EDITED 02.02.2024 REVISION 4

2024 NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT MATERIALS

The People of the State of Nirvana v. Lindsay Gordon

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

Supported by The New York Bar Foundation

NYSBA

THE NEW YORK BAR FOUNDATION

LYC
Law, Youth and Citizenship

This page intentionally left blank.

Greetings Mock Trial Tournament Participants! November 2023

Welcome back to in-person competitions! 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 the NYS Bar Mock Trial Statewide Coordinators, Stacey Whiteley swhiteley@nysba.org and Kim McHargue kmchargue@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/nys-mock-trial/**

- **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/nys-mock-trial/**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!

The 2024 Mock Trial State Finals will be held in Albany on May 19-21.

Questions/Comments? Contact Kim McHargue kmchargue@nysba.org

Current Mock Trial Case Materials always available online at www.nysba.org/nys-mock-trial/
Information about the Mock Trial program is available online at www.nysba.org/nys-mock-trial/

This page intentionally left blank.

TABLE OF CONTENTS

- Letter from the Chairs 1
- Standards of Civility 3

PART I -TOURNAMENT RULES 5

1. Team Composition 7
2. Objections 7
3. Dress 8
4. About Stipulations 8
5. Outside Materials 8
6. Exhibits 8
7. Signals and Communication 8
8. Videotaping/Audiotaping 9
9. Mock Trial Coordinators 9
10. Role and Responsibility of Attorneys 10
11. Witnesses 10
12. Protests 11
13. Judging 11
14. Order of the Trial 12
15. Time Limits 13
16. Team Attendance at State Finals Round 13

PART II - POLICIES AND PROCEDURES 15

1. General Policies 17
2. Scoring 18
3. Levels of Competition 19
4. County Tournaments 19
5. Regional Tournaments 21
6. Statewide Finals 21
7. MCLE Credit for Participating Attorneys and Judges 23
    - Request for CLE Credit Verification Form **25**

PART III - SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE 27

1. SCOPE 29

- Rule 101: Scope 29
- Rule 102. Objections 29

2. RELEVANCY 29

- Rule 201: Relevancy 29
- Rule 202: Character 30
- Rule 203: Other Crimes, Wrongs, or Acts 31

3. WITNESS EXAMINATION 32

a. Direct Examination 32

- Rule 301: Form of Question 32
- Rule 302: Scope of Witness Examination 33
- Rule 303: Refreshing Recollection 33

b. Cross-Examination (Questioning the Other Side's Witnesses) 33

- Rule 304: Form of Question 33
- Rule 305: Scope of Witness Examination 33
- Rule 306: Impeachment 33
- Rule 307: Impeachment by Evidence of a Criminal Conviction 34

c. Re-Direct Examination 35

- Rule 308: Limit on Questions 35

d. Re-Cross Examination 35

- Rule 309: Limit on Questions 35

e. Argumentative Questions 36

- Rule 310 36

f. Compound Questions 36

- Rule 311 36

g. Asked and Answered Questions 36

- Rule 312 36

h. Speculation 37

- Rule 313 37

4. HEARSAY 37

- Rule 401: Hearsay 37
- Reasons for Excluding Hearsay 37

5. EXCEPTIONS 38

- Rule 402: Admission of a Party Opponent 38
- Rule 403: State of Mind 39
- Rule 404: Business Records 39
- Rule 405: Present Sense Impression 40
- Rule 406: Statements in Learned Treatises 40
- Rule 407. Statements by an Unavailable Declarant 40

6. OPINION AND EXPERT TESTIMONY 41

- Rule 501: Opinion Testimony by Non-Experts 41
- Rule 502: Opinion Testimony by Experts 42

7. PHYSICAL EVIDENCE 42

- Rule 601: Introduction of Physical Evidence 42
- Procedure for Introducing Evidence 43
- Rule 602: Redaction of Document 43
- Rule 603: *Voir Dire* of a Witness 44

8. INVENTION OF FACTS 44

- Rule 701: Direct Examination 44
- Rule 702: Cross-Examination 44

9. PROCEDURAL RULES 45

- Rule 801: Procedure for Objections 45
- Rule 802: Substantive Motions not Permitted 45
- Rule 803: Closing Arguments 45
- Rule 804: Objections During Opening Statements and Closing Arguments 45
- Rule 901: Prosecution's Burden of Proof (Criminal Cases) Beyond a Reasonable Doubt 45
- Rule 902: Plaintiff's Burdens of Proof (Civil Cases) 46
  - 902.1: Preponderance of the Evidence 46

- 902.2: Clear and Convincing Evidence 46
- Rule 903: Direct and Circumstantial Evidence 46
  - 903.1: Direct Evidence 46
  - 903.2: Circumstantial Evidence 47

PART IV – MOCK TRIAL SCRIPT 49

- Case Summary 51
- **List of Stipulations-R1 (12.21.23)R3(01.12.24)R4(02.02.24)** 55
- Indictment 57
- **Affidavit of Kelly Severide-R1(12.21.23) R2 (01.04.24).** 59
- Affidavit of Pat Wheeler 67
- Affidavit of Tracy Bickle. 71
- Affidavit of Lindsay Gordon **R2 (01.04.24).** 73
- Affidavit of Leslie Neal**. R2 (01.04.24)..** 79
- Affidavit of Ryan Casey. 83

PART V - EVIDENCE 87

- Exhibit – Report: Loss Claim Form 89
- Exhibit – Report: Fire Investigation Report 91
- Exhibit – Map: Severide Map. 95
- Exhibit – Map: Nobile Gas Station. **R3 (01.12.24).** 97
- Exhibit – Photograph: Lighter 99
- Exhibit – Photograph: Damaged Door. 101
- Exhibit – Article: Daily Bliss-July 30. 103
- Exhibit –Article: Daily Bliss-August 19. 105

PART VI – RELATED CASES/STATUTES/OTHER MATERIALS 107

- Relevant Statutes 109
- Related Cases **R2 (01.04.24)** 111

APPENDICES 113

- Performance Rating Guidelines 115
- Performance Rating Score Sheet – Page 1 (Front) 117

- Performance Rating Score Sheet – Page 2 (Back).....118
- Preparing for the Mock Trial Tournament.....119
- Timekeeper's "One Minute" Sign – Page 1 (Front).....121
- Timekeeper's "One Minute" Sign – Page 2 (Back).....122
- Map of New York State Mock Trial Regions and Counties.....123
- Mock Trial 2023 Winners.....125

This page intentionally left blank.

New York State Bar Association
NYSBA One Elk Street, Albany, New York 12207 • 518/463-3200 • http://www.nysba.org

LETTER FROM THE CHAIRS

November 20, 2023

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

Thank you for participating in the 2023–2024 New York State High School Mock Trial Tournament, and we hope you are excited for this year's tournament!

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 – 42 years strong! 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 devoted their time and energy 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 2022-2023 New York State Tournament Champion, Abraham Joshua Heschel School, who was victorious in the Mock Trial Finals in May.

This year's case summary is below:
In this criminal case, People v. Lindsay Gordon, the defendant is accused of setting the fire that destroyed the defendant's business. The prosecution contends that the defendant's business, Gordon Paint & Supplies, was failing and that the defendant destroyed the business to collect the insurance proceeds. Lindsay Gordon alleges that a disgruntled former employee set the fire. The defendant is charged with Arson in the Third Degree (Penal Law, §150.10[1]).

Please take the time to carefully review all 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. **Note that Rule 1(c) of the General Tournament Rules has been amended to read as follows:**

1. TEAM COMPOSITION

c. Each school participating in the Mock Trial Tournament may enter only **ONE** team. *If a school has an insufficient number of students to field a team in accordance to the Mock Trial Rules, that school may apply to the subcommittee to join another school's team.*

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 19 through Tuesday, May 21, 2024. 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 on 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.nysba.org/nys-mock-trial/ .

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,

Gail Ehrlich, Esq.
Co-Chairperson

Jay Worona, Esq.
Co-Chairperson

Lisa Eggert Litvin, Esq.
Vice-Chair

Subcommittee Members:

Oliver C. Young, Esq., *Buffalo (Chair)*
Laetitia Kasay Basondwa, Esq., *Maryland*
Craig R. Bucki, Esq., *Buffalo*
Christine E. Daly, Esq., *Chappaqua*
Hon. Erin P. Gall, *Utica*
Seth F. Gilbertson, *Williamsville*
Allen M. Hecht, Esq., *Bronx*
Candice Baker Leit, Esq., *Rochester*
Alexander Paykin, Esq., *NYC*
Jennifer Letitia Smith, Esq., *NYC*
Lynn B. Su, Esq., *NYC*
Hon. Jonah Triebwasser, *Red Hook*

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.

This page intentionally left blank.

NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT RULES

PART I

This page intentionally left blank.

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. *If a school has an insufficient number of students to field a team in accordance to the Mock Trial Rules, that school may apply to the subcommittee to join another school's 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 are 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 witness' 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 their 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.

This page intentionally left blank.

NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT POLICIES AND PROCEDURES

PART II

This page intentionally left blank.

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's 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 2 .....Central
Region 3 .....Northeast
Region 4 .....Lower Hudson
Region 5 .....New York City (NYC-A)
Region 6.....New York City (NYC-B)
Region 7.....Nassau County
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 nine) and adult coaches and/or advisors (more than two) 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[1]. **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[2] 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 30 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/nys-mock-trial/ .

[1] 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.

[2] County Coordinators will begin disseminating this revised form to participating attorneys and judges during the 2022-2023 New York State Mock Trial tournament season.

This page intentionally left blank.

New York State Bar Association
New York Statewide High School Mock Trial Tournament

Request for CLE Credit Verification Form

PER THE NEW YORK STATE CLE BOARD RULES IN REGARD 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.

IMPORTANT! ***You must complete this form to receive CLE credit (form must be signed to be valid, and a valid email address must be included.) Immediately return completed form to your County Coordinator****. They will verify your request and forward the form to the Mock Trial Program Manager in Albany for processing.* ***All forms must be received in Albany no later than June 30 of the current tournament season. Any forms received after this date will not be processed for MCLE credit.*** *Once your CLE credit has been processed by the NYSBA, your CLE certificate will be emailed directly to you. If you have questions, contact Kim McHargue, kmchargue@nysba.org.*

Are you a member of the New York State Bar Association (NYSBA)? ☐ **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*
- Work Phone Number: _____
- 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 CLE Board Rules pertaining to CLE credit for mock trial participation 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 durin the mock trial tournament season.

- County of Service where you Coached or Judged: _____
- Date of Service: _____ Hours of Service: _____ (max. of 3.0 credit hours
- Role: Attorney: ☐ Coach ☐ Judge ☐ Presiding Sitting Judge

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!

Revised Nov. 2022 **NYSBA Staff use only: Date processed:** _____ **CE21:** ☐ **Download** ☐ **Email** **Initials:** _____

This page intentionally left blank.

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

PART III

This page intentionally left blank.

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, an event or a person directly involved in the litigation.

Example:

Photographs present a classic problem of possible unfair prejudice. For instance, in a murder trial, the prosecution seeks to introduce graphic photographs of the bloodied victim. These photographs would be relevant because, among other reasons, they establish the victim's death and location of the wounds. At the same time, the photographs present a high danger of unfair prejudice, as they could cause the jurors to feel incredible anger and a desire to punish someone for the vile crime. In other words, the photographs could have an inflammatory effect on the jurors, causing them to substitute passion and anger for reasoned analysis. The defense therefore should object on the ground that any probative value of the photographs is substantially outweighed by the danger of unfair prejudice to the defendant.

Problems of unfair prejudice often can be resolved by offering the evidence in a matter that retains the probative value, while reducing the danger of unfair prejudice. In this example, the defense might stipulate to the location of the wounds and the cause of death. Therefore, the relevant aspects of the photographs would come in, without the unduly prejudicial effect.

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

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

Examples:

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

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

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

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

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

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

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

Examples:

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

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

In the same trial, the evidence shows that the victim died after William struck him in the larynx. William's defense is that the death was completely accidental, and that the fatal injury suffered by his victim was unintended and a fluke.

The prosecution seeks to offer evidence that William has a black belt in martial arts, and therefore has knowledge of how to administer deadly strikes as well as the effect of such strikes. This evidence would be admissible to show the death was not an accident; rather, William was aware that the strike could cause death.

3. WITNESS EXAMINATION

a. Direct Examination (attorneys call and question witnesses)

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

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

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

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

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

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

Objections:

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

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

Objection:

"Objection. The question requires information beyond the scope of the witness's knowledge."

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

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

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

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

Objection:

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

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

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

Example:

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

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

Example:

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

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

Examples:

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

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

Rule 307: IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION.

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

Example:

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

Objections:

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

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

c. Re-Direct Examination

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

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

Objection:

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

d. Re-Cross Examination

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

Objection:

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

e. Argumentative Questions

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

Example:

"*Why were you driving so carelessly*?"

Objection:

"Objection. Your Honor, counsel is being argumentative."

f. Compound Questions

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

Examples:

"Tony, didn't you get sued by the buyer of your company and get prosecuted by the IRS?"

"Did you see and feel the residue on the counter?"

Objection:

"Objection. Your Honor, counsel is asking a compound question."

g. Asked and Answered Questions

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

Objection:

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

h. Speculation

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

Example:

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

Objection:

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

4. HEARSAY

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

Rule 401: HEARSAY. A statement made out of court (i.e., not made during the course of the trial in which it is offered) is hearsay if the statement is offered for the truth of the fact asserted in the statement. A judge may admit hearsay evidence if it was a prior out-of-court statement made by a party to the case and is being offered against that party. The party who made the prior out-of-court statement can hardly complain about not having had an opportunity to cross-examine himself regarding this statement. He said it, so he has to live with it. He can explain it on the witness stand. Essentially, the witness on the stand is repeating **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 7-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 7-Eleven on May 1." Peter, the party offering the witness's testimony as evidence, is offering it to prove that Joe was in the 7-Eleven on May 1, presumably to create a question as to whether it could have been Joe at the scene of the crime, rather than Peter. In this example, Joe is the declarant. The reason why the opposing party, in this case the prosecution, should object to this testimony is that the prosecution has no opportunity to cross-examine Joe to test his veracity (was he telling the truth or just trying to help his friend Peter out of a mess) or his memory (was Joe sure it was May 1, or could it have been May 2)?

5. EXCEPTIONS

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

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

Example:

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

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

Example:

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

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

Example:

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

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

Example:

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

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

(A) The statement is called to the attention of an expert witness on cross- examination or relied on by the expert on direct examination; and

(B) The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

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

Example:

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

Portions of the treatise may then be read into evidence although the treatise is not to be received as an exhibit. If Dr. G does not recognize the treatise as authoritative, the treatise may still be read to the jury if another expert witness testifies as to the treatise's reliability or if the court by judicial notice recognizes the treatise as authoritative.

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:

a. Have exhibit marked for identification. *"Your Honor, please mark this as Plaintiff's Exhibit 1 (or Defense Exhibit A) for identification*."

b. 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?"*

c. Ask witness questions about the exhibit, establishing its relevancy, and other pertinent questions.

d. Offer the exhibit into evidence. "*Your Honor, we offer Plaintiff's Exhibit 1 (or Defense Exhibit A) into evidence at this time."*

e. Show the exhibit to opposing counsel, who may make an objection to the offering.

f. The judge will ask opposing counsel whether there is any objection, rule on any objection, admit or not admit the exhibit.

g. 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. No substantive pre-trial or trial-term motions are permitted.

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

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

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

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

Moreover, the prosecution must prove beyond a reasonable doubt every element of the crime including that the defendant is the person who committed the crime charged. (Source: NY Criminal Jury Instructions).

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

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

902.2 Clear and Convincing Evidence: (To be used in cases involving fraud, malice, mistake, incompetency, etc.) The burden is on the plaintiff to prove fraud, for instance, by clear and convincing evidence. This means evidence that satisfies the trier of fact that there is a high degree of probability that the ultimate issue to be decided, *e.g.,* fraud, was committed by the defendant. To decide for the plaintiff, it is not enough to find that the preponderance of the evidence is in the plaintiff's favor. A party who must prove his/her case by a preponderance of the evidence only needs to satisfy the trier of fact that the evidence supporting his/her case more nearly represents what actually happened than the evidence which is opposed to it. But a party who must establish his/her case by clear and convincing evidence must satisfy the trier of fact that the evidence makes it highly probable that what s/he claims is what actually happened. (Source: NY Pattern Jury Instructions, §1:64).

Rule 903: DIRECT AND CIRCUMSTANIAL 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].

This page intentionally left blank.

NEW YORK STATE HIGH SCHOOL MOCK TRIAL SCRIPT

PART IV

This page intentionally left blank.

CASE SUMMARY

PEOPLE v. LINDSAY GORDON

Shortly after midnight on July 29, 2023, a four-alarm fire completely destroyed the 25,000-square-foot prefabricated building of Gordon Paint & Supplies, located at 534 South Poplar Avenue in Bliss, Nirvana. The business, a wholesaler, sold paint and painting supplies to area construction companies and small businesses that sell painting supplies. The blaze could be seen from several miles away, and smoke was still billowing from the burned-out structure several days later.

The city fire marshal suspected arson and called upon arson investigator Kelly Severide to commence an investigation of the origin and the cause of the fire. Severide determined that someone had poured an accelerant on the paint store's floor and lit the accelerant, probably with a match or other fire starter like a cigarette lighter. In addition to examining the fire scene, Severide also interviewed the owner of Gordon Paint & Supplies, Lindsay Gordon, who had owned the business since April 2016. During the interview, Severide observed that Gordon was extremely nervous and highly evasive in answering questions. Severide also learned that Gordon always carried a cigarette lighter. The vintage lighter was a gift from Gordon's grandfather, who had purchased the lighter while serving a tour of duty during the Vietnam War. Gordon, who does not smoke, said the lighter barely works half of the time. Finally, Severide learned that Gordon, several months prior to the fire, had talked on occasion about filing for bankruptcy.

Partly based on Severide's recommendation, Gordon was arrested on the charge of Arson in the Third Degree (Penal Law §150.10[1]). Gordon was subsequently indicted on the arson charge by the Grand Jury convened by the District Attorney of Utopia County. Maintaining that they had nothing to do with causing the fire, Gordon hired the law firm, Will Getz Youse Offmann LLP. Gordon claims that at the time of the fire they were in a bar that is located about five blocks away from the paint store. As an alibi witness, Gordon offers Ryan Casey, a close friend and Gordon's financial adviser, who was in Lights Out Bar & Grill with Gordon on the night of July 28–29. Gordon claimed that they were together the whole time, except for the brief time when Casey stepped outside to the front entrance of the bar to take a telephone call from a relative, an army infantryman, stationed in Seoul, South Korea. Seoul is 13 hours ahead of Bliss. Casey told Gordon wherefrom the call was coming and that Casey expected to be on the call for about 20 to 25 minutes. Casey then excused themselves from the bar at approximately 12:10 a.m.

The prosecution theorized that Gordon, while Casey was out front on the phone call, exited the bar through the back door, walked down the alley to South Poplar Avenue, and made their way to the paint store. While in the store, the prosecution claims that Gordon poured gasoline on the floor under the shelves holding the five-gallon plastic paint containers and lit the gasoline, causing the fire. Prosecution claimed that it would have taken Gordon only 15 minutes to get to the paint store, pour the gasoline and get back to the bar. The prosecution further claimed that Gordon believed that Casey would be on the long-distant phone call for at least 20 minutes or so, giving Gordon plenty of time to commit the criminal act and get back to the bar.

Tracy Bickle, a taxi driver, dropped a passenger off at the bar at around 12:15 a.m. on July 29. As Bickle was pulling away and turning right onto South Poplar Avenue, Bickle noticed someone

exiting the back alley and turning to walk down South Poplar. Believing that the person might need a ride, Bickle rolled down the passenger-side front window and yelled, "Hey, do you need a ride?" The person, who was wearing a baseball cap pulled way down on the forehead, simply gave an emphatic hand gesture indicating "No!" Bickle then turned left onto Pine Street, heading back to the taxi depot. Halfway down Pine Street, Bickle said to themselves, "That person looked like Gordon." Bickle turned the taxi around to go back to South Poplar Avenue to confirm that the person was Gordon. By the time Bickle got back to South Poplar, the person had vanished. Bickle thought more and more about it and concluded that the person they saw walking was definitely Gordon, saying to themself, "I know that SOB's walk anywhere."

When Casey's long-distant call ended at approximately 12:35 a.m., Casey returned to the table and Gordon was not there. Gordon returned to the table a couple of minutes later and said that Gordon had just visited the restroom. Casey said that Casey noticed that Gordon was sweating and slightly out of breath. Casey inquired as to whether Gordon was OK. Gordon said nothing was wrong and responded that the unairconditioned restroom was very warm and that Gordon's asthma was acting up again. Gordon assured Casey that Gordon would be fine in a few minutes.

At approximately 12:40 a.m., Gordon received a text message from his employee, Leslie Neal, that the paint store was on fire. Casey noticed that Gordon did not appear to be surprised after reading the text message and simply wrote it off as Gordon being somewhat in shock upon reading the bad news. Gordon and Casey rushed over to the paint store. After staring at the fire for several minutes, Gordon said to Casey, "I know who did this. It was that no-good Pat Wheeler, the former employee I fired back in March."

Around 12:45 a.m., Bickle took another fare to Lights Out Bar & Grill. After dropping off this passenger, Bickle drove down South Poplar and noticed all the firetrucks attempting to put out the fire at Gordon's paint store. Putting two and two together, Bickle believed it was Gordon that they had seen earlier walking down South Poplar and that Gordon must have torched the paint store!

Bickle and Gordon had been partners in a corporate real estate business they had formed in 2004. As to the division of labor, Bickle would spend the bulk of their time drumming up business, while Gordon would be in charge of the management of the office. Bickle had invested their last penny in the business and Gordon had put in very little. Over the years, Gordon hid from Bickle the fact that income was not keeping up with expenses and that state and federal taxes had not been paid for some time. Nevertheless, Gordon continued to pay themselves a handsome salary and both lived very well. When the state and federal taxing authorities started to file liens, the business failed and closed its doors in 2011. Bickle lost everything and felt betrayed by Gordon. Bickle had sworn that however long it took, they would get back at Gordon. Several days after the fire, Bickle contacted fire investigator Severide and Bickle informed Severide that Bickle was pretty sure they saw Gordon walking toward the paint store shortly before the building was engulfed in flames.

Pat Wheeler worked at the warehouse from September 2016 to March 24, 2023, the date on which Wheeler was fired. In Gordon's assessment, Wheeler, at the beginning and for many years subsequent, was a great employee, but after May 2021 increasingly became a problem. Wheeler began to refuse some work assignments Wheeler considered menial, would arrive late to work several times a week, constantly annoy many of the co-workers with Wheeler's antics, and stole the

love interest of co-worker Leslie Neal. Gordon also suspected Wheeler was stealing paint and other supplies to sell on the street but could not prove it. The last straw for Gordon occurred on March 24, 2023, when Gordon caught Wheeler listening in on a conversation Gordon was having with Neal. Neal walked into Gordon's office just as Gordon was ending a phone call with Casey. Gordon was telling Neal that Gordon raised the subject of bankruptcy with Casey and that Casey said, "You may not need to go that route if we can get the bank to restructure the loans with more favorable terms." Gordon said that Gordon told Casey that that approach would be a long shot but worth a try. Wheeler claims to have heard Gordon say to Neal, "I would hate to do anything drastic, if you know what I mean." Wheeler was fired on the spot and escorted out of the building. Before leaving, Wheeler said out loud to Gordon, "You will regret this day! Mark my word." Neal and the other employees also heard Wheeler's statement. All of the employees, including Leslie, were happy to see Wheeler fired.

During Severide's interview of Gordon, Gordon told the investigator that they suspected Pat Wheeler set the fire. Gordon related to Severide about what a troublesome employee Wheeler had become and told Severide of the veiled threat Wheeler made after being fired. Severide interviewed Wheeler, who denied having set the fire. Wheeler said they made the ill-advised statement "You will regret this day" out of anger at having been fired. Wheeler said they had briefly thought about doing something to hurt Gordon, like damaging Gordon's vehicle, but never did anything beyond just thinking about it and that they have moved on with their life. Wheeler told Severide about overhearing Gordon talk about filing for bankruptcy and about being counselled not to do so for now. Wheeler also told Severide that they heard Gordon say to Neal, "I would hate to do anything drastic, if you know what I mean." Wheeler said that Gordon was way over their head in debt and that torching the business was Gordon's only way out of the mess Gordon had created.

Witnesses:

<u>Prosecution</u>
- Kelly Severide, Bliss Fire Department arson investigator
- Pat Wheeler, former employee of Gordon Paint & Supplies
- Tracy Bickle, taxi driver

<u>Defense</u>
- Lindsay Gordon, defendant and owner of Gordon Paint & Supplies
- Leslie Neal, employee of Gordon Paint & Supplies
- Ryan Casey, friend and financial adviser of Lindsay Gordon

This page intentionally left blank.

LIST OF STIPULATIONS

1. All witness statements are deemed to have been 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 pre-trial motions and other evidentiary suppression issues brought by the defense have been resolved and in favor of the government.

5. Defense will not raise the affirmative defense available under Penal Law §150.10(2).

6. Prosecution and defense agree that the paint store layout as described in Investigator Severide's affidavit is accurate.

7. The cigarette lighter was seized by the police from Lindsay Gordon on the date of Gordon's arrest, to wit: August 18, 2023, and has been continuously in the custody of the police or the District Attorney from that date to the present.

8. The District Attorney obtained the online insurance claim form completed by Lindsay Gordon from Casualties 'R Us Insurance Group by way of a subpoena to the insurance company.

9. **The door exhibit is a rendering made by fire investigator Kelly Severide on August 2, 2023. On July 30, 2023 and before Severide was able to take a picture, the City of Bliss demolished the wall where the door was located because the wall posed a safety hazard. The parties agree that the rendering is a fair depiction of how the door appeared on July 29, 2023, with the exception that the door latch was unlatched when first observed by Severide. The parties further agree that the hole in the glass is large enough for an adult hand to reach through.**

10. **Prosecution and defense agree that the gas station exhibit is a fair and accurate depiction of the Nobil Gas Station and is admissible into evidence upon the laying of a proper foundation.**

11. **Prosecution and defense agree that the insurance policy on Gordon Paint & Supplies was obtained when the business was established in April 2016.**

12. No other stipulations shall be made between the petitioner/plaintiff/prosecutor and the respondent/defense, except as to the admissibility of evidentiary exhibits provided herein.

This page intentionally left blank.

COUNTY COURT: COUNTY OF UTOPIA
STATE OF NIRVANA
==========
THE PEOPLE OF THE STATE OF NIRVANA,

- against - Indictment No. 2023--10432

LINDSAY GORDON,
Defendant.
==========

THE GRAND JURY OF THE COUNTY OF UTOPIA, by this indictment, accuses the defendant of the crime of ARSON IN THE THIRD DEGREE, in violation of Section 150.10 Subdivision 1 of the Penal Law of the State of Nirvana committed as follows:

The defendant, LINDSAY GORDON, on or about the 29th day of July 2023, in the County of Utopia, State of Nirvana, did intentionally damage a building, located at 534 South Poplar Avenue in Bliss, Nirvana, by starting a fire.

Dated: August 16, 2023
Bliss, Nirvana

Domenick Napoletano Richard C. Lewis

DOMENICK NAPOLETANO
Grand Jury Foreperson

RICHARD C. LEWIS
District Attorney

This page intentionally left blank.

AFFIDAVIT OF KELLY SEVERIDE

1. My name is Kelly Severide. **I am 53 years old and currently work as a senior arson investigator for the City of Bliss' Fire Department.** Prior to my employment with the BFD, I was a police officer for 12 years with the Bliss Police Department. I earned a Bachelor of Arts Degree in Criminal Justice from Bliss Technical Institute in May 1992. I then attended the State of Nirvana Police Academy in 1994 and proceeded to work as a police officer for the City of Bliss in 1996.

2. When I was with the police department, I would frequently go to the scenes of fire that occurred in my precinct when I was on duty. I felt it was important to show up and provide backup assistance to my fellow public servants – the fire fighters. Each partner I had over the years hated when I would proceed to the fire scenes. Most of the time I would say, "C'mon, let's go. You have had enough donuts for the day!" Didn't get many laughs for that bit of witticism. While at the fire scenes, I would frequently talk to the firefighters, many of whom had become friends of mine, about the cause of each of the fires and about whether they thought arson was involved. I was completely fascinated with the discussions with the firefighters, so much so that when an entry-level arson investigation position in the fire department opened up 15 years ago, I jumped on it. I was promoted to senior arson investigator in 2018. I **expect** to be elevated to principal arson investigator, one level under fire marshal, sometime within the next two years.

3. Arson investigators receive significant training continually in the areas of fire science, chemistry, and engineering. The job of an investigator entails not only determining the cause and origin of a fire, but also determining who is responsible for the fire if it is conclusively shown that the fire was not an accident. There are numerous tools available to investigators to use in analyzing whether a fire was caused by defective electrical wiring, by natural gas explosion, or by use of an accelerant, such as gasoline, paint thinner or kerosene.

4. I investigated the July 29, 2023 fire at Gordon Paint & Supplies at the request of the BDF fire marshal. Immediately upon entering the burned-out structure at approximately 8:00am on July 29, I knew right away it was no accident. Since most arsonists use gasoline to start fires, I used my combustible gas detector to determine whether gasoline had been used. Lo and behold, the device went crazy! I was able to determine that gasoline in fact was the accelerant used to start the fire and to locate the approximate area where the gasoline was poured. The gasoline was poured right near the wooden shelves holding the five-gallon vats of paint. This shelving, as shown on pictures of the store obtained from the Internet, was very close to the rear entry door. The arsonist probably used a match or other fire starter like a cigarette lighter. Once the fire started, it spread quickly throughout the building because the structure was one of those prefabricated buildings made mostly of wood. I learned that the structure was almost completely destroyed before the fire trucks even arrived. The conflagration could be seen for miles, and smoke was still billowing from the burned-out structure several days later.

5. The investigative report I prepared in connection with this case sets forth my findings. It appears that the culprit entered the building through the back door. Amazingly, the back wall

was still standing. The entry door had a glass window. A hole was broken in the glass near the sliding latch, allowing the perpetrator to gain entry. The doorknob did not have a lock. I learned that the security system has a 30-second delay, allowing that much time to disable the alarm by entering a code. Several employees know the code just in case one of them must open the store when Gordon is away. I also noticed that there were shattered pieces of glass on the floor inside the store and pieces on the ground outside. There were more shard pieces outside the door than inside. It appears that the glass was broken twice, both from the inside and then from the outside. I suspect the perpetrator wanted anyone investigating this arson to believe that entry was made through the hole in the window. Realizing that the glass shards should be on the floor inside, the perpetrator then struck the window glass from the outside.

6. As part of my investigation, I interviewed the owner of the paint store, Lindsay Gordon, at approximately 12 noon of July 29. We were standing just outside of what was left of the building and near my fire department SUV. Gordon appeared to be very nervous and was highly evasive in answering my very simple questions. I needed Gordon to show proof of identity before I completed my questioning. Gordon reached into their pocket for their wallet and a cigarette lighter fell to the ground when the wallet came out. I commented that the cigarette lighter appeared to be a vintage lighter. Gordon said the lighter was a gift from their grandfather, who had purchased the lighter in Vietnam while serving a tour of duty during the war. Gordon said that they do not smoke and that the lighter barely works half of the time, but that they always carry it in memory of their grandfather. Gordon flicked the lighter and a flame appeared. Gordon flicked it again and no flame this time.

7. Gordon said to me that Gordon had noticed that there is a hole in the glass of the rear door. Gordon then asked me, "Is that how the perpetrator gained entry?" I said, "Maybe, or just maybe someone wants the police to think that is how entry was made." I'm still curious why Gordon did not bother to ask me what I meant by that comment. Perhaps Gordon was afraid of what I might have said. Anyway, I told Gordon that I suspected arson had occurred and I asked Gordon who might have wanted to harm Gordon and/or the business. Without any hesitation, Gordon said it was Pat Wheeler. Gordon said that Wheeler had become a troublesome employee and that Gordon had to fire Wheeler this past March. Gordon said that Wheeler was often late to work, did not get along with co-workers, and that Gordon suspected that Wheeler was stealing paint and other supplies to sell on the street. Gordon admitted, however, that they did not have solid proof that Wheeler had been stealing paint and other supplies.

8. Gordon said that the final straw leading to the firing of Wheeler was Wheeler spreading rumors that the business was failing, and that Gordon was about to file for bankruptcy any day now. Gordon admitted that the business had ups and downs due to the nature of the economy, and more downs than ups, but denied that the business was failing. Before leaving the building after being fired, Gordon said Wheeler made this statement to Gordon in the presence of the other employees, "You will regret this day! Mark my word." Gordon suggested that I should have a talk with Wheeler.

9. Before I even asked Gordon where Gordon was at the time of the fire, Gordon blurted out, as if trying to establish an alibi, that Gordon was at Lights Out Bar & Grill with Gordon's friend and financial adviser Ryan Casey. In response to my question about the night at the bar, Gordon told me that Gordon arrived at the bar on July 28 at around 11:00 p.m. and that Ryan got there about 11:15 p.m. I then asked Gordon whether there was any period during the time Ryan and Gordon were at the bar that they were not in each other's presence. Gordon answered in a quivering voice, suggesting to me that the response was not completely truthful, saying, "Not really, except for the brief time between 12:10 a.m. and approximately 12:35 a.m. when Ryan was outside on the phone call, and I took the opportunity to visit the restroom." Gordon also said that the two of them drove in their separate vehicles to the scene of the fire after being made aware of it. Gordon said the bar, located on the corner of Spring Street and South Poplar Avenue, is about four to five long blocks from the paint store. I told Gordon that I would be in touch with Casey. Before departing, I asked Gordon whether **they** owned a container for carrying gasoline. Gordon said that Gordon has a one-gallon gas can that Gordon keeps in the back of Gordon's pickup truck under the canvas cover. I asked to see it. Gordon said that Gordon has it in case the truck runs out of gas. Gordon said one gallon would be enough to get to a gas station. The gas can was full, but I did notice what appeared to me to be a small amount of gasoline on the outside of the can that had not completely dried, suggesting to me that the can had recently been filled. I asked Gordon when was it that Gordon last filled the gas can. Gordon said months ago.

10. On Monday, July 31, 2023, I went to the office of Ryan Casey to interview Casey. I asked Casey to confirm that Casey and Gordon were together at Lights Out Bar & Grill on the night of July 28 through the midnight hour of July 29. Casey said the bar is located at 1000 Spring Street on the corner of Spring Street and South Poplar Avenue in Bliss. Casey said that Gordon had called Casey on Wednesday, July 26, to invite Casey out for a drink on July 28 to catch up on things. Casey said that Casey told Gordon that Casey was reluctant to go to the bar that night because Casey had been expecting a long-distance phone call from a relative overseas that night. Casey said that Casey told Gordon that the call could be 20 minutes or more. Gordon insisted that they meet, telling Casey that the length of the call did not trouble Gordon and that if it was too noisy in the bar at the time of the call, Casey could just step outside for a few minutes. Casey relented, telling me that Gordon is a good friend and a great client, and that Casey would not want to disappoint Gordon. Besides, Casey said to me that one of Casey's favorite local hard rock bands, Han Valen, was playing at the bar that night.

11. Casey confirmed that Gordon and Casey were indeed together at the bar on the night/morning of July 28/29. Casey said that Casey arrived at about 11:15 p.m. and that Gordon was already there. I also asked Casey whether Gordon ever left Casey's presence at any time. At first, Casey said no, but then corrected themselves to say that a few minutes past midnight on July 29, Casey stepped outside of the bar to take the long-distance phone call from the relative. It was rather convenient for Gordon that Han Valen was playing that night, necessitating that Casey go outside for a period of time to take the call.

12. Casey said the call came in around 12:10 a.m. and that Casey reminded Gordon that the call might take 20 minutes or more. Casey said that after the call ended at around 12:35 a.m., Casey returned to their table and saw that Gordon was not there. Casey said Gordon returned to the table at about 12:40 a.m. and Gordon told Casey that Gordon had just visited the restroom. Gordon failed to tell me that Gordon was not at the table when Casey had returned. Hard to believe Gordon was in the restroom for 20 minutes or more. Casey also said that Casey noticed that Gordon was sweating and slightly out of breath upon returning to the table. Casey inquired of Gordon whether Gordon was OK. Casey said that Gordon's response was that the unairconditioned restroom was very warm and that Gordon's asthma was acting up again, causing Gordon to breathe more heavily than usual. Casey said that Gordon then said Gordon would be fine in a few minutes. I was thinking to myself that Gordon was sweating and breathing heavily because Gordon had just finished running back to the bar from the paint store. At around 12:45 a.m., Casey said Gordon got a text message from one of Gordon's employees, informing Gordon that the paint store was on fire. Casey said they both left the bar in their own vehicles and drove to the fire scene.

13. Finally, I asked Casey about the financial status of Gordon's paint store business. Casey said that ordinarily Casey would not talk about a client's business in the absence of a subpoena. However, Casey said that since I would likely have little difficulty getting a subpoena duces tecum issued by the court or the District Attorney, Casey did not see any problem talking about the now-defunct business. Casey said that Gordon was having significant financial problems; that Gordon had taken on a huge amount of debt to carry the inventory and to pay the employees; and that the market value of the business fell way short of the debt load. Consequently, Casey said selling the business was probably not a great option. Casey said that Casey counseled Gordon in January 2022 that there may be some state or federal funds available later in the year that could be tapped to turn the business around. I asked Casey whether Casey had ever heard Gordon say anything about abruptly ending the business. At first, Casey said no, then said Gordon, out of frustration, once said to Casey, "More loans! That's all I need. If things don't turn around by January 2023, I will have to follow my own advice and just do whatever I have to do. It may or may not include bankruptcy that you always talk about." Finally, Casey said that Gordon has a $2,000,000 casualty insurance policy on GPS. After paying off the loans and any other indebtedness, Casey said that Gordon would walk away with approximately $1,250,000.

14. On Tuesday, August 1, 2023, Tracy Bickle, a taxi driver for Mellow Yellow Cab Company, called the fire marshal to report that Bickle knew who started the fire at the paint store. The call was referred to me. Bickle said that Bickle had dropped off a fare at ~~to~~ Lights Out Bar & Grill at around 12:10 a.m. on July 29. As Bickle was heading back to the taxi depot, Bickle said Bickle turned right onto South Poplar Avenue and noticed someone exiting Cat Alley, the alleyway that runs behind the bar, and the person proceeded to walk down South Poplar. Believing that this could be a fare, Bickle yelled out the front passenger-side window to ask whether the person needed a ride. The person, who Bickle said was wearing a baseball cap pulled way down on their head, just waved emphatically indicating "No." Bickle then said Bickle turned left down Pine Street towards the depot. Bickle said that halfway down Pine, it occurred to Bickle that the person walking might be Lindsay Gordon.

15. Bickle told me that Bickle has known Gordon for almost 30 years and that they were business partners in a real estate enterprise for about seven years in the early 2000s. Bickle said that Bickle knows very well Gordon's posture and gait and turned the taxi around to go back to confirm that the person was Gordon. Bickle said that by the time Bickle got back to South Poplar Avenue, the person had vanished. When I told Bickle that Gordon was in the bar on the night of the fire, Bickle said Bickle is now even more convinced that the person walking on South Poplar Avenue was Gordon. Bickle said that the bar is on the corner of Spring Street and South Poplar Avenue, that the bar is about four short blocks from the paint store, and that it only about four minutes to walk from the bar to the paint store.

16. Bickle said that the real estate business folded after about seven years of operation, and Bickle blames Gordon for the failure. Bickle said that Bickle lost everything, and that Gordon is solely responsible. I asked Bickle whether the business failure is leading Bickle to provide false testimony against Gordon. Bickle paused for a long moment, and then said, "No. I am just looking to see that justice is done."

17. On Thursday, August 3, 2023, I interviewed Leslie Neal in my office. Neal is an employee of the paint supply store and is the person who texted Gordon about the fire. Like Gordon, Neal also believes that Pat Wheeler is the person who set the fire. Neal said that at about 10:00 p.m. on July 28, 2023, Neal was gassing up Neal's vehicle at the Nobil gas station and noticed that Pat Wheeler had pulled up to a pump on the other side of the station and proceeded to fill up a two-gallon plastic container with gasoline. Neal told me which pump Neal used and the one used by Wheeler. The relative positions of their vehicles are shown on the gas station exhibit I produced. Neal said that Wheeler glanced at Neal, that Wheeler looked startled, and that Wheeler quickly put the container of gasoline into the trunk of Wheeler's vehicle and drove off. After seeing the fire, Neal said that Neal put two and two together and concluded that Wheeler was getting the gasoline to burn down the paint store. Neal said that Gordon and all the employees heard Wheeler say, after being fired, "You will regret this day! Mark my word."

18. Based on Neal's comments, I called Wheeler in for an interview. At the interview occurring on August 7, 2023, Wheeler said that the paint store was not doing very well financially, and that Wheeler had heard Gordon say on several occasions, including on the day Wheeler was fired, that Gordon was thinking about filing for bankruptcy. In fact, Wheeler told me about overhearing Gordon talking about filing for bankruptcy and about Gordon being counselled not to do so for now. Wheeler also told me that they heard Gordon say to Neal, "I would hate to do anything drastic, if you know what I mean." Wheeler said that Gordon was way over their head in debt and that torching the business was Gordon's only way out of the mess Gordon had created.

19. I asked Wheeler about filling up a plastic gasoline container on the night of July 28. I warned Wheeler that someone Wheeler knew had seen Wheeler at a gas station at about 10:00 p.m. that night. Wheeler said that Wheeler was at the Nobil gas station that night but did not see anyone there that Wheeler recognized. Wheeler said the gasoline was for Wheeler's lawnmower. Wheeler said that Wheeler normally mows on Saturday mornings and that Wheeler gassed up the night before so that Wheeler could get an early start at daybreak on

July 29. However, I was not able to verify that Wheeler actually mowed Wheeler's lawn on the morning of July 29.

20. Wheeler denied having set the fire. Wheeler said they made the ill-advised statement "You will regret this day! Mark my word" out of anger at having been fired and in the heat of passion. Wheeler said they had briefly thought about doing something to hurt Gordon, like damaging Gordon's vehicle or the paint store, but never did anything beyond just thinking about it. Wheeler said that they have moved on with their life and have no intention of harming Gordon. Wheeler's comments to me were quite reasonable, and nothing Neal said would cause any rational person to cast suspicion on Wheeler as the culprit of the arson. I'm laser-focused on Gordon.

21. I talked to property crime bureau chief of the District Attorney's Office and recommended, based on the information I had collected, that Gordon be charged with third degree arson. A sealed indictment, charging Gordon with Arson in the Third Degree, was issued on August 16, 2023. The District Attorney then obtained an arrest warrant on August 17, 2023, and Gordon was arrested on August 18, 2023 for third degree arson. Gordon's business was in dire financial straits with little prospect of being turned around. Selling the business was probably not an option because proceeds from the sale would not cover Gordon's huge debt load. So, Gordon decided to torch the building to get the insurance money. However, Gordon needed an alibi. After calling Casey on Wednesday, July 26 to invite Casey for drinks on Friday, July 28, Gordon learned that Casey was expecting an important phone call from a relative overseas. Casey was reluctant, but Gordon insisted, even suggesting that Casey could go outside the bar to take the call. Knowing that Casey would be on the call for 20 minutes or so, Gordon calculated that Gordon would have enough time to leave the bar through the rear door, get to the paint store, pour the gasoline, ignite the gasoline, and get back to the bar before Casey's call ended. Gordon had two days to plan out this misdeed. Gordon could have easily stored the one-gallon gasoline can in a closet in Gordon's office and no one else would have been the wiser. No doubt Gordon returned the gas can to Gordon's truck before returning to the bar. Moreover, Gordon had plenty of time to refill the gas can before our meeting on July 29. When Gordon was not at the table when Casey returned from outside, Gordon concocted the story that Gordon had been in the restroom.

22. From my measurements, the distance from the bar to the paint store is about 400 yards. That's four football fields long. A Google search shows that the average 59-year-old person in fairly decent physical shape can walk 400 yards in four minutes or so, especially if the person is in a hurry and walking fast. I was shocked upon learning that Gordon filed the insurance claim on Sunday, July 30, the day after the fire. The District Attorney issued a subpoena to Gordon's insurance company, Casualties 'R Us, to obtain a copy of the online claim form that Gordon had submitted. The perp couldn't wait for me to finish the investigation before filing the claim. No worries, however, as Gordon won't see a penny of that insurance money because Gordon will be convicted and sentenced to prison where criminals like Gordon belong.

23. I'm ignoring the clamor from the defense that I have rushed to judgment in this case. I made a follow-up call to Tracy Bickle on August 3, 2023 and informed Bickle that Gordon was in

fact in the Lights Out Bar & Grill on the night of the fire. Bickle is even more convinced that Gordon is the person Bickle saw that night walking toward the paint store. The claim is that I am using this case to boost my chance of being promoted to principal arson investigator. I admit that the Fire Commissioner is not completely happy with some of my work. But it is wrong to conclude that I am using this case to get back into the good graces of the Commissioner. I'm sorry that an investigative report I prepared two years ago contained many gross errors and led to an innocent man being convicted of second-degree arson. The poor sap was sentenced to 10 years. The Appellate Division reversed the conviction and threw out the indictment based solely on my defective report. The District Attorney was not a happy camper and made the Fire Commissioner aware of that. The Commissioner told the District Attorney that they would closely monitor my work and make sure nothing like that ever happens again. If anything, I have been very careful in this investigation knowing what is on the line. I believe I am entitled to the promotion to Principal arson investigation. This case proves it. I firmly believe I have identified the person who committed this arson.

I affirm under penalty of perjury that the above statements are true.

Bliss, Nirvana

September 18, 2023

Kelly Severide

_____

Kelly Severide, Senior Arson Investigator
Bliss Fire Department

This page intentionally left blank.

AFFIDAVIT OF PAT WHEELER

1. My name is Pat Wheeler. I'm 29 years old. My address is 254 Civics Circle in Bliss, Nirvana. I live alone in a small house I rent. I graduated high school in Nirvana, and had one year of community college. As a student I always had part-time jobs, then worked full-time. I am proud to say that before March 2023, I've never been unemployed. My last real job was at Gordon Paint & Supplies for almost seven years. Since March 2023, I've been looking for a new job, but so far, I have only been working part-time jobs here and there. It's a frustrating job market.

2. My longest employment was at Gordon Paint & Supplies, a wholesale warehouse, located at 534 South Poplar Avenue in Bliss, Nirvana. I was there from September 2016 to March 24, 2023. The business sold paint and painting supplies to area construction companies and small businesses that sell painting goods. I enjoyed working there. I did some of everything in the place, but mostly worked with servicing customers. They loved me and found me very entertaining. In my opinion, the business could have been run better to make it more successful and profitable. I was aware there were financial troubles, mostly in the last couple of years, because my boss, Gordon, could often be heard talking loudly on the phone to Casey, the financial advisor, about problems and the possibility of filing for bankruptcy. In July 2023, a few months after I was let go, a four-alarm fire completely destroyed all 25,000-square-feet of Gordon Paint & Supplies. What a shame. I felt really bad when I learned about it. It really affected the town, too. The smoke was a problem for weeks afterward. I still can't wrap my head around the fact that Gordon would destroy the business for the insurance money.

3. As I said, I worked there for going on seven years, until March 24, 2023, when the defendant, my former boss Gordon, unceremoniously fired me after all of those years of loyal service. I still cannot believe I was fired on the spot and escorted out of the building. For no good reason! Gordon claims I was eavesdropping when confidential issues might have been discussed. Actually, Gordon basically broadcast problems by talking loudly on the phone. If you want privacy, why not close your office door?

4. On that last day of my employment when Gordon decided to fire me, here's what transpired. I happened to be walking past Gordon's open office door. Leslie Neal, my co-worker who is Gordon's pet employee, was in there while Gordon was on the speakerphone with someone, probably Casey the financial advisor who Gordon was always talking to about the company's financial problems. I didn't catch the whole phone conversation, but Gordon sounded pretty upset, and after Gordon ended the phone call, I heard Gordon tell Neal, "I would hate to do anything drastic, if you know what I mean," as I could clearly hear Gordon flicking on and off that cigarette lighter that Gordon always carries. In my opinion, Gordon wasn't talking about bankruptcy this time. When Gordon realized I had heard the conversation, Gordon erupted and said, "That's the last straw! You're fired!" Just before I left the premises, I returned the store's door key to Gordon. I then said out loud to Gordon, "You will regret this day! Mark my word." I'm sure everyone heard me. I'll admit I spoke angrily. I may be a little hotheaded at times, maybe even rub some people the wrong way sometimes with my

maverick personality. While I am not out there looking for mischief, trouble occasionally seems to find me. Anyhoo, anyone who has ever been unjustifiably fired would understand. I did have a few fantasies about getting back at Gordon by keying Gordon's car or something. But there is no way I would do something drastic like torching the warehouse as some have suggested. I thank my lucky stars that Kelly Severide, the arson investigator for Bliss Fire Department, didn't fall for that nonsense. I'm sure Investigator Severide knows I didn't have anything to do with setting that fire.

5. Sometime in the beginning of August 2023, Kelly Severide asked me to come to Severide's office for an interview. I'm sure Gordon and Neal are trying to pin the fire on me. I met with Severide on August 7. In response to the series of questions Severide asked, I let Severide know that the paint store was not doing very well financially. I told Severide that I had heard Gordon say on several occasions, including on the day I was fired, that Gordon was thinking about filing for bankruptcy. In fact, I told Severide about overhearing Gordon talking on one occasion about filing for bankruptcy and about Gordon being counseled by Gordon's crooked financial adviser not to do so for now. I also told Severide that I once heard Gordon say to that suck up Neal, "I would hate to do anything drastic, if you know what I mean." I said to Severide that Gordon was way over their head in debt and that torching the business was Gordon's only way out of the mess Gordon had created.

6. Severide asked me about the plastic gasoline container I was filling up on the night of July 28, 2023, warning me that someone who knows me saw me at Nobil gas station at about 10:00 p.m. that night. I said that I was at the gas station that night but did not see anyone there that I recognized. I told Severide that the gasoline was for my lawnmower. I also said to Severide that I normally mow on Saturday mornings and that I gassed up the night before so that I could get an early start at daybreak on July 29.

7. I told the good investigator that I did not set the fire. I admitted to Severide that I had made the ill-advised statement "You will regret this day! Mark my word" to Gordon at the time of my termination out of anger at having been fired and in the heat of passion. I told Severide that I had briefly thought about doing something to hurt Gordon, like damaging Gordon's vehicle or the paint store, but never did anything beyond just thinking about it. I also told the investigator that I have moved on with my life and have no intention of harming Gordon. I believe that Severide was satisfied with my statements and that Severide appeared to be convinced that I had nothing to do with the fire. Severide set their sights in the right direction and towards the real culprit of the arson: Lindsay Gordon.

8. Gordon and I had a great relationship for several years, which was why I was so upset about being fired. I think something happened to Gordon in May 2021. I mean, Gordon was never brilliant at running the business, but maybe it was because of Covid-19. In 2020, the Governor of Nirvana had ordered all non-essential businesses to shut down because of the pandemic. We went from 25 employees on the payroll in 2019 to only four in May 2020, including me, Leslie Neal, and two people from accounting. That was a bad business decision right there. Don't get me wrong. I was happy to keep my job, but why did we need two people to manage the books? Were there two sets of books? Something wasn't right. If

you ask me, Gordon is just a failed businessperson. Case in point would be the rumor around the warehouse that in 2011 Gordon caused the failure of a real estate business Gordon had co-owned because Gordon neglected to pay state and federal taxes, while at the same time receiving a huge salary. Gordon wasn't smart enough to figure out how to get the Covid-19 money the government was giving out to keep businesses like the paint warehouse from going under during the pandemic. On several occasions, I heard Gordon talking about getting out of debt by filing for bankruptcy. And I heard Casey warn Gordon against doing that at least a couple of times, in person and on the phone. Gordon was too lazy to hold the phone to Gordon's ear when conversing with people, preferring instead to use the speakerphone setting. Anyone passing by Gordon's open door can hear what is being said over the phone. Everyone knew that Gordon was on the verge of bankruptcy. I was just spreading the truth.

9. During those last months I worked at Gordon Paint, the boss definitely favored Leslie Neal, so I started to get all the menial jobs around the place. I felt like all I was doing was sweeping, cleaning, fixing broken things, and keeping track of inventory. It was demeaning after all the authority I'd had when the staff was bigger and I mostly waited on customers. I'll admit I started coming in late sometimes, because it was so depressing to be treated so badly. Maybe I didn't have the best attitude, but Leslie was acting like a prima donna and that made me mad.

10. My relationship with Leslie Neal was okay for most of the time I worked at Gordon Paint, but when it was just down to the two of us working to do everything, I started to notice a lot of things, including how Neal treated Neal's partner Drew. Leslie and Drew had been a couple for a long time, but Neal was very neglectful of Drew – always working long hours only to butter up to the boss. Sometimes Drew would be waiting in the car outside the warehouse for Neal to get off work for an hour or more. So, I would go sit in the passenger seat and we'd talk to pass the time. Drew was not happy in that relationship, I can tell you that, but had no one to confide in, except me. Drew and I used to text each other and send videos we both liked from the Internet. Once in a while we even went out for a beer or two. Wow, did that make Leslie jealous. And once, when Drew wanted to surprise Leslie by repainting Leslie's dingy kitchen, I took a few cans of custom-blended paint that an unhappy contractor returned and couldn't be resold, as well as some roller brushes and pans for Drew to take home. I was trying to be nice. But Leslie accused me, in front of people at work, even customers, of stealing Drew away! Drew did ultimately break up with Leslie, but not because of me. It was Leslie's own fault. Even though I might have liked it to be different, Drew and I were never anything more than friends.

11. The accusation that I set the fire is just a way for Gordon to deflect blame, because Gordon won't see a penny of that insurance money unless Gordon is acquitted. Clearly, torching GPS, assuming of course that Gordon beats the rap, is a much better outcome for Gordon than filing for bankruptcy. How dare Gordon try to pin the arson on me! I gave nearly seven years of my life to that place. Yes, I filled up my 2-gallon plastic gas container with gasoline at Nobil on the night of July 28 at 10:00 p.m. What's the big deal?! I needed the gasoline for my lawnmower, as I wanted to get an early start on my lawn on the morning of July 29. I will

usually fill up my vehicle's gas tank whenever I get gasoline for my lawnmower. I don't recall now if I filled up my car on the night of July 28 or not. That's a while ago. Anyway, Gordon is the criminal here, not me.

I affirm under penalty of perjury that the above statements are true.

Bliss, Nirvana
October 19, 2023

Pat Wheeler

_____

Pat Wheeler

AFFIDAVIT OF TRACY BICKLE

1. My name is Tracy Bickle. I am a taxi driver.

2. I'm 64 years old and getting too old to do 12-hour shifts in a cab, especially with all the unfair competition from Under, Lift and the other ride services. I had to pass a background check and a written test to be a licensed cab driver. Any clown with car keys can drive for Under and Lift!

3. Because of the peanuts I make driving hack, I have to live in a run-down section of town near downtown Bliss, Nirvana, at 465 Johnson Street, Apt. 6. I don't worry about my own safety, however, because I practice quick draw with my licensed handgun in the full-length mirror at home. Also, if someone gives me a hard time on the street, I narrow my eyes, pull my gun and say, "You talking to me? Then who the heck else are you talking to? I'm the only one here!"

4. I've been driving hack since that thief Lindsay Gordon wrecked our real estate management business. We were supposed to be partners, but you wouldn't know it by the way Gordon acted.

5. I'm looking forward to collecting my Social Security soon so I can cut back on the number of hours I spend in the cab. Of course, I'd be much better off financially today if Gordon hadn't screwed me on our real estate enterprise.

6. We formed the business in 2004. As to the division of labor, I did the heavy lifting by spending the bulk of my time drumming up business, while Gordon would sit on their backside, being in charge of the management of the office. I invested my last penny in the business while Gordon put in very little.

7. Over the years, Gordon hid from me the fact that income was not keeping up with expenses and that state and federal taxes had not been paid for some time. Nevertheless, Gordon continued to draw a big paycheck and lived very well. I didn't do too badly either.

8. When the state and federal taxing authorities started to file liens, the business failed, and we closed the doors in 2011. I lost everything and felt betrayed by Gordon. At that time, I was very angry and I swore that however long it took, I would get back at Gordon. I have mellowed over time and have put that anger behind me. Of course, I wouldn't lose any sleep if Gordon is convicted and sentenced for any crimes the SOB has committed.

9. On the night of the fire, July 28, 2023, I wasn't thinking about Gordon until I saw Gordon walking towards Gordon's paint store a little after midnight. I do my best to keep that crumb-bum out of my mind.

10. I dropped a passenger off at the Lights Out Bar & Grill, located on the corner of Spring Street and South Poplar Avenue, at around 12:15 a.m. on July 29, 2023. As I was pulling away and turning right onto South Poplar Avenue, I noticed someone exiting the back alley and turning to walk down South Poplar. Believing that the person might need a ride, I rolled down the

passenger-side front window and yelled, "Hey, do you need a ride?" The person, who was wearing a baseball cap pulled way down on the forehead, simply gave an emphatic hand gesture indicating "No!" I then turned left onto Pine Street, heading back to the taxi depot. Even though I was not wearing glasses that night, and it was pretty dark outside, halfway down Pine Street, I said to myself, "Self, that person looked and walked like Lindsay Gordon!"

11. I then turned my taxi around to go back to South Poplar Avenue to confirm that the person was Gordon. By the time I got back to South Poplar, the person had vanished. I thought more and more about it and concluded that the person I saw walking was definitely Gordon. I said to myself, "Self, I'd know that SOB's walk anywhere." I've known Gordon for almost 30 years, and I know Gordon's posture and gait very well.

12. At around 12:50 a.m., I took another fare to Lights Out Bar & Grill. After dropping off this passenger, I drove down South Poplar and noticed all the fire trucks attempting to put out the fire at Gordon's paint store. Putting two and two together, I believed it was Gordon who I saw earlier walking down South Poplar and that Gordon must have torched the paint store! Gordon is the worst businessperson I know, and I was thinking to myself, "Self, Gordon must have gotten into financial trouble and lit the place up for the insurance money."

13. Several days after the fire, August 1 or so I believe, I contacted fire investigator Severide and informed Severide that I was pretty sure that I saw Gordon walking toward the paint store shortly before the building was engulfed in flames. The bar is only about four blocks from Gordon's paint store. Knowing Gordon as I do, I told Severide that Gordon probably torched the place to get the insurance money.

14. Later on, probably August 3, I heard from Investigator Severide that Gordon was in the Lights Out Bar & Grill on the night of the fire. I told Severide that I am even more convinced that Gordon is the person I saw that night walking toward the paint store. Gordon was probably in the bar that night running up a big tab on the money that the scumbag cheated me out of before heading over to torch the building. I happen to know, having taken enough drunks home from that place in my cab, that it's only a four-minute walk from the bar to the paint store.

15. The failure of our real estate business, which Gordon caused singlehandedly, is not the reason that I am testifying against Gordon, but I wouldn't lose any sleep if Gordon is convicted of the crime Gordon has committed. In fact, I might rest very well. Anyway, I am really just looking to see that justice is done. This isn't personal; it's strictly business.

I affirm under penalty of perjury that the above statements are true.

Bliss, Nirvana
October 24, 2023 Tracy Bickle

_____
Tracy Bickle

AFFIDAVIT OF LINDSAY GORDON

1. My name is Lindsay Gordon. I am 59 years old, and, except for my asthma, I am otherwise in pretty good shape. I reside at 1110 Hilltop Terrace in Bliss, Nirvana. Until July 29, 2023, I was the proud owner of Gordon Paint & Supplies, located at 534 South Poplar Avenue in Bliss. A fire on July 29 destroyed my business. It has been a little over two months since the fire, and I still cannot believe it's gone.

2. I started the business from nothing in April 2016, approximately five years after another business I co-owned had failed. I managed to save a few dollars that I earned from the other business, and with the money from the home equity loan, I was able to get Gordon Paint & Supplies, or GPS as I fondly called it, up and running. Whenever someone would call for directions to the store, I would say, "To get to GPS, set your GPS to 534 South Poplar Avenue."

3. GPS was a wholesale business in a 25,000-square-foot prefabricated building constructed using mostly wood. Although GPS was a large warehouse, I referred to it as simply my paint store. As a volume sales outlet, I sold mostly to contractors and to the so-called "Mom and Pop" retail stores that sold painting supplies. The business was going swimmingly well, so much so that in December 2019 I had about 25 employees on the payroll. Everything started to fall apart in March 2020 when my ability to stock GPS with paint and other supplies became difficult because of the COVID-19 pandemic. The business at GPS slowed to a trickle. I had wanted to keep all of my employees, but by May 2020 I had laid off all but four workers. I kept Leslie Neal, Pat Wheeler, and the two employees who worked in accounting. They all have door keys to the store and would open up whenever I was away. It was a tough slog trying to pay the salaries of four employees when there were very few accounts receivable on the ledger book. In fact, I burned through practically all of GPS's cash reserves. GPS did not qualify for any of the federal government support programs, like PPP, because I had laid off employees.

4. Things started to turn around somewhat in May 2021 when the pandemic started to ease and businesses started to reopen full-time. New orders started to trickle in. Anticipating that there was pent-up demand for new housing and housing renovations, **I quickly brought back 16 of the 21 employees I had laid off.** By December 2021, I was beginning to think that I had made a mistake bringing back all of those employees. Business overall had not grown as rapidly as the local economists had predicted. However, I was still hopeful that things would get better. Besides, I did not have the heart to lay off those employees again.

5. In January 2022, I talked to my financial adviser, Ryan Casey, who also happens to be a good friend, about GPS's financial outlook for 2022. Ryan said my debt load was a little too heavy and that accounts receivable were not coming in at a fast enough clip to stabilize the business. Ryan said that there may be some state or federal funds available later in the year that could be tapped to help turn the business around. Sometimes I wonder if I am getting the best advice from Ryan. I'm paying Ryan a good buck but getting very little in return. In the dark recesses of my mind, I believe Ryan is just stringing me along just to keep the GPS account.

6. In July 2022, Ryan and I met again. Ryan said that Ryan would be able to secure a $250,000 government-backed loan from Last Fourth Bank and Trust. However, Ryan said I would have to personally guarantee the loan. I was reluctant to be personally responsible, but the money would get me through the next six or seven months. So, I directed Ryan to put the paperwork through. I told Ryan, "More loans! That's all I need. If things don't turn around by January 2023, I will have to follow my own advice and just do whatever I have to do. It may or may not include bankruptcy that you always talk about." I was just frustrated. I did not mean anything by that statement. I received the $250,000 loan check on August 15, 2022.

7. On March 24, 2023, Leslie Neal, my favorite employee, stepped into my office just as I was bringing a phone call with Ryan to an end. I always use the speakerphone when conversing on the phone, as it allows me to multitask. When the call ended, I told Leslie that the finances were still topsy-turvy, and that Ryan again raised the issue of bankruptcy. I also told Leslie that Ryan said GPS may not need to go that route if Ryan and I can get the bank to restructure the outstanding loans on more favorable terms for GPS. I said to Leslie that I told Ryan that that approach would be a long shot but worth a try. I then said to Leslie, "I would hate to do anything drastic, like quickly shutting the business down, as that would be a mean thing to do to GPS's great employees." As I was making that last statement, I noticed Pat Wheeler standing outside my door and listening in on my conversation with Leslie.

8. I hired Wheeler back in September 2016. At the beginning of Wheeler's employment, and for four or five years subsequent, Wheeler was a great employee. As I stated earlier, Wheeler was one of the four employees I kept on during the pandemic. For some reason, Wheeler, after May 2021, increasingly became a problem. Wheeler began to refuse some work assignments Wheeler regarded as menial. Wheeler would arrive late to work several times a week, would constantly annoy many of the employees with Wheeler's antics, and even stole the love interest of Leslie Neal. Leslie is still very upset about that to this date. I also suspected Wheeler was stealing paint and other supplies to sell on the street, but I've not been able to conclusively prove it. Wheeler's eavesdropping on my conversation with Leslie on March 24 was the final straw, as such conduct was unforgiveable. I very well could have been discussing confidential personnel matters with Leslie. I fired Wheeler on the spot, got the store's door key back from Wheeler, and escorted Wheeler out the door. Before leaving, Wheeler said out loud to me, "You will regret this day! Mark my word." Leslie and the other employees also heard Wheeler's statement. All the employees, including Leslie, were happy to see Wheeler fired.

9. I still can't believe my business is gone. I even helplessly and hopelessly watched it burn down on that fateful morning of July 29. Wheeler did this! All my employees heard Wheeler threaten me that I would regret firing Wheeler. At the time of the fire, I was at Lights Out Bar & Grill, on the corner of Spring Street and South Poplar Avenue, having a drink with Ryan to socialize with my friend and to discuss the next steps in turning GPS around. I was wearing my Yankees baseball cap just to annoy Ryan, who is a fanatic Boston Red Sox fan. I go to Lights Out frequently because it is only five or so blocks from the paint store. I had called Ryan on Wednesday, July 26 to invite Ryan out for a drink on July 28 at 11 p.m.-ish.

Ryan was reluctant to go to the bar that night because Ryan had been expecting a long-distance phone call that night at around 12:00 midnight Nirvana-time from a relative, an army ranger stationed in Seoul, South Korea. I insisted that we meet, telling Ryan that if it was too noisy in the bar at the time of the call, Ryan could just step outside for a few minutes. I sealed the deal by telling Ryan that one of Ryan's favorite local hard rock bands, Han Valen, was playing at the bar that night. So, Ryan relented, telling me that I am a good friend and a great client, and that Ryan would not want to disappoint me. Ryan also warned me that the call could be 20 minutes or more. I said, "No problem."

10. Ryan and I were together the whole time, except for the few minutes when Ryan stepped outside the bar at 12:10 a.m. to take the phone call. The band, Han Valen, was so loud you could hardly hear yourself think. A few minutes after Ryan exited the bar, I made a visit to the restroom located in the rear of the bar. I was in the restroom for a period of time dealing with, let's say, some gastrointestinal problems. When I returned to our table, Ryan was already there. Ryan asked me why I was sweating so much and why I looked so anxious. I told Ryan I was sweating because the restroom did not have air conditioning and it was very hot in there. My asthma had also kicked in, causing me to breathe more heavily than usual. I had forgotten to bring the inhaler for my asthma.

11. Ryan and I were still conversing when, at approximately 12:45am on July 29, I received a text message from Leslie, informing me that the paint store was on fire. I told Ryan what was happening. I probably did not have any expression on my face, thinking to myself at the time that this was Wheeler's revenge. Ryan and I raced to the paint store in our separate vehicles. After staring at the fire for several minutes, I said to Ryan, "I know who did this. It was that no-good Pat Wheeler, the employee I fired back in March."

12. I hardly got any sleep on July 29, having arrived home at approximately 4:30 a.m. I got up at around 9:00 a.m., a little groggy and not in the best shape mentally. After breakfast, I made my way back to GPS to assess the damage. I got there around 11:30 a.m. and saw that everything was gone except for the rear wall where the rear entry door is located. At 12:00 noon, someone in a SUV with the marking "BFD" pulled up to the front of what was GPS. The person exited the vehicle and approached several of my employees who were a short distance from me and asked them if a Lindsay Gordon was around. They pointed to me. I walked over to the person's vehicle, and they identified themselves as Kelly Severide, a senior arson investigator from the Bliss Fire Department. I said, "Pleased to meet you, even if under these circumstances."

13. Severide proceeded to tell me that Severide was at the site this morning at 8:00 a.m. to conduct an investigation of the fire. Severide wanted to ask me some questions. Before Severide commenced the questioning, Severide wanted me to show proof of my identity. I reached into my front pocket for my wallet, where I usually keep it, and a cigarette lighter fell to the ground when the wallet came out. Severide commented that the cigarette lighter appeared to be a vintage lighter. I said the lighter was a gift from my grandfather, who had purchased the lighter in Vietnam while serving a tour of duty during the war. I said that I do not smoke and that the lighter barely works half of the time anyway, but that I always carry it

with me in memory of my grandfather. I flicked it a couple of times in front of Severide, but I don't remember whether it lit or not.

14. Severide said that, while using accelerant detection equipment during the investigation earlier today, the presence of gasoline was detected and that, in Severide's opinion, gasoline was used to start the fire. Severide asked me whether I stored gasoline inside the building. I said, "No." I also said the employees are not allowed to bring gasoline inside as well. I said to Severide that there is a hole in the glass of the rear door. The door has a sliding latch and a non-locking doorknob. I asked Severide, "Is that how the perpetrator gained entry?" Severide, with a mocking and an accusatory tone in their voice, responded, "Maybe, or just maybe someone wants the police to think that is how entry was made." I did not bother to ask what that surly comment was implying. I later learned that Severide claimed that there were shards of glass on the inside of the back door and on the outside of the door. I saw pieces of glass on the inside of the door but did not notice or even look for any glass pieces on the outside.

15. Severide asked me who did I think might have started the fire. I said right out it was Pat Wheeler. I told Severide that Wheeler had become a troublesome employee and that I had to fire Wheeler this past March. I explained to Severide that Wheeler was often late to work, did not get along with the other employees, and that I suspected that Wheeler was stealing paint and other supplies to sell on the street. I admitted, however, that I did not have concrete proof that Wheeler had been stealing paint and supplies. I told Severide that the final straw leading to the firing of Wheeler was Wheeler spreading rumors that the business was failing and that I was about to file for bankruptcy. I admitted that the business had its ups and downs due to the nature of the economy and more downs than ups, but I've always denied that the business was failing. I told Severide that Wheeler, before leaving the building after being fired, said to me in the presence of my other employees, "You will regret this day! Mark my word." I suggested that Severide should have a talk with Wheeler.

16. It looked as if Severide wanted to ask me where I was at the time of the fire, so I gladly informed them that I was at Lights Out Bar & Grill with my friend and financial adviser Ryan Casey. I gave Severide the contact information for Ryan and urged Severide to reach out to Ryan. I told Severide that I arrived at the bar on July 28 at around 11:00 p.m. and that Ryan got there about 11:15 p.m. Severide asked me whether there was any period during the time Ryan and I were at the bar that we were not in each other's presence. I answered, "Not really, except for the brief time between 12:10 a.m. and 12:35 a.m. when Ryan was outside on the phone call, and I took the opportunity to visit the restroom." I let Severide know that I did not become aware of the fire until approximately 12:45 a.m., when my employee Leslie Neal texted the bad news to me. Severide started to leave, but turned around and asked me whether I owned a gasoline container. I thought the question was rather strange, but I said I have a one-gallon gas can that I keep in the back of my pickup truck. Severide asked to see it. We went over to my truck. I pulled back the canvas cover and showed Severide the gas can. Severide opened it and saw that it was completely full. I told Severide that I have the gasoline in case my truck runs out of gas. I told Severide that one gallon would be more than enough to get me to a gas station to refuel. Severide carefully examined the outside of the gas can and then asked me when was it that I last filled the can. I told Severide it has been

several or more months ago. From the expression on Severide's face, Severide did not appear to believe me.

17. I recently learned from Leslie that, at about 10:00 p.m. on the night of the fire, Leslie saw Wheeler at the Nobil gas station filling up a two-gallon plastic container with gasoline. Leslie was gassing up Leslie's vehicle at the time and when Wheeler saw Leslie, Wheeler finished filling up the container and quickly drove off. I just wonder what Wheeler did with all of that gasoline two hours later that night! I still kick myself every day for not changing the disarming code for the security alarm after Wheeler was fired. Leslie, Wheeler, and the two employees in accounting know the code in case they must open the store when I am absent. If I had changed the code, Wheeler might well have been caught in the act since it is a silent alarm. I hope our "Inspector Clouseau" Severide investigated Wheeler's activities on the night of the fire.

18. I filed an insurance claim electronically with Casualties 'R Us Insurance Group, the carrier for GPS, on July 30, one day after the fire. It's not like the building is gonna grow back in a week or two or ever. Ha, ha! There was no reason to wait. Besides, there was no telling how long Severide's investigation was going to take. Anyway, I knew that I did not set the fire, so there is no reason why I shouldn't be able to collect right away.

19. I was completely devastated as a result of being arrested on August 18, 2023, on a bogus indictment charging me with third degree arson. I could not believe it because I am a legitimate businessperson. In fact, I am the recipient of the Rotary Club's Employer of the Quarter Award for first quarter 2023. I am also a major contributor to the Bliss Police Athletic Club that works with youth in the community. Now, I am on the verge of financial ruin. The insurance company will not pay on my claim until I am acquitted on this criminal hoax. I have a $2,000,000 insurance policy on the business from Casualties 'R Us. After paying off the loans and any other indebtedness, I will probably be left with just $1,250,000. **All of my trouble with the law is the doing of that awful person Tracy Bickle**. Bickle and I were partners in a corporate real estate business that we formed in 2004. As to the division of labor, Bickle would spend the bulk of their time drumming up business, while I would be in charge of the day-to-day management of the office, which involves a lot of work. I admit that Bickle invested almost all of Bickle's savings into the business and I had put in very little. Despite that, my overall contribution to the firm was just as significant as Bickle's investment.

20. Over the years, I was probably not completely forthcoming with Bickle about the finances of the firm. Income was not always keeping up with expenses and there was sometimes not enough cash on hand to pay state and federal taxes. Nevertheless, Bickle and I made handsome salaries and lived very well. When the state and federal taxing authorities started to file liens, the business failed and closed its doors in 2011. Bickle lost everything and blamed me. Bickle had sworn that however long it took, they would get back at me.

21. It is my understanding from my attorneys at the law firm Will Getz Youse Offmann LLP that several days after the fire, Bickle contacted Severide, and Bickle informed Severide that Bickle is pretty sure they saw me walking toward the paint store shortly before the store was engulfed in flames. That is not possible. I was in the bar at the time of the fire. Ryan will

testify to that. You can't be in two places at the same time. Bickle has been trying to get back at me since 2011.

22. This whole investigation was bogus. Ryan has a client in the BFD and heard that Severide is looking to be promoted to Principal Arson Investigator. It may not happen because Severide botched several investigations that resulted in innocent people getting convicted and going to prison. I bet the Fire Commissioner, and the District Attorney are not happy with Severide's work product. Severide is using my case to get back into the good graces of the Commissioner. This is simply wrong! I hope when I am acquitted that the District Attorney will charge Wheeler with this arson and charge Bickle with perjury for lying on the witness stand about me.

I affirm under penalty of perjury that the above statements are true.

Bliss, Nirvana

October 11, 2023 *Lindsay Gordon*

_____

Lindsay Gordon

AFFIDAVIT OF LESLIE NEAL

1. My name is Leslie Neal. I am 31 years old. I currently reside at 1905 Franklin Street, Bliss, Nirvana.

2. I have a Bachelor's Degree in History (2014) and a Master's Degree in Organizational Psychology (2016) from Nirvana State.

3. I have been an employee of Gordon Paint & Supplies (GPS) since May of 2016. Prior to the July 29, 2023 fire at GPS, my concerns mostly revolved around trying to help my boss and GPS's owner, Lindsay Gordon, salvage the business from the lingering effects of the COVID-19 pandemic. You might say that I was Lindsay's favorite employee. Lindsay was very good to me and paid me very well. I would do anything to help Lindsay and the business. The fire brought everything to a sad ending.

4. I loved my job at GPS. It was my first job out of graduate school and to this day I appreciate that Lindsay hired me. At GPS, I was able to put theory into practice and gain on-the-job training that graduate school internships just cannot duplicate. I learned a great deal about management styles and running a business from working with Lindsay. Lindsay was candid about the mistakes that were made in the past that led to or contributed to a failed corporate real estate business that Lindsay co-owned, but Lindsay obviously learned from them and came back and built GPS up from nothing using their own money. Perhaps because of this investment, Lindsay liked to be very involved. And Lindsay pitched in with any task, right beside us, whatever needed to be done. We all did. Gladly. Or most of us did.

5. Lindsay is a pro at soliciting input from the employees and has a knack for making us all feel appreciated. As just one example, Lindsay likes to tell customers and delivery companies how to find us by joking, "To get to GPS, set your GPS," and everyone loves it. I think it was the year before the pandemic that Lindsay challenged all of us to a competition to see who could come up with a GPS-themed tagline for a promotional mailer to our "Mom and Pop" customers. I think Lindsay was pleased with my submission since I actually won! In fact, "From Purple Waze to Google Maps Magenta, Trust GPS to Take You in The Right Direction When Choosing Which Paint Colors to Stock!" is still in use in some of our promotions up until the awful fire that destroyed the company.

6. When the pandemic hit, Lindsay found it difficult getting paint and other supplies to stock the shelves. The business at GPS slowed down to almost nothing. Lindsay had to make some hard choices as a manager as to who of the 25 employees to lay off. **Twenty-one** people were let go, drastically reducing our staff to four. Luckily, I made the cut. My romantic partner at the time, Drew Evans, who worked at Whole Edibles Supermarket, lost their job at the start of the pandemic and moved in with me as a result. I do not even want to think about what would have happened to us if I had lost my job too.

7. Although I was grateful to have a job, life at GPS was chaotic during the pandemic. I do not know how bad it got on the ledger books, but we had way less orders than even our slowest quarter on record pre-pandemic, and Lindsay was definitely acting stressed and seemed

anxious all the time. Trying to be helpful, I told Lindsay about a relaxation app I like to use calm my nerves.

8. It was not simply the stress of navigating the business through the pandemic that Lindsay was dealing with. Lindsay also had Pat Wheeler to contend with. Pat and I both started at GPS in 2016. I do not recall what month Pat started, but I was already here when Pat came on board. At first, Pat and I worked alongside each other without incident. And then at some point – ironically after Pat's job was spared at the start of the pandemic – Pat started coming in late and showing lack of respect for the work environment by refusing to do work assigned to them. On more than one occasion Pat actually said, "That is beneath me." Please. We all pitch in around GPS. More often than not, when Pat refused to do something, I would do it just to save Lindsay from having to do it. Lindsay was not asking anything of us that Lindsay would not do themself. Lindsay was working long hours to keep GPS afloat and keep the four of us employed; the least we could do was keep up. Frankly, it drove me crazy that Pat was so cavalier about remaining employed.

9. My relationship with Pat deteriorated from work-related frustration and annoyance to outright hostility when Drew told me they went out for drinks with Pat. Look, the pandemic was hard on all of us, and Drew and I were no exception. Our relationship did not last. We did not break up because of Pat, but Pat trying to worm their way into our relationship certainly did not help. Back in 2021, Drew was still unemployed and would often get lonely in my apartment all day. I suggested they go up to the rooftop garden on the top of the apartment building and look over at GPS if they were missing me. Sometimes, I like to go up there and think or read myself. I think I even said, "You don't need to set your GPS to get to GPS – you can see it from the roof!" But Drew is afraid of heights, and instead of going up to the roof, they would drive to GPS and wait for me in the car. Now that we are no longer together, I came to learn that Pat would sometimes sit in my car and "talk" to Drew while they were waiting for me. Apparently, it was these "talks" that led to Drew and Pat going for drinks. My negative feelings toward Pat reached a boiling point and I confronted them at work about the amount and frequency of time they were spending with my partner. Pat was adamant that Drew was a friend and nothing more, but I do not believe that for a second. I know what they really wanted was to steal Drew away from me. Pat told me I was imagining things – things I was seeing with my own eyes – and concocted some ridiculous cover story that they were working with Drew to paint my apartment as a surprise. Pat even produced some cans of paint and brushes as proof that they were trying to do something nice. Imagine gaslighting me like that! All this proved to me is what a hateful person Pat is.

10. None of this behavior resulted in Pat's firing, however. That finally happened on March 24, 2023. Leading up to March 24, I was aware that GPS was again under financial strain. Lindsay hired back 16 of the employees who had been previously laid off, but business has not resumed at the expected, pre-pandemic pace. On March 24, I walked into Lindsay's office as Lindsay was concluding a call with their friend and financial advisor, Ryan Casey. Lindsay appeared upset when I walked in and proceeded to tell me after the call ended that the issue of bankruptcy came up during the call with Casey. Lindsay told me that Casey advised against pursuing bankruptcy prematurely if there was a possibility of restructuring the loans with favorable terms instead. Lindsay also told me the restructuring approach was a long shot. I recall Lindsay holding Lindsay's cigarette lighter in their hand when we were talking, but I

don't remember Gordon flicking it on and off. Lindsay always has that lighter with Lindsay and it probably does not even work. I believe it is just a sentimental gift from a relative. While I do not recall Lindsay's next statement in its entirety, to the best of my recollection, Lindsay said something along the line that Lindsay did not want to do anything "drastic." The tone Lindsay used was not angry; it was concerned. At this point, Pat made themselves known to have been eavesdropping on our conversation, and Lindsay fired them on the spot. Before Lindsay took the store's door key from Pat and escorted them out, Pat said, "You will regret this day! Mark my word." Anyway, I do not think anyone was sad to see Pat go. In fact, I was thrilled.

11. The next time I saw Pat was July 28, 2023, at approximately 10 p.m., as I was fueling my car at Nobil Oil. Pat pulled up to a gas pump on the other side of the station and took out from the trunk of Pat's vehicle what appeared to be a 2-gallon plastic gasoline container. As Pat was proceeding to fill the container with gasoline, we made eye contact and I'm sure Pat recognized me. Pat, looking startled to see me, quickly picked up the plastic container now filled with gasoline, put it in Pat's vehicle and drove off. I finished fueling my vehicle and went home. At the time, I considered it odd that Pat, at 10 p.m. on a Friday night, would be getting a couple gallons of gasoline in a container and not also filling up the fuel tank of Pat's vehicle. Who would go out of their way so late on a Friday evening just to fill a small plastic container with gasoline?! Probably someone with nefarious intentions!

12. Upon returning home on July 28, 2023, at approximately 10:30, I put in my earbuds, turned on my calming app, and went up to the rooftop garden of my apartment building. There was no one else up there and it was a lovely, warm night, and I fell asleep while reclining on a lawn chair. When I awoke around two hours later, I immediately smelled smoke and could see flames coming from the direction of GPS. I then drove over to GPS and saw that the place was on fire. The fire department was already there when I arrived. At approximately 12:45 a.m., I texted Lindsay that GPS was on fire.

13. I immediately put two and two together and connected the dots between seeing Pat place a portable container of gas into their car, Pat's threat that we would all regret the day when Pat was fired, and the flames coming from GPS. During my interview with BFD arson investigator Kelly Severide on August 3, 2023, I told Severide about me seeing Pat gassing up the 2-gallon gasoline container on the night of July 28, about which pump I was using and the one used by Pat, about how Pat had become a problem employee, about how Pat had ruined my relationship with my former partner Drew, and about the threatening comment Pat made after being fired.

14. Pat told us to "mark" Pat's words and I have. Now mark my words: Pat is an arsonist. Pat is the one who should be on trial, not Lindsay.

I affirm under penalty of perjury that the above statements are true.

Bliss, Nirvana

October 30, 2023 *Leslie Neal*

_____

Leslie Neal

This page intentionally left blank.

AFFIDAVIT OF RYAN CASEY

1. My name is Ryan Casey. I am 56 years old and reside with my partner at 12390 Nob Hill Drive. Bliss, Nirvana. I have a B.S. in Finance from Emory University and an M.B.A. from NYU. I am a financial advisor and the president and owner of Ryan Casey & Associates LLC, a firm that offers financial planning and investment advice to individuals and businesses. Because of my business acumen, ability to exploit the "gray areas" of finance, and gregarious personality, I've managed to build a very successful business. At the risk of sounding immodest, I believe that my clients are lucky to be doing business with a financial advisor of my caliber.

2. Lindsay Gordon is a good friend of mine and a longtime client. In January 2022, Lindsay, who was the owner of Gordon Paint & Supplies, talked to me about the financial outlook of his business. Lindsay had to shutter their business for a while during the pandemic, and the business never fully recovered. I told Lindsay that their business's debt load was too great and that the account receivables weren't coming in quickly enough to stabilize the business. I mentioned that there might be some federal or state funds available later in 2022 that could be tapped into to revive the business.

3. On July 11, 2022, I met with Lindsay again, this time to share some good news. I told Lindsay that I thought they would be able to secure a $250,000 government-backed loan from Last Fourth Bank and Trust. But I told Lindsay that they'd have to personally guarantee the loan. Lindsay didn't like this, but they reluctantly agreed to this course of action to keep their business going.

4. During my July 11 conversation with Lindsay, they became quite agitated and balked at my fees – Lindsay is a great person but a bit of a cheapskate. Lindsay directed me to secure the loan from Last Fourth Bank and Trust but made an odd remark. Lindsay said, "More loans! That's all I need. If things don't turn around by January 2023, I will have to follow my own advice and just do whatever I have to do. It may or may not include bankruptcy that you always talk about." I didn't think much about this remark at the time; I chalked it up to the stress Lindsay was experiencing and their frustration with my fees. Lindsay received the $250,000 loan check on August 15, 2022.

5. I checked in with Lindsay by phone on March 24, 2023 to inquire how the business was doing. I hate it when Lindsay puts me on the speakerphone. Anyone passing by Lindsay's office can hear our conversation. Lindsay said that the $250,000 loan had helped somewhat, but that GPS's balance sheet was still not looking good. I believe Lindsay said the finances were "topsy-turvy." I told Lindsay that bankruptcy was always an option. Lindsay did not want to hear that. Instead, Lindsay wanted me to take a look at having the outstanding loans restructured on terms more favorable to GPS. Before the call ended, Lindsay acknowledged that getting the banks to restructure the loans would be a longshot but worth a try. I told Lindsay I would look into it, and we ended the call.

6. On July 26, 2023, Lindsay called me and invited me to go out for drinks at Lights Out Bar & Grill on July 28 at around 11 p.m. We'd often go out drinking, but I told Lindsay I was

expecting a long-distance call that night and wasn't sure I could go. I had promised to speak with a relative of mine, an army ranger stationed in Seoul, South Korea, at midnight Nirvana-time on July 29. I could sense, however, that Lindsay was in a bit of a panic and that they wanted to talk about business and blow off some steam. Lindsay said that if it got too noisy in the bar that I could take the call outside. Lindsay told me that one of my favorite local hard rock bands, Han Valen, was playing at the bar that night. So I reluctantly agreed, because Lindsay is a good friend and great client, and I didn't want to disappoint them. Besides, I would also get to hear Han Valen perform some of my favorites. I made sure to warn Lindsay that the call could take 20 minutes or more, and to that Lindsay said, "No problem."

7. On July 28, I met Lindsay at the Lights Out Bar & Grill, located on the corner of Spring Street and South Poplar Avenue in Bliss; I arrived at 11:15 p.m. The band, Han Valen, was in good form and loud. We ordered some drinks and talked about sports and business. My call came in at approximately 12:10 a.m. on July 29. I remember looking at the time on my phone. I went outside to take the call because the bar was too noisy. The call ended at about 12:35 a.m. and I went back into the bar to the table where Lindsay and I had been sitting. But Lindsay wasn't there.

8. It was around 12:40 a.m. when Lindsay returned to the table. Lindsay was sweating profusely and looked anxious, so I asked if they were okay. Lindsay said that they had been in the restroom, which had no air conditioning. They said the heat triggered their asthma and that they had not remembered to bring their inhaler. So that, according to Lindsay, was why they appeared to be so sweaty and anxious. Lindsay said everything would be okay in a few minutes.

9. At about 12:45 a.m. on July 29, Lindsay received a text message from Leslie Neal, an employee of Gordon Paint & Supplies, informing Lindsay that there was a fire at the business. I noticed that Lindsay didn't appear to be surprised after reading the text; I assumed they were in a state of shock after receiving such bad news.

10. After Lindsay received the text about the fire, we rushed to the paint store, driving our own cars. When we got there, we stared at the fire for a few minutes. It was so tragic to see a business literally go up in flames. While we were standing there, Lindsay mumbled, "I know who did this. It was that no-good Pat Wheeler, the employee I fired back in March."

11. On Monday, July 31, Kelly Severide, a senior arson investigator at Bliss Fire Department, came to my office to interview me. I told Severide that I was with Lindsay at the Lights Out Bar & Grill from about 11:15 p.m. on July 28 until 12:45 a.m. on July 29. But I'm an honest person, so I also explained that I stepped outside the bar from about 12:10 a.m. to 12:35 a.m. to take the call.

12. Even though I ordinarily wouldn't discuss a client's business without a subpoena, I knew Severide would easily be able to get one, so I told Severide about Lindsay's financial difficulties when Severide asked me about Lindsay's business. I explained that because of the huge amount of debt Lindsay took on to keep the business afloat, the market value of the

business fell way short of the debt load. Therefore, selling the business really wasn't a viable option for Lindsay. Severide was hinting at whether Lindsay had taken out insurance on GPS. I reluctantly told Severide that Lindsay has a $2,000,000 casualty insurance policy on GPS from Casualties 'R Us Insurance Group. After paying off all GPS's indebtedness, I told Severide that Lindsay would net approximately $1,250,000.

13. Severide asked me if I ever heard Lindsay mention abruptly ending the business. Therefore, I had no choice but to mention Lindsay's comment in our July 2022 conversation in which Lindsay said, "More loans! That's all I need. If things don't turn around by January 2023, I will have to follow my own advice and just do whatever I have to do. It may or may not include bankruptcy that you always talk about."

14. I can't believe that Lindsay has been arrested. Their business was about to tank, but I never thought they would set it on fire. It's possible that Severide is looking to close this case quickly. I heard from a client who works for the Bliss Fire Department that Severide is up for a promotion to Principal Arson Investigator. But my client said that this may not happen because Severide botched several investigations that resulted in innocent people getting convicted and being sentenced to prison. So, Severide might see solving this case as a way to rehabilitate Severide's reputation.

I affirm under penalty of perjury that the above statements are true.

Bliss, Nirvana
November 6, 2023

Ryan Casey

_____

Ryan Casey

This page intentionally left blank.

NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT EVIDENCE

PART V

This page intentionally left blank.

EXHIBIT_____

Casualties 'R Us Insurance Group
Online Loss Claim Form

How to complete this form
- Please fill in the requested details below and attach any required documentation.
- A Casualties 'R Us claims representative will contact you in 1 to 2 business days.

Person reporting the claim

Name: Lindsay Gordon

Phone number: (716) 555-4321

E-mail address: gordonpaint@CompuServe.com

Date: July 30, 2023

Relation to insured: Owner

Insured's name: Gordon Paint & Supplies

Phone number: (716) 555-1234

Policy number: BO123-45678

Property street address: 534 South Poplar Avenue, Bliss, Nirvana 14299

Circumstances of the loss/damage: At approximately 12:30 a.m. on Saturday, July 29, 2023, a fire engulfed the insured's building. The loss is total. The Bliss Fire Department suspects arson and is conducting an investigation to find the perpetrator.

This page intentionally left blank.

EXHIBIT _____

City of Bliss Fire Investigation - Preliminary Report

Investigator: Kelly Severide, Senior Arson Investigator
Crime(s) alleged: Arson 3rd
Date of incident: 7/28/23–7/29/23
Time: 7/29/23 12 a.m. approx
Location: Gordon Paint & Supplies, 534 South Poplar Avenue, Bliss
Summary description: ARSON of commercial business; gasoline accelerant used; entry possibly through rear entry door of premises; alarm system status unknown, but several employees and owner had access
Details: Investigated at the request of the BDF fire marshal. Entered onto burned-out premises 7/29/23 8:00 a.m.; combustible gas detector determined that gasoline was accelerant. Gasoline was poured near wooden shelves of 5-gallon vats of paint, close to rear entry door. Fire likely ignited by match or lighter flame. Fire started, spread quickly throughout premises; total destruction of building except for rear wall.
Entry gained by hole in glass window of back door; observed glass was broken near deadbolt latch; shattered pieces of glass on floor inside and pieces on ground outside. It appears that the glass was broken twice, both from the inside and from the outside. This investigator suspects the perpetrator wanted anyone investigating this arson to believe that entry was made through the hole in the window. Realizing that the glass shards should be on the floor inside, the perpetrator then struck the window glass from the outside.
No injuries or fatalities. Smoke lingered in Bliss skies for several days.

Interview Subject #1*:* Lindsay Gordon, sole proprietor of Gordon Paint & Supplies
Location of interview: just outside of former Gordon Paint & Supplies, located at 534 Poplar Ave, now destroyed
Date of interview: 7/29/23 ***Time***: 12 noon
Impression of interviewee's mental state*:* very nervous and highly evasive in answering simple questions.
General observations**:**
Subject has owned Gordon Paint & Supplies since 2016; successful wholesale paint and supplies business.
Subject details business encountered serious pandemic-related financial problems; laid off most of 25-employee staff; did not lay off Pat Wheeler and Leslie Neal and two on accounting staff. Confirms all four had keys and access to security alarm codes.

During interview, subject reached for ID in pocket, dropped cigarette lighter, vintage appearance. Subject mentioned lighter a gift from grandfather, purchased in Vietnam while in army; carries lighter as personal memento. Subject is non-smoker, claims lighter sometimes operable.

Subject states suspicion of former employee Pat Wheeler for starting fire in retaliation. States Wheeler made threats on day of Wheeler's firing. Reasons for firing were increasing lateness,

insubordination, eavesdropping, possible theft of paint/supplies for street resale (no proof), and spreading rumors that business was going bankrupt.

Observed that subject has a one gallon can of gasoline in back of subject's pickup truck. Subject advised that gasoline is for emergency.

Alibi Claim:
Subject claims subject was at *Lights Out Bar & Grill* (corner of Spring St and South Poplar Ave) with friend and financial adviser Ryan Casey.
Subject arrived July 28 11 p.m.; Casey arrived 11:15 p.m.; separate vehicles.
Subject states bar is several long blocks from Gordon Paint
Subject was with Casey except for short period 12:10–12:35 a.m. when Ryan was outside taking a phone call and subject claims subject had visited restroom.

Interview Subject #2 Ryan Casey, financial advisor/friend of Lindsay Gordon
Location of interview: Office of Ryan Casey & Associates; ***Date***: July 31 ***Time***: 10 a.m.
Impression of interviewee's mental state: clear and composed; cooperative
Subject agreed to discuss Gordon finances without a subpoena.
Subject stated they are advisor to Gordon re $$ issues running Gordon Paint & Supplies; helped Gordon secure bank financing to weather pandemic business losses; business encountered increasingly large debt load - discussed bankruptcy with Gordon on numerous occasions but Gordon was resistant to filing for bankruptcy.
Subject quoted Gordon as follows re financing options: "More loans! That's all I need. If things don't turn around by January 2023, I will have to follow my own advice and just do whatever I have to do. It may or may not include bankruptcy."
Subject stated Gordon has $2,000,000 casualty insurance policy on GPS from Casualties 'R Us Insurance Group. After paying off all GPS 'indebtedness, Gordon would net approximately $1,250,000

That Subject stated Gordon had habit of using speakerphone for conversations which should be confidential

That Gordon suggested to Subject that Pat Wheeler, former employee fired by Gordon in March 2023, set the fire in retaliation for the firing

Alibi Witness:
Subject stated being present with Gordon at the Lights Out Bar & Grill from about 11:15 p.m. on July 28 until 12:45 a.m. on July 29. Step outside of bar from 12:10 a.m. to 12:35 a.m. to take a call outside due to loud music; Gordon returned to table 12:40 a.m., sweating short of breath. Gordon said lack of A/C made it hard to breathe. Subject said Gordon has asthma.

Interview Subject #3 Tracy Bickle Taxi Driver/former business partner Lindsay Gordon
Location of Interview: Bliss Fire Dept. Investigation Office; ***Date***: 8/3/23 ***Time***: 1 p.m.
Impression of interviewee's mental state: agitated
General observations:
Subject made initial outreach phone call 8/1/23; follow-up interview 8/3.
Subject is **EYEWITNESS** to Lindsay Gordon in close proximity to crime scene on 7/29/23.
Subject reported dropped a passenger off at the Lights Out Bar & Grill, located on corner of Spring Street and South Poplar Avenue, at around 12:15am on July 29, 2023, at which time observed person wearing baseball cap exiting the back alley and turning to walk down South Poplar. Yelled out taxi window to ask if they needed a ride. The individual indicated no and walked away. Subject then drove off, but several minutes later realized person was former business partner Gordon.
Subject recounts real estate business partnership from 2004–2011 when business failed due to tax problems. Bickle attributes demise of business to Gordon failing to file and pay tax authorities, unknown to Bickle. Claims to have gotten past being angry after total loss of investments in the business. Stated suspicion that Gordon, who is known to be a failed businessperson, burned down paint store for insurance proceeds.

Interview Subject #4 Leslie Neal - employee of Gordon Paint & Supplies
Location of Interview: Bliss Fire Dept. Investigation Office; ***Date***: 8/3/23 ***Time***: 9:30 a.m.
Impression of interviewee's mental state: Calm, cooperative
Subject employed at Gordon Paint & Supplies since 2016; right-hand to Gordon; worked closely to assist with pandemic-related business problems and currently assisting in salvaging business post-fire.
General observations: Subject stated belief that Pat Wheeler set fire to Gordon Paint & Supplies; confirms Wheeler was angry after being fired by Gordon; quotes Wheeler on day of firing: "Mark my words! You will regret this." Subject confirms Gordon took possession of Wheeler's keys to paint store premises and escorted Wheeler out on day of firing in March 2023.

Subject was at Nobil gas station Friday, 7/28/23 10 p.m. when coincidentally observed Wheeler at the gas station filling up 2-gallon plastic gas container without also filling their vehicle gas tank. Claims Wheeler made eye contact, then quickly drove off. Subject was at home at time of fire.

Subject claims prior working relationship with Wheeler was mostly congenial; however, deteriorated after pandemic layoffs when Wheeler was disgruntled at being assigned new work tasks "beneath" them. Subject blames breakup with their romantic partner Drew on Wheeler. Subject demonstrated great animosity towards Wheeler.

Follow up required interview Pat Wheeler

Preliminary Conclusion: Lindsay Gordon, owner is **chief suspect** for Arson in the 3rd degree of Gordon Paints & Supplies.

Kelly Severide

Kelly Severide date: 8/4/23; time: 3:00pm

EXHIBIT ____

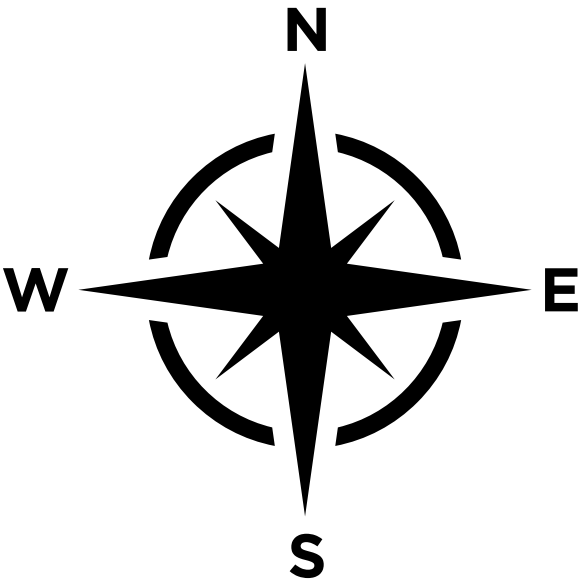
SPRING STREET

LIGHTS OUT BAR & GRILL

CAT ALLEY

PINE STREET

SOUTH POPLAR AVENUE



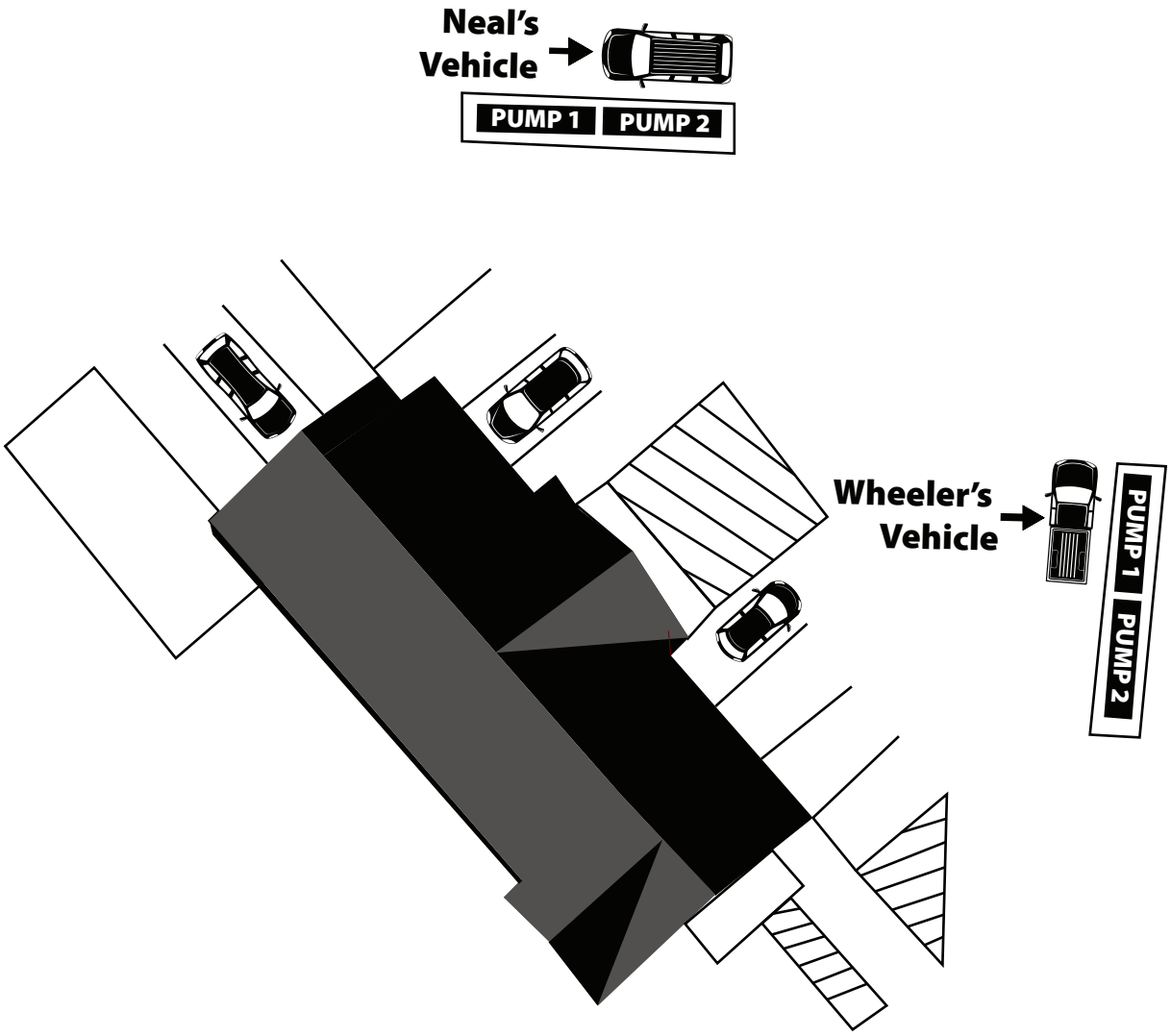
GORDON PAINT & SUPPLIES

Prepared by:
K. Severide
BFD
August 10, 2023

MAP NOT TO SCALE

This page intentionally left blank.

EXHIBIT_____



Nobil Gas Station
1788 Constitution Parkway
Bliss, Nirvana

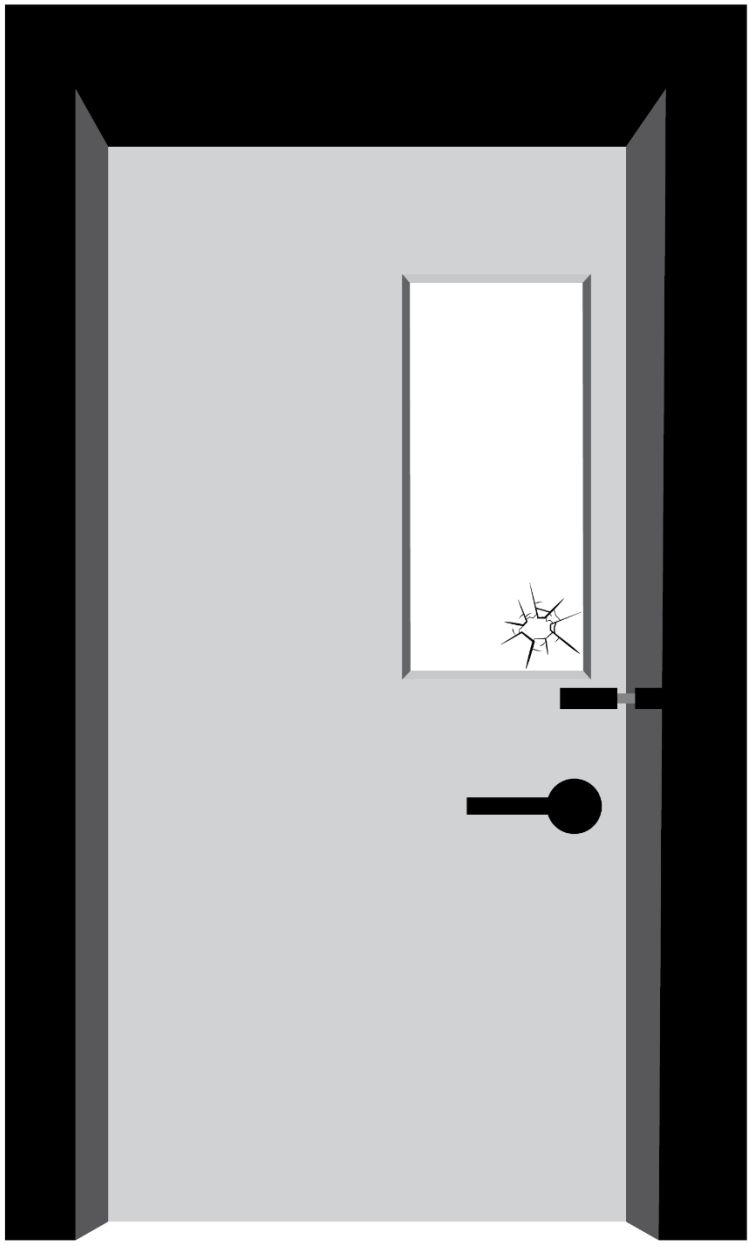
Prepared by:
K.Severide
BFD
August 15, 2023

This page intentionally left blank.

EXHIBIT _____

This page intentionally left blank.

EVIDENCE_____



This page intentionally left blank.

Sunday July 30, 2023

BLISS DAILY JOURNAL

All the news that fits.

Issue # 10142

Richard Threlkeld

Massive Inferno Engulfs Gordon Paint & Supplies: Arson Suspected

In a catastrophic turn of events, a blazing inferno ripped through Gordon Paint & Supplies, a long-standing establishment located at 534 South Poplar Avenue in Bliss, yesterday. The fire, which consumed the building entirely except for the rear wall, has left investigators with unsettling suspicions of arson.

Kelly Severide, an arson investigator for the Bliss Fire Department (BFD), has been on the scene since the early hours of the morning, meticulously sifting through the remnants of the once-thriving business. Severide expressed grave concerns that the devastating fire may have been a deliberate act.

The blaze, a terrifying spectacle that could be seen from miles away, sent plumes of thick smoke and fiery embers billowing into the sky, creating an eerie, apocalyptic atmosphere across the Bliss skyline.

The incident brought the BFD to its limits, taking over six arduous hours of relentless efforts to finally contain the raging fire.

Gordon Paint & Supplies, which had been a cornerstone of the local business community since 2016, employed approximately 25 individuals. The fate of these employees remains uncertain, as their workplace was consumed by flames. Bliss residents have expressed their condolences and support for those affected by the tragedy.

This reporter made several attempts to reach out to Lindsay Gordon, the owner of the establishment, for a comment regarding the devastating incident. Unfortunately, these efforts proved futile, as Gordon could not be reached for a statement before going to press.

The investigation into the fire's origin and the suspicion of arson will undoubtedly be closely monitored in the coming days. The people of Bliss, while mourning the loss of a beloved local business, will be anxiously awaiting updates on this developing story.

As the community rallies together in the face of this tragedy, the Bliss Daily Journal will continue to provide updates and coverage as more information becomes available. Our hearts go out to all those affected by this devastating event, and we stand in solidarity with the resilient community of Bliss.

This page intentionally left blank.

Saturday
August 19,
2023

BLISS DAILY JOURNAL

All the news that fits.

Issue #
10162

Owner of Gordon Paint & Supplies Arrested for Arson: Shockwaves Ripple Through Bliss

Max Robinson

In a shocking twist of events, Lindsay Gordon, the owner of Gordon Paint & Supplies, has been arrested and charged with the arson that devastated the business on July 30, 2023, according to authorities. The arrest has sent shockwaves through the Bliss community, where Gordon was not only known as a successful businessperson but also as a prominent member of various civic organizations.

The arrest comes after an extensive investigation led by arson investigator Kelly Severide of the Bliss Fire Department (BFD). Severide had suspected foul play from the outset, believing that the fire was intentionally set to collect insurance money. Yesterday's arrest appears to confirm these suspicions.

Gordon's standing in the community added to the shock of the arrest. As a Rotary Club member, Gordon had recently received the Rotary Club's prestigious Employer of the Quarter Award for the first quarter of 2023.

Additionally, Gordon was a significant contributor to the Bliss Police Athletic Club (PAC), an organization dedicated to working with the youth in the community.

The revelation that Gordon may have been involved in arson casts a shadow over the accolades received by the business owner, leaving many in the community bewildered and saddened.

Rumors, which had been circulating for some time, suggested that Gordon Paint & Supplies was in financial turmoil, teetering on the edge of bankruptcy. These rumors were reportedly initiated by a former employee, who was fired this past March for misbehavior. Several individuals, speaking off-the-record, have suggested that the former employee had the motive and the means to set the fire. Since this former employee has not been officially charged in charged in connection with the fire, this newspaper will refrain from disclosing the name of said former employee at this time.

In response to the arrest, Lindsay Gordon expressed deep disappointment and maintained that Gordon is innocent of the charges. Gordon vehemently denied any involvement in the fire, instead pointing the finger at the disgruntled former employee mentioned in the rumors. Gordon's legal team is expected to mount a vigorous defense.

The indictment against Lindsay Gordon is set to be unsealed at Gordon's arraignment in Bliss City Court on Monday, Aug. 21, 2023, according to a credible source speaking on background. The indictment reportedly includes charges of arson in the third degree, adding another layer of complexity to this already perplexing case.

As the community grapples with the stunning turn of events, Bliss Daily Journal will continue to provide comprehensive coverage of the trial and investigation. The arrest of Lindsay Gordon marks a somber chapter in Bliss's recent history, challenging the perception of an esteemed community member.

This page intentionally left blank.

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

PART VI

This page intentionally left blank.

RELEVANT STATUTE

PENAL LAW

Section 150.10(1) – Arson in the Third Degree

A person is guilty of arson in the third degree when he intentionally damages a building . . . by starting a fire or causing an explosion.

This page intentionally left blank.

RELATED CASES

People v. Samuel J. Gardner, 26 AD3d 741

The defendant appealed a judgment imposed upon a jury verdict finding him guilty of arson in the third degree and attempted grand larceny in the second degree. The appellate court held that the verdict was not against the weight of the evidence where the People presented evidence establishing that the fire was neither accidental nor the result of natural causes, and that the People presented overwhelming circumstantial evidence that the defendant set the fire and had the financial motive to do so.

People v. Lloyd Lewis, 275 NY 33

The defendant allegedly set fire to a barn he owned. The barn contained farm implements and a vehicle. The building and the personal property were all insured against loss or damage by fire. The Court of Appeals reversed the second-degree arson conviction, holding that proof of motive was essential to conviction of arson based on circumstantial evidence. In this case, the appellate court determined that there was no evidence to submit to the jury from which it might draw the inference of guilt beyond a reasonable doubt.

People v. Lewis Moore, 18 AD2d 417

The defendant was convicted of two counts of attempted arson. In dismissing one of the convictions, the appellate court held that evidence regarding insurance on the building and the contents was admissible in arson prosecution as being relevant to motive.

People v. Sharon Venkatesan, 295 AD2d 635

The defendant was charged with, and convicted of, arson in the third degree, related to the fire that destroyed her home. As evidence of motive, the People established at trial that a bank was in the process of foreclosing on the defendant's home. The People also proved that the defendant had purchased a personal property insurance policy about one week after receiving a notice of eviction and about one month before the fire. The appellate court held that valid reasoning and permissible inferences could lead a rational trier of fact to conclude that the instant defendant was guilty of arson in the third degree.

People v. James Mills, 138 AD2d 638

The appellate court reversed the defendant's second-degree arson conviction. The court wrote that:

> *In assessing the legal sufficiency of the evidence, which in this case was wholly circumstantial, we must view the evidence in a light most favorable to the prosecution, giving it the benefit of every reasonable inference to be drawn therefrom, and we must then " 'determine whether the jury reasonably concluded ' that the defendant's guilt was proven to a moral certainty" (**People v. Betancourt**, 68 N.Y.2d 707, 709-710 . . . .)*

Applying this standard, the court concluded that the jury's verdict was not supported by legally sufficient evidence in that said evidence was not "inconsistent with the defendant's innocence" nor did it "exclude to a moral certainty every other reasonable hypothesis."

People v. Daniel J. Hamilton, 129 AD2d 859

The defendant was convicted of arson in the second degree. On appeal, the court determined that the prime issue to be resolved was whether the defendant's guilt was established beyond a reasonable doubt. The court found that there was a lack of credible evidence indicating that the defendant had possession of, or access to, an accelerant on the night of the fire. In reversing the conviction, the court held that there was insufficient circumstantial or direct evidence showing that the defendant committed the arson.

People v. McKinley Smith, 289 AD2d 597

On a pre-trial motion, the Nassau County Court dismissed a count of the indictment that had charged arson on the ground that the fire investigator had testified before the Grand Jury that the fire was deliberately set. On the District Attorney's appeal, the appellate court reinstated the arson charge. However, the appellate court, in agreeing with the County Court and citing ***People v. Goldberg*** (215 AD2d 402), ***People v. Johnson*** (186 AD2d 584), and ***People v. Abreu*** (114 AD2d 853), held that the fire marshal's testimony violated the rule against an arson investigator expressing an opinion that a particular fire was caused by arson. It is exclusively within the province of the finder of fact to determine an ultimate fact issue in the case.

People v. Doris Rivera, 131 AD2d 518

The court held that the fire marshal's testimony that based upon his investigation, he had eliminated "to a reasonable degree of scientific certainty" all possible "natural" and "accidental" causes of the fire, was entirely proper (citing ***People v. Maxwell***, 116 AD2d 667). Since the fire marshal did not testify that in his opinion the fire was incendiary in nature, or that it was intentionally set, the rule that this ultimate question of fact (i.e., whether or not the fire was intentionally set) being exclusively for the jury to determine was not violated.

NEW YORK STATE HIGH SCHOOL MOCK TRIAL APPENDICES

This page intentionally left blank.

POINTS	MOCK TRIAL TOURNAMENT PERFORMANCE RATING GUIDELINES
1 Ineffective	• Not prepared/disorganized/illogical/uninformed • Major points not covered • Difficult to hear/speech is too soft or too fast to be easily understood • Speaks in monotone • Persistently invents (or elicits invented) facts • Denies facts witness should know • Ineffective in communications
2 Fair	• Minimal performance and preparation • Performance lacks depth in terms of knowledge of task and materials • Hesitates or stumbles • Sounds flat/memorized rather than natural and spontaneous • Voice not projected • Communication lacks clarity and conviction • Occasionally invents facts or denies facts that should be known
3 Good	• Good performance but unable to apply facts creatively • Can perform outside the script but with less confidence than when using the script • Doesn't demonstrate a mastery of the case but grasps major aspects of it • Covers essential points/well prepared • Few, if any mistakes • Speaks clearly and at good pace but could be more persuasive • Responsive to questions and/or objections • Acceptable but uninspired performance
4 Very Good	• Presentation is fluent, persuasive, clear and understandable • Student is confident • Extremely well prepared—organizes materials and thoughts well, and exhibits a mastery of the case and materials • Handles questions and objections well • Extremely responsive to questions and/or objections • Quickly recovers from minor mistakes • Presentation was both believable and skillful
5 Excellent	• Able to apply case law and statutes appropriately • Able to apply facts creatively • Able to present analogies that make case easy for judge to understand • Outstandingly well prepared and professional • Supremely self-confident, keeps poise under duress • Thinks well on feet • Presentation was resourceful, original, and innovative • Can sort out the essential from non-essential and uses time effectively • Outstandingly responsive to questions and/or objections • Handles questions from judges and attorneys (in the case of a witness) extremely well • Knows how to emphasize vital points of the trial and does so
Professionalism of Team Between 1 to 10 points per team	• Team's overall confidence, preparedness and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; and strategies intended to waste the opposing team's time for its examinations.

This page intentionally left blank.

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

TIME LIMITS

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

		PLAINTIFF / PROSECUTION	DEFENSE
➢ **OPENING STATEMENTS (ENTER SCORE) →**			
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

TIME LIMITS

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

		PLAINTIFF / PROSECUTION	DEFENSE
DEFENSE 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		
➢ **CLOSING STATEMENTS** (ENTER SCORE→)			
(1–10 points PER team) ➢ **PROFESSIONALISM** (ENTER SCORE→) • Team's overall confidence, preparedness and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; strategies intended to waste the opposing team's time for its examinations.			
➢ **TOTAL SCORE** (ENTER SCORE)→			

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

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.

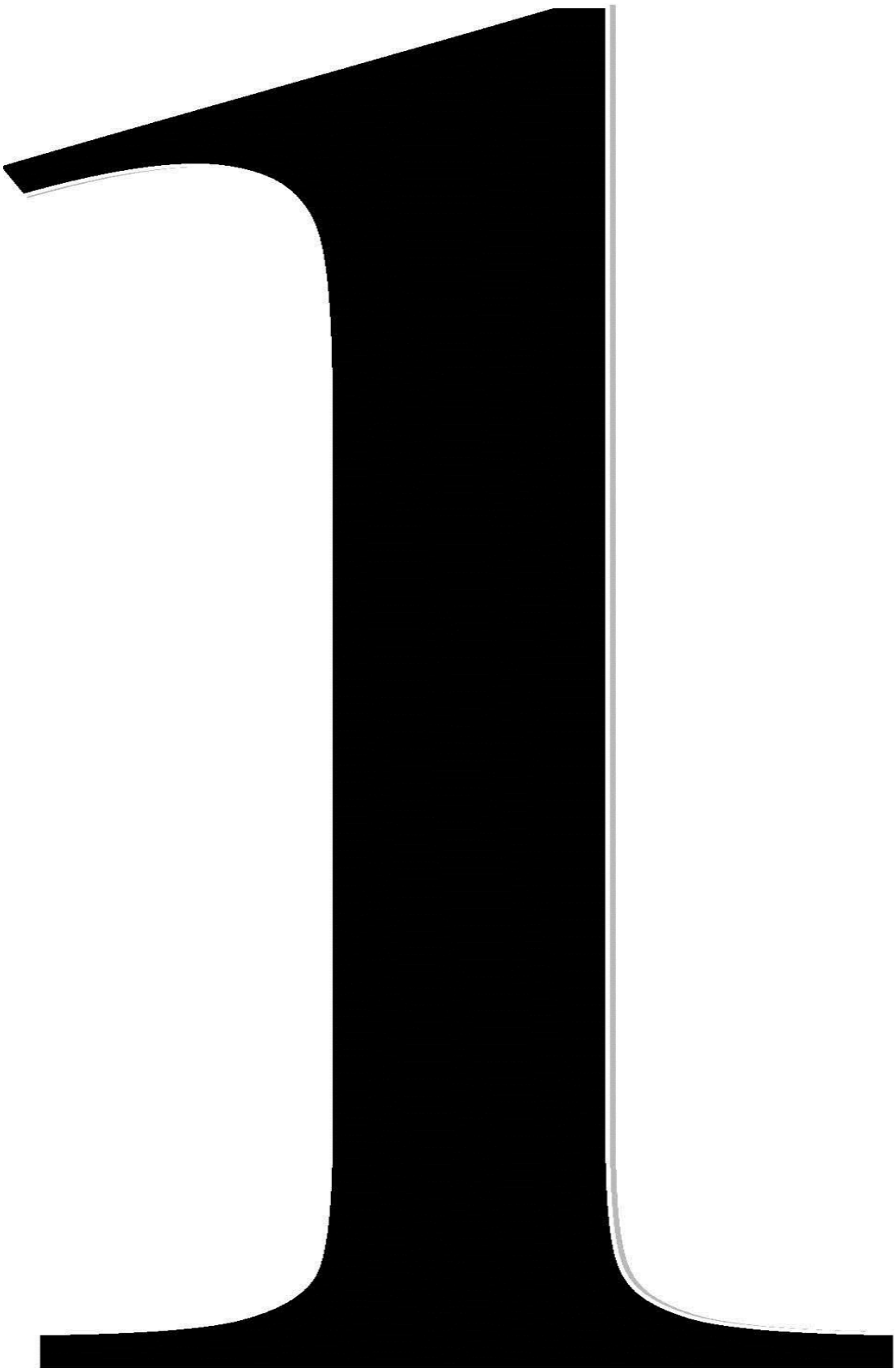
3. Teachers should assign students their respective roles (witness or attorney).

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

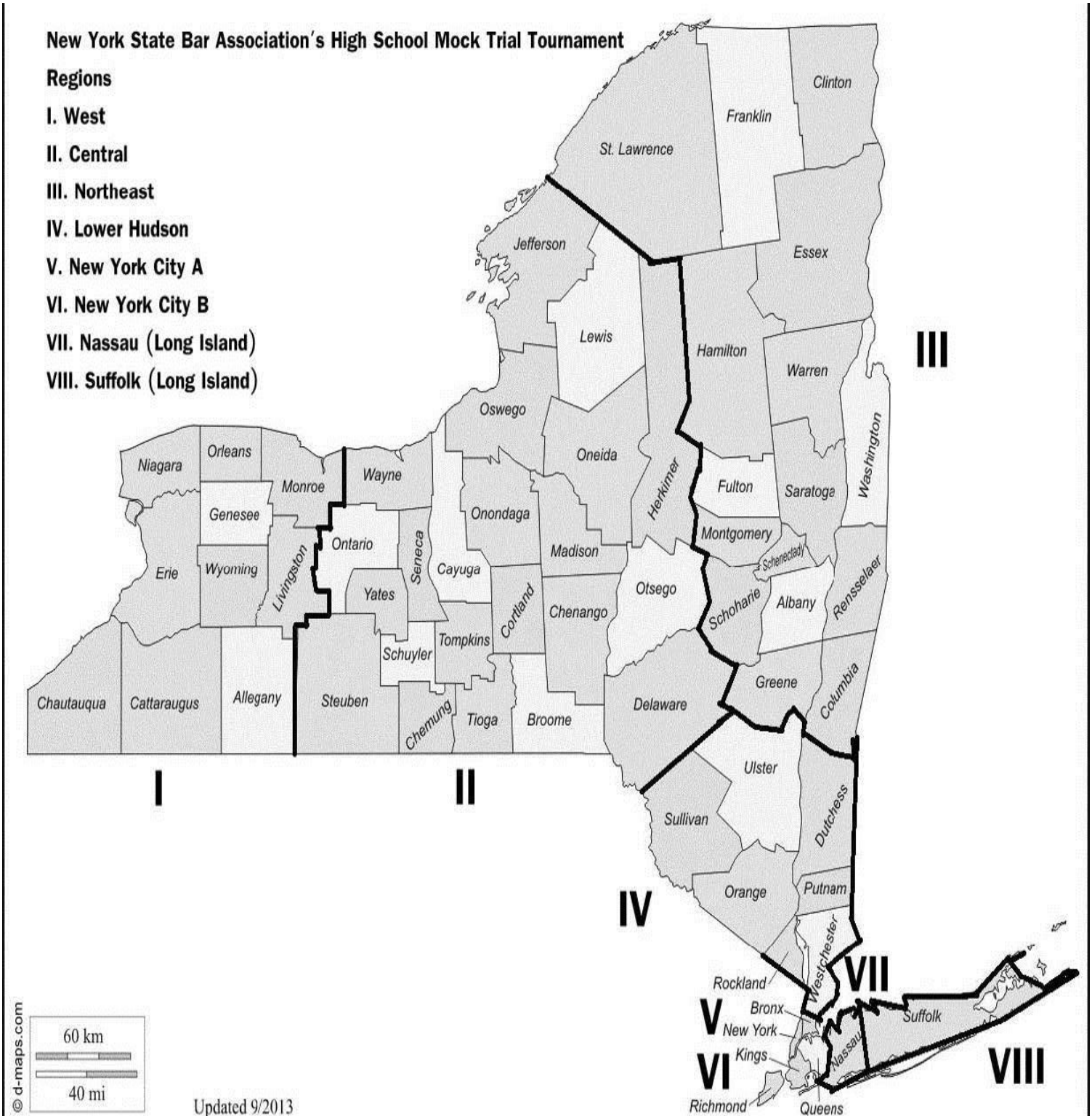
DIRECT EXAMINATION
10 minutes for each side

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/nys-mock-trial/



This page intentionally left blank.

2023 NEW YORK STATE BAR ASSOCIATIONS
HIGH SCHOOL MOCK TRIAL CHAMPIONS
ABRAHAM JOSHUA HESCHEL SCHOOL
REGION 5 , NEW YORK CITY

Presiding Judge: Hon. John P. Cronan
U.S. District Judge, Southern District of New York, New York, NY

Faculty Facilitator/Coach
David Steinberg

Attorney Coach
Jacob Buchdahl
Jesse Furman

Team Members
Mira Cohen
Zoe Singer
Joseph Lyss
Charlie Lebwohl
Rose Buchdahl
Noa Glezer
Eva Ungar
Ella Rowe
Rikki Tamir
Laila Posner
Abby Bruhim
Elana Farbiarz
Mor Kaminosh
Lev Dubler-Furman
Eden Litt
Hannah Wurzburger
Caleb Creizman
Pierce Malter

This page intentionally left blank.