

# **NEW YORK STATE 2016 HIGH SCHOOL MOCK TRIAL TOURNAMENT MATERIALS**

## **PEOPLE V. KELLY ROBERTS**



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

Supported by The New York Bar Foundation





**NEW YORK STATE BAR ASSOCIATION  
2016 NYS HIGH SCHOOL MOCK TRIAL TOURNAMENT  
Regarding the Case of "People v. Kelly Roberts"  
CORRECTION MEMO #1 – Issued January 19, 2016**

Based on questions received and reviewed by the Mock Trial Subcommittee, the following corrections are being made to the case materials. Please be advised that this correction memo, the revised pages, and a revised version of the PDF will be posted online at [www.nysba.org/mtcase](http://www.nysba.org/mtcase). Please use these revised materials effective immediately. The revised pages will be renumbered as **xx-Rx**. The entire case will have the latest revision date at the top of each page. Questions can be addressed to [kfrancis@nysba.org](mailto:kfrancis@nysba.org). Thank you.

<b>DOCUMENT</b>	<b>CORRECTIONS</b>	<b>ORIGINAL PAGE #</b>	<b>NEW REVISED PAGE #</b>	<b>PDF VERSION PAGE #</b>
CASE SUMMARY	<p>THE FOLLOWING PARAGRAPH WAS ADDED AT THE END OF THE CASE SUMMARY (AFTER THE LIST OF WITNESSES).</p> <p><i>Please note, the foregoing summary of the case is provided solely for the convenience of the participants in the Mock Trial Tournament. This overview itself does not constitute evidence and may not be introduced at trial or used for impeachment purposes.</i></p>	54	54-R1	62
STIPULATIONS	<p>STIPULATION #2 - THE PARAGRAPH WAS REVISED AS INDICATED IN BOLD BELOW.</p> <p>All items of evidence are originals and eligible for use <b>during the match</b>, following proper procedure for identification and submission. <b>The pill bottle exhibit is to be regarded as the actual bottle recovered by the police officer. It may be marked for identification, and admitted into evidence, as the actual pill bottle.</b></p>	55	55-R1	63
STIPULATIONS	<p>STIPULATION #3 - THE FOLLOWING TEXT HAS BEEN ADDED AT THE END OF SENTENCE #1.</p> <p><b>(Please note that the Case Summary is provided solely for the convenience of the participants in the Mock Trial Tournament. Said summary itself does not constitute evidence and may not be introduced at the hearing/trial or used for impeachment purposes.)</b></p>	55	55-R1	63
STIPULATIONS	<p>STIPULATION #4 - THE PARAGRAPH WAS REVISED AS INDICATED IN BOLD BELOW.</p> <p>All <i>Payton</i> (445 US 573; 63 LE2d 639), <i>Dunaway</i> (442 US 200; 60 LE2d 824) and <i>Huntley</i> (15 NY2d 72; 255 NYS2d 838) issues have been resolved <b>or held in abeyance</b>. The sole determination to be made by the court is the admissibility of the contraband. <b>The guilt or innocence of the defendant will not be decided at this time.</b></p>	55	55-R1	63

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<b>DOCUMENT</b>	<b>CORRECTIONS</b>	<b>ORIGINAL PAGE #</b>	<b>NEW REVISED PAGE #</b>	<b>PDF VERSION PAGE #</b>
EXHIBITS	<p>MAP OF AREA - THE MAP WAS REVISED TO INCLUDE THE FOLLOWING:</p> <p>#4. The street Parker Pedersen lives on – Marigold Street #5. The street Leslie Mooney lives on – Beacon Street (formerly called Social Studies Blvd.)</p>	95	95-R1	103
EXHIBITS	<p>EMPTY PILL BOTTLE FOUND AT ROBERTS’ RESIDENCE</p> <p>The exhibit represents <b>the actual pill bottle</b> (not a photograph of the pill bottle). It has been labeled by the East Nirvana Police Department as “Inventory Tag 003 (Parker)”.</p>	101	101-R1	109
EXHIBITS	<p>IN THE PHOTO OF THE FENCE DETAIL (THE HOLE IN THE FENCE), THE TEXT DESCRIPTION ON EACH SIDE OF THE FENCE WAS REVISED:</p> <p><u>LEFT SIDE</u> PREVIOUS TEXT: Side of fence closest to 534 Pearl St. REVISED TEXT: Edge of fence closest to Pearl Street</p> <p><u>RIGHT SIDE</u> PREVIOUS TEXT: Side of fence closet to Noble Path Center REVISED TEXT: Edge of fence at the rear of the Roberts’ apartment building</p> <p><u>NOTES:</u> 1) The fence is not to scale. 2) The fence runs between Kelly’s apartment building and the daycare building. It would be perpendicular to Pearl Street. The two buildings are side-by-side and the fence separates the two properties.</p>	103	103-R1	111
EXHIBITS	<p>NATIONAL WEATHER SERVICE REPORT – THE COORDINATES WERE CHANGED TO REFLECT A MORE ACCURATE LOCATION:</p> <p><b>NEW COORDINATES:</b> Lat: 42.8N Long: 77.18W</p>	107	107-R1	115
CASES (CASE LAW)	<p>PEOPLE V. DI STEFANO, 38 NY2d 640, 382 NYS2d 5 [1976] –</p> <p>THE FOLLOWING TWO (2) SENTENCES WERE REMOVED FROM THE END OF THE PARAGRAPH: However, the People’s burden of proof is beyond a reasonable doubt (<i>People v. Renis</i>, 94 AD2d 728, 462 NYS2d 266 [1983].</p> <p>THE FOLLOWING TEXT WAS ADDED AT THE END OF THE LAST SENTENCE: <i>People v. Thomas</i>, 291 AD2d 462 [2002].)</p>	111	111-R1	119

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CASES (CASE LAW)	<p>THE FOLLOWING CASE WAS ADDED TO THE END OF THE CASES:</p> <p><b><i>People v. Spinelli</i>, 35 NY2d 77, 358 NYS2d 743 [1974]</b>            A person who leaves an article in plain view has no legitimate expectation of privacy with respect to that item, so long as the article comes into plain view inadvertently. (See also <b><i>People v. Hysmith</i>, 223 AD2d 724, 637 NYS2d 447</b> – police officer who is lawfully in a suspect's residence may seize incriminating items that the officer had observed in plain view).</p>	113	113-R1	121
PERFORMANCE RATING SHEET (SCORE SHEET)	<p>PERFORMANCE RATING SHEET (SCORE SHEET)</p> <p>The Performance Rating Sheet (Score Sheet) was revised to correct an error. The "grayed out" boxes in the columns were accidentally reversed.</p>	119 120	119-R1 120-R1	127 128



**NEW YORK STATE BAR ASSOCIATION**  
**2016 NYS HIGH SCHOOL MOCK TRIAL TOURNAMENT**  
**Regarding the Case of “People v. Kelly Roberts”**  
**CORRECTION MEMO #2 – Issued January 29, 2016**

Based on questions received and reviewed by the Mock Trial Subcommittee, the following corrections are being made to the case materials. Please be advised that this correction memo, the revised pages, and a revised version of the PDF will be posted online at [www.nysba.org/mtcase](http://www.nysba.org/mtcase). Please use these revised materials effective immediately. The revised pages will be renumbered as **xx-Rx**. The entire case will have the latest revision date at the top of each page. Questions can be addressed to [kfrancis@nysba.org](mailto:kfrancis@nysba.org). Thank you.

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**CORRECTION MEMO #2:** INCLUDES CLARIFICATION ON SOME COMMON QUESTIONS WE HAVE RECEIVED. **PLEASE NOTE:** WHEN A CORRECTION MEMO IS ISSUED, YOU SHOULD BE DOWNLOADING AND PRINTING OUT NOT ONLY THE CORRECTION MEMO BUT ALSO **ALL** OF THE REVISED PAGES. **YOU MUST REPLACE THE PAGES IN THE MOST RECENT VERSION OF THE CASE WITH THE REVISED PAGES.** THERE IS ALSO A REVISED VERSION OF THE ENTIRE CASE IF YOU WANTED TO PRINT THAT OUT (NOT NECESSARY BUT AVAILABLE TO YOU ANYWAY).

<b>DOCUMENT</b>	<b>CORRECTIONS</b>	<b>ORIGINAL PAGE #</b>	<b>NEW REVISED PAGE #</b>	<b>PDF VERSION PAGE #</b>
<b>SAM DOOLITTLE AFFIDAVIT</b>	<b>Corrections to paragraph #12 are in BOLD below:</b>  12. S/he shows me <b>a knife and</b> these pills the cops say they found in the grass in Kelly’s yard— probably Tylenol for all I know—and starts acting like s/he is some kind of hero saving my kids. In a loud, kind of threatening voice, s/he says “it is a good thing I found these drugs before the children did. It would be a disaster for you if a child ingested one or more of these tablets believing them to be candy.” <b>That is all I need right now. In early August, I got this warning letter from those worthless bureaucrats at the Children and Family Services complaining about some so-called deficiencies at my daycare. So, these police officers should be careful. If they continue to make allegations that my daycare is next door to a drug dealer, coupled with the problems I am having with CFS, parents might start to remove their children and I would lose my livelihood. Kelly is really a good person and that the knife and drugs were probably left by someone traversing through the neighborhood.</b>	<b>87</b>	<b>87-R1</b>	<b>95</b>
<b>EXHIBIT</b>	<b>Revised Photo of Kelly Roberts’ apartment building and Noble Path Daycare Center:</b>  A legend was added to indicate that Officer Leeds took the photo on 09-22-2015.	<b>97</b>	<b>97-R1</b>	<b>105</b>
<b>EXHIBIT</b>	<b>Revised Photo of Kelly Roberts’ Kitchen:</b>  A legend was added to indicate that Officer Leeds took the photo on 09-22-2015.	<b>99</b>	<b>99-R1</b>	<b>107</b>
<b>EXHIBIT</b>	<b>Revised Photo of the detail of the hole in the fence:</b>  A legend was added to indicate that Officer Leeds took the photo on 09-22-2015.	<b>103</b>	<b>103-R2</b>	<b>111</b>

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<b>Clarifications</b>				
<b>N/A</b>	<p><b>CLARIFICATION REGARDING WHETHER THIS CASE IS A SUPPRESSION HEARING OR A TRIAL:</b></p> <p>This 2016 case is a Suppression Hearing. The ultimate issue for the judge to decide is whether or not the contraband was illegally obtained and therefore should be suppressed. The case is <b>NOT</b> a trial. The judge will not be making a determination of guilt or innocence.</p> <p>On Mapp and other pre-trial suppression hearings, the prosecution commences the hearing by presenting evidence to show the legality of the police conduct. This is because the prosecution has the burden of going forward once the defense makes the motion.</p>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>MAP OF AREA</b>	<p><b>CLARIFICATION REGARDING THE MAP:</b></p> <p>The pictures on the map were not intended to represent precisely where the objects are located, but just generally. It was not possible to put the images of the people and the physical structures in the small spaces on the map. The precise location of the objects and the people are described in the affidavits and/or the Case Summary.</p> <p>Kelly Roberts’ apartment building is actually located on the west side of Pearl Street. Mooney’s apartment building is on the east side of Beacon Street, not where the “5” is positioned. So, the back yards of the two apartment buildings would abut. In other words, when Kelly looks out his/her rear kitchen window, s/he would see the rear of Mooney’s building. We could not put the “3” and the “5” in their exact location because they would overlap.</p>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>FENCE</b>	<p><b>CLARIFICATION REGARDING THE FENCE:</b></p> <p>There are two exhibits related to the fence, however, there is only one fence – one photo is just showing the detail of the hole in the fence.</p> <p>The fence runs between Kelly’s apartment building and the daycare building. It would be perpendicular to Pearl Street. The two buildings are side-by-side and the fence separates the two properties. The fence is not drawn to scale. However, it a typical chain-link fence separating the two properties. Officer Flanagan will testify that the hole in the fence is large enough for a young child to fit through (paragraph #13, p.64). The exhibit does not need to be admitted into evidence in order for the officer to testify that there is a fence separating the properties with a large gaping hole.</p>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>



**NEW YORK STATE BAR ASSOCIATION**  
**2016 NYS HIGH SCHOOL MOCK TRIAL TOURNAMENT**  
**Regarding the Case of “People v. Kelly Roberts”**  
**CORRECTION MEMO #3 – Issued February 1, 2016**

Based on questions received and reviewed by the Mock Trial Subcommittee, the following corrections are being made to the case materials. Please be advised that this correction memo, the revised pages, and a revised version of the PDF will be posted online at [www.nysba.org/mtcase](http://www.nysba.org/mtcase). Please use these revised materials effective immediately. The revised pages will be renumbered as **xx-Rx**. The entire case will have the latest revision date at the top of each page. Questions can be addressed to [kfrancis@nysba.org](mailto:kfrancis@nysba.org). Thank you.

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EXHIBITS	<p>EMPTY PILL BOTTLE FOUND AT ROBERTS’ RESIDENCE</p> <p>There was an error in the text at the bottom of the exhibit. The name <u>Parker</u> has been replaced with the name <u>Roberts</u>.</p> <p><b>PREVIOUS TEXT:</b> Inventory Tag #003 (Parker) East Nirvana Police Department</p> <p><b>REVISED TEXT</b> Inventory Tag #003 (<b>Roberts</b>) East Nirvana Police Department</p>	101	101-R1	109



**NEW YORK STATE BAR ASSOCIATION**  
**2016 NYS HIGH SCHOOL MOCK TRIAL TOURNAMENT**  
**Regarding the Case of “People v. Kelly Roberts”**  
**CORRECTION MEMO #4 – Issued February 18, 2016**

Based on questions received and reviewed by the Mock Trial Subcommittee, the following corrections are being made to the case materials. Please be advised that this correction memo, the revised pages, and a revised version of the PDF will be posted online at [www.nysba.org/mtcase](http://www.nysba.org/mtcase). Please use these revised materials effective immediately. The revised pages will be renumbered as **xx-Rx**. The entire case will have the latest revision date at the top of each page. Questions can be addressed to [kfrancis@nysba.org](mailto:kfrancis@nysba.org). Thank you.

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<b>AFFIDAVIT</b>	<p><b>AFFIDAVIT OF LESLIE MOONEY</b></p> <p>Paragraph #20 of the affidavit was revised to concur with the statement on page 53 of the Case Summary regarding the specifics of Leslie Mooney’s color blindness.</p> <p><b>PREVIOUS TEXT:</b></p> <p>20. When I looked out my window, I saw a person who looked like Kelly tossing some small items out a window. Although I have poor vision, even with my contacts, and a slight case of colorblindness, I’m sure the person was throwing small round objects. I could see the arc of blue circular shapes sailing to the ground in Kelly’s back yard. I was wearing my contacts that afternoon and am good at discerning shapes and motions despite my poor eyesight.</p> <p><b>REVISED TEXT</b></p> <p>20. When I looked out my window, I saw a person who looked like Kelly tossing some small items out a window. Although I have poor vision, even with my contacts, and a slight case of <b>blue/yellow</b> color blindness, I’m sure the person was throwing small round objects. I could see the arc of <b>light</b> blue circular shapes sailing to the ground in Kelly’s back yard. I was wearing my contacts that afternoon and am good at discerning shapes and motions despite my poor eyesight.</p>	<b>76</b>	<b>76-R1</b>	<b>84</b>





## **2015 NEW YORK STATE BAR ASSOCIATION HIGH SCHOOL MOCK TRIAL CHAMPIONS**

### **CLARENCE HIGH SCHOOL**

#### **Team Members**

Ethan Alexin  
Derek Andrews  
Tyler Bird  
Julia Carey  
Georgia Hulbert  
Adam Klavoon  
Rebecca Knapp  
Alexander Maccallini  
Ryan Mazurkiewz  
Mary Owen  
Mitchell Snyder  
Sean Stendardi

#### **Faculty Advisor**

Ronald DiNicolantonio

#### **Legal Advisors**

Justin Kloss, Esq.  
Colleen Mattrey, Esq.

With The **Honorable Michael C. Lynch**  
State of New York Supreme Court  
Appellate Division, Third Department– May 19, 2015



## Mock Trial Summer Institute

July 17-22, 2016  
Silver Bay YMCA  
Lake George, NY

Get your application in early!

More details about **MTSI** are available online at [www.nysba.org/mtsi](http://www.nysba.org/mtsi)  
or contact Kim Francis at [kfrancis@nysba.org](mailto:kfrancis@nysba.org)

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# New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>

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## *Letter from the Chair*

November 16, 2016

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

Thank you for participating in the 2015-2016 New York State High School Mock Trial Tournament. The tournament is now entering its 34th year. Thanks to the continued financial and logistical support from the New York Bar Foundation and the New York State Bar Association, New York State continues to have one of the largest and longest running high school mock trial programs in the nation. Equally important to the success of the program is the continued support of the numerous local bar associations across the state that sponsor mock trial tournaments in their counties and the County Coordinators who spend many hours managing the local tournaments. We are grateful to the teacher-coaches and attorney advisors who give their time, dedication and commitment to the program. And finally, our special thanks to the students who devote their time and energy in preparing for the tournament. Every year, we are amazed at the level of skill and talent the students bring to the courtrooms. Congratulations to the 2014- 2015 NYS Tournament Champion, Clarence High School, who turned in a winning performance last May at the State Finals here in Albany.

Please take the time to carefully review all of the enclosed mock trial tournament information. The Simplified Rules of Evidence and the General Tournament Rules should be studied carefully. Please pay special attention to the information regarding the timing, redaction of evidence and constructive sequestration of witnesses. This year's case is ***The People v. Kelly Roberts***. **In this criminal case, Kelly Roberts was observed by the police to be engaging in what appeared to be a drug transaction with a known addict.** The police chased Kelly to an apartment building and upon entering the apartment, found an empty pill bottle with a label indicating that it had contained oxycodone. The police suspected that before they arrived, Kelly threw the pills out of the window into the back yard, which is next door to a daycare center. A rainstorm that would destroy the evidence was imminent, so the police retrieved the pills from the yard without a warrant. Kelly was charged with possessing the prescription-only pain medication, oxycodone, without a prescription (Penal Law §220.06[1]). Defense counsel moved to suppress the evidence (the twenty oxycodone tablets on the ground), stating that the warrantless search was improper. The prosecution will attempt to show that the warrantless search of the defendant's premises was justified under the Emergency Doctrine to prevent the contraband from harming young daycare children. Alternatively, the People may argue that under the Exigent Circumstances Doctrine, the officers had to move quickly to prevent the destruction of the evidence by the inclement weather.

The mock trial program is, first and foremost, an educational program designed to teach high school students basic trial skills. Students learn how to conduct direct and cross examinations, how to present opening and closing statements, how to think on their feet and learn the dynamics of a courtroom. Students will also learn how to analyze legal issues and apply the law to the facts of the case. Second, but equally important, is that participation in mock trial will teach the students professionalism. Students learn ethics, civility, and how to be ardent but courteous advocates for their clients. Good sportsmanship and respect for all participants are central to the competition. We thank the teachers, coaches, advisors, and judges, not only for the skills that they teach, but for the example of professionalism and good sportsmanship they model for the students throughout the tournament.

We remind the teams that all participants (students, teachers, attorneys, parents and all spectators) must conduct themselves with the utmost respect and civility toward the judge, before, during and after each round. If there is a circumstance in which any participant does not abide by this standard, a referral will be made to the LYC Mock Trial Subcommittee to consider appropriate sanctioning.

Please be sure to encourage your students to consider participating in the Mock Trial Summer Institute. MTSI is scheduled for July 17-22, 2016 at the Silver Bay YMCA on the shores of beautiful Lake George. If you have not had a student attend MTSI, now is the time! The students who return from MTSI become the team leaders of tomorrow and an inspiration to the rest of the team. Having a student or two attend MTSI will give you a definite leg up as you start the tournament season next year.

The tournament finals will be held in Albany on May 16 and 17, 2016. As in years past, the regional winners in each of the eight regions will be invited to participate in the semi-finals, and two of the teams will advance to the final round the next day. The New York Bar Foundation is generously supporting the tournament again this year and will fund the teams' room and board for the state tournament. More details will be available closer to the date of the tournament.

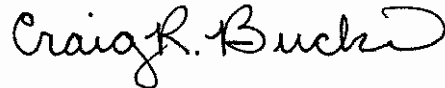
This year's Mock Trial Tournament materials will be posted on the Law, Youth and Citizenship website, [www.lyc.org](http://www.lyc.org), and there will be frequent updates on Facebook at [www.facebook.com/nysmocktrial](http://www.facebook.com/nysmocktrial) and on Twitter @NYSMockTrial.

We trust you will enjoy working on this year's case. Best wishes to all of you for a successful and challenging mock trial tournament.

Sincerely,



Hon. Jonah Triebwasser, *Red Hook*  
Chair, Committee on Law, Youth and Citizenship



Craig R. Bucki, Esq., *Buffalo*  
Chair, Mock Trial Subcommittee

**Subcommittee Members:**

Melissa Ryan Clark, Esq., *New York City*  
Christine E. Daly, Esq., *Chappaqua*  
Eugenia Brennan Heslin, Esq., *Poughkeepsie*  
Seth F. Gilbertson, Esq., *Syracuse*

Stuart E. Kahan, Esq., *White Plains*  
Susan Katz Richman, Esq., *Hempstead*  
Lynn Boepple Su, Esq., *Old Tappan*  
Oliver C. Young, Esq., *Buffalo*

## **STANDARDS OF CIVILITY**

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

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

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

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

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

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# **NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT RULES**

## **PART I**

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## **MOCK TRIAL TOURNAMENT RULES**

### **1. TEAM COMPOSITION:**

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

### **2. OBJECTIONS**

- a. Attorneys should stand when making an objection, if they are physically able to do so.
- b. When making an objection, attorneys should say “objection” and then, very briefly, state the basis for the objection (for example, “leading question”). Do not explain the basis unless the judge asks for an explanation.

- c. Witnesses should stop talking immediately when an opposing party makes an objection. Please do not try to “talk over” the attorney making an objection.

### 3. **DRESS**

We emphasize to the judges that a student’s appearance is not a relevant factor in judging his or her performance. However, we strongly encourage students to dress neatly and appropriately. A “business suit” is not required.

### 4. **STIPULATIONS**

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

### 5. **OUTSIDE MATERIALS**

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

### 6. **EXHIBITS**

Students may introduce into evidence or use only the exhibits and documents provided in the Mock Trial Tournament materials. Students may not create their own charts, graphs or any other visual aids for use in the courtroom in presenting their case. **Evidence is not to be enlarged, projected, marked or altered for use during the trial.**

### 7. **SIGNALS AND COMMUNICATION**

The team coaches, advisors, and spectators may not signal the team members (neither student-attorneys nor witnesses) or communicate with them in any way during the trial, including but not limited to wireless devices and text messaging. The use of cellular telephones, laptop computers, or any other wireless devices by any student attorney or witness, other than a timekeeper for the purpose of keeping time during the trial, is strictly prohibited. A student witness may talk to a student attorney on his/her team during a recess or during direct examination, but may not communicate verbally or non-verbally with a student attorney on his/her team during the student witness’ cross examination.

## 8. VIDEOTAPING/AUDIOTAPING

- a. During any tournament round, except State semi-finals and State finals, a trial may be videotaped or audio taped but only if each of the following conditions is satisfied:
  - i. The courthouse in which the tournament round is taking place must permit video or audio taping and the team wishing to videotape or audiotape has received permission from the courthouse in advance of the trial. *We note that many state and Federal courthouses prohibit video or audio taping devices in the courthouse.*
  - ii. The judge consents before the beginning of the trial.
  - iii. The opposing team consents in writing prior to the time the trial begins. Written consents should be delivered to the County Coordinator. Fax or e-mail is acceptable.
  - iv. A copy of the video or audio tape must be furnished to the opposing team (at no cost) within 48 hours after the trial.
  - v. The video or audio tape may not be shared by either team with any other team in the competition.
- b. Video or audio taping of the State semi-finals and final rounds is **NOT** permitted by either team.

## 9. MOCK TRIAL COORDINATORS

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

## 10. ROLE AND RESPONSIBILITY OF ATTORNEYS

- a. The attorney who makes the opening statement may not make the closing statement.

- b. Requests for bench conferences (i.e., conferences involving the Judge, attorney(s) for the plaintiff or the people and attorney(s) for the defendant) may be granted after the opening of court in a mock trial, but not before.
- c. Attorneys may use notes in presenting their cases, for opening statements, direct examination of witnesses, etc. Witnesses are **NOT** permitted to use notes while testifying during the trial.
- d. Each of the three attorneys on a team must conduct the direct examination of one witness and the cross examination of another witness.
- e. The attorney examining a particular witness must make the objections to that witness's cross examination, and the attorney who will cross-examine a witness must make the objections to the witness's direct examination.

## 11. WITNESSES

- a. Each witness is bound by the facts of his/her affidavit or witness statement and any exhibit authored or produced by the witness that is relevant to his/her testimony. Witnesses may not invent any other testimony. However, in the event a witness is asked a question on cross examination, the answer to which is not contained in the witness's statement or was not testified to on direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial.
- b. If there is an inconsistency between the witness statement or affidavit and the statement of facts or stipulated facts, the witness can only rely on and is bound by the information contained in his/her affidavit or witness statement.
- c. A witness is not bound by facts in other witnesses' affidavits or statements.
- d. If a witness contradicts a fact in his or her own witness statement, the opposition may impeach the testimony of that witness.

- e. A witness's physical appearance in the case is as he or she appears in the trial re-enactment. No costumes or props may be used.
- f. Witnesses, other than the plaintiff and the defendant, may be constructively sequestered from the courtroom at the request of opposing counsel. A constructively sequestered witness may not be asked on the stand about the testimony another witness may have given during the trial enactment. A team is **NOT** required to make a sequestration motion. However, if a team wishes to make such motion, it should be made during the time the team is introducing itself to the judge. Please note that while a witness may be constructively sequestered, said witness **WILL REMAIN** in the courtroom at all times. (Note: Since this is an educational exercise, no participant will actually be excluded from the courtroom during an enactment.)
- g. Witnesses shall not sit at the attorneys' table.

## 12. PROTESTS

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

## 13. JUDGING

**THE DECISIONS OF THE JUDGE ARE FINAL.**

#### 14. ORDER OF THE TRIAL

The trial shall proceed in the following manner:

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

## 15. TIME LIMITS

a. The following time limits apply:

- Opening Statement..... 5 minutes for each team
- Direct Examination ..... 10 minutes for each witness
- Cross Examination ..... 10 minutes for each witness
- Closing Argument..... 10 minutes for each team

b. At all county and regional trials, the time will be kept by two timekeepers. Each team shall provide one of the timekeepers. Timekeeper shall be a student of the participating school. A school may use a student witness who is not a witness during a particular phase of the trial. (For example, a defense witness can keep time when the plaintiff/prosecution attorneys are presenting their case.)

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

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

## 16. TEAM ATTENDANCE AT STATE FINALS ROUND

Eight teams will advance to the State Finals. All eight teams are required to participate in all events associated with the Mock Trial Tournament, including attending the final round of the competition.

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

**PART II**

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## **MOCK TRIAL TOURNAMENT POLICIES AND PROCEDURES**

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

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

### **1. GENERAL POLICIES**

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

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

## 2. SCORING

- a. Scoring is on a scale of 1-5 for each performance (5 is excellent). Judges are required to enter each score on the performance rating sheet (Appendix) after each performance, while the enactment is fresh in their minds. Judges should be familiar with and use the performance rating guidelines (Appendix) when scoring a trial.
- b. Judges are required to also assign between 1 and 10 points to **EACH** team for demonstrating professionalism during a trial. A score for professionalism may not be left blank.

Professionalism criteria are:

- Team's overall confidence, preparedness and demeanor
- Compliance with the rules of civility
- Zealous but courteous advocacy
- Honest and ethical conduct
- Knowledge and adherence to the rules of the competition
- Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; and strategies intended to waste the opposing team's time for its examinations. *A score of 1 to 3 points should be awarded for a below average performance, 4 to 6 points for an average performance and 7 to 10 points for an outstanding or above- average performance.*

- c. The appropriate County Coordinator will collect the Performance Rating Sheet for record keeping purposes. Copies of score-sheets are **not** available to individual teams; however, a team can get its total score through the County Coordinator.

### 3. LEVELS OF COMPETITION

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

- |                              |                                       |
|------------------------------|---------------------------------------|
| • Region 1 .....West         | • Region 5 .....New York City (NYC-A) |
| • Region 2 .....Central      | • Region 6 .....New York City (NYC-B) |
| • Region 3 .....Northeast    | • Region 7 .....Nassau County         |
| • Region 4 .....Lower Hudson | • Region 8 .....Suffolk County        |

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

### 4. COUNTY TOURNAMENTS

- a. All rules of the New York State Mock Trial Tournament must be adhered to at tournaments at the county level.

- b. In these tournaments there are two phases. In the first phase each team will participate in at least two rounds before the elimination process begins, once as plaintiff/prosecution and once as defendant. After the second round, a certain number of the original teams will proceed to the second phase in a single elimination tournament. Prior to the competition and with the knowledge of the competitors, the County Coordinator may determine a certain number of teams that will proceed to the Phase II single elimination tournament. While this number may be more or less than half the original number of teams, any team that has won both rounds based on points, but whose combined score does not place it within the established number of teams, **MUST** be allowed to compete in the phase II single elimination tournament.
- c. The teams that advance to Phase II do so based on a combination of wins and point differential, defined as the points earned by a team in its Phase I matches minus the points earned by its opponents in those same Phase I matches. All 2-0 teams automatically advance; teams with a 1-1 record advance based upon point differential, then upon total number of points in the event of a tie; if any spots remain open, teams with a record of 0-2 advance, based upon point differential, then upon total number of points in the event of a tie.
- d. If the number of teams going into the single elimination phase is odd, the team with the most wins and highest combined score will receive a bye. If any region starts the year with an odd number of teams, one team from that region may receive a bye, coin toss, etc.
- e. Phase II of the contest is a single round elimination tournament; winners advance to the next round.
- f. At times, a forfeit may become a factor in determining aggregate point totals and which teams should advance to the single elimination tournament. Each county should review its procedures for dealing with forfeits, in light of the recommended procedures below. Please note that due to the variety of formats in use in different counties, it is strongly urged that each county develop a system which takes its own structure into account and which participants understand prior to the start of the local tournament. That procedure should be forwarded to the New York State Mock Trial Program Manager, before the first round of competition is held.

- g. If a county has an established method for dealing with forfeits, or establishes one, then that rule continues to govern. If no local rule is established, then the following State rule will apply: *In determining which teams will advance to the single elimination tournament, forfeits will first be considered to cancel each other out, as between two teams vying for the right to advance. If such canceling is not possible (as only one of two teams vying for a particular spot has a forfeit victory) then a point value must be assigned for the forfeit. The point value to be assigned should be derived from averaging the team's point total in the three matches (where possible) chronologically closest to the date of the forfeit; or if only two matches were scheduled, then double the score of the one that was held.*

## 5. REGIONAL TOURNAMENTS

- a. Teams who have been successful in winning county level tournaments will proceed to regional level tournaments. Coordinators administer regional tournaments. Coordinators have sole responsibility for organizing, planning and conducting tournaments at the regional level. Participants must adhere to all rules of the tournament at regional level tournaments.
- b. Regional tournaments are held in counties within the region on a rotating basis. Every effort is made to determine and announce the location and organizer of the regional tournaments before the new mock trial season begins.
- c. All mock trial rules and regulations and criteria for judging apply, at all levels of the Mock Trial Tournament.
- d. The winning team from each region will be determined by an enactment between the two teams with the best records (most number of wins and greatest number of points) during the regional tournament. The winning team from each region will qualify for the State Finals in Albany.

- e. The regional tournaments MUST be completed 16 days prior to the State Finals. Due to administrative requirements and contractual obligations, the State Coordinator must have in its possession the schools' and students' names by this deadline. Failure to adhere to this deadline may jeopardize hotel blocks set aside for a region's teacher-coaches, attorney-advisors and students coming to Albany for the State Finals.

## **6. STATEWIDE FINALS**

- a. Once regional winners have been determined, The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days it participates in the State Finals in Albany. Funding is available to pay for up to nine students, one teacher coach and one attorney-advisor for each team. Students are up to four to a room. Transportation costs are not covered. However, if a school can cover additional costs for room and board for additional team members above the nine sponsored through the Bar Foundation, all members of a team are welcome to attend the State Finals.
- b. Additional students' and adults' costs will not be covered by the New York Bar Foundation grant or the LYC Program. The Mock Trial Program Manager will not be responsible for making room arrangements and reservations for anyone other than the nine students, one teacher-coach and one attorney-advisor for each team. However, every attempt will be made to pass along any special hotel rates to these other participants. Additional students and adults attending the State Finals may participate in organized meal functions but will be responsible for paying for their participation.
- c. Each team will participate in two enactments the first day, against two different teams. Each team will be required to change sides—plaintiff/prosecution to defendant, defendant to plaintiff/prosecution—for the second enactment. Numerical scores will be assigned to each team's performance by the judges.
- d. The two teams with the most wins and highest numerical score will compete on the following day, except that any team that has won both its enactments will automatically advance, regardless of its point total. In the rare event of three teams each winning both of their enactments, the two teams with the highest point totals, in addition to having won both of their enactments, will advance.



- e. The final enactment will be a single elimination tournament. Plaintiff/prosecution and defendant will be determined by a coin toss by the Mock Trial Program Manager. All teams invited to the State Finals must attend the final trial enactment.
- f. A judge will determine the winner.

**THE JUDGE’S DECISION IS FINAL.**

**7. MCLE CREDIT FOR JUDGES AND ATTORNEY-ADVISORS**

The LYC Program applies for MCLE credit for attorneys participating in the New York State High School Mock Trial program. All paperwork is submitted to the MCLE board after the State Finals are held in May. Coordinators and the LYC Program must follow the following procedures:

- a. County Coordinators receive and disseminate the appropriate forms to attorneys and judges that participate in their counties.
- b. The County Coordinators will collect all forms from attorneys who participated in the Mock Trial Tournament during the current year, complete the required form provided by the Mock Trial Program Manager and return it to Albany by June 1.
- c. The Mock Trial Program Manager compiles all of the forms and submits them to the MCLE Board within 7 days of receiving the forms from the County Coordinators.
- d. Once the tournament has been accredited, certificates will be generated by the MCLE staff at the NYSBA and emailed to attorneys.
- e. According to MCLE rules, each attorney-judge or attorney-coach may earn CLE credits by participating in a specific activity. That is, an attorney-judge earns credits for trial time only; an attorney coach earns credit for time spent working with students only which does not include the advisor’s personal preparation time. A maximum of three (3) CLE credits may be earned for judging or coaching mock trial competitions during any one reporting cycle, i.e., in a two-year period. Finally, an attorney who has been admitted to the New York State Bar in the last two years **MAY NOT** apply for this type of CLE credit.

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

**PART III**

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## **SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE**

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

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

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

### **1. SCOPE**

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

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

### **2. RELEVANCY**

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

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

Example:

*Photographs present a classic problem of possible unfair prejudice. For instance, in a murder trial, the prosecution seeks to introduce graphic photographs of the bloodied victim. These photographs would be relevant because, among other reasons, they establish the victim's death and location of the wounds. At the same time, the photographs present a high danger of unfair prejudice, as they could cause the jurors to feel incredible anger and a desire to punish someone for the vile crime. In other words, the photographs could have an inflammatory effect on the jurors, causing them to substitute passion and anger for reasoned analysis. The defense therefore should object on the ground that any probative value of the photographs is substantially outweighed by the danger of unfair prejudice to the defendant. Problems of unfair prejudice often can be resolved by offering the evidence in a matter that retains the probative value, while reducing the danger of unfair prejudice. In this example, the defense might stipulate to the location of the wounds and the cause of death. Therefore, the relevant aspects of the photographs would come in, without the unduly prejudicial effect.*

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

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

the victim's good or (more likely) bad character, and the prosecution may offer evidence to rebut the defense's evidence of the victim's character.

Examples:

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

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

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

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

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

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

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

Examples:

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

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

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

**3. WITNESS EXAMINATION**

**a. Direct Examination** (attorneys call and question witnesses)

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



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

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

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

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

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

Objections:

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

*“Objection. Witness is narrating.”*

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

Objection:

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

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

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

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

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

Objection:

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

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

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

Example:

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

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

Example:

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

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

Examples:

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

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

**Rule 307: IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION.**

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

Example:

*"Have you ever been convicted of criminal possession of marijuana?"*

Objections:

*"Objection. The prejudicial effect of this evidence outweighs its usefulness."*

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

**c. Re-Direct Examination**

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

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

Objection:

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

**d. Re-Cross Examination**

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

Objection:

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

**e. Argumentative Questions**

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

Example:

*“Why were you driving so carelessly?”*

Objection:

*“Objection. “Your Honor, counsel is being argumentative.”*

**f. Compound Questions**

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

Examples:

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

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

Objection:

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

**g. Asked and Answered Questions**

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

Objection:

*"Objection. "Your Honor, the witness was asked and answered this question."*

**h. Speculation**

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

Example:

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

Objection:

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

**4. HEARSAY**

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

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

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

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

Example:

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

## 5. EXCEPTIONS

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

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

Example:

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

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

Example:

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

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



Example:

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

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

Example:

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

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

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

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

Example:

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

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

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

**6. OPINION AND EXPERT TESTIMONY**

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

Example:

(General Opinion)

*The attorney asks the non-expert witness, "Why is there so much conflict in the Middle East?"*

*This question asks the witness to give his general opinion on the Middle East conflict.*

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

Objection:

*"Objection. Counsel is asking the witness to give an opinion."*

Example:

(Lack of Personal Knowledge)

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

Objection:

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

Example:

(Opinion on Outcome of Case)

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

Objection:

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

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

Example:

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

Objection:

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

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

## 7. PHYSICAL EVIDENCE

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

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

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

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

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

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

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

Objection:

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

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

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

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

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

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

Objection:

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

**Rule 702: CROSS-EXAMINATION.** Questions on cross-examination should not seek to elicit information that is not contained in the fact pattern. If on cross-examination a witness is

asked a question, the answer to which is not contained in the witness's statement or the direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial. If a witness's response might materially alter the outcome of the trial, the attorney conducting the cross-examination may object.

Objection:

*"Objection. The witness's answer is inventing facts that would materially alter the outcome of the case."*

## 9. PROCEDURAL RULES

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

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

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

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

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

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

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

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

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

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

convincing evidence must satisfy the trier of fact that the evidence makes it highly probable that what s/he claims is what actually happened. (Source: NY Pattern Jury Instructions, §1:64).

**Rule 903: DIRECT AND CIRCUMSTANTIAL EVIDENCE**

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

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

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



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

## **PART IV**

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## **CASE SUMMARY**

### **PEOPLE V. KELLY ROBERTS Nirvana County Court Indictment No. 2015-00432**

On Saturday, August 15, 2015, at approximately 1:30 PM, Kelly Roberts, age 21, while standing on the corner of Chippewa Street and Franklin Street in the City of East Nirvana, located in central New York, was observed by undercover narcotic officers, Officer Bobby Flanagan and Officer Carmen Leeds, to be engaged in what appeared to be a drug transaction. While Kelly and the person were talking on the corner known to be a location for selling illegal drugs, the person, Parker Pedersen, noticed out of the corner of his/her eye two persons s/he alleges s/he did not recognize, but later learned were undercover officers Flanagan and Leeds. Claiming to believe that the two persons were assailants, Parker started to run in a northerly direction up Franklin Street and Kelly ran in an easterly direction down Chippewa.

Pedersen, whose nickname is Pillhead, is a known drug addict. S/he knows Officer Flanagan and other members of the narco unit and they know him/her. However, the officers, believing Kelly to be the drug dealer, pursued him/her. Officer Flanagan had noticed prior to the chase that Kelly appeared to have a knife attached to his/her belt when s/he lifted up his/her shirt as s/he was retrieving a white envelope from his/her fanny pack worn on the right side of his/her waist. At the same time, Pillhead was reaching into his/her left rear pocket and appeared to be pulling out paper that was greenish in color. Officer Flanagan, claiming to have been hiding behind a bush, had moved slightly to get a better view of what was going on, made eye contact with Pillhead and the chase began.

Kelly, believing s/he had lost the pursuers after having traversed several blocks and turning a few corners, decided to run to his/her apartment building, located on Pearl Street, approximately seven and one-half blocks from the Chippewa/Franklin corner. Kelly's apartment is on the second floor of the building. The building, which is located next door to a daycare center, is owned by Kelly, a gift in 2013 from his/her now deceased grandfather. Kelly's apartment is the only space in the building that is habitable. The building is in arrears for property taxes and user fees. Because of its severely dilapidated condition, the building is on the city's list of structures to be demolished once the city appropriates money for the next round of demolitions.

Once in the apartment, Kelly heard footsteps of a person running up the stairs. Officer Flanagan, not knowing at the time that Kelly resided in the building, demanded that s/he open the door. After no response, Officer Flanagan, having earlier observed the knife in Kelly's possession and mindful that drug dealers sometimes carry handguns, burst through the flimsy door, believing that there very well could be a hostage situation in progress. The officer was mindful that squatters sometimes take up residence in abandoned buildings. After entering the apartment, the officer found Kelly in the kitchen standing next to an open window. S/he asked Kelly to turn around and Kelly was patted down for weapons. The officer also checked Kelly's fanny pack. No weapons were found. Officer Flanagan asked Kelly whether s/he knew why s/he was being chased. Kelly said that s/he believed the persons chasing him/her were robbers looking to do him/her harm. The officer also asked Kelly why s/he was on the corner of Chippewa and Franklin talking to Pillhead, a known drug addict. Kelly said that s/he just happen to bump into Pillhead, that s/he had not seen him/her since high school and was just catching up on things.

While talking to Kelly, the officer was looking around the room to make sure there were no weapons or other objects that Kelly could use to harm him/her and his/her partner. As s/he scanned the kitchen floor, Officer Flanagan noticed what appeared to be a large pill bottle in a corner about eight to ten feet from where Kelly was standing. The officer told Kelly to have a seat while s/he walked over to examine the object. The bottle was empty, but on the label was the name **OXYCODONE**. The label also showed that the bottle once contained two hundred pills. There had been a rash of drug store break-ins in the community lately and the theft of bottles of oxycodone and other prescription-only opioid drugs. Kelly was asked whether the bottle belonged to him/her. Kelly denied having any knowledge of the bottle, claiming that s/he had a big party the night before and that one of his/her guests must have left the bottle.

As Officer Flanagan was examining the oxycodone bottle, Officer Leeds walked into the kitchen and was shown the bottle. Officer Leeds had remained outside in the front of the building in case the suspect tried to evade capture by exiting through another entrance. Officer Leeds told Officer Flanagan that when s/he was outside, s/he heard a window opening and the faint sound of some things hitting the grass and weeds in the back yard.

The officers suspected that Kelly had thrown the oxycodone pills out the open and screen-less kitchen window. Officer Flanagan asked Kelly for permission to search the back yard. Kelly told the officers that s/he was not answering any questions and that they were probably going to do whatever they wanted to do with or without his/her permission.

Believing s/he had permission, Officer Flanagan conducted a search of the back yard. The yard was full of knee-high grass and weeds, appearing not to have been mowed all summer. Officer Flanagan found a gravity knife and twenty oxycodone tablets spewed about the back yard. S/he observed that the daycare center next door was having what appeared to be a picnic and that there were dozens of youngsters wildly running about with very little adult supervision. After recovering the weapon and the drugs and believing that there were no other drugs or weapons about the yard, Officer Flanagan happened to see the owner of the daycare, Sam Doolittle, and told him/her about the knife and the drugs. S/he said to Sam, "It is a good thing I found these drugs before the children did. It would be a disaster for you if a child ingested one or more of these tablets believing them to be candy." Remembering that s/he had recently received a warning letter from the New York State Office of Children and Family Services and concern that parents might remove their children from the daycare as not to have their children so close to an alleged drug dealer, Sam sought to downplay the incident, maintaining that Kelly is a good person and that the knife and drugs were probably left by someone traversing through the neighborhood.

At approximately 2:30 PM on August 15<sup>th</sup>, shortly after Officer Flanagan and Sam had talked, it started to rain heavily. Earlier in the day, Officer Flanagan had commented to Officer Leeds that s/he had heard a weather forecast over the radio of a storm coming in with heavy rain expected. The local forecast office of NOAA (the national weather service) had predicted that there was a 65% chance of significant rainfall starting at approximately 5:00 PM. Officer Flanagan believed that a heavy soaking rain would likely have dissolved the tablets and consequently would have "washed away" the evidence. Officer Leeds said, "It was a darn good thing you didn't go and wait for some judge to sign a search warrant. This low-life Roberts would have beaten the rap."

Kelly was arrested upon Officer Flanagan's return to the apartment, having been charged with Criminal Possession of a Controlled Substance in the Fifth Degree (Penal Law §220.06[1]) and Criminal Possession of a Weapon in the Fourth Degree (Penal Law §265.01[1]). The officers believe Kelly is associated with a person named Monk, who the narco unit has been watching for some time now. They

suspect that he is a big-time drug kingpin. They also believe that he is behind the rash of drug store break-ins lately and the theft of bottles of oxycodone and other prescription-only opioid drugs. Kelly resembles someone who has been seen coming in and out of Monk's residence. It is believed that Monk gets young people, like Kelly, who are down on their luck, to sell drugs for him. Kelly claims that Monk has trouble walking and pays Kelly to run errands for him.

The court, at a proceeding several days following the local court arraignment, granted the prosecution's motion for a buccal swab. However, Kelly's DNA was not found on the knife or the empty oxycodone bottle. Also, the knife and the bottle were dusted for fingerprints, but no discernible prints were revealed on either.

Because of the DNA and fingerprint results, the District Attorney decided not to pursue the weapon possession charge against Kelly. S/he was, however, held for action of the Grand Jury on the charge of possessing the prescription-only pain medication, oxycodone, without a prescription (Penal Law §220.06[1]) and was indicted on September 18, 2015. The defendant was arraigned on the indictment on September 21, 2015, entered a plea of not guilty to the charge and was released on \$15,000.00 posted bail.

Parker Pedersen admitted to the police that s/he knows Kelly and was talking to Kelly in the early afternoon on August 15<sup>th</sup>. Parker states that all of a sudden s/he saw two unknown persons quickly approaching them and s/he and Kelly started to run, believing that the two individuals were intending to harm them.

Parker denies that s/he currently uses drugs and insists that s/he was not attempting to buy drugs from Kelly. S/he claims that s/he got the nickname Pillhead because, when s/he was young, his/her head was shaped like an oblong pill. Although his/her head is no longer shaped like that, s/he asserts that the nickname stuck. S/he claims that s/he was just catching up with his/her old friend Kelly and that nothing nefarious was taking place.

Dr. Jordan Taylor, a chemist at the Nirvana County Forensic Laboratory, is a specialist on the effects of drug overdosing. S/he has authored several books and published many articles on the topic. In the spring of 2015, the local daily newspaper, *The Nirvana Herald*, ran a weeklong series addressing the

problems with opiate use in the community. Dr. Taylor was a key consultant for the newspaper on the series of articles. In addition, *Time Magazine*, in its June 15, 2015 issue, had an article about the effects of powerful painkillers. Officer Flanagan had read the *Time Magazine* article and much of Dr. Taylor's work, especially the topics on children accidentally taking adult prescription medication.

Dr. Taylor also expressed concern about recovering the suspected drugs quickly because of the coming rain storm. Oxycodone is highly soluble and the rain water would dissolve the tablets, washing away the substances. The chemist believed that the officers were right to move quickly to search for the drugs.

A neighbor of Kelly Roberts is Leslie Mooney. Ms./Mr. Mooney, a former TV weather anchor for the National Network News Channel (NNNC), has a son who nearly died of a drug overdose from hydrocodone. S/he retired from NNNC to take care of his/her son. Rumor has it that Ms./Mr. Mooney was going to be released anyway because of incompetence. Ms./Mr. Mooney believed that Kelly Roberts provided the drugs to his/her son and once told Kelly that, "To my dying day, I will do whatever it takes to get you and people like you off the streets." Ms./Mr. Mooney can see the back of Kelly's apartment building from his/her rear bedroom window. S/he told Officer Flanagan that a person who looked like Kelly was tossing some small items out of a window just before s/he saw all of the commotion about Kelly's back yard. The items appeared to him/her to be small round objects and light blue in color, even though Mr./Ms. Mooney admittedly has poor eyesight and has been diagnosed with a slight case of blue/yellow color blindness. Ms./Mr. Mooney was aware of the impending storm and will testify that an immediate search was necessary because the rain was predicted to be heavy.

Kelly believes that Mr./Ms. Mooney unfairly blames him/her for Mr./Ms. Mooney's current economic circumstances, having overheard Mr./Ms. Mooney lamenting about living on this less-than-desirable side of town. S/he heard that the rumor on the street is that Mr./Ms. Mooney is no longer at NNNC not so that s/he can care for his/her son, but because of his/her unsatisfactory work performance.

Two weeks prior to the suppression hearing, Officer Leeds, while on patrol in his/her cruiser, observed a drug transaction in progress at the corner of Chippewa and Franklin. The alleged dealer, who was alone in his vehicle, was talking to someone leaning by the driver-side window. Officer Leeds moved towards the intersection and the alleged drug dealer sped away. During the high speed chase, Officer Leeds'

vehicle struck a concrete retaining wall. S/he suffered a severe head injury and is in a comatose state. S/he is not available to testify.

Following the arraignment on the indictment, defense counsel moved to suppress the evidence, to wit: the twenty oxycodone tablets, on the ground that the warrantless search was improper. Officer Flanagan claims that Kelly is now denying that permission to search the back yard was granted because s/he has “lawyered-up.” Conceding that the consent to search was equivocal, the prosecution, at the suppression hearing, will attempt to show that the warrantless search of the defendant’s premises was justified under the Emergency Doctrine to prevent the contraband from harming the young daycare children. Alternatively, the People may argue that under the Exigent Circumstances Doctrine the officers had to move quickly to prevent the destruction of the evidence by the inclement weather.

Witnesses for the prosecution

Officer Bobby Flanagan

Jordan Taylor, *forensic chemist*

Leslie Mooney, *neighbor of the Defendant*  
*and former TV weather anchor*

Witnesses for the defendant

Kelly Roberts

Sam Doolittle, *owner of daycare center*

Parker Pedersen, *a/k/a “Pillhead”*

***Please note, the foregoing summary of the case is provided solely for the convenience of the participants in the Mock Trial Tournament. This overview itself does not constitute evidence and may not be introduced at trial or used for impeachment purposes.***



## STIPULATIONS

1. All witness statements are deemed sworn and duly notarized.
2. All items of evidence are originals and eligible for use **during the match**, following proper procedure for identification and submission. **The pill bottle exhibit is to be regarded as the actual bottle recovered by the police officer. It may be marked for identification, and admitted into evidence, as the actual pill bottle.**
3. Any enactment of this case is conducted after the named dates in the Case Summary and the witness affidavits. **(Please note that the Case Summary is provided solely for the convenience of the participants in the Mock Trial Tournament. Said summary itself does not constitute evidence and may not be introduced at the hearing/trial or used for impeachment purposes).**
4. All *Payton* (445 US 573; 63 LEd2d 639), *Dunaway* (442 US 200; 60 LEd2d 824) and *Huntley* (15 NY2d 72; 255 NYS2d 838) issues have been resolved or **held in abeyance**. The sole determination to be made by the court is the admissibility of the contraband. **The guilt or innocence of the defendant will not be decided at this time.**
5. Hearsay evidence is not admissible unless said evidence falls within one of the Mock Trial exceptions to the hearsay rule.
6. No other stipulations shall be made between the plaintiff/prosecution and the defense, except as to the admissibility of evidentiary exhibits provided herein.

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COUNTY COURT: COUNTY OF NIRVANA  
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

- against -

Indictment No. **2015-00432**

KELLY ROBERTS,

Defendant.

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THE GRAND JURY OF THE COUNTY OF NIRVANA, by this indictment, accuses the defendant of the crime of CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FIFTH DEGREE, in violation of Section 220.06 Subdivision 1 of the Penal Law of the State of New York committed as follows:

The defendant, KELLY ROBERTS, on or about the 15th day of August, 2015, in the County of Nirvana, State of New York, did knowingly and unlawfully possess a controlled substance with intent to sell it, to wit: oxycodone.

Dated: September 18, 2015  
West Nirvana, New York

Noordsy Francis  
NOORDSY FRANCIS  
District Attorney

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# **NEW YORK STATE HIGH SCHOOL MOCK TRIAL AFFIDAVITS**

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**AFFIDAVIT OF POLICE OFFICER BOBBY FLANEGAN**

1. My name is Bobby Flanagan. I am an undercover police detective in the Narcotics Unit of the East Nirvana (New York) Police Department. I have proudly served on the force for eight years.
2. I am a graduate of Cattaraugus Programming University with an Associate Degree in Data Processing Technology in 2006. I tried to get a job in the computing industry when I graduated, but was unable to land one. This degree is worthless. So, when I heard that the police department in East Nirvana, my home town, was recruiting, I applied, went through the academy and became a police officer in 2008.
3. I was promoted to detective in 2013 and moved to the narco unit. The training to become a narcotics officer is quite extensive. We learn about all kinds of drugs, including street concoctions and legitimate pharmaceutical products. We also learn about drug addictions and treatment. Finally, we are taught proper stakeout procedures and how to handle drug dealers who often are very violent.
4. Illegal drug use in East Nirvana is a big problem and the abuse of opiate drugs is on the rise. In the spring of 2015, our local daily newspaper, *The Nirvana Herald*, ran a week-long series addressing the problems with opiate use in our community. Dr. Jordan Taylor, a chemist at our Nirvana County Forensic Laboratory and a specialist on the effect of drug overdosing, was a key consultant for the newspaper on the series of articles. In addition, *Time Magazine*, in its June 15, 2015 issue, had an article about the use and misuse of powerful painkillers, like opiates, in society today. I read with great interest the newspaper articles and the *Time Magazine* article. I have also read much of Dr. Taylor's work, especially the topics on children accidentally taking adult prescription medication.
5. On Saturday, August 15, 2015, my partner, Officer Carmen Leeds and I were in plain clothes and were staking out the corner of Chippewa and Franklin Streets. It is a street corner in our city that is well-known for buying and selling drugs. We were about thirty yards from the intersection and hiding behind a wide arborvitae bush next to the front side of Chipp-Frank

ShopMart, a convenience store located on the southwest portion of the corner. At approximately 1:30 PM, we observed Parker Pedersen, a/k/a "Pillhead," arrive at the northeast portion of the corner. S/he appeared to be nervously waiting for someone. Pillhead is a known drug addict. S/he knows me and other members of the narco unit. However, s/he has never been arrested for sale or possession of drugs.

6. Approximately three minutes after Pillhead arrived on the corner, a person we now know as Kelly Roberts approached Pillhead and began to engage in conversation. Pillhead, who had his/her backside to us, then reached into his/her left rear pocket and appeared to pull out paper that was greenish in color. At the same time, Mr./Ms. Roberts was pulling out what appeared to be a white envelope from his/her fanny pack worn on the right side of his/her waist. I also noticed a knife attached to his/her belt as s/he lifted his/her shirt to gain access to the fanny pack. I moved slightly to get a better view of what was going on. At the very time I was moving, Pillhead looked over his/her right shoulder and we made eye contact. Pillhead shoved the green object back into his/her pocket and took off running north on Franklin Street. Mr./Ms. Roberts also proceeded to run, moving in an easterly direction on Chippewa Street. Since Mr./Ms. Roberts appeared to have the drugs, we decided to pursue him/her. S/he was running very fast. We later learned s/he had been a track star in high school. When s/he reached Ellicott Street, s/he turned left onto that street. Kelly then made a quick right turn down Seneca Street and we temporarily lost sight of him/her. We gained sight of him/her again on Pearl Street. From a distance of about a quarter of a mile, we saw him/her enter an old building.
7. Officer Leeds remained outside the building in case the perp tried to escape via another entrance. I entered the structure through the front entrance and quickly determined that it was an apartment building. The four-apartment building appeared to have only one occupied apartment because only one mailbox had a name on it and the other three boxes were busted. The mailbox with the name on it was for apartment #4 located on the second floor.
8. I proceeded up the creaky steps to apartment #4. I knocked on the door, identified myself as a police officer and directed the occupant to open the door. I did not know at the time that the person we were chasing resided there. I believed that this could very well be a hostage



situation, because squatters are known to take up residence in abandoned buildings. Since the perp had a weapon on his/her person and had entered an apartment that could have been occupied, I had to act decisively. Drug dealers are known to carry handguns and can be very violent. Fearful that the apartment dwellers could be in danger, I crashed through the flimsy door.

9. With my service revolver drawn, I carefully moved about the living room, checked the bedroom, peered into the bathroom and proceeded to the kitchen. In the kitchen, I saw the person we had been chasing standing near the only window in the room. The window was open and the screen was pushed up. I identified myself as Officer Flanagan and showed him/her my badge that was hanging from a string around my neck. I asked the perp to identify himself/herself. S/he said his/her name is Kelly Roberts. I recalled that the name Roberts was on the mailbox. I asked him/her whether s/he resides here alone, and s/he responded in the affirmative. I also asked him/her whether there was anybody else in the apartment. S/he wisecracked, “Only you.”
10. I asked Mr./Ms. Roberts to turn around. I patted him/her down for weapons. I also checked his/her fanny pack. No weapons were found. I asked Mr./Ms. Roberts whether s/he knew why my partner and I were chasing him/her. S/he said that s/he believed we were robbers looking to do him/her harm. I asked him/her why s/he was on the corner of Chippewa and Franklin talking to Pillhead, a known drug addict. Roberts said that s/he just happened to bump into Pillhead, that s/he had not seen him/her since high school and was just catching up on things.
11. While talking to Mr./Ms. Roberts, I was looking around the room to make sure there were no weapons or other objects s/he could use to harm me and my partner. As I scanned the kitchen floor, I noticed what appeared to be a large pill bottle in a corner about eight feet from where Roberts and I were standing. The pill bottle was clearly in plain sight. I told Roberts to have a seat while I walked over to examine the object. The bottle was empty, but on the label was the name oxycodone. The label also showed that the bottle once contained two hundred pills. There had been a rash of drug store break-ins lately and the theft of bottles of oxycodone and other prescription-only opioid drugs. I asked Roberts whether this bottle belonged to him/her.

S/he denied it, claiming that s/he had a big party the night before and that one of his/her guests must have left the bottle.

12. As I was examining the oxycodone bottle, Officer Leeds walked into the kitchen. I showed him/her the bottle. Officer Leeds said that when s/he was outside, s/he heard a window opening and the sound of something, like a knife Mr./Ms. Roberts was observed carrying, hitting the grass and weeds in the back yard. Officer Leeds and I suspected that Roberts had thrown the knife and the oxycodone pills out the kitchen window. Throwing the pills out the window would be preferable for this perp, rather than flushing them down the toilet. The pills can be retrieved from the yard, but not from the toilet.
13. I asked Mr./Ms. Roberts for permission to search his/her back yard. S/he told us that s/he was not answering any questions and that we were probably going to do whatever we wanted to do, with or without my permission. Roberts did not state unequivocally that permission to search was denied. I noticed when I got outside that there was a daycare center next door to the apartment building. Officer Leeds had told me that there was a picnic taking place next door and that dozens of young children were running about with very little supervision. Officer Leeds and I were very concerned about the children, especially considering the fact that there is a large hole in the apartment building's chain-link fence. A young child could easily go through the fence and eat the pills, thinking they were candy. I know from the recent article in *Time Magazine* about powerful painkillers and from the work of Dr. Taylor that these types of drugs are harmful and even deadly for young children.
14. Not wasting any more time, I went into the back yard, which was full of knee-high grass and weed and appeared to not have been mowed all summer. Lo and behold, I found, after a careful search, twenty oxycodone pills and a gravity knife. I noticed that there were several young children watching me through the chain-link fence, very near the large gaping hole. I did not see any adults around and the children could easily have come through the fence.
15. After recovering the weapon and the drugs and believing that there were no other drugs or weapons about the yard, I started to head back to the apartment. I happened to encounter a person, by the name of Sam Doolittle, who turned out to be the owner of the daycare center. I

told him/her about the knife and the drugs. I said to Mr./Ms. Doolittle, “It is a good thing I found these drugs before the children did. It would be a disaster for you if a child ingested one or more of these tablets, believing them to be candy.” Seeing the concern on Doolittle’s face that parents might remove their children from the daycare as not to have their children so close to an alleged drug dealer, s/he sought to downplay the incident, insisting that Roberts is a good person and that the knife and drugs were probably left by someone traversing through the neighborhood. I asked Doolittle about staff and parental supervision at the picnic, but s/he abruptly ended the conversation and, in a huff, started to return to the daycare center.

16. As Doolittle was about to leave, a concerned citizen approached us. S/he identified himself/herself to me as Mr./Ms. Leslie Mooney, the rear neighbor of Roberts. Mr./Ms. Mooney said that before s/he saw me searching Roberts’ back yard, s/he had seen Roberts tossing some small items out of his/her kitchen window. S/he admitted that s/he has poor vision and slight colorblindness, but that s/he is sure the items were small round blue objects like the ones I was holding in my hand. On reflection, I probably should have had him/her describe the objects before I let her see them. Anyway, I am fairly confident that the items s/he saw Roberts toss out the window were the oxycodone I had just recovered. S/he said it is a good thing we finally got Roberts before Roberts hurts another person like his/her son Larry. S/he said she will do whatever it takes to make sure Roberts goes to prison for a long time. I told Mr./Ms. Mooney that we will be in touch with him/her later to get a statement.
17. At approximately 2:30 PM, shortly after I had finished talking to Doolittle and Mr./Ms. Mooney, it started to rain heavily. Earlier in the day, I had commented to Officer Leeds at around 8:00 AM, shortly after our shift had started, that I had heard a weather forecast over the radio of a storm coming in with heavy rain expected. The local forecast office of NOAA (the national weather service) had predicted that there was a 65% chance of significant rainfall starting at approximately 5:00 PM. Officer Leeds had joked that we probably would not see any drug dealers today because of the threatening weather. There is no question in my mind that the heavy soaking rain would likely have dissolved the pills and consequently would have “washed away” the evidence. In fact, Officer Leeds later said, “It was a darn good thing you didn’t go and wait for some judge to sign a search warrant. This low-life Roberts would have beaten the rap.”

18. I returned to the kitchen and asked Roberts about the pills and the knife. S/he denied that the pills and the knife belonged to him/her and told me to direct any further questions to his/her lawyer. We then arrested Roberts and charged him/her with Criminal Possession of a Controlled Substance in the Fifth Degree (Penal Law §220.06[1]) and Criminal Possession of a Weapon in the Fourth Degree (Penal Law §265.01[1]). We had the Forensic Lab dust the oxycodone pill bottle and the knife for fingerprints. No discernible prints were found on either piece of evidence. The prosecutor also informed me that the court, at a proceeding several days following the arraignment in local criminal court, had granted the District Attorney's motion for a buccal swab. However, Roberts' DNA was not found on the knife or on the pill bottle. Consequently, the District Attorney chose not to present the knife charge to the Grand Jury.
19. The lead prosecutor told me that Roberts was held for action of the Grand Jury and was indicted on September 18, 2015 for possessing the prescription-only pain medication, oxycodone, without a prescription. S/he was arraigned on the indictment on September 21, 2015, entered a plea of not guilty and was released on \$15,000.00 posted bail. We will be keeping an eye on him/her.
20. It is my understanding that Roberts' attorney has now moved to suppress the twenty oxycodone tablets. We'll see about that! It is unfortunate that Officer Leeds is not available to testify. Several weeks after Roberts' arrest, Officer Leeds, while on patrol in his/her cruiser, observed a drug transaction in progress at the corner of Chippewa and Franklin. The drug dealer, who was alone in his vehicle, was talking to someone leaning by the driver-side window. Officer Leeds moved towards the intersection and the drug dealer sped away. During the high speed chase, Officer Leeds' vehicle struck a concrete retaining wall. S/he suffered a severe head injury and is in a comatose state.
21. The narco unit has been watching a guy named Monk for some time now. We believe that he is a big-time drug kingpin. We also believe that he is behind the rash of drug store break-ins lately and the theft of bottles of oxycodone and other prescription-only opioid drugs. Kelly resembles someone who has been seen associating with Monk. Monk gets young people like Kelly who are down on their luck to sell drugs for him. If we can get low-level dealers like Roberts to turn on the ringleaders like Monk, we can put an end to the damage illegal drug use

has done to our community and society. Roberts is now denying that s/he gave me permission to search the back yard only because s/he has “lawyered-up.”

22. These drug perps think we are all stupid. If you believe anything Pillhead says, then I have a bridge in Brooklyn for sale. “Rival dog-walkers” is the reason Pillhead gives for running. Really?! S/he is not called “Pillhead” just because of the shape of his/her head when s/he was young. Trust me! Pillhead acknowledged that s/he was at Roberts’ party on August 14<sup>th</sup>. They both now claim that there were so many people at the party that they did not talk to or even see each other. Who goes to a party and not know who is hosting?! I suspect that their “chance” meeting on the corner of Chippewa and Franklin on August 15<sup>th</sup> was prearranged to allow Roberts the opportunity to get a supply of drugs from Monk to sell to Pillhead. I don’t know for sure, but the green object Pillhead was pulling out of his/her back pocket was not a pen. It probably was very green U.S. currency. So, we know why Roberts and Pillhead were running. It’s clear as a bright summer day.

Dated: November 2, 2015

I affirm the veracity of the foregoing statement.

*Officer Bobby Flanagan*  
Officer Bobby Flanagan

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**AFFIDAVIT OF DR. JORDAN TAYLOR**

1. My name is Jordan Taylor. I am employed as a Senior Chemist at the Nirvana County Forensic Laboratory part of the Nirvana County Department of Laboratories and Research. I have been so employed since 2001. I reside at 234 Knob Hill Way, West Nirvana, New York. Prior to my employment with the Nirvana County Forensic Laboratory, I worked as a Forensic Chemist in the Office of the Suffolk County Medical Examiner.
2. I received my Bachelor of Science in Chemical Engineering from Cornell University. I received my Master's Degree in Forensic Chemistry from SUNY Albany. I received my doctorate degree from SUNY Buffalo College of Pharmacy. My doctoral dissertation involved an investigation of opiates, particularly oxycodone. I am Board Certified in Forensic Chemistry and I am a member of numerous professional organizations relating to my work.
3. I have authored numerous articles on drug overdoses, causes and solutions in professional publications including *Science*, as well as in *Time* and the *Nirvana Herald*. As a Senior Chemist with the Nirvana County Forensic Laboratory, I have testified many times for various law enforcement agencies including the FBI, New York State Police, Nirvana County Sheriff's Department and East Nirvana Police Department.
4. Over the past few years, there has been a significant increase in abuse of pain prescription medication in Nirvana County, and more specifically, in East Nirvana. Specifically, my office has experienced a dramatic increase in the number of cases involving opiate abuse, particularly oxycodone. Unfortunately, many of the cases forwarded to my office involve fatal drug overdoses from oxycodone, in particular. I have been told by police officers in East Nirvana that there has been a rash of burglaries from doctors' offices and pharmacies where oxycodone and other pain killers have been taken. Oxycodone is highly addictive, and if its use is not carefully controlled by a trained professional, the result can be dire.
5. In early 2015 I spoke with the publisher of the *Nirvana Herald*, a local newspaper covering East and West Nirvana. The publisher wanted to develop a series of articles on the increasing opiate abuse in the Nirvana community. I consulted with the publisher and met with various reporters

to provide my insight on this very important topic. The series ran for six days in the spring of 2015. People from within and outside of the Nirvana community provided information, stories and anecdotes about the scourge of illegal prescription pain medication flooding our area.

6. Unfortunately, the increase in the use of illegal prescription pain medication has affected our youngest and most vulnerable members of the community. Children, some as young as three years old, have innocently ingested these medications with terrible results. A few years back, I was involved with a case in East Nirvana where two children, ages three and five, found some oxycodone tablets on the ground. The tablets, round and blue, look like candy to a small child. Each child consumed between five and six pills. The younger child died as a result of the drug overdose. The older child survived but suffered significant neuromuscular damage. This particular event caused me to speak out on the dangers to children of adult prescription medication. In addition to my work with the Nirvana County Forensic Laboratory, I have lectured extensively at schools throughout the county. The Nirvana County Department of Health now provides a color brochure so that parents and guardians know what different medications look like and how to best protect their children from the danger of an accidental overdose.
7. In August 2015, my office received from the East Nirvana Police Department, an empty bottle for 200 oxycodone pills, 20 loose blue round pills and other items recovered from a search of a yard at 534 Pearl Street, East Nirvana. Laboratory testing confirmed that the 20 loose pills were oxycodone 10mg.
8. I learned that the pills were found in a yard next to a daycare center where many young children attend. Photographs of the scene depicted a large hole in a chain-link fence separating the property at 534 Pearl Street from the daycare center. Children could easily go through the fence and wander onto the property at 534 Pearl Street. If any child from the daycare center had entered the property and consumed the pills, the results could have been catastrophic. The decision by the East Nirvana Police Department Narcotics Unit to recover the pills was necessary to avoid a tragedy.



9. The actions by the East Nirvana Police Department in recovering the pills as it did were also necessary because of the likely disintegration of the pills due to weather conditions. I recall that in the afternoon of August 15, 2015 there was a very significant rainfall in the East Nirvana area. That rainfall would have severely damaged, if not destroyed, the pills in the yard at 534 Pearl Street. Oxycodone pills are designed to dissolve when in contact with water or other liquid substance. The pills recovered from the yard at 534 Pearl Street were considered to be “fast acting”. The pills were designed to dissolve quicker than regular oxycodone pills. Exposure of the pills found in the yard at 534 Pearl Street to liquids would have caused rapid disintegration so that none of the pills could have been recovered by the police.
10. One of the people who contacted me after the series ran in the newspaper was Leslie Mooney. Leslie told me about what happened to his/her son and how he almost died as a result of a drug overdose. He/she told me that a drug dealer named Kelly Roberts provided hydrocodone to his/her son. It is a very sad story which has impacted me greatly. Leslie thanked me for being involved with the series and for promising to do all I can to help him/her to get illegal drugs off of the streets.

Dated: November 4, 2015

I affirm the veracity of the foregoing statement.

Jordan Taylor  
Jordan Taylor

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**AFFIDAVIT OF LESLIE MOONEY**

1. My name is Leslie Mooney. I am 54 years old and reside at 863 Beacon Street, Apt. No. 5B in East Nirvana. I am divorced and have one grown child, Larry, who currently lives with me.
2. I graduated from Northwestern University's McGill School of Journalism and had a successful career in TV journalism for more than two decades. I began as a reporter at a local station in Rockford, Illinois, then moved to Seattle to cover an environmental beat. I started appearing on the air and received rave reviews from the fans.
3. In 2002, the National Network News Channel (NNNC) hired me to be their weather anchor. As soon as I started, the station's ratings skyrocketed. My job at NNNC required my family to relocate to West Nirvana, New York. My spouse, Alex, couldn't handle my success; we were constantly fighting and finally called it quits and divorced in 2007. The judge gave me and Alex joint custody of Larry who then was 13.
4. The divorce and joint custody arrangement was very hard on Larry; he became depressed and withdrawn. I sent him to a psychologist to talk about his feelings, but that didn't seem to help. In his junior year of high school, Larry, who had always been a straight-A student, took up with a bad crowd and his grades began to suffer. He started hanging out with Kelly Roberts, a real lowlife. Larry wanted to fit in, and Kelly was part of a popular clique who did a lot of drugs.
5. During high school, Kelly and his/her track buddies had crazy parties every weekend; Larry would come home from these parties drunk and smelling of marijuana. I'm sure Kelly was a drug dealer. His/her parents had no money, but s/he seemed to be rolling in it, driving a fancy car and always showing off the latest technology; phones, iPads, whatever had just come out. There was a big problem with kids doing heroin and hydrocodone during Larry's junior year and I know that Kelly was behind the epidemic.
6. In the summer of 2010, Kelly had a Fourth of July party that ruined Larry's life. I told Larry that I didn't want him to go to the party because alcohol would be flowing and Kelly would be

pushing drugs on everyone. We had a big fight over it. Larry said he didn't care what I thought and ran out of the house.

7. I will never forget the phone call I got from the ER at Nirvana Central Hospital that Fourth of July night. I was terrified - the doctor told me that Larry had overdosed on hydrocodone and was on life support. Hospital personnel found Larry propped up against the building next to the entrance to the Emergency Room. Apparently, someone - I'm sure it was Kelly - had dumped Larry on the sidewalk and left. Larry was in the Intensive Care Unit for a week and didn't regain consciousness for four days. I was beside myself thinking I'd lose him. But the doctors were terrific and pulled him through.
8. The drug overdose caused Larry to suffer permanent neurological damage. He was in the hospital for three weeks and was transferred to an inpatient rehab facility when he was released from the hospital. He had to relearn many basic life skills because his brain had suffered a severe trauma. Larry was in rehab until December of 2010, so I homeschooled him for the rest of the year. Unfortunately, he lost a lot of his higher reasoning skills and has significant memory deficits.
9. I had to cut back on my hours at NNNC after Larry overdosed. It was an overwhelming time; his prognosis was uncertain and I needed to be there for him. I continued working a reduced schedule when Larry was in rehab and then took a leave of absence in December 2010 when he came home. It was like having a young child again - I homeschooled him, took him to all his doctors' appointments, and made sure he was keeping up with his physical therapy.
10. In the spring of 2011, I stopped by Larry's high school to pick up some course materials that I needed for the homeschool curriculum. In the hallway, I saw Kelly Roberts laughing with a group of kids from the track team. I was infuriated to see the person who had destroyed my son's life acting so carefree.
11. When I saw Kelly, my heart began racing and my hands started shaking. I confronted Kelly and told him/her that I knew s/he was a drug dealer and that Larry started using drugs because of him/her. Overcome with emotion, I screamed that to my dying day, I would do whatever it

takes to get Kelly and people like him/her off the streets. Not surprisingly, Kelly smugly looked past me and continued laughing with his/her friends.

12. In the years since his overdose, Larry's progress has been slow. He earned his GED and has taken some classes at a local community college, but he still has serious cognitive deficits and sometimes suffers seizures. He hasn't been cleared to drive and tires very easily.
13. I tried to resume a full-time schedule at NNNC in 2011, but it was too much for me. I was always worried about Larry and couldn't concentrate at work. In January 2012, I decided to take an early retirement so I could focus all my efforts on helping Larry get stronger and move on with his life. The executive team at NNNC was sorry to lose me, but they understood my situation.
14. After I retired, Larry and I had to downsize because I could no longer pay the mortgage and taxes for our large house in West Nirvana without my income from the NNNC. I sold the house and we moved to a two-bedroom apartment in East Nirvana.
15. I hold Kelly responsible not only for Larry's tragedy but also for my own economic reversal, and I wanted Kelly to pay for what s/he did. I asked the police to arrest Kelly for giving Larry the drugs that caused him to overdose, but the police told me there wasn't enough evidence to bring charges.
16. After I left my job at NNNC, some of the gossips in town started a vicious rumor that I retired because I was going to be fired for incompetence. This is completely untrue. It's nothing more than lies spewed by a group of haters who were jealous of my success as a TV anchor. Now they feel superior to me and gloat over the fact that I had to move to the "wrong" side of town.
17. I can't believe it, but it turns out that my apartment in East Nirvana is really close to Kelly's new place. Kelly moved to the Pearl Street apartment in East Nirvana a few years after s/he flunked out of high school. I can see the back of Kelly's apartment building from my rear bedroom window. My building is about 100 feet from Kelly's building - lucky me - I have an unobstructed view of his/her place. I can't believe Larry and I live so close to that lowlife.

18. Larry and I get by on the money from the sale of our West Nirvana home and some extra income I bring in from a part-time job selling vintage clothing at Upcycled Threads, a store in downtown East Nirvana. Larry recently dropped out of community college and now is applying to trade school. I'm hoping he'll find something he'll enjoy.
19. On Saturday, August 15, 2015, at about 1:30 PM, I was in my apartment cleaning the closet in my back bedroom. I was sorting through old clothes that I had worn on the air as an anchor but no longer needed. I planned to donate the better pieces to Dress to Impress, a charity that helps indigent people put together a wardrobe for job interviews. While I was sorting clothes, I looked out my bedroom window - the one that faces the back of Kelly's building - to see if it had started raining yet. That morning I heard the new weather anchor at NNNC forecast rain and a thunderstorm for the afternoon.
20. When I looked out my window, I saw a person who looked like Kelly tossing some small items out a window. Although I have poor vision, even with my contacts, and a slight case of **blue/yellow** color blindness, I'm sure the person was throwing small round objects. I could see the arc of **light** blue circular shapes sailing to the ground in Kelly's back yard. I was wearing my contacts that afternoon and am good at discerning shapes and motions despite my poor eyesight.
21. A few minutes after Kelly tossed the objects, I saw two police officers searching through the tall grass in his/her back yard. There was a lot of commotion, so I ran outside to see if I could be of any help. I met Officer Bobby Flanagan in front of Kelly's apartment building. I told Officer Flanagan that I saw a person who looked like Kelly throw a handful of small objects out of the window of Kelly's apartment.
22. Apparently, Officer Flanagan and his/her partner found 20 oxycodone pills and a gravity knife in the grass in Kelly's back yard. Officer Flanagan showed me the pills and asked me whether these are the objects I saw being thrown out of Kelly's window. Without a moment's hesitation, I said "Yes." It didn't surprise me; Kelly has always been trouble. I'm just glad that the police recovered the pills. There is a daycare center next to Kelly's building and the kids could have climbed through the hole in the chain-link fence between the properties and eaten the pills since they look like candy.

23. During Larry's treatment, I learned that oxycodone is water soluble, so a heavy, soaking rain would have washed the pills away. It's good that the police acted quickly to recover the pills before the storm. It would have been a real tragedy if the evidence to prosecute that no-good drug dealer had been destroyed. Kelly Roberts almost killed my son and it's time that s/he is put behind bars so s/he can't hurt anyone else's children.
24. It is truly a shame that these drug dealers have damaged our community. Our local newspaper, the *Nirvana Herald*, recently ran a series of articles about the increasing abuse of opiate drugs in our local area. I contacted the chief consultant on the series, Dr. Jordan Taylor, to thank him/her for exposing this problem. I told Dr. Taylor about what had happened to my son and how he almost died as a result of a drug overdose. I mentioned to him/her that Kelly Roberts was the drug dealer who had provided hydrocodone to my son. S/he was saddened by my story and I believe it may have had an impact on him/her. During our brief phone conversation, I thanked him/her repeatedly for doing the series on the drug epidemic. In turn, Dr. Taylor promised to do whatever it takes to get illegal drugs off the streets.

Dated: November 9, 2015

I affirm the veracity of the foregoing statement.

Leslie Mooney

Leslie Mooney

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### **AFFIDAVIT OF KELLY ROBERTS**

1. My name is Kelly Roberts and I am 21 years old. I reside at 534 Pearl Street, Apt. #4, East Nirvana, New York. I own the two-story apartment building, a gift I received in 2013 from my now deceased grandfather Jim Roberts. My apartment is on the second floor, the only habitable space in the severely dilapidated structure. I'm heavy in arrears for property taxes and user fees. Recently, the city informed me that the building is on the list of structures to be demolished. I suspect that would take place once the city appropriates money for the next round of demolitions.
2. I am currently between jobs. I was last employed as a stockperson/cashier at Dollar Heaven, one of those chain dollar stores that are now very popular. I was let go because I didn't show up for work, or was late, on several occasions. Many times I would call to report that I would be late or needed a sick day, but the store manager would never pick up the phone. Anyway, I expect to be employed as soon as I get this criminal matter behind me. I have a lead on a job at The House Depot that pays well and offers benefits.
3. I was not able to finish high school. I was expelled in the second quarter of my senior year for mouthing off to an assistant principal. What an idiot! I believed I should have been able to leave school early each day since my study hall was the last period. The assistant principal did not see it that way. Anyway, I decided not to go back after the two-week expulsion. I had had enough. I earned a GED in 2014 when I was 20.
4. You could say I was very popular in high school. I was on the track team and was very good in the 100 meter run. I was pretty outgoing around the school and everyone wanted to be my friend, including Larry Mooney. After begging for months, I decided to let him join our little clique. He turned out to be a drug-head and ended up almost dying from an overdose on hydrocodone. His parent, Leslie Mooney, for some reason has always blamed me for his near-death episode. S/he once said to me, "To my dying day, I will do whatever it takes to get you and people like you off the streets." Do you think "whatever" could mean lying? Anyway, I had no idea what s/he was talking about. I am not a drug dealer and I never gave any drugs to Larry. I can't imagine what s/he has told the police. Everybody thinks that since I like playing

loud music, throwing big parties that go way into the late night and just having fun, I must be involved with drugs. I admit that some of the people who come to my parties might bring drugs. But that is on them. I can't be held responsible for that.

5. I admit that things have not gone that well for me. I should have stayed in high school and maybe even gone on to college. But, I am not sitting around feeling sorry for myself. I have to make a living, being that I am currently unemployed. So, if someone, like this guy called Monk, asks me to deliver a package or pick up an envelope for a small fee, I don't ask a lot of questions. It's not for me to open up the packages to see what's in there. It's none of my business. I'm just trying to make a few bucks.
6. So, on Saturday, August 15, 2015 at about 1:30 PM, I am walking down Chippewa Street, just to get some fresh air and clear my head from the rockin' party I hosted on Friday night, August 14<sup>th</sup>. When I got to Franklin Street, I bumped into my friend Parker Pedersen. I hadn't seen Parker, who we all called Pillhead, since I was expelled from high school. So, we are just catching up on old times when all of a sudden Pillhead just took off running. I did not know what was going on; so, naturally, I started to run also. Initially, I thought Pillhead was in trouble and I was not going to wait around to find out why. Glancing over my shoulder, there appeared to be two people chasing me. So, I put it in third gear (I hadn't lost much since my high school track days), turned several corners and believed I had lost them. I then decided to just run back to my apartment and locked my door. I did not know at the time that the persons chasing me were police officers. They were not in uniform. I ran because I thought my life was in danger. That street corner, Chippewa and Franklin, is where addicts go to buy their drugs.
7. Once safely inside my apartment, I heard footsteps running up the stairs. I heard someone say, "Open the damn door." Not knowing who was there, I was not about to do that. I then ran to the kitchen in the back of my apartment. All of a sudden, the person breaks down my door, enters my apartment, proceeds to the kitchen and points a gun at me. S/he identifies himself/herself as Police Officer Flanagan and shows me what s/he claims a badge hanging on a string around his/her neck. The officer tells me to turn around with my hands in the rear and I am patted down. Nothing was found on me. I was asked whether there was anybody else in

the apartment and I said no. The officer noticed a large pill bottle on the floor in a corner of the kitchen approximately ten feet from where I was standing. Officer Flanagan told me to sit down in one of my chairs. S/he retrieved the bottle, which turned out to be empty. Officer Flanagan showed me the bottle, which had on the label the word **OXYCODONE** and asked me whether the bottle belonged to me. I said no and that I had never seen the bottle before. I told him/her about the big wild party I had the night before and that anyone could have left the bottle. The officer's facial expression showed that s/he did not believe me. I've seen a lot of police shows on TV and decided it was best not to answer any more questions.

8. The officer noticed that the kitchen window where I was standing when s/he entered the room was open and the screen was pushed up. At about that time, another officer, Carmen Leeds, came running into the kitchen. S/he told Officer Flanagan that s/he had heard a creaky window opening and the sound of something like a knife hitting the grass and weeds in the back of the building. Officer Leeds was full of crap! If you are in the front of my building, it would be difficult to hear something as small as a knife hitting the ground. Besides, the daycare next door was having a picnic and the kids were making so much noise it was hard to hear yourself think. Officer Flanagan asked me whether it was OK for him/her to search my back yard. I told him/her that I was not answering any questions and that they were probably going to do whatever they wanted to do with or without my permission. I would never have given the officers permission to search my back yard. By the way, the window was open because I was trying to cool down from my hard run. The screen was up because it is broken and cannot be pulled down. This is an old building.
9. Officer Flanagan told Officer Leeds to stay with me while s/he went to search the back yard. A few minutes later, Officer Flanagan returned to the kitchen with a gravity knife and a handful of pills s/he called oxycodone. S/he asked me whether the items belonged to me. I said no and that any further questions should be directed to my attorney.
10. I was taken downtown to central booking and charged with possessing oxycodone without a prescription and a gravity knife. My attorney told me later that the knife charge was dropped because there was no evidence that I had ever possessed it. I was indicted by the Grand Jury on September 18, 2015 on one count of Criminal Possession of a Controlled Substance in the

Fifth Degree. I was arraigned on the indictment on September 21, 2015 and entered a plea of not guilty to the charge. I posted the \$15,000.00 bail and was released.

11. I had wanted to testify before the Grand Jury, but my lawyer told me that would not be a good idea. I would have told the Grand Jury panel that I had nothing to do with the drugs. Anyway, my lawyer told me not to worry. At one of our weekly meetings, my lawyer told me that s/he had filed what is called an omnibus motion, which includes a motion to suppress the evidence. S/he is sure the evidence will be suppressed and the drug charge dismissed.
12. My lawyer has explained to me that the District Attorney is opposing my suppression motion on the basis of something called the Emergency Doctrine. Alternatively, the prosecution is alleging that exigent circumstances allowed the police to conduct the warrantless search. As explained to me, the police believed I tossed the drugs and the knife out of the kitchen window after hearing the police officer coming up the steps. As far as the Emergency Doctrine goes, the prosecution will argue that the police had to search immediately because the daycare center next door was having the picnic and young children, poorly supervised, were wildly running about. If a child were to mistake the drugs as candy, the child could have been severely harmed. So, time was of the essence. I don't buy that nonsense. For as long as I have lived here, I have seen children on my property on one or two occasions. I know the owner of the daycare center, Sam Doolittle, and s/he is a very careful and conscientious person. When those kids are outside, s/he watches them like a hawk and makes sure the children stay on the daycare property. I realize there is a big hole in my chain-link fence, but I just do not have the money to fix it. Besides, there were probably plenty of parents around to supervise the children. I don't know for sure, but if I had a child at the daycare, I would be there at the picnic. Anything could happen in a neighborhood like this.
13. As far as this Exigent Circumstances crap goes, my attorney thinks the D.A. will claim that they had to search quickly and didn't have time to get a warrant because of the rain. Well, by the time Officer Flanagan decided to conduct the warrantless search, it wasn't raining and didn't even look like it was going to rain. My attorney checked and the National Weather Service had forecast that the rain would not arrive until 5:00 PM. According to my lawyer, there was more than enough time to request and obtain a search warrant. The illegal search

was made before there was a threat of rain. The fact that it rained right after the illegal search should not lead to the defeat of my suppression motion, according to my lawyer. You cannot make the illegal search retroactively legitimate. So, the claim of exigent circumstances does not wash, pardon the pun. Besides, I remember from my We The People class in high school, we have the right to be free from unreasonable searches and seizures. The police should have had a neutral party, a judge, decide whether a search of my property was necessary and proper.

14. Sure, I know Monk. A lot of people know Monk. I don't believe the rumor that he is a drug dealer. These stupid cops even think I am dealing drugs, which I am not. Monk has trouble walking; so, he pays me to run errands for him. As I stated earlier, I don't know what is in the packages and I don't ask any questions. Since I am not currently employed, I need the money Monk gives me to live on and to save up for the deposit on another apartment when my building is demolished any time now.
15. You cannot believe anything Leslie Mooney tells you. S/he is just trying to get me in trouble because of what happened to his/her son. S/he never saw me throwing anything out of the window. In fact, I was waving sarcastically out the window at Mr./Ms. Mooney on that Saturday afternoon before the police arrived. It is my understanding that s/he has very poor eyesight and is colorblind. I once overheard him/her blaming me because of his/her current economic circumstances and because s/he has to live on this less-than-desirable side of town. It's not my fault that s/he lost his/her job. The rumor on the street is that Mr./Ms. Mooney is no longer a weather anchor at NNNC not so that s/he can care for his/her son, but because of his/her unsatisfactory work performance. Mooney will say anything to get me in trouble or anything the police tells him/her to say about me. S/he even got this quack over at the police lab, Dr. Taylor, to come out against me. Dr. Taylor is nothing more than a Mooney crusader and will say anything if it would hurt me. Dr. Taylor has no proof that I ever possessed the oxycodone pills. I feel sad more than angry towards Mr./Ms. Mooney and Dr. Taylor.
16. It is not true that my meeting with Pillhead was prearranged. Like I stated earlier, I hadn't seen Pillhead in several years. Just before we were chased, I was lifting my shirt and reaching in my fanny pack to get a piece of paper to write down Pillhead's phone number. I did not have my cell phone with me at the time. Pillhead was just reaching into his/her back pocket to get a

pen to give to me to write the number. It looked like one of those green pens hotels give out to their guests. These two keystone cops should go back to the academy for more training. They don't know the difference between a meeting of two old friends and a drug deal. Incredible!

17. Finally, I did not know Pillhead was at my party on August 14<sup>th</sup>. There were so many people there that I probably only saw one-third of them. It was very dark in the apartment and the music was extremely loud. If s/he was there, I did not recognize him/her. Remember, I had not seen Pillhead in several years until our chance meeting on August 15<sup>th</sup>.

Dated: November 4, 2015

I affirm the veracity of the foregoing statement.

Kelly Roberts

Kelly Roberts

### AFFIDAVIT OF SAM DOOLITTLE

1. My name is Sam Doolittle and I am 42 years old. I reside at 536 Pearl Street, East Nirvana, New York. My house is large and doubles as a daycare center, which I own and operate. I am a licensed daycare operator and my business, Noble Path Center for Child Awakening, is growing every year.
2. I graduated from SUNY Syracuse with a double major in childhood development and business entrepreneurship in 1998. After working for several schools and child care centers, I was disappointed by the way that they treated children like incompetent pets. Surely children need some supervision, but they also need space to find their own way in the world. That's when I got the idea to open up Noble Path.
3. I run Noble Path in a way that promotes the freedom of children to pursue their own interests on their own volition without unnecessary adult interference. We believe that this method promotes the personal growth of each child as an individual. When necessary, I even allow the more spiritually advanced children to supervise the less balanced children, rather than use domineering adult minders like most child care centers. This method also allows me to run a more efficient operation.
4. Another way that I add value to my operation is to operate in what is considered by some to be a less desirable neighborhood. Some people even call my area a slum, but I prefer to use the term "transitional." Anyway, those suburban snobs are really just unable to appreciate the history—this is an older neighborhood. Sure there are some run-down places, but there are also some real gems like my place. I could never afford a place to run an operation this size in snooty West Nirvana. Plus, those neighborhoods have no character, no flavor, no harmony.
5. Here in East Nirvana, we all know each other and mostly get along. Sure the young people act like young people, get a little loud, have a little fun, but they're mostly good natured if you get to know them. I've got this funny looking kid that comes around once a month or so asking to walk my dog and I have to keep telling her/him I don't have one. S/he seems so bummed out every time that last time I felt bad and gave him/her a few bucks to watch some of the kids

while I ran an errand. When I came back s/he had them all in a drum circle learning rhythm exercises! You've got to give people a chance I always say.

6. Even the young person who lives in the dumpy apartment building next door, Kelly, is a solid neighbor. I'm not saying that the music and parties don't wear on me once in a while, but at least they are always late at night when the kids are gone. I just make sure to walk around the yard in the morning and pick up all the red and blue plastic cups before the parents drop their kids off.
7. Honestly, the one exception to the nice little circle of neighbors that we have around here is the creepy recluse that lives across the back yard from Kelly and me. S/he seems to spend the whole day peering out the window looking for something to complain about. Name is Mooney something.
8. Whether it be my kids having too much fun in the yard or Kelly—s/he really seems to have it in for Kelly—playing music too loud, it's always something. Half of the time s/he doesn't even seem to know what s/he is screaming across the yard at. S/he once told one of my kids to stop hitting golf balls at her house when he was playing croquet on the other side of the fence.
9. The only problem that I have running Noble Path in this neighborhood is the perception. Some parents are skeptical that it is as safe as I say. And once in a while something will happen that gives them a scare and I'll lose a few kids. First was a parent seeing some hobos walking across the back yards next to mine, which lots of people use as a shortcut between blocks. Then it was obscene graffiti on the sidewalk. Then the police raided a place across the street right in the middle of the day when parents were lined up to get their kids. Couldn't those fools have waited a few hours! I lost 10 families after that one.
10. I worry more about the police screwing up this neighborhood than I do about the kids like Kelly. Those cops just can't seem to let people be. They see long hair or a sideways cap and out come the Tasers and guns. Most of the time they are just trumping up things to justify their massive wasteful budget. I'd fire half of them and put the money toward community projects, like tearing down some of these old eyesores.



11. Just the other day these plainclothes cops came banging around Kelly's building. They made a big disruption in the middle of a picnic that I was having for my customers. One came barging in the back yard and started treating the place like a crime scene.
12. S/he shows me **a knife and** these pills the cops say they found in the grass in Kelly's yard – probably Tylenol for all I know – and starts acting like s/he is some kind of hero saving my kids. In a loud, kind of threatening voice, s/he says "it is a good thing I found these drugs before the children did. It would be a disaster for you if a child ingested one or more of these tablets believing them to be candy." **That is all I need right now. In early August, I got this warning letter from those worthless bureaucrats at the Children and Family Services complaining about some so-called deficiencies at my daycare. So, these police officers should be careful. If they continue to make allegations that my daycare is next door to a drug dealer, coupled with the problems I am having with CFS, parents might start to remove their children and I would lose my livelihood. Kelly is really a good person and that the knife and drugs were probably left by someone traversing through the neighborhood.**
13. Then the cop starts hassling me about a little hole in the fence. I told her/him I'll make the city fix it when they finally get around to tearing that old building down. It's not my fence anyway. Robert Frost can have his, but I think fences prevent the kind of tight-knit neighborhood that we have. Anyway, that cop watches too much Dateline. I'm more worried about one of them pepper-spraying my kids because they take too long to cross the street than I am about the kids crawling into Kelly's yard and finding a beer-pong ball or something.
14. Of course, all this commotion brings that Mooney out of his/her nest. S/he comes over blabbing about how s/he saw Kelly tossing some small objects out of the window. Kelly could throw Chewbacca out that window that Mooney would think it was a golden retriever. Can you believe it?! This stupid officer, Flanagan I believe is his/her name, shows Mooney the pills and then asks Mooney whether these are the objects Kelly was tossing out of the window. In a split second, Mooney answered yes. I've seen enough *Law and Order* on TV to know that you ask the person to describe the object before showing the thing to the person. Give me a break!

15. Anyway, before all these cops started in with the commotion, I was resting on a chair in my yard that faces right across Kelly's back window. If s/he tossed something out of it, I'm sure that I would have seen it.
16. If there were anything in the back yard (that the cops didn't plant), it could have come from anywhere. Kelly just had a big party the night before that there must have been 30 people smoking in the back yard right where they say the pills were.
17. Finally, as this cop is walking away, s/he says over his shoulder "better get those kids inside anyway, it's supposed to rain." I look up and there is one puffy white little cloud against a deep blue sky. I say back "yeah, I'll get right to work on that ark" and chuckle. This cop turns around, comes right back up to me, points a finger at my chest and says "it is going to rain any time now" like I just insulted his/her mother.
18. Of course all this couldn't happen at a worse time. The one day that I have parents hanging around the Center and these cops and Mooney feel the need to make a scene. It just sort of reinforces the bad impression that some people already have about East Nirvana. And now I hear there is going to be a trial! It's like they want to destroy my business.

Dated: November 12, 2015

I affirm the truth of this statement.

*Sam Doolittle*

Sam Doolittle

**AFFIDAVIT OF PARKER PEDERSEN (A/K/A PILLHEAD)**

1. My name is Parker Pedersen. Some people call me Pillhead, but I can get into that later. I am 20 years old. Currently I'm living with my mom at her place at 454 Marigold Street, Apt. 2, East Nirvana, New York. I don't have a steady job, but I live by my dream of making it big one day as a drummer. I practice my drums all the time; the only problem is that the members of my band keep flaking out on me. They don't take it as seriously as I do and so we've had a lot of turnover in the band and haven't been able to get any gigs. Since I haven't made any money from my music, I make do with odd jobs here and there. Most of my money comes from being a dog-walker in the neighborhood. I've got some steady clients and my business is really growing.
2. As for school, I am not going to downplay it; I had a rough time in high school. I was never really into the classes, but I did like going to East Nirvana High and seeing my friends. I was really into soccer and was the second string wingback on the varsity team when I got into a car accident that caused two of my ribs to break during my junior year. I had never felt that much pain before, and during the course of my rehabilitation from the accident, I got hooked on painkillers. I am proud to say that even in spite of my addiction, I managed to graduate from East Nirvana High on time with my class in 2013.
3. After high school, I messed around for a while and mostly hung out with my friends in the neighborhood. I guess it was tough for me to realize that I would never be able to play real organized soccer again with my injury and I didn't really get my stuff in order to apply for college on time. I would get high and try to focus on my music and drums. I'd like to say that it was a creative time for me with my music, but mostly I was just slacking off. I never took any hard drugs, just oxy. I thought that I had it under control that it was just a release, but looking back on it I can see that hillbilly heroin had me for a couple of years. Luckily, I was never arrested for it.
4. I've never been arrested for anything. I am a peaceful person. And I kept it safe by using the same dealer regularly. I knew him by his street name, "Monk." I knew Monk from the neighborhood, everyone did. Monk always knew what I needed and he'd have someone drop it off to me right at my home. It was just a text away. Convenience was the name of the game.

Monk had lots of guys running for him. I never worked for him though, I never dealt any drugs, and I wouldn't want that heat on me. I like to keep it mellow and focus on my dreams.

5. I am thankful to say that I was able to quit. I went to rehab for several months over the summer in 2014 and got clean. Since then, I have only relapsed once in early 2015 due to all of the pressures of the holiday season. I went back to rehab for a thirty day stay and came out clean in May of 2015. I have been clean and drug-free since then.
6. In spite of my being clean, some people don't believe it because of my nickname and all. You see, my nickname is Pillhead. But that is not because of my past drug addiction, it's on account of the shape of my head. I have one of those longer oval shaped heads. When I was a kid, I used to hate it because some older kids said my head looked like a pill and they teased me by calling me Pillhead. After a while though, I got used to it. They say a nickname is a term of endearment, right? Anyway, it wasn't so bad once I got to high school and I decided to let my hair grow in long and shaggy. It makes me stand out behind my drum set and I've never had a problem getting dates.
7. Saturday, August 15, 2015 started off as a regular day for me. I slept in late until around 11:00 AM since I had been out at a party the night before. When I woke up, I made myself and my mom my famous cinnamon French toast. We hung out for a while at home eating and talking before she went off for her shift at work. I then went to practice my drums when I realized that I was out of Moon Gel drum pads. I knew that I needed some of those to correct my overtones since I was trying to get some of the band together that night to practice. So, I threw on my sneakers and headed out to the music supply store on Maple Street, probably a little before 1:00 PM.
8. After I bought the Moon Gel pads, I put them in my back pants pocket and headed out back towards my home on Marigold Street. When I was on Franklin Street just near Chippewa I got one of those weird vibes that you sometimes get when someone is watching you. I stopped and looked around to see where that vibe was coming from, and lo and behold I ran into my old friend Kelly Roberts from high school. That was crazy. I hadn't seen Kelly since s/he had been expelled. Kelly was a year ahead of me at East Nirvana High and we knew each other from sports and all. Kelly was a cool cat—I think that everyone knew her/him. Naturally, we stopped to talk

and catch up, when the strangest thing happened. There are these thick green bushes across the street and I saw these crazy-looking people crouching in those scratchy bushes staring at us and then they jumped out and started running towards us. Well, when I saw that, I bugged out and I ran the hell away from them. I know now that they were cops. Officers Flanagan and Leeds have been harassing me for years about this or that. But on August 15<sup>th</sup>, I did not recognize them and I thought they may be some rival dog-walkers who were going to shake me down and try to intimidate me. You see, my dog-walking route has really grown in popularity and I've been tipped off that some of the other dog-walkers are jealous and that the word on the street is that they were talking about "putting me in my place."

9. I didn't know that Kelly got arrested that day until much later on. That whole scene was weird, and when I heard that Kelly had oxy on him/her, I was surprised. I never heard that Kelly was into drugs and I certainly never saw or heard about him/her dealing oxy. When I was speaking with Monk back in the day, I never saw Kelly, and no one ever spoke about him/her being into drugs. Believe me, I know from the days before I got clean who was into that scene, and Kelly was definitely not a drug user or a drug dealer.
10. After I learned that Kelly got arrested, I heard on the street that the party I went to the night before was actually at his/her apartment. I had no idea that I went to Kelly's place. All I know is that on Friday, August 14, 2015, my friend Chris picked me up and we went to a party at 534 Pearl Street. It was a great party. There were a ton of people there, and the place was jumping. I spent most of the night helping the DJ spin some tunes. I don't know who was there—it was dark and crowded and I was focused on the music. I didn't see Kelly there and I sure didn't know that it was Kelly's apartment. Like I said, the first time I saw Kelly since high school was the next day on the corner of Chippewa and Franklin The cops are acting like it's some big conspiracy, but all this was just a normal Friday night party and a normal conversation between friends who hadn't seen each other in years catching up.

Dated: November 6, 2015

I affirm the truth of the statement above.

Parker Pedersen

Parker Pedersen

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# **NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT EVIDENCE**

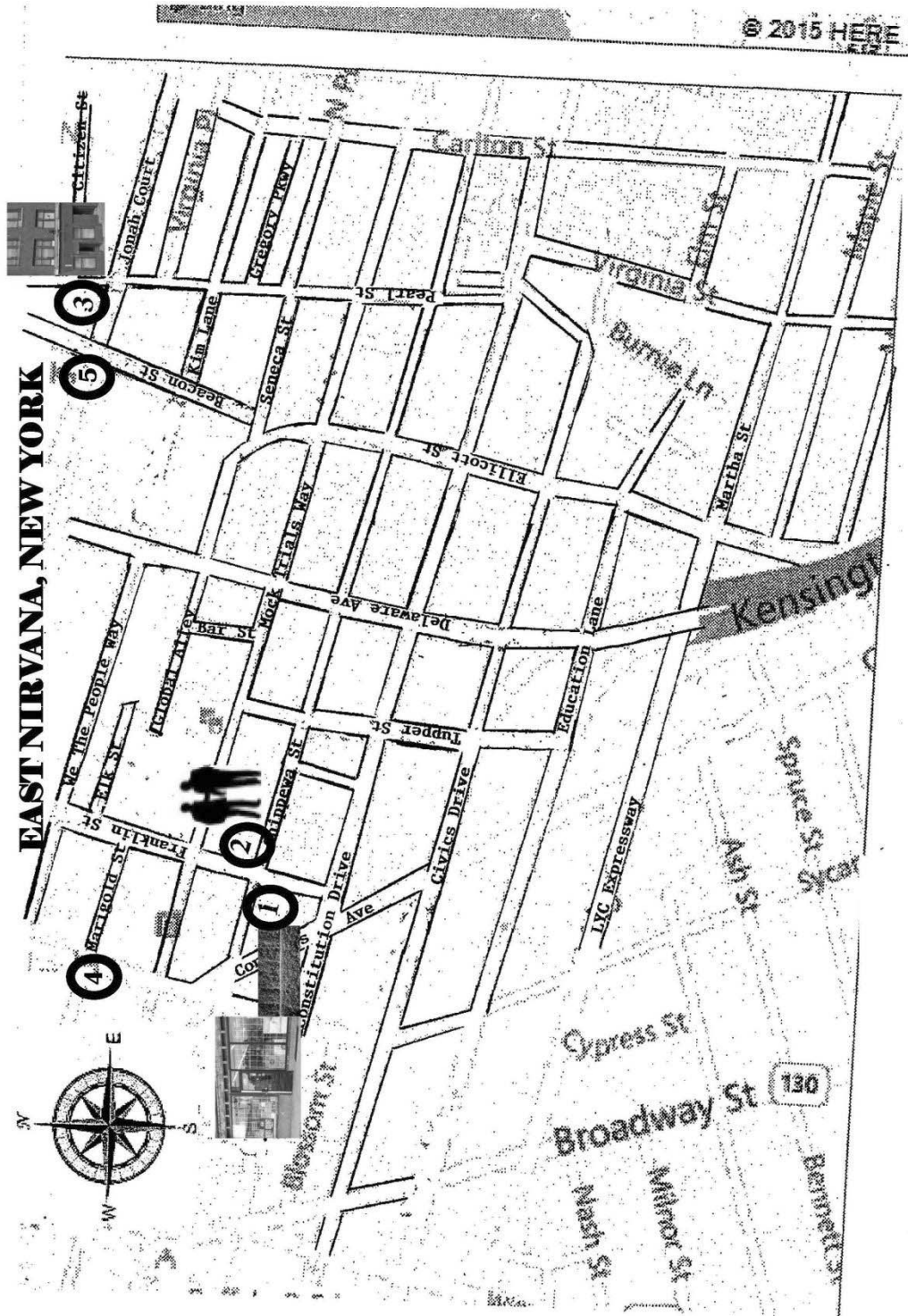
## **PART V**

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EXHIBIT \_\_\_\_\_

➤ Map of area



Legend

1. Chipp-Frank ShopMart
2. Location of Roberts/Pedersen encounter
3. Roberts' apartment building
4. Parker Pedersen lives on Marigold St.
5. Leslie Mooney lives on Beacon St.

Prepared by: P.O. Leeds 09-22-2015

Version #2 - Revised 01-04-2016

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**EXHIBIT \_\_\_\_\_**

- Residence of Kelly Roberts – 534 Pearl Street (building in the middle)
- Noble Path Center Child Awakening (building on far right)



Photograph taken by P.O. Leeds  
09-22-2015

**Revised 01-29-2016**

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**EXHIBIT \_\_\_\_\_**

- Kitchen at the residence of Kelly Roberts – 534 Pearl Street



Photograph taken by P.O. Leeds  
09-22-2015

Revised 01-29-2016

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**EXHIBIT \_\_\_\_\_**

- **Empty pill bottle** found at the residence of Kelly Roberts – 534 Pearl Street



**Inventory Tag # 003 (Roberts)**  
**East Nirvana Police Department**

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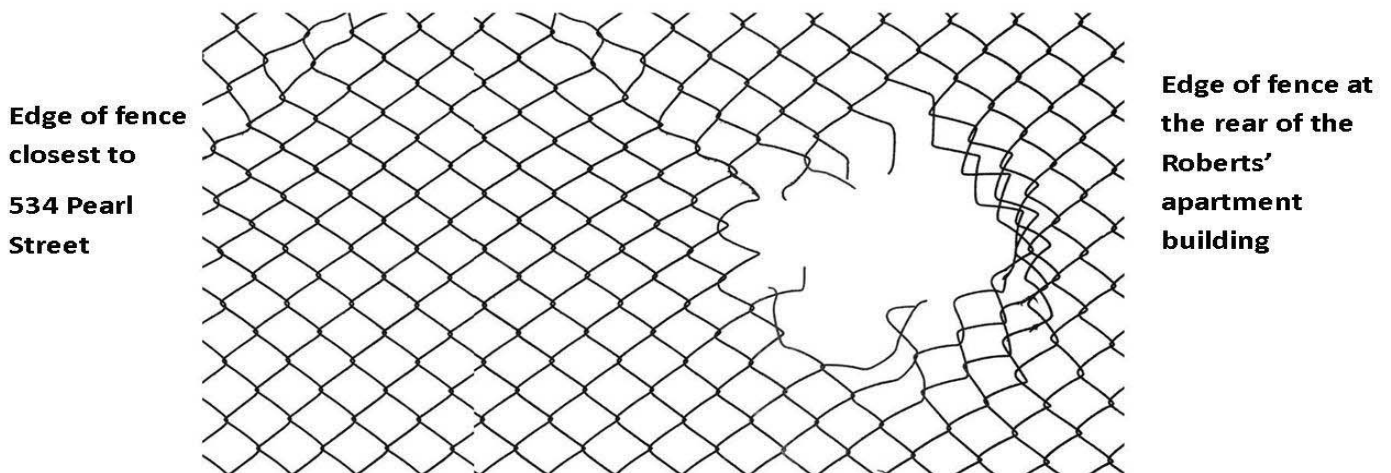


**EXHIBIT \_\_\_\_\_**

- Detail of hole in fence between residence of Kelly Roberts at 534 Pearl Street and Noble Path Center Child Awakening



**Enlarged photo of hole in fence between 534 Pearl Street and Noble Path Center Child Awakening (Noble Path Center daycare center is the building on the right)**



**NOTES: 1) Photo is not to scale. 2) The fence runs between Kelly Roberts' apartment building and the Noble Path Center daycare building. It would be perpendicular to Pearl Street. The two buildings are side-by-side and the fence separates the two properties.**

Photograph taken by P.O. Leeds  
09-22-2015

**Revised 01-29-2016**

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**EXHIBIT \_\_\_\_\_**

- Letter to Sam Doolittle from NYS Office of Children and Family Services
- 



New York State Office of Children and Family Services  
52 Washington St.  
West Nirvana, NY 00052

August 5, 2015

Sam Doolittle  
Noble Path Center for Child Awakening  
536 Pearl Street  
East Nirvana, NY

Dear Mr./Mrs. Doolittle:

This letter serves as official notice of non-compliant status under Section 390 of the New York Social Services Law of the Noble Path Center for Child Awakening, located at 536 Pearl Street, East Nirvana, NY.

The following deficiencies were observed on August 3, 2015, during the annual site inspection of the aforementioned facility:

- Peeling and damaged paint and plaster in the interior of the facility
- Portable electric space heater in the interior of the facility
- Large hole in fence on the barrier of the property

A re-inspection date of September 3, 2015 has been set for the abovementioned facility. Failure to remedy the deficiencies before the re-inspection date will result in loss of registration.

Sincerely,

*Joan Keepusafe*

Joan Keepusafe  
Assistant Commissioner

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**EXHIBIT \_\_\_\_\_**

- Weather Forecast for August 15, 2015



**NATIONAL WEATHER SERVICE**  
**National Oceanic and Atmospheric Administration**

**Weather Conditions**

**Current Conditions at**  
**East Nirvana, New York**

**Lat: 42.8°N Lon: 77.18°W Elev: 58ft.**

Partly Cloudy  
72° F  
24° C

**Humidity** 78%  
**Wind Speed** SW 8mph  
**Barometer** 29.63 in  
**Dew Point** 61°F (16°C)  
**Visibility** 10.00 mi  
**Last update** 15 Aug 7:50 am EDT

**Detailed Forecast**

**Today**

Rain showers starting at approximately 5pm. Rain could be significant at times. Southwest winds 5-10 mph. Chance of precipitation is 65%.

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

## **PART VI**

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## **CASES**

### ***Mapp v. Ohio*, 367 U. S. 643, 81 S.Ct. 1684 [1961]**

The illegal search and seizure of the premises of a defendant contaminates all evidence found as a result thereof. The fruits of such illegal search and seizure invokes the Exclusionary Rule. Said rule covers not only the evidence illegally obtained, but the product of the unlawful search as well. The underlying rationale is that government may not violate the constitutional guarantee (*i.e.*, the Fourth Amendment to the U.S. Constitution).

### ***People v. Di Stefano*, 38 NY2d 640, 382 NYS2d 5 [1976]**

Case involved undercover surveillance (eavesdropping) by the police of organized crime figures. Defendants sought to suppress incriminating statements that were recorded. The Court of Appeals held that the defendants have the burden of proving by a preponderance of the evidence (burden of persuasion) that the police officers acted illegally. The People only have the burden of going forward with credible evidence tending to show that the police acted lawfully in the first instance. (See also *People v. Whitehurst*, 25 NY2d 389, 306 NYS2d 673 [1969]; *People v. Thomas*, 291 AD2d 462 [2002].)

### ***People v. Mitchell*, 39 NY2d 173, 383 NYS2d 246 [1996]**

Guidelines for the application of the emergency doctrine” to warrantless searches:

1. The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.
2. The search must not be primarily motivated by intent to arrest and seize evidence.
3. There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

(See also *People v. Rossi*, 24 NY3d 968, 995 NYS2d 692 [2014] - The Court of Appeals did not disturb the Appellate Division’s determination that the defendant's incoherence and evasive answers about the location of the gun and the presence of children on the premises established an ongoing emergency and danger to life, justifying the search for and seizure of the gun. Application of the emergency doctrine involves a mixed question of law and fact that is ordinarily beyond review by the Court of Appeals so long as there is record support for the findings of the lower courts).

### ***People v. Jenkins*, 24 NY3d 62, 995 NYS2d 694 [2014]**

The Court of Appeals held that the People had failed to meet its burden of establishing that the exigencies of the situation justified the warrantless search for the gun. The “exigent circumstances” exception to the prohibition to warrantless searches dictates that police may act without a warrant where they possess probable cause to search, but urgent events make it impossible to obtain a warrant in sufficient time to preserve evidence or contraband threatened with removal or destruction. The suppression court had determined that the warrantless entry into the apartment was proper, but that once the defendant was handcuffed and secured, the exigency had abated and the subsequent warrantless search of the closed box containing the gun was improper.

***People v. Gonzalez*, 39 NY2d 122, 383 NYS2d 215 [1976]**

Consent to search is voluntary when it is a true act of the defendant’s will, an unequivocal product of an essentially free and unconstrained choice. (See also *People v. Marcial*, 109 AD3d 937, 971 NYS2d 328 [2013] - The People’s burden of proving voluntariness cannot be discharged by showing no more than acquiescence to a claim of lawful authority).

***People v. Faulkner*, 185 AD2d 764, 587 NYS2d 622 [1992]**

Police officers who observed transaction bearing all of the earmarks of a narcotic deal in a public entryway of an apartment building were justified in entering the defendant’s apartment without a warrant to arrest participant in the transaction; officers were in immediate hot pursuit and exigent circumstances were clearly present, including the strong likelihood that the narcotics would be destroyed.

***Kentucky v. King*, 563 US 452, 179 L.Ed2d 865 [2011]**

Police followed suspected drug dealer to his apartment. They smelled marijuana and knocked loudly on the door, announcing their presence. The officers announced their intent to enter the apartment after hearing noises consistent with the destruction of evidence. After kicking in the door, the officers saw drugs in plain view. The trial court denied defendant’s motion to suppress the evidence, holding that exigent circumstances - the need to prevent the destruction of evidence - justified the warrantless entry. The intermediate appellate court affirmed. The Kentucky Supreme Court reversed, holding that the exigent circumstances rule did not apply because the police should have foreseen that their conduct would prompt the occupants to attempt to destroy evidence. The U.S. Supreme Court reversed and remanded, holding that warrantless entry to prevent the destruction of evidence is allowed where police do not create the exigency through actual or threatened Fourth Amendment violation.

***People v. Spinelli*, 35 NY2d 77, 358 NYS2d 743 [1974]**

A person who leaves an article in plain view has no legitimate expectation of privacy with respect to that item, so long as the article comes into plain view inadvertently. (See also ***People v. Hysmith*, 223 AD2d 724, 637 NYS2d 447** – police officer who is lawfully in a suspect’s residence may seize incriminating items that the officer had observed in plain view).

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# **NEW YORK STATE HIGH SCHOOL MOCK TRIAL APPENDICES**

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

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**2016 NEW YORK STATE MOCK TRIAL TOURNAMENT**  
**PERFORMANCE RATING SHEET**

In deciding which team has made the best presentation in the case you are judging, use the following criteria to evaluate each team's performance. For each of the performance categories listed below, rate each team on a scale of 1 to 5 as follows (use whole numbers only). INSERT SCORES IN THE EMPTY BOXES.

SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	(Page 1 of 2)
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**TIME LIMITS**

OPENING STATEMENTS	DIRECT EXAMINATION	CROSS EXAMINATION	CLOSING ARGUMENTS
5 minutes for each side	10 minutes for each side	10 minutes for each side	10 minutes for each side

		PLAINTIFF / PROSECUTION	DEFENSE
➤ OPENING STATEMENTS (A score is required) ➔			
PLAINTIFF / PROSECUTION First Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
PLAINTIFF / PROSECUTION Second Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
PLAINTIFF / PROSECUTION Third Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		

➤ Please be sure to also complete the other side of this form (page 2)

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

(Page 2 of 2)

**TIME LIMITS**

OPENING STATEMENTS		DIRECT EXAMINATION	CROSS EXAMINATION	CLOSING ARGUMENTS
5 minutes for each side		10 minutes for each side	10 minutes for each side	10 minutes for each side
			PLAINTIFF / PROSECUTION	DEFENSE
DEFENSE First Witness	Direct and Re-Direct Examination by Attorney			
	Cross and Re-Cross Examination by Attorney			
	Witness Preparation and Credibility			
DEFENSE Second Witness	Direct and Re-Direct Examination by Attorney			
	Cross and Re-Cross Examination by Attorney			
	Witness Preparation and Credibility			
DEFENSE Third Witness	Direct and Re-Direct Examination by Attorney			
	Cross and Re-Cross Examination by Attorney			
	Witness Preparation and Credibility			
➤ CLOSING STATEMENTS (A score is required) ➔				
➤ PROFESSIONALISM (1-10 points PER team (A score is required) ➔ • Team's overall confidence, preparedness and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; and strategies intended to waste the opposing team's time for its examinations.				
➤ TOTAL SCORE (A score is required) ➔				
➤ JUDGE'S NAME (Please print)				
In the event of a tie, please award one point to the team you feel won this round. <u>Mark your choice below.</u> <input type="checkbox"/> PLAINTIFF/PROSECUTION <input type="checkbox"/> DEFENSE				



## **ORDER OF THE TRIAL**

The trial shall proceed in the following manner:

- Opening statement by plaintiff's attorney/prosecuting attorney
- Opening statement by defense attorney
- Direct examination of first plaintiff/prosecution witness
- Cross examination of first plaintiff/prosecution witness
- Re-direct examination of first plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second plaintiff/prosecution witness
- Cross examination of second plaintiff/prosecution witness
- Re-direct examination of second plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third plaintiff/prosecution witness
- Cross examination of third plaintiff/prosecution witness
- Re-direct examination of third plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Plaintiff/prosecution rests
- Direct examination of first defense witness
- Cross examination of first defense witness
- Re-direct examination of first defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second defense witness
- Cross examination of second defense witness
- Re-direct examination of second defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third defense witness
- Cross examination of third defense witness
- Re-direct examination of third defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Defense rests
- Closing arguments by defense attorney
- Closing arguments by plaintiff's attorney/prosecuting attorney There can be no deviation from this ordering.

Thank you,

Craig R. Bucki, Chair  
NYSBA's Mock Trial Subcommittee (11/15)

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## **PREPARING FOR THE MOCK TRIAL TOURNAMENT**

### **Learning the Basics**

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

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

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

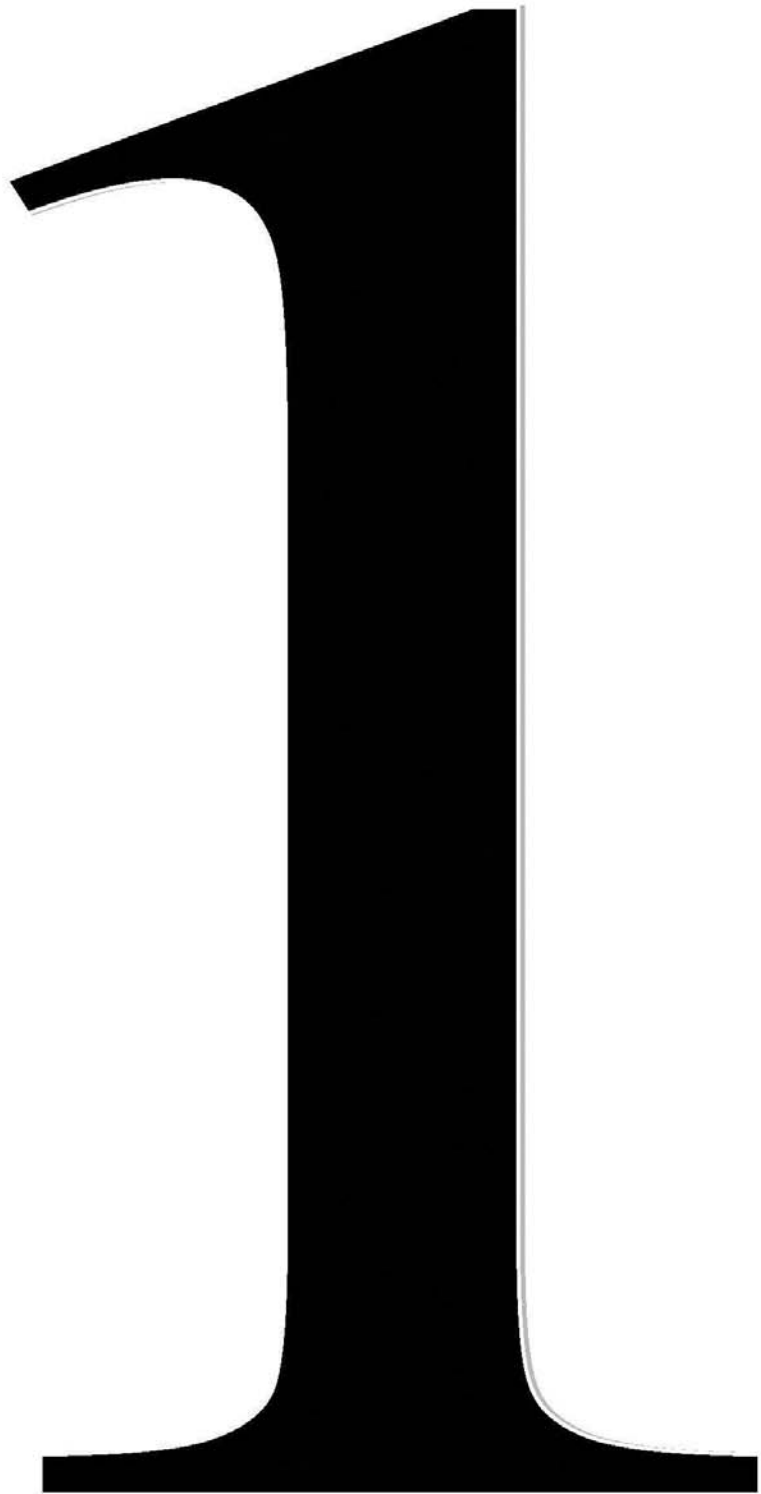
Vile, John R., Pleasing the Court: A Mock Trial Handbook (3rd ed.), Houghton Mifflin Company

### **Preparation**

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

practice their roles, with repeated direct and cross examinations, and anticipate questions that may be asked by the other side. The goal is to be a credible, highly prepared witness who cannot be stumped or shaken.

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



# **TIME LIMITS**

## **OPENING STATEMENTS**

**5 minutes for each side**

## **DIRECT EXAMINATION**

**10 minutes for each side**

## **CROSS EXAMINATION**

**10 minutes for each side**

## **CLOSING ARGUMENTS**

**10 minutes for each side**



**NEW YORK STATEWIDE HIGH SCHOOL MOCK TRIAL  
TOURNAMENT PAST REGIONAL CHAMPIONS**

**2015**

**Clarence High School**

Thomas R. Proctor High School  
Potsdam High School  
Goshen High School  
Hunter College High School  
Forest Hills High School  
Stella K. Abraham School for Girls  
Ward Melville High School

**2014**

Pittsford-Mendon High School  
Seton Catholic Central High School  
Notre Dame-Bishop Gibbons High School  
The Mount Academy  
Brooklyn Technical High School  
The Brooklyn Latin School  
Plainview-Old Bethpage JFK High School  
**William Floyd High School**

**2013**

Frewsburg Central High School  
Jamesville-Dewitt High School  
Saratoga Central Catholic High School  
The Mount Academy  
Tottenville High School  
**William Floyd High School**

**2012**

Clarence High School  
Jamesville-Dewitt High School  
Notre Dame-Bishop Gibbons High School  
**Nyack High School**  
Townsend Harris High School  
William Floyd High School

**2011**

Buffalo Academy of the Sacred Heart  
Seton Catholic Central  
**LEAH Schenectady Homeschool Team**  
Blind Brook High School  
Bronx High School of Science  
William Floyd High School

**2010**

Brighton High School  
Vestal High School  
LEAH Schenectady Homeschool Team  
Scarsdale High School  
**James Madison High School**  
William Floyd High School

**2009**

Pittsford Mendon High School  
Lehman Alternative Community School  
Madrid-Waddington Central School  
Rye Neck High School  
**Tottenville High School**  
W. Tresper Clarke High School

**2008**

Clarence High School Bishop  
Ludden Jr./Sr. High School  
Notre Dame-Bishop Gibbons High School  
Nyack High School  
Tottenville High School  
**East Islip High School**

**2007**

Clarence High School  
Vestal High School  
Potsdam High School  
Blind Brook High School  
**Bronx School for Law, Government and Justice**  
Bay Shore High School

**2006**

Buffalo Academy of the Sacred Heart  
Lehman Alternative Community School  
LEAH Schenectady Homeschool Team  
Blind Brook High School  
**Marymount High School of New York**  
William Floyd High School

**2005**

Buffalo Academy of the Sacred Heart  
Vestal High School  
Notre Dame-Bishop Gibbons High School  
Blind Brook High School  
James Madison High School  
**William Floyd High School**

**2004**

McQuaid Jesuit High School  
Union-Endicott High School  
Notre Dame-Bishop Gibbons High School  
Ramapo High School  
Tottenville High School  
**William Floyd High School**

**2003**

Albany Academy for Girls  
Hunter College High School  
Minisink Valley High School  
Vestal High School  
Williamsville North High School  
W. Tresper Clarke High School

**2002**

Pittsford-Mendon High School  
Vestal High School  
Coxsackie-Athens High School  
Ramapo High School  
**The Rabbi Joseph H. Lookstein Upper School of Rainaz**  
William Floyd High School

**2001**

St. Francis High School  
Chittenango High School  
Albany Academy for Girls  
Kingston High School  
The Kew-Forest School  
**William Floyd High School**

**2000**

**St. Francis High School**  
Norwich High School  
Notre Dame-Bishop Gibbons High School  
Sleepy Hollow High School  
The Kew-Forest School  
Roslyn High School

**1999**

Orchard Park High School  
Dewitt High School  
The Academy of the Holy Names  
Mt. Vernon High School  
Louis D. Brandeis High School  
**William Floyd High School**

**1998**

Allendale Columbia School  
Seton Catholic Central High School  
Scotia-Glenville High School  
John S. Burke Catholic High School  
The Rabbi Joseph H. Lookstein Upper School of Rainaz  
**Stella K. Abraham High School for Girls**

**1997**

**Canisius High School**  
Susquehanna Valley High School  
Waterford-Halfmoon High School  
Mt. Vernon High School  
St. Ann's School  
Hebrew Academy of the Five Towns and Rockaway

**1996**

Canisius High School  
Fayetteville-Manlius High School  
Waterford-Halfmoon High School  
Port Jervis High School  
Townsend Harris High School  
Port Washington Senior High School

**1995**

Clarence High School  
New Berlin Central School  
Scotia-Glenville High School  
Spring Valley Senior High School  
Sheepshead Bay High School  
Hebrew Academy of the Five Towns and Rockaway

**1994**

Buffalo Seminary High School  
Seton Catholic Central School  
Waterford-Halfmoon High School  
Kingston High School  
York Preparatory School  
Hebrew Academy of the Five Towns and Rockaway

**1993**

Pittsford Mendon High School  
Seton Catholic Central School  
Waterford-Halfmoon High School  
Kingston High School  
Martin Van Buren High School  
Syosset High School

**1992**

Pittsford Mendon High School  
Fayetteville-Manlius High School  
Ballston Spa High School  
Byram Hills High School  
Edward R. Murrow High School  
Half Hollow Hills High School—West

**1991**

Brighton High School  
Fayetteville-Manlius High School  
Academy of the Holy Names  
Kingston High School  
Andrew Jackson High School  
Port Washington Senior High School

**1990**

Canisius High School  
Seton Catholic Central High School  
Ballston Spa High School  
Kingston High School  
Edward R. Murrow High School  
Roslyn High School

**1989**

Canisius High School  
Binghamton High School  
Waterford-Halfmoon High School  
Kingston High School  
Riverdale Country School  
Roslyn High School

**1988**

St. Francis High School  
Chittenango Central School  
Christian Brothers Academy  
Spring Valley High School  
Packer Collegiate Institute  
Half Hollow Hills High School—East

**1987**

Greece-Athena High School  
Binghamton High School  
Shenendehowa High School  
Ossining High School  
Packer Collegiate Institute  
Roslyn High School

**1986**

Clarence Central High School  
Binghamton High School  
Albany High School  
Mount Vernon High School  
Jamaica High School  
George W. Hewlett High School

**1985**

Pittsford Mendon High School  
Union-Endicott High School  
South Colonie High School  
Harrison High School  
Martin Van Buren High School  
Brentwood High School

**1984**

R. L. Thomas  
Fayetteville-Manlius High School  
Colonie High School  
Harrison High School  
The Ramaz School  
Bay Shore High School

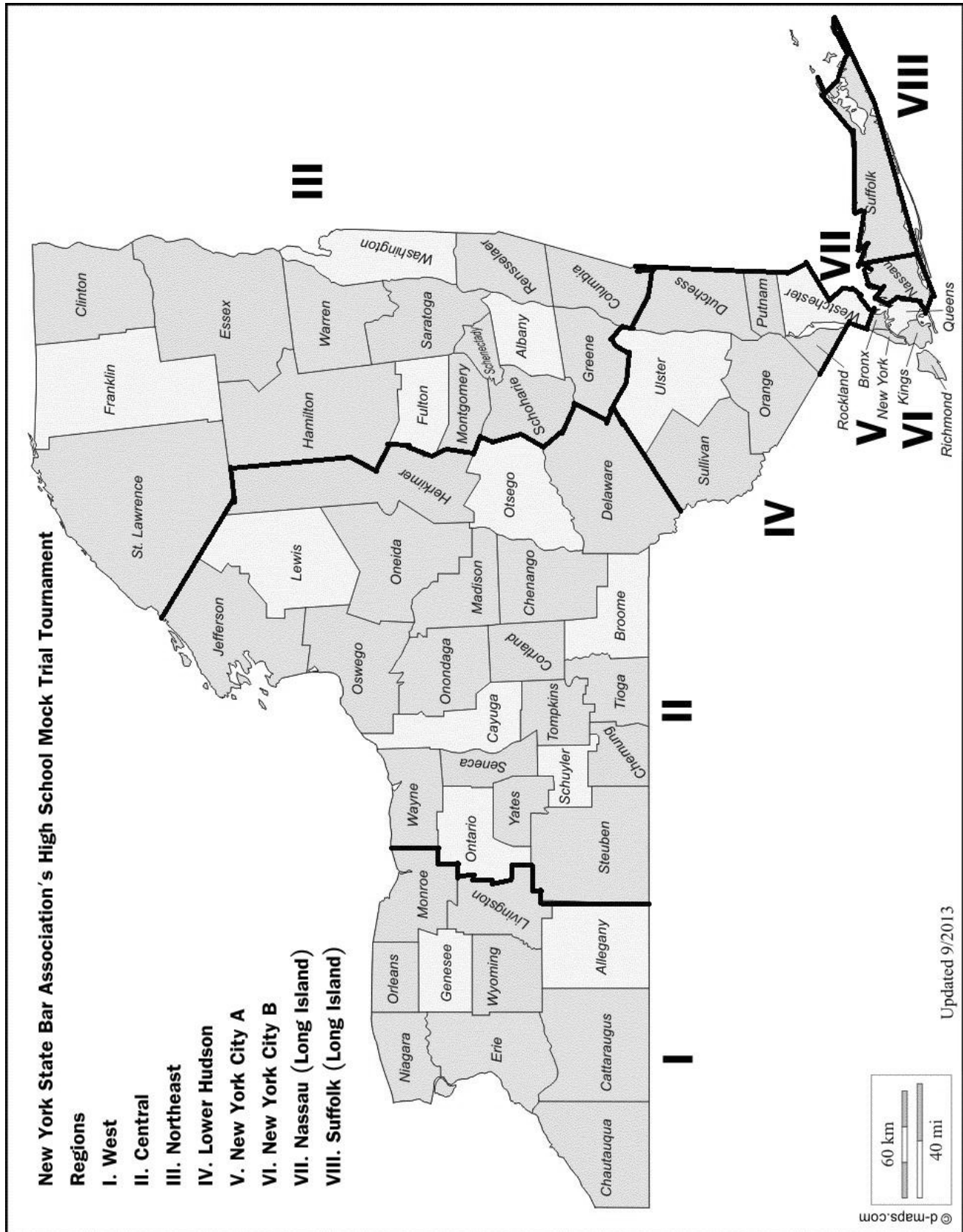
**1983**

Pittsford Mendon High School  
Union-Endicott High School  
Keveny Memorial Academy  
Ossining High School  
The Ramaz School  
Half Hollow Hills High School—West

**1982**

Fairport High School  
Maine-Endwell High School  
Cohoes High School  
North Rockland High School  
Jamaica High School  
Hewlett High School

## REGIONAL MAP OF THE NEW YORK STATE BAR ASSOCIATION'S HIGH SCHOOL MOCK TRIAL TOURNAMENT



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## **SOCIAL MEDIA**



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*Law, Youth and Citizenship*

**[www.lycny.org](http://www.lycny.org)**

## **YOUTH COURT...IS IT FOR YOU?**

- *Do you wish to practice your courtroom skills in more “real life” situations?*
- *Would you like to be an agent of change in another young person’s life?*
- *Do you want to be part of the solution?*
- *Would you like to work closely with attorneys, judges, and law enforcement officials as you further your legal and civic education?*
- *Would you like to work with like-minded students that are both passionate about the law as well as interested in providing positive peer pressure for those most at risk?*

If you answered yes to any of the questions above, then you should become a Youth Court member.

If your school or community doesn’t have a Youth Court, let us help! The New York State Bar Association’s Law, Youth & Citizenship (LYC) Department and the Association of New York State Youth Courts (ANYSYC) can assist in providing resources and training materials to start a Youth Court in your school or community. With assistance from ANYSYC and LYC and support from your community, you can get a Youth Court started too.

For a list of New York State Youth Courts and more information regarding Youth Courts, please visit:

[www.nysyouthcourts.org](http://www.nysyouthcourts.org)



