2006

ALASKA HIGH SCHOOL

MOCK TRIAL

CHAMPIONSHIP COMPETITION

Anchorage, February 17-18, 2006

Boney Courthouse

State v. MacLaine

Case No. 3AN-05-9999 CR

OFFICIAL CASE MATERIALS & COMPETITION RULES

TEAM MEMBER'S PACKET

Including all evidence, applicable law, competition rules, and team registration forms

Sponsored by the Anchorage Bar Association,
Young Lawyers Section

TABLE OF CONTENTS

The Case

The Law

The Rules

Alaskopolis Observer
Saturday, September 10, 2005, p. A1

Fire and Explosion Destroy The Alaska Glow Factory; Re-Flec-Tor Captured

Jaren Rothman

Early Friday morning, at approximately 2:30 a.m., a fire and series of explosions ripped through The Alaska Glow Factory, a business in the industrial section of Alaskopolis that manufactures neon and other colored signs. Two people were seriously injured by the blaze and The Alaska Glow Factory completely destroyed.

One of the injured individuals was Drew Molinski a/k/a Re-Flec-Tor. Molinski was placed under arrest at Alaskopolis General Hospital, where s/he had been taken after being discovered by members of the Alaskopolis Fire Department laying unconscious outside the burning building, dressed in her/his Re-Flec-Tor suit.

Also injured in the blaze was Dana Walters, who remains in a coma at Alaskopolis General Hospital and was apparently sleeping in The Alaska Glow Factory when it caught fire.

Fire Department officials believe the major destruction to the building occurred when cylinders of acetylene gas stored in the building for occupational purposes exploded. The Alaskopolis Police Department is investigating the fire as a possible arson.

Police Chief Biggles commented to reporters on Friday that no details would be released until after s/he completed an investigation of the incident, but an interview with store owner Kif Walters suggests that Molinski had entered The Alaska Glow Factory initially to steal some valuable jade and gold statues that had recently arrived as part of a project for the Alaskopolis First National Bank.

Kif Walters told reporters: “I had just received the statues and Dana was staying in the store to guard them. Why did this have to happen?” Walters accused Parker MacLaine, proprietor of the competing Alaskopolis Lighting Expressions of being the superhero The Protector and of starting the fire. Police Chief Biggles would not comment on these allegations because of the ongoing investigation.

Witnesses reported seeing an unknown figure carrying the aflame body of Drew Molinski from the burning building and dousing the flames in a nearby puddle of water caused by the rains that evening. This was followed by a series of loud explosions coming from The Alaska Glow Factory that shook surrounding buildings.

Parker MacLaine refused to comment on the incident and on allegations the s/he is The Protector.

Author's Note

The problem this year is a departure from traditional mock trial problems in that the primary character is (allegedly) a person who could not exist in real life — a superhero. However, while the "protagonist," the Protector, is not a realistic character, the legal issues raised in this case are very real and cover a range of different possible criminal actions. The goal has been to provide a genuinely fun problem that also tests the ability of the students to focus on the basic elements necessary for their side to prevail. There is also a continuing goal to encourage students to think spontaneously in reacting to the different twists in the problem.

Along these lines, there have been a couple of important changes from past years. Instead of an extended section of statutes and case law, the problem this year presents the jury instructions that would be read to a jury prior to deliberation. These jury instructions are taken directly from the Alaska Model Criminal Jury Instructions with only minor adaptations for use with the present problem. They are divided into two sections: The "Foundational Instructions" provide basic background that would be applicable to any criminal case. Not all possible background instructions were provided. The "Case-Specific Instructions" provide the particular case law applicable to the present fact pattern and indictment. These instructions lay out step-by-step what the prosecution will need to prove in order to convict Parker MacLaine of each of the charges in the indictment. There is also an instruction for "Renunciation," which the defense may attempt to argue in response to the charge of Solicitation. A shorter section of case law is still provided to assist students with the "Communications to Clergy" Privilege.

The other "change" has been to structure the problem to emphasize interaction between the teams more than has existed in the past. A well-presented case, for either side, should incorporate significant elements of cross-examination as well as direct examination. Additionally, there is a substantial role in this problem played by the legal issue of waiver. Please see the "Friendly Note on Privilege and Waiver" for further discussion. In short, teams will face key decisions about whether to call as witnesses Parker MacLaine (for the defense) and Rev. Max Karma (for the State). It is not uncommon for the accused not to testify in criminal cases, and no negative implications will be inferred from a refusal by Parker MacLaine to testify. Then again, there may be valid reasons for calling Parker MacLaine to the stand. The State faces a different issue in that if Rev. Karma is called to testify, the defense is likely to try to prevent Rev. Karma from testifying on certain key issues. The State must determine whether it believes it can defeat these legal objections in deciding if Rev. Karma is worth calling as a witness, aware of the risk that much of Rev. Karma's testimony may be blocked.

In an effort to prevent time overruns, the amount of time for direct and re-direct examination has been reduced to 20 minutes. A mock trial competition match is necessarily an artificial situation and cannot hope to mirror the amount of time that would be available in a real criminal trial. The scoring judges are more than aware of this. That said, the condensed time frame will reward those teams with excellent organizational skills and focus. The reduced time for direct and re-direct examination also anticipates there being a significant number of complex objections and a greater emphasis on cross-examination. Because objections do not count against the time for examination of witnesses, it is necessary to adjust those time limits where objections become an important part of the conduct of the trial. To assist students in keeping track of available time, Rule of Procedure 16 has been modified to allow each team an unofficial

timekeeper at the table during trial. This student can only keep track of time and cannot consult with the attorneys on trial strategy.

There is furthermore one twist to how this is being prosecuted as a criminal trial. Often in a criminal trial there are multiple overlapping charges for the same basic set of facts. Also, it is not necessary that a subpart within a charge be specified, though sometimes it is. For the sake of simplicity and focus, teams are limited exactly to the claims as stated in the indictment. Where this most comes into play are the first degree assault charges. The State MUST prove that Parker MacLaine injured Drew Molinski by use of a dangerous instrument and MUST prove that Parker MacLaine injured Dana Walters under circumstances manifesting extreme indifference to the value of human life; the underlying basis for these counts cannot be interchanged. In other words, for the purposes of this Mock Trial problem, Parker MacLaine cannot be convicted for injuring Drew Molinski under circumstances manifesting extreme indifference to the value of human life or injuring Dana Walters by use of a dangerous instrument.

As you will soon come to realize, this problem is designed to be more than a bit ridiculous. There will be a temptation for students to "ham it up" when portraying witnesses. While this to a limited extent is encouraged, witnesses should remember that they are in a courtroom and behave accordingly. Teams are further reminded that costumes are prohibited for the witnesses (Rule 21). Absolutely no displays of supernatural powers will be tolerated during the competition! In presenting their arguments, students are restricted to the materials provided in this packet and cannot rely on independent research to critique the factual analysis presented by the witnesses. Reasonable inferences can be drawn from the materials provided, but students should not seek external sources upon which to base their arguments. In other words, the main character is a superhero who can control the powers of the Northern Lights — don't sweat the science too much.

Teachers should note that the entry fee has been increased to $150 from $125 last year. (There is no late fee because it was widely ignored in the past.) This increase is part of a phased increase over the past two years to accommodate tighter budget restrictions on the Young Lawyers Section of the Anchorage Bar Association, which sponsors this event. The Mock Trial Committee has increased its fundraising efforts and maintains the goal of providing a fun and affordable competition.

If you have any questions or believe there to be gross inconsistencies in the problem (some minor inconsistencies are intentional, and I am sure I missed a typo here and there), please do not hesitate to contact me at fortson.ryan@dorsey.com. My policy in answering questions about the problem is to respond to all participating teachers/coaches. A special thanks to Holly Chari, Erin Egan, and Krista Schwarting for assisting with the Mock Trial Committee and for their comments on the problem.

As always, I look forward to seeing what students do with the problem during the competition. Enjoy the problem!

Ryan Fortson

"You expect me to tell the truth, the whole truth, and nothing but the truth, and then you ask me a question like that!"

A Friendly Note on Privilege and Waiver

There is a key legal issue in this year's problem that does not appear in any formal rules but rather has developed over many years of legal practice. More specifically, the issue of waiver is potentially central to the testimonies of Parker MacLaine and Rev. Max Karma, should those witnesses be called to testify. Students will need to be very familiar with the doctrine of waiver to avoid potential pitfalls relating to Parker and Rev. Karma. I will first give an overview of the law of waiver and then discuss how it applies to those two witnesses.

Waiver is defined in Black's Law Dictionary as "the intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right … ." What this means for the purposes of the present mock trial problem is that the privileges witnesses have not to give testimony are not absolute but rather can be forfeited through responses that signal a desire not to invoke the protections of that privilege. In practical terms, this means that a witness waives a particular privilege when that witness answers a question in a way that would otherwise be protected by that privilege. In other words, if a witness answers a question and the answer provides information that would be protected by the privilege but for the witness's answer, then the witness has waived the privilege for all reasonable follow-up questions based upon the information the witness did provide. The scope of waiver may be narrow or broad, depending on how extensive an answer is given, and it is up to the presiding judge to determine the scope of the waiver.

The privilege is waived even if the witness answers a question in the negative. Example: A prosecutor asks the accused, "Did you murder the victim?" The accused, rather than exercising her Fifth Amendment rights, answers "No, I did not." The prosecutor can then ask follow-up questions to establish the whereabouts of the accused or impeach the credibility of the accused or any other questions that the judge determines are reasonably related to the accused's denial of committing the murder. The witness cannot subsequently re-invoke the Fifth Amendment. So, keep in mind that waiver relates as much to the nature of the question asked as to the content of the response. However, it is also possible that the witness would answer a question with information that constitutes waiver regardless of the question asked. For example,

if the prosecutor in the above example asks, “Where were you the night the murder took place?” and the witness answers, “I did not murder the victim,” this would have the same waiver effect as if the witness had been asked directly about her guilt.

The Fifth Amendment privilege against self-incrimination applies to Parker MacLaine. This privilege applies only to questions the answer to which might lead to incriminating evidence. So, asking Parker “What is the capital of Mongolia?”, while objectionable on relevance grounds, would not merit invocation of the Fifth Amendment. There is no requirement that the defense call Parker to the stand as a witness, but if they do, both the attorneys and the witness should keep the issue of waiver in mind. The attorneys need to be careful not to ask questions that open Parker up to waiver, and Parker needs to be sure not to answer questions in a way that waives the privilege for subsequent questions from the State on cross-examination. This extends to questions about Parker’s identity as the Protector. It is conceivable, though, that the defense may choose to waive issues for strategic reasons, such as a belief that the answers given would refute the accusations. It is also conceivable that the defense may want to concede certain issues, such as Parker’s identity as the Protector, to take this battle off the table. Indeed, a team may decide to list Parker as one of their witnesses and wait to see how good a job the State does of establishing its case before deciding the extent of testimony they want to elicit from Parker. These decisions are up to the team of attorneys. But, remember that waiver of an issue opens up Parker for further questioning by the State on cross-examination. Again, the scope of waiver is up to the presiding judge, so there may very well be significant battles over this.

I will also say that for the defense there is an issue as to how to structure their argument because of the uncertainty over the identity of Parker MacLaine as the Protector. This case is a classic “even if” case, meaning that the defense is likely going to argue something along the lines of: “Parker is not the Protector, but even if she is, she is not guilty of the crimes charged because . . .” This structure is fairly common in civil cases (e.g. “there was no contract, but even if there was, my client did not breach it”), a bit less so for criminal cases. The identity issue is a bit tricky. Attorneys are not themselves providing evidence, but should still be careful not to create an impression of waiver. Again, a team may decide for strategic reasons to admit that Parker MacLaine is the Protector and focus on other issues.

There is an added twist for waiver with regard to Rev. Max Karma — the privilege will be invoked not by the witness’s attorneys but by the opposing attorneys. The privilege affecting Rev. Karma is the “communications to clergy” privilege in Rule of Evidence 506. Students have been provided with caselaw applicable to this privilege in addition to the rule itself. The privilege can be invoked on behalf of Parker MacLaine even if it is Rev. Karma that is on the stand. This makes calling Rev. Karma as a witness a bit of a gamble for the State. Rev. Karma has information that arguably is decisive to the case but at the same time could be prevented from testifying about anything meaningful whatsoever through objections by the defense. However, if the defense allows a question to be answered by Rev. Karma without objecting and prevailing on the objection, then the defense is considered to have waived all questions that reasonably follow from the answer given. In other words, it is key that the defense attorneys pay attention during the direct examination of Rev. Karma to object to any questions they reasonably believe to be protected by the “communications to clergy” privilege.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

PARKER MacLAINE
DOB: 7/23/1978
APSIN ID: 1234567
SSN: 546-00-9999
ATN: 107-907-666

Defendant.

Court No. 3AN-S05-9999 CR

INDICTMENT

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

The following counts charge a crime involving DOMESTIC VIOLENCE as defined in AS 18.66.990: NONE.

THE GRAND JURY CHARGES:

Count I
AS 11.31.110(a)
Solicitation

That on or about September 6, 2005, in the municipality of Alaskopolis in the Third Judicial District, State of Alaska, PARKER MacLAINE did solicit theft in the first degree by asking, inducing, or commanding Drew Molinski a/k/a Re-Flec-Tor to commit the crime of theft in the first degree with respect to The Alaska Glow Factory.

All of which is a Class C felony being contrary to and in violation of Alaska Statute 11.31.110(a) and against the peace and dignity of the State of Alaska.

Count II
AS 11.41.200(a)(1)
Assault in the First Degree

That on or about the morning of September 9, 2005, in the municipality of Alaskopolis in the Third Judicial District, State of Alaska, PARKER MacLAINE did commit assault in the first degree by causing serious injury to Drew Molinski a/k/a Re-Flec-Tor by use of a dangerous instrument.

All of which is a Class A felony being contrary to and in violation of Alaska Statute 11.41.200(a)(1) and against the peace and dignity of the State of Alaska.

Count III
AS 11.41.200(a)(3)
Assault in the First Degree

That on or about the morning of September 9, 2005, in the municipality of Alaskopolis in the Third Judicial District, State of Alaska, PARKER MacLAINE did commit assault in the first degree by causing serious injury to Dana Walters under circumstances manifesting extreme indifference to the value of human life.

All of which is a Class A felony being contrary to and in violation of Alaska Statute 11.41.200(a)(3) and against the peace and dignity of the State of Alaska.

Count IV
AS 11.46.400(a)
Arson in the First Degree

That on or about the morning of September 9, 2005, in the municipality of Alaskopolis in the Third Judicial District, State of Alaska, PARKER MacLAINE did commit arson in the first degree by (1) intentionally damaging The Alaska Glow Factory by starting a fire or causing an explosion and (2) recklessly placing another person at risk of serious physical injury.

All of which is a Class A felony being contrary to and in violation of Alaska Statute 11.46.400(a) and against the peace and dignity of the State of Alaska.

Count IV
AS 11.46.482(a)(2)
Criminal Mischief in the Third Degree

That on or about the morning of September 9, 2005, in the municipality of Alaskopolis in the Third Judicial District, State of Alaska, PARKER MacLAINE did commit criminal mischief

in the third degree by recklessly creating a risk of damage in an amount exceeding $100,000 to The Alaska Glow Factory by the use of widely dangerous means.

All of which is a Class C felony being contrary to and in violation of Alaska Statute 11.46.482(a)(2) and against the peace and dignity of the State of Alaska.

DATED this __12__ day of ___December, 2005____, at Anchorage, Alaska.

A true bill

_____
Grand Jury Foreperson

_____
_____
Assistant District Attorney
Bar No. _____

WITNESSES EXAMINED BEFORE THE GRAND JURY:

Police Chief Biggles
Kif Walters
Drew Molinski

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

PARKER MacLAINE
DOB: 7/23/1978
APSIN ID: 1234567
SSN: 546-00-9999
ATN: 107-907-666

Defendant.

Court No. 3AN-S05-9999 CR

STIPULATIONS

It is stipulated for purposes of this Mock Trial that the following facts have been properly introduced into evidence and may be relied upon by the parties in the presentation of their case:

I.

Alaskopolis is a city of approximately 125,000 people located in the Third Judicial District of Alaska.

II.

Members of the Alaskopolis Fire Department arrived at 2:28 a.m. on the morning of September 9, 2005 at The Alaska Glow Factory in response to an anonymous phone call. The building was on fire and substantially burned. The firefighters reported hearing explosions as they approached the building. The damage to the building exceeded $500,000.

III.

As a result of the fire, Drew Molinski and Dana Walters were severely burned. They were found by members of the Alaskopolis Fire Department in the locations indicated on the police report sketch drawn by Police Chief Biggles. For the purposes of satisfying the requirements for Assault in the First Degree, the injuries to both Drew Molinski and Dana Walters are stipulated to be "serious injuries."

IV.

All affidavits are considered part of the case materials and may be used during trial. The affidavits are to be considered as having been validly signed and otherwise properly executed.

V.

All exhibits included in these case materials are authentic and, where appropriate, validly signed. No objections to the authenticity of the exhibits will be entertained. All exhibits must be properly identified by a witness before being admitted, not withstanding other objections to admissibility of the exhibit. The commemorative shirt is stipulated as already having been admitted into evidence and as being a shirt sold at The Hero Shoppe.

VI.

The witnesses for the State are (in no particular order):

1. Kif Walters
2. Police Chief Biggles
3. Rev. Max Karma
4. Drew Molinski a/k/a Re-Flec-Tor

VII.

The witnesses for the Defendant are (in no particular order):

1. Parker MacLaine
2. Jaren Rothman
3. Sal(ly) “The Snake” Babbo
4. Prof. Ashley Alvarez

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

PARKER MacLAINE
DOB: 7/23/1978

Defendant.

Court No. 3AN-S05-9999 CR

AFFIDAVIT OF KIF WALTERS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Kif Walters, being first duly sworn on oath, deposes and states as follows:

1. My name is Kif Walters. I am forty-seven years old and father/mother to Dana Walters. I am also the owner of The Alaska Glow Factory, the maker of fine lighted signs in Alaskopolis for over fifteen years. I am very safety conscious in my business. By the nature of my job I use such highly explosive chemicals as acetylene gas. I am always careful to store the acetylene gas cylinders and other dangerous chemicals properly.

2. Others are not so careful with and have recklessly destroyed all that is important to me. My business and my life were ruined by Parker MacLaine under the guise of The Protector. I am certainly against crime, but fighting crime is the job of the Alaskopolis Police, not Parker MacLaine. By choosing to become a vigilante, Parker MacLaine became a criminal! All I know is that I wasn't the one being protected.

3. I have owned and operated The Alaska Glow Factory for fifteen years and grown it into a successful respected business in Alaskopolis. I grew up in Alaskopolis but went to the Lower 48 for college at the University of Nevada Las Vegas. I knew I would some day open my own business, so I majored in business administration while searching for a

trade I could excel in. Living in Las Vegas, even back then, lighted signage was ever-present. I knew there was not a neon sign maker in Alaskopolis, but that with as much darkness as we have it would be a successful business venture. My roommate's father was a manufacturer of neon and other lighted signs in town. Following graduation, I became an apprentice for five years. It takes that long to learn how to be a successful manufacturer of lighted signs. There is so much physics and chemistry involved. You can't just learn this stuff from books; you have to learn by watching others and only after countless hours of study slowly picking up their techniques. By the end of my five year apprenticeship, I felt I was finally able to strike out on my own and return to Alaskopolis to start my own business.

4. I can make any lighted sign in the business. You tell me your vision and I will figure out how to make it a reality. The only kind of sign I can't figure out is the multi-color-changing sign created by Parker MacLaine. Sort of like a self-contained display of the aurora borealis. I have never seen anything like these signs in all my years in the business. I just don't know how it is possible to have signs that change color within the same tube. I didn't think it was possible, and yet I could see the signs all around town. Even close up inspection yielded no clues. Alaskopolis Lighting Expression signs are of sub-par quality other than this one feature. It took me a while to figure out why Parker MacLaine could create this kind of sign — because s/he is the Protector.

5. When Parker MacLaine first opened up Alaskopolis Lighting Expressions and offered color-changing signs, of course I had to lower my prices to compete. I had never had a competitor located in Alaskopolis, only mail-order competitors who were terrible with customer service, so I was not sure how much to lower my prices. Once I realized I had lowered my prices too much and was losing money, I raised them a bit to a more reasonable level.

6. I talked to my mentor and a few other friends in the lighted sign making business, and no one could figure out how Parker MacLaine was making multi-color-changing signs. I was concerned that Parker MacLaine might be using poisonous gases, since that is something a respectable sign maker would never do, and all the respectable sign makers I knew didn't know how to make a lighted sign that changed colors in the same tube. So, I demanded that city public health officials investigate one of the multi-color-changing signs. No, no poisonous gases were found. I asked the city to see the resulting report so that I could assure myself that the testing had been done correctly, but they would not give it to me. I was not trying to steal the secret to those multi-color-changing signs. I have a competitive rivalry with Alaskopolis Lighting Expressions, but I would not say that I hate Parker MacLaine. At least I didn't until s/he destroyed what I had worked so hard to build up and put my only child in a coma.

7. Recognizing my skill and many years of experience, the Alaskopolis First National Bank awarded me a bid to create a piece of art combining my skills with neon with several valuable gold and jade masks and statues they had recently acquired. I was honored to accept this job and even lowered my hourly rate without being asked to do so. I knew that once finished, this artwork would be displayed with pride for many years to come. The masks and statues arrived on Monday, September 5. We did not have very good

security measures at The Alaska Glow Factory, so Dana, who had just graduated from college the previous May, agreed to sleep in the business office of the store to keep watch on the valuable pieces of art. The Bank told me the masks and statues were worth over a million dollars. I had placed the pieces on bookcase in the business office, which I always kept locked.

8. This is why Dana was in the building the night of September 8. I was at home sleeping, so I have no idea what happened. And Dana is still in a coma because of burns from the fire and hence can't speak to anything that went on. When I arrived the next morning for work, my building was burned completely down to the ground. I instinctively rushed to the cinders that were the office to look for any sign of Dana. Nothing. You can't possibly know what a horrible feeling that is for a parent. I immediately went to Alaskopolis General Hospital to see if Dana had been brought in. I found Dana in the intensive care unit, severely burned and in a coma. Dana has not recovered from this coma. The doctors don't know if Dana will ever recover. My only child!

9. I called the Alaskopolis Fire Department to find out if they knew anything about the fire, and they told me that because Re-Flec-Tor had been found on the scene the Alaskopolis Police were doing an investigation. At that moment, everything clicked. If Re-Flec-Tor had been there, I knew that the Protector must have been there as well. I read the article in the Alaskopolis Observer — the Protector was a sworn enemy of Re-Flec-Tor because Re-Flec-Tor used a mirror suit to reflect the Protector's bolts of electro-magnetic energy. The Protector, as was revealed in the Alaskopolis Clarion interview, could control energy in the same form as the aurora borealis. But Parker MacLaine's multi-color-changing lights looked just like an accelerated aurora borealis display. Parker MacLaine must be the Protector!

10. As soon as I realized the Protector's identity, I called Police Chief Biggles. Chief Biggles and I are friends from a curling league we are in. I love curling; it is one of the best things about being in Alaska. I knew from talking to her/him that Chief Biggles had for a while been looking for a way to get that vigilante, the Protector, off the streets of Alaskopolis. I was happy to help. I told Chief Biggles why I was convinced that Parker MacLaine was the Protector. Chief Biggles agreed and promised that s/he would press charges. Chief Biggles said s/he never thought that Re-Flec-Tor was alone in my building.

11. I don't know why Re-Flec-Tor chose to rob The Alaska Glow Factory that evening. I was so worried about security that I never told anyone other than Dana and a couple of employees I trust completely about getting those valuable jade and gold sculptures into my store. Wait, I bet Parker MacLaine knew about the sculptures. Though they ultimately chose me, I'm sure the Alaskopolis First National Bank also asked Alaskopolis Lighting Expressions to put in a bid. The bid request gave a deadline for completion of the piece and so also said when the sculptures that were to go into the final piece of art were going to be delivered. Parker MacLaine must have known this and used this to lure Re-Flec-Tor into my shop. I bet Parker MacLaine wanted all along to destroy my business and just used this whole thing with Re-Flec-Tor as a cover-up!

12. The public thinks that the Protector is some great superhero. They buy Protector t-shirts and other merchandise. Alaskopolis has become a center of national attention because of the Protector. This has all been a lie, a distracting illusion, just like Parker MacLaine's signs. It is time that the public sees the darker side of the Protector.

WITNESS ADDENDUM

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

_____
Kif Walters

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 2005.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

PARKER MacLAINE
DOB: 7/23/1978

Defendant.

Court No. 3AN-S05-9999 CR

AFFIDAVIT OF POLICE CHIEF BIGGLES

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Police Chief Biggles, being first duly sworn on oath, deposes and states as follow:

1. My name is Police Chief Biggles; my first name is unimportant. I am fifty-two years old and the head of the Alaskopolis Police Department. I have three kids, all of them teenagers. The oldest two were on the state champion mock trial team last year. I'm real proud of them.

2. The governor named us the finest police department in a hundred miles. Of course, there are no other police departments within a hundred miles, but I'm still proud of the distinction. We have a police force of about seventy-five officers in the Alaskopolis Police Department. I consider that a bit undersized for a city the size of Alaskopolis, which has around 125,000 citizens. I would like to have twice as many officers. But we make do.

3. I admit that the Alaskopolis Police have not always been as effective in stopping crime as I would have liked, but the last thing we need is some yahoo like the Protector running around being a vigilante. Sending a message that the citizens should take the law into their own hands is the exact wrong thing to do. I'm glad I finally put a stop to that. I

want my children to have respect for the law, and the Protector teaches nothing but disrespect for the law and for authority.

4. I've been trying to catch the Protector for years. But the Protector has always been a step ahead of us. And even I know better than to look a gift horse in the mouth when the Protector conveniently deposits a known criminal in our hands tied and bound with a glowing metal pin on him. I don't find it a bit embarrassing that the Protector has brought to justice so many members of the Blips. The Alaskopolis Police had good leads on all of those perpetrators, we were just waiting to try to ensnare them all at once. Indeed, the fact that all of them were convicted just shows that we already had the evidence on them even before the Protector stuck his or her nose in our business. I dare say we may even have been able to put the Blips out of business earlier if the Protector hadn't kept foiling our investigation by trapping one of our key suspects. One after one, the Protector kept making my job harder.

5. Sure, I was happy to see the crime rate drop so dramatically after the Protector started operating, but I don't think you can place all the credit with the Protector. There could be a lot of factors that caused the drop in crime. These things are very hard to study. I was doing my job and doing my job well. I am highly insulted by any insinuation that a single person like the Protector could fight crime better than the entire Alaskopolis Police Department. It's just not possible. The Protector was like that final person at the table who opens the jar after everyone else has been loosening it. People need to understand that it was the constant presence of the Alaskopolis Police that allowed the Protector to operate so effectively.

6. Prior to arresting Parker MacLaine, I had no idea who the Protector was. How could I? The Protector was always cowardly hiding behind that ball of light. Real crime fighters aren't afraid to let others know who they are. I'm Police Chief Biggles at home as much as I am in my uniform. I don't know what Parker was like in "real" life. I never did find a Protector costume in his/her house.

7. Not knowing the Protector's secret identity myself, I was happy and relieved when my curling buddy Kif Walters explained how s/he figured out that Parker MacLaine is the Protector. It made complete sense. I just feel so bad that it had to take The Alaska Glow Factory being destroyed and Dana being put in a coma for Kif to figure this out. I sincerely hope that Dana recovers and that Kif is able to rebuild The Alaska Glow Factory. Kif is such an upstanding and law-abiding citizen of Alaskopolis.

8. Because the Alaskopolis Police Department is a bit under-staffed, we don't have a full-time crime scene analyst. All senior officers have received basic crime scene analysis training. Once a summer for about a week we hire a specialist in crime scene analysis to give us a nightly seminar on crime scene basics. For most crimes, this knowledge is sufficient to create a thoroughly reliable police report. If matters are so complicated that they exceed our knowledge, we call in help from the Alaska State Troopers.

9. When I arrived at the remains of The Alaska Glow Factory the next day, I could tell that this was going to be a pretty straight-forward case. I mean, first of all, everything was destroyed by the fire, so there was not much left to analyze. Second, with all the explosive acetylene gas tanks in the shop area, it was easy to conclude what had caused the fire. Furthermore, I could tell from the small crater in the cement floor and the distribution of the shrapnel from the steel tanks that at some point, those tanks must have exploded. The extreme level of destruction in the building strongly suggests that at the very least the explosion of the acetylene tanks exacerbated, if not outright caused, the fire that destroyed The Alaska Glow Factory and put Dana Walters in a coma. Really, the only mystery was what caused the acetylene tanks to catch fire and then explode.

10. There are dozens, maybe even hundreds, of different types of donuts, but there are only three possible ways for those acetylene tanks to have exploded: 1) heat or an electrical charged outside the tanks may have caused an explosive reaction inside the tanks; 2) one of the tanks could have been punctured and exposed to fire or electricity; or 3) one of the tanks could have been left open, the escaping acetylene gas caught fire, and that fire worked its way back into the tank. I really don't believe the last explanation is at all credible. Everyone knows that acetylene is intended to be used as part of a torch for welding or, in Kif Walters' case, for shaping tubes of glass. In other words, the escaping gas is intentionally set on fire safely. These torches are designed so that the resulting fire does not somehow work its way back into the gas canister hooked up to the torch and cause an explosion.

11. That leaves either one of the tanks being punctured or outside forces causing an internal reaction inside the tanks. I should point out that really only one tank needed to explode. Once one of the tanks exploded, it would cause a chain reaction that would explode all of the tanks. Personally, I believe it more likely that an outside force caused an internal explosion inside one of the tanks. It is conceivable that one of the tanks could be punctured or the top sealing nozzle knocked off, and I admit that either of these could have happened with the reinforced ulus used by Re-Flec-Tor, but it would have taken a very precise hit for this to occur, probably with one of the points on the end of the ulu blade. The steel tanks holding the acetylene are round, so a blow by the edge of the ulu would almost certainly glance off the tank. And, the sealing nozzle on the top of the steel tank is so small that it is unlikely it would have been hit unless someone intended to do so and could precisely aim for the nozzle. In all the chaos inside The Alaska Glow Factory that night, I just don't see this happening.

12. Furthermore, an accidental blow to the acetylene tanks by Re-Flec-Tor is inconsistent with my analysis of the crime scene and interviews with Re-Flec-Tor. I've drawn a diagram of the inside of The Alaska Glow Factory. As you can see, Re-Flec-Tor was not standing anywhere close to the acetylene tanks. This is consistent with what Re-Flec-Tor told me when I interviewed her/him in the hospital a couple days after the incident. Re-Flec-Tor told me that after entering The Alaska Glow Factory, for the purpose of stealing the valuable jade and gold statues that Parker MacLaine had told her/him about, s/he went over to the work bench area of the shop, expecting to find the statues there. This makes perfect sense. Re-Flec-Tor, or I should probably say Drew Molinski ... I'm sorry, I sort of get caught up in the epic battle between the Protector and Re-Flec-Tor, told me

s/he was looking around the work bench area in the dark when all of a sudden the room lit up very brightly. Expecting to find the Protector, Drew began to turn around but was immediately engulfed in flames. Drew had no time to react. Sure enough, several burned pieces of fabric from Drew's Re-Flec-Tor suit were found near the work bench area of The Alaska Glow Factory. Drew told me it was soon after this that s/he felt a jolt of electricity, almost certainly from the Protector, and passed out.

13. Some sort of external source causing a reaction inside the acetylene tanks is consistent with what I was able to observe about the crime scene. Everyone knows that the Protector could control electromagnetic energy and project it away from his/her body. Intentionally or by accident, Parker MacLaine could have directed an energy bolt toward one of the acetylene tanks. This bolt likely would have electrically charged the steel acetylene tank. Maybe a spark got in via the nozzle or perhaps it just got conducted through the steel walls themselves and directly into the acetylene gas. Either would have caused an explosion. Alternately, a fire in the vicinity of the acetylene tanks could have caused the temperature in the tanks to rise to a level that an explosion resulted. From one of the chemistry portions of the crime scene analysis class I took, I remember that acetylene becomes reactive at relatively low temperatures, around 325 degrees. This is well within the temperature that would be reached in a serious fire. I think it is impossible to tell whether the explosion was caused by fire or by electromagnetic energy, but one of the two is the most reasonable explanation for the explosion that destroyed The Alaska Glow Factory and put Dana Walters in a coma. Because Parker MacLaine, acting as the Protector, could control electromagnetic energy, I view a bolt of energy from the Protector as the likely cause of the devastating fire.

14. It took me four days to complete my analysis. It then took another couple of days to get a warrant to arrest Parker MacLaine. I arrested Parker in his store on September 16, 2005, one week after the incident. I have to say that no one has heard from the Protector since that date and there have been no reported sightings of the Protector called in to the Alaskopolis Police Department. I think we have our wo/man.

WITNESS ADDENDUM

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

_____
Police Chief Biggles

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 2005.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

PARKER MacLAINE
DOB: 7/23/1978

Defendant.

Court No. 3AN-S05-9999 CR

AFFIDAVIT OF REVEREND MAX KARMA

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Rev. Max Karma, being first duly sworn on oath, deposes and states as follows:

1. My name is Max Karma. I have been on this Earth for 58 years. I am a reverend at and the spiritual leader of the Fellowship for Religious Understanding and Intellectual Transcendence ("FRUIT") in Alaskopolis.

2. I founded FRUIT approximately ten years ago after a long spiritual journey. I am a child of the 1960s. Like many in my generation, I witnessed the horrors perpetrated by those many who took power without earning it. These men did not know the ways of peace and love; they only knew war and hatred. I have devoted my life to creating a better society based on the understanding that we are all human beings of equal relevance in the eyes of the Creator, whomever He, She, It, or They (people always forget the possibilities of polytheism) may be. Through sharing so many different experiences with so many different people at Woodstock and other cultural gatherings in the 60s, I came to realize that what is important is not the name of your god but the kindness you express to others. I knew then that I was destined to follow a path of preaching a coming together through embracing individuality. But I also knew that I still had a lot of learning to do before I

could share my spirituality with others. How could I be a leader of minds and hearts if I did not know who I myself was?

3. I traveled the United States, and indeed the world, as a religious pilgrim for close to twenty-five years. I would go from community to community, taking odd jobs to get by, but mostly so that I could experience different churches. Over the years I experienced a variety of Christian religions, as well as Judaism, Islam, Hinduism, Shintoism, and others. Each religion was of course unique, but that were all based on a love of others. This was the message I took from my journey. By the mid-1990s I found myself in Alaskopolis and knew I was ready to share my message with others.

4. That is why I founded the Fellowship for Religious Understanding and Intellectual Transcendence — so that others could gain the benefit of my long years of searching. Our membership at any given time is only a couple hundred souls. That is not as many as I would like, and things are sometimes hard financially for our church, but we find ways to get by. I try to lead my sermons in as inclusive a manner as I can. The only true way to understanding and intellectual transcendence is through hearing the stories of others and taking those stories into your heart. The understanding you gain from hearing others becomes the basis for all moral decision-making, which is how you achieve intellectual transcendence of our petty mortal differences.

5. It is also vitally important to me that FRUIT have a public service and outreach program, which is why I started the Center for Alaskan Enrichment ("CAKE"). CAKE currently focuses its efforts on alleviating homelessness, drug addiction, and alcoholism in Alaskopolis. We have many patrons, and much of my time is spent there giving counseling to those in need. My goal would be to close our doors because poverty and drugs have been eliminated, but for now I must serve.

6. Between working at CAKE and preparing my enlightenment speeches (what more traditional preachers call "sermons"), I am quite busy. However, I believe strongly that true understanding can come only through individual contact. So, as much as I can I try to make myself available for individual meetings with Fellowship members and to get to know as many of them as I can.

7. I do know and am good friends with Parker MacLaine. As far as I know, I am the only person who knows Parker's secret identity as The Protector. I very much hope that Parker's secret can be kept unrevealed. Yet, this is not my decision to make. Everything Parker has told me, s/he has told me in confidence. I cannot function as a counselor of souls if people cannot trust that I will keep their secrets confidential. As a religious leader, however, I am bound by a search for the Truth, and I see the court system as a vital part of that search. I will let Life take its course; I will not lie. I speak now only in the hope that those who receive it will chose not to use this information.

8. Parker MacLaine is a very tortured person. Parker came to me while still living a life of crime as a member of the Blips. I could tell that Parker wanted to leave this wanton life and live a life of loving others. I encouraged Parker to ponder what was most important to her/him in her/his daily interactions with others. To look at life as a series of revealing

new possibilities instead of closing them of through destruction and fear. Each new interaction with someone is a true blessing that cannot be appreciated when what you are focused on is what you can take from that person. Parker lived this life of taking from others to the extreme. As Parker started to turn around spiritually, I advised her/him to take a solo camping trip to meditate on a future path for her/his life.

9. When Parker came back from the camping trip, s/he told me about being struck by the aurora. I did not think this possible, but I've been on too many journeys full of miracles to question what nature can accomplish. Over the course of the next year, Parker would demonstrate for me the tricks that s/he had learned to do with his/her new-found super-powers. That erased any doubts.

10. As Parker began to realize the extent of her/his powers, s/he asked me how best to put them to use. I told Parker that the best way to put power to use, regardless of whether it is super-power or the power of kindness of a single human heart, is to help others. Parker knew better than I the wave of crime that enveloped Alaskopolis due to the battles between the Blips and the Cornered Wombats. Parker and I discussed matters and determined that the best way to help Alaskopolis was to put an end to this wave of lawlessness.

11. Parker explained that the way to end the violence in Alaskopolis was to concentrate on destroying the Blips. Parker cautioned me, though, that it was very important that no one in the Blips learn about his/her powers or the decision to destroy the Blips. Parker said this would lead to her/his own destruction. It was from this impetus that Parker developed her/his secret identity as The Protector. I can certainly understand how it would be more effective to fight crime when no one knows who or where you are.

12. I advised Parker that making lighted signs that could change colors just like the Northern Lights would eventually lead to disclosure of his/her secret identity as The Protector. I can't believe that it took someone so knowledgeable about lighted signs as Kif Walters so long to figure it out. But Parker is stubborn and saw these color-changing signs as a way to make money. As much as I tried to divert Parker away from a focus on making money, I could not completely purge the person s/he once was.

13. Given this, I am very happy and proud that I was able to convince Parker to set up a store, the Hero Shoppe, selling The Protector merchandise and have the proceeds go to support CAKE. I don't know where the FRUIT CAKE would be if we did not have the financial support from people buying The Protector shirts, mugs, key chains, and mouse pads. That is why it is so important that Parker be left alone and allowed to continue the good work that s/he has been doing directly for the people of Alaskopolis and indirectly for the FRUIT CAKE.

14. From time to time Parker would be tempted to return to a life of crime. Or would be concerned about breaking the law to fight crime. I always tried to be available to provide Parker moral support in these times. I reasoned matters to Parker this way: Criminals do not follow the law. Therefore, they are already outside the boundaries of what is meant to be protected by the law. Because they are outside this boundary, it cannot be wrong

yourself to go outside the law when fighting criminals. The only limitation, as with everything, is to cause no harm to others. Once that limitation is accepted the task becomes finding the best ultimate ends for the most people and the best means for achieving that end.

15. Parker did his/her best as The Protector to follow this advice, but sometimes would have pangs of guilt over certain actions s/he took fighting crime. I encouraged Parker to write a letter of confession to me after these incidents explaining his/her doubts so that we could discuss it when both of us could find a time to meet. I do this for all members of the Fellowship for whom I sense such a need. I've receive quite a few confession letters from Parker over the past couple of years. I knew after reading about the fire at The Alaskopolis Glow Factory and the apprehension of Re-Flec-Tor in the Saturday paper that Parker had been involved – Re-Flec-Tor was far too experienced a thief to have an accident like that – and that I would be receiving a letter in my Confessions Box at Sunday morning's service. I think it is unfortunate what happened to the Glow Factory and to Dana Walters, but if Re-Flec-Tor had not gone into that building to steal in the first place, Parker would not have to have acted. Despite his/her background, Parker would never cause such destruction intentionally. The Protector must not be hand-cuffed by charges such as this that will damage the reputation of this upstanding citizen and return an aura of fear to Alaskopolis. Matters will be even worse if The Protector is put in jail.

WITNESS ADDENDUM

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

_____
Reverend Max Karma

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 2005.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

PARKER MacLAINE
DOB: 7/23/1978

Defendant.

Court No. 3AN-S05-9999 CR

AFFIDAVIT OF DREW MOLINSKI a/k/a RE-FLEC-TOR

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Drew Molinski a/k/a Re-Flec-Tor, being first duly sworn on oath, deposes and states as follows:

1. I am Re-FLEC-Tor. Get it right! The emphasis is on the middle syllable. And no preceding article "the." That is for *THE* Protector. I abhor extraneous verbiage. I have been alive for about a year now. Before that I was Drew Molinski, who lasted thirty-four years. I am currently serving a five-year prison term, all at the hands of *the* Protector. I pled guilty to first degree burglary and attempted theft in exchange for telling the truth about the Protector.

2. I was the leader of the Blips before the Protector destroyed us. Way back about eight years ago there were rival Bloods and Crips gangs in Alaskopolis. I was with the Bloods. Faced with a recession in the thievery business, we decided to merge our operations. There were thirteen of us who considered our selves in charge, so we formed a governing council called The Thirteen. In a patriotic nod, we modeled our bylaws after the Articles of Confederation. We had trouble trading with each other, but for the most part things worked out well. For our name, we wanted to honor both former gangs, so we chose "the Blips" in a narrow 7-6 vote over "the Cruds."

3. The Blips were by far the most successful crime gang in Alaskopolis. In fact, we were so successful that we eventually inspired a rival gang of wannabe Blips — the Cornered Wombats. The Cornered Wombats were mostly thugs who we rejected for full membership in the Blips. I should explain the structure of the Blips. It was sort of like a law firm. The Thirteen were the partners. We divided up the bulk of the loot and all the profits from the black market sales we made. We let other people, apprentices as it were, assist us in our crime and learn the ways of thievery. They were paid on a per job basis. We called them associate Blips. We would not let a new member into The Thirteen until one of the existing members was arrested or died. So, turnover was very low, at least at first. The Cornered Wombats were mostly frustrated Blips associates who wanted to be let into The Thirteen but were not patient to wait their turn. Since the Cornered Wombats knew our methods and the typical manner in which we would strike, they would anticipate our criminal activities and then attempt to rob us as we emerged from our latest victory. I guess you could call the Cornered Wombats leeches, sucking on the hard-fought booty of the Blips. Fortunately, since most of the Cornered Wombats were too impatient to finish their training, it was usually easy for the Blips to thwart them.

4. The Blips had a master plan for taking over all of Alaska. The Cornered Wombats were just a road block we could easily roll our big-wheeled gas guzzling unstoppable machine over. Once we did that, we were going to go to Valdez, and then Kodiak, and then Fairbanks, skipping Tok because of the parody implications, and then Soldotna, and then Sleetmute, and finally Anchorage. YEEAAAIIIIGGHH!!!!!

5. I remember Parker MacLaine very well. Parker was a very promising associate member of the Blips. S/he was very crafty and very adept at breaking into buildings. Parker really had a gift for crime and a black heart that was the envy of many in The Thirteen. Parker would stop at nothing to complete a job and return the prize to the Blips. I knew Parker would have a great future with the Blips, so as soon as an opening arose in The Thirteen, due to the unfortunate arrest of Larry “Larry” Lapp, I promoted Parker into our esteemed council over a few more senior associate Blips, all of whom of course left to become members of the Cornered Wombats.

6. Parker was a weird dude. Stupid pimped out dog-sled. Chrome runners? Who puts chrome runners on their dog-sled? And a velveteen food bag! I strictly forbade Parker bringing that thing into our Blips meetings. But Parker did her/his job very well and brought in a lot of money for the Blips. I could sense some tension Parker felt toward my unquestioned leadership, so I was not too surprised when Parker eventually asked to leave the Blips. Needless to say, I could not risk someone as talented as Parker going over to the Cornered Wombats. I offered to kill Parker, but Parker counter-offered that we could implant a remotely-controlled vial of poison in him/her that could be used as “security” that Parker would never turn against the Blips. I kept the button that could end Parker’s life under lock and key at Blips headquarters. Only myself and three other members of The Thirteen had a copy of the key. Parker never has and never will cause the Blips any trouble.

7. I believe it was not too long after Parker left the Blips, in fact, that we started to have trouble with the Protector. Why must Alaskopolis be cursed with a superhero?!? We

were close to defeating the Cornered Wombats for good and beginning to implement our plan for statewide domination. But no, now someone who can shoot bolts of light comes along to do battle with us. I wish Parker had still been with us to battle the Protector. I would have liked to see how Parker would have handled the situation. As it was, the rest of the Blips had to go it on our own. We were decidedly not successful. I mean, the Alaskopolis Police were completely incompetent, especially Chief Biggles, and easy to handle. Occasionally one of our members would mess up and get caught, but it was almost always our fault an no credit to the Man. I mean that metaphorically. I don't mean that there was one Man. "The Man" is a gender-neutral metaphor meant to refer to all official personages of the Alaskopolis government who sought to oppress the Blips and prevent us from expressing our criminal individuality.

8. It was Mary "Quite Contrary" Rose who among The Thirteen fell the first at the hands of the Protector. To be honest, we were not that sorry to see her go — she was a very disagreeable person. However, this was the first time the Protector appeared in public. She told me about it one time I went to visit her in jail. Mary was robbing a florist. Nothing special. Standard usual. Go in during the night, empty the cash register, and snag a few bulbs for planting season. As Mary was turning to leave the store, a large glowing ball of green light appeared in the entrance. Mary knew that with a light that color it could not be the Alaskopolis Police, but she could not figure out what it was. Next thing she knew, she was being shocked as if from a stun gun. She awoke sometime later with her hands tied behind her back and her legs bound together, both with a plastic tie. Pinned to her was an aluminum eight-pointed star with a big letter "P" in the middle. It was all very schadenfreude-esque. As morning came, the shop owner arrived and called the Alaskopolis Police to come take Mary away. The Protector had his or her first victim and begun a wave of anti-crime the likes of which Alaskopolis has never seen.

9. YEEAAAIIIIGGHH!!!!!

10. The Thirteen met immediately to assess the situation. There was no one in the associate Blips ranks worth promoting, so we decided to become The Twelve, hoping our luck would change. But we was wrong, wronger than Michael Jackson at a Teletubbies convention. The Protector went down the list of The Twelve one by one, picking us off every few weeks. The Blips became afraid to go out on raids, but we had a profit margin to uphold, so we had no choice.

11. I knew I had to do something. If anyone was going to save the Blips, I knew it had to be me. I am the alpha and the omega of the Blips. I am also the beta and the theta and the delta, tau, and phi. I am not the omicron or the sigma, though I am not entirely sure why not. I interviewed in jail each captured Blip to find out as much as I could about how the Protector operated. I determined through rigorous study that the Protector could control light and shoot electro-magnetic bolts that temporarily stunned their victim. I realized I needed to created a suit that could reflect light and bounce off all energy waves that were sent my way. I did not want any weaknesses, so I designed my suit to cover my entire body from head to toe. Woven silver, just like a mirror, mixed with lycra to make it flexible and oh so skin-tight. I even bought some cool mirrored sunglasses to complete the outfit. Just like Corey Hart, I wear my sunglasses at night. My weapon of choice is

still my slightly over-sized reinforced ulus — one in each hand. Perfectly reflective, of course. I have long found the slicing ability of an ulu to be superior to more conventional knives. I have to say that had I not chosen a life of crime, I feel I could have become an ulu spokesperson.

12. I chose for my new identity the name "Re-Flec-Tor" because it is a perfect expression of how I operate. The Protector tries to stun me with those stupid electro-magnetic bolts, and I simply reflect them away like water off a duck's back. Some day, all will know the reflective power of Re-FLEC-Tor! No, I do not think it is ironic that I get my power only when attacked by the Protector. I still have my ulus and my many years of criminal experience. I can take care of myself and do not need the Protector to define my existence. Still, I will not stop until the Protector is destroyed!

13. After assuming my new identity, I thwarted the Protector on three attempts to capture me. I know this must have been a big blow to the ego of that mighty superhero. Unfortunately, the rest of the Blips were not so lucky. The most crushing blow to me was when the Protector nabbed Sal(ly) "The Snake" Babbo, my closest friend in the Blips. Plus, The Snake was one of the most productive members of the Blips. Before I myself got caught, I still visited Sal(ly) in jail quite frequently.

14. By August of last year I was the only Blip left. The Protector had put the rest behind bars. I figured I was safe from the Protector, but at the same time I didn't want to push my luck too much. I wanted one big payday so I could retire. Then Parker got in touch with me and asked if we could meet for lunch. On occasion, Parker made friendly gestures toward me, so as to stay on my good side and consequently alive. We had lunch on Tuesday, September 6. Parker told me about how The Alaska Glow Factory had just won a big bid from the Alaskopolis First National Bank to make a neon sculpture out of some valuable jade and gold masks and sculptures worth over a million dollars. Sounded tacky to me, so I decided to put a stop to it by taking the centerpieces and using them for my retirement fund.

15. I was so excited that I went the next day to tell Sal(ly) that I was getting out of the business. I told The Snake I knew this would likely mean one last battle with the Protector but that I was prepared for it. Of course I was prepared, I still had my mirror-suit. There was nothing the Protector could do to stop me! I think I even said that if the Protector got close to me I would kill that so-called superhero with some good old-fashioned ulu fu.

16. Of course, that is not how it worked out. I expected that the Protector would follow me into The Alaska Glow Factory somehow. I had just gone into the main factory area to look for my booty. I figured it would be there so that the owner of the shop could work on that tacky new masterpiece. Before I knew it I could sense the presence of the Protector. Only usually it is easy to find the Protector because there is only one big ball of light in any given room. But this time there were several balls of light. The Protector had somehow rigged the room to be one big optical illusion. I was confused and did not know what was going on. The Protector had to be in one of those balls of light, so I started swinging madly at the various balls of light. I knew I was hitting something, but I

couldn't tell what. The whole factory was chaos. All of a sudden there was a huge explosion from a giant fireball that threw me back several feet. Immediately I realized I was on fire. YEEAAAIIIIGGHH, indeed! I ran around looking for a way to get out into the pouring rain. Then I blacked out. I was completely unconscious until waking up the next day in a hospital bed. My body was covered with several third and fourth degree burns. At least I woke up, unlike Dana Walters. I might have had to cut Dana to get at those jade and gold masks and sculptures, but since I did not, I feel bad about what happened.

17. A few weeks later Chief Biggles approached me about testifying against the Protector. Chief Biggles said s/he could get me a deal on my own sentence, only five years for burglary and attempted theft, if I cooperated. If I did not cooperate, Chief Biggles said I would be held responsible for Dana. I did not need that as encouragement. It was tough in jail, even for a hardened criminal such as myself, and I shuddered at the thought of having my sentence extended for something that was not my fault. Any chance to get a reduced sentence for myself and to put the Protector behind bars is a chance I am always going to jump at. And here I am today. I did not start the fire. Why would I set myself on fire? This is all the Protector's fault. If the Protector had not shown up, I would be retired on a tropical island by now.

18. What, Parker MacLaine is the Protector?!? You are kidding, right? Please tell me you are kidding! You mean I could have put an end to the Protector just by killing Parker MacLaine?!? YEEAAAIIIIGGHH!!!!! Parker had better hope we never cross paths again, or s/he will learn the true power of the Re-Flec-Tor. Aaaaaaah!! I meant just "Re-Flec-Tor." Take out the "the." Can you do that? No? Well, you are on my hit list too. First the Protector, then you.

WITNESS ADDENDUM

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

_____
Drew Molinski a/k/a Re-Flec-Tor

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 2005.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

PARKER MacLAINE
DOB: 7/23/1978

Defendant.

Court No. 3AN-S05-9999 CR

AFFIDAVIT OF PARKER MacLAINE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Parker MacLaine, being first duly sworn on oath, deposes and states as follows:

1. My name is Parker MacLaine. I am 27 years old and the owner of Alaskopolis Lighting Expressions. Alaskopolis Lighting Expressions sells neon and other lighted signs for a variety of Alaskopolis businesses. I personally make all of the signs I sell.

2. I am not the Protector. I admire what the Protector has done for the city of Alaskopolis, but the Protector is a completely different person from Parker MacLaine. I believe that this trial is motivated not by any desire to unmask the Protector but by Kif Walters' obsession with driving me out of business. Kif cannot accept that I make better signs than s/he does. Kif had a monopoly on the lighted sign business until a couple of years ago when I opened Alaskopolis Lighting Expressions. I have not done any formal marketing surveys, but I'd say that I now have about 30% of the lighted sign business in Alaskopolis. I feel I am well on the way to becoming the dominant competitor in my line of business.

3. I use dangerous chemicals such as acetylene gas in my business on an almost daily basis. I know the risks involved in working with a highly explosive chemical such as acetylene

and am respectful of these dangers. Acetylene gas is stored dissolved in liquid acetone and kept in steel cylinders encased in porous concrete. It is very important to keep these cylinders away from heat sources, as acetylene, even when dissolved in acetone, can be highly reactive at relatively low temperatures. I believe it is explosive at around 325 degrees. Obviously, you do not want to get anywhere close to this, as acetylene explosions are truly massive and devastating. The acetylene cylinders are hooked up to a specially designed feeder tube into a torch device that specially controls the flow of the acetylene gas. You see, the acetylene gas, when dissolved in liquid acetone, must be stored under pressure. When the pressure decreases, the acetylene gas separates from the liquid acetone. A spark can then light the acetylene torch, which reaches high enough temperatures to soften the glass tubes I use to make signs to the point where those tube are easy to bend.

4. I have developed a special technique for creating multi-colored lighted signs that can actually change colors within a single glass tube. Most lighted signs contain neon, which glows a fiery red. Sometimes argon gas with traces of mercury is used to create a blue tone. Other colors are created by lining the tubing with a colored florescent coating or sometimes by using colored glass. The point is that however the color is created, once the tube is sealed it can only emit one color when electrified. I have found a way to create a single tube that can glow with multiple, ever-changing colors. Like a brilliant display of the Northern Lights No one else can accomplish what I can with lighted signs. Of course, how I do this is a trade secret that I am not going to reveal.

5. Kif Walters has always been jealous of my talent and artistry. When I first opened up Alaskopolis Lighting Expressions two years ago, Kif tried to drive me out of business by lowering prices at The Alaska Glow Factory well below what I know her/his costs must have been. But businesses knew my signs were better and were willing to pay extra for them. When undercutting my prices did not work, Kif went back to the original Glow Factory pricing and instead tried to damage my business reputation by claiming that my changing-color signs contain poisonous gases. People don't exactly go around inhaling large quantities of neon or argon, so I don't see why my signs should be treated any differently, though admittedly those are inert gases and essentially non-poisonous. Regardless, a series of scientific tests showed that the gases in my signs did not pose a public health threat. Of course, once the tube is broken and the gases escape it can no longer light up, but that is true of neon and other lighted signs as well. I think that Kif really wanted to have these scientific tests conducted so that s/he could try to figure out how I made my changing-color signs. It didn't work, as I knew it wouldn't.

6. This latest tactic of accusing me of being the Protector is just another attempt to bankrupt me so that The Alaska Glow Factory can become a monopoly again. I think it is unfortunate that the Glow Factory accident occurred, but the Protector had nothing to do with it. It seems to me that Re-Flec-Tor is the one to blame. I'm sure that Kif will be able to recover. I may not like him/her, but I do recognize that Kif Walters is a strong competitor in the lighted sign business. But unlike Kif, I don't have to rely on lies to be an effective competitor.

7. Before going into the lighted sign business and opening up Alaskopolis Lighting Expressions, I am ashamed to say I lived a life of crime as a member of the Blips. I didn't do especially well in high school. When I graduated I had a bit of an attitude problem and felt that earning an honest living was boring. After a few years of dead-end jobs, I fell in with a bad crowd — the Blips. I started out as an apprentice, but was a quick learner and soon leading burglary raids on buildings. I could break into any building I wanted to, mostly business that had closed for the night. At my peak, I must have burglarized a couple of businesses a week. We'd collect all the valuable goods we could, and every month go down to the lower 48 to sell our stuff where it would be harder to trace back to us. It wasn't a bad living. I never really kept track of how much money I made. I only cared that I had plenty of cash in my wallet. It's not like I was going to pay taxes on it, so why add it up?

8. We weren't afraid of the Alaskopolis Police. They were always a step behind and two steps too slow. The only thing we feared was the Cornered Wombats, a rival gang to the Blips. Well, we didn't really fear them, we were just wary. The Cornered Wombats were motivated primarily by their opposition to the Blips. It was really just a rivalry thing. The Cornered Wombats would some how figure out where the Blips were going to strike next and then try to steal from us when we left the building. They knew how we operated because most of them were Blips rejects. I don't think the Cornered Wombats ever robbed anyone themselves. They just let the Blips do their dirty work. Needless to say, this led to many violent battles between the Blips and the Cornered Wombats. Unfortunately, some innocent bystanders were hurt in these battles.

9. Yes, I knew Drew Molinski before s/he became Re-Flec-Tor. I thought Drew was a capable leader of the Blips but very arrogant. I knew I was just as smart as Drew and grew tired of always following her/his orders. But Drew kept very tight control over the Blips, so I dare not disobey him/her. I frequently got frustrated with Drew, but the money Drew was bringing in was too good for me to put up much of a fuss. And the flexible hours let me pursue one of my other passions — dog-sledding.

10. By the spring of 2002 I had been a member of the Blips for about three years and had worked my way up to The Thirteen, the governing counsel of the Blips. But I was also becoming more of an adult, more mature, and was questioning whether I still wanted to live a life of crime. I started attending the Fellowship for Religious Understanding and Intellectual Transcendence and listening to the sermons of Rev. Max Karma. I came to realize that the life of the mind was more glorious than a life of crime. True happiness and intellectual transcendence comes through contemplating about and appreciating life, not through attempting to destroy it by being a common criminal. At the encouragement of Rev. Karma, that fall I took a camping trip by myself in the Arctic National Wildlife Refuge and for several days just meditated on what I wanted to do with my life, on where I wanted to be in five years. It was truly a life-changing experience.

11. I came back from my camping trip realizing I had to leave the Blips and start a new life. I told The Thirteen that I wanted out. Like any criminal group, they were reluctant to do this because they feared I might turn them in. To provide "security" that I would never betray them, the Blips implanted in me a canister of deadly poison that could be remotely

triggered by a device kept under lock and key at the headquarters of the Blips. As long as the Blips exist, I can never betray them.

12. Now that I was out of the Blips, I of course needed that dreaded honest way of making a living. I remembered a shop class I took back in high school where we had made glass sculptures using acetylene torches and so on. I enjoyed this project and actually thought I did quite well at it. When I realized that there was only one company in Alaskopolis that produced lighted signs, I thought this might be a good business to get into. I ordered a bunch of books on sign-making and studied on my own. I even experimented a bit with different techniques, which is how I came up with my multi-colored sign technology. After about a year of practice, I felt comfortable opening up my own store. As I said earlier, since then I have been very successful. Quality always shines through.

13. I am very grateful to Rev. Karma for turning my life around. I still go most weekends to hear Rev. Karma's sermons. Rev. Karma is very generous with his/her time and always willing to meet with Fellowship members on an individual basis. I often meet with Rev. Karma personally if I am experiencing tension in my life. Not unlike an addiction, I sometimes feel drawn back to a life of crime. That is when I know I need to call Rev. Karma. With Rev. Karma's help I will stay on the path to intellectual transcendence.

14. The night of Thursday, September 8, 2005, I was working late in my studio on a sign. I am often working late. I won't trust anyone else with the secrets of my changing-color signs, so I work alone. I had just received quite a few new orders for signs that week, so I had been expecting to have to work late. But hey, it just means more money for me, so I can't complain.

15. I feel horrible about what happened to Dana Walters and even what happened to Drew Molinski. What Drew was doing was wrong, and I wish s/he had chosen to abandon a criminal lifestyle, like I had, but this does not mean that I ever wanted Drew to be seriously injured. As for Kif Walters, I sort of believe that s/he got what was coming to her/him after all the negative actions Kif had taken toward me. But as I said earlier, Kif is a fierce competitor, and I have to admit a decent, though inferior to me, sign maker, so I'm sure that The Alaska Glow Factory will be up and running in no time.

WITNESS ADDENDUM

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

_____
Parker MacLaine

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 2005.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

PARKER MacLAINE
DOB: 7/23/1978

Defendant.

Court No. 3AN-S05-9999 CR

AFFIDAVIT OF JAREN ROTHMAN

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Jaren Rothman, being first duly sworn on oath, deposes and states as follows:

1. My name is Jaren Rothman. I am 29 years old. I am currently a crime reporter for the Alaskopolis Observer, a job I have held for the past five years. I take pride in my work and stand behind my stories 100%.

2. As part of my job as a crime reporter, I have covered The Protector ever since he or she first came onto the scene. I still do not know the identity of The Protector and am not convinced it is Parker MacLaine. I also don't believe that The Protector is behind the awful fire at The Alaska Glow Factory. I mean, gosh, I have covered The Protector for about two years now and I firmly believe that The Protector is all about helping people and would never do anything to hurt them. That is why, I believe, The Protector only stuns criminals as opposed to doing anything even more harmful to them.

3. I remember when The Protector first started fighting crime. The first criminal The Protector caught was Mary Rose. Mary told the Alaskopolis Police about being captured by this ball of light, but everyone figured Mary was lying and too embarrassed to say

what had really happened. But I knew that someone must have put that eight-pointed star on her and began the search for who had come to rescue Alaskopolis from its crime wave.

4. The Alaskopolis Police Department, and in particular Chief Biggles, is incompetent. Before The Protector came along, the crime rate in Alaskopolis was at an all-time high and getting worse. No one felt safe on the streets. Most of the crime was due to the battles between the Blips and the Cornered Wombats. I don't know why the Alaskopolis Police couldn't put a stop to this gang warfare, but I'm glad that The Protector did. I think that the success of The Protector really humiliated the Alaskopolis Police Department. Here you have one person able to do a better job than 100.

5. Golly, I sure was honored that The Protector chose me for his or her first public interview. Now, there are not any other daily newspapers in Alaskopolis than the Observer, but still The Protector broke a long silence. This is quite remarkable for someone so secretive about his or her identity. I had been "pursuing" The Protector for quite some time by dropping notes in the Comments Box in The Hero Shoppe, the souvenir store through which The Protector sells Protector merchandise to raise money for charity, praising The Protector and requesting an interview. After persistent requests over a few weeks, the clerk at the store passed me a note reflecting The Protector's willingness to give an interview.

6. The interview took place on July 26, 2005, though my editor wanted to hold off publishing the article until the following Sunday so as to promote the interview and increase sales. Of course, precautions had to be taken to ensure that The Protector's identity would not be revealed during the interview. I let The Protector handle all of the arrangements. We met in a back room of The Hero Shoppe. The Protector set up a frosted glass screen to hide behind. I could tell that someone was behind the screen, but I could not tell anything about that person. Before the interview began, though, The Protector put on a brilliant light display to prove to me that he or she was in fact The Protector. I am quite proud of the interview I conducted with The Protector. I think it showed a very human side to the superhero, which is what I wanted to accomplish.

7. After the interview, I asked The Protector to shock me with the same force used to stun criminals. I promised I would not write about this in the article. The Protector reluctantly obliged and emerged from behind the frosted glass barrier but engulfed in a ball of light. I have previously been stunned by a police stun gun for a different article I was writing. Getting stunned by The Protector was definitely more painful than that, but it did not leave me with any lasting damage. Unlike a police stun gun, getting stunned by The Protector knocked me unconscious. I awoke about a half hour later and The Protector was gone. My body was a bit sore for a day or two, but it definitely helped my journalistic curiosity to experience this.

8. Through the many articles I have written on The Protector and the interviews afterwards with the apprehended criminals, I have become very familiar with the method of operation of The Protector. I think this was evident in the incisive questions I asked in the interview. Yet, despite my extensive knowledge of The Protector, I had never seen

him or her in action. This is not surprising, since one never knows where crime is going to strike next, and I do not have The Protector's sixth sense for these sorts of things. That is why I was so excited when on September 8, 2005, I received a letter from Sal(ly) Babbo informing me that Re-Flec-Tor was fixing to rob The Alaska Glow Factory and that The Protector was likely to be there to stop Re-Flec-Tor. Gee willikers, what an opportunity! As both a reporter and a fan of The Protector, I knew I had to go watch, even if it meant placing myself in danger. That is part of the job of being a reporter.

9. I went out that night to sit watch over The Alaska Glow Factory. It was rainy and windy all night and because of the overcast skies was even darker than usual. I positioned myself in the beginning of the alley, assuming that Re-Flec-Tor would not want to be so visible as to break into the front of the store, but at the same time in view of the sidewalk in front of the store. At 1:57 a.m., according to my watch, I saw a shiny figure move up the alley and approach the side door to the building. I had never seen Re-Flec-Tor in person, but the way in which the little bit of light in the alley glimmered off of the stealthily lurking figured assured me it was in fact Re-Flec-Tor. I decided to move into better position behind a dumpster about 15 yards down from the side entrance. The rain was coming down quite hard, and I actually slipped and fell on my way to the dumpster. Just my luck, but right after I hid behind the dumpster, the rain gutter above me broke and dumped buckets of water on me. I covered my head with my rain jacket and repositioned myself so the water was not pouring directly on my head. The view was not quite as good of the door, but it was still fine.

10. I turned my attention back to The Alaska Glow Factory. The windows were too high for me to see inside the building. Plus, the windows were quite dirty. I thought about crossing the alley and attempting to peek in the door, but I didn't want to risk being discovered. I would just wait to see if anything happened. And gadzooks did it ever. After only a couple of minutes, I started to see a few flashes of light illuminating the windows. With the rain and wind, I couldn't hear much of what was going on. I never saw anyone else enter The Alaska Glow Factory, so I assumed it was just Re-Flec-Tor in there. Then I saw what looked like smoke billowing at the top of the inside of the Glow Factory. I knew that something seriously wrong must be happening. I waited a couple minutes or so, trying to decide what to do. I decided I had to find out what had happened and see if I could help. I got out from behind the dumpster and began to head toward the side door. Just then, the door began to open, so I went back behind the dumpster. I could see a person in what appeared to be very tight clothing carrying the body of someone who had caught fire. I checked my watch and it read 2:19 a.m. I did not get a good look at the person doing the carrying because I was trying to hide again behind the dumpster. I could tell, though, that the person doing the carrying had placed the person on fire down in a puddle in the alley and was putting out the fire. This good samaritan then ran off.

11. As soon as the alley was clear, I darted over to the person who had been on fire and realized it was Re-Flec-Tor, but that s/he was unconscious. I checked to see if Re-Flec-Tor was breathing and had a heartbeat, and fortunately found both of those. Still, I could tell that Re-Flec-Tor needed immediate medical help. Nervously, I fumbled around in my pocket for my cell phone. Just as I retrieved it, though, several loud explosions came from inside The Alaska Glow Factory. These explosions shook the ground and startled

me so much I almost fell over. I was afraid there would be more explosions, so I ran back behind the dumpster. I did not hear any more explosions after that first round. I reached back for my phone to call 911, but I could hear fire truck sirens quickly approaching. I did not want to be seen at a crime scene, so I ran down the alley before the fire trucks arrived. I figured they could call for help for Re-Flec-Tor. As I left, I checked my watch again, and it read 2:27 a.m.

12. I don't see how that could have been The Protector inside The Alaska Glow Factory. I know how The Protector operates, and what happened was just not consistent with that. First of all, The Protector would never risk being discovered, and the person who emerged from the building carrying Re-Flec-Tor was not cloaked in The Protector's standard ball of light that hides his or her identity. Furthermore, when I went over to check on Re-Flec-Tor, there was no eight-sided star placed on her/his body. The is the calling card of The Protector, and he or she never leaves a criminal for the Alaskopolis Police without letting them know who had given them this gift. Those are two things that this unknown person in the building did that The Protector would definitely have done differently. And, in all my time covering The Protector, no innocent people were ever harmed as a result of The Protector's actions.

13. I think Police Chief Biggles' conclusions about the cause of the blaze are ridiculous and obviously motivated by bias. Acetylene is very explosive, and it is not going to be stored in a container where an explosion could be set off by an accidental jolt of electricity. In fact, I talked to a chemical supplier in town and he told me that acetylene cylinders are always encased in porous concrete tubes, in part to protect against excessive electrical charges. Concrete is a very poor conductor of electricity, so it would be almost impossible for an electrical charge to get through to the cylinder.

14. I asked the chemical supplier if I could purchase an empty acetylene cylinder and casing, which the supplier said I could. I wanted to see what would happen if I struck the cylinder with a high quality ulu. First of all, the porous concrete casing around the cylinder shattered easily with even a mild ulu blow. I do have to admit that my attempts to puncture the cylinder itself all ended in failure, with the ulu blade glancing off the round cylinder. However, I did cause several sparks from hitting my ulu on the steel of the cylinder. Then, it only took one blow for me to dislodge the nozzle on top of the cylinder. I don't know exactly what happened inside The Alaska Glow Factory because I couldn't see in there, but my guess is that Re-Flec-Tor, swinging her/his ulus wildly and not being careful, knocked off the nozzle of one of the cylinders and then a spark from the ulu hitting the steel cylinder caused the acetylene to explode.

15. I've been wanting to write an exposé on the utter incompetency of Police Chief Biggles in conducting her/his investigation and accusing The Protector of crimes he or she obviously did not commit, but my editor won't let me because of my involvement in this case. I don't know, maybe Parker MacLaine was in The Alaska Glow Factory that night, but I'm sure that The Protector wasn't.

16. No one has heard from The Protector since the incident at The Alaska Glow Factory. My guess is that now that Re-Flec-Tor is captured, The Protector is taking that vacation he or

she mentioned in my interview. Or maybe the publicity has caused The Protector to take a low profile. But none of this is evidence of guilt.

WITNESS ADDENDUM

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

_____
Jaren Rothman

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 2005.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

PARKER MacLAINE
DOB: 7/23/1978

Defendant.

Court No. 3AN-S05-9999 CR

AFFIDAVIT OF SAL(LY) "THE SNAKE" BABBO

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Sal(ly) Babbo, being first duly sworn on oath, deposes and states as follows:

1. My name is Sal(ly) Babbo. My better known name is "The Snake." I am 31 and a year or so into a fifteen year prison term.

2. Unlike Re-Flec-Tor, I'm not getting a reduced sentence to give my testimony. Re-Flec-Tor promised to break me out of jail and never did. I'm still here. I miss crime. It is like an addiction. I need to steal. By getting caught Re-Flec-Tor has permanently gone back on his/her word. I can't accept that.

3. I've known Re-Flec-Tor forever, before s/he became Re-Flec-Tor. I was one of the original The Thirteen, along with Re-Flec-Tor. I was from the Crips, while Re-Flec-Tor, or Drew Molinski as s/he went by then, was a member of the Bloods before we merged to become the Blips. Old hatreds die hard, and it took me a while to learn to trust Drew. Probably never should have done that.

4. We Blips ruled Alaskopolis and were on our way to ruling all of Alaska before the Protector came along. The Cornered Wombats were a nuisance, but we could take care of them. Yeah, so some people got hurt in the cross-fire? Not my problem.

5. Drew was our leader. S/he was the brains of the group and would plan the timing and place of our raids. I was clever at robbing rubes, but not at the financial side of the business. And with my boa constrictor Damien watching my back, I was undefeatable.

6. Damien was one of those snakes that just naturally liked to squeeze. I trained Damien by giving him a treat every time he choked out a person. In fact, I wouldn't feed Damien until after he did that. Snakes can go a long time without eating, but it just seemed Damien was always hungry. Soon, Damien automatically attacked anyone around me so that he could get a marinated rat. I always called Damien off before the person actually died. Damien would let go when he felt me lifting him off the victim.

7. Look, I'm no friend of the Protector. I had a good thing going before the Protector caught me. I was attacking a rich couple leaving the Alaskopolis Opera and walking back to their. Damien had already choked them out, two-for-one. I was nabbing the woman's fur coat when I heard Damien slithering toward someone behind me. I turned around only to see Damien quickly retreating from the Protector. I don't know what happened. The Protector was all, like, "Why don't you pick on someone at your own income level." I knew I was cooked. Now I'm in jail and Damien is a tourist attraction at the Alaskopolis Zoo. He deserves better than that.

8. Drew went kind of crazy as more and more members of the Blips kept getting caught by the Protector. Drew liked to be in control, and saw the Blips as his/her chance at immortality. Or at least at infamy, which is pretty much the same thing. After The Thirteen shrunk down to The Eight, I could see that we were in trouble. I think Drew could see this too. That is why s/he became so obsessed with the Protector. Drew focused solely on stopping the Protector and ignored the rest of the Blips. We were on our own. I guess I can understand. I mean, as long as the Protector was out there, we were doomed to disappear completely. Anyway, that is when Drew developed that special mirrored-suit and became Re-Flec-Tor. I mean, adopting a name that rhymes, c'mon! Drew always could wield a mean ulu. Kind of a weird weapon of choice, but hey, this is Alaska after all.

9. The whole mirrored-suit thing seemed to be working. The Protector and Re-Flec-Tor had a few encounters where Re-Flec-Tor got away. That hadn't happened to too many Blips. Didn't happen to me. Drew would sometimes visit me in jail, out of costume of course, and was always excited about how s/he was some day going to put an end to the Protector and build the Blips back up to their former glory. I didn't know how Drew, as smart as s/he was, could stop someone with super powers. I mean, I've felt what it's like to get stunned by the Protector's bolts of electro-magnetic energy, and it hurts like heck. No permanent injury, though. I guess it is probably like a stun gun, though I've never felt one of those before.

10. Then on September 7 of last year, Drew comes to me and says that s/he has finally figured out a way to kill the Protector. Re-Flec-Tor had heard from Parker MacLaine, a former member of the Blips that a shipment of valuable jade and gold sculptures had arrived at The Alaska Glow Factory, this place that makes lighted signs and all. Drew figured that the Protector would show up at this sign place because the Protector always goes where criminals are likely to be, and criminals are likely to be places where there are valuable things to steal. But Drew figures that if s/he opens up the acetylene tanks s/he knows will be in the back area of the shop, since I guess they are needed to make the signs, then when the Protector does that thing with the glowing ball of light and shoots bolts of energy and stuff it would ignite the acetylene into a giant fireball that would engulf the Protector in flame. Made sense to me, but what do I know. Drew was really excited about it, though.

11. However, I wasn't excited about Drew. I wanted to make sure that if Drew was going to put an end to the Protector that Drew also be put behind bars so that I could get a little payback. So, I sent a letter to Jaren Rothman, that reporter what's done all those articles on the Protector. I knew Jaren would want to observe the Protector in action, especially for the last time, so I sent Jaren a letter saying that Re-Flec-Tor was fixing to rob The Alaska Glow Factory and that the Protector would probably be there. I didn't say nothing abouts Drew's plan to do in the Protector. It only takes a day for mail to get around in Alaskopolis, so I was hoping it would get to Jaren in time. I figured Jaren would be able to get enough evidence collected to put Re-Flec-Tor away. I didn't wants to go to the cops with this info because they ain't no friends of mine and we don't trusts each other.

12. I guess Drew's plan kind of worked. I mean, there was a big explosion at The Alaska Glow Factory caused by rupturing of acetylene gas tanks. At least, that is what I read in the paper a couple days later. But it was Drew who caught fire and got burned. I'm not sure the Protector was even there. I think Drew got what s/he deserved. If Drew had spent as much time thinking about how to break me out of the joint as s/he did about how to catch the Protector, I might be a free wo/man right now. Then again, I might also be burnt to a crisp. Heh-heh.

13. So, Parker is the Protector, huh? That's pretty gutsy considering Drew could have killed Parker at any moment by releasing that poison. I can see Parker doing that, though. Parker was always kind of independent and never afraid to bend the rules a bit. In some ways Parker was the most cunning and devious of all the Blips. I kind of always thought Parker was going to stab me in the back. Hmmm, I guess s/he kind of did.

WITNESS ADDENDUM

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

_____
Sal(ly) Babbo

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 2005.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

PARKER MacLAINE
DOB: 7/23/1978

Defendant.

Court No. 3AN-S05-9999 CR

AFFIDAVIT OF PROF. ASHLEY ALVAREZ

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Prof. Ashley Alvarez, being first duly sworn on oath, deposes and states as follow:

1. My name is Ashley Alvarez. I am thirty-nine years old and a professor chemistry at Alaska State University at Alaskopolis. My specialty is the study of electrically charged gases. Mostly, I study the Aurora Borealis, which is why I am up here in Alaska, but I am familiar with the chemical reactions of other supercharged gases as well.

2. I have been asked to testify by the attorneys for Parker MacLaine. I have never testified in court before; there is not much need in trials for someone with my unique area of study. I asked some of my professor friends at other universities what the were paid for testifying at trial, and I came up with what I considered to be a reasonable fee of $275 per hour. This is actually a bit on the low end of the range of fees my friends charge, but because of my lack of experience preparing for and testifying at trials, I decided that I should position myself toward the lower end of the spectrum.

3. First of all, let me start off by saying that there is absolutely no way anyone could be hit with the Aurora Borealis and imbued with its powers. The visual display that we view from the ground is actually taking place on average form sixty to two hundred miles

above the Earth's surface, and at the very least twenty miles. To give you an idea, commercial airplanes fly no higher than six or seven miles in altitude. The aurora is caused by a powerful electrical discharge in the upper atmosphere, resulting from the Earth's magnetic poles being hit by electrically charged particles from the solar wind. The charged particles interact with gases naturally found in the Earth's upper atmosphere. When electrically charged, these gases emit different wavelengths of light. The colors of the wavelengths depends on the gases that are being charged and the altitude at which the reaction is taking place. Generally speaking, oxygen will emit a greenish color when ionized and nitrogen a reddish color. It is also possible to get pinks, blues, and greys. But, the overriding point is that all of this is happening well above where any humans would come into contact with the Aurora. The Aurora does sometimes appear to touch the ground, but that is an optical illusion based on the perspective of the viewer to the display, sort of like a rainbow may seem to touch the ground but never really does. There is no gold at the end of the Aurora.

4. However, I have not been asked to testify about where the Protector may or may not have gotten his or her alleged super powers. More specifically, I have been asked to testify about the properties of acetylene gas and the manner in which it is stored. In preparing to testify, I have reviewed the report of Police Chief Biggles. I disagree with her/his conclusion discounting the possibility that the explosions could have been caused by the intentional or accidental opening of the acetylene cylinders.

5. An acetylene molecule is composed of two carbon atoms and two hydrogen atoms. The two carbon atoms in the acetylene molecule are held together by something called a "triple carbon bond." This bond is useful for chemical purposes because it stores a substantial amount of energy that can be released as heat during combustion, such as through an acetylene torch. However, the triple carbon bond is also very unstable, making acetylene gas very sensitive to conditions such as excess pressure, excess temperature, static electricity, or mechanical shock. Because acetylene gas is highly volatile, it cannot be stored in its pure form. Instead, it is stored dissolved in liquid acetone, which is itself poisonous but at least chemically stable. Acetone is found in the everyday world in such products as paint removers, certain polishes, and cigarettes. The acetylene-acetone mixture is stored in steel cylinders under a pressure of 250 pounds per square inch. These cylinders are then placed in a cushioned tube of porous concrete to protect the cylinders against physical shock and accidental electrical discharge. Even with these protections, it is still vitally important to handle acetylene cylinders carefully. The high amount of energy stored in an acetylene triple carbon bond makes for especially large and devastating explosions if accidentally ignited.

6. As I mentioned, though, under controlled conditions, acetylene can be very useful because it burns very hot with just a small amount of gas. Thus, an acetylene torch can provide high heat directed to a very small point. That is why it is used by glass artists such as Kif Walters to shape glass tubes into signs. Acetylene torches are also commonly used for welding for similar reasons. This is accomplished through hooking the acetylene cylinder to a rubber tube that in turn connects to a torch device that carefully regulates the flow of acetylene gas. When the torch valve is opened, there is a decrease in pressure in the direction of the torch. This causes the acetylene-acetone mixture to depressurize,

resulting in a stream of acetylene gas flowing toward the torch. The more the valve is opened, the more depressurization occurs and the more acetylene gas is released, creating a more intense and higher temperature flame.

7. Of course, the valve on the torch device, even if fully opened, will release acetylene gas only in manageable amounts. However, if someone were to open an acetylene cylinder without first connecting it to a torch regulator, the flow of acetylene gas would be extremely unsafe and bound to lead to disaster. If, for example, Re-Flec-Tor were to have directly opened one or more of the acetylene cylinders and the escaping gas were ignited, the result would be an extremely large fireball shooting out from the cylinder that would very quickly set the entire building on fire. Furthermore, the fireball would continue to burn as long as there was acetylene escaping from the cylinder. It is hard to say how long a full cylinder would burn because it would depend on how much the sealing nozzle was opened, but it is easy to imagine this fireball lasting for upwards of twenty minutes.

8. That is, assuming that the acetylene tank did not explode first. The flames from an acetylene torch can reach upwards of 4,000 degrees Fahrenheit. If this temperature is close to the acetylene cylinder itself instead of separated by a long rubber tube and a torch device, it is easy to imagine that the resulting heat would heat the gas inside they cylinder to a point where it would spontaneously explode. I have not conducted any experiments to this effect, but I imagine it would take in the order of eight to twelve minutes for this to happen. In this regard, I do believe Chief Biggles' report is potentially correct — excessive heat might have cause the explosions. However, this heat would need to be in close proximity to the acetylene cylinders for an extended period of time for this to happen. The scenario I describe could also be similar to what Chief Biggles' dismissed as the fire "working its way back into the tanks." Really, this is not quite what is happening. The force of the escaping acetylene gas would prevent the fire from entering the acetylene cylinders per se, and there are also protective mechanisms in the sealing nozzles to prevent this from happening, but an open cylinder could explode by proximity to heat if the escaping gas is ignited.

9. Given the protective measures taken with acetylene cylinders, I do not believe it possible that an electric charge could by itself ignite the acetylene cylinders unless they had already been breached. The electric charge might somehow surround the steel cylinder, but it would be discharged into the ground instead of penetrating the steel itself. I do believe that if the acetylene cylinders were somehow punctured, the same depressurization could occur as if the sealing valve were intentionally opened. The resulting fireball and likely explosion would be the same as I just described.

10. I should add that if the same thing happened to canisters of the other gases in the work area of The Alaska Glow Factory, namely the neon and argon gases stored there, the gases would light up, just as they do in lighted signs, but they would not explode because neon and argon are inert gases. In other words, you would have a very bright light, and perhaps a minor increase in heat from the ionized gases, but no explosion. I do not believe that the heat caused by ionized argon or neon would be sufficient to cause an explosion in an acetylene cylinder.

11. Acetylene gas has a very noxious, garlic-like odor. It would be hard for anyone not to notice the presence of acetylene gas, especially if the gas is present in large quantities. Neon gas and argon gas, on the other hand, have no odor to them. All three gases are colorless in their un-ionized forms.

12. Acetylene gas is a very dangerous chemical compound, but this does not mean that it should be unavailable to commercial users such as Kif Walters. Indeed, acetylene gas has a wide variety of industrial uses and has been used safely by many, many people for years. Unfortunately, accidents do happen, especially when someone such as Drew Molinski, someone unfamiliar with the inherent dangers, tries to handle acetylene gas. On the basis of the facts as reported by Chief Biggles, I think the most likely conclusion is that Drew Molinski a/k/a Re-Flec-Tor intentionally opened one or more cylinders of acetylene gas and that in the ensuing fight between himself/herself and the Protector, the acetylene gas ignited, perhaps from a spark caused by Re-Flec-Tor's ulu hitting a steel cylinder, creating a fireball that eventually caused the acetylene cylinders to explode.

WITNESS ADDENDUM

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

_____
Ashley Alvarez

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 2005.

_____
Notary Public in and for Alaska
My Commission Expires:_____

Alaskopolis Police Department
Incident Report

Reporting Officer: Police Chief Biggles

Date: September 12, 2005

Location of Incident: Alaska Glow Factory
1842 Mallory Dr.
Alaskopolis

Description of Incident: Massive fire destroying building. Significant fire damage in all parts of building. Fire seems to have started in workshop room. Evidence of explosions. Drew Molinski a/k/a Re-Flec-Tor discovered unconscious outside building by Alaskopolis Fire Department. Police called to scene immediately. Incident being investigated as possible arson.

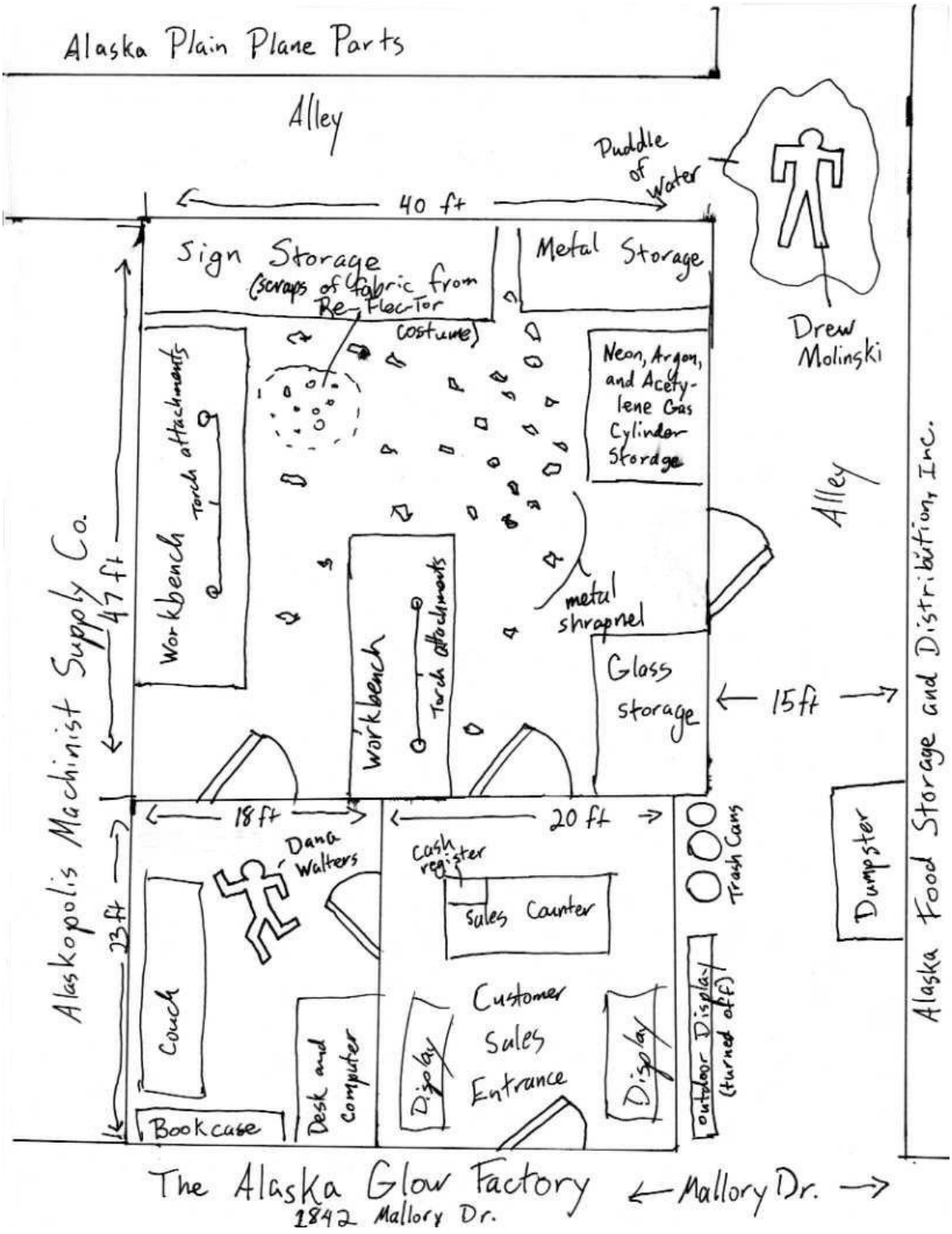
Persons Harmed or Damage: Dana Walters severely burned in fire; currently in coma at Alaskopolis General. Drew Molinski severely burned but not unconscious; also at Alaskopolis General. Building a complete loss. Minor damage to adjacent building.

Persons Interviewed: Kif Walters, owner of building (interviewed about arrangement of workshop); Drew Molinski; Alaskopolis Fire Department firefighters on scene.

Evidence Examined: Kif Walters testified as to arrangement of workshop. Acetylene cylinders placed in protective cement tubes painted red. Neon and argon gases in cylinders without protective tubes. Cylinders all closed by nozzle attachment. All gas cylinders placed across from workbenches. See attached diagram. Shrapnel from cylinders scattered outward in direction

from original location in fan pattern. Scraps of Re-Flec-Tor costume found near workbench. Walters stated Parker MacLaine was in building as the Protector. No physical evidence of other persons in building than D. Molinski and D. Walters. Firefighters reported hearing explosions as they approached building. Building completely ablaze upon arrival; fire throughout building. Firefighters heard screaming from front of building; when fire under control broke in to discover unconscious body of Dana Walters. Doors burned down, so impossible to tell if were open at beginning of blaze. Also discovered in back alley unconscious body of Drew Molinksi. Drew Molinski refusing to testify at this time; asserts Fifth Amendment.

Cause of Incident: Clearly explosion of acetylene gas cylinders, likely caused by bolt of electric energy from Parker MacLaine a/k/a The Protector. Only massive explosions, of the type caused by acetylene gas, would create as big a fire as what destroyed Alaska Glow Factory. Electric energy likely sparked explosion by supercharging gas inside cylinders. Acetylene gas known to be especially susceptible to explosion from electrical charges. No evidence of fire existing prior to explosions.


Alaska Plain Plane Parts
Alley
Puddle of Water
40 ft
Sign Storage
(scraps of fabric from Re-Flec-Tor costume)
Metal Storage
Drew Molinski
Neon, Argon, and Acetylene Gas Cylinder Storage
Workbench
Torch attachments
Alley
47 ft
Alaskopolis Machinist Supply Co.
metal shrapnel
Workbench
Torch attachments
Glass storage
15ft
18 ft
20 ft
Dana Walters
cash register
Sales Counter
Trash Cans
Dumpster
Alaska Food Storage and Distribution, Inc.
23 ft
Couch
Bookcase
Desk and computer
Display
Customer Sales Entrance
Display
Outdoor Display (turned off)
The Alaska Glow Factory
1842 Mallory Dr.
Mallory Dr.

Alaskopolis Observer
Monday, December 13, 2004, p. B1

The Protector Captures Sal(ly) "The Snake" Babbo

Jaren Rothman

The Protector has struck another blow for making Alaskopolis safe for everyday citizens. Just this past Saturday evening The Protector apprehended Sal(ly) Babbo as s/he was attempting to rob Mr. and Mrs. Ralph and Julia Johnson as they walked back to their cars after a performance by the Alaskopolis Opera Guild.

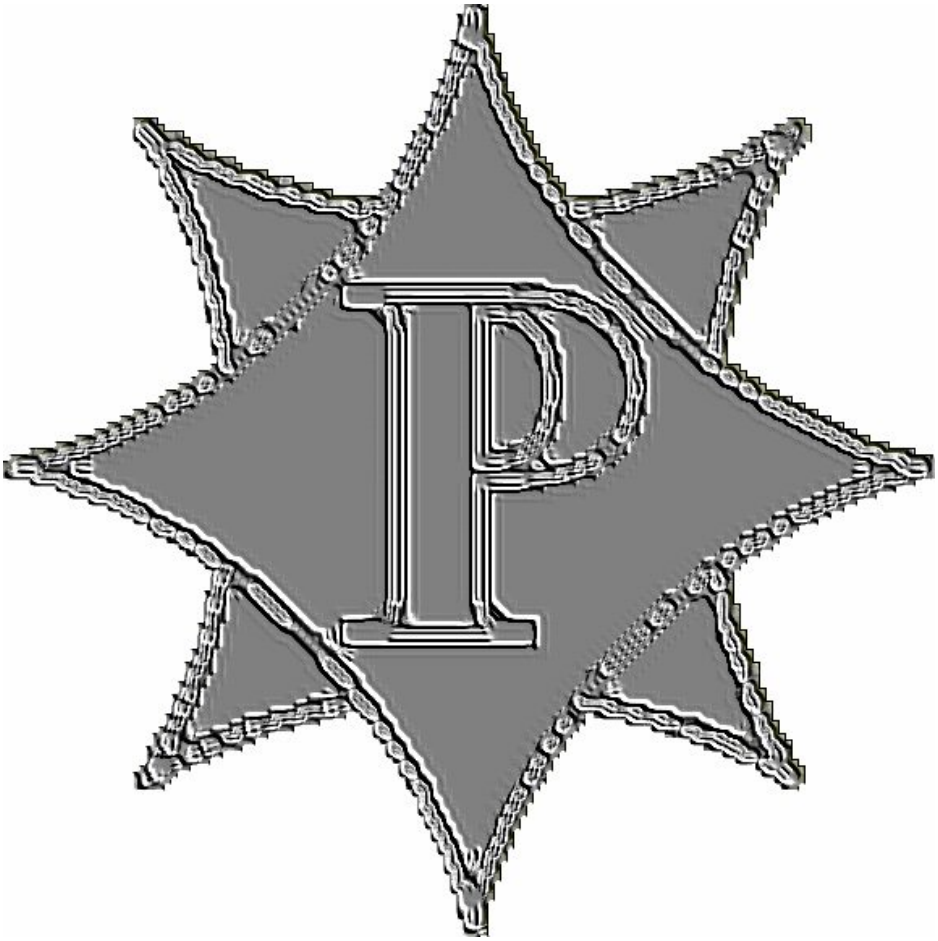
At approximately 10:30, the Johnsons were confronted by Sal(ly) Babbo. Babbo, known as "The Snake" because of a specially trained boa constrictor, Damien, who disables Babbo's victims, said nothing to Mr. and Ms. Johnson but instead let Damien do its work.

The Johnsons are not aware of what happened next, but when they awoke, lying next to them was the unconscious body of their assailant, with an aluminum eight-pointed star pinned on top of her/him. Mr. Johnson called the Alaskopolis Police, who quickly arrived and escorted Sal(ly) Babbo away.

Mr. and Mrs. Johnson later informed the Alaskopolis Police that no money, credit cards, or other valuable items appear to have been stolen. They are very grateful to The Protector for saving them from being robbed.

When contacted for comment, Police Chief Biggles stated, "I am happy that the Johnsons escaped unharmed, but this should not cause law-abiding citizens to condone the actions of a known vigilante like The Protector."

Sal(ly) "The Snake" Babbo, a well known member the Blips, faces several counts of robbery, as well as several counts from previous crimes.



Actual Size Aluminum Pin Placed on Persons

Apprehended by The Protector

Alaskopolis Observer
Sunday, July 31, 2005, p. A1

The Protector Speaks Out

Jaren Rothman

Alaska needed a superhero. The Protector came through. The Protector, that beacon of light when all else around is dark, has been fighting crime in this state, and mostly in our fair city of Alaskopolis, ever since his arrival almost two years ago.

Or should I say *her* arrival? The Protector not only protects the citizens of Alaskopolis, but is also very protective of his or her identity. In the comics, most superheroes wear a mask. No one knows if The Protector wears a mask because he or she fights crime immersed in a ball of light that blinds the viewer from seeing The Protector's location or true identity.

One thing cannot be questioned, though, and that is the impact that The Protector has had on reducing crime in Alaskopolis. Over the past two years, incidents of violent crime in Alaskopolis not involving domestic violence have dropped almost 50 percent. Murders are down over 80 percent, from 47 three years ago to only nine the past twelve months. Our streets are safer and more active, with Alaskopolites looking to bask in the bright future made possible by The Protector.

I recently sat down for an interview with The Protector, the first time this superhero has granted an interview. Tracking down a superhero no one can see is not easy, even for intrepid reporters. Fortunately The Protector has a souvenir store in downtown Alaskopolis, The Hero Shoppe in the Midnight Sun Mall, that I could use as a conduit to pass messages to him or her.

No, The Protector is not behind the counter, at least not that I am aware, but does reportedly read fan mail left in the Comment Box. I left several "glowing" (pardon the pun) comment cards for The Protector requesting an interview so that the citizens of Alaskopolis could know more about who was making their lives safer.

I came back the same time every week, and one week ago I received a note from the store clerk telling me to come back the next day for an interview in the backroom of the store. The interview was to be conducted through exchanging emails, with The Protector remaining the whole time hidden from view behind an opaque screen.

When I arrived for the interview, I was led into a dimly lit storeroom, the back half of which had been completely blocked off with a large pane of thick, heavily frosted glass. In front of that sat a computer on a small table and a single wooden chair. On the computer was a message that read: "I suppose you want proof that I am really The Protector? Type 'yes' for a demonstration."

And what a demonstration it was! Bolts of red, green, yellow, blue, and white light whizzing around behind the glass pane and occasionally even being thrown through the glass pane. The highlight was when The Protector created a glowing image of an Alaskan flag.

Satisfied, the interview began:

Jaren Rothman: Thank you for agreeing to be interviewed. Why, after being so reclusive, have you decided to speak out now?
The Protector: It is understandable that there is a natural curiosity in the public about a superhero such as myself. Yet, there are some in the public who fear or even hate me. I am

speaking out so that everyone will understand that I am only here to help. I chose you because I like your articles, Jaren. They tend to be fairly accurate.
JR: Do you think doing this interview will also help sell merchandise at your store?
The Protector: It can't hurt.
JR: For those who have been in another state or on another planet, please describe your super powers.
The Protector: To put it simply, I can control the Northern Lights. In other words, I can generate ionized light and related electric fields through my hands. As you saw from my earlier demonstration, I can manipulate light in brilliant displays, but I can also use my powers to fight crime, such as by enveloping myself in a ball of light to conceal my identity, creating a light shield that can stop bullets, and throwing bolts of electro-magnetic energy to temporarily stun criminals.
JR: After stunning a perp, you tie their hands behind their back and bind their feet with a plastic band sometimes used by police. Why don't you just use light hand-cuffs?
The Protector: There are limits to even my powers.
JR: Do you have a special super-suit?
The Protector: I do have an outfit that I like to wear when I fight crime. It is not absolutely necessary for me to function, but I have designed it with special electricity conductors and gloves to help concentrate my electro-magnetic powers. I actually generate electro-magnetic energy throughout my entire body, but needless to say, it is easier to aim that energy with my hands. The suit is also what generates the ball of light that hides my identity. So of course I can't show you my suit.
JR: How did you gain your super powers?
The Protector: I was on a camping trip early in the fall of 2002 in the Arctic National Wildlife Refuge. One night the aurora was especially bright, so bright that it shined through my tent, keeping me from sleeping. I went out to take a look, and just as I did, a bolt of brilliant multi-colored light shot down from the sky and hit me. It would have been beautiful if it weren't so exquisitely painful. After about a minute of being electrocuted, I was knocked unconscious. When I woke up the next morning I was just happy to be alive. I could still feel my body tingling from all the electricity. I figured this sensation would go away. But it didn't. The energy was always coursing through my body. Over time I figured out that I could channel this energy in magnificent ways. It took me about a year until I felt comfortable using my powers in public to fight crime.
JR: Why did you decide to use your powers to fight crime?
The Protector: Like all good citizens, I was appalled by the crime wave that enveloped Alaskopolis a couple of years ago. Innocent citizens were afraid to walk the streets at night. The battles between the Blips and the Cornered Wombats were epic and put many bystanders in harm's way. I respect the Alaskopolis Police, but they simply were not doing their jobs. In the past I had sometimes attended the Fellowship for Religious Understanding and Intellectual Transcendence, so I turned to Rev. Max Karma to ask if there was anything I as a private citizen should do. Rev. Karma convinced me that it was morally acceptable to bend the law to protect the law-abiders against the law-breakers. I don't always relish the actions I have to take, breaking into buildings and the like, but I've learned to look to the greater good.
JR: You mentioned the Blips and the Cornered Wombats, the two fiercest gangs in Alaskopolis. Which do you think was more dangerous?
The Protector: I would say the Blips. I have a long history with the Blips. The Blips are truly

motivated to rob and create havoc. I think the Cornered Wombats were more motivated by their opposition to the Blips. The Cornered Wombats would some how figure out where the Blips were going to strike next and then try to steal from them when they left the building. I don't think the Cornered Wombats ever stole directly from the citizens of Alaskopolis, though there were certainly citizens who were injured as innocent bystanders during the fighting between these two rival gangs. As the members of the Blips diminished, the Cornered Wombats sort of dissolved on their own. I anticipated this would happen, so I concentrated my efforts on eliminating the Blips. Now only one Blip remains — Re-Flec-Tor.
JR: Why haven't you been able to capture Re-Flec-Tor?
The Protector: Re-Flec-Tor has developed a special mirrored suit that reflects my bolts of electro-magnetic energy. I normally like to operate at a distance from the perpetrator, but Re-Flec-Tor's suit effectively prevents this. Rest assured, though, that I am working on a way to capture Re-Flec-Tor and Re-Flec-Tor will be in jail very, very soon!
JR: Do you think that once you capture Re-Flec-Tor your job will be done?
The Protector: There will always be petty criminals, but my hope is that I might finally be able to take a vacation.
JR: Why do you leave an aluminum eight-pointed star behind every time you nab a crook?
The Protector: Crime protection is all about marketing. I'd rather have crooks not commit a crime in the first place than have to catch them afterwards. That is why I leave a little memento, to let them know I'm out there. I don't sell these stars in my store, though I know they would be hugely popular and are in much demand, because I want the Alaskopolis Police to know for sure it was me who was doing their job.
JR: Can you recall for our readers some of your most memorable battles?
The Protector: Certainly. One of them, I think you wrote about it, was with a thief, a member of the Blips, who referred to himself/herself as "The Snake." Sal(ly) "The Snake" Babbo was an ace robber, a real thug and liar who excelled at sneak attacks. The Snake's secret weapon, though, was a trained boa constrictor who The Snake would let loose any time s/he was burglarizing a building or robbing someone on the street. I don't know how The Snake trained her/his boa to do this, but that animal would slither behind anyone who happened to disturb The Snake — a cop or an innocent bystander in the wrong place at the wrong time — wrap itself around the neck of that person and squeeze until the person passed out. Once that boa got around your neck, it was definitely lights out. I knew how The Snake operated, so I wired my boots to retain an electric charge that would deter the boa. Without that boa to protect him/her, The Snake was easy pickings. I sure enjoyed putting The Snake behind bars.
JR: Have you ever thought of leaving Alaskopolis to fight crime elsewhere?
The Protector: There is a danger in trying to accomplish too much in life. If I tried to protect the entire world, I would more likely end up protecting none of it.
JR: You've become quite the hero in Alaskopolis. Your merchandise is flying off the shelves.
The Protector: Yes, but remember that all proceeds go to support the Center for Alaskan Enlightenment, a very worthy cause.
JR: Indeed. Don't you want to bask in the glory of what you have accomplished, garner all of the public accolades that would come your way by revealing who you really are?
The Protectors: The appreciation of a safe Alaskopolis is all the reward I need.
JR: But aren't you living a lie?
The Protector: I never lie.
JR: Then why won't you tell Alaska your true identity?

The Protector: I said I never lie. I never said that I reveal everything about myself. It is to my advantage to keep my identity a secret.
JR: Why?
The Protector: By keeping my identity secret, I can go places undercover if necessary. I can explore the criminal element and strike when I want, where I want. And I know the criminal element in Alaskopolis very well. I don't need my suit to control my powers, it just helps channel my powers. I can call up the power of light whenever the need arises.
JR: So, I could see you walking down the fine streets of Alaskopolis and never know that you are The Protector.
The Protector: Exactly. That's the idea.
JR: I still don't see why that isn't living a lie. What is the difference between keeping your identity secret by withholding information and telling a lie about who you are?
The Protector: When you tell a lie, you tell a story. When you withhold information, you let other people tell the story. And when that happens, people will believe whatever they want to believe.
JR: Are you telling the people of Alaskopolis that it is acceptable to let other people deceive themselves into believing a lie?
The Protector: You've got a lot to learn, kid. You see my secret identity as some stark dichotomy. But my secret identity is no different than the thoughts you have swirling around in your head right now that you, for whatever reason, don't want to become public. Life is nothing more than a series of revealings. We all have a secret identity. Mine just wears a skin-tight suit and hides behind a ball of light.

Letter Deposited in Confessions Box at the Fellowship for Religious Understanding and Intellectual Transcendence on September 11, 2005

September 10, 2005:

Forgive me, Reverend, for I fear I have again strayed from the path to understanding and transcendence. As I'm sure you've read by now, I finally captured Re-Flec-Tor. But I am not proud of what I needed to do to put this most dangerous of criminals behind bars. I knew from my business life that the Alaskopolis Glow Factory had just received an order to create a magnificent sign combining neon lights with precious jade and gold sculptures for display at the headquarters of the Alaskopolis First National Bank and that consequently there were many valuable jade and gold sculptures in the back room of the Factory. As Parker, I arranged to have lunch with Re-Flec-Tor three days ago, Tuesday, and made sure that this information came up in the conversation. I knew that Re-Flec-Tor would not be able to resist breaking into the Glow Factory to steal the valuable sculptures. I waited outside the Glow Factory that night, but nothing happened. Nor did anything happen Wednesday night. Re-Flec-Tor must have still been planning. But sure enough, as I waited outside the Glow Factory on Thursday evening, September 8, and into Friday morning, Re-Flec-Tor finally showed up — at about 2:00 a.m. It took me a few minutes to actually enter the building because I could tell someone was watching and I needed to create a diversion by shooting a bolt of energy to cause a rain gutter to burst open.

The reason I chose to set my trap at the Alaskopolis Glow Factory is because I knew it had the materials necessary for me to thwart Re-Flec-Tor's mirrored suit. In my previous attempts to capture him/her, Re-Flec-Tor could easily bounce off my electro-magnetic bolts. And I couldn't get close to Re-Flec-Tor because of his/her ulus, which I assure you Re-Flec-Tor knew how to wield with deadly precision. If it was just me in my ball of light, Re-Flec-Tor would know exactly where I was. However, if I could create multiple balls of light, there might be enough of a distraction that I could get close to Re-Flec-Tor, rip his/her suit, and shock Re-Flec-Tor into submission. I knew that I could open the tanks of argon and neon gases in the Glow Factory and electrify the gases to create the necessary diversion. So, once Re-Flec-Tor was inside the Glow Factory, I followed him/her inside, opened the tanks, and electrified the leaking gases all at once. The place was immediately ablaze in light.

What I had not planned for was that in the chaos caused by all of the glowing light, Re-Flec-Tor began wildly swinging those two ulus around. I couldn't see too well, but somehow Re-Flec-Tor must have hit one of the acetylene tanks and punctured it. Before I knew it, within a matter of seconds, a fireball erupted from one side of the warehouse. Careful to avoid the flames, I moved closer to where I thought Re-Flec-Tor was and noticed that s/he had caught on fire. I guess the mirrored suit was not fireproof. Because of my history with the Blips, I felt sympathy for Re-Flec-Tor, or Drew as I knew her/him from our days in the Blips, and just could not let him/her die. Still, Re-Flec-Tor had to be put behind bars for good and the Blips eliminated. Enough of Re-Flec-Tor's suit had burned away that I could easily stun her/him by hand. I then dragged Drew's limp body outside and rolled it around in a puddle of water on the street to put out the fire. I decided it best that this one time I not leave behind one of my star emblems.

Rev. Karma, the worst is that the Alaskopolis Glow Factory was completely destroyed in the resulting fire, including all of those valuable jade and gold sculptures. After I left the building and put out Drew, I went to the nearest pay phone and called the fire department. But as I was doing this, I heard a series of loud explosions, which must have been the acetylene tanks exploding. This turned the whole building into a raging inferno. It was too late. My intention was not to cause any harm. I knew that Re-Flec-Tor needed to be captured for the good of Alaskopolis and that igniting the argon and neon gases would not by themselves cause any harm. And now I hear that Dana Walters was seriously injured in the fire. Please tell me that I did the right thing.

Your humble servant in intellectual transcendence,
Parker

Prof. Ashley Alvarez
Alaska State University at Alaskopolis
Chemistry Department
123 E. Aurora Lane
Alaskopolis, AK 99909

Education

University of Nebraska, B.A., Summa Cum Laude in Chemistry, 1989.

Stanford University, Ph.D., Department of Chemistry, 2001.

Work Experience

ChemLabs of America, research technician, 1989–1994.

Brayton Institute for Astro-Chemistry, research fellow, 2001–2002.

Alaska State University at Alaskopolis, assistant professor of chemistry, 2002–present.

Publications

"Ionization of Elemental Gases," *American Chemistry Quarterly*, Vol. 47, Issue 3, Fall 2005. Analyzed common gases in the Earth's comprised of a single element and how those gases react to electrical charges.

"The Effect of Upper Atmosphere Disturbances on Aurora Formation," *Scientific Inquiry*, March 2003. Explored how atmospheric disturbances in the ionosphere influence the formation of auroras.

"Pressurization of Volatile Electrified Gases," *New England Journal of Chemistry*, Vol. 103, Issue 8, August 2002. Studied how electricity and pressurization interact to affect the chemical state of volatile gases.

"Solar Radiation and Aurora Colorization," *Astronomy Today*, June 2000. Studied the impact of sunspots and other solar phenomena on the colors produced in the aurora.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

PARKER MacLAINE
DOB: 7/23/1978
APSIN ID: 1234567
SSN: 546-00-9999
ATN: 107-907-666

Defendant.

Court No. 3AN-S05-9999 CR

JURY INSTRUCTIONS

FOUNDATIONAL INSTRUCTIONS

Presumption of Innocence; Burden of Proof Beyond a Reasonable Doubt

The distinguishing features of a criminal trial are what are known in the language of the law as the presumption of innocence and the burden of proof beyond a reasonable doubt. The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a clean slate — with no evidence favoring conviction. The presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

This last-mentioned requirement, that you be satisfied beyond a reasonable doubt of defendant's guilt, is what is called the burden of proof. It

is not required that the prosecution prove guilt beyond all possible doubt, for it is rarely possible to prove anything to an absolute certainty. Rather, the test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense. Proof beyond a reasonable doubt must be proof of such a convincing character that, after consideration, you would be willing to rely and act upon it without hesitation in your important affairs. A defendant is never to be convicted on mere suspicion or conjecture.

The burden of proving the defendant guilty beyond a reasonable doubt always rests upon the prosecution. This burden never shifts throughout the trial, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant has the absolute right not to testify, and you must not draw any inference against the defendant for not testifying. Thus a reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove every essential element of the crime charged, beyond a reasonable doubt, a defendant has the right to rely upon the failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution.

Direct/Circumstantial Evidence

A fact may be proved by direct evidence, by circumstantial evidence, or by both. Direct evidence is given when a witness testifies about an event which the witness personally saw or heard. Circumstantial evidence is given when a witness did not personally see or hear an event but saw or heard something which, standing alone or taken together with other evidence, may lead a juror to conclude that the event occurred. Both types of evidence are admissible and may be considered by you. Neither is entitled to any greater weight than the other.

State of Mind

State of mind may be shown by circumstantial evidence. It can rarely be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what another person does or fails to do, no one can see or hear the state of mind with which another person's acts were done or omitted. But what a person does or fails to do may indicate that person's state of mind. In determining issues of state of mind, the jury is entitled to consider any statements made and acts done or omitted by the person, and all facts and circumstances in evidence which may aid determination of state of mind.

Motive

Motive is not an element of the crime charged. However, you may consider motive or lack of motive as a circumstance in this case. Presence of motive may tend to establish guilt. Absence of motive may tend to establish innocence. You will therefore give its presence or absence, as the case may be, the weight you believe it should have as evidence.

Witness Credibility

Every person who testifies under oath is a witness. You, as jurors, are the sole judges of the credibility, by which I mean the believability, of the witnesses. You are also the sole judges of the weight their testimony deserves.

You may believe all, part, or none of the testimony of any witness. You need not believe a witness even though the witness' testimony is uncontradicted. You should act reasonably in deciding whether or not you believe a witness and how much weight to give to the witness' testimony.

In deciding whether to believe a witness or how much weight to give a witness' testimony, you should consider anything that reasonably helps you to judge the testimony. Among the things you should consider are the following:

(1) the witness' attitude, behavior and appearance on the stand and the way the witness testifies;

(2) the witness' intelligence;

(3) the witness' opportunity and ability to see or hear the things about which the witness testifies;

(4) the accuracy of the witness' memory;

(5) any motive of the witness not to tell the truth;

(6) any interest that the witness has in the outcome of the case;

(7) any bias of the witness;

(8) any opinion or reputation evidence about the witness' truthfulness;

(9) any prior criminal convictions of the witness relating to honesty or veracity;

(10) the reasonableness or unreasonableness of the witness' testimony; and the consistency of the witness' testimony and whether it is supported or contradicted by other evidence.

Opinion Testimony of Non-Expert Witnesses

A non-expert witness may testify to his or her opinion if it is rationally based on the witness' perceptions and helpful to a clear understanding of the testimony or the determination of a fact in issue.

In determining the weight to be given to an opinion expressed by a non-expert witness, you should consider the witness' credibility, the extent of the witness' opportunity to perceive the matters upon which the opinion is based and the reasons, if any, given for it. You are not required to accept such an opinion but should give it the weight, if any, to which you find it entitled.

Expert Witnesses

A witness who has scientific, technical or other specialized knowledge or experience may be qualified as an expert and may express an opinion in addition to giving testimony as to facts.

In determining whether to believe an expert witness and the weight to be given to his or her opinion, you may consider the expert's qualifications and knowledge, the reasons given for the opinion, how the expert got the information he or she testified about, in addition to the factors given you for evaluating the testimony of any other witness.

As with other witnesses, you must decide whether or not to believe an expert witness and how much weight to give his or her testimony. You may believe all, part or none of the testimony of an expert witness.

CASE-SPECIFIC INSTRUCTIONS

Culpable Mental State

The requisite mental states for a criminal offense are defined as follows:

(1) A person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective.

(2) A person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist.

(3) A person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the

result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

A person who acts intentionally also acts knowingly and recklessly. A person who acts knowingly also acts recklessly.

Solicitation

Parker MacLaine, the defendant in this case, has been charged with the crime of solicitation of theft in the first degree. To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt each of the following elements:

(1) the defendant intended to cause another person to engage in conduct constituting the crime of theft in the first degree; and

(2) the defendant asked, induced, or commanded the other person to engage in that conduct.

Renunciation

The defendant, Parker MacLaine, may have raised the affirmative defense of renunciation. To establish this affirmative defense, the defendant must prove that each of the following statements is more likely true than not true:

(1) the defendant, after soliciting another person to engage in conduct constituting a crime, prevented the commission of the crime; and

(2) the defendant's conduct occurred under circumstances showing a voluntary and complete renunciation of intent to commit the crime.

Renunciation means giving up, refusing, or abandoning. Renunciation does not require a statement abandoning the criminal goal. The burden is on the defendant to prove renunciation. The defendant does not have to prove renunciation beyond a reasonable doubt. Rather, the burden is on the defendant to prove renunciation by a preponderance of the evidence, which is a lower standard than beyond a reasonable doubt. It means "more likely true than not true."

If you find that the state has proved beyond a reasonable doubt each of the elements of the crime of solicitation charged in a given count but you also find that the defendant has proved by a preponderance of the evidence the affirmative defense of renunciation, then you must find the defendant not guilty on that count.

Theft in the First Degree

The crime of theft in the first degree exists where the state has proven beyond a reasonable doubt each of the following elements:

(1) the defendant intended to deprive another of property or to appropriate the property of another to himself, herself, or a third person;

(2) the defendant obtained the property of another; and

(3) the value of the property was $25,000 or more.

Assault in the First Degree by Use of a Dangerous Instrument

Parker MacLaine, the defendant in this case, has been charged with the crime of assault in the first degree by use of a dangerous instrument. To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt each of the following elements:

(1) the defendant caused serious physical injury to another person;

(2) the defendant caused the injury recklessly; and

(3) the defendant caused the injury by means of a dangerous instrument.

A "dangerous instrument" means any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury.

Assault in the First Degree Under Circumstances Manifesting Extreme Indifference to the Value of Human Life

Parker MacLaine, the defendant in this case, has been charged with assault in the first degree under circumstances manifesting extreme indifference to the value of human life. To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt each of the following elements:

(1) the defendant's conduct caused serious physical injury to another person;

(2) the defendant knowingly engaged in the conduct; and

(3) the conduct was performed under circumstances manifesting extreme indifference to the value of human life.

"Extreme indifference to the value of human life" means extreme recklessness. In deciding whether the defendant's conduct manifested extreme indifference to the value of human life, you must consider the following factors:

(a) the social utility of the defendant's conduct;

(b) the magnitude of the risk the defendant's conduct created, including both the nature of the harm that was foreseeable by the defendant and the likelihood that the defendant's conduct would cause that harm;

(c) the defendant's knowledge of the risk; and

(d) any precautions the defendant took to minimize the risk.

Arson in the First Degree

Parker MacLaine, the defendant in this case, has been charged with the crime of arson in the first degree. To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt each of the following elements:

(1) the defendant intentionally damaged any property by starting a fire or causing an explosion, and

(2) by that act recklessly placed another person in danger of serious physical injury.

Criminal Mischief in the Third Degree

Parker MacLaine, the defendant in this case, has been charged with the crime of criminal mischief in the third degree. To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt the following:

(1) the defendant recklessly created a risk of damage to property of another by use of widely dangerous means;

(2) the defendant had no right to do so or any reasonable ground to believe that the defendant had such a right; and

(3) the risk of damage was in an amount exceeding $100,000.

A "widely dangerous means" means any difficult-to-confine substance, force, or other means capable of causing widespread damage, including fire, explosion, avalanche, poison, radioactive material, bacteria, collapse of a building, or flood.

Ronald L. Plate v. State of Alaska, 925 P.2d 1057, 1064–1067

Does Alaska Evidence Rule 506 Prohibit the State from Introducing Testimony Concerning Plate's Conversation with a Pastor from his Church?

In 1987, S.P.'s sister K.V.A. reported to a school administrator that Plate had sexually abused her. Tom Johnson, the Plate family's church pastor, accompanied the school administrator to speak to Plate about this allegation. At first, Plate denied the abuse. In response, the two men told Plate that they wanted to help him and his family, but if Plate was not willing to accept their help, then they would report K.V.A.'s allegations to the police.

Later that same evening, Plate telephoned Johnson and acknowledged that he had abused K.V.A. According to Johnson, Plate "agreed to get together with me and work out whatever needed to be worked out". Plate and Johnson had several subsequent meetings. At one of these meetings, Johnson asked Plate to tell him what had occurred between him and K.V.A. Plate corroborated K.V.A.'s account of the sexual abuse: he admitted to Johnson that he had pinned K.V.A. to the floor, then had raised her shirt and fondled her breasts.

As noted above, Plate took the stand at his trial and denied that he had ever sexually abused or improperly touched any of his three stepdaughters. In response, the State called Johnson as a rebuttal witness. Plate objected, arguing (among other things) that his communications with Johnson were privileged under Alaska Evidence Rule 506, which deals with communications to a member of the clergy. Under Evidence Rule 506(b), "[a] person has a privilege to ... prevent another from disclosing a confidential communication by the person to a member of the clergy in that individual's professional character as spiritual advisor." Judge Cranston held a hearing on whether Plate's statements to Johnson were covered by Rule 506.

At this hearing (out of the presence of the jury), Johnson testified that he had not promised confidentiality to Plate during their meetings, and that he did not consider those meetings to be counseling sessions. In fact, Johnson testified that he never provided counseling to Plate. After hearing Johnson's voir dire testimony, Judge Cranston ruled that Plate's communications with Johnson were not privileged. The judge therefore ruled that the State would be allowed to present Johnson as a witness.

Immediately following this ruling, Plate sought reconsideration. Taking the stand, Plate testified that he had believed that his conversations with Johnson were confidential. Plate testified that he met with Johnson in Johnson's office with the door closed. Plate further testified that Johnson indicated to him that nothing Plate said would be repeated to other members of the church.

Responding to Plate's testimony, the State called Douglas McAuliffe, a church elder, to supplement the record on this issue. McAuliffe testified that he had spoken to Johnson in 1987 about the allegation of sexual abuse because, as a church elder, he wanted to know what was going on. Johnson told McAuliffe that Plate had admitted sexually abusing K.V.A. McAuliffe testified that if the situation had not been satisfactorily resolved, then Plate's admissions would have been reported to the congregation.

Following this additional testimony, Judge Cranston again found that Plate's statements to Johnson were not intended to be confidential, and thus Johnson could testify about these statements.

On appeal, Plate argues that this was error. He contends that Judge Cranston improperly resolved the question of confidentiality by relying on Johnson's intent rather than on Plate's intent. This issue turns on the meaning of Rule 506(a)(2): "A communication is confidential [for purposes of Rule 506] if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication."

Rule 506(a)(2) directs trial judges to determine whether a conversation was "made privately" and was "not intended for further disclosure". A trial judge confronted with this task might naturally ask, "Who among the participants to the conversation must intend that there be no further disclosure of the conversation?" Because Rule 506(a)(2) is phrased in the passive voice, it fails to provide a clear answer to this question.

The commentary to Evidence Rule 506 does not address this question, although it does state that the definition in 506(a)(2) is modeled after the definitions of "confidential communication" in Evidence Rule 503(a)(5) (attorney-client privilege) and Evidence Rule 504(a)(4) (physician-patient and psychotherapist-patient privileges). Consulting the commentary to Evidence Rule 503(a)(5), we again find the desired answer hiding behind the passive voice:

> The requisite confidentiality of communication is defined in terms of intent. A communication made in public or meant to be relayed to outsiders or which is to be divulged by the client to third persons can scarcely be considered confidential. Unless intent to disclose is apparent, the attorney-client communication is confidential.

The commentary, like the rule, fails to specify whose intent controls the privacy of the conversation. However, in Farrell v. Anchorage, 682 P.2d 1128 (Alaska App.1984), this court indicated that the scope of the privilege is determined by the reasonable expectations of the person seeking the consultation. In particular, this court stated that "the scope of privacy accorded to an attorney-client conversation must in part depend upon the reasonable expectations of the client". Farrell, 682 P.2d at 1131 n. 3.

For instance, in Blackmon v. State, 653 P.2d 669 (Alaska App.1982), this court held that the attorney-client privilege prevented a state trooper from testifying to parts of an attorney-client conversation that he had overheard while guarding the defendant in court. The court found that the conversation was protected by the privilege because (1) the defendant "plainly ... intended to have a secret conversation with [his attorney]" and (2) the defendant took "[r]easonable precautions ... not to have the conversation overheard". Blackmon, 653 P.2d at 671. Summarizing its view of the matter, this court stated: "The essence of the lawyer-client privilege is ... that the client reasonably intend his communication with counsel to be confidential." Id.

In one key respect, Farrell and Blackmon are not directly applicable to Plate's case. In both Farrell and Blackmon, there was no question that the attorneys and their clients shared the

same expectation that their conversations were to be private. Plate's case, on the other hand, presents the issue of whether a conversation is privileged when the person who has come for the professional consultation and the professional who is being consulted have differing expectations concerning the privacy of the conversation. Notwithstanding this difference, Farrell and Blackmon strongly suggest that the privacy of a communication is governed by the reasonable expectations of the person who is seeking the consultation.

We note that the privilege belongs to the person seeking the consultation with a lawyer, doctor, or clergyman. See Evidence Rules 503(b), 504(b), and 506(b). We further note that Evidence Rules 503, 504, and 506 use a "reasonable expectations" test to resolve a related issue: is a communication privileged if the person who has come for the consultation mistakenly believes that the person being consulted is a lawyer, a physician, or a clergyman? The answer, according to Evidence Rules 503(a)(3), 504(a)(2), and 506(a)(1), is that the communication is privileged if the person seeking the consultation reasonably believed that the person he or she was talking to was a lawyer, physician, or clergyman.

This "reasonable expectations" analysis, when applied to the clergy-communicant problem in Plate's case, suggests that the scope of the privilege depends on the reasonable expectations of the person consulting the clergyman. The person consulting the clergyman must believe that the conversation is to remain private, and the person's belief in the privacy of the conversation must be reasonable.

Federal case law supports this conclusion. Exercising its authority under Federal Evidence Rule 501 to continue the common-law development of the evidentiary privileges, the Third Circuit defined the scope of the clergy-communicant privilege this way: "[T]he privilege ... protect[s] communications made (1) to a clergyperson (2) in his or her spiritual and professional capacity (3) with a reasonable expectation of confidentiality." In re Grand Jury Investigation, 918 F.2d at 384. The party asserting the privilege bears the burden of proving that the contested communication is protected by the privilege. Id. at 385 n. 15.

For these reasons, we conclude that Alaska's Evidence Rule 506(a)(2) should be interpreted to require the person claiming the privilege to prove four things: first, that he or she subjectively believed that the conversation with the clergyman was being held in private; second, that this belief was reasonable under the circumstances; third, that he or she intended that the communication not be disclosed to anyone except in furtherance of its purpose (obtaining spiritual guidance from the clergyman); and fourth, that he or she reasonably believed that this intention was shared by the clergyman.

Turning to the facts of Plate's case, the first and second elements are not disputed; both Plate and Johnson testified that their conversation was held in private. This leaves the third and fourth elements. Plate testified that he believed his conversation with Johnson would be held in confidence. Judge Cranston found that Johnson gave Plate no guarantee of confidentiality, or at most a conditional promise of confidentiality (that the conversation would go no further only if Plate underwent counseling to resolve his sexual mistreatment of his stepdaughter).

The problem here is that Judge Cranston's findings seem to be framed in terms of how Johnson viewed the conversation. Because two people can conceivably have differing, reasonable views of a conversation, Judge Cranston's findings are at least potentially consistent with Plate's testimony that he personally believed the conversation would be confidential. And neither Plate's testimony nor Judge Cranston's findings resolve the fourth element of Plate's claim of privilege: assuming that Plate subjectively expected his conversation with Johnson to be held in confidence, was Plate's expectation reasonable under the circumstances?

Judge Cranston was the finder of fact regarding Plate's claim of privilege. The judge was entitled to disbelieve Plate's testimony and find that Plate had no subjective expectation of confidentiality. However, Judge Cranston's ruling does not directly address the credibility of Plate's assertion. Instead, Judge Cranston's ruling is framed in terms of what Johnson expected.

Johnson's expectations concerning the conversation are relevant, but only to the extent that they were communicated to Plate. If Johnson told Plate that their conversation would not be held in confidence, or would be held in confidence only if certain conditions were met, this fact would clearly be important when assessing the credibility and the reasonableness of Plate's professed belief that the conversation was confidential. Compare La Moore v. United States, 180 F.2d 49, 54 (9th Cir.1950), in which the defendant claimed that a conversation was protected by the attorney-client privilege, but the other party to the conversation (the attorney) testified that he was not representing the defendant. The appeals court held that if, based on this testimony, the trial judge concluded that the defendant did not have a reasonable belief that the attorney was representing him, then the conversation was not protected by the attorney-client privilege.

On the other hand, if Johnson held a private, unexpressed intention to reveal his conversation with Plate if the sexual abuse problem was not properly resolved, this fact would not be inconsistent with Plate's claim of privilege. It is Plate's expectations that govern, so long as Plate's expectations were reasonable under the circumstances.

From the record before us, we can not tell how Judge Cranston resolved the two crucial issues: (1) what was Plate's subjective expectation regarding the conversation, and (2) if Plate subjectively believed that the conversation was to be confidential, was Plate's belief reasonable? We therefore can not resolve Plate's claim of privilege in this appeal. If Plate is retried, and if the State again offers Johnson as a witness, the superior court should renew its consideration of this issue and should enter findings that address the elements of the clergyman-communicant privilege explained in this opinion.

United States v. Richard J. Gordon, 655 F.2d 478, 486 (2d. Cir. 1981):

Gordon argues that the district court should not have admitted the testimony of his employee James Meyers, a priest employed while on leave of absence from his church. Gordon contends that Meyers' testimony was based on conversations protected by the priest-penitent privilege. We find this argument wholly without merit. The district court correctly concluded that the conversations between Gordon and Meyers related to business relationships, not spiritual matters, and that Meyers was enlisted by Gordon to procure the business of Norbert Meister.

State of Minnesota v. Thomas Rhodes, 627 N.W.2d 74, 85 (Minn. 2001):

Finally, appellant argues that the district court erroneously allowed Pastor Wieland to testify about the conversation he had with appellant upon returning to shore with the volunteer ambulance team. The burden is on the party asserting the clergy privilege to show he was seeking spiritual aid in a confidential conversation when he spoke with a member of the clergy. The privilege does not apply where a member of the clergy receives nothing more than an ordinary description of the events.

In the instant case, the record does not conclusively show that appellant knew on the night in question that Wieland was a pastor. Although Wieland agreed that the conversation took place while Wieland "talked * * * as a pastor," and that appellant "fell on his hands and knees" during a separate conversation the next morning, these statements do not indicate that appellant fell on his knees in the religious sense or that he knew Wieland was speaking as a pastor. Nor does the record show that appellant, standing in the lobby of the inn, gave Wieland anything more than a general description of the night's events. Thus, appellant has not satisfied his burden of proving that the conversation was both ministerial and confidential.

RULES GOVERNING THE ALASKA HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP COMPETITION

CONTENTS

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time
Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes
Rule 405. Methods of Proving Character
Rule 406. Habit; Routine Practice
Rule 407. Subsequent Remedial Measures
Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements
Rule 411. Liability Insurance (civil case only)

C. *Privileges*
Rule 501. General Rule
Rule 506 Communications to Clergy

D. *Witnesses*
Rule 601. General Rule of Competency
Rule 602. Lack of Personal Knowledge
Rule 607. Who may Impeach
Rule 608. Evidence of Character and Conduct of Witnesses
Rule 609. Impeachment by Evidence of Conviction of Crime (this rule applies only to witnesses with prior convictions)
Rule 610. Religious Beliefs or Opinions
Rule 611. Mode or Order of Interrogation and Presentation
Rule 612. Writing Used to Refresh Memory
Rule 613. Prior Statements of Witnesses

E. *Opinions and Expert Testimony*
Rule 701. Opinion Testimony by Lay Witnesses
Rule 702. Testimony by Experts
Rule 703. Bases of Opinion Testimony by Experts
Rule 704. Opinion on Ultimate Issue
Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

F. *Hearsay*
Rule 801. Definitions
Rule 802. Hearsay Rule
Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial
Rule 804 Hearsay Exceptions – Declarant Unavailable
Rule 805. Hearsay within Hearsay

I. RULES OF THE COMPETITION

A. GOVERNING RULES

Rule 1. Competition Coordinators

The Alaska High School Mock Trial Championship is sponsored by the Anchorage Bar Association, Young Lawyers Section. A committee comprised of interested members of that organization and other persons, as appropriate, shall organize and oversee all aspects of the competition, and shall be referenced as the competition coordinators. All correspondence with the competition coordinators should be addressed to:

ANCHORAGE BAR ASSOCIATION
YOUNG LAWYERS SECTION
P.O. BOX 100844
ANCHORAGE, AK 99510-0844
Attn: MOCK TRIAL

Rule 2. Interpretation of the Rules

All trials will be governed by the current Alaska High School Mock Trial Championship's Rules of Competition and Rules of Procedure and by the Federal Rules of Evidence (Mock Trial Version). Interpretation of the rules is within the discretion of the competition coordinators, whose decisions are final. Any clarification of rules will be issued in writing to all participating teams. Teams who believe that clarification is needed should request clarification in writing.

Rule 3. Code of Conduct

The Competition rules, as well as proper rules of courthouse and courtroom decorum and security must be followed. The Competition Coordinators will have discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program.

Rule 4. Emergencies

During a trial, the presiding judge or the competition coordinators shall have discretion to declare an emergency and adjourn the trial for the period of time necessary to address the emergency. If an emergency arises which would cause a team to be unable to continue a trial, or require it to participate with less than six members, the competition coordinators shall have the discretion to determine how to proceed.

Rule 4.5. Food and Beverages in the Courtrooms

Food and beverages – including water – are NOT ALLOWED in the courtroom at any time. After receiving a warning, teams that fail to follow this rule are subject to forfeiture of rounds and/or disqualification. Water will be available during the trial for the participating lawyers and witnesses.

B. THE PROBLEM

Rule 5. Case Materials

The problem will be an original fact pattern which may contain any or all of the following: statement of facts, indictment or complaint, stipulations, witness statements/affidavits, jury charges, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

Teams who believe that errors exist in the case materials should bring such errors to the attention of the competition coordinators in writing prior to the start of the competition. Any clarification of case materials will be issued in writing to all participating teams. In preparing and participating in the Competition, students are limited to the supplied case materials, the Governing Rules and the Modified Rules of Evidence.

Participants are not allowed to introduce at trial cases or exhibits not included in the case materials. Reasonable extrapolation will be allowed as explained in Rule 7.

Rule 6. Witness Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement or as explicitly allowed by the case materials. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 7, outside the scope of the problem.

If, in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony.

A witness is not bound by the facts contained in other witness statements.

Rule 7. Unfair Extrapolation

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral. Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation.

If a witness is asked information not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case.

Consistent with the obligation to attack unfair extrapolations through impeachment and closing arguments, attorneys for the opposing team may refer to Rule 7 in a special objection, such as "unfair extrapolation" or "information is beyond the scope of the statement of facts."

Possible rulings by a judge include:

a. No extrapolation has occurred;
b. An unfair extrapolation has occurred;
c. The extrapolation was fair; or
d. Ruling is taken under advisement.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings. The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

Rule 8. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any team member may portray the role of any witness of either gender. Please try to be mindful of the genders of the witnesses portrayed by the opposing team.

Rule 9. Voir Dire

Voir dire examination of a witness is not permitted.

C. THE TRIAL

Rule 10. Team Eligibility

Any Alaska high school may assemble one or more teams and become eligible to compete in the Alaska High School Mock Trial Championship Competition. Two or more Alaska high schools may jointly form a team if each school participating in the formation of a joint team would otherwise be unable to participate in the Alaska High School Mock Trial Championship Competition. Educational and civic organizations which are 1) independent of any Alaska high school, 2) not formed primarily for the purpose of competing in the Alaska High School Mock Trial Championship Competition, and 3) comprised of high school students residing in Alaska, may assemble one or more teams and become eligible to compete in the Competition. Alaska high schools wishing to form a team but not qualifying under this Rule may timely request that an exception to this Rule be granted by the competition coordinators. A decision by the competition coordinators as to eligibility under this Rule or an exception to this Rule shall be final. Any team wishing to participate in the Alaska High School Mock Trial Championship Competition must properly register with the competition coordinators in advance of the competition. The competition coordinators will attempt to accommodate all registrants. Any school or other organization wishing to enter multiple teams must designate a "first" team. In the unlikely event that registration must be limited as a result of too many teams attempting to participate, priority will be given to the "first" team over other teams from the same school or organization. In all other aspects, registration will be permitted on a first come, first served basis. Registration will only be limited if the number of teams registered exceeds the capacity of the facilities where the competition is held.

The team that wins the Alaska High School Mock Trial Championship Competition will be deemed the current Alaska State Mock Trial Championship Team and is eligible to participate and compete in the National High School Mock Trial Championship. Any team representing Alaska in the National High School Mock Trial Championship must be comprised of students who participated on the current Alaska State Mock Trial Championship team. A team intending to compete in the National High School Mock Trial Championship *must* bring at least seven members to the National Championship. Teams eligible for the National Championship may decline to participate, in which case eligibility will pass to the next highest finishing team in the Alaska Competition. The Alaska State Mock Trial Championship Team is responsible for its

own expenses in attending the National High School Mock Trial Championship Competition. Registration fees (estimated at $300) incurred by the Alaska State Mock Trial Championship Team in conjunction with participation in the National High School Mock Trial Championship Competition may be paid by the competition sponsors to the extent that budgetary constraints will permit. The Anchorage Bar Association, Young Lawyers Section, may be prohibited from contributing any funds for travel and related expenses.

Rule 11. Team Composition

Teams consist of no less than **six** members and no more than **nine** members, including alternates. Team members are assigned to attorney and witness roles representing the Prosecution/Plaintiff and Defense/Defendant sides in each round of the competition. For each match, a team is required to provide three attorneys and three witnesses, as described below in Rule 12. Teams may rotate participants between rounds at their discretion.

Rule 12. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members. Different sides will be assigned to teams for different rounds. Only in the case of an emergency may a team participate with less than six members. In such a case, a team may continue in the competition by making substitutions to achieve a two attorney/three witness composition. If an emergency causes a team to use less than three attorneys, the team may be penalized by a reduction of points for that round or may be caused to forfeit the round, depending on the nature of the emergency. Final determinations of emergency, forfeiture, or scoring record will be made by the competition coordinators and are solely at their discretion. If a coach knows his or her team might not be able to field the required six members for a given round, the coach should notify the competition coordinators as soon as possible.

Rule 13. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct and one cross; in addition, one will present the opening statement and another will present a closing argument. The principal attorney duties for each team will be as follows:

1. Pre-Trial Motion (if required by case)
2. Opening Statement
3. Direct Examination of Witness #1
4. Direct Examination of Witness #2
5. Direct Examination of Witness #3
6. Cross Examination of Opposing Witness #1
7. Cross Examination of Opposing Witness #2
8. Cross Examination of Opposing Witness #3
9. Closing Argument

Opening Statements must be given by both sides at the beginning of the trial.

The attorney who will examine a particular witness on direct examination is the only person who may make objections to the opposing attorney's questions of that witness's cross-

examination, and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.

Each team must call three witnesses. Witnesses must be called only by their own team and examined by both sides. Although re-direct and re-cross are permissible, witnesses may not be recalled to the stand after their testimony is complete. Thus, once a witness is excused and steps down, neither team may recall the witness for further questioning even if no re-direct or re-cross was previously conducted.

Rule 14. Swearing of Witnesses

The following oath, or a similar oath permitted by the presiding judge, may be used before questioning begins:

> "Do you promise that the testimony you are about to give faithfully and truthfully conforms to the facts and rules of the mock trial competition?"

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate that all witnesses are to be sworn in collectively at the start of the competition, or the above oath will be conducted by the presiding judge upon the calling of each witness. The presiding judge shall indicate which method will be used during any given round of the Mock Trial Competition. Witnesses must stand during the oath unless physically unable to do so.

Rule 15. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
3. Direct and (optional) Redirect Exam (20 minutes total per side)
4. Cross and (optional) Recross Exam (15 minutes total per side)
5. Closing Argument (5 minutes per side)

Teams will not be given additional time for failure to budget time improperly. The Prosecution/Plaintiff is the first to present the opening statement and give the closing argument. The Prosecution/Plaintiff may reserve a portion of the time allotted for closing argument to present a rebuttal. Rebuttal is limited to the scope of the opposing side's argument.

Rule 16. Timekeeping

Time limits are mandatory and will be enforced. Where possible, teams will be permitted to have one additional student at the table with the attorneys. This student must be a team member but need not be a witness in that particular match. This person may serve as a student timekeeper, but may not consult with the student attorneys other than to convey available time. Student timekeepers are not considered "official timekeepers" in the tournament. In criminal trials, the timekeeper may be the Defendant if the team so chooses, but teams will not be allowed an additional timekeeper at the table in addition to the Defendant. Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements. Time does not stop for the introduction of exhibits.

Rule 17. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring judges may determine individually whether or not to discount points in a category because of over-runs in time.

Rule 18. Prohibited Motions

Except as provided in these Rules, no motions may be made. (A motion for directed verdict, acquittal, or dismissal of the case at the end of the Prosecution's case, for example, may not be used.) A motion for a recess may be used in the event of an emergency (i.e., health emergency). To the greatest extent possible, team members are to remain in place. Should a recess by called by the court, teams are not to communicate with any observers, timekeepers, coaches, or instructors during the recess.

Rule 19. Sequestration

Teams may not invoke the rule of sequestration.

Rule 20. Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should normally be conducted in such a manner that all participants, scoring judges, instructors, alternates, and other courtroom observers can hear the arguments and discussions in their entirety. This Rule is designed to further the educational interests of the Alaska High School Mock Trial Competition. Bench conference time shall not be counted against the time allotted to either team.

Rule 21. Supplemental Materials/Illustrative Aids

Teams may refer only to the materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials.

Rule 22. Trial Communication

Instructors, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This Rule remains in force during any recess time that may occur during the course of the trial. Team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' own timekeepers shall not be considered a violation of this Rule. Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in a round may sit inside the bar during that round.

Rule 23. Viewing a Trial

Each team is responsible for the conduct of its members and persons associated with the team throughout the duration of the mock trial competition. Team members, alternates, attorney-coaches, teacher-sponsors, and any other persons directly associated with a mock trial team may view their team competition, but otherwise, except when specifically authorized by the competition coordinators, are not allowed to view other teams in the competition.

Nothing may be brought into the courtroom which would tend to reveal the identity of the participating teams. Spectators should be cautioned that they may not wear school insignias. School owned equipment should have all identifying marks covered.

Rule 24. Videotaping/Photography/Audiotaping

Any team may videotape or audiotape a competition round in which it participates for its own educational purposes only. With the consent of an opposing team, any team may videotape or audiotape a competition round for any other purpose. Bright camera lights, flash bulbs and equipment tending to distract the competitors may be barred in the discretion of the presiding judge. Disruptive conduct in the course of taping, filming, or taking photographs is prohibited, and may result in a penalty against the team responsible for the conduct of the offending photographer.

If school owned equipment is employed for video or audiotaping, identifying information must not be visible on such equipment that might be seen by a judge.

Media coverage will be allowed in accordance with the policies of the competition coordinators. Competition coordinators will be permitted to photograph or otherwise record the competition for promotional purposes.

D. JUDGING

Rule 25. Decisions

All decisions of the judges are FINAL.

Rule 26. Composition of the Judging Panel

The judging panel will consist of individuals determined to be eligible by the competition coordinators. Generally, the competition judges are members of the Alaska judiciary or attorneys practicing in Alaska. Qualified educators, paralegals, and other persons may also be invited by the competition coordinators to participate as Mock Trial judges. The composition of the judging panel and the role of the presiding judge will be at the discretion of the competition coordinators. For preliminary rounds, one presiding judge and at least one additional scoring judge will be appointed by the competition coordinators to judge the round. The final (championship) round may have a larger judging panel than preliminary rounds, at the discretion of the competition coordinators.

All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing as to the case, the role of judges, and the standards to be applied. These materials will not be available to the team members.

Rule 27. Score Sheets

The presiding judge and each additional scoring judge shall complete a "score sheet" for each trial conducted in each round of the competition. Judges' score sheets will be substantially like the sample provided by the competition coordinators to each team. When evaluating the teams that each judge observes in the competition, the judges will reference the teams only by their assigned identification codes.

Score sheets are to be completed individually by the judges and without consultation with the other judges. Scoring judges are not bound by the rulings of the presiding judge. While the

judging panel may confer within guidelines established by the competition coordinators, the judging panel should not deliberate on individual scores.

There will be a space on the score sheet for judges to deduct points at their discretion if a team exhibits poor courtroom etiquette or makes excessive unwarranted objections. At the option of the competition coordinators, there may be a mechanism for awarding certificates of recognition based on individual performance.

Rule 28. Completion of Score Sheets

Score sheets are completed by the judges as follows:

1. Trial Points:
   Each judge will award and record a number of points for each aspect of the trial. Points will be awarded from a scale of 1 to 9, with 9 being the highest. Judges are required to complete the ballots in their entirety.
2. Final Point Total:
   A team is determined to be the winner of a round when that team wins a majority of the points cast by the judges scoring a given trial. If the opposing teams for a given round each receive the same number of points for that trial, the competition coordinators shall consider the judges' determinations of tiebreaker points, as provided in the tiebreaker box at the bottom of each scoresheet.

A forfeiting team will receive a loss for purposes of ranking. If a trial cannot continue due to forfeiture, the non-forfeiting team shall be considered to have won by default. A non-forfeiting team will not be penalized in ranking by any inability to receive points from scoring judges. The non-forfeiting team will be awarded the average number of points from its remaining rounds.

Rule 29. Team Advancement

Teams will be ranked based on the total number of points received for all rounds. The two teams emerging with the strongest record from the preliminary rounds will advance to the final round. In the event of a tie, the advancing team will be determined by the overall win-loss record in the preliminary rounds, then if necessary by head-to-head competition (if any) between the tied teams, and finally by the total number of highest scores (9 out of 9) on all score sheets combined.

Score sheets from the championship round will determine the current Alaska State Mock Trial Championship Team only.

Rule 30. Selection of Opponents for Each Round

A random lottery will be conducted prior to the competition for the purpose of assigning team identification designations. The schedule governing the assignment of opponents will designate which team is to present the Prosecution/Plaintiff's case and which is to present the Defense/Defendant's in each round. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Every effort will be made to ensure that each team will present each side twice, but all teams will be scheduled to present each side of the case at least once. Individual teams will be sent their schedule the Tuesday before the competition. Coaches should immediately notify the competition coordinators of any scheduling conflicts.

Rule 31. Merit Decisions

Judges will make a ruling on the legal merits of the trial, after deliberating. During the debriefing process, judges may inform students of the verdict on the merits of the case. Judges may not inform the students of score sheet results.

Rule 32. Effect of Bye

A "bye" becomes necessary when an odd number of teams are present for the tournament. If an odd number of teams are competing, an additional round will be scheduled, during which those teams receiving a bye will compete against each other. Any team receiving a bye must not observe other teams competing during the round in which the bye was drawn.

E. DISPUTE SETTLEMENT

Rule 33. Reporting a Rules Violation Inside the Bar

Disputes which (a) involve students competing in a competition round and (b) occur during the course of a trial must be filed immediately upon conclusion of the trial. Disputes must be brought to the attention of the presiding judge at the conclusion of the trial. If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The presiding judge will instruct the student attorney to prepare a notice of dispute, in which the student will record in writing the nature of the dispute. The student may communicate with counsel and/or student witnesses before lodging the notice of dispute or in preparing the form. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure permitted under this Rule.

Rule 34. Dispute Resolution Procedure

Upon receipt of a Rule 33 notice of dispute, the presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce his/her decision to the Court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a representative. After the designated representatives have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's designated representative three minutes for a presentation. The judge may question the designated representatives. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider his/her ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 35. Effect of Violation on Score

If any judge, whether presiding or scoring, observes independently that a substantial rules violation has occurred, or if the presiding judge makes such a determination in accordance with Rule 34, the judge will inform each of the other judges for that trial. The presiding judge shall

inform all other judges who score a trial in which a notice of dispute is submitted of the nature and existence of the dispute, and in the event that some or all of the scoring judges are not present for resolution of the dispute, the presiding judge shall provide a summary of each team's argument and any decision rendered as to the dispute. Each scoring judge will consider the dispute before reaching his or her final decisions. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges.

Rule 36. Reporting of Rules Violation Outside the Bar

Disputes which arise from matters not governed by Rule 33 may be brought exclusively by a team's official faculty advisor or attorney-coach. Such disputes must be made promptly to the competition coordinators, who may ask the complaining party to state the complaint in writing. The competition coordinators will select and appoint a dispute resolution panel which will (a) notify all pertinent parties; (b) allow time for a response, if deemed by the dispute resolution panel to be appropriate; (c) investigate, if deemed by the dispute resolution panel to be appropriate; (d) conduct an informal hearing, if deemed by the dispute resolution panel to be appropriate; and (e) rule on the charge. The dispute resolution panel may notify the judging panel of the affected courtroom of the ruling on the charge.

II. RULES OF PROCEDURE

A. BEFORE THE TRIAL

Rule 37. Team Roster

Copies of the team roster must be completed and duplicated by each team prior to arrival for trial. Teams must be identified ONLY by the code assigned at registration. No information identifying a team's city or school of origin should appear on the form or any materials brought into the courtroom. Before beginning a trial, the teams must exchange copies of the Team Roster Form. Copies of the Team Roster Form should also be made available to the judging panel before each round.

Rule 38. Stipulations

When the Court asks the Prosecution/Plaintiff if it is ready to proceed with opening statements, the attorney assigned the opening statement should offer the stipulations into evidence.

Rule 39. The Record

The stipulations, indictment, and charge to the jury, if any, will not be read into the record.

B. BEGINNING THE TRIAL

Rule 40. Jury Trial

The case will be tried to a jury consisting of the scoring judge(s), who shall serve as the official timekeeper(s). Arguments are to be made to the judge and jury. Teams may address the scoring judges and any other persons permitted by the presiding judge to sit in the jury box as the jury.

Rule 41. Standing During Trial

Unless excused by the presiding judge, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections.

Rule 42. Objection During Opening Statement/Closing Argument

No objections may be raised during opening statements or during closing arguments.

If a team believes an objection would have been necessary during the opposing team's closing argument, a student-attorney, following the closing arguments, may seek to be recognized by the presiding judge and may say "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that _____." The presiding judge need not rule on this "objection." Presiding and scoring judges will weigh the "objection" individually. No rebuttal by the opposing team will be heard.

C. PRESENTING EVIDENCE

Rule 43. Argumentative Questions

An attorney shall not ask argumentative questions, except that the Court, may, in its discretion, allow limited use of argumentative questions on cross-examination.

Rule 44. Admission of Evidence

Attorneys shall lay a proper foundation prior to moving for the admission of evidence. After motion has been made, the exhibits may still be objected to on other grounds. Objections not made upon an attempt to admit evidence as an exhibit will be considered waived.

Rule 45. Procedure for Introduction of Exhibits

The following steps are *examples* by which evidence may be effectively introduced:

1. All evidence will be pre-marked as exhibits.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. ___?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. "I now hand you what has been marked as Exhibit No. ____ for identification."
6. Ask the witness to identify the exhibit. "Would you identify it please?"
7. Witness answers with identification only.
8. Offer the exhibit into evidence.

9. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
10. Opposing Counsel: "No, your Honor," or "Yes, your Honor." If the response is "yes", the objection will be stated on the record. Court: "Is there any response to the objection?"
11. Court: "Exhibit No. ____ is/is not admitted."

Rule 46. Admission of Expert Witnesses

If a team wishes to admit a witness as an expert in a particular area of knowledge, the attorney performing the direct examination must establish foundation to the satisfaction of the presiding judge for admission as an expert. Voir dire by the opposing attorney will not be allowed, but the opposing attorney may object that insufficient foundation has been laid.

Rule 47. Use of Notes

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes.

Rule 48. Redirect/Recross

Redirect and recross examinations are permitted, provided that they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence (Mock Trial Version).

D. CLOSING ARGUMENTS

Rule 49. Scope of Closing Arguments

Closing arguments must be based on the actual evidence and testimony presented during the trial. Attorneys may not cite to affidavits of witnesses not called at trial.

E. CRITIQUE

Rule 50. The Critique

The judging panel is allowed time for debriefing at their option and time permitting. Judges will not reveal the scores attributed by them to individual performances, nor will they reveal which team was the winner of the round on the scoring sheets. The judges may announce the winner of the case on the merits and may discuss or comment upon the presentations in furtherance of the educational interests of the Alaska High School Mock Trial Competition.

III. MODIFIED RULES OF EVIDENCE
(Alaska Mock Trial Version)

In American trials, 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 deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the Rules of Evidence (Alaska Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses. For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Alaska and Federal Rules of Evidence and their (shared) numbering system. When rule numbers or letters are skipped, those rules were deemed not applicable to mock trial procedure. Text in italics represents simplified or modified language from the Alaska and Federal Rules of Evidence. Departures from the actual Federal Rules of Evidence are for informational purposes only. These Rules of Evidence are to be interpreted as written.

Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate. The Mock Trial Rules of Competition and these Rules of Evidence (Alaska Mock Trial Version) govern the Alaska High School Mock Trial Championship.

Article I. General Provisions

Rule 101. Scope

These Rules of Evidence (Alaska Mock Trial Version) govern the trial proceedings of the National Mock Trial Championship.

Rule 102. Purpose and Construction

The Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.

ARTICLE II. Judicial Notice –

Rule 201. Judicial Notice of Fact

(a) Scope of Rule. This rule governs only judicial notice of facts. Judicial notice of a fact as used in this rule means a court's on-the-record declaration of the existence of a fact normally decided by the trier of fact, without requiring proof of that fact.

(b) General Rule. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within this state or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice as specified in subdivision (b), whether requested or not.

Rule 202. Judicial Notice of Law

(a) Scope of Rule. This rule governs only judicial notice of law.

(b) Without request by a party, the court shall take judicial notice of the common law, the Constitution of the United States and of this state, the public statutes of the United States and this state, the provisions of the Alaska Administrative Code, and all rules adopted by the Alaska Supreme Court.

ARTICLE III. Presumptions in Civil Actions and Proceedings – Not Applicable

ARTICLE IV. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

Relevant evidence is admissible, except as otherwise provided *in these Rules. Irrelevant evidence is not admissible.*

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, *if it confuses the issues, if it is misleading, or if it causes undue delay, wastes time, or is a needless presentation of cumulative evidence.*

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character Evidence – Evidence of a person's character or a *character trait*, is not admissible to prove *action regarding* a particular occasion, except:

(1) Character of Accused – Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;

(2) Character of Victim – Evidence of a pertinent character trait of the victim of the crime 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 aggressor;

(3) Character of witness – Evidence of the character of a witness as provided in Rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts – Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. 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.

Rule 405. Methods of Proving Character

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

(b) Specific instances of conduct – In cases in which character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Rule 406. Habit; Routine Practice

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization, on a particular occasion, was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures

When measures are taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose; such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 410. Inadmissibility of Pleas, Pleas Discussions, and Related Statements

Except as provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against a defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;

(2) a plea of *nolo contendere*;

(3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or

(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in presence of counsel.

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias, or prejudice of a witness.

Article V. Privileges

Rule 501. Privileges Recognized Only as Provided

Except as otherwise provided by the Constitution of the United States or of this state, by enactments of the Alaska Legislature, or by these or other rules promulgated by the Alaska Supreme Court, no person, organization, or entity has a privilege to:

(1) refuse to be a witness; or

(2) refuse to disclose any matter; or

(3) refuse to produce any object or writing; or

(4) prevent another from being a witness or disclosing any matter or producing any object or writing.

Rule 506. Communications to Clergy

(a) Definitions. As used in this rule:

(1) A member of the clergy is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual.

(2) A communication is confidential if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in that individual's professional character as spiritual adviser.

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The member of the clergy may claim the privilege on behalf of the person. The authority so to do is presumed in the absence of evidence to the contrary.

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless *the witness has personal knowledge of the matter*. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses.

Rule 607. Who may Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character – The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but

subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) Specific instances of conduct – Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination with respect to matters related only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime (this rule applies only to witnesses with prior convictions)

(a) General Rule – For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused had been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit – Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon, annulment, or certificate of rehabilitation – Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

(d) *Not applicable*.

(e) *Not applicable*.

Rule 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court – The Court shall exercise reasonable control over *questioning* of witnesses and presenting evidence so as to (1) make the *questioning* and presentation effective for ascertaining the truth, (2) to avoid needless use of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination – *The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.*

(c) Leading Questions – Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.

(d) Redirect/Recross – *After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on recross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.*

Rule 612. Writing Used to Refresh Memory

If a written statement is used to refresh the memory of a witness either while or before testifying, the Court shall determine that the adverse party is entitled to have the writing produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions which relate to the testimony of the witness.

Rule 613. Prior Statement of Witnesses

Examining witness concerning prior statement – In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

Extrinsic evidence of prior inconsistent statement of witness – Extrinsic evidence of prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issue

(a) *Opinion or inference testimony* otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.

(b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or date, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

(a) Statement – A "statement" is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant – A "declarant" is a person who makes a statement.

(c) Hearsay – "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay – A statement is not hearsay if:
(1) Prior statement by witness – The declarant testifies at the trial or hearing and

is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by a party-opponent – The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these Rules of Evidence (Alaska Mock Trial Version)

Rule 803. Hearsay Exceptions – Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression – A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance – A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical conditions – A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purpose of medical diagnosis or treatment – Statements made for the purpose of medical diagnosis or treatment.

(5) Recorded Recollection – A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.

(6) Business Records – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that

business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(18) Learned treatises – To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.

(21) Reputation as to character – Reputation of a person's character among associates or in the community.

(22) Judgment of previous conviction – Evidence of a judgment *finding* a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

(23) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (a) the statement is offered as evidence of a material fact; (b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (c) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence.

Rule 804. Hearsay Exceptions – Declarant Unavailable.

(a) **Definition of Unavailability.** Unavailability as a witness includes situations in which the declarant

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) establishes a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), (4), or (5), of this rule, his attendance or testimony) by reasonable means including process.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) **Hearsay Exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former Testimony.* Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) *Statement Under Belief of Impending Death.* A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be his impending death.

(3) *Statement Against Interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of Personal or Family History.* (A) A statement concerning the declarant's own birth, adoption, marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Other Exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

EVALUATION GUIDELINES

The competition judges are given instructions on how to evaluate the performance of participating teams and individuals. The following guidelines, as well as additional instructions that are not included here, are included in the material provided to the competition judges. Participating teams may assume that the winning team will excel in the following ways:

ATTORNEYS: **DEMONSTRATED SPONTANEITY:**

- in response to witnesses and/or the court;
- in the overall presentation of the case; and
- in making and responding to objections, capitalizing on opportunities which arise during trial.

DEMONSTRATED COMMAND OF THE FACTS AND ISSUES in the case and attorney's understanding of the relevant points of law.

When examining witnesses, attorney **PHRASED QUESTIONS PROPERLY** and demonstrated a clear understanding of trial procedure and the simplified rules of evidence used for the mock trial competition.

The attorney's questions:

- were clearly stated, concise, and to the point;
- resulted in straightforward answers from the witness;
- brought out information important to the case; and
- brought out contradictions in testimony.

Opening statements and closing arguments were **ORGANIZED AND WELL-REASONED** presentations, with the closing argument emphasizing the strengths of the attorney's own side and addressing the flaws exposed by the opposing attorneys during trial.

WITNESSES: Testimony was **CONVINCING** and characterizations were **BELIEVABLE** and **CONSISTENT** with the affidavits and character descriptions**. PREPARATION** and **SPONTANEITY** were evident in the manner witnesses handled questions posed to them by the attorneys.

TEAMS: Courtroom **DECORUM AND COURTESY** by all team members and coaches were observed. Affiliated observers were not disruptive. All participants were **ACTIVE** in the presentation of the case.

2006 ALASKA HIGH SCHOOL
MOCK TRIAL CHAMPIONSHIP COMPETITION
(Anchorage, February 17-18, 2005)

TEAM REGISTRATION FORM
(Please CLEARLY print name and contact information)

School (Organization) Name: _____

Team Mailing Address: _____

_____

Teacher or other School Advisor: _____ T-Shirt Size: _____

Advisor Contact Phone: _____ Message Phone: _____

Advisor FAX Number: _____ **E-Mail: _____**

Attorney Coach: _____ T-Shirt Size: _____

Coach Contact Phone: _____ Message Phone: _____

Coach FAX Number: _____ **E-Mail: _____**

Student Team Members (Please print names in block lettering)

	(T-Shirt Size)		(T-Shirt Size)
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	THIS IS TEAM NUMBER _____	

Each team must have a minimum of six students members. No team may have more than nine members, including alternates. The assistance of attorney coaches is recommended, but not mandatory. Schools wishing to register more than one team may designate the same teacher or other school sponsor as the official school advisor. A different registration form must be submitted for each team. Any school wising to register multiple teams MUST indicate which team is the "First Team," "Second Team," etc. **All teams must be registered *no later than February 13, 2005.***

TO REGISTER A TEAM, PLEASE RETURN THIS FORM WITH THE REGISTRATION FEE OF $150 PER TEAM TO:

ANCHORAGE BAR ASSOCIATION
YOUNG LAWYERS SECTION
P.O. BOX 100844
ANCHORAGE, ALASKA 99510-0844