Vincent J. Apruzzese

Mock Trial Competition

2017–2018

HIGH SCHOOL WORKBOOK

Celebrating 36 years of service to the educational community

Sponsored by the New Jersey State Bar Foundation in cooperation with New Jersey's county bar associations and the New Jersey State Bar Association

ATTENTION TEACHER-COACHES

CASE CLARIFICATIONS

We do not send mock trial case clarifications or updates by mail or email. It will be your responsibility to check our website, www.njsbf.org, periodically for possible updates or corrections.

CODE OF CONDUCT

Teacher- and attorney-coaches, students, parents and observers are expected to abide by the provisions of the competition's Code of Conduct. See Part I of this workbook for details.

UPDATES

Some changes have been made to the Rules of Evidence in Part VI. Please review carefully.

BEHAVIOR OF CONTESTANTS, JURORS AND OBSERVERS

Students and adults who participate in the New Jersey State Bar Foundation's High School Mock Trial Competition are expected to comport themselves properly in and out of the courtroom. Students and observers must respect their surroundings. Contestants and observers must (a) remove their litter from courtrooms and other areas and place trash in receptacles; (b) refrain from entering sections of the courthouses or other facilities where they are not authorized to be such as judges' chambers, conference rooms, offices, etc.; (c) refrain from using or removing property belonging to the courthouses or other facilities; (d) refrain from tampering with sound systems and (e) leave the courtrooms, jury rooms, restrooms, and common areas of the courthouses or other facilities in good order. Failure to do so may result in sanctions, including, but not limited to, the team's immediate disqualification from the competition.

Vincent J. Apruzzese
2017-2018 High School Mock Trial Competition

Sponsored by the New Jersey State Bar Foundation

OFFICIAL ENTRY FORM

In order to enter the competition, you must complete this Official Entry Form. All entries must be received no later than October 27, 2017. Please type or print clearly.

Name of School _____

School Address _____

_____ Zip _____

County in which School Is Located_____

Name of Teacher-Coach _____

Area Code, Telephone Number and Ext. (work)_____(home) _____

School Fax Number _____ Date Submitted_____

E-mail Address_____

Please check the following where applicable:

☐ I need a lawyer-coach.

☐ I already have a lawyer-coach. His/her name is: _____

☐ This is my first year coaching mock trial.

☐ This is the school's first year of participation in mock trial.

☐ We are mock trial "veterans."

☐ Other (please explain): _____

Please return this completed entry form to: Sheila Boro, High School Mock Trial Competition, New Jersey State Bar Foundation, New Jersey Law Center, One Constitution Square, New Brunswick, NJ 08901-1520. Fax number: 732-828-0034; Email: sboro@njsbf.org.

Please Note: You must complete and return this form to the State Bar Foundation in order to enter the competition. Please keep a copy for your records.

Mock Trial Competition

Statement of Goals

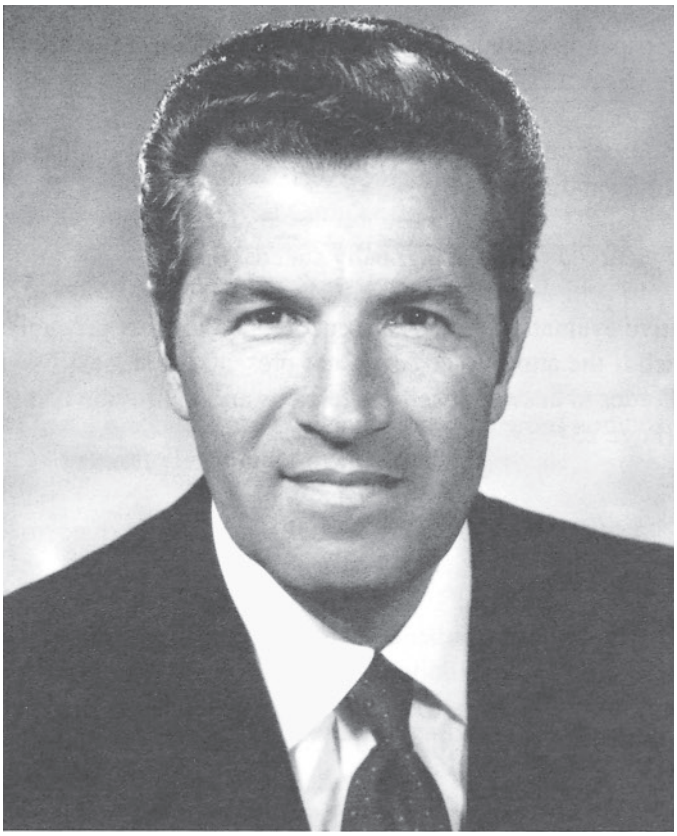
To increase comprehension of the historical, ethical and philosophical basis of the American system of justice.

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

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

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

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



Vincent J. Apruzzese, Esq.

In recognition of his many years of service, the New Jersey State Bar Foundation named its Mock Trial Competition in honor of Vincent J. Apruzzese, Esq. in 1991. Mr. Apruzzese is a past president of the New Jersey State Bar Association. He led the drive to build the New Jersey Law Center, served as the first chairman of the New Jersey State Bar Foundation, and was chair of the Foundation's Public Education Committee for several years. This competition is a fitting tribute to his leadership, indefatigable spirit and insight in implementing free law-related education programs for the public and particularly for young people.

VINCENT J. APRUZZESE
MOCK TRIAL COMPETITION

Dear Educator:

The New Jersey State Bar Foundation's Mock Trial Competition, now in its 36th year, is one of the nation's foremost contests of its kind for high school students. Our Mock Trial Competition has won many national awards for excellence in educational programming.

We thank you, the educators, and your students for your strong support and interest in the Mock Trial Competition. Last year 216 teams registered statewide. We look forward to working with you again in the year ahead.

The New Jersey State Bar Foundation's Mock Trial Competition is made possible by a network of support and cooperation from New Jersey's 21 County Bar Associations. County bar volunteers coordinate trials at the local levels and devote countless hours each year to bring this exciting educational program to students throughout the state. Volunteer attorneys from the counties will assist you and your team in preparing for the competition. This program is made possible through funding from the IOLTA Fund of the Bar of New Jersey.

We hope you'll join us in this classic educational event.

Sincerely,

Ronald Appleby

Ronald C. Appleby, Jr., Esq.
Chair, Mock Trial Committee

New Jersey State Bar Foundation • One Constitution Square
New Brunswick, New Jersey 08901-1520 • 732-937-7519 • FAX: 732-828-0034

VINCENT J. APRUZZESE
MOCK TRIAL COMPETITION

Sponsored by the New Jersey State Bar Foundation

FREE Mock Trial Workshop for Teachers & Attorneys

Learn how to conduct a mock trial and prepare your team for the New Jersey State Bar Foundation's High School Mock Trial Competition on **Thursday, October 26, 2017** at the New Jersey Law Center in New Brunswick from **9:00 a.m. to 1:15 p.m.**

The workshop is for teachers and attorneys (county coordinators and attorney-coaches) only. Due to space limitations, we regret that we cannot accommodate students.

Teachers attending the entire workshop will receive professional development hours.

An overview of the mock trial structure, from local contests through statewide finals, will be presented. Students will enact this year's case. A mock trial judge will explain how teams will be evaluated. The revised rules of evidence will be discussed.

The workshop is free but reservations are required. Please complete and return the form below.
Please keep a copy of this workshop form for your records. Directions follow:

From NJ Turnpike: Take Exit 9 to Route 18 North to Route 1 South. Take Route 1 South to Ryders Lane, New Brunswick (FIRST EXIT). The Law Center is the first right turn off of Ryders Lane.

From Trenton: Take Route 1 North to second Ryders Lane sign (RYDERS LANE-NEW BRUNSWICK). Ryders Lane passes over Route 1. The Law Center is the first right turn off of Ryders Lane.

For further information about directions, call 732-249-5000 or visit our website at www.njsbf.org.

Please Note: This is a registration form for the workshop only. It is **not** an entry form. You must complete an **Official Entry Form** in order to enter the competition.

HIGH SCHOOL MOCK TRIAL WORKSHOP

☐ **Please register me/us for the free workshop on October 26, 2017. I understand that this workshop is for teachers and lawyers only, not students.**

NAME(S) _____

SCHOOL OR LAW FIRM ADDRESS _____

_____

WORK PHONE _____ HOME PHONE _____

I am a ☐ Teacher ☐ Attorney-Coach ☐ County Coordinator

Return to: Sheila Boro • New Jersey State Bar Foundation • One Constitution Square
New Brunswick, NJ 08901-1520 • Fax number: 732-828-0034 • Email: sboro@njsbf.org

VINCENT J. APRUZZESE
HIGH SCHOOL MOCK TRIAL COMPETITION

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* The New Jersey State Bar Foundation gratefully acknowledges the assistance of the Mock Trial Committee, Committee Chair Ronald C. Appleby Jr., Esq., case author; and the Hon. Marilyn C. Clark, Presiding Judge, Criminal Part, Superior Court, Passaic County, for providing technical expertise and case review.

The Vincent J. Apruzzese High School Mock Trial Competition is sponsored by the New Jersey State Bar Foundation in cooperation with the New Jersey State Bar Association and New Jersey's County Bar Associations, and is funded by the IOLTA Fund of the Bar of New Jersey.

PART I
CODE OF CONDUCT
For Participants in the
Vincent J. Apruzzese High School Mock Trial Competition

Please review the following revised code carefully. It is the teacher-coach's responsibility to obtain all required signatures.

OVERALL PURPOSE AND SPIRIT OF THE COMPETITION

The Vincent J. Apruzzese High School Mock Trial Competition ("Mock Trial Competition") has been created for the purpose of stimulating and encouraging a deeper understanding and appreciation of the American legal system by high school students. Because of the competition's experiential educational format, learning derives from various sources and results from both articulated and unarticulated messages. The students learn proper comportment from each other, their teacher-coaches, their attorney-coaches, the volunteer mock trial judges and their parents and other guest-observers in the courtroom. Given the multifarious sources of student learning in the Mock Trial Competition, this Code of Conduct interprets "Participants" to include not only the students, but all of those who have the potential to influence student learning. In keeping with this interpretation, "Extensions" of this Code of Conduct must be executed by the team members, the teacher-coach and the attorney-coach. **In addition, each teacher-coach is required to provide parents and other guest-observers with copies of this Code of Conduct.**

SPECIFIC GOALS OF THE MOCK TRIAL COMPETITION

All Participants shall in manner and in deed do their parts in helping the Mock Trial Competition achieve the following specific goals:

- Promote cooperation, academic integrity, honesty and fair play among students.
- Promote good sportsmanship and respect for others in both victory and defeat. Participants must also demonstrate respect for County Mock Trial Coordinators, mock trial personnel, mock trial judges and other volunteers who make this competition possible.
- Promote good faith adherence to the Mock Trial Competition rules and procedures.
- Improve proficiency in speaking, listening, reading, reasoning and analytical skills.
- Promote respect for the judicial system and instill a notion of proper courtroom decorum. This includes respect for the courthouse and other venues where mock trials take place.
- Promote congeniality and open communication between the educational and legal communities.

SPECIFICALLY PROHIBITED NEGATIVE BEHAVIORS

Although not exhaustive, the following list contains behaviors that are directly opposed to the goals and objectives of the Mock Trial Competition and which, if engaged in, will constitute grounds for such disciplinary action as the County Coordinator at the local level (or Mock Trial Committee at state regional, semi-final and final levels) deems appropriate given the circumstances:

- Failure of the teacher-coach (a) to familiarize all parents and guest-observers with the contents of this Code of Conduct, or (b) to submit Extensions of this Code of Conduct executed by the team members, teacher-coach, and attorney-coach to the County Coordinator prior to the first round of competition.
- Use of communications technology (audio recording, visual recording, telephone, text-messaging by telephone, BlackBerry, laptop or other telecommunications device) by a team member (a) to communicate with any member of its team during an ongoing mock trial round, or (b) to record or in any way memorialize any portion of a round of the competition in which the team is not a participant. Students are not permitted to use iPads, laptops, cell phones or any electronic or telecommunication devices while competing.

- Acceptance of an audiotape, videotape, DVD recording, CD recording, or other transcription of the performance of another team in a round that the recipient did not participate in, even if the recipient has not viewed the material, listened to the recording or read the transcript.
- Plagiarism by any member of a team or any team's use of material plagiarized by its teacher-coach, its attorney-coach, or by the parents or guest-observers of team members.
- Direct verbal or written communication outside of the courtroom with a volunteer mock trial judge by any team, its teacher-coach, its attorney-coach or the parents or guest-observers of team members, except as permitted after the trial for the teacher- or lawyer-coach under R.5:3-6.

ACCOUNTABILITY FOR AND CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT

All Participants, including parents and guest-observers, must adhere to the rules and procedures of the Mock Trial Competition and this Code of Conduct (which includes by this reference the Extensions signed by the student teams, teacher-coaches and attorney-coaches). Teacher-coaches must submit all three of the signed Extensions that follow to their County Mock Trial Coordinators prior to the first round of the local competitions. Failure to abide by the Mock Trial Code of Conduct is sufficient grounds for disqualification and dismissal of the team with which the offender(s) is directly or indirectly connected at the sole discretion of the County Coordinator at the local level or the Mock Trial Committee at the state regional, semi-final and final levels.

EXTENSION OF CODE OF CONDUCT

To Be Signed by Teacher-Coach Participants in the Vincent J. Apruzzese High School Mock Trial Competition

I have read and fully commit myself to the overall purpose and spirit of the Mock Trial Competition. Moreover, I endorse the specific goals of the Mock Trial Competition as set forth in the Code of Conduct and agree not to engage in or condone any of the negative behaviors set forth therein. I execute this Extension of said Code of Conduct in my role as teacher-coach, hereby agreeing to focus attention on the educational value of the Mock Trial Competition.

I agree to act as an adult role model for my students and to discourage willful violations of the rules. I will instruct my students as to proper procedure and decorum and will assist them in understanding and abiding by the competition rules and procedures as well as adhering to the spirit of this Code of Conduct. By action and by deed, I will teach my students the importance of treating others with respect and courtesy. In my interaction with other teacher-coaches, attorney-coaches, mock trial judges, county mock trial coordinators, other volunteers and mock trial personnel, I will set an example that my students can follow.

I understand that I have the following responsibilities for which I, alone, am accountable:

- Training students to fulfill the role of jurors and bringing a sufficient number of student jurors to each round of competition.
- Circulating the Code of Conduct to all parents and guest-observers in advance of their attending any of the rounds of competition.

I agree that I will not disseminate any reproduction of any portion of this competition without the express written consent of each student and the parent/guardian of each, of my team as well as opposing teams, as well as the permission or consent of the student's own coach, whose images may be captured on film or other telecommunications technology. I will not post any images from this competition on Facebook, Twitter or any other social networking site without the permission as set forth above. I will not encourage or permit anyone else to do so, and will report same if it happens. I further agree that any violation of this rule subjects me to removal from the competition and places my entire team in jeopardy of being severely penalized for my actions. See R.2:5-3.

I agree to act as a role model by carrying out my responsibilities as a teacher, never forgetting that I am representing the educational system in addition to coaching high school students as their mock trial advisor. Thus, I will zealously encourage fair play and promote conduct and behavior that is in keeping both with proper courtroom decorum and the spirit of the Mock Trial Competition. I will discourage skirting the rules and engaging in obstructionist behavior that interferes with the orderly flow of courtroom procedures. I agree to inculcate the highest standards of the education profession by discouraging a culture of win-at-any-cost and by promoting a spirit of willing compliance with the rules of the competition and the ethical guidelines provided by this Code of Conduct.

Date:_____

_____
Teacher-Coach

_____
School

EXTENSION OF CODE OF CONDUCT

To Be Signed by Attorney-Coach Participants in the Vincent J. Apruzzese High School Mock Trial Competition

I have read and fully commit myself to the overall purpose and spirit of the Mock Trial Competition. Moreover, I endorse the specific goals of the Mock Trial Competition as set forth in the Code of Conduct and agree not to engage in or condone any of the negative behaviors set forth therein. I execute this Extension of said Code of Conduct in my role as attorney-coach, hereby agreeing to abide by the rules and procedures of the Mock Trial Competition and to uphold the highest standards of the legal profession.

I agree to act as a role model of our honorable profession by carrying out my responsibilities as an officer of the court, never forgetting that I am representing the judicial system in addition to coaching high school students as their mock trial advisor. Thus, I will zealously encourage fair play and promote conduct and behavior that is in keeping both with proper courtroom decorum and the spirit of the Mock Trial Competition. I will discourage skirting the rules and engaging in obstructionist behavior that interferes with the orderly flow of courtroom procedures. I agree to inculcate the highest standards of the legal profession by discouraging a culture of win-at-any- cost and by promoting a spirit of willing compliance with the rules of the competition and the ethical guidelines provided by this Code of Conduct.

I agree that I will not disseminate any reproduction of any portion of this competition without the express written consent of each student and the parent/guardian of each, of my team as well as opposing teams, as well as the permission or consent of the student's own coach, whose images may be captured on film or other telecommunications technology. I will not post any images from this competition on Facebook, Twitter or any other social networking site without the permission as set forth above. I will not encourage or permit anyone else to do so, and will report same if it happens. I further agree that any violation of this rule subjects me to removal from the competition and places my entire team in jeopardy of being severely penalized for my actions. See R.2:5-3.

Date:_____

_____
Attorney at Law, State of New Jersey

_____
School

EXTENSION OF CODE OF CONDUCT

To Be Signed by Student Team Member Participants in the Vincent J. Apruzzese High School Mock Trial Competition

As a Team Member/Juror of _____High School, I state that I have read and fully commit myself to the overall purpose and spirit of the Mock Trial Competition. Moreover, I endorse the specific goals of the Mock Trial Competition as set forth in the Code of Conduct and agree not to engage in or condone any of the negative behaviors set forth therein. I execute this Extension of said Code of Conduct as a condition of participation in the Mock Trial Competition and hereby promise to compete with the highest standards of comportment, showing respect for my fellow students, opponents, judges, attorney-coaches, teacher-coaches, county mock trial coordinators and mock trial personnel.

I agree to accept both defeat and success with dignity and restraint. I promise to avoid all tactics that I know are wrong or in violation of the rules. I make a commitment to comply with the rules of the competition in spirit and in practice. I will not plagiarize or accept plagiarized material. I will not use telecommunications technology to circumvent the rules or to gain unfair advantage. I understand that use of telecommunications technology in the courtroom by any Participant (with the exception of permissible videotaping by participating teams per R.2:5-3) seeking to gain advantage for a team subjects that team to the risk of disciplinary action, which could result in an expulsion of the team from the competition or in the lesser penalty of a score reduction. I understand that I may be photographed, videotaped or audiotaped as part of my participation in the competition.

I agree that I will not disseminate any reproduction of any portion of this competition without the express written consent of each student and the parent/guardian of each, of my team as well as opposing teams, as well as the permission or consent of the student's own coach, whose images may be captured on film or other telecommunications technology. I will not post any images from this competition on Facebook, Twitter or any other social networking site without the permission as set forth above. I will not encourage or permit anyone else to do so, and will report same if it happens. I further agree that any violation of this rule subjects me to removal from the competition and places my entire team in jeopardy of being severely penalized for my actions. See R.2:5-3.

By signing below, I agree to vigorously uphold the Code of Conduct of the Mock Trial Competition:

Date:_____ _____

Date:_____ _____

Date:_____ _____

Date:_____ _____

Date:_____ _____

Date:_____ _____

Date:_____ _____

Date:_____ _____

Date:_____ _____

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Date:_____ _____

Date:_____ _____

Date:_____ _____

PART II
RULES OF GENERAL APPLICATION

RULE 2:1 APPLICABILITY, SCOPE, CONSTRUCTION AND CITATION OF RULES

2:1-1 APPLICABILITY; SCOPE
The Vincent J. Apruzzese Mock Trial Competition is governed by these Rules of Procedure and Evidence. Additional rules regarding the competition and its procedures are contained throughout this workbook. Please read the entire workbook carefully. **Other rules of procedure or evidence may not be raised.**

2:1-2 CONSTRUCTION
These rules shall be construed to secure a just determination, simplicity in procedure, and fairness in administration of the competition.

2:1-3 CITATION
Attorneys should be prepared to cite the specific rule number upon which an objection is based if requested to do so by judges.

RULE 2:2 GENERAL CONTEST FORMAT

2:2-1 LOCAL COMPETITIONS
Each team must compete in at least two trials, switching sides for the second trial. If there are an uneven number of teams in the initial two trials, the County Mock Trial Coordinator has the discretion to ask teams to volunteer to play both sides at the same time or to randomly assign team(s) to do so. Contestants must be prepared to field both sides simultaneously if necessary. If a team does not have enough members to play both sides at once, the teacher-coach must notify the County Mock Trial Coordinator in advance.

In the event of an emergency, last-minute cancellation by a team, or failure of a team to appear, which may create an uneven number of teams competing, the County Mock Trial Coordinator shall designate one team to field both sides.

After each team has had an opportunity to play both sides, the County Mock Trial Coordinator may elect to utilize a single-elimination or other format. The County Mock Trial Coordinator has the authority to configure local contest schedules. The County Mock Trial Coordinator will determine which teams advance based upon win/loss record and point scores. In a configuration where teams play only two rounds initially, a team with two losses should not advance and a team with two wins should advance. Where three rounds of competition are initially scheduled, a team with three losses should not advance and a team with three wins should advance.

If a team has questions about the local competition, the teacher-coach should contact the County Mock Trial Coordinator. Names and phone numbers of County Mock Trial Coordinators are posted on our website, www.njsbf.org.

2:2-2 DATES AND TIMES; FAILURE TO APPEAR
Local contest dates and times will be determined by county coordinators. **Failure to appear on the dates specified by the County Mock Trial Coordinator will result in forfeiture.** The county coordinator works very hard to arrange contest schedules, and teams should make every effort to participate in the local contest once they have entered. Last-minute cancellations create scheduling difficulties for everyone.

2:2-3 POSTPONEMENTS
Postponements may be made only by the county coordinator.

2:2-4 CHANGES TO RULES AND PROCEDURES

No rule or procedure may be changed after the 30th day preceding the first contest.

2:2-5 OFFICIAL REPRESENTATIVE OF EACH TEAM

The official representative of a mock trial team is the teacher-coach, not students, lawyer-coaches or others. All communications regarding a team must be made by and through the teacher-coach as official team representative. **Communications received from students will not be answered.** See R.2:14-15. Teacher-coaches and attorney-coaches are prohibited from coaching more than one team in any given year.

2:2-6 WORKBOOKS

Workbooks may be photocopied as necessary, and permission to photocopy a workbook is hereby granted. Please download the workbook from the Foundation's website, www.njsbf.org.

RULE 2:3 TEAMS

2:3-1 TEAM MEMBERS

A competing team in any given round shall consist of no more than TEN (10) students—two (2) attorneys, three (3) witnesses and alternates—plus the teacher-coach. A school may enter ONE (1) team only. For any single trial, a team must consist of two (2) attorneys and three (3) witnesses. The competition is open to New Jersey high schools only. **For our policy regarding a combined team, please see the back of this workbook.**

2:3-2 IDENTIFICATION OF TEAMS

Teams will be identified by I.D. numbers, not high school names, and teams should not bring materials, such as notebooks, T-shirts, school newspapers, etc., that would identify their schools. Guests of each team should similarly be requested to refrain from wearing or bringing items to contests that would identify the schools with which they are affiliated. Contestants are not permitted to identify their school or the opposing team's school to the judges.

2:3-3 STUDENT JURIES

Each team should bring SIX (6) student jurors to each competition. Team members may serve as jurors in rounds in which their team is not playing, and jurors may serve as team members in rounds in which they are not serving as jurors. A student should not serve as a juror on a trial in which his or her school is participating unless there are extenuating circumstances. Rules pertaining to student jurors are set forth infra at R. 2:4.

RULE 2:4 STUDENT JURIES

2:4-1 PURPOSE OF STUDENT JURIES

The purpose is to provide students with a better understanding of the duties and responsibilities of jurors and to enable more students to participate in the competition.

2:4-2 JURY CHARGE

Because of time restraints, actual procedures for selection and "charge" of jurors will not be followed. Juries will render their decision based upon a simplified charge and upon the factual testimony they have heard during the course of the trial. (The charge to the jury is the final address by the judge to the jury before the verdict, in which the judge sums up the case and instructs the jury as to the rules of law which apply to its various issues and which they must observe.) The judge will not read the charge to the jury. Jurors are expected to be familiar with the contents of the jury charge.

2:4-3 JURY VERDICT

Student juries will be required to render a verdict based upon the merits of the case and applicable law. They will **not** at any time determine which team wins or advances to the next round. That decision will be made by the judges only. Jurors will neither score team performances nor will their verdicts or performances as jurors be scored.

2:4-4 PROHIBITIONS

Jurors are not allowed to take notes or use recording devices.

2:4-5 PROCEDURES

In all competitions, the jurors from losing teams will be released, except for the runners-up. In each phase, jurors from first runner-up teams will be eligible to act as jurors in the final competition on the local or regional level. The runners-up from the state semi-final competition will be eligible to serve as jurors in the final statewide championship round at the New Jersey Law Center.

In the statewide championship round, the jurors of winning teams will not participate, unless the runner-up team is not available. The runner-up team in the semi-finals will be requested to provide jurors for the championship round.

Jurors should proceed immediately to the courtroom in which the trial they are assigned to will be conducted and shall seat themselves in the jury box. Jurors will only be triers of the facts. Their decisions will not affect which team wins.

At the conclusion of the trial, jurors will be allotted 15 minutes maximum to deliberate the facts and render a decision concerning those facts. Student jurors shall be responsible for electing a spokesperson from among the jury to advise the judge of the jury's verdict when the trial reconvenes. The spokesperson must briefly summarize the reasons for their verdict. Generally, jurors are requested to arrive at an unanimous decision.

Jurors are requested to take into consideration only the facts that are presented to them without considering testimony which may have been presented in a previous trial in which they acted as jurors.

RULE 2:5 GENERAL PROCEDURE FOR TRIALS

2:5-1 DETERMINATION OF SIDES — STATE LEVEL

Determination of which team will be prosecution/plaintiff and which team will be defense at the state level, which includes regionals, regional finals and state semi-finals as well as the final round, will be made by drawing lots a few minutes before each trial begins. However, if the same two teams have previously met in the statewide semi-finals and have both qualified for the statewide finals, the teams must switch sides in the championship round. At the regionals, teams that are eligible to advance to the next round will switch sides if possible. Where it is impossible for both teams to switch sides, a drawing of lots must be used to determine assignments in the next round.

2:5-2 DETERMINATION OF SIDES — LOCAL/COUNTY LEVEL

At the local/county level, sides for the initial round of competition may be preassigned at the discretion of the County Mock Trial Coordinator. Contestants in any subsequent round of a competition should automatically switch sides in the case for the next round (provided that they are eligible to advance to the next round). Where it is impossible for both teams to switch sides, a drawing of lots must be used to determine assignments in the subsequent round.

2:5-3 OBSERVATION OF TRIALS BY NON-PARTICIPANTS

Teams are permitted to observe mock trial contests, even if they are not participating in those contests. Note-taking by observers by any means during competitions is **not** permitted except for teacher-coaches and attorney-coaches of teams participating in that round. Teams that are not participating in a round shall not audiotape or videotape or use any other technological means to obtain auditory or visual information. Only participating teams will be allowed to videotape or audiotape mock trial contests. Each school will be allowed to designate one official videotaper/audiotaper. Experience has demonstrated that careful preparation has more impact on the quality of presentation and the final result than last-minute changes based on the above.

Those who are designated as the official video/audio recorders are reminded of the last paragraphs of the Extensions to the Code of Conduct which prohibit the distribution/dissemination/reproduction in ANY FORM of any portion of the competition without the express written consent of each student and parent/guardian as well as the student's coach.

RULE 2:6 PREPARATION OF MOCK TRIAL CONTESTS

2:6-1 MEETINGS WITH ASSIGNED ATTORNEYS

All teams are to work with their assigned attorneys in preparing their cases. It is recommended that teams meet with their lawyer-advisers at least six times prior to the contest. See Part VII for suggestions regarding the attorney-adviser's role in helping a team prepare for the competition.

2:6-2 DRESS REHEARSALS

All teams are required to conduct one full trial enactment (dress rehearsal) with attorney-advisers in attendance based on the case prior to the first round of the competition. Additional sessions devoted to the attorneys' questioning of individual witnesses are also recommended.

RULE 2:7 DECISIONS

The judge(s) will render a decision based on the quality of the students' performance in the case and the best team presentation. The judges have been instructed to rate the performance of all witnesses and attorneys on the team. (See Performance Rating Sheet.)

Judges will provide qualitative evaluations only, based on the categories in the rating sheet. Numerical scores will **not** be released. The purpose of this procedure is to re-emphasize the educational goals of the competition. Judges will provide evaluations and announce the winning team before the jury delivers its verdict. The jury verdict is not significant in the judges' evaluation.

Contestants may, as always, discuss their trials with judges after each contest if time permits. However, contestants are prohibited from contacting competition judges directly to complain about competition results. See Rule 2:14 and Rule 2:15.

The student jury will decide on the merits of the legal case and the applicable law. This decision of guilt or innocence in a criminal case, or finding in favor of the plaintiff or defendant in a civil case, does **not** determine which team wins or advances to the next round.

The decisions of the judges are final.

RULE 2:8 SCORING PERFORMANCES

While all possible measures are taken to encourage consistency in scoring, not all mock trial judges evaluate the performance of students identically. Even with rules and evaluation criteria for guidance, the competition reflects the subjective quality present in all human activities.

Please review the score sheet at the back of this workbook very carefully.

RULE 2:9 TIME LIMITS

The following time limits will be in effect:
Opening Statements—4 minutes for each side
Direct Examination—6 minutes for each witness
Cross-Examination—7 minutes for each witness
Closing Statements—8 minutes for each side

Every effort shall be made to respect these time limits. County coordinators are encouraged to appoint bailiffs to keep time. Bailiffs will also be appointed at the regional, statewide semi-final and statewide final levels. Bailiffs will keep time, and their decisions regarding timekeeping are final. Challenges to timekeeping will not be considered. Timekeepers may issue one-minute warnings verbally or through the use of a card or hand signals. When time is up, judge(s) must halt the trial. Regarding objections, the clock will be stopped.

Re-direct and re-cross (optional, to be used at the discretion of the team)—After cross-examination, additional questions may be asked by the direct-examining attorney, but questions must be limited to matters raised by the attorney on cross-examination. Likewise, additional questions may be asked by the cross-examining attorney on re-cross, but such questions must be limited to matters raised on re-direct examination and should avoid repetition. **One minute will be allowed for re-direct and re-cross respectively. Judges should not deduct points if a team decides not to re-direct or re-cross. (See Part VIII.)**

RULE 2:10 REGIONAL COMPETITION

To reach the statewide finals, a team will have to compete in a two-part regional competition. Winning teams from each county qualify for the first stage of the regionals, consisting of two, single-elimination trials. Winners of the first stage will return for regional playoffs. Winners of the regional playoffs qualify for the statewide semi-finals. Winning semi-finalists will be eligible to compete in the statewide finals.If there is a tie score, the judge(s) will make the final determination based on overall team performance.

Please take note of all of the following contest dates before entering the competition in order to make sure your team can attend.

The New Jersey State Bar Foundation will be responsible for coordinating the regional competitions. **All regionals will be conducted at the New Jersey Law Center in New Brunswick as follows: Central - February 1, 2018; North - February 6, 2018; and South - February 7, 2018. Regional playoffs will be held on February 27, 2018.** Please reserve these dates. Inability to attend will result in forfeiture.

To find out which regional your county belongs in, please call 732-937-7519 or e-mail sboro@njsbf.org.

RULE 2:11 SEMI-FINALS

Regional finals winners are eligible to compete in the statewide semi-finals scheduled for **March 14, 2018** at the New Jersey Law Center in New Brunswick. Please reserve this date. Inability to attend will result in forfeiture.

RULE 2:12 STATEWIDE FINALS

The winners of the semi-finals are eligible to compete in the statewide championship round scheduled for **March 21, 2018** at the New Jersey Law Center in New Brunswick. This date is final; please arrange your schedule accordingly. Inability of finalist teams to attend will result in forfeiture. This will be a single-elimination round. The judges' decision will be final.

2:13 STUDENT ILLNESS POLICY

In the event that one or more members of a team cannot compete due to illness, another member or members of that team may substitute for them. The substitutes must be team members who are not already playing in that round. In addition, jurors may serve as substitutes unless they are already serving as jurors in a round. One attorney cannot play the roles of both attorneys in any given round. Likewise, one witness cannot play the roles of other witnesses in the same round. A student-lawyer cannot play the role of a witness in the same round nor can a witness play the role of a lawyer in the same round. If a contestant becomes ill while a trial is in progress, judge(s) may grant a 15-minute recess. During that time, the teacher-coach may arrange for another team member or juror to continue in place of the ill student. The team with the ill student and their teacher-coach and attorney-coach may communicate about the ill student and his or her replacement during the emergency recess. If the ill student cannot continue to compete, and a substitution cannot be made, the team must forfeit the round. It is recommended that teacher-coaches prepare "understudies" in case of illness.

2:14 COMPLAINT PROCEDURE

No one shall contact any competition judge to complain about competition results. **Only teacher- or attorney-coaches are authorized to communicate about questions, problems, comments or complaints about contests. Communications received from students will not be answered.** Students should discuss issues or concerns with their teacher-coaches. Complaints about county competitions must be submitted in writing, via e-mail to your County Mock Trial Coordinator. Names and addresses of the County Mock Trial Coordinators will be posted on the New Jersey State Bar Foundation's website, www.njsbf.org. Please remember that, as stated in R. 2:7, the decisions of the judges are final. If a teacher-coach, as official team representative, wishes to file a grievance regarding another coach's/team's conduct or alleged rule violation, such complaint should be emailed promptly to the County Coordinator at the county level or to the Mock Trial Committee at the state regional, semi-final and final level. The County Coordinator or Mock Trial Committee shall forward the grievance to the teacher-coach of the team against which it is lodged and shall give that party a specific time period in which to respond. Final disposition of the grievance rests with the County Coordinator at the local level or the Mock Trial Committee at the state level.

2:15 QUESTIONS REGARDING CASE OR RULES

Contestants who have questions about the mock trial case and/or rules should submit them through their teacher- or attorney-coaches. Teacher- or attorney-coaches should e-mail or fax their questions to Sheila Boro, director of mock trial programs, at sboro@njsbf.org or fax to 732-828-0034. **Communications received from students will not be answered.** Please identify yourself, your school, whether you are the teacher-or attorney-coach, and provide a daytime phone number.

PART III
HINTS ON PREPARING FOR A MOCK TRIAL COMPETITION

The following tips have been developed from previous experiences in training a mock trial team.

All students should read the entire set of materials and discuss the information/procedures and rules used in the mock trial contest.

The facts of the case, witnesses' testimony, and the points for each side in the case then should be examined and discussed. Key information should be listed as discussion proceeds so that it can be referred to at some later time.

All team roles in the case should be assigned and practiced.

Credibility of witnesses is very important to a team's presentation of its case. As a result, students acting as witnesses need to really "get into" their roles and attempt to think like the persons they are playing. Students who are witnesses should read over their statements (affidavits) many times and have other members of the team or their class ask them questions about the facts until they know them cold.

Student team members have primary responsibility for deciding what possible questions should be asked of each witness on direct and cross-examination. Questions for each witness should be written down and/or recorded.

The best teams generally have students prepare their own questions, with the teacher-coach and attorney-adviser giving the team continual feedback and assistance on the assignment as it is completed. Based on the experience of these practice sessions, attorneys should revise their questions, and witnesses should restudy the parts of their witness statements where they are weak.

Opening and closing statements should also be written out by team members. Legal and/or non-legal language should be avoided where its meaning is not completely understood by attorneys and witnesses.

Closing statements should not be totally composed before trial, as they are supposed to highlight the important developments for the prosecution or plaintiff and the defense which have occurred during the trial. The more relaxed and informal such statements are, the more effective they are likely to be. Students should be prepared for interruptions by judges who like to question the attorneys, especially during closing argument.

As a team gets closer to the first round of the contest, the competition requires that it conduct at least one complete trial as a kind of "dress rehearsal." All formalities should be followed and notes taken by the teacher-coach and students concerning how the team's presentation might be improved. A team's attorney-adviser should be invited to attend this session and comment on the enactment.

The ability of a team to adapt to different situations is often a key part in a mock trial enactment since each judge—or lawyer acting as a judge—has his or her own way of doing things. Since the proceedings or conduct of the trial often depend in no small part on the judge who presides, student attorneys and other team members should be prepared to adapt to judicial rulings and requests, even if they appear contrary to outlined contest procedures and rules.

Some of the things most difficult for team members to learn to do are:

(a) To decide which are the most important points to prove their side of the case and to make sure such proof takes place;

(b) To tell clearly what they intend to prove in an opening statement and to argue effectively in their closing statement that the facts and evidence presented have proven their case;

(c) To follow the formality of court, e.g., standing up when the judge enters; or when addressing the judge, to call the judge "your honor," etc.;

(d) To phrase questions on direct examination that are not leading (carefully review the rules and watch for this type of questioning in practice sessions);

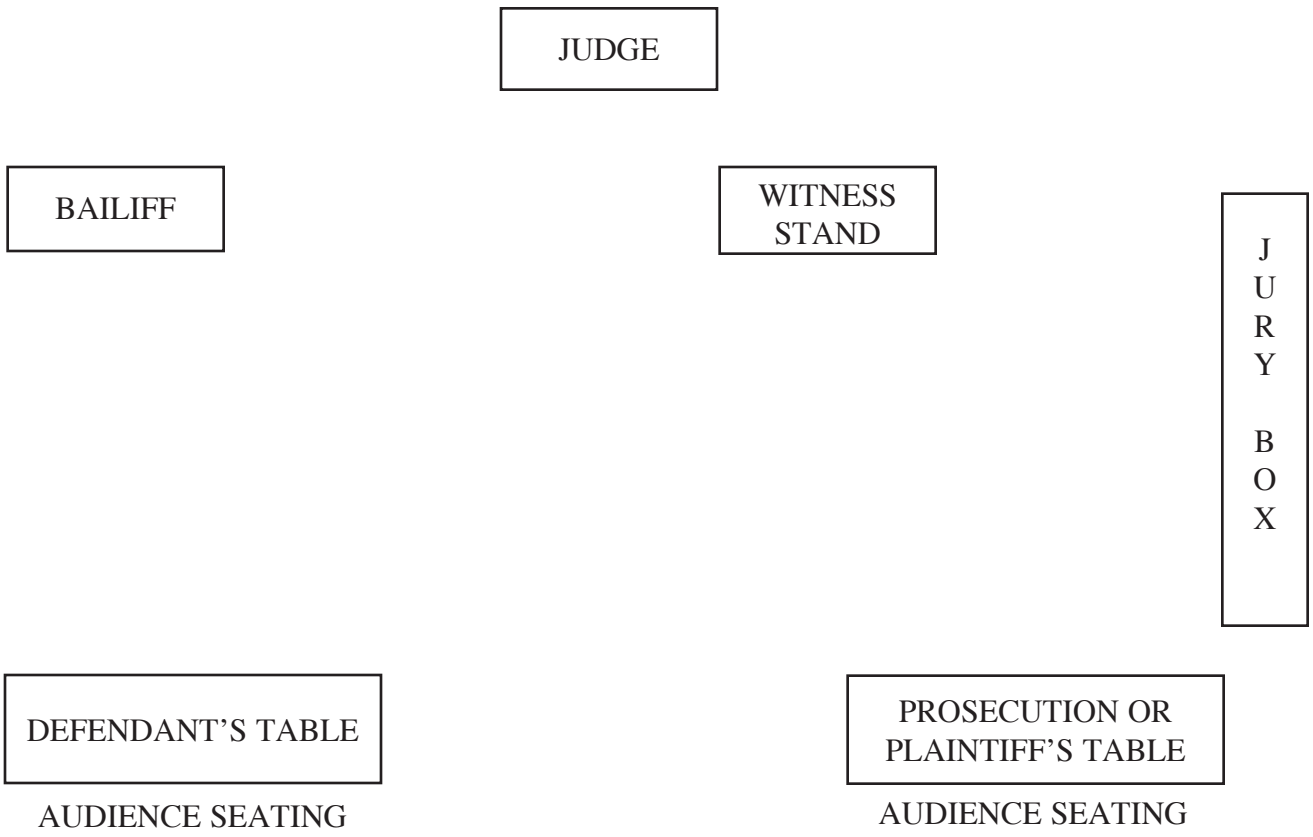
(e) Not to ask so many questions on cross-examinations that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions which often lessen the impact of points previously made. (Stop — recognize what questions are likely to require answers that will make good points for your side. Rely on the use of these questions. Avoid pointless questions!)

(f) To think quickly on their feet when a witness gives an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at the attorney or witness. (Practice sessions will help prepare for this.)

PART IV
TRIAL PROCEDURES

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom as well as with the events that generally take place during the exercise and the order in which they occur.

COURTROOM LAYOUT



PARTICIPANTS

The Judge(s)
The Attorneys
- Prosecutor–Defendant (Criminal Case)
- Plaintiff–Defendant (Civil Case)

The Witnesses
- Prosecutor–Defendant (Criminal Case)
- Plaintiff–Defendant (Civil Case)

STEPS IN MOCK TRIALS

The Opening of the Court

Either the clerk of the Court or the judge will call the Court to order.

When the judge enters, all participants should remain standing until the judge is seated.

The case will be announced, i.e., "The Court will now hear the case of _____ v. _____ ."

The judge will then ask the attorneys for each side if they are ready.

Appearances

Opening Statements to the Jury

(1) Prosecution (in criminal case)/Plaintiff (in civil case)

The prosecutor in a criminal case (or plaintiff's attorney in a civil case) summarizes the evidence which will be presented to prove the case.

(2) Defendant (in criminal or civil case)

The defendant's attorney in a criminal or civil case summarizes the evidence which will be presented to rebut the case the prosecution or plaintiff's attorney has made.

Direct Examination by Prosecution or Plaintiff's Attorney

The prosecutor(s) or plaintiff's attorney(s) conduct direct examination (questioning) of each of their own witnesses. At this time, testimony and other evidence to prove the prosecution's or plaintiff's case will be presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case. Direct examination is limited by the scope of the affidavits and/or the exhibits contained in this workbook.

NOTE: The attorneys for both sides, on both direct and cross-examination, should remember that their **only function is to ask questions which elicit the most important facts of the case;** attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

Cross-Examination by Defendant's Attorney

After the attorney for the prosecution or plaintiff has completed questioning each witness, the judge then allows the other party (i.e., defense attorney) to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out through cross-examination.

Direct Examination by Defendant's Attorneys

Direct examination of each defense witness follows the same pattern as the preceding which describes the process for prosecution's/plaintiff's witnesses.

Cross-Examination by Prosecution or Plaintiff's Attorneys

Cross-examination of each defense witness follows the same pattern as the step above for cross-examination by the defense.

Closing Arguments to the Jury

(1) Defense

The closing statement for the defense is essentially the same as for the prosecution/plaintiff. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not satisfy the elements of the charge or claim, stresses the facts favorable to the defense and asks for a finding (verdict) of not guilty (criminal case) or judgment for the defense (civil case). The defense will give its closing argument first, followed by the prosecution/plaintiff, as done in real trials.

(2) Prosecution or Plaintiff

A closing statement is a review of the evidence presented. It should indicate how the evidence has satisfied the elements of the case, and ask for a finding (verdict) of guilty (criminal case).

THE JUDGE'S ROLE

The judge is the person who presides over the trial to ensure that the parties' rights are protected, and that the attorneys follow the rules of evidence and trial procedure. In trials held without a jury, the judge also has the function of determining the facts of the case and rendering a judgment. (The student jurors will render a verdict, but will not determine which team wins. That will be decided by the judges.)

At all levels of the competition, a panel of two judges will judge the contests wherever possible. This may include two judges, sitting or retired, one judge and one lawyer, or two lawyers. If, for any reason, only one judge is available for any given contest, the contest shall proceed with one judge.

THE STAFF'S ROLE

Staff of the New Jersey State Bar Foundation attend the regional, semi-final and final contests in order to handle room and luncheon arrangements. **Please do not ask staffers to get involved in the competition proceedings. Student team members are responsible for pointing out infractions, if any, to judge(s). The judge(s) will then decide.** (See Parts V and VI for further details, particularly the section dealing with objections.)

PART V
RULES OF PROCEDURE

RULE 5:1 GENERAL PROCEDURE DURING TRIALS

5:1-1 USE OF EXHIBITS
The use of evidentiary or demonstrative exhibits not contained in this Mock Trial Workbook is not permitted. Use of props, visual and illustrative aids, other than what is specified in this workbook, is prohibited. Case materials cannot be enlarged unless specifically stated. It is assumed that once an exhibit has been put into evidence, it has been published to the jury. As such, copies of the exhibits shall not be distributed to the jury.

5:1-2 STATEMENT OF FACTS AND STIPULATIONS
The Statement of Facts, if provided, and any additional stipulations may not be disputed. The Statement of Facts is not admissible as an exhibit.

5:1-3 MOTIONS
No motions of any kind are allowed. For example, defense cannot make a motion to dismiss after the prosecution has rested its case. Motion for directed verdict is also prohibited.

5:1-4 VOIR DIRE
Voir dire, the preliminary examination of a witness or juror to determine his or her competency to give or hear evidence, is prohibited.

5:1-5 COURTROOM DECORUM
Usual rules of courtroom decorum apply to all participants. Appropriate, neat appearance is required.

RULE 5:2 OBJECTIONS

5:2-1 IN GENERAL
Procedural objections and objections to evidence are restricted to those in the Mock Trial Rules of Evidence. Other objections found in the New Jersey and Federal Rules of Evidence are not permitted. All objections, except those relating to openings or closings, shall be raised immediately by the appropriate attorney. When an objection is made, each side will usually have at least one fair opportunity to argue the objection before the presiding judge rules. Sidebars are not permitted. Competitors shall refrain from interrupting an adversary during opening statements or closing arguments. See Mock Trial Rule of Evidence 1201.

5:2-2 TIME FOR OBJECTIONS
A student attorney can object any time that the opposing team has violated the rules of evidence or has violated the rules or procedures of the Mock Trial Competition. IMPORTANT: Only student attorneys may object to any violations they believe have occurred, and they must object directly to the judge during the trial at the time of the violation, except with respect to opening statements and closing arguments. See Mock Trial Rule of Evidence 1201.

5:2-3 LIMITATION ON OBJECTIONS
Objections made after the trial has concluded cannot be addressed. NJSBF staff members cannot object on your behalf. Please do not ask staffers to intervene in the competition.

5:2-4 MANNER OF OBJECTIONS
The attorney wishing to object should stand up and do so at the time of the violation, except as set forth in Rule 1201. 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 that 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 disregarded because it has violated a rule of evidence or mock trial procedure ("objection sustained") or whether to allow the question or answer to remain on the trial record ("objection overruled"). When objecting to a competition rule or procedural violation, student attorneys should be prepared to refer to the appropriate rule number in this workbook if requested to do so by judges. All objections should be made succinctly, with the reason for the objection publicly stated.

RULE 5:3 PROCEDURE REGARDING ATTORNEYS

5:3-1 MANDATORY ATTORNEY PARTICIPATION IN EXAMINATIONS

Each attorney shall conduct the examination of three witnesses (1 direct and 2 cross-examinations or 2 direct and 1 cross-examination).

5:3-2 ATTORNEY OPENINGS/CLOSINGS

Each team must present an opening statement and closing argument. An attorney for a team presenting the opening statement may not make the closing argument. An attorney is not permitted to advise the jury of facts in opening for which there is no good faith basis in the Mock Trial Workbook materials. In closing argument, an attorney is not permitted to comment on evidence that was not presented or evidence which was excluded by the presiding judge. In an opening or closing, an attorney is allowed to make arguments from a fair extrapolation of the facts in the Mock Trial Workbook. "Fair extrapolation" refers to an inference that can be reasonably made from the facts stated in the Mock Trial Workbook or from testimony adduced during the course of the trial. The defendant's attorney shall make the first closing statement, followed by the prosecuting/plaintiff attorney. No rebuttal statements are permitted.

5:3-3 DESIGNATION OF ATTORNEY PERMITTED TO OBJECT

Only one attorney may address any one witness. The attorney who will examine or cross-examine the witness is the only attorney who may make an objection. Likewise, only the attorney who will open may object to the opposition's opening statement and only the lawyer who will close may object to the opposition's closing.

5:3-4 USE OF NOTES BY ATTORNEYS

Attorneys are permitted to use notes in presenting their cases.

5:3-5 COMMUNICATION BETWEEN AND AMONG TEAM MEMBERS AND OTHERS

A. During a trial, law instructors, coaches, and all other observers may not talk to, signal or otherwise communicate, in any manner whatsoever, with or, in any way, coach or attempt to coach any members of the team.

B. No team member shall seek to communicate, verbally, non-verbally or in writing, with any witness who is in the act of testifying.

C. Only the two participating student-attorneys may communicate with each other during the five-minute pre-summation recess.

Failure to comply with the aforementioned shall be considered a violation of the mock trial rules. Should any team member participating in that round observe any conduct which is in violation of this rule, s/he shall immediately and unobtrusively bring the alleged violation to the attention of the appropriate student attorney. The student attorney, at his/her discretion, may then object to the presiding judges. Any such objection must be made at the time the violation is noted, and in the case of Section B above, prior to the witness leaving the witness stand.

The judge(s) shall immediately make an inquiry into the matter and may deduct one or more points at their discretion. The deduction may come from the score of the witness, the attorney(s), and/or the overall team score.

5:3-6 COMMUNICATION WITH JUDGES

No one affiliated with a competing team is permitted to have any contact with competition judges before or during the competition. Only student-attorneys and student-witnesses may communicate with the judges during a trial. After a trial has concluded, judges may meet privately with the attorney-coach, or teacher-coach if the attorney-coach is not present, for at least five minutes in order to answer specific questions and to provide additional evaluation of students' performances.

RULE 5:4 WITNESS TESTIMONY

5:4-1 FACTS RELIED UPON FOR TESTIMONY

Each witness is bound by the facts contained in his/her own witness statement, the facts contained in the Statement of Facts, if provided, and the necessary documentation provided in the competition workbook. A witness is not bound by facts contained in other witness statements.

5:4-2 WITNESS' PHYSICAL APPEARANCE
A witness' physical appearance in the case is as he or she appears in the trial enactment.

5:4-3 WITNESS' GENDER
Contestants cannot change the gender of witnesses as provided in the case unless it is indicated that a witness can be male or female. Male or female contestants, however, may play the roles of any witnesses.

5:4-4 REQUIRED EXAMINATION OF WITNESSES
Each team of attorneys must engage in either the direct examination or cross-examination of each witness. Direct examination is limited by the scope of the affidavits and/or the exhibits contained in the workbook.

5:4-5 FAIR EXTRAPOLATION
A witness who is testifying may use fair extrapolations from his or her own statement. "Fair extrapolation" refers to an inference that can be reasonably made from the facts stated in the witness statement of the testifying witness. A witness who is testifying on direct examination, in responding to questions of counsel, may utilize the reasonable and logical inferences from his or her own statement. Testimony which is unsupported by the facts in a witness' own statement and/or intended solely for the purpose of materially strengthening his or her team's position, is "unfair extrapolation" and is in violation of the rules and spirit of the competition. If a witness invents an answer which is favorable to his or her side, but not fair extrapolation, the opposition may object; the judge will decide whether to allow the testimony. An exception to this rule can occur when an attorney on cross-examination asks a question, the answer to which is not included in the witness statement. The witness is then free to "create" an answer.

5:4-6 IMPEACHMENT
On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. A witness may be impeached by showing that he or she has given a prior statement that differs from his or her trial testimony, that he or she has some interest in the outcome of the case, that he or she has a bias for or against any other party or person, that he or she has some other motivation to either lie or be untruthful, or that he or she is simply mistaken as to what he or she has seen or heard.

5:4-7 USE OF NOTES BY WITNESSES
Witnesses are not permitted to use notes while testifying during the trial.

5:4-8 REQUIRED WITNESSES
All three witnesses for each side must testify. Teams may not call another team's witnesses.

5:4-9 SEQUESTERING WITNESSES
Sequestering witnesses is not permitted.

RULE 5:5 INTRODUCTION OF PHYSICAL EVIDENCE

5:5-1 PRE-TRIAL CONFERENCE
Physical evidence must be relevant to the case and the attorney must be prepared to define its use on that basis. In an actual trial an attorney introduces a physical object or document for identification and/or use as evidence during the trial. **For the purposes of this mock trial competition, there will be a pre-trial conference, lasting no more than five minutes, in which both prosecution's/plaintiff's and defendant's attorneys get together to present pre-marked exhibits for identification before trial. The issue of admissibility cannot be addressed at this stage.**

The purpose of the pre-trial procedure is to avoid eroding into each team's time limitations during the trial and to help students understand that attorneys, while they are adversaries, can also work cooperatively to benefit their clients. During this pre-trial, students should introduce themselves and the roles they will play. Remember to give the judges scoresheets with the names of the students at this time. See "Important Notice" preceding scoresheets for details.

PART VI
MOCK TRIAL RULES OF EVIDENCE

In American courts, complex rules are used to govern the admission of proof (both oral and physical evidence). These rules are to ensure all parties a fair hearing as well as to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. Attorneys must use the evidence rules, by making objections, to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence and the New Jersey Rules of Evidence and their parallel numbering system. **Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure**. The High School Mock Trial Rules of Evidence are fully set forth below. DO NOT refer to any other outside materials or source other than these rules when making or responding to objections. Rules 1201 and 1202 have been added as no parallel rules exist in either the Federal or State Rules of Evidence.

Not all judges will interpret the Rules of Evidence (or procedure) in the same way, and mock trial attorneys should be prepared to point out specific rules for reference (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate. Judges are asked to adjust scoring to reflect how well attorneys pose and respond to objections. Judges are encouraged to have attorneys explain their positions more than might be expected in a real courtroom, so you may demonstrate your knowledge of how the evidence rules apply in court.

While the evidence rules are numbered, attorneys are expected to refer to the rules by description but may also refer to them by number. Memorizing the evidence rule numbers is not necessary. However, if a Judge asks for a rule number, the mock trial attorney should be prepared to give the rule number referenced. Note that multiple evidence objections may be under a single rule number. Additionally, where a witness makes a statement which is objected to and the Judge sustains the objection, the mock trial attorney may also request: "I ask that the jury be directed to disregard the witness's last statement" or "I ask that the witness's last statement be stricken from the record."

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Test for Relevant Evidence
Evidence is relevant if:
(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
(b) the fact is of consequence in determining the action.

Rule 402. General Admissibility of Relevant Evidence
Relevant evidence is admissible unless these rules provide otherwise. Irrelevant evidence is not admissible.

Example of objection to irrelevant evidence: "I object, your Honor. This testimony is not relevant to the facts of the case."

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons
The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence, or unfair extrapolation.

The probative value of evidence is the tendency of the evidence to establish the proposition that it is offered to prove. In determining the probative value of evidence, the focus is upon the logical connection between the proffered evidence and the fact in issue.

Example of objection to compound question: "Objection. Counsel is asking the witness a compound question."

Example of objection to mischaracterization of testimony: "Objection. Counsel is mischaracterizing the witness's testimony."

Example of objection to assuming facts not in evidence: "Objection. Counsel's question (or closing argument) assumes facts which are not in evidence."

Example of objection to unfair extrapolation: "Objection, the witness' unfair extrapolation is in violation of Rule 5:4-5 in that it goes beyond the witness' statement/deposition/testimony or any reasonable inference to be drawn therefrom."

NOTE: While "needless presentation of cumulative evidence" may support the objection that a question was already "asked and answered," this objection is **not** allowed in Mock Trial Rules. The prescribed time limits already discourage repetitive questioning.

Rule 404. Character Evidence not Admissible to Prove Conduct; Exceptions
(a) Character Evidence Generally. Evidence of a person's character or character trait, including a trait of care or skill or lack thereof, is not admissible for the purpose of proving that on a particular occasion the person acted in accordance with the character or character trait.

This rule does not apply to evidence admissible under Rule 406, however.

Example of objection to improper character testimony: "Objection. Counsel's question is inadmissible, as it goes to the witness's character."

NOTE: That is, you cannot show that someone acted a certain way just because they did a similar act in the past. BUT see habit evidence, Rule 406, below.

(b) Crimes, Wrongs, or Other Acts

(1) Prohibited Uses. Evidence of a crime, wrong or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident when such matters are relevant to a material issue in dispute.

(c) Character and Character Trait in Issue. Evidence of a person's character or trait of character is admissible *when that character or trait is an element of a claim or defense*.

Rule 405. Methods of Proving Character

(a) Reputation or opinion. When evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.

(b) Specific instances of conduct. When character or a trait of character of a person is an essential element of a charge, claim, or defense, evidence of specific instances of conduct may also be admitted.

Rule 406. Habit, Routine Practice
Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

The witness' knowledge must be that the person or organization has engaged in the habit or routine practice on many occasions.

The habit or routine practice must be specific, or else it is inadmissible under Rule 404(a) as character evidence.

NOTE: For example, if a witness knows X *always* uses his/her seatbelt when getting into a car, as the witness has often seen him/her get into a car many times and buckle the seatbelt, the witness may be permitted to testify to this habit. The key to admissibility is that X engages in the conduct of wearing his/her seatbelt on a regular basis. The habit must be specific or routine must be specific in nature. The witness cannot make the broad statement, for example, that X is a careful driver.

ARTICLE VI. WITNESSES

Rule 601. Competency to be a Witness
Each mock trial witness is competent to be a witness and may testify in accordance with his/her witness statement, deposition, prior testimony, the facts contained in the Statement of Facts and the documents provided. A witness may testify as to any reasonable inference to be drawn from these facts.

Example of objection to unfair extrapolation: "Objection, the witness' unfair extrapolation is in violation of Rule 5:4-5 in that it goes beyond the witness' statement/deposition/testimony/Statement of Facts/documents or any reasonable inference to be drawn therefrom."

Rule 602. Need for Personal Knowledge
A witness may testify to a matter only if evidence is introduced establishing that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony, which is governed by Rule 703.

Example of objection to lack of personal knowledge: "Objection. The witness has no personal knowledge that would enable him/her to answer this question."

Example of objection to speculation: "Objection. The question calls for speculation on the part of the witness."

Rule 607. Who May Impeach a Witness
Any party, including the party that called the witness, may attack the witness's credibility. Also see R.5:4-6.

NOTE: That is, an attorney may ask questions to show that the witness is lying or lied on a prior occasion.

Rule 608. Evidence of Character for Truthfulness or Untruthfulness and Conduct of Witnesses

(a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, provided, however, that (1) the evidence relates only to the witness' character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' character for truthfulness may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness, (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Rule 609. Impeachment by Evidence of a Criminal Conviction
(a) In General. The following rules apply to attaching a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime,
(A) must be admitted, subject to Rule 403, for a witness;
(B) must be admitted in a criminal case, against a Defendant
(b) the impeachment will be limited to the name of the offense, the degree of the offense, the sentence date and what the sentence was (i.e. in years of probation and days and years of incarceration).
(c) if the witness or Defendant "opens the door" to more details of an offense, however, and it is admitted, then the opponent

may cross or recross regarding more details of the prior offense, to the extent permissible under the other rules of evidence, including Rule 403.

Rule 611. Mode and Order of Interrogation and Presentation
(a) Control by the Court; Purposes.
The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to
(1) make those procedures effective for determining the truth and
(2) protect witnesses from harassment or undue embarrassment.
Example of objection to argumentative question: "Objection. Counsel's question is argumentative."

(b) Leading and Narrative Questions.

Leading questions should not be used on direct examination or re-direct examination of one's own witness. Ordinarily, the court should allow leading questions on cross-examination and re-cross-exam. Narrative questions (questions that call for a narrative answer) are generally not permitted on direct or re-direct exam or cross or re-cross exam.
NOTE: Direct examination may cover all facts relevant to the case of which the witness has firsthand knowledge. It is limited by the scope of the witness statements and/or the exhibits in this workbook and the Statement of Facts or stipulated facts if he/she has knowledge of them. Any factual areas examined on direct examination may be subject to cross-examination. On direct examination, a witness is not permitted to quote from the witness statement of another witness. Fair extrapolation, as defined in Rule 5:4-5, is permitted.

In direct examination, attorneys call and question witnesses. Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a "yes" or "no" answer. Direct questions generally are phrased to evoke a set of facts from the witness.

Example of direct question: "Mr. Hudson, when did you meet June Harris?"
Example of a leading question: "Mr. Hudson, isn't it true that you first met June Harris on April 14, 1981?"

Example of objection to leading question: "Objection. Counsel is leading the witness." (Remember, this is only objectionable when done on direct examination or re-direct examination of one's own witness).

Example of objection to non-responsive answer: "Objection. The answer is not responsive."

Example of objection to question calling for a narrative answer: "Objection. Counsel's question calls for a narrative answer."

Note: Narrative questions (questions that call for a narrative answer) and narrative answers are generally not permitted, especially in direct examination. While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions should not be so broad that the witness is allowed to wander or narrate a whole story. The opposing team will likely want to object to a question on direct examination calling for a narrative response.

At times, a direct question may be appropriate, but the witness' answer may go beyond the facts for which the question was asked. This may also happen when a leading question is asked on cross-examination and the answer given is in a narrative form.

(c) Cross-Examination.
The scope of cross-examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters. Opposing counsel may also inquire into any omissions from the witness' statement that are otherwise material and admissible and/or into any issue potentially affecting the credibility of the witness.
NOTE: An attorney may ask leading questions when cross-examining the opponent's witnesses, but asking that opposing witness a narrative question is generally not wise, since it gives the witness an opportunity to stress facts that favor his/

her own side.

While the purpose of direct examination is to get the witness to tell a story, the questions in cross-examination and re-cross should ask for specific information. It is not in the cross-examining team's interest to ask an opposing witness questions that are so broad that the witness is allowed to wander or narrate a whole story. Questions tending to evoke a narrative answer often begin with "how," "why" or "explain." An example of a narrative question is: "Mr. Hudson, what went wrong with your marriage?"

On cross-examination, a witness is permitted to invent an answer which is not included in his/her witness statement only as permitted by Rule 5:4-5. If that answer is inconsistent with any other evidence, including statements of that witness, the Statement of Facts, or any other stipulations, the cross-examining attorney may impeach or object as may be appropriate. For example, he/she may object to an answer as being non-responsive.

(d) Re-Direct and Re-Cross Examination.
After cross-examination, additional non-leading questions may be asked by the direct-examining attorney on re-direct examination, but questions must be limited to matters raised by the opposing attorney on cross-examination. Likewise, additional questions may be asked by the cross-examining attorney on re-cross, but such questions must be limited to matters raised on re-direct.

NOTE: Re-direct and re-cross are optional, to be used at the discretion of the team. One minute will be allowed for re-direct and re-cross respectively. Judges should not deduct points if a team decides not to re-direct or re-cross.

Example of objection to questions beyond the scope: On re-direct or re-cross, the opposing party may object as follows: "Objection. This question is beyond the scope of cross-examination (or re-direct)."

(e) Permitted Motions.
The judge is presumed to strike testimony elicited by a question following a successful objection to its admission.

NOTE: For the purpose of mock trial, it is assumed that when an objection is sustained, the response is stricken. If the witness has responded in a meaningful way, mock trial attorneys need not but may move to have the testimony stricken from the record. Counsel should **not** refer to stricken testimony in closing arguments.

Rule 612. Writing Used to Refresh a Witness's Memory
A written statement is used to refresh the memory of a witness, but while on direct examination, a witness cannot read from the witness' own statements to bolster testimony (that is, to show that the witness said something earlier). The adverse party may cross-examine the witness on the material and introduce into evidence those portions of the written statement that relate to the testimony of the witness.

Rule 613. Witness's Prior Statement
The statements of witnesses, whether in affidavit or deposition format, are not admissible into evidence, but may be used during cross-examination for impeachment purposes. When examining a witness about the witness' prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, indicate the relevant segment of the statement for opposing counsel. Counsel may show the document for impeachment, or on re-direct examination, may show the same document to rebut the impeachment.

NOTE: It is best to briefly show the exhibit you are going to show a witness to opposing counsel just as you are about to approach the witness with it. When asking the witness about the document, it is best to refer to the page and line number. For example:

"Ms. Jones, I am showing you what has been marked as S-1 for identification. Do you recognize S-1?" (The witness should say "yes" and identify the document. After the witness identifies S-1, ask, "I would like you to read line X of page Y. . . ." When referring to the witness' own statement, mock trial attorneys may ask the witness if the statement was given under oath, but are not required to do so and may refer to it in summation.

Otherwise, opposing counsel may ask the court: "Can I have the page and line number (counsel is referring to)?"

If your witness is impeached by his or her statement, but the words used were taken out of context, not fairly showing what the witness meant, on re-direct you may want to show the statement to your witness and "rehabilitate" him/her. For example, if cross-examination brings out that the witness said "I did not shoot the victim," in response to police asking if s/he did so, you may ask your witness to add what s/he said after that phrase:

"Witness, you were asked if you said to police, "'I did not shoot the victim?'" "Yes." "Do you remember your complete response to police?" "No." "I am showing you S-1 again, the same line opposing counsel showed you. Do you now remember your *complete* answer to that question?" "Yes." "What was that full response?" "'I did not shoot the victim until he pointed a gun in my face.'"

After the exhibits have been agreed upon, the attorneys may ask witnesses about the documents.

For example, if an attorney decides to show a letter (already agreed upon as an exhibit by both sides) to a witness, an attorney may show the letter to him/her, asking: "Mr. Davis, do you recognize this document which is marked Plaintiff's P-1 for identification?" (The witness should say yes and identify the document.)

At this point the attorney may proceed to ask the witness questions about P-1.

If the attorney wishes to place the document into evidence, say, "Your Honor, I offer this letter for admission into evidence as Plaintiff's P-1 and ask the court to so admit it." Moving a document into evidence must occur either at the time the document is identified or at the end of the parties' case.

Get a ruling from the court on admissibility and hand the document to the judge.

Bringing physical evidence to the trial, e.g., a weapon in the case of a murder trial, is prohibited unless otherwise indicated. It is sufficient to rely upon the documents provided in this workbook for exhibits. Use of props, visual and illustrative aids, other than what is specified in the workbook, is prohibited, under Rule 5:1-1.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witness
If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
(a) rationally based on the witness's perception;
(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

NOTE: Lay witnesses are any witnesses not admitted as experts in the trial. A lay witness may offer testimony in the form of an opinion based on the common experience of laypersons in the community and of which the witness has firsthand knowledge. Examples include: what things look like; how someone is acting (e.g., drunk, tired, happy); speed, distance, sound, size, weight, degree of darkness, and general weather conditions.

A witness may not testify to any matter of which the witness has no personal knowledge (except for expert witnesses, in exceptions listed below).
For example: If Mrs. Davis was not present at the scene of an intersectional collision between a Ford Explorer and a bus, she could not say, "The bus went through the red light."

Example of objection to improper request for opinion: "Objection. The witness is not qualified as an expert on this topic and counsel is asking the witness to give an expert opinion."

Example for lay witnesses: "Objection. Counsel is asking the witness to give an opinion on a topic about which the witness has no personal knowledge."

Rule 702. Testimony by Experts
A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

NOTE: Certain witnesses who have special knowledge or qualifications may be qualified as "experts." An expert must be qualified by the attorney for the party for which the expert is testifying; this means that before an expert can be asked an expert opinion, the questioning attorney must bring out the expert's qualifications and experience.

An expert witness may offer testimony in the form of an opinion only if the subject matter is within the expert's area of expertise.

Rule 703. Bases of Opinion Testimony by Experts
An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, this is sufficient grounds for the admissibility of the expert's opinion in the case at hand.

NOTE: An expert may testify to things that are otherwise not admissible under the rules of evidence, if the expert relied upon that information to come up with his or her opinion. For example, if an expert physician relied upon medical records of treatment, he or she can testify to them.

Rule 704. Opinion on Ultimate Issue
No witness may give an opinion about how the case should be decided. This is called the "ultimate issue" question. An expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged (i.e. purposeful, knowing or recklessness).

Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion
Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

NOTE: In mock trial, however, we have limited the presentation of an expert's facts and data to streamline the case. Parties should not use invention on direct examination of their own expert witnesses to enhance their testimony.

ARTICLE VIII. HEARSAY

Rule 801. Definitions
The following definitions apply under this article:
(a) "Statement" means a person's oral assertion, written assertion, or nonverbal conduct if the person intended it as an assertion.
(b) "Declarant" means the person who made the statement.
(c) Hearsay is a statement attributed to a declarant *who is not a witness in the case* which is offered to prove the truth of the statement. A witness is not permitted on direct examination to quote from the witness statement of another witness.

Example: Mrs. Mills is testifying. Her witness statement contains the following statement: "Mr. Hudson told me he was at the scene of the crime." This is inadmissible hearsay (if offered to prove that Mr. Hudson was at the scene of the crime) unless Mr. Hudson is also a witness in the case. If Mr. Hudson is a witness in the case, then the statement is not hearsay.

Example: Mrs. Mills is testifying. Mr. Hudson is a witness in the case. His witness statement contains the following statement: "I heard Mrs. Harris threaten my son." Mrs. Mills may not testify that "Mr. Hudson said that Mrs. Harris threatened his son." The statement is not contained in the witness statement of Mrs. Mills. Such testimony is inadmissible hearsay and also violates the mock trial rule that prohibits a witness on direct examination from quoting from the witness statement of another witness.

(d) Statements That Are Not Hearsay.
A statement that meets the following conditions is not hearsay:
(1) Party Declarant's Admission against Interest
A statement may be admissible if it was said by a party in the case and contains evidence that goes against the party's interest (e.g., in a murder case, the defendant told someone he committed the murder).
(2) Opposing Party's Statement
A statement may be admissible if it is offered against an opposing party and was made by the party.
(3) Relied upon by Expert
A statement may be admissible if it was relied upon by an expert witness and forms the basis for the expert's opinion. See Rule 703, above.

Rule 802. Hearsay Rule
Hearsay is not admissible except as provided by these Rules.

Example of objection to hearsay: "Objection. Counsel's question/the witness' answer is based on hearsay." (If the witness makes a hearsay statement, the attorney should also say, "and I ask that the jury be directed to disregard the witness' last statement" or "and I ask that the witness' last statement be stricken from the record.")

Rule 803. Exceptions to the Rule against Hearsay
The following exceptions to the hearsay rule are not dependent on whether the declarant is available as a witness or not:

(1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
(2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
(3) **State of Mind.** A statement of the declarant's then-existing state of mind (such as motive, intent or plan).

NOTE: Understand that the statement may not be used to prove the truth of the matter asserted, however, if it comes in, it is only to establish the speaker's "state of mind."

(6) **Records of regularly conducted activity.** A statement contained in a writing or other record of acts, events, conditions, and made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate that it is not trustworthy. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(8) **Public Records.** A record or statement of a public office or official within the scope of that office or official's duty.

NOTE: The hearsay statements contained in public records, such as police reports, are admissible, but the reports themselves are not admissible into evidence.

(21) **Reputation as to Character.** Evidence of reputation of a person's character at a relevant time among the person's associates or in the community.

Rule 803 (c). Statements not Dependent on Declarant's Availability whether or not the Declarant is Available to a Witness

(Sections 1-4 are not made a part of this case.)
(5) Recorded recollection. --A statement concerning a matter about which the witness is unable to testify fully and accurately because of insufficient present recollection if the statement is contained in a writing or other record which (A) was made at a time when the fact recorded actually occurred or was fresh in the memory of the witness, and (B) was made by the witness or under the witness' direction or by some other person for the purpose of recording the statement at the time it was made, and (C) the statement concerns a matter of which the witness had knowledge when it was made, unless the circumstances indicate that the statement is not trustworthy; provided that when the witness does not remember part or all of the contents of a writing, the portion the witness does not remember may be read into evidence but shall not be introduced as an exhibit over objection.

Rule 805. Hearsay within Hearsay
Hearsay included within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

ARTICLE XII. OTHER OBJECTIONS

Rule 1201. Objections to Openings and Closings
Attorneys may not interrupt or object during the opposition's opening or closing, but must raise any objections to openings or closings immediately after the opposing attorney concludes. The presiding judge will then rule on the objections and instruct the jury as may be necessary.

Rule 1202. Number of Objections
While there is no limit on the number of objections attorneys may raise, teams should be aware that judges may assess scoring penalties for objections which are frivolous.

Rule 1203. Other Standard Objections
Other standard forms of evidentiary objections allowed in the Mock Trial Competition are as follows. These "other objections" may be altered from year to year depending on the nature of the case.

Example of objection to lack of proper foundation: "Objection. Counsel has not laid a proper foundation for the question (or for admission of an exhibit)."

Example of objection to conclusion of law improperly called for by question: "Objection. Counsel is calling for the witness to make a conclusion of law."

PART VII
GUIDELINES FOR ATTORNEY TEAM ADVISERS

The rules of evidence governing trial practice have been modified and simplified for the purposes of this mock trial competition (see Part VI of this packet.) Other more complex rules are **not** to be raised during the trial enactment.

Team members cannot contradict the witness statement sheets for the case (see Part X of this packet) nor introduce any evidence that is not included in this packet of materials.

ALL WITNESSES MUST TAKE THE STAND.

The decision of the judge(s) in any mock trial enactment determines which team advances. This decision is to be based on the quality of the students' performance.

The preparation phase of the contest is intended to be a cooperative effort among students, teacher-coach and attorney-adviser. **Remember:** The official representative of a mock trial team is the teacher-coach, **not** students, lawyer-coaches or others. All communications regarding a mock trial team will be made by and through the teacher-coach as official team representative.

When assisting students, attorney-advisers should avoid use of highly complicated legal terminology unless such terminology is pertinent to the comprehension of the case.

Attorneys should not "script" or prepare the cases for the students. As part of the educational goals of the competition, students are expected to read, study and analyze the case. Attorney-coaches may then help students to refine their strategy.

The first session with a student team should be devoted to the following tasks:

- answering questions which students may have concerning general trial practices;
- explaining the reasons for the sequence of events/procedures in a trial;
- listening to the students' approach to the assigned case; and
- discussing general strategies as well as raising key questions regarding the enactment.

A second and subsequent session with students should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here an attorney can **best** serve as constructive observer and critic-teacher, i.e., listening, suggesting, demonstrating to the team.

Courtroom Visit—In order to provide a "real life" look at a trial, attorney-coaches should consider arranging, through the local courthouse, a courtroom visit for their team(s).

PART VIII
GENERAL GUIDELINES TO PRESENTATIONS FOR JUDGES

Under contest rules, student-attorneys are allowed to use notes in presenting their cases; witnesses may **not** use notes in testifying.

Attorneys and witnesses may neither contradict the witness statement sheets for the case nor introduce any evidence that is not included in this packet of materials.

Only **one** opening and closing statement is allowed.

Except for opening the court, general procedural instructions, rulings on objections, etc., it is best to keep judicial involvement/participation to a minimum during the trial enactment.

Each attorney (two for each side) shall conduct the examination of three witnesses. See R.5:3-1.

The Mock Trial Rules of Evidence have been revised. (See Part VI of this workbook). They are to govern proceedings. Other more complex rules are **not** to be raised during the trial enactment.

Witness statements may be used by attorneys to "refresh" a witness' memory and/or impeach the witness' testimony in court.

Attorneys have been asked to keep their presentations within the following guidelines: Opening Statements—4 minutes; Closing Statements—8 minutes; Direct Examination—6 minutes/witness; and Cross-Examination—7 minutes/witness. Regarding objections, the clock will stop. One minute will be allowed for re-direct and re-cross respectively. See rule 2:9 on "Time Limits" for details. Judges should **not** deduct points if a team decides not to re-direct or re-cross.

The decision of the judge(s) determines which team advances and which team is eliminated.

In the event of a tie score, the judge(s) shall make a final determination based on overall team performance. Judges may award an additional point to the team with the better overall team performance in order to break a tie. See Part XI for details.

Judges may include in their rating of overall team performance an evaluation of civility and compliance with the Code of Conduct in this workbook as well as compliance with mock trial rules.

If a team fails to adhere to the established guidelines/rules set forth for the competition, a judge may (depending upon the circumstances of the violation) lessen his/her rating of that team.

The student jury will render the verdict. The judge will decide which team wins. The judge should explain that these two decisions are separate. Winning the verdict does not necessarily mean that the team has won the competition.

Better understanding is promoted among students and teachers if the judge(s) in a mock trial takes a few minutes following the enactment to explain his/her decision(s) regarding the teams' presentation. Judges will provide a qualitative evaluation of each team's performance. They will not release numerical scores. Judges may also offer their opinions regarding the legal merits of the case after the student jury has rendered a verdict. Judges are also encouraged to meet privately with the attorney-coach, or teacher-coach if the attorney-coach is not present, for at least five minutes after the contest has concluded in order to answer specific questions and to provide additional evaluation of students' performances.

The judges' decisions are final.

PART IX
MOCK TRIAL VIDEOTAPE LOAN PROGRAM

In order to help as many teachers and students as possible participate in the Mock Trial Competition, the Foundation will lend a 65-minute videotape to contestants. The videotape, which is available in one-half inch VHS and DVD, was taped at the New Jersey Law Center in 1995. The Mock Trial Instructional Videotape or DVD may be borrowed for a period of two weeks, after which time it must be returned.

You may also purchase this videotape or DVD at cost plus postage and handling. If you would like to purchase a copy, send your request with a check or money order in the amount of $10 payable to the New Jersey State Bar Foundation (address follows on the next page).

The following videotapes of the 1998 and 2001 National High School Mock Trial Championships and DVDs of the 2007–2009 American Mock Trial Invitational Finals are available for loan only: **"1998 National High School Mock Trial Championship Final Round"**—In this final round of the 1998 National High School Mock Trial Championship conducted in Albuquerque, New Mexico, on May 9, New Jersey's 1997-98 statewide championship team, Cherry Hill High School East of Camden County, defeated Guam for the national title. The Cherry Hill High School East team represented

the defendant in this criminal trial dealing with homicide. Please note that the national rules differ from those of the Vincent J. Apruzzese High School Mock Trial Competition. (2 hours, available in videotape only)

"2001 National High School Mock Trial Championship Final Round"—On May 12, in the final round of the 2001 National High School Mock Trial Championship in Omaha, Nebraska, Iowa narrowly defeated New Jersey's 2000–2001 statewide championship team, Montclair High School of Essex County. In the 2001 national case, high school senior Chris Hall is charged with possession of methamphetamine, a controlled substance. Hall maintains that rival Taylor Jennings, a student who is in competition with Hall for senior class valedictorian, planted the drugs in his/her backpack. Please note that the national rules differ from those of the Vincent J. Apruzzese High School Mock Trial Competition. (3 hours, 31 minutes, available in videotape only)

"2007 American Mock Trial Invitational (AMTI) Final Round"—On May 4, Family Christian Academy of Tennessee defeated University Preparatory Academy of Washington State at the New Jersey Law Center in New Brunswick. The case deals with aggravated manslaughter and death by vehicular homicide. Photo montage of our group trip to the Ellis Island Immigration Museum is also included. Please note that AMTI rules differ from those of the Vincent J. Apruzzese High School Mock Trial Competition. (2 hours, available in DVD only)

"2008 American Mock Trial Invitational (AMTI) Final Round"—On May 20, D.H. Hickman High School of Missouri defeated Gray Stone Day of North Carolina at the Mecklenburg County Courthouse in Charlotte, NC. In this case, Bailey Kissner, who was a young, up-and-coming amateur golfer, is suing Polk Hospital, a private psychiatric facility, for negligence in allowing Martin Dutcher to be released from 24-hour supervised care without ensuring he no longer posed a threat to himself or others. Dutcher assaulted Kissner in a road rage incident, then later Dutcher took his own life. Kissner seeks monetary damages for pain and suffering and pecuniary losses arising from the assault and battery. The trial will determine issues of liability and damages. Please note that the AMTI rules differ from those of the Vincent J. Apruzzese High School Mock Trial Competition. 0(1 hour, 49 minutes, available in DVD only).

"2009 American Mock Trial Invitational (AMTI) Final Round"—On May 19, Menlo School of California defeated Victory Christian Center School of North Carolina at the Middlesex County Courthouse in New Brunswick, NJ. In this case, a teenager severely burned in a fire in a barn illegally converted to a casino, sues the owner of the barn. The owner claims no knowledge of the use to which renters put the barn. AMTI rules differ from those of the Vincent J. Apruzzese High School Mock Trial Competition. (101 minutes, available in DVD only)

To borrow a mock trial videotape or DVD, send your request to:

High School Mock Trial Video/DVD, New Jersey State Bar Foundation,
One Constitution Square, New Brunswick, NJ 08901-1520

Please enclose a $50 security deposit for each videotape or DVD you want to borrow. This will be returned to you when you return the videotape(s) or DVD(s). **Videotapes and DVDs must be returned via insured U.S. mail, certified mail or UPS so that shipments may be tracked**. Orders will be filled on a first-come, first-served basis. **We cannot fill orders over the phone. Specify which videotape(s) or DVD(s) you want.**

Please handle with care as we have only a limited number. **A fee will be assessed in the event borrowed tapes or DVDs are not returned or are damaged.** Thank you for your cooperation.

PART X

State v. Dana Martin

STATEMENT OF FACTS

In a way, Zachary Simon is just another statistic in the ever-worsening opioid epidemic, a scourge on Metropolitan County, as well as in the rest of the country. But for Zach's mother/father who had watched his/her son's struggles with drug addiction, the matter of how he died, and who was involved, is quite personal. For Detective Rory Bernard, it is part of a war on drugs s/he's been fighting for his/her entire career. Detective Bernard and other authorities want the person who sold the deadly batch of fentanyl to be punished. They assert that the culprit is Dana Martin.

Dana Martin was found to have the cell phone which was used to arrange the sale to Zach. Also, in Dana's family vehicle police found bags of opiates matching those which had killed Zach.

Dana Martin, however, claims to be innocent. A friend, Harley Novack, says that s/he was at his/her house when Zach was said to be out buying drugs from Dana Martin.

The State will present the testimony of cooperating ex-con witness Carson Silva, who claims Zach bought the deadly bags of fentanyl from Dana.

The deadly dealer's cell phone was recovered, but did Dana have that phone to make the arrangements to sell Zach his last batch, or did Dana come in possession of the phone only later?

The stakes are high as Dana Martin faces 10 to 20 years in prison for this first degree crime for strict liability drug distribution, resulting in the death of Zach. Zach's family wants closure, while Dana claims his/her innocence.

Exhibits

1. S1 – Phone extraction of SIM Card of toll number 555-5678
2. S2 – "Buy" sheet
3. S3 – Note from Dana Martin
4. S4 – 15 heat-sealed wax folds of fentanyl (see stipulation #6 re: S4)

Stipulations

1. The Metropolitan Police Laboratory determined that the substances heat-sealed wax folds, also referred to as bags that make up S4 are fentanyl, and the total weight of the fentanyl inside the bags totals less than one-half ounce.
2. Fentanyl is a controlled dangerous substance, and an opiate, just as heroin is, but fentanyl is much more potent than heroin. The fact that someone possessed fentanyl thinking that it was heroin, which is another controlled dangerous substance, does not constitute a defense to the crimes charged.
3. There was a post-mortem toxicology test of Zachary Simon's blood, which was found to contain metabolites of fentanyl.
4. There was no sign of methadone or other prescription drugs such as Hapavan in Zachary Simon's blood, and other drugs would have been detected if present in the blood.
5. Hapavan is a fictitious drug. For the purpose of this mock trial, Hapavan is a controlled dangerous substance, illegal to dispense without a prescription.
6. S4, consisting of the 15 heat-sealed wax folds of fentanyl, has been admitted into evidence, with agreement of both parties. As props may not be used, the reference to the drugs as S4 is only for attorneys and witnesses to make a shorthand reference to the drugs at issue.
7. Zachary Simon's cause of death was from an opiate overdose, specifically from fentanyl.
8. It is stipulated, as per the findings of the medical examiner, reviewing the post-mortem toxicology report, that Zachary Simon ingested fentanyl about 15 minutes before he died.
9. It is agreed that Zachary Simon's date and time of death was Sunday, June 25, 2017 at 4:00 p.m., as that is when Detective Bernard encountered Zachary Simon's lifeless body.
10. The ingested fentanyl depressed Zachary Simon's central respiratory system, causing him to stop breathing, which led

to his death.

11. Detective Rory Bernard may testify to stipulations 1 through 8.
12. There is no evidence that Zachary Simon's death was the result of suicide.
13. Detective Rory Bernard is an expert in the field of drug use, packaging and distribution. While not necessary, the State may proffer qualifications of the detective for the jury's benefit, and the defense may address them, but the defense cannot challenge Detective Bernard's being recognized as an expert in those areas.
14. Detective Rory Bernard is also a Drug Recognition Expert ("DRE"), and hence can testify as an expert as to his/her opinion as to whether someone is under the influence of a controlled dangerous substance or alcohol, pursuant to his/her observations.
15. Detective Bernard may directly opine that Defendant possessed the drugs, or possessed them with the intent to distribute them (unlike in New Jersey courts, an expert must answer a hypothetical that whoever possessed the drugs did so with the intent to distribute them).
16. The defense may not claim that Detective Bernard was somehow the cause of death of decedent Zachary Simon.
17. "Big" Jake Tomlinson was shot to death in a drive-by shooting on July 4, 2017.
18. The records of the cellular phone, were extracted from the phone by Detective Rory Bernard and form the spreadsheet, S1. These records are deemed complete and accurate as to their content.
19. Defendant Dana Martin was incarcerated at the Metropolitan County Jail from late evening on June 12 until the early morning of June 14, 2017, and hence it is conceded that Dana Martin could not have made the texts and calls dated June 13, 2017, utilizing cell phone, number 555-1234, as is reflected in S1, the extraction of that cell phone's memory card.
20. The other cellular phone found in Dana Martin's bedroom was a smart phone, showing no texts or calls to or from Zachary Simon's cell phone, 555-5678, for the two weeks before Zachary Simon's death.
21. All of the phone numbers listed in the workbook are fictitious and area codes are intentionally omitted.
22. Dana Martin does not have a visible scar on his/her right forearm.
23. Dana Martin has a prior conviction for theft of movable property, a third degree crime, having been sentenced on March 12, 2017 to three years' probation.
24. Carson Silva has two prior convictions, for possession of heroin, a third degree offense, and for theft of movable property, a third degree offense, for which s/he received three years of probation on both cases. S/he was sentenced on July 29, 2016. Silva was originally facing five to ten years of imprisonment for possession of heroin with the intent to distribute it to another, within 500 feet of a public park, a second degree offense. On the theft offense, s/he was facing three to five years of imprisonment, to be served consecutively to the drug sentence (i.e., one after the other).
25. Harley Novack has two prior convictions for possession of CDS, heroin, both with the sentence date of September 1, 2017, with a sentence to attend and complete Drug Court.
26. The prior convictions stipulated to are subject to the jury instructions, as to how they may be used by the jury, and counsel may not ask for the jury to use them in any other fashion, in determining the guilt or innocence of Dana Martin.
27. Dana Martin was ordered to pay restitution of $3,000.00, jointly, severally and in the alterative with co-defendant, but has not paid any monies to the court yet.
28. Dana Martin has a tattoo on his/her left shoulder, which says, in stylish writing, "Just tell me what to say."
29. Counsel may not ask Dana Martin to show any tattoo, nor is the student playing Dana Martin allowed to wear a fake tattoo.
30. Frances Martin provided electric, water and cable utility bills to Detective Bernard immediately following Frances Martin's statement to the detective, and the bills totaled almost exactly $600.00.
31. All exhibits may be used and entered into evidence by either side, and, to avoid confusion, the defense need not remark any of these exhibits, and may refer to them as "State's Exhibit __," regardless of whether the State has made any reference to that exhibit.
32. The typing of Dana Martin's handwritten statement is completely accurate.
33. Costumes, make-up and "props" are prohibited.
34. The trial judges shall dispense with the reading of the jury charge, and it shall be stipulated that all jurors are familiar with its contents.
35. Exhibits are stipulated to be accurate.
36. Witnesses may be male or female.
37. All witness statements and transcripts of testimony are deemed to be sworn. If asked, a witness must acknowledge swearing an oath or certifying to the contents of the document on the date indicated therein, and also to signing any statement. Transcripts of testimony have been prepared by an official court reporter and are stipulated to be accurate.
38. Depositions consist of questions posed by opposing counsel.

WITNESSES AT TRIAL

Prosecution Witnesses
Detective Rory Bernard
Robin Simon
Carson Silva

Defense Witnesses
Dana Martin
Frances Martin
Harley Novack

All characters, institutions, events and other facts contained herein are fictitious and not intended to represent any individuals, living or dead, or any institutions. The "facts" presented in this case were created for the purpose of teaching mock trial skills and not for any other purpose.

INITIAL JURY CHARGE

I direct that you must not discuss this case among yourselves or with anyone else during this or any other recess. You must not communicate or share information about the case. Recess means breaks, lunch, or when you leave here at the end of the day. You are not permitted to discuss anything about this case with your fellow jurors, or with anyone else, until I instruct you to do so at the end of the case, which means after you have heard all of the testimony, listened to the summations of the lawyers, and heard my instructions as to the applicable law. Once I instruct you to begin your deliberations in the privacy of the jury room, that will be the first time you can discuss this case. You may not have any discussions with anyone before then about this case or about anything related to the case.

So it is clear, when I mean you cannot discuss the case with anyone, I mean any of the facts alleged, the charges, where the crimes allegedly occurred, the names of any witnesses, and even the jury selection process. And discuss means communicate. The word communicate means something far different today than it did a few years ago. I am sure you understand what I am referring to. Communication includes any way in which you can share information with someone else. It includes, of course, all forms of electronic communication. So, not only am I instructing you that you cannot discuss this case with anyone such as your fellow jurors as well as your friends, family members and co-workers, but you can also not call them, text them, email them, or communicate with them in any way about anything connected to this case, including through any form of social media. I realize that there are numerous forms of social media, including Facebook, Twitter, Instagram, Snapchat, and the like, and that many of you utilize social media on a regular basis. You may not communicate with anyone via social media about the case.

The only exception to this strict rule is that you may tell family members or a supervisor or co-worker about the length and schedule of the trial, but not about anything else related to the case including the charges.

A conversation about a jury trial may begin innocently, maybe with just a sentence or two. But if you start talking about this trial with someone else, that person will say something to you that might affect your thinking about the facts of this case. That would obviously be unfair to both parties in this case because what some other person says to you outside this courtroom is not evidence and cannot be considered by you.

I instruct you further that you cannot read, or have anyone tell you about something they have read, in the newspaper, on-line, nor can you search the Internet for any media accounts about this trial or about any issues even remotely related to this trial. You are also prohibited from searching the Internet about any persons, topics or places related to this case, or even reading blogs about anything concerning this case.

I also instruct you not to visit the scene of the incident or try to view it on the Internet through MapQuest or Google Earth type sites. You must not, under any circumstances, do any legal or factual research about anyone or any topic connected to this case. You are NOT here as investigators - you are here as judges of the facts.

If you are sworn as jurors in this case, and some of you will be, you will become the sole judges of the facts, so you must remain impartial throughout the trial. You must decide the facts of this case based solely on the evidence produced in this courtroom. It would be unfair and a violation of the oath that many of you will take as jurors to base your decision about the facts of this case upon something that was said to you, or discovered by you, outside this courtroom. You will hear me use the word integrity many times. The reasons for all of these critical instructions is to protect the integrity of the trial, and to assure that both sides receive a fair trial, from fair and impartial jurors.

Also, you must understand that no one is permitted to talk to you about this case outside the courtroom. If you should see any of the attorneys, the defendant or witnesses in the hallway and they do not greet you, do not be offended or think that they are being rude. They are not permitted to talk to you. Also, if anyone approaches you and tries to talk about this case, do not tell any of the other jurors but report that to one of the sheriff s officers immediately. That officer will then inform me and I will take the appropriate steps. Again, the reason for these rules is to protect the integrity of the trial.

FINAL JURY CHARGE

Ladies and gentlemen of the Jury, the evidence in this case has been presented and the attorneys have completed their

summations. We now arrive at that time when you, as jurors, are to perform your final function in this case.
At the outset, let me express my thanks and appreciation to you for your attention to this case. I would like to commend counsel for the professional manner in which they have presented their respective cases and for their courtesy to the court and jury during the course of this trial.

Before you retire to deliberate and reach your verdict, it is my obligation to instruct you as to the principles of law applicable to this case. You shall consider my instructions in their entirety and not pick out any particular instruction and overemphasize it.

You must accept and apply this law for this case as I give it to you in this charge. Any ideas you have of what the law is or what the law should be or any statements by the attorneys as to what the law may be, must be disregarded by you, if they are in conflict with my charge.

Now, beginning with the general principles of law that apply to a criminal case, the defendant stands before you on an indictment returned by the grand jury charging him/her with Strict Liability for Drug Induced Deaths, Unlawful Possession of a Controlled Dangerous Substance and Possession of a Controlled Dangerous Substance with Intent to Distribute.

The indictment is not evidence of the defendant's guilt on the charges. An indictment is a step in the procedure to bring the matter before the court and jury for the jury's ultimate determination as to whether the defendant is guilty or not guilty on the charges stated in it.

The defendant has pleaded not guilty to the charges.

The defendant on trial is presumed to be innocent and unless each and every essential element of an offense charged is proved beyond a reasonable doubt, the defendant must be found not guilty of that charge.

The burden of proving each element of a charge beyond a reasonable doubt rests upon the State and that burden never shifts to the defendant. The defendant in a criminal case has no obligation or duty to prove his/her innocence or offer any proof relating to his/her innocence.

The prosecution must prove its case by more than a mere preponderance of the evidence, yet not necessarily to an absolute certainty.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is necessary to prove only that a fact is more likely true than not true. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

A reasonable doubt is an honest and reasonable uncertainty in your minds about the guilt of the defendant after you have given full and impartial consideration to all of the evidence. A reasonable doubt may arise from the evidence itself or from a lack of evidence. It is a doubt that a reasonable person hearing the same evidence would have.
Proof beyond a reasonable doubt is proof, for example, that leaves you firmly convinced of the defendant's guilt. In this world, we know very few things with absolute certainty. In criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him/her guilty. If, on the other hand, you are not firmly convinced of defendant's guilt, you must give defendant the benefit of the doubt and find him/her not guilty.

The function of the judge is separate and distinct from the function of the jury. It is my responsibility to determine all questions of law arising during trial and to instruct the jury as to the law which applies in this case. You must accept the law as given to you by me and apply it to the facts as you find them to be.

During the course of the trial, I was required to make certain rulings on the admissibility of the evidence either in or outside of your presence. These rulings involved questions of law. The comments of the attorneys on these matters were not evidence. In ruling, I have decided questions of law and, whatever the ruling may have been in any particular instance, you should understand that it was not an expression or opinion by me on the merits of the case. Neither should my other rulings

on any other aspect of the trial be taken as favoring one side or the other. Each matter was decided on its own merits.

I may have sustained an objection(s) to some questions asked by counsel which may have contained statements of certain facts. The mere fact that an attorney asks a question and inserts facts or comments or opinions in that question in no way proves the existence of those facts. You will only consider such facts which in your judgment have been proven by the testimony of witnesses or from exhibits admitted into evidence by the court.

The fact that I may have asked questions of a witness in the case must not influence you in any way in your deliberations. The fact that I asked such questions does not indicate that I hold any opinion one way or the other as to the testimony given by the witness. Any remarks made by me to counsel or by counsel to me or between counsel, are not evidence and should not affect or play any part in your deliberations.

As I instructed you when we started the case, I explained to you that you are the judges of the facts and, as judges of the facts, you are to determine the credibility of the various witnesses as well as the weight to be attached to their testimony. You and you alone are the sole and exclusive judges of the evidence, of the credibility of the witnesses and the weight to be attached to the testimony of each witness.

Regardless of what counsel said or I may have said recalling the evidence in this case, it is your recollection of the evidence that should guide you as judges of the facts. Arguments, statements, remarks, openings and summations of counsel are not evidence and must not be treated as evidence. Although the attorneys may point out what they think important in this case, you must rely solely upon your understanding and recollection of the evidence that was admitted during the trial. Whether or not the defendant has been proven guilty beyond a reasonable doubt is for you to determine based on all the evidence presented during the trial. Any comments by counsel are not controlling.

It is your sworn duty to arrive at a just conclusion after considering all the evidence which was presented during the course of the trial.

Now I will move on to the second part of the instructions and discuss the evidence that you may consider in judging the facts of the case. When I use the term "evidence" I mean the testimony you have heard and seen from this witness box, any stipulations and the exhibits that have been admitted into evidence. Any exhibit that has not been admitted into evidence cannot be given to you in the jury room even though it may have been marked for identification. Only those items admitted into evidence can be given to you.

Any testimony that I may have had occasion to strike is not evidence and shall not enter in your final deliberations. It must be disregarded by you. This means that even though you may remember the testimony you are not to use it in your discussions or deliberations. Further, if I gave a limiting instruction as to how to use certain evidence, that evidence must be considered by you for that purpose only. You cannot use it for any other purpose.

As jurors, it is your duty to weigh the evidence calmly and without passion, prejudice or sympathy. Any influence caused by these emotions has the potential to deprive both the State and the defendant of what you promised them - a fair and impartial trial by fair and impartial jurors. Also, speculation, conjecture and other forms of guessing play no role in the performance of your duty.

As I instructed you at the beginning of the case, evidence may be either direct or circumstantial. Direct evidence means evidence that directly proves a fact, without an inference, and which in itself, if true, conclusively establishes that fact. On the other hand, circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence. Whether or not inferences should be drawn is for you to decide using your own common sense, knowledge and every day experience. Ask yourselves is it probable, logical and reasonable.

It is not necessary that all the facts be proven by direct evidence. They may be proven by direct evidence, circumstantial evidence or by a combination of direct and circumstantial evidence. All are acceptable as a means of proof. In many cases,

circumstantial evidence may be more certain, satisfying and persuasive than direct evidence.
However, direct and circumstantial evidence should be scrutinized and evaluated carefully. A verdict of guilty may be based on direct evidence alone, circumstantial evidence alone or a combination of direct evidence and circumstantial evidence provided, of course, that it convinces you of a defendant's guilt beyond a reasonable doubt. The reverse is also true, a defendant may be found not guilty by reason of direct evidence, circumstantial evidence, a combination of the two or a lack of evidence if it raises in your mind a reasonable doubt as to the defendant's guilt.

As the judges of the facts, you are to determine the credibility of the witnesses and, in determining whether a witness is worthy of belief and therefore credible, you may take into consideration:

the appearance and demeanor of the witness;
the manner in which he or she may have testified;
the witness' interest in the outcome of the trial if any;
his or her means of obtaining knowledge of the facts;
the witness' power of discernment meaning his or her judgment - understanding;
his or her ability to reason, observe, recollect and relate;
the possible bias, if any, in favor of the side for whom the witness testified;
the extent to which, if at all, each witness is either corroborated or contradicted, supported or discredited by other evidence;
whether the witness testified with an intent to deceive you;
the reasonableness or unreasonableness of the testimony the witness has given;
whether the witness made any inconsistent or contradictory statement;
and any and all other matters in the evidence which serve to support or discredit his or her testimony.

Through this analysis, as the judges of the facts, you weigh the testimony of each witness and then determine the weight to give to it. Through that process you may accept all of it, a portion of it or none of it.

STRICT LIABILITY FOR DRUG INDUCED DEATHS (M.S.A. 2C:35-9)

Count 1 of the indictment charges the defendant as follows:

The Grand Jurors of the State of New Jersey, for the County of Metropolitan, upon their oaths present that Dana Martin, on or about the 25th day of June, 2017, in the City of Metropolitan, did knowingly distribute fentanyl, a controlled dangerous substance, and the injection of that substance resulted in the death of Zachary Simon, contrary to the provisions of Metropolitan Statute Annotated 2C:35-9, and against the peace of the State, the Government and dignity of the same, said crime being of the first degree.

The pertinent part of the statute (Metropolitan Statute A. 2C:35-9) on which this indictment is based reads as follows:

Any person who distributes fentanyl, a controlled dangerous substance, is strictly liable for a death which results from the injection, inhalation, or ingestion of that substance and is guilty of a . . . crime.

This statute, read together with the indictment, identifies the elements which the State must prove beyond a reasonable doubt to establish guilt of the defendant on this (count of the) indictment. The elements are that:

1. The defendant distributed fentanyl;
2. The defendant acted knowingly or purposefully in distributing the fentanyl;
3. Zachary Simon injected the fentanyl distributed by the defendant;
4. Zachary Simon died as a result of injecting the fentanyl distributed by the defendant. That is, the defendant's act of distributing the fentanyl caused Zachary Simon's death.

With respect to the first element, the State, as I have said, must prove beyond a reasonable doubt that the defendant distributed a Schedule I or II controlled dangerous substance. Here, the State alleges the defendant distributed fentanyl. Fentanyl is a Schedule I or II controlled dangerous substance.

With respect to the first element, to "distribute" means the transfer, actual, constructive or attempted, from one person to another of fentanyl. It is not necessary that the drugs be transferred in exchange for payment or promise of payment of money or anything of value.

In regard to the second element, the State must prove beyond a reasonable doubt that the defendant acted knowingly or purposefully in distributing the fentanyl.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. "Knowing," "with knowledge" or equivalent terms have the same meaning.

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she believes or hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.

Remember that when we speak of knowingly and purposely we are speaking of conditions of the mind that cannot be seen. It is not necessary for the State to prove the existence of such mental states by direct evidence such as a statement by the defendant that he/she had particular knowledge or a particular purpose. Knowledge and purpose as separate propositions of proof do not commonly exist. They must ordinarily be discovered as other mental states are from circumstantial evidence; that is, by reference to the defendant's conduct, words, or acts and all the surrounding circumstances.

In regard to the third element, the State must prove beyond a reasonable doubt, as I have said, that Zachary Simon injected the fentanyl distributed The fourth element is that Zachary Simon died as a result of injecting the fentanyl distributed by the defendant. To prove this element, the State must prove that the defendant's act of distributing the fentanyl caused Zachary Simon's death. In order for the State to prove this element, the State must prove, beyond a reasonable doubt, the following:

First, the State must prove that the injection of the fentanyl is an antecedent, that is a preceding act, but for which the death would not have occurred; in other words, that the death would not have occurred without the injection of the fentanyl.

Second, the State must prove that the death was not too remote in its occurrence as to have a just bearing on defendant's liability, and,

Third, the State must prove that the death was not too dependent upon conduct of another person which was unrelated to the injection of the fentanyl or to its effect as to have a just bearing on the defendant's liability.

In determining whether the death was not too remote or not too dependent upon the conduct of another person, you should consider, among all other factors suggested by the evidence, whether causes other than the injection of the fentanyl contributed to the death, and if so, then the number and nature of such cause or causes. You should also consider how drug-induced deaths normally occur in comparison with how this death actually occurred, or, in other words, whether the State has proven beyond a reasonable doubt that the death did not occur in such an unusual manner that it would be unjust to find the defendant responsible for the death. You should also consider, if you find them relevant, the length of time between defendant's act of distributing the fentanyl and the place of Zachary Simon's death.

The fact that Zachary Simon contributed to his own death by his purposeful, knowing, reckless, or negligent injection of the fentanyl, or by his consenting to the administration of fentanyl by another is not a defense to prosecution for this offense. Thus, Zachary Simon's conduct of injecting the fentanyl or consenting to its administration by another does not make the death too remote or too dependent upon the conduct of another to have a just bearing on defendant's liability.

In summary, in order for the State to prove the defendant's guilt under this (count of the) indictment, the State must prove four elements:

1. That the defendant distributed fentanyl;

2. That the defendant did so knowingly or purposefully;
3. That Zachary Simon injected the fentanyl, and
4. That Zachary Simon died as a result of injecting the fentanyl distributed by the defendant. In other words, that the defendant's act of distributing the fentanyl caused the victim's death; that is, but for Zachary Simon's injection of the fentanyl, he would not have died, and the death was not too remote in its occurrence or too dependent upon the conduct of another person which was unrelated to the injection of the fentanyl or its effect as to have a just bearing on the defendant's liability.

If you find that the State has proven all of these elements beyond a reasonable doubt then you must find the defendant guilty. On the other hand, if you find the State has failed to prove beyond a reasonable doubt any of these elements, then you must find the defendant not guilty.

UNLAWFUL POSSESION OF A CONTROLLED DANGEROUS SUBSTANCE (M.S.A. 2C:35-10)

Count 2 of the indictment charges the defendant with unlawful possession of a controlled dangerous substance.

The Grand Jurors of the County of Metropolitan, upon their oaths present that Dana Martin, on or about the 25th of June, 2017, City of Metropolitan, County of Metropolitan, aforesaid, and within the jurisdiction of this Court, did unlawfully or purposely possess fentanyl, a Schedule II controlled dangerous substance, contrary to the provisions of Metropolitan Statute 2C:35-10A(1), and against the peace of this State, the Government and dignity of same, said crime being a crime of the third degree.

The statute upon which this count of the indictment is based states in pertinent part: It is unlawful for any person knowingly or purposely, to obtain or to possess, actually or constructively, a controlled dangerous substance.

In order for you to find defendant guilty of the charge, the State must prove the following elements beyond a reasonable doubt:

1. S4 is a controlled dangerous substance.
2. That the defendant possessed or obtained S4.
3. That the defendant acted knowingly or purposely in possessing or obtaining S4.

The first element that the State must prove beyond a reasonable doubt is that S4 is CDS. Here, the State alleges that defendant possessed fentanyl.

The second element that the State must prove beyond a reasonable doubt is that defendant possessed or obtained S4. To "obtain" means to acquire, to get, to procure.
To "possess" an item under the law, one must have a knowing, intentional control of that item accompanied by knowledge of its character. So, a person who possesses an item such as fentanyl must know or be aware that he/she possesses it/them, and he/she must know what it is that he/she possesses or controls (that it is a controlled dangerous substance).

The State must prove beyond a reasonable doubt that a possessor acted knowingly in possessing the item. A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of the high probability of their existence. A person acts knowingly as to a result of his/her conduct if he/she is aware that it is practically certain that conduct will cause such a result. Knowing, with knowledge, or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inferences from conduct, words or acts. Therefore, it is not necessary for the State to produce witnesses to testify that a particular defendant stated, for example, that he/she acted with knowledge when he/she had control over a particular thing. It is within your power to find that proof of knowledge has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances.

A person may possess a controlled dangerous substance, such as fentanyl, even though it was not physically on his/her

person at the time of the arrest, if he/she had in fact, at some time prior to his/her arrest had control over it.

Possession means a conscious, knowing possession, either actual or constructive.

A person is in actual possession of an item when he/she first, knows what it is: that is, he/she has knowledge of its character, and second, knowingly has it on his/her person at a given time.

Possession may be constructive instead of actual. As I just stated, a person who, with knowledge of its character, knowingly has direct physical control over an item at a given time is in actual possession of it.

Constructive possession means possession in which the possessor does not physically have the item on his or her person but is aware that the item is present and is able to and has the intention to exercise control over it. So, someone who has knowledge of the character of an item and knowingly has both the power and the intention at a given time to exercise control over it, either directly or through another person or persons, is then in constructive possession of that item.

Possession may be sole or joint. If one person alone has actual or constructive possession of an item, possession is sole. If two or more persons share actual or constructive knowing possession of an item, possession is joint.

The third element that the State must prove beyond a reasonable doubt is that the defendant acted knowingly or purposefully in obtaining or possessing S4. A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. "Knowing," "with knowledge" or equivalent terms have the same meaning.

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.

Knowledge and purpose are conditions of the mind. They cannot be seen and can only be determined by inferences from conduct, words or acts. Therefore, it is not necessary for the State to produce witnesses to testify that a particular defendant stated, for example, that he/she acted with knowledge when he/she had control over a particular thing. It is within your power to find that proof of knowledge has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances.

If you find that the State has proven all of these elements beyond a reasonable doubt, then you must return a verdict of guilty. If you find that the State has failed to prove any one of these elements beyond a reasonable doubt, then you must return a verdict of not guilty.

POSESSION OF A CONTROLLED DANGEROUS SUBSTANCE WITH INTENT TO DISTRIBUTE
(M.S.A. 2C:35-5)

Count 3 of the indictment charges the defendant as follows:

The Grand Jurors of the County of Metropolitan, upon their oaths present that Dana Martin, on or about the 25th of June, 2017, City of Metropolitan, County of Metropolitan, aforesaid, and within the jurisdiction of this Court, did unlawfully or purposely possess with intent to distribute fentanyl, a Schedule II controlled dangerous substance, in a quantity less than ½ ounce including any adulterants or dilutants, contrary to the provisions of Metropolitan Statute 2C:35-5-B(3), and against the peace of this State, the Government and dignity of same, said crime being a crime of the third degree.

The pertinent part of the statute on which this indictment is based reads as follows:

Except as authorized by statute, it shall be unlawful for

> any person knowingly or purposely ... to possess or have under his control with intent to ... distribute a controlled dangerous substance.

The various kinds of substances are defined in another part of our statute. Fentanyl is a dangerous substance prohibited by statute.

The statute, read together with the indictment, identifies the elements which the State must prove beyond a reasonable doubt to establish guilt of the defendant on this count of the indictment. They are as follows:

1. S4 in evidence is fentanyl.
2. The defendant possessed, or had under his/her control, S4 in evidence.
3. The defendant, when he/she possessed or had under his/her control S4 in evidence, had the intent to distribute S4 in evidence.
4. That the defendant acted knowingly or purposefully in possessing or having under his/her control with intent to distribute S4 in evidence.

In regard to the second element, that the defendant had under his/her control or possessed S4 in evidence, "possess" was previously defined for you.

In regard to the third element, that the defendant had the intent to distribute S4 in evidence, "distribute" means the transfer, actual, constructive or attempted, from one person to another of a controlled dangerous substance. The intent must refer to the defendant's purpose to distribute S4 in evidence (the controlled dangerous substance) and not merely to possess the items. It is not necessary that the drugs be transferred in exchange for payment or promise of payment of money or anything of value.

"Intent" means a purpose to do something, a resolution to do a particular act or accomplish a certain thing. Intent is a state of mind, and it is very rare that intent is proven by witnesses who can testify that an accused said he/she had a certain intent when he/she engaged in a particular act. The intention may be gathered from a person's acts, conduct, from all the person said and did at the particular time and place, and from all of the surrounding circumstances. You may consider any evidence as to the quantity, purity, and packaging of S4 together with all the other evidence in the case to aid you in your determination of the element of intent to distribute.

In regard to the fourth element, the State must prove, as I have stated, that the defendant acted knowingly or purposefully in having under his/her control or possessing S4 with intent to distribute.

To reiterate, the four elements of this offense are that:

1. S4 in evidence is fentanyl.
2. The defendant possessed, or had under his/her control, S4 in evidence.
3. The defendant had the intent to distribute S4 in evidence.
4. That the defendant acted knowingly or purposely in possessing or having under his/her control with intent to distribute S4 in evidence.

If you find that the State has proven all these elements beyond a reasonable doubt, then you must return a verdict of guilty. On the other hand, if you find that the State has failed to prove any one of these elements beyond a reasonable doubt, then you must return a verdict of not guilty.

ALIBI

The defendant as a part of his/her denial of guilt contends that he/she was not present at the time and place that the crime was allegedly committed, but was somewhere else and therefore could not possibly have committed or participated in the crime. Where a person must be present at the scene of the crime to commit it, the burden of proving the defendant's presence beyond a reasonable doubt is upon the State. The defendant has neither the burden nor the duty to show that he/she was elsewhere at the time and so could not have committed the offense. You must determine, therefore, whether the State has proved each and every element of the offense charged, including that of the defendant's presence at the scene of the crime and his/her participation in it.

You have heard testimony about when Dana Martin first came forward with his/her account of what happened. I instruct you that Dana Martin had no obligation to provide an account at any time and there may be many reasons for his/her not doing so. You may not use the testimony about when Dana Martin first came forward to affect his/her credibility or to conclude that he/she violated some obligation to come forward, because Dana Martin had no duty to speak on the subject with anyone.

You will also recall that the witness testified that Dana martin was at Harley Novack's house when decedent Zachary Simon bought fentanyl that the Sate alleges killed Zachary Simon.

You may consider the evidence concerning when Harley Novack came forward, and why Harley Novack did so at that time, only for the limited purpose of deciding whether it affects the credibility of Harley Novack's account. You may not use the evidence to conclude that Harley Novack violated some obligation to come forward, because Harley Novack had no duty to speak on the subject with anyone.

If, after a consideration of all of the evidence, including the evidence of the defendant's whereabouts at the time of the offense, you conclude that the State has failed to prove beyond a reasonable doubt any of the elements of the offenses charged, you must find the defendant not guilty. If, however, after considering all of the evidence, you conclude that the State has proven every element of the offenses charged beyond a reasonable doubt, including the defendant's presence at the scene of the crime, then you must find the defendant guilty.

CREDIBILITY – PRIOR CONVICTION OF A DEFENDANT

You have heard evidence that Dana Martin has previously been convicted of a crime. This evidence may only be used in determining the credibility or believability of the defendant's testimony. You may not conclude that the defendant committed the crime charged in this case or is more likely to have committed the crime charged simply because he/she committed a crime on another occasion.

A jury has a right to consider whether a person who has previously failed to comply with society's rules as demonstrated through a criminal conviction would be more likely to ignore the oath requiring truthfulness on the witness stand than a person who has never been convicted of any crime. You may consider in determining this issue the nature and degree of the prior conviction and when it occurred.

Our law permits a conviction to be received in evidence only for the purpose of affecting the credibility of the defendant and for no other purpose. You are not, however, obligated to change your opinion as to the credibility of the defendant simply because of a prior conviction. You may consider such evidence along with all the other factors we previously discussed in determining the credibility of the defendant.

CREDIBILITY – PRIOR CONVICTION OF A WITNESS

You have heard evidence that Carson Silva and Harley Novack previously been convicted of crimes. This evidence may be only used in determining the credibility or believability of these witnesses' testimony.

A jury has a right to consider whether a person who has previously failed to comply with society's rules as demonstrated through criminal convictions would be more likely to ignore the oath requiring truthfulness on the witness stand than a person who has never been convicted of a crime. You may consider in determining this issue the nature and degree of the

prior convictions and when it they occurred.

You are not, however, obligated to change your opinion as to the credibility of this these witnesses simply because of prior convictions. You may consider such evidence along with all the other factors we previously discussed in determining credibility of a witness.

TESTIMONY OF A CHARACTER WITNESS

Evidence of good character or reputation of an accused is always competent in the trial of a criminal action, and is entitled to be considered by you.

You, the jury, should consider all of the relevant testimony, including that relating to the defendant's good character or reputation, and if, on such consideration, there exists a reasonable doubt of his/her guilt, even though that doubt may arise merely from his/her previous good repute, he/she is entitled to an acquittal; but if, from the entire evidence in this case, including that relating to good character, you believe the defendant guilty beyond a reasonable doubt, he/she should be convicted and the evidence of good character should not alter the verdict.

EXPERT TESTIMONY

As a general rule, witnesses can testify only as to facts known by them. This rule ordinarily does not permit the opinion of a witness to be received as evidence. However, an exception to this rule exists in the case of an expert witness who may give his/her opinion as to any matter in which (he/she is versed which is material to the case. In legal terminology, an expert witness is a witness who has some special knowledge, skill, experience or training that is not possessed by the ordinary juror and who thus may be able to provide assistance to the jury in understanding the evidence presented and determine the facts in this case.

In this case, the State called an expert, Det. Rory Bernard.

You are not bound by such expert's opinion, but you should consider each opinion and give it the weight to which you deem it is entitled, whether that be great or slight, or you may reject it. In examining each opinion, you may consider the reasons given for it, if any, and you may also consider the qualifications and credibility of the expert.

It is always within the special function of the jury to determine whether the facts on which the answer or testimony of an expert is based actually exist. The value or weight of the opinion of the expert is dependent upon, and is no stronger than, the facts on which it is based. In other words, the probative value of the opinion will depend upon whether from all of the evidence in the case, you find that those facts are true. You may, in fact, determine from the evidence in the case that the facts that form the basis of the opinion are true, are not true, or are true in part only, and, in light of such findings, you should decide what affect such determination has upon the weight to be given to the opinion of the expert. Your acceptance or rejection of the expert opinion will depend, therefore, to some extent on your findings as to the truth of the facts relied upon.

The ultimate determination of whether or not the State has proven defendant's guilt beyond a reasonable doubt is to be made only by the jury.

JURY VERDICT SHEET

STRICT LIABILITY FOR DRUG INDUCED DEATH

Count 1 of the indictment, strict liability for drug induced death, charging defendant with strict liability for Zachary Simon's death, resulting from the injection of a controlled dangerous substance, namely fentanyl, and with defendant having distributed that controlled dangerous substance to Zachary Simon.
Our verdict is:
GUILTY _____
NOT GUILTY_____

POSSESSION OF CONTROLLED DANGEROUS SUBSTANCE

Count 2 of the indictment, possession of controlled dangerous substance, charges Defendant Dana Martin did unlawfully and knowingly or purposely possess a controlled dangerous substance, namely, fentanyl.
Our verdict is:
GUILTY _____
NOT GUILTY _____

POSSESSION OF CONTROLLED DANGEROUS SUBSTANCE WITH THE INTENT TO DISTRIBUTE

Count 3 of the indictment, possession of controlled dangerous substance with the intent to distribute, charges Defendant Dana Martin did unlawfully and knowingly or purposely possess with intent to distribute a controlled dangerous substance, namely, fentanyl.

Our verdict is:
GUILTY _____
NOT GUILTY _____

Detective Rory Bernard

I have been working for the Metropolitan County Police Department as a law enforcement officer for 24 years. I will retire on July 1, 2018, upon completing my 25 years on the force. Then I plan on collecting my pension while consulting for my sister's security firm.

My other sister, my big sister Kara, we lost her to a barbiturate overdose when I was in high school. Barbiturates kill the way opiates kill. They cause your heart and respiration rate to slow down until you stop breathing entirely. It is the reason I became a police officer, in fact.

You know, this isn't our first epidemic as a nation. Over a hundred years ago it was laudanum, another opioid. Laudanum was marketed to cure whatever was wrong with you, from pain to diarrhea. Over one hundred years ago, the U.S. government started regulating drugs like laudanum. You could say that that's when the war on drugs began, although that war was declared by then-President Richard Nixon on in 1971. So I guess we've come full circle! I've hated drugs ever since Kara died. Every drug dealer is a potential killer – it's just Russian roulette. I go after them all.

On Sunday, June 25, 2017, at approximately 21:12 hours, I was dispatched to 9 Shady Lane here in Safe Harbor on a report of an unconscious male. We of the County Police are the police agency for all of Safe Harbor. Upon arrival, which preceded arrival of EMS, the victim's parent, Robin Simon, advised me that his/her son was unconscious on a sofa in his bedroom. Upon entering the room, it appeared that the victim, Zachary Simon, was unconscious and not breathing. Robin explained that s/he had tried to awaken Zachary, but he could not be aroused.

After checking for vital signs, and finding none – no pulse, no breath - I attempted to resuscitate Zach, using chest compressions followed by Narcan. Narcan is a nasal spray. It can work wonders when the person overdosing on an opiate is not too far gone. Then, EMS (emergency medical service) workers arrived, and quickly took Zach to Metro Hospital, where he was declared dead soon thereafter, having shown no signs of life from the time that EMTs (emergency medical technicians) encountered him.

The bedroom was treated as a crime scene, with nothing being moved or altered until cataloged, although, of course, the EMTs had moved some things around. I watched them, however, and saw that they did not alter anything of evidential value. In the bedroom was a single bed, a nightstand, a dresser and a small closet. In the nightstand drawer were found empty opioid bags (wax folds), as documented in my inventory of items found and collected from the room.

In the early days, things were easier. Drug dealers had their beepers, their pagers. If you called a pager, you would leave a phone number to call back, and the pager would show that number on its tiny screen. They'd go to a pay phone to call that number after getting paged. So we monitored the people loitering near pay phones.

Then, with the start of cellular phones, we'd trace the cell phone to the phone account. People would buy phones in their own names, usually. Now, there are anonymously bought "burner" phones. They're call and text only phones, and until a couple years ago, they were usually the flip kind They're bought with a block of call minutes and text limits, which can be recharged, again anonymously.

On Tuesday, July 4, 2017, a search warrant was obtained, both for the Martin residence

and for the Martin vehicle, based upon the recorded statement of Carson Silva to me, and upon what was found at the crime scene. (A judge issued the search warrant, having found from this information that there was probable cause that items of evidentiary value, like opioids, would be found).

That search warrant was executed at the home of Frances Martin, residence of Dana Martin, at 04:40 a.m., on July 5, 2017. Present at the home were Frances and Dana Martin, as well as Dana's cousin Kenneth Martin. Dana Martin was found in his/her bedroom. Frances Martin was found in his/her bedroom. Kenneth Martin was found on the couch. All three were brought to the living room and handcuffed and remained during the search. While I was taking the flip-type cell phone from the back bedroom into the living room, with the phone visible in my hand, where Dana Martin was seated in handcuffs, Dana saw it and blurted out, "I need my phone!"

The recent spread of fentanyl has worsened the already bad opiate epidemic. Because of its potency, we see many more people overdosing. More often, my fellow officers and I are administering Narcan to bring people back from near death. Fentanyl is usually sold as a powder, in the same heat-sealed wax fold packaging as heroin, and presumed to be heroin, but there are also fentanyl pills. For example, pills seized by investigators at Prince's (the deceased musician's) home were labeled as hydrocodone but actually contained fentanyl. The first time I heard about fentanyl was when Russian authorities used a fentanyl gas to incapacitate hostage-takers at the Moscow theater hostage crisis 15 years ago. It was effective, too effective. Over a hundred hostages died, as well as some of the perpetrators.

I am a Drug Recognition Expert, which means that I focus on determining what class of drugs someone is under the influence of, including opiates, by tell-tale signs, like how a person speaks and walks.

I was trained in stash spots drug dealers use to hide their drugs during transport to avoid detection. Drug distributors are increasingly using rental cars, rented in someone else's name, to avoid forfeiture of the vehicle if the drugs are discovered by police, and to be able to argue that someone else placed the drugs there. Drugs are more and more being secreted in factory voids in cars, such as behind the glove compartment, or under and behind the front center console arm rest. It is also done so that rival dealers and hungry users do not steal the drugs either. While I have never seen drugs secreted behind the fuel door, this is the same concept of "stashing" CDS (controlled dangerous substance), such as opioids, to avoid detection.

"Big" Jake Tomlinson was shot to death in a drive-by shooting on July 4, 2017, at 10:00 p.m. He was found only an hour later, though, between two cars parallel parked on the street. While nearby residents had heard shots, they had thought it was fireworks, a common mistake. The shooting had all the hallmarks of a turf war over drugs. He was killed a mere two blocks from Dana Martin's house. Tomlinson had two convictions for possession of CDS cocaine, from 10 years ago, but he was not known to be high level in the heroin trade. I knew him to frequent the neighborhood where the Martins live. To date, no one has been charged in connection with his death. We have no leads, either. I'm not particularly surprised, given the "snitches get stitches" attitude out in these neighborhoods where drugs are commonly sold. Jake's cell phone, found on his person, had number 222-4444, but the SIM memory card was damaged, so we could not recover these records from the phone. Text messages are not retained by phone carriers, so without the SIM card, we'll never have those records.

Frances Martin surrendered the keys to the pickup truck, registered in his/her name,

which were left under the welcome mat outside the front door of the house. Nothing evidential in value was found in the cab of the vehicle, but it was messy, with fast food wrappers all around, and a letter addressed to Dana Martin from Metropolitan Municipal Court regarding overdue fines for motor vehicle offenses, found on the driver's seat.

To access the fueling area, I had to use the mechanical lever accessible from the front of the driver's seat. Upon lifting the lever, I heard a "click" popping noise. I then went to the now-open fuel door, and looked inside. Above the gas cap was a purple drawstring bag, with the brand name Crown Royal on it. These bags are commonly used by drug distributors to safeguard drugs. Crown Royal is a brand of whisky.

Perusing inside the bag, I found 15 heat-sealed wax folds, each containing what appeared to me, from training and experience, to be fentanyl. They were all stamped with the very same stamp found on most of the bags at the scene of Zachary Simon's death, "OTP." I understand from debriefing young people who I have arrested that the acronym "OTP" means "One True Pairing," whatever that means.

That single "Killer Clowns" empty opioid baggie found in decedent Zachary Simon's bedroom must have been old. That brand was popular when people were reporting attacks by people dressed as clowns, about a year ago. At the same time, they had a "Pokémon Go" stamp on the streets, too. Opioid "brand" names change with fashion and with current events. "OTP" is a brand which my colleagues and I have been seeing for only the last few months.

Regarding the 15 bags of fentanyl found in Defendant Dana Martin's bedroom, it is my opinion, given my training and experience as a narcotics detective, that they were possessed with the intent to distribute them. A user will generally buy less bags, as buying more than he or she normally consumes may cause him or her to take too much at once, potentially overdosing. Also, if a user were to buy that much fentanyl, then she or he would likely buy a single bag, typically a plastic bag, knotted at the top, containing a larger amount of the drug, getting a better price per gram.

Also found in Dana Martin's bedroom was money. Illegal street-level drug purchases are usually made with cash. The presence of a wallet containing U.S. currency bills, totaling $ 715.00, in a mix of small and large bills, some separated by folding them over, by $20 increments, strengthens my opinion that S4 (State's Exhibit 4) was possessed with the intent to distribute. Opiate dealers, selling on the street, usually want to make change without drawing the attention of authorities or others.

The presence of the digital scale further strengthens my opinion that the fentanyl was possessed with the intent to distribute it. Dealers may package drugs, and they try to place a particular standard weight of drug powder in each heat-sealed wax fold or bag.

I briefly examined victim Zachary Simon's cell phone, 555-5678. It showed that there had been texts to and from the number 555-1234, on June 25 between 11:12 and 11:22 a.m.

I examined the flip cell phone found in Defendant Dana Martin's bedroom by my making, then reviewing, a mirror image of the phone's SIM memory card, where all records of all text messages and toll calls are stored. The card was scanned by computer and an extraction of any and all records was printed out by the program, which is State's Exhibit 1 (S-1). I made this extraction on Tuesday, June 27, at 11:00 a.m., and the text and toll call records comprise S-1. S-1 shows the calls I saw on Zachary Simon's phone, mentioned above. I never performed extractions of either Zachary Simon's phone or

Dana Martin's smart phone, as it was unnecessary.

The texts in S- 1 were, based upon my training and experience, and based upon the circumstances, the arranging of a purchase by Zach Simon from the person texting from 555-1234. Accordingly, I used Zachary Simon's phone to text 555-1234 on June 26, 2017 at 9:45 a.m., as is reflected in S-1. When I received no response from that text for several hours, I called 555-1234 at 12:33 p.m. on June 26. The person answering immediately hung up, with no one speaking, and did so again upon a second attempt a few minutes later.

I conclude, based upon my training and experience, that the texts clearly show communications between a drug seller, using the flip cell phone, phone number 555-1234, and drug distributors, as well as that seller also arranging to meet with buyers to distribute controlled dangerous substances. It is common that people engaging in drug transactions make no direct references to drugs, in order to avoid detection by other people.

The other cell phone found in Dana Martin's bedroom, a smart phone, was analyzed the same way as the flip phone, but without any relevant results. I admit that that smart phone was used on a regular basis in the weeks leading up to its seizure, for regular voice phone calls and texts, except for June 12 to June 14, 2017, the same days and times when Dana Martin was in Metropolitan County Jail. There were no calls or texts between that phone and the phone found in Zachary Simon's bedroom since a long call between them on June 10, 2017, however. That leads me to believe that Dana Martin began communicating with Zachary Simon by means of the flip phone thereafter.

I have training and experience as to how drug distributors communicate with each other and with buyers. Often, dealers will utilize "burner" cell phones, which are not full191 screen smart phones, and are bought anonymously, with a certain number of talk minutes and texts allotted. This will make it harder to track the caller/texter. Both 555-1234, and 222-4444, the last number communicating with 555-1234, are burner phones, and both were bought on May 1, 2017 from OK-Tel. It is not known where the phones were purchased, as OK-Tel has stores throughout the tri-state area.

The interrogation of Defendant Dana Martin was short. Near the end, after being caught in inconsistences, s/he confessed, albeit reluctantly, to having dealt drugs to decedent Zachary Simon in late June of 2017. S/he refused to give details, however, feigning a lack of memory, but s/he did confess.

Upon arresting Dana Martin, I saw fresh track marks on his/her left arm, indicative of intravenous opiate use within the last couple of days, based upon my training and experience. I did not confront Dana about it or memorialize it in photographs, not wanting to alarm Defendant or raise his/her suspicions.

Detective Rory Bernard
Detective Rory Bernard

Dated: July 6, 2017

Extracts of testimony of Detective Rory Bernard, on October 22, 2017, at a motion to suppress evidence, in answer to prior defense counsel's questions:

Q: You searched the gas tank area after engaging the lever for it?
A: Yes. I lifted the mechanical lever before approaching the gas tank area, outside of the vehicle.
Q: Yet you never tried to open the fuel door *before* you lifted the lever, did you?
A: No, but I don't think that would have worked . . .
Q: But it is *possible* that the fuel door would not have opened by pressing on it?
A: Before I lifted the lever, and it clicked? Nearly anything is possible, counselor.
Q: Where is the pickup truck now?
A: I know it was forfeited, and sold at auction, with the proceeds going to pay for police equipment. I was not involved in that personally.
Q: You say that Dana Martin had track marks when you encountered him/her, soon before questioning at the station.
A: That's right.
Q: So s/he was high when you questioned him/her?
A: As a DRE ("Drug Recognition Expert"), I did not detect that Dana Martin was under the influence of a CDS at that particular time. Certainly not an opiate, as his/her pupil size was normal, not pinpoint or small, and s/he was not nodding off at any time in my presence.
Q: You claim that my client asked for his/her cell phone, as you brought it into the living room, where you had him/her seated, handcuffed?
A: That's right. S/he just came out with that request. We police weren't talking to him/her yet at that point.
Q: In fact, officer, there was another officer coming into the living room, from my client's room, at the same time, visibly holding his/her other phone, the smart phone, correct?
A: That's so.
Q: And yet, you never put that in your police report?
A: No. The other officer could have put it in her report.
Q: Yet you reviewed her report, as her supervisor, and you approved it, having seen that she did not include that information?
A: That's so.
Q: You never told my client, at any time, that Zach Simon was dead?
A: No. I did not want to alarm him/her in any way. So far as Dana knew, I was investigating possible drug charges against Dana and Zach.
Q: Nor did you tell my client's grandparent that Zach was dead, when you encountered and questioned him/her?
A: No, for the very same reason.
Q: You hold yourself out as an expert with regard to controlled dangerous substances and their distribution?
A: I do. I have testified as such in criminal courts, at hearings and before a jury, over 20 times.
Q: But there was an occasion when you were sued for improper use of Narcan, to a woman whom you thought was passed out from being under the influence of opiates?
A: That was an unfortunate incident, a single blemish in a career spanning over 24 years as a police officer.
Q: As it turns out, this unfortunate young lady was actually passed out from a pulmonary embolism?
A: Yes, but I had no reason to know that.
Q: But a jury in the civil case against you disagreed, did they not? And she was awarded $100,000.00 for damages, as the poor woman had a lengthy recovery due to your administering Narcan?
A: The County of Metropolitan paid that.
Q: The county paid that, for your liability for you being negligent in wrongly

determining that the woman had passed out from opiates?
A: Yes. Naloxone, largely known under the brand name Narcan, is usually harmless. It is a simple nasal spray. It is worth the risk to use when in doubt. I did try to resuscitate Zach Simon, as well, but it was too late. I have saved several people in the line of duty from likely death by administering Narcan. You can take my word for it!

Inventory Form, authored by Det. Bernard, of items found at Search Warrant execution at Frances Martin's house, of his/her home and vehicle, on July 5, 2017:

A 2005 pickup truck, registered to Frances Martin, was found parallel parked on the street directly in front of Frances Martin's single-family home. In between the fuel door and the gas cap of Frances Martin's car were found:

15 bags of heroin, stamped "OTP," in a Crown Royal drawstring purple bag.

In rear bedroom, determined to be Dana Martin's bedroom, was found:

A leather wallet, in a dresser drawer, with cash inside totaling $ 715.00, in a mix of small and large bills, some separated by $20 increments, along with Dana Martin's DMV (Department of Motor Vehicles) driver's license card.

In the drawer of the bedside nightstand table, a flip-type cell phone, toll number 555-1234, with carrier OK-Tel, unregistered.

On top of the nightstand table, plugged in to the wall via a charging cord, and charging, a Smart cell phone, toll number 123-4567, with carrier Huge Communications, registered to Frances Martin.

In the kitchen cabinets:

Digital scale with white powdery residue (powder was never tested at lab as to whether it contains CDS).

A half-empty bottle of Crown Royal, without the sack it would originally have been packaged in, as well as dozens of other liquor bottles. I examined the sack and the bottle, and I placed the bottle in the sack. The bottle fit snugly inside.

Inventory Form, authored by Det. Bernard, as to items found at crime scene, where victim was found:

In Zachary Simon's bedroom:

Empty heroin bag folds, 1 labeled "Killer Clowns," 4 labeled "OTP" (One True Pairing)

Narcotics Anonymous round token "NA Never Alone – 30 days clean," dated 6/20/17.

Cash, totaling $150.75, in twenties and in smaller bills and coins.

Large screen non-smart cell phone, toll number 555-5678, unregistered, with 88 minutes talk remaining with OK-Tel Communications

Det. Rory Bernard - Relevant Portions of Curriculum Vitae

Metropolitan University, Bachelor of Arts, Criminal Justice, 1992

Metropolitan County Police Academy	5 months 1993
Basic Crime Scene Investigation for Detectives	5 days 1994
Effective Death Investigation	3 days 1996
FBI Investigator's School	5 days 1999
Top Gun: Undercover Drug Investigation	10 days 2005
Arrest, Search and Seizure Update	1 day, annually, 2007-2017
Current Drug Trends	1 day 2007
Drug Recognition / Under the Influence Course	1 day 2010
Cellular Telephone Technology	3 days 2010
Drug Recognition Expert Recertification	1 day, annually, 2011-2017

Metropolitan County Police Department:

Patrol Officer 1993-2000

On loan to Drug Enforcement Administration, as undercover officer, 2000-2001

Detective 2001-present

Robin Simon

For me, Zach will now be forever frozen in time, as a 21-year-old young man. Zach was always a good student. He was quiet but always had a few close friends. Zach was a very loving son. He would shovel snow for my parents and me, take us to the doctors, take out the garbage, walk the dog. Zach was an only child, and my spouse had died when Zach was a toddler, so, yeah, we were close. He tried to help me with my business, but it is mostly outside work, and Zach has, had bad allergies to trees, to grass, to everything but air practically.

Zach changed about three years ago, when his grades slipped in his senior year of high school. At first, we thought it was "senioritis," since Zach was accepted and all set to go to Metropolitan University. Zach had excelled at basketball, and had helped Safe Harbor's varsity high school team become the Metropolitan County Champions in 2014. He'd managed to get a partial basketball scholarship to college.

I patted myself on the back for having worked so hard and saved every penny to move to Safe Harbor and its safe schools when Zach started high school, away from the drug19 ridden Metropolitan High School. If only Zach had not kept going back to Metropolitan and Metropolitan kids.

When Zach started to get bad grades, I also thought he was at friends' houses, playing video games. That was the only addiction Zach had ever had, and I thought that was an innocent one.

Then Zach became unreliable. He was supposed to pick up his grandmother from the doctor's office and never showed; she had to take an Uber home, which was difficult to manage with her walker. Whenever we would confront Zach, he'd always come up with some excuse. He had a lot of flat tires and other "emergencies."

After that, things started disappearing a round the house and my parents' home, next door. My dad had a coin collection. Then my mom's cuckoo clock got legs and was gone. Zach would just deny everything, always. A friend spotted him at a pawn shop once, and that led us to getting my mother's jewelry back, including rings inscribed with her name.

Zach was charged with stealing all those items. It broke our hearts when my mother pressed charges. But we all hoped it would help Zach. He did dry out in jail for a few days, and he did stay clean in inpatient rehab for some months thereafter. Then he left in the middle of treatment, for the first time. So Zach never got past freshman year, and he had to drop out.

Thereafter, I spent Zach's college fund on rehabs, once I hit the insurance caps. The Florida one was a scam. They let Zach "use," use drugs, that is, and pocketed the insurance money. Then came the ones in Arizona and Maine, without insurance. Taking Zach away from the friends and the places, that triggered him to use, always worked, at first. But eventually he'd fall off the wagon. Zach's N.A. (Narcotics Anonymous) sponsor, Colin French, told me right after Zach died, how much Zach loved me, and how he tried to stay clean for me, but he couldn't get that monkey of addiction off of his back.

During the entire several-year ordeal, whenever my parents and I would confront Zach about his addiction, he'd throw back in my face my problems with alcohol. It's true. I am just over 90 days clean now. I am sad to admit that it took my son's death to clean up my act and stop drinking again. I'm the kind of person who can never do something halfway.

This trait has led me to success in business as a landscaper and owner of a nursery, Simon's Nursery and Tree Repair. Yet, it has also led me to go off on benders, for days at a time, leaving my responsibilities, to go bar-hopping. My parents would have to fill the breach, to take care of Zach during those absences. It breaks my heart to think that my addictive behavior rubbed off somehow on Zach.

So I wasn't always the best parent for Zach. And maybe that led me to be too soft with him, after I would clean up. The bottle was a way for me to escape, and Zach must have picked that up from me. Zach picked up influences like a sponge. He really was a boy who, if his friends jumped off a cliff, would jump with them like a lemming.

He also saw me in action when I'd be drinking. I would get angry and yell, and blame everybody else for things that maybe were my own fault.

The most galling thing, however, is that the person who ultimately took my boy's life was Frances Martin's grandchild, that Dana Martin. Many years ago, I had expressly forbidden Zach to hang out with that kid. I say that the apple never falls far from the tree.

You see, Frances and I were good friends many years ago. I was always bad at handling money, easy-come, easy-go, and Frances told me s/he had a "sure-fire investment opportunity" in a business. That was before I got it into my head that Frances is a first75 class liar. Now, investing has never been in my wheelhouse; I'm all about trees, shrubs, anything that flowers, really, but not stocks and bonds and all that. I fork over the money, about 5 G ($5,000.00), not a lot of money, I guess, but for me at that time, before the nursery business caught fire, it was a lot. Thereafter I would ask Frances for paperwork, but s/he always had some excuse. Finally, Frances started giving me typed "reports." These reports turned out to be pure fiction.

After a couple years, I confronted Frances. I had seen that s/he was going to AC (Atlantic City) every weekend. Then it was also during the week. Frances then asked for more money to "grow the venture." I demanded to see proof of the "venture" then and there. At that point, Frances broke down and told me that the money was "gone," but that s/he would make it back, for sure, with a little more money. Frances claimed to have a betting "system" that "couldn't lose."

I responded by telling Frances what an idiot s/he was, and threatened to sue him/her. That's when s/he threw back in my face how I'd "ruined" his/her wedding 15 years ago. Sure, I had been drunk at the wedding, but that marriage was cursed – s/he'd have been lucky if I had derailed it entirely. Sure, I fell in the aisle, passed out, and sure, it kind of blocked the passage of the bride and groom on their way to the altar. Sure, at the reception, I may have been a little off-color in my toast to the "happy couple." I don't have a clear recollection of it, but I have been forced to watch the video, documenting all of it, several times by Frances, since Frances can never just let anything go. Finally, I swiped Frances' only copy of the VHS tape of that stupid wedding and threw it in the trash.

Frances also always throws in my face the time I accidently dinged the back of his/her car when we were in the funeral procession for Frances' aunt about ten years ago. It turned into one of those accordion/domino-type accidents, since everybody was following me so close. I really wasn't *that* drunk, but I'm sure I would have blown a .10 blood alcohol content, above the legal limit to drive. It only takes a few drinks to be at that level. Nobody got hurt but Frances called the cops! I took off, driven away by a friend, so nothing came of it, but really Frances wanted to get me in trouble.

I had it out on the phone with Frances for doing that, when what I did was just an accident; calling 911, on the other hand, was on purpose. It ended with Frances telling me never to call him/her again.

I was fine with that. Fast forward a few years, I'm deep in my Alcoholics Anonymous phase. I get to "Step Nine: Make direct amends to any people we have harmed wherever possible, except when to do so would injure them or others." So I go to apologize to all those people. It was a long list but eventually I get to Frances' name. I swallow my pride and go to the thieving, good-for-nothing's house, hoofing it, as the State had taken my license for a full 10 years, for a third DUI (Driving Under the Influence of Alcohol). Frances lets me in, and the boy/girl, Dana, s/he's there. Here I'm making my amends, pouring my heart out, and who speaks up but Dana, that snotnosed kid. Dana, who must have been about 15 at the time, had been too young to remember all the things I had done to Frances. But Dana says, "my grandpa/ma is better off without you! You were always a mean drunk!" So I stuck up for myself, told the boy/girl how dear grandpa/ma had stiffed me for five grand, then Frances, s/he gets physical with me. Then, true to form, Frances threatens to call the cops, says s/he'll tell police I *forced* my way into their house. Imagine that. I just left. I decided that, if anything, that old gambler/cheat should make amends with me for injuring my pocketbook. I won't hold my breath for that though!

I know Frances well enough to know that s/he is a capital-L "Liar!" S/he's dishonest, and that's his/her reputation all over the neighborhood. Everybody's always known, when Frances Martin needs to "borrow" some money, or claims s/he has some business arrangement for you, you should walk the other way.

Dana is certainly a chip off the old block. I had a contract with a strip mall to put in shrubs. We at Simon's Nursery are experts at shrubs. Your quartz rose verbena, your dwarf globe blue spruce, your nandina. We had beautiful nandinas around the strip mall lawn, with the bright red berries. About a year ago, comes the time to prune them back, my workers call me – the nandinas are cut to stumps! The pizza store owner is a buddy of mine. We look at her surveillance video, together with the cops, and I recognize the car – it's Frances Martin's old pickup truck! Dana Martin was ID'ed as one of those who stole the shrubs. It cost me several thousand dollars to replace them, too. I had to replace them or risk my reputation for my shrubbery. I demanded to the prosecutor that Martin-the-Younger and his/her partner in crime pay back every penny of that as restitution. It was ordered by the court, but neither one has paid a dime yet! Dana had tried to get close to Zach since they started going to the same school in middle school, though Zach, being smarter, was a grade ahead of Dana. I had always discouraged it, since that four-flushing Frances Martin had already cheated me by then.

I went to Zach at the time and asked: "I know that I told you never to see Frances' grandkid, but be straight with me – are you friends with him/her?" Zach admitted he was, but swore to me on his mother's/father's grave that he'd never have anything to do with him/her again. Then, just a week before Zach was taken away from me, I caught Zach with Dana in the driveway, in that old jalopy pickup. Zach explained that Dana was in Narcotics Anonymous, and Dana had given him a ride to a meeting. They both looked high as a kite! I can tell when people are using heroin. Pinpoint (constricted) pupils, slurred speech, the both of them!

Zach's last treatment was a one-week detox in Newark in April. He was to follow up at another program, but left against medical advice on Arbor Day, April 28, which otherwise would be my favorite day of the year. When I saw Zach in the driveway coming back from the program, it was in the Martin ratty-old pickup truck, with Dana at the wheel!

While Zach had attempted suicide about four years ago, in the weeks leading up to the OD death, Zach was in a good mood. He had gotten off drugs, and had a girlfriend, although I didn't approve of her, since she was another ex-addict.

Zach always wanted privacy in his room. He'd put on headphones, and listen to music in the dark. He'd hardly make a sound. So it wasn't strange when he had not answered my call for dinner that night. That was just Zach being Zach.

Zach used to escape out the bedroom window, back when he was much younger, and we'd ground him. A few months ago, the problem was someone delivering heroin to Zach in his room, by coming up to his window, Zach's room being on the first floor. When I confronted Zach about it, he joked that it was drive-through service. I suspected Zach's forbidden buddy, Dana Martin.

Just a few weeks before I found Zach's unconscious body in his bedroom, I saw Dana leaving there. At some ungodly late hour, I heard talking coming from Zach's bedroom, which I couldn't quite make out the words. It was Dana's voice, though, clear as day. I knock on the door – my mistake; I should have opened it right away – knocked a second time. Finally, I opened it, and I could spy through Zach's open window a figure running off into the night. I could have sworn it was that Dana! I'm about 80 percent sure. I'd recognize the back of that kid's head anywhere, even with a stupid baseball cap on it! And my eyesight is perfect, even in the dark.

I searched Zach, and the room, and I came up with two heroin packets right in his closet, in a jacket pocket. Zach surely put the drugs there while I was foolishly knocking and knocking on the door. Zach wouldn't tell me who it was. That shows you right there it was Dana. 'Cause Dana was the kid that Zach had sworn to me never to see again. So there you have it!

One of my workers told me an expression, from Spanish. In English it's, "Tell me with whom you walk, and I will tell you who you are." I told Zach that expression after that night, about how he was not the bird of a feather to flock together with people like those deadbeat Martins.

Plants are the things I really understand, really am good with. With people, that's a different story. You put a tree into the ground, you water it, you fertilize it, and with a little luck, it flourishes. People aren't so easy to cultivate. Try growing a kid, and it's hit or miss. Zach had a great heart, and could have had a great future. But he never thrived.

Zach isn't the only one of his generation, sadly. How many young people work when they're young? I mean really work, getting their hands dirty, and developing calluses on their hands? Without the pride of having a job, their idle hands are the devil's workshop.

Yeah, I was still drinking when Zach was taken away from me. I would drink every day. My memory is sometimes hazy about events. People who drink too much, too long, can get dementia, including Wernicke's disease. I read about that on the internet, and asked my doctor about it last week, but she said it is my imagination. I can sense that alcohol's taken its toll on my health, though. I can't even remember what I've had for breakfast sometimes. But I know one thing for certain: that Frances Martin's kid killed my beloved son!

I loved Zach, and kept a roof over his head. I never laid a hand on him. Whatever trials and tribulations the boy had from my drinking, I didn't kill him. That was Dana Martin's

doing. Now I'm stone-cold sober again. Living addicted to anything is no life at all. Zach would have wanted me to live clean.

Robin Simon
Robin Simon

Dated: October 25, 2017

Carson Silva

Portion of Carson Silva Interview, under oath, as Questioned by Detective Bernard, on June 29, 2017:

Q: How did you know Zachary Simon?
A: I came to town a year ago. I hit it off with Zach right away. He's a good friend. Was a good friend, I mean.
Q: Did he like to get high?
A: We all did. We would go to Metropolitan, chill there for the whole day.
Q: When was the last time you heard from him?
A: That Sunday, June 25th, that I've been talking to you about. I mean, normally he would have called me up Monday, but he never called, never texted. I just figured he didn't need to go raise any money, you know. He never hit me up for cash, he wasn't like that. What we would do is figure out a way to get money for the next high. Odd jobs, like construction. Nothing too complicated, carpentry, tear-downs, where you tear down sheetrock, stuff like that. And there's been landscaping work sometimes lately, weather's getting warm. Otherwise, we'd have to do something less work-like to get it. But no word from Zach at all. Then, two days ago, someone on the street told me about Zach's passing away, and I called your cell right away.
Q: Ugh, Carson, we know each other. That is, you have called me in the past, when you had some information about drug activities.
A: Yeah, just that time, after I got jammed up, charged, and the cops flipped me right away, and they told me you would be my contact, to help you guys out. That's why they gave me your cell (phone number). But you know all that.
Q: You assisted us that one time, correct. You have to say it, for the recorded statement we're doing.
A: Right. You just had me make a couple of marijuana buys out of a guy's house. You'd hand me the cash, and I'd go inside. I'd come out with the product, and hand it off to you. Then you hit the house, with a search warrant, I guess. You hit the house, and came up with pay dirt, even a "grow," a hydroponic marijuana plant growing operation.
Q: True, so after that, you got straight probation for the case you had. It was possession with the intent to distribute heroin within 500 feet of a public park, a second degree offense.
A: Yes.
Q: Oh, and for that old bird you had stolen. What was its name?
A: Theodore.
Q: (Laughing) Theodore, right. I have recommended to the prosecutors that they package that theft together with your violation of probation, since you stole the bird while on probation for the drug case, to just extend your probation, and they just did that, had you plead guilty for that result. When is your sentence?
A: Next month. Actually, the judge said that she may reject the plea as being too easy on me. I want her to see that I am giving back to society. Still, this time I know we were square, but I just had to get off my chest what I knew. Of course, if I get in trouble in the future . . .
Q: So why'd you come forward?
A: I feel guilty. I was his NA sponsor and instead of being there for him, we fell off the wagon together. That Friday, two days before he died, we both got our bottles of methadone to tide us over until Monday – the clinic can't afford to be open for the weekend. Zach, he got some Hapavan anti-anxiety pills from his mother/father, Robin. If you time it right, popping the pills a few minutes before drinking the methadone, the Hapavan and the meth get you high, kind of the way heroin does.
Q: So Zach was using when you last saw him?
A: No, not at all. Zach was over thirty days clean of heroin. I know, as his sponsor at

N.A. We'd go to meetings together.
Q: So you did not sell Zach heroin that weekend?
A: No, not in like forever. It was a long time since I'd sold heroin. Had I been selling it, I've no doubt I'd be burning through my product myself. Actually, I was in the hospital that whole morning, from a dog bite.
Q: You weren't trying to steal the dog, were you?
A: No, my pet-stealing days are over, Officer.
Q: Did you ever refer to Zachary as Z-Man?
A: No, never. I heard a couple of people call him that, though.
Q: Who?
A: John, Mary, Dana.
Q: Dana Martin?
A: Yeah, that's the one. Dana Martin.
Q: Describe this Dana.
A: [Description matches the student playing Dana Martin, except for the following:] . . And s/he has an ugly scar on the right forearm. I heard s/he got it in a knife fight, in a beef over whose turf Avenue H was.
Q: Does Dana have any tattoos?
A: Not that I know of.
Q: So when Zach was using, where would he buy the heroin?
A: Same place as me.
Q: Where have you bought heroin?
A: Metropolitan used to have the projects buildings, but they tore them all down, so now the Section 8 housing's all spread out, and the dealers are more spread out, too. Each block has its own organization. Dana's and mine's was Avenue H. You can't make something like that name up.
Q: Have you ever seen Dana Martin deal drugs?
A: Yes. I live in that neighborhood, remember. I have seen him/her deal right outside of his/her house, and from out of his/her car. S/he wasn't shy about it.
Q: Have you seen Dana stash drugs, hide them?
A: Yes, under the insole of his/her sneakers.
Q: Anywhere else?
A: (After a pause) Oh, in his/her gas cap. S/he says s/he heard that the gasoline smell throws off the drug dogs, in case a K9 does a sniff of the car.
Q: You're sure of this?
A: I don't know, but s/he sure believed it!
Q: No, I mean you're sure that Dana would use the gas cap area as a stash spot?
A: Positive.
Q: Did you ever see him/her deal to Zachary Simon?
A: Yes.
Q: When was the last time?
A: Just a month or so ago.
Q: Where?
A: Outside by Dana's pickup truck, at the Big Guys' Hamburgers parking lot, in Metropolitan.
Q: Do you owe Dana any money?
A: No, never, not a penny.
Q: Are you yourself involved in heroin?
A: I admit that I buy and sell heroin. I'll buy anywhere from two to 20 bags, based upon how much money I have, or can be fronted, and how much the dealer has, and if it's a good price. I'll also buy an 8-ball, a single bag containing more heroin powder for multiple doses, if it's available, which it occasionally is. If I buy enough, then I can sell some and keep some.
Q: You called me from 345-1111. Is that my way to reach you?

A: Yeah. Same cell number as always, 345-1111. You need me for anything else, you just let me know.

Second Interview of Carson Silva, by Detective Bernard, on September 21, 2017:
Q: Was Dana on the wagon recently?
A: No, Dana was still using when you scooped him/her up. S/he's a dope fiend, pure and simple – uses day and night. And I know because I saw him/her every day till you arrested him/her.
Q: Did you know a guy named Jake Tomlinson?
A: You mean Big Jake? He is a loudmouth punk.
Q: Why is he called "Big" Jake?
A: Because he is tall and chubby, that's why. No other reason.
Q: Is he involved in running drug deals in Dana's neighborhood?
A: Big Jake might *claim* that he is doing that but Big Jake is a nobody. He has lived as long as he has because his brothers are gang members. If you do anything to Jake, he'll go crying to them.
Q: You told me that you were at the hospital ER on the morning of Sunday, June 25.
A; Yeah, it turns out I was off about that. But that was one mean dog bite, so I was nursing my wound still the next morning. So I couldn't have been with Zach on the day he died. I was either in the ER or in my house that whole weekend.

Yeah, I have had my problems with heroin. I guess fentanyl and heroin. We'd never know what we were getting – one or the other. Didn't care, either. They both give you the same kind of high.

I did some crazy things for money to get high in the few years I was addicted, until I stopped this summer. But they were minor. Take Theodore. My Aunt Gracie had this old African gray parrot. It would talk up a storm. Aunt Gracie had just had a 30th birthday party for the dumb bird, with a cake and everything. Birds don't eat cake, I told her, but she said she got it for the guests. I took the bird a few months later, when she was paying me to bird-sit. I said Theodore had flown away, and she responded that Theodore had his wings clipped, and couldn't fly. I then said I had just assumed that the bird had flown. I came into the house to see his cage open. She bought my explanation. Truth is, the bird only got me $200. I'm sure my aunt was tired of that old bird anyway. I only got caught because they found Theodore – turns out he had a tiny GPS bracelet on his leg. I tell you, when Big Brother's not watching you, he's watching some dumb bird!

Then Aunt Gracie's cancer got worse, and she was in hospice, when the treatment stopped working. At the bedside table were my aunt's fentanyl lollipops, which are used to lessen the pain. They were IV'ing opioids into her bloodstream, so I'm sure that the lollipops were overkill. I would take one every time I came to see her. I'm sure she never missed them.

Zach and I were in treatment together in Boca Grande, Florida, last year. Nothing planned. Just by accident we were in treatment together. He was living in one guy's "sober living" house, and I was living in another. Every day we'd be bussed to the same clinic for therapy, all that. I had dirty urines but they never kicked me out. Of course, everyone knows many of the drug programs in Boca Grande are scams. The program we were in, New Life, was run by a doctor who was caught running a "pill mill," being too generous in prescribing painkillers. She's been awaiting federal indictment for several 31 years. I left "against clinical advice" a couple months into it. I heard that Zach finished, then went to a halfway house, but came back to New Jersey high as a kite.

Zach would often use drugs with Harley Novack. Harley won't speak to me anymore. Sure, I was setting him/her up when I said that I had no ID, at the pawn shop, but s/he should have known better. I was selling commemorative spoons of the 50 states. Who in their right mind would have thought that I owned that stuff? I figured Harley knew it was hot, and the portion of the money I gave him/her, I can't remember just how much, was for taking the risk of getting caught.

I never had to pay a price for using. Not the ultimate price that Zach paid, and not any serious jail time. I can say now that I was a snitch to the police. The few times I got popped, I would be offered by the arresting police to give up my dealer. I would give someone up, all right. Not my regular dealer, though. I don't have a death wish, and I don't want to lose my steady source of heroin (or fentanyl, or whatever). I would give up a user who would deal on the side. I would go to the dude's house and buy a few times, then police would come in with a search warrant and raid them. I was arrested with heroin three times. Three times I cooperated this way. I'm not bragging or anything. But I'm a survivor.

Carson Silva
Carson Silva

Dated: September 28, 2017

Dana Martin, as questioned by Detective Rory Bernard, on July 5, 2017 at 9:30 a.m.:

Q: You have the right to remain silent and refuse to answer questions. Do you understand?

A: Yes.

Q: Anything you do say may be used against you in a court of law. Do you understand?

A: Yeah.

Q: You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future. Do you understand?

A: Sure thing.

Q: If you cannot afford an attorney, one will be appointed for you before any questioning if you wish. Do you understand?

A: I do.

Q: If you decide to answer questions now without an attorney present, you will still have the right to stop answering at any time until you talk to an attorney. Do you understand?

A: When would that be – this consultation with an attorney?

Q: I don't know. Do you understand?

A: Yeah, I'll talk to you.

Q: I have to finish reading the sheet. Knowing and understanding your rights as I have explained them to you, are you willing to answer my questions without an attorney present?

A: Yeah, but I'm really tired. I only slept a couple hours before you woke me up. I've been in the police cell for hours, wide awake.

Q: We found this (showing the 15 packets found in the Crown Royal bag, as well as the Crown Royal bag itself) stuffed between the fuel door and the gas cap of your pickup truck.

A: Of my grandpa/ma's pickup truck, you mean. So what?

Q: You're not going to fess up to owning this? You want your grandfather/mother to get charged with it?

A: You won't charge him/her with that. I know that much.

Q: So explain how that heroin got inside there in the truck?

A: I don't know.

Q: How would someone else have done it?

A: I have no idea. You have any other questions?

Q: And we found this cell phone in your room.

A: You found my real phone, my smart phone in my room, and you found this phone.

Q: Look, we know that you have been using this flip cell phone.

A: Is that cell phone in my name? Of course not. I just borrowed it from a friend.

Q: When did you borrow it?

A: I don't remember.

Q: Why do you fold bills into $20 increments?

A: What do you mean? I don't do that. If the bills were that way, that means I was paid that way. I just grabbed the bills and left.

Q: What's this sheet we found in your bedroom supposed to show? (Detective shows Dana Martin Exhibit 2).

A: (After looking a long time) This sheet? I don't know.

Q: This is your handwriting?

A: Yes.

Q: So what is this, if not an account for your heroin sales?

A: (After another pause) I gamble. I gamble on Metropolitan Sting Ray games. Always loved our football team. (Pointing at his/her Sting Ray shirt s/he's wearing) I even sleep in a Sting Ray jersey!

Q: If you're going to lie to me . . .

A: Look, what do you want out of me? You've been talking at me and questioning me for over an hour. I appreciate the hamburger and fries and soda and all, but I'm getting tired. You found a few bags of dope. That's it. So why the third degree?

Q: If you cooperate, then this will go faster. Do you know Big Jake Tomlinson?

A: Yes. But I'm not that kind of cooperator. I don't want to end up dead. I have nothing to say about Big Jake.

Q: This cell phone has calls on it from . . .

A: I was given the phone sometime after I got out of jail, but I don't want to go down that road. Look, my public benefits had been cut off, like the food stamps, something stupid because they were told I was in jail. I got to where I needed money bad. So, after many months, I went back to selling to support my habit. I don't want to say where I got the

phone from, though.

Q: Do you know Carson Silva, known as “C?”

A: Yeah, I know C. Now, I’ll work with you on C. So long as s/he’ll still sell to me.

Q: What’s your relationship with C?

A: C and me, we’re like hot and cold. Right now, stone cold. Always competitive with each other. C, s/he’s kind of cutthroat. But C’s also money-hungry since s/he owes me money on a game s/he lost. So I think with a cover story, like I need some crack, so I know you would have good stuff. Heroin’s everywhere around here, so asking him/her for that would raise a red flag right away.

Q: What about Z-Man?

A: Zeke?

Q: No, how about Zach?

A: You know I know Zach. But I’m not going to turn on him. Find someone else.

Q: But you sold to Zach just a few days ago.

A: No, I did not. You want to get Zach in trouble, when he’s just a user. No.

Q: He already owed you $100.00 from heroin from that last sale?

A: Look, if you want me to work for you, I will. Do you want me to say something about C, do something to C, I will.

Q: Just admit that you sold those drugs to Zach.

A: If that’s what it takes to get out of here. If that’s what it takes to go to County [Jail], and then get released at the Prelim [Preliminary Hearing, which occurs within 48 hours of arrest], then fine. I sold those drugs to Zach. There. Satisfied?

Q: OK. Tell me where and when.

A: Why? You claim you have it on video, which I am sure you do not, because it never happened, but according to you, you told me in the patrol car on the way over here that it’s on video, and video surveillance cameras have time stamps.

Q: Yes, yes. (pause) We always got along, Dana. If you want me to help you, you got to be honest, here and now.

A: I didn’t sell drugs to Zach on June 25, but you wanted me to say it even though it means nothing. I said it to make you happy. Now let’s go to County.

Q: It was five bags, right? (Silence). It was on June 25th, right? (Silence)

A: You say you got me because those bags of dope were in my gran’s pickup truck. So why do you need me to say anything about selling to Zach? Zach is my friend. I have nothing to say about him. Forget what I said about selling to him. Zach’s not guilty of

anything. I'm not guilty of anything either.

(Whereupon, the interview is concluded).

Dana Martin's Handwritten Statement
Written on July 30, 2017, Typed Below:

I just wasn't taking Detective Bernard seriously when I talked at the police station. I knew they had nothing on me. Nothing to prove the heroin they found was mine. If I had known that my friend Zach was dead, then I would never have been so fast and loose answering all of Bernard's questions. Especially about selling Zach his last bags of heroin ever.

I know that I have taken fentanyl before because I shot up baggies [wax folds] labeled "Special K" once with a friend, who got the stuff, and my friend died from it. It was said to be a "bad batch," but it gave me a great high. I went out and bought it again on purpose, but I tried to be careful how much I used at a time. It turned out that the "Special K" was a mix of heroin and fentanyl. I had no idea.

I got hooked on heroin, opiates, after a work accident. Gran feels bad about it, 'cause s/he was watching nearby, but really s/he couldn't have stopped it. Doctors kept prescribing me pain pills until I completed rehab and was better. When I stopped, I was jonesing for them so bad, so I would get high any way I could.

I went to jail on June 12th for something stupid, and within 48 hours, I was in front of a judge, at a Prelim, a Preliminary Hearing, on June 14. The prosecutor, probably knowing the case was junk, said they weren't filing for detention, and they let me go. That case was dismissed entirely a week later. So, on July 4, I figured the same thing would happen.

If you look at those cell phone records Bernard goes on and on about, you see that the *real* owner of that cell phone is calling and texting away! Couldn't have been me. There are no cell phones in jails anymore. That's a big crime for everybody, especially the C.O.s (correction officers). I got that cell phone from Big Jake on Thursday, June 29, shortly before police came in and searched the house. You see the texts sent to that flip phone in all caps, and the calls I made after them? Those were my phone calls to Big Jake. I realize that Big Jake's line, 222-4444, is an anonymous burner phone, like the one he gave me. That was the whole idea behind it – to have untraceable phones!

If you look, there are spelling errors in those calls. I was just given that cell phone from Big Jake, and the only time there were texts is when he wanted me to call him. Jake wasn't stupid. Texts leave a trail, he knew. That phone was to be used only to call him, and him alone. No one else was supposed to know that number, and I told no one the number. Obviously, the guy who had the phone before me didn't follow the rules. The person who was guilty used that phone before Jake gave it to me.

Had Detective Bernard asked me where I was on June 25th, I would have told him that I was at my friend Harley's house, hanging out.

Bernard makes a big deal that, on my smart phone, I hadn't called Zach or been called by him for some days. That's because I would see Zach on the street nearly every day, hanging around his old haunts in my neighborhood, in Downtown Metropolitan.

Finally, this friend was still sleeping at 9:45 a.m. I have always been an early riser. I get up by 9:00 a.m. each and every day, just like my gran, whether I have something to do or

not! If Detective Bernard had asked me about where I was on June 25th, I would have told him/her that I was at Harley's house, just hanging out.

Jake got shot a couple blocks from my house only hours before I got arrested. That was his territory, true. But I only started dealing a day before the phone was taken by police. And I was out of product when the police searched the house and the vehicle. Big Jake knew I was a user with a bad habit, and he didn't trust me to hold on to too much heroin at a time. My routine, every morning, was to get up early and get my day's heroin from Big Jake or one of his associates.

The fuel door on the pickup truck looks OK, but the latch is broken. Anybody could open it. Originally, you needed to pull the lever to release it and open it, but a few months ago it broke. You press one side of the little door and the other side flips open. People sell right outside my house, and that pickup was parked against the curb, right outside. Any dealer could have stashed it there.

The drugs were in a Crown Royal bag. In spite of my last name, the namesake of Remy Martin cognac whisky, I do not like whisky by any name! I'm not much of a drinker. Gran, though, likes to make mixed drinks, so the liquor cabinet looks like a boozehound's chemistry set. Crown Royal was one of the bottles. I wouldn't know one way or the other. When I was a kid, gran would have me try to mix drinks for him/her and for company, but I would always make a mess of it, literally spilling stuff. Ever since, I've kind of stayed away from the liquor cabinet. You choose your poison, I guess.

That sheet of paper that Detective Bernard writes is some "buy" sheet, is about money but I did not sell to Zach on June 25th. No way. I did not have any part in killing my friend! And "Z-Man" is Zeke Fairman, some old guy who loves to bet against my beloved Sting Rays.

Gran taught me to play poker and craps at a young age. Until recently, we were contract bridge (card game) partners, too. We would play at local nursing homes, as partners, up against another pair of players. But we got caught cheating. We would use code words and hand gestures to telegraph to each other how much to bid (how many hands we agreed we had to win), and which of the four suits to bid on. Some old lady, who was still pretty sharp, like gran is, called us out, and so we're blacklisted now from all the old folks homes. That happened after Zach died.

I saw a photocopy of that note I wrote to Zach [Exhibit 3]. What I meant in that note was, if Zach ever had the urge to use, he could call me, just like he could call his N.A. (Narcotics Anonymous) sponsor, Colin French, or call me, and I would talk him off the ledge. I was always there for Zach, and I would have been there for him this last time, but Zach never reached out to me. That's what's so crazy about all this. My life is going to get ruined, and for what? Nothing's bringing Zach back. I'm facing 20 years in prison, in part because I wrote that note. I never dealt to Zach, not ever.

Mr./Mrs. Simon, Robin Simon, has it out for me, and always has. As a kid, Zach would come by, we'd be on the lawn or something, and then Robin Simon would come by, and start screaming, dead drunk, for Zach to get out of our yard. S/he called me names, saying, "That kid is no good, just like his/her grandfather/mother!"

Robin Simon always hated me by association, but after the shrubbery incident, it got personal. I have always been something of an entrepreneur. When other kids were glued to their videogame consoles, I was always out hustling. I'm a natural-born sales person, and so it started with lawns. In fact, I undercut old Simon on a couple of jobs, which I'm

sure got his/her goat. By last year, I was going gangbusters with wreaths. As the winter holidays were approaching, I was cashing in, k-ching, k-ching! I'd take the pickup into the ritzy neighborhood, in Downtown Hayfield, and sell the wreaths and vase-ready sprays right off the back gate. If the cops came around, I threw a blanket over it all and acted casual.

I noticed that my bestsellers were the nandinas, you know, the thin branches with the bunches of red berries? – very festive. I used my lawn clients as my supply, but I had a need for more nandinas. So I scouted out the neighborhood, and I would proone the nandina bushes that hadn't already been prooned. Nothing too crazy, but you can really cut those babies back. I was doing the owners a favor really. Prooning leads the shrubs to have more shoots, and they fill in more when they grow back. The rules I live by are: one, proone back a third of the plant, and two, proone in any month with an "r" in it. It was late September, and October also has an "r" in it, so everything was good when I serviced the shrubs around that strip mall. I even had permission from the regular lawn guy out there, though his English wasn't so good. He nodded his head that I could do it when I asked.

Robin Simon lied and claimed that the plants had to be replaced. I bet s/he just took those prooned trees and replanted them somewhere else. Anyway, I didn't have anything in writing saying I could take the clippings, so I pled guilty to theft of over $500.00 value of property, in this case, of shrubbery, a third degree crime.

In fact, the money the cops found, that was from jobs with gran. I was going to use most of it to pay the restitution to Robin Simon for his/her stupid plants. S/he can thank the police for not getting it.

I did spend time with Zach over the years, on the sly. We would both do whatever it took to keep from his dad/mom from finding out. On my eighteenth birthday, when Zach was just over 18, we went to get tattoos. It was Zach's idea, and Zach had some cool design all picked out. Me, I must have spent an hour pouring over the books full of photos, and looking up tattoos on the internet. Finally, Zach's like, "What do you say?," and my response was, "I don't know. Just tell me what to say." "That's it," Zach said, "your tattoo will be 'just tell me what to say.'" Now, that's a pretty dumb tattoo to have, but Zach insisted that it was brilliant. So I said, why not? I had pretty much left it up to him. Everybody says that tattoo suits me. Growing up, I wouldn't get in trouble with my gran for admitting I did something as much as I would for denying it. It got to the point where I'd admit to my grandpa/ma to doing stuff I hadn't even done, like the time the dog whacked a vase with her tail and broke it on the ground. And I guess that's why I told Detective Bernard, for a single moment, that I sold Zach that dope. Of course, I didn't do it. But I was very tired, almost delirious from lack of sleep, so after some questions, I was to the point where it was, "Just tell me what to say!"

If you ask me, C did it – that Carson. S/he only ever cared about him/herself. I take that back – s/he was pretty close to his/her aunt. You know Carson would see that woman in hospice every day until she died. That's dedication. Otherwise, C was a cold fish. And always getting into trouble, but somehow never having to pay a price for doing bad things. I wrote C off after we came back from rehab, pretty much. C never even paid me for losing that bet, when Metropolitan's football team got clobbered.

Dana Martin
Dana Martin

Dated: July 30, 2017

Frances Martin, answering the questions of Detective Rory Bernard, on July 6, 2017:

Q: All I can tell you is that Dana's in trouble with drugs. I was wondering if I could ask you a few questions.

A: Trouble with drugs. Again.

Q: Do you know a Carson Silva? (Frances Martin nods no). Goes by the name C? (Detective Bernard describes Carson Silva)

A: Oh, C, yes. Was one of Dana's friends, some time ago, but they had a falling out.

Q: Why?

A: Over money, as far as I know. Back when I used to answer my landline phone, before the bot ad callers took over, C would call, saying, "Tell Dana to give me what's mine." S/he also left threatening voicemail messages about the same thing. I asked Dana about it but s/he said it was nothing, and that C was "dead" to him/her, and that, if anything, C owed Dana money.

Q: Owed money for what?

A: I didn't ask. Dana gambles, like me, but s/he doesn't brag about winning the way I do.

Q: When Dana and C were friends, they were close?

A: I suppose. It was C that helped my home décor disappear.

Q: What do you mean?

A: C was the one who showed Dana how to sell things to get money for pills. Pills, then later, heroin. Dana had a huge fish tank since s/he was little. Over the years, the set-up got more elaborate. Dana would buy it all on Craigslist. S/he'd get the fish used, as well. Anyway, by the end, it was over 100 gallons, and looked like something in the Camden Aquarium. But once I came back from vacation, and the fish were all dead. I asked Dana about it, and s/he mumbled something about "ick" disease. Then, day by day, the whole thing was dismantled, until even the stand was gone. S/he had gone with C to pawn the stuff and buy oxy pills. Dana admitted as much to me. Dana never could keep a secret from me. S/he'd always spill the beans, sooner or later.

Q: We found a large amount of cash in Dana's room.

A: Yes, that's no surprise. S/he mostly works, when s/he does work, for cash.

Q: So s/he keeps all his money under his/her mattress?

A: Sure. S/he doesn't have a bank account. I tried to get him/her to open one, but s/he said that they don't pay interest anyway, so why bother. It's not like when we were growing up. I used to rack up interest in a savings account. That money found in Dana's room was from me, for doing work off the books, and as walking-around money.

Q: “Walking-around money?” Why did you give your drug-addicted grandchild “walking-around money?”

A: I had just won big at the [horse-racing] track that Friday on a longshot. If I had kept the money, then it would have burned a hole in my pocket. I would have spent it all gambling. It was for the utilities.

Q: I suppose you have those utility bills? The mortgage bill, whatever.

A: I have one of those reverse mortgages they advertise on TV, so when I die, poor Dana will be on the street. I’m 80 years young come next week, but I am hale and healthy, with no mortgage to pay, and those reverse mortgage people have a long time to wait to get my hovel. But the electric and phone and cable bills, they were all due at the end of the month, June. I’ll show them to you.

Q: Is Dana a football fan? Pro ball, I mean. A Sting Ray fan, maybe?

A: Well, s/he never talks football around me. But I’m a Cowboys fan. Most people learn not to talk about football around me. Unless they want to have a little wager, of course.

Q: We know that you let Dana use your car.

A: It was originally registered to Dana, but now it’s in my name. I got the insurance in my name because s/he racked up so many insurance points that we couldn’t afford it any more. I have him/her listed as an occasional driver on my policy for the pickup now. Now it’s the only vehicle we have. I lost the old Caddy at a bridge (card) game.

Q: So it is primarily Dana’s car?

A: Well, s/he drives it more than me. I’ve had eye problems, bad night vision, so s/he drives me at night. Also, all the times I have to go to the eye doctor, they measure the pressure in my eyes, and I see blurry for hours afterwards. S/he has to drive me on those occasions. I’ve got no one else to take me around. I’ve heard of this Uber thing, but I don’t like the idea of letting complete strangers cart me around. Plus, I don’t have a so called smart phone to hail one. I still get by on this old-style flip phone (shows phone to Detective Bernard). It’s hip to flip, I always say!

Q: What’s Dana’s cell phone number? Or numbers?

A: I only know Dana to have one phone, of the smart variety. The number’s 555-5678. Only number s/he’s had, that I know, and I should know. I’ve only ever seen him/her with that one phone, too, for the last year or so.

Q: What about a flip phone?

A: That died, a long time ago. Battery went on it.

Q: Do you know a Jake Tomlinson?

A: No, should I?

Q: Maybe as “Big” Jake.

A: Big Jake, sure. Physically big, he is. Was. He just died, I guess you know that.

Q: Yes. Know him?

A: Dana and I knew him in passing.

Q: Did he ever come to your house?

A: No, but then again, for the last couple years, I haven't allowed Dana to bring his/her fair-weather "friends" over to my house. I'd put my foot down. So far as I know, Big Jake and Dana were just acquaintances. I would see Big Jake walking and driving around the neighborhood here often, including past our house, until Jake got gunned down. After Big Jake died, I asked Dana if he'd bought drugs from him before, and Dana, always honest with me when I would directly confront him/her, said that Big Jake had been his/her regular dealer.

Q: When I asked you for the key to the house, you retrieved it from under the welcome mat outside the front door. Do you always leave the key there?

A: No, not often. The Friday before you came and you searched the house, I had left my house key at the doctor's office, so Dana had to leave his/her key and key ring under the mat there so we could both get in the house. A copy of the pickup's key was on there, too. Dana had the only other house key until we went back to the doctor to get my house key back.

Q: You had called the police on Dana once.

A: Yes, I did call the police because my LPs were stolen. They were valuable ones, worth a lot of money.

Q: Your what?

A: My long-playing records, my vinyl records were stolen, or so I thought. It turns out that Dana had borrowed them.

Q: Records? Is that still a thing?

A: Oh, yes. I predicted LPs would make a comeback, with their analog sound, so much warmer than today's computerized cold digital sound.

Q: But you dropped the charges.

A: Because it was all a misunderstanding. Dana came back with the records. S/he had just been borrowing them and forgot to ask me.

Q: You believed your grandchild that s/he was just out playing old records?

A: Sure, Dana loves everything I do. Like watching those old gangster pictures (i.e., movies). We may be generations apart but we are very close, and we are very similar.

Frances Martin

It is very unlikely someone came into my house before the raid without me knowing about it. I was at home all that day, as it was my one day off, and I usually do nothing on those days so I can just unwind.

Sadly, drug abuse runs in our family. It took Dana's dad, my dear son, away many years ago. His mother lost parental rights altogether. I was what was called Dana's kinship legal guardian, which saw that Dana was not shipped off to foster care, and the State's plan was to have reunification with his mom. But she wouldn't accept the State's services, especially drug treatment, and, when Dana was just five years old, she just gave up, stopped coming to Family Court, knowing she'd lose the right to see him until the age of 18. Last I heard, she was in Arizona somewhere. I Google her name from time to time, to see if she's died, or if anything else has happened to her. I've found nothing so far. Dana went looking for her once but no dice.

I divorced many years ago, and my ex-spouse, Dana's only other living grandparent, has lived overseas for all that time. So it's just me and Dana. I've always done anything I could to help him/her.

What can I tell you about Robin Simon? That s/he's a drunk, and always has been, and always will be. The leopard can't change its stripes – err spots. And the tiger, he can't lose his stripes. My second marriage didn't last long, that's true, but it's a miracle that we even got through the marriage ceremony with the spectacle that Robin made in front of my spouse's family and my friends. (I'd say my family but Dana's pretty much all I have in that department, and, at the time, my aunt). Robin was *literally* falling-down drunk, falling in my path as I tried to get to the altar. I had to step over him/her! Some of my friends carried him/her out of there, but at the reception Robin was back with a vengeance. Uninvited, Robin gives a toast (Robin *loves* to give toasts), saying that my spouse had "married up." That I would be good for her/him, and shape him/her up! A few days later, after Robin sobered up a bit, I asked him/her about it. Since s/he didn't remember a thing, which is common when Robin's been hitting the bottle, I showed him/her the video of both incidents. Robin was still unapologetic, saying that s/he had merely been complimenting me! Meanwhile, my spouse would argue with me whenever I had contact with Robin after that. I swear it's one of the many reasons the marriage thing didn't last.

You'd think I would have learned the lesson, but no. At my aunt's funeral, going from the parlor to the cemetery, Frances caused a four-car pile-up. S/he comes out stinking drunk, and gets someone to speed him/her away. Again, I later confront him/her about it, and somehow I was made out to be the one in the wrong.

The bottom line is that Robin will *always* blame things on others. There always has to be a fall guy. S/he won't even concede that it was a wash, that it was no one's fault, when really it's his/her own fault. In other words, s/he's a liar! Everyone I've known who knows Robin would tell you the same.

A few years later, Robin comes to my house to apologize for the many boneheaded drunken things that s/he'd done to me, and nearly strikes Dana in the head for sticking up for me. Did I threaten to lie, to say Robin came in my house without permission? Sure, I would have done whatever it would have taken to get that maniac out of our house!

I'm no saint, of course. There was a time when I liked visiting the casinos. Whether it was blackjack, craps or poker, once they got that going, you would see me there. I got sucked in by all the comps, you know, the free meals, the free rooms. "Can I help you, Mr./Mrs.Martin? Fussing over me, all that. Did I truly mean to put Robin's money and my other friends' money into a safe, ironclad investment that would insure them a steady income stream? Well, sure I did. Did I, as a human, with all the frailties humans are subject to, spend that money at the gaming tables in Atlantic City? Yes I did. Did I try my

darndest to pay that money back? I did, and I would have made a first installment when Robin *finally* came to make amends to me for all of the heartache s/he caused me over the years. That is, until s/he raised a hand to my grandchild, my only flesh and blood I have left in this whole wide world. So Robin has only him/herself to blame for not getting that investment money back!

I raised Dana the right way. S/he had a work ethic, so long as s/he wasn't stuck in his/her heroin addiction. And no matter what, s/he would always get up early to meet the day, since I did too. I need help getting from place to place, and I'm no good with technology. Often enough, Dana finds odd jobs to work, usually outside work, like cutting lawns. Often I set those jobs up with my friends.

The weird thing is that Dana was never addicted to anything other than heroin. While other kids were in front of a computer screen, obsessed, watching cats get scared by cucumbers, and playing video games, Dana became well-rounded. Other than a few beers, s/he doesn't really drink. The sad truth is that Dana had an accident doing topiary work. You know the big hedges, made into shapes? That kid had a gift for topiary, like Edward Scissorhands, only with hands for hands, and not scissors for hands, of course. Anyway, s/he was about 18, working at the time for the Happy Tree Nursery, which, by the way, was Simon's nursery's biggest rival at the time. S/he was clipping an obelisk topiary hedge, sharpening the point at the top. Then boom, s/he came crashing down off the tall ladder s/he was on and fractured several disks in his/her back.

The recovery was weeks in bed, and s/he had a few disks fused together. The bottom line is that it was quite painful. Come to find out, s/he got hooked on the pain pills. We don't have a lot of money so, as soon as the pills weren't being prescribed to him/her anymore, s/he switched to heroin, which is much cheaper than buying pills on the street. I know now that, often enough, that so-called heroin is mixed with who-knows-what, like that fentanyl. Back in my day, when you wanted some "horse," some "dope," some heroin, that's what you got, maybe with a little baby powder, talcum powder, to bulk it up some.

Dana was a good kid, as I've said, but s/he would keep secrets from me when it came to drugs. Big Jake was one of them. It kills me to think that Big Jake giving Dana that cell phone may have ruined Dana's life.

We *did* have a problem with the fuel door on the pickup truck. After all, it's a 2005 model with 150,000 miles on it. The latch would not engage anymore. Sometimes I'd have to shut the thing with the palm of my hand. It would just pop open for no reason. Didn't seem worth fixing, though. I usually paid for the gas, so I usually gassed up the car, not Dana.

I would see drug dealers like that Big Jake, outside our house, curbside, where we parallel parked the pickup, where police found and searched it. I'm sure it must have been one of them who placed it there. Or that bully, that snitch, C, Carson!

This whole situation really is the perfect storm. With the cell phone, the drugs placed in the pickup, and the vendetta of Robin Simon, Dana is being framed for a crime s/he did not commit.

And vendetta is not too harsh a word for it. Robin hates my guts, and hates my grandson's/daughter's guts. Robin has said that I am dead to him/her. I have to admit that I am partly to blame for his/her hard feelings. Looks like Robin gets to take revenge now.

I'd say pinning those text messages on Dana is a joke, if it weren't so sad. Dana knows

how to spell. Won the 8th grade spelling bee, beating out dozens of other students. S/he could never have written those texts to Zach. Never.

Frances Martin
Frances Martin

Dated: August 1, 2017

Harley Novack

I know all about these charges they put on my good friend Dana. Dana's told me, and his/her grandparent, or "gran," as Dana always says, told me, too. I can't wait to tell the court about how Dana couldn't have sold Zach that dope. We were together at my place, chilling, when they have Zach buying the heroin from Dana that late Sunday morning on June 25, 2017.

Yeah, I have a (criminal) record. Dana and I would go and shoplift at stores like Globemart and Tar-Jay. There were convenience stores in Downtown Metro, Metropolitan, where they would buy unopened things like baby formula, razors and perfumes, colognes. We would steal about a couple hundred dollars' worth, and the store would give us about 50 or 60 dollars, just enough to stay high for the day. I got popped a few times. It started to cost me when I'd get a mandatory 90 days jail each time, even if I got caught with one item. Every time I'd go to jail, I'd go through withdrawal cold turkey. That's why I'm waiting for a bed at a residential drug program now. This time, I swear I'll stay clean.

Dana's no drug dealer, not really. Sure, s/he'd buy for me or for another friend. It's not worth all of us buying our own individual stash on the street. There's less danger of getting caught or getting killed if one person does it. It so happens that Dana grew up around Metro. I'm a stranger around here, and I'll probably always be seen that way. The first time I bought heroin in Downtown Metro, they sold me beat stuff, I think it was baking soda.

Dana is from here, and s/he knows the streets. While Dana is "street," streetwise, s/he is totally different from the thugs that push drugs on street corners. Dana was raised by gran, and while Dana won't admit it, s/he's afraid of gran. Afraid of disappointing gran, for sure. Gran, Mr./Mrs.Martin to me, would get work for Dana to do, backbreaking work, some of it, on construction sites, doing landscaping, you name it, and Dana would go off and do it without ever complaining. Plus being Mr./Mrs.Martin's personal chauffeur and servant.

With Dana, it's always "gran this," and "gran that." S/he was into old-time music. Would listen to records, "LPs," of all things. Would go with gran to "oldies" concerts, for things like "doo wop." Mr./Mrs.Martin said "youngsters" used to hang out on street corners and sing music together, and that became doo wop. Could you imagine singing out on the sidewalk in Downtown Metropolitan? People would think you were nuts.

That flip phone? Since gran had a flip phone, I'm sure that Dana had no problem having one, too. The number I always used for Dana, though, was 123-4567, not any 555 number.

When I heard that Dana had been arrested for selling heroin to Zach, I was shocked. I quickly found out that Zach had died on June 25th. What struck me is that Dana had spent much of the day with me, over at my house. We were playing first-person shooter games, killing zombies, saving the planet from being overrun. Dana's great at those games. I'm not sure when Dana got to my place, exactly. I never get going too early in the morning, and Dana had started sleeping late more, too. But it had to be by late morning.

Speaking of saving the world, that's why I had joined the Army – my dad's idea. He said there always is a war going on somewhere, so that the military was a "recession-proof" place to work. I figured I'd been shooting at things ever since I could get my fingers

around a Nintendo controller. But the military was not about just shooting. It demanded discipline, which I didn't have, not at that time at least. I bombed out, no pun intended, due to drug use. I was supposed to make the world safe for democracy, and yet I wasn't even able to save myself! Dad says it's his fault, that he was too soft on me growing up "like my whole generation." After that, I was adrift. I would start a school, then drop out. Dad would just shake his head. Zach is different. S/he is a go-getter when s/he tries, and s/he's a salesperson – very persuasive.

I graduated to heroin much the way Dana did, after getting hooked on oxys. Of course, Dana did it because s/he'd had this bad accident. Once they gave him/her a morphine drip, s/he was hooked.

Me, I was just a brat who snuck pills from family who actually had a need for the medicine. My mother had a bad back, and disk fusion surgery only made it worse. A few years ago, she swore off the pain pills, trying biofeedback and acupuncture, that voodoo stuff, even though she kept getting the pain medication. I started taking these pills, and when my mother questioned me, I lied and said I knew nothing about it. Then I started buying them at the high school from fellow students. It wasn't long ago when doctors were prescribing these pain pills like candy.

I wasn't just hooked on oxys and such, but anxiety pills, too. Then I faked anxiety to my local doctor, and got those pills the legit way. He wouldn't prescribe the oxys, though. Just those big horse pills full of Ibuprofen. So when my grandparents started putting their oxys in a safe, I switched to heroin. Never could afford oxys on the street. Too expensive.

Big Jake Tomlinson? I knew about him from how he got killed, just a couple of blocks from Dana's house. Dana complained, saying, "I worry about my gran," with shootings going on around us. Was Big Jake the big dealer around Downtown Metro? I don't know, and I don't want to know. Ignorance is bliss. I'm some naïve country bumpkin, or at least I was originally. Till the family sold the farm for land preservation and bought a place in the 'burbs, when I was in high school.

I never trusted that Carson Silva, and after Carson betrayed Dana one too many times, neither did s/he. C always had a scheme to make money for drugs where everyone else would stick their necks out. My conviction's for receiving stolen property. Shame on me for falling for the oldest trick in the book. C gave me the old "I don't have any ID on me" trick, after I had driven him/her over to the pawn shop. The only way to get my cut, just my gas money really, was to show my ID for the items C had brought, which it turns out C had burgled from his/her neighbor's cars. C took it as a burglary conviction. C had told me s/he'd gotten it from his/her dead aunt's estate. I knew s/he was probably lying, which is all it takes to be guilty of receiving stolen property. Since the stuff was worth over $500.00, my guilty plea was to a third degree crime.

Dana's number is, always has been 555-4321. I don't know the number 555-1234. Dana showed me a copy of his/her discovery, and I read a copy of Exhibit 1, the texts on that burner phone Big Jake gave him/her. Dana would have never spelled so many names wrong, like in the texts with Zach. These are not from Dana. Dana might have been lazy at school, but s/he knew how to spell.

I saw C near Dana's car that evening just before the police searched it.
S/he looked pretty suspicious too, looking all around, head turning left and right.

Beneath that hard exterior, Dana's not so tough. If I badger him/her about something, s/he'll eventually give up. Especially if s/he thinks it doesn't matter. "Yeah, yeah, right,

whatever you say," is his/her way of avoiding clashes with people. For example, s/he'll always end up agreeing with whatever Mr./Mrs.Martin says, even if s/he knows it's wrong. S/he'll tell me, "I have to live with my grandma/pa, it's just easier to go along." S/he has a tattoo on his/her shoulder, saying, "Just tell me what to say." That's pretty much Dana's motto, as s/he will go along to get along. In fact, I'm the one who had Dana get that very tattoo.

Back in June, when all this went down, Dana had really changed, telling me, "Harley, I'm there for you no matter what! I'm off the stuff, you're off the stuff, let's keep it that way." S/he said it like s/he really meant it, too. I know now that Dana went back to heroin right before getting arrested, but that note Dana tells me s/he gave Zach, that was no drug dealer's calling card. That was Dana reaching out his/her hand to Zach, to try to keep Zach sober. This whole case makes me sick.

Zach seemed better, too. Zach even had a girlfriend, and she seemed sober those last days with Zach. Frances didn't understand, so they kinda snuck around. I forget her name. She was always wearing one of Zach's many baseball caps, tucking her hair inside. Janice, Jane, Jessie? Well, I don't remember the name.

As for me, I'm in Drug Court now. Having finished my mandatory inpatient treatment, paid for by the State, I now have to go to court one day a week, go to my follow-up treatment, get drug-tested regularly and stay out of trouble. I also have to keep my lousy job. If not, I will get kicked out and serve my alternate sentence of five years.

Harley Novack
Harley Novack

Dated: October 5, 2017

State's Exhibit 1

Phone extraction, by Det. Rory Bernard,

of SIM Card of toll number 555-5678

Date	Time	Text From	Text To	SMS Text Message
6/13/17	11:22 a.m.	555-9999	555-5678	Yo, man, hit me up. I need 5.
6/13/17	11:22 a.m.	555-5678	555-9999	I'm home. Where u at?
6/13/17	11:23 a.m.	555-9999	555-5678	Walnut and 5th. So I'll be with you in 5.
6/13/17	11:23 a.m.	555-5678	555-9999	Alrite, B. I got you.
6/15/17	12:33 p.m.	222-4444	555-5678	These guys are breathing down my neck. What do I tell them?
6/15/17	12:34 p.m.	555-5678	222-4444	Tell em to chill out. I'm just coverin for now.
6/15/17	12:55 p.m.	222-4444	555-5678	Seriously. Where you at?
6/15/17	12:59 p.m.	555-5678	222-4444	B there in a minut. Quit bagering me. I am sirius!
6/17/17	1:22 a.m.	555-5678	555-9999	Another dilivery, B. Come on by.
6/17/17	1:24 a.m.	555-9999	555-5678	I knew you were good for it. B ther in 5.
6/17/17	2:11 a.m.	222-4444	555-5678	CALL ME
6/22/17	9:57 p.m.	222-4444	555-5678	CALL NOW
6/24/17	4:33 p.m.	111-2222	555-5678	Bring LP
6/25/17	11:12 a.m.	213-8888	555-5678	This is Zach.
6/25/17	11:15 a.m.	555-5678	213-8888	Wha you need 20 wroth, bro
6/25/17	11:15 a.m.	213-8888	555-5678	100
6/25/17	11:15 a.m.	555-5678	213-8888	that's ok. I got you
6/25/17	11:16 a.m.	213-8888	555-5678	usual place?
6/25/17	11:22 a.m.	555-5678	213-8888	Y. In 10
6/26/17	2:05 a.m.	222-6666	555-5678	I'm waitig here
6/26/17	2:06 a.m.	555-5678	222-6666	Coming
6/26/17	9:45 a.m.	555-1234	555-5678	This is Zach again.
6/26/17	10:55 a.m.	555-5678	555-1234	Why so early. U no I'd be sleeping

S1 (continued)

6/26/17 10:56 a.m.	555-1234	555-5678	I figured you'd see it when you woke up.
6/26/17 10:57 a.m.	555-5678	555-1234	I told u not to use this phon!
6/29/17 10:58 a.m.	555-1234	555-5678	I need another 100, Dana
6/29/17 11:15 a.m.	555-1234	555-5678	Dana, U there?
6/30/17 12:05 a.m.	222-4444	555-5678	CALL
7/1/17 10:44 a.m.	222-4444	555-5678	WAITING
7/2/17 10:01 p.m.	222-4444	555-5678	NOW

Date	**Time**	**Call From**	**Call To**	**Call Duration** (minutes:seconds)
6/13/17	11:00 a.m.	555-5678	222-4444	0:33
6/13/17	10:33 p.m.	555-5678	222-4444	2:30
6/14/17	12:28 p.m.	555-5678	222-4444	0:39
6/14/17	2:45 p.m.	555-5678	345-1111	9:00
6/17/17	2:20 a.m.	555-5678	222-4444	1:33
6/17/17	10:00 p.m.	555-5678	222-4444	0:23
6/30/17	12:06 a.m.	555-5678	222-4444	0:29
7/1/17	10:45 a.m.	555-5678	222-4444	0:19
7/2/17	10:03 p.m.	555-5678	222-4444	0:33

State's Exhibit 2
Handwritten "Buy" sheet, a list of street names and numerical amounts

Owed

C 60-forget it!

HN 40

RB 20 BJ-200

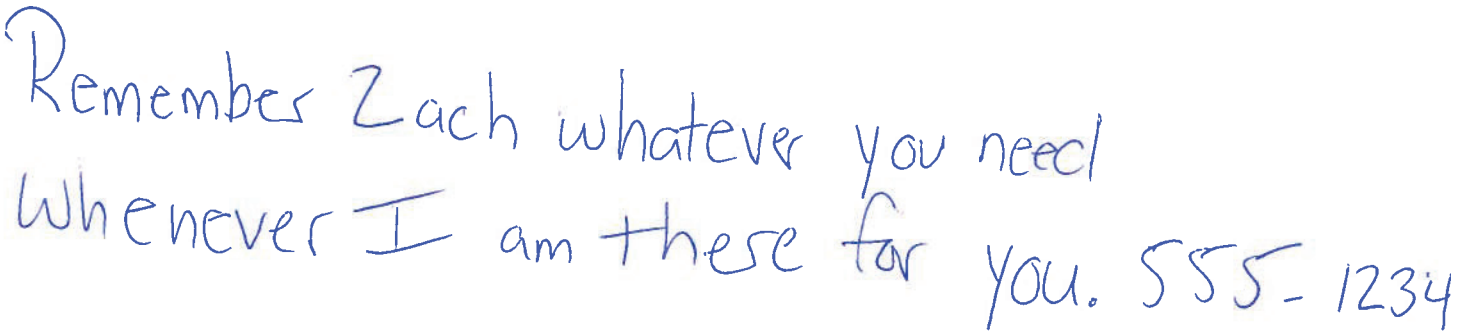
Z-Man 100

FM 20

PKD 2201974

Take Gran to Dr. 6/25 4p!

State's Exhibit 3



State's Exhibit 4

15 heat-sealed wax folds of fentanyl

(See stipulation #6 regarding this exhibit.)

PART XI
EXPLANATION OF PERFORMANCE RATINGS USED ON MOCK TRIAL COMPETITION SCORESHEETS

Please consider the criteria listed below when evaluating student performances. Participants will be rated in the categories listed in the score sheet on a scale of **5-10. Fractional points are NOT to be awarded.**

Please use the following guide when awarding points:

5-6: Average (exhibiting only a few of criteria listed below)
7-8: Very Good (exhibiting many of the criteria listed below)
9-10: Excellent (exhibiting virtually all of the criteria listed below)

The judge(s) will score student performance in each category, not the legal merits of the case. Each category on the score sheet must be evaluated separately. Note that one team must be awarded more total points than the other. **There are no ties. The tiebreaker category is overall team performance. In the event of a tie score, the judge(s) shall make a final determination based on overall team performance. While this category must be rated like all other categories, judges may award an additional point to the team with the better overall team performance in order to break a tie.** This category is designed to measure whether the team stayed within established time limits, followed mock trial rules and procedures, and demonstrated excellent teamwork. See Part VIII for more information.

Also please note that all post-trial evaluations by the judge(s) will be qualitative. Numerical scores will not be released. The purpose is to re-emphasize the educational goals of the competition.

EVALUATIVE CRITERIA

Attorneys

Opening/Closing Statements:

- Establishes theory of the case (opening)/continues theory of case (closing).
- Clearly provides overview of team's case and position in a persuasive fashion.
- Addresses strengths of own case, and weaknesses of opponent's case.
- Demonstrates a thorough understanding of the issues.
- Exhibits mastery of case and materials.
- Applies applicable law effectively.
- Refers to key witnesses.
- Is articulate and professional in presentation, with minimal use of notes.
- Discusses burden of proof.
- States relief requested.
- Displays appropriate decorum to judges, opposing team and teammates.
- Demonstrates spontaneity, summarizes evidence and incorporates examples from actual trial (closing).

Direct Examination:

- Effective in phrasing straightforward questions and eliciting information.
- Exhibits mastery of case and materials.
- Observes rules of competition at all times.
- Demonstrates understanding of mock trial procedures and rules of evidence.
- Uses case theory appropriately and effectively.

- Avoids leading and narrative questions.
- Responds effectively to opponent's objections.
- Demonstrates proper use of objections in cross-examination.
- Makes effective use of time.
- Interacts well with witnesses.
- Demonstrates confidence and speaks sufficiently loudly and clearly to be heard and understood.

Cross Examination:

- Skillfully utilizes leading questions.
- Does not ask "one too many" questions, i.e. cross examines witnesses judiciously.
- Does not invite invention.
- Effectively able to rephrase questions.
- Exhibits mastery of case and materials.
- Observes rules of competition at all times.
- Demonstrates understanding of mock trial procedures and rules of evidence.
- Responds effectively to opponent's objections.
- Demonstrates proper use of objections in direct examination.
- Effectively exposes contradictions or weaknesses of other side's case.
- Interacts well with witnesses. Confidently manages difficult witnesses.
- Able to proceed without reading from prepared script.
- Demonstrates confidence and speaks sufficiently loudly and clearly to be heard and understood.

Witnesses

Direct Examination:

- Dress and demeanor are appropriate for witness being portrayed. (Costumes are not allowed. See case stipulations.)
- Demonstrates extensive knowledge of the facts and theory of team's case.
- Observes rules of competition at all times.
- Convincingly and credibly portrays character throughout testimony, without relying on notes. (See R.5:4-7.)
- Shows emotion appropriate to the role.
- Effectively responds to questions without inventing material facts.
- Demonstrates confidence and speaks sufficiently loudly and clearly to be heard and understood.

Cross Examination:

- Convincingly and credibly portrays character throughout testimony, without relying on notes. (See R.5:4-7.)
- Able to field questions with confidence and poise.
- Observes rules of competition at all times.
- Does not become flustered or uncertain when responding to unanticipated or leading questions.
- Able to avoid impeachment.
- Employs invention but only appropriately.
- Demonstrates confidence and speaks sufficiently loudly and clearly to be heard and understood.

IMPORTANT NOTICE

Teams must enter the names of the students and roles they are playing **on the score sheet** and submit same to the judge during the pre-trial conference. Prepare one sheet for the prosecution/plaintiff and one for the defense. Permission is granted to enlarge the score sheet on a photocopier if necessary in order to include this information. **Please type or print clearly.**

2017-2018 VINCENT J. APRUZZESE MOCK TRIAL COMPETITION
Score Sheet

Prosecution/Plaintiff: _____ (Team Code) Defendant: _____ (Team Code)

Date: _____ **Competition Level:** _____ **Round:** _____

On a scale of **5 to 10** rate the Prosecution/Plaintiff and Defendant in the categories below.

DO NOT USE FRACTIONS.

	PROSECUTION/PLAINTIFF		**DEFENDANT**	
	Name	Score	Name	Score
Opening Statements				
Prosecution/Plaintiff's First Witness				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
Prosecution/Plaintiff's Second Witness				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
Prosecution/Plaintiff's Third Witness				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
Column Subtotals:				

(Continued on next page.)

2017-2018 VINCENT J. APRUZZESE MOCK TRIAL COMPETITION
Score Sheet

Prosecution/Plaintiff: _____ Defendant: _____
(Team Code) (Team Code)

Date: _____ **Competition Level:** _____ **Round:** _____

On a scale of **5 to 10** rate the Prosecution/Plaintiff and Defendant in the categories below.

DO NOT USE FRACTIONS.

	PROSECUTION/PLAINTIFF		**DEFENDANT**	
	Name	Score	Name	Score
Defense's First Witness				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
Defense's Second Witness				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
Defense's Third Witness				
Witness Performance — Direct Examination:				
Witness Performance — Cross Examination:				
Attorney — Direct Examination:				
Attorney — Cross Examination:				
Closing Arguments				
Overall Team Performance*				
Column Subtotals:				
Subtotals from preceding page				
Column Totals				

Please advise county or state coordinator of scores before critique.

_____
Judge(s) Signature(s)

***This category MUST be graded with all the other categories, and can also be used as a tiebreaker.**

☐ WINNER (P or D)

HONOR ROLL
PAST MOCK TRIAL COMPETITION WINNERS

1982–83	Voorhees High School Hunterdon County
1983–84	Middlesex High School Middlesex County
1984–85	Holy Spirit High School Atlantic County
1985–86	Cherry Hill High School West Camden County
1986–87	St. Mary High School Bergen County
1987–88	Kittatinny Regional High School Sussex County
1988–89	Cherry Hill High School East Camden County
1989–90	Cherry Hill High School East Camden County
1990–91	Bergen Catholic High School Bergen County *(Winners of State and National Competitions)*
1991–92	Atlantic City High School Atlantic County
1992–93	Atlantic City High School Atlantic County
1993–94	Don Bosco Preparatory High School Bergen County
1994–95	Hunterdon Central High School Hunterdon County
1995–96	Lower Cape May Regional High School Cape May County
1996–97	Kittatinny Regional High School Sussex County
1997–98	Cherry Hill High School East Camden County *(Winners of State and National Competitions)*
1998–99	Hunterdon Central High School Hunterdon County
1999–00	Bergen Catholic High School Bergen County
2000–01	Montclair High School Essex County
2001–02	High Point Regional High School Sussex County
2002–03	Mainland Regional High School Atlantic County
2003–04	Kittatinny Regional High School Sussex County
2004–05	Torah Academy Bergen County
2005–06	Montclair High School Essex County
2006	Middle Township High School Cape May County, American Mock Invitational, Second Place
2006–07	Middle Township High School Cape May County
2007-08	Crossway Homelearners Atlantic County
2008	Crossway Homelearners Atlantic County, American Mock Invitational, Fourth Place
2008-2009	Mainland Regional High School Atlantic County
2009-2010	West Morris Mendham High School Morris County
2010-2011	Middle Township High School Cape May County
2011-2012	Oratory Preparatory School Union County
2012-2013	West Morris Mendham High School Morris County
2013-2014	West Morris Mendham High School Morris County
2014-2015	Mainland Regional High School Atlantic County
2015-2016	Bergen Catholic High School Bergen County
2016-2017	West Morris Mendham High School Morris County

PAST MOCK TRIAL CASES

Year	Case	Topic
1982–83	*St. Clair* v. *St. Clair*	Child custody
1983–84	*Vickers* v. *Hearst*	Host liability when serving alcohol
1984–85	*Hudson* v. *Daily Metropolis*	Freedom of press
1985–86	*State* v. *Percy Snodgrass*	Murder trial
1986–87	*Vincent Taylor* v. *Lance Memorial*	Male nurse claims sex discrimination
1987–88	*Barr* v. *Zuff*	Employment discrimination relating to AIDS
1988–89	*State* v. *Martha Monroe*	Battered Woman Syndrome
1989–90	*Elyse Roberts* v. *City of Metropolitan*	Sexual harassment in the workplace
1990–91	*State* v. *Diane Lynch*	Prosecution of mother for death of "cocaine baby"
1991–92	*Chris M.* v. *Dr. Terry Preece and Metropolitan School District*	Educational malpractice
1992–93	*State of New Jersey* v. *Jan Stover*	Hate crime
1993–94	*In the Matter of the Estate of Daniel Nugent*	Will contest
1994–95	*United States of America* v. *Luis Cosme-Sanchez*	Drug smuggling
1995–96	*Oliver Yanov and Annette Yanov* v. *Judy Williams and Kevin Williams*	Adoption
1996–97	*State of New Jersey* v. *Pat Peterson*	Fraternity hazing
1997–98	*Fran Wilkins* v. *Metropolitan School District*	Negligence
1998–99	*Brennan* v. *New Jersey Interscholastic Athletic Association*	Student is barred from playing baseball due to alleged performance-enhancing device
1999–00	*State of New Jersey* v. *Daniel Gunnet*	Student is charged with aggravated manslaughter and death by vehicular homicide
2000–01	*Betty Groom* v. *Metropolitan College and H.B. Williams*	Wrongful death suit involving a college junior who died at a campus rock concert

2001–02	*State* v. *Pat Petrecca*	Road rage
2002–03	*Melendino* v. *Cornwall*	Student is injured in fire in illegal casino
2003–04	*State* v. *Mel Perfect*	An honor student is charged with felony murder, conspiracy to commit burglary and conspiracy to commit computer theft
2004–05	*Farrow* v. *Simon*	Bullying
2005–06	*State* v. *Dagger*	Murder of reality TV show host
2006-07	*Fectious* v. *Tagen Burgers, LLC*	Food safety
2007-08	*State of New Jersey* v. *Avery Fisher*	Performance–enhancing drugs
2008-09	*AARCI* v. *Dillon Matthews*	Illegal downloading of music files
2009-2010	*State of New Jersey* v. *Loren Perry*	Kidnapping of a child
2010-2011	*Jordan Pederson* v. *J.E. Moody*	Distracted driving/walking
2011-2012	*State of New Jersey* v. *Pat Hopper*	Bias crime
2012-2013	*Capella* v. *Petzicon Products, Inc.*	Product liability
2013-2014	*State* v. *Sid Sawyer*	Vehicular homicide and DWI
2014-2015	*Payton Reynolds* v. *Smithville School District and Dalton Fisher*	Negligence
2015-2016	*State* v. *Jordan Abrams*	Self-defense
2016-2017	*Shea Simmons* v. *Delaney Barnes and Cameron Winchell*	Defamation

REVISED 6/24/13

NJSBF HIGH SCHOOL MOCK TRIAL
POLICY REGARDING A COMBINED TEAM

The intent of the New Jersey State Bar Foundation (NJSBF) High School Mock Trial policy regarding a combined team is to encourage schools, which would otherwise be unable to compete because of an inability to field a full team, to request permission to combine their students with those of another school. In order to form a combined or cooperative mock trial team under the above circumstances, the boards of education or governing bodies of both schools must submit a joint request to the Mock Trial Committee of the New Jersey State Bar Foundation. Teams that combine without such permission will be disqualified.

The intent of the cooperative mock trial program is to afford greater opportunity to students to participate in mock trial only when the enrollment of their high school would not allow either the initiation of such a program or its continuance. Only schools that qualify under the specific enrollment requirements will be permitted to apply to form a combined team with any other equally qualified school. No cooperative mock trial team should be undertaken to enhance the competitive advantage of a member school or for the purpose of "venue shopping."

The following guidelines were adopted by the New Jersey State Bar Foundation's Mock Trial Committee and will be utilized to implement cooperative mock trial teams in order to afford the opportunity for as many students as possible to participate in the NJSBF Vincent J. Apruzzese Mock Trial Competition. Factors considered in granting approval of a combined team include, but are not limited to, the following:

- The boards of education or governing bodies of both schools approve the request to form a combined team.
- The host school accepts the responsibilities and obligations that go along with that designation. The combined team will compete in the county in which the host school is located. (See #7 of application form regarding designation of the host school.)
- The total student population of each school involved is under 200 students per class year (800 for a 4-year high school and 600 for a 3-year high school).
- A pattern of declining enrollment in mock trial, i.e., insufficient number of team members in or from the previous year to field a team.
- The schools involved have made a good faith effort to recruit students for mock trial without success.
- The boards of education or governing bodies of both schools certify that they are not applying to form a combined team for the purpose of strengthening their current teams.
- The boards of education or governing bodies of both schools certify that, without a combined team, the schools involved would not be able to participate in the competition.

The Mock Trial Committee will review requests on a case-by-case basis and will advise applicants of its decision in writing. The application form and guidelines for a cooperative mock trial team can be downloaded from the NJSBF website, www.njsbf.org. The completed application is to be submitted to:

Sheila Boro
Director of Mock Trial Programs
New Jersey State Bar Foundation
One Constitution Square
New Brunswick, NJ 08901-1520

The application must be approved by both boards of education or other governing bodies, signed by both school principals and submitted to the State Bar Foundation's Mock Trial Committee with the approval of their County Mock Trial Coordinator(s). The application form will be reviewed by the Mock Trial Committee and its decision will be final. Schools must make an application **prior** to their enrollment in NJSBF's Vincent J. Apruzzese Mock Trial Competition and, if approved, must enroll in mock trial as one single team and remain as a single team throughout the competition school year. Approval is only for the school year in which it is given.

NJSBF VINCENT J. APRUZZESE MOCK TRIAL COMPETITION
COMBINED TEAM APPLICATION

Combined Team Application for School Year:_____

Cooperating Schools

School #1 (Sponsoring/Host)

Address

Principal Name & Email

Enrollment

School #2

Address

Principal Name & Email

Enrollment

Combined enrollment: (no. of pupils)

1. Mock trial is open to all students in both schools in grades 9 through 12. Both schools represent that they have made a good faith effort to recruit students for a mock trial team without success and that one or both schools has been unable to obtain enough student participation to field a team for the school year for which a cooperative team approval is sought. Both schools certify that they are not applying to form a combined team for the purpose of strengthening their current teams.

Please attach a sheet outlining the circumstances in both schools which have led to this cooperative team application specifically setting forth why, without a combined team, the schools involved would not be able to participate in the competition.

2. Approved (public schools): Both Boards of Education Yes_____ No_____ Date_____

3. Approved (non-public schools): Superintendent(s)/ School Governing Bodies Yes_____ No_____ Date_____

4. County Coordinator approval:

_____, Coordinator, _____ Approved: Yes_____ No_____ Date_____
(signature) (County)

County Coordinator approval:

_____, Coordinator, _____ Approved: Yes_____ No_____ Date_____
(signature) (County)

5. Public Schools Agreement:_____agrees to act as the Sponsoring/Host school.
(name of school)

Non-Public Schools Agreement:_____agrees to act as the Sponsoring/ Host school.
(name of school)

6. The participating schools shall agree on the legal, financial, staff and personnel responsibilities of each school, including but not limited to, such considerations as transportation, release time, rules, and supervisory services.

7. The Sponsoring/Host School for the combined mock trial team shall be the larger of the two schools based on enrollment of grades 9-12. The combined mock trial team shall function as any other extracurricular activity in that school and will compete in the NJSBF Mock Trial Program in the county in which the host school is located.

8. A participating school shall not withdraw from a Cooperative Program until the completion of the involved Mock Trial Competition season.

9. The Sponsoring/Host School will be considered the home site, and as such will be entitled to all county and state awards.

10. The student participants shall be subject to NJSBF's Vincent J. Apruzzese Mock Trial Competition eligibility rules as well as the eligibility rules of both schools; where rules are at variance, the more stringent rules will be in effect.

11. The decision of the NJSBF State Mock Trial Committee will be final, with NO appeals.

I hereby attest to the accuracy of all facts contained herein. I have also read and agree to abide by all qualifications set forth in the application.

_____, Principal _____, School #1

_____, Principal _____, School #2

This agreement shall terminate at the end of the school year for which cooperation is sought. Renewal must be accompanied by a new application.

New Jersey State Bar Foundation Approval: Yes___ No___

_____, Executive Director, NJSBF

_____, Chair, NJSBF Mock Trial Committee

Please return original to the NJSBF after making a copy for your files:

Sheila Boro
Director of Mock Trial Programs
New Jersey State Bar Foundation
One Constitution Square
New Brunswick, NJ 08901-1520

FREE WORKSHOP FOR TEACHERS AND ART CLUB MODERATORS

Plan to attend this instructional workshop and get your students ready for the 2018...

Courtroom Artist Student Competition

in conjunction with the New Jersey State Bar Foundation's

Vincent J. Apruzzese High School Mock Trial Competition

Thursday, October 19
10 a.m.–1:30 p.m.

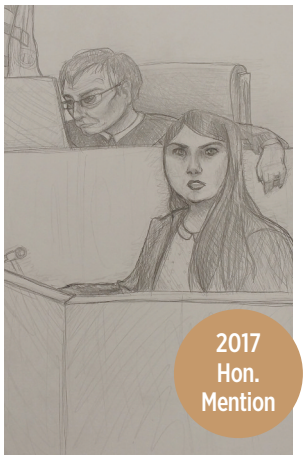
Complimentary continental breakfast and luncheon will be provided.

3.0 NJ professional development credits

Encourage your art students to sketch your school's mock trial team in action—then select your top entry for judging in the statewide competition. The winners will be presented with an award at the mock trial finals at the New Jersey Law Center, New Brunswick, in March 2018.

A FREE INSTRUCTIONAL WORKSHOP ***conducted by professional courtroom artists*** will be given to high school art teachers and art club moderators at the New Jersey Law Center.

Register online at http://conta.cc/2nk7NcA



To register, or for more information, contact Cynthia Pellegrino at 732-937-7507 or cpellegrino@njsbf.org .

njsbf.org

New Jersey State Bar Foundation
New Jersey Law Center
One Constitution Square
New Brunswick, NJ 08901-1520
1-800-FREE LAW
www.njsbf.org