

Vincent J. Apruzzese

Mock Trial Competition

2018-2019



HIGH SCHOOL WORKBOOK

Celebrating 37 years of service to the educational community



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

ATTENTION TEACHER-COACHES

CASE CLARIFICATIONS

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

CONTEST SCHEDULES

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

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

CODE OF CONDUCT

Teacher- and attorney-coaches, students, parents and observers are expected to abide by the provisions of the competition's Code of Conduct. See Part I of this workbook for details.

UPDATES

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

BEHAVIOR OF CONTESTANTS, JURORS AND OBSERVERS

Students and adults who participate in the New Jersey State Bar Foundation's High School Mock Trial Competition are expected to comport themselves properly in and out of the courtroom. Students and observers must respect their surroundings. Contestants and observers must (a) remove their litter from courtrooms and other areas and place trash in receptacles; (b) refrain from entering sections of the courthouses or other facilities where they are not authorized to be such as judges' chambers, conference rooms, offices, etc.; (c) refrain from using or removing property belonging to the courthouses or other facilities; (d) refrain from tampering with sound systems and (e) leave the courtrooms, jury rooms, restrooms, and common areas of the courthouses or other facilities in good order. Failure to do so may result in sanctions, including, but not limited to, the team's immediate disqualification from the competition.

Vincent J. Apruzzese
2018-2019 High School Mock Trial Competition
Sponsored by the New Jersey State Bar Foundation

OFFICIAL ENTRY FORM

In order to enter the competition, you must complete this Official Entry Form. All entries must be received no later than October 26, 2018. Please type or print clearly.

Name of School _____

School Address _____

_____ Zip _____

County in which School Is Located _____

Name of Teacher-Coach _____

Area Code, Telephone Number and Ext. (work) _____ (home) _____

School Fax Number _____ Date Submitted _____

E-mail Address _____

Please check the following where applicable:

- ☐ I need a lawyer-coach.
- ☐ I already have a lawyer-coach. His/her name is: _____
- ☐ This is my first year coaching mock trial.
- ☐ This is the school's first year of participation in mock trial.
- ☐ We are mock trial "veterans."
- ☐ Other (please explain): _____

Please return this completed entry form to: Sheila Boro, High School Mock Trial Competition, New Jersey State Bar Foundation, New Jersey Law Center, One Constitution Square, New Brunswick, NJ 08901-1520. Fax number: 732-828-0034; Email: sboro@njsbf.org.

Please Note: You must complete and return this form to the State Bar Foundation in order to enter the competition.
Please keep a copy for your records.

Mock Trial Competition

Statement of Goals

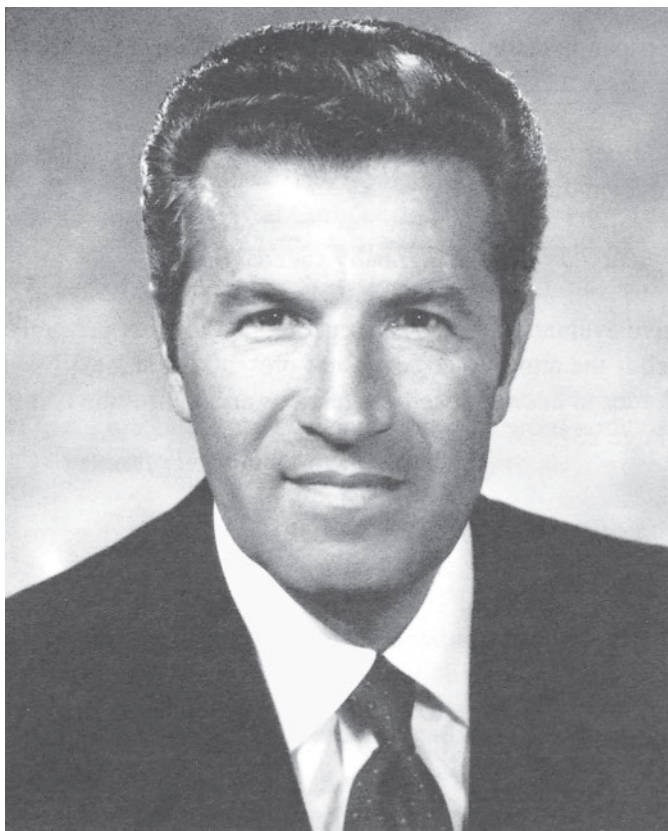
To increase comprehension of the historical, ethical and philosophical basis of the American system of justice.

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

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

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

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



Vincent J. Apruzzese, Esq.

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

VINCENT J. APRUZZESE

MOCK TRIAL

COMPETITION

Dear Educator:


The New Jersey State Bar Foundation's Mock Trial Competition, now in its 37th year, is one of the nation's foremost contests of its kind for high school students. Our Mock Trial Competition has won many national awards for excellence in educational programming.

We thank you, the educators, and your students for your strong support and interest in the Mock Trial Competition. Last year 214 teams registered statewide. We look forward to working with you again in the year ahead.

The New Jersey State Bar Foundation's Mock Trial Competition is made possible by a network of support and cooperation from New Jersey's 21 County Bar Associations. County bar volunteers coordinate trials at the local levels and devote countless hours each year to bring this exciting educational program to students throughout the state. Volunteer attorneys from the counties will assist you and your team in preparing for the competition. This program is made possible through funding from the IOLTA Fund of the Bar of New Jersey.

We hope you'll join us in this classic educational event.

Sincerely,



Ronald C. Appleby, Jr., Esq.
Chair, Mock Trial Committee

VINCENT J. APRUZZESE MOCK TRIAL COMPETITION

*Sponsored by the New Jersey State Bar
Foundation*

FREE Mock Trial Workshop for Teachers & Attorneys

Learn how to conduct a mock trial and prepare your team for the New Jersey State Bar Foundation's High School Mock Trial Competition on **Thursday, October 25, 2018** at the New Jersey Law Center in New Brunswick from **9:00 a.m. to 1:15 p.m.**

The workshop is for teachers and attorneys (county coordinators and attorney-coaches) only. Due to space limitations, we regret that we cannot accommodate students.

Teachers attending the entire workshop will receive professional development hours.

An overview of the mock trial structure, from local contests through statewide finals, will be presented. Students will enact this year's case. A mock trial judge will explain how teams will be evaluated. The revised rules of evidence will be discussed.

The workshop is free but reservations are required. Please complete and return the form below.

Please keep a copy of this workshop form for your records. Directions follow:

From NJ Turnpike: Take Exit 9 to Route 18 North to Route 1 South. Take Route 1 South to Ryders Lane, New Brunswick (FIRST EXIT). The Law Center is the first right turn off of Ryders Lane.

From Trenton: Take Route 1 North to second Ryders Lane sign (RYDERS LANE-NEW BRUNSWICK). Ryders Lane passes over Route 1. The Law Center is the first right turn off of Ryders Lane.

For further information about directions, call 732-249-5000 or visit our website at www.njsbf.org.

Please Note: This is a registration form for the workshop only. It is **not** an entry form. You must complete an **Official Entry Form** in order to enter the competition.

HIGH SCHOOL MOCK TRIAL WORKSHOP

- ☐ Please register me/us for the free workshop on October 25, 2018. I understand that this workshop is for teachers and lawyers only, not students.

NAME(S) _____

SCHOOL OR LAW FIRM ADDRESS _____

WORK PHONE _____ HOME PHONE _____

I am a ☐ Teacher ☐ Attorney-Coach ☐ County Coordinator

Return to: Sheila Boro • New Jersey State Bar Foundation • One Constitution Square
New Brunswick, NJ 08901-1520 • Fax number: 732-828-0034 • Email: sboro@njsbf.org

VINCENT J. APRUZZESE
HIGH SCHOOL MOCK TRIAL COMPETITION
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* The New Jersey State Bar Foundation gratefully acknowledges the assistance of the Mock Trial Committee and case authors Ronald C. Appleby Jr., Esq., Kathleen M. Dotoli, Esq., Edward Moody, Paul J. Endler Jr., Esq., and William C. Popjoy III, Esq.

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

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

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

OVERALL PURPOSE AND SPIRIT OF THE COMPETITION

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

SPECIFIC GOALS OF THE MOCK TRIAL COMPETITION

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

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

SPECIFICALLY PROHIBITED NEGATIVE BEHAVIORS

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

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

- Acceptance of an audio, video, DVD recording, or other transcription of the performance of another team in a round that the recipient did not participate in, even if the recipient has not viewed the material, listened to the recording or read the transcript.
- Plagiarism by any member of a team or any team's use of material plagiarized by its teacher-coach, its attorney-coach, or by the parents or guest-observers of team members.
- Direct verbal or written communication outside of the courtroom with a volunteer mock trial judge by any team, its teacher-coach, its attorney-coach or the parents or guest-observers of team members, except as permitted after the trial for the teacher- or lawyer-coach under R.5:3-6.

ACCOUNTABILITY FOR AND CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT

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

EXTENSION OF CODE OF CONDUCT

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

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

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

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

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

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

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

Date: _____

Teacher-Coach

School

EXTENSION OF CODE OF CONDUCT

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

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

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

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

Date: _____

Attorney at Law, State of New Jersey

School

EXTENSION OF CODE OF CONDUCT

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

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

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

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

By signing below, I agree to vigorously uphold the Code of Conduct of the Mock Trial Competition:

Date: _____	_____
Date: _____	_____
Date: _____	_____
Date: _____	_____
Date: _____	_____
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Date: _____	_____

PART II

RULES OF GENERAL APPLICATION

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

2:1-1 APPLICABILITY; SCOPE

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

2:1-2 CONSTRUCTION

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

2:1-3 CITATION

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

RULE 2:2 GENERAL CONTEST FORMAT

2:2-1 LOCAL COMPETITIONS

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

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

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

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

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

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

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

2:2-3 POSTPONEMENTS

Postponements may be made only by the county coordinator.

2:2-4 CHANGES TO RULES AND PROCEDURES

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

2:2-5 OFFICIAL REPRESENTATIVE OF EACH TEAM

The official representative of a mock trial team is the teacher-coach, not students, lawyer-coaches or others. All communications regarding a team must be made by and through the teacher-coach as official team representative.

Communications received from students will not be answered. See R.2:14-15. Teacher-coaches and attorney-coaches are prohibited from coaching more than one team in any given year.

2:2-6 WORKBOOKS

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

RULE 2:3 TEAMS

2:3-1 TEAM MEMBERS

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

2:3-2 IDENTIFICATION OF TEAMS

Teams will be identified by I.D. numbers, not high school names, and teams should not bring materials, such as notebooks, T-shirts, school newspapers, etc., that would identify their schools. Guests of each team should similarly be requested to refrain from wearing or bringing items to contests that would identify the schools with which they are affiliated. Contestants are not permitted to identify their school or the opposing team's school to the judges.

2:3-3 STUDENT JURIES

Each team should bring SIX (6) student jurors to each competition. Team members may serve as jurors in rounds in which their team is not playing, and jurors may serve as team members in rounds in which they are not serving as jurors. A student should not serve as a juror on a trial in which his or her school is participating unless there are extenuating circumstances, and except for county semi-finals, regional finals and state semi-finals. Rules pertaining to student jurors are set forth infra at R. 2:4.

RULE 2:4 STUDENT JURIES

2:4-1 PURPOSE OF STUDENT JURIES

The purpose is to provide students with a better understanding of the duties and responsibilities of jurors and to enable more students to participate in the competition.

2:4-2 JURY CHARGE

Because of time restraints, actual procedures for selection and "charge" of jurors will not be followed. Juries will render their decision based upon a simplified charge and upon the factual testimony they have heard during the course of the trial. (The charge to the jury is the final address by the judge to the jury before the verdict, in which the judge sums up the case and instructs the jury as to the rules of law which apply to its various issues and which they must observe.) The judge will not read the charge to the jury. Jurors are expected to be familiar with the contents of the jury charge.

2:4-3 JURY VERDICT

Student juries will be required to render a verdict based upon the merits of the case and applicable law. They will **not** at any time determine which team wins or advances to the next round. That decision will be made by the judges only. Jurors will neither score team performances nor will their verdicts or performances as jurors be scored.

2:4-4 PROHIBITIONS

Jurors are not allowed to take notes or use recording devices.

2:4-5 PROCEDURES

In all competitions, the jurors from losing teams will be released, except for the runners-up. In each phase, jurors from first runner-up teams will be eligible to act as jurors in the final competition on the local or regional level. The runners-up from the state semi-final competition will be eligible to serve as jurors in the final statewide championship round at the New Jersey Law Center.

In the statewide championship round, the jurors of winning teams will not participate, unless the runner-up team is not available. The runner-up team in the semi-finals will be requested to provide jurors for the championship round.

Jurors should proceed immediately to the courtroom in which the trial they are assigned to will be conducted and shall seat themselves in the jury box. Jurors will only be triers of the facts. Their decisions will not affect which team wins.

At the conclusion of the trial, jurors will be allotted 15 minutes maximum to deliberate the facts and render a decision concerning those facts. Student jurors shall be responsible for electing a spokesperson from among the jury to advise the judge of the jury's verdict when the trial reconvenes. The spokesperson must briefly summarize the reasons for their verdict. Generally, jurors are requested to arrive at an unanimous decision.

Jurors are requested to take into consideration only the facts that are presented to them without considering testimony which may have been presented in a previous trial in which they acted as jurors.

RULE 2:5 GENERAL PROCEDURE FOR TRIALS

2:5-1 DETERMINATION OF SIDES — STATE LEVEL

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

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

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

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

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

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

RULE 2:6 PREPARATION OF MOCK TRIAL CONTESTS

2:6-1 MEETINGS WITH ASSIGNED ATTORNEYS

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

2:6-2 DRESS REHEARSALS

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

RULE 2:7 DECISIONS

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

Judges will provide qualitative evaluations only, based on the categories in the rating sheet. Numerical scores will **not** be released. The purpose of this procedure is to re-emphasize the educational goals of the competition. Judges will provide evaluations and announce the winning team before the jury delivers its verdict. The jury verdict is not significant in the judges' evaluation.

Contestants may, as always, discuss their trials with judges after each contest if time permits. However, contestants are prohibited from contacting competition judges directly to complain about competition results. See Rule 2:14 and Rule 2:15.

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

The decisions of the judges are final.

RULE 2:8 SCORING PERFORMANCES

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

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

RULE 2:9 TIME LIMITS

The following time limits will be in effect:

Opening Statements—4 minutes for each side

Direct Examination—6 minutes for each witness

Cross-Examination—7 minutes for each witness

Closing Statements—8 minutes for each side

Every effort shall be made to respect these time limits. County coordinators are encouraged to appoint bailiffs to keep time. Bailiffs will also be appointed at the regional, statewide semi-final and statewide final levels. Bailiffs will keep time, and their decisions regarding timekeeping are final. Challenges to timekeeping will not be considered. Timekeepers may issue one-minute warnings verbally or through the use of a card or hand signals. When time is up, judge(s) must halt the trial. Regarding objections, the clock will be stopped.

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

RULE 2:10 REGIONAL COMPETITION

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

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

The New Jersey State Bar Foundation will be responsible for coordinating the regional competitions. **All regionals will be conducted at the New Jersey Law Center in New Brunswick as follows: North - February 5, 2019; South - February 6, 2019; and Central - February 7, 2019. Regional playoffs will be held on February 26, 2019.** Please reserve these dates. Inability to attend will result in forfeiture.

To find out which regional your county belongs in, please call 732-937-7519 or e-mail sboro@njsbf.org.

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

RULE 2:11 SEMI-FINALS

Regional finals winners are eligible to compete in the statewide semi-finals scheduled for **March 5, 2019** at the New Jersey Law Center in New Brunswick. Please reserve this date. Inability to attend will result in forfeiture.

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

RULE 2:12 STATEWIDE FINALS

The winners of the semi-finals are eligible to compete in the statewide championship round scheduled for **April 11, 2019** at the New Jersey Law Center in New Brunswick. Inability of finalist teams to attend will result in forfeiture. This will be a single elimination round. The judges' decision will be final.

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

2:13 STUDENT ILLNESS POLICY

In the event that one or more members of a team cannot compete due to illness, another member or members of that team may substitute for them. The substitutes must be team members who are not already playing in that round. In addition, jurors may serve as substitutes unless they are already serving as jurors in a round. One attorney cannot play the roles of both attorneys in any given round. Likewise, one witness cannot play the roles of other witnesses in the same round. A student-lawyer cannot play the role of a witness in the same round nor can a witness play the role of a lawyer in the same round. If a contestant becomes ill while a trial is in progress, judge(s) may grant a 15-minute recess. During that time, the teacher-coach may arrange for another team member or juror to continue in place of the ill student. The team with the ill student and their teacher-coach and attorney-coach may communicate about the ill student and his or her replacement during the emergency recess. If the ill student cannot continue to compete, and a substitution cannot be made, the team must forfeit the round. It is recommended that teacher-coaches prepare "understudies" in case of illness, or other conflicts.

2:14 COMPLAINT PROCEDURE

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

2:15 QUESTIONS REGARDING CASE OR RULES

Contestants who have questions about the mock trial case and/or rules should submit them through their teacher- or attorney-coaches. Teacher- or attorney-coaches should e-mail or fax their questions to Sheila Boro, director of mock trial programs, at sboro@njsbf.org or fax to 732-828-0034. **Communications received from students will not be answered.** Please identify yourself, your school, whether you are the teacher-or attorney-coach, and provide a daytime phone number.

PART III

HINTS ON PREPARING FOR A MOCK TRIAL COMPETITION

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

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

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

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

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

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

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

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

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

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

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

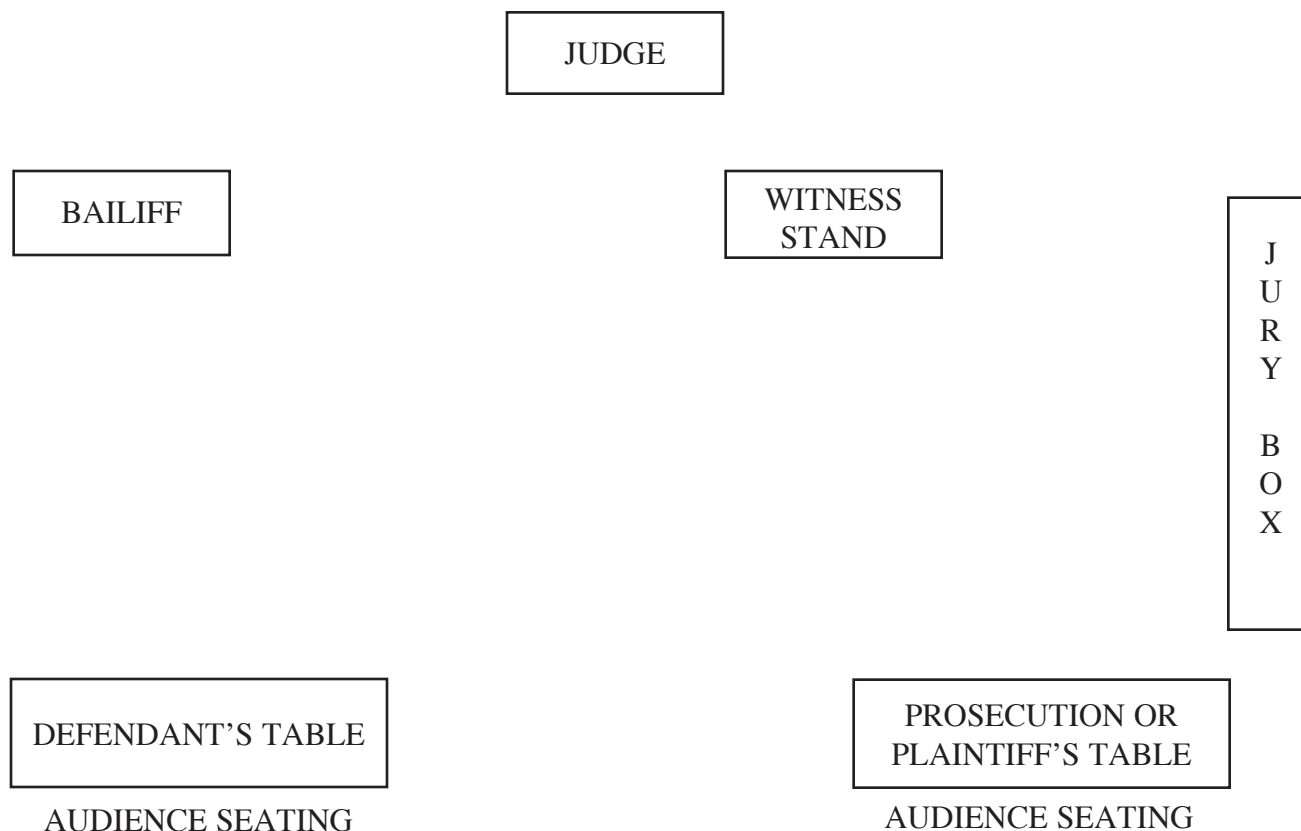
Some of the things most difficult for team members to learn to do are:

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

PART IV TRIAL PROCEDURES

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

COURTROOM LAYOUT



PARTICIPANTS

The Judge(s)

The Attorneys

Prosecutor–Defendant (Criminal Case)

Plaintiff–Defendant (Civil Case)

The Witnesses

Prosecutor–Defendant (Criminal Case)

Plaintiff–Defendant (Civil Case)

STEPS IN MOCK TRIALS

The Opening of the Court

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

When the judge enters, all participants should remain standing until the judge is seated.

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

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

Appearances

Opening Statements to the Jury

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

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

(2) Defendant (in criminal or civil case)

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

Direct Examination by Prosecution or Plaintiff's Attorney

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

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

Cross-Examination by Defendant's Attorney

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

Direct Examination by Defendant's Attorneys

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

Cross-Examination by Prosecution or Plaintiff's Attorneys

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

Closing Arguments to the Jury

(1) Defense

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

(2) Prosecution or Plaintiff

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

THE JUDGE'S ROLE

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

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

THE STAFF'S ROLE

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

PART V

RULES OF PROCEDURE

RULE 5:1 GENERAL PROCEDURE DURING TRIALS

5:1-1 USE OF EXHIBITS

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

5:1-2 STATEMENT OF FACTS AND STIPULATIONS

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

5:1-3 MOTIONS

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

5:1-4 VOIR DIRE

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

5:1-5 COURTROOM DECORUM

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

RULE 5:2 OBJECTIONS

5:2-1 IN GENERAL

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

5:2-2 TIME FOR OBJECTIONS

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

5:2-3 LIMITATION ON OBJECTIONS

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

5:2-4 MANNER OF OBJECTIONS

The attorney wishing to object should stand up and do so at the time of the violation, except as set forth in Rule 1201. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted (“sustained”) by the judge. The judge will then decide whether a question or answer must be disregarded because it has violated a rule of evidence or mock trial procedure (“objection sustained”) or whether to allow the question or answer to remain on the trial record (“objection overruled”). When objecting to a competition rule or procedural violation, student attorneys should be prepared to refer to the appropriate rule number in this workbook if requested to do so by judges. All objections should be made succinctly, with the reason for the objection publicly stated.

RULE 5:3 PROCEDURE REGARDING ATTORNEYS

5:3-1 MANDATORY ATTORNEY PARTICIPATION IN EXAMINATIONS

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

5:3-2 ATTORNEY OPENINGS/CLOSINGS

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

5:3-3 DESIGNATION OF ATTORNEY PERMITTED TO OBJECT

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

5:3-4 USE OF NOTES BY ATTORNEYS

Attorneys are permitted to use notes in presenting their cases.

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

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

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

C. Only the two participating student-attorneys may communicate with each other during the five-minute pre-summation recess.

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

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

5:3-6 COMMUNICATION WITH JUDGES

No one affiliated with a competing team is permitted to have any contact with competition judges before or during the competition. Only student-attorneys and student-witnesses may communicate with the judges during a trial. After a trial has concluded, judges may meet privately with the attorney-coach, or teacher-coach if the attorney-coach is not present, for at least five minutes in order to answer specific questions and to provide additional evaluation of students' performances.

RULE 5:4 WITNESS TESTIMONY

5:4-1 FACTS RELIED UPON FOR TESTIMONY

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

5:4-2 WITNESS' PHYSICAL APPEARANCE

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

5:4-3 WITNESS' GENDER

Contestants cannot change the gender of witnesses as provided in the case unless it is indicated that a witness can be male or female. Male or female contestants, however, may play the roles of any witnesses.

5:4-4 REQUIRED EXAMINATION OF WITNESSES

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

5:4-5 FAIR EXTRAPOLATION

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

5:4-6 IMPEACHMENT

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

5:4-7 USE OF NOTES BY WITNESSES

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

5:4-8 REQUIRED WITNESSES

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

5:4-9 SEQUESTERING WITNESSES

Sequestering witnesses is not permitted.

RULE 5:5 INTRODUCTION OF PHYSICAL EVIDENCE

5:5-1 PRE-TRIAL CONFERENCE

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

The purpose of the pre-trial procedure is to avoid eroding into each team's time limitations during the trial and to help students understand that attorneys, while they are adversaries, can also work cooperatively to benefit their clients. During this pre-trial, students should introduce themselves and the roles they will play. Remember to give the judges scoresheets with the names of the students at this time. See "Important Notice" preceding scoresheets for details.

PART VI

MOCK TRIAL RULES OF EVIDENCE

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

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

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

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

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

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

Rule 402. General Admissibility of Relevant Evidence

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

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

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

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

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

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

Example of objection to mischaracterization of testimony: “Objection. Counsel is mischaracterizing the witness’s testimony.”

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

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

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

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

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

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

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

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

(b) Crimes, Wrongs, or Other Acts

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

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

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

Rule 405. Methods of Proving Character

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

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

Rule 406. Habit, Routine Practice

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

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

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

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

ARTICLE VI. WITNESSES

Rule 601. Competency to be a Witness

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

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

Rule 602. Need for Personal Knowledge

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

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

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

Rule 607. Who May Impeach a Witness

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

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

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

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

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

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by the Court; Purposes.

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

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

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

(b) Leading and Narrative Questions.

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

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

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

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

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

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

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

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

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

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

(c) Cross-Examination.

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

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

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

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

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

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

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

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

(e) Permitted Motions.

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

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

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

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

Rule 613. Witness’s Prior Statement

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

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

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

Otherwise, opposing counsel may ask the court: “Can I have the page and line number (counsel is referring to)?”

If your witness is impeached by his or her statement, but the words used were taken out of context, not fairly showing what the witness meant, on re-direct you may want to show the statement to your witness and “rehabilitate” him/her. For example, if cross-examination brings out that the witness said “I did not shoot the victim,” in response to police asking if s/he did so, you may ask your witness to add what s/he said after that phrase:

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

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

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

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

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

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

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

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witness

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

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

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

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

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

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

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

Rule 702. Testimony by Experts

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

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

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

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

Rule 703. Bases of Opinion Testimony by Experts

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

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

Rule 704. Opinion on Ultimate Issue

No witness may give an opinion about how the case should be decided. This is called the “ultimate issue” question. An expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged (i.e. purposeful, knowing or recklessness).

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

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

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

ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

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

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

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

(d) Statements That Are Not Hearsay.

A statement that meets the following conditions is not hearsay:

(1) Party Declarant’s Admission against Interest

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

(2) **Opposing Party’s Statement**

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

(3) **Relied upon by Expert**

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

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these Rules.

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

Rule 803. Exceptions to the Rule against Hearsay

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

(1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

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

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

(4) **Statements for Purposes of Medical Diagnosis or Treatment.** Statements made in good faith for purposes of medical diagnosis or treatment which describe medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof to the extent that the statements are reasonably pertinent to diagnosis or treatment.

(6) **Records of regularly conducted activity.** A statement contained in a writing or other record of acts, events, conditions, and made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate that it is not trustworthy. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Rule 805. Hearsay within Hearsay

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

ARTICLE XII. OTHER OBJECTIONS

Rule 1201. Objections to Openings and Closings

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

Rule 1202. Number of Objections

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

Rule 1203. Other Standard Objections

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

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

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

PART VII

GUIDELINES FOR ATTORNEY TEAM ADVISERS

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

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

ALL WITNESSES MUST TAKE THE STAND.

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

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

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

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

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

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

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

Courtroom Visit—In order to provide a “real life” look at a trial, attorney-coaches should consider arranging, through the local courthouse, a courtroom visit for their team(s).

PART VIII

GENERAL GUIDELINES TO PRESENTATIONS FOR JUDGES

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

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

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

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

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

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

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

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

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

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

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

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

The student jury will render the verdict. The judge will decide which team wins. The judge should explain that these two decisions are separate. Winning the verdict does not necessarily mean that the team has won the competition.

Better understanding is promoted among students and teachers if the judge(s) in a mock trial takes a few minutes following the enactment to explain his/her decision(s) regarding the teams’ presentation. Judges will provide a qualitative evaluation of each team’s performance. They will not release numerical scores. Judges may also offer their opinions regarding the legal merits of the case after the student jury has rendered a verdict. Judges are also encouraged to meet privately with the attorney-coach, or teacher-coach if the attorney-coach is not present, for at least five minutes after the contest has concluded in order to answer specific questions and to provide additional evaluation of students’ performances.

The judges’ decisions are final.

PART IX

MOCK TRIAL VIDEO LOAN PROGRAM

In order to help as many teachers and students as possible participate in the Mock Trial Competition, the Foundation will lend a 65-minute video to contestants. The video, which is available in DVD, was taped at the New Jersey Law Center in 1995. The Mock Trial Instructional DVD may be borrowed for a period of two weeks, after which time it must be returned.

You may also purchase this DVD at cost plus postage and handling. If you would like to purchase a copy, send your request with a check or money order in the amount of \$10 payable to the New Jersey State Bar Foundation (address follows on the next page).

To borrow or purchase a mock trial DVD, send your request to:

**High School Mock Trial Instructional DVD
New Jersey State Bar Foundation
One Constitution Square
New Brunswick, NJ 08901-1520**

Please enclose a \$50 security deposit for each DVD you want to borrow. This will be returned to you when you return the DVD(s). **DVDs must be returned via insured U.S. mail, certified mail or UPS so that shipments may be tracked.** Orders will be filled on a first-come, first-served basis. We cannot fill orders over the phone.

Please handle with care as we have only a limited number. **A fee will be assessed in the event borrowed DVDs are not returned or are damaged.** Thank you for your cooperation.

PART X

Avery Mansion v. Captain Kidd's Pier

STATEMENT OF FACTS

On August 19, 2017, high-school senior Avery Mansion planned to spend the day at Captain Kidd's Pier with best friend Aiden Lovecraft. They went on the first ride, the roller coaster named "The Hurricane," described as a "Category 5 storm with three plunging drops and loops, with legs and arms dangling free." While the sign warned that people with previous head injuries and aneurysms should not ride the coaster, Avery had never been diagnosed with either, and s/he'd just had a checkup with the doctor a week prior.

Joint Exhibits

1. EMG Report of 9/30/17
2. MRI Report of 9/14/17
3. MRI Report of 9/14/17
4. Incident Report of 8/23/17
5. Roller Coaster Seat Diagram

Stipulations

1. Upon being asked, both Rowan Clamp and Lynn Pingry shall identify the plaintiff, Avery Mansion, as the person they saw in the video of "The Hurricane."
2. The warning sign in front of The Hurricane ride, on August 19, 2017, stated, under "Ride Description" that it is a "High Thrill" ride. "Captain Kidd and his mates warn park guests with specific conditions that they should not go on the ride, including heart conditions, head injuries, neck, back or bone ailments, pregnancy, or high blood pressure or aneurysms."
3. National Express lost the package containing the DVD-Rom video of Avery Mansion riding The Hurricane. It was the only copy, so the video no longer exists.
4. Some of the medical records referenced by the experts are not included with this case. The referenced records exist and cannot be challenged.
5. The box relating to gender of the patient on the MRI report, labelled "Joint Exhibit 2," has been left blank intentionally as witnesses may be male or female.
6. Exhibits are stipulated to be accurate.
7. Costumes, make-up and "props" are prohibited. The student playing the role of Avery Mansion shall not wear any medical devices to approximate Mansion's injury unless such devices are medically necessary for the student playing the role.
8. The student playing the role of Avery Mansion is not to act as if s/he is suffering from symptoms of injury while in court.
9. All witness statements are deemed to be sworn. If asked, a witness must acknowledge swearing an oath or certifying to the contents of the document on the date indicated therein, and also to signing any statement.

Plaintiff's Witnesses

Avery Mansion
Aiden Lovecraft
Dr. Dharma Pavlik

Defense Witnesses

Rowan Clamp
Lynn Pingry
Dr. C. Mohr Bones

These materials are produced for educational purposes only. All characters, names, events and circumstances are fictitious. No resemblance or reference to real individuals, events or circumstances is intended or should be inferred.

JURY CHARGE

A. Purpose of Charge

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

B. Role of the Judge

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

C. Role of the Attorneys

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

D. Role of the Jury

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

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

E. The Evidence

The evidence in this case consists of the following:

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

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

Further, if I gave a limiting instruction as to how to use certain evidence, that evidence must be considered by you for that purpose only. You cannot use it for any other purpose.

F. Contention of the Parties

The plaintiff, Avery Mansion, contends that s/he was injured as a result of the negligence of the defendant, Captain Kidd's Pier, by "The Hurricane" roller coaster. Defendant denies this.

G. Burden of Proof

The burden of proof is on the plaintiff/each party to establish his/her/their claim by a preponderance of the evidence. In other words, if a person makes an allegation, then that person must prove the allegation.

In this action, the plaintiff, Avery Mansion, has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues:

Plaintiff asserts that s/he was injured by riding The Hurricane roller coaster on August 19, 2017. All three of plaintiff's witnesses assert that Avery Mansion has had physical effects caused by the ride. Plaintiff's expert opines that s/he suffers permanent injuries to both hands, with hand numbness and weakness, leading to loss of ability to use the hands in activities.

The defendant, Captain Kidd's Pier, has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues:

Defendant concedes that Avery Mansion rode on The Hurricane on August 19, 2017. Defendant asserts that the complaints of pain and numbness and weakness, to the extent they may exist, are not attributable to the ride on The Hurricane. Defendant's expert suggests that any such injury may be the result of diving in the bay on the morning of August 19, 2017, shortly before Avery Mansion rode on The Hurricane.

H. Preponderance of Evidence

The party with the burden of proof has the burden of providing his/her/its claim by a preponderance of the evidence. If the party fails to carry that burden, the party is not entitled to your favorable decision on that claim.

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

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

I. Direct and Circumstantial Evidence

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

Let me give you an example of direct and circumstantial evidence. If a witness testified that he/she observed snow falling last night, that would be an example of direct evidence. On the other hand, if a witness testified that there was no snow on the ground before

going to sleep, and that when he/she arose in the morning the ground was snow covered, you could infer from these facts that it snowed during the night. That would be an example of circumstantial evidence.

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

J. Credibility

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

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

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

LIABILITY

NEGLIGENCE AND ORDINARY CARE – GENERAL

1. Negligence may be defined as a failure to exercise, in the given circumstances, that degree of care for the safety of others, which a person of ordinary prudence would exercise under similar circumstances. It may be the doing of an act which the ordinary prudent person would not have done, or the failure to do that which the ordinary prudent person would have done, under the circumstances then existing.
2. Negligence is the failure to use that degree of care, precaution and vigilance which a reasonably prudent person would use under the same or similar circumstances. It includes both affirmative acts which a reasonably prudent person would not have done and the omission of acts or precautions which a reasonably prudent person would have done or taken in the circumstances.

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

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

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

FORESEEABILITY (AS AFFECTING NEGLIGENCE)

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

DUTY OWED – CONDITION OF PREMISES

Invitee — Defined and General Duty Owed

An invitee is one who is permitted to enter or remain on land (or premises) for a purpose of the owner/occupier. He/she enters by invitation, expressed or implied. The owner/occupier of the land (or premises) who by invitation, expressed or implied, induced persons to come upon his/her premises, is under a duty to exercise ordinary care to render the premises reasonably safe for the purposes embraced in the invitation. Thus, he/she must exercise reasonable care for the invitee's safety. He/she must take such steps as are reasonable and prudent to correct or give warning of hazardous conditions or defects actually known to him/her (or his/her employees), and of hazardous conditions or defects which he/she (or his/her employees) by the exercise of reasonable care, could discover.

The basic duty of a proprietor of premises to which the public is invited for business purposes of the proprietor is to exercise reasonable care to see that one who enters his/her premises upon that invitation has a reasonably safe place to do that which is within the scope of the invitation.

FAILURE TO WARN/INSTRUCT

Let me now discuss the law governing the plaintiff's claim of failure to warn.

If a product, here a roller coaster, The Hurricane, fails to contain an adequate warning or instructions, it is defective. Avery Mansion says The Hurricane did not contain an adequate warning or instruction because it did not warn of failure to wear a lap seat belt. Defendant says The Hurricane did contain an adequate warning or instruction which was announced on the loudspeaker, as part of a three-minute repeating audio loop. Defendant, as the owner of The Hurricane, had a duty to provide adequate warnings or instructions about the dangers The

Hurricane may present. Defendant had this duty even if The Hurricane were perfectly designed and manufactured. To decide the plaintiff's failure to warn claim, you must determine what warnings and instructions the defendant provided and whether those warnings and instructions were adequate.

Let's talk about what a warning or instruction is. Warnings or instructions may consist of statements that a product should not be used at all under certain circumstances, that it should be used only in a particular way, or that it should be used with particular care. Warnings or instructions may be in the form of words, symbols or pictures. They must be in a form which will effectively convey the information essential to make the use of the product reasonably safe. To be adequate, the warning or instruction must be the kind of warning or instruction which a reasonably prudent manufacturer or seller in the same or similar circumstances would have provided to people intended to use the product. Adequate information may be required to be given to others in the chain of distribution of the product such as from the manufacturer and the seller to the buyer, or from the manufacturer and the seller directly to the user. An adequate warning or instruction will communicate sufficient information on the dangers of the product and how to use the product safely. When deciding whether the information provided is adequate, you should take into account the characteristics of the people reasonably expected to use the product and ordinary common knowledge.

In deciding whether the warning or instruction given in this case was adequate, you must assume defendant knew of the dangers of The Hurricane at the time The Hurricane was ridden by Avery Mansion. With that assumption you must then decide whether the defendant acted in a reasonable, prudent manner in marketing The Hurricane without any warnings/with the particular form of warning that was provided.

To establish a claim of failure to warn, Avery Mansion must prove all of the following elements by a preponderance (greater weight) of the credible evidence:

1. that The Hurricane failed to contain an adequate warning/instruction.
2. that the failure to adequately warn/instruct existed before Avery Mansion rode The Hurricane.

Avery Mansion must prove that at the time of the accident The Hurricane was being used properly for its intended purposes or for an intended or reasonably foreseeable purpose. To prove this, plaintiff must show that s/he was not riding in a way which was neither intended nor was reasonably foreseeable. In this case, the defendant contends that at the time of the accident Avery Mansion was not wearing the seat lap belt restraint, and that Avery Mansion knew or should have reasonably known to use said lap belt. Also, defendant may have argued that Avery Mansion did not remain seated during the ride, and that s/he reasonably should have stayed seated while The Hurricane was in motion. Finally, defendant may have argued that Avery Mansion had sustained a neck injury from diving earlier on August 19, 2017, and was warned that someone with a neck injury should not ride The Hurricane, and that Avery Martin heard or read the warning, and a reasonable person would have heeded the warning.

3. That Avery Mansion would have followed an adequate warning/instruction if it had been provided.

In this case, Avery Mansion claims that The Hurricane was defective because there was no adequate warning/instruction. If you find that The Hurricane was defective because adequate warning/instruction was not given, then you must decide whether the lack of an adequate warning/instruction was a proximate cause of the accident.

The defendant may have introduced evidence seeking to show that Avery Mansion would not have read and/or heard and followed an adequate warning/instruction even if one had been provided by the defendant.

You have to decide whether plaintiff would have read and heeded a warning/instruction had one been given or that he/she would not have read and heeded a warning/instruction had one been given.

Plaintiff has the burden to prove by a preponderance of the credible evidence that he/she would have followed an adequate warning/instruction if it had been provided.

4. That the failure to adequately warn/instruct was a proximate cause of the accident/injury.

Proximate cause means that the failure to warn/instruct was a substantial factor which singly, or in combination with another cause or causes, brought about the accident. Avery Mansion need not prove that this accident could have been anticipated so long as it was foreseeable that some harm could result from the failure to warn/instruct. If an adequate warning/instruction would have reduced the risk of the occurrence of this accident, you may find that its absence was a contributing factor to the happening of this accident. If, on the other hand, the failure to warn/instruct does not add to the risk of the occurrence of this accident and therefore is not a contributing factor to the happening of the accident, then plaintiff has failed to establish that the failure to warn/instruct was a proximate cause of the accident.

In this case, the defendant may contend that a pre-existing injury was sustained earlier on August 19, 2017, from diving into the bay, which was an intervening cause. An intervening cause is the act of an independent agency which destroys the causal connection between the defect in the product and the accident. To be an intervening cause, the independent act must be the immediate and sole cause of the accident. In that event, liability will not be established because the failure to warn/instruct is not a proximate cause of the injury. However, the defendant would not be relieved from liability for its failure to warn/instruct by the intervention of acts of third persons, if those acts were reasonably foreseeable. Where the intervention of third parties is reasonably foreseeable, then there is a substantial causal connection between the product defect and the accident. You must determine whether the alleged injury from diving was an intervening cause that destroyed the causal connection between the failure to warn and the accident. If it did, then the failure to warn/instruct was not a proximate cause of the accident.

If Avery Mansion has proven each element by a preponderance of the credible evidence, then you must find for Avery Mansion.

If, on the other hand, Avery Mansion has failed to prove any of the elements, then you must find for the defendant.

5. Was the plaintiff negligent?

Defendant contends that Avery Mansion was at fault for the happening of the accident by not wearing the seat lap belt. Defendant may also have argued that Avery Mansion stood up during the ride.

To win on this defense, defendant must prove that Avery Mansion voluntarily and reasonably proceeded to encounter a known danger and that Avery Mansion's action was a proximate cause of the accident. The failure of Avery Mansion to discover inadequate warnings or instructions or to guard against the possibility of inadequate warnings or instructions is not a defense. Rather, to win on this defense, defendant must prove that Avery Mansion had actual knowledge of the particular danger presented by The Hurricane and that Avery Mansion knowingly and voluntarily encountered the risk.

DAMAGES

I shall now instruct you on the law governing damages in the event you decide the liability issue in favor of plaintiff Avery Mansion.

The fact that I instruct you on damages should not be considered as suggesting any view of mine about which party is entitled to prevail in this case. Instructions on damages are given for your guidance in the event you find that the plaintiff Avery Mansion is entitled to a verdict. I am required to provide instructions on damages in all cases where the trial includes a claim for damages.

The plaintiff Avery Mansion has the burden of establishing by a preponderance of the evidence each item of damages that he/she claims. The plaintiff must also prove that the damages were the natural and probable consequences of the defendant's negligence. The accident must have been a proximate cause of the damages. Damages may not be based on conjecture or speculation.

In this case, the plaintiff, Avery Mansion, is seeking the following type of damages: pain, suffering, disability, impairment and loss of enjoyment of life.

DISABILITY, IMPAIRMENT AND LOSS OF THE ENJOYMENT OF LIFE, PAIN AND SUFFERING

If you find for Avery Mansion, he/she is entitled to recover fair and reasonable compensation for the full extent of the harm and losses caused, no more and no less.

Fair and reasonable compensation means to make Avery Mansion whole for any permanent or temporary injury and the consequences of that injury (or injuries) caused by the defendant's negligence.

The law on compensation recognizes that a plaintiff may recover for any disability or impairment that he or she suffers as a result of his or her injuries. Disability or impairment means worsening, weakening or loss of faculties, health or ability to participate in activities. The law also permits a plaintiff to recover for the loss of enjoyment of life, which means the inability to

pursue one's normal pleasure and enjoyment. You must determine how the injury has deprived Avery Mansion of his/her customary activities as a whole person. This measure of compensation is what a reasonable person would consider to be adequate and just under all the circumstances of the case to make Avery Mansion whole for his/her injury and his/her consequent disability, impairment, and the loss of the enjoyment of life. The law also recognizes as proper items for recovery, the pain, physical and mental suffering, discomfort, and distress that a person may endure as a natural consequence of the injury. Again, this item of recovery is what a reasonable person would consider to be adequate and just under all the circumstances to compensate Avery Mansion.

Here are some factors you may want to take into account when fixing the amount of the verdict for disability impairment, loss of enjoyment of life, pain and suffering. You may consider Avery Mansion's age, usual activities, occupation, family responsibilities and similar relevant facts in evaluating the probable consequences of any injuries you find he/she has suffered. You are to consider the nature, character and seriousness of any injury, discomfort or disfigurement. You must also consider their duration, as any verdict you make must cover the harms and losses suffered by Avery Mansion since the accident, to the present time, and even into the future if you find that Avery Mansion's injury and its consequence have continued to the present time or can reasonably be expected to continue into the future.

The law does not provide you with any table, schedule or formula by which a person's pain and suffering, disability, impairment, and loss of enjoyment of life may be measured in terms of money. The amount is left to your sound discretion. You are to use your sound discretion to attempt to make the plaintiff whole, so far as money can do so, based upon reason and sound judgment, without any passion, prejudice, bias or sympathy. You each know from your common experience the nature of pain and suffering, disability, impairment and loss of enjoyment of life and you also know the nature and function of money. The task of equating the two so as to arrive at a fair and reasonable award of compensation requires a high order of human judgment. For this reason, the law can provide no better yardstick for your guidance than your own impartial judgment and experience.

You are to exercise sound judgment as to what is fair, just and reasonable under all the circumstances. You should, of course, consider the testimony of Avery Mansion on the subject of his/her discomforts. You should also scrutinize all the other evidence presented by both parties on this subject, including the testimony of the doctors. After considering the evidence, you shall award a lump sum of money that will fairly and reasonably compensate Avery Mansion for his/her pain, suffering, disability, impairment, and loss of enjoyment of life proximately caused by defendant's negligence.

PROXIMATE CAUSE — GENERAL CHARGE TO BE GIVEN IN ALL CASES

If you find that Captain Kidd's Pier was negligent, you must find that Captain Kidd's Pier's negligence was a proximate cause of the accident/incident/event before you can find that Captain Kidd's Pier was responsible for Avery Mansion's claimed injury/loss/harm. It is the duty of Avery Mansion to establish, by the preponderance of evidence, that the negligence of Captain Kidd's Pier was a proximate cause of the accident/incident/event and of the injury/loss/harm allegedly to have resulted from Captain Kidd's negligence.

The basic question for you to resolve is whether Avery Mansion's injury/loss/harm is so connected with the negligent actions or inactions of Captain Kidd's Pier that you decide it is reasonable, in accordance with the instructions I will now give you, that Captain Kidd's Pier should be held wholly or partially responsible for the injury/loss/harm.

PROXIMATE CAUSE — WHERE THERE IS CLAIM THAT CONCURRENT CAUSES OF HARM ARE PRESENT

To find proximate cause, you must first find that Captain Kidd's Pier's negligence was a cause of the accident/incident/event. If you find that Captain Kidd's Pier's negligence is not a cause of the accident/incident/event, then you must find no proximate cause.

Second, you must find that Captain Kidd's Pier's negligence was a substantial factor that singly, or in combination with other causes, brought about the injury/loss/harm claimed by Avery Mansion. By substantial, it is meant that it was not a remote, trivial or inconsequential cause. The mere circumstance that there may also be another cause of the injury/loss/harm does not mean that there cannot be a finding of proximate cause. Nor is it necessary for the negligence of Captain Kidd's Pier to be the sole cause of Avery Mansion's injury/loss/harm. However, you must find that Captain Kidd's Pier's negligence was a substantial factor in bringing about the injury/loss/harm.

COMPARATIVE NEGLIGENCE

A. Combined Burden of Proof

Now where, as here, a plaintiff seeks to prove liability as to defendant, it is the plaintiff's burden to prove the negligence of the defendant by a preponderance or greater weight of the credible evidence. He/she must prove not only that defendant was negligent, but that such negligence was a proximate cause of the accident.

The mere happening of an accident itself provides no basis for liability; liability in this case must be proven.

Because defendant has charged the plaintiff with negligence, it is his/her burden to prove that plaintiff was negligent and that such negligence was a proximate cause of the accident. Defendant also must prove his/her charge by a preponderance or greater weight of the credible evidence.

B. Credible Evidence

Credible evidence means evidence which in the light of reason and common sense is worthy of belief. In order to be believed, testimony should not only proceed from the mouth of credible witnesses but it also must be credible in itself. It must be such that the common experience of men and women can approve as probable in the circumstances.

Proof of "possibility" as distinguished from "probability" is not enough.

It follows, therefore, that if the evidence is in equal balance, the party who has the burden of proof with respect thereto has not sustained that burden.

The right of each party to have the other party bear the required burden is a substantial one and not a mere matter of form.

C. Combined Definition of Negligence

Negligence is defined as a failure to exercise in the given circumstances that degree of care for the safety of others which a reasonably prudent person would exercise under the same or similar circumstances. Negligence may be the doing of an act which the reasonably prudent person would not have done, or it may be the failure to do that which the reasonably prudent person would have done under the circumstances then existing. Negligence is a departure from that standard of care.

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

Thus, each party in this case was required to exercise the foresight, the prudence and the caution which a reasonably prudent person would exercise under the same or similar circumstances. You must determine whether each party in this case has conformed to or departed from the standard of care.

D. Proximate Cause

Each party must not only prove the negligence of the other party by preponderance or greater weight of the credible evidence, but also that this negligence was a proximate cause of the accident.

By proximate cause it is meant that the negligent conduct of a party was an efficient cause of the accident, that it necessarily set the other causes in motion and naturally and probably led to the accident in question.

E. Comparative Negligence — Liability

1. Introduction

If you find that more than one party has established his/her burden of proof as to negligence, as defined by the court, you must then compare the negligence of those parties. The total amount of negligence is 100%. The figure that you arrive at should reflect the total percentage of negligence attributed to each party with respect to the happening of the accident. A comparison of negligence is made only if the negligence of more than one party proximately caused the accident.

F. Comparative Negligence - Damages

1. Introduction

If you determine that defendant was solely negligent or that both parties were negligent, it then becomes your duty to determine the amount of money, if any, to be awarded to plaintiff. For that reason, I will now instruct you with respect to the measure of damages in this case in the event that you need to consider this question.

2. Damages Must be Proximately Caused

It is the duty of the plaintiff to prove by preponderance or the greater weight of the credible evidence that the injuries and damages for which compensation is sought proximately resulted from the accident. It is not

enough for a plaintiff to prove a mere possibility that a particular injury or claimed item of damage resulted from the accident. Speculation is not enough. It must be shown that the injury or damage was the natural and probable consequence of the accident.

EXPERT TESTIMONY

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

In this case, Dharma Pavlik and C. Mohr Bones were called as experts and testified about certain opinions. In examining each expert's opinions, you may consider the person's reasons for testifying, if any. You may also consider the qualifications of the individuals and the believability of the expert, including all the considerations that generally apply when you are deciding whether or not to believe a witness' testimony. The weight of the expert's opinion depends on the facts on which the expert bases his/her opinion. You as jurors must also decide whether the facts relied upon by the expert actually exist.

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

It is for you the jury to resolve any conflicts in the testimony of the experts, using the same guidelines in determining credibility that I mentioned earlier.

The amount of the expert witness' fee is a matter that you may consider as possibly affecting the believability of an expert. However, there is nothing improper in the expert witnesses being paid a reasonable fee for their work and for their time in attending court.

NO PREJUDICE, PASSION, BIAS OR SYMPATHY

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

VERDICT

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

JURY VERDICT FORM

Below is the jury verdict form. When completed this will be your verdict in this case.

Question No. 1 reads:

Was defendant Captain Kidd's Pier negligent, which negligence was a proximate cause of the accident?

Yes _____ No _____

If you find that defendant was negligent and that this negligence was a proximate cause of the accident, mark "Yes" as to Question No. 1 and proceed to Question No. 2. If you find to the contrary, mark "No" as your answer, cease deliberations and return your verdict.

Question No. 2 reads:

Was plaintiff Avery Mansion negligent, which negligence was a proximate cause of the accident?

Yes _____ No _____

If you find that plaintiff was negligent and that the negligence was a proximate cause of the accident, mark "Yes" as your answer and proceed to Question No. 3. If you find to the contrary, mark "No" as your answer and proceed to Question No. 4 on damages.

Question No. 3 reads:

Defendant Captain Kidd's Pier	_____	%
Plaintiff Avery Mansion	_____	%
Total	100	%

This question asks you to compare the negligence of each party with respect to the happening of the accident, which should be reflected in a percentage figure ranging from 1% to 99%. The combined negligence of all parties shall total 100%. This question is only to be answered where the answer to both Question No. 1 and No. 2 is "Yes". When you arrive at the appropriate figure, mark your verdict form and proceed to Question No. 4 on damages.

Question No. 4 reads:

Damages to plaintiff: \$ _____

After considering the evidence relating to the plaintiff's injuries and their consequences, you will determine what amount of money would fairly and reasonably compensate plaintiff for his/her injuries and losses proximately resulting from the accident and state the dollar amount as your answer to Question No. 4 in one lump sum. The evaluation of plaintiff's injuries and damages should be made irrespective as to which party is at fault or to what degree or who is ultimately to pay. You are to be concerned only with evaluating the plaintiff's injuries and damages without regard to whose fault proximately caused them.

Avery Mansion

I am usually a careful person. When my friends, like Aiden Lovecraft, would go rock climbing or ziplining, I would always say no. But Aiden convinced me to ride “The Hurricane,” a “rocket”- style roller coaster, and it changed my life forever, for the worse.

My passion has always been art. Especially oil and watercolor. You see, art is a spectator sport. You depict what you see. You aren’t moving more than your arms and hands. I had seen the movie *Loving Vincent*, the first movie made up of oil paintings and other drawings. Whoever thinks of painting as being a thing of the past should see that movie. Cold computer imaging still can’t hold a candle to brush strokes made by human hands, acts of the artists’ inspiration.

In fact, I was no longer sweating senior year in high school, since I had bagged a full boat scholarship to Rutgers in New Brunswick, which actually has a “top 10” program in painting and drawing. They had loved my portfolio, which I’d spent months creating. They overlooked my middling grades, somehow. Perhaps because I had won several awards for entries at local art contests. I knew that I was on my way to success!

So my idea of the outdoors was landscape painting. I would swim, in the summer, and do light hiking. But otherwise, I wasn’t into sports and adventure.

On Saturday, August 19, 2017, Aiden and I got to the Jersey Shore early, about 10 a.m. Finding parking in Metropolitan Beach is always difficult. If you get two-hour parking, they’ll ticket you when you’re a minute over. Somehow, we could only find parking on the bay side, some blocks from the pier.

We entered Captain Kidd’s Pier, and, after some skee ball and games of chance, we were ready for something, anything else.

Immediately after playing those games, Aiden dared me to go on The Hurricane. As we approached, I watched the riders. I noticed that they were all flailing and screaming. That should have told me to stay away!

There was no line, I think because people tend to be afraid of The Hurricane. I didn’t read the instructions, as there was nothing wrong with me physically. The Hurricane is a snake-like slender roller coaster, which only has one person per row. I thought Aiden was going in first, but s/he pushed me ahead at the last minute. I was in the second car. Aiden had pushed me into some huge guy, not happy with Aiden’s horsing around, who quickly took the first seat. The huge guy had another huge male friend, who sat in the third row. That left Aiden in the fourth row of the single-file car. The harness came down automatically, hovering over my shoulders, and joining as a “U” shape over my belly button. I had never been on the ride, and didn’t even know that there was a lap belt that was supposed to be clicked on, as a secondary way to be secured during the ride. I must have sat on it. I never drive in a car without a seat belt. I certainly would not have knowingly failed to put on a seat belt on a roller coaster that goes sideways and upside down as well as forwards and backwards! The ride attendant didn’t give me a second look. I don’t think s/he could even see past the tall, large man behind me.

After the first drop, I knew I was in trouble. I was bouncing around between the harness and the seat. I tensed up and gripped the harness bars (the two sides of the “U” of the U-shaped harness)

as tight as I could. That couldn't keep my head still, though. I remember banging my head against the hard-cushioned headrest again and again. It felt like the ride would never end. Getting out, I felt terrible but the ride attendant was nowhere to be seen. Isn't the ride attendant supposed to help you get out of the ride?

I complained to Aiden of neck pain, but I wasn't aware that they had a first aid station at the pier until we were ready to leave, some hours and a couple of nasty hot dogs later. They literally did nothing but give me an aspirin. What was I doing after that horrible ride? We left, fed the parking meter, sat on the beach for a while, ate some lunch at the pier, then, and only then, we saw the first aid station. It must have been 1:30 or 2:00 p.m. at the latest when I went in there.

It was Saturday, but the next day I went to one of those urgent care centers, as my family doctor doesn't work on Sundays. I was in bad shape. The doctor who examined me said nothing was wrong, however.

A week later, an MRI from my real doctor showed that I had herniated discs at C3-4 and C2-3 vertebrae.

A month after that, I found that my hands would grow numb without warning. As the condition got worse, I even had trouble holding a brush.

Unable to paint or draw, I lost the scholarship, and now I am attending Metropolitan Community College. I haven't even figured out a major yet.

Are there other things I can no longer do after the accident? Yes, many things. I can't play tug-of-war with my dog. I can't write on a blackboard for more than a few seconds. I can't do yard work. I used to love gardening. I know I should try to go back to physical therapy. I still have good health insurance through my mom. But I think I've just given up on getting better, on trying to improve my arms.

For the record, I never saw any sign telling me to wear a seat belt, and with all of the carrying on by those men, I didn't hear any announcement. What I *do* remember was seeing stupid "Wanted" posters all over, especially on top of signs, as they were flat surfaces to paste the signs on.

Dated: November 6, 2017

Avery Mansion
Avery Mansion

Addendum:

Reading Aiden's statement, yes, I recall jumping off that pier. Aiden pushed me in. Well, not really pushed, but goaded me in. We were supposed to go in together, but I jumped in and he/she didn't. In the air, I remember thinking how angry I was about it. And yes, I remember my *hands* touching bottom. Just my hands. So I bragged to Aiden about it. You needed to do a perfect dive to get that far down. Now I "swum" or "swam" (whatever it is) a bit while growing up. I'd like to call myself a swimmer, but I think I'd be lying. My uncle used to force me to go swimming. I can get from Point A to Point B. I've always been afraid of getting water up my

81 nose, so I didn't learn to dive until I was in my teens. I used to do belly flops, and people would
82 laugh, but not my uncle. But anyway, I conquered my fear and learned how to dive. I can't
83 remember how good this dive was, but I do remember that I went in a little off balance.

84 I stayed there a second or two, sort of collecting my thoughts. When I came to the surface, I
85 started to yell at Aiden. It took a few minutes for me to compose myself, but I was angry that I
86 was in the water, and Aiden wasn't. I got water in my ears too, like always, and was trying to
87 get it out with my fingers. No luck. So I was done with the water. Plus, I couldn't convince
88 Aiden to come in.

89 I acknowledge getting the diving ticket, and pleading guilty to the ordinance violation. I wasn't
90 trying to hide anything by not mentioning it in my original statement. After all, I told all the
91 doctors about it. It's just that the dive had nothing to do with my injuries. *That* was all the result
92 of that fateful roller coaster ride.

93 Dated: January 3, 2018

Avery Mansion

Avery Mansion

Aiden Lovecraft

I am 20 years old. I was a year ahead of Avery Mansion in Metropolitan High School, but we've always been best friends since meeting there when I was in the tenth grade. I'd been a military brat, so I had lived in about a dozen places around the world before coming to Metropolitan. There I got to stay when my parents left the service and both worked manufacturing military parts of some kind or other. They couldn't talk about their work because it was top secret.

Avery and I are really different. I'm a world traveler. I am a thrill seeker. I've ziplined in jungle canopies. I've climbed volcanoes. I go spelunking in caves, using ropes and harnesses to get into deep crevasses. I rock climb up the sheer cliff face of the Shawangunk Mountains – it's pronounced "shon-gum," by the way, with the stress on the "shon" part.

I have virtually no fear. Most people have a voice in their head to tell them not to take crazy risks. I don't. I guess that Avery helps me, in being that voice, not to do dangerous things, when I tell him/her about my plans.

Usually, I try to get Avery to go with me on my "adventures," as s/he calls them, but I rarely succeed. An exception was that fateful day when we went to Captain Kidd's Pier. Avery confessed that s/he'd never been on an *adult* roller coaster before. Instead of the type where you had to be at least *this* tall to ride, s/he'd been on ones where you had to be *this* short, very short, as a kid. Well, I was going to remedy that.

Getting to the park early on Saturday morning, the best parking we could find was metered parking all the way on the bay, a few blocks from the oceanfront wooden pier. It was two-hour parking, so we'd have to go back there again and again not to get a parking ticket. In view was the Metropolitan Township municipal wooden fishing pier, which juts out over a hundred feet into the bay. People usually use it to fish or go crabbing, but Avery remembered diving there as a young kid.

We'd dressed for swimming, so we wouldn't have to change clothes. No one was around. Avery talked about how, as a kid, his/her uncle used to make him/her and his/her cousins practice swimming right there. He would have them dive off the far end of the pier. There's no railing on the pier, nothing between the edge of the pier and the water. Getting to the end, I looked in first. You couldn't see the bottom, which I took to mean that it was pretty deep there, but, then again, the bay water there was a bit murky.

I managed to convince Avery to go diving with me, right then and there. After accusing him/her of being chicken, Avery reluctantly agreed. Avery fell for the oldest trick in the book. I acted like I was going to dive off when s/he did, and I even counted "one, two, three," but while I flinched like I was diving in, I never did. Avery went in, a perfect swan dive, head first, no splash. I laughed. Then, when s/he didn't come up right away, I stopped laughing.

When s/he did come up, s/he didn't scold me for my trick. Instead s/he yelled, "Bottom!" I don't recall if he/she said something before "bottom." Might have. I was worried, and, when s/he came up, s/he put one hand to his/her neck. But then, s/he never mentioned it again, and s/he seemed to have no pain, no discomfort. S/he moved his/her neck around like normal. I never said another word about it.

41 There was a ladder from the water to the end of the pier, and Avery wasted no time getting out. I
42 would have gotten in the water, too, if Avery had not gotten out so soon.

43 I heard that the defense attorneys found out that Avery got an ordinance violation for his/her
44 little swim. We hadn't noticed the sign as you get on to the pier, which says that diving is not
45 allowed. A cop saw Avery, and as we left the pier, she handed Avery a summons for it. Another
46 way that the shore towns get money out of you – Avery said the fine was over 200 bucks!

47 We went right to the park after that. Our bathing suits were wet, but it was a sunny, warm day,
48 and they started to dry right away. Besides, Captain Kidd's Pier is famous for its water slides, so
49 we were just going to get wet again anyway. Avery suggested we play skee ball or some ring
50 toss game, and we did that for a while. Avery seemed to be in tip-top shape. No trouble tossing
51 the rings, though neither one of us won anything. I swear those games are rigged.

52 The lines for most of the rides were long by the time we finished with that nonsense. I convinced
53 Avery to go on "The Hurricane," instead of "The Flying Dutchman," because the line was short.
54 I'm sure Avery had mentioned "The Flying Dutchman" first just because it is more of a "kiddy"
55 roller coaster. We waited only three minutes to get on The Hurricane. I hate to wait. I have
56 ADHD, attention deficit hyperactivity disorder, and I don't believe in drugs, so I have trouble
57 just standing in a line, doing absolutely nothing like that. I'm easily distracted, can't concentrate,
58 and I get fidgety. And Avery was typing on his/her cell phone the whole time, probably looking
59 up how dangerous roller coasters are!

60 It's truly ironic that Avery got this *real* injury. Avery has a lifelong trait of avoiding risks, except
61 when I convince him/her to do something fun. Like ride a roller coaster.

62 Walking up to get on the ride, as the last set of riders were exiting, so far as I could tell, the
63 riders on The Hurricane were having fun. Except for this one older gentleman, who seemed
64 excited, as the ride came to a stop, yelling that the "ride is too loose," followed by "my neck and
65 back are aching, thanks to that contraption!" I just figured the guy had a screw loose himself.
66 Nobody else complained. Come to think of it, I believe that old guy was seated in the very same
67 seat where Avery sat right after.

68 I pushed Avery so s/he'd get in first, but a man was in front of me, and Avery ended up sitting in
69 the second row, followed by the guy, who was really big and tall, followed by me. I didn't say it
70 great...let me try again. There was a man, Avery, another man, then me. Both of those other
71 guys were really carrying on. They were wearing cowboy hats and hooting and hollering the
72 whole time. I thought they were going to get kicked off. I mean, I would have kicked them off.
73 Then Avery and I could have been closer to each other. The worker, the one who starts and
74 stops the ride, didn't even look at us. Once we got on the ride, I couldn't even see Avery.

75 I had ridden The Hurricane several times in the past, but this was the first time since that last
76 summer, the summer of 2016. As soon as the ride started, I sensed that it felt different this time.
77 To borrow the other guy's word, "loose." A loose feel, like the car didn't sit right on the tracks.
78 The car bounced around a lot. I had been on some real "bone rattlers," and in my considerable
79 experience with them, this sleek metal contraption was far worse. I felt like a pinball, bouncing
80 around in my seat. The ride used to be tighter, somehow.

81 And that's with my retractable lap belt on. After the ride, when Avery complained of body pain,
82 I said maybe his/her belt hadn't been tight enough. That's when Avery asked, "What belt?"

83 I've been asked about some sign saying that you have to have your seat belt on at all times. I
84 don't recall that. Then again, I'm not a big sign reader. Just like I never read the small print on
85 forms or websites. What are you going to do? If you don't agree with the fine print, it's not like
86 you can change anything.

87 I told Avery to sue that place for all it was worth, which I'm sure is a lot of money. But Avery
88 wouldn't even lift a finger to pursue it. Me being the bold one of our dynamic duo, I called that
89 place and told them that they'd be hearing from a lawyer for sure. I described how Avery was
90 wearing this unique Rutgers University "Arts" baseball cap. It turns out Avery had painted the
91 "Arts" part on a Rutgers hat, so it was pretty unique. I said that I was glad that there was a
92 surveillance video camera attached to the ride. I told them to look at the tape, and it would show
93 them how messed up my friend Avery was from the ride. I then had to pressure Avery to go to a
94 lawyer.

95 I'm sure glad I did. Now Avery is a different person. S/he's depressed, and doesn't want to do
96 anything since the accident. I say, "Let's go kayaking," or "Let's go play baseball." S/he'll
97 respond that s/he can't, because his/her arm is acting up. We still go swimming, but now
98 swimming with Avery is just standing in the pool and swimming doggie-style a bit. I can't
99 always tell if Avery is saying that because of the pain, or because his/her right hand quickly
100 becomes useless, unable to even hold the brush. It is obvious to me, watching Avery try to do
101 things, that both hands are affected, and his/her ability to grasp things with the hands. Of course,
102 I'm no medical pro, but that's what I see. S/he's depressed. I do know that s/he can no longer
103 paint. Avery will start to paint, but then can't. S/he was on top of the world before, but Avery's
104 lifelong dream of being a painter is gone, and, somehow, my friend is gone as well.

105 Dated: November 21, 2017

Aiden Lovecraft
Aiden Lovecraft

Dharma Pavlik, M.D.

INJURY EVALUATORS
400 Eagletown Road
Hackensack, NJ 07602
732-555-1234

January 13, 2018

Attn: Attorneys for the Plaintiff

Re: Avery Mansion
D/A: 8/19/17
D/E: 1/10/18

Dear Counselors:

This office has been asked to evaluate the nature and extent of permanent injuries regarding the aforementioned patient, Avery Mansion, who has alleged personal injury arising from a roller coaster ride.

HISTORY:

The patient was examined in our Paramus office. The patient states at the time of the accident, the patient was a high school student, age 18. Patient reports having experienced neck pain, bilateral hand weakness and radiating pain into the right shoulder soon after experiencing an exceptionally turbulent roller coaster ride that included excessive bouncing and abrupt head movement. Patient reports utilizing an overhead harness, however, a seat belt was not visible. Patient reports being unable to control head movement during the course of the ride and feeling poorly immediately upon exiting the ride.

Patient sought emergent care at the theme park and was treated with an ice pack and ibuprofen. On August 20, 2017, patient presented at the Eagleton Quick-Care Center complaining of head and neck pain. It was recommended that patient present at an Emergency Room for diagnostic studies and evaluation for concussion but declined having no insurance. Patient presented at Porter Orthopedic on August 31, 2017 and was evaluated by Dr. Haven Paulson who prescribed MRI studies of the cervical area. These studies were performed by Dr. Damian Salzer on September 14, 2017. Patient underwent a course of physical therapy three times a week for a duration of approximately three months with no improvement. Throughout the course of physical therapy, patient continued to complain of neck pain and radiating pain down the right arm with bilateral hand weakness. Dr. Paulson further ordered an EMG study of the cervical area, which was conducted by Dr. Parlin Westwood on September 30, 2017. In October 2017, Dr. Paulson recommended a series of three steroidal epidural injections and if pain relief was not achieved, surgery was recommended, including laminectomy, discectomy and/or foraminotomy. Patient suspended treatment, citing lack of insurance and fear of unfavorable outcome. Patient was released at Maximum Medical Improvement on November 30, 2017.

PRESENT COMPLAINTS:

Patient reports pain, stiffness and soreness with limitation of motion. Patient has difficulty sleeping. Pain radiates down the arms into the hands and fingers with numbness and tingling in the right arm. Patient reports difficulties with grip and grasp bilaterally. Patient reports difficulties holding small items, dropping things, manual dexterity, and items weighing more than 20 pounds for any length of time. Formerly an avid painter, patient reports being unable to hold brushes for periods longer than 30 minutes without pain, extend arm for more than 20 minutes, and due to difficulties holding up patient's head, it

now takes two to three times the amount of time to finish a painting as it did before the accident. All complaints are exacerbated by cold/damp weather.

PHYSICAL EXAMINATION:

Examination of the cervical spine reveal moderate paracervical muscle tenderness bilaterally on palpation. The curvature is normal. Forward flexion is normal and extension lacks 25 degrees. Bending to the right and left lack 10 degrees each. Twisting to the right lacks 30 degrees and 20 degrees to the left. Compression and Spurling's tests are positive. The biceps, triceps and brachioradialis reflexes are equal and normal.

On examination, the patient had difficulty gripping, grasping with the both hands, right worse than left. There was decreased sensitivity on the ventral aspect of the thumb, second and third fingers and distal part of the fourth finger. There was weakness of the abductor pollicis brevis. The muscle was tested by having the patient abduct the thumb at right angles to the palm against resistance. The Tinel's sign was positive and the Phalen's maneuver was negative.

There are no objective orthopedic findings in the right shoulder to warrant diagnosis or disability.

RECORDS REVIEWED:

Incident report prepared by Captain Kidd's Pier dated 8/23/17
Eagleton Quick-Care Center dated 8/20/2017
Porter Orthopedic, Dr. Haven Paulson, dated 08/31/17 thru 11/30/17
MRI reports 9/14/17
EMG report 9/30/17
Garland Physical Therapy 9/15/17 to 11/30/2017
Office Notes, Dr. Haven Paulson

DIAGNOSIS:

Traumatic injury due to multiple repetitive and cumulative sprains of the cervical spine with multiple cervical herniations, specifically at C3-4 with impingement on the thecal sac and C2-3 disc herniation as shown on flexion view; acute C4 cervical radiculopathy.

PAST MEDICAL HISTORY:

Non-contributory

CONCLUSION:

The objective medical findings noted in the body of this report have resulted in a conclusion that the patient's injuries are permanent and severe in nature. The description of the mechanism of the injury comports with the objective medical findings and the patient's subjective complaints. Without further treatment, it is unlikely that the condition will improve and the prognosis is negative.

Patient also noted an event having taken place earlier on the day of the aforementioned accident wherein patient dove from a dock into the bay. Patient did not report cervical pain, discomfort, disorientation or any other symptoms that would suggest this event was the cause of patient's extensive cervical injury related to the roller coaster and in fact continued on with the course of the day according to the patient's timeline of events. In contrast, patient's cervical complaints occurred immediately thereafter the time spent unsecured on the roller coaster.

Please note, the purpose of this evaluation is for litigation purposes only. No doctor-patient relationship exists and no treatment was offered or suggested

Thank you for allowing me to evaluate this patient. Should you have any questions or comments, please don't hesitate to contact me.

108 I was paid \$1500 for the preparation of my expert report and \$5000 to appear in court to testify before the
109 jury.

110

111

Very truly yours,

112

113

Dharma Pavlik, M.D.

114

Dharma Pavlik, M.D.

115

Board Certified – Orthopedics

DHARMA PAVLIK, M.D.
CURRICULUM VITAE

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Westwood, NJ 07675
201-555-0408

EDUCATION

Undergraduate: **Vermont Institute of Technology** (Catherine Lake, VT)
Bachelor of Science in Life Sciences, September 1980 – June 1984

Medical School: **Bale University School of Medicine** (Old Haven, CT)
Doctor of Medicine, August 1985 – June 1989

SPECIALTY TRAINING

Internship: **University of South Carolina Hospitals** (Colombia, SC)
Resident (PGY-1) in Surgery, July 1989 – June 1991

Residency: **University of South Carolina Hospitals** (Colombia, SC)
Resident in Orthopaedic Surgery, July 1991 – June 1995

Fellowship: **University Hospitals of New York** (Utica, NY)
Fellow in Spine and Spinal Cord Injury July 1995 to June 1997

LICENSURE

South Carolina
New Jersey
New York

CERTIFICATION: American Board of Orthopaedic Surgery (July 1998 to present)

WORK EXPERIENCE

President & Physician Evaluator, Injury Evaluators (2006 to present)

Orthopaedic Surgeon, OrthopaedicCare Center of North Jersey (1997 - Present)

Chairperson, OrthopaedicCare Center of North Jersey (2006 - Present)

President, OrthopaedicCare Center of North Jersey (1997 - 2006)

Stockholder & Vice Chairman, Orthopaedic Diagnostics, Inc. (1999-2006)

HOSPITAL AFFILIATIONS: Oradell Regional Hospital (1997 to present), Paramus Metro Hospital (1997 to present) and Norwood Community Hospital (1997 to present)

Rowan Clamp

I am the mechanics shop manager for Captain Kidd's Pier. We have eight amusement park rides, and I service them all. My manager, Lynn Pingry, however, doesn't like to pay to be "overstaffed," so, on August 19, 2017, I was actually wearing two hats, for someone who called out sick. I was covering for the ride operator for our most popular ride, "The Hurricane."

I've been working at Captain Kidd's since high school. The previous owner had been a friend of the family, and since I was into engineering, they gave me a job. They were nice people. The jury is still out on Pingry. I like the way that the place is headed, but I am not a fan of the how do you say, "clientele." It used to be families and a fun place to go for the day. Now it seems we only get rowdies and kids who have nothing better to do than cause trouble. Parents just drop them off and these kids are running around all day.

If you had asked me what I'd be doing when I was in college, I'd have told you that I'd be an engineer. But here I am, 27 years old, being a glorified grease-monkey for a kiddy park. Heck, I was even named after Henry Rowan, because, when I was born in 1992, Mr. Rowan had just given a bazillion dollars to Glassboro State College, and the college became Rowan University. In the end, I went there. I got a lot of ribbing from friends about that – "Rowan C. goes to Rowan U." Yet, a year before graduation, I had to drop out to be a caregiver for my dad. We had just lost my mom, she'd been taking care of him ever since he had the stroke. He couldn't move the right side of his body. He's passed now. When I hear about what's happened to Avery Mansion, I sure appreciate what it is to have health problems. It's just that those problems had nothing to do with Captain Kidd's Pier or The Hurricane.

After we got the call from the angry patron, Pingry and I went back and looked at the video of Mr./Ms. Mansion on the ride that very day. I was sitting in front of the 25-inch screen of the monitor for the video recorder. I think I left my eye patch on. I kind of get used to wearing it after a while, when I have to play pirate. Pingry was watching with me, hovering over my shoulder.

It took me a second to remember this particular day. But as soon as I saw the video, it all came back to me. I also remembered it because it was the last day of the season. We were shutting down all of the rides for the whole season to "update" them. The games and stuff were still going to be open, and that would still give me things to do and fix. I know that the old owners never really kept up with making the place look attractive. There wasn't much budget put into flowers and plants and keeping the concession area up to date. I was looking forward to putting the time into cleaning the place up. Maybe business would have gotten better as well.

We'd been told s/he was seated in the second row. I saw myself do what I am supposed to do...go to each person, make sure that their U harness came down and locked. Though there was no sound on the video, I distinctly remember that the audio rules and regulations, that are played for three minutes as the riders are seated, was working. I remember because it was the last day that the recording of the previous owner would be used. He had such a distinctive "pirate voice." He did it perfectly. I guess that went out with the end of the season as well!

I remember that the person in the first row was really tall, with a cowboy hat which he takes off right as the ride starts, and puts back on as the car is rolling to a stop. This obscured Avery

43 Mansion's face below the nose, but I could see Mr./Ms. Mansion down past the neck at all other
44 times. S/he is smiling at first, then seems scared during the ride, as many patrons do, and his/her
45 mouth is open, appearing to be screaming at times.

46 Pulling back into the station, Mansion looks relieved. I never saw any rocking action consistent
47 with banging against the back headrest. The U-shaped harness remains in place, as it always is,
48 being locked until the ride comes to a stop. Mansion gets up after a pause. Cowboy guy blocks
49 him/her entirely for a few seconds. Then I see Mansion, already standing, walk off, walking the
50 same normal way that s/he walked getting up to and into the ride. I could see Mansion take three
51 steps before s/he was out of camera view. While I do not see myself come up to Mansion to help
52 him/her off, Mansion left the ride so quickly that I probably did not have time. I know that I must
53 have been just off-camera, ready to help the riders get off, though. That's because I am *always*
54 within a short distance of the coaster after it stops, and the riders are getting off.

55 Pingry was on the phone with a vendor the whole time, complaining how we'd gotten ripped off
56 for some charge or other, and s/he was like yelling in my ear. After Mansion is out of view, I
57 asked Pingry if s/he needed to see it again, but Pingry was wrapped up in that conversation, so I
58 just turned it off, and made a copy of the video right there on the spot. The video machine
59 records over after a week or so, so I didn't want to miss the time window. I put it on a DVD-
60 Rom disc. We made only one copy of the video. We sent it via National Express, a next-day
61 delivery service. I placed that DVD-Rom in the mailing envelope myself. It was addressed to the
62 law firm we had at the time, Boaring and Boaring. All I know is that it's lost.

63 Oh, the sign thing. Well, we have a lot of college kids who work here for the summer, and they
64 do some juvenile pranks. In this case, a few of them thought it was funny that I had to be The
65 Hurricane ride operator that day, August 19th. I guess in part that's because Pingry requires
66 his/her ride operators to work in costume. Given our pirate theme at Captain Kidd's, that means
67 dressing as buccaneers. The get-up consists of a jacket, a tricorne hat with a feather in it, and a
68 patch over one eye. If you don't wear your full costume, and Pingry sees you, you get placed in
69 the stocks. This is why I tell those smart-aleck college kids that they better have a good major
70 and good grades and get at least a bachelor's degree, so they don't have to suffer the indignities
71 that I do.

72 So one of these kids took my photo, in the costume, and made a "wanted" poster out of it. That I
73 was wanted for "freebooting," or some such thing. They plastered copies of that sign all over the
74 park just before we opened on August 19. I went around, when on my 10-minute breaks, taking
75 them down. They were the size of a piece of paper, 8 ½ by 11 inches. I don't remember any of
76 them covering up our warning notices.

77 Dated: December 21, 2017

Rowan Clamp
Rowan Clamp

Lynn Pingry

I purchased Captain Kidd's Pier at the end of the 2016 season. The place was in total shambles. At the time, I was torn between holding onto the park for a long time so that it would be something to keep in the family, or to try to "flip" it. I'm always watching HGTV to see all of those shows. I mean, I'd never seen *Amusement Park Flip*, but I still did my research and saw an opportunity to make some money. In my previous life, I had made some money in a private equity firm. I got out because of all of the stress, and I wanted to spend more time with my family. I had grown up in Metropolitan, and had visited Captain Kidd's a lot growing up.

When I bought the place, I knew that I had to dive in head first. I decided that the best course of action was to have a "short season" for 2017. Take part of the summer and fix the place up. I knew that in order to make money, you had to spend money. I wasn't sure whether I was going to flip it, or get people to come back to the park. I knew that 2017 was going to be close to a total loss, but I was willing to take that risk. One of the other caveats in my purchase was that any outstanding lawsuits had to be finalized. I didn't want any legal issues outstanding when I came in.

"The Hurricane" was and is the jewel in the crown of the Captain Kidd's Pier. Each rider has a headrest, as well as a bump between the legs, to keep the body from slipping down. Instead of a bar or a seat belt restraint, two heavily padded bars come down, resting above the shoulders and meeting in a loop near the belly button, so that, looking straight at the rider, it looks like a "U." When the ride operator presses a button to start the ride, this restraint comes down and locks for each rider. The legs are left dangling in the air. We knew through the research conducted, that that was what the people wanted. They wanted to be on the edge. Like that McDonald's lawsuit from years ago. People wanted their coffee hot, even if it teetered on the edge of too hot.

On August 23rd, I got an angry call from Aiden Lovecraft, who said that s/he and Avery Mansion had been on The Hurricane four days earlier, and that Mansion had been "whacked" by the restraints during the ride, and now Mansion had a sore neck. Lovecraft described what Mansion looked like, and what s/he was wearing, including the Rutgers University baseball cap. Lovecraft added that Mansion was in the second row.

For all of 2017, we had a video camera to show all of the riders, and the camera starts to record as soon as the ride starts, and stops 20 seconds after the ride ends. The video was mounted in front of the first car, several feet above and several feet in front of the heads of the riders in the first row. While it shows all riders at all times, it captures the front rows especially well.

Well, the first thing I did was have Rowan pull the video of the ride, and we both had a look. Mansion was in the second row. Watching Mansion, s/he looked fine the whole time. I was able to see his/her whole head the entire time. I didn't see his/her head banging against the headrest. I just saw a young person shifting with the other passengers as the thrill ride took them all through the series of twists and turns and loops. At one point, s/he lifts a hand up, like waving to somebody. I can't see what's in his/her hand, but it sure looked like one end of the seat belt! We get those types on the rides. If you have the lap belt on, you can't look all around, like if you want to find someone in the crowd. I bet that this kid was showing off to a friend that s/he was

42 brave enough to ride without a seat belt. S/he walked up to the ride fine, and walked off fine.
43 S/he had no difficulty getting up that I recall.

44 We have maintenance records going back to 2014, when the old owners switched from paper
45 copies to computer. The place was a mess. I never saw, or have ever seen, any issues with the
46 first car of The Hurricane. The first car is the first five seats. I was told of other cars that had
47 issues with the U-frame padding fraying, but nothing ever, from what I recall, about the seat
48 belts. This is one of the reasons I was willing to “take the hit” for 2017. Clean the place up, fix
49 all the issues, then maybe attract the families again!

50 Personally, I’ve never been on The Hurricane. I have a bad neck, and, as the warning signs say,
51 don’t go on the ride if you have a neck ailment. My neck hurts much of the time.

52

53 Dated: December 11, 2017

Lynn Pingry

Lynn Pingry

54

1 C. Mohr Bones, MD

2
3 C. MOHR BONES, M.D., F.A.C.S
4 123 Civic Center Drive
5 Lakewood, NJ 08701
6 732-555-2500

7
8 July 20, 2018
9

10
11 **RE: Avery Mansion**
12 **Date of Loss: August 19, 2017**
13 **Date of Examination: July 20, 2018**
14

15 To Whom It May Concern:

16
17 Thank you for the opportunity to perform an independent orthopedic examination on the above-named
18 claimant.
19

20 I examined this now 20-year-old student in my office on 7/20/18.
21

22 Prior to the examination I reviewed the claimant's medical records and imaging studies which were
23 provided to me.
24

25 In addition to the time reviewing the records, I spent 50 minutes in face-to- face contact with the claimant
26 obtaining a history and performing a physical examination.
27

28 History of Accident
29

30 The claimant states that on 8/19/17 s/he attended an event at Captain Kidd's Pier with a friend. Claimant
31 alleges that while on a roller coaster known as "The Hurricane," s/he was thrown about while on the ride
32 and complained of neck pain to his/her friend. In attempting to get a complete picture of the plaintiff's
33 accident, I discussed with him/her the events of the day leading up to the ride on the coaster. It was
34 relayed to me that prior to going on the ride, the claimant had jumped off a pier into the bay and, when
35 doing so, dove deep enough to strike both of his/her hands on the bottom.
36

37 Current Complaints
38

39 The primary complaints seem to emanate from the claimant's neck/shoulder area. There are also
40 complaints of numbness in the hands (plural) causing weakness and a loss of strength. There are also
41 complaints of difficulty in performing activities of daily living, such as using a toothbrush.
42

43 Medical Treatment
44

45 Although the claimant had pain on the day of the accident, no treatment was rendered other than a trip to
46 the first aid station at the pier where s/he received aspirin. It was not until the following day that s/he
47 sought care at an urgent care center near his/her home. Complaints of neck pain were elicited at that time
48 and an evaluation of the claimant's cervical spine was completed by the doctor on staff at the care center.
49 The spine is divided into four basic regions and the portion of the spine in your neck is designated as the
50 cervical portion of the spine. Results of the examination of the cervical spine revealed no abnormalities in
51 that region.
52

53 When the pain persisted, an MRI was performed which was alleged to have shown a herniated disc. A
54 discussion of the various diagnostic tests will follow.

55
56 The claimant also received physical therapy in an attempt to alleviate his/her pain.

57
58 Review of Records

59
60 I have reviewed all of the medical records that have been provided to date which include an intake report
61 at the urgent care facility where the claimant noted pain in the neck. I am also in receipt of EMG test
62 results taken on 9/30/17 as well as the physical therapy notes from treatment at Garland Physical Therapy
63 from 9/15/17 to 11/30/17.

64
65 I have also reviewed films of the diagnostic tests performed on Ms. /Mr. Mansion. It is my opinion that
66 the alleged herniation seen on the MRI is not a true herniation, but rather a bulging disc. The term
67 herniation, as relates to spinal discs, has become extremely overused in the last decade. A true herniation
68 occurs when the nucleus pulposus, which is the center of the disc, escapes beyond the fibrous ring that
69 surrounds the disc. In a bulging disc, which I believe this to be, the disc is somewhat flattened but not
70 broken. I like to use a jelly doughnut as an example to explain this difference. You can squish a jelly
71 doughnut slightly without the jelly protruding out of the edge of the pastry. In that case, it is only a bulge
72 and eventually the disc regains its shape. If the doughnut were pushed hard enough to push the jelly out
73 through the sides, the jelly would not return. That would be more analogous to a herniation where the
74 center of the disc material is forced out and will not return. In reviewing the films, I did not see any
75 indication that the central disc material had been forced out of the disc. Any injury to the spine showing
76 only a bulge should be temporary in nature and should be treated with physical therapy.

77
78 Conclusions

79
80 It is my opinion within a reasonable degree of medical probability that any current complaints given by
81 the claimant are unrelated to any injury that may have occurred on the roller coaster. As stated above, the
82 diagnostic films do not show a herniation and I respectfully disagree with Dr. Salzer, the radiologist who
83 made that interpretation. It should also be noted that the area where the herniation allegedly exists would
84 not cause the pain as alleged by the claimant. Each one of the nerves that comprise our nervous system
85 has a specific job. The nerves that would cause numbness in the hands, as alleged by the claimant, would
86 not match up with the C2-3 vertebrae as supposedly shown on the MRI. Further medical proof of the lack
87 of the alleged herniation being related to the complaints can be seen in the EMG test ordered by Dr.
88 Paulson. An EMG tests the velocity of nerve responses between two points. Historically, we know that it
89 takes nerve impulses a certain amount of time to travel between two set points. A deviation of that time
90 can show a potential problem. The EMG that supposedly shows a radiculopathy is at a different level than
91 the suspected herniation.

92
93 It is my opinion that there are a number of other potential factors for the plaintiff having ongoing
94 complaints to his/her hands including, but not limited to, striking his/her hands on the bottom of the bay
95 which could cause a serious disruption to the nervous system in the arms, as well as the possibility of
96 prior injuries or damage suffered to the spine. Although it is unusual for someone so young to have
97 degenerative changes in the spine, it is not unheard of in medical literature. The one thing that I can state
98 clearly, however, is that any "jostling" while riding on the roller coaster would not be sufficient to cause
99 the claimed injuries as presented upon examination.

100
101
102 I was compensated in the amount of \$1500 for my expert report plus \$5000 to testify in court.

103
104
105 Very truly yours,

106
107 C. Mohr Bones, M.D.
108 C. Mohr Bones, M.D.

CURRICULUM VITAE

C. MOHR BONES, M.D., F.A.C.S

LICENSES: METROPOLITAN 1976
NEW JERSEY 1977
NEW YORK 1978

SPECIALTY: Orthopedics - Sports Medicine
Sub-Specialty: General Orthopedics: Spinal Injuries

EDUCATION:

Undergraduate: University of Metropolitan
Graduated: 1970 – Degree B.S.

Medical Education: University of Medicine of Metropolitan
Graduated: 1975 – Degree M.D.

Internship: Metropolitan University Hospital
July 1975 – July 1976 – General Surgery Internship

Residency: Hospital for Special Surgery
1976-1980 – Orthopedic Residency

HOSPITAL AFFILIATIONS:

St. Mary's Medical Center – Medical Director, Chief of Orthopedic
Department 2004-Present

Metropolitan University Hospital Full Attending 1980 – Present

JOINT EXHIBIT 1

Dr. Parlin Westwood
225 Washington Street, Suite B
Hackensack, NJ 07602

Patient: Avery Mansion

Physician: Dr. Haven Paulson

DOB: 4/6/1998

Test: EMG/NCV Upper

Test Date: 9/30/2017

SUMMARY AND FINDINGS:

Motor and sensory nerve conduction studies revealed normal distal latencies, amplitudes and conduction velocities for bilateral median and ulnar nerves. F-wave latencies were within the normal limits for all nerves tested.

Needle examination was performed with a monopolar disposable needle electrode on the muscles indicated above. Study reveals signs of electrical instability.

IMPRESSION:

The above electrodiagnostic study reveals evidence of an acute left C4 radiculopathy.

RECOMMENDATIONS:

Repeat the study in one year if the symptoms persist.

Parlin Westwood, MD
Parlin Westwood, MD

JOINT EXHIBIT 2

Patient Name	MRN#	ACCESS #	DOB	AGE	SEX	DATE	Mod	Study Description	Ordered by	Scanner Code
Avery Mansion	652-524	65289.010	04/06/1998	20		09/14/2017	MRI	CERVICAL SPINE	HAVEN PAULSON MD	

Final Report: 09/14/2017 9:30 p.m.

Report Dictated By:

PATIENT: AVERY MANSION

ORDERING: HAVEN PAULSON, MD

MRN 652-524

D.O.B.: 04/06/1998

MAIL TO: HAVEN PAULSON, MD

EXAM LOC: RIDGEWOOD

38 SEALY STREET

SUITE B12

EMERSON, NJ 07630

MRI OF THE CERVICAL SPINE WITHOUT CONTRAST

HISTORY: Chronic neck pain radiating to the right shoulder.

COMPARISON: None.

TECHNIQUE: Multiplanar, multisequence imaging was performed on a 0.6 Tesla MRI scanner without intravenous contrast. Motion artifact was present on most of the study, somewhat limiting evaluation.

FINDINGS:

- ❖ CRANIOCERVICAL JUNCTION: Unremarkable.
- ❖ ALIGNMENT: Normal.
- ❖ MARROW: Within normal limits.
- ❖ FRACTURES: None.
- ❖ SPINAL CORD: No abnormal signal is seen within the cervical spinal cord.
- ❖ DISC SPACES: Mild degenerative changes are scattered through the cervical region.
- ❖ SOFT TISSUES: Within normal limits.
- ❖ C2-3: No disc bulge or herniation is seen. The neural foramina are patent.
- ❖ C3-4: There is a broad herniation noted centrally with impingement on the thecal sac.
- ❖ C4-5: No disc bulge or herniation is seen. The neural foramina are patent.
- ❖ C5-6: No disc bulge or herniation is seen. The neural foramina are patent.
- ❖ C6-7: No disc bulge or herniation is seen. The neural foramina are patent.
- ❖ C7-T1: No disc bulge or herniation is seen. The neural foramina are patent.

IMPRESSION:

1. There is a broad herniation centrally at C3-4.
2. Remaining discs appear normal.

Date of Dictation: 09/14/2017 9:42 a.m.

Date of Signature: 09/14/2017 9:47 a.m.

DAMIAN SALZER, MD

Consulting Copies:

JOINT EXHIBIT 3

Patient Name	MRN#	ACCESS #	DOB	DATE	Mod	Study Description	Ordered by
Avery Mansion	652-524	65289.010	04/06/1998	09/14/2017	MRI	CERVICAL SPINE	HAVEN PAULSON MD

Final Report: 09/14/2017, 9:48 p.m.

Reported Dictated By:

PATIENT: AVERY MANSION

ORDERING: HAVEN PAULSON, MD

D.O.B.: 04/06/1998

ACCESSION #: 65289.010

MAIL TO: HAVEN PAULSON, MD

EXAM LOC: RIDGEWOOD

38 SEALY STREET

EXAM DATE: 07/14/2017

SUITE B12

EMERSON, NJ 07630

MRI OF THE CERVICAL SPINE WITHOUT CONTRAST FLEXION/EXTENSION

HISTORY: Chronic neck pain radiating to the right shoulder.

COMPARISON: Prior neutral position study done earlier the same day.

TECHNIQUE: Multiplanar, multisequence imaging was performed on a 0.6 Tesla MRI scanner without intravenous contrast.

FINDINGS:

- ❖ C2-3: There is a disc herniation noted on flexion views, not seen on neutral or extension positioning.
- ❖ C3-4: No significant changes are seen on flexion/extension views.
- ❖ C4-5: No significant changes are seen on flexion/extension views.
- ❖ C5-6: No significant changes are seen on flexion/extension views.
- ❖ C6-7: No significant changes are seen on flexion/extension views.
- ❖ C7-T1: No significant changes are seen on flexion/extension views.

IMPRESSIONS:

There is a central disc herniation at C2-3 on flexion views, not seen on neutral or extension positioning.

Date of Dictation: 09/14/2017 9:48 a.m.

Date of Signature: 09/14/2017 9:51 a.m.

DAMIAN SALZER, MD

Consulting Copies:

JOINT EXHIBIT 4

INCIDENT REPORT

Department of Community Affairs
HOTLINE 732-555-0000
Fax 732-555-1234

To be completed by owner immediately after accident or injury and faxed to the above number within 24 hours. If the accident results in death, serious injury or failure of a critical structural and/or mechanical component, call the Carnival Amusements Ride Hotline at 732-555-0000.

Company Name: Captain Kidd's Pier

Date: 8/23/17

Trading as:

Phone:

Address of Incident: Street: Ocean
County: Metropolitan

City:

Ride Name: The Hurricane

Zip Code:

Date of Incident: 8/19/17 **Time of Incident:** 11 ☒ AM ☐ PM

NJ Serial Number:

Name of Injured: Avery Mansion

Weather: Clear and dry

Type of Injury: headache, neck strain

Did the injured go on for further treatment (hospital, doctor)?

Yes _____ No ☒

Was the injured transported by ambulance?

Yes _____ No ☒

If yes, where did the injured go?

If yes to either, call HOTLINE immediately

Detailed Description of Incident:

Getting off the ride, passenger complained of a dull headache and sore neck.

List of all operators on the ride:

1. Rowan Clamp
2. _____
3. _____

4. _____
5. _____
6. _____

List all witnesses: (Include names, first and last, age, address and relationship to owner or injured.)

Rowan Clamp

Print Name: Lynn Pingry

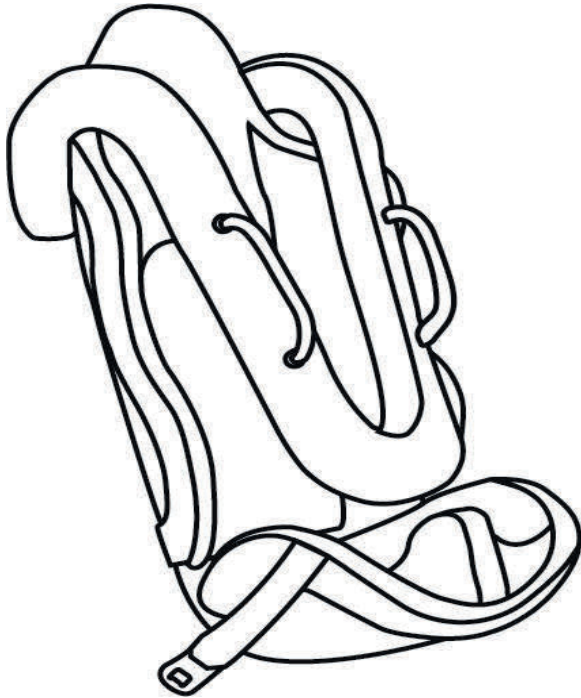
Signature: *Lynn Pingry*

JOINT EXHIBIT 5

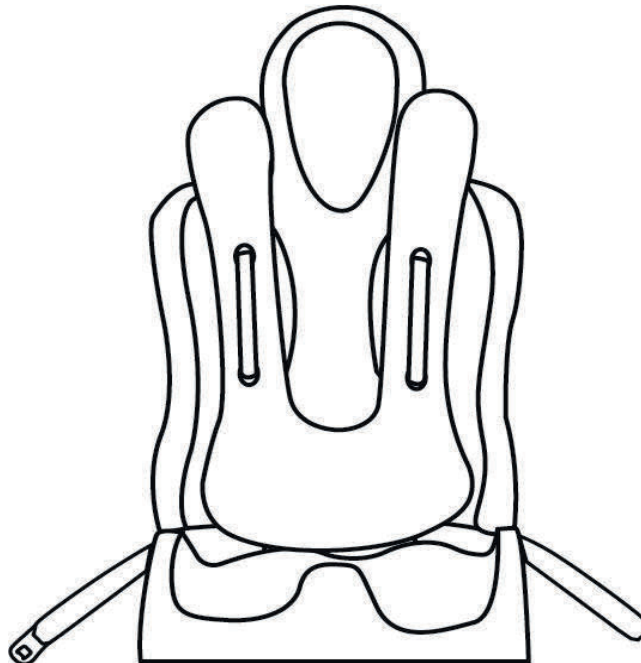
Owner's Manual – Roller Coaster Seat

Model # 8675309*

Manufactured by Cook-Bjanes Co., Toledo, Ohio



DIMENSIONS
SEAT BASE WIDTH: 22 INCHES
SEAT HEIGHT: 36 INCHES
BELT LENGTH (FULLY ENGAGED): 32 INCHES
U HARNESS LENGTH: 25 INCHES
U HARNESS INTERIOR WIDTH (TOP): 12 INCHES
SEAT PITCH (AFTER FIRST ROW): 38 INCHES



***©1992 Cook-Bjanes Co.**

PART XI

EXPLANATION OF PERFORMANCE RATINGS USED ON MOCK TRIAL COMPETITION SCORESHEETS

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

Please use the following guide when awarding points:

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

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

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

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

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

EVALUATIVE CRITERIA

Attorneys

Opening/Closing Statements:

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

Direct Examination:

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

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

Cross Examination:

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

Witnesses

Direct Examination:

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

Cross Examination:

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

IMPORTANT NOTICE

Teams must enter the names of the students and roles they are playing **on the score sheet** and submit same to the judge during the pre-trial conference. Prepare one sheet for the prosecution/plaintiff and one for the defense. Permission is granted to enlarge the score sheet on a photocopier if necessary in order to include this information. **Please type or print clearly.**

2018-2019 VINCENT J. APRUZZESE MOCK TRIAL COMPETITION

Score Sheet

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

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

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

DO NOT USE FRACTIONS.

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

(Continued on next page.)

2018-2019 VINCENT J. APRUZZESE MOCK TRIAL COMPETITION

Score Sheet

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

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

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

DO NOT USE FRACTIONS.

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

Please advise county or state coordinator of scores before critique.

Judge(s) Signature(s)

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

7

WINNER (P or D)

HONOR ROLL

PAST MOCK TRIAL COMPETITION WINNERS

1982–83	Voorhees High School Hunterdon County	2000–01	Montclair High School Essex County
1983–84	Middlesex High School Middlesex County	2001–02	High Point Regional High School Sussex County
1984–85	Holy Spirit High School Atlantic County	2002–03	Mainland Regional High School Atlantic County
1985–86	Cherry Hill High School West Camden County	2003–04	Kittatinny Regional High School Sussex County
1986–87	St. Mary High School Bergen County	2004–05	Torah Academy Bergen County
1987–88	Kittatinny Regional High School Sussex County	2005–06	Montclair High School Essex County
1988–89	Cherry Hill High School East Camden County	2006	Middle Township High School Cape May County, American Mock Invitational, Second Place
1989–90	Cherry Hill High School East Camden County	2006–07	Middle Township High School Cape May County
1990–91	Bergen Catholic High School Bergen County <i>(Winners of State and National Competitions)</i>	2007–08	Crossway Homelearners Atlantic County
1991–92	Atlantic City High School Atlantic County	2008	Crossway Homelearners Atlantic County, American Mock Invitational, Fourth Place
1992–93	Atlantic City High School Atlantic County	2008–2009	Mainland Regional High School Atlantic County
1993–94	Don Bosco Preparatory High School Bergen County	2009–2010	West Morris Mendham High School Morris County
1994–95	Hunterdon Central High School Hunterdon County	2010–2011	Middle Township High School Cape May County
1995–96	Lower Cape May Regional High School Cape May County	2011–2012	Oratory Preparatory School Union County
1996–97	Kittatinny Regional High School Sussex County	2012–2013	West Morris Mendham High School Morris County
1997–98	Cherry Hill High School East Camden County <i>(Winners of State and National Competitions)</i>	2013–2014	West Morris Mendham High School Morris County
1998–99	Hunterdon Central High School Hunterdon County	2014–2015	Mainland Regional High School Atlantic County
1999–00	Bergen Catholic High School Bergen County	2015–2016	Bergen Catholic High School Bergen County
		2016–2017	West Morris Mendham High School Morris County
		2017–2018	West Morris Mendham High School Morris County

PAST MOCK TRIAL CASES

Year	Case	Topic
1982–83	<i>St. Clair v. St. Clair</i>	Child custody
1983–84	<i>Vickers v. Hearst</i>	Host liability when serving alcohol
1984–85	<i>Hudson v. Daily Metropolis</i>	Freedom of press
1985–86	<i>State v. Percy Snodgrass</i>	Murder trial
1986–87	<i>Vincent Taylor v. Lance Memorial</i>	Male nurse claims sex discrimination
1987–88	<i>Barr v. Zuff</i>	Employment discrimination relating to AIDS
1988–89	<i>State v. Martha Monroe</i>	Battered Woman Syndrome
1989–90	<i>Elyse Roberts v. City of Metropolitan</i>	Sexual harassment in the workplace
1990–91	<i>State v. Diane Lynch</i>	Prosecution of mother for death of “cocaine baby”
1991–92	<i>Chris M. v. Dr. Terry Preece and Metropolitan School District</i>	Educational malpractice
1992–93	<i>State of New Jersey v. Jan Stover</i>	Hate crime
1993–94	<i>In the Matter of the Estate of Daniel Nugent</i>	Will contest
1994–95	<i>United States of America v. Luis Cosme-Sanchez</i>	Drug smuggling
1995–96	<i>Oliver Yanov and Annette Yanov v. Judy Williams and Kevin Williams</i>	Adoption
1996–97	<i>State of New Jersey v. Pat Peterson</i>	Fraternity hazing
1997–98	<i>Fran Wilkins v. Metropolitan School District</i>	Negligence
1998–99	<i>Brennan v. New Jersey Interscholastic Athletic Association</i>	Student is barred from playing baseball due to alleged performance-enhancing device
1999–00	<i>State of New Jersey v. Daniel Gunnet</i>	Student is charged with aggravated manslaughter and death by vehicular homicide
2000–01	<i>Betty Groom v. Metropolitan College and H.B. Williams</i>	Wrongful death suit involving a college junior who died at a campus rock concert

2001–02	<i>State v. Pat Petrecca</i>	Road rage
2002–03	<i>Melendino v. Cornwall</i>	Student is injured in fire in illegal casino
2003–04	<i>State v. Mel Perfect</i>	An honor student is charged with felony murder, conspiracy to commit burglary and conspiracy to commit computer theft
2004–05	<i>Farrow v. Simon</i>	Bullying
2005–06	<i>State v. Dagger</i>	Murder of reality TV show host
2006–07	<i>Fectious v. Tagen Burgers, LLC</i>	Food safety
2007–08	<i>State of New Jersey v. Avery Fisher</i>	Performance-enhancing drugs
2008–09	<i>AARCI v. Dillon Matthews</i>	Illegal downloading of music files
2009–2010	<i>State of New Jersey v. Loren Perry</i>	Kidnapping of a child
2010–2011	<i>Jordan Pederson v. J.E. Moody</i>	Distracted driving/walking
2011–2012	<i>State of New Jersey v. Pat Hopper</i>	Bias crime
2012–2013	<i>Capella v. Petzicon Products, Inc.</i>	Product liability
2013–2014	<i>State v. Sid Sawyer</i>	Vehicular homicide and DWI
2014–2015	<i>Payton Reynolds v. Smithville School District and Dalton Fisher</i>	Negligence
2015–2016	<i>State v. Jordan Abrams</i>	Self-defense
2016–2017	<i>Shea Simmons v. Delaney Barnes and Cameron Winchell</i>	Defamation
2017–2018	<i>State v. Dana Martin</i>	Opioid epidemic

NJSBF HIGH SCHOOL MOCK TRIAL POLICY REGARDING A COMBINED TEAM

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

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

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

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

The Mock Trial Committee will review requests on a case-by-case basis and will advise applicants of its decision in writing. The application form and guidelines for a cooperative mock trial team can be downloaded from the NJSBF website, www.njsbf.org. The completed application is to be submitted to:

Sheila Boro
Director of Mock Trial Programs
New Jersey State Bar Foundation
One Constitution Square
New Brunswick, NJ 08901-1520

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

NJSBF VINCENT J. APRUZZESE MOCK TRIAL COMPETITION COMBINED TEAM APPLICATION

Combined Team Application for School Year: _____

Cooperating Schools

School #1 (Sponsoring/Host)

Address _____

Principal Name & Email _____

Enrollment _____

School #2

Address _____

Principal Name & Email _____

Enrollment _____

Combined enrollment: (no. of pupils) _____

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

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

2. Approved (public schools): Both Boards of Education Yes_____ No_____ Date_____

3. Approved (non-public schools): Superintendent(s)/ School Governing Bodies Yes_____ No_____ Date_____

4. County Coordinator approval:

_____, Coordinator, _____ Approved: Yes_____ No_____ Date_____
(signature) (County)

County Coordinator approval:

_____, Coordinator, _____ Approved: Yes_____ No_____ Date_____
(signature) (County)

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

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

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

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

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

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

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

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

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

_____, Principal _____, School #1

_____, Principal _____, School #2

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

New Jersey State Bar Foundation Approval: Yes___ No___

_____, Executive Director, NJSBF

_____, Chair, NJSBF Mock Trial Committee

Please return original to the NJSBF after making a copy for your files:

Sheila Boro
Director of Mock Trial Programs
New Jersey State Bar Foundation
One Constitution Square
New Brunswick, NJ 08901-1520

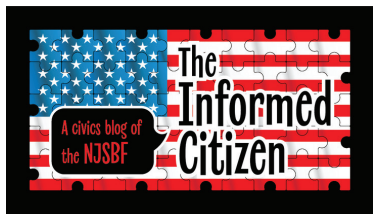
STAY INFORMED

WITH BLOGS FROM THE NJSBF

The New Jersey State Bar Foundation has launched three blogs, which will keep you well-informed.

New posts will be added to the blog every week, so check back often.

THE INFORMED CITIZEN



James Madison, the Father of our Constitution, once said, "Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives." *The Informed Citizen*, a civics blog of the NJSBF, will tackle civics-related topics with the goal of arming all citizens with the knowledge of how the Founding Fathers created the nation and what every citizen's rights are under the U.S. Constitution.

Access the blog at njsbf.org/blog/the-informed-citizen/

GET THE LOWDOWN!

The Legal Eagle Lowdown is an update blog for the Foundation's legal newspaper for kids, *The Legal Eagle*, published FREE three times a year. Posts for the Lowdown will update a story that was recently published in *The Legal Eagle* but has had some development since publication. Posts will be added periodically.

Check back often to get the Lowdown!

Access the blog at njsbf.org/blog/legal-eagle-lowdown/



GET THE RUNDOWN



The Respect Rundown is an update blog for the Foundation's tolerance and diversity newsletter, *Respect*, published FREE three times a year. Posts for the Rundown will update a story that was recently published in *Respect* but has had some development since publication.

Posts will be added periodically.

Check back often to get the Rundown!

Access the blog at njsbf.org/blog/the-respect-rundown/

INFORMED CITIZENS ARE BETTER CITIZENS





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