

Court Connection Presentation

October 3, 2012



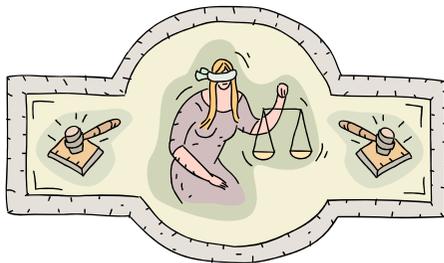
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AGENDA OF EVENTS

We welcome you to the United States District Court for the Southern District of California. We hope that you have a fun and educational experience as you participate and learn about the United States Courts.

- 8:00 a.m.** Arrive at Courthouse. Proceed to 5th Floor, Courtroom 16
- 8:30 a.m.** Welcome and Opening Statements
(Chief U.S. District Judge Barry Ted Moskowitz)
- 8:45 a.m.** Opening Activity
(Dr. Fran Chadwick)
- 9:00 a.m.** Overview of the Federal Judicial System
(U.S. District Judge Jeffrey T. Miller)
- 9:45 a.m.** *Comfort break and travel to Third Floor, Courtroom 6*
- 10:00 a.m.** Observe live court—Courtroom 6
(U.S. District Judge Janis L. Sammartino, presiding)
- 11:00 am** Debrief and Question and Answer period
- 11:30 am** *Comfort break and travel to La Jolla Room (4th Floor of Federal Building)*
- 11:45 am** Lunch with judges and presenters



- 12:30 pm** Civics Education Resources
(Matt Hayes, Lori Williams, Julie Myers)
- 1:00 pm** *Comfort break and travel to Fifth Floor, Courtroom 16*
- 1:15 pm** Voir Dire (*Jury Selection*) lesson and example
- 1:45 pm** Mock Trial in Courtroom 16
(U.S. District Judge Jeffrey T. Miller, presiding)
- 4:00 pm** Closing/Wrap up

***** Please note:** You will receive evaluation forms via email which will need to be completed and returned within 1 week.

This program was made possible through the joint efforts of the USDC for the Southern District of California, the San Diego Superior Court and the S.D. Unified School District. Special thanks to all committee members: Hon. Janis L. Sammartino, Hon. Jeffrey T. Miller, Clerk of Court Sam Hamrick, Community Outreach Coordinator Kathleen McMahon-Walford, Public Affairs and Community Outreach & Education Manager Julie Myres, Director of California on My Honor Dr. Fran Chadwick, Social Studies Coordinator Matt Hays, and Community Relations Associate Lori Williams.

Mock Trial Script
Texting While Driving¹

United States District Court
for the Southern District of California

October 3, 2012 at 1:15 p.m.
Judge Miller presiding
Courtroom 16 (5th Floor)

Based on American Bar Association, Division for Public Education text
revised by Kathleen Walford and Janet Cabral, USDC, So. District of California, 2011

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General Information about the Mock Trial

This is a criminal action for vehicular manslaughter, arising from a car crash that may have been caused by defendant's texting while driving. In a classroom, students play all the parts in this scripted simulation. In a courtroom, a real federal judge presides with a student judge and attorneys coach the student lawyers at counsel tables. Pre-assigned students play the parts of defendant, witnesses and courtroom deputy. All other students are jurors who deliberate in groups of 12.

The cast includes:

- ☆ Student Judge
- ☆ Courtroom Deputy (CRD)
- ☆ Assistant US Attorney (2)
- ☆ Counsel for Defendant (2)
- ☆ Defendant Riley Gardner (**male actor**)
- ☆ Witness, Sidney Young (**male actor**)
- ☆ Witness, Javier Perez (Sidney's cousin) (**male actor**)
- ☆ Witness, Tracy Gardner (Defendant's Mother–Hostile Witness)
(**female actress**)
- ☆ Witness, Alex Williams (Defendant's Neighbor)(**male actor**)
- ☆ Witness, Officer Chris Jones (CHP Officer)(**female actress**)
- ☆ Witness, Dr. Jan Smith (Expert Witness) (**female actress**)
- ☆ Jurors

If time permits, prior to the start of the scripted mock trial, the Court will allow time for the student lawyers to consult with the volunteers to draft their own opening statement. Otherwise, the scripted one contained herein can be used.

Scenario Description
[*Texting While Driving*]

I. Opening Section

At 1:45pm,

-- jurors should fill jury box and other actors should be seated in the appropriate spots throughout the courtroom.

--the professional Courtroom Deputy will be at her/his desk;

A. Professional Courtroom Deputy will call the court to order as judge takes the Bench.

Courtroom Deputy: All rise.

[everyone in courtroom stands up]

This United States District Court for the Southern District of California is now in session. The Honorable Jeffrey T. Miller presiding assisted by student Judge _____.

[Judge and student judge take seats on bench]

Courtroom Deputy: Please be seated and come to order.

[everyone sits down]

*****Comments:** Judge will explain the purpose of the mock trial and the nature of the charges (*See Scenario Description* below)

On May 11, 2011 at approximately 10:30 pm, five teens were traveling in a red, 2006 Honda Accord heading southbound on Wells Gate National Parkway on Camp Pendleton. Suddenly, the vehicle careened into the median and crashed into a light pole. One of the back seat passengers, 17-year-old Courtney Walls, was killed in the crash. The front seat passenger, Sidney Young, was seriously injured. No other vehicles were involved. According to Sidney Young and another passenger, the driver, 18-year-old Riley Gardner, was sending text messages on his cell phone while driving. Mr. Gardner has been charged with vehicular manslaughter.

*****Comments:** *The Judge may wish to discuss possible civil liability that also exists and how that would be addressed in a separate trial and could include liability for the defendant's family.*

B. JURY SELECTION AND OATH

*****Comments:** In this mock trial, the jurors and other actors were all randomly selected before commencing the event. In a real trial, the jury would be selected by a process known as voir dire or jury selection.

Judge will explain the purpose of the voir dire and commence short voir dire to select 12 jurors, excusing jurors as he/she sees fit, taking time to discuss peremptory v. “for cause” challenges.

Questions the judge may ask of the jury panel.

1. The court will instruct you about the law. Will you have difficulty following the law as given by the Court, disregarding any idea or notion you have about what the law is or should be?
2. Do you have any moral or religious reservations that might prevent you from sitting in judgment of another person?
3. The Defendant in this case is accused of vehicular manslaughter caused by texting while driving. Would this make it difficult for you to be a fair and impartial juror in this case?
4. Would you be able to put aside any feeling of sympathy or pity for the defendant when deciding the facts in this case?
5. Have you or has anyone close to you ever been involved in an automobile accident?
6. Have you or has anyone close to you ever been stopped by law enforcement officers for texting while driving?
7. Have you or has anyone close to you ever been arrested?
8. Have you or has anyone close to you ever worked in the legal profession or for a law enforcement agency?
9. All other factors being equal, would you be inclined to give the testimony of law enforcement witnesses more or less weight than that of non-law enforcement witnesses?
10. Have you ever been a witness in a case? If so, what kind of case?
11. Have you ever served on a jury before? If so,
 - a. Was it a criminal or civil case?
 - b. Were you able to reach a verdict?
12. Is there any reason why you could not be a fair juror in this case?

Judge: We are now ready to begin our trial.

Student Judge: Will the parties state their appearances for the record?
[Each attorney will rise and say their true name. First, the prosecution team, then Defendant's team.]

Prosecutor: Your Honor, I am Assistant United States Attorney _____, for the United States. Your Honor, I am Assistant United States Attorney _____, for the United States.

A. Defense Attorney: Your Honor, I am _____ for the defendant *Riley Gardner*. Your Honor, I am _____ for the defendant *Riley Gardner*.

Student Judge: The Courtroom Deputy will give the jury the oath.

Courtroom Deputy: Members of the jury, please rise and raise your right hands.
[jury stands up and each person raises their right hand]

Members of the jury, do you each solemnly swear that you will fairly try the case now before the court, and that you will render a true verdict according to the evidence?

Jurors *(in unison)*: yes

*****Comments: Judge w/explain oath and jury instructions.**

II. PRESENTATION OF EVIDENCE

A. PRELIMINARY JURY INSTRUCTIONS

Student Judge: Members of the jury, now that you have promised to be fair to the participants, I will give you some instructions. The job of being a juror is an important one. You must listen carefully to what each witness says. If the witnesses tell different stories, it is your job to decide what really

happened. You must decide who to believe or not to believe. Do not form an opinion until you have heard all of the evidence. The defendant is presumed to be innocent. If you were to vote right now, you would have to find the defendant "not guilty" because we have not yet heard any evidence against him. You can only convict if you find that the government has proven its case "beyond a reasonable doubt."

*****Comments: Judge w/explain opening statements & testimony.**

Student Judge: Counsel, you may now proceed with your opening statements.

**** If time permitted prior to the start of the mock trial, students may have drafted their own opening statements. Otherwise, use the scripted ones below .*

AUSA #1: Ladies and Gentlemen of the jury, texting while driving has become a national epidemic. Every year, nearly 500,000 people are injured and 6,000 people are killed because drivers are talking, texting and e-mailing behind the wheel. The evidence will show that this is exactly what happened on May 11, 2011 when Riley Gardner was driving a car full of friends after a party, late on a rainy night. Witnesses will testify that he was sending a text message to his girlfriend while he was driving and lost control of his vehicle on the slippery, wet roads, ultimately colliding with a light pole. That collision caused the death of 17-year-old Courtney Walls. It also resulted in serious injuries to another passenger, Sidney Young. You will hear Mr. Young describe the lasting impact Mr. Gardner's gross negligence and the resulting injuries have had on his quality of life.

Student Judge: Thank you. Does the defense wish to make an opening statement?

Defense Attorney #1: Yes. Your Honor. Ladies and Gentlemen of the jury, the evidence will show that while my client may have been texting his girlfriend prior to the accident, he was NOT distracted at the time of the accident. He had already thrown the phone to his passenger and was focused on the road.

In fact, witnesses will testify that they passed two other vehicles that had spun out on the same road due to the poor weather conditions. This was an unfortunate accident, pure and simple, not the result of inattentiveness or negligence by Mr. Gardner.

***** Comments: Judge** will explain demeanor and keeping an open mind and impartiality.

B. THE GOVERNMENT'S CASE

1. Direct Examination of Witness, Sidney Young **(by AUSA #1)**

Student Judge: The government may call its first witness.

AUSA #1: Your Honor, we call our first witness, Mr. Sidney Young.

Student Judge: Mr. Young, please come up to the witness stand and raise your right hand.

CRD: Please remain standing. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Young: Yes.

AUSA #1: Please state your name and age for the record.

Young: My name is Sidney Young. I'm 18 years old now.

AUSA #1: Tell us what happened on the evening of May 11, 2011.

Young: Well, it was a Friday and I had just come to town to spend the weekend with my cousin Javier. We went to a party after their soccer team had just won the regional championship, and everybody was pretty excited. At one point, some people decided to go get something to eat. Javier and I decided to go. I had hit it off with one of Javier's friends, Riley. He's cool — like the kids I hang with at

my own school. I got in the front seat of Riley's car, and Javier and Riley's friend Alex got in the back with Courtney.

AUSA #1: What happened then?

Young: Well, Riley was cruising along when his cell phone rang. He looked at it and must have seen a text message because he said something like, "Taylor is driving me crazy." He then started texting — didn't slow down or anything, and it was raining and at night, which was definitely not cool — made me edgy. He later tossed the phone into my lap — or dropped it — right before the car crashed.

AUSA #1: Tell us what you remember about the accident.

Young: It's kind of a fuzzy blur, but I remember we skidded, then slammed into a light pole in the Parkway median. The paramedics had to pry me out of the car. They couldn't save Courtney -- the pole hit the car right where she was sitting in the back seat.

AUSA #1: Describe your injuries from the accident.

Young: Well, I couldn't feel my right leg and foot, which were crushed in the accident. I couldn't even clench my right fist to bang on the car door to get out. At the ER, I was in so much pain I could barely answer the doctors' questions. The doctors told me three ribs were broken. That must have been why every breath hurt so much. I couldn't move the toes on my right foot. They did surgery on me that night to put a metal rod and pins in my leg, which will have to be replaced later. The whole thing has been extremely painful.

AUSA #1: Any long-term consequences from the accident?

Defense counsel #1 (standing): Objection, Irrelevant, Your Honor.

Comments: Judge will explain objections and explain that only relevant evidence is admissible.

Student judge: Objection overruled. You may answer the question.

Young: The worst thing is the pain in my back and legs. I can't sit through a class period — so college is out. I can't take a desk job, let alone go to a movie or a game. My hand goes numb now when I'm texting, working on a computer, or playing video games. I had planned to be a commercial airline pilot, but all that is out the window now. I'm 18, and my entire life is messed up because of this. Riley let some girl get under his skin instead of paying attention to the road and he almost cost me my life. He might as well have, as banged up as I am.

AUSA #1: Thank you, Sidney. Nothing further.

Student Judge: (*to defense attorney*): Does the defense have any questions for this witness?

Comments: Judge will explain cross examination

2. Cross Examination of Witness, Sidney Young

Defense counsel #1: We do, Your Honor. Mr. Young, have you ever used a cell phone while operating a vehicle?

AUSA #1 (standing, outraged): Objection! Irrelevant, Your Honor.

Defense counsel #1: Question withdrawn. Mr. Young, it was raining hard the night of the accident, wasn't it?

Young: Yes, that's true.

Defense counsel #1: Isn't it true that you passed two other cars that had spun out of control on Wells Gate National Parkway that night?

Young: Yes, which is why Riley should have been driving even more carefully.

Defense counsel #1: You testified that Mr. Gardner tossed the phone, or

dropped it, into your lap. Did he say anything to you when he did that?

Young: Not that I remember.

Defense counsel #1: Thank you, Mr. Young. No further questions.

Student Judge: Redirect?

Comments: Judge will explain re-direct pointing out it is intended to cover only those items covered on cross-examination and not new matters

AUSA #1: Yes, very briefly. Mr. Young, within how many seconds of the collision was Mr. Gardner texting?

Young: I don't know. Like I said before, it's all kind of fuzzy. But it was right before — like, just a few seconds.

AUSA #1: Did you ever tell Mr. Gardner to stop texting?

Young: I did, but he played it off. I didn't want to press the point because I didn't want to distract him even more when we were already in a bad driving situation.

AUSA #1: Nothing further.

Student Judge: Mr. Young, you may step down. . . . Next witness, counsel?

3. Direct Examination of Witness Javier Perez **(by AUSA #1)**

AUSA #1: Next, we would like to call Mr. Javier Perez.

Student Judge: Mr. Perez, would you come up?

Courtroom Deputy: Remain standing and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Perez: I do.

AUSA #1: Please state your name and age for the record.

Perez: Javier Perez. I'm 17.

AUSA #1: Could you tell us what happened on the evening of May 11, 2011?

Perez: My cousin Sidney was visiting from out of state for the weekend. We ended up over at Austin Crosher's . . . hanging out and playing pool. Around 10:30, we decided to go cruising for burgers. We piled into Riley's car. Riley was driving, and Sid rode shotgun. Alex and I were in the back seat with Courtney.

AUSA #1: How did you know Courtney?

Perez: She was my girlfriend. We had been dating for 3 months.

AUSA #1: What happened next?

Perez: Well, as soon as we got out of the driveway, Riley got a text message from Taylor Bowling. He seemed aggravated and texted her back. But then, almost immediately, Taylor texted him again. Then she called, or tried to text again. They were going back and forth.

AUSA #1: Tell me about the road conditions that night.

Perez: It was very rainy. We were on the Parkway, a four-lane divided highway, and I think it was hard for Riley to see where he was going. The next thing I know, we were skidding. Riley must have slammed on the brakes and lost control of the car.

AUSA #1: Then what happened?

Perez: The passenger side of the car, toward the back, must have hit

the light pole in the median first, because the car was wrapped around it. Alex and I were able to get out and so was Riley, but the light pole was literally part of the car where Courtney had been sitting. It was immediately obvious that she was not going to make it (said with much emotion....)

AUSA #1: What about Sid? Was he able to get out of the car by himself?

Perez: No. Sid's door was also all bent out of shape. He was pinned inside and couldn't move. Somebody driving by must have called 9-1-1, because in a few minutes the ambulance arrived. The paramedics tried to help Courtney, but there was nothing they could do. They used the jaws of life to get Sid out of the car. He was pretty jacked up and yelling about the pain he was in.

AUSA #1: Thank you, Mr. Perez. No further questions.

4. Cross Examination of Witness, Javier Perez

Judge: Any questions on cross-examination?

Defense counsel #1: Yes, Your Honor. Mr. Perez, what is your relationship to Mr/s. Young?

Perez: I'm his first cousin. Our mothers are sisters.

Defense counsel #1: Tell us, isn't it true that just before the accident in this case, you saw two cars that had skidded off the road on the Parkway?

Perez: Yes, that's true. All the more reason Riley should have been paying more attention — with both hands on the wheel — keeping the car under control.

Defense counsel #1: Mr. Young earlier testified that the defendant had already stopped texting, and actually threw the phone on the passenger seat, before the accident occurred. Isn't that true?

Perez: I didn't see him do that.

Defense counsel #1: Thank you, Mr. Perez. No further questions.

Judge: Redirect?

AUSA #1: No, Your Honor.

Judge: Mr. Perez, you may step down. Next witness, counsel?

5. Direct Examination of Witness Tracy Gardner
(by AUSA #2)

AUSA #2: Next we call Ms. Tracy Gardner.

Student Judge: Ms. Gardner, please come to the stand and raise your right hand.

CRD: Do you swear to tell the truth, the whole truth, and nothing but the truth.

Tracy Gardner: I do.

AUSA #2: Please state your name and age for the record.

Tracy Gardner: My name is Tracy Gardner. I'm 46.

AUSA #2: What is your relationship to Riley Gardner?

Tracy Gardner: I'm his mother.

AUSA #2: Are you testifying voluntarily for the prosecution today?

Tracy Gardner: No, I was served with a subpoena requiring me to testify.

AUSA #2: Your Honor, we would ask permission to treat Ms. Gardner as a hostile witness?

Comments: Judge will explain what a hostile witness is and how they are handled differently than other witnesses.

Student Judge: Granted.

AUSA #2: Did your son Riley own a Honda Accord on May 11, 2011?

Tracy Gardner: It was technically my car. But because he gets good grades and obeys my curfews, I sometimes let him use it in the afternoon or on weekend nights.

AUSA #2: Did he own a cell phone at the time?

Tracy Gardner: Well, I pay the phone bill -- it's a family plan — but he has exclusive use of the phone, if that's what you mean.

AUSA #2: Did you ever ride in the car while your son was driving?

Tracy Gardner: Yes, quite often.

AUSA #2: Did you ever witness him using the cell phone to send text messages while driving the vehicle?

Tracy Gardner: Sometimes, but only when we were stopped in traffic.

AUSA #2: Did you ever advise your son that it was dangerous to text while he was driving?

Defense counsel #2: Objection, hearsay.

Comments: Judge will explain that hearsay is an out-of-court statement offered in court for the truth of that statement. The witness's testimony about what she told her son is hearsay.

Student judge: The objection is overruled.

Tracy Gardner: No.

AUSA #2: Well, did you ever take steps to prevent him from texting while he was driving? Did you take his phone or his driving privileges away?

Tracy Gardner: That wasn't necessary. My son has had to grow up quickly since his father was killed in a car accident several years ago. He takes driving very seriously. He knows the consequences of being reckless. He's very responsible.

AUSA #2: Was it responsible of him to send text messages while he was driving a car full of other kids on a very rainy night?

Tracy Gardner: [Long pause] I suppose not.

AUSA #2: No more questions.

Student Judge: Defense counsel, any questions for this witness?

6. Cross Examination of Witness, Tracy Gardner

Defense counsel #1: Yes, Your Honor. Ms. Gardner, are you always able to control your son's behavior?

Tracy Gardner: No parent can guarantee that, especially when their kids are technically adults. But Riley has worked hard to earn my trust since his father's death, and I have full confidence in him.

Defense counsel #1: No further questions.

Student Judge: Redirect?

AUSA #2: No further questions.

Student Judge: You may step down, Ms. Gardner. Counsel, any other witnesses?

AUSA #2: Yes, Your Honor. The government calls CHP Officer Chris Jones.

7. Direct Examination of Witness, CHP Officer Chris Jones
(by AUSA #2)

Student Judge: Officer Jones, please come to the witness stand.

Courtroom Deputy: Remain standing and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Officer Jones: I do.

AUSA #2: Please state your name and occupation for the record.

Officer Jones: Chris Jones. I am an California Highway Patrol Officer.

AUSA #2: And how long have you been employed with the CHP?

Officer Jones: 2 years.

AUSA #2: How many traffic accidents have you been called to in that period of time?

Officer Jones: Well, including everything from fender benders to major collisions involving deaths, probably 500.

AUSA #2: And approximately what percentage of those accidents involved distracted drivers?

Officer Jones: Distraction is a major cause of accidents. Probably half of all accidents can be traced back to distraction in a variety of forms, such as kids screaming in the backseat, or changing the radio station, or dropping french fries in your lap, or talking on the phone.

AUSA #2: What percentage of the accidents involving teenagers have you

been called to that were the result of distraction caused by texting while driving?

Officer Jones: Probably about 10%.

Defense counsel: Objection Your Honor. This witness is guessing.

Student Judge: Officer Jones, on what are you basing your estimate?

Officer Jones: Well, I know that statistically 21% of fatal car crashes involving teenagers are the result of cell phone usage. That coupled with my recollection of the actual accident scenes I have been to leads me to estimate that 1/2 of those were caused by texting.

Defense counsel: Objection Your Honor. There is no evidence that this witness is qualified to provide statistical evidence.

Student Judge: All right. I'm going to ask the jury to disregard the reference to statistics but allow Officer Jones' estimate of the percent of accidents she personally has witnessed that were the result of texting. *(To AUSA)* Please continue.

AUSA #2: Can you tell the Court what you remember about the evening in question?

Officer Jones: I remember the evening well. It was raining and as often happens in San Diego when it rains, we received so many calls that we had to stop responding to injury accidents. Just after 10:30 pm a call came over the radio that there was an injury accident on Wells Gate National Parkway. I was in the vicinity and so responded immediately. I was the first to arrive on the scene.

AUSA #2: Can you describe the scene you discovered Officer Jones.

Officer Jones: The first thing that crossed my mind when I approached was that this did not look good. It was a single car accident involving a red Honda Accord and a light pole. The car was literally wrapped around the light pole, bent at the point of the rear passenger side door. I knew that if someone was in that

seat, he or she was going to be in bad shape. I saw 3 people exiting the car and I called for an ambulance and paramedics before getting out of my squad car.

AUSA #2: And then what did you do?

Officer Jones: I approached the vehicle to ascertain if there was anyone still in the car and if so, what their medical conditions were

AUSA #2: And what did you discover?

Officer Jones: There were two people trapped in the car, both severely injured. The victim in the front passenger seat was conscious, the one in the back was not.

AUSA #2: So, what did you do next?

Officer Jones: About that time, the paramedics and ambulances arrived along with several other squad cars. We were unable to get the victims out the doors of the car and had to use the jaws of life to pry the car open.

AUSA #2: And then what happened?

Officer Jones: The medical teams took over and rushed the front seat passenger to the hospital. The woman in the back seat was pronounced dead.

AUSA #2: And did you then question the other 3 people who were in the car?

Officer Jones: I did. I determined that Riley Gardner had been driving the vehicle. I tested him to confirm that he had not been drinking and driving and he had not.

AUSA #2: And did you determine anything else at that time?

Officer Jones: The two other passengers indicated that Mr. Gardner had been texting on his cell phone just prior to the accident. Mr. Gardner admitted to

this. We placed him under arrest for vehicular manslaughter.

AUSA #2: No further questions.

Student Judge: Defense counsel, any questions for this witness?

8. Cross Examination of Witness, CHP Officer Chris Jones
(by Defense Attorney #1)

Defense Attorney #1: Yes, Your Honor. Officer Jones, how many accidents occurred on May 11, 2011 between the hours of 9pm and midnight?

Officer Jones: As I indicated earlier, we stopped responding to non-injury accidents because of the volume of fender-benders brought on by the rain. That being said, I think the department responded to 5 injury accidents between those hours.

Defense Attorney #1: And was anyone arrested as a cause of those accidents?

AUSA #2: Objection Your Honor...relevance.

Defense Attorney #1: Your Honor, I'm trying to show that the rain was the cause of many accidents that night, including the one that is the subject of this prosecution.

Student Judge: I'm going to allow it. Officer Jones, answer the question to the best of your knowledge.

Officer Jones: I personally did not have cause to arrest anyone else that evening, but I know one other driver was arrested by my co-worker for suspicion of drunk driving.

Defense Attorney #1: So, there were 5 injury accidents between 9 pm and midnight on May 11, 2011 and only 2 drivers were arrested, my client and someone suspected of driving under the influence, is that correct?

Officer Jones: To the best of my knowledge.

Defense Attorney #1: Do you know what was determined to be the cause of the other accidents as indicated on the accident reports?

Officer Jones: Not all of them.

Defense Attorney #1: And the ones you do have first hand knowledge of? What was listed as the cause of the accident?

Officer Jones: Unsafe road conditions caused by inclement weather.

Defense Attorney #1: No further questions.

Student Judge: Redirect?

AUSA #2: Just briefly, Your Honor. Officer Jones, in your personal experience as a CHP Officer, does a driver need to be texting at the exact moment of a collision for it to be the primary cause of distraction leading to the accident?

Defense Attorney#1: Objection! Counsel is calling for a hypothetical.

Student Judge: Sustained.

AUSA #2: No further questions, Your Honor.

Student Judge: You may step down, Officer Jones. Counsel, any other witnesses?

AUSA #2: Yes, Your Honor. The government calls Dr. Jan Smith.

9. Direct Examination of Witness Dr. Jan Smith
(by AUSA #2)

Comments by Judge will explain expert that a party can rely upon expert testimony and what type of qualifications are necessary

Student Judge: Dr. Smith, please come to the witness stand.

Courtroom Deputy: Remain standing and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Dr. Smith: I do.

AUSA #2: Please state your name and occupation for the record.

Dr. Smith: Jan Smith, Ph.D. I am an expert in the field of transportation safety.

AUSA #2: Can you tell us your educational background?

Dr. Smith: Sure. I earned a bachelor of science degree in Physics from the University of Arizona. Over the 10 years after that, I completed course work to earn my Ph.D., also in the field of physics. In addition, I have extensive technical training related to transportation and accident reconstruction. Over the past 30 years I have participated in no less than 75 training seminars both in Arizona and California on topics ranging from vehicle crash dynamics, technical and advanced accident investigation, bio-mechanics of vehicle movement, computer-aided diagramming of accident scenes, and trajectory factors. I have also participated in a number of seminars over the past several years on the topic of distracted driving.

AUSA #2: And can you tell us about your work in the area of transportation safety?

Dr. Smith: I have worked in the area of accident reconstruction and traffic investigations for the last 30 years. I served as an investigative officer for the Phoenix Police Department for 20 years. In that role, I became knowledgeable about injury patterns, mathematical analysis of crash scenes, the use of computer applications to determine the cause of collisions, and crash severity analysis. I retired from the Police Department 10 years ago and moved to San Diego, where I joined a consulting firm specializing in accident reconstruction.

AUSA #2: Have you previously testified in court regarding the safety impact of talking on a cell phone or texting and driving?

Dr. Smith: Yes. Over the last 5 years, I have testified in court on 8 separate occasions in cases involving distracted drivers.

AUSA #2: From what sources have you obtained information about the impact of talking on a cell phone or texting while driving?

Dr. Smith: There have been numerous studies by government agencies, insurance companies, and Universities, regarding the impact of texting and talking while driving. Those studies are based not only upon a review of accident reports, but also upon clinical experiments.

AUSA #2: Is texting while driving a common practice among young drivers?

Dr. Smith: Yes. A recent study showed that drivers account for 150 billion text messages a month. Young drivers, those between the ages of 16 and 21, send approximately 60% of those messages, compared to the population as a whole.

AUSA #2: Let's get specific about the impact of texting upon the reaction time of a driver. Have you conducted any research on that topic?

Dr. Smith: Yes. We conducted an experiment where a red light was mounted on the windshield of a car at eye level, to simulate the brake lights of a car in front. On a straight, empty airstrip, the test drivers were given mobile phones popular among young drivers, including a Blackberry and iPhone. Our researcher rode shotgun in the test vehicle, to trigger the red light and monitor the driver's results. On each trial, the driver responded 6 times to the light. We then deleted the slowest reaction time.

There were a total of 10 drivers in the test, all between the ages of 16 and 21. Driver reaction times were tested at both 35 mph and 70 mph, and were tested first without any distraction and then while sending and reading texts.

AUSA #2: And what were your findings?

Dr. Smith: The average reaction time at 35 mph for a non-distracted driver was .4 seconds. The reaction time at the same speed reduced to .6 seconds when the driver was reading a text, and to .7 seconds when the driver was sending a text. At 70 mph, the non-distracted driver's reaction time was almost the same, .39 seconds, while the time for sending and reading texts were both about the same, .62 seconds.

AUSA #2: Can you tell me how much farther a car can travel in that amount of time at those speeds?

Dr. Smith: Traveling at 35 mph, a person reading a text message would travel an extra 21 feet before hitting the brakes, and a person sending a text would travel an extra 29 feet. At 70 mph, a person reading or sending a text message would travel another 38 feet before hitting the brakes.

AUSA #2: So is it fair to say that looking away from the road for even a fraction of a second to send or read a text message is an unsafe practice?

Dr. Smith: Yes.

AUSA #2: No further questions, Your Honor.

10. Cross Examination of Witness, Dr. Jan Smith

Defense counsel #2: Dr. Smith, are you being paid by the prosecution to testify in this case.

Dr. Smith: I do receive a fee to provide my expert testimony.

Defense counsel #2: And did you examine any of the evidence regarding the accident in this particular case?

Dr. Smith: No, I did not.

Defense counsel #2: Are you aware that the Defendant, Mr. Gardner, says he was not texting at the time of the accident?

Dr. Smith: I was not aware of that.

Defense counsel #2: Are you aware that it was raining on the night of the accident?

Dr. Smith: I was not aware of that, no.

Defense counsel #2: Wouldn't the rain on the street be more likely to contribute to a driver losing control of the car than sending or receiving a text message?

Dr. Smith: There is almost no condition more dangerous for a driver than texting. In fact, in the study I mentioned above, it was shown that reaction times for texting drivers are substantially slower than drunk drivers.

Defense counsel #2: Objection, your honor. The witness has not responded to the question.

Student Judge: Objection sustained. Dr. Smith, please just respond to the question.

Dr. Smith: In my experience, yes. There are a lot of accidents when it rains.

Defense counsel #2: No further questions.

11. Redirect Examination of Dr. Jan Smith

AUSA #2: Would the combination of texting while driving on a rainy night increase the chances of an accident?

Dr. Smith: Yes, it all adds up. Driving in the rain is dangerous, and texting at the same time only decreases reaction times.

AUSA #2: No further questions. Your Honor, the prosecution rests at this time.

C. DEFENDANT’S CASE

1. Direct Examination of Riley Gardner **(By Defense counsel #2)**

Student Judge (to defense counsel): You may call your first witness.

Comments by Judge will explain a defendant’s right not to testify

Defense counsel #2: We call Mr. Riley Gardner.

Student Judge: Mr. Gardner, please come up to the witness stand.

CRD: Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Riley Gardner: Yes, sir.

Defense counsel #2: Please state your name and age for the record.

Riley Gardner: My name is Riley Gardner. I'm 18.

Defense counsel #2: Could you tell us about yourself and your family?

Riley Gardner: I'm a high school senior now. I live with my mom and three younger sisters. I watch my sisters after school until Mom gets home from work, then I go to my job and get back by 10 p.m. I do homework, then go to bed. My dad died in a car accident about six years ago, so it's just the five of us at home.

Defense counsel #2: Tell us what happened on the evening of May 11, 2011.

Riley Gardner: Well, our soccer team had just won regionals. Mom let me have the car, so my next-door neighbor Alex Williams and I picked up my friend Javier, his girlfriend Courtney, and his cousin Sidney. We all went to a

party. I promised to meet Taylor Bowling — another friend of mine — for coffee later at The Wireless Café. I figured she'd be doing homework there, like usual, and wouldn't care when I showed up.

Defense counsel #2: What happened at the party?

Riley Gardner: We played pool and hung out and, at one point, a couple of us decided to go get something to eat at Chandelier's. Javier, Courtney, Sidney, Alex and I were in my car, and we were on the Parkway when my cell rang with a text message from Taylor. It said, "ADN . . . CB NOW."

Defense counsel #2: And what did you understand that to mean?

Riley Gardner: That meant "Any day now . . . ! Call back now!" All-caps means the message is serious — it's like yelling. She was driving me crazy. She knew I needed some space to be with my friends and that we were going to meet up later.

Defense counsel #2: What did you do then?

Riley Gardner: I text messaged her back: "soon." But a minute later, my cell rings again and she's texting, "NOW!" — in all-caps. I'd had it. It was late, and raining, so I just hit reply, then tossed the phone to Sid and asked him to type "n-t-w-d," which means "no texting while driving." I wanted Taylor to get the picture that I'd be in touch with her as soon as I could.

Defense counsel #2: What happened after that?

Riley Gardner: Next thing I know, the car is skidding out of control and hits a pole. I'm very sorry about Courtney. And also that Sidney got hurt. I know their parents will always blame me for everything, but I don't think it really was my fault. It was just an accident. The road was slippery — and actually, we saw several cars that had skidded out of control that night.

Defense counsel #2: How much time passed between when you tossed the phone to Mr. Young and when the car started skidding out of control?

Riley Gardner: I don't know exactly, but maybe a couple minutes.

Defense counsel #2: Thank you. Nothing further, Your Honor.

Student Judge (to AUSAs): Counsel?

**2. Cross Examination of Riley Gardner
(By AUSA #1)**

AUSA #1: You estimate it was a couple minutes between the time you tossed your phone to Mr. Young and when the car started skidding. But wasn't it merely seconds later?

Riley Gardner: No -- it definitely didn't happen right away.

AUSA #1: Mr. Gardner, how many times in your life would you estimate that you have sent text messages while operating a motor vehicle?

Riley Gardner: I have no idea.

AUSA #1: Would it be fair to say that you've sent at least 100 text messages while operating a motor vehicle?

Riley Gardner: I don't keep count, but yeah, that's probably true. I've got a lot going on. It's not a big deal, 'cause I can text without looking down at the cell.

AUSA #1: Isn't it true, Mr. Gardner, that texting requires glances at the keyboard and screen — even for the most proficient users?

Riley Gardner: Well, yeah, but I can glance down and back real quick.

AUSA #1: What about reading text messages -- you have to look at the screen to read it, right?

Riley Gardner: Of course, but again I can just look down really fast.

AUSA #1: You said you asked Mr. Young to text your friend "ntwd" -- did he send that message?

Riley Gardner: No, I don't think so.

AUSA #1: Mr. Gardner, you've admitted that you've probably sent more than 100 text messages while driving. I would remind you that you are under oath. Do you expect us to believe that, right before the accident in question, you asked Sidney Young, whom you'd just met, to intervene in an argument with your girlfriend and text message her "n-t-w-d"— "no texting while driving"?

Defense Counsel #2 (standing, outraged): Objection, Your Honor!

AUSA #1: I withdraw the question.

AUSA #1: No further questions.

Student Judge: Counsel do you have any redirect?

Defense Counsel #2: Yes, Your Honor. Mr. Gardner, were you sending a text message at the time the vehicle collided with the light pole?

Riley Gardner: No, I was not. By then, I had already tossed Sid the phone.

Defense Counsel #2: Thank you. No more questions.

Student Judge: Mr. Gardner, you may step down. Defense counsel, your next witness?

3. Direct Examination of Alex Williams
(By Defense counsel #2)

Defense counsel #2: The defense calls Alex Williams to the stand.

CRD: Raise your right hand. Do you swear to tell the truth, the whole

truth, and nothing but the truth?

Williams: Yes.

Defense counsel #2: Please state your name and age for the record.

Williams: Alex Williams. 17.

Defense counsel #2: Where were you on the evening of May 11, 2011?

Williams: I was playing pool at Austin Crosher's with Riley, Javier and his cousin Sidney. Around 10:30 or so, we headed over to Chandelier's in Riley's car to get something to eat. Sid was up front with Riley. Javier and I were in the back seat with Javier's girlfriend, Courtney.

Defense counsel #2: Then what happened?

Williams: Riley was texting something to Taylor Bowling. He was dating her, and I guess she was getting clingy — calling and texting him a lot. She and I used to be friends and I know she tends to smother people. The roads were slick and when Riley saw a couple of cars on the side of the road, he threw his phone to Sid and asked him to text Taylor for him. Riley is actually a really safe driver. We go a lot of places together.

Defense counsel #2: What happened next?

Williams: Well, everything seemed to go into slow motion. We skidded toward the median, then there was a terrible sound when we crashed. I'll never forget the horrific noise. The next thing I know Sid is yelling about his hand and his leg. And Javier is yelling that we need to help Courtney. Javier, Riley, and I managed to get out of the car.

Defense counsel #2: Then what happened?

Williams: It was pretty obvious there was nothing we could do to help Courtney. The car hit the pole right where she had been sitting. It also messed

Sidney up, and we were all trying to get him out. Someone must have called 9-1-1 because the police got there really fast.

Defense counsel #2: Thank you. No further questions.

Judge: Cross?

AUSA #1: Is it fair to say that, because you were in the back seat, you couldn't see everything that actually happened in the accident?

Williams: Well, things did happen pretty fast. But I know the crash wasn't because Riley was texting, because he handed off the phone to Sid before that.

AUSA #1: How long after Mr. Gardner handed off the phone to Mr. Young did the accident occur?

Williams: Uhmhhh, maybe a few minutes.

AUSA #1: How long have you known Riley Gardner?

Williams: Since first grade. We're next-door neighbors.

AUSA #1: Is it fair to say that you are good enough friends that you would do just about anything for him?

Williams: Absolutely. We always say we've got each other's back.

AUSA #1: Would you be willing to lie under oath to protect him?

Defense counsel #2 (standing up, outraged): Objection, Your Honor!

Student Judge: Overruled. The witness will answer the question.

Williams: No, I wouldn't do that.

AUSA #2: We have nothing further, Your Honor.

Student Judge: Any redirect?

Defense Counsel #2: No, Your Honor. The defense rests.

Student Judge: Okay. The witness may step down. Ladies and gentlemen of the jury, we will now hear the parties' closing arguments. I will then provide you with some instructions on the relevant law and how you should conduct your deliberations.

***** Comments: Judge will explain closing arguments**

III. CLOSING ARGUMENTS

Student Judge: Members of the jury, an attorney for each party will now make a closing argument. The attorneys' arguments are not evidence; they are only a possible interpretation of the evidence presented during the trial. It is up to you to decide what happened.

The prosecutor may now address the jury.

[It is recommended that the mentor volunteer attorneys present unscripted closing arguments or assist the students in presenting their argument. In the alternative, you may use the ones that are scripted below.]

A. For Prosecution (By AUSA #2)

[at podium] Thank you, Your Honor. Ladies and gentlemen, we have proven beyond a reasonable doubt that Mr. Gardner was texting his girlfriend at the time of the accident. His actions were grossly negligent, and directly resulted in the death of Courtney Walls and serious injuries to Sidney Young. As you heard several witnesses testify, Mr. Gardner was distracted while communicating with his girlfriend and not focused on the hazardous road conditions brought on by the heavy rain. And this was not the first time he had sent text messages while driving -- he admitted that he often texted while driving and even his mother said she was

aware he used his phone while driving. This accident could have been avoided had Mr. Gardner left his cell phone where it belonged while he was driving... in his pocket. His conduct was grossly negligent and you should convict him of the charge of vehicular manslaughter. Thank you.

Student Judge: Thank you Counsel. The attorney for Mr. Gardner may now address the jury.

B. For the Defense
(by Defense Attorney # 2)

[at podium] Thank you, Your Honor. Ladies and gentlemen, the government has proved nothing beyond the fact that my client was driving on a rainy night and involved in a car accident similar to many others the same evening, two of which were on the same road. He admitted that he had responded to a couple of texts from his girlfriend, but at the time of the accident, his cell phone was not even on his person. He had tossed it to his passenger, Sidney Young. The road conditions were not ideal and you heard testimony that my client asked Mr. Young to let his girlfriend know he couldn't text her while driving in those conditions. It is terrible and unfortunate that Ms. Walls was killed, and Mr. Young was injured, in this accident. However, Riley was not negligent. He was just a kid taking his friends out for a burger on a rainy night. He was being as careful as he could be on a rainy night, which is why he tossed his phone to his passenger...to avoid being distracted. Driving is dangerous and accidents happen. You should find him not guilty of the charge in this case. Thank you.

Student Judge: Thank you Counsel. Counsel for the government may make a rebuttal argument at this time.

C. For Prosecution
(By AUSA #2)

[at podium] Thank you, Your Honor. Ladies and gentlemen, this is not just an unfortunate accident. This accident ended one person's life and caused serious permanent injury to another. Were it not for Riley Gardner's gross negligence behind the wheel on that rainy night last May, Courtney Wells would still be alive

and Sydney Young would still be pursuing his dream of becoming a pilot. Riley Gardner should be punished for his negligence which caused this deadly accident. Thank you.

A. JURY INSTRUCTIONS

***** Comments: Judge** will explain the purpose and importance of jury instructions and explain how they should be used during deliberations.

Student Judge: *[Read packet of attached jury instructions]*

Student Judge: The jury may now retire to consider its verdict. You have 20 minutes to decide the case. Courtroom Deputy, please show the jury into the jury room.

[Courtroom Deputy walks across, and opens door to jury room for jurors]

During deliberations, non-jurors will listen to the process of deliberations via microphone.

[At the end of the allotted time or when the jury opens the door with a verdict:]

Student Judge: The Courtroom Deputy will knock on door and instruct the jury to take their seats.

Courtroom Deputy: *[knocks on jury room door]* The jury will return to the courtroom.

Student Judge: Has the jury reached a verdict?

Foreperson: We have. *[hands verdict form to the Courtroom Deputy]*

Courtroom Deputy: *[read the verdict aloud]* Ladies and Gentlemen of the jury, is this your verdict as presented and read, the verdict of each of you, so say

you all?

Jury [*in unison*]: Yes.

Student Judge: Thank you. That will be all.

Courtroom Deputy: The Court is in recess.

Judge will then commence a discussion of what happened during deliberations with all participants.

The End

FINAL JURY INSTRUCTIONS

CASE No. 11-CR-9999-JM

USA v. GARDNER

TRIAL DATE: OCTOBER 3, 2012

JURY INSTRUCTION No. 1

DUTY TO FOLLOW LAW

MEMBERS OF THE JURY, NOW THAT YOU HAVE HEARD ALL THE EVIDENCE, IT IS MY DUTY TO INSTRUCT YOU ON THE LAW WHICH APPLIES TO THIS CASE. A COPY OF THESE INSTRUCTIONS WILL BE AVAILABLE IN THE JURY ROOM FOR YOU TO CONSULT.

IT IS YOUR DUTY TO WEIGH AND TO EVALUATE ALL THE EVIDENCE RECEIVED IN THE CASE AND, IN THAT PROCESS, TO DECIDE THE FACTS. IT IS ALSO YOUR DUTY TO APPLY THE LAW AS I GIVE IT TO YOU TO THE FACTS AS YOU FIND THEM, WHETHER YOU AGREE WITH THE LAW OR NOT. YOU MUST DECIDE THE CASE SOLELY ON THE EVIDENCE AND THE LAW AND MUST NOT BE INFLUENCED BY ANY PERSONAL LIKES OR DISLIKES, OPINIONS, PREJUDICES, OR SYMPATHY. YOU WILL RECALL THAT YOU TOOK AN OATH PROMISING TO DO SO AT THE BEGINNING OF THE CASE.

YOU MUST FOLLOW ALL INSTRUCTIONS AND NOT SINGLE OUT SOME AND IGNORE OTHERS; THEY ARE ALL IMPORTANT. PLEASE DO NOT READ INTO THESE INSTRUCTIONS OR INTO ANYTHING I MAY HAVE SAID OR DONE ANY SUGGESTION AS TO WHAT VERDICT YOU SHOULD RETURN—THAT IS A MATTER ENTIRELY UP TO YOU.

JURY INSTRUCTION No. 2

**CHARGE AGAINST DEFENDANT NOT EVIDENCE --
PRESUMPTION OF INNOCENCE-- BURDEN OF PROOF**

**THE DEFENDANT IS ACCUSED IN AN INDICTMENT WITH VEHICULAR
MANSLAUGHTER WITH GROSS NEGLIGENCE.**

**THE INDICTMENT IS NOT EVIDENCE. THE DEFENDANT HAS
PLEADED NOT GUILTY TO THE CHARGE[S]. THE DEFENDANT IS
PRESUMED TO BE INNOCENT UNLESS AND UNTIL THE GOVERNMENT
PROVES THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. IN
ADDITION, THE DEFENDANT DOES NOT HAVE TO TESTIFY OR PRESENT
ANY EVIDENCE TO PROVE INNOCENCE. THE GOVERNMENT HAS THE
BURDEN OF PROVING EVERY ELEMENT OF THE CHARGE[S] BEYOND A
REASONABLE DOUBT.**

JURY INSTRUCTION No. 3

REASONABLE DOUBT -- DEFINED

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY. IT IS NOT REQUIRED THAT THE GOVERNMENT PROVE GUILT BEYOND ALL POSSIBLE DOUBT.

A REASONABLE DOUBT IS A DOUBT BASED UPON REASON AND COMMON SENSE AND IS NOT BASED PURELY ON SPECULATION. IT MAY ARISE FROM A CAREFUL AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE, OR FROM LACK OF EVIDENCE.

IF AFTER A CAREFUL AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE, YOU ARE NOT CONVINCED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY, IT IS YOUR DUTY TO FIND THE DEFENDANT NOT GUILTY. ON THE OTHER HAND, IF AFTER A CAREFUL

**AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE, YOU ARE
CONVINCED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS
GUILTY, IT IS YOUR DUTY TO FIND THE DEFENDANT GUILTY.**

JURY INSTRUCTION No. 4

WHAT IS EVIDENCE

THE EVIDENCE FROM WHICH YOU ARE TO CONSIDER IN DECIDING

WHAT THE FACTS ARE CONSISTS OF:

(1) THE SWORN TESTIMONY OF ANY WITNESS; [AND]

(2) THE EXHIBITS RECEIVED IN EVIDENCE; AND

(3) ANY FACTS TO WHICH THE PARTIES HAVE AGREED.

JURY INSTRUCTION No. 5

WHAT IS NOT EVIDENCE

IN REACHING YOUR VERDICT YOU MAY CONSIDER ONLY THE TESTIMONY AND EXHIBITS RECEIVED INTO EVIDENCE. THE FOLLOWING THINGS ARE NOT EVIDENCE AND YOU MAY NOT CONSIDER THEM IN DECIDING WHAT THE FACTS ARE:

1. QUESTIONS, STATEMENTS, OBJECTIONS AND ARGUMENTS BY THE LAWYERS ARE NOT EVIDENCE. THE LAWYERS ARE NOT WITNESSES. ALTHOUGH YOU MUST CONSIDER A LAWYER'S QUESTIONS TO UNDERSTAND THE ANSWERS OF A WITNESS, THE LAWYER'S QUESTIONS ARE NOT EVIDENCE. SIMILARLY, WHAT THE LAWYERS HAVE SAID IN THEIR OPENING STATEMENTS, WILL SAY IN THEIR CLOSING ARGUMENTS AND AT OTHER TIMES IS INTENDED TO HELP YOU INTERPRET THE EVIDENCE, BUT IT IS NOT EVIDENCE. IF THE FACTS AS YOU REMEMBER THEM DIFFER FROM THE WAY THE LAWYERS HAVE

STATED THEM, YOUR MEMORY OF THEM CONTROLS.

2. ANY TESTIMONY THAT I HAVE EXCLUDED, STRICKEN OR INSTRUCTED YOU TO DISREGARD IS NOT EVIDENCE. IN ADDITION, SOME EVIDENCE WAS RECEIVED ONLY FOR A LIMITED PURPOSE; WHEN I HAVE INSTRUCTED YOU TO CONSIDER CERTAIN EVIDENCE IN A LIMITED WAY, YOU MUST DO SO.

3. ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN THE COURT WAS NOT IN SESSION IS NOT EVIDENCE. YOU ARE TO DECIDE THE CASE SOLELY ON THE EVIDENCE RECEIVED AT THE TRIAL.

JURY INSTRUCTION No. 6

DIRECT AND CIRCUMSTANTIAL EVIDENCE

EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY BY A WITNESS ABOUT WHAT THAT WITNESS PERSONALLY SAW OR HEARD OR DID. CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE, THAT IS, IT IS PROOF OF ONE OR MORE FACTS FROM WHICH YOU COULD FIND ANOTHER FACT.

YOU ARE TO CONSIDER BOTH DIRECT AND CIRCUMSTANTIAL EVIDENCE. EITHER CAN BE USED TO PROVE ANY FACT. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE TO ANY EVIDENCE.

JURY INSTRUCTION No. 7
CREDIBILITY OF WITNESSES

IN DECIDING THE FACTS IN THIS CASE, YOU MAY HAVE TO DECIDE WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE. YOU MAY BELIEVE EVERYTHING A WITNESS SAYS, OR PART OF IT, OR NONE OF IT.

IN CONSIDERING THE TESTIMONY OF ANY WITNESS, YOU MAY TAKE INTO ACCOUNT:

- 1. THE WITNESS'S OPPORTUNITY AND ABILITY TO SEE OR HEAR OR KNOW THE THINGS TESTIFIED TO;**
- 2. THE WITNESS'S MEMORY;**
- 3. THE WITNESS'S MANNER WHILE TESTIFYING;**
- 4. THE WITNESS'S INTEREST IN THE OUTCOME OF THE CASE, IF ANY;**
- 5. THE WITNESS'S BIAS OR PREJUDICE, IF ANY;**

6. WHETHER OTHER EVIDENCE CONTRADICTED THE WITNESS'S TESTIMONY;

7. THE REASONABLENESS OF THE WITNESS'S TESTIMONY IN LIGHT OF ALL THE EVIDENCE; AND

8. ANY OTHER FACTORS THAT BEAR ON BELIEVABILITY.

THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY. WHAT IS IMPORTANT IS HOW BELIEVABLE THE WITNESSES WERE, AND HOW MUCH WEIGHT YOU THINK THEIR TESTIMONY DESERVES.

JURY INSTRUCTION No. 8

OPINION EVIDENCE, EXPERT WITNESS

YOU HAVE HEARD TESTIMONY FROM PERSONS WHO, BECAUSE OF EDUCATION OR EXPERIENCE, WERE PERMITTED TO STATE OPINIONS AND THE REASONS FOR THEIR OPINIONS.

SUCH OPINION TESTIMONY SHOULD BE JUDGED LIKE ANY OTHER TESTIMONY. YOU MAY ACCEPT IT OR REJECT IT, AND GIVE IT AS MUCH WEIGHT AS YOU THINK IT DESERVES, CONSIDERING THE WITNESS'S EDUCATION AND EXPERIENCE, THE REASONS GIVEN FOR THE OPINION, AND ALL THE OTHER EVIDENCE IN THE CASE.

JURY INSTRUCTION No. 9

DUTY OF THE DRIVER OF VEHICLE ON PUBLIC HIGHWAY

**THE DRIVER OF ANY VEHICLE USING A PUBLIC STREET OR
HIGHWAY HAS A DUTY TO EXERCISE ORDINARY CARE AT ALL TIMES TO
AVOID PLACING THE DRIVER OR OTHERS IN DANGER; TO USE LIKE CARE
TO AVOID AN ACCIDENT; TO KEEP A PROPER LOOKOUT FOR TRAFFIC
AND OTHER CONDITIONS TO BE REASONABLY ANTICIPATED AND TO
MAINTAIN PROPER CONTROL OF THE VEHICLE.**

JURY INSTRUCTION No. 10

GROSS NEGLIGENCE—DEFINED

GROSS NEGLIGENCE MEANS CONDUCT WHICH IS MORE THAN ORDINARY NEGLIGENCE. ORDINARY NEGLIGENCE IS THE FAILURE TO EXERCISE ORDINARY OR REASONABLE CARE.

GROSS NEGLIGENCE REFERS TO A NEGLIGENT ACT WHICH IS AGGRAVATED, RECKLESS OR FLAGRANT AND WHICH IS SUCH A DEPARTURE FROM THE CONDUCT OF AN ORDINARILY PRUDENT, CAREFUL PERSON UNDER THE SAME CIRCUMSTANCES AS TO BE CONTRARY TO A PROPER REGARD FOR DANGER TO HUMAN LIFE OR TO CONSTITUTE INDIFFERENCE TO THE CONSEQUENCES OF THOSE ACTS. THE FACTS MUST BE SUCH THAT THE CONSEQUENCES OF THE NEGLIGENT ACT COULD REASONABLY HAVE BEEN FORESEEN AND IT MUST APPEAR THAT THE DEATH WAS NOT THE RESULT OF INATTENTION, MISTAKEN JUDGMENT OR MISADVENTURE BUT THE NATURAL AND

**PROBABLE RESULT OF AN AGGRAVATED, RECKLESS OR FLAGRANTLY
NEGLIGENT ACT.**

JURY INSTRUCTION NO. 11

VEHICULAR MANSLAUGHTER WITH GROSS NEGLIGENCE

**DEFENDANT IS ACCUSED IN THE INDICTMENT OF HAVING
COMMITTED THE CRIME OF VEHICULAR MANSLAUGHTER WITH GROSS
NEGLIGENCE IN VIOLATION OF SECTION 192, SUBDIVISION (C)[1][2] OF
THE PENAL CODE.**

**EVERY PERSON WHO DRIVES A VEHICLE IN A GROSSLY NEGLIGENT
MANNER AND UNINTENTIONALLY BUT UNLAWFULLY KILLS ANOTHER
HUMAN BEING IS GUILTY OF THE CRIME OF VEHICULAR MANSLAUGHTER
WITH GROSS NEGLIGENCE IN VIOLATION OF PENAL CODE SECTION 192,
SUBDIVISION [C] SECTIONS (1) AND (2).**

**A KILLING IS UNLAWFUL WHEN A PERSON COMMITS AN UNLAWFUL
ACT WHICH IS DANGEROUS TO HUMAN LIFE UNDER THE
CIRCUMSTANCES OF ITS COMMISSION.**

**IN ORDER TO PROVE THIS CRIME, EACH OF THE FOLLOWING
ELEMENTS MUST BE PROVED:**

**1. THE DRIVER OF A VEHICLE COMMITTED WITH GROSS
NEGLIGENCE AN UNLAWFUL ACT WHICH UNDER THE CIRCUMSTANCES
OF ITS COMMISSION WAS DANGEROUS TO HUMAN LIFE, NAMELY A
VIOLATION OF THE PROHIBITION AGAINST TEXTING WHILE DRIVING.**

**2. THE UNLAWFUL OR NEGLIGENT ACT WAS A CAUSE OF THE
DEATH OF ANOTHER HUMAN BEING.**

JURY INSTRUCTION No. 12

DUTY TO DELIBERATE

WHEN YOU BEGIN YOUR DELIBERATIONS, ELECT ONE MEMBER OF THE JURY AS YOUR FOREPERSON WHO WILL PRESIDE OVER THE DELIBERATIONS AND SPEAK FOR YOU HERE IN COURT.

YOU WILL THEN DISCUSS THE CASE WITH YOUR FELLOW JURORS TO REACH AGREEMENT IF YOU CAN DO SO. YOUR VERDICT, WHETHER GUILTY OR NOT GUILTY, MUST BE UNANIMOUS.

EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT YOU SHOULD DO SO ONLY AFTER YOU HAVE CONSIDERED ALL THE EVIDENCE, DISCUSSED IT FULLY WITH THE OTHER JURORS, AND LISTENED TO THE VIEWS OF YOUR FELLOW JURORS.

DO NOT BE AFRAID TO CHANGE YOUR OPINION IF THE DISCUSSION PERSUADES YOU THAT YOU SHOULD. BUT DO NOT COME TO A DECISION SIMPLY BECAUSE OTHER JURORS THINK IT IS RIGHT.

IT IS IMPORTANT THAT YOU ATTEMPT TO REACH A UNANIMOUS VERDICT BUT, OF COURSE, ONLY IF EACH OF YOU CAN DO SO AFTER HAVING MADE YOUR OWN CONSCIENTIOUS DECISION. DO NOT CHANGE AN HONEST BELIEF ABOUT THE WEIGHT AND EFFECT OF THE EVIDENCE SIMPLY TO REACH A VERDICT.

JURY INSTRUCTION No. 13

CONSIDERATION OF EVIDENCE-- CONDUCT OF THE JURY

BECAUSE YOU MUST BASE YOUR VERDICT ONLY ON THE EVIDENCE RECEIVED IN THE CASE AND ON THESE INSTRUCTIONS, I REMIND YOU THAT YOU MUST NOT BE EXPOSED TO ANY OTHER INFORMATION ABOUT THE CASE OR TO THE ISSUES IT INVOLVES. EXCEPT FOR DISCUSSING THE CASE WITH YOUR FELLOW JURORS DURING YOUR DELIBERATIONS:

DO NOT COMMUNICATE WITH ANYONE IN ANY WAY AND DO NOT LET ANYONE ELSE COMMUNICATE WITH YOU IN ANY WAY ABOUT THE MERITS OF THE CASE OR ANYTHING TO DO WITH IT. THIS INCLUDES DISCUSSING THE CASE IN PERSON, IN WRITING, BY PHONE OR ELECTRONIC MEANS, VIA EMAIL, TEXT MESSAGING, OR ANY INTERNET CHAT ROOM, BLOG, WEBSITE OR OTHER FEATURE. THIS APPLIES TO COMMUNICATING WITH YOUR FAMILY MEMBERS, YOUR EMPLOYER, THE

MEDIA OR PRESS, AND THE PEOPLE INVOLVED IN THE TRIAL. IF YOU ARE ASKED OR APPROACHED IN ANY WAY ABOUT YOUR JURY SERVICE OR ANYTHING ABOUT THIS CASE, YOU MUST RESPOND THAT YOU HAVE BEEN ORDERED NOT TO DISCUSS THE MATTER AND TO REPORT THE CONTACT TO THE COURT. DO NOT READ, WATCH, OR LISTEN TO ANY NEWS OR MEDIA ACCOUNTS OR COMMENTARY ABOUT THE CASE OR ANYTHING TO DO WITH IT; DO NOT DO ANY RESEARCH, SUCH AS CONSULTING DICTIONARIES, SEARCHING THE INTERNET OR USING OTHER REFERENCE MATERIALS; AND DO NOT MAKE ANY INVESTIGATION OR IN ANY OTHER WAY TRY TO LEARN ABOUT THE CASE ON YOUR OWN.

THE LAW REQUIRES THESE RESTRICTIONS TO ENSURE THE PARTIES HAVE A FAIR TRIAL BASED ON THE SAME EVIDENCE THAT EACH PARTY HAS HAD AN OPPORTUNITY TO ADDRESS. A JUROR WHO VIOLATES THESE RESTRICTIONS JEOPARDIZES THE FAIRNESS OF THESE PROCEEDINGS AND A MISTRIAL COULD RESULT THAT WOULD REQUIRE THE ENTIRE TRIAL PROCESS TO START OVER. IF ANY JUROR IS

**EXPOSED TO ANY OUTSIDE INFORMATION, PLEASE NOTIFY THE COURT
IMMEDIATELY.**

JURY INSTRUCTION NO. 14

JURY CONSIDERATION OF PUNISHMENT

THE PUNISHMENT PROVIDED BY LAW FOR THIS CRIME IS FOR THE COURT TO DECIDE. YOU MAY NOT CONSIDER PUNISHMENT IN DECIDING WHETHER THE GOVERNMENT HAS PROVED ITS CASE AGAINST THE DEFENDANT BEYOND A REASONABLE DOUBT.

JURY INSTRUCTION No. 15

COMMUNICATION WITH COURT

IF IT BECOMES NECESSARY DURING YOUR DELIBERATIONS TO COMMUNICATE WITH ME, YOU MAY SEND A NOTE THROUGH THE BAILIFF, SIGNED BY ANY ONE OR MORE OF YOU. NO MEMBER OF THE JURY SHOULD EVER ATTEMPT TO COMMUNICATE WITH ME EXCEPT BY A SIGNED WRITING, AND I WILL RESPOND TO THE JURY CONCERNING THE CASE ONLY IN WRITING, OR HERE IN OPEN COURT. IF YOU SEND OUT A QUESTION, I WILL CONSULT WITH THE LAWYERS BEFORE ANSWERING IT, WHICH MAY TAKE SOME TIME. YOU MAY CONTINUE YOUR DELIBERATIONS WHILE WAITING FOR THE ANSWER TO ANY QUESTION. REMEMBER THAT YOU ARE NOT TO TELL ANYONE--INCLUDING ME--HOW THE JURY STANDS, NUMERICALLY OR OTHERWISE, ON ANY QUESTION SUBMITTED TO YOU, INCLUDING THE QUESTION OF THE GUILT OF THE DEFENDANT, UNTIL AFTER YOU HAVE REACHED A UNANIMOUS VERDICT OR HAVE BEEN DISCHARGED.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No.09cr9897-01 JM
)	
Plaintiff,)	VERDICT
v.)	
)	[Mock Trial 10/1/12]
RILEY GARDNER,)	
)	
Defendant.)	
_____)	

We the jury in the above entitled cause find that the defendant RILEY GARDNER is: *(circle one)*
 GUILTY NOT GUILTY
of vehicular manslaughter with gross negligence in the above entitled action.

Dated: October 1, 2012
San Diego, California

_____ Foreperson of the Jury