

## **AABANY 2025 Fall Conference**

### **New York Law School**

#### **Trial Advocacy Program (TAP)**

Saturday, September 27th, 2025

9:00 AM – 4:15 PM

#### **Presenters**

Hon. James R. Cho, U.S. District Court, E.D.N.Y.

Hon. Frances Wang, Queens Supreme Court

Joe Gim, Kings County District Attorney's Office, Chief of Criminal Court

Jacqueline Choi, In-House Litigation Counsel, Red Apple Group, Inc.

Sarah Khan, Assistant District Attorney, Manhattan DA's office (Trial Bureau)

Hana Kim, Acting Bureau Chief of Frauds, Queens District Attorney's Office

Hugh Mo, Principal, The Law Firm of Hugh H. Mo, PC

William Campo, Assistant Attorney, U.S. Attorneys Office, E.D.N.Y.

#### **Moderator**

Genny Ngai, Partner, Morrison Cohen

Sheila Shen, Associate, Holland & Knight

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#### **Day Agenda Overview**

|                      |   |
|----------------------|---|
| 09:00 AM – 10:30 AM: | Presentation on Opening, Directs, and Crosses |
| 10:45 AM – 12:15 PM: | Mock Openings and Direct Examination          |
| 02:30 PM – 03:25 PM: | Mock Cross Examination                        |
| 03:30 PM – 04:15 PM  | Presentation on Closings                      |

## **Faculty Biography**

### **William Campo**

Assistant Attorney, U.S. Attorneys Office, E.D.N.Y.

**William P. Campos** is an Assistant United States Attorney in the Eastern District of New York and is a member of the International Narcotics and Money Laundering where he investigates and prosecutes a wide range of cases. Will formerly was a member of the Business and Securities Fraud Section and the Health Care Fraud Task Force and also served as the Office's Coordinator for Intellectual Property Crimes. Additionally, Will was an adjunct professor of clinical law at Brooklyn Law School, who taught and supervised students in the Brooklyn Law School Prosecution Clinic.

Before joining the United States Attorney's Office in June 2007, Will was a litigation associate in a law firm. He started his legal career as an Assistant District Attorney in the Manhattan District Attorney's Office, serving in a Trial Bureau and later in the Rackets Bureau.

Will is a graduate of the United States Military Academy. He served as an Armor Officer commanding tank units in West Germany and later returned to West Point as an Outreach Admissions Officer. After his Army service, Will went to law school at Northwestern University before returning home to New York City.

### **Hon. James R. Cho**

U.S. District Court, E.D.N.Y.

On April 5, 2021, **James R. Cho** joined the Eastern District of New York bench as a federal Magistrate Judge. He is the first Korean American to serve as a federal judge in the Eastern District. Prior to his appointment, Judge Cho served as an Assistant United States Attorney ("AUSA") in the Civil Division of the United States Attorney's Office for the Eastern District of New York. During his more than 12 years at the U.S. Attorney's Office, Judge Cho litigated both affirmative and defensive cases across a wide subject area. He tried numerous cases and regularly represented the United States in appellate cases before the Second Circuit Court of Appeals. While at the U.S. Attorney's Office, he held the position of Chief of Bankruptcy and Immigration Litigation. Judge Cho also served as the Civil Division's training coordinator, where he was responsible for AUSA training, and on the Office's hiring committee. Before joining the U.S. Attorney's Office, Judge Cho worked in private practice with Seyfarth Shaw LLP where he litigated labor and employment matters, in its Chicago and New York offices.

Judge Cho previously taught courses in government civil litigation as an adjunct professor at New York University Law School and Brooklyn Law School. He also served as president of the Korean American Lawyers Association of Greater New York and the Asian American Bar Association of New York, one of the largest affinity bar associations in the country.

Judge Cho graduated with high honors from the University of Michigan and cum laude from the University of Minnesota Law School.

**Jacqueline Choi**  
In-House Litigation Counsel, Red Apple Group, Inc.

**Jacqueline Choi** is an in-house litigation counsel for Red Apple Group, Inc. As a board-certified trial attorney in New Jersey, Jacqueline has tried **numerous cases** to verdict, with a focus on insurance and commercial litigation. Prior to joining Red Apple Group, she worked as a trial counsel for various national insurance companies. She is licensed to practice law in New York and New Jersey. She received her Bachelor of Business Management degree from Stetson University and earned her Juris Doctor degree from Stetson University College of Law. In her free time, she enjoys travelling with friends, playing piano, and practicing hot yoga.

**Joe Gim**  
Kings County District Attorney's Office, Chief of Criminal Court

**Joseb “Joe” Gim** currently serves as Chief of Criminal Court at the Kings County District Attorney’s Office. In this role, he manages prosecutors and staff handling cases in the Kings County Criminal Court and plays a central role in leading the office’s criminal justice initiatives.

Joe began his career in public service in 2004 as an Assistant District Attorney at the Richmond County District Attorney’s Office in Staten Island, where he litigated cases involving organized crime and substance abuse. He later became Chief of the Crime Strategies Unit. In 2017, he joined the Nassau County District Attorney’s Office as a Senior District Attorney and went on to serve as Deputy Chief of the Trial Court Bureau and Chief of the Hate Crimes Unit. In those roles, he supervised teams of Assistant District Attorneys, developed training programs for law enforcement, and led community outreach efforts on hate crime prevention and response.

Beyond his prosecutorial work, Joe has been an advocate for building stronger connections between communities and the justice system. He has helped mentor young attorneys through trial advocacy training and contributed to efforts to reform hate crimes legislation.

Joe’s commitment to public service is rooted in personal experience. Growing up in Baltimore, his family was the victim of multiple crimes, including a shooting that left his father seriously injured. These early experiences shaped his understanding of justice and the importance of accountability for victims.

Joe is a graduate of George Washington University and Fordham University School of Law. With more than two decades of prosecutorial and leadership experience, he continues to dedicate his career to advancing public safety, strengthening community trust, and mentoring the next generation of legal professionals.

### **Sarah Khan**

Assistant District Attorney, Manhattan DA's office (Trial Bureau)

**Sarah Khan** is a Homicide ADA at the Manhattan District Attorney's Office (DANY). During her career at DANY, she has tried over 20 cases as first chair. She is a member of the DANY's Legal Hiring Board, and previously served as the Attorney-in-Charge of the College Internship Program. She also previously served as an executive board member of DANY's Asian lawyers' affinity group. Sarah also recently finished her term as the Co-Director of the Prosecution Clinic at New York Law School.

### **Hana Kim**

Acting Bureau Chief of Frauds, Queens District Attorney's Office

**Hana C. Kim** has been a prosecutor with the Queens District Attorney's Office for over twenty years. She began her career handling misdemeanor cases and trials, after which she was promoted to the felony trial bureaus, where she tried to verdict violent felonies and narcotics cases. Hana then began her investigations career with the Organized Crime & Rackets Bureau, where she handled long-term wiretap cases into the city's organized criminal enterprises and was promoted to supervisor. Hana was then Assistant Deputy Bureau Chief of the Major Economic Crimes Bureau, where she supervised ADAs with their cases and wiretap investigations. Hana was promoted to Deputy Chief of the Frauds Bureau, which handles complex financial crimes including, investment fraud, tax fraud, embezzlement, government fraud, insurance fraud and elder fraud. She is currently the Acting Bureau Chief of the Frauds.

### **Hugh Mo**

Principal, The Law Firm of Hugh H. Mo, PC

A trailblazer in the Asian American community, **Hugh H. Mo** celebrates 48 years in practice and 30 years as Principal of The Law Firm of Hugh H. Mo, P. C. Mr. Mo was the first Asian-American Assistant District Attorney for the New York County District Attorney's Office ("Manhattan DA"). In 1984, he was appointed as the first Asian-American Deputy Commissioner in Charge of Trials in the New York City Police Department (NYPD). At the time, he was the highest ranking Asian-American in New York City government. Mr. Mo then continued his legal practice as Founder and Partner-In-Charge for six years of the China Practice Group of Whitman & Ransom and represented Chinese government, state-owned entities, and private corporations in banking, corporate, litigation and real estate matters in the U.S. and overseas. Over the past 30 years, Mr. Mo has served as outside legal counsel to various U.S. and overseas corporate entities.

Mr. Mo has extensive investigative and jury trial experience, including supervising numerous complex financial fraud and internal police corruption investigations and first chairing over fifty federal/state criminal and civil jury trials. He also presided as Chief Administrative Judge in over 300 administrative trials in the NYPD. For the last 15 years, he has served as a Referee for the New York State Commission on Judicial Conduct, in which he presides at investigative and due

process hearings involving judicial misconduct. He is the Founder/President Emeritus/Chair of the NYPD Asian American Police Executives Council (AAPEX), with the mission to inculcate leadership development of Asian police executives in the NYPD. He also served on the NYPD Training Advisory Committee. He was also a legal commentator on Court TV (now TruTV) and for various Chinese-language news media. Mr. Mo's extensive community and political involvement includes serving as an "outside validator" at the request of The Obama White House during Supreme Court Associate Justice Sonia Sotomayor's June 2009 Senate confirmation hearings (see politico.com, 06/02/2009, Real-World Skill Prepped Nominee); serving on the transition committees of Manhattan District Attorney Cyrus Vance, Jr., Queens District Attorney Melinda Katz, New York City Comptroller John C. Liu (currently New York State Senator), and serving as both chairman of the Criminal Justice Advisory Council for David N. Dinkins's Mayoral Campaign and subsequently as a member of Mayor-elect Dinkins's transition committee.

Over the past 50 years, Mr. Mo has also served as board president and member of a variety of community and social engagement organizations, including Board President of the Chinese-American Planning Council (formerly Chinatown Planning Council and the nation's largest Asian American social services organization), Community Board No. 1 in Manhattan, Flushing YMCA, member of the National Committee on U.S.-China Relations, as well as various government policy committees. He also co-founded various civic and community organizations, including the Chinatown Health Clinic (predecessor to the Charles B. Wang Community Health Center), NYPD Asian Jade Society, and the Asian American Bar Association of New York (AABANY).

Mr. Mo is a life-member of the National Association of Criminal Defense Lawyers and has served as a member of various committees with the New York City Bar Association, including the Judiciary Committee. He was born in Shanghai, China, came to the States at the age of 9, grew up on the Lower East Side of New York, and attended Stuyvesant High School. He received his B.A. in History and Political Science from New York University, University Heights College, and J.D. from Boston University School of Law. He is married and has three

children, two of which are members of the Bar and also graduates of BU Law. His daughter Elizabeth served as a Manhattan ADA for almost six years, his older son Hugh Jr. is an entrepreneur, and his younger son Douglas is a litigator in BigLaw. Mr. Mo is fluent in Chinese Mandarin, and has traveled extensively on business to China, Taiwan, and Hong Kong.

**Genny Ngai**  
Partner, Morrison Cohen

**Genny Ngai** advises individuals and corporations on navigating and defending against federal and state criminal actions, as well as in high-stakes business disputes, guiding them through each step of the process, from investigation through appeal. She also focuses on internal investigations and helping clients design, enhance and implement compliance programs to avoid and mitigate civil and criminal risk. Genny served for over five years as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Eastern District of New York, most recently in its Business & Securities Fraud Section. Genny has investigated and prosecuted a wide variety of crimes, from

complex financial crimes to sex trafficking and racketeering offenses. She has particular experience in domestic and cross-border prosecutions of fraud and money laundering offenses.

Genny also has extensive trial and courtroom experience. During her tenure with the U.S. Attorney's Office, she tried several cases to verdict, including securing the conviction of the former Minister of Finance of Mozambique in connection with his role in a \$2 billion international fraud, bribery and money laundering scheme. She also led numerous investigations into companies and individuals and successfully obtained a first-of-its-kind independent monitorship for one of the world's largest online adult content distribution platforms.

Genny draws on her extensive trial and courtroom experience to offer pre-litigation counseling and guidance on domestic and cross-border civil and criminal actions. She has worked closely with domestic and international law enforcement and regulatory authorities, including the Federal Bureau of Investigation (FBI), Securities and Exchange Commission (SEC), Consumer Financial Protection Bureau (CFPB), FinCEN, the Internal Revenue Service (IRS), the Office of Foreign Assets Control (OFAC) and the United Kingdom's Financial Conduct Authority.

Genny is well-versed in all phases of civil litigation. Prior to joining the U.S. Attorney's Office, she was a member of Gibson Dunn & Crutcher LLP's Litigation Practice, where she represented individuals and companies in high-profile, high-stakes litigation, including in class action employment disputes, fraudulent inducement and breach of contract claims, and product liability matters.

Earlier in her career, Genny served as a judicial clerk to the Honorable Ann M. Donnelly of the Eastern District of New York. She also worked as an investigative analyst at the New York State Office of the Inspector General.

### **Sheila Shen**

Associate, Holland & Knight

**Sheila Shen** is an attorney in the Litigation and Dispute Resolution Practice Group of Holland & Knight's New York and Los Angeles offices, and maintains her New Jersey practice. Ms. Shen is a trial and arbitration lawyer who has secured favorable outcomes for clients in state and federal court actions, as well as in alternative dispute resolution proceedings.

Her clients look to Ms. Shen for impactful strategy in high-stakes litigation, to develop novel legal issues, manage complex class actions, and prepare substantive legal briefs, oral arguments and trials. Since beginning her career at Holland & Knight, Ms. Shen has obtained positive results for clients in complex commercial disputes, class action defense, education, transportation and logistics, asset recovery, and insurance and indemnification matters as a result of dispositive motion practice, trials and arbitrations.

Ms. Shen is active in the firm's pro bono and mentoring efforts and is a past coordinator of the New York Women's Initiative.

Ms. Shen is also active in the legal community. She is a former member of the Civic Affairs Committee of the Southern California Chinese Lawyers Association (SCCLA), past newsletter editor for the Insurance Committee of the International Bar Association (IBA), a previous member of the Pro Bono Advisory Committee for Asian Americans Advancing Justice of Southern California (AJSOCAL) and a past co-chair of the Asian American Bar Association of New York's (AABANY) Young Lawyers Committee.

**Hon. Frances Wang**  
Queens Supreme Court

**Judge Frances Y. Wang** was first appointed as an Interim Civil Court Judge in December 2016, and was assigned to serve in Bronx Criminal Court. She is the first Taiwanese to be appointed by a Mayor to sit in New York City Criminal Court. In December 2017, Judge Wang was appointed as a Criminal Court Judge, and had been serving in Bronx Criminal Court until January, 2021. Thereafter, Judge Wang was transferred to Queens Criminal Court. In December, 2021, she was promoted to sit in Queens Supreme Court, Criminal Term as an Acting Justice.

Judge Wang presides in a hearing and trial part. Judge Wang graduated magna cum laude from St. John's University, and received her J.D. from Hofstra University School of Law. Upon graduating from law school, Judge Wang served as an Assistant District Attorney in the Bronx for eight years. Prior to her appointment as a judge, Judge Wang was a Principal Court Attorney in Supreme Court, Criminal Term, Bronx County for six years.

Judge Wang was President of the Bronx District Attorney's Alumni Association and Secretary of the Asian American Judges Association of New York ("AAJANY"). She is currently the Vice-President of AAJANY. She has served on various panels to discuss the pathway to the bench. Through the Equal Justice Committee of Queens Supreme Court, Criminal Term, Judge Wang chairs the summer law school internship program. She also co-chairs several committees that plan cultural celebrations including Lunar New Year and Asian American Native Hawaiian Pacific Islander heritage month. She currently co-chairs the New York State Unified Court System's WorkingGroup on Anti-Asian Hate. Judge Wang also trains judges at the New York State Judicial Institute.

Judge Wang has been honored by the Taipei Economic and Cultural Office in New York and the Asian American Bar Association of New York for her contributions to the legal community. Most recently, in May 2024, she was honored as Person of the Year by the Society of Asian Federal Officers.

Judge Wang's family is from Taiwan. She was born in Singapore and lived in several countries, including Iran, Taiwan and Saudi Arabia, before migrating to the United States and settling in Queens when she was eight years old. Judge Wang is the product of New York City public schools.

## **AABANY 2025 Fall Conference**

### **Trial Advocacy Program (TAP): Opening Statements, Direct and Cross Examinations**

Saturday, September 27th, 2025

9:00 AM – 10:30 AM

#### **Presenters**

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Speakers: Hon. James R. Cho, Hon. Frances Wang, and Joe Gim

Moderator: Genny Ngai

#### **Program Agenda**

This year, rather than prepare a full mock trial, registrants will be asked to prepare portions of openings, direct examinations, and cross-examinations focused on developing specific skills relevant to each. Registrants will receive the fact pattern and materials by September 12, 2025, along with further information as to what skills they should focus on as they prepare their examinations.

9:00 AM – 10:30 AM: Presentation on Opening, Directs, and Crosses- 90 minutes

09:00 - 09:05 AM: Introductions

09:05 - 09:30 AM: Opening Statement

- Trial overview
- Structure and preparation of opening Statement
- Goals and pointers in telling the factual story
- What not to do during the opening statement

09:30 - 09:55 AM: What is Direct Examination?

- Goals of Direct
- Key Rules for Direct Examination
- Tips for Direct Examination
- General Outline of Direct

09:55- 10:20 AM: Cross-Examinations

- Scope of Cross-Examinations
- Identifying Leading Questions
- Standard Cross

#### **NY CLE Credit**

1.5 Skills

(Transitional and non-transitional)

AABANY Trial Advocacy  
Program  
September 27, 2025

Openings  
Direct Examinations  
Cross-Examinations

Hon. James R. Cho  
Hon. Frances Wang  
Joe Gim – Chief of Criminal Court – Brooklyn DA's  
Office

1

OPENING STATEMENT

2

## Trial overview

- Structure varies:
  - Jury vs. bench
  - Criminal vs. civil
  - Federal vs. state court
  - Court rules
  - Judge's rules

3

## What is an opening statement?

- Persuasive factual narrative (not "argument")
- Opportunity to establish
  - favorable first impression
  - credibility
  - theory
- Jury receptive to information
- Do not prepare first just based on the order of trial
- Understand legal limitations and requirements

4

## Preparation logistics

- Use an outline
- Vary spacing and font
- Highlight key words
- Go slowly
- Practice, practice, practice
- Presentation

5

## Order of Openings

- May be required (*i.e.*, criminal prosecution) or optional (*i.e.*, may be waived)
- Generally, the party bearing the burden of proof (plaintiff in civil case or prosecution in criminal case) goes first and defendant goes second
- Some jurisdictions permit the defendant to reserve opening until right before the defendant's case in chief is presented (mainly in criminal cases)

6

# Goals

- Tell a *factual* story by choosing:
  - facts to highlight
  - perspective
  - particular words
- Do not argue or draw conclusions – let the facts do that for you
- The jury should be able to understand:
  - your client's view
  - why you should win the case

7

# The first minutes

- Start strong
- Convey your theme (one-liner or short paragraph, woven throughout)
- Appeal to emotions
- Use a “hook” to grab the jury's attention
- Acknowledge (prosecutor/plaintiff)/emphasize (defense) burden of proof
- Summarize the facts that entitle you to win versus summarizing why the other side should not win
- Introduce yourself and your client

8

# Tell your client's story

- Pick a viewpoint
- Tell a story:
  - in chronological order (but not sequential, based on witnesses)
  - highlighting the most important facts first
  - organized based on the elements that you have to prove
- Focus on facts (can also include motivations), not legal issues
- Personalize your client
- Include only the key facts
  - Don't get bogged down in details
- Tell a coherent story
- Use repetition if appropriate

9

# Choose your words carefully

- Tell the story persuasively
- Names matter
  - "My client" vs. "Tom"
- Do not use jargon
  - "vehicle" vs. "car"
- Words convey meaning
  - "accident" vs. "collision"
- Use your words to create mental images
  - Use metaphors
  - Sensory words
  - Adjectives
  - Adverbs

10

## Front weakness

- If there is an obvious weakness in your case, consider defusing it by raising it before your opponent does
  - May not be an option for criminal defendants
- Present it in the least damaging light
- Provide jury with a way to reconcile the weakness with the rest of the story
- Be careful not to raise an issue that the other side may not mention

11

## Using exhibits

- Can be very effective
- But need to be sure it will come in to evidence
  - Consider a motion *in limine*
- Can also be harmful
  - Exhibits can detract jurors' attention
  - Can ruin surprise at trial
  - Can desensitize jurors
- Advise judge and opposing counsel in advance of any exhibits you plan to use

12

## What not to do

- Do not argue
  - Do not argue the law
  - Let the facts make your point
  - Tell the jury what the evidence will show
- Do not state personal opinions
  - Do not use the word "I"
- Do not overstate the evidence/overpromise
- Do not ignore the "bad" evidence

13

## Conclusion

- End strong (sum up the case in one sentence)
- Remind the jury of your theme
- Tell the jury the evidence will support your side
- Try to make an emotional connection
- Tell the jury what you are going to ask them to do at the end of the case

14

## DIRECT EXAMINATION

15

## WHAT IS DIRECT EXAMINATION?

- Generally speaking, it's questioning of the witness by the lawyer calling the witness.
- Opportunity to tell your story.
- Preparation is key.
  - Deposition transcripts.
  - Review witness statements.
  - Review key documents associated with witness
  - Meet with witness.
  - Rehearse direct examination.
  - Anticipate cross examination.

16

## GOALS OF DIRECT

- DELIVER on what you promised in opening.
- Introduce evidence by testimony and exhibits.
  - Where does this witness fit on your proof chart?
- Tell a coherent story from beginning to end.
  - For some witnesses, the story will be very brief.
- Make your witness seem credible and likeable.

17

## GOALS OF DIRECT

- Minimize your witnesses' weaknesses.
- Get the bad facts out on your terms.

18

## KEY RULES FOR DIRECT EXAMINATION

- Make the witness The Star.
  - Do not lead the witness – damages credibility
  - Let the witness talk
- Build rapport between the witness and the jury (e.g., eye contact and engagement)

19

## KEY RULES FOR DIRECT EXAMINATION

- Use non-leading, reporter-type questions.
  - Who? What? Where? When? Why? How?
  - Open-ended questions.
  - Describe? Explain? Show us. Tell us.
  - 8 words or less.
  - Plain English. *Daily News*, not *Harvard Law Review*.
- Leading questions = objections.
  - “What happened next” or “what, if anything” = catchall (when all else fails) question

20

## DEFINITELY NOT PLAIN ENGLISH!

- Q: “And is it your understanding that the employees of Diamond Crest Homes, once funds were received from the escrow closings, made decisions, including reallocation of monies to get the contractors out that they needed, regardless of whether they were on the list or not in order to complete a home?”

21

## DEFINITELY NOT PLAIN ENGLISH!

- Q: “Would it be your understanding based on your experience in reviewing these balance sheets from Hancock communities to American West homes that this would be representing monies advanced or sent to Diamond Crest homes by Hancock Communities, which was then a receivable back to Hancock Communities?”

22

## USE PLAIN, SIMPLE ENGLISH!

- Break up the questions:
  - Q. What are these documents?
  - Q. What's a balance sheet?
  - Q. Do these documents reflect any monies flowing from one entity to another?
  - Q. What do these entries represent?
  - Q. How are these amounts treated in an accounting sense?

23

## RULES FOR DIRECT EXAMINATION

- Cover all elements of proof or defense.
- Avoid clutter.
- Be an active listener. Don't be tied to a script.
- Looping ("What did you do after finding that bloody body?").
- Start strong, end strong. Bookend it.

24

## TIPS FOR DIRECT EXAMINATION

- Remember, direct exam is difficult
  - Witness management issues
  - Refreshing recollection
- Write answers, not the questions
- Control your pacing (but be mindful of trial time limits)
- The “Did” Problem
  - Did you see a gun?
  - What type of weapon did you see? (Disguised leading)

25

## TIPS FOR DIRECT EXAMINATION

- Positioning in the courtroom.
  - Where to stand.
  - Posture and confidence.
  - Speak slowly and clearly. Break up cadence.
- Your witness (not you) is the focus.
- Use an outline, not a script.
  - Remember your goals.
  - Put your theme in your outline.
- Don’t be distracted by objections, even if sustained.
  - Be mindful of the Court’s *in limine* rulings.

26

## TIPS FOR DIRECT EXAMINATION

- Re-phrasing
  - “Let me withdraw the question” not “strike that.”
  - Humanize yourself: “Let me ask you a better question.”
- Sometimes, a little leading is necessary.
  - Preliminary matters.
  - Uncontested matters.
  - Transitions from one subject/frame of reference to the next. (“Did there come a time that you found the defendant outside your home?”)

27

## TIPS FOR DIRECT EXAMINATION

- Use sign posting:
  - “I’m now going to switch subjects to...”
  - “Let me now switch gears and ask about a new topic.”
  - “Let me direct you to a new topic.”

28

## TIPS FOR DIRECT EXAMINATION

- Witness management.
  - Prepare the witness. Head it off at the pass.  
“Hold on.” “Let me stop you there.” “Stop right there and explain what you mean by that.”
  - Understand that witnesses might be nervous.  
We are all afraid of public speaking.

29

## TIPS FOR DIRECT EXAMINATION

- Prepare in advance how you plan to lay foundation for exhibits you will introduce via your witness (*e.g.*, author, recipient, custodian).
- Anticipate objections and how you will address them.
  - Hearsay problems? (see FRE 803 Exceptions)
  - Include response to potential objections in outline.

30

## GENERAL OUTLINE FOR DIRECT

- Introduce and personalize witness.
  - Education
  - Professional training, etc.
  - Establish witness's experience or ability to perceive.
- Go through your story chronologically.
  - Break the story into relevant parts.
- Ask several questions about key points (the heart).

31

## GENERAL OUTLINE OF DIRECT

- Make your record – refer to exhibits by number and description.
- Listen to your witness. Make it a dialogue, not a stilted presentation.
- If you get off track, compose yourself.

32

# CROSS EXAMINATION

33

## Cross Examination

### Scope of Cross-Examination

FRE Rule 611(b)

Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.

See Guide to NY Evidence 6.06

## Cross Examination

### Leading Questions

FRE Rule 611(c)(1)

Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions on cross-examination.

See Guide to NY Evidence 6.11

## Cross Examination

### What is a Leading Question

Any question that suggests to the witness the desired answer.

*Didn't you hear the gunshot?*

A question that assumes a controverted fact is also a leading question:

*What was the plaintiff saying while he assaulted the victim?*

Cross Examination

## Other Examples

Did you do your homework?

*You didn't do your homework, did you!*

What time did you go to work?

*You were late for work that day, right?*

How often do you work out?

*Pushups are for suckers, right?!*

Cross Examination

## Standard Cross

- 1) Redo Direct - leading
- 2) Impeach prior bad acts
- 3) Impeach prior inconsistent stmt
- 4) Impeach bias/motive
- 5) Impeach evidence/logic
- 6) Question corroboration or lack
- 7) Question perspective
- 8) Question memory

Cross Examination

## Federal Impeach: Inconsistent Statement

(a) **Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) **Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

Cross Examination

## Cross – Inconsistent Statement

Have them commit to a fact you can contradict

Neg them when possible

Ask them about their memory today

Ask them about whether their memory was better earlier

Ask them whether they remember the prior statement

Ask them the contradiction

\*Confront them about the contradiction

An abstract background image showing a close-up of a hand holding a glass, with a blurred, colorful light effect in the background.

## Cross Examination

Do you remember telling us that <fact>  
And you're sure that <fact>  
You could be mistaken about <fact> couldn't you?  
The day of the incident was <date>, it's <time> since then –  
your memory could have faded couldn't it?  
The day of the incident you spoke with <person>, didn't you?  
You even had to fill out a form about that incident, right?  
Isn't it true that you told <person> that <contradiction> on the  
day of the incident?  
Isn't it also true that you filled out a form saying  
<contradiction>  
Would you like to see a copy of that form?  
I'm asking that this be marked in for ID (show form)

An abstract background image showing a close-up of a hand holding a glass, with a blurred, colorful light effect in the background.

## Cross Examination

### Impeachment by Bias, Hostility, & Interest

The credibility of a witness may be impeached by asking the witness on cross-examination about the witness's bias, hostility, or interest for or against any party to the proceeding and by extrinsic evidence of such bias, hostility, or interest.



Cross Examination

## Impeachment by Bias, Hostility, & Interest

Start by establishing how well the witness and the parties know each other and highlight whether they are familiar or not  
Explore the incentives for the witness to testify  
Point out how the outcome of the litigation would affect them



Cross Examination

## Lack of Corroboration

For critical facts you wish to dispute ask questions about whether any corroboration exists  
Uncalled witnesses  
Lack of physical evidence  
Recordings that may exist or were not preserved  
Writings related to a fact that exist but weren't produced



Cross Examination

## Question Perspective and Memory

Highlight the length of time since incident  
Ask questions about when they first reported  
Discuss relative location of the witness and event  
Ask questions about lighting location and other environmental things that can affect observation and memory  
Try to get specific answers about distance or time because they can often lead to powerful closings

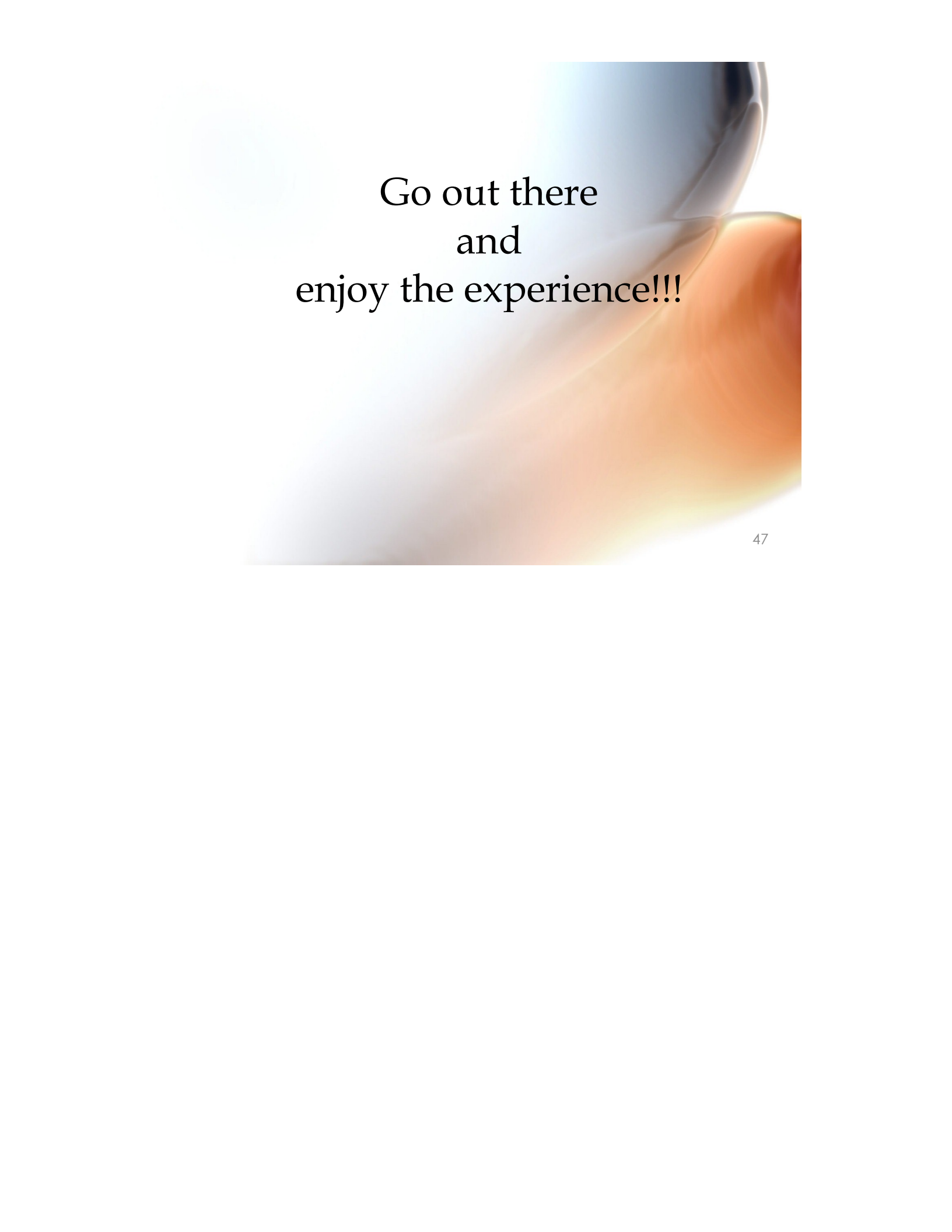
Cross Examination

Gotcha

## General Notes

- No matter what: you expected outcome
- Know when to stop (see Know Your Purpose)
- Use Closing traps – get small admissions to exploit in your closing but don't elaborate
- Watch your facial expressions!
- End strong if in front of jury!
- Use answers to create new questions
- Caution with “why” or open questions

Preparation



Go out there  
and  
enjoy the experience!!!

## **AABANY 2025 Fall Conference**

### **Trial Advocacy Program (TAP): Mock Openings and Direct Examinations**

Saturday, September 27th, 2025

10:45 AM – 12:15 PM

#### **Faculty**

Jacqueline Choi, In-House Litigation Counsel, Red Apple Group, Inc.

Sarah Khan, Assistant District Attorney, Manhattan DA's office (Trial Bureau)

Hana Kim, Acting Bureau Chief of Frauds, Queens District Attorney's Office

Genny Ngai, Partner, Morrison Cohen

Sheila Shen, Associate, Holland & Knight

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Saturday, September 27th, 2025

10:45 AM – 12:15 PM

Faculty: Jacqueline Choi, Sarah Khan, Hana Kim, Genny Ngai and Qian (Sheila) Shen

### **Program Agenda**

Students will be split into small groups to present their examinations to a group of experienced trial attorneys. The faculty will provide feedback in this small group setting and students will have the opportunity to practice in response to this feedback, time permitting.

Program Length: 90 Minutes

Mock Openings and Direct Examination– Split into Rooms with Students & Faculty

### **NY CLE Credit**

1.5 Skills  
(Transitional and non-transitional)

## **AABANY 2025 Fall Conference**

### **Trial Advocacy Program (TAP): Mock Cross Examinations**

Saturday, September 27th, 2025

2:30 PM – 3:25 PM

#### **Faculty**

Jacqueline Choi, In-House Litigation Counsel, Red Apple Group, Inc.

Sarah Khan, Assistant District Attorney, Manhattan DA's office (Trial Bureau)

Hana Kim, Acting Bureau Chief of Frauds, Queens District Attorney's Office

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## **AABANY 2025 Fall Conference**

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Saturday, September 27th, 2025

2:30 PM – 3:25 PM

Faculty: Jacqueline Choi, Sarah Khan, Hana Kim, Genny Ngai and Qian (Sheila) Shen

### **Program Agenda**

Students will be split into small groups to present their examinations to a group of experienced trial attorneys. The faculty will provide feedback in this small group setting and students will have the opportunity to practice in response to this feedback, time permitting.

Program Length: 55 Minutes

Mock Cross Examination – Split into Rooms with Students & Faculty

### **NY CLE Credit**

1.0 Skills  
(Transitional and non-transitional)

## **AABANY TRIAL ADVOCACY PROGRAM (TAP)<sup>1</sup>**

### ***Shawn Wright v. Play and Learn Childcare Center***

In this civil action, the parent of a three-year-old sues a day care center for negligence after the child breaks his arm under staff supervision.

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<sup>1</sup> This problem was developed by the Street Law Clinic at the Georgetown University Law Center and is used by AABANY TAP with permission. The problem is slightly modified for TAP purposes.

## **PROGRAM RULES**

1. The official mock trial materials, consisting of the Statement of Stipulated Facts, Applicable Law, Witness Statements, and Documents, comprise the sole source of information for testimony. The Stipulated Facts and any additional stipulations may not be disputed at trial.
2. Each witness is bound by the facts in the given witness statement. All participants agree that the witness statements are signed and sworn affidavits. Witness Statements may not be introduced as evidence, but may be used for impeachment. Fair additions which (a) are consistent with facts contained in the witness affidavits and (b) do not materially affect the witness's testimony are permitted. If a witness is asked a question on cross-examination which is not dealt with in the witness's statement, the witness may invent an answer favorable to that witness's position.
3. Students may read other cases, materials, or articles in preparation for the mock trial. However, they may only cite the materials given, and they may only introduce into evidence those documents given in the official mock trial packet.
4. If a witness testifies in contradiction of a fact in the witness statement, the opposition must show this on cross-examination through correct use of the affidavit for impeachment. This procedure is spelled out in the attached Simplified Rules of Evidence.
5. If on direct examination witness invents an answer which is likely to affect the outcome of the trial, the opposition should show this on cross-examination through correct use of the affidavit for impeachment. This procedure is spelled out in the Rules of Evidence. The scoring panel should consider such inventions of facts in scoring the witness' presentation.
6. The trial proceedings are governed by the Mock Trial Simplified Rules of Evidence. Other more complex rules may not be raised in the trial.

*Wright v. Play and Learn Child Care Center*

**Stipulated Facts**

Shawn Wright is the parent of Junior Wright, a three year old. Shawn first visited the Play and Learn Day Care Center on July 14, 2000. S/he met with the center director, Sydney Little, and visited two classrooms for three year olds. On that day there were fifteen students in each class with three adult teachers: one lead teacher and two assistant. Shawn met the lead teachers from each class, Joy and Lorraine. At that time, Shawn said that s/he had a couple of places to consider and would contact Sydney Little if s/he decided to enroll Junior.

On Monday, July 17<sup>th</sup> Shawn Wright returned to Play and Learn and completed an enrollment application and intake forms. These included his social and medical histories. Junior attended his first day at the center on Monday, July 24<sup>th</sup>. He was placed in the Giraffe Class with Lorraine. This class was immediately next door to the Elephant Class where Joy was the lead teacher.

Junior Wright previously attended the Teach the Tots PreSchool. Teach the Tots had asked Junior to leave, due to behavioral problems. Shawn withdrew Junior and immediately had him tested by a developmental pediatrician, Dr. Ellis Baldwin, who specialized in developmental issues. Dr. Baldwin diagnosed Junior with HID (Hyperactive and Impulsive Disorder). Dr. Baldwin referred Junior to Carla Thomas, a clinical psychologist, for follow up evaluation.

On Wednesday, July 26<sup>th</sup> the Play and Learn Day Care Center sent home its weekly newsletter. Each Wednesday the center sends out newsletters with weekly reminders, the calendar of events and field trips, and any other information the staff feels parents should have. Shawn received the newsletter on July 26<sup>th</sup>, which contained information about pink eye and reduced staffing at the Center.

On July 28<sup>th</sup>, afternoon snack was served to the students in the Giraffe Room at 2:30 PM according to the master schedule. Joy, the head teacher in the Elephant Room, was absent from work because she contracted pink eye. Sandy, the office manager, was serving as substitute head teacher that day in the Elephant Room. The Giraffe Room was staffed by Lorraine (the regular lead teacher) and Lee and Sherri (the regular assistants in that class). Adam, one of the assistant teachers from the Elephant Room entered the Giraffe Room while snack was being served and explained that they were having some problems with

a student next door. Sherri left the Giraffe Room and went to help in the Elephant Room. At some point while Sherri was out of the room, Junior left his assigned table seat and climbed the changing table located in the back corner of the room. Lee and Lorraine heard him hit the floor and rushed to his aid. The staff at Play and Learn immediately put in place their emergency medical plan. They called Shawn and paramedics. Lorraine accompanied Junior to Children's Hospital.

Junior's left arm was fractured in several places. There was also some tendon damage. He wore a cast for three months. During the time he was in the cast he was unable to use his left arm for any reason. Despite intense physical therapy, Junior's motor skills have been impaired. Even though he has tried to learn how to write and eat with his right hand, he has had problems because he is left handed.

After Junior was released from the hospital, Shawn placed him in another day care center that continues his physical therapy and he has not had any other injuries since that time.

Shawn is suing Play and Learn on Junior's behalf for negligence for the full amount of his medical expenses and physical therapy, and for the income s/he has lost in having to manage his needs since the accident. Both parties stipulate to the amount of these damages. Shawn Wright is also suing for \$50,000 for pain and suffering that resulted from this accident.

Play and Learn defends by claiming that Shawn is at fault for what happened to Junior, because Shawn did not inform Play and Learn of Junior's diagnosed behavioral problems. It claims that Shawn was aware that Junior suffered from HID and failed to inform the day care center. Play and Learn further asserts that if it had known about Junior's behavior, the staff would have followed different procedures regarding the care of special needs children. Play and Learn maintains it followed the regulations and customs of the child care industry.

**Stipulation: Parties Stipulate to the following**

**Definition of HID (Hyperactive & Impulsive Disorder)<sup>1</sup> and Testimony**

HID is a disorder characterized by inappropriate levels of three observable behaviors: inattention, impulsivity, and hyperactivity. Children with HID cannot stop their responses to events and

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<sup>1</sup>HID is not a real disorder but was created for the purposes of this Mock Trial. Diagnostic and child care procedures followed in the mock trial are similar to but not intended to be the exact equivalents of, actual procedures required by federal and local laws.

situations long enough to think about and modify what they are saying or doing. They may be able to recite classroom rules, for example, but in the heat of the moment they are unable to stop, think about the rules, and alter their behavior. Therefore, their actions in these situations result not from willful disobedience but from the inability to apply their skills and knowledge appropriately.

Plaintiff waives any claim to confidentiality of medical records pertaining to this case.

#### **Applicable Statutory Law**

#### Section 18-101 Negligence. Standards Governing Tort Actions

(A) Standard Governing Negligence Actions: To support a finding of negligence, a plaintiff must prove by a preponderance of the evidence that:

- i) defendant owed plaintiff a duty of care;
- ii) defendant breached that duty;
- iii) defendant's breach caused plaintiff's injuries; and
- iv) plaintiff suffered damages as a result.

(B) Comparative Negligence: In a negligence action, to assess damages the finder of fact must:

- i) determine the percentage of fault attributable to each party; and
- ii) reduce the amount of the damages due plaintiff by the percentage of fault attributed to the plaintiff;

(C) Parental Liability in Comparative Negligence: In suits brought by a parent on behalf of a minor child under the age of eight, any parental negligence which contributes towards any injury to the child which is the subject of the suit is imputed to the child. This section operates in effect to make the parents the same party as the child for purposes of comparative negligence assessment.

#### **Selected Portions of Olympia Municipal Regulations**

Title 29: Public Welfare

### Chapter 3: Child Development Facilities

Section 315.4 Teachers at child development centers shall be qualified by meeting the requirements of one of the following:

- 1) A bachelor's degree in early childhood education or a related field with minimum of 15 hours in early childhood education courses;
- 2) Two or more years of college, including at least 15 hours of early childhood education courses; and one year of experience in a child development facility;
- 3) A high school diploma or its equivalent and 3 years of experience as an assistant teacher plus 9 college credit hours in early childhood education
- 4) Experience as a teacher or assistant teacher in a licensed child development center; provided that he or she has been awarded a child development associate credential.

Section 315.5: An assistant teacher shall be qualified by meeting the requirements of one of the following:

- 1) Two or more years of college and demonstration, to the satisfaction of the director, of skill and competence with children; or
- 2) A high school diploma and certificate in child development from an accredited vocational school; or one year of experience in a child development center.

Section 316.2: There shall be a teacher, who may also be the director, and an assistant teacher or aide for each group of children at all times. During non-peak hours (before 8:30 a.m. and after 4:30 p.m.), an assistant teacher may substitute for a teacher.

### **SELECTIONS FROM APPLICABLE CASES**

*Carson v. La Petite Academy*, 751 V.V. 67 (1999).

Facts: Jimmy Carson, who was three at the time, fell off the steps of a slide on the playground of La Petite Academy. La Petite argued that it was not negligent and that "children will be children."

Holding: The court ruled in favor of the plaintiff. It held that the mere fact that the nature of small

children is such that they fall and hurt themselves is a consideration in the evaluation of the duty of care owed to the child.

*Wood v. Wingfield*, 457 V.V. 890 (1995).

Facts: The defendant day care center in this case was granted summary judgment in response to a suit by a parent on behalf of a child who injured his thumb. The nine year old tripped on a floor mat and injured his thumb while playing bean bag catch with another child. The legally required ratio for school age children to adults was 18 to 1, in this case the actual numbers were 6 to 1. The defense also stated that no prior injuries have occurred while children played bean bag catch in the room.

Holding: The appellate court held that in order to establish actionable negligence, the plaintiff must show the existence of a duty, a breach of duty, and an injury proximately resulting therefrom. Whether a duty of care is owed to a particular plaintiff depends on whether the defendant should have foreseen that its conduct would likely cause harm to a person in the plaintiff's position. The dismissal of the case in favor of the defendant was upheld.

### **Witnesses**

#### **Plaintiff Witnesses:**

|                                    |                     |
|------------------------------------|---------------------|
| Parent:                            | Shawn Wright        |
| Early Childhood Psychologist:      | Tyler Larsen, Ph.D. |
| Former Employee of Play and Learn: | Lee Morrison        |

#### **Defense Witnesses:**

|                             |                   |
|-----------------------------|-------------------|
| Director of Play and Learn: | Sydney Little     |
| Developmental Pediatrician: | Dr. Ellis Baldwin |
| Neighbor:                   | Dell Anderson     |

### **Witness Statement of Shawn Wright**

I am a thirty year old parent with two children. Junior is three and Mark is eight. I lost my spouse a year and a half ago and now I work hard to raise our sons in a loving, nurturing environment. When Mark first entered kindergarten, we had some problems with his teacher. She felt that he was disruptive in the class, spoke out too often and failed to follow directions as other students of the same age did. My spouse and I were very upset, especially when we received his first report card. After several meetings we, the principal, and the teacher agreed that it would be best to move Mark to a different classroom. Once he began working with a different teacher, Mark absolutely thrived. He was even tested and placed in the program for gifted and talented students. That was three years ago. Mark has been on the honor roll ever since. It's true that I have been suspicious of teachers and anyone who wants to label my children since then, but I sincerely believe that as parents of young black males we cannot be too careful. My spouse was labeled as learning disabled as a child and always felt it held him/her back.

That's why, when Junior first began having problems at Teach the Tots, I was less than happy at the idea of testing him. He was so young and was going through his "terrible two's." I thought it seemed very premature to label him. Junior was also in a transition stage. He was moved from home day care situation where he was cared for by a neighbor with three other children to a big, bustling day care center, not to mention losing a parent. Ms. Ruby, the woman who kept Junior from the age of six months to two years, felt that it was time for him to move on. She told me about a program called "Child Find" that helps families diagnose disabilities. She said she thought that Junior was possibly hyperactive. I thought it was too early to tell. We placed him at Teach the Tots, a center known for aggressively educating young children. Since Junior and Mark are so close, Junior is exposed to a lot of things for older children. In addition to being very bright, has learned a great deal from his brother. I thought that he would do well in a center really focused on student learning.

Well, it was a disaster from the beginning. In the course of four months Junior spent time in two different rooms. I hoped he would bond with at least one of the teachers, but both felt that he was too active and could not control his behavior. We never had problems with him at home, but for some reason, they felt that he was disruptive in the classroom. Even the other parents were biased. In Junior's first month there he was invited to two birthday parties which he attended. Later, when I was picking him up one day I saw another parent putting party invitations in the student cubbies, but Junior did not receive one. A friend of mine who also had a child at Teach the Tots went to the birthday party with his child and

told me that he heard parents saying that Junior really acted up at the two parties he did attend. I am convinced that it was just the teachers gossiping and complaining about him and not his behavior. After all, how can a child be an angel at home and so wild everywhere else?

That's really what lead me to have Junior tested. Both of his teachers at Teach the Tots recommended it. I even took him to the specialist they suggested, Dr. Baldwin, who diagnosed him with HID. Dr. Baldwin referred Junior for more testing, but I didn't follow up. The HID diagnosis was what his teachers expected, but I was not happy with that and decided that things really were not working there. I looked into moving Junior again and selected Play and Learn Day Care Center. The director seemed not only nice, but very knowledgeable about early childhood education.

I didn't know what to think when Junior was injured at the Play and Learn Day Care Center. One morning I dropped off a happy, energetic, extremely healthy three year old. Then I got a call at the office around 3 PM. Junior's teacher, Miss Lorraine, said that he had been taken to the hospital. I was so upset I couldn't even drive myself. When I got there Junior's entire arm was bandaged. His face was puffy and red and there were tubes in him. I couldn't even tell where he was hurt. The moment I touched his left hand I could feel that something really terrible had happened to my baby and I almost passed out.

When the doctor came out and explained Junior's injuries to me it was just too much. Apparently when he fell and hit the hard, linoleum floor of the classroom he broke his arm in several places. This would be a serious injury at any point, but to have such a thing happen to so young a child has been my worst nightmare as a parent. Junior was in a cast that covered his entire left arm for over three months. I had to take him to physical therapy three times a week and do exercises with him at home every night. I have also had to place him in a special day care center that has trained staff. They work on his motor skills with him there as well. Since Junior is left handed, it has been especially difficult. He was doing so well, but in the last year went from learning to eat with his left hand to using his right hand to going back to using the left.

This has taken a serious toll on the entire family. As a single parent I am all that my children have. I have been devoting so much time to Junior's care and recovery that I worry that Mark feels neglected. I have enrolled him in gymnastics classes, as well as art, but that means that I spend even more time trying to coordinate their schedules. Between Junior's therapy, Mark's classes and little league, and the fact that Junior's new day care center is so far from our home- I feel like I am on my last leg. It is a

struggle to maintain this pace. I try to stay busy though, because when I think of how sad Junior looks watching his big brother who he admires so much playing softball, I am just overwhelmed. Who knows when, if ever, Junior will be able to swing a bat?

Play and Learn claims that this is my fault because I did not inform them of the fact that Junior was diagnosed with HID. However, when I first had Junior tested I was not convinced the doctor was right. The doctor who tested Junior was referred to me by the staff at Teach the Tots. Junior was at Teach the Tots for four months and always had problems, and the doctor used notes from Junior's teachers as part of his/her analysis. I met with his teachers repeatedly and they kept voicing the same complaints: he was hyperactive, impulsive, disruptive, and inattentive. They didn't seem to understand that Junior is an active and busy toddler. He is very close to his older brother and tries to imitate everything that he does. After the diagnosis I did some research and learned that many people are skeptical of the HID diagnosis. The "disorder" has only been known of for a couple of years, and some think it is just a way of tracking black males at an even earlier stage. I felt it was my duty as a parent not to allow my child to be labeled if I was not 100% certain that it was correct.

I did not tell Play and Learn about Junior's diagnosis because I knew that they would be difficult about it. Besides that, I planned on having Junior tested again to get a second opinion. I didn't have time to do the follow up until after the fall. I really don't see why everyone thinks it is so important that Junior may have these problems. The point is that he is a three year old and should be properly supervised at all times. Play and Learn should have had enough staff to supervise the children in their charge, even the active ones, and should not have had things that were so easy to climb (not to mention leaving the starfish crackers out). I did read the newsletter on July 26<sup>th</sup>, but didn't think his behavior was so bad that I had to notify his teacher.

**Witness Statement of Dr. Tyler Larsen (Early Childhood Psychologist)** I am a psychologist who specializes in early childhood development. I was trained at the University of DC and George Washington University. I teach several courses on child development and have published four books on the subject, including *Active While Black: A Critical Look at the Over-diagnosis of Hyperactivity in Black Males*. I also consult in the establishment and management of child care centers in Olympia. I have been in this field for over twenty (20) years and have worked with families with special needs children since I began my career. After recognizing a problem of active Black male students being over-diagnosed with any number of hyperactive disorders, I helped found the professional organization, Professionals Against Labeling Students (PALS). Our mission is to work to end the mislabeling of Black youth as having Hyperactive Impulsive Disorder (HID). Many of our members even doubt the existence of such a condition. We also work to educate the professional community about some of the reasons why black children are misdiagnosed. That includes working to dispel stereotypes and working to reform the testing that is currently used for assessment purposes. Many in the medical community do not agree that black males are often misdiagnosed. However, I am not a medical doctor but I qualified to take a much more complete view of these matters, considering factors other than simple outward behaviors. I am receiving a fee of \$2,500 for my work in this case.

I have reviewed the records in this case and met with Junior Wright. In my professional opinion he does not suffer from HID. Dr. Baldwin's diagnosis was based in large part on the statements of Junior's teachers at Teach the Tots. For a truly accurate assessment of a child to be made, a doctor should directly observe the child in the classroom. That way the doctor can ascertain exactly what is going on without viewing the facts through the filter of the teacher's perceptions. In addition, even the experts who developed the diagnostic criteria for HID believe that it takes 4 months of observation to accurately assess and evaluate behavior. Most care givers have the best of intentions, but this is a world in which for a number of reasons certain children, especially young black males, are misdiagnosed with HID and other related conditions. I believe that this is what happened to Junior. Children develop at different rates. The range of normal behavior goes from "quiet children" to "active children." When black males fall into that active end of the normal range, they are often labeled as HID.

We don't have data on Olympia just yet, but in cities of similar sizes like Boston, blacks are enrolled in special education 30% more often than white students. Once placed in special education programs, black students are twice as likely to be placed in restrictive classroom environments. A New York study showed that, in New York school systems, once enrolled in special education programs only one in twenty students are declassified and put back in regular classes. In almost every setting black children are more likely to be deemed mentally retarded. Black parents are more likely than other racial groups to be told by a school that a black child has behavioral problems. This leads to all kinds of unnecessary concerns, especially when the children get to school. That is why we advise parents to be careful in selecting doctors and always urge them to get second opinions when their children are diagnosed. We also encourage parents to seek options other than having their children placed in special programs. PALS offers, for a small fee, consulting services to parents with these needs.

When Shawn first came to see me and brought Junior, my immediate reaction was that this bright, energetic child could not possibly have HID. I met with Junior alone, saw him interact with Shawn and with his older brother Mark, observed him in the new day care center, and performed my own testing. As a result, I am convinced that while active and curious, he is not hyperactive or impulsive. Although he displayed some signs of inattention, many children his age do. Junior is not always in control of his behavior, but this is because he is an especially imaginative and thoughtful child. Mark and Junior lost their other parent rather tragically. Even though Junior is only three, he feels the stress of this. Much of what Dr. Baldwin calls hyperactivity and impulsiveness is really just a sign of

Junior's anxiety and stress. These are the kind of factors that the tests used to diagnose children with behavioral problems and learning disabilities do not take into account.

For the Play and Learn Center to claim that Junior was so impulsive and out of control is ridiculous. He is an active and emotional child, but he does not have any type of condition that excuses the center of its negligence. I visited the Play and Learn Center and saw the room where the accident occurred. The first thing I observed was that immediately next to the changing table is a diaper disposal. Diaper disposals are commonly used in child care centers because they are so convenient and sanitary. However, the proximity of this diaper disposal to the changing table created a virtual staircase to something attractive, like the starfish cookies. It takes only a child with a little ingenuity, not one with a hyperactive disorder, to recognize and seize such an opportunity. If the diaper disposal were kept in the cabinet this would not have happened. It is common practice to keep diaper disposals out to the side of changing tables in rooms with children up to the age of two, but in a classroom for children over 36 months they should be kept away from children, and if even visible, should be in an open shelf and not simply freestanding. Not only is it no longer necessary to have them out in classes for children over 30 months (most children are potty trained or at least wearing tug-ups and no longer using the changing table), but by the time that children are 30 to 36 they have the gross motor skills necessary to climb something like that. In this business, child care providers have to think beyond the municipal regulations and what makes their lives easier when it comes to classroom design. They have to think about the continuing and progressive motor development of the children. Any three year old with an average level of motor skills could have climbed that diaper disposal to reach the top of that changing table and fallen off. It is unfortunate that in this case the unlucky little boy had also be misdiagnosed with HII.

#### **Witness Statement of Lee Morrisson (Former Play and Learn Teacher)**

My name is Lee Morrison and I am a child care provider with Tender Years PreSchool. Up until a few months ago I worked at Play and Learn as an assistant teacher. I really love kids and plan on going back to school to complete my undergraduate degree in early childhood education. I completed my two year certification in 1999 and have been taking classes in education ever since. Sydney Little fired me a few months after Junior's accident and claims that it was because I couldn't get along with people and lowered staff morale. I can't believe that people like to work in that type of environment, no structure for employees, no rules for the kids- I just couldn't understand it. They were always saying "They're children, Lee, cut them some slack," but if they don't learn what's right in preschool the real world is going to be a shocker. There is no reason that young children can't "learn to color in the lines." I actually believe that children crave discipline and order. I know that some of the other assistants called me Major Morrisson, but they are adults who lack order in their own lives. The real reason is that I was fired was that Sydney didn't like the suggestions I was making on how Play and Learn could change to better serve the children in its care. Play and Learn was all play. The curriculum was too unstructured and the only thing Sydney wanted us to teach was how to play games (and even then Sydney felt that the kids should make up and change the rules).

I worked at two other child care centers before going to Play and Learn. They spent more time on professional development and training than Play and Learn. Most day care centers struggle to keep good staff, but at Play and Learn not having enough adults to go around was a chronic problem. Often people from the office staff, like Sandy, would fill in. Sandy is a lovely person and has a degree in education, but all of her experience is in teaching high school kids. Sometimes having her as lead teacher just made more work for the assistants.

I worked with the Giraffe and Elephant Classes the entire year that I was there. We usually had about fifteen kids to a class, but often had two assistant teachers and a lead teacher. It wouldn't have been so bad, but the teaching staff had no support from the administrators. Someone is supposed to rotate into the room when one teacher has a lunch break or just has to run to the restroom, but that rarely happened. There was no formal training program. When I started, I had an interview with the director, s/he took me on a brief tour, and the next day I was in the classroom. No one really talked about policies. At the day care where I worked before Play and Learn, they had an orientation and explained things like how we were supposed to take kids to the playground, how we should serve lunch, all kinds of things like that. At Play and Learn, we just kind of figured it out as we went along.

Most of the time things ran fairly well. We had some difficulty at snack time because of the set up of the room. The rooms are really nice and large, but aside from the children's tables, we don't have a lot of flat surfaces. Since we had to serve snacks in the room, we would put the food wherever there was space, and sometimes that included the changing table. All of the kids in the three year old room were potty trained (otherwise they were kept back with the two year olds), so the changing table evolved into a kind of extra flat surface for placing things.

I worked with Junior a lot during the week he was at Play and Learn. He was a happy child. He didn't mix too much with the other children, but that is normal. For one thing, he was new at the center. For another, three year olds do a lot of independent play. Even when they appear to play with other children, they are actually doing more of their own thing than playing what you could say "collaboratively." It's called "parallel play." They are just beginning to learn social interaction and how to play together at that age. Junior did have a strong will and did what he wanted to do, but that is common for many children his age. I had to constantly remind him to follow our routines. He loved playing in the playground, too. He constantly was running on our play equipment and was a real

climber on the jungle gym. I talked to Lorraine from Junior's classroom, and she said that Junior should be evaluated for hyperactivity or some other developmental problem because of his activity. I didn't agree.

People shouldn't think that because Junior managed to get up to the top of the changing table that we weren't paying attention or anything like that. Sometimes things get chaotic because you are trying to keep fifteen to sixteen three year olds sitting still while you serve each one a snack. It's a lot of work- some kids have food allergies, some have to take medication with snack, some like Tommy always throw their cups (sometimes full of juice, sometimes not)-- it's hard work! We had four tables to cover, and like I said, when another teacher in the room had to run out, even for a second, mutiny could happen before you realized it.

I was in the room when Junior fell. The other assistant, Sherri, had just gone into the hall with the assistant teacher from next door, something about a disruptive child next door. It was the kind of thing that happened all the time. On that particular day it was because Joy, the lead teacher in the Elephant Class, was out with pink eye. Lorraine, the lead teacher, was helping other children at another table. I was putting the cups down for each child that we place the starfish crackers in. I guess Sherri had taken the starfish out of the food cupboard. When she was called to the door she probably set them down on the changing table. Junior sat at table two and I was at table one. I remember because Tommy would always throw his cup across the room and I wanted to make sure that he kept it right there. I was explaining to Tommy that we do not throw cups in the classroom and the next thing I knew I looked up in time to see Junior falling off of the changing table. I felt terrible for him. Junior was such a sweetheart, even if a bit of a busy bee, so it really seemed especially sad.

**Witness Statement of Sydney Little (Director of Play and Learn)**

My name is Sydney Little and I am the executive director of Play and Learn. I founded Play and Learn ten years ago with one of my classmates from college. We had a vision of young children learning through their play, and Play and Learn was born. We are a full service child care provider and take infants from 6 weeks old and provide after school care for children up to twelve.

I vividly remember my first meeting with Shawn Wright. S/he seemed quite anxious to find a suitable place for Junior, and said that s/he had not been happy with the dynamic between Junior and the teachers at Teach the Tots. I took Ms./Mr. Wright on a tour of our facility and s/he met with both of the head teachers of the three year olds. I was pleased when s/he returned a few days later to enroll Junior. I sat with Mr./Ms. Wright and Junior as Mr./Ms. Wright completed the application form and history. I also asked him/her if Junior had any special needs, anything from a favorite blanket to a tendency to have a hard time coming out of naps, anything at all, that perhaps the center or his teachers should be aware of, and Mr./Ms. Wright said no. I recall because I go through these questions with all parents. Sometimes they know their children so well they forget to tell us the important details. I did notice that Junior was very active and didn't pay much attention to his parent. He didn't look at any of

the books we had for him, and he went rapidly from toy to toy. I didn't think much about it at the time because children can be restless during these interviews. Sometime during the week, though, Lorraine, the lead teacher, came to me about Junior. She told me that she thought Junior should be evaluated for hyperactivity or other developmental problems because of his inattention, his extreme activity, and his impulsiveness.

Mr./Ms. Wright told me that s/he had heard only positive things about Play and Learn. We have an excellent reputation in the community because we hire only the best and most qualified staff. It isn't enough to have the credentials required by the licensing board of Olympia. A Play and Learn teacher must truly love children and be ready to help them develop and grow into their own personalities, their own identity. I look for qualities like patience, character, and personal integrity in everyone we hire. This is certainly the first time we have ever been sued. In ten years we have never had an incident like this before.

It's funny that our former employee, Lee Morrisson, is so critical of our policies and training. I think it's really just Lee's way of lashing out for the ridicule s/he suffered at the hands of his/her colleagues. At first I felt bad for him/her, but when a person is as rigid and strict as Lee was it's hard to have patience. Lee was a good worker but closed minded. Lee saw nothing wrong with kids watching videos everyday as long as it was at the same time, nothing wrong with a morning going by in which Lee's was the only voice heard. Lee did not share our vision of children learning through play, so we had to let him/her go. Lee frequently said that she had two children in her class who were handfuls, Tommy and Junior.

Our training and policies are truly first rate. We have a manual that explains everything from procedure during fire drills to how to complete supply order forms. Play and Learn has received only the highest ratings from the licensing board. We have had some staffing problems in the past, but that is the case with all child care centers. When we anticipate problems in staffing, we take proactive steps like informing parents in our newsletter. Parents were informed of the pink eye epidemic and were asked to inform the center of any problems. Fortunately, we also have a good office staff with several retired high school teachers like Sandy who assist when we are missing teachers.

We also put great care in the design of Play and Learn classrooms. Because we want to have as much flexibility within our building as possible, we had the changing tables installed in each classroom in

the preschool part of the building. We also keep diapers and changing supplies, including a diaper disposal, in each room just in case. But in ten years we have never had a child use the diaper disposal as a step stool.

I was the director on site the day that Junior was injured. It is true that we had experienced a pink eye epidemic around the center. Our attendance was down ten percent from normal and several staff members were also out. However, each class was adequately covered by other competent adults. In fact, in Junior's class that day both his lead teacher and two regular assistants were present, unlike in many other classes around the center where there were more absences. When Junior fell the assistant teacher, Lee, immediately went to his aid. The lead teacher in the same instant, called the ambulance and paged for me to come. Lorraine was absolutely frantic and said that Sherri left the room for just an instant, but she and Lee were both there with the children, and somehow one of the children had climbed and fallen off of the changing table. When I entered the room I saw Junior being given as much care and support as anyone could have wanted. His teacher even went to the hospital with him, and I conducted an investigation to determine what must have happened.

It was right around snack time and the children were seated at their tables with the cups and napkins passed out to three of the four tables. Junior's table had not yet received cups and napkins, and even after everything had happened, all of the other children remained seated at their assigned seats. I saw the changing table where Junior fell. There were some starfish crackers on the table, but we certainly do not serve food from the changing table. That would be unsanitary and inappropriate for any number of reasons. It's possible that one of the teachers pulled the crackers from the snack cabinet, had to take care of something immediately, and set the crackers down for a moment. However, there would be no reason to believe that a child would leave his seat to get the crackers, especially when all of the children knew that they were about to be served. And it's not as if any toys or blocks were left out that the children could have used to climb to the top of the table.

The only reason this type of thing happened is that we were not informed of Junior's condition. There is another little boy in one of the four year old rooms who has HID. We have never had any problems with him because his parents informed us of his condition as soon as he was diagnosed. He is on a medication that works beautifully at controlling his impulsive behavior. Play and Learn has a policy of staffing all rooms with special needs children with at least one teacher or assistant teacher with special training pertaining to the special needs involved. We will meet their needs even if we are short of staff,

as we indicated in the newsletter on July 26th. If we had known about Junior we could have taken precautions like putting his seat closer to the teacher work station or simply monitoring him more closely. He had only been with us for a week, so it is understandable that we had not yet concluded that he had that type of problem. We are dependent upon the honesty of parents in completing their applications and in the interviews to become informed of such conditions, at least until we have some time to observe the child.

We are very sorry about what happened to Junior. He is a delightful child and really rather clever. But as sorry as we are, we cannot be responsible for the behavior of children when we are not given the information we need to care for them properly. No one at Play and Learn failed to fulfill each and every duty of a day care provider.

### **Witness Statement of Dr. Ellis Baldwin (Developmental Pediatrician)**

My name is Ellis Baldwin and I am a developmental pediatrician. My training was conducted at Mercy Hospital. I went there for residency after graduating from Georgetown University with a B.S. in biology and behavioral sciences and Howard Medical School. I did my medical fellowship at Johns Hopkins Medical School in developmental pediatrics. I specialize in diagnosing and treating children with behavioral problems like HID and ADHD (Attention Deficit and Hyperactive Disorder). I have evaluated more than 800 children for in the last nine years. In fact the majority of my practice involves this type of testing. I have worked with many of the day care providers in Olympia and have done testing for Teach the Tots on numerous occasions. I know first hand what an excellent center it is, both of my daughters went to preschool there and my spouse is on the board of directors. I am not being paid for my testimony because this relates to work done prior to this lawsuit and trial.

This is an especially tragic case because I see in Shawn Wright a kind and caring parent who is unable to come to grips with the fact that his/her son has a condition that needs treatment. I met with Junior for two hours in my office and not only reviewed the records from Teach the Tots, but also conducted a fifteen minute phone interview with one of his teachers there. Junior displayed many tendencies of a HID child.

He was totally unable to control and direct his behavior in response to environmental and situational demands. When testing a child for HID, he or she is compared to other children of the same age. On the majority of tests Junior was lacking in the self control exhibited by the average three year old. For example, when I gave him some toys to play with, he went quickly from toy to toy and then threw them around. His may not be the easiest case to diagnose simply because he is sweet and charming, but it does not take a great deal of observation to see that Junior is hyperactive. Both of his teachers at Teach the Tots indicated in their six week progress report to Shawn Wright that Junior was disruptive and fidgety. I personally observed that Junior was a squirmer, was easily distracted by extraneous stimuli, and did not seem to listen when spoken to directly. These behavioral tendencies are each on the list of HID assessment factors. I'm not saying that Junior has every symptom on the board-approved list, but those that he does have are more than strong indicators that he has HID.

Another symptom is a child who runs or climbs excessively. It is quite likely that a child like Junior who is easily distracted could have seen something near the changing table that caught his eye and

decided to go for it. Junior's motor skills are rather advanced, and he could have made great progress towards climbing the changing table before any adult who is also watching other children would have noticed.

HID is not an uncommon disorder. Since the development of the diagnostic criteria and treatment program in the last couple of years, many children have been diagnosed and helped. It is true that a disproportionately high number of these children have been black males, but that does not mean that the diagnosis of every black male child should raise suspicion. Parents should really be grateful that these children are being identified and helped before they get to school and it becomes more of a problem. With treatment including guided play and activities that channel children's energy, many kids with HID are able to start elementary school with regular classes and no medication. HID therapy can make it possible for kids to really succeed in a traditional classroom setting.

Of course, for preschool children, there may be other disabilities, like reduced language development, that cause communication problems and increased activity. These children may not have HID. That is why I referred Junior to Ms. Carla Thomas, the developmental specialist, for additional evaluation. These types of evaluations are common, and are important in identifying developmental disabilities in their early stages. The Federal law, Individuals with Disabilities Education Act, known as IDEA, provides that every child who is identified with disabilities is entitled to services to meet their specialized needs.

I sincerely wish that there was more accurate information about HID, perhaps then a parent like Shawn wouldn't feel compelled to hide it from a child care provider. The student with HID who runs to the window when a passing car honks or watches students passing in the hall instead of completing his coloring is no more choosing to disobey the rules or the teacher than the blind child is choosing not to see the blackboard.

### **Witness Statement of Dell Anderson (Shawn Wright's Neighbor)**

I am 65 years old and have lived in Olympia all of my life. I have actually lived in the same neighborhood for the last forty years. Unfortunately Shawn and her children, those wild kids, live in the unit next to mine. Don't get me wrong, I liked kids well enough thirty, even twenty years ago, but now my nerves just can't take it. Regular kids would be one thing, but that Junior is too much. He's a cute little kid, actually kind of small for his age. A person wouldn't think he could get into so much, but he can. He can be a real brat, too. When first met him I would try to get his attention, but he was always too active to stay in one place. I didn't want to chase him around, so I never had much to do with him.

The real problems started with my flowerbed. First Junior would just run and play in my flowers when he and the brother were outside. Apparently that was not killing enough of my plants so then he decided it would be fun to pull them out of the ground. I've never seen anything like it. The older boy, Mark, would try to get him to stop, but once he got into something that was it. He was going to be into it until he broke it. Shawn was nowhere around when this happened.

I said something to Shawn about it. Shawn seemed shocked that anyone would think that the little angel could do anything wrong. When I told Shawn that he climbed to the top of my El Dorado s/he didn't believe it until I showed her the peanut butter and jelly stains that were the size of his hands all over my rag top roof. Imagine if my moon roof had been open! To say that she has a blind spot when it comes to that kid is like saying Luther Vandross can sing- it just isn't strong enough language.

Apparently Shawn heard that my friend Myrtle babysits on the weekends. She arranged to have Myrtle watch those two for an entire Saturday afternoon and evening. (Shawn was always looking for a babysitter-- I guess it's a struggle to have such an active social life with two young boys). I tried to warn her, "Myrtle, I said, you have no idea what you are in for- -just watch out!" I babysat one time and all the kids did was run around from one toy to the next. They wouldn't even stay put in front of the TV. But Myrtle said the money Shawn was offering was good and that she been losing at bingo lately. Anyway, Myrtle called me when they left her place that night. She sounded like she barely had the energy to dial the phone. She told me that if she had known she was going to be babysitting a little dynamo, she would have said no, no matter how bad her bingo debts. Myrtle said that Junior climbed every piece of furniture in her house, including her curio cabinet full of porcelain bingo chips (he didn't tip it over, but two or three cracked from the jostling).

I see those kids all the time. As captain of the neighborhood patrol I make it my business to see. That Junior can't be still for two minutes put together. I've seen him get into it up and down the street. In my day we would have straightened him out, but not Shawn. I just don't understand parents these days. Every time I stop by their house the TV is on, sometimes the radio too, and the boys clearly have the run of the house.

Shawn never seems to discipline either boy at all. With Shawn, anything goes. I don't know if Shawn is trying to make up for the loss of their other parent or what, but Shawn should take a step back and see what the lack of rules is doing to those boys.

I did feel bad for the little tyke when he broke his arm so badly. It didn't seem like the same Junior with him whimpering about all the time. But I must say he is calmer. Nice enough kid, but I always suspected that he knew when "Oprah" was on. Seems like just when the interview was getting good he would decide to throw something against the wall. I can't believe it took so long for him to hurt his little self. Please don't think I'm glad he got hurt, but I do feel like I am getting my money's worth for cable now.

#### **Table of Stipulations and Documents**

##### **Stipulation**

Copy of Damages Stipulated to by Both Parties

##### **Documents**

1. Excerpts from Play and Learn Policy Manual
2. Copy of Dr. Baldwin's testing form and evaluation
3. Copy of the application form for Play and Learn completed by Shawn Wright
4. Excerpt from Play and Learn Newsletter
5. Map of the Giraffe Classroom where Junior was injured

## **Stipulated Damages\***

The following amounts have been stipulated to by both plaintiff and defendant.

### **Medical Expenses**

|                       |                     |
|-----------------------|---------------------|
| Initial Hospital Stay | \$25,000            |
| Physical Therapy      | \$75,000 over 5 yrs |

### **Rehabilitative Day Care**

|   |                     |
|---|---------------------|
| Difference between cost of day care that provides<br>physical therapy and regular day care center | \$10,000 over 2 yrs |
|---|---------------------|

|                           |         |
|---------------------------|---------|
| Shawn Wright's Lost Wages | \$5,000 |
|---------------------------|---------|

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|       |              |
|-------|--------------|
| Total | \$115,000.00 |
|-------|--------------|

\* Shawn Wright is requesting an additional \$50,000 for pain and suffering.

### **Excerpt from *Play and Learn Policy Manual, Chapter 2, Staffing***

Play and Learn will maintain a least one lead teacher and assistant in each toddler to pre-school classroom. The following chart lists the numbers to be followed for each toddler and pre-school age group in the Play and Learn Center. See modifications to the numbers of staff needed for special needs children in the Special Needs Chapter of this manual. In the case of an emergency teachers and assistants should use their best judgment to determine how to meet the needs of the center.

| <u>Age of Students</u> | <u>Maximum Number of Students in Class</u> | <u>Lead Teacher(s)</u> | <u>Assistants</u> |
|------------------------|--|------------------------|-------------------|
| 24-35 months           | 8  | 2                      | 0                 |
| 3 years                | 16   | 1                      | 1                 |
| 4 years                | 20   | 1                      | 1                 |
| 5 years                | 25   | 1                      | 1                 |
| 6-12 years*            | 30   | 1                      | 2**               |

\* Aftercare programs only. Look to Chapter 5 on Summer Camp for guidelines for staffing summer programs.

\*\* Two assistants are only needed on the days when arts and crafts are offered or groups are taken on field trips.

Excerpt from *Play and Learn Policy Manual, Chapter 4, Special Needs Children*

Play and Learn is a full service child care provider that accommodates children with special needs involving learning and/or behavioral issues. There will be at least two classes for each age group. **If there are any special needs children in a class, the teachers will be provided with special training for the special needs of the children.** At least one of the assistants in each class with a special needs child must have completed the course Special Education for Early Childhood Education that is offered at the University of Olympia and obtained a B average or better. If any assistant or lead teacher is interested in taking that course Play and Learn will pay the course fees and purchase all necessary books.

### **Test for Hyperactive and Impulsive Disorder**

Prepared by the Board Certified Pediatricians and  
Child Development Experts for Professional Use and Diagnosis  
[This form is to be used for children between 36 and 47 months old.]

Doctor: *Ellis Baldwin, MD*      Date: *June 30, 2000*

Patient's Name: *Tyrone (Junior) Wright*

|   | Diagnostic Criteria for Hyperactive Impulsive Disorder                 | Present in Child |
|---|--|------------------|
| 1 | Often has difficulty sustaining attention in tasks of play activities. |                  |
| 2 | Often does not seem to listen when spoken directly to.                 |                  |

|    |  |   |
|----|--|---|
| 3  | Often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort. |   |
| 4  | Is often easily distracted by extraneous stimuli.  | X |
| 5  | Often fidgets with hands or feet or squirms in seat.   | X |
| 6  | Often has difficulty playing or engaging in leisure activities quietly.                          |   |
| 7  | Is often “on the go” or acts as if “driven by a motor.”  | X |
| 8  | Often talks excessively.   |   |
| 9  | Often has difficulty waiting turn.   | X |
| 10 | Often interrupts or intrudes on others.  |   |
| 11 | Often runs or climbs when he should not.   | X |
| 12 | Often wanders off.   | X |

Instructions for form: A diagnosis of HID is appropriate if seven (or more) of the symptoms in the chart above of hyperactivity and impulsivity have existed for at least 4 months, according to a consistent observation by one teacher or child care provider who knows the child well. Such observation should reflect behavior to a degree that is maladaptive and inconsistent with developmental level.

Evaluators should observe children for at least ninety (90) minutes. Additional information from other child care professionals may also be considered in determining whether HID characteristics are present in a child.

When observing children for the purposes of diagnosis, testers should keep in mind the widely held expectations for normal behavior for the age group of the child in question.

#### Widely Held Expectations for the Social and Emotional Development of 3 Year Olds

- ☞ Shows difficulty taking turn and sharing objects, activity changing form often during a play period; lacks ability to solve problems well among peers; usually needs help to resolve a social situation if conflict occurs.
- ☞ Plays well with others and responds positively if there are favorable conditions in terms of materials, space, and supervision (less likely to engage in positive behavior if any of these are lacking).
- ☞ Can follow simple requests; likes to be treated as an older child at times but may still put objects in mouth that can be dangerous or wander off if not carefully supervised.
- ☞ Toddlers react impulsively.

Additional comments or observations by tester.

*This child runs in circles, doesn't stop to rest, bangs into objects or people, and asks questions constantly. Despite having spent time in a preschool setting and having turned three a few months ago he still has difficulty attending, except briefly, to a storybook or a quiet task such as coloring or drawing.*

*In my professional opinion this child has Hyperactive Impulsive Disorder.*

Signed: *Ellis Baldwin, MD*

Play and Learn Registration Form  
Welcome to Play and Learn Child Care Center!  
Please read the following, provide the requested information  
and sign on the last page.

Parent(s)'s or Guardian's Name(s): Shawn Wright Date: July 17, 2000

Child's Name: Tyrone Wright

Child's Nickname: Junior Child's Age: 3

Home Address: 315 East St SE Billing Address if Different:  
Olympia, C.D. 39117

Home telephone: 501-789-6363 Work Telephone: 501-278-3001

Emergency Contact Name: Robin Sterling

Emergency Contact Telephone: 501-394-4899

Does your child have any allergies? If so, please list them.

No.

Is your child on any medications? If so, please list them.

No.

Is your child allergic to any medications? If so, please list them.

Yes, Bendadrol.

Does your family have any dietary restrictions (Kosher, vegetarian, etc.)?

No.

Is your child free to attend all field trips or do you prefer to have permission slips sent home for each outing? He is free to attend all field trips.

**Page 2 –Play and Learn Registration: Learning Information**

Is your child reading yet? (All children are grouped in reading circles.)

Not really. He knows the alphabet and can write all of the letters. And he knows most of the words in his favorite Dr. Seuss books.

Does your child have any physical problems (e.g. hearing impairment, visual impairment, asthma, etc.)?

No.

Does your child have any learning disabilities of which you are aware? If so, please list them. If you are concerned that your child has any learning problems, please indicate those in the space below.

No.

Does your child have any behavioral problems (e.g. hyperactivity)? If so, please list them.

No.

## All About My Child

Does your child have any imaginary friends?

No.

Does your child have any favorite objects which he or she will want to keep with him/her at school?

No.

Is there anything about your child we should know that would not be obvious? Is there anything we should know about your child's personalities or idiosyncracies, likes or dislikes? (Feel free to tell us something that makes your little one special!)

He is the sweetest child in the world!

Play and Learn is a child care center devoted to the education and nurturing of all children. We want to establish a partnership between this center and your family. To do so, we must have accurate information about your child. Please review your answers and verify their accuracy. Sign below if you have answered everything to the best of your ability. Thank you.

Parent or Guardian Signature:

Shawn R. Wright

**Play and Learn Newsletter ( excerpt from page 1, July 26, 2000 edition)**

Because of a bad outbreak of pink eye, many students and several staff members have become ill. Therefore, the Center will be operating without its full staff. Parents , if your children are suffering from pink eye and other ailments, please keep your children home.

Although the Center may have some staffing problems, we will still be able to provide the appropriate care for the identified special needs students. Any parents with other concerns about their child should speak directly to the lead teacher in their child's class.

***Giraffe Classroom***

windows

teacher work area

potty training

diaper disposal

changing table

cabinets

snacks

paper products

art supplies

toys

Tommy

Junior

play space

student cubbies

book station

toy center

book station

# Simplified Rules of Evidence

To assure each side a fair trial, certain rules have been developed to govern the types of evidence that may be introduced, as well as the manner in which evidence may be presented. These rules are called the "rules of evidence." The attorneys and the judge are responsible for enforcing these rules. Before the judge can apply a rule of evidence, an attorney must ask the judge to do so. Attorneys do this by making "objections" to the evidence or procedure employed by the opposing side. When an objection is raised, the attorney who asked the question that is being challenged will usually be asked by the judge why the question was not in violation of the rules of evidence.

The rules of evidence used in real trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes, and these are presented below.

## Rule 1. Leading Questions:

A "leading" question is one that suggests the answer desired by the questioner, usually by stating some facts not previously discussed and then asking the witness to give a yes or no answer.

**Example:** "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?"

**Leading questions may not be asked on direct or redirect examination. Leading questions may be used on cross-examination.**

**Objection:** "Objection, Your Honor, counsel is leading the witness."

**Possible Response:** "Your Honor, leading is permissible on cross-examination," or "I'll rephrase the question." For example, the question can be rephrased: "Mr. Smith, where did you go that night? Who did you go with?" (This would not suggest the answer the attorney desires.)

## Rule 2. Narration:

Narration occurs when the witness provides more information than the question called for.

**Example:** Question - "What did you do when you reached the front door of the house?"

Witness - "I opened the door and walked into the kitchen. I was afraid that he was in the house -- you know, he had been acting quite strangely the day before."

**Witnesses' answers must respond to the questions. A narrative answer is objectionable.**

**Objection:** "Objection, Your Honor, the witness is narrating."

**Response:** "Your Honor, the witness is telling us a complete sequence of events."

## Rule 3. Relevance:

Questions and answers must relate to the subject

matter of the case; this is called "relevance." Questions or answers that do not relate to the case are "irrelevant."

**Example:** (In a traffic accident case) "Mrs. Smith, how many times have you been married?"

**Irrelevant questions or answers are objectionable.**

**Objection:** "Your Honor, this question is irrelevant to this case."

**Response:** "Your Honor, this series of questions will show that Mrs. Smith's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

## Rule 4. Hearsay:

"Hearsay" is something the witness has heard someone say outside the courtroom. Also, any written statement made outside the courtroom is hearsay.

**Example:** "Harry told me that he was going to visit Mr. Brown."

**Hearsay evidence is objectionable.** However, there are two exceptions to the hearsay rule for purposes of the mock trial. If an exception applies, the court will allow hearsay evidence to be introduced.

**Exception:** In a mock trial, hearsay evidence is allowed when the witness is repeating a statement made directly to the witness by one of the witnesses in the case. Hearsay is also allowed if one of the witnesses is repeating a statement made by an individual who is no longer alive.

Note that this exception to the hearsay rule does not extend to witness testimony about what another person heard a witness say. This is "double hearsay."

**Example:** Mary, the plaintiff, told me that Harry, the defendant was drunk the night of the accident.

**Objection:** "Objection, Your Honor, this is double hearsay."

**Response:** "Your Honor, since Harry is the defendant, the witness can testify to a statement he heard Harry make."

For mock trials, other exceptions to the hearsay rule are not used.

drunk, so I'm sure he was drunk that night, too."

## Rule 5. Firsthand Knowledge:

Witnesses must have directly seen, heard, or experienced whatever it is they are testifying about.

**Example:** "I know Harry well enough to know that two beers usually make him

## Rule 6. Opinions:

Unless a witness is qualified as an expert in the appropriate field, such as medicine or ballistics, the witness may not give an opinion about matters relating to that field.

**Example:** (Said by a witness who is not a doctor) "The doctor put my cast on wrong. That's why I have a limp now."

**Opinions are objectionable unless given by an expert qualified in the appropriate field.**

As an exception to this rule, a lay witness may give an opinion based on common experience.

**Objection:** "Objection, Your Honor, the witness is giving an opinion."

**Response:** "Your Honor, the witness may answer the question because ordinary persons can judge whether a cast was put on correctly."

## Rule 7. Opinions on the Ultimate Issue:

Witnesses, including experts, cannot give opinions on the ultimate issue of the case: the guilt or innocence of the defendant or the liability of the parties. These are matters for the trier of fact to decide.

**Example:** "I believe that Mr. Smith was negligent in driving too fast in this case."

**Opinions on the ultimate issue in a case are objectionable.**

**Objection:** "Your Honor, the witness is giving an

**A lack of firsthand knowledge is objectionable.**

**Objection:** "Your Honor, the witness has no firsthand knowledge of Harry's condition that night."

**Response:** "The witness is just generally describing her usual experience with Harry."

an opinion on the ultimate issue -- the negligence of Mr. Smith."

**Response:** "The witness is commenting that the driver was speeding. This is not the ultimate issue in this case."

## Rule 8. Additional Rules of Evidence:

1. Objections during the testimony of a witness must be made only by the direct examining and cross-examining attorneys for that witness.
2. Cross-examination is not limited to the scope of direct questioning.
3. A short redirect examination, limited to no more than two questions, will be allowed following cross-examination, if an attorney desires. Questions on redirection are limited to the scope of the cross-examination.

## Rule 9. Special Procedures:

### Procedure 1. Introduction of Documents or Physical Evidence:

Sometimes the parties wish to offer as evidence letters, affidavits, contracts, or other documents, or even physical evidence such as a murder weapon, broken consumer goods, etc. Special procedures must be followed before these items can be used in trial.

#### **Step 1: Introducing the Item for Identification**

- a. An attorney says to the judge, "Your Honor, I wish to have this (letter, document, item) marked for identification as (Plaintiff's Exhibit

- A, Defense Exhibit A, etc.)."
- b. The attorney takes the item to the clerk, who marks it appropriately.
- c. The attorney shows the item to the opposing counsel.
- d. The attorney shows the item to the witness and says, "Do you recognize this item marked as Plaintiff's Exhibit A?"  
Witness: "Yes."  
Attorney: "Can you please identify this item?"  
Witness: "This is a letter I wrote to John Doe on September 1." (Or witness gives other appropriate identification.)
- e. The attorney may then proceed to ask the witness questions about the document or item.

#### **Step 2. Moving the Document or Item into Evidence.**

If the attorney wishes the judge or jury to consider the document or item itself as part of the evidence and not just as testimony about it, the attorney must ask to move the item into evidence at the end of the witness examination. The attorney proceeds as follows:

- a. The attorney says, "Your Honor, I offer this (document/item) into evidence as Plaintiff's Exhibit A, and ask that the court so admit it."
- b. Opposing counsel may look at the evidence and make objections at this time.
- c. The judge rules on whether the item may be admitted into evidence.

### Procedure 2. Impeachment

On cross-examination, an attorney wants to show that the witness should not be believed. This is best accomplished through a process called "impeachment," which may use one of the following tactics: (1) asking questions about prior conduct of the witness that makes the witness' truthfulness doubtful (e.g., "Isn't it true that you once lost a job because you falsified expense reports?"); (2) asking about evidence of certain types of criminal convictions (e.g., "You were convicted of shoplifting, weren't you?"); or (3) showing that the witness has contradicted a prior statement, particularly one made by the witness in an affidavit. Witness statements in the Mock Trials Materials are considered to be affidavits.

In order to impeach the witness by comparing information in the affidavit to the witness' testimony, attorneys should use this procedure:

**Step 1:** Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

**Example:** "Now, Mrs. Burke, on direct examination you testified that you were out of town on the night in question, didn't you?" (Witness responds, "Yes.")

**Step 2:** Introduce the affidavit for identification, using the procedure described in Procedure 1.

**Step 3:** Ask the witness to read from his or her affidavit the part that contradicts the statement made on direct examination.

**Example:** "All right, Mrs. Burke, will you read paragraph three?" (Witness reads, "Harry and I decided to stay in town and go to the theater.")

**Step 4:** Dramatize the conflict in the statements. (Remember, the point of this line of questioning is to demonstrate the contradiction in the statements, not to determine whether Mrs. Burke was in town or out of town.)

**Example:** "So, Mrs. Burke, you testified that you were out of town on the night in question, didn't you?" "Yes." "Yet, in your affidavit you said you were in town, didn't you?" "Yes."

### Procedure 3. Qualifying an Expert

Only a witness who is qualified as an expert may give an opinion as to scientific, technical, or other specialized knowledge in the area of his/her expertise. (Note: A lay witness may give an opinion about something related to one's common experience (see Rule 6).) Experts **cannot** give opinions on the **ultimate issue** of the case.

Before an expert gives his/her expert opinion on a matter, the lawyer must first **qualify** the expert. There are two steps to qualify an expert. First, the lawyer must **lay a foundation** that shows the expert is qualified to testify on issues related to that expert's

field of expertise. To lay a foundation, the lawyer asks the expert to describe factors such as schooling, professional training, work experience and books he/she has written that make a person an expert regarding a particular field. Second, once the witness has testified about his/her qualifications, the lawyer **asks the judge to qualify the witness as an expert in a particular field.**

**Example:** The wife of Harold Hart is suing Dr. Smith and General Hospital for malpractice. She claims they did not treat Mr. Hart for an obvious heart attack when he was brought to the hospital. Mrs. Hart's lawyer is examining his expert witness, Dr. Jones:

Q: Dr. Jones, what is your occupation?

A: I am a heart surgeon. I am Chief of Staff at the Howard University Medical Center.

Q: What medical school did you attend?

A: I graduated from Georgetown Medical School in 1978.

Q: Where did you do your internship?

A: I did a two year internship in cardiology at John Hopkins University from 1978-1980.

Q: Did you afterwards specialize in any particular field of medicine?

A: Yes, I specialized in heart attack treatment and heart surgery.

Q: Have you published any articles or books?

A: I wrote a chapter in a medical text on heart surgery procedures after heart attacks.

Q: Describe the chapter.

A: I set out the steps for identifying heart attacks and doing open heart surgery.

Q: What professional licenses do you have?

A: I am certified by the D.C. Board of Medical Examiners to practice medicine in D.C.

Attorney #1: Your Honor, I ask that Dr. Jones be qualified as an expert in the field of medicine.

Judge: Any objection?

Attorney #2: We object. No foundation has been laid regarding Dr. Jones's ability to render an opinion as to all fields of medicine.

Judge: Objection sustained. Dr. Jones's expertise seems to be limited to certain areas of medicine.

Attorney #1: Thank you, your Honor. We ask that Dr. Jones be qualified as an expert in the field

of heart surgery.

Judge: Any objections?

Attorney #2: No, your Honor.

Judge: Let the record reflect that Dr. Jones is qualified to testify as an expert in the field of heart surgery.

Once qualified, an expert may give opinions relating only to the expert's area of expertise. That is, an expert cannot give an opinion in an area outside his/her expertise.

**Example:** (Dr. Jones has been qualified as an expert on heart surgery.)

Q: Dr. Jones, what is your opinion as to Mr. Hart's cause of death?

A: The patient suffered a massive heart attack caused by clogged arteries.

Q: Dr. Jones, in your opinion was the patient also suffering from a rare lung disease transmitted through contact with the North American mongoose as the defense contends?

Objection: The witness is testifying outside her area of expertise.

Judge: Sustained. Please confine your opinion to matters related to care and treatment of the heart.

Q: Dr. Jones, in your opinion, how should the patient's doctors have treated him?

A: They should have recognized that the patient was having a heart attack based on his chest pains, purple face, difficulty breathing, and numbness in his left arm. They should have given him the proper medication and treated him in the emergency room right away.

Q: Who was at fault in this matter?

A: Dr. Smith and General Hospital were definitely negligent.

Objection: The witness is testifying to the ultimate issue of the case, which is whether Dr. Smith and General Hospital are liable for malpractice. That is a question of fact for the judge (or jury, when the case is tried before a jury) to decide.

Judge: Sustained.

## **AABANY 2025 Fall Conference**

### **Trial Advocacy Program (TAP): Closing Statements**

Saturday, September 27th, 2025

3:25 PM – 4:15 PM

#### **Presenters**

Hugh Mo, Principal, The Law Firm of Hugh H. Mo, PC  
William Campo, Assistant Attorney, U.S. Attorneys Office, E.D.N.Y.

#### **Moderator**

Qian (Sheila) Shen, Associate, Holland & Knight LLP

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### **Trial Advocacy Program (TAP): Closing Statements**

Saturday, September 27th, 2025

3:25 PM – 4:15 PM

Presenters: Hugh Mo and William

Moderator: Qian (Sheila) Shen

### **Program Agenda**

Experienced trial attorneys will present mock closing arguments, one on behalf of the plaintiff and one on behalf of the defense, based on the same problem provided to attendees. Q&A to follow, as time permits.

3:30 – 4:15 PM (Presentation on Closings)

Program Length: 50 Minutes

- |                 |  |
|-----------------|--|
| 3:30 – 3:40 PM  | Closing Arguments Explained <ul style="list-style-type: none"><li>• Closing Arguments v. Opening Statements</li><li>• Structure of Closing Arguments</li><li>• Tools and Pointers for a persuasive closing</li></ul> |
| 3:40 – 4:10 PM: | Closing Argument Demonstration   |
| 4:10 – 4:15 PM: | Questions and Answers  |

### **NY CLE Credit**

1.0 Skills  
(Transitional and non-transitional)