CHAPTER SIX: PARTIES TO CRIME AND VICARIOUS LIABILITY

INTRODUCTION

This chapter will discuss criminal facilitation, criminal liability for the conduct of another, and vicarious liability as it relates to corporate liability and child endangerment offenses.

New York State differs markedly from the textbook when it comes to parties to crime and vicarious liability. For instance, New York does not distinguish between accomplices and accessories. Unlike the distinction provided by the textbook, these concepts are used interchangeably in New York. The Penal Law does not even define "accomplice" or "accessory."[1] Instead, New York distinguishes between criminal facilitation (Article 115) and criminal liability for the conduct of another (§20.00). The difference between the two concepts depends upon the contributor's level of culpability of the underlying offense, rather than the point at which the contributor enters the crime. Under Article 115, one must actually aid the person who commits an offense, but the degree at which a defendant will be charged depends on the type of felony the defendant facilitated. As discussed later, a defendant cannot be charged with facilitation of a misdemeanor.

Section 20.00 requires that an accomplice either "solicit, request, command, importune, or intentionally aid" a principal to engage in a crime. A principal is an individual who actually commits the offense and whom the culpable actor solicits, requests, aids, etc. In an arson, for example, a man solicits an arsonist to burn down his house for insurance money. If the act is completed, the arsonist would be the principal and the solicitor would be his accomplice. Under §20.00, both would be equally guilty of arson.

As another example, in a case of robbery, it would also be possible for a defendant who solicits, requests, commands, importunes, or aids the principal to be guilty of a robbery under §20.00 without actually aiding the principal in the commission of the crime. The prosecution need only prove that the defendant shared the intent of the principal to commit the robbery. Section 20.00 is also called "acting-in-concert liability" when the defendant's sole role is direct involvement in the crime.

Additionally, New York does not recognize vicarious liability for corporations in criminal cases. Again, this diverges from other states' laws mentioned in the textbook. New York is further reluctant to criminalize vicarious liability for parents, and would prefer to handle such cases under family law which imposes less punitive responses to child endangerment cases.

RESOURCES

The following links refer the reader to Article 115, Criminal facilitation:
http://wings.buffalo.edu/law/bclc/web/NewYork/nyart115.htm and
§20.00, Criminal liability for conduct of another:
http://wings.buffalo.edu/law/bclc/web/NewYork/ny20_00.htm

This link provides the full-text version of *People v. Kaplan*, a case that will be discussed later in this chapter: http://wings.buffalo.edu/law/bclc/web/nykapln.htm

CRIMINAL FACILITATION

Article 115 contains the provisions for criminal facilitation, parties which the textbook describes as accomplices. Article 115 was enacted as a new concept of criminal liability in the revised Penal Law in 1965 to provide an additional tool for the prosecutor in situations where the "facilitator" knowingly aided the commission of a crime but did not possess the mental culpability required for commission of that crime. Article 115 was conceived as a kind of accessorial conduct in which the actor aids in the commission of the crime and knows that he is doing so, but he does not have the specific intent to participate in the underlying offense or benefit from it. The actor's culpability is thus sufficient to glean some criminal liability but not full liability. In order to be liable under Article 115, the actor must *actually aid* the person who commits the offense.

Facilitation is a separate charge from the crime that results from the facilitation. There are now four degrees of facilitation. They are determined by the nature of the planned offense as well as the age of the accomplice. The sections enacted in 1965 included only two degrees. Two additional degrees, which incorporate the facilitation of an accomplice under sixteen years old, were enacted in 1978.

Finally, the Penal Law does not recognize facilitation of a misdemeanor. Facilitation of a misdemeanor is thus no crime. The legislature felt that the low culpability required for criminal facilitation of a misdemeanor was not desirable to include. The culpability of criminal facilitation ranges from the lowest culpability for providing aid for a felony (§115.00) to the highest culpability for providing aid to a murder or kidnapping (§115.05).

Section 115.00, Criminal facilitation in the fourth degree states:

> A person is guilty of criminal facilitation in the fourth degree when, believing it probable that he is rendering aid:
>
> 1. to a person who intends to commit a crime, he engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony; or
>
> 2. to a person under sixteen years of age who intends to engage in conduct which would constitute a crime, he, being over eighteen years of age, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a crime.
>
> Criminal facilitation in the fourth degree is a class A misdemeanor.

An example of facilitation in the fourth degree is found in *People v. Streeter* in which the defendant was convicted under subsection (1). Defendant and a companion spontaneously joined two men who had called to them to purchase drugs for the men. One of the men gave defendant some money, and defendant and his companion in turn delivered two tinfoil packages containing cocaine to the same man. The group then dispersed. After the sale, the police stopped the purchaser in his car and found the packages clenched in his hand.[2]

Section 115.01, Criminal facilitation in the third degree states:

A person is guilty of criminal facilitation in the third degree, when believing it probably that he is rendering aid to a person sixteen years of age who intends to engage in conduct that would constitute a felony, he, being over eighteen years of age, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony.

Criminal facilitation in the third degree is a class E felony.

Section 115.05, Criminal facilitation in the second degree

A person is guilty of criminal facilitation in the second degree when, believing it probably that he is rendering aid to a person who intends to commit a class A felony, he engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit such class A felony.

Criminal facilitation in the second degree is a class C felony.

The facts of *People v. Polk* provide an example of second degree facilitation. One of the defendants in this case, Harrison, was the leader of a gang. On the evening of April 15, 1978, one of his gang members, Greene, was severely beaten by Grace who was a member of a rival gang. Greene told Harrison of this event, and the two of them, along with defendant, agreed to seek retribution. Around 4:00 a.m. on April 16th, while armed with guns, Greene and defendant waited in the bushes outside of a local tavern. As Harrison walked to the front of the tavern, he met Grace who was coming out of the tavern. Grace asked about Harrison's role in the earlier incident, and Harrison feigned ignorance of the fight. Harrison then put his arm around Grace's waist and guided him to a position near the two assailants. At that point, another one of Harrison's gang members made a gesture to Harrison who then took a step back from Grace. Greene and defendant emerged from the bushes, and Greene then shot Grace in the left side. Grace died from this wound. Defendant was convicted of facilitation in the second degree.[3]

Section 115.08, Criminal facilitation in the first degree

A person is guilty of criminal facilitation in the first degree when, believing it probable that he is rendering aid to a person under sixteen years of age who intends to engage in conduct that would constitute a class A felony, he, being over eighteen years of age, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit such a class A felony.

Criminal facilitation in the first degree is a class B felony.

CRIMINAL LIABILITY FOR THE CONDUCT OF ANOTHER

Article 20 (Parties to offenses and liability through accessorial conduct) of the Penal Law contains the criminal liability section defined in this chapter. Unlike criminal facilitation whereby an actor actually assists a person to commit a crime, criminal liability for the conduct of another describes a range of roles in which the actor engages. According to §20.00, an actor can solicit, request, command, importune, or intentionally aid a person to engage in an offense without actually aiding the person in the commission of the offense, or the actor can engage directly in the offense. This new provision, also enacted in 1965, makes clear that the culpable accessory is liable for the same offense as the principal's conduct not only when the principal is found guilty but even when the principal is found not guilty by virtue of his lack of culpability, infancy, or insanity. Under acting-in-concert liability, the most minor participant in a crime will be considered criminally liable to the same extent of an accomplice who committed the most serious acts. And if the prosecution proves that the accessory had the same level of intent as the principal, the accessory will be subjected to the same level of punishment as the principal.

Section 20.00, Criminal liability for conduct of another, states:

> When one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct.

In *People v. Nieves*, the Supreme Court, Appellate Division, stated, "It is well settled that in order to establish the liability of an accomplice for a crime committed by a principal actor, the People must demonstrate beyond a reasonable doubt that the accessory possessed the mental culpability necessary to commit the crime charged and in furtherance thereof, solicited, requested, commanded, importuned or intentionally aided the principal." In this case, defendant was charged with murder in the second degree, criminal possession of a weapon in the second degree, and reckless endangerment in the second degree. The court reiterated established law by stating, "With respect to the homicide, although the People were not required to prove that the defendant actually fired the fatal shot, they were required to present adequate evidence of a plan or intent to commit murder shared by each person charged and this 'must be shown to exclude other fair inferences.' Without adequate proof of a shared intent with the principal actor, there is no community of purpose and therefore no basis for finding that defendant acted in concert with the actual 'shooter.'" The court dismissed the indictment.[4]

In the following case, the defendant was convicted of criminal sale of a controlled substance in the first degree for his criminal liability for the conduct of his cousin, Mike Kaplan.

PEOPLE V. KAPLAN
Court of Appeals of New York
76 N.Y. 2d 140 (1990)

Opinion By: Titone, J.

The issue in this case stems from defendant's belief that, although the culpable mental state required for the commission of the crime for which he was convicted is "knowledge," the trial court should have instructed the jury that defendant could not be held liable as an accomplice unless he acted with the specific intent to sell a controlled substance in the first degree.

On October 15, 1988, defendant was at his cousin's office in the Empire State Building when Grasso, an undercover detective, went to the office to purchase cocaine. After introducing Grasso to his cousin and another man present, Kaplan instructed defendant "to take care of the young lady." Defendant went to a file cabinet in the room, removed a manila envelope, and placed it on the desk in front of Grasso. Grasso produced $15,000 in prerecorded buy money and placed it on the table. Defendant picked up the money and began counting it. Grasso placed a zip lock plastic bag from the envelope in her purse.

Defendant was subsequently charged with criminal sale of a controlled substance, a charge and conviction from which he appeals. He argues that the test under which he was charged should have been based on his shared intent of the principal actor, his cousin. Such a test would have raised the prosecution's burden of proof of *intentionally* selling cocaine rather than knowingly, the level that is required for criminal sale of a controlled substance.

The Court of Appeals stated that defendant's test was that which existed under the former Penal Law's concept of criminal liability. Under the current §20.00, the Penal Law specifies that an accomplice must have acted with the "mental culpability required for the commission" of a particular crime, which under §220.43 [Criminal sale of a controlled substance in the first degree] is that a "person is guilty of criminal sale of a controlled substance in the first degree when he knowingly and unlawfully sells…" Section 20.00 does not require specific intent when the underlying crime does not involve such intent.

Furthermore, the court stated, "there was sufficient evidence for the jury to find that, knowing that the substance in question was cocaine, defendant intentionally aided Mike Kaplan by delivering it to Detective Grasso…That defendant neither negotiated nor arranged the transactions does not affect his liability as an accomplice, and the court was not required to include specific intent to sell as an element in its charge on accessorial liability. The elements were adequately conveyed when the court told the jury that it must find both that defendant acted with the specific intent required for the substantive offense, i.e., knowledge that the substance was cocaine, and that he 'intentionally aided' the sale."

The Court of Appeals affirmed defendant's conviction.

In another case, the defendant was the getaway driver of two men who held up a bank. In this case, the police, shortly after the robbery, received a description of the vehicle in which the three men were riding. The police stopped the vehicle and arrested all three. The defendant was subsequently convicted of robbery in the second degree. He contended on appeal that he was unaware that his companions had robbed the bank. He was nevertheless convicted and the Supreme Court, Appellate Division upheld the conviction. As part of its reasoning, the court upheld the trial court's permitting into the court record evidence of defendant's presence at a previous bank holdup as a way to establish defendant's state of mind.[5]

VICARIOUS LIABILITY

Corporate Liability

Corporate liability was previously mentioned in Chapter Four which discussed the theoretical role of a corporation as a "person." In this chapter, corporate liability is discussed in terms of the responsibility that a corporation bears when its representatives (e.g., employees, officers) engage in criminal behavior. Section 20.20(2) enumerates liability for agents or high managerial agents when they either: (a) fail to act when a duty to intervene is required; (b) solicit or otherwise authorize or tolerate an offense on behalf of the corporation; or (c) commit: (i) a misdemeanor or violation; (ii) other crime for which they would be liable; or (iii) an environmental crime.

Section 20.20, Criminal liability of corporations, states:

1. As used in this section:

    (a) "Agent" means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation.
    (b) "High managerial agent" means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

2. A corporation is guilty of an offense when:

    (a) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

    (b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation; or

    (c) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation, and the offense is (i) a misdemeanor or a violation, (ii) one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation, or (iii) any offense set forth in title twenty-seven of article seventy-one of the environmental conservation law.

In *People v. Mejia Real Estate Inc. and Mackay*, the individual defendant was a real estate agent for the defendant real estate agency. As such, the prosecution satisfactorily established that he was either an agent or a high managerial agent for the business. In this case, undercover agents, posing as managers of a brothel entered the defendant business to find a house to rent in the neighborhood. The officers explained to one representative of the business that they intended to use the house for prostitution. Several days later, the officers returned to the business and were introduced to defendant as a real estate

agent who had prior knowledge of dealing with brothel managers. Defendant showed the officers a house in a "secluded" area and was arrested for attempted promoting prostitution.

According to the Supreme Court of Queens County, under §20.20(2), an agent, "if acting within the scope of his employment, may confer criminal liability on the corporation for misdemeanor offenses the agent commits. A corporation is guilty of both felonies and misdemeanors committed by a 'high managerial agent' acting within the scope of his employment and in behalf of the corporation…[T]hat the defendant Mackay was either an agent or high managerial agent, as those terms are defined…confer[s] criminal liability on the defendant Mejia Real Estate Inc." The court determined on these issues that there was prima facie evidence to establish that individual defendant was either an "agent" or "high managerial agent" as defined in §20.20(1).[6]

In New York State, the doctrine of vicarious liability is basically reserved for civil cases. As the following case demonstrates, the Court of Appeals responded to the question of when the vicarious liability doctrine attaches to a representative of a business in a criminal case. It determined that the Penal Law does not enable an interpretation of vicarious liability for criminal offenses.

PEOPLE V. BYRNE
Court of Appeals of New York
77 N.Y. 2d 460 (1991)

Opinion By: Titone, J.

The issue in this case concerns whether §§ 65(1) and 130(3) of the Alcoholic Beverage Control Law create a "vicarious liability," the violations of which allow a person to be convicted solely because of the person's relationship to a business.

The defendant and his brother were each part-owner of Tullow Taverns, Inc. Defendant was president and his brother was secretary-treasurer. On March 12, 1983, defendant's brother sold alcohol to two individuals under 19 years old at their tavern, Manions, in the Bronx. Both brothers were charged with violating §65(1) which prohibits selling alcohol to a person under 19. Section 130(3) provides that the violation be a misdemeanor. Prior to trial, the charges against defendant were dismissed since he was not present in the tavern during the time the alcohol was sold to the minors. The Appellate ourt reinstated the charges after determining that as an officer of the corporation, defendant may be held criminally liable despite his lack of knowledge of or participation in the sale. Defendant was later convicted and sentenced to pay a fine.

Defendant argued that he could not be held vicariously liable for his brother's acts. The Court of Appeals found that neither section under which defendant was convicted contained language "extending the legislatively imposed duty beyond the actor who actually engages in the prohibited conduct."

According to the court, "It is true that when a corporation is prosecuted, the fact[s based on] its liability [are], invariably, the conduct of someone else, namely its agents or employees. However, since corporations, which are legal fictions, can operate only through their designated agents and employees…the [agents and employees] are, in a sense, the acts of the corporation as well. Thus, when a corporation is held criminally liable because it is a 'person' under Alcoholic Beverage Control Law… it is, in reality, being made to answer for its *own* acts. Such a theory of liability is a far cry from one involving *true* vicarious liability in which…the conduct of one individual is artificially imputed to another who 'has played no part in it [and] has done nothing whatever to aid or encourage it.'"

Further, "[t]he doctrine of vicarious liability…eliminates the need to prove that the accused personally committed the forbidden act" but "where the Legislature has not clearly directed otherwise, we should be most reluctant to embrace the doctrine vicarious liability for use in the criminal sphere…[I]t is out of harmony with several provisions of the Penal Law, which are instructive on the Legislature's over-all attitude toward individual responsibility."

"Penal Law §§20.20 and 20.25, which detail the circumstances under which a corporate principal may be held liable for the acts of their agents and vice versa, do not go so far as to suggest that a corporate principal may be held liable for corporate acts in which he did not participate and which he did not intend." The Court of Appeals held that in the face of legislative silence on vicarious liability, "a legislative intent to authorize prosecution for another's criminal conduct will not be inferred."

The order of the Appellate Court was reversed and complaint dismissed.

According to **Section 20.25** Criminal liability of an individual for corporate conduct.

> A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or in behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.

The following cases illustrate the culpability that corporate officers and employees have when, on behalf of the corporation, they engage in criminality that personally benefits them either directly or indirectly through the business.

PEOPLE V. SAKOW
Court of Appeals of New York
45 N.Y. 2d 131 (1978)

Opinion By: Fuchsberg, J.

One of the two issues brought by defendant indicates that he could not be held criminally liable because title to the buildings which he controlled was not held in his name but rather in the name of the corporations of which he was only a stockholder.

Defendant was the active manager and dominant controlling force in a group of corporations among which he shuffled the title to the twin buildings he owned at 154-160 East 91st Street in Manhattan. These buildings, largely unoccupied, had been the scene of at least a dozen fires, one of which caused two fatalities. On May 29, 1975, the fire department issued defendant fire code violation orders. Later fire inspections in December 1975 and January 1976 revealed that the violation orders were ignored. Defendant was then put on trial where the evidence showed that he was the "active manager and dominant controlling force in a group of corporations," the names of which included "Wama Property, Inc.," "Mawash Realty Corp.," "Justin Property, Inc.," and "Lescal Realty Corp." In each of these corporations, defendant was the principal and sometimes the sole shareholder. When he acted for the corporations, he did so without reporting minutes and without a meeting of the board of directors. For three of the corporations, minute books and stock certificates had not even been issued at the time of formation. Defendant was convicted on two counts of violation of the Administrative Code of the City of New York and on each count, received three years' probation conditioned on payment of a $1,000 fine, a $250 penalty, and correction of the violations. The Appellate Term court upheld the judgment.

Based on its interpretation of §20.25, the Court of Appeals stated, “the corporate barriers on which the appellant relies need not have been accepted as an effective screen behind which Sakow could succeed in shielding himself from culpability for omission to take safety precautions necessary for the welfare of the buildings’ remaining residents and visitors, the occupants of neighboring structures, jeopardized firefighters and others within range of danger.” The court further remarked that the defendant’s “web of obscurity woven by the interplay of a number of corporations” could not protect him from “penetration by the law.”

The Court of Appeals affirmed the Appellate Term’s order by holding that defendant was criminally culpable for failing to comply with the buildings’ violations.

Section 20.25 limits individual liability for corporate criminal acts to cases where the individual defendant personally performed or caused the conduct constituting the offense. As *People v. Sobel* demonstrates, defendant, an employee of a corporation contracted to launder pillows and sheepskins for Long Island Jewish Hospital, was billing the hospital for the cleaning of a quantity of pillows and sheepskins “substantially greater than the quantity actually laundered.” Defendant was indicted for grand larceny. He argued that there was no evidence that he, as opposed to his corporation, stood to gain by his actions. However, all checks paid by the hospital were in fact payable to the corporation. The Supreme Court, Appellate Division noted that even though the defendant had not appeared to commit the offense "in the name of" his corporation, the offense benefited the corporation, and hence, was committed "in [its] behalf” and is a crime under §20.25.[7]

Parental Liability

Section 260.10, previously discussed in Chapter Four, places the responsibility on parents to prevent their children from becoming, among other statuses, a juvenile delinquent. However, criminal liability for fostering these conditions is not usually solvable by stringent penalties. The better course is generally to respond to these cases through the Family Court Act. Section 260.10 is generally a supplement to the Family Court Act when the latter response is inappropriate in a particular case.

According to **Section 260.10**, Endangering the welfare of a child, states:

A person is guilty of endangering the welfare of a child when:

1. He knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his life or health; or

2. Being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming an "abused child," a "neglected child," a "juvenile delinquent" or a "person in need of supervision," as those terms are defined in articles ten, three and seven of the family court act.

Endangering the welfare of a child is a class A misdemeanor

The difficulties in applying the Penal Law to such cases is illustrated in the following examples. In *People v. Dailey*, defendant's son, aged 14, was found at 3:45 a.m. wandering in the street "in danger of becoming a juvenile delinquent." Defendant was charged with endangering the welfare of his son. The County Court dismissed the information. The court reasoned that the allegation of wandering or loitering is insufficient to charge a parent for failing to supervise his child. An allegation of a criminal act or involvement in a crime is required. Also, there must be a showing that the boy is a habitual truant or "who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other lawful authority."[8]

In the next case, *People v. Smith*, the defendant was charged with four counts of endangering the welfare of a child. The "endangered" children were alleged to be in danger of becoming neglected, juvenile delinquents, or persons in need of supervision. Defendant was accused of leaving her four children, ages five, seven, 12 and 13, home alone for two hours without supervision and food. The court dismissed the case and stated that, unless the legislature "clarifies its intentions with respect to these often troubling 'home alone' cases,…well-established and traditionally accepted community standards must continue to be carefully applied on a case-by-case basis."[9]

Furthermore, in recent years in Westchester County, an affluent suburb of New York City, the prosecutor's office has been grappling with approaches to "cracking down" on underage drinking parties. Attempts to charge liquor stores for selling to minors, teenagers for providing alcohol to minors in their homes, or minors for possessing alcohol have been made in order to curtail the parties. However, officials seem disinclined to penalize the parents. Parents have been noted to condone such parties and see official intervention as a prevention to stopping a partygoer from "getting into Harvard." The Westchester district attorney, Jeanine Pirro, has acknowledged that part of the difficulty of trying to prosecute the provider of the alcohol stems in part from "frustrations with the law."[10]

REVIEW QUESTIONS

1. A night security guard at a computer warehouse is paid by A not be at the entrance at 1:00 a.m. when A and his confederates enter to steal computers. The security guard, who has no other interest in the burglary, complies. His behavior is an example of:

    A. acting-in-concert liability
    B. vicarious liability
    C. facilitation
    D. burglary

2. The same night security guard now telephones A to let him know that the building is dark and, upon A's arrival, opens the front door to the warehouse. His behavior is an example of:

    A. acting-in-concert liability
    B. vicarious liability
    C. facilitation
    D. burglary

3. Under acting-in-concert liability, what would an accomplice be charged for?

   A. the same offense which the principal is charged
   B. a lesser offense than the principal
   C. a greater offense than the principal
   D. no offense

4. New York State prefers that cases in which parents are charged with failure "to exercise reasonable diligence in the control of [a] child to prevent him from becoming…a "juvenile delinquent" be adjudicated:

   A. as capital offenses.
   B. under the Family Court Act.
   C. by dismissal of the charges.
   D. in another jurisdiction.

5. In New York, the main parties to crime are:

   A. principals and accomplices.
   B. parents and children.
   C. officers and employees.
   D. offenders and victim.

REFERENCES

[1] "Accomplice" is defined, however, in the Criminal Procedure Law §60.22(2). "Accomplice" is defined as a witness in a criminal action who, according to evidence adduced in such action, may reasonably be considered to have participated in:

   (a) The offense charged; or
   (b) An offense based upon the same or some of the same facts or conduct which constitute the offense charged.

[2] 527 N.Y.S. 2d 531 (1988)
[3] 446 N.Y.S. 2d 678 (1981)
[4] 522 N.Y.S.2d 166 (1987)
[5] People v. Chavis (471 N.Y.S. 2d 421)
[6] 672 N.Y.S.2d 645 (1998)
[7] 448 N.Y.S.2d 511 (1982)
[8] 323 N.Y.S. 2d 523 (1971)
[9] 678 N.Y.S. 2d 872 (1998)
[10] Foderaro, L. (2004, June 1). A tougher approach to teenage drinking in Westchester. *The New York Times*.

ANSWERS

1. C; 2. A; 3. A; 4. B; 5. A