



2012-13
CASE MATERIALS & COMPETITION RULES

State of Independence
vs.
Dustin Beaver

We extend gratitude to the New Jersey State Bar Foundation Mock Trial Program on the Problem who originally authored this fact pattern. It has been adapted for our use by the MSBA Mock Trial Advisory Committee's Case Subcommittee.

*The Mock Trial Program extends its gratitude
for the generous support and assistance of:*

MSBA Civil Litigation Section
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Special thanks to the Mock Trial Advisory Committee!

Committee members: The Honorable Peter Cahill, Chair, Minneapolis; The Honorable Jim Dehn, Cambridge; Trina Alvero Iijima, Minneapolis; Dyan Ebert, St. Cloud; Tara Ferguson Lopez, St. Cloud; Mark Griffin, Minneapolis; Thomas Hanson, Prior Lake; Tracy Harris, Elk River; A.J. Kasprick, Warren; David Lillehaug, Minneapolis; Kaarin Nelson, Minneapolis; Kristin Olson, Minnetonka; Steven Ott, Winona; Torrie Schneider, Bloomington; Marc Sebor, Hutchinson; Amanda Sieling, Granite Falls; Andrew Steil, St. Cloud

Since 1986, the Mock Trial Program has been sponsored by

The Minnesota State Bar Association
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Visit the Mock Trial Website at: <http://www2.mnbar.org/mocktrial/index.htm>

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To: MSBA Mock Trial Program Participants
From: The Honorable Peter Cahill, Chair, MSBA Mock Trial Advisory Committee
Re: 2012-13 Mock Trial Program
Date: September 17, 2012

On behalf of the Minnesota State Bar Association and the Mock Trial Advisory Committee, welcome to the 27th season of the MSBA High School Mock Trial Program! We are proud to present to you these case materials and look forward to seeing the arguments you develop.

The MSBA hopes that all the benefits of the Mock Trial Program will go far beyond the rewards associated with competing against one's peers, winning a round or two, or even the state title. The goals of Mock Trial include:

- 1) To develop a practical understanding of the way in which the American legal system functions.
- 2) To enhance cooperation and respect among educators, students, legal professionals, and the general community.
- 3) To help students increase basic life and leadership skills such as critical and creative thinking, effective communication, and analytical reasoning.
- 4) To heighten appreciation for academic studies and promote positive scholastic achievement.

The mock trial website, located at <http://www2.mnbar.org/mocktrial/index.htm>, will be your source for information regarding the case and the tournament throughout the next several months. You will find timekeeper's sheets, score sheets, case clarifications, and other resources to help you prepare your case.

The success of this program relies heavily on the hundreds of volunteers acting as coaches and judges; be sure to extend your gratitude to these individuals whenever given the chance throughout the season! Best of luck and enjoy the case!

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Section 1: MSBA Mock Trial Outstanding Professionalism Performance Award

The MSBA Mock Trials are conducted with the same high professional standards expected of all attorneys and judges within the State of Minnesota. The Mock Trial Outstanding Professionalism Performance Awards were created by the MSBA Professionalism Committee to recognize Mock Trial Participants demonstrating high professional standards while competing in Mock Trials. Student attorneys and judges are invited to nominate participants demonstrating high professional standards. Awards are given in three categories: individual, team and attorney coach.

2012 Mock Trial Outstanding Professionalism Performance Award Recipient:

Individual: Ryan Oye, Luverne HS

We congratulate past recipients and challenge all 2013 participants to follow their example in conducting themselves as professionals and examples for all in the legal profession. Nomination forms are available on the Mock Trial website. In addition, all judges will be provided with forms during the competition. Nominations will be reviewed by the Professionalism Committee. Selection will be based on civility, courtesy, honesty, integrity and trustworthiness demonstrated during the 2012-2013 Mock Trial Competition. The Professionalism Aspirations and Attorney Core Value messages are resources to review to become familiar with these expectations.

The MSBA Professionalism Committee looks forward to presenting the 2013 Mock Trial Outstanding Professionalism Performance Award at the 2013 State Tournament in St. Paul on March 13, 2013.

Respect & Fairness

A message from the MSBA Student & Professionalism Committees

This is the second in a series of five messages regarding the core values in the legal profession that cover: 1) Respect & Fairness; 2) Service; 3) Honesty, Integrity, and Trustworthiness; 4) Competent, Prompt, and Diligent Representation; and 5) Quality of Justice. This piece addresses Respect & Fairness.

The cliché is true: we are guardians of our profession. The legal profession is one of the remaining self-regulating professions. It is an awesome responsibility and we must fiercely protect its integrity. Take the time now, while you are in a learning environment, to practice respect and fairness.

Core Value: Respect & Fairness

The Preamble of the **Minnesota Rules of Professional Conduct** states that:

A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

Rule 4.4 of the **Minnesota Rules of Professional Conduct** states:

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Examples In Action

In a settlement conference, an Attorney cursed at opposing party and then refused to respond to her complaint. After an investigation the court stated: "Lawyers must be encouraged to represent their clients vigorously and we are hesitant in any way to interfere . . . ; yet there is a line that should not be crossed and respondent has crossed it." Attorney's comment served no legitimate purpose and was made only to burden or embarrass the other person.

- *In re Getty*, 401 N.W.2d 688, 671 (Minn. 1987), www.courts.state.mn.us/lprb/fc051799.html

What does this mean for me?

Practicing core values forms solid skills:

- **Respect** does not necessarily mean agreement. It means independent regard of another's perspectives, ideas, and contributions. Disagree without being disagreeable.
- **Fairness** includes sharing resources in school and the community. We all use the same materials so be considerate of others.
- **Listening.** You can not win an argument without first listening to and understanding your opponents, your colleagues and your future clients.
- **Promote and celebrate diversity.** Determine what diversity means to you. Familiarize yourself with different cultures, religious beliefs, and ideologies through clubs and organizations.
- **Spirited Debate.** Classroom debate should be spirited and zealous while remaining fair and respectful.
- **Professionalism and ethics.** Good lawyers are ethical, disciplined, and value their reputation. Your reputation never leaves you.
- **Civility.** The law community is surprisingly small. Act civilly in all your dealings. Your colleague may become your boss or a judge.
- **Anger.** Reflect before you act. For example, don't send a hostile e-mail in anger only to regret it later.

Public Service

A message from the MSBA Professionalism Committee

There are five core values in the legal profession: 1) Respect and Fairness; 2) Public Service; 3) Honesty, Integrity and Trustworthiness; 4) Competent, Prompt, and Diligent Representation; and 5) Quality of Justice.

Society depends upon lawyers to provide services to those who cannot afford them. But public service is more than just providing free legal services. It is about committing ourselves to civic engagement. As members of the legal profession we are obligated to give back to the community and make it stronger.

Core Value: Pro Bono Service

Rule 6.1 of the **Minnesota Rules of Professional Conduct** states that:

[a] lawyer should aspire to **render at least 50 hours of *pro bono publico* legal services per year.** In fulfilling this responsibility, the lawyer should provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to (1) persons of limited means or (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means.

The comment to Rule 6.1 calls pro bono service a “professional responsibility” and an “individual ethical commitment of each lawyer.”

Examples In Action

Some simple ways to serve others include volunteering in a local soup kitchen, reading books to children, volunteering with a restorative justice program, and volunteering with the Minnesota Justice Foundation.

“How wonderful it is that nobody need wait a single moment before starting to improve the world.”

Anne Frank

What does this mean for me?

Maintaining the value to serve others means that you:

- **Actively participate in the community.** Seek out volunteer opportunities which interest you.
- **Make time for others.** No matter how busy you are, serving others should be high on your priority list.
- **Use your special gifts and abilities** to give back to your community. Lawyers have a privileged role in society. This privilege comes with responsibility to try to improve our communities.
- **Treat others with fairness and respect.** Recognize that we all contribute differently to a common goal. Make your goal the improvement of the common good.
- **Seek to grow professionally** by learning new areas of law and to grow personally by developing diverse relationships.
- **Help others.** Be committed to promoting equal access to the legal system and educate others about the law.
- **Learn what resources are available** in your community to assist others. When you cannot provide assistance yourself, be able to refer people to agencies that can help them.

Why wait until after law school to begin serving those around you? Life will always be busy and there will always be competition for your time. By serving others as you build your legal career you begin forming the patterns that you should aspire to throughout your legal career. You are developing your credibility as a lawyer by living out the core values of the legal profession.

Honesty, Integrity, & Trustworthiness

A message from the MSBA Professionalism Committee

There are five core values in the legal profession: 1) Respect and Fairness; 2) Public Services; 3) Honesty, Integrity, and Trustworthiness; 4) Competent, Prompt, and Diligent Representation; and 5) Quality of Justice.

Attorneys are officers of the court appointed to assist the court in the administration of justice. Property, liberty, and sometimes the lives of our clients are committed into our hands. This commitment demands a high degree of intelligence, knowledge of the law, respect for its function in society, sound and faithful judgment and, above all else, integrity of character in conduct.

Core Values: Honesty, Integrity, & Trustworthiness

Rule 8.4 of the **Minnesota Rules of Professional Conduct** states in part that:

It is professional misconduct for a lawyer to:

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with a lawyer's professional activities; or
- (h) commit a discriminatory act, prohibited by federal, state or local statute or ordinance, that reflects adversely on the lawyer's fitness as a lawyer. . .

"Prefer a loss to a dishonest gain; the one brings pain at the moment, the other for all time." *Chilon*

Resources:

For additional resources on honesty, integrity, and trustworthiness in the legal profession, refer to:

- Association of Professional Responsibility Lawyers, <http://www.aprl.net>
- Legalethics.com, <http://www.legalethics.com>
- ABA Center for Professional Responsibility, <http://www.abanet.org/cpr/home.html>
- The Trusted Advisor by David H. Maister, Charles H. Green, Robert M. Galford

What does this mean for me?

- **Meet commitments and deadlines.** Allow enough time to get assignments and other commitments completed on time.
- **Live up to the aspirations of the legal profession.** Your behaviors should always measure up to the aspirations of the profession. Professional misconduct jeopardizes our ability to be self-regulating.
- **Make your word your bond.** Every day you are building the reputation that will stay with you throughout your career. Do what you say you are going to do.
- **Protect Confidences.** Recognize the conversations that you should not share with others. A casual social story may be a serious breach of confidence. If you are acting as a student lawyer, realize you have both an ethical and legal obligation to protect your client's confidences. Remind your peers when you hear disclosures that you think should be confidential.
- **Candidly complete your applications.** You place yourself at serious risk if you fail to be forthright and candid in your applications for employment and to the Bar.

Competent, Prompt, and Diligent Representation

A message from the MSBA Professionalism Committee

There are five core values in the legal profession: 1) Respect and Fairness; 2) Public Service; 3) Honesty, Integrity, and Trustworthiness; 4) Competent, Prompt, and Diligent Representation; and 5) Quality of Justice.

People will rely on you to have the judgment and expertise to serve their legal needs. As a professional you are expected to know the law, the legal process, and how to interact with your clients.

Core Value: Competence, Promptness and Diligence

The **Minnesota Rules of Professional Conduct** state in part that:

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Rule 1.3 Diligence [and Promptness]

A lawyer shall act with reasonable diligence and promptness in representing a client.

Resources:

Minnesota State Bar Association
612-333-1183
www.mnbar.org

Minnesota Continuing Legal Education
612-227-8266
www.minncle.org

Hennepin County Bar Association
612-752-6601
www.hcba.org

Ramsey County Bar Association
651-222-0846
www.ramseybar.org

What does this mean for me?

Maintaining these values means that you:

- **Be punctual and meet deadlines.** Meet your deadlines whether in class or a clinic. Punctuality is essential whenever you are dealing with the court. Being late is not tolerated in practice, and jeopardizes client interests.
- **Work hard.** Invest time and effort in all assignments. Recognize that you are learning skills that will help you represent real people with real problems. Practicing law is a vocation, not an academic exercise.
- **Expand your knowledge.** Look at research projects as opportunities to further your legal knowledge. The greater your knowledge, the better able you will be to give legal advice to clients in a wider array of situations.
- **Recognize limitations.** The law is highly specialized. Do not expect to be knowledgeable in every area of the law. Your client has the right to demand your utmost competence.
- **Utilize CLE courses and lunchtime lecture opportunities.** The bar offers many opportunities for law students to attend CLE courses for free or at a reduced rate.
- **Seek help when you need it.** If you are working as a student attorney, never hesitate to seek advice and help when you are not sure what to do. Never guess. As you begin your career, seek out a mentor and others to help you provide the best representation you can.

Quality of Justice

MSBA Professionalism Committee

There are five core values in the legal profession: 1) Respect and Fairness; 2) Public Service; 3) Honesty, Integrity, and Trustworthiness; 4) Competent, Prompt, and Diligent Representation; and 5) Quality of Justice.

Core Value: Responsibility for the Quality of Justice

The first sentence of the Preamble to the **Minnesota Rules of Professional Conduct** states that: “[a] lawyer is a representative of clients, an officer of the legal system and a public citizen *having special responsibility for the quality of justice.*”

The Preamble continues, “A lawyer should **demonstrate respect for the legal system** and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.”

“As a public citizen, a lawyer should **seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession.** As a member of a learned profession, a lawyer should **cultivate knowledge of the law** beyond its use for clients, employ that knowledge in **reform of the law and work to strengthen legal education.** A lawyer should be **mindful of deficiencies** in the administration of justice and of the fact that the poor and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence on their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.”

What does this mean for me?

Maintaining this value means that you:

- **Actively participate in the legal community.** Seek out ways to improve the law and the legal system by joining and participating in Bar activities and events. Offer your expertise and contribute the skills you are learning to improve justice issues in your community. Find ways to get involved.
- **Consider the public policy when evaluating case decisions.** Public policy arguments are often an expression of the need for justice to be done. These are ways in which lawyers help steer the law in the direction it should go.
- **Understand the legal process.** The public’s faith in the justice of the legal process depends upon having a voice in the process.
- **Treat others with fairness and respect.** Recognize that we all contribute differently to a common goal. Make your goal the improvement of the common good.

Examples In Action

A *non-lawyer* by the name of Clarence Earl Gideon working pro se petitioned the Supreme Court to ensure that a person charged with a crime, for which his freedom could be taken away, was entitled to the assistance of an attorney. Today, law students across the United States assist inmates on death row with appeals through organizations such as the Innocence Project. Law Students participating in national and local bar associations are partnering to improve the law and strengthen legal education. This series of letters on professionalism was developed for you by law students.

**DISTRICT COURT OF INDEPENDENCE
LAKOTA COUNTY
LAW DIVISION
(CRIMINAL)**

The State of INDEPENDENCE

INDICTMENT NO. 2000-07000500-I

vs.

Aggravated Manslaughter
Independence Statute 2C:11-4a
(First Degree)

Dustin Beaver,

Defendant

Death By Vehicular Homicide
Independence Statute 2C: 11-5
(Second Degree)

Note: All Characters, institutions, names, events, circumstances and places are fictitious.

INTRODUCTION AND DIRECTIVES

Dustin Beaver would have started his college career in September of 2012. Instead, he faces criminal prosecution for death by vehicular homicide. If convicted on either charge, he will likely be sentenced to a significant term of imprisonment. The Lakota County Prosecutor has assigned her three top trial attorneys to prosecute Dustin. The county prosecutor believes that Dustin should be appropriately punished for causing the senseless and untimely death of high school sophomore Freddy Ferris. The prosecutor also believes that a conviction in this “high publicity” case will help other teenagers to understand the seriousness of underage drinking and perhaps deter such underage drinking in the future. Dustin’s parents, who are distraught over Dustin’s drinking within hours of the death of Freddy Ferris, realize that a conviction will ruin his life. They have hired three of the top criminal attorneys in the state to defend him.

Please follow these directives:

- The witnesses in the case may be either male or female.
- All witness statements are signed and certified. If asked, a witness must acknowledge that s/he signed the statement and certification on the date indicated.
- The parties may not contest the qualifications of the two experts in the field of alcohol and its effects on human behavior, the central nervous system and motor and other functional skills. However, for this year’s case, objections can and should be made if the experts attempt to testify outside of their area of expertise. Student lawyers may establish the qualifications of an expert during direct examination if they decide it is tactically advantageous to do so. Detective Evans is a fact witness, not an expert. However, the detective may testify to the autopsy results and cause of death and to the results of the blood test of Dustin Beaver.

- The only permissible exhibits are the charts (Blood Alcohol Curves) of the respective experts; the chart entitled “Relationship between Alcohol Intoxication and Behavior;” and excerpts from *Drugs, the Brain, and Behavior: The Pharmacology of Abuse and Dependence*, authored by John Brick, Ph.D., FAPA, DABFM, and Carlton K. Erickson, Ph.D. The exhibits may be photocopied, but not enlarged.
(Two things to note with regard to Exhibits 1 and 2: First, they contain different BAC results. This is because they use different rates of elimination; the two experts must make different assumptions about the quantity of alcohol consumed by Dustin Beaver to support their respective opinions. Second, the peak BACs are accurate. The computations are not subject to dispute. Peak blood alcohol levels do NOT usually correspond to the moment of total alcohol absorption. Therefore, it is incorrect to simply calculate back from the blood test result to the peak and assume that the difference is a linear function of the rate of elimination.)
- The experts must acknowledge the excerpted material from Drs. Brick’s and Erickson’s textbook, and the chart (“Relationship between Alcohol Intoxication and Behavior”) as reliable authority. An expert who has given a witness statement or direct testimony contradictory to the authoritative text may be contradicted by the text. If a competition judge determines that the student playing the role of an expert is deliberately attempting to avoid acknowledging the text excerpts or chart as reliable authority, then points should be deducted from the performance score of that witness.
- Student attorneys may not ask experts questions about alcohol from materials or information not included in the 2012-13 Mock Trial Workbook.
- The defense may not move for a dismissal at the close of the prosecution’s case or at the conclusion of the defense’s case.
- The defendant has a constitutional (Fifth Amendment) privilege against self-incrimination. No adverse inference may be drawn from his refusal to testify, and no one may comment on his silence or on his failure to testify. Schools may have a student sit at the defense counsel table to play the defendant. The defendant must remain silent at all times during the trial.
- Alex Alvaro may not suggest or admit that his/her boat struck Freddy Ferris; to do so will be considered a violation of the rules against unfair extrapolation and should result in a significant deduction of points by the judges.
- All witnesses are aware of the Point Douglas Beach Ordinance and may testify to its contents. The attorneys may refer to the Ordinance at any time during the trial if they choose to do so.
- The primary purpose of the Mock Trial Jury Charge is to assist students in understanding legal issues and in preparing the case. Mock trial judges may, in their discretion, modify the charge or forego reading it to the jury.

STATEMENT OF FACTS

Saturday night, May 20, 2012 was the night of the senior prom at Liberty High School. The prom was held from 8 p.m. to 11:30 p.m. in the luxurious midtown facility of Liberty Catering. Dustin Beaver, Lee Lincoln, Alex Alvaro and Rene/Renee Robbins were among the many students who attended the prom. The students were greeted at the door by teacher and parent chaperones. There is no evidence that any students were drinking before or during the prom. The previous day all students who intended to attend the prom were required to sign a declaration not to use drugs or alcohol before or after the prom. Students acknowledged in the declaration that violation of their promise would result in suspension, not graduating with the senior class and delay in the award of a diploma until September 1, 2012.

Following the prom, an all-night “after prom” providing substance-free entertainment was held in the gym of the high school. The “after-prom,” which was chaperoned by parents of the students, had become a popular tradition at Liberty High School. Unfortunately, a significant number of students did not attend the chaperoned “after prom.” Dustin Beaver was one such student.

Dustin Beaver and Lee Lincoln were students who lived in the riverside community of Point Douglas Beach. The entire community is not much more than 160 upscale private residences, tucked away between two major resort communities bordering Wisconsin and Independence. Both ends of the little town are connected across the St. Croix River, to other communities by long wooden bridges on pilings. The bridge at the north end of town is named “Prescott Bridge,” and the bridge at the south end of town is named “Railroad Bridge.” Small beaches exist at the end of each bridge, both on the Wisconsin side and Independence side and extend slightly beneath the bridges. A Point Douglas Beach Ordinance prohibits swimming after dark and prohibits the use of beaches for any purpose after 10 p.m. However, because of its undeveloped surroundings and isolation, teenagers often use the beach at the northern end of Railroad Bridge at night. The beach on the Wisconsin side is very rugged, with bushes coming down to the water’s edge, teeming with small rodents, called Packers, that frequent that side of the river. The rodent’s scat is so bothersome that no one, except Cat fishermen (with stink bait) ever wander along that area. There have also been reports of Otter attacks on swimmers and random fishermen.

Dustin Beaver, and Lee Lincoln and other students thought that boating near Railroad Bridge following the prom would be romantic, adventurous and fun. Following the prom, Dustin and other students drove to the Shelly Beach Marina, entered their parents’ powerboats, and piloted the boats to the vicinity of Railroad Bridge. Some of the students brought beer and champagne. Many of the students, including Dustin, were drinking. A sophomore named Freddy Ferris, who had come to Point Douglas Beach with a group of his friends to hang out and swim, disappeared after two boats piloted by Dustin Beaver and Alex Alvaro sped by the area where he was swimming. His body was found several days later.

Following an investigation into the circumstances of Freddy Ferris’s death, the Lakota County Prosecutor scheduled a court hearing to have the court order Dustin Beaver, who was 17 years old, to stand trial as an adult. The prosecutor was successful and Dustin, who is facing trial as an adult, has been indicted by a Lakota Grand Jury. In a series of pre-trial rulings, the trial judge has determined that Dr. Shelly Storm and Dr. Chris Carson are qualified to testify as experts about alcohol and its effects; that the sample of blood taken from Dustin Beaver at the hospital on the morning of May 21, 2012 is admissible; and that the facts upon which experts relied in forming their opinion, as set forth in their respective witness statements, are admissible during their testimony at trial.

STIPULATIONS

1. Dr. Storm and Dr. Carson are experts in the field of alcohol and its effects.
2. The exhibits are authentic. Their admission into evidence cannot be objected to based on lack of authenticity.
3. Witness statements are signed and certified by the witnesses.
4. The blood sample taken from Dustin Beaver at the hospital was properly drawn, preserved and analyzed. Parties may not dispute either the reliability of the sample or the blood alcohol concentration. The results of the sample may be admitted at trial through the testimony of the experts, through the testimony of Detective Evans or by stipulation of counsel.
5. The results of the autopsy are stipulated. Detective Evans, who was present at the autopsy, may testify about the autopsy results.
6. To the extent recited in their witness statements, the experts' reliance upon the investigation conducted by Detective Evans, the other witness statements and the 2:20 a.m. time reported by toll tender Denise Gant may not be objected to as hearsay during the testimony of the experts.

WITNESSES

Prosecution

Lee Lincoln

Detective Eric(a) Evans

Dr. Shelly Storm

Defense

Alex Alvaro

Rene(e) Robbins

Dr. Chris Carson

EXHIBITS

1. Blood Alcohol Curve for Dustin Beaver- Prosecution Expert's Exhibit
2. Blood Alcohol Curve for Dustin Beaver- Defense Expert's Exhibit
3. Relationship between Alcohol Intoxication and Behavior Chart©
4. *Drugs, the Brain and Behavior; The Pharmacology of Abuse and Dependence*©
Excerpts from Chapter 6 (reprinted with permission)
5. Map of St. Croix River between Prescott and Railroad Bridge

**DISTRICT COURT OF INDEPENDENCE
Lakota COUNTY
LAW DIVISION
(CRIMINAL)**

INDICTMENT NO. 2000-07-00500-I

The State of Independence

vs.

Dustin Beaver,

Defendant

Aggravated Manslaughter
Independence statute 2C:11-4a
(First degree)

Death by Vehicular Homicide
Independence Statute 2C: 11-5
(Second Degree)

COUNT ONE

The Grand Jurors of the State of Independence for the County of Lakota, upon their oaths present that Dustin Beaver, on or about May 21, 2012, in the waters off of Point Douglas Beach, County of Lakota, State of Independence, and within the jurisdiction of this Court, did recklessly cause the death of Freddy Ferris under circumstances manifesting extreme indifference to the value of human life; contrary to the provisions of Independence Statute 2C 11-4a and against the peace of this State, the Government and dignity of the same.

COUNT TWO

The Grand Jurors of the State of Independence for the County of Lakota, upon their oaths present that Dustin Beaver, on or about May 21, 2012, in the waters off of Point Douglas Beach, County of Lakota, State of Independence and within the jurisdiction of this Court, did cause the death of Freddy Ferris by recklessly operating a vessel; contrary to the provisions of Independence 1 Statute 2C: 11-5 and against the peace of this state, the Government and dignity of the same.

Note: In Independence a person who, while operating a motor vehicle or boat while intoxicated, causes an accident resulting in a death may be prosecuted for vehicular homicide, aggravated manslaughter or both. Death by vehicular homicide is a crime of the second degree and is punishable by a term of imprisonment of 5 to 10 years. Aggravated manslaughter is a crime of the first degree and is punishable by a term of imprisonment of 10 to 30 years.

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AFFIDAVIT OF ERIC(A) EVANS

(Testifying for the Prosecution)

My name is Eric(a) Evans. I am 32 years old. I am a detective in the Independence State Police-Marine Bureau. It is the responsibility of the Independence State Police to patrol inland lakes and waterways areas in order to enforce applicable Independence laws relating to the safe and prudent operation of powerboats. We have become quite busy in the last 10 years, due to the ever-increasing number of boats on Independence waters, specifically the St.Croix River, as well as people who unfortunately don't know how to operate them. As with automobiles, it seems that the younger individuals have a higher proportional number of boating accidents.

On May 21 at approximately 3:00 a.m., I received an emergency pager call. I returned the call to our marine headquarters, and learned that a frantic family was at the State Police Barracks in Loondale, claiming that a group of kids had been swimming at the Railroad Bridge in Point Douglas Beach and one of them had disappeared. My first thought was that a tragedy was inevitable. We chase kids off that beach at night at least 20 times every summer season. Usually the kids are partying and are drunk. I always thought that sooner or later some kid would drown late at night. I jumped into my jeep and drove directly to Railroad Bridge, approximately seven miles away. As a result of a series of telephone calls, I had three State Police marine boats meet me at the location, and I was informed that the Sheriff's Water Patrol from both Independence and Wisconsin was also sending a watercraft.

By 3:30 a.m. I was at the bridge. I was somewhat surprised to see that no fishing boats were in the area and no one was fishing from the bridge. I guess the catfish weren't running well because usually Railroad Bridge and the Wisconsin shore around it are busy with people fishing through the summer nights. I made some inquiries and was provided with information indicating that a number of high school students had decided to go for a swim off the small beach adjacent to the Railroad Bridge at the Point Douglas Beach side of the St.Croix River. Apparently, two boats had approached the bridge at high speed and at the last minute had gone under the bridge between the pilings closest to the beach, rather than the properly marked channel in the middle of the span. This was incredibly stupid- at high winds with waves and fast running current, there isn't enough room for boats to clear the underside of the bridge; at low winds, waves, and slow current, the propeller of a speeding boat, and possible the boat itself would run aground. Also, the bridge pilings at the end of the bridge are not very far apart and a speeding boat could easily strike them. In the 10 years that I have patrolled that area I have never seen any boat go under the bridge at that spot. Anyway, immediately after the boats passed, the other high school students noticed that Freddy Ferris, nephew of our cemetery custodian, Skeeter Ferris, was nowhere to be found. Fearing that he might have drowned or been struck by one of the boats, three of the young people immediately left to get help, while the other two began searching desperately in the dark waters for their friend.

Next I spoke to the Prescott bridge toll tender, 38-year old Denise Gant. Denise is a local resident who is a stickler for detail. She despises the teenagers who party on the beach after dark and she always marks the time of unusual events. She told me that only two boats approached the pilings closest to the Point Douglas Beach since she had started her shift at 10:00 p.m. The boats were speeding and people on the beach were screaming hysterically, trying to wave the boats away. The boats turned back toward the marina and several frantic teenagers came running

up to her to call the police -- someone had been run over by a boat and was missing. The time was 2:20 a.m.

The three marine police boats were searching the area with spotlights when I arrived. The Sheriff's Water Patrol had two boats patrolling the west side of the river, in that a now fast-moving current was racing downstream. Despite our best efforts, including the use of the helicopter that had now been added to the search, we were unable to locate this young man. The Wisconsin Sheriff's Water Patrol cooperated with our efforts as well as Sheriff Bart Favre directed the shore craft on the east side of the river. Although I tried to remain optimistic in front of Freddy Ferris's guardian, Skeeter Ferris, who found Freddy's favorite dog and constant companion, Wolf, running up and down the shoreline, whining, I felt in my heart that the end result was not going to be a good one. Skeeter had become Freddy's guardian shortly after his parents were tragically killed after their car had driven off the Prescott Bridge, into the St. Croix River just two years previously. How sad if the river would once again claim another life in the Ferris family.

Four days later I was on duty in one of our patrol craft when I received a call that a local fisherman had located a human body in a marshy area in the back eddy of the river approximately one-half mile from the Railroad Bridge. I was the first law enforcement officer to arrive. My partner and I carefully lifted the body into our boat. The body had just started to decompose and the ears, eyes and lips were missing. However, it was apparent from the design of the bathing trunks and a distinctive Viking tattoo on the upper right arm that it was the young man we had been looking for. Dental records later confirmed Freddy Ferris's identity.

We raced the body immediately to the nearest hospital with autopsy facilities. Although I did not take any photographs at the scene, I alerted our office so that photographs might be taken immediately prior to the autopsy and during the autopsy. After the body was delivered to the hospital, I took it upon myself to drive personally to the Ferris residence and informed Skeeter as to what we had found.

One hour later I returned to the hospital to witness the autopsy. The medical examiner confirmed that there was a skull fracture in the rear of Freddy's head. In addition, there were three deep cuts down his back and his thigh consistent with a spinning propeller blade. The lacerations were similar to those found on Channel Catfish and Sturgeon that had been driven over by boats, during low water, in the fall on the St. Croix River. Lastly, the left foot was completely missing. This kid never had a chance. The medical examiner concluded that the cause of death was blunt force trauma resulting in a fracture of the skull, splitting of the brain, and massive hemorrhaging -- all consistent with being struck by a boat.

Approximately two days after the autopsy was completed, we were finally able to ascertain what two boats may have been involved in this incident. We had received an anonymous tip that a group of high school seniors had taken their parents' boats out immediately after the prom at Liberty High School. As luck would have it, the two teenagers driving the two boats in question had already retained attorneys and we were advised that neither boy would speak with us. This did not surprise me about the Beaver kid. Twice last summer I charged him for swimming off of that beach after midnight. Apparently, his father is some local bigwig because the charges I issued against Beaver were dropped. I was determined that he would not get away with killing Freddy Ferris.

Relying upon further tips from other high school students, we learned that Beaver went to Liberty Hospital in the early morning hours of May 21. Further investigation revealed that a doctor, suspicious that Beaver had been drinking, drew a blood sample at 3:45 a.m. that was later tested and determined to contain a blood alcohol concentration of .057%. The records also indicated his height and weight. I also learned that the first boat had been piloted by Beaver and had been moved from its normal slip at the Shelly Beach Marina to a friend, Matt Mahoney's dock approximately 1 1/2 miles downriver. I was familiar with the Mahoney residence as his father, Slip Mahoney, gained notoriety as the dock boom loader for the last journey of the Edmund Fitzgerald before it sunk in Lake Superior back in the 70's. A search warrant was executed at the Mahoney residence and out buildings for the seizure and examination of the boat. Nothing of an evidential nature was recovered. The propeller on the boat looked new, but even if it wasn't, the time it sat in the water, attracting minnows, crayfish, etc., would have destroyed any blood or body tissue evidence remaining.

I also learned that a kid named Lee Lincoln had been in the boat with Beaver. I paid Lincoln a visit. After giving Lincoln Miranda warnings and explaining that an accessory to a homicide could end up in prison for a long time, Lincoln was inclined to cooperate. Lincoln's father hired a criminal lawyer who insisted on a grant of immunity. I conferred with the local prosecutor and immunity was granted with the consent of the State Attorney General's Office. After Lincoln told us what happened, there was no need to conduct any further investigation and we cleared the case. Searching the other kid's boat would have been a waste of time. Beaver was obviously the person who ran over Freddy Ferris.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

August 1, 2012

/s/Eric(a) Evans
Eric(a) Evans

AFFIDAVIT OF LEE LINCOLN

(Testifying for the Prosecution)

My name is Lee Lincoln. I'm 17. I graduated from Liberty High School in June and in September I will be going to National University in Washington, D.C. I got an academic scholarship, otherwise I could never have afforded to go to college. Unlike a lot of the rich kids in Point Douglas Beach, I have to work for everything I get in life. My father had to take out a loan to pay for my lawyer in this case. I'm going to have to pay him back. I used to be a close friend or rather a very close friend of Dustin Beaver. I guess you could say that up until the night of the prom, there was a group of us who were best friends.

Dustin's father seems to make a ton of money doing some kind of consulting. He has a house in Point Douglas Beach. In addition to owning two very nice boats, he has his own airplane. During the beginning of our senior year, Dustin told me that his father let him use the smaller boat (the ski boat) but wouldn't let him touch the 40-foot Silverton. In the weeks before the prom, Dustin and I, as well as other friends had spent a lot of good times on the ski boat; it was sweet the way the boat could zip in and out of the various sand bars and channels. I'm a pretty decent water skier and felt safe with Dustin since he passed his DNR boating course and obtained his boating license. One of the biggest thrills for all of us was swimming and skiing off of Point Douglas Beach at the Railroad Bridge, especially at night. Partying with friends, swimming and skiing in the dark, and lying on the beach under the stars is more fun that you can ever imagine. I guess that's now finished forever.

About a week before the prom, Dustin suggested that a group of us spend a romantic evening on the water after the prom. At first I thought the idea sounded stupid, but after further thought I began to like the idea. Spending the whole night after the prom on the water under a starlit sky, drinking champagne and swimming would be the perfect ending to a perfect night. We arranged for our other friends to accompany us with two other boats, and we would spend the evening floating off of Point Douglas Beach and drinking champagne. If we were lucky, we might even see some shooting stars. Dustin told me that he obtained permission from his parents to use their boat and everything was set.

The evening started off great. Dustin's date was my twin sister, Laurie. Everyone was dressed to the hilt, and we hired a limousine to take us to the prom. The prom was held at a local catering company, and to the credit of the student council, the catering hall had been decorated beautifully. The music and dancing were great, and it was almost everything you would want out of your high school prom.

Toward the end of the prom, Dustin excused himself to go to the bathroom. When he didn't return in 10 minutes, I went outside to look for him. That's when I saw Dustin in the back of a car with Janet Johnson. Although I couldn't see them too well, it was pretty obvious that they were hooking up. When they saw me, they both sort of jumped apart. I didn't even give Dustin a chance to explain. I just walked back into the catering hall.

Janet cornered me about a half-hour later. She told me that it "wasn't what it seemed," and that she had to speak to Dustin because, at the last minute, her mother didn't want her going out boating after the prom. Apparently she was trying to get in touch with her mother to see if she

would change her mind. When she couldn't reach her mother, she decided she was going to go anyway and was telling Dustin this. Although I still suspected that Dustin had betrayed my sister, I let it go because I didn't want to spoil the night for my date and the other kids who were going boating with us.

We left the prom and drove to the Shelly Beach Marina to get the boat. I brought champagne and a case of beer (12 oz. cans) which Dustin put in a cooler in the cutty cabin. As we pulled out of the slip, Dustin opened the first bottle of beer. I looked at my watch and noticed it was midnight. I said to Dustin, "I hope that stuff doesn't turn you into a pumpkin." Janet, who was in another boat, was with her date. After finding a nice spot along the river, we dropped anchor. For the next hour and a half, we sipped champagne or drank beer and hung out under the stars. At about 1:30 in the morning we were out of beer. Dustin drank at least two six-packs. He was also guzzling champagne. I am not certain about exactly how much alcohol Dustin had to drink because I also was drinking beer and champagne. Dustin was showing off by swigging from the bottle of champagne. Anyway, we stayed and talked. We talked about high school, we talked about college, and Dustin said we should all make a pact to stay tight after graduation. I thought the jerk was a hypocrite after what happened with Janet earlier, but everyone was so happy and mellow that I just kept my mouth shut.

Janet then decided she wanted to go tubing. Alex Alvaro, who was driving the boat she was in, said the boat had dual ski clips and ropes. Janet and Rene(e) Robbins hopped overboard, two tubes were hooked to the back of the boat, and Alex started pulling up the anchor. I turned to talk to Dustin and saw him smiling and gawking at Janet as she sat in the tube waiting to be towed. I got very angry and I let Dustin know it.

The next thing I knew, Alex had the boat in gear and took off across the back bay with Janet and Rene(e) in tow. Dustin started chasing them. I yelled to Dustin to slow down, that it was pitch black, that we were going to hit something, why was he checking out some other guy's girlfriend. He just laughed and started going faster. Although Dustin drinks almost every weekend and I have seen him hold a lot more, I thought he was feeling the alcohol.

After about 10 minutes of this, both boats started heading toward the Railroad Bridge. This is one of those old bridges with lots of wooden pilings. There are also sandbars in the area as well as a small beach, Point Douglas Beach, where kids like to swim. Dustin knew this because he and I went swimming there many times. Both boats are now speeding toward the Railroad Bridge with Dustin in the lead. I couldn't imagine that Alex would risk pulling a tuber under the bridge in the middle of the night and I guess Dustin didn't think so either. We swung suddenly in a high-speed turn heading toward the beach. At the last minute, I saw that Alex's boat was not slowing and was coming straight toward us, apparently intent on going under the bridge. At the same time, I saw swimmers in the water and on the beach waving their hands frantically. It seemed like in a split second we just missed hitting the other boat and almost ran aground. I felt a jolt like we had just hit a sandbar and slid right off. By now I was screaming and yelling at Dustin, "Stop! Stop!" He was speeding back the other way, back toward the marina. I kept screaming, "There were swimmers back there! We have to go back." "Why," he shouted back, "so the police can show up and find out we were drinking and boating? No way!" I looked at my watch again. It was 2:20 a.m.

Instead of going back to the marina where his father kept the ski boat, Dustin kept going down the river to his friend Matt Mahoney's house. Dustin pulled the ski boat up to Matt's dock and it soon became apparent that absolutely nobody was home. Dustin then raised the propeller of the outboard motor out of the water and said something about running over one of the ropes at the dock. After a couple of minutes, he screamed and jerked back his left hand. We got out of the boat and went up to the house under a floodlight. Dustin's left hand had a deep cut and he wrapped it up in his shirt. Dustin used his cell phone to call his cousin. When his cousin arrived, his hand was still bleeding and he thought he needed stitches. His cousin took him to the hospital and I went home.

That Monday word was out all over school that a sophomore by the name of Freddy Ferris had drowned during the night of our prom. Some boat had run him over. I was scared to death and didn't say anything. When I tried to talk to Dustin about it in the hallway between classes, he said, "Don't even think about it. Just keep your mouth shut." I haven't discussed it with him since. I was afraid to go to the police because I thought that I might get in trouble for buying the beer and champagne. All I could think about was going to jail, missing college and screwing up my whole life.

A week or so later Detective Evans appeared at my door. I had to go to the police station, where Evans and another cop told me that a number of witnesses implicated Dustin and me. They said it looked to them like I was an accessory to a homicide and that I could go away for a long time. They told me they would work with me if I cooperated with them in their case against Beaver. I was scared to death, and I was afraid to say anything more without talking to my dad. Once I was convicted for shoplifting in juvenile court and I knew I should get a lawyer before talking to the police. My dad got a lawyer for me and told me if the lawyer could get me immunity, I should tell the police everything I knew about what Dustin did. Why should I ruin my life and left him get off?

I hear that Dustin and Janet are engaged and that Dustin's parents have already bought them a condo near Point Douglas Beach. For some strange reason, I hear the ski boat has been sold. I am happy where I am, and despite what people might think, I hold no grudges against anyone. The fact that Dustin is facing a long jail term is his own fault. I guess he'll get whatever he deserves.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment

August 8, 2012

/s/Lee Lincoln
Lee Lincoln

AFFIDAVIT OF DR. SHELLY STORM

(Testifying for the Prosecution)

My name is Shelly Storm. I am 34 years old. I am a toxicologist. I received a bachelor of science degree from Ivy League University, where my major was chemistry and my minor was biology. Next I attended Bailey University of Massachusetts where I received my Master of Science in chemistry. I was prepared to make my fortune with one of the large national chemical companies when tragedy struck and forever changed my life. Two months before completing my work for my masters, my older brother, whom I idolized, was killed in an automobile accident – the victim of a drunk driver. For nearly six months after his funeral I was so depressed that I couldn't think about work or school. Then, with the help of a counselor who finally got through to me, I realized I could put my talents to work educating people about the devastating consequences of alcohol abuse and addiction. I finished the master's program and then went on to receive a Ph.D. in toxicology from the University of Independence. Now I teach there and do federally funded research at the University's Institute for Drug and Alcohol Research and Rehabilitation.

I have conducted extensive studies on the effects of alcohol on human behavior and performance. Of particular interest have been my studies on blood alcohol levels and impairment of functional ability with respect to the operation of simple and complex machinery. I have published more than 90 articles in nationally recognized journals and my work has been recognized and utilized by more than 30 blue chip companies. I have also been recognized as an authority on alcohol and human behavior in the municipal, state and federal courts of 13 states. I have testified for the prosecution in more than 100 DUI, vehicular homicide and manslaughter cases. Although I have occasionally testified for the defense, I only do so when it is entirely clear that alcohol is not involved in aberrant or damaging behavior.

Earlier this month I was contacted by the Independence State Police-Marine Bureau in Loondale, Independence, and asked to review the investigation into the death of a young man named Freddy Ferris. I spoke to Detective Eric(a) Evans and carefully reviewed the detective's investigation summarized in a witness statement. Next I interviewed Denise Gant to confirm the times of her observations as reported in Evans's reports. I then read the witness statements of Lee Lincoln, Alex Alvaro and Rene/Renee Robbins. Finally, I went to Lakota Hospital to confirm the time blood was drawn from defendant Beaver on the night of the homicide, his blood alcohol level, and his weight. After carefully studying all of the information available to me, I can testify with reasonable scientific certainty that defendant Beaver's blood alcohol at the time he sped toward Railroad Bridge and then suddenly swerved at 2:20 in the morning of the homicide was at or above 0.08%; that he was operating his vessel under the influence of intoxicating liquor; and that his consumption of alcohol and consequent reckless behavior was a proximate cause of the death of Freddy Ferris.

Alcohol is absorbed rather quickly through the stomach and intestines, and into the bloodstream. Absorption generally exceeds elimination for 30 to 90 minutes after the last drink. Although if one has eaten recently the food in the stomach may slow the rate that alcohol passes through the stomach and into the bloodstream, this is not a consideration in this case because we know what Mr. Beaver's blood alcohol level was from the hospital sample. Once alcohol enters the body through the stomach and intestines, it is distributed throughout the water in the body. Some studies suggest that the same amount of alcohol can result in slightly different blood alcohol

levels in different individuals because of body weight. Heavier people have a lower percentage of water per body weight so there is less water through which alcohol is absorbed, thereby resulting in a higher blood alcohol concentration. Similarly, women generally have more body fat than men, which means the same quantity of alcohol may cause a slightly higher blood alcohol concentration in women. Generally though, such variations are insignificant.

Alcohol is eliminated from the body through the liver, through one's breath, and through one's urine. The rate of discharge of alcohol can vary; however, it is generally accepted in the scientific and medical community that the average rate of discharge is 0.015% to 0.017% per hour. In this case I used 0.017% because there is evidence that the defendant drank on a number of occasions before May 21, and some literature suggests that people who drink habitually have a higher than average rate of elimination.

In this case, we know the defendant had his last drink at approximately 1:30 on the morning of the Homicide/Vehicular Operation. We also know that he raced toward Railroad Bridge, then swerved toward the beach at 2:20 a.m. His blood alcohol level when his blood was taken in the hospital at 3:45 a.m. was 0.057%. Therefore, the defendant's BAC was at or above 0.08% when his boat struck Freddy Ferris. I have charted the BAC of the defendant in Exhibit 1.

Even if one assumes that Beaver's BAC was below 0.08% at the time of Freddy Ferris's death, in my opinion he was still operating a vessel recklessly while under the influence of alcohol. Exhibit 3 shows the relationship between alcohol intoxication and behavior. If one assumes that the defendant's rate of elimination of alcohol was 0.015% per hour, his BAC would have been at or near 0.08% at 2:20 a.m. on May 21. Clearly, he would have experienced divided attention failure and impaired judgment. He may have been experiencing impaired muscular coordination and some impaired vision. As shown on Exhibit 1, the likelihood of a person with a BAC of 0.06% being involved in a motor vehicle accident is twice that of a person who has consumed no alcohol. The likelihood of a person with a BAC of 0.08% being involved in a motor vehicle accident is six times that of a person who has consumed no alcohol.

I know that some of the people with the defendant on prom night have given statements that he only had three or four beers but this is impossible in light of the BAC determined from his blood sample taken at 3:45 a.m. He would have consumed the equivalent of five or six beers. I also am aware that no one observed any bloodshot eyes, slurred speech, balance problems or other visible signs of intoxication. But Beaver's friends weren't trained observers.

Many people, especially teenagers, think that because one is legally intoxicated in Independence if they operate a motor vehicle with BAC of 0.08%, they may safely operate a motor vehicle when their BAC is below 0.08%. This is simply untrue. A person can be convicted of driving when intoxicated if a trained observer such as a police officer sees that the driver's coordination and motor functions are impaired. This can occur in some people with blood alcohol levels as low as 0.05%. Moreover, it is now generally accepted that the majority of people cannot safely operate a motor vehicle when their BAC reaches 0.08%. This is why there was a movement nationally to lower to 0.08% the BAC for driving while intoxicated. The defendant's BAC was, undisputedly, above 0.08% at 2:20 a.m. on May 21, 2012.

It is ironic that while many of the northern states talked about getting tough on impaired drivers they were the last ones to come on board to pass the .08% law with Independence being the last one to pass it.

It is also sad that with the .08% law being in place for several years now the average BAC reading nationally is still at or above .15%. It appears that while one famous beer distributor used to advertise "Know When To Say When" that America never has learned when "When" is!

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

August 30, 2012

/s/Shelly Storm
Shelly Storm, Ph.D.

AFFIDAVIT OF ALEX ALVARO

(Testifying for the Defense)

I am 17 years old. I will be attending Midwest University in September.

I went to the prom with my date, Pat Painter. A group of us had decided that we would end the evening with a scenic boat ride and a champagne toast on the St. Croix River near Point Douglas Beach. I knew that a lot of my friends were going drinking after the prom, and some had even rented suites at various local motels. I didn't want any part of that. Neither did Pat.

Like many other families here at Point Douglas Beach, our family keeps a small boat at Shelly Beach Marina. It is a 24-foot inboard/outboard with a cutty cabin. I have been boating regularly since I was 14 and have all necessary credentials as well as a boating license. I pride myself on being a safe boater.

The prom was really nice and Pat and I had a good time. Originally, there were supposed to be three boats involved in our private party, but one boat canceled at the last minute, so I agreed to take some of our friends in our boat after the prom. Janet was one of the people who came in my boat.

As we were leaving Shelly Beach Marina, Janet confided to me that she had an argument with her parents over this little boating trip. She seemed upset over this fact, and told me that she had decided to go anyway. She also told me that as she was telling Dustin Beaver all of this midway through the prom, Lee Lincoln, whose twin sister Laurie was Dustin's prom date, had gotten upset, thinking that "something was going on." I told Janet not to worry about it and no one should ruin what was turning out to be one of the best nights of high school and one that we would always remember. That turned out to be true, except for the wrong reasons.

We spent an hour or so sitting in our boats on the river sipping champagne. Janet had brought some of those plastic champagne glasses from her house, and it all seemed quite elegant. I know I only had a glass. I was anchored next to Dustin's boat. I didn't see him drink even a full glass of champagne. He and Lee Lincoln are beer drinkers and they split a six-pack that Lee brought to the marina. Since I am aware that Dustin is a careful boater, I'm sure he had no more than three or four beers.

Things began to drag a little bit, so in the spur of the moment, I suggested that we all go swimming. Janet said she really didn't want to swim at night, but told me that she would like to go tubing. Rene(e) Robbins agreed that tubing was a great idea; Pat said s/he was too tired. We still had two inner tubes in the boat from the previous weekend. I gave it a moment's thought and agreed. I yelled over to Dustin as to what we planned to do and he thought the idea was hilarious. Lee Lincoln, who was in Dustin's boat, seemed a little surprised, but that's just Lee.

I have boated these waters for the last two years and I am very familiar with the river, both in the day and at night. I safely pulled Janet and Rene(e) back and forth through the river channels for about 20 minutes with Dustin following at a safe distance behind. As I slowed at one point, he pulled up next to me and offered to "take it to the bridge." I accepted this challenge, and we both floored our boats and headed down the river towards Railroad Bridge.

Janet and Rene(e) were having a great time, but I didn't want to approach the bridge with the other boat running alongside. I slowed somewhat and let Dustin get ahead of me. I figured he would cut between the pilings and I would simple follow behind him.

I'm not quite sure what happened next, but I remember seeing Dustin's boat turning and cutting in front of me. I cut my boat sharply in order to avoid hitting him. I was now afraid that Janet or Rene(e) would be whipped from the inner tubes and get thrown into either Dustin's boat or the bridge. I don't know how I missed Dustin's boat, the bridge or the shore.

After I recovered, I slowed the boat to a stop and quickly got Janet and Rene(e) back on board. They had no idea how close we had come to having an accident and simply thought I was giving them an extra thrill. I don't think Pat had any idea either. I didn't tell them why, but told them we had to go back to the marina.

I never saw any swimmers in the water that night. If they were swimming under or near the bridge in the dark that night, they shouldn't have been there. Swimming isn't permitted and I know there is a town ordinance that specifically forbids it. I know a lot of people are asking why Dustin didn't stop that night, but there is no way he would have known whether or not his boat hit a swimmer. Like I said, I didn't see any swimmers so no one driving a boat would have expected to run over one. When I was speeding toward that bridge, the water was just a little bit choppy. The bow of my boat would hit the chop and slap down pretty hard. Once it thumped down unusually hard, but that's to be expected. No one could tell the difference between the thudding of the boat on the river and the bow of the boat striking something. After I got Janet, Rene(e) and the tubes back in the boat, I also headed toward the marina. Coming so close to colliding with Dustin's boat, striking the bridge, hitting a sand bar, or running ashore was very sobering. The thought of how easily an accident could have happened put a damper on what otherwise had been a great night. I headed home, never thinking that anyone had been injured.

I know Dustin wasn't drunk and I know he is one of the safest boaters in our area. There is no way he could have navigated the river channels or sand bars in that part of the river if he had been drunk. You can't see the channel markers very well in the dark and you need to be very alert, have very good boating skills, and use very sharp judgment to get through the river channels safely at night. That same Sunday I learned that Dustin had not returned to the marina, but instead headed down the river, past "No Name Island" and docked his boat at a friend's house. It further confirms that he could not have been drunk. I have been up and down that river hundreds of times. It curves and winds sharply. No one with even a slight buzz from booze could navigate that river at night. I am still in disbelief that he would be criminally charged for what was a terrible accident, especially one that was not his fault.

A week or so after the accident, I heard that the police were looking for Dustin and for I. The local newspapers had run several stories about the brutal death of Freddy Ferris. I never saw any other boats so close to Railroad Bridge when we were there the night after the prom so I figured that the police would suspect either Dustin or I of running over Ferris with our boats. I knew I didn't do it. There is no way I could have struck that kid or hit him with my prop and not realized it. I only had a few drinks and I wasn't anywhere near intoxicated. Anyway, when I read about the story in the newspaper, I pulled our boat out of the water. There wasn't any damage to the boat or to the props. There wasn't any blood anywhere near the boat. If the police had inspected my boat, they would have seen that there was no evidence that I ran over that kid.

Also, if I hit somebody, Janet and Rene(e) would have known it as soon as it happened. I just didn't want to talk to the police because I didn't want to get caught up in something this terrible.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

August 14, 2012

/s/Alex Alvaro
Alex Alvaro

AFFIDAVIT OF RENE(E) ROBBINS

(Testifying for the Defense)

My name is Rene(e) Robbins. I am 18 years old. I'll be starting classes in a couple of weeks at Evergreen Community College. I'm dating Janet Johnson's cousin and will be in Janet's wedding party when she and Dustin Beaver get married next July.

I went to the prom on May 20, 2012 and after the prom I went with the others to drink champagne on the water under a starlit sky. I expected an evening filled with fun and romance. I always thought of myself as a romantic at heart. Isn't it funny that I was one of the people in the tube that night?

Janet was really upset with her parents. Frankly, Janet's cousin told me her parents wanted Janet home right after the prom. They didn't want her going drinking, going to motels, going out or going anywhere for that matter. I don't know what they were so concerned about. I was at their house when, at the last moment, they told Janet she could not go on this boat excursion, but she wore her bathing suit under her prom gown anyway. She was determined to go.

I wanted to go on the boat with Dustin, Laurie and Lee, but after what happened at the prom, I figured I better go with someone else so I went with Alex. It seemed like everything was patched up and we had a very pleasant time sipping champagne while the boats were anchored in the river. The moon was full and I have a vivid memory of the moonlight on the water. You could see across the river. As I recall, I was the one who suggested that we go tubing and Alex volunteered because there were tubes on his/her boat. Janet loved the idea. She went tubing too. That's when all the action began. Although I couldn't hear what was going on, from my perspective, both boats were behaving responsibly. I had quite the ride and invited others to join in. No one wanted to. I remember that at one point, both boats were going to the Railroad Bridge and both boats turned, giving me "the whip." Alex's boat turned so sharply that his/her motor sputtered and almost stalled. Although I was swung around near the bridge, I really wasn't in danger of hitting the bridge or anything else for that matter.

As we swerved away from the bridge, I saw two other kids on Point Douglas Beach and one kid in the water, all waving at me. I waved back. I didn't think that anything was wrong whatsoever. We've all been to the beach at Point Douglas after dark to party lots of times. It's not unusual to wave at passing boats. I did think it was somewhat unusual for a swimmer to be out in the water at that time of night. Although occasionally kids go skinny-dipping beneath the bridge after dark, you have to be an idiot to do that. Fisherman use that bridge almost every night to go catfish fishing, although the mosquitos must have been biting that night, because I didn't see any fishermen on the night of the prom. Anyway, there have been reports in the news lately about river otters biting swimmers out in the water, and so people have been warned to stop swimming in the area. The reports said there are likely a lot of protective mama otters right now over their babies, and the pictures of the otter bites they have shown on the news have been nasty! Anyway, there is also an ordinance against swimming in the water after dark and although the DNR doesn't enforce it much, occasionally they do come by and chase the kids off of the beach at night. Anyway, with the moonlight that night you could clearly see the kids on the beach and the swimmers waving, but I never thought a thing of it. I'm sure that Dustin Beaver would have thought that they were waving us in so they could have a boat ride.

I cannot believe that Lee ratted out Dustin. I saw the witness statement that Lee gave. The prosecutor's office had to give a copy of all witness statements to Dustin's lawyers. Alex and I saw the statements when we went to the law office and talked to the investigator working for Dustin's lawyers. I know Lee made the crack to Dustin about turning into a pumpkin at midnight, but don't you think it is a little bit funny that Lee was clock-watching when we all ran out of beer, and again when Dustin swerved his boat near the bridge and beach?

Lee felt friendless after ratting out Dustin. One day after school, I asked Lee about it. Lee felt that Mr. and Mrs. Lincoln, the lawyer they hired and the police were all pressuring Lee to implicate Dustin. They said Lee could be arrested as an accessory to a homicide, which would ruin college, a career and Lee's life.

I believe Lee lied about how much Dustin had to drink and about what Dustin said in the week following the prom. Lee gave a statement saying Dustin drank two six-packs and a lot of champagne. I know there were at least four people drinking the case of beer that Lee brought. I was there and I saw who was drinking. Dustin drank no more than one six-pack. When I asked Lee if Dustin had said anything about the kid that got killed, Lee never mentioned anything about Dustin saying keep your mouth shut. Lee told me Dustin said, "Try not to think about it or you will end up hurting innocent people."

Lee's statement also made it seem like there were a lot of swimmers in the area when Dustin swerved his boat toward the beach. The moon was bright and I could clearly see that there were only one or two swimmers near the bridge when Dustin drove by.

I was also shocked when I saw Lee's statement about Dustin's boat hitting something like a sandbar. When I spoke to Lee, I specifically asked if Lee and Dustin thought they ran over the guy that drowned. Lee didn't say anything about the boat hitting a sandbar or anything else.

All those allegations Lee is making simply aren't true. Lee is angry about Dustin's treatment of Lee's sister. Also, Lee is scared to death of going to jail and would say anything to avoid it. For all the police know, the kid that got killed could have been run over by Alex, although I am sure I would have heard something or seen something if that happened. Dustin won't get his diploma until September and he can't go to college. All he has left is Janet. He never should have been arrested and certainly should not go to jail for something he did not do.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

August 21, 2012

/s/ Rene(e) Robbins
Rene(e) Robbins

AFFIDAVIT OF DR. CHRIS CARSON

(Testifying for the Defense)

I am Dr. Chris Carson. I am 48 years old. I have a Ph.D. in Toxicology from Mid-Western University. I am the president of my own forensic consulting firm, Reliable Experts, Inc. I have consulted in more than 300 cases involving alcohol-related issues. I have published 20 articles involving the effects of alcohol on human behavior and perception, 18 of which have been published in legal journals. However, I have been qualified as an expert in over 40 district courts in the State of Independence, where I have testified in numerous cases involving charges of DUI. I have also consulted in more than 150 personal injury cases involving accidents where alcohol is alleged to have played a part. The majority of my testimony in those cases has been on behalf of plaintiffs or injured parties. I have also testified in 23 criminal trials; 20 for the defense and three for the prosecution. I have been paid \$2,500.00 for completing my investigation and preparing my report. I will be paid \$1,500.00 daily for my time while testifying at trial.

I was requested by Dustin Beaver's attorney to provide an opinion in this case. I reviewed the following material:

- The witness statement of Lee Lincoln
- The witness statement of Eric(a) Evans
- The witness statement of Alex Alvaro
- The witness statement of Rene(e) Robbins
- The witness statement of Dr. Shelly Storm
- The blood sample and BAC of the defendant, Dustin Beaver and
- The autopsy results reported by Detective Evans.

I have assumed that Dustin Beaver began drinking at 12:01 a.m. on May 21, 2012 and that he stopped drinking around 1:30 a.m. I have also assumed that he approached the Railroad Bridge, then swerved toward the beach at 2:20 a.m. His blood sample, which was reportedly taken at 3:45 a.m. disclosed a blood alcohol concentration of 0.057%.

One's blood level reaches its maximum concentration, or peak from 30 to 90 minutes after one stops drinking. That is because after one stops drinking, alcohol continues to be absorbed through the stomach and intestines. Alcohol is eliminated from the body at the average rate of 0.015% per hour. I see that Dr. Storm uses a range of 0.015% to 0.017%. Such a range is really no longer accepted by the scientific or medical community and can result in a distorted extrapolation that is higher than one's actual BAC. Studies which show that habitual abusers of alcohol may eliminate it at a slightly higher than average rate involve chronic alcoholics, not casual weekend drinkers. There is no sound reason to use a rate of elimination other than the well-established average of 0.015%.

Based upon the foregoing considerations and assumptions, it is my opinion, within reasonable scientific probability and with even greater certainty, that Mr. Beaver's blood alcohol peaked at approximately 2:20 a.m. on May 21, 2012—approximately the time he sped toward and swerved away from Railroad Bridge. It is also my opinion that his peak BAC was between 0.072% and 0.079%; it never reached 0.08% on the morning of May 21. I have plotted Mr. Beaver's BAC curve on Exhibit 2.

Lee Lincoln's assertion in the witness statement that Dustin Beaver consumed two six-packs of 12 oz. beer plus quantities of champagne is preposterous. Dustin's BAC at 3:45 would have been considerably higher—perhaps twice what it was. Dustin's BAC of 0.057% at 3:45 a.m. is consistent with his consumption of five, possibly six 12-oz bottles of beer or their equivalent.

Alcohol affects different people in different ways. Some people become totally uncontrollable after one or two drinks. Others can drink significantly greater quantities and show little sign of intoxication. Because there is little or no evidence of Mr. Beaver's drinking history, and no way to accurately gauge the effects of different quantities of alcohol upon him, it is, from a scientific or toxicological perspective, simply impossible to say whether or to what extent his ability to operate a boat was impaired by alcohol on May 21, 2012. Certainly his ability to navigate a boat through tricky river channels, an island, and sand bars down a winding river on his return trip suggests he was not impaired. Also, he demonstrated no readily observable signs of intoxication.

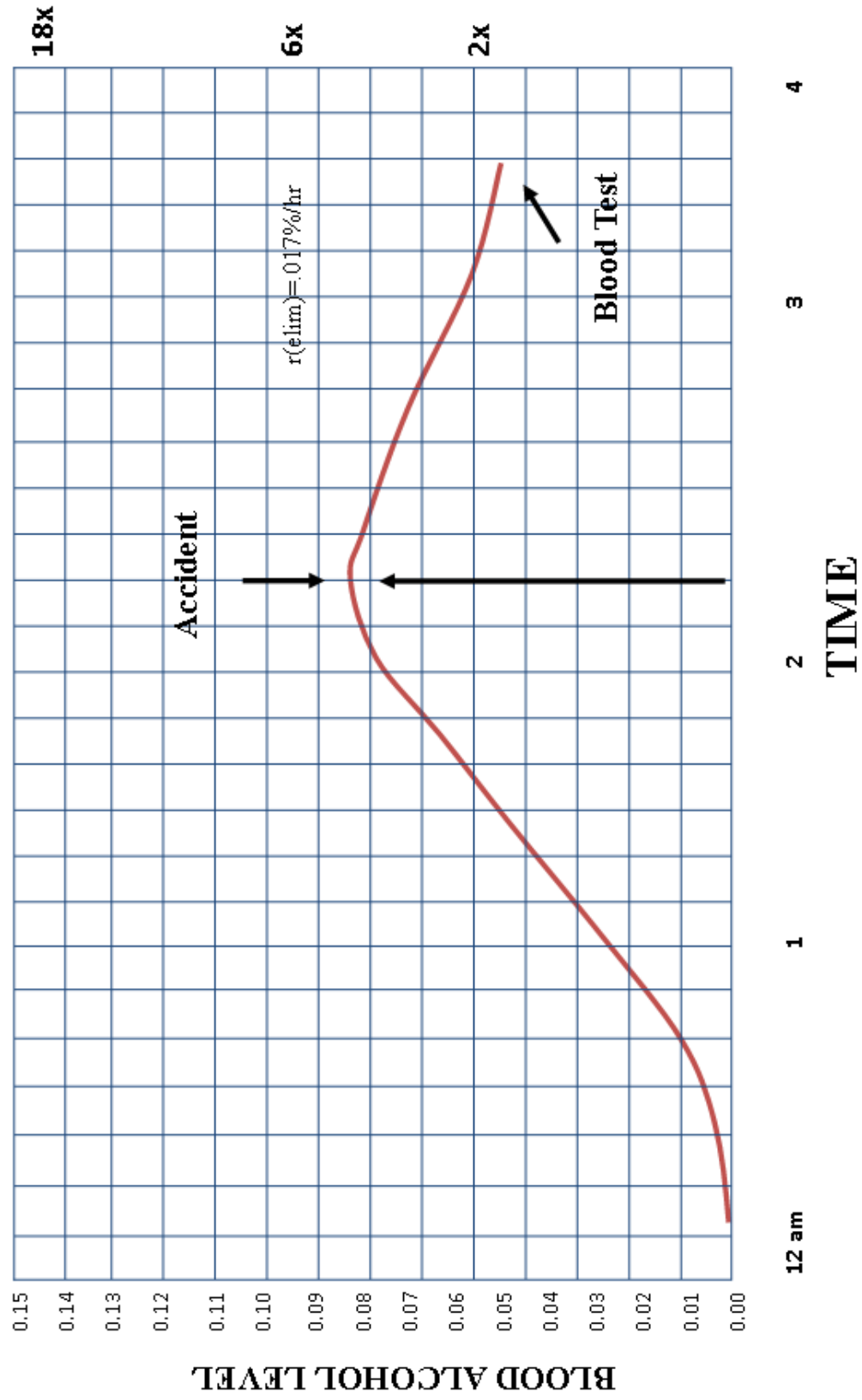
I acknowledge that Exhibit 3 is authoritative and represents generally accepted correlations between alcohol and behavior. I also agree that an individual's ability to operate a motor vehicle or vessel is impaired if his or her BAC is at or above 0.08%. People with BACs at those levels suffer from impaired judgment, loss of self-control and diminished visual acuity. I also acknowledge that a person whose BAC is above 0.06% has a likelihood of becoming involved in a vehicular accident that is twice that of a person who has no alcohol in his system. I have indicated the increased likelihood of an accident on Exhibit 2. I do not know if that same principle would apply to boating accidents. I am not aware of any authoritative studies on boating as opposed to motor vehicle accidents.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

September 6, 2012

/s/Chris Carson
Chris Carson, Ph.D.

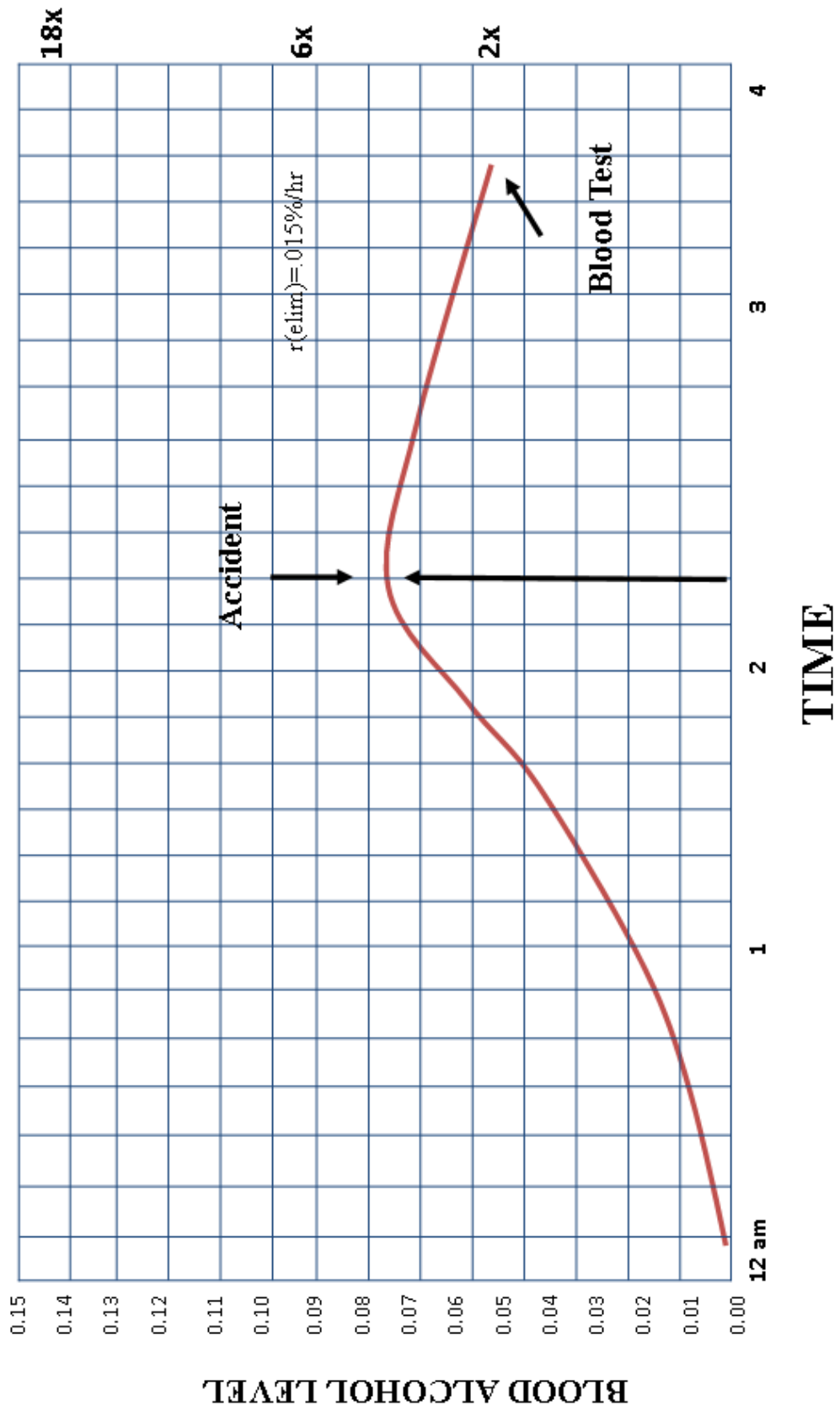
BLOOD ALCOHOL CURVE FOR DUSTIN BEAVER



Accident: 2:20 a.m., Blood Alcohol Level = .057% at 3:45 a.m.; $r(\text{elim}) = 0.17\%/\text{hr}$.

Exhibit 1

BLOOD ALCOHOL CURVE FOR DUSTIN BEAVER



Accident: 2:20 a.m., Blood Alcohol Level= .057% at 3:45 a.m.; $r(\text{elim})=0.015\%/hr$.

Exhibit 2

RELATIONSHIP BETWEEN ALCOHOL INTOXICATION AND BEHAVIOR©

BAC (grams percent)	BIOBEHAVIORAL EFFECTS
.02-.04%	No impairment detectable except when measured by highly specialized tests. Subjective, warm mellow feeling, slight relaxation.
.06%	Increased risk for an accident (2x greater) due to divided attention failure and impaired judgment.
.08%	Too intoxicated to drive (legal limit); impaired muscular coordination on certain standardized tests, some impairment of vision.
.15%	Reliable signs of visible intoxication without the use of special tests (e.g., slurred speech, difficulty walking, standing, picking up objects), inappropriate uninhibited behavior, impaired sensory processing, increased reaction time.
.20-.25%	Severely impaired sensory motor processing.
.30%	Stuporous - Unconscious.
.35%	Low range of surgical anesthesia.
.40%	Lethal level for half the population.

The effects described are cumulative. Symptoms that appear at lower blood alcohol levels may also be present at higher alcohol concentrations. Derived from Brick, J., *The Relationship between Alcohol Intoxication and Behavior* ©1994, and Brick J. and Erickson, C., *Drugs, The Brain and Behavior*, Haworth Medical Press, 1998.

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Exhibit 3

**DRUGS, THE BRAIN, AND BEHAVIOR:
THE PHARMACOLOGY OF ABUSE AND DEPENDENCE©**

By John Brick, Ph.D. and Carl Erickson, Ph.D.

The following excerpts from Chapter 6 are reprinted with permission from Dr. John Brick:

- Alcohol is perhaps the world's oldest known drug.
- It is toxic to almost everything, including the liver, heart, brain, gut, pancreas, and fetus -- yet people drink gallons of it. We know more about this drug than other psychoactive drugs, yet we still do not know all of the mechanisms through which it works to produce intoxication and addiction.
- When alcohol is swallowed it enters the stomach. The transit from the stomach into the small intestine is regulated by a ring-shaped muscular valve called the pyloric sphincter. Under laboratory conditions in which the pylorus has been clamped closed or ligated, about half the alcohol in the stomach will eventually be absorbed through the stomach wall and into the blood. However, under more natural drinking conditions, about 10 percent of the orally ingested alcohol is absorbed through the stomach; the rest is absorbed in the upper intestine.
- The concentration of alcohol in the blood is a function of many factors including (1) the amount consumed, (2) the rate at which alcohol enters the circulatory system from the gastrointestinal tract, (3) the diffusion and distribution of alcohol into blood and fluid compartments, (4) the rate at which alcohol is oxidized and eliminated, and (5) the time course of drinking.
- When the rate of absorption exceeds the rate of elimination, blood alcohol concentration (BAC) rises. Therefore, the rate of alcohol absorption directly affects the maximum BAC.
- Under most drinking scenarios, alcohol absorption exceeds elimination for about thirty to ninety minutes after the last drink.
- Widmark was the first to accurately describe the rate of alcohol elimination in humans...Widmark reported [the rate of alcohol elimination in humans] to be about 15mg/dl/hr (.015 percent/hr.).
- More recent studies using better analytical techniques have confirmed Widmark's original computation and have suggested that, except in some clinical populations, the rate of elimination is very centrally weighted at approximately .015 percent/hr.
- Approximately 90 percent of all alcohol is eliminated from the body through breakdown by the liver enzyme alcohol dehydrogenase. Small amounts of unchanged alcohol are eliminated from the body through sweat, urine, and expired air. These can be measured in alcohol sweat patch tests, urinalysis, and through breath testing.

- The BAC is the concentration of alcohol by weight in a volume of blood, almost always 100 milliliters (in the United States). The BAC is usually expressed in grams or milligrams (mg) of pure ethanol per 100 milliliters (ml) of whole blood or serum.
- In most drinkers, as the BAC increases toward 100 mg/dl (.10 percent), it becomes increasingly difficult to perform various complex psychomotor tests, including tasks such as driving. However, it is difficult, in the absence of specific testing, to reliably observe and identify symptoms of alcohol intoxication until BACs reach 150 mg/dl (.15 percent). At that level or more, the majority of people will show signs or symptoms of impairment due to alcohol intoxication, even in the absence of specific testing.
- One of the most pronounced effects of alcohol is on divided attention tasks... For example, operating a motor vehicle requires the driver to attend to and remember many tasks. Alcohol intoxication may interfere with the ability to remember to wear a seat belt, turn on driving lights and/or directional signals, attend simultaneously to other vehicles, pedestrians, traffic control devices, road markings, hazards, or signs, and to control lane position, speed, make estimates of time and distance, etc. At high BACs the performance of these skills is further hampered by analgesia and impaired feed back from tactile (touch) receptors in the skin. (This type of feedback is called proprioception.)
- People rarely look visibly intoxicated at BACs that produce impairment in complex divided attention task, such as driving. Most drinkers will not appear visibly intoxicated (impaired) at BACs of 0.08 percent (the current legal limit in all states), unless they are given specific tests. The reality is that virtually all drinkers are at increased risk for an accident at BACs that do not produce visible intoxication....
- Chronic heavy drinking can produce liver damage (e.g., fatty liver, cirrhosis), cardiovascular diseases (e.g., heart disease, hypotension), brain damage (cerebellum degeneration, enlarged ventricles), peripheral nerve damage (e.g., neuropathies, paresthesias), neurological damage (cognitive and memory impairment), and motor disorders (gait).

Exhibit 4

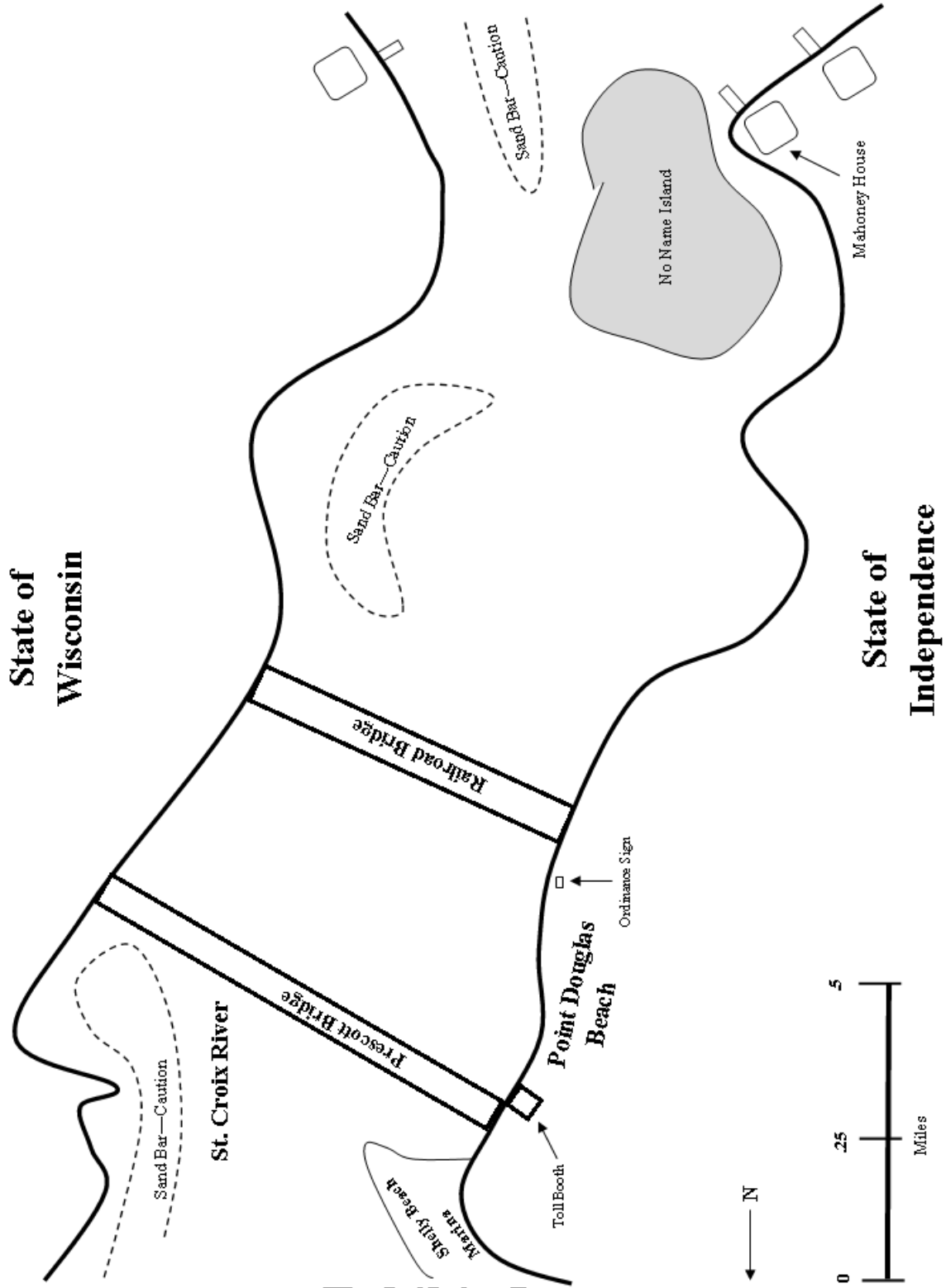


Exhibit 5

LEGAL AUTHORITY

INDEPENDENCE STATUTES

2C: 2-2 General requirements of culpability.

- a. Minimum requirements of culpability. A person is not guilty of an offense unless s/he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.
- b. Kinds of culpability defined.
 - (3) Recklessly. A person acts recklessly with respect to a material element of an offense when s/he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the person's conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

2C: 2-3 Causal relationship between conduct and result.

- a. Conduct is the cause of a result when:
 - (1) It is an antecedent but for which the result in question would not have occurred.
- b. When the offense requires that the defendant recklessly cause a particular result, the actual result must be within the risk of which the actor is aware or, if not, the actual result must involve the same kind of injury or harm as the probable result and must not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

2C: 11-2 Criminal Homicide.

- a. A person is guilty of criminal homicide if s/he purposely, knowingly, recklessly, or under circumstances set forth in section 2C 11: -5, causes the death of another human being.
- b. Criminal homicide is murder, manslaughter or death by auto.

2C: 11-4 Manslaughter.

- a. Criminal homicide constitutes aggravated manslaughter when the actor recklessly causes death under circumstances manifesting extreme indifference to human life.
- b. Aggravated manslaughter is a crime of the first degree.

2C: 11-5 Death by vehicular homicide.

- a. Criminal homicide constitutes vehicular homicide when it is caused by driving a vehicle or vessel recklessly.
- b. A person who drives a vehicle or vessel with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood, is presumed to be operating the vehicle or vessel recklessly.

2C: 43-6 Sentence of imprisonment for crime.

- a. Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:
 - (1) in the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 10 years and 20 years;
 - (2) in the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between 5 years and 10 years;
 - (3) in the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between 3 years and 5 years.

POINT DOUGLAS BEACH ORDINANCE 15-88

Section 1. Use of beaches after 10:00 p.m. and swimming after dark prohibited.

- a. It shall be unlawful for any person to walk on or use for any purpose after 10:00 p.m. the beaches at Prescott Bridge and Railroad Bridge or to swim after dark in the waters adjacent to, or within 300 feet of, the beaches at Prescott Bridge and Railroad Bridge.
- b. Any person who has been convicted of a violation of this ordinance shall be required to pay a fine of \$1,000.00 and shall be subject to a term of imprisonment of up to 90 days or both.

JURY CHARGE

STATE V. DUSTIN BEAVER

Ladies and Gentleman,

The defendant, Dustin Beaver, is presumed to be innocent until and unless the State proves guilt beyond a reasonable doubt. The burden of proving guilt is upon the State. No burden of proof is imposed upon the defendant, Dustin Beaver. Unless the State has proven beyond a reasonable doubt each and every element of the crimes charged, this defendant, Dustin Beaver, is entitled to a verdict of not guilty. Reasonable doubt is an honest and reasonable uncertainty as to the guilt of this defendant existing in your minds after you have given full, fair and impartial consideration to all of the evidence.

Count One of the indictment alleges that on May 21, 2012 the defendant, Dustin Beaver, committed aggravated manslaughter. In order to establish the crime of aggravated manslaughter, the State must prove to you beyond a reasonable doubt that on May 21, 2012, Dustin Beaver recklessly caused the death of Freddy Ferris under circumstances manifesting extreme indifference to human life. In order for you to find the defendant guilty of aggravated manslaughter, the State is required to prove each of the following elements beyond a reasonable doubt:

1. That the defendant caused Freddy Ferris's death;
2. That the defendant did so recklessly; and
3. That the defendant did so under circumstances manifesting extreme indifference to human life.

One element that the State must prove beyond a reasonable doubt is that the defendant acted recklessly. A person who causes another's death does so recklessly when s/he is aware of and consciously disregards a substantial and unjustifiable risk that death will result from his conduct. The risk must be of such nature and degree that, considering the nature and purpose of the defendant's conduct and the circumstances known to the defendant, his/her disregard of that risk is a gross deviation from the standard of conduct that any reasonable person would follow in the same situation.

In other words, you must find that the defendant was aware of and consciously disregarded the risk of causing death. If you find that defendant was aware of and consciously disregarded the risk of causing death, you must determine whether the risk that he disregarded was substantial and unjustifiable. In doing so, you must consider the nature and purpose of defendant's conduct, and the circumstances known to the defendant, and you must determine whether, in light of those factors, the defendant's disregard of that risk was a gross deviation from the conduct a reasonable person would have observed in the defendant's situation.

Another element that the State must prove beyond a reasonable doubt is that the defendant acted under circumstances manifesting extreme indifference to human life. The phrase "under circumstances manifesting extreme indifference to human life" does not focus on the defendant's state of mind, but rather on the circumstances under which you find he acted. If, in light of all the evidence, you find that the defendant's conduct resulted in a probability as opposed to a mere

possibility of death, then you may find that he acted under circumstances manifesting extreme indifference to human life. On the other hand, if you find that his conduct resulted in only a possibility of death, then you must acquit him of aggravated manslaughter and consider the crime of death by vehicular homicide, which I will explain to you shortly.

The final element that the State must prove beyond a reasonable doubt is that the defendant caused Freddy Ferris's death. Causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt:

First, that but for the defendant's conduct, Freddy Ferris would not have died.

Second, Freddy Ferris's death must have been within the risk of which the defendant was aware. If not, it must involve the same kind of injury or harm as a probable result of the defendant's conduct, and must also not be too remote, too accidental in its occurrence, or too dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense. In other words, the State must prove beyond a reasonable doubt that Freddy Ferris's death was not so unexpected or unusual that it might be unjust to find the defendant guilty of aggravated manslaughter.

Count Two of the indictment alleges that on May 21, 2012, the defendant committed the crime of death by vehicular homicide. A person is guilty of death by vehicular homicide when that person causes the death of another by operating the vehicle or vessel, in this case a boat, recklessly. The elements of death by auto or vessel in this case are:

1. That the defendant, Dustin Beaver, was the operator of a boat;
2. That Dustin Beaver caused the death of Freddy Ferris; and
3. The defendant caused Freddy Ferris's death by driving the boat recklessly.

I have previously explained to you that causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt:

First, that but for the defendant's conduct, Freddy Ferris would not have died.

Second, Freddy Ferris's death must have been within the risk of which the defendant was aware. If not, it must involve the same kind of injury or harm as a probable result of the defendant's conduct, and must also not be too remote, too accidental in its occurrence, or too dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense. In other words, the State must prove beyond a reasonable doubt that Freddy Ferris's death was not so unexpected or unusual that it might be unjust to find the defendant guilty of death by vehicular homicide.

In this case there has been testimony that Dustin Beaver was drinking alcohol, and that his blood alcohol concentration was 0.08% or higher. If you find that the State has proven Dustin Beaver was the operator of the boat that struck Freddy Ferris, and that Dustin Beaver's blood alcohol concentration, or BAC, was .08% or more at the time, then you are permitted to infer from the proven facts that Dustin Beaver was operating the boat recklessly. However, while you are permitted to accept the inference that Dustin Beaver was operating the boat recklessly, you may also reject it. If you find that there was credible evidence that contradicts or refutes the

inference, then you should not conclude from defendant Beaver's BAC alone that he operated the boat recklessly at the time of Freddy Ferris's death. Of course, if you do not find from the evidence that defendant Beaver's BAC was 0.08% or above at the time of Freddy Ferris's death, then there is no inference.

The State need not prove beyond a reasonable doubt that the defendant's BAC was 0.08% or more at the time he was operating the boat in order to establish that he operated the boat recklessly. Such proof would give rise to an inference that the defendant's operation of the boat was reckless. However, the State may prove reckless operation of the boat from other evidence. If you do not conclude that defendant Beaver's BAC was 0.08%, you should then consider the testimony of all of the witnesses, including the experts, in deciding whether the State has proven beyond a reasonable doubt that the defendant, Dustin Beaver, recklessly operated the boat.

If, after weighing all of the evidence, you conclude that the State has proven beyond a reasonable doubt that Dustin Beaver was operating the boat that struck Freddy Ferris, that the defendant was operating the boat recklessly, and that Dustin Beaver's reckless operation of the boat caused the death of Freddy Ferris's, then you should find Dustin Beaver guilty of death by vehicular homicide. If you find there is reasonable doubt as to any of these three elements, then you should find that Dustin Beaver is not guilty.

The accused, Dustin Beaver, is entitled to separate consideration on each count of the indictment. In addition, if the State has not proven any one element of any offense beyond a reasonable doubt, the defendant is entitled to a "not guilty" verdict. However, if you conclude that the State has proven each element of an offense beyond a reasonable doubt, you must return a verdict of guilty with regard to that particular count.

Since this is a criminal case, your verdict must be unanimous -- all jurors deliberating must agree one way or the other before a verdict can be returned. You should decide this case on the evidence presented without any bias, prejudice, or sympathy, and without any reference to suspicion or conjecture. Although you are required to give careful consideration to the views of your fellow jurors, you are not required to give up your honestly held belief as to the guilt or innocence of the defendant on any particular count, as long as you are satisfied that your conclusion is correct after you have considered the views of your fellow jurors.

You may begin your deliberations. At such time as you return with your verdict, I will ask the juror sitting in seat #1 to rise and inform the court publicly of the verdict.

MINNESOTA HIGH SCHOOL MOCK TRIAL COMPETITION RULES

Any clarification of rules or case materials will be issued in writing to all participating teams no less than two weeks prior to the tournament.

Each team is responsible for the conduct of persons associated with the team throughout the mock trial event.

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I. RULES OF THE COMPETITION

A. ADMINISTRATION

Rule 1.1 Rules

All trials will be governed by the Rules of the Minnesota High School Mock Trial Competition and the Minnesota High School Mock Trial Rules of Evidence.

Rules with the “NHSMTC” designation appear in these rules only as notification to the team representing Minnesota at the National High School Mock Trial Championship (NHSMTC) that additional and different rules govern that tournament. (See Rule 1.3 for an example.) This designation does not imply that rules governing the NHSMTC govern this, the Minnesota Mock Trial Tournament, in any way.

Questions or interpretations of these rules are within the discretion of the Minnesota State Bar Association (MSBA), whose decision is final.

Rule 1.2 Code of Conduct

The rules of competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. Coaches, judges, spectators and students alike are expected to work with one another on a professional level at all times. The MSBA possesses 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 1.3 Emergencies (NHSMTC)

B. THE PROBLEM

Rule 2.1. The Problem

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

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics which would allow them to be played by either males or females. All three of the witnesses must be called.

The fact that information is contained in a statement of facts, indictment, witness statement/affidavit, or exhibit does not mean that the information is admissible or has been admitted into evidence. Proffers of evidence must be made and ruled upon during the course of the trial itself.

Rule 2.2 Witnesses Bound by Statements

While students are encouraged to research the topic for their own general benefit or as part of a class project, the information, data, or citations generated from outside research may not be introduced at trial, and may result in point deductions. Thus, students may cite only the cases and laws given in the

official case materials, and may introduce as evidence only those documents provided as exhibits in the trial script.

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. Some extrapolations of facts not in the record are allowed since some additional information may be necessary to make the case realistic. As an example of a fair extrapolation, background information such as date or place of birth would be a minor construction and allowed to amplify or humanize the case. Unfair extrapolation that would not be allowed includes information pivotal to the particular facts at issue. Only those facts which are neutral to both sides are fair extrapolations. If you have a question as to whether a particular added fact would be allowable background information, or if you believe it might be an unfair extrapolation, do not add the questionable fact. As a general rule of thumb, the more the "supplemental" information helps your case, the more cautious you should be in adding it to the witness' testimony. *When in doubt, leave it out!*

It is virtually impossible to provide witnesses with detailed answers to every conceivable question that lawyers can ask. The witness statements are not intended as a complete life history and, for the most part, information not in the statements will be irrelevant and should be subject to objection. If an attorney's question solicits unknown information, the witness may supply an answer of his/her choice, so long as it does not materially affect the witness' testimony. Try to avoid a rigid, mechanical approach to the trial (the witness statements are not scripts), but stay within the bounds of honest competition. Remember that your *presentation* is graded –not the merits of the case. Just as in our judicial system, lawyers must deal with the facts which exist. Attempts to bolster the witness' testimony with added facts may be met with disapproval from the judges.

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 2.3, "unfair extrapolation."

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 (i.e., would not be considered "unfair extrapolation" under Rule 2.3).

A witness is not bound by facts contained in other witness statements. Witnesses must be prepared to deal with any inconsistencies between their own statement and the case materials. Witness statements are subject to all of the human inaccuracies that people make in similar situations. These include distortion and even dishonesty.

Rule 2.3 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. If the question would elicit an unfair extrapolation the witness may answer, "There is no information in my witness statement to answer this question."

When an attorney objects to an extrapolation, a witness responds to an extrapolation, or a witness responds to a question with an answer of "no information in my statement," the judge should rule immediately in open court to clarify the course of future proceedings. The burden of proof with respect to the objection is on the objector. The purpose of the rulings is to avoid an irrelevant digression from the statement of facts either through attorney questions or witness responses. Participants should understand that any ruling by a judge from the bench is not to be taken as an indication of scoring merit or of the eventual outcome of the trial. Student attorneys should be aware of these alternatives and feel free to use them as they might benefit the strategy of the team. Do not become overly obsessed with handling extrapolations. *Bring your concerns to the judges' attention and move on* with the rest of the trial.

Attorneys for the opposing team may refer to Rule 2.3 in a special objection, such as "unfair extrapolation" or "This 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.

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. Judges should use their scores to reflect whether they believe that unfair extrapolation has occurred, but scoring judges may not do so if the presiding judge has ruled in open court that no such extrapolation has occurred.

Rule 2.4 Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender.

Rule 2.5 Voir Dire

Voir dire examination of a witness is not permitted.

C. TEAMS

Rule 3.1 School and Student Eligibility

The competition is open to students currently enrolled in grades seven through twelve in all Minnesota schools. Program information and registration forms are mailed to appropriate school personnel at the beginning of the school year.

To participate in the competition schools must return a completed entry form and registration fee for each team entered. Registration fees will not be refunded after October 31. In addition to the registration fee, a \$50.00 late drop deposit is required to register for the season. The late drop deposit

will be refunded to teams that remain in the tournament after the team drop-out deadline. Teams may opt to apply the current year's late drop deposit refund to next year's late drop deposit. Any team that drops out of the tournament after the drop-out deadline forfeits their late drop deposit. Registration forms received after October 17 will not be guaranteed trials in the competition.

A school may enter up to four teams in the competition. This limitation does not prevent a school from entering more than four teams in an invitational, scrimmage, or other event.

For schools with more students interested in participating than can be accommodated on the number of mock trial teams for which the school is eligible, there are various options:

- Hold tryouts for the mock trial team(s) and have the teacher coach (the attorney coach may also want to participate) select team members.
- Hold intraschool rounds to determine which students will represent the school in regional and state competition.
- Create "practice teams" comprised of less experienced members and allow only upper class students to be on the school's "official" teams.

Schools must follow the MSBA procedures for confirming their trial schedules or be disqualified from entering the competition the following year.

Rule 3.2 Team Composition

Each team must consist of at least **eight** primary members: three witnesses, three attorneys, a timekeeper and one alternate. In any given round of competition, seven students must participate. There is no limit to the total number of students who can be members of the team.

At least two students on the team must participate in a scoring role in every round for which the team qualifies. Once a student has participated in a scoring role on a team, that student cannot participate on another team for the remainder of the rounds for which the team qualifies. A student need not participate in the same scoring role in each round.

A scoring role is defined as an attorney or witness that receives a score during a round.

Every team must be fully prepared to argue both sides of the case. Schools cannot have a separate "prosecution team" and "defense team". Only one team from each school may be eligible to compete at the state tournament.

Each team may include as many as three 7th and 8th grade students per round. These students may participate in scoring or non-scoring roles. Any school that utilizes seventh and eighth grade participants cannot field more than two teams. Teams should be advised that the team representing Minnesota at the National High School Mock Trial Championship must be comprised of 9-12 grade students and that its team roster cannot be altered after the Minnesota State Championship or during the National competition.

Refer to Section D: The Trial for more details on the student attorney roles.

Refer to Rule 4.5 for more details on the timekeeper's role.

Rule 3.3 Team Presentation (NHSMTC)

Rule 3.4 Team Duties

Team members are to evenly divide their duties. During pre-trial matters, teams shall read the Pre-Trial Conference script (p. 103) aloud to the court. The prosecution/plaintiff team shall read one thru five and the defense shall read six through ten. These requests may be read by any team member, including non-scoring and scoring team members. There shall be three attorneys and three witnesses. Each of the three attorneys will conduct one direct examination and one cross-examination; one of the three attorneys will present the opening statement and another will present the closing argument and rebuttal. [See Rule 4.5]

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

Each team must call each of the three witnesses. Witnesses must be called only by their own team during their case-in-chief and examined by both sides. Witnesses may not be recalled by either side.

Rule 3.5 Team Roster

Copies of a Team Roster must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified *only* by the side they are arguing (e.g. prosecution or defense). No information identifying team origin (name, location, etc.) should appear on the roster. Before beginning a trial, the teams must exchange copies of their Team Roster. The roster should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster also should be given to the judging panel and presiding judge before each round. A sample roster format is included at the end of the case packet.

D. THE TRIAL

All trials will be governed by the "Simplified Rules of Evidence" contained in these materials. Other more complex rules may not be raised in the trial.

Rule 4.1 Courtroom Setting (2-5, Minnesota only)

1. The Plaintiff/Prosecution team shall be seated closest to the jury box. If a team wants to rearrange the courtroom, the teacher coach must ensure that the courtroom is returned to its original arrangement before the team leaves the courtroom at the end of the trial.

2. Coaches must sit so they are behind the student attorneys (i.e., coaches should not be visible to the attorneys during their presentations).

3. All participants are expected to display proper courtroom behavior. The following rules should be observed in the courtroom at all times:

A. Students should dress appropriately for a courtroom setting. (Suits are not required.) A student playing the part of a witness may wear clothing consistent with that witness' character, but may not wear a costume. [Refer to Rule 4.11 for rule about costumes.]

- B. Be courteous and respectful to witnesses, other attorneys, and the judge.
 - C. Ask permission of the judge to approach the witness.
 - D. If you receive a ruling against your side on a point or on the case, accept the decision gracefully.
4. All participants are expected to display proper behavior in the courthouse. The following rules should be observed in the courthouse at all times. Any violation of these rules (e.g., going into other parts of the courthouse) will be grounds for requesting that school to leave the courthouse.
- A. Each team must have an adult chaperone assigned to it while at the courthouse. The chaperone must remain with the team at all times, while the team is waiting for a trial to begin, competing in the courtroom, waiting for another team to finish competing, etc.
 - B. All students must stay in the area of the courthouse where the competition is being held. Students will be allowed to use the restrooms which are nearest to the courtroom being used for competition.
 - C. Teams should be advised that some courthouses prohibit cell phones on the premises. Courthouses do not have provisions to store them during trials and teams (including students, coaches and spectators) should be prepared to follow courthouse policy.
 - D. Students may not have in their possession any food, beverage or gum while in the courtroom.
 - E. Following completion of the trial, the coaches will inspect the area used for the competition, including the restrooms, to ensure that everything is left in the same condition in which it was found. *Any furniture in the courtroom that was moved before or during the trial MUST be restored to its original configuration!*
 - F. If requested to do so by the Court Administrator, the coaches will notify the administrator's office when their team arrives and when it leaves. The latter will provide an opportunity for the Court Administrator to arrange for an inspection of the area.
5. In order to avoid the appearance of impropriety or bias, coaches should not interact with the judges until after the trial.

Rule 4.1(A) Pretrial Matters (Minnesota only)

1. Teams are expected to be present in the courtroom fifteen minutes before the starting time of the trial. To assist in enforcing these rules, presiding judges, upon taking the bench before the start of the trial, will handle the following pre-trial matters:
- A. Ask each side if it is ready for trial. Ask each team to read aloud their portion of the Pre-Trial Matters script (p. 103) put forth on a trial basis by the Mock Trial Advisory Committee. Ask each side to provide the judges with copies of its team roster (a sample roster it provided in the back of these rules). Ask each member of a team to rise and identify himself/herself by name and role.

B. If video recorders are present, the judge will remind the teams that the tape cannot be shared with any other team. (See Rule 4.14 for more on videotaping.)

C. The judge will remind all present in the courtroom of the rule prohibiting verbal or written communication between the team members and the coaches, spectators or anyone else throughout the trial round, including any recesses. (This is to be especially stressed in crowded court settings where there is close proximity between audience and teams.) Communication is allowed once the trial is complete. Judges should announce that the trial is complete and communication is permitted.

2. The judge will remind all present that the courtroom should be put back in order, all trash removed, and that no food or drink is allowed anywhere, at any time, by anyone.

3. Team members will meet the judges for introductions and to assure that the rules of evidence and procedure are uniformly interpreted. Each team should submit to the judges a roster of the students' names and the roles they will play. The Mock Trial Program will receive team rosters from all judges. The parties should also ask the judges when the exhibits (if any) should be marked for identification.

4. The starting time of any trial will not be delayed for longer than ten minutes, except with the agreement of the teacher coaches for both teams and the presiding judge. Incomplete teams may proceed with the trial by having one or more members play up to two roles. However, incomplete teams will be assigned a two (2) point deduction by each judge for each missing attorney, witness or timekeeper. Teams missing a bailiff will not be assigned a point deduction.

5. Once a trial has been scheduled, the trial will not be rescheduled due to the absence of a team member or illness, unless approved by the Mock Trial Manager. Teams should include alternates to replace absent members. Trials may be rescheduled due to inclement weather conditions at the discretion of the Mock Trial Manager.

6. All team members must remain in the courtroom during the entire trial. During a formal recess called by the judge, team members may leave the courtroom but should not communicate with anyone other than their student team members.

Rule 4.2 Stipulations

Stipulations shall be considered part of the record and already admitted into evidence.

Rule 4.3 Reading Into The Record Not Permitted

Stipulations, the indictment, or the Charge to the Jury will not be read into the record.

Rule 4.4 Swearing of Witnesses

The following oath may be used before questioning begins:

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

Rule 4.5 Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and Redirect (optional) Examination (25 minutes per side)
3. Cross and Re-cross (optional) Examination (18 minutes per side)
4. Preparation for closing argument (2 minutes)
5. Closing Argument and Rebuttal (7 minutes per side)
The prosecution/plaintiff attorney may reserve up to 3 minutes of his/her time for rebuttal. The attorney must advise the court at the beginning of his/her argument what portion (if any) of the allotted 3 minutes s/he wishes to set aside for rebuttal.
6. Team Conference (2 minutes)

The Prosecution/Plaintiff gives the opening statement and the closing argument first.

The Plaintiff's Opening Statement must be given at the beginning of the trial. The Defense may choose to postpone its Opening Statement until after the conclusion of the Plaintiff's case-in-chief.

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

Rule 4.6 Timekeeping

Time limits are mandatory and will be enforced. Each team is required to have its own timekeeper and timekeeping aids. Timekeepers must use these standard time increments on their timecards: 7:00; 6:00; 5:00; 4:00; 3:00; 2:00; 1:00; :45; :30; :15; STOP. (See sample timekeeping aids on the mock trial website.)

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 introduction of exhibits. If at any point during the trial time expires any timekeeper should say "stop" aloud for the court and parties to hear at the point of time expiration. Failure of a timekeeper to say "stop" aloud for the court and parties to hear will be considered a waiver of the time violation.

Every effort should be made to respect the time limits. Judges will be asked to use their scores to reflect a team's ability to adhere to the time guidelines. Perceived time violations are an issue which generates much controversy every year during the Mock Trial Competition. Due to the nature of the event and in the interest of keeping the competition good-spirited, teams are urged to adhere to the time limits indicated and to give their opponents the benefit of the doubt if minor infractions occur.

Rule 4.7 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 presiding judge should request that the student stop his/her presentation. Scoring judges shall determine individually whether or not to discount points in a category because of over-runs in time.

Rule 4.8 Motions Prohibited

Motions which defeat the purpose of the trials (such as those to dismiss or to sequester or motions in limine) will not be allowed.

Rule 4.9 Sequestration

Teams may not invoke the rule of sequestration.

Rule 4.10 No Bench Conferences

All matters should be handled in open court, without bench conferences.

Rule 4.11 Supplemental Material/Costuming/Exhibits

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories, and makeup which are case specific.

The only documents which the teams may present to the presiding judge or scoring panel are the team roster forms and the individual exhibits as they are introduced into evidence. Exhibit notebooks are not to be provided to the presiding judge or scoring panel.

Each team may laminate and enlarge one (1) exhibit to a maximum size of 24 by 36 inches. There can be no other enhancement of the exhibits (e.g., color, additional words), but they can be mounted on poster board or foam core in order to allow them to be handled more easily.

No other chalkboards, posters or other visual aids are permitted during the trial, except that during closing arguments a flip chart or other paper (e.g. newsprint) with hand lettering or hand drawing may be used. A flip chart or other paper (e.g. newsprint) with hand lettering or hand drawing may be prepared either prior to or during the trial. Students may write on their own or the other team's demonstrative tools so long as it is not destructive."

Rule 4.12 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 emergency recess which may occur. Signaling of time by the teams' 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 this round may sit inside the bar. Attorneys and witnesses may communicate with each other during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes. During the permitted conference at the close of the trial regarding rules infractions, all team members (witnesses, attorneys, bailiff and time keeper) may communicate with each other. No disruptive communication is allowed.

Rule 4.13 Viewing a Trial

Team members, alternates, attorney/coaches, teacher-sponsors and any other persons directly associated with a mock trial team, except for those authorized by the MSBA, are not allowed to view other teams' performances, so long as their team remains in the competition.

Everyone attending a trial should be reminded that appropriate courtroom decorum and behavior must be observed and that absolutely no food or drink is permitted in the courtroom.

Rule 4.14 Videotaping/Photography

Videotaping can be an effective teaching tool and is permitted in each round of competition provided that:

1. Courthouse policy permits videotaping.
2. A team only tapes a trial in which it is competing.
3. The taping must not disrupt the trial. Photographers should position themselves carefully to avoid distracting the participants during the course of the trial.
4. The tape will be used only by the competing team and will not be shared with any other team (even from the same school) or used for the purposes of "scouting."
5. There are no objections to videotaping from either team or any judge(s).

Rule 4.15 Jury Trial (NHSMTC only)

Rule 4.16 Standing During Trial

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

Rule 4.17 Objections 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 proper during the opposing team's opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the 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 will not rule on this "objection," but all of the judges will weigh the "objection" individually and use their scores to reflect whether they believe a rules violation has occurred. A brief response by the opposing team will be heard under the presiding judge's discretion.

Rule 4.18 Objections

The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge should ask the reason for it. Then the judge should allow the attorney who asked the question to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a rule of evidence has been violated ("objection

sustained”), or whether to allow the question or answer to remain on the trial record (“objection overruled”).

1. Argumentative Question: An attorney shall not ask argumentative questions, i.e. one that asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. The court, however, in its discretion, may allow limited use of argumentative questions on cross-exam.

2. Assuming Facts Not in Evidence: Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a "hypothetical question").

3. Badgering the Witness: An attorney may not harass or continue to annoy/aggravate a witness.

4. Beyond the Scope: Refer to Rule 611(b); applies only to redirect & re-cross.

5. Character Evidence: Refer to Rule 608.

6. Hearsay: Refer to Mock Trial Rules of Evidence, Article VIII for an explanation of hearsay and the exceptions allowed for purposes of mock trial competition.

7. Irrelevant: Refer to Article IV.

8. Lack of Personal Knowledge: A witness may not testify on any matter of which the witness has no personal knowledge. (See Rule 602, Article VI)

9. Lack of Proper Predicate/Foundation: Attorneys shall lay a proper foundation prior to moving the admission of evidence. The basic idea is that before a witness can testify to anything important, it must be shown that the testimony rests on adequate foundation. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

10. Lack of Qualification of the Witness as an Expert: See Rule 702.

11. Leading Question: Refer to Rule 611(c).

12. Non-Responsive Answer: A witness' answer is objectionable if it fails to respond to the question asked.

13. Opinion on Ultimate Issue: Refer to Rule 704.

14. Question Calling for Narrative or General Answer: Questions must be stated so as to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")

15. Repetition: Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

16. Speculation: A witness' testimony should be based on the facts and issues of the case being argued. An attorney shall not ask a question which allows the witness to make suppositions based on hypothetical situations.

17. Unfair Extrapolation: Refer to explanation in Rule 2.3.

Note: Teams are not precluded from raising additional objections which may be available under the Minnesota Mock Trial Competition Rules of Evidence.

Rule 4.19 **Reserved.**

Rule 4.20 **Procedure for Introduction of Exhibits**

As an example only, the following steps effectively introduce evidence:

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. ___?" (Because judges may not have seen the evidence, this rule departs from real life trial procedure.)
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. "Your Honor, we offer Exhibit No. ___ into evidence at this time. The authenticity of this exhibit has been stipulated."
9. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not be 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."

Witness affidavits may be used to impeach or refresh recollection and when used for those purposes, need not be admitted into evidence.

Rule 4.21 **Use of Notes and Standards for Judging**

The standards for judging are contained in the MSBA Mock Trial Performance Rating Standards. While attorneys are allowed to use notes, extensive reliance on notes during an opening, closing, direct examination, or cross examination is subject to a point deduction when scoring that attorney's presentation. Witnesses are not permitted to use notes while testifying during the trial; any use of notes by witnesses is subject to a point deduction.

Rule 4.22 Redirect/Re-cross

Redirect and re-cross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Minnesota High School Mock Trial Rules of Evidence.

Rule 4.23 Scope of Closing Arguments

Closing Arguments must be based on the actual evidence and testimony presented during the trial.

Rule 4.23.1 Team Conference (Minnesota Only)

The following rule is designed to deal with the extraordinary circumstance where a team believes that a significant rules violation occurred during the trial which the judges may not have observed. This rule is not designed to increase the contentiousness of the trial process or to encourage teams to try to find rules violations. At the conclusion of final arguments, the presiding judge will allow two minutes for the three student attorneys, three witnesses, bailiff and timekeeper to confer. The purpose of this team conference is to give these team members a chance to discuss among themselves whether they believe any significant rules violations occurred during the trial of which the judges could not be aware or have observed themselves.

After the allotted two minutes, the presiding judge will ask if either team wishes to report any significant rules violations. If a team feels point deductions should be assessed against the opposing team, one attorney from the team will have two minutes to explain why point deductions should be assessed. Following this explanation, one attorney from the opposing team will have two minutes to explain why point deductions should not be assessed. Further discussion will be limited to five minutes total, at which time the judges will decide individually about making any point deductions on their score sheets. The amount of such point deductions, if any, is at the discretion of each individual judge. **These decisions (about point deductions) are final!**

Of course the judges may, at their discretion, award point deductions for a rules violation regardless of whether the opposing team brings a rules violation to the attention of the judges.

If the presiding judge fails to ask the teams if they wish to ask for point deductions, and one or both teams wish to do so, it must be brought to the attention of the judge at this time.

Rule 4.24 The Critique

The judging panel is allowed 10 minutes for debriefing. The timekeeper will monitor the critique following the trial. Presiding judges are to limit critique sessions to a combined total of fifteen minutes.

The presiding judge will render two decisions at the end of the trial:

1. The merits of the legal case and the applicable law (i.e., a decision about guilt or innocence in a criminal trial, or in favor of the plaintiff or respondent in a civil trial). **This decision is not used to determine the team's win/loss record or standing in the competition** (i.e. you can win the case on the merits but still lose the trial for mock trial purposes, or you can lose on the merits and still be the trial winner for mock trial purposes).

2. The quality of the teams' performances, i.e., the nature/success of the team's strategy, the students' level of preparedness, the individual student performances, etc.. The total points awarded to each team by each judge will be added together; the team with the higher point total will be considered the winning team. **The team that wins on its performance is considered the winner of the trial for mock trial purposes.**

Rule 4.25 Offers of Proof

No offers of proof may be requested or tendered.

E. JUDGING AND TEAM ADVANCEMENT

Rule 5.1 Finality of Decisions

All decisions of the judging panel are **FINAL**. The only exception is when there is a computational error in the math on a judge's score sheet. In the event of a mathematical error, the trial will be awarded to the team with the higher number of ACTUAL ballots or points as determined by the corrected math, even if this result is different than the one announced to the teams by the judge(s).

PLEASE NOTE: Many trial lawyers say that trial is an art and not a science. Thus, as beauty is in the eye of the beholder, trial performance may also lie in the eye of the beholder. This competition makes every effort possible to establish objective criteria by which student competitors are to be evaluated. However, it is a fact of life that not every attorney will evaluate a competitor the same. It is also true that not every juror will evaluate an attorney and his or her case the same. Thus trial competitions are very similar to real trials and the tournament could not progress without the selection of winners. We have therefore developed a rather detailed scoring process for the judges to use. Once the scoring process is complete, the decision of the judge(s) is final, as long as the team's scores have been added correctly.

It is also true that judges will often make different rulings on motions and objections during trial. That is true in real life as well. It is an inherent part of the trial system based on judges' discretion. Therefore, as in real life, the rulings of the trial judge are final, even if you disagree.

This competition is intended to not only teach students about how the legal system functions, but also to provoke thought about the issues involved. We encourage instructors to use this packet as a vehicle for education toward both goals.

Rule 5.2 Composition of Judging Panels (Minnesota only)

Every effort is made to have two volunteer judges evaluating each trial at the regional level. One is the presiding judge, whose role is to both conduct the trial and to evaluate the teams' performances. The other judge's responsibility is solely that of an evaluator. Both judges have been instructed to rate the performance of all witnesses and attorneys on the team. In the event only one lawyer is able to judge a trial, the one score will be doubled for purposes of calculating the point differential score. If there are three judges during a regional tournament trial, the evaluating and presiding will be handled in the same fashion as the state finals: one judge will be the presiding judge, the other two will be the evaluating judges. The scoring judges' evaluations will determine the trial winner. In the event of a tie, the presiding judge's ballot will determine the winner.

There will be three judges for each trial in the state finals. One judge will be the presiding judge, the other two will be the scoring judges. The scoring judges' evaluations will determine the trial winner. In the event of a tie, the presiding judge's ballot will determine the winner.

Rule 5.3 Score Sheets/Ballots (NHSMTC)

Rule 5.4 Completion of Score Sheets

Score sheets are to be completed individually by each judge without consultation with the other judges. Each scoring judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each judge shall total the sum of each team's individual point and place this sum in the Column Totals box. The Mock Trial Manager has the authority to correct any mathematical errors on score sheets. The coach of the winning team from each trial shall e-mail the scores from the trial to the Mock Trial Manager as soon as possible.

Rule 5.5 Contest Format/Team Advancement (Minnesota only)

In the Minnesota competition there are three phases: sub-regionals (Rounds 1, 2 & 3), regional playoffs (Rounds 4 & 5), and the state finals.

Team attendance is expected at all trials in each phase of the competition for which the team is eligible.

1. Invitationals: Mock Trial Invitationals, camps and other non-MSBA Mock Trial related events are encouraged by the MSBA. The MSBA's Mock Trial webpage is available to serve as a place for such events to be publicized, however the MSBA and its Mock Trial program does not specifically endorse such events. The MSBA encourages such events to include teams/individuals from schools across Minnesota and also encourages organizations hosting these events to establish subsidies to enable all teams/individuals who are interested in attending to do so.

2. Sub-regionals: For mock trial purposes, the state will be divided into regions. The exact number of regions will be determined by the number of teams entered in the competition.

All teams shall compete in three trials (Rounds 1, 2 and 3), the MSBA makes every effort to ensure each team argues both sides of the case.

The MSBA shall set the trial schedule and determine which teams compete against each other. The fact that a team has scrimmaged another team will not preclude the same two teams from facing each other in competition. Teams from the same school may compete against each other at the option of the Mock Trial Manager, although every effort will be made to guarantee "immunity" for teams from the same school in Rounds 1, 2 and 3.

3. Regionals: After all teams in a region have argued three times, teams will be ranked based first upon win-loss record; second based upon the cumulative point differential scores; third based upon cumulative points earned. [**Note:** A team's point differential score is the total point spread between that team's score and its opponent's score in a given trial. For example, if team A scores 95 points in a trial and its opponent, team B, scores 92 points, then team A will have an adjusted score of plus 3 and team B will have an adjusted score of minus 3.] Teams ranked one thru four after three rounds of competition will advance into Round 4.

a. Regional finalists will compete in a single elimination playoff format to determine the region winner (Rounds 4 and 5). Pairings for these Rounds will be done according to a *power-match system*, with the highest-ranked team matched with the lowest-ranked team, the next highest with the next lowest, and so on until all of the teams are paired. Power matching may be superseded by travel considerations in regions where the sites for Rounds 4 & 5 would require significant additional travel for a team. Teams from the same school will not be immune from meeting one another if their ranking within the region results in their being paired.

b. Sides for Rounds 4 and 5 will be assigned in advance. Teams with a 2-1 record will be assigned the side on which they *lost* in Rounds 1, 2 or 3; if this would result in the same pairing/sides as a trial in Round 1, 2 or 3, the teams will switch sides (so, if it was Liberty Blue v. City Green in Round 2, and power-matching would result in the exact same pairing in Round 4, the teams would switch sides). To the greatest extent possible, teams will switch sides in subsequent rounds if both teams can do so; otherwise, the team that is first alphabetically will present the defense side of the case.

4. State Finals: Each regional champion is eligible to attend the state competition. If the first place team from a region decides it does not want to attend the state tournament, the second place team will be eligible to compete. The state tournament format differs from that of the regional competition. All teams at the State Competition will participate in at least three rounds of trials and will present each side of the case at least once. There will be two scoring judges and a presiding judge at each trial. After each round of competition a designee of the Mock Trial Advisory Committee will review the power-matching results and ensure that the trial pairings are correct. The power-matching system is subject to human error. Generally, the final results of power-matching cannot be appealed. The Mock Trial Advisory Committee has final authority to interpret these rules. State Finals Power-matching criteria for the first three rounds are: 1) Win/loss record (the team receiving the most ballots in a trial shall be deemed the winner of the trial regardless of the number of points earned by each team), 2) total number of ballots won, 3) cumulative point differential, 4) cumulative points earned. Pairings for the first round will be assigned at random. After round one of the competition, teams will be divided into two brackets (1-0 and 0-1). Teams will be ranked within the brackets and power-matched. After round two of the competition, teams will be divided into three brackets (2-0, 0-2 and 1-1). Teams will be ranked within the brackets and power-matched. After three rounds of competition, final championship trial participants will be determined using this criteria: 1) Win/loss record, 2) Total number of ballots won, 3) Number of wins against 2-1 teams, 4) Number of wins against 1-2 teams, 5) Cumulative point differential. (Provided that, if by application of the criteria a team is ranked higher than a team with the same win/loss record that defeated it, the losing team shall be placed immediately below the winning team) The top two ranked teams will compete in the final championship round. Side-assignments will be determined by a coin-flip after the final championship round teams are announced. The state champion is then eligible to represent Minnesota at the annual National High School Mock Trial Championship, which is held in a different city each year (2012 Albuquerque, NM; 2013 Indianapolis, IN).

Rule 5.6 **Power Matching/Seeding** (NHSMTTC Only; see Rule 5.5(3) for MN version)

Rule 5.7 **Selection of Sides For Championship Round** (NHSMTTC)

Rule 5.8 **Effect of Bye Round**

A team that prevails by forfeit or receives a bye will be awarded a win, along with a cumulative point differential and cumulative points that equal the average (mean) cumulative point differential and

average (mean) cumulative points of all regional rounds for the prior school year. A team that prevails by forfeit over another team from the same school will receive a cumulative point differential of zero and cumulative points of zero. [Note: for 2013, the cumulative point differential is 18 and cumulative points are 204.]

F. DISPUTE RESOLUTION

Rule 6.1 Reporting a Rules Violation/Inside the Bar (NHSMTC Only)

Disputes which (a) involve students competing in a competition round and (b) occur within the bar, must be filed immediately following the conclusion of that trial round. 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 scoring panel will be excused from the courtroom, and the presiding judge will provide the student attorney with a dispute form, on 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.

Rule 6.2 Dispute Resolution Procedures

During trial: If a team has serious reason to believe that a significant rules violation has occurred during the course of a trial, and that the violation involved an act that may be corrected during the course of the trial, a member of that team shall make an objection and communicate the complaint to the presiding judge. To the extent possible, the presiding judge will attempt to resolve the dispute during the course of the trial without disrupting the trial, and may consider the validity or invalidity of the complaint in his/her determination of which team gave the better performance during the trial.

After trial: After the trial has been completed, if a teacher coach or attorney coach has serious reason to believe that a significant rules violation has occurred of which their team members could not have been aware, the coach shall communicate the complaint to the presiding judge while the judges are still in the courtroom. In this case the presiding judge will give the teams two minutes to discuss the alleged violation among themselves.

Each team will then designate one team member to present its case to the judges. Each team must limit its statement to two minutes.

The judges will be allowed to consider the dispute before completing their score sheets. The dispute may or may not affect the scoring. The matter will be left to the discretion of the judges.

The judges' decision will be final.

Rule 6.2.1 Complaint/Grievance Process:

If any team believes that blatantly unprofessional misconduct, unethical behavior, or a serious and substantial rules violation has occurred outside of a trial a teacher, attorney coach or judge may advise the Mock Trial Manager that they intend to file a complaint. This complaint must be with regard to matters that could not be resolved in the course of the trial and could not be resolved

through Rule 6.2 or Rule 4.231. The resolution of the Complaint/Grievance Process **will not affect** the outcome of any trial. See Rule 5.1. Complaints/Grievances in regard to a judge's rulings, points awarded, or who won the trial will not be entertained. *Coach concerns about a judge's performance that do not merit a Complaint/Grievance under this rule, should be directed to the Mock Trial Manager*

The complaint/grievance process will be governed by this rule and will follow these guidelines:

- 1) Within 48 hours of the incident, the written complaint must be received by the Mock Trial Manager. The complaint may be sent electronically and must contain specific information about the violation.
- 2) All complaints will be referred to the Mock Trial Advisory Committee.
- 3) After a complaint is received by the Mock Trial Manager, the Mock Trial Advisory Committee will convene as soon as practicable. A quorum of the Committee is required for any decision. The Committee will alert the party(ies) against which the complaint was lodged and share the nature of the grievance. The Committee may invite further comment in writing or in person from those involved, in its discretion. The Committee will take action based on a majority vote and all parties shall be notified of the decision. All decisions of the Committee shall be final. See Rule 1.1.
- 4) The Committee may decide to issue any one of the following in order of increasing severity:
 - a) Warning: A private conversation discussing the alleged violation with the offending party or parties.
 - b) Reprimand: A written letter to the offending party or parties advising them of the Rules violation. This letter may be sent to the individual and/or school and/or employer.
 - c) Suspension: Suspension of an offending individual(s) or team(s) from participation in mock trial for a time period to be specified by the Committee.
 - d) Disqualifications: Disqualification of an offending individual(s) or team(s) for a time period specified by the Committee, but no less than one competition season.
 - e) The Committee will report violations where appropriate to governing ethical bodies such as the Lawyers Professional Responsibility Board.

Rule 6.2.2 Unsolicited Communication between Coaches and Judges

Unsolicited communication between coaches and judges is strictly prohibited. Judges may file a grievance against a coach that he/she believes has violated this rule. The grievance must be filed within 48 hours of the alleged communication. The grievance process will be governed by the guidelines set forth in Rule 6.21 Complaint/Grievance.

Refer to Rule 4.231 for dealing with student team members' concerns about rules violation.

Rule 6.3 Effect of Violation on Score (NHSMTTC)

Rule 6.4 Reporting of Rules Violation/Outside the Bar (NHSMTTC)

MINNESOTA MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

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 evidence will probably be allowed by the judge. The burden is on the mock trial team to know the Minnesota High School Mock Trial Rules of Evidence 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 the mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence, and its numbering system. Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure. Text in italics or underlined represent simplified or modified language.

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 Minnesota High School Mock Trial Rules of Evidence govern the Minnesota High School Mock Trial Program.

The fact that information is contained in a statement of facts, indictment, witness statement/affidavit, or exhibit does not mean that the information is admissible or has been admitted into evidence. Proffers of evidence must be made and ruled upon during the course of the trial itself.

Article I. General Provisions

Rule 101. Scope

These Minnesota High School Mock Trial Rules of Evidence govern the trial proceedings of the Minnesota High School Mock Trial Program.

Rule 102. Purpose and Construction

These 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

1. This rule governs only judicial notice of adjudicative facts.
2. A judicially noticed fact must be one not subject to reasonable dispute in that it is either
 - a. generally known within the territorial jurisdiction of the trial court or
 - b. capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
3. A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.

4. Judicial notice may be taken at any stage of the proceeding.
5. In a civil action or proceeding, the judge shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the judge shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Article III. Reserved

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

All 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, 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 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 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 607-609.

(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 where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.

(b) Specific instances of conduct. In cases where 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 eye-witnesses, 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, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. 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 408. Compromise and Offers to Compromise

(a) Prohibited uses. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior consistent state or contradiction:

- (1) furnishing or offering or promising to furnish—or accepting or offering or promising to accept—a valuable consideration in compromising or attempting to compromise the claim; and
- (2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

(b) Permitted uses. This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

Evidence of furnishing of offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

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

Except as otherwise 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 forgoing pleas; or

4. any statement made in the course of plea discussions 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 which is later withdrawn.

However, such a statement is admissible (a) 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 (b) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the 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 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 witness.

Article V. Privileges

Rule 501. General Rule

There are certain admissions and communications excluded from evidence on grounds of public policy. Among these are:

1. communications between husband and wife;
2. communications between attorney and client;
3. communications among grand jurors;
4. secrets of state; and
5. communications between psychiatrist and patient.

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. (See Rule 2.2.)

Rule 607. Who may Impeach (i.e., show that a witness should not be believed)

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

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has 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) Juvenile adjudications. Evidence of juvenile adjudications is generally not admissible but the court may, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

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. 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 & 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/Re-cross. 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 exam. Likewise, additional questions may be asked by the cross examining attorney on re-cross, 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 Statements 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 a 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.

Rule 702.1 Expert Witness Qualifications

Any witness testifying as an expert must be recognized as an expert by the trier of fact. Proper foundation must be laid in order for the witness to be recognized as an expert.

As an example only, the following steps effectively lay foundation for tendering witnesses as experts:

1. Ask the witness questions to establish foundation for the witness's education, training and other experience that illustrates his/her qualifications. Example: Dr. Smith, can you please summarize your educational background for the court?
2. If there is a Resume/Curriculum Vitae available documenting the witnesses qualifications, take the proper steps (example in Rule 4.20) to enter the document into evidence.
3. After laying proper foundation, ask the judge to allow the witness to testify as an expert in the appropriate subject area.
"Your honor, I ask that you allow this witness to testify as an expert in the area of ____."
4. Court: "Is there an objection?" (If opposing counsel believes proper foundation has not been laid, the attorney should be prepared to object at this time.)
5. 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?"
6. Court: "The court will/will not allow the witness to express an expert opinion in the area of ____."

Rule 703. Basis 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 therefore without prior disclosure of the underlying facts or data, 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: an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant: a person who makes a statement.

(c) Hearsay: 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) 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.

Example: Witness A testifies, "Some of the other tenants told me that Jones often failed to keep his apartments in good repair." This would not be admissible to prove that Jones often failed to keep his apartments in good repair, which was the matter asserted in the out-of-court statement. But, it might be admissible to prove that A had some warning that Jones did not keep his apartments in good repair, if that were an issue in the case, since it would not then be offered for the truth of the matter asserted.

Comment: Why should the complicated and confusing condition be added that the out-of-court statement is only hearsay when "offered for the truth of the matter asserted?" The answer is clear when we look to the primary reasons for the exclusion of hearsay, which are the absence in hearsay testimony of the normal safeguards of oath, confrontation, and cross-examination which test the credibility and accuracy of the out-of-court speaker.

For example, if Ms. Jones testified in court, “My best friend, Ms. Smith, told me that Bill was driving 80 miles per hour” and that out-of-court statement was offered to prove the truth of the matter asserted (that Bill was driving 80 miles per hour), we would be interested in Smith’s credibility, i.e., her opportunity and capacity to observe, the accuracy of her reporting, and tendency to lie or tell the truth. The lack of an oath, confrontation, and cross-examination would make the admission into evidence of Smith’s assertion about Bill unfair to the opposing party. If the statement was offered, however, to show that Ms. Smith could speak English, then its value would hinge on Ms. Jones’ credibility (who is under oath, present, and subject to cross-examination) rather than Ms. Smith’s, and it would not be hearsay.

Another example: While on the stand, the witness says, “The salesperson told me that the car had never been involved in an accident.” This statement would not be hearsay if offered to prove that the salesman made such a representation to the witness. (The statement is not offered to prove the truth of the matter asserted.) If offered to prove that the car had never been in an accident, it would not be allowed because it would be hearsay.

Objections: “Objection. Counsel’s question is seeking a hearsay response,” or “Objection. The witness’ answer is based on hearsay. I ask that the statement be stricken from the record.”

Response to objection: “Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show...”

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/physical conditions.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, 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 made for purposes 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. **Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make 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 exam 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.

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 the declarant’s statement; or
2. persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so; or
3. testifies to a lack of memory of the subject matter of the declarant’s statement; or
4. can’t 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 a statement has been unable to procure the declarant’s attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), or (4), the declarant’s attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a 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 the same or 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. In a prosecution for homicide or in a civil proceeding, a statement made by a declarant while believing that his/her death was imminent, concerning the cause or circumstances of what the declarant believed to be 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, divorce, legitimacy, relationship by blood, adoption, or 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; (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. Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Rule 805. Hearsay within Hearsay: Hearsay included within hearsay is not excluded if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

ARTICLE IX. Authentication and Identification - Not applicable.

ARTICLE X - Contents of Writing, Recordings and Photographs - Not applicable.

ARTICLE XI - Other

Rule 1103. Title

These rules may be known and cited as the Minnesota High School Mock Trial Rules of Evidence.

SAMPLE TEAM ROSTER

Below is a suggested format for a roster sheet to be provided at the pre-trial conference to each of the judges at a trial. This sheet is for the judges' convenience in identifying the team members and the roles they will play. Some teams include a photo of each team member but this is completely optional.

MINNESOTA MOCK TRIAL PROGRAM

SIDE: Prosecution LOCATION: Rock Cty Courthouse

DATE: _____

ATTORNEYS

<u>Name</u>	<u>Gender</u>
Student _____	(M / F)
Opening, Direct of <u>insert witness' name here</u> , Cross of <u>insert witness' name here</u>	
Student _____	(M / F)
Direct of _____, Cross of _____	
Student _____	(M / F)
Direct of _____, Cross of _____, Closing	

WITNESSES (in order of appearance)

	<u>Gender</u>
<u>Witness #1 name</u> _____	<u>Student's name</u> _____ (M / F)
<u>Witness #2 name</u> _____	<u>Student's name</u> _____ (M / F)
<u>Witness #3 name</u> _____	<u>Student's name</u> _____ (M / F)

Bailiff..... Student's Name

Timekeeper..... Student's Name

Pre-Trial Conference

Pursuant to Rule 3.4 of the Minnesota Mock Trial Rules, the following pre-trial motions and advisories must be read aloud before commencement of the mock trial competition. Recitation of these items is not scored.

- 1. Standard of Review.*** *The parties jointly move the Court to judge this mock trial according to the mock trial standards, not the legal merits of the case.*
- 2. Rating Standards.*** *The parties jointly move the Court to use the evaluative criteria provided on the official mock trial score sheet. By these standards, scores below “4” are reserved for unprofessional conduct. A high score of “10” is reserved for superlative presentations.*
- 3. Full Hearing of Evidentiary Objections and Argument.*** *The parties jointly move the Court to allow each side to present all of its witnesses (unless the party’s time has expired) and to make and fully argue all objections. While objections to the foundation and relevance of testimony and exhibits should be made and fully argued, the parties jointly move the Court to apply a reasonably inclusive standard for admissibility.*
- 4. Constructive Critique.*** *The parties jointly advise the Court that, pursuant to Rule 4.24, the judging panel is allowed a combined total of fifteen minutes after the trial for constructive comments. It is recommended that each judge limit themselves to a maximum of three comments. The timekeeper will monitor the time following the trial.*
- 5. Scoring the Use of Notes.*** *The parties jointly advise the Court that, pursuant to Rule 4.21, a point deduction for use of notes by attorneys should be considered in overall score and not as an additional point deduction.*
- 6. Mathematical Computation and Error Checking.*** *The parties jointly move the Judges to: use a calculator to check the score tabulation; double check each other’s math; and confirm that the Presiding Judge has filled in the tie-breaker box.*
- 7. Unfair Extrapolations.*** *The parties jointly advise the Court to take notice of Rule 2.3 Unfair Extrapolations, located at page 75 of the Mock Trial Case Materials. According to this rule, 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. A fair extrapolation is one that is neutral.*
- 8. Roster Sheet.*** *The parties may submit their roster sheets if these have not been presented already and may raise any other pre-trial matters at this time.*

Presiding Judge: The parties’ motions are granted and the advisories are accepted.

**Minnesota High School
Mock Trial State Champions**

2012 Breck School, Minneapolis
2011 Breck School, Minneapolis
2010 Breck School, Minneapolis
2009 Lakeville North High School, Lakeville
2008 Lakeville North High School, Lakeville
2007 Buffalo High School, Buffalo
2006 South, Minneapolis
2005 South, Minneapolis
2004 Meadow Creek Christian, Andover
2003 South, Minneapolis
2002 South, Minneapolis
2001 Meadow Creek Christian, Andover
2000 Meadow Creek Christian, Andover
1999 South, Minneapolis
1998 Fergus Falls
1997 St. Thomas Academy, Mendota Heights
1996 Eden Prairie
1995 Dassel-Cokato
1994 Christ's Household of Faith, St. Paul
1993 Kennedy, Bloomington
1992 South, Minneapolis
1991 Visitation, Mendota Heights
1990 South, Minneapolis
1989 Chisago Lakes
1988 Waseca
1987 Waseca