

2023 NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT MATERIALS

Remington Stone

v.

Marley Miser and Acme Construction Company



Materials prepared by the Law, Youth & Citizenship Program of the New York State Bar Association[®]

Supported by The New York Bar Foundation



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Greetings Mock Trial Tournament Participants!

November 2022

Welcome back to in-person competitions! Each year, the Mock Trial Subcommittee spends several months creating a new mock trial case for you to work with. The cases typically alternate each year between a civil and criminal case. There are over 400 teams around the state competing in the high school mock trial tournament, so it does take some time for everyone to begin working with the case.

It is possible that once the case has been released and teams begin to work with it, questions may arise, and corrections may be required. Please note the following important information:

- **All questions and comments about the case should be submitted in writing (no phone calls please) and sent to the NYS Bar Mock Trial Statewide Coordinators, Stacey Whiteley swhiteley@nysba.org and Kim McHargue kmchargue@nysba.org for review (copy your County Coordinator on the email).**
- The Statewide Coordinator will forward all questions to the Mock Trial Subcommittee for their review, and if necessary, a **correction memo** will be issued, along with any **revised pages** which may need to be inserted into the case booklet. The most current revisions will always be easily identifiable for you.
- All correction memos and revised pages will immediately be provided by email to the county coordinators, who will then notify the team coaches/advisors. **The memos and revised pages will also be accessible online at www.nysba.org/nys-mock-trial/**
- **Once a correction memo has been issued, the current pages in the case booklet should immediately be replaced with the revised pages.** You may also want to include the correction memo in your case booklet for reference purposes.
- Please be aware that more than one correction memo may be issued if the questions or comments received require additional changes to be made to the case after the first correction memo has been issued. We realize that receiving the correction memos can be frustrating once you have begun working with the case, and although the case is proofread before being released, please bear in mind that human error does occur, so your patience and understanding is greatly appreciated.
- The most current updated version of the case will also be available **online at www.nysba.org/nys-mock-trial/** should you choose to reprint the entire case. It is **not** necessary to reprint the entire case booklet each time a correction memo is issued, but you do have that option.

We hope you enjoy working with this year's case. Have fun, and good luck with your trials!

The 2023 Mock Trial State Finals will be held in Albany on May 21-23.

Questions/Comments? Contact Stacey Whiteley swhiteley@nysba.org

Current Mock Trial Case Materials always available online at www.nysba.org/nys-mock-trial/

Information about the Mock Trial program is available online at www.nysba.org/nys-mock-trial/

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- Knowledge and adherence to the rules of the competition
 - Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; and strategies intended to waste the opposing team’s time for its examinations. A score of 1 to 3 points should be awarded for a below average performance, 4 to 6 points for an average performance, and 7 to 10 points for an outstanding or above average performance.
- c. The appropriate County Coordinator will collect the Performance Rating Sheet for record-keeping purposes. Copies of score sheets are **NOT** available to individual teams; however, a team can get its total score through the County Coordinator.

3. LEVELS OF COMPETITION

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

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

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

4. COUNTY TOURNAMENTS

- a. All rules of the New York State Mock Trial Tournament must be adhered to at tournaments at the county level.
- b. In these tournaments, there are two phases. In the first phase, each team will participate in at least two rounds before the elimination process begins, once as plaintiff/prosecution and once as defendant. After the second round, a certain number of the original teams will proceed to the second phase in a single elimination tournament. Prior to the competition, and with the knowledge of the competitors, the County Coordinator may determine a certain number of teams that will proceed to the Phase II single elimination tournament. While this number may be more or less than half the original number of teams, any team that has won both rounds based on points, but whose combined score does not place it within the established number of teams, **MUST** be allowed to compete in the Phase II single elimination tournament.

- c. The teams that advance to Phase II do so based on a combination of wins and point differential, defined as the points earned by a team in its Phase I matches minus the points earned by its opponents in those same Phase I matches. All 2-0 teams automatically advance; teams with a 1-1 record advance based upon point differential, then upon total number of points in the event of a tie. If any spots remain open, teams with a record of 0-2 advance, based upon point differential, then upon total number of points in the event of a tie.
- d. If the number of teams going into the single elimination phase is odd, the team with the most wins and highest combined score will receive a bye. If any region starts the year with an odd number of teams, one team from that region may receive a bye, coin toss, etc.
- e. Phase II of the contest is a single round elimination tournament. Winners advance to the next round.
- f. At times, a forfeit may become a factor in determining aggregate point totals and which teams should advance to the single elimination tournament. Each county should review its procedures for dealing with forfeits, in light of the recommended procedures below. Please note that due to the variety of formats in use in different counties, it is strongly urged that each county develop a system which takes its own structure into account and which participants understand prior to the start of the local tournament. That procedure should be forwarded to the New York State Mock Trial Program Manager, before the first round of competition is held.
- g. If a county has an established method for dealing with forfeits, or establishes one, then that rule continues to govern. If no local rule is established, then the following State rule will apply:

In determining which teams will advance to the single elimination tournament, forfeits will first be considered to cancel each other out, as between two teams vying for the right to advance. If such canceling is not possible (as only one of two teams vying for a particular spot has a forfeit victory), then a point value must be assigned for the forfeit. The point value to be assigned should be derived from averaging the team's point total in the three matches (where possible) chronologically closest to the date of the forfeit; or if only two matches were scheduled, then double the score of the one that was held.

5. REGIONAL TOURNAMENTS

- a. Teams who have been successful in winning county level tournaments will proceed to regional level tournaments. Coordinators administer regional tournaments. Coordinators have sole responsibility for organizing, planning, and conducting tournaments at the regional level. Participants must adhere to all rules of the tournament at regional level tournaments.
- b. Regional tournaments are held in counties within the region on a rotating basis. Every effort is made to determine and announce the location and organizer of the regional tournaments before the new mock trial season begins.
- c. All mock trial rules and regulations and criteria for judging apply at all levels of the Mock Trial Tournament.
- d. The winning team from each region will be determined by an enactment between the two teams with the best records (the greatest number of wins and greatest point differential) during the regional tournament. The winning team from each region will qualify for the State Finals in Albany.
- e. The regional tournaments **MUST** be completed 16 days prior to the State Finals. Due to administrative requirements and contractual obligations, the State Coordinator must have in its possession the schools' and students' names by this deadline. Failure to adhere to this deadline may jeopardize hotel blocks set aside for a region's teacher-coaches, attorney-advisors and students coming to Albany for the State Finals.

6. STATEWIDE FINALS

- a. Once regional winners have been determined, The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days it participates in the State Finals in Albany. Funding is available to pay for up to nine students, one teacher coach and one attorney-advisor for each team. Students of the same gender will share a room, with a maximum of four per room. Transportation costs are **not** covered. However, if a school can cover the additional costs for room and board for additional team members above the nine students, one teacher coach and one attorney-advisor sponsored through the Bar Foundation, all members of a team are welcome to attend the State Finals. However, requests to bring additional team members must be approved by the Mock Trial Program Manager in advance.

- b. Costs for additional students (more than nine) and adult coaches and/or advisors (more than two) will **not** be covered by the New York Bar Foundation grant or the LYC Program. The Mock Trial Program Manager is **not** 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, the Mock Trial Program Manager may choose to make those arrangements for the additional team members. This applies to team members only, not guests. If the Program Manager chooses **not** to make the arrangements, every attempt will be made to pass along any special hotel rates to these other participants. Additional team members attending the State Finals may participate in organized meal functions but will be responsible for paying for their participation. **The teacher coach must advise their school administration of the school's responsibility to cover those additional charges and obtain their approval in advance.**

The Mock Trial Program Manager will provide an invoice to the coach to submit to the school's administrator. A purchase order must then be submitted to the Mock Trial Program Manager in Albany immediately after the school's team has been designated as the Regional Winner who will be participating in the State Finals in Albany. In most cases, the school will be billed after the State Finals. However, it is possible that a school may be required to provide payment in advance for their additional team members.

- c. Each team will participate in two enactments the first day, against two different teams. Each team will be required to change sides—plaintiff/prosecution to defendant, defendant to plaintiff/prosecution—for the second enactment. Numerical scores will be assigned to each team's performance by the judges.
- d. The two teams with the most wins and highest numerical score will compete on the following day, except that any team that has won both its enactments will automatically advance, regardless of its point total. In the rare event of three teams each winning both of their enactments, the two teams with the highest point totals, in addition to having won both of their enactments, will advance.
- e. The final enactment will be a single elimination tournament. Plaintiff/prosecution and defendant will be determined by a coin toss by the Mock Trial Program Manager. All teams invited to the State Finals must attend the final trial enactment.
- f. A judge will determine the winner. **THE JUDGE'S DECISION IS FINAL.**

7. MCLE CREDIT FOR PARTICIPATING ATTORNEYS AND JUDGES

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program in the State of New York, as an accredited provider of CLE programs, we are required to carefully monitor requests for earning CLE credit through participation in our high school mock trial program. Credit may be earned for preparing students for and judging law competitions, mock trials, and moot court arguments, including those at the high school level. Ethics and professionalism credit hours are not available for participation in this type of activity. No additional credit may be earned for preparation time.

One (1) CLE credit hour may be earned for each 50 minutes of participation in a high school or college law competition. **A maximum of three (3) CLE credits** in skills may be earned for judging or coaching mock trial competitions **during any one reporting cycle**, i.e., within a two-year period¹. **Newly admitted attorneys (less than 24 months) are NOT eligible for this type of CLE credit.**

The LYC Program will process all requests for CLE credit through the New York State Bar Association's Continuing Legal Education Department, an accredited provider of CLE approved by the New York State Continuing Legal Education Board. The procedure is as follows:

- a) The Mock Trial Program Manager will provide the County Coordinators with a copy of the Request for CLE Credit Verification Form² to disseminate to attorneys/judges participating in the mock trial tournament in their county.
- b) **Request for CLE Credit Verification Forms** must be signed by the attorney/judge and returned to the County Coordinator. The County Coordinator must return the signed copy to the Mock Trial Program Manager in Albany by mail, email, or fax by June 30 for processing.
- c) MCLE certificates will be generated and sent by **email** to the attorney/judge requesting the credit. **MCLE credit cannot be provided without the signed Request for CLE Credit Verification Form.** The attorney/judge **MUST** provide a valid email address on the form. A copy of the Request for CLE Credit Verification Form follows and is also available online at www.nysba.org/nys-mock-trial/.

¹ 1) The biennial reporting cycle shall be the two-year period between the dates of submission of the attorney's biennial registration statement; 2) An attorney shall comply with the requirements of this Subpart commencing from the time of the filing of the attorney's biennial attorney registration statement in the second calendar year following admission to the Bar.

² County Coordinators will begin disseminating this revised form to participating attorneys and judges during the 2022-2023 New York State Mock Trial tournament season.

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

PART III

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SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In trials in the United States, elaborate rules are used to regulate the admission of proof (i.e., oral, or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge.

The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the attorneys to know the rules of evidence and to be able to use them to protect their client and to limit the actions of opposing counsel and their witnesses.

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

1. SCOPE

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

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

2. RELEVANCY

Rule 201: RELEVANCY. Only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the probative value of the relevant evidence is substantially outweighed by the

danger that the evidence will cause unfair prejudice, confuse the issues, or result in undue delay or a waste of time, the court may exclude it. This may include testimony, physical evidence, and demonstrations that do not relate to time, an event or a person directly involved in the litigation.

Example:

Photographs present a classic problem of possible unfair prejudice. For instance, in a murder trial, the prosecution seeks to introduce graphic photographs of the bloodied victim. These photographs would be relevant because, among other reasons, they establish the victim's death and location of the wounds. At the same time, the photographs present a high danger of unfair prejudice, as they could cause the jurors to feel incredible anger and a desire to punish someone for the vile crime. In other words, the photographs could have an inflammatory effect on the jurors, causing them to substitute passion and anger for reasoned analysis. The defense therefore should object on the ground that any probative value of the photographs is substantially outweighed by the danger of unfair prejudice to the defendant.

Problems of unfair prejudice often can be resolved by offering the evidence in a matter that retains the probative value, while reducing the danger of unfair prejudice. In this example, the defense might stipulate to the location of the wounds and the cause of death. Therefore, the relevant aspects of the photographs would come in, without the unduly prejudicial effect.

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

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

Examples:

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

Sally is fired and sues her employer for sexual harassment. The employer cannot introduce evidence that Sally experienced similar problems when she worked for other employers.

Evidence about Sally's character is not admissible to prove that she acted in conformity with her prior conduct, unless her character is at issue, or it relates to truthfulness.

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

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

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

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

Examples:

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

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

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

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

3. WITNESS EXAMINATION

a. Direct Examination (attorneys call and question witnesses)

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

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

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

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

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

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

Objections:

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

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

Objection:

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

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

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

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

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

Objection:

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

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

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

Example:

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

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

Example:

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

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

Examples:

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

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

Rule 307: IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION.

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

Example:

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

Objections:

“Objection. The prejudicial effect of this evidence outweighs its usefulness.”

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

c. Re-Direct Examination

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

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

Objection:

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

d. Re-Cross Examination

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

Objection:

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

e. Argumentative Questions

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

Example:

“Why were you driving so carelessly?”

Objection:

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

f. Compound Questions

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

Examples:

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

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

Objection:

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

g. Asked and Answered Questions

Rule 312: A student-attorney may not ask a student-witness a question that the student-attorney has already asked that witness. Such a question is subject to objection, as having been asked and answered.

Objection:

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

h. Speculation

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

Example:

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

Objection:

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

4. HEARSAY

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

Rule 401: HEARSAY. A statement made out of court (i.e., not made during the course of the trial in which it is offered) is hearsay if the statement is offered for the truth of the fact asserted in the statement. A judge may admit hearsay evidence if it was a prior out-of-court statement made by a party to the case and is being offered against that party. The party who made the prior out-of-court statement can hardly complain about not having had an opportunity to cross-examine himself regarding this statement. He said it, so he has to live with it. He can explain it on the witness stand. Essentially, the witness on the stand is repeating **a statement made** outside 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 7-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 7-Eleven on May 1." Peter, the party offering the witness's testimony as evidence, is offering it to prove that Joe was in the 7-Eleven on May 1, presumably to create a question as to whether it could have been Joe at the scene of the crime, rather than Peter. In this example, Joe is the declarant. The reason why the opposing party, in this case the prosecution, should object to this testimony is that the prosecution has no opportunity to cross-examine Joe to test his veracity (was he telling the truth or just trying to help his friend Peter out of a mess) or his memory (was Joe sure it was May 1, or could it have been May 2)?

5. EXCEPTIONS

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

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

Example:

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

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

Example:

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

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

Example:

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

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

Example:

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

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

- (A) The statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
- (B) The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

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

Example:

Dr. G, plaintiff's expert witness, is being cross-examined by defendant's counsel. During the cross-examination Dr. G is shown a volume of a treatise on cardiac surgery, which is the subject of Dr. G's testimony. Dr. G is asked if s/he recognizes the treatise as reliable on the subject of cardiac surgery. Dr. G acknowledges that the treatise is so recognized.

Portions of the treatise may then be read into evidence although the treatise is not to be received as an exhibit.

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

Rule 407: STATEMENTS BY AN UNAVAILABLE DECLARANT. In a civil case, a statement made by a declarant unavailable to give testimony at trial is admissible if a reasonable person in the declarant's position would have made the statement only if the declarant believed it to be true because, when the statement was made, it was so contrary to the declarant's

proprietary or pecuniary interest or had so great a tendency to expose the declarant to civil or criminal liability.

Example:

Mr. X, now deceased, previously gave a statement in which he said he ran a red light at an intersection, and thereby caused an accident that injured plaintiff P. Offered by defendant D to prove that D should not be held liable for the accident, the statement would be admissible as an exception to the exclusion of hearsay.

6. OPINION AND EXPERT TESTIMONY

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

Example:

(General Opinion)

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

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

Objection:

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

Example:

(Lack of Personal Knowledge)

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

Objection:

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

Example:

(Opinion on Outcome of Case)

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

Objection:

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

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

Example:

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

Objection:

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

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

7. PHYSICAL EVIDENCE

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

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

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

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

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

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

Objection:

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

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

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

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

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

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

Objection:

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

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

Objection:

“*Objection. The witness’s answer is inventing facts that would materially alter the outcome of the case.*”

9. PROCEDURAL RULES

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

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

Rule 802: MOTIONS. No substantive pre-trial or trial-term motions are 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.

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

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

Accident Investigation Report

Name of Injured Person: Remington Stone

Date of Birth: March 15, 1994 Telephone Number: (718) 987-6543

Address: 534 South Percy Street, Apt. 312, Gotham, Nirvana

What part of the body was injured? Describe in detail. The palms of both hands and both forearms

What was the nature of the injury? Describe in detail. Third degree electrical burns to the hands and the forearms, with severe nerve damage to the forearms

Describe fully how the accident happened? What was the injured person doing prior to the event? What equipment, tools being used? Remington Stone was using an aluminum ladder and a claw hammer to remove sheetrock from a wall. After hitting the wall with the hammer, the ladder started to slip, Stone dropped the hammer and grabbed the ladder with both hands to brace for the fall. The ladder then struck a live 220-volt electrical line behind the sheetrock, causing the injuries noted above.

Names of persons interviewed:

<u>Remington Stone</u>	<u>Dakota Springs</u>
<u>Marley Miser</u>	

Date of Event: September 23, 2021 Time of Event: Approx. 7:45 AM

Exact location of event: 2597 Lancaster Road, Depew, Nirvana

What caused the event? Unsafe workplace: use of a defective aluminum ladder on a wet surface

Were safety regulations in place and used? If not, what was wrong? Safety regulations were ignored. The employer and the homeowner should have provided Remington Stone with a safe working environment, including, but not limited to, a non-metal ladder and a sufficiently dry work area.

Injured person went to doctor/hospital? Doctor's Name: Mark Sloan

Hospital Name: Gotham General

Analysis and Opinion:

On October 1, 2021, I was asked by the attorneys for Remington Stone to conduct an investigation of the facts and circumstances of the injuries to Remington Stone. The investigation was conducted between October 4 and October 6, 2021. I interviewed Remington on October 4 and Remington stated that the only ladder available for Remington to use on the day of the accident was an aluminum one with its rubber footings missing. Remington also stated that the surface where Remington had to work was vinyl tile flooring that was very wet because of the heavy rain the night before and the missing windows. I conducted a site visit on October 5 and spoke with the homeowner Marley Miser. Miser acknowledged that the floor was wet because of the rain. Later on October 5, I spoke with Dakota Springs, the union steward for Construction Workers Local 1212, who stated that Remington was a capable construction worker and that Remington had shown no signs of being afraid to climb ladders. The floor during my site visit was completely dry and consequently I was not able to recreate the exact conditions of September 23. However, I did examine the aluminum ladder and observed that the rubber footings that would have prevented the ladder from slipping were missing.

It is my expert opinion, within a reasonable degree of scientific certainty, that the accident was caused by the wet vinyl flooring on which the ladder was standing and the lack of rubber footings on the ladder. When Remington reached for their claw hammer and proceeded to strike the drywall, the unsafe conditions—the wet flooring and defective ladder—caused the ladder to slip and fall against the electrical line.

Alexis Andersen, Ph. D.

Alexis Andersen, Ph.D., Vice President and Senior
Investigator Taylor & Associates

November 1, 2021

Accident Reconstruction Report

October 25, 2021

Raymond Fudd, Adjuster
Nascent Indemnity Insurance of Nirvana
P.O. Box 1234
Gotham, Nirvana 12233-1234

RE: Report: Workplace Accident Investigation
 Insured: Acme Construction Company
 Claim No.: 98765-012
 Date of Accident: September 23, 2021
 Accident Location: 2597 Lancaster Road, Depew, Nirvana

Dear Mr. Fudd:

As per your request on September 27, 2021, an investigation was made of the accident on September 23, 2021 at the property located at 2597 Lancaster Road, Nirvana. The property in question is 125-year-old Victorian house. It is being converted from a single-family house to a side-by-side duplex. The work is being performed by Acme Construction Company, the insured.

My instructions were to make a reconstruction of the accident and to form an opinion of how the accident happened.

The following is a summary of my investigation:

Facts:

After obtaining the HIPAA release, I received the medical report of Remington Stone, the construction worker injured in the September 23 accident. The medical report showed that Stone received third-degree electrical burns to the hands and the forearms. On September 30, 2021 I visited the property and spoke with Acme site supervisor Reese Withers and the property owner Marley Miser. Withers stated that Stone was directed on the morning of the accident to commence taking down drywall. Withers stated that Stone, who was not being directly supervised at the time, used an old aluminum ladder that belonged to the property owner. I examined the 12-foot aluminum ladder and observed that it was missing its rubber footings. Miser stated that the ladder was to be thrown away, but that Miser had kept forgetting to put it to the curb for trash pickup. Miser also stated that Miser does not remember giving Stone permission to use the ladder.

Withers stated that on the morning of the accident, some rainwater had collected on the old vinyl tile flooring. It had rained the night before, the old windows had been removed; and the new windows had not yet been installed. Withers stated that Stone told Withers that after Stone had climbed the ladder and took a big strike at the drywall, the ladder slid backwards causing the top of the ladder to fall against a live 220-volt electrical line and injuring Stone as described in the medical report. I was unable to obtain permission from Stone's attorneys to speak to Stone.

On my visit, the vinyl floor was completely dry. I poured a two-quart size bucket of water on the floor. I positioned the ladder on the wet portion of the floor (using the 4-to-1 rule) and asked a worker, who

was approximately the same height and weight as Stone, to climb up the ladder. The medical report shows that Stone was 73 inches tall and weighed about 180 pounds. After directing the worker to make the motion purportedly made by Stone striking the wall with a claw hammer, I observed that the ladder did not move in the slightest. The 4-to-1 rule provides that the base of the ladder is to be placed one foot away from the wall for every four feet of height to where the ladder rests against the building (Nirvana Workplace Safety Rules.)

Professional Opinion:

It is my professional opinion that the sole cause of the accident is Stone's failure to properly position the ladder from the wall. Pursuant to the 4-to-1 rule, the base of the 12-foot ladder should have been positioned no more than three feet away from the wall. Some people who might be fearful of heights will pitch the base of the ladder farther away from the wall so that the slope of the ladder is not as steep. The less-steeped slope gives them a false sense of security. Moreover, the aluminum edges on a properly pitched ladder with approximately 180 pounds on it would actually penetrate slightly into the vinyl and provide a stable base for the ladder. In the case at hand, Stone's improper positioning of the ladder (whether or not the floor was wet) caused the ladder to slip, resulting in the injuries Stone suffered.

Dr. Skylar Harris

Dr. Skylar Harris

GOTHAM GENERAL HOSPITAL

Medical Incident Report

Attending Physician: Dr. Doogie Howser, 3rd Year Resident

Date: September 23, 2021

Patient name: Remington Stone

Address: 534 S. Percy Street, Apt. 312, Gotham, Nirvana

Health Insurance: Construction Workers United Major Medical, Policy # AA-235689

Secondary Coverage: none

Patient's primary physician: Cristina Yang

Vital Statistics: Age 28 Date of Birth March 15, 1994 Weight 177 lbs Height 5' 10"

Blood pressure 135/78 Pulse 67 Temperature 99.0

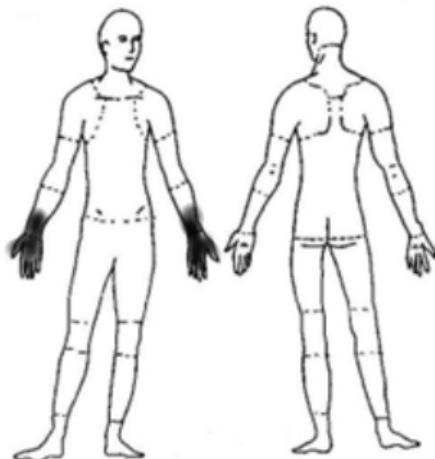
Respiratory rate 25 breaths per minute Blood alcohol content %

Details of Illness/Accident: Patient reported to the ER with third-degree burns on both palms and the inside of both forearms. See diagram below. Patient presented disoriented, lacked balance and hand-eye coordination, consistent with shock and/or being under the influence. Testing also showed that patient incurred significant nerve damage in both forearms. Patient stated that the injuries occurred as the result of a metal ladder that patient was on falling onto a live electrical line. Injuries are non-life threatening.

Treatment: Palms will be treated with warm water, suave and wrapping. Forearms will require skin grafting.

Prognosis: Full recovery guarded. Skin grafting may not result in restoration of sensory nerves and muscles tissue in the forearms.

Part of body affected: (shade all that apply)



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State of Nirvana

Commission on Occupational Safety and Health

Workplace Safety Rules

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VI. Ladders

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3. Straight ladders –When using a straight ladder, pitch the ladder against the structure using the 4-to-1 rule. The rule provides that the ladder must be leaned at a 75-degree angle. As such, the base of the ladder should be $\frac{1}{4}X$ from the structure where X represents the length of the ladder. For example, if the ladder being used is 12 feet tall, the base should not be more than three feet from the structure. Ladders should have rubberized footings to prevent slippage.

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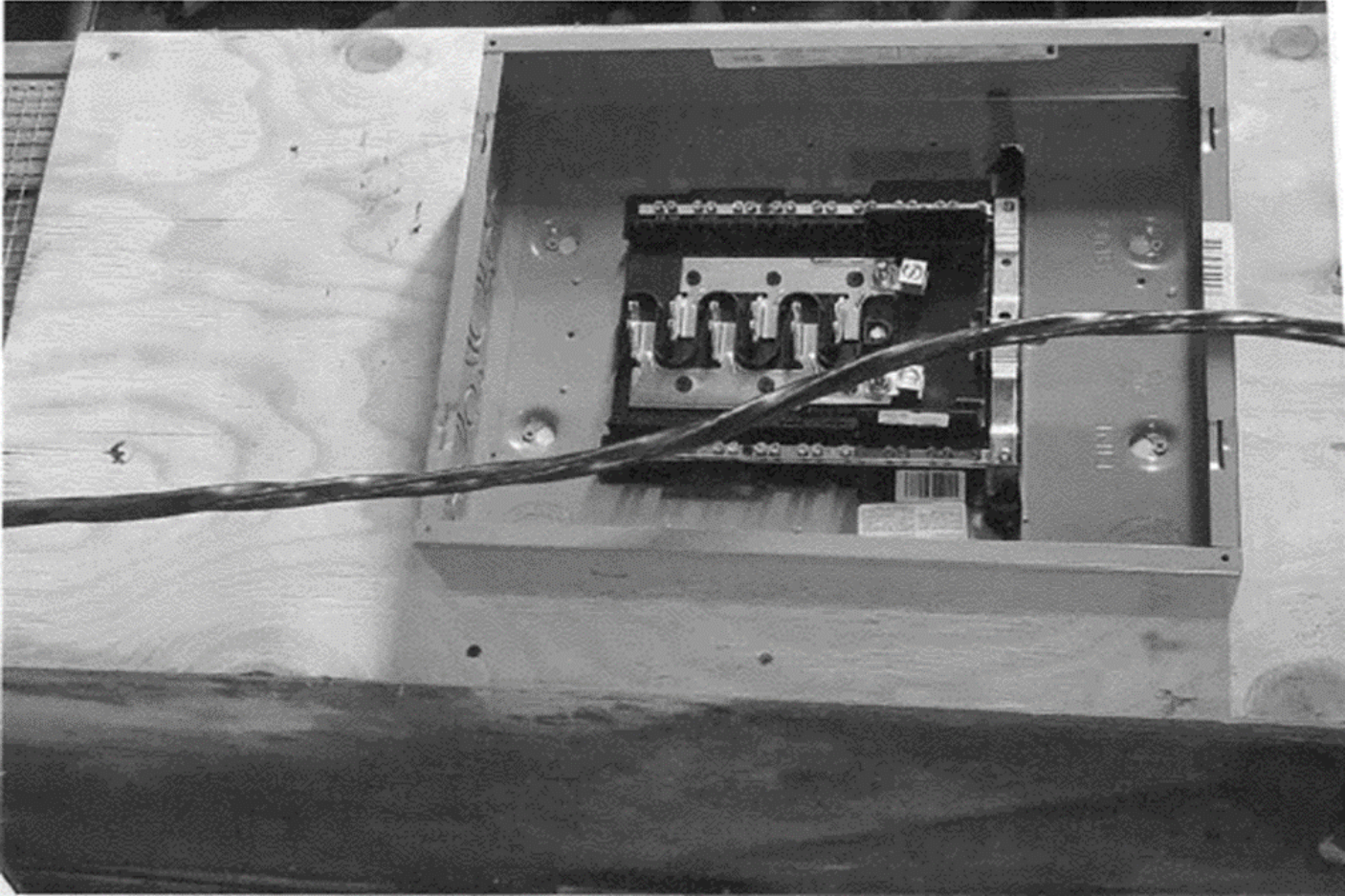
12-Foot Aluminum Ladder



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EXHIBIT ____

220-volt Electrical Wire Struck by R. Stone



Photograph taken by A. Andersen on October 5, 2021

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EXHIBIT _____

Wire Gauge Safety Rating Diagram

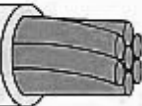
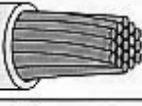

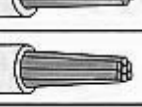
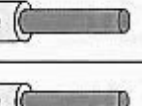
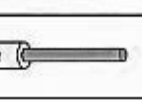
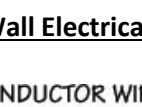

3/0 Gauge		200 Amps Service entrance
1/0 Gauge		150 Amps Service entrance and feeder wire
3 Gauge		100 Amps Service entrance and feeder wire
6 Gauge		55 Amps Feeder and large appliance wire
8 Gauge		40 Amps Feeder and large appliance wire
10 Gauge		30 Amps Dryers, appliances, and air conditioning
12 Gauge		20 Amps Appliance, laundry and bathroom circuits
14 Gauge		15 Amps General lighting and receptacle circuits

Diagram 5 from § 180(e) of the Gotham City Building Code.

Types of In-Wall Electrical Wires & Cables Permitted under State Code

SINGLE-CONDUCTOR WIRES

Solid-core wire



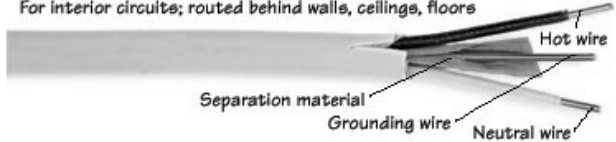
Stranded wire



MULTICONDUCTOR CABLES

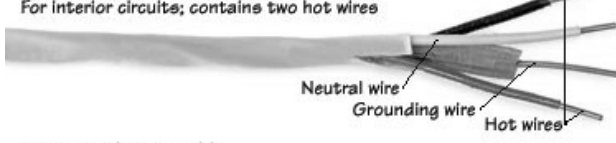
Type NM (nonmetallic sheathed) cable "12-2"

For interior circuits; routed behind walls, ceilings, floors



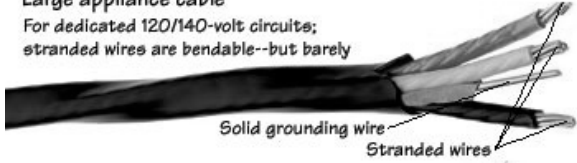
Type NM (nonmetallic sheathed) cable "14-3"

For interior circuits; contains two hot wires



Large appliance cable

For dedicated 120/140-volt circuits; stranded wires are bendable--but barely



Type MC armored cable

For interior circuits only

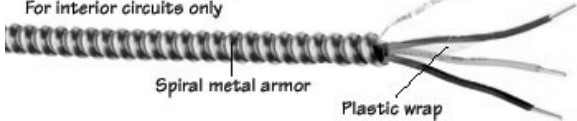


Diagram 7 from § 180(e) of the Gotham City Building Code.

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Gotham Daily Chronicle

Issue 42

Your favorite daily paper!

August 31, 2022

University Funding from Construction Company and Testimony from Accident Reconstruction Expert

By Mortin Muckrader

Gotham Daily Chronicle – August 31, 2022

In 2014, Acme Construction Company and the University of Nirvana entered into an agreement whereby Acme Construction Company pledges \$30,000,000 to the University. Pursuant to the agreement, the University will receive \$1,500,000 each year for 20 years, and the first donation is scheduled for the 2015-2016 academic year.

Initially, Acme Construction Company allowed the University to decide how to allocate the funds to the University operations. However, the CEO of Acme Construction Company, Doug Mogul, has urged the University to provide a significant portion of the funding to the Department of Industrial Arts. Does Acme plan to train more construction engineers or to pay back for the services of its expert testimony?

Allocations received by the Department of Industrial Arts

Academic year	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
Allocations	\$50,000	\$100,000	\$175,000	\$225,000	\$275,000	\$315,000	\$370,000	\$450,000

According to the University's records, the funds allocated to the Department of Industrial Arts have continued to grow over the past eight years. The Department of Industrial Arts received twice the allocation in the 2016-2017 academic year than the year prior. Until the academic year of 2022-2023, the funds allocated to the Department of Industrial Arts were up to nine times the original amount!

Why did the Department of Industrial Arts receive more funding?

Conveniently, the Department of Industrial Arts received a larger allocation starting in 2016, the same year that Skyler Harris began to testify as an accident reconstruction expert on behalf of Acme.

Skyler Harris is a tenured professor and the Associate Dean in the Department of Industrial Arts at The University of Nirvana. Professor Harris also served as an accident reconstruction expert in dozens of personal injury cases.

Professor Harris has testified on behalf of Acme Construction in a number of high-profile accident cases since 2016. It is believed that Harris' testimony was instrumental in the company receiving favorable outcomes in practically all of its relevant cases. The similarity between all of the cases was that Professor Harris has always been able to provide "professional" and "reasonable" testimonies which served to help Acme get rid of those annoying personal injury lawsuits. The point is that Professor Harris provides Acme with accident reconstruction expert testimony at a price far below the market price.

According to the plaintiffs' attorneys who have sued Acme in personal injury cases, the increasingly larger contributions to Professor Harris' Department are the real payback for their "expert" services.

Overall, it is difficult to say that the increase in fund allocation to the Department of Industrial Arts in recent years has nothing to do with the expert testimony services provided by Professor Harris to Acme Construction. It is worth pondering whether experts funded by enterprises are qualified to testify on behalf of the enterprises in court and whether such expert testimony is credible.

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

PART VI**

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CASES

Ortega v. Puccia, 57 AD3d 54 (2008)

The plaintiff was injured after falling from a scaffold. The scaffold had been disassembled on the day before the accident and reassembled just prior to the accident. There was conflicting testimony as to who reassembled the scaffold and failed to reinstall the locking wheels. Cases involving Labor Law §200 fall into two broad categories: (1) those where workers are injured as a result of dangerous or defective premises conditions at a work site, and (2) those involving the manner in which the work is performed. The court opined that where a premises condition is at issue, property owners may be held liable if the owner either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident. The court further opined that when the manner of work is at issue, no liability will attach to the owner solely because the owner may have had notice of the unsafe manner in which work was performed. Rather, it must be shown that the party to be charged had the authority to supervise or control the performance of the work.

Tsongas v. Apex Construction, 67 Misc.3d 1237 (2020)

The plaintiff, a construction worker, was injured after falling into an unguarded and uncovered hole in the backyard of the homeowner's property. The construction company had excavated the hole as part of creating footings for a rear deck. The plaintiff sued the construction company as well as the homeowner. The court held that in order to hold a homeowner liable under Labor Law §200, it must be shown that the accident occurred in circumstances under which (i) the homeowner exercised supervisory control of the manner and method of the work; or (ii) the homeowner had actual or constructive notice of a dangerous or defective condition and an opportunity to take action, but failed to do so. In denying the summary judgment motion, the court ruled that the homeowner had failed to establish *prima facie* that they lacked constructive notice of the dangerous condition that brought about the plaintiff's injuries. **On appeal, Appellate Division, 1st Department concluded that the dispositive issue was not the defective premises condition, but, rather, whether the defendant homeowner had authority to exercise supervisory control over the injury-producing work. The appellate court determined that the record did not establish that the homeowner had exercised such supervisory control since said homeowner had lived off-site. The First Department then reversed the lower court's order that denied the summary judgment motion, and dismissed the complaint against the homeowner (*Tsongas v. Apex Construction*, 189 AD3d 567 [2020]).**

Gittins v. Barbaria Construction Corp., 74 AD3d 744 (2010)

The plaintiff, a carpenter, was injured at the residence of the defendant homeowner. The plaintiff commenced a Labor Law §200 action against the construction company and the homeowner. There was deposition testimony that the defendant did not direct or control the plaintiff's work, that the defendant never met the homeowner, and that the homeowner never gave the plaintiff directions as to how the plaintiff should perform the work. On a summary judgment motion, the court dismissed the cause of action against the homeowner.

***Hawver v. Steele*, 204 AD3d 1125 (2022)**

The plaintiff was injured when doors of a barn, owned by the defendant, fell on the plaintiff when the plaintiff was delivering sheetrock to the defendant. The doors were off their hinges and secured only by wedges. In reversing the lower court's order granting summary judgment to the defendant, the appellate court held that the fact that a dangerous condition is open and obvious does not relieve the defendant of all duty to maintain the premises in a reasonably safe condition.

IMPORTANT NOTE:

Only the names and the citations of the relevant cases are provided here.

Please go to www.nysba.org/nys-mock-trial/ to **view** and/or **print** the text of each case.

RELEVANT STATUTES

Labor Law § 200. General duty to protect health and safety of employees

1. All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons. The board may make rules to carry into effect the provisions of this section.

...

Labor Law § 240. Scaffolding and other devices for use of employees

1. All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

...

Labor Law § 241. Construction, excavation and demolition work

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:

...

6. All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

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SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	Page 2 of 2
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T I M E L I M I T S

OPENING STATEMENTS	DIRECT EXAMINATION	CROSS EXAMINATION	CLOSING ARGUMENTS
5 minutes for each side	10 minutes for each side	10 minutes for each side	10 minutes for each side

		PLAINTIFF / PROSECUTION	DEFENSE
DEFENSE 1st Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
DEFENSE 2nd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
DEFENSE 3rd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		

➤ <u>CLOSING STATEMENTS</u> (ENTER SCORE→)		
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<p align="center">(1-10 points PER team)</p> <p>➤ <u>PROFESSIONALISM</u> (ENTER SCORE→)</p> <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; improper communication and signals; invention of facts; strategies intended to waste the opposing team’s time for its examinations. 		
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➤ <u>TOTAL SCORE</u> (ENTER SCORE)→		
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JUDGE’S NAME (Please print) →

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

- PLAINTIFF/PROSECUTION
 DEFENSE

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

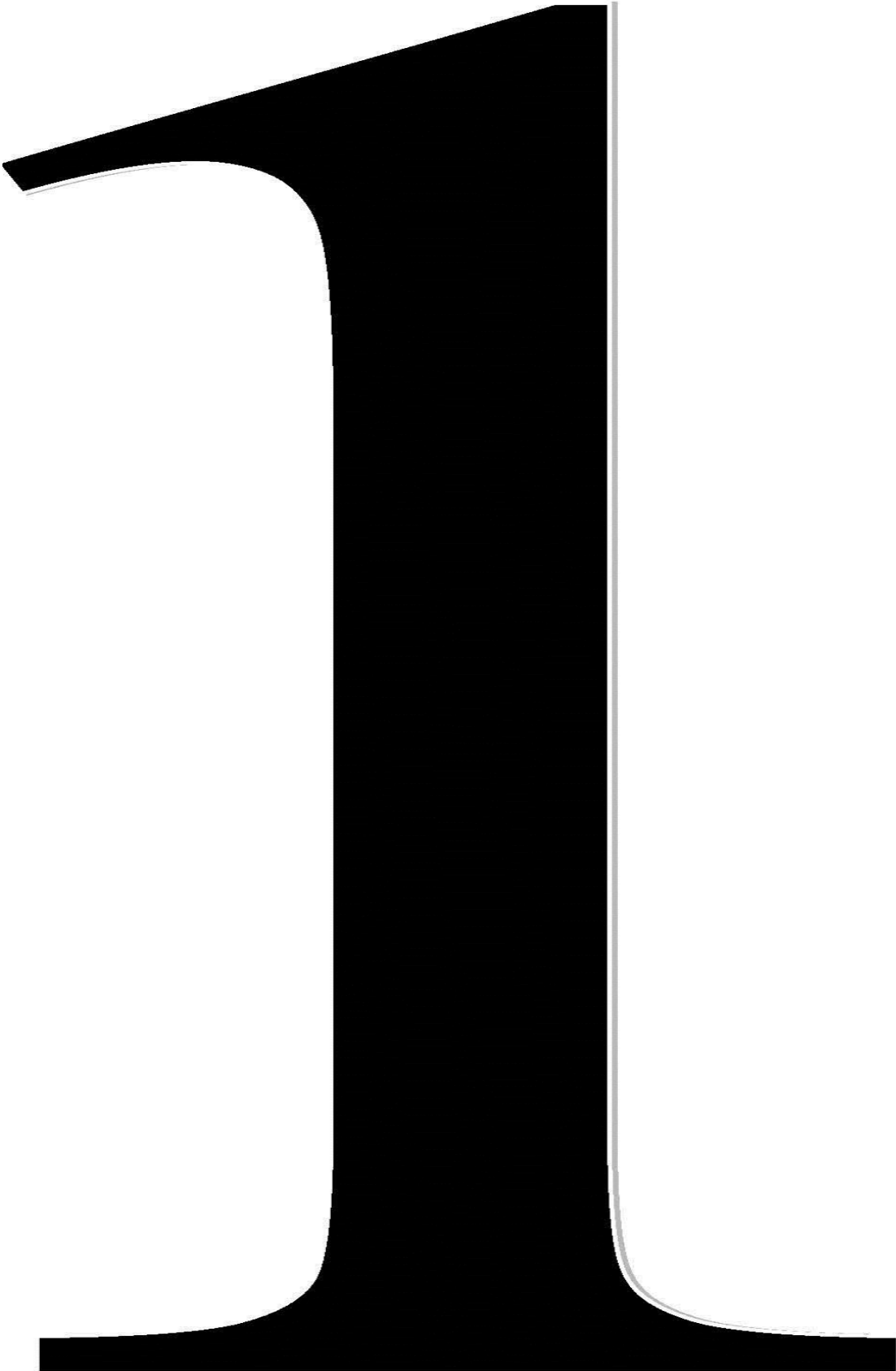
Lubet, Steven, Modern Trial Advocacy, National Institute for Trial Advocacy

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.



(over)

TIME LIMITS

OPENING STATEMENTS

5 minutes for each side

DIRECT EXAMINATION

10 minutes for each side

CROSS EXAMINATION

10 minutes for each side

CLOSING ARGUMENTS

10 minutes for each side

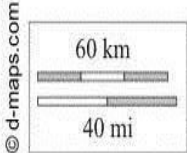
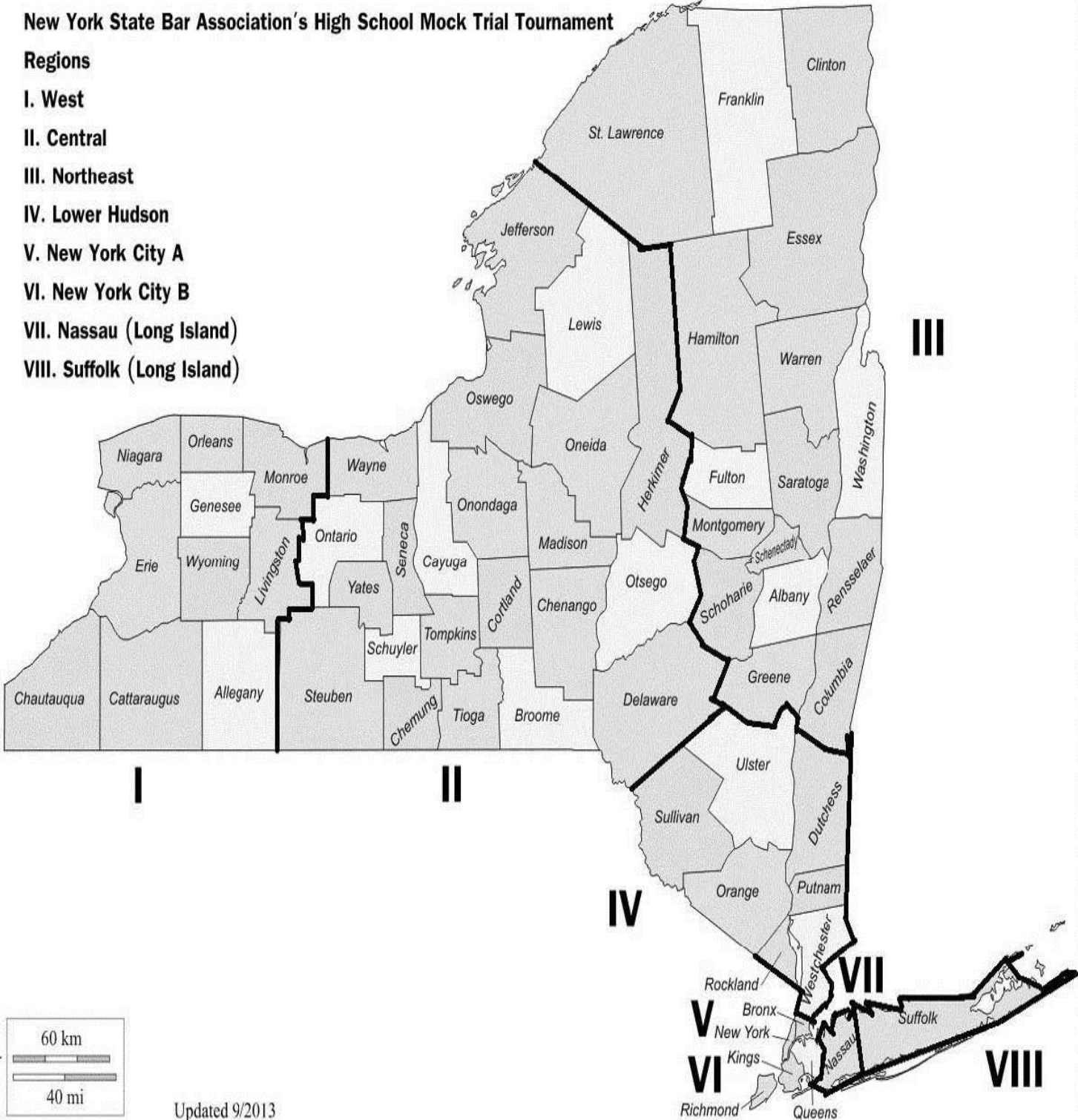
Regional Map for New York State Bar Association's High School Mock Trial Tournament

A list of all the Past Regional Champions is available at www.nysba.org/nys-mock-trial/

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

Regions

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



Updated 9/2013

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**2022 NEW YORK STATE BAR ASSOCIATION
HIGH SCHOOL MOCK TRIAL CHAMPIONS**

Hunter College High School -New York County, Region 5

*Presiding Judge: Hon. John P. Cronan
U.S. District Judge, Southern District of New York, New York, NY*

Coach

Jonathan Cartwright

Team Members

Liam Austin
Odelya Bergner-Phillips
Ila Chander
Sabina Cherner
Peri Dunn
Victoria Freeman
Daniella Glezer
Leo Greenberg
Lois Herring
Matthew Kohn
Sencha Kreymerman
Ariela Lopez
Elizabeth Louie
Cristina Mercado
Christine Neubert
Leila Shafizadeh
Devanshi Shah
Mia Taubenblat
Soleil Wizman
Caroline Xiao
Caroline Xiong
Leo Zhang

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