CASE MATERIALS

Official 2020 Mock Trial Materials

for the

FORTIETH ANNUAL

UTAH LAW RELATED EDUCATION

MOCK TRIAL PROGRAM

State of Zion

v.

Alex Buckley

Case No. 19-CRM-0803

Original case from Carolina Center for Civic Education co-authored by

Susan H, Johnson, and Elise Wilson

Adapted and revised by Kristina Kindl of the Utah Board of Education

FACT SUMMARY

On May 17, 2019, a fire destroyed the upper floors of Watchman Dormitory located on the property of Bald Mountain Preparatory Academy in Snow Canyon County, State of Zion. The fire started at approximately 10:55 p.m. outside of room 321, the single dorm room assigned to Carly Walsh. At the time the fire started, Walsh and another student, Dakota Pope, were studying in the room. Pope managed to escape from the fire by jumping out of a window, although Pope was badly injured in the fall. Walsh was unable to escape the fire, and although she was later rescued by the responding fire fighters, she died from sepsis and multi-organ failure due to having sustained full-body third-degree burns. Through the course of the investigation, it became clear that the fire was deliberately started outside of room 321, that gasoline was used as an accelerant for the fire, and that Walsh was the intended target. Pope also provided a statement that, while Pope was lying on the ground after jumping from the building, Pope saw an individual who matched the description of another student, Alex Buckley, hurrying away from the scene. Pope also reported that the alleged perpetrator dropped the gasoline can that was recovered at the scene, a can that contained Buckley's fingerprints. Buckley had access to the gasoline can and gasoline due to Buckley's employment at a local gas station/convenience store. Buckley also had motive to harm Walsh because Buckley needed to remove Walsh as competition for the full-ride college scholarship that Buckley needed to attend Stanford University. Buckley has pled not guilty to the charges alleging, instead, that Walsh's prior boyfriend, Todd Larkin, who had a history of being abusive, was the perpetrator. Buckley alleges that on the night of the fire: Larkin came into the store where Buckley was working; Buckley loaned Larkin the gasoline can from the store; and Buckley sold Larkin one gallon of gasoline. The witnesses differ in their beliefs as to who started the fire and who better fits the profile of the perpetrator of this type of crime.

AVAILABLE WITNESSES

Prosecution Witnesses	Defense Witnesses
Dakota Pope, student Lupe Rodriguez, guidance counselor Emerson Burke, EPD Division Chief & CSI	Alex Buckley, defendant Ridham Patel, store owner Kennedy Felder, forensic psychologist

CASE DOCUMENTS

Legal Documents

Information
Statutes
Stipulations
Available Case Law

Affidavits and Reports

Prosecution
Affidavit of Dakota Pope
Affidavit of Lupe Rodriguez
Report of Emerson Burke

Defense
Affidavit of Alex Buckley
Affidavit of Ridham Patel
Report of Kennedy Felder

EXHIBITS

1. Emigration Police Department Report
   A. Arrest Report
   B. Addendum: Witness Interview Summaries
2. Emigration Police Department photographs taken on May 18, 2019
   A. Watchman Dormitory
   B. Gasoline can recovered from the scene
   C. Uniform worn by Alex Buckley at the time of Buckley's arrest
3. 7-Eleven Receipt, May 17, 2019
4. Map of Bald Mountain Preparatory Academy
5. Text messages recovered from the phone of victim Carly Walsh
6. E-mails between Lupe Rodriguez and Alex Buckley
7. Bald Mountain Preparatory Academy Incident Report

NOTE: All names and places used in the mock trial case are fictitious, and the names were created to be gender neutral.

STATE OF ZION
24th JUDICIAL DISTRICT COURT
SNOW CANYON COUNTY

STATE OF ZION, **Prosecution,** v. **ALEX BUCKLEY,** **Defendant.**	**INFORMATION** **CRIMINAL NO. 19-CRM-0803** **OTN/Citation #012345678**

The undersigned Prosecutor for Snow Canyon County, State of Zion, states on information and belief that the defendant, ALEX BUCKLEY, on or about May 17, 2019, within Snow Canyon County, State of Zion, committed the following:

COUNT ONE

AGGRAVATED ARSON, a first-degree felony, in violation of Zion Code §76-6-103 in that the defendant at the time and place aforesaid, maliciously, intentionally, and without justification, set fire to a habitable structure and said habitable structure caught fire, burned, and was destroyed.

COUNT TWO

AGGRAVATED MURDER, a non-capital first-degree felony, in violation of Zion Code §76-5-202, insofar as the defendant, in the intentional and deliberate committing of the above action, caused the death of a living person. To wit, during the commission of an act of aggravated arson in the first degree, the defendant proximately caused the death of a living person.

THIS INFORMATION IS BASED ON INFORMATION OBTAINED FROM THE FOLLOWING WITNESS(ES): Dakota Pope, student at Bald Mountain Preparatory Academy; Lupe Rodriguez, guidance counselor at Bald Mountain Preparatory Academy; and Emerson Burke, Division Chief of the Criminal Investigation Division of the Emigration Police Department.

The bases for the charges are as follows:

On May 17, 2019, in Snow Canyon County, State of Zion, Alex Buckley borrowed a gasoline canister and purchased gasoline from his place of employment, a local

gasoline/convenience store. Buckley then deliberately poured approximately one gallon of gasoline on or near the door and hallway of room 321 of Watchman Dormitory, located on the property of Bald Mountain Preparatory Academy, and set the gasoline alight, burning said dormitory. Buckley specifically targeted room 321, the dormitory room of the victim, Carly Walsh. The resulting fire trapped Walsh in her dormitory room, and she died solely due to her fire-related injuries.

STATEMENT OF PROBABLE CAUSE: The undersigned Prosecutor is the Snow Canyon County Attorney and has probable cause to believe that the defendant, Alex Buckley, SSN: ***-**-4723, committed one or more criminal offenses, based upon credible information received from Emerson Burke, Division Chief with the EPD; Lupe Rodriguez; and eye witness observations of Dakota Pope.

Authorized on July 22, 2019, for presentment and filing:

L. Sam Buendia, County Attorney

By: L. Sam Buendia
Snow Canyon County Attorney
09387439

TITLE 76. ZION CRIMINAL CODE
(Selected provisions)

76-2-101. Requirements of criminal conduct and criminal responsibility.

(1) (a) A person is not guilty of an offense unless the person's conduct is prohibited by law; and

(b) (i) the person acts intentionally, knowingly, recklessly, with criminal negligence, or with a mental state otherwise specified in the statute defining the offense, as the definition of the offense requires; or

(ii) the person's acts constitute an offense involving strict liability.

(2) [Omitted.]

76-2-103. Definitions.

A person engages in conduct:

(1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

(2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(3) [Omitted.]

(4) [Omitted.]

*****

76-6-101. Definitions.

(1) For purposes of this chapter:

(a) "Fire" means a flame, heat source capable of combustion, or material capable of combustion that is caused, set, or maintained by a person for any purpose.

(b) "Habitable structure" means any building, vehicle, trailer, railway car, aircraft, or watercraft used for lodging or assembling persons or conducting business whether a person is actually present or not.

(c) [Omitted.]

(d) [Omitted.]

76-6-103. Aggravated arson.

(1) A person is guilty of aggravated arson if by means of fire or explosives he intentionally and unlawfully damages:

(a) a habitable structure; or

(b) any structure or vehicle when any person not a participant in the offense is in the structure or vehicle.

(2) Aggravated arson is a felony of the first degree.

*****

76-5-201. Criminal homicide -- Elements -- Designations of offenses -- Exceptions.

(1) (a) Except as provided in Subsections (3) and (4), a person commits criminal homicide if the person intentionally, knowingly, recklessly, with criminal negligence, or acting with a

mental state otherwise specified in the statute defining the offense, causes the death of another human being, including an unborn child at any stage of its development.
(b) There shall be no cause of action for criminal homicide for the death of an unborn child caused by an abortion, as defined in Section 76-7-301.
(2) Criminal homicide is aggravated murder, murder, manslaughter, child abuse homicide, homicide by assault, negligent homicide, or automobile homicide.
(3) [Omitted.]
(4) [Omitted.]

76-5-202. Aggravated murder.
(1) Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances:
(d) the homicide was committed incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit . . . aggravated arson, ...;

BURDEN OF PROOF

1. The burden of proof rests with the prosecution. The following are definitions and explanations that will assist you in either building your case against the defendant, or in defending Alex Buckley.

2. The defendant is presumed to be innocent of the charges. This presumption remains in effect unless and until, from all the facts/evidence presented at trial, the trier of fact is convinced beyond a reasonable doubt that the defendant is guilty of the alleged crime(s). Beyond a reasonable doubt is the highest standard of proof used in the United States court system.

3. The prosecution, State of Zion, has the burden of proving the guilt of the defendant beyond a reasonable doubt. Beyond a reasonable doubt means that no other logical explanation -- or reasonable alternative -- can be drawn from the facts/evidence presented at trial except that Alex Buckley committed the crime, thereby overcoming the presumption that a person is innocent until proven guilty. It does not mean that no doubt exists as to the accused's guilt, but only that no reasonable doubt is possible from the evidence presented.

4. The defendant is not required to prove his/her innocence.

5. If the judge has a reasonable doubt as to the defendant's guilt, the judge will pronounce the defendant not guilty. If the judge has no doubt as to the defendant's guilt, or if his/her only doubts are unreasonable doubts, then the prosecutor has proven the defendant's guilt beyond a reasonable doubt and the defendant should be pronounced guilty.

STATE OF ZION
24th JUDICIAL DISTRICT
SNOW CANYON COUNTY

STATE OF ZION, **Prosecution,** v. **ALEX BUCKLEY,** **Defendant.**	**CRIMINAL ACTION** **DOCKET NO. 19-CRM-0803** Judge Lucy Ridgeway **STIPULATIONS**

COME NOW the parties and agree to the following stipulations:

1. The case of *State v. Buckley* has been bifurcated. This trial concerns only the guilt phase. No evidence that goes solely to the extent of the penalty faced by Buckley may be presented by either party.

2. Alex Buckley has entered a plea of not guilty to all indicted charges and has not indicated intent to raise any affirmative defense. The State has agreed to not pursue the death penalty in this case.

3. Carly Walsh died at 9:47 a.m. on May 18, 2019. Her death was caused by sepsis and multi-organ failure due to full-body third-degree burns.

4. Jurisdiction, venue, and chain of custody of all evidence are proper and may not be challenged.

5. Both parties waive all objections and motions based on the Constitution of the United States. Both parties also waive all objections and motions based on privilege.

6. All witnesses reviewed their affidavits and reports immediately prior to trial and were given an opportunity to revise them. None did so. All witnesses affirm the truthfulness of everything stated in their affidavits. When preparing and reviewing their sworn statements, all witnesses were instructed to include everything that they know may be relevant to their testimony.

7. All documents, signatures, and exhibits included in the case materials are authentic; no objections to the authenticity of any documents will be entertained. Both parties must still lay proper foundation prior to entering evidence, and both parties reserve the right to dispute any legal or factual conclusions based on these items and to make objections other than to authenticity.

8. All electronic timestamps contained within exhibits are authentic and accurate.

9. All objections to Exhibit 1.A, the Arrest Report prepared by the arresting officer of the Emigration Police Department, have been waived. If offered, it is admissible by either party

at any time the record is open without further foundation. However, both parties reserve the right to object to Exhibit 1.B, the addendum to Exhibit 1.A, regarding witness interviews.

10. Alex Buckley waived the right against self-incrimination under the Fifth Amendment to the United States Constitution and will testify. Either party may refer to Buckley's decision to testify throughout trial. Buckley has waived his/her right to a trial by jury.

11. No witness currently possesses any physical injury relating to or resulting from the events of May 17, 2019, or any other events materially relevant to this case.

12. Todd Larkin is currently studying abroad in an exchange student program through Morgan University and was not able to be subpoenaed to testify. This court has declared Todd Larkin unavailable as a witness pursuant to Rule 804(a)(5). However, any hearsay statements made by Todd Larkin must meet one of the Rule 804(b).

13. Alex Buckley was taken into custody at 11:40 p.m. on May 17, 2019, in the parking lot adjacent to Watchman Dorm on the Bald Mountain Academy campus.

14. The State of Zion, prosecution, asks the Court to hold a bench trial to determine the guilt of the defendant.

15. No props may be used in lieu of, or in addition to, evidence included in this packet. Teams may not use markers or laser pointers to assist in the presentation of witness testimony concerning an exhibit. Use of electronic equipment is prohibited.

16. Exhibits may be copied and enlarged for demonstrative purposes only, but may not exceed 24" x 36" in size.

DATED: AUGUST 20, 2019

IT IS SO ORDERED.

Lucy Ridgeway
LUCY RIDGEWAY
24th District Court Judge

APPLICABLE CASE LAW

All decisions were rendered by the Zion Supreme Court

Criminal Trials

State v. Bayog

In a criminal case, the burden of proof lies solely on the State to prove every element of each charge beyond a reasonable doubt. The State may rely on both direct and circumstantial evidence to do so. This burden, however, does not apply to every individual fact alleged. Instead, it requires that the cumulative effect of all presented evidence must convince the finder of fact beyond a reasonable doubt that the State has proved each element. The defendant bears no burden of proof except in cases in which the defendant raises an affirmative defense.

State v. Wilson

While motive may be relevant circumstantial evidence for consideration by the jury, proof of motive is not an essential element in any criminal charge. If the jury is convinced beyond a reasonable doubt that a defendant committed the crime, the defendant may be convicted even without proof of motive.

Charges

State v. D'Ippolito

Intent to cause a death is not required for the aggravated murder rule to apply. During a convenience store robbery, a felony, the defendant unintentionally dropped a loaded handgun on the floor. The gun discharged, shooting and killing a store clerk. Because the store clerk's death was a reasonably foreseeable consequence of the defendant's conduct of using a loaded gun during the attempted robbery of the store, the defendant's felony murder conviction was upheld.

State v. Michael

A victim's pre-existing condition does not break the causal chain for aggravated murder. Defendant kidnapped and restrained the victim, leaving her unattended in the trunk of a car for a five-day period. During that time, the victim – who had previously been diagnosed with chronic epilepsy -- died of a grand mal seizure. Defendant's aggravated murder conviction was upheld despite the victim's pre-existing medical condition because the victim's death was a reasonably foreseeable consequence of the defendant's conduct of restraining the victim in such circumstances.

Expert Testimony

Hudson v. Ridgeway

When assessing methods under Rule 702(a) of the Rules of Evidence, judges may consider factors such as: (1) whether the theory or technique has been or can be tested; (2) whether it has

been peer reviewed and published; (3) whether it has gained widespread acceptance within the field; and (4) whether it has a known, calculable error rate. However, there is no definitive checklist of what must or must not be present for admission; judges must apply the rule based on the totality of the circumstances.

State v. Price Psychology Services

Testimony by profilers has become increasingly common in modern criminal cases. While Rule 704 of the Rules of Evidence prohibits witnesses from stating an opinion about whether the named defendant did or did not possess a mental state that constitutes an element of the charged crime, it does not prohibit a properly tendered expert from presenting a psychological profile of (1) the defendant; (2) an unnamed perpetrator of a specific type of offense; or (3) an individual other than the defendant in the case.

Hearsay

State v. Schmidly

Criminal defendant sought to introduce out-of-court statements of a victim and a police officer under Rule 801(d)(2) of the rules of evidence. Both witnesses testified at trial, and the police officer was the party representative of the State. The Court of Appeals affirmed the trial court's decision to exclude the evidence, because neither the victim nor the police officer was an "opposing party" for purposes of 801(d)(2).

Glazier v. Yasinovsky

As various rules of evidence are applied, the ruling sometimes turns to who made a particular statement. If the proponent of a statement produces evidence that would permit a reasonable jury to find, by a preponderance of the evidence, that a specific person made a statement, then the statement may be attributed to that person for admissibility purposes. In this case, absent evidence to the contrary, statements in text messages may be attributed to the owner of the phone from which the messages were sent.

STATE OF ZION
24th JUDICIAL DISTRICT
SNOW CANYON COUNTY

STATE OF ZION, **Prosecution,** v. **Alex Buckley,** **Defendant.**	**AFFIDAVIT OF DAKOTA POPE** **Case No. 19-CRM-0803**

DAKOTA POPE, having been duly sworn, hereby states the following:

My name is Dakota Pope. I just graduated from Bald Mountain Preparatory Academy this spring, and I'll be attending Middlebury College in Vermont this fall. I know Middlebury isn't the most famous college in the world, but it has a beautiful campus and small classes, and they're giving me a good scholarship. And honestly, after everything that happened to Carly Walsh, I'm glad to leave Zion.

Carly was my best friend. She was really competitive in everything she did. She was the captain of the girls' soccer team for two years, and she joined the mock trial and Science Olympiad teams. Despite how hard she pushed herself, Carly was a really nice person. She went out of her way to be friends with everyone. If there was a big exam, she'd organize a study group and buy all the pizza, or if there was a school dance, she'd invite all the girls over to get ready. Her parents paid extra for her to have a single room in Watchman Dorm, so it was a great place to hang out with other students. Our student IDs give us access to all campus buildings until 10 p.m. on weekdays and 11:30 p.m. Friday to Sunday. No one without an active student ID can get in, and outside those hours, students can only get into their own dorms.

Until the start of our senior year, the only person I can think of who was ever mean to Carly was her ex-boyfriend, Todd Larkin. Todd was a year older than Carly and me, and he dated her for half of our sophomore and most of our junior year. At first, Todd seemed like the perfect boyfriend for Carly since he was captain of the football team and very popular. They were always the "it" couple at all the school dances and social events. But by the end of our

20 sophomore year, things had changed. For one thing, Todd wasn't much of a student. He seemed
21 to be okay with earning C's, and he forced Carly to skip study groups to spend time with him.
22 Todd liked to control most aspects of their relationship. He would get mad at her for speaking to
23 or texting other guys, and once he even accused her of cheating on him. Sometimes I noticed
24 bruises on Carly's arms, but, when I asked her about them, she said she got them playing soccer.
25 I'd watched some of the games, and they did get pretty physical, and I didn't think Carly would
26 lie to me.

27 Over the summer, I thought things between them were getting better. Carly and Todd
28 were both taking classes in summer school, and they spent a lot of time together. Carly sent me
29 photos of them swimming and going to cookouts, and I couldn't see any bruises, though Carly
30 had put filters on the pictures. But when I came back to school in the fall, and the bruises were
31 back – months away from soccer season – I confronted her. This time she admitted it was Todd;
32 she said that he would sometimes grab her too hard or even hit her, but she insisted it was
33 deserved, or they were just playing and Todd didn't know his own strength. I wasn't so sure, and
34 I told her that she needed to go to the school administration, but she said no. She said Todd
35 would get upset if she told anyone, and she begged me to keep it to myself. I am ashamed to say
36 that I did as Carly asked; I never reported the abuse. But I never actually saw Todd grab her or
37 treat her roughly our junior year, so I like to think that if I had, I would have reported Todd to the
38 school no matter what Carly wanted. I was so glad when he graduated in 2018, and Carly ended
39 their relationship.

40 Todd didn't take the breakup too well at first, and he even sent her some pretty scary
41 texts that summer, which Carly showed to me. But as far as I know, no one at Bald Mountain
42 Prep heard from him after he left for college at Morgan University, four hours away from
43 Emigration. I'd been friends with Todd on Facebook since my sophomore year, and I still read
44 his posts sometimes. In early December of 2018, Todd posted photos of his new girlfriend at
45 Morgan University. One week later he posted, complaining that his dad had taken away his car
46 because he'd gotten a DUI and had lost his license for six months. His relationship status was
47 unchanged, though. I was relieved on both counts – with a new girlfriend Todd had no reason to
48 come back to Bald Mountain Prep to bother Carly, and now that his car had been taken away, he
49 couldn't get here. But just as everything with Todd was resolved, Alex Buckley started acting
50 crazy toward Carly.

Every semester when grades were released, the school posted GPA and class rank data on the student portal of the school website. At the end of our junior year, Carly found out she was in the running to be our class's valedictorian and receive the Miller Scholarship. I'm not sure who Mr. Miller was, but he must've been a pretty big deal. His scholarship gives the class valedictorian a free ride to the college of their choice every year. I didn't have the best grades, so I didn't care much about it, but I know Carly did. She talked about it all the time; whenever there was a project, a test, or even a homework assignment, Carly would shut herself in her room studying, saying that was the only way she could earn the Miller. She didn't need the money -- her family was well-off, so I assumed she just saw it as another competition to win.

Alex Buckley was Carly's biggest competition for the Miller Scholarship. Alex had a scholarship to Bald Mountain Prep and retained the top spot in our class for most of our first three years. Alex was a science buff and took every AP course Bald Mountain offered except AP Art. Alex managed to ace nearly every class, join a few clubs, run varsity track, and work a job at a gas station/convenience store down the road all at the same time, even if it meant sometimes going to school events in a work uniform. Alex and I weren't great friends or anything, but we had a lot of classes together, and it was clear that Alex was brilliant. The first couple years of high school, Alex would sometimes come to Carly's study groups to help people out, which I really appreciated. But when the class ranks were posted at the end of the 2018 spring semester, that all changed. Carly and I were looking at the ranks on a computer in the library when Alex walked up. Alex saw that Carly's GPA was just barely higher than Alex's and became angry, glaring at Carly and kicking over a chair before stomping out of the room.

When the fall semester of our senior year began, Carly sometimes invited Alex over to study as she always had. But Alex would say no because Alex "didn't want to help Carly steal the Miller," or because "if Carly is really the best, she should be able to ace the test without my help." As the year went on, Alex's comments became more aggressive and scary, so much so that I started to feel uncomfortable just being around Alex. Sometimes in AP Calculus, I saw Alex scowling angrily at Carly when Carly was looking the other way. If Alex saw that I was watching those evil looks directed at Carly, Alex would look down and start working on a math problem. It was creepy and made the hairs on the back of my neck stand up. In the spring, Alex punched a wall after Carly scored higher than Alex on one Calculus test. As a result, Alex had to wear a brace on Alex's right hand until right around our final exams. Alex's attitude really concerned

Carly, but it also made her want to work harder. Carly told me that even if Alex needed the money, Carly didn't want the scholarship to go to someone who was so obsessed and hyper-competitive.

Carly's hard work paid off. Going into final exams in May, Carly had all A's, and Alex was on the verge of getting a B in AP Calculus BC. Carly tried to be nice about it, and she even invited Alex to a math and science study group at her room in Watchman Dorm the Friday before finals. But, unsurprisingly, Alex turned down the invitation because it might help Carly. Alex wasn't the only one to decline the invitation, though. Everyone Carly invited bailed to go to the Finals Dance instead. It's a huge tradition, like a prom but even better. It starts at 9 p.m. and ends at midnight, and almost every senior goes since it's their last dance at Bald Mountain Prep. But Carly didn't want to attend, and everyone – including Alex – knew that she wouldn't be going to the dance. Carly's leg had been in a cast since she broke it at the first soccer game in April, and she said if she couldn't dance, she might as well study. I didn't want her to be stuck all alone, so I said I'd come study, too. If only I'd known what would happen. I wish I'd convinced her to meet in the library or go to the dance anyway; then maybe she'd still be alive.

That night, May 17, I got to Carly's third floor dorm room just after 9 p.m. Everyone else had already left for the dance; I didn't see or hear anyone else in the dorm. We ordered a pizza, grabbed some sodas from the vending machines, and got to work. By about 10:55 p.m., we had finished the pizza and were getting a little burnt out from studying. Carly was sitting at her desk in the far corner nearest the door, while I was on the other side of the room, beside the window. She called me over to watch a funny video on her computer, and, as I was getting up to go back to my chair, I started to smell gasoline. I thought that maybe I was imagining it because I was so tired, but then I saw fluid coming under the door. Seconds later, everything ignited.

I didn't know what to do. We didn't have any water or any way to put the fire out, and my phone was dead, so I couldn't call for help. The fire alarm started blaring, but the sprinklers didn't come on immediately. I pulled the window open in the hopes that we could escape. I could hear Carly coughing a lot from the smoke, and I reached for her hand and motioned to the window. I told her to jump first, and then I would jump and make sure we both got away safely. It was a long way down, but there was grass outside the window, and we had no other option. Carly shook her head no, motioned to her leg, and told me through her coughs to take her

unlocked phone, get out, and call for help. That was the last thing she ever said to me, possibly to anyone.

I did what Carly said. I jumped out the window. I landed really hard on my right side, and I felt an immediate pain in both my right leg and my right wrist. I tried to get up and find Carly's phone to call 911, but it hurt too much to move. Panicking, I looked around for someone to help me, and I saw a person walking rapidly away from the dorm toward the parking lot. They were wearing a yellow collared shirt and dark pants, and they were carrying a bright red object that looked like a plastic gas container. I could not tell which hand the person was using to carry the object. The clothes looked a lot like the uniforms they wear at the gas station where Alex Buckley works. The person was far enough away that I couldn't see their face, but they were the same height and had the same hair color as Alex. I called out to them for help, but they didn't turn around. They seemed startled because they tripped over the curb, dropped the gas can, and got up and ran into the parking lot, ducking behind a dark colored SUV.

A few seconds later, I heard voices. It was two juniors, Ana Gandhi and Don Hernandez, running toward me, dressed like they'd been at the dance. They told me they had called 911 and help was on the way. I couldn't stand up, so Ana and Don found Carly's phone, grabbed under my arms, and pulled me farther away from the building. It hurt like crazy, but the fire was growing quickly, so we needed to get as far away as we could.

It took the firefighters five whole minutes to arrive, and at least another minute for the police and the paramedics. It seemed like an eternity. A firefighter asked me if I knew of anyone still in the building, and I frantically told them Carly was trapped inside because of her leg. Then EMTs put me on a gurney and took me to an ambulance, where a cop asked if I had any idea what happened. I told him about the gasoline and the person in the yellow shirt and gave him Carly's phone. Right then the firefighters ran up with a person they'd just pulled out of the building. The person was burned from head to toe and so disfigured that I couldn't immediately tell who it was. But I could see the remnants of a cast on their right leg, and I knew it was Carly.

The EMTs surrounded her while the ambulance rushed us to the hospital. We were both taken right into surgery. The next thing I knew, I woke up in the recovery room with casts on my right leg and wrist. I tried asking about Carly, but no one would tell me anything. I later learned that she died a few hours after we got to the hospital. The doctors tried everything to save her, but she was too badly burned. I never even got to say good-bye. If only I'd made Carly go

through the window first, she might have been hurt even more, but she might still be alive. I'm not sure I can ever forgive myself.

When I got out of the hospital a few days later, I heard that they had arrested Alex Buckley for Carly's murder. Some people thought it could have been Todd Larkin, but I know it was Alex. Alex always got so angry when Carly did well, and Alex talked about the Miller as "my scholarship and no one else's." Besides, Todd is at least half a foot taller than Alex; I would have recognized Todd if he had been in the parking lot that night. At least Alex's plan didn't work; the school cancelled exams and donated the Miller award to a charity in Carly's honor. But that's not enough. I want Alex to pay for what happened to Carly, and I hope Alex rots in jail for the rest of Alex's life.

Of the available exhibits, I am familiar with the following and only the following: Exhibit 2.B looks like the gas canister I saw the person carrying on May 17. Exhibit 2.C. is the uniform for workers at 7-Eleven. Exhibit 4 is a map of Bald Mountain Preparatory Academy and the surrounding area. Exhibit 5 is an accurate screenshot of texts Carly received during the summer of 2018, which she showed to me at that time. I have also reviewed the statements attributed to me in Exhibit 1.B, and they appear to be a fair and accurate characterization of my conversation with the police on May 17.

Dakota Pope
SIGNATURE

Christi Lea
Christi Lea
Notary Public

Date: August 2, 2019

THE STATE OF ZION
Christi Lea
My commission expires
12/16/20

STATE OF ZION
24th JUDICIAL DISTRICT
SNOW CANYON COUNTY

STATE OF ZION, **Prosecution,** v. **Alex Buckley,** **Defendant.**	**AFFIDAVIT OF LUPE RODRIGUEZ** **Case No. 19-CRM-0803**

LUPE RODRIGUEZ, having been duly sworn, hereby states the following:

1 My name is Lupe Rodriguez. I am a guidance counselor at Bald Mountain Preparatory
2 Academy, a prestigious high school in Emigration, Zion. I was the person responsible for selecting
3 Alex Buckley for a scholarship so that Alex could attend Bald Mountain Prep, and I was also
4 Alex's academic advisor.
5 I've been an advisor at Bald Mountain Prep since 2008. On average, 450 students attend
6 Bald Mountain each year, divided evenly among me and the two other advisors. As a guidance
7 counselor, I have many responsibilities. I help students resolve social conflicts if any arise,
8 navigate stress or anxiety if they feel it, and regain good academic standing if they lose it. The
9 biggest part of my job is helping students plan for college.
10 At a private school like Bald Mountain, advertising is everything, and one of our most
11 important selling points is that we get results. Parents choose Bald Mountain Prep because we take
12 pride in our students' accomplishments and are invested in their success. It is my job to see that
13 each student graduates and attends the college that is the best fit for them. With such a large
14 student body, this is a huge responsibility, and one that I take very seriously. When a student enters
15 their senior year, I help them prepare their college applications and even arrange practice
16 interviews if they request them. I encourage our highest achievers to apply to the top universities in
17 the nation. If I see that a student is less skilled academically, I steer them toward universities and
18 colleges where they can still achieve success.

19 Finding the right program for everyone takes a lot of time and can be a bit stressful. I've
20 never seen this happen at Bald Mountain Prep, but I've definitely heard of advisors at other prep
21 schools losing their jobs when an assigned student doesn't go to college or doesn't graduate.
22 Thankfully, most of our students (or, more accurately, their parents) are extremely self-motivated
23 and don't need a lot of help.
24 One of my favorite parts of my job is getting to know and assist our scholarship students.
25 While most students pay a hefty price to attend this school, each year we admit between eight and
26 twelve low-income students on merit-based scholarships. I helped start this program in 2010 after
27 Bald Mountain Prep got some bad press about its lack of diversity, and I have been a big proponent
28 of our scholarship program ever since. I think the program benefits everyone; these students help
29 our school by adding socio-economic diversity, and we help them by giving them a first-rate
30 education.
31 As a result of my hard work, every single one of our scholarship students has graduated
32 with honors and attended a four-year university. The program's success has generated lots of good
33 press for the school, and I even got a significant raise for me a few years ago. The only hiccup
34 we've ever had is with Alex Buckley.
35 Alex started school in the fall of 2015. Alex came from a single-parent household, and
36 Alex's mother was tasked with caring for both Alex and a younger sibling. From what I gathered,
37 Alex's mother tried to provide Alex with support, but, due to stress and finances, she was unable to
38 offer Alex the kind of encouragement and financing necessary to put a child through college.
39 Despite Alex's circumstances, however, Alex was excelling in public school, so when I received
40 Alex's application, I thought that Alex would be a perfect scholarship candidate.
41 Alex's transition from public school to boarding school was a little bumpy, and Alex did
42 have an incident during freshman year. Alex had joined the Science Olympiad team and was
43 enthusiastic about the required robotics project. But when it came time for the regional
44 competition, Alex finished in fourth place, just shy of advancing to the next level. Alex kicked
45 over one of the advancing student's projects, and it caught on fire. Thankfully, no one was hurt,
46 but the project was so damaged that the other student had to drop out of the competition, and Alex
47 got to move into third place and advance. Alex's teacher advisor and I questioned Alex about the
48 incident, and Alex said that the project catching on fire was an unintended consequence. It
49 bothered me that Alex never expressed any remorse and was just happy to move on in the

competition. The advisor and I agreed that Alex's behavior was unacceptable and that a consequence needed to happen for Alex. We decided I would meet with Alex once per week for the rest of the semester to talk about anger management and coping strategies. Alex seemed to progress well with my counseling, so, at the end of the year, I signed off for Alex to continue at Bald Mountain Prep without further intervention.

Alex excelled academically even as a freshman at Bald Mountain, proving that I was right to select Alex for our diversity program. Alex not only held the top position in the class, but Alex also joined a few clubs and started a volunteer organization that encouraged our students to serve as tutors at low-income elementary schools in Emigration. Alex was also a star on the varsity track team, setting records in the 1600 meters and 1 mile; in every meet, Alex ran both those races and consistently finished in way less than 5 minutes! When Alex turned 16, Alex even picked up a job at a gas station nearby to earn some extra money, and Alex's grades were not affected at all. Alex wanted to study chemical engineering at Stanford, and, based on Alex's first two years, I believed Alex could do it.

In fact, by the middle of Alex's sophomore year, it was clear that Alex might be a contender for the Miller scholarship. The Miller is the only full-ride college scholarship we offer, and it is awarded to each class's valedictorian. I knew that if Alex won, not only would Alex benefit, but Alex's success would result in positive publicity for Bald Mountain Prep and my diversity program. But of course, if someone else won, Alex still had the grades to get into Stanford and could apply for other scholarships.

When I told Alex about the Miller award, Alex was excited – almost too excited – about the prospect of a full merit scholarship. Every time report cards and class ranks came out, Alex would come into my office and ask, "How's my scholarship?" or "No one's beating me for the Miller, right?" Each time, I assured Alex that Alex's top-class rank seemed secure. By Alex's junior year, Alex started to act somewhat arrogant about it. When Alex declined to take AP Art, an "easy A" course that most juniors at Bald Mountain take, I reminded Alex that doing well on AP courses is the best way to maintain top class ranking. But Alex didn't listen. That decision allowed Carly Walsh, another junior, to just barely pass Alex in the year-end class rankings. I didn't know Carly very well because she wasn't assigned to me, but I had heard good things about her from her teachers and her advisor.

When the rankings came out in spring of 2018 and Alex was no longer first, Alex immediately started scrambling to get back into first place. I helped Alex plan the best senior schedules I could, but I made it clear that with the extra AP course, Carly might have an edge over Alex, no matter what. Alex seemed furious. I tried to convince Alex to apply for other scholarships and reminded Alex that Stanford has generous need-based aid programs, but Alex said, "No, I have to stop Carly. If I don't, I can kiss Stanford goodbye. All my hard work will be for nothing. I'll be stuck in menial jobs the rest of my life. The Miller is my only way out! I'll do whatever it takes to get back on top." Alex's response concerned me, but I thought Alex just planned to put even more effort into getting good grades. I didn't think Alex intended to hurt Carly.

Alex worked harder than any student I have ever seen during senior year. Looking back, perhaps I should have asked Alex more questions or checked in more often, but I always saw Alex as a driven student, and I didn't want to do anything to harm Alex's work ethic. However, in the spring, when Alex punched a wall from stress and fractured a hand, I decided to step in. I scheduled a meeting with Alex at the end of April to try and talk about what Alex was feeling.

Alex came by for a few minutes on April 24, still wearing a brace. I tried to talk through what happened and get Alex to open up about the anger Alex was experiencing, but it felt like I was getting nowhere – Alex had become irrationally angry about the scholarship and was having a lot of trouble calming down. Although Alex seemed upset, Alex finally agreed to my game plan: I would give Alex information on three additional scholarship programs, and Alex would complete the applications and meet with me in three weeks. I thought Alex was likely to receive a good portion of Alex's college tuition if Alex put work into these applications. I reminded Alex that I was always available to read essays, look over resumes, or just talk. Even though Alex seemed on edge, Alex nodded, so I thought Alex would do as I recommended. But Alex was muttering as Alex left. I couldn't make out all the words, but I am certain I heard Carly's name.

I didn't see or hear from Alex during the three-week period. I sent a check-in e-mail on May 8 but received no response. Alex skipped our appointment on May 15. I tried to schedule another meeting with Alex, but Alex's e-mail made it clear Alex wanted no part of that. Based on Alex's e-mails, I hoped Alex had applied for the other scholarships. However, after investigating further, I couldn't find records of Alex requesting the official transcripts or teacher recommendations that most scholarships require. Alex could have sent unofficial transcripts, which are available for free online, and requested teacher recommendations in-person instead of through

111 my office. But I don't think that's likely. Alex had always requested these documents through my
112 office in the past, which leads me to believe that Alex never filled those applications out. I did not
113 have a chance to speak with Alex about it before the horrifying events of May 17.

114 On May 18, I was absolutely devastated when I learned that Carly Walsh had been killed in
115 a dorm fire. I was even more shocked to learn that Alex had been arrested when Officer Trost
116 interviewed me. I want to believe that Alex is a good person and would never commit such a
117 heinous act, but the way Alex talked about Carly was definitely extreme. I wish I had done more to
118 help Alex; perhaps if I had been more proactive, I could have intervened and prevented this tragedy.

119 I know people have been talking about Todd Larkin as someone who could have been
120 involved. I wasn't Todd's advisor, but I had seen him come into the advising office before. He
121 wasn't the brightest student, and his grades frequently fell so low that he lost academic eligibility
122 to play sports. His father, who is a generous donor to the school, protested (unsuccessfully) to
123 more than one of my colleagues to get Todd's eligibility back. That being said, I never heard of
124 Todd being reported for any physical abuse or violent altercations. With his family's reputation in
125 the community, I don't know how amenable Bald Mountain students would be to filing a report
126 about Todd, but if one had been created, it would have passed through my office.

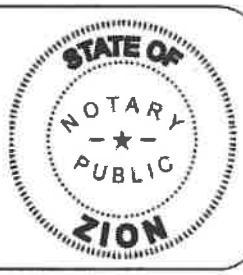
127 Of the available exhibits, I am familiar with the following and only the following: The
128 statements attributed to me in Exhibit 1.B appear to be a fair and accurate summary of my
129 conversation with the police on May 18. Exhibit 2.A shows Watchman Dorm after that terrible
130 fire. Exhibit 4 is a map of the school. Exhibit 6 accurately reflects my e-mail correspondence
131 with Alex Buckley during April and May. Exhibit 7 is the disciplinary report I filed during
132 Alex's freshman year; it is the only report in Alex's disciplinary file.

Lupe Rodriguez
SIGNATURE

Kelly Pinkston
Kelly Pinkston
Notary Public

Date: August 5, 2019

THE STATE OF ZION
Kelly Pinkston
My commission expires
2/18/23



EMIGRATION POLICE DEPARTMENT
CRIMINAL INVESTIGATION DIVISION
INVESTIGATIVE REPORT

Division Chief: Emerson Burke
Date: July 26, 2019
RE: Citation No. **#012345678**

SUMMARY

Carly Walsh, a senior at Bald Mountain Preparatory School, died as the result of burns sustained in a fire deliberately set outside her dorm room (321 Watchman Dormitory) on the night of May 17, 2019. Alex Buckley, a classmate of Walsh, threatened Walsh as Buckley grew concerned that Walsh would earn the Miller Award, a full-ride college scholarship, instead of Buckley. All evidence points to Buckley as the perpetrator who set fire to Walsh's dorm room, and Buckley has been charged with aggravated arson and aggravated murder.

CREDENTIALS

I am the Division Chief of the Criminal Investigation Division of the Emigration Police Department ("EPD"), a position I have held since June of 2015. I earned my Bachelor of Science with Honors in chemistry from Cornell University in 1995 and then attended the University of Illinois at Chicago, earning my Masters of Forensic Science in 1997. I worked for the Chicago Police Department as a forensic specialist from 1997 until 2009, during which time I conducted DNA, fingerprint, and blood spatter analysis for more than 300 cases. From 2006-09, I continued working while I obtained my Masters in Forensic Psychology online from Arizona State University. In 2009, I accepted a detective position in the EPD. Admittedly, some of my colleagues in Chicago considered this move a step backward in my career, but I wanted to raise my family in a smaller, safer environment. In 2011, I was promoted to Chief Investigator, and in 2015 I assumed the role of Division Chief in the Criminal Investigation Division of the EPD.

Since 2009, I have attended more than 200 hours of Continuing Professional Education seminars on topics covering the best practices in arson investigations, fingerprint, DNA, bloodstain pattern analysis, and examination of the criminal mind. I am a member of the American Academy of Forensic Sciences, the International Crime Scene Investigator's Association, the International Association of Crime Analysts, and the American Society of Criminology.

As Division Chief, I am responsible for overseeing all EPD criminal investigations. I analyze or review all evidence relating to major crimes, including, but not limited to, homicide, kidnapping,

rape, armed robbery, and arson. This case was no exception, as I personally conducted the investigation into the death of Carly Walsh.

BASES OF OPINIONS

I relied on the following evidence to reach my conclusions:

- Police report filed by Officer Benjamin Trost, including summaries of the interviews Officer Trost conducted at the scene (Exhibit 1.A & 1.B)
- Physical evidence at or near the crime scene, including (1) fragments of wood and carpet from Watchman Dormitory; (2) the gasoline can located near the dorm; and (3) the clothing that Buckley wore at the time of Buckley's arrest (Exhibits 2.B & 2.C)
- Fingerprint analysis of the gasoline can found at the scene (Exhibit 2.B)
- Gasoline receipt time-stamped 22:34:46 on 5/17/19 from the 7-Eleven store located at 1791 Bald Mountain Dr., Emigration, Zion 84000 (Exhibit 3)
- Texts retrieved from Walsh's cell phone (Exhibit 5)

I visited the scene on May 18, 2019, to gather physical evidence from Watchman Dormitory. The photos in Exhibit 2.A accurately depict the building on that day, and Exhibit 4 accurately portrays the campus. I did not conduct my own interviews of eyewitnesses to the events of May 17, relying instead on the accounts that Officer Trost provided.

To come to my conclusions, I analyzed (1) the composition of various materials found at the crime scene; (2) the fingerprints found on the gas container; and (3) the interview notes recorded by Officer Trost. The methods I used are standard within the field of crime scene analysis and are used by crime scene investigators globally.

INVESTIGATION

1. Fire Accelerant Analysis

According to eyewitness Dakota Pope, the fire began in the vicinity of room 321 in Watchman Dormitory. Photographs of the scene were taken on May 18 after the fire chief declared the building safe to enter. At that time, I obtained samples of carpet, wallboard, and flooring from the vicinity of room 321 and the surrounding area. I sealed the samples in airtight metal containers to prevent evaporation of any accelerants used to start the fire.

I also mapped the areas where the damage was most extensive in order to determine the origin of the fire. My mapping revealed that the charring was most intense outside room 321, confirming that the hallway just outside the door to room 321 was the place of origin.

Back at the lab, I analyzed the samples using the "passive headspace" method: I inserted carbon strips into the metal cans containing the samples. Next, I warmed the cans and debris, driving the accelerant residue from the debris into the top, or "headspace," of the containers, where it was absorbed by the carbon strips. The carbon strips were removed from the cans and washed with solvents to release the trapped material; then the solvents were injected into a gas chromatograph to analyze their chemical composition. This method is extremely sensitive and can detect one one-thousandth of a drop of an accelerant. My tests revealed that regular grade gasoline (87 octane) was poured under and on the outside of the door of room 321 and subsequently ignited.

The burn pattern indicates that approximately one gallon of gasoline was used as the accelerant. The gasoline quickly caught fire, spreading into the room and igniting the surrounding rooms. Due to the presence of thick, industrial carpet in the hallway and in the room itself, smoke quickly engulfed the room and the hallway, making it difficult for anyone in the vicinity to see or to breathe. The fire spread quickly throughout the top floor but was contained by the eventual activation of the sprinkler system and the quick response of the Emigration Fire Department before extensive damage to the lower floors.

Gas chromotography analysis of miniscule amounts of gasoline remaining in the gas can at the scene revealed that it contained detergents and other additives consistent with both the accelerant used in the fire and the regular gasoline sold at the 7-Eleven store on Bald Mountain Drive. The store owner, Ridham Patel, provided a cash receipt for one gallon of gasoline purchased at the store approximately 30 minutes prior to the ignition of the fire. The composition of the sample also is consistent with regular gasoline sold by Maverick, Top Stop, and Sinclair stores within a two-mile radius of the school, so it is not possible to definitively conclude that the gasoline was purchased at the 7-Eleven on Bald Mountain Drive. However, receipts from those three stores during the hours of 9 to 11 p.m. on May 17 did not reveal any purchases of one single gallon of gasoline.

2. Fingerprint Analysis

Fingerprint analysis compares prints obtained from physical evidence with prints from known individuals, analyzing them for similarities or differences in patterns (arch, loop, whorls) and minutia (ridge endings, bifurcation, and short ridges). Ridge endings are the points at which a ridge, or line, terminates; bifurcations are points at which a single ridge splits in two; short ridges are significantly shorter than average. Our laboratory uses pattern-based algorithms to compare two prints. While the FBI does not require a specific number of matching characteristics to declare a match, the greater the number of points in common, the more reliable the result. Some experts in the field require only 12 points in common to declare a match, while other experts require 20 points in common. Our standard is to declare a match if two samples have 16 or more points in common.

Four fingerprints (three full and one partial) were found on the gasoline container retrieved from the scene. I compared those prints against the prints obtained from Alex Buckley during booking. I determined that two of the prints found on the gasoline container matched those of Buckley: (1) A full print from the handle of the container was a 20-point match for the left middle finger of Buckley; and (2) A full print from the screw-on lid of the container was an 18-point match for Buckley's left index finger. A partial print, also taken from the lid of the can, was a seven-point match with Buckley's left thumb.

One additional full print was obtained from the lid of the can. This print did not match the prints from Alex Buckley, and no match was obtained when the print was run through the federal IAFIS ("Integrated Automated Fingerprint Identification System") database. Several unidentifiable partial smudges were obtained from the handle and body of the container.

3. Interview Analysis

Officer Benjamin Trost interviewed key eyewitnesses as part of his investigation; summaries of those interviews are included in his report (Exhibit 1.B).

The interviews revealed several key facts that implicate Buckley in this fire. First, Buckley believed that Walsh was about to earn the full-ride college tuition Miller Award, an award Buckley had demonstrated substantial interest in receiving. Second, Buckley had demonstrated threats of and tendencies toward violence, with respect to property and Buckley's own person. Finally, Buckley had access to gasoline – the accelerant used to start the fire – at Buckley's job at the 7-Eleven store located one mile from the school.

Based on his investigation at the scene, Officer Trost apprehended Alex Buckley at 11:40 p.m. on May 17, 2019, to prevent Buckley from fleeing the area.

CONCLUSIONS

The evidence demonstrates that Alex Buckley set the fire in Watchman Dormitory on May 17, 2019, that led directly to the death of Carly Walsh. Accordingly, on May 18, Alex Buckley was arrested and charged with aggravated arson and aggravated murder.

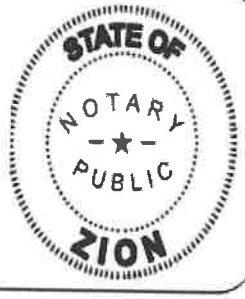
While no eyewitness definitively placed Buckley at the scene, the physical evidence and the testimony of Dakota Pope make it extremely likely that Buckley was present at Watchman Dorm on May 17 when the fire was set. Pope attests that an individual wearing a yellow shirt and dark pants, believed to be the perpetrator, fled the scene in a suspicious manner soon after the fire was set. When apprehended, Alex Buckley was wearing a uniform matching that description: a 7-Eleven yellow polo shirt and dark cargo pants. Pope also reported that the alleged perpetrator

153 dropped the gasoline can that was found at the scene, a can that contained Alex Buckley's
154 fingerprints.
155
156 Admittedly, the timeline would make it difficult for a regular pedestrian to reach the crime scene
157 in the amount of time available. Buckley clocked out at work from the 7-Eleven at 10:40, and the
158 fire was reported at 11:01 by a call to 911 (so it may have begun several minutes prior). Buckley
159 does not own a car, and buses do not run between the gas station and the school at that hour on
160 Friday evening. Still, it would have been easy for Buckley, a star of the school's varsity track team,
161 to jog from the gas station to the school in less than 15 minutes, arriving in time to set the fire.
162
163 Buckley claims that Walsh's former boyfriend, Todd Larkin, purchased one gallon of gasoline at
164 the store on the night of May 17, using a loaner container from 7-Eleven. As already stated, store
165 owner Ridham Patel provided a receipt proving that such a gasoline purchase was made – but since
166 it was a cash purchase, the buyer's identity cannot be determined. Security cameras at the store
167 were not working on the night in question, so no videos exist to prove that either Buckley or Larkin
168 made the purchase in question. Although our investigation revealed that Larkin had sent
169 threatening texts to Walsh in late spring and summer of 2018, no other witnesses report seeing
170 Larkin in Emigration after Larkin graduated in May of 2018 and left for Morgan University, four
171 hours from Emigration. With Larkin's DUI arrest and corresponding loss of his license, it appears
172 highly unlikely Larkin was driving in Emigration on the date of the fire.
173
174 Our investigation did confirm that Larkin got into trouble during his first year at Morgan U. He
175 failed several courses and was arrested in December 2018 for underage drinking and DUI. Larkin's
176 license was revoked for six months, and Larkin was ordered to complete a 20-hour substance abuse
177 course and pay a $1,500 fine. As a first-time offender, Larkin's charges were dismissed after
178 successful completion of these requirements. But because of his arrest, Larkin's fingerprints are in
179 the IAFIS database. The prints were tested and determined not to match the prints from the gasoline
180 can obtained during this investigation. Additionally, Larkin was scheduled to move into a summer
181 school dorm the weekend of May 17 - 19, 2019, to repeat courses failed during Larkin's freshman
182 year. Because of this information, Larkin was not considered to be a viable suspect.
183

EMERSON BURKE
SIGNATURE

Adrienne Applewhite
Adrienne Applewhite
Notary Public

THE STATE OF ZION
Adrienne Applewhite
My commission expires
1/21/21



STATE OF ZION
24th JUDICIAL DISTRICT
SNOW CANYON COUNTY

STATE OF ZION, **Prosecution,** v. **Alex Buckley,** **Defendant.**	**AFFIDAVIT OF ALEX BUCKLEY** **Case No. 19-CRM-0803**

ALEX BUCKLEY, having been duly sworn, hereby states the following:

1 My name is Alex Buckley. I was born on April 25, 2001, and I have lived in Zion my
2 whole life. I used to be a senior at Bald Mountain Preparatory Academy. I was weeks away from
3 graduating and winning one of the highest honors in the whole school, but then I was arrested for
4 this crime that I did not commit.

5 Growing up, I never thought I would be a prep school kid. My dad left when I was pretty
6 young, and my mom worked two jobs to support me and my little brother. We always had food
7 and a place to stay, but we never had money to buy more than the essentials. My mom told me
8 that if I worked hard in school, I could earn a scholarship, go to college, and get a good job. I'm
9 districted to Emigration High School, but it's a pretty dangerous place; they have a lot of
10 bullying there, and they don't offer a lot of advanced classes. I decided to apply to the
11 scholarship program at Bald Mountain Prep, and, after loads of essays and interviews, they let
12 me in.

13 Board school and Bald Mountain Prep, in particular, was a complete culture shock. Almost
14 everyone there came from money, and I didn't always fit in. I didn't have a new smartphone like
15 most people, and, while I could get texts and send e-mails, I could never afford data plans that
16 would allow me to stream videos or post on social media. I mainly used the phone for school, to
17 text my mom, or in emergencies.

18 I saw a lot of people at Bald Mountain taking the school for granted: missing homework
19 assignments, slacking on projects, or even skipping class. I couldn't do that; I wanted to make the

20 most of my opportunity, get good grades, and go to a premier college. I've always wanted to be an
21 engineer, so I joined the Science Olympiad club. That got off to a rough start after I accidentally
22 knocked over another student's robotics project. It caught on fire, so the student quit the
23 competition. Because of what happened, my guidance counselor forced me to sit through anger
24 management training. But despite all that, I ended up advancing to state finals my freshman year,
25 and Science Olympiad became my favorite club. I made friends there, and those friends even
26 convinced me to join track to get in shape. Turns out, I actually love running, especially the longer
27 distances, and I'm one of the fastest milers on the team. Just another honor I could add to my
28 college applications.
29 Sometimes it was hard to balance it all, especially because I had to pick up a job at a 7-
30 Eleven store near campus. The store is open 24/7. I usually worked 20 hours a week, mostly on
31 weekends. I didn't have a car, but my boss, Ridham Patel, understood if I was a little late because
32 the bus wasn't on time. By the middle of my senior year, I even got a promotion! The only bad
33 thing was that the store was about a mile from campus. Some nights when I was scheduled until
34 10:30 p.m., I wouldn't get off work until 11:00 p.m. By that time, the buses wouldn't be running.
35 While the 15 to 20-minute walk to my dorm wasn't bad during the day, it felt a lot longer when I
36 had to do it alone at night.
37 I always thought that I would get the Miller Scholarship to pay for college. The Miller – given
38 to the valedictorian – is the most prestigious award at the school. The competition is intense. Every
39 time class ranks are posted, everyone checks to see where they stand. Until my junior year, I had
40 stayed in the top position for our class and thought there was no way I wouldn't win. But as junior
41 year began, Carly Walsh started catching up to me. She was able to take one more AP course that
42 year than I was, and her GPA in May of 2018 was a couple hundredths of a percent higher than mine.
43 I never had anything personal against Carly; we took most of the same rigorous classes,
44 and she always seemed to work hard. But I knew her family had the money to pay for any college
45 she wanted to go to – even Harvard or Yale. I wanted to attend Stanford for chemical engineering,
46 but unless I got a huge scholarship, I knew it wouldn't be possible. I tried not to hold it against
47 Carly, but it hurt to watch her trying to take away my future just because she liked being
48 competitive. When she wasn't focused on beating me, Carly could be nice. We were in Science
49 Olympiad together for two years, and we even studied for AP exams together during junior year.

50 AP exams don't factor into your GPA, so there was no need to be competitive, and Carly actually
51 helped me out.

52 That being said, Carly and I were not friends, especially not senior year. After Carly
53 passed me in class rank, she was actually pretty rude to me. If she outperformed me, she would
54 laugh at me or call me a "sore loser," and once after an AP Calculus test, she made me so angry
55 that I punched a wall in the hallway and fractured a couple of bones in my right hand. After the
56 doctor said to avoid writing, typing, and other hand activities for the next month, I realized that I
57 needed to do something about how Carly was making me feel. My school counselor, Lupe
58 Rodriguez, offered to meet with me and help me apply for other scholarships, but I wanted to
59 focus my efforts on the Miller award. I started working even harder, staying in the library late at
60 night and even bringing textbooks to read behind the counter at work, if business was slow. I had
61 never felt this stressed about school in my life, but I didn't want to let Carly take my dream away
62 from me.

63 By the middle of May of 2019, I was feeling pretty good. I had gotten my Stanford
64 acceptance letter, I had studied endlessly for AP Calculus, and I knew that AP Chemistry would
65 be a breeze. My hand was feeling better, too; I hardly ever had to wear the brace the doctor had
66 prescribed. Exams would be exhausting, but I was going to get through them, and I was feeling
67 prepared. Then, on May 17, everything fell apart.

68 That Friday was the last day of spring classes, and exams were scheduled to start the next
69 Monday. But instead of worrying about exams, everyone was talking about the Finals Dance. It's
70 a Bald Mountain tradition, the last big event seniors can go to before graduation. My friends had
71 been pestering me to go, but honestly, I don't like dances. Carly was hosting a study group, but I
72 wasn't interested in going to that, either. In any case, I was scheduled to work until 10:30 p.m.
73 Even if I wanted to go to the dance, it would have taken me at least an hour to walk home, shower
74 and change, and then walk to the gym. Even if I got off work on time, I would miss all but the last
75 half hour of the dance -- unless I went in my silly work uniform. My uniform is an eyesore; I
76 didn't think I would have too much fun in a yellow polo and black cargo pants, so I told everyone
77 I was booked for the night.

78 That day, I got out of class and immediately started getting ready for work since my shift
79 started at 4:30 p.m. The night shift worker often came in late, so I knew I might not get out on
80 time at 10:30 p.m. But that didn't bother me too much; I didn't have any plans for after work,

81 and I was honestly thankful for the extra time on the clock. Plus, it's unusual to get a bunch of
82 customers that late, so it was pretty easy work.
83 At any rate, that's where I was on May 17 – at work. It was a weird shift right from the
84 start. The store had blown a fuse during a storm earlier that week, and the security cameras
85 weren't working. Ridham was in the office on the phone, trying to get the security company to
86 fix them. Ever since the storm, Ridham had been telling every employee to be hyper-vigilant if
87 they saw anything out of the ordinary. At some point that evening, Ridham told me the night
88 shift worker had called in sick, so Ridham would take his place. By 10:35 p.m., I was ready to be
89 done with customer surveillance and go home, but Todd Larkin walked in.
90 I hadn't seen Todd in almost a year, but he was hard to forget. He was loud, and he was
91 huge -- at least half a foot taller than I am. He graduated from Bald Mountain Prep when I was a
92 junior, and, from what I know, everyone was happy to see him go. He comes from a really wealthy
93 family in Morgan; his dad owns the Zion Razzmatazz NBA team -- and he gets away with
94 basically everything. Carly Walsh dated him for almost two years. I never really understood it; no
95 one did. He treated her terribly. Every time I saw them together, he berated her about not being
96 smart or pretty or thin enough. Sometimes, she even came to class with bruises on her arms, which
97 I assumed were from Todd. Carly ended things when he graduated, and I heard he took it badly.
98 Until May 17, 2019, I thought he had gone off to college and found someone else. I'd seen pictures
99 he posted on Instagram in early November of 2018, kissing another girl in front of the Morgan
100 University football stadium.
101 When Todd came in, he asked if we had any empty gas containers, so I could sell him a
102 single gallon of gas. I was pretty wary of dealing with him alone in the middle of the night, so I
103 tried to make the sale and get him out of the store as quickly as possible. I grabbed the red loaner
104 gas container we keep as a courtesy for customers, charged him for a gallon, and then sent him
105 outside to fill the container. He paid in cash. I don't remember what he was wearing; I didn't
106 notice it, so it probably wasn't anything too out of the ordinary. After I watched Todd turn out of
107 the store's parking lot, I straightened up the service counter, clocked out in Ridham's office, and
108 left.
109 I thought about going to the dance or walking to a fast food place for a quick bite, but I
110 checked my phone, and it was already 10:45 p.m. So, I decided to stop by the vending machines at
111 the student union instead. I do that a lot, so I don't remember what I got. Then I headed back to my

112 dorm, Kayenta Hall. On the way, I heard sirens. I assumed it was a false alarm – that someone had
113 burned their popcorn too much and set off the detector – but then I started to smell smoke from the
114 direction of the Watchman Dorm quad. I thought about going to look, but I was tired from work
115 and decided to just go home. All of a sudden, a police officer approached me and asked to see my
116 phone. I had nothing to hide, so I unlocked it and handed it to him. Suddenly, he told me I was
117 being taken into custody, handcuffed me, and threw me into the back of a police car. I was
118 completely caught off guard; I had no idea what the police could possibly want with me! The next
119 day, I was shocked when they charged me with aggravated arson and aggravated murder. It's
120 absolutely insane that they think I'd do this!

121 I have no idea how the fire started or who would do that to Carly. The police should be
122 trying to find the real killer. It was probably Todd Larkin; if anyone wanted to hurt Carly, it was
123 him. But when I tried to tell the police that, they wouldn't listen. They probably know that
124 Todd's rich family would make sure he got away with it, so they decided not to even look for
125 him. They only want to lock someone up, and I'm an easy target. I have to admit; I'm pretty
126 scared.

127 Of the available exhibits, I am familiar with the following and only the following:
128 Exhibit 2.A is a photo of the dorm shown to me by the police. Exhibit 2.B looks like the gas
129 container I loaned to Todd Larkin, though I can't be sure it's the exact same one. Exhibit 2.C is my
130 work uniform at 7-Eleven. Exhibit 3 looks like the receipt I printed out for the store's records when
131 I sold the gas to Todd. Exhibit 4 is a map of Bald Mountain's campus. Exhibit 6 shows e-mails
132 between me and my guidance counselor, Lupe Rodriguez. Exhibit 7 is a disciplinary report from
133 my freshman year that I had to sign. I also have reviewed the statements attributed to me in Exhibit
134 1.B, and they appear to be a fair and accurate characterization of my conversation with the police on
135 May 17-18.

Alex Buckley
SIGNATURE

Michelle Strickland
Michelle Strickland
Notary Public

Date: July 26, 2019

THE STATE OF ZION
Michelle Strickland
My commission expires
9/16/21

STATE OF ZION
24th JUDICIAL DISTRICT
SNOW CANYON COUNTY

STATE OF ZION, **Prosecution,** v. **Alex Buckley,** **Defendant.**	**AFFIDAVIT OF RIDHAM PATEL** **Case No. 19-CRM-0803**

RIDHAM PATEL, having been duly sworn, hereby states the following:

1 My name is Ridham Patel. I have lived in Zion since I was a teenager. I was not born in the
2 United States, but I am proud to say that I became a citizen on September 11, 2011. The 10th
3 anniversary of 9/11, "Patriot Day," just seemed like the right time to act.
4 I'm proud, now, to call America my home. Where else could a poor immigrant family start
5 from nothing and, after a few years, own more than 40 gas stations across five states? My parents
6 sacrificed a lot to bring our family to this country, and I am grateful every day that they did.
7 Watching them start the 7-Eleven business taught me that hard work, diligence, and integrity are
8 the path to success. Growing up, my parents made sure that I learned what it meant to work hard.
9 They had me rotate through every job in the stores before I went off to Zion University, where I
10 earned my business degree with honors. After I graduated in 2009, my dad made me the manager
11 of our store in Morgan. Three years later he promoted me to regional manager for five stores in
12 Snow Canyon County, where I've tripled the overall sales in just five years.
13 As regional manager, I oversee the hiring and training of our store managers, develop our
14 regional marketing plan, and make sure that each store is running efficiently. I also lead quarterly
15 trainings for all of our employees, including part-timers. Our cashiers are the face of our brand, so
16 I want to make sure they're a good fit and uphold our company motto: "We go the extra mile so
17 you don't have to." Also, employee morale is important to me. I want our employees to know that
18 we care about them, so I chat with them individually when I visit the stores each week.

19 My favorite store is the one on Bald Mountain Drive in Emigration. It's not too far from the
20 interstate, so it's open 24/7. It's also only a mile from that expensive boarding school, Bald
21 Mountain Preparatory Academy. Students from the school are frequent customers. Many drive
22 expensive cars I could never have afforded at their age. They dress in designer clothes and spend
23 ridiculous amounts on snack food and energy drinks. I'll bet they receive an allowance from their
24 parents and never have to earn their own money.
25 In the second week of April this year, the store manager at the Bald Mountain Drive store
26 went on maternity leave for two months, so I picked up many of her shifts. That's when I really got
27 to know Alex Buckley, a high school student we hired in 2017. Alex impressed the store manager
28 from the start, and I could see why. Alex asked lots of questions at the quarterly trainings and was
29 eager to learn. Whenever I visited that store, I could see that Alex was a hard worker and great
30 with the customers.
31 Alex started working as a cashier right after Alex turned sixteen. I was surprised that a
32 student at the prep school applied for a job, but then I learned that Alex was attending on a full
33 scholarship. The number of activities on Alex's resume impressed me, and Alex's reference, a
34 teacher named David Gray, said Alex was a model student with a strong work ethic. When I got to
35 know Alex, I agreed with the teacher's assessment. Alex's mom was a single parent and unable to
36 financially support Alex, so Alex wanted to work as many hours as I would allow. Yet despite that
37 tough background, Alex always had a very upbeat, positive attitude. My family's encouragement
38 had always been so important to me that I wanted to "pay it forward" by helping Alex. In the years
39 that Alex worked for me, Alex became like family. Whenever I saw Alex, I would ask about
40 Alex's classes and other activities. Alex started showing me quarterly report cards and class rank
41 reports, and I was amazed – the report cards showed Alex was first in the class! I knew Alex could
42 achieve anything, with the right resources and support.
43 Because of Alex's initiative and great attitude, Alex was quickly promoted from cashier to
44 head cashier. In December of 2018, the manager promoted Alex to shift supervisor. This change
45 meant that Alex supervised and trained other cashiers, counted the registers as each cashier clocked
46 out, and put the extra cash and checks in the store safe. Alex did an excellent job with these new
47 responsibilities.
48 Soon after I began filling in as store manager in mid-April, Alex reported to work with one
49 hand wrapped up in a brace. Alex told me that several bones were fractured because "I lost my cool
50 for a second." I was surprised by that. I offered to let Alex take a few weeks off until the hand

healed, but Alex reacted very strongly. "NO!! I mean, thank you, but I really need to work if I can. I promise I'll still be able to do a good job." Alex appeared stressed by the very thought of not working, so I dropped the subject.

During that time, I noticed that Alex also started bringing in textbooks to study during slow periods. Alex had never done that before, so I made a joke about "Guess you're not succumbing to senioritis, are you?" Alex looked startled, so I quickly said, "It's a compliment! Most seniors slack off by now, don't they?" Alex looked extremely upset, saying, "I wish I could! If I keep my top-class rank, I'll get a full college scholarship. But if someone else gets in my way and takes my money, I don't know what I'll do." A customer came in right then, so we didn't talk any further. But the conversation stuck with me because Alex looked pretty anxious about the whole thing.

Even so, I never saw Alex do anything violent, even when stressed. In fact, around the store, Alex was known for being nice to everyone. Alex was cool, calm, and collected when dealing with angry customers, and Alex went out of the way to help Alex's co-workers whenever they were given difficult tasks. It seemed to me like Alex's professionalism carried over into Alex's academic life as well. Even though Alex talked constantly about wanting to be the top student at Bald Mountain, Alex always spoke respectfully about Alex's classmates. I remember once, Alex was talking about a classmate, Carly something, who was competing against Alex for that top spot. Alex said she was the nicest person Alex had met. More than once, Alex said how glad Alex was to have Carly as a friend, even if she was smarter than Alex. Alex told me that the competition pushed Alex to work harder, and that was why Alex brought so much schoolwork into the store.

On May 18, I was stunned when I heard Alex had been arrested and accused of murdering another student by setting a fire in a dorm the night before. I was even more shocked when I learned that the victim was Carly. That was just crazy! When the police came to interview me, I told them they must be mistaken: Carly was Alex's friend, and, besides, Alex was working at the store on the evening of May 17. Alex was scheduled from 4:30 – 10:30 p.m. and was definitely at the store, manning a cash register, when I arrived at 9:00 p.m.

I remember that night very clearly; I was aggravated to be at the store. Usually, I'd be home at that hour on a Friday, but I had to come in to deal with the company that provides our security cameras. We have two cameras outside to cover the gas pumps, and two cameras that view the entire store inside. Lightning had struck a nearby transformer a few days earlier, overheating the circuits and blowing out all the cameras. The security company kept promising to fix them, but no one had shown up yet. It was ridiculous. Even though the store was in a safe area, I paid good

83 money to keep those cameras working, and I was tired of excuses. So, I called up the company,
84 asked to speak with a manager, then spent several hours getting passed around and playing phone
85 tag. To add insult to injury, the night shift worker called in at around 9:45 p.m., claiming to be sick,
86 and I had no one to fill in besides me. I knew it was going to be a long night.

87 Around 10:15 p.m., while I was on hold with the security company, I let Alex know that I
88 would take over at 10:30 p.m., and Alex could go home. I vaguely remember waving at Alex
89 around 10:40 p.m. when Alex came into my office to clock out. I don't remember hearing anyone
90 come into the store between 10:15 p.m. and when Alex left, but I had seen cars in the parking lot
91 near the gas pumps. Around midnight, when I walked outside to take out trash, I smelled smoke and
92 saw light in the direction of the prep school. I finally left for home at 6:30 a.m. My house is in the
93 opposite direction, so I didn't learn about the fire at Bald Mountain Prep until the police came to
94 see me at the store that same day.

95 When the police spoke with me, they asked if Alex had ever purchased or taken gasoline
96 from the store. I said no, not to my knowledge. I also told them that we try to keep one or two
97 inexpensive red plastic gasoline containers at each of our stores to loan to motorists who run out of
98 gas, but I couldn't seem to find the one for the Bald Mountain Drive store. I didn't know if the store
99 had one the night of the fire, since that's not something I'd confirmed when I began filling in as
100 manager. In checking our cash register receipts for May 17, I found a receipt for one gallon of gas
101 purchased inside the store just after 10:30 p.m. That was an unusually small purchase, and I have no
102 idea who bought it since they paid with cash, and we have no security video footage from that
103 night.

104 Like everyone in town, I was horrified to hear that a student died in the fire. The news
105 reports say that Carly was a senior and one of the brightest students in the school – maybe even
106 the top student in the class. What a tragic loss! I cannot imagine what her family and friends are
107 going through. Given how Alex spoke about Carly, I'm sure Alex was just as devastated by her
108 loss as anyone in Emigration. I hope the police catch the person who did it – because there's just
109 no way it was Alex.

110 Of the available exhibits, I am familiar with the following and only the following:
111 Exhibit 2.B looks like the type of gas container we usually keep at our stores (although I cannot
112 confirm that it's from any of the stores I manage). Exhibit 2.C looks to be the uniform that all 7-
113 Eleven employees are required to wear. Exhibit 3 is a receipt for one gallon of gasoline
114 purchased on May 17, 2019, and it is the only receipt for such a small amount of gasoline that

115 the store collected between 10:00 p.m. and 11:00 p.m. that evening. Exhibit 4 is a map of Bald
116 Mountain Preparatory Academy; it also gives information about the direction and distance to the
117 7-Eleven gas station my family owns near the school. I also have reviewed the statements
118 attributed to me in Exhibit 1.B, and they appear to be a fair and accurate characterization of my
119 conversation with the police on May 18.

Ridham Patel

SIGNATURE

Patti Chichester

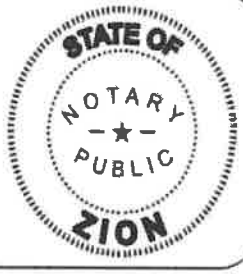
Patti Chichester
Notary Public

Date: August 8, 2019

THE STATE OF
ZION

Patti Chichester

My commission
expires 8/30/21



REPORT OF DR. KENNEDY FELDER

State v. Buckley: Findings and Conclusions

August 13, 2019

Retention and Compensation

The defense asked me to examine the evidence surrounding Carly Walsh's death, to develop a criminal profile for the perpetrator, and to see how well that profile fit with Todd Larkin, a person of interest in this case who was only cursorily investigated by the Emigration Police Department. I spent a total of 45 hours on case preparation, for which I was paid my standard defense consulting rate of $500/hour. If I testify, I will earn an additional $5,000 to cover my time and expenses.

Background and Qualifications

I am a criminal profiler. In 1982, I received my BA in Criminal Justice from the University of Georgia. To pursue my interest in criminal psychological profiling, I earned my PhD in psychology at the University of Virginia in 1987. I then applied to work at the FBI. After completing the FBI's training program and working as a field agent for five years, I was promoted to a profiler position at the National Center for the Analysis of Violent Crime ("NCAVC"). There, I honed my skills and investigated hundreds of cases involving abduction, homicide, arson, terrorism, and other violent crimes.

After 21 years as a profiler, I decided to step back from fieldwork and accept a teaching position with the NCAVC. Since 2013, I have taught criminal investigation and profiling to new FBI recruits looking to join the NCAVC. When asked, I consult for the State or the defense, and I frequently testify as an expert witness in those cases. My consulting rate of $500/hour only applies when I consult for the defense, as any work done on behalf of the State is considered part of my job with NCAVC. Since 1995, I have testified as an expert at least 45 times, of which approximately 30 were for the defense.

Rationale and Methods

While generating a criminal profile isn't an exact science, it can be an extremely useful tool in an investigation. Creating a profile essentially involves deductive reasoning. Each element of a crime enables profilers to infer facts about the perpetrator based on crime trends, similarity to other cases, and criminal psychology. An accurate profile can help investigators narrow down their suspect pool, targeting their efforts toward those most likely to have committed the crime. Profiling can help officers stay smart and safe as they apprehend violent or dangerous criminals.

Criminal profiling is generally a five-step investigative process in which a profiler analyzes all available evidence in a case to develop a profile of the likely perpetrator of the crime. First, a profiler considers the specific type of criminal act, comparing it to similar crimes in the past. Next, the profiler conducts a detailed analysis of the crime scene in order to determine how the crime was committed. Factors such as the offender's movements and positioning during the crime, as well as their use of any weapons or physical substances to aid in commission of the crime, clue us into the criminal's thought process during the event. Next, we evaluate the victim's activities, contacts, and background to find connections to potential suspects and possible motives for their targeting. In the process, we analyze physical and testimonial evidence with the objective of determining possible and probable motives. Finally, putting it all together, we produce a full profile of the criminal. Depending on the extent of the evidence, the profile may include information about height, build, background, intelligence, drug use, or a host of other factors specific to the probable perpetrator.

I began my research in this case by investigating the fundamental details of the crime. First, I gathered information about the criminal act itself, reviewing Exhibits 1.A & 1.B (Police report), Exhibits 2.A, 2.B & 2.C (Crime scene photographs), and Exhibit 4 (Map). This evidence revealed that this incident was an act of arson that specifically targeted Carly Walsh, and that the fire was started with an accelerant, gasoline.

From there, I reviewed as much information as I could about the victim. I read the statements of Dakota Pope and Alex Buckley, Exhibit 5 (Text messages recovered from the phone of Carly Walsh) and Exhibit 6 (e-mails between Alex Buckley and Lupe Rodriguez). Next, I reviewed the forensic evidence associated with the case, including the report of CSI Burke and Exhibit 3 (Gas receipt from 7-Eleven). Finally, I contacted Bald Mountain Prep and asked for all student disciplinary reports associated with fire. They provided me with only one report, Exhibit 7, a report about Alex Buckley. I asked both the school and Buckley's attorneys for any other reports filed about Buckley and Larkin, and the school provided none. Upon completing my review of the material facts in this case, I was able to create a criminal profile of the perpetrator.

Findings and Conclusions

A. Type of Arson

The first step in profiling an arson case is to classify it based on mode, motive, and destruction. People light destructive fires for many reasons, from pyromania (an irresistible impulse to set fires) to insurance fraud. In this case, based on the choice of victim and the level of destruction, I was able to conclude that this crime constituted "spite" or "revenge" arson. In cases driven by revenge, fire damage is typically extensive but is focused on the site occupied by the victim. A revenge arsonist's goal is to cause as much harm as possible to the victim, so it is not uncommon for these fires to claim lives. This motivation and the resulting damage distinguish

revenge arson from other types of arson. Most arsonists either feel indifferent about harming others or try to avoid it, while revenge arsonists' primary goal is to inflict harm.

B. Profile of Revenge Arsonist

A thorough profile includes information about the perpetrator's probable background, intelligence level, prior bad acts, modus operandi, and relationships with others. Revenge arsonists typically come from a lower to lower-middle class household. They are also typically of lower intelligence; they rarely succeed in school and often have lower IQs. In this case, where no measures were taken to hide or destroy physical evidence such as the gas container, it is unlikely that the perpetrator possesses a high degree of intelligence. Despite their relative lack of intelligence, however, revenge arsonists typically have at least 10 years of formal education.

Revenge arsonists typically display a history of minor violence. People who prefer fire as a weapon tend to light smaller fires earlier in life as a way to get out their anger. Typically, they also lash out at friends or loved ones when stressed. In most cases, we look for someone with either a criminal record or a history of violent behavior. In many instances, these actions will coincide with use or abuse of alcohol or other drugs.

Revenge arsonists almost always follow a similar pattern in the method they use to commit their crimes. Usually these perpetrators set the fires in or around the community where they live. Yet even if they reside close to the crime scene, revenge arsonists tend to stay away from the site once they start the fire. Typically, they use a personal vehicle to get to their intended burn site, and they leave in that vehicle almost immediately after setting the fire. Unlike pyromaniacs or thrill-seeking arsonists, these arsonists do not watch their fires. Instead, they light the fire and flee the scene for hours to days after the incident, and they usually focus on developing a strong alibi.

Finally, revenge arsonists follow a similar pattern in their relationships, both with the victim and with others. These individuals see the world as constantly cheating them, and their relationships are typically unhealthy and short-lived. They value a high degree of control in their relationships and may tend to exhibit abusive behaviors for the duration of any relationship. When they view their victim as having hurt or cheated them, arson serves as a way to vengefully harm the victim; they see it as a *quid pro quo*. Because these arsonists target a specific individual and don't necessarily idolize fire itself, they pose a low threat of committing a series of similar acts in the short term.

C. Application to Todd Larkin

Todd Larkin fits the profile of a revenge arsonist in a number of significant ways, so I am concerned by the Emigration Police Department's ("EPD's") quick dismissal of Todd as the possible perpetrator. While I understand the arresting officer's reluctance to believe a detainee's claim about an alternative suspect, I found no evidence that the EPD made any real attempt to

verify or disprove that Larkin was present at or near Bald Mountain Preparatory Academy on May 17. The EPD reported that Larkin was presumed to be in Morgan moving into his summer school dorm on the weekend of May 17-19, but no witness confirmed that assumption. Larkin could have been in Emigration on May 17 and driven to Morgan on May 18 or 19.

Larkin lost academic standing due to failing grades and had to enroll in summer school at both Bald Mountain and Morgan University to maintain a passing average. Larkin's academic difficulties correspond to the intelligence level I would expect to see in a revenge arsonist. In addition, Larkin's criminal record includes a recent DUI, which signals alcohol abuse, and statements about Larkin reveal a history of violence. Larkin also had access to a vehicle – a dark SUV like the one seen by Pope – and was not found near the site of the fire afterward, two important revenge arsonist profile factors.

Larkin's relationship with the victim is even more troubling, as it is laden with both psychological and physical abuse. Larkin used a number of stereotypical abuse and control tactics during his relationship with Walsh. He isolated her from her friends; he constantly criticized her, undermining her self-esteem to make her dependent upon him; and when those tactics failed to control Walsh, Larkin apparently escalated to physical abuse.

Larkin's manipulative, domineering behavior stems from the same type of personality that seeks revenge when a relationship ends. Larkin's texts indicated Larkin's perception that Walsh wronged him by ending their relationship. Since it appears that the EPD did not bother to corroborate Larkin's whereabouts on the night in question, I cannot rule out the possibility that this fire was Larkin's attempt at revenge.

D. Application to Alex Buckley

Although the defense only asked me to focus my investigation on Todd Larkin, having generated this profile, I cannot help but evaluate its application to Alex Buckley. While I must admit that some parts of the profile fit Buckley, several red flags raise serious questions about whether Buckley could be the arsonist. First, Buckley's intelligence level is significantly higher than I would expect of the person who started this fire; it would be highly unusual for a revenge arsonist to graduate second in their high school class. In addition, Buckley's relationship with the victim doesn't immediately give cause for concern; Buckley seemed to have a functioning relationship with Walsh as a colleague in school, if not as a friend. In fact, Buckley seemed to have close, functioning relationships with many of Buckley's peers and with Buckley's boss, another deviation from the profile.

In addition, Buckley's behavior at the time of the fire is very different from that of a typical revenge arsonist. Such perpetrators almost never remain at or near the scene of the crime immediately afterward. Instead, these arsonists generally try to place themselves in highly crowded

areas that are far from the crime scene, where multiple people can corroborate their alibi. While I can't say with certainty whether or not Buckley's alibi of walking alone to the student union after work is to be believed, I can say that the story Buckley is telling does not fit the typical criminal profile for a revenge arsonist.

It is true that there are multiple accounts of Buckley responding violently when Buckley perceived that other students' achievements interfered with Buckley's own success. However, Buckley's school record only included one documented instance of past violent behavior – nearly four years prior – and Buckley claims the incident was purely an accident. Buckley received anger management counseling as a result of that incident, and Buckley's school counselor reported that Buckley learned coping strategies and was able to move on. While Buckley's words to and about Walsh are certainly concerning, Buckley does not fully fit the revenge arsonist profile. It is clear that the Emigration Police Department rushed to judgment in arresting Buckley within an hour of the incident.

E. Oath

I understand I have a duty to update this report if I receive any additional relevant information or reach any additional conclusions prior to trial. I understand that I also have a duty to be truthful and complete in this report, and I have upheld that obligation.

Kennedy Felder

SIGNATURE

Victoria Moore

Victoria Moore
Notary Public

THE STATE OF ZION

Victoria Moore

My commission expires
7/6/22

EXHIBITS

EXHIBIT 1.A

EMIGRATION POLICE DEPARTMENT RECORDS

Arrest Report

Snow Canyon County **Citation #:** **#012345678**

Arrestee's Name: (Last, first, middle)			**SS#**	**D.O.B**
Buckley	Alex	C.	xxx-xx-4723	04/25/2001

Charges:	**Booking Number:**	**Defendant status:**
Arson; felony murder	02073647	Adult

	Date	**Time:**	**Location:**
Crime Occurred:	05/17/2019 Friday	23:01	Bald Mountain Preparatory 732 Bald Mountain Dr. Emigration, Zion, 84000

Circumstances of Arrest

Responding Officer:	Officer Benjamin Trost
Victim:	Carly Walsh

Report of Responding officer:

On May 17, 2019, I was called to a fire on the campus of Bald Mountain Preparatory Academy. When I arrived, the Snow Canyon County Fire Department was already on the scene. As Fire Captain Ty Gomez noted, this fire appeared to be deliberately set. Although it caused extensive damage to the dorm, his team was able to contain it before it spread to other buildings. I began interviewing witnesses and collecting evidence. I spoke with several Bald Mountain students. Based on their accounts of Buckley's interactions with Carly Walsh, and Pope's description of the clothing, height, and hair color of the suspected perpetrator, I had enough evidence to bring Buckley in. I found Buckley in the parking lot near Watchman dorm, wearing the outfit Pope described. Buckley voluntarily gave me Buckley's phone. I then brought Buckley to the station for questioning. Buckley was held overnight and arrested the next day (5/18/19).

Forensic evidence (collected at the scene):

- A red gasoline container found in the parking lot near Watchman Dorm.
- Alex Buckley's cellular phone, voluntarily handed over to me. Relevant screenshots were catalogued and preserved.
- Carly Walsh's cellular phone, provided by Dakota Pope. Relevant screenshots were catalogued and preserved.
- The clothes Buckley was wearing when arrested were photographed and preserved as evidence.

EXHIBIT 1.B

Report Addendum: Witness Interviews

Recorded by Officer Benjamin Trost

Dakota Pope: 11:15pm, 05/17/19 interviewed at the crime scene
Dakota Pope spoke with me at the scene of the crime. While Pope was visibly injured, Pope was not in critical condition. Pope seemed in shock at the time of the interview and continued to repeat the name "Carly," telling me we needed to "Get Carly out." Pope insisted that student Carly Walsh was still inside the burning building when Pope got out. Pope reported being in the dormitory building at the time it was set on fire. Pope stated that Watchman dorm was one of three dorms that housed female students and that Pope had been in the room assigned to Carly Walsh for a study session at the time the fire started. Pope recalled smelling gasoline and seeing a pool of liquid forming under the dorm room's door seconds before the fire started. Pope stated that Pope escaped the fire by jumping out the window, and that this jump was the source of Pope's injury. Pope described seeing someone rapidly flee the scene of the fire; that individual reportedly dropped a red gas canister. Pope noted that this suspect was wearing a yellow shirt and dark pants and compared their wardrobe to the work uniform of a student named Alex Buckley. Pope noted that Buckley had made threats towards Walsh in the past and insisted that I find and question Buckley.

Ana Gandhi and Don Hernandez: 11:23pm, 05/17/19 interviewed at the crime scene
Ana Gandhi, the Resident Assistant ("RA") for Carly's floor of Watchman Dorm, spoke with me at the scene of the crime. Gandhi reported attending a school dance and seeing the fire as she was walking home with her date, Don Hernandez. She reported seeing smoke and flames coming from the dorm starting at 11:00pm and immediately called 911. Gandhi reported seeing a victim, later identified as Dakota Pope, exit from the third-floor window. Gandhi and Hernandez moved Pope away from the fire to the location where the EMTs found the three of them. Gandhi indicated that only students could enter dorms because an access card is required, though she admitted that someone had propped the door open for a short time that afternoon. Hernandez corroborated her story in full.

Alex Buckley: 12:25am, 05/18/19 interviewed at the police station
After being advised of Buckley's rights, Alex Buckley chose to speak with me about the fire. Buckley claimed Buckley worked at a convenience store about a mile from the Bald Mountain campus, and that Buckley was working until 10:45pm on May 17. Buckley claimed that after work, Buckley walked to the school's student union,

purchased food with cash at a vending machine, and then walked toward Kayenta dorm, where Buckley lived. Buckley denied being at or near the scene of the crime until 11:40 p.m., when the police found Buckley walking towards the dormitories and apprehended Buckley. At the time of the arrest and the interview, Buckley was wearing what Buckley identified as a convenience store uniform. The uniform included a yellow polo shirt with a small logo on the front and dark cargo style pants. Buckley was not wearing an arm brace at the time of arrest, although Buckley complained of pain in Buckley's right wrist and asked to retrieve a brace from Buckley's room prior to leaving the campus. This request was denied. When asked if Buckley's work required contact with red gas canisters, Buckley stated that the store had such canisters available to loan to customers in need. Buckley reported providing one to a customer, Todd Larkin, on the night of May 17. Buckley claimed that Larkin was a former boyfriend of the victim. Buckley voluntarily provided Buckley's cellular phone for examination. While the phone contained no text messages of material consequence, e-mails between Buckley and Lupe Rodriguez that discussed Carly Walsh were documented and preserved.

Ridham Patel: 10:04am, 05/18/19, interviewed at 7-Eleven

Ridham Patel reported being the regional manager and an owner of the establishment where Alex Buckley was employed. Patel stated that Buckley was a model employee. Patel recalled Buckley being present at the store on May 17, 2019 from 4:30 p.m. to about 10:40 p.m. When asked if the store carried red gas containers, Patel stated that they did, and that one was unaccounted for. When asked about customers between 10 and 11pm on May 17, Patel reported working in the store's office at that time and denied seeing or hearing any customers enter the store during that period. Patel provided a receipt for a purchase of one gallon of gas in that time frame.

Lupe Rodriguez: 11:25am, 05/18/19, interviewed on the Bald Mountain Preparatory campus

As someone with whom Buckley had discussed negative feelings about Carly Walsh, Lupe Rodriguez was interviewed about those communications with Buckley. Rodriguez, Buckley's academic advisor, explained that Buckley was in the running for a full college scholarship, and that Buckley saw Carly Walsh as Buckley's only competition. Rodriguez reported Buckley becoming enraged and aggressive about the prospect of not winning the scholarship, but stated that the only injury Buckley ever caused was to Buckley's own hand. Rodriguez also provided me with Buckley's full disciplinary history, which contained only one report.

EXHIBIT 2.A

Watchman Dorm, May 18, 2019

Watchman Dorm, photographed aerially, May 18, 2019

EXHIBIT 2.B

Key: **Medium blue circles:** full prints (20 points, 18 points) matching Alex Buckley
Light green circle: partial print (7 points) matching Alex Buckley
Orange circle: full print; no match found

EXHIBIT 2.C

EXHIBIT 3

7-ELEVEN.ZION.COM

7-ELEVEN
1791 BALD MOUNTAIN DR.
EMIGRATION
ZION
84000

- -

CASHIER: #013
CUSTOMER:

- -

PURCHASE:

UNLEADED 87 GASOLINE		$ 2.24
GST + 13%	TAX:	$0.29

- -

TOTAL: $2.53

PAYMENT METHOD: CASH
TRANSACTION #1497297319 -001
DATE: 05/17/2019 10:34:46 PM

ALL SALES FINAL

THANK YOU

EXHIBIT 4

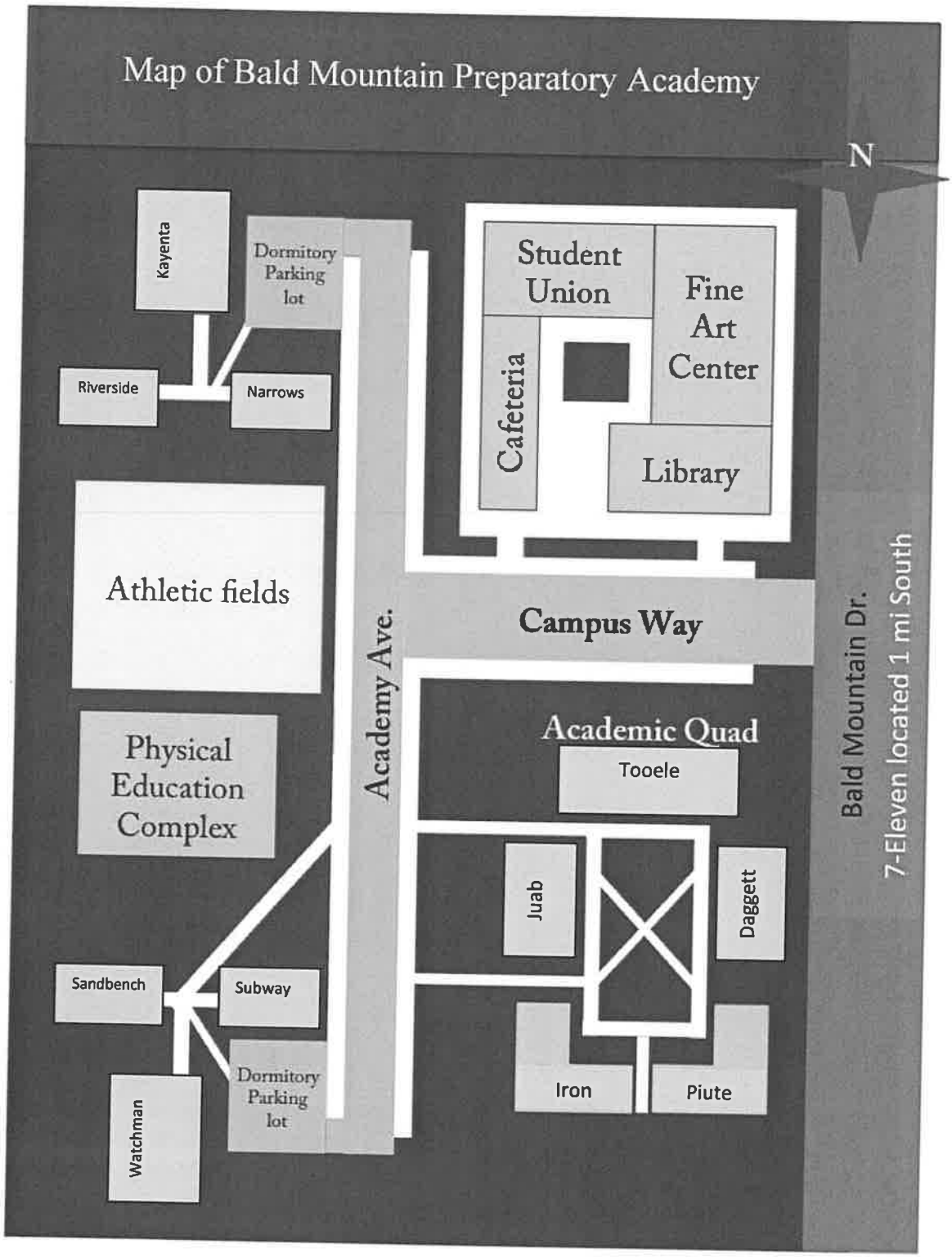

Map of Bald Mountain Preparatory Academy
N
Kayenta
Dormitory Parking lot
Riverside
Narrows
Student Union
Fine Art Center
Cafeteria
Library
Athletic fields
Campus Way
Academy Ave.
Physical Education Complex
Academic Quad
Tooele
Juab
Daggett
Sandbench
Subway
Dormitory Parking lot
Watchman
Iron
Piute
Bald Mountain Dr.
7-Eleven located 1 mi South

EXHIBIT 5

●●●●○ AT&T 12:09 AM 59%

Messages **Todd Larkin** Contact

May 19, 2018 10:31 PM

Was really looking forward to seeing u at my graduation party... Please come back Carly. You need me! Wont survive without me!

Our relationship is over, Todd. Please stop texting me.

You dont even know how bad you messed xup Just wait n see what happens. Yu will never be nything withouth me. You bettr take me back before i have ro hurt you

You're drunk, Todd. If you contact me again, I will call the police.

You bettr not stop texing me or else!!!!!

iMessage Send

EXHIBIT 5

●●●●○ AT&T 12:09 AM 59%

Messages **Todd Larkin** Contact

July 23, 2018 3:36 PM

Look Carly Im sorry about everything. Please give me another chance. I go to college in two weeks and I wanna see you again before I leave.

I think it's best that we don't see each other again. Please leave me alone.

You'll see me again! Maybe not this week or next week! Maybe not until next summer! But I promise you I will make you see just how terrible your life can be without me in it!

iMessage Send

EXHIBIT 6

On 4/23/2019 at 10:35 AM, Alex Buckley <abuckley@bmprep.org > wrote:

I can come by around 3:35. But unless you have a way to get Carly Walsh out of the picture, there isn't much to talk about.
- Alex

> *On 4/22/2019 3:10 PM, Lupe Rodriguez <lrodriguez@bmprep.org > wrote:*
>
> I'd just like to chat. I know an injury can make this time of year difficult, especially when you are under stress.
>
> Warmly,
> Lupe Rodriguez
>
>> *On 4/22/19 at 2:42 PM, Alex Buckley <abuckley@bmprep.org> wrote:*
>>
>> I can come in after class on Wednesday. But I am really fine. I just lost control for a bit.
>> - Alex
>>
>>> *On 4/22/2019 9:35 AM, Lupe Rodriguez <lrodriguez@bmprep.org> wrote:*
>>>
>>> Alex,
>>> I heard about your hand injury. I would love to make an appointment to discuss what happened and how to best move forward. If you are free anytime this week, please let me know.
>>>
>>> Warmly,
>>> Lupe Rodriguez

EXHIBIT 6

On 5/15/2019 at 8:57 PM, Alex Buckley <abuckley@bmprep.org > wrote:

My scholarship is going to be fine. After this weekend, Carly Walsh won't matter to me at all. I spent too much time this year letting Carly get the best of me, when I really just needed to take matters into my own hands this whole time. No need to meet. I have work anyway.
- Alex

> *On 5/15/2019 4:13 PM, Lupe Rodriguez <lrodriguez@bmprep.org> wrote:*
>
> Alex,
> I noticed you missed our meeting today. Is everything going okay? How did the scholarships turn out? Do you have any time to meet this week? Maybe Friday during lunch or after school before the dance?
>
> Warmly,
> Lupe Rodriguez
>
>> *On 5/08/2019 9:14 AM, Lupe Rodriguez <lrodriguez@bmprep.org> wrote:*
>>
>> Alex,
>> How are the scholarship applications going? Have you turned them in yet? If you need any help proofreading, my door is always open; if not, I will see you at 3:35 next Wednesday for our meeting.
>>
>> Warmly,
>> Lupe Rodriguez

EXHIBIT 7

Student Incident Report

Bald Mountain Preparatory Academy

Report date and time: March 7, 2016 3:45pm
Incident date and time: March 5, 2016 10:50am
Report filed by: Lupe Rodriguez

Student name: Alex Buckley
Date of birth: April 25, 2001 **Age:** 14 **Grade:** 9
Incident Location: Bald Mountain physical education complex
Offense: Destruction of property
Parent notified: Yes **Police called?** No

Description of incident:
Alex competed in the Robotics event at the Science Olympiad Regional Competition hosted in the Bald Mountain gymnasium. Alex was awarded fourth place. As the top three places were announced, Alex became resentful and angry. Alex punched at and then kicked the project built by the student who took second place. The project fell over, started to smoke, and eventually caught on fire. The fire alarm sounded and the building was evacuated. While Alex claims the incident was an accident and that Alex did not intend to harm the project, the teacher advisor for Science Olympiad, David Gray, disagreed. Mr. Gray called me during the alarm and said that Alex had intentionally harmed the project and ought to be suspended or punished.

Remediation/follow up recommended? Yes
Description of recommended remediation:
Alex should receive anger management counseling once per week for the remainder of the school year. Failure to complete the counseling sessions will result in Alex's expulsion. At the end of the school year, Alex should be re-evaluated and, pending advisor approval, be allowed to continue studying as a scholarship student at Bald Mountain.

Signature of student: Alex Buckley **Date:** 3/7/16
Signature of counselor: Lupe Rodriguez **Date:** 3/7/16

Remediation completed? Yes
Date completed: May 13, 2016
Description of completed remediation:
Alex met with me each Thursday from March 10 – May 12, 2016. I worked with Alex on developing skills to handle stressful situations and deal with anger in a respectful manner. Alex had experienced some difficulty during the transition from a large public school to Bald Mountain, and I have helped Alex learn to control the emotions resulting from this transition. Alex has made significant progress in the past two months, and based on that progress, I am fully comfortable signing off for Alex to continue studying at Bald Mountain in our scholarship program.

Signature of counselor: Lupe Rodriguez **Date:** 5/12/16

GUIDANCE: UTAH SIMPLIFIED MOCK TRIAL RULES OF EVIDENCE

A. HOW TO USE THIS SECTION

1. Complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence that is not important to the case, to ensure that only persons with knowledge of facts or specialized training provide testimony, to protect parties from introduction of evidence that may be unfairly prejudicial, to ensure the trial is completed in a timely manner, and to achieve other policy goals.

2. The teams should know the Mock Trial Rules of Evidence (based on the National High School Mock Trial Championship Rules of Evidence and the Federal Rules of Evidence) and be able to use them to make their own case and to fairly limit the testimony and evidence of opposing counsel and their witnesses.

3. IMPORTANT: The Guidelines in this section are generally accepted practices about the appropriate ways to enter physical evidence, lay foundation for expert witnesses, and object to testimony and documents, with some examples of how the rules work. Just like in actual trials, not all judges will interpret the Rules of Evidence (or procedure) the same way. Just because one judge rules one way and another judge has ruled another does not mean one judge was "right" and the other was "wrong." Likewise, simply following these examples does not guarantee that your objection will be sustained, or that a judge will score you highly.

B. GENERAL PROCEDURE FOR OBJECTING TO QUESTIONS OR TESTIMONY

1. If it appears that an attorney's question, or a witness' answer will violate, or has violated, a rule of evidence, the attorney responsible for that witness may raise an objection to the judge.

2. In general, the objection must be made before the witness begins her answer, unless the objection could not be anticipated before the witness started answering.

3. The judge then decides whether the question or answer violates a rule and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence.

4. When the attorney responsible for the witness believes the opposing attorney has asked a question that is objectionable, the attorney may follow the following procedure:

    a. Wait for the opposing attorney to finish her question.

    b. Stand.

c. Say, "Objection, your Honor", and state the basis for the objection (relevance, leading, hearsay).
This initial objection should be brief and state only the basis of the objection, without additional argument. The most persuasive mock trial attorneys are prepared to point out specific rules (quoting from the rule and citing the rule number, if necessary).

d. Wait for the opposing party to respond or for the Court to ask for further argument.
In general, the opposing party is the first to provide argument to support the admission of the question. There may be circumstances where the reason for the objection is not apparent. In such situations, it is appropriate to ask the Court to be heard immediately.

For example:
***Q**: Where did John go after that?*
***Attorney**: Objection, your Honor, this question calls for hearsay. May I be heard further?*
***The Court**: You may.*
***Attorney**: We expect that this witness will say she left the party by herself, and John left 30 minutes later. The only way she would know where John went is when Mary told her about it, the next day. Therefore, the question calls for a hearsay statement.*
***The Court**: Opposing counsel, response?*

e. Respond when requested and await the Court's ruling. If the Court agrees with the objecting attorney, the objection will be "sustained." If the Court disagrees, the objection will be "overruled", and the questioning attorney or witness will be allowed to ask and answer the question.

f. Sit down.

g. Remember, if the objection is sustained, then object again if the attorney asks the same question.

5. When the attorney responsible for the witness believes the witness has offered objectionable testimony, even if the question itself was not objectionable, the attorney may follow the following procedure:

a. Stand.

b. Say, "Objection, your Honor, move to strike; this witness' answer is. . . ", and then briefly state the basis for the objection.
*While it is generally inappropriate to interrupt an opposing attorney while she is in the middle of a question, the objecting attorney **should** interrupt a witness as soon as practicable if the witness begins testifying to*

objectionable material. It also may be appropriate to say, "While counsel's question did not ask for any objectionable testimony, the witness' answer did", and state the basis for the objection.

c. Wait for the opposing party to respond or for the Court to ask you for further argument.

d. Respond when requested and await the Court's ruling.

e. If the objection is sustained, say, "Your Honor, I move to strike", and describe the objectionable portion of the witness' testimony.

f. Sit down.

6. When an attorney is questioning a witness and the opposing attorney objects to a question (or to testimony), the attorney may follow the following procedure:

a. Remain standing.

b. Wait for the opposing party to finish her objection and argument (if requested by the Court).

c. Respond to the objection.

1) *The Court may ask for a response, or indicate that the Court is ready to hear a response by looking at the attorney. If the attorney is unsure, the attorney may ask, "May I respond, your Honor?"*

2) *A response may include a legal response (quoting or citing a rule number, if necessary), or an offer to clarify or modify the question so that it follows the rules.*

d. Respond further if requested and await the Court's ruling.

e. Continue your questioning.

1) *If the objection was overruled and the witness has not answered, the witness will need to answer the question.*

2) *You may ask the witness the same question again, or you may ask the witness, "Please answer the question."*

3) *If the objection was sustained, you may not ask the question, but, depending on the objection, you may ask a similar question about the same material.*

C. EXAMPLES OF SPECIFIC OBJECTIONS

1. The following are examples of objections typically offered under the Mock Trial Rules of Evidence and most commonly used in most mock trial situations.

2. These examples do not supersede the Rules and may not be cited to during a mock trial, but are provided as a learning tool and guide. A reference to the number of the Simplified Rules is included in parenthesis following each objection.

a. **Objections based on the form of the question/answer**
These are the most common objections when the attorney is primarily concerned not with the content of a witness' answer, but rather the way in which a question is being asked or when it is asked. They include:

- *Leading the witness*
- *Beyond the scope (of cross-examination, or redirect examination)*
- *Calls for narration*
- *Asked and answered*
- *Argumentative*
- *Nonresponsive*
- *Compound*
- *Arguing/Assuming a fact not in evidence*

1) **Leading the witness** (applicable to direct examination only) (Rule 611(c))

a) In mock trials, witnesses may generally not be asked leading questions by the attorney who calls them, except when the attorney asks questions on preliminary, non-substantive matters.

b) A leading question is a question that suggests to the witness the answer desired by the examiner, often "yes" or "no".

c) Questions on direct examination must be open-ended and are generally phrased to bring out a set of facts from the witness: who, what, where, when, why, and how.

Examples of leading questions:
***Mr. Wolf**, you've always liked roast pork, haven't you?*
***Mr. Wolf**, the money was under the hay bale, correct?*
***Ms. White**, the old woman had a weathered face and a long, crooked nose just like the defendant, didn't she?*

Example of a proper, open-ended question:
***Ms. White**, what did the old woman who knocked on the door look like?*

Example of an objection:
***Q**: Ms. White, the old woman had a weathered face and a long, crooked nose just like the defendant, didn't she?*
***Attorney**: Objection, your Honor, counsel is leading the witness.*

Examples of potential responses:
***Your Honor**, the question does not suggest an answer to the witness.*
***Your Honor**, this is a preliminary matter and asking leading questions is necessary to develop the witness' testimony.*

2) **Beyond the scope** (applicable to redirect examination and recross examinations only) (Rule 611(b))

a) In mock trials, teams may not call a witness for the other side as their own witness. A team *may* question a witness for the other side on cross-examination about *anything* in that witness' statement (so long as it is otherwise admissible). Consequently, in a mock trial, a "beyond the scope" objection is different from actual trial--it is available only during redirect and recross examinations.

b) During redirect or recross, attorneys may only ask questions that relate to matters brought out by the other side on cross-examination or redirect. Any attempt to question about anything else is objectionable.

Example of an objection:
***Q**: [After a redirect examination which discussed only whether the lights were on by the door when Ms. White answered it;] Ms. White, when you ate the apple, what happened to you?*
***Attorney**: Objection, your Honor, this question is beyond the scope of my redirect examination.*

Examples of potential responses:
***Your Honor**, on cross-examination, attorneys may inquire about any relevant facts contained in the witness' statement.*

***Your Honor**, this question is within the scope because during (cross, or redirect), counsel inquired about the issue of ___ (i.e., damages, the witness' ability to see, motive, etc.).*

3) **Narration** (Rule 611(a), 403)

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

b) The reason for this is that it would make it very difficult for opposing counsel to make an appropriate objection. While some questions call for a narrative answer, sometimes a witness may continue outside the bounds of the original question. An attorney may object to improper narration in this situation as well.

Example of an objection:
***Q**: Ms. White, tell the Court about your family history since 1902.*
***Attorney**: Objection, your Honor, this question calls for a narrative answer.*

Example of an objection when a witness begins narrating:
***Q**: Ms. White, what happened when the old lady came to the door?*
***A**: Well, she wanted me to eat this apple. So I took it. Then, later, I put the apple to the side and started cooking dinner. After that, my seven roommates came home--Sleepy, Happy, Doc. . . .*
***Attorney**: Objection, your Honor, the witness has begun to narrate, and I ask that the examination proceed in a question-and-answer format.*

Examples of potential responses:
***Your Honor**, the question is limited in time and scope and does not call for narration.*
***Your Honor**, the witness has limited her answer to the question asked and has not narrated.*
***Your Honor**, I will be happy to ask another question.*

4) **Asked and answered** (Rule 611(a), 403)

- It is properly within a trial judge's discretion to prevent one party from repeating a question already asked by that party.

Example of an objection:
***Q**: Ms. White, who was at the door?*
***A**: The wicked Queen, my stepmother.*
***Q**: Who was at the door again?*
***A**: The wicked Queen, my stepmother.*
***Q**: Was it your stepmother at the door?*
***Attorney**: Objection, your Honor, this question has been asked and answered.*

Examples of potential responses:
***Your Honor**, this question is different from the one I asked previously because____.*
***Your Honor**, I asked this question before, but the witness has not yet answered it.*

5) **Argumentative** (Rule 611(a), 403)

- An attorney cannot badger or argue with the witness, even when using a pleasant tone of voice. An attorney cannot, in the guise of asking a witness a question, present a *legal argument* to the judge or jury.

Example of an objection (badgering):
***Q**: [While leaning over the witness box and pointing,] Ms. White, you knew that the old hag was your stepmother, didn't you! You hate her and want to be queen and so you're lying.*
***Attorney**: Objection, your Honor, this question is argumentative, and counsel is badgering the witness.*

Example of an objection (arguing):
***Q**: Ms. White, you didn't recognize the woman at the door, did you?*
***A**: Not her appearance, but I recognized her soul--it was my stepmother.*
***Q**: There's no way you can recognize someone's soul!*
***Attorney**: Objection, your Honor, counsel is arguing with the witness. The comment should be struck, and counsel should be instructed to proceed in a question-and-answer format.*

Example of an objection (legal argument):
***Q**: Ms. White, because you knew that the old woman was your stepmother in disguise, you knew she didn't like you, you knew she had access to apple-poisoning facilities, and you saw there was a syringe prick in the apple. Isn't it fair to say that you assumed the risk of eating the apple?*

***Attorney**: Objection, your Honor, this question is essentially a legal argument.*

Examples of potential responses:
***Your Honor**, merely because I am asking hard questions does not mean I am badgering the witness.*
***Your Honor**, the witness has not answered my question, and I am attempting to appropriately cross-examine the witness so the witness will answer my question.*
***Your Honor**, I am not giving a legal argument, but rather asking for this witness' knowledge.*

6) **Nonresponsive** (Rule 611(a), 403)

a) On cross-examination, a witness might give an answer that makes a point the witness wants to make, but evades answering the question the attorney asked.

b) After repeated nonresponsive answers, the cross-examining attorney could ask the judge to strike any nonresponsive testimony and to instruct the witness to answer the question actually asked.

Example of an objection:
***Q**: Ms. White, the apple the old woman gave you was red, wasn't it?*
***A**: I think so, but at the door, I spent most of my time staring into the old hag's evil, sad, piercing blue eyes. As I stared into her eyes, I knew she wanted to harm me. But at the time, I thought I was being too paranoid.*
***Attorney**: Objection, your Honor, the witness' answer was nonresponsive. I ask that you strike everything after "I think so," and instruct the witness to answer my questions.*

Examples of potential responses:
***Your Honor**, the witness was responding to the question asked.*
***Your Honor**, the question was worded such that the witness was providing the best testimony she could.*
***Your Honor**, the question was worded such that the witness could not truthfully simply answer "yes" or "no".*

***Hint**: The use of the nonresponsive objection is highly effective with some judges, while other judges believe it is an ineffective way of controlling a witness on cross-examination. Only use the objection if the witness has*

repeatedly been evading questions, and then carefully examine the judge's reaction to the objection.

7) **Compound** (Rule 611(a), 403)

- Questions should be about one topic, or fact, only. Because the answers to compound questions are unclear and often only partially correct, particularly on cross-examination, compound questions are objectionable.

  Example of an objection:
  ***Q**: Ms. White, when you went to the door, the old woman was there with an apple in her hand, and no one else was at home to see her, right?*
  ***Attorney**: Objection, your Honor, the question is compound.*

  Example of a potential response:
  ***Your Honor**, I am asking only about one fact: ____.*

8) **Arguing/Assuming a fact not in evidence** (Rule 611(a), 403)

a) During testimony, this objection is raised where the introductory part of a question assumes a fact not in evidence, and the fact is in dispute. It is objectionable because it prejudices the fact-finder to believe there is testimony on a particular issue when, in fact, none exists.

b) It also may be raised after an attorney states a fact in closing argument that was never introduced in trial.

Example of an objection:
***Q**: Ms. White, isn't it true that you still chose to bite into the apple, even after you tested the apple with your home chemistry kit for any traces of sleeping powder?*
***Attorney**: Objection, your Honor, the question assumes a fact--that Ms. White tested the apple with a chemistry set--that is not in evidence.*

This is sometimes used as the basis for arguing that the witness is creating a material fact not in the record--an unfair extrapolation. Attorneys should be very clear about whether the objection is because the question (or the attorney's statement) improperly assumes facts not in evidence, or whether the witness' testimony is not in her statement.

b. **Objections based on the witness' knowledge, or the witness' capacity to be able to answer the question**
These are the most common objections when the attorney is primarily concerned that a witness does not have the background, capacity, expertise, or ability to answer the question, and, therefore, the testimony will be unreliable, unhelpful, or confusing. They include:

- *Lack of personal knowledge*
- *Speculation*
- *Lack of foundation*
- *Improper opinion*
- *Improper expert opinion*
- *Creating a material fact not in the record (Mock Trial only)*

1) **Lack of personal knowledge** (Rule 602)

- Witnesses may only testify to information of which they have personal knowledge. However, expert witnesses may provide their opinions based on facts of which they have no personal knowledge.

  Example of an objection:
  ***Q**: Ms. White, you just testified that you were asleep from midnight until 5:00 the next morning. What was your roommate Dopey doing at that time?*
  ***Attorney**: Objection, your Honor, lack of personal knowledge.*

  Examples of potential responses:
  ***Your Honor**, the witness' answer is based on her reasonable perceptions at the time.*
  ***Your Honor**, she can answer if she knows, or she can tell the Court that she does not, in fact, know.*

  ***Note**: This is not the same as creating a material fact not in the witness' statement. A witness statement may state a fact, but that witness may not have any way of knowing it.*

2) **Speculation** (Rule 602, 403, 701, 401)

a) Any question that asks the witness to speculate or guess is improper because cases should be decided on facts, and guesswork from a witness on what the facts might be or could possibly be is irrelevant and unhelpful.

b) Witnesses, however, are permitted to give estimates and approximations if they are rationally based on the perceptions of the witness and are helpful to the trier of fact.

Example of an objection:
***Q**: Ms. White, how long do you think you might have slept if you had taken a bite out of that apple?*
***Attorney**: Objection, your Honor, speculation.*

Example of an objection:
***Q**: Ms. White, isn't it possible that the poison wouldn't have affected you at all if you had taken a bite of the apple?*
***Attorney**: Objection, your Honor, counsel is asking the witness to guess in order to answer the question.*

Examples of potential responses:
***Your Honor**, I am asking for an estimate based on the witness' perception. Witness' answer is based on her reasonable perceptions at the time.*
***Your Honor**, I am asking about the facts understood by this expert witness.*

3) **Lack of foundation** (Rule 602, 702, 901, 1003)

a) An attorney must establish that the witness has the "who, what, where, when, why, or how" of the subject about which a question is asked. The objection is not that the witness cannot testify about the topic, but that she has not proven she has personal knowledge of the subject.

b) This objection also is used when introducing documents (See p. 20.), where there has not been foundation to establish that the witness has adequate knowledge of the document, or with an expert that the expert does not have adequate foundation to offer an opinion being requested.

Example of an objection:
Q: *[To a witness who has never seen the police report;] Ms. White, what does this police report reflect as the criminal history of your stepmother?*
Attorney: *Objection, your Honor, lack of foundation.*

Examples of potential responses:
***Your Honor**, this witness is testifying about her personal knowledge.*

***Your Honor**, I have provided foundation for this testimony/document by demonstrating _____.*

4) **Improper opinion** (Rule 701, 704)

a) Generally, witnesses must offer "just the facts". A witness' opinion on any matter is usually not relevant or helpful at court. However, if the witness' opinion is related to the witness' perception, helpful to the jury, and is not based on specialized training, then it can be admitted.

b) A witness' opinion about how a case should be decided (i.e., whether the defendant is guilty) is not admissible.

Examples of an objection:
Q: *Mr. Bear, was Ms. Locks mean to your children?*
Attorney: *Objection, your Honor, improper opinion. The opinion is not helpful to the jury.*
Q: *Mr. Bear, was Ms. Locks legally drunk when she was in your house?*
Attorney: *Objection, your Honor, improper opinion. The opinion requires specialized training.*

Example of a response:
Q: *Mr. Bear, was the weather stormy that day?*
Attorney: *Objection, your Honor, improper opinion.*
Response: *Your Honor, Mr. Bear already testified that he had been out in the weather, and my client's defense to trespass was necessity. Mr. Bear's perception of the weather is relevant to determine whether it was necessary to get out of the storm, and the opinion is related to his perceptions of the weather at the time.*

5) **Improper expert opinion** (Rule 702)

- See the section on Expert Witnesses, below.

6) **Creating a material fact not in the record** (Rule 616)

a) One objection available only during a mock trial, allows you to stop an opposing witness from creating new facts. Witnesses are bound by their witness statements and cannot invent new, material facts, or even testify to information contained in another person's witness statement. An opposing attorney may object when, on direct examination, the witness

makes a statement of fact which is not in the witness' statement and is likely to affect the outcome of the trial.

Example of an objection:
Q: *Mr. Bear, what was the condition of your house when you arrived home?*
A: *Terrible. Ms. Locks had burned the sofa in the fireplace. The bathroom was flooded because she left the water running in the tub. She plucked out the eyes of my daughter's favorite stuffed animal.*
Attorney: *Objection, your Honor, the witness is creating a material fact not in the record. On line 35 of Mr. Bear's statement, he says, "When I got home, the place was a mess! There were toys everywhere." Nowhere does he mention burning items, flooding, or destroying toys.*

Examples of a response:
***Your Honor**, the fact is not likely to affect the outcome of the trial. (Such as, for example, the witness inventing her middle name.)*
***Your Honor**, the fact testified to is stated in line ___ of the witness' statement.*

b) On cross-examination, a cross-examining attorney **may not** object to the witness creating a material fact. If the witness testifies contrary to the witness' statement, the attorney should impeach by prior inconsistent statement. (See p. 24.) If the attorney asks a question about a fact that does not exist in the witness' statement, the witness may answer consistent with the statement, so long as the answer does not materially affect the rest of the witness' testimony, or may simply say, "I don't know."

c. **Objections based on the substance of the witness' testimony**
These are objections to the substance of the witness' testimony. The question may have been worded properly, and the witness may have knowledge of the fact, but the testimony is inadmissible because it does not matter to the case, is unfair, or is excluded for other reasons. They include:

- *Relevance*
- *Unfairly prejudicial* (New this year)
- *Improper character evidence*
- *Hearsay*

1) **Relevance** (Rule 401, 402)

a) Generally, only relevant testimony and evidence is allowed. Relevant evidence is evidence that tends to make an important fact more or less likely than the fact would be without the evidence. Testimony, physical evidence, and demonstrations may be disallowed if they have no direct bearing on the issues of the case or have nothing to do with making the issues clearer.

b) Note that the witness' credibility is always relevant. Thus, questions about facts showing the witness' bias, motive, or interest should generally be allowed, even if the questions themselves might not have to do with the events in the case.

Example of an objection:
Q: *Mr. Bear, isn't it true that Mama Bear never made cookies for your child?*
Attorney: *Objection, your Honor, relevance.*

Example of a response:
***Your Honor**, the question is relevant to the issue of ___ (knowledge, or breach of duty, or causation, or damages, whatever the legal elements are in the case).*
Q: *Mr. Bear, isn't it true that Ms. Lock's father, a banker, foreclosed on your house a few years ago?*
Attorney: *Objection, your Honor, what does that have to do with this case?*
Response: *Your Honor, the question goes to Mr. Bear's bias against Ms. Locks. Because Ms. Locks' family caused him financial ruin, it's more likely that his testimony about what Ms. Locks did in his house is untrue.*

2) **Danger of unfair prejudice** (Rule 403)

a) Sometimes evidence might be relevant, but if it is admitted, the trier of fact might be so prejudiced against the other side that it would be impossible for the other side to get a fair trial. The evidence can be excluded.

b) The evidence must not just be "prejudicial" to the other side--all adverse evidence is "prejudicial"--it must be "unfairly prejudicial." And the danger of prejudice must "substantially outweigh" any value it has as relevant evidence.

Example of an objection:
Q: *Your Honor, I move to admit Exhibits A-Z, twenty-four close-up pictures of the corpse of the 8-year-old murder victim.*
Attorney: *Objection, your Honor, this evidence is not relevant. And even if it is marginally relevant, its probative value is substantially outweighed by a danger of unfair prejudice.*

Examples of a response:
***Your Honor**, this evidence is highly relevant to determine the issue of ____; therefore, its probative value substantially outweighs the risk of unfair prejudice.*
***Your Honor**, the evidence is not unfairly prejudicial; the evidence shows ____.*

3) **Improper character testimony** (Rule 404, 406, 608)

a) The proper use of character evidence is extremely complicated. Most mock trial students--and really most attorneys--do not understand these rules, so do not feel bad if you are unable to master them.

b) For mock trial purposes, evidence of a person's character, character trait, or a specific bad act (i.e., the witness is generally a bad person, they are untruthful, they are cruel, they previously tortured animals) is generally not admissible to prove that they acted a particular way on an issue relevant at trial, sometimes called "conduct in conformity". This means that the opposing party may not introduce evidence that a criminal defendant is "bad" or "mean", or because the party tortured cats in the past, he is more likely to have murdered someone.

c) Additionally, evidence of a witness' religious beliefs is not admissible to enhance or impair the witness' character or credibility.

d) There are exceptions to these general rules.

i) First, if a criminal defendant offers evidence of her character, the prosecution may introduce evidence rebutting that evidence. So, for example, if a defense witness testifies that the defendant has "never harmed a flea," then the prosecution could ask the defense witness about the defendant torturing cats.

ii) Second, a witness may be impeached by the introduction of evidence that the witness was convicted of crimes related to dishonesty, or any felony conviction, so long as the felony conviction occurred within the last 10 years, or that another witness can testify that the first witness has a reputation for untruthfulness.

iii) Third, other crimes, wrongs, or acts may be admissible not to show conduct in conformity, but rather for other purposes, such as motive, intent, plan, lack of mistake, or other purposes listed in Rule 404(b).

For example:
Goldilocks' previous conviction for breaking and entering the Bears' house may be admissible not to show that because she broke into the house in the past, it is more likely that she broke in this time, but to show that she knew she did not have permission to enter the Bears' home this time.

iv) Fourth, evidence of a person's habit is admissible to prove that the person acted in the same way. The line between impermissible "conduct in conformity" and permissible "habit" is blurry and difficult. In general, something is someone's habit if it is the person's (or organization's) regular response to a repeated, specific situation. The action should be "semi-automatic," "specific," "regular," and "frequent".

Examples of an objection:
***Objection**, Your Honor, the question seeks to introduce improper character evidence.*
***Objection**, Your Honor, counsel is seeking to prove conduct in conformity with a past bad act.*
***Objection**, Your Honor, the defendant has not put her character at issue.*
***Objection**, Your Honor, the witness' reputation for truthfulness is at issue here, not the witness' reputation for (neatness, kindness to dogs, etc.).*

Examples of a response:
***Your Honor**, the Defendant has put her character at issue by ____.*
***Your Honor**, this evidence is offered to impeach the witness and is permitted by Rule 608.*

***Your Honor**, this evidence is not offered to prove the witness' character, but instead is offered to prove her (motive, intent, plan, etc.).*
***Your Honor**, this is evidence of the witness' habit or routine practice.*

4) **Hearsay** (Rule 801, 802, 803, 805)

a) Hearsay is the in-court repetition of an out-of-court statement in which the statement is being offered to prove the truth of the statement. Different from previous years, the new Simplified Rules define as hearsay any out-of-court statement offered for its truth. It does not matter whether the person who gave the statement is in court to testify.

b) An out-of-court statement is any statement made not during the trial. This includes oral statements ("John said, ...") as well as statements in documents.

c) What does "offered for the truth of the matter asserted" mean? It means that the party is offering the statement, so the judge will believe the statement is true (not merely that someone said the statement).

i) If a witness testifies, "Mama bear yelled, 'Goldilocks is in our house!'" and the prosecutor is entering the evidence to convince the judge that Goldilocks, in fact, was in the house, then the statement is being "offered for the truth of the matter asserted."

ii) But if the statement is being offered for another purpose, for example, to show that Mama bear knew who Goldilocks was at the time of the break-in, then the statement is not hearsay by definition.

d) In general, hearsay is not admissible, but there are a number of exemptions and exceptions to this blanket rule.

i) The rules exclude from the definition of hearsay statements made by a person, under oath, in the current proceeding.

ii) This rule is slightly different from the rule in real life, but the effect is that witness statements are not

hearsay, and statements in them can be offered for their truth.

e) Second, a statement by the opposing party, offered against the party, is not hearsay. This rule is sometimes referred to an "admission by a party opponent."

f) Third, there are a slew of hearsay exceptions. The Simplified Rules have six exceptions:

i) An **Excited Utterance** is a statement relating to a startling event, made while the speaker was under the stress of the excitement it caused.

Example testimony:
"I saw Ms. Locks run out of the house. She was terrified. She said, 'Oh my goodness, these bears are trying to eat me!'"

ii) The **State of Mind** exception allows hearsay statements describing a condition while the speaker was describing the condition.

Example testimony:
"Yes, I saw the defendant five minutes before he got into his car. He said, 'I probably should not be driving. I'm feeling drunk.'"

iii) **Statements for purposes of medical diagnosis and treatment** are admissible when they are made for, and related to, a medical diagnosis or treatment.

Example testimony:
"The plaintiff was my patient. When she came in for her examination after the accident, she said that she got a little bump on her head when she rear-ended the driver in front of her, but her neck snapped back hard when the driver behind her rammed into her afterwards, and she was afraid she had whiplash."

iv) The **Business Records** exception allows documents to be admitted if they are regularly kept in the ordinary course of business, and the record was made at or near the time by a person with knowledge.

Example testimony:
"These cell phone records are automatically generated every month to show every call in and out of the cell phone. They are kept in our servers, and I printed them out."

v) **Learned Treatises** (basically, well-recognized books or articles) are allowed to be admitted as part of cross-examination to expert witness' testimony, if the expert admits that the book is reliable.

Example testimony:
"Yes, I admit that Black's Law Dictionary is the primary source for looking up legal terms. Even though Black's defines a 'contract' as requiring mutual assent, I believe the contract in this case came about because of implied consent."

g) Finally, attorneys should look out for "hearsay within hearsay", or sometimes called "double hearsay". This occurs when a hearsay statement exists within another hearsay statement; for example, a police report contains hearsay statements made by eyewitnesses. Each hearsay statement must have an appropriate exception.

D. HINTS ON OBJECTIONS

1. Object as soon as you're sure you feel comfortable about a question asked or the answer a witness begins to give. While you should wait until the question is completely asked before objecting, feel free to stand up in anticipation of the objection.

2. Use objections sparingly and accurately (i.e., when it matters), not wildly. Too many objections during a trial may be annoying to the judge. Do not object to a question if you intend to address the exact same testimony during your examination.

3. Only the attorneys assigned to do the direct or cross-examination of a particular witness shall raise and respond to objections when the opposing side conducts its examination of that witness. (See "Team Composition," p. 7 of the Handbook.)

4. Do not argue with opposing counsel on objections. Direct all arguments to the judge.

5. If the judge rules against you on a point in the case, take the ruling gracefully. Be cordial to the judge; don't roll your eyes, sigh, protest, or interrupt the judge. Don't thank the judge for ruling against (or for) you. Don't take the ruling personally or be afraid to object again.

6. Don't give up a line of questioning because an objection to one question is sustained. Take a deep breath, then think of a different way to ask the question or approach the subject.

7. If an objection is overruled, ensure that the witness has answered the question asked. Re-ask the question, if necessary.

8. If an objection is sustained, ensure that the opposing party does not simply ask the same question again to "sneak" in the testimony.

9. Sometimes if your witness is getting killed on cross, you have to object to just try to break up the flow. Objections about the form of the question, or the "unfairly prejudicial" objection, which almost always requires the attorneys to respond, are often particularly effective in this situation.

E. INTRODUCTION OF DOCUMENTS OR OTHER PHYSICAL EVIDENCE

1. There is a special procedure for introducing physical evidence (called exhibits) during a trial. Physical evidence includes written materials, diagrams, photos, or any other object that might help clarify what happened.

2. Most of the time, physical evidence does not include a witness' statement or any demonstratives (like a notepad or enlargement); these physical objects will not be admitted into evidence. The physical evidence must be relevant to the case, and the attorney must be prepared to defend its use on that basis.

3. Below are the basic steps an attorney must use when introducing a physical object or document for identification and/or use as evidence.

   a. **Mark before trial.**
   Most exhibits used in mock trials will come premarked with exhibit numbers. **Use those numbers if they are provided.** If not, Prosecution/Plaintiff should mark exhibits with numbers (P-1, P-2, etc.), and Defense should mark exhibits with letters (D-A, D-B, etc.). Make sure the opposing party has seen your premarked exhibits before the trial begins.

   b. **Identify exhibit.**
   Your Honor, I would like to refer to what has been marked as Exhibit 1, a picture of a golden hair.

c. **Show opposing counsel.**
Let the record reflect I am showing opposing counsel what has been marked as Exhibit 1.

d. **Ask to approach the witness and provide the witness a copy.**
It's best if the attorney has a second copy for herself to refer to during the questioning. May I approach the witness to hand him a copy of Exhibit 1?

e. **Show witness.**
Baby Bear, I am handing you a copy of Exhibit 1. Do you recognize Exhibit 1?

f. **Lay foundation.**

1) At this point, the attorney must ask the witness a series of questions about Exhibit 1 in preparation for asking the crucial question.

2) This may include how the witness recognizes the exhibit, whether any document is a fair and correct copy, and any other questions necessary to demonstrate that the witness has personal knowledge of the exhibit, and there is sufficient foundation for the exhibit to be admitted.

g. **Request admission of the exhibit.**
Don't wait until you have asked substantive questions about the exhibit. Your Honor, Defense offers Exhibit 1 into evidence.

h. **Objections.**

1) Opposing counsel may then object to the exhibit's admission (if there is some basis for objection, such as lack of foundation, relevance, hearsay, or the like), and the judge will decide whether the exhibit is to be admitted.

2) If it is admitted, continue. If not, you may be able to repeat the steps (f.) above, laying more foundation to get the exhibit admitted. If the exhibit is not admitted, you may not refer to it in testimony or in closing argument.

i. **Ask crucial questions.**
At this point, the attorney should ask about the substance of the exhibit: This hair does not match the hair on Goldilocks' head, does it?

j. **Collect and keep the exhibit.**

When finished asking about an exhibit, ask permission to retrieve it from the witness. The judge may request that you place it on the bench, give it to the bailiff, or keep it safe in another way.

F. **OPINIONS OF EXPERT WITNESSES** (Rule 702, 703)

1. As a general rule, a witness may not give opinions on matters that require specialized knowledge, skill, training, education, or experience. Witnesses who do have such special knowledge and have no (direct) interest in the outcome of trial may provide an "expert opinion".

2. An expert must be qualified to give an expert opinion, and the basis of their qualification must be sufficiently established during trial through questioning.

   Examples:
   To lay foundation for a law enforcement officer to be an expert in fingerprint identification, the following questions could be asked:
   Q: *What do you do for a living?*
   Q: *How long have you been a police officer?*
   Q: *What sort of education or training did you have to have to become a police officer?*
   Q: *What specialties do you have?*
   Q: *What type of specialized training have you had on fingerprint identification?*
   Q: *What experience have you had using your education and training to identify fingerprints?*

3. At this point, in the past, our rules suggested that the side offering the expert had to "tender" the expert--to ask the judge, "Your Honor, I would like this witness to be qualified as an expert in fingerprint identification." Then, the opposing party might object to the qualification, and the Court would rule.

   a. "Tendering" does not happen often in real trials (because judges do not want a jury to think that the judge's approval means the jurors have to believe the expert), and it is not required under the Simplified Rules.

   b. While the rules do not prohibit tendering, a judge is not required to qualify an expert. All an attorney needs to do is lay sufficient foundation for the expert to testify, and then ask the expert's opinion:

      Q: *Based on your education, training, and experience, as well as your examination of the fingerprints at the scene and the record of Ms. Locks' prints kept in the police database, have you formed an opinion, to a reasonable degree of certainty, about whether the fingerprints at the scene came from Ms. Locks' fingers?*

c. At this point, the opposing party could object that there is not sufficient foundation for the witness to provide an expert opinion, or that the question falls outside of the witness' expertise.

G. USE OF A WITNESS' STATEMENT TO IMPEACH OR REFRESH THE WITNESS' RECOLLECTION

- In mock trials, witnesses generally may not use notes and may not refer to their witness statements. However, their statements may be shown to them in two particular circumstances--when used to refresh the witness' recollection (generally on direct examination), and when used to impeach the witness by a prior inconsistent statement (generally on cross-examination).

a. **Refreshing recollection** (Rule 612)

1) If a witness is unable to recall a statement made in that witness' statement, or if the witness' testimony contradicts the statement, the attorney on direct may have the witness refer to that portion of the statement that could help the witness to remember. This is generally done on direct examination to help the attorney's own witness to remember.

2) Of course, refreshing a witness' recollection may be embarrassing for the witness. An attorney must decide whether to follow the procedure for refreshing recollection, or simply asking additional questions to clarify the witness' testimony.

3) **Procedure for refreshing recollection.**

a) **Confirm that the witness cannot remember or has made a mistake.**

Q: *Ms. White, I asked you what color the apple was, and you said that you can't remember; OR*
Q: *Ms. White, I asked you what color the apple was, and you said that it was red. Are you positive about that? [This may draw an objection for leading the witness, but you respond by saying that you're laying foundation to determine whether the witness needs to have her recollection refreshed.]*

b) **Ask the witness if there is something that would refresh her recollection on the matter.**

Q: *Ms. White, is there something you could refer to that would refresh your recollection about what color the apple was?*
A: *Oh yes, my witness statement.*

c) **After asking to approach the witness, hand the witness the statement, pointing out the part of the statement that is relevant. Do not have the witness read the statement out loud. Take the witness statement back from the witness.**

d) **Ask if the witness' memory is refreshed.**

Q: *Now, after reviewing the statement, has your memory been refreshed about what color the apple was?*
A: *Yes.*

e) **Ask the question.**

Q: *What color was the apple?*
Note: *You do not enter the witness statement into evidence nor have the witness read the statement out loud.*

b. **Impeaching a witness by a prior inconsistent statement** (Rule 608)

1) To "impeach" a witness simply means to put on evidence showing that their testimony is not to be believed.

2) The rules allow impeachment by prior criminal convictions, an opinion about the witness' truth-telling ability, and, finally, by demonstrating that they testified one way before (in this case, in their witness statement) and now are saying something different.

3) An "impeached" witness is not automatically disqualified, nor does their testimony have to be wholly disregarded. Impeachment is just a method to demonstrate they should not be believed.

4) To impeach a witness with a prior inconsistent statement, the attorney should:

a) **Allow the witness to make the inconsistent statement.**

b) **Ask the witness if she made a statement at an earlier time.**

c) **Ask the witness if she told the truth when she made the earlier statement.**

d) **Ask the Court to approach the witness.**

e) **Show opposing counsel the copy of the statement the attorney plans to use, identifying the paragraph or lines to which she will refer.**

f) **Show the witness her statement, asking if the signature on the statement is her own.**

g) **Point the witness to the specific line or paragraph of the prior inconsistent statement. Ask her to read along while you read aloud the lines.**

h) **Confirm with the witness that you read the lines correctly.**

i) **Stop. Do not accuse the witness of lying or asking why her testimony is different today. That may be done in closing argument.**

H. **JUDICIAL NOTICE** (Rule 201)

1. The purpose of judicial notice is to allow the Court to recognize a fact everyone agrees on without having to put on testimony about that fact. For the purposes of mock trial, the facts capable of being noticed are facts "not subject to dispute" and are a "matter of mathematical or scientific certainty."

2. **For example:** The court could take judicial notice that 10 x 10 = 100 or that there are 5,280 feet in a mile. The request may be made during a witness' testimony, or before or after a witness testifies. These should be used sparingly, as most facts which could be judicially noticed also may be introduced through fact or expert witnesses.