

NEW YORK STATE BAR ASSOCIATION  
2020 NYS HIGH SCHOOL MOCK TRIAL TOURNAMENT

**“United States v. Phoenix Jones”**

**CORRECTION MEMO #1 – Issued January 16, 2020**

**PLEASE READ THIS IMPORTANT INFORMATION...**

Print this Correction Memo and keep it with your case materials for reference. Go to the website [www.nysba.org/org/mtcase](http://www.nysba.org/org/mtcase) and print all revised pages and any new materials being added to the case. Replace the current pages in your booklet with the newly revised versions. **Revised pages are identified with Page Number-Revision Number and Date of Revision (for example: page 38 becomes 38-R1 (1.16.2020)).** Revisions on affected pages are indicated by **BOLD AND UNDERLINE**.

DOCUMENT	CORRECTIONS	OLD PAGE	NEW PAGE
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	➤ Exhibit Facial Recognition Photos (revised 1.16.2020)	103-104	103-R1 – 104-R1

**IMPORTANT!!**

**Several new items were added to the materials in Correction Memo #1. Rather than repaginating, these items are being provided as handouts instead of inserted with the rest of the materials. Please download them from the website at [www.nysba.org/mtcase](http://www.nysba.org/mtcase). They are as follows:**

1. Response to Subpoena of Scotty Carson (new 1.16.2020)
2. Exhibit – Google Search History on Phoenix Jones’ Computer (new 1.16.2020)
3. Exhibit – Emery Rose Storage Unit Sales Receipt (new 1.16.2020)
4. Exhibit – Emery Rose CoinDomain Receipt (new 1.16.2020)
5. Exhibit – Denver Department of Public Safety Report (new 1.16.2020)
6. Exhibit – Square Sapphire Men’s Ring (new 1.16.2020)
7. Exhibit – Tag Heuer Monaco Steve McQueen Men’s Watch (new 1.16.2020)
8. Exhibit – Phoenix Jones Computer Sales Receipt (new 1.16.2020)



PLEASE REFER TO CORRECTION MEMO #1 FOR IMPORTANT INFORMATION. DOWNLOAD THE CORRECTION MEMO AND REVISED MATERIALS AT [WWW.NYSBA.ORG/MTCASE](http://WWW.NYSBA.ORG/MTCASE) CHANGES TO THE CASE ARE IN **AND UNDERLINED**, AND REVISED PAGES HAVE BEEN RENUMBERED WITH “R-1” AND THE DATE.

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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. WITNESSEXAMINATION

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

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

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

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

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

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

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

Objections:

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

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

Objection:

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

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

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

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

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

Objection:

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

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

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

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

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

*"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 **a statement made** outside the courtroom. The hearsay rule applies to both written as well as spoken statements. If a statement is hearsay and no exceptions to the rule are applicable, then upon an appropriate objection by opposing counsel, the statement will be inadmissible.

**REASONS FOR EXCLUDING HEARSAY:** The reason for excluding hearsay evidence from a trial is that the opposing party was denied the opportunity to cross-examine the declarant about the statement. The declarant is the person who made the out-of-court statement. The opposing party had no chance to test the declarant's perception (how well did she observe the event she purported to describe), 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.

Revised 1.16.2020 (just added the "-a" to Rule 402 below

**Rule 402-a: 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.*

NEW (1.16.2020)

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

**Example:**

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

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

**Example:**

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

**Rule 404: BUSINESS RECORDS.** A judge may admit a memorandum, report, record, or data compilation concerning an event or act, provided that the record was made at or near the time of the act by a person with knowledge and that the record is kept in the regular course of business. The rationale for this exception is that this type of evidence is particularly reliable because of the

regularity with which business records are kept, their use and importance in the business and the incentive of employees to keep accurate records or risk being reprimanded by the employer.

Example:

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

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

Example:

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

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

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

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

*Dr. G, plaintiff's expert witness, is being cross-examined by defendant's counsel. During the cross-examination Dr. G is shown a volume of a treatise on cardiac surgery, which is the subject of Dr. G's testimony. Dr. G is asked if 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.*

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

Example:

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

## 6. OPINION AND EXPERT TESTIMONY

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

Example:

(General Opinion)

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

*Note: This question is objectionable because the witness lacks personal perceptions as to the conflict in the Middle*

*East and any conclusions regarding this issue would require specialized knowledge.*

Objection:

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

Example:

(Lack of Personal Knowledge)

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

Objection:

*“Objection. The witness has no personal knowledge that would enable him/her 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 a n 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 factfinder (a judge or a jury) beyond a reasonable doubt of the person’s guilt of that crime. (Source: NY Criminal Jury Instructions).

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

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

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## LIST OF STIPULATIONS

1. All witness statements are deemed sworn or affirmed, and duly notarized.
2. All items of evidence are originals and eligible for use during the match, following proper procedure for identification and submission.
3. Any enactment of this case is conducted after the named dates in the Case Summary and the witness affidavits. (Please note that the Case Summary is provided solely for the convenience of the participants in the Mock Trial Tournament. Said summary itself does not constitute evidence and may not be introduced at the trial or used for impeachment purposes).
4. All *Payton* (445 U.S. 573; 63 L. Ed2d 639), *Mapp* (367 U.S. 643), *Dunaway* (442 U.S. 200; 60 L. Ed2d 824) and other evidentiary suppression issues have been resolved and in favor of the government.
5. If the person playing the role of Phoenix Jones is female, Cameron Clark must testify, if asked, that the suspicious person who entered the pawn shop was female. If the person playing the role of Phoenix Jones is male, Cameron Clark must testify, if asked, that the suspicious person who entered the pawn shop was male.
6. Cameron Clark’s identification of Phoenix Jones is limited to the statements made in his/her affidavit.
7. Each photograph in the facial recognition exhibit is of a person who resembles Phoenix Jones.
8. The Chicago police report and the Denver police report are documents that are kept in the ordinary course of business.
9. The Tag Heuer Monaco Steve McQueen watch and the Norval Square Sapphire men’s ring are both engraved with the initials “CNR”.
10. The Tag Heuer Monaco Steve McQueen watch is a special edition that has an alarm.
11. The pictures of the watches and the rings are deemed the actual items, and each exhibit may be offered into evidence as the actual watch and ring.
12. 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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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

**Holding a Criminal Term  
Grand Jury Sworn in on September 2, 2019**

**UNITED STATES OF AMERICA**

Case No. **19-cr-00123**

v.

Violation: **18 U.S.C. §371  
(Conspiracy)**

**PHOENIX JONES**

**INDICTMENT**

Assigned to: Judge Greenberg, Horace  
Assign Date: October 4, 2019  
Description: INDICTMENT

**COUNT ONE**

THE GRAND JURY OF THE WESTERN DISTRICT OF NEW YORK, by this indictment, accuses PHOENIX JONES of the crime of CONSPIRACY, in violation of 18 U.S.C. §371 (1988), to receive and to sell stolen goods in violation of 18 U.S.C. §2315 (1988) as follows:

The defendant, acting in concert with others, from on or about or before June 1, 2019 to on or about August 22, 2019, in the Western District of New York, with intent that conduct, prohibited by 8 U.S.C. §371, be committed, did willfully and knowingly agree with others, both known and unknown, to engage in and cause the performance of such conduct, to wit: conspiracy to receive and sell stolen goods.

**PREAMBLE**

From on or about or before June 1, 2019 to on or about August 22, 2019, it was the purpose of this conspiracy to engage in the receipt and the sale of stolen goods, said stolen goods having been obtained through transactions over the Internet and having been transported across state lines.

The defendant PHOENIX JONES, along with unindicted co-conspirator, known as Big Tom Clark, participated in a scheme to obtain stolen goods that were transported across state lines and to sell said stolen goods from a pawn shop owned by Big Tom Clark.

The defendant PHOENIX JONES and unindicted co-conspirator, Big Tom Clark, knew that the goods, which were transported across state lines, were stolen goods.

## OVERT ACTS

In furtherance of the conspiracy and to affect the objects thereof, from on or about or before June 1, 2019 to on or about August 22, 2019, the following overt acts, among others, were committed:

1: From on or about or before June 1, 2019 to on or about August 22, 2019, the defendant PHOENIX JONES purchased stolen goods from unnamed persons over the Internet and caused said stolen goods to be transported across state lines to the State of New York.

2: From on or about or before June 1, 2019 to on or about August 22, 2019, the defendant PHOENIX JONES caused said stolen goods to be transported to a pawn shop owned by unindicted co-conspirator Big Tom Clark for resale. Unindicted co-conspirator Big Tom Clark knew that the goods were stolen.

3: The defendant PHOENIX JONES and unindicted co-conspirator Big Tom Clark shared in the proceeds from the resale of the stolen goods.

**(18 U.S.C. §371 - Conspiracy)**

A TRUE BILL

FOREPERSON

**Scotty Carson**

Scotty Carson  
Attorney of the United States in  
and for the Western District of New York

## **AFFIDAVIT OF INVESTIGATOR MORGAN THORNBERRY**

1. My name is Morgan Thornberry. I am an investigator in the U.S. Attorney's Office for the Western District of New York. I am 52 years old and have been with the Department of Justice for the past twenty years. I reside in Chemung, New York.
2. I am a 1989 graduate of Allegany State College with a bachelor's degree in Criminal Justice. Right after graduation, I underwent the six-month training at the Chemung Police Academy and became a police officer for the Chemung Police Department in 1990.
3. I was promoted to detective in 1996 and was assigned to the property crimes unit. We would investigate burglaries, home invasions, shoplifting, snatch and grabs, and all other incidents involving theft of property. We recovered all kinds of stolen property and did our best to return the property to the rightful owner. These thieves, who prey upon vulnerable people, are some of the worst human beings alive, and it gives me great pleasure to see them locked up and off the streets for as long as the law allows. I've always remembered a tongue-in-cheek comment by an instructor at the academy, who happened to be a retired police chief, who said something along the lines that there may not be enough evidence to prove the suspect committed the alleged crime, but s/he had gotten away with other criminal offenses in the past, so prosecute the SOB anyway. I don't necessarily subscribe to that philosophy, but it is an intriguing concept.
4. In 1999, I got wind of an opening for an investigator in the U.S. Attorney's Office in the Chemung branch office. They were looking for someone with property crime investigatory skills to work in the emerging cybercrime unit. Since my skill set fit the bill, I applied and was hired right away. The Department of Justice noticed, that in 2006, with the explosion of commerce on the Internet, stolen property was also starting to be sold in an ever-increasing amount over the worldwide web. My job mostly centers on chasing down the criminal transportation of stolen goods in interstate commerce, so one of the first things I did was to establish a relationship with the package delivery services in the area, such as the U.S. Postal Service, DHL and UPS. I requested that they call me if they ever received suspicious packages at their facilities. I have received many calls over the years. Most of the calls were false alarms. Some of the calls, however, were fruitful, and resulted in the imposition of criminal charges, and subsequently, in convictions. I remember that, in 2009, there was a large shipment of counterfeit Air Jordans that would have hit the streets if we did not intercept it. The Air Jordan counterfeiters were convicted and received lengthy sentences. In 2013, I investigated the suspected sale of stolen iPhones, iPads, MS Surfaces, and other high-end computer devices. These perps were caught red-handed, and they all pled guilty.
5. When I got the call from the postal inspector on August 22, 2019 that a suspicious package had been

received at their airport shipping facility for an Emery Rose, my team and I, which included an explosives expert, rushed right over. The postal inspector's interest was piqued because a ticking sound was emanating from the box that had a Chicago postmark stamp. Before opening the box, my expert used sophisticated bomb-detection equipment and determined that the box was safe to open. I proceeded to open the box and, lo and behold, we found a treasure trove of stolen goods. There were many high-priced items, such as a Rolex watch, a video game console, several iPhone Xs, an authentic Louis Vuitton Odeon handbag, a Norval square sapphire men's ring, gold earrings, a pearl necklace and many other very expensive goods. All the items appeared to be used, which suggested that they were stolen. In fact, the ticking sound was the alarm of an Omega Tag Heuer Monaco Steve McQueen men's watch worth approximately \$4,000. Good thing the owner had set the alarm!

6. I re-taped the box and allowed the postal service to deliver it to the virtual mailbox of this Emery Rose at the Ted-Rex Dinko's location on Community Drive in Chemung. I suspected Emery Rose was a fake name, and I subsequently determined that the name was fake, because if it was not, I would have found him/her by now.
7. I followed the postal truck as it delivered the box to Ted-Rex Dinko's. After the Ted-Rex Dinko's clerk accepted the package, I identified myself as a federal agent and asked the clerk whether she knew Emery Rose. She said no. I then asked her to pull Emery Rose's records so that I could get whatever information was on file. She said that she could not do that, and that I would need to talk to the store manager. The store manager was out of town on vacation and not reachable, so I just decided to wait around the store to see whether Emery Rose would come to claim the box. I told the clerk that this was a federal matter and that she should not tell the person picking up the package that I was a federal agent, or that I had inquired about the package.
8. I waited in the store for approximately forty-five minutes and was about to leave when a person came into the store, identified himself/herself as a Rover driver, gave the clerk a code and asked for the Emery Rose package. Rover is a ride-hailing service like Uber and Lyft. Apparently, the Rover driver had instructions from Emery Rose to provide a passcode in order to pick up the package. I allowed the Rover driver to take the box, and I followed him/her surreptitiously. The Rover driver delivered the package to Big Tom's Reseller on Central Avenue, one of the largest pawnshops in Chemung. After the Rover driver (Blair Overland) gave the box to the counter clerk (Cameron Clark), I showed my federal badge and asked the Rover driver to tell me who Emery Rose was. S/he said that s/he did not personally know Emery Rose, had never seen Emery Rose, and was just delivering the package as ordered by his/her dispatcher.

9. I then asked Cameron Clark whether s/he knew this Emery Rose. S/he said that s/he did not know Emery Rose and did not believe s/he had ever seen him/her. I asked him/her about the owner of the pawn shop, Big Tom Clark. S/he said that Big Tom was his/her uncle. Clark said that Big Tom had suffered a massive stroke in early August 2019, was in a deep coma and was not expected to emerge from the coma any time soon. I told Clark to call me if anyone s/he does not know comes into the shop asking about the Emery Rose package and asking for Big Tom. I gave Clark one of my business cards and told him/her to make sure the surveillance cameras inside and outside the shop are working properly every day. I also gave the Rover driver my business card and told him/her to call me if Emery Rose ever contacts him/her. I took the box of stolen goods and left the pawn shop.
10. On September 12, 2019, I received a call from Clark informing me that someone using the name Emery had just come into the shop and asked for Big Tom. Clark said s/he told the person that Big Tom was going to be away from the shop for a while. Clark then said s the person looked distressed upon hearing the news about Big Tom, dropped several F-bombs about Big Tom, and quickly left the shop without saying anything else.
11. I immediately went to the pawn shop to get a copy of the surveillance video. I'm pretty sure Emery Rose had come to inquire about his/her share of the proceeds from the sale of the stolen goods being that s/he would not have heard from Big Tom since early August.
12. I took the video clip to our crime lab in Buffalo so that I could run the images through the National Crime Information Center's (NCIC's) database. The clip was a bit grainy, but usable. I used sophisticated facial recognition technology on the video clip and produced a report showing ten possible matches. I am a trained facial recognition technologist. In 2005, I received eight weeks of training at the FBI facility in Quantico, Virginia on facial recognition technology and earned a certificate recognizing me as an expert in facial recognition technology. Since 2005, I have prepared approximately thirty facial recognition reports. None of my reports have been rejected by the courts. In the thirty cases where my reports were used, all of the defendants were convicted. In the Jones case, five of the ten suspects were quickly eliminated because they were in jail or prison at the time the August 22<sup>nd</sup> package of stolen goods were being shipped. We learned that three of the remaining five were out of town during the time period in question and had been away for some time. Now, I admit that the whereabouts of the ninth person is unknown. However, I have no reason to suspect the ninth person was involved because all indications are that Phoenix Jones is the perp. There is no doubt in my mind that Jones is the chief suspect.
13. On the morning of September 16, 2019, I took a photograph of Phoenix Jones to the pawn shop and asked

Clark whether s/he recognized the person. At first, Clark was a bit equivocal, but after pressing Clark to look a little harder at the photo, s/he finally stated that the person in the photo appears to be the person who had come into the shop asking for Big Tom. That was good enough for me. I believe I showed Clark the facial recognition report and s/he recognized Phoenix Jones in the array.

14. I arrested Phoenix Jones in the afternoon of September 16<sup>th</sup> on the federal charge of conspiring with others (18 U.S.C. §371) to receive and sell stolen goods that were conveyed through interstate commerce (18 U.S.C. §2315). Jones' photo was in the federal crime database because of an arrest for, and his/her indictment on, an assault charge when s/he was 18 years old. Although the charge was dismissed as a result of the victim's refusal to testify, Jones' photo remained in the database for inexplicable reasons. Lucky for us!
15. When Phoenix Jones was arrested in his/her one-room apartment, we found \$7,500 stuffed in a duffel bag underneath his/her bed. I had to search the bag because it could have contained a weapon that would have put me and the other agents in danger. The suppression court agreed with me that the search was lawful. Jones' claim that the money was stuffed between the mattress and box spring is just made up. These criminals will say anything to escape responsibility. Besides, \$7,500 is a lot of money for someone who is not working full-time. I don't believe Jones' part-time job as a web developer would generate that kind of money in the few months since s/he moved out of his/her parents' house. I'm sure the money is from the sale of stolen goods. Moreover, I would bet dollars to donuts that the rest of the money Jones received from his/her little criminal enterprise is tied up in cryptocurrency, and consequently, hidden.
16. When we are investigating cases, we look at everything that will assist in the prosecution of a defendant. We often look at the social media of persons who might have a connection with the suspect. When we looked at the FaceSpace page of Jones' mother, we saw something very interesting. On the public portion of her FaceSpace page, she had information about a deceased family member. It showed that Jones' mother had a younger brother named Emerald Rose who was born on February 15, 1980 and passed away in January 1983, just before his third birthday. That is the same date of birth on the Rover Car Service account of Emery Rose (aka Phoenix Jones). So, this perp stole his/her uncle's identity to aid in the commission of this crime. How disgusting is that?! It's probably true that someone else could have easily stolen Emerald Rose's identity since it was up on FaceSpace, but I'm pretty sure Jones did it.
17. During my interview with Blair Overland, the Rover driver, I learned that the creator of the Rover Account used one of those pre-paid VEZA cards where you don't need to provide an address or real phone number. All transactions are over the Internet, and the card can be replenished anonymously by using non-banking services like Q-Pal.

18. On September 23, 2019, Cameron Clark visited my office and gave me a notebook that belonged to Big Tom. The notebook contains a long list of very expensive items. There was an indication that some of the items were sold and the amount each one had been sold for. There is also a column showing how much “Emery Rose” (aka Phoenix Jones) had received as his/her share for each item. It looks like Phoenix Jones was getting about 45% of each sale. I noticed that the list was started on June 1, 2019 – about one month after Phoenix Jones had moved to the boarding house. Clark was unable to locate the unsold items, except for the men’s Omega wristwatch and the 3-carat diamond ring engraved with the number “85”. I took possession of the two items. I never threatened Clark that the pawn shop would be closed if s/he did not cooperate in the investigation, but I did make it clear to him/her that good citizens cooperate with law enforcement. I did warn him/her that someone in his/her position could be prosecuted for possessing stolen property.
19. Cameron Clark also gave me what appears to be an e-mail receipt, dated July 5, 2019, showing the purchase of two Bytecoins. I checked on Google and found that one Bytecoin in July 2019 was selling for about \$3,200.00. Clark said s/he found the receipt in the same desk drawer where Big Tom’s notebook was discovered. The receipt was made out to Emery Rose. Near the bottom of the receipt was a hand-written note that said: “Big Tom, Just bought more Bytecoins so that I can pull down more hot stuff from the web. You should get into cryptocurrency. Expect another shipment soon. Emery.” The word “hot” means “stolen” in gangster parlance. If you look closely at the hand-written name “Emery,” you will notice that someone, let’s say Phoenix Jones, started to write the letter “P” and then apparently caught himself/herself by writing over the “P” with the name “Emery.” Another slip up by PJ?! The \$6,400.00 that Phoenix Jones paid for the two Bytecoins is about equal to the amount of the proceeds s/he received from Big Tom between June 1<sup>st</sup> and July 1<sup>st</sup>. I checked with the e-mail domain provider GoodMail.com to get information about this Emery Rose. All of the information that they had on file was bogus. GoodMail appears to be one of those ISPs that does not verify the signup information. I suspect that whenever Phoenix Jones would access the Internet to commit his/her crimes, s/he would use a non-logging VPN. When we checked the Internet activity of Emery Rose using the IP address, supposedly belonging to Rose, that we had obtained from GoodMail.com, the IP address was reported to be somewhere out in the South Pacific. That SOB Jones was trying to cover his/her tracks!
20. My boss, Scotty Carson, US Attorney for WNY, sent a subpoena to CoinDomain, where the Bytecoins were purchased, to get information about Emery Rose. CoinDomain responded to the subpoena by providing the dates Emery Rose purchased the cryptocurrencies and the dates on which trades were made. CoinDomain had no other information about this Emery Rose.

21. I had confiscated Phoenix Jones' desktop computer on the day s/he was arrested and, after examining the computer, I did not find a VPN account on it. But checking Jones' Google search history, I found something very interesting. On June 15, 2019, Jones did a search on what a used iPhone X would cost. If you take a look at Big Tom's notebook, you will see that Big Tom received a used iPhone X from Emery Rose on June 21st. The Google search history also shows that on June 15<sup>th</sup> Jones sought information on the value of a Bytecoin. Two days later (June 17<sup>th</sup>), Emery Rose bought two Bytecoins. The high-tech guru Jones forgot to clear his/her Google search history. The suppression court judge redacted some entries in the Google history because they were purely personal and not relevant to this prosecution.
22. When searching Jones' room following the arrest, I noticed a receipt for a laptop computer purchased on May 15, 2019. I'm pretty sure Jones used the laptop to do his/her criminal activities, which would explain why, except for the used iPhone X and the Bytecoin searches, there is no other proof of criminal activity on his/her desktop. I directed Jones to give me the laptop. S/he claims, without proof, that the laptop was stolen from him/her on August 20, 2019 when s/he left it on a table at Sawbucks Coffeehouse to go visit the restroom. How convenient! S/he said s/he did not report the theft to the police, nor complain to Sawbucks' personnel. The laptop is probably stashed away in storage somewhere. I checked all of the storage facilities near Jones' boarding house and found that Storage-R-U's at 3245 Main Street in Chemung had an account for Emery Rose that was opened on May 8, 2019, one week after Phoenix Jones moved to the boarding house. The storage facility records show that the account was closed on September 13, 2019, one day after Jones learned that Big Tom was ill and would not be returning to the pawn shop any time soon. The counter clerk at Storage-R-U's who set up the account for Emery Rose was fired about three weeks ago on suspicion of stealing property from some of the storage units. The manager of the facility does not know the current whereabouts of the former clerk and suspects he might have moved out to California to become a beach bum. Rose's address on the sales receipt is fake. The address is for an abandoned building about half a mile from Jones' boarding house. I'm sure the laptop is in storage under another assumed name Jones may be using.
23. I accessed the NCIC database again to determine whether the two items I got from Cameron Clark on September 23<sup>rd</sup> had ever been reported stolen. Needless to say, I was elated when I came across a Chicago police report showing that the Omega watch, the 3-carat diamond ring and a Gucci Handbag with the bamboo handles were stolen in that city from a vehicle on June 6, 2019. The Gucci handbag is on Big Tom's list of suspected stolen items, having been received by Big Tom on July 25, 2019. It appears that Big Tom sold the handbag on July 29<sup>th</sup>. Unfortunately, I recently learned that the victim of the

Chicago theft, a Ms. Victoria Thomas, was involved in a horrific accident on the Dan Ryan Expressway in Chicago and is deceased. I was hoping to reach her through the Chicago Police Department, and that is when I was informed of her demise. I also checked on the status of the items in the August 22<sup>nd</sup> shipment. The only hits I received on the NCIC system was from the Denver Department of Public Safety. The Tag Heuer Monaco Steve McQueen watch (approx. value \$4,000.00) and the Norval square sapphire men's ring (approx. value \$2,400.00) were both engraved with the initials "CNR." The items were positively identified as belonging to an elderly Colorado citizen. The eighty-eight-year-old gentleman is too ill to travel to New York to testify in the trial of this matter.

24. The evidence of Phoenix Jones' guilt is overwhelming: the identity theft of his/her deceased uncle Emerald Rose so that s/he could engage in this criminal scheme; no visible means of support; found in possession of \$7,500; when shown a photo of Phoenix Jones, the pawn shop clerk (Clark) believes the person inquiring about Big Tom was Jones; the pawn shop is located on Central Avenue, only a few blocks away from the boarding house at 1010 Main Street where Jones resides; Big Tom's notebook showing very expensive items being sold, and someone named Emery Rose (who we believe to be Phoenix Jones) getting a percentage of each sale; the Google search history of June 15<sup>th</sup> found on Jones' desktop computer; an entry in Big Tom's notebook shows that Emery Rose, on July 29, 2019, received \$6,825 for the 24-carat gold MacBook Pro computer and \$675 for the Gucci handbag, for a total of \$7,500, the exact amount of money found in Jones' duffel bag; Jones has the computer skills to pull off this scheme; Jones is very knowledgeable about cryptocurrency and the dark web; the receipt from the cryptocurrency broker CoinDomain to Emery Rose showing a recent purchase of Bytecoins; these new-age criminals are using cryptocurrency to hide their web transactions because it is virtually impossible to trace; although Jones had gained lots of money from his/her criminal enterprise, s/he continued to live modestly for now so as to not draw unwanted attention to himself/herself; Jones became the prime suspect after facial recognition biometrics identified him/her as one of ten persons of interest, and eight of the ten were quickly eliminated for one reason or another; and although the whereabouts of person #9 is unknown, there is no evidence that the ninth person was involved in any way, shape or form; no one by the name Emery Rose resides in Chemung or in a nearby town; and the name Emery Rose first surfaced just one week after Jones moved to the boarding house as evident by the Storage-R-U's sales receipt. It's clear that Phoenix Jones is Emery Rose. No doubt in my mind.
25. The facial recognition probability of the five individuals, who were in prison or jail, being the person in the video was in the 45% to 55% range. The three persons who were out of town were in the 65% to 80% range. The person whose whereabouts is unknown clocked in at 96%. Although Phoenix Jones was at 95%,

s/he was well within the margin of error and, given all the other circumstantial evidence of his/her guilt, I knew s/he was the right perp.

26. I interviewed the Rover driver, Blair Overland, on October 1<sup>st</sup> and s/he told me about the heated conversation in June 2019 between Big Tom and a person in a hoodie. Overland said that Big Tom referred to the person using the nickname PJ. Most likely, their argument involved a dispute over payment of Jones' share of the proceeds of stolen property from a shipment Jones thought had already been delivered. Phoenix Jones had probably gone to see Big Tom because s/he had not heard from him about what was going on with that shipment. I would guess that maybe Jones thought that s/he was being stiffed. When the package was finally delivered by Overland, Jones, or should I say PJ, was then apparently satisfied that Big Tom was not cheating him/her. Overland's claim that the person arguing with Big Tom did not look like Jones is just the Rover driver trying to protect his/her job. It's probably safe to say that the Rover company would not want to be involved in assisting a criminal enterprise.

27. Well, that Dr. Kaden Keller is a real piece of work. After learning that s/he might be a witness for Jones, I did some checking and found that s/he was once accused of trying to buy Quaaludes over the Internet. S/he got snared in a sting operation run by our old technology crime unit. The good professor claimed s/he was just doing "research." Yeah, right! His/her attorney managed to get the charge dropped, but I don't believe s/he was some little innocent academic researcher. Now the professor has a vendetta against the agency. We should have prosecuted his/her butt to the hilt! Our expert witness, Professor Thompson, is absolutely right about cryptocurrency. It is not easy tracking down perpetrators of illicit schemes when they use cryptocurrency due in large part to the secrecy afforded to this new age currency. That's why sophisticated criminals are resorting more and more to the use of cryptocurrency. Professor Keller is trying to help this very undeserving defendant, while taking a cheap shot at us.

28. According to the latest FBI stats, nearly \$1.4 billion worth of jewelry and precious metals were stolen in 2016. I'm pretty sure much more will be shown to have been stolen in 2019 once the statistics come out. I'm also sure that our computer whiz kid, Phoenix Jones, contributed to the 2019 stats. Jones will be convicted and will spend a lot of time, not on the dark web, but in a dark prison cell.

Under the pains and penalties of perjury, I affirm the veracity of this statement.

Dated: Chemung, New York  
October 8, 2019

*Morgan Thornberry*  
Morgan Thornberry

## AFFIDAVIT OF CAMERON CLARK

1. My name is Cameron Clark. I am 19 years old and live with my parents at 822 Woodhill Lane in Chemung, New York. I graduated from Chemung High School in May 2018 and plan to attend Chautauqua County Community College within the next year or two. I want to study computer engineering and hope to work in data science after I graduate.
2. In September 2018, I began working as a clerk at Big Tom’s Reseller, a pawn shop business at 1559 Central Avenue in Chemung. Tom Clark, the owner of the shop, is my uncle. My uncle hired me to work a few hours, Monday through Saturday, to give him time to get lunch and run errands. I’m saving my earnings to pay for college tuition and expenses. I hope to save enough money so that I don’t have to take out student loans when I start college.
3. Big Tom’s Reseller is a high-volume business with lots of customers buying and selling all kinds of merchandise. It’s not unusual for ride-hailing services like Rover to deliver items to the shop for regular customers. My uncle trained me to be efficient, professional, and not to ask customers a lot of questions. He said people are busy and don’t want us prying into their business.
4. Big Tom suffered a massive stroke in early August 2019 and is in a deep coma. After Big Tom’s stroke, I started working full-time. This was the only way that my uncle’s shop could stay in business. My parents occasionally help me at lunchtime so that I can have a break.
5. On August 22, 2019, a Rover driver came to the shop, followed shortly after by someone who I thought was just a customer. The Rover driver said, “This package from Emery Rose is for Big Tom.” I told the driver that Big Tom wasn’t available, but I would accept the package for him. While the Rover driver was still in the shop, the person who I thought was a customer approached me and the driver, identified himself/herself as Investigator Morgan Thornberry, a federal agent, and asked, “Who is Emery Rose and where does s/he reside?” The Rover driver said s/he does not know Rose and was just delivering a package as requested by the dispatch office. I told Investigator Thornberry that I didn’t personally know an Emery Rose and had no information about Rose. I also explained that Big Tom had suffered a massive stroke and that he was in a coma and was not expected to return to work anytime soon.

6. Investigator Thornberry confiscated the package and gave me and the Rover driver his/her card. Investigator Thornberry told me to call him/her immediately if anyone I did not know came into the shop asking for Big Tom. He/she also asked me to make sure that the surveillance cameras, both inside and outside the shop, were functioning properly. Thornberry made it clear that s/he expected me to cooperate in the investigation; otherwise, s/he would see to it that the pawn shop was shut down on suspicion of receiving stolen goods. I desperately need this job to support myself and my educational goals. There are not a lot of employment opportunities in Chemung, and I certainly don't want to go to prison so I told Inspector Thornberry that I would make sure the surveillance cameras were working properly and would fully cooperate in the investigation in every way possible.
7. On September 12, 2019, a person who I did not recognize entered the shop and asked for Big Tom. I said, "Who should I say is asking for him?" The person said "Emery." I then told Emery that Big Tom was ill and that I wasn't sure when he would be back at work. Emery, who was wearing a sleeveless hoodie that exposed only his/her face, looked very distressed upon hearing the news, dropped a couple of F-bombs about Big Tom (and quickly left the shop.
8. Immediately after this encounter, I called Investigator Thornberry to report that a suspicious person using the name Emery had entered the shop and asked for Big Tom. I also mentioned that the person looked troubled and abruptly left after learning that Big Tom wasn't expected back for some time. About a half hour after I called, Investigator Thornberry came to the shop. I gave him/her the video footage of the suspicious person.
9. Sometime later – I believe it was September 16, 2019 – Investigator Thornberry returned to the shop and showed me a picture. S/he asked whether the person in the picture looked like the person claiming to be Emery. I was hesitant to say one way or the other. After Thornberry pressed me a little bit, I finally said that the person in the photo could very well be this Emery, but that I could not be absolutely sure. Thornberry then told me that the real name of the person in the photo was Phoenix Jones. Thornberry also showed me what s/he called a facial recognition report, and the only person I even slightly recognized was Phoenix Jones. 10. I now recall that Big Tom, on a few occasions, complained about a person named Emery who was

doing things that could get both Big Tom and Emery in trouble with the law. One Saturday afternoon in mid-June, Big Tom, during one of his musings out loud, stated that most of the items Emery was bringing to him were stolen. He told me not to repeat that to anybody. Big Tom also told me that “Emery” was not the person’s real name, telling me that shady people like Emery don’t use their own names. Big Tom said, “I don’t know Emery’s real name and his/her nickname.” He never told me Emery’s real name out of concern for me. Big Tom wouldn’t want to see me get into any trouble.

13. Prior to September 12<sup>th</sup>, I don’t believe Emery Rose, or whatever his/her real name is, was ever in the shop when I was there. Before his stroke, Big Tom gave me a general description of Emery’s appearance. The description could fit Phoenix Jones, but it also could fit the description of hundreds of other people in Chemung. Anyway, if I had to bet, my gut tells me that Phoenix Jones is Emery Rose.
14. After my September 16<sup>th</sup> meeting with Investigator Thornberry, I started snooping around the shop. I found a notebook in a drawer in Big Tom’s desk; the desk is in the back office. I also found in the desk drawer, an email receipt showing the purchase of some Bytecoins by this Emery Rose. The notebook contains a long list of very expensive items. Some of the items had indications that they had been sold and the amount each one had been sold for. There is also a column showing how much this Emery Rose had received for each item sold. The only items appearing on the list as unsold that I was able to locate were the men’s Omega wristwatch and the 3-carat diamond ring, engraved with the number “85.” I suspect that Big Tom kept the other unsold items of in a special location because those items were not in the regular inventory. I’m sorry my uncle ever got involved with Phoenix Jones.
15. At the bottom of the Bytecoin receipt, there was a hand-written note to Big Tom. I don’t remember what the note said, but at the end of the hand-written note was the name “Emery.” The pawn shop was probably closed one day when Emery stopped by and s/he left the receipt bearing the note for Big Tom in the locked mailbox slot in the front door. Big Tom is the only person who had the key to the locked mailbox until I took over the shop in early August.

16. On September 23, 2019, I went to the U.S. Attorney’s Chemung branch office and gave the notebook, the Bytecoin receipt, the Omega wristwatch and the diamond ring to Investigator Thornberry. S/he noticed that the list was started on June 1, 2019, about one month after Phoenix Jones had moved to the boarding house.

I affirm the veracity of the foregoing statement.

Dated: Chemung, New York  
October 25, 2019

Cameron Clark  
Cameron Clark

## AFFIDAVIT OF PROF. JULES THOMPSON

1. My name is Jules Thompson. I am 50 years old and reside in Glencoe, Illinois, a suburban village just north of Chicago. I am a business professor at the University of Chicago.
  
2. I received my B.A. in Economics *magna cum laude* from the University of Wisconsin-Madison in 1991. Between 1991 and 1993, I attended Northwestern University where I received a masters in business administration. I then went on to the University of California at Berkley, where in 1997, I received a Ph.D. in Business, with a concentration in information systems management. I started teaching at the University of Chicago in September 1998 and became a tenured professor in 2008.
  
3. I have authored numerous peer-reviewed articles in professional business journals and books on such topics as e-commerce, business technology, management systems and the economics of business. In 2005, I co-authored a textbook, along with a University of Pennsylvania colleague, entitled *Introduction to Business Management Systems*. The textbook, which went through four editions, was widely used by business schools for more than ten years. In 2010, I wrote an article for the University of Chicago's *Business Journal* entitled Cybersecurity: What Business Information Systems Must Do to Guard Against Hacking. I have lectured on numerous occasions in the United States and in European countries on hacking and cybersecurity. Some of the lectures have appeared on C-Span. I have testified in at least ten court proceedings about hacking and the harm caused to business systems as a result of such attacks. My fee is \$300 per hour for out-of-court preparation and \$500 per hour for in-court testimony. I charge governmental entities half my usual rate. For my services in this case, I expect to bill the federal government approximately \$1,100 (4 hours preparation and 2 hours in court) plus travel and lodging.
  
4. As it relates to this criminal matter, I wrote a scholarly treatise for the trade magazine, *Business Outsider*, entitled Cryptocurrency: The Future of Money or the Rise of New Criminality. In the article, which was published in July 2017, I described how cryptocurrency, like Bytecoin, is increasingly being used in legitimate commercial transactions, but warned that the criminal element is using the technology for nefarious purposes.
  
5. Criminals, including drug dealers, pornographers and thieves, have started to use cryptocurrency and the Silk Road (aka the dark web) to shield their identities. The secrecy provided by cryptocurrency is not a difficult concept to understand. In my "crypto for dummies" explanation of cryptocurrency, I start by stating that cryptocurrency, like Bitcoin, is simply a digital currency. You cannot hold a Bitcoin

or a Bytecoin in your hand. Rather, it exists as a series of zeroes and ones on computer servers. There are approximately 15 million Bytecoins, the cryptocurrency allegedly used by Phoenix Jones in committing his/her crime, currently in circulation. I believe the maximum number of Bytecoins that can exist is 20 million. So, there are only 5 million more that can be created or “mined.” Mining is how you enter the cryptocurrency ecosystem. It is not for the faint of heart and requires significant computer skills and computer power to accomplish the task. Miners who wish to acquire Bytecoins must solve a complex mathematical problem (referred to as “proof of work”), which allows them to chain together a block of transactions known as the blockchain.

6. In short, the Bytecoin blockchain is simply a shared public ledger showing all the transactions made on the Bytecoin network. Before a new transaction can be made, all nodes on the network must agree to the transaction and confirm it. Confirmation allows the miner’s Bytecoin “wallet” to calculate the miner’s spendable balance for future transactions. Note that the wallet does not actually contain the amount of Bytecoins the miner owns. Rather, the wallet is computer code that stores encrypted public and private keys that can be used to calculate the amount of Bytecoins the owner has. The keys are also used to make new transactions. So, while transactions in the blockchain are visible, personal information about the users is limited to their encrypted digital username. Consequently, the key, so to speak, to cryptocurrency’s anonymity is the wallet. That’s all you need to know about cryptocurrencies like Bytecoin.
  
7. I don’t believe Phoenix Jones got his/her Bytecoins by mining. Jones may have superior computing skills, but mining requires specialized high-end computing equipment and an enormous amount of electricity. I suspect Jones did not have the necessary technology to do mining, and I’m pretty sure that the electrical panel at his/her old boarding house could not handle the amount of electricity required for mining. More likely than not, Jones bought his/her Bytecoins from a cryptocurrency broker like CoinDomain or CryptoLyte.
  
8. When combining cryptocurrency with the dark web, you have a witch’s cauldron of criminality. With the secrecy and anonymity, drug dealers can move narcotics around the world, pornographers are able to trade their filth to each other, and thieves can sell their ill-gotten goods to sometimes unwitting buyers. From what I have learned about this case, it appears that Phoenix Jones engaged in an elaborate scheme to fence stolen goods. S/he used Bytecoins, as I described, to purchase the goods from sellers on the dark web. Pursuant to the scheme, the dark web sellers would send the goods through the regular mail to Emery Rose at his/her mailbox address at Ted-Rex Dinko’s. Emery Rose,

or should I say Phoenix Jones, would arrange to have Rover, a ride-hailing service, pick up the package and deliver it to Big Tom’s Reseller. Investigator Thornberry believed that the business arrangement between Phoenix Jones and Big Tom was that Big Tom would sell the items and they would split the proceeds 55/45, with the higher percentage going to Big Tom. There is very little government oversight and regulation of these pawn shops. The business model for these types of shops almost encourages this kind of criminality.

9. In preparing to testify, I reviewed Investigator Morgan Thornberry’s entire file of this matter. I also discussed the case with said investigator. I was not told what to say, but only to give my expert opinion and to testify truthfully so that the court could understand how cryptocurrency can be used by criminals. The scheme Phoenix Jones concocted with Big Tom, together with the use of Bytecoins, provided enough anonymity to Jones and shielded him/her from detection for a long time. It was the suspicion of a postal inspector, after hearing a sound emanating from the box addressed to Emery Rose, that started the process of identifying Jones as the architect of this criminal enterprise. Who knows how long Jones’ criminality would have continued if the postal inspector’s suspicion had not been aroused? If the investigators cannot find all the money Jones obtained as a result of his/her illegal activity, it may be that s/he has secreted the ill-gotten proceeds in cryptocurrency.
  
10. I was a victim of this type of criminality. Two years ago, I was asked by the London School of Economics to be a visiting professor for one year. My spouse, my two kids and I, relocated to London for that year. The subdivision in Glencoe where I reside is a fairly wealthy, upper middle-class area and is a prime target for thieves. Well, needless to say, my house was burglarized approximately six months after our move to London. We were devastated. All our family heirlooms, jewelry, paintings, TVs, computers and other electronic devices were taken. Insurance compensated us for only a small part of our losses. I’m sure many of our stolen items were sold on the dark web and probably bought and resold by Phoenix Jones. I have no proof of that, but it angers me greatly that there is this possibility that Jones could have been involved in the sale of property stolen from my home. I will go wherever, and do whatever, to get these miscreants like Phoenix Jones off the street and locked up for a long, long time.

**I affirm the veracity of the foregoing statement.**

Dated: Chicago, Illinois  
November 8, 2019

Jules Thompson  
Prof. Jules Thompson

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**AFFIDAVIT OF PHOENIX JONES**

1. My name is Phoenix Jones and I am 20 years old. Until May 2019, I resided with my parents at 534 South Percy Street, Chemung, New York. I now reside in an inexpensive boarding house at 1010 Main Street in the central district of Chemung. This one-room apartment is all I can afford given my limited financial resources. I was in school at Chemung State College until the Spring semester of the academic year 2018-2019, when I dropped out. I was a sophomore at the time and about to declare my major in Computer Science. However, the academic requirements to get a BA degree were just so uninspiring and unchallenging that I decided to call it quits. Who needs all that English Lit. and world history and geography and civics?! – O-M-G! –I just wanted to do computer programming and web development. I am really good at that. However, I did like my Economics 201-Macroeconomic course. The professor, Ms./Ms. Kaden Keller, is very cool and understands me. Anyway, my parents always said that if I was not in school or working, I could not live at home. I moved out on May 1, 2019, so here I am in my four-cornered room.
2. To cover my expenses until I can find a job, I started to sell or pawn a lot of my personal property. Some of the items were in my room, and the rest were in storage in a facility further up Main Street. I don't remember the exact address. I gave the storage facility clerk my name, but I don't believe he wrote it down. I believe I then gave him \$120.00 for a six-month rental and he gave me a locker number. That clerk looked a little shady and probably pocketed the money. Anyway, I sold some items like computer accessories and components on eBay. I pawned the rest of the items so that I could get money right away. I'm still looking for employment.
3. I pawned items at a lot of pawn shops around the city. I don't remember ever going to Big Tom's Reseller, but I could have. I now know it is located on Central Avenue, just a few blocks from my boarding house. If someone said I was there once or twice, then maybe I was. I just don't have any present recollection of ever going to Big Tom's. Anyway, there is no requirement that I go to Big Tom's Reseller just because it is near where I live.
4. So, one day – I believe it was September 16, 2019 – I was in my room, and I heard a loud bang on my door. Someone on the other side identified himself/herself as a federal officer and demanded that I open the door. I was frightened, but, reluctantly, I opened the door. S/he showed me his/her badge and said that his/her name was Morgan Thornberry. Thornberry started asking me

questions about an Emery Rose. I told him/her that I did not know an Emery Rose, but that I have a deceased maternal uncle named Emerald Rose. My mother's maiden name is Emily Rose. Thornberry then asked me whether I ever went by the name Emery Rose. I said no and asked him/her, rhetorically, "Why would I need to use that name?" Thornberry then proceeded to tell me that Emery Rose is a suspect in a conspiracy to possess and sell expensive stolen property. The officer further stated that all indications are that I, Phoenix Jones, have gone by the name Emery Rose. I then told Thornberry that I was not answering any more questions and that I plan to talk to a lawyer. Thornberry proceeded to place me under arrest, and I was taken down to the federal lockup for processing. My parents posted bail on September 17, 2019, and I was released.

5. My parents hired the law firm, Eager Beavers, PLLC to represent me. The lawyers explained the government's case against me. Through what my lawyers referred to as pre-trial discovery, they learned that the Feds have been investigating, all over the country, the rash of thefts in the homes and offices of very wealthy people and the transportation of this stolen property across state lines by use of the dark web. As the investigation relates to me, the lawyers said that a postal inspector alerted Thornberry that a suspicious package had been received at the post office's airport mailing facility. After opening the box, Thornberry suspected that the items contained therein were stolen. Thornberry allowed the package to be delivered to Emery Rose at a Ted-Rex Dinko's in Chemung. A Rover driver arrived at Ted-Rex Dinko's to retrieve the package and delivered it to Big Tom's.
6. My lawyers informed me that Thornberry asked the Rover driver to provide him/her any information the Rover driver had on Emery Rose. The Rover driver told Thornberry that s/he never met, or even talked to, Emery Rose. The driver said that s/he was just following instructions from the dispatcher to deliver the package to Big Tom's Reseller. Anyway, I have never used Rover. I use Uber or Lyft.
7. My lawyers told me that Thornberry also asked the counter clerk at Big Tom's about the whereabouts of Big Tom. The clerk told Thornberry that Big Tom had suffered a stroke and was in a coma. Thornberry asked the clerk about Emery Rose, and the clerk told Thornberry that s/he did not personally know Emery Rose and has no information about Rose. My lawyers learned that the counter clerk began snooping around the pawn shop after his/her first encounter with Thornberry and found a notebook containing a long list of expensive items, and the amount for which Big Tom had sold each item. The notebook also referred to someone called Emery Rose

and noted the share of the proceeds Emery Rose received for each sale. My lawyers and I agree that it is purely coincidental that Big Tom started this notebook list about one month after I moved to the boarding house. So what?!

8. The government’s theory of the case, according to my lawyers, is that I, using the name Emery Rose, bought stolen items over the dark web from unsavory characters, using the cryptocurrency Bytecoin, to shield my identity. I once bought some Bytecoins from a cryptocurrency broker when I was in college just to learn how cryptocurrency works. In fact, I wrote a paper in my Econ 201 class about the benefits and the hazards of cryptocurrency. The paper was well-written – even if I do say so myself – and I even received an A on the paper from Prof. Keller. You can say I know a lot about cryptocurrency.
9. During the brief time that I owned Bytecoins, I did buy some items over the Internet. I don’t believe I ever bought anything over the dark web. I could have, but I just do not remember. That counter clerk at the pawn shop also found what Thornberry claims is a receipt of a Bytecoin purchase that I supposedly made. I have never seen this receipt. My lawyers, who have seen this document, said that the e-mail receipt is made out to Emery Rose. So, it has nothing to do with me. Anyway, I warned in my paper that the dark web is a dangerous place to do business because identities are shielded and the criminal elements that occupy that space cannot be trusted. People on the dark web use fake names like Emery Rose to deceive other people. The adage that “There is no honor among thieves” is true.
10. Thornberry has no proof that I have ever gone by the name Emery Rose. The claim that I stole my Uncle Emerald Rose’s identity is ludicrous and insulting. Emerald passed away before his third birthday. My mother, who was five years older than Emerald, was devastated. I would never do anything that would cause more suffering for my mother. So what if Emery Rose and my uncle Emerald have the same birthdate of February 15, 1980?! Anyway, my mom, on what would have been Uncle Emerald’s 35<sup>th</sup> birthday (February 15, 2015), posted information about him on the public section of her FaceSpace page. I tried to talk her out of doing this, but she did it anyway. So, anyone looking to steal Emerald’s identity could have obtained information about Emerald from my mom’s FaceSpace page and/or from other public records.
11. This whole ordeal has me very upset, going back to how I was so-called “identified” as Emery

Rose. My lawyers tell me that someone in a hoodie entered Big Tom’s pawn shop about three weeks after the suspected package was delivered and asked to speak to Big Tom. I admit that I own several hoodies. I don’t know anyone my age that does not own a hoodie. According to my lawyers, the counter clerk told this person, who said his/her name is Emery, that Big Tom was not there and that s/he was uncertain when Big Tom would return to the shop. The person did not say anything else and left. Thornberry had told the counter clerk that if anyone suspicious came to the pawn shop asking for Big Tom, the clerk was to call Thornberry immediately. Thornberry went to the shop and got a copy of the surveillance video. Thornberry’s crime lab, using facial recognition technology, identified ten persons as possible matches to the person who entered the pawn shop. I was one of the ten because my mug shot was on file as a result of an incident from when I was eighteen years old. I got into a fight with a person at GameStop who pushed me off the game I was trying out and was otherwise being very obnoxious. I went outside, found an empty beer bottle, went back inside and let the bully have it across the head. The bully was a bloody mess! I was arrested for assault, was fingerprinted, and stood for a mugshot. The charge was subsequently dropped because the bully was too embarrassed to proceed and preferred to just have the matter go away. My public defender, who I am sure is very busy with many other cases, had not gotten around to having the record sealed. That’s why my mug shot was still in the system.

12. It’s shameful that Thornberry is using the counter clerk at Big Tom’s Reseller to frame me. S/he threatened the clerk that the pawn shop would be closed and that the clerk would be prosecuted on suspicion of possessing stolen goods if the clerk was unwilling to state that I was Emery Rose. The poor clerk is scared to death and will say anything Thornberry wants him/her to say. This has been nothing but a sham investigation from the start.
13. According to my lawyers, Thornberry determined that five of the ten possible matches were in jail or prison during the time period in question. Three of the remaining five were out of town and had been for some time. The whereabouts of the ninth person was unknown. So, Thornberry makes the incredible conclusion that I am Emery Rose and the perpetrator of this elaborate criminal enterprise. Give me a break! My lawyers said that the facial recognition probability of the ninth person being the one in the video is 96%. I am only at 95%. What is the deal with Thornberry?! With that ninth person still out there and unaccounted for, my lawyers believe that

trying to prove my guilt beyond a reasonable doubt will be really tough.

14. I am a very good computer programmer and web developer. In addition to selling my personal items, I support myself by designing websites for small businesses located in the county. I don't make a lot of money, but I get by. I am paid in cash and off the books. When Thornberry searched my room following my arrest, s/he found \$7,500 I had hidden under my mattress. I don't trust banks! Thornberry claimed that the money was in a duffel bag under my bed. S/he asserted at the suppression hearing that the duffel bag had to be searched for weapons that could be used against the officers. The suppression court believed the lying investigator and allowed the money to be used against me. Thornberry, by lying about the location of the money, shows what kind of corrupt cop s/he is.
15. My lawyers wondered why I live in a crappy one-room apartment when I had \$7,500 and could afford a nicer place. Thornberry suggests that I have chosen to stay in the boarding house to avoid drawing attention to myself as I go about engaging in the alleged criminal activity. That is all untrue. I could not afford to move out of my small room at the time. The \$7,500 was to last me for a while until I was able to get full-time employment. Now that Thornberry has my money, I am really stuck here.
16. Thornberry tries to make a big deal about the \$7,500. It appears that one of the entries in Big Tom's notebook is a payment to Emery Rose on July 29, 2019 in the amount of \$6,825 for a 24-carat gold MacBook Pro computer. Another entry on that date is for a Gucci handbag that sold for \$675, for a total of \$7,500. So, what if that is the same amount of money I had stuffed under my mattress? Thornberry's claim that I am Emery Rose, is a ridiculous assertion and completely without basis.
17. The money was really from my eBay/pawn shop transactions and my web development activities. You know, I don't want to identify all the businesses for which I did web development. They should not be dragged into this mess. I can tell you I did work for businesses like Carol's Cut and Curl over in Elmira and Bob's Bistro off US 86 in Horsehead. I had every intention of paying state and federal taxes on the money I received for my web development, and if I didn't, it would be an IRS/state tax matter, not a case of conspiracy to receive and sell stolen property, for heaven's sake!

18. I have no knowledge about this alleged criminal matter, except what my lawyers learned from the pre-trial discovery motions they filed. I do know that I am not Emery Rose and that there is insufficient proof that I was involved in any scheme to receive stolen property. The fact that some Rover driver overheard pawn shop owner, Big Tom, refer to a customer by the nickname PJ has nothing to do with me. There are a lot of people with the nickname PJ, such as Pat Johnson, Perry Joseph, Parker Jackson, etc. Why is Thornberry targeting me? S/he was probably under heavy pressure to solve this case and crafted this false narrative. It's bad enough that Thornberry confiscated my desktop computer but trying to manufacture a case by pointing to two Google searches I may have made is beyond the pale. I needed to get a cell phone and I was looking at a used iPhone X. Why pay \$1,300 for a new one when an old one works just as well?! Also, thousands of people, every day, I bet, do Google searches on Bytecoin. Are they all involved in criminal activity? And so what if I go on FaceSpace a couple of times a day? I like to see what my mom is posting about our family and friends. As far as I am concerned, Thornberry did not find any suspicious activity on my desktop. I wish my laptop had not been stolen back in August. If I had it now, I would be able to prove that I am not Emery Rose and that I was not involved in any scheme to buy and sell stolen goods. I did not report the theft of my laptop because I do not like dealing with cops. Also, I did not want to involve the Sawbucks' employees because it was my stupidity in leaving the laptop unattended that led to the theft. Besides, it was just one of those cheap Chromebooks that sells for only a couple hundred dollars. Anyway, it does not appear to matter to Thornberry whether a person is guilty or not, and I just happen to be the convenient scapegoat. When this whole thing blows up in his/her face, s/he should be fired for this misguided prosecution.

I affirm the veracity of the foregoing statement.

Dated: Chemung, New York  
October 18, 2019

Phoenix Jones  
Phoenix Jones

## AFFIDAVIT OF BLAIR OVERLAND

1. My name is Blair Overland. I am 29 years old and reside at 259 Niagara Street in Chemung, New York.
2. I graduated from East Stroudsburch University with a bachelor's degree in Sociology 7 years ago. Right after college, I got married and just one year later, we welcomed our first child. Two years after that, we had a second child. While nothing makes me happier than my family, and I would do anything for them, money can get pretty tight around here, so I have always had a full-time job and a side hustle.
3. Right now, I work as a residential aide in a group home from 11 p.m. until 7 a.m. I make \$17.50 per hour, plus family health insurance coverage. I chose the graveyard shift because I was told there would be a lot of opportunity for overtime, but that really hasn't materialized.
4. I thought about driving for one of those larger, nationally known ride-hailing services, but because of some youthful indiscretions and a DUI conviction ten years ago, I did not pass their screening procedures. Then Rover contacted me. Rover is a smaller, franchise-based ride-hailing service with a more forgiving attitude towards its employees' past indiscretions. I drive for Rover during the busiest hours for ride-hailing, and along with premium pricing, I get some primo tips!
5. One of my favorite runs is for Rover's customer, Emery Rose, who has one of those virtual mailbox addresses at Ted-Rex Dinko's, just outside of town. I have never met Emery, but I frequently get a gig to pick up packages at Ted-Rex Dinko's and take them to Big Tom's Reseller, a large pawn shop on Central Avenue in Chemung. As far as I know, Emery texts a passcode to my dispatcher, who then sends me to Ted-Rex Dinko's. I've probably delivered seven or eight packages for Emery Rose from Ted-Rex Dinko's to Big Tom's, starting in early June 2019 through August 2019. I just get the package and take it where I am told. I am paid immediately, usually with a very large tip, once I arrive at Big Tom's. All payments, including tips to Rover drivers are, of course, by credit/debit card and made electronically.
6. To tell you the truth, Big Tom's Reseller is more of a pawn shop than one of those second-hand stores you see all over the place. Let's just say it's not a very high-end retail establishment with a polished staff and classy customers. In fact, I remember one day in late June 2019 – probably June

21<sup>st</sup> if my memory serves me correctly – when I observed Big Tom arguing fiercely with a customer who was wearing a sleeveless hoodie covering his/her entire head and ears. They were both standing at the far end of the counter, away from the door. I didn't want to interrupt, and it's never a good idea to stare at people you don't know; so I just went up to the end of the counter closest to the door and informed Big Tom that I had a package for him from Emery Rose. Big Tom yelled, "It's about time! See PJ, I told you there was nothing to worry about. Without saying goodbye, this PJ quickly left the shop, nearly bumping into me as s/he was leaving.

7. On August 22, 2019, we got another hail from Emery to pick up a package at Ted-Rex Dinko's for delivery to Big Tom's. On route to Big Tom's, I thought I saw someone following me, but to be honest, I didn't think much about it. However, once I got to the pawn shop, I noticed that the driver of the other vehicle followed me in. I told the clerk that I had a package from Emery for Big Tom. The clerk said Big Tom wasn't there, but s/he would sign off on the package for him. The creepy person who was following me then demanded to know who Emery Rose was and where Rose lived. I told him/her I don't know – I'm just the delivery driver. The lout then flashed his/her federal ID badge, which identified him/her as Investigator Morgan Thornberry. S/he gave me a business card and told me to call him/her if I could ascertain anything about Emery Rose's identity. Reluctantly, I said sure, but there's no way I am going to be accusing or involving Rover customers in crimes, especially such a good tipper as Emery.
8. I was nosing around the Rover office on September 30, 2019 and just happened to come across Emery Rose's customer account file. It appears that Emery used one of those pre-paid VEZA cards to pay for his/her Rover transactions. I've bought these type of pre-paid credit cards over the years for my nieces and nephews as gifts. It does not take much to set up and maintain these cards. You can probably use any name you want when registering the card.
9. In late September 2019, Investigator Thornberry called to invite me down to the U.S. Attorney's branch office in Chemung for a brief interview. On October 1, 2019, I met with Thornberry at his/her office. I told Thornberry about Emery Rose's Rover account and about the pre-paid VEZA credit card used to maintain the account. During my interview, I mentioned the altercation I observed between Big Tom and the person he called PJ. Thornberry thanked me for the information and said that the government lawyers handling this case will likely subpoena Rover for the customer account-information log.

10. I really don't know anything more about this case beyond what I have already stated. During the October 1<sup>st</sup> interview with Thornberry, s/he showed me a picture of Phoenix Jones. I really did not get a good look at the person arguing with Big Tom back in late June because of the hoodie s/he was wearing, but I can say that the person Big Tom referred to as PJ appeared to have the same facial features as Phoenix Jones. Thornberry was pushing me for more information, but I told him/her that the statement by Big Tom is all I know. Anyway, if I am pressed, I would have to say that the person talking to Big Tom was probably not Jones. Several days before my interview with Thornberry, I was chatting with a co-worker, and he was saying that it is not a good idea for me and the company to be involved, knowingly or unknowingly, in the transportation of stolen goods. He said that people could get fired and/or go to jail. I agree with my co-worker on that point. Besides, I cannot afford to lose this job, and I certainly do not want to go to jail. I have to look out for numero uno, which is moi.
  
11. I was subpoenaed by the defense to appear at trial and to testify, and I am not happy about losing my beauty rest time or the money from my side hustle. I have mouths to feed, you know!?

I affirm the veracity of the foregoing statement.

Dated: Chemung, New York  
November 1, 2019

Blair Overland  
Blair Overland

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## AFFIDAVIT OF PROF. KADEN KELLER

1. My name is Kaden Keller. I am 53 years old and reside at 2020 Civics Circle in Chemung, New York. I am an economics professor at Chemung State College.
2. I received a bachelor of arts degree in Political Science from the State University of New York at Stony Brook in 1988. In 1991, I earned a masters in business administration from SUNY at Binghamton. I received a Ph.D in economics from SUNY at Buffalo in 1995. In August 1996, I was hired by Chemung State as an assistant professor. In 2003, I was promoted to an associate professorship with full tenure.
3. Although I do some research, I prefer to just teach, especially freshman and sophomore students. Many of them are very bright and inquisitive, and the semesters just fly by. I have written several books, the latest entitled *Political Economy: How and Why Countries Fail* (Univ. at Buffalo Press, 2003). I have written many articles in scholarly journals on topics such as GDP, business trends, economic development and mass marketing over the Internet. I have also testified in numerous personal injury cases on the issue of economic loss. This is my first time testifying in a criminal trial. I ordinarily charge a fee when I testify. However, in this case, I am testifying in support of one of my former students and will not charge a fee.
4. Phoenix Jones was a student in my Economic 201-Macroeconomic course in the Fall semester of the academic year 2018-2019. PJ, as we fondly called him/her, was one of those bright and inquisitive students that made teaching easy. I was exceedingly disappointed when I learned s/he had dropped out of school. When s/he was in my class, I was able to engage PJ on a high level and challenge him/her intellectually. The other instructors, with their humdrum approach to teaching, failed to reach PJ at the level s/he required and demanded.
5. I discussed this case with the defense attorneys prior to preparing this affidavit. The attorneys did not assist me in the drafting of the affidavit, nor suggested what points I might want to make. While I might be, more or less, a character witness, I was nevertheless intrigued by the prosecution's apparent misunderstanding of the so-called "secrecy" afforded to cryptocurrency.

6. PJ has excellent computer skills and an exceptional grasp on the full potential of the Internet. I don't doubt s/he could carry out the scheme that Investigator Thornberry has accused him/her of doing, but I am confident s/he did not. Don't ask me how I know s/he did not do this crime; it is just based on a feeling. For the required writing assignment in my Econ 201 course, PJ wrote a paper on Cryptocurrency and the dark web, and s/he demonstrated a great understanding of the theoretical and practical underpinnings of the two technologies, and their interrelationship in criminality. PJ believed that cryptocurrency provides a level of security and anonymity that is, for all practical purposes, impenetrable.
  
7. I disagreed with PJ regarding the level of anonymity provided by cryptocurrency, but s/he received an "A" on the paper, nevertheless. Bytecoin transactions are what I call "pseudo-anonymous." Anybody using Bytecoin can be tracked down by examining the person's public address information and Internet Protocol (IP) address that are recorded with the transaction in the blockchain that is visible to everyone. A person looking for more anonymity may be able to use a VPN (virtual private network) to complete the transaction but will run the risk of not having the transaction confirmed by all the nodes on the Bytecoin network, and the transaction will fail. So, with a little ingenuity and less sloppiness, the investigators could discover these perpetrators who use cryptocurrency and easily put an end to this kind of dark web criminal activity.
  
8. Those pinhead, ivory tower elitists like Professor Thompson think they know everything about everything. I know a lot about cryptocurrency and the dark web and could teach the good Chicago professor a thing or two about these topics. For the professor to travel this far to testify for what is relatively a minor criminal case suggests to me that s/he has an axe to grind. I don't think the prosecution is getting its (crypto-) money's worth with Professor Thompson.
  
9. I was once accused, or should I say falsely accused, of having committed a crime using the Internet. In 2004, I was an associate professor and was doing research on how illegal drugs were starting to be sold on the worldwide web. While at home one night, I went to this one suspicious site and put in a fake name, a fake address and a fake credit card number along with an order for Quaaludes. I did not plan to hit the order button since I just want to see how far along one could get. I then got a phone call and left my computer. My then five-year old precocious son was playing with the

computer mouse and hit the button placing the order. When I got back to my computer, I saw what had happened and admonished him. I didn't think much of it since all the information was fake. Well, two days later, federal agents, in the early morning hours, broke down my door, terrorized my family, arrested me for attempted drug possession and took my computer with all my important research. That drug website turned out to be a government operation, and the agents used my IP address to track me down. The criminal charge was subsequently dropped after my attorney was able to convince those knuckleheads that I was simply engaging in academic research. The whole ordeal, however, was extremely traumatic for me and my family, and we are still suffering psychologically from it to this day. I also believe the agents' improper conduct delayed me in receiving a full professorship by at least a year and a half. I recognize Morgan Thornberry as one of the abusive agents involved in my illegal arrest. His/her actions and the actions of the other agents are unforgiveable.

10. PJ is really a great person. Although I have not seen PJ since the time s/he was in my Econ 201 class, and while I don't know what s/he has been up to since that time, I, nevertheless, don't believe s/he would resort to this kind of criminal activity. I have since learned that s/he may have fallen on hard times since moving out of his/her parents' home, and tough times often cause some people to make bad decisions. However, when PJ was in my class, I spoke to him/her often and s/he never said anything that would lead me to believe that s/he did not have a high moral character. This criminal charge should be dropped.

**I affirm the veracity of the foregoing statement.**

Dated: Chemung, New York  
November 15, 2019

*Kaden Keller*  
Prof. Kaden Keller

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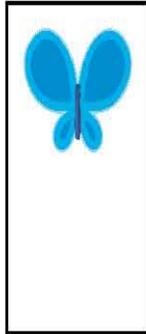
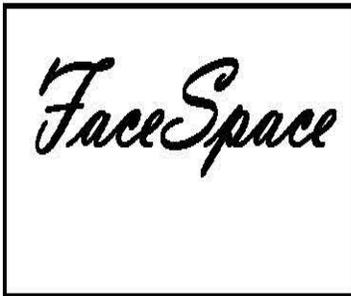
EXHIBIT \_\_\_\_\_

**BIG TOM'S RESELLER – NOTEBOOK**

<b>DATE RECEIVED</b>	<b>ITEM</b>	<b>SALE PRICE</b>	<b>DATE SOLD</b>	<b>Emery Rose's Share</b>
June 1, 2019	Men's Rolex Watch (used, mint condition; value \$5,000)	\$3,000	June 29, 2019	\$1,350
June 1, 2019	Tahitian Pearl Necklace (18 inches; value \$4,000)	\$2,500	June 14, 2019	\$1,125
June 8, 2019	Men's 14K Gold Bracelet (value \$2,500)	\$1,800	June 21, 2019	\$810
June 8, 2019	Video Game Console (good condition; value \$350)			
June 21 2019	Coach Pocketbook (fair condition; value \$200)	\$100	July 1, 2019	\$45
June 21, 2019	iPhone X (mint condition; value \$800)	\$500	June 24, 2019	\$225
June 21, 2019	Hermes Birkin Bag (tan, mint condition; value \$7,000)	\$5,000	July 5, 2019	\$2,250
July 1, 2019	Pearl Necklace (17-inch; value \$700)			
July 1, 2019	Diamond Earrings (2 carats, 1 each earring; value \$3,500)	\$2,800	July 15, 2019	\$1,260
July 10, 2019	Diamond Tennis Bracelet (excellent condition, value \$5,000)			

<b>DATE RECEIVED</b>	<b>ITEM</b>	<b>SALE PRICE</b>	<b>DATE SOLD</b>	<b>Emery Rose's Share</b>
July 10, 2019	Gold 24-carat MacBook Pro Computer (fair condition; value \$22,000)	\$16,700	July 29, 2019	\$6,825
July 17, 2019	Tiffany CT60 Men's Watch (excellent condition; value \$11,500)			
July 17, 2019	18K Ruby Studs Earrings (value \$8,000)	\$4,500	July 20, 2019	\$2,025
July 25, 2019	Men's Omega wristwatch (Black and Silver; vintage 1975; value \$6,000)			
July 25, 2019	Gucci Handbag (grey with bamboo handles; excellent condition; value \$3,000)	\$1,500	July 29, 2019	\$675
July 25, 2019	3-carat Diamond Ring (gold; engraved with "85"; value \$22,500)			

EXHIBIT \_\_\_\_\_



**EMILY ROSE JONES**

What are you thinking about today?

Finally had the courage to add my deceased sibling to my [Descendantsandme.com](http://Descendantsandme.com) family tree! Rest in peace, **EMERALD ROSE** born February 15, 1980, died January 13, 1983.

Posted: February 15, 2015

😊 approve

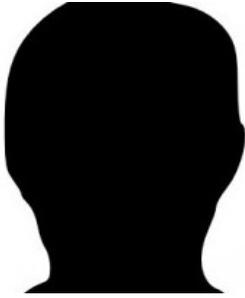
👍 say something

➦ Spread the word

😊👍 ♡ 58

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EXHIBIT \_\_\_\_\_



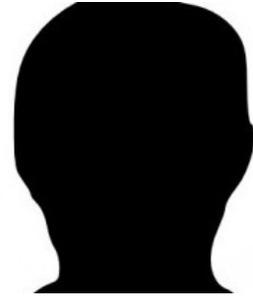
**Pat Williams**  
FR: 45%



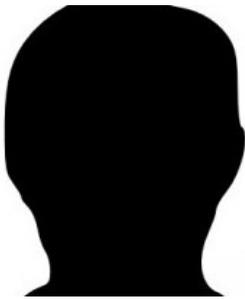
**Shawn Miller**  
FR: 47%



**Bobby Johnson**  
FR: 49%



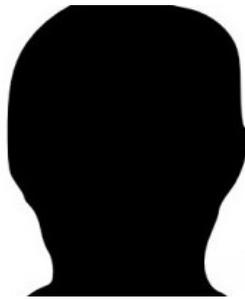
**Cary Thomas**  
FR: 51%



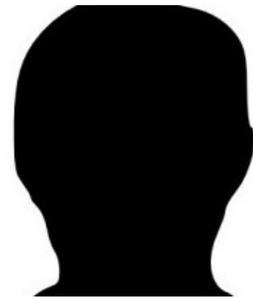
**Shelly Smith**  
FR: 53%



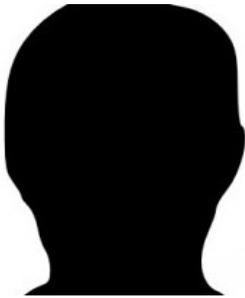
**Robin Roberts**  
FR: 55%



**Denver Bobson**  
FR: 65%



**Frankie Lane**  
FR: 73%



**Phoenix Jones**  
FR: 95%



**Clarke Taylor**  
FR: 96%

Legend: FR is “facial recognition percentage”

Prepared by: Morgan Thornberry, Investigator, U.S. Attorneys’ Office

FBI Crime Lab – Buffalo Regional Office

September 14, 2019

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# 2020 NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT MATERIALS

## United States v. Phoenix Jones



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

Supported by The New York Bar Foundation





Greetings Mock Trial Tournament Participants!

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

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

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

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

**FYI, the 2020 Mock Trial State Finals will be held in Albany on May 17-19.**

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Questions/Comments? Contact Kim Francis at [kfrancis@nysba.org](mailto:kfrancis@nysba.org)

Current Mock Trial Case Materials always available online at [www.nysba.org/mtcase](http://www.nysba.org/mtcase)

Information about the Mock Trial program is available online at [www.nysba.org/nysmocktrial](http://www.nysba.org/nysmocktrial)



PLEASE REFER TO CORRECTION MEMO #1 FOR IMPORTANT INFORMATION. DOWNLOAD THE CORRECTION MEMO AND REVISED MATERIALS AT [WWW.NYSBA.ORG/MTCASE](http://WWW.NYSBA.ORG/MTCASE) CHANGES TO THE CASE ARE IN **BOLD AND UNDERLINED**, AND REVISED PAGES HAVE BEEN RENUMBERED WITH “R-1” AND THE DATE.

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# New York State Bar Association

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

## LETTER FROM THE CHAIR

November 2019

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

Thank you for participating in the 2019-2020 New York State High School Mock Trial Tournament. The tournament is now entering its 38<sup>th</sup> 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 the 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 2018-2019 New York State Tournament Champion, *Fayetteville-Manlius High School*, who turned in a winning performance last May at the State Finals 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.

*In this criminal case, United States v Phoenix Jones, Phoenix Jones (PJ) is accused of purchasing allegedly stolen items over the Internet and using Bitcoin, the new cryptocurrency, as the payment source to shield his/her identity. The prosecution contends that PJ, while using a fake name, would have packages of stolen goods delivered to a company offering a virtual mailing address. PJ would then hire a ride-hailing service to deliver the packages to his/her collaborator, a pawn shop, where the stolen items would be put up for sale. A federal investigator became involved after receiving a call from a postal inspector that a suspicious package had arrived at an airport post office facility. After opening and examining the contents of the package, it was suspected that the items had been stolen and transported across state lines. The investigator later determined that PJ was the perpetrator of the scheme. PJ was then arrested and charged with the federal offense of conspiring with others (18 U.S.C. §371) to receive and sell stolen goods that were conveyed through interstate commerce (18 U.S.C. §2315).*

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.

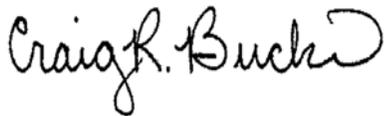
We remind the teams that all participants (students, teachers, attorneys, parents and all spectators) must conduct themselves with the utmost respect and civility toward the judge, before, during and after each round. If there is a circumstance in which any participant does not abide by this standard,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

The tournament finals will be held in Albany, Sunday, May 17 through Tuesday, May 19, 2020. 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 last 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.lycny.org](http://www.lycny.org) (click on the *NYS Mock Trial* tab).

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,



Craig R. Bucki, Esq.  
*Chair, Committee on Law, Youth and Citizenship*

**Subcommittee Members:**

Oliver C. Young, Esq., *Buffalo (Chair)*  
Craig R. Bucki, Esq., *Buffalo*  
Melissa Ryan Clark, Esq., *New York City*  
Matthew Coseo, Esq., *Ballston Spa*  
Christopher E. Czerwonka, Esq., *New Windsor*

Christine E. Daly, Esq., *Chappaqua*  
Eugenia Brennan Heslin, Esq., *Poughkeepsie*  
Seth F. Gilbertson, Esq., *Syracuse*  
Susan Katz Richman, Esq., *Hempstead*  
Lynn Boepple Su, Esq., *Old Tappan*

## 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. ABOUT STIPULATIONS

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

### 5. OUTSIDE MATERIALS

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

### 6. EXHIBITS

Students may introduce into evidence or use only the exhibits and documents provided in the Mock Trial Tournament materials. Students may not create their own charts, graphs or any other visual aids for use in the courtroom in presenting their case. **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. The restriction upon the use of electronic devices during an enactment by a person other than a timekeeper should not be construed to prevent a county coordinator or other authorized tournament official from authorizing the use of such a device as a reasonable accommodation for a participant with a disability, where such use is required to ensure the person’s full and equal participation in the tournament. 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.**

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

## 10. ROLE AND RESPONSIBILITY OF ATTORNEYS

- a. The attorney who makes the opening statement may not make the closing statement.
- b. 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.
- h. All witnesses are intended to be gender-neutral and can be played by any eligible student regardless of the student's sex or gender identity.

## 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 (the greatest number of wins and greatest point differential) during the regional tournament. The winning team from each region will qualify for the State Finals in Albany.
- e. The regional tournaments **MUST** be completed 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 of the same gender will share a room, with a maximum of four per room. Transportation costs are **not** covered. However, if a school can cover the additional costs for room and board for additional team members above the nine students, one teacher coach and one attorney-advisor sponsored through the Bar Foundation, all members of a team are welcome to attend the State Finals. However, requests to bring additional team members must be approved by the Mock Trial Program Manager in advance.

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

## 7. MCLE CREDIT FOR PARTICIPATING ATTORNEYS AND JUDGES

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

One (1) CLE credit hour may be earned for each 50 minutes of participation in a high school or college law competition. **A maximum of three (3) CLE credits** in skills may be earned for judging or coaching mock trial competitions **during any one reporting cycle**, i.e., within a two-year period<sup>1</sup>. **Newly admitted attorneys (less than 24 months) are NOT eligible for this type of CLE credit.**

The LYC Program will process all requests for CLE credit through the New York State Bar Association's Continuing Legal Education Department, an accredited provider of CLE approved by the New York State Continuing Legal Education Board. The procedure is as follows:

- a) The Mock Trial Program Manager will provide the County Coordinators with a copy of the Request for CLE Credit Verification Form<sup>2</sup> to disseminate to attorneys/judges participating in the mock trial tournament in their county.
- b) **Request for CLE Credit Verification Forms** must be signed by the attorney/judge and returned to the County Coordinator. The County Coordinator must return the signed copy to the Mock Trial Program Manager in Albany by mail, email or fax by June 1 for processing.
- c) MCLE certificates will be generated and sent by **email** to the attorney/judge requesting the credit. **MCLE credit cannot be provided without the signed Request for CLE Credit Verification Form.** The attorney/judge **MUST** provide a valid email address on the form. A copy of the Request for CLE Credit Verification Form follows and is also available online at [www.nysba.org/nysmocktrial](http://www.nysba.org/nysmocktrial).

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

<sup>2</sup> County Coordinators will begin disseminating this revised form to participating attorneys and judges during the 2018-2019 New York State Mock Trial tournament season.

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## New York State Bar Association High School Mock Trial Program

### Request for CLE Credit Verification Form

#### NEW YORK STATE MCLE RULES PERTAINING TO CLE CREDIT FOR MOCK TRIAL PARTICIPATION

One (1) CLE credit hour may be earned for each 50 minutes of participation in a high school or college law competition. (No additional credit may be earned for preparation time.) A maximum of three (3) CLE credits in skills may be earned for judging or coaching mock trial competitions during any one reporting cycle, i.e., within a two-year period. Newly admitted attorneys (less than 24 months) are NOT eligible for this type of CLE credit. Go to [www.nysba.org/mtclecredit](http://www.nysba.org/mtclecredit) for more information.

**IMPORTANT!** *You must complete this form to receive CLE credit. Completed forms should be returned to your County Coordinator or sent directly to the Mock Trial Program Manager at the NYS Bar Association for processing (form must be signed to be valid). Your CLE certificate will be emailed directly to you once it has been issued by the NYSBA, so be sure to include a valid email address below.*

Questions? Contact the NYS Bar Association's Mock Trial Program Manager, Kim Francis, at [kfrancis@nysba.org](mailto:kfrancis@nysba.org).

Are you a member of the New York State Bar Association?  Yes  No If Yes, what is your NYSBA member ID #? \_\_\_\_\_  
(if you do not know your NYSBA member ID #, leave blank)

PLEASE PRINT NEATLY

◆ Your Name: \_\_\_\_\_

◆ Home Address: \_\_\_\_\_  
Street City State Zip Code

◆ Name of Firm/Court : \_\_\_\_\_

◆ Work Address: \_\_\_\_\_  
Street City State Zip Code

◆ Primary Email Address (required): \_\_\_\_\_

*Your CLE Certificate will be sent to you by email, so please be sure to include your email address!*

**PLEASE NOTE:** New York State MCLE Rules pertaining to CLE credit for mock trial participation only allows a maximum of 3.0 credits per biennial registration cycle, even if you served in more than one county and/or on more than one date during the mock trial tournament season. You may review the Rules online at [www.nysba.org/mtclerules](http://www.nysba.org/mtclerules).

◆ County of Service where you Coached or Judged: \_\_\_\_\_

◆ Date of Service: \_\_\_\_\_ Hours of Service: \_\_\_\_\_

*By signing below, I certify that the information provided on this form is accurate.*

➤ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**THIS FORM IS NOT VALID WITHOUT YOUR SIGNATURE AND DATE!**

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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. WITNESSEXAMINATION

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

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

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

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

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

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

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

Objections:

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

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

Objection:

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

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

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

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

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

Objection:

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

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

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

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

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

*"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 **a statement made** outside the courtroom. The hearsay rule applies to both written as well as spoken statements. If a statement is hearsay and no exceptions to the rule are applicable, then upon an appropriate objection by opposing counsel, the statement will be inadmissible.

**REASONS FOR EXCLUDING HEARSAY:** The reason for excluding hearsay evidence from a trial is that the opposing party was denied the opportunity to cross-examine the declarant about the statement. The declarant is the person who made the out-of-court statement. The opposing party had no chance to test the declarant's perception (how well did she observe the event she purported to describe), 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.

Revised 1.16.2020 (just added the "-a" to Rule 402 below)

**Rule 402-a: 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.*

**NEW (1.16.2020)**

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

Example:

*Jane and Jill are charged with conspiracy to sell illegal drugs. During that alleged conspiracy, Jill approached an undercover police officer and said: "We have two kilos for sale. How much are you willing to pay?" At Jane's trial, the prosecution may try to get the officer's testimony of Jill's out-of-court statement admitted into evidence as an admission against a co-conspirator's interest. The court will admit this statement as an exception to hearsay if the prosecution has demonstrated that Jill was a co-conspirator and this statement was made in the course and in furtherance of the conspiracy. However, even if the court admits the evidence, the statements alone.*

**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.*

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

Example:

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

## 6. OPINION AND EXPERT TESTIMONY

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

Example:

(General Opinion)

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

*Note: This question is objectionable because the witness lacks personal perceptions as to the conflict in the Middle*

*East and any conclusions regarding this issue would require specialized knowledge.*

Objection:

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

Example:

(Lack of Personal Knowledge)

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

Objection:

*“Objection. The witness has no personal knowledge that would enable him/her 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 a n 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 factfinder (a judge or a jury) beyond a reasonable doubt of the person’s guilt of that crime. (Source: NY Criminal Jury Instructions).

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

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

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

**PART IV**

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## UNITED STATES v. PHOENIX JONES

### CASE SUMMARY

1. Phoenix Jones, otherwise known as PJ, is a 20-year-old computer whiz. S/he was pursuing a degree in Computer Science at Chemung State College until s/he dropped out in the Spring semester of the 2018-2019 school year, mid-way through his/her sophomore year. PJ felt that the curriculum at Chemung State was not challenging enough and s/he was bored.
2. PJ's parents always told him/her that, after his/her graduation from high school, s/he would have to be either in college or working in order to continue living with them. Since PJ was not in school and was not working, s/he moved out of the family residence and to a room in a cheap boarding house located in the central district of Chemung. The room was just big enough to hold his/her computer desktop and his/her clothing. To make ends meet and to make space in his/her small living quarters, PJ started selling much of his/her stuff, most of which was in storage, on eBay and to area pawn shops.
3. PJ was quickly running out of items to sell, so it is alleged that s/he started buying merchandise on the dark web from vendors who trade in stolen goods. In an exceptionally elaborate scheme, the prosecution alleges that PJ would purchase items from dark web vendors using Bytecoin, the new cryptocurrency, to shield his/her identity. Bytecoin, like Facebook's new cryptocurrency Libra, affords anonymity to the purchaser because the Bytecoins and the transactions are not linked to a person's real name, his/her e-mail address or the person's physical address. Rather, the Bytecoin algorithm links everything to a randomly generated Bytecoin address. The prosecution's investigator, Morgan Thornberry, alleges that PJ is a fencer who would make purchases from sites on the dark web known for trading in illicit goods and use cryptocurrency to avoid detection. Thornberry believes PJ opened a virtual mailing address at Ted-Rex Dinko's for receiving packages, under the fake name Emery Rose. The prosecution further contends that PJ would use the taxi-alternative service, Rover, to pick up packages from Ted-Rex Dinko's and deliver them to Big Tom's Reseller, a high-volume pawnbroker. Big Tom did not ask many questions and avoided prying into his customers' business activities. Rover is a ride-hailing service, like Uber and Lyft, but does not engage in much identity-checking like the other two services do. The prosecution alleges that PJ used a prepaid credit card under the name Emery Rose to pay Ted-Rex Dinko's for the "business" address and to pay Rover for "delivery" services.

4. Prior to forming his/her theory about PJ's operation, Investigator Thornberry received word from a postal inspector that a suspicious package for an Emery Rose was received at the post office's airport shipping facility. The postal inspector reported that a buzzing sound was emanating from the very large box. With a bomb squad in tow, Thornberry arrived at the post office and succeeded in having the box opened without incident. Inside the box, the investigator found a large number of high-priced items, such as a Rolex watch, a video game console, several iPhone Xs, an authentic Louis Vuitton Odeon handbag, a square sapphire men's ring, gold earrings, a pearl necklace and many other very expensive goods. To Thornberry, many of the items appeared to be used and possibly stolen. The buzzing sound turned out to be from one of the watches whose alarm had become engaged. The mailing label showed that the package was to be sent to Emery Rose at a Ted-Rex Dinko's store in Chemung. Ted-Rex Dinko's provides a package receiving service for persons or business that do not have a physical address. Thornberry had the box re-taped and allowed the box to be delivered by the post office to Emery Rose at Ted-Rex Dinko's. Thornberry followed the package to Ted-Rex Dinko's and waited for Emery Rose to arrive for the package. A Rover driver by the name of Blair Overland arrived at Ted-Rex Dinko's, requested the package, provided the clerk with the required passcode provided to the Rover dispatcher by Emery Rose, and proceeded to drive to the designated location. Thornberry followed the Rover driver incognito to what turned out to be Big Tom's Reseller. The Rover driver entered the pawn shop, followed seconds later by Thornberry. Thornberry heard the Rover driver say to the counter clerk, whose name is Cameron Clark, that, "This is a package from Emery Rose for Big Tom." Clark said that Big Tom was not there, but that s/he would accept the box for him.
  
5. Thornberry, recognizing that the box given to the clerk was the same one s/he had just re-taped, identified himself/herself and asked both the clerk and the Rover driver, "Who is Emery Rose, and where does s/he reside?" The Rover driver said s/he did not know Rose and was just delivering a package as requested by the dispatch office. The clerk, who turned out to be Big Tom's nephew/niece, also said that s/he had never seen Rose and had no information about him/her. The clerk further informed the investigator that Big Tom recently suffered a massive stroke in early August 2019 and was in a deep coma. The doctors have given the family a gloomy prognosis for his recovery.

6. Thornberry confiscated the alleged contraband. S/he gave his/her business card to the Rover driver and told the Rover driver to call him/her if the driver found out any information about Rose’s identity. Thornberry also directed the clerk to call him/her immediately if anyone came into the shop asking about the Emery Rose package and asking for Big Tom. The clerk was also told to make sure that the surveillance cameras, both inside and outside of the shop, were all functioning properly. Investigator Thornberry suspected that Emery Rose would visit Big Tom on a regular basis to make sure that their arrangement was still in effect.
  
7. About three weeks after the seizure of the alleged contraband, a person entered the pawn shop and asked for Big Tom. The clerk told the person that Big Tom was ill and that s/he was uncertain when Big Tom would return to the pawn shop. When the clerk asked the person for his/her name, the person did not respond and exited the shop. Suspicious that the person may have been “Emery Rose,” the clerk called Thornberry. Thornberry went to the pawn shop immediately to get images from the surveillance cameras. Although the images were grainy, the crime lab, through facial recognition technology, was able to identify the person as Phoenix Jones. Since the contraband appeared to have been transported over state lines, PJ was arrested and charged with the federal offense of conspiring with others (18 U.S.C. §371) to receive and sell stolen goods that were conveyed through interstate commerce (18 U.S.C. §2315).
  
8. University of Chicago Business Professor Jules Thompson, an expert on the emerging use of cryptocurrency in criminality, described in a recent article in the popular financial magazine, *Business Outsider*, how criminals are using the dark web and cryptocurrency to commit almost undetectable criminal offenses. S/he contends that drugs and other sordid criminal activities are transacted over the Silk Road (aka, the dark web).
  
9. PJ’s Econ 201 professor, Mr./Ms. Kaden Keller, believes the whole discussion about cryptocurrency and criminality is overblown. S/he contends that cryptocurrency does not provide complete anonymity and that if investigators were not so sloppy, they could easily stop this criminal activity. Although Professor Keller acknowledged that PJ wrote a paper in the 2018 Fall semester ‘s Econ 201 class about cryptocurrency and the dark web, and even received an “A”, the professor felt that the paper was more fantasy than anything else.

10. PJ maintains that s/he is innocent and asserts that there is no direct evidence linking him/her to the conspiracy or the alleged stolen goods. While s/he acknowledges that his/her mother's maiden name is Rose, it is purely coincidental that someone would use that name to create a fake account. Besides, according to PJ, Rose is a common last name. However, Investigator Thornberry discovered that PJ had an uncle by the name of Emerald Rose who passed away at an early age. Thornberry notes that criminals sometimes use the identity of deceased persons to perpetrate fraudulent criminal activity.

**Witnesses for the Prosecution:**

- Morgan Thornberry, Investigator, U.S. Attorney's Office, WDNY
- Cameron Clark, Pawnshop clerk
- Jules Thompson, University of Chicago Business Professor

**Witnesses for the Defense:**

- Phoenix Jones, the Defendant
- Blair Overland, Rover driver
- Kaden Keller, Professor at Chemung State College

## LIST OF STIPULATIONS

1. All witness statements are deemed sworn or affirmed, and duly notarized.
2. All items of evidence are originals and eligible for use during the match, following proper procedure for identification and submission.
3. Any enactment of this case is conducted after the named dates in the Case Summary and the witness affidavits. (Please note that the Case Summary is provided solely for the convenience of the participants in the Mock Trial Tournament. Said summary itself does not constitute evidence and may not be introduced at the trial or used for impeachment purposes).
4. All *Payton* (445 U.S. 573; 63 L. Ed2d 639), *Mapp* (367 U.S. 643), *Dunaway* (442 U.S. 200; 60 L. Ed2d 824) and other evidentiary suppression issues have been resolved and in favor of the government.
5. If the person playing the role of Phoenix Jones is female, Cameron Clark must testify, if asked, that the suspicious person who entered the pawn shop was female. If the person playing the role of Phoenix Jones is male, Cameron Clark must testify, if asked, that the suspicious person who entered the pawn shop was male.
6. Cameron Clark's identification of Phoenix Jones is limited to the statements made in his/her affidavit.
7. Each photograph in the facial recognition exhibit is of a person who resembles Phoenix Jones.
8. The Chicago police report and the Denver police report are documents that are kept in the ordinary course of business.
9. The Tag Heuer Monaco Steve McQueen watch and the Norval Square Sapphire men's ring are both engraved with the initials "CNR".
10. The Tag Heuer Monaco Steve McQueen watch is a special edition that has an alarm.
11. The pictures of the watches and the rings are deemed the actual items, and each exhibit may be offered into evidence as the actual watch and ring.
12. 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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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

**Holding a Criminal Term  
Grand Jury Sworn in on September 2, 2019**

**UNITED STATES OF AMERICA**

Case No. **19-cr-00123**

v.

Violation: **18 U.S.C. §371  
(Conspiracy)**

**PHOENIX JONES**

**INDICTMENT**

Assigned to: Judge Greenberg, Horace  
Assign Date: October 4, 2019  
Description: INDICTMENT

**COUNT ONE**

THE GRAND JURY OF THE WESTERN DISTRICT OF NEW YORK, by this indictment, accuses PHOENIX JONES of the crime of CONSPIRACY, in violation of 18 U.S.C. §371 (1988), to receive and to sell stolen goods in violation of 18 U.S.C. §2315 (1988) as follows:

The defendant, acting in concert with others, from on or about or before June 1, 2019 to on or about August 22, 2019, in the Western District of New York, with intent that conduct, prohibited by 8 U.S.C. §371, be committed, did willfully and knowingly agree with others, both known and unknown, to engage in and cause the performance of such conduct, to wit: conspiracy to receive and sell stolen goods.

**PREAMBLE**

From on or about or before June 1, 2019 to on or about August 22, 2019, it was the purpose of this conspiracy to engage in the receipt and the sale of stolen goods, said stolen goods having been obtained through transactions over the Internet and having been transported across state lines.

The defendant PHOENIX JONES, along with unindicted co-conspirator, known as Big Tom Clark, participated in a scheme to obtain stolen goods that were transported across state lines and to sell said stolen goods from a pawn shop owned by Big Tom Clark.

The defendant PHOENIX JONES and unindicted co-conspirator, Big Tom Clark, knew that the goods, which were transported across state lines, were stolen goods.

## OVERT ACTS

In furtherance of the conspiracy and to affect the objects thereof, from on or about or before June 1, 2019 to on or about August 22, 2019, the following overt acts, among others, were committed:

1: From on or about or before June 1, 2019 to on or about August 22, 2019, the defendant PHOENIX JONES purchased stolen goods from unnamed persons over the Internet and caused said stolen goods to be transported across state lines to the State of New York.

2: From on or about or before June 1, 2019 to on or about August 22, 2019, the defendant PHOENIX JONES caused said stolen goods to be transported to a pawn shop owned by unindicted co-conspirator Big Tom Clark for resale. Unindicted co-conspirator Big Tom Clark knew that the goods were stolen.

3: The defendant PHOENIX JONES and unindicted co-conspirator Big Tom Clark shared in the proceeds from the resale of the stolen goods.

**(18 U.S.C. §371 - Conspiracy)**

A TRUE BILL

FOREPERSON

**Scotty Carson**

Scotty Carson  
Attorney of the United States in  
and for the Western District of New York

**AFFIDAVIT OF INVESTIGATOR MORGAN THORNBERRY**

1. My name is Morgan Thornberry. I am an investigator in the U.S. Attorney’s Office for the Western District of New York. I am 52 years old and have been with the Department of Justice for the past twenty years. I reside in Chemung, New York.
2. I am a 1989 graduate of Allegany State College with a bachelor’s degree in Criminal Justice. Right after graduation, I underwent the six-month training at the Chemung Police Academy and became a police officer for the Chemung Police Department in 1990.
3. I was promoted to detective in 1996 and was assigned to the property crimes unit. We would investigate burglaries, home invasions, shoplifting, snatch and grabs, and all other incidents involving theft of property. We recovered all kinds of stolen property and did our best to return the property to the rightful owner. These thieves, who prey upon vulnerable people, are some of the worst human beings alive, and it gives me great pleasure to see them locked up and off the streets for as long as the law allows. I’ve always remembered a tongue-in-cheek comment by an instructor at the academy, who happened to be a retired police chief, who said something along the lines that there may not be enough evidence to prove the suspect committed the alleged crime, but s/he had gotten away with other criminal offenses in the past, so prosecute the SOB anyway. I don’t necessarily subscribe to that philosophy, but it is an intriguing concept.
4. In 1999, I got wind of an opening for an investigator in the U.S. Attorney’s Office in the Chemung branch office. They were looking for someone with property crime investigatory skills to work in the emerging cybercrime unit. Since my skill set fit the bill, I applied and was hired right away. The Department of Justice noticed, that in 2006, with the explosion of commerce on the Internet, stolen property was also starting to be sold in an ever-increasing amount over the worldwide web. My job mostly centers on chasing down the criminal transportation of stolen goods in interstate commerce, so one of the first things I did was to establish a relationship with the package delivery services in the area, such as the U.S. Postal Service, DHL and UPS. I requested that they call me if they ever received suspicious packages at their facilities. I have received many calls over the years. Most of the calls were false alarms. Some of the calls, however, were fruitful, and resulted in the imposition of criminal charges, and subsequently, in convictions. I remember that, in 2009, there was a large shipment of counterfeit Air Jordans that would have hit the streets if we did not intercept it. The Air Jordan counterfeiters were convicted and received lengthy sentences. In 2013, I investigated the suspected sale of stolen iPhones, iPads, MS Surfaces, and other high-end computer devices. These perps were caught red-handed, and they all pled guilty.
5. When I got the call from the postal inspector on August 22, 2019 that a suspicious package had been

received at their airport shipping facility for an Emery Rose, my team and I, which included an explosives expert, rushed right over. The postal inspector's interest was piqued because a ticking sound was emanating from the box that had a Chicago postmark stamp. Before opening the box, my expert used sophisticated bomb-detection equipment and determined that the box was safe to open. I proceeded to open the box and, lo and behold, we found a treasure trove of stolen goods. There were many high-priced items, such as a Rolex watch, a video game console, several iPhone Xs, an authentic Louis Vuitton Odeon handbag, a Norval square sapphire men's ring, gold earrings, a pearl necklace and many other very expensive goods. All the items appeared to be used, which suggested that they were stolen. In fact, the ticking sound was the alarm of an Omega Tag Heuer Monaco Steve McQueen men's watch worth approximately \$4,000. Good thing the owner had set the alarm!

6. I re-taped the box and allowed the postal service to deliver it to the virtual mailbox of this Emery Rose at the Ted-Rex Dinko's location on Community Drive in Chemung. I suspected Emery Rose was a fake name, and I subsequently determined that the name was fake, because if it was not, I would have found him/her by now.
7. I followed the postal truck as it delivered the box to Ted-Rex Dinko's. After the Ted-Rex Dinko's clerk accepted the package, I identified myself as a federal agent and asked the clerk whether she knew Emery Rose. She said no. I then asked her to pull Emery Rose's records so that I could get whatever information was on file. She said that she could not do that, and that I would need to talk to the store manager. The store manager was out of town on vacation and not reachable, so I just decided to wait around the store to see whether Emery Rose would come to claim the box. I told the clerk that this was a federal matter and that she should not tell the person picking up the package that I was a federal agent, or that I had inquired about the package.
8. I waited in the store for approximately forty-five minutes and was about to leave when a person came into the store, identified himself/herself as a Rover driver, gave the clerk a code and asked for the Emery Rose package. Rover is a ride-hailing service like Uber and Lyft. Apparently, the Rover driver had instructions from Emery Rose to provide a passcode in order to pick up the package. I allowed the Rover driver to take the box, and I followed him/her surreptitiously. The Rover driver delivered the package to Big Tom's Reseller on Central Avenue, one of the largest pawnshops in Chemung. After the Rover driver (Blair Overland) gave the box to the counter clerk (Cameron Clark), I showed my federal badge and asked the Rover driver to tell me who Emery Rose was. S/he said that s/he did not personally know Emery Rose, had never seen Emery Rose, and was just delivering the package as ordered by his/her dispatcher.

9. I then asked Cameron Clark whether s/he knew this Emery Rose. S/he said that s/he did not know Emery Rose and did not believe s/he had ever seen him/her. I asked him/her about the owner of the pawn shop, Big Tom Clark. S/he said that Big Tom was his/her uncle. Clark said that Big Tom had suffered a massive stroke in early August 2019, was in a deep coma and was not expected to emerge from the coma any time soon. I told Clark to call me if anyone s/he does not know comes into the shop asking about the Emery Rose package and asking for Big Tom. I gave Clark one of my business cards and told him/her to make sure the surveillance cameras inside and outside the shop are working properly every day. I also gave the Rover driver my business card and told him/her to call me if Emery Rose ever contacts him/her. I took the box of stolen goods and left the pawn shop.
10. On September 12, 2019, I received a call from Clark informing me that someone using the name Emery had just come into the shop and asked for Big Tom. Clark said s/he told the person that Big Tom was going to be away from the shop for a while. Clark then said s the person looked distressed upon hearing the news about Big Tom, dropped several F-bombs about Big Tom, and quickly left the shop without saying anything else.
11. I immediately went to the pawn shop to get a copy of the surveillance video. I'm pretty sure Emery Rose had come to inquire about his/her share of the proceeds from the sale of the stolen goods being that s/he would not have heard from Big Tom since early August.
12. I took the video clip to our crime lab in Buffalo so that I could run the images through the National Crime Information Center's (NCIC's) database. The clip was a bit grainy, but usable. I used sophisticated facial recognition technology on the video clip and produced a report showing ten possible matches. I am a trained facial recognition technologist. In 2005, I received eight weeks of training at the FBI facility in Quantico, Virginia on facial recognition technology and earned a certificate recognizing me as an expert in facial recognition technology. Since 2005, I have prepared approximately thirty facial recognition reports. None of my reports have been rejected by the courts. In the thirty cases where my reports were used, all of the defendants were convicted. In the Jones case, five of the ten suspects were quickly eliminated because they were in jail or prison at the time the August 22<sup>nd</sup> package of stolen goods were being shipped. We learned that three of the remaining five were out of town during the time period in question and had been away for some time. Now, I admit that the whereabouts of the ninth person is unknown. However, I have no reason to suspect the ninth person was involved because all indications are that Phoenix Jones is the perp. There is no doubt in my mind that Jones is the chief suspect.
13. On the morning of September 16, 2019, I took a photograph of Phoenix Jones to the pawn shop and asked

Clark whether s/he recognized the person. At first, Clark was a bit equivocal, but after pressing Clark to look a little harder at the photo, s/he finally stated that the person in the photo appears to be the person who had come into the shop asking for Big Tom. That was good enough for me. I believe I showed Clark the facial recognition report and s/he recognized Phoenix Jones in the array.

14. I arrested Phoenix Jones in the afternoon of September 16<sup>th</sup> on the federal charge of conspiring with others (18 U.S.C. §371) to receive and sell stolen goods that were conveyed through interstate commerce (18 U.S.C. §2315). Jones' photo was in the federal crime database because of an arrest for, and his/her indictment on, an assault charge when s/he was 18 years old. Although the charge was dismissed as a result of the victim's refusal to testify, Jones' photo remained in the database for inexplicable reasons. Lucky for us!
15. When Phoenix Jones was arrested in his/her one-room apartment, we found \$7,500 stuffed in a duffel bag underneath his/her bed. I had to search the bag because it could have contained a weapon that would have put me and the other agents in danger. The suppression court agreed with me that the search was lawful. Jones' claim that the money was stuffed between the mattress and box spring is just made up. These criminals will say anything to escape responsibility. Besides, \$7,500 is a lot of money for someone who is not working full-time. I don't believe Jones' part-time job as a web developer would generate that kind of money in the few months since s/he moved out of his/her parents' house. I'm sure the money is from the sale of stolen goods. Moreover, I would bet dollars to donuts that the rest of the money Jones received from his/her little criminal enterprise is tied up in cryptocurrency, and consequently, hidden.
16. When we are investigating cases, we look at everything that will assist in the prosecution of a defendant. We often look at the social media of persons who might have a connection with the suspect. When we looked at the FaceSpace page of Jones' mother, we saw something very interesting. On the public portion of her FaceSpace page, she had information about a deceased family member. It showed that Jones' mother had a younger brother named Emerald Rose who was born on February 15, 1980 and passed away in January 1983, just before his third birthday. That is the same date of birth on the Rover Car Service account of Emery Rose (aka Phoenix Jones). So, this perp stole his/her uncle's identity to aid in the commission of this crime. How disgusting is that?! It's probably true that someone else could have easily stolen Emerald Rose's identity since it was up on FaceSpace, but I'm pretty sure Jones did it.
17. During my interview with Blair Overland, the Rover driver, I learned that the creator of the Rover Account used one of those pre-paid VEZA cards where you don't need to provide an address or real phone number. All transactions are over the Internet, and the card can be replenished anonymously by using non-banking services like Q-Pal.

18. On September 23, 2019, Cameron Clark visited my office and gave me a notebook that belonged to Big Tom. The notebook contains a long list of very expensive items. There was an indication that some of the items were sold and the amount each one had been sold for. There is also a column showing how much “Emery Rose” (aka Phoenix Jones) had received as his/her share for each item. It looks like Phoenix Jones was getting about 45% of each sale. I noticed that the list was started on June 1, 2019 – about one month after Phoenix Jones had moved to the boarding house. Clark was unable to locate the unsold items, except for the men’s Omega wristwatch and the 3-carat diamond ring engraved with the number “85”. I took possession of the two items. I never threatened Clark that the pawn shop would be closed if s/he did not cooperate in the investigation, but I did make it clear to him/her that good citizens cooperate with law enforcement. I did warn him/her that someone in his/her position could be prosecuted for possessing stolen property.
  
19. Cameron Clark also gave me what appears to be an e-mail receipt, dated July 5, 2019, showing the purchase of two Bytecoins. I checked on Google and found that one Bytecoin in July 2019 was selling for about \$3,200.00. Clark said s/he found the receipt in the same desk drawer where Big Tom’s notebook was discovered. The receipt was made out to Emery Rose. Near the bottom of the receipt was a hand-written note that said: “Big Tom, Just bought more Bytecoins so that I can pull down more hot stuff from the web. You should get into cryptocurrency. Expect another shipment soon. Emery.” The word “hot” means “stolen” in gangster parlance. If you look closely at the hand-written name “Emery,” you will notice that someone, let’s say Phoenix Jones, started to write the letter “P” and then apparently caught himself/herself by writing over the “P” with the name “Emery.” Another slip up by PJ?! The \$6,400.00 that Phoenix Jones paid for the two Bytecoins is about equal to the amount of the proceeds s/he received from Big Tom between June 1<sup>st</sup> and July 1<sup>st</sup>. I checked with the e-mail domain provider GoodMail.com to get information about this Emery Rose. All of the information that they had on file was bogus. GoodMail appears to be one of those ISPs that does not verify the signup information. I suspect that whenever Phoenix Jones would access the Internet to commit his/her crimes, s/he would use a non-logging VPN. When we checked the Internet activity of Emery Rose using the IP address, supposedly belonging to Rose, that we had obtained from GoodMail.com, the IP address was reported to be somewhere out in the South Pacific. That SOB Jones was trying to cover his/her tracks!
  
20. My boss, Scotty Carson, US Attorney for WNY, sent a subpoena to CoinDomain, where the Bytecoins were purchased, to get information about Emery Rose. CoinDomain responded to the subpoena by providing the dates Emery Rose purchased the cryptocurrencies and the dates on which trades were made. CoinDomain had no other information about this Emery Rose.

21. I had confiscated Phoenix Jones' desktop computer on the day s/he was arrested and, after examining the computer, I did not find a VPN account on it. But checking Jones' Google search history, I found something very interesting. On June 15, 2019, Jones did a search on what a used iPhone X would cost. If you take a look at Big Tom's notebook, you will see that Big Tom received a used iPhone X from Emery Rose on June 21st. The Google search history also shows that on June 15<sup>th</sup> Jones sought information on the value of a Bytecoin. Two days later (June 17<sup>th</sup>), Emery Rose bought two Bytecoins. The high-tech guru Jones forgot to clear his/her Google search history. The suppression court judge redacted some entries in the Google history because they were purely personal and not relevant to this prosecution.
22. When searching Jones' room following the arrest, I noticed a receipt for a laptop computer purchased on May 15, 2019. I'm pretty sure Jones used the laptop to do his/her criminal activities, which would explain why, except for the used iPhone X and the Bytecoin searches, there is no other proof of criminal activity on his/her desktop. I directed Jones to give me the laptop. S/he claims, without proof, that the laptop was stolen from him/her on August 20, 2019 when s/he left it on a table at Sawbucks Coffeehouse to go visit the restroom. How convenient! S/he said s/he did not report the theft to the police, nor complain to Sawbucks' personnel. The laptop is probably stashed away in storage somewhere. I checked all of the storage facilities near Jones' boarding house and found that Storage-R-U's at 3245 Main Street in Chemung had an account for Emery Rose that was opened on May 8, 2019, one week after Phoenix Jones moved to the boarding house. The storage facility records show that the account was closed on September 13, 2019, one day after Jones learned that Big Tom was ill and would not be returning to the pawn shop any time soon. The counter clerk at Storage-R-U's who set up the account for Emery Rose was fired about three weeks ago on suspicion of stealing property from some of the storage units. The manager of the facility does not know the current whereabouts of the former clerk and suspects he might have moved out to California to become a beach bum. Rose's address on the sales receipt is fake. The address is for an abandoned building about half a mile from Jones' boarding house. I'm sure the laptop is in storage under another assumed name Jones may be using.
23. I accessed the NCIC database again to determine whether the two items I got from Cameron Clark on September 23<sup>rd</sup> had ever been reported stolen. Needless to say, I was elated when I came across a Chicago police report showing that the Omega watch, the 3-carat diamond ring and a Gucci Handbag with the bamboo handles were stolen in that city from a vehicle on June 6, 2019. The Gucci handbag is on Big Tom's list of suspected stolen items, having been received by Big Tom on July 25, 2019. It appears that Big Tom sold the handbag on July 29<sup>th</sup>. Unfortunately, I recently learned that the victim of the

Chicago theft, a Ms. Victoria Thomas, was involved in a horrific accident on the Dan Ryan Expressway in Chicago and is deceased. I was hoping to reach her through the Chicago Police Department, and that is when I was informed of her demise. I also checked on the status of the items in the August 22<sup>nd</sup> shipment. The only hits I received on the NCIC system was from the Denver Department of Public Safety. The Tag Heuer Monaco Steve McQueen watch (approx. value \$4,000.00) and the Norval square sapphire men's ring (approx. value \$2,400.00) were both engraved with the initials "CNR." The items were positively identified as belonging to an elderly Colorado citizen. The eighty-eight-year-old gentleman is too ill to travel to New York to testify in the trial of this matter.

24. The evidence of Phoenix Jones' guilt is overwhelming: the identity theft of his/her deceased uncle Emerald Rose so that s/he could engage in this criminal scheme; no visible means of support; found in possession of \$7,500; when shown a photo of Phoenix Jones, the pawn shop clerk (Clark) believes the person inquiring about Big Tom was Jones; the pawn shop is located on Central Avenue, only a few blocks away from the boarding house at 1010 Main Street where Jones resides; Big Tom's notebook showing very expensive items being sold, and someone named Emery Rose (who we believe to be Phoenix Jones) getting a percentage of each sale; the Google search history of June 15<sup>th</sup> found on Jones' desktop computer; an entry in Big Tom's notebook shows that Emery Rose, on July 29, 2019, received \$6,825 for the 24-carat gold MacBook Pro computer and \$675 for the Gucci handbag, for a total of \$7,500, the exact amount of money found in Jones' duffel bag; Jones has the computer skills to pull off this scheme; Jones is very knowledgeable about cryptocurrency and the dark web; the receipt from the cryptocurrency broker CoinDomain to Emery Rose showing a recent purchase of Bytecoins; these new-age criminals are using cryptocurrency to hide their web transactions because it is virtually impossible to trace; although Jones had gained lots of money from his/her criminal enterprise, s/he continued to live modestly for now so as to not draw unwanted attention to himself/herself; Jones became the prime suspect after facial recognition biometrics identified him/her as one of ten persons of interest, and eight of the ten were quickly eliminated for one reason or another; and although the whereabouts of person #9 is unknown, there is no evidence that the ninth person was involved in any way, shape or form; no one by the name Emery Rose resides in Chemung or in a nearby town; and the name Emery Rose first surfaced just one week after Jones moved to the boarding house as evident by the Storage-R-U's sales receipt. It's clear that Phoenix Jones is Emery Rose. No doubt in my mind.
25. The facial recognition probability of the five individuals, who were in prison or jail, being the person in the video was in the 45% to 55% range. The three persons who were out of town were in the 65% to 80% range. The person whose whereabouts is unknown clocked in at 96%. Although Phoenix Jones was at 95%,

s/he was well within the margin of error and, given all the other circumstantial evidence of his/her guilt, I knew s/he was the right perp.

26. I interviewed the Rover driver, Blair Overland, on October 1<sup>st</sup> and s/he told me about the heated conversation in June 2019 between Big Tom and a person in a hoodie. Overland said that Big Tom referred to the person using the nickname PJ. Most likely, their argument involved a dispute over payment of Jones' share of the proceeds of stolen property from a shipment Jones thought had already been delivered. Phoenix Jones had probably gone to see Big Tom because s/he had not heard from him about what was going on with that shipment. I would guess that maybe Jones thought that s/he was being stiffed. When the package was finally delivered by Overland, Jones, or should I say PJ, was then apparently satisfied that Big Tom was not cheating him/her. Overland's claim that the person arguing with Big Tom did not look like Jones is just the Rover driver trying to protect his/her job. It's probably safe to say that the Rover company would not want to be involved in assisting a criminal enterprise.
27. Well, that Dr. Kaden Keller is a real piece of work. After learning that s/he might be a witness for Jones, I did some checking and found that s/he was once accused of trying to buy Quaaludes over the Internet. S/he got snared in a sting operation run by our old technology crime unit. The good professor claimed s/he was just doing "research." Yeah, right! His/her attorney managed to get the charge dropped, but I don't believe s/he was some little innocent academic researcher. Now the professor has a vendetta against the agency. We should have prosecuted his/her butt to the hilt! Our expert witness, Professor Thompson, is absolutely right about cryptocurrency. It is not easy tracking down perpetrators of illicit schemes when they use cryptocurrency due in large part to the secrecy afforded to this new age currency. That's why sophisticated criminals are resorting more and more to the use of cryptocurrency. Professor Keller is trying to help this very undeserving defendant, while taking a cheap shot at us.
28. According to the latest FBI stats, nearly \$1.4 billion worth of jewelry and precious metals were stolen in 2016. I'm pretty sure much more will be shown to have been stolen in 2019 once the statistics come out. I'm also sure that our computer whiz kid, Phoenix Jones, contributed to the 2019 stats. Jones will be convicted and will spend a lot of time, not on the dark web, but in a dark prison cell.

Under the pains and penalties of perjury, I affirm the veracity of this statement.

Dated: Chemung, New York  
October 8, 2019

*Morgan Thornberry*  
Morgan Thornberry

## AFFIDAVIT OF CAMERON CLARK

1. My name is Cameron Clark. I am 19 years old and live with my parents at 822 Woodhill Lane in Chemung, New York. I graduated from Chemung High School in May 2018 and plan to attend Chautauqua County Community College within the next year or two. I want to study computer engineering and hope to work in data science after I graduate.
2. In September 2018, I began working as a clerk at Big Tom’s Reseller, a pawn shop business at 1559 Central Avenue in Chemung. Tom Clark, the owner of the shop, is my uncle. My uncle hired me to work a few hours, Monday through Saturday, to give him time to get lunch and run errands. I’m saving my earnings to pay for college tuition and expenses. I hope to save enough money so that I don’t have to take out student loans when I start college.
3. Big Tom’s Reseller is a high-volume business with lots of customers buying and selling all kinds of merchandise. It’s not unusual for ride-hailing services like Rover to deliver items to the shop for regular customers. My uncle trained me to be efficient, professional, and not to ask customers a lot of questions. He said people are busy and don’t want us prying into their business.
4. Big Tom suffered a massive stroke in early August 2019 and is in a deep coma. After Big Tom’s stroke, I started working full-time. This was the only way that my uncle’s shop could stay in business. My parents occasionally help me at lunchtime so that I can have a break.
5. On August 22, 2019, a Rover driver came to the shop, followed shortly after by someone who I thought was just a customer. The Rover driver said, “This package from Emery Rose is for Big Tom.” I told the driver that Big Tom wasn’t available, but I would accept the package for him. While the Rover driver was still in the shop, the person who I thought was a customer approached me and the driver, identified himself/herself as Investigator Morgan Thornberry, a federal agent, and asked, “Who is Emery Rose and where does s/he reside?” The Rover driver said s/he does not know Rose and was just delivering a package as requested by the dispatch office. I told Investigator Thornberry that I didn’t personally know an Emery Rose and had no information about Rose. I also explained that Big Tom had suffered a massive stroke and that he was in a coma and was not expected to return to work anytime soon.

6. Investigator Thornberry confiscated the package and gave me and the Rover driver his/her card. Investigator Thornberry told me to call him/her immediately if anyone I did not know came into the shop asking for Big Tom. He/she also asked me to make sure that the surveillance cameras, both inside and outside the shop, were functioning properly. Thornberry made it clear that s/he expected me to cooperate in the investigation; otherwise, s/he would see to it that the pawn shop was shut down on suspicion of receiving stolen goods. I desperately need this job to support myself and my educational goals. There are not a lot of employment opportunities in Chemung, and I certainly don't want to go to prison so I told Inspector Thornberry that I would make sure the surveillance cameras were working properly and would fully cooperate in the investigation in every way possible.
7. On September 12, 2019, a person who I did not recognize entered the shop and asked for Big Tom. I said, "Who should I say is asking for him?" The person said "Emery." I then told Emery that Big Tom was ill and that I wasn't sure when he would be back at work. Emery, who was wearing a sleeveless hoodie that exposed only his/her face, looked very distressed upon hearing the news, dropped a couple of F-bombs about Big Tom (and quickly left the shop.
8. Immediately after this encounter, I called Investigator Thornberry to report that a suspicious person using the name Emery had entered the shop and asked for Big Tom. I also mentioned that the person looked troubled and abruptly left after learning that Big Tom wasn't expected back for some time. About a half hour after I called, Investigator Thornberry came to the shop. I gave him/her the video footage of the suspicious person.
9. Sometime later – I believe it was September 16, 2019 – Investigator Thornberry returned to the shop and showed me a picture. S/he asked whether the person in the picture looked like the person claiming to be Emery. I was hesitant to say one way or the other. After Thornberry pressed me a little bit, I finally said that the person in the photo could very well be this Emery, but that I could not be absolutely sure. Thornberry then told me that the real name of the person in the photo was Phoenix Jones. Thornberry also showed me what s/he called a facial recognition report, and the only person I even slightly recognized was Phoenix Jones. 10. I now recall that Big Tom, on a few occasions, complained about a person named Emery who was

doing things that could get both Big Tom and Emery in trouble with the law. One Saturday afternoon in mid-June, Big Tom, during one of his musings out loud, stated that most of the items Emery was bringing to him were stolen. He told me not to repeat that to anybody. Big Tom also told me that “Emery” was not the person’s real name, telling me that shady people like Emery don’t use their own names. Big Tom said, “I don’t know Emery’s real name and his/her nickname.” He never told me Emery’s real name out of concern for me. Big Tom wouldn’t want to see me get into any trouble.

13. Prior to September 12<sup>th</sup>, I don’t believe Emery Rose, or whatever his/her real name is, was ever in the shop when I was there. Before his stroke, Big Tom gave me a general description of Emery’s appearance. The description could fit Phoenix Jones, but it also could fit the description of hundreds of other people in Chemung. Anyway, if I had to bet, my gut tells me that Phoenix Jones is Emery Rose.
14. After my September 16<sup>th</sup> meeting with Investigator Thornberry, I started snooping around the shop. I found a notebook in a drawer in Big Tom’s desk; the desk is in the back office. I also found in the desk drawer, an email receipt showing the purchase of some Bytecoins by this Emery Rose. The notebook contains a long list of very expensive items. Some of the items had indications that they had been sold and the amount each one had been sold for. There is also a column showing how much this Emery Rose had received for each item sold. The only items appearing on the list as unsold that I was able to locate were the men’s Omega wristwatch and the 3-carat diamond ring, engraved with the number “85.” I suspect that Big Tom kept the other unsold items of in a special location because those items were not in the regular inventory. I’m sorry my uncle ever got involved with Phoenix Jones.
15. At the bottom of the Bytecoin receipt, there was a hand-written note to Big Tom. I don’t remember what the note said, but at the end of the hand-written note was the name “Emery.” The pawn shop was probably closed one day when Emery stopped by and s/he left the receipt bearing the note for Big Tom in the locked mailbox slot in the front door. Big Tom is the only person who had the key to the locked mailbox until I took over the shop in early August.

16. On September 23, 2019, I went to the U.S. Attorney’s Chemung branch office and gave the notebook, the Bytecoin receipt, the Omega wristwatch and the diamond ring to Investigator Thornberry. S/he noticed that the list was started on June 1, 2019, about one month after Phoenix Jones had moved to the boarding house.

I affirm the veracity of the foregoing statement.

Dated: Chemung, New York  
October 25, 2019

Cameron Clark  
Cameron Clark

**AFFIDAVIT OF PROF. JULES THOMPSON**

1. My name is Jules Thompson. I am 50 years old and reside in Glencoe, Illinois, a suburban village just north of Chicago. I am a business professor at the University of Chicago.
2. I received my B.A. in Economics *magna cum laude* from the University of Wisconsin-Madison in 1991. Between 1991 and 1993, I attended Northwestern University where I received a masters in business administration. I then went on to the University of California at Berkley, where in 1997, I received a Ph.D. in Business, with a concentration in information systems management. I started teaching at the University of Chicago in September 1998 and became a tenured professor in 2008.
3. I have authored numerous peer-reviewed articles in professional business journals and books on such topics as e-commerce, business technology, management systems and the economics of business. In 2005, I co-authored a textbook, along with a University of Pennsylvania colleague, entitled *Introduction to Business Management Systems*. The textbook, which went through four editions, was widely used by business schools for more than ten years. In 2010, I wrote an article for the University of Chicago's *Business Journal* entitled Cybersecurity: What Business Information Systems Must Do to Guard Against Hacking. I have lectured on numerous occasions in the United States and in European countries on hacking and cybersecurity. Some of the lectures have appeared on C-Span. I have testified in at least ten court proceedings about hacking and the harm caused to business systems as a result of such attacks. My fee is \$300 per hour for out-of-court preparation and \$500 per hour for in-court testimony. I charge governmental entities half my usual rate. For my services in this case, I expect to bill the federal government approximately \$1,100 (4 hours preparation and 2 hours in court) plus travel and lodging.
4. As it relates to this criminal matter, I wrote a scholarly treatise for the trade magazine, *Business Outsider*, entitled Cryptocurrency: The Future of Money or the Rise of New Criminality. In the article, which was published in July 2017, I described how cryptocurrency, like Bytecoin, is increasingly being used in legitimate commercial transactions, but warned that the criminal element is using the technology for nefarious purposes.
5. Criminals, including drug dealers, pornographers and thieves, have started to use cryptocurrency and the Silk Road (aka the dark web) to shield their identities. The secrecy provided by cryptocurrency is not a difficult concept to understand. In my "crypto for dummies" explanation of cryptocurrency, I start by stating that cryptocurrency, like Bitcoin, is simply a digital currency. You cannot hold a Bitcoin

or a Bytecoin in your hand. Rather, it exists as a series of zeroes and ones on computer servers. There are approximately 15 million Bytecoins, the cryptocurrency allegedly used by Phoenix Jones in committing his/her crime, currently in circulation. I believe the maximum number of Bytecoins that can exist is 20 million. So, there are only 5 million more that can be created or “mined.” Mining is how you enter the cryptocurrency ecosystem. It is not for the faint of heart and requires significant computer skills and computer power to accomplish the task. Miners who wish to acquire Bytecoins must solve a complex mathematical problem (referred to as “proof of work”), which allows them to chain together a block of transactions known as the blockchain.

6. In short, the Bytecoin blockchain is simply a shared public ledger showing all the transactions made on the Bytecoin network. Before a new transaction can be made, all nodes on the network must agree to the transaction and confirm it. Confirmation allows the miner’s Bytecoin “wallet” to calculate the miner’s spendable balance for future transactions. Note that the wallet does not actually contain the amount of Bytecoins the miner owns. Rather, the wallet is computer code that stores encrypted public and private keys that can be used to calculate the amount of Bytecoins the owner has. The keys are also used to make new transactions. So, while transactions in the blockchain are visible, personal information about the users is limited to their encrypted digital username. Consequently, the key, so to speak, to cryptocurrency’s anonymity is the wallet. That’s all you need to know about cryptocurrencies like Bytecoin.
  
7. I don’t believe Phoenix Jones got his/her Bytecoins by mining. Jones may have superior computing skills, but mining requires specialized high-end computing equipment and an enormous amount of electricity. I suspect Jones did not have the necessary technology to do mining, and I’m pretty sure that the electrical panel at his/her old boarding house could not handle the amount of electricity required for mining. More likely than not, Jones bought his/her Bytecoins from a cryptocurrency broker like CoinDomain or CryptoLyte.
  
8. When combining cryptocurrency with the dark web, you have a witch’s cauldron of criminality. With the secrecy and anonymity, drug dealers can move narcotics around the world, pornographers are able to trade their filth to each other, and thieves can sell their ill-gotten goods to sometimes unwitting buyers. From what I have learned about this case, it appears that Phoenix Jones engaged in an elaborate scheme to fence stolen goods. S/he used Bytecoins, as I described, to purchase the goods from sellers on the dark web. Pursuant to the scheme, the dark web sellers would send the goods through the regular mail to Emery Rose at his/her mailbox address at Ted-Rex Dinko’s. Emery Rose,

or should I say Phoenix Jones, would arrange to have Rover, a ride-hailing service, pick up the package and deliver it to Big Tom’s Reseller. Investigator Thornberry believed that the business arrangement between Phoenix Jones and Big Tom was that Big Tom would sell the items and they would split the proceeds 55/45, with the higher percentage going to Big Tom. There is very little government oversight and regulation of these pawn shops. The business model for these types of shops almost encourages this kind of criminality.

9. In preparing to testify, I reviewed Investigator Morgan Thornberry’s entire file of this matter. I also discussed the case with said investigator. I was not told what to say, but only to give my expert opinion and to testify truthfully so that the court could understand how cryptocurrency can be used by criminals. The scheme Phoenix Jones concocted with Big Tom, together with the use of Bytecoins, provided enough anonymity to Jones and shielded him/her from detection for a long time. It was the suspicion of a postal inspector, after hearing a sound emanating from the box addressed to Emery Rose, that started the process of identifying Jones as the architect of this criminal enterprise. Who knows how long Jones’ criminality would have continued if the postal inspector’s suspicion had not been aroused? If the investigators cannot find all the money Jones obtained as a result of his/her illegal activity, it may be that s/he has secreted the ill-gotten proceeds in cryptocurrency.
  
10. I was a victim of this type of criminality. Two years ago, I was asked by the London School of Economics to be a visiting professor for one year. My spouse, my two kids and I, relocated to London for that year. The subdivision in Glencoe where I reside is a fairly wealthy, upper middle-class area and is a prime target for thieves. Well, needless to say, my house was burglarized approximately six months after our move to London. We were devastated. All our family heirlooms, jewelry, paintings, TVs, computers and other electronic devices were taken. Insurance compensated us for only a small part of our losses. I’m sure many of our stolen items were sold on the dark web and probably bought and resold by Phoenix Jones. I have no proof of that, but it angers me greatly that there is this possibility that Jones could have been involved in the sale of property stolen from my home. I will go wherever, and do whatever, to get these miscreants like Phoenix Jones off the street and locked up for a long, long time.

**I affirm the veracity of the foregoing statement.**

Dated: Chicago, Illinois  
November 8, 2019

Jules Thompson  
Prof. Jules Thompson

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**AFFIDAVIT OF PHOENIX JONES**

1. My name is Phoenix Jones and I am 20 years old. Until May 2019, I resided with my parents at 534 South Percy Street, Chemung, New York. I now reside in an inexpensive boarding house at 1010 Main Street in the central district of Chemung. This one-room apartment is all I can afford given my limited financial resources. I was in school at Chemung State College until the Spring semester of the academic year 2018-2019, when I dropped out. I was a sophomore at the time and about to declare my major in Computer Science. However, the academic requirements to get a BA degree were just so uninspiring and unchallenging that I decided to call it quits. Who needs all that English Lit. and world history and geography and civics?! – O-M-G! –I just wanted to do computer programming and web development. I am really good at that. However, I did like my Economics 201-Macroeconomic course. The professor, Ms./Ms. Kaden Keller, is very cool and understands me. Anyway, my parents always said that if I was not in school or working, I could not live at home. I moved out on May 1, 2019, so here I am in my four-cornered room.
2. To cover my expenses until I can find a job, I started to sell or pawn a lot of my personal property. Some of the items were in my room, and the rest were in storage in a facility further up Main Street. I don't remember the exact address. I gave the storage facility clerk my name, but I don't believe he wrote it down. I believe I then gave him \$120.00 for a six-month rental and he gave me a locker number. That clerk looked a little shady and probably pocketed the money. Anyway, I sold some items like computer accessories and components on eBay. I pawned the rest of the items so that I could get money right away. I'm still looking for employment.
3. I pawned items at a lot of pawn shops around the city. I don't remember ever going to Big Tom's Reseller, but I could have. I now know it is located on Central Avenue, just a few blocks from my boarding house. If someone said I was there once or twice, then maybe I was. I just don't have any present recollection of ever going to Big Tom's. Anyway, there is no requirement that I go to Big Tom's Reseller just because it is near where I live.
4. So, one day – I believe it was September 16, 2019 – I was in my room, and I heard a loud bang on my door. Someone on the other side identified himself/herself as a federal officer and demanded that I open the door. I was frightened, but, reluctantly, I opened the door. S/he showed me his/her badge and said that his/her name was Morgan Thornberry. Thornberry started asking me

questions about an Emery Rose. I told him/her that I did not know an Emery Rose, but that I have a deceased maternal uncle named Emerald Rose. My mother's maiden name is Emily Rose. Thornberry then asked me whether I ever went by the name Emery Rose. I said no and asked him/her, rhetorically, "Why would I need to use that name?" Thornberry then proceeded to tell me that Emery Rose is a suspect in a conspiracy to possess and sell expensive stolen property. The officer further stated that all indications are that I, Phoenix Jones, have gone by the name Emery Rose. I then told Thornberry that I was not answering any more questions and that I plan to talk to a lawyer. Thornberry proceeded to place me under arrest, and I was taken down to the federal lockup for processing. My parents posted bail on September 17, 2019, and I was released.

5. My parents hired the law firm, Eager Beavers, PLLC to represent me. The lawyers explained the government's case against me. Through what my lawyers referred to as pre-trial discovery, they learned that the Feds have been investigating, all over the country, the rash of thefts in the homes and offices of very wealthy people and the transportation of this stolen property across state lines by use of the dark web. As the investigation relates to me, the lawyers said that a postal inspector alerted Thornberry that a suspicious package had been received at the post office's airport mailing facility. After opening the box, Thornberry suspected that the items contained therein were stolen. Thornberry allowed the package to be delivered to Emery Rose at a Ted-Rex Dinko's in Chemung. A Rover driver arrived at Ted-Rex Dinko's to retrieve the package and delivered it to Big Tom's.
6. My lawyers informed me that Thornberry asked the Rover driver to provide him/her any information the Rover driver had on Emery Rose. The Rover driver told Thornberry that s/he never met, or even talked to, Emery Rose. The driver said that s/he was just following instructions from the dispatcher to deliver the package to Big Tom's Reseller. Anyway, I have never used Rover. I use Uber or Lyft.
7. My lawyers told me that Thornberry also asked the counter clerk at Big Tom's about the whereabouts of Big Tom. The clerk told Thornberry that Big Tom had suffered a stroke and was in a coma. Thornberry asked the clerk about Emery Rose, and the clerk told Thornberry that s/he did not personally know Emery Rose and has no information about Rose. My lawyers learned that the counter clerk began snooping around the pawn shop after his/her first encounter with Thornberry and found a notebook containing a long list of expensive items, and the amount for which Big Tom had sold each item. The notebook also referred to someone called Emery Rose

and noted the share of the proceeds Emery Rose received for each sale. My lawyers and I agree that it is purely coincidental that Big Tom started this notebook list about one month after I moved to the boarding house. So what?!

8. The government’s theory of the case, according to my lawyers, is that I, using the name Emery Rose, bought stolen items over the dark web from unsavory characters, using the cryptocurrency Bytecoin, to shield my identity. I once bought some Bytecoins from a cryptocurrency broker when I was in college just to learn how cryptocurrency works. In fact, I wrote a paper in my Econ 201 class about the benefits and the hazards of cryptocurrency. The paper was well-written – even if I do say so myself – and I even received an A on the paper from Prof. Keller. You can say I know a lot about cryptocurrency.
9. During the brief time that I owned Bytecoins, I did buy some items over the Internet. I don’t believe I ever bought anything over the dark web. I could have, but I just do not remember. That counter clerk at the pawn shop also found what Thornberry claims is a receipt of a Bytecoin purchase that I supposedly made. I have never seen this receipt. My lawyers, who have seen this document, said that the e-mail receipt is made out to Emery Rose. So, it has nothing to do with me. Anyway, I warned in my paper that the dark web is a dangerous place to do business because identities are shielded and the criminal elements that occupy that space cannot be trusted. People on the dark web use fake names like Emery Rose to deceive other people. The adage that “There is no honor among thieves” is true.
10. Thornberry has no proof that I have ever gone by the name Emery Rose. The claim that I stole my Uncle Emerald Rose’s identity is ludicrous and insulting. Emerald passed away before his third birthday. My mother, who was five years older than Emerald, was devastated. I would never do anything that would cause more suffering for my mother. So what if Emery Rose and my uncle Emerald have the same birthdate of February 15, 1980?! Anyway, my mom, on what would have been Uncle Emerald’s 35<sup>th</sup> birthday (February 15, 2015), posted information about him on the public section of her FaceSpace page. I tried to talk her out of doing this, but she did it anyway. So, anyone looking to steal Emerald’s identity could have obtained information about Emerald from my mom’s FaceSpace page and/or from other public records.
11. This whole ordeal has me very upset, going back to how I was so-called “identified” as Emery

Rose. My lawyers tell me that someone in a hoodie entered Big Tom's pawn shop about three weeks after the suspected package was delivered and asked to speak to Big Tom. I admit that I own several hoodies. I don't know anyone my age that does not own a hoodie. According to my lawyers, the counter clerk told this person, who said his/her name is Emery, that Big Tom was not there and that s/he was uncertain when Big Tom would return to the shop. The person did not say anything else and left. Thornberry had told the counter clerk that if anyone suspicious came to the pawn shop asking for Big Tom, the clerk was to call Thornberry immediately. Thornberry went to the shop and got a copy of the surveillance video. Thornberry's crime lab, using facial recognition technology, identified ten persons as possible matches to the person who entered the pawn shop. I was one of the ten because my mug shot was on file as a result of an incident from when I was eighteen years old. I got into a fight with a person at GameStop who pushed me off the game I was trying out and was otherwise being very obnoxious. I went outside, found an empty beer bottle, went back inside and let the bully have it across the head. The bully was a bloody mess! I was arrested for assault, was fingerprinted, and stood for a mugshot. The charge was subsequently dropped because the bully was too embarrassed to proceed and preferred to just have the matter go away. My public defender, who I am sure is very busy with many other cases, had not gotten around to having the record sealed. That's why my mug shot was still in the system.

12. It's shameful that Thornberry is using the counter clerk at Big Tom's Reseller to frame me. S/he threatened the clerk that the pawn shop would be closed and that the clerk would be prosecuted on suspicion of possessing stolen goods if the clerk was unwilling to state that I was Emery Rose. The poor clerk is scared to death and will say anything Thornberry wants him/her to say. This has been nothing but a sham investigation from the start.
13. According to my lawyers, Thornberry determined that five of the ten possible matches were in jail or prison during the time period in question. Three of the remaining five were out of town and had been for some time. The whereabouts of the ninth person was unknown. So, Thornberry makes the incredible conclusion that I am Emery Rose and the perpetrator of this elaborate criminal enterprise. Give me a break! My lawyers said that the facial recognition probability of the ninth person being the one in the video is 96%. I am only at 95%. What is the deal with Thornberry?! With that ninth person still out there and unaccounted for, my lawyers believe that

trying to prove my guilt beyond a reasonable doubt will be really tough.

14. I am a very good computer programmer and web developer. In addition to selling my personal items, I support myself by designing websites for small businesses located in the county. I don't make a lot of money, but I get by. I am paid in cash and off the books. When Thornberry searched my room following my arrest, s/he found \$7,500 I had hidden under my mattress. I don't trust banks! Thornberry claimed that the money was in a duffel bag under my bed. S/he asserted at the suppression hearing that the duffel bag had to be searched for weapons that could be used against the officers. The suppression court believed the lying investigator and allowed the money to be used against me. Thornberry, by lying about the location of the money, shows what kind of corrupt cop s/he is.
15. My lawyers wondered why I live in a crappy one-room apartment when I had \$7,500 and could afford a nicer place. Thornberry suggests that I have chosen to stay in the boarding house to avoid drawing attention to myself as I go about engaging in the alleged criminal activity. That is all untrue. I could not afford to move out of my small room at the time. The \$7,500 was to last me for a while until I was able to get full-time employment. Now that Thornberry has my money, I am really stuck here.
16. Thornberry tries to make a big deal about the \$7,500. It appears that one of the entries in Big Tom's notebook is a payment to Emery Rose on July 29, 2019 in the amount of \$6,825 for a 24-carat gold MacBook Pro computer. Another entry on that date is for a Gucci handbag that sold for \$675, for a total of \$7,500. So, what if that is the same amount of money I had stuffed under my mattress? Thornberry's claim that I am Emery Rose, is a ridiculous assertion and completely without basis.
17. The money was really from my eBay/pawn shop transactions and my web development activities. You know, I don't want to identify all the businesses for which I did web development. They should not be dragged into this mess. I can tell you I did work for businesses like Carol's Cut and Curl over in Elmira and Bob's Bistro off US 86 in Horsehead. I had every intention of paying state and federal taxes on the money I received for my web development, and if I didn't, it would be an IRS/state tax matter, not a case of conspiracy to receive and sell stolen property, for heaven's sake!

18. I have no knowledge about this alleged criminal matter, except what my lawyers learned from the pre-trial discovery motions they filed. I do know that I am not Emery Rose and that there is insufficient proof that I was involved in any scheme to receive stolen property. The fact that some Rover driver overheard pawn shop owner, Big Tom, refer to a customer by the nickname PJ has nothing to do with me. There are a lot of people with the nickname PJ, such as Pat Johnson, Perry Joseph, Parker Jackson, etc. Why is Thornberry targeting me? S/he was probably under heavy pressure to solve this case and crafted this false narrative. It's bad enough that Thornberry confiscated my desktop computer but trying to manufacture a case by pointing to two Google searches I may have made is beyond the pale. I needed to get a cell phone and I was looking at a used iPhone X. Why pay \$1,300 for a new one when an old one works just as well?! Also, thousands of people, every day, I bet, do Google searches on Bytecoin. Are they all involved in criminal activity? And so what if I go on FaceSpace a couple of times a day? I like to see what my mom is posting about our family and friends. As far as I am concerned, Thornberry did not find any suspicious activity on my desktop. I wish my laptop had not been stolen back in August. If I had it now, I would be able to prove that I am not Emery Rose and that I was not involved in any scheme to buy and sell stolen goods. I did not report the theft of my laptop because I do not like dealing with cops. Also, I did not want to involve the Sawbucks' employees because it was my stupidity in leaving the laptop unattended that led to the theft. Besides, it was just one of those cheap Chromebooks that sells for only a couple hundred dollars. Anyway, it does not appear to matter to Thornberry whether a person is guilty or not, and I just happen to be the convenient scapegoat. When this whole thing blows up in his/her face, s/he should be fired for this misguided prosecution.

I affirm the veracity of the foregoing statement.

Dated: Chemung, New York  
October 18, 2019

Phoenix Jones  
Phoenix Jones

## AFFIDAVIT OF BLAIR OVERLAND

1. My name is Blair Overland. I am 29 years old and reside at 259 Niagara Street in Chemung, New York.
2. I graduated from East Stroudsburch University with a bachelor's degree in Sociology 7 years ago. Right after college, I got married and just one year later, we welcomed our first child. Two years after that, we had a second child. While nothing makes me happier than my family, and I would do anything for them, money can get pretty tight around here, so I have always had a full-time job and a side hustle.
3. Right now, I work as a residential aide in a group home from 11 p.m. until 7 a.m. I make \$17.50 per hour, plus family health insurance coverage. I chose the graveyard shift because I was told there would be a lot of opportunity for overtime, but that really hasn't materialized.
4. I thought about driving for one of those larger, nationally known ride-hailing services, but because of some youthful indiscretions and a DUI conviction ten years ago, I did not pass their screening procedures. Then Rover contacted me. Rover is a smaller, franchise-based ride-hailing service with a more forgiving attitude towards its employees' past indiscretions. I drive for Rover during the busiest hours for ride-hailing, and along with premium pricing, I get some primo tips!
5. One of my favorite runs is for Rover's customer, Emery Rose, who has one of those virtual mailbox addresses at Ted-Rex Dinko's, just outside of town. I have never met Emery, but I frequently get a gig to pick up packages at Ted-Rex Dinko's and take them to Big Tom's Reseller, a large pawn shop on Central Avenue in Chemung. As far as I know, Emery texts a passcode to my dispatcher, who then sends me to Ted-Rex Dinko's. I've probably delivered seven or eight packages for Emery Rose from Ted-Rex Dinko's to Big Tom's, starting in early June 2019 through August 2019. I just get the package and take it where I am told. I am paid immediately, usually with a very large tip, once I arrive at Big Tom's. All payments, including tips to Rover drivers are, of course, by credit/debit card and made electronically.
6. To tell you the truth, Big Tom's Reseller is more of a pawn shop than one of those second-hand stores you see all over the place. Let's just say it's not a very high-end retail establishment with a polished staff and classy customers. In fact, I remember one day in late June 2019 – probably June

21<sup>st</sup> if my memory serves me correctly – when I observed Big Tom arguing fiercely with a customer who was wearing a sleeveless hoodie covering his/her entire head and ears. They were both standing at the far end of the counter, away from the door. I didn't want to interrupt, and it's never a good idea to stare at people you don't know; so I just went up to the end of the counter closest to the door and informed Big Tom that I had a package for him from Emery Rose. Big Tom yelled, "It's about time! See PJ, I told you there was nothing to worry about. Without saying goodbye, this PJ quickly left the shop, nearly bumping into me as s/he was leaving.

7. On August 22, 2019, we got another hail from Emery to pick up a package at Ted-Rex Dinko's for delivery to Big Tom's. On route to Big Tom's, I thought I saw someone following me, but to be honest, I didn't think much about it. However, once I got to the pawn shop, I noticed that the driver of the other vehicle followed me in. I told the clerk that I had a package from Emery for Big Tom. The clerk said Big Tom wasn't there, but s/he would sign off on the package for him. The creepy person who was following me then demanded to know who Emery Rose was and where Rose lived. I told him/her I don't know – I'm just the delivery driver. The lout then flashed his/her federal ID badge, which identified him/her as Investigator Morgan Thornberry. S/he gave me a business card and told me to call him/her if I could ascertain anything about Emery Rose's identity. Reluctantly, I said sure, but there's no way I am going to be accusing or involving Rover customers in crimes, especially such a good tipper as Emery.
8. I was nosing around the Rover office on September 30, 2019 and just happened to come across Emery Rose's customer account file. It appears that Emery used one of those pre-paid VEZA cards to pay for his/her Rover transactions. I've bought these type of pre-paid credit cards over the years for my nieces and nephews as gifts. It does not take much to set up and maintain these cards. You can probably use any name you want when registering the card.
9. In late September 2019, Investigator Thornberry called to invite me down to the U.S. Attorney's branch office in Chemung for a brief interview. On October 1, 2019, I met with Thornberry at his/her office. I told Thornberry about Emery Rose's Rover account and about the pre-paid VEZA credit card used to maintain the account. During my interview, I mentioned the altercation I observed between Big Tom and the person he called PJ. Thornberry thanked me for the information and said that the government lawyers handling this case will likely subpoena Rover for the customer account-information log.

10. I really don't know anything more about this case beyond what I have already stated. During the October 1<sup>st</sup> interview with Thornberry, s/he showed me a picture of Phoenix Jones. I really did not get a good look at the person arguing with Big Tom back in late June because of the hoodie s/he was wearing, but I can say that the person Big Tom referred to as PJ appeared to have the same facial features as Phoenix Jones. Thornberry was pushing me for more information, but I told him/her that the statement by Big Tom is all I know. Anyway, if I am pressed, I would have to say that the person talking to Big Tom was probably not Jones. Several days before my interview with Thornberry, I was chatting with a co-worker, and he was saying that it is not a good idea for me and the company to be involved, knowingly or unknowingly, in the transportation of stolen goods. He said that people could get fired and/or go to jail. I agree with my co-worker on that point. Besides, I cannot afford to lose this job, and I certainly do not want to go to jail. I have to look out for numero uno, which is moi.
  
11. I was subpoenaed by the defense to appear at trial and to testify, and I am not happy about losing my beauty rest time or the money from my side hustle. I have mouths to feed, you know!?

I affirm the veracity of the foregoing statement.

Dated: Chemung, New York  
November 1, 2019

Blair Overland  
Blair Overland

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## AFFIDAVIT OF PROF. KADEN KELLER

1. My name is Kaden Keller. I am 53 years old and reside at 2020 Civics Circle in Chemung, New York. I am an economics professor at Chemung State College.
2. I received a bachelor of arts degree in Political Science from the State University of New York at Stony Brook in 1988. In 1991, I earned a masters in business administration from SUNY at Binghamton. I received a Ph.D in economics from SUNY at Buffalo in 1995. In August 1996, I was hired by Chemung State as an assistant professor. In 2003, I was promoted to an associate professorship with full tenure.
3. Although I do some research, I prefer to just teach, especially freshman and sophomore students. Many of them are very bright and inquisitive, and the semesters just fly by. I have written several books, the latest entitled *Political Economy: How and Why Countries Fail* (Univ. at Buffalo Press, 2003). I have written many articles in scholarly journals on topics such as GDP, business trends, economic development and mass marketing over the Internet. I have also testified in numerous personal injury cases on the issue of economic loss. This is my first time testifying in a criminal trial. I ordinarily charge a fee when I testify. However, in this case, I am testifying in support of one of my former students and will not charge a fee.
4. Phoenix Jones was a student in my Economic 201-Macroeconomic course in the Fall semester of the academic year 2018-2019. PJ, as we fondly called him/her, was one of those bright and inquisitive students that made teaching easy. I was exceedingly disappointed when I learned s/he had dropped out of school. When s/he was in my class, I was able to engage PJ on a high level and challenge him/her intellectually. The other instructors, with their humdrum approach to teaching, failed to reach PJ at the level s/he required and demanded.
5. I discussed this case with the defense attorneys prior to preparing this affidavit. The attorneys did not assist me in the drafting of the affidavit, nor suggested what points I might want to make. While I might be, more or less, a character witness, I was nevertheless intrigued by the prosecution's apparent misunderstanding of the so-called "secrecy" afforded to cryptocurrency.

6. PJ has excellent computer skills and an exceptional grasp on the full potential of the Internet. I don't doubt s/he could carry out the scheme that Investigator Thornberry has accused him/her of doing, but I am confident s/he did not. Don't ask me how I know s/he did not do this crime; it is just based on a feeling. For the required writing assignment in my Econ 201 course, PJ wrote a paper on Cryptocurrency and the dark web, and s/he demonstrated a great understanding of the theoretical and practical underpinnings of the two technologies, and their interrelationship in criminality. PJ believed that cryptocurrency provides a level of security and anonymity that is, for all practical purposes, impenetrable.
  
7. I disagreed with PJ regarding the level of anonymity provided by cryptocurrency, but s/he received an "A" on the paper, nevertheless. Bytecoin transactions are what I call "pseudo-anonymous." Anybody using Bytecoin can be tracked down by examining the person's public address information and Internet Protocol (IP) address that are recorded with the transaction in the blockchain that is visible to everyone. A person looking for more anonymity may be able to use a VPN (virtual private network) to complete the transaction but will run the risk of not having the transaction confirmed by all the nodes on the Bytecoin network, and the transaction will fail. So, with a little ingenuity and less sloppiness, the investigators could discover these perpetrators who use cryptocurrency and easily put an end to this kind of dark web criminal activity.
  
8. Those pinhead, ivory tower elitists like Professor Thompson think they know everything about everything. I know a lot about cryptocurrency and the dark web and could teach the good Chicago professor a thing or two about these topics. For the professor to travel this far to testify for what is relatively a minor criminal case suggests to me that s/he has an axe to grind. I don't think the prosecution is getting its (crypto-) money's worth with Professor Thompson.
  
9. I was once accused, or should I say falsely accused, of having committed a crime using the Internet. In 2004, I was an associate professor and was doing research on how illegal drugs were starting to be sold on the worldwide web. While at home one night, I went to this one suspicious site and put in a fake name, a fake address and a fake credit card number along with an order for Quaaludes. I did not plan to hit the order button since I just want to see how far along one could get. I then got a phone call and left my computer. My then five-year old precocious son was playing with the

computer mouse and hit the button placing the order. When I got back to my computer, I saw what had happened and admonished him. I didn't think much of it since all the information was fake. Well, two days later, federal agents, in the early morning hours, broke down my door, terrorized my family, arrested me for attempted drug possession and took my computer with all my important research. That drug website turned out to be a government operation, and the agents used my IP address to track me down. The criminal charge was subsequently dropped after my attorney was able to convince those knuckleheads that I was simply engaging in academic research. The whole ordeal, however, was extremely traumatic for me and my family, and we are still suffering psychologically from it to this day. I also believe the agents' improper conduct delayed me in receiving a full professorship by at least a year and a half. I recognize Morgan Thornberry as one of the abusive agents involved in my illegal arrest. His/her actions and the actions of the other agents are unforgiveable.

10. PJ is really a great person. Although I have not seen PJ since the time s/he was in my Econ 201 class, and while I don't know what s/he has been up to since that time, I, nevertheless, don't believe s/he would resort to this kind of criminal activity. I have since learned that s/he may have fallen on hard times since moving out of his/her parents' home, and tough times often cause some people to make bad decisions. However, when PJ was in my class, I spoke to him/her often and s/he never said anything that would lead me to believe that s/he did not have a high moral character. This criminal charge should be dropped.

**I affirm the veracity of the foregoing statement.**

Dated: Chemung, New York  
November 15, 2019

*Kaden Keller*  
Prof. Kaden Keller

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

**PART V**

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EXHIBIT \_\_\_\_\_

## CHICAGO POLICE DEPARTMENT

### Complaint Information



**Complaint # MT-2019-09 Date Received: June 6, 2019 Source: Victim**

Dispatch Code: 09	Description: Larceny/Theft	Call Type: I-04
Final Dispatch Code: 09	Description: Grand Larceny	
Street: 123 Jefferson Ave., Chicago, IL	Tract: CF	Street Code: Res
Cross Street: Adams	Municipality: Chicago	
Business: N/A	Call Back: Info	
Times: Received: 13:22	Dispatched: 13:52	Arrived: 14:04
		Completed: 14:32
Officers: G. Washington, P. O'Reilly		
Received By: Monroe	Dispatcher: Madison	
Report (follow up): Inf Vic Items Recovered	Notified: June 6, 2019	
Action Codes	1. Inv	2.
	3.	4.

**Associated Persons:** Victoria Thomas

**Notes:** Victim reported suspected larceny from vehicle parked in driveway of residential premises. Officers Washington and O'Reilly responded to residence at 123 Jefferson Ave. Met with victim who reported that she was moving items from recently deceased father's home on June 5, 2019 and had come out of house to find car door open. Unsure whether door had been left locked, but no evidence of tampering with lock or window.

Inside car, signs of intruder evident (glove box and console open and items strewn). Upon inspection, victim identified several missing items, including black and silver Omega wristwatch (vintage 1975), Gucci handbag (grey with bamboo handles) and gold and diamond ring (appx 3 carat) with " '85 " engraved on inner band.

Victim reported that items were in vehicle in preparation for transport from father's house to her home in preparation for estate sale. Victim wished to keep valuable items elsewhere for safekeeping. Might have failed to lock car due to stress of moving and preparation for sale.

Offices reported to victim that report made and items would be added to register in case of recovery from known or suspected stolen property.

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EXHIBIT \_\_\_\_\_

**BIG TOM'S RESELLER – NOTEBOOK**

<b>DATE RECEIVED</b>	<b>ITEM</b>	<b>SALE PRICE</b>	<b>DATE SOLD</b>	<b>Emery Rose's Share</b>
June 1, 2019	Men's Rolex Watch (used, mint condition; value \$5,000)	\$3,000	June 29, 2019	\$1,350
June 1, 2019	Tahitian Pearl Necklace (18 inches; value \$4,000)	\$2,500	June 14, 2019	\$1,125
June 8, 2019	Men's 14K Gold Bracelet (value \$2,500)	\$1,800	June 21, 2019	\$810
June 8, 2019	Video Game Console (good condition; value \$350)			
June 21 2019	Coach Pocketbook (fair condition; value \$200)	\$100	July 1, 2019	\$45
June 21, 2019	iPhone X (mint condition; value \$800)	\$500	June 24, 2019	\$225
June 21, 2019	Hermes Birkin Bag (tan, mint condition; value \$7,000)	\$5,000	July 5, 2019	\$2,250
July 1, 2019	Pearl Necklace (17-inch; value \$700)			
July 1, 2019	Diamond Earrings (2 carats, 1 each earring; value \$3,500)	\$2,800	July 15, 2019	\$1,260
July 10, 2019	Diamond Tennis Bracelet (excellent condition, value \$5,000)			

<b>DATE RECEIVED</b>	<b>ITEM</b>	<b>SALE PRICE</b>	<b>DATE SOLD</b>	<b>Emery Rose's Share</b>
July 10, 2019	Gold 24-carat MacBook Pro Computer (fair condition; value \$22,000)	\$16,700	July 29, 2019	\$6,825
July 17, 2019	Tiffany CT60 Men's Watch (excellent condition; value \$11,500)			
July 17, 2019	18K Ruby Studs Earrings (value \$8,000)	\$4,500	July 20, 2019	\$2,025
July 25, 2019	Men's Omega wristwatch (Black and Silver; vintage 1975; value \$6,000)			
July 25, 2019	Gucci Handbag (grey with bamboo handles; excellent condition; value \$3,000)	\$1,500	July 29, 2019	\$675
July 25, 2019	3-carat Diamond Ring (gold; engraved with "85"; value \$22,500)			

EXHIBIT \_\_\_\_\_



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EXHIBIT \_\_\_\_\_



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EXHIBIT \_\_\_\_\_

# ROVER CAR SERVICE

## Customer Account- Information Log

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**CUSTOMER:** Emery Rose

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**DATE OF BIRTH:** February 15, 1980

---

**EMAIL:** [CompuGeek@zmail.com](mailto:CompuGeek@zmail.com)

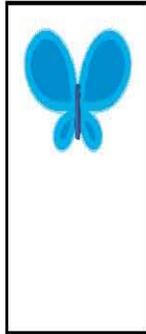
---

**CREDIT CARD:** VEZA – 3333121275438962  
Expiration: 05/2022  
Security Code: 123

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EXHIBIT \_\_\_\_\_



**EMILY ROSE JONES**

What are you thinking about today?

Finally had the courage to add my deceased sibling to my [Descendantsandme.com](http://Descendantsandme.com) family tree! Rest in peace, **EMERALD ROSE** born February 15, 1980, died January 13, 1983.

Posted: February 15, 2015

😊 approve

👍 say something

➦ Spread the word

😊👍 ♡ 58

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EXHIBIT \_\_\_\_\_



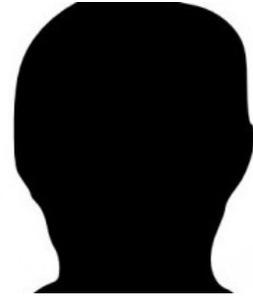
**Pat Williams**  
FR: 45%



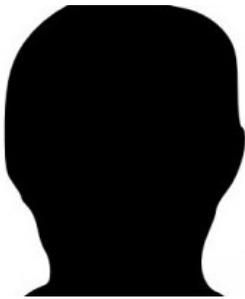
**Shawn Miller**  
FR: 47%



**Bobby Johnson**  
FR: 49%



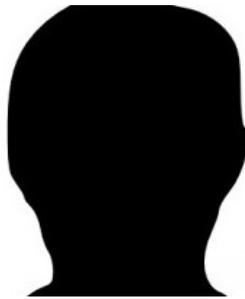
**Cary Thomas**  
FR: 51%



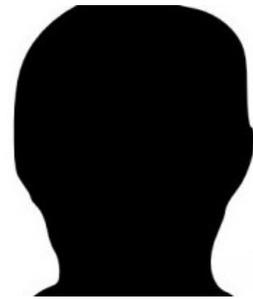
**Shelly Smith**  
FR: 53%



**Robin Roberts**  
FR: 55%



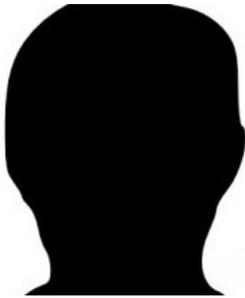
**Denver Bobson**  
FR: 65%



**Frankie Lane**  
FR: 73%



**Phoenix Jones**  
FR: 95%



**Clarke Taylor**  
FR: 96%

Legend: FR is “facial recognition percentage”

Prepared by: Morgan Thornberry, Investigator, U.S. Attorneys’ Office

FBI Crime Lab – Buffalo Regional Office

September 14, 2019

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

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## CASES

### ***U.S. v. Rosa et al., 17 F.3d 1531 (1994)***

The defendant and others were convicted of conspiring, in violation of 18 U.S.C. §371, to receive stolen goods in violation of 18 U.S.C. §2315). Conspiracy is a crime that is separate and distinct from the substantive offense that is the object of the conspiracy. Because it is the conspiratorial agreement itself that is prohibited, the illegality does not depend on the actual achievement of the coconspirators' goal, such as when a government agent might intervene before the object of the conspiracy (*i.e.*, the substantive offense) is completed. Moreover, circumstantial evidence may be sufficient to prove conspiratorial intent or the intent to commit the underlying substantive offense.

### ***U.S. v. Samaria, 239 F.3d 228 (2001)***

The defendant was charged with conspiring to receive or possess stolen goods and conspiring to commit credit card fraud. To prove conspiracy, the government must show that the defendant agreed with another to commit the offense; that she knowingly engaged in the conspiracy with the specific intent to commit the offenses that were the objects of the conspiracy; and that an overt act in furtherance of the conspiracy was committed. Since conspiracy to receive or possess stolen goods is a specific intent crime, the government must establish beyond a reasonable doubt that the defendant had the specific intent to violate the substantive statute (*U.S. v. Monaco, 194 F.3d 381[1999]*).

### ***U.S. v. Aleskerova, 300 F.3d 286 (2003)***

Absent evidence of purposeful behavior, mere presence at the scene of a crime, even when coupled with knowledge that a crime is being committed, is insufficient to establish membership in a conspiracy. Thus, a mere association with conspirators is insufficient. However, a person can be in a conspiracy with another person, even if they never met (*e.g.*, Internet transactions [*ed. comment*]), and so long as they knew the other person was doing something to further the conspiracy. Moreover, a defendant's knowing and willing participation in a conspiracy may be inferred from, for example, her presence at critical stages of the conspiracy that could not be explained by happenstance.

### ***U.S. v. Strauss, 678 F.2d 886 (1982)***

The defendant was convicted of receiving, in interstate commerce, motor vehicles, knowing that the goods were stolen. On appeal, the court held that accepting a good and having either physical control of or apparent legal power over a good is sufficient to show that an individual received it. Moreover, the unexplained possession of recently stolen goods would allow inference of knowledge of their character at time of receipt and sustain a conviction of receiving stolen goods in interstate commerce knowing that they were stolen.

#### **IMPORTANT NOTE:**

Only the names and the citations of the relevant cases are provided here.

Please go to [www.nysba.org/mtcaselaw](http://www.nysba.org/mtcaselaw) to **view** and/or **print** the text of each case.

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## RELEVANT STATUTES

### **18 U.S.C. §371. Conspiracy to commit offense or to defraud United States**

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

### **18 U.S.C. §2315. Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps**

Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of \$5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of \$500 or more, which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken

. . . (s) shall be fined under this title or imprisoned not more than ten years, or both.

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**OTHER RELEVANT MATERIALS**  
**(NOT evidence – informational purposes ONLY)**

*Click the links below to read the articles:*

**Some Bitcoin Words You Might Hear...**

- <https://bitcoin.org/en/vocabulary#address>

**Facial Recognition Technology**

- <https://www.pogo.org/report/2019/03/facing-the-future-of-surveillance/>
- <https://nationalinterest.org/feature/facial-recognition-meets-fourth-amendment-test-82311?page=0%2C1>

**An Untraceable Currency? Bitcoin Privacy Concerns (see page 113)**

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## An Untraceable Currency? Bitcoin Privacy Concerns

Fintech Weekly | *Tyler G. Newby and Ana Razmazma* | April 7<sup>th</sup>

(Reprinted with permission from Fintech Weekly)

<https://www.fintechweekly.com/magazine/articles/an-untraceable-currency-bitcoin-privacy-concerns>



**Bitcoin is often portrayed as an untraceable method of payment that facilitates illicit activities by enabling criminals to make and receive payments without being tracked. This depiction implies that users transacting in bitcoin can do so completely anonymously — that their identities will not be exposed. However, that is not necessarily the case. While bitcoin offers increased privacy compared to traditional payment methods involving a third-party intermediary such as a credit card provider, it is still not as anonymous as a cash transaction. In fact, there are many ways a person’s identity could potentially be exposed in bitcoin transactions.**

### **An Overview of the Blockchain**

Bitcoin is not anonymous. As we explain below, it is pseudonymous — an important distinction. It is also a decentralized, peer-to-peer digital currency, having no third-party intermediary (for instance, a credit card issuer, merchant processor or bank) that is involved to verify a transaction between a buyer and seller. Since there is no third party, there must be another way to verify a transaction between two users and avoid the “double-spending” problem (i.e., a way of ensuring that a user does not spend bitcoin they have previously transferred).

This is where the blockchain, the truly revolutionary aspect of cryptocurrencies such as bitcoin, comes into play. A blockchain is a public, distributed ledger, in which every transaction is recorded. Unlike traditional payment systems in which the ledger is maintained by a single third party, a blockchain ledger is distributed across a group of computers (thousands of them), each with its own copy of the blockchain transactions.

Each block of transactions in a blockchain is confirmed by users in the peer-to-peer network, called “miners,” who compete to solve a complex computational problem. The first successful miner to validate the transaction broadcasts it to the network, which then checks the results. Once checked, the new transactions are added as a new block to the blockchain. In the case of bitcoin, the miner who first successfully verified this transaction gets rewarded by the network with newly created bitcoins. As of July 2016, the reward was reduced from 25 to 12.5 bitcoins, and it is expected that the reward will be further reduced to 6.25 bitcoins in 2021.

### **Anonymity vs. Pseudonymity**

Because the bitcoin blockchain is a permanent public record of all transactions accessible by anyone at any time, it is not anonymous. Instead, the transactions in the blockchain are encrypted with public key cryptography that masks the real identities of the individuals behind the transactions. This makes bitcoin pseudonymous. In each bitcoin transaction, each user is assigned two digital keys: (1) a public key or address — the address is actually a hash derived from the public key, but for purposes of this article, we use these terms interchangeably — which everyone can see and is published on the bitcoin blockchain, and (2) a private key, which is only known to the user and is the user’s “signature.”

The private key is used by others to verify that the transaction was in fact signed by that user. The bitcoin blockchain will only show that a transaction has taken place between two public keys (an identifier of 34 random alphanumeric characters), indicating the time and amount of the transaction.

### **Tracing Bitcoins Back to Individuals**

Encryption might create the impression that these transactions are viewable but unmatchable to specific individuals. However, bitcoin is not as untraceable as encryption may imply. Tying an encrypted transaction to an actual individual is possible — it is not a remote risk. There are several ways this could occur.

Users who rely on a bitcoin trading exchange (such as Bitfinex, Binance or Kraken) to exchange currency for bitcoin have to divulge their personal information to that exchange to create an account. The information collected by the exchange varies, but normally includes, at a minimum, a user’s first and last name, and, possibly, a phone number. The exchange may also collect a user’s IP address. If these

exchanges were subject to a data security breach, a user’s personal information could be exposed. In addition, some centralized exchanges offer to manage users’ bitcoin funds and users’ private keys on their behalf.

There are also online wallet service providers that manage users’ wallets on their behalf. A wallet is a software program that stores a collection of a user’s public and private key pairs. The storage of private keys makes these centralized exchanges, and online wallet service providers, prime targets for criminals because, as discussed above, anyone with access to a user’s private key will be able to create a valid bitcoin transaction. A hacker who accesses a user’s private key can send all of that user’s bitcoins to him or herself, or to any intermediary of their choosing.

There have been several high-profile breaches of exchanges in the past, including the February 2014 hack of Mt. Gox, once the world’s largest bitcoin exchange. The Mt. Gox attack resulted in a loss of 850,000 bitcoins then valued at \$450 million. Thus, hackers who gain control over a user’s exchange or online wallet account not only gain access to a user’s personal information and transaction history but also to a user’s bitcoin funds.

Exchanges are also increasingly subject to regulatory requirements that could lead to government entities accessing a user’s personal information. Bitcoin valuation plunged recently when the U.S. Securities and Exchange Commission released a statement warning that online platforms trading digital assets that meet the definition of “securities” would be considered exchanges under the securities laws and need to register with the SEC or show exemption from registration. Although the SEC has not taken any action to date, this means that cryptocurrency exchanges could be subject to the stringent securities regulations applicable to national securities exchanges.

Similarly, South Korea announced greater regulation of bitcoin earlier this year. Under the new South Korean regulation, users will only be able to deposit into their exchange wallets if the name used on the exchange matches the name on the user’s bank account. Exchanges are also already subject to certain legal requirements, such as responding to subpoenas, which could require them to share personal information with governmental authorities if required by law. For instance, the U.S.-based exchange Coinbase was recently ordered by a court to turn over to the Internal Revenue Service information regarding approximately 14,000 of its customers. A brief review of several exchanges’ online privacy policies indicates that exchanges will share a user’s information as needed to comply with their legal and regulatory obligations.

### **Blockchain Analytics**

It is also possible to identify users simply by analyzing transactions on the blockchain. Companies like Elliptic and Chainalysis have built businesses based on blockchain forensics. These companies use

analytics on the bitcoin blockchain to link bitcoin addresses to web entities and help their customers assess the risk of illegal activities. Their customers include exchanges but also government entities. In fact, it became public last year that the IRS is using Chainanalysis’s software to track potential tax evaders.

Several studies have also shown that it is possible to use network analysis and other methods to observe and potentially tie back blockchain transactions to certain websites and individuals. Specifically, one 2013 study by researchers at the University of California, San Diego and George Mason University showed that it was possible to tag bitcoin addresses belonging to the same user by using clustering analysis of bitcoin addresses. A small number of private transactions with various services were used to identify major institutions (such as exchanges or large websites).

From there, the researchers were able to get information on the structure of the bitcoin network, where transaction funds are going and which organizations are party to it. Another study by researchers at ETH Zurich and NEC Laboratories Europe that looked at bitcoin transactions in a small university sample found that using behavior-based clustering techniques could unveil in a typical university environment the profiles of up to 40 percent of the users.

### **How Bitcoin Users Can Enhance Their Privacy**

Despite these privacy issues, bitcoin users need not despair — there are ways to enhance one’s privacy on the bitcoin blockchain. First, a bitcoin user can use a new bitcoin address for each transaction and will thus receive a new public key for each transaction, making it more difficult to trace one specific individual’s transactions to the same address. This is actually the approach that was envisioned by Satoshi Nakamoto, bitcoin’s pseudonymous (and still unknown) founder, who recommended in the paper that first introduced bitcoin using “a new key pair ... for each transaction to keep them from being linked to a common owner.”

Second, a bitcoin user can take some additional precautions to minimize the risk of traceability on third-party exchanges. The user could use the anonymous Tor browser to access the exchange and create an account without including any real personal information; the user’s IP address and personal information would not be exposed.

Third, the user could avoid storing bitcoins in online third-party wallets, and only use offline desktop wallets; that reduces the exposure to exchange hacks. Fourth, bitcoin mixing algorithms, such as CoinJoin, link users and allow them to pay together such that the bitcoins are mixed. This makes it harder to identify a particular user because only a group of transactions is published on the blockchain (although studies and research have shown that even CoinJoin presents weaknesses and could allow linking back to a particular individual).

## **The Monero Alternative**

These privacy issues have not gone unnoticed and alternative cryptocurrencies with an increased privacy focus have emerged. Monero is the most prominent of these alternatives. Unlike the bitcoin blockchain, which, as we have noted, is based on a two-key (public and private key) cryptography, the Monero blockchain is based on unique one-time keys and ring signatures. With ring signature technology, the actual signer is pooled together with a group of possible signers, forming a “ring.”

This creates a distinctive signature that can authorize a transaction. When an individual initiates a Monero transaction, the verifier is able to establish that a transaction came from a group but is not able to determine the identity of the initiator whose private key was used to produce the signature. As a result, the Monero blockchain does not identify a specific sender, and the receivers’ addresses and the transaction amounts are hidden. Monero has become the cryptocurrency of choice for privacy-focused users.

Although bitcoin is a decentralized and unregulated payment method, users should understand that this does not mean that their bitcoin transactions are anonymous and hidden from scrutiny. The public nature of the blockchain combined with the increasing threat of government regulation can lead to the identification of users engaged in transacting the currency.

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

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POINTS	MOCK TRIAL TOURNAMENT PERFORMANCE RATING GUIDELINES
<p style="text-align: center;">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 style="text-align: center;">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 style="text-align: center;">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 style="text-align: center;">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 style="text-align: center;">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 style="text-align: center;">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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**2020 NEW YORK STATE MOCK TRIAL TOURNAMENT  
PERFORMANCE RATING SCORE SHEET**

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

SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	Page 1 of 2
<b>T I M E L I M I T S</b>						
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	
➤ <b>OPENING STATEMENTS</b> <b>(ENTER SCORE) →</b>						
PLAINTIFF/PROSECUTION 1st Witness	Direct and Re-Direct Examination by Attorney					
	Cross and Re-Cross Examination by Attorney					
	Witness Preparation and Credibility					
PLAINTIFF/PROSECUTION 2nd Witness	Direct and Re-Direct Examination by Attorney					
	Cross and Re-Cross Examination by Attorney					
	Witness Preparation and Credibility					
PLAINTIFF/PROSECUTION 3rd Witness	Direct and Re-Direct Examination by Attorney					
	Cross and Re-Cross Examination by Attorney					
	Witness Preparation and Credibility					

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

SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	Page 2 of 2
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## T I M E L I M I T S

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

		PLAINTIFF / PROSECUTION	DEFENSE
DEFENSE 1st Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
DEFENSE 2nd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
DEFENSE 3rd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
<b>➤ CLOSING STATEMENTS (ENTER SCORE→)</b>			
<b>(1-10 points PER team)</b>			
<b>➤ PROFESSIONALISM (ENTER SCORE→)</b> <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; strategies intended to waste the opposing team’s time for its examinations.</li> </ul>			
<b>➤ TOTAL SCORE (ENTER SCORE)→</b>			

**JUDGE’S NAME (Please print) →**

In the event of a tie, please award one point to the team you feel won this round. Mark your choice below.

PLAINTIFF/PROSECUTION

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,

Oliver Young, Chair  
NYSBA's Mock Trial Subcommittee

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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

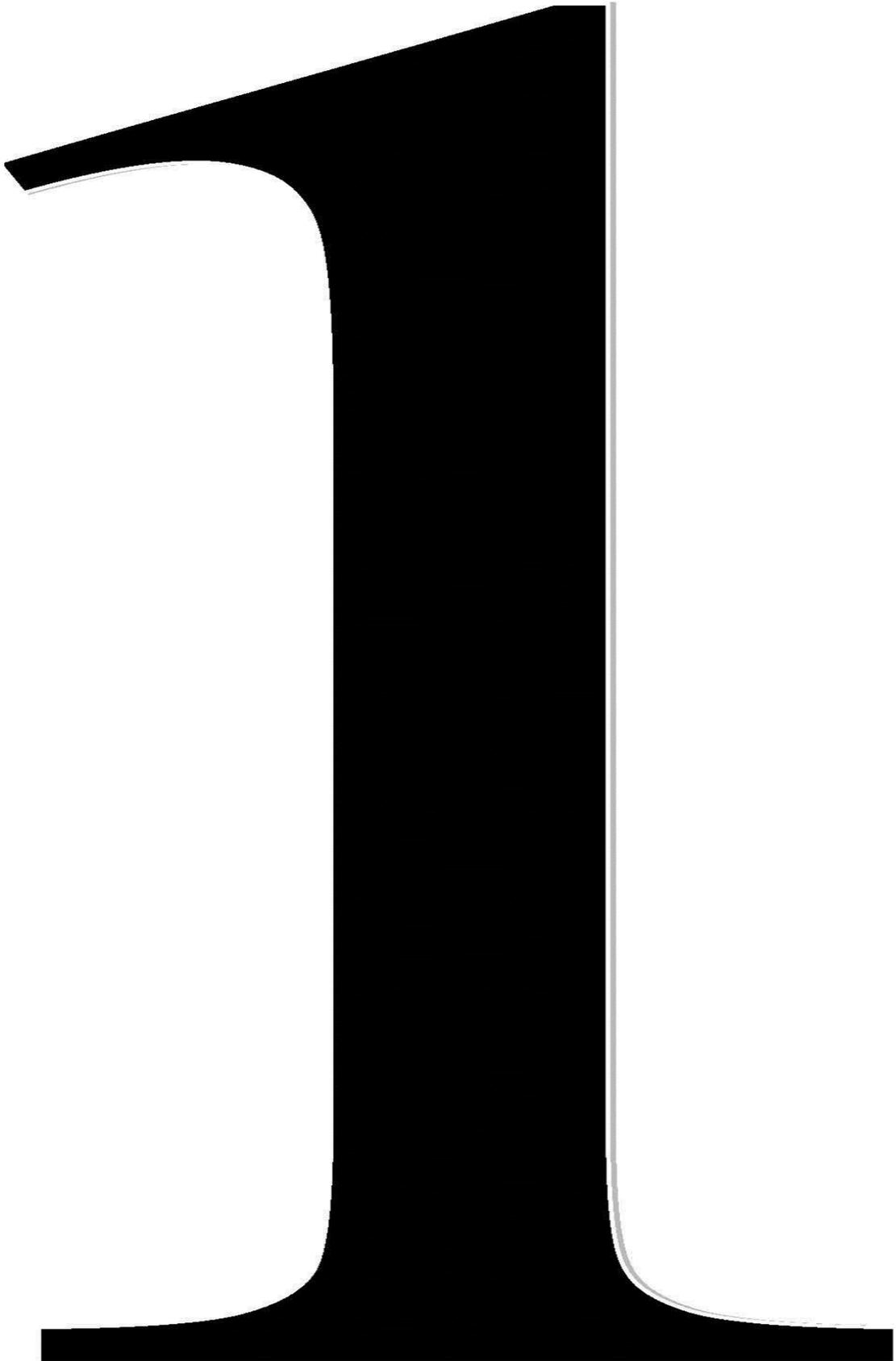
Lubet, Steven, Modern Trial Advocacy, National Institute for Trial Advocacy

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.



(over)

# **TIME LIMITS**

## **OPENING STATEMENTS**

**5 minutes for each side**

## **DIRECT EXAMINATION**

**10 minutes for each side**

## **CROSS EXAMINATION**

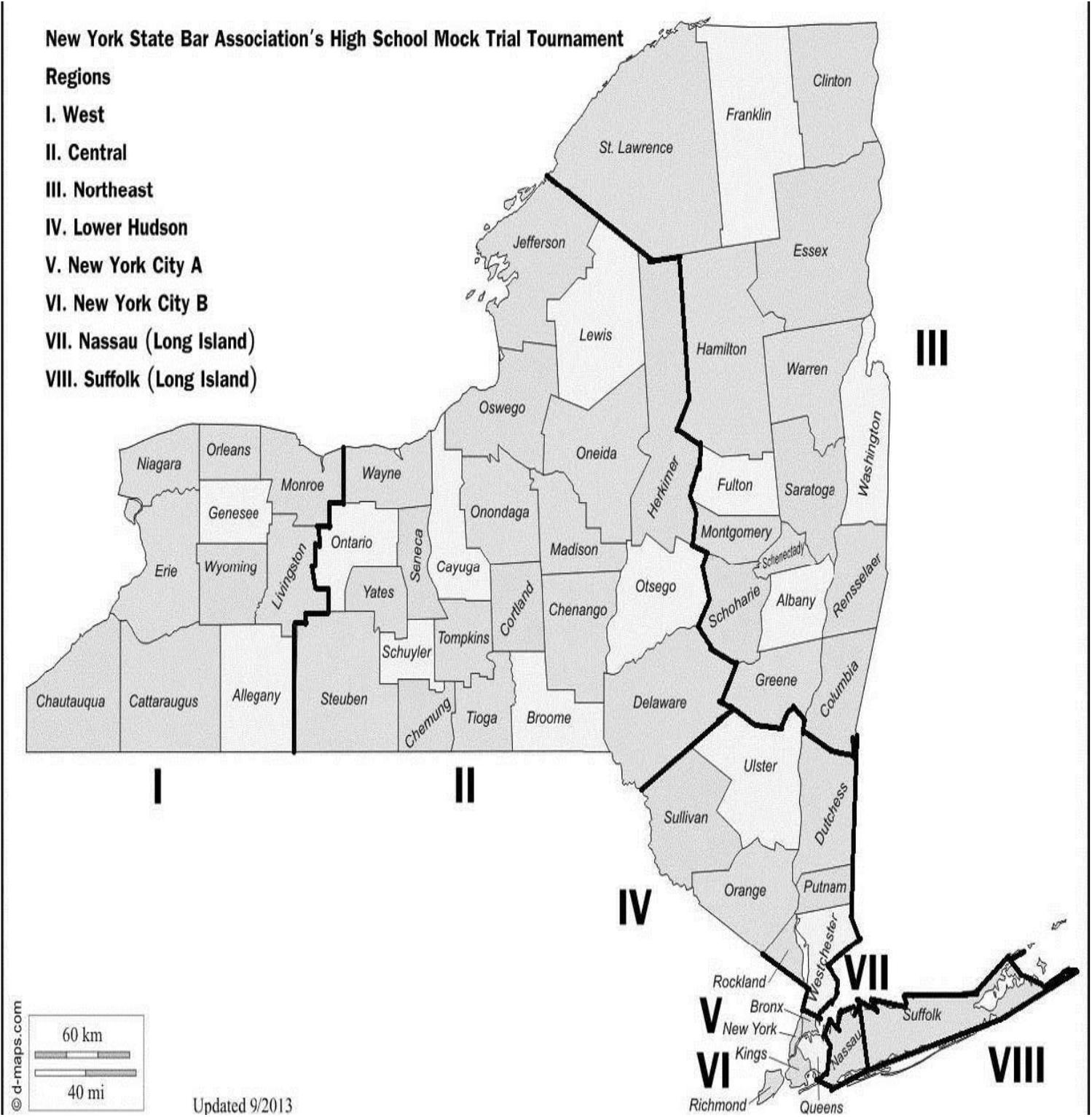
**10 minutes for each side**

## **CLOSING ARGUMENTS**

**10 minutes for each side**

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

A list of all the Past Regional Champions is available at [www.nysba.org/pastchampions](http://www.nysba.org/pastchampions)



## 2019 NEW YORK STATE BAR ASSOCIATION HIGH SCHOOL MOCK TRIAL CHAMPIONS



### FAYETTEVILLE-MANLIUS HIGH SCHOOL

*Manlius, NY / Onondaga County*

#### **Faculty Coach**

Joseph Worm

#### **Attorney Coach**

Danielle Fogel

#### **Team Members**

Briana Amador  
Nicholas Bissell  
Cecilia Byer  
Maria Costello  
Matthew Crovella  
Jayden Davis  
David Haungs  
Candace Kim  
Jordan Krouse

Emily Ledyard  
Michelle Lim  
Rachel Liu  
Nathan Montgomery  
Joshua Ovadia  
Michael Reikes  
Flavia Scott  
Kathryn Yang  
Rebecca Ziobro

**SEPARATE MATERIALS ADDED TO THE  
CASE ON 1.16.2020 (Per Correction Memo #1)**



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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**UNITED STATES OF AMERICA**

-vs-

Case No. **19-cr-00123**

**PHOENIX JONES,**

Defendant.

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**RESPONSE TO SUBPOENA OF SCOTTY CARSON, UNITED STATES ATTORNEY  
FOR THE WESTERN DISTRICT OF NEW YORK**

The subpoena *duces tecum*, issued by Scotty Carson, United States Attorney for the Western District of New York, pursuant to Rule 17 of the Federal Rules of Criminal Procedure, seeks information held by CoinDomain, Inc. relative to an Emery Rose. In response thereto, the records of CoinDomain show that Emery Rose opened an account on May 20, 2019 and at that time purchased one Bytecoin, a cryptocurrency. Subsequently, Emery Rose purchased two Bytecoins on June 17, 2019, two Bytecoins on July 5, 2019 and three Bytecoins on August 9, 2019. The records also show that Emery Rose traded Bytecoins on May 27, 2019, June 19, 2019, July 9, 2019 and August 15, 2019. Because of the algorithm and anonymity protocols established for the Bytecoin blockchain, the CoinDomain records do not show the names of Emery Rose's trading partners, nor what was exchanged on the several trading dates.

Respectfully submitted under penalties of perjury.

DATED: Amherst, New York  
December 16, 2019

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EUGENIA F. HESSLYN,  
Vice President and General Counsel  
CoinDomain, Inc.



EXHIBIT \_\_\_\_\_

Phoenix Jones's Desktop Computer

History

Saturday, June 15, 2019

- 9:30 PM FaceSpace mtouch.facespace.com
- 8:45 PM Buy/Sell cryptocurrency – CoinDomain [www.coindomain.com](http://www.coindomain.com)
- 8:42 PM CoinDomain.com – Google Search [www.google.com](http://www.google.com)
- 8:30 PM what is the cost of one Bytecoin – Google Search [www.google.com](http://www.google.com)
- 7:58 PM what is the price of a used iPhone X – Google Search [www.google.com](http://www.google.com)
- 6:00 PM REDACTED by the suppression court judge
- 5:17 PM REDACTED by the suppression court judge
- 4:59 PM REDACTED by the suppression court judge
- .
- .
- .
  
- 11:45 AM FaceSpace mtouch.facespace.com
- 10:15 AM REDACTED by the suppression court judge
- 9:37 AM REDACTED by the suppression court judge



EXHIBIT \_\_\_\_\_

# Sales Receipt

**STORAGE-R-US**  
Clutter Be Gone

Date: May 8, 2019  
Invoice #: 2559

**Sold to:** Emery Rose  
259 Kensington Avenue  
Apt. 4  
Chemung, NY 14753

Payment Method	Check No.	Job
Cash		Clerk: Larry Sands

Qty	Item #	Description	Unit Price	Discount	Line Total
1	100-5X5	Storage Unit 5' X 5' @ \$20.00 per month	\$ 20.00	\$ -	\$ 120.00


Total Discount	
Subtotal	\$120.00
Sales Tax	9%
<b>Total</b>	<b>\$130.80</b>

Thank you for your business!  
3245 Main Street, Chemung, NY 14753

Store Copy



Exhibit \_\_\_\_\_

From: CoinDomain <[no-reply@coindomain.com](mailto:no-reply@coindomain.com)>  
Date: Fri., July 5, 2019 at 4:44 PM  
Subject: Your Bytecoin purchase is now available to trade  
To: <[emeryrose@goodmail.com](mailto:emeryrose@goodmail.com)>

Your Bytecoins are now available to trade. Thank you for your continuing business with CoinDomain.

Reference code	HS9-12MTCM-CVCS
Payment Method	VESA Card (USD)
Date	July 5, 2019
Amount	2.0 Bytecoins
Exchange rate	@ \$3,200.00 / Bytecoin
Subtotal	\$6,400.00
CoinDomain Fee	\$100.00
Total	\$6,500.00

Big Tom,  
Just bought more Bytecoins  
so that I can pull down  
more hot stuff from the  
Web. You should get into  
cryptocurrency. Expect  
another shipment soon.  
Emery 7/7/19







EXHIBIT \_\_\_\_

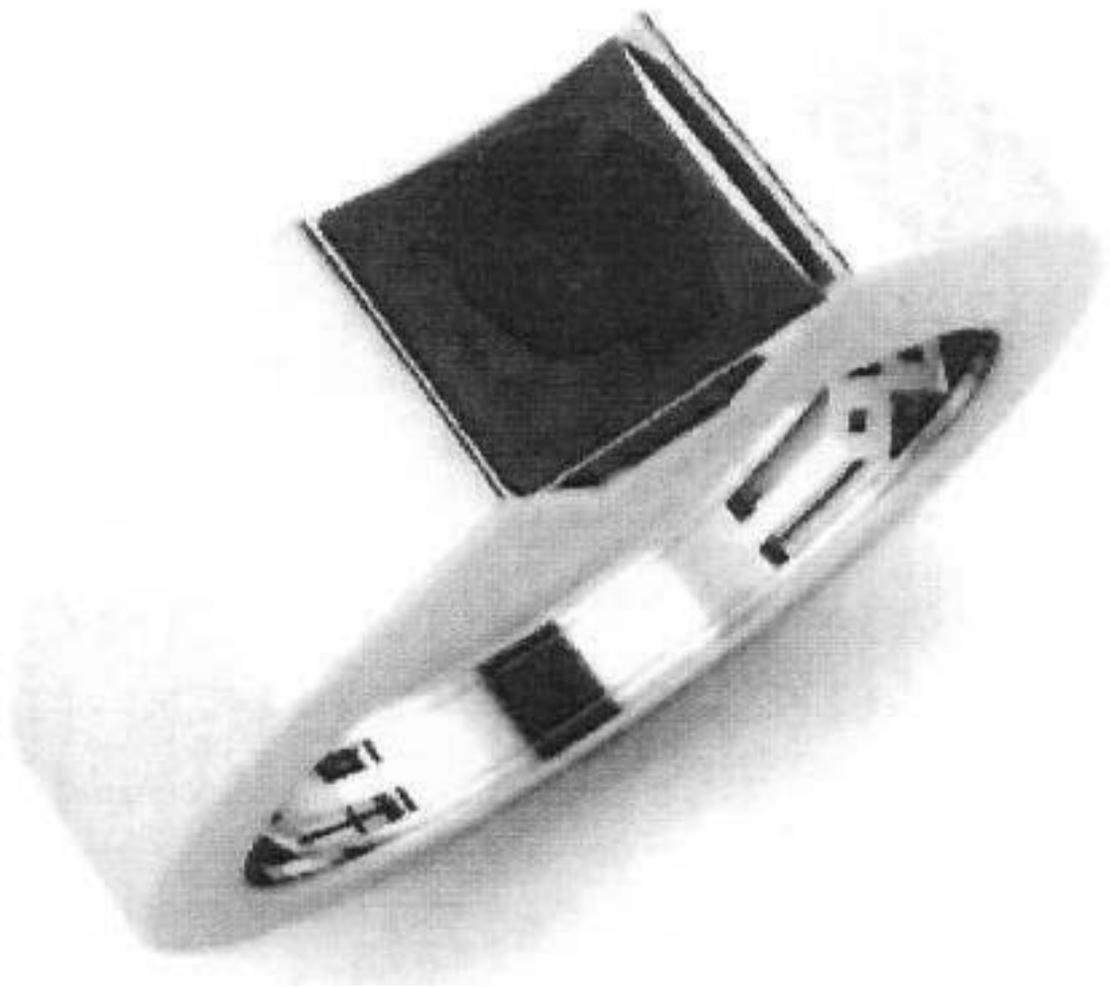




EXHIBIT \_\_\_\_\_





EXHIBIT \_\_\_\_\_

# Sales Receipt

**GreatBuy Consumer Electronic Warehouse**  
Buy More For Less

Date: May 15, 2019  
Invoice #: No

**Sold to:** Phoenix Jones  
1010 Main Street  
Room #3  
Chemung, New York 14753

Payment Method	Check No.	Job
Cash		

Qty	Item #	Description	Unit Price	Discount	Line Total
1	Chr-Bk01	HP ChromeBook Laptop - 14-inch	210		210

Total Discount		
Subtotal	\$	210.00
Sales Tax		0.09
<b>Total</b>	<b>\$</b>	<b>228.38</b>

Thank you for your business!  
Chemung Mall Plaza, Chemung, New York 14754

