

PROJECT



NORTHLAND

# CLASS ACTION

A HIGH SCHOOL ALCOHOL-USE PREVENTION CURRICULUM  
**SECOND EDITION**

*Case 3: Benton v. Dempsey*  
**Drinking and Violence on Trial**

**Handouts:** Step Assignment Sheet

Who's Who

Prep Sheets

- Prep Sheet 1: Events of the Case
- Prep Sheet 2: Responsibilities Neglected
- Prep Sheet 3: Relevant Facts

Strategy Sheets

- Step 1: Prove Responsibility
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- Step 5: Present Expert Testimony
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Transcript of Defense Attorney's Argument

Case 3: *Benton v. Dempsey*  
**Step Assignment Sheet**

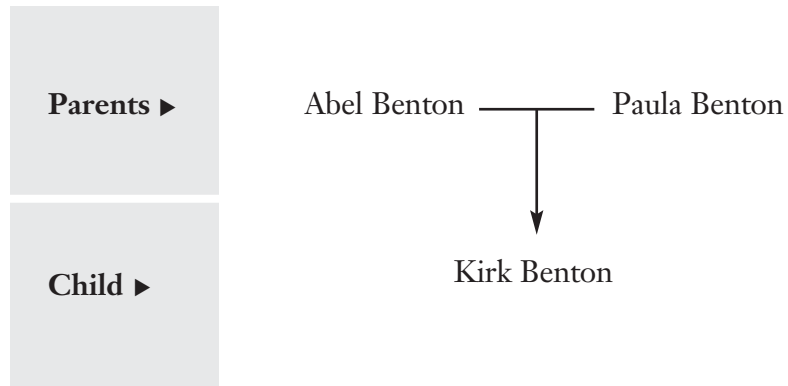
Team: \_\_\_\_\_

Steps for Building Your Case	Team Member Assignment
<b>STEP 1</b> Explain the responsibility of Lou Dempsey.	
<b>STEP 2</b> Explain how Lou Dempsey failed to meet his responsibility.	
<b>STEP 3</b> Explain the damages suffered by the Bentons.	
<b>STEP 4</b> Prove that the damages the Bentons suffered were caused by the failure of Lou Dempsey to meet his responsibility.	
<b>STEP 5</b> Conduct an interview with an emergency medical professional or volunteer to add to the evidence.	
<b>STEP 6</b> Respond to the arguments from Lou Dempsey's attorney.	
<b>BEFORE THE JURY VOTES</b> Answer questions from the jury/class.	<i>All team members</i>

Case 3: *Benton v. Dempsey*

## Who's Who

The following list shows the key individuals in your case.



**Alex Jacobs:** Deanna Wells's boyfriend; stabbed Kirk Benton

**Deanna Wells:** Former girlfriend of Kirk Benton, now dating Alex Jacobs

**Eric Howe:** Bought beer kegs illegally from Lou Dempsey

**Lou Dempsey:** Sold beer kegs illegally to Eric Howe

## Prep Sheet 1: Events of the Case

Team: \_\_\_\_\_

What happened?	How did alcohol affect what happened?
Kirk approached Alex at the party <i>before</i> the fight.	
Alex tried to ignore Kirk but refused to leave the party <i>before</i> the fight.	
There was a fight between Kirk and Alex.	
Alex stabbed Kirk.	
Teens fled the scene of the party after the fight.	

## Prep Sheet 2: Responsibilities Neglected

Team: \_\_\_\_\_

Person	Acted irresponsibly by . . .	Acted illegally by . . .
Alex Jacobs		
Deanna Wells		
Kirk Benton		
Eric Howe		
Lou Dempsey		

*Hint: Deanna Wells is the only person who did not act illegally.*

Case 3: *Benton v. Dempsey*  
**Prep Sheet 3: Relevant Facts**

Team: \_\_\_\_\_

Summary of Relevant Facts	Sources

## Step 1: Prove Responsibility (Duty)

### *Strategy Sheet*

Team Member(s): \_\_\_\_\_

Responsibility, or “duty,” as it is called in legal terms, involves acting in a way that would prevent someone from foreseeable harm. It is important to show that the harm or injury should have been anticipated or foreseen by the responsible party.

In the case of *Benton v. Dempsey*, you must demonstrate

- a. What responsibility Lou Dempsey had to anyone under the age of twenty-one who might drink from the kegs
- b. How alcohol could affect an underage drinker who might be at the keg party
- c. Why Lou Dempsey could assume that some underage drinkers might be at the party

Team members working on step 1 will have five minutes to present the opening argument. What you say will be important because everyone else will refer to your arguments and build on them. Read through the facts of the case again, including the affidavits and depositions. Fill in any more facts that you discover on your prep sheets.

#### *Strategy Steps: Preparing for the Class Presentation*

1. Begin by stating what you are going to prove in the next five minutes. This is your ***opening statement***. Write down what you will say. Be sure to emphasize the responsibility that Lou Dempsey had to Kirk Benton and the other minors at the party.
2. Back up your opening statement with facts from the case, including the affidavits and depositions. You may quote the affidavits and depositions by reading them aloud or by playing the audio recording. *Write out the facts you will present and what you will say to present them.*

3. Examine the Relevant Laws File in the casebook. Do these laws apply to your case? How can you use them to support your argument? *Write out how the **relevant laws** apply (or do not apply) to your case.*
4. Examine the Case Law File in the casebook. How can you show the jury that your arguments are similar to arguments used in these other cases? Which points made in these successful cases support the points you are making in your case? *Write out which points in your case are supported by specific arguments in **case law**.*
5. Back up your arguments with more information from the Info File. You can collect facts and opinions from experts, as well as information about related happenings in the community. This can help you explain what is reasonable for merchants like Lou Dempsey to know about underage drinking and the problems it can cause. *Write out the **additional information** you will present.*
6. At the end of your five minutes, summarize your presentation by restating what you set out to prove and emphasizing how you proved it. *Write your **summary**.*

The written statement that you prepare will need at least six paragraphs, one (or more) to address each of the six parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present. This will help you to be dramatic and convincing when you present to the jury in class.

### **Important**

Review your arguments and brainstorm counterarguments that Lou Dempsey's attorney might make for each point. Prepare to answer these counterarguments with evidence. *Write your **counterarguments**.*

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## Step 2: Prove That Responsibility Was Not Met (Breach of Duty)

### *Strategy Sheet*

Team Member(s): \_\_\_\_\_

You will prove that there was a breach of duty in the case of *Benton v. Dempsey*. An important part of breach of duty concerns doing what is reasonable to prevent someone from foreseeable harm. You must show that, given the responsibility that Lou Dempsey had to Kirk Benton and the other teens at the party, he was guilty of failing to meet that responsibility. You must show that Lou Dempsey should have been aware that there were many possible consequences of his selling beer kegs to someone under the age of twenty-one.

Team members working on step 2 will have five minutes to convince the jury that Lou Dempsey failed to meet his responsibility to both Kirk Benton and Alex Jacobs. It is important to show (a) that a reasonable adult could anticipate or foresee the harm that occurred and (b) what reasonable action an adult could have taken to prevent that harm.

Remember that in the end your legal team will be proving that it was the alcohol that Alex and Kirk drank that caused the violence at the keg party. This case must show how the alcohol helped to cause the stabbing.

Your presentation will have to build on what your team member(s) presented in step 1. It is important that you meet with this person so you know what he or she will be saying. Read through the facts of the case again, including the affidavits and depositions. Fill in any more facts that you discover on your prep sheets.

#### *Strategy Steps: Preparing for the Class Presentation*

1. Begin by stating what you are going to prove in the next five minutes. This is your *opening statement*. Write down what you will say.

Be sure to emphasize (a) how Lou Dempsey failed to meet his responsibility to Kirk, Alex, and any other minors at the party, and (b) that he should have foreseen that the alcohol could affect the teens and cause injury or even loss of life.

2. Back up your opening statement with facts from the case, including the affidavits and depositions. You may quote the affidavits and depositions by reading them aloud or by playing the audio recording. *Write out the **facts** you will present and what you will say to present them.*
3. Examine the Relevant Laws File in the casebook. Do these laws apply to your case? How can you use them to support your argument? *Write out how the **relevant laws** apply (or do not apply) to your case.*
4. Examine the Case Law File in the casebook. How can you show the jury that your arguments are similar to arguments used in these other cases? Which points made in these successful cases support the points you are making in your case? *Write out which points in your case are supported by specific arguments in case law.*
5. Back up your arguments with more information from the Info File. You can collect facts and opinions from experts, as well as information about related happenings in the community. This can help you explain what is reasonable for merchants like Lou Dempsey to know about underage drinking and the problems it can cause. *Write out the **additional information** you will present.*
6. At the end of your five minutes, summarize your presentation by restating what you set out to prove and emphasizing how you proved it. *Write your **summary**.*

The written statement that you prepare will need at least six paragraphs, one (or more) to address each of the six parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present. This will help you to be dramatic and convincing when you present to the jury in class.

**Important**

Review your arguments and brainstorm counterarguments that Lou Dempsey's attorney might make for each point. Prepare to answer these counterarguments with evidence. *Write your counterarguments.*

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## Step 3: Present Evidence of Damages

### *Strategy Sheet*

Team Member(s): \_\_\_\_\_

To prove that a person or persons are negligent, you must show that some damage occurred. You will present damages in the case of *Benton v. Dempsey*. The obvious damage is the stabbing of Kirk Benton, but try to think of other damages as well. For example, how were Kirk's parents harmed or damaged by what happened? How was Alex Jacobs hurt or damaged by what happened? Alex's parents? Eric Howe?

Team members working on step 3 will have five minutes to convince the jury of the damages that occurred. Consider these types of damages:

- parents' pain and suffering over the injury of their child
- emotional distress
- medical bills
- parents' lost work time immediately after the incident, when they had to spend a lot of time in the hospital
- damage to reputation
- loss of school time
- loss of job
- problems suffered by other family members

Read through the facts of the case again, including the affidavits and depositions. Fill in any more facts that you discover on your prep sheets.

#### ***Strategy Steps: Preparing for the Class Presentation***

1. Begin by stating what you are going to prove in the next five minutes. This is your ***opening statement***. Write down what you will say. Be sure to emphasize how much Kirk and his parents and Alex and his parents have suffered emotionally, physically, and economically.
2. Back up your opening statement with facts from the case, including the affidavits and depositions. You may quote the affidavits and depositions by reading them aloud or by playing the audio recording. ***Write out the facts you will present and what you will say to present them.***

3. Examine the Relevant Laws File in the casebook. Do these laws apply to your case? How can you use them to support your argument? *Write out how the **relevant laws** apply (or do not apply) to your case.*
4. Examine the Case Law File in your casebook. How can you show the jury that your arguments are similar to arguments used in these other cases? Which points made in these successful cases support the points you are making in your case? *Write out which points in your case are supported by specific arguments in **case law**.*
5. Back up your arguments with more information from the Info File. You can collect facts and opinions from experts, as well as information about related happenings in the community. This can help you explain what is reasonable for merchants like Lou Dempsey to know about underage drinking and the problems it can cause. *Write out the **additional information** you will present.*
6. At the end of your five minutes, summarize your presentation by restating what you set out to prove and emphasizing how you proved it. *Write your **summary**.*

The written statement that you prepare will need at least six paragraphs, one (or more) to address each of the six parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present. This will help you to be dramatic and convincing when you present to the jury in class.

### **Important**

Review your arguments and brainstorm counterarguments that Lou Dempsey's attorney might make for each point. Prepare to answer these counterarguments with evidence. *Write your **counterarguments**.*

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## Step 4: Prove That Irresponsibility Caused Damages (Causation)

### *Strategy Sheet*

Team Member(s): \_\_\_\_\_

You will present causation in the case of *Benton v. Dempsey*. You must prove that the damages to the Bentons were *caused in part* by the beer that Lou Dempsey sold to Eric Howe for the party. In other words, you must prove that the alcohol caused Alex Jacobs to stab Kirk Benton and caused Kirk to act the way he did at the party.

Team members working on step 4 will have five minutes to convince the jury that Lou Dempsey's failure to meet his responsibility was the direct cause of harm done to the Bentons. Remember that part of proving negligence is proving that it would be reasonable for Lou Dempsey to be aware of the possibility that someone could get hurt.

Your presentation also must show that Lou Dempsey's failure to meet his responsibility helped to cause the damages described by your teammates. It is important to talk to the other members of your legal team when putting your presentation together. You must know what points will be emphasized in all the different parts, so that you can bring all the links in this chain of events together.

Read through the facts of the case again, including the affidavits and depositions. Fill in any more facts that you discover on your prep sheets.

#### *Strategy Steps: Preparing for the Class Presentation*

1. Begin by stating what you are going to prove in the next five minutes. This is your ***opening statement***. Write down what you will say. Your statement should emphasize how Lou Dempsey's actions caused the damages to the Bentons.
2. Back up your opening statement with facts from the case, including the affidavits and depositions. You may quote the depositions and affidavits by reading them aloud or by playing the audio recording. *Write out the facts you will present and what you will say to present them.*

3. Examine the Relevant Laws File in the casebook. Do these laws apply to your case? How can you use them to support your argument? *Write out how the **relevant laws** apply (or do not apply) to your case.*
4. Examine the Case Law File in the casebook. How can you show the jury that your arguments are similar to arguments used in these other cases? Which points made in these successful cases support the points you are making in your case? *Write out which points in your case are supported by specific arguments in **case law**.*
5. Back up your arguments with more information from the Info File. You can collect facts and opinions from experts, as well as information about related happenings in the community. This can help you explain what is reasonable for merchants like Lou Dempsey to know about underage drinking and the problems it can cause. *Write out the **additional information** you will present.*
6. At the end of your five minutes, summarize your presentation by restating what you set out to prove and emphasizing how you proved it. *Write your **summary**.*

The written statement that you prepare will need at least six paragraphs, one (or more) to address each of the six parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present. This will help you to be dramatic and convincing when you present to the jury in class.

### **Important**

Review your arguments and brainstorm counterarguments that Lou Dempsey's attorney might make for each point. Prepare to answer these counterarguments with evidence. *Write your **counterarguments**.*

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## Step 5: Present Expert Testimony (Supporting Causation)

### *Strategy Sheet*

Team Member(s): \_\_\_\_\_

You will present expert testimony to support causation in the case of *Benton v. Dempsey*. As part of the causation section of the presentation, it will be important to show that drinking alcohol often leads otherwise nonviolent people to act violently. To do this, you will need to present some facts by using the Info File in your casebook and by conducting an *interview with an expert witness*, such as an emergency medical professional or emergency volunteer. This could be a paramedic, a medical professional who works in an emergency room, or another member of the emergency medical team. You could also interview a law enforcement officer for your expert witness.

Team members working on step 5 will have five minutes to use expert testimony to convince the jury that Lou Dempsey's irresponsibility caused the harm that was done to the Bentons.

Your presentation is actually part of the causation argument, so it will be important for you to meet with the person who is responsible for step 4. Or, you could work together with this person and both do the interview and share the work for steps 4 and 5.

#### *Prepare for the Interview*

1. Call the nearest police station or hospital or ambulance service to set up your interview.

Name of facility: \_\_\_\_\_

Phone number of facility: \_\_\_\_\_

- Say who you are, the name of your school, and why you are calling.
- Describe the case and the argument you are preparing.

- Explain that you want to interview a law enforcement officer or an emergency medical professional for about fifteen minutes.
- Ask permission to record the interview.
- Arrange a time to conduct the interview in person or by phone; otherwise, arrange to send your interview questions by e-mail.
- Write down the details of your interview appointment:

Name: _____
Job title: _____
Location: _____
Date and time of interview: _____
Other important details: _____
_____

2. Consider the information you want from this witness, and think about what to ask. (Remember, you are trying to prove that Alex's and Kirk's drinking helped to cause Alex to stab Kirk.)
3. Write out the questions you will ask this witness. *Sometimes it works best to write each question at the top of a separate sheet of paper, leaving plenty of space below for answers.*  
See suggested interview questions on the next page.
4. If you will record the interview, prepare equipment for recording.

### **Suggested Interview Questions for a Law Enforcement Officer**

- How often are you called to a scene in which someone has been injured in an alcohol-related incident?
- What kinds of injuries related to alcohol use do you see?
- What kinds of injuries from violence related to alcohol do you see in your work?
- What are the ages of people who are involved in situations with alcohol-related injuries? Are alcohol-related injuries more common in some age groups and less common in others?
- How do you usually find out that alcohol was involved?
- Can you describe some situations you have seen in which alcohol was involved?

*Add your own questions, too.*

### **Suggested Interview Questions for Emergency Personnel**

- How often do you treat or see people in the emergency room who have been injured in an alcohol-related incident?
- What kinds of injuries related to alcohol use do you see?
- What kinds of injuries from violence related to alcohol do you see in your work?
- What are the ages of people who come in or are brought in with alcohol-related injuries? Are alcohol-related injuries more common in some age groups and less common in others?
- How do you usually find out that alcohol was involved?
- Can you describe some situations you have seen in which alcohol was involved?

*Add your own questions, too.*

### ***Conduct the Interview***

- Make sure you have your questions, plenty of paper for taking notes, a few pencils, and any recording equipment needed.
- Be on time.
- Be sure to write notes about the details of what the person says. Don't be afraid to ask the person to repeat something.
- Ask follow-up questions to get details and to be sure that you understand the answers.
- Be sure to thank the person for his or her time and information.

### ***Strategy Steps: Preparing for the Class Presentation***

Review the facts of the case, including the affidavits and depositions. Fill in any more facts that you discover on your prep sheets. Your presentation must show that it is very common for alcohol to affect a person's behavior and to influence him or her to act violently. Consider how much alcohol was consumed that night and how Lou Dempsey contributed to the amount of alcohol consumption. Using the facts of the case and expert testimony will help convince the jury.

1. Begin by stating what you are going to prove in the next five minutes. This is your opening statement. Your statement must emphasize how alcohol affects a person's behavior, especially when it comes to acting violently. *Write your opening statement.*
2. Review the results of your interview. *Write out the statements from the expert that you will present.*
3. Back up your arguments with more details from the Info File. You can collect facts and opinions from experts, as well as information about related happenings in the community. This can help you explain what is reasonable for merchants like Lou Dempsey to know about underage drinking and the problems it can cause. *Write out the additional information you will present.*
4. At the end of your five minutes, summarize your presentation by restating what you set out to prove and emphasizing how you proved it. *Write your summary.*

The written statement that you prepare will need at least four paragraphs, one (or more) to address each of the four parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present. This will help you to be dramatic and convincing when you present to the jury in class.

### **Important**

Review your arguments and brainstorm counterarguments that Lou Dempsey's attorney might make for each point. Prepare to answer these counterarguments with evidence. *Write your counterarguments.*

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## Step 6: Rebuttal

### *Strategy Sheet*

Team Member(s): \_\_\_\_\_

You will write and present your rebuttal in the case of *Benton v. Dempsey*. Your job is to respond to the points raised by Lou Dempsey's lawyer. To prepare your rebuttal, you will need to listen to the audio recording of Lou's lawyer presenting the closing argument. You can get this recording from your teacher. *You are the only member of your team who will be allowed to listen to this recording before the trial.* Your teacher will also give you a printed copy of the defense statement so you can follow along.

After your legal team has made its presentation (steps 1 through 5), the recording of Lou Dempsey's lawyer defending Lou will be played for the class.

Team members working on step 6 will have five minutes to make your team's final argument and convince the jury that Lou Dempsey was negligent. It is important to make a strong argument that leaves a lasting impression on the jury.

#### *Strategy Steps: Preparing for the Class Presentation*

**Listen** to the recording of the defense argument and write down the main points made by Lou Dempsey's attorney. Plan and write counterarguments for these points. When you write your rebuttal, remember that your job is to **respond directly to the defense attorney**; you are not to summarize your team's entire argument. You may review notes from the team's other five steps, but your argument must address only points raised by Lou Dempsey's attorney.

1. In the **opening statement** of your counterargument, explain how you disagree with Lou Dempsey's attorney. Clearly summarize the main points made by the defense, and state that you will prove these points false.
2. Back up your opening statement with **facts** from the case, including the **affidavits** and **depositions**. Use this information to dispute the defense attorney's main points.

3. Summarize the *relevant laws* that apply to your case, and use this information to dispute the defense attorney's main points.
4. Summarize the *expert testimony* and *key evidence* from the Info File. Use this information to dispute the defense attorney's main points.
5. At the end of your five minutes, *summarize your rebuttal* by restating what you set out to prove and emphasizing how you proved it.

The written statement that you prepare will need at least five paragraphs, one (or more) to address each of the five parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present. This will help you to be dramatic and convincing when you present to the jury in class.

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## Transcript of Defense Attorney's Argument

Below is a verbatim transcript of the defense attorney's argument found on the audio CD for this case. The audio CDs are first used by the students assigned to do the rebuttals for each of the cases. The whole class should listen to the audio CDs during the classroom presentations (prior to the rebuttal). Please note that the transcript below and the transcripts for the other cases are of spoken, not written, language and may include stutters, stammers, and incomplete sentences for dramatic effect.

### **Case 3: *Benton v. Dempsey* Drinking and Violence on Trial**

Ladies and gentlemen of the jury, I am representing the defendant in this case, Lou Dempsey. Today the law that is the deciding factor states, if somebody suffers an injury by an intoxicated person and that injury is to bodily harm, property damage, financial loss, or the loss of an ability to work, the person who suffered the injury can legally sue the person who caused the intoxication based on an illegal sale of alcohol. Thus, the primary issue in this case is the cause. The person who caused the intoxication based on an illegal sale of alcohol. In this case, granted, Lou Dempsey was the source of the alcohol and has been punished for his action appropriately by paying the required fine for selling alcohol to Eric Howe. Eric Howe ultimately sold the beer he had purchased to his peers, and Eric Howe should be held accountable for his irresponsible behavior, not Lou Dempsey. Besides the fact that Eric Howe ultimately resold the beer, there were many other factors which intervened in a manner that you cannot hold Lou Dempsey responsible for.

What is an intervening factor? The fight between Kirk Benton and Alex Jacobs is an example of an intervening factor—it was brewing before the sale of the alcohol. The tension among the boys was apparent over their association with Deanna Wells before the party. Alex Jacobs was looking for a confrontation before his first beer by just attending the party with Deanna Wells. And in addition, the knife which caused the harm was a concealed weapon that Alex Jacobs intentionally brought with him to the party.

It was Alex Jacobs's intention to show off his new girlfriend to her ex-boyfriend and to create a confrontation. Thus, the alcohol is not what caused this fight. It was the jealousy of two young men. It was an act of passion, which may have occurred without the presence of alcohol.

Ladies and gentlemen of the jury, your opinion today sets policy for future cases. By allowing the young man to place his blame on Lou Dempsey, your message would state that a seventeen-year-old boy does not have to be responsible for his own actions. That we must protect a seventeen-year-old young man who may stab someone even when they could be sitting in a jury box next to you. The appropriate action is to stop teenage violence and go to the root of the problem, the teenager. If you would find for Lou Dempsey today, your actions would send a clear message to parents to take an interest, an active role in their children's lives, to prevent tragedies like these. And you would send a message to teenagers that they should be accountable for their own actions. You'd also send a clear message to teenagers that the corruption of this community will not be tolerated. Teens will no longer be able to blame the small-business owner for teens' bad choices to use violence and alcohol.

Thank you.

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