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**2002-2003  
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 Contest). 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. 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 will designate another circuit in which this team may compete.  
  
Those Regional circuit slots not filled due to lack of sufficient team participation will be filled by runners-up in other circuits based on 1) the highest average number of points accumulated in the rounds of the local competition, and 2) the lowest margin of loss in the championship match within the circuit.
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 8 or 9, 2003.
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 November 7, 2002. 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**

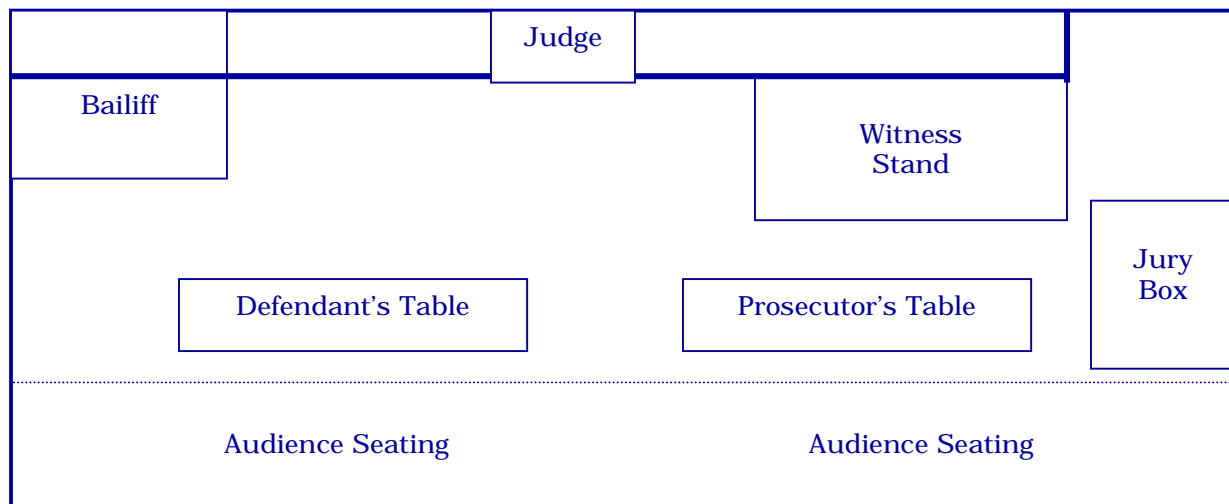
*The following tips were developed by long-time Mock Trial Coaches.*

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 your 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 in your opening and closing statements before trial, as they are supposed to highlight the important developments that have 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 revise their own questions and witnesses should again study the parts of their affidavit they need to learn better.
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 are the most important to prove your side of the case and making sure such proof takes place.
  - 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 appropriately addressing the judge as “Your Honor,” etc.
  - 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 exercise, 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 stand and remain standing until the judge is seated.
  - c. The case will be announced; i.e., “The Court will now hear “Wyndall v. Vaccio.”
  - d. The judge will then ask the attorneys for each side if they are ready.
2. Opening Statements
  - 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 has made.

3. Direct Examination by the Prosecutor/ Plaintiff

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.

**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.

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 Prosecution/ Plaintiff

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.

8. Re-Cross Examination by the Defense Attorneys

The defense attorneys may re-cross examine the opposing witness to impeach previous testimony.

9. Voir Dire Examination by Either the Prosecution/ Plaintiff or the Defense Attorneys

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. 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 other side is trying to elicit from this witness.

10. Direct and Re-Direct Examination by the Defense Attorneys

Direct and re-direct examination of each defense witness follows the same pattern as above which describes the process for plaintiff/ prosecution's witness.

11. Cross and Re-Cross Examination by the Prosecution/ Plaintiff

Cross and re-cross examination of each defense witness follows the same pattern as the step above for cross-examination by the defense.

## 12. Closing Arguments (Attorneys)

### 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. For the purposes of the Mock Trial Competition, the first closing argument at all trials shall be that of the Defense.

### b. Prosecution/ Plaintiff

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 State, the prosecution has the final word.

## 13. 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. At mock trials, the judge also has the function of determining the facts of the case and rendering a judgment, just as in real trials held without a jury.

## **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 advocate 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.

Examples:

Plaintiff's Attorney: Isn't it true that you have been fired a number of times from past jobs?

Objections:

"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 and often suggests a "yes" or "no" answer.

Example of a Direct Question:

(directed to Murky Merkel) "What did you see when you entered the house where the party was occurring?"

Example of a Leading Question:

(directed to Murky Merkel) "You saw a lot of drinking and drug-using going on when you walked in the house, did you not?"

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:

“Lane Wyndall, tell us about the artwork that you and your daughter, Jessica, used to create together.”

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 tending to evoke a narrative answer should be avoided, however.

**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 questions which did not come up on 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 308:** 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 309:** 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:**

(directed to Page Vaccio) “What did your spouse have to say about the events that occurred at your house on the night of May 25th?”

**Objection:**

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

**Example:**

Murky Merckel states: “My friend said he saw a lot of people doing drugs in the house.”

**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.

**Example:**

Detective Jamey McKenna states: “Randie told me that s/he took the drugs out of

his/her parents' bedroom closet.”

**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.

Example:

Page states: “When I first got home, Randie just said, over and over, how terrifying the whole night had been.” (Offered not to show fault, but to show Randie was really upset.)

**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.

## **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 which 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)

Prosecuting Attorney asks Lane Wyndall, “Do you believe that the Vaccios took necessary precautions before allowing Randie to host the graduation party?”

Objection:

“Objection. Counsel is asking the witness to give an opinion.”

Example:

(Lack of Personal Knowledge)

“Detective McKenna, do you believe that the Vaccios made an appropriate decision to allow Randie to host the party?”

Dr. Chacha states: “The Vaccios exemplify incredible morals. They are not at fault here.”

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)

Plaintiff's attorney asks Dr. Detective McKenna: “Do you believe the Vaccios should be held responsible in the eyes of the Court for the death of Jessica Wyndall?”

Objection:

“Objection. The questions 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 qualifications, education and experience.

Example:

“Dr. Chacha, tell the Court of your educational background with regard to forensic pathology.”

“Detective McKenna, explain to the Court your work experience in drug crime and punishment.”

Example of Inappropriate Question:

“Dr. Chacha, can you explain the charges noted on the medical bill for Jessica Wyndall’s emergency room treatment?”

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 that Court accept and qualify the witness as an expert in the field of \_\_\_\_\_.”

## **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:

- a. Show exhibit to opposing counsel.
- b. Show exhibit and have it marked by the clerk/judge. “Your Honor, please have this marked as Plaintiff’s Exhibit 1 for identification.”
- c. Ask witness to identify the exhibit. “I now hand you what is marked Plaintiff’s Exhibit 1. Would you identify it, please?”
- d. Ask witness about the exhibit, establishing its relevancy and other pertinent

- questions.
- e. Offer the exhibit into evidence. "Your Honor, we offer Plaintiff's Exhibit 1 into evidence at this time."
  - f. Judge will ask opposing counsel whether there is any objection, rule on the objection, admit or not admit the exhibit.
  - g. If 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 his or her affidavit without its introduction into evidence; but to read from it or submit it to the judge, it must first be admitted 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 given. 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."

**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 exam, 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 a question or answer must be discarded because it has violated a rule of evidence ("objection sustained"), or whether to allow the questions 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 and an objection may be made to the addition of new information.

Wyndall v. Vaccio

### Statement of Stipulated Facts

At approximately 2:14 am on May 25, 2002, Jessica Wyndall was pronounced dead on arrival at Cape Stone Memorial Hospital Center in Cape Stone, Maryland, from pulmonary edema and other complications that resulted from the ingestion of a "club drug" called XTC.

Earlier that same week, Jessica was injured during her school team's softball game where she had been hit by a wild pitch. Her physician prescribed the painkiller, Percoset, to ease the pain she was experiencing in her back.

Randie Vaccio's parents had planned a graduation party for Randie as a graduation gift. However, they received a call regarding a family emergency the day prior to the party that resulted in their needing to go out of town. They decided, since it was last minute, to allow Randie to host the party. Though they expected only 25 kids to attend, the party swelled to more than 100 teenagers; control of the party was quickly lost. The kids hung out and danced; some drank alcohol and did drugs.

Jessica Wyndall, 16 years old, and close friend of Randie's, became seriously ill at Randie's graduation party. Randie admitted to giving Jessica soda that was laced with XTC, thinking she wanted to get high in order to forget her worries. An hour later, Jessica was seen passed out on the floor of the bathroom. Randie assumed that Jessica was drunk and decided that sleep would be the best cure. Only later did Randie realize that her condition was serious. Randie attempted to seek help from a neighbor and then called 911.

Doctors found XTC, Alcohol, Percoset, and caffeine in Jessica's system, but determined the cause of death to be related to the XTC.

Lane Wyndall, parent of Jessica Wyndall, filed this wrongful death lawsuit on behalf of the Wyndall family.

### Claims and Defenses

The Wyndalls are suing the Vaccios for (1) a violation of the Wrongful Death Statute §9-301 under Maryland Law and for (2) negligence, alleging that the Vaccios failed to properly supervise their home and their child, ultimately causing the death of Jessica Wyndall. The Vaccios argue that Jessica had a drug problem as evidenced by the ingestion of XTC as well as alcohol; and that Jessica's contributory negligence prohibits any recovery. The Wyndalls claim that the Vaccios are reading too narrowly the Maryland statute and case law regarding parental liability and that fault lies within the negligence of the Vaccio parents.

The Vaccios claim that the injury was caused by Jessica and that their actions were reasonable; additionally, they argue that they did not encourage or condone the use of alcohol or drugs at the party. They submit that they had no reason to believe that their child would ingest drugs or give drugs to another child. They also argue that Maryland law does not hold parents liable for the torts of their children.

### Relief Requested

The Wyndalls are asking the court to find that the Vaccios violated Maryland Statute §9-301 and to find that they were negligent. The Wyndalls are requesting the following damage awards: \$24,250 in actual medical expenses, (including costs for emergency medical treatment and ambulatory services) and \$500,000 for pain and suffering.

The Vaccios are asking the court to find that there was no negligence on their part, that they did not violate Maryland Statute §9-301, and thus, to deny damages sought. In the event that the court finds that the victim was contributorily negligent, then damages should be accordingly reduced.

### Additional Stipulations

The parties have stipulated to the authenticity of the following five items:

1. The transcript of the 911 phone call made by Randie Vaccio
2. The autopsy report for Jessica Wyndall
3. The medical bill for Jessica Wyndall's Emergency Room Treatment from Cape Stone Hospital
4. Ecstasy Fact Sheet
5. For the purpose of this Mock Trial case, the terms "Ecstasy," "ADAM," "MDMA," "XTC," and "X," as well as any other slang terms, are used synonymously to refer to the drug "methylenedioxymethamphetamine."

### Witnesses for the Plaintiff

Lane Wyndall, Parent of Jessica Wyndall  
Whitney "Murky" Merkel, Minor who attended the party  
Detective Jamey McKenna, Narcotics Division, Cape Stone Police Department; former-DEA agent

### Witnesses for the Defendant

Page Vaccio, Parent of Randie Vaccio  
Randie Vaccio, Minor who hosted Party  
Kelsey Chacha, M.D., Forensic Pathologist

**Lane Wyndall**

Parent of Deceased Child  
Witness for the Plaintiff

678 Windy Path Way  
Capestone, Maryland 21999

We've known the Vaccios for a number of years. Randie and Jessica have been close friends since the first grade. When she was invited to the Vaccios' home for a graduation party, I thought that was great. We were planning a party ourselves for Jessica, since her friends and family wanted to celebrate her success. We were trying to schedule a time when both my spouse and I could be home because we know that we can't have teenagers in our home without ample supervision. And, throwing a party is a lot of work. We were so excited that Jessica was graduating from high school. I thought this gathering with Randie's friends was a great idea. In fact, I ran into Page Vaccio three weeks before the party and I distinctly remember saying: "Let me know if you need anything for the party." Page had said: "No, we have it under control." I would have been happy to help chaperone.

Jessica had had some trouble in school and we were glad that she was able to turn herself around. She had become more confident and even talked about future goals which included college. In a way, her past trouble turned out to be a blessing; we went to counseling together and that helped us to strengthen our trust in one another. We discovered that we both had an artistic talent, so we started painting watercolors together. We used to have good-natured watercolor competitions— Dueling Easels, we called them. In the last year or so, we actually spent a good deal of time together— probably more than most parents and teenage kids. It was something that both my spouse and I really valued. Most people think that teenagers only care about themselves and their friends. But Jessica was different—Jessica enjoyed being around her family, and made a concerted effort to do so on a regular basis.

On the day of the party, Jessica was her usual self, except for some back pain from playing in a softball game a few days earlier. (She had been hit by a wild pitch.) I told Jessica to take the pain killer, Percoset, that the doctor had prescribed, to ease her discomfort. That night, she seemed like she was feeling much better, so she went over to Randie's party. That was the last time I saw her alive. By the time we arrived at the hospital, Jessica was gone. The emergency room doctor said there had been no chance to save her by the time she arrived at the hospital. It happened so fast—everything has been such a blur since then. It seems so absurdly surreal. I keep hoping that I will awaken from this terrible nightmare and our sweet Jessica will still be alive.

I am sick to think that Jessica didn't even know what she was taking. She didn't even make the decision to take ecstasy—that was done for her. I just can't imagine what kind of parents would regularly take illegal drugs—and moreover, keep them in their house, accessible to children. I just can't find it within myself to forgive the Vaccios for their utter disregard of the kids' safety.

Any parent who has lost a child knows that there is nothing that will ever come close to making the pain go away—certainly not money. But I feel as though we need to do something to memorialize her life. It's too late to help Jessica, but it's not too late to help other kids understand the seriousness of drug use. Any and all compensation we receive beyond that which will cover the enormous medical and funeral bills, will go directly into an endowment fund that will be established in her name. Then, maybe, all will not be lost; maybe other young lives will be saved. I simply cannot allow her death, at such a ridiculously young age, to serve no purpose. I will not have it.

*Lane Wyndall*

Lane Wyndall

**Whitney “Murky” Merkel**

Party Attendee  
Witness for the Plaintiff

12 Dirt Road  
Capestone, Maryland 21999

I am going into my sophomore year at Cape Stone High School. I knew Randie, who threw the party back in May, but we’ve never been friends. In high school, you hear of a party and you go—and hopefully no one cares.

I don’t think Randie knew we were even there in the beginning. It started off as a great party—which we knew it would be. Everyone at school knows Randie is a hard-core partier. Randie knows where to go to get the good stuff—has some reliable connections. I didn’t get an invitation, but some of my friends were going, so I went along. I walked through the side gate and we sat out back in the gazebo. We figured if we stayed on the fringe of the party, we could get free beer and they wouldn’t ask us to leave. About 11:30 pm., I had to use the bathroom, so I went inside. I found the bathroom in the basement, and saw Jessica laying on the floor, saying: “I need a little help.” I was like, “You’re way messed up”. She just kept muttering to herself. She was in and out of it. I tried to pull her up, but I couldn’t manage by myself. I finally got her sitting up a little bit but she passed out again.

I called people for help, but they were like looking at me like, you know, like, *whatever*, like I had five heads or something. I figured the older kids knew about her, so I went back to the gazebo and told my friends what I had seen. They said that she was probably just wasted and that it was no big deal.

A little while later, the music stopped. People were leaving left and right. I went to the house to grab another beer. I saw Randie Vaccio stomping in a circle. Randie was screaming things like, “What am I going to do? Don’t just stand there! Someone help her! Jessica looks so bad. If this gets out, they won’t let me graduate. I’m *dead*.” Randie plopped down on the sofa, looking really shaken-up. I asked if the girl was okay. Randie just yelled: “It’s none of your business.” Then Randie threw a plastic cup at me and told me to get out. After hearing what Randie said, I was scared. I went back to the gazebo but my friends were gone, so I took off. I didn’t want to be there when the cops got there.

Whitney Merkel

Whitney Merkel

**Detective Jamey L. McKenna**

Cape Stone Police Department, Narcotics Division  
Witness for the Plaintiff

555 Hive Drive  
Capestone, Maryland 21999

I have been a detective with the Cape Stone Police Department Narcotics Division for eight years. Prior to my time with CSPD, I was an agent with the Drug Enforcement Administration for just about ten years. I became interested in law enforcement back in college—I majored in Criminal Justice and minored in Chemistry at Bryant University where I received my Bachelor of Science degree. That was in 1984. I landed my first job with the DEA as a Special Agent that same year and received a series of promotions and recognition awards during my time as a DEA agent. In 1994, I was hired by CSPD to oversee drug investigations and seizures. I've always liked this line of work, mainly because we try to prevent all the ugliness caused by drugs—the crime, the violence, the addiction, and too frequently, the death of people who are too young to die.

Unfortunately, this is the type of case I have gotten all too used to seeing. We were called to the scene when the EMT suspected that drugs were a contributing factor in the death of Jessica Wyndall. I received the call on my pager around 2:00 a.m. on May 25<sup>th</sup>, 2002. Normally, I work during the dayshift, but a lot of my squad detectives were on vacation that week, so I was on back-up.

When we got to the Vaccio home, we found the place in pretty good shape, though it was obvious that a party had taken place. There was an obvious smell of stale cigarette smoke and alcohol. During my investigation, I saw beer bottles and liquor bottles. I also found some plastic bags that are typically used for holding drug paraphernalia. I had them analyzed in our lab and found residue of XTC and an amphetamine derivative called PMA.

Randie Vaccio was glassy eyed and agitated and explained that this was due to anxiety as a result of what had occurred during the party. Randie said that some of the people who had attended the party had been drinking and doing drugs. Randie willingly admitted to putting ecstasy in Jessica's drink—of which she was unaware. From Randie's comments, I believe that Randie didn't intend to cause Jessica harm. Randie seemed very upset and very worried about her condition.

Randie also volunteered information regarding where the XTC came from and this is what really concerned me. Randie's parents, evidently, use ecstasy on a regular basis. Randie knew this, and, in fact, actually knew where they kept the XTC tablets. Randie retrieved some of them during the party. I have a hard time believing parents would keep illegal drugs in the house, even if it is supposedly in "their" possession and only for "their" use.

I would like to make it clear that Randie volunteered all of the aforementioned information I have regarding the events of the night of May 24, (and early morning hours of May 25,) 2002.

The kids often refer to XTC as Adam, Clarity, or Lover's Speed, but it's actually methylenedioxymethamphetamine (MDMA), a chemical substance that combines methamphetamines with hallucinogenic properties. PMA is para-methoxyamphetamine and is often made in basement factories. Often mixed with Ecstasy; it has been attributed to a number of deaths in the area. Kids don't realize that the illegal manufacture of these drugs means that they often come with impure ingredients. They are mixed with other drugs that make a potentially lethal drug all the more dangerous. Because many different recipes are used to make Ecstasy, the risk of death and permanent brain damage is

relatively high.

We've seen an increase in the number of Ecstasy pills that contain PMA. We see kids dying or severely harmed from XTC, and combinations of the drugs to which I was just referring. It's downright terrifying. It's very frustrating because Ecstasy has earned the reputation of being a harmless, non-addictive drug—both of which are far from the truth. And what's more frustrating—and saddening—is the fact that too many kids are learning the real truth too late for it to do them any good.

Unsupervised house parties, all-night raves, and underground clubs are a haven for this kind of stuff. XTC, like all club drugs, is easily accessible at these places. Kids don't know when to stop, especially when their parents aren't home or aware of what is going on. I don't believe a smart parent would leave home knowing a teen party was going on— and certainly not in a house where illegal drugs lie in an unlocked closet. In my opinion, this situation is analogous to having an unlocked gun cabinet with loaded firearms.

**Detective Jamey L. McKenna**

Detective Jamey L. McKenna

**Page Vaccio**

Parent of Randie Vaccio  
Witness for the Defense

3890 Schmoolevard Boulevard  
Capestone, Maryland 21999

We are very proud of Randie's accomplishments in school. We had planned to throw Randie a party months prior to graduation – after all, Randie really deserved this party. We had planned to chaperone the party ourselves. Then, a day before the party, my spouse's father became seriously ill. Since his condition was critical, we thought it best for both of us to fly out to Arizona where they reside—that way, one of us could stay there at the hospital with my father-in-law and one of us could help my mother-in-law, since she is not in the best of health, either.

Randie told us that handling the party wouldn't be a problem, since we weren't expecting more than 25 people—and these were nice kids. We had sent out about 30 invitations. Lane Wyndall offered to send some food to the party, but I explained that we were having a caterer. Lane did not offer to chaperone. In fact, Lane had said they were really busy preparing for their own party, so I didn't think to ask them to look into Randie's party.

We had allowed Randie to have an unsupervised party six months before; we went next door to the Bessel's for the evening to escape the deafening noise at the party. Aside from a few bottles of beer on the lawn and a broken lamp, we had no real trouble. We asked our neighbors, the Bessell's, to look in on the party during the evening.

Randie was on the honor roll for the first two quarters of the semester and was also involved with various sports and school activities. I've never had any problems with Randie – certainly no drugs problems. (Randie once took a few drinks from the liquor cabinet but learned a valuable lesson from throwing up that night.) I told Randie that we wouldn't tolerate "hard drugs" at the party. I also told Randie that if there was trouble to go to the Bessells' or the Landers' house for help. Of course, Randie had the phone number of where we would be in Arizona.

Earlier on the day of the party, I called to make sure the caterer had arrived and that the DJ had set up. I didn't call during the party because I didn't want to disturb the fun. And I know my own child—Randie is not a trouble-maker and certainly not a hard drug-user.

Having any kind of drugs, even painkillers, in the house makes me nervous. It seems strange to me that Jessica's parents would readily suggest that she take something as strong as Percoset before going to a party. It is true that Randie took the Ecstasy from our bedroom closet; I must have forgotten to lock it before we went out of town. I would never have thought that Randie would have taken the pills from our closet and given them to Jessica. We are very careful about when and under what circumstances we use ecstasy. I didn't even know that Randie was aware we had it or used it.

This was a terrible tragedy. I never knew that XTC could cause death. When we got the phone call about the problem, I came home immediately. I found the house clean— in fact, almost cleaner than I had left it. I couldn't believe that there had been a "wild" party the night before. I went next door to the Bessell's, where I found Randie, very shaken. Not one for public displays of emotion, I was surprised when Randie ran to me and hugged me, saying, "I've never been more scared in my life. I am so sorry for what I've done."

I just can't find it in my heart to blame Randie for Jessica's death. They were too close—Randie would have never done anything to hurt her in anyway. I really blame all those drug-pushers out there. And to think that the Wyndalls want to blame us! What we have in our home is ours—it was certainly never intended for use by Randie or other kids.

The Wyndalls are the ones who recommended that Jessica take a prescription pain killer before going to a party!! I know they are angry and upset. I can only imagine their sadness, but parents just can't be held responsible for everything that kids do. After all, I warned Randie that there was to be no use of hard drugs at the party. I guess it's fair to say I was not surprised to hear of the alcohol...but...this? I wouldn't have expected it in a million years. It is obvious to me that this lawsuit has arisen out of the Wyndalls' need to blame someone, but holding us responsible is ridiculous.

Page Vaccio

Page Vaccio

**Randie Vaccio**

Underage Host of Party  
Witness for the Defense

3890 Schmoolevard Boulevard  
Capestone, Maryland 21999

I didn't expect that many people to show up for the party. We had sent 35 invitations, but I told some other people they should come to the party as well. When people found out that my parents would be out of town, more people said they were coming. I didn't invite them. I guess at the most there were 120 people at my house. The house is small, so it was cramped and hot— people hung out in the basement, kitchen— some in the back yard. Yeah, some people brought beer; I told them to keep it outside. They put ice in a trash can and put beers there. If they didn't drink it at my house, they would be driving around and drinking and that would be more dangerous. People were cool though.

About 10 pm, I noticed that Jessica was sitting in the corner looking bummed out. I remember that Jessica was in one of those moods where she was worrying about everything. Jessica was wondering about the future and college and the pressure of it all. I tried to get Jessica to loosen up. I tried to joke with her. I started singing that old song... "don't worry be happy." Jessica smiled and joked that, "I needed a 'little help in that department' ". I thought Jessica meant that she wanted to roll, you know, get high. Looking back, I know this wasn't a smart move, but I knew where to find some ecstasy.

I knew my parents kept ecstasy in their bedroom closet. I stumbled across it when I went snooping for birthday presents last year. I figured that they wouldn't notice if a few tabs were missing. I would have never given it to her had I known she were taking Percoset. I mean, I knew she had been hurt in the softball game, and had been to the doctor, but I didn't know about the painkiller.

A little later I saw Jessica dancing in the crowd, having a great time. About an hour later I went into the basement and found Jessica on the floor, mumbling. I threw water in Jessica's face and sat her up. I got someone to help me get Jessica to the sofa. I ran upstairs and got Jessica a soda. When I got back, Jessica looked much worse, but she was sleeping which I figured was good to shake the buzz. I knew Jessica had stopped doing drugs about a year ago, so I figured the X was a little too much for her. I decided to let Jessica sleep and to check on her after I could clear everyone out of my house.

The place smelled like alcohol and cigarette smoke. I told people not to smoke or bring beer into the house. The music was loud. People were laughing. I couldn't think. I picked up the phone to call someone, but I couldn't hear myself think. I needed peace and quiet. I started pushing people out of the basement and up the stairs. I told the DJ to stop the music and tell everyone they had to leave. Nobody moved at first. Then, I grabbed the DJ's microphone and said the cops were coming because one of the neighbors said there were drugs. The party cleared. I got a couple of my friends to help me clear the house of beer bottles. I was so foggy—it was like I was in slow motion. I just kept cleaning, like I was in autopilot or something. We cleaned the place up pretty well. I figured if I could get the house together, I could better deal with Jessica.

I made some coffee and got some seltzer medicine. I went back downstairs to check on Jessica. By this point, Jessica's eyes were fixed and wide open. I think I was completely panicked by this time. I ran to the Bessel's house next door and no one was home. I went home and called 911. I remember a pink frothy substance coming out of Jessica's mouth—I think that scared me the most. The ambulance arrived, and the EMTs worked on her for a while, but I never saw her awake again. Jessica was pronounced dead at the hospital.

I never expected any of this to happen. I don't know what else Jessica was taking or how much. I can't for the life of me, believe she is gone— just like that. It happened so fast...so incredibly fast. Jessica was one of my closest friends. I talked to her almost everyday. Everyone knew us as a pair—we went everywhere together, ever since we were little kids. I feel like a piece of me is gone. I wish I could just take that whole night back.

## Randie Vaccio

Randie Vaccio

**Dr. Kelsey Chacha**  
Forensic Pathologist  
Witness for the Defense

2121 Imsosmart Road  
Capestone, Maryland 21999

I have worked in the field of forensic pathology for three years. I received a double B.S. degree from Jenson College in Chemistry and Statistics. I decided to go straight into a Master of Science in the Sciences program, also at Jenson College. I received top honors in both of these degrees, graduating summa and magna cum laude, respectively. After a brief hiatus, I returned to academia in order to pursue my Doctorate in Forensic Pathology. Since receiving my doctorate in 1999, I have been asked to investigate a number of suspicious, high profile deaths. I have also authored the nationally renowned, autobiographical book entitled, *Living A Gory Life*.

I was hired by the Vaccio family to investigate the sudden and tragic death of Jessica Wyndall. From the beginning of the case, they voiced discomfort with the level of expertise of the Coroner. While I presume the Coroner—a Dr. White, I believe—is quite capable, I am sure that the workload is far too heavy to allow him or her to keep up with the latest research studies. I am a firm believer in keeping abreast of current trends and data.

In reviewing the autopsy report, several inconsistencies became readily apparent. The first discrepancy relates to the identification of several drugs in Jessica's system. Though the coroner notes substances in addition to methylenedioxymethamphetamine in the victim's system, there is no exact amount noted in the report. This troubles me. What one medical examiner defines as a "trace" amount, another might note as significant if, as in this case, it is mixed with another substance.

I am in a quandary with regard to a second discrepancy as well. Statistically speaking, it has been proven that overdosing on "ADAM" has *caused* death, only in rare circumstances. I firmly believe, through my in-depth reading of the literature, that drug-related deaths are much more frequent when the victim has engaged in the use of multi prescription and/or illegal drugs, as in the unfortunate case of young Jessica Wyndall. It is my opinion to a reasonable degree of medical certainty that her death would have never occurred had it not been for the painkillers and ethanol already in her system and only *then* compounded by the introduction of methylenedioxymethamphetamine (*ecstasy*, to the layperson).

**Dr. Kelsey Chacha**  
Kelsey Chacha, M.D.

**9-1-1 Transcript**

Date: May 25, 2002

Time: 1:44 a.m./ Length of Call: 6 minutes—10 seconds

Call originated from: 3890 Schmoolevard Boulevard, Cape Stone, Maryland 21999

9-1-1 Operator: 911 Operator. What is your emergency?

Caller: Uh...um...I think...I think I have someone here who is...um... sick...pretty bad.

9-1-1 Operator: What is your name please?

Caller: Um...uh...Randie, Randie is my name.

9-1-1 Operator: Randie, your last name please?

Caller: Uh, um...Vaccio. V-A-C-C-I-O.

9-1-1 Operator: Randie, where are you right now?

Caller: Um, at home...at my house. Um...3890 Schmoolevard Boulevard in...uh...Cape Stone. Oh...geez...there is stuff coming out of her mouth still. It's like...this...pink stuff... hurry please. I'm so scared. I don't know what is wrong with her.

9-1-1 Operator: Randie, is there anyone else there in the house with you—a parent or another adult?

Caller: No...no, it's just me here.

9-1-1 Operator: Randie, can you tell me who is hurt?

Caller: Oh, yes. Her...her name is, um, it's Jessica.

9-1-1 Operator: Is Jessica conscious?

Caller: No. Um...she hasn't been...not for a while.

9-1-1 Operator: Is Jessica breathing?

Caller: Yeah, I just checked to see if she was before I called.

9-1-1 Operator: How long has she been unconscious?

Caller: I...I'm not sure. Maybe, like, an hour or two. I'm not so sure. I thought she just needed to sleep it off, you know? I thought it was what she needed to feel better.

9-1-1 Operator: She needed to sleep what off? Did she take something?

Caller: Yeah...yes...she took...I think she might have taken X.

9-1-1 Operator: X? Do you mean that Jessica took Ecstasy?

Caller: Um-huh...yeah. Oh, man...please hurry. That stuff is still coming out of her mouth. She's so pale. What can I do? What should I do?

9-1-1 Operator: Randie, I need you to bear with me a few moments longer, OK? The ambulance is on its way. You will hear the sirens any minute now. Just a couple more questions. Do you know if Jessica took anything else?

Caller: I don't think so. I didn't see her take anything else.

9-1-1 Operator: Think carefully—did she drink alcohol? Do you know if she is on medicine for

anything?

Caller: I only saw her drinking soda. She doesn't do drugs...I know that much. I know she's clean.

9-1-1 Operator: Besides the Ecstasy, you mean?

Caller: She didn't even know it was in her drink. I thought it would...I thought it would, I don't know...make her have a good time. I never meant for it to hurt her. If I knew this would happen, I would have never given it to her.

9-1-1 Operator: Let's focus on getting her help, Randie. You did the right thing by calling 911. I need you to make sure a door is open for the EMTs. Is a door open?

Caller: Yes... yes, I left the front door open.

9-1-1 Operator: Where is Jessica in the house?

Caller: She is here in the basement.

9-1-1 Operator: And you are there with her in the basement?

Caller: Yes...um...the ambulance is here, I think. I hear it.

9-1-1 Operator: Randie, check to be sure they are there. I will hold on the line until you verify the ambulance is there, OK?

Caller: OK.

*58 seconds elapses.*

Caller: Um, hi, are you there?

9-1-1 Operator: Yes, Randie. Have the EMTs arrived?

Caller: Yes, they're here with her.

9-1-1 Operator: OK, Randie. I'm going to let you off the phone now. Goodbye.

Caller: 'Bye.

OFFICE OF THE MEDICAL EXAMINER  
MARYLAND, DISTRICTS 9 & 10  
VOLUSIA AND CAPE STONE COUNTIES  
1010 CAPE ST. CLAIRE DRIVE, CAPESTONE, MARYLAND 21999

Name: Jessica K. Wyndall NS: 1VT-- 29765  
Sex: Female  
DOB: 1/10/1986 AGE: 16  
Date of Death: 5/25/2002 Date of Exam: 5/25/2002  
Time of Exam: 08:30 a.m.

Gross Anatomic Diagnoses

I. Transcript & Finding

“Autopsy report—Case Number 1-V-T-29765; Body is a well-developed, well-nourished female measuring 5 feet, 5 inches and weighing 124 pounds; body is open in the usual manner, with a Y-shaped incision; the lungs are 910 grams together...widespread, noticeable fluid surrounding them...the brain is 1,440 grams...the cardinal surfaces of the heart are smooth, heart is noticeably enlarged to 380 grams and otherwise unremarkable. It is my opinion that the death of Jessica K. Wyndall is due to pulmonary edema, secondary to mixed mechanisms. Causation of pulmonary edema— acute drug intoxication due to methylenedioxymethamphetamine.

Postmortem toxicology revealed 0.29 mg/L of methylenedioxymethamphetamine, and trace amounts of ethanol, Percoset and caffeine.”

II. Background

A healthy 16-year-old child ingested Ecstasy (approximately 100 mg) and an unknown, but quite minimal, amount of alcohol within a 60- to 90-minute period. Shortly thereafter, she collapsed. She was unconscious for an undetermined length of time, and on arrival of the paramedics, was found to be in ventricular fibrillation. She was pronounced dead at Cape Stone Memorial Hospital after resuscitation attempts were unsuccessful.

Jonathon M. White, M.D.

Jonathon M. White, M.D.  
Coroner

**Medical Invoice**

Cape Stone Memorial Hospital  
100 Hospital Drive  
Capestone, Maryland 21999



Patient: Jessica K. Wyndall  
678 Windy Path Way  
Capestone, Maryland 21999

Services received on:  
05/25/2002  
Patient transported by ambulance  
Arrival Time: 2:06 a.m.

Ambulance Service	\$ 17,850.00
Medical Aid at Scene	\$ 9,800.00
Medical Aid in ER	\$ 24,600.00
Sub-Total:	\$ 52,250.00

Best Care Insurance Company:	-	\$ 28,000.00
		\$ 24,250.00

PLEASE SUBMIT PAYMENT TO: Capestone Memorial Hospital  
P.O. Box 100  
Capestone, Maryland 21999  
Attn: Billing Department

After 120 days, a late fee will be assessed as determined by 18% of the outstanding balance.

<b>0 Days Over</b>	<b>30 Days Over</b>	<b>60 Days Over</b>	<b>90 Days Over</b>	<b>120 Days Over</b>
\$24,250.00				

FIRST INVOICE  
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## Ecstasy Fact Sheet

**What is it?** Ecstasy or MDMA (methylenedioxymethamphetamine) is both a stimulant and a hallucinogen, since it speeds up the workings of the central nervous system and alters the user's perception of reality.

Ecstasy is a Schedule I controlled substance in Maryland and on the federal level. Ecstasy can be found in capsule, tablet, powder or liquid forms. MDMA is usually distributed in tablet form and taken orally at doses ranging from 2 to 10 mg per kilogram, depending on the user's body weight. Individual tablets are often imprinted with graphic designs or commercial logos, and typically contain 100 mg of MDMA. After oral administration, effects are felt within 30 to 45 minutes, peak at 60 to 90 minutes, and last for 4 to 6 hours. Analysis of seized MDMA tablets indicates that about 80 percent of all samples actually contain MDMA. Many users interviewed believe that ecstasy pills contain other drugs such as methadone, ketamine, cocaine, heroin, LSD, or other, sometimes lethal, substances that are byproducts of manufacture. The pills cost about .20-.25 a piece to make and sell for \$7-30 on the street.

### **Symptoms of Overdose and Effects of Use?**

People with certain disorders - such as epilepsy, high blood pressure, heart disease or diabetes - are at greater risk if they take ecstasy. In high doses, ecstasy can cause seizures and vomiting. The symptoms of overdose include a sharp rise in body temperature and blood pressure, dizziness, cramps, heart palpitations and vomiting.

It is well-documented that ecstasy produces detrimental effects in the brain and body. It causes the brain to release serotonin, a neurotransmitter that helps control mood. Users often experience euphoria, enhanced mental and emotional clarity, and heightened sensory perceptions. When the drug wears off, in typically three to six hours, the user's brain has been depleted of serotonin, which can contribute to depression and can harm parts of the brain responsible for thought and memory. Because users feel energetic, many party until they are dehydrated.

This has led to deaths from heat exhaustion and kidney and cardiovascular system failure. It has also led to muscle tension, tremors, blurred vision, dilutional hyponatremia (when the user drinks their brain by drinking far too much water), and hyperthermia resulting in organ failure, heart attacks, strokes, and seizures.

Recent studies with humans and monkeys revealed that repeated use of ecstasy has an

adverse effect on the serotonin levels in the brain. Brain damage was still present in monkeys seven years after use of the drug stopped. A human study comparing 24 users to 24 non-users shows significant impairment in visual and verbal memory more than two weeks after use was discontinued. (NIDA Notes Vol. 114, No. 4)

### **Additional Possible Effects of Long-Term Use include:**

Permanent damage to the brain cells that make the neurotransmitter serotonin, which is involved in mood regulation, body temperature, appetite and sex drive; Liver damage; Delusions; Panic attacks; Risk of HIV or hepatitis infection, blood poisoning or skin abscesses if ecstasy in powder form is injected using shared needles; Hallucinogenic flashbacks that can occur weeks, months or even years after taking the drug; Susceptibility to having unprotected sex, which increases the risk of contracting a sexually transmitted disease; The need to use other drugs to balance the side effects of ecstasy.

**Trafficking?** In the early 1990s, MDMA became increasingly popular among European youth. However, it is within the last five years that MDMA use in the United States has increased at an alarming rate. A recent report from the National Drug Intelligence Center states that a majority of the pills sold in the U.S. are manufactured in European countries such as the Netherlands, Belgium, the Czech Republic, and Romania. The pills may contain adulterants, diluents, and approximately 100 milligrams of MDMA. (Joint Assessment of MDMA Trafficking Trends, July 2000)

MDMA is popular among middle-class adolescents and young adults but is used at all age and socioeconomic levels. MDMA is increasingly becoming an abuse problem because many users view it as non-addictive and benign. MDMA is sold primarily at legitimate nightclubs and bars, at underground nightclubs sometimes called "acid houses," or at all-night parties known as "raves."

## Applicable Law

### **Related Statutes:**

Maryland Wrongful Death Statute:  
Courts and Judicial Proceeding Article, §3-901

“Wrongful act means an act or default including a felonious act which would have entitled the party injured to maintain an action and recover damages if death had not ensued.”

Maryland Child Abuse and Neglect Statute:  
Family Law Article, §5-701, Defining Neglect and Child.

(2)(d) “Child” means any individual under age 18 years.

(2)(p) “Neglected” means the leaving of a child unattended or another failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of child under circumstances that

- (1) the child’s health is harmed or places at substantial risk of harm;
- (2) mental injury to the child or substantial risk of mental injury.

### **Relevant Maryland Case Law:**

#### Parental Liability

Lanterman v. Wilson, 277 Md. 364 (1976) In Lanterman, a 19 year old broke into the home of a neighbor, Lanterman, ransacking the house and stealing some valuable items. Lanterman sought to hold the teenager’s parents liable, saying they had prior knowledge that the teen had committed wrongful acts and had dangerous tendencies and failed to control him.

“It is a well-recognized principle of common law, firmly established in Maryland, that a parent is not ordinarily responsible for the wrongful act of his minor child, and that to charge a parent with such responsibility, it must be shown that he induced or approved of the act, or that the child’s relationship to the parent at the time was that of servant or agent.” Kerrigan v. Carroll, 168 Md. 682.

The court later said: “We see no reason in this case to depart from the common law rule announced in Kerrigan and Whitelock that parental liability for intentional torts of minor children is ordinarily limited to instances of inducement, approval, or agency.” “Negligence in controlling one’s child should not, of itself, be reason to find parental liability, as it “would be extending the hardships of harassed and exasperated parents too far to hold them liable for general incorrigibility, a bad education, and upbringing, or the fact that the child turns out to have a nasty disposition.”

#### Negligent entrustment

One who supplies directly or through a third party a chattel for the use of the another whom the supplier knows or has reason to know to be likely because of his or her youth, inexperience, or otherwise– to use it in a manner involving an unreasonable risk of harm to himself or herself and others whom the supplier should expect to share in or be endangered by its use to suspect liability for physical harm resulting to them. Broadwater v. Dorsey, 344 Md. 548 (1997)

#### Maryland Law on Unintentional Torts (Negligence)

Negligence is doing something that a person using ordinary care would not do, or not doing something that a person using ordinary care would do. Ordinary care means that caution, attention or skill a reasonable person would use under similar circumstances.

The elements of actionable negligence are:

(a) a duty or obligation, recognized by law, requiring conformance to a certain standard of conduct for the protection of others against unreasonable risks.

(b) Failure to conform to that standard (breach of duty)

(c) Reasonably close causal connection and resulting injury (proximate cause)

(d) Actual Damage or Loss by others.

BN v. KK, 312 Md.135, 538 A.2d 1175 (1988)

#### Duty to Social Guest

A social guest is nothing more than a licensee to whom the possessor owes no duty of inspection and affirmative care to make the premises safe for his or her visit. The legal duty owed to the social guest by a host is to take the same care of the guest that the host takes of himself or herself and other members of his or her family. Bramble v. Thompson, 264 Md. 518.

#### Foreseeable Circumstances

A duty or obligation, recognized by law, requires the person to conform to a certain standard of conduct, for the protection of others against unreasonable risk. A reasonable person changes conduct according to the circumstances and the danger that is known or should be known. Therefore, if the foreseeable danger increases, a reasonable person acts more carefully. Orfanos v. Athenian, Inc., 66 Md. App. 507 (1986)

The question of duty is decided on a case by case basis, but foreseeability of the risk is the primary element establishing duty.

#### Proximate Cause

To recover damages or to be barred from recovery, the negligence must be a cause of the injury. [There may be more than one cause of an injury, that is several negligent acts may work together. Each person whose negligent act is a cause of an injury is responsible.]

A reasonably close causal connection between the conduct and the resulting injury, i.e., proximate cause. The element of proximate cause is satisfied if the negligence is (1) cause in fact of the injury and (2) a legally cognizable cause. A defendant will not be relieved from liability for an injury if, at the time of the defendant's negligent act, the defendant should have foreseen the general field of danger, not necessarily the specific harm to which the injured party would be subjected to as a result of the defendant's negligence. Yonce v. Smithkline Beecham Clinical Labs 111 Md. App. 124 (1996)

Lashley v. Dawson, 162 Md. 549 (1932)

Concurring Cause: Yellow Cab Co. v. Bonds, 245 Md. 86 (1966)

#### Assumption of the Risk

A person who, with full knowledge and understanding of an existing danger, voluntarily chooses to expose himself or herself to that danger, cannot recover for injury resulting from that danger.

Voluntariness of Exposure to Danger: Johnson v. County Arena, Inc., 29 Md. App. 674 (1976)

**Relevant Non-Maryland Court Opinions:**

59 Am Jur. 2d §99 Failure to control

Generally, a parent may be liable for the consequences of failure to exercise the power of control which has over his children, where he knows, or in the exercise of due care should have known, that the injury to another is a probable consequence. However, to render a parent responsible, his negligence in the exercise of parental supervision must have some specific relation to the act complained of the child that has caused the harm, injury, and/or damage.

Crisafulli v. Bass, 2001 MT 316 (2001) Spectator at auction brought a negligence action against the parent of a boy who allegedly rode a bicycle into the spectator, causing back injury. The Court cites Capps v. Carpenter, 129 Kan. 462, (1930), which “clearly indicates that parents may be liable for the tortuous acts of their child, not because the child’s acts are imputed to them, but because of their own negligence in failing to exercise reasonable control of the child.”

Restatement of Torts, 2nd §316 (1965) A parent is under the duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them if the parent

- (a) knows or has reason to know that he has the ability to control his child, and
- (b) knows or should know of the necessity and opportunity for exercising such control.

## **Appendix A**

### Guidelines for Attorney Coaches

The rules of evidence governing trial practice have been modified and simplified for the purposes of this mock trial competition (see Part IV). 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” for the case, nor introduce any evidence that is not included in this packet of materials.

The decision of the judge regarding the quality of the students’ performance (see Rating Sheet) determines which team advances during the single elimination competition.

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.

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

- Answering questions that students may have concerning general trial practices;
- 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.

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.

Finally, 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. Students should use that experience to learn and improve.

After nineteen 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.

## **Appendix B**

### Guidelines for Competition Judges

Always award the Special Point immediately after the close of the trial, although it will not be counted unless there is a tie.

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.

Next, please announce which team prevailed, based on the merits of the case.

Your last announcement should declare who prevailed based on the performance (scoring).

Local 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.

Student attorneys have been asked to keep their presentations to the following guidelines.

- 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); and
- Re-Direct and Re-Cross Examination— 3 minutes and a maximum of 3 questions

It is particularly helpful for the 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 timeframe on their own. Others prefer not to watch the time at all, though this has, at times, led to lengthy competitions. Competitions should last approximately 1 ½ - 2 hours. **Students should not base an objection on the time. This is left to your discretion as the presiding judge.**

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.

The rules of evidence governing trial practice have been modified and simplified for the purposes of this mock trial competition. 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.

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

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.

**Maryland State Bar Association  
2002-2003**

Statewide High School Mock Trial Competition

Registration Deadline.....Wednesday, November 6, 2002  
Mock Trial Guides Distributed.....Thursday, November 7, 2002  
Circuit Competitions (1<sup>st</sup> level of competition).....January 6-March 27, 2003

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**Note: All Circuit competitions MUST be declared to CLREP no later than 5:00 p.m.  
on Thursday, March 27, 2003.**

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Regional Competitions (2<sup>nd</sup> Level).....Tuesday, April 8- Wednesday, April 9, 2003  
(Circuit Champions compete against one another)

Semi-Final Competitions: Annapolis, MD.....Thursday, April 24, 2003

Statewide Finals: Annapolis, MD.....Friday, April 25, 2003

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**Note: All competition dates are final.  
A change by the Chief Judge of the State of Maryland is the only exception.**

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**Organizing Local Competitions**

**The Citizenship Law-Related Education Program will:**

- a. provide Mock Trial Guides and rules for each State competition;
- b. disseminate information to each circuit;
- c. provide technical assistance to Circuit Coordinators;
- d. provide all registered participants who compete for the season with a certificate of participation;
- e. assist in recruitment of schools;
- f. act as a liaison in finding legal professionals to assist teams;
- g. develop press releases, beginning at the Regional level.

**The role of the Bar Association is:**

- a. to advocate involvement of local attorneys in preparing teams and hearing trials;
- b. to provide support to schools;
- c. to assist the Circuit Coordinator.

**The role of the Circuit Coordinator is:**

- a. to make decisions/ mediate at the local level when problems or questions arise;

**Role of Circuit Coordinator continued...**

- b. to establish the circuit calendar;
- c. to arrange for courtrooms, judges, and attorneys for local competitions;
- d. to inform and attempt to recruit all schools in the circuit;
- e. to work with the local Bar Associations to set court dates, recruit attorney advisors, and establish local guidelines;
- f. to arrange general training sessions if necessary.

**The role of the individual school/teacher coach is:**

- a. to DEMONSTRATE that winning is secondary to learning;
- b. to recruit students for the team;
- c. to arrange training sessions and scrimmages;
- d. to arrange transportation and supervision of the team;
- e. to work with partners to recruit attorney advisors;
- f. to ensure that the team arrives at all scheduled mock trial competitions.

