



# New York State Bar Association

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November 28, 2006

Dear Mock Trial Coaches, Teachers and Students:

Thank you for participating in the New York State High School Mock Trial Tournament. This program, now in its 24th year, is sponsored by the New York State Bar Association's Committee on Law, Youth and Citizenship and The New York Bar Foundation. Many thanks to the numerous local bar associations across the state that sponsor mock trial tournaments in their counties and to the County Coordinators who spend many hours managing the local tournaments. Thanks also go to the teacher-coaches and attorney-advisors who dedicate countless hours to students across the state. Most importantly, thank you to all the students who devote their time and energy to preparing for the tournament and never cease to amaze us with their incredible performances year after year. Congratulations to Marymount School of New York, New York, the winner of the 2006 Mock Trial Tournament!

Please review carefully all of the enclosed mock trial tournament information, paying special attention to the rules of the competition and the simplified rules of evidence with which you must become familiar. The case this year, *State of New York vs. Pat C. Macintosh*, is a criminal case in which the defendant, a college sophomore, is charged with stalking a fellow student through messages posted in a campus-sponsored internet chat room.

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

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

The tournament finals will be held in Albany on May 20–22, 2007. The team that is successful in achieving the regional championship in each of the six mock trial regions will be invited to participate in the state finals. The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days that the team participates in the tournament finals in Albany. Regional teams consist of the nine students paid for by The New York Bar Foundation. However, as we have done in the past, if schools can cover additional costs for transportation and room and board, all members of a team are welcome to attend the state finals.


This year we conducted an on-line survey designed to get your feedback on the competition. We received over 140 responses that provided us with helpful and constructive thoughts that we have

considered along with other suggestions that we received throughout the year. We have tried to reflect as many of your suggestions as possible in this year's updated rules and procedures as we continually strive to create a high quality, challenging and fair competition. For example, we have reinstated the rule allowing videotaping of the early rounds of the competition and have made numerous other clarifications to the Rules and Procedures.

We are pleased to announce that teams can now register on-line for the Mock Trial Tournament by visiting the Law, Youth and Citizenship website at [www.lycny.org](http://www.lycny.org). While teams can still register using paper forms this year, we encourage you to try on-line registration as we hope to have all teams register on-line for the 2008 Mock Trial Tournament. You will also find this year's mock trial materials posted on our website. Throughout the competition, you should check the website for important notices as we continue to move more toward electronic communications.

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

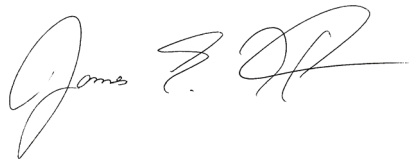
Sincerely,



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



Danielle Carbone, Esq.  
**Co-Chair, Mock Trial Sub Committee**



James Hanlon, Esq.  
**Co-Chair, Mock Trial Sub Committee**

## STANDARDS OF CIVILITY

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

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

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

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

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

# 2006-2007 Mock Trial Case Materials

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## PREPARING FOR THE MOCK TRIAL TOURNAMENT

### Learning the Basics

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

Mauet, Thomas A., Trial Techniques (6<sup>th</sup> ed.), Aspen Law and Business  
Murray, Peter, Basic Trial Advocacy, Little, Brown and Company  
Lubet, Steven, Modern Trial Advocacy, National Institute for Trial Advocacy  
Vile, John R., Pleasing the Court: A Mock Trial Handbook (3<sup>rd</sup> ed.), Houghton Mifflin Company

### Preparation

1. Teachers and attorneys should teach the students what a trial is, basic terminology (e.g., plaintiff, prosecutor, defendant), where people sit in the courtroom, the mechanics of a trial (e.g., everyone rises when the judge enters and leaves; the student-attorney rises when making objections, etc.), and the importance of ethics and civility in trial practice.
2. Teachers and attorneys should discuss with their students the elements of the charge or cause of action, defenses, and the theme of their case. We encourage you to help the students, but not to do it for them.
3. Teachers should assign students their respective roles (witness or attorney).
4. Teams must prepare both sides of the case.
5. Student-witnesses cannot refer to notes so they should become very familiar with their affidavits and know all the facts of their roles. Witnesses should “get into” their roles. Witnesses should practice their roles, with repeated direct and cross examinations, and anticipate questions that may be asked by the other side. The goal is to be a credible, highly prepared witness who cannot be stumped or shaken.
6. Student-attorneys should be equally familiar with their roles (direct examination, cross examination, opening and closing statements). Student attorneys should practice direct and cross examinations with their witnesses, as well as practice opening and closing arguments. Closings should consist of a flexible outline. This will allow the attorney to adjust the presentation to match the facts and events of the trial itself, which will vary somewhat each time. Practices may include a judge who will interrupt the attorneys and witnesses occasionally. During the earlier practices, students may fall “out of role”; however, we suggest that as your practices continue, this be done less and less and you critique presentations at the end. Each student should strive for a presentation that is as professional and realistic as possible.
7. Each team should conduct a “dress rehearsal” before the first round of the competition. We encourage you to invite other teachers, friends and family to your dress rehearsal.

# PART I

## NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT RULES

### General Information

#### 1. TEAM COMPOSITION:

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

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

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

#### 2. OBJECTIONS

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

#### 3. DRESS

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

#### 4. STIPULATIONS

The Stipulations contained in Section IV are binding on all participants and the judge, and may **NOT** be disputed at the trial.

#### 5. OUTSIDE MATERIALS

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

#### 6. EXHIBITS

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

#### 7. SIGNALS AND COMMUNICATION

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

#### 8. VIDEOTAPING/AUDIOTAPING

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

#### 9. MOCK TRIAL COORDINATORS

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

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

## 10. ROLE AND RESPONSIBILITY OF ATTORNEYS

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

## 11. WITNESSES

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

## 12. PROTESTS

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



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

### **13. JUDGING**

The decisions of the judge are final.

### **14. TIME LIMITS**

- a. The following time limits apply:

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

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

### **15. TEAM ATTENDANCE AT STATE FINALS ROUND**

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

## PART II

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

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

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

#### 1. GENERAL POLICIES

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

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

## 2. SCORING

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

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

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

## 3. LEVELS OF COMPETITION

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

Region #1: West	Region #4: Lower Hudson
Region #2: Central	Region #5: New York City
Region #3: Northeast	Region #6: Long Island

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

#### 4. COUNTY TOURNAMENTS

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

## 5. REGIONAL TOURNAMENTS

- a. Teams who have been successful in winning county level tournaments will proceed to regional level tournaments. Volunteer coordinators administer regional tournaments. Coordinators have sole responsibility for organizing, planning and conducting tournaments at the regional level. Participants must adhere to all rules of the tournament at regional level tournaments.
- b. Regional tournaments are held in counties within the region on a rotating basis. Every effort is made to determine and announce the location and organizer of the regional tournaments before the new mock trial season begins.
- c. The winning team from each region will be determined by an enactment between the two teams with the best records (most number of wins and greatest number of points) during the regional tournament. The winning team from each region will qualify for the State Finals in Albany.
- d. The regional tournaments **MUST** be completed 10 days prior to the State Finals. Due to administrative requirements and contractual obligations, the LYC Program must have in its possession the schools' and students' names by this deadline. Failure to adhere to this deadline may jeopardize hotel blocks set aside for a region's teacher-coaches, attorney-advisors and students coming to Albany for the State Finals.

## 6. STATEWIDE FINALS

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

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

## **7. MCLE CREDIT FOR JUDGES AND ATTORNEY-ADVISORS**

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

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

## **PART III**

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

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

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

#### **SCOPE**

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

#### **RELEVANCY**

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

Example:

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

Rule 202: CHARACTER. Evidence about the character of a party or witness may not be introduced unless the person's character is an issue in the case or unless the evidence is being offered to show the truthfulness or untruthfulness of the party or witness. Evidence of character to prove the person's propensity to act in a particular way is generally not admissible in a civil case. In a criminal case, the general rule is the prosecution cannot initiate evidence of the bad character of the defendant to show that he or she is more likely to have committed the crime. However, the defendant may introduce evidence of her good character to show that she is innocent, and the prosecution may offer evidence to rebut the defense's evidence of the defendant's character. With respect to the character of the victim, the general rule is that the prosecution cannot initiate evidence of the character of the victim. However, the defendant may introduce evidence of the victim's good or (more likely) bad character, and the prosecution may offer evidence to rebut the defense's evidence of the victim's character.

Examples:

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



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

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

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

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

Examples:

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

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

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

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

## WITNESS EXAMINATION

### a. **Direct Examination** (attorneys call and question witnesses)

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

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

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

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

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

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

Objections:

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

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

*“Objection. Witness is narrating.”*

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

Objection:

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

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

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

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

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

Objection:

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

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

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

Example:

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

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

Example:

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

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

hostility toward the party against whom the witness is testifying or the witness's interest in the case.

Example:

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

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

Example:

*“Have you ever been convicted of criminal possession of marijuana?”*

Objections:

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

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

### c. Re-Direct Examination

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

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

Objection:

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

**d. Re-Cross Examination**

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

Objection:

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

**e. Argumentative Questions**

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

Example:

*“Why were you driving so carelessly?”*

Objection:

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

**f. Compound Questions**

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

Examples:

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

*“Did you see or feel the residue on the counter?”*

Objection:

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

**g. Asked and Answered Questions**

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

Objection:

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

**HEARSAY**

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

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

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

Example:

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

## EXCEPTIONS

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

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

Example:

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

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

in mind that the reliability concerns of hearsay relate to the out-of-court declarant, not to the witness who is offering the statement in court.

Example:

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

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

Example:

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

## OPINION AND EXPERT TESTIMONY

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

Example:

(General Opinion)



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

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

Objection:

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

Example:

(Lack of Personal Knowledge)

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

Objection:

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

Example:

(Opinion on Outcome of Case)

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

Objection:

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

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

Example:

*The attorney asks the witness, an automechanic, “Do you think Luke’s recurrent, severe migraine headaches could have caused him to crash*

*his car into the side of George's house?"*

Objection:

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

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

## **PHYSICAL EVIDENCE**

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

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

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

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

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

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

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

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

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

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

Objection:

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

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

Objection:

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

## PROCEDURAL RULES

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

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

Rule 802: MOTIONS TO DISMISS. Motions for directed verdict or dismissal at the end of the plaintiff’s or prosecution’s case are not permitted.

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

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

## **PART IV**

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

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

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

*Adapted with permission from the Illinois State Bar Association and the Delaware Law Related Education Center, Inc. and edited by the Mock Trial Sub-Committee of the NYSBA Law, Youth and Citizenship Committee.*

*At the time these materials were printed there was no cyberstalking law in New York State. There are a number of bills pending in the New York State Legislature that would make cyberstalking a criminal offense. To date, the New York State Bar Association has not taken a position on this issue or any pending legislation.*

**IN THE SUPERIOR COURT OF THE STATE OF NEW YORK  
IN AND FOR ALBANY COUNTY**

<b>People of the State of New York,</b>	)	
	)	
<b>Prosecution</b>	)	
	)	
v.	)	<b>No. 2006-0001</b>
	)	
<b>Pat C. Macintosh,</b>	)	
	)	
<b>Defendant</b>	)	

**Case Summary<sup>1</sup>**

Pat C. Macintosh, a sophomore at Big Apple State College, a small college in upstate New York, has been charged with cyber-stalking. The person Pat allegedly stalked via an on-line, campus-sponsored chat room is Jamie Gates, also a sophomore at Big Apple. Both students live in Adirondack Hall, a co-ed dormitory on campus.

Big Apple State established the chat room as a resource to enable students to engage in discussions about campus life, courses, homework assignments and related matters. Although the chat room was set up originally for professors to continue classroom discussions and engage in intellectual debate, the chat room now is used almost exclusively by students. However, students are discouraged from using the chat room as merely an entertainment outlet. Also, there are rules that prohibit unauthorized and/or abusive use of the computer system, such as, but not limited to, hacking, using a password belonging to someone else and sending offensive messages. Members of the faculty rotate on a regular basis to monitor the chat room for improper activities.

Students who use the chat room must first sign a waiver regarding unauthorized use and prohibited language. Along with the waiver, students must also check a box on the chat room home page which indicates they have agreed to the rules of the chat room. A student is not able to use the chat room until he/she checks the box. Access to the chat room is password-protected. Students are able to choose their own passwords and are required to keep the passwords strictly confidential. While most students are careful with their passwords, some students are known to write their passwords on book covers or to lend their passwords to friends. The students also use chat room user names, as opposed to their real names, in order to maintain some level of anonymity. The purpose of remaining anonymous is to protect the students from invasion of their privacy and misuse of their personal information.

In addition to the chat room monitoring by the faculty, the computer system employs a security-screening device called a filter to prevent the transmission of messages containing offensive words. However, because some words in one context may be offensive, but not offensive in another context

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

(such as the use of the word murder or death in the discussion of a Shakespearean tragedy), the filtering device has not been very effective. In order not to stifle important discussions and debates, some words and phrases that might be offensive in a particular context are nevertheless not filtered by the security device. Therefore, the constant faculty monitoring is designed to hinder the transmission of contextually offensive messages.

Jamie Gates, whose chat room user name is Jammin@BASC, was in the chat room one day and observed chat room entries that he/she believed were directed to him/her from someone who calls himself/herself SirVive2005. The official transcript of the chat room shows that these entries rendered on Monday, May 9, 2006 were as follows: *Jam's in the window. Exercise all you want, my friend, you won't be able to run fast enough.* These messages originated from a computer in the campus library.

On Thursday, May 12, 2006, while in the chat room again, Jamie read another message that he/she believes was meant for him/her. The official transcript shows that someone using the moniker Shokwave left the following entry: *Speaking of colors, Jammin's been seen wearing school colors all week. Think blood won't show on those dark colors?* This message originated from a computer in Adirondack Hall. Jamie exited the chat room shortly after reading the entry. Because of an incident in the student union building on May 12<sup>th</sup>, there were no classes and the student union building was relatively empty.

On Friday, May 13, 2006, Jamie entered the chat room at 2:45pm. He/She signed off at 3:15pm after reading the following message from Shokwave: *Listen good and respond or don't. Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear ... suffocation, torture, painful prolonged death.* Jamie signed back on at 3:35pm and Shokwave rendered this message: *Jammin is back. Time is running out my Jammin friend. Maybe we can meet in the alley?* Jamie signed off at 3:37pm. Both messages were from a computer located in Adirondack Hall.

Finally, during a chat room session on Saturday, May 14<sup>th</sup>, Shokwave typed in these messages: *I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression. Ever wonder about pain and suffering. Just remember, the clock is ticking. Time is on my side. Time is running out my friend.* Approximately ten minutes after the second message, Jamie received an e-mail message from a campus computer that said, *SV may lose control at any time ... longs to test your control. How long will you last, my jammin friend? If you're afraid, you better stay locked up in your 2<sup>nd</sup> floor roost and not go out to play. You could be sorry. You could be dead.*

Albeit they are not friends, Jamie and Pat have known each other since their freshman year. They were in the same freshman psychology class. Jamie has felt uncomfortable around Pat ever since Pat presented a very graphic report on Jack the Ripper in their psychology class.

Computer security personnel have provided a red button, or a panic option, at the bottom of the chat room page. If a participant is alarmed or concerned about any on-line discussion, he or she may click on the red button, which will alert the monitoring faculty to the problem. Jamie did not click the red button at any time during his/her on-line chat sessions.

After receiving the chat room message, Jamie and his/her roommate, Casey Wallner, who had also seen some of the chat room messages, went to the campus police to report what they had observed.

The campus police contacted the Albany County Sheriff Department, which sent Ashton Hopp, a deputy sheriff, to investigate. While Pat admits to making the statement, "*The clock is ticking. Time is on my side. Time is running out, my friend,*" he/she denies having authored any of the other allegedly threatening statements.

The State of New York has charged Pat Macintosh with stalking in the second degree, a class E felony, and stalking in the third degree, a class A misdemeanor. Pat Macintosh has entered a plea of not guilty.

## **STIPULATIONS**

1. There is no First Amendment issue in this case.
2. There is no entrapment issue in this case.
3. There is no jurisdictional issue in this case.
4. Chat room discussion transcripts are stipulated as an authentic representation of what was on the computer at the time they were seized by the authorities.
5. All students named in this mock trial problem have signed the waiver for chat room use and agreed to chat room rules by checking off the rules agreement box on the chat room home page.
6. The campus online discussion option is one where messages and comments may be entered in real time and are then posted and left, and can be read at any time.
7. Witness statements are sworn and notarized.
8. All items of evidence are eligible for use at trial, following proper procedure for identification and submission.

## **WITNESSES**

### **Prosecution witnesses:**

1. Jamie Gates, alleged victim of cyberstalking
2. Casey Wallner, Jamie Gate's roommate
3. Ashton Hopp, Albany County Deputy Sheriff investigator assigned to the case

### **Defense witnesses:**

1. Pat C. Macintosh, alleged cyberstalker
2. Loren Albert, BASC professor of computer sciences
3. Jesse Clifford, BASC Webmaster



**Affidavit of Jamie Gates,**  
**Alleged Victim of Cyberstalking**

1. My name is Jamie Gates and I'm currently a sophomore at Big Apple State College. I live on campus in Adirondack Hall, one of the co-ed dorms on campus. This is my second year living at Adirondack Hall. I requested assignment to this residence hall again because I knew so many of the student residents, the place started to feel like home.

2. I logged onto the campus chat room the College sponsors as part of my class registration. The chat room gives students a chance to discuss courses, homework assignments, and things like that. I posted a message asking for the reading assignments for my literature course. I didn't want to fall behind.

3. Prior to signing on for the first time, I had to read and sign the usual release that says that the campus authorities monitor user activity by use of the "red button" scheme to protect students from unsavory activities, and I was also required to check-off on the chat room home page that I understood so-called "panic" options available to chat room users. I had to check off that I read the rules in order to use the chat room. I was in the campus advisor's office to sign up for the service. A couple of other students were in there with me at the time. We all joked about the release; I don't think any of us took that seriously at the time. I didn't think signing the releases would really be a deterrent if someone wanted to hack or bend the rules.

4. I hadn't used the chat room all that much until the middle of May. I know it was on a Friday. The campus pretty much clears out on Fridays, so I gave it a shot and asked if anyone had the assignment for my English 301 class. I got an almost instant response to my request for the homework assignment from another student in class. It seemed funny that we had been told not to reveal our actual names, address, telephone numbers, or other personal information. I thought at the time that the small campus was full of friendly folks all concentrating on their educations and having a good time at college.

5. After that first positive experience, I visited the chat room often. There would often be movie reviews or discussions on books being read, bestsellers and assignments, and information on good places to eat. And, there was also the routine info on class assignments in case someone was out sick. I'm not very computer savvy, but I could use the chat room and my campus e-mail account with no problems.

6. I was in a class with Pat Macintosh during our freshman year. It was a class on psychology and the professor was using quite a bit of literature as a way to help us understand various psychological problems and profiles. It was a fun class, but I remember that Pat was frustrated because none of the literary situations created really challenging psychological profiles. Pat asked to do some extra-credit reading and did a report on Jack the Ripper. It was a painful report to listen to, and I guess I was a bit more sensitive than some. Pat's report almost made me ill. It was very graphic. Pat seemed to enjoy the class's discomfort with some of the descriptions and photographic materials that were circulated during the report. I asked the professor if I could be excused in the middle of the report, I was that upset. I was given permission to leave, but had to explain to the professor in the hallway why I was so upset. The professor understood and I left and called home and discussed the report with my parents. I felt better after speaking with them.

7. I think it was about two months after I'd signed up to use the chat room, and about a week after the student union incident where I'd avoided Pat Macintosh that I noticed some references to my nickname, which is Jam. Some kids in the dorm call me "the Jam" because my dorm room is so messy that the door sometimes jams up against something...and my real name is Jamie, so it sort of fits. My chat room and e-mail user names are both the same, Jammin@BASC and Jammin@BASC.edu. In hindsight, I should have been much more careful in choosing user names and e-mail addresses. Better to be as anonymous as possible on the Internet. My password is, or was, JRCHAT. These have changed now.

8. Anyhow, one day I logged onto the chat room and remembered that someone had posted two messages on previous dates that had sort of freaked me out. "*Jam's in the window. Exercise all you want, my friend, you won't be able to run fast enough.*" My first thought on reading that was that I'd been goofing

around the night before doing some jumping jacks and running in place in the dorm room. My room is on the second level so I rarely bother to close the drapes, as no one can really see in the room. I sort of calmed myself down by telling myself that I wasn't a jogger, so it must not have really been meant for me. But, I did show the message to my roommate Casey. Casey sort of shrugged it off at first, but then read the second message further down the discussion thread. Then we both got concerned.

9. There were some other messages on the board that same day, and the discussion was about a campus hazing that had taken place at a high school a few weeks ago. Some kids had been pretty badly beat up and suffered some extreme indignities, to say the least. There are no sororities or fraternities allowed at Big Apple, so there's never been a problem with that kind of social rite of passage, so to speak.

10. We both saw the statement; *"Jamming has been seen wearing school colors all week. Think blood won't show on those dark colors?"* and Casey and I both thought that this line in particular was directed at me, because I had been wearing school colors all week. I have a part time job at the College Union and we were promoting t-shirts, sweatshirts, and other BASC logo clothes and items and all of the student employees had been given an assortment of stuff from the union store to wear as a sales promotion.

11. Casey and I were both convinced that someone using the chat room knew that I was Jammin@BASC and was trying to prank me somehow. I first thought someone was just trying to get my attention, but some of the other lines started to really get to me and I started having trouble sleeping and would constantly look over my shoulder wherever I went. Casey and I started going places together or not going out at all. This made going to class for a week or so a little difficult, but we worked it out between us so that neither of us would be alone walking on campus.

12. Even though we were careful, we kept visiting the chat room. We felt like sleuths looking for some additional evidence, to determine for sure if someone was earmarking me for trouble, or threats or something. We were drawn to it, even though it was freaking us out. It really never occurred to either of us that we should press the panic button that the College offers as a safeguard. I can't say why. We sure got to the point that we were close to panic.

13. On May 13, 2006, a Friday, there was a flurry of chatter about a course on campus that was talking about terrorism and the law. It's a government and current events course, in the political science field. There was plenty of discussion on freedom of speech and September 11, and individual rights. Nothing too frightening, it was a good discussion actually.

14. But then we saw another reference to "Jam." *"Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear...suffocation, torture, painful prolonged death."* And then there was *"You can keep your friends around you, but the clock is ticking. Time is on my side."* And it started up again with, *"Time is running out, my Jammin friend. Maybe we can meet in the alley?"*

15. Casey and I saw it at the same time and Casey said that maybe we should notify someone on campus about the series of postings that were mentioning me. I said I'd think about it. I guess I was trying to talk myself out of being afraid. But the next day, on the 14th, a Saturday, when campus was really empty, there were two more postings.

16. One was responding to the comment I mentioned above, about suffocation and torture, saying that the language was inappropriate. I don't know who had posted that response, but I was glad someone else on campus was feeling uncomfortable about the discussion.

17. The person who'd been posting the threats responded to that by saying, *"I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression."*

18. About ten minutes later my computer indicated I'd received an incoming e-mail with the subject line blank. I usually just delete these without opening them; fear of virus problems, but I opened it. The message was from user@BASCLib, which meant it was from one of the campus library computers where you can either sign on with your student I.D. or as a general student, using the user@BASCLib and then the password student. Its anonymous, so far as I can tell. Anyhow, the message said, "*SV may lose control at any time...longs to test your control. How long will you last, my jammin friend? If you're afraid, you better stay locked up in your 2nd floor roost and not go out to play. You could be sorry. You could be dead.*" Someone had figured out that all you had to do to Jammin@BASC was add a dot and then "edu" to turn it into my e-mail address.

19. And then we totally freaked. Casey and I turned off the computer and locked the dorm room on our way out and went right to the campus police station to report on what we'd been seeing. Campus police called the Albany County authorities and they all met with Casey and me and with other campus officials who got involved. That's when I learned how high-tech the campus computer system was. Every chat room discussion had been captured, fully, and was stored on disks in the security offices. They had access to every chat room discussion thread and all they had to do was search for "Jam" and "Jammin" or other variations, and they found some vague references I hadn't even seen.

20. The campus police and other College personnel asked if I had any idea who might be targeting me, and I said I thought of one person but really didn't want to say because I wasn't at all sure. I was relieved when their investigations lead them to Pat Macintosh. I just don't know why Pat chose me as a target for the stalking, which is what it really was. Stalking.

21. Once the police became involved, there were only two more references to me in chat room discussions, neither was as threatening as the first, but they still crossed the line and are included in the complaint against Pat Macintosh.

22. One appeared on Sunday, May 15th, and referred to Jam and Jammin, and included mention of my English homework. It was then I remembered that I'd asked for the homework assignment for English 301. It must have been pretty easy for Pat Macintosh to figure out that Jammin@BASC was Jamie in English 301.

23. The message that appeared on May 12 was probably what convinced me that Pat was, in fact, the person behind all the threatening chat room messages. I'd seen Pat in the student union and had made a point of turning and walking in a different direction. I'm absolutely positive Pat and the friends that were there with Pat all saw me avoid them, and I have to say I wasn't all that subtle about it. Casey was with me and I actually grabbed his/her arm and dragged him/her down a side hallway. I also know that they saw us make that move, because we stopped and looked back and saw Pat laughing and pointing at us. That's when Pat said, and we both heard it perfectly, "There goes Jammin@BASC, The Jam," and when Pat said "The Jam," he/she made that little quotation mark sign with his/her hands and laughed a pretty scary laugh.

24. Another proof, sort of, that it was Pat Macintosh who was posting all those messages in the chat room is that they stopped right after Pat was arrested. During the whole investigation we were told to keep on using the chat room and not discuss the investigation with anyone.

This I swear under penalty of perjury.



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Jamie Gates

Date: 6/2/06

**Affidavid of Casey Wallner,**  
**Jamie Gates's Roommate**

1. My name is Casey Wallner and I'm Jamie Gates's roommate at Big Apple State College. Our dormitory room is on the second floor of Adirondack Hall. Pat Macintosh also lives at Adirondack Hall. All of us are sophomores at Big Apple, and we all knew each other, in passing, last year. That is, Jamie and I knew each other well as we're from the same high school, but we knew Pat Macintosh only in passing.

2. I remember that Jamie and I signed up for the chat room together, on registration day, just in case. I don't think either of us really planned on using it all that much, but then Jamie got sick and needed a homework assignment from someone and it worked so well that we both started jumping in and commenting now and again. It's a useful tool. We enjoyed it for a few weeks and then things got strange.

3. We went to the student union to get some coffee and meet friends on Thursday, the 12th. When we arrived, we saw Pat Macintosh sitting at a table in the middle of the union with a bunch of friends. Jamie grabbed me and pulled me back out of view, but we heard Macintosh and the other people at the table laughing and saying things about Jamie, like making fun of the nickname, "The Jam." Not their business. I guess it wasn't all that frightening, being as it was such a public place, but we were in such a tense state that we reacted like we were really freaked out by running into Macintosh and those other pals of his/hers. We left the way we came rather than walking through the union and setting ourselves up as targets for more of their verbal teasing. I know Jamie didn't sleep well that night. I didn't either.

4. I keep a pretty accurate calendar of where I'm supposed to be and when, because when I get too busy I sometimes forget stuff. The calendar came in handy when we reported the chat room threats to the authorities because we, Jamie and I, were able to confirm 100% that the discussions took place on the dates they did. My calendar jived with the printouts that the computer geeks were able to retrieve.

5. I even urged Jamie to print some of the chat room screens so we'd have something to refer to if questions arose about what we'd been reading there. It was some pretty ugly stuff.

6. I remember that Jamie got real freaked out after seeing "Jam" and "Jammin" appear in some of those ugly messages. I know if I'd seen my name attached to those threats, I'd have gone through the same or worse emotions that Jamie suffered. Jamie pretty much stopped opening the curtains in the morning, answering the phone or taking walks. And Jamie's behavior was catching, especially since I'd read the messages as well. All that talk of torture can really dig in and sort of fester in your mind. Jamie and I decided that we'd hang pretty close together and make sure that Jamie wasn't alone. Ever. And we were doing that when the additional messages came onto the message board.

7. I don't know why we didn't just sign off and stop using the chat room. I guess we sort of felt that we wanted to know what the person out there was thinking and that we'd be able to tell if there was a real threat coming Jamie's way. Better to know than try to guess, you know?

8. Anyhow, after about the third mention of "Jam" I started asking Jamie if we shouldn't alert the campus authorities or dial that 9999 campus phone number to let someone know how freaked we were getting. I felt sorry for Jamie. There was a real confused feeling in him/her. I guess it's hard to get someone in trouble. I don't think I'd have minded so much getting someone who was picking on me so awfully in trouble. They deserve whatever comes their way. Eye for an eye, they say.

9. I was pretty insistent after Jamie stopped eating. Wouldn't go to the dorm cafeteria or any of the local campus town restaurants. I was asking other friends to bring us fast food almost daily. I was afraid to explain why, so I just said we were working on a class project and couldn't get away from the computer that long.

10. I think Jamie lost about 10 lbs. And night after night, I'd wake up to see Jamie just sitting there, or peering through the closed curtains, or listening at the doorway. It was awful to watch and I tried to offer some comfort and assurances. After all, there is a dorm alarm system, the doors are usually kept locked and we have to use keys to get onto the resident floors, and we had the phone right there. But it didn't help.

11. I can't remember ever discussing with Jamie the possibility of clicking on the panic button on the chat room web page. I think we may have considered it, but decided that the College must be monitoring the pages, because they said in their registration materials that the pages were not considered private. I guess that maybe in the backs of our minds we thought that someone would be watching and know that something was wrong. No one ever contacted us to check to see if we were alarmed or concerned or anything like that though.

12. I guess we could have put a stop to the whole business if we'd used that panic button early on. Maybe then we would have gotten some sleep, Jamie wouldn't have been so freaked out, and Pat Macintosh would have avoided getting into all this legal trouble.

13. When we did finally decide to report the problem, we went to the campus officials together with the printouts we'd kept. They were able to match their computer times and messages to ours so they could see we hadn't faked anything. We also reviewed the printouts from the computer geeks so we were sure they were the same as ours.

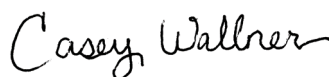
14. Then they really started watching the chat room. They told us to keep logging on and using the computer in our room to use the chat room. We did. It felt sort of good knowing that someone else was watching and that there was a good chance that someone was going to get caught red-handed sending those ugly messages. We were still pretty apprehensive though and kept up our policy of never being alone, closing curtains, and keeping our doors locked up tight.

15. It didn't take long after we reported the problem to the campus officials that the computer guys told us that they thought the chat room messages had been sent from a computer inside Bedford, Jamie really freaked and started talking about quitting school, dropping out for a year or two, going home to get a job and let things settle down. Terrible to let someone get away with threatening someone like that and causing such life changing fears to take over.

16. Finally, they made an arrest, Pat Macintosh, and the chat room messages referring to Jamie stopped immediately. Guess that sort of proves that Pat must have been the one doing all that nasty stuff. What a jerk.

17. And now we've heard that Pat Macintosh may be using the defense that someone else is probably using his/her passwords and codes. That's funny. Macintosh's been using that chat room and must have seen the tags on the ends of his/her comments. Why would a student who is so interested in law-enforcement and all that stuff not want to investigate and find out who was adding text? Makes no sense. I'd have been furious if someone started altering my comments, especially if they were turning something allegedly innocent into something dangerously threatening. That's nonsense. Pat's supposed to have such a keen mind, why wasn't it used when the additional lines were seen? I would have thought it would be the kind of challenge Macintosh would love!

This I swear under penalty of perjury.



Casey Wallner

Date: 6/12/06

**Affidavit of Ashton Hopp,**  
**Albany County Deputy Sheriff Investigator**

1. My name is Ashton Hopp, I am a Albany County Sheriff Investigator. I moved to Albany from Delaware about a year ago because my spouse got a great job in Albany as a court reporter. When I was on the force back in New Castle County, I was assigned to one of the police force's "elite cyber crimes squad," which means I've received special training in computers and on-line security issues. Investigators were allowed to choose which "elite squad" they are interested in and then the force offered extensive training. The fact that we got to choose means that each officer on the force was given special training in his or her area of interest. Goes a long way to boost morale, I really liked that job, kind of miss it. I also have a degree in computer science from University of Delaware, where I met my spouse. I graduated with honors 10 years ago and went right to the police academy. I served 4 years in the Navy as a computer technician on board the U.S.S. Reliant. During the time I was part of the cyber crimes squad in New Castle, I had investigated more than a dozen cases involving alleged cyber crimes. This is my first year on the force in Albany. I was on duty when Jamie Gates and Casey Wallner arrived at the College security offices. I took the call from the College and went over there to help with the preliminary interviews and investigations. Given my background in cyber crimes, it was lucky I was on duty that day.

2. When I arrived, both of the students were highly agitated and nervous. My first thought was that if we don't get them calmed down, we're not going to get good information from the interviews. So, I set out to calm them down by offering them sodas, sitting with them for a while, introducing myself and generally making them comfortable with the surroundings and the people they'd be speaking with. Even after they relaxed, Jamie kept exhibiting nervous tendencies like hand wringing, twisting and turning in the chair, standing and pacing the floor, things like that are very telling during the interview process. I'd say that whatever had happened to these two kids, they were taking very seriously and they were scared.

3. They mentioned that almost all of the communications had taken place through computer on-line chat rooms but that there had been one face-to-face confrontation that had also upset them both. Evidently Pat Macintosh saw Jamie and Casey in the student union and had targeted them there with some teasing remarks that had made quite a threatening impression on them both.

4. It's routine for Big Apple State College campus police and the Albany County Sheriff's Department to cooperate fully when something happens on campus or a student has a complaint. We have a long history of cooperation and support for each other's offices and authority. I was called in to take statements, so if a civil or criminal investigation ensued, there would be a proper chain of evidence.

5. The campus police had already called the computer technical staff to retrieve the chat room conversations that had taken place in the past two or three weeks. We were going to limit the search for the threatening language by asking the students what times they had entered and exited the chat room. Knowing how efficient the computer staff at Big Apple State College can be, I knew we'd have the information very quickly.

6. Casey Wallner had the presence of mind to bring in a calendar that indicated quite a few of the incidents they were questioning. Nice kid. Thoughtful and I'd be willing to bet Casey is a good student. Organized.

7. It's routine in this kind of case to encourage continued chat room use to see if we can draw out the person or persons who are making threats. When we encouraged Jamie to continue utilizing the on-line chat-room until they could follow the leads they had to try to identify the sender of the threatening messages, Jamie's fear showed in full force. You could see his/her face go pale and his/her hands tremble. Casey Wallner looked a bit taken aback as well. I suppose they had thought that simply reporting the problem would make it go away. That's not how investigations work though. We sometimes need help to find out the computer that was used, and the pass code of the user.

8. I am aware that Big Apple State College has in place monitoring software that automatically alerts security staff when certain words or phrases are used in the chat-rooms on campus. It's called the "shark program." I knew we'd need to interview the computer technology staff to see when the discussions took place, which computers were used, etc. This could be a lengthy process.

9. In the past, I have investigated some child exploitation cases on the Internet. The common denominator was that all three cases originated in chat rooms. I try to encourage parents and teens, and even younger children who are allowed Internet use to always take great care in protecting their confidentiality. In one of the cases I mentioned, I asked the teenager involved if she knew how to research the name and information on the person she'd been chatting with. She felt she didn't need to because she'd been chatting with this person and had asked so many questions. She felt confident she knew the person. What she hadn't thought of was that person might be lying. I asked her if she had given out any personal information and she said she hadn't. But then I asked if she'd ever mentioned her high school name. She said yes. I asked if she'd indicated her gender, and she admitted she had. I asked if she'd ever mentioned what year she was in school. She said she had. I then asked one more question, had she ever mentioned any of her extracurricular activities. Again, she said yes. All these, to her, seemed innocent enough. However, when all are taken as a whole, they provide an incredible amount of information for a stalker or other criminally minded individual.

10. The information she offered could have helped to narrow the search for a target. Think about it. She told this person what high school she went to. That narrows the field, in this case, to less than 800. From the entire world, to 800. Then she said she was a female. That cut the number in half, to approximately 400. She mentioned she was a senior, narrowing the field to about 100, and she also indicated she was a cheerleader, thus narrowing the global field to eight. And, take this into account as well. The high school she attended has a website that displays photographs of team sports and, you guessed right, the cheerleaders. So, if this girl had also mentioned that she was blond, or had long hair, the field would narrow even more. So, even though this girl hadn't given out her name, address, telephone number, e-mail or web information, anyone with enough will could have located her pretty easily with the information she had provided.

11. After checking the captured computer information available from the College's computer systems analyst and computer tech people, we were able to determine which computers on campus had been used to enter the chat room each time one of the suspect comments was made. All but one time, the computer used was the one located in the Adirondack Hall common room on the first floor of that dormitory. That computer sits in a small, rather out of the way room, down a hallway and you can close the door for complete privacy. It's the perfect place to undertake questionable computer behavior, and think that you couldn't be traced because of the number of students with access.

12. The College has in place a "filter" system called "the shark program" that has the capability to capture questionable language and alert monitors to potential problems. However, we've learned through experience that no software program is foolproof. First, it has to be switched on. You have to learn how to maneuver through the data history files to see what's been going on.

13. By checking user files, sign on dates and times, we were able to discern that the user name and pass code, which students must register when they sign the initial release forms to utilize the chat room, belonged to Pat Macintosh. The username was "Shokwave," which is one of Pat Macintosh's usernames. Shokwave's password is "Crag06." The other registered student username Macintosh uses is "SirVive2005" with the password "Kincrag." Both usernames appear on the printouts of the chat room discussions in question. Both were using the Adirondack Hall computer. After reviewing all the chat room transcripts printed by the college as part of my usual investigation, I noted that one message that did not use that particular computer was the first message with a reference to "Jam." That one appeared on May 9<sup>th</sup> and said "*Jam's in the window. Exercise all you want, my friend, you won't be able to run fast enough.*" That message was posted from a computer in the Big Apple State College Library, second floor student lounge. The username was "SirVive2005" with the appropriate password "Kincrag."

14. As a routine user of the campus e-mail and website, I can testify that often e-mails are sent but don't arrive until seconds, minutes or even hours later. And, relying on any campus clock when indicating where you might have been at what time, can be taking a chance. Everyone on campus knows the campus clocks are unreliable and more often than not they're way off. Must be because of power brownouts or something. They just can't seem to keep the things running right.

15. Macintosh seems to think that his/her username and password from last year, which were "SirVive2005" and "Kingcrag" were found on a textbook he/she sold and are being used by someone trying to get Macintosh into trouble. We have yet to locate that particular textbook, which Macintosh says was sold back to the College bookstore. We checked at the College Library to see if this particular textbook had found its way onto the bookshelves and might have been available or accessible for student use, but they don't have that particular textbook in their inventory. They have five duplicate versions, but none have the writing on the cover that Pat Macintosh says should be there. We also checked with the College bookstore. There was no book so marked in their inventory, but that doesn't mean there might not have been at some time. College personnel did indicate that they do not make an effort to clean or erase markings off of used textbooks sold back to the bookstore.

16. There is some responsibility that the selling student should assume in erasing any personal information, like a password, personal code, etc., if they choose to sell a textbook, or donate it somewhere. Even if accounts are no longer being used, or go stagnant, they can still cause problems. Macintosh should have taken care to erase his/her computer e-mail and user codes from that textbook. If there's a lesson to be learned here, in addition to the seriousness of computer threats, it's that personal information should be guarded.

This I swear under penalty of perjury.



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Ashton Hopp

Date: 6/1/06



**Affidavit of Pat C. Macintosh,**  
**Alleged Cyber Stalker**

1. My name is Pat Macintosh and I'm a sophomore at Big Apple State College. I live in Adirondack Hall, the same dorm where Jamie Gates and Casey Wallner live. I admit to using the on-line chat room offered by the college, but never intended to threaten anyone in the various postings I submitted.

2. I guess I can see how someone might not like to talk about sleep deprivation and human laboratory experiments to study pain and suffering, and hate crimes, but my major is psychology with a minor in law enforcement. I have an honest curiosity about these things that is shared by many in my classes.

3. I decided on this major because I want to become a psychologist to help post-traumatic stress disorder patients recover from their traumas. I watch quite a bit of television when I'm not doing my homework and the history channel, and the news channels, often have special programs on virtually every crime that has ever been committed and they often run stories told by the survivors. I'm incredibly interested in these first-hand accounts of how victims survive, their thought processes, their physical strengths, etc. I mean, if we all knew what it took to survive a terrible situation, they'd be able to train us all to withstand just about any terror we could ever expect to face. I think my research is going to be very useful someday.

4. I guess that because I'm such a serious student, I am often perceived to be a loner or outsider. I know I'm a bit of an over-achiever and often accept extra credit assignments, especially if they allow me to undertake some individual options in my research. One of my extra credit reports in a psychology in literature class evidently freaked out some of the less challenged students. I don't really understand why. I wasn't exposing any deep dark historical or psychological secret. The schools all teach crime and punishment, and television programs run the same kinds of pictures I showed. One student got up and walked out, obviously shaken. Now that same student is lodging a complaint against me.

5. The chat room has been a great resource for me and I vigorously deny improper use. I've often ridiculed the general chat room population, but I've never targeted any individual. The statement that said, *"Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear...suffocation, torture, painful prolonged death,"* was from me. I had been discussing torture camps with some other students and was responding to a question that someone had asked as we all headed home. It's true. Anticipating something dreadful is often worse than the actual happening, when it finally occurs. Like going to the dentist. You think how awful it's going to be, but then you do it and it's not all that bad. Fear gets to you and makes you freak. Discussing controversial views should not be illegal, even if someone misinterprets the statements that are made!

6. I remember writing something like *"I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression."* Someone had said that I was nuts in one of my classes. I prefer the word "mad." It's so much more poetic, somehow. Loads of highly productive and famous people have been thought to be mad, but they still gain fame and fortune for their thought processes. I admit that being a bit different makes one appear to be a bit mad, thus the statement. Being different, to me, is a good thing. It isolates me from people I don't really care about and I'm allowed to focus on my thoughts, goals, class work, research, etc.

7. I am, while a loner, a very aggressive student. I like to challenge my professors by tossing them questions they don't expect. I like to make them think as much as they like to make me think. I guess I may be a different kind of student from what they normally see, but I've had quite a few professors compliment me and tell me they enjoy the challenge of having me in their classes.

8. I flat out deny having anything to do with the two statements that are included in the complaint that say; *"Jam's in the window. Exercise all you want, my friend, you won't be able to run fast enough."* And *"Jamming has been seen wearing school colors all week. Think blood won't show on those dark colors?"* Who cares when Jamie was exercising or what color his/her clothes were? And that bit about the blood. I

am absolutely convinced that some nut case with some computer expertise has been out there using my passwords.

9. I'll also admit to typing in the statement that *"The clock is ticking. Time is on my side. Time is running out, my friend."* How anyone could see that as a threat, I don't know. I was talking about a statistical probability that all of us in the chat room at the time would be victims of crime. I think everyone understood what the context was. It's when you pull the dialogue apart and start looking for ugliness that it appears to be threatening. That's not my fault.

10. And, when that second transmission, the one on the 13<sup>th</sup> that everyone thinks is so awful, appeared, I wasn't near a computer. I had logged off and was actually at an interview, talking with the computer lab personnel about a report I was going to do about on-line research. So now they're probably going to say that I have the technical ability to pause a computer e-mail entry or had someone else press the enter key? Good luck.

11. I think that someone in the chat room knew that Jamie and I weren't seeing eye to eye and started tacking on comments to my chat room commentary. I even think I know how it was done and I've asked Jesse Clifford if I'm right. I think if you ask Jesse, you'll find that anyone could have logged into the chat room using my personal information and tagged words onto my comments after I'd signed off. This is especially true if I happened to be using one of the College computers, like at the library, the union or in the common room at Adirondack Hall, and I have used those computers, but not frequently. I can't remember the last time I used the library computer. Must have been a few semesters ago.

12. There's a strong possibility that someone's pranking both Jamie Gates and me. I know that I had written my personal pass code from last year for the chat room on the cover of my forensics textbook from last year and I sold that book or donated it to the library without erasing the information. I haven't closed that account, I just added a new one this year, so someone could be making all of this look like it's coming from me, when it isn't. That should be illegal, if it isn't! Some may think that it's a convenient way for me to have pranked someone, using an old account, but it's just plain easier to let the old accounts ride, rather than completing paperwork. It's not a crime to be lazy, is it?

13. I've been asked what computer usernames I've got on file in my name. This year I registered the username "Shokwave" with a password "Crag06." Last year, I had registered under the username "SirVive2005" with the password "Kincrag." I'm absolutely positive that the SirVive2005/Kingcrag information was written on my forensics book from last year. I'm also absolutely positive that whoever has that book is the person you're looking for. Again, I'm willing to admit to making some of the statements, or participating in some of the discussions, but my intent was not to harass anyone. I thought all along I was in an educational conversation, a learning experience, you know?

14. People are also making a big deal about me making fun of Jamie in the student union. Since when has laughing at someone been a crime? All I did was make fun of the nickname "The Jam." I was sitting at a table in the union with some friends and Jamie came around the corner and lurched back so suddenly, dragging someone with him/her out of view. Then they peeked around the corner, like kids playing hide-and-seek! Jamie was making a fool of him/herself by dragging that friend behind some wall and acting so afraid. It was pretty childish.

15. By the way, someone tells me that Jamie received an e-mail from the College library computer that they think came from me. I wish they'd fingerprint all those computers over there. I haven't used the library computers for months.

This I swear under penalty of perjury.



Pat Macintosh

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Pat C. Macintosh

Date: 6/16/06

**Affidavit of Loren Albert,**  
**College Professor of Computer Sciences**

1. My name is Loren Albert and I am a Big Apple State College Professor. I teach computer science, computer ethics, and advanced technology and research. I've been serving in my capacity as head of the computer technology division for four years.

2. I encourage my students to use the on-line chat room and discussion opportunities as a safe and efficient way to expand their studies. It is important for students to realize early on that our student chat rooms are not meant for entertainment, they are meant as learning and communication tools. They should be used for open dialogue. Students are encouraged to utilize the chat rooms, and to adhere to the rules and guidelines set forth by the College and individual professors. For example, I tell my students to be particularly aware of message length, continuity of discussion and articulate responses that can keep the discussion flowing. Short is always better. Brief phrases are easier to respond to and keep the discussion going without lengthy delays that can create confusion.

3. Some students arrive on campus experienced with computer chat rooms. Others experience a bit of timidity when they first use the tool, but with some encouragement these students learn how the medium works and are able to use it efficiently within a matter of weeks.

4. What students sometimes don't understand is that there can be a number of "conversations" going on simultaneously and they need to process the discussions to weed out what is relevant to their particular discussion.

5. Having a problem like this arise on the Big Apple State College Campus is disturbing and I've been in meeting after meeting with College Deans, the Chancellor, faculty and staff to try to determine whether or not the chat room facilities should be shut down. There seems to be the overwhelming response from the student body that they want the chat rooms to continue, but with additional monitoring by campus officials.

6. It was one of my responsibilities to supervise the on-line chat rooms and I take that responsibility very seriously. I believed I should assume this role as I have both a technical understanding of chat rooms and an understanding of computer ethics. It was my decision to include the "red button" feature that students can click if they feel discussions are getting out of line or crossing into a territory that makes them uncomfortable. The red button has never been used during this academic year. Quite often students take it upon themselves to admonish other students that ask inappropriate questions or use unacceptable language. I'm very proud of the Big Apple State College students. They are using a tool in a very adult manner.

7. Unfortunately, on the week that the alleged cyber-stalking took place on the Big Apple State College chat room I was on and off campus taking care of family wedding plans and was not checking on the chat room conversations, as I usually do at least three to four times a day. I log on routinely and read discussion threads to see how students are using the chat room and if there are problems with the equipment, etc.

8. This particular allegation is the first time in the history of the chat room that such a threat has been observed. It is my personal opinion that the language does not rise to the level of a criminal complaint; however, as a College official, I need to be aware of all investigations and allegations so I've reviewed all the chat room discussions in question.

9. I am concerned that there may be some unauthorized use of a student's password. Based on our records, one of the alleged offensive statements occurred on Saturday, May 14th. Between the entry, *"The clock is ticking, Time is on my side. Time is running out my friend,"* and the line *"Time is running out, my Jammin friend. Maybe we can meet in the alley,"* There's a 20 minute break or lapse in the discussion. That is plenty of time for Pat Macintosh to have logged off and left the building and someone else, an unauthorized user, to enter, log on and use Pat's password to continue the conversation and issue the threatening second phrase. Pat Macintosh was actually interviewing someone on campus in the computer lab

at the time that second phrase appeared so Pat may not have been the person responsible for making the entry. I can confirm that because I saw Pat.

10. Unauthorized use, if indeed that is what happened in this situation, is a serious infraction of the campus rules. A year ago, the College experienced an on-line prank when a student I'll call John, left a computer workstation without logging off and protecting his e-mail account. The next student who sat down at the station realized that he had the opportunity to prank the student named John and sent out a rather innocent message to the chat room that indicated that John was madly in love with Marsha. This embarrassed both John and Marsha, who had never really spoken to each other. I was able, in class, to call attention to the breach and discussed the misconduct, which violated College policy and academic integrity of the chat room. The resulting gossip from the incident was innocent and no one was hurt. And the prankster issued a verbal and written apology to the parties he'd pranked. This offered a valuable learning experience to everyone involved in the chat room. We haven't had that type of prank since.

This I swear under penalty of perjury.

Loren Albert

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Loren Albert

Date: 6/27/06

**Affidavit of Jesse Clifford,**  
**Big Apple College Webmaster and Cyber Angel**

1. My name is Jesse Clifford and I work at Big Apple State College in the computer technology lab.
2. It was my responsibility to design the College's chat room option for the students. In doing so, I made sure that every one of the College's computers, in the library, dormitories, student union, computer labs, and in the offices, could link directly to the chat room with appropriate user names and passwords. That would ensure that the students would have access, and the faculty and staff would be able to have access as well. We drafted an on-line form for the students to read and check-off on the chat room home page so they would understand some of the "panic" or "red button" options in case they felt there were problems. If the students failed to check-off that they understood this option they would not be able to use the campus chat room. They also signed a form that indicated they had read the rules for using the chat room. Those rules prohibit abuse of the system, hacking, and unauthorized use--like using someone's password without their knowledge, and other standard, common sense rules. I have been combating cyber crime such as this through my involvement with the Cyber Angels, a national watchdog group of volunteers who work closely with the law enforcement agencies to address and monitor on-line abuse and cyber crime. I am on a special team that is responsible for answering e-mails from people that are being stalked on-line. Victims are given information regarding how to protect themselves and how to turn the predator in.
3. I think the chat room has a lot of potential, but I don't think it's being used as the College had first envisioned. At the outset, teachers would go to use the chat room to expand on classroom discussions and pose challenging questions to the students for additional debate. That never happened. The chat room, as it is used now, is 99.9% student driven. The only time a faculty member visits is to check in if they are assigned as a monitor for a day or so. Those monitor duties rotate so no one has to continually be responsible for reading all the chatter that goes on.
4. Usually the discussions are about assignments, what's due when, why do they give us so much to read, do you have something I need or want, etc. There has certainly been nothing very in-depth, controversial or inspiring. I've monitored the chat room off and on since inception and can tell you that there has been no earth breaking news out there.
5. I have read the transcripts of the conversations in question and, given by background and experience, and I fail to see why any of the language created this uproar. I found none of it to be particularly threatening. But, I'm not an 18-year-old student away from home. I suppose if I were out there without a good support system, and if I got it into my head that someone was mad at me or didn't like me, some of the wording could be construed as vaguely threatening. But it does not cross the line into a cyber-stalking matter. There's just no basis for it.
6. It's incredibly common for students to forget their passwords and use someone else's for a few seconds to get an assignment...and that's after all the nagging we do to tell them to keep that kind of information strictly confidential. Students also, quite commonly, write their usernames, passwords, e-mail addresses and other information on the covers of books or notebooks. I've even found this kind of information written on mirrors in the restrooms.
7. Maybe there's a false sense of security because the students all know that the faculty and advisors and campus security have access to the chat room and we monitor the discussions on a regular basis.
8. There's been a bit of a fuss between the campus security office and the computer technology folks regarding security-screening devices that are supposed to filter discussions to look for particular words or phrases. It's my feeling that the technology we have isn't nearly sophisticated enough to do that. Even words we find offensive can be used in sentences, especially in intellectual discussions or debates, so that they lose their offensive nature and become part of a very positive discussion.

9. For instance, pick a phrase like "kill you," which initially sounds terrible, unless it's used in a phrase like, "those shoes will kill you if you wear them too long, or something like that. I think "murder you" has been filtered once, and that was a student warning another that if he got caught doing something "Your parents are going to murder you." We let that kind of thing slip by. We've never had a filtered phrase appear in a sentence that would infer a direct threat, like "I'm going to kill you." Same thing with murder you, torture you, etc. Maybe it's because the students realize the phrases they aren't supposed to use that can raise an alarm with one of the security personnel assigned to monitor the chat rooms.

10. I've met Pat Macintosh. Pat was interviewing me about Internet use in combating terrorism...and that interview fell at exactly the same time as one of the alleged communications in the complaint. Pat seemed to be exceptionally bright.

11. Some folks seem to think that Pat has a bit of an odd streak. I'm not at all sure that's true. I just saw a very intelligent and motivated student who wanted to seek out answers. In any event, I do not believe she/he is capable of stalking anyone. From my personal and professional experience, Pat does not fit the profile.

This I swear under penalty of perjury.

A handwritten signature in cursive script that reads "Jesse Clifford". The signature is written in black ink and is positioned above a horizontal line.

Jesse Clifford

Date: 6/22/06

**PART V**

**NEW YORK STATE HIGH SCHOOL MOCK TRIAL**

**OFFICIAL EXHIBITS**

- A. Big Apple State College Chat Room Rules and Regulations
- B. Big Apple State College Student On-line Chat Room Usage Policy
- C. Internet Chat Room Dialogue Excerpts
- D. Casey Wallner, Daily Diary Excerpts



**Welcome to Big Apple State College's On-Line Student Chat Room.**  
**Click to select chat topic: You will need your Student Chat room User Name and Password to participate!**

**Student Directories**

**Freshman**

**Sophomores**

**Juniors**

**Seniors**

**Faculty Notes (Find course descriptions and syllabus information)**

**Library Study Circles (Join a topic/discussion thread)**

**English & Literature**

**History & Archeology**

**Forensics & Law**

**Mathematics & Sciences**

**Music & Theater**

**Athletics & Health**

**General On-line Discussion Group (campus life, assignments, general discussions)**

**Chat Room Rules: No swearing, racist or sexually explicit language. Respect the opinions of others. Provide accurate information when discussing class assignments. Be aware of the panic and discipline systems used in this chat room.**

**a. Panic.** There is a red button at the bottom of the chat room page. If you are alarmed or concerned about on-line discussions, feel free to click on the red button, which will alert College personnel to the problem.

**b. Discipline.** Big Apple State College reserves the right to monitor the chat room message boards 24/7. College monitors are authorized to act on behalf of the College if they feel action should be taken to close the chat room to protect the integrity of the site and ensure the safety of our users.

**(A-Z Index) (About BASC) (Academics) (Admissions) (Alumni & Friends) (Arts) (Athletics) (Calendar) (Contact BASC) (Current Student Directory) (Faculty & Staff Directory) (Life @ BASC) (Library) (Online Research) (Technology) (Visitors) (Legal Notices & Disclaimers) (Web Privacy Waiver) (Questions/Contact Us)**

*Privacy Waiver: Information contained in this communication is neither privileged nor confidential. You have signed a waiver of privacy, which is on file in the office of the Dean of Students. This page and the sub-pages may be monitored by the campus office of information technology and security personnel. Campus authorities will address any misuse and serious infractions of chat-room rules may lead to loss of campus privileges, expulsion or criminal prosecution. Infractions should be reported to campus security or to the Dean of Students by dialing 9999 on any campus telephone.*

**Big Apple State College Student On-line Chat Room Usage Policy**

All students utilizing the On-line Chat Room must read and sign this release form. Students who are found to have violated this Usage Policy will be barred from further use of the On-line Chat Room and may face civil or criminal penalties, depending upon the violation.

Students violate Big Apple State College's On-line Chat Room Usage Policy when they engage in any of the following prohibited activities. This is not an exclusive list; other activities not listed may be prohibited, at the discretion of Big Apple State College.

- Hacking and related activities are strictly prohibited. Hacking includes, but is not limited to, illegally or without appropriate College authorization accessing computers, accounts or networks, penetrating or attempting to penetrate College computer security measures, port scans, stealth scans, and other activities designed to assist in hacking.
- Obscene, defamatory, abusive or threatening language or content is strictly prohibited. Use of the Big Apple State College On-line Chat Room to post or transmit, or otherwise make available obscene, defamatory harassing, abusive or threatening language is strictly prohibited.
- Pornography is strictly prohibited. Use of the Big Apple State College On-line Chat room to post or transmit, or otherwise make available any pornographic, obscene or other inappropriate materials is strictly prohibited.
- Any activity meant to cause disruption or interference with the Big Apple State College On-line Chat Room is prohibited. Actions meant to harm, disrupt or threaten to disrupt services, business operations, reputation, goodwill, student and/or student relations, or the ability of Big Apple State College students to effectively and safely utilize the Big Apple State College On-line Chat Room are prohibited.

If Big Apple State College finds any violation of this Usage Policy, Big Apple State College may take any appropriate action to stop or correct such violation, including, but not limited to, shutting down the On-Line Chat room and/or removing information. In addition, Big Apple State College reserves the right to monitor and retain electronic copies of all communications posted through its On-line Chat room for security purposes and for purposes of quality assurance.

Violations received by Big Apple State College regarding the use or misuse of the On-line Chat room may be forwarded to campus or other appropriate law enforcement authorities for investigation and resolution.

Student users of the Big Apple State College On-line Chat Room are encouraged to maintain strict levels of secrecy and confidentiality to guard their personal information. If a breach of personal on-line security has been noted or is suspected, students are advised to immediately change their passwords and/or e-mail addresses. Additionally, there is a red button at the bottom of the chat room page. If you are alarmed or concerned regarding on-line discussions, feel free to click on the red button, which will alert College personnel to the problem. Serious breaches of security may be reported to campus administration, campus security, the Big Apple State College Student Union, Computer Services Division, and/or the Dean of Students.

**I have read and understand and agree to the Big Apple College Student On-Line Chat Room usage policy.**



9/4/05

\_\_\_\_\_  
Student Signature

\_\_\_\_\_  
Date

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**I have read and understand and agree to the Big Apple College Student On-Line Chat Room usage policy.**

*Jamie Gates*

9/14/05

\_\_\_\_\_  
Student Signature

\_\_\_\_\_  
Date

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**I have read and understand and agree to the Big Apple College Student On-Line Chat Room usage policy.**

*Casey Wallner*

9/14/05

\_\_\_\_\_  
Student Signature

\_\_\_\_\_  
Date

**BIG APPLE STATE COLLEGE  
INTERNET CHAT ROOM DIALOGUE EXCERPTS**

**EXHIBIT 3**

**Monday, 9 May 2006**

Canonball: enters the chat room 4:45 p.m.

Hi folks, anyone got the assignment done from History of Western Civ from last week? I thought it was pp 205 to 400, but Chancy5 said we had to go all the way to 414. Anyone?

Chancy5: 4:52 p.m.

I'm pretty sure it's to 414 but I could have written it wrong.

Butters: 4:55 p.m.

It must be 414, that's what I wrote 2.

Allthumbs enters chat room at 4:55 p.m.

Cannonball: 4:55 p.m.

More work for me. I'd rather be outside.

Micahforce enters chat room at 4:55 p.m.

page 414 is right. I have that too and just spoke with Prof. G.

Jammin@BASC enters chat room at 4:56 p.m.

Hi everyone. Concur with page 414. BTW-Anyone in here seen the student play at the Union? Hamlet?

Cannonball:

Nope. Shakespeare ain't my bag.

SirVive2005 enters Chat room at 4:58 p.m.

Yankeegirl enters chat room at 4:58 p.m.

Butters: 4:59 p.m.

I heard it was good, but haven't seen.

HughesQ enters chat room at 5:01 p.m.

Cannonball: 5:02 p.m.

I'd rather be outside than in on a day like today.

Micahforce: 5:10 p.m.

Just walked by the lake. Joggers are out in force. Go track team Big Apple.

PhoebeS: 5:11 p.m.

So why, if we'd all like to be outside are we in on our computers?

Jammin@BASC 5:11 p.m.

I'm going out now. Get some p.m. sunshine and exercise.

SirVive2005 5:11 p.m.

Jam's in the window. Exercise all you want, my friend, you won't be able to run fast enough.

Micahforce: 5:12 p.m.

`Jam, you run with the track team?

Yankeegirl: 5:12 p.m.

If you do, run fast and win!

Cannonball: 5:13 p.m.

Jam, if you're on the team, fly!

Jammin@BASC : 5:13

Not on the team.

Jammin@BASC exits chat room 5:13 p.m.

SirVive2005: 5:14 p.m.

Not on the team, but practices nonetheless. In the window.

Canonball 5:15 p.m.

SirVive2005, you're creeping me out.

SirVive2005 exits Chat room at 5:25 p.m.

Allthumbs:

That survivor person was making some inappropriate comments, don't you think?

Cannonball:

Sure do. Vive's out now. No worries.

#### **Thursday, 12 May 2006**

Jammin@BASC : enters chat room 3:18 p.m.

Fleetstreet: enters chat room 3:18 p.m.

Yankeegirl: enters chat room 3:19 p.m.

Anyone know if the campus is doing a flag day celebration again this year?

Striker8: enters chat room 3:19 p.m.

Coreforce: enters chat room at 3:19 p.m.

Allthumbs: enters chat room at 3:19 p.m.

Zulu: enters chat room at 3:20 p.m.

Don't know but last year's celebration was a gas. Check the union bulletin board?

Yankeegirl: did that.

Nothing there.

Rogerwilco: enters chat room 3:22 p.m.

Jammin@BASC:

Last year's was cool. The color guard was awesome.

Shokwave: enters chat room 3:23 p.m.

Speaking of color, Jamming's been seen wearing school colors all week. Think blood won't show on those dark colors?

Yankeegirl:

What's that all about?

Fleetstreet:

Yeah, what's up?

Yankeegirl:

Talk like that can prompt a panic button alert, you goof.

Shokwave:

No harm intended, no harm done. Drop it

Jammin@BASC:

exits chat room 3:25 p.m.

Allthumbs:

Hey Shokwave, you know someone using SirVive2005? You two should get together sometime.

Shokwave: Aware of SirVive2005.

Not interested.

#### **Friday, 13 May 2006**

Shokwave: enters chat room at 2:30 p.m.

Striker8: enters chat room at 2:45 p.m.

Jammin@BASC: enters chat room at 2:45 p.m.

TravellerX: enters chat room at 2:45 p.m.

Yankeegirl: enters chat room at 2:46 p.m.

Classes out for the weekend. Sigh.

Striker8:

Yeah, relief from drudgery, eh?

TravellerX:

Anyone on from the history and forensics class? Some pretty strange stuff in that class.

Striker8:  
like what?

Allthumbs enters chat room 2:47 p.m.

TravellerX:  
like lots of talk about killing. Really freaky.

Striker8:  
that's what's going on in class? Talk like that?

Shokwave:  
Some criminals used fear as a control; fear is stronger than chains and fences.

TravellerX:  
Upset quite a few students in the class. Some had relatives who had been victimized. It was a sad class.

Yankeegirl:  
My neighbor's mother survived an attack. She absolutely never talks about it.

Striker8:  
understandable not to talk about pain and suffering when it's been so close.

Yankeegirl:  
Guess so. Not sure I'd have survived.

Shokwave:  
Wonder if anyone our age would handle the situation well. Would be interesting to try to re-create the atmosphere.

Yankeegirl:  
You kidding?

TravellerX:  
That's crossing the line. Who would want to do that?

Striker8:  
Someone not quite right in the head.

Shokwave:  
Don't call me crazy.

Striker8:  
I didn't. But the thought of studying pain and suffering? Come on.

Shokwave:  
It would be amazing to study pain and suffering. Doctors must do it all the time. Long-term effects of suffering could produce some interesting data. Volunteers?  
Hey, Jam you still here?

Jammin@BASC:  
just listening

Allthumbs:  
Don't respond to that kind of comment.

Shokwave:  
Listen good and respond or don't. Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear...suffocation, torture, painful prolonged death.

Jammin@BASC signs off at 3:15 p.m.

Striker8:  
You're a freak

Shokwave:  
Thanks for the compliment. Jam is full of fear. Would make a great experiment.

TravellerX:  
You're so lame.

Allthumbs:  
Shokwave, you're about crossing the line there with all that torture talk.

Shokwave:

Don't be such babies. It's talk.

\*\*\* no significant discussion for approximately 20 minutes

Jammin@BASC signs back on at 3:35 p.m.

Shokwave: Jammin is back.

Time is running out my Jammin friend. Maybe we can meet in the alley?

Jammin@BASC signs off at 3:37 p.m.

### Saturday, May 14 2006

Allthumbs enters chat room 9:30 a.m.

Anyone up yet?

Coreforce enters chat room at 9:32 a.m.

Just joined in. No chatter?

Allthumbs:

nothing this a.m. Weekend. Sleeping late maybe

Talon enters chat room at 9:33 a.m. There's been talk on campus that someone in the chat room is freaking people out. Anyone on line a witness?

Allthumbs:

You may mean someone named Shokwave. Been picking on participants and trying to scare people.

Talon:

Why would someone do that?

Shokwave enters chat room 9:34 a.m.

Coreforce:

Who knows? Shokwave, you nuts or what?

Shokwave:

I was just talking about a forensics and history class. I can't help if people take things out of context.

Allthumbs:

You were crossing a line. You obviously ID'd Jammin and have been trying to freak...you crazy?

Shokwave:

I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression. Ever wonder about pain and suffering?

Jammin@BASC enters chat room:

Shokwave:

**And, after a five-minute break, "Jamming, can you come out of your 2nd floor roost and play?"**

Jammin@BASC exits chat room.

\*\*\* (indicates lapse in time and refers to later in the day)

HMSPinfore: enters chat room at 7:30 p.m.

LaLa: enters chat room at 7:30 p.m.

Shokwave enters chat room at 7:31 p.m.

Anyone review the chat room conversations from earlier in the afternoon re: torture, etc.?

LaLa:

not me

HMSPinfore:

me neither.

Thor56:

enters chat room at 7:32 p.m.

Yankee girl: enters chat room at 7:32 p.m.

Not that again.

CATGIRL: enters Chat room at 7:32 p.m.



Free speech. What was going on?  
Shokwave:  
discussion on pain and torture and what can be learned from fear.  
Thor56:  
I'd just as soon not know.  
LaLa:  
Me neither.  
Shokwave:  
Why not? Statistics tell us that we're just about all going to be victims at some point in our lives.  
LaLa:  
So what? You can't let fear guide your whole life.  
CATGIRL:  
No kidding. What a waste of time.  
Jammin@BASC  
enters chat room at 7:45 p.m. Not this again.  
Shokwave:  
You chickened out before.  
Jammin@BASC:  
Had better things to do.  
Shokwave:  
Really? Like what.  
Jammin@BASC:  
Inappropriate question.  
Shokwave:  
Not really, but never mind. Back to the discussion. Everyone's going to be a victim. Even all of us.  
I've actually been one already so statistically I may be out of the picture.  
LaLa:  
What happened to you?  
Shokwave:  
to quote someone above, inappropriate question.  
LaLa:  
sorry  
Shokwave:  
Just remember, the clock is ticking. Time is on my side. Time is running out my friend.  
LaLa:  
What's that supposed to mean?  
CATGIRL:  
Yeah, what are you talking about?  
Shokwave:  
Just that statistically, all of you are going to have to endure. Gotta meeting.  
Shokwave:  
exits chat room 7:50 p.m.

No relevant discussion for approximately 20 minutes

SirVive2005:  
enters Chat room 8:15 p.m.  
Anyone still want to talk about pain and suffering? Time is running out, my Jammin friend. Maybe we can meet?  
Jammin@BASC:  
exits chat room at 8:16 p.m.

Message posted at 9:30 p.m. by Shokwave

Chat room entry read at campus computer room with police witnesses, "Jam will rot just like Jelly if buried long enough."

**Casey Wallner - Daily Diary Excerpts 2006**

**EXHIBIT 4**

May 7 home  
May 8 home  
May 9 Jamie got creepy message at Chat room  
May 10  
May 11  
May 12 Another creeper for Jamie  
Jerks at the Student Union  
May 13 Jamie's freaked and so am I. More Chat room chatter. Calling security  
May 14 Witnesses to Chat room - finally, some sleep  
May 15 Calm Sunday! No Chat room blather  
May 16 Heard from campus police, questioning Macintosh  
May 17 **MACINTOSH ARRESTED**

# PART VI

## NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT

### RELATED LAW

Set forth below is the law that is applicable to the case. Although you can review other materials in preparing your case, you can only cite to the sections of the New York State Penal Law set forth in Section A and the case law that is set forth in Section C in your trial enactment.

Section A contains relevant excerpts from the New York State Penal Law that we have adapted for use in the Mock Trial Tournament. **Section A contains the only statutory law that applies in this case.** Although New York State has had laws against stalking on the books since 1999, those laws did not specifically cover stalking that involved the use of a technological device or what is sometimes more commonly referred to as “cyberstalking.” Today, there are a number of bills pending in the New York State legislature that would make cyber-stalking a crime. The excerpts set forth in Section A are based on the relevant sections of the New York State Penal Law in effect as of the printing of these materials; however, we have changed that statute for purposes of the Mock Trial Tournament so that it includes amendments that have been proposed in one of the bills pending in the New York State legislature that would make “cyberstalking” a crime in New York State.

Section B contains a copy of Bill 5038, which, as of the printing of these materials, is pending in the New York State Assembly. Bill 5038, if enacted, would amend the New York State Penal Law by criminalizing stalking with the use of a technological device in the way that is set forth in Section A. We have included Bill 5038 so that you have a better understanding of how existing laws are amended to keep up with our ever changing times. **You should not cite Bill 5038 in your trial enactment; it is included as a reference only. For purposes of the Mock Trial Tournament, you should assume that Bill 5038 was passed and enacted into law exactly as it was proposed, and that the amended statute (as set forth in Section A) was in effect at the time of the chat room communications that are the subject of the case.**

Section C contains summaries of relevant cases from the State of New York. Since for purposes of this Mock Trial Tournament, New York’s “cyber-stalking” statute will be newly adopted, *State of New York v. Pat C. Macintosh* presents a “case of first impression” in the state. In other words, this case is the first time that a person has been charged under the newly amended statute and therefore it is the first time that a judge and jury will be applying the new “cyber-stalking” statute in a case. Therefore, while existing New York case law (the “law of the land”) is certainly relevant because the existing New York stalking statute has been on the books since 1999, there are no New York cases addressing “cyberstalking” under the new statute.

**SECTION A: Relevant Law**

**(Excerpts from New York State Penal Law that includes the amendments from Bill 5038)**

**Title A – General Purposes, Rules of Construction, and Definitions  
Article 10 – Definitions**

**§ 10.00 Definitions of terms of general use in this chapter**

Except where different meanings are expressly specified in subsequent provisions of this chapter, the following terms have the following meanings:

\* \* \* \*

4. “Misdemeanor” means an offense, other than a “traffic infraction,” for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed.
5. “Felony” means an offense for which a sentence to a term of imprisonment in excess of one year may be imposed.
6. “Crime” means a misdemeanor or a felony.
7. “Person” means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

\* \* \* \*

9. “Physical injury” means impairment of physical condition or substantial pain.
10. “Serious physical injury” means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

**Title H – Offenses Against the Person Involving Physical Injury,  
Sexual Conduct, Restraint and Intimidation  
Article 120 – Assault and Related Offenses**

**§ 120.40 Definitions**

For purposes of sections 120.45, 120.50, 120.55 and 120.60 of this article:

\* \* \* \*

- 4 . “Immediate family” means the spouse, former spouse, parent, child, sibling, or any other person who regularly resides or has regularly resided in the household of a person.

\* \* \* \*

6. “Technological devices” means the internet, cameras, global positioning tracking devices and any other tracking device, but shall not be limited to such items.

**§ 120.45 Stalking in the fourth degree**

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person’s immediate family or a third party with whom such person is acquainted;
2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person’s immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct;

\* \* \* \*

Stalking in the fourth degree is a class B misdemeanor.

**§ 120.50 Stalking in the third degree**

A person is guilty of stalking in the third degree when he or she:

\* \* \* \*

3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or

\* \* \* \*

5. Commits the crime of stalking in the fourth degree by the use of a technological device or technological devices.

Stalking in the third degree is a class A misdemeanor.

**§ 120.55 Stalking in the second degree**

A person is guilty of stalking in the second degree when he or she:

\* \* \* \*

6. Commits the crime of stalking in the third degree by the use of a technological device or technological devices.

Stalking in the second degree is a class E felony.

SECTION B: Pending Legislation  
5038

2005-2006 Regular Sessions

**IN ASSEMBLY**

February 15, 2005

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Introduced by M. of A. TOWNSEND, KOLB, CASALE, O'CONNELL -- Multi-Sponsored by M. of A. FINCH -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to prohibiting stalking by the use of technological devices

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Section 120.40 of the penal law is amended by adding a new subdivision 6 to read as follows:

6. "Technological devices" means the internet, cameras, global positioning tracking devices and any other tracking device, but shall not be limited to such items.

**Section 2.** Subdivision 4 of section 120.50 of the penal law, as added by chapter 635 of the laws of 1999, is amended and a new subdivision 5 is added to read as follows:

4. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree; or
5. Commits the crime of stalking in the fourth degree by the use of a technological device or technological devices.

**Section 3.** Subdivision 5 of section 120.55 of the penal law, as added by chapter 598 of the laws of 2003, is amended and a new subdivision 6 is added to read as follows:

5. Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted; or
6. Commits the crime of stalking in the third degree by the use of a technological device or technological devices.

**Section 4.** This act shall take effect on the first of November next succeeding the date on which it shall have become a law.



## NEW YORK STATE ASSEMBLY MEMORANDUM IN SUPPORT OF LEGISLATION

**BILL NUMBER:** A5038

**SPONSOR:** Townsend

**TITLE OF BILL:** An act to amend the penal law, in relation to prohibiting stalking by the use of technological devices

**PURPOSE OR GENERAL IDEA OF BILL:** Increased the penalty for stalking in the third and fourth degrees by one penalty level, when such crimes are committed by the use of a technological device.

**SUMMARY OF SPECIFIC PROVISIONS:** Section one amends section 120.40 of Penal Law to define “technological devices” as the internet, cameras, global positioning tracking devices and any other tracking devices, but shall not be limited to such items.

Section two amends Section 120.50 of the Penal Law to make a person guilty of stalking in the third degree, a class A misdemeanor, when he or she commits the crime of stalking in the fourth degree by means of a technological device.

Section three amends Section 120.55 of Penal Law to make a person guilty of the crime of stalking in the second degree, a class E felony, when he or she commits the crime of stalking in the third degree by means of a technological device.

**JUSTIFICATION:** In 1999, New York state established the crimes of stalking in the first through fourth degree, punishable as a class D felony to a class A misdemeanor, depending on the severity of the crime. This law is silent regarding the specific use of technological devices.

As technology evolves, stalkers continue to find new ways to harass their victims by utilizing such mechanisms as the internet, hidden cameras, and caller identification. The most serious case to date involves a Wisconsin man who allegedly mounted a global positioning system (GPS) device under the hood of his ex-girlfriend’s car in order to track her every movement. The stalker told his victim that no matter where she went, he would find her. This device utilized a constellation of Defense Department Satellites to pinpoint her location.

Similar scenarios playing out around the country have prompted the need to update stalking laws to include stalker use of technology. The Stalking Resource Center advises that states keep their statutes broad enough to include technologies that don't yet exist. Providing heightened penalties for stalkers who misuse technology to terrorize their victims sends a clear message that this type of behavior will not be tolerated.

**PRIOR LEGISLATIVE HISTORY:** A5444 of 2004

**FISCAL IMPLICATIONS:** None

**EFFECTIVE DATE:** This act shall take effect on the first of November succeeding the date on which it shall have become a law.

## SECTION C: New York State Cases

### **The People of the State of New York v. Paul Stuart, 100 N.Y.2d 412 (N.Y. 2003)**

The Court of Appeals for the State of New York reviewed the constitutionality of Penal Law §120.45, stalking in the fourth degree. The Court held that this section was not unconstitutionally vague on its face or as applied. The Court noted in its opinion, “[t]he statute does not require that a defendant intend a specific result, such as fear or harm.” Rather, “[t]he statute . . . focuses on what the offenders do, not what they mean by it or what they intend as their ultimate goal. . . . [The statute] requires that the offender know or reasonably should know that his [or her] conduct is likely to cause reasonable fear of material harm to the victim’s physical health, safety or property.”

### **The People of the State of New York v. Raymond Starkes, 185 Misc.2d 186, 712 N.Y.S.2d 843, 2000 Slip. Op. 20383 (N.Y. Crim. Ct. 2000)**

The Criminal Court of the City of New York addressed the issue of whether the defendant’s conduct rose to the level of stalking in the third degree, in violation of Penal Law §120.50(3). Factually, the defendant telephoned the victim more than 200 times over the course of a six month period, leaving graphic messages containing profanity and threats. One such message contained the message, “YOU’RE GOING TO DIE VERY SOON.” Another message stated, “YOU KEEP PUSHING ME.” Following the six month period of phone calls, the defendant allegedly e-mailed messages on fourteen occasions to the victim’s workplace indicating his devotion to the victim and conveying apologies for his “outrageous” behavior. The e-mails, however, also contained graphic and disturbing language.

The court held that the defendant’s actions met all the elements of stalking in the third degree. First, the defendant’s actions were intentional and harassing as placing a phone call is a deliberate act. The defendant also understood that his persistent conduct was offensive as he sent apologetic e-mails. Next, the defendant’s actions established a “course of conduct,” which is defined as “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.” Finally, the court found that “the course of conduct would likely cause its target reasonably to fear physical harm.”

**(Please note that the full text of this opinion contains graphic and sexually explicit language.)**

### **The People of the State of New York v. Richard Wong, 3 Misc.3d 274, 776 N.Y.S.2d 194, 2004 Slip Op. 24079 (N.Y. Crim. Ct. 2004)**

The Criminal Court of the City of New York addressed the issue of whether the defendant’s conduct rose to the level of stalking in the fourth degree, in violation of Penal Law §120.45(1). Factually, the defendant placed multiple phone calls at night to the victim while she was at undisclosed out-of-town hotels and at one of the hotels sending her room service and telling her he was in the hotel. Defendant also sent multiple e-mails to the victim’s place of business, and followed the victim from her place of business and for several blocks after she exited the subway in the direction of her home. All these events occurred over the course of eight separate dates.

The court held that the defendant’s actions had met the elements of stalking in the fourth degree. The court noted that, “[a]lthough the defendant is not alleged to have made any verbal threats, the

sheer number of communications, both verbal and nonverbal, and their context, including those made to the complainant at out of town hotels, make the defendant's course of conduct one which is likely to cause reasonable fear of material harm to the complainant. The statute does not require an allegation of a threat of immediate and real danger."

**The People of the State of New York v. Michael J. Watson, 2006 WL 2714921 (N.Y. App. Div. 4th Dep't Sept. 22, 2006)**

The New York Supreme Court, Appellate Division for the Fourth Department, addressed, in part, the issue of whether the defendant's conduct rose to the level of stalking in the fourth degree, in violation of Penal Law §120.45(1). The court specifically examined whether there was prima facie evidence that the defendant knew or reasonably should have known that his conduct was likely to cause reasonable fear of material harm to the physical health or safety of the women who were the subject of his alleged stalking. The court acknowledged that there was no disputing that the defendant, a police officer, "intentionally and for no legitimate purpose engaged in a course of conduct directed at the two women who were the subject of the counts of stalking in the fourth degree." Factually, the defendant lurked around one of the victims as she worked while he repeatedly told her he loved her and "wanted" her. The defendant also exposed himself to her on two occasions, called her cellular phone and kissed her on the cheek. The defendant would sit in his patrol car in front of the other victim's home and shine his vehicle's lights into her bedroom. He would follow her from her children's school in his patrol car and would touch himself while asking her questions about whether she had dreamed about him.

The court held that the prosecution failed to submit "prima facie evidence that the defendant knew or reasonably should have known that his conduct was likely to cause reasonable fear of material harm to the physical health or safety of the two women." The court agreed with the defendant that, although an examination of the case should focus on the defendant's conduct, the actual perceptions of the women should have been considered "in determining what a reasonable person would perceive based on defendant's behavior." The two women testified that the defendant's behavior made them feel "uncomfortable" and that he was "bothersome" and "creepy," but also testified that they were not afraid for their physical safety.

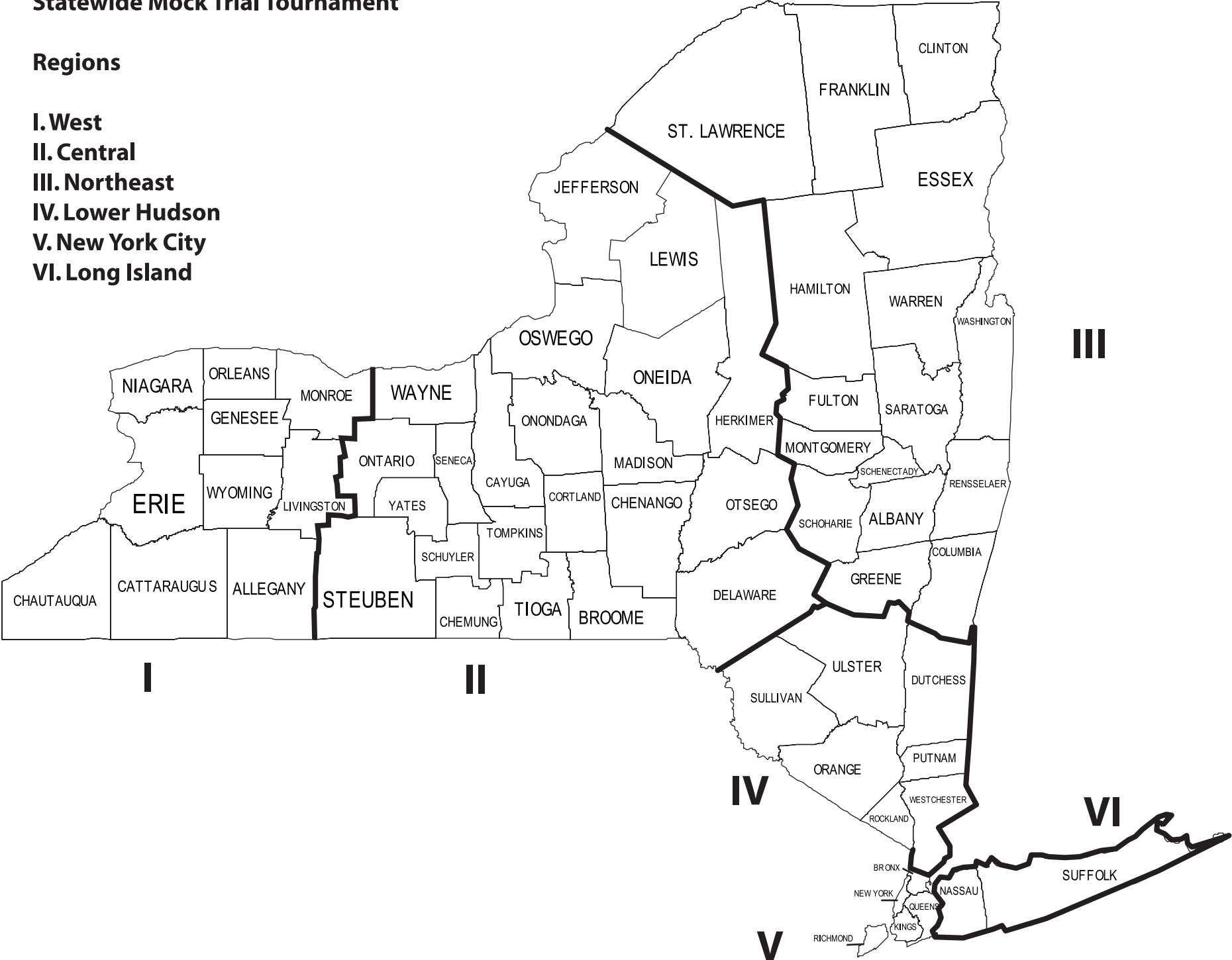
## **APPENDICES**

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

# Statewide Mock Trial Tournament

## Regions

- I. West
- II. Central
- III. Northeast
- IV. Lower Hudson
- V. New York City
- VI. Long Island



## APPENDIX B

# MOCK TRIAL TOURNAMENT PERFORMANCE RATING GUIDELINES

<b>Points</b>	
1 Ineffective	<p>Not prepared/disorganized/illogical/uninformed</p> <p>Major points not covered</p> <p>Difficult to hear/speech is too soft or too fast to be easily understood</p> <p>Speaks in monotone</p> <p>Persistently invents (or elicits invented) facts</p> <p>Denies facts witness should know</p> <p>Ineffective in communications</p>
2 Fair	<p>Minimal performance and preparation</p> <p>Performance lacks depth in terms of knowledge of task and materials</p> <p>Hesitates or stumbles</p> <p>Sounds flat/memorized rather than natural and spontaneous</p> <p>Voice not projected</p> <p>Communication lack clarity and conviction</p> <p>Occasionally invents facts or denies facts that should be known</p>
3 Good	<p>Good performance but unable to apply facts creatively</p> <p>Can perform outside the script but with less confidence than when using the script</p> <p>Doesn't demonstrate a mastery of the case but grasps major aspects of it</p> <p>Covers essential points/well prepared</p> <p>Few, if any, mistakes</p> <p>Speaks clearly and at good pace but could be more persuasive</p> <p>Responsive to questions and/or objections</p> <p>Acceptable but uninspired performance</p>
4 Very Good	<p>Presentation is fluent, persuasive, clear and understandable</p> <p>Student is confident</p> <p>Extremely well prepared—organizes materials and thoughts well and exhibits a mastery of the case and materials</p> <p>Handles questions and objections well</p> <p>Extremely responsive to questions and/or objections</p> <p>Quickly recovers from minor mistakes</p> <p>Presentation was both believable and skillful</p>
5 Excellent	<p>Able to apply case law and statutes appropriately</p> <p>Able to apply facts creatively</p> <p>Able to present analogies that make case easy for judge to understand</p> <p>Outstandingly well prepared and professional</p> <p>Supremely self-confident, keeps poise under duress</p> <p>Thinks well on feet</p> <p>Presentation was resourceful, original and innovative</p> <p>Can sort out the essential from non-essential and uses time effectively</p> <p>Outstandingly responsive to questions and/or objections</p> <p>Handles questions from judges and attorneys (in the case of a witness) extremely well</p> <p>Knows how to emphasize vital points of the trial and does so</p>
<p><b>Professionalism of Team</b></p> <p><b>1 to 10 points per team</b></p>	<p>Team's overall confidence, preparedness and demeanor</p> <p>Compliance with the rules of civility</p> <p>Zealous but courteous advocacy</p> <p>Honest and ethical conduct</p> <p>Knowledge of the rules of the competition</p> <p>Absence of unfair tactics, such as repetitive baseless objections and signals</p>

## NEW YORK STATE MOCK TRIAL TOURNAMENT PERFORMANCE RATING SHEET

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

**1=Ineffective      2=Fair      3=Good      4=Very Good      5=Excellent**

### Time Limits

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

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

		Plaintiff/ Prosecution	Defense
Defense- First Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
Defense- Second Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
Defense- Third Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
Closing Statements			
<b>Professionalism (1-10 points PER team)</b> <ul style="list-style-type: none"> <li>• Team's overall confidence, preparedness and demeanor</li> <li>• Compliance with the rules of civility</li> <li>• Zealous but courteous advocacy</li> <li>• Honest and ethical conduct</li> <li>• Knowledge of the rules of the competition</li> <li>• Absence of unfair tactics, such as repetitive baseless objections and signals</li> </ul>			
		Total	

Judge's Name: \_\_\_\_\_

Please Print

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

Plaintiff/Prosecution

Defense