

**NJ YAG**



# **New Jersey Youth & Government Judicial Manual 2018**

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## **YAG Judiciary/Court Program Statement of Goals**

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

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

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

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

To bring law to life for students through active preparation for and participation in the competitions.

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

The YAG Judiciary/Court program has been created for the purpose of stimulating and encouraging a deeper understanding and appreciation of the American legal system by high school students. Because of the experiential educational format, learning derives from various sources and results from both articulated and unarticulated messages. The students learn proper comportment from each other, their teachers, their parents and other guest-observers in the courtroom.

All Participants shall in manner and in deed do their parts in helping the YAG Judiciary program achieve the following specific goals:

- Promote cooperation, academic integrity, honesty and fair play among students.
- Promote good sportsmanship and respect for others in both victory and defeat.
- Promote good faith adherence to the program rules and procedures.
- Improve proficiency in speaking, listening, reading, reasoning and analytical skills.
- Promote respect for the judicial system and instill a notion of proper courtroom decorum. This includes respect for the courthouse and other venues where the program takes place.

Finally, participants are to always be mindful of, and promote, the four core values of the YMCA: Caring, Honesty, Respect and Responsibility.

An attorney arguing before the Court should possess the following qualities: willing to meet deadlines, ability to work in a long distance team environment, demonstrate leadership skills, quick to respond to questions or challenge assertions, comfortable presenting a logical argument before a group, and dedication to the project at hand. You need not possess all (or even, any) of these qualities, but a willingness to learn and work will suffice.

### **Pre-Legislative Conference:**

It is expected that each and every member of the YAG Judiciary/Courts Program will have read and be thoroughly familiar with the facts of each appellate case *prior* to the Pre-Leg Conference. Although formal, written summaries need not be prepared, notes may be made so that everyone is well on their way to understanding every case and is prepared to discuss the potential issues presented.

The importance of teamwork in this chamber is paramount; therefore all members of the YAG Judiciary/Courts Program are strongly urged to attend the Pre-Leg Conference. If a delegate is unable to attend Pre-Leg, he/she must contact the Chief Justice prior to the conference and make any necessary arrangements. If a member of the YAG Judiciary/Courts Appellate Program cannot meet the submission date for the brief, then consideration should be given to participation in another section of YAG. (Remember, if you cannot complete your assignment by the due date, you not only affect your participation, but those of your teammates and your opposing team, too.) If an unavoidable situation arises that affects your team's ability to meet a deadline, contact the Chief Justice as soon as possible.

## **YAG Judiciary/Courts Program:**

The YAG Judiciary/Courts Program has two separate and distinct parts. These two parts include appellate brief writing with oral argument and constitutional scrutiny of legislation proposed by the current year's YAG legislature or governor. In addition, some of the appellate cases may have amicus curiae offering position papers and argument for or against a particular position.

### **Appellate Cases:**

The first part of the YAG Judiciary/Courts Program involves the writing of and arguing an appeal. In general, the cases selected will involve issues of state law, state constitutional law, or federal constitutional law. Student members of the YAG Judiciary/Courts Program will be divided into teams. The teams will usually be composed of approximately 4 members. Teams are expected to work together, dividing up the workload equitably. Each team will write a brief and present one side of a case, while a second team will write a brief and present the opposing side.

The appellate cases will be assigned at the "Pre-Leg" Conference. As you will not know which case you are assigned to (or judging) until the Pre-Leg Conference, you should come prepared by being familiar with all of the appellate cases. At Pre-Leg, discussions will be held (with the advisor) to help identify the issues that should be addressed. By the end of the Pre-Leg Conference, you should know who is on your team, how to best contact each team member, what case you are assigned to, and which party you are representing. You should also be able to tell whether you are the appellant or the respondent on the appeal. The briefs are usually due within 2 to 3 weeks after Pre-Leg. (See How to Write the Appellate Brief guideline included in this manual.)

At the YAG Conference, each team will present oral argument representing the party that has been assigned to their team. Every member of the team is expected to participate in the oral argument. Each side must adhere to strict time limits. The time limits for oral argument are set forth as follows:

#### **Oral Argument by the Appellant - Maximum time: 30 minutes**

The team representing the appellant will have **30 minutes** to present their case. For the **first 4 minutes** of the presentation, Justices will not interrupt the argument. However **after 4 minutes** the justices may start asking questions, until time has elapsed. If any justice interrupts with a question, the advocate/counsel who is presenting the argument must immediately stop. It is generally preferred that the advocate/counsel who is in mid argument responds to the question asked, but any member of the team may respond. (Justices should only ask questions of the advocate/counsel and not of each other, nor should any

justice respond to another justice's question. Debate amongst justices will take place during deliberation.)

The side representing the appellant may reserve 1 or 2 minutes of their time for rebuttal. Rebuttal is an opportunity to respond to arguments made by the side representing the respondent, but should not be used to merely reiterate previously stated arguments. New arguments cannot be made for this first time during rebuttal. In order to reserve time for rebuttal argument, which is deducted from the total 30 minute allotment, an application (request) must be made to the Chief Justice *prior* to starting any argument. (Although an application to reserve time for rebuttal may be denied, as it rests in the sole and exclusive discretion of the Chief Justice, it is usually granted.)

### **Oral Argument by the Respondent - Maximum time: 30 minutes**

The team representing the respondent will also have **30 minutes** to present their case. For the **first 4 minutes** of the presentation, Justices will not interrupt the argument. However **after 4 minutes** the justices may start asking questions, until time has elapsed. If any justice interrupts with a question, the advocate/counsel who is presenting the argument must immediately stop. It is generally preferred that the advocate/counsel who is in mid argument responds to the question asked, but any member of the team may respond. (Justices should only ask questions of the advocate/counsel and not of each other, nor should any justice respond to another justice's question. Debate amongst justices will take place during deliberation.)

### **Justices**

The panel of justices is made up of all members of YAG Judiciary/Courts Program who are not on one of the teams presenting the case. Accordingly, all members of the YAG Judiciary/Courts Program are expected to be fully familiar with every case, the underlying facts, the procedural history and the issues being presented. Every Justice is expected to be prepared to question the advocates/counsel for each side. Thorough preparation by the Justices will lead to a more interesting oral argument and a more thoughtful decision process. (Also it means more fun!)

After argument is concluded, both teams representing the appellant(s) and the respondent(s) must leave courtroom to allow for deliberations. Justices will now have the chance to state their opinion on the case presented. Justices will use this time to debate the issues presented, discuss the possible resolution of each issue, determine the effect that each issue's resolution will have on the case, formulate their individual opinion on the case, and vote on the outcome. All justices should be

prepared to explain the basis for their view on each issue and ultimately the case as a whole.

At the conclusion of the deliberations, the two teams of advocates will be invited to return to the courtroom and advised of the court's decision.

### **Amicus Curiae:**

Members of the Lobby Corps will be participating in one or more of the appellate cases as Amicus Curiae. Amicus Curiae translates to friend of the court. An amicus curiae will often submit a brief or present oral argument in support of one side or the other in a case. Examples of organizations that often will submit an Amicus Curiae brief might include the National Rifle Association, Planned Parenthood, the State Trial Lawyers Association, or the State Insurance Underwriting Association, to name a few.

The lobbyists who participate in this program will not be arguing the law, as would be the normal position of an Amicus Curiae. However, **their argument will focus on public policy** reasons that one side or the other should prevail. In addition, YAG Amicus Curiae will not be required to prepare a brief, but will prepare a position paper.

### **Amicus Curiae Position Paper:**

The YAG Amicus Curiae will be expected to prepare a Position Paper setting forth their argument. This will include the public policy that will be promoted if the side they support is successful. The Position Paper may be as short as half a page, but should not be any longer than 2 pages. (While the 2 page maximum is not a limit or an absolute maximum, this length is intended to make participation as an Amicus Curiae easy.) As the Amicus Curiae argument is one based on public policy, no legal research is required. However, some reading of public policy positions, editorials, or learned treatises/papers would be helpful in developing the position you wish to argue.

The Amicus Curiae Position Paper will be due approximately one week before the YAG Conference. However, well before you will need to finalize your Position Paper you will have copies of the briefs for both sides of your case.

### **Amicus Curiae Oral Argument:**

In an effort to allow the Amicus Curiae to participate and present oral argument, without interfering with the lobbyist's other duties, the Amicus Curiae will have priority in the timing of their argument. For any case in which there will be amicus argument, the amicus curiae who is supporting the appellant will present

argument first and the amicus curiae who is supporting the respondent will present argument next, with the advocates for both sides presenting the legal case after all amicus have completed their argument.

For any appellate case that has an amicus curiae submission, the amicus argument will be at the beginning of that case. Each amicus curiae will have **5 minutes** to present their case. For the **first 2 minutes** of the presentation, Justices will not interrupt the argument. However **after 2 minutes** the justices may ask questions, until time has elapsed. If any justice interrupts with a question, the amicus curiae is expected to respond to the question to the best of their ability. Questions asked by the Justices should be based on the public policy that the amicus is presenting, not necessarily the legal issues in the case.

### **Constitutionality of Legislation:**

The second part of the Courts involves debate on the constitutionality of Bills written by the Legislative delegates of YAG. At conference we will divide into different teams and choose sides on the Bills in question. Time will be given at conference to format an argument and prepare to support or oppose the constitutionality of the bill. A brief is not required to present your argument, but it may be helpful to have written notes to refer to. All members of the YAG Judiciary/Courts Program will have a chance to present a side of a Bill. When not presenting, the other members of the YAG Judiciary/Courts Program will act as justices determining the outcome of each argument.

A major change from past years is that the author/sponsor of the proposed legislation will not necessarily be brought into the Court for a presentation or questioning. The oral presentation/argument of the bill constitutionality cases will follow the same format/timing as the appellate arguments. The team arguing that the legislation is unconstitutional will present their case first, while the team arguing that the bill is constitutional will thereafter respond. If an author is able to be present, their presentation of their bill will be before the advocates' argument, much the same as amicus curiae, with the same timing as the amicus. (The author will have **5 minutes** to present their bill. For the **first 2 minutes** of the presentation, Justices will not interrupt the argument. However **after 2 minutes** the justices may ask questions, until time has elapsed.)

## Conference Schedule YAG Judicial Timeline

### Friday:

Time allotted for teams to consider final preparations for oral argument of the first appellate case. Including time to discuss amicus curiae arguments.

#### Appellate Cases

##### First Case

30 minutes for appellant  
30 minutes for respondent  
Deliberation & delivery of opinion  
Congratulations to all advocates

##### Second Case

30 minutes for appellant  
30 minutes for respondent  
Deliberation & delivery of opinion  
Congratulations to all advocates

### Saturday:

##### Third Case

30 minutes for appellant  
30 minutes for respondent  
Deliberation & delivery of opinion  
Congratulations to all advocates

##### Constitutionality Arguments

Teams will be assigned to argue constitutionality of bills. Time will be allotted for each team to research and develop arguments.  
30 minutes allotted for unconstitutional argument  
30 minutes allotted for constitutional argument  
Deliberation and decision of justices  
Congratulations to all advocates

### Sunday:

Continued consideration of the constitutionality of legislation

(Amicus Curiae argument for appellate cases will take place before the legal arguments. Bill author presentations will take place before constitutional arguments.)

## How to Write the Appellate Brief

The following is a guide to assist you in preparing and presenting your Appellate Brief to the Judges before the YAG Judiciary/Courts Program. DO NOT OVER REACT TO THE BRIEF..... it is not as difficult as you may initially think. The brief, however, is the most critical document that you will prepare in preparation for the case because the effort you put into this document will determine how much fun you will have at the Conference. Both sides must exert this effort. It is never fun to just pummel your opponent, (well not always) instead, you will garner a greater satisfaction from winning a true match up.

Before we get into the writing of the brief, you should have a basic understanding of the structure of the appellate courts in New Jersey. The court of general jurisdiction and the highest court with *initial trial jurisdiction* is the New Jersey Superior Court. Most trial cases are brought in this court. There is a Superior Court located within each county. The next court above the Superior Court is the Appellate Division. If either side disagrees with the decision of the Superior Court, based on a claim that the trial judge was wrong on the law, the case can be appealed to the Appellate Division. Above the Appellate Division is the New Jersey Supreme Court. This is the highest court in the state. An appeal to the Supreme Court is not always a right in every case, as certain criteria must be present. Finally, we come to our cases and forum. As most of our cases were once heard in the NJ Supreme Court, we needed a court with jurisdiction that is above the NJ Supreme Court. Accordingly, we have created the YAG Supreme Court.

An appellate argument is a trial of the law, as opposed to a factual argument. You will win or lose your case based on how you present your facts and define the issues in relation to the law. This means the most important sections of your brief will be the Questions Presented; Statement of the Case; Summary of the Argument; and Argument. Please take the time to research and present these sections in a concise and effective manner. Remember brevity is usually better.

Each team before the YAG Supreme Court is required to submit a brief outlining their case in chief and present oral argument on that case to the Judges who are sitting on the YAG Supreme Court. (Please note that the phrase “outlining” you case does not mean that the brief is an outline. Full sentences, proper grammar, and the ability to convince the reader that your position is correct is the key to a great brief.) The following is a guide for your brief. Briefs should include the following: Title Page (cover); Table of Contents; Table of Authorities; Statutes Involved (sometimes); Preliminary Statement; Questions Presented; Statement of the Case; Summary of the Argument; Argument and Conclusion.

The Briefs should be single spaced and use a 12 point font. A 10 page limit applies to the Questions Presented; Statement of the Case; Summary of the

Argument; and Argument portions of the brief. Don't be intimidated, no one has ever gotten close to the limit.

YAG SUPREME COURT

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THE PEOPLE OF THE STATE OF NEW JERSEY

Prosecution/Respondent

-against-

JOHN SMITH,

Defendant/Appellant

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Case No. 001/2018

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BRIEF FOR DEFENDANT - (APPELLANT or RESPONDENT)

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First Name, Last Name, Delegation  
Attorneys for (Appellant/Respondent)

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(Each point you make in your argument is actually the answer to the question you state in Questions Presented)

I. THE TRIAL COURT IMPROPERLY DENIED MR. SMITH’S  
6<sup>TH</sup> AMENDMENT RIGHT TO CONFRONT HIS ACCUSER BY  
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A. The court failed to properly consider that the out of court  
statement offered was testimonial in nature.

II. THE TRIAL COURT IMPROPERLY ALLOWED INTO  
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III. MR. SMITH’S ALLEGED ADMISSION SHOULD NOT HAVE  
BEEN ADMISSIBLE AT TRIAL BECAUSE HE WAS DENIED  
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## TABLE OF AUTHORITIES

### CASES:

(List all case information here in court hierarchy and alphabetical order. Please note that the precedence order of the cases is as follows: United States Supreme Court, NJ Supreme Court, NJ Appellate Division and/or Federal Appellate decisions, followed by NJ Superior Court decisions and other lower court decisions from other jurisdictions. All case citations should have the name of the case underlined followed by the volume number, reporter and page number where the case can be found. A comma separates the name from the citation and between multiple report citations for the same case.)

Examples:

<u>Crawford v. Washington</u> , 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed.2d 177 (2004)	6
<u>Davis v. Washington</u> , 547 U.S. 813, 126 S. Ct. 2266, 165 L. Ed.2d 224 (2006)	6
<u>State v. Branch</u> , 182 N.J. 338 (2005)	7

### STATUTES:

(Listed in alphabetical order by letter first then by date.)

Examples:

New Jersey Constitution Article I, Paragraph 7	6
New Jersey Rules of Evidence, <u>Rule</u> 803(c)(2)	8
United States Constitution, Fourth Amendment	6

### MISCELLANEOUS: (If any. Listed in alphabetical order)

List any other source that you may have used or discussed in your brief. These can include items such as law review articles or other academic works.

## STATUTES INVOLVED

(In this section, you should list any statutes that you are challenging the constitutionality of, or that you are quoting extensively in the brief. You need not include this section if you are merely going to duplicate your entry above.)

## PRELIMINARY STATEMENT

This is a **brief** paragraph describing the actions taken prior to the case being heard before this court. A well-written preliminary statement should include the following: the nature of the claim or charge (in a criminal case); the action the trial court and subsequent appellate courts took (ie: ruled for the defendant at trial, for the prosecution on appeal, etc.); and what you are doing here at the YAG Supreme Court (appealing the NJ Supreme Court determination of . . .) This section can be as short as a few sentences.

## QUESTIONS PRESENTED

These are the actual questions that you want the court to focus on. Word them well so the court looks at them from the position you want. The “answers” to these questions are going to be your argument points. Each question should be a separate paragraph, usually numbered (using Arabic – 1, 2, 3 . . . - or Roman – I, II, III . . . numerals or lettered - A, B, C . . .). For example, in the example set forth in the Table of Contents page, above, for section “I”, the question presented might be:

- I. Did the trial court deny Mr. Smith’s 6<sup>th</sup> amendment right to confront his accuser by allowing the police to testify as to what others said, thus denying him the opportunity to cross examine his accuser?

## STATEMENT OF THE CASE

Using the facts as cited in the record/decision from the court this appeal is taken from, you set forth the most important facts that support your case. You will need to cite each fact you use in this section at the end of the sentence by writing (R. Pg #) The “R” stands for the record, which will be provided to you. Again, I reiterate you cannot discuss or bring in any additional facts not found in the record. You need to make sure the brief tells the entire story, but you don’t need to highlight unimportant items that do not bear on the court’s decision or your argument. You do need to be persuasive in terms of the facts that support your conclusions and you need to mention and discredit any facts that support your opponent. By discredit, you should try to show why those items are unimportant. (It does not mean to merely say you don’t believe them or the like.)

As a writing tip for this section: Highlight those facts that support your case. Identify the facts that weaken your case but place less emphasis on them. Think of this like watching a movie. You want to go into slow motion on the facts that support your argument/conclusion. Describe these facts in detail. Describe facts that are not good for you like you are fast forwarding through them. You still have to mention them but generalize those facts and do not go into any detail. Please

note that readers tend to remember the first and last parts of a reading selection and forget information presented in the middle. As a result place those facts that are good to your case first and last in this section. Bury the bad facts in the middle of your statement.

Finally, remember that this is not your argument, just the facts. Be brief, but don't leave out important items.

## **SUMMARY OF THE ARGUMENT**

This section can be as few as the number of paragraphs equal to the number of questions presented. You should put your answers to those questions here. However, this section should not be in numbered or lettered format. Your answers are probably very similar to the "Points" you are making in the argument, but they are written as regular sentences in paragraph form. This section may refer to the facts from the record and the law to form a very brief but compelling reason why the court should find in your favor. Remember this is a summary of the argument you are about to present. Keep it short, but make sure it covers all of your arguments in a general manner. This is meant to be nothing more than a "teaser" of your argument that is coming up next. In a really good brief, this teaser sort of sets up the argument, so that the justice reading the brief can't wait to see your reasoning in the next section. Do not set forth all your reasoning here lest you have just put the judge to sleep when he/she reads the next section!

## **ARGUMENT**

### **I**

#### **THE TRIAL COURT IMPROPERLY DENIED MR. SMITH'S 6<sup>TH</sup> AMENDMENT RIGHT TO CONFRONT HIS ACCUSER BY ALLOWING THE POLICE OFFICER TO TESTIFY TO THE CONTENT OF HIS ACCUSER'S STATEMENT**

You now must write, using the best possible grammar, in paragraph form (and never in anything that looks like an outline) your argument for this point. You start with your premise – the defendant was denied his 6<sup>th</sup> amendment right – explain what the law is; state what the pertinent facts are that the court should be looking at; apply the law to the facts; and reach your conclusion on this issue which should be consistent with your initial premise or heading.

Each paragraph within your argument should follow a logical progression. One of the best formulas to use is CRAC, Conclusion, Rule, Argument, Conclusion. An

alternative is IRAC, Issue, Rule of Law, Argument, Conclusion. A third option is, Premise, Law, Facts, Law applied to Facts, Conclusion. This style of writing is probably something your English teachers have been trying to teach you for years. Start each paragraph with a topic sentence (or conclusion or issue). This is followed by the rule of law that you are claiming applies in this part of your case. Then you apply the law to the facts. This is your actual argument sentence(s). Finally, your concluding sentence for the paragraph is the idea that you present in your topic/conclusion/issue sentence at the beginning. (If the first and last sentences are identical, you will lose the reader's attention. I guess you will have to learn how to say practically the same thing in different ways.)

#### A.

The Court Failed To Properly Consider That  
The Out Of Court Statement Offered Was  
Testimonial In Nature.

In my example, I chose to use this item as a subdivision of Point I. You may opt not to have subdivision arguments, but have each item as a separate point. Either way is fine, but whether an item is its own point or a subdivision, you write the same evaluation as indicated under Point I, above. (Please note that I have chosen to indent this Point A slightly more than Point I as I am trying to point out that it is a subdivision of point I.)

#### II

THE TRIAL COURT IMPROPERLY ALLOWED INTO  
EVIDENCE HEARSAY TESTIMONY OF OUT OF  
COURT STATEMENTS USED IN COURT TO PROVE  
THE MATTER ASSERTED

Write your argument for this point, here.

#### III

MR. SMITH'S ALLEGED ADMISSION SHOULD NOT  
HAVE BEEN ADMISSIBLE AT TRIAL BECAUSE HE  
WAS DENIED HIS CONSTITUTIONAL RIGHT TO  
REMAIN SILENT AND NOT PROVIDED WITH THE  
REQUIRED MIRANDA WARNINGS

Write your argument for this point, here.

Remember to write *persuasively*. You want to convince the justice that you are correct. Finally, what do you do if there is a major law or case that goes against you or there is something in the facts that is not favorable to you? Well, ignoring such a problem would be like ignoring a pink elephant in the room – everyone knows it’s there! If there is something that is a problem, address the problem. Explain why your case is different or unique or why the other case does not apply. The most common approaches to these problems are showing factual differences or reasons why the other case should be viewed narrowly so that the holding does not apply to you situation. If all else fails, you can always try to suggest that the other case was decided wrong. This is not usually the best approach, but you have to use what you have.

## CONCLUSION

This is where you state what you want the court to do if they find in your favor. The length of this section is usually only 1 or 2 sentences.

### **Example:**

For all of the foregoing reasons, Mr. Smith’s conviction should be reversed and the charges dismissed.

Always put the names of the attorneys submitting the brief at the end with their respective delegation, just as you did on the cover page, as follows:

Yours, etc.,

First Name, Last Name, Delegation  
First Name, Last Name, Delegation  
First Name, Last Name, Delegation  
First Name, Last Name, Delegation