

**2007 Wisconsin High School
Mock Trial Tournament Case Materials**

*The 2007 Wisconsin High School Mock Trial case materials
are intended for educational purposes only and not for profit.*

Reggie Dunlop by G.A.L. Christopher Stawski

vs.

Cary S. Driver and Clearwater Mutual Insurance Company

(with revisions as of 1/4/07)

Plaintiff's Witnesses

Reggie Dunlop
Chris Kim
Officer Kirby Latanatto
Dani Driver

Defense Witnesses

Cary Driver
Karl/Karla Lantz
Tristan Manchanda
Sam Senn

DISCLAIMER

The 2007 mock trial case is a hypothetical case. All names used in the mock trial case are fictitious and were created to be gender-neutral. Any similarity to the name of an actual person is strictly coincidental.

As in previous years, all admissible exhibits and information relating to the case are contained in these case materials. Students and coaches are encouraged to do outside research but are reminded that only the materials provided herein are intended for use within the actual competition.

Witness Selection:

There are four witness roles for each side. On the plaintiff side, you must call Police Officer Latanatto. On the defense side, you must call Cary Driver. You are free to choose two remaining witnesses for each side that you think will most help your case. You may not call witnesses adversely.

Stipulations for Trial

1. All parties have stipulated as to the seriousness and reality of Reggie Dunlap's injuries and the fact that Reggie's days as a soccer player are over.
2. The amount of damages is not an issue in this case.
3. The authenticity of the exhibits is not in question. Formatted
4. The date and time of the accident was Tuesday, October 18, 2005 at 3:30 p.m. Formatted: Bullets and Numbering

WISCONSIN JURY INSTRUCTIONS - CIVIL

200 BURDEN OF PROOF: ORDINARY

The burden of proof on questions rests upon the party contending that the answer to a question should be “yes”. This burden is to satisfy you to a reasonable certainty by the greater weight of the credible evidence that “yes” should be the answer.

By the greater weight of the evidence is meant evidence which when weighed against evidence opposed to it has more convincing power. Credible evidence is evidence which in the light of reason and common sense is worthy of your belief.

If you have to guess what the answer should be after discussing all evidence which relates to a particular question, then the party having the burden of proof as to that question has not met the required burden.

215 CREDIBILITY OF WITNESSES; WEIGHT OF EVIDENCE

You are the sole judges of the credibility of the witnesses and the weight to be given to their testimony. In determining the credibility of witnesses and the weight you give to the testimony of each witness, including expert witnesses, you should consider their interest or lack of interest in the result of this trial, their conduct and demeanor on the witness stand, their bias or prejudice if any has been shown, the clearness of, or lack of clearness of, their recollection, their opportunity for observing and knowing the matters and things given in evidence by them.

The weight you give to the evidence is not to be decided merely according to the number of witnesses on each side. You may find that the testimony of one witness is entitled to greater weight than that of another witness, or even of several other witnesses. In weighing the evidence, you may take into account matters of your common knowledge and your observations and experiences in the affairs of life.

You should also consider all facts and circumstances appearing in the trial which tend either to support or discredit the testimony of a witness, and then give to the testimony of each witness such weight as you believe it is fairly entitled to receive.

1005 NEGLIGENCE: DEFINED

A person is negligent when he or she fails to exercise ordinary care. Ordinary care is the degree of care which the great mass of mankind exercises under the same or similar circumstances. A person fails to exercise ordinary care, when, without intending to do any harm, he or she does something or fails to do something under circumstances in which a reasonable person would foresee that by his or her action or failure to act, he or she will subject a person or property to an unreasonable risk of injury or damage.

In addition to this general definition of negligence, there are other safety statutes enacted by the legislature, a violation of which is negligence as that term is used in the verdict and these instructions.

1007 CONTRIBUTORY NEGLIGENCE: DEFINED

Every person in all situations has a duty to exercise ordinary care for his or her own safety. This does not mean that a person is required at all hazards to avoid injury; a person must, however, exercise ordinary care to take precautions to avoid injury to himself or herself.

ADDITIONAL OR OPTIONAL PARAGRAPHS

(A person must exercise ordinary care to employ (his) (her) senses of sight and hearing so as to become aware of the existence of danger to (him) (her). A failure to do so is negligence.)

(It is the duty of every person to exercise ordinary care to recognize and appreciate all dangers that are open and obvious to (him) (her) or which should have been recognized and appreciated by a reasonably prudent person under the same or similar circumstances. That the warning of the existence of danger was not seen or was not heard does not free one from negligence. In addition, one who looks and fails to see, or listens and fails to hear, a warning of danger which under like or similar circumstances would have been seen or heard by a reasonably prudent person is as guilty of negligence as one who did not look or listen at all.)

(However, a person is not bound to see every hazard or danger in his or her pathway even though they should be plainly observable nor to remember the existence of every condition of which the person has had knowledge. A person is only required to act as a reasonably prudent person would act under the same or similar circumstances.)

(To be free of negligence, a person must exercise ordinary care in choosing his or her course of conduct and in the pursuit of that choice. A person is not guilty of negligence in making a choice of conduct if the person has no knowledge that one course of conduct carries a greater hazard than another, provided that such lack of knowledge is not the result of the person's failure to exercise ordinary care.)

1010 NEGLIGENCE OF CHILDREN

As a child, Reggie Dunlop, was required to use the degree of care which is ordinarily exercised by a child of the same age, intelligence, discretion, knowledge, and experience under the same or similar circumstances.

In determining whether Reggie Dunlop exercised this degree of care, you should consider the child's instincts and impulses with respect to dangerous acts, since a child may not have the prudence, discretion, or thoughtfulness of an adult.

COMMENT...

A child over seven is capable of negligence, although by a lesser standard of care than an adult. Rossow v. Lathrop, 20 Wis.2d 658, 663, 123 N.W.2d 523 (1963); Gonzalez v. City of Franklin, 128 Wis.2d 485, 383

N.W.2d 907 (Ct. App. 1986). Between the age of seven and the age of majority, neither common law nor statutory law creates any further age classifications regarding the acts of minors. Therefore, the care of a minor over seven years is measured against the degree of care which children of the same age ordinarily exercise, under the same circumstances, taking into account the experience, capacity, and understanding of the child. ...

1045 DRIVER'S DUTY WHEN CHILDREN ARE PRESENT

Drivers of motor vehicles are chargeable with the knowledge that children of tender years do not possess the traits of mature deliberation, care, and caution of adults. The driver must increase vigilance if the driver knows, or in the exercise of ordinary care should know, that children are in, or are likely to come into, the driver's course of travel.

COMMENT...

In Binsfeld v. Curran, 22 Wis.2d 610, 612, 126 N.W.2d 509 (1964), the court quoted Wis JI-Civil 1045 in full and made the following interpretation: This does not mean a driver of a motor vehicle is under a higher standard or degree of care approaching absolute liability but rather, when children are present or likely to come into his course of travel, he must exert greater effort in respect to lookout, speed, and management and control of his car to fulfill the duty of exercising ordinary care under such circumstances. As in any other case of negligence, the question is for the jury unless the facts are such as to compel a determination as a matter of law.

...

1055 LOOKOUT

A driver must use ordinary care to keep a careful lookout ahead and about him or her for the presence or movement of other vehicles, objects, or pedestrians that may be within or approaching the driver's course of travel. In addition, the driver has the duty [to use ordinary care] to lookout for the condition of the highway ahead and for traffic signs, markers, obstructions to vision, and other things that might warn of possible danger. The failure to use ordinary care to keep a careful lookout is negligence.

To satisfy this duty of lookout, the driver must use ordinary care to make observations from a point where the driver's observations would be effective to avoid the accident. Additionally, having made the observation, the driver must then exercise reasonable judgment in calculating the position or movement of persons, vehicles, or other objects.

[When approaching an intersection where a marked or unmarked crosswalk for pedestrians exists, the driver must maintain such a lookout as is reasonably necessary to avoid striking them (and to yield the right of way to pedestrians when they have the statutory right of way).]

[When hazards exist because of highway conditions, volume of traffic, obstructions to view, weather, visibility, or other conditions, care must be exercised consistent with the hazards.]

COMMENT...

The duty of lookout has two aspects: namely, a duty of observation and a corollary duty to exercise reasonable judgment in calculating the position and movement of other persons, vehicles, and other objects. This dual aspect of the duty of lookout has been collectively referred to as "the requirement of efficient lookout." Gleason v. Gillihan, 32 Wis.2d 50, 55, 145 N.W.2d 90 (1966).

...The operator of an automobile having the right of way on an arterial highway must still maintain a proper lookout. Having the right of way does not relieve one of the duty of watching the road for vehicles on the highway or entering thereon. (Citing Puhl v. Milwaukee Auto Ins. Co., 8 Wis.2d 343, 348, 99 N.W.2d 163 (1959).)

The failure of a driver who does not see or become aware of danger in time to take effective steps to avoid an accident is negligent as to lookout, not management and control. Leckwee v. Gibson, supra at 291 n.7.

...The duty of lookout extends beyond the confines of the roadway being traveled. See Reshan v. Harvey, 63 Wis.2d 524, 530, 217 N.W.2d 302 (1974).

Wis. Stat. §346.88 prohibits the obstruction of the driver's view by activities within the car or by covering of the glass.

1095 LOOKOUT: PEDESTRIAN

A pedestrian, who enters and crosses a street or highway on a crosswalk, must use ordinary care to observe timely the presence, location, and movement of motor vehicles that may be approaching.

[When a pedestrian crosses at a place other than a crosswalk, it is the pedestrian's duty to maintain such a lookout as is reasonably necessary to enable the pedestrian to yield the right of way to motor vehicles.]

COMMENT ...

This instruction is based on the duty of the pedestrian to yield the right of way. Wis. Stat. §346.25. Schlewitz v. London & Lancashire Indem. Co., 255 Wis. 296, 299, 38 N.W.2d 700(1949); Engstrum v. Sentinel Co., 221 Wis. 577, 580-81, 267 N.W. 536 (1936).

1105 MANAGEMENT AND CONTROL

A driver must exercise ordinary care to keep his or her vehicle under proper management and control so that when danger appears, the driver may stop the vehicle, reduce speed, change course, or take other proper means to avoid injury or damage.

[If a driver does not see or become aware of danger in time to take proper means to avoid the accident, the driver is not negligent as to management and control.]

COMMENT ...

Simon v. Van de Hey, 269 Wis. 50, 54-55, 68 N.W.2d 529 (1955).

The duty is not to have the vehicle under such control as to avoid accident but to use ordinary care to that end. Beer v. Strauf 236 Wis. 597, 600-01, 296 N.W. 68 (1941); Schulz v. General Casualty Co., 233 Wis. 118, 126, 288 N.W. 803 (1939).

The second paragraph should be given when the court feels that the evidence raises the issue as to whether the party did or did not see the other car in time to take some effective action to avoid the collision.

1165 RIGHT OF WAY: TO PEDESTRIAN AT UNCONTROLLED INTERSECTION OR CROSSWALK

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.

The statutes further provide that, at an intersection or crosswalk where traffic is not controlled by traffic control signals or by a traffic officer, the driver of a vehicle shall yield the right of way to a pedestrian who is crossing the roadway within a marked or unmarked crosswalk.

(A marked crosswalk is any portion of a roadway clearly indicated for pedestrian crossing by signs, lines, or other markings on the surface of the roadway.) (An unmarked crosswalk is formed by extending imaginary lines the width of the sidewalk at an intersection, across the roadway, to the sidewalk on the opposite side of the intersection.)

(If there is a sidewalk on only one side of an intersection, an unmarked crosswalk is formed by extending imaginary lines the width of the sidewalk, at right angles to the centerline of the roadway, to the opposite side of the intersection.)

If you find that (plaintiff) was crossing the roadway within a (marked) (unmarked) crosswalk, then it became the duty of (defendant) to yield the right of way to (plaintiff). If, however, you find that (plaintiff) was crossing the roadway and was not within a (marked) (unmarked) crosswalk, then it became (plaintiff)’s duty to yield the right of way to (defendant).

COMMENT...

The first and second paragraphs refer, respectively, to Wis. Stat. §340.01(51) and 346.24(1). The appropriate statutory definition of “marked” or “unmarked” crosswalk should be given. Definitions are found in Wis. Stat. §340.01(10)(a) or (b). There may be marked crosswalks at places other than intersections.

Burke v. Tesmer, 224 Wis. 667, 670-71, 272 N.W. 857 (1937), indicates that there are no unmarked crosswalks at intersections in the country where there are no sidewalks and that a pedestrian crossing at such an intersection is under a duty to yield the right of way to a car on the highway. Wis. Stat. §346.24(2) is a statutory admonition to pedestrians not to suddenly leave a curb or other place of safety and walk or run into the path of a vehicle.

1255 RIGHT OF WAY: PEDESTRIAN’S DUTY AT UNCONTROLLED INTERSECTION OR CROSSWALK; SUDDENLY LEAVING CURB OR PLACE OF SAFETY

A safety statute provides that at an intersection or crosswalk where traffic is not controlled by traffic control signals or by a traffic officer, the operator of a vehicle shall yield the right of way to a pedestrian who is crossing the highway within a marked or unmarked crosswalk.

The statute defines right of way as the privilege of the immediate use of the roadway.

The statute further provides that no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is difficult for the operator of the vehicle to yield the right of way.

If you find that (pedestrian) did so (walk) (run), then (driver) did not have a duty to yield the right of way; but if you find that (pedestrian) did not so (walk) (run), then it became the duty of (driver) to yield the right of way to (pedestrian).

1285 SPEED: REASONABLE AND PRUDENT; REDUCED SPEED

A safety statute provides that no person shall drive a vehicle at a speed greater than is reasonable and prudent under existing conditions. This statute requires that a driver in hazardous circumstances exercise ordinary care to so regulate the vehicle's rate of speed to avoid colliding with any object, person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and using due care.

The statute also provides that a driver must drive at an appropriate reduced speed (when approaching and crossing [an intersection] [a railway grade crossing]) (when approaching and going around a curve) (when approaching a hillcrest) (when traveling upon any narrow or winding roadway) (when passing [school children] [highway construction or maintenance workers] [other pedestrians]) (when special hazards exist with regard to other traffic or by reason of weather or highway conditions).

Appropriate reduced speed as used in this instruction is a relative term and means less than the otherwise lawful speed. An appropriate reduced speed is that speed at which a person of ordinary intelligence and prudence would drive under the same or similar circumstances.

...

1290 SPEED: FIXED LIMITS

[This instruction may be used in addition to Wis JI-Civil 1285.]

A safety statute provides that no person shall drive a vehicle at a speed in excess of _____ miles per hour _____; any speed in excess of that limit would be negligent speed regardless of (other) conditions.

It is for you to determine whether (name's) speed was over said limit and, if under, whether it was nevertheless a negligent speed under the conditions and circumstances then present and under the rules of law given to you by these instructions.

COMMENT

The comment was reviewed without change in 1989. Wis. Stat. §346.57(4). The blanks are provided for the insertion of the specific appropriate clause of the statute.

1500 CAUSE

(A) Question(s) in the special verdict ask(s) about the cause of the (accident) (injury). (This) (These) question(s) (do) (does) not ask about “*the* cause” but rather “*a* cause” because an (accident) (injury) may have more than one cause. An (accident) (injury) may be caused by one person’s negligence or by the combined negligence of two or more people.

You must decide whether someone’s negligence caused the (accident) (injury). Someone’s negligence caused the (accident) (injury) if it was a substantial factor in producing the (accident) (injury).

REGGIE DUNLOP

1750 DuPont Street, Apt. 3
Clearwater, WI 55555
by Guardian ad Litem, Christopher J. Stawski,
Plaintiff,

Case No. **06-CV-000**

Classification: 30101

vs.

CARY S. DRIVER

3363 South Locust Street
Clearwater, WI 55555,
and

**CLEARWATER MUTUAL INSURANCE
COMPANY**

#10 First Clearwater National Building
123 South Main Street
Clearwater, WI 55555,

Defendants.

JURY VERDICT **[TO BE REPLACED WITH NEW VERDICT FORM]**

We the jury find for:

The Plaintiff, Reggie Dunlop _____

The Defendant, Cary S. Driver _____

Foreperson

Dissents:

REGGIE DUNLOP

1750 DuPont Street, Apt. 3
Clearwater, WI 55555
by Guardian ad Litem, Christopher J. Stawski,
Plaintiff,

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123 South Main Street
Clearwater, WI 55555,

Defendants.

PLAINTIFF'S COMPLAINT

NOW COMES Plaintiff Reggie Dunlop, by his/her undersigned counsel, and by his/her Guardian ad Litem, Christopher J. Stawski, and for his/her complaint against Defendant Cary S. Driver and Clearwater Mutual Insurance Company alleges as follows:

1. Plaintiff Reggie Dunlop is a minor residing with his/her parents at 1750 DuPont ~~Avenue~~, Apt. 3, Clearwater, WI.
2. Defendant Cary S. Driver is an adult resident residing at 3363 South Locust Street, Clearwater, WI.
3. Defendant Clearwater Mutual Insurance Company, is a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business at #10 First Clearwater National Building, 123 South Main Street, Clearwater, WI. Upon information and belief, Clearwater Mutual has issued to Defendant Cary S. Driver insurance policies that provide coverage for the incident and damages described in this complaint.

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4. On or about October 18, 2005, at approximately 3:30 p.m., plaintiff was crossing DuPont Avenue when s/he was hit by an automobile driven by defendant Cary S. Driver.
5. At and before the subject accident, Defendant Cary S. Driver was negligently operating his/her automobile, including without limitation, traveling at an excessive rate of speed, failure to keep a proper lookout, inattentive driving, talking on a cell phone and failing to pay attention.
6. Defendant's negligence was a proximate cause of the subject accident and of the injuries suffered by plaintiff.
7. As a result of defendant's negligence plaintiff has suffered and will continue to suffer great and grievous bodily injury, emotional distress, pain and suffering, medical bills, and future damages.

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WHEREFORE, plaintiff Reggie Dunlop demands judgment in his/her favor, awarding him/her damages for past and future pain and suffering, future lost wages, past and future medical expenses, emotional distress, attorney's fees, costs, and such other relief as this Court may deem just and equitable.

PLAINTIFF DEMANDS A JURY OF 12

Dated this 14th day of April, 2006.

STAWSKI & ROSENBERG, S.C.
ATTORNEYS FOR PLAINTIFF

By: _____
Michael D. Rosenberg

P.O. ADDRESS:
11 St. Stephen Way
Suite L25
Clearwater, WI

AFFIDAVIT OF REGGIE DUNLOP

1. My name is Regina/Reginald Dunlop – everyone calls me Reggie. I’m 13 years old. I was born on November 2, 1992. I live at 1750 DuPont Avenue, apartment 3, here in Clearwater. I’m in 7th grade right now. Just a few months away from high school! I can’t wait! I’ve been on the honor roll every quarter of middle school, so I do pretty good. My favorite class is math, though. I’m really good in math. I’m already taking Algebra, and most kids don’t get to take that until high school. My mom and dad are proud of me, I guess. They’ve got one of those bumper sticker things about me being an honor roll student or something like that. I’ve got a brother and a sister too. Bryce is only in third grade, and Megan is in kindergarten. Megan is really fun, but Bryce is so annoying. Every time I have my friends over, he’s just a little pest. This one time, me and my friends were all playing video games, and Bryce tripped over the cord and unplugged it. We were so mad. He’s still my little brother, though, so I love him.
2. I used to play soccer too. I LOVE soccer. I always played forward, and I was the leading scorer for my team a couple of seasons. I’ve got posters of soccer players all over my room. I’ve got Beckham, Ronaldo, Freddy Adu and Mia Hamm. They are all so awesome. Someday I wish I could go to a World Cup game. Before the accident, I wished that some day I could PLAY in a World Cup game. I keep hoping, but the doctors say I won’t be able to play soccer anymore on account of my leg. I missed the end of the season after the accident. I didn’t even get to see them play – I was still in the hospital. We didn’t win the championship, but the team still gave me a game ball. They all signed it, and wrote ‘Get well,’ and ‘We miss you,’ and stuff. That was really nice, but it made me sad too.
3. I remember the accident. It seems as if I think about it every day. I don’t try to, but it’s as if I can’t help it – it just pops into my head and I think about it. It happened on October 18th, 2005 – a Tuesday. Me and my friends were all on the bus, talking about normal stuff I guess. I think I remember Sam talking about a cheat code on a video game, but I don’t remember which one. Little things like that I can’t remember really good. They say it’s because of the concussion. Anyway, Sam was telling us about the cheat code. Sam is totally my best friend. Sam was my first friend when I came to Clearwater. Sam lives two houses down from me. We do EVERYTHING together. Even our birthdays are only a week apart – Sam’s is on October 26! So anyway, at school we had this magazine thing we did. A fundraiser, you know? And if you sell so many subscriptions you can win these prizes. Well I sold like a gazillion subscriptions, so I got some prizes. The coolest was this thing... I can’t remember what it’s called. It’s this monkey rubber-band thingy that you launch kind of like a slingshot. I remember the fundraiser guy showed it to all of us in the auditorium, he flung it around, and we were all like, ‘Oh, I’m going to get one of those!’ It’s really cool and really funny. But sometimes school stinks, because you win a cool prize like that and they won’t even let you play with it at school! Well, Sam won one too, so we were going to play with them after school.

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Deleted: , but I wasn’t actually born in Clearwater. I was born in Sheboygan, but we moved here when I was really little – in 1997 I think. I don’t even remember Sheboygan. I’m glad we moved too, because I have so many cool friends here.

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4. On the afternoon of the accident, Sam and I got off the bus which stops at the end of our block. We crossed the street to the median. We already had the monkey's out. I couldn't wait, so I flung mine all the way across the second part of the road and it landed perfectly – right on the sidewalk! Before the bus had even left, Sam accidentally flung his/hers kind of into the road. I said I'd get it. It landed most of the way across the road – maybe two-thirds or so. That's when the accident happened. I'm pretty sure I looked for cars, and then I ran out to get it. Like I said, the bus hadn't even left yet. And this car comes flying out of nowhere. It came from the opposite direction of where the bus was going. I couldn't do anything. It seemed as if it was going real fast. It happened so quick. It's weird, some things are kind of fuzzy, and some things aren't. I don't think I can remember what color the car was, or even what kind it was, maybe it was black. I remember seeing the drivers face but I can't really remember what s/he looked like. You know, if they had brown hair or anything like that. But s/he was talking on a phone. And s/he didn't really have a look on his/her face – you know, an expression. It was as if the driver never saw me at all. And there was no noise. No squealing brakes like you hear in movies and stuff. And that was it. I kind of closed my eyes when I knew it was going to hit, and then I don't remember anything. People ask me if it hurt, and I don't think it did. I guess I went unconscious. I heard afterward that I was knocked in the air 16 feet or something like that. It even knocked me out of my shoes!
5. It was two days before I woke up in the hospital. I didn't really know it, it's just that my mom and the doctor told me about it. I don't really remember exactly what they said though when I woke up. After a while, I remember them telling me how lucky I was. They said my head wasn't fractured, just that I had a really bad concussion. That's why I can't remember little things. I'm pretty good about remembering now though. I get headaches from the concussion. I had really bad ones at first. They even made me cry because they hurt so bad. I still get headaches now. I mean, it's not like I have them constantly, but I get them three or four times a week. The doctor gave me medicine to take too, in case Tylenol doesn't help. Sometimes Tylenol helps, but most of the time it doesn't. Some days the sunlight really bothers me. Sometimes even when it's cloudy. I don't get that at all. I mean, how can sunlight hurt me on a cloudy day? And one of the reasons that they don't want me to play soccer is because of the concussion. I could get really bad if I get another one. But I bet I could wear a padded helmet.
6. The bigger reason for me not playing anymore is my legs. My left one isn't so bad. It had one fracture. I think they fixed it good though. My right leg is what makes it hard for me to walk. They said it looked like it had exploded. They said I almost lost it because of the arterial damage or something like that. They said they counted five different fractures. I've got all sorts of plates and screws and rods in it, holding it all together. I've had four different surgeries to try to fix it. One time they said that part of it was growing back weird so they had to re-break it. It makes me so mad. It's hard for me to walk, and it hurts every day. I can't run yet. They don't know if I ever will be able to, and they think I will still have to have surgeries in the future. Right now I have to walk with a forearm crutch because my leg is so weak.

7. It hasn't just been hard for me. My mom and dad have a difficult time keeping up with the hospital bills — with all the surgeries. I still have physical therapy usually three times a week. Physical therapy is a real drag. Most of the time it hurts, and it's always hard for me to do. And it stinks too, because I have such a hard time doing stuff that used to be so easy for me. I'm not sure how much mom and dad owe in hospital bills, but it's a lot. Plus they have to miss work all the time so they can take me to my rehab appointments. I asked them once, but they said not to worry about it, that everything was fine. But I know it's not. We used to have satellite TV, but we don't anymore because we can't afford it. Me and Bryce and Megan didn't get any new school clothes this year. Mom and dad even sold our camper. I hate that because we used to go camping all the time in the summer.

8. The worst part is that mom and dad always fight now too. It never happens during the day, but I hear them at night when I'm trying to sleep. They argue about bills and stuff. They think that I don't hear. Bryce hears it too, but Megan is always asleep. Sometimes I can kind of hear Bryce crying, so I go into his room and sleep with him and tell him that everything is OK. It's really not though. Mom and dad just aren't the same any more. They aren't really cheery, and they hardly ever smile any more. I wish things could be the way they used to be.

Reggie Dunlop

Subscribed and sworn to before me this
12th day of May, 2006.

Notary Public, State of Wisconsin
My commission expires: _____

AFFIDAVIT OF CHRIS KIM

1. Hi, my name is Chris Kim. I am 60 years old and a retired teacher. I live at 1750 DuPont Avenue. I am not originally from this area, but right after I graduated from college, I got a job offer to teach math at Clearwater middle school. I accepted the job and moved to Clearwater in the early 1970's. I can't remember the exact date that I moved to Clearwater; but I have lived in Clearwater for over 30 years.
2. I got married soon after my college graduation and moved to Clearwater with my spouse. I accepted the job gladly because I am very fond of young children. I was born to be a teacher and simply love hanging out with children. However, unfortunately, I do not have any children of my own; against my desire, my spouse did not wish to have any children. Therefore, I happily spent much of my time with children in my neighborhood and school, especially those who attended my class.
3. I have lived in the same neighborhood since the day we moved to Clearwater. Because our family only consists of my spouse and me, we did not bother to buy a house even though we have sufficient income. We chose to live in an apartment complex for convenience. Furthermore, in an apartment complex, you come in contact with various people all the time. For older people like us, who sometimes feel quite lonely without any children, opportunities to be in contact with other people are very precious.
4. After retirement, when I stopped teaching, I became quite lonely. It was a great emotional shock and a trying time for me. I missed my job and wanted to see the kids again. Moreover, I really did not have anything special to do after my retirement. My spouse prefers reading at home to exercising but I am a very outgoing and social person so inactivity was depressing me. Therefore, I decided to use my teaching skills to help mentor children to develop their academic skills. Reggie was one of the kids I mentored.
5. I know Reggie Dunlop very well. Reggie's family lives in the apartment next door to me and they are very good hearted people. They are nice, kind, and very caring. I have lived in this neighborhood for so long that I even witnessed all three Dunlop children being born and growing up.
6. My favorite Dunlop child has always been Reggie. Quite delightful and bright, Reggie has been such a magnificent comfort to me and has helped ease my loneliness. Reggie knows so much about me that s/he is the first one to notice my mood. Also, Reggie has talents that I admire. I was the first one to notice Reggie's talent as a great mathematician. I found great pleasure in using my abilities to help develop Reggie's talent. Reggie utilized my teaching skills more than any other child in the neighborhood.

Deleted: Street

7. I devoted most of my time before the accident mentoring Reggie in math. Reggie is the brightest and most kind spirited student I've ever seen in my life. I care about him/her as much as Reggie's parents do. I've been with Reggie ever since s/he was a baby; I am Reggie's godparent. I even remember the day Reggie was born; s/he was born on November 2, 1993 at Clearwater hospital.
8. I'll never forget the day of the accident. I am outside most of the time when the school bus lets children off. I usually take a walk around my apartment and do some sort of exercise about that time – usually running and stretching.
9. On Tuesday afternoon, Oct 18th, 2005, around 3:15 pm, I was outside as usual, doing some stretching to prepare myself for running. I usually come out a little later, but the weather was very nice on that Tuesday so I decided to go outside earlier. I spent a little time right outside my apartment complex, stretching my legs and arms. Soon I started jogging heading north.
10. It is my habit to focus on a random object when I am concentrating on running. It's not that I am actually observing the object; I just need something to concentrate on without being disturbed. About a minute or two before the accident, my eyes were completely focused on a black car that was on the street. I remember that around the time I found the black car, I was about to pass Rustic Avenue.
11. The school bus usually comes by around 3:30 p.m., drops the children around the corner, and waits until the children cross the street. The bus always makes a right turn onto DuPont at Columbus Avenue and lets the two children out on the northbound side of DuPont just up from my apartment complex.
12. The car was a black 1998 Oldsmobile Intrigue. There was a pizza sign on the rear door of the car. Two people were sitting in the front. A man/woman was driving. I remember clearly that the driver was a man/woman and that s/he was wearing sunglasses. I saw him/her holding an object that looked like a cell phone right next to his/her face and his/her mouth was moving.
13. I recall being shocked that s/he would be talking on a cell phone while driving. I do not know whether s/he got off the phone call before the accident because the car speed was a little too fast for my eyes to follow. The car was going definitely faster than the speed limit of the street. I noticed this because usually my eyes can follow the cars that drive the speed limit without much difficulty.
14. It is so dangerous to drive using a cell phone! It is a well-established fact that the probability of having an accident increases infinitely during cell phone use while driving. What was s/he thinking? Doesn't s/he care about the children who usually cross the street? Doesn't s/he have any regard for his/her own children? That driver should have known that there would be children on the street around that time. Everyone in Clearwater knows that 3:30 p.m. is about the time children get off the school bus.

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15. I am very sorry about what happened; poor Reggie lost his/her chance to play his/her favorite sport, soccer. It is such a tragedy for his/her family also; I do not know how to help. There is such sorrow whenever I see the shadows and darkness behind the eyes of Reggie's parents. I want to do something to help his/her family and to discover a way to develop Reggie's other talents.

Chris Kim

Subscribed and sworn to before me this
20th day of June, 2006.

Notary Public, State of Wisconsin
My commission: _____

AFFIDAVIT OF OFFICER KIRBY LATANATTO

I, Kirby Latanatto, being first duly sworn and with knowledge of the penalties for false swearing, attest that the following facts are true to the best of my knowledge and belief:

1. My name is Kirby Latanatto. I have been a patrol officer with the Clearwater Police Department for four years. Before working for Clearwater P.D., I worked as a dispatcher for the Rochester, Minnesota Police Department for 18 months.
2. In 2004, I completed a 40-hour class in the investigation of traffic accidents. One component of the training was traffic deaths, including determination of the cause of fatal accidents. As part of this training, I learned how to estimate speeds of vehicles and how to evaluate physical evidence at or near an accident scene. In October 2007, after I complete another course, I will test for certification in accident reconstruction.
3. In my current job, I have investigated over 200 vehicle accidents, including five in which deaths occurred. In three of those five cases, criminal charges were brought, which resulted in a certified reconstruction expert reviewing my work. In all three cases, the expert agreed with my conclusions regarding the cause of the fatal accidents. Dozens of my other investigations have been cases in which injuries occurred; because of budget limitations, our department does not have access to review by a certified reconstruction expert in injury cases.
4. I was on duty on the afternoon of October 18, 2005, about 3:30 p.m., when the dispatcher notified me of a car-pedestrian accident. The first officer at the scene had reported that the driver was going too fast and had injured a child.
5. I drove to the scene, which was southbound on DuPont Street, just south of Rustic Avenue. An ambulance had already taken the child to the hospital, and Officer Melissa Wilson was directing traffic to detour around the accident scene. The weather was sunny in the area, with excellent visibility and no apparent obstructions aside from the blocked-off accident scene.
6. In the northbound far-right lane, across from the accident, a school bus was parked. In the southbound lanes was a black 1998 Oldsmobile Intrigue: its rear end was in the center lane, and the front was in the far-right lane. The grill and hood were slightly dented and the windshield was cracked. A child was standing on the sidewalk, looking very upset, and a child protective services worker was trying to comfort him/her.
7. I interviewed the bus driver, who identified himself/herself by Wisconsin driver's license as Karl/Karla Lantz, date of birth April 28, 1946. Lantz said that s/he had let off the injured child and his/her friend at the last stop of the route. Lantz knew the injured child by the first name Reggie, but did not know the other child's name. The two children crossed in front of the bus to the median. Lantz said that the children initially stopped in the median, as if watching for traffic before crossing the two southbound lanes. Lantz looked

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away momentarily and then heard Reggie's friend yell something like, "No, watch out!" Reggie yelled "Come on, chicken! We can make it." Reggie started to run across the street.

8. Lantz said that for a split second, s/he thought of shouting at Reggie to stop, but it looked like Reggie could make it across without being hit. "I didn't realize at first how fast the black car was coming". Lantz said that s/he thought s/he saw the driver holding something - maybe a cell phone or something to eat, shortly before striking Reggie.

9. After talking to Lantz, I then interviewed Cary Driver, the driver of the Intrigue. Driver was agitated and complained that the bus should never park in a way that causes children to cross such a busy street. Driver said that s/he works as a pizza delivery driver at Napoli Palace and often drives on this stretch of DuPont Street.

10. Driver said that s/he saw the children in the median and assumed that they would wait for traffic before crossing. "It wasn't like they were chasing a ball or kitten or anything weird that makes you think they would run into traffic." Driver said that the victim darted into traffic at the last minute and "there was just no way to stop."

11. Driver seemed upset and asked a couple times how badly the child was hurt. Driver did not appear to be intoxicated - no slurred speech, problems with balance, or other indicators. I saw no need to administer any sobriety tests.

12. I asked Driver how fast s/he was driving, and s/he denied speeding. Driver admitted that s/he did not know the exact speed, however. I also asked whether Driver had been talking on a cell phone at the time of the accident. Driver acknowledged making a call shortly before the accident, but said s/he was not on the phone when the accident occurred. Driver said that there was a passenger who could verify his/her version of events, but the passenger had left the area while I was talking to the bus driver. I was unable to locate any other eyewitnesses at the scene, and the protective services officer had transported the uninjured child from the scene before I could speak with him/her.

13. I issued Driver a citation for inattentive driving and advised him/her that depending upon my findings, I might have to refer the matter to the District Attorney due to the serious injury involved.

14. Officer Wilson had sealed off the area with reflective cones and her squad car, so I began to take measurements and photographs of the scene. Unfortunately, I discovered later that evening that my camera had malfunctioned, so I did not obtain photographs of the Intrigue and the bus.

15. I have also attached to this report Exhibit A, which is a diagram that I prepared of the scene. It accurately depicts the scene, although not to the precise scale.

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16. Most notable of the measurements that I took at the scene are as follows:

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Width of the concrete median that the victim crossed before being struck - 5 feet;
Length of pre-impact skid marks - 32 feet; and Length of post-impact skid marks - 52 feet.

17. On the basis of the total of 84 feet of skid marks, I was able to determine that the Intrigue was traveling between 39 and 44 miles per hour before it started to brake. The speed limit is posted at regular intervals along this stretch of DuPont as 35 miles per hour. I made this calculation using standard formulas taught as part of accident reconstruction training. These formulas take into account the skid marks, the coefficient of friction for the type of road surface, and estimated braking efficiency.

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18. In my experience investigating accidents, I estimate that at least 25% of them involve a driver talking on a cell phone. If you take away the cases caused by intoxication or bad weather, cell phones contribute to over half of the accidents. I base this estimate not only on conversations with witnesses and drivers at accident scenes, but also on my own observations as I patrol the city. On an average shift, I see at least five drivers on cell phones and putting themselves or others at risk. They fail to monitor their speed (either speeding or going much slower than other traffic), they fail to signal turns, and they look straight ahead instead of moving their eyes and checking their mirrors.

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19. From my experience, training, and observations at the scene, I conclude that despite the victim running into the southbound lanes of DuPont Street, a reasonably attentive driver could have seen the child and avoided the accident.

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20. Unfortunately, the defense attorney in an earlier traffic case made an issue of my public involvement in seeking to make our streets safer. As a result, the police chief recommended that I include my newspaper article about cell phones in any police report for an accident caused by the driver's use of a cell phone. I have followed that advice, but I would never allow my personal beliefs about this issue color my professional opinion or my investigation in any way.

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Officer Kirby Latanatto

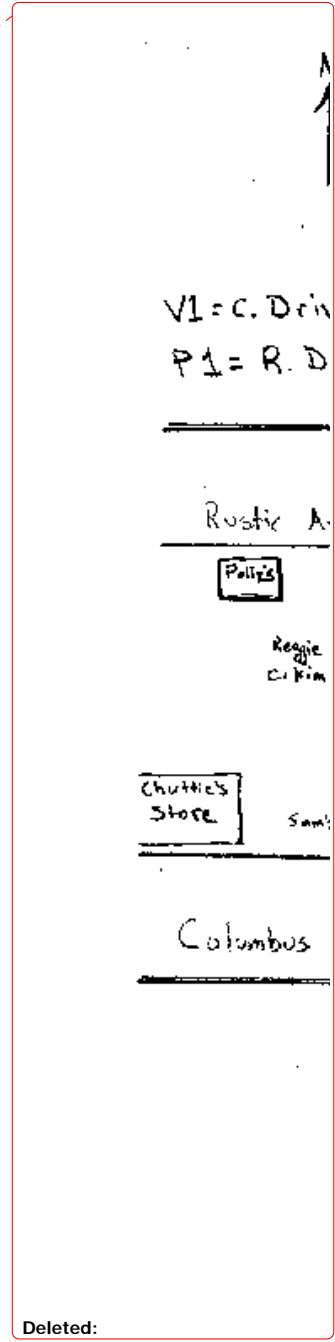
Subscribed and sworn to before me this
19th day of May, 2006.

Notary Public, State of Wisconsin
My commission: permanent

[See new exhibit A]

Diagram of the scene
(DuPont Avenue runs north and south)

Exhibit A



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Article from the Clearwater Herald

Cell phone Restrictions Promote Traffic Safety

You don't have to have my job - City of Clearwater Police Officer - to notice the danger caused by drivers chatting on their cell phones. Yes, I spend 40 hours a week in my squad car, observing traffic violations and accident scenes caused by the carelessness that goes hand-in-hand with cell phone use. But the cell phone menace is evident to the increasingly rare motorists not talking on cell phones - when they look around at the drivers cutting them off, speeding past them, or slowing down drastically for no apparent reason.

Sadly, my family felt the effects of a preoccupied, cell phone user two months ago. Our six-month-old puppy was playing in the yard with our two children when a ball rolled into the street. A teenager came around the corner talking on a cell phone and hit Ajax, killing him in front of two small children. The driver actually seemed like a good kid - just got caught up in the phone conversation and forgot about safe operation of the dangerous 4-wheeled machine.

Our family needlessly lost a beloved pet. Others have tragically lost children, siblings, spouses, and parents as a result of the negligence caused by cell phone use. A study published by researchers in Utah shows that cell phone usage is more dangerous than intoxicated driving.

Senate Bill 135 would make it illegal for the driver of a motor vehicle to talk on a cell phone, except in specified emergency situations. I strongly support this bill, and I urge all readers to write to your senator and state representative to urge them to protect Wisconsin motorists and pedestrians by passing it this session.

Kirby Latanatto is a Clearwater police officer and co-chair of Wisconsin Citizens for Safe Highways, an advocacy group in support of Senate Bill 135.

AFFIDAVIT OF DANI DRIVER

STATE OF WISCONSIN)
) ss.
COUNTY OF CLEARWATER)

1. My name is Dani Driver. I am divorced and a single parent. I work in sales for an office supply firm. I was married to Cary Driver for ten years. We have two children: Sam, who is 9 years old and Pat, who is 7. Cary has primary placement of the kids.
2. I am always worried about the kids being in the car with Cary. Not because Cary is a bad driver, but because s/he becomes distracted when s/he is on the cell phone. And Cary uses his/her cell phone constantly. Prior to our divorce, I used to joke to our friends that maybe Cary would pay more attention to me if I had a tattoo that said “Nokia” or “Check out my ring tone.” We couldn’t even eat at a restaurant without Cary using his/her cell phone at least half a dozen times while we were eating. It really bugged me – it wasn’t like s/he was so important that s/he couldn’t turn it off!
3. Once, before we were divorced, the kids and I were in the car and Cary was driving. A car stopped suddenly in front of us to make a turn. Cary had to grab the steering wheel with both hands and the cell phone went flying through the air and it ended up in the back seat. It landed on Pat’s lap. Luckily we were OK. Cary was able to swerve around the car in time, but that made him/her lose the grip on the phone. We joked about the “flying phone” and “look up in the sky: is it a bird? A plane? No it is Cary’s cell phone.” Even after that episode Cary kept talking on the phone whenever s/he was driving. Cary gives me a hard time because I use a Blackberry in my job, and need to use it constantly. Difference is, in the car I use a hands-free earpiece and microphone. I even told Cary I would buy him/her one, so I’d know the kids would be safe in the car. Cary just said “why don’t you just pay me maintenance and you won’t have to buy me anything.” Cary completely missed the point. I worry even more now that Cary is working at the pizza place, because they use cell phones to call drivers about orders and addresses.
4. I know about Cary’s accident with Reggie. I think it is awful. I coach soccer and Reggie is a great forward. Reggie tries hard. You can tell s/he loves soccer. Reggie’s parents called me when Reggie was in the hospital to let me know s/he wouldn’t be in soccer anymore this year. Now I hear Reggie won’t ever be able to play again. I asked around about what happened when I first heard about the accident. When I heard Reggie was struck by Cary’s car, my first thought was “Oh no! I hope s/he wasn’t yammering on the cell phone.” I heard that someone saw her/him with a cell phone in his/her hand when Cary got out of the car.

5. I called Cary shortly after I heard about the accident. I asked Cary what happened. Cary was very defensive talking about it. I said that someone said you had a cell phone in your hand. Cary got all mad and said something like, “well, I jumped out of the car and called 911.” I asked why the cell phone was in his/her hand right when s/he got out of the car; was s/he talking on it? Cary answered, “What does that matter when some kid just runs out into the road?” I remember s/he said exactly that, because I didn’t like Cary referring to one of my soccer players as “some kid”. I said that I know how s/he drives when on the phone. Cary then said his/her memory is unclear about the details of what happened.
6. When Cary heard that I had been contacted about what I knew about the accident and his/her driving habits, s/he called me to ask if it was true. I said “yes,” I had been called to give a statement. Cary became real nice, asked me if I wanted visitation with the kids more or shared placement. It sounded like Cary was trying to get me to help him/her. Cary kept asking me about my statement, and if I said anything about his/her driving and cell phone use or our conversation after the accident. I asked why s/he wanted to know if I said anything about that. Cary then said, “You didn’t tell them I was on the phone did you? You weren’t there. You don’t know anything about how I was driving when that accident happened.” Cary also threatened to go back to court to gain full custody of the children if I said anything against him/her.
7. I hope that Cary is more careful about using the cell phone in the car. I know in Connecticut and some other states it is illegal to drive and talk on the cell phone at the same time. I think it would be safer for kids like Reggie if that was the law in Wisconsin.

Dani Driver

Subscribed and sworn to before me
this 2nd day of June, 2006.

N. Terry Public
Notary Public, Clearwater County, Wisconsin
My commission expires: 09/30/2007

because sometimes the kids go running across the street without looking.

6. I think the bus was stopped at the corner of DuPont and Rustic Avenue. My memory is a little unclear about some of the details. I remember seeing two kids on the median between the northbound and the southbound lanes and that they were stopped there. All of a sudden, however, just as I was coming up to the Rustic intersection, one child darted across my southbound lanes right in front of me. I blew my horn and thought I heard the bus driver blow his/her horn, but the kid just ran right in front of me anyway. There was nothing I could do. I was in a panic; there was a kid, about Sam's age right in front of me. He/she turned to look at me and I slammed on the brakes as hard as I could, but it wasn't enough. I vaguely remember the brakes locking up and skidding into the kid—no anti-lock brakes. I hit the kid head on, s/he bounced off the hood, hit my windshield, cracking it.
7. As soon as the car stopped, I grabbed my cell phone and called 911 as I was running out of the car to the kid. The other kid was uninjured, but s/he was standing there crying. The bus driver was right behind me, as were several other people who were in the area. I really don't remember what happened or what I might have said to the police or to anyone else. It was all so much of a shock that I was only semi-coherent. I was only glad the child was still alive. S/he was bleeding all over and bent funny, especially her/his leg.
8. It wasn't my fault that Reggie Dunlop darted out in front of the bus and my car. I understand that the bus driver told him/her several times before to wait for traffic, but didn't. Nor do I know how they can possibly let kids off across the street from their house and have them cross a busy road. It's really dangerous. There was nothing I could have done. I was driving carefully and paying attention, there just wasn't any time.
9. The police officer wanted to talk to Tristan, but Tristan was upset and took off towards Whole Foods. I gave the police officer his/her telephone number and address. I occasionally give Tristan a ride to Whole Foods because Tristan is a nervous driver and doesn't like to drive in areas that are high volume traffic. Sometimes I'm able to give Tristan a ride home if I have a delivery to make, otherwise Tristan grabs the bus home.
10. I know my ex is trying to say that I always talk on my cell while driving, but s/he hasn't driven with me since s/he left in the middle of the night five years ago. Dani is still trying to get custody of the kids and make me look bad after all of these years. Nor can I afford one of those new fancy phones that you don't need to use your hands. I only use my cell phone when driving when it is safe to do so and when it won't distract me—it's not illegal. At least I don't use a Blackberry and drink coffee at the same time like s/he does while driving. I've never been in any other accident. I'm always a careful driver.

11. I've been seeing a therapist since hitting that child. I'm really sorry that I hit Reggie, but there is nothing I could have done. I wish Reggie hadn't run out into the street like that and that this never happened. It's really shaken me up. I have nightmares about it and keep seeing Reggie's face through my windshield.

FURTHER AFFIANT SAYETH NOT

Cary S. Driver

Subscribed and sworn to before me
this 30th day of May, 2006.

Notary Public State of Wisconsin
My Commission Expires: _____

AFFIDAVIT OF KARL/KARLA LANTZ

1. My name is Karl/Karla Lantz. I am 60 years old, and I have lived in Clearwater for most of my life. I have been a bus driver for the past 15 years, and I also own a popular bookstore downtown Clearwater.
2. I have degrees in philosophy and business from UW-Madison. I became a school bus driver because it was something different than my normal routine at the store and it adds some spice to my day. I've done it for 15 years, and I love it and I love working with the kids.
3. I remember the day on which Reggie Dunlop was hit by the defendant. It was October 18, 2005. The school day had ended, and I had Reggie and a few of his/her friends on my bus. I remember because they seemed to be making a great deal of noise in the back of my bus. I have those kids on my bus quite often, and, I swear to God, they cannot shut their mouths and be calm to save their lives. They just talk as loudly as they wish. They're just not all that attentive to their general surroundings or the rules. Lord knows I've told them repeatedly to shut up and sit down, but it's like they didn't even hear me. They just don't care. They are not attentive at all. It's their nature, in my opinion.
4. Anyhow, I let them off at their stop on DuPont Street – somewhere in the 1700s, I think. This street is a two lane street, and it is relatively busy in the afternoon. I remember the traffic that day was just normal. It was not overly bustling with traffic – just the normal, busy amount of traffic going both ways.
5. I dropped the kids off at their stop and they continued their screwing around. Out of the corner of my eye, I also saw them act as though they were preparing to cross the street (i.e. looking both ways), but I had to turn around to deal with some other munchkins who were screwing around in the back of the bus. There were two or three kids causing a ruckus in the back. As I turned around to deal with my discipline problems, I heard a couple of sounds in close sequence. The first thing was the sound of two voices. The first one said: "No, watch out!" The second one said: "Come on! We can make it." The second sound I heard was the screeching of a car trying to brake as quickly as possible. I could distinctly hear the screeching of the breaks, since I have heard that sound many times over the course of my 15 years on the job.
6. I immediately turned my head and saw Reggie Dunlop on the road; s/he appeared to be injured. First, I grabbed my cell phone out of my duffel bag and called 911. Then, I told the kids to remain in the bus and keep calm. I then exited the bus to help Reggie and as I exited, I called dispatch to let them know the bus was off schedule so they could inform the parents that their children would be late. I rushed to Reggie to help him/her. Though I have not exactly been endeared to the boy/girl, I couldn't help but be worried about him/her.

7. When I did reach Reggie, I saw that s/he was injured. Reggie looked fairly banged up, as was the car that hit him/her. The defendant, Cary S. Driver, was also right alongside me, and s/he seemed very distressed over the accident. Driver was very concerned with the injuries to the kid. Driver seemed very anxious, understandably so. Driver kept on repeating: "Oh my God! Oh my God!" Driver then said something about how s/he had just jumped out into the street and s/he could not stop fast enough to avoid him/her. Driver was really frantic and stricken with an overwhelming terror. Anyhow, within a few minutes, an ambulance arrived and Reggie was taken by emergency personnel to the Clearwater Hospital, where I've heard that s/he was released not all that long afterwards.

8. I think that this accident was avoidable. If those kids hadn't been screwing around and had been more attentive to the street and the traffic, as they should have been, this accident would never have happened. It was not the defendant's fault. Now this kid's got some lawyer saying that it was the driver's fault. Well, maybe Reggie should have been paying attention! God forbid Reggie takes responsibility for his/her own mistake. This whole proceeding just further demonstrates his/her utter lack of responsibility.

Karl/Karla Lantz

Subscribed and sworn to before me this
7th day of June, 2006

Notary Public, State of Wisconsin
My commission: permanent

AFFIDAVIT OF TRISTAN MANCHANDA

1. My name is Tristan Manchanda and I live in Clearwater, Wisconsin. I graduated from Clearwater High School and currently reside at 3110 South Locust Street. I live right down the block from my good friend, Cary Driver. Cary and I went to school together. Though we didn't start out friends, we became really good friends when Cary stopped all the students from teasing me and calling me "fingers". I used to have a slight problem with clipping my nails.....a LOT.
2. Since Cary and I live close, I do spend quite a bit of time with him/her and I try to help him/her out by helping with the kids sometimes when Cary has them. I don't have kids of my own so I enjoy doing things with them. I spend a lot of time in the car with Cary because it seems like s/he is always taking Sam or Pat somewhere. Sometimes Cary takes me to get groceries with him/her because I really do not enjoy driving – there are too many distractions for me and it makes me really nervous.
3. Cary works hard to support his/her two kids. I admire that about him/her. It seems like Cary is always doing something for the kids and even when they aren't with Cary – Cary talks to them every day. Cary makes sure s/he always has the cell phone with him/her so they can "stay connected". It's hard to have conversations with Cary at times because you don't know if s/he is talking to you or one of the kids – that phone is everywhere we go! I do get a bit annoyed sometimes – what the heck did people ever do before cell phones! I guess people actually had to get up and walk somewhere to dial a number!
4. It just so happened that on the day of the accident I was riding along with Cary because I was going to Whole Foods to pick up some groceries and Cary was explaining to me how to cook fish on the grill. I usually go with Cary on his/her way to work because Whole Foods is on his/her way to work and then I can catch the bus home or sometimes Cary is able to stop and give me a ride home on his/her way to a delivery. Cary works at Napoli Palace Pizza. I don't like to drive to Whole Foods because it is close to a residential neighborhood and there are always a bunch of kids out playing in the street and I'm too nervous to drive that way. I'm afraid I'll run over a toy or a baseball will go through my windshield and break it and I'll end up with a smashed face or worse!
5. Anyway, we were on our way to the store talking about types of fish that would be good on the grill and Cary was telling me how to select just the right kind and how it should feel and smell. As usual, the cell phone was right on the visor attached to that little thingy that Cary sometimes uses when s/he talks for long periods of time, that way Cary can keep his/her hands free for driving. I always know when that thingy is on the visor, Cary doesn't mean to talk on the cell too long – just perhaps to check the pick up or drop off time with one of the kids.

6. I remember that it was a nice sunny day and there were lots of people out in their yards and I saw several people jogging. I remember seeing a school bus because I asked Cary why the bus didn't have out the stop arm and flashing lights. Cary said that in Clearwater, buses are not allowed to put out the stop sign, stop arm, and flashing lights because there are curbs and sidewalks on both sides. Cary told me that it is proper to slow down anyway just to be safe.
7. I remember listening to the radio as we went along and I got excited because the Black Eyed Peas came on and I started singing along to Fergie – that chick has some pipes! The next thing I knew, I heard a horn and saw this blur of blue and I felt my head whip back. Thank goodness I was wearing my seat belt. It seemed like the car screeched for hours but I'm sure it must have been just a few seconds.
8. I think we were traveling south on DuPont. It was afternoon because Cary had to get to work. It must have been about the time school lets out – about 3:15 p.m. because I saw the school bus across the street – I saw the strobe light on top. I don't like driving in this area because there are always so many kids – they don't pay attention and just walk into the street whenever they feel like it. That makes me really nervous and then I start biting my nails again.
9. The bus was stopped at the corner of DuPont and Rustic Ave. I remember that because that is where I usually catch the Clearwater City bus to go home. I remember seeing kids on the median between the northbound and the southbound lanes. I remember asking Cary if s/he wanted to go see the Peas when they were in town in a few weeks and I leaned over to turn up the volume on the radio. The next thing I saw was this blue blur come across the windshield.
10. I heard a horn blow – I'm not sure whose it was. I felt the brakes slam. I remember going into a skid. I heard a thud and looked up in time to see something hit the windshield and bounce off the top of the car. The windshield had a big crack in it.
11. At first I thought someone had tossed their blue ball onto our windshield. When Cary stopped the car, s/he was extremely upset and kept muttering “please be OK, please be OK, please be OK.” I didn't realize we had hit someone until I saw the kid lying on the pavement.
12. As soon as the car stopped, Cary grabbed his/her cell phone and called 911 and ran out of the car to the side of the road. I got out too to see what we hit. There were lots of people standing around and then I saw Cary bent over a kid. I can't believe we hit a kid! We weren't even going that fast!
13. Cary reacted immediately and had the cell phone in his/her hand immediately and was calling 911 and crying at the same time. I remember getting out of the car to see if the child was hurt. There was a lot of blood but I could detect a pulse. It seemed to take forever for the ambulance to arrive. There were lots of people gathered around by the time the ambulance arrived – I'm not sure exactly who

everyone was but I do remember talking to the bus driver. The kid evidently had just got off the bus from school.

14. There was another kid that appeared to be uninjured standing there crying. I didn't stick around – I thought I was going to be sick so I went and sat down in the grass away from the crowd. After the ambulance left, I got up and walked to Whole Foods since I knew it would be a while before I could talk to Cary. S/He looked like s/he was busy talking to some official looking person.
15. Everyone is trying to play the blame game now and saying that it was all Cary's fault. I know that Cary's ex has accused him/her of talking too much while driving but I have never known Cary to be anything but a careful driver. In fact, Cary once told me that s/he talked on the phone when his/her ex was in the car because Cary knew it annoyed him/her and because they didn't communicate very well at the time. Cary said s/he would rather talk to just about anyone else other than his/her ex. Sometimes an accident is just an accident and it is no one's fault.

FURTHER AFFIANT SAYETH NOT

Tristan L. Manchanda

Subscribed and sworn to before me this
1st day of June, 2006.

Notary Public, State of Wisconsin

My commission expires: _____

AFFIDAVIT OF SAM SENN

1. My name is Sam Senn and I am 13 years old. I am in 8th grade at Clearwater Middle School. Reggie and I are at the same school and we are best friends. I didn't really want to give a statement but they made me swear to tell the truth and everything.
2. I have been friends with Reggie Dunlop since we met in first grade. We used to have kind of a competition; either Reg or I were sitting in the talking corner most days of the week.
3. Reg and I only live a couple of houses apart on the east side of Clearwater—near my Uncle Chuttie's Pretty Good Grocery store. Sometimes, when it is really hot, we would play in the back room of the store. If we made enough noise or mess, usually he would give us a popsicle if we would go away. We usually could scam a popsicle a few times a week!
4. Sometimes Reg and I spend summer afternoons at the Clearwater Swimming Pool. It is really cool. They built a waterslide and all sorts of neat stuff to play on a few years ago. Reg would always dare me to go down the slide in as many different ways as possible. I thought Reg would break his/her neck from all the crazy stunts s/he would try on that slide – until the lifeguards threatened to kick us both out!
5. Reggie is kind of a space cadet sometimes, always doing dumb dare devil things. When we were in 3rd grade, Reg wanted to get out of school for the rest of the day. S/he was going to jump out of a tree and break his/her leg. What a goof! Reg jumped...and broke his/her arm instead!
6. Last summer, my cousin Duke from New York came to visit. He taught Reg and I to play stickball. It is great, sometimes we get our 4-H group to play. Usually we play in the street beside Mrs. Basting's house. I think stickball is just the "city kid's" version of baseball. They don't have enough room in cities for ball fields so they just play in the street.
7. On October 18, 2005 - the day of Reg's accident, we were supposed to be at Polly's house for our 4-H meeting at 3:30 pm. So we were in a hurry! 4-H is cool! Reggie and I got off the bus which stops at the end of our block. We crossed the street to the median.
8. I was talking to Reg and trying to explain a cheat code for one of our video games but Reggie wasn't paying any attention to me because s/he was focused on this monkey thing that s/he won for selling so many magazine subscriptions. We had the monkey's out before the bus even had a chance to pull away. Reggie flung his/hers all the way across the second part of the road. ~~Mine~~ landed most of the way across the road – maybe two-thirds or so. ~~Before I could do anything Reggie~~ ran out into the road.

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9. I yelled at Reggie to watch out! Reg laughed and said that s/he could make it! That's when the accident happened. I saw a black car but I don't remember hearing or seeing any warning – you know, like brakes squealing or smoking tires or anything. I saw Reggie laying there and s/he was very still. I was holding my breath and praying that Reg was alive. I saw Reggie's bare feet. Bare feet – I kept wondering why Reggie didn't have any shoes on.
10. It seemed like in just a few seconds there were lots of people standing around. I remember some people standing over Reg and trying to help him/her. I guess I was in shock because I kept staring at Reggie's shoes – they weren't on his/her feet anymore. There was a person, it was the driver of the car that struck Reggie, that kept saying stuff like, "please be OK", "please be OK". Then s/he said something about talking on that stupid phone and not paying attention. I think the bus driver must have called someone to come get me because after about 30 minutes or so, a Ms. Aidez-moi came and took me home.
11. I visited Reg in the hospital right after the accident. I asked Reggie, "What happened?" Reggie said that the car just came out of nowhere! Reggie saw the driver just before s/he hit him/her. Reggie thought the driver was eating an ice cream cone or something.
12. I was hoping Reggie would recover quickly, we were supposed to show our pets at the Clearwater County Fair. Reggie had crabs and I had a ferret. Reggie never got to show his/her crabs.

Sam Senn

Subscribed and sworn to before me this
30th day of June, 2006.

Notary Public, State of Wisconsin
My commission: permanent