

STANDING UP INSTEAD OF SITTING BACK *(The impact of our decision to accommodate in 2005)*

In 2005 NCATL hosted the National High School Mock Trial Competition (NHSMTC) in Charlotte. It took more than 3 years to plan this 3 day event. Teams from 42 states and two territories were only 6 weeks away from coming to Charlotte for the big event when a request came from New Jersey to change the competition dates. As it turned out, New Jersey's State Championship team was from an Orthodox Jewish high school – The Torah Academy. The students could not compete from sunset Friday through darkness Saturday due to their religious observances. They had earned the right to compete, but the schedule prohibited their meaningful participation. While it was impossible to change dates so close to the event, NCATL, in spite of fierce opposition by the national competition board, came up with and implemented a reasonable accommodation that would allow the Torah Academy to fully compete. We knew we did the right thing then. We saw it in the faces of the Torah Academy team and their families. We saw it in the faces of the rest of the students who learned the importance of making this kind of accommodation.

After the 2005 competition, the NHSMTC board resolved never to make such an accommodation again. Our NC representatives on the national board resigned and NC and NJ pulled out from the NHSMTC and joined forces to start our own national competition known as the American Mock Trial Invitational (AMTI).

This issue was revisited in Atlanta this past spring when The Maimonides School won the Massachusetts State Championship and faced the same issue with NHSMTC that New Jersey faced in 2005. Unfortunately, the Georgia host did not take a stand. In the end the Maimonides School fought for an accommodation and won. Jeffrey Kosowsky is a parent of one of the Maimonides School team members (Michael Kosowsky) and an alumnus of the Maimonides School in Brookline, Massachusetts. He shares with us below their decision to stand up instead of sitting back and what role our stand in 2005 played in that decision and in winning the accommodation:



The Maimonides School High School Mock Trial Team at 2009 State Championship in Atlanta with the State Championship Judging panel (l to r) Hon. Peter W. Agnes, Hon. Howard J. Whitehead, and Hon. John D. Casey/. Photo by Christine Peterson



Michael Kosowsky (Maimonides School, class of '09) holds the championship bowl, with the State Championship Judging panel (l to r) Hon. John D. Casey, Hon. Peter W. Agnes and Hon. Howard J. Whitehead, photo by Christine Peterson

Perhaps surprisingly, the initial reaction of many of the Maimonides School parents and students was a mix of disappointment and resigned understanding that perhaps nothing could be done to allow our students to participate while observing the Jewish Sabbath without seriously disrupting the entire tournament schedule. The students were still excited about winning the Massachusetts state championship. Believing that there was no alternative, the team accepted the fact that at the 2009 Atlanta championship they would be forced to forfeit the Saturday rounds and give up on any chance of winning or even placing in the top half. Such is the price that sometimes must be paid for remaining faithful to one's beliefs and traditions. **However, our reaction changed from acceptance to dogged activism as we learned about the noble behavior of the North Carolina Trial Lawyers Association in the face of an intransigent NHSMTTC Board when a similar situation occurred in 2005, the year that North Carolina hosted the championship.**

Based on the 2005 experience, it turns out that Sabbath observance can easily be accommodated without major disruption simply by rescheduling the timing of 2 out of the more than 150 trials. Moreover, more than a quarter of the state teams in 2005 had volunteered to accept a schedule change and looking back, the two opposing teams that were rescheduled found the experience both educational and rewarding.

We learned that the successful accommodation in 2005 occurred only because of the brave and principled stand of the North Carolina Trial Lawyers Association under the leadership of Dick Taylor and supported by North Carolina's two representatives on the NHSMTTC Board -- Attorneys Rebecca Britton and Andrew McVey. As gracious hosts of the 2005 competition, North Carolina insisted that a way must be found for all student teams to participate despite the protestations and dug-in resistance and threats of the grossly insensitive NHSMTTC Board.

Perhaps most shockingly, rather than belatedly jumping on the bandwagon and welcoming the accommodation proposed and implemented by North Carolina, the NHSMTTC Board reacted in a mean-spirited fashion by attacking the "illegal" behavior of the North Carolina host and passing a reactionary resolution forbidding *any* future religious scheduling accommodations. This behavior of the Board was so egregious that the States of North Carolina and New Jersey decided to resign from future NHSMTTC competitions rather than be party to such blatantly insensitive if not discriminatory policies. For the past 4 years, North Carolina and New Jersey have invested significant time and dollars in creating an alternative inclusive national mock trial championship event, the American Mock Trial Invitational (AMTI). The United States Congress also weighed in with a unanimous non-binding resolution calling on the NHSMTTC to reverse course.

Knowing this history, I felt strongly that attending and quietly forfeiting was not a moral option -- we simply had no right to acquiesce to an injustice that others were continuing selflessly to oppose on our behalf, including significant personal sacrifices and financial investment. Our team either needed to boycott the event and join in solidarity with the AMTI or we needed to fight aggressively for our right

to participate fully without forfeiting. Since the school and students were inclined to attend Atlanta, I chose to lead the fight for accommodation along with a fellow Maimonides alumnus and attorney, Daniel (Danny) Edelman, who now lives in New Jersey, and had been involved in the 2005 incident on behalf of the New Jersey Orthodox Jewish day school.

Once again, the good members of the North Carolina Trial Lawyers Association went beyond the call of duty to be helpful. The first person Danny contacted was his old friend Attorney Hampton Dellinger who had also been active back in 2005. Without even being asked, Hampton immediately reached out to mobilize his legal and political connections in Georgia. Hampton continued to help with outreach and serve as both a sounding board and cheerleader through to the end. Dick Taylor also provided good counsel, encouragement, and support behind the scenes. Most importantly, we were advised that given the reactionary position of the NHSMTTC Board, we would be wasting our time trying to convince them and that we should focus instead on influencing the local Atlanta legal community. Indeed, the NHSMTTC Board was completely dismissive of our request for accommodation, responding only with preposterous rationalizations for their policy.

Our legal strategy was led by the formidable civil rights legal duo of Nathan and Alyza Lewin who volunteered to help our cause pro-bono. The Lewins devised the innovative approach of filing a complaint letter with the Special Counsel for Religious Discrimination at the Civil Rights Division of the United States Justice Department. Together, Danny, the Lewins, and I became a tight team working almost 24x6 to coordinate our approach and reach out to as many influencers as possible in the Atlanta legal, political, and media community. The Anti Defamation League (ADL) which has a prominent regional office in Atlanta became actively involved early on in reaching out to their prominent network and seeding the media.

With just a week remaining until the championships, the pressure for accommodation began to mount on multiple fronts. First, the Justice Department responded in record time with a letter to the Georgia court system telling the judges that as recipients of Federal funds they were bound by the "Safe Streets Act of 1968" that prohibits the administration of programs that have the *effect* (not just intent) of subjecting individuals to discrimination on the basis of religion. At the same time, the media became interested in the "David vs. Goliath" case of exemplary, religiously observant high school students being prevented from competing in a scholastic competition due to the arrogance of a distant Board comprised of insensitive lawyers, judges, and academics. The story received extensive coverage in the local law newspaper (Fulton County Daily Reporter), made top billing in local newspapers and TV, and even featured prominently in the New York Times and on the national Fox network. Finally, many prominent lawyers, judges, and politicians started exerting pressure on the Georgia Bar to follow the 2005 example of the North Carolina Trial Lawyers Association and use the prerogative of host to compel the NHSMTTC to accommodate.

Unfortunately, while the leadership of the Georgia Bar expressed deep personal sympathy for our position, they were unwilling to step forward

and go against the NHSMTC Board citing their "contractual" obligations to follow the policies of the NHSMTC. Despite the mounting public and professional pressure, the President of the Georgia Bar reiterated this hands-off position in a letter to the editor of the Fulton County Daily Reporter titled "Our hands are tied on mock trial schedule." The contrast between the principled approach of the North Carolina Trial Lawyers Association in 2005 and the legalistic defense of the Georgia Bar in 2009 could not be more striking.

As the students arrived in Georgia for practice rounds with the start of the competition just one day away, we finally admitted to ourselves that although we had fought a good fight and had extracted a high price in adverse publicity for the NHSMTC, time had clearly run out. Then just as we were feeling at our lowest point while commiserating over the phone, we received an email informing us that Chief Judge Doris Downs of the Fulton County Superior Court had personally intervened and given the Georgia Bar and the NHSMTC an ultimatum: either accommodate the team's religious observance or move the entire competition out of the public courtrooms. The NHSMTC had no choice but to comply and accommodate. Surely Divine Providence was smiling down on us.

The triumph of accommodation and inclusiveness over insensitivity and academic rationalizations was exhilarating. The students were treated as celebrities and heroes at the ensuing competition with other teams and coaches going out of their way to congratulate our team and express their support. Our team went on to win 2 out of 4 trials and finish tied for 20th place out of 41 participants which is a very respectable finish for a first time national contender from a small parochial school.

However, for us the victory will not be complete until the policy is changed permanently. At the end of the day, our fight was not just for our kids to participate this year but for the general principle of reasonable accommodation and inclusiveness. The silver lining to this year's very public down-to-the-wire battle is that the NHSMTC has been compelled out of their own self-interest to revisit their reactionary, anti-accommodation policy. The NHSMTC's reputation was appropriately sullied during this incident and the Georgia Bar was deprived of much of the goodwill that they had hoped to harvest in return for their huge investment in dollars and time for hosting the event. Sympathizers in Philadelphia and Phoenix, the sites of the 2010 and 2011 NHSMTC championships, respectively, are already actively advocating for change. We can only hope that the NHSMTC Board will realize that they have nothing to gain yet so much to lose by continuing their intransigence. Most importantly, we sincerely hope that the Board will reverse their policy in an open-handed and gracious way that will not only allow for future religious accommodation but that will also make it possible for North Carolina and New Jersey to rejoin the competition as proud participants.

By Jeffrey Kosowsky
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