

# **2013-2014 Nevada High School Mock Trial Competition**

## **State of Nevada vs. Dustin Beaver**

**Co-Sponsored by:  
The School Districts of Nevada  
And  
Law Related Education**



The Nevada Mock Trial Board thanks the New Jersey State Bar Foundation Mock Trial Program for permission to utilize the case, which was edited for Nevada by Andrew Craner and David F. Sarnowski. 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
Detective Eric(a) Evans	Alex Alvaro
Lee Lincoln	Dr. Chris Carson
Dr. Shelly Storm	Rene(e) Robbins
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	Blood Alcohol Curve for Dustin Beaver- Prosecution
2	Blood Alcohol Curve for Dustin Beaver- Defense
3	Relationship between Alcohol Intoxication and Behavior Chart
4	<i>Drugs, the Brain and Behavior; The Pharmacology of Abuse and Dependence</i>
5	Map of St. Croix River between Prescott and Railroad Bridge

## STIPULATIONS

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 the witnesses and all physical evidence and exhibits were constitutionally obtained.
4. Defendant Dustin Beaver has elected not to testify in his defense. Consequently, his role will not be portrayed at trial because he is not a witness in the case. Neither the identity nor gender of Dustin Beaver is an issue in this case and no team may seat someone portraying Dustin Beaver at counsel table. Nonetheless, Dustin Beaver is stipulated to be a male for purposes of having other witnesses refer to Dustin.
5. The blood sample taken from Dustin Beaver at the hospital was properly drawn, preserved, and analyzed.
6. The results of the autopsy are stipulated. Detective Evans, who was present at the autopsy, may testify about the autopsy results.
7. Dustin Beaver has a Fifth Amendment privilege against self-incrimination. No adverse inference may be drawn from Dustin's declination to testify, and no one may comment on Dustin's silence or on Dustin's failure to testify.
8. All witnesses are aware of the Point Douglas Beach Ordinance and may testify to its contents. The attorneys may refer to the Ordinance at any time during the trial if they choose to do so.
9. 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 Mock Trial Rule of Evidence 702 to allow the witness to testify as an expert witness.
10. Students should feel free to address the scoring judges as though they are the jury.

# **JURY INSTRUCTIONS**

## **[Not to be read in open court]**

Ladies and Gentleman of the Jury:

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

Count One of the indictment alleges that on May 19, 2013 the Defendant, Dustin Beaver, committed aggravated manslaughter. In order to establish the crime of aggravated manslaughter, the State must prove to you beyond a reasonable doubt that on May 19, 2013, Dustin Beaver recklessly caused the death of Freddy Ferris under circumstances manifesting extreme indifference to human life. In order for you to find the Defendant guilty of aggravated manslaughter, the State is required to prove each of the following elements beyond a reasonable doubt:

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

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

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

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

indifference to human life. On the other hand, if you find that Defendant Dustin Beaver's conduct resulted in only a possibility of death, then you must acquit the Defendant of aggravated manslaughter and consider the crime of death by vehicular homicide, which I will explain to you shortly.

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

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

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

Count Two of the indictment alleges that on May 19, 2013, the defendant committed the crime of death by vehicular homicide. A person is guilty of death by vehicular homicide when that person causes the death of another by operating the vehicle or vessel, in this case a boat, recklessly. The elements of death by auto or vessel in this case are:

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

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

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

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

In this case there has been testimony that Dustin Beaver was drinking alcohol, and that his/her blood alcohol concentration was 0.08% or higher. If you find that the State has proven Dustin Beaver was the operator of the boat that struck Freddy Ferris, and that Dustin Beaver's blood alcohol concentration, or BAC, was .08% or more at the time, then you are permitted to infer from the proven facts that Dustin Beaver was operating the boat recklessly. However, while you are permitted to accept the inference that Dustin Beaver was operating the boat recklessly, you may also reject it. If you find that there was credible evidence that contradicts or refutes the inference, then you should not conclude from Defendant Dustin Beaver's BAC alone that s/he operated the boat

recklessly at the time of Freddy Ferris's death. Of course, if you do not find from the evidence that Defendant Dustin Beaver's BAC was 0.08% or above at the time of Freddy Ferris's death, then there is no inference.

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

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

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

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

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

#### **PERTINENT STATUTES**

##### **200.010 General requirements of culpability.**

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

**200.015 Causal relationship between conduct and result.**

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

**200.100 Criminal Homicide.**

1. A person is guilty of criminal homicide if s/he purposely, knowingly, or recklessly causes the death of another human being.
2. Criminal homicide is murder, manslaughter, death by auto, or death by chocolate.

**200.140 Manslaughter.**

Criminal homicide constitutes aggravated manslaughter when the actor recklessly causes death under circumstances manifesting extreme indifference to human life.

**200.160 Death by vehicular homicide.**

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

**POINT DOUGLAS BEACH ORDINANCE 15-88**

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

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

**The preceding instructions and statutes are intended to provide students with a general background into the general principles of law. They are provided solely for purposes of this Mock Trial Problem and should not be utilized or relied upon for any other purpose. This case utilizes common law instead of the Nevada Revised Statutes (NRS).**

**NATIONAL HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP  
FEDERAL RULES OF EVIDENCE  
(AMENDED 8/22/2012)**

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

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence and its numbering system. Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure. Text in italics or underlined represent simplified or modified language.

Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate.

The Mock Trial Rules of Competition and these National High School Mock Trial Rules of Evidence govern the National High School Mock Trial Championship.

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**ARTICLE I. GENERAL PROVISIONS**

**Rule 101. Scope**

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

**Rule 102. Purpose and Construction**

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

**ARTICLE II. JUDICIAL NOTICE**

**Rule 201. Judicial Notice of Adjudicative Facts**

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

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



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

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

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

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

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

### **ARTICLE IV. RELEVANCY AND ITS LIMITS**

#### **Rule 401. Test for Relevant Evidence**

Evidence is relevant if:

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

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

#### **Rule 402. General Admissibility of Relevant Evidence**

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

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

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

#### **Rule 404. Character Evidence; Crimes or Other Acts**

(a) Character Evidence.

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

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

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

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

(i) offer evidence to rebut it; and

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

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

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

(b) Crimes, Wrongs, or Other Acts.

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

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

**Rule 405. Methods of Proving Character**

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

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

**Rule 406. Habit, Routine Practice**

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

**Rule 407. Subsequent Remedial Measures**

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or

- a need for a warning or instruction.

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

**Rule 408. Compromise Offers and Negotiations**

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

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

(2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

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

**Rule 409. Offers to Pay Medical And ~~or~~ Similar Expenses**

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

**Rule 410. Pleas, Plea Discussions, and Related Statements**

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

(1) a guilty plea that was later withdrawn;

(2) a nolo contendere plea;

(3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or

(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

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

(1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or

(2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

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

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

**ARTICLE V. PRIVILEGES**

**Rule 501. General Rule**

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

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

**ARTICLE VI. WITNESSES**

**Rule 601. General Rule of Competency**

Every person is competent to be a witness.

**Rule 602. Need for Personal Knowledge**

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

**Rule 607. Who May Impeach A Witness**

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

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

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

(b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support

the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

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

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

#### **Rule 609. Impeachment by Evidence of a Criminal Conviction**

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

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

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

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

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

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

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

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

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

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

- (1) it is offered in a criminal case;
- (2) the adjudication was of a witness other than the defendant;

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

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

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

#### **Rule 610. Religious Beliefs or Opinions**

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

#### **Rule 611. Mode and Order of Interrogation and Presentation**

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

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

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

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

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

(d) **Redirect/Re-cross.** After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney or re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

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

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

If a written statement is used to refresh the memory of a witness either while testifying or before testifying, the Court shall determine that the adverse party is entitled to have the writing produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions which relate to the testimony of the witness.

### **Rule 613. Witness's Prior Statement**

(a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

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

## **ARTICLE VII. OPINIONS AND EXPERT TESTIMONY**

### **Rule 701. Opinion Testimony by Lay Witness**

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

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

### **Rule 702. Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

### **Rule 703. Bases of an Expert's Opinion Testimony ~~by Experts~~**

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

### **Rule 704. Opinion on Ultimate Issue**

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

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

### **Rule 705. Disclosing the Facts or Data Underlying An Expert’s Opinion**

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

## **ARTICLE VIII. HEARSAY**

### **Rule 801. Definitions**

The following definitions apply under this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

### **Rule 802. Hearsay Rule**

Hearsay is not admissible except as provided by these Rules.

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

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

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

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

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

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

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

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

(5) **Recorded Recollection.** A record that:

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

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

(C) accurately reflects the witness's knowledge.

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

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

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

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

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

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

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

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

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

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

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

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

(A) it sets out:

(i) the office's activities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Rule 804. Hearsay Exceptions; Declarant Unavailable**

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

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

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

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

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

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

(1) Former Testimony. Testimony that:

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

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

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

(3) Statement Against Interest. A statement that:

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

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

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

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

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

(5) Not Applicable

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

**Rule 805. Hearsay within Hearsay**

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

**ARTICLE IX. AUTHENTICATION AND IDENTIFICATION – Not Applicable**

**ARTICLE X. CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS – Not Applicable**

**ARTICLE XI. OTHER**

**Rule 1103. Title**

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

Host states have the discretion to eliminate rules that do not pertain to the trial at hand.

*Last Revision:08/22/2012*

## **NEVADA HIGH SCHOOL MOCK TRIAL COMPETITION RULES**

The Nevada High School Mock Trial Competitions are governed by these Rules of Competition, the Rules of Procedure and the National High School Mock Trial Championship Federal Rules of Evidence. Any clarification of rules or case materials will be issued in writing to all participating teams no less than two weeks prior to the tournament. The trial coordinator, upon the advice and consent of the Nevada High School Mock Trial Committee will distribute to each team such clarification. No participant should alter the language of these rules without the approval of the Nevada High School Mock Trial Board. The Rules of Evidence may be reviewed for relevance and rules may be added or deleted, so long as the language inserted is the original text contained in the Federal Rules of Evidence.

All teams are responsible for the conduct of persons associated with their teams throughout any mock trial event. The Mock Trial program is intended to be solely an extracurricular activity. The current year's mock trial case materials may not be used in any class offered, or comprise any part of the curriculum of any class, at any school during the applicable year in which these materials are to be used in competition.

## **NEVADA STATE RULES**

### **I. Rules of the Competition**

#### **A. The Problem**

- Rule 1. Rules
- Rule 2. The Problem
- Rule 3. Witness Bound by Statements
- Rule 4. Unfair Extrapolation
- Rule 5. Gender of Witnesses
- Rule 6. Voir Dire

#### **B. The Trial**

- Rule 7. Team Eligibility 2.
- Rule 8. Team Composition
- Rule 9. Team Presentation/Participation
- Rule 9.1. Emergencies
- Rule 10. Team Duties
- Rule 11. Swearing of Witnesses
- Rule 12. Trial Sequence and Time Limits
- Rule 13. Time Keeping
- Rule 14. Time Extensions and Scoring
- Rule 15. Prohibited Motions
- Rule 16. Exclusion of Witnesses
- Rule 17. Bench Conferences
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#### **C. Judging**

- Rule 22. Decisions
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- Rule 26. Team Advancement
- Rule 27. Power Matching/Seeding
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- Rule 29. Effect of Bye/Default

**D. Dispute Settlement**

- Rule 30. Reporting a Rules Violation/Inside the Bar
- Rule 31. Dispute Resolution Procedures
- Rule 32. Effect of Violation on Score
- Rule 33. Reporting a Rules Violation/Outside the Bar

**II. Rules of Procedure**

**A. Before the Trial**

- Rule 34. Team Roster
- Rule 34A. Coaches Meeting
- Rule 34B. Tabulation Room
- Rule 35. Stipulations
- Rule 36. The Record

**B. Beginning the Trial**

- Rule 37. Jury Trial
- Rule 38. Standing During the Trial
- Rule 39. Student Work Product
- Rule 39A. Objections During Opening Statement/Closing Argument

**C. Presenting Evidence**

- Rule 40. Argumentative Questions
- Rule 40A. Leading Questions
- Rule 41. Lack of Proper Predicate/Foundation
- Rule 42. Procedure of Introduction of Exhibits
- Rule 43. Use of Notes
- Rule 44. Redirect/Re-cross

**D. Closing Arguments**

- Rule 45. Scope of Closing Arguments

**E. Critique**

- Rule 46. Critique



## **I. RULES OF THE COMPETITION**

### **A. THE PROBLEM**

#### **Rule 1. Rules**

All trials will be governed by the Rules of Competition, the Rules of Procedure and the National High School Mock Trial Championship Federal Rules of Evidence. Questions or interpretations of these rules are within the discretion of the Nevada High School Mock Trial Committee whose decision is final.

#### **Rule 2. The Problem**

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

#### **Rule 3. Witness Bound by Statements**

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

If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 4, as being outside the scope of the problem.

If, in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony. A witness is not bound by the facts contained in other witness statements.

#### **Rule 4. Unfair Extrapolation**

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral. Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation.

If a witness is asked information not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case.

Attorneys for the opposing team may refer to Rule 4 in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the statement of facts."

Possible rulings by a judge include:

- a) No extrapolation has occurred;
- b) An unfair extrapolation has occurred;
- c) The extrapolation was fair; or
- d) Ruling is taken under advisement.

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

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

**Rule 5. Gender of Witnesses**

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

**Rule 6. Voir Dire**

Voir dire examination of a witness is not permitted.

**B. THE TRIAL**

**Rule 7. Team Eligibility**

Teams must be comprised of students who attend the high school for which they compete. Each school may enter up to three teams in the district competition. The top three teams from each district competition will advance to the state competition no matter what school they represent. All teams from a school will be held to the same requirements as apply to all other teams.

All schools north of Tonopah are assigned to the northern district competition. All schools in Tonopah and all schools south of Tonopah are assigned to the southern district competition.

Each team competing in the State competition must be comprised of students who were on the official team roster for that team at the district competition. Each qualifying team from the district tournaments must notify the State coordinator within 72 hours after the completion of the district competition whether that team will attend the State competition. If a team is unable to fulfill its State earned slot, the State Coordinator will designate a replacement team which will be the team from the applicable district competition with the next best record.

Schools or regions may not enter an “all-star” team. The Nevada High School Mock Trial Board shall determine what an “all-star” team is. The Board’s decision will be final.

**Rule 8. Team Composition**

The entire team shall consist of 6 to 8 members. The team members shall be assigned to roles representing the prosecution/plaintiff and defense/defendant sides. Only six members may participate in any given round. (See Rule 10 for further explanation referring to team participation.)

A team may provide a student or adult timekeeper who shall not be a coach for a team.

At no time may any team for any reason substitute any person in place of any official team member. The Team Roster will become official at the time of on-site registration at the district tournaments.

The District coordinators will send the official rosters to the State Coordinator within 72 hours of the tournament.

**Rule 9. Team Presentation/Participation**

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

three students as attorneys and three students as witnesses.

All team members including alternates listed on the official entry must participate in at least one preliminary round per tournament at the district and state competitions.

### **Rule 9.1. Emergencies**

In the event of an emergency that arises during a district or State competition that would cause a team to participate with less than six members, the team must notify the Nevada High School Mock Trial Board at the State Tournament (or the Tournament Director at a local competition) as soon as is reasonably practical. If the Board, in its sole discretion, agrees that an emergency exists, the Board shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than six members. A penalty may be assessed.

A forfeiting team will receive a loss and points totaling the average number of ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and an average number of ballots and points received by the winning teams in that round.

Final determination of emergency, forfeiture, reduction of points, or advancement, will be made by the Nevada High School Mock Trial Board (or the Tournament Director at local competitions).

### **Rule 10. Team Duties**

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross-examination; in addition, one will present the opening statement and another will present closing argument (which includes any rebuttal argument by the prosecution/plaintiff team). The eight attorney duties for each team will be divided as follows:

1. Opening Statement, (One attorney from each team)
2. Direct Examination of Witness #1 (side one)
3. Direct Examination of Witness #2 (side one)
4. Direct Examination of Witness #3 (side one)
5. Cross Examination of Witness #1 (side two)
6. Cross Examination of Witness #2 (side two)
7. Cross Examination of Witness #3 (side two)
8. Closing Argument - One attorney from each team (including any Rebuttal by the prosecution/plaintiff team)

Each team at the beginning of the trial must give an Opening Statement.

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

Each team must call three witnesses. Witnesses must be called only by their own team and examined by both sides. Witnesses may not be recalled by either team.

Violation of Speaker Duties distribution (such as one attorney giving both the opening and closing) will be considered a Major Rules Violation and carry a 10-point team deduction.

A minor violation of this rule would be the wrong attorney making objections during a witness's testimony.

### **Rule 11. Swearing of Witnesses**

The following oath may be used before questioning begins:

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

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate all witnesses are assumed to be sworn, or the above oath will be conducted by (a) the presiding judge, (b) a bailiff, provided by the tournament host, or (c) the examining attorney. The tournament host (or the Nevada High School Mock Trial Committee will indicate which method will be used during all rounds of the tournament. Witnesses may stand or sit during the oath.

### **Rule 12. Trial Sequence and Time Limits**

The trial sequence and time limits are as follows:

1. Opening Statement (3 minutes per side)
2. Direct and Redirect (optional) Examination (20 minutes per side)
3. Cross and Re-cross (optional) Examination (15 minutes per side)
4. Closing Argument (4 minutes per side)

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

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

### **Rule 13. Timekeeping**

Time limits are mandatory and will be enforced. Each team is permitted to have its own timekeeper and timekeeping aids; however, an official adult timekeeper may be assigned to each trial.

Each team may be asked to bring an official timekeeper to the competition that will be assigned to neutral rounds during the entire time a team remains in the competition. Teams may be asked to bring a timekeeper who will sit with the opponent team's timekeeper and, together, they will be the official timekeepers.

Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

Time does not stop for introduction of exhibits.

### **Rule 14. Time Extensions and Scoring**

There will be a 10 second grace period for any timed area as indicated in Rule 12. Time violations in each timed area will result in a mandatory deduction of points as

follows:

- a. less than 30 seconds 1 point
- b. 31 seconds to 1 minute 2 points
- c. 1 minute to 2 minutes 3 points
- d. 2 minutes to 3 minutes 4 points
- e. Over 3 minutes 10 points

The official timekeeper will notify the scoring judges of the length of the time violation. The time violation deduction should be marked clearly on the time sheet so there is no question that the mandatory deductions need to be taken. The tabulation room will mark the deduction clearly on the score sheets. The score will be official only after the deductions are taken.

**Rule 15. Prohibited Motions**

No motions may be made except that in the event of an emergency, a motion for a recess may be made. Should a recess be called, teams are not to communicate regarding the trial with any observers, coaches, or instructors.

**Rule 16. Exclusion of Witnesses**

Teams may not invoke the rule of exclusion.

**Rule 17. Request for Bench Conferences**

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

**Rule 18. Supplemental Material/Illustrative Aids**

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials.

No team is permitted to present judges or opponent team members with binders, folders, packets, listings, or similar compilations containing materials duplicating ballots, listings, case materials, rules, etc.

**Rule 19. Trial Communications**

Non-team members, alternate team members, teachers, and attorney coaches must remain in the spectator section of the courtroom. Only attorneys and the defendant participating in this round may sit at the counsel tables.

Instructors, alternates and observers shall not talk to, signal, communicate with, or coach their teams during the trial. This rule remains in force during any recess time, which may occur during a round. Only student attorneys and the defendant may, among themselves, communicate during the trial. No disruptive communication is allowed. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

Any violation of this rule in any round may result in a point deduction up to 10 points and a possible loss in the round. The point deduction will be determined by the tournament board based on the severity of the violation.

**Rule 20. Viewing a Trial**

Any team has the right to refuse to allow spectators to view their trial presentation at any time, for any reason.

**Rule 21. Videotaping /Photography**

Any team has the option to refuse participation in videotaping, tape-recording, still photography, or media coverage. Videotaping or photography is done totally at the discretion of the tournament host.

**C. JUDGING**

**Rule 22. Decisions**

All decisions of the judging panel are FINAL subject to score miscalculations, rules violations outside the bar, and overtime penalties not assessed in the round.

The final round of competition at the state tournament will determine the state championship. The winner of the final round will be the state champion and represent Nevada at the national competition. If for any reason the championship team cannot compete at the national tournament, the runner up team from the final round will compete as the state representative.

**Rule 23. Composition of Panel**

The judging panel for the district and state panels should consist of at least three individuals. There must be an odd number of scoring judges with three being the preferred number. The composition of the judging panel and the role of the presiding judge will be at the discretion of the Nevada High School Mock Trial Committee, with the same format used throughout the competition, as follows: (options are listed in the preferred order)

1. One presiding judge and three attorney scoring judges (scoring judges only complete score sheets); or
2. One presiding judge and two attorney scoring judges (all three of whom complete score sheets); or
3. One presiding judge and two attorney scoring judges and one neutral attorney coach or neutral educator (with mock trial experience) scoring judge; or
4. One presiding judge, one attorney, one neutral educator with mock trial experience (all three complete score sheets).
5. If a panel of three scoring judges cannot be obtained then one scoring judge will be used.

The championship round may have a larger panel at the discretion of the Nevada High School Mock Trial Committee however; the panel must consist of an odd number of scoring judges.

All presiding and scoring judges receive the mock trial manual, the case, and orientation materials

**Rule 24. Score Sheets/Ballots**

The term “ballot” will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term “score sheet” is used in reference to

the form on which speaker and team points are recorded. Score sheets are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of the presiding judge. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate on any special awards, such as Outstanding Attorney/Witness, the judging panel shall not deliberate on individual scores.

### **Rules 25. Completion of Score Sheets**

Each scoring judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each scoring judge shall total the sum of each team's individual points, place the sum in the Column Totals box, and enter the team ("P" for the prosecution and "D" for the defense) with the higher total number of points in the Tiebreaker Box. **NO TIE IS ALLOWED IN THE COLUMN TOTALS BOXES.**

In the event of a mathematical error in tabulation by one or more of the scoring judges which, when corrected, results in a tie in the Column Totals boxes, the Tiebreaker Box shall determine the award of the ballot.

It is strongly suggested that the mathematical computations be checked by the Tabulation Room when the score sheet is turned in and while the judge is still present.

### **Rule 26. Team Advancement**

Teams will be ranked by the following criteria in the order listed:

1. Win/Loss Record - equals the number of rounds won or lost by a team;
2. Total Number of Ballots - equals the number of scoring judges' votes a team earned in preceding rounds; if an equal number of scoring judges were in each preceding round; if not, this option will be void.
3. Total Number of Points Accumulated in all rounds;
  - A. If an equal number of judges is used in all rounds; or
  - B. All scores will be averaged if the judging pool is limited and restricts equal number of judges in each round.
4. Point Spread Against Opponents - The point spread is the difference between the total points earned by the team whose tie is broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

### **Rule 27. Power Matching/Seeding (listed in order of preference)**

#### 1. State Competition:

A random method of selection will determine opponents in the first two rounds in a three or four round preliminary tournament. The third round and all rounds thereafter will be power matched. A power matching system is included. The two schools emerging with the strongest record from the three or four rounds will advance to the final Championship round. The first place team will be determined by the ballots from the championship round only. Sides will be determined by a flip of the coin unless the teams have met previously. If the teams have met in the tournament, the sides will be locked on the opposite sides.

Procedure for random draw:

1. Rounds one and two are preset making sure teams compete on both the prosecution and defense side of the case.

2. Example follows:

Round I Round II

P D	P D
1 2	4 5
3 4	6 7
5 6	8 1
7 8	2 3

3. All teams will draw the team number prior to the start of the competition.

4. All teams will be treated as separate entities no matter the school affiliation.

2. District Competitions:

Option A: The District Competition may follow the state competition schedule with or without the final round.

Option B: A random pairing will determine the first round. Power matching will occur in the next round with a limited number of teams advancing beyond the second round. (i.e. four teams advancing out of an eight team pool.) A power match system will determine opponents for the second round. A discussion of the power match system is included. The teams will compete in a single elimination format after the second round during all elimination rounds.

Option C: A random pairing will determine the first round. Power matching will occur in subsequent rounds. The top three teams will be determined in accordance with the process described in Rule 26 for team advancement.

3. Invitational:

A tournament director may determine how to handle pairings at an invitational tournament.

4. Random Draw should provide for the following:

1. If possible, a school should not have to meet themselves.
2. A team will not meet the same team twice during random draw.

**Power Matching will provide that:**

1. The teams in the first round of a tournament will be randomly matched.
2. All teams are guaranteed to present each side of the case at least once notwithstanding any other provision.
3. Brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order:

A) (1) win/loss record; (2) ballots; (3) total points; then (4) point spread. The team with the highest number of ballots in the bracket or sub-bracket will be matched with the team with the lowest number of ballots in the bracket or sub-bracket; the next highest with the next lowest, and so on until all teams are paired.

4. If there are an odd number of teams in a bracket, the top team in the higher bracket will be matched with the top team from the next lower bracket, therefore creating a new bracket.



5. Teams should not meet the same opponent twice if possible; however, if it is necessary in a bracket, they shall be on opposite sides from the first meeting.
6. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Bracket integrity in power matching will supersede alternate side presentation.
7. All teams will be treated as separate entities no matter the school affiliation except that if more than one team has the identical competition standing as another team under the factors described in 3 above, the bracket will provide that two teams from the same school do not have to meet each other in the next round.

#### **Rule 28. Merit Decisions**

Judges will not make a ruling on the legal merits of the trial. Judges will not inform the students of score sheets results.

#### **Rule 29. Effect of Bye/Default**

A "Bye" becomes necessary when an odd number of teams are present for a tournament. For the purpose of advancement and seeding, when a team draws a bye or wins by default, that team for that round will be given a win and the number of ballots and points equal to the average of all winning teams' ballots and points for that same round. The tournament director may, if time and space allows, arrange a "bye round" to allow teams drawing a bye to compete against one another in order to earn a true score.

1. Byes will be determined by random draw.
2. No team will receive more than one bye in any tournament if possible.
3. Byes should be alternated between schools when possible.
4. The tournament host or the District or State committee has the discretion on how to handle a bye in all rounds of the tournament.

### **D. DISPUTE SETTLEMENT**

#### **Rule 30. Reporting a Rules Violation/Inside the Bar**

Disputes, which (a) involve students competing in a competition round and (b) occur within the bar, must be filed immediately following the conclusion of that trial round. Disputes must be brought to the attention of the presiding judge at the conclusion of the trial.

If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The scoring panel will be excused from the courtroom, and the presiding judge will provide the student attorney with a dispute form, on which the student will record in writing the nature of the dispute. The student may communicate with student attorneys and/or student witnesses before lodging the notice of dispute or in preparing the form.

At no time in this process may team coaches, attorney or educator, communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure.

#### **Rule 31. Dispute Resolution Procedure**

The presiding judge will review the written dispute and determine whether the dispute

should be heard or denied. If the dispute is denied, the judge will record the reasons for the denial, announce her/his decision to the court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the judge feels the ground for the dispute merits a hearing, the form will be shown to opposing student attorneys for their written response, allowing a 5 minute preparation time, the completed response form shall be transmitted to the presiding judge. The presiding judge will ask each team to designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for the presentation. The spokespersons may be questioned by the presiding judge. At no time in this process may team coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. The decision will be recorded in writing on the dispute form, with no further announcement.

### **Rule 32. Effect of Violation on Score**

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

### **Rule 33. Reporting of Rules Violation/Outside the Bar**

Disputes, which (a) involve people other than student team members and (b) occur outside the bar only during a trial round, may be brought by the teacher or attorney/coaches exclusively. Such disputes must be made promptly to a trial coordinator or a member of the Nevada High School Mock Trial Committee, who will ask the complaining party to complete a dispute form. The form will be taken to the tournament communication center (designated by the tournament host), whereupon a dispute resolution panel will (a) notify all pertinent parties; (b) allow time for a response, if appropriate; (c) conduct a hearing; and (d) rule on the charge. The dispute resolution panel may notify the judge panel of the affected courtroom of the ruling on the charge.

The dispute resolution panel will be composed of three members. The panel should include a designee from the host director, a designee from the Nevada Board, and a representative of the legal community. The panel may include any other competition officials recruited by the designees to assist in the hearing. A ruling from the Dispute Resolution Panel will only impact the round in question.

## **II. RULES OF PROCEDURE**

### **A. Before the Trial**

#### **Rule 34. Team Roster**

Copies of the Official Team Roster Form must be completed and duplicated by each team prior to arrival at the competition site. Teams must be identified by the code assigned at registration. No information identifying team's origin should appear on the form. Before beginning a trial, the teams must exchange copies of the Team Roster Form. Witness lists should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster Form should also

be made available to the judging panel and presiding judge before each round.

**Rule 34A. Coaches' Meeting**

At the beginning of each competition, a coaches' meeting should be held to make sure attorney and teacher coaches are familiar with the way the tournament will be run and how to access the tab room if a concern arises.

**Rule 34B. Tab Room**

The tab room will be open to all coaches during a tournament. Consideration should be given to tab room staff at all times to facilitate the tournament running on time.

**Rule 35. Stipulations**

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

**Rule 36. The Record**

Stipulations, the indictment, or the charge to the jury will not be read into the record. A copy of the stipulations will not be given to the judges by the teams.

**B. Beginning the Trial**

**Rule 37. Jury Trial**

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

**Rule 38. Standing During Trial**

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

**Rule 39. Student Work Product**

All opening statements and closing arguments, all direct and cross examinations, and all objections shall be substantially the work product of team members and not scripted by coaches, teachers or attorneys.

**Rule 39A. Objection During Opening Statement/Closing Argument**

No objections may be raised during opening statements or during closing arguments. If a team believes an objection would have been necessary during the opposing team's closing, a student may, following the closing arguments, raise his/her hand to be recognized by the judge and may say, "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that \_\_\_\_\_." The presiding judge will rule on this "objection."

Presiding and scoring judges will weigh the "objection" individually. No rebuttal by opposing team will be heard. If the objection has foundation, the scoring judges may deduct from 1 to 10 points.

## **C. Presenting Evidence**

### **Rule 40. Argumentative Questions**

An attorney shall not ask argumentative questions. Argumentative questions are always improper.

### **Rule 40A. Leading Questions**

An attorney may not ask leading questions (questions which suggest the desired answer within) on direct examination. Attorneys may use leading questions only on cross-examination.

### **Rule 41. Lack of Proper Predicate/Foundation**

Attorneys shall lay a proper foundation prior to offering an exhibit into evidence. After the offer has been made, the exhibit may still be objected to on other grounds.

### **Rule 42. Procedure for Introduction of Exhibits**

As an example, the following steps effectively introduce evidence:

1. All exhibits will be pre-marked as an exhibit.
2. Show the exhibit to opposing counsel.
3. Ask for permission to approach the witness. Give the exhibit to the witness.
4. "I now hand you what has been marked as Exhibit Number \_\_\_\_ for identification.
5. After laying proper foundation, ask the witness to identify the exhibit. "Would you identify this please?"
6. Witness answers with identification only.
7. Offer the exhibit into evidence. "Your Honor, we offer Exhibit Number \_\_\_\_ into evidence at this time."
9. Court: "Is there an objection?"
10. Opposing Counsel: "No, your Honor", or "Yes, your Honor."  
If the response is "Yes", the objection will be stated on the record. Court: "Is there any response to the objection?"
11. Court: "Does the objecting party have anything further?" "Objection overruled/sustained. Exhibit Number \_\_\_\_ is/is not admitted."
12. If the exhibit is admitted into evidence, the attorney may now solicit testimony on its content.

### **Rule 43. Use of Notes**

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

### **Rule 44. Redirect/Re-cross**

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

## **D. Closing Arguments**

### **Rule 45. Scope of Closing Arguments**

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

## **E. Critique**

**Rule 46.** The judging panel, including the presiding judge, is allowed no more than 15 minutes for debriefing, critiquing and finishing ballots. The timekeeper will monitor the critique following the trial and let the presiding judge know when the allotted time has expired. Presiding judges are to limit critique sessions to the total time allotted.

### **Nevada Mock Trial Guidelines for Coaches Attorneys and Teachers**

1. Always remember this is an educational activity with the focus on student learning.
2. All speeches and questions should be written by the students. Coaches (attorneys/teachers) guidance is strongly encouraged, but the actual product should be student generated.
3. Never should a coach (attorney/teacher) or anyone affiliated with a team view another trial while their team is still in the competition.
4. Coaches (attorney/teacher) should have no contact with their team once the trial begins. This includes during any breaks or recesses until the trial is completed. (See Dispute Outside The Bar, rule 33)
5. Please remember these students depend on your help to be competitive. Please keep this commitment or let the Board know they will need to assign another teacher or attorney.
6. Teacher coaches are responsible for all paperwork and obtaining all the signed permission slips before each competition. When the teacher signs the team in at the beginning of the tournament, they are assuring the tournament host that all the paperwork is accurate and complete.
7. Coaches (attorney/teacher) are at all times role models for the students. The goal of the mock trial program should always be to create an experience of honesty and integrity from a fair competition.
8. At the beginning of each competition, a coaches meeting should be held to make sure all coaches and attorney coaches are familiar with the format and rules for the competition.

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3 Silver County District Attorney

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7 *Attorneys for Plaintiff*

8 **IN THE 14<sup>TH</sup> JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
9 **IN AND FOR THE COUNTY OF SILVER**

10 STATE OF NEVADA,

Case No. CR2013-110MT

Dept. No. LII

11 Plaintiff,

12 vs.

**INDICTMENT**

13 DUSTIN BEAVER,

14 Defendant.

15  
16 The Defendant is accused by the Grand Jury of Silver County, State of Nevada, as follows:

17  
18 **COUNT ONE**

19 The Grand Jurors of the State of Nevada for the County of Silver, upon their oaths  
20 present that Dustin Beaver, on or about May 19, 2013, in the waters off of Point Douglas Beach,  
21 County of Silver, State of Nevada, and within the jurisdiction of this Court, did recklessly cause  
22 the death of Freddy Ferris under circumstances manifesting extreme indifference to the value of  
23 human life; contrary to the provisions of Nevada Criminal Code Section 200.140 and against the  
24 peace of this State, the Government and dignity of the same.

COUNT TWO

The Grand Jurors of the State of Nevada for the County of Silver, upon their oaths present that Dustin Beaver, on or about May 19, 2013, in the waters off of Point Douglas Beach, County of Silver, State of Nevada and within the jurisdiction of this Court, did cause the death of Freddy Ferris by recklessly operating a vessel; contrary to the provisions of Nevada Criminal Code Section 200.160 and against the peace of this state, the Government and dignity of the same.

Dated: September 13, 2013.

JENNIFER LOVE-HEWITT, ESQ., J.S.D.  
District Attorney  
Silver County, Nevada

/s/ Jennifer S. Lawrence  
Jennifer S. Lawrence, Esq.  
Deputy District Attorney

/s/ Jennifer A. Garner  
Foreperson of the County Grand Jury

1 **AFFIDAVIT OF ERIC(A) EVANS**

2  
3 My name is Eric(a) Evans. I am 32 years old. I am a detective with the Nevada State  
4 Police-Marine Bureau. It is the responsibility of the Nevada State Police to patrol inland lakes and  
5 waterways areas in order to enforce applicable Nevada laws relating to the safe and prudent  
6 operation of powerboats. We have become quite busy in the last 10 years, due to the ever-  
7 increasing number of boats on Nevada waters, specifically the St. Croix River, as well as people  
8 who unfortunately don't know how to operate them. As with automobiles, it seems that the  
9 younger individuals have a higher proportional number of boating accidents.

10 On May 19, 2013, at approximately 3:00 a.m., I received an emergency pager call. I returned  
11 the call to our marine headquarters, and learned that a frantic family was at the State Police  
12 Barracks in Loondale, claiming that a group of kids had been swimming at the Railroad Bridge in  
13 Point Douglas Beach and one of them had disappeared. My first thought was that a tragedy was  
14 inevitable. We chase kids off that beach at night at least 20 times every summer season. Usually  
15 the kids are partying and are drunk. I always thought that sooner or later some kid would drown  
16 late at night. I jumped into my jeep and drove directly to Railroad Bridge, approximately seven  
17 miles away. As a result of a series of telephone calls, I had three State Police marine boats meet  
18 me at the location, and I was informed that the Sheriff's Water Patrol was also sending a watercraft.

19 By 3:30 a.m., I was at the bridge. I was somewhat surprised to see that no fishing boats  
20 were in the area and no one was fishing from the bridge. I guess the catfish weren't running well  
21 because usually Railroad Bridge and the surrounding shore are busy with people fishing through  
22 the summer nights. I made some inquiries and was provided with information indicating that a  
23 number of high school students had decided to go for a swim off the small beach adjacent to the  
24 Railroad Bridge at the Point Douglas Beach side of the St. Croix River. Apparently, two boats had  
25 approached the bridge at high speed and at the last minute had gone under the bridge between the  
26 pilings closest to the beach, rather than the properly marked channel in the middle of the span.  
27 This was incredibly stupid- at high winds with waves and fast running current ,there isn't enough  
28 room for boats to clear the underside of the bridge; at low winds ,waves, and slow current, the



1 propeller of a speeding boat, and possible the boat itself would run aground. Also, the bridge  
2 pilings at the end of the bridge are not very far apart and a speeding boat could easily strike them.  
3 In the 10 years that I have patrolled that area I have never seen any boat go under the bridge at that  
4 spot.

5 Immediately after the boats passed, the other high school students noticed that Freddy  
6 Ferris, nephew of our cemetery custodian, Skeeter Ferris, was nowhere to be found. Fearing that  
7 he might have drowned or been struck by one of the boats, three of the young people immediately  
8 left to get help, while the other two began searching desperately in the dark waters for their friend.

9 I next spoke to the Prescott bridge toll tender, 38-year old Denise Gant. Denise is a local  
10 resident who is a stickler for detail. She despises the teenagers who party on the beach after dark  
11 and she always marks the time of unusual events. She told me that only two boats approached the  
12 pilings closest to the Point Douglas Beach since she had started her shift at 10:00 p.m. The boats  
13 were speeding and people on the beach were screaming hysterically, trying to wave the boats away.  
14 The boats turned back toward the marina and several frantic teenagers came running up to her to  
15 call the police -- someone had been run over by a boat and was missing. The time was 2:20 a.m.

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

27  
28

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

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

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

21           Approximately two days after the autopsy was completed, we were finally able to ascertain  
22 which two boats may have been involved in this incident. We had received an anonymous tip that  
23 a group of high school seniors had taken their parents' boats out immediately after the prom at  
24 Liberty High School. As luck would have it, the two teenagers driving the two boats in question  
25 had already retained attorneys and we were advised that neither of them would speak with us. This  
26 did not surprise me about Dustin Beaver. Twice last summer, I charged Dustin for swimming off  
27 the beach after midnight. Apparently, Dustin's father is some local bigwig because the charges I  
28

1 issued against Dustin Beaver were dropped. I was determined that Dustin Beaver would not get  
2 away with killing Freddy Ferris.

3 Relying upon further tips from other high school students, we learned that Dustin Beaver  
4 went to Liberty Hospital in the early morning hours of May 19. Further investigation revealed that  
5 a doctor, suspicious that Beaver had been drinking, drew a blood sample at 3:45 a.m. that was later  
6 tested and determined to contain a blood alcohol concentration of .057%. The records also  
7 indicated Dustin's height and weight. I also learned that the first boat had been piloted by Beaver  
8 and had been moved from its normal slip at the Shelly Beach Marina to a friend, Matt Mahoney's  
9 dock approximately 1½ miles downriver. I was familiar with the Mahoney residence as his father,  
10 Slip Mahoney, gained notoriety as the dock boom loader for the last journey of the *Edmund*  
11 *Fitzgerald* before it sunk in Lake Superior back in the 1970's. A search warrant was executed at  
12 the Mahoney residence and out buildings for the seizure and examination of the boat. Nothing of  
13 an evidential nature was recovered. The propeller on the boat looked new, but even if it wasn't, the  
14 time it sat in the water, attracting minnows, crayfish, etc., would have destroyed any blood or body  
15 tissue evidence remaining.

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

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

26  
27 August 1, 2013

*/s/ Eric(a) Evans*

Eric(a) Evans

1 **AFFIDAVIT OF LEE LINCOLN**

2  
3 My name is Lee Lincoln. I am 17 years old. I graduated from Liberty High School in June and in  
4 September I will be going to National University in Washington, D.C. I received an academic  
5 scholarship, without which I could never have afforded to go to college. Unlike a lot of the rich  
6 kids in Point Douglas Beach, I have to work for everything I get in life. My father had to take out a  
7 loan to pay for my lawyer in this case. I am going to have to pay him back. I used to be a close  
8 friend or rather a very close friend of Dustin Beaver. I guess you could say that up until the night  
9 of the prom, there was a group of us who were best friends.

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

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

1 The evening started off great. Dustin's date was my twin sister, Laurie. Everyone was  
2 dressed to the hilt, and we hired a limousine to take us to the Prom. The Prom was held at a local  
3 catering company, and to the credit of our hard-working Student Council, the catering hall had  
4 been decorated beautifully. The music and dancing were great, and it was almost everything you  
5 would want out of your high school Prom. I will always appreciate the fine work done by the  
6 dedicated students who served on our Student Council. They rock!

7 Toward the end of the Prom, Dustin left to use the bathroom. When Dustin did not return  
8 after 10 minutes, I went outside. That was when I saw Dustin in the back of a car with Janet  
9 Johnson. Although I could not see them very well, it was pretty obvious that they were hooking  
10 up. When they saw me, they both sort of jumped apart. I did not even give Dustin a chance to  
11 explain. I just walked back into the catering hall.

12 Janet cornered me about a half-hour later. She told me that it "wasn't what it seemed," and  
13 that she had to speak to Dustin because, at the last minute, Janet's mother did not want her going  
14 out boating after the prom. Apparently, Janet was trying to get in touch with her mother to see if  
15 she would change her mind. When Janet could not reach her mother, she decided she was going to  
16 go boating anyway and explained this to Dustin. Although I still suspected that Dustin had  
17 betrayed my sister, I let it go because I did not want to spoil the night for my date and the other  
18 kids who were going boating with us.

19 We left the prom and drove to the Shelly Beach Marina to get the boat. I brought  
20 champagne and a case of beer (24 12 oz. bottles), which Dustin put in a cooler in the cabin. As we  
21 pulled out of the slip, Dustin opened the first bottle of beer. I looked at my watch and noticed it was  
22 midnight. I said to Dustin, "I hope that stuff does not turn you into a pumpkin!" Janet, who was in  
23 another boat, was with her date and using the camera on her Smartphone to text pictures of her  
24 prom shoes. After finding a nice spot along the River, we dropped anchor.

25 For the next hour and a half, we sipped champagne, drank beer, and hung out under the  
26 stars. Around 1:30 in the morning, we were out of beer. Dustin drank at least two six-packs and  
27 also guzzled champagne. I am not certain about exactly how much alcohol Dustin had to drink  
28 because I also was drinking beer and champagne. Dustin was showing off by swigging from the

1 bottle of champagne. Anyway, we stayed and talked. We talked about high school, we talked  
2 about college, and Dustin said we should all make a pact to stay tight after graduation. I thought  
3 the jerk was a hypocrite after what happened with Janet earlier, but everyone was so happy and  
4 mellow that I just kept my mouth shut.

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

10 The next thing I knew, Alex had the boat in gear and took off across the back bay with Janet  
11 and Rene(e) in tow. Dustin started chasing them. I yelled to Dustin to slow down, that it was pitch  
12 black, and that we were going to hit something. I also demanded to know why Dustin was  
13 checking out some other student's girlfriend. Dustin just laughed and started going faster.  
14 Although Dustin drinks almost every weekend and is capable of "holding" a lot more, I thought  
15 Dustin was feeling the alcohol.

16 After about 10 minutes of this activity, both boats started heading toward the Railroad  
17 Bridge. This is one of those old bridges with lots of wooden pilings. There are also sandbars in the  
18 area as well as a small beach, Point Douglas Beach, where kids like to swim. Dustin knew this  
19 because we both went swimming there many times. Both boats are now speeding toward the  
20 Railroad Bridge with Dustin in the lead. I could not imagine that Alex would risk pulling a tuber  
21 under the bridge in the middle of the night and I guess Dustin did not think so either. We swung  
22 suddenly in a high-speed turn heading toward the beach. At the last minute, I saw that Alex's boat  
23 was not slowing and was coming straight toward us, apparently intent on going under the bridge.  
24 At the same time, I saw swimmers in the water and on the beach waving their hands frantically. It  
25 seemed like in a split second we just missed hitting the other boat and almost ran aground. I felt a  
26 jolt like we had just hit a sandbar and slid right off. By now I was screaming and yelling at Dustin,  
27 "Stop! Stop!" Dustin was now speeding the other way, back toward the marina. I kept screaming,  
28 "There were swimmers back there! We have to go back." Dustin shouted back, "Why? So the

1 Police can show up and find out we were drinking and boating? No way, Jose!” I looked at my  
2 watch again. It was 2:20 a.m.

3         Instead of going back to the marina where Dustin’s father kept the ski boat, Dustin kept  
4 going down the River to Matt Mahoney’s house. Dustin pulled the ski boat up to Matt’s dock and  
5 it soon became apparent that absolutely nobody was home. Dustin then raised the propeller of the  
6 outboard motor out of the water and said something about running over one of the ropes at the  
7 dock. After a couple of minutes, Dustin screamed and jerked back his left hand. We got out of the  
8 boat and went up to the house under a floodlight. Dustin’s left hand had a deep cut and we  
9 wrapped it up in a towel that we retrieved from the boat. Dustin used my cell phone to call his  
10 cousin. When the cousin arrived, Dustin’s hand was still bleeding. Dustin and his cousin agreed  
11 that the hand needed stitches. Dustin’s cousin took Dustin to the hospital and I went home.

12         That Monday, word was out all over school that a sophomore by the name of Freddy Ferris  
13 had drowned during the night of our Prom. Some boat had run him over. I was scared to death and  
14 did not say anything. When I tried to talk to Dustin about it in the hallway between classes, Dustin  
15 said, “Do not even think about it! Just keep your mouth shut!” I have not discussed it with Dustin  
16 since then. I was afraid to go to the police because I thought that I might get in trouble for buying  
17 the beer and champagne. All I could think about was going to jail, missing college, and screwing  
18 up my whole life.

19         A week or so later, Detective Evans appeared at my door. I had to go to the police station,  
20 where Detective Evans and another officer told me that a number of witnesses implicated Dustin  
21 and me. They said it looked to them like I was an accessory to a homicide and that I could go away  
22 for a long time. They told me they would work with me if I cooperated with them in their case  
23 against Dustin. I was scared to death, and I was afraid to say anything more without talking to my  
24 dad. Once I was convicted for shoplifting in Juvenile Court and I knew I should get a lawyer  
25 before talking to the police. My dad got a lawyer for me and told me if the lawyer could get me  
26 immunity, I should tell the police everything I knew about what Dustin did. Why should I ruin my  
27 life and let Dustin get off?  
28

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

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

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10 August 8, 2013

*Lee Lincoln*

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Lee Lincoln

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1 **AFFIDAVIT OF DR. SHELLY STORM**

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3 My name is Shelly Storm. I am 34 years old. I am a toxicologist. I received a Bachelor of  
4 Science degree from Harvard University, where my major was chemistry and my minor was  
5 biology. Next I attended Northwestern University where I received my Master of Science in  
6 chemistry. I was prepared to make my fortune with one of the large national chemical companies  
7 when tragedy struck and forever changed my life. Two months before completing my work for my  
8 masters degree, my older brother, whom I idolized, was killed in an automobile accident by a drunk  
9 driver. For nearly six months after his funeral, I was so depressed that I could not think about work  
10 or school. Then, with the help of a counselor who finally got through to me, I realized I could put  
11 my talents to work educating people about the devastating consequences of alcohol abuse and  
12 addiction. I finished the Master's Program and then went on to receive a Ph.D. in toxicology from  
13 the University of Nevada in Reno. I now teach at Riverside University and perform federally  
14 funded research at the University's Institute for Drug and Alcohol Research and Rehabilitation.

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

24 Earlier this month, I was contacted by the Nevada State Police-Marine Bureau in Loondale,  
25 Nevada, and asked to review the investigation into the death of a young man named Freddy Ferris.  
26 I spoke to Detective Eric(a) Evans and carefully reviewed the detective's investigation summarized  
27 in a witness statement. Next, I interviewed Denise Gant to confirm the times of her observations as  
28 reported in Detective Evans' reports. I then read the witness statements of Lee Lincoln, Alex

1 Alvaro, and Rene/Renee Robbins. Finally, I went to Liberty Hospital to confirm the time blood  
2 was drawn from Defendant Dustin Beaver on the night of the homicide, along with Dustin Beaver's  
3 blood alcohol level and weight. After carefully studying all of the information available to me, I  
4 can testify with reasonable scientific certainty that Defendant Dustin Beaver's blood alcohol at the  
5 time he/she sped toward Railroad Bridge and then suddenly swerved at 2:20 in the morning of the  
6 homicide was at or above 0.08%; that Dustin Beaver was operating the vessel under the influence  
7 of intoxicating liquor; and that his/her consumption of alcohol and consequent reckless behavior  
8 was a proximate cause of the death of Freddy Ferris.

9 Alcohol is absorbed rather quickly through the stomach and intestines, and into the  
10 bloodstream. Absorption generally exceeds elimination for 30 to 90 minutes after the last drink. If  
11 someone has recently eaten, the food in their stomach may slow the rate that alcohol passes through  
12 the stomach and into the bloodstream. However, this factor was not a consideration in this case  
13 because we know what Dustin Beaver's blood alcohol level was from the hospital sample. Once  
14 alcohol enters the body through the stomach and intestines, it is distributed throughout the water in  
15 the body. Some studies suggest that the same amount of alcohol can result in slightly different  
16 blood alcohol levels in different individuals because of body weight. Heavier people have a lower  
17 percentage of water per body weight so there is less water through which alcohol is absorbed,  
18 thereby resulting in a higher blood alcohol concentration. Similarly, women generally have more  
19 body fat than men, which means the same quantity of alcohol may cause a slightly higher blood  
20 alcohol concentration in women. Generally though, such variations are insignificant.

21 Alcohol is eliminated from the body through the liver, through one's breath, and through  
22 one's urine. The rate of discharge of alcohol can vary; however, it is generally accepted in the  
23 scientific and medical community that the average rate of discharge is 0.015% to 0.017% per hour.  
24 In this case, I used 0.017% because there is evidence that the Defendant drank on a number of  
25 occasions before May 19, and some literature suggests that people who drink habitually have a  
26 higher than average rate of elimination.

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1 Contrary to popular belief, peak blood alcohol levels do not usually correspond to the  
2 moment of total alcohol absorption. Therefore, it is incorrect to simply calculate back from the  
3 blood test result to the peak and assume that the difference is a linear function of the rate of  
4 elimination.

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

11 Even if one assumes that Dustin Beaver's BAC was below 0.08% at the time of Freddy  
12 Ferris' death, in my opinion s/he was still operating a vessel recklessly while under the influence of  
13 alcohol. Exhibit 3 shows the relationship between alcohol intoxication and behavior. If one  
14 assumes that the Defendant's rate of elimination of alcohol was 0.015% per hour, the BAC would  
15 have been at or near 0.08% at 2:20 a.m. on May 19. Clearly, Defendant would have experienced  
16 divided attention failure and impaired judgment. S/he may have been experiencing impaired  
17 muscular coordination and some impaired vision. As shown on Exhibit 1, the likelihood of a  
18 person with a BAC of 0.06% being involved in a motor vehicle accident is twice that of a person  
19 who has consumed no alcohol. The likelihood of a person with a BAC of 0.08% being involved in  
20 a motor vehicle accident is six times that of a person who has consumed no alcohol.

21 I know that some of the people with the Defendant on Prom Night have given statements  
22 that s/he only had three or four beers, but this is impossible in light of the BAC determined from  
23 the blood sample taken at 3:45 a.m. Defendant would have consumed the equivalent of five or six  
24 beers. I also am aware that no one observed any bloodshot eyes, slurred speech, balance problems,  
25 or other visible signs of intoxication. But Dustin Beaver's friends were not trained observers.

26 Many people, especially teenagers, think that because one is legally intoxicated in Nevada  
27 if they operate a motor vehicle with a BAC of 0.08%, they may safely operate a motor vehicle  
28 when their BAC is below 0.08%. This is simply untrue! A person can be convicted of driving

1 when intoxicated if a trained observer such as a police officer sees that the driver's coordination  
2 and motor functions are impaired. This can occur in some people with blood alcohol levels as low  
3 as 0.05%. Moreover, it is now generally accepted that the majority of people cannot safely operate  
4 a motor vehicle when their BAC reaches 0.08%. This is why there was a movement nationally to  
5 lower to 0.08% the BAC for driving while intoxicated. The Defendant's BAC was, undisputedly,  
6 above 0.08% at 2:20 a.m. on May 19, 2013.

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

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

12  
13 August 29, 2013

*Shelly Storm*

14 Shelly Storm, Ph.D.  
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## AFFIDAVIT OF ALEX ALVARO

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3 My name is Alex Alvaro. I am 17 years old and will be attending UNR in September.  
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5 I went to the Prom with my date, Pat Painter. A group of us decided to end the evening  
6 with a scenic boat ride and a champagne toast on the St. Croix River near Point Douglas Beach. I  
7 knew that a lot of my friends were going drinking after the Prom, and some had even rented suites  
8 at various local motels. However, I did not want any part of these activities and neither did Pat.

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

13 The Prom was really nice and Pat and I had a good time enjoying the fun, thanks to the  
14 great work by our dedicated Student Council in putting the whole thing together. Originally, there  
15 were supposed to be three boats involved in our private party, but one boat canceled at the last  
16 minute, so I agreed to take some of our friends in our boat after the prom. Janet Johnson was one  
17 of the people who came in my boat.

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

25 We spent an hour or so sitting in our boats on the river sipping champagne. Janet had  
26 brought some of those plastic champagne glasses from her house, and it all seemed quite elegant. I  
27 know I only had a glass. I was anchored next to Dustin's boat. I did not see Dustin drink even a  
28 full glass of champagne. Dustin and Lee Lincoln are beer drinkers and they split a six-pack that

1 Lee brought to the marina. Since I am aware that Dustin is a careful boater, I'm sure he had no  
2 more than three or four beers.

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

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

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

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

21 After I recovered, I slowed the boat to a stop and quickly got Janet and Rene(e) back on  
22 board. They had no idea how close we had come to having an accident and simply thought I was  
23 giving them an extra thrill. I do not believe Pat had any idea either. I told Janet and Rene(e) that  
24 we had to return to the marina but did not explain why.

25 I never saw any swimmers in the water that night. If they were swimming under or near the  
26 bridge in the dark that night, they should not have been there. Swimming is not permitted and I  
27 know there is a town ordinance that specifically forbids it. I know a lot of people are asking why  
28 Dustin did not stop that night, but there is no way Dustin would have known whether or not his

1 boat hit a swimmer. Like I said, I did not see any swimmers so no one driving a boat would have  
2 expected to run over one. When I was speeding toward that bridge, the water was just a little bit  
3 choppy. The bow of my boat would hit the chop and slap down pretty hard. Once it thumped  
4 down unusually hard, but that is to be expected. No one could tell the difference between the  
5 thudding of the boat on the river and the bow of the boat striking something. After I got Janet,  
6 Rene(e), and the tubes back in the boat, I also headed toward the marina. Coming so close to  
7 colliding with Dustin's boat, striking the bridge, hitting a sand bar, or running ashore was very  
8 sobering. The thought of how easily an accident could have happened put a damper on what  
9 otherwise had been a great night. I headed home, never thinking that anyone had been injured.

10 I know Dustin was not drunk. I also know Dustin is one of the safest boaters in our area.  
11 Dustin never could have navigated the river channels or sand bars in that part of the river if he had  
12 been drunk. You cannot see the channel markers very well in the dark and you need to be very  
13 alert, have very good boating skills, and use very sharp judgment to get through the river channels  
14 safely at night.

15 That same Sunday, I learned that Dustin had not returned to the marina, but instead headed  
16 down the river, past "No Name Island," and docked the boat at a friend's house. It further confirms  
17 that Dustin could not have been drunk. I have been up and down that river hundreds of times. It  
18 curves and winds sharply. No one with even a slight buzz from booze could navigate that river at  
19 night. I am still in disbelief that Dustin would be criminally charged for what was a terrible  
20 accident, especially one that was not his fault.

21 A week or so after the accident, I heard that the police were looking for Dustin and for I.  
22 The local newspapers had run several stories about the brutal death of Freddy Ferris. I never saw  
23 any other boats so close to Railroad Bridge when we were there the night after the Prom so I  
24 figured that the police would suspect either Dustin or I of running over Ferris with our boats. I  
25 knew I did not do it. There is no way I could have struck that kid or hit him with my prop and not  
26 realized it. I only had a few drinks and I was not anywhere near intoxicated.

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1           When I read about the story in the newspaper, I pulled our boat out of the water. There was  
2 not any damage to the boat or to the props. There was no blood anywhere near the boat. If the  
3 police had inspected my boat, they would have seen that there was no evidence that I ran over that  
4 kid. Also, if I hit somebody, Janet and Rene(e) would have known it as soon as it happened. I just  
5 did not want to talk to the police because I did not want to get caught up in something this terrible.

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

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9 August 14, 2013

*Alex Alvaro*

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Alex Alvaro

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## AFFIDAVIT OF DR. CHRIS CARSON

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

Dustin Beaver's attorney requested that I provide an opinion in this case. I reviewed the following materials:

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

I have assumed that Dustin Beaver began drinking at 12:01 a.m. on May 19, 2013 and that s/he stopped drinking around 1:30 a.m. I have also assumed that s/he approached the Railroad Bridge, then swerved toward the beach at 2:20 a.m. Dustin Beaver's blood sample, which was reportedly taken at 3:45 a.m., disclosed a blood alcohol concentration of 0.057%.

1 A person's blood level reaches its maximum concentration, or peak, from 30 to 90 minutes  
2 after they stop drinking. That is because after someone stops drinking, alcohol continues to be  
3 absorbed through their stomach and intestines. Alcohol is eliminated from the body at the average  
4 rate of 0.015% per hour. Although I disagree with Dr. Storm's conclusions, I concur with Dr.  
5 Storm's statement regarding methodology, namely that peak blood alcohol levels do not usually  
6 correspond to the moment of total alcohol absorption and that simply calculating back from the  
7 blood test result to the peak and assuming that the difference is a linear function of the rate of  
8 elimination is incorrect.

9 I see that Dr. Storm uses a range of 0.015% to 0.017%. Such a range is really no longer  
10 accepted by the scientific or medical community and can result in a distorted extrapolation that is  
11 higher than a person's actual BAC. Studies which show that habitual abusers of alcohol may  
12 eliminate it at a slightly higher than average rate involve chronic alcoholics, not casual weekend  
13 drinkers. There is no sound reason to use a rate of elimination other than the well-established  
14 average of 0.015%.

15 Based upon the foregoing considerations and assumptions, it is my opinion, within  
16 reasonable scientific probability and with even greater certainty, that Dustin Beaver's blood alcohol  
17 peaked at approximately 2:20 a.m. on May 19, 2013—approximately the time s/he sped toward and  
18 swerved away from Railroad Bridge. It is also my opinion that Dustin Beaver's peak BAC was  
19 between 0.072% and 0.079%; it never reached 0.08% on the morning of May 19. I have plotted  
20 Mr./Ms. Beaver's BAC curve on Exhibit 2.

21 Lee Lincoln's assertion in the witness statement that Dustin Beaver consumed two six-  
22 packs of 12 oz. beer plus quantities of champagne is preposterous! Dustin Beaver's BAC at 3:45  
23 a.m. would have been considerably higher—perhaps twice what it was. Dustin Beaver's BAC of  
24 0.057% at 3:45 a.m. is consistent with his consumption of five, possibly six 12-oz bottles of beer or  
25 their equivalent.

26 Alcohol affects different people in different ways. Some people become totally  
27 uncontrollable after one or two drinks. Others can drink significantly greater quantities and show  
28 little sign of intoxication. Because there is little or no evidence of Mr./Ms. Beaver's drinking

1 history, and no way to accurately gauge the effects of different quantities of alcohol upon him/her,  
2 it is, from a scientific or toxicological perspective, simply impossible to say whether or to what  
3 extent Dustin Beaver's ability to operate a boat was impaired by alcohol on May 19, 2013.  
4 Certainly Dustin Beaver's ability to navigate a boat through tricky river channels, an island, and  
5 sand bars down a winding river on his/her return trip suggests s/he was not impaired. Also, s/he  
6 demonstrated no readily observable signs of intoxication.

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

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

18  
19 September 6, 2013

*Chris Carson*

Chris Carson, Ph.D.

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1 **AFFIDAVIT OF RENE(E) ROBBINS**

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3 My name is Rene(e) Robbins. I am 18 years old. I will be starting classes in a couple of  
4 weeks at Stanford University. I am dating Janet Johnson’s cousin and remain very close to Janet.

5 I attended the Prom on May 18, 2013 and after the Prom I went with the others to drink  
6 champagne on the water under a starlit sky. I expected an evening filled with fun and romance. I  
7 always thought of myself as a romantic at heart. No surprise that I was one of the people in the  
8 tube that night.

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

14 I wanted to go on the boat with Dustin, Laurie, and Lee. However, after what happened at  
15 the Prom, I decided that I should go with someone else so I went with Alex. It seemed like  
16 everything was patched up and we had a very pleasant time sipping champagne while the boats  
17 were anchored in the river. The moon was full and I have a vivid memory of the moonlight on the  
18 water. You could see across the river. As I recall, I was the one who suggested that we go tubing  
19 and Alex volunteered because there were tubes on his/her boat. Janet loved the idea. She went  
20 tubing too. That is when all the action began. Although I could not hear what was going on, from  
21 my perspective, both boats were behaving responsibly. I had quite the ride and invited others to  
22 join in but nobody wanted to. I remember that, at one point, both boats were going to the Railroad  
23 Bridge and both boats turned, giving me “the whip.” Alex’s boat turned so sharply that his /her  
24 motor sputtered and almost stalled. Although I was swung around near the bridge, I really was not  
25 in danger of hitting the bridge or anything else for that matter.

26 As we swerved away from the bridge, I saw two other kids on Point Douglas Beach and one  
27 kid in the water, all waving at me. I waved back. I did not think that anything was wrong  
28 whatsoever. We have all frequented the beach at Point Douglas to party after dark. It is not unusual

1 to wave at passing boats. However, I thought it was somewhat unusual for a swimmer to be out in  
2 the water at that time of night. Although occasionally kids go skinny-dipping beneath the bridge  
3 after dark, you have to be an idiot to do that. Fisherman use that bridge almost every night to go  
4 catfish fishing, although the mosquitos must have been biting that night because I did not see any  
5 fishermen after we left the Prom. I have seen reports in the news lately about river otters biting  
6 swimmers out in the water, so people have been warned to stop swimming in the area. The reports  
7 said there are likely numerous mama otters right now that are protective of their babies, and the  
8 pictures of the otter bites they have shown on the news have been nasty! There is also an ordinance  
9 against swimming in the water after dark, and although the beach patrol does not enforce it much,  
10 occasionally they come by and chase the kids off the beach at night. With the moonlight that  
11 night, you could clearly see the kids on the beach and the swimmers waving, but I never thought a  
12 thing of it. I am sure that Dustin Beaver would have thought that they were waving us in so they  
13 could have a boat ride.

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

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

24 I believe Lee lied about how much Dustin had to drink and about what Dustin said in the  
25 week following the Prom. Lee gave a statement saying Dustin drank two six-packs and a lot of  
26 champagne. I know there were at least four people drinking the case of beer that Lee brought. I  
27 was there and I saw who was drinking. Dustin drank no more than one six-pack. When I asked  
28 Lee if Dustin had said anything about the kid that got killed, Lee never mentioned anything about

1 Dustin saying keep your mouth shut. Lee told me Dustin said, “Try not to think about it or you will  
2 end up hurting innocent people.”

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

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

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

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

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19 August 21, 2013

*/s/ Rene(e) Robbins*

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Rene(e) Robbins

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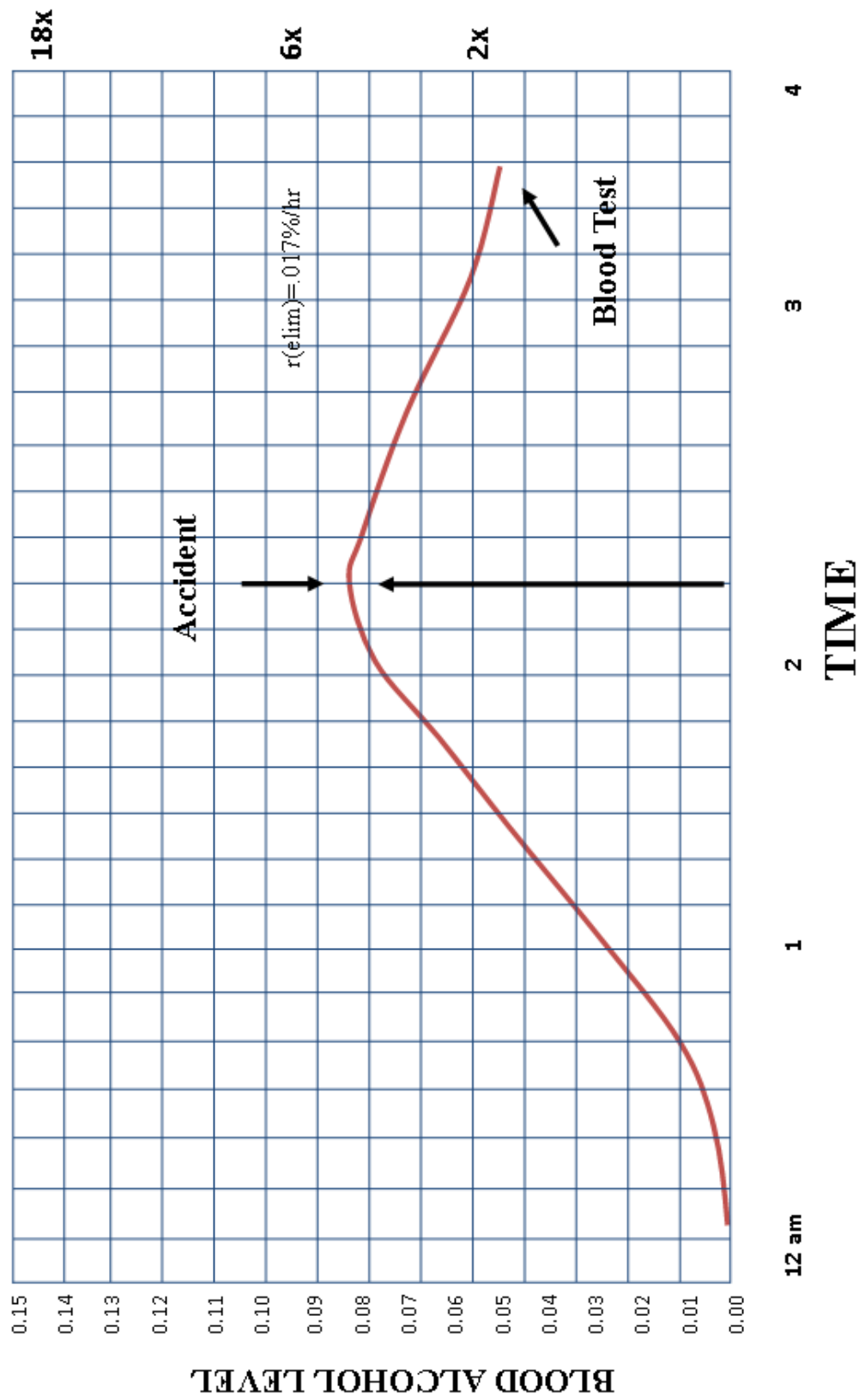
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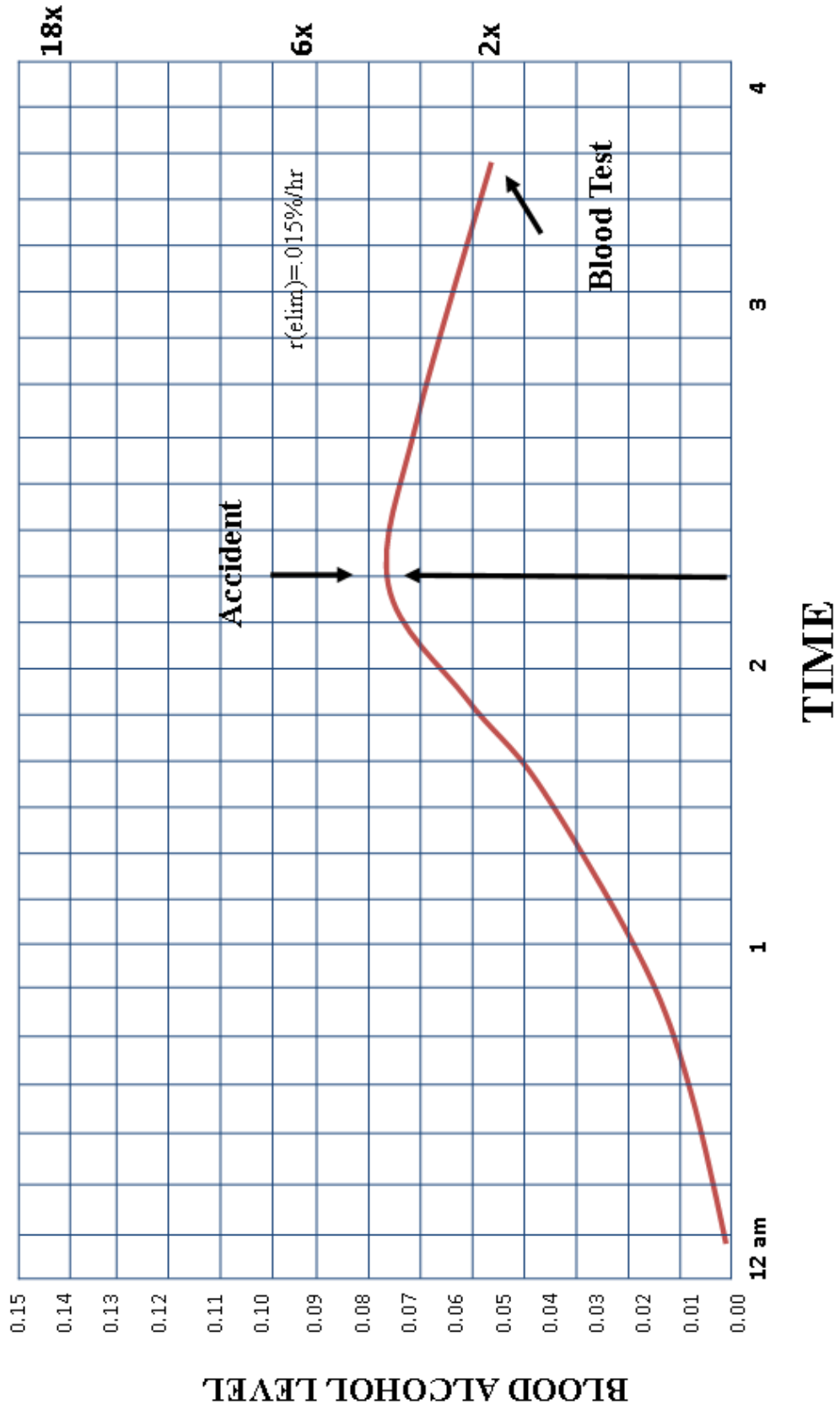
# BLOOD ALCOHOL CURVE FOR DUSTIN BEAVER



Accident: 2:20 a.m., Blood Alcohol Level = .057% at 3:45 a.m.;  $r(\text{elim}) = 0.017\%/hr$ .

## Exhibit 1

# BLOOD ALCOHOL CURVE FOR DUSTIN BEAVER



Accident: 2:20 a.m., Blood Alcohol Level= .057% at 3:45 a.m.;  $r(\text{elim}) = .015\%/\text{hr}$ .

## Exhibit 2



## RELATIONSHIP BETWEEN ALCOHOL INTOXICATION AND BEHAVIOR©

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

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

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## Exhibit 3

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

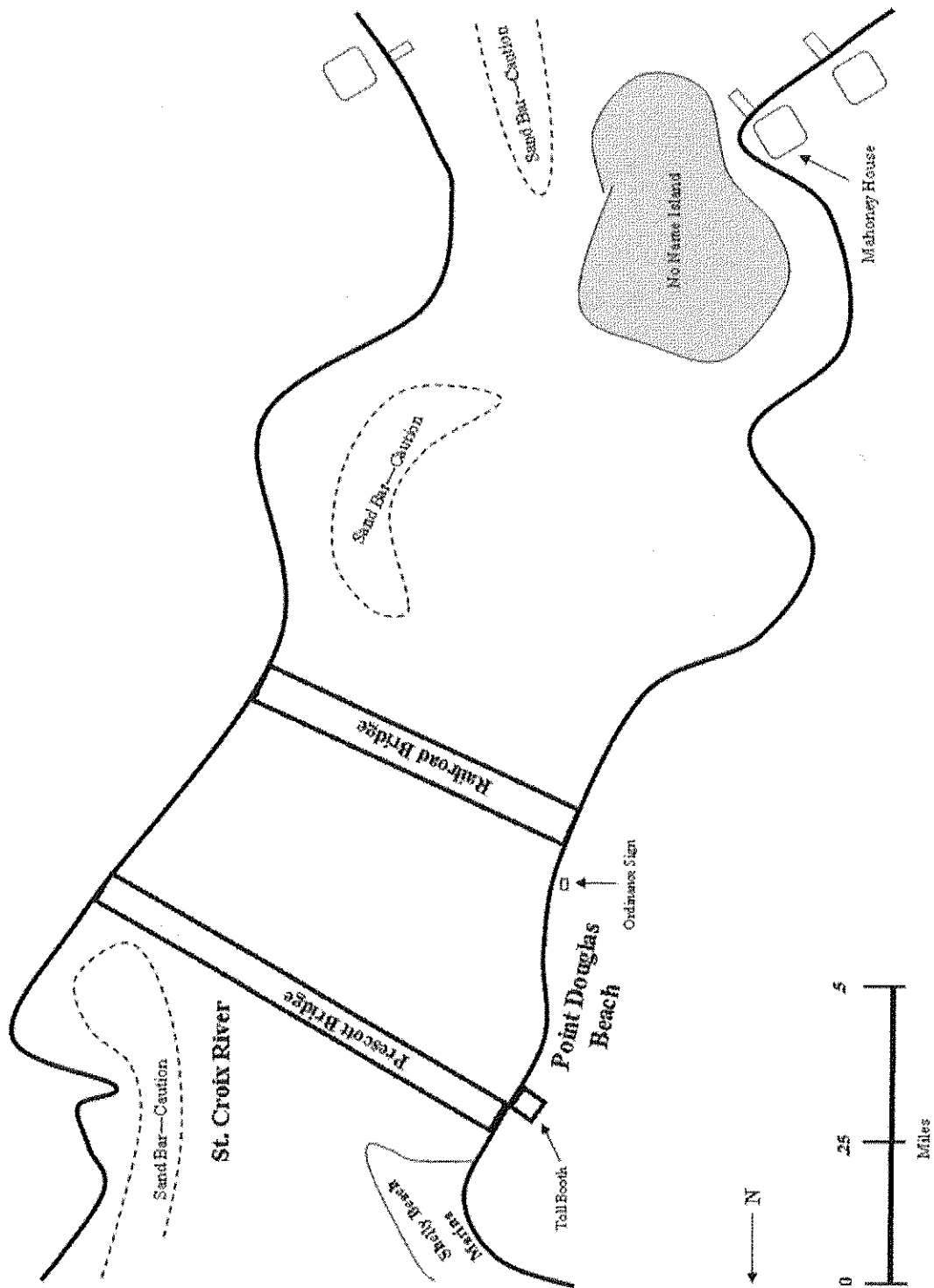
By John Brick, Ph.D. and Carl Erickson, Ph.D.

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

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

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

## **Exhibit 4**



**Exhibit 5**