

**29<sup>TH</sup> ANNUAL  
HIGH SCHOOL MOCK TRIAL COMPETITION**

**STATE OF NEW JUSTICE  
V.  
SYDNEY TAYLOR**

**The 2005-2006 High School Mock Trial Program is dedicated to the memory of Robert (Bob) Boland, who died in the summer of 2005. Bob was a long-time mock trial advisor at Manchester Community College and coordinator of the CCLCE Middle School and High School Mock Trial Educational Sessions. He was a good friend to the CCLCE and will be greatly missed.**

**Written by  
Michelle Giger, President & CEO  
Center for Civic Values  
Karl Johnson, Esq.  
Luebben, Johnson & Young, LLP  
The Honorable Wendy York  
Second Judicial District Court**

**With Special Thanks to  
Barbara Bergman, Esq.  
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Duhigg, Cronin, Spring, Berlin & Bencoe, PA  
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## **Supplementary Changes to High School Mock Trial Rules**

Replace 1<sup>st</sup> paragraph of Competition Rules with the following: All rounds of the CCLCE Mock Trial Competition are governed by these rules. Each competitor and coach should be thoroughly familiar with these rules. Failure to comply with these rules may result in disqualification. Consequences will be determined by the competition coordinator(s). **All rule violations must be brought to the judges' attention by participating student "attorneys" during the trial in a timely and appropriate manner. UNDER NO CIRCUMSTANCES may a coach or member of the audience interrupt the trial for ANY reason, nor may they communicate rule violations to the student "attorneys" in any way during the trial. It is the responsibility of the students participating in the competition to be thoroughly familiar with the rules and alert the judges to any and all violations. Failure to do so results in a missed opportunity.** It is simply too difficult for competition coordinator(s) to witness all violations or to make a ruling based upon an alleged violation that they did not witness. Trial judges will be instructed to note violations and discuss them with the coordinators after the trial as the judges are present and can make the best assessment at the time of the actual occurrence of the violation if it is brought to their attention in a timely and appropriate manner.

Competition Rules #101 add to end: If a team has less than 12 students, students who have 2 roles must have their second role on the opposite side from the first role in the competition (i.e.: prosecution and defense sides)

Competition Rules # 204 Regional Competition: Change second sentence to "The regional rounds will be held in March/April."

Competition Rules #205 Quarter and Semi-Finals: Change end of first sentence to "to be held in April."

Competition Rules #206 Final Competition: Change end of first sentence to "to be held in May."

Modified Rules of Evidence and Procedure #102 Objections: After first sentence in same paragraph add "The time keeper shall stop the clock when an objection is raised and re-start the clock after said objection has been ruled on by the judges."



46 suspicion of drug and gang activity at the school had centered on several students, among  
47 them Joseph/Josephine (Joey) Chavez and Alexander/Alexandra (Alex) Day. Chavez is a  
48 native of Rye and lives with her/his parents. Day moved to Rye with her/his mother in August  
49 2002. By all appearances, neither family is well-to-do. Chavez had been sentenced to a  
50 juvenile detention facility in the fall of 2003 for aggravated assault and illegal possession of a  
51 firearm and consequently was not at George Washington in January 2004. Day's only prior  
52 record was a shoplifting conviction arising from an incident in December 2003.

53

54 Taylor will also testify that during the first half of 2004 her/his own observations and  
55 information provided by Principal Mathis, Detective Thomas and certain informants led  
56 her/him to believe that Chavez and Day were in fact members of the 54<sup>th</sup> Street Gang;  
57 that Day was a major source of club drugs like Ecstasy and Special K at George  
58 Washington; that Day carried weapons and was extremely dangerous; but that despite  
59 Taylor's careful surveillance and diligent efforts, s/he could not catch Day committing any  
60 illegal acts from January 2004 until the school year ended. Day was aware of Taylor's  
61 surveillance and on several occasions needled and teased her/him about it.

62

63 Chavez returned to Rye in June 2004 on probation from juvenile detention and was  
64 arrested shortly thereafter for driving under the influence of alcohol. The charge is  
65 pending. Day had been in New York between late May when school was out and the end of  
66 July. Taylor will testify that Day's return driving a new Camaro and, according to certain  
67 sources, "throwing a lot of money around," confirmed her/his already strong conviction  
68 that Day was involved in illegal activities and strengthened her/his resolve to "nail" Day.  
69 Chavez and Day began classes at George Washington High School on August 15, 2004. Both  
70 will testify that although they were acquainted and had socialized with 54<sup>th</sup> Street Gang  
71 members in the past, they had each decided to terminate those relationships and that  
72 neither had been nor was a member of any gang or involved in any illegal activity during  
73 the evening of August 23, 2004.

74

75 On that evening, Taylor arrived at the George Washington High School stadium at 6:30 PM  
76 to serve as the security guard for the first football game of the season, S/he was  
77 stationed initially at the parking lot gates to collect a dollar for parking from each  
78 automobile and to make sure that students did not bring in alcohol, weapons or drugs. At  
79 about 7:00 PM Day's Camaro pulled into the parking lot with Day driving and Chavez in  
80 the passenger's seat. There was a brief encounter in which Day again needled Taylor.  
81 Taylor will testify that during the encounter s/he smelled the strong odor of marijuana  
82 emanating from the Camaro,.

83

84 The football game began at 7:30 PM . During the game, Day and Chavez were joined by a  
85 third teenager, Bobby Davis, who was not a George Washington student. Taylor will  
86 testify that s/he observed suspicious behavior on the part of the three and had another  
87 brief run-in with Day during which it appeared that the three were under the influence of  
88 alcohol or drugs. By approximately 10:45 PM the game had ended and the spectators had  
89 departed. The stadium lights were still on. Taylor and Principal Mathis were making the  
90 rounds of the stadium prior to closing it when they heard a screeching of wheels and saw  
91 a car pulling in under the home side grandstand. Both knew the only way that a car could

92 get into that area was if the lock on the nearby gate was cut. As Principal Mathis left to call  
93 the police, Taylor approached the car. S/he will testify that s/he observed the car, which  
94 appeared to be Day's Camaro, facing north with its parking lights on and that three  
95 individuals, at least one of whom had just exited the car, were standing very close together  
96 talking about prices and exchanging an object which s/he suspected to be drugs or a weapon.  
97 Taylor will also testify that when s/he was approximately 60 feet from the car, s/he ordered  
98 the three individuals whom s/he had by then identified as Chavez, Davis and Day, to put their  
99 hands up. Instead of complying, s/he will testify, one of them pointed a handgun at her/him  
100 where upon s/he drew her/his weapon and fired in the direction of the handgun, wounding  
101 Day in the right thigh. Chavez and Day will deny that they or Davis had a handgun or  
102 anything else in their hands and that Taylor never told them to raise their hands. They will  
103 testify that Taylor was much closer to them than 60 feet and shot Day without warning when  
104 the three laughed at her/him.

105  
106 When Sergeant Andrew/Andrea (Andy) Medina of the Rye Police Department arrived at the  
107 scene shortly after being dispatched in response to Principal Mathis' call, s/he found Day,  
108 Chavez and Taylor next to the Camaro and immediately radioed for an ambulance to transport  
109 Day to Catholic Hospital. Soon thereafter, Principal Mathis returned after unsuccessfully  
110 giving chase to Davis who fled when the shooting occurred. Davis has not been seen or heard  
111 from since.

112  
113 Sergeant Medina made no arrests that evening but gathered as evidence the cut lock,  
114 three empty beer bottles, one of which bore Day's fingerprints, and two spray paint cans  
115 which Sergeant Medina will testify matched the colors of freshly painted graffiti on a wall  
116 under the grandstand approximately ten feet from the Camaro. Detective Thomas will  
117 testify that the graffiti bore the tag of the 54<sup>th</sup> Street Gang. No alcohol, weapons or other  
118 contraband were found at the scene or during a subsequent search of the Camaro. The  
119 following day at Catholic Hospital, Sergeant Medina with Day's consent examined the  
120 clothing that Day had worn the previous evening and seized for evidence a New York Jets  
121 jacket and a switchblade. Sergeant Medina also obtained a hospital report that  
122 reflected a blood alcohol level for Day of 0.06 percent upon admission. From such a level it  
123 may be inferred that Day had been drinking at some time on the afternoon or evening of  
124 August 23<sup>rd</sup>, but it is impossible to pinpoint the time or the amount more precisely.

125  
126 On September 8, 2004, Taylor was indicted by a grand jury for attempted first degree  
127 murder, aggravated battery and negligent use of a firearm following testimony from Day,  
128 Chavez and Sergeant Medina, including testimony from the latter two that Taylor had  
129 made statements to them which they understood to be threats against Day's life. Taylor  
130 was arraigned on September 15, 2004, and released on a \$50,000 bond.

131  
132 Taylor has pled self-defense, and the case is now set for a jury trial. Alex Day, Joey Chavez  
133 and Sergeant Andy Medina will testify for the prosecution; Sydney Taylor, Principal Mathis  
134 and Detective Leslie Thomas will testify for the defense.

**TWENTIETH JUDICIAL DISTRICT**

**COUNTY OF RYE**

**STATE OF NEW JUSTICE**

**STATE OF NEW JUSTICE**

**VS.**

**No. CR-2004-MT**

**SYDNEY TAYLOR**

**Defendant.**

**Crimes: Attempted Murder, Aggravated Battery, and Negligent Use of a Firearm**

**GRAND JURY INDICTMENT**

**THE GRAND JURY CHARGES:**

**Count 1:**

**Attempted Murder.** On or about the 23<sup>rd</sup> day of August 2004, in Rye County, State of New Justice, the above-named Defendant did attempt to commit the offense of murder in the first degree in that the Defendant attempted to kill Alex Day without lawful justification or excuse, by any means with which death may be caused by any kind of willful, deliberate and premeditated killing contrary to N.J.S.A. 30-2-1 and 30-28-1.

**Count 11.**

**Aggravated Battery.** On or about the 23<sup>rd</sup> day of August 2004, in Rye County, State of New Justice, the above-named Defendant did commit the offense of aggravated battery in that s/he unlawfully touched or applied force to the person of Alex Day with intent to injure her/him inflicting great bodily harm or doing so with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted contrary to N.J.S.A. 30-3-5.

**Count III:**

**Negligent Use of a Firearm.** On or about the 23<sup>rd</sup> day of August 2004, in Rye County, New Justice, the above-named Defendant did commit the offense of negligent use of a firearm in that Sydney Taylor discharged a firearm into a building or vehicle so as to knowingly endanger a person or her/his property, endanger the life of another by handling or using a firearm or other deadly weapon in a negligent manner or discharged a firearm within 150 yards of an inhabited building or dwelling without permission of the owner or lessees thereof contrary N.J.S.A. 30-7-4

**APPROVED:**

*Nan Nash*

**Nan Nash, Grand Jury Foreman**

*Debra Seeley*

**Debra Seeley, Assistant District Attorney**

**COUNTY OF RYE**

**TWENTIETH JUDICIAL DISTRICT STATE OF NEW JUSTICE**

**STATE OF NEW JUSTICE**

**vs.**

**No. CR 2004-MT**

**SYDNEY TAYLOR**

**Defendant**

**STIPULATIONS**

The parties have stipulated to the following facts and conclusions. They may be relied upon by both parties in the presentation of the case and may not be controverted.

1. All pertinent Miranda rights were validly waived on all statements.
2. All exhibits were obtained in conformity with all pertinent search and seizure requirements.
3. Chain of custody is proper with respect to each of the exhibits.
4. All exhibits are authentic and are accurate in every respect.
5. All signatures on the witness statements and other documents are authentic.
6. The arrest and disposition and hospital records are those of the person whose name appears thereon and are records of regularly conducted business activities made at or near the time the matters recorded occurred, by someone with personal knowledge, or from information submitted by someone with such knowledge, of the matters recorded.
7. The Defendant was at all material times authorized by law to carry a firearm in the course of her/his employment.
8. Under New Justice law, the offense of aggravated battery is a felony; the offenses of driving while intoxicated (first Offense), illegal possession of a firearm, minor in possession of alcohol and shoplifting (less than \$100 value) are misdemeanors. Non-capital felony offenses are punishable by imprisonment in excess of one year. Misdemeanors are punishable by imprisonment for less than one year.

## Alexander/Alexandra (Alex) Day

### EXCERPTS FROM TESTIMONY BEFORE THE GRAND JURY

My name is Alex Day. I am 16 years old, I will be 17 in December, 2004 and I'm a junior at George Washington High School. I have lived with my mom since she and my dad got divorced. My parents thought it would be best for me to live with her because my dad travels a lot in his work. I don't know exactly what he does – some kind of consulting thing, I think. I grew up in New York City. I liked living in New York. I had lots of friends there and there were tons of great things to do. All the awesome bands play there, plus I'm a big Jets fan.

When I found out we had to move to New Justice I was really hacked off. At first, I thought my mom didn't have a choice about moving – she works for Sunicorp and got transferred here to the new chip plant when the one in New York was closed down. Then later she told me we'd have probably moved anyway because she didn't like whom I was hanging around with in New York City, and she'd been wanting to get me away from bad influences. It wasn't as bad as she thought. My friends and I would get rowdy sometimes, but we never got into any serious trouble – just things like drag racing and fighting mostly.

I also didn't like having to move so far away from my dad. He is really cool – not all uptight like my mom. He sent me a jets jacket for my birthday this year. It is very cool, and I like to wear it wherever I go. My dad is also the one who gave me my cell phone, and he even pays for it.

I admit that when I got here two years ago, I wanted to hang around with the group that my mom would hate the most. I was glad I drove my car out here when we moved. It would have been lousy to be stuck in this hick town with no wheels. Anyway, I started going to the 54<sup>th</sup> Street Gang's parties. That's where I met Joey Chavez. I guess s/he used to be a member, but I never was. Even though we knew a lot of them, and we'd hang out with them pretty often, we never got involved in any of their stuff.

As a matter of fact, I never got popped for anything more serious than shoplifting, and that was a bogus charge. It was on my last birthday, and I had gone to Raley's to get a pack of cigarettes. I saw someone I knew, and I accidentally slipped the cigarettes into my pocket out of habit. Then, boom, I got busted. I still think that happened because I was so upset about that memo Ms. McDonald, she's my counselor, said Principal Mathis was going to send to my mom. I'd been trying real hard in school and then Ms. McDonald called me into her office to tell me all my teachers said I had a bad attitude, that I was breaking school rules by wearing my Jets jacket and some other stuff that wasn't true. I don't have a bad attitude – I just get tired of my teachers hassling me. She said that she was going to write a memo to the principal and suggested that s/he was sending a copy to my mom. In the end, I guess s/he never sent it because my mom never said anything to me, and if she had gotten it, she would have blasted me for sure.

44 I knew who Sydney Taylor was almost from the first day of school after winter break.  
45 Why wouldn't I? S/he was practically stalking me. If I went to my locker, there was  
46 Taylor. If I went to McDonald's there was Taylor. I remember a bunch of times being in  
47 my car at stoplights. I would just be minding my own business, and who would be in the  
48 next lane? Taylor, of course. I got sick and tired of having her/him spying on me.  
49

50 Taylor was always nervous, and I admit I enjoyed making her/him sweat She/he was such  
51 a moron, and everyone knew s/he had been kicked out of the Rye PD. Before that  
52 happened, I even heard that other cops would rather shoot themselves in the foot and go  
53 on medical leave than have her/him for a partner. I bet that's true. I mean who works for  
54 the police for as long as Taylor did and doesn't make it past the rank of officer? What a  
55 loser.  
56

57 I guess s/he thought that just because I went to some of the 54<sup>th</sup> Streeters' parties, I was a  
58 gang member and into drugs and guns. I wasn't, and that's why s/he could never pin  
59 anything on me. If you ask me, that attitude really sucks. It especially bugged me  
60 because by that time, Joey had been busted, and I had decided that even just hanging  
61 around with gang members could get me into a lot of trouble, so I quit going to their  
62 parties and tried to do better at school. I don't want to be stuck in a lousy job. I want too  
63 make lots of money, so I can live in a great house, and wear cool clothes and stuff. I'm  
64 going to college, and so is Joey.  
65

66 Taylor's obsession with me really got worse when I came back from visiting my dad with  
67 my new Camaro. Taylor wiggled out, s/he just couldn't handle it that someone like me  
68 from the wrong side of the tracks was driving a car that was nicer than any car s/he'd ever  
69 owned. I know it bugged her/him. But, I earned that car – my dad was real proud of me  
70 for cleaning up my act, and he got a great deal on it from a guy he used to work with. The  
71 problem is if your family is poor, you can't have nice things because the cops assume you  
72 stole them or bought them with drug money.  
73

74 On the night of the homecoming game, I told Joey that I'd pick her/him up. S/he had been  
75 released and was back in school. I did drink a couple of 40s – you know those big malt  
76 liquors – that afternoon, but I definitely quit drinking by 5:30 PM. And we didn't take  
77 any drugs or alcohol with us to the game. Joey had barely gotten out, so s/he was being  
78 super careful. Besides, my dad had told me I could only keep the Camaro as long as I  
79 stayed out of trouble, and I knew my mom would tell him if I didn't.  
80

81 When I picked Joey up, I was wearing my Jets jacket, as usual. We left her/his house and  
82 drove to the school. As soon as we pulled into the parking lot, we saw Taylor taking  
83 money. As I pulled up, I rolled down the window a tiny bit just because I knew it would  
84 bug him. S/he kind of stuttered and said that we had to pay a dollar to park. S/he totally  
85 forgot what s/he was doing, so I started pulling forward Taylor slammed her/his fist on the  
86 top of my car, so I backed up and said, "Did you forget something, Syd?" Yeah, I was  
87 sarcastic – so sue me.

88 About halfway through the game a friend of mine from New York, Bobby Davis, got  
89 there. He was in town for the weekend, so I invited him to the game. Taylor was sitting  
90 down with Principal Mathis at that point, and I saw Taylor looking at us when Bobby sat  
91 down. I think s/he was staring at Bobby because he's Black. and Taylor thinks that if  
92 you're Black – you're in a gang; and, if you're from a poor family – you're in a gang. So  
93 Bobby, Joey and I are all in gangs the way s/he sees it.  
94

95 During the game, we went to the concession stand to get something to drink. When we  
96 went back to our seats, we were messing around with the people who were sitting in front  
97 of us. Some soda did spill on one of them, but it was just an accident. Taylor got all bent  
98 out of shape. S/he came over to "straighten me out" but I just saluted her/him and said  
99 something like, "Whatever you say, Syd."

100  
101 After the game, Bobby wanted to go for a ride in my new car. I told him & Joey,  
102 "Don't move, I'll bring it to you." They were still up in the grandstand, so I decided to  
103 really bring the car to them. I had to cut the lock on the south gate, so I could get in, but  
104 who would ever know I did it? I drove my car right under the stands, and Bobby and Joey  
105 couldn't believe it! Even though the stadium lights were still on, I left my parking lights  
106 on and my car running so that we could listen to tunes. Joey and Bobby came down to  
107 where my car was. I put a CD on, got out of my car and we all just stood on the passenger  
108 side a few feet from the front on my car. There were some empty beer bottles on the  
109 ground right next to my tire. I moved them away because I didn't want to end up with a  
110 flat.  
111

112 We were minding our own business when we heard Taylor call out. "What are you kids  
113 doing?" We were kind of surprised partly because we didn't know s/he was there, but  
114 mostly because we couldn't believe s/he asked what we were doing; s/he should have  
115 been able to see that we weren't doing anything since s/he wasn't more than 20 feet away  
116 from us. I told Joey and Bobby that Taylor ought to get a life, but we didn't say anything  
117 to Taylor; we just stood there. We knew s/he would be standing there all nervous and  
118 sweaty and stuff, and we thought is we didn't say anything s/he'd get even more paranoid.  
119 Joey and I were laughing and telling Bobby how the cops probably wanted Taylor  
120 scheduled at the school to keep her/him off the streets.  
121

122 After we heard Taylor call out, we were kind of laughing again, and then Bobby  
123 started to laugh out loud. You know how you don't want to laugh, but you can't help it.  
124 Well, then Joey and I started to laugh, too. Right after that we heard a bang, and I felt  
125 this real bad pain in my thigh; I fell down on the ground and Joey was holding me. I don't  
126 know where Bobby went. Taylor came running over to us, and Joey was yelling at  
127 her/him.  
128

129 I heard Taylor say something to me like –you kids scared me. Where's the gun? After  
130 that, I must have passed out because I don't remember anything else.

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**VERIFICATION STATEMENT**

This is true transcript of excerpts from the sworn testimony of Alex Day, Witness, at the Grand Jury proceedings of Rye County, New Justice, reported by John Gabaldon, Certified Court Reporter, commencing at 9:27 AM, September 8, 2004.

*John Gabaldon*  
John Gabaldon  
Certified Court Reporter

**WITNESS ADDENDUM**

I have reviewed this transcript, and I have nothing of significance to add. The material facts are true and correct.

*Alex Day*  
Alex Day

SIGNED AND SWORN to before me at 8:00 AM on the day of this round of the 2006 New Justice Mock Trial Competition.

Signed: *Tina Bartlett*  
Tina Bartlett, Notary Public  
State of New Justice  
My Commission Expires January 30, 2007

31 JOSEPH/JOSEPHINE (JOEY) CHAVEZ

32  
33 EXERPTS FROM TESTIMONY BEFORE THE GRAND JURY

34  
35 My name is Joey Chavez, and I live at 58 Ridge Place, N.E., in Rye, New Justice. I'm 17  
36 years old, and I go to George Washington High School. I'm a sophomore. Yeah, yeah –  
37 that's old for a sophomore, but I flunked my freshman year. I live with my parents, and my  
38 brother and sister who are both younger than me. I like sports and watching TV, and I'm  
39 pretty good at art.

40  
41 Alex Day and I met each other last year at a 54<sup>th</sup> Street Gang party. I wasn't a member of  
42 the gang, and neither was Alex. We both hung around with them because they gave  
43 great parties. Alex and I got to be good friends during the summer before I got busted and  
44 sent away. That bust was a complete rip; just because I happened to be there when the  
45 cops came to break up a fight, I got charged with battery and possession of a fire arm. The  
46 gun they found didn't even belong to me: it belonged to one of the other people, but I was  
47 there, and I already had a record, so I got convicted.

48  
49 I hated being locked up, so while I was in detention I decided that when I got out I would  
50 really try to stay out of trouble. I learned a good lesson, and I don't ever want to go back  
51 there again. There are some real bad people there, and you can get hurt. Right after I got  
52 out, I got busted again – this time for DUI. My dad was real mad, but I convinced him I  
53 wanted to turn over a new leaf and not get into any more trouble. He let me keep hanging  
54 around with Alex because Alex had transportation. Besides s/he wanted to live up to this  
55 promise s/he made to her/his dad earlier in the summer. While Alex was in New York  
56 visiting him, her/his dad gave Alex this great Camaro. There was some condition about  
57 Alex having to stay out of trouble if s/he wanted to keep the car. S/He loved that car and  
58 wouldn't do anything to risk losing it, and I sure didn't want any more hassle from my dad  
59 or the cops.

60  
61 I especially didn't want to hear any more from Sydney Taylor who warned me after the  
62 DUI bust that I should stop hanging around with Alex, because we would just keep getting  
63 into more and more trouble, and eventually somebody was going to get killed. I didn't  
64 know when Taylor said that s/he meant that s/he was going to try to kill Alex.

65  
66 On August 23, 2004, Alex and I got together during the day at school and made plans to  
67 go to the homecoming game that night. S/He's really a big football fan and especially likes  
68 the Jets. Alex said s/he would pick me up at my house. S/He got there about 7:00 PM,  
69 and we went straight to the stadium. When we pulled into the parking lot, we saw Taylor.  
70 S/He thinks Alex is big time drug dealer at our school. Alex sort of gave Taylor a hard time  
71 in the parking lot while s/he was collecting money. I think it made Taylor mad because  
72 s/he banged her/his hand on the top of Alex's car. There's a surprise, huh? Taylor mad at  
73 Alex? Anything Alex does makes Taylor mad. I swear s/he's obsessed with Alex.

74  
75 Anyway, Alex and I were together during the whole game. S/He never left my side, and  
76 s/he didn't have anything to drink. S/He drove fine on the way to the game, and s/he didn't  
77 do anything weird at the game. S/He definitely was not intoxicated or high. I told you s/he

78 came to pick me up at my house, and believe me, if my dad had suspected anything like  
79 that, there's no way he would have let me get into the car with her/him. No way.

80  
81 About halfway through the game, a friend of Alex's from New York City, named Bobby  
82 Davis came to sit with us. I saw Principal Mathis and Taylor watching us when Bobby got  
83 there. Some people who were sitting in front of us started hassling us and throwing popcorn.  
84 Alex had a soda in her/his hand and was pretending that s/he was going to soak them when  
85 somebody came from behind and hit Alex's arm. The drink flew all over the place, and I  
86 guess one of the girls got mad because she went and talked to Taylor who came right  
87 over to give us a hard time. I didn't say anything, but I think Alex may have saluted her/him.

88  
89 After the game, Bobby wanted to go for a ride in Alex's car. Alex told us to wait in the stands  
90 while she/he went to get it. The next thing we knew the car was underneath the stands. I  
91 knew s/he had to have broken in through a gate to get there, but I figured since  
92 everyone had left the stadium, no one would ever know it was Alex who had done it. Besides,  
93 it was no big deal. It's not like s/he hurt anyone, it was just a lock.

94  
95 Bobby and I went down to Alex's car. We were just standing around talking and listening  
96 to music. We didn't have anything in our hands. I heard the cops found some spray paint  
97 cans and empty beer bottles near where the car was parked and that they lifted Alex's  
98 fingerprint from one of them, but they weren't ours. They were there when we went down  
99 there. Alex just moved them away from her/his car, so s/he wouldn't run over any of them.  
100 Lots of kids hang around there during and after school. That stuff could have belonged to  
101 anybody.

102  
103 We were pretty surprised when we heard Taylor call us out. We didn't even know that s/he  
104 was in the stadium, much less standing right next to us. Well, I don't really mean standing  
105 right next to us, but s/he couldn't have been more than 25-30 feet away. S/He wanted  
106 to know what we were doing. Just to give her/him a hard time, we didn't answer. We didn't  
107 know it would make her/him so mad that s/he'd shoot at us. We were all trying not to  
108 laugh, but first Bobby cracked up, and then Alex and I did too. The next thing we knew  
109 there was a shot, and Alex went down. Taylor ran up to us saying something about a gun.  
110 "What gun?" I yelled at her/him. I couldn't believe s/he shot at us. I guess that's when  
111 Bobby ran off. I haven't seen or heard from him since.

112  
113 Alex didn't do anything to make Taylor think s/he was in danger. S/He's just a lousy  
114 security guard who shouldn't be allowed to carry a gun. I'm surprised s/he hasn't shot  
115 anyone before. I was glad I got to see Alex that night, and s/he was doing good. We spent  
116 about half an hour, just the two of us, in her/his hospital room.

117  
118 I didn't give a statement to the police the night Taylor shot Alex because I was too freaked  
119 out. My main concern was making sure that Alex was okay, and Sgt. Medina understood  
120 that. S/He said it was okay for me to go to the police station the next day to give one, which I  
121 did. I know the cops probably didn't believe a word I said, but I don't care. That's just  
122 because they think I'm in a gang with Alex and trying to protect my homie. That's so dumb.  
123 Nobody can prove that we're in a gang. Just because Alex has a nice car and wears a Jets  
124 jacket, everybody assumes that s/he's dealing drugs. If you ask me, that's nothing but  
125 discrimination.

**VERIFICATION STATEMENT**

This is a true transcript of excerpts from the sworn testimony of Joey Chavez, Witness, at the Grand Jury proceedings of Rye County, New Justice, reported by John Gabaldon, Certified Court Reporter, commencing at 1:15 PM, September 7, 2004.

*John Gabaldon*

Certified Court Reporter

Signed Tina Bartlett

Tina Bartlett, Notary Public  
State of New Justice

My commission expires January 30, 2007

**WITNESS ADDENDUM**

I HAVE REVIEWED THIS TRANSCRIPT, AND I HAVE NOTHING OF SIGNIFICANCE TO ADD. The material facts are true and correct.

Signed *Joey Chavez*  
Joey Chavez

SIGNED AND SWORN to before me at 8:00 AM on the day of this round of the 2006 New Justice Mock Trial Competition.

Signed Tina Bartlett

Tina Bartlett, Notary Public  
State of New Justice

My commission expires January 30, 2007



47 Principal Mathis had not seen the incident in question and had little to add.

48

49 After the ambulance left, I conducted a thorough search of the area. I placed into  
50 evidence the lock that was near the gate; two spray paint cans immediately in back of the  
51 Camaro; and, three empty beer bottles that were located approximately three feet from  
52 the passenger side of the Camaro.

53

54 I did not request fingerprinting of the paint cans. In my experience, it is difficult to lift prints  
55 from slick surfaces like that, but I did ask the lab to check out the beer bottles. They were  
56 able to make a match to Alex Day on one of them. His fingerprint was on the beer bottle.  
57 Although the other bottles had partial prints, they were smudged and unidentifiable. At the  
58 scene, I also observed tagging on the west wall of the grandstand approximately ten feet  
59 south of the driver's side of the Camaro. The paint was fresh and appeared to be in the  
60 same colors as the two cans of spray paint I seized, although no lab tests were performed  
61 on the paint. Finally, I made a diagram of the crime scene.

62

63 The following day, I went to the hospital. I wanted to take Day's pants to have them tested  
64 for powder residue, so a precise determination could be made of how close or how far  
65 Taylor was from Day at the time of the shooting. Unfortunately, the pants disappeared  
66 and were never recovered. I did find in the pocket of Day's Jets jacket a small switchblade.  
67 I seized the jacket and the knife. I know Jets clothing is sometimes worn by gang members  
68 At the yard, Day's Camaro was searched before being released to her/his mother, but it  
69 contained no weapons, alcohol or other suspicious items.

70

71 I have reviewed Day's medical records from Catholic Hospital. The records reflect two  
72 things. A bullet was removed from her/his upper thigh and her/his blood alcohol level  
73 indicated Day had been drinking. I have also attempted to locate Bobby Davis who had  
74 also been present at the scene. I learned Davis was from New York City, so I contacted the  
75 New York City Police Department and requested they run a check. They found nothing, and I  
76 have been unable to find anyone in Rye who has seen him since that night or who knows his  
77 whereabouts.

78

79 I am aware there are concerns about gang activity in Rye. The police department has been  
80 worried about it for the past few years. We've experienced tremendous growth in our  
81 community during that time, including an influx of people from New York. There's no doubt  
82 that some of these folks have children who were involved with gangs, and I think it's possible  
83 that gang elements have now been established in Rye.

84

85 The department has provided training on how to identify gang members. A few years ago,  
86 we looked primarily at race, dress and any indication that people from poorer families  
87 were in possession of expensive items, which could be an indication that they were  
88 involved in illegal activities. Now, though, they're telling us we have to look for things that  
89 are less easy to spot. I've even heard that if you tie your shoes a certain way or wear a  
90 hair net or shave your eyebrows just so, it can mean you're in a gang.

91

92 Frankly, I think there has been over reaction in the department and in the schools. I'm  
93 especially concerned about the emphasis on race as a factor, because it could lead to  
94 profiling, which is a dangerous thing. I realize that gang members can be vicious and that  
95 the risks for police officers are real. Nevertheless, I think we need to be very careful about

96 making assumptions based on people's appearances or ethnicity. After all, that attitude is  
97 what got Taylor into the mess she/he's in. You shoot first and ask questions later, because  
98 you're afraid that every poor kid in a Jets jacket you run across is a gang member who's doing  
99 a drug deal. Yes, it's true that we need to be vigilant to ensure that gangs don't take over our  
100 streets. But we simply can't engage in the kind of hysteria we've seen over the past couple of  
101 years. I think all the news articles about youth violence are overstated, and these parents who  
102 are demanding armed security in the schools are probably making the situation worse, instead  
103 of better. And, although it's not going to make me popular to say it, we've even had some of  
104 that over-reacting going on within the police force.

105

106 Take Taylor. Ever since she/he became security guard at George Washington High School,  
107 s/he's been obsessed with this. Occasionally, I would see her/him around town, and all she/he  
108 ever talked about was how gangs were ruining Rye and that they had to be eliminated once  
109 and for all. S/He even said that George Washington's a "cesspool of gang activity" and that  
110 s/he thought it was up to her/him to do something about it. It was like s/he was on a moral  
111 crusade to clean up Rye and was going to start with that school

112

113 It was common knowledge that Taylor was convinced not only that Alex Day was a  
114 member of the 54<sup>th</sup> Street Gang but also that s/he sold club drugs to the other students at  
115 George Washington. S/He even believed Day frequently came to school armed although  
116 there wasn't a shred of evidence to support that. A few times, Taylor had convinced the  
117 Principal to let her/him search Day's locker, or car or backpack; every time, s/he found  
118 nothing, but that didn't dissuade her/him at all. In fact, it seemed to make Taylor more  
119 determined. I remember one night in August 2004 right before the school year began. I  
120 ran into Taylor, so we went to have a couple of beers. S/he mentioned about how frustrating  
121 it had been to know Day was supplying the whole school with Ecstasy and Special K but that  
122 s/he'd been unable to catch her/him in the act. S/He also said words to the effect that one  
123 way or another, s/he was going to get Alex Day if it was the last thing s/he did. Taylor told  
124 me that Day wasn't going to make a fool out of her/him anymore and that s/he was going to  
125 teach that little gang banger a lesson.

126

127 I warned her/him to calm down and to try to regain some perspective, so s/he didn't do  
128 something s/he'd end up regretting. I reminded her/him that s/he had nothing on Day.  
129 S/He told me that two very reliable informants had implicated Day in a couple of drug deals.  
130 S/He wouldn't tell me who these reliable people were though. I pointed out they  
131 could be lying because they had an ax to grind with Day, but s/he wouldn't listen. As I look  
132 back over it, this obsession with Day started right after the Chief hired Leslie Thomas, the  
133 big city gang expert. Thomas was convinced that Day was some kind of dangerous drug  
134 kingpin, and Taylor ate it up. I think Day is maybe a wannabe, s/he's definitely not a  
135 big-time thug. I admit there's no love lost between Detective Thomas and me. I think  
136 the last thing we needed in Rye was somebody from New York telling us how to do things  
137 here. Thomas knew I felt that way and I'm sure that's why I wasn't invited to join her/his  
138 elite gang unit.

139

140 After that night, I didn't talk to Taylor again until I arrived at the stadium on August 23. I  
141 was not surprised to learn that s/he had panicked and tried to kill Alex Day.

## VERIFICATION STATEMENT

This is a true transcript of excerpts from the sworn testimony of Andy Medina, Witness, at the Grand Jury proceedings of Rye County, New Justice, reported by John Gabaldon, Certified Court Reporter, commencing at 9:07 PM, September 8, 2004.

*John Gabaldon*

John Gabaldon  
Certified Court Reporter

Signed Tina Bartlett

Tina Bartlett, Notary Public  
State of New Justice

My commission expires January 30, 2007

## WITNESS ADDENDUM

I HAVE REVIEWED THIS TRANSCRIPT, AND I HAVE NOTHING OF SIGNIFICANCE TO ADD. The material facts are true and correct.

Signed      *Andy Medina*  
Andy Medina

SIGNED AND SWORN to before me at 8:00 AM on the day of this round of the 2006 New Justice Mock Trial Competition.

Signed Tina Bartlett

Tina Bartlett, Notary Public  
State of New Justice

My commission expires January 30, 2007

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## SYDNEY TAYLOR STATEMENT TO POLICE

13 I, Sydney Taylor, being duly sworn upon oath do here by state:

14 My name is Sydney Taylor, and I am a security guard at George Washington High School. I  
15 attended the Police Academy in 1989, and after graduating, I worked full-time in law  
16 enforcement for the next 14 or so years. I consider myself an expert in recognizing  
17 criminals and criminal activity: I look for nervousness, shifty eyes, bulges under clothing that  
18 might signify weapons and so on. I was an excellent cop, but I was always passed over  
19 for promotion for some reason.

20 Over the past several years, we've had a lot of outsiders moving into Rye. Many of them  
21 came from New York and you know what that place is like. I made it my business to  
22 develop an expertise about gangs. I know they're often connected to drug dealing and  
23 that some of them make huge sums of money selling drugs or weapons. Besides the fact  
24 that all that is illegal, it really sticks in my craw that decent law-abiding citizens have to  
25 struggle to make a buck, but these gang bangers are living high on the hog, driving fancy  
26 cars and wearing expensive clothes. I'm sure that's why poor people are so attracted to  
27 gangs. That potential to make a fast buck, I mean. Anyway, during my career in law  
28 enforcement, I've seen enough that I'm convinced the gang problem is serious here in Rye.  
29 I've also been concerned for some time that certain members of the Rye Police Department,  
30 like Andy Medina for instance, do not take this situation seriously enough.

31 I was honored when Principal Mathis approached me about working at George Washington  
32 High School. I knew it would give me the opportunity to do something very important in our  
33 community. I would be autonomous, so I could focus on certain students who I knew were  
34 gang members and who were selling club drugs at school. I was eager to put together a case  
35 against the people who were ruining Rye. Right after starting at the school, I noticed how  
36 many students wore beepers or carried cell phones. That was a clear indication to me they  
37 were receiving calls from their connections and their buyers.. I also saw a lot of gang wear.  
38 You know the type of stuff I'm talking about: hats and jackets from certain sports teams like  
39 the New York Jets.

40 It's for sure the job offer came at a very good time because my job at the Rye Police  
41 Department had been terminated. That's because I led a drug bust against a powerful city  
42 official, and people felt that kind of aggressive police work could cost us. Some of my co-  
43 workers said I had jeopardized the department's budget by alienating certain city officials.  
44 After the bust, I placed the whole stash I had seized in the Evidence Room, but then it  
45 disappeared. People within the department tried to pin that on me. They had no evidence that  
46 I stole those drugs, and I can say right now that I didn't. Apparently, that didn't matter.  
47 Certain high-up officials in the department who were cozy with the guy I busted forced me  
48 out.

49 I had known Principal Mathis for many years. We had gone to high school together and later  
50 attended the same church. We were both very concerned by what was happening in Rye; we  
51 talked about it frequently, and we had even gone to a seminar together to try to develop a

48 strategy for getting the gang problem under control before it was too late.

49

50 Principal Mathis briefed me extensively about drug dealing and gang activity she/he  
51 suspected was going on at the school. When I started, s/he gave me a memorandum that  
52 pinpointed certain individuals, among them Alex Day and Joey Chavez, as sources of the  
53 problem. S/He basically gave me a free rein to look for weapons possession, drug dealing,  
54 drug use and any other potential gang activity. Even though I didn't work for the Rye PD  
55 anymore, I talked at length with their gang specialist, Detective Leslie Thomas, who also  
56 warned me about Day and Chavez.

57

58 I usually worked from 8:30 AM to 3:30 PM at the school, and I also worked the extra-  
59 curricular activities like dances and sports events. I was always armed, and I wore a  
60 guard's uniform. When I started working at the school in the middle of the 2003-2004  
61 school year, I knew the only way I could gather data would be through developing a network  
62 of informants. I did this by trading information for cigarettes, and if the information  
63 was good enough, for money. It was from these sources that I confirmed that Alex Day  
64 and Joey Chavez were members of the 54<sup>th</sup> Street Gang, that Alex Day was the main  
65 source at George Washington for Ecstasy and Special K, and that s/he often carried weapons  
66 and would do anything to protect his/her stash.

67

68 I learned this from two different informants, and I paid them \$100 each, out of my own  
69 pocket. I received the information in January of 2004. At about the same time, I  
70 researched Day's and Chavez' juvenile records and discovered that while Chaves had  
71 been incarcerated in a juvenile detention facility for having assaulted another kid with a  
72 gun, nobody had been able to get Day for anything more than a shoplifting rap. It was  
73 then I decided to do something about that.

74

75 I began to keep a close eye on Alex Day. I knew s/he was driving a fairly late model car,  
76 which suggested to me that s/he might be earning significant sums of money from  
77 nefarious activities. I knew where s/he lived, and it was in one of the poor sections of  
78 town. There was no way s/he came by the car legitimately. From January of 2004 until the  
79 end of the school year, I also saw Day frequently wearing a New York Jets jacket and  
80 carrying a cell phone. However, like many criminals, Day was slick, and despite locker  
81 searches and other skillful investigative initiatives, I could never nail her/him. I pulled  
82 her/his school schedule and would sometimes follow her/him after class out to the parking  
83 lot or to where s/he was going to lunch. S/he's smart though. S/he knew I was following  
84 her/him, and s/he was very, very careful.

85

86 One thing that really ticked me off was that s/he always made fun of me when I was  
87 following her/him. It was infuriating to have a teenager treat me so disrespectfully. I also  
88 have to say s/he made me more than a little nervous. I was sure s/he carried a weapon and  
89 wouldn't be afraid to use it. I'm very cautious about people with weapons, and one  
90 time it saved my life. Back in 1994, I used my night stick to knock a knife from a drunk's  
91 hand. Unfortunately, I accidentally broke his arm in the process. The guy sued, and if you  
92 can believe it, the city attorney settled the case for \$100,000. Can you imagine? Here I was  
93 just doing my job. I could have been killed, but the guy who pulled a knife on me got  
94 a bunch of money.

95 I didn't see Alex Day between late May when school let out and early August. I drove by  
96 her/his house several times, but I never saw her/him. By asking around I found out that  
97 Day was in New York with her/his father for the summer. I called the NYPD and had Day's  
98 father checked out. I was told that he was unemployed, that he lived in a terrible section of  
99 the city and that he did not have a police record. Just before the new school year started on  
100 August 15, 2004, Day reappeared driving a fancy new Camaro and from what I heard,  
101 throwing a lot of money around. As far as I was concerned, my suspicions about Day were  
102 confirmed. I was certain/he had returned from New York with a trunk full of drugs, and  
103 probably weapons, too. I knew that stuff would make its way into George Washington  
104 High School, so I then and there decided to redouble my efforts to bust Alex Day. I knew if  
105 I could just catch her/him in the act, I'd have a good chance of getting back my job with the  
106 Rye Police Department.

107

108 On August 23, 2004, I got to school a little bit after 8:30 AM and worked until 3:30 PM. I  
109 did all my usual patrols that day, combing the hallways, the parking lot and the more  
110 remote areas of the school grounds on the lookout for illicit activity. I noticed nothing  
111 unusual. I went home after the end of the school day and returned to the school at 6:30 PM  
112 to begin my work at the football game. I collected a dollar from each car that entered  
113 the parking lot, using that as a opportunity to watch for alcohol, weapons or drugs.

114

115 Around 7:00 PM, I saw Day's Camaro pull in. The windows were tinted so dark you could  
116 hardly see into the car, but I was certain that I smelled pot. Day rolled down her/his  
117 window only a crack and made some smart comment to me. Another student, Joey Chavez,  
118 was in the front seat, and they both started to laugh at whatever Day had said. I  
119 was very disappointed to see Joey with Alex; shortly after her/his release from the juvenile  
120 detention facility, s/he had been busted for DUI. I warned her/him that s/he should stop  
121 hanging around with Day, but apparently that fell on deaf ears. Day stopped, rolled down  
122 the window only about three inches, and threw a dollar out of the window and onto the  
123 ground. I was furious, but I used my deep breathing exercises, which really helps to control  
124 my stress better than the muscle relaxants my doctor had prescribed right after I was fired  
125 from the Rye Police Department. In no time at all, I had completely recovered from the run-  
126 in with Day.

127

128 For the next couple of hours, I ate a hot dog and popcorn, watched the students and enjoyed  
129 the game. I sat with Principal Mathis for part of the time, and I kept a close eye on Day, as I  
130 always do. About halfway through the game, I saw a Black teenager wearing a Jets cap  
131 approach Chavez and Day and sit down with them. I had not seen the person before but  
132 learned later that it was one Bobby Davis. The three huddled together and talked in hushed  
133 tones about something important. I was sure they were talking about drugs, but I wasn't close  
134 enough to overhear. When they got up and left; I tried to follow them, but I lost them in the  
135 crowd. In about 15 minutes, they returned to their seats, and I could tell they were on  
136 something.

137

138 During the second half a girl had come up to me and had asked if I could get Alex Day and  
139 Joey Chavez to lay off. She was very upset because they had thrown a coke into her hair.  
140 When I approached Alex Day, s/he, Chavez and Davis all appeared to be either intoxicated  
141 or high. Day simply saluted me and said, "Whatever you say, Syd." It is my belief that Day

142 has no respect for authority figures. However, that is not why s/he was shot on August 23,  
143 2004.

144  
145 Although I watched them closely for the remainder of the game, I observed nothing else  
146 unusual. After the game, I patrolled the area to ensure that all the students left. Principal  
147 Mathis and I secured the visitor's side of the football stadium and started walking towards  
148 the home side. We heard screeching of wheels and saw a car pulling in under the  
149 grandstand. I knew that the only way that a car could get into the south area was if the  
150 lock which we had just checked had been cut or if the gate had been totally torn down. I  
151 asked Principal Mathis to go call the police, and s/he left.

152  
153 The car pulled in so that it was facing north, and its parking lights were on. Naturally, I  
154 approached with extreme caution because of course I suspected it was Day's Camaro.  
155 When I was about 60 feet from the car, I saw someone in a dark jacket get out of it. I saw  
156 two others who had either just gotten out of the car or who were already there. Although  
157 the stadium lights were still on, it was pretty dark under the stands, and I couldn't see for  
158 sure who they were. I could tell they were talking, and I saw an object change hands  
159 which could have been either a weapon or drugs. I did overhear what seemed to be a  
160 discussion about prices. The car was still on. I could see that one of the suspects was  
161 Black and was wearing a cap. I was certain the three were Day and Chavez and the kid  
162 that I had seen them with earlier.

163  
164 A drug deal was probably going down, I thought. I was nervous because I knew they were  
165 probably carrying weapons, and if I was correct in my earlier observation that they had  
166 been doing drugs during the game, there was no telling what they might do. At the same  
167 time, I was also excited because I thought I finally had Day dead to rights. I called out for  
168 them to put their hands over their heads. I heard a voice which I recognized as that of  
169 Alex Day say, "Sydney get a life." They all began to laugh. None of them did what I had  
170 advised them to do.

171  
172 I saw a reflection off a shiny object that one of them was holding. I was sure it was a  
173 handgun. They were all three very close together, and I couldn't tell exactly who had the  
174 gun, but the lighting was good enough that I was, and still am certain that it was a  
175 handgun pointed directly at me. I immediately drew my weapon and fired in the direction  
176 of the gun.

177  
178 I did not shoot to kill, obviously, I'm a very good shot, and I fired toward the lower part of the  
179 body, which is why I hit Day's thigh. Believe me, if I had wanted to kill her/him, I could  
180 have done so. After all, I was a police officer for many years, and I am trained to use a  
181 gun. Because I aimed at the person with the weapon, and it was Day whom I shot, I am  
182 certain it was s/he who pulled the gun. I am also convinced the reason that no weapon  
183 was found at the scene is because Davis picked it up and ran with it. I didn't actually see  
184 that happen, but there's no other explanation.

185  
186 I ran over to where Day was lying on the ground with Chavez. Naturally I was upset. No  
187 security guard wants to shoot anyone; however, I had to defend myself. Day had a gun,  
188 and if I hadn't shot first, s/he would have killed me. I had to act quickly and without  
189 hesitation. I am sorry that I had to shoot a student, but I know that in the same situation, I  
190 would do it again.

## VERIFICATION STATEMENT

I do hereby certify that I have read all questions propounded to me and all answers given by me on August 24, 2004, taken before a certified court reporter and notary public and that there are no changes noted.

Signed: *Sydney Taylor*  
Sydney Taylor

Signed *Tina Bartlett*  
Tina Bartlett, Notary Public  
State of New Justice  
My commission expires *January 30, 2007*

## WITNESS ADDENDUM

I HAVE REVIEWED THIS TRANSCRIPT, AND I HAVE NOTHING OF SIGNIFICANCE TO ADD. The material facts are true and correct.

Signed *Sydney Taylor*  
Sydney Taylor

**SIGNED AND SWORN** to before me at 8:00 AM on the day of this round of the 2006 New Justice Mock Trial Competition.

Signed *Tina Bartlett*  
Tina Bartlett, Notary Public  
State of New Justice  
My commission expires *January 30, 2007*

1  
2  
3 **LESLIE THOMAS**  
4 **EXCERPTS FROM DEPOSITION**

5 I, Detective Leslie Thomas, being duly sworn upon oath do hereby depose and state:  
6 I have been with the Rye Police Department for the past 11 months. Prior to that, I spent  
7 eight yeas with the New York City Police Department, the last three of which were with the  
8 Gang Unit.

9  
10 I was hired by the Rye Police Department to form a gang unit here in response to a citizen  
11 demand that the city do something about the influx of outsiders, mostly from New York, who  
12 were brought here by Sunicorp. The Department was looking for someone experienced in  
13 gang problems, and I was looking for a way to get out of New York City. It had become just  
14 to dangerous for me and my family. That city is history as far as I'm concerned. It's being  
15 completely overrun by people who couldn't care less about obeying the law or behaving like  
16 civilized human beings.

17  
18 I took the job in Rye because I thought I could make a difference here and nip these  
19 gangs in the bud before they could really take root In New York City, it seems that no matter  
20 how hard you try, you just can't make a dent in the problems. I thought it might be different  
21 here and, in fact, I think we're beginning to have an effect.

22  
23 During my time with NYPD, I attended a 40 hour, week-long seminar at the New York Law  
24 Enforcement Coalition's Institute of Gang Eradication. In addition, I have been certified as  
25 an Inner City Gang Specialist by the National Law Institute in Washington, D.C., and I  
26 served on a Federal Task Force to develop a strategy for addressing gang problems in  
27 cities larger than 1,000,000 in population. Since moving to Rye, I have received training  
28 from the New Justice Department of Public Safety in traffic control during hazardous  
29 waste clean-up situations.

30  
31 I have attended numerous conferences regarding the detection and eradication of gang activity  
32 and have read extensively about gangs. I have arrested literally hundreds of gang members  
33 in New York City and several in Rye. I have also testified on the subject in numerous other  
34 criminal proceedings. Based on my training, education and experience. I know without  
35 question that poverty, race and clothing are reliable identifiers of gang members. In Rye,  
36 just as in New York the gangs in Rye are predominantly poor and minorities.

37  
38 I have been retained as an expert witness by the attorneys for Sydney Taylor. Based on  
39 my review of the witness statements, memoranda, arrest records and other available  
40 information, it is my firm belief that Taylor was completely reasonable in assuming that  
41 Alex Day, Joey Chavez, and Bobby Davis were members of the 54<sup>th</sup> Street Gang. I base  
42 that opinion on the clothing worn by Alex Day and Bobby Davis, the race of Bobby Davis,  
43 the fresh 54<sup>th</sup> Street Gang tagging found at the scene of the August 23<sup>rd</sup> shooting and the  
44 spray paint cans that were removed from the site by the investigating officer. I feel certain  
45 we could have proved all of this, if Andy Medina hadn't screwed up the investigation by  
46 allowing Chavez to wait until the day after the incident for questioning. Instead Chavez  
47 was able to go to the hospital that night, and I have no doubt s/he is the one who saw to it  
48 that Day's pants "disappeared."

49 I am quite familiar with the 54<sup>th</sup> Street Gang, and believe you me, they are deadly. They  
50 deal drugs and would as soon shoot you as look at you. And it's not only the boys who are  
51 involved; it's girls, too, and I mean they're the kind of people you sure don't want to tangle  
52 with. When I began seeing 54<sup>th</sup> Street tagging here in Rye, I knew we were in for trouble, and  
53 that's what I told Principal Mathis.

54  
55 S/he asked to meet with me when I first came to Rye because s/he was concerned about  
56 gang problems at George Washington. S/He showed me a memorandum that s/he had  
57 distributed to school personnel at the beginning of the school year which banned gang-  
58 related clothing and pinpointed several students as potential gang members. I told her/him  
59 that informing the faculty to be on the lookout was an excellent idea, and at her/his  
60 request I began to keep my eyes and ears open for gang-related activity at GW. Based upon  
61 what I have learned since then, mostly from my confidential sources, I have concluded the  
62 54<sup>th</sup> Street Gang has developed a following at the school and that Day and Chavez, among  
63 others, are involved.

64  
65 Just prior to the beginning of school in August 2003, the Department had been able to nail  
66 Joey Chavez for beating up another teen and threatening the teen with a gun. We got  
67 her/him off the streets for a while because s/he was confined in juvenile detention but then  
68 she/he was released and back in George Washington by the next school year.

69  
70 In December 2003, we busted two other kids right on the school grounds at George  
71 Washington. Both were Latino and wearing Jets garb, so I was sure they were 54<sup>th</sup> Streeters.  
72 One was arrested for possession of drugs and the other for carrying a loaded 45 caliber  
73 weapon. A loaded 45! You can see the situation was getting completely out of control.  
74 It seemed to be happening all over Rye, and I couldn't be everywhere at once. The parents  
75 were in an uproar, and they demanded immediate action. Principal Mathis called an  
76 emergency meeting of the P.T.O. and invited me to present recommendations for dealing with  
77 the situation. I suggested installing metal detectors at the entrances to the school and hiring a  
78 full-time security guard; both ideas were overwhelmingly approved.

79  
80 I think Principal Mathis made an excellent decision when s/he hired Sydney Taylor. S/He  
81 had demonstrated a clear understanding of the dangers of gangs taking over Rye and  
82 appreciated fully the seriousness of the situation. I briefed her/him thoroughly about the  
83 situation at George Washington. We discussed in detail Principal Mathis' memorandum,  
84 what my investigation had turned up during the past couple of months and the arrests of  
85 Joey and the other two kids. I specifically warned her/him about Alex Day and explained  
86 that although I hadn't been able to develop any hard evidence, I sure had a hunch and  
87 that if s/he kept close eye on Day, Sydney could end up with a bust so important that  
88 s/he might be reinstated at the Rye Police Department. I also warned Sydney to use extreme  
89 caution in all her/his dealings with suspected gang members. There are no more dangerous  
90 types around than those thugs. You start screwing around with them, and you can end up  
91 dead. They all carry weapons. I reminded Sydney of that and urged her/him to use the  
92 utmost care whenever s/he approached or interacted with them. The safest policy is to  
93 prepare for the worst and to be vigilant at all times. In my expert opinion, it was completely  
94 reasonable that Sydney believed the object s/he saw in Alex Day's hand on the night of  
95 August 23<sup>rd</sup> was a gun.

96 There is nothing surprising about Day and Chavez claiming they were not 54<sup>th</sup> Streeters.  
97 These gangs surround themselves and their activities with secrecy. And, it is extremely  
98 unlikely that any of these gangs would allow non-members to socialize with them. As a  
99 result, if an individual goes to gang parties and hangs out with gang members, there is no  
100 doubt in my mind that he or she is a member of that gang.

101

102 I understand that Sydney didn't have a shining career with the Rye PD, but what s/he may  
103 lack in skill s/he certainly makes up for in dedication. In all my years in this line of work,  
104 I've never known anyone as single-minded as Sydney. S/He was convinced that gangs  
105 were going to be the ruin of Rye, that the Rye Police Department wasn't taking the  
106 situation seriously enough, and that it was up to her/him to rescue George Washington  
107 High School. I guess some people might think s/he got carried away with the rhetoric,  
108 but for the most part, I thought s/he was right on target in her/his approach. S/He  
109 worked like a demon to bust these punks, and I admire her/him for it.

110

111 As for Andy Medina, s/he still has her/his nose out of joint because I refused to take her/him  
112 into the gang unit. To be honest, I really don't think much of Medina's police skills, and  
113 in my opinion s/he has never appreciated the serious threat that gangs pose to the  
114 City of Rye.

## END OF EXCERPTS FROM DEPOSITION

Signed *Leslie Thomas*  
Leslie Thomas

Signed Tina Bartlett  
Tina Bartlett, Notary Public  
State of New Justice  
My commission expires January 30, 2007

## WITNESS ADDENDUM

I have reviewed this deposition, and I have nothing of significance to add. The material facts are true and correct.

Signed *Leslie Thomas*  
Leslie Thomas

SIGNED AND SWORN to before me at 8:00 AM on the day of this round of the 2006 New Justice Mock Trial Competition.

Signed Tina Bartlett  
Tina Bartlett, Notary Public  
State of New Justice  
My commission expires January 30, 2007

## DANA MATHIS EXCERPTS FROM DEPOSITION

1. I, Dana Mathis, being duly sworn upon oath do hereby depose and state:
2. My name is Dana Mathis, and I have lived in Rye all my life. I am the principal of
3. George Washington High School. I am married and have two children with whom I
4. spend as much time as possible in order to instill in them the kinds of family values I
5. consider important.
6. I first met Sydney Taylor when we attended high school together. We lost track of
7. each other somewhat over the years, but we became reacquainted in June of 1997,
8. when we began attending the same church. One night we went out for coffee after a
9. church meeting, and Sydney told me about her/his job with the Rye Police
10. Department. We discovered we shared a common belief: as a result of the Sunicorp
11. plant our city was experiencing all the problems associated with the sudden arrival of
12. outsiders.
13. Several times over the next couple of years, Sydney and I had discusses the issue of
14. increased gang-related activity in our community. I told Sydney about the many new
15. students in my school who were being raised by single mothers, including Alex Day,
16. without the benefit of a father in the home, it was not really surprising these kids had
17. no understanding of real family values or that they were turning into criminals left and
18. right.
19. We both believed that we had an obligation to do what we could to protect our
20. community, so in July 2003, s/he and I attended a Law-Related Education Summer
21. Institute focusing on teens, Crime and the Community. To us, it sounded exactly like
22. what we needed to gain skills for recognizing and combating gang activities. It turned
23. out that the Institute really did provide us with valuable information about how to deal
24. with young people and how to involve them in activities that would deter them from
25. delinquent behaviors. We liked what the trainers said, But I was pretty sure
26. educational techniques wouldn't work with the likes of Alex Day and Joey Chavez. I
27. knew Chavez had been sentenced to a juvenile facility, but I also knew that upon
28. her/his release, s/he would be back at George Washington. I just knew those two were
29. going to bring drugs and weapons into my school, and I became increasingly
30. convinced that what I needed was to rid our campus of people like them.
31. When school started that August, I wrote a memorandum to my staff advising them to
32. be on the lookout for Day and Chavez and certain other students, and I banned the
33. wearing of gang-related clothing. In October, when Leslie Thomas was hired as the
34. gang specialist by the Rye Police Department, I met with her/him and asked that
35. she/he keep an eye on things a George Washington to see what s/he could learn. In
36. early December of 2003, Detective Thomas arrested two known members of the 54<sup>th</sup>
37. Street Gang at George Washington. One of them had drugs and the other had brought
38. a loaded weapon to school.
39. Naturally, when word got out about it, many of the parents were outraged, demanding
40. that I do something immediately. I scheduled a meeting of the P.T.O. at which
41. Detective Thomas was present. S/he made several suggestions about how we should
42. approach the problem. Over the winter break I had metal detectors installed at the
43. school entrances, and I offered Sydney Taylor a job as security guard for GWHS.
44. After an incident that was not her/his fault, Sydney had been let go by the Rye Police

45. Department. There were allegations that s/he had been framed, and I have no reason  
46. to question that. S/He also said that some of her/his coworkers accused her/him of  
47. overreacting to the gang situation, and with my personal knowledge of the seriousness  
48. of the situation, I thought that was highly unlikely. Nevertheless, for some period of  
49. time, s/he was experiencing so much job-related stress that her/his doctor had  
50. prescribed tranquilizers, although s/he told me s/he was reluctant to use them.  
51. I thought then, and still do, that the security guard position at GW was perfect for  
52. Sydney. S/He could work in an environment where s/he would be supported and  
53. affirmed in her/his desire to rid the city of some of its worst elements, and I knew we  
54. could get really something accomplished with both of us working at the school  
55. everyday. I was sure we could really clean things up.  
56. Sydney did discuss with me how difficult it was for her/him to use violence. S/He  
57. said sometimes s/he had to do it, but s/he always waited until it was absolutely  
58. necessary. In fact, s/he told me that one police captain had told her/him that s/he  
59. needed to respond more quickly or else her/his life would be in danger. I told her/him  
60. I agreed with the captain; everyone who knows Sydney knows that s/he is a really  
61. peaceable, sometimes almost passive, person. That's just her/his personality.  
62. Sydney was tireless in her/his role as the school's security guard. S/He led random  
63. locker searches and surprise inspections of backpacks and vehicles. Although s/he  
64. was continually disappointed when s/he couldn't pin anything on Alex Day, s/he never  
65. gave up trying.  
66. On August 23,2004, Sydney and I both attended the GWHS homecoming game.  
67. Sydney was working, so I didn't see her/him during the first part of the game. S/He  
68. did come and sit with me for a while, but left when a student came to ask her/his  
69. assistance. I watched as Sydney went to speak to Alex; s/he was sitting with Joey  
70. Chavez and some Black kid in a Jets cap, whom I had never seen before. I saw Alex  
71. make some kind of hand gesture at Sydney; and knowing her/him, s/he probably also  
72. smarted off.  
73. After the game, Sydney's duties included securing the school grounds, so s/he and I  
74. began a patrol of the stadium area. We heard tires squealing and saw a car driving  
75. under the grandstand. We had already checked the gate, so we knew someone must  
76. have cut the lock. Sydney asked me to go call the police, so I ran to the bank of  
77. phones on the visitors side of the field. I was told by the dispatcher that a unit was in  
78. the area and would arrive in a few minutes. I have to say I was very hopeful that it  
79. would get there before some gang member shot my security guard.  
80. As I returned to the home side of the stadium, I heard what sounded like a gunshot.  
81. Naturally, I was horrified. I began running, and as I approached, I saw Sydney  
82. standing by Alex Day's car with Joey Chavez. Behind them I saw that same Black kid  
83. who was with them earlier. As he ran away, I chased after him but was unable to  
84. catch him before he disappeared into the night.

85. I gave up and went back to the stadium, where I saw Alex Day being loaded into an  
86. ambulance. There was an RPD officer at the scene when I returned. S/He told me that  
87. Sydney had apparently shot Alex Day.

88. I wasn't a bit surprised to learn that Alex got her/himself shot. S/He has been nothing  
89. but trouble ever since coming to GWHS. Last winter Alex's counselor advised me  
90. that all of Alex's teachers had reported dismal grades and serious attitude problems. I  
91. sent a copy of her report to Alex's mother along with my handwritten request that she

92. schedule a conference with me. Of course, Ms. Day did not respond to my request. I  
93. reviewed Alex's records at least two or three more times, and it was always the same:  
94. poor grades and a bad attitude.

95. Although I did not actually see the shooting or most of what led up to it, I am sure that  
96. Sydney did what s/he did in self-defense: it was definitely the right thing to do. We  
97. simply have to put an end to these activities that are ruining my school and my  
98. reputation.

## END OF EXCERPTS FROM DEPOSITION

Signed *Dana Mathis*  
Dana Mathis

Signed Tina Bartlett  
Tina Bartlett, Notary Public  
State of New Justice  
My commission expires January 30, 2007

## WITNESS ADDENDUM

I have reviewed this deposition, and I have nothing of significance to add. The material facts are true and correct.

Signed *Dana Mathis*  
Dana Mathis

SIGNED AND SWORN to before me at 8:00 AM on the day of this round of the 2006 New Justice Mock Trial Competition.

Signed Tina Bartlett  
Tina Bartlett, Notary Public  
State of New Justice  
My commission expires January 30, 2007

# **EXHIBITS**

CATHOLIC HOSPITAL  
1314 South Avenue B  
Rye County, NJ 88435  
505-472-3085  
505-472-3084 (fax)

PATIENT: Alex Day  
ADDRESS: 8413 Bush Street, Rye County, New Justice  
DOB: December 18, 1985  
INSURANCE: Sunicorp Employees HMO

8/23/04 Patient arrived via ambulance. Patient reports having been shot after harassing security guard. B.P. 150/100. Resp. 20 Temp 98.2 Pulse 100. Blood Alcohol Level .06.

8/24/04 Patient intermittently awake. Complains of restless night, little sleep, sharp pains in area of bullet wound and general pain in upper thigh area.  
B.P. 120/80, Pulse 86, Resp. 22, Temp. 98.6

8/24/04 Patient awake. Complains generally of restless night, little sleep, sharp pains in area of bullet wound and general pain in upper thigh area. B.P. 120/80, Pulse 86, Resp. 22, Temp 98.6.

8/25/04 Patient awake. Demands to be discharged. Continues to experience pain in area of bullet wound, but to a lesser degree than previous day. B.P. 120/80, Pulse 81, Resp. 21, Temp. 98.4

8/25/04 Patient discharged to mother. Given instruction on follow up care of wound.

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Certified as a true correct copy of permanent records of Catholic Hospital.

Signed: Sherman Fox  
Sherman Fox, Director of Medical Records  
Catholic Hospital

**RYE POLICE DEPARTMENT**  
**6134 West Aragon**  
**Rye, New Justice**  
**505-472-3889**

*“To Serve and Protect”*

**UNIFORM ARREST AND DISPOSITION RECORD**

**Name:** Alex Day

**Address:** 8413 Rush Street

**Telephone:** 472-7679

**DOB:** December 18, 1987

**SSN:** 543-64-4989

12/18/03	Shop lifting	Community service, \$25fine,3months probation

**RYE POLICE DEPARTMENT**  
**6134 West Aragon**  
**Rye, New Justice**  
**505-472-3889**

*“To Serve and Protect”*

**UNIFORM ARREST AND DISPOSITION RECORD**

**Name:** Joey Chavez  
**Address:** 55 Ridge Place NE  
**Telephone:** 472-6768  
**DOB:** March 17, 1987  
**SSN:** 585-28-9034

8/10/04	DWI	Pending
8/12/03	Illegal possession of a firearm	Commitment to juvenile facility
8/12/03	Aggravated battery	Commitment to juvenile facility
2/26/03	Minor in possession of alcohol	Community service and 6 months probation

**EXCERPTS FROM TESTIMONY OF DETECTIVE LESLIE THOMAS**

**State of New York V. Poole**  
**Brooklyn Superior Court, July 17, 2003**

**Direct Examination (By the District Attorney)**

**Q. What is your name?**

**A. Leslie Thomas**

**Q. What is your occupation?**

**A. I am employed as a detective with the Gang Unit of the New York Police Department.**

**Q. What is a gang unit?**

**A. It is made up of police officers trained to detect and eradicate gang activity.**

**Q. What kinds of things do you look for to determine whether gang activity is present?**

**A. Well, initially I look at race. It's a simple fact that minority neighborhoods are where you find gang activity. Then, I look for any visible drug paraphernalia or the presence of weapons. I do this not only to attempt to confirm that the people are in a gang but also for my own safety. I also watch for signs of nervousness or actions that indicate they are trying to hide something. Of course, another thing that I look at is whether the people are wearing any gang related clothing.**

**Q. Have you experience with gangs outside of the New York?**

**A. Not directly, but my extensive training and study in gang behaviors have led me to certain professional opinions about gangs in other communities.**

**Q. Have you formed such an opinion about the similarities and differences in gangs between larger cities such as New York and smaller metropolitan areas such as Long Island.**

**A. Yes I have. It's part of my job to keep up on developments in gangs wherever they exist: you can't know too much when you're dealing with a situation as complicated as gang psychology.**

**Q. How do gangs differ in larger and smaller cities?**

**A. Well, in larger cities you have certain sections which you might say are known gang areas like South Central in N.Y. There, you see a bunch of Black kids in Jets jackets hanging around a nice car, and you can just bet there's something going down. The same is true in East N.Y. with Latinos. And it doesn't matter even if there are some girls or a white guy in the crowd. A gang unit detective gets to where he can tell what's happening just by careful observation. If you walk up to a group like that unprepared, you're a dead man.**

**Q. And how does that differ from the situation in smaller cities?**

**A. You can't be sure what you're dealing with. You've still got to be careful, particularly in the poorer parts of any city, whenever you see a group of Black or Latino kids hanging around, especially when they're wearing what you know to be gang insignia. But in smaller cities, the gangs generally aren't as powerful and able to control their neighborhoods as completely, so you get a lot more kids who aren't really gang members—they're not into the guns and drugs – but they like the style.**

**Q. How does that difference between larger and smaller cities affect the role of the police?**

**A. I don't know how it does, but I know how it should. Again, I'm speaking generally here, but normally the smaller the city, the less certain you can be of the situation. Not that you can afford to be any less careful. But you can't be as sure that just because a kid in a Jets jacket is in a suspicious situation that the kid has his pockets full of dope. In South Central NY, yes. In South Hampton, maybe not. So for police officers, it's less dangerous in some ways because not all of these encounters are going to be life-or-death situations. But in other ways, it's even more dangerous because you be as certain about the situation, and you're much more likely make a mistake.**

#### **END OF EXCERPTS FROM TESTIMONY OF LESLIE THOMAS**

I hereby certify that this is a true and correct copy from the official records of the official records of the Superior Court of Brooklyn, State of New York.

Martin E. Mason

Martin E. Mason, Superior Court Clerk

## **George Washington High School**

To: All Teachers And Counselors  
From: Dana Mathis, Principal  
Date: August 15, 2003  
Subject: Gang Activity

---

I wish to welcome all of you back to George Washington High School for what I hope is a productive new school year. I have several items of concern, one of which I would like to bring up with you in this memo. As you know, gang activity throughout the city is increasing. The writing in on the wall, excuse the pun.

The gang activity in the George Washington High School neighborhood became noticeable last year and escalated towards the end of the year. In order to keep the gangs out of the school, we took several steps. The first step was to ban all gang-related clothing at the school during school hours. At the present time such clothing includes any item bearing the insignia of the New York Jets, Los Angeles Kings and the Chicago Bulls or White Sox. The purpose behind this rule is to ensure that students at George Washington High School are not unknowing victims of gang violence. Oftentimes, members of rival gangs will shoot someone simply because they have on what might be construed to be gang-related clothing. If you see students wearing gang-related clothing, please advise them of the ban, take the item of clothing and advise them that they can pick it up at the end of the school day. Please announce to your first period class each day this week and every Monday thereafter that the wearing of such items of clothing is strictly forbidden and that you will confiscate any such items.

We have also attempted to develop a list, which I request that you keep confidential, of students who may possibly be involved in gang activity. This list was developed from information provided by teachers and various members of the Rye Police Department. The students we have determined may be involved in gang activity include Steve Wonder, Andrea Aragon, Carl Puckett, Alex Day and Joey Chavez.

I repeat that this list should be confidential and is for informational purposes only. You should not treat these students differently than any other students. They have not been convicted of gang activity in any way, and these are only suspicions on our part.

## **George Washington High School**

To: Dana Mathis, Principal  
From: Ms. McDonald, Junior Class Counselor  
Date: December 18, 2003  
Subject: Alex Day

---

This memo is my monthly report about the students with whom there have been problems at school that are severe enough to warrant their being called into my office to receive formal notice of those problems. I am pleased to advise that for the period November 18- December 18, the only student with whom I have had to meet is Alex Day.

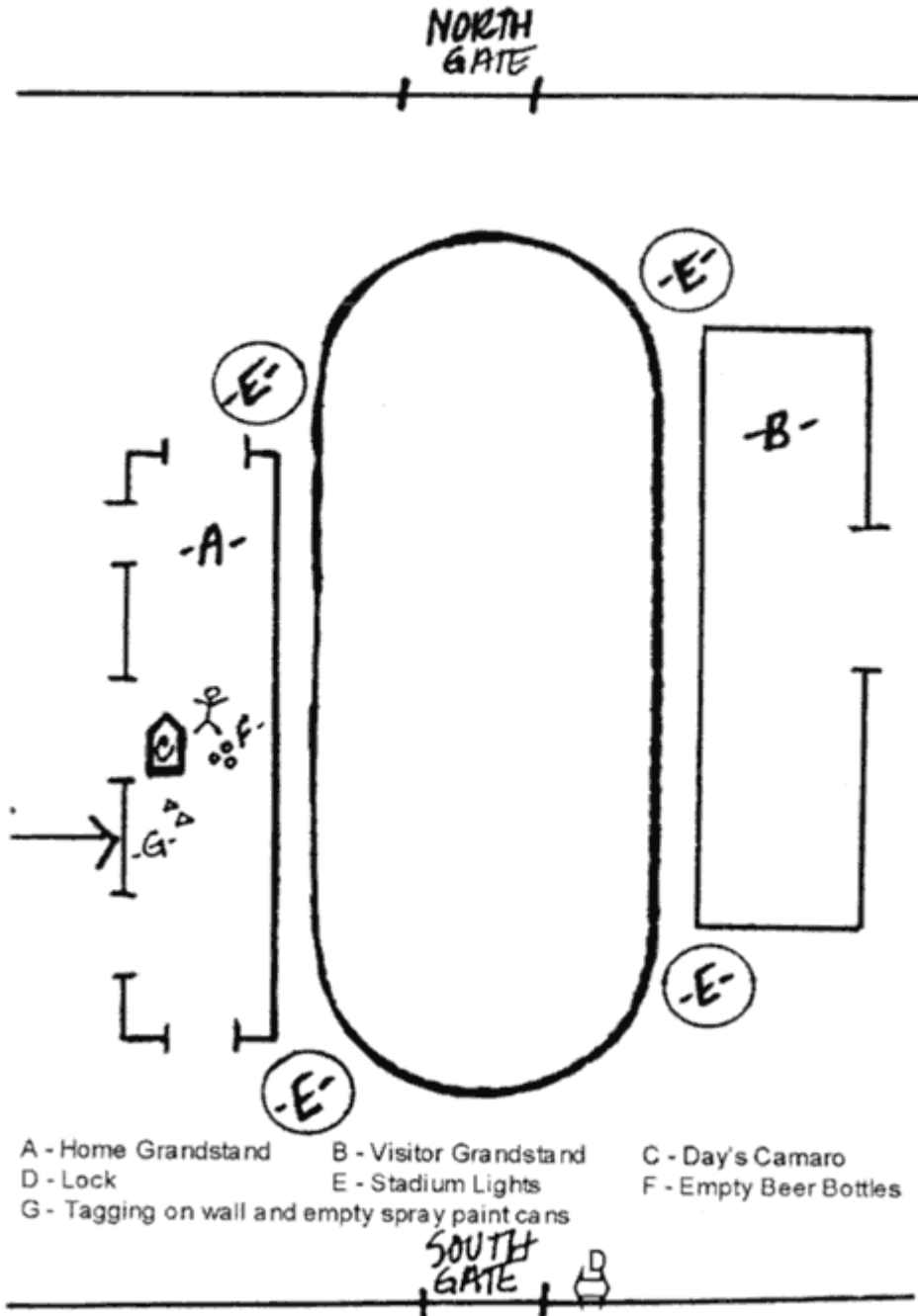
Alex's grades have fallen steadily since the beginning of the school year in every class. As you review her/his transcript you will see that Alex's teachers are primarily concerned with what they describe as a surly, uncooperative attitude and little or no effort on Alex's part to improve either grades or behavior.

In addition, Alex's chemistry teacher, Mr. Cheney, notified me yesterday that for the fifth time during this nine weeks, he had to confiscate Alex's jacket which bears the insignia of the Jets. Alex has been advised on numerous occasions of the ban against wearing clothing that could put GWHS students at risk for retaliatory acts from gangs. In spite of the ban, Alex continues to wear the jacket regularly.

Alex's refusal to abide by this particular school rule supports the claim of Ms. Saunders, Alex's World History teacher, who is convinced that Alex is a member of the 54<sup>th</sup> Street Gang. She insists that she has seen Alex with known members of the 54<sup>th</sup> Street Gang, including the student who was arrested on campus earlier this month for possession of crack cocaine. In addition, she says that a number of the students here at GWHS are afraid of Alex.

My concern is the implied threat Alex made during our conference. When I informed Alex that I would be writing this report to you and that I would suggest you send a copy to Mrs. Day, I was told I was making a big mistake because Alex knows "a whole gang of people who could make you very sorry you're sticking your nose in where it doesn't belong." As I state above, I would strongly suggest that you notify Mrs. Day immediately and schedule a meeting to discuss this situation with her.

Sketch of August 23, 2004 Shooting Scene  
Prepared by Sergeant Andy Medina



## **LEGAL AUTHORITIES**

### **Statutory Law from the New Justice Statutes Annotated**

#### **30-2-1.Murder**

A. Murder in the first degree is the killing of one human being by another without lawful justification or excuse, by any of the means with which death may be caused.

(1) by any kind of willful, deliberate and premeditated killing...

Whoever commits murder in the first degree is guilty of a capital felony.

B. Unless he is acting upon sufficient provocation, upon a sudden quarrel or in the heat of passion, a person who kills another human being without lawful justification or excuse commits murder in the second degree if in performing the acts which cause the death he knows that such acts create a strong probability of death or great bodily harm to that individual or another.

Murder in the second degree is a lesser included offense of the crime of murder in the first degree.

Whoever commits murder in the second degree is guilty of a second degree felony resulting in the death of a human being.

#### **30-3-5.Aggravated battery**

A. Aggravated battery consists of the unlawful touching or application of force to the person of another with intent to injure that person or another...

C. Whoever commits aggravated battery inflicting great bodily harm or does so with a deadly weapon or does so in any manner whereby great bodily harm or death can be inflicted is guilty of a third degree felony.

#### **30-7-4.negligent use of a deadly weapon.**

A. Negligent use of a deadly weapon consists of:

- (1) discharging a firearm into any building or vehicle or so as to knowingly endanger a person or his property...
- (3) endangering the safety of another by handling or using a firearm or other deadly weapon in a negligent manner, or
- (4) discharging a firearm within one hundred fifty yards of an inhabited dwelling or building without the permission of the owner or lessees thereof.

B. The provisions of Paragraphs (1), (3), and (4) of Subsection A of this section shall not apply to a peace officer or other public employee, who is required or authorized by law to carry or use a firearm in the course of his employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of his office or employment...

Whoever commits negligent use of a deadly weapon is guilty of a petty misdemeanor.

**30-28-1. Attempt to commit a felony.**

Attempt to commit a felony consists of an overt act in furtherance of and with intent to commit a felony and tending but failing to effect its commission.

Whoever commits attempt to commit a felony upon conviction thereof, shall be punished as follows:

A. if the crime attempted is a capital or first degree felony, the person committing such attempt is guilty of a second degree felony...

B. if the crime attempted is a second degree felony, the person committing such attempt is guilty of a third degree felony...

## CASE LAW

The following are excerpts from case law concerning the legal issues raised in this mock trial case. This is only a portion of the opinion in each cited case. The entire case may be read in preparation for the mock trial and cited in the course of the trial.

### **State of New Justice v. Garcia**, 114 N.J. 269,837 P. 2d 862 (1992)

[The New Justice Supreme Court reversed a first degree murder conviction for insufficient evidence in support of the jury's finding that the killing was willful, deliberate and premeditated.]

...[U]nder New Justice's statutory scheme murder consists of two categories of intentional killings: those that are willful, deliberate, and premeditated; and those that are committed without such deliberation and premeditation but with knowledge that the killer's acts create a strong probability of death or great bodily harm. Included within the second category...[is] a killing that even though intentional, is committed on "[a] mere unconsidered and rash impulse," i.e., a rash or impulsive killing  
Was Garcia's killing of Gutierrez deliberate and premeditated, or was it only rash and impulsive?... There was *no* evidence to support the jury's conclusion that... Garcia decided to stab Gutierrez as a result of careful thought; that he weighed the considerations for and against his proposed course of action; and that he weighed and considered the question of killing and his reasons for and against this choice... All we know is that the parties argued in the back yard and decided to "take it to the street," and that ten to fifteen minutes later Garcia stabbed Gutierrez...

We do not dispute the State's contention that Garcia had sufficient time to form a deliberate intention to kill... Garcia certainly could have formed a deliberate intent during the ten to fifteen minutes while going from the back yard to the front yard, but nothing in the evidence enables the jury to infer that this is when he formed the requisite deliberate intent, or that he ever formed such an intent...

### **State of New Justice v. Salgado**, 112 N.J. 793, 819 P.2d 1351 (Ct. App. 1991)

[The New Justice Court of Appeals reversed convictions for aggravated assault and aggravated battery, holding that the trial court erred in excluding evidence concerning the victim's predilection for violence.]

... In self defense or defense-of-others cases, evidence of the victim's character may be admissible to show either defendant's reasonable fear and response under the circumstances, or that the victim was the aggressor... The victim's reputation for violence and any prior violent acts committed by the victim are relevant to both issues.. [C]ontrary to the trial court's ruling, the hearsay rule is no bar to the introduction of such testimony, at least where, as her, the testimony is offered not for the truth of the matter asserted, but to show defendant's state of mind...

Where character evidence such as this is offered to establish a defendant's reasonable apprehension of danger, the defendant must show he knew of the reputation or conduct at the time of the incident. . .

At trial, defendant attempted to testify about [the victim] Romero's reputation in the community for violence. . . [D]efendant had heard that Romero would threaten to shoot young men who were dating his daughters, and had bragged about wearing a chain of people's ears around his neck when he was in Vietnam. The court ruled that the evidence was hearsay and refused to allow the questioning. . .

Romero's purported reputation for violence and his alleged gruesome behavior in Vietnam were obviously important factors in explaining why defendant reacted so strongly during the incident. If the jury had believed defendant's description of Romero's personality and had believed that the defendant really did think Romero had cut off people's ears in Vietnam, it would have gone a long way toward explaining why defendant thought it was necessary to take a gun with him to Romero's house and to use it during the incident. . .

Therefore, we believe that the reputation, evidence and the Vietnam conduct evidence was of such importance to defendant's defense that the exclusion of such evidence was an abuse of discretion. . .

**State of New Justice v. Reneau**, 111 N.M. 217, 804 P. 2d 408 (Ct. App. 1990)

[The New Justice Court of Appeals reversed convictions for voluntary manslaughter and being a felon in possession of a firearm because of the admission at trial of evidence of the defendant's prior acts of violence.]

. . . [D]uring the trial, the state was permitted to question the defendant regarding her stabbing of a person not the victim. When defense counsel objected, the court ruled that in a self-defense case the jury must choose the aggressor and, therefore, since the character of the defendant had been put at issue, specific instances of conduct to show that character could be admitted. . . [E]vidence of a person's character is not admissible for the purpose of proving that that person acted in conformity therewith, except where offered by the accused. If evidence of a pertinent trait of his/her character is offered by the accused, the state may rebut by specific instances of conduct. Here defendant presented no evidence of peacefulness which would have opened her character to rebuttal by the prosecution. . .

Where character is an element of the crime or defense, . . . evidence of specific conduct may be admitted to prove the character. . . The state argues that because the victim's character is an element of self-defense, so too should the character of defendant be an element of self-defense. We do not agree that the character of the defendant should be or is an element of self-defense. The inquiry in a self-defense claim focuses on the reasonableness of defendant's belief as to the apparent necessity for the force used to repel an attack. . . The jury is to consider whether the defendant reasonably believed that she was in imminent danger of death or great bodily harm in light of all the facts and circumstances known to her. While this inquiry may conceivably involve some minor consideration of defendant's character, her character is not itself an essential element of a self-defense claim. . .

The fact that defendant may have stabbed another man does not establish that she did not fear the victim. . . Therefore, defendant's character, whether peaceful or violent, has nothing to do with whether she feared defendant and acted reasonably in accordance with that fear. It was error for the trial court to permit evidence of specific instances of violence in connection with defendant's character.

**State of New Justice v. Wyman**, 96 N.M. 558, 632 P. 2d 1196 (Ct. App. 1981)

[The New Justice Court of Appeals affirmed a conviction of criminal sexual penetration and burglary holding that the prosecutor's questions to the defendant as to whether he committed certain specified crimes on certain specified dates were permissible despite the fact that those instances of conduct occurred at a time when the defendant was a juvenile, where the prosecutor did not ask about juvenile adjudication and where no evidence as to juvenile adjudications was presented.]

. . .For the purpose of attacking the credibility of a witness, Evidence Rule 609 permits cross-examination as to whether the witness had been convicted of certain crimes. Evidence Rule 609(c) states: "Evidence of juvenile adjudications is generally not admissible under this rule."

The prosecutor's questions. . .did not ask about juvenile adjudications, and no evidence as to juvenile adjudications was presented.

The prosecutor's questions went to specific instances of conduct. Such questions were permissible under Evidence Rule 608(b). Defendant claims the questions should not have been permitted because the questions had the effect of circumventing Evidence Rule 609(c). .

We disagree. . .Specific conduct, admissible on cross-examination to attack credibility, is not to be excluded because an adjudication based on that conduct is excluded.