

# LAW DAY 2003 MOCK TRIAL CASE

Courtesy of Ontario Bar Association (1997)

Target Audience: Adults, Teenagers

## GENERAL COMMENTS:

1. The lawyers' duty of professionalism, integrity and promoting the administration of justice is a fundamental part of the Mock Trial.
2. **The trial shall be conducted as an educational exercise.**
3. There shall be no questioning the judges' ruling.

## INTRODUCTION

This year's case is *Her Majesty the Queen v. Danielz* and the accused is charged with the indictable offence of Impaired Driving. The applicable law is detailed in these materials under the heading "Applicable Law". You may assume for the purposes of this case that the accused's rights under the **Canadian Charter of Rights and Freedoms** have been fully complied with. The accused has been granted permission to be tried without a jury.

The witnesses may be played by persons of either sex. All references in the witness statements to a specific gender may be modified as the particular situation dictates.

## FACT SHEETS

This section of the materials contains role descriptions for the accused and the various witnesses. Please, however, **do NOT deviate from the role descriptions, in a manner that constitutes "unfair deviation" as described below.**

We encourage the witnesses to "get into character", whether by way of role playing and/or by way of dressing the part. Although witnesses will attempt to prepare for every possible question that may be asked of them, they must be prepared to respond, on the spot, to questions which were not anticipated. As a result, witnesses must be flexible. On the other hand, if the testimony is not consistent, the Judge may begin to doubt the truth of the statements. Establishing credibility will, therefore, present a challenge to every witness at the trial.

In order to carry out the witness role successfully, the two Crown witnesses (Captain Morgan and T. Totaller) should meet before trial and work out other details about their characters. Similarly, the two defence witnesses (the accused and Robin "Bud" Weiser) need to work out some details together.

For the purposes of the mock trial, the following definition of "unfair deviation" includes, but is not limited to:

- A. Changing relevant facts,
- B. Refusing to admit, in cross-examination, a fact which is included in a fact sheet; and
- C. The addition of any fact, including personal characteristics of a witness, which might unfairly influence the result of the case.

There will be no specific objections to bring the deviation to the notice of the judge, nor will there be specific penalties for deviations; the existence of, effect of, and penalty for, any deviation is strictly within the discretion of the judge.

In your presentation, you are directed to strictly adhere to the facts and law as given to you; do not add additional facts, do not use case law, case books or any statute law extraneous to the problem. All of the relevant and material facts and law have been provided to you in the materials.

## **CAPTAIN MORGAN**

Crown Witness #1

Morgan is a 35 year old police officer, and a 10 year veteran of the Halifax Regional Municipality Police Department, although her experience, until March of 2002, was strictly with the canine division of the Halifax Regional Municipality Police Department. Captain Morgan had started her shift at 8:00 am on the morning of May 21, 2002 and was forced into working late that night because of cutbacks in the Halifax Regional Municipality Police Department's budget and also because her relief that day had called in ill. At 9:00 pm., Morgan was alone in her scout car, on patrol of a residential neighbourhood near QEII High School. It was a clear, dry night and road conditions were excellent. There had been no rain all that day.

At approximately 9:40 pm., Morgan was driving eastbound along Charles Street, a two lane main street, approaching its intersection with Robbie Street. It will be Morgan's evidence that the speed limit along Miller was a posted 50 kph and that she was travelling at "about" 45 kph when she first noticed the white Ford Bronco.

The Bronco, when Morgan first saw it, was travelling northbound on Robie Street towards its intersection with Charles Street. The Bronco came to a complete stop at the stop sign, but then proceeded to make a right turn in front of the cruiser, forcing Morgan to brake suddenly. (Charles Street at its intersection with Robie Street is neither controlled by a stop sign nor by a traffic light) The Bronco continued along Charles Street, with the police cruiser following it for a few blocks observing the following:

- the Bronco's speed was slow, travelling at approximately 25 kph;
- the driver's head moved constantly from left to right;
- the Bronco weaved, somewhat, on two occasions, crossing one wheel over the solid white line on each occasion;
- suddenly, and for no apparent reason, the Bronco swerved fully into the westbound lane (luckily, there was no oncoming traffic).

Morgan had seen enough and decided to pull the vehicle over, so she activated the cruiser's flashing roof lights and signalled the Bronco to pull over. The accused immediately pulled to the side of the road, Morgan pulled the cruiser up behind the Bronco and promptly "exited" the cruiser and approached the accused, who was still sitting in the driver's side seat. As the accused rolled the window down Morgan noticed a "decidedly strong" smell of alcohol coming from the car.

The accused was asked to identify him/herself and to produce his/her driver's licence, the vehicle registration and the insurance. As soon as he/she opened his/her mouth, Morgan was "was struck in the face" by the "smell of alcohol" on the accused's breath. The accused fumbled for, and eventually found, all of the required documents saying "Here they are officer, hope they're all in order". Morgan asked the driver if he/she had been drinking and he/she replied, "yes officer, but I only had two or three beers at a house party".

When asked how long before the accused had consumed the beers, the accused replied that he/she had had one around 7:30 and another between 8:00 and 8:30. Morgan then asked the accused why he/she had been driving so slowly and why he/she had been weaving. the accused responded that he/she was looking for Connaught Avenue because he/she was going to visit some friends and was unfamiliar with the area.

Captain Morgan shone her flashlight into the car and saw a few empty beer bottles on the

passenger's side floor of the car. The accused was asked to get out of the car and to accompany Morgan back to the cruiser. Morgan noticed that the accused was walking slowly and with deliberate steps, and that the accused's eyes were glassy and bloodshot. The accused was charged under Section 253 of the Criminal Code of Canada for operating a motor vehicle while his/her ability to operate the vehicle was impaired by alcohol. All of the accused's Charter rights were fully complied with.

The accused was taken to the police station, was booked and was then released pending trial. Unfortunately, the station's breathalyser machine was broken and a test could not be administered to the accused. Morgan will deny that the accused made the request to have the breathalyser administered but will state, gratuitously, that every drunk I have ever arrested for DUI has asked for the test, "they all ask". Captain Morgan "is sure" the accused would have "blown over 80, there is absolutely no question about it."

**\*\*\*NOTE\*\*\***

Captain Morgan will only refer to Danielz as "the accused" and never as "Danielz" or as either "Mr./Ms. Danielz".

## **T. TOTALLER**

### **Crown Witness #2**

T. Totaller is a 76 year old resident of Connaught Avenue who was out walking his twin Scotties, Black and White, in the late evening of May 21, 1996. Totaller had left home around 9:00 pm to walk the dogs, as was his usual habit; "my doctor told me to exercise for at least half an hour every day, so I walk my dogs in the late evening. Besides, its good for them too."

At approximately 9:40 pm that evening as Totaller was returning home, walking eastbound on the south side of Charles Street, three or four blocks east of Connaught Avenue when he observed "a couple of greasy young punks" travelling slowly, and a little erratically, eastbound along Charles Street in a white Bronco". He will state, in direct examination that he saw the passenger drinking from a beer can. However, when pressed in cross examination, he will grudgingly admit that the passenger was actually drinking from what "looked like" a beer can.

Totaller will testify that he then noticed that neither Black nor White were at his side; he turned to look for the dogs just in time to see the Bronco swerve "wildly" into the oncoming lane on Charles Street. The dogs returned to his side.

At this point, Totaller noticed the flashing lights of the police cruiser and observed the Bronco pull over to the side of the road. Totaller watched as the officer approached the Bronco and then watched as the officer and the driver walked back to the police cruiser. Totaller will swear that the accused was walking unsteadily and it looked to Totaller that the accused was steadying himself, by holding onto the Bronco, as he/she walked to the police cruiser.

Totaller will admit in cross examination to having first been drawn to the vehicle by the blaring of "that blasted car radio; you know, I am getting sick and tired of these drunk hooligans racing up and down Charles Street, with their radios shrieking out that awful disco music, having little regard for anybody but themselves. They should all be put into jail".

Totaller, who usually always wears his glasses, was not wearing them when he took the dogs out for their walk. He will state that he could not find them and the dogs really needed to be walked.

## **JACK/JACKIE DANIELZ**

Defence Witness #1

Jack/Jackie Danielz is a university graduate student who, on May 21, 2002, was looking forward to going to a party with his/her best friend, Robin Weiser, to celebrate Weiser's birthday. It had been a long day at work for Danielz, having worked a 12 hour shift waitressing/waitering at 44 North, when, at approximately 7:15 pm. that evening, Danielz picked up Weiser, in Danielz' older sister's white Ford Bronco.

Danielz had only eaten once that day, at approximately 2:30 pm., having devoured a large box of french fries and the very popular vegetarian "Green" burger. Danielz had had no time for breakfast, and had had no time for supper if he/she was to pick up Weiser at 7:15.

Weiser and Danielz arrived at the party at approximately 7:30 pm carrying their beer, Southern Comfort and Coke; each of them cracked open "a cold one" as soon as they stepped into the party. The friends separated until approximately 9:25 pm. when Weiser approached Danielz and stated that he/she wanted to leave and go to another party. Danielz recalls that, in addition to the beer that he/she had had at 7:30 pm, he/she is "fairly certain" that he/she had one or two more between 8 and 8:30 pm. In cross examination, Danielz will admit that he/she does not recall consuming any Southern Comfort, "although it is possible".

Danielz will state that Weiser had had a considerable amount of alcohol to drink throughout the evening and was "thoroughly enjoying the celebrations".

At approximately 9:30 pm. they left the party in Danielz' sister's car to go to the party on Connaught Avenue. Danielz was driving, although he/she was unfamiliar with the route to the second party; Weiser knew the route and was giving Danielz directions. Weiser had turned the volume of the car radio to its maximum setting, was changing stations frequently and was drinking from a can of Coke.

Danielz will state that, after travelling several blocks, he/she came to a full stop at the corner of Seagram and Charles Street at which point Weiser blurted out "turn right this is ... now, look for Guinness". Danielz turned right, drove slowly looking intently from side to side at the street signs since he/she had no idea where Connaught Avenue was. He/she had not noticed that he/she had turned in front of the car travelling eastbound along Miller. He/she was not concentrating on his/her driving.

While looking at the street signs to locate Connaught Avenue, Danielz thought that he/she noticed, at the last second, a dog that had run onto Charles Street in front of his/her car and that he/she swerved into the oncoming lane to avoid hitting it. Danielz immediately noticed a flashing red light in the car's rear view mirror and pulled over to the side of the road.

As the police officer approached the driver's side door, Danielz rolled the window down and turned to faced Captain Morgan. Danielz recalls being extremely nervous upon being asked for his/her licence, registration and insurance; he/she had never been stopped by the police before and fumbled with his/her wallet trying to locate the documents. When asked to respond to the reason for swerving suddenly into the oncoming lane, Danielz thinks that he/she advised Captain Morgan that he/she swerved to avoid a dog that was on the road.

Danielz followed the officer back to the cruiser where he/she was informed of his/her rights under the Charter of Rights and Freedoms and was advised that he/she was being charged with "impaired driving". They drove to the station where Danielz was formally booked. He/she

was not given a breathalyser test, although he/she insisted that one be administered; Danielz was not told that the breathalyser was broken. Danielz will deny that he/she was walking unsteadily from his/her car to the police cruiser; he/she will state that what Totaller probably saw was Danielz' hand tracing the Bronco's pin striping as he/she walked to the rear of the Bronco.

## **ROBIN "BUD" WEISER**

Defence Witness #2

Robin "Bud" Weiser is also a university graduate student who, on May 21, 2002, was looking forward to celebrating the first long weekend of the summer, the end of the school year and her/his 25<sup>th</sup>, birthday. At approximately 7:15 pm. that evening, Bud Weiser was picked up by her/his best friend, Jack/Jackie Danielz, in Danielz' sister's white Ford Bronco, intent upon attending a house party at 12 Robie Street, together with the rest of the graduating class of QEII High School.

The friends arrived at the party at approximately 7:30 pm. that evening ready to celebrate Weiser's reaching the age of majority. Between them, they had purchased a "two-four" of Weiser's favourite beer, Labatt's 50, a "forty pounder" of Southern Comfort, and a six-pack of Coke to mix with the Southern Comfort. As they entered the house at 12 Robie Street, they each cracked open a beer and started to party. The music was loud, all of their friends were there and it took almost no time for them to feel "good".

At 9:30, Weiser recalled that a teammate on the swim team was also having a house party at 24 Connaught Avenue (which is approximately 4 blocks east of Robie Street) that she wanted to go to before the evening ended, so Weiser sought out the accused and they left together, in Danielz' car. Weiser will recall that she knows that Danielz had at least one beer prior to leaving the Robie Street party and cannot recall whether she saw Danielz consume any other alcohol. Weiser will admit that she had "several" beers over the course of the two or so hours they were at the party and that half of the Southern Comfort had disappeared, although she will state that she only had two, three ounce, drinks, "all mixed with some Coke, I think". She does not know who had consumed the other fourteen ounces of the SoCo.

Upon departing from Robie Street, Weiser grabbed a few Coke cans for the road, put the remaining beer into the Bronco's trunk, and sat in the passenger seat, while the accused took the wheel of the car and proceeded to drive. The car's radio was set to the maximum volume and bass levels, the windows were closed and the friends set off for the Connaught Avenue party. Weiser recalls seeing "a few" empty beer cans in the front seat of the car, but is emphatic that they were on her side of the Bronco's front seat. She will vehemently deny consuming any alcohol during the drive to the Connaught Avenue party and will admit that she does not know when, or how, the beer cans found their way into the car.

Weiser recalls, that while chugging the last of the Coke, the accused suddenly swerved into the oncoming lane on Charles Street and shouted "look out", just narrowly missing two dogs which ran away, onto the sidewalk, on the passenger's side of the car. Prior to this, Weiser will state that she did not notice anything unusual about Danielz' driving and will state that she was unaware of exact speed of the car, having been absorbed by the music playing on the radio. Weiser will state that, to her recollection, Danielz was driving both carefully and safely.

It will be Weiser's evidence that, in her experience, Danielz has never driven in a state of impairment and that she felt "totally" confident with Danielz' driving abilities on this occasion. When pressed in cross-examination, Weiser will admit that she had only driven with Danielz on "five or six" occasions, most of which were during the daytime, on the way to school. On only two other occasions, that Weiser can recall, had Danielz driven her to a house party and Weiser is "fairly certain" that the accused had not driven after drinking.

## **IV. THE INDICTMENT**

CANADA  
PROVINCE OF NOVA SCOTIA  
REGIONAL MUNICIPALITY OF HALIFAX

**HER MAJESTY THE QUEEN**

**against**

**JACK/JACKIE DANIELZ**

**INDICTMENT**

Jack/Jackie Danielz stands charged:

That in this town and county, in this province, on or about the 21st. day of May, 2002  
Jack/Jackie Danielz did unlawfully operate a motor vehicle while his/her ability to operate the  
vehicle was impaired by alcohol or a drug contrary to the provisions of s. 253 of the Criminal  
Code of Canada.

Dated this 2<sup>nd</sup> day of July 2002, in this town and in this province.

**AGENT FOR THE ATTORNEY  
GENERAL OF NOVA SCOTIA**

## APPLICABLE LAW

Here are the sections of the Criminal Code of Canada which are relevant to the 2003 Mock Trial problem:

### OPERATION OF A MOTOR VEHICLE, VESSEL OR AIRCRAFT WHILE IMPAIRED OR WITH MORE THAN 80 MG. ALCOHOL IN BLOOD

- 253 Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,
- (a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or,
  - (b) having consumed alcohol in such a quantity that the concentration thereof in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.

#### \*\*\*NOTE\*\*\*

In this case, there is no doubt that the accused was operating a motor vehicle. As a result, the only issue to be determined at trial revolves around the whether the ability of the accused to operate the motor vehicle has been impaired by alcohol.

Absent the use of a breathalyser, proof of impairment involves the application of the facts of each particular case to certain legal tests or standards. The judge must ultimately decide whether the prosecution has established sufficient facts to support a finding of impairment beyond a reasonable doubt. The court will be faced with conflicting testimony; was the accused driving in such a manner as to suggest that he/she was impaired? Can the accused's story that he/she had only consumed 2 or three beers be believed?

To assist in preparation of the case, reference may be had to the following judicial comments: **(Please note, however, that these comments are provided ONLY as a guide to the preparation of the case, and SHOULD NOT be cited or referred to during the trial.)**

1. "There appears to be no single test or observation of impairment of control of faculties, standing alone, which is sufficiently conclusive. There should be consideration of a combination of several tests and observations of such as general conduct, smell of the breath, character of the speech, manner of walking, turning sharply, sitting down and rising, picking up objects, reaction of the pupils of the eyes, character of the breathing.

"If a combination of several tests and observations shows a marked departure from what is usually considered as the normal, it seems a reasonable conclusion that the driver is intoxicated with consequent impairment of control of faculties and therefore that his ability to drive is impaired.

"I do not think such a finding should be made on a slight variation from the normal."

2. "In determining whether or not a person's ability to drive was impaired by alcohol or a drug, consideration may be given to such factors as his ability to drive in a mechanical sense and also in the field of judgment, his appearance, his manner of speech, the smell of his breath, his manner of walking, the reaction of the pupils of his eyes and the results of all physical test including the breathalyser test. If a consideration of such factors leads the court to the conclusion that the condition of the accused was consistent with the conclusion that he was driving while his ability to drive was impaired by alcohol or a drug and inconsistent with any other rational explanation, then the court is justified in convicting him."

"It should be noted that it is not the driving of the accused that is to be judged, although that is a factor to be considered. Even if nothing abnormal about his driving was observed, that is not conclusive as to his guilt or innocence. One's ability to drive may be impaired even though there is no evidence of bad driving and, conversely, one may drive badly without being impaired. The question for determination is not whether he drove badly, but rather was his ability to drive impaired or was it not."

## V. MOCK TRIAL TOURNAMENT TIME CHART 2003

		<u>Maximum</u>
1.	Call to order, read charge, enter plea, introduction of teams	2 - 3 min
2.	Crown - opening statement	4 min
3.	Crown Witnesses	
	Captain Morgan	- direct examination - cross examination
		6 min 4 min
	T. Totaller	- direct examination - cross examination
		6 min 4 min
4.	Defence - opening	4 min
5.	Defence Witnesses	
	J. Danielz	- direct examination - cross examination
		6 min 4 min
	R. Weiser	- direct examination - cross examination
		6 min 4 min
6.	Summations	
	Defence	5 min
	Crown	5 min
7.	Short Recess at Judge's discretion for deliberation	
8.	Judge - verdict and team assessment	10 - 12 min

**These are guidelines only.**

## CLERK/DEPUTY OF THE COURT 2003

The clerk's and the deputy's jobs are to help the judge run the courtroom. To begin with, you should be familiar with the general trial script summary which is set out below:

### A. Trial Script Summary

- i. Court deputy escorts judge to bench and calls order; court clerk formally opens court.
- ii. Counsel stand to identify themselves (Crown followed by defence).
- iii. Court clerk reads the indictment and accused pleads to charges.
- iv. Crown counsel makes opening statement.
- v. First Crown witness called and sworn in by court clerk.
- vi. Crown examines witness (direct examination).
- vii. Defence examines witness (cross examination).
- viii. Steps 5-7 are repeated for each Crown witness.
- ix. Defence makes opening statement.
- x. Steps 5-7 are repeated for each defence witness with defence conducting direct examination and Crown conducting cross examination.
- xi. Defence presents closing arguments.
- xii. Crown presents closing arguments.
- xiii. Judge leaves.
- xiv. Court adjourns briefly to await return of judge.
- xv. Judge returns and tells the accused that he or she is "guilty" or "not guilty".
- xvi. Judge evaluates teams.
- xvii. Court is adjourned.

The specific duties of the court clerk and deputy will now be explained.

### **1. ANNOUNCE THE OPENING OF COURT:**

When all participants have taken their places, you will usher in the judge and announce:

Court Deputy: "Order, all rise"

It is also good to introduce the judge, by saying:  
"Mr. Justice/Madame Justice presiding".

Court Clerk: "Oyez, Oyez, Oyez, Anyone having business before the Supreme Court for the Province of Nova Scotia and come now forward attend upon Her Majesty the Queen".

### **2. READ THE CHARGES TO THE ACCUSED:**

After the Crown and defence lawyers identify themselves, you will read the charge as it is set out in the Indictment. A copy of the Indictment is in these materials. You will stand and say:

1. Change to reflect facts.
2. "How say you to this charge? Do you plead guilty or not guilty?"

### **3. SWEAR IN THE WITNESSES:**

After the accused pleads "not guilty" to the charge, the Crown will begin its case. They will call their first witness to the stand, Captain Morgan. You will be responsible for swearing in Captain Morgan and all subsequent witnesses.

One way of doing this is to approach the witness with a book (Bible) for him/her to swear on. You then say:

"Will you state your name to the court please?"

After the name is given, the oath is given:

"Do you promise to tell the truth as you know it concerning this matter?"

or

"Do you swear that the evidence to be given by you to this court between our Sovereign Lady the Queen and the accused shall be the truth, the whole truth, and nothing but the truth, so help you God?"

"Do you solemnly affirm to... etc." (for those who object to swearing an oath to God)

### **4. ANNOUNCE ADJOURNMENTS AND THE CLOSING OF COURT**

After the closing arguments have been made by both sides, the judge will adjourn

for 10-12 minutes to decide on the verdict and prepare the team evaluation. When ready to adjourn, you will rise and say:

Deputy: "All rise"

Clerk: "Court will now adjourn (or recess) for 10 minutes"

When the judge is ready to return, the deputy will call the courtroom back to order and will ask everyone to rise.

Clerk: Court is now resumed, please be seated.

The judge will then announce the verdict (guilty or not guilty). When all is finished, you rise and say:

Deputy: "All rise"

Clerk: "Court is adjourned"

## **5. MISCELLANEOUS DUTIES**

There may be other jobs which you can perform for the judge, such as providing pens and paper, and a glass of water.