

Mock Trial

Billings v. Pearson

After receiving numerous text messages and MyFace posts from a fellow student, a high school freshman sues his/her classmate for intentional infliction of emotional distress and the school system for negligent supervision.

**Developed by the D.C. Street Law Clinic
at Georgetown University Law Center**

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STIPULATED FACTS

Note: "Stipulated Facts" are facts that both parties agree to be true. Attorneys agree not to argue about these facts during the trial.

King High School ("KHS") is a public high school within the Metro City School District ("MCSD"), located in Metro City, in the state of New Columbia, where 5,125 students are enrolled. Alex Billings and C.J. Pearson attended KHS's freshman orientation from August 16th-18th, 2010. During this orientation, Billings and Pearson became friendly. By the conclusion of the orientation, they had exchanged cell phone numbers, as well as "friended" each other on MyFace, a popular social networking website. On August 23rd, 2010, Billings and Pearson began classes at KHS. They were both in the same freshman English class.

At the end of the first week of school, on the evening of August 27th, Billings and Pearson met at a musical all-ages club. Following this evening, over the course of three months, Billings and Pearson exchanged over 2400 text messages through their cellular phones. Some of these text messages were sent during KHS school hours, and others were sent outside of school hours. KHS policy prohibits students from bringing cell phones to campus. The two also had significant interaction through MyFace. Students are prohibited from accessing MyFace from KHS computers. In fact, the KHS administration blocks MyFace on all school computers.

On November 1st, 2010, KHS's ninth grade counselor, Mr./Ms. Cook, called Billings into his/her office to discuss Billings' poor attendance and grades. During this conversation, Billings revealed to Cook that (s)he was unable to participate fully in school because of a problem with Pearson. Cook told Billings that she would investigate

the matter and asked Billings to report back to him/her if the problem continued or worsened. Billings never spoke to Cook about Pearson again. On the same day, Cook emailed Principal Li about her conversation with Alex. On November 10th, 2010, Cook spoke to Pearson regarding Alex.

On December 1st, 2010, Francis Billings, Alex's parent, learned of Pearson's MyFace postings about Alex. At this time, Francis Billings initiated a discussion with Alex about the MyFace postings. On the same day, Alex and Francis Billings met with KHS Principal Li. During this meeting, Francis Billings angrily confronted Principal Li about Pearson's alleged bullying of Billings and showed Principal Li some of the text messages and MyFace postings.

Following this conversation, Francis withdrew Alex from KHS. On the same day, the Billings' visited St. Joseph Academy ("SJA") and spoke with Dr. Gabriel/Gabriella Rodriguez, the SJA school psychologist. Following this conversation, Francis enrolled Alex at SJA. Alex began attending SJA the following week, on December 6th, 2010. SJA agreed to charge Billings \$15,000 in tuition for the remainder of the 2010-2011 school year and \$20,000 a year thereafter. The following day, Francis Billings went to the Metro City Superior Court and received a Temporary Restraining Order prohibiting Pearson from contacting Alex.

Alex Billings began seeing Dr. Snyder, a therapist, twice a week. Snyder charges \$200 a visit and recommends treatment for one year, for a total cost of \$20,800.

STIPULATIONS OF EVIDENCE

The parties stipulate to the authenticity and admissibility of the following pieces of evidence. However, to discuss such evidence at trial, or to submit the evidence to the judge for consideration, the parties must properly introduce the evidence according to the rules detailed in the Simplified Rules of Evidence, located in Appendix B.

EXHIBIT A: Excerpted Text Messages between Billings and Pearson;

EXHIBIT B: Screen Shot of a MyFace Group Page;

EXHIBIT C: City Express Article;

EXHIBIT D: KHS Anti-Bullying Policy;

EXHIBIT E: KHS Cell Phone Policy;

EXHIBIT F: Email Correspondence; and

EXHIBIT G: Post-Traumatic Stress Disorder Diagnostic Test.

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

CLAIMS AND DEFENSES

Billings' Claims

Billings claims that:

1. Pearson sent harassing text messages to Billings and published derogatory postings about Billings on MyFace, which constituted bullying as defined and prohibited by the KHS Anti-Bullying Policy;
2. Pearson was intentionally bullying him/her, and Pearson's conduct was extreme and outrageous, and intended to cause emotional distress to Billings;
3. Pearson's bullying did actually cause severe emotional distress to Billings: (s)he felt extremely anxious, depressed, and fearful of Pearson and the possibility of further bullying to the extent that (s)he avoided attending school;
4. (S)he adequately reported to the KHS administration that (s)he was being bullied by Pearson;
5. The KHS administration failed to adequately respond to the bullying report, in violation of its obligations under the KHS Anti-Bullying policy;
6. KHS's failure to adequately respond to the bullying report constituted unreasonable, insufficient supervision;
7. It was reasonably foreseeable that if KHS did not properly respond to the bullying complaint, it could result in Billings experiencing severe emotional distress;
8. Because of KHS's insufficient supervision, Pearson's bullying of Billings continued to occur and did actually cause Billings to suffer severe emotional distress; and
9. Billings' severe emotional distress constitutes a psychiatric and emotional injury.

Joint Defenses

MCSD and Pearson both defend on the grounds that:

1. Pearson's text messages and MyFace postings do not constitute bullying as defined by the KHS Anti-Bullying Policy;
2. Even if Pearson's messages and postings constituted bullying, they did not rise to the level of "extreme and outrageous conduct;" and
3. Billings did not experience severe emotional distress or an emotional or psychological injury of any kind, or if (s)he did, it was caused by reasons unrelated to Pearson's messages and postings.

MCSD's Defenses

MCSD further defends that:

1. If Pearson's messages and postings are found to constitute bullying, Billings did not adequately report such bullying to the KHS administration; and
2. Even if it is found that Pearson's actions constitute bullying, and that Billings adequately reported such bullying to the KHS administration, the KHS administration adequately responded to the bullying report.

RELIEF REQUESTED

Billings asks the court to make a finding of negligent supervision against Metro City School District and requests relief of \$75,000 to pay for St. Joseph Academy's tuition, as well as an award for pain and suffering as authorized by New Columbia Civil Code §4372. Billings also requests that KHS update its Anti-Bullying Policy to include cyber bullying and that MCSD fund and provide bullying prevention training to its 75,000 students. MCSD asks the court to find that it did not negligently supervise Billings.

Billings asks the court to make a finding of intentional infliction of emotional distress against Pearson and requests an award for pain and suffering as authorized by King Civil Code §4372. Additionally, Billings asks for \$20,800 to pay for therapy for one year. Pearson asks the court to find that (s)he did not intentionally inflict emotional distress upon Billings.

WITNESS LIST

Witnesses for the Plaintiff

Alex Billings
Plaintiff

Francis Billings
Plaintiff's Parent

Dr. Gabriel/Gabriella Rodriguez, PhD
School Psychologist at St. Joseph Academy

Witnesses for the Defendant

C.J. Pearson
High School Student

Justin/Justine Cook
School Counselor at King High School

Brendan/Brenda Li
Principal at King High School

**Plaintiff's
Witness
Statements**

Witness Statement of Alex Billings

My name is Alex Billings. I am 14 years old and am now in the ninth grade at St. Joseph Academy. However, I started my freshman year of high school at King High School. The time I spent at KHS was the worst experience of my life. I met C.J. Pearson during the KHS freshmen orientation – that’s where everything started. Some cool seniors led the orientation, and they taught us some great tricks: like how we should give the school a fake phone number for our parents so that if we skipped school and the attendance office called home, they’d call the wrong number and our parents wouldn’t find out about our absence. I gave a fake number for my parent – I knew I’d want to skip some days and not get in trouble when I did.

School started the next week; Pearson and I were assigned to English class together. I thought Pearson was nice. We sometimes ate lunch together in the cafeteria. The weekend after school started, Pearson suggested we meet at a Go-Go. I was really excited about that because it was my first time to see go-go live, and I loved it. That night was also the first time that Pearson started bullying me – (s)he verbally abused me and would not stop making fun of me. Upon hearing Pearson’s taunts, other people at the club started laughing at me too.

I must have done something to really make Pearson mad – after that night, it was like (s)he became a different person. (S)he started calling me names in English class. The teacher didn’t do anything to stop the name calling; sometimes she even laughed along with the students. I don’t know if the teacher didn’t stop Pearson because what (s)he was saying wasn’t really that bad, or if it was actually bad – either way, it really bothered me and I wished that the teacher would just tell Pearson to shut up.

Then the text messages started. I know I'm not supposed to use my cell phone at school, but I need it in case my parent calls me – I'd get in a lot of trouble at home if I didn't pick up his/her calls because sometimes (s)he has to work late and needs me to watch my younger brothers and sister. Anyway, Pearson started sending me all of these terrible text messages – sometimes (s)he would send ten in a row! At first I responded to the text messages, but that just seemed to make things worse, so eventually I ignored them – but that didn't stop Pearson. No matter how good of a day I was having, when one of those text messages came in, I felt like garbage; like I just wanted to crawl into my bed and never leave it.

One night I logged into my MyFace account and saw that Pearson had created a MyFace group that was dedicated to joaning on me. It was basically the same gist as the text messages, but online for every single one of our mutual friends to see. It was humiliating. All these other kids from school started joining the group and adding their own comments to Pearson's updates. By November, over 300 KHS students had joined the group! At school, people would tease me about the MyFace group. I acted like it didn't bother me, but really I wanted all the talk and teasing to stop.

All of these messages became too much for me. Every morning I woke up, I dreaded going to KHS. I started staying home from school a lot. I didn't want to spend eight hours every day at a place where people treated me like I had a disease! I don't want anyone to make a big deal about this, but when I stayed home from school, I'd usually meet up with some friends, and we'd play video games. With school as bad as it was, video games became my main priority. I would stay up all night to beat a level.

Finally, I guess because of all my absences, Mr./Ms. Cook, the ninth grade counselor, called me to his/her office. At first, I didn't say anything about Pearson and blamed my problems on video games: that I was staying up all night playing video games and was too tired to come to school the next day. Eventually, I told her I wasn't going to go to a school where people treated me so badly. I even showed him/her one of the worst texts that Pearson sent me! I told her that Pearson was messing with me so much that I couldn't take coming to school. Mr./Ms. Cook said that (s)he would look into the situation and get back to me. I never heard from him/her about it again.

One day my mom/dad confronted me about what was happening on MyFace – somehow (s)he learned about the group about me and how Pearson posted a gun on it. I was feeling terrible at that point. It was bad enough Pearson turned kids in school against me, now (s)he was threatening me. I felt that (s)he was out of control and would do anything to get me. No one was doing anything to stop Pearson, or even say (s)he was wrong. I felt helpless. And I was scared.

I told Mom/Dad the whole story, showed him/her all the text messages, and let him/her see the MyFace group about me. I have never seen him/her so angry. (S)he told me to get in the car, and we sped to KHS. (S)he burst into the principal's office and started yelling – even though I was kind of embarrassed by the whole scene, it also felt really good that someone was finally standing up for me. It was hilarious to see my principal get told off, especially by my mom/dad, who is usually pretty quiet.

The same day my mom/dad took me over to St. Joseph Academy. Now that is a nice school! They saw us right away, and they even told me that I seemed like a perfect fit for SJA. Dr. Rodriguez had a meeting with us and gave me some tests. I told him/her

my whole story from KHS. (S)he assured me that nothing like that would happen at SJA. My mom/dad enrolled me that same day at SJA and I have been going there ever since. It's a great school. I have made some really nice friends, and I love it there. I can't wait to spend the rest of high school studying there. I have all As, and I haven't missed a school day yet.

I've been feeling better after my mom/dad got the Temporary Restraining Order against Pearson and I've been seeing Dr. Snyder, the therapist. Finally I can sleep well at night.

Witness Statement of Francis Billings

My name is Francis Billings, and I am the parent of Alex Billings. I work full time as the day manager at Freshfield Grocery here in Metro City. I'm a divorced parent, and Alex has three younger siblings, so it's hard for me to keep track of everything that is going on with them at school. However, as I understand it, as soon as my kids walk through the school doors, the school administration is responsible for supervising them and ensuring their well being.

I was raised with religious values, and I think that it is very important for children to be taught about moral beliefs in school – just as important as learning reading and math. I always wanted my kids to go to one of those private religious schools, but with the salary of a grocery store manager, I never had enough money to afford private school tuition.

Alex was excited about high school at the beginning of the school year, but by the end of September, I practically had to drag him/her out of bed and onto the school bus. (S)he didn't seem interested anymore. Sometimes I found him/her playing video games in the middle of the night. When I told Alex that missing out on sleep was going to result in bad grades, (s)he told me that (s)he didn't care. I figured this was just a phase; all teenagers have bad attitudes now and again. But it seemed to get worse each month.

One morning right after Thanksgiving, before Alex was going to school, I got a strange call from a parent of Alex's classmate, saying that there was worrisome material about Alex posted on MyFace. I asked Alex about it – s(he) logged into MyFace, and I was horrified by the threatening messages C.J. had directed towards him/her. Alex then told me about the terrible time (s)he had been having at school and how much C.J. had

been harassing him/her. (S)he showed me all the awful text messages. Alex also told me that (s)he tried to get help about this from his/her counselor, and that the counselor had promised to look into the situation but never again contact Alex about it.

I then realized that I hadn't seen any of Alex's grades since (s)he started the ninth grade. I called KHS' main office and asked them to immediately email me Alex's latest report card. (S)he had missed more days of school than (s)he had attended! Also, his/her grades were terrible! And I did not receive so much as a phone call about this from KHS! They didn't even notice that (s)he wasn't there. They should have been concerned that a student was absent that much and had grades that poor.

I was so angry to hear all this. I pay taxes to the school district so that they have the funding to run a school where my child can feel safe and get properly educated! I'm paying my taxes, but the school district isn't holding up its part of the bargain, and they should be held accountable for their failure. That's why I brought this lawsuit – it's only fair that MCSD pay the costs of alternative education for my child, because they are unable to provide it.

After Alex told me what was happening, I was outraged. I am usually a pretty calm person, but this was too much. A student was psychologically abusing my child, and the administration was not stopping this abuse, even though it was aware of the situation. I felt an overwhelming urge to march up to that school and defend my baby. I wanted to protect my child – (s)he would not experience any such harassment ever again, not even for one more minute. I also was angry at myself. I was blaming Alex's problems on video games. But I learned that his/her obsession with the games weren't the cause of his/her problems, but rather the symptoms.

I drove Alex to the school and we went straight to the main office, where I demanded to speak to the person in charge. I was directed to Principal Li's office, and we sat down with the Principal and I explained the situation. I'll admit, I didn't speak to the principal in the calmest or most polite manner – I let my anger take a hold of me. I let the principal know how (s)he messed up, and how KHS had messed up.

Principal Li kept on saying that (s)he wanted to focus on “moving forward,” but I really wasn't interested in that. There was no way for Alex to move forward at KHS without a risk of harassment – (s)he would have to be removed from the school district to ensure a safe educational environment. I completed the disenrollment paperwork as quickly as I could, and we left that horrible place. Finally I felt like I was giving Alex the help (s)he needed in the situation. I felt like a good parent.

I needed to quickly find an alternative school for Alex to attend - (s)he had fallen really far behind because of all the absences. I had seen a lot of advertisements for St. Joseph Academy – big ads about the school were posted on the city busses – that's how I got the idea to take Alex there to learn more about it.

We drove to SJA and went into the main office. Right away I liked the feel of the school – the building itself was in much better shape than the KHS building, and the employees in the main office were welcoming and polite. They recommended that Alex and I speak with Dr. Rodriguez, who invited us into his/her office right away. (S)he gave us a better understanding of SJA and a full tour of the facilities. By the end of that tour, I knew that SJA was the best educational option for Alex.

I decided to enroll Alex at SJA that day. I signed all the paperwork and wrote a \$500 check to cover the tuition deposit. I know it's a lot of money, but a good education

isn't cheap, and since a public education is not an option for Alex, I really have no choice. I told Dr. Rodriguez that I was concerned I wouldn't be able to afford the tuition, but (s)he told me that the SJA administration would help me come up with a payment plan and investigate whether there were alternative resources to pay for it.

I know I acted fast when I decided that Alex was going to change schools, but quick action is necessary sometimes. I don't regret my decisions at all. In fact, Alex is thriving at SJA. I just received his/her report card, and (s)he has all As. Metro City School District should be forced to pay for Alex's tuition at SJA, as well as pay our family for all we have suffered. It's only fair.

The day after seeing Principal Li, I took Alex to the Superior Court to apply for a Temporary Restraining Order ("TRO") against C.J. to stop communicating with Alex. The judge immediately granted a six-month TRO requiring C.J. to stop texting Alex or communicating on MyFace about him/her in any way.

I also found a therapist for Alex. In December, Alex started going to Dr. Snyder two days each week. I think Dr. Snyder is helping Alex a lot, and that these therapy sessions are one of the reasons why Alex is doing so well in school. Dr. Snyder recommended that Alex see him for a year, which would cost \$20,800.

Witness Statement of Gabriel/Gabriella Rodriguez, PhD

My name is Dr. Gabriel/Gabriella Rodriguez, and I have a PhD in school psychology from The University of Santa Fe, which I attained through an online PhD program. In this PhD program, I wrote my thesis about how juveniles exhibit post-traumatic stress disorder symptoms. I am the school psychologist at St. Joseph Academy (“SJA”), and I was recently promoted to the head of the recruitment committee. I love my job, and I am always excited to bring new students into the SJA community.

To give you a little more information about SJA, it’s a private Christian institution started in the 1950s by reverends who wanted to enrich teenagers’ lives by providing them with a rigorous education that encompasses the morals and values of the Christian faith. Although the religious focus of the school has significantly lessened throughout the 1990s and today, we still conduct a moment of silent reflection and prayer at the beginning of each day, and students are required to study theology and the history of religion.

As a private school, SJA does not receive any public funding; instead, we rely on student tuition and donations to keep our school running. We charge each student \$20,000 for each year’s tuition; a student who studies all four years of high school at SJA pays a total of \$80,000 in tuition over four years. We think that this is a very reasonable rate, considering that the average yearly tuition at private high schools is \$29,000. We do offer limited financial assistance to students in need, and we work with families to reach creative solutions to come up with the required tuition. Students are not permitted to graduate early from SJA. We are only charging the Billings family \$15,000 for this school year, since Alex started with us in December.

I saw Alex Billings for the first time on December 2nd, 2010 when the Billings' dropped by our school seeking information about enrolling at SJA. They were directed to me because of my role on the recruitment committee, but I ended up speaking to both of them as a school psychologist. I immediately sensed that they were both very upset. It looked as if Alex had been crying. They explained to me what had occurred to Alex at KHS. Mr./Ms. Billings believed that the KHS administration was incompetent and unable to keep Alex from being harassed, so it was impossible for Alex to receive an adequate education there. Mr./Ms. Billings felt forced to find an alternative school for Alex.

Mr./Ms. Billings was particularly upset that KHS, its counselor, and its principal had done nothing to stop the bullying. I read the KHS bullying policy and feel that it doesn't go far enough. It should cover bullying that goes on outside school grounds and school events, like the SJA policy does. If bullying affects a student's life at school in any way, that conduct should be banned by the school. Schools that allow any form of bullying by one student over another are negligent in their responsibilities. I rejected the KHS approach when I worked on our anti-bullying policy. Metro City School District definitely negligently supervised Alex Billings.

We discussed the expectations and culture of SJA and it seemed to me that Alex would be a great fit for our school. At that time, I decided to begin the enrollment process. The first step in this process is to administer an emotional and academic evaluation of the student. We use the results of these evaluations to tailor an individualized course of study for each SJA student based on their academic and emotional needs.

I concluded from Alex's emotional evaluation that (s)he was left with lasting emotional trauma from the bullying (s)he had experienced. In fact, I diagnosed Alex with post-traumatic stress disorder ("PTSD") using a PTSD diagnostic test. There are six criteria required to be diagnosed with PTSD: first, they must experience a traumatic incident where they are threatened; second, they must somehow relive that traumatic experience; third, they must experience avoidance symptoms; fourth, they must experience hyperarousal symptoms; fifth, these symptoms must be present for over a month; and finally, the symptoms must negatively impact the person's life.

I conclude that Alex meets all six of these criteria. I also believe that the PTSD stems not only from Pearson's harassment, but also from the way Alex was treated by the KHS administration. Alex expressed strong feelings of helplessness and even fear. By skipping school at KHS, Alex demonstrated avoidance of the contact with Pearson that Alex felt was causing the trauma. Finally, the symptoms Alex displayed had a great negative influence on his/her life. There is no question that they caused his/her poor attendance and low grades at school.

Based on this evaluation, I decided to place Alex in a specialized educational program catering to students who have experienced emotional trauma. Within this program, I'll be checking in on his/her progress on a weekly basis, and (s)he will participate in a counseling program in which we will assist him/her in recovering from the PTSD. SJA is going to give Alex the support (s)he needs to move past this horrific experience and to excel as a high school student. This support is something that every student deserves, and it's obvious that KHS was unable to provide it.

**Defendant's
Witness
Statements**

Witness Statement of Justin/Justine Cook

My name is Justin/Justine Cook, and I am the ninth grade school counselor at KHS in Metro City. I earned a bachelor's degree in School Counseling from the University of Virginia. I have been in my current position for five years, and I must admit that it's a really difficult job. 5000 students attend KHS, and almost 1500 of them are freshmen. That's a lot of people for me to keep track of. My primary responsibility is to create and coordinate all of the freshmen's schedules. Additionally, I act as a confidant for students who want a trustworthy adult to talk with. Kids will tell me about problems they are experiencing at home and at school. I give them advice, and when I decide they need assistance from the school administration, I help coordinate it.

I was a member of the committee that wrote the KHS policy on bullying. I am proud to say, in fact, that I was its primary author. Everyone else on the committee agreed that bullying that might go on outside of school is not the school's business.

I met Alex for the first time when I called him/her to my office in November because I was concerned about his/her poor attendance and grades. When I asked Alex about them, at first (s)he just shrugged his/her shoulders and said (s)he was playing too many video games. But when I asked whether (s)he was having problems at school, (s)he became extremely agitated – his/her eyes were darting and red, and (s)he was extremely fidgety. In a raised voice, (s)he told me that (s)he didn't want to come to school anymore and that (s)he was going to drop out of KHS. (S)he was coming across as very irrational and upset, so I asked him/her to calm down, take a deep breath, and explain from the beginning what happened that caused him/her to want to drop out.

(S)he said again that (s)he was miserable at KHS and that the worst person in the school was C.J. Pearson. (S)he showed me a text message from Pearson on his/her cell phone. I decided to ignore the fact that students are not allowed to have a cell phone at school and took a look at the text message. I can't remember exactly what it said, but it was something about Billings' clothes; it was not very nice at all. (S)he also told me that C.J. was posting a lot of nasty things about him/her on MyFace.

When dealing with issues like this, I always focus on the fact that I am dealing with high schoolers. I think we can all remember some teenage trauma from our high school years. If there's anything that I've learned at this job, it's that teenagers can be mean! Part of growing up is figuring out how to deal with meanness and cruelty and learning how to rise above it. That's what I always tell my freshmen – they need to ignore it when someone is bothering them, particularly because what a harasser wants the most is to get a strong reaction from their target.

I tried to explain this all to Alex in the kindest way possible; after all, (s)he was very upset. That's when (s)he started crying. (S)he said that it made him/her sick to his/her stomach to come to school, and that if Pearson didn't stop bothering him/her, it would drive him/her crazy. I told Alex that I was very sorry that (s)he felt that way, but that this was a difficult situation because the harassment wasn't actually happening at school. Some of it was occurring through cell phones, which aren't allowed on campus. Other messages were posted on MyFace, and all school computers have MyFace blocked.

If Alex's only complaints were about things on cell phones and MyFace, two things that aren't allowed on campus, then it was clear that the school administration had no business interfering with it. If C.J. got in trouble for this, it would be the same as me

assigning detention to someone for not making their bed at home! There has to be a line drawn between school and home – we cannot be responsible for our students' actions when they are outside of the school; it would be too difficult and complicated.

I didn't want Alex to think I was completely ignoring the situation, so I told him/her that I would look into it and get back to him/her. I also specifically told him/her to notify me if the situation continued – and especially if it got worse. That seemed to make him/her feel better. Before (s)he left my office, I gave Alex a note to take home to his/her parent. I never heard from Mr./Ms. Billings.

Alex was so upset that I decided to email Principal Li about the situation. I asked what (s)he knew about Pearson and Billings, and whether Pearson had a history of behavior problems. The next week Principal Li responded with an email saying that Pearson had been suspended twice last year, but that (s)he had been on the straight and narrow this school year. Principal Li also reminded me that we did not have the time or the ability to look into potential problems between students that did not occur on school property.

After Principal Li responded to me, I spoke briefly with C.J. and gave him/her an informal warning to lay off the text messages and MyFace postings about Alex. I really meant to follow up with Alex, but it just kept slipping to the bottom of my to-do list. I never did talk with him/her about what Principal Li told me. But since I didn't hear from Alex again, I figured the situation must have worked itself out. I feel bad that I didn't make an effort to get a hold of him/her, but freshman spring scheduling has taken over my life. It's sad, but sometimes students slip through the cracks.

Witness Statement of Brendan/Brenda Li

My name is Brendan/Brenda Li, and I am the KHS Principal. I have a bachelor's degree in Education from Mt. Holy Oak College, a master's degree in Education Administration from the University of New Columbia, and I have worked in education administration for over ten years. I am currently working on a doctorate in Business Management from Kern University. I have been in my current position for three years.

I was on the faculty team that wrote KHS's current anti-bullying policy. I've received a few complaints from parents because "cyber bullying" isn't mentioned in this policy. However, I think all of this uproar about cyber bullying is silly, and it just shows you how overly sensitive people are today. Our anti-bullying policy is completely adequate and is used at KHS whenever alleged bullying is reported. It covers conduct ranging from "offensive" to causing "fear of physical harm" and "emotional distress." It prohibits retaliation and false reporting. We deal with potential problems from cell phones, texting and social media like MyFace by banning them from use in school. Moreover, our anti-bullying policy is consistent with federal civil rights law by prohibiting harassment based on discrimination.

I recall receiving an email from the ninth grade counselor regarding Alex. From what I remember, the email didn't really alarm me. It was clear that the alleged conduct was taking place off school grounds. The counselor mentioned that Alex had been having some trouble with C.J. Pearson on MyFace and requested any information I had about these students. I don't like to patrol MyFace – that's outside the bounds of school. However, I did have to discipline students for a MyFace posting a couple of years ago – they started a group called "Our Math Teacher Is Dumber Than a Hamster." It brought

the math teacher to tears, and I called the students who made the group into my office and made them erase the page in front of me. I had to do it to protect the teacher, my employee. I also felt compelled to intervene because I knew it was affecting her teaching performance – she couldn't concentrate on her lesson planning because she was constantly obsessing over how much the students hated her.

As for Pearson, (s)he isn't a model student: I heard from the junior high principal that (s)he was suspended twice last year for spray painting graffiti on the walls at school. When Pearson arrived at KHS, I told him/her that (s)he had to change that behavior or I would expel him/her from KHS. Pearson promised to change, and since the new school year started, I haven't had any problems with him/her.

I didn't hear anything further about the matter until December 2, 2010, when Francis Billings stormed into my office with Alex. Mr./Ms. Billings started screaming at me that (s)he wouldn't let his/her child suffer any longer, and that KHS was not a healthy place for a teenager. She slammed down a piece of paper on my desk, which looked like a printout from a MyFace page. I skimmed it, and I was pretty shocked. It appeared to be some extremely inappropriate postings made by C.J. Pearson about Alex.

I told Mr./Ms. Billings that I was sorry the situation had gotten so out of hand but that I was confident we could find an appropriate way to move forward. Mr./Ms. Billings replied with some really nasty things about KHS: that the whole staff was incompetent, that it was our fault that her child wasn't getting an adequate education, and that (s)he wasn't going to deal with it anymore. (S)he demanded to know the withdrawal procedures. I asked him/her to calm down and perhaps we could discuss that when

tempers weren't so flared, but (s)he stormed out and headed into the registrar's office, where withdrawals are handled.

Honestly, I didn't know that something that bad was going on between Pearson and Billings. Had I known more about the messages, I might have intervened. I am running a school of 5000 students. It is impossible for me to know the relationships between each and every one of them. I know I am dealing with teenagers who may not always communicate straightforwardly, but if someone has a problem they need to clearly ask for help. Billings came to Mr./Ms. Cook's office and whined about the situation, but (s)he didn't do it in an appropriate way.

Pearson's treatment of Alex Billings may have made Alex feel uncomfortable, but it was not discriminatory. It was not based on traits protected by federal civil rights laws – race, color, national origin, gender, or disability. It was a private matter between Alex and C.J., and it was not the school administration's place to intervene.

The proper avenue for solving the problem was for Alex to get a Temporary Restraining Order (“TRO”) from a judge. This is the way bullying outside of school should be handled, just like any other harmful interpersonal matter, like problems with teen dating violence. In fact, when law students from our local law school teach a “street law” unit on teen dating violence, they tell students how to get a TRO but say nothing about school discipline policy.

Things were probably not even that bad for Billings - this lawsuit is just another plot for a parent to try to wrangle money out of Metro City School District. I am sure many frivolous and petty lawsuits are filed by greedy parents. And they wonder why we struggle to create an effective learning environment for their children – we spend most of

our time dealing with lawsuits such as this, which are blown out of proportion and draining our resources!

Finally, Billings asking for money from our public school district to pay tuition at a private Christian school is flat out unconstitutional. (S)he should read the First Amendment – it's called the separation between church and state!

Witness Statement of C.J. Pearson

My name is C.J. Pearson, and I'm a freshman at King High School. I met Alex in the first week of school at freshman orientation. Billings seemed pretty cool at first but turned out to be a big weirdo. During that first week of school, we were all trying to figure out who we wanted to be friends with. Not all of those friendships worked out in the long run; that's what happened between Billings and me.

One Friday night soon after school had started, I asked Alex if (s)he wanted to meet me at a Go-Go to hang out. (S)he showed up at the club in an outfit straight out of 1995 – it looked like something your nerdy cousin would wear for a family photo! I guess (s)he was trying to look nice, but (s)he had to know that people were going to give him/her a hard time about the outfit. You can expect to be made fun of when you are so clueless. I was embarrassed just hanging out with him/her that night. I guess that's why I started to give him/her a hard time about the clothes. I thought it was pretty funny, and I thought Billings knew I was joking. I wasn't the only one saying things either. A lot of other kids from our school were there, and they were taking cracks at him/her too.

Billings turned into this private joke between me and my friends. We'd text him/her a lot. It was funny; (s)he'd get all riled up and text us back, and we'd crack up. Yeah, I posted some things about Billings on MyFace, and a lot of my classmates thought it was funny and posted stuff too. I can't control what other people do. Anyway, my sending him/her texts or MyFace messages has nothing to do with school. I was just playing around. I do that with lots of people and it's not a big deal. That's what high school kids do.

For example, one day in computer lab, we pulled a prank on James Thomas when he left for the bathroom and forgot to log off his computer. Student accounts at our school have a boring home page. When James Thomas was gone, we replaced his home page with a swimsuit picture. The teacher walked by, saw it, and sent him to the office. It was really funny.

I'm sorry if Billings didn't understand that, but I can't believe I'm going to court because of text messages that I sent. A person shouldn't be able to sue every time someone hurts their feelings.

I probably was a little too mean in my posts in November, but I was so angry that Alex had snitched on me to the ninth grade counselor. Mr./Ms. Cook pulled me out of class to discuss Alex. That's when I vowed to make Alex sorry for getting me in trouble.

I'm not a bad kid - I'm a normal kid. I play sports, I have friends, and I'm dating someone. I can get along with people, joke around with them, and no one else is accusing me of "emotionally distressing" them. Yeah, I've been in some trouble in the past, but I've put that behind me. I have a good life, except that Billings is ruining it by dragging me into court. My parents told me they are going broke paying the lawyer's bills, and I am really afraid that this is going to impact my chances to get into a good college some day. This lawsuit is being covered by the newspapers! It's so humiliating.

Maybe if Billings wasn't such a loser and knew how to act like a normal person in high school, (s)he wouldn't have left KHS. I don't even think that transferring to this private school is going to help. It'll just keep shielding him/her from the real world, and (s)he'll never learn how to function within it.

I don't think I should get in trouble at school for things that I am saying or writing outside of school. I have the right to free speech just like anyone else. No one can stop me from texting or posting messages online.

Besides, if what I was doing affected Billings so much, he could have told me to stop. He didn't.

Statutes And Case Law

STATUTES

In the state of New Columbia, the common law tort offenses of negligent supervision and intentional infliction of emotional distress have been codified in the New Columbia Civil Code.

New Columbia Civil Code §2211: Negligent Supervision. A school district shall be held liable for a foreseeable injury of a minor enrolled as a student within the school district, if it can be established that the school district's unreasonable, insufficient supervision was the proximate cause of the injury.

New Columbia Civil Code §5500: Intentional Infliction of Emotional Distress. A person is liable for intentional infliction of emotional distress when he or she intentionally or recklessly engages in extreme and outrageous conduct that intends to cause and causes severe emotional distress to another.

New Columbia Civil Code §4372: Pain and Suffering Awards in Tort Actions. In actions for negligent and intentional torts, plaintiffs may be awarded for reasonable pain and suffering at the discretion of the finder of fact, based upon the facts of the case.

New Columbia Civil Code §4382: Apportionment of Tort Damages. In any tort action, damages may be apportioned (divided) among the parties to the action, including the plaintiffs and defendants, according to the judge's determination of their relative contribution to the damages, i.e., their relative fault.

CASE LAW

When a court makes a decision (a “holding”) about a case, that decision is considered law and can be applied to other trials. The following cases include law that may help prove your case.

How to use these cases in trial:

- 1. Read each case.*
- 2. Decide whether you think the law from the case should apply to the current trial.*
- 3. If you think the law should apply to the current trial:
 - a. Establish during witness questioning how this trial’s facts or issues are similar to the facts of one of the below cases.*
 - b. Mention the case in your opening or closing: tell the court the case name, the law in the case, and why that law should be applied in this trial.**
- 4. If you think the law should not apply to the current trial:
 - a. Establish during witness questioning how this trial’s facts or issues are different from the facts of one of the below cases.*
 - b. Mention the case in your opening or closing: tell the court the case name, the law in the case, and why that law should not be applied in this trial.**

New Columbia Case 1: Tracy v. City of Woodson

Facts: After school one day, LaNae Tracy, a senior at Woodson High School, accidentally bumped into Delia Webster, another student. Although Tracy immediately apologized, Webster, who thought the contact was intentional, cursed at and kicked Tracy, and then said she was going to kill her. After the encounter, Tracy decided to report the incident to the security office. However, the office was locked and no one was there. She then decided to wait for a security officer near the main entrance, where security officers were sometimes present. After waiting for half an hour without seeing a security officer, Tracy decided to walk home. As she walked down the school’s main stairwell, Webster, along with two male students, blocked her path. Webster then struck Tracy multiple times on the head and arm with a hammer. One of the males then stabbed Tracy’s right wrist with a knife. Tracy needed stitches for her head wound and surgery for her wrist. Six months after the accident, she still experienced regular headaches and had her right hand was still not functioning properly.

Holding: The court found the school liable for negligent supervision. The court noted that the school had a duty to “supervise its students at the same level of care and supervision that a reasonably prudent parent would exercise under the same circumstances.”

New Columbia Case 2: Wesley v. Jones

Facts: The Wesley family and the Jones family lived in neighboring houses, with a small stream running between their propertise. The two families disagreed about who owned

the stream. Because of this disagreement, the Jones' screamed vulgar things at the Wesley's, photographed them, and looked into the Wesley home with binoculars. The Jones' continued interacting with the Wesley's like this for a year and a half. Mrs. Wesley testified that these actions caused her to lose weight, to be fearful for her safety, and to be unable to sleep. Mr. Wesley testified that he felt nervous when exiting his house, that he felt like he had no privacy, and that he always had to "look over his shoulder."

Holding: The court found the Jones' liable for intentionally inflicting emotional distress upon the Wesley's. It noted that intentional infliction of emotional distress ("IIED") is present when "conduct is so outrageous that it goes beyond all possible bounds of decency and is considered utterly intolerable in a civilized community." Additionally, it defined emotional distress as mental suffering or anguish, including reactions such as fright, shame, humiliation, anger, and worry. The court found that to qualify as IIED, the emotional distress must be so severe that no reasonable person could be expected to endure it.

Supreme Court Case 1: Tinker v. Des Moines School District

Issue: Does a school district violate the First Amendment right of freedom of expression of its students when it suspends them from wearing black armbands in protest of the Vietnam War?

Holding: The Supreme Court held that the school district violated the students' First Amendment right of freedom of expression when it suspended them for wearing the armbands. However, the court noted that "...conduct by the student, in class or out of it, which for any reason...materially disrupts classwork or involves substantial disorder or invasion of the rights of others" was not protected by the First Amendment and could be prohibited by a school district.

Supreme Court Case 2: Lemon v. Kurtzman:

Issue: Does a school district violate the First Amendment's separation of church and state when it pays the salaries of teachers at religious schools who are teaching non-religious subjects, such as math and reading?

Holding: The school district violated the First Amendment in paying those salaries. The Supreme Court established a three-question rule that must be used when determining whether a school district is violating the First Amendment when involving itself with a religious school:

1. Does the school district's action have a religious purpose?
2. Does the school district's action have the primary effect of advancing or inhibiting religion?
3. Does the school district's action result in an "excessive entanglement" between the school district and religion?

If the answer to any of these questions is "yes," then the school district's action violates the First Amendment and should not be allowed.

Evidence

EXHIBIT A:
Text Messages

**TRANSCRIPT OF TEXT MESSAGES
BETWEEN BILLINGS AND PEARSON**

Note: Between August 16th, 2010 and December 1st, 2010, Billings and Pearson exchanged over 2400 text messages. The parties agree and stipulate that the following selected text messages are a representative sample of these messages. Pearson's messages are in gray text boxes on the left side of the page. Billings' messages are in white text boxes on the right side of the page.

8/24/10

Where'd u get those jeans from – mama's closet?

Dude, I don't know what you're talking about

9/2/10

Looked like u conditioned your hair with gunk from the Louisiana oil spill

???

9/14/10

Stop sucking up to our English teacher...

Stop texting me in class!

I would tell u to stop being ugly, but I guess u can't help it...

Where u from Alex? I know u aren't from Metro City, looking like that...

10:3:10

Nobody likes u

U have no friends

I don't care

I would care if I were u...

But I'm not a bamma like u

10:15:10

Alex, u r the dirtiest looking person I have ever seen

Why are u doing this?

What did I do to u?

U came to school looking like that

Your outfit and haircut r offensive

And u keep saying stupid things in class

11:10:10

Really, nobody cares what u say

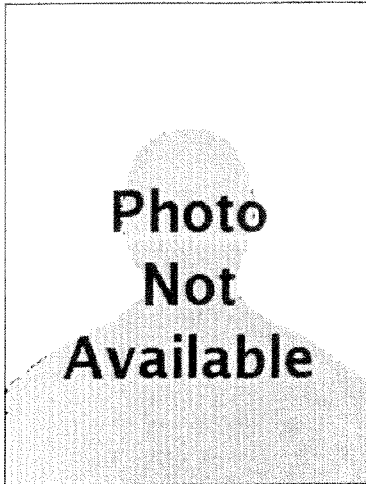
Even the teachers don't want to listen to your idiot comments

EXHIBIT B

MyFace

Search

Home Profile Account



Message Members

Edit Settings

Members

Invite Friends to Join

Create Event

I Hate Alex Billings!!

Wall Info Discussions Photos Videos



CJ Pearson Alex stays smellin like the X2 coming down Main St.

October 27, 2010



Brandon Davis More like the train station..

October 27, 2010



Janelle Thompson Aint that the truth!

October 27, 2010



Alejandro Diaz Take a bath, Alex!

October 27, 2010



Alex Billings You guys are lame...

October 28, 2010.



CJ Pearson Saw Billings standing outside the donut shop asking people for Metro fare

November 3, 2010



Ross Anderson Alex needs a job

November 3, 2010



Michelle Rogers Alex, I'd give you some quarters, no need to beg

November 4, 2010



CJ Pearson Alex doesn't need to be in English class – that fool needs to be in remedial FASHION class

November 10, 2010

Photo
Not
Available

CJ Pearson Let's celebrate We Hate Alex Billings Day. Officially tomorrow, November 19, 2010! How will you celebrate?

November 18, 2010



Toni Alvarez Watch out Alex! Im gonna trip you in the hallway. Haha

November 18, 2010



Brandon Davis Nobody sit by Alex at lunch

November 18, 2010



Ashley Bryant Alex, you disappoint me... you didn't even come to school today!

November 18, 2010

Photo
Not
Available

CJ Pearson Stop coming to school, Billings. No one wants you here.

November 23, 2010



Shayla Moore Go back to where you came from

November 24, 2010



Lindsey Howell And if you do keep coming, you'll be sorry

November 25, 2010

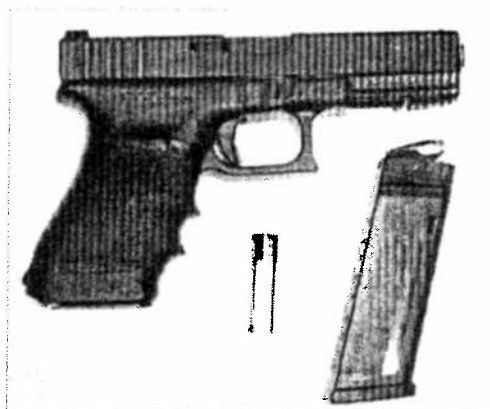


Jonathon Todd I've got your back, CJ!

November 26, 2010

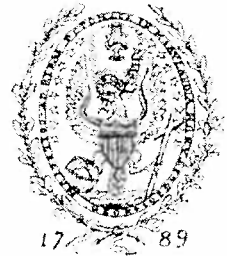
Photo
Not
Available

CJ Pearson THIS IS FOR YOU



December 1, 2010

city express



GEORGETOWN UNIVERSITY

JANUARY 12, 2011 Publication of the D.C. Street Law Clinic LAW, JUSTICE, ADVOCACY



Street Law students prepare for Mock Trial competition on March 31 and April 4



Local student sues Metro City School District over text message and cyber-bullying



Kids these days! How to understand what your teenager is talking about

Parents, have you ever listened to your child gabbing on his cell phone and didn't have a clue what they were saying? Every generation of kids has their own "language" – slang that is usually unique to their part of the country. Metro City kids



Music fans gather at a Metro City area go-go concert.

are no different. Use our handy guide below to learn

some of the commonly used words that your kids are using!

1. **Bamma:** *Noun.* A person who has no style, taste, class, or common sense. Usually this person is unaware that they are considered a bamma.
Ex: That guy came to work in khakis and black socks...what a bamma!
2. **Go-go:** *Noun.* (1) A subgenre of music associated with funk that originated during the mid- to late-1970s and remains popular today in various urban areas; (2) a musical venue that primarily plays go-go music.
3. **Joaning:** *Verb, present participle.* Putting down or making fun of someone.
Ex: Roger was joaning on Ian's horrible basketball skills.

EXHIBIT D:
Anti-Bullying Policy

King High School
Anti-Bullying Policy

Implemented on August 1, 2003

King High School (“KHS”) has determined that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. Bullying detracts from such an environment, and as such is prohibited at KHS.

Defining Bullying. Bullying is any gesture or written, verbal, graphic, or physical act that occurs on school grounds, at any school-sponsored event, or in a school vehicle. Bullying is conduct that is (1) directed at one or more students; (2) substantially interferes with education opportunities of one or more students; and (3) adversely affects the ability of a student to benefit from KHS’ educational opportunities because the conduct, as reasonably perceived by the targeted student, is very severe or offensive, or because the conduct places the targeted student in reasonable fear of physical harm or causes the targeted student emotional distress.

Administration Procedures for Responding to Reports of Bullying. The KHS Principal is responsible for receiving complaints alleging bullying. All school employees are required to report alleged bullying to the principal. The principal is required to conduct a prompt and thorough investigation of each alleged bullying incident that is reported to him/her.

Retaliation Prohibited. Retaliation against any person who reports an act of bullying is prohibited.

False Accusations of Bullying Prohibited. Any student who falsely reports bullying will face disciplinary action.

EXHIBIT E:
Cell Phone Policy

King High School
Cell Phone Policy

Implemented on August 1, 2003

Cell Phone Use Prohibited. All KHS students are prohibited from using a cell phone on the KHS campus.

Defining Cell Phone Use. Cell phone use is interpreted as using any cell phone function or feature, including sending or receiving calls, taking photographs, text messaging, and recording/video taping.

Disciplinary Action for Cell Phone Use Violations: Students who are found using a cell phone on the KHS campus will be referred for insubordination and disciplinary action will be enacted; consequences include possible police referral. All cell phones found on campus will be confiscated.

School Not Responsible for Cell Phones. KHS and its faculty and staff are not responsible for any damaged, missing, or stolen cell phones. KHS will not utilize administrative time to investigate incidents in which a cell phone is damaged, missing, or stolen, or other related incidents involving cell phones.

EXHIBIT F:
Email Correspondence

From: Cook, J.
Sent: November 2, 2010
To: Li, B.
Subject: Question

Hello Principal Li,

I just had a ninth grade student in here, Alex Billings, who was pretty upset about another student, C.J. Pearson. Apparently Pearson was sending Billings some nasty texts and MyFace messages. Do you know anything about either of these students? Are either of them trouble? Just wanted to check in with you about this.

From: Li, B.
Sent: November 9, 2010
To: Cook, J.
Subject: RE: Question

Hello,

Thanks for emailing me about this situation. It's always good to keep me in the loop. Pearson has caused some trouble last year in junior high – it was silly stuff, and (s)he has since agreed to behave.

I want to remind you of the boundaries we have in place regarding cell phones and MyFace. Neither is allowed at KHS. Thus, problems that students are having that involve these platforms are beyond the scope of our review. Please refer to the KHS Anti-Bullying and Cell Phone Policy for more info.

Unless you hear more from Billings about this incident, I don't think you need to address it any further. It's probably just teenage squabbling, which we are used to!

EXHIBIT G

PTSD DIAGNOSTIC TEST

For a person to be diagnosed with Post-Traumatic Stress Disorder (“PTSD”), they must fulfill each of six requirements as detailed below.

REQUIREMENT 1: Has the person experienced a traumatic event where both of the following occurred?	Yes	No	N/A
1. The person experienced an event where there was the threat of or actual death or serious injury <i>picture of gun</i>	x		
2. The person responded to the event with strong feelings of fear, helplessness or horror <i>school did nothing</i>			

REQUIREMENT 2: Has the person experienced at least one of the following re-experiencing symptoms?	Yes	No	N/A
1. Frequent upsetting thoughts or memories about the traumatic event			
2. Recurrent nightmares	x		
3. Felt as though the traumatic event was happening again (flashbacks)			
4. Strong feelings of distress when reminded of the traumatic event			
5. Physical responses, such as increased heart rate and sweating, when reminded of the traumatic event			

REQUIREMENT 3: Has the person experienced at least three of the following avoidance symptoms?	Yes	No	N/A
1. Making an effort to avoid thoughts, feelings, or conversations about the traumatic event <i>skipped school, didn't tell parent</i>	x		
2. Making an effort to avoid places or people that remind one of the traumatic event <i>skipped school</i>	x		
3. Having a difficult time remembering important parts of the traumatic event			
4. Loss of interest in important, once positive, activities <i>skipped school</i>	x		
5. Feeling distant from others			
6. Experiencing difficulties having positive feelings, such as happiness or love			
7. Feeling as though one's life may be cut short			

REQUIREMENT 4: Has the person experienced at least two of the following hyperarousal symptoms?	Yes	No	N/A
1. Having a difficult time falling or staying asleep	x		
2. Feeling more irritable or having outbursts of anger			
3. Having difficulty concentrating	x		
4. Feeling constantly “on guard” or like danger is lurking around every corner			
5. Being jumpy or easily startled			

REQUIREMENT 5: Have the symptoms described above lasted for more than a month?	Yes	No	N/A
	x		

REQUIREMENT 6: Do the symptoms described above have a great negative impact on the subject's life, interfering with work relationships? <i>school</i>	Yes	No	N/A
	x		

PTSD Diagnosis YES NO Incomplete Information

Symptom Severity Rating

MODERATE TO SEVERE

Level of Impairment in Functioning

MODERATE

Was the Criterion Met?			DSM-IV Criterion
YES	NO	Incomplete Information	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A: Exposure to a traumatic event
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B: Reexperiencing symptoms
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	C: Avoidance symptoms
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	D: Arousal symptoms
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E: Symptom duration of 1 month or more
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	F: Distress or impairment in functioning

Signature G. Rodriguez Date 12/02/2010

APPENDICES

APPENDIX A:
2011 DISTRICT OF COLUMBIA
MOCK TRIAL TOURNAMENT RULES

The Mock Trial Tournament is governed by the rules set forth below, which are designed to ensure excellence in presentation and fairness in judging all trials.

TEAM PRESENTATIONS

1. The official mock trial materials, consisting of the (1) Statement of Facts; (2) Additional Stipulations; (3) Claims and Defenses; (4) Relief Requested; (5) Witness Statements; (6) Statutes; (7) Case Law; and (8) Evidence, comprise the sole source of information for testimony. The Stipulated Facts and any additional stipulations may not be disputed at trial.
2. Each witness is bound by the facts in their given witness statement. All participants agree that the witness statements are signed and sworn affidavits. Witness Statements may not be introduced as evidence, but may be used for impeachment.

A witness may testify to additional information not included in their witness statement which (a) is consistent with facts contained in the witness affidavits and (b) do not materially give an advantage to the testifying party. If a witness is asked a question on cross-examination which is not addressed in the witness' statement, the witness may invent an answer favorable to that witness's position.

Students may read other cases, materials, or articles in preparation for the mock trial. However, they may only cite the materials given, and they may only introduce into evidence those documents given in the official mock trial packet.

3. If a witness testifies in contradiction of a fact in the witness statement during direct examination, there is no objection for "violating the rules of the mock trial." The opposition must show the contradiction on cross-examination through impeachment. Likewise, if a witness testifies in contradiction of a fact on cross-examination, the cross examining attorney should show the contradiction through impeachment. Impeachment procedure is described in the Simplified Rules of Evidence.
4. If on direct examination a witness invents an answer that is likely to affect the outcome of the trial, the opposition should show this on cross-examination through impeachment. This procedure is described in the Simplified Rules of Evidence. The scorers should consider such inventions of facts in scoring the witness' presentation.
5. Witnesses are not permitted to use notes while testifying during the trial.
6. All participants are expected to display proper courtroom decorum and collegial sportsmanlike conduct. The decisions of the judges with regard to rules challenges and all other decisions are final.

7. The trial proceedings are governed by the Simplified Rules of Evidence. Other more complex rules may not be raised in the trial.
8. During the trial, teachers, attorneys, other coaches, affiliated non-participating team members, parents and all other observers may not talk to, signal, or otherwise communicate with or coach their teams. Team members may communicate with each other during the trial. Instructors from opposing teams are advised to sit next to one another, if possible, and to be reasonable. The purpose of this rule is to prevent last minute coaching; it is not intended as a device to disqualify an opposing team.
9. Neither team may introduce surprise witnesses or call witnesses from the other side. All witnesses (three for each side) must take the stand, in any order or sequence determined by the party calling them.
10. Witnesses will not be excluded from the courtroom during the trial.
11. All teams in the tournament must consist of from three to eight attorneys, and three witnesses. Exceptions may be made by the D.C. Street Law Clinic after consultation.
12. Only students registered in their high school's Street Law class as of February 3, 2010 will be eligible to participate in the Mock Trial Tournament unless otherwise approved by the Director.
13. Teams are expected to be present at the Superior Court for the District of Columbia by 5:30 p.m. on the days of the trials. Trials will begin at 6 p.m.
14. The start time of any trial will not be delayed for longer than 15 minutes. Incomplete teams will have to begin without their other members, or with alternate members.

JUDGING

1. Presiding judges for the mock trials may include judges, law school faculty, members of the D.C. Bar, other attorneys, or others approved by the Director.
2. All judges receive the Guidelines for Judges, Judge's Score Sheet, the Simplified Rules of Evidence, and the Mock Trial Packet.
3. Presiding judges are asked to make a legal decision on the merits of the case, but this does not affect a team's score. The decision on team scores is made by a scoring panel, consisting of two or more scorers selected by the Street Law staff and, in some instances, the presiding judge. The criteria for scoring are discussed in the Guidelines for Scorers and the Score Sheet.
4. All decisions of the judges are final.

APPENDIX B:
SIMPLIFIED RULES OF EVIDENCE

To assure a fair trial, rules have been developed to govern what evidence may be introduced, as well as the manner in which evidence may be presented. These rules are called the "rules of evidence." The attorneys and the judge are responsible for enforcing these rules. Before the judge can apply a rule of evidence, an attorney must ask the judge to do so. Attorneys do this by making "objections" to the opposing side's evidence or trial procedure. When an objection is raised, the attorney who asked the question that is being challenged will usually be asked by the judge why the question was not in violation of the rules of evidence.

The rules of evidence used in trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes, and these are presented below.

Rule 1: Leading Questions. A "leading" question is one that suggests the answer desired by the questioner, usually by stating some facts not previously discussed and then asking the witness to give a yes or no answer. **Leading questions may not be asked on direct or redirect examination. Leading questions may be used on cross-examination.**

Example: "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?"

Objection: "Objection, Your Honor, counsel is leading the witness."

Possible Responses: "Your Honor, leading is permissible on cross-examination," or "I'll rephrase the question." For example, the question can be rephrased: "Mr. Smith, where did you go that night?" (This question does not suggest the answer the attorney desires.)

Rule 2: Narration. Narration occurs when the witness provides more information than the question called for.

Example: Attorney: "What did you do when you reached the front door of the house?"
Witness: "I opened the door and walked into the kitchen. I was afraid that he was in the house -- you know, he had been acting quite strangely the day before."

Objection: "Objection, Your Honor, the witness is narrating."

Response: "Your Honor, the witness is telling us a complete sequence of events."

Rule 3: Relevance. Questions and answers must relate to the subject matter of the case; this is called "relevance." Questions or answers that do not relate to the case are "irrelevant."

Example: (In a traffic accident case) "Mrs. Smith, how many times have you been married?"

Objection: "Your Honor, this question is irrelevant to this case."

Response: "Your Honor, this series of questions will show that Mrs. Smith's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

Rule 4: Hearsay. "Hearsay" is something the witness has heard someone say outside the courtroom. Also, any written statement made outside the courtroom is hearsay.

Example: "Harry told me that he was going to visit Mr. Brown."

Objection: "Your Honor, that is hearsay."

Response: Witness should rephrase the answer to only include his/her firsthand knowledge.

There are many exceptions to the hearsay rule. For mock trial purposes, two exceptions are observed: (1) **a witness may repeat a statement made directly to him/her by another witnesses in the case; and (2) a witnesses may repeat a statement made by an individual who is no longer alive.** If an exception applies, the court will allow hearsay evidence to be introduced.

A witness may not testify about what another person heard another witness say. This is "double hearsay."

Rule 5: Firsthand Knowledge. Witnesses must have directly seen, heard, or experienced whatever it is they are testifying about. A lack of firsthand knowledge is objectionable.

Example: "When I arrived at the bar, there were six empty beer cans sitting next to Harry. He must have drunk them all before I arrived."

Objection: "Your Honor, the witness has no firsthand knowledge of whether Harry drunk those beers."

Response: The witness can rephrase his response: "When I arrived at the bar, there were six empty beer cans sitting next to Harry."

Rule 6: Opinions. Unless a witness is qualified as an expert in the appropriate field, such as medicine or ballistics, the witness may not give an opinion about matters relating to that field. Opinions are objectionable unless given by an expert qualified in the appropriate field.

Example: (Said by a witness who is not a doctor) "The doctor put my cast on wrong."

That's why I have a limp now."

Objection: "Objection, Your Honor, the witness is giving an opinion."

Response: "Your Honor, the witness may answer the question because ordinary persons can judge whether a cast was put on correctly."

Ruling: A judge will likely sustain this objection because it is probably not within an ordinary person's knowledge to know whether an incorrectly placed cast will cause a limp.

Exception to Opinion Rule: A lay witness may give an opinion based on common experience.

Example: "It looked to me like Harry was drunk that night. I've seen him drunk and have seen other drunks before."

Objection: "Objection, Your Honor, the witness is giving an opinion."

Response: "Your Honor, the witness may answer the question because ordinary persons may judge whether or not a person appeared drunk based on the witness' experience."

Rule 7: Opinions on the Ultimate Issue. Witnesses, including experts, cannot give opinions on the ultimate issue of the case, which is the guilt or innocence of the defendant or the liability of the parties. These are matters for the judge to decide.

Example: "I believe that Mr. Smith was negligent in driving too fast in this case."

Objection: "Your Honor, the witness is giving an opinion on the ultimate issue – the negligence of Mr. Smith."

Response: "The witness is commenting that the driver was speeding. This is not the ultimate issue in this case."

Additional Rules of Evidence

1. Objections during the testimony of a witness must be made only by the direct examining and cross-examining attorneys for that witness.
2. Cross-examination is not limited to the scope of direct questioning.
3. If an attorney so desires, (s)he may conduct a short redirect examination, limited to no more than two questions, following the cross-examination. Redirect questions are limited to the scope of the cross-examination.

4. If an attorney (on direct or cross-examination) repeatedly asks a witness to discuss the exact same matter, opposing counsel may object to the question as being “asked and answered.” It is in the court’s interest to have the trial move along in a timely manner.
5. Witnesses must be treated with respect by opposing counsel. If an attorney continuously, and for no valid trial or evidentiary purpose, uses a disrespectful tone with the witness, the opposing counsel may object that the questioning attorney is “badgering the witness.”

Special Procedures

Procedure 1: Introduction of Documents or Physical Evidence. If a party wants to discuss a piece of evidence that is included in the mock trial materials, they must do so using the following special procedures.

Step 1: Introduce the Item for Identification So Attorney Can Question the Witness About It

1. Attorney says to the judge, "Your Honor, I wish to have this (letter, document, item) marked for identification as (Plaintiff's Exhibit A, Defense Exhibit 1, etc.)."
2. Attorney takes the item to the judge, who marks it appropriately.
3. The attorney shows the item to the opposing counsel.
4. The attorney shows the item to the witness and says, "Do you recognize this item?"
Witness: "Yes."
Attorney: "Can you please identify this item?"
Witness: Witness describes the evidence.
5. The attorney may then proceed to ask the witness questions about the document or item.

Step 2. Move the Document or Item into Evidence.

After the attorney questions the witness about the document or item, the attorney must ask to move the item into evidence at the end of the witness examination. This will allow the judge to consider the document or item itself as part of the evidence (and not just the testimony about it).

1. The attorney says, "Your Honor, I offer this (document/item) into evidence as Plaintiff's Exhibit A, and ask that the court so admit it."
2. Opposing counsel may look at the evidence and make objections at this time.
3. The judge rules on whether the item may be admitted into evidence.

Procedure 2: Impeachment. On cross-examination, an attorney wants to show that the witness should not be believed. This is best accomplished through a process called "impeachment," which may use one of the following tactics:

1. Asking questions about prior conduct of the witness that makes the witness' truthfulness doubtful (e.g., "Isn't it true that you once lost a job because you falsified expense reports?");
2. Asking about evidence of certain types of criminal convictions (e.g., "You were convicted of shoplifting, weren't you?"); or
3. Showing that the witness has contradicted a prior statement, particularly one made by the witness in his/her written statement.

To impeach the witness by comparing information in the written witness statement to the witness' verbal testimony, attorneys should use this procedure:

Step 1: Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

Example: "Now, Mrs. Burke, on direct examination you testified that you were out of town on the night in question, didn't you?" (Witness responds, "Yes.")

Step 2: Introduce the witness statement for identification using the same procedure for identifying a piece of evidence (described above).

Step 3: Ask the witness to read the part of his/her affidavit that contradicts the witness' statement made on direct examination.

Example: "All right, Mrs. Burke, will you read paragraph three?" (Witness reads, "Harry and I decided to stay in town and go to the theater.")

Step 4: Dramatize the conflict in the statements.

Example: "So, Mrs. Burke, you testified that you were out of town on the night in question, didn't you?" "Yes." "Yet, in your affidavit you said you were in town, didn't you?" "Yes."

Note: When impeaching a contradictory prior statement, the point is to establish that because the witness has made two contradictory statements about a matter, the witness may not be believable on that matter. The contradiction also may cast doubt on the witness' truthfulness, generally. Impeachment does NOT disprove a statement; it only casts doubt on either statement.

Procedure 3: Qualifying an Expert. Only a witness who is qualified as an expert may give an opinion as to scientific, technical, or other specialized knowledge in the area of his/her expertise. (Remember, a witness who is not an expert may still give an opinion about something related to his/her common experience). Experts **cannot** give opinions on the **ultimate issue** of the case.

Before an expert gives his/her expert opinion on a matter, the lawyer must first **qualify**

the expert using the following procedure:

Step 1: The lawyer lays a foundation that shows the expert is qualified to testify on issues related to that expert's field of expertise by asking the expert to describe factors such as schooling, professional training, work experience and books (s)he has written that make him/her an expert.

Step 2: The lawyer asks the judge to qualify the witness as an expert in a particular field.

Example: The wife of Harold Hart is suing Dr. Smith and General Hospital for malpractice. She claims they did not treat Mr. Hart for an obvious heart attack when he was brought to the hospital. Mrs. Hart's lawyer is examining his expert witness, Dr. Jones:

Q: Dr. Jones, what is your occupation?

A: I am a heart surgeon at the Howard University Medical Center.

Q: What medical school did you attend?

A: I graduated from Georgetown Medical School in 1978.

Q: Where did you do your internship?

A: I did a two-year internship in cardiology at John Hopkins University from 1978-1980.

Q: Did you afterwards specialize in any particular field of medicine?

A: Yes, I specialized in heart attack treatment and heart surgery.

Q: Have you published any articles or books?

A: I wrote a chapter in a medical text on heart surgery procedures after heart attacks.

Q: What professional licenses do you have?

A: I am certified by the D.C. Board of Medical Examiners to practice medicine in D.C.

Attorney #1: Your Honor, I ask that Dr. Jones be qualified as an expert in the field of medicine.

Judge: Any objection?

Attorney #2: We object. No foundation has been laid regarding Dr. Jones's ability to render an opinion as to all fields of medicine.

Judge: Objection sustained. Dr. Jones's expertise seems to be limited to certain areas of medicine.

Attorney #1: Thank you, your Honor. We ask that Dr. Jones be qualified as an expert in the field of heart surgery.

Judge: Any objections?

Attorney #2: No, Your Honor.

Judge: Let the record reflect that Dr. Jones is qualified to testify as an expert in the field of heart surgery.

Once qualified, an expert may give opinions relating only to the expert's area of expertise. That is, an expert cannot give an opinion in an area outside his/her expertise.

Example: (Dr. Jones has been qualified as an expert on heart surgery.)

Q: Dr. Jones, what is your opinion as to Mr. Hart's cause of death?

A: The patient suffered a massive heart attack caused by clogged arteries.

Q: Dr. Jones, in your opinion, is it true as the defense contends that the patient also suffering from a rare lung disease transmitted through contact with the North American mongoose as the defense contends?

Objection: The witness is testifying outside her area of expertise.

Judge: Sustained. Please confine your opinion to matters related to care and treatment of the heart.

Q: Dr. Jones, in your opinion, how should the patient's doctors have treated him?

A: They should have recognized that the patient was having a heart attack based on his chest pains, purple face, difficulty breathing, and numbness in his left arm. They should have given him the proper medication and treated him in the emergency room right away.

Q: Who was at fault in this matter?

A: Dr. Smith and General Hospital were definitely negligent.

Objection: The witness is testifying to the ultimate issue of the case, which is whether Dr. Smith and General Hospital are liable for malpractice. That is a question of fact for the judge (or jury, when the case is tried before a jury) to decide.

Judge: Sustained.