

PROJECT



NORTHLAND

# CLASS ACTION

A HIGH SCHOOL ALCOHOL-USE PREVENTION CURRICULUM  
**SECOND EDITION**

*Case 2: Garcia v. Nordeen*  
**Fetal Alcohol Syndrome on Trial**

**Handouts:** Step Assignment Sheet

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Transcript of Defense Attorney's Argument

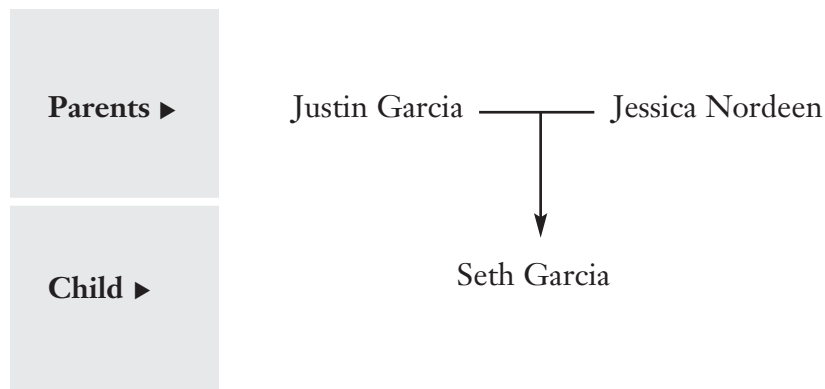
Case 2: *Garcia v. Nordeen*  
**Step Assignment Sheet**

Team: \_\_\_\_\_

Steps for Building Your Case	Team Member Assignment
<b>STEP 1</b> Explain the responsibility of Jessica Nordeen.	
<b>STEP 2</b> Explain how Jessica Nordeen failed to meet her responsibility.	
<b>STEP 3</b> Explain the damages suffered by Justin Garcia and his son, Seth.	
<b>STEP 4</b> Prove that the damages suffered by Justin Garcia and his son, Seth, were caused by the failure of Jessica Nordeen to meet her responsibility.	
<b>STEP 5</b> Conduct an interview with an alcohol or other drug treatment counselor or social worker to add to the evidence.	
<b>STEP 6</b> Respond to the arguments from Jessica Nordeen's attorney.	
<b>BEFORE THE JURY VOTES</b> Answer questions from the jury/class.	<i>All team members</i>

## Who's Who

The following list shows the key individuals in your case.



**Justin Garcia:** Former boyfriend and husband of Jessica Nordeen, father of Seth Garcia

**Jessica Nordeen:** Former girlfriend and wife of Justin Garcia, mother of Seth, drank alcohol while pregnant

**Seth Garcia:** Son of Justin Garcia and Jessica Nordeen, diagnosed with fetal alcohol syndrome

## Prep Sheet 1: Responsibilities Neglected

Team: \_\_\_\_\_

Jessica's responsibilities to Seth	Did she meet her responsibilities?	How was Seth affected?
	<input type="checkbox"/> Yes <input type="checkbox"/> No (If no, how did she fail?)	

Jessica's responsibilities to Justin	Did she meet her responsibilities?	How was Justin affected?
	<input type="checkbox"/> Yes <input type="checkbox"/> No (If no, how did she fail?)	

Case 2: *Garcia v. Nordeen*  
**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 *Garcia v. Nordeen*, you must demonstrate

- a. What responsibilities Jessica had to her son, Seth
- b. What responsibilities Jessica had to Justin concerning their son, Seth

Remember, it is Justin and not Seth who is suing Jessica, so you must show how the responsibility to Seth was also a responsibility to his father.

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. 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 Jessica had to Seth, and therefore to Justin, and (b) the fact that she should have known what could happen to the baby if she drank alcohol while she was pregnant.
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 Jessica Nordeen to know about underage drinking and fetal alcohol syndrome. *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 Jessica Nordeen's 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 *Garcia v. Nordeen*. An important part of breach of duty concerns doing what is reasonable to prevent someone from harm that could foreseeably occur. You must show that, given the responsibility that Jessica had to Seth and Justin, she was guilty of failing to meet that responsibility. You must show that Jessica was aware or should have been aware (a) that her drinking could cause harm to the baby, and (b) how this would also affect Justin. Think about all the ways that Justin could be affected by a child with fetal alcohol syndrome and how Jessica should have foreseen these effects.

Team members working on step 2 will have five minutes to convince the jury that Jessica Nordeen failed to meet her responsibility to both Seth and Justin. 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.

You can add to your case by describing ways in which Justin tried to get Jessica to change her behavior. How did he change when he learned that Jessica was pregnant? What did he try to do about Jessica's drinking? How did he act responsibly toward her?

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 Jessica Nordeen failed to meet the responsibility she had to Seth and Justin, and (b) that she should have known that drinking alcohol when she was pregnant would affect the life of her child and, therefore, her child's father.

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 Jessica Nordeen to know about underage drinking and fetal alcohol syndrome. *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 Jessica Nordeen’s 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 *Garcia v. Nordeen*. To prove that Jessica Nordeen was negligent, you must show that her irresponsibility *caused harm*. Remember that you are talking not only about the harm done to Seth but also about the damages to his father, Justin.

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

- pain and suffering over the condition of his child
- emotional distress, including distress caused by the loss of the expected relationship with his son
- medical bills (as well as possible expenses for future care and living situations)
- social problems (Seth not being accepted, not fitting in)
- specialized care costs (education, psychological care)

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 Seth and Justin 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 people like Jessica Nordeen to know about underage drinking and fetal alcohol syndrome. *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 Jessica Nordeen's 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 *Garcia v. Nordeen*. You must prove that the damages to Justin Garcia and his son, Seth, were *caused by* Jessica Nordeen's use of alcohol while she was pregnant. Because she admits to using alcohol while pregnant, you must show that her alcohol use directly resulted in harm to Justin Garcia because his son, Seth, developed fetal alcohol syndrome.

Remember, part of proving negligence involves being aware that someone could get hurt. You must prove that Jessica should have foreseen the harm that occurred.

Team members working on step 4 will have five minutes to convince the jury that Jessica Nordeen's failure to meet her responsibility was the direct cause of harm done to Justin and Seth. Remember that part of proving negligence is proving that it would be reasonable for Jessica to be aware of the possibility that drinking alcohol while pregnant could cause Seth's fetal alcohol syndrome.

Your presentation also must show that Jessica Nordeen's failure to meet her 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*. Write down what you will say. Your statement should emphasize how Jessica's actions caused the damages to Justin because his son, Seth, developed fetal alcohol syndrome.

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 Jessica Nordeen to know about under-age drinking and fetal alcohol syndrome. *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 Jessica Nordeen's 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 *Garcia v. Nordeen*. As part of causation, it is important to show that having a child with fetal alcohol syndrome can affect the whole family. 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 pediatrician, psychologist, or alcohol or other drug treatment counselor. You may choose to interview the counselor or social worker at your school, or someone in your community or county.

Team members working on step 5 will have five minutes to use expert testimony to convince the jury that Jessica Nordeen's irresponsibility caused the harm that was done to her son, Seth, and his father, Justin Garcia.

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 hospital, clinic, or addiction treatment center 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 pediatrician, psychologist, or alcohol or other drug treatment counselor 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 it is more likely than not that Jessica's drinking caused Seth's fetal alcohol syndrome (FAS) and harm to Justin.
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

- What amount of alcohol can cause FAS?
- How can alcohol affect the development of the fetus in the womb?
- What kinds of needs do children with FAS have?
- What kinds of needs do teenagers with FAS have?
- What happens to adults who have FAS?
- What effect does a child with FAS have on other family members?
- What are the most common stresses on parents who have children with FAS?
- How much might it cost to care for a child with fetal alcohol syndrome throughout his or her life?
- Can children with FAS ever “get better”?

*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 there is no question that Jessica's alcohol use during her pregnancy affected Justin. 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 having a child with FAS affects the lives of that child's parents. *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 people like Jessica Nordeen to know about underage drinking and fetal alcohol syndrome. *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 Jessica Nordeen’s 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 *Garcia v. Nordeen*. Your job is to respond to the points raised by Jessica Nordeen's lawyer. To prepare your rebuttal, you will need to listen to the audio recording of Jessica's 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 Jessica Nordeen's lawyer defending Jessica 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 Jessica Nordeen was 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 Jessica Nordeen's 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 the team's other five steps, but your argument must address only points raised by Jessica Nordeen's attorney.

1. In the **opening statement** of your counterargument, explain how you disagree with Jessica Nordeen's attorney. Clearly summarize the main points made by the defense, 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 defense attorney's main points.

3. Summarize the *relevant laws* that apply to your case, and use this information to dispute the defense attorney's main points.
4. Summarize the *expert testimony* and *key evidence* from the Info File. Use this information to dispute the defense 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 2: *Garcia v. Nordeen*

#### Fetal Alcohol Syndrome on Trial

Ladies and gentlemen of the jury, thank you for being here today. I'm here to represent Jessica Nordeen. Justin Garcia has sued her because he's upset and he's angry. His baby, Seth Garcia, wasn't born perfect, and he's taking the stress and pain of that out on Jessica Nordeen. Justin Garcia claims that Jessica was negligent when she drank while pregnant. It's true that she drank, but she wasn't negligent.

Now, let's look at what the law says about negligence. It says two main things: First, a plaintiff must show that the defendant owed him a duty and caused him harm by breaching that duty. Now, the second thing the law says is that negligence occurs if an individual does something harmful that a person of ordinary intelligence would not do. Negligence can also occur if an individual fails to do something to prevent harm that a person of ordinary intelligence would do in the same situation. Now, that same situation is very important. Applied to this case, it means that to be found negligent you must say that Jessica did something that harmed Justin Garcia that any reasonable young person would not have done in the same situation.

You'll notice that the plaintiff's lawyers didn't tell you about any law making it illegal for a pregnant woman to drink. There is no such law. That's because the law only steps into personal family decisions in the most extreme cases. These kinds of decisions are personal and they're left to the family. Now, what does that mean in this case? Well, it means that the law doesn't create any duty that

Jessica Nordeen owed to Justin Garcia. You may still find she had some responsibility to Justin, but the law by itself doesn't try to tell them what to do in their family. Only you can try to step in and do that today.

Even if you say a duty did exist, you must also believe that Jessica breached that duty in order to find her negligent. In this case, Jessica's duty wasn't breached to Justin Garcia. That is, Jessica acted reasonably for her situation.

Now think about her situation. To better understand that situation, put yourself in her shoes seven years ago. You're seventeen years old, you're in high school, you're not worried about your future. You're in love with your boyfriend. You've got great friends. You go to parties, and sometimes you drink too much. Your whole life's ahead of you, though; everything's looking great. But then you find out you're pregnant. Your whole life changes in an instant. You're scared. You don't know what to do, where to turn. Everything's out of control. Everybody starts telling you what to do. It's like they want to live your life for you. The doctor gives you a whole stack of brochures and pamphlets to read, but you only skim them; there's just too much information in there. You can't remember it all.

Your boyfriend tries to tell you what to do, but he's such a hypocrite. One minute he's telling you not to drink, because it's not good for the baby, the next minute he's out partying with you. And besides, when it comes down to it, you're trying your best to take care of your baby. Once you're pregnant, you don't get drunk anymore. You drink a few, but you don't get drunk. Ladies and gentlemen, this is Jessica Nordeen. A woman, torn in many different directions, not knowing who to believe or what to do. In this situation, any young woman would have tried to stick with her friends, tried to keep some semblance of her old life, and for Jessica that included having an occasional beer or two. At least she tried to take care of her baby by minimizing her drinking once she knew she was pregnant.

Now today, you the jury must determine whether it's right for the courts to step in and tell women when they can and can't drink. You must decide whether Jessica Nordeen's occasional beer was a breach of her duty to Justin Garcia. Was she negligent toward him? I don't think so, and I think you'll agree. You must also consider justice in this case. What is the right outcome? Now, to help make the right decision, put yourself back in Jessica's situation. You've done your best to prepare for your baby, but in the end, Seth was born with fetal alcohol syndrome.

Now jump three years ahead. Justin sues you because Seth wasn't born perfect. He says you shouldn't have drunk alcohol while you were pregnant. You finally have a chance to put your life back together with this inheritance from your grandfather, and Justin wants to take *that* away.

Now, ladies and gentlemen, is this right? Should Justin Garcia be rewarded because his baby has fetal alcohol syndrome? He chose to father a baby, now he's trying to avoid the consequences of his choice? Should he get *part* of Jessica's inheritance, solely because Jessica did what another teenager would have done in her situation? I don't think so, and I hope you'll agree.

What has happened in this family is a tragedy. A loving relationship has ended, and a child and his parents face a very difficult life. Don't make it any harder than it already is. Deny Justin Garcia's suit, and let Jessica get on with her life.

Thank you for your time.

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