

2022 NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT MATERIALS

People of the State of New York v. Shawn Miller



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

Supported by The New York Bar Foundation



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Greetings Mock Trial Tournament Participants!

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

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

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

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

**FYI, the 2022 Mock Trial State Finals will be held virtually May 23-25.
(May 23 – Orientation; May 24 – Semi-Final Rounds; May 25 – Final Round)**

Questions/Comments? Contact Kim Francis at kfrancis@nysba.org

Mock Trial information is available online at <https://nysba.org/nys-mock-trial/>

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New York State Bar Association

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LETTER FROM THE CHAIR

December 2021

Dear Mock Trial Students, Teacher-Coaches and Attorney-Advisors:

Thank you for participating in the New York State High School Mock Trial Tournament. This program, now in its 40th year, is sponsored by the New York State Bar Association's Committee on Law, Youth and Citizenship and The New York State Bar Foundation.

Many thanks to the numerous county bar associations across the state that sponsor the mock trial tournaments in their counties and to the county coordinators who spend many hours managing the local tournaments. Thanks also go to all the teacher-coaches and attorney-advisors who dedicate a countless number of hours to students across the state. We appreciate all your cooperation on implementing a virtual competition again this year. If circumstances allow, we will hold the State Finals in May, in-person in Albany. We will keep you apprised as we move forward.

Please carefully review all the enclosed mock trial tournament information, paying special attention to the rules of the competition, including the new virtual rules, which were added in 2020, and with which you must become familiar, as well as the simplified rules of evidence.

Mock Trial Rule 11(h) states: *All witnesses are intended to be gender-neutral and can be played according to the gender preference the student is most comfortable using.* Please note that we have updated the case materials to reflect current standards regarding gender pronouns according to MLA standards. (see <https://style.mla.org/using-singular-they>)

The case this year is *People of New York State v. Shawn Miller*. This criminal case involves two lifelong friends and now business associates accused of securities fraud.

The New York High School Mock Trial Tournament is a program with a strong educational emphasis. While you are working on the case, students will be:

- Learning about the law, the legal system and court procedures
- Increasing their proficiency in basic skills such as listening, speaking, reading, and reasoning
- Learning to use the law as a tool for the analysis of legal situations
- Improving their ability to think on the spot
- Learning about appropriate courtroom decorum and the adversarial system
- Learning to adapt to the new requirements of virtual courtroom technology

The tournament is a competition and, as in all other competitive endeavors, good sportsmanship is critical. Respect for volunteers, judges and other teams should always be displayed.

Best wishes to all of you. Learn and enjoy!

Sincerely,



Gail Ehrlich, Esq., *Mount Vernon, NY*

Chair: Committee on Law, Youth and Citizenship

Mock Trial Subcommittee

Chair: Oliver C. Young, Esq., *Buffalo, NY*

Lawtitia Nyavingi Kasay Basondwa, Esq., *Silver Spring, MD*

Craig R. Bucki, Esq., *Buffalo, NY*

Christine E. Daly, Esq., *Chappaqua, NY*

Gail Ehrlich, Esq., *Mount Vernon, NY*

Seth F. Gilbertson, Esq., *Syracuse, NY*

Allen M. Hecht, Esq., *Bronx, NY*

David P. Johnson, Esq., *Albany, NY*

Candice Catherine Baker Leit, Esq., *New York NY*

Hon. Susan Katz Richman, *Hempstead, NY*

Jennifer L. Smith, Esq., *New York, NY*

Lynn B. Su, Esq., *Old Tappan, NJ*

Hon. Jonah Triebwasser, *Red Hook, NY*

STANDARDS OF CIVILITY

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

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

The following standards apply to all Mock Trial Tournament participants, including students, teachers, attorneys, and parents/guardians. A Mock Trial Tournament participant's failure to abide by any of these standards may result in the disqualification of their team from the Tournament, pursuant to the sole discretion of the New York State Bar Association Law, Youth and Citizenship Committee's Mock Trial Subcommittee.

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

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

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**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
TOURNAMENT
RULES

PART I**

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MOCK TRIAL TOURNAMENT RULES

1. TEAM COMPOSITION

- a. The Mock Trial Tournament is open to all 9th–12th graders in public and nonpublic schools who are currently registered as students at that school.
- b. If a school chooses to limit student participation for any reason, this should be accomplished through an equitable “try-out” system, not through disallowing participation by one or more entire grade levels.
- c. Each school participating in the Mock Trial Tournament may enter only **ONE** team.
- d. Members of a school team entered in the Mock Trial Tournament—including teacher-coaches, back-up witnesses, attorneys, and others directly associated with the team’s preparation—are NOT permitted to attend the trial enactments of any possible future opponent in the contest. This rule should not be construed to preclude teams from engaging in practice matches, even if those teams may meet later during the competition. Violations of this rule can lead to being disqualified from the tournament.
- e. Immediately prior to each trial enactment, the attorneys and witnesses for each team must be physically identified to the opposing team and the judge by stating their first and last names. The judge will not be told the name of the schools participating in the enactment he or she is judging. Please do **not** state the name of your school in front of the judge.

2. OBJECTIONS

Note: Paragraph “a.” below has been revised for the virtual competition.

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

3. DRESS

We emphasize to the judges that a student's appearance is not a factor in judging -their performance. However, we strongly encourage students to dress neatly and in clothing appropriate for a courtroom as lawyers do. However, a "business suit" is **not** required.

4. ABOUT STIPULATIONS

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

5. OUTSIDE MATERIALS

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

6. EXHIBITS

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

7. SIGNALS AND COMMUNICATION

Note: Please note the revision in bold below for the Virtual Competition.

The team coaches, advisors, and spectators may not signal the team members (neither student attorneys nor witnesses) or communicate with them in any way during the trial, including but not limited to wireless devices, text messaging and **the video conferencing platform chat feature**. A student witness may talk to a student attorney on their team during a recess or during direct examination but may not communicate verbally or non-verbally with a student attorney on their team during the student witness' cross-examination.

8. RECORDING

Note: Please note the revisions for this section (8.) below in bold for the Virtual Competition.

- a. During any tournament round, except State semi-finals and State finals, a trial may be **recorded**, but only if each of the following conditions are satisfied:

- i. The team wishing to **record** the proceedings has received permission from the judge before the beginning of the trial.
 - ii. The opposing team consents in writing prior to the time the trial begins. Written consents should be delivered to the County Coordinator. Fax or e-mail is acceptable.
 - iii. A copy of the **recording** must be furnished to the opposing team (at no cost) within 48 hours after the trial.
 - iv. The recording may not be shared by either team with any other team in the competition.
- b. **Recording** of the State semi-finals and final rounds is **NOT** permitted by either team.
 - c. Any **recording** of a round made by a team according to the conditions in (a) above, can only be used for educational purposes related to mock trial **and may not be shared on any online platform.**

9. MOCK TRIAL COORDINATORS

The success of the New York State Mock Trial Program depends on the many volunteer County and Regional Coordinators. The appropriate supervisor will be contacted if any representative from a high school, parent, coach, or team member addresses a mock trial volunteer or staff person at any level of the competition in an unprofessional or discourteous manner. County Coordinators may also refer any such matters to the *Law, Youth and Citizenship Committee* of the New York State Bar Association for appropriate action by the *LYC Committee*.

Absent prior approval by the Mock Trial Subcommittee of the New York State Bar Association's *Law, Youth and Citizenship Committee*, a County or Regional Mock Trial Tournament Coordinator or Assistant Coordinator may not be an employee of a school that competes, or of a school district that includes a high school that competes, in that county or regional Mock Trial Tournament. Nothing in this rule shall prohibit an employee of a Board of Cooperative Educational Services (BOCES) or the New York City Justice Resource Center from serving as a County or Regional Mock Trial Tournament Coordinator or Assistant Coordinator.

10. ROLE AND RESPONSIBILITY OF ATTORNEYS

- a. The attorney who makes the opening statement may not make the closing statement.
- b. Attorneys may use notes in presenting their cases, for opening statements, direct examination of witnesses, etc. Witnesses are **NOT** permitted to use notes while testifying during the trial.
- c. Each of the three attorneys on a team must conduct the direct examination of one witness and the cross examination of another witness.
- d. The attorney examining a particular witness must make the objections to that witness's cross-examination, and the attorney who will cross-examine a witness must make the objections to the witness's direct examination.

11. WITNESSES

Note: Please note the revisions in paragraph (f) below in bold for the Virtual Competition.

- a. Each witness is bound by the facts of their affidavit or witness statement and any exhibit authored or produced by the witness that is relevant to **their** testimony. Witnesses may not invent any other testimony. However, in the event a witness is asked a question on cross examination, the answer to which is not contained in the witness's statement or was not testified to on direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial.
- b. If there is an inconsistency between the witness statement or affidavit and the statement of facts or stipulated facts, the witness can only rely on, and is bound by, the information contained in their affidavit or witness statement.
- c. A witness is not bound by facts in other witnesses' affidavits or statements.
- d. If a witness contradicts a fact in his or her own witness statement, the opposition may impeach the testimony of that witness.
- e. A witness's physical appearance in the case is as he or she appears in the trial re-enactment. No costumes or props may be used.
- f. Witnesses, other than the plaintiff and the defendant, may be constructively sequestered from the courtroom at the request of opposing counsel. A constructively sequestered witness may not be asked on the stand about the testimony another witness may have given during the trial enactment. A team is **NOT** required to make a sequestration motion. However, if a team wishes

to make such motion, it should be made during the time the team is introducing itself to the judge. Please note that while a witness may be constructively sequestered, the witness **will remain in the video conferencing platform room at all times.** (Note: Since this is an educational exercise, no participant will be excluded from the **video conferencing platform room** during an enactment.)

- g. Witnesses shall not sit at the attorneys' table.
- h. All witnesses are intended to be gender-neutral and can be played according to the gender preference the student is most comfortable using.

12. PROTESTS

- a. Other than as set forth in 12(b) below, protests of judicial rulings are **NOT** allowed. **All judicial rulings are final and cannot be appealed.**
- b. Protests are highly disfavored and will only be allowed to address two issues:
 - (1) Cheating (a dishonest act by a team that has not been the subject of a prior judicial ruling)
 - (2) A conflict of interest or gross misconduct by a judge (e.g., where a judge is related to a team member). All protests must be made in writing and - emailed to the appropriate County Coordinator and to the teacher-coach of the opposing team. The County Coordinator will investigate the grounds for the protest and has the discretion to make a ruling on the protest or refer the matter directly to the Mock Trial Statewide Coordinator, who will forward it to the LYC Committee for further review. The County Coordinator's decision can be appealed to the LYC Committee.
- c. Hostile or discourteous protests will not be considered.

13. JUDGING

THE DECISIONS OF THE JUDGE ARE FINAL.

14. ORDER OF THE TRIAL

The trial shall proceed in the following manner:

- Opening statement by plaintiff's attorney/prosecuting attorney
- Opening statement by defense attorney
- Direct examination of first plaintiff/prosecution witness
- Cross-examination of first plaintiff/prosecution witness
- Re-direct examination of first plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second plaintiff/prosecution witness
- Cross-examination of second plaintiff/prosecution witness
- Re-direct examination of second plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third plaintiff/prosecution witness
- Cross-examination of third plaintiff/prosecution witness
- Re-direct examination of third plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Plaintiff/prosecution rests
- Direct examination of first defense witness
- Cross-examination of first defense witness
- Re-direct examination of first defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second defense witness
- Cross-examination of second defense witness
- Re-direct examination of second defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third defense witness
- Cross-examination of third defense witness
- Re-direct examination of third defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Defense rests
- Closing arguments by defense attorney
- Closing arguments by plaintiff's attorney/prosecuting attorney

15. TIME LIMITS

Please note edit in bold in paragraph (b)

- a. The following time limits apply:
 - Opening Statement5 minutes for each team
 - Direct Examination.....10 minutes for each witness
 - Cross Examination.....10 minutes for each witness
 - Closing Argument10 minutes for each team
- b. At all county and regional trials, the time will be kept by two timekeepers. Each team shall provide one of the timekeepers. The timekeeper shall be a student at the participating school. A school may use a student witness who is not a witness during a particular phase of the trial. (For example, a defense witness can keep time when the plaintiff/prosecution attorneys are presenting their case.)

The timekeepers will use one watch and shall agree as to when a segment of the trial (e.g., the direct examination of a witness) begins. When one minute remains in a segment, the timekeepers shall flash the “1 Minute Remaining” card **on camera** (found in the *Appendices*), alerting the judge and the attorneys. The timekeepers will not stop the clock during objections, *voir dire* of witnesses or bench conferences.

Since the number of questions allowed on redirect and re-cross is limited to three, time limits are not necessary. Any dispute as to the timekeeping shall be resolved by the trial judge. The judge, in their sole discretion, may extend the time, having taken into account the time expended by objections, *voir dire* of witnesses and/or bench conferences, thereby allowing an attorney to complete a line of questioning.

16. SPECIAL ONLINE TRIAL RULES

- a. **Applicability of Online Trial Rules:** These rules apply to any NYSBA Mock Trial event that is held online. As far as there is any contradiction between rules in this Section 16 and rules in other sections of this rulebook, this Section 16 controls.
- b. **Video conference platform hosting:** Mock trial coordinators will determine how rounds will be virtually hosted. They may use Court Monitors to set up virtual rounds, issue invitations to the participants and spectators, and assist with any technological issues prior to and during rounds.

- c. **Video conferencing platform naming:** As soon as participants enter the video conferencing platform courtroom, they will change their video conferencing platform names according to the following naming scheme which will allow judges to identify video conferencing platform accounts by their roles:

Examples:

(P for Prosecution, D for Defense, Student's real name and how they would like to be addressed, role, and witness character name if a witness)

P – John Smith (he/him) – attorney

P– Jane Jones (they/them) – Witness – Character name

All other prosecution and defense witnesses and attorneys will do the same.

- d. **Video and Audio:** The following rules govern the use of video and audio by participants in each trial.
- i. **Pretrial Matters:** During introductions, anyone being introduced for the record may have their microphone on. All other participants should have their microphones muted.
 - ii. **Opening and Closing Statements:** During opening and closing statements, the only people who will have their microphones on are the presiding judge and the attorney giving the current opening or closing statement. All other participants will have their microphones muted.
 - iii. **Direct and Cross examination -** The witness will always have their microphones on. The attorneys examining the witness will always have their microphones on. The objecting attorneys (i.e., on direct examination the attorney who crosses that witness and on cross examination the attorney who directs that witness) will mute their microphones except during objections. All other participants should have their microphones muted.

- e. There will be no video breakout rooms for bench conferences. All bench conferences shall be conducted constructively on the host screen.
- f. Documents, Exhibits, and Demonstrative Aids:
 - i. Access to Documents: All participants should assume that all other student participants and the presiding judge have a copy of the case in front of them and access to all the exhibits and case documents. Students need not show opposing counsel documents prior to the admission of those documents. All students must acknowledge that they have access to these documents.
 - ii. Timekeeping: Timekeepers may temporarily unmute themselves to inform the judge that one minute is left and that time is finished. Any discrepancy between the timekeepers shall be resolved by the judge.
 - iii. Technical Issues: Should it become clear that any party is experiencing technical issues (video conferencing platform audio or video are not working, or a student loses their connection) the presiding judge may request that time be stopped until the issues are resolved. Students will notify the presiding judge if they or a performing teammate are experiencing technical issues. Students will do this verbally as soon as the connection is lost, unless another student is conducting opening or closing statements in which case, they will only notify the judge if they cannot hear the opposing opening or closing. Each team may designate one alternate lawyer and one alternate witness to substitute during the round if a student's connection is lost and cannot be resolved in a timely manner. The names of the alternates must be submitted at the beginning of the round.
 - iv. Use of Electronics: The ban on use of electronics is waived. Students may make use of any electronic device they wish to use. However, this does not permit them to communicate with individuals they would not otherwise be permitted to communicate with. In other words, students may use their electronic devices, but they are still not permitted to communicate with anyone not on their roster (in particular, they may not communicate with their coaches during the trial.)

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**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
TOURNAMENT
POLICIES AND
PROCEDURES
PART II**

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MOCK TRIAL TOURNAMENT POLICIES AND PROCEDURES

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

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

1. GENERAL POLICIES

- a. All mock trial rules, regulations, and criteria for judging apply at all levels of the Mock Trial Tournament.
- b. The Simplified Rules of Evidence and Procedure contained in Part III govern the trial proceedings.
- c. County Coordinators administer county tournaments. County Coordinators have sole responsibility for organizing, planning, and conducting tournaments at the county level and should be the first point of contact for questions at the county level.
- d. For any single tournament round, all teams are to consist of three attorneys and three witnesses.
- e. For all tournament rounds, one judge will be utilized for trial re-enactments.
- f. Teams must not identify themselves by their school's name to the judge prior to the announcement of the judge's decision.
- g. If a team member who is scheduled to participate in a trial enactment becomes ill, injured, or has a serious conflict and as a result cannot compete, then the team may substitute an alternate team member. **If an alternate team member is not available, the local coordinator may declare a forfeit or reschedule the enactment at their sole discretion.**
- h. Members of a team may play different roles in different rounds, or other students may participate in another round.

- i. Winners in any single round will be asked to switch sides in the case for the next round. Where it is impossible for both teams to switch sides, a coin flip will be used to determine assignments in the next round.
- j. Teacher-coaches of teams who will be competing against one another are required to exchange information regarding the names and gender (with preferred pronouns) of their witnesses at least three days prior to each round.
- k. No attorney may be compensated in any way for his or her service as an attorney-advisor to a mock trial team or as a judge in the Mock Trial Tournament. When a team has a student or students with special needs who may require an accommodation, the teacher-coach **MUST** bring this to the attention of the County Coordinator at least two weeks prior to the time when the accommodation will be needed.
- l. The judge must take judicial notice of the Statement of Stipulated Facts and any other stipulations.
- m. Teams may bring perceived errors in the problem or suggestions for improvements in the tournament rules and procedures to the attention of the LYC staff at any time. These, however, are not grounds for protests. Any protest arising from an enactment must be filed with the County Coordinator in accordance with the protest rule in the Tournament Rules.

2. SCORING

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

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

3. LEVELS OF COMPETITION

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

Region 1West

Region 2Central

Region 3Northeast

Region 4Lower Hudson

Region 5New York City (NYC-A)

Region 6New York City (NYC-B)

Region 7Nassau County

Region 8Suffolk County

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

4. COUNTY TOURNAMENTS

- a. All rules of the New York State Mock Trial Tournament must be adhered to at tournaments at the county level.
- b. In these tournaments, there are two phases. In the first phase, each team will participate in at least two rounds before the elimination process begins, once as plaintiff/prosecution and once as defendant. After the second round, a certain number of the original teams will proceed to the second phase in a single elimination tournament. Prior to the competition, and with the knowledge of the competitors, the County Coordinator may determine a certain number of teams that will proceed to the Phase II single elimination tournament. While this number may be more or less than half the original number of teams, any team

that has won both rounds based on points, but whose combined score does not place it within the established number of teams, **MUST** be allowed to compete in the Phase II single elimination tournament.

- c. The teams that advance to Phase II do so based on a combination of wins and point differential, defined as the points earned by a team in its Phase I matches minus the points earned by its opponents in those same Phase I matches. All 2-0 teams automatically advance; teams with a 1-1 record advance based upon point differential, then upon total number of points in the event of a tie; if any spots remain open, teams with a record of 0-2 advance, based upon point differential, then upon total number of points in the event of a tie.
- d. If the number of teams going into the single elimination phase is odd, the team with the most wins and highest combined score will receive a bye. If any region starts the year with an odd number of teams, one team from that region may receive a bye, coin toss, etc.
- e. Phase II of the contest is a single round elimination tournament; winners advance to the next round.
- f. At times, a forfeit may become a factor in determining aggregate point totals and which teams should advance to the single elimination tournament. Each county should review its procedures for dealing with forfeits, considering the recommended procedures below. Please note that due to the variety of formats in use in different counties, it is strongly urged that each county develop a system which takes its own structure into account and which participants understand prior to the start of the local tournament. That procedure should be forwarded to the New York State Mock Trial Program Manager, before the first round of competition is held.
- g. If a county has an established method for dealing with forfeits, or establishes one, then that rule continues to govern. If no local rule is established, then the following State rule will apply:
In determining which teams will advance to the single elimination tournament; forfeits will first be considered to cancel each other out, as between two teams vying for the right to advance. If such canceling is not possible (as only one of two teams vying for a particular spot has a forfeit victory), then a point value must be assigned for the forfeit. The point value to be assigned should be derived from averaging the team's point total in the three matches (where possible) chronologically closest to the date of the forfeit; or if only two matches were scheduled, then double the score of the one that was held.

5. REGIONAL TOURNAMENTS

- a. Teams who have been successful in winning county level tournaments will proceed to regional level tournaments. Coordinators administer regional tournaments. Coordinators have sole responsibility for organizing, planning, and conducting tournaments at the regional level. Participants must adhere to all rules of the tournament at regional level tournaments.
- b. Regional tournaments are held in counties within the region on a rotating basis. Every effort is made to determine and announce the location and organizer of the regional tournaments before the new mock trial season begins.
- c. All mock trial rules and regulations and criteria for judging apply, at all levels of the Mock Trial Tournament.
- d. The winning team from each region will be determined by an enactment between the two teams with the best records (the greatest number of wins and greatest point differential) during the regional tournament. The winning team from each region will qualify for the State Finals in Albany.
- e. The regional tournaments **MUST** be completed no later than 16 days prior to the State Finals (preferably by April 30). Due to administrative requirements and contractual obligations, the Statewide Coordinator must have in its possession the schools' and students' names by this deadline. Failure to adhere to this deadline may jeopardize hotel blocks set aside for a region's teacher-coaches, attorney-advisors and students coming to Albany for the State Finals.

6. STATEWIDE FINALS

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

- b. Costs for additional students (more than 9) and adult coaches and/or advisors (more than 2) will **not** be covered by the New York Bar Foundation grant or the LYC Program. The Mock Trial Program Manager is **not** responsible for making room arrangements and reservations for anyone other than the nine students, one teacher-coach and one attorney-advisor for each team. However, the Mock Trial Program Manager may choose to make those arrangements for the additional team members. This applies to team members only, not guests. If the Program Manager chooses **not** to make the arrangements, every attempt will be made to pass along any special hotel rates to these other participants. Additional team members attending the State Finals may participate in organized meal functions but will be responsible for paying for their participation. **The teacher-coach must advise their school administration of the school's responsibility to cover those additional charges and obtain their approval in advance.** The Mock Trial Program Manager will provide an invoice to the Coach to submit to the school's administrator. A purchase order must then be submitted to the Mock Trial Program Manager in Albany immediately after the school's team has been designated as the Regional Winner who will be participating in the State Finals in Albany. In most cases, the school will be billed after the State Finals. However, it is possible that a school may be required to provide payment in advance for their additional team members.
- c. Each team will participate in two enactments the first day, against two different teams. Each team will be required to change sides—plaintiff/prosecution to defendant, defendant to plaintiff/prosecution—for the second enactment. Numerical scores will be assigned to each team's performance by the judges.
- d. The two teams with the most wins and highest numerical score will compete on the following day, except that any team that has won both its enactments will automatically advance, regardless of its point total. In the rare event of three teams each winning both of their enactments, the two teams with the highest point totals, in addition to having won both of their enactments, will advance.
- e. The final enactment will be a single elimination tournament. Plaintiff/prosecution and defendant will be determined by a coin toss by the Mock Trial Program Manager. All teams invited to the State Finals must attend the final trial enactment.
- f. A judge will determine the winner. **THE JUDGE'S DECISION IS FINAL.**

7. MCLE CREDIT FOR PARTICIPATING ATTORNEYS AND JUDGES

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

One (1) CLE credit hour may be earned for each 50 minutes of participation in a **high school** or college law **competition**. **A maximum of three (3) CLE credits** in skills may be earned for judging or coaching mock trial competitions **during any one reporting cycle**, i.e., within a two-year period¹.

Newly admitted attorneys (less than 24 months) are NOT eligible for this type of CLE credit.

The New York State Bar Association's Continuing Legal Education Department is the accredited provider of CLE approved by the New York State Continuing Legal Education Board. The procedure is as follows:

- a) The Mock Trial Program Manager will provide the County Coordinators with a copy of the **Request for CLE Credit Verification Form** to disseminate to attorneys/judges participating in the mock trial tournament in their county. The form is also available in this case booklet, as well as on the Mock Trial page of the NYSBA website at <https://nysba.org/nys-mock-trial/>.
- b) **Request for CLE Credit Verification Forms** must be signed by the attorney/judge and returned to the County Coordinator. The County Coordinator must return the signed copy by mail or email to the Mock Trial Program Manager in Albany **no later than June 30 of the current tournament season** for processing. **Any forms received after this date will NOT be processed for MCLE credit.**
- c) MCLE certificates will be sent by **email** to the attorney/judge requesting the credit. **MCLE credit cannot be provided without the signed Request for CLE Credit Verification Form.** The attorney/judge **MUST** provide a **valid email address** on the form. A copy of the **Request for CLE Credit Verification Form** follows (also available online) <https://nysba.org/nys-mock-trial/>.

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

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

PART III

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SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

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

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

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

1. SCOPE

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

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

2. RELEVANCY

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

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

Example:

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

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

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

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

Examples:

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

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

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

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

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

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

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

Examples:

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

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

In the same trial, the evidence shows that the victim died after William struck him in the larynx. William's defense is that the death was completely accidental and that the fatal injury suffered by his victim was unintended and a fluke. The prosecution seeks to offer evidence that William has a black belt in martial arts, and therefore has knowledge of how to administer deadly strikes as well as the effect of such strikes. This evidence would be admissible to show the death was not an accident; rather, William was aware that the strike could cause death.

3. WITNESS EXAMINATION

a. Direct Examination (attorneys call and question witnesses)

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

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

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

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

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

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

Objections:

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

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

Objection:

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

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

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

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

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

Objection:

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

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

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

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

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

Example:

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

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

Examples:

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

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

Rule 307: IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION.

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

"Have you ever been convicted of criminal possession of stolen property?"

Objections:

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

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

c. Re-Direct Examination

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

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

Objection:

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

d. Re-Cross Examination

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

Objection:

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

e. Argumentative Questions

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

Example:

“Why were you driving so carelessly?”

Objection:

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

f. Compound Questions

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

Examples:

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

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

Objection:

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

g. Asked and Answered Questions

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

Objection:

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

h. Speculation

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

Example:

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

Objection:

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

4. HEARSAY

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

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

REASONS FOR EXCLUDING HEARSAY: The reason for excluding hearsay evidence from a trial is that the opposing party was denied the opportunity to cross-examine the declarant about the statement. The declarant is the person who made the out-of-court statement. The opposing party had no chance to test the declarant's perception (how well did she observe the event she purported to describe), **their** memory (did **they** really remember the details **they** related to the court), **their** sincerity (was **there** deliberate falsifying), and **their** ability to relate (did **they** really mean to say what now appears to be the thrust of **their** statement).

The opportunity to cross-examine the witness on the stand who has repeated the statement is not enough because the judge or the jury is being asked to believe what the declarant said.

Example:

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

5. EXCEPTIONS

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

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

Example:

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

(ADDED 1.31.2022)

Rule 402-b: STATEMENT OF A CO-CONSPIRATOR: A judge may admit hearsay evidence if it is a prior out-of-court statement offered against a party and is a statement by a co-conspirator of a party made during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered.

Example:

Jane and Jill are charged with conspiracy to sell illegal drugs. During that alleged conspiracy, Jill approached an undercover police officer and said: “We have two kilos for sale. How much are you willing to pay?” At Jane’s trial, the prosecution may try to get the officer’s testimony of Jill’s out-of-court statement admitted into evidence as an admission against a co-conspirator’s interest. The court will admit this statement as an exception to hearsay if the prosecution has demonstrated that Jill was a co-conspirator, and this statement was made in the course and in furtherance of the conspiracy. However, even if the court admits the evidence, the statements alone cannot be used to establish the existence of the conspiracy.

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

Example:

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

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

Example:

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

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

Example:

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

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

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

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

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

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

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

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

Example:

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

6. OPINION AND EXPERT TESTIMONY

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

Example:

(General Opinion)

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

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

Objection:

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

Example:

(Lack of Personal Knowledge)

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

Objection:

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

Example:

(Opinion on Outcome of Case)

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

Objection:

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

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

Example:

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

Objection:

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

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

7. PHYSICAL EVIDENCE

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

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

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

Have exhibit marked for identification. *“Your Honor, please mark this as Plaintiff’s Exhibit 1 (or Defense Exhibit A) for identification.”*

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

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

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

Objection:

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

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

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

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

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

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

Objection:

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

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

Objection:

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

9. PROCEDURAL RULES

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

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

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

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

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

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

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

the defendant is the person who committed the crime charged. (Source: NY Criminal Jury Instructions).

Rule 902: PLAINTIFF’S BURDENS OF PROOF (civil cases).

901.1 Preponderance of the Evidence: The plaintiff must prove their claim by a fair preponderance of the credible evidence. The credible evidence is testimony or exhibits that the trier of fact (jury or judge) is worthy to be believed. A preponderance of the evidence means the greater part of such evidence. It does not mean the greater number of witnesses, or the greater length of time taken by either side. The phrase refers to the quality of the evidence, *i.e.*, its convincing quality, the weight, and the effect that it has on the trier of fact. (Source: NY Pattern Jury Instructions, §1:23).

901.2 Clear and Convincing Evidence: (To be used in cases involving fraud, malice, mistake, incompetency, etc.) The burden is on the plaintiff to prove fraud, for instance, by clear and convincing evidence. This means evidence that satisfies the trier of fact that there is a high degree of probability that the ultimate issue to be decided, *e.g.*, fraud, was committed by the defendant. To decide for the plaintiff, it is not enough to find that the preponderance of the evidence is in the plaintiff’s favor. A party who must prove their case by a preponderance of the evidence only needs to satisfy the trier of fact that the evidence supporting their case more nearly represents what actually happened than the evidence which is opposed to it. But a party who must establish their case by clear and convincing evidence must satisfy the trier of fact that the evidence makes it highly probable that what they claim is what actually happened. (Source: NY Pattern Jury Instructions, §1:64).

Rule 903: DIRECT AND CIRCUMSTANTIAL EVIDENCE

903.1 Direct evidence: Direct evidence is evidence of a fact based on a witness’s personal knowledge or observation of that fact. A person’s guilt of a charged crime may be proven by direct evidence if, standing alone, that evidence satisfies the factfinder (a judge or a jury) beyond a reasonable doubt of the person’s guilt of that crime. (Source: NY Criminal Jury Instructions).

903.2 Circumstantial evidence: Circumstantial evidence is direct evidence of a fact from which a person may reasonably infer the existence or non-existence of another fact. A person's guilt of a charged crime may be proven by circumstantial evidence, if that evidence, while not directly establishing guilt, gives rise to an inference of guilt beyond a reasonable doubt. (Source: NY Criminal Jury Instructions).

NOTE: The law draws no distinction between circumstantial evidence and direct evidence in terms of weight or importance. Either type of evidence may be enough to establish guilt beyond a reasonable doubt, depending on the facts of the case as the factfinder (a judge or a jury) finds them to be. [Source: NY Criminal Jury Instructions].

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

PART IV

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CASE SUMMARY**PEOPLE OF THE STATE OF NEW YORK V. SHAWN MILLER**

1. Shawn Miller and Sidney Taylor have been the best of friends since elementary school. Growing up in the same working-class neighborhood, they attended the same schools in their hometown of Far Rockaway, New York. They did everything together. In grade school, they played on the same softball and soccer teams. In middle and high school, they would go to the movies together, hang out at parties, and always watch out for each other.
2. While their parents were doing their best to make their lives as comfortable as economically possible, Shawn and Sidney always wanted more. This desire for financial enrichment was fueled when in their eleventh-grade business course, they had to read a book by and about a very successful Wall Street stockbroker who started from nothing and who, along with his child, at one time had been homeless. Shawn and Sidney were fascinated by the story and talked about it all the time. Sidney would always say, “If this person could do this, there is no reason why we can’t do it too.”
3. In their senior year, Shawn and Sidney took all the economic, business and marketing courses available. They even joined the mock stock market investment club so that they could learn as much as they could about the financial markets and investing. While Sidney earned good grades and scored a nearly perfect SAT score, Shawn did not fare so well. Sidney was accepted into Wharton School of the University of Pennsylvania, matriculating in September 2006. Shawn attended the Far Rockaway Community College. Although they were many miles apart, the two friends were in constant contact. They would talk at least once per week. Sidney would come home during school breaks and summer recesses, allowing the friends to resume their usual activities. Shawn graduated from FRCC in May 2008 with an associate degree in business administration. While Shawn could have gone on to New York University to pursue a bachelor’s degree, Shawn had had enough of school and started to look for employment. In August 2008, Shawn decided to take a job in the mailroom at Behman Brothers, a large brokerage house and investment bank on Wall Street. After nine months on the job, a Behman manager, Ryan Williams, recognized that Shawn had an outgoing personality, and in their frequent discussions, the manager believed that, despite rudimentary knowledge of the financial markets, Shawn could nevertheless be a good stock “salesperson,” if not a stockbroker. Shawn was made a junior associate in May 2010.

4. In January 2012, Shawn began to study for several Financial Industry Regulatory Authority (FINRA) examinations so that they could obtain a license to trade securities. After several failures, Shawn, in October 2015, finally passed the Series 6 exam (mutual funds/variable annuities) and the Series 7 exam (stockbroker). Shawn's sponsor for the exams was Ryan Williams.
5. After graduating in May 2010, Sidney went to work for Terrill Hynch, Fierce, Phenner & Smythe, the premier brokerage house on Wall Street. Sidney worked for several years in the commercial finance unit before transitioning to the firm's hedge fund that traded in mortgage-backed securities. Sidney passed on the first try, all the securities examinations for which they had sat: Series 6, Series 7, Series 22 (sales representative), Series 26 (investment company - mutual funds), Series 31 (Futures - managed funds exam) and Series 63 (uniform securities agent state law exam).
6. Despite being very well compensated, Sidney was not content and wanted more. Sidney invited Shawn to lunch one day, August 1, 2016, to discuss the possibility of going into business together. The plan was for Shawn to leave Behman Brothers and start an investment consulting firm. The firm would in fact be a hedge fund, called S&S Derivatives, LLC. Because Sidney had a DO NOT COMPETE clause in their employment contract, Sidney was prohibited from working with any business involved in the trading of securities in the tri-state area (New York/New Jersey/Connecticut) for one year. Shawn had no such prohibition.
7. Sidney would join the new firm after his/her/their graduation from Columbia in May 2017. In the meantime, Shawn would bring over some clients from Behman Brothers and actively solicit new investment clients. The plan was for Sidney to advise Shawn on how to invest the clients' money until such time as Sidney joins the firm.
8. In November 2016, Shawn resigned from Behman Brothers. In January 2017, S&S Derivatives, LLC was launched. After having graduated from Columbia, Sidney joined the firm as a full partner in August 2017. Shawn had developed such a knack for bringing in new clients that Shawn took on that task for the firm. Because of Sidney's superior technical knowledge developed at two of the best business schools in the country and at the largest brokerage house on the Street, Sidney would take the lead on making the investments and preparing the monthly client statements. This division of labor worked perfectly and before long the firm was earning

sizable returns on their clients' investments. The success of the firm was making the two friends very wealthy.

9. After several years of making unbelievable investment returns for their clients, the Security and Exchange Commission started an investigation. The SEC had received a complaint in August 2019 from one of the firm's clients, Fran Ashcott. Fran had been reading on one of their favorite financial blogs about hedge funds that consistently pay double-digit returns to investors month after month even during stock market downturns. The blog warned the readers to be cautious in dealing with such hedge funds and to demand more information about their accounts. Fran, a retired college professor, and their spouse had invested their entire 3.5-million-dollar nest-egg with S&S Derivatives. Fran had met Shawn shortly after Shawn had become a junior associate at Behman Brothers. Fran and their spouse had an account at Behman Brothers. They were impressed with Shawn and decided to move their money to S&S Derivatives in March 2017.
10. After reading the financial blog, Fran contacted Shawn to inquire into (1) the status of their account beyond the monthly statement and (2) the basis of the firm's investment strategy. Shawn appeared to be somewhat evasive, reassured Fran that their account was sound and directed Fran to contact Sidney if Fran wanted more assurance. Fran called Sidney five or six times over a two-week period to discuss the matter. Each time, Sidney's executive assistant, Pat Nolan, told Fran that Sidney was unavailable, but that Sidney would call Fran soon. Pat worked primarily with Sidney, setting up Sidney's daily calendar, serving as office manager and assisting Sidney in getting out the monthly statements.
11. Having not heard from Sidney as promised, Fran became frustrated. The SEC's investigation had stalled due to bureaucratic malaise. So, on October 15, 2019, Fran contacted the Investor Protection Bureau of the New York Attorney General's Office to file a formal complaint. The matter was assigned to investigator/analyst Sheridan Holmes, who had been with the AG's Office since 2010. Sheridan Holmes had worked in the securities industry as a trader until the stock market crashed in September 2008. Holmes knows the ins and outs of the stock market and keeps up to date on all the new, and sometimes exotic, securities. Holmes reviewed the books of S&S Derivatives and determined that the returns were too uniform over too long a period. Holmes suspected that a phony investment scheme was afoot and recommended to the Attorney General that the principals of S&S Derivatives be arrested and prosecuted.

12. On February 5, 2020, the Attorney General’s office indicted Shawn Miller and Sidney Taylor under the Martin-Webb Act (General Business Law, Article 23-A, § 352 et seq.) on charges of securities fraud. It appeared to the state prosecutors that the principals at S&S Derivatives started to manipulate the books to make it appear that its investors were receiving double-digit returns as promised in the firm’s prospectus. As new clients were brought into the hedge fund, the new money was credited to the accounts of older clients to make it appear that these older accounts had earned the promised returns. The new money was deposited into a special business account at a bank, and the money was moved among the different clients’ accounts to create the impression of trading. A client who requested a redemption of their account would receive the money they had requested, plus a printed confirmation of the “sale” of some or all the securities in their account. All clients receive 1099s showing interest, dividends, and sales proceeds at the end of the year so that they can prepare their income tax returns. It is the position of the Attorney General that when the S&S clients received their monthly and annual statements, they, in effect, would simply receive false confirmations of trades. It would be almost impossible for a client to devise that their statement was false. Fran Ashcott became concerned because they realized that ten to fifteen percent return in the current economy was not realistic.

The principals at S&S Derivatives had always intended to resume legitimate trading activity and restore all their clients’ accounts. But with the expectation that the economy was about to weaken, investments slowed almost to a halt, and there was not enough cash to pay out as more and more clients demanded redemption. Furthermore, because of the pressures brought on by the inquiries from Fran Ashcott, it became difficult and ultimately impossible for S&S Derivatives to reconcile its clients’ accounts. The prosecutors believed that the scheme worked for such a long time because new clients were always brought to the firm. With the anticipated downturn in the economy, new clients had become harder to recruit and the firm started to have difficulty maintaining the scheme, according to the prosecutors.

13. Pat Nolan was named as an unindicted co-conspirator and agreed to testify for the prosecution. Pat Nolan maintains that they were unaware of the alleged securities fraud and did not actively participate in the scheme. Pat insists that their job was merely to prepare the monthly and annual statements according to Sidney’s instructions and to place the statements in the mail. Nolan’s suspicions were aroused once when they overheard Sidney say to Shawn prior to the June 2018

statements going out, “Did you ever think it could be so easy?! If they only knew.” Shawn was heard to say, “Way too easy I say. He is doing a great job for us.” Pat at the time dismissed the statements as idle chatter. Pat now believes that the comments were about the securities fraud scheme. Shawn claims that they and Sidney were talking about the New York Yankees. Being huge Yankees’ fans, Shawn maintains that they were excited about well the Yankees were playing in April, May, and most of June of 2018 and how easy the team was racking up wins during that time-period. Shawn and Sidney are season ticket holders of the Yankees. Their parents are lifelong Yankees’ fans and season ticket holders as well. The “he” Shawn claims they were talking about when they said “He is doing a great job” was pitcher Luis Severino, who was on pace at that time to a season of 20+ wins. Pat Nolan believes the “he” Shawn referenced is Bernie Madlock, Shawn, and Sidney’s accomplice, who worked at the trading firm Storgan Manly, LLC.

14. Ryan Williams, the Behman Brothers’ manager, was shocked upon learning of the criminal case against Shawn. Ryan Williams did not believe that Shawn would engage in securities fraud. No longer in the securities industry because of the recent collapse of Behman Brothers, Ryan nevertheless pledged to do whatever they could do to help Shawn. It is believed that Behman Brothers failed, in part, because of improper trading activities occurring primarily in the division managed by Williams. Although Ryan Williams has not yet faced criminal or civil charges, it is believed that Williams permitted his unit to sell mortgaged-backed securities that were improperly rated as investment grade AAA. Ryan Williams now lives on their farm in upstate New York and is writing a book about the fall of Behman Brothers.
15. Shawn maintains knowing nothing about the allegedly illegal investment scheme. Shawn claims that Sidney was supposed to invest the clients’ money in the highly lucrative derivatives market, such as credit default swaps, forward contracts, and futures contracts. Shawn insists that Sidney kept the books, supposedly made all the investment calls and solely produced the monthly reports. The firm’s auditor was Meal & Muchie, which assigned Mickey Pennman as the lead auditor on the S&S account. Mickey Pennman, who also happened to be Shawn’s personal accountant, believes Sidney misled Shawn. Mickey Pennman believes Sidney kept two sets of books. The book that Pennman believes they examined, on an interim basis, contained the phony numbers. Pennman claims that they adhered to generally accepted auditing principles as well as PCAOB (Public Company Accounting Oversight Board) standards in their financial reporting

and does not at this time believe they have incurred any legal exposure.

16. Sheridan Holmes, the analyst/investigator for the NYS Attorney General's Office, maintains that Shawn Miller's claimed ignorance as to what was going on at S&S Derivatives is nonsense. Alleging that Shawn Miller has earned millions of dollars during the short time S&S Derivatives has been in business, Sheridan Holmes believes Shawn Miller's story that they did not know anything about the illegal activities taking place there is incredible. According to Sheridan Holmes, Shawn Miller wants everyone to believe that Shawn is not very knowledgeable about derivatives trading, played no part in preparing the monthly statements and did not manipulate their clients' accounts to make it appear that legitimate trades had occurred. Sheridan Holmes claims to have proof that Shawn Miller regularly reviewed the monthly statements. The Attorney General also has proof in the form of a wiretap implicating the two principals at S&S Derivatives in a cover-up of their illegal activities. For derivative trading fraud to be successful, the securities trader would need an accomplice at the clearing house, the derivative market maker, to produce the phony documentation showing that trades had occurred in various accounts. Without the paper trail, an auditor would be alerted to suspicious activities in the accounts. Most of S&S trades were made with Storgan Manly LLC, a medium-sized holding company with a large derivatives unit. The account executive at Storgan Manly, who executed S&S trades, was Bernie Madlock, the clearing agent. Mr. Madlock worked at Behman Brothers between 2010 and 2013 before moving over to Storgan Manly. Sheridan Holmes interviewed Mr. Madlock who admitted that he had, for several years, prepared documents showing non-existent trades for S&S Derivatives. Unfortunately, Mr. Madlock was the victim of a very violent mugging and has been in a coma since January 2020.
17. Legal counsel for Shawn, believing that a separate trial was warranted given the circumstances, moved for, and was granted a severance. Sidney went to trial first and was convicted as charged of committing securities fraud and conspiracy to commit securities fraud. While out on bail awaiting sentencing, Sidney jumped bail and is residing in a country that has no extradition treaty with the United States.
18. At Shawn's trial, the prosecution must show beyond a reasonable doubt that Shawn engaged in securities fraud and/or engaged in a conspiracy to commit securities fraud.

Witnesses:

Prosecution

- Sheridan Holmes
- Fran Ashcott
- Pat Nolan

Defense

- Shawn Miller
- Mickey Pennman
- Ryan Williams

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LIST OF STIPULATIONS

1. All witness statements are deemed to have been sworn or affirmed, and duly notarized.
2. All items of evidence are originals and eligible for use during the match, following proper procedure for identification and submission.
3. Any enactment of this case is conducted after the named dates in the Case Summary and the witness affidavits. (Please note that the Case Summary is provided solely for the convenience of the participants in the Mock Trial Tournament. Said summary itself does not constitute evidence and may not be introduced at the trial or used for impeachment purposes.)
4. All pre-trial motions and other evidentiary suppression issues brought by the defense have been resolved and in favor of the government.
5. The United States Federal Reserve in early 2017 issued a forecast that the U.S. economy would likely be in a recession by the first quarter of 2018 and continue for most of that year.
6. The U.S. stock market crashed in September 2008. A world-wide financial slowdown in the capital markets occurred in 2019.
7. No other stipulations shall be made between the petitioner/plaintiff/prosecutor and the respondent/defense, except as to the admissibility of evidentiary exhibits provided herein.

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AFFIDAVIT OF SHERIDAN HOLMES*(Witness for the Prosecution)*

1. My name is Sheridan Holmes. I am a Senior Investigator/Analyst with the Investor Protection Bureau of the New York Attorney General's Office. My office is located at 120 Broadway in New York City.
2. I am 55 years old and have been employed as an investigator/analyst for the Attorney General's office since 2010. Prior to my current employment, I worked in the securities industry as a trader. I worked on the floor of the New York Stock Exchange for Coldman Machs, a prominent brokerage house and investment bank on Wall Street, for about ten years. I was let go in November 2008 following the stock market crash in the September 2008. In 2009, I tried to find another job in the securities business, but the employment market was tight, or the pay was not there. I even tried to get a job with the Securities & Exchange Commission that year. I was unceremoniously rejected. I was then hired by the Attorney General's office and have been there ever since. My job is to investigate allegedly illegal investment schemes and, if found, report them to the Attorney General, who decides whether to prosecute offenders under the New York Martin-Webb Act. It's my responsibility to know the ins and outs of the stock market and I have managed to stay up to date on all the new, and sometimes exotic, securities out there.
3. On October 15, 2019, my office was contacted by a Fran Ashcott, alleging that they and their spouse had made a sizable investment with S&S Derivatives, LLC. My assistant directed Fran Ashcott to come down to the office on October 17, 2019, to discuss this matter with me. At the meeting, Ashcott informed me that they had become concerned about their investment because the firm was refusing to return their calls or give them more information about their account. Fran Ashcott told me they had contacted the SEC, but that the SEC was not doing anything. I am not surprised because that agency is full of bungling incompetents. I understand the new SEC commissioner is cleaning house.
4. Derivatives trading is quite complicated, but very lucrative. In 2017, the notional value of the derivatives market was approximately 427 trillion dollars. By the end of 2019, the outstanding positions had risen to 640 trillion dollars. The derivatives markets are the financial markets for trading derivatives. There are essentially two types of markets: exchange traded market and over-the-counter market. Looking at the website of S&S Derivatives, LLC, it appears that this firm

participated for the most part in the over-the-counter derivatives market and somewhat in the futures market.

5. Derivatives are financial contracts, like forwards (over the counter), futures (exchange), options (exchange) and swaps (over the counter). The price for the financial instruments is derived from something else. This “something else” is called the underlying, and the price of the underlying on which the derivative is based could be that of an asset like a collateralized debt obligation (CDO) - securitized residential mortgage obligations for example, or it could be an index, such as exchange rates or interest rates. Almost anything that can be securitized, rated, and priced can serve as an underlying.
6. Derivatives investors typically earn returns by seeking to minimize risk when the value of the underlying investment changes, by hedging. This commonly includes short selling. With short selling, or “going short,” the investor makes money if the asset declines in value and she sells the asset at the contract price. So, when the investor goes to repurchase the asset at the lower value, she pockets the difference in the price. This is what S&S Derivatives was doing in the over-the-counter derivatives market and in the exchange market in its first year or so of operation.
7. When the worldwide economy started to soften in the **early part of second quarter 2018** due in large part to the trade war between the U.S. and China, S&S Derivatives could no longer keep the promise to provide double-digit returns to its clients. So, the principals at S&S Derivatives, Shawn Miller, and Sidney Taylor, started to manipulate the books to make it appear that its investors were receiving double-digit returns as promised in the firm’s prospectus. As new clients were brought into the hedge fund, the new money was credited to the accounts of older clients to make it appear that said older accounts had earned the promised returns. The new money was simply deposited into a special business account at a bank and the money was moved among the different clients’ accounts to create the impression of trading. A client who requested a redemption of their account would receive the money requested plus a printed confirmation of the “sale” of some or all the securities in their account. All clients received 1099s showing interest, dividends, and sales proceeds at the end of the year so that they could prepare their income tax returns. We believe that when the S&S clients received their monthly and annual statements, they in effect would simply receive false confirmations of trades. It would be practically impossible for a client to devise that their statement was false. Fran Ashcott became concerned because they realized that ten to fifteen percent return in this economy was not realistic. Fran was right!

8. To facilitate the fraud, S&S Derivatives needed someone on the inside of the derivative market maker who would prepare the phony trading slips. The auditors from S&S Derivatives's outside accounting firm, having no reason to suspect that the trading confirmation documents were fake, would issue favorable reports after the yearly audits. S&S Derivatives executed most of its trades with Storgan Manly LLC, a medium size holding company that had a large derivatives unit. One of the account executives working in the Storgan Manly derivatives unit was Bernie Madlock, a clearing agent, who I interviewed on December 2, 2019. He told me that he executed all the trades for S&S Derivatives and prepared the trade confirmation slips. He said, "I knew Shawn from our days working at Behman Brothers and they introduced me to Sidney at a Behman Brothers' holiday party in 2016." Mr. Madlock told them that he was now working in the derivatives unit at Storgan Manly. This unit was a clearing house for derivatives trading. Admitting to the illegal trading scheme, Mr. Madlock said that Sidney would deliver to him, on a flash drive, the "trades" Sidney wanted for each of the accounts and that he, Mr. Madlock, would then prepare the fake trading documents. According to Mr. Madlock, the scheme started **in the middle of 2018** and continued until this office began its investigation in October 2019. The flash drive was the best medium for engaging in this type of illegal activity. Phone calls could be too lengthy, and emails would have to be preserved under Sarbanes-Oxley.

9. When I visited S&S Derivatives on December 16, 2019, to review the firm's books, Shawn Miller told me that Sidney Taylor was out of the office. I carefully reviewed S&S's books and told **Shawn Miller** that the returns looked fishy because the reported returns were too uniform over too long a period. Mr./Ms./Mx. Miller, feigning ignorance, tried to look dumbfounded. I asked Shawn Miller whether they knew someone by the name of Bernie Madlock. Shawn told me that Mr. Madlock and they had worked at Behman Brothers at the same time. I then asked Shawn Miller when the last time was that they had any communication with Mr. Madlock. Shawn Miller claimed that it was at a holiday party Behman Brothers threw in December 2016. This was, of course, a lie. Shawn Miller also claimed to be unaware that Mr. Madlock had been providing fake trading documents to S&S, further claiming that Sidney Taylor oversaw all the trading activities for the firm and that s/he/them (Shawn Miller) was solely responsible for client development. How convenient! We would have called Mr. Madlock to testify about his part in this scheme, but in January 2020, before we could even get a written statement, he was the victim of a robbery that went bad and endured a vicious beating. Mr. Madlock is now in a coma.

10. During their interview, Pat Nolan, Sidney Taylor’s executive assistant, told me about a conversation they overheard between Shawn Miller and Sidney Taylor. In early July 2018, the three of them were working on the June monthly statements, Pat Nolan heard Sidney say to Shawn Miller, “Did you ever think this could be so easy?! If they only knew.” Shawn Miller replied, “Way too easy I say. He is doing a great job for us.” Pat Nolan asked Sidney about this conversation, and Sidney told Pat Nolan that, “Oh we were just talking about the Yankees. I can’t believe how well they’re doing this year. It probably won’t last.” Pat Nolan now claims on reflection that they weren’t talking about the Yankees, but about securities fraud going on at S&S right under their nose. Pat Nolan believes, as I do, that the “he” Shawn Miller claims to have been talking about when they said, “He is doing a great job for us” is actually Bernie Madlock. No doubt in my mind. Just look at the wiretap my office obtained. Who else were Shawn Miller and Sidney Taylor talking about on the wiretap other than Bernie Madlock as they were discussing how to cover up their illegal activities?
11. On February 5, 2020, the Attorney General indicted Shawn Miller and Sidney Taylor under the Martin-Webb Act (General Business Law, Article 23-A, § 352 et seq.) on charges of securities fraud and conspiracy to commit securities fraud. They were **both** arrested on February 6, 2020, provided the usual “perp walk,” and booked at Riker’s Island. They were **both** arraigned on February 9, 2020, in Supreme Court, New York County. Each pleaded not guilty to all the charges, and they were released after each posted bail in the amount of one million dollars.
12. We believe that the principals at S&S Derivatives had always intended to resume legitimate trading activity and restore all their clients’ accounts. But with the weakening economy, investments slowed almost to a halt and there was not enough cash to pay out as more and more clients demanded redemption. Moreover, because of the pressures brought on by the inquiries from Fran Ashcott, it became difficult and ultimately impossible for S&S Derivatives to reconcile its clients’ accounts. If S&S Derivatives had been able to continue to bring in new clients, the illegal investment scheme could probably have worked for a long time. But with the downturn in the economy, new clients had become harder to recruit. To protect investors like Fran, there needs to be more transparency in the derivatives market. To accomplish this, all derivatives should be traded on an exchange or through a clearing house, in my opinion.
13. Sidney Taylor went on trial first. Shawn Miller’s attorneys were able to convince the court to grant Shawn Miller a severance because they believed Shawn Miller would be called testify against Sidney Taylor. I don’t believe the prosecutors ever intended to call Shawn Miller to testify. They would

only lie anyway. In any event, Sidney Taylor was convicted as charged on all counts; remained on bail and surrendered their passport. Prior to sentencing, Sidney Taylor jumped bail, managed to get out of the country and may be residing in the Middle East, probably Dubai. Sidney Taylor is in the FBI's Top Twenty-Five Most Wanted list.

14. Shawn Miller's claimed ignorance as to what was going on at S&S Derivatives is just rich! There is no doubt in my mind that they learned how to commit securities fraud from Ryan Williams. Just look at the newspaper accounts about how Ryan Williams engaged in massive securities fraud that brought down Behman Brothers on October 30, 2019. Shawn Miller earned millions of dollars during the short time S&S Derivatives was in business and they now want us to believe that they did not know anything about the illegal activities taking place there. Give me a break! Shawn Miller also wants us to believe that they know little about derivatives trading, played no part in preparing the monthly statements, and did not manipulate their clients' accounts to make it appear that legitimate trades had occurred. However, we have proof that Shawn Miller regularly reviewed the monthly statements. We also have proof in the form of the wiretap I mentioned earlier where the two principals at S&S Derivatives discussed how to cover-up their fraud.
15. I worked on Wall Street as a trader for a long time. Now, I have been a securities fraud investigator for more than ten years. There are many honest professionals in the financial industry. But I have seen way too many scoundrels in this industry whose sole purpose is to lie, cheat and steal their way to prosperity. I had a great job on Wall Street and lost it because of the greed and the excesses of people like Ryan Williams. These Ryan Williams acolytes oversaw S&S Derivatives. We need to do all we can to rid ourselves of this plague. Of course, we should do this only after a fair trial.

To the best of my knowledge the above is true.

Sheridan Holmes

Sheridan Holmes

Dated: New York, New York
November 2, 2020

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AFFIDAVIT OF FRAN ASHCOTT*(Witness for the Prosecution)*

1. My name is Fran Ashcott. My spouse and I currently reside at 534 Clay Alley in New Rochelle, New York. Previously, we resided on Stratton Terrace in a very nice, gated subdivision of New Rochelle until we were the victims of a scam perpetrated by Shawn Miller and Sidney Taylor. Because of them, we lost all our retirement savings.
2. In June 2015, I retired after working 35 years as an English professor at Bartmoor College. My spouse, a chemical engineer, had retired the previous December from their job at a mid-size industrial company. Over the course of our respective careers, my spouse and I had amassed a 3.5-million-dollar retirement nest egg. Our money was managed by Behman Brothers, a company that had provided modest, but stable, returns on our investments over the years.
3. In April 2016, during our yearly meeting with our account managers at Behman Brothers, my spouse and I were introduced to Shawn Miller, who six years earlier had been promoted to the position of junior associate. Shawn was now assigned our retirement account. Both my spouse and I instantly felt comfortable with Shawn, given their natural “people friendly” demeanor.
4. Shawn’s management of our Behman Brothers’ accounts had resulted in consistent returns on our investment. However, we had been hoping for the more profitable double-digit returns that many of our friends thought we should have been receiving.
5. In early December 2016, we met with Shawn to discuss our accounts. At that time, Shawn told us about a new company, S&S Derivatives, LLC, that Shawn was planning to start in January 2017. Having known and worked with Shawn for the past eight months or so, we decided in March 2017 to take the risk and invest all our retirement accounts with S&S Derivatives.
6. From March 2017 through the second quarter of 2019, our investments with S&S Derivatives produced double-digit returns month after month. We were earning 10%, and some months even 15%, returns. This occurred even in months experiencing significant stock market downturns. Of course, we were very happy. **My spouse and I would regularly withdraw the monthly earnings to help with our living expenses, but never touched our initial investment.**
7. In early summer 2019, I began to hear about an investment blog that focused primarily on hedge funds. I subsequently began to read this blog daily. Many of the blog comments warned its readers about investing in hedge funds or investment companies that paid double-digit returns to investors, month after month, despite the economic conditions. The comments also advised readers that they

should demand more information from their account managers, such as where are our funds being invested and exactly how are our funds making money.

8. In July 2019, acting upon this advice, I contacted Shawn to inquire about the status of our account with S&S Derivatives. The information I specifically requested was information beyond the monthly statements that we had been receiving and background information on the firm's investment strategy. When I spoke with Shawn about these concerns, Shawn was somewhat evasive but assured me that our account was sound. For additional assurance, Shawn directed that I contact Sidney Taylor, a long-time friend of Shawn, who in August 2017 had joined S&S Derivative as a full-time partner. Sidney had apparently been taking the lead on making the investment decisions for their hedge fund clients and preparing the monthly client statements.
9. I attempted to contact Sidney five or six times over a two-week period in mid to late July 2019 to discuss our investment concerns. On each attempt, Pat Nolan, Sidney's executive assistant told me that Sidney was unavailable, but that Sidney would return my call soon.
10. Sidney never did return my calls. Becoming extremely frustrated, I then contacted the New York City office of the Securities and Exchange Commission in late August 2019 and filed a formal complaint. I believe the SEC made a cursory inquiry into our complaint, but because of bureaucratic ineptness the investigation had stalled.
11. On October 15, 2019, after not hearing anything further from the SEC, I contacted the Investor Protection Bureau of the New York Attorney General's Office to file a formal complaint. The matter was assigned to investigator/analyst Sheridan Holmes, who interviewed me several days later. I explained how Shawn had been evasive, how Sidney had failed to return my phone calls and why I was concerned about our account with S&S Derivatives.
12. My spouse and I were not trying to make trouble. We just wanted information about our money. So, when we learned in February 2020 that Shawn and Sidney had been indicted on securities fraud charges, we were devastated. My spouse and I expected we would most likely lose our entire retirement savings because we had invested it all with S&S Derivatives. As anticipated, we are now destitute. To make ends meet, I am now teaching English on a part-time basis at New Rochelle Community College and my spouse is a greeter at a local big box store.
13. I know that there are many people who believe that my spouse and I are partly responsible for our current situation. They accuse us of being excessively greedy, reckless with our retirement savings and not deserving of empathy. Perhaps we should not have invested all our money with S&S Derivatives, but that did not give Shawn and Sidney the right to do what they did to us.

14. It is difficult to believe that such a likable person as Shawn could have been involved in this despicable scheme. Having never met Sidney but knowing that they were not responding to our concerns, we believe that Sidney must have been the driving force behind this criminal endeavor. However, because Shawn and Sidney worked together so closely, it is impossible that Shawn was not aware of what Sidney was doing.

To the best of my knowledge the above is true.

Fran Ashcott

Fran Ashcott

Dated: New Rochelle, New York
November 9, 2020

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AFFIDAVIT OF PAT NOLAN*(Witness for the Prosecution)*

1. My name is Pat Nolan. I reside at 4 Ponsie Drive, Yonkers, New York.
2. I graduated from Paulson High School in Far Rockaway, New York in 2012. Following my graduation, I attended one year at J. Jay School of Business, studying to be an administrative assistant. I received my business school certificate in May 2013.
3. After completing my studies at J. Jay School of Business, I was hired by Sidney Taylor in August 2013 as their administrative assistant at Terrill Hynch, Fierce, Phenner & Smythe, the large Wall Street investment firm. I learned a lot through working at Terrill Hynch, which everyone knows is the largest brokerage house on “the Street.” Sidney took a particular interest in my work and my career, often giving me opportunities to study different investment scenarios and discussing with me what they thought were the best opportunities for their clients. With Sidney’s assistance and advice, I learned quickly about Wall Street and investments in general, and Sidney began to give me more responsibility beyond that of an administrative assistant. It wasn’t long before I began to assist in filling out monthly investment statements, and in other tasks that a secretarial employee wouldn’t ordinarily do.
4. In August 2016, Sidney came to me and told me that they was leaving Terrill Hynch and was enrolling in the one-year accelerated executive MBA program at Columbia, and that after graduation in May 2017, they would be joining with their old friend, Shawn Miller, in forming a new firm to be called S&S Derivatives, LLC. Sidney asked me to keep this information a secret, and promised me that if I stuck it out at Terrill Hynch for another year, they would make sure that I had a great job at S&S. When I asked about the non-compete clause from the employment contract that we all had to sign at Terrill Hynch, Sidney told me not to worry about it and that it’s only enforced against key personnel. I was also informed that Shawn Miller was bringing some of their clients over from Behman Brothers and that the new venture would make a lot of money.
5. In August 2017, after Sidney had finished at Columbia and had joined S&S, they called me and made good on their promise. I joined S&S in October 2017 as the office manager and as Sidney’s executive assistant. In addition to all the duties associated with those two titles, I continued to help Sidney fill out the monthly investment statements. I got a big raise and was the first person in my family to earn a six-figure income. Before long, S&S was making big money and I began to receive annual bonuses of \$20,000 or more.

6. The one problem I had with working at S&S was that I didn't think Mr./Ms./Mx. Miller really liked me. Miller's assistant told me that Mr./Ms./Mx. Miller didn't really want to hire me, because they didn't think I had the right training and background for such a responsible position, and that Mr./Ms./Mx. Miller wanted to stop my annual bonuses. I'm glad Sidney never gave in to that! With everything I did for S&S, and for Sidney, I earned my salary and bonuses fair and square.
7. Other than that, I loved working at S&S because of the family atmosphere. Sidney and Mr./Ms./Mx. Miller were old friends, and you could see that they loved working together, making big money and realizing their childhood dreams. It seemed like they could hardly believe their good fortune. Mr./Ms./Mx. Miller and Sidney would meet often to discuss company matters and on at least one day each month they would meet to go over client accounts. One day, in early July 2018, as we were working on the June monthly statements, I heard Sidney say to Mr./Ms./Mx. Miller, "Did you ever think this could be so easy?! If they only knew." Mr. /Ms./Mx. Miller replied, "Way too easy I say. He is doing a great job for us." I asked Sidney about this conversation, and they told me, "Oh we were just talking about the Yankees.... I can't believe how well they're doing this year. It probably won't last." I didn't think anything more about their conversation until very recently, but now I'm certain that they weren't talking about the Yankees, but about securities fraud going on at S&S right under my nose. I put 2 and 2 together and now really believe that the "he" Mr./Ms./Mx. Miller claims they were talking about when they said, "He is doing a great job for us" is Bernie Madlock, Mr./Ms./Mx. Miller's, and Sidney's accomplice, who worked at the trading firm Storgan Manly, LLC. We sent trading requests to Mr. Madlock all the time, but never by e-mail or regular mail. The requests were always on a flash drive. I even delivered the flash drive to Mr. Madlock on many occasions. I can't believe I didn't see what was going on, but I guess I just always see the good side of people. It never occurred to me that S&S was cheating innocent clients out of their hard-earned money.
8. I remember receiving a lot of calls in the summer of 2019 from one of our clients, Fran Ashcott, asking to speak with my boss. I guess Fran Ashcott called five or six times within a two-week period. I was instructed by Sidney that they were not available to speak to Mr./Ms./Mx. Ashcott. I kept telling Fran Ashcott that my boss would return the calls soon. I don't know if they ever did speak, but I did tell Sidney about every call, all in accordance with office protocol.
9. I was shocked upon learning that Sidney and Mr./Ms./Mx. Miller were indicted on charges of securities fraud. I was heartbroken when Sidney was convicted because I believe that if anyone is

guilty of fraud and conspiracy, it's Shawn Miller. I never did trust them and I'm certain that they are "knee-deep" in this scheme. It is impossible for Shawn Miller not to have known what was going on. I think that Shawn Miller should pay for their crimes, and that my boss shouldn't be the scapegoat for any hanky-panky. I wished Sidney's attorneys had called me to testify at Sidney's trial. The Attorney General also could have called me. Did they all think I would not have been truthful at Sidney's trial?

10. I know Mickey Penman thinks that Sidney and I kept two sets of books for S&S, but I am aware of only one set of books. We are not liars! I know it looks bad, and I feel bad for all our clients who were cheated by Shawn Miller, and that's why I went to the Attorney General's office and volunteered to testify in this case. The prosecutors knew that I had not intentionally done anything wrong, which is why I was simply referenced in the indictment as an unindicted co-conspirator. All I want is for the truth to come out, and I'm sure that when it does, Shawn Miller will be spending a lot of time in the Big House. I haven't seen or spoken to Sidney Taylor since the conviction, but I hope they are doing OK wherever they **are**.

To the best of my knowledge the above is true.

Pat Nolan

Pat Nolan

Dated: Yonkers, New York
November 17, 2020

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AFFIDAVIT OF SHAWN MILLER*(Witness for the Defense)*

1. My name is Shawn Miller and I reside in an apartment at 259-12 Knox Terrace in New York City. It is an upscale neighborhood in Lower Manhattan called SoHo. I bought this apartment in March 2018. It was expensive, but a great find, nevertheless.
2. I have talked to my lawyers many times since the indictment, but I still don't understand why I am being prosecuted. I have not personally done anything wrong and certainly nothing illegal like securities fraud. The lawyers tell me that Sidney and I were charged under something called the Martin-Webb Act. Never heard of this law.
3. I don't know what went wrong with my best friend, Sidney Taylor. Sidney and I have been friends since grade school. We grew up together in the same neighborhood in Far Rockaway, New York and attended the same schools all the way through high school. In grade school, we were on the same soccer and softball teams. We were not very good in any sport, but we always had lots of fun playing. In middle and high school, we hung out together all the time, going to movies, parties or whatever. You know how it is when kids get together. There is usually a misunderstanding or a fight breaking out. Sidney and I always were there to watch each other's back and protect each other. We were like siblings.
4. Our families did not have a lot of money when Sidney and I were in our formative years. Our parents were doing their level best to provide a comfortable livelihood, but in our working-class neighborhood, life was sometimes economically tough. Sidney and I pledged to each other that we would do better. I remember a book Sidney and I had to read in the eleventh grade by and about a successful Wall Street stockbroker. This stockbroker started with nothing and in fact at one time was, along with his son, homeless. Sidney and I were fascinated by this story. We talked about it all the time. Sidney repeatedly said, "If this person could do this, there is no reason why we can't do it too."
5. I remember in our senior year in high school, Sidney and I took all the economic, business and marketing courses the school offered. We joined the Mock Investing Club where we pretended to invest in real companies so that we could learn as much as we could about the financial markets and investments. I did OK on the SAT, scoring about 1250 (reading and math only); Sidney did exceptionally well, earning a score of 1575.

6. After graduating from high school in May 2006, I decided to attend Far Rockaway Community College. I pursued an associate degree in Business Administration. Sidney earned a scholarship to attend Wharton School of the University of Pennsylvania. We both entered college in September 2006. I lived at home of course. We stayed in constant contact during our college years, talking at least once per week. When Sidney would come home during school breaks, we would hang out and talk about how successful we would be in the business world.
7. I graduated from FRCC in May 2008. My parents were encouraging me to go on to New York University to pursue a bachelor's degree, but by then I had had enough of school. I decided to look for work. In August 2008, I took a job in the mailroom at Behman Brothers, a large brokerage house and investment bank on Wall Street. I did not mind the low-level job because I got to meet a lot of brilliant people in the financial industry, and I was able to learn much about how financial institutions operate literally from the "ground up."
8. You can say that I have always had an out-going personality. I have always been comfortable meeting and engaging people in conversation. I can talk to anybody about anything. About nine months into my employment, a Behman manager, Ryan Williams, recognized my engaging personality and would talk to me frequently about many things, including discussions about the stock market. I would have occasion to talk to Ryan Williams practically every day when they stopped by the mail room to get their mail. All the other managers would send their secretaries to retrieve their mail. But not Ryan Williams. Ryan felt comfortable interacting with everyone in the firm, even lowly mail room clerks. Ryan Williams would also talk to me on chance encounters passing through the hallways.
9. At Ryan Williams' suggestion, we would have lunch together once a month or so to talk about the financial markets. We would, on occasion, talk about all the illegal trading schemes that Ryan has seen over the years, but I certainly would not engage in that kind of activity. After not even two years on the job and with the support of Ryan Williams, I was offered a position as a junior associate in May 2010. Ryan Williams came to believe that despite my limited knowledge of investments and investing, I could nevertheless be a good stock salesperson given my smooth disposition.
10. Knowing that at some point in the future I would want my own securities' firm, I decided I should try to obtain several of the certifications from the Financial Industry Regulatory Authority (FINRA) so that I could obtain my license to trade securities in my own name. So, in January 2012, I started

studying for the Series 6 exam (mutual funds/variable annuities) and the Series 7 exam (stockbroker). I had a lot of trouble with these two exams. Talk about difficult! After having failed both exams several times, I finally passed both in October 2015. What a relief! My sponsor, Ryan Williams, was probably happier and more relieved than I was.

11. Sidney graduated from Wharton in May 2010 and went to work right away for Terrill Hynch, Fierce, Phenner & Smythe, the premier brokerage house on Wall Street. They started out in the firm's commercial finance unit and worked there for several years. They then moved over to the firm's hedge fund that traded in mortgage-back securities. Sidney took several of the securities examinations and passed them all without a hitch on the first try. I believe they took the following exams: Series 6, Series 7, Series 26 (investment company - mutual funds), Series 31 (Futures - managed funds exam) and Series 63 (uniform securities agent state law exam).
12. I got a call from Sidney in late July 2016 inviting me to lunch. We met for lunch on August 1, 2016 and discussed the possibility of going into business together. While Sidney was well compensated at Terrill Hynch, they were not satisfied and were looking for more. The plan was for me to leave Behman Brothers and start an investment consulting firm. The firm would in fact be a hedge fund, called S&S Derivatives, LLC. Because Sidney had a DO NOT COMPETE clause in their employment contract, they were prohibited from working for any other business involved in the trading of securities in the tri-state area (New York/New Jersey/Connecticut) for a period of one year following the termination of their employment at Terrill Hynch. I had no such prohibition.
13. Sidney left Terrill Hynch on August 16, 2016. Because they could not work in the securities business for one year, they decided to go back to school for a Master's in Business Administration. They entered the one-year accelerated executive MBA program at Columbia University in September 2016. Sidney would join our newly formed firm, sometime after their May 2017 graduation. My job, in the meantime, would be to bring over as many of my loyal Behman Brothers clients as possible and actively solicit new investment clients. Sidney would advise me on how to invest the clients' money until such time as they would join the firm.
14. In November 2016, I left Behman Brothers and on January 9, 2017, S&S Derivatives, LLC was launched. I was running the firm alone for about eight months until the expiration of the DO-NOT-COMPETE clause in Sidney's employment contract. During the eight-month period, Sidney would tell me how and where to make the investments. I never questioned their instructions.

They had learned all about derivative investments at Terrill Hynch. Much more than I ever wanted or cared to know.

15. Sidney joined the firm as a full equity shareholder on August 21, 2017. Because I had developed an ability to bring in new clients, I took on that responsibility for the firm. Sidney had the superior technical knowledge acquired at two of the best business schools in the country and honed at the largest brokerage house on the Street. So, they took the lead on developing the investment strategy for the firm and preparing the monthly client statements. This division of labor worked well, and we were earning sizable returns for our clients in record time. The firm was also doing exceptionally well. Of course, Sidney and I were benefitting handsomely from the firm's success.
16. For some reason, the Securities and Exchange Commission contacted the firm in August 2019 and started asking questions about our investment strategies and business practices. We were both at a loss about the inquiry because for two-plus years the firm was earning unbelievable investment returns for our clients. I have since learned that one of our clients, Fran Ashcott, a nervous type, had contacted the SEC after reading on some financial blog about hedge funds that may be ripping off their clients with illegal investment schemes. When I was at Behman Brothers, I was introduced to Fran and their spouse. We struck an accord, and I managed their Behman account. They liked my management of their account and moved the account, approximately 3.5 million dollars, to S&S Derivatives in March 2017, shortly after we opened. We were very cooperative with the SEC and after several visits from the SEC, the investigation must have been dropped because we never heard from the SEC again.
17. I did talk to Fran. Talk about greedy! They weren't happy with the double-digit returns we were delivering. They and their sorry spouse thought they were entitled to more. Fran had contacted me to ask about (1) the status of their account beyond the monthly statement and (2) the basis of the firm's investment strategy. I sought to reassure Fran that their account was sound and directed Fran to contact Sidney if they wanted more assurance. They seemed to feel that I was being evasive. I have since learned that Fran called Sidney five or six times over a two-week period to discuss the matter. Each time, Sidney's executive assistant, Pat Nolan, told Fran that Sidney was unavailable, but that Sidney would call Fran soon. Pat worked primarily with Sidney, setting up their daily calendar, serving as office manager and assisting Sidney in getting out the monthly statements. I don't know why Sidney never returned Fran's calls.

18. (a) The New York State Attorney General started hounding us in October 2019. I believe Fran contacted the Investor Protection Bureau of the New York Attorney General's Office to file a formal complaint against us. In December 2019, Sheridan Holmes (IPB) paid a visit to S&S. I believe it was December 16th. Sidney was not in the office that day. Sheridan Holmes reviewed our books and claimed without any basis that the returns Sidney was able to deliver were too uniform over too long a period.
- (b) Sheridan Holmes asked me if I knew someone by the name of Bernie Madlock. I responded that Mr. Madlock and I had worked at Behman Brothers at the same time. They wanted to know the last time I had any communication with Mr. Madlock. It may have been at a holiday party Behman Brothers threw in December 2016. Sheridan Holmes then asked if Mr. Madlock was a friend of mine and if Mr. Madlock had been conducting illegal trading for S&S Derivatives. I responded that Mr. Madlock was a mere acquaintance and that I was unaware that he was conducting any trading for S&S at all. I further stated that in our setup Sidney oversaw all of the trading activities and that I was in charge of client development.
- (c) Well, this poor excuse of a securities fraud investigator did not believe anything I said. They became increasingly agitated and started making all kinds of outlandish accusations. I believe that Sheridan Holmes could not make it in the investment business and is now taking their frustration out on legitimate investment advisers like me and Sidney. I could not believe it when Sheridan Holmes reported to the Attorney General that they suspected a phony investment scheme was afoot and recommended that Sidney and I be arrested and prosecuted.
19. (a) As far as I know, no one had lost any money prior to the Attorney General investigation and if S&S Derivatives had been allowed to continue, no one would have lost money going forward. We promised our clients that they would receive ten percent or better return each year if they invested with us. Looking at the monthly reports that Sidney was generating, we appeared to be achieving those returns. We were a new firm. We had to promise and deliver great results to get business.
- (b) Part of the reason I'm in this mess rests with Pat Nolan. Pat never liked me. I believe Pat always thought I was trying to get him/her/them fired so that I could hire my old assistant at Behman Brothers. Totally false. Anyway, the investigator told me that Pat overheard Sidney and me talking in July 2018 about something being "too easy." Pat told the investigator that Sidney and I had a big laugh, and that Pat now believes that the statements were about the alleged securities

fraud scheme. Now, Sheridan Holmes, believing this worthless Pat Nolan, claims that I was talking about Bernie Madlock. Totally ridiculous.

- (c) I believe Pat is just protecting their own rear end. If Sidney was “cooking the books,” Pat was knee-deep in it. I believe Sidney paid Pat a six-figure salary plus \$20,000 annual bonuses. Why would you pay a glorified secretary that kind of money? Perhaps to buy silence?! They should be the ones who are prosecuted, not me.
- (d) If I remember correctly, Sidney and I were talking about the New York Yankees when we were preparing the June 2018 monthly statements. With Sidney and me being huge Yankees’ fans and season ticket holders in fact, we were excited about how well the Yankees were playing in April, May, and most of June of 2018 and how easy the team was winning until late June. Why even Sidney’s parents and my parents are lifelong season ticket holders of the Yankees. I don’t recall exactly what Sidney and I said, but the “he” I was talking about when I said “He is doing a great job for us” was pitcher Luis Severino, who was on pace at that time to a season of 20+ wins, and that Severino was doing a great job for us Yankees’ fans. I’m sure I mentioned his name before Pat started eavesdropping on our private conversation.

- 20. I realize people might find it hard to believe that I did not know what Sidney and Pat were doing; but this is the truth. As I understand it, Sidney was supposed to invest our clients’ money in the extremely lucrative derivatives market, like credit default swaps, forward contracts, and futures contracts. Don’t ask me about what this is all about. I really do not understand all the ins and outs of derivatives investment. It is true that, during the four-month period before Sidney came on board, I was making the various investments for our clients. But Sidney was instructing me on exactly what to do. I was just following instructions and certainly no securities fraud was knowingly committed by me during that time.
- 21. Now I am on trial for something I don’t fully understand and for something I did not do. Although we were indicted together, Sidney went on trial first. My attorneys asked for and were granted a severance because I was expected to testify against Sidney. However, I was never called to testify. I could not believe it when Sidney was convicted of securities fraud and conspiracy to commit securities fraud. I did not attend Sidney’s trial upon advice of counsel. My attorneys told me to stay away unless I was subpoenaed to testify. So, I don’t know anything about what might have transpired at Sidney’s trial, except that they were convicted. After the verdict, Sidney jumped bail and is living somewhere in the Middle East, probably Dubai. This whole thing is just crazy! Why

should Sidney have to go to prison because Sheridan Holmes wanted another notch in their belt?! From the beginning of the investigation, it was all a rush to judgment.

22. The forecasts in early 2017 were that the economy was entering into a recession the next year and that double-digit returns were probably not sustainable in the long run. But our monthly reports showed otherwise. Sidney was working their magic! I don't know what Sidney was doing, but it was working.

To the best of my knowledge the above is true.

Shawn Miller

Shawn Miller

Dated: New York, New York
November 4, 2020

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AFFIDAVIT OF MICKEY PENNMAN*Witness for the Defense*

1. My name is Mickey Pennman and I live at 124-98 Ruth Street in Hudsonale, New York.
2. I am a Certified Public Accountant. I have been licensed in the State of New York for thirty-four years and in the State of New Jersey for twenty-nine.
3. I received my undergraduate degree in accounting from CUNY Roosevelt and my Master of Science in Taxation from Bricker University in Massachusetts. Both schools have strong accounting programs. Roosevelt is well known nationally, and I did well there, receiving my degree, summa cum laude, which led to a scholarship to Bricker.
4. My father graduated from Bricker University and had his own accounting practice for forty-seven years. I worked for my father during school vacations and in the evenings during his audit season. I started just answering phones and making copies and gradually took on more responsibility as my education progressed.
5. I interned at Arthur Andersen during my years at Bricker and was offered a spot after graduation—a spot I jumped at because of Andersen’s reputation, and because the people I worked with were smart. I really liked the work, and I was learning a lot.
6. I stayed with Andersen for thirteen years, during which I gained a lot of excellent experience in auditing. In addition, I became an adjunct faculty member at my alma mater, CUNY Roosevelt. It took up a lot of time, but it also allowed me to prospect for promising auditors. I used to like telling my students about our training center, Andersen U. At that time, I began working on my Ph.D. in Accounting.
7. The handwriting was on the wall, and I was preparing to leave Andersen in 2001. I made manager at Andersen, but I didn’t make partner. I brought in clients but maybe not enough, and they were all auditing clients. I was growing uneasy about Andersen’s “2X” strategy which required that partners bring in two times as much non-auditing revenue as they did auditing revenue. I just wanted to be an auditor and I loved it at Andersen because I worked on big audits. Unfortunately, Enron was one of them.
8. In the summer of 2001, Enron stories began to pop up in the news. The stock price had tanked. I was interviewing at the time, but I was still with Andersen. I got the order to shred documents. Andersen had a shredding policy. I had been trained in it. I followed it. End of story. Only it wasn’t. Enron filed for bankruptcy. My boss pled guilty to obstruction of justice. I was accused of

obstruction for shredding the documents and I was also threatened with jail time, and who would raise my children with me in jail? Luckily, I was able to avoid criminal charges. The U.S. Supreme Court overturned Andersen's conviction in 2005.

9. Andersen was destroyed, but I still had my licenses and lots of good experience. I was 36 years old when Andersen folded. It was a tough time for me. I bounced around for nearly two decades doing temporary work assignments under contract. Finally, I got a phone call from Sam Muchie of Meal & Muchie ("M&M") offering me a full-time job. It was a good firm and I made partner in 2015 at the ripe old age of 55.
10. M&M merged with Ramirez and Roper in 2017. This was important to us and long overdue because we needed a larger staff of experienced auditors to do audits of public companies under the new requirements of Sarbanes Oxley (SOX).
11. M&M has been conducting audits for S&S Derivatives, LLC for the past three and one half (3½) years, but that does not mean that M&M would necessarily continue to be the S&S outside auditors. The first part of any annual audit involves a re-consideration of the auditor/client relationship. We look at the client, the business environment, the problems incurred with the client in the past and their ability to pay. Did you know, Sarbanes-Oxley requires that we drop a client who has not paid within a year? SOX also requires that we rotate the partner in charge of the audit every five years. We must be sure we have enough trained auditors to do the job properly. In our evaluation of S&S, we didn't find anything to indicate that we should drop this client.
12. We have a really good staff at M&M, and we are always undergoing training to hone our skills. That goes for staff members who are out on family leave or who participate in job share. Sure, with job share, we must train two people, but our job-share people usually return to full time within three years, so the extra expense makes sense. Also, we pay our staff well.
13. Of course, we always do interim work. Audit season is rush, rush, rush! We must make SEC deadlines, tax deadlines, etc. But, since summer is usually slow, we do some of the work then. We bring new staff with us, get them familiar with the client's business, etc. We perform analytical procedures then and conduct tests of internal controls.
14. I have always believed that internal controls are the key to running a tight ship. People are people. They get sloppy. Forget to put things away. Forget to record things. Sometimes, you get an employee with some sort of personal problem, one that might be solved with a little extra money. You don't tempt people. You set up a system of checks and balances. Keeps people on their toes, you know. We did evaluate internal controls during our interim work at S&S.

15. We performed analytical procedures during interim work too as well as during the review of internal controls, during the audit and while wrapping up. Analytical procedures include comparisons of data from different periods or between various components of the financial statements to reveal possible errors or omissions. In some famous cases, these comparisons would have shown that something was wrong. **For example: how could Bernie Madoff, the imprisoned and now deceased hedge fund manager, have such consistent profits when the market was inconsistent?** We did not notice any such anomalies at S&S.
16. You know, auditing has changed now that we've got SOX. Consequently, we now do what we call "an integrated audit." That means we take the information we obtain from the tests of internal controls and use that to develop not only our report on the effectiveness of the internal controls but also to plan the audit. What we are doing is assessing the risk of material error and determining how much evidence we need to formulate an opinion of the fairness of the financial statements. Oh yes, the financial statements include the income statement, the balance sheet, the statement of retained earnings and the cash flow statement.
17. We gain evidence by performing tests of the account balances. We observe while the client takes inventory. We confirm a statistical sample of accounts receivable. We check a sample of the accounts payable to make sure that the client has recorded properly the money owed to vendors, that kind of thing. You know, you can never be 100% sure that there are no errors or omission unless you redo every transaction and even then, you might make a mistake. We use statistical sampling because it would be too expensive to check everything. As I said, there is always a residual risk that you've missed something. We use representative samples to reduce that risk to something acceptable.
18. How do we know what's acceptable? Brainstorming. We hold meetings for the entire staff of an audit, and we discuss what could go wrong. S&S's investment strategy was not simple. Sidney invested clients' funds in credit default swaps, forward contracts, and futures contracts. These are complex securities, and they require a very specialized knowledge of the market and of the economy. So, when we brainstormed, we tried to think of all the ways in which something could go wrong. One of our newest auditors even suggested that, given the incredible rates of return achieved by S&S, we ought to request more confirmations. I didn't ever think this situation would occur, but this auditor was new and eager to do things right, so we increased the scope of our audit and got the confirmations she requested. And it didn't help. We still missed what was going on.

19. Proper internal controls guard against employee misappropriation and financial reporting fraud, but when top management conspires to commit fraud, it's virtually impossible to discover. This is especially true when management has a history of honesty. The infamous Bernie Madoff, for example, really did transact business honestly for years before deciding to maintain his track record by fudging results and then by outright stealing.
20. We did all the right things and have no legal exposure. These securities fraud investigators are always pointing the finger at the outside auditors when these scandals are uncovered and often make unfounded accusations against the auditors. But in this case, we complied with every auditing standard including the new PCAOB standards that followed SOX. We confirmed purchases that were apparently never made. When I say we "confirmed," I mean we wrote to the people who sold securities to S&S and asked them to send directly to us written confirmation that certain trades took place and the dates, the identity of securities traded, and the amount involved in those trades. I've been over it and over it and there is only one way this could have happened without our knowledge: someone in the vendor's organization was lying. I wonder now if this lying went on from the beginning.
21. I've known Shawn for over eight years. We first met when Shawn was a junior associate at Behman Brothers. I believe it was at one of those December holiday parties that Behman is famous for hosting. I just don't see Shawn as a liar. In fact, I am their personal accountant and trust Shawn implicitly. Sidney may well have kept two sets of books so that they could keep track of where the money was. Of course, if Sidney did, they may have destroyed the second set by now because **that set** would be powerful evidence against Sidney. It's a shame really because those books just might exonerate Shawn.

To the best of my knowledge the above is true.

Mickey Pennman

Mickey Pennman

Dated: Hudsonale, New York
November 6, 2020

AFFIDAVIT OF RYAN WILLIAMS*Witness for the Defense*

1. I am 52 years old. I graduated from the University of Pennsylvania with a bachelor's degree in Finance in 1991 and from the Yale University School of Management in 1995. In September of that year, I began a career in investment banking with Behman Brothers, then one of the largest financial firms on Wall Street. After years of hard work, I eventually became a Manager of Behman Brothers' Mortgage-backed Securities Division in 2014. I served the firm in that capacity until its collapse in October 2019.
2. After Behman Brothers closed its doors, I decided to retire from the securities business to pursue a much less stressful life in a more bucolic setting. I now reside on a beautiful 150-acre farm located at 12500 Main Street in the Town of Pembroke, located in Genesee County, New York. These days, I worry much more about my roses and my vegetable garden than I do about the fluctuations in the capital markets.
3. Nonetheless, I have taken time to make this affidavit to support my friend Shawn Miller, who is presently the target of a malicious and unwarranted criminal prosecution for fraud. Thanks to the broad powers afforded to the State Attorney General pursuant to the Martin-Webb Act in New York, A.G. Andrew Snitzer – in his quest for headlines and media fame – is trying to ruin the life and career of one of the finest people I know.
4. I first met Shawn Miller in August 2008 when Shawn was working in the mail room at Behman Brothers. Unlike some other management-level employees who send their secretaries to retrieve their mail, I picked up my own mail every day. Even though I was making a seven-figure salary and leading a comfortable life, I made it my business to get to know and to interact with everyone in our New York office, from the CEO to the janitor on the overnight shift. It's nice to be important, but it's more important to be nice.
5. The first time I talked with Shawn on my daily trip to the mail room, I was impressed at how Shawn's fixation on the National Business Network broadcast on the TV when I came in, and by how Shawn approached me in such an outgoing, cordial, and friendly way. After I introduced myself, I asked Shawn what had brought them to work in the mail room, and they explained that they viewed the job as their entry-level opportunity to achieve their career goal of becoming a stockbroker.

6. After talking to Shawn on a regular basis for several months and sensing Shawn's determination, I offered to have lunch with Shawn monthly or so to talk about stocks and the markets. Shawn immediately accepted my invitation, and for the next two years, we would meet to talk about the bulls and the bears, the hottest investments, and the American economy. I was amazed at Shawn's knowledge in discussing the markets, despite their relative lack of formal academic training in business. Sometimes during our lunch meetings, I would talk to Shawn about all the illegal trading activities I've seen or heard about over the years just so that Shawn would know about that kind of stuff.
7. Anyway, I have known Shawn to be an honest person of the highest integrity. This became apparent to me one day in mid-December 2008. I had ordered some holiday gifts from the TV Shopping Channel and expected them to arrive at my office any day. Unfortunately, the gift box was given to my boss' secretary by accident. My boss was none too pleased that I had used my office address as a personal mailbox, and he told me so upon delivering the box to me later in the afternoon. I was angry that someone from the mail room must have caused me this angst, so I stopped what I was doing, and walked down there in a huff to demand an explanation as to what happened. When I explained the problem to Shawn, they immediately volunteered that they had made the accidental mistake of giving my gift box to my boss' secretary, apologized, and promised that kind of mix-up would never happen again. Shawn didn't need to fess up for the mistake but did anyway. To me, that demonstrates what a person of character Shawn really is.
8. In May 2010, after calling in a few favors from my colleagues at Behman Brothers, I got Shawn a job as a junior associate in our sales brokerage unit. I sincerely believed that Shawn, despite rudimentary knowledge of the financial markets, could nevertheless be a good stock "salesperson," if not a legitimate stockbroker.
9. Shawn flourished in their career as a salesperson at Behman. Shawn built up an excellent rapport with our clients and used their outgoing personality to generate new business contacts from among their friends and acquaintances. In January 2012, with my encouragement, Shawn began to study for examinations given by the Financial Industry Regulatory Authority (FINRA) to become a licensed stockbroker. Although Shawn failed the first few times, these setbacks did not deter Shawn. As a testament to Shawn's outstanding character, they persevered, and eventually passed the Series 6 and Series 7 exams in October 2015. I was proud to serve as Shawn's sponsor for the exams.

10. In November 2016, Shawn left Behman Brothers to start their own investment firm, S&S Derivatives, LLC. When some managers at Behman realized that Shawn was stealing our clients, they became upset and angry, as anyone could imagine. It didn't really bother me, though – Behman had not forced Shawn to sign any covenant not to compete when Shawn became a junior associate, so Shawn could freely and legally solicit any Behman client. Shawn's bold decision to strike out on their own exemplifies Shawn's resilience and risk-taking spirit – qualities that every successful businessperson must have.
11. Although we haven't worked together since 2016, Shawn and I have kept in touch on the phone and via email every few weeks. When Shawn called me in February 2020 to tell me they had been indicted for securities fraud and filled me in on the details in this case, I was floored. Given their character and integrity, Shawn is the last person I would ever suspect to be guilty of such a terrible crime. During our monthly lunch meetings, Shawn and I would often talk about financial ethics and how the foundation of the financial markets is built on trust. Shawn believed that and lived it. So, there's no need for me to read the so-called "evidence" produced by A.G. Snitzer; Shawn is too honest and too good of a person to do what Snitzer says Shawn did.
12. Some people might view my opinion of Shawn's character with skepticism. The *New York Rag*, that muckraking broadsheet not fit to be called a newspaper, has reported scandalous and libelous stories that I authorized improper trading activities that led to the downfall of Behman Brothers. To rehabilitate my reputation in response, I am writing a book about the firm's collapse. I have received a \$1 million advance from my publisher, Chance Dwelling, so I am working on my initial draft in earnest to set the record straight.
13. Just as I need to defend my own reputation against personal attacks and invectives, so does Shawn. That investigator Sheridan Holmes is a real loser. Holmes blames everyone because they lacked the financial acumen to make it on Wall Street. For anyone to suggest that Shawn might have learned how to commit securities fraud from me is offensive. That's why I'm happy to vouch for my friend's honesty and good character in Shawn's time of need.

To the best of my knowledge the above is true.

Ryan Williams

Ryan Williams

Dated: Pembroke, New York
November 23, 2020

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STATE OF NEW YORK
SUPREME COURT: COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Indictment No. 2020-00011-SAG

**SHAWN MILLER and
SIDNEY TAYLOR,**

Defendants.

COUNT ONE

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuses SHAWN MILLER and SIDNEY TAYLOR of the crime of CONSPIRACY IN THE FIFTH DEGREE, in violation of section 105.05 of the Penal Law of the State of New York, committed as follows:

The defendants, acting together and with others, from on or about September 1, 2017 to on or about October 31, 2019, in New York County and elsewhere in the State of New York, with intent that conduct, prohibited by section 352-c(6) of the General Business Law, said crime being a class E felony, be committed, did knowingly and intentionally agree with each other and others to engage in and cause the performance of such conduct as would constitute the above-mentioned class E felony, to wit: securities fraud.

PREAMBLE

Between on or about September 1, 2017, to on or about October 31, 2019, it was the purpose of this conspiracy to engage in the fraudulent trading of securities, including derivative contracts such as forwards, futures, options, and swaps, throughout New York State, including New York County, and elsewhere.

The defendants SHAWN MILLER and SIDNEY TAYLOR jointly owned and operated a company called S&S Derivatives, LLC, a hedge fund. In their company's prospectus and other literature, they promised their clients that said clients would receive double-digit returns on their investments. As new clients were brought into the hedge fund during the conspiracy, the new money was credited to the accounts of older clients to make it appear that said older accounts had earned the promised returns. The new money was deposited into a special business account at a bank and the money was moved among the different clients' account to create the impression of trading. A client who requested a redemption of her account would receive the money she had requested plus a printed confirmation of the "sale" of some or all of the securities in her account. All clients received IRS 1099s showing interest, dividends, and sales proceeds at the end of the year so that they could prepare their income tax returns. When the S&S clients received their quarterly and annual statements, they were receiving false confirmations of trades.

The defendants SHAWN MILLER and SIDNEY TAYLOR, along with unindicted co-conspirators, Pat Nolan and Bernie Madlock, produced and distributed trading confirmation documents that were false.

The defendants SHAWN MILLER and SIDNEY TAYLOR, along with unindicted co-conspirators, Pat Nolan, produced and distributed quarterly financial statements and IRS 1099 statements that were false.

OVERT ACTS

In furtherance of the conspiracy and to affect the objects thereof, from on or about September 1, 2017, to on or about October 31, 2019, the following overt acts, among others, were committed:

- 1: On or about September 1, 2017, to on or about October 31, 2019, the defendants accepted money from clients with the clients' express intention that the money be invested in legitimate financial instruments. The money belonging to the clients was not invested in accordance with the clients' understanding and direction but was diverted to other accounts and misappropriated.
- 2: On or about September 1, 2017, to on or about October 31, 2019, the defendants solicited Bernie Madlock, a clearing agent, to issue trading confirmation documents that were false. Bernie Madlock received money from the defendants to produce trading confirmation documents that were false.
- 3: On or about September 1, 2017, to on or about October 31, 2019, the defendants produced and distributed quarterly financial statements and IRS 1099 statements that were false, to their clients.
- 4: On or about October 23, 2019, Investigator/Analyst Sheridan Holmes, pursuant to a wiretap order, overheard a coded telephone conversation between the defendants wherein the defendants discussed covering-up their illegal activities.

COUNT TWO

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuses SHAWN MILLER and SIDNEY TAYLOR of the crime of SECURITIES FRAUD, in violation of section 352-c(6) of the General Business Law, in that they, the said SHAWN MILLER and SIDNEY TAYLOR, between on or about September 1, 2017 to on or about October 31, 2019, in New York County and elsewhere in the State of New York, intentionally engaged in the fraudulent trading and selling of securities, as defined in section 352 of the General Business Law, and thereby wrongfully obtained property of a value in excess of two hundred fifty dollars.

ANDREW SNITZER

Attorney General of the State of New York

Jack McCoy

BY: JACK McCOY

Assistant Attorney General,
of Counsel

DATED: New York County
February 5, 2020

New York County Grand Jury

A TRUE BILL

Harold Justice

Foreperson: Harold Justice

NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT EVIDENCE

PART V

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EXHIBIT _____
Page 1

New York Rag

Salacious R Us

Vol. 36, No. 303

October 30, 2019

Behman Brothers Collapses; Mortgage-backed Securities Unit Primary Cause

Walter Monkite, Reporter

In a frightening development on the eve of Halloween, Behman Brothers filed for bankruptcy. In what has been nothing less than a “nightmare on Wall Street” this year, the famed global financial firm was unable to convince government or private lenders to fork over the funds to cover its many debts. It appears that the firm’s mortgage-backed securities division was the major contributing factor to the downfall.

The mortgage-backed securities unit, managed by “investment banker to the stars” Ryan Williams, held large positions in subprime mortgages and other basement-rated mortgage securities. Between 2003 and the current residential mortgage meltdown, Behman Brothers was the leader in securitizing mortgages and selling these bundled mortgages around the globe. Williams, who over the years cultivated a great personal relationship with many in the securities rating companies, allegedly was able to obtain AAA ratings on all the collateralized mortgage obligations (CMOs) the firm packaged. During this period, the mortgage-backed securities unit earned huge returns for the firm and Williams received a seven-figure salary and six-figure bonuses each year.

In early 2019, as the residential mortgage market bubble was about to burst, Williams failed to reposition the firm out of the subprime mortgage market. As a result of this inertia, Behman had to pay several billions to cover some of the large positions it held in the subprime space. This payment was a charge against earnings and the firm’s stock price declined precipitously. As the credit market continued to tighten, Behman, suffering significant losses each quarter, was unable to secure funding to cover the remaining positions in its CMO portfolio. Cut out of the credit market and lacking reserves, these circumstances forced Behman to declare bankruptcy.

Ryan Williams was unavailable for comment. Sources revealed that Williams is planning to leave Wall Street and will soon move to upstate New York. Investigations by the SEC are expected, and Williams may be called to answer questions about the firm’s demise. Civil and possibly criminal charges may result, especially in connection with Williams’ undue influence in obtaining AAA rating on some questionable CMOs.

It is expected that Behman Brothers will be broken up and sold in parts. Several of its units, such as retail brokerage and asset management, are still rather lucrative operations and should sell at close to market price. The mortgage-backed securities operation managed by Williams is worthless and will likely go for pennies to the dollar.

Many of Behman Brothers’ investors, both institutional and individual who rode the stock down, are not happy with the outcome. Much of their anger is directed at Williams. Calls for a criminal investigation of **Williams’** conduct are rampant in the financial blogosphere.

EXHIBIT _____
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New York *Rag*

Salacious R Us
 Vol. 37, No. 41
 February 10, 2020

Financial Page Editorial

FOR SHAME!

Ryan Williams' Legacy: The Demise of S&S Derivatives, LLC

Georgette Wills

The fall of S&S Derivatives, LLC appears to be an isolated event until all of the dots are connected. The dots all lead back to Ryan Williams, the unit manager of the now defunct mortgage-back securities operation of bankrupt Behman Brothers.

As the *Rag* reported on October 30, 2019, Ryan Williams contributed significantly to the causes that brought down Behman. Williams, while raking in a personal fortune for **him/her/them self**, allowed Behman to remain highly leveraged in collateralized mortgage obligations (CMOs), perhaps as much as 40 or 50 to 1! Consequently, Behman lacked the reserves to pay off most of their cash outs.

Moreover, Williams' manipulation of the rating system by securing AAA ratings on poor quality bungled mortgages was pure fraud. With institutions and governments in this country and all over the world relying on these ratings, Williams actions were criminal. Many institutions, like pension plans, and governments, like Iceland, are themselves teetering on bankruptcy. Without a doubt, excessive greed and gross miscalculations lead to firestorm at Behman.

Now the *Rag* has learned that one of the principals at S&S Derivatives, Shawn Miller, was an associate and protege of Ryan Williams when Miller was employed at Behman. The two worked together for six and one-half (6½) years and would meet frequently for lunch. Miller and the other co-owner of S&S Derivatives, Sidney Taylor, were indicted last Wednesday on securities fraud charges and conspiracy to commit securities fraud. Given Williams' questionable ethics, there is no doubt that they conveyed this "win at all costs" to his/her **/their** young and impressionable friend. We at the *Rag* are at a total loss as to why Williams has not been indicted.

People like Ryan Williams caused the financial collapse of 2019. These scourges of Wall Street enticed investors to entrust their life savings to them and they betray that trust. We will never know whether Miller would have engaged in the alleged criminal activity had they never met Williams. We do know that the dots ran from Behman Brothers and Williams to S&S Derivatives and Miller and the picture drawn is not pretty.

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Page 2

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EXHIBIT _____
Page 1

New York State Attorney General's Office
Investor Protection Bureau
S. Holmes, Senior Investigator/Analyst

Wiretap – October 25, 2019

Shawn: This thing is a disaster!

Sidney: We're screwed.... that's for sure. I've never seen a train wreck like this in my life.

Shawn: He started out doing such a good job.... but you know, we're going to have to find someone else. He's just not delivering the goods anymore.

Sidney: There's no way to save this situation. Right now, it's every man for himself. Just blow the whole thing up and start over.

Shawn: The press has been all over this. Every day there's a new story.

Sidney: The bigwigs are going to have to clean house, or they'll have egg all over their faces.

EXHIBIT _____
Page 2

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EXHIBIT _____
Page 1**S&S Derivatives, LLC**
Customer Account Journal
June 30, 2019

Client: Fran Ashcott
787 Stratton Terrace
Scarsdale, NY 10583

Stocks	Basis	Current Market Value
450 shares Ambuskate	91,208.00	97,200.00
700 shares BunnyShark	40,444.00	56,182.00
500 shares Connecticut Smart Phone	92,238.11	101,016.00
300 shares DogFood	15,166.50	21,156.88
175 shares Denial.com	48,740.00	63,000.00
150 shares Edgy Com	54,670.36	99,124.02
255 shares Entertots	7,008.00	12,150.00
900 shares Gerbil Exercise Systems	150,274.50	181,800.00
335 shares Football Stadia, Inc.	49,390.26	65,468.00
400 shares Idaho Asparagus	71,000.00	81,944.00
500 shares Joyous Pucks United	7,809.44	15,000.00
880 shares Lol Cola	171,084.66	181,164.00
500 shares Mal Props Inds	46,912.36	63,000.00
475 shares Sand Mining	74,192.00	77,000.00
350 shares MaxiHard	73,084.36	75,626.26
155 shares Southern Strategy Systems	20,000.00	25,606.82
225 shares Sphere, Inc	27,580.50	29,400.00
400 shares United Busware	70,000.00	78,800.00
425 shares Tenn Fish Farms	84,989.00	91,476.00
500 shares Walpert	60,000.00	64,965.52
468 shares West Eastern Co.	20,230.00	25,428.00
500 shares Western Pride Juices	36,750.50	42,300.00
350 shares Xert Prognosis	40,900.00	50,405.50
735 shares Yankee Popcorn	131,700.00	141,945.00
500 shares Youvgot	50,000.00	58,000.00

Options

108 Put GEBX Aug 19	1,350.50
92 Call MXHD Aug 19	376.50
56 Call UBWH Aug 19	330.00
40 Call WVFPZ Aug 19	3,516.00
45 Call WPJ Sep 19	174.00
65 Put MNBV Sep 19	405.00
13 Put JPUK Sep 19	396.00
90 Call ZXD Sep 19	3,996.00
210 Call KLP Oct 19	2,205.00
40 Call YVL Oct 19	1,440.00
65 Put XEPR Oct 19	236.25

EXHIBIT _____**Page 2****Funds**

1,508.3625 shares NOVER Fund	403,926.76	415,964.47
1,742.1956 shares Alias Mortgage Fund	476,901.04	488,368.00
1,245.3001 shares PurMo Fund	308,125.66	359,198.07
1,5498.3749 shares Big Dev Fd	426,835.99	427,307.05
Total Funds		1,690,837.59
Ending value as of June 30, 2019.		\$3,504,901.84

EXHIBIT _____
Page 1

S&S Derivatives, LLC

Monthly Statement of Account

Your Financial Advisor
 Sidney Taylor
 S&S Derivatives, LLC
 10583 New York, NY

Fran Ashcott
 787 Stratton Terrace
 Scarsdale, New York

YOUR PORTFOLIO AT A GLANCE

Beginning value as of June 1	\$3,148,162.00
Change in investment value	365,739.84
Ending value as of June 30, 2019	\$3,504,901.84

Portfolio

Stocks

450 shares	Ambuskate	97,200.00
700 shares	BunnyShark	56,182.00
500 shares	Connecticut Smart Phone	101,016.00
300 shares	DogFood	21156.88
175 shares	Denial.com	63,000.00
150 shares	Edgy Com	99,124.02
255 shares	Entertots	12,150.00
900 shares	Gerbil Exercise Systems	181,800.00
335 shares	Football Stadia, Inc.	65,468.00
400 shares	Idaho Asparagus	81,972.00
500 shares	Joyous Pucks United	15,000.00
880 shares	Lol Cola	181,164.00
500 shares	Mal Props Inds	63,000.00
475 shares	Sand Mining	77,000.00
350 shares	MaxiHard	75,626.26
155 shares	Southern Strategy Systems	25,606.82
225 shares	Sphere, Inc	29,400.00
400 shares	United Busware	78,800.00
425 shares	Tenn Fish Farms	91,476.00
500 shares	Walpert	64,965.52
468 shares	West Eastern Co.	25,428.00
500 shares	Western Pride Juices	42,300.00
350 shares	Xert Prognosis	50,405.50
735 shares	Yankee Popcorn	141,945.00
500 shares	Youvgot	58,000.00

EXHIBIT _____**Page 2****Options**

108 Put GEBX Aug 19	1,050.50
92 Call MXHD Aug 19	1129.50
56 Call MXHD Aug 19	330.00
40 Call WVFPZ Aug 19	3,516.00
45 Call WPJ Sep 19	174.00
65 Put MNBV Sep 19	405.00
13 Put JPUK Sep 19	396.00
90 Call ZXD Sep 19	3,996.00
210 Call KLP Oct 19	2,205.00
40 Call YVL Oct 19	1,440.00
65 Put XEPR Oct 19	263.25

TRANSACTIONS BY TYPE OF ACTIVITY**Dividends and Interest**

06/06/19	Dividend West Eastern Co.	516.75
06/14/19	Dividend Sphere, Inc	464.48
06/25/19	Dividend MaxiHard	1096.50

Sales & Purchases

06/05/19	Sold 300 shares Walpert	\$77,400.00
06/05/19	Purchased 275 shares DogFood	61,424.88
06/10/19	Sold 200 shares GEBX	67,421.97
06/10/19	Purchased 375 shares Lol Cola	72895.14
06/10/19	Sold 375 shares Qua Computer	99,607.50
06/12/19	Sold 250 shares Distributed Electric	37478.26
06/12/19	Sold 150 shares Qleen Wind Energy	30,156.42
06/14/19	Sold 300 shares Dublet Systems	79,862.00
06/14/19	Purchased 500 shares Edgy Com	146,693.22
06/17/19	Purchased 380 shares Walpert	344319.66
06/25/19	Sold 150 shares My Turn	57,000.00

Additions & Withdrawals

06/28/19	Withdrawal	3,000.00
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EXHIBIT _____

Page 1

Storgan Manley LLC

CONFIRMATION STATEMENT

Your Financial Advisor
 Sidney Taylor
 S&S Derivatives, LLC
 10583 New York, NY

Fran Ashcott
 787 Stratton Terrace
 Scarsdale, New York

Account Number: 44-99107

August 15, 2019

<u>Confirm Date</u>	<u>Trade Date</u>	<u>Description of Transaction Sold</u>	<u>Dollar Amount of Transaction</u>	<u>Share Price</u>	<u>Shares this Transaction</u>
08/15/19	08/15/19	M & A Fund	\$75,116.16	\$74	1015.08318

Please review your statement and notify us in writing of any inaccuracy or discrepancy promptly. It is also recommended that you re-confirm any oral communications between you and the firm in writing. Storgan Manley LLC assumes that customer records are correct unless notification is received otherwise. You can check your account information at our website at www.storganmanleyllc.org or call us at 800-999-9999.

EXHIBIT _____
Page 2

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EXHIBIT _____
Page 1

DOW JONES INDUSTRIAL AVERAGE INDEX
(\$INDU)

Open (01/02/2017): 21,215.28; Closed (01/02/2019): 17,759.87 -16.3%
Volume (01/02/2017): 341,130,000; (01/02/2019): 193,340,000

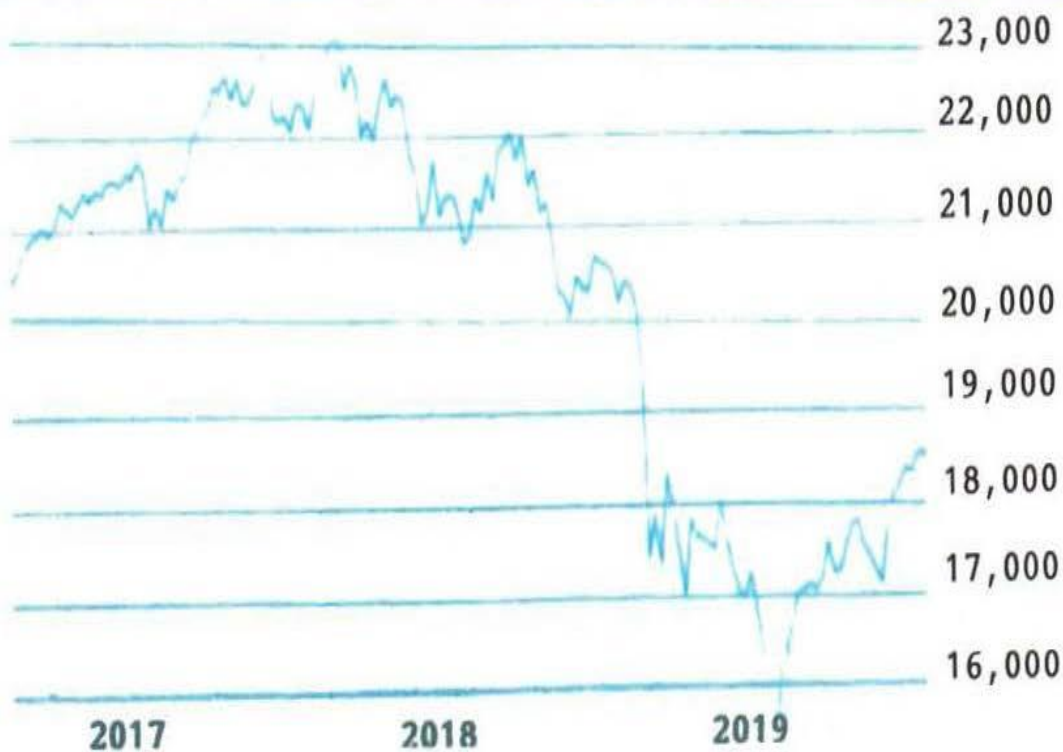


EXHIBIT _____
Page 2

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EXHIBIT _____**Page 1**

2018 Baseball Standings – MLB.com

New York Yankees' Standings

as of June 15, 2018



VIDEO

SCORES

STATS

SCHEOULE

Standings

Reg. Season

Wild Card

Spring Training

Postseason Projections

◀	June 15					▶		2018					▼		
Division						▼		Standard				Advanced			
AL East	WL	PCT	GB	WCGB	L10	SIRK	RS	PA	DIFF	X-- W/ L	HOME	AWAY	>.500		
BOS	4823	.676	- -		6-4	L1	362	259	+103	46-25	23-11	25-12	1-7		
NYY	4521	.682	0.5	-	7-3	W2	354	259	+95	42-24	25-10	20-11	17-8		
TB	3237	.464	15.0	5.5	4-6	L2	276	288	-12	33-36	15-16	17-21	8-27		
TOR	3138	.449	16.0	6.5	5-5	W1	310	336	-26	32-37	17-19	14-19	12-20		
BAL	19	49	.279	27.5	18.0	2-8	L8	234	352	-118	22-46	10-22	9-27	5-25	
AL Central	W	L	PCT	GB	WCGB	L10	SIRK	RS	PA	DIFF	X-- W/ L	HOME	AWAY	> .500	
CLE	36	32	.529	-		6-4	L1	327	296	+31	37-31	20-12	16-20	12-16	
DET	34	37	.479	3.5	4.5	5-5	W3	295	322	-27	33-38	23-17	11-20	11-16	

<https://www.mlb.com/standings/2018-06-15>

EXHIBIT _____
Page 2

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

PART VI

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PERTINENT LAW

MARTIN-WEBB ACT (General Business Law, Article 23-A)

Section 352

Whenever it shall appear to the attorney-general, either upon complaint or otherwise, that in the advertisement, investment advice, purchase, or sale within this state of any commodity dealt in on any exchange within the United States of America or the delivery of which is contemplated by transfer of negotiable documents of title all of which are hereinafter called commodities, or that in the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice or distribution within or from this state, of any stocks, bonds, notes, evidences of interest or indebtedness or other securities, including oil and mineral deeds or leases and any interest therein, sold or transferred in whole or in part to the purchaser where the same do not effect a transfer of the title in fee simple to the land, or negotiable documents of title, or foreign currency orders, calls or options therefor hereinafter called security or securities, any person, partnership, corporation, company, trust or association, or any agent or employee thereof, shall have employed, or employs, or is about to employ any device, scheme or artifice to defraud or for obtaining money or property by means of any false pretense, representation or promise, or that any person, partnership, corporation, company, trust or association, or any agent or employee thereof, shall have made, makes or attempts to make within or from this state fictitious or pretended purchases or sales of securities or commodities or that any person, partnership, corporation, company, trust or association, or agent or employee thereof shall have employed, or employs, or is about to employ, any deception, misrepresentation, concealment, suppression, fraud, false pretense or false promise, or shall have engaged in or engages in or is about to engage in any practice or transaction or course of business relating to the purchase, exchange, investment advice or sale of securities or commodities which is fraudulent or in violation of law and which has operated or which would operate as a fraud upon the purchaser,... any one or all of which devices, schemes, artifices, fictitious or pretended purchases or sales of securities or commodities, deceptions, misrepresentations, concealments, suppressions, frauds, false pretenses, false promises, practices, transactions and courses of business are hereby declared to be and are hereinafter referred to as a fraudulent practice or fraudulent practices or he believes it to be in the public interest that an investigation be made, he may in his discretion either require or permit such person, partnership, corporation, company, trust or association, or any agent or employee thereof, to file with him a statement in writing under oath or otherwise as to all the facts and circumstances concerning the subject matter which he believes it is to the public interest to investigate, and for that purpose may prescribe forms upon which such statements shall be made. The attorney-general may also require such other data and information as he may deem relevant and may make such special and independent investigations as he may deem necessary in connection with the matter.

Section 352-c

1. It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to use or employ any of the following acts or practices:

(a) Any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;

(b) Any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(c) Any representation or statement which is false, where the person who made such representation or statement: (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or statement made; where engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation or purchase within or from this state of any securities or commodities, as defined in **section three hundred fifty-two** of this article, regardless of whether issuance, distribution, exchange, sale, negotiation or purchase resulted.

2. It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to engage in any artifice, agreement, device, or scheme to obtain money, profit, or property by any of the means prohibited by this section.

....

6. Any person, partnership, corporation, company, trust or association, or any agent or employee thereof who intentionally engages in fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale, or who makes any material false representation or statement with intent to deceive or defraud, while engaged in inducing or promoting the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of any securities or commodities, as defined in this article, and thereby wrongfully obtains property of a value in excess of two hundred fifty dollars, shall be guilty of a class E felony.

Section 358

The attorney-general may prosecute every person charged with the commission of a criminal offense in violation of the laws of this state, applicable to or in respect of the practices or transactions which in this article are referred to as fraudulent practices. In all such proceedings, the attorney-general may appear in person or by his deputy before any court of record or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform

PENAL LAW

Section 105.05 - Conspiracy in the Fifth Degree

A person is guilty of conspiracy in the fifth degree when, with intent that conduct constituting:

1. a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct

RELATED CASES

***People v. F.H. Smith Co.*, 230 AD 268**

The defendant was the underwriter of bonds to be used to convert an apartment building to a hotel. The court held that it was a violation of the Martin Act to issue bonds where the property's appraisal was exorbitant.

***People v. The Federated Radio Corporation*, 244 NY 33**

Promoters issued a prospectus that, according to the Attorney General, contained unduly inflated stock values and concealed certain facts regarding the stock values which should have been revealed. The court held that the purpose of the Martin Act is to prevent all kinds of fraud in connection with the sale of securities and commodities and to defeat all unsubstantial and visionary schemes in relation thereto whereby the public is fraudulently exploited. Promoters are under a duty to make reasonable investigation before issuing a prospectus and to the extent that they fail in the performance of their duty, lack of *scienter* will not relieve them from liability in actions brought under the Martin Act.

***People v. Sala*, 258 AD2d 182 (affirmed 95 NY2d 254)**

The defendants marketed financial plans consisting of numismatic coin portfolios, art portfolios and condominiums, promising very high appreciation rates. On appeal, they contended that their convictions under the Martin Act were not based upon legally sufficient evidence because they lacked the requisite fraudulent intent. The court, however, held that neither *scienter* nor an intent to defraud need be proven in order to establish liability under the Martin Act. Rather, the prosecutor need only prove that the defendant committed an intentional act constituting fraud, which under the Martin Act includes all deceitful practices contrary to the plain rules of common honesty and all acts tending to deceive or mislead the public.

***People v. Schlund*, 295 NY 859**

The defendant was prohibited by court order from participating in the sale of or offer to sell securities. He was convicted in the Batavia City Court of a Martin Act violation in that he had allegedly provided advice to an individual about her securities and assisted her in disposing of certain bonds. The Court of Appeals reversed the conviction, holding that the prosecutor must prove the defendant's guilt of a Martin Act violation beyond a reasonable doubt.

***People v. First Meridian Planning Corp.*, 86 NY2d 608**

(companion case to *People v. Sala* 258 AD2d 182 (affirmed 95 NY2d 254))

The Court of Appeals defined what is a security under the Martin Act by adopting the Federal definition that equated securities with investment contracts. The tripartite test enunciated in *Securities & Exchange Commission v. Howey* (328 US 293) provides that “an investment contract ... means a contract, transaction, or scheme whereby a person [1]invests his money [2]in a common enterprise and [3]is led to expect profits solely from the efforts of the promoter or a third party.”

***People v. Barysh*, 95 Misc2d 616**

The defendants moved to dismiss the indictment on the ground that the Martin Act requires proof of intent to defraud to sustain a criminal prosecution. Dismissing the motion, the court held that the Martin Act is directed at acts or practices, and not at any particular mental state on the part of the defendant.

People v. Hasslinger, 4 AD3d 564

The defendant was found guilty by a jury of conspiracy in the fourth degree, grand larceny in the second degree, money laundering in the second degree and securities fraud in violation of the Martin Act. He was accused of bilking over \$1 million an elderly woman who was suffering from dementia and Alzheimer's disease. In a 2½-year period, the defendant had liquidated all of the victim's bank accounts, stocks and bonds. The court reversed the Martin Act conviction, holding that the defendant's conduct did not constitute a violation of the Martin Act as he was not engaged in a securities transaction with an intent to deceive or defraud the investing public.

People v. Burns et al., 36 Misc2d 444

The defendant and his codefendant were accused of filing a fraudulent medical report as part of a scheme to defraud an insurance company. They were charged with conspiracy to commit the crime of grand larceny. On a motion to inspect the Grand Jury minutes, the defendants contend that Grand Jury had to "speculate" on the effect Dr. Burn's report had on the insurance company's decision to pay an award. Dismissing the motion, the court held that the "... gravamen of the offense of conspiracy is the unlawful combination and not the successful execution of the plan. The offense is completed upon proof of the unlawful agreement and of an overt act done to affect the object thereof by either of the parties to the agreement."

People v. Bac Tran, 80 NY2d 170

The defendant, a fire safety director of two Manhattan hotels, was charged with two counts of bribery. He had allegedly tried on separate occasions to get a fire safety inspector and an undercover investigator to disregard fire violations. At trial, the defendant objected to the admission of taped hearsay statements of a co-worker implicating the defendant, claiming that a *prima facie* case of conspiracy had not been presented or proven and, absent that, the hearsay statements could not be admitted under the coconspirator exception. Agreeing with the defendant, the Court of Appeals held that since "... a *prima facie* case of conspiracy was never made out, the recorded hearsay statements of the coworker referring to the defendant in any respect never should have been allowed into evidence."

People v. Korsen, 167 AD2d 180

The defendant was convicted of conspiracy and scheme to defraud in connection with the fraudulent sale of securities. On appeal, he argued that he did not know about the misrepresentation contained in the script and promotional materials provided by the company. However, because the defendant had made additional misrepresentations about the securities, the appellate court held that his own misrepresentations and intent to benefit thereby tied him into the conspiracy.

People v. Caban, 5 NY3d 143

The defendant was convicted of conspiracy to commit murder. Coconspirators made statements that were used against the defendant. He argued that hearsay statements of coconspirators are admissible only when a *prima facie* case of conspiracy is established independent of the statements. The Court of Appeals held that the coconspirator's acceptance of the defendant's solicitation to kill the victim, by stating "I'll do it," was non-hearsay with respect to the conspiracy charge. Said statement was relevant not for its truth, but rather, as evidence of an agreement to commit the underlying crime of conspiracy and it was a verbal act which rendered the defendant and his coconspirators culpable for the inchoate crime of conspiracy, even if the planned substantive crime never came to fruition.

People v. Chapman, 30 AD3d 1000

The defendant was convicted of manslaughter, criminal facilitation, and criminal possession of a weapon. On appeal, he contended that the evidence was legally insufficient to support the conviction of

manslaughter and criminal facilitation because the prosecutor failed to present evidence establishing that the shooting of the victim by a co-defendant was not justified. The court held that accessorial liability “... requires only that defendant, acting with the mental culpability required for the commission of the crime, intentionally aid another in the conduct constituting the offense (citation omitted). The People presented evidence establishing that defendant shared the shooter’s intent to cause serious physical injury to the victim and intentionally aided the shooter by providing him with the weapon and informing the victim where the shooter was located, thereby leading the victim to the shooter.”

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL APPENDICES

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POINTS	MOCK TRIAL TOURNAMENT PERFORMANCE RATING GUIDELINES
1 – Ineffective	<ul style="list-style-type: none"> • Not prepared/disorganized/illogical/uninformed • Major points not covered • Difficult to hear/speech is too soft or too fast to be easily understood • Speaks in monotone • Persistently invents (or elicits invented) facts • Denies facts witness should know • Ineffective in communications
2 – Fair	<ul style="list-style-type: none"> • Minimal performance and preparation • Performance lacks depth in terms of knowledge of task and materials • Hesitates or stumbles • Sounds flat/memorized rather than natural and spontaneous • Voice not projected • Communication lacks clarity and conviction • Occasionally invents facts or denies facts that should be known
3 – Good	<ul style="list-style-type: none"> • Good performance but unable to apply facts creatively • Can perform outside the script but with less confidence than when using the script • Doesn't demonstrate a mastery of the case but grasps major aspects of it • Covers essential points/well prepared • Few if any mistakes • Speaks clearly and at good pace but could be more persuasive • Responsive to questions and/or objections • Acceptable but uninspired performance
4 – Very Good	<ul style="list-style-type: none"> • Presentation is fluent, persuasive, clear and understandable • Student is confident • Extremely well prepared—organizes materials and thoughts well and exhibits a mastery of the case and materials • Handles questions and objections well • Extremely responsive to questions and/or objections • Quickly recovers from minor mistakes • Presentation was both believable and skillful
5 – Excellent	<ul style="list-style-type: none"> • Able to apply case law and statutes appropriately • Able to apply facts creatively • Able to present analogies that make case easy for judge to understand • Outstandingly well prepared and professional • Supremely self-confident, keeps poise under duress • Thinks well on feet • Presentation was resourceful, original, and innovative • Can sort out the essential from non-essential and uses time effectively • Outstandingly responsive to questions and/or objections • Handles questions from judges and attorneys (in the case of a witness) extremely well • Knows how to emphasize vital points of the trial and does so
Professionalism of Team Between 1 to 10 points per team	<ul style="list-style-type: none"> • Team's overall confidence, preparedness, and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; and strategies intended to waste the opposing team's time for its examinations.

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2022 NEW YORK STATE MOCK TRIAL TOURNAMENT

PERFORMANCE RATING SCORE SHEET

In deciding which team has made the best presentation in the case you are judging, use the following criteria to evaluate each team's performance. **FOR EACH OF THE PERFORMANCE CATEGORIES LISTED BELOW, RATE EACH TEAM ON A SCALE OF 1 TO 5 AS FOLLOWS (USE WHOLE NUMBERS ONLY). INSERT SCORES IN THE EMPTY BOXES.**

SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	Page 1 of 2
T I M E L I M I T S						
OPENING STATEMENTS	DIRECT EXAMINATION		CROSS EXAMINATION		CLOSING ARGUMENTS	
5 minutes for each side	10 minutes for each side		10 minutes for each side		10 minutes for each side	
			PLAINTIFF / PROSECUTION		DEFENSE	
➤ OPENING STATEMENTS (ENTER SCORE) ➡						
PLAINTIFF/PROSECUTION 1st Witness		Direct and Re-Direct Examination by Attorney				
		Cross and Re-Cross Examination by Attorney				
		Witness Preparation and Credibility				
PLAINTIFF/PROSECUTION 2nd Witness		Direct and Re-Direct Examination by Attorney				
		Cross and Re-Cross Examination by Attorney				
		Witness Preparation and Credibility				
PLAINTIFF/PROSECUTION 3rd Witness		Direct and Re-Direct Examination by Attorney				
		Cross and Re-Cross Examination by Attorney				
		Witness Preparation and Credibility				

PLEASE BE SURE TO ALSO COMPLETE THE OTHER SIDE OF THIS FORM (PAGE 2)

SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	Page 2 of 2
-------	---------------	--------	--------	-------------	-------------	-------------

OPENING STATEMENTS		DIRECT EXAMINATION	CROSS EXAMINATION	CLOSING ARGUMENTS
5 minutes for each side		10 minutes for each side	10 minutes for each side	10 minutes for each side
			PLAINTIFF / PROSECUTION	DEFENSE
DEFENSE 1st Witness	Direct and Re-Direct Examination by Attorney			
	Cross and Re-Cross Examination by Attorney			
	Witness Preparation and Credibility			
DEFENSE 2nd Witness	Direct and Re-Direct Examination by Attorney			
	Cross and Re-Cross Examination by Attorney			
	Witness Preparation and Credibility			
DEFENSE 3rd Witness	Direct and Re-Direct Examination by Attorney			
	Cross and Re-Cross Examination by Attorney			
	Witness Preparation and Credibility			
➤ CLOSING STATEMENTS (ENTER SCORE) ➡				
(1–10 points PER team) ➤ PROFESSIONALISM (ENTER SCORE) ➡ <ul style="list-style-type: none"> • Team's overall confidence, preparedness and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; strategies intended to waste the opposing team's time for its examinations. 				
➤ TOTAL SCORE (ENTER SCORE) ➡				
JUDGE'S NAME (Please print) ➡				
In the event of a tie, please award one point to the team you feel won this round. <u>Mark your choice below.</u> <input type="checkbox"/> PLAINTIFF/PROSECUTION <input type="checkbox"/> DEFENSE				

PREPARING FOR THE MOCK TRIAL TOURNAMENT

Learning the Basics

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

Mauet, Thomas A., Trial Techniques (6th ed.), Aspen Law and Business
Murray, Peter, Basic Trial Advocacy, Little, Brown and Company

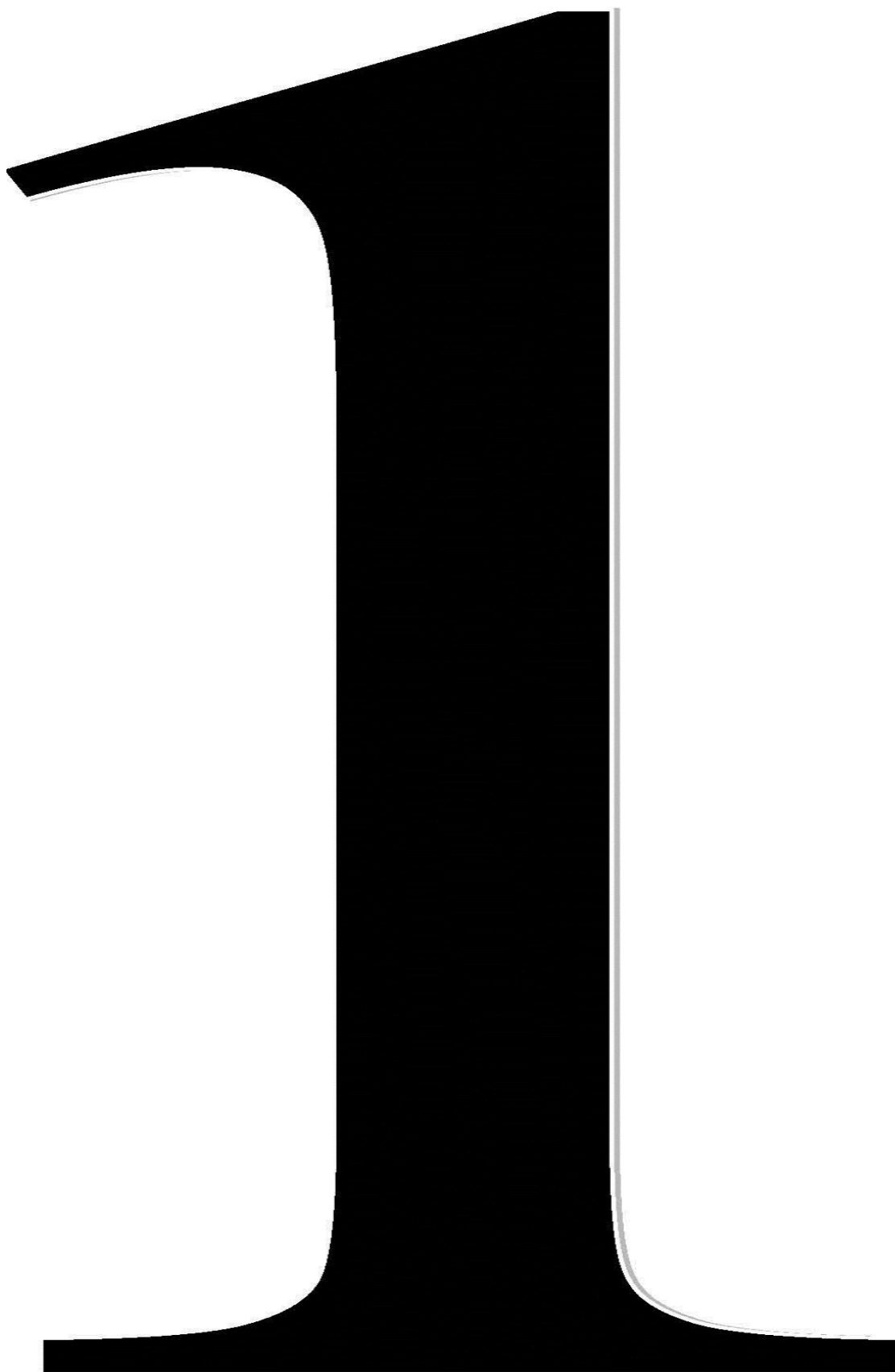
Lubet, Steven, Modern Trial Advocacy, National Institute for Trial Advocacy

Vile, John R., Pleasing the Court: A Mock Trial Handbook (3rd ed.), Houghton Mifflin Company

Preparation

1. Teachers and attorneys should teach the students what a trial is, basic terminology (e.g., plaintiff, prosecutor, defendant), where people sit in the courtroom, the mechanics of a trial (e.g., everyone rises when the judge enters and leaves the courtroom; the student-attorney rises when making objections, etc.), and the importance of ethics and civility in trial practice.
2. Teachers and attorneys should discuss with their students the elements of the charge or cause of action, defenses, and the theme of their case. We encourage you to help the students, but not to do it for them.
3. Teachers should assign students their respective roles (witness or attorney).
4. Teams must prepare both sides of the case.
5. Student-witnesses cannot refer to notes so they should become very familiar with their affidavits and know all the facts of their roles. Witnesses should “get into” their roles. Witnesses should practice their roles, with repeated direct and cross examinations, and anticipate questions that may be asked by the other side. The goal is to be a credible, highly prepared witness who cannot be stumped or shaken.

6. Student-attorneys should be equally familiar with their roles (direct examination, cross examination, opening and closing statements). Student attorneys should practice direct and cross examinations with their witnesses, as well as practice opening and closing arguments. Closings should consist of a flexible outline. This will allow the attorney to adjust the presentation to match the facts and events of the trial itself, which will vary somewhat with each trial. Practices may include a judge who will interrupt the attorneys and witnesses occasionally. During the earlier practices, students may fall “out of role”; however, we suggest that as your practices continue, this be done less and that you critique presentations at the end. Each student should strive for a presentation that is as professional and realistic as possible.
7. Each team should conduct a dress rehearsal before the first round of the competition. We encourage you to invite other teachers, friends, and family to your dress rehearsal.



(over)

TIME LIMITS

OPENING STATEMENTS

5 minutes for each side

DIRECT EXAMINATION

10 minutes for each side

CROSS EXAMINATION

10 minutes for each side

CLOSING ARGUMENTS

10 minutes for each side

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

A list of all the Past Regional Champions is available at www.nysba.org/pastchampions

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

Regions

I. West

II. Central

III. Northeast

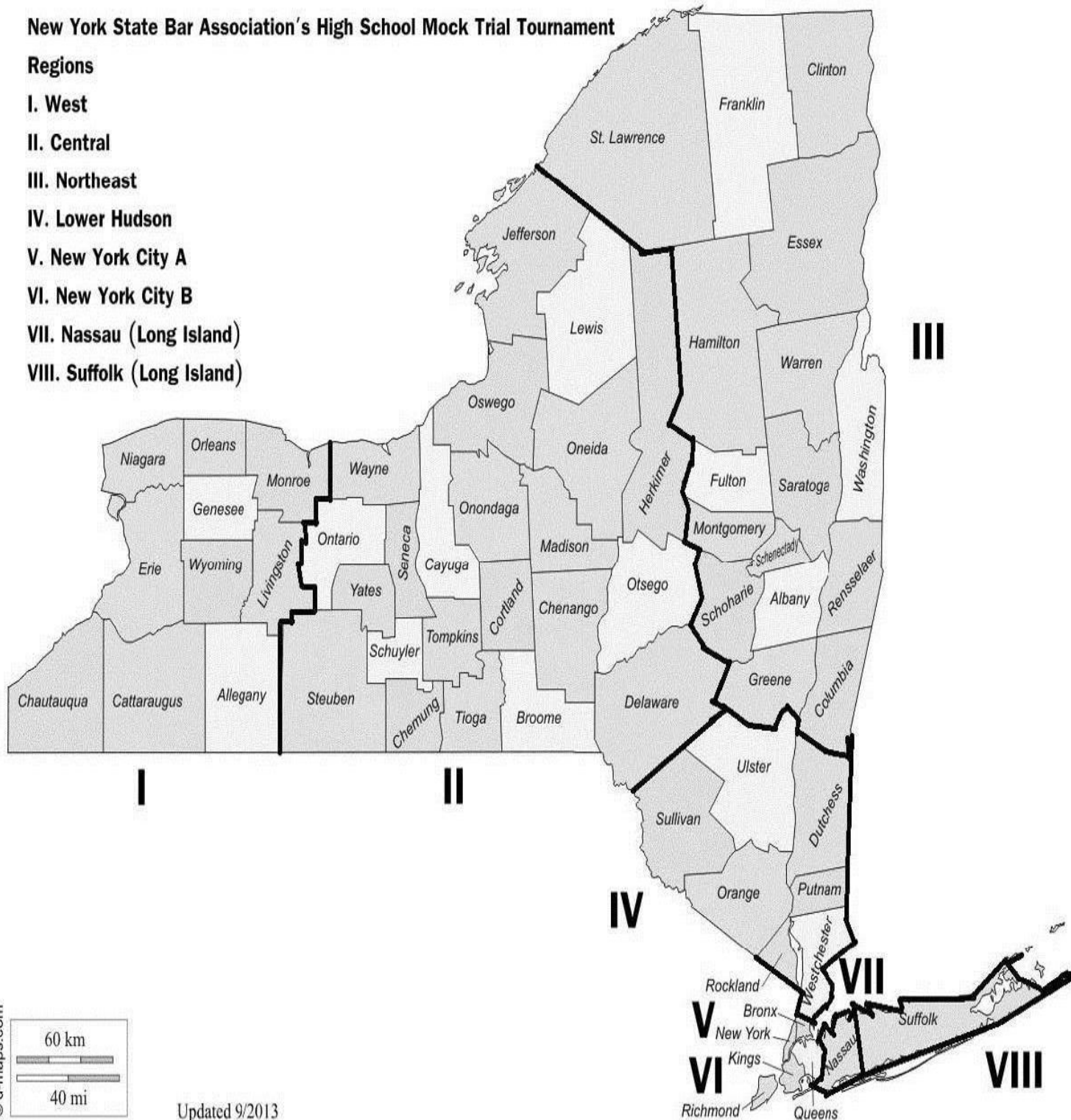
IV. Lower Hudson

V. New York City A

VI. New York City B

VII. Nassau (Long Island)

VIII. Suffolk (Long Island)



New York State Bar Association
 2021-2022 NYS High School Mock Trial Tournament
“People of the State of New York v. Shawn Miller”
Correction Memo #1 – Issued February 2, 2022

Print this Correction Memo and keep it with your case materials for reference.
 Bookmark this link to the Mock Trial page: <https://nysba.org/nys-mock-trial/>.

Replace current pages with the most recently revised pages. Revised pages are identified with Page Number-Revision Number and Date of Revision (for example: If page 55 was changed, it becomes 55-R1 (2.2.2022)). Revisions on affected pages are indicated by **BOLD AND UNDERLINE**.

It may be preferable to replace an entire section rather than just individual page(s).

DOCUMENT	CORRECTIONS (CORRECTION MEMO #1 – Issued February 1, 2021)	OLD PAGE / NEW PAGE
Table of Contents	Table of Contents has been updated to reflect the changes in pagination.	Replace Table of Contents
Rules	<p>Page 40 – Added new Rule 402-b.</p> <p>Rule 402-b: STATEMENT OF A CO-CONSPIRATOR: A judge may admit hearsay evidence if it is a prior out-of-court statement offered against a party and is a statement by a co-conspirator of a party made during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered.</p> <p><i>Example:</i> <i>Jane and Jill are charged with conspiracy to sell illegal drugs. During that alleged conspiracy, Jill approached an undercover police officer and said: “We have two kilos for sale. How much are you willing to pay?” At Jane’s trial, the prosecution may try to get the officer’s testimony of Jill’s out-of-court statement admitted into evidence as an admission against a co-conspirator’s interest. The court will admit this statement as an exception to hearsay if the prosecution has demonstrated that Jill was a co-conspirator, and this statement was made in the course and in furtherance of the conspiracy. However, even if the court admits the evidence, the statements alone cannot be used to establish the existence of the conspiracy.</i></p>	<p>n/a / 41-R1</p> <p>Replace all pages from 41-R1 thru 46-R1</p>

DOCUMENT	CORRECTIONS (CORRECTION MEMO #1 – Issued February 1, 2021)	OLD PAGE / NEW PAGE
Case Summary	<p>Page 54, Paragraph 7.</p> <ul style="list-style-type: none"> ➤ The first 3 sentences were deleted. ➤ New first sentence: Sidney would join the new firm after his/her/their graduation from Columbia. <p>Page 54, Paragraph 8, 3rd Sentence changed to:</p> <ul style="list-style-type: none"> ➤ After having graduated from Columbia, Sidney joined the firm as a full partner in August 2017. <p>Page 54, Paragraph 9, 5th sentence changed:</p> <ul style="list-style-type: none"> ➤ 2.5-million-dollar is now 3.5-million-dollar 	<p>54 / 54-R1</p> <p>Replace all pages from 54-R1 thru 60-R1</p>
Stipulations	<p>Page 61, Stipulation #5:</p> <ul style="list-style-type: none"> ➤ Changed from late 2017 to early 2017 	<p>61 / 61-R1</p> <p>Replace all pages 61-R1 thru 62-R1</p>
Affidavit of Sheridan Holmes	<p>Page 64, Paragraph 7, 1st sentence:</p> <ul style="list-style-type: none"> ➤ Changed ...third quarter of 2019... to ... early part of second quarter 2018... <p>Page 65, Paragraph 8, 10th sentence:</p> <ul style="list-style-type: none"> ➤ Changed...the scheme started in late 2017... to the middle of 2018... <p>Page 65, Paragraph 9, 2nd sentence:</p> <ul style="list-style-type: none"> ➤ Changed Sidney Taylor to Shawn Miller 	<p>64 / 64-R1</p> <p>65 / 65-R1</p> <p>Replace all pages 63-R1 thru 68-R1</p>
Affidavit of Fran Ashcott	<p>Page 69, Paragraph 6 – Added new sentence at end of paragraph:</p> <ul style="list-style-type: none"> ➤ My spouse and I would regularly withdraw the monthly earnings to help with our living expenses, but never touched our initial investment. 	<p>69 / 69-R1</p> <p>Replace all pages 69-R1 thru 72-R1</p>
Affidavit of Pat Nolan	<p>Page 74, Paragraph 8, Sentences 2, 3, and 4:</p> <ul style="list-style-type: none"> ➤ Ashcroft was changed to Ashcott. 	<p>74 / 74-R1</p> <p>Replace all pages 73-R1 thru 76-R1</p>

DOCUMENT	CORRECTIONS (CORRECTION MEMO #1 – Issued February 1, 2021)	OLD PAGE / NEW PAGE
Affidavit of Shawn Miller	<p>Page 78, Paragraph 8, 8th Sentence:</p> <ul style="list-style-type: none"> ➤ Shawn felt comfortable interacting... Shawn was changed to Ryan <p>Page 78, Paragraph 9, 2nd sentence changed to:</p> <ul style="list-style-type: none"> ➤ We would, on occasion, talk about all the illegal trading schemes that Ryan has seen over the years, but I certainly would not engage in that kind of activity. <p>Page 79, Paragraph 10, last sentence:</p> <ul style="list-style-type: none"> ➤ Changed the word that to than <p>Page 79, Paragraph 13, 4th sentence changed to:</p> <ul style="list-style-type: none"> ➤ Sidney would join our newly formed firm, sometime after their May 2017 graduation. <p>Page 79, Paragraph 14</p> <ul style="list-style-type: none"> ➤ 2nd Sentence changed to: I was running the firm alone for about eight months until <u>the expiration of the DO-NOT-COMPETE clause in Sidney's employment contract.</u> ➤ 3rd Sentence changed: ...four-month period....has been changed to eight-month period... <p>Page 79, Paragraph 15, 1st sentence changed to:</p> <ul style="list-style-type: none"> ➤ After graduating from Columbia, Sidney joined the firm as a full equity shareholder on August 21, 2017. <p>Page 83, Paragraph 22, 1st sentence:</p> <ul style="list-style-type: none"> ➤ Changed late 2017 to early 2017 	<p>78 / 78-R1 79 / 79-R1 83 / 83-R1</p> <p>Replace all pages 77-R1 thru 84-R1</p>
Affidavit of Mickey Penman	<p>Page 87, Paragraph 15, 4th sentence changed to:</p> <ul style="list-style-type: none"> ➤ For example: how could Bernie Madoff, the imprisoned and now deceased hedge fund manager, have such consistent profits when the market was inconsistent? 	<p>87 / 87-R1</p> <p>Replace all pages 85-R1 thru 88-R1</p>

New York State Bar Association
 2021-2022 NYS High School Mock Trial Tournament
“People of the State of New York v. Shawn Miller”
Correction Memo #2 – Issued February 16, 2022

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DOCUMENT	CORRECTIONS (CORRECTION MEMO #2 – Issued February 15, 2022)	OLD PAGE / NEW PAGE
Table of Contents	Table of Contents has been updated to reflect the changes in pagination.	Replace Table of Contents
Affidavit of Fran Ashcott	Page 70, Paragraph 8, Sentence 4 ➤ Changed May 2017 to August 2017	70 / 70-R2 Replace all pages 69-R2 thru 72-R2

