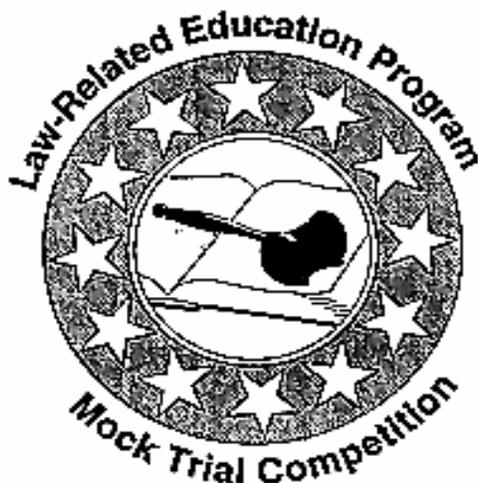


New Hampshire Bar Association Mock Trial Competition Case Materials 2005-2006



STATE OF NEW HAMPSHIRE

V.

SYDNEY TAYLOR



Developed by the Mock Trial Sub-Committee of the Law Related Education Special Committee. Sponsored in part, by the New Hampshire Bar Association and the New Hampshire Bar Foundation. Please feel free to contact the NHBA's Law Related Education Coordinator, Robin E. Knippers, at (603) 715-3259 or at reknippers@nhbar.org or visit our website at www.nhbar.org/law-related-education for more information. We welcome your comments and suggestions at any time.



The Mock Trial Sub-Committee acknowledges the assistance of Attorneys Bonnie Boulanger, Tracy Barbagiovanni, Kelleigh Domaingue, Christine Hanisco, Tracy McGraw, Patricia Peard, Dennis Thivierge and Courtney Worcester in writing this year's case and materials.

DISCLAIMER: The case is a work of fiction. Names, characters, places and incidents are fictional and any resemblance to actual persons, living or dead, establishments, events, or locales is entirely coincidental.

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

MERRIMACK, SS

NOVEMBER TERM, 2005

STATE OF NEW HAMPSHIRE

V.

SYDNEY TAYLOR

STIPULATIONS

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

1. Sydney Taylor was indicted on one (1) count of Attempted Second Degree Murder, RSA 629:1, 630:1-b and one (1) count of First Degree Assault, RSA 631:1 (b).
2. All pertinent Miranda rights were validly waived on all statements.
3. All exhibits were obtained in conformity with all pertinent search and seizure requirements, including consents to blood testing.
4. Chain of custody is proper with respect to each of the exhibits.
5. All signatures on the witness statements and other documents are authentic.
6. The arrest and disposition and hospital records are those of the person whose name appears thereon and are records kept in the normal course of business.
7. The Defendant was at all material times authorized by law to carry a firearm in the course of his/her employment.
8. Under New Hampshire law, first degree assault, RSA 631:1, is a class A felony if committed by an adult; possession of a dangerous weapon while committing a violent crime, RSA 159:15, is a class A misdemeanor if committed by an adult; driving while intoxicated (first offense) is a class B misdemeanor; and minor in possession of alcohol is a violation.

Witness List

Witnesses for the Prosecution

Alex Day
Toni(y) Sanchez
Sergeant Andy(rea) Medina

Witness for the Defense

Officer Sydney Taylor
Detective Leslie Thomas
Principal Sam(antha) Mathis

**PROSECUTION WITNESS
ALEX DAY**

EXCERPTS FROM DEPOSITION

1. My name is Alex Day. I am 17 years old. I will be 18 in December, and I am a senior at White Mountain High School. I have lived with my mom since she and my dad got divorced. My parents thought it would be best for me to live with her because my dad travels a lot for work. I don't know exactly what he does – some kind of consulting thing, I think.
2. I grew up in Jersey City, New Jersey, just outside of New York City. I liked living in Hoboken. I had lots of friends there and there were plenty of things to do. All the great bands came to NY, and I'm also a big Jets fan.
3. When I found out we had to move to New Hampshire, I was really upset. At first, I thought my mom didn't have a choice about moving – she works for ABC and got transferred here to the new recycling plant when the one in New Jersey was closed down. Then later she told me we would have probably moved anyway because she didn't like who I was hanging out with and she had been wanting to get me out of that environment anyway. It wasn't as bad as she thought. My friends and I would get rowdy sometimes, but we never got into any serious trouble – just things like drag racing in the car I had then which was a 1990 Camaro, and a couple of fights.
4. I also didn't like having to move so far away from my dad. He is really cool – not all uptight like my mom. He sent me a Jets jacket for Christmas this past year. I really like my jacket, and I sort of wear it everywhere I go. My dad even gave me a cellular phone that I carry most places.
5. I admit that when I got here two years ago, I wanted to hang around with the group that my mom would hate the most. I was glad I drove my car up here when we moved. It would have been lousy to be stuck in this hick town with no wheels. Anyway, I started going to the Main Street Gang's parties. That's where I met Toni[y] Sanchez. I guess s/he used to be a member, but I never was. Even though we knew a lot of the members, and we'd hang out with them about three or four times a week, we never got involved in any of their stuff.
6. As a matter of fact, I never got popped for anything more serious than shoplifting, and that was a bogus charge. It was on my last birthday, and I had gone to Smith's to get a pack of cigarettes. I saw someone I knew, and I accidentally slipped the cigarettes into my pocket out of habit. Then, boom, I got busted. I still think that happened because I was so upset about that memo Ms. McDonald – she's my counselor – said Principal Mathis was going to send to my mom. I'd been trying real hard in school and then Ms. McDonald called me into her office to tell me all my teachers said I had a bad attitude, that I was breaking school rules by wearing my Jets jacket and some other stuff that wasn't true. I don't have a bad attitude – I just get tired of my teachers hassling me about my jacket. She said that she was going to write a memo to the principal and suggest that s/he send a copy to my mom. In the end, I guess s/he never sent it because my mom never said anything to me, and if she had gotten it, she would have blasted me.
7. I knew who Sydney Taylor was almost from the first day of school after winter break. S/he stuck to me like white on rice. If I went to my locker, there was Sydney. If I went to the mall, there was Sydney. I remember a bunch of times being in my car at stoplights. I would just be minding my own business, and who would be in the next lane? Sydney, of course. I got sick and tired of having him/her watch me like a hawk.

8. Sydney was always nervous. I have to admit I enjoyed making him/her sweat. S/he was such a loser. Everyone knew s/he was barely making it on the police force. I heard the other cops would rather shoot themselves in the foot and go on medical leave than have him/her for a partner.
9. I guess s/he thought that just because I went to some of the Main Street Gang's parties that I was a gang member and into drugs and guns. I wasn't, and that's why s/he could never pin anything on me. If you ask me, that attitude really stinks. It especially bugged me because by that time, Toni[y] had been busted, and I had decided that even just hanging around with gang members could get me into a lot of trouble, so I quit going to their parties and tried to do better at school. I don't want to be stuck in a lousy job like my mom, so I'm going to college, and so is Toni[y].
10. Sydney's attitude really got worse when I came back from visiting my dad with my new BMW. Sydney wiggled out; s/he just couldn't handle it that someone like me from the "wrong side of the tracks" was driving a car that was nicer than any car s/he'd ever set foot in. I know it bugged him/her. But, I earned that car – my dad was real proud of me for cleaning up my act, and he got a great deal on it from a guy he used to work with. The problem is if your family is poor, you can't have nice things because the cops will just assume you stole them or bought them with drug money.
11. On the night of the homecoming game, I told Toni[y] that I'd pick her/him up. S/he had been released and was back in school. I drank a couple of beers that afternoon, but we didn't take any drugs or alcohol with us to the game. Toni[y] had barely gotten out, so s/he was being super careful because s/he never wanted to be locked up again. Besides, my dad had told me I could only keep the BMW as long as I stayed out of trouble, and I knew my mom would tell him if I did anything really bad.
12. When I picked up Toni[y] I was wearing my Jets jacket, as usual. We left her/his house and drove to the school. As soon as we pulled into the parking lot, we saw Sydney taking money. As I pulled up, I rolled down the window just a little bit because I knew it would bug her/him. S/he kind of stuttered and said that we had to pay a dollar to park. I said or did something to make Sydney mad, and s/he just spaced out. S/he totally forgot what s/he was doing, so I pulled forward a little bit and then backed up and said, "Didn't you forget something, Sydney?" I admit I was sarcastic, but is that a death penalty offense?
13. About halfway through the game a friend of mine from NY, Bobby[ie] Davis, who was in town for the weekend got there; I had invited Bobby[ie] to the game. Sydney was sitting down with Principal Mathis at that point, and I saw Sydney looking at us when Bobby[ie] sat down. I think s/he was staring at Bobby[ie] because Bobby[ie] was wearing a Jets' cap, and Sydney thinks that if you wear Nicks or Jets clothing you are in a gang; and, if you're from a poor family – you're in a gang. So Bobby[ie], Toni[y] and I are all in gangs the way Sydney sees it.
14. During the game, we went to the concession stand to get something to drink. When we went back to our seats, we were messing around with the girls who were sitting in front of us. Some soda spilled on one of them, but it was just an accident. Sydney got all bent out of shape. S/he came over to "straighten me out," but I just saluted her/him and said something like, "Whatever you say, Sid."
15. After the game, Bobby[ie] wanted to go for a ride in my car. I told Toni[y] and Bobby[ie], "Don't move, I'll bring it to you." They were still up in the grandstand, so I decided to really bring the car to them. I cut the lock on the south gate with some wire cutters – no one would ever know I had done it. Then I drove my car right under the stands. Bobby[ie] and Toni[y] couldn't believe

it! Even though the stadium lights were still on, I left my parking lights on and my car running so that we could listen to my Eminem CD. Toni[y] and Bobby[ie] came down to where my car was. I put the CD on, got out of my car and we all just stood on the passenger side about ten feet from the front of my car. There were some empty beer bottles on the ground right next to my car. I moved them away because I didn't want to risk a flat tire.

16. We were minding our own business when we heard Sydney call out, "What are you kids doing?" We were kind of surprised partly because we didn't know s/he was there, but mostly because we couldn't believe s/he asked what we were doing; s/he should have been able to see that we weren't doing anything since s/he wasn't more than 20 feet away from us. I told Toni[y] and Bobby[ie] that Sydney ought to get a life, but we didn't say anything to Sydney; we just stood there. We knew s/he would be standing there nervous and sweaty and stuff, and we thought if we didn't say anything s/he'd get even more paranoid. Toni[y] and I were laughing and telling Bobby[ie] how the cops probably wanted Sydney scheduled at the school to keep her/him off the streets.
17. After we heard Sydney call out, we were kind of laughing again, and then Bobby[ie] started to laugh out loud. You know how you don't want to laugh, but you can't help it? Well, then Toni[y] and I started to laugh too. Right after that we heard a bang, and I felt this real bad pain in my leg. I fell down on the ground, and Toni[y] was holding me. I don't know where Bobby[ie] went. Sydney came running over to us, and Toni[y] was yelling stuff at her/him.
18. I heard Sydney say something to me like – you kids scared me. Where is the gun? After that, I must have passed out because I don't remember anything else.

I hereby swear that the facts and information contained herein are true to the best of my knowledge and belief.

/s/
Alex Day

The personally appeared the above named Alex Day and made oath that the foregoing affidavit subscribed is true.

/s/
Notary Public/Justice of the Peace

**PROSECUTION WITNESS
TONI[Y] SANCHEZ**

EXCERPTS FROM DEPOSITION

1. My name is Toni[y] Sanchez, and I live at 58 Ridge Place, White Mountain, New Hampshire.
2. I am seventeen years old, and I attend White Mountain High School, where I am a senior.
3. I live with my parents and my brother and sister who are both younger than me. I like sports and watching TV, and I'm pretty good at art.
4. Alex Day and I met each other last year at a Main Street Gang party. I wasn't a member of the gang, and neither was Alex. We both just hung around with them because they gave great parties. Alex and I got to be good friends during the summer before I got busted and sent away. That bust was a complete rip; just because I happened to be there when the cops came to break up a fight, I got charged with assault and possession of a firearm. The gun they found didn't even belong to me; it belonged to one of the other people, but I was there, and I already had a record, so I got convicted.
5. I hated being locked up, so while I was in detention I decided that when I got out I would really try to stay out of trouble. I learned a good lesson, and I don't ever want to go back there again. Besides, my father is in the military, and he was already pretty strict before that happened. I knew that when I got out, he would keep me on a very short chain, so I might as well make the best of it.
6. Right after I got out of detention in June, I got busted again – this time for DWI. My dad was furious, but after we talked, he was convinced that I wanted to turn over a new leaf and not get into any more trouble. He let me keep hanging around with Alex because he knew that Alex wanted to live up to this promise s/he made to her/his dad earlier in the summer. While Alex was in New Jersey visiting him, her/his dad gave Alex this great BMW. There was some condition about Alex having to stay out of trouble if s/he wanted to keep the car. S/he loved that car and wouldn't do anything to risk losing it, and I sure didn't want any more heat from my dad or the cops. I especially didn't want to hear anymore from Sidney Taylor who warned me after the DWI bust that I should stop hanging around with Alex because we would just get into more and more trouble, and eventually, somebody was going to get killed. I didn't know when Sydney said that s/he meant that s/he was going to try to kill Alex.
7. On September 23, 2005, Alex and I got together during the day at school and made plans to go to the homecoming game. S/he is really a football fan, especially the Jets, and we knew everybody would be going to the game, so we decided to go too. S/he said s/he would pick me up at my house.
8. S/he came to pick me up around 7:00 p.m. We headed straight to the stadium, and as we pulled into the parking lot, we saw Sydney Taylor. Sydney and Alex don't really get along because Sydney thinks that Alex is a big time drug dealer at our school. Alex sort of gave Sydney a little bit of a hard time in the parking lot where s/he was collecting money. I think it probably made Sydney mad; just about anything Alex does makes Sydney mad.
9. Alex and I were together during the whole game. S/he never left my side, and s/he didn't have anything to drink. S/he drove fine on the way to the game, and s/he didn't do anything weird at

the game. S/he definitely was not intoxicated. I told you s/he came to pick me up at my house, and believe me, if my dad had suspected that Alex was drunk, there is no way he would have let me get into the car with her/him. No way.

10. About halfway through the game, a friend of Alex's from New York, named Bobby[ie] Davis came to sit with us. I saw Principal Mathis and Sydney watching all of us when Bobby[ie] sat down.
11. Some girls who were sitting in front of us started hassling us and throwing popcorn. Alex had a soda in her/his hand and was pretending that s/he was going to soak them when somebody came from behind and hit Alex's arm. Soda flew all over the place, and I guess one of the girls got mad because she went and talked to Sydney, who came up to give us a hard time. I didn't say anything to her/him, but Alex saluted her/him, which didn't seem to make Sydney too happy.
12. After the game ended, Bobby[ie] wanted to go for a ride in Alex's car. Alex told us to wait in the grandstand while s/he went to get the car. The next thing we knew, the car was underneath the stands. I knew s/he had to have broken in through a gate to get there, but I figured since everyone had left the stadium, no one would ever know it was Alex who had done it, so I didn't worry about it.
13. Bobby[ie] and I went down to Alex's car. We were just standing around talking and listening to music. We didn't have anything in our hands. I heard the cops found some spray paint cans and empty beer bottles near where the car was parked and that they lifted Alex's fingerprint from one of the empty beer bottles, but those bottles weren't ours. They were there when we went down there. Alex just moved them away from the car so s/he wouldn't run over any of them. Lots of kids hang around there during and after school, so they could have been left by anyone.
14. We were pretty surprised when we heard Sydney call out. We didn't even know that Sydney was in the stadium, much less standing right next to us. Well, I don't really mean standing right next to us, but s/he couldn't have been more than 35 to 40 feet away. S/he wanted to know what we were doing. Just to give her/him a hard time, we didn't answer. Little did we know it would make her/him so mad that s/he would shoot at us.
15. We were all trying not to laugh, but first Bobby[ie] cracked up, and then Alex and I did too. The next thing we knew, there was a shot, and Alex went down screaming. Sydney ran up to us saying something about a gun. "What gun?" I yelled at her/him. I couldn't believe s/he shot at us. Right then, Bobby[ie] ran off. I haven't seen or heard from Bobby[ie] since that night.
16. Alex didn't do anything to cause Sydney to believe that s/he was in danger. S/he's just a terrible cop who shouldn't have a gun. In fact, I'm surprised s/he hasn't shot anyone before.
17. I was really shook up. I was glad I got to see Alex that night, and s/he was doing good. We spent about a half an hour, just the two of us, in her/his hospital room.
18. I didn't give a statement to the police the night Sydney shot Alex because I was too weirded out. My main concern was making sure that Alex was okay. But, I went down to the police station the next day and gave one.
19. I know the cops probably didn't believe a word I said because they think I'm in a gang with Alex and just trying to protect her/him. That's so stupid. Nobody can prove that we're in a gang. Just

because Alex has a nice car and wears a Jets jacket, everybody assumes that s/he's dealing drugs. If you ask me, that's nothing but discrimination, and it's completely bogus.

I hereby swear that the facts and information contained herein are true to the best of my knowledge and belief.

/s/
Toni[y] Sanchez

The personally appeared the above named Toni[y] Sanchez and made oath that the foregoing affidavit subscribed is true.

/s/
Notary Public/Justice of the Peace

**PROSECUTION WITNESS
SERGEANT ANDY[REA] MEDINA**

EXCERPTS FROM DEPOSITION

1. My name is Sergeant Andy[rea] Medina, and I have been a member of the White Mountain Police Department for 12 years. I attended the Police Academy in 1992 and have spent all of my years since graduating from the Academy in White Mountain.
2. I have a perfect record with the White Mountain Police Department. I have neither been sued nor has anyone lodged even a complaint against me for excessive force. I am familiar with Officer Sydney Taylor. S/he and I attended the academy together. I believe that s/he has been used as a scapegoat in a case where evidence was lost. I am also familiar with the civil case in which s/he was charged with excessive force. From the facts of that case, it's my understanding that there was little merit to it and that the Department's lawyers figured it would be more expensive to go to trial and win then to just pay the other side \$10,000.
3. I wouldn't call Officer Taylor a friend of mine, but s/he and I were on the Fraternal Order of Police volleyball team, and we have gone out for beers several times.
4. I was called to a disturbance on September 23, 2005, at White Mountain High School football stadium. I was close to the stadium, and I arrived there within five minutes after being dispatched. That particular neighborhood is notorious for gang activity, so I also called for backup.
5. When I arrived at the scene the lights were still on in the stadium. I entered through the south gate, which was open. I noticed that a cut lock was on the ground by the gate. I immediately proceeded north, where I encountered Alex Day, Toni[y] Sanchez, and Officer Taylor. Day had been shot and was lying on the ground toward the front passenger side of the BMW which had its parking lights on. The first thing I did was radio for an ambulance. I advised them to enter through the south gate.
6. I approached Alex Day and attempted to make her/him comfortable. The ambulance arrived shortly. The ambulance personnel immediately cut open her/his right pant leg. S/he had been shot in the right knee area and was bleeding profusely. S/he seemed to be in shock at that point and not aware of what was going on.
7. I then proceeded to talk to Toni[y] Sanchez who was visibly shaken. I got a blanket out of my unit and put it around her/him. I told Sanchez to just sit down and that s/he could give a statement to me later. I arranged for radio to call both Toni[y] Sanchez' and Alex Day's parents to advise them that Toni[y] was still at the scene and that Alex was en route to County Hospital.
8. I then approached Officer Taylor who was also visibly shaken. S/he was sweating profusely and pacing. S/he was muttering, "Why couldn't they have just answered? I thought they had a gun." When I asked Officer Taylor if s/he would give a formal statement, s/he replied that s/he would later but was too shook up to do so then. Out of professional courtesy, I did not arrest Officer Taylor that night. Instead, I asked her/him to come down to the station the next day to give a statement which s/he did.
9. I also talked briefly with Sam[antha] Mathis, principal of White Mountain High School, who had placed the call for backup, but Mathis had not seen the incident in question and had little to add.

10. After the ambulance left, my backup and I began to comb the scene for possible evidence. I placed into evidence the lock that was near the gate, two spray paint cans located immediately in back of the BMW, and three empty beer bottles that were located approximately three feet from the passenger side of the BMW.
11. I did not order that the spray paint cans be printed because it is hard to lift prints from that kind of surface. However, I did request that the lab run fingerprints on the beer bottles. It is my understanding that they were able to make a match on one of the beer bottles. The fingerprint on the beer bottle was Alex Day's. The remaining beer bottles had no intact prints.
12. I also noticed gang writing on the west wall of the grandstand approximately ten feet south of the driver's side of the BMW. The paint was fresh and appeared to be in the same colors as the two cans of spray paint I seized, although no lab tests were performed on the paint. That night, I made a diagram of the scene.
13. The following day, I went to the hospital. At that time, I seized Alex Day's pants because I had hoped that the lab could conduct powder residue tests to determine how close or how far Officer Taylor was from Day at the time of the shooting. Unfortunately, because of the rescue personnel's handling of the pants, the lab was unable to do any positive tests of distance. I searched the pants, and I did find a knife in the right front pocket. It was a switchblade-type knife, which I tagged into evidence. I also seized the jacket that Alex Day was wearing which was a New York Jets jacket. Jets clothing is sometimes indicative of gang involvement. The BMW was searched prior to releasing it to Alex Day's mother. It contained no contraband, weapons or alcohol.
14. I obtained a report on Alex Day from the Medical Records Department of County Hospital; a bullet was taken from her/his knee. The report also shows a blood alcohol level that indicates Day had been drinking.
15. I have attempted to locate Bobby[ie] Davis who had also been present at the scene. I learned Davis was from New York City, so I contacted N.Y.P.D. and requested they run a check. They found nothing, and I have been unable to find anyone in White Mountain who has seen Davis since that night or who knows Davis' whereabouts.
16. I am familiar with gang activity in White Mountain. The police department has been particularly concerned with gang activity in the last five years. White Mountain has experienced tremendous growth within that time, including many people from New York and New Jersey. Some of those people have brought with them their children who were involved in gang activity. Those gangs were then transported to New Hampshire.
17. The police department has given us some training on how to spot gang members. The things we are trained to look for include age, certain types of clothing, and hand gestures. In addition, if they come from poorer families and are in possession of highly expensive items that could be an indication that they are involved in illegal activities. Gangs, as you probably know, are oftentimes involved in illegal sales of drugs or contraband.
18. With the influx of outsiders to White Mountain, police officers have been very concerned about getting injured on the job. When we encounter a situation in which we suspect the presence of gang activity, we know to be particularly cautious. Gang activity increases the chances of

weapons being present. It also increases the possibility that illegal drug activity is going on. Many gang members will go to great lengths, even shooting a police officer, to protect their contraband.

19. But I also think the whole city of White Mountain has overreacted to the gang problem, and when that happens, you get a situation like this one. Police officers start to shoot first and ask questions later, because they're afraid that every group of kids that they run across that meet their gang profile are gang members doing a deal and that every move the kids make may be reaching for a gun. Yes, we have a gang problem in White Mountain. It doesn't justify, however, the kind of hysteria we've seen over the past couple of years in the newspapers, parent meetings, and so on – and, although it's not going to make me popular to say it, even on the police force.
20. I had grown increasingly concerned about Officer Taylor ever since s/he became a security guard at White Mountain High School. It got to where s/he talked about nothing but how gangs were ruining White Mountain and that they had to be eliminated once and for all. On more than one occasion, I heard Officer Taylor call the high school a “cesspool of gang activity” and say, “It's up to me to do something about it.” It was like s/he was on a moral crusade to clean up White Mountain and was going to start with the school.
21. It was common knowledge on the police force that Officer Taylor was completely convinced that Alex Day was a member of the Main Street Gang, a big narcotics dealer who was often armed and the source of most of the problems at the high school. One evening in late August, 2005, as school was about to start for the year, Officer Taylor and I had a few beers after work, and s/he talked about how frustrating it had been to know that Day was “supplying the whole school with crack” but to have been unable, despite months of surveillance to catch “her/him in the act.” Officer Taylor also said to me that evening, “One way or another, I'm going to get Alex Day this year if it's the last thing I do. S/he's not going to make an idiot out of me any longer. I'm going to teach that punk a lesson.”
22. I then warned Sydney to chill out, that if s/he didn't calm down and get some perspective on this, s/he was going to do something s/he would regret. I reminded Sydney that s/he didn't have a shred of evidence against Day and that it was anybody's guess whether the informants who had implicated Day were telling the truth or lying through their teeth to get Day for some reason or another. I told Sydney that except maybe for Detective Thomas, our big-city gang expert, I don't think there's another officer on the force who's convinced that Day is some kind of dangerous drug kingpin. A wannabe maybe, a hanger on – but no Al Capone. It's no secret that there's no love lost between Detective Thomas and me. I think the last thing we needed in White Mountain was somebody from New York to tell us how to do things here. Thomas knew I felt that way and that's why I wasn't invited to join her/his elite gang unit. I'm glad, in retrospect that I didn't.
23. Sydney wouldn't listen and just got more agitated, finally saying, “Look, Andy[rea], sooner or later someone is going to die at White Mountain High School. Maybe it will be a drug overdose, maybe a shooting or knifing. I just don't want it to be some innocent kid who gets tangled up in all this. I want to make sure that if someone has to die, that someone is Alex Day.” I knew we had big trouble, and I told her/him so but I was getting nowhere. I left and did not talk to Sydney again until the night of September 23, 2005. I must say that when I arrived at the scene and discovered that Sydney had almost killed Alex Day, I was not surprised.

I hereby swear that the facts and information contained herein are true to the best of my knowledge and belief.

/s/
Andy[rea] Medina

The personally appeared the above named Andy[rea] Medina and made oath that the foregoing affidavit subscribed is true.

/s/
Notary Public/Justice of the Peace

**DEFENDANT
OFFICER SYDNEY TAYLOR**

STATEMENT TO POLICE

I, Officer Sydney Taylor, being duly sworn upon oath do hereby state:

1. My name is Sydney Taylor, and I am an officer with the White Mountain Police Department and also a security guard at White Mountain High School. I attended the Police Academy in 1992, and for the next 12 years, I worked full-time law enforcement in the field. I learned a tremendous amount both at the academy and on the street. I knew what to look for to locate possible criminal activity: nervousness, furtive glances, and bulges that might signify dangerous weapons.
2. In the last few years, given all of the new people who have moved in White Mountain, I have also learned a significant amount about gang activity. I know that gang members are often connected to drug dealing and that some gang members make huge sums of money selling drugs. I believe that people at a lower socioeconomic level are attracted to gangs because of the potential to make a fast buck. Out on the street these last couple of years and during my tenure as a security guard at the high school, I have come to believe that gang activity is serious here in White Mountain. It is also my belief that the White Mountain Police Department is not taking seriously enough the threat of gang activity.
3. One of the reasons I was so excited when Principal Mathis approached me about working at White Mountain High School is that I felt I could have autonomy. I could focus on certain students who I believed were members of gangs and possibly selling contraband. I could slowly, day by day, put together a case against these people who are ruining White Mountain. During my years as a police officer and security guard, I learned, through trial and error, who was engaging in criminal activity. One thing I was surprised about when I went to White Mountain High was the number of students who wore beepers or carried cellular phones. I know that that's a method for them to receive calls from their connections or potential purchasers. I also keep an eye out for gang wear – hats and jackets from certain sports teams, including the New York Jets.
4. I have to admit that when Principal Mathis approached me about working at White Mountain High School, things were not going great with the Police Department. I had stepped on some toes when I led a drug bust against a powerful city official. Many people felt that kind of aggressive police work would hurt the department in the end, by alienating other city officials. I placed all the pills that were seized in the Evidence Room but someone got to them. The police department has been trying to pin it on me. They have absolutely no evidence that I stole those drugs, and I can say right now that I didn't. However, certain high-up officials in the department, those who were cozy with the city official who was busted, have done their best to try to force me out of the department.
5. The department had to drop the case against the city official and has been blaming it on me. As a result, my hours were significantly cut back. I was happy that Principal Mathis offered me a job, and I felt that it was a job I could really excel at. If I were terminated from the White Mountain Police Department, or forced to quit because of lack of hours, I could be very happy as a security guard at the high school.
6. I have known Principal Mathis for many years. We had gone to high school together and later played on the same softball team. We were both very concerned about what was happening to

7. Nevertheless, when I was hired at White Mountain High I knew that I had to prove myself to Principal Mathis and that breaking the drug ring/gang connection that we both felt was present in the high school would go a long way to ensuring a permanent job for me. Principal Mathis knew the extent of the drug dealing and gang activity that was going on at White Mountain High School, and when I started, s/he gave me a memorandum that pinpointed certain individuals, among them Alex Day and Toni[y] Sanchez, as sources of the problem. S/he basically gave me free reign to look for weapons possession, drug dealing, drug use, and any other possible gang activity. When I started, I was briefed extensively by the W.M.P.D. gang specialist, Detective Leslie Thomas, who again warned me specifically about Day and Sanchez.
8. I usually worked from approximately 11:00 a.m. to 3:30 p.m. at the high school. I would also work the extra-curricular activities. Even though I was a White Mountain police officer, I was considered off-duty during those hours. I always wore my White Mountain Police Department uniform and carried my radio with a microphone attached to the shoulder of my shirt. I never had to use the radio during my time as a security guard, but it was nice to know that it was available, if I needed it.
9. When I started working at the high school in the middle of the 2004-2005 school year, I knew that the only way I would get information was to develop a network of informants. I did this by trading information for cigarettes and, if the information was good enough, for money. It was from these sources that I confirmed that Alex Day and Toni[y] Sanchez were members of the Main Street Gang, that Alex Day was the main source at White Mountain for cocaine, and that s/he often carried weapons and would do anything to protect his/her stash. I received this information from two different informants, and I paid them \$100 each. I paid it out of my own money. I received the information in January of 2005. At about the same time, I researched Day's and Sanchez' juvenile records and discovered that Sanchez was then in juvenile detention on a weapons charge for having assaulted another kid with a gun. Nobody had been able to get Day for anything more than shoplifting. It was then I decided to do something about that.
10. I began to keep a closer eye on Alex Day. I knew s/he was driving a late model Camaro, which suggested to me that s/he was earning a significant amount of money from illegal activities. I knew where Alex Day lived, and it was in one of the poor sections of town. During that time, from January of 2005 until the end of the school year, I also noticed that Day regularly wore a New York Jets jacket and carried a cellular phone. However, Day was very smooth. S/he'll even appear smooth to you on the witness stand like s/he was the innocent person that night.
11. I continued to hear stories on the street that confirmed my suspicions of Day, but I could not catch her/him committing any illegal acts. I pulled her/his school schedule and would sometimes follow her/him after class out to the parking lot or to where s/he was going to lunch. S/he's smart though, and s/he knew I was doing it.
12. S/he would always make fun of me when I was following her/him, and I have to admit that it made me mad. S/he was just a punk who was getting these students hooked on cocaine. I also have to say that s/he made me a little nervous because I know people look for any excuse to sue a police officer. I was sued for excessive force back in 1997. It involved a guy who was drunk and had a knife. There were many people around, and I used my nightstick to knock the knife out of his hand. Unfortunately, I broke his hand in the process. The City Attorney settled the case for

\$10,000, which made me mad because it was such a frivolous lawsuit, but they told me it would cost much more than \$10,000 to try the case. It was my reputation that was hurt.

13. I didn't see Alex Day between late May, 2005, when school let out and early August. I drove by her/his house several times but didn't see the Camaro. By asking around I found out that Day was in New Jersey with her/his father for the summer. I called the Jersey City Police Department and got an officer to check out Day's father. I was told that Day's father was currently unemployed, lived in a poorer section of Jersey City, but did not have a police record. Then, just before the new school year started on August 25, 2005, Day reappeared driving a fancy BMW and, from what I heard, throwing a lot of money around. Once again, my suspicions of Day were confirmed and I thought it quite likely that s/he had returned from New Jersey with a trunk full of crack, or maybe guns, that would soon find their way into White Mountain High School. I decided that I was going to redouble my efforts to nail Alex Day.
14. On September 23, 2005, I worked in the morning for the White Mountain Police Department. I worked a 7:00 a.m. to 11:00 a.m. shift. I got to school a little bit after 11:00 a.m. and worked until 3:00 p.m. I did the usual that day – roaming the hallways, the parking lot and the remote areas of the school grounds. I noticed nothing unusual. I went home after the end of the school day and returned to the school at 6:30 p.m. to begin my work at the football game. Initially, my job was to collect a dollar from each car that entered the parking lot. I was also to make sure that students were not bringing in alcohol, weapons or drugs.
15. At about 7:00 p.m., I saw Day's BMW pull towards me. The windows were tinted as dark as they could legally be tinted. The driver's window went down just a little bit, and Day said, "Hey, Syd, how's it hangin'?" Another kid, Toni[y] Sanchez who had recently been released on parole from juvenile detention, was in the front seat and they both started to laugh loudly; I just ignored them. I was very disappointed to see Toni[y] with Alex; shortly after her/his release, s/he had been busted for DWI, and I had warned her/him at that time that s/he should stop hanging around with Day because they were just going to get into more and more trouble. Day pulled forward a little bit in her/his car and said, "Haven't you forgotten something Syd?" Then s/he and Sanchez began to laugh again. S/he rolled down the window only about three inches, and threw a dollar bill out of the window onto the ground. I didn't ask to search the car, but I was certain that I smelled the strong odor of marijuana coming from it. I was angry at Day, but I had gone to a stress management class and learned that deep breathing helped control my stress better than the muscle relaxants that I had been taking occasionally. After a few deep breaths, I had forgotten about the run-in with Day.
16. During the game, I ate a few hot dogs, watched the students and enjoyed the game. I sat with Principal Mathis for part of the game, and I kept an eye on Day and her/his friends as I always do. About halfway through the game, I saw a teenager wearing a Jets cap approach Sanchez and Day and sit down with them. I had not seen this person before but learned later that it was Bobby[ie] Davis. The three huddled together and appeared to talk in hushed tones about something important, but I was not close enough to overhear what they were saying. The three then got up and left; I tried to follow them because I suspected that they were leaving either to do drugs or to do a drug deal, but I lost them in the crowd. After about fifteen minutes, they returned to their seats.
17. A girl came up to me in the second half of the game and asked if I could get Day and Sanchez to lay off. She looked really upset because apparently they had thrown a soda into her hair. When I approached Alex Day, s/he, Sanchez and Davis all appeared to be either intoxicated or under the influence of a narcotic. Day simply saluted me and said, "Whatever you say, Syd." It is my belief

that Day has no respect for authority figures. However, that is not why s/he was shot on September 23, 2005.

18. Although I watched them closely for the remainder of the game, I observed nothing else unusual. After the game, my job was to make sure that the students left. Principal Mathis and I secured the visitors' side of the football stadium and started walking towards the home side. We heard a screeching of wheels and saw a car pulling in under the grandstand. I knew that the only way that a car could get into the south area was if the lock, which Principal Mathis and I had secured earlier was cut or if the gate had been totally torn down. I asked Principal Mathis to go call for backup and s/he did.
19. The car pulled in so that it was facing north, and its parking lights were on. I approached with caution from the north. It appeared to be Alex Day's BMW. When I was about 60 feet from the car, I saw someone wearing a jacket getting out of it and two others who had either just gotten out of the car or who were already there. Although the stadium lights were still on, it was pretty dark under the stands, and I couldn't see who they were, but I could see them talking, and I saw an object change hands which could have been either a weapon or a parcel of narcotics. I did overhear what I thought was a discussion of prices. The car was still running. I could see that there were three individuals, one of whom was wearing a cap. I was not yet sure, but I thought that the three were Day and Sanchez and the kid that I had seen them with earlier.
20. I formed a belief that a possible drug deal was going down. I was nervous because I thought they probably had weapons, and if I was correct in my earlier hunch that they had been doing drugs during the game, there was no telling what they might do. I was also excited because I heard a voice, which I recognized as that of Alex Day say, "Sydney, get a life." They all began to laugh. None of them did what I had advised them to do.
21. I saw a reflection off a shiny object that one of them was holding; it looked like a revolver. They were all three very close together, and I couldn't tell exactly who had the gun, but the lighting was good enough that I was, and still am, certain that it was a revolver. It was pointed in my direction. I immediately drew my weapon and fired in the direction of the gun.
22. I did not shoot to kill, obviously. I'm a very good shot, and I shot towards the lower part of the body, which is why I hit Alex Day's knee. Believe me, if I had wanted to kill her/him, I would have been able to do so. That's what we are trained to do. Because I aimed at the person with the weapon, and it was Day whom I shot, I feel strongly that it was s/he who pulled the gun. I am also sure that the reason that no weapon was found at the scene is because Davis picked it up and ran with it. I didn't actually see that happen, but there's no other explanation.
23. I ran over right away and was very upset. No police officer wants to shoot a citizen. However, I believe that if I hadn't shot Alex Day, I would be dead today.
24. I was certain at that time that these kids were negotiating a drug deal. Based on my experience and my education, I know that drug dealers will go to great lengths to protect their profits and their drugs, including murder if necessary. For these reasons, I knew that I had to act quickly and without hesitation. I am sorry that I had to shoot a student, but I know that I would do it all over again.

I hereby swear that the facts and information contained herein are true to the best of my knowledge and belief.

/s/
Sydney Taylor

The personally appeared the above named Sydney Taylor and made oath that the foregoing affidavit subscribed is true.

/s/
Notary Public/Justice of the Peace

**DEFENSE WITNESS
DETECTIVE LESLIE THOMAS**

EXCERPTS FROM DEPOSITION

I, Detective Leslie Thomas, being duly sworn upon oath do hereby depose and state:

1. I have been with the White Mountain Police Department for the past 11 months. Prior to that, I spent eight years with the Los Angeles Police Department, the last three of which were in the Gang Unit.
2. I was hired by the White Mountain Police Department to form a gang unit here in response to the trouble the city was having dealing with the influx of outsiders – most of them from the greater New York City area – brought in by the ABC Plant. The Department was looking for someone experienced in handling gang problems, and I was looking for a way to get out of LA. It had become just too dangerous for my family and me. LA is a goner as far as I'm concerned. The city is being completely taken over by people who couldn't care less about obeying the law or behaving like civilized human beings.
3. I took the job in White Mountain because I thought I could make a difference here and nip these gangs in the bud before they could really take root. In LA it seems that no matter how hard you try, you just can't make a dent in the problems. I thought it might be different here, and in fact, I think we're beginning to have an effect.
4. Prior to my job in White Mountain, I was with the Los Angeles Police Department for eight years, and I spent my last three years in LA working for the Department's Gang Unit. During those years, I attended a 40-hour weeklong institute at the New York City Police Department's Gang School. In addition, I have been certified as an Inner City Gang Specialist by the National Law Enforcement Institute in Washington, D.C. I also served on a Federal Task Force where we developed a manual about gangs for use in cities with populations larger than one million. Since moving to White Mountain, I have received training from the White Mountain Department of Public Safety in traffic control during hazardous waste clean-up situations.
5. I have attended numerous conferences regarding the detection and eradication of gang activity and have read all available literature on gang problems. I have arrested literally hundreds of gang members in L.A. and a dozen or so in White Mountain. I have testified in numerous other proceedings regarding the detection and eradication of gang activity.
6. Based on my training, education, and experience, I have learned that gang wear includes New York Jets jackets and hats. I have also determined that age and clothing are important factors as to whether or not a person is in a gang. The gangs in White Mountain are just like the gangs in L.A.
7. I have been retained as an expert witness by the attorneys for Officer Sydney Taylor. Based on my review of the statements, memos, rap sheets, and other available discovery in this case, it is my belief that Officer Taylor was completely reasonable in assuming that Alex Day, Toni[y] Sanchez and Bobby[ie] Davis are members of a gang. I base that opinion on the clothing worn by Alex Day and Bobby[ie] Davis, the fact that fresh spray paint was found at the scene as well as gang writing which I inspected and identified as a tag of the Main Street Gang. Spray paint cans were removed from the scene by officers.

8. I was familiar with the Main Street Gang from my days in L.A., and believe you me, they are one of the worst. They are into selling crack cocaine big time, and they would as soon shoot you as look at you. And it's not only the boys who are involved; it's girls too, and I mean the kind you sure don't want to tangle with. When I began seeing Main Street graffiti here in White Mountain, I knew we were in for trouble, and that's what I told Principal Mathis.
9. Principal Mathis asked to meet with me when I first came to White Mountain because s/he was concerned about gang problems at the high school. S/he showed me a memorandum that s/he had distributed to school personnel at the beginning of the school year, which banned gang-related clothing and pinpointed several students as potential gang members. I told her/him that I thought that the memo was an excellent idea and, at her/his request, began to keep my eyes and ears open for gang-related activity at White Mountain High. Based upon what I have been able to learn since then from my confidential sources, I have concluded that the Main Street Gang has developed a following at the school and that Day and Sanchez, among others, are involved.
10. Just prior to the beginning of school in August, 2004, the Department had been able to nail Toni[y] Sanchez for beating up another kid and threatening the kid with a gun. We got her/him off the streets for a while – s/he was committed to detention – but s/he was out on parole before you could turn around and back at White Mountain High by the next school year.
11. In December, 2004, we busted two other kids – both were wearing Jets garb, so I was pretty sure they were Main Streeters – right on the school grounds at White Mountain High – one for possession of crack and the other for carrying a loaded 45 caliber weapon. A loaded .45! I mean, this was getting completely out of control, but it was happening all over White Mountain, and I couldn't be everywhere at once. The parents were in an uproar, and they demanded immediate action. Principal Mathis called an emergency meeting of the PTO and invited me to present recommendations for dealing with the situation.
12. I was really glad when they accepted my recommendations and decided to install metal detectors at the entrances to the high school and to hire Officer Taylor to keep an eye on things everyday. I briefed Officer Taylor thoroughly on the situation at White Mountain. We discussed in detail Principal Mathis' memorandum, what my investigation had turned up during the past couple months and the arrests of Toni[y] Sanchez and the other two kids. I specifically warned her/him about Alex Day and explained that although I hadn't been able to develop any hard evidence, I sure had a hunch, and that if s/he kept a close eye on Day, Sydney could end up with a real important bust.
13. I also warned Sydney to be careful, that gang members in White Mountain, just like in L.A., are known to carry weapons and that s/he should approach every suspected gang member assuming that the member is armed and dangerous. In my expert opinion, it was completely reasonable for Officer Taylor to believe that the object s/he saw in Alex Day's hand on the night of September 23, 2005, was a gun.
14. Given the secrecy associated with gangs, it is not unusual for members of gangs to deny that they are members. The fact that Alex Day and Toni[y] Sanchez claim that they were never in a gang does not surprise me. It does not mean, however, that they are not gang members.
15. It is highly unusual for gangs to allow non-members to socialize with them. If an individual goes to gang parties three to four times per week, there is absolutely no doubt in my mind that he or she is a member of that gang.

16. Officer Taylor isn't the world's greatest cop, if you know what I mean. S/he doesn't have the experience I have and is, well, sort of nervous for this kind of job. But s/he makes up for all that in dedication. I've never known anyone as single-minded as Officer Taylor when it comes to these gangs. S/he was convinced they were going to be the ruin of White Mountain, that the White Mountain Police Department wasn't taking this whole thing seriously enough and that it was up to her/him to rescue the high school from the Main Street Gang. So maybe s/he got carried away talking about it sometimes. But I thought s/he was pretty much right about it; s/he definitely worked like a demon to bust these punks; and I admire her/him for it.
17. As for Andy[rea] Medina, s/he still has her/his nose out of joint because I refused to take her/him into the gang unit. To be honest, I really don't think much of Medina's police skills, and s/he has never appreciated the serious threat that gangs pose to the City of White Mountain.

I hereby swear that the facts and information contained herein are true to the best of my knowledge and belief.

/s/
Leslie Thomas

The personally appeared the above named Leslie Thomas and made oath that the foregoing affidavit subscribed is true.

/s/
Notary Public/Justice of the Peace

**DEFENSE WITNESS
PRINCIPAL SAM[ANTHA] MATHIS**

EXCERPTS FROM DEPOSITION

I, Sam[antha] Mathis, being duly sworn upon oath do hereby depose and state:

1. My name is Sam[antha] Mathis, and I have lived in White Mountain all my life. I am the principal of White Mountain High School. I am married and have two children with whom I spend as much time as possible. I believe it is absolutely necessary to spend a lot of time with your children in order to instill in them the kinds of family values I consider important.
2. I first met Sydney Taylor when we attended high school together. We lost track of each other over the years, but we became reacquainted in June of 2002 when we played on a city league softball team together. One night when we went out after a game, Sydney was telling me about her/his job with the White Mountain Police Department. We discovered we shared a common interest. As a result of the opening of the ABC Plant, we believed our city was experiencing all the problems associated with any influx of newcomers.
3. Several times over the next couple of years, Sydney and I had dinner or went out for coffee together. S/he always asked me if I would go pick her/him up. Sydney didn't like driving at night; I'm not exactly sure why. Anyway, we often discussed the increase in gang-related activity s/he noticed as a member of the police force and I noticed at WMH. I told Sydney about the many new students in my school who were being raised by single mothers, including Alex Day; without the benefit of a father in the home, it was no wonder these kids had no understanding of real family values and were turning into criminals left and right. S/he and I agreed that something had to be done.
4. We both believed that we had an obligation to do what we could to protect our community, so in July 2004, s/he and I attended the same New Hampshire Law-Related Education Summer Institute. We had heard that it was going to be about "Teens, Crime and the Community." That sounded like exactly what we needed to learn skills to both recognize and combat gang activities.
5. The Institute provided a lot of valuable information about how to deal with juveniles and how to turn students away from delinquent or gang activity by involving them in law-related education programs instead. We liked what the LRE trainers had to say, but I was pretty sure educational techniques wouldn't work with the likes of Alex Day and Toni[y] Sanchez, who I had already heard had been released on parole and was going to be back at White Mountain. I was sure those two were probably going to be bringing drugs and weapons into my school, and I became increasingly convinced that what I needed to do was get rid of those types.
6. When school started in the fall, I instructed my staff in a memorandum to watch out for them and certain other students, and I banned the wearing of gang-related clothing. In October when Leslie Thomas was hired as the gang specialist by the Police Department, I met with her/him and asked that s/he keep an eye on things at WMH to see what s/he could learn. Detective Thomas liked my memo and thought it was a good idea.
7. In early December of 2004, Detective Thomas arrested two known members of the Main Street Gang at White Mountain, one for possession of crack cocaine and the other for bringing a loaded gun to school. All the parents were very upset, so we had a PTO meeting at which Detective Thomas gave us some advice about what to do. Based on her/his recommendations, over the

winter break I had metal detectors installed at the school entrances, and I offered Sydney Taylor a job as a security guard for WMH.

8. Sydney was delighted with the job offer. Her job with the police department apparently wasn't going that well. Other members of the department didn't take the gang crisis seriously enough in Sydney's mind. S/he told me that s/he was so stressed out that her/his doctor had prescribed muscle relaxants, but s/he was reluctant to use them. So, I thought it was perfect that s/he accepted the offer. Sydney could then work in an environment where s/he would really be supported in her/his crusade against gangs, and I knew s/he and I could get something accomplished with both of us working at the school everyday. I was sure we could really clean things up.
9. Sydney did discuss with me how difficult it was for her/him to use violence. S/he said sometimes s/he had to do it, but s/he always waited until it was absolutely necessary. In fact, s/he told me that one police captain had told her/him that s/he needed to respond more quickly or else her/his life would be in danger. I told her/him I agreed with the captain. Everyone who knows Sydney knows that s/he is a really peaceful, sometimes almost passive, person. That's just her/his reputation. I also reminded her/him of the crack cocaine and loaded gun incidents and why s/he was working at White Mountain High.
10. Officer Taylor was completely dedicated in her/his role as the school's security guard. Although s/he and I were both pretty disappointed that s/he couldn't pin anything on Alex Day, Sydney never gave up trying.
11. On September 23, 2005, Taylor and I both attended the White Mountain High School homecoming game. Sydney was working, so I didn't see her/him during the first part of the game. S/he did come and sit with me for awhile, but left when a student came to ask for help in getting Alex Day and her/his friends to stop throwing soda. I watched when Sydney went to speak with Alex. Day was sitting with Toni[y] Sanchez and some kid in a Jets cap. I had never seen the kid before. I saw Alex salute Sydney, and knowing Alex, s/he probably made some smart comment.
12. After the game, Sydney's duties included securing the school grounds, so s/he and I began a patrol of the stadium area. We heard tires squealing and saw a car driving under the grandstand. We had already secured the gate, so we knew the only way that could have happened was if someone had cut the lock. Sydney told me to go call for a backup for her/him, so I ran to the bank of phones on the visitor's side of the field because it was closer to where Sydney and I were when we saw the car. I was told by dispatch that a unit was in the area and would arrive within a few minutes. I was very hopeful that it would get there before some gang member shot my security guard.
13. As I was returning to the home side of the stadium, I heard a gunshot. I began running, and as I got close, I saw Sydney standing by Alex Day's car with Toni[y] Sanchez. Behind them, I also saw that same kid who was with them earlier running away. I gave chase but I lost him right away. Probably all that gang experience has been excellent training on how to elude a pursuit.
14. I finally gave up and went back to the stadium. I saw Alex Day being loaded into an ambulance. There was another police officer at the scene when I returned. S/he told me that Sydney had shot Alex Day.
15. I wasn't a bit surprised to learn that Alex was the gang member Sydney shot. S/he has been nothing but trouble ever since coming to White Mountain. Last winter Alex's counselor advised

me in her monthly report that all of Alex's teachers had reported failing grades and attitude problems. I sent a copy of her report to Alex' mother along with my handwritten request that she schedule a conference with me. Ms. Day did not respond to my request, but I reviewed Alex's record reguarly, and they continued to reflect poor grades and attitude problems throughout the remainder of the school year.

16. Although I did not actually see the shooting or most of what led up to it, I am sure that Sydney did what s/he did in self-defense; it was definitely the right thing to do. We have got to stop these people who are ruining our schools.

I hereby swear that the facts and information contained herein are true to the best of my knowledge and belief.

/s/
Sam[antha] Mathis

The personally appeared the above named Sam[antha] Mathis and made oath that the foregoing affidavit subscribed is true.

/s/
Notary Public/Justice of the Peace

**COUNTY HOSPITAL
1314 SOUTH AVENUE
WHITE MOUNTAIN, NH 03000
603-555-3084**

PATIENT: Alex Day

ADDRESS: 841 Oak Street, White Mountain, New Hampshire

DOB: December 18, 1987

INSURANCE: ABC Employees HMO

09/23/2005 – Patient arrived via ambulance. Patient conscious and reports having been shot after harassing security guard. B.P. 150/100. Resp. 20. Temp. 98.2. Pulse 100. Blood Alcohol Level .06.

09/24/2005 – Patient awake. Complains of restless night, little sleep, sharp pains in area of bullet wound, and general pain in the knee area. B.P. 120/80. Pulse 80. Resp. 22. Temp. 98.4.

09/25/2005 – Patient discharged. Given instruction on caring for wound.

Certified as a true and correct copy of permanent records of County Hospital, White Mountain, New Hampshire.

Signed:

/s/

SHERMAN FOX, DIRECTOR
MEDICAL RECORDS
COUNTY HOSPITAL

WHITE MOUNTAIN POLICE DEPARTMENT

613 Main Street
White Mountain, NH 03000
603-555-3889

UNIFORM ARREST AND DISPOSITION RECORD

Name: Alex Day

Address: 841 Oak Street, White Mountain, NH 03000

Telephone: 555-7679

DOB: December 18, 1987

SSN: 543-64-4989

DATE	OFFENSE	DISPOSITION
12/18/2004	Shoplifting	\$50 fine

WHITE MOUNTAIN POLICE DEPARTMENT

613 Main Street
 White Mountain, NH 03000
 603-555-3889

UNIFORM ARREST AND DISPOSITION RECORD

Name: Toni[y] Sanchez

Address: 58 Ridge Place, White Mountain, NH 03000

Telephone: 555-6768

DOB: March 17, 1988

SSN: 585-28-9037

DATE	OFFENSE	DISPOSITION
07/10/2005	DWI	Pending
08/12/2004	Possession of a dangerous weapon while committing a violent crime	Commitment to Youth Detention Center
08/12/2004	First degree assault	Commitment to Youth Detention Center
02/26/2004	Minor in possession of alcohol	6 months conditional release

EXCERPTS FROM TESTIMONY OF DETECTIVE LESLIE THOMAS

STATE OF CALIFORNIA V. POOLE
SACRAMENTO COUNTY SUPERIOR COURT
JULY 17, 2004

DIRECT EXAMINATION (By the District Attorney)

Q. What is your name?

A. Leslie Thomas.

Q. What is your occupation?

A. I am employed as a detective with the Gang Unit of the Los Angeles Police Department.

Q. What is the Gang Unit?

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

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

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

Q. Have you had any experience with gangs outside of the Los Angeles area?

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

Q. Have you formed such an opinion about the similarities and differences in gangs between larger cities such as Los Angeles and smaller metropolitan areas such as Sacramento?

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

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

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

Q. And how does that differ from the situation in a smaller city?

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

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

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

END OF EXCERPTS FROM TESTIMONY OF LESLIE THOMAS

I hereby certify that this is a true and correct copy from the official records of the Superior Court of the County of Sacramento, State of California.

/s/

Superior Court Clerk

CONFIDENTIAL

WHITE MOUNTAIN HIGH SCHOOL

MEMORANDUM

TO: All teachers and counselors

FROM: Principal Mathis

DATE: August 15, 2004

RE: Gang Activity

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

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

We have also attempted to develop a list, which I request that you keep confidential, of students who may possibly be involved in gang activity. This list was developed from information provided by teachers and various members of the White Mountain Police Department. The students who we have determined may be involved in gang activity include Kelly Watson, Andrea Green, Carl Puckett, Alex Day, and Toni[y] Sanchez.

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

WHITE MOUNTAIN HIGH SCHOOL**MEMORANDUM**

TO: Principal Mathis

FROM: Ms. McDonald, Junior Class Counselor

DATE: December 18, 2004

RE: Alex Day

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

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

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

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

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

As I stated above, I would strongly suggest that you notify Mrs. Day immediately and schedule a meeting to discuss the situation with her.

LEGAL AUTHORITIES

RSA 629:1 Attempt

- I. A person is guilty of an attempt to commit a crime if, with a purpose that a crime be committed, he does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step toward the commission of the crime.
- II. As used in this section, “substantial step” means conduct that is strongly corroborative of the actor’s criminal purpose.
- III.
 - a. It is an affirmative defense to prosecution under this section that the actor voluntarily renounces his criminal purpose by abandoning his effort to commit the crime or otherwise preventing its commission under circumstances manifesting a complete withdrawal of his criminal purpose.
 - b. A renunciation is not “voluntary” if it is substantially motivated by circumstances the defendant was not aware of at the inception of his conduct which increase the probability of his detection or which make more difficult the commission of the crime. Renunciation is not complete if the purpose is to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another similar objective or victim.
- IV. The penalty for attempt is the same as that authorized for the crime that was attempted, except that in the case of attempt to commit murder the punishment shall be imprisonment for life or such other term as the court shall order.

RSA 630:1-b Second Degree Murder

- I. A person is guilty of murder in the second degree if:
 - a. He knowingly causes the death of another; or
 - b. He causes such death recklessly under circumstances manifesting extreme indifference to the value of human life.
- II. Murder in the second degree shall be punishable by imprisonment for life or for such term as the court may order.

RSA 631:1 First Degree Assault

- I. A person is guilty of a class A felony if he:
 - a. Purposely causes serious bodily injury; or
 - b. Purposely or knowingly causes bodily injury to another by means of a deadly weapon.

RSA 627:5 Physical Force in Law Enforcement

- I. A law enforcement officer is justified in using non-deadly force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or detention or to prevent the escape from custody of an arrested or detained person, unless he knows that the arrest or detention is illegal, or to defend himself or a third person from what he reasonably believes to be the imminent use of non-deadly force encountered while attempting to effect such an arrest or detention or while seeking to prevent such an escape.
- II. A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary:

- a. To defend himself or a third person from what he reasonably believes is the imminent use of deadly force; or
- b. To effect an arrest or prevent the escape from custody of a person whom he reasonably believes:
 - i. Has committed or is committing a felony involving the use of force or violence, is using a deadly weapon in attempting to escape or otherwise indicates that he is likely to seriously endanger human life or inflict serious bodily injury unless apprehended without delay; and
 - ii. He had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest and has reasonable grounds to believe that the person is aware of these facts.
- c. Nothing in this statute constitutes justification for conduct by a law enforcement officer amounting to an offense against innocent persons whom he is not seeking to arrest or retain in custody.

Case Law

State v. Smalley, 151 N.H. 193 (2004)

[The Supreme Courts affirmed conviction for second-degree murder, holding that evidence of the defendant's drug-dealing activities was properly admitted where the defendant argued self-defense.]

At trial the court allowed the State to submit evidence regarding the defendant's prior drug-dealing activities. The court denied the defendant's motion to exclude this evidence.

The defendant had placed his state of mind at issue by claiming self-defense.

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

In order to determine the admissibility of such evidence, the court uses a three-part test: (1) the evidence must be relevant for a purpose other than proving the defendant's character or disposition; (2) there must be clear proof that the defendant committed the act; and (3) the probative value of the evidence must not be substantially outweighed by its prejudice to the defendant. The State bears the burden of demonstrating the admissibility of the prior bad acts.

In weighing the prejudice to the defendant, the court must look at the nature of the prior act. Some acts have a great emotional impact upon a jury and have greater potential for appealing to a juror's sense of resentment or outrage. The more prejudicial an act is, the greater its probative value must be in order to be admitted.

State v. Newell, 141 N.H. 199 (1996)

[The defendant was charged with first-degree assault and argued self-defense. On appeal, the defendant argued that the trial court erred in excluding evidence of the victim's convictions for reckless conduct and simple assault. The Supreme Court affirmed the conviction.]

While character evidence is generally inadmissible, evidence of a pertinent trait of character of the victim of the crime is admissible when offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.

When the defendant argues self-defense, the victim's peaceful or aggressive character is a pertinent trait and, therefore, admissible. However, while the defendant was free to introduce testimony regarding the victims' reputation for violence, or regarding opinions about the victim's propensity for violence, the defendant could not introduce evidence regarding specific acts of

violence by the victim. Such evidence was inadmissible, as the victim's propensity for violence, while pertinent, was not an essential element of the defense of self-defense.

“Even had [the defendant] proven that [the victim] is a violent person, the jury would still have been free to decide that [the victim] was not using or about to use unlawful force, or that the force [the victim] was using was not likely to cause death or great bodily harm, or that [the defendant] did not reasonably believe force was necessary, or that he used more force than appeared reasonably necessary. On the other hand, a successful defense in no way depended on [the defendant's] being able to show that [the victim] has a propensity toward violence. A defendant could, for example, successfully assert a claim of self-defense against an avowed pacifist, so long as the jury agrees that the defendant reasonably believed unlawful force was about to be used against him.”

State v. Wyman, 96 Ct. App. 558 (1981)

(There are no New Hampshire cases directly on point, so teams may cite this case)

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

The rules of evidence allow cross-examination as to whether the witness had been convicted of certain crimes for the purpose of attacking a witness's credibility. However, “evidence of juvenile adjudications is generally not admissible under this rule.”

The prosecutor's questions in this case did not ask about juvenile adjudications, and no evidence as to juvenile adjudications was presented. Rather, the prosecutor's questions went to specific instances of conduct. Such questions were permissible under the rules of evidence. The defendant claims that the questions should not have been permitted because the prosecutor was merely trying to circumvent the rule regarding the general inadmissibility of juvenile adjudications.

The court disagreed and found that specific conduct, admissible on cross-examination to attack credibility, is not to be excluded because an adjudication based on that conduct is excluded.

State v. Allison, 126 N.H. 111 (1985)

[The Supreme Court upheld the defendant's conviction for second-degree murder where the State had brought charges under two indictments – one charging that the defendant acted knowingly and one charging that the defendant acted recklessly]

It has long been the general rule that the State may proceed to trial on more than one charge where it only seeks one conviction and that there may be a joint trial of several counts of one indictment, each alleging a different method of committing a given offense.

State v. Dow, 126 N.H. 205 (1985)

[The Supreme Court upheld the defendant's conviction of second-degree murder, despite the defendant's argument that there was insufficient evidence to show an extreme indifference to the value of human life]

"Circumstances manifesting an extreme indifference to the value of human life' means something more than merely being aware of and consciously disregarding a substantial and unjustifiable risk. 'If the advertence [to the risks involved] and the disregard are so blatant as to manifest extreme indifference to life, then the offense is murder' Thus where the accused's behavior 'constitutes a gross deviation' from law-abiding conduct ...but does not manifest 'an extreme indifference to the value of human life,' ... the jury may properly find only manslaughter. Where, however, the evidence supports the additional element of 'extreme indifference,' the jury may find murder in the second degree. The existence and extent of disregard manifested is a factual determination to be made by the jury."