2011-2012 Nevada High School Mock Trial Competition

State of Nevada vs. Megan Barry

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Co-Sponsored by:
The School Districts of Nevada
And
State Bar of Nevada & Washoe County Bar Association

The 2011-2012 High School Mock Trial case is an original case written by Michelle Giger of the Center for Civic Values, Karl Johnson, Esq. of Luebben Johnson & Barnhouse LLP, and H. Nicole Werkmeister, Esq. of the Narvaez Law Firm. The Mock Trial Board thanks the Center for Civic Values in Albuquerque, NM for permission to utilize the case, which was edited for Nevada by Lori L. Plater and Andrew Craner. We hope you find these materials interesting and educational, and we wish you the best of luck at competition!

Witness and Exhibit List

The following witnesses shall be called by the parties.	
FOR THE PROSECUTION	**FOR THE DEFENSE**
Frances/Francis Baykon	Logan Barry
Lt. Marty Pacheco	Madison James, MD, PhD
Dakota Griffin, MD	Taylor McGraw, MD
The following exhibits may be used by teams in competition. They are pre-marked and are to be referred to by number as follows:	
EXHIBIT NUMBER	**EXHIBIT NAME**
1	Accident Report
2	Supplementary Offense Report
3	Curriculum Vitae Résumé of Dakota Griffin, MD
4	Résumé of Madison James MD, PhD
5	Automobile Consumer Utility Safety Department Report
6	Résumé of Taylor McGraw, MD
7	Excerpt of Study

JURY INSTRUCTIONS
[Not to be read in open court]

Ladies and Gentlemen of the Jury:

It will be your duty to decide the facts. You must decide the facts only from the evidence presented in court. You must not speculate or guess about any fact. You must not be influenced by sympathy or prejudice. You will hear the evidence, decide the facts, and then apply the law I will give you to those facts. That is how you will reach your verdict(s). In doing so you must follow that law whether you agree with it or not. You must not take anything I may say or do during the trial as indicating any opinion about the facts. You, and you alone, are the judges of the facts.

You must consider all of these instructions. Do not pick out one instruction, or part of one, and ignore others. As you determine the facts, however, you may find that some instructions no longer apply. You must then consider the applicable instructions, together with the facts as you have determined them.

The Evidence

You will decide what the facts are from the evidence presented here in court. That evidence will consist of testimony of witnesses, any documents and other things received in evidence as exhibits, and any facts stipulated, or agreed to, by the parties or which you are instructed to accept.

You will decide the credibility and weight to be given to any evidence presented in the case, whether it be direct evidence or circumstantial evidence. **Direct evidence** is a physical exhibit or the testimony of a witness who saw, heard, touched, smelled or otherwise actually perceived an event. **Circumstantial evidence** is the proof of a fact from which the existence of another fact may be inferred. You must determine the weight to be given to all the evidence without regard to whether it is direct or circumstantial.

Admission of evidence in court is governed by rules of law. I will apply those rules and resolve any issues that arise during the trial concerning the admission of evidence. If an objection to a question is sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit is offered in evidence and an objection to it is sustained, you must not consider that exhibit as evidence. If testimony is ordered stricken from the record, you must not consider that testimony for any purpose. Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the credibility or weight you should give to any evidence that has been admitted.

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it. In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in deciding matters of importance in everyday life, including: the witness' ability to see, hear, or know the things to which he/she testified; the quality of his/her memory; the witness' manner while testifying; whether he/she has any motive, bias, or prejudice; whether the witness is contradicted by anything he/she said or wrote before trial, or by other evidence; and the reasonableness of the testimony when considered in the light of the other evidence. Consider all evidence in light of reason, common sense, and experience.

A witness qualified as an expert by education or experience may state opinions on matters in that witness's field of expertise, and may also state reasons for those opinions. Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept or reject it, in whole or in part, and you should give it as much credibility and weight as you think it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

As I mentioned earlier, it is your job to decide from the evidence what the facts are. Here are six rules on what is and what is not evidence:

1. **Evidence to be considered:** You are to determine the facts only from the testimony of witnesses and from exhibits received in evidence.

2. **Lawyers' statements:** Ordinarily, statements or arguments made by the lawyers in the case are not evidence. Their purpose is to help you understand the evidence and law. However, if the lawyers for both/all parties agree or stipulate that some particular fact is true, you should accept it as true.

3. **Questions to a witness:** By itself, a question is not evidence. A question can be used only to give meaning to a witness's answer.

4. **Objections to questions:** If a lawyer objects to a question and I do not allow the witness to answer, you must not try to guess what the answer might have been. You must also not treat the objection as evidence or guess the reason why the lawyer objected in the first place.

5. **Rejected evidence:** At times during the trial, testimony or exhibits will be offered as evidence, but I might not allow them to become evidence. Since they never become evidence, you must not consider them.

6. **Stricken evidence:** At times I may order some evidence to be stricken, or thrown out. Because it is no longer evidence, you must not consider it.

Burden of Proof and the Elements of the Claim

Burden of proof means burden of persuasion. The State has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not true, or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime or crimes charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find the defendant not guilty.

You must decide whether or not the State has proven the defendant guilty beyond a reasonable doubt. The law does not require a defendant to prove innocence. You must start with the presumption that the defendant is innocent. The State must then prove the defendant guilty beyond a reasonable doubt. This means that the State must prove each element of the charges beyond a reasonable doubt. If you conclude that the State has not met its burden of proof beyond a reasonable doubt with respect to a particular charge, then you must find the defendant not guilty of that charge.

You must decide whether the defendant is guilty or not guilty by determining what the facts in the case are and applying these jury instructions. You must not consider the possible punishment when deciding on guilt; punishment is left to the judge.

If you find that the Prosecutor, the State of Nevada, has lost, destroyed, or failed to preserve evidence whose contents or quality are important to the issues in this case, then you should weigh the explanation, if any, given for the loss or unavailability of the evidence. If you find that any such explanation is inadequate then you may infer that the evidence is against the State's interest, which may create a reasonable doubt about the defendant's guilt.

The State must prove guilt beyond a reasonable doubt with its own evidence. You must not conclude that the defendant is likely to be guilty because the defendant did not testify. The defendant is not required to testify. The decision on whether or not to testify is left to the defendant acting with the advice of an attorney. You must not let this choice affect your deliberations in any way.

The defendant is not required to produce evidence of any kind. The decision on whether to produce any evidence is left to the defendant acting with the advice of an attorney. The defendant's failure to produce any evidence is not evidence of guilt.

Before you may convict the defendant of the charged crimes, you must find that the State proved beyond a reasonable doubt that the defendant committed a voluntary act. A voluntary act means a bodily movement performed consciously and as a result of effort and determination. You must consider all the evidence in deciding whether the defendant committed the act voluntarily.

There are two classes of evidence recognized and admitted in courts of justice, upon either of which, juries may lawfully find the accused guilty of crime. One is direct or positive testimony of an eyewitness to the commission of the crime, and the other is proof by testimony of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant, and which is known as circumstantial evidence.

Such evidence may consist of admissions by the defendant, plans laid for the commission of the crime, in short, any acts, declarations or circumstances admitted in evidence tending to connect the defendant with the commission of the crime. There is nothing in the nature of circumstantial evidence that renders it less competent for your consideration than any other class of evidence.

It is well established that the defendant's guilt may be established, beyond a reasonable doubt, by circumstantial evidence, as well as direct evidence. If you are satisfied of defendant's guilt, beyond a reasonable doubt, it matters not whether your judgment of his or her guilt is based upon direct and positive evidence or on indirect and circumstantial evidence or both.

The rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception to this rule exists in the case of expert witnesses. A person who, by education, study and experience, has become an expert in any act, science or profession, and who is called as a witness, may give his or her opinion as to any such matter in which he or she is versed and which is material to the case. You should consider such expert opinion and should weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it if, in your judgment, the reasons given for it are unsound.

The Counts / Charges:

The State has charged the defendant with a specific crime. A charge is not evidence against the defendant. You must not think that the defendant is guilty just because of a charge. The defendant has pled "not guilty". This plea of "not guilty" means that the State must prove each element of the charges beyond a reasonable doubt.

The State need not prove motive, but you may consider motive or lack of motive in reaching your verdict.

Definitions:

The word "willfully," when applied to the intent with which an act is done or omitted and as used in my instructions, implies simply a purpose or willingness to commit the act or to make the omission in question. The word does not require in its meaning any intent to violate law, or to injure another, or to acquire any advantage. The word relates to an act or omission which is done intentionally, deliberately, or designedly, as distinguished from an act or omission done accidentally, inadvertently or innocently.

"Knowingly" means that a defendant acted with awareness of or belief in the existence of conduct or circumstances constituting an offense. It does not mean that a defendant must have known that the conduct is forbidden by law. If the State is required to prove that the defendant acted "knowingly", that requirement is satisfied if the State proves that the defendant acted "willfully."

"Recklessly" or "reckless disregard" means that a defendant is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be such that disregarding it is a gross deviation from what a reasonable person would do in the situation. If the State is required to prove that the defendant acted "recklessly", that requirement is satisfied if the State proves that the defendant acted "intentionally" or "knowingly."

"Negligence" means, with respect to a result or a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a deviation from the standard of care that a reasonable person would observe in the situation. If the State is required to prove that the defendant acted "with negligence", that requirement is satisfied if the State proves that the defendant acted "willfully", "knowingly", or "recklessly."

Homicide by vehicle; essential elements.

For you to find the defendant guilty of causing death by vehicle, the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant operated a motor vehicle while under the influence of intoxicating liquor or in a reckless manner;

2. The defendant thereby caused the death of Baby Doe; and,

3. This happened in Nevada on or about the 28th day of May, 2011.

Driving in a reckless manner; defined.

For you to find the Defendant operated a motor vehicle in a reckless manner, you must find that the defendant drove with willful disregard of the safety of others and at a speed or in a manner that endangered or was likely to endanger any person.

Under the influence of intoxicating liquor; defined.

A person is under the influence of intoxicating liquor when, as a result of drinking such liquor, the person is less able, to the slightest degree, either mentally or physically or both, to exercise the clear judgment and steady hand necessary to handle a vehicle with safety to the person and the public.

Homicide; proximate cause; defined.

In addition to the other elements of the crime of homicide by vehicle as set forth above, the State must also prove to your satisfaction beyond a reasonable doubt that:

1. The death was a foreseeable result of the Defendant's act;

2. The act of the Defendant was a significant cause of the death of Baby Doe. The defendant's act was a significant cause of death if it was an act which, in a natural and continuous chain of events, uninterrupted by an outside event, resulted in the death and without which the death would not have occurred.

Credibility of witnesses.

You alone are the judges of the credibility of the witnesses and the weight to be given to the testimony of each of them. In determining the credit to be given any witness, you should take into account the witness's truthfulness or untruthfulness, ability and opportunity to observe, memory, manner while testifying, any interest, bias or prejudice the witness may have and the reasonableness of the witness's testimony considered in the light of all the evidence in the case.

Defendant not testifying; no inference of guilt.

You must not draw any inference of guilt from the fact that the defendant did not testify in this case, nor should this fact be discussed by you or enter into your deliberations in any way.

Opinion testimony.

You should consider each opinion received in evidence in this case and give it such weight as you think it deserves. If you should conclude that the reasons given in support of the opinion are not sound or that for any other reason an opinion is not correct, you may disregard the opinion entirely.

Presumption of innocence; reasonable doubt; burden of proof.

The law presumes the defendant to be innocent unless and until you are satisfied beyond a reasonable doubt of her or his guilt.

The burden is always on the state to prove guilt beyond a reasonable doubt. It is not required that the state prove guilt beyond all possible doubt. A reasonable doubt is based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act in the graver and more important affairs of life.

Duty to follow instructions.

The law governing this case is contained in these instructions, and it is your duty to follow that law. You must consider these instructions as a whole. You must not pick out one instruction or parts of an instruction and disregard others.

Jury must not consider penalty.

You must not concern yourself with the consequences of your verdict.

Jury sole judge of facts; sympathy or prejudice not to influence verdict.

You are the sole judges of the facts in this case. It is your duty to determine the facts from the evidence produced here in court. Your verdict should not be based on speculation, guess or conjecture. Neither sympathy nor prejudice should influence your verdict. You are to apply the law as stated in these instructions to the facts as you find them, and in this way decide the case.

Duty to consult.

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agrees. Your verdict must be unanimous.

It is your duty to consult with one another and try to reach an agreement. However, you are not required to give up your individual judgment. Each of you must decide the case for yourself, but you must do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own view and change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the purpose of reaching a verdict.

You are the judges -- judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

NEVADA HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP FEDERAL RULES OF EVIDENCE (Adopted from the National High School Mock Trial Championship Federal Rules of Evidence) (AMENDED 10/11/2011)

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.

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope

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

Rule 102. Purpose and Construction

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

ARTICLE II. JUDICIAL NOTICE -- Not Applicable

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

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Definition of "Relevant Evidence"

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

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by these Rules. Evidence which is not relevant is not admissible.

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

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

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

(a) **Character evidence generally**. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) **Character of accused.** In a criminal case, evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404 (a)(2), evidence of the same trait of character of the accused offered by the prosecution;

(2) **Character of alleged victim**. In a criminal case, and subject to the limitations imposed by Rule 412, evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor;

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

(b) **Other crimes, wrongs, or acts**. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

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

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

Rule 406. Habit, Routine Practice

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

Rule 407. Subsequent Remedial Measures

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

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

(1) furnishing or offering or promising to furnish--or accepting or offering or promising to accept--a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

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

Rule 409. Payment of Medical or Similar Expenses

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

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

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

(1) a plea of guilty which was later withdrawn;
(2) a plea of *nolo contendere*;
(3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state proceeding regarding either of the foregoing pleas; or
(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which does not result in a plea of guilty or which results in a plea of guilty which is later withdrawn.

However, such a statement is admissible (1) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

ARTICLE V. PRIVILEGES

Rule 501. General Rule

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

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

ARTICLE VI. WITNESSES

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

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

Rule 607. Who May Impeach

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

Rule 608. Evidence of Character and Conduct of Witness

(a) **Opinion and reputation evidence of character**. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

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

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) **General rule.** For the purpose of attacking the character for truthfulness of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

(b) **Time limit.** Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) **Effect of pardon, annulment, or certificate of rehabilitation.** Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime that was punishable by death or imprisonment in excess of 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 adjudication.** Evidence of juvenile adjudication is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) **Not Applicable**

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

(a) **Control by Court.** The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to:

1. make the interrogation and presentation effective for ascertaining the truth,
2. avoid needless consumption of 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 of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

(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 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. Prior Statements of Witnesses

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

(b) **Extrinsic Evidence of Prior Inconsistent Statement of Witness**. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witness

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

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on Ultimate Issue

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

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

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

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

(d) **Statements which are not hearsay**. A statement is not hearsay if-- …

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

(2) **Admission by party-opponent**. The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these Rules.

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

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

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

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

(4) **Statements for purposes of medical diagnosis or treatment**. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) **Recorded recollection**. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) **Records of regularly conducted activity**. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or date compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) **Absence of entry in records kept in accordance with the provisions of paragraph (6)**. Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) **Public records and reports**. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) **Records of vital statistics**. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) **Absence of public record or entry**. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(18) **Learned treatises**. To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

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

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

Rule 804. Hearsay Exceptions, Declarant Unavailable

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

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

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

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

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

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.a Declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

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

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

(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

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

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

(5) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Rule 805. Hearsay within Hearsay

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

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION– Not Applicable

ARTICLE X. CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS
Rule 1001. Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by Act of Congress.

Rule 1002. Admissibility of Duplicates

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1003. Admissibility of Other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if--

(1) **Originals lost or destroyed**. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) **Original not obtainable**. No original can be obtained by any available judicial process or procedure; or

(3) **Original in possession of opponent**. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(4) **Collateral matters**. The writing, recording, or photograph is not closely related to a controlling issue.

Rule 1004. Public Records

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Rule 1005. Summaries

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Rule 1006. Testimony or Written Admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

ARTICLE XI. OTHER
Rule 1103. Title

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

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Attorneys for Plaintiff

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF SILVER

STATE OF NEVADA, Plaintiff, vs. MEGAN BARRY, Defendant.	Case No. CR2011-100MT Dept. No. XLIV **INDICTMENT**

The Defendant is accused by the Grand Jury of Silver County, State of Nevada, as follows:

COUNT I: Homicide by Vehicle, a violation of NRS 484C.130, a felony, committed as follows:

On or about May 28, 2011, Defendant Megan Barry, did commit the offense of homicide by vehicle, by operating a motor vehicle while under the influence of intoxicating liquor or in a reckless manner, thereby causing the death of Baby Doe.

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Pursuant to NRS 172.105, the County Grand Jurors find that the offenses described above were committed, in whole or in part, in Silver County, Nevada.

Dated: October 1, 2011.

STACY ANN FERGUSON, ESQ.
District Attorney
Silver County, Nevada

/s/ *William James Adams, Jr.*
William James Adams, Jr.
Deputy District Attorney

A "True Bill"

/s/ *Kesha Rose Sebert*
Foreperson of the County Grand Jury

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IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF SILVER

STATE OF NEVADA, Plaintiff, vs. MEGAN BARRY, Defendant.	Case No. CR2011-100MT Dept. No. XLIV **STIPULATION**

The parties have stipulated as follows:

1. All witness statements, exhibits, and the signatures thereon are authentic.

2. Jurisdiction, venue, and chain of custody of the evidence are proper.

3. All statements made by witnesses and all physical evidence and exhibits were constitutionally obtained.

4. Defendant Megan Barry has elected not to testify in her defense. Consequently, her role will not be portrayed at trial because she is not a witness in the case. Neither the identity nor gender of Megan Barry is an issue in this case and no team may seat someone portraying Megan Barry at counsel table. Nonetheless, Megan Barry is stipulated to be a female for purposes of having other witnesses refer to Megan.

5. The medical treatments of Megan Barry and Baby Doe may be discussed by the witnesses, but the actual records will not be introduced into evidence.

6. A potential expert witness does not need to be "certified" as an expert by the judge as a prerequisite to proffering testimony as an expert. However, sufficient evidence must still be introduced as required by Federal Rule of Evidence 702 to allow a witness to testify as an expert witness.

The parties enter into this Stipulation freely and voluntarily.

SILVER COUNTY DISTRICT ATTORNEY OFFICE

/s/ *William James Adams, Jr.*
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Nevada Bar No. 3
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WILLIAM JAMES ADAMS, JR., ESQ.
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/s/ *Elle Woods*
DIANA DICKINSON, ESQ.
Nevada Bar No. 2007
ELLE WOODS
Law Student (duly certified under SCR 49.5)
Attorneys for Defendant, MEGAN BARRY

IT IS SO ORDERED.

/s/ *Joseph A. Wapner, Jr.*
DISTRICT COURT JUDGE

STATEMENT OF FRANCES/FRANCIS BAYCON

My name is Frances/Francis Baykon. I live at 16 Osterhouse Road, in Silverado, Nevada, and have lived in that house since I was a little kid. In May, 2011, I graduated from Benjamin Franklin High School. Until about three months before graduation, Megan Barry and I were very close friends. We both ran track, we were in band together, and we served on the BFHS Student Council. During the Fall semester, we even worked on the school newspaper, when Megan was the editor. We had known each other for years, because we went to the same elementary and middle schools, and she and my brother, Tony, dated each other exclusively the whole time she was in high school. Or, at least that is what Tony and I thought. Then, in March, we learned that Megan was pregnant, and Tony said he knew for a fact that he was not the father. Megan did not dispute Tony's statement and never said that Tony was the father.

I was pretty upset at first because I felt that Megan had made a fool of Tony. You think you are the only person someone is dating and then she gets pregnant by someone else! I mean, how embarrassing is that? It was not long, however, before Tony started seeing someone else, and he and Megan remained friends. He was going to Nevada State College by this time, so he met many acquaintances and made new friends. I decided that if Megan's actions did not bother him, it should not bother me. Thus, to extend the olive branch, I called Megan a couple of times in one week to make arrangements to get together with her, but she did not call me back.

I assumed Megan was still mad at me for the things I said to her when she told Tony and I that she was pregnant, so I went over to her house to apologize. Megan answered the door herself, and I told her I was sorry for yelling at her and calling her names. I explained that I was just defensive because she had cheated on Tony. I reminded Megan of how she would feel if someone had done this to her sister/brother, and she agreed that she would have also been very upset. She said she understood completely about family members protecting each other, so we sort of hugged and that was that.

Even though Megan and I made up, we did not go back to the same kind of closeness we had shared before, but we kept an open line of communication. Megan talked with me about the pregnancy, although she never told me who the father was – only that he did not know the baby

was his and that she was not going tell him. She had been accepted to Stanford University, and she planned to give up the baby for adoption. Nothing, she said, was going to interfere with her going to college. There were no adoptive parents standing in the wings or anything like that – she was just going to go through an adoption agency.

I remember thinking that it was a good thing her parents had given her the 2005 Zuisu Gazelle the year before, because they certainly would not have bought her a car after she became pregnant. Megan's parents were furious and they threatened to take the car away. However, Megan convinced her parents that she needed the car to take her and her sister/brother to school and to go to the doctor. However, Megan did not go to the doctor until she was nearly four months along. Megan said it was because she did not want her parents to find out she was pregnant, but I think she just did not care about the baby. Also, when Megan finally saw the doctor, she did not tell the truth about some things.

After Megan knew she was pregnant, she still drank and smoked occasionally. I know years ago no one knew that it was bad for pregnant people to smoke and drink, but nowadays, everyone knows that the better care the mother takes of herself, the better off her baby will be. I do not mean to say that Megan was a chain smoker or an alcoholic. I emphasize "occasionally." However, it just seemed to me that, if Megan really cared anything at all about the baby, she would be more responsible and less selfish.

Sometimes, after school, Megan would repeatedly nag to go with me to my house to party. She would tell her parents some lie and then off we would go. Both of my parents worked and Tony was at college, so I had free reign of the house, including of the refrigerator and the bar. We drank at my house every couple of weeks, but fortunately my parents never seemed to notice that liquor was missing. They bought everything by the case at a warehouse store and kept it out in the garage. I guess when you buy in quantity, you do not really pay attention to what is going on. I always tried to discourage Megan from drinking, but most of the time she did not drink all that much. Megan said she really needed the alcohol to relax, so I foolishly went along with her.

On graduation night, a friend of ours named Blake Colvin, was having a party at her house. When I arrived, there were probably 30 or 40 people there. The music was great, and everyone was

dancing. Even Megan got out and danced a few times. I noticed that people kept going around the back of the house to this storage building, so I went there, too. Inside was a keg with a tap and four or five cases of bottled beer. There were also cases of different types of sodas. Blake's parents were home, so I could not believe there was all this alcohol. However, Blake generally did whatever she wanted, so I guess it was not all that surprising. Her mother had made these great snacks and food for us, and everyone except Megan was really pigging out. Whenever I saw Megan, she was drinking, not eating. One time, though, I saw her eating some of the pizza Blake's mom had baked.

Around 10:30 p.m., someone suggested that we drive up to the mountains to watch the sunrise. I cannot remember whose idea it was, but I do remember thinking it was insane since people had been drinking. Besides, it was late and everyone was tired. But, they did not care what I thought, and they all decided to go anyway. For some reason, they went in four cars. Megan was the only one in the Gazelle, and I could not understand why she did not carpool with someone else.

Before everyone left, I noticed that Megan went out back again. I did not know what she was doing, but I really hoped she was not drinking any more beer. I followed Megan and asked her about it. She angrily told me to mind my own business. I watched her for a while, but I did not see her drink any more beer. I went into the house to get my jacket, and as I walked out to my car to go home, I saw Megan getting into her car. She was carrying a six-pack of bottles, but I could not tell what they were. There were bottles of beer and soda in that storage building, though. If Megan had taken bottles of soda, why was she so paranoid when I asked her why she had gone out back again?

I heard a couple of days later that Megan had rolled the Gazelle. I thought to myself, "Well, that is what happens when you drink and drive!" But then, I found out that she had the baby, and it died. I felt very badly about what I had thought. Then, I felt even worse when I heard that the baby had several things wrong with it, including a deformity. Now Megan has been charged with killing her child, which is really awful for her. I cannot help thinking, though, if Megan had cared about her baby, she would have taken better care of herself while she was pregnant, and she certainly would not have consumed beer and then tried to drive herself to the mountains late at night. That seems so irresponsible to me.

WITNESS ADDENDUM

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

Signed,

Frances/Francis Baykon
FRANCES/FRANCIS BAYKON

SIGNED AND SWORN to before me
this 20th day of September, 2011.

Molly Johnson Giger
Molly Johnson Giger, Notary Public
State of Nevada

My Commission Expires: November, 1, 2012

STATEMENT OF LIEUTENANT MARTY PACHECO

My name is Marty Pacheco. I am currently a Lieutenant with the State Police and am stationed in Rye, Nevada. I was born on October 15, 1970, in Lansing, Michigan. Originally, my parents were from Nevada, but in 1965, the State of Michigan hired my dad who was an engineer to help design a new expressway, so they moved.

I attended two years of college at Michigan State University, and then in 1990 I joined the Merchant Marines. While I was in the military, I attended some additional college courses, but I never received a degree. I left the service after five years and relocated to Nevada in 1996.

I applied to the Nevada State Police Academy and was accepted. Upon graduation, I was stationed in Sparks. In 1998, I married my spouse. We have one child, a son named Jason. Unfortunately, when Jason was six years old, he was struck and permanently injured by a drunk driver whose blood alcohol concentration (BAC) was measured at .35, more than three times the then-legal limit.

The drunk driver walked away, but Jason will never walk again. He will be in a wheelchair for the rest of his life. One of the most unfortunate aspects of the accident was that the driver had been arrested on four previous occasions for DWI. The last time was only six months before he hit Jason. The driver should not have been on the road. I became convinced that DWI was a plague in Nevada and that it had to be stopped!

I requested and was granted the opportunity to participate in the Operation DWI Community Coordination and Visibility Program. Our mission was to coordinate police activities and state and community media advocacy and publicity efforts to ensure the effectiveness and visibility of law enforcement efforts during the implementation of Operation DWI. After that, I participated in the Operation DWI Checkpoint Enforcement Program, which conducts specialized DWI enforcement operations on a statewide basis.

I have been on loan to various local police departments throughout the state to assist them in the Drug Recognition Expert Development Program which utilizes the National Highway Traffic Safety Administration's approach to increase the apprehension of persons driving while impaired by drugs other than alcohol. I am also a frequent contributor to a monthly newsletter and quarterly

traffic safety forums managed by the Institute of Public Law.

For the past two years, I have served as a consultant to the Nevada Traffic Safety Bureau's Statewide Teen Drinking Deterrence Program, which offers a program to encourage local police to conduct underage alcohol sales enforcement using Cops in Shops and other sting approaches. I will do everything I can to get drunk drivers off of the road. They are a menace and should be treated like the criminals they are. So, during the past year and a half, I have focused my full attention on becoming an expert in the area of breath alcohol testing.

In Nevada, all breath alcohol analysis is performed by direct breath testing devices which are either evidential or screening in nature. Evidential devices provide information that can be used as evidence in court. Screening devices may be used to develop probable cause to arrest for DWI and/or justification for further DWI testing. The Scientific Laboratory Division, or SLD, as we in the field call it, of the Nevada Department of Health, is the agency that issues regulations governing the certification of laboratories, breath alcohol testing instruments and individuals, and the methods of taking and analyzing samples for blood and breath testing for alcohol and/or other chemical substances under the Nevada Implied Consent Act.

The Department of Health regulations require that breath samples be analyzed by certified Operators or Key Operators on equipment and instruments approved by the SLD. The testing instruments are certified for one year by SLD, and those certifications expire annually on September 30. Prior to initial certification and twice a year thereafter, SLD will schedule and conduct calibration tests and inspection of the instruments. If the equipment does not meet the SLD-established criteria, they will not certify it or, if it was previously certified, they will revoke or suspend the certification.

I have been an SLD-certified Operator for more than one year, and an SLD-certified Key Operator for five months. In order to be a certified Operator, you have to be a full-time, salaried peace officer in Nevada, and you have to provide proof to SLD that you have completed training provided by SLD-certified instructors. The training must include, but is not limited to, the value and purpose of blood and breath alcohol testing; the effects of alcohol on the human body; the methods of alcohol analysis and the theory of breath testing; breath alcohol testing instruments and

the procedures for breath testing; practical experience and demonstration of competency; and the Nevada Implied Consent Act, regulations and any amendments and/or revisions and court testimony. In addition, you have to successfully complete comprehensive practical and written examinations.

To be a Key Operator, the person who performs the weekly calibration checks of breath testing equipment, you have to be a certified Operator on the type of equipment for which you are seeking Key Operator status, and you have to take additional training that includes, but is not limited to, the theory of breath testing; the operational and theoretical principles of the selected breath testing equipment; the preparation and use of a simulator; calibration checks of selected breath alcohol testing instruments; quality control measures and proficiency testing; minor maintenance and repair of breath alcohol testing equipment; the Nevada Implied Consent Act, regulations and any amendments and/or revisions and court testimony; and, laboratory practice and the demonstration of competency on the applicable equipment. And, like with being certified as an Operator, you have to successfully complete comprehensive practical and written examinations.

To get my certifications as an Operator and a Key Operator, I had to acquire 16 hours of training, and I had to pass two tests. You can see that I am achieving my goal of becoming an expert in breath alcohol analysis. Once I complete an additional 32 hours of training and pass another test, I can become an Operator Instructor and teach others how to be Operators and Key Operators.

I remember May 28, 2011, very well. I was on duty, working the 7:00 p.m. to 3:00 a.m. shift out of Silverado. Late spring is always a difficult time of year because schools let out, and there is a dramatic increase in the amount of traffic on the highways. Families take vacations and high school and college kids are out partying. Thus, a great deal of drinking goes on and it is a really busy time for us. During the week in question, I had been called to seven DWI stops on the interstate highway between Silverado and Rye.

At about 11:20 p.m. while I was making a run from Rye to Silverado, I passed a sports utility vehicle that was proceeding erratically, heading west, in the opposite direction. The SUV was weaving, going from lane to lane, passing other cars, and even though I was unable to get the

radar gun on it, I am sure the driver was speeding, as well.

I notified dispatch that a dark colored SUV was proceeding west at a high rate of speed and that I believed the driver to be drunk. I looked for the first median I could find where I could cross over and head west. I was traveling at approximately 90 miles per hour in an effort to catch the SUV. Fortunately, traffic was not very heavy, so I was able to stay in the left lane. Only a few cars had to get out of my way, but the flashing lights on my unit were easy for them to see in the dark, and they moved over without incident.

It took about two or three minutes before I could actually see the SUV. When I was about a quarter of a mile behind it, the driver suddenly swerved, struck the guardrail and rolled the vehicle two or three times. I reached the accident scene within seconds.

The first thing I remember about getting out of my unit was how windy it was. A gust from the north caught me by surprise and almost knocked me over. I think it must have been gusting to about 35 mph, or so. I ran over to the SUV, which turned out to be a 2005 navy blue Zuisu Gazelle 4x4. It was pretty well banged up, but I could see that, before the wreck, it had been in good shape. I had heard those vehicles were top heavy and even prone to rolling over, but I did not believe that. I was sure that the accident was a result of the driver being drunk and driving recklessly.

The driver was a female who appeared to be around 17 or 18 years old. She was conscious, and when I asked her if she was injured, she started crying, “my baby, my baby!” I thought she meant there was a child in the vehicle, so I checked both the front and back seats. I did not see anything in the car but a six-pack of beer, with two bottles missing. When I looked back at the driver, I saw that she was pregnant, so I realized she was referring to that baby.

I asked the driver her name, and she told me it was Megan Barry. I again asked Ms. Barry if she was injured, and she said she was not. I unhooked Ms. Barry's seat belt and asked her to step out of the car. She seemed disoriented and confused. Her eyes were red, her speech was slurred, and she appeared to stagger when she walked. I could see that her forehead was bleeding, and her left eye looked swollen. When I got close to her, I smelled alcohol. It was a strong odor, and I think it was beer. I looked again in her vehicle, but I didn’t see any empty bottles, and there were no other cans or bottles.

Since Ms. Barry was pregnant, it seemed that she needed to be examined by a doctor, so I went to my unit and called for an ambulance. I got a gauze pad from my first aid kit and told Ms. Barry to hold it on the cut on her forehead. Fortunately, the cut stopped bleeding almost immediately. After observing Ms. Barry for a few minutes, I asked her to take a field sobriety test, which she failed. I videotaped Ms. Barry taking the test, but somehow the tape was lost. She could not walk a straight line, touch her nose, or count to ten. I waited the required 20 minutes, during which time I observed Ms. Barry constantly, and then I administered breathalyzer tests, the second 15 minutes after the first. The first test showed Ms. Barry's BAC to be a .04, and the second test registered as a .07. The regulations specify that if the difference between the two tests is more than .02 grams of alcohol per 210 liters of breath, then a third sample must be collected. I then collected the third sample almost immediately, which measured .08, the legal limit.

About this time, three other vehicles loaded with teenagers arrived, along with the ambulance I had summoned. The kids did not appear to be intoxicated. One of them told me they had been at a graduation party with Ms. Barry, and they were all on their way to the mountains to watch the sunrise. At about this time, Ms. Barry began to moan and fell to the ground. I rushed over to her, and she again cried, “my baby, my baby!” She was clutching her stomach. The ambulance attendant lifted her T-shirt, revealing a red welt in the shape of a steering wheel on her abdomen. Parts of the welt were already turning purple, and Ms. Barry began to vomit.

The EMTs placed Ms. Barry on a gurney and lifted her into an ambulance. They took her to Nevada College Hospital in Rye, where I understand her baby was born by c-section. It is so sad that the baby lived only two days after being born. Apparently, Ms. Barry was only seven months into her pregnancy. I believe the baby would have lived, if she had carried it to full term, instead of drinking, getting behind the wheel of a vehicle, and driving like a maniac.

Ms. Barry is to blame for the death of that baby. If she had not been drunk and swerving all over the road, she never would have been in the accident. Although Ms. Barry did not test at .08 until over half an hour after the accident, I believe that either the first test was unreliable or she had just consumed a beer immediately before the accident and the alcohol had not yet metabolized. In any case, she was clearly impaired, and that impairment caused her to roll her vehicle, which led to

the death of her baby. Driving under the influence of intoxicating liquor is a serious offense. Ms. Barry put herself, her baby, and other drivers at risk, with her reckless disregard of the law. And, Ms. Barry was just 17 at the time. That is below the legal drinking age, so she broke the law the second she consumed alcohol. Some time in jail will give her the opportunity to think about what she did. Hopefully, she will not do it again, or at the very least, it will keep her off our roads.

I understand the accident reconstructionist thinks the wreck was because of the instability of the SUV Ms. Barry was driving, but I bought a Zuisu Gazelle in 2006. At that time, both the 2005 and 2006 models had been redesigned to address the problems that were identified as contributing to their tendency to tip or roll over. Here are the things I know about from my owner's manual that were changed: the track was widened 2.4 inches to give the Gazelle a squatter stance and better stability; the front suspension A-arms were lengthened one inch to increase wheel travel; the front torsion bar spring rates were raised; the rear stabilizer bar diameter was increased; and the shock absorbers were retuned. And, I know that the National Highway Traffic Safety Administration recently denied a petition by Consumer Reports to open a defect investigation into the Gazelle. The NHTSA is a government agency of the U.S. Department of Transportation, responsible for enforcing all safety-related recall notices involving manufacturer defects in consumer vehicles. If the NHTSA thinks the Zuisu Gazelle is safe, then that is good enough for me.

WITNESS ADDENDUM

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

Signed,

Marty Pacheco
LIEUTENANT MARTY PACHECO

SIGNED AND SWORN to before me
this 13th day of September, 2011.

Andrew Cashner
Andrew Cashner, Notary Public
State of Nevada

My Commission Expires: December 23, 2013

STATEMENT OF DAKOTA GRIFFIN, MD

My name is Dakota Griffin, and I am a doctor. I am a graduate of Nevada State College and the University of Nevada College of Medicine. I did my residency at the University of Nevada College Hospital (UNH), and after a two-year Fellowship at Emory University School of Medicine in Atlanta, Georgia, I returned to UNH, where I have worked ever since, specializing in pediatric and emergency room medicine.

I have always been very interested in pediatrics and, in particular, chromosomal abnormalities among children. I have conducted extensive research in the field, receiving grants from the General Clinical Research Centers, the Division of Research Resources, the National Institute of Health, and the Christopher Taylor Harrison Research Fund. In addition to my work at the Hospital, I teach several classes at the University of Nevada College of Medicine. I have collaborated with the Chair of the Department of Pediatrics at Emory, as well as the President of the John F. Kennedy Institute for Children With Disabilities in Baltimore, Maryland, on several publications involving chromosomal abnormalities.

Chromosomes are tiny thread-like structures found within human body cells. Each chromosome contains hundreds of genes that determine an individual's appearance and body functions. A human cell contains 22 pairs of chromosomes, which scientists have numbered from 1 to 22. Each cell also contains a pair of sex chromosomes which, for a female, is the XX chromosome and for a male, the YX chromosome. The sex chromosome X is inherited from the mother and the sex chromosome inherited from the father can be either an X, female, or a Y, male. This chromosome determines the sex of the baby and is the 23rd pair in a cell. That means that a normal human cell contains a total of 46 chromosomes.

I became even more interested in this subject when my sister, Karen, and her husband gave birth to a daughter with Trisomy 18, or Edward's Syndrome. Children with Trisomy have 47 chromosomes instead of 46. With Trisomy 18, there are three of the 18th chromosome, instead of two. Other Trisomy disorders include Trisomy 21, or Down Syndrome, where the third chromosome is in the 21st pair, and Trisomy 13, or Patau's Syndrome, in which the extra chromosome is in the 13th pair.

Because Karen was over 35 -- women over age 35 have an increased risk of having a baby with a chromosome abnormality -- at the time of her pregnancy, her obstetrician recommended prenatal testing. She and her husband agreed, so when she was 10 weeks along, her doctor conducted chorionic villus sampling. The test revealed that their baby was at risk for Trisomy 18. And, that is when the agony began.

Immediately, Karen's doctor counseled her about having an abortion. Although the doctor referred to a therapeutic termination, everyone knows that just means killing the fetus. I was very reluctant for my sister to make that decision. Although I am pro-life, the important issue is that I am fully aware that all abortions can create deep and abiding emotional distress and guilt. However, nothing affects a woman as negatively as the type of "convenience" abortion Karen's doctor was recommending. For instance, Dr. David Reardon, Ph.D., Founder of the Elliot Institute for Post Abortion Studies and author of *Aborted Women – Silent No More*, has conducted research that found that women who underwent eugenic abortions have the most difficult time coping because they aborted babies who were wanted, at least babies who were wanted until it was discovered they were going to be "defective."

In a convenience abortion, the woman knows that she, and she alone, is responsible for the death of her child. And, researchers on the after-effects of abortion have identified a pattern of psychological problems known as Post-Abortion Syndrome, or PAS. Women suffering PAS may experience drug and alcohol abuse, personal relationship disorders, sexual dysfunction, communication difficulties, damaged self-esteem, and even attempt suicide. Finally, other studies show that there is a high incidence of marital separation or divorce after abortion. Naturally, I did not want my sister and her husband to experience any of that.

In my opinion, Karen's physician did a poor job in delivering the prognosis regarding the child's potential life. This complicated the decision-making process because Karen and her husband felt pressured to follow the doctor's recommendation, rather than making their own choice. Although most Trisomy babies are born with heart defects, respiratory problems, and physical abnormalities, that does not make them any less valued as children. Also, the life expectancy of babies born with Trisomy 18 is not good – a study in clinical genetics conducted by Nielsen

Goldstein in 1988 found that about 50% of babies died by one week and about 90% by five months. In that study, however, most of the children were not prenatally diagnosed, and, therefore, were cared for in the obstetric and delivery room settings without knowledge of the diagnosis or prognosis. This could account for the low survival rates that conflict with other studies showing that 45% of children born with Trisomy 13 will die within the first month and 70% of the survivors will die by one year of age. Cast in a more positive light, however, it can be said that 55% will live past the first month, and 30% will live past the first year. It is true that survival to adulthood is quite rare, but one adult is known to have survived to age 33.

Most survivors have profound mental and physical disabilities; however, the capacity for learning in children with Patau syndrome varies from case to case. Older children may be able to walk with or without a walker. They may also be able to understand words and phrases, follow simple commands, use a few words or signs, and recognize and interact with others.

Besides the doom-saying doctor, other well-meaning family members and friends told Karen and her husband that it would be "better" if Karen just had an abortion and because they did not "need" the burden of a child with a disability. It would have been easy for them to cave to that kind of pressure, but I did not let that happen. Thankfully, I was able to share my expertise about chromosomal disorders with Karen and her husband and persuaded them that it was not only their right but also their duty to try to take the baby to full-term.

I began by letting them know that they were not alone in their situation. After all, a chromosomal defect of some type occurs approximately once in every 200 births, and the risk factor is the same for all parents. Furthermore, although there are no absolute statistics, it is estimated Trisomy 21 occurs approximately once in every 700 births, Trisomy 18 once in every 1800-2000 births, and Trisomy 13 once in every 2800-3000 births. In addition to there being plenty of people in the same boat, there are also support groups, internet chat rooms, and websites where families who have afflicted children get together and share information. The most well-known of these is the Support Organization for Trisomy 18, 13 and Related Disorders.

The Support Organization for Trisomy 18, 13 and Related Disorders is a worldwide organization that began in 1979, and now has 10 international chapters plus 57 in the United States.

The local chapters are run independently from state to state, allowing them to bring together family members and professionals for informal meetings. Imagine the comfort this brings to all parties, to be able to meet face to face with other parents who have similar experiences to share! I knew this would be of great interest to Karen, so I told her about it immediately and requested a "new family information packet" for her. Included in the packet were copies of recent newsletters, a booklet about the common problems for babies with Trisomy, fact sheets about Trisomy 13 and 18, growth charts, expected developmental milestones, and an audio DVD. While I already knew all the information contained in the packet, I wanted Karen and her husband to have tangible proof of the support network that was out there and that would be there for them after the birth of their new baby.

Through delivery, Karen's pregnancy was relatively uneventful. Then, at birth, Daria – that is what Karen and her husband named the baby -- had congestive heart failure, apnea (which means her breathing was interrupted for periods of time), and a cleft lip. Daria also suffered from low birth weight and was born with her fists clenched, having her index finger overlapping her third and fourth fingers. During Daria's first months of life, my sister and her husband learned how to manage tube feedings and oxygen masks, and they spent many all-night vigils at Daria's bedside. But, Daria was not born blind or deaf like so many Trisomy 18 babies, so there was much for which we could be thankful. Most importantly, Daria has grown and flourished and is now nearly four years old! Although I already knew intellectually that all life is precious, my sister's experience really reinforced that for me.

On the night of Ms. Barry's tragic automobile accident that led to the death of her baby, I was on duty in the emergency room at UNH. When the ambulance arrived, Ms. Barry was wheeled immediately into the ER. During a brief physical exam, I noted a bruise on Ms. Barry's abdomen, which was consistent with her having been in an auto accident. Ms. Barry had a minor cut on her forehead, which a nurse cleansed and bandaged. Naturally, I was far more concerned about Ms. Barry and her baby then I was about a little scrape. I immediately ordered a transvaginal ultrasound probe, which confirmed pregnancy of approximately 28 weeks. The fetal heart rate was 130 and regular. Ms. Barry complained of abdominal and back pain, although at that time there

was no vaginal bleeding. A blood test revealed her BAC to be .08, over the legal limit, which, no doubt, led to her car wreck. I decided to admit her to the OB/GYN ward for further observation and fetal monitoring.

About six hours later, Ms. Barry began to experience vaginal bleeding and the fetal monitor indicated the baby was in distress. An ultrasound was performed, revealing significant placenta abruption, one of the leading causes of fetal death in the third trimester. The placenta transfers oxygen and nutrients from the mother's bloodstream to the baby and carries fetal waste products in the opposite direction. Abruption, or separation, of the placenta refers to the separation of the placenta from the inner wall of the uterus before labor begins which can decrease or interrupt the flow of oxygen-rich blood to the baby. Fortunately, Ms. Barry was quite lucky. There is no clear diagnostic test for abruption, and it is not always observable through ultrasound. In any event, I determined that the distress of the baby and the risk to the mother was severe enough that we should proceed with an emergency abdominal delivery, or cesarean-section.

The delivery went well, and Ms. Barry gave birth to a 4½ pound baby boy. It was apparent upon delivery that the child was not perfectly formed. He had a moderately small head, known as microcephaly, and I noticed that his forehead sloped. In addition, he experienced periods of interrupted breathing know as apnea and his heart action was relatively slow. We provided respiratory life support, and he was resuscitated successfully. Because of the observed microcephaly, I ordered a CAT scan of his brain. Fortunately, he was not found to be holoprosencephalic, which means his forebrain had developed and divided properly. This was excellent news.

Based upon his physical characteristics I suspected a Trisomy, but only a chromosome analysis could confirm that. He was transferred to the neonatal intensive care unit, where he remained on life support overnight. Over the course of the next 36 hours, Baby Doe seemed to improve slightly, so we extubated him. He did well initially, but then he began to have repeated and prolonged periods of apnea. We resuscitated him on three more occasions, but on the fourth attempt, we were unable to bring him back.

I ordered that a blood and tissue sample be sent to a cytogenetics lab for testing. These tests

are 99.9% accurate, but they take some time. The following day, I prepared a summary of the medical records of Baby Doe in which I set forth clearly the information outlined above. I also explained my medical conclusion that the cause of death was prematurity. It is my expert opinion that, had Baby Doe been given his rightful opportunity to remain in the womb for an additional 2 months, his physical condition would have been dramatically improved. As it was, he was denied 24% of his time to grow and develop because his mother chose to drink and drive. The blunt trauma to her abdomen that she sustained in the accident caused the placenta abruption. The placenta abruption then necessitated a premature delivery to protect both the child and the mother. I have no doubt, whatsoever, that Ms. Barry, and Ms. Barry alone, is responsible for the death of her child.

A few weeks later I received the results on the cytogenetic test, confirming that little Baby Doe did, in fact, have Trisomy 13. Is it not tragic that, because of his mother's total disregard for her child, there was no opportunity to see if Baby Doe might have been among the 55% who live past the first month or maybe even among the 30% who live to the first year or beyond?

WITNESS ADDENDUM

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

Signed,

Dakota Griffin
DAKOTA GRIFFIN, MD

SIGNED AND SWORN to before me
this 21st day of September, 2011.

Addison Montgomery
Addison Montgomery, Notary Public
State of Nevada

My Commission Expires: October 13, 2012

STATEMENT OF LOGAN BARRY

My name is Logan Barry, and I am Megan Barry's brother/sister. We went to the same high school even though we were in different grades. I say went because Megan graduated in May of 2011. Now she is Stanford, and here I am, still stuck in Silverado, Nevada. Megan and I were always very close. It was different from so many sibling relationships where people are pretty close in age. We would do anything for each other. I cannot wait until I graduate, so I can move away from home and live on my own. Ever since Megan ended up pregnant last year, my parents have been keeping me on a very short leash. I am not allowed to have a car or similar mode of transportation. My parents have repeatedly told me that, if Megan had not owned a car, she would not have been running around and would not have become pregnant. I have told my parents a million times that Megan was not running around. She is a good person, who made one mistake.

At the time, Megan was really on a roll, and getting pregnant could have ruined everything for her. Megan was President of the Student Council at Benjamin Franklin, she was in the Band, and she was a star on the Track Team. Megan was also the Editor of the School Newspaper and Captain of the Debate Team. She had been accepted to Stanford and had received a large scholarship from them.

Megan was named the Salutatorian of her Class. The Principal asked Megan to step down when it became public knowledge that she was pregnant, but Megan refused and the Principal dropped the issue. Megan had to cut way back on her school activities, but that was because our parents were trying to keep her under their thumb. They did not need to do that, though. I was with Megan all the time and she always behaved responsibly. The only times I was not with Megan were when she would drop me off at home after school and then go to Frances/Francis Baykon's house to study. Frances/Francis is not the brightest, so Megan would help her/him with Math. Unfortunately, after all the help that Megan gave Frances/Francis, s/he is saying bad stuff about my sister. Frances/Francis is nothing but a liar! I know Megan and how much she cared about her baby. Megan cared enough that she was willing to give the baby up for adoption, so that the baby would have a good home with people who had the ability and desire to provide the necessary care.

Megan had a good reason for not going to the doctor until she was so far along. For the

first three months that Megan missed her period, she did not think anything of it. Megan was an athlete, so her period was always irregular. When Megan started to wonder if she might be pregnant, she panicked. The only doctor we knew was Dr. Garcia. He had been our family doctor for as long as I can remember. However, Megan was afraid that if she went to Dr. Garcia and she was pregnant, he would tell our parents. In the end, she called Planned Parenthood, and they were able to recommend a clinic doctor who Megan could see, without our parents knowing.

The doctor at the clinic confirmed that Megan was pregnant and estimated that she was about four months along. I do not know if Megan would have considered having an abortion, but it did not matter anyway, because she was past the time when she could have had one. I also do not know if she would have considered keeping the baby if the father would have participated, or helped out financially, or even just offered moral support and encouragement. That, however, was also irrelevant because the father did not want anything to do with a child. Megan never told me who the father was, but I have always thought it was Frances/Francis's brother, Tony. Megan loved Tony, and she would never have been unfaithful to him.

Megan tried to keep up with all her regular activities, and she did a great job of carrying on as if everything was just fine, but I know she was totally freaked out. Megan's whole future was ahead of her and looking great, and then her world got turned upside down because she ended up pregnant, and she basically had to deal with it all by herself. I know Frances/Francis said s/he was a good friend to Megan, but I disagree. S/He was just trying to get close to Megan, so s/he could know all the intimate details of what was going on and then spread it all over school.

On May 28, 2011, Blake Colvin, one of the graduates in Megan's class, was having a party. Megan decided to go to the party, and she invited me to go with her. I only saw Megan drink two glasses of beer that night. I was not with Megan every single second, but I was with her most of the time and I would have known if she had gotten drunk. I was surprised that Megan drank the beer because she had never been the type to drink or smoke. Running was too important to her. I could not imagine she would do anything like that while she was pregnant, but I guess the stress finally became too much, and she just gave in.

I was pleased to see Megan relax and have a good time. I could not remember the last time

I had seen Megan so animated. Her eyes were sparkling, she was laughing and singing and waving her arms around. She was even dancing. She had always liked dancing, and excelled at it -- like everything else she did. This was the first time I saw Megan dance since she became pregnant.

Sometime around 10:30, a group of students, including Megan, became sentimental about graduation and several of the girls were misty-eyed. Then, one of Megan's friends suggested they all drive to the mountains to watch the sunrise. I thought it was a dumb idea and I knew that, if I went, I would probably be grounded for the rest of my life. Megan, however, was leaving for college in just a few months and was not concerned about being punished.

Megan dropped me off at home and then took off to meet her friends. I told my parents where they were all going, and they really did not get upset. However, when my parents told me that Megan had been in an accident, they were very angry and scared. I was scared as well. When they brought Megan home from the Hospital, I saw that she was no longer pregnant. I asked where the baby was, and they told me he had died.

I cannot believe they have charged my sister with a crime. Do they not realize that she feels badly enough? They said she was drunk or being a reckless driver, but I know neither of those things are true. I was with Megan at the party, and she definitely was not drunk. Also, has not been a wild driver since my parents took Megan's car away from her for three months about a year and a half ago because she received a bunch of speeding tickets.

WITNESS ADDENDUM

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

Signed,

Logan Barry
LOGAN BARRY

SIGNED AND SWORN to before me
this 29st day of September, 2011.

Mary Catherine Elephant
Mary Catherine Elephant, Notary Public
State of Nevada

My Commission Expires: November 27, 2012

STATEMENT OF MADISON JAMES, M.D., Ph.D.

My name is Madison James. I am an accident reconstruction expert. I live and work in Providence, Rhode Island. For several years before my current career, I was in the private practice of medicine. As things turned out, however, being a physician just was not for me. I saw too many people die from illness or trauma, and I could not handle the stress. Thus, I decided to get out of medicine and go back to school. I had always been fascinated with physics, so I pursued a degree in that, with the intention of becoming what is commonly called an accident reconstruction expert.

I attended the University of Maine and received my Ph.D in Physics in 1980. Since then, I have testified for the defense at 42 trials. One time, I was hired by a plaintiff in a civil case. However, once the attorneys heard my expert opinions, they told me they would find someone else. I am not sure why they did not want me, but maybe it was because they thought I was biased and could not take the side of the person seeking damages. I have lectured at the University of Pittsburgh, Rutgers University and the Insurance Institute, and I have been hired by insurance companies to teach their adjusters. I am paid for my testimony, just like any other professional. My standard fee is $750 per hour, with a minimum ten hours retainer paid in advance. If those ten hours are used, I charge $7,500 for the next ten hours, and so on.

To prepare for trial, I visited the accident scene, reviewed the accident report, breath analysis report and diagram of the accident scene as prepared by Lt. Pacheco, and I reviewed a report on Zuisu Gazelle SUVs. I also spoke with the Defendant, Megan Barry, for about 30 minutes. All of this led me to the following expert opinions: (1) Ms. Barry was not intoxicated on May 28, 2011, at the time of her accident; and, (2) even if she were, intoxication was not the cause of the accident – instead, a sudden gust of wind pounded the Zuisu Gazelle as she was headed into a curve in the road, which caused her to swerve, lose control and roll over.

I am absolutely certain that Megan Barry was not intoxicated at the time of her accident. First of all, Ms. Barry obviously struck her head, as was evidenced by the bleeding forehead noted in Lt. Pacheco's accident report. I believe Ms. Barry's failure to pass the field sobriety test and her appearing dazed and confused were because in striking her head, she suffered a mild concussion. This would certainly account for her staggering and her being unable to touch her nose, to count to

10, or to speak clearly. In addition, it is quite probable that she was in shock.

As far as the results of Lt. Pacheco's breathalyzer tests go, I believe them to be suspect. Her breath alcohol concentrate (BrAC) was taken at three different times. The first reading was .04, well below the legal limit. Fifteen minutes later, it was .07, and immediately after that, it was .08, clearly demonstrating that Ms. Barry was below the legal limit of .08 at the time of the accident.

How alcohol metabolizes in the human body is quite fascinating. Once alcohol is consumed, it is metabolized at a fairly constant rate. In addition, until all of the alcohol leaves the stomach, the BrAC will continue to increase. Only after it reaches the maximum BrAC, will it begin to decrease. Once that process begins, it drops at a relatively constant rate, until all of the alcohol has been metabolized. And, if the individual ingests no additional alcohol, the BrAC will eventually fall to 0.0.

The breathalyzer test was given three times over the course of one hour. The first test read .04, the next was .07, and the third was .08. This means that Ms. Barry still had alcohol in her stomach that had not reached her bloodstream until after the first test. What this means is that Ms. Barry's BrAC, at the time of the accident, was not only below .08, it was beneath, I believe, .04. Ms. Barry was not at the legal limit until the third breathalyzer test, which was well after the accident. That being the case, Ms. Barry was definitely not legally intoxicated when she lost control of the SUV.

My second opinion is that Ms. Barry lost control of the SUV, not because of having consumed intoxicating liquor, but because of the instability of the vehicle she was driving. Despite great advances in safety technology, vehicles with higher ground clearance still pose a higher rollover risk than vehicles that sit lower. Because one of the key defining characteristics of sport utility vehicles – or SUVs – is their greater height, they are more likely to roll over in an accident than passenger cars. Unfortunately, technology cannot defy the laws of physics. These laws dictate that an object with a higher center of gravity is less stable and easier to topple than an object of similar weight with a lower center of gravity. We all understand this concept intuitively. Prop up a block of wood lengthwise, and it is easier to topple with the push of a finger. Place it on its tall side, to make it short, and it is far more difficult, maybe even impossible, to topple the same object.

The National Highway Transportation Safety Administration reports that fatalities due to rollovers are two to three times higher for SUVs than for other passenger vehicles, and the incidence of incapacitating injuries are 27.6% higher.

A 2001 PBS *FrontLine* program about SUV vehicle rollover accidents amazed me that no one, among the carmakers, among the legislators, or among the researchers, seemed to understand the very basic physics involved! In that *FrontLine* program, an expert from Ford comforted a judge in a court case by informing him that Ford had fully analyzed the situation and they would widen the track of their SUVs by two inches, and that that change would completely solve the problem. The judge seemed comforted, but only because he did not know enough about physics to realize that would produce a very minimal improvement and the basic danger would still remain.

What needs to happen instead is using an extremely old technology of automatically changing the height of the vehicle suspension. That was popular in luxury cars in the 1970s for leveling out the ride when back seat riders were in the car. I see that as a simple and obvious solution for SUVs and other tall vehicles now. At low speeds, like for off-roading, the suspension could be as high as is popular on SUVs. But as the vehicle sensed greater road velocity – as on a highway – the suspension could smoothly lower down to a height where the vehicle was far more stable and even unlikely to roll over. It would not be very expensive to add to vehicles, it is an old and proven technology, and it would certainly save lives.

Data collected by the Highway Loss Data Institute, is similarly damning: of 30 sport-utility vehicle models, one third had higher-than-average injury rates. In addition, some SUVs have collision rates as much as 40% higher than average. Generally SUV safety has been criticized because of performance in situations drivers could face every day. For example, if someone was driving a station wagon and swerved sharply to avoid a child on a bike, the driver would be able to swerve quickly back onto her or his original course. If, however, the driver were operating a SUV, that sharp swerve could cause the vehicle to tip.

I acknowledge that the Zuisu Gazelle is not the only sport utility vehicle with problems. Sport utility vehicles generally have the highest rate of deaths occurring in rollovers. Cars such as the Ford Explorer**,** Toyota 4 Runner**,** Isuzu Rodeo**,** and Honda Passport have been involved in SUV

rollovers that have ended up in serious injuries and death. SUV rollovers are almost three times more likely to occur than the average passenger car, and government tests indicate the most stable SUV is still more unstable than the most unstable car.

In 1988 and again in 1996, the NHSTA turned down petitions from *Consumer Reports* to investigate the Suzuki Samurai, a vehicle that not only showed serious rollover problems but also has been involved in 147 deaths and 7000 injuries. Most recently, however, Consumer Union petitioned the NHTSA to conduct a defect investigation of the 2005 and 2006 Gazelle and the Acura SLX, but the petition was denied. In July of 1997, a statement issued by Dr. R. David Pittle, Vice President and Technical Director of Consumers Union, the publisher of *Consumer Reports Magazine*, noted, "NHTSA's refusal to grant our petition is the latest in a disturbing record of misguided decisions, in which the federal safety agency has failed to protect consumers from rollover hazards. It is a serious setback for the nation's motorists."

Zuisu, the manufacturer of the Gazelle, claims that the NHTSA has "vindicated" the Gazelle, but the NHTSA has not done that, and the manufacturer's claims are seriously misleading. In denying the petition, NHTSA was not saying that the Gazelle is safe. It was only saying that it did not expect that opening a defect investigation would lead to a formal recall.

I have conducted a thorough analysis of the NHTSA decision and noted several major flaws in their work. The NHTSA did not test the Gazelle against any other similar vehicles. When I observed the tests of the Gazelle and the SLX against other SUVs, it was apparent that the Gazelle uniquely performed in a hazardous way that most other SUVs do not. When the NHTSA repeated the tests of the Gazelle, the agency also found tip-ups, although not as frequently as those I observed. I believe the NHTSA failed to take the tip-ups seriously enough. Finally, I believe the NHTSA improperly discounted consumers' real-world experiences. As the agency said in its own decision, there were 36 consumer complaints, and some reported accidents, relating to the instability of the Gazelle, even though the models in question have been on the road for only five to six years.

I disagree wholeheartedly with the NHTSA. Since 2008, I have observed the testing of 57 SUVs, minivans, and compact trucks on a special emergency-handling course, and only the

Gazelle, the Acura SLX, the Suzuki Samurai, and the Ford Bronco II have shown a significant tendency to tip. To be sure of the results on the Gazelle and the SLX, the tests were run 125 times at speeds of 36 mph and above, and both vehicles tipped up 62 times, with two wheels off the ground. This demonstrates phenomenal instability, and it is no wonder that the vehicle Ms. Barry was driving rolled over.

As I read the Accident Report, Ms. Barry was traveling at a rate of around 70 mph, barely 5 miles over the speed limit for that section of highway. She was, however, at a point on the road where the highway curves. Lt. Pacheco said it was extremely windy -- so windy in fact, that it nearly knocked her/him down as s/he exited the police car. I believe that the combination of the entering the curve at around 70 mph and being hit by a significant gust of wind from the North caused Ms. Barry to lose control of the SUV. No doubt, as she swerved, she overcompensated, could not keep the vehicle on the highway, and it rolled over. Had she been driving a safer vehicle or had there been no wind, I am certain there would have been no accident.

Although I could not find any conclusive information about the wind speed that evening, I estimate from my review of weather reports that gusts reached 40 or 50 mph. The manufacturer has denied that the Gazelle is in any way unsafe, saying that it meets all federally established safety guidelines. I also know they say that 50 mph wind gusts would not affect it, but the report from Automobile Consumer Utility Safety Department and the tests conducted by *Consumer Reports* demonstrate otherwise. Moreover, the NHTSA's refusal to open a defect investigation of the Gazelle does not prove anything, since the NHTSA also refused petitions in 1989 and 1991 to investigate the Jeep CJ5, a vehicle with a widely recognized tendency to roll. In addition, although the agency opened a limited investigation of the Ford Bronco II, which was also involved in numerous rollover accidents, it ended the investigation without taking action.

In conclusion, I can only say that in my expert, Ms. Barry’s accident was caused solely by her driving a vehicle that has been repeatedly demonstrated to be unsafe.

WITNESS ADDENDUM

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

Signed,

Madison James, M.D., Ph.D.
MADISON JAMES, M.D., Ph.D

SIGNED AND SWORN to before me
this 21st day of September, 2011.

Crystal Ball
Crystal Ball, Notary Public
State of Nevada

My Commission Expires: February 10, 2015

STATEMENT OF TAYLOR McGRAW, M.D.

My name is Taylor McGraw. I graduated from the University of Pennsylvania School of Medicine in 1995. I did my residency in Hartford, Connecticut, working at both the Hartford Medical Center and Hartford General Hospital. In 1997, I applied and was accepted to Harvard's fellowship program in pediatrics, so I moved to Boston and began working at Children's Hospital. Although I was working exclusively with children, my focus was still in neurology. I finished my fellowship in 1999.

After completing my fellowship, I moved to Washington, DC, and began working in the Department of Neonatology at Children's Hospital National Medical Center. While there, I became involved with the National Institute of Child Health and Human Development and the National Institute of Neurological and Communicative Disorders and Stroke. I was part of an effort between the two to compile a Joint Assessment of Prenatal and Perinatal Factors Associated with Brain Disorders, which was eventually published.

In 2005, I moved to Rye, Nevada, so I could be closer to my family. I began working with the University of Nevada College Hospital upon relocating to Rye. Because of my combined training in pediatrics and neurology, I spent a lot of time examining neurological dysfunction in children. In 2006, I started my own private practice, focusing on prenatal and perinatal causes of neurologic dysfunction.

I have reviewed the medical summary of Baby Doe, as prepared by Dr. Griffin. I disagree with her/his conclusion that Baby Doe died because of prematurity resulting from an auto accident. In my expert opinion, Baby Doe died due to his having had a severe birth defect. As Dr. Griffin stated, Baby Doe had what is referred to as Trisomy 13 Syndrome. A syndrome is a collection of signs and symptoms, which together form an identifiable inherited abnormality. The term "trisomy" refers to the presence of a third or extra chromosome, rather than the normal two, in a chromosome pair.

Dr. John Langdon Down first described Trisomy 21 in 1866. However, it was not until 1959, when scientists were able to see chromosomes under a microscope, that Dr. Lejeune in Paris was able to identify the third chromosome as the cause of Trisomy 21. Trisomy 13 is a syndrome

caused by an extra 13th chromosome. It is also called Patau's Syndrome, after Dr. Klaus Patau, who first identified the extra chromosome and published a report describing Trisomy 13. Similarly, Trisomy 18 is caused by an extra 18th chromosome and is also called Edwards' Syndrome after Dr. John Edwards, the doctor who identified and described the syndrome.

Unlike other cells in the human body, when egg and sperm cells are produced, each pair of their chromosomes split in two and only one remains. This means that each ovum or egg should contain 23 of the mother's chromosomes, including the X sex chromosome, and 23 of the father's as well. A trisomy occurs when a parent's body produces sperm or eggs and a cell fails to divide properly, resulting in there being three identical chromosomes, instead of two. That cell will then contain 24 chromosomes, instead of 23, and at conception will create a single cell with 47, instead of the normal 46. To reiterate, Trisomy 18 means that there are three of the number 18 chromosome, Trisomy 13 means there are three of the number 13 chromosome, and so on. When it comes to chromosomes, more genetic material is not necessarily better. In the case of a trisomy, the extra genetic material from the extra chromosome affects every state of the baby's development and growth, including the placenta, the umbilical cord, and so on.

Trisomy 13 is a chromosomal anomaly. It occurs once in every 3000 live births. It is the third most common autosomal after Trisomy 21 and Trisomy 18. Although not as well known, both Trisomy 13 and 18 are as common as cystic fibrosis and more common than muscular dystrophy. Infants affected with Trisomy 13 tend to be small at birth. Spells of interrupted breathing, or apnea, in early infancy are frequent, and mental retardation is usually severe. Many affected children appear to be deaf. A moderately small head, or microcephaly, with sloping forehead and wide joints and openings between parietal bones are present in the body. Gross anatomic defects of the brain, especially holoprosencephaly, or failure of the forebrain to divide, are common.

In addition, the entire eye is usually small, and colomboma, a defect of the iris tissue, and retinal dysplasia, or faulty development of the retina, occur frequently. Cleft lip, cleft palate or both are present in most cases. In addition, the ears are abnormally shaped and unusually low-set. Other symptoms include polydactyl, or extra fingers and toes; flexed fingers; and, rounding of the sole of the foot, known as "rocker-bottom feet." There may also be loose folds of skin over the back of the

neck and abnormal genitalia. In addition to these terrible physical abnormalities, 45% of children with Trisomy 13 die within the first 30 days of their lives, and 70% of the survivors will die by their first birthday.

While it is true that there are prenatal tests that can be performed to detect chromosomal problems, it is ridiculous to suggest that Ms. Barry was in any way irresponsible because she did not elect to have amniocentesis or chorionic villus sampling, both of which are generally done at 10 or 12 weeks into the pregnancy. It is simply not reasonable for doctors to suggest genetic testing to everyone. And, although the procedures are considered safe, there is a 1 in 200 risk of complications that can lead to miscarriage. In a pregnant person as young as Ms. Barry, there was no reason to suspect that any abnormalities existed. She was a healthy young woman with no history of genetic disease in her family, although this fact may be irrelevant because Trisomy is not hereditary. In addition, the odds of women in their teens and 20s giving birth to children afflicted with Trisomy are one in several thousand, as compared with one in 20 for women older than 45.

In any case, had prenatal testing been performed and the Trisomy 13 diagnosed, it is likely that Ms. Barry's physician would have counseled her about the possibility of therapeutic termination. It is, after all, part of a physician's duty to identify a high risk pregnancy, advise the mother of the facts and alternatives, and to discuss intervention, if the mother so chooses. Since it was Ms. Barry's intention to give up her baby for adoption, it is unlikely that she would have elected to carry her baby to full-term had she been in possession of all the facts.

While I agree with the information contained in Dr. Griffin's medical records for Megan Barry and Baby Doe, I disagree completely with the conclusion about the cause of death. S/He concludes that Baby Doe died as a result of the auto accident, which s/he says caused Ms. Barry to experience placenta abruption, or the premature separation of the placenta from the wall of the uterus. While there is no question that Ms. Barry suffered from placenta abruption, there is absolutely no medical evidence that it was caused by the car accident. There are a variety of reasons that placenta abruption occurs, ranging from cigarette smoking and hypertension to alcohol or drug use and premature rupture of membranes. Only rarely, does any sort of trauma or injury to the mother result in placenta abruption.

In addition, the placenta abruption could easily have been present for some time. In the early stages, there may be no indication that it is occurring because it is extremely difficult to diagnose. Its symptoms are similar to several other conditions that happen during pregnancy. There are no clear diagnostic tests, and, in fact, it is usually diagnosed by determining what it is not, rather than what it is. Although placental abruption always causes some bleeding, the blood may not always be apparent. Sometimes the middle portion of the placenta pulls away from the uterine wall, leaving the outer margins and membranes attached. Blood can thus be trapped and concealed in a "pocket." At other times, the baby's head or another body part may be so tightly pressed against the wall of the uterus that the blood cannot make its way past.

Dr. Griffin saw the baby upon birth and should have reasonably concluded from the baby's physical abnormalities that a trisomy was, at a minimum, highly probable. Instead, s/he concluded that Ms. Barry's auto accident was the cause of the baby's death. Any competent physician would have drawn only a tentative conclusion about the cause of death, pending her/his receipt of the results of a chromosome analysis. In the laboratory a culture is made and the cells are gown for a few days. They are then collected and stained with a dye for inspection by a cytogeneticist. The chromosome analysis is highly-specialized and is, as a rule, 99.9% accurate. The results of the analysis would have demonstrated that Baby Doe was among that group of children who have very little chance of survival to begin with, due to their being born with severe and life-threatening birth defects.

The chromosome abnormality, when combined with the child being born two months early, was undoubtedly the cause of the baby's death. According to her/ his own medical records, Dr. Griffin decided to conduct an emergency c-section. Dr. Griffin's decision was based upon the fetus being in significant distress, at least according to the fetal monitoring. This being the case, the child had already experienced problems while still in the womb. Baby Doe would never have survived, regardless of whether or not Megan Barry had been involved in an automobile accident.

WITNESS ADDENDUM

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

Signed,

Taylor McGraw, M.D.
Taylor McGraw, M.D.

SIGNED AND SWORN to before me
this 4th day of October, 2011.

Tabitha Renee Soroto
Tabitha Renee Soroto, Notary Public
State of Nevada

My Commission Expires: July 31, 2015

LEGAL AUTHORITIES

from Statutory Law

Nevada Revised Statutes, 484C.130. Homicide by vehicle.

A. Homicide by vehicle is committed when a person who is under the influence of intoxicating liquor or a controlled substance who is driving or in actual physical control of a vehicle on or off the highways, or who is driving recklessly, proximately causes the death of another person.

B. Any person who commits homicide by vehicle is guilty of a Category A Felony pursuant to NRS 484C.440.

Nevada Revised Statutes 484C.110, 484C.130. Persons under the influence of intoxicating liquor or drugs.

A. It is unlawful for any person who is under the influence of intoxicating liquor to drive any vehicle within this state.

B. It is unlawful for any person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive any vehicle within this state.

C. It is unlawful for any person who has an alcohol concentration of .08 or more in his or her blood or breath, or who has an alcohol concentration .08 or more in his or her blood or breath within two hours after driving, to drive or be in actual physical control of any vehicle within this state.

Nevada Revised Statutes 484C.160: Implied consent to submit to chemical test.

A. Any person who operates a motor vehicle within this state shall be deemed to have given consent to an evidentiary test of his or her breath or blood, urine or other bodily substance to determine the drug or alcohol content of his or her blood or breath if a police officer has reasonable grounds to believe that the person tested was driving while under the influence of alcohol or controlled substance.

B. If the person to be tested is dead or unconscious, the officer shall direct that samples of blood from the person be tested.

Nevada Revised Statutes 484B.653: Reckless driving.

A. It is unlawful for a person to drive a vehicle in willful or wanton disregard of the safety of persons or property. A violation constitutes reckless driving.

EXHIBITS

Exhibit 1

ACCIDENT REPORT

NV STATE POLICE – SILVERADO/RYE **REPORTING DEPARTMENT**		**150016** STATE OF NEVADA UNIFORM ACCIDENT REPORT

DATE OF ACCIDENT	MILITARY TIME	CITY OCCURRED IN	COUNTY	SHEET
MO 05 DAY 28 YR 2011	23:44	RYE	RYE	1 OF 2 SHEETS

SUN	M	T	W	T	F	SAT	OCCURRED ON: (RT. # OR NAME)	AT INTERSECTION WITH
						X	I-29 btwn Silverado and Rye	

OTHER LOCATION		N S E W	COUNTY LINE - INTERSECTION	FOR USE BY ORIGINATOR
☐ FEET 2 ☑ MILES		☐ ☐ ☐ ☑		
MILEPOST 500 ☑ FEET LOCATION ☐ MILES		N S E W ☐ ☐ ☑ ☐	OF MILEPOST NO. 481	

ACCIDENT OCCURRED	ACCIDENT CLASSIFICATION
☑ On Roadway ☐ Off Roadway	☑ Overturned ☐ Other N-Col ☐ Pedestrian ☐ Other Vehicle ☐ Parked Veh. ☐ RR Train ☐ Pedalcyclist ☐ Animal ☐ Fixed Object

VEHICLE ONE

VEHICLE ONE HEADED	POSTED SPEED	SAFE SPEED
N S E W ☐ ☐ ☐ ☑ ON: I-29	65	65

DRIVER'S FULL NAME	ADDRESS	PHONE
Megan Barry	193 Park Lane, Silverado, NV	702-555-1122

DRIVER'S LICENSE NUMBER	STATE	CLASS	RESTRICTIONS	EXPIRES	DATE OF BIRTH
0539989412	NV	C	none	06-29-11	MO 06 DAY 29 YR. 93

Seat Position Code	SSN	OCCUPATION	Seat Belt	Helmet	Age	Seat	Injury
☐ LR ☑ LFf ☐ CR ☐ CF ☐ RR ☐ RF		Student					
Seat Position: LF	Occupant's Name: Megan Barry	Occupant's address: See above	Y	N/A	17	F	Y

Vehicle Yr.	Vehicle Make/Model	Color	Body Style	Removed to
2005	Zuisu Gazelle	Dk Blue	SUV	Bert's Towing & Auto Body

License Yr	State	License No	Vehicle No	Owner's Telephone
2010	NM	797DRG	930321D12005832	702-555-1122

Owner's Name	Owner's Address
Karen or Mark Barry	193 Park Lane, Silverado, NV

Insured by (Name of Company)	Policy No	Liability Insurance	VEHICLE DAMAGE
AMICA	63291	☑ Yes ☐ No	☑ Over $250 ☐ Under

VEHICLE TWO

VEHICLE TWO HEADED	POSTED SPEED	SAFE SPEED
N S E W ☐ ☐ ☐ ☐ ON: N/A		

DRIVER'S FULL NAME	ADDRESS	PHONE

DRIVER'S LICENSE NUMBER	STATE	TYPE	RESTRICTIONS	EXPIRES	DATE OF BIRTH
					MO___ DAY ___ YR. ____

Seat Position Code	SSN	OCCUPATION	Seat Belt	Helmet	Age	Seat	Injury
☐ LR ☐ LFf ☐ CR ☐ CF ☐ RR ☐ RF							
Seat Position	Occupant's Name	Occupant's address					

Vehicle Yr.	Vehicle Make/Model	Color	Body Style	Removed to	Removed by

License Yr	State	License No	Vehicle No	Owner's Telephone

Owner's Name	Owner's Address

Insured by (Name of Company)	Policy No	Liability Insurance	VEHICLE DAMAGE
		☐ Yes ☐ No	☑ Over $250 ☐ Under

LIGHTING (check one)	WEATHER (check one)	ROAD COND. (one for each)	ROAD SURFACE (one for each)	TRAFFIC CONTROL	ROAD CHARACTER	ROAD DESIGN (check one))

				(one for each)	(check one)	
	☐ Daylight ☐ Dawn ☐ Dusk ☐ Dark Lighted ☑ Dark – Not Lighted ☐ Other	☑ Clear ☐ Raining ☐ Snowing ☐ Fog ☐ Dust ☐ Wind ☐ Other	☑ Dry ☐ Wet ☐ Snow ☐ Ice ☐ Loose Material ☐ Other ☐ Pvmt Not Striped ☐ Pvmt Ctr Stripe ☑ Pvmt Ctr & Edge ☐ Unpaved	☐ No pass ☐ Stop ☐ Signal ☐ Yield ☐ RR Gate ☐ 4-Way ☐ Flashers ☑ None	☐ Straight ☑ Curved GRADE (check one) ☑ Level ☐ Dip ☐ Dip ☐ On grade	☐ 1-lane ☐ 2-lane ☐ 3-lane ☑ 4-lane ☐ Divider ☐ One-way ☐ Ramp ☑ Freeway ☐ Undeveloped ☐ Alley ☐ Other ☐ Constr. Zone

EVENT

APPARENT CONTRIBUTING FACTORS (check one for each)		WHAT THE DRIVERS WERE DOING (check one for each)	
☑ Excess speed 70-75 ☐ Too fast for conditions ☐ Failed to yield ☐ Posted stop sign ☐ Drove left of center ☐ Improper overtaking ☐ Disregarded traffic signal	☐ Followed too closely ☐ Made improper turn ☐ Driver inattention ☑ Under influence of alcohol ☑ Other improper driving * ☐ Pedestrian error ☐ Inadequate brakes *Swerving	☑ Going straight ☐ Passing ☐ Right turn ☐ Left turn ☐ U-turn ☐ Slowing ☐ Backing up	☐ Stopped-traffic ☐ Stopped-signal ☐ Start in traffic ☐ Start from park ☐ Parked ☐ Other

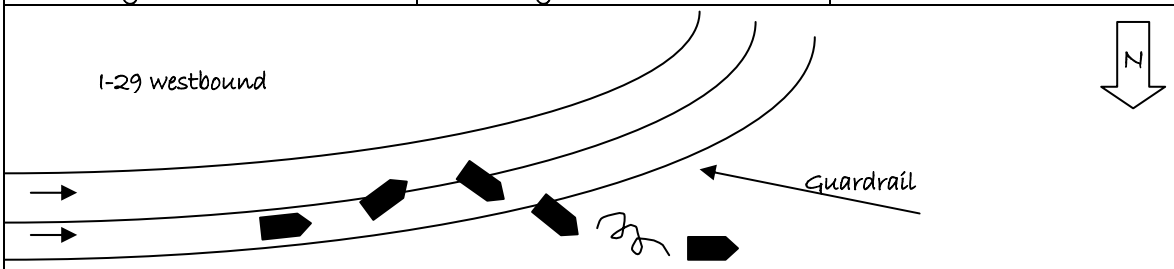
DRIVER

DRIVER OR PEDESTRIAN SOBRIETY (check one for each)	DRIVER OR PEDESTRIAN PHYSICAL CONDITION (check one for each)
☐ HBO ☑ Tested by Instrument ☐ Not drinking ☐ Sobriety unknown ☑ Field sobriety test ☐ Consumed medication ☑ Eye glaze Nystagmus	☐ Fatigue-asleep ☐ Eyesight impaired ☐ Hearing impaired ☐ Ill ☐ Medication ☐ Amputee ☐ No apparent defects ☐ Other physical impairment

PEDESTRIAN

PEDESTRIAN ACTION	
At intersection	Not at Intersection
☐ With signal ☐ Against signal ☐ No signal ☐ Diagonal	☐ From behind ☐ No crosswalk ☐ Crosswalk ☐ Walking with traffic ☐ Other ☐ Walking against traffic ☐ Pushing vehicle ☐ Working on vehicle ☐ Playing in road

Diagram drawn by	Measurements by	Leave blank
Lt. Marty Pacheco	Lt. Marty Pacheco	



Use Supplemental Diagram/Narrative Sheet for Additional Information

Narrative (Describe how accident occurred)

Driver was DUI – appeared to be speeding – driving recklessly - lost control at curve and swerved suddenly vehicle overturned and rolled at least twice

See supplemental Offense Report

Driver is white female – states is 7 months pregnant – cut on forehead – radioed for ambulance – taken to UHN

ACTION

VEH NO. 1	Name Megan Barry	Violation DUI	Citation No.
VEH NO.	Name	Violation	Citation No.
VEH NO.	Name	Violation	Citation No.

Time Notified	Time Arrived	Notified by	Supervisor at Scene	Checked by
Observed by self	11:44 PM	N/A	Self	

Officer's Signature	Rank	ID No.	District	Date of Report
Marty Pacheco	Lieutenant	6482	Nevada State Police	05-29-2011

Exhibit 2

SUPPLEMENTARY OFFENSE REPORT

	OFFENSE: DUI
	CASE NO: 150016
	OFFENSE LOCATION: I-29, Milepost Number 481
	VICTIM: N/A

SUBJECT:	Megan Barry	
DATE/TIME BREATH TEST ADMINISTERED:	05/29/2011, 12:14 AM	
BREATH TEST ADMINISTERD BY:	Lt. Marty Pacheco	
ARRESTING OFFICER:	Lt. Marty Pacheco	
OFFICER'S ASSIGNMENT:	I-29, Silverado to Rye	
DEATH OR SERIOUS INJURY:	YES:	NO: X

FIRST TEST:	.04 % ALCOHOL	TIME: 12:14 AM
SECOND TEST:	.07 % ALCOHOL	TIME: 12:29 AM
THIRD TEST:	.08 % ALCOHOL	TIME: 12:36 AM
REMARKS: Subject is pregnant. Transported via ambulance to UHN		

INVESTIGATING OFFICER: Lt. Marty Pacheco	6482 ID NO.	DATE: 05-29-11
REVIEWING OFFICER: Cpt. James T. Kirk	3197 ID NO.	DATE: 05-29-11

NOTE: This form is for additional narrative information only. Any additional persons, property, change of status, etc. must be submitted upon the appropriate NVSP ACOPS to update the computer file.

NVSP SOP (revised 02/09)

Exhibit 3

CURRICULUM VITAE OF DAKOTA GRIFFIN, MD

68 Tennessee, NE
Rye, Nevada 89901

EDUCATION:	BS, University of Nevada, Reno	1982 - 1986
	MD, University of Nevada School of Medicine	1989 – 1993
RESIDENCY:	University of Nevada College Hospital	1993 - 1995
FELLOWSHIP:	Emory University, School of Medicine	1995 – 1997
SPECIALTIES:	Pediatric and Emergency Room Medicine	
RESEARCH GRANTS:	General Clinic Research Centers Program	Division of Human Resources
	National Institutes of Health	Christopher Tyler Harrison Research Fund
PROFESSORSHIPS:	Adjunct, University of Nevada School of Medicine	Rye, Nevada
	Visiting, Emory University School of Medicine, Department of Pediatrics,	Atlanta, Georgia
	Adjunct, John F. Kennedy Institute for Handicapped Children	Baltimore, Maryland
HOSPITAL AFFILIATIONS:	University of Nevada College Hospital	Rye, Nevada
	Emory University Medical Center	Atlanta, Georgia
PROFESSIONAL AFFILIATIONS/ MEMBERSHPS:	American Association of Pediatric Physicians	
	National Institute for the Study of Chromosome Anomalies	
	National Coalition for Life and Peace	
	The Armchair Lobbyist	
	American Pro-Life Network	

Exhibit 4

RÉSUMÉ OF MADISON JAMES MD, PHD

1267 BALTIMORE AVENUE
PROVIDENCE, RHODE ISLAND 02886

EDUCATION

University of Maine, BS, Psychology, 1971 - 1974
University of Pittsburgh Medical School, MD, 1975 - 1979
University of Maine, Ph.D., Physics, 1987 - 1990

RESIDENCY

Tufts New England Medical Center, 1979 - 1982

FELLOWSHIP

University of Texas Health Sciences, 1984 - 1986

PROFESSORSHIPS

University of Pittsburgh, 1994 - 1996
Rutgers University, 1997
Insurance Institute, 2004 - 2007

AREAS OF EXPERTISE

Recognized Accident Reconstruction Expert, 2004 - present
- Provided testimony at 42 trials
- Qualified as an expert in 14 states

PUBLICATIONS

Causes of Accidents, *Automobile Consumer Utility Safety Dept., Inc.* (August 2005)
Alcohol-Related Accidents, *Automobile Consumer Utility Safety Dept., Inc.* (February 2006)
Are SUVs Safe?, *Automobile Consumer Utility Safety Dept., Inc.* (February 2006)

Exhibit 5

AUTOMOBILE CONSUMER UTILITY SAFETY DEPARTMENT REPORT

815 Collie Avenue Billings Montana
406.555.8978▪▪406.555.8979▪▪info@acusd.org▪▪acusd.org

ACUSD IS A PRIVATELY-OWNED CORPORATION
DEDICATED TO PERSONAL INJURY VICTIMS IN THE UNITED STATES

October 7, 2008 RE: Zuisu Gazelle

Dear Subscriber:

ACUSD has conducted an in-depth study of the Gazelle at the request of several attorneys who represent those injured while riding in the Gazelle. The study took place during the summer of 2008, at our test site in Billings, Montana.

PARTIAL LIST OF TESTS ADMINISTERED

1. Navigating sharp curves at speeds of 40 MPH.
2. Proceeding in a straight line for 1000 yards while traveling into a controlled wind of 50 MPH.
3. Traveling in a straight line while subjected to an air current of 4 MPH, striking the Gazelle from the left side and then the right side.
4. Navigating curves at speeds in excess of 60 MPH wile subject to air currents from either side of 50 PMH.

FINDINGS

1. The Gazelle has an extremely high center of gravity and a narrow wheel base. As a result, it is susceptible to tipping when making sharp turns of 60 degrees or more at speeds of 40 MPH or above.
2. The Gazelle cannot safely maintain speeds above 55 MPH if traveling into winds exceeding 50 MPH. The same problem occurs in climbing a steep hill. The vehicle is subject to drastic and sudden slowdowns.
3. The Gazelle tends to tip when struck from either side by wind in excess of 50 MPH. This is exacerbated when rounding a curve. Our tests show that the vehicle could tip on its side if struck by a gust of wind of 52 MPH while at the apex of the curve.

CONCLUSION

The Gazelle is unsafe. While it can be driven safely at speeds under 45 MPH, it should be not used for general highway transportation. ACUSD strongly recommends that the Zuisu Gazelle not be considered for purchase, because it is unreasonably prone to rollovers, due to its high center for gravity and narrow wheel base. We believe the Gazelle should be recalled and removed from American highways.

(THE FULL REPORT WITH ALL TEST DATA IS AVAILABLE FROM ACUSD AT A CHARGE OF $1,500 PER COPY.)

Exhibit 6

RÉSUMÉ OF TAYLOR MCGRAW, MD

4200 University Avenue
Rye, Nevada 89901

EDUCATION
1986-1990: University of Pennsylvania, BS
1991-1995: University of Pennsylvania School of Medicine, MD

RESIDENCY
1995 – 1997: Hartford Medical Center and Hartford General Hospital

FELLOWSHIP
1997 – 1999: Boston Children's Hospital

AFFILIATIONS
2000 – 2005: Children's Hospital National Medical Center, Washington, DC
2005 – Present: University Hospital, Rye, Nevada

SPECIALIZATIONS
Neonatology
Pediatrics
Pediatric Neurology

PUBLICATIONS
Joint Assessment of Pre-Natal and Peri-Natal Factors Associated With Chromosomal Disorders, *Journal of Neurological Disorders,* 2006

PROFESSIONAL AFFILIATIONS AND MEMBERSHIPS
American Medical Association
American Medical Society
Nevada Medical Society
Center for Reproductive Law and Policy
Reproductive Rights Network
National Abortion Rights Action League

Exhibit 7

EXCERPT OF STUDY

From: PEDIATRICS, Official Journal of the American Academy of Pediatrics, Vol. 111 No. 4 April 2003, pp. 777-784.

Objective. Although trisomy 13 and trisomy 18 are generally considered to be lethal, long-term survival of patients has been reported. We sought to evaluate mortality in people with trisomy 13 or 18 using 2 population-based strategies.

Methods. In the first analysis, infants who had trisomy 13 or 18 and were born during 1968–1999 were identified using the Metropolitan Atlanta Congenital Defects Program, a population-based birth defects surveillance system. Dates of death were documented using hospital records, Georgia vital records, and the National Death Index. In the second analysis, we used the Multiple-Cause Mortality Files compiled from US death certificates from 1979 through 1997. Using these 2 analyses, we examined median survival time or median age at death, survival beyond 1 year of age, and factors associated with longer survival.

Results. Using Metropolitan Atlanta Congenital Defects Program, we identified 70 liveborn infants with trisomy 13 and 114 liveborn infants with trisomy 18. Median survival time was 7 days (95% confidence interval [CI]: 3–15) for people with trisomy 13 and 14.5 days (95% CI: 8–28) for people with trisomy 18. For each condition, 91% of infants died within the first year. Neither race nor gender affected survival for trisomy 13, but for trisomy 18, girls and infants of races other than white seemed to survive longer. The presence of a heart defect did not seem to affect survival for either condition. Using MCMF, we identified 5515 people with trisomy 13 and 8750 people with trisomy 18 listed on their death certificates. Median ages at death for people with trisomy 13 and trisomy 18 both were 10 days; 5.6% of people with trisomy 13 and 5.6% of people with trisomy 18 died at age 1 year or greater. Race and gender seemed to affect survival in both conditions, with girls and blacks showing higher median ages at death.

Conclusions. Although survival is greatly affected by trisomy 13 and trisomy 18, 5% to 10% of people with these conditions survive beyond the first year of life. These population-based data are useful to clinicians who care for patients with these trisomies or counsel families with infants or fetuses who have a diagnosis of trisomy 13 or 18.