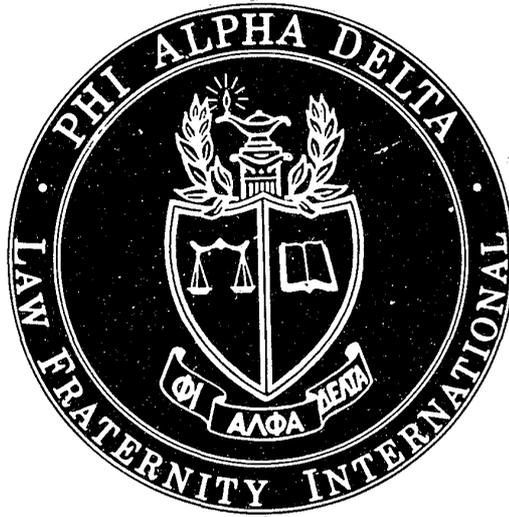


A RESOURCE GUIDE TO ALL LAW STUDENTS FOR  
PARTICIPATION IN AFRICAN SCHOOL LAW RELATED EDUCATION  
PROGRAMS

PHI ALPHA DELTA



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AMERICAN OFFICE OF THE  
PHI ALPHA DELTA PUBLIC SERVICE CENTER  
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U.S. Department of Justice  
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PHI ALPHA DELTA PUBLIC SERVICE CENTER  
DRUG/ALCOHOL EDUCATION PROGRAM

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A RESOURCE GUIDE TO ASSIST LAW STUDENTS FOR  
PARTICIPATION IN A HIGH SCHOOL LAW-RELATED EDUCATION  
DRUG/ALCOHOL EDUCATION PROGRAM

FIELD TEST VERSION

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NCJRS

FEB 27 1992

ACQUISITIONS

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## INTRODUCTION

Since 1979, the Phi Alpha Delta Law Fraternity, International (PAD) has been a leader in the nationwide law-related education program sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to help reduce youth delinquency and crime. The Fraternity's international membership network has contributed extensively, on a volunteer basis, to the success of this program.

During this ten-year period of Law-Related Education (LRE) service, Phi Alpha Delta has published manuals to train resource persons from the legal profession for active participation in LRE activities. This new drug/alcohol resource manual is now being added to the PAD library of LRE publications.

OJJDP has taken the lead in coordinating all Federal programs dealing with illegal drug use by our nation's youth. It aggressively and actively worked to develop a plan to keep all Federal agencies aware of what each Federal agency is doing in the area of juvenile drug abuse.

How serious is the problem? A recent study by the General Accounting Office reported that illegal drug use costs the nation \$60 billion annually in lost wages, treatment programs, law enforcement and other criminal justice expenses. The report estimated that Americans spent approximately \$140 billion last year to purchase 178 tons of cocaine, 12 tons of heroin, and 60,000 tons of marijuana. The seriousness of this problem has been expressed in many ways by our national leaders. As former President Reagan has said, "Drugs are menacing our society. They're threatening our values and undercutting our institutions. They're killing our children." President Bush has clearly stated, "The scourge of drugs must be stopped!"

The Department of Justice has taken a strong leadership role in conducting the national anti-drug effort. A summation by the National Institute of Justice says: "Drug abuse by America's young people is a nightmare few communities have escaped. It has torn apart families, turned some schools into drug markets, and threatened the safety of many town and cities."

The National Council of Juvenile and Family Court Judges describes the evolution of this crisis in the following terms: "In the span of one generation, we have witnessed a ten-fold increase of substance use that affects every strata and group in our society."

The interest and potential contribution of PAD in this fight against drugs should fall into the area of curbing demand. Anti-drug education gets to the heart of the matter. The need to educate our children about drugs is painfully evident. A recent news report stated the sad and astonishing fact that most people who use drugs begin between the ages of 11 and 13. In the city of Houston, Texas, school officials estimate that seven out of every ten school children will use drugs at least once before leaving school. Numerous studies now confirm that drug education can produce a significant change in children's attitudes toward drugs.

Law-related drug/alcohol education will be provided under the OJJDP mandate on a nationwide basis, primarily to grades 8 to 12 in the public and private schools of communities in which our law student chapters are located.

A unique feature of such education by the Fraternity is the identity of the persons who will bring this critical information directly to students. PAD will call on its law student members to bring anti-drug lessons into classrooms. Using either of two successful models, i.e., classroom interaction and discussion or mock trial episodes built on a drunk driving hypothetical case.

The PAD program is modeled upon successfully implemented programs. For example, the Fraternity law students at Texas Tech University School of Law developed a manual explaining the legal consequences of an arrest and conviction for drug or alcohol offenses in Texas. The law students present this material to high school students in the Lubbock school system. In St. Paul, Minnesota, Fraternity law students at Hamline University School of Law developed a mock trial program that takes students through all phases of a drunk driving case. This program can be adapted for presentation in one, two or three day segments as part of regular high school classes.

These programs inform students about the legal and social consequences of illegal drug and alcohol use. They will assist the students to develop skills needed to identify their own attitudes, values and expectations, and to better estimate the risk of personal drug/alcohol use.

PAD is publishing this resource manual for the use of law students and teachers. The manual will serve as a guide for law students conducting jointly with teachers, these classroom lessons on drug use, which focus on the consequences of a conviction in court, a DWI mock trial demonstration, and community level problems. Law students will form a partnership with the classroom teacher. In partnership, the teacher and law student will decide which and how many of six different lessons will be presented, where such lessons will fit into the curriculum, and when such classroom presentations will be scheduled.

The program goals are as follows:

- (1) Students will develop a knowledge of how state drug/alcohol laws are made, interpreted and enforced and how these laws can affect the life of each student.

(2) Students will develop an awareness of the legal and social consequences of drug/alcohol use for themselves, their family and friends, and their community.

(3) Students will be able to develop their own personal definitions of responsible behavior, based upon information about the negative aspects of drug and alcohol abuse.

(4) Law students and teachers will broaden their knowledge of current drug/alcohol laws and the teacher will gain a resource to help his or her students understand the consequences of those laws.

(5) Law students will develop professionally through a community service project.

In summary, the involvement and the relationship of PAD to this specialized law-related education program is best summarized in the following statement by the International Justice of Phi Alpha Delta, Larry J. Crigler:

All members of Phi Alpha Delta--lawyers, judges, law professors and law students--can be expected to give their time, talent, effort and commitment to join the fight toward the honorable goal of substance abuse prevention through law-related education.

The contents of this Guide have been copyrighted. We are pleased, however, to authorize the reproduction of any part of the publication without our written permission, provided it is for non-profit purposes and that credit is given to the publishers for its availability. We welcome comments and suggestions for improvement of this publication.

Robert E. Redding  
Executive Vice President  
Phi Alpha Delta Public Service Center  
and Director of its Juvenile Justice Program

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Special appreciation goes to the key persons responsible for this publication and their contributions to the PAD LRE Drug/Alcohol Education Program. These key persons include the following:

**Linda Riekas**, Director of the Law and Citizen Education Unit, St. Louis Public Schools which administers a drug free schools and community program. As a Consultant to the Phi Alpha Delta Public Service Center, Linda has contributed greatly to the drafting of this Guide.

**Armentha Russell**, Coordinator of the Middle School Law and Citizen Education Unit, St. Louis Public Schools, who with Linda Riekas administers the St. Louis drug-free schools and community program. As a Consultant to the Phi Alpha Delta Public Service Center, Armentha has also contributed greatly to the drafting of this Guide.

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**Timothy V. Ostroot**, Attorney at Law, Minneapolis, Minnesota. As the PAD LRE Coordinator for Minnesota, Tim has assisted in the redrafting of the Mock Trial materials and was a co-developer of the "Minnesota Model".

**Steve Jenkins**, Director of the Resource Center for Law-Related Education, Bar Association of Metropolitan St. Louis. As the State LRE Coordinator for Missouri, Steve has assisted by critiquing draft materials and advising the authors regarding legal materials.

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## PAD LRE DRUG/ALCOHOL EDUCATION PROGRAM

### "How the Program Began"

Over the past four years, two law school chapters of Phi Alpha Delta Law Fraternity, International (PAD), have developed law-related education programs dealing with drug/alcohol education. An introduction to these two programs follows.

As the reader may know, the LRE effort has been aimed at reducing delinquency among the young people of America. The initial study on the effect of LRE has shown it to be an effective vehicle for this reduction. Students that receive LRE lessons are less likely to use violence to solve problems, were less dependent on others who engaged in delinquent behavior and felt their parents viewed them less negatively. They also express more positive feelings towards their teachers. Delinquent acts within the test group were markedly reduced.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) announced in 1988, that the agency was assuming a leadership role in the areas of drug education and prevention. The agency requested that the LRE projects develop programs and materials to respond to the needs of this new role. It is believed that the same methods used in LRE classrooms can be effective in drug education and prevention.

The PAD response to this OJJDP request has been to develop a program designed to utilize PAD law students in the classroom. They inform the classroom students about the legal and social consequences of illegal drug and alcohol use. The law students will form a partnership with the classroom teacher into whose class they are going.

#### I. Texas Model

This model consisted of a law student led discussions, utilizing interactive learning, of the legal and social consequences of illegal drug and alcohol use. Students are encouraged to ask questions and to respond to problems posed by the law student presentors. To date, this program has been presented to over 2,000 students in and around Lubbock. This model was developed at Rayburn Chapter, Texas Tech University School of Law.

#### II. Minnesota Model

This model consisted of a mock trial demonstration presented in junior and senior high schools, using the students in the roles of jurors and testifying witnesses, and law students performing the roles of prosecutor, defense attorney and judge. The trial centers around a minor charged with DWI, open container, possession and consumption. To date, this program has been presented to well over 4,000 students in the Twin Cities of Minneapolis & St. Paul, Minnesota. This model was developed at Monroe Chapter, Hamline University School of Law.

## BENEFITS TO LAW STUDENTS

### "Why Get Involved"

Listed below are benefits to be derived, in general, by a law student through his or her participation in a community service project, or more specifically, a law-related education program. This list was compiled by Professor Joseph L. Daly of Hamline University School of Law, St. Paul, Minnesota and was published by the Phi Alpha Delta Public Service Center in a monograph entitled, "For Value Received: Community Law Program Benefits to Law Students".\*

### BENEFITS

- 1) Improving knowledge of the law.
- 2) Synthesizing legal knowledge
- 3) Understanding the public's perception of lawyers.
- 4) Developing oral skills--speaking before large groups.
- 5) Developing expertise in handling questions.
- 6) Developing lawyer/client relationship skills--learning how to explain the law to lay persons.
- 7) Developing a sense of professionalism.
- 8) Developing a working relationship with another professional as an equal.
- 9) Developing legal training skills.
- 10) Offering an opportunity to fulfill the professional duty from the Code of Professional Responsibility to educate the public.
- 11) Deriving satisfaction from using one's skills and legal knowledge in a positive, beneficial way.

Without diminishing Professor Daly's words in any way, please consider one person's view on the most important of these reasons, satisfaction. The satisfaction that comes from a deed well done in the service of your community is very difficult to quantify. But, after one or more classroom presentations a law student will indeed feel satisfied. Satisfied that he or she has successfully communicated their knowledge to the youth of their community, satisfied that they have taken a step towards demystifying the law for these students, and satisfied that through law-related education, they have engaged in an effort which has been shown to reduce juvenile crime and delinquency.

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\*Reprints of this monograph are available upon request.

**IMPLEMENTING THE PROGRAM--  
A COOPERATIVE ENDEAVOR**

Making the decision to get involved  
and making contacts in the schools

Before any PAD law school chapter can fully dedicate itself to implementing a Law-Related Education Program in the local schools, it must first address the level of commitment of its members. How many times during a semester or school year would participants like to make classroom presentations? Will scheduling conflicts and absent participants endanger the flexibility school teachers need and jeopardize the presentation? A commitment by the chapter is no better than the dedication of its member participants, and it will serve no purpose to delegate one or two persons to schedule 20 or 30 dates at various schools if chapter members are not prepared to meet such an obligation. Thus, the fundamental questions must be asked and answered before any member can be appointed the task of making school contacts and scheduling presentations.

Assuming the preliminary questions have been settled, the job of making contacts and scheduling is quite simple. It begins with telephone calls or letters to the state LRE coordinators and then to those local schools as identified during planning sessions, with the ostensible purpose of identifying those persons teaching classes in social studies, civics, or business law. Ask the State or Local LRE Coordinator if you should first contact someone in the school district administration. In many districts a meeting with the Assistant Superintendent, Department heads or Principal should precede contact with individual teachers. Once teachers have been identified, it is an easy task to address a letter to each teacher introducing and explaining the program; its purpose, benefits, and expectations. Moreover, with the benefit of a computer, its database and word processing capabilities, one can easily generate a personalized letter to each teacher identified by telephone. A single form letter may be appropriate, but they are seemingly indifferent to the teacher and school, while a personalized letter commands greater impact and brings better results.

Typically, letters should be followed up by a telephone call to the teachers themselves. By this time they will have heard about the program through correspondence and can ask questions they may have. Of course, the caller should be prepared to "sell" the program to the teacher; that is, he or she must know and be able to articulate the program purpose, benefits, and expectations.

The teacher will usually commit to a date and time for a meeting during this post-correspondence telephone call, but it is not unusual for the teacher to require more time to consider such a proposal.

Follow-up calls should be used when the teacher is still undecided. While the purpose of the call is essentially to remind the teacher of the program, the caller should again be prepared to "sell" it and answer additional questions. If the teacher remains undecided after correspondence and two telephone calls, it is doubtful that any invitation will be forthcoming and further efforts will be wasted. Recall, that these contacts may be made through school administration.

Teachers are generally very receptive to the program. Mock trial and other presentations by PAD members are usually well received, and in some circumstances, can provide a unique and memorable capstone to a high school course. The person in charge of scheduling should not be surprised if the teacher suggests that the mock trial, for example, be performed before the entire school assembly, rather than just one or two classes. The program is easily adaptable to such situations.

Law-Related Education can be an exciting and advantageous way that law students can polish trial and public speaking skills before graduation. The program is educational for all participants, but none of these benefits will be realized unless the person in charge of making contacts and scheduling does the job. In that sense, this task is critical to the program success and cannot be taken lightly. Remember that you represent PAD, your law school and the legal profession in the eyes of the community. Whatever the level of commitment the chapter demonstrates, in the final analysis that commitment is realized through the efforts of this person, or persons, or it is not realized at all.

#### Making LRE Contacts in Your State

Generally, there is an individual in every state who coordinates law-related education programs in schools throughout their state. That person--the State LRE Coordinator--may be employed by a bar association, state department of education, law school, or other agency or organization. Your efforts to successfully implement your program can be enhanced and made easier by developing a good working relationship with your State LRE Coordinator.

At minimum, it is important to understand the role of the State LRE Coordinator to law-related education programming in your state. In most instances, State LRE Coordinators are the focal point for school systems, and local or state constituencies interested in LRE. Relationships and communications with individuals and groups may have been cultivated over a period of years. The needs you have to successfully implement your program must take into account the concomitant need--at a minimum--to apprise your State LRE Coordinator of what you and your program are planning to do. You need to ascertain the degree to which your State LRE Coordinator may wish to become involved in your efforts. For example, you should see your State LRE Coordinator as the source to look to on how best to approach getting into the schools or school system you want to work with to set up the classroom assignments. The State LRE Coordinator may give you a name of the person in the school system for you to contact, or provide you with relevant information regarding that school's programs, needs, and interests. In any event, approach your State LRE Coordinator with an attitude that conveys your own interest and desire to work together on behalf of attaining mutual goals, and find out from that person how you might best do that.

When your chapter is ready to make this contact, please write or call collect the Phi Alpha Delta Public Service Center in Bethesda at (301) 961-8985, 7315 Wisconsin Avenue, #325E, Bethesda, Maryland 20814. The Center will put you in touch with the appropriate persons in your state.

The PAD LRE Coordinator in your state also needs to be involved in your planning, from the beginning, to ensure that PAD, at both the state and national level, are knowledgeable about your endeavors. Having this coordination will assist your program in gaining access to valuable state and national PAD resources and contacts. The PAD LRE Coordinator is a volunteer position. The Coordinator works closely with the Service Center and is in charge of the law-related education activities of PAD for your state. As with the State LRE Coordinator, contact the Service Center to identify the PAD LRE Coordinator in your area.

Before you make final commitments to school districts, it would be helpful if both the State LRE Coordinator and PAD LRE Coordinator could be involved in a planning meeting, at which time goals, roles and responsibilities are discussed and the timeline for your program established. With their approval, be prepared to state your cooperation with state and local LRE and school personnel.

Finally, consideration should always be given to any special relationships your chapter or law school may have with local educational or political organizations. You will also want to determine if your law school itself participates in an LRE program and if so, find out which local schools are involved and how your chapter can coordinate and cooperate.

#### Roles and Responsibilities of Law Student LRE Chairperson

Each law school chapter should name or select a Law Student LRE Chairperson for your chapter. This person will be the focal point for your chapter program and should assume the responsibilities listed below:

- (1) Set-up a planning meeting with State LRE Coordinator and PAD LRE Coordinator and discuss contacting schools, training and publicity.
- (2) Contact the Dean or representative of your law school, including your law school LRE Project Director, if applicable, to describe your program. Make certain that a copy of the letter is sent to the State LRE Coordinator and PAD LRE Coordinator and that the letter invites their cooperation in the endeavor.
- (3) Work in your PAD chapter. Include the program in recruitment of law students for PAD.
- (4) Have a training session for PAD law students on the program and invite the State LRE Coordinator and the PAD LRE Coordinator to the meeting. If they can't come ask them to provide literature about what they are doing in law-related education in the state.
- (5) Discuss at the planning meeting with the State LRE Coordinator which of you will contact the schools. You either need to contact the schools personally as per the Coordinator's advice or you need to give the schedules and information to the Coordinator to contact the schools.

(6) Contact teachers personally to arrange meeting or phone conference. At this time, select which lessons you will present, coordinate calendars and set dates for classroom presentations. Provide the teacher with a copy of the Guide.

(7) After the schools have been established, write letters to the law students with their assignments and send a copy to the teacher, and both Coordinators. With the teacher's copy point out any pre-lesson materials the teacher will need to have ready for the particular lessons being presented.

(8) Send out a press release announcing the program to local media including the two Coordinators. At the planning meeting you can talk about the sample press release and seek suggestions from both Coordinators.

(9) At the planning meeting establish with the State LRE Coordinator who should send out follow-up evaluation forms to the teachers involved. If you send them out, share the responses with both Coordinators. Also, send out an evaluation form to the law students and, again, share the results with the two Coordinators.

(10) Start working early with several people in your chapter who might be interested in heading the program when you graduate.

(11) Write thank you notes and a short report to share with all concerned, if possible.

Remember that communication is the key to a successful implementation effort. Therefore, it is important to make these contacts with state level LRE people. Also, be sure to maintain close contact with the Public Service Center for additional information and resources. You should also regularly update the PSC on your efforts and contacts.

## DO'S AND DON'TS

Here is some advice that law-related educators frequently give to lawyers and law students.

### DO

Translate "legalese" into English.

Use a variety of methods and examples.

Start where students are, and relate your presentation to their world (e.g., with a story involving young people and the law in yesterday's newspaper or on T.V.).

At the beginning, briefly tell students about your work and explain the goals of your visit.

Encourage questions.

Be realistic about the legal system. (Note its weaknesses as well as its strengths, and show students how they can help improve it).

Let students see you as a real human being. (Share your interests, concerns, and satisfactions; but don't bore them with the details of your specialty).

Use this Guide to carefully prepare your classroom presentations.

### DON'T

Lecture at students.

Use legal jargon.

Try to cover too many topics in one class period.

Talk down to student.

Tell a lot of "war stories."

Read from the text.

Let one or two students dominate the discussion. (If this starts happening, call on other students or limit the number of times one student may speak).

Think you must defend every thing about the operation of the legal system. (An unrealistic, idealized portrait of the system can increase student cynicism; a thoughtful, balanced presentation should increase understanding).

Give advice on individual legal problems.

SOURCE: The Lawyer-Teacher Partnership Program, by Dr. David M. Schimmel, Published by Phi Alpha Delta Public Service Center (1986).

## INTRODUCTION TO THE LESSONS

This Guide is based on a combination of the Texas and Minnesota models described earlier in the Guide.

Each lesson in the Guide is designed as an independent, stand-alone, instructional unit. This means that you can teach the lessons in any order. You can also teach as many, or as few, lessons as is convenient for you.

Lessons One through Five include characteristics of the Texas model, using an interactive, activity oriented approach to teaching. The Introductory Lesson has been designed to demonstrate to students that there is much to learn about the legal process when it comes to drug laws, and their enforcement. Lesson Two demonstrates the need for drug control and the nature of that control. Lesson Three demonstrates the system for scheduling drugs and the enforcement and interpretation of these laws. It also includes a study of how one drug--qualudes--was scheduled. Lesson Four deals with drug related actions, such as possession of controlled substances or drug paraphernalia. Lesson Five demonstrates the legal penalties for drug use and abuse.

Lesson Six includes a mock DWI trial demonstration, based on the Minnesota model, which allows students, acting as jurors, to apply the information presented. Note that this lesson is a mock trial demonstration, not a competition.

Some of the lessons are short, and can usually be completed in one class period. Others are longer, and may take more class time. Each lesson includes a Lesson Overview that describes the purposes of the lesson, as well as Lesson Materials and Lesson Sequence. The Guide includes both Student Handouts and Law Student/Teacher References. It contains all of the information you will need to plan for and conduct a successful lesson. The examples given are based primarily on the Uniform Controlled Substances Act, ULA, Vol. 9, adopted in 48 of the 50 states.

## LESSON ONE:

### INTRODUCTORY LESSON—WHAT'S THE LAW?

#### Lesson Overview

This Introductory Lesson will help students make a judgment regarding what they know about laws related to drug and alcohol abuse. The lesson presents specific legal information and asks students what the law should be in their view. Students are asked to reassess their knowledge of drug and alcohol laws, and write a letter presenting their personal views on the need for knowledge. The lesson is a vehicle for discussing cases of substance abuse with students, and for helping students see the need for information.

This Introductory Lesson can be taught as a general awareness lesson or as an introduction to a series of lessons which focus in more detail on drug abuse issues or a second series of lessons which include a mock trial of an alcohol case.

#### Lesson Materials

- (1) Law Student/Teacher Reference #1.1 (2 pages): The Case of Ken Smith. (Case fact pattern and description, legal information and case disposition and outcome).
- (2) Student Handouts #1.1 and 1.2 (1 page each): Two Case Studies. The Case of Tom Small and The Case of Cindy Terrell.
- (3) Law Student/Teacher Reference #1.2 (2 pages): Case study, legal information, case disposition and outcomes related to Tom Small and Cindy Terrell.
- (4) Law Student/Teacher Reference #1.3 (6 pages): Background on drug and alcohol laws.

Federal Comprehensive Drug Abuse Prevention and Control Act of 1970;  
Driving While Intoxicated (DWI) Laws; and,  
Implied Consent

- (5) Law Student/Teacher Reference: Sample Letter from a concerned citizen. (This letter may be used as a Student Handout). (Optional)

### Lesson Sequence

- Step 1 - The law school student should introduce him/herself to the students and give a brief overview of the Law-Related Education (LRE) drug/alcohol education program that the teacher and the law student have planned.
- Step 2- Begin this Introductory Lesson by asking students to make a decision on their current knowledge level regarding laws related to drug and alcohol abuse. Have students select one of the following options: very knowledgeable, knowledgeable, somewhat knowledgeable, not very knowledgeable, no knowledge at all. Students should be asked to indicate their level of knowledge as part of the student evaluation.
- Step 3- Pass out a copy or read the case of Ken Smith. Lead a class discussion using the questions on the Student Handout. Encourage participation from as many students as possible. After the discussion, present the Legal Information, Case Outcome and Disposition using the law student/teacher reference materials. Provide other current, local information as appropriate. (See Appendix "L" for "Research Model--How to Research Laws in Your State").
- Step 4- Ask students to count off from one to six. Reorganize the class into six small groups. Inform the students that they will read and discuss one of two cases. Pass out the Student Handout for the Tom Small and Cindy Terrell cases. Even numbered groups can be asked to consider the Small case while odd numbered groups focus on the Terrell case. Indicate that the groups will share their case information and discussion with the rest of the class. Provide time for small group discussion. Lead a class discussion of the two cases calling on small groups for answers to the discussion questions on the Student Handout. After the discussion of each case, provide factual legal information as well as case outcome. Share other current cases and related legal information as time permits.
- Step 5- Ask students to reconsider the decision they made about their personal level of knowledge about drug and alcohol abuse laws now that they have discussed the three specific cases and the Uniform Controlled Substances Act. Ask if students were accurate in the estimation of their personal level of knowledge. Ask students to indicate changes in, and the accuracy of their estimates, their level of knowledge as a part of the student evaluation.

Step 6- (Optional) Pass out or read the handout "Letter to the Editor from a Concerned Citizen". Explain to the students that this letter was written by one of the authors of the manual regarding her personal views. If the law student has a personal experience, along these lines, they should feel free to relate their story as well. Students could write similar letters expressing their personal views regarding the need to learn more about drug use and abuse. Have any students willing share their views with the class and discuss as appropriate.

Step 7- Close the lesson with an explanation of what, if any, additional lessons are planned as a part of the PAD IRE Drug/Alcohol Education Program.

## **The Case of Ken Smith.**

### **Case Fact Pattern and Description**

One morning a ninth grade English teacher, Ms. Evans, at Walnut Grove High School came to see the principal, Mr. Jones. She was concerned. She said a fifteen year old student, Ken Smith, had been seen, on a number of occasions surrounded by kids in the hall and in her classroom. He always had a red back pack with him and a stack of dollar bills. She thought that he was dealing drugs and wanted Mr. Jones to search his locker.

The principal, the teacher, and a school security guard went to the locker assigned to Ken. The principal took the school pass key and opened the locker and found the red back pack. He opened the back pack and discovered hundreds of multi-colored tablets and capsules, in different unmarked containers.

Ken was called to the principal's office and presented with this "evidence", by the principal and the teacher. He was furious and said, "You had no right to go into my locker without my permission. And besides, those pills are only extra samples that I received from the pharmacy, where I help out on weekends. I was not dealing. I have done nothing wrong."

### **Discussion Questions**

1. What are the facts in the Ken Smith case?
2. Can the principal open a student's locker and remove his or her belongings without the student's permission? Why? Why not?
3. Would the back pack and pills be allowed into evidence in a subsequent juvenile court hearing? Why? Why not?
4. How would the situation be different if it was a police officer rather than a principal who had searched the locker and later obtained Ken's statement?
5. What do you think the law should be in cases like that of Ken Smith?

## The Case of Ken Smith.

### Legal Information

The legal concepts covered in the Ken Smith case relate to illegal possession of drugs and search and seizure issues.

The legal information related to this case is based on the U.S. Supreme Court decision, New Jersey v. T.L.O., 469 U.S. 325 (1985). In general, the Court ruled that public school officials can conduct "reasonable" searches of students without search warrants. The ruling said teachers and administrators do not need a search warrant nor do they have to show "probable cause" to search a student suspected of violating a law or a rule of the school. The majority opinion said that a search of a student and his or her possessions is justified if school authorities have reasonable grounds for believing a law or rule is being broken.

While the principal, and any other school authority, is considered an agent of the State, the standard conduct is not as great as that for a police officer. For that reason the actions of school personnel are not restricted by the laws regarding search and seizures and those regarding obtaining of statements (i.e., Miranda rights).

### Case Disposition and Outcome

What happened to Ken?

Ken and his parents retained an attorney and appeared before a commissioner in a juvenile court hearing. The prosecutor did not attempt to prove that Ken had been dealing drugs, but charged him with possession of controlled substances without a doctor's prescription. (The pills had turned out to be dozens of different amphetamines and barbiturates--several hundred pills in all.)

The evidence (the back pack, pills, Ken's statement to the principal) was sufficient to prove the case, so Ken pled guilty. He, his parents, and his attorney emphasized that he had never been in legal trouble before, that his grades were high, and that he was generally manageable at home.

The commissioner considered that amount of drugs on a school campus to be very serious, and he committed the boy to the State Division of Youth Services, with a stay. This meant that Ken went home with his parents, but that if he were to come back to court, on any subsequent charge, the stay would be lifted and he would be sent to the state juvenile correctional facility.

Ken has not had any further legal difficulties, and is now attending college.

## **The Case of Tom Small.**

### **Case Fact Pattern and Description**

The student editor of the school newspaper at Wilson High School had arrived at the hotel where the state high school journalism convention was being held. It was a pleasant autumn evening and Tom Small, the editor, was in a party mood.

After a rushed dinner, he hurried to the hotel room where his friends and fellow staffers had already gathered. Most of the kids were drinking soda, talking and "unwinding" after a long bus ride across state.

Tom was warmly welcomed by his friends. He had a soft drink and joined the conversation. After awhile, he took out some marijuana and started to smoke. When his friend asked Tom where he had gotten the "grass", he said he had brought it with him from home. He offered to share his "pot" with his friends, but they all refused, saying they were afraid of the legal consequences.

The next week back at school, Tom was called into the principal's office. He was startled by the principal's grim look, and the presence of the newspaper's teacher-sponsor.

"Tom, I could not be more disappointed in you", said Mr. Cavanaugh, the principal. "We have learned that you took marijuana with you to the state journalism convention, used it and tried to distribute it to some of our other students. This is a very serious infraction of the school's rules. I have no other choice but to suspend you from school for ten days and to remove you from the staff of the newspaper. That is all I have to say. What do you have to say for yourself?" Tom was silent.

### **Discussion Questions**

1. What are the facts in the Tom Small case?
2. In your opinion, was the principal's punishment of Tom fair? Why or why not?
3. Are there others who might be responsible for Tom's behavior? What about his parents?
4. Does Tom have any recourse? For example, should Tom be able to appeal the principal's decision? If he should appeal the decision, do you think he would be successful in getting the decision changed? Briefly explain your answer.
5. Should the principal give any evidence of illegal drug use to the police? Why or why not?
6. What do you think the law should be in cases like that of Tom Small?

## **The Case of Cindy Terrell.**

### **Case Fact Pattern and Description**

Officer Katie Keenan, a ten-year veteran of the Police Traffic Division, was having a cup of coffee at the local diner. Suddenly, Keenan heard a loud noise, like a crash near the diner. She ran outside and saw that an old beat-up car had slammed into a new unoccupied jeep. The car's engine was still running, and the driver, a young woman, was slumped over the steering wheel.

Officer Keenan rushed over to the car. She reached inside the open window on the driver's side and turned the ignition off. Keenan noticed that the driver was still conscious, and the officer asked the driver if she was injured. In a slurred voice, the driver said, "I'm O.K." An empty beer can lay on the floor near the driver's feet. Officer Keenan asked to see the driver's license. The driver seemed to have a hard time finding her license in her purse. Finally she found it and gave it to Officer Keenan. According to the license, the driver was Cindy Terrell, sixteen years old.

Officer Keenan asked Cindy to get out of the car. This proved difficult for the young woman, as she lost her balance and stumbled against Keenan. Keenan detected the smell of alcohol from Cindy's breath. Keenan asked Cindy what had happened. Cindy looked puzzled and mumbled, "I don't know."

The officer decided to conduct some field sobriety tests. Keenan asked the young woman to put her head back, arms out straight, and put her right forefinger to her nose. Cindy had trouble maintaining her balance, and she had difficulty touching her nose. When Officer Keenan asked her to walk a straight line, Cindy stumbled and fell.

Based on her experiences with persons driving under the influence of alcohol, Officer Keenan informed Cindy that she was placing her under arrest for driving while intoxicated. Keenan then read Cindy her Miranda rights. Keenan requested that Cindy submit to a breathalyzer test to determine the alcohol content in her blood, informing her that if she refused, her driver's license could be revoked for a year. Nevertheless, Cindy refused to take the test, and with a slurred voice said, "I'm as sober as a judge."

### **Discussion Questions**

1. What are the facts in the Cindy Terrell case?
2. What evidence will probably be used in attempting to prove Cindy guilty of driving while intoxicated?
3. What is likely to happen to Cindy's privilege to drive?
4. Could Cindy lose her driver's license for one year, even if she were found not guilty of driving while intoxicated? Why? Why not?
5. Does Cindy have any rights in trying to get her driver's license returned? Briefly explain.
6. What do you think the law should be in cases like that of Cindy Terrell?

## **The Case of Tom Small.**

### Legal Information

The legal concepts covered in the Tom Small case relate to use of an illegal substance and right to an attorney issues.

Answers to the questions are based on the concept that the principal is not an agent of the State. However, it is the principal's responsibility to enforce school rules. Therefore, the principal doesn't have to bring a law enforcement officer into the questioning and probably would not want to, since the principal does not have to read the student his Miranda rights before questioning him. Tom could ask to be represented by an attorney.

### Case Disposition and Outcome

What happened to Tom?

Tom's parents decided not to appeal the principal's decision. Tom readily admitted to them that he had brought and tried to distribute the marijuana. His parents knew he had been using marijuana himself, for some time, no matter how much they had protested. They felt the principal's action might help jolt their son, and get him to stop using marijuana.

Their decision proved to be correct. Tom decided to give up illegal drugs, worked hard the last year of high school and is now in college where he is majoring in journalism and has a position on the school newspaper.

## **The Case of Cindy Terrell.**

### Legal Information

The legal concepts covered in the Cindy Terrell case relate to driving while intoxicated and implied consent issues.

Answers to the questions in the Cindy Terrell case include the fact that if Cindy refuses to take the breathalyzer test, in Missouri, for example, and many other states, her license will be revoked, even if she is not subsequently found guilty of driving while intoxicated.

The police action, arrest, and license revocation were lawful based on the following Missouri statutory language, as an example:

An arrest without a warrant by a law enforcement officer, including a uniformed member of the state highway patrol, for violation of the driving while intoxicated law or for a violation of the driving with excessive blood alcohol law is lawful whenever:

1. The arresting officer has reasonable grounds to believe that the person to be arrested has violated the above sections (whether or not the violation occurred in the presence of the arresting officers) provided; however,
2. Such arrest is made within one and one-half (1 1/2) hours after the claimed violation occurred.

### Case Disposition and Outcome

What happened to Cindy?

Cindy was charged and tried on 5 separate counts. Driving while intoxicated, possession of alcohol by a minor, consumption of alcohol by a minor, open container and reckless driving.

She and her parents retained an attorney. Her attorney stressed that Cindy was a good kid and had never been involved with alcohol before. During a pre-trial conference the Judge encouraged the Prosecutor to work out a plea bargain with Defense Counsel.

They were able to do so. Cindy pled guilty to the possession and consumption charges and the other charges were dropped. The Judge, in her sentencing, imposed 30 days in the juvenile correction facility and stayed 28 days and placed Cindy on 2 years probation. This meant that Cindy had to spend a weekend at the facility and then report regularly to her Probation Officer.

Since that time, Cindy has not been in any further trouble. She will graduate from High School this year and will be enrolling at the local Junior College in the Fall.

Cindy described her weekend at the juvenile correction facility as a "frightening experience", but that it also taught her a good lesson.

## Background on Drug and Alcohol Laws

### State Drug Laws

All the lessons regarding drug use and abuse, have been developed using the Uniform Controlled Substances Act.

As an example, in 1971, Missouri adopted the Uniform Controlled Substance Act (Chapter 195, Missouri Revised Statutes) in order to coordinate the drug laws at the federal and state levels. Missouri has also incorporated the essential provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C.A. Sect. 801 et seq.) [It should be noted that forty-eight states have adopted the Uniform Controlled Substances Act, and that, therefore, there is basic uniformity throughout the United States on which drugs should be controlled, to what degree each of the drugs should be controlled, and what constitutes a violation under the Act.]\*

Across the states there may be variation in the penalties assessed for each violation. Consequently, it is essential that, before you begin "teaching" these lessons, you research and become familiar with your own state's drug laws.

### **Federal Comprehensive Drug Abuse Prevention and Control Act of 1970**

Principal Purposes of the Act: This legislation is designed to deal in a comprehensive fashion with the growing menace of drug abuse in the United States by:

- 1) providing authority for increased efforts in drug abuse prevention and rehabilitation of users;
- 2) providing more effective means for law enforcement aspects of drug abuse prevention and control; and
- 3) providing for an overall balanced scheme of criminal penalties for offenses involving drugs. (21 U.S.C.A. Sect 801 et seq).

In Title I, the U.S. Department of Health and Human Services (HHS) has the authority to provide rehabilitation, treatment, and prevention of drug abuse through community mental health centers and public health service hospitals.

The approach of the federal act is to emphasize the concept of rehabilitation within the broader concept of penalties. The goal is to cure drug users rather than to punish them.

\* Research your own state's law. See the Uniform Controlled Substance Act for a listing of statutory citations for adopting states.

In the case of persons engaged in the illicit manufacturing or selling of controlled drugs (primarily for the profits), the bill provides severe criminal penalties. Here retributive punishment is considered not only appropriate, but necessary.

The National Institute of Mental Health, within HHS, the Drug Enforcement Administration and the Department of Justice collect, collate, and analyze data on all forms of drug abuse.

The functions of investigating the illicit manufacture, sale, or other distribution, or possession of narcotic drugs and marijuana have been transferred to the Department of Justice. Therefore, Department of Justice enforces the drug regulations after the Food and Drug Administration of HHS determines their safety and efficacy.

#### **Federal Schedules** (See Student Handouts #2.2 and #3.1)

The schedules are to be updated and republished on an annual basis. The federal criteria for inclusion in each of the five schedules is repeated verbatim, in the state statute deciding which drugs are to be included.

Also, the specific drugs listed in both the federal and the state statutes are virtually identical -- originating at the federal government level.

There are some differences. For example, there is no mention of drug paraphernalia in the federal act, so any prosecution involving those items would have to be litigated in the state courts under state laws. More background information is provided on this topic in Lesson 4.

Also, the penalties set forth in state and federal laws are distinctive (different from one another). In general the minimum federal penalties available are less severe than those available at the state level.

In addition, in every case in the federal courts, a sentence can be imposed, or a fine levied, or both. As an example, in Missouri state courts, there is no option of a fine, except in cases involving marijuana, or in cases involving Schedule III, IV, or V drugs.

For more information on the schedules and differences, please refer to Lessons 2 and 3.

## Driving While Intoxicated (DWI)

The highlights of DWI law are touched on in the following lesson for high school students. You should emphasize that, in general, all states are taking a stricter stand in an effort to get "drunk drivers" off the road, in an attempt to reduce traffic-related injuries and fatalities.

As an example of this stricter stand, in most states, if a person is convicted of, or pleads guilty to, driving while intoxicated (operating a vehicle while in an intoxicated or drugged condition), he or she shall not be granted a suspended imposition of sentence, unless placed on probation for a minimum of two years.

Also, as stated in most state statutes, the following may appear, "any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent to, subject to the provisions of said statute, a chemical test or tests of his breath, blood, saliva, or urine for the purpose of determining the alcohol or drug content of his blood, if arrested for any offense arising out of acts which the arresting officer had reasonable grounds to believe were committed while the person was driving a motor vehicle while in an intoxicated or drugged condition."

It is this implied consent to a chemical test which serves as the legal basis for revoking a person's driver's license for a period of one year, if he or she refuses to take the breathalyzer test upon the officer's reasonable request. This one-year revocation is provided for, explicitly, in most state statutes.

If a person does submit to a breathalyzer test, and the results show a .10, or higher, even .05 in some cases, concentration of alcohol in the person's blood "this shall be prima facie evidence, in most states, that the person was intoxicated at the time the specimen was taken." When introduced into evidence by the prosecution, it can be challenged by the defense "with competent evidence" (for example, challenging the reliability of the person who performed the test, or of the machinery used).

If a person is a "persistent offender," ("one who had pleaded guilty to, or has been found guilty of, two or more intoxication - related traffic offenses committed at different times within ten years of a previous intoxication, related traffic offense convention"), and is found guilty of driving while intoxicated, or driving with excessive blood alcohol content, he or she shall be guilty of a class D felony. In such a case his sentence cannot be suspended, nor can be fined in lieu of a term of imprisonment.

In summary, the only evidence necessary to convict the defendant of a violation of driving while intoxicated is the credible testimony of the police officers, and any independent witnesses, when available. Their testimony must show some or all of the following:

- defendant was unsteady;
- defendant had slurred speech;
- defendant lacked body coordination; and
- defendant had impaired motor reflexes.

On the other hand, if a defendant has been drinking excessively, and when arrested agrees to have a chemical analysis done of his or her blood, breath, saliva, or urine and it registers .10 or more, the defendant may be charged in some states with "driving with excessive blood alcohol content."

When a police officer stops and arrests a driver, believing him or her to be intoxicated, and asks the driver to take a breathalyzer test, he must also inform the driver that he has the right to refuse. However, if the driver does refuse, his or her driver's license can, automatically, be revoked for one year. Most important, that one-year revocation stands, even if the driver is never subsequently found guilty of driving while intoxicated. Whether or not the person's driver's license is revoked depends entirely upon the police officer's discretion to apply, or not to apply, for revocation. If the officer thinks it can be proven that there were reasonable grounds to stop the driver, he or she will probably request the revocation. The state official has no such discretion. He or she must revoke when a written request is received from the police officer.

**Problem:** Why do you think the legislature included the one-year revocation of a driver's license upon the driver's refusal to take a chemical test to determine his blood alcohol content?

**Answer:** Because if you are not intoxicated, you have nothing to lose, no reason to refuse. If you are intoxicated, the test will obviously help in the prosecution of your case, and sometimes it is difficult to prove a driving while intoxicated case without it. The overall purpose behind this section, as expressed by the legislature, is "to protect the public."

If a person's driver's license is revoked, he or she can ask for a hearing before a court in the county where he or she resides, or where he or she was arrested, but the only elements the judge will determine are:

- 1) Whether or not the person was arrested;
- 2) Whether or not the arresting officer had reasonable grounds to believe that the person was driving a motor vehicle while in an intoxicated condition; and
- 3) Whether or not the person refused to submit to the test.

**Problem:** Why do you think the state legislature in some states have passed both a "driving while intoxicated" and a "driving with excessive blood alcohol content" section?

**Answer:** If a person refuses to take a chemical test and, therefore, driving with excessive blood alcohol content cannot be proved, the prosecutor can go forward with driving while intoxicated; and the latter can be used to convict someone high on drugs and not alcohol--a condition that is difficult to prove through a chemical test.

## **Driving While Intoxicated For Juveniles In the Traffic Court or In Juvenile Court.**

Any person under the age of seventeen years is considered a "juvenile" in most states; and, as such, must appear in the local juvenile court for any alleged violation of local, state, or federal law that occurred before his or her seventeenth birthday.

The law has been amended, however, in the case of traffic violations, so that only alleged felony (more serious than misdemeanor) offenses go to juvenile court. All others go to the regular traffic court (municipal court).

For example, the first two offenses for "driving while intoxicated" are misdemeanors under the statutes and, therefore, for his or her first two alleged violations, the juvenile would go to municipal court. Since most juveniles will not be arrested for driving while intoxicated three or more times between their sixteenth and seventeenth birthdays, most will not appear in juvenile court for this particular offense.

There are circumstances, however, that could elevate the first or second offense for driving while intoxicated to a felony rather than a misdemeanor, for example:

- 1) if a person is seriously injured, or killed, during the violation for which the driver was arrested; or
- 2) if the violation involved leaving the scene of an accident.

If either of these alleged felonies occurs, the juvenile will appear in juvenile court. At that time a social history will be prepared by the social worker assigned to the juvenile, together with any psychological or psychiatric tests which the social worker feels would be helpful. A recommendation will be made to the juvenile judge of what, if any, programs are available within the court for this juvenile. These could include rehabilitation or educational programs.

The judge will not be restricted by any statutory requirements regarding penalties. He or she, can run the legal gamut, from taking the matter under advisement and doing nothing, to ordering:

- a) family treatment;
- b) attendance in a drug or alcohol treatment program;
- c) residence in a group home; or
- d) commitment to the state division of youth services.

The effort will be to cure any present addiction, and/or to prevent any future addiction. Rehabilitation, and not punishment, is the goal.

## Implied Consent

### Refusal to Submit To Chemical Test--Revocation of License

1. If an arresting officer requests a person under arrest to submit to a chemical test, stating his reason for the request and informing the person that his license may be revoked if he refuses to take the test, and the person under arrest refuses, no test shall be given.

If the person does refuse to submit to the test, the arresting officer, if he so believes, shall make a sworn report that he has reasonable grounds to believe that the arrested person was driving a motor vehicle upon the public highways of that state while in an intoxicated condition and that, on his request, refused to submit to the test.

After receiving the officer's report, the state official shall revoke the license of the person refusing to take the test for a period of not more than one year; or if the person arrested be a non-resident, his or her operating permit or privilege shall be revoked for no more than one year; or if the person is a resident without a license or permit to operate a motor vehicle in this state, an order shall be issued denying the person the issuance of a license or permit for a period of no more than one year.

2. If a person's license has been revoked because of a refusal to submit to a chemical test, he or she may request a petition for review before a court in the county in which he resides, or in the county in which the arrest occurred. Upon his or her request, the clerk of the court shall notify the prosecuting attorney of the county and the prosecutor shall appear at the hearing on behalf of the arresting officer. At the hearing, the judge shall determine only:

- a) whether or not the person was arrested;
- b) whether or not the arresting officer has reasonable ground to believe that the person was driving a motor vehicle in an intoxicated condition; and,
- c) whether or not the person refused to submit to the test.

3. If a judge determines any issue not to be in the affirmative, the judge shall order the reinstatement of the license or permit to drive.

4. Requests for review shall go to the head of the docket of the court wherein filed.

Dear Editor:

I wonder if your readers have ever wondered why adults are so anxious for their children not to try illegal drugs? Why some people have gone so far as to advocate the death penalty for drug dealers? Why political candidates promise to wage an all-out war on drugs and other substance-abuse? Why is there this very deep and genuine concern?

For myself, I became concerned about drug abuse because my beloved, younger brother died of a heroin overdose. The more people I speak to about substance abuse, the more I realize how alcohol and drug abuse has touched many lives in some way. We hear everyday of a friend, or a family member, or a famous idol, who has fought the battle against addiction--and either won or lost.

One of the great tragedies of drug addiction and alcoholism, particularly among teenagers, is the wasted years and the wasted talents. Frequently young athletes, who go for the momentary "high" instead of developing their bodies and skills so that they can pursue a sports career, fall by the wayside and never catch up. Creative teens (potential writers, artists, and musicians), who pursue drugs, miss out on those formative years when they could be testing and developing their talents.

By the time many of these teenagers recognize their problem and attempt to change their lives, they find their contemporaries have passed them by. They are not only behind their peers in academic success and work experience but find they lack the self-confidence and emotional maturity to try to catch up. Many never do.

We all need knowledge about substance abuse laws that have been passed, at the state and federal levels, to attempt to curb present addiction and prevent future addiction.

Questions about drug and alcohol abuse are hard to answer. Sometimes there seems to be no "right" or "wrong" answers, but information and knowledge can certainly help us find the best possible answer for ourselves.

I hope other concerned citizens, old and young, will join me in getting more information about drugs and alcohol. Considering the consequences of abuse will help us all develop a definition of responsible behavior we can live by.

I hope your readers agree.

Sincerely,

A Concerned Citizen

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## LESSON TWO: DRUG CONTROLS

### Lesson Overview

This lesson serves as an overview of some of the consequences of drug abuse, and provides students with information on who makes the decisions as to which drugs will be controlled, and the nature of that control.

### Lesson Materials

- (1) Student Handout #2.1 (1 page): provides reasons why some drugs are controlled by the government and other are not. It also poses two problems for students to complete.
- (2) Law Student/Teacher Reference #2.1 (1 page): provides suggested answers to the student problems.
- (3) Law Student/Teacher Reference #2.2 (1 page): provides information on the different ways in which a drug can be controlled or "scheduled", and the extent to which it can be scheduled. This information will be helpful in explaining the chart in (4) below.
- (4) Student Handout #2.2 (1 page): provides a chart summarizing drug scheduling in the states. (Law students may want to copy chart onto poster board or blackboard for use in discussion).

### Lesson Sequence

- Step 1 - The law school student should introduce him/herself to the students and give a brief overview of the PAD LRE Drug/Alcohol Education Program that the teacher and the law student have planned. (If you have not already done so).
- Step 2 - Begin this second lesson by referring back to the three introductory cases, or if necessary, briefly describe those cases. Ask students to identify noted and inferred consequences in those cases. Ask students what other consequences of drug and alcohol use and abuse they know about. You may want them to list these items on paper. Ask students to state consequences they have listed and write them on the board.

- Step 3 - Pass out lesson materials (Student Handout #2.1 and #2.2). Lead a class discussion using the questions on the Student Handout. Encourage participation from as many students as possible. Provide other current, local information as appropriate. (See Appendix "M" for "Research Model-How to Research Laws in Your State").
- Step 4 - Ask students to count off from one to six. Reorganize the class into six small groups. Ask the students to read and discuss addiction and consequences of drug abuse. Indicate that the groups will share their information and discussion with the rest of the class. Provide time for small group discussion. Lead a class discussion for answers to the discussion questions on the Student Handout #2.1. Share related legal information from Law Student/Teacher Reference #2.1, as time permits.
- Step 5 - (Optional) Ask students to reconsider the decision they made about their personal level of knowledge about drug and alcohol abuse laws now that they have discussed the issues of use, abuse and drug scheduling and control. As in the Introductory Lesson, ask students to indicate the changes in their level of knowledge as part of the student evaluation.
- Step 6- Close the lesson with appropriate observations and comments. Indicate the next lesson planned, if any, as a part of the PAD IRE Drug/Alcohol Education Program.

**Why are some drugs "controlled" by the State and/or Federal Government and others are not?**

The main reason that some drugs are considered "illegal" when in the hands of the ordinary citizen, without a doctor's prescription, is their potential for abuse. There is evidence that these drugs, if left on the across-the-counter market, would be used habitually by many citizens, and that such habitual use would lead to psychological and/or physical dependence on the drugs. The user would need them more and more, for less of a so-called "beneficial" effect; and soon the user would be unable to function without them, or become addicted to them.

In addition, some of these controlled drugs have no accepted medical use. These become the most highly regulated drugs classified as Schedule I drugs.

**Problem 1:**

- (a) What is your definition of an addict?
- (b) What is your definition of a drug dependent person?
- (c) What is your definition of a user?
- (d) What substances other than drugs are highly addictive? Are any of these substances regulated by the government? Should they be? (Example: tobacco; coffee; chocolate)

**Problem 2:** What are some of the serious consequences of drug use that the state legislatures and state divisions of health are trying to eliminate through enforcement of the drug laws?

### **One Definition of Drug Dependence**

One definition, used by federal legislators of a drug dependent person is "a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis." Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence."

### **Serious Consequences of Drug Abuse...A Sample List.**

Addiction

Losing job

Drug-related crimes, including stealing from family members and friends, and from the rest of society

Being absent from family gatherings and holiday celebrations

Losing ability to converse, and to care about anyone but oneself

Losing friends

Getting a divorce and related family problems (e.g. losing custody of children)

Having car accidents (causing injury and possible death)

Having car insurance premiums raised, or a policy cancelled

Facing legal difficulties (legal fees and possible convictions and punishment)

Having a felony conviction and losing certain rights as a citizen (such as voting and being certified in certain professions)

Jail

Death

Mental and physical disabilities

## Legal Information

Who makes the decision as to which drugs will be controlled, and to what extent?

There are several ways in which a drug can be "scheduled" (controlled) "re-scheduled" (changed from one category and set of penalties to another), or deleted (removed from control) in a state.

The first is through the U.S. Food and Drug Administration, where scientists, pharmacists and physicians decide jointly that a substance should be controlled based upon its proven, or potential for, abuse. Their proposed regulation is published in the Federal Register, and after a public hearing is held, it becomes part of the Federal Drug Law.

When such a federal regulation is adopted, it is automatically mailed to the State Department of Health, where it becomes part of the State's drug laws after thirty days have elapsed, unless the State Department of Health's Bureau of Narcotics disagrees and holds a hearing, and states in writing their reasons for disagreeing.

The second is that the State Department of Health can promulgate its own regulations, adding, changing, or subtracting drugs from the State Drug Law Schedules. There is a thirty-day period during which public hearings are held and differences of opinion can be aired; and, after that, the agreed upon regulations become part of the State's Narcotic Drug Act, in Missouri, for example, see Chapter 195, "Drug Regulations" of Missouri Revised Statutes.\*

The third way in which changes can be made in the Act is by Senators and Representatives in the U.S. Congress amending the Federal Drug Laws. An amendment is then automatically made part of the State Laws. In like manner, the State Legislators can amend the State Narcotic Drug Act directly, just as they can amend any statute that they have passed.

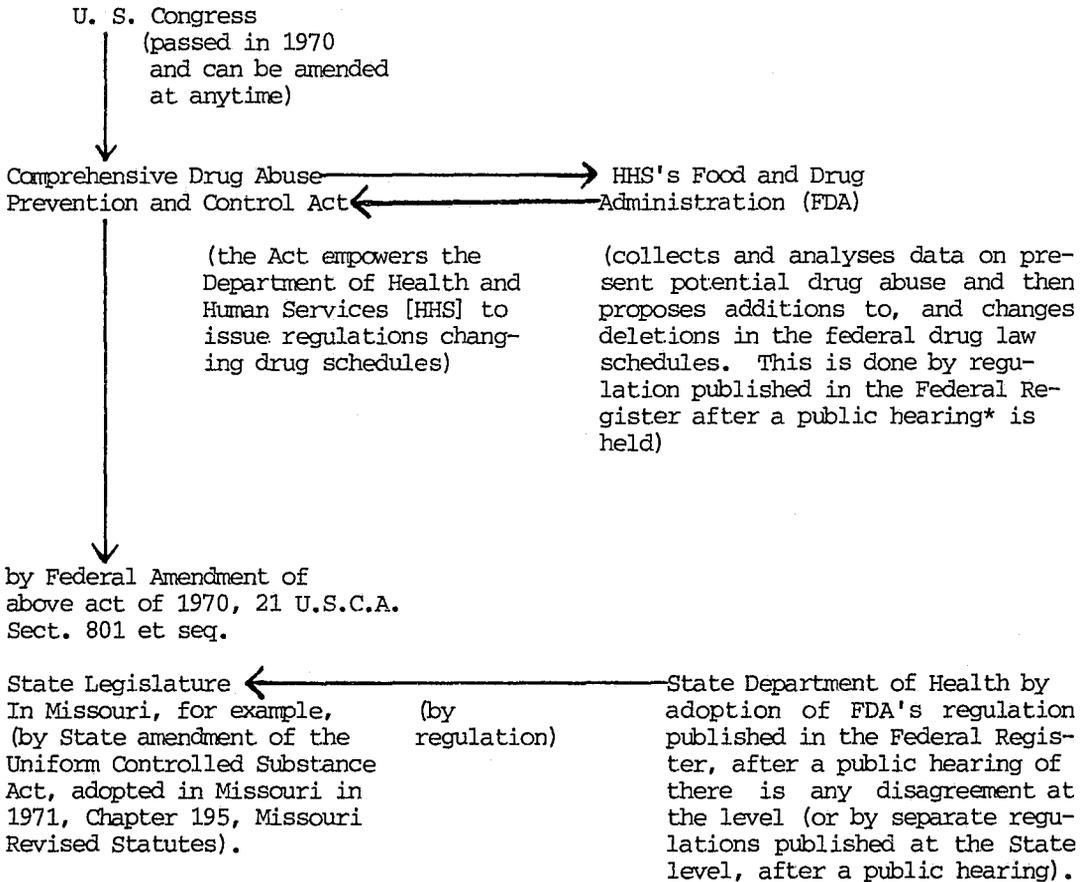
Complicated? It sounds more complex than it is in reality, for most of the scheduling is left to the U.S. Food and Drug Administration, and little of it is effected through State Legislatures or State Departments of Health. Most states attempt to have uniformity in their drug laws, although special problems in certain areas sometimes generate stronger state or local action.

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\* Research you own state's law.

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**Drug Scheduling in the States -- Ways In Which It Can Be Changed**



\*NOTE: Public hearings permit all interested parties to testify about the proposed changes in drug laws and regulations.

## LESSON THREE: DRUG SCHEDULING

### Lesson Overview

This lesson provides students with information on the rationale behind drug scheduling; information on some of the people involved in writing, enforcing, and the interpretation of drug laws; and, a case study illustrating the process of and need for drug scheduling.

### Lesson Materials

- (1) Student Handout #3.1 (3 pages): provides a basic rationale for drug scheduling and a description of the five-step scheduling system. It also includes a student problem.
- (2) Law Student/Teacher Reference #3.1 (1 page): provides answers to the student problem.
- (3) Student Handout #3.2 (1 page): lists twelve individuals that have some role in the development, enforcement, or interpretation of drug laws.
- (4) Law Student/Teacher Reference #3.2 (1 page): provides suggested role descriptions for each person listed in (3) above.
- (5) Student Handout #3.3 (2 pages): presents a case study of one drug--quaaludes. Students follow the drug from its over-the-counter sales, to its eventual banning. The case study is followed by a series of questions for the students.

### Lesson Sequence

- Step 1 - The law school student should introduce him/herself to the students and give a brief overview of the PAD LRE Drug/Alcohol Education Program that the teacher and the law student have planned. (If you have not already done so).
- Step 2 - Begin the third lesson by asking students to make a decision on their current knowledge level regarding laws related to the scheduling of drugs. Have students select one of the following options: very knowledgeable, knowledgeable, somewhat knowledgeable, not very knowledgeable, no knowledge at all. Ask students to indicate these levels of knowledge as part of the student evaluation. Include in this discussion what, if anything, they know about quaaludes.

- Step 3 - Pass out a copy of Student Handout #3.1 on Drug Scheduling and have students read it. Lead a class discussion using the questions on the Student Handout. Encourage participation from as many students as possible. After the discussion, provide other current, local information as appropriate.
- Step 4 - Ask students to count off from one to twelve. Inform the students that they will assume one of the twelve roles listed in Student Handout #3.2. Ask a student representing one of each of the twelve roles for their description of that role and compare your descriptions from Law Student Reference #3.2 with the class. Pass out Student Handout #3.3.
- Step 5 - Ask the students to develop a position statement and their answers to the questions based on their assumed role. Lead a class discussion of the roles calling on students for answers to the discussion questions in the Student Handout.
- Step 6 - Close the lesson with appropriate observations and comments. Indicate the next lesson planned, if any, as a part of the PAD LRE Drug/Alcohol Education Program.

## Scheduling Drugs

Why are drugs subdivided into five categories called "Schedules"?

Drugs which have a high likelihood to be abused (used when not medically necessary) are listed under the uniform drug laws in Schedules I and II. If a drug is included in Schedule I, it cannot be legally distributed to the public. The reason for the absolute ban:

- 1) there is a high potential for abuse; and
- 2) there is no accepted medical use in treatment of human patients in the United States (example, PCP) or lacks accepted safety for use in treatment under medical supervision (example, heroin).

A Schedule II drug can be distributed to the public, but only through a doctor's prescription which must be refilled with another, separate prescription. It is considered to have a high potential for abuse. Unlike Schedule I drugs, however, a Schedule II drug does have a currently accepted medical use in treatment in the United States, or a currently accepted medical use with severe restrictions. The abuse of these substances may lead to severe psychic or physical dependence. (For example, cocaine is currently a Schedule II drug, because it is used, among other things, by ophthalmologists in a diluted form for treatment of the eye).

Substances which are not so likely to be abused are listed in Schedules III, IV and V. They are distributed through a doctor's prescription, which frequently can be refilled a stated number of times during a stated period without a separate prescription.

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## UNIFORM DRUG LAW SCHEDULES

Drugs and other controlled substances are regulated according to the potential for abuse, whether or not they are used by the medical community and whether they can produce psychological or physical dependence. These are divided into different groups or schedules, I through V.

### SCHEDULE I

- A) The drug or other substance has a high potential for abuse.
  - B) The drug or other substance has no currently accepted medical use in treatment in the United States.
  - C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.
- C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

### SCHEDULE II

- A) The drug or other substance has a high potential for abuse.
  - B) The drug or other substance has a currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions.
  - C) Abuse of the drug or other substance may lead to severe psychological or physical dependence.
- C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

### SCHEDULE III

- A) The drug or other substance has a potential for abuse less than the drugs or other substances in Schedules I and II.
  - B) The drug or other substance has a currently accepted medical use in treatment in the United States.
- B) The drug or other substance has a currently accepted medical use of treatment in the United States.
  - C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

### SCHEDULE IV

- A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule III.
- B) The drug or other substance has a currently accepted medical use of treatment in the United States.

### SCHEDULE V

- A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule IV.
- B) The drug or other substance has a currently accepted medical use in treatment in the United States.
- C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.

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**Problem:** In which of the categories ("Schedules") above would you place the following drugs? Why?

- a) Heroin
- b) Methadone
- c) Amphetamines (Stimulants)
- d) Marijuana
- e) Barbiturates (Depressants)
- f) Quaaludes
- g) Cocaine

**Answers to Problem on Page 55.**

- a) Heroin (I)
- b) Methadone (II)
- c) Amphetamines (II and III)  
(Stimulants)
- d) Marijuana (I)
- e) Barbiturates (II, III, and IV)  
(depressants)
- f) Quaaludes (I)
- g) Cocaine (II)

Drugs can be reviewed and reclassified at any time. Law students will need to research the latest statutes and regulations to be certain this information is current.

**Problem:** These are some of the people involved in writing, enforcing, or interpreting a State's Drug Laws. Briefly describe the role you were assigned. Fill in other descriptions as discussed.

Pharmacist:

Physician:

Legislator:

The Public:

The Media:

Police Officer:

Lawyer:

Judge:

Jury:

Defendant:

Prosecutor:

Defense Attorney:

**Answer:** These are some of the people involved in writing, enforcing, or interpreting a State's Drug Laws.

**Pharmacist:** Fills prescriptions; helps decide which drugs shall be controlled through U.S. Food and Drug Administration and State Department of Health.

**Physician:** Writes prescriptions; helps decide which drugs shall be controlled through U.S. Food and Drug Administration and State Department of Health.

**Legislator:** State and federal lawmakers pass and amend laws.

**The Public:** You and I, through public pressure, can get the government to change laws, or agencies to adopt new regulations.

**The Media:** Through news articles, can alert U.S. Food and Drug Administration officials, federal and state legislators, and the public of a need for change.

**Police Officer:** Arrests violators of the law, prevents crime, and assists in providing legal awareness and information.

**Lawyer:** Drafts regulations and statutory amendments; and serves as a judge, prosecutor, or defense attorney in Court cases.

**Judge:** Hears and may determine the case of person(s) in a court of justice.

**Jury:** A group of persons, numbering twelve, legally selected to inquire into any matter of fact, and to render their verdict according to the evidence in the case.

**Defendant:** A person required to answer for his alleged actions in a criminal court.

**Prosecutor:** One that prosecutes another for a crime in the name of the government.

**Defense Attorney:** Counsel arguing in support, or in justification, or denial of a defendant's alleged crime(s).

This is a partial list. In addition, a state's governor, for example, can sign a drug bill into law. There are obviously many different ways to elaborate on this lesson.

## Introduction to Quaaludes: "Case History"

In an effort to understand better the government's scheduling of drugs, a case history of one drug--quaaludes--is included. You will follow the drug from its over the counter sales, to its control, to its reclassification into the most restricted schedule, and therefore banned. You will see that the drug was highly abused; and yet, after a number of coordinated efforts by legislators, police, and the courts, it was eventually eliminated from use in the United States.

### Case History

The following is a story of the rise and fall of one drug, methaqualone, or as it was more popularly known, quaaludes.

In 1965, quaaludes were introduced into the United States over-the-counter market, primarily as an aide for sleeping. By the early 1970's, those who abused drugs, had discovered quaaludes and were "popping" them for their euphoric qualities--a "high". Because they were easily accessible and inexpensive, they rapidly became the number one choice of the drug culture. Middle-class white women, black inner-city youth, and students on college campuses, all started using this drug.

Soon the statistics regarding quaaludes proved alarming. Emergency room visits, overdoses (deaths), and auto fatalities linked to quaalude usage rose, dramatically. In 1973, the federal government stepped in and classified methaqualone as a Schedule II drug (like morphine and codeine). Now, you could not get the drug without a doctor's prescription, and could not get a refill without a new prescription.

About this time, during a one-year period, approximately seven tons of methaqualone, were manufactured domestically. Although quotas had been imposed on the importation of the drug from various foreign countries (for example, Germany, Hungary, Austria, and China), they had begun shipping methaqualone manufactured in their countries (approximately 120 tons a year) to factories in Columbia, South America, where it was pressed into pills and then smuggled into south Florida.

As the fatalities linked to quaalude abuse continued to rise, the federal government waged a war on several fronts. It entered into international agreements that resulted in:

- 1) Colombia banning the importation of the drug into their country;
- 2) West Germany and Austria passing laws strictly controlling their manufacture of the drug;

- 
- 3) Hungary banning the drug completely; and
  - 4) Later China, Switzerland, and India also adopting strict controls.

In the United States, federal quotas for its production were drastically cut, and some states banned its sale completely.

Then, in short order, the largest U.S. producer stopped its production; and the U.S. Congress reclassified methaqualone as a "Schedule I" drug, making it impossible to obtain legally, even through a doctor's prescription.

Simultaneously, local police and federal drug agents successfully prosecuted sham clinics (that had been set up as distribution sites for quaaludes). Also, federal prosecutors attacked the last remnants of international drug smuggling rings dealing in quaaludes.

This story of a joint onslaught against one drug shows how a coordinated effort by legislators, police, and the courts, at the international, federal, state and local levels, can get the job done. The drug--quaaludes--now is virtually unknown to members of the present drug culture.

Answer the following questions:

- 1) What was the original medical use of quaaludes?
- 2) When you were born, how were quaaludes classified? Could you buy quaaludes over the counter or would you need a doctor's prescription?
- 3) What are some reasons to explain why the government reclassified quaaludes?
- 4) Why and how were foreign governments used to help combat quaalude abuse?
- 5) Briefly describe how this type of coordinated effort might be used against other harmful drugs.

## LESSON FOUR: CONDUCT AND ACTIONS

### Lesson Overview

This lesson provides students with information on specific drug-related conduct and actions that are prohibited by laws. It gives students the opportunity to rule on a drug possession case and report their decisions to the class, with their reasoning.

### Lesson Materials

- (1) Student Handout #4.1 (1 page): provides the actual language from Missouri drug laws (to be used as an example, research your own state's laws) regarding unlawful activities.
- (2) Law Student/Teacher Reference #4.1 (2 pages): provides background information on unlawful activities related to drug paraphernalia and two additional student problems. This background information will be used to introduce and discuss the student problems.
- (3) Law Student//Teacher Reference #4.2 (2 pages): introduces a student problem involving a series of five "possession" cases. It provides information you will need, to introduce the student problems, and to answer each of the case-related questions, in Student Handout #4.2.
- (4) Student Handout #4.2 (3 pages): presents students with information on five possession cases.

### Lesson Sequence

- Step 1 - The law school student should introduce him/herself to the students and give a brief overview of the PAD LRE Drug/Alcohol Education Program that the teacher and the law student have planned. (If you have not already done so).
- Step 2 - Begin the fourth lesson by asking students to make a decision on their current knowledge level regarding laws related to search and seizure and arrest in drug possession cases. Have students select one of the following options: very knowledgeable, knowledgeable, somewhat knowledgeable, not very knowledgeable, no knowledge at all. Ask students to indicate these responses as part of the student evaluation.

- Step 3 - Pass out a copy and have students read Student Handout #4.1. Lead a class discussion using the Problem on the Student Handout #4.1 and from Law Student/Teacher Reference #4.1. Encourage participation from as many students as possible. After the discussion, present the background information using the law student/teacher reference materials. Provide other current or local information as appropriate.
- Step 4 - Ask students to count off from one to five. Reorganize the class into five small groups. Inform the students that they will read and discuss one of the five cases (assign each group their corresponding case number), acting as Appeals Court Judges. Pass out Student Handout #4.2 which includes the problem for each of the five cases. Indicate that the groups will share their information and discussion with the rest of the class. Provide time for small group discussion. Each group should report the facts, their decision and reasoning for their assigned case. Lead a class discussion of the five cases calling on the small groups for answers to the discussion questions in the Student Handout. After the discussion of each case, provide factual legal information as well as case outcome. Share other current cases and related legal information as time permits.
- Step 5 - Ask students to reconsider the decision they made about their personal level of knowledge about drug possession laws now that they have discussed specific cases. Ask if students were accurate in the estimation of their personal level of knowledge. Ask students to indicate any changes in their level of knowledge as a part of the student evaluation.
- Step 6 - Close the lesson with appropriate observations and comments. Indicate the next lesson planned, if any, as a part of the PAD LRE Drug/Alcohol Program.

**An Example of Actions Prohibited by A State's Laws...The State of Missouri.**

What actions are prohibited by the Missouri\* Drug Laws?

Section 195.020 "It is unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, distribute, or compound any controlled or counterfeit substance, except as authorized in sections 195.010 to 195.030"

What do those terms mean, and who decides their meaning?

First, you can look in Section 195.010 of the Missouri Narcotic Drug Act, entitled Definitions. There, the State legislators have spelled out the meaning of many of the most important terms used in the Act.

Second, you can read the cases decided by the Missouri courts, many of which are listed at the end of each section in the Act.

For example the term "sale" is defined in Section 195.010 as including "barter, exchange, or gift, or offer therefore..."

**Problem:** Why do you think the Missouri Legislature defined "sale" so broadly as to include any transference of ownership of a controlled drug, regardless of whether or not money changed hands?

On the other hand the terms "possess" and "have under his control" are not included among the definitions in Sect. 195.010. Instead, over the years they have been given meaning through a series of Court cases. A sampling of these cases is included in the following problem that you will be answering.

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\*Discuss your state's law with Law Student presentors.

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## Background Information

In addition to the subsection making unlawful the possession, sale, etc., of any controlled or counterfeit substance, there are a number of subsections referring to the illegal use or possession, or delivery, or advertisement, of drug paraphernalia.

The term "drug paraphernalia" has been defined as: "all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, sorting, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or an imitation controlled substance in violation of this chapter."\*

The language is both complex and specific, in an attempt to cover every contingency. The first terms refer to the cultivation or manufacture of illegal drugs; the last terms from "sorting, containing", etc. on to, the use or possession of illegal drugs. The latter terms are the ones which will interest high school students the most.

The language of the subsection includes the following guide for the court in interpreting the term "drug paraphernalia". In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- a) Statements by an owner, or by anyone in control of the object, concerning its use;
- b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance or imitation controlled substance;
- c) The proximity of the object, in time and space, to a direct violation of this Chapter;
- d) The proximity of the object to controlled substances or imitation controlled substances;
- e) The existence of any residue of controlled substances or imitation controlled substances on the object;
- f) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of any owner, or of anyone in control of the object, as to a direct violation of this Chapter shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia;

- g) Instructions, oral or written, provided with the object concerning its use;
- h) Descriptive materials accompanying the object which explain or depict its use;
- i) National or local advertising concerning its use; and
- j) The manner in which the object is displayed for sales.

#### Optional Student Problems

**Problem:** Brainstorm with the students and make a list on the chalkboard of at least ten different, commonly-known items of drug paraphernalia.

Then have them volunteer, giving examples of any two of the criteria listed in the guide for court interpretation for each of the examples listed on the board. (Example: a hypodermic needle, with heroin residue which was found on a table near the defendant, who was arrested for possession of a controlled substance.)

**Problem:** Write on the board several of the longer, more complicated examples of how to prove an item is drug paraphernalia, and then have the students attempt to explain the statutory meaning, word for word. Then have them rewrite each criteria in their own language--using simple, clear words.

In this way they will learn to read a statute, and have an opportunity to write a statute in their own words. Some states have even enacted "plain English" laws in order to better explain state statutes. Students may wish to research their state law to see if their drugs laws are written in plain English.

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\* Research you own state's law.

## Introduction to Problem

Students role play as Appeals Court Judges.

Keep in mind the role discretion plays in any court decision, at the trial or appeals level. In drug decisions in particular there are many gray areas.

Students should be urged to think for themselves and not to look for "the right answer." However, whatever decision they make concerning possession, should have reasons to back it up. The livelier the discussion, the better.

At the end of the discussion of each case, tell the students whether or not the court of appeals upheld the lower court conviction, and why or why not.

## Answers to Student Handouts (Handouts follow)

### I. State v. McCurry, 587 S.W. 2d 337 (Mo. App. 1979).

"Possession?" - Yes.

- Drugs were "in plain view;"
- Drugs were found in the defendant's bedroom, in a house he owned jointly;
- Defendant's home was known site for drug sales as undercover police were aware of it and had come and bought drugs from the defendant before.

### II. State v. Jackson, 576 S.W. 2d 756 (Mo. App. 1979).

"Possession?" - Yes.

- Defendant was standing two feet from a kitchen table, upon which--"in plain view"--were drugs and drug paraphernalia;
- The apartment was occupied, jointly, by him and by his girlfriend.

### III. State v. Corley, 682 S.W. 2d 380 (Mo. App. 1982).

"Possession?" Yes.

- The proximity of the drugs to the defendant;
- The evidence of prior drug transactions;

- No one else in the bedroom with the defendant when the drugs were found.

IV. State v. Barber, 635 S.W. 2d 342 (Mo. 1982).

"Possession?" No.

- There was no evidence of whether the defendant resided at that address, or how long he had been there;
- There was no actual possession of the drugs, and no evidence presented that the defendant exercised any control over them;
- There were seven other adults in the house at the time;
- There was no evidence that the defendant had regular use, whether exclusive, or joint, of that bedroom, or of any other part of the residence.

V. State v. West, 559 S.W. 2d 282 (Mo. App. 1977).

"Possession?" No.

- There was no evidence that the defendant had touched the box, or even entered the trunk;
- Defendant did not have exclusive control of the car (brother and boyfriend use it too);
- The car keys had been left at the mobile home while the defendant was in custody overnight;
- Perhaps the most compelling fact indicating lack of knowledge of drugs was defendant's conduct. She had given permission for the police to search her car, and two hours had elapsed since her release, time enough for her to get the drugs out of the trunk if she knew that they were there;
- The only evidence that implicates the defendant was her ownership of the car, and that, by itself, is not enough.

## You Be The Judge!

**Problem:** You are a judge sitting on the State Court of Appeals. A series of cases involving "possession" of a controlled substance are before you.

In each of the following cases the defendant was found guilty in the lower court, and is appealing that conviction.

Read the facts in each case and then decide whether or not there was sufficient evidence from which "reasonable" persons could have found the defendant guilty.

In order for "possession" of drugs to have been proven, there need not be actual possession. Constructive possession is enough. This means, for example, drugs a few feet away from the defendant in "plain view" may be sufficient to prove that the drugs belonged to the defendant. In any case the evidence must have shown that the defendant was aware of the presence and nature of the substances in question.

### I. State v. McCurry

- Two undercover police go to defendant's home to buy heroin;
- Defendant comes to the door of the house he jointly owns, and recognizing the officers as prior buyers, says he'll be right back with the drugs;
- Defendant goes into the bathroom and escapes through the window.
- In a later search of the house police find, on a dresser top, in the defendant's bedroom a quantity of heroin.

Was the defendant in "possession" of the drugs?      Yes \_\_\_\_\_ No \_\_\_\_\_  
Why?

### II. State v. Jackson

- Police officers go to an apartment occupied, jointly, by defendant and his girlfriend;
- Girlfriend lets police into the apartment;
- Police enter the kitchen and find defendant, dressed in his bathrobe, standing about two feet from a table on which there is drug paraphernalia, and eighteen capsules of heroin;
- Defendant claims to have had no knowledge of the items and says he was awakened from sleep by the police knocking at the door;

- 
- A further search of the apartment finds sixty additional capsules of heroin in a bathroom closet.

Was the defendant in "possession" of the drugs? Yes \_\_\_\_\_ No \_\_\_\_\_  
Why?

### III. State v. Corley

- Police go to defendant's home, with a search warrant based upon information provided by a "reliable confidential informant;"
- They find defendant alone in a bedroom upstairs, seated on the bed with a revolver to his immediate right;
- Beside the bed is a chair containing a plate with a quantity of heroin and two measuring spoons;
- On top of the dresser in the room are syringes, a small bag of marijuana, a pipe with marijuana in the bowl, and a roach clip;
- The police had had prior drug transactions at this address, while defendant was there.

Was the defendant in "possession" of the drugs? Yes \_\_\_\_\_ No \_\_\_\_\_  
Why?

### IV. State v. Barber

- At 4:40 a.m. police officers enter a residence owned by Donald Ray Ward with an arrest warrant for Elizabeth Ward, who is wanted by the police in another jurisdiction;
- In one bedroom they find Donald Ward, Carol Ward, and her child;
- In another bedroom they find the defendant, D. Barber; his wife, and Gregory Dorsey;
- In this second bedroom they discover over 1,000 pills and capsules, stacked in individual piles on the floor by color, size, and type. Other rooms also had drugs, but not in this quantity;
- No drugs are found on the defendant's person.

Was the defendant in "possession" of the drugs? Yes \_\_\_\_\_ No \_\_\_\_\_  
Why?

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V. State v. West

- Defendant and several friends are having a party at a mobile home;
- The home is rented by someone other than the defendant;
- The defendant has been staying in the mobile home for a few days prior to the party;
- Sheriff obtains a search warrant for the mobile home, including defendant's possession;
- The next morning the sheriff asks if the defendant would consent to the search of her automobile, located near the mobile home;
- She agrees to the search and is released;
- Two hours later, after she has returned to the mobile home, the police search her car and find a small box in the trunk of the car. The box containing several pills of the controlled substance, phencyclidine, "PCP".

Was the defendant in "possession" of the drugs? Yes \_\_\_\_\_ No \_\_\_\_\_  
Why?

## LESSON FIVE: LEGAL PENALTIES

### Lesson Overview

This lesson provides students with information on the legal penalties for drug use and abuse. The lesson includes materials and information, based on Missouri law.\*

### Lesson Materials

- (1) Law Student/Teacher Reference 5.1 (2 pages): provides background information on the range of penalties that can be assessed for each violation of Missouri drug laws, as well as the forfeitures imposed as a result of a violation. This information can be used to introduce the lesson, and in discussing the student handouts.
- (2) Student Handout #5.1 (1 page): introduces the concept of penalties and provides students with hypothetical problem to solve.
- (3) Law Student/Teacher Reference #5.2 (1 page): provides suggested answers to the problem in (2) above.
- (4) Student Handout #5.2 (1 page): provides students with a chart outlining the range of penalties for violation of Missouri drugs laws.

### Lesson Sequence

- Step 1 - The law school student should introduce him/herself to the students and give a brief overview of the PAD LRE Drug/Alcohol Education Program that the teacher and the law student have planned. (If you have not already done so).
- Step 2 - Begin the fifth lesson by asking students to make a decision on their current knowledge level regarding laws related to penalties for drug and alcohol abuse. Have students select one of the following options: very knowledgeable, knowledgeable, somewhat knowledgeable, not very knowledgeable, no knowledge at all. Ask students to indicate their level of knowledge as a part of the student evaluation.
- Step 3 - Pass out a copy of Student Handout #5.1. Permit time for students to read. Lead a class discussion using the questions on the Student Handout. Encourage participation from as many students as possible. After the discussion, present the legal information using the law student/teacher reference materials. Provide other current or local information as appropriate. (See Appendix "M" for "Research Model-How to Research Laws in Your State").

- Step 4 - Inform the students that they will read and discuss Student Handout #5.1, regarding penalties for abuse. Pass out Student Handout #5.2, "Example for State Drug Penalties". Indicate that the students will share their discussion with the rest of the class. Lead a class discussion of the Handouts calling on the individual students for answers to the discussion questions in the Student Handout. After the discussion, provide factual legal information. Share other current cases and related legal information as time permits.
- Step 5 - Ask students to reconsider the decision they made about their personal level of knowledge about penalties for drug abuse laws now that they have discussed specific laws and the Missouri Narcotic Drug Act. Ask if students were accurate in the estimation of their personal level of knowledge. Ask students to indicate any changes in the level of knowledge as a part of the student evaluation.
- Step 6 - Ask students to take a personal position which they are able to support with facts and personal views regarding current penalties for drug abuse in their state. In developing these positions, remind students that they should consider how their position might impact and affect themselves, their family and friends, and community. Lead a discussion with the students about whether or not these penalties are a deterrent to drug and alcohol use.
- Step 7 - Close the lesson with appropriate observations and comments. Indicate the next lesson planned, if any, as a part of the PAD LRE Drug/Alcohol Education Program.

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\* Missouri law is used as an example throughout this lesson. Research your own state's law.

### Legal Information

What factors result in a greater penalty being assessed?

The range of penalties that can be assessed for each violation of the Missouri Narcotic Drug Act are listed in Section 195.200 (for Schedule I and II drugs) and Section 195.270 (for Schedule III, IV and V drugs). These penalties have been determined by the Missouri State Legislature and can be amended (changed) at any time.

In the summary, the following factors dictate what range of penalties will be assessed:

- 1) violations involving a Schedule I or II drug are considered more serious than those involving a III, IV, or V drug;
- 2) "sale" or distribution of, or intent to sell or distribute, any drug is considered more serious than "possession" of one; and
- 3) a case involving a second--or third--time offender is considered a more serious matter than one involving a first-time offender.

By statutory provision, there is no possibility of parole, probation, or a suspended sentence for anyone convicted of possession of a Schedule I or II drug, who has two or more prior drug convictions in federal or state courts; or, anyone convicted of selling a Schedule I or II drug, who has one or more prior felony convictions.

As another illustration, possession of a Schedule I or II drug can result in a prison term of up to twenty years. The maximum sentence the defendant can receive for possession of a Schedule III, IV, or V drug is ten years. For sale of a Schedule I or II drug, a life term can be assessed; for sale of a Schedule III, IV, or V drug, only up to ten years.

The reason for the above discrepancy is obvious. There is an absolute ban on Schedule I drugs, and severe restrictions on Schedule II drugs because of their high potential for abuse and because of their lack of or limited use by the U.S. medical community. The other categories of drugs are prescribed frequently, and have less potential for abuse.

All violations of the Missouri Narcotic Drug Act, as described in Sect. 195.200 and 195.270, are felonies, except for the following violations involving marijuana:

- 1) first offenses of possession of 35 grams or less of marijuana, or 5 grams or less of hashish (a misdemeanor); and
- 2) first offenses of delivery of less than 25 grams of marijuana, or 5 grams of hashish, for no remuneration (a misdemeanor).

Therefore, you should note that, even though marijuana is listed as a Schedule I drug, the offenses set out specifically in Sect. 195.200 involving possession of small amounts of marijuana and hashish carry a much lighter maximum sentence (one year--instead of twenty years or life and feature the option of a fine of up to \$1,000) for first conviction.

In all cases of Schedule I and II drugs involving prior offenders, the decision regarding punishment is taken away from the jury and given to the judge. The judge alone decides whether the defendant will be sent to the state prison system for the minimum number of years, the maximum, or anywhere in between. The sentencing hearing becomes crucial for the defendant and his or her attorney.

### **Forfeitures**

Section 195.410. In addition to the imposition of a prison term, a defendant faces the forfeiture (permanently losing possession) of money and property relating to the violation.

The defendant gives up to the state:

- 1) any controlled drugs or imitation controlled drugs seized by the authorities;
- 2) any property (such as houses, cars, jewelry, art work, guns, etc.), gained in exchange for controlled substances, or any proceeds that can be traced to such an exchange; and
- 3) any money found in close proximity to the exchange.

Section 195.145. Also it is presumed that any vehicle (car or truck), vessel (boat), or aircraft used in any violation of the Narcotic Drug Act belongs to the defendant. For this reason it, too, is forfeited to the state, where after a court hearing declaring and proving the property it a common nuisance, it will be sold at a public or private auction. Any profits from the sale of this property goes into the general revenue fund of the State of Missouri. This statute has recently been upheld.

Hampton v. Thurmand, 619 S.W. 2d 310 (Mo. 1981).

If an innocent party, however, owns the vehicle or craft, he or she can attend the court hearing and present evidence proving his or her ownership, and plead ignorance of the illegal use of the property. The court shall render judgment on such matters after hearing all of the evidence by interested parties.

## Penalties

What is a penalty? A penalty is the price you pay for not following the rules. It is the punishment you receive for going against what is expected of you by others. There are many different kinds of penalties. For example, there are penalties for violating rules in sports. In basketball, if a player knocks the ball out-of-bounds, the other team gains possession of the ball. This is a fairly minor offense, so the penalty is fairly minor too. On the other hand, if a player from one team fouls a player from the opposing team, the opposing team gets to shoot the ball without any interference. This is a harsher penalty because it was a more serious violation.

The same is true of penalties for violating drug laws. More serious violations usually result in greater penalties. The penalty assigned for a violation of a drug law depends in part on the circumstances of the case. For example, think about the following problem.

**Problem:** You are the judge officiating at a sentencing hearing after the defendant, age 18 was found guilty of a cocaine related crime, under the Missouri Narcotic Drug Act. Other than noting:

- a) whether there was a "sale", or "possession";
- b) what type of substance was involved (Schedule I or II--or the lesser abusive substances included in III, IV and V); and
- c) whether this was a first-time offender or a repeat offender,

what other information would you consider important in making this decision? (Remember, for example, that if this were a first-time offense involving possession of a Schedule I or II drug, you could assess a punishment of anywhere from six months to one year in the county jail--up to twenty years in the state prison).

**Answer to Problem** on Page 81. (Student Handout #5.1)

The following factors might be considered by the judge in coming to a decision:

1. Past history with juvenile or adult courts (all offenses);
2. Past treatment programs and any present rehabilitation programs;
3. Past traffic records;
4. Academic records;
5. Employment records;
6. Where he or she is living (with whom, how long and how successfully);
7. Past family history;
8. Whether he or she has any dependents (children, etc.); and
9. Present attitude (any hope for change?).

**NOTE:** These factors are given as suggestions only. Some states list such factors by statute. Research your own state's law.

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**Example of a State's Drug Penalties**

|   | <b>Schedule I or II</b><br>(other than Marijuana)                        | <b>Marijuana</b>   |
|---|--|--|
| Possession,<br>1st Drug Offense                         | Up to 20 years (State Prison),<br>or 6 months to 1 year (County<br>Jail) | (Up to 35 grams of marijuana<br>or up to 5 grams of hashish)<br>Up to 1 year (County Jail), or<br>fined \$1,000, or both.                                      |
| Possession,<br>2nd Drug Offense                         | 5 years to life (State Prison)   | (2nd possession, or 1st offense<br>of more than 35 grams of mari-<br>juana or more than 5 grams of<br>hashish)   |
| Possession,<br>3rd Drug Offense                         | 10 years to life (State Prison)  | Up to 5 years (State Prison),<br>or up to 1 year (County Jail),<br>or \$1,000 fine, or both.   |
| Selling,<br>(giving or delivering),<br>1st Offense      | 5 years to life (State Prison)   | 1st offense and delivering less<br>than 25 grams of marijuana, or<br>less than 5 grams of hashish)<br>Up to 1 year (County Jail), or<br>up to \$1,000 or both. |
| Selling,<br>(giving or delivering),<br>2nd Drug Offense | 10 years to life (State Prison)  |  |

**Schedule III, IV, and V**

|   |  |
|---|--|
| Possession or Sale,<br>1st, or subsequent offender* | 2 years to 10 years (State Prison),<br>or up to 1 year (County Jail) or<br>fine of up to \$1,000, or both. |
|---|--|

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\*Many states have passed "prior and persistent" offender laws that increase the potential sentence for persons who have been found guilty of two or more felony crimes. Therefore, someone convicted of selling a Schedule III drug might be sentenced to a much longer term (e.g., 15-30 years, or in some jurisdiction life in prison) if the defendant is a "prior and persistent" offender.

## LESSON SIX: MOCK DWI TRIAL DEMONSTRATION

### Lesson Overview

This lesson provides students with background information on state laws regarding "driving while intoxicated" (DWI), and an opportunity to apply the information in a mock trial, while acting as jurors.

### Lesson Materials

- (1) Law Student/Teacher Reference #6.1 (4 pages): provides background information on state laws regarding "driving while intoxicated." The information can be used to introduce the lesson and the mock trial. The information also provides a student discussion problem.
- (2) Student Handout #6.1 (1 page): provides students with information and a student problem.
- (3) Law Student/Teacher Reference #6.2 (1 page): provides suggested answers for the student problem in (2) above.
- (4) Student Handout #6.2 (1 page): provides students with a pre-performance test. Ask students to complete the test before the mock trial demonstration.
- (5) Student Handout #6.3 (1 page): provides students with a synopsis of the trial presentation. Students will read the Handout prior to the mock trial demonstration.
- (6) Student Handout #6.4 (4 pages): provides students with written statements of the testifying witnesses in the mock trial demonstration. Students will read both statements.
- (7) Law Student/Teacher Reference #6.3 (4 pages): provides objectives, goals and an implementation plan for the mock trial demonstration.
- (8) Student Handout #6.5 (9 pages): (optional) provides students with background reading material on the American criminal justice system, the judicial system, and the law regarding DWI.
- (9) Law Student/Teacher Reference #6.4 (2 pages): provides the answers for both the pre and post-performance tests.
- (10) Law Student/Teacher Reference #6.5 (2 pages): provides a restatement of the DWI laws from the "Minnesota Model".\*
- (11) Student Handout #6.6 (1 page): provides students with a post-performance test. Students will complete this test after the mock trial demonstration.

(12) Law Student/Teacher Reference #6.6 (17 pages): provides performance materials for law students to use in the mock trial demonstration.

(13) Law Student/Teacher Reference #6.7 (1 page): provides a list of sample objections for use during the mock trial demonstration.

### Lesson Sequence

- Step 1 - The law school student should introduce him/herself to the students and give a brief overview of the PAD LRE Drug/Alcohol Education Program that the teacher and the law student have planned. (If you have not already done so).
- Step 2 - As an optional activity, either before or during your visit, have the students read the background reading material in Student Handout #6.5. Follow this reading with appropriate discussion.
- Step 3 - Begin the sixth lesson by asking students to make a decision on their current knowledge level regarding laws related to alcohol use and DWI. Have students select one of the following options: very knowledgeable, knowledgeable, somewhat knowledgeable, not very knowledgeable, no knowledge at all. Ask students to indicate their level of knowledge as a part of the student evaluation.
- Step 4 - Pass out a copy or read Student Handout #6.1, discuss the answers to the problem. Have the students take the pre-test. Discuss the answers with the class. Encourage participation from as many students as possible. Provide other current or local information as appropriate. (See Appendix "M" for "Research Model-How to Research Laws in Your State").
- Step 5 - Divide the students into jury pools of six to twelve students and discuss the Voir Dire issues. After empaneling the class as jurors conduct the mock trial demonstration according to the outline in Law Student/Teacher Reference #6.3.
- Step 6 - After the mock trial demonstration, ask students to reconsider the decision they made about their personal level of knowledge regarding laws related to alcohol use and DWI. Ask if students were accurate in the estimation of their personal level of knowledge. Ask students to indicate any changes in their level of knowledge as a part of the student evaluation.
- Step 7 - Close the lesson with appropriate observations and comments. Indicate the next lesson planned, if any, as a part of the PAD LRE Drug/Alcohol Education Program.

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\* Based on "Minnesota Model", research your own state's law.

Law Student/Teacher Reference #6.1  
(4 pages) (Repeated from Lesson One,  
as reinforced discussion, if needed,  
or if Lesson One was not conducted).

### **Driving While Intoxicated For Juveniles in the Traffic Court or in Juvenile Court.**

Any person under the age of seventeen years is considered a "juvenile" in most states; and, as such, must appear in the local juvenile court for any alleged violation of local, state, or federal law that occurred before his or her seventeenth birthday.

The law has been amended, however, in the case of traffic violations, so that only alleged felony (more serious than misdemeanor) offenses go to juvenile court. All others go to the regular traffic court (municipal court).

For example, the first two offenses for "driving while intoxicated" are misdemeanors under the statutes (for example, first offense: a class B misdemeanor; second offense: a class A misdemeanor), and, therefore, for his or her first two alleged violations, the juvenile would go to municipal court. Since most juveniles will not be arrested for driving while intoxicated three or more times between their sixteenth and seventeenth birthdays, most will not appear in juvenile court for this particular offense.

There are circumstances, however, that could elevate the first or second offense for driving while intoxicated to a felony rather than a misdemeanor, for example:

- 1) if a person is seriously injured, or killed, during the violation for which the driver was arrested; or
- 2) if the violation involved leaving the scene of an accident.

If either of these alleged felonies occurs, the juvenile will appear in juvenile court. At that time a social history will be prepared by the social worker assigned to the juvenile, together with any psychological or psychiatric tests which the social worker feels would be helpful. A recommendation will be made to the juvenile judge of what, if any, programs are available within the court for this juvenile.

The judge will not be restricted by any statutory requirements regarding penalties. He or she, can run the legal gamut, from taking the matter under advisement and doing nothing, to ordering:

- a) family treatment;
- b) attendance in a drug or alcohol treatment program;
- c) residence in a group home; or
- d) commitment to the State Division of Youth Services.

The effort will be to cure any addiction present, and/or to prevent any future addiction. Rehabilitation, and not punishment, is the goal.

## Driving While Intoxicated (DWI)

The highlights of DWI law are touched on in the following lesson for high school students. You should emphasize that, in general, all states are taking a stricter stand in an effort to get "drunk drivers" off the road, in an attempt to reduce traffic-related injuries and fatalities.

As an example of this stricter stand, in most states, if a person is convicted of, or pleads guilty to, driving while intoxicated (operating a vehicle while in an intoxicated or drugged condition), he or she shall not be granted a suspended imposition of sentence, unless placed on probation for a minimum of two years.

Also, as stated in most state statutes, the following may appear, "any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent to, subject to the provisions of said statute, a chemical test or tests of his breath, blood, saliva, or urine for the purpose of determining the alcohol or drug content of his blood, if arrested for any offense arising out of acts which the arresting officer had reasonable grounds to believe were committed while the person was driving a motor vehicle while in an intoxicated or drugged condition."

It is this implied consent\* to a chemical test which serves as the legal basis for revoking a person's driver's license for a period of one year, if he or she refuses to take the breathalyzer test upon the officer's reasonable request. This one-year revocation is provided for, explicitly, in most state statutes.

If a person does submit to a breathalyzer test, and the results show a .10, or higher, even .05 in some cases, concentration of alcohol in the person's blood "this shall be prima facie evidence, in most states, that the person was intoxicated at the time the specimen was taken." When introduced into evidence by the prosecution, it can be challenged by the defense "with competent evidence" (for example, challenging the reliability of the person who performed the test, or of the machinery used).

If a person is a "persistent offender," ("one who had pleaded guilty to, or has been found guilty of, two or more intoxication--related traffic offenses committed at different times within ten years of a previous intoxication, related traffic offense conviction"), and is found guilty of driving while intoxicated, or driving with excessive blood alcohol content, he or she shall be guilty of a class D felony. In such a case his sentence cannot be suspended, nor can be fined in lieu of a term of imprisonment.

In summary, the only evidence necessary to convict the defendant of a violation of driving while intoxicated is the credible testimony of the police officers, and any independent witnesses, when available. Their testimony must show some or all of the following:

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\* See Introductory Lesson, Case 3 on page 28.

- defendant was unsteady;
- defendant had slurred speech;
- defendant lacked body coordination; and
- defendant had impaired motor reflexes.

On the other hand, if a defendant has been drinking excessively, and when arrested agrees to have a chemical analysis done of his or her blood, breath, saliva, or urine and it registers .10 or more, the defendant may be charged in some states with "driving with excessive blood alcohol content."

When a police officer stops and arrests a driver, believing him or her to be intoxicated, and asks the driver to take a breathalyzer test, he must also inform the driver that he has the right to refuse. However, if the driver does refuse, his or her driver's license can, automatically, be revoked for one year. Most importantly, that one-year revocation stands, even if the driver is never subsequently found guilty of driving while intoxicated. Whether or not the person's driver's license is revoked depends entirely upon the police officer's discretion to apply, or not to apply, for revocation. If the officer thinks it can be proven that there were reasonable grounds to stop the driver, he or she will probably request the revocation. The State Official has no such discretion. He or she must revoke when a written request is received from the police officer.

**Problem:** Why do you think the legislature included the one-year revocation of a driver's license upon the driver's refusal to take a chemical test to determine his blood alcohol content?

**Answer:** Because if you are not intoxicated, you have nothing to lose, no reason to refuse. If you are intoxicated, the test will obviously help in the prosecution of your case, and sometimes it is difficult to prove a driving while intoxicated case without it. The overall purpose behind this section, as expressed by the legislature, is "to protect the public."

If a person's driver's license is revoked, he or she can ask for a hearing before a court in the county where he or she resides, or where he or she was arrested, but the only elements the judge will determine are:

- 1) Whether or not the person was arrested;
- 2) Whether or not the arresting officer had reasonable grounds to believe that the person was driving a motor vehicle while in an intoxicated condition; and
- 3) Whether or not the person refused to submit to the test.

**Problem:** Why do you think the state legislature in some states have passed both a "driving while intoxicated" and a "driving with excessive blood alcohol content" section?

**Answer:** If a person refuses to take a chemical test and, therefore, driving with excessive blood alcohol content cannot be proved, the prosecutor can go forward with driving while intoxicated; and the latter can be used to convict someone high on drugs and not alcohol--a condition that is difficult to prove through a chemical test.

### Driving While Intoxicated (Police discretion)

If a person has been "observed" driving while under the influence of alcohol or drugs, he or she can be arrested, in some states, under one of two statutory sections:

- 1) Driving While Intoxicated;
- 2) Driving With Excessive Blood Alcohol Content (more than .10 grams of alcohol per one hundred milliliters of blood); however
- 3) The defendant can be charged under one or the other, but not under both.

The first section--"driving while intoxicated"--is proven through the evidence of the police officer, or an independent witness observations of the erratic driving and erratic behavior of defendant when stopped.

The language in the following case demonstrates the type of behavior that constitutes evidence of driving while intoxicated:

- 1) "smell of alcohol on motorist's breath;
- 2) unsteady walk;
- 3) unusual or peculiar speech;
- 4) red and watery eyes; and
- 5) evidence of rear-ending another vehicle."

**Problem:** Can you think of other descriptions of a person's driving, and of his behavior when stopped, that would help "prove" that he or she was driving while intoxicated?

**Answer to Problem** on page 93. (Student Handout #6.1)

Driving

- 1) Weaving across road for several miles;
- 2) Could not be safely passed;
- 3) Ran onto shoulder repeatedly;
- 4) Crossed line and struck another.

Evidence or Behavior

- 1) Several beer cans in car;
- 2) "Incoherent;"
- 3) Didn't know how accident occurred;
- 4) Could not recite alphabet;
- 5) Confused;
- 6) Stumbling;
- 7) Unable to count money in their possession;
- 8) Couldn't walk straight line;
- 9) Couldn't touch nose with their finger.

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PRE-PERFORMANCE TEST

T/F

- \_\_\_\_\_ 1. If convicted of a DWI, you can be sentenced to either a fine or short jail term, but not both.
- \_\_\_\_\_ 2. To be found not guilty, a person accused of a crime must somehow prove he/she did not do what they are accused of.
- \_\_\_\_\_ 3. The legal system is simply made up of the courts, lawyers, and those accused of crimes.
- \_\_\_\_\_ 4. An opening statement is made to the newspapers, so the lawyer's case will get good publicity.
- \_\_\_\_\_ 5. The police are responsible to the courts, and their job is to assist courts in determining who deserves to be punished.
- \_\_\_\_\_ 6. The lawyers in a case try to keep their information secret from the other side, so they can surprise them at the trial in order to win.
- \_\_\_\_\_ 7. You have to pass a written test to be on a jury.
- \_\_\_\_\_ 8. If a person is arrested, the judicial system assumes he/she is probably guilty.
- \_\_\_\_\_ 9. It takes a majority vote by the jury to decided that a person is guilty.
- \_\_\_\_\_ 10. The defense presents its side of the story first in a trial.
- \_\_\_\_\_ 11. If a person is found guilty, the judge can sentence the person to whatever punishment seems fair.
- \_\_\_\_\_ 12. The judge tells the jury which witnesses to believe.
- \_\_\_\_\_ 13. Attorneys object because they wanted to ask the question, instead of the other lawyer.
- \_\_\_\_\_ 14. The lawyers can ask questions about any subject during cross-examination.

MOCK TRIAL DEMONSTRATION

Objectives

- A) The program will acquaint high school students with the judicial process, introducing both the objectives and procedures of the American legal system.
- B) The program will allow high school students hands-on participation in a mock trial, giving them an opportunity to assume a specific role, that of a juror, in a simulated trial.
- C) The program will increase the students' knowledge of alcohol laws as they relate to juveniles.

Purposes

- I. To develop an understanding of and familiarity with the legal system through a trial.
  - a) To identify the institutions active within the legal system.
  - b) To identify each institution's unique role within the legal system.
  - c) To understand the interplay between institutions within the legal system.
- II. To examine the judicial institution through the course of a trial.
  - a) To articulate and understand the fundamental goals and policies of the judiciary.
  - b) To identify judicial participants and define their roles.
  - c) To identify and understand the stages of a trial by analyzing its process.
  - d) To utilize the legal thought-process, and to understand legal evidence and proof.
- III. To understand the substantive law of alcohol and driving, especially as it relates to juveniles.
  - a) To catalog the various crimes involved.
  - b) To match the crimes with their penalties.
  - c) To analyze the legality of specific conduct.

## MOCK TRIAL IMPLEMENTATION

The program is best performed in a three day format. Each day of the presentation lasts a full class period. It may also be done in an abbreviated one day format, which may fit particularly well into a previously set course teaching about the legal system and the law.

Materials have been prepared for use by the presentors, the instructor at the school, and the students. The materials include a fact situation outlining the hypothetical arrest, the charges brought, statements of the involved parties, and short essays explaining the legal process and the actors involved. The materials also include a statement of teaching objectives and lesson plans. Evaluation materials are to be found in the Appendix.

The project is designed to fit any civics, government, or related class (i.e., LRE class). The trial may be performed before single classes, or larger assembly groups.

### Lesson Sequence for Mock Trial Portion:

**Day 1** -- Pre-Performance Test and Discussion. After testing, teachers discuss the legal system with the students, emphasizing the logistics, mechanics, and assumptions behind a trial. The students are encouraged to react to questioning about their preconceptions of the system, and to relate any experience they may have had with the system.

**Day 2** -- Mock Trial. Based on the previously distributed fact situation, a trial is performed. Students serve as the jury members and bailiff. Enough juries are selected to allow all students an opportunity to participate. PAD members serve as attorneys, witnesses, and moderators. A prominent local attorney or judge serves as judge, if possible.

**Day 3** -- Post Performance Test and Evaluation. As a follow up and reflection on the events of Day 2, students are encouraged to take the post performance test to see how much they have learned. In addition, they are strongly encouraged to fill out the evaluation, as accurately as possible. This information will help to better implement this program and make improvements when necessary.

### Day 1

#### 1. Pre-Performance Test

- A. test should be administered. (5 minutes)
- B. test answers should be given and discussed. (5 minutes)

## 2. Discussion

A. Statement of the incident should be handed out.

B. Divide the class into 5 small groups or pairs and assign them a side, either the prosecution or defense. They are to assume the role of the attorneys. Each side should discuss and write down:

-what further information they need to know to find her guilty or not guilty

-why they need to know it (10 minutes)

Caution: students should not make up or add any facts not mentioned in this skeletal treatment of the facts.

C. Students should then present these ideas/questions to the class. Should any student want to respond, they should be given an opportunity to do so. The more searching and insightful these questions, the better. (10 minutes)

## 3. Statement of Parties

A. Pass out copies of statements made by the police officer and the accused

B. Students should then discuss among themselves any testimony that may be problematic for their side and what they, as lawyers should do to handle it. (10 minutes)

## 4. Mock Voir Dire

A. Explain to the class they will be jurors for the trial.\* Have them brainstorm-

- What a juror does

- What qualities or opinion a juror should possess. What qualities or opinions an attorney would not want a juror to possess. (The areas of discussion should revolve around teenagers, police, drinking, drinking and driving, truth, innocence until guilt is proved). (10-15 minutes)

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\* Explain too, that before anyone becomes a juror, they must be approved by both attorney's handling the trial. In a real trial, each juror is questioned closely by each attorney about their background, opinions, ideals/etc. If an attorney objects to a juror, they can ask the judge to remove that juror from the case.

## 5. **Mock Trial Presentation**

With the remainder of class time and/or homework, students should read and study the handouts.

These will help them be better prepared for the trial.

### Day 2

#### **Mock Trial**

Students will need a piece of paper and something to write with. While the trial takes place, students should take notes of things they want to remember. They should also list questions about procedure, vocabulary or trial tactics. They will need these notes for reference when they "retire" as a jury to decide on a verdict, and the notes will be helpful in post-performance discussion and evaluation.

### Day 3

#### **Post-Performance Test**

- Administer the Post-Performance test.
- Grade it as a class.
- Discuss how the case illustrated these principles.
- Discuss what evidence tipped the scales for the students, how they might have presented the case and why.

#### **Evaluation**

Please give students time to complete this evaluation form. Their answers should be thoughtful and they should take time and care when writing.

#### **Follow Up**

If you, the law student presenter, or the classroom teacher, have any closure or final points to make, this is the time for it.

## **BACKGROUND READING MATERIAL**

### **I. THE CRIMINAL JUSTICE SYSTEM**

The American criminal justice system at the federal, state, and local levels is a network of many institutions and individual actors working together. The goal of the system is to provide guidelines for life in a complex society that allow individuals their liberty and freedom to act for themselves, yet still provide for community safety and comfort.

The United States of America is based upon a republican form of government; state governments and the federal government are each responsible for regulating the activity of its own citizens. The 10th Amendment to the United States Constitution reserves certain powers to the states. These police powers interpreted in conjunction with several other provisions of the Constitution (Article I, Section 8; Article I, Section 9) gives the primary responsibility for making and enforcing criminal laws to the individual states. Thus, each state is responsible in determining what acts will be considered crimes, as well as the penalties set for committing those crimes. The federal government deals with criminal law in a much more restricted level, generally only in cases where more than one state is involved (for instance, kidnapping when the victim is transported from one state to another) or when an area of power that the Constitution expressly grants the federal government, such as immigration or treason is involved.

The import of all this is that some 52 separate criminal justice systems co-exist in the United States--one in each of the 50 states, the District of Columbia, and the federal justice system. Each of these systems is unique, but the institutions involved in each system are generally the same. These institutions interact with each other to make, enforce, interpret, and execute the laws in the criminal justice system.

#### **A. THE LEGISLATURE**

The first institution involved in this process is the state legislature. Meeting in the capitol building, the state senators and representatives that have been elected from legislative districts throughout the state, draft and pass bills. After the Governor signs the bills, and they become law, they are gathered together in printed volumes known as the State Statutes. These are the laws of the state that we as residents must follow. Of course, citizens of other states who are in said state must also follow these laws.

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Laws are categorized as criminal laws if they prohibit certain activity and attach a jail sentence or fine as a consequence of breaking that law. Criminal laws must exactly describe the activity prohibited, in order that the citizens can be aware and have proper notice as to what they can and cannot do. Each criminal law must also attach a specific penalty for its violation.

## **B. THE EXECUTIVE**

The next institution involved is the state executive--the Governor. The Governor, as chief executive officer of the state, is responsible for enforcing the laws that the legislature has enacted and the Governor has signed. This is accomplished with the help of the police, located in nearly every city, town and village in the state. They are a part of the executive branch. Each police department is ultimately responsible to the Governor.

Modern society demands a tremendous number of services from the police department, including:

- Prevention of criminal activity;
- Detection of criminal activity;
- Apprehension of criminal offenders;
- Participation in court proceedings;
- Assistance to those who cannot care for themselves;
- Protection of those in danger of physical harm;
- Control of traffic;
- Creation and maintenance of community security;
- Promotion and preservation of civil order; and
- Service activity.

The police do not make the law. Neither do they apply the law by simply arresting a person and imposing the penalty the legislature has prescribed on-the-spot. They enforce the law, by investigating to determine whether criminal activity is taking place or has taken place, stopping the criminal activity by arresting a person, investigating to gather evidence against that person, and bringing the arrested person to court.

## **C. THE JUDICIARY**

In the criminal justice system, the judiciary, or court system, has three general functions. First is the speedy determination of guilt or innocence of individuals who are charged with criminal offenses. The second function is the sentencing of those individuals convicted of crimes. Third is the protection of the rights of the offender. The court accomplishes these functions by the trial of an accused offender. The trial will be discussed and analyzed in depth throughout the rest of this unit.

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#### D. THE PENAL SYSTEM

The final institution involved is the penal system. The system is composed of local and county jails, the state and federal prisons. Prisons enforce the sentence set by the judiciary by overseeing the incarceration of a convict.

Many reasons have been advanced to justify or explain how societies deal with their criminal offenders. Most observers agree that these reasons include one or more of the following factors:

1. Retribution -- punishing for past wrongful acts;
2. Rehabilitation -- correcting wrongful conduct and preparing for re-entry into society;
3. Deterrence -- imposing preventive and punitive measures to impede future wrongful conduct by this wrongdoer and others;
4. Incapacitation -- removal from society to prevent further wrongful conduct.
5. Restitution -- requiring wrongdoer to repay victim or society in money or services.

#### E. THE VICTIM OF CRIME

Ignored in the past, our justice institutions are finally realizing that victims of crime are also due consideration as a part of the justice system. Chairman of the President's Task Force on Victims of Crime, Lois Haight Herrington, stated it this way: "If we take the justice out of the criminal justice system, we leave behind a system that serves only the criminal."

Up until this realization the justice system had lost sight of the victims and their plight and instead focused on its lawyers, judges and defendants. This is changing and discussion of this change may be appropriate as a part of this program.

#### F. SUMMARY

All of these institutions, along with the individual persons who are a part of them, make up the criminal justice system. Each institution and each person within that institution have a part to play, and each part is unique. In theory,

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however, each of the institutions is designed to work with each other in an integrated system, so that society will be guided by fair laws each of us are expected to obey, that those who have broken these laws will be discovered and punished and that we may all be able to safely live our lives as free individuals within an ordered society.

## II. THE JUDICIAL SYSTEM

### A. GOALS AND ASSUMPTIONS OF A TRIAL

The role of the judiciary in the criminal justice system is to determine whether a particular accused person is guilty of a particular crime. The way the judiciary makes this decision is a trial. In the trial, however, the judiciary must ensure that the constitutional rights of the accused are protected.

A trial is a formal, public effort to determine whether the government is justified in punishing someone accused of breaking the law. The trial is designed to give the government a fair chance to prove that the person accused of a crime is really guilty, and to protect the person until guilt is proven. The result of a trial is a decision, or verdict as it is called, as to whether the person is in fact guilty and whether he or she should be punished.

The most important goal of a trial is to discover the truth. The object of the trial is to decide exactly what the facts of a situation were--whether a crime occurred, and, if so, whether the person accused committed that crime. The trial is a search for justice: if guilty, a fair punishment will be set; if innocent, the individual will be protected in his or her right to remain free.

#### 1. The Adversary Model

The first assumption is that the truth will be best exposed if the two sides to the story are told by different "teams" each striving their best to "win" the trial by proving that the facts are as they claim exist. This is referred to as the **Adversary Model**, so-called because each side represents a position adverse, or opposite, to the other.

The person accused of a crime is called the **Defendant**. With the defense attorney, the defendant's lawyer, represents one side of the battle. On the other side is the government. The government is represented by its lawyer, the **Prosecutor**, or prosecuting attorney. These are the adversaries.

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The theory of the Adversary Model is that following procedures each team will do all it can to win, and will produce as much information to support their side as possible. The final decision will then be fair, because the information needed to find the truth will be complete.

Each party has important reasons to try to win in order to fulfill its responsibilities. The prosecutor represents the government, which in turn represents society, composed of individuals like yourself. The goals the prosecutor represents is an orderly and safe society, a society of law-abiding citizens who get along with each other and produce goods and services beneficial to all. The defense attorney represents the person accused of crime, who should not be punished if innocent and who has a right to be treated fairly by the government at all times. Since both sides have such a large stake in winning, each will work very hard toward that goal.

Each side tries to win by building a "case." A case is the side of the story the party must prove in order to win. A case is built by gathering evidentiary facts--finding and talking to eyewitnesses, or bringing in actual things involved in the case, such as a murder weapon or other pieces of evidence to verify their story. Both parties are highly motivated to find any uncovered facts that might help their case. If one side tries to ignore facts that might hurt its case, the other side will be sure to bring those facts forward. In this way, the whole truth will surface, rather than a slanted or biased view predisposing one party or the other.

## **2. A Jury of Citizens**

The second assumption of the legal system is that a jury made up of common, ordinary people can best determine the truth. This assumption recognizes the fact that common, ordinary people all have had life experiences upon which to base a fair conception of truth. The assumption also builds public confidence in the judiciary, for it is the public itself that makes the important decisions, not lawyers or those who the public may not trust. The jury in a trial is a group of either 6 or 12 people which are chosen, not because they have a special talent or skill or have passed a comprehensive exam, but because they are the peers of everyone in society, including the persons accused of the crime. They ideally represent a cross-section of the American people, without bias or prejudice, to render an impartial decision.

Most importantly, it is the jury, not the judge or the lawyers, who has the final decision as to what the truth is. In the end, it is those ordinary people, representing their cross-section of beliefs and life experiences, who determine which side more accurately represents the truth. They decide whether witnesses can be believed, what facts support one side of the story or the other, and relate their life experiences to the evidence the lawyers bring in front of them. In this way, the jury determines whether the person accused of the crime is guilty or not guilty. The judge helps the jury, by explaining the requirements of

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the law to them, and by showing the jury what the rules of court require of the prosecutor, defense attorney, defendant, and the jury itself. The judge gives the jury these instructions to help them understand their role in the trial system.

## B. PREPARATION FOR TRIAL

### 1. From Arrest to Trial

The first contact an accused has with the criminal justice system is usually an arrest by a police officer. Within a short time after the arrest, the accused must have an initial hearing before a judge. The purpose of the hearing is to (a) inform the accused of the charges against him or her, (b) inform him or her of their rights, such as the right to have an attorney, (c) appoint a lawyer if the accused can't afford one, and (d) set bail, a sum of money the court will keep if a person fails to show up for their next court appearance. At this hearing, the accused is given an opportunity to challenge whether or not there is a sufficient reason to arrest and to charge the person with a crime. In this way, the judge can protect an individual if it appears that no probable cause to arrest the person exists, and the person's freedom is being taken needlessly, and unfairly, and then dismiss the case.

If probable cause exists, the accused is then formally charged in a document known as an information or complaint filed by the prosecuting attorney in the court where the trial will be held. In some jurisdictions, an indictment of an accused is rendered by a Grand Jury, which examines evidence to establish probable cause. Next, the accused is asked to enter a plea in the court where the trial will be held at an arraignment. A plea is how the person responds to the charge--either guilty or not guilty. If the person pleads guilty at arraignment, the judge will make sure the person understands the charges, and that there is some good, factual reason behind pleading guilty. If the person pleads not guilty, a trial will be set for a later date.

### 2. Plea Bargaining

Plea bargaining is a process of negotiation in which the prosecution and defense try to secure the best arrangement possible as to the number or types of charges or type of sentence. For instance, if a person has been charged with three counts of murder, and all three counts carry a possible life in prison sentence, plea bargaining may occur. The defense may offer to plead guilty to three counts of manslaughter, which may only carry a sentence of 15 years in prison each. If the prosecution accepts, a formal presentation of the deal is made to the judge at arraignment for approval, and the accused will plead guilty and be sentenced according to the reduced charges.

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The benefits of plea bargaining are that it saves time and money, by avoiding a trial and all the pre-trial arrangements. It also ensures that the guilty accused pleads guilty and punished. Further, it may increase the flexibility of the legal system, and may encourage individualized justice. If a person steals some food from the grocery store because he or she is starving, and a prosecutor offers to reduce the theft charge to petty theft so the accused will not have to spend time in jail but can instead get help from a social agency, for instance, justice is probably better served than by trial. It relieves cases from the crowded trial docket, and saves money and resources for the government.

However, critics of plea bargaining argue that prosecutors overcharge because of plea bargaining, that is, charge people with offenses they cannot prove, but can reduce in negotiations. For instance, if our petty thief had on three different days in fact stolen three cans of Spaghetti's, a prosecutor may charge the person with three counts of theft, when only one count is justified. That leaves the prosecutor room to plea bargain.

### 3. Constructing a Case

As we have seen, it is the prosecutor's task to convince the jury that the defendant committed the crime, while it is the defense attorney's job to raise a doubt in the jury's mind. They do this by building a case. Before the trial begins, each of the attorneys must go about the task of constructing a case.

#### a. Elements of a Crime

First, the two lawyers will examine the law itself, breaking the law down into elements, or requirements. Assume, for instance, Minnesota law defines jaywalking as "a pedestrian crossing a paved street or road at a point other than a corner or readily marked crosswalk" and attaches a fine of \$50.00 for violating the law. A person is charged with jaywalking. The elements of the jaywalking offense are that (1) a pedestrian, (2) crosses a paved street or road, (3) at a point other than a corner or readily marked crosswalk.

Each of these elements must be proved by the prosecutor at trial. If one of the elements is missing, the prosecutor's case is incomplete, and will fail in court. If, for example, a bicyclist crossed a paved street between the corners, one element of the crime of jaywalking is missing, since the accused was a bicyclist instead of a pedestrian. The accused may have in fact used poor judgement as a bicyclist, but he or she is no jaywalker, according to the statute, and is then not guilty of jaywalking. The prosecutor must prove each and every element of the crime in order for a person to be found guilty. The defense attorney, on the other hand, need only show that one element is missing in order to win the case.

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b. Evidence

Next, the lawyers seek out evidence to support each element or to show that an element is missing. This evidence, or the proof of facts, may come in the form of: (1) eyewitnesses (e.g., a shopper who, through a store window, saw the pedestrian cross in the middle of the street); (2) physical evidence (e.g., photographs of the crosswalk markings on the corner showing the proper crosswalk); (3) circumstantial evidence, or evidence which proves other facts which support an element of the crime (e.g., testimony that the bus was loaded and ready to pull away from the curb when the accused jaywalker was across the street, but the accused jaywalker indeed caught the bus a moment later); (4) documents or other papers or tests; or (5) expert testimony by a doctor or psychologist, etc.

c. Discovery

The process of gathering facts to be used in court is called discovery. The Federal Rules of Criminal Procedure and State Rules of Criminal Procedure are the rules which govern what processes are allowed in discovering evidence.

The most important aspect of the criminal discovery process is that the defendant and defense lawyer are entitled to know what evidence the prosecutor will bring forward at trial. The Rules of Criminal Procedure allow the defendant and his defense attorney to find out before the trial what evidence the prosecutor has uncovered---what witnesses the prosecutor will bring forward and what they have said in prior statements, the results of any tests, and so on. This right of the defense is an attempt to keep the adversaries on equal footing. The prosecutor's office, usually a large office with a number of lawyers working in it, financed by the government and backed up by crime labs, etc., has far greater resources than does the defense. The defendant usually has to pay his or her own lawyers, and usually has to pay for any tests, investigation, and other discovery. By allowing the defense to have access to the state's evidence before trial, the Rules of Criminal Procedures help ensure that both sides have an even chance to prove their case.

d. Beyond a Reasonable Doubt Standard

The prosecutor must develop a strong case, for the prosecutor must prove to the jury that the defendant is guilty "beyond a reasonable doubt." That means that the jury must be entirely convinced that the defendant is guilty; if there remains any element the jury is not convinced on, the prosecutor has not proved his case. This requirement represents the prosecutor's burden of proof, or the standard the prosecutor must meet to win the case.

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It is a fundamental concept of American criminal law that **one is innocent until proven guilty**. The beyond a reasonable doubt standard is a difficult one to meet to prove guilt. Since our society highly values the right to liberty, the courts must protect the individual, to ensure that a person's freedom is not wrongfully taken away. It has been said that it is better that ten guilty people go free than that one innocent person be jailed. Thus, in deference to this prized value of freedom, our system presumes that everyone is innocent and requires the government to prove guilt beyond a reasonable doubt.

Student Questions/Notes:

THE LAW (Based on Minnesota Model)\*

A. THE DWI LAW (Driving While Intoxicated)

Minnesota law concerning alcohol and driving has, not surprisingly, changed much in the last several years, and will probably continue to change rapidly. Each legislative session sees a number of alcohol-related bills introduced and passed. The information below is based on Minnesota law at the end of the 1988 legislative session. This pattern is also true in most other states.

Basically, a person is forbidden from driving while under the influence of alcohol or drugs. The law specifically states that it is a misdemeanor for a person to drive, operate, or be in control of any motor vehicle within the state when that person is under the influence of alcohol, under the influence of a controlled substance, or under the influence of any combination of alcohol and controlled substances. The crime is termed a misdemeanor on the basis of the punishment assigned for breaking the law--those laws with the least severe penalties are termed misdemeanors, while gross misdemeanors and felonies carry stiffer penalties.

Thus, three elements comprise the DWI crime: (1) the person must be driving, operating, or in control of a motor vehicle; (2) within the State of Minnesota; (3) while under the influence of alcohol or drugs. The crime is punishable by a fine of \$700 or imprisonment in a local or county jail for 30 days, or both.

In addition to the fine and/or jail sentence, a person's driver's license will be revoked as a penalty for driving while under the influence. The length of the revocation increases the more often a person is convicted for a DWI. The license revocation is for a period not less than 90 days. For a third offense within five years of the first, the license revocations is for a period not less than one year. For a fourth offense, no matter how far apart the offenses occurred, the license revocation is for a period not less than two years. However, for persons under 21 convicted of a DWI, the license revocation is for six months or until the person reaches the age of 21, whichever is longer.

Further, conditions to reissuing a driver's license may apply to repeat DWI criminals. Before a two-time DWI convicted driver may obtain his or her license back, he or she must complete a treatment program. For those convicted three or more times, a license will be reissued only when the person can establish that he or she has been rehabilitated, that is, been successfully treated for their drinking or drug problem.

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\* Law Student presentors should research their own State's law.

## **B. OTHER ALCOHOL AND DRIVING LAWS**

Several other alcohol-related laws pertain to drinking and driving. It is against the law to drink in a vehicle on a public road, whether you are driving or not. It is also illegal to have an open liquor container in your car on any public road. An open liquor container includes an open beer can, a bottle of liquor with the seal broken--even if none of the liquor has been drunk. The glove box of your car is not a legal place to keep an open bottle, since the glove box is considered to be part of the area of the car occupied by the driver and passengers. The open bottle law applies not only to the driver of the car, but to passengers as well. All these offenses are also misdemeanors, punishable by a fine of up to \$500 or 30 days in a local or county jail, or both.

## **C. ALCOHOL LAWS RELATING ESPECIALLY TO MINORS**

Persons under the age of 21 are not allowed to buy, possess, or consume alcohol in the state of Minnesota. They are not allowed to even enter a liquor store to try to buy alcohol. Those who buy alcohol for minors are breaking the law themselves, as are persons who sell alcohol to minors. It is even against the law to induce a minor to buy alcohol; that is, convince or talk a minor into buying alcohol. It is also unlawful to lie about your age in order to buy alcohol, or to use someone's drivers license in order to buy alcohol. Likewise, it is unlawful to loan a minor a driver's license with which to buy alcohol. Finally, it is against the law to change your driver's license, to possess a license that is altered or counterfeit, or to use it to buy alcohol. Each of these crimes, too, are misdemeanors punishable by a fine of up to \$500 or a jail term of up to 30 days, or both.

POST-PERFORMANCE TEST

1. List the steps in a trial, in their correct order:

- A.
- B.
- C.
- D.
- E.
- F.
- G.
- H.
- I.
- J.
- K.

2. Match the following judicial actors to their roles:

- |                     |       |                                  |
|---------------------|-------|----------------------------------|
| A. Prosecutor       | _____ | 1. The person on trial           |
| B. Defense Attorney | _____ | 2. Determines guilt or innocence |
| C. Judge            | _____ | 3. Represents the accused        |
| D. Jury             | _____ | 4. Gives jury instructions       |
| E. Defendant        | _____ | 5. The government's lawyer       |

3. Briefly explain the following concepts:

- A. The adversarial model:
  
- B. Proof beyond a reasonable doubt:
  
- C. Discovery and Evidence:

4. In a short essay, describe the various institutions that make up the legal system, their roles, and how they relate to each other: (Use back of paper).

5. In a short essay, describe how your attitudes and knowledge regarding current drug and alcohol laws have changed as a result of this program: (Use back of paper).

TEST ANSWERS

**Pre-Performance Test:** All answers are false.

**Post-Performance Test**

1. List the steps in a trial, in their correct order:

- A. Voir Dire
- B. Opening Statements
- C. Prosecution's Case
- D. Motion for Directed Verdict
- E. Defendant's Case
- F. Motion for Directed Verdict
- G. Closing Arguments
- H. Jury Instructions
- I. Deliberations
- J. Verdict
- K. Sentencing

2. Match the following judicial actors to their roles:

- |                     |          |                                  |
|---------------------|----------|----------------------------------|
| A. Prosecutor       | <u>5</u> | 1. The person on trial           |
| B. Defense Attorney | <u>3</u> | 2. Determines guilt or innocence |
| C. Judge            | <u>4</u> | 3. Represents the accused        |
| D. Jury             | <u>2</u> | 4. Gives jury instructions       |
| E. Defendant        | <u>1</u> | 5. The government's lawyer       |

3. Briefly explain the following concepts:

A. The adversarial model:

- 1. Assumption of the judicial system
- 2. Parties (government and accused) are in an adversarial relationship
- 3. Government (prosecutor) has an interest in an orderly society
- 4. Accused has an interest in liberty and justice
- 5. Interests clash to encourage full disclosure of the truth

B. Proof beyond a reasonable doubt:

- 1. Prosecutor's burden of proof
- 2. Jury has no doubt remaining that is not farfetched or fanciful--the degree of certainty that one would use in his/her most important affairs
- 3. Represents society's high valuation of the right to liberty and justice
- 4. Helps protect both the accused and the innocent (better ten guilty set free than one innocent jailed).

C. Discovery and Evidence:

1. Discovery--Process of gathering facts

- a. Statements--given under oath, under penalty or perjury and recorded verbatim
- b. Investigation--find and test tangible evidence
- c. Defendant has the right to know of the prosecutor's evidence, reflecting the unevenness of resources between government and defendant

2. Evidence--Facts as presented by lawyers while presenting their case to the jury

- a. Eyewitnesses
- b. Physical evidence (tangible things)
- c. Circumstantial evidence (proof of other facts which in turn support an element of the crime)
- d. Documents, papers and tests
- e. Expert testimony

4. Short essay:

A. Legislature

1. Defines the law
2. Legislative veto checks the governor

B. Executive

1. Enforces the law
2. Governor signs the law--checks legislature
3. Police discover, prevent and halt criminal activity

C. Judiciary

1. Interprets the law
2. Determines a defendant's guilt or innocence
3. Protects

D. Penal

1. Incarcerates individuals found guilty
2. Enforces sentences

E. Relationship of the institutions

1. Primarily a checks and balances system
2. Work together, but with different objectives

5. There is no correct answer here. Discuss student responses.

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STATEMENT OF THE ACCUSED

My name is       name      . I am a senior at Central High School in St.       

On Friday night, March 28, 1986, my boy/girlfriend and I went out. He/she came by my house at about 8:30 p.m. We talked with my parents for a few minutes. Then we went to my friend Jan's house.

Jan's parents were out of town for the weekend, and she had a party. It wasn't a huge party--there were only about thirty people or so there. In the basement were two kegs.

We got to the party between 9:15 to 9:30. We drank out of plastic cups. I can't remember for sure how many cups I drank. I didn't drink a whole lot--I don't really like beer all that much anyway. I think I probably had four or five beers the whole time we were there. I talked with a lot of my friends at the party, and I played some video games downstairs. There were chips and snacks at the party, too.

We both had to be home by 12:30 a.m. We left between 11:30 and 11:45 p.m. On the way out of the party, one of my friends handed my boy/girlfriend a can of beer. We got to the car and he/she opened it. I drank part of it, then gave it back to my boy/girlfriend. He/she held onto it while I drove. We drove around for awhile. Then we noticed the time and started for home. I turned from \_\_\_\_\_ on to \_\_\_\_\_, to take my boy/girlfriend to his/her house. I noticed a cop was behind us. He turned on his lights, and pulled us over.

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He came up to the car and shined a flashlight inside. He asked us where we were going. I said "home." The light went into the back seat, and I think he saw the beer can. He took the can with him later, when we left. He asked me for my license, and I gave it to him. Then he asked me to get out of the car.

When I got out, he asked me if I'd been drinking. I said "not really". Then he asked me to tip my head up, close my eyes, and touch my nose. I did. He asked me to count backwards from 20 to 0. I did. Next, he had me stand behind the car, and balance my right foot six inches above the bumper. I did, but the gravel on the side of the road was loose, and my foot slid in it. I lost my balance. He asked me to walk a straight line, and I had trouble, but that was because of the gravel, too.

The cop told me I was under arrest for DWI, open bottle, and possession and consumption of beer, while a minor. He asked me to get in the back seat of his car and go to the station with him. I told him we had to be home by 12:30, and he said we would have to come down to the station and that we could call our parents from there.

At the station, I had to take a breathalyzer test. The same cop gave me the test. I blew into the machine twice. I'm not sure what the readings were--I was pretty scared.

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STATEMENT OF THE ARRESTING OFFICER

On the evening of March 28, 1986, I was driving my usual beat in name of town. Traveling west on \_\_\_\_\_, I noticed a car driving slightly erratically. The car was traveling slowly, and drifted slightly in the lane. When the driver turned south on to \_\_\_\_\_, the turn signal was not engaged until halfway through the turn. The driver also over-corrected coming out of the turn. I decided to stop the car. I turned on my lights.

Upon parking behind the car, I noticed two occupants in the front seat. I approached the car. I also carried a flashlight with me. I motioned the occupant on the driver's side of the car to roll down their window. He/she did.

The occupants were both young, one male, one female. I estimated their ages to be 18-19. I visually inspected the car, and observed a beer can in the back seat. I later seized the beer can as possible evidence. I asked the driver where he/she was driving to. He/she responded that he/she and his/her companion were "heading home." The occupant smelled of alcohol, and his/her eyes were slightly glazed. His/her speech seemed a bit slow.

I asked the occupant for his/her license. I noted his/her age to be 17. I then asked him/her to step out of the car.

When he/she stepped outside, I noticed he/she appeared very nervous. I asked him/her to perform some standard field sobriety tests. He/she adequately performed two of the tests, but failed two. While he/she could touch his/her nose and count backwards, he/she failed both balance tests. He/she could not walk a straight line, and could not balance her foot above the rear bumper of the car.

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I asked the occupant if he/she had been drinking. He/she replied "not really." I then informed him/her he/she was under arrest, read him/her his/ her rights, and asked him/her to get in the squad car to accompany me to the station.

The second occupant did not appear impaired, although he/she did smell slightly of alcohol. I asked him/her to get in the squad car to accompany me to the station as well. The driver protested that both must be back home by 12:30. That was about the time I asked them to get in the squad car. I informed both the occupants they would have to come down to the station, where they could call their parents.

At the station, I administered a standard breathalyzer test to the driver. I administered two separate tests. Each time he/she registered a blood alcohol content of 0.09.

At the station, I spoke to the occupant who had been in the passenger seat. He/she briefly told me of a house party the two had attended that evening, and told me that his/her boy/girlfriend had been drinking at the party.

The two then called their parents. The driver was booked for driving while under the influence, driving with an open container, and possession and consumption of alcohol while a minor. The passenger was not charged. He/she was released to his/her parents, while the driver was detained overnight.

THE LAW (Based on Minnesota model)  
Research your own State's law

Restatement of Minn. Stat. 169.121

It is a misdemeanor for anyone to operate a motor vehicle while under the influence of alcohol. It is a separate offense when one's alcohol concentration is .10 or more, even when measured within two hours of the time of driving. A police officer may arrest a person without a warrant but with probable cause, regardless of whether the violation was committed in the officer's presence. Probable cause is determined by the manner in which one is operating the motor vehicle (i.e. swerving, erratic speed changes, or lane changes).

The amount of alcohol in the offender's blood, breath, or urine, as shown by analysis of those items, may be admitted by the court as evidence of the influence of alcohol. A .05 alcohol concentration level or less is clear evidence that the offender was not under the influence of alcohol. A level of .05 to .10 is relevant evidence in indicating whether the person was under the influence.

Restatement of Minn. Stat. 169.123

Minn. Stat. 169.123 spells out the chemical tests used to determine the offender's intoxication level. Any person who operates a motor vehicle consents to a chemical test of his or her blood, breath, or urine to determine the presence of alcohol. If the offender refuses to submit to testing, his or her right to drive will be revoked for a minimum of one year or, in the case of a juvenile, until the person reaches 18, whichever is greater. After submitting to tests, the offender has the right to consult with an attorney and have additional tests (blood or urine) done by someone of the offender's choosing. The person may choose which of either a blood or urine test he or she will submit to, if those are the test choices designed by the officer. A breath test is standard unless the substance is not detected by its use then a blood or urine test is necessary.

Restatement of Minn. Stat. 169.122 Open Bottle Penalty

Consumption - subdivision 1

No person shall drink alcoholic beverages in a motor vehicle while operating it upon a public highway.

Open Bottle - subdivision 2

No person shall have in their possession while in a motor vehicle on a public highway intoxicants which have been opened, or the seal broken or contents partially removed.

Possession - subdivision 3

It is unlawful for the owner of a vehicle or the driver (if the owner is not in the vehicle) to keep in the vehicle while it is upon a public highway, any bottle or receptacle containing intoxicants which have been opened or the seal broken or the contents partially removed except when such bottle or receptacle is kept in the trunk or some other area not normally occupied by the driver or passenger. A utility compartment or glove compartment is deemed within area occupied by driver and passenger. Violation of this statute is a misdemeanor.

### TRIAL PRESENTATION

The trial is presented by two attorneys: Prosecuting attorney and defending attorney.

The prosecuting attorney represents the interests of the State and its citizens, and brings forth the charges against the defendant seeking a guilty verdict. In representing the interests of the State he or she must take into account the general safety and well being of the general public and the importance of protecting society from any potential danger the defendant may inflict.

The defending attorney represents the defendant, and seeks the presentation of a fair trial to the jurors without any unfair prejudice against the defendant, and ultimately an acquittal.

The prosecuting attorney presents the State's side first in opening arguments, presentation of witnesses and closing arguments. It is the prosecutor's burden to prove the defendant is guilty beyond a reasonable doubt because defendant remains innocent until proven guilty. The defending attorney has the opportunity to rebut that evidence to show the defendant is not guilty.

The judge's role in a trial is to see that the attorneys have a fair chance to present their case by properly ruling on objections or improper conduct which may arise. The judge instructs the jury on the applicable law so that the jury can properly arrive at a decision. After hearing the jury's decision, the judge has the power to strike their verdict if he or she feels it was reached improperly. The judge also sentences the defendant, if the defendant is found guilty, taking into account such factors as previous offenses, age and the seriousness of the present crime to determine the proper punishment.

PERFORMER'S MATERIAL

Bailiff's Statement

At the opening of every trial, a student observer will be chosen to be the bailiff. At the time of the judge's entrance, the bailiff should read some version of the following statement:

"Will everyone please rise.

HEAR YE! HEAR YE! The District Court for the County of

\_\_\_\_\_, State of \_\_\_\_\_,

Judicial District is now in session, the Honorable Judge

\_\_\_\_\_ presiding."

## JUDGE'S OPENING STATEMENT

After entering, the Judge should give some form of the following statement. It is required that the judge read the charges listed below in order to give the observers an idea as to what the case is about.

"Please be seated.

Ladies and Gentlemen we are here today to hear the case of People of the State of \_\_\_\_\_ v. \_\_\_\_\_. The defendant, \_\_\_\_\_ has been charged with:

1. Driving while under the influence of alcohol, in violation of Minn. Stat. Section 169.121, subd. 2.
2. Having an open alcohol container in a motor vehicle in violation of Minn. Stat. Section 169.122, subd. 2.
3. Possession of alcohol with the intent to consume, while a minor, in violation of Minn. Stat. Section 340.503, subd. 3.
4. Consumption of alcohol while a minor, in violation of Minn. Stat. Section 340A.503, subd. 3.

Are both sides ready to proceed with the case? Is the State ready to proceed? (Wait for answer). Is the defense ready to proceed? (Wait for answer). Is the jury that has been empaneled acceptable to both parties? (Wait for an answer from both sides).

The State may proceed with its opening statement. (Allow the State to make a brief opening statement).

Defense, you may proceed with your opening statement. (Allow the defense to make a brief opening statement.)"

It is traditional for the attorneys first to ask permission from the judge to approach the jury; that way the observers understand that the judge is in charge of the courtroom and also that the jury is essentially set apart from any type of personal contact with the attorneys.

After both sides have fully completed their arguments and any final motions have been made, the judge must instruct the jury on the guidelines for determining the case. Give the jury instructions as follows:

"Ladies and Gentlemen of the jury, you have now heard all the testimony and seen all the evidence in the case of State v. \_\_\_\_\_. Soon the matter will be given into your hands in order that you may decide the guilt or innocence of \_\_\_\_\_. Before you are allowed to make that decision, I ask that you listen very closely to the following instructions. These instructions will guide and assist you in determining whether \_\_\_\_\_ has violated the laws of the State of \_\_\_\_\_."

**Read the Jury Instructions on the following page.**

## JURY INSTRUCTIONS\*

The defendant has been charged with four separate offenses. You must now make a decision as to his/her guilt or innocence on each of the four charges. You must make four separate decisions.

### Instruction #1: Reasonable Doubt.

Proof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based on reason and common sense; it does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.

### Instruction #2: Driving While Under the Influence

In order to return a guilty verdict on this count, you must be satisfied beyond a reasonable doubt that the defendant was driving, operating, or in control of a motor vehicle within the state of Minnesota while under the influence of alcohol.

### Instruction #3: Under the Influence

Minnesota law does not define what constitutes under the influence of alcohol. The law simply says that a blood alcohol content of .10 or greater creates a presumption that the individual was under the influence. The defense has an opportunity to rebut that presumption. The law also says that a blood alcohol content of .05 to .09 is relevant evidence that the individual was under the influence, it is your decision to determine whether the defendant in this case was as a matter of fact under the influence.

Instruction #4: Open Container

In order to return a guilty verdict on this count, you must be satisfied beyond a reasonable doubt that an open alcohol container, that is, a container with the seal broken, was in the defendant's motor vehicle within the area the driver occupied.

Instruction #5: Possession

In order to return a guilty verdict on this count, you must be satisfied beyond a reasonable doubt that the defendant was in possession of alcohol with the intent to consume while under the age of 21.

Instruction #6: Consumption

In order to return a guilty verdict on this count, you must be satisfied beyond a reasonable doubt that the defendant consumed alcohol while under the age of 21.

Dismiss the Jury to make a decision.

After the verdict, proceed to sentencing, see next page.

---

\*NOTE: Based on Minnesota JIG, research you own state's law.

## SENTENCING

(After the jury has returned the verdict, you must close the trial. The following is a general outline to use).

"Will the defendant please stand.

\_\_\_\_\_ name \_\_\_\_\_ you have been found guilty of (state the charges the defendant was found guilty of), do you have any statements to make before I pass sentence. (Allow any short statements).

\_\_\_\_\_ name \_\_\_\_\_ you have been found guilty of (state charges). The seriousness of these crimes in today's society mandates that I impose on you a sentence that will act as a deterrent to others and to yourself, so that you do not commit these offenses again. I, therefore, sentence you to thirty days in the \_\_\_\_\_ Jail for each of the offenses for which you have been found guilty and fine you the sum of SEVEN HUNDRED DOLLARS (\$700.00) for each offense.

I will stay 28 days, and \$500.00 for a period of one year, provided no similar charges are brought during that year. You will be committed to the custody of the Marshall to serve your two days beginning tomorrow at 9:00 a.m., and must pay the \$200.00 fine within 30 days."

**SAMPLE OF DIRECT EXAMINATION OF THE ACCUSED**

The Defense calls Angela Kimmel.

- Q: Miss Kimmel, would you state you name and spell it for the record?
- A: Angela Kimmel; K-I-M-M-E-L
- Q: How old are you?
- A: I'm 17 years old.
- Q: Do you go to School?
- A: Yes, I'm a senior at           (School)
- Q: Do you participate in any extracurricular activities?
- A: Yes, I'm on the basketball team.
- Q: What are your grades like, generally?
- A: I usually get C's, sometimes a B or an A in subject I like, like math.
- Q: Do you remember the night of March 28, 1986?
- A: Yes.
- Q: Can you tell us what you did that night?
- A: Well, my boyfriend and I were going to go out. He came to my house about 8:30. We talked to my parents for awhile, and then we left.
- Q: How did you leave?
- A: I took my parent's car.
- Q: Did you get their permission?
- A: Oh, of course. They let me drive it quite a bit.
- Q: Where did you go?
- A: Well, my friend Jan's house.
- Q: What did you do there?
- A: Jan was having a party--not a huge party, probably only 30 people or so.
- Q: What time did you get to the party?
- A: Between 9:15 and 9:30.
- Q: Was there any alcohol at the party?

A: Yeah, there were two kegs in the basement.

Q: Did you have anything to drink?

A: Well, yes. I drank some beer.

Q: What were you drinking out of?

A: These plastic cups.

Q: How big were the cups?

A: Oh, I don't know--probably this big or so. (Hold hands apart).

Q: Your Honor, let the record reflect that Angela's fingers are three to three and a half inches apart and about a half an inch in diameter--probably about an eight to ten ounce glass.

P: Objection, your Honor--Counsel is misstating the Defendant's testimony. Let the record reflect her fingers are five to six inches apart, and about two inches in diameter--probably about a 14 to 16 ounce glass.

J: I think the Defendant's testimony was somewhere in between, Counsel. Generally, the glasses given with keg purchases are of the 12 ounce variety approximately, and if there are no objections, we'll use that size.

C: No objection, your Honor.

Q: How many glasses of beer did you drink?

A: I don't really remember--I really don't like beer anyway. Probably only two or three.

Q: Were they full glasses?

A: No, sometimes it got warm and I filled it up before I drank it all, and sometimes you get lots of foam on top.

Q: What else did you do at the party?

A: We played some video games, ate some chips and stuff, and talked to friends.

Q: What time did you leave the party?

A: About 11:30--we both had to be home by 12:30.

Q: Where did you go?

A: I was bringing my boyfriend home.

Q: What happened on your way home?

A: I was driving down name of street, and then I turned left onto name of street. Then I noticed some flashing lights behind me, so I pulled over.

Q: Then what happened?

A: The cop got out of the squad car, and started coming towards me.

Q: What were you thinking?

A: I didn't know what was going on. I was really scared--I had never been stopped by a police officer before.

Q: What did the officer do when he got to the car?

A: He asked me for a license, and took it back to his squad car.

Q: What happened next?

A: After a few minutes, he came back. He looked in the car, and asked me where I was driving to. I said I was going home. Then he asked me to get out of the car.

Q: How did this make you feel?

A: I was really nervous now. I didn't know what was going on.

Q: What happened next, Angela?

A: He made me do four tests.

Q: Would you tell us what tests he had you do?

A: First he had me count backwards from 20 to 0.

Q: Could you do that?

A: Oh, sure.

Q: What was the second test?

A: Then he had me tip my head back, close my eyes, and touch my nose.

Q: Could you do that?

A: Yes.

Q: What was the third test?

A: He had me put my foot above the bumper of my car, and balance on one foot.

Q: Could you do that?

A: Well--kind of. I had trouble keeping my balance in the gravel on the road with my shoes. But I thought I did pretty well.

Q: What was the fourth test?

A: He had me walk a straight line by putting my heel right against my toe.

Q: Could you do that?

A: Well--kind of. That's a pretty funny way to walk, and I stepped on my own toe once, but I did ok.

Q: How were you feeling during these tests?

A: I was really scared, really nervous. Plus I was worried because it was getting late and I had to be home. And I didn't really know how to do the tests very well.

Q: What happened next?

A: The cop told me I was under arrest for DWI, open bottle and possession and consumption of beer, while a minor. Then he brought me down to the station.

Q: What happened at the station?

A: He gave me some test--he said it would see whether or not I was drunk.

Q: Then what happened?

A: They went through some stuff; they finger-printed me, and stuff. Then I called my parents, and they said we could go.

Q: Has anything like this every happened to you before?

A: No, never in my whole life.

Q: Thank you Angela. I have no further questions, your Honor.

SAMPLE DIRECT EXAMINATION OF ARRESTING OFFICER

Your Honor, The State calls Officer Robert Johnson.

Q: Office Johnson, would please state you name, and spell it for the record?

A: Officer Robert Johnson, J-O-H-N-S-O-N.

Q: Are you a police officer in \_\_\_\_\_?

A: Yes, I am.

Q: How long have you been an officer?

A: Two years.

Q: What is your position?

A: I am a patrolman.

Q: What type of training is required to become a police officer in       Name of State      .

A: A two year Associate of Arts degree, and 10 weeks at the Police Academy. I might add that I have a four year degree from the University of Minnesota.

Q: Are you then a licensed Police officer in the State of \_\_\_\_\_?

A: Yes.

Q: What are your duties as a patrolman?

A: I am responsible to patrol a particular area of       Name of Town      , to respond to any calls the dispatcher may put through or assign to me, and to appropriately respond to any suspicious or unlawful activity I may observe while patrolling.

Q: Where you working on Friday, March 28, 1986?

A: Yes.

Q: What shift were you working?

A: I was working the afternoon shift from 4:00 p.m. to midnight.

Q: What area were you patrolling?

A: I was patrolling the area between       name of street       and       name of street      , and from       name of street       to       name of street      .

Q: Do you recall what happened at approximately 11:15 p.m. on March 28?

A: Yes, I do.

Q: What happened?

A: I was traveling on name of street and made a left hand turn onto name of street. I was then traveling west. Ahead of me I observed a brown Chevy Citation driving somewhat erratically.

Q: What do you mean by erratically?

A: The car was swerving left and right, and crossed the center line once. I continued to follow the car. As it approach name of street, the driver began a left turn onto name of street. The driver did not engage the turn indicator until halfway through the turn. The turn was exaggerated and the driver over-corrected coming out of the turn, crossing the center line on name of street. The driver continued in a erratic fashion. I radioed in that I was making a stop.

Q: Then what happened?

A: I turned on my overhead lights, and the car pulled over. I stopped behind the vehicle, stepped out of my car, and approached the vehicle.

Q: In what fashion did you approach the vehicle?

A: I approached the driver's side of the vehicle. The driver's window was rolled down. I observed two occupants--a female who was driving and a male passenger in the front seat.

Q: What did you do next?

A: I introduced myself as Officer Johnson of the name of County Police, and asked the driver for her license.

Q: Do you recall the driver of the car?

A: Yes.

Q: Is that person in the courtroom today?

A: Yes, she is.

Q: Could you identify that individual?

A: Yes. (Point out defendant).

Q: Your Honor, let the record reflect that Officer Johnson has identified the Defendant.

J: The record will so reflect.

Q: What did you do with the license then?

A: I brought it back to the patrol car, where I called it in to the dispatcher to check for any warrants or violations outstanding. It came back clean.

Q: What time did you make that call?

A: 12:02 a.m.

Q: Did you come to know the driver's age?

A: Yes, by observing the date of birth of her driver's license, I noted she was 17 years of age.

Q: What did you do next?

A: I approached the vehicle, and visually inspected the inside of the vehicle as well as the occupants.

Q: What did your inspection reveal?

A: I observed a beer can in the back seat of the vehicle. I asked the driver where she was driving to. She responded that she was driving home. I noted that the driver's eyes appeared slightly glazed, and that her speech was somewhat slurred. I also noted the smell of alcohol. She also had spider veins on her upper ear.

Q: What did you do then?

A: I asked the occupants to step out of the car. When the driver stepped out of the car, I noted that she appeared very nervous.

Q: Why did you ask her to step out of the car?

A: From my previous observations, I suspected that the driver may be under the influence of alcohol and I determined it was necessary to perform some standard field sobriety tests.

Q: What tests did you perform?

A: I performed four tests. First was a counting exercise, where the subject is to count backwards from 20 to 0. Second was a dexterity test, where the subject is to tip her head back, close her eyes, and touch her index finger to her nose. Third was another dexterity test, where the subject is to hold her left foot six inches above the rear bumper of the car and balance on one foot. Fourth was another dexterity test, where the subject is to walk heel-to-toe along a straight line.

Q: Officer Johnson, is it standard procedure to record the results of these tests?

A: Yes, we record the results on a scoring sheet.

Q: Do you recall following that procedure in this case?

A: Yes.

Q: Officer, I now show you what has been marked as State's Exhibit No. 1 for Identification, and ask you to examine it.

Officer, please tell the Court what this is.

A: This is the scoring sheet I filled out when I tested Angela Kimmel.

Q: Is that your signature at the bottom of the page?

A: Yes, it is.

Q: Officer, could you please tell us what the results of the counting exercise were?

A: Miss Kimmel passed that test.

Q: What were the results of the nose touching test?

A: Ms. Kimmel passed that test.

Q: What were the results of the balancing dexterity test?

A: Ms. Kimmel failed that test.

Q: What would cause a person to fail that test?

A: We look to see whether the subject sways while balancing, must use her arms to balance, hops, or puts her foot down.

Q: What do the check marks on the scoring sheet indicate?

A: When we observe a flaw in the subject's test, we check the appropriate box.

Q: What did you observe in Ms. Kimmel's balancing dexterity test?

A: She swayed while balancing, used her arms to balance and put her foot down.

Q: What were the results of the walk and turn dexterity test?

A: Miss Kimmel failed that test.

Q: What caused Miss Kimmel to fail that test?

A: She stopped to steady herself while walking, did not touch her heel to her toe, lost her balance, used her arms for balance, and stepped off the line.

Q: Your Honor, the State asks that State's Exhibit No. 1 for Identification be admitted into evidence. May the record reflect I am now showing Defense Counsel the Exhibit.

J: Any objections, Counsel?

DC: No objections your Honor.

Q: The State offers State's Exhibit No. 1.

J: State's Exhibit No. 1 is so accepted.

Q: In your experience, Officer Johnson, what did the Defendant's test results signify?

A: It was my opinion that Miss Kimmel may have been driving while under the influence of alcohol, and should be brought to the station for further testing.

Q: What was the next step you took?

A: I asked both occupants to get into the squad car. They did. I retrieved the beer can, and then drove the occupants to the Name of Precinct on Name of Street.

Q: What did you do at the station?

A: I sealed the beer can in an evidence bag, and locked it in an evidence locker. I then administered an intoxolyzer test to the driver.

Q: What were the results of that test?

DC: Objection--lack of foundation.

J: Will Counsel approach the bench?

(Argue foundation)

J: Objection sustained.

Q: Officer Johnson, do you have any special training in regards to this intoxolyzer test, where did you learn the mechanics of the machine?

A: Yes, I have successfully completed a 48 hour class with the BCA--Bureau of Criminal Apprehension.

Q: Are you licensed by the State of \_\_\_\_\_ to administer the test?

A: Yes, I am.

Q: What does the test consist of?

A: First, I test and re-set the machine, and insert a blank test record. The subject blows into the mouthpiece, and I record the results.

Q: Is it standard procedure to keep the results of this test?

A: Yes, the results are recorded on the Operational Check List.

Q: Officer Johnson, did you follow that procedure in this case?

A: Yes.

Q: I now show you what has been marked as State's Exhibit No. 2 for Identification and ask you to look at it.

Do you recognize it?

A: Yes. That is the Intoxolyzer Operational Checklist from the test taken by the Defendant.

Q: Is that your signature at the bottom of the form?

A: Yes, it is.

Q: Officer, what were the results of the test administered to the defendant?

A: Both times the Defendant registered a blood alcohol content of .09.

Q: Officer, you previously mentioned that you obtained a beer can from the Defendant's car, is that correct?

A: Yes.

Q: And you put that can in an evidence envelope, sealed the envelope and initialed it, correct?

A: Correct.

Q: Officer, I show you what has been marked as State's Exhibit No. 3 for Identification. Do you recognize it?

A: Yes, that is the can that was taken from the Defendant's car.

Q: How do you recognize it?

A: Those are my initials on the envelope.

Q: Has the seal been broken at all?

A: Yes.

Q: Is the can now open?

A: Yes.

Q: So, the can was open when you retrieved it from the Defendant's car.

A: Yes, it was.

Q: Your Honor, I now offer State's Exhibit No. 3 for Identification into evidence.

Let the record reflect I am showing the Exhibit to Defense Counsel.

J: Any objections, Counsel?

DC: No objections, your Honor.

Q: Your Honor, the State asks that the for Identification marks be stricken.

J: So be it. State's Exhibit No. 3 is received.

Q: Officer Johnson, did you take a Statement from the Defendant?

A: No, however, I did ask her whether she had been drinking.

Q: What was her response?

A: "Not Really."

Q: Thank you. No further questions, your Honor.

SAMPLE OBJECTIONS

OBJECTIONS TO QUESTIONS

Calls for irrelevant answer  
Violates the best evidence rule  
Calls for a privileged communication  
Calls for a conclusion  
Calls for an opinion (by an incompetent witness)  
Calls for a narrative answer  
Calls for a hearsay answer  
Leading  
Repetitive (asked and answered)  
Beyond the scope (of a direct, cross or redirect)  
Confusing/misleading/ambiguous/vague/unintelligible  
Speculative  
Compound question  
Argumentative  
Improper characterization  
Mistakes evidence/misquotes the witness  
Cumulative  
Improper foundation/lack of foundation  
Improper impeachment

OBJECTIONS TO EXHIBITS

Irrelevant  
No foundation  
No authentication  
Contains hearsay  
Prejudice outweighs its probative value

OBJECTIONS TO ANSWERS

Irrelevant  
Privileged  
Conclusion  
Opinion  
Hearsay  
Narrative/not responsive/volunteered  
Improper characterization  
Violates parole evidence rule

JUDGES RULINGS

Sustained - Question, exhibit or answer allowed  
Overruled - Question, exhibit or answer prohibited

**APPENDICES**

Appendix "A"

PAD LRE Drug/Alcohol Education Program

Name \_\_\_\_\_  
Grade \_\_\_\_\_ Age \_\_\_\_\_  
Male Female (Circle One)  
School \_\_\_\_\_

Mock Trial Evaluation

Using a scale of 1 to 10, with 5 as average and 10 as perfect, please rate each student on his or her presentation. In determining the score, consider poise and articulation, organization, proper phrasing of questions, correct use of procedure and the law student's overall understanding of the facts, issues and the law involved in the trial. The law student's use of objections and knowledge of the rules of evidence should be considered in scoring each individual.

1. Opening Statement: Prosecution Comments  
Score: 1 2 3 4 5 6 7 8 9 10
2. Opening Statement: Defense  
Score: 1 2 3 4 5 6 7 8 9 10
3. Prosecution's Case:
  - A. Direct Examination of Witness:  
Score: 1 2 3 4 5 6 7 8 9 10
  - B. Cross Examination of Witness:  
Score: 1 2 3 4 5 6 7 8 9 10
  - C. Witness for the Prosecution:  
Score: 1 2 3 4 5 6 7 8 9 10
4. Defense's Case:
  - A. Direct Examination of Witness:  
Score: 1 2 3 4 5 6 7 8 9 10
  - B. Cross Examination of Witness:  
Score: 1 2 3 4 5 6 7 8 9 10

(over)

C. Witness for the Defense:

Score: 1 2 3 4 5 6 7 8 9 10

5. Closing Statement: Prosecution:

Score: 1 2 3 4 5 6 7 8 9 10

6. Closing Statement: Defense:

Score: 1 2 3 4 5 6 7 8 9 10

VERDICT

Your Verdict:

Jury's Verdict:

What have you learned from this demonstration?

How have your attitudes regarding drugs and alcohol changed as a result?

What did you like about the presentation? Dislike?

Additional remarks:

Appendix "B"

Student Evaluation

Name \_\_\_\_\_

Subject \_\_\_\_\_

Date \_\_\_\_\_

Name of Resource Person(s) \_\_\_\_\_

Please use the following scale to rate the resource person on the statements listed below:

1 - Excellent      2 - Good      3 - Fair      4 - Poor

- \_\_\_\_\_ 1. The resource person seemed to be knowledgeable about drug and alcohol laws.
- \_\_\_\_\_ 2. The resource person used language I could understand.
- \_\_\_\_\_ 3. The resource person's speech and presentation style made me want to listen and participate.
- \_\_\_\_\_ 4. The resource person made me feel free to ask questions, disagree and express my ideas.
- \_\_\_\_\_ 5. The resource person presented: (Please list one)
  - a. Too much information in the time available.
  - b. Too little information in the time available.
  - c. About the right amount of information in the time available.
- \_\_\_\_\_ 6. This session met my expectations of the program.
- 7. I learned three things about drug and alcohol laws and their relationship to myself, my family, friends and community when the speaker came to class.
  - a. \_\_\_\_\_
  - \_\_\_\_\_
  - b. \_\_\_\_\_
  - \_\_\_\_\_
  - c. \_\_\_\_\_
  - \_\_\_\_\_

(over)

8. Indicate below your personal level of knowledge prior to this presentation. (Circle one)

Very knowledgeable    Knowledgeable    Somewhat knowledgeable

Not very knowledgeable    No knowledge at all

9. Indicate below changes in, and the accuracy of, your estimated level of knowledge after this presentation.

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10. I think this resource person should be invited to other classes.

a. yes                      b. no

11. This program would have helped me more if \_\_\_\_\_

---

---

Additional comments/suggestions:

Appendix "C"

Teacher Evaluation

Name \_\_\_\_\_

School or Organization \_\_\_\_\_

Date \_\_\_\_\_

Name(s) of Speaker(s) \_\_\_\_\_

1. Was the material presented in an organized manner that was easy for your students to understand?

\_\_\_\_\_

2. Did you feel that the class responded well to the presentation?

\_\_\_\_\_

3. Did you, the teacher, broaden your knowledge of current drug/alcohol laws?

\_\_\_\_\_

4. Did the program meet your expectations?

\_\_\_\_\_

5. Would you invite members of Phi Alpha Delta to conduct lessons in other classes or return next school year or semester?

\_\_\_\_\_

6. Overall, the program was \_\_\_\_\_

1-Excellent    2-Good    3-Fair    4-Poor

7. Comments, suggestions:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Appendix "D"

LAW STUDENT TRAINING REPORT  
(Form A)

Instructions:

1. This form should be completed by the PAD law student coordinator for the training sessions they conduct.
2. Please attach agenda and participant list.

Data:

1. State \_\_\_\_\_ Date of Activity \_\_\_\_\_
2. Law School \_\_\_\_\_
3. Chapter \_\_\_\_\_
4. Length of training (round to the nearest quarter hour) \_\_\_\_\_
5. Number of participants in this session:  
\_\_\_\_\_ Law Students \_\_\_\_\_ Administrators  
\_\_\_\_\_ Faculty \_\_\_\_\_ Others

Person completing Form \_\_\_\_\_ Date \_\_\_\_\_

Participant List:

- |           |           |
|-----------|-----------|
| 1) _____  | 11) _____ |
| 2) _____  | 12) _____ |
| 3) _____  | 13) _____ |
| 4) _____  | 14) _____ |
| 5) _____  | 15) _____ |
| 6) _____  | 16) _____ |
| 7) _____  | 17) _____ |
| 8) _____  | 18) _____ |
| 9) _____  | 19) _____ |
| 10) _____ | 20) _____ |

Appendix "E"

PAD LRE DRUG/ALCOHOL EDUCATION PROGRAM REPORT  
(Form B)

Instructions: This form should be completed for each session. Please attach agenda and evaluation forms, as appropriate.

1. School \_\_\_\_\_ Grades - 8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_

2. Presentation date(s) \_\_\_\_\_

3. Lessons presented (check):

\_\_\_\_\_ Introductory Lesson  
\_\_\_\_\_ Lesson Two  
\_\_\_\_\_ Lesson Three  
\_\_\_\_\_ Lesson Four  
\_\_\_\_\_ Lesson Five  
\_\_\_\_\_ Lesson Six

4. Length of presentation per lesson (in minutes) \_\_\_\_\_  
\_\_\_\_\_

5. Number of participants in this session:

\_\_\_\_\_ Students  
\_\_\_\_\_ Classroom teachers  
\_\_\_\_\_ School Administrators  
\_\_\_\_\_ Community Resource persons (specify) \_\_\_\_\_  
\_\_\_\_\_ Others (specify) \_\_\_\_\_

\* \* \* \* \*

Person completing form \_\_\_\_\_ Phone \_\_\_\_\_

Law School \_\_\_\_\_ Chapter \_\_\_\_\_

Send to: Phi Alpha Delta Public Service Center  
7315 Wisconsin Avenue, #325E  
Bethesda, Maryland 20814

Appendix "F"

**SAMPLE LETTER**

(Form 1)

March \_\_, 19\_\_

Mr. William Johnson  
Social Studies Department  
Lincoln High School  
123 Main Street  
Anytown, U.S.A.

RE: Phi Alpha Delta, LRE Drug/Alcohol Education Program

Dear Mr. Johnson:

On behalf of the \_\_\_\_\_ Chapter of Phi Alpha Delta Law Fraternity, International, \_\_\_\_\_ University School of Law, let me take this opportunity to inform you about our Law-Related Education Drug/Alcohol Education Program.

The program is designed to educate your students through demonstration and discussion about the legal and social consequences of illegal drug and alcohol use and the American system of criminal jury trials. At a time that is convenient to you, \_\_\_\_\_ Chapter members would conduct a discussion and/or a criminal mock trial demonstration involving all of your students as jury members. The roles of attorneys, witnesses and judge would be performed by the chapter members all of whom are law students at \_\_\_\_\_ University School of Law.

While the lessons are primarily educational, they are also designed to interest the audience with its subject matter; that is, illegal drug/alcohol use and in the mock trial demonstration, a high school senior is charged with DWI, open bottle, possession of alcohol while a minor, and consumption of alcohol while a minor. Such a scenario is particularly interesting to those attending high school today. Not only are they exposed to American Jurisprudence in a criminal trial, but they are witness to the consequences of underage drinking.

Along with the trial and discussion, our chapter will provide teaching materials that can be used by you to introduce your students to the subject matter of our visit. The program is designed to be fully integrated into your course curriculum, and many teachers who have participated consider their partnership with their local chapter to be highly important. Your preparation for our visit would be minimal as the materials are fully prepared and need only to be presented to the students during regular class time.

There is no cost to you or your school for participation. The program is offered to you, for the benefit of your class, students, school and community. You may be asked to share or contribute the cost of handout materials.

If you would like more information about this program, please feel free to call me at \_\_\_\_\_, or write me at:

Yours very truly,

Appendix "G"

**SAMPLE LETTER**  
(Form 2)

Date

Dear \_\_\_\_\_:

The \_\_\_\_\_ Chapter of Phi Alpha Delta Law Fraternity, International at the \_\_\_\_\_ University School of Law sponsors a continuing program entitled Phi Alpha Delta Law-Related Education Drug/Alcohol Education Program, a program designed to inform the youth of \_\_\_\_\_ and the surrounding communities regarding the legal and social consequences of illegal drug and alcohol use. All speakers are law student volunteers who devote time from their busy schedules to community service.

The program consists of a series of lessons using either a question and answer format or a mock trial demonstration. Concentration is on specific areas such as laws pertaining to the possession or use of illegal drugs and alcohol, and the consequences of a conviction for drug and alcohol possession or use including DWI. The program is designed for grades 8-12 and could be adopted to youth groups and young adult groups as well. Law Student presentors are available to present this program through 19\_\_\_. We have a number of volunteers available with flexible schedules so that we can accommodate classroom and meeting schedules.

If you are interested in Phi Alpha Delta presenting this program to your group, please contact \_\_\_\_\_ at the \_\_\_\_\_ Law School. For more information pertaining to the program, contact \_\_\_\_\_ at \_\_\_\_\_, (or leave a message at the \_\_\_\_\_).

\_\_\_\_\_  
Law Student Coordinator  
PAD LRE Drug/Alcohol  
Education Program

\_\_\_\_\_ Chapter

Appendix "H"

**SAMPLE LETTER**  
to Chapter Members

Our Drug/Alcohol Education program is going well. We've had a great response from the \_\_\_\_\_ School District. Now there is ample opportunity for everyone to participate in the program. Some of you were unable to attend our last couple of meetings where we had a sign-up sheet for volunteers to go to the schools and present the program. If you would like to help out, please sign your name next to one (or all), of the times listed and return it to my box in the law school commons. My thanks to those of your who did sign up at the last meeting. Please volunteer on the new schedule for upcoming presentations. Remember that ideally we will have two members at each presentation.

P.S. Don't worry if you don't know anything about the drug law, we have a guide and I will explain the presentation to any volunteers.

Thanks,

Friday 2/20: 8:35-9:25 \_\_\_\_\_  
(Atkins Jr.) 9:30-10:20 \_\_\_\_\_  
1:45-2:35 \_\_\_\_\_

Monday 2/23: 10:25-11:15 \_\_\_\_\_  
(Atkins Jr.) 11:20-11:45 \_\_\_\_\_  
12:50-1:40 \_\_\_\_\_  
1:45-2:35 \_\_\_\_\_

Thursday 2/26: 8:25-9:20 \_\_\_\_\_  
(Mackenzie Jr) 10:20-11:10 \_\_\_\_\_  
12:50-1:40 \_\_\_\_\_  
2:40-3:30 \_\_\_\_\_

Tuesday 3/3: 11:05-12:05 \_\_\_\_\_  
(Evans Jr.) \_\_\_\_\_

Tuesday 3/24: 8:35-9:25 \_\_\_\_\_  
(Wilson Jr.) 10:25-11:15 \_\_\_\_\_

Tuesday 3/31: 10:50-11:40 \_\_\_\_\_  
(Monterey) 12:30-1:20 \_\_\_\_\_  
1:30-2:20 \_\_\_\_\_

Appendix "I"

**SAMPLE LETTER**  
Request for Press Coverage

Dear

Each year the \_\_\_\_\_ Chapter of Phi Alpha Delta Law Fraternity, International sponsors a program entitled "PAD LRE Drug/Alcohol Education Program." The goal of this program is to provide the youth and the surrounding community with factual and current information regarding the present drug and alcohol laws. Members of Phi Alpha Delta are law students who will make program presentations before any interested groups or organizations.

We hope that you will provide a medium through which we may make contact with groups or organizations interested in this program. Phi Alpha Delta requests any public service time that you might devote to this community education project. Enclosed is a Public Service Announcement which contains the basic information that we wish to convey. The program will be presented through April of 19\_\_.

Service to the community is one of Phi Alpha Delta's goals. We sincerely appreciate your assistance in helping us accomplish this goal, and if you would like any additional information, please contact \_\_\_\_\_ at the above address, or call \_\_\_\_\_.

Thank you,

Law Student Coordinator  
PAD LRE Drug/Alcohol  
Education Program

Appendix "J"

Proposed Public Service Announcement

Phi Alpha Delta Law Fraternity, International at \_\_\_\_\_ Law School sponsors a program called the "PAD LRE Drug/Alcohol Education Program," a program designed to inform the youth of \_\_\_\_\_ and the surrounding community regarding current drug and alcohol laws. Members of Phi Alpha Delta are law students who will speak to any interested group or organization. If you are interested in a presentation of this program, please contact \_\_\_\_\_, Phi Alpha Delta Drug/Alcohol Education Program, \_\_\_\_\_ Law School, or call \_\_\_\_\_.

Appendix "K"

Glossary  
(Legal)

- Accused Offender: The genetic name for the defendant in a criminal case; commonly used in statues to indicate person implicated in the commission of a crime.
- Adjudication: The formal giving or pronouncing a judgment or decree in a cause; also the judgment given. The entry of a decree by a court in respect to the parties in a case.
- Adverse: Opposed; contrary; in resistance or opposition to a claim, application or proceeding. Having opposing interests.
- Alcohol: Alcoholic liquors. "Alcoholic, spirituous and malt liquors" mean intoxicating liquors which can be used as average, and which when drunk to excess, will produce intoxication.
- Alcohol Concentration: A measure of the percentage of alcohol in the blood.\*
- Appeal: Resort to a superior court to review the decision of an inferior court or administrative agency.
- Apprehension: The seizure, taking, or arrest of a person on a criminal charge.
- Arraignment: Procedure by which the accused is brought before the court to plead to the criminal charge in the indictment or information. The charge is read before him and he is asked to plead "guilty" or "not guilty."
- Arrest: To deprive a person of his liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand.
- Assumption: The act of conceding or taking for granted. \*\*
- Bail: To procure release of one charged with an offense by insuring his future attendance in court and compelling him to remain within jurisdiction of court.
- Biased: Inclination; bent; prepossession; a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction.\*
- Bonded: Placed under or operating under a bond of trust as a public or bonded Official (i.e., Notary Public).\*
- Breached: The breaking or violation of a law, right, obligation, engagement, or duty, either by commission or omission.

Burden of Proof: In the law of evidence, the necessity or duty of affirmatively proving a fact or facts on an issue raised between the parties in a cause.

Charged: Accusation of crime by complaint, indictment or information.

Circumstantial Evidence: Testimony not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved.\*

Class "A" Misdemeanor: Punishable by up to one year in jail and/or up to \$2,000 fine. (Example)\*

Class "B" Misdemeanor: Punishable by 180 days in jail and/or up to \$1,000 fine. (Example)\*

Class "C" Misdemeanor: Punishable by a fine up to \$200 - no jail term. (Example)\*

Committed: To perpetrate, as a crime; to perform as an act; to entrust; to pledge.\*\*

Common Law: As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the court recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.

Complaint: The original or initial pleading by which an action is commenced under codes or Rules of Civil Procedure. The pleading which sets forth a claim for relief.

Comprehensive Drug Laws: See, for example, Uniform Controlled Substances Act (Appendix "N").\*

Consequence: The result following in natural sequence from an event which is adapted to produce, or to aid in producing, such result; the correlative of "cause".\*\*

Constructing a Case: A logical, systematic method used by an attorney to organize his or her case. Includes the development of a "theory of the case", legal research and organization of evidence and arguments.\*

Contraband: In general, any property which is unlawful to produce or possess.

Controlled Substances: Any narcotic drug so designated by law.

Controlled Substances Act: Federal and State acts (the latter modeled on the Uniform Controlled Substances Act) the purpose of which is to control the distribution, classification, sale, and use of drugs. The majority of states have such acts.

Convicted: In a general sense, the result of a criminal trial ends on a verdict which ends in a judgment or sentence that the accused is guilty as charged.

Counsel: Attorney. Advice and assistance given by one person to another in regard to a legal matter, proposed line of conduct, claim or contention.

Counts: In pleading, the plaintiff's, or prosecution's, statement of his cause or action. \*

Deal: (See Plea Bargaining)

Defendant: The person defending or denying; the party against whom relief or recovery is sought in an action or suit or the accused in a criminal case.

Defense: That which is offered on alleged by the party proceeded against in an action or suit, as a reason in law or fact why the plaintiff should not recover or establish what he seeks.

Deferred Adjudication Probation: (See Probation)

Deleted Drugs: Removed from control.\*

Delinquent Conduct: He who has been guilty of some crime, offense, or failure of duty or obligation.

Detection: A discovery or laying open of that which was hidden, investigation.

Deterrence: Anything which impedes or has a tendency to prevent.\*\*

Discovery: In a general sense, the ascertainment of that which was previously unknown; the disclosure or coming to light of what was previously hidden; the acquisition of notice or knowledge of given acts or facts; as in regard to the "discovery" of fraud affecting the running of the statute of limitations, or the granting of a new trial for newly "discovered" evidence.

Documents: An instrument on which is recorded, by means of letter, figures, or marks, the original, official, or legal form of something, which may be evidentially used.

Dram Shop Act: Many states have Dram Shop or Civil Liability Acts which impose liability on the seller of intoxicating liquors (which may or may not include beer), when a third party is injured as a result of the intoxication of the buyer where the sale has caused or contributed to such intoxication. Some acts apply to gifts as well as sales. Such acts protect the third party not only against injuries resulting directly from affirmative acts of the intoxicated person, such as resulting from negligent operation of vehicle or assault and battery, but also against the loss of family support due to injuries to the person.

DUID: Driving under the influence of Drugs.

DWI: Driving While Intoxicated: An offense committed by one who operates a motor vehicle while under the influence of intoxicating liquor or drugs.

Drug Paraphernalia: All equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, sorting, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or an imitation controlled substance in violation of this chapter.

Due Process: Law in its regular course of administration through courts of justice.

Element: Material; substance; ingredient; factor.\*\*

Elements: Facts assembled by an attorney to prove his or her case.\*

Enacted: To establish by law; to perform or effect; to decree. The common introductory formula in making statutory law is, "Be it enacted."

Evidence: Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention

Expert Testimony: Opinion evidence of some person who possess special skill or knowledge in some science, profession or business which is not common to the average man and which is possessed by the expert by reason of his or her special study or expertise.

Eyewitnesses: A person who could testify as to what they had seen.

Felony: A crime of a grave or more serious nature than those designated as misdemeanors. Under federal law, and many state statutes, any offense punishable by death or imprisonment for a term exceeding one year.

First Degree Felony: Punishable by confinement for life or for a term of not more than 99 years or less than five years, and/or a fine not to exceed \$20,000.

Forfeiture: Something to which the right is lost by the commission of a crime or fault or the losing of something by way of penalty.

Fourteenth Amendment: Creates or at least recognizes for the first time a citizenship of the U.S., as distinct from that of the states; forbids the making or enforcement by any state of any law abiding the privileges and immunities of citizens of the U.S.; and secures all "persons" against any state action which results in either deprivation of life, liberty, or property without due process of law, or, in denial of the equal protection of the laws.

Gross Misdemeanor: Classification of a type of crime which, while not a felony, is ranked as a serious misdemeanor.

Guilty Beyond A Reasonable Doubt: Guilt by such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based on reason as common sense; it does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.\*

Illicit: Not permitted or allowed; prohibited; unlawful.\*\*

Implied Consent: Agreement; the act or result of coming into harmony or accord. A concurrence of wills.

Imposition of Sentence: (See Sentencing)

Incapacitation: Want of power or ability to take or dispose; want of legal ability to act.

Incarceration: Imprisonment; confinement in a jail or penitentiary.

In Control: As used in a DWI case, the physical act of driving or operating a motor vehicle.\*

Information: An accusation exhibited against a person for some criminal offense, without an indictment.

Initial Hearing: The first formal appearance by the parties in a criminal case; hearing: Proceeding of relative formality (though generally less formal than a trial), generally public, with definite issues of fact or of law to be tried, in which witnesses are heard and parties proceeded against have right to be heard, and is much the same as a trial and may terminate in final order. It is frequently used in a broader and more popular significance to describe whatever takes place before magistrates clothed with judicial functions and sitting without jury at any stage of the proceedings subsequent to its inception, and to hearings before administrative agencies as conducted by a hearing examiner or Administrative Law Judge.

Joint Possession: Joint: United; combined; undivided; done by or against two or more unitedly; shared by or between two or more; coupled together in interest or liability. Possession: The detention and control, or the manual or ideal custody, or anything which may be the subject of property, or one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Act or state of possessing. That condition of facts under which one can exercise his or her power over a corporal thing at his or her pleasure to the exclusion of all other persons.

Judiciary: That branch of government invested with the judicial power; the System of courts in a country; the body of judges; the bench. That branch of government which is intended to interpret, construe and apply the law.

Jury: A certain number of men and women selected according to law, and sworn to inquire of certain matters of fact, and declare the truth upon evidence to be laid before them.

Juvenile: A young person who has not yet attained the age at which he or she should be treated as an adult for the purposes of criminal law. In some states, this age is seventeen. Under the federal Juvenile Delinquency Act, a "juvenile" is a person who has not attained his or her eighteenth birthday.

Liability: An obligation one is bound in law or justice to perform.

License: The permission by competent authority to do an act which, without such permission, would be illegal or a trespass.\*\*

Miranda Rule: Prior to any custodial interrogation the person must be warned: 1. That they have a right to remain silent; 2. That any statement they make may be used as evidence against them; 3. That they have a right to the presence of an attorney; 4. That if they cannot afford an attorney, one will be appointed for them prior to any questioning if they so desire.

Misdemeanor: Offenses lower than felonies and generally those punishable by fine or imprisonment otherwise than in penitentiary. Under federal law, and most state laws, any offense other than a felony is classified as a misdemeanor.

Narcotics: Generic term for any drug which dulls the senses or induces sleep and which commonly becomes addictive after prolonged use.

Negotiation: Negotiation is process of submission and consideration of offers until acceptable offer is made and accepted.

Occurred: To happen; to meet one's eye; to take place.\*\*

Offenses: A felony or misdemeanor; a breach of the criminal law.

Overcharges: With respect to public carriers or public utilities, a charge collected above a lawful tariff rate; a charge of more than is permitted by law.

Peers: Equals; those who are a man's equals in rank and station.\*\*

Penal: Punishable; inflicting a punishment.\*\*

Penal System: Governmental systems set up to deal with those incarcerated by the courts.\*

Penitentiary: A prison or place of confinement where convicted felons are sent to serve out the term of their sentence.

Physical Evidence: Testimony, writings, material objects or other things presented to the senses that are offered to prove the existence or non-existence of a fact. (Also see Evidence).

Plaintiff: Person who brings an action; the party who complains or sues in a civil action and is so named on the record.

Plea: The answer which the defendant in an action at law made to the plaintiff's declaration, and in which he set up matter of fact as defense, thus distinguished from a demurrer, which interposed objections on grounds of law.

Plea Bargaining: The process whereby the accused and the prosecutor in a criminal case work out mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge.

Possession: The detention and control, or the manual or ideal custody, of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name.\*\*

Predisposing: To dispose of or incline beforehand.\*

Prevention: In the civil law, the right of a judge to take cognizance of an action over which he has concurrent jurisdiction with another judge.

Probable Cause: Reasonable cause; having more evidence for than against.

Probated Sentence: (See Probation)

Probation: A sentence releasing the defendant into the community under supervision of a probation officer.

Prosecutor: One who prosecutes another for a crime in the name of the government. A "prosecutor" is one who takes charge of the case and performs function of trial lawyers for the people.

Proximately: Direct or immediately. Pertaining to that which in an ordinary natural sequence produces a specific result, no independent disturbing agency intervening.\*\*

Punishment: Any fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by that person, or for their omission of a duty enjoined by the law.

"Reasonable Suspicion": Reasonable suspicion which will justify officer in stopping defendant in public place is quantum of knowledge sufficient to induce ordinarily prudent and cautious person under circumstances to believe criminal activity is at hand.\*

Reduced Charges: (See Plea Bargaining)

Rehabilitation: Restoring to a former capacity; reinstating, qualifying again.\*\*

Republican (Government): A government in the republican form; a government of the people; a government by representatives chosen by the people.\*\*

Requirements: To direct, order, demand, instruct, command, claim, compel, request, need, exact.\*\*

Rescheduled Drugs: Changed from one category and set of penalties to another.\*

Retribution: Something given or demanded in payment.

Revoiced: To annul or make void by recalling or taking back; to cancel, rescind, repeal or reverse.

Scheduled Drugs: Controlled drugs.\*

Schedule I Drugs: It cannot be legally distributed to the public; high potential for abuse.\*

Schedule II Drugs: Can be distributed to the public but only through a doctor's prescription. High potential for abuse; but a currently accepted medical use.\*

Schedule III-V: Lesser potential for abuse.\*

Search Warrant: An order in writing, issued by a justice or magistrate, in the name of the state, directed to a sheriff, constable, or other officer, authorizing them to search for and seize any property that constitutes evidence of a commission of a crime, contraband, the fruits of crime, or things otherwise criminally possessed.

Second Degree Felony: Punishable by confinement for 2 to 20 years and/or up to \$10,000 fine.

Self Incrimination: Acts or declarations either as testimony at trial or prior to trial by which one implicates themselves in a crime.

Sentencing: The post-conviction stage of the criminal justice process in which the defendant is brought before the court for imposition of sentence.

Society: An association or company of persons united together by mutual consent, in order to deliberate, determine, and act jointly for some common purpose. Community or public; the people in general.\*\*

Specimens of Blood or Breath: A sample; a part of something intended to exhibit the kind and quality of the whole.\*\* (i.e., obtained by drawing blood or administering an intoxolyzer)

State Executive: Governor.\*\*

State Legislature: Elected Legislative officials, (i.e., Senators or State Assemblymen).\*\*

Statutory Cause of Action: The fact or facts, required by statute, which give a person a right to judicial relief.

Statutory Law Warrants & Duties of Providers of Alcoholic Beverages:

(See Dram Shop Act)

"Straight" Probation:

(See Probation)

Substance:

Essence; the material or essential part of a thing, as distinguished from "form".

Tenth Amendment:

An amendment to the U.S. Constitution which provides that the powers not delegated to the Federal Government are reserved to the States or to the people.

Third Degree Felony:

Punishable by confinement for 2 to 10 years and/or up to \$5,000 fine.

Time of the Conduct:

When the allegedly illegal act occurred.

Trial:

A judicial examination and determination of issues between parties to action whether they be issues of law or of fact.

Under the Influence:

Phrase as used in statutes or ordinances prohibiting the operation of motor vehicle by a party under the influence of intoxicating liquors covers not only all well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging in any degree in intoxicating liquors, and which tends to deprive one of that clearness of intellect and control of one's self which would otherwise possess. Any condition where intoxicating liquor has so far affected the nervous system, brain or muscles of the driver as to impair, to an appreciable degree, his ability to operate one's automobile in the manner than an ordinary, prudent and cautious person, in full possession of their faculties, using reasonable care, would operate or drive under like conditions.

Unlawful Conduct:

Conduct prohibited by law.\*

Usable Quantity:

The amount sufficient to constitute a usable quantity is not defined in the Act, but courts have construed it to be as little as .0075 grams.\*

Verdict:

The formal decision or finding made by a jury; impaneled and sworn for the trial of a cause, and reported to the court (and accepted by it), upon the matters or questions duly submitted to them upon the trial. The definitive answer given by the jury to the court concerning the matters of fact committed to the jury for their deliberation and determination.

SOURCE: Unless otherwise indicated, Black's Law Dictionary (West 1979).

\* By the author.

\*\* Webster's Ninth New Collegiate Dictionary, 1987.

Appendix "L"

GLOSSARY  
(Drug Terms)

Slang Terms of a Few Abused Substances (Also referred to as Vernacular terms, synonyms, common names, etc)

- AMF: Alpha Methyl Fentanyl - See China White.
- AMP: Cigarettes dipped in formaldehyde solution, then dried and smoked.
- Angel Dust: An analgesic-anesthetic used in veterinary medicine abused for a "high". Also known as Phencyclidine, PCP, etc.
- Bang: Isobutyl Nitrite (an inhalant), also an injection of Heroin and other narcotics.
- Baseball: See Freebasing.
- Bazooka: Cigarette of tobacco or other material with cocaine.
- Black Tar Heroin: A form of Heroin resembling tar believed to originate in Mexico and varying in potency from 40-80%.
- Bolivian Marching Power: Cocaine.
- China White: Methyl Fentanyl, a synthetic narcotic with a potency or more than 100 times that of Morphine or Heroin. Also refers to pure white grade on Heroin from Southeast Asia, Persian White, synthetic Heroin, AMF.
- Crack: Pre/freebased form of Cocaine or an analogy of Cocaine. Also called Rock.
- DAM: Another name for the narcotic Heroin, also known as Diacetyl Morphine.
- Designer Drugs: Non-controlled substances produced synthetically and clandestinely that are modifications of controlled substances.
- Desire: Smoking Crack and PCP.
- Devil's Trumpet: See Jimson Weed.
- Don: A new Hallucinogen 1- (2.5 - Dimethoxy - 4 - Nitrophenyl - 2 - Aminopropane.)

Doobie: Another name for a Marijuana cigarette.

Ecstasy: An hallucinogenic amphetamine derivative, also known as MDMA (methylene dioxy methamphetamine).

Eve: 3, 4 Methylene Dioxy-N-Ethyl Amphetamine.

Flip Crib: Illicit retail outlet for sale of drugs.

Florida Show: See Incense.

Freebasing: The smoking of Cocaine (base). Cocaine salt is converted to Cocaine base by a chemical process and the resulting product is smoke or sprinkled on tobacco or marijuana and smoked.

French Fry: A form of Crack. High purity Cocaine base cut into rectangular shapes resembling french fried potatoes.

Hallucinogen: A substance causing hallucinations and includes LSD, peyote cactus, psilocybe mushroom, morning glory seed, STP (DOM), etc.

Hallucination: (wander in mind) subjective perception of that which does not exist.

Happy Sticks: Tobacco cigarettes dipped in a solution of PCP, then dried and smoked. Also known as Shermans or Joy Sticks.

Hardball: Heroin and a stimulant such as Cocaine or amphetamine.

Heavenly Blue: The seed of a variety of morning glory that are hallucinogen, other varieties are wedding bells, flying saucers, and pearly gate whites.

Huffer: User of inhalants such as industrial solvents, aerosols and volatile anesthetics.

Incense: A kiddie dope drug containing a local anesthetic such as procaine, dibucaine, benzocaine, etc.

Intellectual Heroin: Also known as Ludes, etc.

Jazz: Cigarettes made from varieties of lettuce.

Jimson Weed: The seed of a species of Datura containing atropine and related compounds - abused as an hallucinogen.

Kiddie Dope: Drug products similar in appearance (color, shape and markings) to controlled drugs but usually containing non-prescription drugs such as caffeine, phenylpropanolamine, pseudoephedrine, tetracaine, lidocaine, benzocaine, dibucaine, etc.

Lemons: See Ludes

Loads: A mixture of the sedative glutethimide (Doriden) and the narcotic Codeine.

Look Alikes: See Kiddie Dope.

Love Drug: Another name for MDA.

Lovelies: A mixture of PCP and marijuana for smoking.

Ludes: The CNS depressant methaqualone (Quaalude TM, Sopor TM). Discontinued as a prescription drug as of January, 1985.

MAM: Monoacetyl Morphine.

MDA: Methylene Dioxymphetamine - also known as Love Drug or Psychedelic Speed.

MDE: Another name for EVE.

MDMA: An amphetamine derivative and also known as Ecstasy.

Methyl Fentanyl: See China White.

MPPP: An analog of Meperidine (Demerol) and also known as synthetic Heroin and "New" Heroin.

MPTP: A by-product (pyridine derivative) formed in the synthesis of the illicit narcotic drug MPPP (an analog of Meperidine). The drug causes destruction of nerve cells in the substantia nigra of the brain inhibiting muscle control resulting in Parkinson symptoms.

Nose Candy: Cocaine.

PCP: See Angel Dust.

Peruvian Rock: A worthless look-alike Crack and usually consists of pieces of soap.

Phencyclidine: (Sernalyn) - See Angel Dust.

Psychotropic Drugs: (Soul Tuning) - mind altering drugs such as stimulants, depressants, narcotics or hallucinogens.

Rock: Another name for Crack.

Shermans: See Happy Sticks.

Sinsemilla: (Seedless) - female marijuana plant grown in the absence of a male plant also known as primo plant.

Snocaine: See Incense.

Snow Dust: Logo printed on a wrapper of illicit Cocaine showing a picture of an animated dwarf. (Approximately 60% Cocaine).

Snow Seal: Logo printed on a wrapper of illicit Cocaine showing a seal balancing a snow flake on its nose. (Approximately 30% Cocaine).

Snow Toke: See Freebasing.

Speckled Bird: Capsule of sustained pellets of amphetamine.

Speedball: See Hardball.

Stink Weed: See Jimson Weed.

Super Kools: See Shermans.

Synthetic Heroin: See China White.

Synthetic Morphine: Street name for the narcotic Dilaudid TM. It is prepared by the oxidation of morphine.

T's and Blues: A narcotic pentazocine (Talwin TM) and the antihistamine tripeleennamine (Pyribenzamine) injected as a mixture. The Talwin TM tablet now includes a narcotic antagonist Naloxone.

Thorn Apple: See Jimson Weed.

Toke: Also Toad - a puff of marijuana cigarette.

Toms and Bettys: See T's and Blues.

Tops and Bottoms: See T's and Blues.

Tricycles and Bicycles: See T's and Blues.

Tulio: Toluene, an illicit inhalant.

Turkey Drugs: See Kiddie Dope.

Wack: Same as Happy Sticks.

Water: A slang term for a solution of a drug used for Dipping. An example would be PCP in solution. Cigarettes are dipped in such a solution, dried and then smoked to obtain a PCP "high"

White Tornado: See Freebasing.

Zing: The seed of a South American plant named guarana and containing up to 5% caffeine.

Zoom: See Zing.

## Appendix "M"

### RESEARCH MODEL

(How to research Drug Laws in your State)

While there are a number of alternative techniques which can be used to research substantive laws in a given state, the following approach ought to be fairly simple and sufficient for your purposes. This model has the further advantage of not requiring access to computer time.

Initially the researcher has to develop a series of word alternatives directed to the topic at hand. For example, in researching the area of substance abuse, words that come to mind would include drugs, alcohol, substance abuse, illicit drugs, medication, etc. The next step would be to find the best annotated collection of statutes for the particular state and to utilize the index together with the above noted words in an effort to locate the various chapters in the statutes which would be relevant to the topic at hand. After reviewing the statutes, it is sometimes necessary to go back to the index with additional words. Once additional statutory cites are reviewed, the researcher will have a pretty complete picture of legislation at hand. It may be also necessary, if the particular state has a code of state regulations to engage in a similar process with that particular code. As is the case with Federal Congressional enactments found in the U.S. Code, some states have a system whereby state agencies are delegated the power to issue regulations which, in effect, have the force of law.

Once the statutes are reviewed, the next step is to begin tracking down the cases which are noted in the annotations. Depending upon the number of cases cited a few, most, or all of the cases should be reviewed. It may then be necessary to Shepardize key cases because frequently the annotations omit many important decisions. Needless to say, it is often necessary to consult pocket parts and

supplemental volumes of the statutes in order to be sure that the most recent material available is being reviewed.

After the cases which are Shepardized are read, it may be helpful to see if the state publishes a service which would include decisions which are not yet generally reported. At this point, it may be useful to discuss the issue with a reference librarian at a library in that state who would be familiar with such a service. Alternatively, new cases sometimes can be found through Lexis or Westlaw.

Secondary sources may also be helpful in doing this research. In many states, law textbook publishers have issued treatises and related works dealing with a substantive topic such as criminal law, criminal procedure, mental health law, etc. Frequently these will contain chapters dealing with the issue at hand and can save the researcher a number of steps in doing the basic research. In addition, using the same "key word" approach described above, state digests may be helpful in locating relevant cases, although generally the statutory references are not included in these digests.

If access to computers is readily obtained, and the student is comfortable doing computer research, this same research can be done at a computer terminal using Lexis or Westlaw. Once again, the important factor here is developing the key words that will be put into the computer in order to find the relevant statutes as well as the relevant cases. Good luck!

## Appendix "N"

## UNIFORM CONTROLLED SUBSTANCES ACT

Table of Jurisdictions Wherein Act Has Been Adopted

| Jurisdiction              | Laws                 | Effective Date | Statutory Citation                                       |
|---------------------------|----------------------|----------------|--|
| Alabama.....              | 1971, No. 1407       | 9-16-1971*     | Code 1975, §§ 20-2-1 to 20-2-93.                         |
| Alaska.....               | 1982, c. 45          | 1-1-1983       | AS 11.71.010 to 11.71.900, 17.30.010 to 17.30.900        |
| Arizona.....              | 1979, c. 103         | 7-1-1980       | A.R.S. §§ 36-2501 to 36-2553.                            |
| Arkansas.....             | 1971, No. 90         | 4-7-1971       | Code 1987, §§ 5-64-101 to 5-64-108.                      |
| California.....           | 1972, c. 1407        | 3-7-1973       | West's Ann. Cal. Health & Safety Code, § 11000 to 11651. |
| Colorado.....             | 1981, pp. 707 to 728 |                | C.R.S. 12-22-3-1 to 12-22-322.                           |
| Connecticut.....          | 1967 No. 555         | 6-21-1967      | C.G.S.A. §§ 21a-240 to 21a-308.                          |
| Delaware.....             | 1972, c. 424         | 6-13-1972*     | 16 Del.C. §§ 4701 to 4796.                               |
| District of Columbia..... | 1981, D.C. Law 4-29  |                | D.C. Code 1981, §§ 33-501 to 33-567.                     |
| Florida.....              | 1973, c. 331         | 7-1-1973       | West's F.S.A. §§ 893.01 to 893.15.                       |
| Georgia.....              | 1974, p. 221         | 7-1-1974       | O.C.G.A. §§ 16-13-20 to 16-13-56.                        |
| Guam.....                 |                      |                | 9 G.C.A. §§ 67.10 to 67.98                               |
| Hawaii.....               | 1972, c. 10          | 1-1-1973       | HRS §§ 329-1 to 329-58.                                  |
| Idaho.....                | 1971, c. 215         | 5-1-1971       | I.C. §§ 37-2701 to 37-2751.                              |
| Illinois.....             | 1971, P.A. 77-757    | 8-16-1971      | S.H.A. ch. 56½, PP1100 to 1603.                          |
| Indiana.....              | 1976, P.L. 148       | 7-1-1977       | West's A.I.C. 35-48-1-1 to 35-48-4-14.                   |
| Iowa.....                 | 1971, c. 148         | 7-1-1971       | I.C.A. §§ 204.101 to 204.602.                            |
| Kansas.....               | 1972, c. 234         | 7-1-1972       | K.S.A. 65-4101 to 65-4140.                               |
| Kentucky.....             | 1972, c. 226         | 7-1-1972       | KRS 218A.010 to 218A.991.                                |
| Louisiana.....            | 1972, No. 634        | 7-26-1972      | LSA-R.S. 40:961 to 40:995                                |
| Maine**.....              | 1975, c. 499         | 5-1-1976       | 17-A M.R.S.A. § 1101 to 1116.                            |
|                           | 1941, c. 251         | 4-16-1941      | 22 M.R.S.A. §§ 2361 to 2382-A.                           |
| Maryland.....             | 1970, c. 403         | 7-1-1970       | Code 1957, art. 27, §§ 276 to 302.                       |
| Massachusetts.....        | 1971, c. 1071        | 7-1-1970       | M.G.L.A. c. 94C, § 1 to 48.                              |
| Michigan.....             | 1978, No. 368        | 9-30-1978      | M.C.L.A. §§ 333.7101 to 333.7545.                        |
| Minnesota.....            | 1971, c. 937         | 6-18-1971      | M.S.A. § 152.01 to 152.10.                               |
| Mississippi.....          | 1971, c. 521         | 4-16-1971      | Code 1972, §§ 41-29-101 to 41-29-185.                    |
| Missouri.....             | 1971, H.B. No. 69    | 9-28-1971      | V.A.M.S. §§ 195.010 to 195.320.                          |
| Montana.....              | 1973, c. 412         | 7-1-1973       | MCA 50-32-101 to 50-32-405.                              |
| Nebraska.....             | 1971, LB 326         | 5-26-1971      | R.R.S. 1943, § 28-401 et seq.                            |
| Nevada.....               | 1971, c. 667         | 1-1-1972       | N.R.S. 453.011 to 453.361.                               |
| New Jersey.....           | 1970, c. 226         | 1-17-1971      | N.J.S.A. 24:21-1 to 24:21-53.                            |
| New Mexico.....           | 1972, c. 84          |                | NMSA 1978, §§ 30-31-1 to 30-31-41.                       |
| New York.....             | 1972, c. 878         | 4-1-1973       | McKinney's Public Health Law 3300 to 3396.               |
| North Carolina.....       | 1971, c. 919         | 1-1-1972       | G.S. §§ 90-86 to 90-113.8.                               |
| North Dakota.....         | 1971, c. 235         | 7-1-1971       | NDCC 19-03.1-01 to 19-03.1-43.                           |
| Ohio.....                 | 1975, p. 269         | 7-1-1976       | R.C. §§ 3719.01 to 3719.99.                              |
| Oklahoma.....             | 1971, c. 119         | 9-1-1971       | 63 Okl. St. Ann. § 2-101 to 2-610.                       |
| Oregon.....               | 1977, c. 745         | 7-1-1978       | ORS 475.005 to 475.285, 475.992 to 475.995.              |

| Jurisdiction       | Laws           | Effective Date              | Statutory Citation                                     |
|--------------------|----------------|-----------------------------|--|
| Pennsylvania.....  | 1972, No. 64   | 6-14-1972                   | 35 P.S. §§ 780-101 to 780-144.                         |
| Puerto Rico.....   | 1971, No. 4    | 180 days after<br>6-23-1971 | 24 L.P.R.A. §§ 2101 to 2607.                           |
| Rhode Island.....  | 1974, c. 183   | 7-1-1974                    | Gen.Laws 1956, §§ 21-28-1.01 to 21-18-6.02.            |
| South Carolina.... | 1971, p. 800   | 6-17-1971                   | Code 1976, §§ 44-53-110 to 44-53-590.                  |
| South Dakota.....  | 1970, c. 229   | 2-13-1970                   | SDCL 34-20B-1 to 34-20B-114.                           |
| Tennessee.....     | 1971, c. 163   | 7-1-1971                    | T.C.A. §§ 39-6-401 to 39-6-419, 53-11-30 to 53-11-414. |
| Texas.....         | 1973, c. 429   | 8-27-1973                   | Vernon's Ann. Texas Civ.St. art. 4476-15.              |
| Utah.....          | 1971, c. 145   | 1-1-1972                    | U.C.A.1953, 58-37-1 to 58-37-19.                       |
| Virgin Islands.... | 1971, No. 2961 | 30 days fol.<br>3-23-1971   | 19 V.I.C. §§ 591 to 630a.                              |
| Virginia.....      | 1970, c. 650   | 4-5-1970*                   | Code 1950, § 54-524.1 et seq.                          |
| Washington.....    | 1971, c. 308   | 5-21-1971                   | West's RCWA §§ 69.50.101 to 69.50.607.                 |
| West Virginia..... | 1971, c. 54    | 6-10-1971                   | Code, 60A-1-101 to 60A-6-605.                          |
| Wisconsin.....     | 1971, c. 219   | 10-1-1972                   | W.S.A. 161.001 to 161.62.                              |
| Wyoming.....       | 1971, c. 246   | 3-4-1971*                   | W.S.1977, §§ 35-7-1001 to 35-7-1057.                   |

\* Date of Approval

\*\* The statutory material in Maine relating to drugs and narcotics contains provisions similar to the Uniform Controlled Substances Act and the Uniform Narcotic Drug Act and, accordingly, the citations for those provision are set forth in the tables for both acts.

## Commissioners' Prefatory Note

The Uniform Controlled Substances Act is designed to supplant the Uniform Narcotic Drug Act, adopted by the National Conference of Commissioners on Uniform States Laws in 1933, and the Model State Drug Abuse Control Act, relating to depressant, stimulant, and hallucinogenic drugs, promulgated in 1966. With the enactment of the new Federal narcotic and dangerous drug law, the "Comprehensive Drug Abuse Prevention and Control Act of 1970" (Public Law 91-513, short title "Controlled Substances Act" [21 U.S.C.A. S 801 et seq.]), it is necessary that the States update and revise their narcotic, marijuana, and dangerous drug laws.

This Uniform Act was drafted to achieve uniformity between the laws of the several States and those of the Federal government. It has been designed to complement the new Federal narcotic and dangerous drug legislation and provide an interlocking trellis of Federal and State law to enable government at all levels to control more effectively the drug abuse problem.

The exploding drug abuse problem in the past ten years has reached epidemic proportions. No longer is the problem confined to a few major cities or to a particular economic group. Today it encompasses almost every nationality, race, and economic level. It has moved from the major urban areas into the suburban and even rural communities, and has manifested itself in every State in the Union.

Much of this major increase in drug use and abuse is attributable to the increased mobility of our citizens and their affluence. As modern American society becomes increasingly mobile, drugs clandestinely manufactured or illegally diverted from legitimate channels in one part of a State are easily transported for sale to another part of that State or even to another State. Nowhere is this mobility manifested with greater impact than in the legitimate pharmaceutical industry. The lines of distribution of the products of this major national industry cross in and out of a State innumerable times during the manufacturing or distribution processes. To assure the continued free movement of controlled substances between States, while at the same time securing such States against drug diversion from legitimate sources, it becomes critical to approach not only the control of illicit and legitimate traffic in these substances at the national and international levels, but also to approach this problem at the State and local level on a uniform basis.

A main objective of this Uniform Act is to create a coordinated and codified system of drug control, similar to that utilized at the Federal level, which classifies all narcotics, marijuana, and dangerous drug subject to control into five schedules, with each schedule having its own criteria for drug placement. This classification system will enable the agency charged with implementing it to add, delete, or reschedule substances based upon new scientific findings and the abuse potential of the substance.

Another objective of this Act is to establish a closed regulatory system for the legitimate handlers of controlled drugs in order to better prevent illicit drug diversion. This system will require that these individuals register with a designated State agency, maintain records, and make biennial inventories of all controlled drug stocks.

The Act sets out the prohibited activities in detail, but does not prescribe specific fines or sentences, this being left to the discretion of the individual States. It further provides innovative law enforcement tools to improve investigative efforts and provides for interim education and training programs relating to the drug abuse problem.

The Uniform Act updates and improves existing State laws and insures legislative and administrative flexibility to enable the States to cope with both present and future drug problems. It is recognized that law enforcement may not be the ultimate solution to the drug abuse problem. It is hoped that present research efforts will be continued and vigorously expanded, particularly as they relate to the development of rehabilitation, treatment, and educational programs for addicts, drug dependent persons, and potential drug abusers.

Appendix "O"

UNIFORM NARCOTIC DRUG ACT

Table of Jurisdictions Wherein Act Has Been Adopted

| Jurisdiction | Laws                         | Effective Date        | Statutory Citation   |
|--------------|------------------------------|-----------------------|--|
| Maine*       | 1975, c. 499<br>1941, c. 251 | 5-1-1976<br>4-16-1941 | 17-A M.R.S.A. §§ 1101 to 1116.<br>22 M.R.S.A. §§ 2361 to 2387. |

\* The statutory material in Maine relating to drugs and narcotics contains provisions similar to the Uniform Controlled Substances Act and the Uniform Narcotic Drug Act, and accordingly, the citations for those provisions are set forth in the tables for both acts.

Appendix "P"

**SAMPLE TRIAL EXHIBITS**  
(See following pages)

COTTAGE GROVE

DEPARTMENT OF PUBLIC SAFETY

|             |
|-------------|
| ICR Number  |
| 1621 Number |
| Date        |

ALCOHOLIC INFLUENCE REPORT

\* one or more  
 Driver     Accident  
 Pedestrian     Violation  
 Passenger     Other

LAST: \_\_\_\_\_ FIRST: \_\_\_\_\_ MIDDLE: \_\_\_\_\_ TIME: \_\_\_\_\_

Date of Birth: \_\_\_\_\_  
 Month: \_\_\_\_\_ Day: \_\_\_\_\_ Year: \_\_\_\_\_

Arresting Officer: \_\_\_\_\_ Budge No. \_\_\_\_\_

Location of Arrest: \_\_\_\_\_

Actions of the driver prior to stop (X) one or more

- (A)  Weave from lane to lane.
- (B)  Proceed in lanes provided for oncoming traffic.
- (C)  Proceed off the road from his lane or lanes of traffic.
- (D)  Make an improper turn.
- (E)  Proceed at excessive - reduced speed.
- (F)  Strike any gutter or other obstacles on a near road.
- (G)  Hit or narrowly miss hitting any person or property.
- (H)  Proceed contrary to any traffic control sign or signal.
- (I)  Involved in any accident.
- (J)  Other (explain on reverse side.)
- (K)  Type of road     Two Way     Divided     Interstate

Driver's License No. State  
123 456 7891 MN

PBT -  Pass     Fail     Refused     Not Offered

Field Sobriety Tests

Pass Fail Straightline walking    Pass Fail One legged stand and count to ten  
Pass Fail Finger to nose    Pass Fail Pick up coins

YOUR CONSTITUTIONAL RIGHTS (TIME \_\_\_\_\_)

1. You have the right to remain silent.
2. Anything you say can and will be used against you in court.
3. You have the right to a lawyer and to have the lawyer present while you are being questioned.
4. If you cannot financially afford to hire a lawyer, the State, after investigation as to your finances, will appoint a lawyer to represent you prior to any questioning if you wish one.

DO YOU UNDERSTAND THESE RIGHTS?  YES     NO

1. Having these rights in mind, do you wish to answer my questions at this time?  Yes     No

2. Were you driving or operating a motor vehicle?    3. What type vehicle were you operating?  
 Chevy Citation - Brown

4. Are you under a doctor or dentist's care?    5. If so, what is your doctor or dentist's name?

6. Are you taking any medication?    7. What kind?    8. Date/Time last taken    9. How much did you take?

10. Do you have diabetes?    11. What medication do you take?    12. Date/Time last taken

13. Do you have any physical disability?    14. Describe your disability?

15. Do you have any speech difficulty?    16. Describe your difficulty?

17. Have you been in an accident?    18. Did you get a bump on the head or any other injury?

19. What time is it?    20. Where are you now?

21. Have you been drinking?    22. What did you drink?    23. Where were you drinking?

24. When did you have your first drink?    25. When did you have your last drink?    26. How many drinks?

27. Have you had anything to drink since the accident or arrest?    28. What did you have?

29. Do you feel the effects of what you have had to drink?

30. Do you feel that what you have had to drink has effected your ability to drive?

# BREATHALYZER OPERATIONAL CHECK LIST

State Toxicology Laboratory  
Form 106

Subject: \_\_\_\_\_ DOB: \_\_\_\_\_

Drivers License # 123 456 7891 MN State \_\_\_\_\_ Citation # \_\_\_\_\_

Operator: \_\_\_\_\_ Date: JULY 4 Instrument Serial No.: A12384

## OPERATING STEPS

PREPARATION

- 1. Throw POWER SWITCH to ON (if needed). Wait until THERMOMETER shows 50 + or - 3°C. Record temperature. 52° F °C.
- 2. Gauge REFERENCE AMPOULE and insert in left hand holder.
- 3. Record AMPOULE CONTROL NUMBER. Gauge TEST AMPOULE, open and regauge solution level. (Control No.) 2
- 4. Place TEST AMPOULE containing bubbler with connector sleeve attached in right hand holder and connect to outlet.

PURGE

- 5. Insert test record. Turn CONTROL KNOB to TAKE, flush, turn CONTROL KNOB to ANALYZE.
- 6. When RED empty signal appears, wait 1½ min., turn on LIGHT and BALANCE.

ROOM AIR BLANK

- 7. Disengage BLOOD ALCOHOL POINTER and set on ZERO LINE. Mark test record.
- 8. Turn CONTROL KNOB to TAKE, collect ROOM AIR sample, turn CONTROL KNOB to ANALYZE.
- 9. When RED empty signal appears, wait 1½ min., turn on LIGHT and BALANCE. Mark test record.
- 10. Record BLANK RESULT (if reading is greater than 0.01%, repeat steps 5 - 10). 0.01 %
- 11. Remove and LABEL test record.

ANALYSIS

- 12. Insert new test record. Disengage POINTER and set on START LINE (LEFT HAND INDEX). Mark test record.
- 13. Turn CONTROL KNOB to TAKE, collect BREATH sample, turn CONTROL KNOB to ANALYZE. Record time. 12:43 pm
- 14. When RED empty signal appears, wait 1½ min. Turn on LIGHT and BALANCE. Mark test record. Record BLOOD ALCOHOL RESULT. 0.09 %
- 15. Remove and LABEL test record.

STANDARD TEST

- 16. Wait until simulator thermometer shows 34 + or - 0.2° C. Record simulator serial number and temperature. 35° F °C
- 17. Insert new test record. Turn CONTROL KNOB to TAKE, flush, turn CONTROL KNOB to ANALYZE.
- 18. When RED empty signal appears, wait 1½ min., turn on LIGHT and BALANCE.
- 19. Disengage POINTER, set on ZERO LINE. Mark test record.
- 20. Turn CONTROL KNOB to TAKE and collect STANDARD sample. Turn CONTROL KNOB to ANALYZE. Record STANDARD SOLUTION NUMBER and VALUE. MN2 0.01 %
- 21. When RED empty signal appears, wait 1½ min. Turn on LIGHT and BALANCE. Mark test record. Record STANDARD RESULT. 0.09 %
- 22. Remove and LABEL test record.

DISCONNECTION

- 23. Turn CONTROL KNOB to TAKE, flush, turn CONTROL KNOB to ANALYZE.
- 24. When RED empty signal appears, dispose of TEST AMPOULE, BUBBLER, and MOUTHPIECE. Remove REFERENCE AMPOULE. Turn CONTROL KNOB to OFF.

REMARKS:

\_\_\_\_\_  
Officer's Signature



# SCORING SHEET (check as many as you observe)

## Gaze Nystagmus Test

- Nystagmus in right eye is moderate or distinct when eye is moved as far as possible to the right.
- Right eye cannot follow moving object smoothly.
- Onset of gaze nystagmus in right eye occurs before 45 degrees (some white is visible).
- Nystagmus in left eye is moderate or distinct when eye is moved as far as possible to left.
- Left eye cannot follow moving object smoothly.
- Onset of gaze nystagmus in left eye occurs before 45 degrees (some white is visible).
- 3** Total Score (Decision Point: 4)

## Walk-and-Turn Test

- Cannot keep balance while listening to instructions.
- Starts before instructions are finished.
- Stops while walking to steady self.
- Does not touch heel to toe.
- Loses balance while walking (i.e., steps off line).
- Uses arms for balance.
- Loses balance while turning.
- Incorrect number of steps.
- Cannot do test (steps off line three or more times).
- 6** Total Score (Decision Point: 2)

## One-Leg-Stand Test

- Sways while balancing.
- Uses arms to balance.
- Hopping.
- Puts foot down.
- Cannot do test (puts foot down three or more times).
- 3** Total Score (Decision Point: 2)

## Decision Table

|                        |   | Gaze Nystagmus Test Score |   |   |   |   |   |   |
|------------------------|---|---------------------------|---|---|---|---|---|---|
|                        |   | 0                         | 1 | 2 | 3 | 4 | 5 | 6 |
| Walk & Turn Test Score | 0 |                           |   |   |   |   |   |   |
|                        | 1 |                           |   |   |   |   |   |   |
|                        | 2 |                           |   |   |   |   |   |   |
|                        | 3 |                           |   |   |   |   |   |   |
|                        | 4 |                           |   |   |   |   |   |   |
|                        | 5 |                           |   |   |   |   |   |   |
|                        | 6 |                           |   |   |   |   |   |   |
|                        | 7 |                           |   |   |   |   |   |   |
|                        | 8 |                           |   |   |   |   |   |   |
|                        | 9 |                           |   |   |   |   |   |   |

Notes:

STATE OF MINNESOTA  
DEPARTMENT OF PUBLIC SAFETY  
DRIVER AND VEHICLE SERVICES DIVISION  
IMPLIED CONSENT SECTION  
108 TRANSPORTATION BUILDING  
ST. PAUL, MINNESOTA 55155



IMPLIED CONSENT ADVISORY

(TO BE USED TO REQUEST THE TEST AND TO RECORD THE INDIVIDUAL'S RESPONSES.)

TIME STARTED: \_\_\_\_\_ LOCATION WHERE READ: \_\_\_\_\_

\_\_\_\_\_, I believe you have been driving, operating, or controlling a motor vehicle while under the influence of alcohol or a controlled substance and you have been placed under arrest for that offense.

1. Minnesota law requires you to take a test to determine if you are under the influence of alcohol or a controlled substance.

2. If testing is refused, your right to drive will be revoked for a minimum period of one year.

**(IF UNDER AGE 18)** If you refuse testing your right to drive will be revoked for a period of one year or until you reach the age of 18, whichever is greater.

3. If you take a test and the results indicate that you are under the influence of alcohol or a controlled substance, you will be subject to criminal penalties and your right to drive may be revoked for a minimum period of 90 days.

**(IF UNDER AGE 18)** If the tests results indicate that you are under the influence of alcohol or a controlled substance, you will be subject to criminal penalties and your right to drive may be revoked for a period of six months or until you reach the age of 18, whichever is greater.

4. After submitting to testing you have a right to consult with an attorney and to have additional tests made by a person of your own choosing.

5. If you refuse to take the test your refusal will be offered into evidence against you at trial.

If the test is unreasonably delayed or if you refuse to make a decision, you will be considered to have refused the test. Do you understand what I have just explained? \_\_\_\_\_

Will you take the (Breath) (Blood or Urine) test? \_\_\_\_\_

**(If person refuses)**

What is your reason for refusing? \_\_\_\_\_

TIME COMPLETED: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
(Printed name of officer requesting test)

STATE OF MINNESOTA  
DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
SAINT PAUL 55155

252702

Name \_\_\_\_\_  
First Middle Last

Address \_\_\_\_\_ D/L # \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

\*Date Issued \_\_\_\_\_  
 Enf. Agency \_\_\_\_\_  
 Ticket or Case # \_\_\_\_\_  
 DOB \_\_\_\_\_  
 Court \_\_\_\_\_

**NOTICE AND ORDER OF REVOCATION**

You are hereby notified that on the date shown above (\*date issued) you were asked to submit to a chemical test to determine the alcohol concentration of your blood pursuant to M.S. 169.123, the Implied Consent Law.

- Because you refused to submit to testing, the Commissioner of Public Safety will revoke your Driver License and/or driving privileges for a minimum of one year or if you are under the age of 18 years, until you reach the age of 18 years, whichever is greater.
- Because you submitted to a breath test which disclosed an alcohol concentration of 0.10 or more, the Commissioner of Public Safety will revoke your driver license and/or driving privileges for a minimum of 90 days. If you are under the age of 18 years, the period of revocation will be 6 months, or until the age of 18 years, whichever is greater.
- Your Driver License and/or privilege to drive in this state is hereby **REVOKED. THIS IS YOUR OFFICIAL NOTICE OF REVOCATION.** This revocation will take effect 7 days after the date shown above.

**SURRENDER OF DRIVER LICENSE**

By law, The officer is required to take all license certificates in your possession, and if you have a valid license, issue a temporary license effective only for 7 days. It is a misdemeanor act to refuse or fail to surrender all driver licenses.

Yes  No Driver License card surrendered and forwarded with this report.

**TEMPORARY LICENSE**

This entire notice is valid as a temporary license from the date shown above for 7 days. NOT VALID IF DETACHED. Temporary license valid only if record so indicates.

Licensee Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Class: \_\_\_\_\_

Restriction: \_\_\_\_\_

No temporary license issued because: \_\_\_\_\_

**AFFIDAVIT OF LOST DRIVER LICENSE**

I have lost or destroyed my license. I promise that if it is found I will immediately forward it to the Driver License Office, 108 Transportation Building, St. Paul, Mn. 55155. I fully realize that in making this affidavit, the license certificate is rendered null and void and may not be used for operating a motor vehicle.

Signed: \_\_\_\_\_  
Signature of Peace Officer

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date Signature of Licensee

**IMPLIED CONSENT LAW  
PEACE OFFICER'S CERTIFICATE**

▶(PLEASE TYPE OR PRINT LEGIBLY. CROSS OUT REFERENCES TO INAPPLICABLE ITEMS.)

|                       |                       |
|-----------------------|-----------------------|
| Name of Peace Officer | Name of Police Agency |
|-----------------------|-----------------------|

I certify to the Commissioner of Public Safety, State of Minnesota, that I am a member of the above police agency and:

1. I am a "peace officer" within the meaning of Minnesota Statutes, Section 169.123, Subdivision 1.

2. On (Date) \_\_\_\_\_, I had probable cause to believe that the person named below had been driving, operating or physically or controlling a motor vehicle within the State of Minnesota on \_\_\_\_\_ in the City or Township of \_\_\_\_\_ in \_\_\_\_\_ County, while under the influence of alcohol or a controlled substance, contrary to law.

|                       |                  |
|-----------------------|------------------|
| Full Name             | Date of Birth    |
| Address               | City, State, Zip |
| Driver License Number | State of Issue   |

3. Reason for initial contact:

- Vehicle stopped by officer because: \_\_\_\_\_  
 Accident  Vehicle already stopped (describe): \_\_\_\_\_  
 Other (describe): \_\_\_\_\_

4. Probable Cause that person was driving, operating or in physical control.

- Saw person  Person admitted  Other: \_\_\_\_\_

5. Probable cause that person was under influence (in addition to other information)

- Odor of alcohol;  bloodshot, watery eyes;  slurred speech  poor balance  
 Other (describe): \_\_\_\_\_

6. Check at least one of the following:

- DWI arrest  accident  refused PBT (preliminary screening breath test);  
 failed PBT with alcohol concentration of .10 or more

7. Other pertinent information \_\_\_\_\_

8. The person was requested to submit to a test to determine (alcohol concentration) (or) (presence of a controlled substance), pursuant to the provisions of Minnesota Statutes, Section 169.123, and was read the Implied Consent Advisory on the other side of this form by: (Name and Agency) \_\_\_\_\_

9. The person: (X APPLICABLE BOX)

- Refused to provide a test sample to determine the presence of (alcohol) (or) (controlled substance).  
 Provided a sample (blood) (breath) (urine) for analysis, which indicated an alcohol concentration of \_\_\_\_\_.

The sample was submitted for analysis to:

|  |
|--|
| Name of Agency, Analyst or Breath Test Operator          |
| Address of Agency or Analyst                             |
| City, State, Zip   |
| Sample Identification Number (Blood or Urine Tests Only) |

**MEDICAL PERSONNEL CERTIFICATE**

Pursuant to Minn. Stat. §634.15 (1982), I certify as follows: at the request of the undersigned peace officer, I withdrew a sample of blood from:

NAME: \_\_\_\_\_

AT: \_\_\_\_\_  
(Location)

I am authorized and qualified to draw blood samples pursuant to Minn. Stat. §169.123, subd. 3 (1982).

I withdrew the sample of blood at \_\_\_\_\_ A.M./P.M., after preparing the site of withdrawal with a non-alcohol substance.

I used a sterile needle and container in withdrawing and receiving the blood sample.

I gave the blood sample to the undersigned peace officer.

DATE: \_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Occupation (M.D., R.N., M.T., L.T., etc.) \_\_\_\_\_

Signature of Peace Officer \_\_\_\_\_

**SEND WITH COPY OF ALCOHOL INFLUENCE REPORT, ARREST OR ACCIDENT REPORT, BREATHALYZER OR INTOXILYZER RECORDS, LABORATORY REPORT TO:**  
 Department of Public Safety  
 Driver and Vehicle Services Division  
 Implied Consent Section  
 108 Transportation Building  
 St. Paul, MN 55155

Attach Notice of Revocation (Form PS-31123-07) if issued.

|                               |
|-------------------------------|
| Signature of Peace Officer    |
| Printed Name of Peace Officer |
| Badge Number                  |
| Business Telephone Number     |
| Date                          |

## About PHI ALPHA DELTA

Phi Alpha Delta Law Fraternity, International is a non-profit, non-political organization whose student and alumni members are dedicated to service, mutual selfhelp, and maintenance of the highest standards of professional ethics. With 171 law school chapters, 90 alumni chapters and 87 pre-law chapters chartered throughout North America, it annually adds 4,000 law students and lawyers to its roster of active members without restrictions by reason of sex, age, race, color or national creed.

The Phi Alpha Delta Public Service Center is an affiliate of the Fraternity which administers the Fraternity's public service programs.

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