

PROJECT



NORTHLAND

CLASS ACTION

A HIGH SCHOOL ALCOHOL-USE PREVENTION CURRICULUM
SECOND EDITION

Case 1: Foley v. Welby
Drinking and Driving on Trial

Handouts: Step Assignment Sheet

Who's Who

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- Step 1: Prove Responsibility
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Transcript of Defense Attorney's Argument

Step Assignment Sheet

Team: _____

Steps for Building Your Case	Team Member Assignment
STEP 1 Explain the responsibility of the Welbys.	
STEP 2 Explain how the Welbys failed to meet their responsibility.	
STEP 3 Explain the damages suffered by the Foleys.	
STEP 4 Prove that the damages suffered by the Foleys were caused by the failure of the Welbys to meet their responsibility.	
STEP 5 Conduct an interview with a law enforcement officer to add to the evidence.	
STEP 6 Respond to the arguments from the Welbys' attorney.	
BEFORE THE JURY VOTES Answer questions from the jury/class.	<i>All team members</i>

Case 1: *Foley v. Welby*

Who's Who

The following list shows the key individuals in your case.

Parents ▶

Ed Welby ——— Jean Welby



Children ▶

Paul Welby
Darlene Welby

Parents ▶

Neal Foley ——— Ellen Foley



Child ▶

Danny Foley

Prep Sheet 1: Responsibilities Neglected

Team: _____

Person	Acted irresponsibly by . . .	Instead should have . . .
Ed Welby		
Jean Welby		
Paul Welby		
Danny Foley		

Prep Sheet 2: Relevant Facts

Team: _____

Summary of Relevant Facts	Sources

Step 1: Prove Responsibility (Duty)

Strategy Sheet

Team Member(s): _____

Responsibility, or “duty,” as it is called in legal terms, involves acting in a way that would prevent someone from foreseeable harm. It is important to show that the harm or injury should have been anticipated or foreseen by the responsible party.

In the case of *Foley v. Welby*, you must demonstrate

- a. What responsibilities Ed Welby had to his son, Paul Welby
- b. What responsibilities Jean Welby had to her son, Paul Welby
- c. What responsibilities Jean and Ed Welby had to Danny Foley

These responsibilities should be related to drinking, driving, and the availability of the champagne.

Team members working on step 1 will have five minutes to present the opening argument. What you say will be important because everyone else will refer to your arguments and build on them. Before you begin, read through the facts of the case again, including the affidavits and depositions. Fill in any more facts that you discover on your prep sheets.

Strategy Steps: Preparing for the Class Presentation

1. Begin by stating what you are going to prove in the next five minutes. This is your ***opening statement***. Write down what you will say. Be sure to emphasize (a) the responsibility that the Welbys had as adults, and (b) the fact that they should have foreseen that Paul could endanger his life and Danny’s life by drinking and then driving.
2. Back up your opening statement with facts from the case, including the affidavits and depositions. You may quote the affidavits and depositions by reading them aloud or by playing the audio recording. *Write out the facts you will present and what you will say to present them.*

3. Examine the Relevant Laws File in the casebook. Do these laws apply to your case? How can you use them to support your argument? *Write out how the **relevant laws** apply (or do not apply) to your case.*
4. Examine the Case Law File in the casebook. How can you show the jury that your arguments are similar to arguments used in these other cases? Which points made in these successful cases support the points you are making in your case? *Write out which points in your case are supported by specific arguments in **case law**.*
5. Back up your arguments with more information from the Info File. You can collect facts and opinions from experts, as well as information about related happenings in the community. This can help you explain what is reasonable for people like the Welbys to know about underage drinking and the problems it can cause teenagers. *Write out the **additional information** you will present.*
6. At the end of your five minutes, summarize your presentation by restating what you set out to prove and emphasizing how you proved it. *Write your **summary**.*

The written statement that you prepare will need at least six paragraphs, one (or more) to address each of the six parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present. This will help you to be dramatic and convincing when you present to the jury in class.

Important

Review your arguments and brainstorm counterarguments that the Welbys' attorney might make for each point. Prepare to answer these counterarguments with evidence. *Write your **counterarguments**.*

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Step 2: Prove That Responsibility Was Not Met (Breach of Duty)

Strategy Sheet

Team Member(s): _____

You will prove that there was a breach of duty in the case of *Foley v. Welby*. An important part of breach of duty concerns doing what is reasonable to prevent someone from foreseeable harm. Your job is to prove that Ed and Jean Welby failed to meet their responsibility to Paul Welby and Danny Foley. You must show (a) that Ed and Jean Welby *were aware of the dangers* that could occur if they allowed Paul to drink and then drive, and (b) that the Welbys *acted irresponsibly* with respect to Danny Foley. How did their actions affect what Danny chose to do that night as well as what actually happened that night?

Team members working on step 2 will have five minutes to convince the jury that the Welbys failed to meet their responsibility to Paul and Danny. It is important to show (a) that a reasonable adult could anticipate or foresee the harm that occurred and (b) what reasonable action an adult could have taken to prevent that harm.

Your presentation will have to build on what your team member(s) presented in step 1. It is important that you meet with this person so you know what he or she will be saying.

Read through the facts of the case again, including the affidavits and depositions. Fill in any more facts that you discover on your prep sheets.

Strategy Steps: Preparing for the Class Presentation

1. Begin by stating what you are going to prove in the next five minutes. This is your ***opening statement***. Write down what you will say.

Be sure to emphasize (a) how the Welbys failed to meet the responsibility they had to Paul and Danny, and (b) that they should have foreseen that Paul was endangering his life and Danny's life by drinking and then driving.

2. Back up your opening statement with facts from the case, including the affidavits and depositions. You may quote the affidavits and depositions by reading them aloud or by playing the audio recording. *Write out the **facts** you will present and what you will say to present them.*
3. Examine the Relevant Laws File in the casebook. Do these laws apply to your case? How can you use them to support your argument? *Write out how the **relevant laws** apply (or do not apply) to your case.*
4. Examine the Case Law File in the casebook. How can you show the jury that your arguments are similar to arguments used in these other cases? Which points made in these successful cases support the points you are making in your case? *Write out which points in your case are supported by specific arguments in **case law**.*
5. Back up your arguments with more information from the Info File. You can collect facts and opinions from experts, as well as information about related happenings in the community. This can help you explain what is reasonable for adults like Ed and Jean Welby to know about underage drinking and the problems it can cause teenagers. *Write out the **additional information** you will present.*
6. At the end of your five minutes, summarize your presentation by restating what you set out to prove and emphasizing how you proved it. *Write your **summary**.*

The written statement that you prepare will need at least six paragraphs, one (or more) to address each of the six parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present. This will help you to be dramatic and convincing when you present to the jury in class.

Important

Review your arguments and brainstorm counterarguments that the Welbys' attorney might make for each point. Prepare to answer these counterarguments with evidence. *Write your counterarguments.*

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Step 3: Present Evidence of Damages

Strategy Sheet

Team Member(s): _____

To prove that a person or persons are negligent, you must show that some damage occurred. You will present damages in the case of *Foley v. Welby*. To prove that Ed and Jean Welby are negligent, you must show that their irresponsibility *caused harm*. Remember that you are not talking about the harm done to Danny Foley. Rather, your job is to prove that harm was done to Danny's parents.

Team members working on step 3 will have five minutes to convince the jury that Danny's parents have suffered emotionally and economically. Consider these types of damages to the parents:

- parents' pain and suffering over the injury of their child
- parents' emotional distress, including distress caused by changed relationships with their son
- medical bills (includes hospital and nursing home care)
- lost wages immediately after the accident, when the parents had to spend a lot of time in the hospital

Read through the facts of the case again, including the affidavits and depositions. Fill in any more facts that you discover on your prep sheets.

Strategy Steps: Preparing for the Class Presentation

1. Begin by stating what you are going to prove in the next five minutes. This is your ***opening statement***. Write down what you will say. Be sure to emphasize how much Danny's parents have suffered emotionally and economically.
2. Back up your opening statement with facts from the case, including the affidavits and depositions. You may quote the affidavits and depositions by reading them aloud or by playing the audio recording. *Write out the facts you will present and what you will say to present them.*

3. Examine the Relevant Laws File in the casebook. Do these laws apply to your case? How can you use them to support your argument? *Write out how the **relevant laws** apply (or do not apply) to your case.*
4. Examine the Case Law File in your casebook. How can you show the jury that your arguments are similar to arguments used in these other cases? Which points made in these successful cases support the points you are making in your case? *Write out which points in your case are supported by specific arguments in **case law**.*
5. Back up your arguments with more information from the Info File. You can collect facts and opinions from experts, as well as information about related happenings in the community. This can help you explain what is reasonable for adults like Ed and Jean Welby to know about underage drinking and the problems it can cause teenagers. *Write out the **additional information** you will present.*
6. At the end of your five minutes, summarize your presentation by restating what you set out to prove and emphasizing how you proved it. *Write your **summary**.*

The written statement that you prepare will need at least six paragraphs, one (or more) to address each of the six parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present. This will help you to be dramatic and convincing when you present to the jury in class.

Important

Review your arguments and brainstorm counterarguments that the Welbys' attorney might make for each point. Prepare to answer these counterarguments with evidence. *Write your **counterarguments**.*

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Step 4: Prove That Irresponsibility Caused Damages (Causation)

Strategy Sheet

Team Member(s): _____

You will present causation in the case of *Foley v. Welby*. You must prove that the damages suffered by Neal and Ellen Foley were *caused by* Ed and Jean Welby supplying Paul and Danny the champagne. You must prove that other actions, such as leaving the champagne bottle on the table or not telling the boys to only drink a little, were important and contributed to the damages. Be sure to read through the story carefully to find these important details.

You must consider both boys separately. It seems obvious to discuss how the champagne affected Paul's driving and judgment. The champagne might also have affected Danny's judgment as well. Was he able to make a good decision after drinking? What happened when he tried to limit how much alcohol he was drinking?

Team members working on step 4 will have five minutes to convince the jury that the Welbys' failure to meet their responsibility was the direct cause of harm done to the Foleys. Remember that part of proving negligence is proving that it would be reasonable for the Welbys to be aware of the possibility that someone could get hurt. Also, consider how the champagne might have affected Ed and Jean Welby's judgment and whether that had anything to do with the tragic events of that evening.

Your presentation also must show that the Welbys' failure to meet their responsibility was the direct cause of the injuries described by your teammates. It is important to talk to the other members of your legal team when putting your presentation together. You must know what points will be emphasized in all the different parts, so that you can bring all the links in this chain of events together.

Read through the facts of the case again, including the affidavits and depositions. Fill in any more facts that you discover on your prep sheets.

Strategy Steps: Preparing for the Class Presentation

1. Begin by stating what you are going to prove in the next five minutes. This is your ***opening statement***. Your statement should emphasize how the Welbys' actions caused the damages to the Foleys.
2. Back up your opening statement with facts from the case, including the affidavits and depositions. You may quote the affidavits and depositions by reading them aloud or by playing the audio recording. *Write out the **facts** you will present and what you will say to present them.*
3. Examine the Relevant Laws File in the casebook. Do these laws apply to your case? How can you use them to support your argument? *Write out how the **relevant laws** apply (or do not apply) to your case.*
4. Examine the Case Law File in the casebook. How can you show the jury that your arguments are similar to arguments used in these other cases? Which points made in these successful cases support the points you are making in your case? *Write out which points in your case are supported by specific arguments in **case law**.*
5. Back up your arguments with more information from the Info File. You can collect facts and opinions from experts, as well as information about related happenings in the community. This can help you explain what is reasonable for adults like Ed and Jean Welby to know about underage drinking and the problems it can cause teenagers. *Write out the **additional information** you will present.*
6. At the end of your five minutes, summarize your presentation by restating what you set out to prove and emphasizing how you proved it. *Write your **summary**.*

The written statement that you prepare will need at least six paragraphs, one (or more) to address each of the six parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present.

This will help you to be dramatic and convincing when you present to the jury in class.

Important

Review your arguments and brainstorm counterarguments that the Welbys' attorney might make for each point. Prepare to answer these counterarguments with evidence. *Write your counterarguments.*

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Step 5: Present Expert Testimony (Supporting Causation)

Strategy Sheet

Team Member(s): _____

You will present expert testimony to support causation in the case of *Foley v. Welby*. As part of causation, it is important to show that drinking too much alcohol caused the crash. To do this, you will need to present some facts by using the Info File in your casebook and by conducting an *interview with an expert witness*, such as a law enforcement officer, about how he or she determines if a driver has been drinking (in addition to blood alcohol and Breathalyzer tests).

Team members working on step 5 will have five minutes to use expert testimony to convince the jury that the Welbys' irresponsibility caused the harm that was done to the Foleys. Consider what happened to Danny and how this compares to situations described by the witness you interviewed.

Your presentation is actually part of the causation argument, so it will be important for you to meet with the person who is responsible for step 4. Or, you could work together with this person and both do the interview and share the work for steps 4 and 5.

Prepare for the Interview

1. Call the nearest police station or hospital or ambulance service to set up your interview.

Name of facility: _____

Phone number of facility: _____

- Say who you are, the name of your school, and why you are calling.
- Describe the case and the argument you are preparing.
- Explain that you want to interview a law enforcement officer or a professional on the emergency medical team for about fifteen minutes.

- Ask permission to record the interview.
- Arrange a time to conduct the interview in person or by phone; otherwise, arrange to send your interview questions by e-mail.
- Write down the details of your interview appointment:

Name: _____
Job title: _____
Location: _____
Date and time of interview: _____
Other important details: _____ _____

2. Consider the information you want from this witness, and think about what to ask. (Remember, you are trying to prove that there is no doubt that Paul's drinking caused the car crash.)
3. Write out the questions you will ask this witness. *Sometimes it works best to write each question at the top of a separate sheet of paper, leaving plenty of space below for answers.*
See suggested interview questions on the next page.
4. If you will record the interview, prepare equipment for recording.

Suggested Interview Questions for a Law Enforcement Officer

- How long have you been a police officer? What experience do you have in stopping drivers for driving under the influence?
- What does a driver do that might lead you to think he or she is intoxicated and needs to be stopped and tested?
- Are there other reasons why a driver might do these same things, and how common are those reasons among teens?
- What circumstances and evidence at the scene of a crash would lead you to believe that the driver had been drinking?
- We often hear about older teens getting in trouble for providing alcohol to younger teens. How often do adults provide alcohol to teens, and what do you think should be done about it?

Add your own questions, too.

Suggested Interview Questions for Emergency Personnel

- How often do you treat or see people in the emergency room who have been injured in an alcohol-related incident?
- What kinds of injuries related to alcohol use do you see?
- What kinds of injuries from car accidents related to alcohol do you see in your work?
- What are the ages of people who come in or are brought in with alcohol-related injuries? Are alcohol-related injuries more common in some age groups and less common in others?
- How do you usually find out that alcohol was involved?
- Can you describe some situations you have seen in which alcohol was involved?

Add your own questions, too.

Conduct the Interview

- Make sure you have your questions, plenty of paper for taking notes, a few pencils, and any recording equipment needed.
- Be on time.
- Be sure to write notes about the details of what the person says. Don't be afraid to ask the person to repeat something.
- Ask follow-up questions to get details and to be sure that you understand the answers.
- Be sure to thank the person for his or her time and information.

Strategy Steps: Preparing for the Class Presentation

Review the facts of the case, including the affidavits and depositions. Fill in any more facts that you discover on your prep sheets. Your presentation must show that it was more likely than not that the alcohol affected Paul's driving. Using the facts of the case and expert testimony will help convince the jury.

1. Begin by stating what you are going to prove in the next five minutes. This is your opening statement. Your statement must emphasize how alcohol affects driving, physically as well as mentally, and how it was obvious that Paul's drinking caused him to crash the car. *Write your opening statement.*
2. Review the results of your interview. *Write out the statements from the expert that you will present.*
3. Back up your arguments with more details from the Info File. You can collect facts and opinions from experts, as well as information about related happenings in the community. This can help you explain what is reasonable for adults like Ed and Jean Welby to know about underage drinking and the problems it can cause teenagers. *Write out the additional information you will present.*
4. At the end of your five minutes, summarize your presentation by restating what you set out to prove and emphasizing how you proved it. *Write your summary.*

The written statement that you prepare will need at least four paragraphs, one (or more) to address each of the four parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present. This will help you to be dramatic and convincing when you present to the jury in class.

Important

Review your arguments and brainstorm counterarguments that the Welbys' attorney might make for each point. Prepare to answer these counterarguments with evidence. *Write your counterarguments.*

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Step 6: Rebuttal

Strategy Sheet

Team Member(s): _____

You will write and present your rebuttal in the case of *Foley v. Welby*. Your job is to respond to the points raised by the Welbys' lawyer. To prepare your rebuttal, you will need to listen to the audio recording of the Welbys' lawyer presenting the closing argument. You can get this recording from your teacher. *You are the only member of your team who will be allowed to listen to this recording before the trial.* Your teacher will also give you a printed copy of the defense statement so you can follow along.

After your legal team has made its presentation (steps 1 through 5), the recording of the Welbys' lawyer defending the Welbys will be played for the class.

Team members working on step 6 will have five minutes to make your team's final argument and convince the jury that the Welbys were negligent. It is important to make a strong argument that leaves a lasting impression on the jury.

Strategy Steps: Preparing for the Class Presentation

Listen to the recording of the defense argument and write down the main points made by the Welbys' attorney. Plan and write counterarguments for these points. When you write your rebuttal, remember that your job is to **respond directly to the defense attorney**; you are not to summarize your team's entire argument. You may review notes from your team's other five steps, but your argument must address only points raised by the Welbys' attorney.

1. In the **opening statement** of your counterargument, explain how you disagree with the Welbys' attorney. Clearly summarize the main points made by the Welbys' attorney, and state that you will prove these points false.
2. Back up your opening statement with **facts** from the case, including the **affidavits** and **depositions**. Use this information to dispute the Welbys' attorney's main points.

3. Summarize the *relevant laws* that apply to your case, and use this information to dispute the Welbys' attorney's main points.
4. Summarize the *expert testimony* and *key evidence* from the Info File. Use this information to dispute the Welbys' attorney's main points.
5. At the end of your five minutes, *summarize your rebuttal* by restating what you set out to prove and emphasizing how you proved it.

The written statement that you prepare will need at least five paragraphs, one (or more) to address each of the five parts outlined above. You need about five typed (or twelve to fifteen handwritten) pages for a five-minute presentation. Practice reading your statement aloud to make sure that it is the appropriate length. The more you practice, the more smoothly you will be able to present. This will help you to be dramatic and convincing when you present to the jury in class.

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Transcript of Defense Attorney's Argument

Below is a verbatim transcript of the defense attorney's argument found on the audio CD for this case. The audio CDs are first used by the students assigned to do the rebuttals for each of the cases. The whole class should listen to the audio CDs during the classroom presentations (prior to the rebuttal). Please note that the transcript below and the transcripts for the other cases are of spoken, not written, language and may include stutters, stammers, and incomplete sentences for dramatic effect.

Case 1: *Foley v. Welby*

Drinking and Driving on Trial

Good day, Your Honor, ladies and gentlemen of the jury. I'm representing Jean and Ed Welby in this matter. And first and foremost, I'd like to say that I'm very sorry for what happened to Danny and that I hope that he is better, and that he's going to be in my thoughts and he's going to be in my prayers. And I know that some of you probably have some strong feelings about this whole thing, but I need you to put those strong feelings aside. I need you to think about the facts in this matter, because this issue revolves around the issue of responsibility. Where a parent stops and where teenagers begin, and what sort of burden we as a society are going to place on parents for the responsibility of their teenagers.

What did Ed and Jean choose to do, and what did they do wrong? The law says that it is okay for parents to serve alcohol to their minors if they feel that there is no danger. And, and as I'm going to talk about, there was no danger that they were aware of. Jean and Ed were celebrating, and they let the two boys join them, and that was the only thing they did wrong. Jean—Ed, sorry, got a promotion and so he got some champagne. I don't know if you've ever been part of these celebrations. He got some champagne and brought it home, and with dinner they all had some champagne. That was the parents' crime. Nothing else, because everything else that the boys did they did on their own, and they chose to do. Was, was that putting their child or, or, or Danny in danger? Absolutely not! Did Jean and Ed cause this accident? No, what caused this accident was those two boys decided to drink more alcohol than they should. Every

time Jean and Ed went into the kitchen or they turned around, the boys grabbed the bottle and drank as much as they could. Now, did Jean and Ed know about this? No. Did the boys wait until their backs were turned? Yes. Why did they do that? Why did they do that? Because the boys knew that Jean and Ed would never, ever let the children drink like that. Never, ever. The boys chose to hide that, chose to hide their drinking.

Jean and Ed had a good boy. Paul is a good boy, and they talked to Paul. They said, “Listen, Son, if you’re ever drinking and you’re out, you don’t need to drive. Just tell us and we’ll come get you and bring you anywhere you need to go.” There was no reason for them to expect that their son, Paul, would drink and then go driving, because if there was ever an issue, they told him that they’d pick him up or they’d give him a ride, and he had agreed to that, and everybody agrees that Paul was a good boy. They had no idea. These boys drank this liquor without permission. This drinking liquor when they turned their backs—some might even call it stealing. It’s the same thing as if they had gone into the liquor cabinet as soon as they’d left. That’s the same thing if your son or your daughter goes into your liquor cabinet or goes into your refrigerator and grabs your beer, or for that matter if some stranger gets ahold of your alcohol and drinks it and then goes driving. Are we as a society going to say that the parents are responsible for the acts, the petty thievery of their children? That’s ridiculous.

We cannot as a society say that Jean and Ed should be responsible for kids drinking more than they should. What is it, cameras in all the homes to see that all the liquor is secure, that, that there are chains around the refrigerator to make sure that the sixteen- and seventeen-year-olds can’t get to it? And these were sixteen- and seventeen-year-olds. They weren’t seven. They all had been to the big parties. They knew about drinking. They made some choices. They chose to drink it all. They chose to drink in excess. They chose to keep it from Jean and Ed. They chose to drive. They got in the car. They had a discussion about driving, and they chose to do it. Danny chose to ride with Paul, and they say that Jean and Ed are responsible for that. Who is really responsible?

Thank you.

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