



**Citizenship Law-Related
Education Program
for the Schools of Maryland**

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November 8, 2004

Dear Mock Trial Participant:

Welcome to the 2004-2005 Maryland State Bar Association Statewide High School Mock Trial Competition. This is the 22nd year for Mock Trial—over 32,000 students have participated in this competition since its inception. We are pleased that you are joining in this exciting learning experience.

This year's case focuses on vehicular manslaughter, a topic that frequently headlines our newspapers and news programs. In Maryland, since the beginning of this school year, nearly a dozen teenagers have died in auto accidents involving teen drivers. Nationally, fifteen teenagers die every day in traffic crashes; high speed, alcohol and the failure to wear seat belts remain the biggest contributors to fatal accidents. One death brings untold suffering to family, friends, schools and communities. We hope this case raises your awareness of the awesome responsibility one assumes when driving an automobile. As you explore this serious topic, we also hope you enjoy the teamwork, preparation, and competition.

It is important for you to understand and remember our four primary objectives for this competition:

- To further understanding and appreciation for the law, court procedures, and the legal system;
- To increase proficiency in basic life skills such as listening, speaking, reading, and critical thinking;
- To promote better communication and cooperation between the school system, the legal profession, and the community at large;
- To heighten enthusiasm for academic studies as well as career consciousness for law-related professions.

Our objectives can only be accomplished, however, if you agree to compete fairly and honestly. Your primary objective should be to learn—not to win. Mock Trial provides opportunities to learn—through case preparation with your attorney advisor, teacher coach, and teammates, the competition with other schools, and various interpretations and perspectives of our law and legal system. It is vital for you to remember that Mock Trial parallels the real world in terms of proceedings, interpretations, and decisions in the courtroom and by the Bench. Decisions will not always go your way and you will not always prevail. If you observe and remember this, you will enjoy the competition and succeed regardless of your win-loss record.

We ask that you read carefully through the rules and guidelines included in this casebook, as some modifications have been made. As always, we wish you a very successful year and a rewarding learning experience.

Sincerely,

Diane O. Leasure

Honorable Diane O. Leasure
Chair, Executive Committee

Ellery M. "Rick" Miller, Jr.

Ellery M. "Rick" Miller, Jr.
Executive Director, CLREP

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**2004-2005
MSBA HIGH SCHOOL MOCK TRIAL COMPETITION**

PART I: ORGANIZATIONAL RULES

1. Local competitions must consist of at least two rounds with each participating high school presenting both sides of the Mock Trial case.
2. A team must be comprised of no less than eight (8) but a maximum of twelve (12) student members from the same high school, with the exception of high schools with a Maryland State Department of Education inter-scholastic athletics designation of Class 2A or Class 1A, which may combine with any other schools in the LEA in those classifications to field a team. Two "alternate" students are permitted during the local competition only. If a team advances beyond the local competition, an official roster must be submitted not exceeding 12 students.
3. A team may use its members to play different roles in different competitions. (See Part II: Hints on Preparing for the Competition). For any single contest round, all teams are to consist of three (3) attorneys and three (3) witnesses, for a total of six (6) different students.
4. Any high school which fields more than one team (Team A and Team B, for example) may NEVER allow, under any circumstances, students from Team A to compete for Team B or vice-versa. If a high school fields two teams, each team must have a different teacher coach and a different attorney coach than the other team. Additionally, if a high school has two teams, then those teams MUST compete in local (circuit) competition.
5. A. Areas of competition coincide with the eight Judicial Circuits of Maryland. Each circuit must have a minimum of four (4) teams. However, in order to provide the opportunity for as many teams to participate as possible, if a circuit has two (2) or three (3) teams, they may compete in a "Round Robin" to determine who will represent the circuit in the circuit playoff. The runner-up team from another circuit would be selected to compete based upon their winning record and average points scored during local competition rounds. This team would compete with the circuit representative in a playoff prior to the Regional Competition. When a circuit has only one registered team, CLREP may designate another circuit in which this team may compete.

B. OR, under the discretion of a circuit coordinator and CLREP, if a circuit so chooses, it may combine with the "un-official" circuit to increase the number of opportunities to compete. In this case, a "circuit opening" arises and will be filled by the following method. To create the most equity, a sequential rotation of circuits will occur; this year, it is Circuit One's turn. If willing, the second place team from the designated circuit will advance to the regional competitions to fill the opening. If that team is unable to advance, the opportunity will move to the next circuit, and so on, until the opening is filled. In the event that all circuits are officially comprised of a minimum of four teams, the designated circuit will remain the next in-line to advance in future years.

2004-2005	Circuit 1	2008-2009	Circuit 5
2005-2006	Circuit 2	2009-2010	Circuit 6
2006-2007	Circuit 3	2010-2011	Circuit 7
2007-2008	Circuit 4	2011-2012	Circuit 8

6. Each competing circuit must declare one team as Circuit Champion by holding local competitions based on the official Mock Trial Guide and rules. That representative will compete against another Circuit Champion in a single elimination competition on April 18 or 19, 2005.
7. The dates for the Regionals, the Semi-Finals, and the Finals will be set and notice given to all known participating high schools by Monday, November 8, 2004. Changes may occur due to conflicts in judicial schedules.
8. District Court judges, Circuit Court judges, and attorneys may preside and render decisions for all matches. If possible, a judge from the Court of Special Appeals or the Court of Appeals will preside and render a decision in the Finals.
9. Any team that is declared a Regional Representative must agree to participate on the dates set for the remainder of the competition. Failure to do so will result in their elimination from the competition and the first runner-up in that circuit will then be the Regional Representative under the stipulations.

10. Winners in any single round should be prepared to switch sides in the case for the next round. Circuit Coordinators will prepare and inform teams of the circuit schedule.
11. CLREP encourages Teacher Coaches of competing teams to exchange information regarding the names and gender of their witnesses at least 1 day prior to any given round. The teacher coach for the plaintiff/prosecution should assume responsibility for informing the defense teacher coach. A physical identification of all team members must be made in the courtroom immediately preceding the trial.
12. Members of a school team entered in the competition—including Teacher Coaches, back-up witnesses, attorneys, and others directly associated with the team’s preparation—are NOT to attend the enactments of ANY possible future opponent in the contest.
13. All teams are to work with their attorney coach in preparing their cases. It is suggested that they meet with their Attorney Advisor at least twice prior to the beginning of the competition. For some suggestions regarding the Attorney Advisor’s role in helping a team prepare for the tournament, see PART II: Hints on Preparing for Mock Trial and Appendix A.
14. THERE IS NO APPEAL TO A JUDGE’S DECISION IN A CASE. CLREP retains the right to declare a mistrial when there has been gross transgression of the organizational rules and/or egregious attempt to undermine the intent and integrity of the Mock Trial Competition.
15. There shall be NO coaching of any kind during the enactment of a mock trial: i.e. student attorneys may not coach their witnesses during the other team’s cross examination; teacher and attorney coaches may not coach team members during any part of the competition; members of the audience, including members of the team who are not participating that particular day, may not coach team members who are competing. Teacher and Attorney Coaches MAY NOT sit directly behind their team during competition as any movements or conversations may be construed as coaching.
16. It is specifically prohibited before and during trial to notify the judge of students’ ages, grades, school name or length of time the team has competed.
17. The student attorney who directly examines a witness is the only attorney who may raise objections when that same witness is being cross-examined. The student attorney who raises objections on direct examination must be the same attorney who then cross-examines that same witness. This same principle applies if a student attorney calls for a bench conference; i.e., it must be the attorney currently addressing the Court.
18. Judging and scoring at the Semi-Final and Statewide Final Competition are distinct from judging and scoring in some local competitions and the regional competitions. As in a real trial, the judge will preside, hear objections and motions, instruct counsel, and determine which team prevailed based on the merits of the law. Two attorneys will independently score the trial, using the score sheet from the official Mock Trial Guide. At the conclusion of the trial and while in chambers, the judge will award the special point without informing the attorney scorers. The attorneys will meet and work out any differences in scoring so that the two attorneys present one score sheet to the judge, and eventually, the two teams. The judge retains the right to overrule any score on the score sheet. Both teams shall receive a copy of this score sheet, signed by the judge. Teams will not have access to the original, independent score sheets of the attorneys.
19. Student attorneys are expected to keep their presentations limited to specific time guidelines. It is the presiding judge’s sole discretion as to how or if the time guidelines will be implemented during each competition. Teams should NOT object if they perceive a violation of these *guidelines*.
 - Opening/closing statements—5 minutes each;
 - Direct examination—7 minutes per witness;
 - Voir Dire, if necessary— 2 minutes per expert witness (in addition to the time permitted for direct and cross examination)
 - Cross-examination—5 minutes per witness;
 - Re-Direct and Re-Cross Examination—3 minutes and a maximum of 3 questions per witness.

PART II: HINTS ON PREPARING FOR A MOCK TRIAL COMPETITION

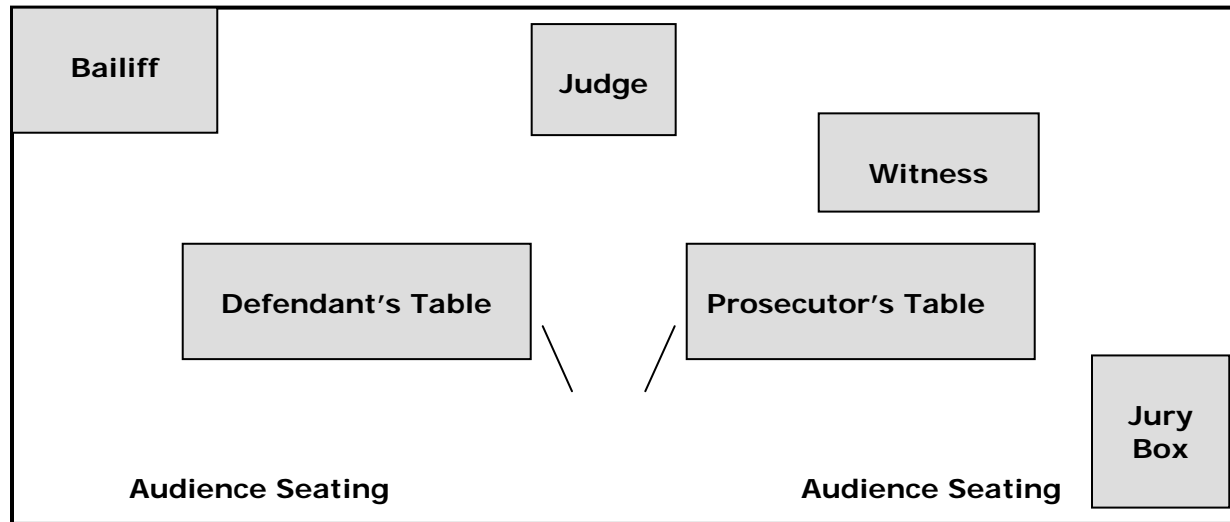
The following tips were developed by long-time Mock Trial Coaches.

1. Every student, teacher and attorney participating in a team's preparation should read the entire set of materials (case and guide) and discuss the information, procedures and rules used in the mock trial competition. Students: you are ultimately responsible for all of this once Court is in session.
2. Examine and discuss the facts of the case, witness testimony and the points for each side. Record key information as discussion proceeds so that it can be referred to in the future.
3. Witness' credibility is very important to a team's presentation of the case. Witnesses: move into your roles and attempt to think as the person you are portraying. Read over your affidavits many times and have other members of your team ask you questions about the facts until you know them.
4. Student attorneys: you should have primary responsibility for deciding what possible questions should be asked of each witness on direct and cross-examination. Questions for each witness should be written down and/or recorded. Write out key points for your opening statements and closing arguments before trial; then, incorporate additional points that arose during the competition for inclusion in your closing argument to highlight the important developments that occurred during the trial. Concise, summary, pertinent statements which reflect the trial that the judge just heard are the most compelling and effective. Be prepared for interruptions by judges who like to question you, especially during closing arguments.
5. The best teams generally have student attorneys prepare their own questions, with the Teacher and Attorney Coaches giving the team continual feedback and assistance. Based on these practice sessions, student attorneys should continue revising questions and witnesses should continue studying their affidavits.
6. As you approach your first round of competition, you should conduct at least one complete trial as a dress rehearsal. All formalities should be followed and notes should be taken by everyone. Evaluate the team's presentation together. Try to schedule this session when your Attorney Coach can attend.
7. **Some of the most important skills for team members to learn are:**
 - Deciding which points will prove your side of the case and developing the strategy for proving those points.
 - Stating clearly what you intend to prove in an opening statement and then arguing effectively in your closing that the facts and evidence presented have proven your case.
 - Following the formality of court; e.g., standing up when the judge enters or whenever you address the Bench, and appropriately addressing the judge as "Your Honor," etcetera.
 - Phrasing direct examination questions that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions).
 - Refraining from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, learn to limit additional questions, as they often lessen the impact of previously made points.
 - Thinking quickly on your feet when a witness gives you an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at you.
 - Recognizing objectionable questions and answers, offering those objections quickly and providing the appropriate basis for the objection.
 - Paying attention to all facets of the trial, not just the parts that directly affect your presentation. All information heard is influential! Learn to listen and incorporate information so that your presentation, whether as a witness or an attorney, is the most effective it can be.

- The Mock Trial should be as enjoyable as it is educational. When winning becomes your primary motivation, the entire competition is diminished. **Coaches and students should prepare AT LEAST as much for losing as they do for winning/advancing.** Each member of the team—student or coach—is personally responsible for his/her behavior prior to, during, and at the close of the trial. There are schools and individuals across the state that are no longer welcome to participate based on previous behavior.

PART III: TRIAL PROCEDURES

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom, as well as with the events that generally take place during the competition and the order in which they occur. This section outlines the usual steps in a “bench” trial— that is, without a jury.



Steps in a Mock Trial

1. The Opening of the Court
 - a. Either the clerk of the Court or the judge will call the Court to order.
 - b. When the judge enters, all participants should remain standing until the judge is seated.
 - c. The case will be announced; i.e., “The Court will now hear the case of _____ v. _____.”
 - d. The judge will then ask the attorneys for each side if they are ready.
2. Opening Statements (5 minutes maximum)
 - a. Prosecution (criminal case)/ Plaintiff (civil case)
After introducing oneself and one’s colleagues to the judge, the prosecutor or plaintiff’s attorney summarizes the evidence for the Court which will be presented to prove the case.
 - b. Defense (criminal or civil case)
After introducing oneself and one’s colleagues to the judge, the defendant’s attorney summarizes the evidence for the Court which will be presented to rebut the case the prosecution or plaintiff has made.
3. Direct Examination by the Prosecutor
The prosecutor/ plaintiff’s attorney conducts direct examination (questioning) of each of its own witnesses. At this time, testimony and other evidence to prove the prosecution’s/plaintiff’s case will be presented. The purpose of direct examination is to allow the witness to relate the facts to support the prosecution/plaintiff claim and meet the required burden. (If an attorney chooses to voir dire a witness, 2 minutes are permitted, in addition to the 7 minutes allowed for direct examination.)

NOTE:

The attorneys for both sides, on both direct and cross-examination, should remember that their only function is to ask questions; attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

4. Cross-Examination by the Defendant's Attorneys
After the attorney for the prosecution/plaintiff has completed the questioning of a witness, the judge then allows the defense attorney to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of the opposing witness. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through cross-examination. (If an attorney chooses to voir dire a witness, 2 minutes are permitted, in addition to the 5 minutes allowed for cross examination.)
5. Direct Examination by the Defendant's Attorneys
Direct examination of each defense witness follows the same pattern as above which describes the process for prosecution's witness.
6. Cross-Examination by the Prosecution/ Plaintiff
Cross-examination of each defense witness follows the same pattern as above for cross-examination by the defense.
7. Re-Direct Examination by the Plaintiff/ Prosecution
The Plaintiff's/Prosecution's attorney may conduct re-direct examination of the witness to clarify any testimony that was cast in doubt or impeached during cross-examination. (Maximum of three minutes or three questions.)
8. Re-Cross Examination by the Defense Attorneys
The defense attorneys may re-cross examine the opposing witness to impeach previous testimony. (Maximum of three minutes or three questions.)
9. Voir Dire Examination by Either the Plaintiff/ Prosecution or the Defense Attorneys
Voir Dire is the process of asking questions to determine the competence of an alleged expert witness. Before giving any expert opinion, the witness must be qualified by the court as an expert witness. The court must first determine whether or not the witness is qualified by knowledge, skills, experience, training or education to give the anticipated opinion. After the attorney who called the witness questions him/her about his/her qualifications to give the opinion, and before the court qualifies the witness as an expert witness, the opposing counsel shall (if he/she chooses to do so) have the opportunity to conduct a brief cross-examination (called "voir dire") of the witness' qualifications.
10. Closing Arguments (Attorneys)
For the purposes of the Mock Trial Competition, the first closing argument at all trials shall be that of the Defense.
 - a. Defense
A closing statement is a review of the evidence presented. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not substantiate the elements of a charge or claim, stresses the facts and law favorable to the defense, and asks for a finding of not guilty for the defense.
 - b. Prosecution/ Prosecution
The closing statement for the prosecution reviews the evidence presented. The prosecution's closing statement should indicate how the evidence has satisfied the elements of a charge, points out the law applicable to the case and asks for a finding of guilt. Because the burden of proof rests with the prosecution/plaintiff, this side has the final word.
11. The Judge's Role and Decision
The judge is the person who presides over the trial to ensure that the parties' rights are protected and that the attorneys follow the rules of evidence and trial procedure. In mock trials, the judge also has the function of determining the facts of the case and rendering a judgment, just as in actual bench trials.

PART IV: SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. **The burden is on the attorneys to know the rules, to be able to use them to present the best possible case, and to limit the actions of opposing counsel and their witnesses.**

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this Mock Trial Competition, the rules of evidence have been modified and simplified. Not all judges will interpret the rules of evidence or procedure the same way, and you must be prepared to point out the specific rule (quoting it, if necessary) and to argue persuasively for the interpretation and application of the rule you think proper. **No matter which way the judge rules, attorneys should accept the ruling with grace and courtesy!**

1. SCOPE

RULE 101: SCOPE. These rules govern all proceedings in the mock trial competition. The only rules of evidence in the competition are those included in these rules.

RULE 102: OBJECTIONS. An objection which is not contained in these rules shall not be considered by the Court. However, if counsel responding to the objection does not point out to the judge the application of this rule, the Court may exercise its discretion in considering such objections.

2. RELEVANCY

RULE 201: RELEVANCY. Only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, confuses the issues, or is a waste of time, it may be excluded by the Court. This may include testimony, pieces of evidence, and demonstrations that have no direct bearing on the issues of the case and have nothing to do with making the issues clearer.

Example:

The defense attorney asks Kris Kelley, on cross-examination, "Is it not true that, when you were eight years old, your mother grounded you for driving your Power Wheels truck erratically?"

Objections to Irrelevant Questions/Testimony:

"Objection. This testimony is unduly prejudicial."

"I object, Your Honor. This testimony is irrelevant to the facts of the case."

RULE 202: CHARACTER. Evidence about the character of a party or witness (other than his or her character for truthfulness or untruthfulness) may not be introduced unless the person's character is an issue in the case.

Examples:

Whether one spouse has been unfaithful to the other may be a relevant issue in a civil trial for divorce, but is generally not an issue in a criminal trial for assault. A person's violent temper may be relevant in a criminal trial for assault, but is not an issue in a civil trial for breach of contract.

Objections:

"Objection. Evidence of the witness' character is not proper given the facts of the case."

"Objection. Only the witness' reputation for truthfulness is at issue here."

3. WITNESS EXAMINATION

A. DIRECT EXAMINATION (attorney calls and questions witness)

RULE 301: FORM OF QUESTION. Witnesses should be asked direct questions and may not be asked leading questions on direct examination. Direct questions are phrased to evoke a set of facts from the witnesses. A leading question is one that suggests to the witness the answer desired by the examiner -- often a "yes" or "no" answer.

Example of a Direct Question:

An attorney for the Prosecution asks Trooper Jesse Ziegler, "How many years have you been a police officer?"

Example of a Leading Question:

An attorney for the Prosecution asks Trooper Jesse Ziegler, "Isn't it true that you have been a police officer for twenty four years?"

Narration: While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or narrate an entire story. Narrative questions are objectionable.

Example of Narrative Question:

An attorney for the defense asks Alex Goldman, "Describe for the Court what happened during the month of July."

Narrative Answers:

At times, a direct question may be appropriate, but the witness' answer may go beyond the facts for which the question was asked. Such answers are subject to objection on the grounds of narration.

Objections:

"Objection: Counsel is leading the witness."

"Objection. Witness is being narrative."

"Objection: Question asks for a narration."

RULE 302: SCOPE OF WITNESS EXAMINATION. Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.

RULE 303: REFRESHING RECOLLECTION. If a witness is unable to recall a statement made in an affidavit, the attorney on direct may show that portion of the affidavit that will help the witness to remember.

B. CROSS EXAMINATION (questioning the other side's witness)

RULE 304: FORM OF QUESTION. An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions that tend to evoke a narrative answer should be avoided in most instances.

RULE 305: SCOPE OF WITNESS EXAMINATION. Attorneys may only ask questions that relate to matters brought out by the other side on direct examination or to matters relating to the credibility of the witness. This includes facts and statements made by the witness for the opposing party. Note that many judges allow a broad interpretation of this rule.

Example:

If on direct examination a witness is not questioned about a topic, the opposing attorneys may not ask questions about this topic on cross examination.

Objection:

"Objection. Counsel is asking the witness about matters which did not arise during direct examination."

RULE 306: IMPEACHMENT. On cross-examination, the attorney may impeach a witness (show that a witness should not be believed) by (1) asking questions about prior conduct that makes the witness' credibility (truth-telling ability) doubtful, or (2) asking questions about previous contradictory statements. These kinds of questions can only be asked when the cross-examining attorney has information that indicates that the conduct actually happened.

C. RE-DIRECT EXAMINATION

RULE 307: LIMIT ON QUESTIONS. After cross-examination, up to three (3), but no more than three (3), questions may be asked by the direct examining attorney, but such questions are limited to matters raised by the attorney on cross-examination. (The presiding judge has considerable discretion in deciding how to limit the scope of the re-direct.)

NOTE:

If the credibility or the reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Please note that at times it may be more appropriate NOT to engage in re-direct examination.

D. RE-CROSS EXAMINATION

RULE 308: LIMIT ON QUESTIONS. Three (3) additional questions, but no more than three (3), may be asked by the cross-examining attorney, but such questions are limited to matters on re-direct examination and should avoid repetition. (The presiding judge has considerable discretion in deciding how to limit the scope of the re-cross.) Like re-direct examination, at times it may be more appropriate not to engage in re-cross examination.

Objection:

"Objection. Counsel is asking the witness about matters that did not come up on re-direct examination."

4. HEARSAY

A. THE RULE

RULE 401: HEARSAY. Any evidence of a statement made by someone who is not the witness on the stand, which, if offered to prove the truth of the matter asserted in that out-of-court statement, is hearsay, and is not permitted.

Example:

An attorney for the Defense asks Riley Schenk, "What did you hear the kids say to Alex Goldman as they were leaving the pool?"

Objection:

Objection. Counsel's question is seeking a hearsay response.

Example:

Riley Schenk states, "I overheard several of the other teens say that Alex was a good driver and that they wanted a ride home."

Objection:

"Objection. The witness' answer is based on hearsay. I ask that the statement be stricken from the record."

Response to the Objections:

"Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show...."

B. EXCEPTIONS

- RULE 402:** ADMISSION AGAINST INTEREST. A judge may admit hearsay evidence if it was said by a party in the case and contains evidence which goes against the party's side.
- RULE 403:** STATE OF MIND. A judge may admit hearsay evidence if a person's state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person's state of mind.
- RULE 404:** BUSINESS RECORDS. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of the information or the method of circumstances of preparation indicate lack of trustworthiness, shall be admissible. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and callings of every kind, whether or not conducted for profit.
- RULE 405:** **EXCITED UTTERANCE. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.**

5. OPINION AND EXPERT TESTIMONY

- RULE 501:** OPINION TESTIMONY BY NON-EXPERTS. Witnesses who are not testifying as experts may give opinions which are based on what they saw or heard and are helpful in explaining their story. A witness may NOT testify to any matter of which the witness has no personal knowledge, nor may a witness give an opinion about how the case should be decided.

Example:

(General Opinion)

Defense attorney asks Kris Kelley, "Do you think that the group of teenagers whom you were with at the pool had a good time?"

Objection:

"Objection. Counsel is asking the witness to give an opinion."

Example:

(Lack of Personal Knowledge)

Defense attorney asks Kris Kelley, "Was the concrete used to pave North-South Highway different than the material used on other roads in West Beakersville?"

Objection:

"Objection. The witness has no personal knowledge that would enable him/her to answer this question/ make this statement."

Example:

(Opinion on Outcome of Case)

The prosecution asks Sam Gilchrist, "Was Alex Goldman driving in a grossly negligent manner on the night of July 4, 2004?"

Objection:

"Objection. The question asks the witness to give a conclusion that goes to the finding of the Court."

RULE 502: OPINION TESTIMONY BY EXPERTS. Only persons qualified as experts may give opinions on questions that require special knowledge or qualifications. An expert may be called as a witness to render an opinion based on professional experience. An expert must be qualified by the attorney for the party for whom the expert is testifying. This means that before the expert witness can be asked for expert opinion, the questioning attorney must bring out the expert's qualifications, education and/or experience.

Example:

Defense attorney asks Trooper Jesse Ziegler, "From your investigation, do you believe that the accident was caused by the grossly negligent operation of a vehicle on July 4, 2004?"

Objection: "Objection. Counsel is asking the witness to give an expert opinion for which the witness has not been qualified."

RULE 503: VOIR DIRE. After an attorney who has called a witness questions him/her about his/her qualifications, and before the court qualifies the witness as an expert, the opposing counsel shall have the opportunity, if he/she chooses, to conduct voir dire. After the voir dire examination has been conducted, the cross-examining attorney should advise the court as to whether there are any objections to the witness being qualified as an expert witness and/or whether there are any objections to the expert witness' expertise to give the specific opinion the opposing counsel is trying to elicit from this witness.

Example:

(after questioning by an attorney to create a foundation for his/her witness to be qualified by the Court as an expert witness): "At this time, your Honor, I request that the Court accept and qualify the witness as an expert in the field of accident reconstruction."

Objection:

"Your Honor, we would like permission to voir dire the witness."

6. PHYSICAL EVIDENCE

RULE 601: INTRODUCTION OF PHYSICAL EVIDENCE. Physical evidence may be introduced if it is relevant to the case. Physical evidence will not be admitted into evidence until it has been identified and shown to be authentic or its identification and/or authenticity has been stipulated. That a document is "authentic" means only that it is what it appears to be, not that the statements in the document are necessarily true.

Physical evidence need only be introduced once. The proper procedure to use when introducing a physical object or document for identification and/or use as evidence is (for example):

- a. Show the exhibit to opposing counsel.
- b. Show the exhibit and have it marked by the clerk/judge. "Your Honor, please have this marked as Prosecution's Exhibit 1 for identification."
- c. Ask the witness to identify the exhibit. "I now hand you what is marked Prosecution's Exhibit 1. Would you identify it, please?"
- d. Ask the witness about the exhibit, establishing its relevancy.
- e. Offer the exhibit into evidence. "Your Honor, we offer Prosecution's Exhibit 1 into evidence at this time."

- f. The Judge will ask opposing counsel whether there is any objection, rule on the objection, and admit or not admit the exhibit into evidence.
- g. If the exhibit is a document, hand it to the clerk/judge.

NOTE:

After an affidavit has been marked for identification, a witness may be asked questions about it without its introduction into evidence.

7. INVENTION OF FACTS (Special Rules for the Mock Trial Competition)

RULE 701: DIRECT EXAMINATION. On direct examination, **the witness is limited to the facts provided in the casebook.** If a witness testifies in contradiction of a fact given in the witness' statement, opposing counsel should impeach the witness' testimony during cross-examination. **If the witness goes beyond the facts given, such that they directly conflict with the stipulated facts or witness affidavits, a bench conference may be requested by opposing counsel, at which time the counsel may object to invention of facts.** (It should be noted that the granting of a bench conference is a discretionary decision of the judge. A request for a bench conference might not be granted.)

Objection to be made at a bench conference:

"Your Honor, the witness is creating facts which are not in the record."

"Your Honor, the witness is intentionally creating facts which could materially alter the outcome of the case."

RULE 702: CROSS-EXAMINATION. Questions on cross-examination should not seek to elicit information that is not contained in the fact pattern. If on cross-examination a witness is asked a question, the answer to which is not contained in the witness' statements of the direct examination, the witness may respond with any answer which does not materially alter the outcome of the trial. An answer which is contrary to the witness' affidavit may be impeached by the cross-examining attorney. If the witness invents facts material to the case, a bench conference may be called and, if granted, an objection made to the invention of facts.

Objection:

"Objection. The witness' answer is inventing facts which materially alter the case."

8. PROCEDURE RULES

RULE 801: PROCEDURES FOR OBJECTIONS. An attorney may object anytime the opposing attorney has violated the Rules of Evidence.

NOTE: The attorney who is objecting should stand up and do so at the time of the violation. When an objection is made, the judge will usually ask the reason for it. Then the judge will turn to the attorney who asked the question and that attorney will usually have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether to discard a question or answer because it has violated a rule of evidence ("objection sustained"), or whether to allow a question or answer to remain on the trial record ("objection overruled").

RULE 802: MOTIONS TO DISMISS. Motions for dismissal at the end of the prosecution's case are NOT permitted.

RULE 803: CLOSING ARGUMENTS. Closing arguments must be based on the evidence and testimony presented during the trial. Offering new information at this point is incorrect.

Criminal Division

STATE OF MARYLAND)
)
)
vs.)
)
)
ALEX GOLDMAN)

Statement of Stipulated Facts

On the afternoon of July 4, 2004, Alex Goldman drove a family-owned 2000 Tonka REV-80 SUV to the community pool to meet friends for a holiday celebration. Alex had just obtained a driver’s license two weeks earlier and was excited to be able to take the Tonka REV-80 SUV out for the evening.

As planned, Alex met several friends at the pool where they hung out, went swimming and cooked burgers and hotdogs. As the teens took part in the July 4th activities at the pool, several members of the group drank two six packs of beer. Later in the afternoon, Alex agreed to drive several friends home, despite the rule of Alex’s parents of only one passenger in the REV-80. Including Alex, five teenagers piled into the REV-80 for the ride home. The teenagers all lived within approximately 5 miles of the pool. One of the passengers in the REV-80 stated that Alex was driving the SUV along North-South Highway, a highway divided by a narrow median strip, at 71 miles per hour—more than fifteen miles over the posted speed limit.

After swerving slightly to the left, the REV-80 struck the 6-inch-high median strip and propelled into oncoming traffic where it hit a pickup truck driven by Thomas McCally, age 22. McCally was on his way home from work. The impact from the collision forced the REV-80 airborne; the vehicle rolled five times before landing off of the west side of the southbound lanes. McCally was taken to a nearby hospital but later died. Two of Goldman’s passengers, Jennifer Hammond and Jeffrey Brown, both 16-years-old, died at the scene.

Alex was treated for minor cuts and abrasions and was released from the hospital the next morning. The two other surviving passengers, Kris Kelley (age 16) and David Johnson (age 17), suffered broken bones, punctured lungs, and deep lacerations; both endured lengthy hospital stays of 19 days and 5 weeks, respectively. David Johnson is still undergoing reconstructive surgery for injuries sustained to his face, eyes, and neck; as a result of the accident, Johnson has not been able to return to school for his senior year.

Police officers who investigated the crash said that Goldman likely lost control of the REV-80 due to excessive speed. Officers were unable to administer a breathalyzer at the scene, because Goldman was unconscious. A blood test was later administered at the hospital, but the results were inconclusive.

Two of the families of those killed and/or injured in the collision have sued the Goldman family. Those suits are still pending.

Statement of the Charges and Defenses

The State of Maryland charges Alex Goldman with the following violations of the Maryland Code:

Count 1 – Manslaughter by Motor Vehicle in violation of Maryland Criminal Code §2-209.

Alex Goldman denies all charges, and claims that these actions did not rise to the level of gross negligence and the charge of manslaughter.

Additional Stipulations

The parties have stipulated to the *authenticity, factual accuracy, and source* of the following items. The parties have agreed that these items are not in dispute.

- Maryland State Police Accident Report
- West Beakersville Blood Alcohol Report
- USA Today Articles
- Teen Driving Statistics Informational Sheet

The parties reserve the right to dispute any other legal or factual conclusions based on these items and to make objections *based on evidentiary issues*.

Witnesses for the Defense

Alex Goldman, *Defendant*
Riley Schenk, *Witness to Collision*
Dana Koran, Ph.D, *Forensic Specialist*

Witnesses for the Prosecution

Kris Kelley, *Passenger in Goldman’s REV-80*
Sam Gilchrist, *UDS Parcel Service Worker*
Trooper Jesse Zeigler, *Traffic Homicide Investigator/ Arresting Officer*

**Alex Goldman
Defendant**

Witness for the Defense

My name is Alex Goldman. I am 16 years old. I attend West Beaker High School, where I am in the eleventh grade. Until a couple months ago, I had been a successful student. I have gotten straight A's my whole life. I am a member of the National Honor Society and Math Club at my school. Before the accident, I also played sports. Last year I lettered in soccer, basketball, and lacrosse.

July 4, 2004 was the worst day of my life. Who would have thought that getting my license would lead to such disastrous things? Until that day, I had a clean driving record and I had obeyed all of my parents' driving rules. I certainly could never have imagined what was to come. That afternoon, I agreed to meet everyone at the pool for some fun. Although I had had my license for a couple weeks, most of the kids I was going to meet had not yet seen my newly inherited 2000 Tonka REV-80. My parents had asked me to pay for insurance on the REV-80, so I still took the bus to school to save money on gas.

At the pool we were just hanging out and having fun, like any normal teenagers on July Fourth. A couple of the guys, Jeffrey and Max, had brought some beer along with them and offered me one. I didn't want to seem like a jerk so I took a beer when they handed it to me. Knowing that I would be driving later, I nursed that same beer all afternoon. I don't think I even finished it. I figured if I had a beer in my hand they wouldn't hassle me about it. It's easier just to blend in sometimes.

When the lifeguards blew the five o'clock whistle, I figured it was about time to go home. We had made plans to go to the fireworks at 8pm and I knew my parents wanted my REV-80 home before that. Not wanting to stir up a bunch of excitement, I quietly asked if Kris wanted a ride home from the pool. Kris is my next door neighbor, and we had been friends for what seemed like forever. I guess some of the others overheard my offer to Kris, because when we went out front it seemed like everyone wanted a ride. Before I could say anything to stop them, David, Jennifer, and Jeffrey were in the back seat of my REV-80.

My parents had laid down pretty strict rules for me when I got the REV-80, and the most important one to them was no more than one passenger in it at a time. I don't know why, but I didn't speak up and tell the others I could not give them a ride. At the time, I did not want them to laugh at me and my parents' ridiculous rules. I remember looking up in my rearview mirror and thinking to myself, they all live close – no one will ever know.

I decided to drop David off first because he lived the farthest, but it was easy to get to his house up North-South Highway. When we turned out of the pool, Kris turned up the radio since "*Let's Get It Started*" was on. Everyone in the back started singing as loud as possible and throwing their hands up in the air. I probably should have said something to them at that point because I was having a difficult time seeing out my back window with hands flailing in the air. I also could not really hear anything other than loud singing and the radio. The words of my driving instructor were haunting me at that point, "Make sure you keep your hands at 10 and 2, do not let anything in the car obstruct your view, and stay aware of what is going on outside of the car."

I carefully merged onto North-South Highway and brought my speed up to the posted 55 mph. At that point, Jeffrey screamed something from the back like, "How fast does this baby go?" I looked down at the speedometer and I was just shy of 60 mph. I was pretty certain that there were no cops on the road, so I kicked it up a notch and pressed on the pedal. The engine revved and that is when I made my biggest mistake – I turned around. I looked at Jeffrey and said, "How do you like that?" Before I could get my eyes back on the road and react, I felt a large thud on the left side of my SUV and saw a pick-up truck coming straight at my window. That is the last memory I have of the accident.

I am told that I did not wake up until about 11 pm that night. I just remember looking down and being in a hospital bed with an IV in my arm and bruises all over my arms and legs. I knew that it could not be good. My mom and dad were right there beside me and I could see the tears in their eyes. If I could take back anything in my life it would be that day. I wish I had never gotten my license and I had never gotten that stupid REV-80. Jennifer and Jeffrey were two of my closest friends and I will not get to share any more memories with them. I cannot apologize enough to the Hammonds, the Browns and the McCally family. I did not know Thomas McCally but I know his life was ended too early. I am so sorry.

Alex Goldman
Alex Goldman

Riley Schenk
Witness to Collision

Witness for the Defense

My name is Riley Schenk. I am 42 years old. My daughter, Sara Schenk, is a classmate of Alex Goldman's at West Beaker High School. I picked up Sara from the pool on the afternoon of July 4th, 2004 and I was following behind Alex Goldman's REV-80 prior to the accident.

When I pulled into the pool parking lot that afternoon, the kids were already herding out of the front gate. From the blood shot eyes and stagger in some of their steps, I could tell that they had probably worn themselves out from all the horse-playing at the pool that afternoon. Sara had called me just a half an hour earlier and said she was ready to go. She had asked me to come get her so that she could get ready for the fireworks in town that night.

As I pulled up to the curb, I saw a few of the kids piling into the back of a green SUV. Sara had told me several days earlier that Alex had gotten a REV-80 and was really excited about it. Alex is a good kid—a well-rounded student who excels in both academics and sports. I'm sure Alex's parents thought Alex had earned the privilege to get a driver's license and a car. Alex turned to say hi to me before jumping into the driver's seat.

I followed Alex and the crew out of the pool. Having parental instincts and a natural concern for their safety, I intently watched Alex's REV-80 to see how Alex was driving. I didn't notice Alex driving in an erratic or even careless manner, but I could tell that the kids were a little rowdy inside of the REV-80 and that made me nervous. However, Alex must have stayed calm because Alex was very good about using the blinker to turn out of the pool, staying on the proper side of the road, and following the posted speed limit. We followed Alex down Main Street and made a right onto the exit ramp for North-South Highway.

The posted speed limit on North-South Highway is 55 mph and the highway is four lanes wide—two going in each direction— with a median strip dividing the North and South-bound sides. People use the divided highway often to travel from South Beakersville to North Beakersville. On that day, probably due to the holiday, the highway was busy.

Alex merged onto the highway and stayed in the right lane for some time. I followed behind the Tonka REV-80 at about 60 miles per hour. Around mile marker 37.5, Alex picked up speed and merged into the left-hand lane. I remember the mile marker because it was at the point that we passed the Beakersville Police Department. I thought it a bit ironic that Alex was starting to go faster as we passed the police station.

No more than a minute later, I saw something that I will never forget – a parent's worst nightmare. The REV-80 continued to pull farther away from us as we traveled down a hill. I never saw the REV-80 braking. If I had to estimate, I would say that Alex, by that point, was going at least 10 miles over the speed limit. The REV-80 jolted to the left and hit the median strip. Sara began to scream in the seat next to me. I slammed on my brakes. Alex's REV-80 traveled over the median, hit a truck, and began to flip. I still remember the sound of rubber screeching and the crunching noise of what sounded like a large metal basketball hitting the concrete over and over again. I could not believe it.

I pulled the car over to the side of the road and I looked back at the accident. All I could see of Alex's SUV were the wheels and under-carriage. The REV-80 had traveled far off the opposite side of the road and landed on its side. The truck involved in the accident must have fishtailed and spun several times because it was facing oncoming traffic on the southbound side of the highway. There were pieces of glass and car everywhere.

We called 911 and the dispatcher informed us that the authorities were already notified and on their way. It was unbelievable that I had seen these kids pile out of the pool just minutes before. It really is a tragedy and such a horrific accident. Alex seemed to be driving perfectly up until seconds before the accident—otherwise, I would have had the kids pile into my car.

Beakersville will be feeling this loss for years to come. This is the type of thing you only hear about on the news. It just doesn't happen in a town like Beakersville.

Riley Schenk
Riley Schenk

**Dana Koran, Ph.D.
Forensic Specialist**

Witness for the Defense

I earned my PhD in statistics from Clarkstown University in Shaysville, Nebraska. My undergraduate degree is in civil engineering from University of Maryland College Park. I have been working at the National Highway Traffic Safety Administration (NHTSA) for the past 16 years.

I work in the traffic safety sector of the NHTSA as a forensic specialist in vehicle accident investigation. Generally, when I am called to investigate particular accidents, my role is to examine the remnants of the accident to determine if any mechanical or design features of the vehicles involved caused or exacerbated the results of the accident. Over the course of my employment, I have investigated over 500 accidents all over the country and almost 200 here in the state of Maryland. I have been called to testify in approximately 40 trials involving vehicular accidents. Of those trials, I have testified for the prosecution about 15 times. Each year my sector publishes the "Crash Statistics Report" which analyzes crash data sent to NHTSA from State motor vehicle associations.

I was called by the Maryland State Police early in the morning on July 5, 2004 to come out and examine the accident in question here. When I arrived in Beakersville, I met initially with Trooper Zeigler to look over the accident report. We then traveled to the impound lot to look at the vehicles involved. The 2000 Tonka REV-80 was in bad shape. According to eye witnesses, the SUV rolled five times. This is consistent with my findings; the roof had collapsed on the passenger side of the vehicle and all of the glass had been shattered from the front, rear, and side windows. There was evidence indicating the SUV had skidded along the median strip – chiefly, a layer of cement dust on the front and side of the driver's side wheel.

I compared this evidence with that found at the accident scene. Trooper Ziegler took me to the location on North-South Highway, approximately 650 feet south of the Brielle Road exit. At this point, the highway was fairly straight with a slight downgrade going from South to North. There was clear visibility across all lanes. The two lanes of opposing traffic are divided by a 6 inch high median that was 2.5 feet wide at that location.

There was a rubber skid mark on the median strip approximately 14 feet in length that stretched from bottom to top of the concrete curb. The beginning of the skid mark was the point of impact and the slight incline of the skid mark indicated that the REV-80 had traveled up and over the median. As the REV-80 traveled into the southbound lanes, it struck the Ford F150 on the front driver's side. The REV-80 rolled five times after the impact with the F150. The SUV came to a rest on the grassy embankment approximately 81 feet off the southbound shoulder.

Our studies have indicated that rollover crashes account for one of every four people who die in auto accidents each year, so it is not surprising from the nature of this accident and the vehicles involved that three people lost their lives. A study conducted by my office at the NHTSA and published in USA Today indicates that Tonka REV-80s have a 38% to 43.9% chance of rolling over when the vehicle runs off the road or is tripped by a ditch, soft soil, or a curb. This means for every 10 accidents where a REV-80 is involved, a rollover will occur in approximately four of those crashes. Time, and time again, this vehicle has ranked among the highest in rollover percentages based on its size and relatively light weight. Had Alex been driving a four door sedan, the rollover risk would have been significantly reduced—likely to less than 9%.

Some people argue that rollovers are caused by the drivers themselves; that careful driving would eliminate the problem. It is clear, however, from the studies conducted by my office, that the propensity to roll is greater for some vehicles than others. There is an actual formula—called the K Index—that determines this likelihood. The formula considers height, weight (including 500 pounds of occupant/cargo weight), and track width (the distance between tires, measured from the center of one tire to the center of the opposite tire) of the vehicle in question. According to this formula, and from my investigation, I believe that the design of the REV-80 played a significant role in the tragic results of this accident. Vehicles with this sort of proclivity to roll should be banned from the roadways.

Dana Koran, Ph.D.

Dana Koran, Ph.D.

**Kris Kelley
Passenger**

Witness for the Prosecution

My name is Kris Kelley. I am 16 years old. I am in my junior year at West Beaker High School.

July Fourth is always such a big deal in my family, or at least for my parents who drag us along with them to the lake house. My dad has this hideous Uncle Sam costume that he wears to cook burgers on the grill. Following dinner, we set off fireworks over the lake—by far, the best part of the whole holiday. This year, however, was different and the family vacation was called off. My brother and I had begged and pleaded for my parents to stay home so that we could go out with our friends. We eventually got our way. Now I am kind of wishing we had gone on that trip. I had a bad feeling about that day from the start.

It was a sunny day, so a group of us decided to meet at the neighborhood pool in the afternoon. Our community pool is pretty nice because it is huge, and surrounded by a large wooded area with picnic tables. We marked our territory at the farthest table from the lifeguard office because we knew Jeffrey Brown and Max McKeffrey were planning on bringing beer for all of us. At some point during the day, each of us had something to drink. Even Alex had a beer in hand all day.

We spent close to four hours goofing off around the pool – having diving contests, playing volleyball, and just hanging out. Around 5 pm, we decided that it was time to go home so that we could get ready for the fireworks. Sara Schenk called her mom for a ride. The rest of us headed outside to leave. Alex, who was so excited about getting a license and car, offered me a ride home. David, Jennifer, and Jeffrey must have heard that Alex was giving me a ride, because they jumped in the car, too. Alex turned to me and said that Mr. and Mrs. Goldman did not want more than one passenger in the REV-80. Alex did not want to say anything to the others out of concern that they might laugh at the rule. “Besides,” Alex had said, “they all live close enough to the pool. My parents will never know.”

Alex decided to drop off David first because he lived straight up North South Highway. As soon as we turned out of the entrance of the pool our favorite song came on the radio—“*Let’s Get It Started*”. David started screaming from the backseat to turn it up. We all started dancing and singing at the top of our lungs. I remember being so excited that we could finally drive ourselves around and the radio was no longer dominated by our parents with the likes of Elton John. The next thing I know, Jeffrey is screaming from the backseat at Alex, “So, how fast does this baby go?” Alex sped up and I saw the speedometer pass 70. Alex turned around to Jeffrey who was in the backseat and said “How do you like that?”

I remember a loud thud. It seemed like everything was in slow motion. I remember thinking—“there’s a pickup truck coming right at us—they’re driving down the wrong side of the road.” Then I realized WE were on the wrong side of the road. It seemed like forever before the REV-80 stopped rolling. The last thing I remember is calling out to everyone in the wreckage to see if they were OK. I don’t remember if anyone answered me.

I woke up the next day in the hospital. I was told that I was knocked unconscious when we got into the accident. I had broken my left leg and ankle, fractured my wrist and the doctors told me that I had a punctured lung. I was in the hospital for 19 days, and my leg still has yet to fully recover. The doctors will not let me play lacrosse or soccer anymore, but my injuries were incomparable to the others. I could still open my eyes and breathe; my best friend Jennifer and my friend Jeffrey were not as fortunate. The accident took their lives.

I really wish I had never gotten into that SUV on July 4th. I should have gone to the lake like I did every other summer. I know that Alex did not mean to harm anyone. But I do think it was really careless of Alex to drink that afternoon and then play around in the car on the way home.

I just wish that we had all taken driving more seriously—that we hadn’t been screwing around, screaming and yelling and singing. In just a split second, our lives changed forever.

Kris Kelley
Kris Kelley

Sam Gilchrist
UDS Parcel Service Worker

Witness for the Prosecution

My name is Sam Gilchrist. I am 37 years old and I have worked for United Delivery System, a privately owned delivery company, for the past 15 years.

My job involves a lot of driving. On a typical day, I am in the truck delivering packages from 6 am to 6 pm. Most companies close for Independence Day but not UDS. The UDS motto is "Packages Around the Clock, 365 days a year," and, so lucky for us, we have to work all holidays. While most days are quite routine, I specifically remember July 4, 2004 because that was the date of my son's first birthday. At about 5pm, I was heading home for his birthday celebration.

I was traveling southbound on North-South highway approximately 50 yards behind a navy-colored pick-up truck. The highway was pretty busy at that time. I guess a lot of people were driving to cook-outs and parties for the 4th.

I was close enough to the truck to notice a person with short hair in the driver's seat. At that time, I saw a REV-80 fast approaching us, traveling on the inside northbound lane. It looked like quite a few kids were piled in that REV-80. I saw the vehicle take a quick jolt and hit the median when it was only about 15 yards from the truck. I immediately got over in the other lane and slowed down, but the guy in the navy pick-up truck did not stand a chance. He had absolutely no time to react.

I would estimate that the SUV was going at least 70 to 75 mph. It was definitely going faster than most of the other vehicles on that side of the road. The REV-80 jumped over the median strip and struck the pick-up truck. It was like one of those high-speed crashes you see on the television show "Cops." Next thing I know, the REV-80 is airborne and flipping over the two lanes intended for southbound traffic. I don't know how anyone made it out of that thing alive. From my vantage point, the SUV appeared to be going pretty fast; after it hit the truck, it must have flipped four or five times.

I immediately pulled my truck over and looked back at the accident. I had luckily avoided it and was able to drive past. Several other vehicles also avoided the accident. I guess they saw that I had stopped and so they proceeded on. I grabbed my cell phone and immediately dialed 911. They asked me to check to see if anyone was hurt.

Both the SUV and the pickup truck were a mangled mess. There was glass everywhere. I called out to the driver of the Ford and then peered inside. The driver did not respond but I was sure he was still breathing. My training in CPR had taught me to look at the chest cavity to see if it was rising, and in this young man's case it was. I then headed over to the REV-80 which had stopped on an embankment on the side of the road. I called out to the three people in the REV-80 and got two faint responses. Two of the other passengers—a boy and a girl—had been thrown from the SUV. They did not move or speak at all when I tried to get a response.

Within minutes, the EMS arrived. They pulled the driver and two passengers from the SUV, and flew them, by helicopter, to the hospital. An ambulance took the other two kids who had been thrown from the SUV. None of them looked like they would make it. I heard on the late-night news that the driver of the Ford, as well as the two kids who had been thrown from the REV-80, had died. The news also reported that the two kids who died had not been wearing their seatbelts.

It really is a tragedy that 3 people lost their lives because an inexperienced driver was out on the road having fun with friends. I am a firm believer that this state should raise the driving age to 18 years. I think the idea of the graduated licensing is a good start—but I don't think it's enough. New drivers shouldn't be allowed to have a bunch of passengers in their cars. If you ask me, it's a recipe for disaster.

Teens take too many risks. I know—I remember. It wasn't so long ago that I was a teen. But there are so many more dangers today than when I was a teenager: higher speed limits, road rage, more highways. Kids have little understanding of the potential consequences of speeding, not wearing seatbelts, and the distractions imposed by a bunch of other kids in the car. This poor kid, Alex Goldman, has to live with these consequences for life. It is a tragic lesson to learn, especially for someone so young.

Sam Gilchrist
Sam Gilchrist

Trooper Jesse Zeigler
Traffic Homicide Investigator

Witness for the Prosecution

My name is Trooper Jesse Zeigler. I have worked for the Maryland State Police for the past 24 years.

I grew up in Harrisonburg, Maryland where I graduated from Miller High School. I went on to pursue an undergraduate degree in Criminal Justice from the University of Maryland, Eastern Shore. I graduated in three years, second in my class. From there, I went immediately to the Maryland State Police Academy and I became an officer after 25 weeks of intense training. After my fourth year on the force, I attended a one month training seminar on Vehicular Accident Reconstruction that was taught by the National Highway Traffic Safety Administration, in conjunction with the Federal Bureau of Investigation. Since that time, I have investigated over 100 accidents a year. I have testified in 25-30 trials per year; in about 90% of the cases, I have testified for the prosecution.

On the evening of July 4th, I received a call at approximately 5:30 pm to respond to a crash. The dispatcher told me that young kids were involved and that fatalities were likely – my stomach sank. Teenage driving fatalities have been all too common. More than six thousand young drivers and passengers died in motor vehicle crashes in the United States in 2002 alone– and Maryland has been no exception to the trend.

I arrived on the scene and conducted a preliminary accident investigation. Both the vehicles were still present and EMS was in the process of treating the victims on the scene. I first went over to the REV-80, which was on its side, approximately 81 feet from the side of the southbound lanes of the highway. The roof was partially caved in on the passenger side and there was glass everywhere. I looked inside the vehicle and talked to the paramedics as they extracted the occupants from the REV-80. An EMS official confirmed that the passengers in seats 4 and 5, (the back left and middle seat), were not wearing seat belts and had been thrown from the vehicle. Both front air bags had deployed inside the REV-80.

I next went over and investigated the Ford F150, which had stopped within the southbound lanes, facing oncoming traffic. The skids indicated that the truck had spun several times before coming to a stop. The front driver's side hood was pushed in and the windshield glass was completely shattered.

This accident was not a difficult one to recreate. On the northbound side of the median strip, there was a skid mark traveling up the median strip approximately 14 feet in length. Based on the size of the skid and the marking on the northbound lane, as well as the damage to the Tonka, I estimated that the REV-80 struck the median going 75 – 80 mph as it traveled on a down grade, about 20 mph over the posted speed limit. The front left tire of the SUV hit the side of the median with considerable force and the REV-80 was gradually propelled up and over the median.

The REV-80 struck the hood and front windshield on the driver's side of the truck. There was no indication of braking on the part of the F150. According to witnesses, it was traveling at approximately 55 mph. Witnesses also stated that the driver did not have ample time to try and avoid the oncoming SUV. The force of the impact caused the REV-80 to flip approximately five times until it finally met its resting place off the southbound side of the road. The impact forced the F150 to spin several times. When the pickup truck stopped, it was facing oncoming traffic in the southbound lanes.

Following my preliminary investigation, I returned to the REV-80 to attempt to question the driver. The driver was being treated by several paramedics and appeared to be unconscious. I asked the paramedics if I could issue a breathalyzer to determine if the driver was under the influence of alcohol. They confirmed the driver's unconscious state – and a breathalyzer was impossible at that point. The paramedics assured me that a blood alcohol test would be administered at the hospital.

I understand that Dana Koran has been called to testify for the Defense, citing automobile crash studies and SUV rollover cases. However, based on my investigation, it is clear that speed played a major role in this accident, and I am sure that inexperience also played a role. I am also convinced, based on my questioning of the defendant, that alcohol was involved. During my questioning, Alex admitted to drinking one beer on the afternoon of July 4th. The blood alcohol report indicates that Alex may have consumed well more than one beer, as it registered results of .005g/100ml. Unfortunately, I was not able to

administer a breathalyzer at the scene, which would likely have been more conclusive since it was closer to the time of their leaving the pool. Even still, the BAC report was indicative of the use of alcohol—the blood test was administered nearly 5 hours after they left the pool, which allows for an estimated .075g/ml of elimination of alcohol from the system if you figure the standard .015g/ml per hour.

In reviewing this case with the State's Attorney's Office, they agreed that there was sufficient evidence in this case to file the charge of manslaughter by motor vehicle. The State's Attorney's Office considered the charge of homicide by motor vehicle while under the influence of alcohol—§2-503 of the Maryland Annotated Code. However, the delay in the administering of the Blood Alcohol Analysis resulted in our moving forward with the first charge. The fact is that three people died as a result of Goldman's actions.

Trooper Jesse Zeigler
Trooper Jesse Zeigler

Formula predicts rollover risk

Advocates want roll-ratings; automakers say process is faulty

By Gary Stoller, USA TODAY

Rollover crashes kill one of every four people who die in auto accidents, the federal government says. Yet while consumers can find out how vehicles perform in government crash tests, they cannot tell which vehicles are most prone to rolling over in an accident.

Now they may be able to. An exclusive analysis performed for USA TODAY provides rollover predictions for 189 model-year 2000 vehicles. The analysis was done by Joe Kimmel, an industrial economist. It is not based on road tests, but rather a mathematical formula that takes into account factors such as a vehicle's height, weight and width. Accidents are defined as those serious enough to be reported to the police and cause property damage, personal injury or a fatality.

Most rollovers occur when a vehicle runs off a road and turns over at least on its side. Under Kimmel's analysis, sport-utility vehicles — a category that includes some of the USA's best-selling vehicles — account for 17 of the 20 vehicles with the highest likelihood of rolling over. Twenty-two cars, nearly all high-priced, such as Cadillacs, Mercedes-Benzes and Lincolns, scored lowest for rollover probability. The formula predicts:

- ▶ Most sport-utility vehicles (SUVs) are likely to roll over in one of every four accidents. Some may turn over in nearly one of every two accidents.
- ▶ For most cars, the chance of rollover in an accident is less than 10%. Some cars, such as the Chevrolet Metro and the Suzuki Swift, can roll over about 20% of the time — as often as some SUVs.
- ▶ Minivans are more likely to roll over than most cars. They're less likely, however, to turn over than SUVs and pickups.

The analysis was done by Joe Kimmel, a Villanova, Pa., management consultant who has independently developed a mathematical formula for predicting the likelihood of a car, minivan, sport-utility vehicle or light truck rolling over in an accident. At least three sources who reviewed Kimmel's K Index — the Center for Auto Safety, a consumer-advocacy group; an independent consultant who has done research work for the National Highway Traffic Safety Administration; and NHTSA's former chief mathematician — say it is as good as or better than a formula NHTSA plans to use.

Automakers criticize the work, generally saying that rollover rates for particular models can't be predicted mathematically. Kimmel's analysis comes as the auto industry fights NHTSA's plan to use a mathematical formula to rate the rollover potential of new models this fall. Last month, the Senate Appropriations Committee voted not to fund the rating system and said the National Academy of Sciences should study rollover propensity. The issue awaits further action by Congress.

NHTSA already rates vehicles in crash tests and has the results on its Web site (www.nhtsa.gov). Kimmel's calculations depend largely on a vehicle's dimensions and estimated center of gravity. Those factors, insurance industry and safety advocates say, play a major role in determining rollover probability. Others, including auto manufacturers, dispute the validity of Kimmel's index and all mathematical formulas used to predict rollover. "The Kimmel Index seems to be an interesting academic exercise, which does little to provide meaningful information to the public," Toyota says. "Using a single calculation as the sole determinant of the potential rollover of a vehicle is not only misleading, it yields inconclusive results," says Mitsubishi Motor Sales of America spokesman Kyle Bazemore. NHTSA statistics show that 9,771 people were killed in rollovers in 1998, the latest numbers available. That's nearly one-quarter of the 41,471 killed in all types of accidents.

About 60% of fatalities in SUVs, and 40% in pickups, were in rollovers, NHTSA says. About 22% of fatalities in cars, and 30% in minivans, were rollover-related. NHTSA has long warned that SUVs are more prone to rollovers than other vehicles. However, some consumers buy them because their height provides more visibility and they are regarded as good vehicles in snow. Experts, though, say their four-wheel-drive capability may not protect against icy roads.

Four SUVs, the Chevrolet Tracker, the Suzuki Vitara, the Toyota RAV4, and the Tonka REV-80, according to Kimmel's K Index prediction, are likely to roll over in more than four of every 10 accidents — the highest rollover propensity of any

type of vehicle. The least likely SUV to roll over is the Ford Excursion, the K Index predicts. The vehicle will probably roll over in less than 13% of its accidents, Kimmel says.

General Motors, which sells the Tracker, says formulas predicting rollover may be consistent with the physics of rollover resistance, but they omit real-world factors that can affect the probability of a rollover. Vehicle design, GM officials say, plays a small role in avoiding rollovers. The best way to prevent rollovers and injuries, they say, is to increase safety belt use and curtail aggressive and impaired driving.

Brian O'Neill, president of the Insurance Institute for Highway Safety, a non-profit research group funded by auto insurers, disagrees. "'Let's blame all rollovers on the driver' has been the standard line out of auto manufacturers forever, and it's just nonsense," he says. "Each car type is more or less likely to roll over than another type. Consumer information provided by the federal government would be a first step, and there's a need for standards to get the most unstable vehicles redesigned."

George Ball, managing counsel for American Suzuki Motor, calls Kimmel's results unreliable. Contrary to what Kimmel predicts, he says, Suzuki's Vitara and Grand Vitara SUVs are more stable than other SUVs. Ball says Suzuki bases its conclusion on a formula called the static stability factor (SSF), which automotive engineers have used for decades and which NHTSA plans to use. That's the ratio of half the track width (the distance between right- and left-side tires) to the height of the vehicle's center of gravity.

Subaru officials also point to the SSF, and spokesman Richard Marshall says Kimmel's calculation for its Forester SUV is "higher than expected." The Forester, says Subaru's Don Bearden, has a low-lying engine and a lower center of gravity than other SUVs. Kimmel maintains that its light weight contributes to a 32% rollover probability. Kimmel says his K Index is better than the SSF because it considers the weight of a vehicle and its cargo, and past rollovers for different sizes of vehicles. K Index results for many older model cars, he says, are in line with state rollover statistics that NHTSA collected and SSF-based calculations by NHTSA.

Kimmel is aware, however, that his K Index and the SSF have their limitations. SSF doesn't include a vehicle's weight in its formula. And neither SSF or the K Index takes into account factors such as driver performance, weather, terrain, tire size, suspension and all-wheel-drive systems. It's possible, Kimmel says, that some of those factors may average out among model types. The index "isn't the be-all and end-all rollover formula," says Kimmel, an auto buff and a member of the Society of Automotive Engineers. "It's a simplified, relatively reliable way to predict rollover propensity based on a vehicle's dimensions and center of gravity."

Kimmel, who became interested in rollover research in 1991, has been using statistical techniques to analyze problems in various industries since 1966. His clients have included seven governors, the U.S. Postal Service and the American Bus Association. He testified once for the plaintiff in a rollover-related lawsuit involving the Ford Bronco II. Clarence Ditlow, executive director of the Center for Auto Safety, a consumer advocate, says, "The K Index is better than the SSF because it adds another factor (weight) into the equation."

Donald Friedman, a California consultant and rollover expert, agrees. Friedman formerly worked for General Motors Research Laboratories and says his own company received \$30 million in NHTSA research and development contracts from 1968-86. Friedman says Kimmel's formula is consistent with other formulas for analyzing rollover propensity and praised him for taking rollover accidents into account. NHTSA's official position is it doesn't know whether Kimmel's rollover index is valid. But Terry Klein, who evaluated K Index results for 30 vehicles while he was NHTSA's top mathematician, says the index "performed about as well" as the SSF.

The K Index "appears as good as any other means for predicting rollover propensity," says Klein, who left the agency several months ago. The K Index's conclusion that SUVs are the most likely, and cars the least likely, to roll over is in line with NHTSA data. A 1999 study, co-authored by two NHTSA officials, states that SUVs have "the lowest SSF values" and that "cars clearly have the highest SSF."

The Alliance of Automobile Manufacturers, whose 13 members claim 90% of U.S. vehicle sales, says it, too, believes SUVs are more likely to turn over. "You accept the fact that SUVs and pickup trucks are more prone to roll over because they are higher off the ground and have a higher center of gravity," says spokeswoman Gloria Bergquist.

Honda contests the K Index's prediction that its model year 2000 CR-V will likely roll over in one of every three accidents. Company officials point to a 1999 NHTSA study that shows the 1998 CR-V with an SSF better than many SUVs. Honda spokesman Art Garner says SSF and the K Index do not accurately predict real-world rollover propensity. Kimmel says that other types of vehicles (from the same and other model years) have had relatively high SSF scores that were similar to the model year 1998 CR-V. A sample of state accident statistics showed they rolled over in 24% to 50% of accidents.

Top cars

The vehicles least likely to turn over, according to Kimmel's index, are Bentley and Rolls-Royce. They will probably roll over in 1% of their accidents, he says. "These are very interesting findings, however, not entirely unexpected," says

John Crawford, a Rolls-Royce and Bentley spokesman. A vehicle's design, low center of gravity and weight play a major role in determining rollover likelihood, he says.

The cars most likely to turn over, Kimmel says, are three subcompacts: Chevrolet Metro, Suzuki Swift and Toyota Echo. They will probably roll over in at least 20% of their accidents and are about six times more likely to turn over than cars with the lowest likelihood of rollover, he says. Ball, Suzuki's lawyer, says the auto manufacturer has spoken to "outside technical experts" who "have been unable to decipher Mr. Kimmel's equations because they are confusing, nonsensical and not presented in any kind of standard mathematical form."

"I respect his opinion and that he is doing his best to represent his client," Kimmel says. "We have people like Terry Klein, Clarence Ditlow and other people who think it's pretty darn good. "Subaru takes issue with Kimmel's calculations predicting that the Impreza is more likely to roll over than the Legacy. It says that its calculations, based on the static stability factor, give the Impreza a lower rollover propensity than the Legacy. Kimmel predicts that the heavier Legacy will likely roll over in 7% of accidents and Impreza, 11%.

Minivans

Most minivans, according to Kimmel's K Index, can be expected to roll over 10% to 17.9% of the time in an accident. The Honda Odyssey will likely be the most stable minivan, probably rolling over in 8% of its accidents, Kimmel says. The Ford Windstar follows closely behind, only a single percentage point higher. Many auto manufacturers oppose a system based on a mathematical formula. Bergquist, the spokeswoman representing 13 manufacturers, says manufacturers "support giving consumers more rollover information, but it's important that consumers realize the merits and limitations of the information."

Since the 1970s, safety advocates have criticized NHTSA for lacking rollover standards for new vehicles and not providing consumer guidance. "The number of deaths keeps climbing, and with the great increase in the number of SUVs on the road, it's only going to keep increasing," Ditlow says. NHTSA last year changed warning labels it requires inside SUVs. Text-only labels must now be in bright colors and graphics, and must read: "WARNING: Higher Rollover Risk," and "Avoid Abrupt Maneuvers and Excessive Speed." NHTSA spokesman Rae Tyson says there's a reason it's taken long to provide rollover information by model to consumers. "We had to make sure we had an accurate, repeatable method of predicting rollover propensity," he says. "These things take time."

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References to the Tonka REV-80 were added to the article for the purpose of this Mock Trial competition.

 **Auto Track**

Predicted rollover probabilities: Model year 2000 vehicles

The percentage range in each group below represents the predicted rollover probability in an accident. A rollover occurs when a vehicle turns over at least on its side. Each car model is computed with 500 pounds of occupant weight/cargo, and each minivan, sport-utility vehicle and pickup is computed with 750 pounds of occupant weight/cargo. Unless stated otherwise, all minivans, SUVs and pickups are equipped with four doors and all- or four-wheel drive (if available from manufacturer). Heavier versions of models are used when a choice is available. An accident is one severe enough to be reported to the police and cause property damage, injury or a fatality. The federal government says most rollovers occur when a single vehicle runs off the road and is tripped by a ditch, soft soil, a curb or other object.

▶ 1%–3.9%

Cars: Acura 3.5RL; Audi A6 Avant; Bentley; BMW 740, 528; Dodge Viper; Ford Crown Victoria; Mercury Grand Marquis; Jaguar XJ8, XK8; Lincoln Town Car, Continental; Mercedes-Benz S420, S500, SL500, CL500; Rolls-Royce; Cadillac Seville, Deville, Eldorado; Infiniti Q45; Lexus LS400.

▶ 4%–6.9%

Cars: Acura 3.2TL; Audi A6 sedan; Buick Century, LeSabre, Park Avenue, Regal; Cadillac Catera; Chevrolet Camaro, Corvette, Impala, Lumina, Monte Carlo; Chrysler 300M, Concorde, Sebring; Dodge Intrepid; Ford Mustang, Taurus; Jaguar S-Type; Lexus ES300, GS400; Lincoln LS; Mazda Millenia; Mercedes-Benz C280, E420, CLK320; Mercury Sable; Oldsmobile Aurora, Intrigue; Pontiac Bonneville, Firebird, Grand Prix; Saab 9.5; Toyota Avalon; Volvo S70, S80.

▶ **7%–9.9%**

Cars: Audi A4, TT; BMW Z3, 323; Chevrolet Malibu; Daewoo Laganza, Nubira; Dodge Stratus; Ford Contour; Honda Accord, Prelude; Infiniti I30; Mazda 626; Mercedes-Benz SLK230; Mercury Cougar, Mystique; Mitsubishi Eclipse, Galant; Nissan Altima, Maxima; Oldsmobile Alero; Pontiac Grand Am; Porsche Boxster two-door convertible, Boxster S, 911 Carrera; Saab 9-3, 9-3 convertible; Saturn LS; Subaru Legacy; Toyota Camry; VW Jetta, Passat, Golf; Volvo C70, S40.
Minivans: Honda Odyssey.

▶ **10%–13.9%**

Cars: Acura Integra; Chevrolet Cavalier, Prizm; Daewoo Lanos; Dodge Neon; Ford Escort, Focus; Honda Civic; Hyundai Elantra, Tiburon; Kia Sephia; Mazda Miata, Protege; Nissan Sentra; Pontiac Sunfire; Subaru Impreza; Toyota Celica, Corolla; VW Beetle, Cabrio.
Minivans: Chevrolet Astro, Express; Chrysler Town & Country; Dodge Grand Caravan; Ford Windstar; Oldsmobile Silhouette.
SUVs: Ford Excursion.

▶ **14%–17.9%**

Cars: Hyundai Accent; Mitsubishi Mirage; Saturn SC, SL; Suzuki Esteem.
Minivans: Chevrolet Venture; Plymouth Voyager; Pontiac Montana; Toyota Sienna.
SUVs: Chevrolet Suburban.
Trucks: Ford F-350 SD SRW, SVT F-150 Lightning; GMC Classic Sierra 2500.

▶ **18%–21.9%**

Cars: Chevrolet Metro; Suzuki Swift; Toyota Echo.
Minivans: VW Eurovan.
SUVs: BMW X-5; Cadillac Escalade; Chevrolet All New Tahoe, Tahoe 2000; Ford Expedition; GMC Yukon Denali; Land Rover Range Rover; Lexus LX470; Lincoln Navigator; Mercedes M-Class; Toyota Land Cruiser.
Trucks: Chevrolet C/K 1500 extended cab; Chevrolet Silverado; Dodge Ram regular cab.

▶ **22%–26.9%**

SUVs: Acura SLX; Chevrolet Blazer; Dodge Durango; Ford Explorer; GMC Jimmy; Honda Passport; Infiniti QX4; Isuzu Rodeo, Vehicross; Land Rover Discovery; Lexus RX300; Nissan Pathfinder.
Trucks: Chevrolet S-10; Dodge Dakota club cab; GMC Sonoma; Nissan Frontier; Toyota Tundra.

▶ **27%–31.9%**

SUVs: Chevrolet Blazer two-door 2WD; Chrysler PT Cruiser; Ford Explorer two-door 2WD SWB; Jeep Grand Cherokee; Mitsubishi Montero Sport; Nissan Xterra; Toyota 4Runner.

▶ **32%–37.9%**

SUVs: Honda CR-V; Jeep Cherokee SE, Wrangler; Kia Sportage; Subaru Forester; Suzuki Grand Vitara.
Trucks: Ford Ranger regular cab; Mazda B series; Toyota Tacoma.

▶ **38%–43.9%**

SUVs: Chevrolet Tracker; Suzuki Vitara; Toyota RAV4; Tonka REV-80.

Source: K Rollover Index, Transportation Analysis Institute

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References to the Tonka REV-80 were added to this article for the purpose of this Mock Trial competition.



West Beakersville Medical Center
100 Hospital Drive
Beakersville, Maryland 29876
Ph: 410.555.1212
Fax: 410.555.1213

Blood Alcohol Report

<u>Goldman</u> PATIENT'S LAST NAME	<u>Alex</u> PATIENT'S FIRST NAME	<u>M.</u> M.I.	<u>05/01/1988</u> DOB	<u>16</u> AGE	<u>315-81-9634</u> SSN
<u>July 4, 2004</u> DATE OF ANALYSIS		<u>140/85</u> BP5		<u>80 bpm</u> PULSE	
Type of skin prep: <input type="checkbox"/> Betadine solution <input checked="" type="checkbox"/> Isopropyl alcohol					
<u>Shana Davis</u> ADMINISTERING RN					
<u>10:40 p.m.</u> TIME OF BLOOD DRAWN			<u>.005g/100mL</u> RESULTS		

CALCULATING BLOOD ALCOHOL CONTENT [BAC]

Various devices and types of Blood Alcohol Content testing methods have been developed to help identify and remove drinking drivers from the highway. The BAC describes the concentration of alcohol in a person's blood expressed as weight per unit of volume. For example, at 0.10 % BAC there is a concentration of 100 mg of alcohol per 100 ml blood. A blood test is not necessary to determine a person's BAC; however, of the available methods, it is often considered the most reliable and has the advantage of being saved for future reference. Although the BAC can also be measured by analyzing exhaled breath, urinalysis or saliva, numerous studies have shown that none of the available methods or testing devices are 100% reliable.

Almost as soon as alcohol enters the bloodstream the body starts eliminating it. One to three percent is given off unchanged in the urine, perspiration and expired air. The remainder of the alcohol is oxidized or burned up by various organs, but mostly by the liver. About 75% of the oxidation of alcohol takes place in the liver. The chemical breakdown of alcohol in the body (metabolism) is accomplished by several enzymes through a series of processes that rapidly convert the chemicals into substances usable by the body such as amino acids, carbohydrates and fats.

Weight, gender, age, time of day, drugs, health of the liver, food, disease and a multitude of other factors serve to moderate the rate at which the metabolism of alcohol occurs in the individual. Once you allow for individual variation, the rate at which alcohol is metabolized is relatively constant. BAC charts that use the amount of alcohol consumed, weight of the individual and time factors can be helpful in that they give a snapshot average. However, no facile computation can account for the multitude of variables that need to go into making an accurate assessment for the court. The following is an example of a simplistic table for charting the BAC based on 12 oz. beer at 5%, 5 oz. wine at 12% or 1½ oz. whiskey at 40% (80 proof) all equaling approximately 6 oz. alcohol:

BLOOD ALCOHOL CONTENT CHART

AFTER:		1 DRINK				2 DRINKS				3 DRINKS				4 DRINKS			
hours		4	3	2	1	4	3	2	1	4	3	2	1	4	3	2	1
WEIGHT (LBS.)																	
100	-	-	-	.02	-	-	.04	.06	.05	.07	.08	.09	.09	.10	.12	.13	
120	-	-	-	.02	-	-	.03	.04	.03	.04	.06	.08	.06	.08	.09	.11	
140	-	-	-	.01	-	-	.02	.04	.02	.03	.05	.06	.04	.06	.08	.09	
160	-	-	-	.01	-	-	.02	.03	.01	.02	.04	.05	.03	.04	.06	.08	
180	-	-	-	.01	-	-	.01	.03	-	.02	.03	.04	.02	.04	.05	.07	
200	-	-	-	-	-	-	.01	.02	-	.01	.03	.04	.01	.03	.04	.06	

ELIMINATION FACTOR CHART

HOUR(S) SINCE FIRST DRINK	1	2	3	4	5
SUBTRACT FROM BAC	.015	.03	.045	.06	.075

Modified from the National Highway Traffic Safety Administration.

2-page police report

2-page police report

Teenage Driving Statistics

According to the National Transportation Safety Board, motor vehicle crashes are the leading cause of death for young people 15 to 20 years of age, causing roughly one-third of all fatalities in this age group. Teens are more likely to be in a car crash than older drivers. They are involved in 14 percent of all traffic fatalities, though they make up just 7% of the population.

Teen drivers have the highest crash risk of any age group. Per mile traveled, they have the highest involvement rates in all types of crashes, from those involving only property damage to those that are fatal. The problem is worst among 16 year-olds, who have the most limited driving experience and an immaturity that often results in risk-taking behind the wheel. The characteristics of 16 year-olds' fatal crashes highlight these problems.

Percentage of Fatal Crashes by Characteristic, 2002			
Driver Age:	16	17-19	20-49
Driver error	85	78	66
Speeding	37	34	24
Single vehicle	50	46	40
3+ occupants	27	24	18
Drivers killed with 0.10+ BAC	11	22	43

Driver error: Compared with crashes of older drivers, those of 16 year-olds more often involve driver error.

Speeding: Sixteen-year-old drivers have a higher rate of crashes in which excessive speed is a factor.

Single-vehicle crashes: More of 16 year-olds' fatal crashes involve only the teen's vehicle. Typically these are high-speed crashes in which the driver lost control.

Passengers: Sixteen year-olds' fatal crashes are more likely to occur when other teenagers are in the car. The risk increases with every additional passenger. Teen passengers in a vehicle can distract a beginning driver and/or lead to greater risk-taking. Sixty two percent of passenger deaths occur in crashes with a teen driver. While night driving with passengers is particularly lethal, many fatal crashes with teen passengers do occur during the day.

Alcohol: Although this is a problem among drivers of all ages, it's actually less of a problem for 16 year-olds. Thirteen percent of fatally injured drivers in 1998 had positive blood alcohol concentrations (BACs). Only 8 percent had BACs of 0.10 percent or greater. This is attributable to under-age drinking laws.

Night driving: This is a high-risk activity for beginners. Per mile driven, the nighttime fatal crash rate for 16 year-olds is about twice as high as during the day. Most nighttime fatal crashes among young drivers occur between 9 p.m. and midnight. The problem isn't just that late-night driving requires more skill. Outings late at night tend to be recreational. In these circumstances, even teens who usually follow all the rules can be easily distracted or encouraged to take risks.

Low belt use: Teenagers generally are less likely than adults to use safety belts.

Information provided by the Insurance Institute for Highway Safety and National Highway Traffic Safety Administration.

STATUTORY LAW

Md Criminal Law §2-209

- (a) "Vehicle" defined – In this section, "vehicle" includes a motor vehicle, streetcar, locomotive, engine, and train
- (b) Prohibited – A person may not cause the death of another as a result of the the person's driving, operating, or controlling a vehicle or vessel in a grossly negligent manner.
- (c) Name of Crime – A violation of this section is manslaughter by vehicle or vessel.
- (d) Penalty – A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$5,000 or both.
- (e) Charging Document –
 - (1) An indictment or other charging document for manslaughter by vehicle or vessel is sufficient if it states: "(name of defendant) on (date) in (county) killed (name of victim) in a grossly negligent manner against the peace, government, and dignity of the State."
 - (2) An indictment or other charging document for manslaughter by vehicle or vessel need not set forth the manner or means of death.

Maryland Pattern Jury Instructions 4.17.10: Homicide – Manslaughter by Motor Vehicle

The defendant is charged with the crime of manslaughter by motor vehicle. In order to convict the defendant, the State must prove:

- (1) that the defendant drove, operated or moved a motor vehicle
- (2) that the defendant acted in a grossly negligent manner, that is, in a manner that created high degree of risk to human life; and
- (3) that this grossly negligent conduct caused the death of (victim).

CASE LAW - CONVICTION UPHeld

DUREN V STATE, 102 A.2D 277 (1954)

- **Facts:** Defendant was driving on Fremont Avenue in Baltimore at a speed of 60 mph at about 7 pm on a Sunday evening. As the car approach the Laurens Street intersection, a heavily congested residential and business area, a man was killed while attempting to cross the road by foot.
- **Issue:** Was the evidence sufficient to show gross negligence? Did the victim's negligence contribute to the accident?
- **Holding:** Defendant is guilty of manslaughter by vehicle. Any contributory negligence on the part of V is not relevant b/c there the accident involved gross negligence on the part of Defendant.
- **Evidence of Negligence:** Speeding on a crowded city street during high pedestrian traffic time
- **Important Principles:**
 - Whether there is gross negligence must be determined on the consideration of all the facts of the particular case
 - Test is: Whether the conduct of the defendant, considering all the factors of the case, was such that it amounted to a 'wanton or reckless disregard for human life'
 - It is plain that the environment in which speed is indulged must determine whether it does or does not show gross negligence at a given time
 - What must be looked for in each case is whether, by reason of speed in the environment, there was a lessening of the control of the vehicle to the point where such lack of effective control is likely at any moment to bring harm to another
 - Appellant in this case argued that the cause of the death was the negligence of the pedestrian stepping out into the path of the car. If the appellant was guilty of gross negligence, he cannot excuse his conduct and escape the consequences by showing that the deceased was guilty of contributory negligence

BLACKWELL V MARYLAND, 369 A.2d 153, 34 Md.App. 547 (1997)

- **Summary of Case:** Defendant was convicted in the Circuit Court for Calvert County for 2nd Degree murder, manslaughter by motor vehicle, driving while intoxicated, and leaving the scene of a fatal accident. Court of Special Appeals overturned the homicide conviction b/c of lack of express malice, but the manslaughter by automobile conviction was upheld.
- **Facts:** The victim, a teenage girl, was killed while riding her bicycle at approximately 10pm. Her bike was equipped with a front light and reflectors on the back, pedals, and wheels. Defendant had left the Solomon's Inn immediately before the accident and two bikers testified that he had been swerving – they later found the victim on the side of the road as Defendant's car was driving away. Defendant had a history of alcohol abuse and had been drinking at three establishments prior to the accident.
- **Issue:** Was Defendant's history of alcohol abuse and the slight evidence of his car swerving before and after the accident enough to show gross negligence?
- **Holding:** Court upheld the charge of Manslaughter by Motor Vehicle
- **Evidence of Negligence:** (1) Defendant had been drinking in at least three different establishments, (2) Defendant had been witnessed swerving back and forth as he left Solomon's Inn, (3) Defendant had been seen driving on the shoulder of the road (after having left the scene of the accident w/o rendering aid to the victim), (4) Defendant denied to Corporal Ireland that he even remembered the accident taking place.
- **Important Principles:**
 - Gross Negligence = Wanton or Reckless disregard for human live

- A conviction of manslaughter does presuppose the proof of the basic elements of negligence as well as "wanton and reckless disregard"
- The overall question to be decided in these cases is - "... was the conduct of the defendant, considering all the factors of the case... such that it amounted to a 'wanton or reckless disregard for human life'."
- This case did not decide whether intoxication alone was sufficient to show a willful and wanton disregard for human life -- the court instead coupled Defendant's insobriety with his driving an automobile on a public highway which is a dangerous instrumentality.

STATE v KRAMER, 569 A.2d 674 (1990)

- **Summary of Case:** Defendant was convicted in the Circuit Court for Cecil County of manslaughter by motor vehicle and driving without security insurance. Court of Special Appeals reversed and remanded for new trial. Court of Appeals held that: (1) joinder of vehicular manslaughter and security insurance counts was prejudicial requiring reversal of convictions on both counts, and (2) evidence was sufficient to sustain a conviction of manslaughter by automobile (Kramer asked the court to look @ the sufficiency of evidence so as to avoid litigating it again)
- **Facts:** Michael James Kramer was driving along a stretch of Maryland Route 213 - a two-lane rural road running through wooded area - at the scene of the accident, the road curved around in a radial curve and there was a no-passing zone. There were 5 passengers in his 1979 Oldsmobile 98 - two in the front seat with Defendant, and three in the back seat. Mr. William F. Miles was driving his Fiat with his wife in the passenger seat and Mr. & Mrs. Miller in the back seat. Kramer attempted to pass another vehicle (Lee's car) in the no passing zone that was traveling approximately 50 to 60 mph -- crossing the double yellow line into the left lane. The Miles car was approaching in the northbound lane and noticed the car so it pulled toward the right shoulder to give the approaching car a "wide berth" -- but Kramer kept bearing left sending Miles' car up an embankment but not before the Kramer car caught the back end of the Miles car. Mr. Miller was badly injured and Mrs. Miller was thrown 6 feet from the car and died
- **Issue:** Should the two charges have been severed for trial? (**Holding:** Yes). If there were a retrial was evidence sufficient enough to show that there was manslaughter by vehicle?
- **Holding:** The evidence was legally sufficient for the jury to find on Kramer's part a wanton and reckless disregard of the rights and lives of others and so a state of mind amounting to criminal indifference to consequences.
- **Evidence of Gross Negligence:**
 - Speed (speed limit was 55 mph, Defendant was going 70)
 - Nature of the Road
 - Failure to keep a proper lookout and thus came upon the Lee vehicle so suddenly that he had to "swerve to avoid it"
- **Important Principles**
 - As a rule, the care required is to be proportioned to the danger; hence driving rapidly in an open country highway might not be negligence, while the same character of driving in a thronged street or thoroughfare, or where there is a known hazard to others, might be negligent in the highest degree
 - Ordinarily, speed alone may not be sufficiently negligent to support an inference of criminal intent must consider the nature of the road
 - Gross Negligence = "such a lack of control, whether by reason of speed or otherwise, in a place and at a time when there was constant potentiality of injury as a result"

CASE LAW - CONVICTION NOT UPHELD

THOMAS v STATE OF MARYLAND, 206 Md. 49 (1954)

- **Facts:** Defendant was driving a truck during the course of employment after having consumed 6 beers throughout the day. Immediately prior to the accident Thomas was observed driving in a prudent manner - including slowing from 30mph to 20 mph while driving through a school zone. At the top of a hill, Defendant had to make a sharp turn and the truck slightly darted to the left. Unable to regain control of the vehicle, he struck two boys who were walking in the right lane of traffic on the bridge in Thomas' path.
- **Issue:** Was the evidence of intoxication enough to sustain conviction?
- **Holding:** No - none of the three factors presented by the prosecution lead to the proper conviction of Defendant for manslaughter by vehicle.
- **Reasoning:**
 - No substantial evidence of excessive speed that would rise to the level of gross negligence
 - The defective brakes did not amount to gross negligence
 - No one witness testified that he appeared intoxicated, and the police failed to do any tests to determine as such

JOHNSON v STATE OF MARYLAND, 213 Md. 527 (1957)

- **Facts:** At 1:50 am in Baltimore City, Defendant was operating his vehicle on a four-lane northbound highway. While navigating a turn Defendant struck a curb, sideswiped a light pole, and lost control of the vehicle. The passenger was thrown from Defendant's vehicle and died as a result of injuries sustained in the collision. Defendant admitted to having consumed 2 beers during the 8 hours prior to the accident. He said that he lost control b/c while making the turn his vehicle struck a bump caused by the railroad tracks that crossed the street. At trial, Defendant was convicted based on the theory that he was traveling at an excessive rate of speed and therefore unable to control his vehicle
- **Holding:** Insufficient evidence for conviction
- **Reasoning:**
 - Although the speed may have been enough to establish negligence, it did not give rise to gross negligence
 - Given the nature of the environment, a solely commercial area with light traffic late in the night, and no other traffic violations, the conviction could not be upheld

PLUMMER v STATE OF MARYLAND, 118 Md. 244 (1997)

- **Facts:** Defendant struck 11 year old girl on sidewalk as she walked home from school with her friends. Driver following behind Defendant testified that Defendant was traveling between 25 and 35 mph in a 30 mph on Piney Branch Road in Takoma Park -- Defendant was following the speed limit however started to drift to left. Driver behind flashed his lights and beeped his horn at the Defendant but was unable to get his attention. Defendant failed to stop at the scene of the accident and didn't turn himself in until three days later
- **Holding:** All of the evidence does not show gross negligence therefore the conviction is overturned
- **Reasoning:**
 - In all of the cases in which the automobile manslaughter convictions were affirmed, the drivers of those vehicles engaged in numerous actions that could lead to a rational inference of a wanton or reckless disregard for human life
 - Here, evidence of "erratic driving" was indicated by the Defendant's drifting onto the shoulder and subsequently the curb of the road
 - The fact that Defendant did not respond to the beeping and lights of the driver behind him does not indicate gross negligence
 - Flight is a factor to consider but flight alone from the scene cannot support a finding of gross negligence

Appendix A: Guidelines for Attorney Coaches

Please also refer to Appendix B: Guidelines for Judges.

I. Approaches to Student Coaching

A. Initial Sessions

The first session with a student team should be devoted to the following tasks:

- Answering questions that students may have concerning general trial practices;
- Discussing court etiquette
- Explaining the reasons for the sequence of events/procedures found in a trial;
- Listening to the students' approach to the assigned case; and
- Discussing general strategies as well as raising key questions regarding the enactment.

B. Subsequent Sessions

Subsequent sessions should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here, an attorney can best serve as a constructive observer and critical teacher—listening, suggesting, and demonstrating techniques to the team.

Students develop a better understanding of the case and learn more from the experience if the attorney coaches **do not** figure out the angles, fill in the gaps, and determine trial strategy for the team. Coaching, guiding, and asking questions of the students is far more beneficial than telling them how to proceed.

If the competition is to realize its full potential, it is crucial that you help discourage a “win-at-all-costs” attitude among your team members. Please coach your team on proper decorum when a case, or decisions throughout the case, are not decided in their favor.

It is extremely important that students are coached on and understand the “human” element of judging and how that fits into the nature of our judicial process. Part of your focus should rest upon the fact that law is not black and white, and that individuals will interpret the law differently. Similarly, as in the real world, court proceedings will vary in relation to the presiding judge; accordingly, scores, interpretations, and outcomes will vary. What is permitted in one courtroom may not be permitted in another; what is successful in one case, may not be successful in another.

After twenty successful years, it has been shown time and time again that the best teams are those that view defeats as opportunities to learn. Debriefing with team members after wins and losses helps everyone to improve their skills and increase their understanding of the law.

II. Time Commitment

There is no pre-determined amount of time that attorney coaches are expected to spend coaching their teams. Some attorneys are available for one to two sessions per month, and others are available on a daily or weekly basis. Attorneys who have caseloads which do not permit them to coach in the afternoons have worked with teams on weekday evenings or weekends.

While most teams work with one attorney coach throughout the competition season, there are a handful of teams which have opted for a “team” of attorney coaches, so that the time commitment of each attorney is decreased.

Appendix B: Guidelines for Competition Judges

I. Procedures for Scoring Competitions

Rankings are determined by both wins and points. Therefore, it is essential that the presiding judge carefully rate each team on all elements listed on the Performance Rating Sheet.

A. Special Point

Always award the Special Point immediately after the close of the trial, and before adding the scores. This point will be used only in the event of a tie.

B. Decorum

Please be sure to score each teams' overall performance in decorum in the space provided on the rating sheet.

C. Announcing Your Decision

1. After awarding, tallying and double-checking the rest of the scores, your first announcement to the teams should focus on the general student performance, decorum, and legal understanding that you just witnessed.
2. Your second announcement should be which team prevailed, based on the merits of the case.
3. Your last announcement should declare who prevailed based on student performance (the score sheet).

II. Time Limitations

Students have been asked to limit their presentations to the timeframes listed below. It is particularly helpful for teams to know in advance how you will handle the time guidelines. Some judges prefer to give a warning, for instance, when there is one minute left; others expect students to be mindful of the time on their own. Still others prefer not to watch the time at all, though this has, at times, led to lengthy competitions. Students should not base an objection on the time. This is left to your discretion as the presiding judge. Competitions should last approximately 1 ½ to 2 hours.

Opening/Closing Statements	5 minutes each
Direct Examination	7 minutes/witness
Cross-Examination	5 minutes/witness
Voir Dire, as part of cross-examination	2 minutes per expert witness (in addition to the 5 minutes permitted for the cross-examination)
Re-Direct and Re-Cross Examination	3 minutes a maximum of 3 questions

III. Mock Trial Simplified Rules of Evidence

The rules of evidence governing trial practice have been modified and simplified for the purposes of mock trial competitions. They are to govern proceedings. Other more complex rules are NOT to be raised during the trial enactment.

Attorneys and witnesses may neither contradict the Statement of Facts or Affidavits, nor introduce any evidence that is not included in this packet of materials. As with any perceived violation of a rule of evidence, students should object or request a bench conference.

IV. Trial Procedures

A. Motions to Dismiss

The purpose of the competition is to hear both sides; therefore, motions to dismiss, etcetera, are not allowed. There shall be no sequestration of witnesses at any time during the trial. If such a motion is made, the motion MUST be denied.

B. Opening/ Closing Arguments

Competition procedures permit only one opening and one closing statement for each team. In Mock Trial Competition, the Defense Team will always make the first closing argument, followed by the Prosecution/Plaintiff. There is no rebuttal in Mock Trial.

C. Direct and Cross Examinations

Each attorney (three for each side) must engage in the direct examination of one witness and the cross-examination of another.

Mock Trial Performance Rating Sheet

Schools: _____ vs. _____
Plaintiff/Prosecution Defense

1=Fair 2=Satisfactory 3=Good 4=Very Good 5=Excellent

Please note that you are asked to give each attorney a composite score for their overall presentation: direct and re-direct or cross and re-cross. If re-direct or re-cross is NOT used, the attorney should NOT be penalized for not using this technique if there was nothing to be gained by using re-direct or re-cross.

Please do not use fractions in scoring.

		Prosecution	Defense
<u>OPENING STATEMENTS</u>			
<u>PLAINTIFF/PROSECUTION</u> First Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>PLAINTIFF/PROSECUTION</u> Second Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>PLAINTIFF/PROSECUTION</u> Third Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> First Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> Second Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> Third Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
Closing Arguments			
Decorum: All team members were courteous, observed courtroom decorum and spoke clearly.			
Total			
Special Point (BEFORE totaling score sheet, please award one point to the team you think gave the best overall performance. This point will be used <u>ONLY</u> in the event of a tie.)			
Final Total			

I have checked the scores and tallies, and by my signature, certify they are correct:

Presiding Judge: _____ Teacher Coach, Defense: _____

Date: _____ Teacher Coach, Prosecution: _____