

The 2003 Mock Trial Case

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

LENNY/LAINEY LIZAMA,)	
)	CIVIL ACTION
Plaintiff)	NO: 02-MT2003
))	
V.)	
)	
PAUL/PAULA PALACIOS,)	
)	
Defendant.)	

NOTE: All characters, names, events, places, and circumstances in this mock trial case are fictitious.

A PROJECT COORDINATED BY THE
CNMI BAR ASSOCIATION

2003 Mock Trial Coordinator
Sherry P. Tenorio

Assistant Coordinator
Janet H. King

Special thanks to the Maryland State Bar Association for use of their Mock Trial case *Wyndall v. Vaccio* and to Daniel M. Camacho, Mock Trial Coordinator, Guam Department of Education, for the use of their training materials.

Hafa Adai and Welcome to the 2003 CNMI High School Mock Trial Competition!

The CNMI Mock Trial Competition was started in 1999 as a way to bring high students into the courtroom. The goals of the competition are:

- , to promote and further the understanding and appreciation of the judicial system, court procedures and the legal system;
- , to promote better communication and cooperation between the legal and educational communities;
- , to improve awareness of current social and legal issues; and
- , to provide an education event to support communication, cooperation and respect for students of all abilities and varying interests.

The 2003 Competition is *tentatively* scheduled to be held on Saipan at the CNMI Guma Husticia (House of Justice) on **FRIDAY, MARCH 21 and SATURDAY, MARCH 22**, subject to approval by Presiding Judge Manibusan and court availability. Once we have a tentative list of all the high schools participating in this year's competition, a 2003 Mock Trial Calendar informing all teams of the important dates to remember will be emailed and/or faxed to the teacher-coaches.

Included in this packet is all the information you will need to prepare for this year's exciting competition. This year's problem is titled, Lizama v. Palacios, a case dealing with issues of wrongful death, negligence, and assumed risk. The winner of the 2003 CNMI High School Mock Trial Competition will go on to represent the CNMI at the National Mock Trial Competition in New Orleans, Louisiana on May 8-10, 2003. Participation by the qualifying team will depend on funds available and raised.

The CNMI Mock Trial Championship is governed by the Rules of the Championship, the Rules of Procedure and the Rules of Evidence (Mock Trial Version) herein. Any clarification of rules or case materials will be issued in writing to all registered teams as soon as practical prior to the scheduled Championship.

All teams are responsible for the conduct of persons associated with their teams throughout the mock trial event. Failure to observe appropriate conduct may subject the team to disqualification at the sole discretion of the coordinator. Inappropriate behavior may include, but may not be limited to the following: coaching (audible or visual) from the gallery, demonstrative reactions to rulings, disruptions from team supporters inside or outside the courtroom, etc.

The media may attend mock trial rounds to cover the event and take pictures, audio and/or videotape. Media representatives will be briefed to minimize disruptions to the trial round in process. Teams are encouraged to understand the value of media coverage and, to the extent practical, train to ignore their presence in order to maximize their trial round performance.

All trials will be governed by the Rules of the Competition and the Simplified Rules of Evidence. Please look over these rules carefully.

If you have any questions or concerns, please call Sherry Tenorio or Janet King.

Sherry P. Tenorio, Esq. - Law Clerk - United States District Court - 236-2900 or 2997 or email at SPTenorio@aol.com.

Janet H. King - Resident Director - Dept. of Labor and Immigration (Tinian) - 433-3700/02 or email at JanetHanKing@hotmail.com.

Good luck, have fun, and see you at the CNMI High School Mock Trial Competition in March 2003!

Sincerely,

Sherry P. Tenorio
2003 Mock Trial Coordinator

Janet H. King
2003 Mock Trial Co-Coordinator

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HARRY/HILLARY HOFSCHEIDER

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PAUL/PAULA PALACIOS

NICK/NANCY PALACIOS

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CODE OF ETHICS

At the first meeting of the Mock Trial team, this code should be read and discussed by students and their Teacher Coach.

All participants in the Mock Trial Competition must adhere to the same high standards of scholarship that are expected of students in their academic performance. Plagiarism¹ of any kind is unacceptable. Students- written and oral work must be their own.

In their relationships with other teams and individuals, the CNMI Mock Trial coordinators expects students to make a commitment to good sportsmanship in both victory and defeat.

Encouraging adherence to these high principles is the responsibility of each teacher sponsor. Any matter that arises regarding this code will be referred to the teacher or sponsors of the teams involved.

¹ Webster-s Dictionary defines plagiarism as, #to steal the words, ideas, etc. of another and use them as ones- own.@

RULES OF THE COMPETITION

SIMPLIFIED RULES OF PROCEDURE

SIMPLIFIED RULES OF EVIDENCE

Hints on Preparing for a Mock Trial Competition

The following tips were developed by the Maryland State Bar Association and 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. 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 the Mock Trial 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 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, and 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.** Each member of the teamCstudent or coachCis 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.

BASIC TRIAL PROCEDURES

A. Pre-trial preparation
information gathering (discovery) **pretrial**
hearing **pretrial** order jury selection

B. Courtroom and participants
judge attorneys witnesses
jurors bailiff court reporter

C. Beginning the trial

Bailiff announces: "All rise. The Court of _____ is now in session, the Honorable Judge _____ presiding." Everyone remains standing until the judge enters and is seated. Next, the judge asks the bailiff to call the day's calendar (the "docket"), at which point the bailiff says, "Your Honor, today's case is _____ v. _____." The judge then asks the attorneys for each side of the case if they are ready to begin the trial.

D. The trial

Plaintiff/Prosecution rises and introduces him/herself: "May it please the court and ladies and gentlemen of the jury, my name is _____, counsel for _____ in this action." Attorney for Plaintiff/Prosecution always delivers his/her opening statement first. Defendant/Defense attorney generally gives his/her opening statement immediately after.

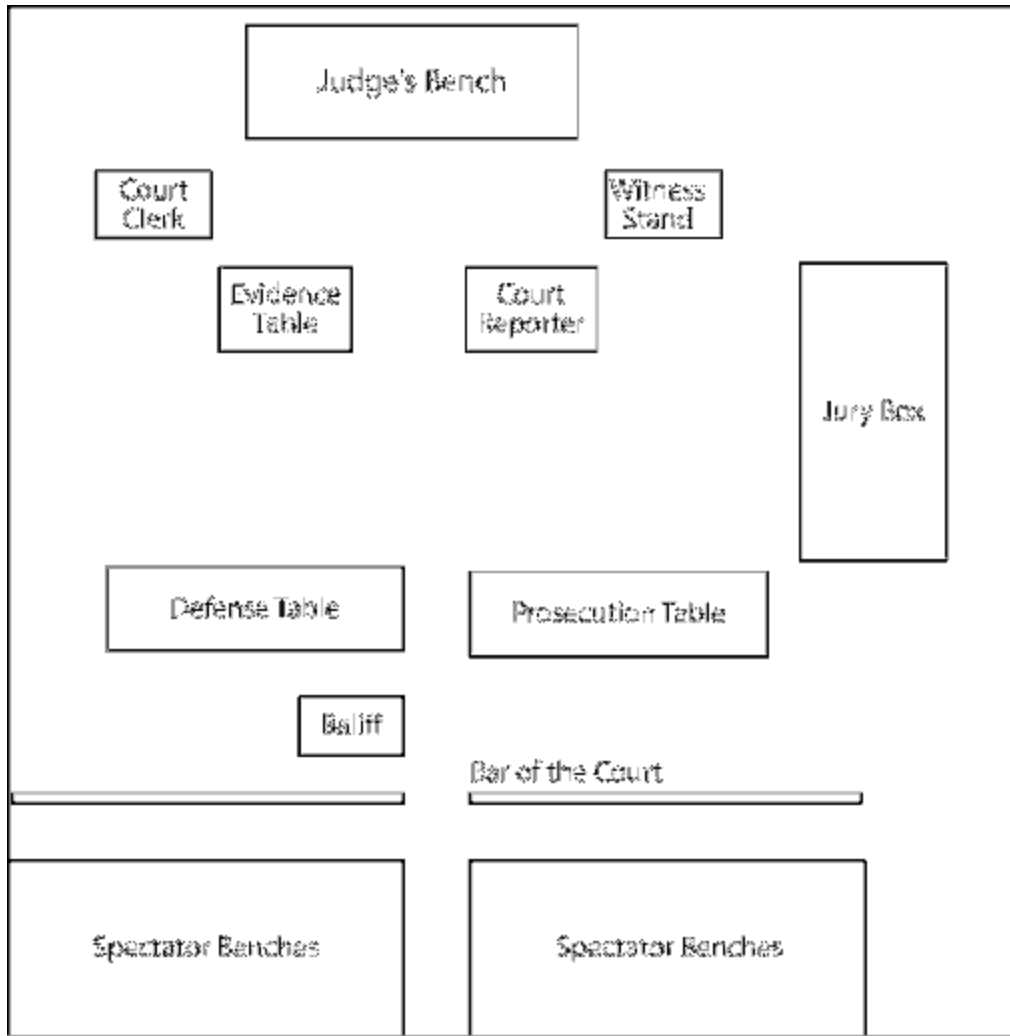
The actual trial is developed by testimony of witnesses.

Plaintiff/Prosecution witnesses are called first. Order of witness presentations is determined by strategy, i.e., chronologically into overall story. Direct examination of Plaintiff/Prosecution witnesses includes Cross-examination by Defense and Redirect examination by Plaintiff and **Recross** examination by Defense which occurs in real trials, but in mock trials it is strongly suggested that teachers allow only a very limited redirect, if at all. Defendant/Defense cross-in-chief proceeds when Plaintiff/Prosecution rests its case. Direct examination of witnesses called by Defense and Cross-examination by Plaintiff, etc. After each side has called all of its witnesses, cross-examines its opponent's witnesses, they enter all relevant documents or objects into evidence.

The Judge then permits Plaintiff/Prosecution closing argument, then Defense closing arguments. Only the Plaintiff may rebut the Defendant's closing argument. After closing arguments, the judge gives the jury their instructions, a brief explanation of the applicable law and then the jury leaves courtroom to deliberate in private. Illinois requires unanimous jury in both civil and criminal cases or "hung jury" requires re-trial before new jury.

When the Jury **returns** with decision on paper given to judge who announces the decision on open court. If a criminal case, guilty defendant scheduled to return at later date for sentencing.

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Lizama v. Palacios
Civil Action No. 02-MT2003

Statement of Stipulated Facts

At approximately 2:14 am on May 25, 2002, Jessica Lizama was pronounced dead on arrival at Commonwealth Health Center on Saipan, CNMI, 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.

Jessica Lizama, 16 years old, and close friend of Nick's/Nancy's, became seriously ill at Nick's/Nancy's graduation party. Nick/Nancy 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. Nick/Nancy assumed that Jessica was drunk and decided that sleep would be the best cure. Only later did Nick/Nancy realize that her condition was serious. Nick/Nancy 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.

Lenny/Lainey Lizama, parent of Jessica Lizama, filed this wrongful death lawsuit on behalf of the Lizama family.

Claims and Defenses

Lenny/Lainey Lizama is suing Paul/Paula Palacios for (1) violation of 2 CMC MT ' 2101 and for (2) negligence, alleging that Paul/Paula Palacios failed to properly supervise their home and their child, ultimately causing the death of Jessica Lizama. Paul/Paula Palacios argues 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. Lenny/Lainey Lizama claims that Paul/Paula Palacios is reading too narrowly the CNMI statute and case law regarding parental liability and that fault lies within the negligence of Paul/Paula Palacios.

Paul/Paula Palacios claims that the injury was caused by Jessica and that Paul/Paula Palacios' actions were reasonable; additionally, Palacios argues that he/she did not encourage or condone the use of alcohol or drugs at the party. Palacios submits that he or she had no reason to believe that his/her child would ingest drugs or give drugs to another child. Paul/Paula Palacios also argues that CNMI law does not hold parents liable for the torts of their children.

Relief Requested

Lenny/Lainey Lizama is asking the court to find that Paul/Paula Palacios violated CNMI statute 2 CMC MT ' 2101 and to find that he/she was negligent. Lizama is 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.

Paul/Paula Palacios is asking the court to find that there was no negligence on his/her part, that he/she did not violate 2 CMC MT ' 2101, 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 Nick/Nancy Palacios
2. The autopsy report for Jessica Lizama
3. The medical bill for Jessica Lizama=s Emergency Room Treatment from Commonwealth Health Center
4. Ecstasy Fact Sheet
5. For the purpose of this Mock Trial case, the terms AEcstasy,@AADAM,@MDMA,@AXTC,@ and AX,@ as well as any other slang terms, are used synonymously to refer to the drug Amethylenedioxymethamphetamine.@

Witnesses for the Plaintiff

Lenny/Lainey Lizama, Parent of Jessica Lizama
Harry/Hillary Hofschneider, Minor who attended the party
Detective Michael/Michelle Manglona, Narcotics Division, Department of Public Safety; former-DEA agent

Witnesses for the Defendant

Paul/Paula Palacios, Parent of Nick/Nancy Palacios
Nick/Nancy Palacios, Minor who hosted Party
Mark/Marcia Manibusan, M.D., Forensic Pathologist

Lenny/Lainey Lizama

Parent of Deceased Child

Witness for the Plaintiff

678 Galaide Way
Saipan, MP 96950

We've known the Palacios family for a number of years. Nick/Nancy and Jessica have been close friends since the first grade. When she was invited to the Palacios 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 successes. 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 Nick's/Nancy's friends was a great idea. In fact, I ran into Paul/Paula Palacios three weeks before the party and I distinctly remember saying: "Let me know if you need anything for the party." Paul/Paula had said: "No, we have it under control." I would have been happy to 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 Nick's/Nancy'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 Palacios family 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.

Lenny/Lainey Lizama

Lenny/Lainey Lizama

Harry/Hillary Hofschneider

Party Attendee

Witness for the Plaintiff

12 Paka Road
Saipan, MP 96950

I am going into my sophomore year at Latte Stone High School. I knew Nick/Nancy, 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 Nick/Nancy knew that my friends and I were even there in the beginning. It started off as a great party which my friends and I knew it would be. Everyone at school knows Nick/Nancy is a hard-core partier. Nick/Nancy 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 my friends and I 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 p.m., 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 but she passed out again.

A little while later, the music stopped. People were leaving left and right. I went to the house to grab another beer. I saw Nick/Nancy Palacios stomping in a circle. Nick/Nancy 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.* Nick/Nancy plopped down on the sofa, looking really shaken-up. I asked if the girl was okay. Nick/Nancy just yelled: *It's none of your business.* Then Nick/Nancy threw a plastic cup at me and told me to get out. After hearing what Nick/Nancy 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.

Harry/Hillary Hofschneider

Harry/Hillary Hofschneider

Detective Michael/Michelle Mangloña

CNMI Department of Public Safety, Narcotics Division
Witness for the Plaintiff

555 Chatañan Drive
Saipan, MP 96950

I have been a detective with the CNMI Department of Public Safety Narcotics Division for eight years. Prior to my time with DPS, 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 DPS 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 Lizama. I received the call on my pager around 2:00 a.m. on May 25th, 2002. Normally, I would 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 Palacios 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.

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

Nick/Nancy also volunteered information regarding where the XTC came from and this is what really concerned me. Nick's/Nancy's parents, evidently, use ecstasy on a regular basis. Nick/Nancy knew this, and, in fact, actually knew where they kept the XTC tablets. Nick/Nancy 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 supposed to be in their possession and only for their use.

I would like to make it clear that Nick/Nancy 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 methylenedioxyamphetamine (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 CNMI. 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 Michael/Michelle Mangloña

Detective Michael/Michelle Mangloña

Paul/Paula Palacios

Parent of Nick/Nancy Palacios

Witness for the Defense

3890 Mamis Boulevard

Saipan, MP 96950

We are very proud of Nick's/Nancy's accomplishments in school. We had planned to throw Nick/Nancy a party months prior to graduation. After all, Nick/Nancy 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 Guam 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.

Nick/Nancy 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. Lenny/Lainey offered to send some food to the party, but I explained that we were having a caterer. Lenny/Lainey did not offer to chaperone. In fact, Lenny/Lainey had said they were really busy preparing for their own party, so I didn't think to ask them to look into Nick's/Nancy's party.

We had allowed Nick/Nancy to have an unsupervised party six months before; we went next door to the Cruz'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 Cruz's, to look in on the party during the evening.

Nick/Nancy 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 Nick/Nancy. Certainly no drug problems. (Nick/Nancy once took a few drinks from the liquor cabinet but learned a valuable lesson from throwing up that night.) I told Nick/Nancy that we wouldn't tolerate hard drugs at the party. I also told Nick/Nancy that if there was trouble to go to our neighbors, the Cruz's or the Deleon Guerrero's homes for help. Of course, Nick/Nancy had the phone number of where we would be in Guam.

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. Nick/Nancy is not a troublemaker 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 Nick/Nancy 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 Nick/Nancy 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 Nick/Nancy 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 Cruz's where I found Nick/Nancy, very shaken. Not one for public displays of emotion, I was surprised when Nick/Nancy 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 Nick/Nancy for Jessica's death. They were too close. Nick/Nancy would have never done anything to hurt her in any way. I really blame all those drug-pushers out there. And to think that the Lizamas want to blame us! What we have in our home is ours. It was certainly never intended for use by Nick/Nancy or other kids.

The Lizamas 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 Nick/Nancy 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 Lizamas' need to blame someone, but holding us responsible is ridiculous.

Paul/Paula Palacios

Paul/Paula Palacios

Nick/Nancy Palacios

Underage Host of Party
Witness for the Defense

3890 Mamis Boulevard
Saipan, MP 96950

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.

At 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 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 ecstasy.

I knew my parents kept ecstasy in their bedroom closet. I stumbled across it when I went shopping 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 Cruz'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. It just 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.

Nick/Nancy Palacios

Nick/Nancy Palacios

Dr. Mark/Marcia Manibusan

Forensic Pathologist
Witness for the Defense

2121 Etau Road
Saipan, MP 96950

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 Palacios family to investigate the sudden and tragic death of Jessica Lizama. From the beginning of the case, they voiced discomfort with the level of expertise of the Coroner. While I presume the Coroner Ca Dr. Javier, I believe C 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 a 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 Lizama. 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. Mark/Marcia Manibusan

Mark/Marcia Manibusan, M.D.

9-1-1 Transcript

Date: May 25, 2002

Time: 1:44 a.m./Length of Call: 6 minutesC10 seconds

Call originated from: 3890 Mamis Boulevard, Saipan, MP 96950

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

Caller: UhYumYI thinkYI think I have someone here who isYumYsickYpretty bad.

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

Caller: UmYuhYNick/Nancy, Nick/Nancy is my name.

9-1-1 Operator: Nick/Nancy, your last name please?

Caller: Uh, umYPalacios. P-A-L-A-C-I-O-S.

9-1-1 Operator: Nick/Nancy, where are you right now?

Caller: Um, at homeYat my house. UmY3890 Mamis Boulevard
inYuhYSaipan. OhYgeezYthere is stuff coming out of her mouth
still. It-s likeY thisYpink stuffYhurry please. I-m so scared. I don-t know what is wrong
with her.

9-1-1 Operator: Nick/Nancy, is there anyone else there in the house with youCa
parent or another adults?

Caller: NoYno, it-s just me here.

9-1-1 Operator: Nick/Nancy, can you tell me who is hurt?

Caller: Oh, yes. HerYher name is, um, it-s Jessica.

9-1-1 Operator: Is Jessica conscious?

Caller: No. UmYshe hasn-t beenYnot 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'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: Nick/Nancy, 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, Nick/Nancy. 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 Yum Y the ambulance is here, I think. I hear it.

9-1-1 Operator: Nick/Nancy, 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, Nick/Nancy. Have the EMTs arrived?

Caller: Yes, they're here with her.

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

Caller: Bye.

**OFFICE OF THE MEDICAL EXAMINER
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

Name: Jessica W. Lizama
Sex: Female
DOB: 1/10/1986
Date of Death: 5/25/2002

NS: 1VTC29765
AGE: 16
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 W. Lizama 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 Commonwealth Health Center after resuscitation attempts were unsuccessful.

Jonathan J. Javier, M.D.

Jonathan J. Javier, M.D.
Coroner

Medical Invoice

Commonwealth Health Center
Commonwealth of the Northern Mariana Islands
Saipan, MP 96950



Patient: Jessica W. Lizama
678 Galaide Way
Saipan, MP 96950

Services rendered 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: Commonwealth Health Center
Saipan, MP 96950
Attn: Billing Department

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

0 Days Over **30 Days Over** **60 Days Over** **90 Days Over** **120 Days Over**
\$24,250.00

FIRST INVOICE
PLEASE REMIT PAYMENT NOW

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-.254 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 drowns 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*

Relevant CNMI Statutes:

CNMI Wrongful Death Statute:

2 CMC MT ' 2101

AWrongful 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 ensued.@

CNMI Child Abuse and Neglect Statute:

6 CMC MT ' 5312, Defining Neglect and Child

(2)(d) **AChild@** means any individual under age 18 years.

(2)(p) **ANeglected@** 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 a substantial risk of harm;
- (2) mental injury to the child or substantial risk of mental injury.

Relevant CNMI Case Law:

Parental Liability

Sablan v. Taimanao, 5 N.M.I. 67 (1999). In Sablan, a 19 year old broke into the home of a neighbor, Sablan, ransacking the house and stealing some valuable items. Sablan 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.

AIt is a well-recognized principle of common law, firmly established in the Commonwealth, that a parent is not ordinarily responsible for the wrongful act of his or her minor child, and that to charge a parent with such responsibility, it must be shown that he or she induced or approved of the act, or that the child=s relationship to the parent at the time was that of servant or agent.@Camacho v. Fleming, 2 N.M.I. 89 (1992).

The Sablan court later said: **A**We see no reason in this case to depart from the common law rule announced

*Notice: The law cited in this section was adopted from other jurisdictions and modified for purposes of the 2003 CNMI High School Mock Trial Competition. The law cited is NOT the law of the CNMI.

in Camacho 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 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. Mafnas v. Cabrera, 4 N.M.I. 55 (1998).

CNMI Law on Unintentional Torts (Negligence)

Negligence is doing something that a person using ordinary care would not do, or not do something that a person using ordinary care would do. Ordinary care means 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, 1 N.M.I. 112 (1990).

Duty to a 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. Kisa v. Lujan, 2 N.M.I. 39 (1993).

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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. Castro v. Thomas, 3 N.M.I. 66 (1995).

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. Warren v. Guerrero, 1 N.M.I. 45 (1990).

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. Taitano v. Babauta, 4 N.M.I. 89 (1998).

Relevant Non-CNMI 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 he or she has over his or her children, where he or she 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 or her 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.

Restatement of Torts, 2d ' 316 (1965)

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A parent is under the duty to exercise reasonable care so to control his or her 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.

Cruz v. Dunlap, 52 Guam 312 (1996). In Cruz, a spectator brought a negligence action against the parent of a boy who allegedly rode a bicycle into the spectator, causing the spectator back injury. The court held that parents may be liable for the tortious 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

GUIDELINES FOR TEACHER COACHES

A. ROLE OF THE TEACHER COACH

The teacher coach is expected to help the team members decide which students will play which parts in the mock trial and to assist the students in playing those roles. As part of the sizeable responsibility of acting as team coaches, teachers are responsible for the following areas:

1. **Rules of the Program.** All teachers and teams are expected to adhere to the rules, facts, and materials provided in the Mock Trial Tournament Case Materials. Therefore, please make sure you are familiar with the tournament rules.
2. **Role Assignments.** Team members should be strongly encouraged to select roles based on their interests and abilities, and not on the basis of any gender or cultural stereotypes which might be drawn from the characterizations in the fact pattern.
3. **Team Preparation.** Attorneys will also help coach each team. Teams should prepare both sides of the case and are strongly urged to arrange and conduct preliminary mock trials with other teams prior to competing in the regional tournament. Preliminary trials require only one attorney or judge to act as the presiding judge, as it is not necessary to award points to the teams during these practice rounds.
4. **Education.** Education of students is the primary goal of the Mock Trial Tournament. Healthy competition helps to achieve this goal, but teachers are reminded of their responsibility to keep the competitive spirit at a reasonable level. The reality of the adversarial system is that one party wins and the other loses, and teachers should be sure to prepare their teams to be ready to accept either outcome in a mature manner. Teachers can help prepare students for either outcome by placing the highest value on excellent preparation and presentation, rather than on winning or losing the trial.
5. **Observers.** Other classes, parents and friends of the participants are welcome to attend the trials.
6. **Arrival Times.** Teachers are responsible for getting their teams to the assigned courtroom 10 minutes prior to the starting time of each trial.

B. SUGGESTIONS FOR TEAM PREPARATION

The following tips have been developed from past experience with students, and may be useful:

1. Have all team members read the entire set of materials. When finished, have them brainstorm the points for each side of the case.
2. The best teams generally have their students prepare their own questions, with the teacher and attorney coaches giving the team continual feedback and assistance.
3. As soon as possible, student attorneys should begin formulating questions for use in examination of witnesses, and student witnesses should rehearse their testimony. Student preparation will progress more rapidly by simulating actual conduct of the trial than by merely conducting general classroom discussion of the steps in the trial.
4. After the questions are prepared for witnesses, a team should hold several practice sessions where its attorneys question individual witnesses, and the rest of the team evaluates which questions are good and which might be dropped or added in order to bring out favorable evidence. These sessions will also help prepare the witnesses for the tournament.
5. Opening and closing statements should be written by students with editing assistance from the teacher and attorney coaches. (Teacher and attorney coaches should not write statements for students.) Coaches should not tell students to incorporate language that the students do not understand or feel comfortable with.

Students should be reminded that closing statements must remain flexible to respond to the evidence as it comes out in the trial.

6. Each attorney should practice handling interruptions from the judge on matters such as the relevance of questions or the rationale of the arguments during the closing statement.
7. The ability of a team to adapt to different situations is often a key part in a mock trial enactment since each judge, or person acting as a judge, has his or her own way of doing things. Since the proceedings of the trial often depend in no small part on the judge who presides, student attorneys and other team members should be prepared to adapt to judicial rulings and requests, even if they appear contrary to outlined tournament procedures and rules.
8. Courtroom etiquette and decorum should be stressed at practice and observed at trial (i.e., standing when the judge enters or leaves the courtroom, and calling the judge "Your Honor").
9. All participants should speak loudly and clearly. Microphones are not usually available. Practice this by having each student attorney stand at the far end of the room while interrogating the student witness.
10. Credibility of witnesses is very important, and students acting as witnesses should be encouraged to "get into" the roles and attempt to think like the person they are playing. These students should read over their statements (affidavits) many times and have other people ask them questions about the facts until they know them "cold." Witnesses are not permitted to refer to their statements during the trial, unless requested by an attorney to refresh recollection.
11. The students need to understand and become familiar with legal terminology; i.e., plaintiff, defendant, overruled, sustained, etc.
12. Some of the things most difficult for team members to learn are
 - a. Deciding which points are the most important in proving their side of the case and making sure such proof takes place.
 - b. Stating clearly what they intend to prove in an opening statement, and arguing effectively in their closing statement that the facts and evidence presented have proven their case.
 - c. Following the formality of court; i.e., standing up when the judge enters and calling the judge "Your Honor."
 - d. Phrasing questions on direct examination that are not leading. (Carefully review the rules of evidence and watch for this type of questioning in practice sessions.)
 - e. Refraining from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions that often lessen the impact of points previously made. (Stop and recognize what questions are likely to require answers that will make good points for your side. Rely on the use of these questions. Avoid pointless questions.)
 - f. Thinking quickly on their feet when a witness gives an unexpected answer, an attorney asks an unexpected question, or a judge questions an attorney or witness. (Practice sessions will help prepare for this.)
 - g. Introducing exhibits into evidence.
13. In order for students to gain the most valuable tournament experience, it is crucial for teachers to discourage participating attorneys from promoting a "win-at-all-costs" attitude among their team members.

GUIDELINES FOR STUDENTS ACTING AS ATTORNEYS AND WITNESSES

These guidelines provide information for students as they prepare to be witnesses and attorneys in mock trials. A.

GENERAL SUGGESTIONS

1. Always be courteous to witnesses, other attorneys, and the judges.
2. Rise when addressing the judge.
3. Direct all remarks to the judge or witness, not to opposing counsel.
4. Don't make objections unless you are relatively sure that the judge will agree with you. Judges don't appreciate attorneys who constantly make objections or attorneys who make objections without being able to explain the reason for them.
5. If the judge rules against you on a point or in the case, accept the defeat gracefully and act cordially toward the judge and the opposing team.

B. ATTORNEYS

L OPENING STATEMENTS

- a. Objective: To acquaint the judge with the case and to outline what you are going to prove through witness testimony and the admission of evidence.
- b. What Should Be Included
 - (1) A short summary of the facts;
 - (2) Mention of the burden of proof (the amount of evidence needed to prove a fact) and who has the burden in this case;
 - (3) The applicable law;
 - (4) A clear and concise overview of the witnesses and physical evidence that you will present and how each will contribute to proving your case.
- c. Advice in Presenting
 - (1) It is essential that you appear confident in your case.
 - (2) Use eye contact when speaking to the judge.
 - (3) Use the future tense in describing what you will do (i.e., "The facts will show," or "Our witnesses' testimony will prove").
 - (4) Do not read too much. Look up occasionally at the judge.
- d. Other Suggestions
 - (1) Learn your case thoroughly (facts, laws, burden of proof, etc.).
 - (2) Avoid too much narrative detail about witness testimony. Avoid exaggeration and overstatement of facts that may not be proven.

2. DIRECT EXAMINATION

a. **Objective.** To obtain information from favorable witnesses you call in order to prove the facts of your case, to present your witness to the greatest advantage, to establish your witness's credibility and to present enough evidence to warrant a favorable verdict.

b. What Should Be Included

- (1) Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information.
- (2) Be sure that all items you need to prove your case will be presented through your witnesses.
- (3) Use clear and simple questions.
- (4) Never ask a question to which you don't know the answer.

c. Advice in Presenting

- (1) Try to keep to the questions that you've practiced with your witnesses and ask a limited number of questions.
- (2) Be relaxed and clear in the presentation of your questions.
- (3) Listen to the answers.
- (4) If you need a moment to think, don't be afraid to ask for a moment to collect your thoughts, or to discuss a point with your **co-counsel**.
- (5) Be sure to have all documents marked for identification before you refer to them at trial. Then refer to them as Exhibit 1, or Exhibit A, etc. After you have finished using the exhibit, if it helps your case_ ask the judge to admit it as evidence.

d. Other Suggestions

- (1) Avoid asking leading questions.
- (2) Practice with your witnesses.
- (3) When your facts are in evidence, stop questioning. Say "No further questions" or "Your witness "

3. CROSS-EXAMINATION

a. Objective: To obtain favorable information from witnesses called by the opposing counsel, and if a witness has no testimony favorable to you, to make that witness less believable.

b. Types of Questions to Ask

- (1) Questions that reflect on the witness's credibility by showing that he or she has given a contrary statement at another time (for example, the witness first testifies to not being at the scene of an accident and later admits to being there). When such an inconsistency arises, ask the witness, "Did you make this statement on June 1st?" Then read it or show a signed statement to the witness and ask, "Is this your statement?" Then ask the witness to read part of it aloud or read it to the witness yourself and ask, "Did you say that?"
- (2) Questions that show that the witness is prejudiced or biased or has a personal interest in the outcome (i.e., the witness testifies that the defendant was her landlord and evicted her).
- (3) Questions that weaken the testimony of the witness by showing that his or her opinion is questionable (i.e., the witness with poor eyesight claims to have observed all the details of a fight that took place 50 feet away in a crowded bar).
- (4) Questions that show that an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience (i.e., a high school student or even a dentist testifying that in her opinion the defendant suffers from a chronic mental disease).

c. Advice in Presenting

- (1) Be relaxed and ready to adapt your prepared questions to the actual testimony given during the direct examination.
- (2) Always listen to the witness's answer.
- (3) Avoid giving the witness an opportunity to re-emphasize the points made against your case during direct examination.
- (4) if the witness is in fact "hostile," don't give him or her an opening to explain anything. Keep to the "yes" or "no" answers whenever possible. Try to stop the witness if his or her answer or explanation is to hurt your case, by saying, "You may stop there. Thank you," or "That's enough. Thank you."
- (5) Don't harass or attempt to intimidate the witness.
- (6) Don't quarrel with the witness.

d. Other Suggestions

- (1) Anticipate each witness's testimony and write your questions accordingly, but be ready to adapt your questions at trial depending on the actual testimony.
- (2) In general, ask only leading questions (questions that suggest the answers and normally only require a yes or no answer).
- (3) Be brief. Don't ask so many questions that well-made points are lost.
- (4) Prepare short questions using easily understood language.
- (5) Ask only questions to which you already know the answer.

4. CLOSING ARGUMENTS - -

- a. Objective: To provide a clear and persuasive summary of the evidence you presented to prove the case, along with the weaknesses of the other side's case, and to argue for your position.
- b. What Should Be Included
 - (1) Thank the judge for his or her time and attention.
 - (2) Isolate the issues and describe briefly how your presentation addressed these issues.
 - (3) Review the witnesses' testimony and physical evidence. Outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses.
 - (4) Argue your case by stating how the law applies to the facts as you have proven **them**_
 - (5) Remind the judge of the required burden of proof. If you have the burden, you must convince the court you have met it. If you do not, you must convince the court that the other side has failed to meet its burden.
- c. Advice in Presenting
 - (1) Do not read all the way **through**. Keep eye contact with the judge or at least look up **occasionally**_
 - (2) Be an advocate-forcefully urge your point of view. Avoid a boring review of the facts.
 - (3) Argue your side, but don't appear to be blind to the other side's arguments. **Fairness** is important.
 - (4) Be very careful to adapt your statement at the end of the trial to reflect what the witnesses actually said and what the physical evidence showed.

C. WITNESSES

1. GENERAL SUGGESTIONS

- a. If you are going to testify about records or documents, familiarize yourself with them before coming to **trial**_
- b. When answering questions, speak clearly so that you will be heard.
- c. Listen carefully to the questions. Before you answer, make sure you understand what has been asked. If you do not understand, ask that the question be repeated or clarified.
- d. If the judge interrupts or an attorney **objects** to your answer, stop answering immediately. Likewise, if an attorney **objects** to a question, do not begin your answer until the judge tells you to do so.

2. DIRECT EXAMINATION

a. Advice in Preparing

- (1) **Learn** the case thoroughly, especially your witness statement.
- (2) Review your testimony with your **attorney**. Know the questions that your attorney will ask, and prepare clear and convincing answers that contain the information the attorney is trying to get you to provide.

b. Advice in Presenting

- (1) Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.
- (2) Don't recite your witness statement verbatim. You should know its content beforehand so that you can paraphrase it or put it in your own words, but be sure that your testimony is never inconsistent with, nor a material departure from, the facts set **forth** in your affidavit.

3. CROSS –EXAMINATION

a. Advice in Preparing

- (1) Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies or problems in **your testimony** and be prepared to explain them as best you can.
- (2) Practice with your **attorney**, asking him or her to act as opposing counsel. **b.**

Advice in b. Presenting

- (1) Be as relaxed and in control as possible - an appearance of confidence and truthfulness is important. Speak **loudly** and clearly enough to be heard by the judges.
- (2) Do **WE** panic if the attorney or judge asks you a question that you haven't **rehearsed**_
Don't be afraid to buy time by saying something like "Excuse me just a moment while I try to remember."
- (3) Be sure that your testimony is never inconsistent with, nor a material departure from the facts set forth in the witness statement. Minor and inconsequential embellishments are acceptable as long as they can be reasonably inferred from the fact statement. If asked on cross-examination to testify about information that is not a part of the case materials, you may invent an answer **that is consistent** with the other affidavits and facts in the trial. **This** is in fact an opportunity to create an answer helpful to your side.

Witnesses should keep in mind that such an answer can be disruptive when the other side objects, and may even open the door to the judge issuing an adverse **special ruling** against you. The wiser course may be to respond in character, but with an innocuous answer, such as "I don't remember" or "I don't believe I can answer that question, would you please rephrase it?" If pressed, you may still prefer to step out of character and say "I don't know. That's not included in the case materials."