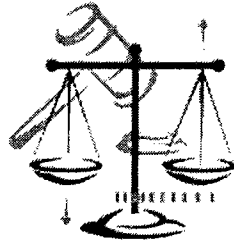


2013 Delaware High School Mock Trial Competition



Jess Paxton v. Alex McMasters

Adapted from 2011 Idaho High School Mock Trial Case

February 23-24, 2013
New Castle County Courthouse

Contact Information:

Mock Trial Office
Delaware Law-Related Education Center, Inc.
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**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

JESS PAXTON)	Case No. MT2012
)	
Plaintiff)	JURY TRIAL OF 12 DEMANDED
)	
vs.)	
)	
ALEX)	
MCMASTERS)	
)	
Defendant)	

COMPLAINT

COMES NOW the Plaintiff, JESS PAXTON, by and through her undersigned attorneys, and in support of her Complaint, alleges as follows:

1. Plaintiff Jess Paxton ("Plaintiff" or "Paxton") is a resident of the state of Delaware, County of New Castle, City of Hickory.
2. Defendant Alex McMasters ("Defendant" or "McMasters") is a resident of the State of Delaware, County of New Castle, City of Hickory.
3. Defendant is subject to the jurisdiction of this Court and is subject to service of process under 10 Del. Code § 3103.
4. This Court has original jurisdiction over this matter pursuant to the provisions as contained in 10 Del. Code § 541.
5. On June 23, 2011, at 9:23 PM, McMasters was driving his/her car north on Summit Street.

6. At the same approximate time, Paxton was riding his/her bicycle south on Summit Street.

7. As Paxton entered the intersection of Summit Street and Jones Avenue, McMasters attempted to make a left turn on to Jones Avenue.

8. McMasters failed to use his/her turn signal at the time of the incident in violation of Title 11 of the Delaware Code.

9. McMasters was texting while driving at the time of the incident in violation of Title 11 of the Delaware Code.

10. McMasters consumed alcohol before driving on the night of the incident in violation of Title 11 of the Delaware Code.

11. By failing to yield to Paxton and by blocking Paxton's lane of travel, McMasters caused a collision to occur.

12. By failing to yield to Paxton and by blocking Paxton's lane of travel, McMasters caused Paxton to suffer serious and permanent injuries.

13. McMasters' negligence caused Paxton to suffer substantial present and future economic and non-economic damages including, but not limited to, personal injuries, physical and emotional pain, suffering, disability, disfigurement, emotional distress, medical and related expenses, lost income, loss of earning capacity, and loss of society, companionship, and consortium.

COUNT I – NEGLIGENCE – DRIVING

14. Plaintiff incorporates and re-alleges the allegations contained in paragraphs 1 through 13.

15. Defendant McMasters owed Paxton a duty to exercise due care in driving his/her vehicle.

16. Paxton had the right-of-way while operating a bicycle on Summit Street.

17. McMasters failed to yield the right-of-way to Paxton and blocked Paxton's lane of travel on Summit Street with his/her vehicle.

18. McMasters failed to exercise reasonable care in operating his/her vehicle by driving while intoxicated, texting while driving, and failing to use a turn signal.

19. McMasters' failure to operate his/her vehicle in a reasonable manner caused the collision and resulting damages to Paxton.

20. The negligence of McMasters proximately resulted in damage to Paxton as enumerate herein.

COUNT II – NEGLIGENCE PER SE

21. Plaintiff incorporates and re-alleges the allegations contained in paragraphs 1 through 20.

22. Certain Delaware statutes define the applicable standard of care in this negligence action, and violation of these statutes by McMasters constitutes negligence *per se*.

23. Defendant is negligent *per se* because he/she violated 21 Del. Code § 4331 requiring headlights be on between sunset and sunrise.

24. Defendant is negligent *per se* because he/she violated 21 Del. Code § 4155(b) requiring that a driver signal before turning.

25. Defendant is negligent *per se* because, by texting while driving, he/she violated 21 Del. Code §§ 4176C(a), (b)(2), and (b)(6) prohibiting using an electronic communication device while such motor vehicle is in motion.

26. Defendant is negligent *per se* because he/she violated 21 Del. Code § 4177(a)(1) prohibiting driving under the influence of alcohol.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Jess Paxton demands a trial by jury and requests and prays that judgment be entered against Alex McMasters as follows:

- A. That Paxton be awarded compensation for all injuries and damages caused by Defendant's negligent and/or wrongful conduct;
- B. That Paxton be awarded attorney fees and costs;
- C. That Paxton be awarded post-judgment interest on the amount of judgment;
- D. That Paxton be awarded attorney fees and costs incurred in attempting to collect on the judgment, if any; and
- E. That Paxton be awarded such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 15th day of August, 2012.


By: Theodore S. Tollefson (#7155)

For Tollefson, Bauges & Shoufler, LLP
Attorneys for Plaintiff, Jess Paxton

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

JESS PAXTON)	Case No. MT2011
)	
Plaintiff)	
)	
vs.)	
)	
ALEX)	
MCMASTERS)	
)	
Defendant)	

ANSWER TO COMPLAINT

COMES NOW, Defendant Alex McMasters (“Defendant” or “McMasters”), by and through his/her attorneys, files his/her Answer to the Complaint and Demand for Jury Trial (the “Complaint”) filed by Plaintiff Jess Paxton (“Plaintiff” or “Paxton”), as follows:

McMasters denies each and every allegation, matter, and thing alleged in the Complaint unless hereinafter specifically admitted.

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

GENERAL ALLEGATIONS

5. Admitted.
6. Admitted.
7. Admitted.
8. Denied.

9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Denied.

COUNT I – NEGLIGENCE – DRIVING

14. In response to Paragraph 14 of the Complaint, Defendant restates all of the foregoing responses as if fully stated herein.

15. Denied.
16. Denied.
17. Denied.
18. Denied.
19. Denied.
20. Denied.

COUNT II – NEGLIGENCE PER SE

21. In response to Paragraph 21 of the Complaint, Defendant restates all of the foregoing responses as if fully stated herein.

22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. Denied.

AFFIRMATIVE DEFENSES

Defendant had the right-of-way while driving his/her car on Summit Street.

Plaintiff failed to yield the right-of-way to Defendant and blocked Defendant's lane of travel on Jones Avenue with his/her bicycle.

Plaintiff was negligent per se because he/she violated 21 Del. Code § 4198F because he/she was under the influence of alcohol while operating his/her bicycle and violated 21 Del. Code § 4198H because he/she was wearing ear buds in both ears while operating her bicycle.

Plaintiff was negligent per se because he/she violated 21 Del. Code § 4198F requiring reflectors and lights be affixed to bicycles between sunset and sunrise.

Plaintiff was negligent per se because he/she violated 21 Del. Code § 4198A requiring bicycles to signal an intention to turn.

Plaintiff's failure to operate his/her bicycle in a reasonable manner caused the collision and resulting damages to himself/herself.

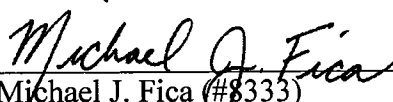
Plaintiff's contributory negligence should bar recovery of any damages or reduce damages in proportion to the amount of negligence attributed to plaintiff as defined in 10 Del. C. § 8132.

PRAYER FOR RELIEF

WHEREFORE, Defendant Alex McMasters requests and prays that the court grant the following relief:

A. That Defendant not be found liable for Plaintiff's alleged injuries in this matter.

DATED this 11th day of September, 2012.


By: Michael J. Fica (#8333)
For Fica, Lloyd, Brush & Dickison, LLP
Attorneys for Defendant, Alex McMasters

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

JESS PAXTON)	
)	C.A. No.: N10C-12-083
Plaintiff)	
)	
vs.)	
)	
ALEX MCMASTERS)	
)	
Defendant)	

**PLAINTIFF, JESS PAXTON'S, ANSWERS TO FORM 30
PERSONAL INJURY LITIGATION INTERROGATORIES**

COMES NOW, Plaintiff, Jess Paxton, by and through his/her attorneys, files his/her answers to Form 30 Interrogatories.

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

The following responses are based upon the information that is presently known and available to Jess Paxton, ("hereinafter Plaintiff") based upon a reasonable investigation. Plaintiff believes that these responses are accurate as of the date made. Although Plaintiff has endeavored to conduct a reasonable investigation, Plaintiff cannot exclude the possibility that their continued investigation may reveal more complete information. Consequently, Plaintiff's investigation of the matters inquired into by Plaintiff's discovery continues and, to the extent appropriate, Plaintiff reserves the right to supplement their objections and responses.

ANSWERS TO INTERROGATORIES

1. Give the name and present or last-known residential and employment address and telephone number of each eyewitness to the incident which is the subject of the litigation.

ANSWER:

Jess Paxton- 625 Benteen Street; Hickory, DE 19806 302-867-5309
Sydney Cosgrove- 824 Culhoun Drive; Hickory, DE 19806 302-555-1212
Alex McMasters- 1839 Custer Street; Hickory, DE 19806 302- 911-9111
Reilly Jackson- 279 West Street; Hickory, DE 19806 302-411-4111

2. Give the name and present or last-known residential and employment address and telephone number of each person who has knowledge of the facts relating to the litigation.

ANSWER: See above eyewitness List. In addition:

Devon St. James - University of Utah, 201 Presidents Circle Room, Salt Lake City, Utah
84112 (801) 581-7200

Teri Osgood – 125 Main Street, Hickory, DE 19806

3. Give the names of all persons who have been interviewed in connection with the above litigation, including the names and present or last-known residential and employment addresses and telephone numbers of the persons who made said interview and the names and present or last-known residential and employment addresses and telephone numbers of persons who have the original and copies of the interview.

ANSWER: None at present.

4. Identify all photographs, diagrams, or other representations made in connection with the matter in litigation, giving the name and present or last-known residential and employment address and telephone number of the person having the original and copies thereof.

ANSWER: See Attached Exhibit List

5. Give the name, professional address, and telephone number of all expert witnesses presently retained by the party together with the dates of any written opinions prepared by said expert. If an expert is not presently retained, describe by type the experts whom the party expects to retain in connection with the litigation.

ANSWER: Devon St. James - University of Utah, 201 Presidents Circle Room, Salt Lake City, Utah 84112 (801) 581-7200 See attached Report.

6. Give a brief description of any insurance policy, including excess coverage, that is or may be applicable to the litigation, including:

The name and address of all companies insuring the risk; The policy number(s);

The type of insurance; and

The amounts of primary, secondary, and excess coverage.

ANSWER: Farmer's State Insurance NC889999C8C999
\$15,000/\$30,000/\$0

7. (Additional interrogatory to be answered by a personal injury litigation Plaintiff only). Give the name, professional address, and telephone number of all physicians, chiropractors, psychologist, and physical therapists who have examined or treated you at any time during the ten year period immediately prior to the date of the incident at issue in this litigation.

ANSWER:

Pro Physical Therapy 98 Hockessin Way; Hockessin, DE 19899 302-PROPHYS

Dr. Imagood Surgeon 228 Doctor's Blvd; Wilmington, DE 19801 302-555-4533

Date: August 15, 2012

///Theodore S. Tollefson///

By: Theodore S. Tollefson (#7155)
For Tollefson, Bauges & Shoufler, LLP
Attorneys for Plaintiff, Jess Paxton

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

JESS PAXTON)	
)	C.A. No.: N10C-12-083
Plaintiff)	
)	
vs.)	
)	
ALEX MCMASTERS)	
)	
Defendant)	

STIPULATIONS AND ORDER

1. The action has been separated into two trials. The only elements that need to be proven in this trial are negligence and causation. The issue of damages will be addressed in a subsequent trial if necessary.
2. Any products liability actions against Dodge arising from any alleged faulty car components have been settled and the parties stipulate that Dodge is therefore not a necessary party to this action.
3. With regards to any claim of negligence per se, the parties have stipulated that the defendant and plaintiff were within the class of persons the statutes were meant to protect. As a defense to a claim to negligence per se, neither party may argue that any party was not within the class the statute was meant to protect.
4. All time-stamps on text messages are accurate representations of when the messages were actually sent and/or received. No time delays that may be typical of such transmissions are to be assumed or argued.
5. All exhibits included in the case materials are authentic and accurate and the proper chain of custody with regard to the exhibits has been maintained.
6. If the defendant has admitted facts in the Answer, those facts are therefore uncontested and need not be proven at trial. Therefore, all parties may refer to these uncontested facts during trial.
7. The signatures on the witness statements and all other documents are authentic.
8. The dates of witness statements are not relevant and therefore not included. No challenges based on the dates of the witness statements will be entertained. All statements were taken after the accident but before trial.
9. The jury instructions have been agreed to by all parties.

10. The lighting in the photographs included in Exhibit 10 does not represent the daylight conditions at the time of the accident.

// Michael J. Fica//

By: Michael J. Fica (#8333)

For Fica, Lloyd, Brush & Dickison, LLP Attorneys for Defendant,
Alex McMasters

///Theodore S. Tollefson///

By: Theodore S. Tollefson (#7155)

For Tollefson, Bauges & Shoufler, LLP
Attorneys for Plaintiff, Jess Paxton

IT IS SO ORDERED this date of 2013.

//Judge//

Judge of Superior Court

Witness Statements

PLAINTIFF WITNESS STATEMENTS

Jess Paxton

1 My name is Jess Paxton. I just turned 17 years old in May and am a junior at City High
2 School. My family moved to Hickory, Delaware from Seattle about five years ago because my
3 dad got what he thought was a good job with FuturTech and my mom thought it would be safer
4 to raise us kids in a smaller town where we couldn't get into as much trouble.

5 On the night of the accident, Thursday, June 23rd, I went to my friend Sarah's house to
6 watch some soccer. She had recorded the World Cup Soccer match and I was excited because I
7 got to see the United States beat Algeria and move on to the Round of 16. Landon was awesome!

8 I admit now, and I already admitted to that detective, that we had snuck some beers that night
9 while we were watching the game, but it had been a while between when I had a beer and when
10 the accident happened. I'm not a big drinker, but the kids in Europe always drink while they are
11 watching soccer; what's the big deal?

12 I love soccer. I have been playing since I was four years old and have always thought that I
13 would go on to play in college and, who knows, maybe even professional soccer. I had just been
14 selected captain of the varsity soccer team at my high school last spring and a lot of recruiters
15 were talking to my family about me playing soccer at their colleges.

16 With my father getting laid off last year because of the bad economy, soccer was really
17 supposed to be my ticket to college. Now all of that may have changed.

18 As soon as the soccer game was over, I remember looking at the clock and seeing that it was
19 almost 9:00 PM. I realized that I needed to get home right away because I had promised my
20 mom that I would walk the dog before it got too late. I had been promising her all week and I
21 kept blowing it off, so I was worried that she was going to be mad at me.

22 I took off from Sarah's house and started running towards home, but I soon realized that I
23 could not possibly run fast enough to get home by 9:30. So, I saw this bike in someone's front
24 yard and I decided to borrow it so I could get home in time. I figured I could use it that night and
25 then ride it back over to the house the next morning and no one would even know it was gone.

26 No harm, no foul, right? Anyway, I hopped on the bike and headed home. I hoped if I rode fast
27 enough, I would get home by 9:30.

28 My parents have never liked it when any of us kids ride down Summit Street on our bikes
29 because there's a lot of traffic on that street and there have been a few accidents with cars and
30 bikes in the last year. But I decided to go that way anyway, because it's the quickest way home.

31 I was headed down Summit Street, just about to cross Jones Avenue. I saw this black pickup
32 truck – it was kind of a small truck, but I'm not sure what kind. I slowed down to make sure it
33 wasn't going to turn and to make sure the driver saw me because it was getting dark outside and
34 the truck didn't have its lights on and I don't remember if the bike had any reflectors. I didn't see
35 a turn signal anyway, so I just kept going. All of the sudden, the car came speeding right at me. I
36 remember that I heard the car make that kind of screeching sound cars make when they take a
37 corner too fast.

38 It all happened so fast that it's hard to remember everything. I tried to really quickly turn my
39 bike to avoid getting hit, but I was too late. The car hit me. I flipped up and off my bike and I just
40 went flying over the car. I landed in the street and the back of my head hit the pavement really
41 hard. I didn't have a bike helmet on because, well, there wasn't a helmet around the bike I
42 borrowed, so I didn't really have access to one.

43 I remember feeling really light-headed and looking around and seeing my iPod smashed and
44 my bike smashed up even worse on the street. The rest gets kind of fuzzy.

45 I was lying in the street. A few people were gathered around me asking me if I was all right
46 or if I needed any help. This one person took out my ear buds and asked me if I had been
47 listening to music while I was riding my bike. I told him/her that I hadn't been listening to music
48 and that's the truth. I put my ear buds in so they wouldn't fall off and get lost on the way home. I
49 realize now that it was Mr./Mrs. Cosgrove that had helped me. My family has known him/her for
50 years and I used to mow his/her lawn.

51 But the person I remember the best is Alex, who it turns out was the driver of the car that hit
52 me, leaning over me with a fancy new EnV cell phone glued to his/her ear. S/he was saying
53 something like, "I hit someone." And then, "Well, find someone to fix this. You know people."
54 To me, s/he sounded like s/he was slurring a little bit and her/his breath reeked of alcohol.

55 The next thing I remember, I'm riding in an ambulance to the hospital and then there are
56 people in the hospital examining me. I had a broken collar bone, and a really bad concussion and
57 a whole bunch of scrapes and bruises all over my body. I was in a lot of pain; I still am, really.

58 My life could be very different because of this accident. I won't be able to play soccer this
59 fall, which is huge for me. This season will be when all the college recruiters are making
60 decisions on who to get to their colleges; on who to give scholarships to. And, I won't be in the
61 running because I'll just be standing on the sidelines watching.

62 And, even when my collar bone does heal completely, I still might not be able to play soccer
63 anymore. My doctor told me that with a head injury I am in greater danger of causing permanent
64 brain damage if I play soccer.

65 My entire future could be changed because of what Alex did. I don't understand why s/he
66 wasn't paying attention and being more careful while driving. This accident could have cost me
67 my life and still might cost me and my family a better quality life.

68 No matter what Alex or Reilly or whatever other people they hire says, what I say is the
69 truth. I'm not making any of this up. I'm not going after the McMasters' family as some kind of
70 vendetta or because they are a family with a lot of money.

71 I know they think I'm a liar because of the whole cheating thing with my soccer team, but I
72 didn't have anything to do with that. I had heard rumors about a key being passed down to soccer
73 players, but I never used a key to break into the school.

74 It doesn't matter anyway. This is not about some dumb school issue. It's about Alex
75 McMasters and how Alex drove into me with a car. It's as simple as that. I just want Alex's
76 family to do what is right.

77 **WITNESS ADDENDUM**

78 I have reviewed this statement, and I have nothing of significance to add at this time. The
79 material facts are true and correct.

80

Signed,



Jess Paxton

81

Sydney Cosgrove

1 My name is Sydney Cosgrove. I'm 55 years old and have lived in Hickory, Delaware for the
2 last fifteen years. Before that I lived in Portland, Oregon, for 15 years, where I moved after
3 graduating from the University of Colorado in Boulder. I work at a local environmental
4 engineering firm, and I am an avid cyclist. Since the time I first learned to ride a bicycle it has
5 been my preferred mode of transportation. We do own a car, just because my spouse insists. In
6 fact we bought one of those Priuses when they first came out – we got it through the Cash for
7 Clunkers program. I insisted that whatever we got it had to be "green." I don't drive it much, but
8 my spouse has never complained.

9 Anyway, on June 23rd I was out walking my dog, like I usually do about that time of night.
10 Things have been stressful at the firm for the past few months. What with all those ridiculous
11 climate change deniers and the hard economy, people just aren't spending as much on
12 environmental engineering as they used to. We've been facing some cut backs, and, well, it's
13 been on my mind a lot. So I don't sleep that well, and when the sleeping medication doesn't work
14 I like to take the dog out for a late walk when it's quiet and I can unwind.

15 I was walking north on Summit Street toward the intersection of Summit Street and Jones
16 Avenue. About a block from the intersection a black Dodge Dakota passed me going the same
17 direction. I can't stand those gas guzzler SUVs! The people who drive those things think they're
18 invincible in them, and that just makes them more dangerous.

19 As I looked I remember seeing a bluish or greenish light, like the light of a cell phone. I
20 thought, "what a knucklehead!" Like I said, I'm an avid cyclist – I bike to and from work every
21 day, and I do a lot of recreational biking on the weekends. We cyclists have to keep a close eye
22 on cars because drivers sure don't pay any attention to us. What with make-up and food and
23 fiddling with the radio – and now cell phones and iThis and iThat – drivers live in iSolation.
24 Sure, you can make it illegal to text and drive, but then drivers only pay attention to cops. It
25 really frosts me when I see a driver using a cell phone. And apparently this moron was also
26 DRUNK!

27 As the Dakota passed I could tell by the light that I had a smudge on my bifocals, so I took
28 them off to clean them with my handkerchief. I'm really nearsighted and blind as a bat without

29 my glasses. All of a sudden I heard the sound of squealing tires, like a car was losing control. I
30 whipped my glasses on and looked up just in time to see the Dakota swerve to the right.

31 From the angle I could tell that the driver had been turning left and then changed his/her
32 mind. As the Dakota swerved right I could see a bicycle in the headlights. The rider looked
33 surprised and terrified. S/he tried to go to his/her left to avoid the Dakota, but it was too late. The
34 bicycle hit the Dakota and the rider flew off, went over the hood of the Dakota and landed in the
35 street. The Dakota kept going and smashed into a fence.

36 Well, I ran as fast as I could to the intersection to see if the cyclist needed help. It turned out
37 to be Jess Paxton! I couldn't believe it. Jess used to mow my lawn until s/he got too busy with
38 soccer. S/he is a really great kid. I always admired Jess for his/her diligence in pursuing his/her
39 dream. Anyway, there s/he was lying in the road and looking pretty disoriented. S/he was pretty
40 banged up and I could tell s/he was in a lot of pain. S/he didn't have a helmet on, and I know
41 better than to try to move someone who is injured – that should be left to the professionals. I took
42 his/her ear buds out so I could talk to him/her, but other than that I left him/her alone. Boy,
43 seeing Jess like that really shook me up.

44 By then the driver had gotten out of the Dakota and was looking at the cyclist – and talking
45 on his/her cell phone! It didn't sound like s/he called for help, either. I heard him/her call the
46 other person “mom” and s/he said something about “fix this.” Since the driver seemed to have
47 more important things to do, I called emergency services.

48 It sure didn't look to me like that Dakota had its turn signal on, but I may not have been able
49 to tell that from the brake lights. It all happened so fast. I'm sure there was no turn signal on
50 when it went by me, and I only had my glasses off for a few seconds before I heard the noise and
51 looked up. I don't remember whether I heard a horn or not. I mean, I was listening to music, but I
52 wasn't driving so that's okay.

53 By the way, it was exactly 9:23pm when the accident happened. I know, because I looked at
54 the time on my iPhone as I was running to help. I knew the police would want to know that so I
55 made a point of looking.

56 It's really a shame when this kind of thing happens. Obviously it's bad for the poor rider. Jess
57 has had his/her dream of playing soccer and maybe even going to college destroyed. But it's also


58 bad for biking in general. Portland and Boulder were very bike-friendly cities, but Hickory -
59 well, drivers just don't pay attention.

60 Why should I feel bad for Alex? Obviously, nobody wants to be in his/her situation, but if
61 you drink, drive and dial what do you expect to happen? I understand his/her mother is in the
62 General Assembly. Maybe having someone so prominent do something so careless and hit a
63 cyclist as a result will bring some attention to the problem so that drivers will be more alert and
64 just PAY ATTENTION!

65 **WITNESS ADDENDUM**

66 I have reviewed this statement, and I have nothing of significance to add at this time. The
67 material facts are true and correct.

68 Signed,


69 Sydney Cosgrove

Devon St. James

1 My name is Devon St. James. I have a Master's Degree in Mechanical Engineering and am a
2 Professor at the University of Utah in the Engineering Department.

3 In addition to my position with the University of Utah, I am the President of St. James and
4 Associates, a firm specializing in providing accident reconstruction and expert witness testimony
5 in cases involving serious injury or fatalities. I charge \$300.00 per hour for my accident
6 reconstructive services and \$500.00 per hour for expert witness testimony. While these rates may
7 be higher than other experts in the industry charge, my clients know that my expertise is worth
8 the additional expense.

9 As President of St. James and Associates, I have been reconstructing crashes and providing
10 expert testimony for the last 5 years. Based on my nationally recognized expertise, I have been
11 asked to reconstruct several high profile crashes throughout the United States. I have provided
12 expert testimony on behalf of the Plaintiff in each of these cases.

13 I know from personal experience what it is like to be hit by a car while riding on a bicycle.
14 Five years ago I was riding one of my Pinarello racing bikes when I was hit by some idiot using
15 a cell phone while he was driving. After that it became clear to me that it is almost always the
16 inattention of the automobile driver that is the cause of these bike and car collisions.

17 I was hired by the Plaintiff Jess Paxton in this matter to perform a crash reconstruction
18 analysis in response to the improperly performed analysis completed by Detective Teri Osgood.
19 In order to prepare my analysis, I reviewed Detective Osgood's Crash Reconstruction Report,
20 photographs, witness statements, and scale diagrams of the accident scene.

21 I also conducted my own investigation of the accident site on August 25, 2011. I started by
22 using my state of the art Vericommm 2000 to take three skids to establish the relevant drag factor.
23 How Detective Osgood could base his analysis on the results of skids taken with the use of a 10
24 pound drag box is beyond me. Unlike the analysis prepared by Detective Osgood, my analysis is
25 based on the use of state of the art equipment and my calculations using a drag factor of .94 are
26 far more accurate. If Detective Osgood would have used a Vericommm 2000, s/he would have
27 realized that his/her analysis was flawed.

28 From my review of the crash scene photographs, I was also able to determine that Detective
29 Osgood made a critical error in investigating the physical evidence at the accident site. While
30 antilock brakes such as those on McMasters' Dodge Dakota can make intermittent skid marks as
31 they reach the point of skid and then release, such skid marks have a very distinctive pattern. The
32 skid marks in the photographs taken by Detective Osgood do not match the pattern resulting
33 from use of antilock brakes. Instead the photographs reveal that the intermittent skid marks were
34 actually made when the Dodge Dakota entered the intersection at an excessive rate of speed and
35 the wheels of the vehicle were forced to both rotate and slide at the same time.

36 In addition, Detective Osgood's determination that the turn signal on the Dodge Dakota was
37 in use at the time of the accident is not supported by the physical evidence. The evidence of
38 shock "damage" described by Detective Osgood is at best inconclusive. That the turn signal was
39 not in use at the time of the collision is also indicated by the eyewitness testimony of Sydney
40 Cosgrove.

41 Finally, Detective Osgood failed to interview Alex McMasters immediately after the
42 accident. If s/he had, s/he would have learned that McMasters was slurring his/her speech
43 immediately after the accident and that his/her breath reeked of alcohol. Based on this testimony,
44 a blood test should have been ordered and evidence of McMasters being under the influence of
45 alcohol at the time of the collision would have been preserved. I am confident that alcohol was a
46 contributing factor in this accident.

47 As a result of my investigation and analysis, I completed a Crash Reconstruction Report
48 dated September 15, 2011, which explains my conclusion that Alex McMasters, and not my
49 client Jess Paxton, was the cause of the collision.

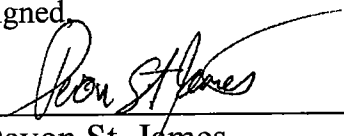
50 **WITNESS ADDENDUM**

51 I have reviewed this statement, and I have nothing of significance to add at this time. The
52 material facts are true and correct.

53

54

Signed,



Devon St. James

DEFENSE WITNESS STATEMENTS

Alex McMasters

1 My name is Alex McMasters. I am 18 years old and am going to be a senior at St.
2 Augustine's Prep. You may have heard of my family. My mom is state senator and my dad owns
3 McMasters' Chef, probably the best restaurant in this town. My family has lived in Hickory for
4 generations. Not to sound conceited, but we're really one of the best known families in this town.

5 Actually, you may even have heard of me. Last spring I tried out for *American Idol*; even
6 made it to Hollywood Week. I'm a great singer and someday I'm going to be a star. I think that's
7 why Jess Paxton is trying to sue me; s/he saw me and heard my family name and saw dollar
8 signs in his/her eyes.

9 I don't know Jess, but I know about Jess. Our town is pretty small and everyone read about
10 Jess and the rest of his/her soccer team getting caught in that cheating scandal last year. Let's
11 face it; Jess is not a very honorable person and the way s/he is going after my family is just more
12 proof of that.

13 On June 23, the night of the accident, I was driving my friend Reilly home. We had gone to
14 the movies that night to see *Knight and Day*, which had just come out that day, and then stopped
15 at our friend Patrick's house to wish him a happy birthday. There were a lot of people at
16 Patrick's because his parents let him have a keg of beer at his birthday party.

17 Patrick's parents have a rule that you can drink at their house as long as you are not driving
18 and you don't take the alcohol out of the house. Pat's parents know that kids are going to drink
19 and they think it's better that they are drinking in a place where there are adults to keep an eye on
20 them.

21 Since I was driving that night, I couldn't have anything to drink. I think Reilly may have had
22 a couple of beers. I remember seeing him/her with a cup in his/her hand standing near the keg of
23 beer. Then Hunter, Patrick's girlfriend, spilled her beer on me. She can be such an idiot when
24 she's been drinking.

25 I knew it was only a matter of time before Hunter picked some stupid fight with Patrick,
26 which was my cue to get out of there. Besides, Reilly was on restriction again, who knows what
27 for; s/he is always in trouble for some reason or another. I think it was because of the underage

28 drinking ticket issue. I mean, did s/he really think s/he could hide something like that from
29 his/her parents?

30 His/her mother let him/her go out with me that night as long as s/he got home by 9:30 PM; I
31 know, random time, but that's Reilly's mom for you. Reilly realized that it was after 9:00 PM
32 and started freaking out that s/he was going to be late getting home and have to be on restriction
33 for another week.

34 We were driving home and texting our friend Patrick. Just like I predicted, Patrick's
35 girlfriend Hunter was being her usual nasty self with him and we were trying to convince him to
36 dump her and send her packing. But then, she found out what we said and was sending her nasty
37 grams to us too. So much drama.

38 It was my phone, but Reilly was sending most of the messages for me. I am positive I was
39 only texting myself when we were at stop lights and that was pretty easy to do since my new
40 EnV has a full keyboard. But, I would never text while I am driving. My mom has drilled it into
41 my head how unsafe that is.

42 It was kind of hectic in the car with Reilly worried about being late and Patrick upset with his
43 girlfriend, but I was still paying attention to the road. We get to Summit Street and Jones Avenue
44 and I turned on my signal to turn left and all of the sudden I see this kid on a bicycle. At first, it
45 looked like s/he was stopping so I could turn so I just slowed down to turn and didn't stop, but
46 all of the sudden Jess darts right out into the road without even looking.

47 I go to slam on my brakes but instead of stopping immediately, the car just starts to skid. I
48 honked the horn several times to warn him/her, but s/he was wearing ear buds, so s/he must have
49 been listening to her/his iPod and didn't seem to hear me.

50 I tried to turn the car to get out of Jess' way, but it was too late. His/her bike slammed into
51 my car and s/he went flying. The car was just out of control and slammed into a fence. I hate that
52 crummy old pickup truck. It's always having problems. If only my parents had gotten me a new
53 car like I asked them to, who knows; maybe none of this would have happened.

54 I admit, I should have been wearing my seat belt, but at least my airbags deployed when my
55 car hit that fence. Still, the force of the airbag broke my nose and gave me two black eyes.
56 Luckily, Reilly was wearing his/her seatbelt and s/he didn't slam his/her head into the front

57 window, but s/he broke her/his wrist when s/he jammed it into the dashboard to brace
58 him/herself for the crash.

59 I was hurting, bleeding and scared, but I found my cell phone on the floor under the steering
60 wheel where it had landed during the accident. I got out of the car to find out about that kid on
61 the bike (who I now know was Jess) and call my mom. I probably wouldn't admit this to her, but
62 my mom is the smartest person I know and she always knows the right thing to do in any
63 situation.

64 So, I told her that someone had been hit and that I had crashed the car. I asked her what we
65 needed to do to fix it. She told me to stay put and that she was on her way. I didn't call 911
66 because I was sure that someone else had already made that call.

67 Soon after that, an ambulance came and took me and Reilly and Jess to the hospital. The
68 doctors fixed us up and our parents came and took us home.

69 I know that Jess Paxton was hurt a lot worse than we were and I feel badly about that. But the
70 thing is, this accident was not my fault. I mean, the kid stopped to let me turn and then darted
71 right into the road.

72 I was not texting and driving. I didn't drink and drive. I'm a safe driver and I was being safe
73 that night. Really, Jess was the one who wasn't paying attention.

74 How can you slow down to let people turn and then just ride right into a car? How can you
75 ride your bike and listen to your iPod if you want to keep from getting hurt? If you are really
76 worried about head injuries, shouldn't you be wearing your helmet? I'm really sorry that Jess
77 might not be able to play soccer anymore, but s/he should look in the mirror if s/he wants to
78 know who to blame for that.

79 **WITNESS ADDENDUM**

80 I have reviewed this statement, and I have nothing of significance to add at this time. The
81 material facts are true and correct.

82 Signed,

83 Alex McMasters

Reilly Jackson

1 My name is Reilly Jackson. I am 16 years old and am going to be a junior at St. Augustine's
2 Prep. I have lived in Hickory since I was four years old and Alex McMasters has been my best
3 friend since kindergarten.

4 The night of the accident I was just glad to get out of the house. I had been grounded most of
5 the summer because of a little incident with underage drinking. I didn't tell my parents that I had
6 gotten a ticket, but not because I was trying to hide it from them. It was because I wanted to act
7 responsibly and take care of the problem myself. Besides, the night I got the ticket, I wasn't even
8 drinking. I was just holding the beer for one of my friends.

9 I had not gotten into any trouble all summer, so I was able to convince my mom to let me go
10 to a movie with Alex. I was supposed to go home right after the movie, but Alex wanted to stop
11 by Patrick's house to wish him a happy birthday. Since s/he was the one driving the car, I had to
12 go along. Besides, my mom did say to be home by 9:30 and it was only 8:00 when we got to
13 Patrick's.

14 I only had one beer. I learned my lesson about drinking in public when I got my ticket, but I
15 think it's OK to have a beer at a friend's house. I mean, it is someone's private home so it's
16 nobody's business what they do on their own private property, right? Besides, Patrick's parents
17 were there to make sure nothing got out of hand.

18 I know Alex wasn't out to get drunk that night, either, since s/he was kind of the designated
19 driver. I never saw Alex drink a beer and the only time s/he wasn't in my line of sight was when
20 s/he went outside to talk to Patrick about Hunter. But, I know Alex is a responsible person, and I
21 know s/he would never drive drunk.

22 I noticed that it was after 9:00 and I told Alex we needed to head out. At that point, s/he was
23 kinda steamed. S/he hates Patrick's girlfriend, Hunter, and is always trying to get Patrick to cut
24 her loose. I saw Hunter and Alex exchange some words, but I don't know what they said. I'm
25 sure Hunter was being obnoxious. She has this way of getting under Alex's skin.

26 When we get into the car, Alex still seemed angry and then the texts start flying. Patrick
27 wants to know what Alex did to make Hunter angry. Hunter is sending her usual foul messages.
28 Alex is trying to respond to all of this and I am helping. Alex would dictate the messages to me

29 and I would type them and send them to Hunter and Patrick. I was sort of like the car secretary.
30 Alex talks, I type. Alex was not the one sending texts.

31 I was just trying to stay chill in the car. I'm not interested in the All My Children stuff those
32 three always get into. My life is enough of a soap opera without all of that stuff. I can tell Alex is
33 steaming, reading the texts from Patrick and Hunter. I just wanted to get home on time.

34 When we get to Summit Street and Jones Avenue, Alex kind of slows down to get ready to
35 turn onto Jones Avenue. I'm fairly certain Alex put on the turn signal. S/he is a good driver and
36 in my experience driving with him/her, s/he always follows the rules of the road. I mean, in the
37 time s/he has been driving s/he has never gotten even one ticket.

38 I don't think either one of us saw Jess on the bike until it was too late. Alex honked the horn
39 to try to let Jess know to get out of the way but for some reason Jess just didn't turn the bike fast
40 enough. Alex slammed on the brakes and tried to turn the car to avoid the bike rider. Alex yelled
41 something about not being able to stop fast enough and the next thing I know we are slamming
42 into a fence.

43 I'm glad I was wearing my seat belt. I think the accident could have been a lot worse if I
44 hadn't. I broke both of my wrists, but they will heal a lot better than if I had broken my head
45 open. I had dropped Alex's cell phone when we got into the accident and Alex was freaking out,
46 yelling at me to find the phone so s/he could call his/her mom and get her take on what we
47 needed to do. Because of my broken wrists, I was having a hard time moving so I just stayed put
48 in the car. I know Alex got out and went to check on Jess to make sure s/he was all right.

49 The next thing I know, these paramedic guys are taping me up and putting me in the back of
50 an ambulance. Once my wrists were in casts my parents came and took me home. I saw Jess and
51 s/he looked like s/he had been in a war zone. But it's her/his own fault. S/he had to see us slow
52 down to make the turn and s/he just kept going. S/he didn't even try to avoid the accident. It's a
53 bummer that s/he got hurt, but sometimes an accident is just an accident.

54 I don't think it's right that s/he's trying to pin this on Alex. And that's what s/he's doing –
55 going after an innocent person. I mean, who should believe a thing s/he says after the cheating
56 scandal s/he got caught up in. Cheaters are liars and once a liar, always a liar. That's what I say.

57

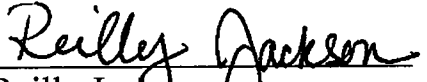
58
59

WITNESS ADDENDUM

60 I have reviewed this statement, and I have nothing of significance to add at this time. The
61 material facts are true and correct.

62

Signed,


Reilly Jackson

63

Teri Osgood

1 My name is Teri Osgood. I am a Detective with the Delaware State Police. I have been a
2 police officer for 20 years since receiving my Bachelor's Degree in Criminal Justice.

3 I was trained in accident reconstruction through law enforcement classes taught at the
4 Delaware Peace Officer's Standards and Training Academy (POST). The classes included Basic
5 Crash Investigation, Advanced Crash Investigation, Crash Reconstruction Training and yearly
6 refreshers.

7 I have been a State Police Accident Reconstructionist for the last 10 years and am currently
8 responsible for teaching the Basic and Advanced Crash Investigation courses at POST.

9 During my time as a State Police Accident Reconstructionist, I have responded to and
10 investigated over 1200 crashes involving motor vehicles. I have reconstructed approximately 80
11 motor vehicle crashes involving either serious injury or fatalities. I have also testified in several
12 cases resulting from motor vehicle crashes that I have investigated.

13 I received a call on June 23, 2011 at approximately 21:30 hours to report to the scene of an
14 accident at the intersection of Summit Street and Jones Avenue in Hickory, Delaware. Officers
15 on the scene had reported a collision between a bicycle and an automobile and I was dispatched
16 to conduct an accident investigation.

17 I arrived at the scene of the accident at 21:45 hours and was informed by the first officer on
18 the scene that the collision had involved a Black 2003 Dodge Dakota with a driver and passenger
19 and an 18 speed road cycle. The driver of the Dodge Dakota was identified as Alex McMasters. I
20 was immediately concerned because I know Alex's family quite well. The bicycle rider was
21 identified as Jess Paxton. I was told that both Alex and Jess Paxton were receiving treatment
22 from the paramedics who had arrived shortly before.

23 At that time, I noted the Dodge Dakota on the east side of Summit Street approximately 74.2
24 feet north of the Point of Impact. The front of the Dodge Dakota had impacted a fence post
25 approximately 61.9 feet from the shoulder of Summit Street. I noted that the bicycle had
26 sustained significant damage as a result of the collision. I did not observe any reflectors on the
27 bicycle.

28 At that point, I received a phone call on my personal cell phone. I did not recognize the
29 number but when I answered, I immediately recognized the voice of Senator McMasters. After
30 identifying herself, Senator McMasters indicated she was calling to obtain an update on the
31 status of her child. I know Senator McMasters very well. She serves as Chairperson of the
32 Senate subcommittee responsible for oversight of the State Police Budget. I have had the
33 opportunity to work with her on several funding requests during her several terms as a State
34 Senator. I know Senator McMasters' husband, George, as well. George owns a restaurant called
35 McMasters' Chef, which sponsors my son's softball team. We often take the team to McMasters'
36 Chef after games and are always treated to a great meal.

37 I told Senator McMasters that I had just arrived on the scene but would immediately
38 determine Alex's status. She stated that she was glad that I would be the one completing the
39 reconstruction of the accident because she knew she could trust me and that I would do a
40 thorough job, which I always do.

41 After confirming that the injuries to Alex and Jess Paxton were not life threatening, I began
42 my investigation. I saw that Alex was fine and then talked to Jess Paxton who admitted to me
43 that s/he drank a beer that evening. I did not charge him/her with underage drinking. Paxton did
44 not seem drunk or smell of alcohol. The kid was really hurting already and really seemed out of
45 it. I didn't see any need to penalize someone who had been honest with me. Of course, if I had
46 known that s/he had also stolen a bicycle, which s/he did not tell me, things might have been
47 different.

48 I then interviewed a Sidney Cosgrove who was a witness to the accident. Cosgrove advised
49 me that s/he had not moved the bicycle rider after the accident. Cosgrove indicated that s/he
50 believed that the reflectors on the bike had been smashed during the accident because s/he saw
51 plastic pieces of what appeared to be reflectors near where the bike had landed. I found no such
52 evidence and the bike itself did not have any reflector brackets. S/he also stated that s/he did not
53 believe the car had its turn signal on at the time of the collision although s/he admitted that s/he
54 had taken off her/his glasses immediately prior to the collision.

55 I then conducted an evaluation of the physical evidence at the scene by conducting skid tests,
56 examining the damage to the Dodge Dakota including collecting the left turn signal bulb from
57 the vehicle and examining the bicycle for evidence of compliance with Delaware Code lighting

58 requirement. As a result of my investigation, I completed a Crash Reconstruction Report dated
59 July 5, 2011, which explains my conclusion that the bicyclist Jess Paxton was at fault for the
60 collision.

61 **WITNESS ADDENDUM**

62 I have reviewed this statement, and I have nothing of significance to add at this time. The
63 material facts are true and correct.

64 Signed,

65 Teri Osgood

Exhibits

The subsequent pages of this section include the following exhibits:

- Exhibit 1: Delaware Vehicle Collision Report
- Exhibit 2: Map of the Accident Scene
- Exhibit 3: Devon St. James' Accident Reconstruction Report
- Exhibit 4: Teri Osgood's Accident Reconstruction Report
- Exhibit 5: Turn Signal Light Bulb
- Exhibit 6: VTI Report on Texting and Driving
- Exhibit 7: LG EnV Cellular Phone Data Sheet
- Exhibit 8: Newspaper Article on City High Cheating Scandal
- Exhibit 9: Text Message Transcript and Cover Letter
- Exhibit 10: Accident Scene Photos

EXHIBIT 1: DELAWARE VEHICLE COLLISION REPORT

DE Vehicle Collision Report										Agency Code	Officer #	Report District	Case No.	Page 1																																																																																																	
ITD-90 5-95M 27-010500-0 Revised 11/29/98										SP00	1831	7	MOCK TRIAL																																																																																																		
Date of Collision	Day of Collision	Time	Police Dispatched	Police Arrived	EMS Dispatched	EMS Arrived	Location	City or Town																																																																																																							
6/23/2011	Thursday	21:23	21:25	21:32	21:25	21:33	Hickory	Hickory																																																																																																							
If Collision location is in:		Name of Street		On Private Property		# of Lanes	Posted Speed	County	Interchange #																																																																																																						
1		ON Summit St		<input type="checkbox"/>		2	35	New Castle																																																																																																							
Intersection of 2 streets		2		In the Intersection with:		Posted Speed	R. R. Crossing #	Latitude (GPS)																																																																																																							
3		Jones Ave		<input type="checkbox"/>		25																																																																																																									
Intersection of Street and: Parking Lot / Driveway / Alley		3		Outside an Intersection		Name of Cross Street or # of Ref. Mile Post Marker		Collision Loc Mile Point																																																																																																							
1, 2, 3		1, 3		<input type="checkbox"/>																																																																																																											
Non-Intersection		1, 3		<input type="checkbox"/>																																																																																																											
UNIT 1		<input checked="" type="checkbox"/> Vehicle		<input type="checkbox"/> Pedestrian		<input type="checkbox"/> Pedalcyclist		Vehicle Owner																																																																																																							
Driver		Last		First		M.I.		Unit Type																																																																																																							
McMasters		Alex		George		A		07																																																																																																							
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1839 Custer Street				2003		Dodge		Dakota																																																																																																							
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Hickory		DE		19806				Black																																																																																																							
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Carrier Name		Policy Number		Insurance		Yes		No																																																																																																							
Allstate		45-31-46N-107-25-45R		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>																																																																																																							
Passenger Names and Addresses (Unit 1 only, additional passengers on page 3)																																																																																																															
Reilly Jackson 1876 Reno Ave Hickory DE 19806																																																																																																															
UNIT 2																																																																																																															
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Driver		Last		First		M.I.		Unit Type																																																																																																							
Paxton		Jess		NA		NA		02																																																																																																							
Street Address		Home Phone		Vehicle Year		Make (Dodge-Chev.)		Model (Dart-Nova)																																																																																																							
625 Benteen Street				NA		NA		NA																																																																																																							
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Passenger Names and Addresses (Unit 2 only, additional passengers on page 3)																																																																																																															
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Locality 1 Business/Commercial 3 School/Playground 5 Agricultural 7 Residential 2 Industrial/Manufacturing 4 Recreational Area 6 Undeveloped		Officer # 1831 Case No. MOCK TRIAL	Page 2
07			04
Light Conditions 1 Day 3 Dark - Street Lights On 5 Dark - No Street Lights 2 Dawn/Dusk 4 Dark - Street Lights Off		Road Type 1 2-Way & Raised/Depressed Divider 5 Ramp 2 2-Way & 2-Way Left Turn Lane Divider 6 Alley 3 One-Way 7 Rest Area 4 2-Way & No Divider 8 Port of Entry A 2-Way & 2 Double Yellow Painted Divider 9 Other	
02			02
Weather Conditions - Two Selections Possible 1 Clear 3 Rain 5 Sleet/Hail 7 Blowing Dust/Sand A Smoke/Smog 2 Cloudy 4 Snow 6 Fog 8 Severe Cross Winds		Road Surface Type 1 Concrete 2 Paved (Asphalt/Brick) 3 Gravel/Stone 4 Dirt	
01			01
Road Surface Conditions 1 Dry 3 Slush 5 Snow 7 Water 2 Wet 4 Ice 6 Mud 8 Other		Roadway Geometrics 1 Straight 2 Curve 1 Upgrade/Downgrade 3 Hillcrest 6 Level	
01			05
Other Road Conditions 0 None 4 High/Low Shoulder 8 Flooded 1 Ruts/Bumps/Holes 6 Loose Gravel/Seal Coat A Poor Pavement 2 Slick Asphalt (Bleeding) 6 Under Construction Markings 3 Washboard 7 Lane Closed 8 Other		Traffic Control 0 None 4 Flashing Beacon 8 Officer/Flagger 1 Stop Sign 5 Traffic Signal-Ped. Only A School Bus Signal 2 Yield 6 R. R. Gates/Signal B No-Pass Barrier Line 3 Traffic Signal 7 R. R. Flashing Beacon C Construction Signing SPECIFY 1 Functioning 2 Not Functioning 3 Removed	
00			00

UNIT # 1	CONTRIBUTING CIRCUMSTANCES - 3 Possible		UNIT # 2
00	0 None	5 Improper Lane Change	13
00	1 Exceeded Posted Speed	6 Following Too Close	00
00	2 Speed Too Fast for Conditions	7 Drove Left of Center	00
00	3 Too Slow for Traffic	8 Oil Roadway / Over Corrected	00
00	4 Improper Overtaking	9 Improper Backing	00
00	11 Improper Turn	12 Felled to Signal	00
00	17 Wheel Defect	18 Light Defect	00
00	22 Inattention	19 Other Vehicle Defect	00
00	28 Improperly Packed	20 Alcohol Impaired	00
00	31 Previous Accident	21 Drug Impaired	00
00	32 Distraction in/on Vehicle (List)	22 Vision Obstruction	00
00	35 Improper use of Turn Lane	23 Vision Obstruction	00
00	89 Other	24 Asleep/Drowsy	00
00	26 Fatigued	25 Slick	00
00	27 Physical Impairment	26 Fatigued	00
00	89 Other	27 Physical Impairment	00

VISION OBSTRUCTION 0 None 3 Roadway Slope/Snowbank 7 Bright Headlights 12 Splash/Spray from Other Vehicle 15 Traffic Sign 1 Curve in Road 4 Trees/Crop/Brush 8 Weather Conditions 13 Moving Vehicle 16 Billboard/Fence 2 Hill Crest 5 Reflection from Surface 10 Rain/Snow/Ice on Windows 14 Parked Vehicle 17 Building 6 Bright Sunlight 11 Cracked/Dirty Windows 14 Parked Vehicle 99 Other	
--	--

11	INITIAL Point of Impact	POINT OF IMPACT Auto / Motorcycle / Tractor with Semi Trailer 13 Top & Windows 14 Undercarriage	Trailing Unit #1 33 Top 34 Undercarriage	Trailing Unit #2 53 Top 64 Undercarriage	INITIAL Point of Impact
11	PRINCIPLE Point of Impact				PRINCIPLE Point of Impact

03	EXTENT OF DEFORMITY 0 None 1 Very Minor 2 Minor 3 Minor/Moderate 4 Moderate 5 Moderate/Severe 6 Severe 7 Very Severe		NA
----	--	--	----

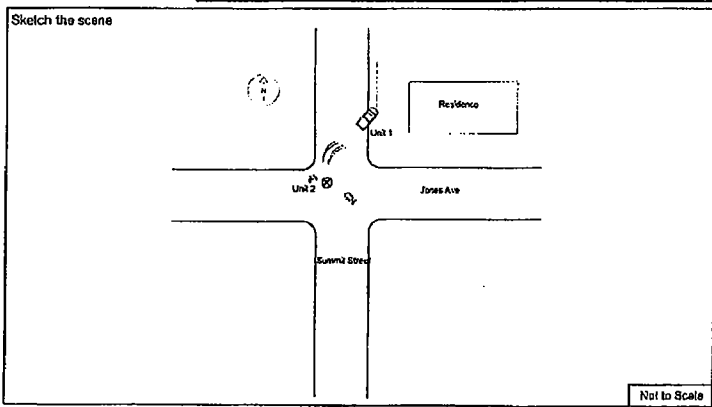
Towed Due to Damage	Towed By: Calhoun Towing	Towed By: Not Towed	Towed Due to Damage
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

1	Driver of UNIT # 1 1 Neither Alcohol or Drugs Detected 2 Yes - Alcohol 3 Yes - Drugs 4 Yes - Both	Driver of UNIT # 2	
01	Alcohol / Drug Test 1 None Given 2 Test Refused 3 Blood Test 4 Urine Test 5 Breath Test 6 Field Test		
01	Alcohol Test	Drug Test	
01	Alcohol Test	Drug Test	
01	BAC Test Results:	Drug Used (if known):	Drug Test Results: NA
01	BAC Test Results:	Drug Used (if known):	Drug Test Results:

UNIT # 1	COMMERCIAL VEHICLE Refer to Instruction Sheet before completing		UNIT # 2
Cargo Body 1 Bus 2 Van/Enclosed Box 3 Cargo Tank 4 Flatbed 5 Dump 6 Concrete Mixer 7 Auto Transporter 8 Garbage/Refuse 9 Other 10 Pickup Bed			
# Axles	GVWR-Power	GVWR-All Trailers	ICC # For Load DOT # For Load
Hazardous Material	Placard: <input type="checkbox"/> Yes <input type="checkbox"/> No	Spilled: <input type="checkbox"/> Yes <input type="checkbox"/> No	Haz-Mat #
Carrier Name & ICC# or DOT# for Load obtained from...			
1 Shipping Papers 2 Vehicle Side 3 Driver 4 Log Book 9 Other			
(If Carrier different from Vehicle Owner)	Carrier Name	Address	City State Zip
(If Carrier different from Vehicle Owner)	Carrier Name	Address	City State Zip

Event	Unit # of Units Involved	Event Location	EVENTS - List events for ALL units in the order they occurred				Case No. MOCK TRIAL	Page 3
15	1 2	01	1 Overturn	24 One Veh. Collision With	41 Bridge Roll	41 Culvert		
10	1	01	2 Separation of Units	14 Pedestrian	25 Overpass	42 Curb		
54	1	04	3 Cargo Loss/Shift	15 Pedalcycle	26 Guardrail Fare	43 Ditch		
			4 Jack-Knifed	16 Railroad Train	27 Guardrail End	44 Embankment		
			5 Ran off Road	17 Domestic Animal	28 Median Barrier	45 Fence	50 Head-On	
			6 Down Hill Runaway	18 Wild Animal	29 Highway Traffic Sign Post	46 Mailbox	51 Rear-End	
			7 Fire/Explosion	19 Other Object Not Fixed	30 Overhead Sign Support	47 Tree	52 Backed Into	
			8 Gas/Inhalation	20 Parked Vehicle on Private Property	31 Street Light Support	48 Building Wall	53 Parked Veh.	
			9 Other Noncollision	21 Impact Attenuator	32 Utility Pole	49 Other Fixed Object	54 Other	
			10 Loss of Control	22 Bridge/Pier/Abutment	33 Other Pole			
			11 Fell/Pushed/Jumped	23 Bridge Parapet End	40 Delinquent Post			
			12 Non-Collision Injury					
			13 Immersion					
			71 Came Back on Road					
			72 Drove UR of Center					

UNIT # 1		FIRST EVENT RELATIONSHIP TO JUNCTION		UNIT # 2		
01	0 Nonjunction	2 Intersection Related	4 Driveway/Alley Related	6 Ramp Related	8 Railroad Crossing Related	
	1 In Intersection	3 At Driveway/Alley	5 On Ramp	7 At Railroad Crossing	9 Other	
15	FIRST Harmful Event	GENERAL DIRECTION OF TRAVEL (If turning, select direction before turning)				15
15	MOST Harmful Event	General Direction of Street	Unit Direction	General Direction of Street	Unit Direction	15
04	Driver / Ped Action	<input checked="" type="checkbox"/> South / North	<input checked="" type="checkbox"/> North <input type="checkbox"/> South	<input checked="" type="checkbox"/> South / North	<input type="checkbox"/> North <input checked="" type="checkbox"/> South	99
		<input type="checkbox"/> West / East	<input type="checkbox"/> East <input type="checkbox"/> West	<input type="checkbox"/> West / East	<input type="checkbox"/> East <input type="checkbox"/> West	
		On Street	Summit St	On Street	Summit St	



- Driver Actions
- Going Straight
 - Turning Right
 - Right Turn on Red
 - Turning Left
 - Left Turn on Red
 - U-Turn
 - Merging
 - Changing Lanes
 - Passing
 - Negotiating Curve
 - Stopped in Traffic
 - Slowing in Traffic
 - Starting in Traffic
 - Parking
 - Entering Drivwy./Alley
 - Leaving Drivwy./Alley
 - Backing
 - Avoiding Obstacle
 - Avoiding Veh./Ped.
 - Pursuing Vehicle
 - Placing Pursuit
 - Racing
 - Parked Vehicle
 - Driverless Vehicle in Motion
- Pedestrian/Pedalcycle Actions
- Crossing at Painted Intersection
 - Crossing at Unpainted Intersection
 - Crossing at Non-Intersection X-walk
 - Crossing Not at Intersection
 - Walk/Ride with Traffic in Bike Lane
 - Walk/Ride with Traffic No Bike Lane
 - Walk/Ride Facing Traffic in Bike Lane
 - Walk/Ride Facing Traffic No Bike Lane
 - Standing on Roadway
 - Playing on Roadway
 - Working on Roadway
 - Enter/Leave School Bus
 - Not on Roadway
 - Other

Property Damage	(Name of Object Struck - Owner Name and Address)	Estimated Damage
Fence * C. Gall * 1840 Jones Ave. Hickory		\$ 150

Narrative / Additional Information / Additional Passengers (indicate unit # and all information for additional passengers)

NOTE: See addendum page for crash narrative.

WITNESSES Name	Address	Home Phone	Work Phone
Sydney Cosgrove	824 Calhoun Drive, Hickory Delaware		

Investigating Officer's Name and #	Photos	Approved By	Date
<i>Det. Lisa Osmond</i>	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<i>[Signature]</i>	6-27-11

Send ORIGINAL to: Office of Highway Safety, P. O. Box 7129, Boise, Idaho 83707-1129

BImpact 3.8

Narrative / Additional Information / Additional Passengers:

001 On June 23, 2011, at approximately 9:23 PM, Alex McMasters (Driver 1) was driving his/her 2003
002 Black Dodge Dakota (Unit 1), northbound on Summit Street. At the same time, Jess Paxton (Driver
003 2), was riding his/her bicycle (Unit 2), southbound on Summit Street. As McMasters vehicle
004 reached the intersection of Summit Street and Jones Ave., she/he attempted to turn west onto
005 Jones Ave. At approximately the same time, Paxton was entering the intersection on his/her
006 bicycle, still traveling southbound on Summit Street. Paxton's bicycle collided with the left
007 front fender of McMasters' Dakota. McMasters' Dakota continued in a northeast direction, running
008 off the road and colliding with a fence, and coming to an uncontrolled rest, facing northeast.
009 Paxton was totally ejected from his/her bicycle and landed in the roadway southeast of the point
010 of collision.

Additional Medical Care Providers:

Property Damage Information

EXHIBIT 2: MAP OF ACCIDENT SCENE

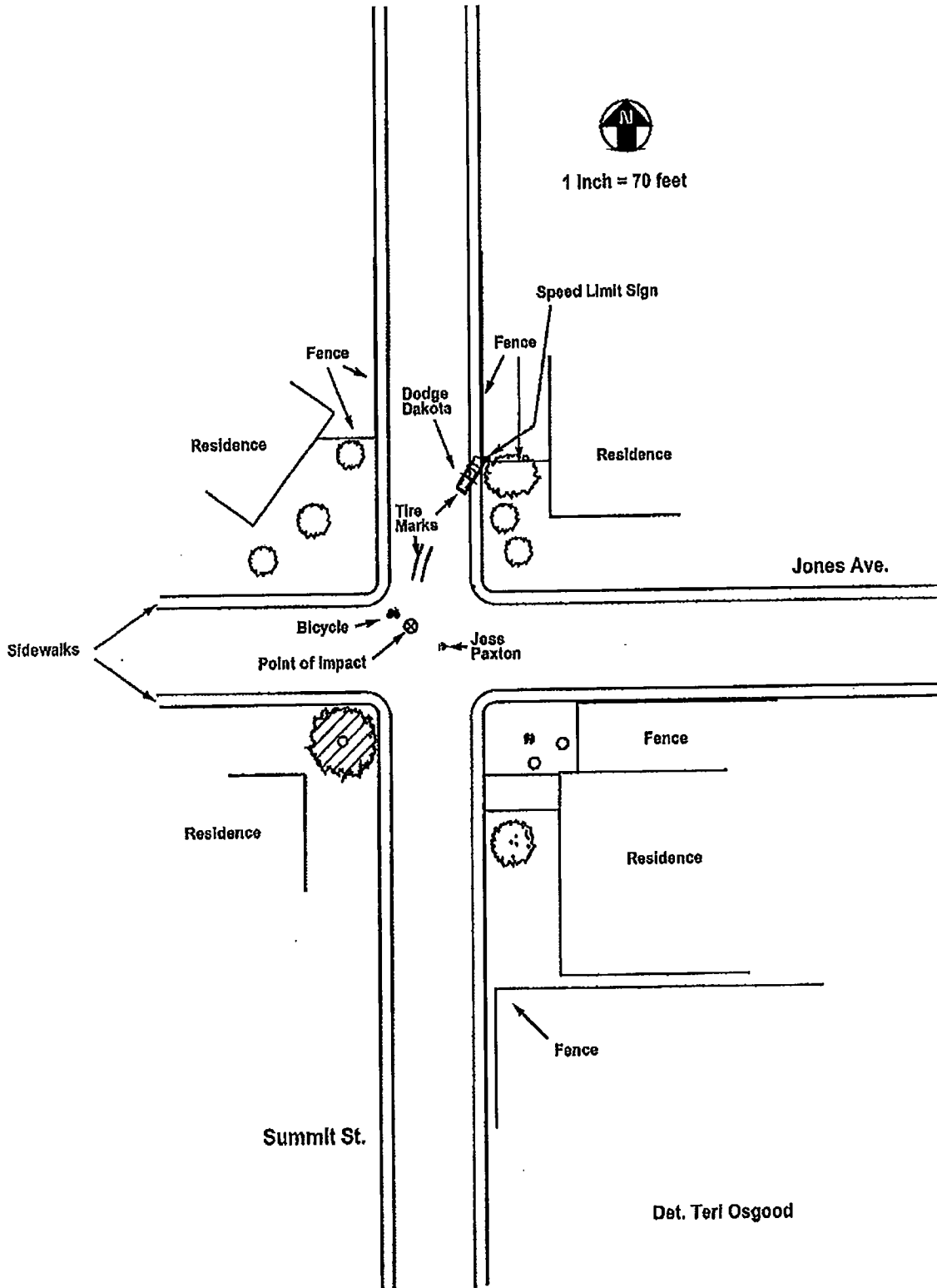


EXHIBIT 3 ST. JAMES' ACCIDENT RECONSTRUCTION REPORT

REPORT INFORMATION

Date of Report: September 15, 2011

Location of Crash: Summit Street and Jones Avenue; Hickory, Delaware

Date of Crash: June 23, 2011

Time of Crash: 9:23 PM

VEHICLES, OCCUPANTS, AND WITNESSES

Unit 1: Black 2003 Dodge Dakota

Driver: Alex McMasters, 18 YOA, sustained a non-life-threatening injury

Passenger: Reilly Jackson, 16 YOA, sustained a non-life-threatening injury

Unit 2: 18 Speed, Street Bicycle

Driver: Jess Paxton, 18 YOA, sustained a life-threatening injury

Witnesses: Sydney Cosgrove, 55 YOA

INFORMATION ANALYSIS IS BASED ON

- Officer Reports
- Photographs
- Statements
- Scale Diagram
- Measurements
- Officer Synopsis

SKID TESTS

On August 25, 2011, I took three skid tests using my Vericom VC2000, in the intersection of Summit Street and Jones Avenue. I used the average drag factor of .94, for my calculations, based on the following results.

- .93
- .96
- .94

OTHER PHYSICAL EVIDENCE

On September 3, 2011, I examined the photographs taken by Detective Osgood, which showed the bulb from McMasters' left front turn signal. Based on my training and experience I don't believe the shock impact present on this bulb conclusively shows the turn signal was activated at the time of impact. I could see a slight deformity of the filament inside the bulb. The bulb is still

operable indicating a very slow speed impact, for example bumping into a garage door or curb when the turn signal was activated. I believe the shock impact present in this bulb could have happened at anytime in the past, but not during this crash where we have a bike traveling 15 mph colliding with a vehicle going 31 mph. In my opinion, if the turn signal would have been activated the filament would have shown a lot more deformity.

ROADWAY INFORMATION

- The intersection of Summit Street and Jones Avenue is an uncontrolled intersection.
- The road is constructed of asphalt.
- Neither Summit Street nor Jones Avenue has any painted lane marking.
- Sidewalks shoulder both roads. Beyond the sidewalks are private residences.
- The speed limit on Summit Street is 35 MPH.
- The speed limit on Jones Avenue is 25 MPH.

ROADWAY AND VEHICLE EVIDENCE

- The skid marks that Detective Osgood indicated were caused by McMasters' Dodge antilock braking system, allowing the rear tires to intermittently lock up because of very little weight on the rear axle are actually "YAW" tire marks made from McMasters' vehicle when s/he turned toward the center of the intersection and over corrected. What Detective Osgood indicates is intermittent tire marks are actually striations made from McMasters' tires rotating and sliding at the same time.
- There is impact damage to the corner post of a fence located on the eastside of Summit Street, north of Jones Avenue.
- There is a gouge in the roadway, near the beginning of McMasters' skid marks, made by Paxton's bicycle rim, slamming into the ground, at the point of impact with McMasters' vehicle.
- There is a blood spot on the roadway, located southeast of the point of impact where Paxton's head hit the asphalt as s/he landed on the ground after impact.
- Paxton's bicycle has severe frontend damage where it struck the left front corner of McMasters' vehicle.
- McMasters' vehicle has impact damage to the left front corner where it was struck by Paxton's bicycle. It also has damage to the front right corner bumper where it struck the fence post.

SPEED CALCULATIONS

Unit 1

Based on Detective Osgood's measurements and his/her scale drawing, I measured a 15 foot cord and a 5" middle ordinate from McMasters' Yaw Tire Marks. I converted the 5" middle ordinate to .41' middle ordinate so I could insert it into the formula shown below. Using the 15' cord and .41' middle ordinate, I calculated a radius of 68.8. I then used the Yaw tire mark's

radius and average drag factor of .94, and applied them to the critical speed formula below to calculate McMasters' speed right after colliding with the bicycle.

Chord: 15 feet

Middle Ordinate: 5 inches or .41'

Radius: 68.8

$$R = \frac{C^2}{8 \times M} + \frac{M}{2}$$

$$R = \frac{15.0000^2}{8 \times 0.4100} + \frac{0.4100}{2}$$

$$R = \frac{225.0000}{3.2800} + \frac{0.4100}{2}$$

$$R = 68.5975 + 0.2050$$

$$R = 68.8025$$

AR = (R ± Cntr of Mass Adjustment)

$$AR = 68.8025 + 0.0000$$

$$AR = 68.8025$$

Radius Formula

Radius: 68.8

Drag Factor: .94

Post Impact Speed: 31 MPH

$$S = 3.86 \times \sqrt{R \times (\mu \pm e)}$$

$$S = 3.86 \times \sqrt{68.8000 \times (0.9400 - 0.0000)}$$

$$S = 3.86 \times \sqrt{68.8000 \times 0.9400}$$

$$S = 3.86 \times \sqrt{64.6720}$$

$$S = 3.86 \times 8.0418$$

$$S = 31.0413$$

Critical Speed Formula

Unit 2

I calculated the Unit 2 (Paxton's bicycle) speed at impact by using the Vault formula shown below. I used measurements taken by Detective Osgood, which included: the distance Paxton flew after hitting McMasters' vehicle; the height of Paxton's center mass (chest area) when s/he was riding the bicycle; and the departure angle the bicycle rider left the bicycle, at the point of

impact. Through my training and experience, I know to use a 45 degree angle when the exact angle is not known.

I converted the bicycle's speed from mile per hour (MPH) to feet per second (fps), see formula listed below. I was then able to place the bicycle, on a scale drawing, at the location it would have been prior to the crash, in relationship to time-in-seconds. This allowed me to determine which Unit reached the intersection first.

Distance: 18'
Height: 3'
Departure angle: 45 degrees
Impact Speed: 15.16 mph

$S = \frac{3.86 \times D}{\sqrt{D \pm h}}$	$S = \frac{3.86 \times 18.0000}{\sqrt{18.0000 + 3.0000}}$
$S = \frac{69.4800}{\sqrt{21.0000}}$	$S = \frac{69.4800}{4.5825}$
$S = 15.1620$	

Vault Formula

Vehicle: 31 MPH = 45.5 fps

$V = 1.466.. \times S$
$V = 1.466.. \times 31.0400$
$V = 45.5253$

MPH to fps Conversion Formula

Bicycle: 15.2 MPH = 22.2 fps

$V = 1.466.. \times S$
$V = 1.466.. \times 15.2000$
$V = 22.2933$

MPH to fps Conversion Formula

STATEMENTS

- Paxton stated s/he had consumed alcohol prior to the crash.

- Paxton stated s/he had ear buds in his/her ears, but was not listening to music. S/he stated they were in his/her ears so s/he didn't lose them on the ride home.
- Paxton stated McMasters didn't have his/her headlights activated.
- Paxton stated s/he wasn't wearing a helmet.
- Paxton stated McMasters' breath reeked of alcohol and s/he was slurring his/her words while talking on his/her cellular phone.
- Paxton stated s/he slowed down on his/her bicycle prior to impact.
- Paxton stated s/he did not see a turn signal activated prior to the collision.
- McMasters stated s/he was driving the vehicle that collided with Paxton
- McMasters stated s/he didn't consume any alcohol prior to the crash, but did have beer spilled on his/her person.
- McMasters stated s/he and his/her passenger Reilly Jackson were both texting other persons, on McMasters' cellular phone, prior to the crash.
- McMasters observed Paxton slow down prior to the crash.
- McMasters stated s/he attempted to avoid the collision by turning to the right and not making the left hand turn. S/he also slammed on his/her brakes, but s/he was unable to avoid the collision. S/he stated when s/he slammed on the brakes his/her vehicle started to slide.
- McMasters stated s/he lost control after the collision and struck a fence.
- McMasters stated s/he was not wearing a seatbelt, but his/her passenger Reilly Jackson was wearing his seatbelt.
- McMasters stated s/he activated her/his turn signal prior to attempting the left turn and prior to seeing Paxton.
- Jackson stated McMasters slowed prior to attempting the left turn onto Jones Avenue.
- Jackson stated s/he did not see Paxton until just prior to the collision.
- Jackson stated s/he was holding McMasters cellular phone at the time of the collision.
- Cosgrove stated s/he observed a "bluish or greenish Light" coming from McMasters' Dakota as it passed him/her on Summit Street. Cosgrove believes the light s/he observed was being transmitted from an active cellular phone.
- Cosgrove stated s/he was a block away from the intersection of Summit Street and Jones Avenue, which is approximately 300 feet.
- Cosgrove stated the Dakota had its headlights activated.
- Cosgrove stated his/her cellular phone indicated the time of the collision was 9:23 PM.
- Cosgrove stated Paxton had ear buds in his/her ears.
- Cosgrove stated s/he did not see the Dakota's turn signals activate during the crash sequence, but was not sure if s/he would have been able to separate them from the brake lights.

VEHICLE DYNAMICS

On June 23, 2011, at approximately 2123 hours, Alex McMasters was driving his/her Dodge Dakota, northbound on Summit Street. At the same time McMasters' vehicle reached Jones Avenue, Jess Paxton was riding his/her 18-Speed, Street bicycle southbound on Summit Street

and also reached Jones Avenue. McMasters attempted to make a left turn onto Jones Avenue as Jess Paxton rode through the intersection. When McMasters and Paxton realized that they were going to collide, each attempted to avoid the collision. Paxton attempted to avoid McMasters' vehicle by turning left toward the center of the intersection. Paxton's bicycle struck the left front corner of McMasters' Dodge. Paxton was thrown from his/her bicycle landing approximately 18 feet from the point of impact. McMasters lost control of his/her vehicle and it went into a critical speed skid creating a "Yaw" tire mark. McMasters continued across Summit Street, until the front of his/her vehicle hit the corner of a fence, which is secured by a cement post. McMasters' vehicle came to an uncontrolled rest approximately 82 feet from the point of impact; on the east side of Summit Street, north of Jones Avenue. Paxton's bicycle came to an uncontrolled rest approximately 10.6 feet from the point of impact.

Speed calculations based on McMasters' Critical Speed Skid Yaw Tire Marks indicated his/her speed just after impact with Paxton was approximately 31 mph.

Speed calculations based on Paxton's vault from his/her bicycle was 15 mph.

Using time and distance calculations based from both units speed indicated that McMasters' vehicle reached the apex of the intersection at approximately the same time as Paxton's bicycle.

CAUSATIONAL FACTORS

- McMasters was driving too fast to safely turn the corner from Summit Street to Jones Avenue at 31 MPH.
- McMasters failed to activate his/her turn signal indicating his/her intent to make a left turn in violation of 21 DEL. CODE ANN. § 4155(b). The light bulb evidence is inconclusive and does not prove McMasters' turn signal was activated at the time of the collision. No evidence exists that indicates the small amount of filament shock shown in the light bulb photograph occurred during this crash. Neither Paxton nor Cosgrove observed McMasters' turn signal activated.
- McMasters failed to yield to through traffic when turning left in violation of 21 DEL. CODE ANN. § 4132. Both McMasters and Paxton reached the intersection at approximately the same time. Paxton gave no signal indicating his/her intent to complete any traffic movement other than ride straight through the intersection.
- McMasters' speed at the intersection increased the potential of a serious injury to Paxton.
- McMasters smelled of alcohol and s/he slurred his/her words indicating s/he consumed alcohol prior to the collision in violation of 21 DEL. CODE ANN. § 4177(a)(1).
- McMasters was driving in an inattentive manner in violation of 21 DEL. CODE ANN. §§ 4176C(a), (b)(2), and (b)(6) while s/he was driving and texting at the same time. McMasters stated s/he was driving and texting and Cosgrove stated s/he observed a light coming from the vehicle just prior to the crash indicating a cellular phone was in use.
- McMasters failed to wear a seatbelt in violation of 21 DEL. CODE ANN. § 4802(a)(1), which increased the seriousness of the injury s/he received during the crash.
- Paxton's bicycle didn't have any lights or reflectors, but it should be noted that it was dusk not dark at the time of the collision.

EXHIBIT 4: OSGOOD'S ACCIDENT RECONSTRUCTION REPORT

REPORT INFORMATION

Investigating Officer: Detective Teri Osgood
Investigating Department: Delaware State Police
Date of Report: July 5, 2011
Location of Crash: Summit Street St. and Jones Avenue Hickory, Delaware
Date of Crash: June 23, 2011
Time of Crash: 09:23 PM

OCCUPANTS, VEHICLES AND WITNESSES

Unit 1 Driver:

Alex McMasters (Non-Serious Injury) 18 YOA

Unit 1 Passengers:

Reilly Jackson (Non-Serious Injury) 16 YOA

Unit 1:

Black 2003 Dodge Dakota

Unit 2 Driver:

Jess Paxton (Serious Injury) 17 YOA

Unit 2:

18 Speed, Street bicycle

Witnesses:

Sydney Cosgrove 55 YOA

INFORMATION ANALYSIS IS BASED ON

- Officer Reports
- Photographs
- Statements
- Scale Diagram
- Measurements
- Officer Synopsis

SKID TESTS

On June 23, 2011, I took three skid tests using my 10 pound drag box in the intersection of Summit Street Drive and Jones Avenue. I used the average drag factor of .83, for my calculations, based from the following results.

- .81
- .84
- .85

OTHER PHYSICAL EVIDENCE

On June 23, 2011, I removed the left turn signal bulb from McMasters' Dodge Dakota. I examined and photographed the bulb to see if the filament showed Impact Shock. Impact Shock is movement of the filament inside the bulb. The filament will bend and/or break in the direction of force, when the light is activated, at the time of impact. The element clearly showed shock damage, which indicates that McMasters had his/her left turn signal on at the time of the crash.

ROADWAY INFORMATION

- The intersection of Summit Street and Jones Avenue is an uncontrolled intersection.
- The road is constructed of asphalt.
- Neither Summit Street nor Jones Avenue has any painted lane marking.
- Sidewalks shoulder both roads. Beyond the sidewalks are private residences.
- The speed limit on Summit Street is 35 MPH.
- The speed limit on Jones Avenue is 25 MPH.

ROADWAY AND VEHICLE EVIDENCE

- There are short intermittent skid marks after the point of impact going in a northeast direction, caused by McMasters' Dodge antilock braking system, allowing the rear tires to intermittently lock up because of very little weight on the rear axle and McMasters' attempted controlled turn and brake action.
- There are straight skid marks approximately 2.14 feet long made by the Dodge just prior to hitting the fence.
- There is impact damage to the corner post of a fence located on the eastside of Summit Street, north of Jones Avenue.
- There is a gouge in the roadway, near the beginning of McMasters' skid marks, made by Paxton's bicycle rim, slamming into the ground, at the point of impact with McMasters' vehicle.

- There is a gouge in the roadway, near the beginning of McMasters' skid marks, made by Paxton's bicycle rim, slamming into the ground, at the point of impact with McMasters' vehicle.
- There is a blood spot on the roadway, located southeast of the point of impact where Paxton's head hit the asphalt as s/he landed on the ground after impact.
- Paxton's bicycle has severe frontend damage where it struck the left front corner of McMasters' vehicle.
- McMasters' vehicle has impact damage to the left front corner where it was struck by Paxton's bicycle. It also has damage to the front corner bumper where it struck a fence post.

Unit 1

SPEED CALCULATIONS

I calculated the speed of Unit 1 by measuring the distance of both sets of skid marks left by McMasters' Dodge Dakota. I obtained the drag factor of the road with my 10 pound drag box. I then calculated the speed loss of each set of skids using the Minimum speed formula listed below. Once I calculated the speed loss from both set of skid marks, I combined both speeds, using the combined speed formula listed below. The combined speed is the speed of the Dakota at the point of impact with the bicycle.

I converted the Dakota's speed from mile per hour (MPH) to feet per second (fps), see formula listed below. I was then able to place the Dakota, on a scale drawing, at the point it would have been prior to the crash, in relationship to time-in-seconds. This allowed me to determine which Unit reached the intersection first, etc.

Skid Mark 1 length: 16.2 feet

Drag Factor: .83

Speed: 20.08 MPH

$$\begin{aligned}
 S &= \sqrt{30 \times D \times f} \\
 S &= \sqrt{30 \times 16.2000 \times 0.8300} \\
 S &= \sqrt{403.3800} \\
 S &= 20.0843
 \end{aligned}$$

Minimum Speed Formula

Skid Mark 2 length: 2.14 feet

Drag Factor: .83

Speed: 7.2 MPH

$$\begin{aligned}
 S &= \sqrt{30 \times D \times f} \\
 S &= \sqrt{30 \times 2.1400 \times 0.8300} \\
 S &= \sqrt{53.2860} \\
 S &= 7.2997
 \end{aligned}$$

Minimum Speed Formula

Combined Speed: 20.05 MPH with 7.3 MPH

IMPACT SPEED: 21.3 mph

$$S = \sqrt{S^2(1) + S^2(2) + \dots S^2(n)}$$

$$S = \sqrt{(20.0800)^2 + (7.2000)^2 + (0.0000)^2 + (0.0000)^2 + (0.0000)^2 + (0.0000)^2 + (0.0000)^2 + (0.0000)^2}$$

$$S = \sqrt{403.2064 + 51.8400 + 0.0000 + 0.0000 + 0.0000 + 0.0000 + 0.0000 + 0.0000}$$

$$S = \sqrt{455.0464}$$

$$S = 21.3318$$

Combined Speed Formula

Unit 2

SPEED CALCULATIONS

I calculated Unit 2's speed (Paxton's bicycle) at impact by using the Vault formula shown below. I measured the distance Paxton flew after hitting McMasters' vehicle. I then measured the height, by measuring from the ground to Paxton's center mass (chest area) when s/he was riding the bicycle. I didn't have any evidence to give me the exact departure angle. A departure angle is the angle the bicycle rider left the bicycle at the point of impact. Through my training and experience, I know to use a 45 degree angle when the exact angle is not known.

I converted the bicycle's speed from mile per hour (MPH) to feet per second (fps), see formula listed below. I was then able to place the bicycle, on a scale drawing, at the location it would have been prior to the crash, in relationship to time-in-seconds. This allowed me to determine which Unit reached the intersection first, etc.

Distance: 18'

Height: 3'

Departure angle: 45 degrees

IMPACT SPEED: 15.16 mph

$$S = \frac{3.86 \times D}{\sqrt{D \pm h}}$$

$$S = \frac{69.4800}{\sqrt{21.0000}}$$

$$S = 15.1620$$

$$S = \frac{3.86 \times 18.0000}{\sqrt{18.0000 + 3.0000}}$$

$$S = \frac{69.4800}{4.5825}$$

$$S = 15.1620$$

Vault Speed Formula

Vehicle: 21.3 MPH = **31 fps** (Feet per Second)

$$\begin{aligned}V &= 1.466.. \times S \\V &= 1.466.. \times 21.4000 \\V &= 31.3866\end{aligned}$$

MPH to fps Conversion Formula

Bicycle: 15.2 MPH = **22 fps**

$$\begin{aligned}V &= 1.466.. \times S \\V &= 1.466.. \times 15.2000 \\V &= 22.2933\end{aligned}$$

MPH to fps Conversion Formula

STATEMENTS

- Paxton stated s/he had consumed alcohol, “some beers” prior to the crash. S/he also stated s/he doesn’t drink often.
- Paxton stated s/he had ear buds in his/her ears.
- Paxton stated s/he left Sarah’s house after 9:00 PM and started running home, but then took a bike from the neighborhood upon realizing that s/he would not be able to make it home by 9:30 pm. S/he rode fast toward home. Because of other obligations, s/he hoped to reach home by 9:30 PM. Paxton stated McMasters didn’t have his/her headlights activated.
- Paxton stated s/he wasn’t wearing a helmet.
- Paxton stated McMasters’ breath reeked of alcohol and that s/he was slurring his/her words while talking on his/her cellular phone.
- Paxton stated s/he slowed down on the bicycle prior to impact.
- McMasters stated s/he was driving the vehicle that collided with Paxton
- McMasters stated s/he didn’t consume any alcohol prior to the crash, but did have beer spilled on his/her person.
- McMasters stated s/he and his/her passenger Reilly Jackson were both texting other persons, on his/her cellular phone, prior to the crash. McMasters stated s/he only texted while stopped at stop lights.
- McMasters observed Paxton slow down prior to the crash.
- McMasters stated s/he activated her/his turn signal prior to attempting the left turn and prior to seeing Paxton.
- McMasters stated s/he honked his/her horn to warn Paxton prior to the crash

- McMasters stated s/he attempted to avoid the collision by turning to the right and not making the left hand turn. S/he also slammed on his/her brakes, but s/he was unable to avoid the collision. S/he stated when s/he slammed on the brakes his/her vehicle started to slide.
- McMasters stated s/he lost control after the collision and struck a fence.
- Jackson stated McMasters slowed prior to attempting the left turn onto Jones Avenue.
- Jackson stated s/he did not see Paxton until just prior to the collision.
- Jackson stated s/he was holding McMasters' cellular phone at the time of the collision.
- Cosgrove stated s/he observed a "bluish or greenish Light" coming from McMasters' Dakota as it passed him/her on Summit Street. Cosgrove believes the light s/he observed was being transmitted from an active cellular phone. Cosgrove stated s/he was a block away from the intersection of Summit Street St. and Jones Avenue, which is approximately 300 feet.
- Cosgrove stated s/he had his/her glasses off at the time of the collision. S/he stated s/he is "nearsighted and blind as a bat" without his/her glasses.
- Cosgrove stated the Dakota had its headlights activated.
- Cosgrove stated his/her cellular phone indicated the time of the collision was 9:23 pm.
- Cosgrove stated Paxton had ear buds in his/her ears.
- Cosgrove stated s/he did not see the Dakota's turn signals activate during the crash sequence, but was not sure if s/he would have been able to separate them from the brake lights.

VEHICLE DYNAMICS

On June 23, 2011, at approximately 9:23 PM, Alex McMasters was driving his/her Dodge Dakota northbound on Summit Street. At approximately the same time, McMasters' vehicle reached Jones Avenue Jess Paxton was riding his/her 18 Speed, Street bicycle, southbound on Summit Street and also reached Jones Avenue. McMasters attempted to make a left turn onto Jones Avenue as Jess Paxton rode through the intersection. When McMasters and Paxton realized that they were going to collide each attempted to avoid the collision. Paxton attempted to avoid McMasters' vehicle by turning left toward the center of the intersection. McMasters attempted to avoid Paxton's bicycle by braking and turning left toward the middle of the intersection. Paxton's bicycle struck the left front corner of McMasters' Dodge. Paxton was thrown from his/her bicycle landing approximately 18 feet from the point of impact. McMasters continued across Summit Street St., leaving approximately 16.2 feet of skid. The vehicle then travelled northeast leaving no tire marks until just prior to colliding with the corner of a fence, where all four tires left a straight skid of 2.25 feet. His/her vehicle came to an uncontrolled rest, after colliding with a fence, approximately 82 feet from the point of impact with Paxton's bicycle, on the east side of Summit Street St., north of Jones Avenue Paxton's bicycle came to an uncontrolled rest approximately 10.6 feet from the point of impact.

Speed calculations based on the combined speed of both set of McMasters' skid marks indicated his/her speed at impact with Paxton was approximately 21 mph.

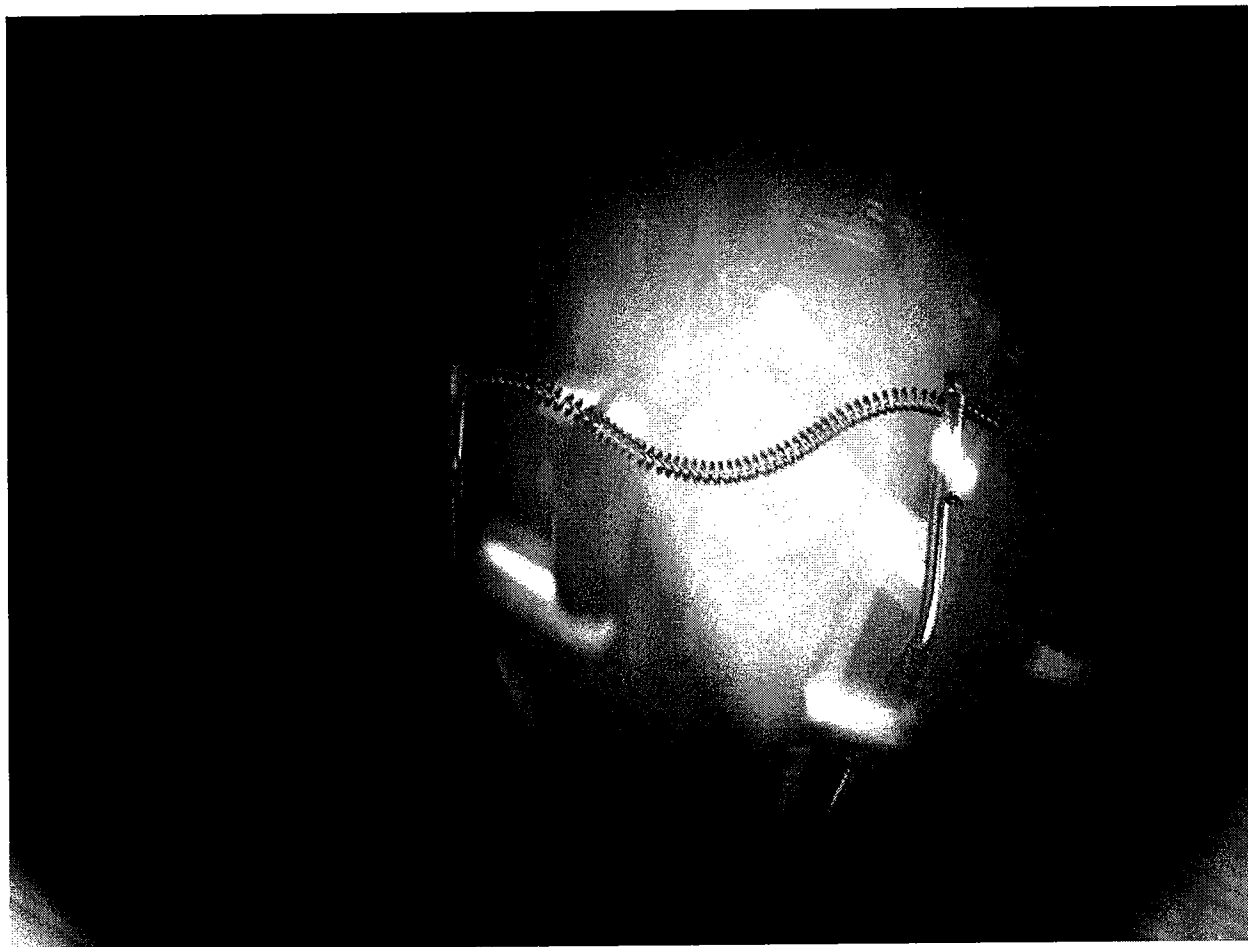
Speed calculations based on Paxton's vault from his/her bicycle was 15 mph.

Using time and distance calculations based on both units speed indicates that McMasters' vehicle reached the apex of the intersection prior to Paxton's bicycle.

CAUSATIONAL FACTORS

- McMasters' vehicle reached the intersection prior to Paxton's bicycle.
- Paxton had ear plugs in both ears in violation of 21 DEL. CODE ANN. § 4198H.
- McMasters' left turn signal was activated prior to attempting the left hand turn giving Paxton prior knowledge of McMasters' intent to make a left hand turn. The filament in McMasters' left front turn signal bulb clearly showed impact shock, indicating the turn signal was activated at the time of impact.
- The bicycle Paxton was riding didn't have any lights or reflectors in violation of 21 DEL. CODE ANN. §§ 4198F(a), (b), (c), and (d). Official sunset time in Hickory was 9:11 PM.
- Paxton had consumed alcohol, "some beers," prior to the crash. S/he also stated s/he doesn't drink often.
- Paxton failed to wear a safety helmet in violation of 21 DEL. CODE ANN. § 4198K(a), causing him/her serious injury.

EXHIBIT 5: TURN SIGNAL LIGHT BULB



Left front turn signal light bulb; zoom up showing the filament

EXHIBIT 6: VTI REPORT ON TEXTING AND DRIVING



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 PR & Marketing Manager
 3500 Transportation Research Plaza (0538)
 Blacksburg, Virginia 24061
 540/231-1549 Fax: 540/231-1555
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New Data from VTTI Provides Insight into Cell Phone Use and Driving Distraction

Blacksburg, Va., July 27, 2009 – Several large-scale, naturalistic driving studies (using sophisticated cameras and instrumentation in participants’ personal vehicles) conducted by the Virginia Tech Transportation Institute (VTTI), provide a clear picture of driver distraction and cell phone use under real-world driving conditions. Combined, these studies continuously observed drivers for more than 6 million miles of driving. A snapshot of risk estimates from these studies is shown in the table below.

“Given recent catastrophic crash events and disturbing trends, there is an alarming amount of misinformation and confusion regarding cell phone and texting use while behind the wheel of a vehicle. The findings from our research at VTTI can help begin to clear up these misconceptions as it is based on real-world driving data. We conduct transportation safety research in an effort to equip the public with information that can save lives,” says Dr. Tom Dingus, director of the Virginia Tech Transportation Institute.

In VTTI’s studies that included light vehicle drivers and truck drivers, manual manipulation of phones such as dialing and texting of the cell phone lead to a substantial increase in the risk of being involved in a safety-critical event (e.g., crash or near crash). However, talking or listening increased risk much less for light vehicles and not at all for trucks. Text messaging on a cell phone was associated with the highest risk of all cell phone related tasks.

CELL PHONE TASK	Risk of Crash or Near Crash event
Light Vehicle/Cars	
Dialing Cell Phone	2.8 times as high as non-distracted driving
Talking/Listening to Cell Phone	1.3 times as high as non-distracted driving
Reaching for object (i.e. electronic device and other)	1.4 times as high as non-distracted driving
Heavy Vehicles/Trucks	
Dialing Cell phone	5.9 times as high as non-distracted driving
Talking/Listening to Cell Phone	1.0 times as high as non-distracted driving
Use/Reach for electronic device	6.7 times as high as non-distracted driving
Text messaging	23.2 times as high as non-distracted driving

Explanation of Findings

Eye glance analyses were conducted to assess where drivers were looking while involved in a safety-critical event and performing cell phone tasks. The tasks that draw the driver’s eyes away from the forward roadway were those with the highest risk.

Driving Transportation with Technology

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Several recent high visibility trucking and transit crashes have been directly linked to texting from a cell phone. VTTI's research showed that text messaging, which had the highest risk of over 20 times worse than driving while not using a phone, also had the longest duration of eyes off road time (4.6 s over a 6-s interval). This equates to a driver traveling the length of a football field at 55 mph without looking at the roadway. Talking/listening to a cell phone allowed drivers to maintain eyes on the road and were not associated with an increased safety risk to nearly the same degree.

Recent results from other researchers using driving simulators suggest that talking and listening is as dangerous as visually distracting cell phone tasks. The results from VTTI's naturalistic driving studies clearly indicate that this is not the case. For example, talking and listening to a cell phone is not nearly as risky as driving while drunk at the legal limit of alcohol. Recent comparisons made in the literature greatly exaggerate the cell phone risk relative to the very serious effects of alcohol use, which increases the risk of a fatal crash approximately seven times that of sober driving. Using simple fatal crash and phone use statistics, if talking on cell phones was as risky as driving while drunk, the number of fatal crashes would have increased roughly 50% in the last decade instead of remaining largely unchanged.

These results show conclusively that a real key to significantly improving safety is **keeping your eyes on the road**. In contrast, "cognitively intense" tasks (e.g., emotional conversations, "books-on-tape", etc.) can have a measurable effect in the laboratory, but the actual driving risks are much lower in comparison.

VTTI's recommendations (based on findings from research studies)

- Driving is a visual task and non-driving activities that draw the driver's eyes away from the roadway, such as texting and dialing, should always be avoided.
- Texting should be banned in moving vehicles for all drivers. As shown in the table, this cell phone task has the potential to create a true crash epidemic if texting-type tasks continue to grow in popularity and the generation of frequent text message senders reach driving age in large numbers.
- "Headset" cell phone use is not substantially safer than "hand-held" use because the primary risk is associated with both tasks is answering, dialing, and other tasks that require your eyes to be off the road. In contrast, "true hands-free" phone use, such as voice activated systems, are less risky if they are designed well enough so the driver does not have to take their eyes off the road often or for long periods.
- All cell phone use should be banned for newly licensed teen drivers. Our research has shown that teens tend to engage in cell phone tasks much more frequently, and in much more risky situations, than adults. Thus, our studies indicate that teens are four times more likely to get into a related crash or near crash event than their adult counterparts.

The Disconnect Between Naturalistic and Simulator Research

It is important to keep in mind that a driving simulator is *not* actual driving. Driving simulators engage participants in tracking tasks in a laboratory. As such, researchers that conduct simulator studies must be cautious when suggesting that conclusions based on simulator studies are applicable to actual driving. With the introduction of naturalistic driving studies that record drivers (through continuous

video and kinematic sensors) in actual driving situations, we now have a scientific method to study driver behavior in real-world driving conditions in the presence of real-world daily pressures. As such, if the point of transportation safety research is to understand driver behavior in the real-world (e.g., increase crash risk due to cell phone use), and when conflicting findings occur between naturalistic studies and simulator studies, findings from the real-world, and not the simulator-world, must be considered the gold standard.

It is also critical to note that some results of recent naturalistic driving studies, including those highlighted here as well as others (e.g., Sayer, Devonshire and Flanagan, 2007) are at odds with results obtained from simulator studies. Future research is necessary to explore the reasons why simulator studies sometimes do not reflect studies conducted in actual driving conditions (i.e., the full context of the driving environment). It may be, as Sayer, Devonshire and Flanagan (2007) note, that controlled investigations cannot account for driver choice behavior and risk perception as it actually occurs in real-world driving. If this assessment is accurate, the generalizability of simulator findings, at least in some cases, may be greatly limited outside of the simulated environment.

NOTE: Dr. Rich Hanowski, Director of the Center for Truck and Bus Safety at VTTI, will be presenting the results of his study directed at Driver Distraction in Commercial Motor Vehicle Operations, at the First International Conference on Driver Distraction and Inattention in Gothenburg, Sweden, September 28-29, 2009.

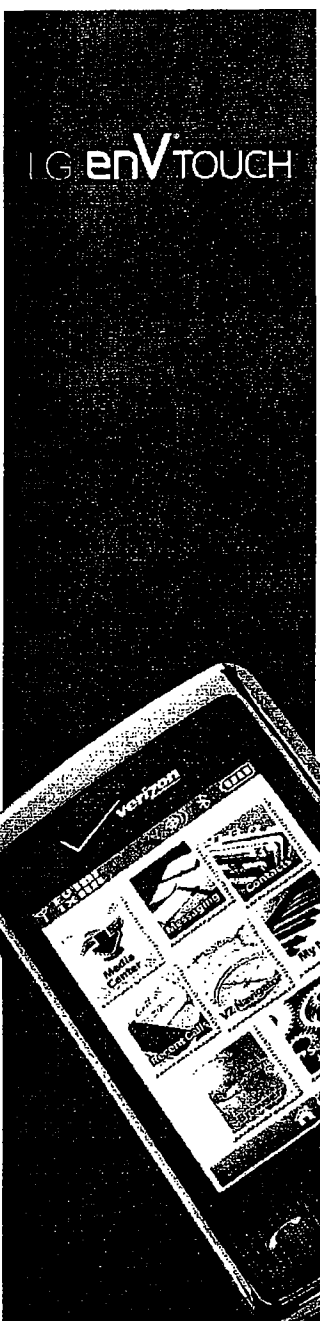
References

- Blanco, M., Bocanegra, J.L., Morgan, J.F., Fitch, G.M., Medina, Olson, R.L., Hanowski, R.J., Daily, B., & Zimmermann, R.P. (April, 2009). *Assessment of a Drowsy Driver Warning System for Heavy Vehicle Drivers: Final Report*. Report No. DOT HS 811 117. Washington, DC: National Highway Traffic Safety Administration.
http://www.trb.org/news/blurbs/detail.asp?id=10451&utm_medium=email&utm_source=Transportation%20Research%20Board&utm_campaign=TRB+E-Newsletter+-+05-27-2009&utm_content=Customer&utm_term
- Blanco, M., Hickman, J.S. Olson, R.L., Bocanegra, J.L., Hanowski, R.J., Nakata, A., Greening, M., Madison, P., Holbrook, G.T., and Bowman, D. (in press). *Investigating Critical Incidents, Driver Restart Period, Sleep Quantity, and Crash Countermeasures in Commercial Operations Using Naturalistic Data Collection: Final Report* (Contract No. DTFH61-01-C-00049, Task Order # 23). Washington, DC: Federal Motor Carrier Safety Administration.
- Dingus, T. A., Klauer, S. G., Neale, V. L., Petersen, A., Lee, S. E., Sudweeks, J., Perez, M. A., Hankey, J., Ramsey, D., Gupta, S., Bucher, C., Doerzaph, Z. R., Jermeland, J., and Knippling, R.R. (2006). *The 100-Car Naturalistic Driving Study: Phase II – Results of the 100-Car Field Experiment*. (Interim Project Report for DTNH22-00-C-07007, Task Order 6; Report No. DOT HS 810 593). Washington, D.C.: National Highway Traffic Safety Administration.
<http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/NRD/Multimedia/PDFs/Crash%20Avoidance/Driver%20Distraction/100CarMain.pdf>

Driver Distraction in Commercial Motor Vehicles Project Webinar

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EXHIBIT 7: LG enV CELLULAR PHONE DATA SHEET



LG enV TOUCH

MULTIMEDIA MESSAGING POWERHOUSE

Designed for your most discriminating customers, the new LG enV[®] TOUCH combines undeniable style with an unrivaled multimedia experience. The exceptional range of leading-edge features puts the enV TOUCH in the company of the world's finest handsets.

Its bright, external touch screen measures an impressive three inches and features state-of-the-art tactile feedback. The full-size QWERTY keyboard, with widely spaced keys, accommodates the texting needs of the most demanding executives.

Revolutionary Dolby[®] Mobile sound brings a deep, rich and engaging listening experience that will be music to user's ears. Camera and video capabilities are also extraordinary. The sharp 3.2 megapixel camera with built-in flash features Intelligent Shot and Facial Makeover to improve the image quality. Other robust features include V CAST Music with Rhapsody[®], Bluetooth[®] stereo capability, and HTML multi-page web browsing.

The new LG enV TOUCH is a true multimedia messaging powerhouse and once your customers get their hands on it they may never want to put it down. It has to be touched to be believed.

Advanced

Stylish



www.LGmobilephones.com/enVTOUCH










-  LARGE EXTERNAL WVGA TOUCH SCREEN
-  4-LINE QWERTY KEYBOARD
-  DOLBY[®] MOBILE
-  HTML WEB BROWSING
-  3.2 MP. CAMERA & CAMCORDER WITH FLASH
-  BLUETOOTH[®] STEREO CAPABLE
-  MICROSD[™] MEMORY PORT

EXHIBIT 8: ARTICLE ON CITY HIGH CHEATING SCANDAL

THE HICKORY GAZETTE

Volume XVII, Issue IV

April 2, 2010

Student Athletes Caught in Cheating Scandal

Jane Lambert, City Desk

City High School Principal Ellis Jacks said school officials are investigating a cheating incident that students say involved a stolen master key and some of the school's best athletes.

Eight City High School students will be suspended and receive zeros on their spring mid-term exams as a result of an incident in which a student took pictures of exam answers on a camera phone and emailed them to other students.

Reports are that over perhaps the last 10 years the graduating captain of the school's varsity soccer team has handed the key down to the next varsity captain who is in charge of making sure other team members have access to the building.

While investigating the incident, Jacks said students told officials about a master key to the school that was stolen a number of years ago.

"When one cheating incident was uncovered, a tip led to others who had access to the building using a master key," Jacks said. School officials do not know the last time students used the key, but the cheating incident was discovered last week.

According to Steven Rope, Athletic Director for City High School, the school is treating it as an isolated incident because they lack evidence that more students were involved.

"We're concerned about the reputation of the school, of the students, and particularly of the school's athletes," Rope said. "There are so many instances of student athletes who perform so well, who do so many things, and they do it the right way."

Jacks did not know why these particular students felt the need to cheat, but knows that there is pressure in the school's competitive environment.

"I know what the research says about high schools cheating. I know what the research says about the pressure of students doing well," Jacks said. "We're in a society now that's highly competitive."

"Do I think that students feel pressure to get into the best, most competitive schools? Yes I do," continued the Principal. "I would say that for the most part, I think kids opt to cheat to gain an advantage to do better. What they don't realize is that they hurt their integrity for both the short term and possibly the long term when they choose an unethical path."

Jacks said the response from the student body has been mixed. "Some [of the students] are very angry. Some are very sad. It's been unfortunate that... there's been a divide," Jacks said. "Part of the junior class, they feel that there will be a negative reflection on their class and that people will remember their class as the class involved in the cheating incident with the master key."

EXHIBIT 9: TEXT MESSAGE TRANSCRIPT AND COVER LETTER

B&T
Wireless Phones, Inc.

7 July, 2011

Detective Teri Osgood
State Police Department
125 Main Street
Hickory, DE 19806

Dear Detective Osgood,

It was a pleasure speaking with you on Friday. I was surprised to hear from you after all these years. It has certainly been a while and we will have to find some time to catch up on our days at the University of Idaho.

In any event, pursuant to your request, enclosed herewith is a copy of the text message log for Alex McMasters from 9:00 to 9:30 PM on Wednesday, June 23, 2011. Please feel free to contact me should you need any further assistance.

Again, it was nice to speak with you. It's good to know that an old friend is doing well.

Sincerely,



Cody Sullivan
Vice President, Customer Relations
B&T Wireless Phones, Inc.

Enclosure

phone: 302.555.1212 | fax: 302.555.5555 | 275 Technology Drive, Hickory, DE 19806 | www.btwireless.com

Rep. Cody Sullivan

Account: BT00941567239
Customer: Alex McMasters
Customer #: 2085553428
Date: 6/23/2011
Time: 21:00 to 21:30
DATA: Text Messages Only
Other # 2085552890 (Hunter Merrick)
Other # 2085552558 (Patrick Lewis)

TIME	FROM	TO	MESSAGE
21:02	2085552890	2085553428	What did u say to Pat?
21:03	2085553428	2085552890	idk what did he tell u
21:05	2085552890	2085553428	He said you said to dump me.
21:05	2085552890	2085553428	OMG what did I ever do to u?
21:06	2085553428	2085552890	B4 or after you dumped a beer on me
21:08	2085552890	2085553428	I never dumped a beer on u. Stop lying.
21:09	2085553428	2085552890	right - i just dumped it on myself
21:10	2085552890	2085553428	Did you tell Pat to dump me?
21:11	2085553428	2085552890	pats his own person. he can do what he wants
21:11	2085552890	2085553428	So, did u tell him to dump me?
21:12	2085553428	2085552890	i told him not to put up with ur stuff.
21:12	2085553428	2085552558	dude wth. what did u tell hunter
21:15	2085552558	2085553428	She kept buggin me a/b what you say.
21:15	2085553428	2085552558	thanks for the loyalty, bro
21:17	2085552558	2085553428	She my girl; don't put me in the middle.
21:18	2085553428	2085552558	u asked i told the truth
21:18	2085553428	2085552558	u dont want to know dont ask
21:19	2085552558	2085553428	UR my BFF; I want ur help.
21:19	2085552890	2085553428	I'm waiting.
21:20	2085553428	2085552890	i dont like how u control P. ease up and we b fine
21:21	2085553428	2085552890; 2085552558	H&P i'm outtie. u work it out urself
21:22	2085552890	2085553428	MYOB
21:23	2085553428	2085552890	take ur own advice

EXHIBIT 10: ACCIDENT SCENE PHOTOS

Exhibit 10 includes 6 photos of the accident scene marked Exhibit 10A through Exhibit 10F. These photos are included in a separate document titled “Exhibit 10 – Crash Scene Photos.”

Jury Instructions

Instruction No. 1¹

These instructions explain the duties of jurors and define the law that applies to this case. It is the jury's duty to determine the facts, to apply the law set forth in these instructions to those facts, and in this way to decide the case. The jury's decision should be based upon a rational and objective assessment of the evidence. It should not be based on sympathy or prejudice.

It is the judge's duty to instruct the jury on the points of law necessary to decide the case, and it is the jury's duty to follow the law as the judge instruct. Jurors must consider these instructions as a whole, not picking out one and disregarding others. The order in which these instructions are given or the manner in which they are numbered has no significance as to the importance of any of them.

In determining the facts, jurors may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits admitted into evidence, and any stipulated or admitted facts. While the arguments and remarks of the attorneys may help jurors understand the evidence and apply the instructions, what they say is not evidence. If an attorney's argument or remark has no basis in the evidence, the jurors should disregard it.

The production of evidence in court is governed by rule of law. At times during the trial, the judge may sustain an objection to a question without permitting the witness to answer it, or to an offered exhibit without receiving it into evidence. The judge's rulings are legal matters, and are solely the judge's responsibility. Jurors must not speculate as to the reason for any objection, which was made, or any ruling thereon, and in reaching a decision jurors may not consider such a question or exhibit or speculate as to what the answer or exhibit would have shown.

¹ Delaware Pattern Jury Instruction 3.2, 3.3, 3.4
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Remember, a question is not evidence and should be considered only as it gives meaning to the answer.

There may have been occasions where an objection was made after an answer was given or the remark was made, and in the judge's ruling on the objection, he/she instructed that the answer or remark be stricken, or directed that jurors disregard the answer or remark and dismiss it from their minds. In the deliberations, jurors must not consider such answer or remark, but must treat it as though they had never heard it.

The law does not require jurors to believe all of the evidence admitted in the course of the trial. As the sole judges of the facts, jurors must determine what evidence they believe and what weight they attach to it. In so doing, jurors bring with them to the courtroom all of the experience and background of their lives. There is no magical formula for evaluating testimony. In jurors' everyday affairs, they determine for themselves whom they believe, what they believe and how much weight they attach to what they are told. The considerations jurors use in making the more important decisions in their everyday dealings are the same considerations they should apply in their deliberations in this case.

INSTRUCTION NO. 2

The Plaintiff, Jess Paxton, claims that the Defendant, Alex McMasters, was negligent in the operation of a motor vehicle and thereby caused injury to the Plaintiff. The Plaintiff has the burden of proof on each of the following propositions:

- (1) The Defendant was negligent.
- (2) The negligence of the Defendant was a proximate cause of the alleged injuries to the Plaintiff.

Jurors will be asked to deliberate on the following question: Was the Defendant negligent, and if so, was the negligence a proximate cause of the alleged injuries to the Plaintiff?

If the jurors find from their consideration of all the evidence that each of these propositions has been proven, they should answer this question "Yes." However, if they find that any of these propositions has not been proven, then the Plaintiff has not met the burden of proof required and the jurors should answer this question "No."

INSTRUCTION No. 3

The Defendant, Alex McMasters, also claims that the Plaintiff, Jess Paxton, was negligent in the operation of a bicycle and thereby caused his/her own injuries. The Defendant has the burden of proof on each of the following propositions:

- (1) The Plaintiff was negligent.
- (2) The negligence of the Plaintiff was a proximate cause of the alleged injuries to the Plaintiff.

Jurors will be asked to deliberate on the following question: Was the Plaintiff negligent, and if so, was the negligence a proximate cause of the alleged injuries to the Plaintiff?

If the jurors find from their consideration of all the evidence that each of these propositions has been proven, they should answer this question "Yes." However, if they find that any of these propositions has not been proven, then the Plaintiff has not met the burden of proof required and the jurors should answer this question "No."

INSTRUCTION NO. 4²

The word "negligence" means the lack of ordinary care; that is, the absence of the kind of care a reasonably prudent and careful person would exercise in similar circumstances.

Negligence may thus consist of the failure to do something which a reasonably careful person would do, or the doing of something a reasonably careful person would not do, under

² Delaware Pattern Jury Instruction 5.1
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circumstances similar to those shown by the evidence. Except in the case of a relevant statute, the law does not say how a reasonably careful person would act under those circumstances. That is for the jurors to decide.

INSTRUCTION No. 5³

The expression "proximate cause" means a cause that directly produces the harm, and but for which the harm would not have occurred. A proximate cause brings about, or helps to bring about, the accident or injury, and it must have been necessary to the result.

There may be one or more proximate causes of an injury. The conduct of two or more persons may operate at the same time, either independently or together, to cause injury or damage. Each cause may be a proximate cause. A negligent party can't avoid responsibility by claiming that somebody else -- not a party in this lawsuit -- was also negligent and proximately caused the injury.

INSTRUCTION No. 6⁴

The Defendant, Alex McMasters, alleges that Plaintiff, Jess Paxton's negligence proximately caused the accident. Negligence is negligence no matter who commits it. When the plaintiff is negligent, we call it contributory negligence. Under Delaware law, a plaintiff's contributory negligence doesn't mean that the plaintiff can't recover damages from the defendant as long as the plaintiff's negligence was no greater than the defendant's negligence. Instead of preventing a recovery, Delaware law reduces the plaintiff's recovery in proportion to the plaintiff's negligence.

³ Delaware Pattern Jury Instruction 21.1, 21.2

⁴ 10 *Del. C.* § 8132; Delaware Pattern Jury Instruction 5.12

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If you find contributory negligence was a proximate cause of the accident, you must determine the degree of that negligence, expressed as a percentage, attributable to Plaintiff Jess Paxton.

INSTRUCTION No. 7

In this case the parties have stipulated or agreed that the Plaintiff suffered damages as a result of the accident. The parties have agreed that the amount of damages that should be awarded, if any, will be the subject of a separate trial.

INSTRUCTION No. 8⁵

When the judge says that a party has the burden of proof on a proposition, or uses the expression "if you find" or "if you decide," the judge means the jury must be persuaded by a preponderance of the evidence. This means that the proposition is more likely than not.

INSTRUCTION No. 9⁶

It was the duty of both the Plaintiff and the Defendant, before and at the time of the occurrence, to use ordinary care for the safety of both themselves and each other.

INSTRUCTION No. 10⁷

A person is also considered negligent if he or she violates a statute that has been enacted for people's safety. The violation of such a statute is negligence as a matter of law. If you find that Defendant or Plaintiff has violated the statutes that I'm about to read to you, then you must conclude that the plaintiff or defendant, as applicable, was negligent. There were certain statutes in force in the State of Delaware at the time of the occurrence in question which provided that:

⁵ Delaware Pattern Jury Instruction 4.1

⁶ Delaware Pattern Jury Instruction 5.1

⁷ Delaware Pattern Jury Instruction 5.7

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Every bicycle in use from sunset to sunrise shall be operated with a light emitting devise visible from a distance of at least 500 feet to the front and with a reflector clearly visible from the rear of the bicycle.

Every vehicle upon a roadway from sunset to sunrise shall display headlights hazard.

No person shall turn a vehicle or bicycle right or left upon a roadway without giving an appropriate signal.

No person shall drive a vehicle inattentively, meaning the conduct of the driver is inattentive, careless, or imprudent in light of the circumstances then existing.

Every person operating a bicycle or human-powered -vehicle shall have all of the rights and duties applicable to the driver of any other vehicle and shall exercise due care.

No person shall drive while under the influence of alcohol.

No person under the age of 21 shall purchase, consume, or possess alcoholic beverages.

All occupants of a vehicle shall -wear seat belts at all times when the vehicle is in motion...

The driver of a vehicle intending to turn left within an intersection shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection, or so close as to constitute an immediate hazard.

A violation of a statute is negligence, unless compliance with a statute was impossible, or something over which the party had no control, placed the individual in a position of violation of the statute, or an emergency, not of the party's own making, caused the individual to fail to obey the statute, or an excuse specifically provided for within the statute existed.

INSTRUCTION NO. 11⁸

The jury may be presented with evidence that the Defendant may have been consuming alcohol prior to driving. A person driving a motor vehicle is under the influence of an intoxicating beverage when, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment,

⁸ 21 Del. C. § 4177
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sufficient physical control, or due care in the driving of a vehicle. Beer is an intoxicating beverage.

INSTRUCTION NO. 12⁹

Whether a party has insurance is not relevant to any of the questions the jury will decide. Any inference, speculation or discussion about insurance must be avoided.

INSTRUCTION No. 13¹⁰

Evidence may be either direct or circumstantial. Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves the fact, by proving one or more facts from which the fact at issue may be inferred.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts from all the evidence in the case: both direct and circumstantial.

INSTRUCTION NO. 14¹¹

The law does not require a juror to believe all of the evidence admitted in the course of the trial, including witness testimony. As the sole judges of the facts, jurors must determine what testimony they find credible and what weight to attach to it. In so doing, jurors bring with them to the courtroom all of the experience and background of their lives.

There is no magical formula for evaluating testimony. In jurors' everyday affairs, they determine for themselves whom they believe, what they believe and how much weight they attach to what they are told. The considerations jurors use in making the more important

⁹ Delaware Rule of Evidence 411

¹⁰ Delaware Pattern Jury Instruction 23.1

¹¹ Delaware Pattern Jury Instruction 3.2

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decisions in their everyday dealings are the same considerations they should apply in their deliberations in this case.

Rules of the Competition

A. ADMINISTRATION

Rule 1.1. Rules

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

Questions or interpretations of these rules are within the discretion of the Mock Trial Committee of the Delaware Law Related Education Center (hereinafter "Mock Trial Committee"), 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. The Mock Trial Committee possesses discretion to impose sanctions, including but not limited to disqualification, immediate eviction from the Championship, and forfeiture of all fees and awards (if applicable) for any misconduct occurring while a team is present for the Championship, for rule violations, and for 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

During a trial, the presiding judge shall have discretion to declare an emergency and adjourn the trial for a short period of time to address the emergency.

In the event of an emergency that would cause a team to be unable to continue a trial or to participate with less than six members, the team must notify the Mock Trial Committee as soon as is reasonably practical. If the Committee, or its designee(s), in its sole discretion, agrees that an emergency exists, the Committee, or its designee(s), shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than six members. A penalty may be assessed.

The Mock Trial Committee may, but does not have to, declare a forfeiture. If a forfeiture is declared, the forfeiting team will receive a loss and points totaling the average number of the ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and an average number of ballots and points received by the winning teams in that round.

Final determination of emergency, forfeiture, reduction of points, or advancement, will be made by the Committee.

Rule 1.4. Student Timekeepers

(a) Each team is responsible for providing one student as an official timekeeper equipped with two stopwatches. In trial, each team is to use a set of "Time Remaining" cards with the following designations to signal time: 20:00, 15:00, 10:00, 5:00, 4:00, 3:00, 2:00, 1:00, 0:40, 0:20, and "STOP". Modification of intervals is not permitted. The mock trial committee will provide "Time Remaining" cards and timekeeper instruction materials. Timekeepers must use the "Time Remaining" cards provided by the Host Committee and NO others.

(b) Each team's official timekeeper is required to attend the scheduled on-site timekeeper orientation if one is scheduled. If a team does not send an official timekeeper to the required orientation meeting, that team will defer to its opponents' official timekeepers in all rounds of the competition.

(c) If a team desires to assign more than one student to the timekeeper role, then all students who will be assigned to the timekeeper role must attend the timekeeper orientation if one is scheduled. The team's official student timekeeper will keep time for both sides during all competition rounds.

B. THE PROBLEM

Rule 2.1. The Problem

The problem will be a 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.

Rule 2.2. Witnesses Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. 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."

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

Rule 2.3. Unfair Extrapolation

A fair extrapolation is one that is neutral. Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial.

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.

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; or
- d) Ruling is taken under advisement.

The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings.

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. Team Eligibility

No institution may field more than one team except that a B team from the same institution can compete if there otherwise would be an odd number of teams competing. The B team will be picked by random draw.

Rule 3.2. Team Composition

Teams consist of at least 6 and up to 14 official members assigned to attorney, witness and timekeeper roles representing the prosecution/plaintiff and defense/defendant sides. Six of the official members will participate in any given round as attorneys and witnesses. (See Rule 3.3 for further explanation referring to team participation.) Additionally, a person will be designated as an official timekeeper. The official timekeeper may be (but need not be) one of the 12 official team members. The official timekeeper must be a student. The team's official student timekeeper will keep time for both sides during all competition rounds. At no time may any team for any reason substitute other persons for official team members. The Team Roster will

become official at the time of **onsite** registration. A team can change its lineup before any round of the competition so long as the participants come from the official roster.

Rule 3.3. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members in each trial round. For each trial round, teams shall use three students as attorneys and three students as witnesses.

Rule 3.4. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross-examination; in addition, one will present the opening statements and another will present the closing arguments. In other words, the eight attorney duties for each team will be divided as follows:

1. Opening Statements
2. Direct Examination of Witness #1
3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross Examination of Witness #1
6. Cross Examination of Witness #2
7. Cross Examination of Witness #3
8. Closing Argument (including Rebuttal) [See Rule 4.5]

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

The attorney who examines 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 cross-examines a witness will be the only one permitted to make objections during the direct examination of that witness. An attorney may not do the opening and the closing in the same trial.

Each team must call 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 Form

Copies of the Team Roster Form must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified by the code assigned at registration. No information identifying team origin should appear on the form. Before beginning a trial, the teams must exchange copies of the Team Roster Form. The Form 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 Form should also be made available to the judging panel and presiding judge before each round. Teams shall not knowingly disclose their place of origin to any member of the judging panel or to the presiding judge.

D. THE TRIAL

Rule 4.1. Courtroom Setting

The Plaintiff/Prosecution team shall be seated closest to the jury box. No team shall rearrange the courtroom without prior permission of the judge.

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 will 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?”

The above oath will be conducted by (a) the presiding judge or (b) a bailiff. The oath of all six witnesses will occur simultaneously at the beginning of each mock trial.

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. (20 minutes per side)
4. Closing Argument (5 minutes per side)

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve a portion of its closing time for a rebuttal. The Prosecution/Plaintiff's rebuttal is limited to the scope of the Defense's closing argument.

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

(a) Each team is required to provide one student who will serve as the official timekeeper for that team. This timekeeper must meet the requirements of Rule 1.4. Timekeepers are responsible for fairly and accurately keeping and reporting the time during the trial presentation and during any disputes under Rule 6.2. Timekeepers are not to communicate with their respective teams during the course of the trial presentation, recesses, or during any dispute procedure, except to display the time remaining cards and indicate (as directed by the presiding judge) how much time is remaining during a particular part of the trial.

(b) Time limits are mandatory and will be enforced. Time runs from the beginning of the witness examination, opening statement, or closing argument until its conclusion. Introduction of counsel or witnesses prior to the opening statement shall not be included in the time allotted for opening statements. However, if counsel or witnesses are introduced once the opening statement has commenced, such time shall be included in the time allotted for the opening statement. Time stops only for objections, questioning from the judge, or administering the oath. Time does not stop for introduction of exhibits.

(c) Timekeepers should display the applicable "Time Remaining" cards simultaneously. At the end of each task during the trial presentation (i.e. at the end of each opening, at the end each witness examination, at the end of each cross examination and at the end of each closing argument) if there is more than a 15 second discrepancy between the teams' timekeepers, the timekeepers must notify the presiding judge of the discrepancy. The presiding judge will then rule on the discrepancy, the timekeepers will synchronize their stopwatches accordingly and the trial will continue. Any discrepancies between timekeepers less than 15 seconds will not be considered. No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of time disputes are final.

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 scoring judges may determine individually whether or not to discount points in a category because of over-runs in time, including over-runs allowed by the presiding judge.

Rule 4.8. Motions Prohibited and Recesses

A motion for a recess may be used only in the event of an emergency, *i.e.*, health emergency. To the greatest extent possible, team members are to remain in place. Should a recess be called, teams are not to communicate with any observers, coaches, or instructors regarding the trial.

A short recess of 2 minutes at the close of all of the evidence but before closings will be granted. Team members should remain in place and there should be no communication outside the bar.

Rule 4.9. Sequestration

Teams may not invoke the rule of sequestration.

Rule 4.10. Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should be made from the counsel table in the educational interest of handling all matters in open court.

Rule 4.11. Supplemental Material/Costuming

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. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories, and make-up which are case-specific.

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

Rule 4.12. Trial Communication

Coaches, teachers, 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. Team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

Coaches, teachers, alternates and observers must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar and communicate with each other.

Rule 4.13. Viewing a Trial

Prior to the final round, team members, alternates, attorney/coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except for those authorized by the Mock Trial Committee, are not allowed to view other teams' performances in the competition, so long as their team remains in the competition. No person shall display anything that identifies their place of origin while in the court room.

Rule 4.14. Videotaping/Photography

Any team has the option to refuse participation in videotaping, tape recording, and still photography by opposing teams.

Media coverage will be allowed.

Rule 4.15. Jury Trial

The case will be tried to a jury; arguments are to be made to judge and jury. Teams may address the scoring judges as the jury.

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 Statement

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 opening statement/closing arguments, I would have objected to the opposing team's statement that _____." The presiding judge will not rule on this "objection."

Presiding and scoring judges will weigh the "objection" individually. No rebuttal by opposing team will be heard.

Rule 4.18. Objections

1. Argumentative Questions: An attorney shall not ask argumentative questions.

2. Lack of Proper Predicate/Foundation: Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

3. 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").

4. Questions 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.")

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

6. 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.

Teams are not precluded from raising additional objections which are available under the *Delaware High School Mock Trial Rules of Evidence*.

Rule 4.19. Reserved

Rule 4.20. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence:

1. All evidence will be pre-marked as exhibits.
2. Ask for permission to approach the bench. "Your honor, may I approach the witness with what has been marked as Exhibit No. ___?"
3. Show the exhibit to opposing counsel.
4. Ask the witness a series of questions that are offered for proof of the admissibility of the exhibit. These questions lay the foundation or predicate for admissibility, including questions of the relevance and materiality of the exhibit.
5. Offer the exhibit into evidence. "Your Honor we offer Exhibit No. ___ into evidence."
6. Court: Is there an objection?
7. Opposing Counsel: "No, Your Honor" or "Yes, Your Honor." If the response is "yes," the objection will be stated for the record. Court: "Is there any response to the objection?"
8. Court: "Exhibit No. ___ (is/is not) admitted. If admitted, questions on content may be asked."

Rule 4.21. Use of Notes

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

Rule 4.22. Redirect/Recross

Redirect and Recross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Delaware 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 4.24. The Critique

The judging panel is allowed 10 minutes for debriefing. Presiding judges are to limit critique sessions to a combined total of ten minutes. Judges shall not make a ruling on the legal merits of the trial. Judges may not inform the students of score sheet results.

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.

Rule 5.2 Composition of Judging Panels

The judging panel will consist of at least three individuals. The composition of the judging panel and the role of the presiding judge will be at the discretion of the Mock Trial Committee, with the same format used throughout the competition, as follows:

1. One presiding judge with the two scoring judges (all three of whom complete score sheets);
2. One presiding judge and two scoring judges (scoring judges only complete score sheets);
3. One presiding judge and two scoring judges (scoring judges only complete score sheets and presiding judge completes a form which selects only the winner and does not assign point totals for either team);
4. The scoring judges may be persons with substantial mock trial coaching or scoring experience or attorneys.

Each scoring panel shall include at least one attorney. The presiding judge shall be an attorney. At the discretion of the mock trial committee, the rounds may have a larger panel. All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing.

In the event of an emergency (i.e., sudden illness, etc.), if a judging panel member must leave the courtroom, the presiding judge will call for a brief recess, assess whether the judging panel member will be able to return in a reasonably short period of time, and then resume the proceedings upon the panel member's return to the courtroom. If the panel member is unable to return to the courtroom, the dispute resolution committee must be informed. Once the panel composition is adjusted by this committee to best meet the requirements of the rules and the

round should continue. During any recess under this rule, the teams, whenever possible, should remain seated in their appropriate positions within the courtroom until the round resumes.

Rule 5.3. Score Sheets/Ballots

The term “ballot” will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term “score sheet” is used in reference to the form on which speaker and team points are recorded. Score sheets are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of the presiding judge. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate on any special awards (i.e., Outstanding Attorney/Witness) the judging panel should not deliberate on individual scores.

Rule 5.4 Completion of Score Sheets

Each scoring judge shall record a number of points (1-10) for each presentation of the trial. If there is a team presentation score on the ballot a number between 1 and 10 needs to be placed in this box. At the end of the trial, each scoring judge shall total the sum of each team's individual points, place this sum I in the **Total Points** box, and enter the team (“P” for prosecution/plaintiff of “D” for defense/defendant) with the higher total number of points in the tie-breaker box. **NO TIE IS ALLOWED IN THE TOTAL POINTS BOXES.**

In the event of a mathematical error in tabulation by the scoring judges which, when corrected, results in a tie in the **Total Points** boxes, the tie-breaker box shall determine award of the ballot.

Rule 5.5. Team Advancement

All teams will compete in four preliminary rounds. Following the completion of the four preliminary rounds, teams will be ranked based on the following criteria in the order listed:

1. Win/Loss Record - equals the number of rounds won or lost by a team;
2. Total Number of Ballots - equals the number of scoring judges' votes a team earned in preceding rounds;
3. Strength of opponents;
4. Total Number of Points Accumulated in Each Round; and
5. Point Spread Against Opponents - The point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

The top two teams following the preliminary rounds will advance to the Championship Round.

Rule 5.6. Power Matching/Seeding

A random method of selection will determine opponents in the first round. A power-match system will determine opponents for all other rounds. The two teams emerging with the strongest record as determined by Rule 5.5 from the preliminary rounds will advance to the final round. The championship round winner will be determined by ballots from the championship round only.

Power matching will provide that:

1. Pairings for the first round will be at random;
2. All teams are guaranteed to present each side of the case at least once;
3. Brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order: (1) win/loss record; (2) ballots; (3) strength of opponent (for pairings for rounds 3 and 4); (4) speaker points; then (5) point spread. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;
4. If there is an odd number of teams in a bracket, the team at the top of that bracket will be matched with the top team from the next lower bracket;
5. Teams will not meet the same opponent twice prior to the fourth round;
6. An A and B team from the same institution will not meet prior to the final round. Whenever possible when a team meets both the A and B team from the same institution the alignment of the second trial will be set up so the team plays the opposite side in the second trial.
7. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. The Mock Trial Committee has the right to reseal teams within a bracket to ensure that teams have an opportunity to present each side of the case. **Teams are not guaranteed that they will present both sides twice.**

Rule 5.7. Selection of Sides For Championship Round

In determining which team will represent which side in the Championship Round, the following procedure shall be used:

1. The team with the letter/numerical code which comes first alphabetically (deleted) will be considered the "Designated Team."
2. The coin will be tossed by a designee of the host state coordinator.

3. If the coin comes up heads, the Designated Team shall represent the plaintiff/prosecution in the Championship Round. If the coin comes up tails, the Designated Team shall represent the defendant.

Rule 5.8. Odd Number of Teams Participating in Championship

In the event of a circumstance resulting in an odd number of competing teams, the following procedure will apply:

a. The team drawing the "bye" (no opponent for a single trial round) in the preliminary rounds will, by default, receive a win and three ballots for that round. For the purpose of power-matching, the team will temporarily be given points equal to the average of its own points earned in its preceding trials. At the end of the preliminary rounds, the average from all three actual trial rounds participated in by the team will be used for the final points given for that team's bye round.

For example, a team receiving a bye in round three would receive three ballots and an average of its points earned in rounds one and two. At the end of the fourth round, however, the points actually awarded to the team for the bye round will be adjusted to take into consideration the fourth round performance of the team.

b. A team receiving a bye in round one will be awarded a win, three ballots and the average number of points for all round one winners, which total will be adjusted at the end of each round to reflect the actual average earned by that team.

F. DISPUTE RESOLUTION

Rule 6.1. Reporting a Rules Violation/Inside the Bar

Disputes which 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 Procedure

The presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce

her/his decision to the Court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 6.3. Effect of Violation on Score

If the presiding judge determines that a substantial rules violation has occurred, the judge will inform the scoring judges of the dispute and provide a summary of each team's argument. The scoring judges will consider the dispute before reaching their final decisions. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges.

Rule 6.4. Reporting of Rules Violation/Outside the Bar

Disputes which occur outside the bar only during a trial round may be brought by teacher or attorney-coaches exclusively. Such disputes must be made promptly to a trial coordinator or a member of the Mock Trial Committee, who will ask the complaining party to complete a dispute form. The form will be taken to the tournament's communication's center, whereupon a dispute resolution panel will (a) notify all pertinent parties; (b) allow time for a response, if appropriate; (c) conduct a hearing; and (d) rule on the charge. The dispute resolution panel may notify the judging panel of the affected courtroom of the ruling on the charge or may assess an appropriate penalty.

The dispute resolution panel will be designated by the Mock Trial Committee.

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**DELAWARE HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP
RULES OF EVIDENCE**

(ADOPTED OCTOBER 2012)

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**DELAWARE HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP
RULES OF EVIDENCE
(Adopted October 2012)**

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the National 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 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 Rules of Evidence govern the Delaware High School Mock Trial Championship.

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope

These National High School Mock Trial Rules of Evidence govern the trial proceedings of the National High School Mock Trial Championship.

Rule 102. Purpose and Construction

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

ARTICLE II. JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts

(a) This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) The court may judicially notice a fact that is not subject to reasonable dispute because it is a matter of mathematical or scientific certainty. For example, the court could take judicial notice that $10 \times 10 = 100$ or that there are 5280 feet in a mile.

(c) The court must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) The court may take judicial notice at any stage of the proceeding.

(e) A party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.

(f) In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS -- Not Applicable

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

Rule 402. General Admissibility of Relevant Evidence

Relevant evidence is admissible unless these rules provide otherwise. Irrelevant evidence is not admissible.

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 404. Character Evidence; Crimes or Other Acts.

(a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(B) a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

(i) offer evidence to rebut it; and

(ii) offer evidence of the defendant's same trait; and

(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Rule 405. Methods of Proving Character.

(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

Rule 406. Habit, Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Rule 407. Subsequent Remedial Measures

When measures are taken that would have made an earlier 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 or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.

Rule 408. Compromise Offers and Negotiations

(a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

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

(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Offers to Pay Medical And/Or Similar Expenses

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

Rule 410. Pleas, Plea Discussions, and Related Statements

(a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea that was later withdrawn;
- (2) a nolo contendere plea;
- (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
- (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) Exceptions. The court may admit a statement described in Rule 410(a)(3) or (4):

- (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
- (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Rule 411. Liability Insurance (*civil case only*)

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or proving agency, ownership, or control.

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. Need for Personal Knowledge.

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. (*See Rule 2.2*)

Rule 607. Who May Impeach A Witness

Any party, including the party that called the witness, may attack the witness's credibility.

Rule 608. A Witness's Character For Truthfulness or Untruthfulness

(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

Rule 609. Impeachment by Evidence of a Criminal Conviction

(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.

(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.

(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:

(1) it is offered in a criminal case;

(2) the adjudication was of a witness other than the defendant;

(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(4) admitting the evidence is necessary to fairly determine guilt or innocence.

(e) Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Rule 611. Mode and Order of Interrogation and Presentation

(a) **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

- (1) make those procedures effective for determining the truth;
- (2) avoid wasting time; and
- (3) protect witnesses from harassment or undue embarrassment.

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

(c) **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (1) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

(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 examination. Likewise, additional questions may be asked by the cross examining attorney or re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

(e) **Permitted Motions.** The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

Rule 612. Writing Used to Refresh a Witness's Memory

If a written statement is used to refresh the memory of a witness either while testifying 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. Witness's Prior Statement

(a) **Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its

contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) **Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witness

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception;

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

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 thereto in the form of an opinion or otherwise.

Rule 703. Bases of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on Ultimate Issue

(a) **In General — Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.

(b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

Rule 705. Disclosing the Facts or Data Underlying An Expert's Opinion

Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

(a) **Statement.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) **Declarant.** “Declarant” means the person who made the statement.

(c) **Hearsay.** “Hearsay” means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing;
and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(d) **Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:

(1) **A Declarant-Witness’s Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) is consistent with the declarant’s testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(C) identifies a person as someone the declarant perceived earlier.

(2) An Opposing Party's Statement. The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these Rules.

Rule 803. Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant is Available as a Witness

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

(1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) **Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) **Statement Made for Medical Diagnosis or Treatment.** A statement that:

(A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) Recorded Recollection. A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by — or from information transmitted by — someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

(7) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) Public Records. A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) neither the source of information nor other circumstances indicate a lack of trustworthiness.

(10) **Absence of a Public Record.** Testimony that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) the record or statement does not exist; or

(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(16) **Statements in Ancient Documents.** A statement in a document that is at least 20 years old and whose authenticity is established.

(18) **Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(21) **Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.

(22) **Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

Rule 804. Hearsay Exceptions; Declarant Unavailable

(a) **Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:

- (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
- (2) refuses to testify about the subject matter despite a court order to do so;
- (3) testifies to not remembering the subject matter;
- (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
- (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

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

(1) **Former Testimony.** Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) Statement Under the Belief of Imminent Death. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) Statement Against Interest. A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) Statement of Personal or Family History. A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) Not Applicable

(6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

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 Delaware High School Mock Trial Rules of Evidence.

**DELAWARE
MOCK TRIAL
CHAMPIONSHIP**

TEAM DISPUTE FORM
Inside the Bar [Rule 6.1]
(please print.)

Date: _____

Round *(circle one)*:
1 2 3 4

TEAM LODGING DISPUTE: _____ *(Enter Team Code)*

Grounds for Dispute: _____

INITIALS OF TEAM SPOKESPERSON: _____

HEARING DECISION OF PRESIDING JUDGE *(circle one)*: **Grant** **Deny**

Reason(s) for Denying Hearing or Response of Opposing Team: _____

INITIALS OF OPPOSING TEAM'S SPOKESPERSON: _____

Judge's Notes from Hearing:

DECISION OF JUDGE REGARDING DISPUTE *(circle one)*: **Refer to Panel**

Not Refer to Panel

Comments: _____

This form must be returned to the trial coordinator along with the scoresheets of all the evaluators.

Signature of Presiding Judge

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**DELAWARE
MOCK TRIAL
CHAMPIONSHIP**

TEAM DISPUTE FORM
Outside the Bar [Rule 6.4]
(Please print.)

Date: _____ Time Submitted: _____

PERSON LODGING DISPUTE: _____

AFFILIATED WITH: _____ *(Enter Team Code)*

Grounds for Dispute: _____

INITIALS OF TRIAL COORDINATOR: _____ TIME DISPUTE PRESENTED TO
COORD: _____

HEARING DECISION OF DISPUTE PANEL *(circle one)*: **Grant** **Deny**

Reason(s) for Denying Hearing: _____

Notes from Hearing: _____

Decision/Action of Dispute Panel: _____

Signature of Trial Coordinator

Date/time of Decision

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Code of Ethical Conduct

The following Code of Conduct is to be read and signed by all team participants, faculty coaches and attorney advisors. The signed copies are to be presented to the Executive Director of the Delaware Law Related Education Center, along with the team roster prior to the beginning of the Competition.

The purpose of the Delaware High School Mock Trial Competition is to stimulate and encourage a deeper understanding and appreciation of the legal system. The purpose is accomplished by providing students the opportunity to participate actively in the learning process. The education of students is the primary goal of the Mock Trial program, and healthy competition helps to achieve this goal. Other important objectives include: improving proficiency in speaking, listening, reading, and reasoning skill; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting cooperation among young people of diverse interests and abilities.

As a means of diligent application of the Delaware Mock Trial Competition Rules, the Delaware Law Related Education Center encourages all participants to follow the Code of Ethical Conduct:

1. Team members promise to compete with the highest standards of deportment, showing respect for their fellow team members, opponents, judges, evaluators, Attorney coaches, teacher coaches and Mock Trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know to be wrong or in violation of the Rules, including the Invention of Facts. Members will not willfully violate the Rules of the competition in spirit or practice.
2. The student presentations shall be the work product of the students themselves. It is important that the opening and closing arguments, direct and cross examinations, testimony and all other presentations be the students' work, rather than the narration of words prepared by an adult.
3. Teacher coaches agree to focus attention on the educational value of the Mock Trial Tournament. They shall discourage the willful violation of the Rules. Teachers will instruct students as to proper procedures and decorum and will assist their students in understanding and abiding by the Competition Rules and this Code of Ethical Conduct.
4. Attorney Coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition Rules and this Code of Conduct. Attorney coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.

5. Attorney coaches and other legal advisors can help the team as constructive and critical teachers by listening, suggesting and demonstrating to a team. An attorney coach or legal advisor should:
 - Discuss the legal issues raised in the case;
 - Answer questions concerning general trial procedure;
 - Explain the reasons for and the sequence of the events and the procedures found in the trial;
 - Listen to the students' approaches to the case; and
 - Discuss general strategies and raise key questions regarding the students' enactment of their roles in the trial.
6. All participants (including observers) are bound by all sections of this Code and agree to abide by its provisions. Teams are responsible for insuring that all observers are aware of the Code.

Signatures:

The Delaware High School Mock Trial Competition
Plaintiff Roster

	Team Code	
Attorneys		Roles
(1)	_____	_____
(2)	_____	_____
(3)	_____	_____

Witnesses		Roles
(1)	_____	_____
(2)	_____	_____
(3)	_____	_____

Alternates

(1) _____
(2) _____

Note: Bring 40 copies of this form to the competition.

The Delaware High School Mock Trial Competition
Defense Roster

Team Code

Attorneys	Roles
(1) _____	_____
(2) _____	_____
(3) _____	_____

Witnesses	Roles
(1) _____	_____
(2) _____	_____
(3) _____	_____

Alternates

(1) _____

(2) _____

Note: Bring 40 copies of this form to the competition.

**DELAWARE HIGH SCHOOL
MOCK TRIAL COMPETITION
CRITERIA FOR SCORING A TRIAL PRESENTATION**

The following criteria should be considered during the course of a team's trial presentation. Consider "5" as average. This list is designed to serve as a guideline. All points accessed in a round are subjective.

Opening Statement

- Provided a case overview
- The theme/theory of the case was identified
- Mentioned the key witnesses
- Provided a clear and concise description of their team's side of the case
- Stated the relief requested
- Discussed the burden of proof
- Presentation was non argumentative
- Points may be deducted for use of notes, at the Scoring Judge's discretion

Direct Examinations

- Properly phrased questions
- Used proper courtroom procedure
- Handled objections appropriately and effectively and did not overuse objections
- Did not ask questions that called for an unfair extrapolation from the witness
- Demonstrated an understanding of the Rules of Evidence
- Handled physical evidence appropriately and effectively (Rule 4.20)

Cross Examinations

- Properly phrased questions
- Effective questioning
- Properly impeached witnesses
- Handled objections appropriately and effectively
- Did not overuse objections
- Used various techniques, as necessary, to handle a non-responsive witness
- Demonstrated an understanding of the Rules of Evidence
- Handled physical evidence appropriately and effectively (Rule 4.20)

Witness Performance

- Did not use notes (as is required)
- Credible portrayal of character
- Showed understanding of the facts
- Sounded spontaneous, not memorized
- Demonstrated appropriate courtroom decorum
- Avoided unnecessarily long and/or non-responsive answers on cross-examination
- Use of unfair extrapolations, for which points should be deducted

Closing Statement

- Theme/theory continued in closing argument
- Summarized the evidence
- Emphasized the supporting points of their own case and damaged the opponent's case
- Concentrated on the important, not the trivial
- Applied the applicable law
- Discussed burden of proof
- Responded to judge's questions with poise
- Overall, the closing statement was persuasive
- There should be only a minimal reliance on notes during the closing statement
- Points should be deducted if closing argument exceeds time limit

Tiebreaker

The team with the higher number of points shall win the ballot. We do not want ties! Place a "P" or "D" in the Tiebreaker Box on the ballot to indicate which side has the higher number of points; the team winning the majority of the ballots shall win the round.

<h2 style="margin: 0;">EXPLANATION OF THE PERFORMANCE RATINGS</h2> <h3 style="margin: 0;">USED ON THE SCORESHEET</h3>

Individual participants will be rated on a scale of 1 – 10 speaker points, according to their roles in the trial. The Scoring Judge is scoring individual performance in each speaker category. The scoring judge is NOT scoring the legal merits of the case.

Scoring Judges may recognize outstanding individual presentations by selecting one OUTSTANDING ADVOCATE and one OUTSTANDING WITNESS per round. Each Scoring Judge determines individually which student will receive his/her vote; however, the entire judging panel may confer on this matter.

Scoring Judges may individually consider penalties for violation of the Rules of the Competition. Penalties would reduce point awards in the appropriate performance categories below. Penalties will not be indicated separately on the score sheet.

<u>POINTS</u>	<u>PERFORMANCE</u>	<u>CRITERIA FOR EVALUATING STUDENT PERFORMANCE</u>
1 – 2	Not Effective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, and ineffective in communication
3 – 4	Fair	Minimally informed and prepared. Performance is passable, but lacks depth in terms of knowledge of task and materials; communications lack clarity and conviction
5 – 6	Good	Good, solid, but less than spectacular performance; can perform outside of written notes, but with less confidence than when using written notes; logic and organization are adequate, but does not convey mastery of same; communications are clear and understandable, but could be stronger in fluency and persuasiveness
7 – 8	Excellent	Fluent, persuasive, clear and understandable; well organized materials and thoughts; exhibits mastery of the case and materials; thinks quickly and spontaneously; does not read from notes
9-10	Outstanding	Exceptional presentation; flawless; superior in qualities listed for performance meriting 7-8 points

The team with the higher number of points shall win the ballot (and shall be entered in the Tiebreaker Box on the ballot); the team winning the majority of the ballots shall win the round.

Scoring Judges are reminded to tally all scores, check totals closely, and sign the score sheet before returning the score sheet to the appropriate committee member.

