

CELEBRATING 27 YEARS OF SERVICE TO THE EDUCATIONAL COMMUNITY

VINCENT J. APRUZZESE

MOCK TRIAL COMPETITION



2008–2009 HIGH SCHOOL WORKBOOK

SPONSORED BY THE NEW JERSEY STATE BAR FOUNDATION
IN COOPERATION WITH NEW JERSEY'S COUNTY BAR ASSOCIATIONS



ATTENTION TEACHER-COACHES

CASE CLARIFICATIONS

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

RULE REVISIONS/CLARIFICATIONS

The Statement of Facts is not admissible as an exhibit. See R.5:1-2.

R.5:3-5 has been revised. Please pay careful attention to this rule, which deals with communication between and among team members and others.

Exhibits are now pre-marked. See R.5:6.

BEHAVIOR OF CONTESTANTS, JURORS AND OBSERVERS

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

Vincent J. Apruzzese
2008–2009 High School Mock Trial Competition
Sponsored by the New Jersey State Bar Foundation

OFFICIAL ENTRY FORM

In order to enter the competition, you must complete this Official Entry Form. All entries must be received no later than November 14, 2008. Please type or print clearly.

Name of School _____

School Address _____

_____ Zip _____

County in which School Is Located _____

Name of Teacher-Coach _____

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

School Fax Number _____ Date Submitted _____

E-mail Address _____

Please check the following where applicable:

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

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

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

Mock Trial Competition

Statement of Goals

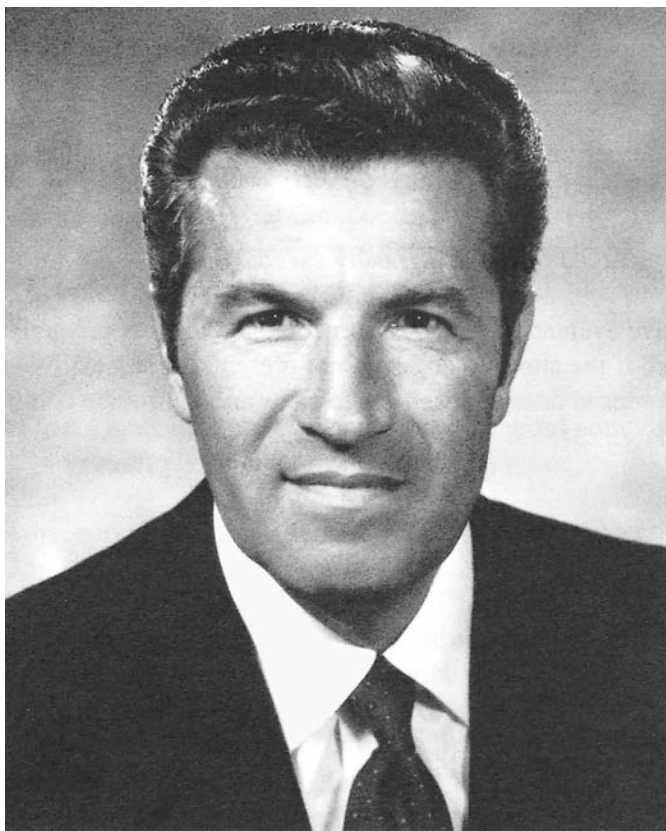
To increase comprehension of the historical, ethical and philosophical basis of the American system of justice.

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

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

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

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



Vincent J. Apruzzese, Esq.

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

VINCENT J. APRUZZESE

MOCK TRIAL

COMPETITION

Dear Educator:

The New Jersey State Bar Foundation's Mock Trial Competition, now in its 27th year, is one of the nation's foremost contests of its kind for high school students. Our Mock Trial Competition has won many national awards for excellence in educational programming.

We thank you, the educators, and your students for your strong support and interest in the Mock Trial Competition. Last year 241 teams registered statewide. We look forward to working with you again in the year ahead.

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

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

Sincerely,



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

VINCENT J. APRUZZESE
**MOCK TRIAL
COMPETITION**

*Sponsored by the New Jersey State Bar
Foundation*

FREE Mock Trial Workshop for Teachers & Attorneys

Learn how to conduct a mock trial and prepare your team for the New Jersey State Bar Foundation's 2008-2009 High School Mock Trial Competition on **Wednesday, October 29, 2008** at the New Jersey Law Center in New Brunswick from **9:30 a.m. to 1:10 p.m.**

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

Teachers attending the entire workshop will receive professional development hours (New Jersey Department of Education Provider #1418).

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

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

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

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

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

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

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

HIGH SCHOOL MOCK TRIAL WORKSHOP

- Please register me/us for the free workshop on October 29, 2008. I understand that this workshop is for teachers and lawyers only, not students.

NAME(S) _____

SCHOOL OR LAW FIRM ADDRESS _____

WORK PHONE _____ HOME PHONE _____

I am a Teacher Attorney-Coach County Coordinator

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

**VINCENT J. APRUZZESE
HIGH SCHOOL MOCK TRIAL COMPETITION**

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* The New Jersey State Bar Foundation gratefully acknowledges the assistance of the Mock Trial Committee in the development and preparation of this year’s original case. We thank the following volunteers for their help in bringing this case to fruition: the Hon. Marilyn C. Clark, Presiding Judge, Law Division, Criminal Part, Passaic County; Patricia C. Carney, Ronald S. Levitt, Esq., immediate past committee chair; Ronald C. Appleby Jr., Esq., committee chair, and committee members Paul Endler Jr., Esq., Lewis C. Fichera, Esq., Gary R. Griffith, Esq., Susan Kaplan, Esq., W. Thomas McDonough Jr., Esq., Edward Moody and special thanks to R.J. Politowski, who authored the first draft.

The Vincent J. Apruzzese High School Mock Trial Competition is sponsored by the New Jersey State Bar Foundation and is funded by the IOLTA Fund of the Bar of New Jersey.

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

The purpose of the High School Mock Trial Competition is to stimulate and encourage a deeper understanding and appreciation of the American legal system. This purpose is accomplished by giving students the opportunity to participate actively in the learning process. Education of high school students is the primary goal of the mock trial program. Healthy competition helps to achieve this goal. Other important objectives include: improving proficiency in speaking, listening, reading, and reasoning skills; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting cooperation among students.

As a means of diligent application of the High School Mock Trial Competition rules and procedures, we have adopted the following Code of Ethical Conduct for all participants:

1. Students promise to compete with the highest standards of deportment, showing respect for their fellow students, opponents, judges, attorney-coaches, teacher-coaches and mock trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Students will avoid all tactics they know are wrong or in violation of the rules. Students will not willfully violate the rules of the competition in spirit or in practice.
2. Teacher-coaches agree to focus attention on the educational value of the Mock Trial Competition. They shall discourage willful violations of the rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition rules and this Code of Ethical Conduct. Teachers shall treat each other courteously and respectfully.
3. Attorney-coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition's rules and this Code of Ethical Conduct.
4. Audio and/or visual recording, whether by tape or other technological means, is prohibited to teams that are not participating in that round. See R. 2:5-3. If team members and/or coaches are offered audiotape, videotape or transcriptions of same obtained from tape or other technology for rounds in which they did not participate, team members agree not to accept or utilize same in any manner whatsoever.
5. Students and coaches agree not to plagiarize.
6. All participants (including observers) are bound by this code and agree to abide by the provisions. Teams are responsible for insuring that all observers are aware of the code. Students, teacher-coaches and attorney-coaches will be required to sign a copy of this code (see below). These signatures will serve as evidence of knowledge and agreement to the provisions of the code. Violations of this Code of Ethical Conduct may be grounds for reductions in scores.

Please return this sheet to your County Mock Trial Coordinator at the first round of your county competition.

Signatures of the Team (including jurors) from _____
NAME OF HIGH SCHOOL

We, the undersigned, agree to uphold the Code of Ethical Conduct in rounds of the 2008–2009 Vincent J. Apruzzese High School Mock Trial Competition:

STUDENTS:

TEACHER-COACH(ES):

ATTORNEY-COACH(ES):

PART II RULES OF GENERAL APPLICATION

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

2:1-1 APPLICABILITY; SCOPE

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

2:1-2 CONSTRUCTION

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

2:1-3 CITATION

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

RULE 2:2 GENERAL CONTEST FORMAT

2:2-1 LOCAL COMPETITIONS

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

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

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

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

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

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

2:2-3 POSTPONEMENTS

Postponements may be made only by the county coordinator.

2:2-4 CHANGES TO RULES AND PROCEDURES

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

2:2-5 OFFICIAL REPRESENTATIVE OF EACH TEAM

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

2:2-6 WORKBOOKS

Workbooks will be distributed free of charge in the fall of each year. Requests for workbooks shall be made by the teacher-coach of each team. Workbooks may be photocopied as necessary, and permission to photocopy a workbook is hereby granted. You may also download the workbook from the Foundation's website, www.njsbf.org.

RULE 2:3 TEAMS

2:3-1 TEAM MEMBERS

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

2:3-2 IDENTIFICATION OF TEAMS

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

2:3-3 STUDENT JURIES

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

RULE 2:4 STUDENT JURIES

2:4-1 PURPOSE OF STUDENT JURIES

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

2:4-2 JURY CHARGE

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

2:4-3 JURY VERDICT

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

2:4-4 PROHIBITIONS

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

2:4-5 PROCEDURES

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

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

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

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

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

RULE 2:5 GENERAL PROCEDURE FOR TRIALS

2:5-1 DETERMINATION OF SIDES — STATE LEVEL

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

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

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

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

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

RULE 2:6 PREPARATION OF MOCK TRIAL CONTESTS

2:6-1 MEETINGS WITH ASSIGNED ATTORNEYS

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

2:6-2 DRESS REHEARSALS

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

RULE 2:7 DECISIONS

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

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

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

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

The decisions of the judges are final.

RULE 2:8 SCORING PERFORMANCES

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

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

RULE 2:9 TIME LIMITS

The following time limits will be in effect:

Opening Statements—4 minutes for each side

Direct Examination—6 minutes for each witness

Cross-Examination—7 minutes for each witness

Closing Statements—8 minutes for each side

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

Re-direct and re-cross (optional, to be used at the discretion of the team)— After cross-examination, additional questions may be asked by the direct-examining attorney, but questions must be limited to matters raised by the attorney on cross-examination. Likewise, additional questions may be asked by the cross-examining attorney on re-cross, but such questions must be limited to matters raised on re-direct examination and should avoid repetition. **One minute will be allowed for re-direct and re-cross respectively. Judges should not deduct points if a team decides not to re-direct or re-cross.** (See R. 5: 4-16.)

RULE 2:10 REGIONAL COMPETITION

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

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

The New Jersey State Bar Foundation will be responsible for coordinating the regional competitions. **All regionals will be conducted at the New Jersey Law Center in New Brunswick as follows: Central—February 10, 2009; North—February 11, 2009; and South—February 12, 2009. Regional playoffs will be held on March 19, 2009.** Please reserve these dates. Inability to attend will result in forfeiture.

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

RULE 2:11 SEMI-FINALS

Regional finals winners are eligible to compete in the statewide semi-finals scheduled for **March 24, 2009** at the New Jersey Law Center in New Brunswick. Please reserve this date. Inability to attend will result in forfeiture.

RULE 2:12 STATEWIDE FINALS

The winners of the semi-finals are eligible to compete in the statewide championship round scheduled for **March 31, 2009** at the New Jersey Law Center in New Brunswick. This date is final; please arrange your schedule accordingly. Inability of finalist teams to attend will result in forfeiture. This will be a single-elimination round. The judges' decision will be final.

AMERICAN MOCK TRIAL INVITATIONAL

For the past three years the New Jersey State Bar Foundation and the North Carolina Academy of Trial Lawyers have sponsored the American Mock Trial Invitational for high school state champions throughout the country and abroad. Details about the 2009 invitational, slated for May 17-19 in New Brunswick, will be posted on our website, www.njsbf.org, in the fall.

2:13 STUDENT ILLNESS POLICY

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

2:14 COMPLAINT PROCEDURE

No one shall contact any competition judge to complain about competition results. **Only teacher- or attorney-coaches are authorized to communicate about questions, problems, comments or complaints about contests.** Complaints about county competitions must be submitted in writing, via e-mail, fax or regular mail, to your County Mock Trial Coordinator. Names and addresses of the County Mock Trial Coordinators will be posted on the New Jersey State Bar Foundation’s website, www.njsbf.org. Please remember that, as stated in R. 2:7, the decisions of the judges are final.

2:15 QUESTIONS REGARDING CASE OR RULES

Contestants who have questions about the mock trial case and/or rules should submit them through their teacher- or attorney-coaches. Teacher- or attorney-coaches should e-mail or fax their questions to Sheila Boro, director of mock trial programs, at sboro@njsbf.org or fax to 732-828-0034. Please identify yourself, your school and your role in the competition and provide a daytime phone number.

PART III

HINTS ON PREPARING FOR A MOCK TRIAL COMPETITION

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

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

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

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

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

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

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

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

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

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

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

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

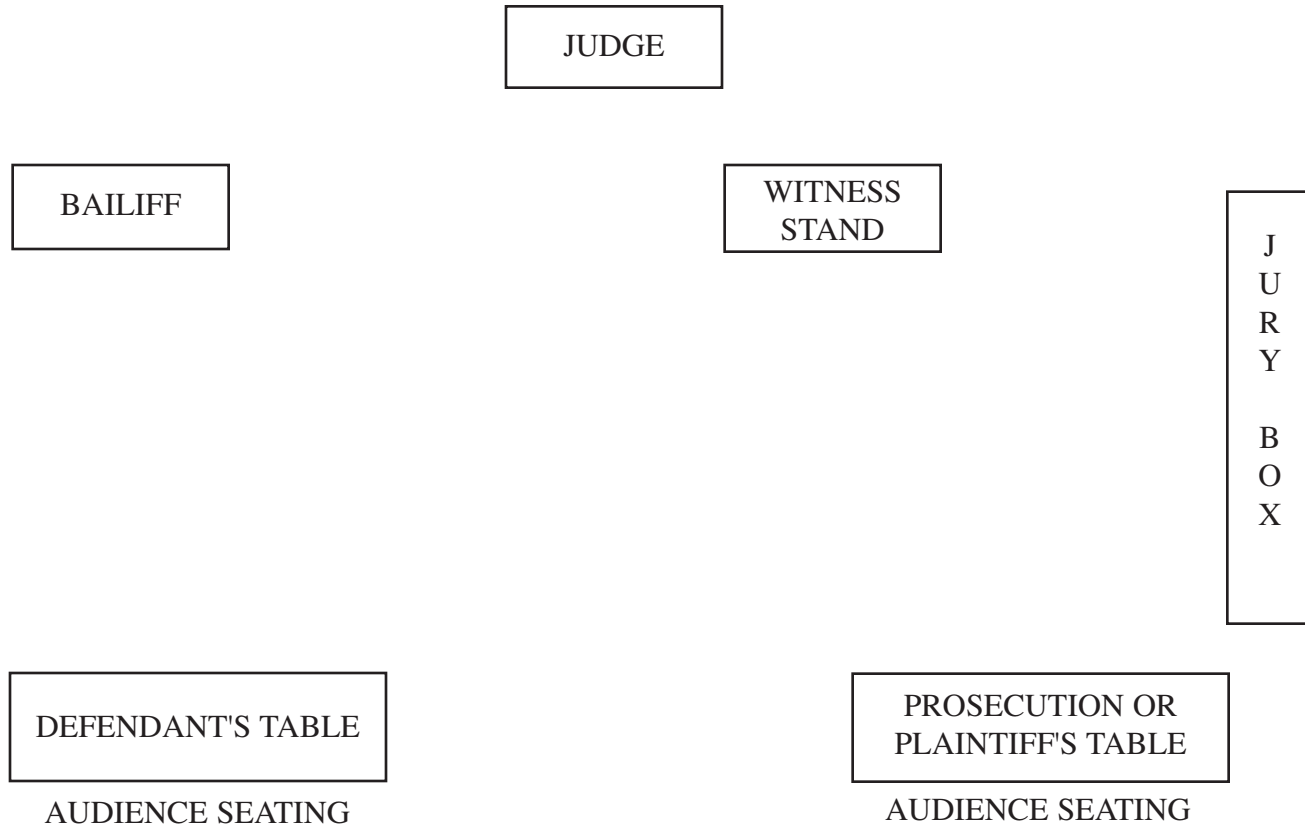
- (a) To decide which are the most important points to prove their side of the case and to make sure such proof takes place;

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

PART IV TRIAL PROCEDURES

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

COURTROOM LAYOUT



PARTICIPANTS

The Judge(s)

The Attorneys

Prosecutor–Defendant (Criminal Case)

Plaintiff–Defendant (Civil Case)

The Witnesses

Prosecutor–Defendant (Criminal Case)

Plaintiff–Defendant (Civil Case)

STEPS IN MOCK TRIALS

The Opening of the Court

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

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

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

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

Appearances

Opening Statements to the Jury

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

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

(2) Defendant (in criminal or civil case)

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

Direct Examination by Prosecution or Plaintiff's Attorney

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

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

Cross-Examination by Defendant's Attorney

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

Direct Examination by Defendant's Attorneys

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

Cross-Examination by Prosecution or Plaintiff's Attorneys

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

Closing Arguments to the Jury

(1) Defense

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

(2) Prosecution or Plaintiff

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

THE JUDGE'S ROLE

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

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

THE STAFF'S ROLE

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

PART V

SIMPLIFIED RULES OF PROCEDURE AND EVIDENCE

RULE 5:1 GENERAL PROCEDURE DURING TRIALS

5:1-1 USE OF EXHIBITS

The use of evidentiary or demonstrative exhibits not contained in this Mock Trial Workbook is not permitted. Use of props, visual and illustrative aids, other than what is specified in this workbook, is prohibited. Case materials cannot be enlarged unless specifically stated.

5:1-2 STATEMENT OF FACTS AND STIPULATIONS

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

5:1-3 MOTIONS

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

5:1-4 VOIR DIRE

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

5:1-5 COURTROOM DECORUM

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

RULE 5:2 OBJECTIONS

5:2-1 IN GENERAL

Procedural objections and objections to evidence are restricted to those in the Mock Trial Workbook. Other objections found in the New Jersey and Federal Rules of Evidence are not permitted. All objections, except those relating to openings or closings, shall be raised immediately by the appropriate attorney. When an objection is made, each side will usually have at least one fair opportunity to argue the objection before the presiding judge rules. Sidebars are not permitted. Competitors shall refrain from interrupting an adversary during opening statements or closing arguments. (See Rule 5:2-6.)

5:2-2 TIME FOR OBJECTIONS

A student attorney can object any time that the opposing team has violated the rules of evidence or has violated the rules or procedures of the Mock Trial Competition. **IMPORTANT:** Only student attorneys may object to any violations they believe have occurred, and they must object directly to the judge during the trial at the time of the violation, except as set forth in Rule 5:2-6.

5:2-3 LIMITATION ON OBJECTIONS

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

5:2-4 MANNER OF OBJECTIONS

The attorney wishing to object should stand up and do so at the time of the violation, except as set forth in Rule 5:2-6. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted (“sustained”) by the judge. The judge will then decide whether a question or answer must be disregarded because it has violated a rule of evidence or mock trial procedure (“objection sustained”) or whether to allow the question or answer to remain on the trial record (“objection overruled”). When objecting to a competition rule or procedural violation, student attorneys should be prepared to refer to the appropriate rule number in this workbook if requested to do so by judges. All objections should be made succinctly, with the reason for the objection publicly stated.

5:2-5 FORM OF OBJECTIONS

Following are some examples of the standard forms of evidentiary objections allowed in the Mock Trial Competition. However, counsel need not parrot the exact words of the provided forms.

Irrelevant evidence: “I object, your Honor. This testimony is irrelevant to the facts of the case.”

Leading question: “Objection. Counsel is leading the witness.” (Remember, this is only objectionable when done on direct examination.)

Unfair extrapolation: “Objection. The witness’ testimony is ‘unfair extrapolation’ in violation of R.5:4-6 in that it goes beyond the witness’ statement/deposition or any reasonable inference to be drawn therefrom.”

Improper character testimony: “Objection. The witness’ character or reputation has not been put in issue.”

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

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

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

Speculation: “Objection. The question calls for speculation on the part of the witness.”

Non-responsive answer: “Objection. The answer is not responsive.”

Compound question: “Objection. Counsel is asking the witness a compound question.”

Mischaracterization of testimony: “Objection. Counsel is mischaracterizing the witness’s testimony.”

Assuming facts not in evidence: “Objection. Counsel’s question (or closing argument) assumes facts which are not in evidence.”

Lack of proper foundation: “Objection. Counsel has not laid a proper foundation for the question (or for admission of an exhibit).

Narrative answer: “Objection. Counsel’s question calls for a narrative answer.”

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

Argumentative question: “Objection. Counsel’s question is argumentative.”

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

5:2-6 OBJECTIONS TO OPENINGS AND CLOSINGS

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

RULE 5:3 PROCEDURE REGARDING ATTORNEYS

5:3-1 MANDATORY ATTORNEY PARTICIPATION IN EXAMINATIONS

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

5:3-2 ATTORNEY OPENINGS/CLOSINGS

Each team must present an opening statement and closing argument. An attorney for a team presenting the opening statement may not make the closing argument. An attorney is not permitted to advise the jury of facts in opening for which there is no good faith basis in the Mock Trial Workbook materials. In closing argument, an attorney is not permitted to comment on evidence that was not presented or evidence which was excluded by the presiding judge. In an opening or closing, an attorney is allowed to make arguments from a fair extrapolation of the facts in the Mock

Trial Workbook. “Fair extrapolation” refers to an inference that can be reasonably made from the facts stated in the Mock Trial Workbook or from testimony adduced during the course of the trial. The defendant’s attorney shall make the first closing statement, followed by the prosecuting/plaintiff attorney. No rebuttal statements are permitted. Students should be prepared for interruptions by judges who may question the attorneys during closing argument.

5:3-3 DESIGNATION OF ATTORNEY PERMITTED TO OBJECT

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

5:3-4 USE OF NOTES BY ATTORNEYS

Attorneys are permitted to use notes in presenting their cases.

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

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

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

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

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

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

5:3-6 COMMUNICATION WITH JUDGES

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

RULE 5:4 WITNESS TESTIMONY

5:4-1 FACTS RELIED UPON FOR TESTIMONY

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

5:4-2 WITNESS’ PHYSICAL APPEARANCE

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

5:4-3 WITNESS’ GENDER

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

5:4-4 REQUIRED EXAMINATION OF WITNESSES

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

5:4-5 DIRECT EXAMINATION

On direct examination, each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation provided in the workbook relevant to his/her testimony. A witness is not bound by facts contained in other witness statements. On direct examination, a witness is not permitted to quote from the witness statement of another witness. Fair extrapolation, as defined in R. 5:4-6, is permitted.

5:4-6 FAIR EXTRAPOLATION

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

5:4-7 CROSS-EXAMINATION

On cross-examination, a witness is permitted to invent an answer which is not included in his/her witness statement only as permitted by R.5:4-6. If that answer is inconsistent with any other evidence, including statements of that witness, the Statement of Facts, or any other stipulations, the cross-examining attorney may impeach or object as may be appropriate. For example, he or she may object to an answer as being non-responsive.

5:4-8 IMPEACHMENT

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

5:4-9 USE OF NOTES BY WITNESSES

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

5:4-10 REQUIRED WITNESSES

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

5:4-11 SEQUESTERING WITNESSES

Sequestering witnesses is not permitted.

5:4-12 LEADING QUESTIONS

Leading questions are not permitted on direct examination or re-direct examination. However, leading questions are permitted on cross-examination and re-cross-examination.

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

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

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

In cross-examination, attorneys question the other side’s witnesses. An attorney may ask leading questions when cross-examining the opponent’s witnesses. Questions tending to evoke a narrative answer should be avoided (these usually begin with “how,” “why” or “explain”).

5:4-13 NARRATIVE QUESTIONS

Narrative questions (questions that call for a narrative answer) and narrative answers are generally not permitted.

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

Example of a narrative question: “Mr. Hudson, what went wrong with your marriage?”

Narrative answers: At times, a direct question may be appropriate, but the witness’ answer may go beyond the facts for which the question asked.

5:4-14 SCOPE OF DIRECT EXAMINATION

Direct examination may cover all facts relevant to the case of which the witness has firsthand knowledge. It is limited by the scope of the witness statements and/or the exhibits in this workbook. Any factual areas examined on direct examination may be subject to cross-examination.

5:4-15 SCOPE OF CROSS-EXAMINATION

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

5:4-16 SCOPE OF RE-DIRECT AND RE-CROSS EXAMINATION

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

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

RULE 5:5 EVIDENCE RULES

5:5-1 CHARACTER EVIDENCE

Evidence about the character of a party may not be introduced unless the person’s character is an issue in the case.

5:5-2 OPINION TESTIMONY

A. No witness may give an opinion about how the case should be decided. This is called the “ultimate issue” question. In addition, witnesses may not give testimony in the form of an opinion unless it fits within one of the exceptions below.

B. A lay (non-expert) witness may offer testimony in the form of opinions or inferences if those opinions or inferences are (1) rationally based upon the perception of the witness and (2) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.

- C. A lay witness may offer testimony in the form of an opinion based on the common experience of laypersons in the community and of which the witness has firsthand knowledge.
- D. An expert witness may offer testimony in the form of an opinion only if the subject matter is within the expert's area of expertise.

Certain witnesses who have special knowledge or qualifications may be qualified as "experts." An expert must be qualified by the attorney for the party for which the expert is testifying; this means that before an expert can be asked an expert opinion, the questioning attorney must bring out the expert's qualifications and experience. A witness may not testify to any matter of which the witness has no personal knowledge.

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

5:5-3 HEARSAY

Hearsay is defined as any evidence of a statement made by someone *who is not a witness in the case* which is offered to prove the truth of a fact, a piece of evidence or any witness' testimony. A witness is not permitted on direct examination to quote from the witness statement of another witness.

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

Example: Mrs. Mills is testifying. Mr. Hudson is a witness in the case. His witness statement contains the following statement: "I heard Mrs. Harris threaten my son." There is no reference in the witness statement of Mrs. Mills about Mr. Hudson hearing Mrs. Harris threaten his son. Mrs. Mills may *not* testify that "Mr. Hudson said that Mrs. Harris threatened his son." The statement is not contained in the witness statement of Mrs. Mills. Such testimony is inadmissible hearsay and also violates the mock trial rule that prohibits a witness on direct examination from quoting from the witness statement of another witness.

The following are exceptions to the hearsay rule:

5:5-4 HEARSAY EXCEPTION—ADMISSION AGAINST INTEREST

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

5:5-5 HEARSAY EXCEPTION—STATE OF MIND

Hearsay may be admissible if it consists of evidence of what someone said which describes that particular person's state of mind at the time it was being said.

5:5-6 HEARSAY EXCEPTION—RELIED UPON BY EXPERT

Hearsay may be admissible if it was relied upon by an expert witness and forms the basis for the expert's opinion.

5:5-7 RELEVANT EVIDENCE

Only relevant testimony and evidence may be presented. Relevant evidence 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.

5:5-8 EXCLUDABLE RELEVANT EVIDENCE

Relevant evidence may be excluded at the discretion of the presiding judge if it is unfairly prejudicial, may confuse the issue, or is a waste of time.

RULE 5:6 INTRODUCTION OF PHYSICAL EVIDENCE

5:6-1 PRE-TRIAL CONFERENCE

Physical evidence must be relevant to the case and the attorney must be prepared to define its use on that basis. In an actual trial an attorney introduces a physical object or document for identification and/or use as evidence during the trial. **For the purposes of this mock trial competition, there will be a pre-trial conference, lasting no more than five minutes, in which both prosecution's/plaintiff's and defendant's attorneys get together to present pre-marked exhibits for identification before trial.**

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

5:6-2 ADMISSIBILITY

The statements of witnesses, whether in affidavit or deposition format, are not admissible into evidence, but may be used during cross-examination for impeachment purposes. All other exhibits in the problem may be admitted (without objection) by any party wishing to utilize them.

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

For example, an attorney may show a letter (already agreed upon as an exhibit by both sides) to a witness. "Mr. Davis, do you recognize this document which is marked Plaintiff's P1 for identification?" (The witness should say yes and identify the document.)

At this point the attorney may proceed to ask the witness a series of questions about P1.

If the attorney wishes to place the document into evidence, say, "Your Honor, I offer this letter for admission into evidence as Plaintiff's P1 and ask the court to so admit it."

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

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

PART VI

GUIDELINES FOR ATTORNEY TEAM ADVISERS

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

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

ALL WITNESSES MUST TAKE THE STAND.

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

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

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

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

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

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

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

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

GENERAL GUIDELINES TO PRESENTATIONS FOR JUDGES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The judges’ decisions are final.

PART VII MOCK TRIAL VIDEOTAPE LOAN PROGRAM

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

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

The following videotapes of the 1998 and 2001 National High School Mock Trial Championships and DVDs of the 2007 and 2008 American Mock Trial Invitational Finals are available for loan only:

“1998 National High School Mock Trial Championship Final Round”—In this final round of the 1998 National High School Mock Trial Championship conducted in Albuquerque, New Mexico, on May 9, New Jersey’s 1997-98 statewide championship team, Cherry Hill High School East of Camden County, defeated Guam for the national title. The Cherry Hill High School East team represented the defendant in this criminal trial dealing with homicide. Please note that the national rules differ from those of the Vincent J. Apruzzese High School Mock Trial Competition. (2 hours, available in videotape only)

“2001 National High School Mock Trial Championship Final Round”—On May 12, in the final round of the 2001 National High School Mock Trial Championship in Omaha, Nebraska, Iowa narrowly defeated New Jersey’s 2000–2001 statewide championship team, Montclair High School of Essex County. In the 2001 national case, high school senior Chris Hall is charged with possession of methamphetamine, a controlled substance. Hall maintains that rival Taylor Jennings, a student who is in competition with Hall for senior class valedictorian, planted the drugs in his/her backpack. Please note that the national rules differ from those of the Vincent J. Apruzzese High School Mock Trial Competition. (3 hours, 31 minutes, available in videotape only)

“2007 American Mock Trial Invitational (AMTI) Final Round”—On May 4, Family Christian Academy of Tennessee defeated University Preparatory Academy of Washington State at the New Jersey Law Center in New Brunswick. The case deals with aggravated manslaughter and death by vehicular homicide. Photo montage of our group trip to the Ellis Island Immigration Museum is also included. Please note that AMTI rules differ from those of the Vincent J. Apruzzese High School Mock Trial Competition. (2 hours, available in DVD only)

“2008 American Mock Trial Invitational (AMTI) Final Round”—On May 20, D.H. Hickman High School of Missouri defeated Gray Stone Day of North Carolina at the Mecklenburg County Courthouse in Charlotte, NC. In this case, Bailey Kissner, who was a young, up-and-coming amateur golfer, is suing Polk Hospital, a private psychiatric facility, for negligence in allowing Martin Dutcher to be released from 24-hour supervised care without ensuring he no longer posed a threat to himself or others. Dutcher assaulted Kissner in a road rage incident, then later Dutcher took his own life. Kissner seeks monetary damages for pain and suffering and pecuniary losses arising from the assault and battery. The trial will determine issues of liability and damages. Please note that the AMTI rules differ from those of the Vincent J. Apruzzese High School Mock Trial Competition. (1 hour, 49 minutes, available in DVD only).

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

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

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

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

PART VIII

AARCI v. Dillon Matthews

STATEMENT OF FACTS



METROPOLITAN HIGH SCHOOL
"HOME OF THE METROPOLITAN MUSTANGS"
ONE STAMPEDE WAY
METROPOLITAN, NEW JERSEY 08901-1520

METROPOLITAN SCHOOL DISTRICT
DR. RONALD S. ANDERSON, SUPERINTENDENT

OFFICE OF THE PRINCIPAL
SUSAN ARCHER

December 12, 2007

Dear Parents and Students:

I would like to take this opportunity to address you, not only as your principal, but also as a concerned parent. Over this past week, rumors have been circulating at our high school about one of our students and some issues regarding the Internet. My primary responsibility as your principal is the welfare and protection of our student body. Accordingly, I am making every effort to disseminate the relevant information I have, while still respecting the privacy of the parties concerned. To that end, I am prepared to share the following information.

I have had several conversations with the student and with the student's parents. It is the wish of the student and his/her family that their identity and situation be made public to classmates, faculty and friends at Metropolitan High School. The following narrative is a synopsis of the events as told to me by Dillon Matthews, a senior at Metropolitan. As always, it is my intention to show respect and concern for all parties. I hope everyone who reads this letter will truly understand the responsibilities of growing up in the Internet Age.

A short time ago, Dillon received a letter from the legal counsel of the American Association of Recording Companies, Inc. (AARCI). The AARCI is essentially the spokesperson for the recording industry in the United States. Its members are the record companies that comprise the music industry throughout the world. The letter alleged that Dillon had unlawfully downloaded, distributed, and/or made available for distribution music files over a peer-to-peer (P2P) network. Apparently, the AARCI is claiming that these files were shared via an Internet Protocol (IP) address that his/her Internet Service Provider (ISP) mapped to Dillon's Internet connection. It is the AARCI's contention that Dillon kept people from buying legal copies of songs by providing free copies.

Dillon has been named as a defendant in a lawsuit initiated by the AARCI. Mr. and Mrs. Matthews have retained a lawyer with AARCI experience. The attorney has instructed Dillon not to discuss the matter. However, I have been informed that the impending litigation is apparently "all a big mix up," and that Dillon's personal computer may have been compromised by a virus. Dillon remains steadfast in his/her denial of the accusations and is confident of vindication.

I am told the average litigation cost for a case such as this is well over \$50,000. I urge everyone, but most importantly our students, **not** to download files from strangers or click hyperlinks from anyone you do not know. You could be exposing your computers to viruses, leading to very serious consequences for you and your families.

Sincerely,

Susan Archer

Susan Archer
Principal

Exhibits

1. User Log
2. Sal Rocco's article from October 28, 2007 issue of *Metropolitan Press*
3. Graph of Declining Album Sales
4. Letter from law firm of Starr, Avril & Brinkman

Stipulations and Exhibits

1. Witnesses may be either male or female.
2. All witness statements and reports are deemed to be sworn, certified and/or signed. If asked a witness must acknowledge signing, swearing an oath or certifying to the contents of the document on the date indicated therein.
3. Dr. Wolff and Sal Rocco are designated as experts and their respective testimony is admissible in evidence, subject to relevant objections. The expert witnesses may not be cross-examined on material not referenced in the workbook unless the expert raises such information in response to a question on cross-examination.
4. It is stipulated that the User Log and the Declining Album Sales Report exhibits are accurate and indisputable.
5. The parties agree that plaintiff AARCI, for the purposes of this mock trial, has been the exclusive copyright holder to the sound recordings in question in this case, and the copyright owner of each of these works at all times relevant to this case.
6. The trial judge shall dispense with the reading of the jury charge, and it shall be stipulated that all jurors are familiar with its contents.
7. Costumes, make-up and "props" are prohibited.

Plaintiff's Witnesses

Roni Raucous
Bobby Mitchell
Dr. R.J. Wolff

Defense Witnesses

Dillon Matthews
Chris Porter
Sal Rocco

All characters, institutions, events and other facts contained herein are fictitious and not intended to represent any individual, living or dead. The "facts" presented in this case were created for the purpose of teaching mock trial skills and not for any other purpose.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Metropolitan Division

Docket no. MET-L-2965-08

Civil Action

JURY CHARGE

INTRODUCTION: Ladies and gentlemen of the jury, now that you have heard all of the evidence that is to be received in this trial and each of the arguments of counsel in summation, it becomes my duty to give you the final instructions of the Court as to the law that is applicable to this case. You should use these instructions to guide you in your decisions.

DUTY TO FOLLOW THE LAW: It is your duty as jurors to follow the law as stated in all of the instructions I give to you and to apply these rules of law to the facts as you find them to be from the evidence received during the trial. You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole in reaching your decisions.

You were chosen as a juror for this trial in order to evaluate all of the evidence received and to decide each of the factual questions presented by the allegations brought by the Plaintiff, the American Association of Recording Companies, Inc., against the Defendant, Dillon Matthews. In resolving the issues presented to you for decision in this trial, you must not be persuaded by bias, prejudice, or sympathy for or against any of the parties to this case or by any public opinion.

CONSIDERATION OF EVIDENCE: There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would deal with any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good and common sense in considering and evaluating the evidence in this case.

TYPES OF EVIDENCE: The evidence in the case consists of the sworn testimony of the witnesses presented during the trial and also the exhibits and documents which have been marked into evidence. There are two types of evidence which are generally presented during a trial - direct evidence and circumstantial evidence. Direct evidence asserts or claims to have actual knowledge of a fact, such as an eyewitness testimony. Circumstantial evidence is proof of a chain of facts and circumstances based upon inference which indicate to you the existence of a fact not directly stated. Inferences are simply deductions or conclusions which logically follow, by reason and common sense, from the indirect evidence presented. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence.

JUDGING CREDIBILITY: Ladies and gentlemen, you are the sole judge of any witness' credibility and of the weight that his/her testimony deserves. By that I mean that you may choose to believe or to disbelieve a witness' testimony. You may be guided in your determination of believability by your everyday experience in making judgments about people. For example, you may consider the appearance and conduct of each witness, the manner in which the witness testified, the nature of the testimony given, or the weight of the evidence and testimony contrary to that witness' testimony.

You should pay careful attention to all the testimony given, the manner in which it was given, and the circumstances under which it was given. You may consider a witness' intelligence, motive, state of mind, and his/her demeanor and manner as he/she testified. You may consider the witness' ability to observe the matters to which he/she testified, and whether he/she impressed you as having an accurate recollection of those matters. You may also consider whether your verdict in favor of any party will directly or indirectly benefit the witness in a way that may affect his/her testimony. Finally, you may consider the fact that a given witness' testimony is supported or contradicted by other testimony or evidence.

Any inconsistency or discrepancy in the testimony of a witness, or between the testimonies of different witnesses, may not be significant. Two or more persons witnessing an incident or a transaction may see or hear it somewhat differently; innocent mis-recollection, like failure of recollection, is not an uncommon experience. In weighing the effect of any discrepancy, you should consider whether the discrepancy pertains to a matter of importance or to an unimportant detail, whether the discrepancy results from innocent error or from intentional falsehood, and whether the discrepancy accords with a reasonable or logical sequence to the testimony.

WEIGHT OF EVIDENCE: When making your judgment, which is yours alone to make, you may give the testimony of each witness as much or as little weight as you may think it deserves, including no weight at all.

During the course of the trial I have tried to refrain from any reference to the facts in this matter. To the extent that I or counsel may have made reference to any fact and that fact does not coincide with your own recollection of the evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel. You are the sole judge of the evidence received in this case.

BURDEN OF PROOF: The Plaintiff, AARCI, has the burden of proof in a civil action to prove by a preponderance or greater weight of the credible evidence that it is entitled to recover from the Defendant, Dillon Matthews, on the issues being presented to you. If the evidence balances equally, the Plaintiff has not sustained its burden of proof, and your verdict must be in favor of the Defendant.

The Complaint charges that between August 18, 2006 and December 25, 2006, in the County of Metropolitan, in the State of New Jersey, the Defendant, Dillon Matthews, reproduced and distributed some 902 sound recordings via the Kazaa peer-to-peer network without seeking permission from, or paying compensation to, the owner.

The Plaintiff has filed suit pursuant to the Digital Millennium Copyright Act resulting in claims that the Defendant willfully uploaded and downloaded sound recordings on a peer-to-peer network. The Plaintiff alleges that it owns and has exclusive copyright to all of the sound recordings. In order to sustain its burden of proof for infringement as charged in the Complaint, the Plaintiff must prove each element by a preponderance of the evidence.

What is a Copyright? A copyright is the exclusive right to copy. A copyrighted work can be a sound recording. The owner of a copyright has the right to exclude any other person from reproducing or distributing a work covered by copyright for a specific period of time. One who reproduces or distributes a copyrighted work during the term of the copyright infringes the copyright, unless licensed by the copyright owner. Plaintiff contends it is, and at all relevant times has been, the copyright owner with respect to certain copyrighted sound recordings, and that the defendant, Dillon Matthews, without the permission or consent of plaintiff, used an online media distribution system known as Kazaa to download the plaintiff's copyrighted recordings and/or to distribute the copyrighted recordings to the public.

Elements of copyright infringement: In order to prevail on their copyright infringement claim, the plaintiff must prove two things:

First: The plaintiffs are the owners of works protected by the Digital Millennium Copyright Act.

Second: The defendant infringed one or more of the rights granted by the Act. By infringed we mean violated the exclusive right of the copyright owner, that is, the defendant copied the work of the owner without permission.

Plaintiff claims in this case that the defendant violated its exclusive rights to reproduce and distribute its copyrighted works.

One who either reproduces or distributes a copyrighted work during the term of the copyright infringes the copyright, unless licensed by the copyright owner.

Downloading Works: The act of downloading one or more copyrighted sound recordings on a peer-to-peer network, without license from the copyright owner, is “reproduction” of the sound recordings, and violates the copyright owner’s exclusive reproduction right.

Making Works Available to Others: The act of making copyrighted sound recordings available for electronic distribution on a peer-to-peer network, without a license from the copyright owner, violates the copyright owner’s exclusive right of distribution, regardless of whether actual distribution has been proven.

STIPULATION: As I indicated, the law ordinarily requires the plaintiff to prove that he/she/it is the owner of the copyright. However, in this matter the parties have stipulated or agreed that Plaintiff AARCI is the exclusive copyright holder to the sound recordings in question in this case, and the copyright owner of each of these works at all times relevant to this case.

POTENTIAL VERDICTS: If you find that the Plaintiff has proven, by the preponderance of the credible evidence, that the Defendant downloaded, between August 18, 2006 and December 25, 2006 one or more of the copyrighted sound recordings on a peer-to-peer network without a license or that the Defendant made copyrighted sound recordings available for electronic distribution on a peer-to-peer network, without a license, then you should return a verdict in favor of the Plaintiff.

If you find that the plaintiff has not proven, by the preponderance of the credible evidence, either that the defendant downloaded one or more of the copyrighted sound recordings on a peer-to-peer network, without a license, or that the defendant made copyrighted sound recordings available for electronic distribution on a peer-to-peer network, without a license, between August 18, 2006 and December 25, 2006, then you should return a verdict in favor of the Defendant for “no cause for action.”

CLOSING REMARKS: That concludes my instructions to you regarding the law which you must apply to the facts of this case as you find them. It is now your task to deliberate for the purpose of attempting to reach a verdict. Because this is a civil case, unanimous agreement by all the jurors is not required. Rather, your verdict may be reached by agreement of any five of the six jurors. As soon as any five jurors agree upon a verdict, you may end your deliberations and announce your verdict to the court.

JURORS’ DUTY DURING DELIBERATIONS: It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to your individual judgment to what the verdict should be. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that as jurors you are not partisan, you are not advocates for the position taken by either the Plaintiff or the Defendant. Rather you are judges of the facts and your sole interest is to seek the truth from the evidence in the case. Thank you for your kind attention. You may now proceed to deliberate.

STATEMENT OF RONI RAUCOUS

1
2
3 In the early 1980s, I was the lead singer for a punk rock band, or as it would be called today, an alternative rock
4 band, known as “Perpetuities Violated.” We had one massive hit entitled “Lien on Thee,” which was a bit of a protest
5 song leveled at what was perceived to be some tactics on the part of the British Government. The Crown had taken to
6 the practice of illegally acquiring the land of its citizens by improperly placing sales tariffs, thereby making some
7 parcels virtually unmarketable. Ironically, my company and I face the same problem, as the illegal pirating, copying and
8 downloading of music is depriving many in the music industry of our right to royalties on our own songs.

9 “Lien on Thee” was the only hit we ever had as band. I think it was in large part due to timing and social unrest,
10 as much as it was the song itself. It was # 1 on both the American and European Charts for quite some time. It was clear
11 to all members of the band, however, that we would never be able to match that level of success again, and we quickly
12 disbanded to pursue other endeavors. I formed Raucous Records with the royalties earned from “Lien on Thee,” and
13 have been very successful in launching the careers of a number of new artists.

14 Since my day in the spotlight, things have changed quite dramatically in the industry. While I initially embraced
15 the ever expanding technology, I soon came to understand the problems it would bring. In my day, cassette tapes were
16 replacing vinyl records. While the pirating of music was problematic, it still required the party stealing the music to
17 physically recreate either a tape or a record, and then sell the goods out in a market somewhere. Whether it was a street
18 corner in Manhattan or Los Angeles, or at a flea market around the country, there had to be something tangible to sell.
19 The knock off copies were readily detectable and prosecutions were quick and easy.

20 Today, however, we are working in a different environment. The explosion of music on the Internet has been
21 both a blessing and a curse. We can sell music legally without the need for costly production efforts, while saving
22 immeasurable natural resources by not creating plastic CD cases, packaging, as well as the saved transportation expenses
23 in getting the product to market. Websites such as MP3.com, iTunes, Musiconline, and Sony Music allow companies
24 such as mine to market and sell music to an ever expanding online audience. Everywhere you go people are plugged
25 into iPods, iPhones, and all sorts of MP3 players. Gift certificates for iTunes are one of the hottest items around the hol-
26 idays, allowing music lovers to shop from home without a record producer ever having to create an actual product,
27 while still being able to pay an artist for his or her talents.

28 The curse of the Internet is the ease by which virtually anyone can download and share music with friends, or
29 with P2P services, even strangers, depriving artists of rightfully earned royalties. As a result, album sales, regardless of
30 format, have been steadily decreasing. In this decade alone, sales decreased 36 percent. The evidence is plain to see
31 from all of the closed record shops, both here and across the pond (in the U.K., that is), and the cold, hard facts are laid
32 out in recording industry reports. Plain and simple, piracy will destroy the record industry if it is allowed to go
33 unstopped. You cannot believe the number of mates who are involved in producing an album - or even a single record-
34 ing- it's endless. They *all* suffer financially at the hands of downloaders. I preach this same sermon all the time: when
35 you rip a file off the Internet, *think* of who you might be hurting. Realistically, I know we can never completely stop
36 downloading, but at least we can make it *manageable*, by holding people accountable.

37 The American Association of Recording Companies, Inc. is an organization that is committed to doing just that:
38 holding downloaders accountable. The AARCI protects the interests of all its member record companies by monitoring
39 and ultimately pursuing illegal downloading. They launched this campaign in September 2003, apparently in an attempt
40 to appeal to the public's sense of economics. The message is pretty clear: pay a little now or a lot more later. It's a no-
41 nonsense approach that quickly identifies illegal downloading and uses every available legal option to obtain restitution.
42 I can't say enough about the job the AARCI has done for the music industry. In a recent survey by Internet Security
43 Project, the percentage of people who download music files online has dropped by almost half from 35 million people
44 down to 18 million since the AARCI began initiating lawsuits. The steepest declines were noted among college-educat-
45 ed people (61% decline), parents with children living at home (58% decline), and women (58% decline). In addition to
46 the declines, it was noted that an increasing number of consumers have signed up for paid online music services.

47 I've never met the defendant, but I've heard about his/her claims of identity theft. Even an old rocker like me
48 knows that, “If it walks like a duck, and it quacks like a duck, it must be a duck.” I trust the judgment of the AARCI
49 and fully support its attempts to bring anyone who violates the law to justice.

50
51 October 17, 2007

/s/Roni Raucous
Roni Raucous

STATEMENT OF BOBBY MITCHELL

1
2
3 My name is Bobby Mitchell. I am completing my junior year at Metropolitan high School. My activities at
4 Metropolitan include Student Council, Peer Leadership, National Honor Society, Soccer, JROTC, Computer Club and
5 Ski Club. I also hold a 4.0 GPA. By this time next year, I expect to receive an appointment to the United States Military
6 Academy at West Point. I guess you might say joining the "Long Gray Line" is a Mitchell family tradition. Both my
7 father and grandfather graduated from West Point. My grandfather had tours of duty in Southeast Asia and my father had
8 tours of duty in the Middle East. I'm proud to say that both my grandfather and father were decorated for their heroism.

9 I was interviewed on two separate occasions for this trial. During the first interview, I met Mr. Walker, an attorney
10 for the recording industry. He told me about all the problems the recording industry was having with people downloading
11 music illegally. He said he was gathering evidence on someone who had downloaded music illegally on his/her
12 computer. He wanted to know how I felt about people taking something that didn't belong to them. I told him I wasn't
13 raised that way. We really didn't talk much about Dillon Matthews. He wanted to know more about me. I told him about
14 West Point and my father and grandfather. He was really impressed. He said he was sure I would be an asset to the team
15 and it would be a privilege working with me. I later found out this guy was an ex-marine, who flew an F-14 Tomcat in
16 the Gulf War. He *even* trained Iranian Air Force pilots. He said that was a long time ago, when the U.S. still had good
17 relations with Iran. I told him I was sure my Dad would love to meet him.

18 My Dad and I traveled to New York for the second interview. Dad said he would wait in the lobby for me and it
19 wasn't necessary for him to tell me what was expected of me. He told me to give Mr. Walker his regards. This time, *all*
20 Mr. Walker wanted to talk about was Dillon Matthews. I told him Dillon and I were both members of the Computer
21 Club. I've been a member since my freshman year, and Dillon joined sometime in October this past year. He/she also
22 went on a few trips with the Ski Club that I attended, but Dillon was never invited to be a member. I'm sure it had something
23 to do with the fact that he/she was a snowboarder and everyone else skied.

24 Mr. Walker kept saying, "I *want* you to jog your memory, you've got to help us." I told him that Dillon and I
25 were never really friends. I saw him/her around school from time to time, usually in the cafeteria. I always went out of
26 my way to say hello, but I rarely got a response. Mr. Walker said, "I don't understand, I thought you two got along." I
27 told him that Dillon probably never even heard what I said half the time.

28 I do remember that I often saw him/her wearing a T-shirt with a picture of Bob Dylan on it. He/she constantly
29 had a headset attached to his/her head. One time, when I tried to talk to him/her, the music coming out of his/her headset
30 was so loud I could hear it from 10 feet away. I remember it was the song "Like a Rolling Stone." I was annoyed. At
31 one point, I said something to Dillon about the fact that he/she was always wearing a headset. Dillon was really rude.
32 Instead of apologizing for brushing off my attempts to be friendly, Dillon called me a "computer nerd" and "geek."
33 Dillon said, "You should get yourself a player, too. Music might loosen you up a little." I told Dillon, "No thanks. I've
34 got better things to do with my time." Dillon said, "If you change your mind, let me know and I'll hook you up. It won't
35 cost you anything." Mr. Walker asked me whether we spoke any more about it. I said that while he/she said nothing else
36 to me personally, I had heard Dillon talking to a few kids in the computer club. Dillon was asking them, "Why would
37 anyone ever want to *pay* for songs, when you could get them for *free*?"

38 I never really put two and two together until Mr. Walker filled me in on the details. He also wanted to know if
39 Dillon ever said anything about identity theft. I said, "It's funny that you mention it because we had a program on identity
40 theft at school recently." It was all the usual stuff, how it happens and how you can protect your personal computer
41 from identity theft. He wanted to know who participated in the program and when it took place. I told him it was juniors
42 and seniors and I wasn't sure of the date.

43 I have always been taught by my parents not only to do the right thing, but to do the honorable thing. I feel that
44 is what I have done.

45
46 October 22, 2007

/s/Bobby Mitchell

Bobby Mitchell

STATEMENT OF DR. R.J. WOLFF

1
2
3 My name is Dr. R.J. Wolff. I graduated from Cornell University in 1993 with a doctorate in Computer
4 Engineering. I also taught Computer Science at Carnegie Mellon University for the last 12 years. This past year I have
5 been conferred with the title "Professor Emeritus" for my contributions to scholarship and to the service of the
6 University community. I have also authored numerous publications and books dealing with everything from computer
7 crimes to advanced network protocols and information warfare. I am a member in good standing of the National
8 Academy of Engineering. The mission of the "NAE is to promote the technological welfare of the nation by marshaling
9 the knowledge and insights of eminent members of the engineering profession."

10 In 2001, I founded Wolfftec Systems, a company specializing in the design of antipiracy software. It seems
11 someone is always trying to get something for nothing. I guess that's why I'm here today. In recent years, Wolfftec has
12 evolved, or should I say adapted to the marketplace, by becoming the leading resource for both forensic and Internet
13 issues. Computer forensics is the art and science of applying computer science to aid the legal process. A forensics
14 expert can quickly identify places to look, signs to look for, and additional information sources for relevant evidence. To
15 that end, Wolfftec's latest innovation is a product called "Wolff Trap." It is a web filter designed to provide Internet fil-
16 tering and is currently being used nationwide to detect, monitor, and block unauthorized peer-to-peer applications.
17 Wolfftec's success in this rather unique field really comes down to one thing: in addition to having cutting-edge soft-
18 ware, we provide unparalleled investigative and analysis techniques in the interests of determining potential legal evi-
19 dence for our clients.

20 I am not a lawyer. I am not part of any recording industry legal team. I personally do not represent any musi-
21 cians and as far as I know, the AARCI does not involve musicians in the lawsuits it files. I work on behalf of the
22 AARCI. My job is to locate *anyone* who goes online and downloads songs without permission. It doesn't make any dif-
23 ference whether that person is a grandmother or a university student - stealing is stealing, regardless who commits the
24 crime. If you leave a door unlocked in your home, is it any less a crime when someone slips in and walks out with your
25 microwave? I don't think so.

26 In the defendant's case, we know 902 songs were allegedly made available through the Kazaa network. Kazaa
27 or KaZaA, is a P2P file sharing application. It is commonly used to exchange MP3 music files over the Internet. I was
28 able to match a username and IP (Internet Protocol) address with the defendant. It turns out the defendant allegedly used
29 the nickname "zimmermanrocks" both as e-mail address and Kazaa username, which really made it simple. The defen-
30 dant's Internet Service Provider (ISP) was instrumental with making the identification. People don't realize that it's not
31 just the *act of downloading* copyrighted sound recordings on a peer-to-peer network that is illegal, but also *making them*
32 *available* for electronic distribution. In other words, the defendant allegedly left the songs in a publicly accessible direc-
33 tory, where they *could* have been downloaded.

34 Typically, when my investigation yields an IP address and a username, the AARCI usually elects to sue hun-
35 dreds of John Does at the same time, all at the same ISP. I was told by the AARCI legal team this lawsuit is different.
36 The defendant alleges his/her identity was "stolen" and someone else was doing the downloading and file sharing using
37 the stolen identity. Based upon my knowledge of computer crimes and the expertise I have gained in developing "Wolff
38 Trap," I can state within a reasonable degree of certainty that music had been downloaded by Dillon Matthews.

39 If you want to argue that another individual stole his/her identity, I found no evidence to suggest that had
40 occurred. I suppose it's possible, but it's a first for me. I guess it would set a bad precedent for the AARCI if a lot of
41 people started making that claim. I am aware of Sal Rocco's claim that it was the Babysitter virus. The problem with
42 his/her theory is that any computer infected with that virus still has telltale miscellaneous files, even if an antivirus pro-
43 gram eventually deleted the program. Viruses like that are like weeds. When you pull them out, some of the roots
44 remain. At this point in time, I personally feel I did my job and identified the correct individual who did the downloading.
45

46 November 1, 2007

/s/R.J. Wolff
Dr. R.J. Wolff

STATEMENT OF DILLON MATTHEWS

1
2
3 My name is Dillon Matthews. I am 18 years old. I am a senior at Metropolitan High School. Ever since I can
4 remember, I have been focused on the goal of being accepted into Princeton. I am in the top 10% of my class, and have
5 been recognized as a semi-finalist in the National Merit Scholarship Program and as a Bloustein Distinguished Scholar. I
6 am a member of the National Honor Society, Computer Club and Music Club. For the last three years, I've also played
7 varsity soccer.

8 I guess my interest in music began when I was given my brother's old model MP3 player. It opened up a whole
9 new world to me. I couldn't get enough of it. I listened to everything. My parents quickly realized that music was some-
10 thing I was serious about and soon my room began filling up with all the latest devices. I had everything - MP3s, speak-
11 ers, headsets, you name it. I remember my father telling me, "Your mother and I consider all these gadgets an investment
12 in your future." I think nothing would have pleased them more than if I combined my college education with a career in
13 music.

14 I really enjoyed the music courses I had taken at school. I remember one course that covered contemporary
15 music over a large part of the last century. Although there was a lot of history, we also listened to all kinds of music - big
16 band, rock 'n roll, R&B, country, just about everything. I thought it was *all* great. My teacher was really big on music
17 representing the social issues of the day. He liked to say, "Music was social commentary. There was always a message.
18 You just had to find it."

19 As a student trying to get into the best college possible, and to do research for my music course, I spent a lot of
20 time in my local library. I am at the library three to four times a week. Our library has a large collection of CDs of the
21 kinds of music we were listening to in class. A few times, I checked out some CDs, took them home and copied songs to
22 my MP3 player. I also put the songs on my hard drive, but I never exchanged them or gave them to anybody else. My
23 teacher was always telling us to be careful about illegal copying and how we should respect the artists' rights to their
24 work. He really knew a lot about the music industry and how music got "pirated." Once, in class, he was explaining the
25 different ways people steal music online and what could happen if you got caught. He even talked about how people do
26 it using fake identities. He said people could use our identities or accounts and, if we weren't careful, they could do
27 some serious damage. In the beginning of my senior year, we even had an assembly on identity theft. I remember hear-
28 ing to be especially careful with your personal information, like account numbers and Social Security numbers. At the
29 time, I didn't think too much about it. Maybe if I did, I wouldn't be here today.

30 Last year, I got a letter from a lawyer saying that I had illegally downloaded music on a peer-to-peer network. It
31 was addressed to "Dylan Matthews," which is a spelling of my name I never used, but somehow got started a couple
32 years ago. I'm pretty sure it was at the library, when I applied for a card. At the time, someone misspelled my first name
33 and I didn't realize it for a long time. I never paid much attention to it, but then it happened again in an e-mail from an
34 online store, when I ordered some earphones. My dad's credit card didn't go through and the transaction got so screwed
35 up that I ended up sending them a payment by Western Union. Anyway, somewhere along the line, that name got
36 attached to my address and I would get mail or email addressed to Dylan Matthews. I always ignored the misspelling. I
37 really couldn't be bothered.

38 I figured this letter was a big mistake, and I never showed it to my parents. For one thing, I didn't think it was
39 for me. It wasn't even my name. I never stole anything in my life. It just didn't make sense. My parents always got me
40 anything I ever wanted. So, I just tossed the letter. A few months later, I came home from school and my mom told me
41 that a Metropolitan Sheriff's officer had come to the house and left some papers. She told me that we were being sued,
42 or I guess, I was being sued. She was crying and told me she wanted the truth. I told her I loved her and I would never
43 do anything to hurt the family. She also wanted to know why I didn't tell them about the letter when it first came. I told
44 her that I never thought anything of it.

45 What happened next was completely unexpected. It was my father's attitude. He went completely crazy about
46 the whole thing. He said, "If they want a fight, they've got one. For goodness sakes, you're at the top of your class. Why
47 do they always go after the good kids? What about your friends - could it have been any of them?" I said, "I was having
48 a problem with this ROTC kid at school, Bobby Mitchell. S/he was on my case about my music and some comments I
49 made. I really don't remember the details. All I know is s/he was looking for some kind of an apology." Then my father
50 started talking about the Internet, how nobody's safe and how people who use the Internet aren't who they seem to be.
51 He went on and on - it was endless. When I look back on it, I guess he had every right to vent.

52 I have read the statements of Roni Raucous, Bobby Mitchell and R. J. Wolff. Just as Mr./Ms. Raucous says, s/he
53 has never met me. And I think it's funny how s/he complains about his/her music being pirated , but s/he can't possibly
54 imagine that my identity might have been pirated also. As to Bobby, I did try to be friendly with him/her a couple of
52 times. And yeah, I did offer to help him/her get started with an iPod and show him/her how to get some music for free.
53 Bobby is a real dork and s/he didn't know anything but s/he liked military music and some weird stuff that isn't even
54 copyrighted. There are perfectly legal ways of getting that music which don't include sending copyrighted songs over
55 the Internet.

56 This Dr. Wolff seems like s/he has made a lot of money accusing people of stealing music. I don't know where
57 s/he got the name "zimmermanrocks" but I never used it and never heard of it. They are saying that the last day I did
58 this downloading was on December 25, 2006. I was not even home on that date. I remember because my parents and I
59 celebrated Christmas at my grandmother's house out-of-state, like we always do.

60 I showed Sal Rocco the only computer that we had in the house in 2006.

61 This entire time has really been a drain on my family. I'm totally aware how much my parents have been paying
62 lawyers and investigators. I just want to put the whole thing behind me, and get on with my life. It's hard to put in words
63 the appreciation I have for my parents. They are not going to be intimidated by anybody or anything.

64

65 November 14, 2007

/s/Dillon Matthews

66

Dillon Matthews

STATEMENT OF CHRIS PORTER

1
2
3 My name is Chris Porter. I was recently dismissed from my job at Wolfftec Systems. I was a technician in a
4 division called IP – Harvesting, under the direction of the Wolfftec’s Enforcement Director, Harry Larsen. It was all part
5 of Wolfftec’s monitoring of file sharing for the AARCI. We identified and traced IP addresses. The IP address is a
6 unique number assigned to the network device you are using to connect you to the Internet. Harry liked to use the term
7 “data mining.” The truth of the matter is, most days he couldn’t find his own lunch.

8 I can remember the day Harry called me in for what he referred to as a “sit down.” He said, “Chris, I’m not
9 looking forward to what I have to tell you, but you have disappointed all of us at Wolfftec Systems.” I thought he
10 couldn’t have been bent out of shape over the “Dirty Harry” thing I started. It had to be my last evaluation. I recall let-
11 ting off a little steam when I received it. I remember saying, “I’m better than half the employees here and this is what
12 you give me.” In retrospect, I guess I should have been that lucky.

13 Somehow, Harry had gotten wind of a recent entry on my blog, referring to Wolfftec as the AARCI’s “800
14 pound gorilla.” I didn’t stop there. I was having some serious pangs of conscience that night. I said, “I know that there
15 are many people being sued who have *never* downloaded any copyrighted material. In fact, some didn’t even own a
16 computer.”

17 I guess it was a day or two after my blog that an interoffice memo started circulating. It read something like,
18 “Any employee has the right to say anything he or she wants, however if he or she does so, he or she will no longer be
19 welcomed at Wolfftec Systems. Employees cannot disparage Wolfftec Systems on any weblog or any other forum for
20 that matter. Doing so will be viewed as a serious security risk that will not be tolerated.” I thought the worst conse-
21 quence would be a little slap on the wrist or a warning. Boy was I wrong. You know what really bothered me? I was
22 just saying what *everybody* already believed.

23 While I worked at Wolfftec, there were days when I had trouble looking at myself in the mirror. It’s like when
24 you see these fishing boats with huge nets, and sometimes they unintentionally trap dolphins and it doesn’t faze them. I
25 don’t want to be like that. I know for a fact that the techniques Wolfftec used could not verify *who* infringed in *every*
26 case, only the IP address associated with the infringement. Wolfftec *doesn’t know* if any file was downloaded or made
27 available by the defendant or by *someone* else. I mean, look at the screen name of the person that they said was respon-
28 sible; “zimmermanrocks” doesn’t even have a connection to Dillon Matthews. I remember one instance when a bunch of
29 John Does were subpoenaed and the Internet Service Provider supplied the identification. One of those individuals had
30 been dead nearly a year. Did downloading occur? I’m sure it did, but certainly *not* by the individual the provider identi-
31 fied.

32 I think I know what’s going on here, and it really makes me angry. Way back when I first started to work at
33 Wolfftec, I heard some of the other employees talk about how this contract with the AARCI was going to “make or
34 break” the company. Wolfftec had put so much of its future in keeping this relationship. I even heard Harry and Doc
35 Wolff talking about this. They were in the conference room, and I was installing a new line into the room next door.
36 They didn’t know that I could hear them. One of them said that they needed to “make a case for the commission.” I
37 think that they were saying that they needed to make an example out of someone.

38 I went to Doc Wolff to tell him/her that there were flaws in our software, but s/he just dismissed me. S/he said I
39 was just overreacting. I didn’t say anything about the conversation I overheard, but I kept alluding to the fact that I
40 thought the software was being rushed. I guess s/he didn’t like the fact that I was talking trash about Wolfftec in my
41 blog. It’s amazing how many people saw it. I got so many responses. People told me stories about their own problems
42 with these companies. I really feel sorry for these people. Their lives were being turned upside down just because of a
43 witch hunt.

44 I would like to point out that no one from the defense team ever went looking for someone who was willing to
45 talk about what goes on at Wolfftec. I sought out Dillon Matthews’ attorneys. I wanted to set the record straight. I no
46 longer have to tow the party line. Harry Larsen essentially said that I was an unwelcome guest in Wolfftec’s house. My
47 obligation to myself began when my obligation to Wolfftec ended.

48 There has been life for me after Wolfftec. I’ve started my own company. Needless to say, it does involve securi-
49 ty. I’m doing something I’ve always dreamed about, software design. Nowadays, sleepless nights are a thing of the past.
50 To all the Dillon Matthews of this world, I’m truly sorry.

51
52 November 14, 2007

/s/ Chris Porter
Chris Porter

STATEMENT OF SAL ROCCO

1
2
3 My name is Sal Rocco and I am 55 years old. I run a company called CyberSecurity. I have 20 employees and
4 offer protection services to anyone interested in controlling identity theft. I laugh when people tell me, "I use a firewall
5 program or I use a secure browser." Trust me when I say nobody's safe. The best any security company can do is slow
6 the bad guys down. We can never completely stop them, no matter how hard we try. I used to have a sign in my office
7 that said, "Nobody gets into my computer, not nobody, not no how." Well, guess what, I threw that sign out. We've been
8 telling all our clients the same thing for years. We can put up obstacles, we can put up barriers and we can try to make it
9 harder to break in, but that's *all* we can do. Let me put this way - think of the computer as your house. You can buy the
10 best possible alarm system, but the right person can still break in. The same thing applies to computers.

11 I've testified in a few of these trials, mostly for the defense, and I learned one thing: it's better to get a few
12 things about my past out of the way. So here goes: I grew up as a streetwise kid in the Bronx, and spent some time in a
13 few juvie halls, never anything real serious but I did pass some bad checks when I was in high school. I attended City
14 College for a while, hung around with the wrong people and the only degree I ever got was on how to rip people off. I
15 was so good at it, you might say I graduated summa cum laude with a major in conning people. I was right up there
16 with people like Kevin Poulsen, the guy who hacked into a radio station's phone system and rigged a call-in contest to
17 win a Porsche. Like Poulsen, I got caught. My scam was to re-route government Social Security checks to various
18 accounts I had opened, all in my name. The government didn't have a clue how I managed to do it. So much so, they
19 actually allowed me to work out a deal on my sentence, and I wouldn't get jail time, if I showed them a few tricks of
20 the trade.

21 I spent the next 10 years as a federal government employee, and I actually enjoyed the work. I like to think that
22 I had a lot to do with the capture of Kevin Mitnick, the serial computer criminal. We caught him stealing 20,000 credit
23 card numbers. It was a big deal at the time. Nowadays, hackers are downloading millions of numbers.

24 For the past 25 years I haven't gotten as much as a traffic ticket. I am happy to see that the new generation of
25 kids doesn't know anything about my storied past. Most people recognize me now as a speaker and an author, and not
26 from wanted posters. I like it that way.

27 My book, *Don't Steal Those Numbers*, was a bestseller in 2007. I have written several articles about controlling
28 identity theft for *The Scientific Journal*, *Computers Today*, and the popular press. My lectures are always sold out.

29 I recently had a chance to talk to the defendant. S/he's a nice kid. Maybe *that* was his/her undoing. I don't
30 know. Apparently, from what I could determine, Dillon Matthews had been receiving communications intended for a
31 "Dylan" Matthews. It happens all the time and it seems only bad things come from it. Not too long ago, I heard about
32 the very same thing happening to some gal who actually ended up spending time in jail. I'm not surprised. In the U.S., 9
33 million people are victimized annually. Students alone are ripped off for \$5 billion each year.

34 Since the defendant is a kid, his/her parents are paying the \$5,000 fee for my investigation and testimony in this
35 matter. Normally, I get my entire fee up front, but I told them and the kid that I would take "half before trial, and half
36 after the trial. Let's see how we do."

37 I examined the kid's computer on August 6, 2007. It is my understanding that this was the only computer in the
38 defendant's house since the summer of 2006. That is an understatement since the computer was really "prehistoric." I
39 don't think NASA is going to borrow it any time soon. It didn't have the most rudimentary protection, no antispyware
40 or antivirus software, not even a firewall. I guess Dillon is like a lot of kids who think they are invulnerable. Needless to
41 say, that ship sailed a long time ago. I'm going to give you the short list of what I believe happened in Dillon's case. It
42 is my opinion, within a reasonable degree of scientific certainty, that Dillon has been the victim of identity theft by
43 "technological" means. Without knowing it, s/he was sharing his/her computer with some uninvited guests. The guests
44 put the victim's computer to work as a "zombie" computer. They use the victim's Internet connection to download files,
45 which are then sent to the perpetrator's computers. They then erase their tracks, so you can't see that they were there, or
46 else your antivirus program eventually gets updated to recognize the pest, and erases it.

47 A virus called the Babysitter gets on the computer in the first place by attaching itself to another program. I saw
48 that Dillon had the WinZipper program, which is a popular program for decompressing files, but has been known to har-
49 bor the Babysitter virus. Sometimes when you get a dog, you end up with some fleas in the bargain.

50 These uninvited guests probably came on board in the form of a virus, probably a Trojan horse or a worm.
51 Usually the victim gets an infected e-mail or makes the mistake of going to an infected website. It could happen by sim-
52 ply downloading a computer file as part of a homework assignment. I'm pretty sure the flavor of the day in Dillon's
53 case is the Babysitter virus. It sounds harmless, but believe me, this is one babysitter you don't want in your house. The
54 only two available options to stop the virus would have been to wipe the hard drive or scrap it.

55 In my expert opinion, within a reasonable degree of technological and scientific certainty, Dillon Matthews'
56 computer was compromised. Additionally, the virus I observed could have easily opened the door to intruders allowing
57 them access to the kid's computer files. When the AARCI dropped a subpoena on this kid, they made a serious mistake.
58 S/he clearly is not a *criminal*. Dillon Matthews is a *victim*. It is sad to think that the AARCI doesn't step up and do the
59 right thing.

60
61 December 3, 2007

/s/ Sal Rocco
Sal Rocco

USER LOG

August 18 – December 25, 2006

Matthews Dillon – User Log – 8674630. txt

Log for user zimmermanrocks@KaZaA
User:zimmermanrocks@KaZaA
IP 114.155.75.198

Total Files: 902

Total Audio: 842
Total Video: 0
Total Software: 0
Total Documents: 1

Total Matched Files: 66
Total Distinct Matches: 66

Title: This Kiss
File Name: Faith Hill – This Kiss.mp3
File Size: 2753952
Artist: Faith Hill
Length: 2 minutes 45 seconds
Album: Faith
Language: en
Keyword
Resolution
Genre: Country
Quality
Description

Title:
File Name: Come On Over.html
File Size: 556
Artist:
Length: 0 minutes 0 seconds
Album:
Language:
Keyword:
Resolution:
Genre:
Quality: 128
Description:

Title: Papa Loved Mama
File Name: Garth – Papa.mp3
File Size: 3667831
Artist: Garth Brooks
Length: 3 minutes 55 seconds
Album: Ropin' The Wind
Language: en
Keyword: Big Ol' Liar
Resolution
Genre; Country
Quality
Description

Title: Track No4
File Name: Track No. 4.mp3
File Size: 2789760
Artist: Kanye West
Length: 2 minutes 15 seconds
Album: Graduation
Language:
Keyword:
Resolution:
Genre: Rap
Quality: 36D
Description:

METROPOLITAN PRESS
WEEKEND UPDATE Oct. 28, 2007

‘The worms crawl in, the worms crawl out’

*Did you ever think, as a hearse goes by, that maybe,
just maybe, your poor old computer might be inside.*

By Sal Rocco

I put a new twist on a few lines of an old folk song to make a point about computer security, not just for Halloween but every day of the year. It’s a scary thought but the demise of your “poor old computer” might really be just a click away.

A computer “worm” is a self-perpetuating computer program. It uses a network to send copies of itself to other computers on the network without any user intervention. Often, it will cause computers to “crash” or, at the very least, result in loss or destruction of information. How does it happen? It can be something as simple as opening an e-mail attachment.

So much for the good news.

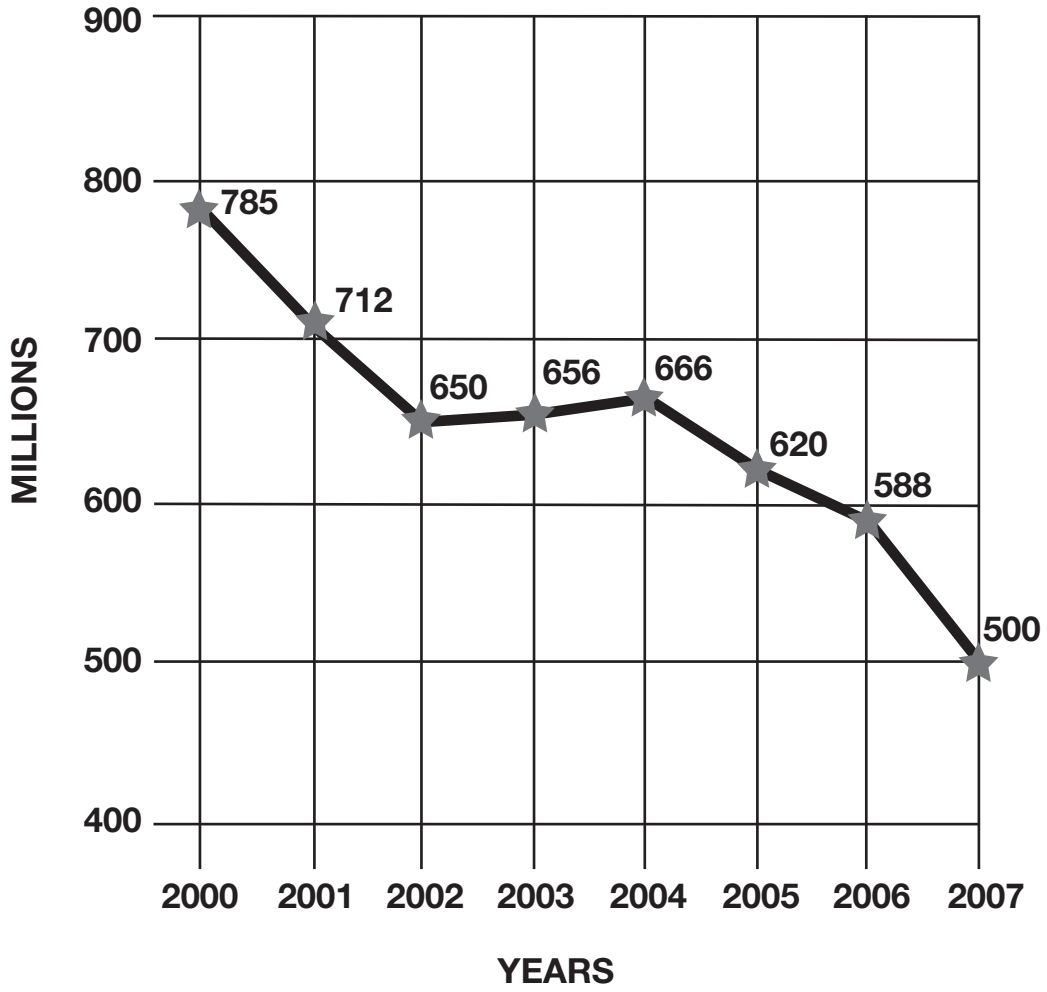
The “payload” for these worms can be much more than just spreading the worm. A very common payload is to install a “backdoor” in the computer it has infiltrated. It now uses this backdoor to allow the creation of a “zombie,” which is entirely under the control of the worm author. These zombies have been known to *secretly* take over a victim’s entire computer. The victim never suspects his or her computer was used to conduct illegal activities until it is too late. The victim thinks his or her computer is behaving “normally,” and never notices the *weak* spot, the backdoor, used by hackers to come and go as they please.

So, this Halloween, as you prepare to greet pirates, ghosts and even zombies at your front door, ponder this: legend has it that a single hacker’s computer secretly infiltrated 1,500,000 unsuspecting victims’ computers, causing over \$10 million in damages, mostly related to identity theft.

Sleep tight, my friends, and whatever you do, don’t let the software bugs *byte* your computer tonight.

For more on computer security, including preventing computer viruses, go to www.rockonsecurity.com and enter keyword: computersecurity. Sal Rocco is a leading authority on computer security. In his/her books, seminars and videos, he/she educates with a flair that has earned him/her the title “Computer’s Mad Genius.” S/he is the founder of CyberSecurity.

AARCI Report – Declining Album Sales



Source of data used in graph: Nielsen SoundScan

P2

J1

Starr Avril & Brinkman LLP

Attorneys at Law

One Metropolitan Plaza, Suite 101

Metropolitan, NJ 08901

555-123-8900

February 2, 2007

Dylan Matthews
One Independence Way
Metropolitan, NJ 08901

Re: Notification of Copyright Infringement Claims

Case # 8675309

Dear Dylan Matthews:

We have asked your Internet Service Provider to forward this letter to you in advance of our filing a lawsuit against you in federal court for copyright infringement. We represent the American Association of Recording Companies, Inc. (hereinafter "AACRI") and their individual member record companies, including EMI Recorded Music, SONY BMG Music Entertainment, Universal Music Group and Warner Music Group, as well as all of their subsidiaries and affiliates ("Record Companies"), in pursuing claims of copyright infringement against individuals who have illegally uploaded and downloaded sound recordings on peer-to-peer networks.

We have gathered evidence that you have been infringing copyrights previously owned by the record companies and recently assigned to AACRI for the purpose of proceeding with a civil action for damages in accordance with the Digital Millennium Copyright Act. In total, you were found to have distributed 902 audio files via the KaZaA peer-to-peer network, a substantial number of which are sound recordings controlled by the AACRI.

The reason we are sending this letter to you in advance of filing suit is to give you the opportunity to settle these claims as early as possible. If you contact us within the next twenty (20) calendar days, we will offer to settle the claims for a significantly reduced amount as compared to what we will offer to settle for after we file suit or compared to the judgment amount a court may enter against you. If you are interested in resolving this matter now, please contact our Settlement Information Line at 555-123-4567 or, alternatively, you may settle this matter immediately online at www.p2pabuse.com, using the CASE ID# that appears at the top of this letter.

In deciding whether you wish to settle this matter, here are some things you should consider:

- The Copyright Act imposes a range of statutory damages for copyright infringement. The minimum damages under the law is \$750 for each copyrighted recording that has been infringed ("shared"). The maximum damage award can be substantially more. In addition to damages, you may also be responsible for paying the legal fees we incur in order to pursue these claims, and you are also subject to having an injunction entered against you prohibiting further infringing activity.
- Now that you are aware that a lawsuit may be filed against you, there is an obligation for you to preserve evidence that relates to the claims against you. In this case, that means, at a minimum, the entire library of recordings that you have

made available for distribution as well as any recordings you have downloaded, need to be maintained as evidence. Further, you should not attempt to delete the peer-to-peer programs from your system—though you must stop them from operating. For information on how to do this, you may visit www.starravrilbrinkman.com.

This is a serious matter and to the extent you have any questions, we strongly encourage you to contact us to ask those questions. Finally, if you would like more information regarding music downloading/file sharing and peer-to-peer networks, please visit www.p2plawsuits.com.

IF WE DO NOT HEAR FROM YOU WITHIN TWENTY (20) CALENDAR DAYS FROM THE DATE OF THIS LETTER, THEN WE WILL FILE SUIT AGAINST YOU IN FEDERAL COURT.

We are not your lawyers, nor are we giving you legal advice. We urge you to consult with an attorney immediately to advise you on your rights and responsibilities.

Sincerely,

Ray Kuminsky

Ray Kuminsky

PART IX

EXPLANATION OF PERFORMANCE RATINGS USED ON MOCK TRIAL COMPETITION SCORESHEETS

Participants will be rated in the categories listed in the scoresheet on a scale of 1–10 (with 10 being the highest). The judge(s) will score student performance in each category, not the legal merits of the case. Each category must be evaluated separately. **Fractional points are not to be awarded.**

One team must be awarded more total points than the other. **There are no ties.** The tiebreaker category is overall team performance. In the event of a tie score, the judge(s) shall make a final determination based on overall team performance. While this category must be rated as are all other categories, judges may award an additional point to the team with the better overall team performance in order to break a tie. This category is designed to measure whether the team stayed within established time limits, followed mock trial rules and procedures and demonstrated excellent teamwork. See Part VI for more information.

All post-trial evaluations by the judge(s) will be qualitative. Numerical scores will not be released. The purpose is to re-emphasize the educational goals of the competition. Judges may discourage invention by deducting points, at their discretion, for non-responsive answers.

EVALUATIVE CRITERIA

OPENING AND CLOSING STATEMENTS

Poor to Below Average—1–4

Disorganized presentation. Inadequate preparation. Communication lacks clarity or is ineffective. Lacks depth in terms of knowledge of task and materials.

Average—5–6

Communication is clear and understandable, but could be stronger in fluency and persuasiveness. Makes some of the main points for the team’s case. Partially successful in attaining objectives.

Very Good—7–8

Fluent, persuasive, clear and understandable. Confident delivery. Very good organization of material and thought. Makes the most of the main points for the team’s case. Successful in attaining objectives.

Excellent—9–10

Thinks well on feet. Thorough understanding of issues and very persuasive on all the main points. Exhibits mastery of case and materials. Clearly outlines team’s case or position. Closing incorporated examples from actual trial. Demonstrated elements of spontaneity, not entirely based on prepared text (especially relevant to the closing).

ATTORNEYS—DIRECT EXAMINATION

Poor to Below Average—1–4

Some leading questions; some narrative questions. Ineffective in asking straightforward questions. Does not bring out key information for team’s side of case. Lack of adequate preparation. Fails to observe proper courtroom decorum. Lack of poise, poor interaction with witnesses. Improper phrasing and rephrasing of questions. Lack of adequate knowledge of mock trial rules of evidence and the case.

Average—5–6

Generally proper phrasing of questions. Fairly effective in asking straightforward questions and eliciting information for team’s side. Generally appropriate response to objections. Adequate use of objections on cross. Observes proper courtroom decorum. Good interaction with witnesses.

Very Good—7–8

Questions are properly phrased. Effective in asking straightforward questions and eliciting information for team’s side. Correct responses to objections. Good use of objections during cross-examination. Throughout questioning attorney made appropriate use of time. Poised, articulate and confident delivery.

Excellent—9–10

Very effective in asking straightforward questions and eliciting information. Ability to think fast on his/her feet. Can sort out essential from nonessential and use time effectively to accomplish major objectives. Clear understanding of fact, issues, and law. Superior qualities of fluency and clarity. Excellent in response to objections. Excellent in use of objections in cross-examination. Observed rules of competition at all times.

ATTORNEYS—CROSS-EXAMINATION

Poor to Below Average—1-4

Improperly phrased or ineffective questioning. Inability to effectively rephrase questions. Inappropriate or ineffective objections to direct examination of witnesses he/she crossed. Illogical, unsure of self. Performance lacks depth in terms of knowledge of task and materials. Difficulty in performing outside of script.

Average—5-6

Some skill in utilizing leading questions. Generally proper rephrasing of questions. Some proper objections to direct examination; some missed objections. Can perform outside of script, but with less confidence than when using script. Grasps major aspects of case but does not convey mastery.

Very Good—7-8

Demonstrates skills in utilizing leading questions in most instances. Good rephrasing of questions. Effective objections to direct examination. Demonstrated good understanding of trial procedures, rules of evidence, and issues. Shows poise, good preparation; articulate and confident delivery. Exposed contradictions in testimony and weakened other side's case.

Excellent—9-10

Creative, organized and convincing presentation. Demonstrates skill in utilizing leading questions. Proper rephrasing of questions. Very effective use of objections to direct examination. Very effectively exposed contradictions in testimony and weakened other side's case. Able to think fast on his/her feet. Deals confidently and appropriately with difficult witness(es). Ability to proceed without reading from prepared script.

WITNESSES—DIRECT

Poor to Below Average—1-4

Responses are not thorough. Does not get into role effectively. Characterization not believable. Inadequate preparation. Fails to abide by mock trial rules.

Average—5-6

Responses show only adequate preparation. Characterization adequate, but not always believable. Good but uninspiring performance.

Very Good—7-8

Responses show good preparation. Good characterization; realistic; stays in role. Convincing and persuasive testimony. Demonstrates understanding of mock trial rules.

Excellent—9-10

Knowledgeable about case facts and theory of team's case. Very effective in responding to questions. Poised and confident. Very articulate and persuasive in role. Excellent characterization and convincing testimony. Demonstrates mastery of mock trial rules.

WITNESSES—CROSS

Poor to Below Average—1-4

Unable to field questions with confidence and poise. Lacks ability to think fast on his /her feet. Lacks credibility. Deliberately evasive and non-responsive.

Average—5-6

Maintains confidence and poise, but has difficulty fielding questions effectively and in maintaining credibility.

Very Good—7-8

Able to respond well to questions posed. Well-prepared. Maintains credibility for the most part.

Excellent—9-10

Excellent responses to questions. Skillful in thinking fast on his/her feet. Able to field questions with confidence and poise. Highly credible in role.

IMPORTANT NOTICE

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

2008–2009 VINCENT J. APRUZZESE MOCK TRIAL COMPETITION Score Sheet

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

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

On a scale of 1 to 10 rate the Prosecution/Plaintiff and Defendant in the categories below.

DO NOT USE FRACTIONS.

Poor	Average	Excellent
1 2 3	4 5 6 7 8	9 10

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

(Continued on next page.)

2008–2009 VINCENT J. APRUZZESE MOCK TRIAL COMPETITION Score Sheet

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

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

On a scale of 1 to 10 rate the Prosecution/Plaintiff and Defendant in the categories below.

DO NOT USE FRACTIONS.

Poor	Average	Excellent							
1	2	3	4	5	6	7	8	9	10

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

Please advise county or state coordinator of scores before critique.

 Judge(s) Signature(s)



WINNER (P or D)

HONOR ROLL

PAST MOCK TRIAL COMPETITION WINNERS

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

PAST MOCK TRIAL CASES

Year	Case	Topic
1982–83	<i>St. Clair v. St. Clair</i>	Child custody
1983–84	<i>Vickers v. Hearst</i>	Host liability when serving alcohol
1984–85	<i>Hudson v. Daily Metropolis</i>	Freedom of press
1985–86	<i>State v. Percy Snodgrass</i>	Murder trial
1986–87	<i>Vincent Taylor v. Lance Memorial</i>	Male nurse claims sex discrimination
1987–88	<i>Barr v. Zuff</i>	Employment discrimination relating to AIDS
1988–89	<i>State v. Martha Monroe</i>	Battered Woman Syndrome
1989–90	<i>Elyse Roberts v. City of Metropolitan</i>	Sexual harassment in the workplace
1990–91	<i>State v. Diane Lynch</i>	Prosecution of mother for death of “cocaine baby”
1991–92	<i>Chris M. v. Dr. Terry Preece and Metropolitan School District</i>	Educational malpractice
1992–93	<i>State of New Jersey v. Jan Stover</i>	Hate crime
1993–94	<i>In the Matter of the Estate of Daniel Nugent</i>	Will contest
1994–95	<i>United States of America v. Luis Cosme-Sanchez</i>	Drug smuggling
1995–96	<i>Oliver Yanov and Annette Yanov v. Judy Williams and Kevin Williams</i>	Adoption
1996–97	<i>State of New Jersey v. Pat Peterson</i>	Fraternity hazing
1997–98	<i>Fran Wilkins v. Metropolitan School District</i>	Negligence
1998–99	<i>Brennan v. New Jersey Interscholastic Athletic Association</i>	Student is barred from playing baseball due to alleged performance-enhancing device
1999–00	<i>State of New Jersey v. Daniel Gunnet</i>	Student is charged with aggravated manslaughter and death by vehicular homicide
2000–01	<i>Betty Groom v. Metropolitan College and H.B. Williams</i>	Wrongful death suit involving a college junior who died at a campus rock concert
2001–02	<i>State v. Pat Petrecca</i>	Road rage
2002–03	<i>Melendino v. Cornwall</i>	Student is injured in fire in illegal casino
2003–04	<i>State v. Mel Perfect</i>	An honor student is charged with felony murder, conspiracy to commit burglary and conspiracy to commit computer theft
2004–05	<i>Farrow v. Simon</i>	Bullying
2005–06	<i>State v. Dagger</i>	Murder of reality TV show host
2006-07	<i>Fectious v. Tagen Burgers, LLC</i>	Food safety
2007-08	<i>State of New Jersey v. Avery Fisher</i>	Performance-enhancing drugs



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