

PROJECT



NORTHLAND

CLASS ACTION

A HIGH SCHOOL ALCOHOL-USE PREVENTION CURRICULUM
SECOND EDITION

Case 8: Vasquez v. Driscoll
Binge-Drinking on Trial

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Transcript of Defense Attorney's Argument

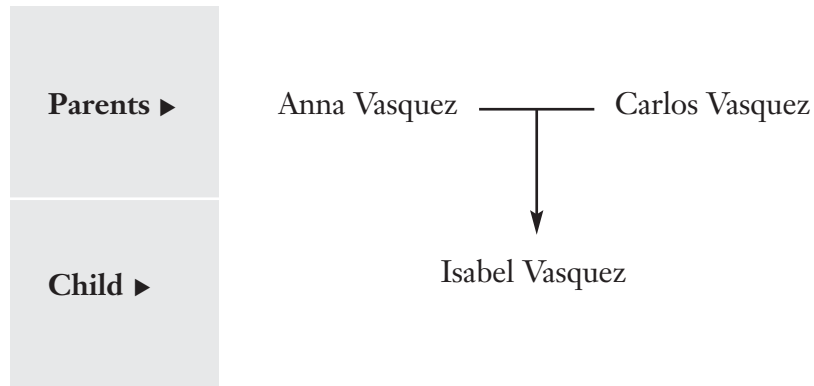
Case 8: *Vasquez v. Driscoll*
Step Assignment Sheet

Team: _____

Steps for Building Your Case	Team Member Assignment
STEP 1 Explain the responsibility of Brianna Driscoll.	
STEP 2 Explain how Brianna Driscoll failed to meet her responsibility.	
STEP 3 Explain the damages suffered by the Vasquez family.	
STEP 4 Prove that the damages suffered by the Vasquez family were caused by the failure of Brianna Driscoll to meet her responsibility.	
STEP 5 Conduct an interview with emergency medical personnel to add to the evidence.	
STEP 6 Respond to the arguments from Brianna Driscoll's attorney.	
BEFORE THE JURY VOTES Answer questions from the jury/class.	<i>All team members</i>

Who's Who

The following list shows the key individuals in your case.



Anna and Carlos Vasquez: Parents of Isabel Vasquez

Isabel Vasquez: Child of Anna and Carlos, died after a night of binge-drinking

Brianna Driscoll: Friend of Isabel, went out drinking with Isabel and bought her many drinks

Amanda Glenn: Friend and roommate of Brianna, gave Isabel her ID to use at the bar

Evan Shore: Friend of Brianna's, met her at the bar

Prep Sheet 1: Responsibilities Neglected

Team: _____

What happened?	Brianna Driscoll acted irresponsibly by . . .	Brianna Driscoll should have . . .
Brianna invited Isabel to spend the day with her.		
Evan Shore invited Brianna to a bar.		
Brianna and Isabel arrived at the bar.		
Brianna's friends warned her that Isabel was very drunk.		
Evan asked Brianna to go back to his place.		
Brianna left Isabel passed out on the living room couch.		

Case 8: *Vasquez v. Driscoll*
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 *Vasquez v. Driscoll*, you must demonstrate

- a. What responsibilities Brianna Driscoll had to her friend, Isabel Vasquez, both in regard to underage drinking and in getting medical attention for Isabel
- b. How Brianna Driscoll failed to meet those responsibilities

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 Brianna Driscoll had as an adult and Isabel’s trusted friend, and (b) the fact that she should have foreseen that Isabel could endanger her life by drinking so much in a short period of time.
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 Brianna Driscoll to know about binge-drinking and how dangerous it can be. *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 Brianna Driscoll'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 *Vasquez v. Driscoll*. An important part of breach of duty concerns doing what is reasonable to prevent someone from foreseeable harm. Your job is to prove that Brianna Driscoll failed to meet her responsibility to Isabel Vasquez. You must show (a) that Brianna Driscoll *was aware of the dangers* that could occur if she kept providing alcohol for Isabel Vasquez during the entire time they were together, and (b) that she *acted irresponsibly* with respect to Isabel Vasquez. How did her actions affect the outcome of what happened that night?

Team members working on step 2 will have five minutes to convince the jury that Brianna Driscoll failed to meet her responsibility to Isabel. 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 Brianna Driscoll failed to meet the responsibility she had to Isabel, and (b) that she should have foreseen that Isabel was endangering her life by drinking so much in such a short time.
2. Back up your opening statement with facts from the case, including the affidavits and depositions. You may quote the depositions and affidavits 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 Brianna Driscoll to know about binge-drinking and how dangerous it can be. *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 Brianna Driscoll'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 *Vasquez v. Driscoll*. To prove that Brianna Driscoll is negligent, you must show that her irresponsibility *caused harm*. Remember that you are not talking about the harm done to Isabel Vasquez. Rather, your job is to prove that harm was done to Isabel's parents.

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

- parents' pain and suffering over the death of their child
- parents' emotional distress
- younger sister's emotional distress
- medical and other bills (includes care for Carlos Vasquez's post-traumatic stress disorder and job loss)

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 Isabel's family has 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 Brianna Driscoll to know about binge-drinking and how dangerous it can be. *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 Brianna Driscoll'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 *Vasquez v. Driscoll*. You must prove that the damages suffered by Anna and Carlos Vasquez were *caused by* Brianna Driscoll providing many drinks for Isabel throughout the time they were together, and not getting medical attention for her. You must prove that other actions—such as ignoring a clearly drunk Isabel at the bar, continuing to purchase alcohol for her, and not alerting Isabel’s family to her condition—were important and contributed to the damages. Be sure to read through the story carefully to find these important details.

Team members working on step 4 will have five minutes to convince the jury that Brianna Driscoll’s failure to meet her responsibility was the direct cause of harm done to the Vasquez family. Remember that part of proving negligence is proving that it would be reasonable for Brianna Driscoll to be aware of the possibility that someone could get hurt.

Your presentation also must show that Brianna Driscoll’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***. Your statement should emphasize how Brianna Driscoll’s actions caused the damages to the Vasquez family.
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 Brianna Driscoll to know about binge-drinking and how dangerous it can be. *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 Brianna Driscoll'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 *Vasquez v. Driscoll*. As part of causation, it is important to show that drinking too much alcohol caused the death of Isabel Vasquez. 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 emergency medical personnel, about how binge-drinking can lead to alcohol poisoning, and even death.

Team members working on step 5 will have five minutes to use expert testimony to convince the jury that Brianna Driscoll's irresponsibility caused the harm that was done to the Vasquez family. Consider what happened to Isabel 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 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 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 Isabel's binge-drinking caused her death.)
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

- How often do you see patients in the emergency room who have been harmed as a result of alcohol use?
- What kinds of injuries related to alcohol use do you see?
- What kinds of injuries do you see related to people binge-drinking (consuming large amounts of alcohol in a short period of time)?
- What are the ages of people you see for these types of injuries?
- Are alcohol-related injuries more common in some age groups and less common in others?
- How do you usually find out how much alcohol someone has in their system?
- What is the medical definition of alcohol poisoning?
- Is there a certain BAC that can cause a death from alcohol poisoning? How many drinks would it take to reach that BAC?
- Can you describe some typical situations in which alcohol poisoning occurs?
- Is it possible to determine how long it takes for a person to die from alcohol poisoning after they have their last drink?

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 large amounts of alcohol Isabel Vasquez consumed caused her death. 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 can be toxic to the body, and how too much alcohol can even cause death. *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 Brianna Driscoll to know about binge-drinking and how dangerous it can be. *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 Brianna Driscoll'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 *Vasquez v. Driscoll*. Your job is to respond to the points raised by Brianna Driscoll's lawyer. To prepare your team's rebuttal, you will need to listen to the audio recording of Brianna Driscoll'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 Brianna Driscoll's lawyer defending Brianna 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 Brianna Driscoll 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 Brianna Driscoll'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 other five steps, but your argument must address only points raised by Brianna Driscoll's attorney.

1. In the ***opening statement*** of your counterargument, explain how you disagree with Brianna Driscoll'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 8: *Vasquez v. Driscoll* Binge-Drinking on Trial

Ladies and gentlemen of the jury:

Today is a very sad day. It's a sad day because anytime you are talking about, thinking about, or rehashing and regretting the unnecessary and tragic death of a teenage girl, there is nothing but grief and sadness. As the story of Isabel Vasquez's death has unfolded before you, there are countless "what ifs." What if Isabel had not gone over to Brianna's that day? What if Amanda had not given Isabel her ID? What if Isabel had gone home and not gone to Ralphie's? What if Brianna had not purchased alcohol for Isabel? What if the waiter at Ralphie's had discovered that Isabel's ID was not hers? What if Brianna had left Ralphie's earlier with Isabel? What if Evan Shore had convinced Brianna to tell Isabel's parents she was home? What if Brianna had informed Isabel's parents of their daughter's condition? What if Carlos and Anna Vasquez had come down to check on their daughter? With so many "what ifs," how is it possible that we can blame Isabel's death on just one person when there are so many others involved? How can we blame Brianna Driscoll, Isabel's friend, for her tragic death?

Yes, Brianna was Isabel's friend. She was not, however, Isabel's baby sitter, or guardian, or even family. She acted like most other nineteen-year-olds would. As a matter of fact, I think she acted more responsibly than most nineteen-year-olds would act. I think a lot of nineteen-year-olds would have left Isabel at the bar while they went off with a guy they found attractive. I think many nineteen-year-olds would have told Isabel to get her own ride home from Ralphie's, or

might have even left without saying good-bye. I think many nineteen-year-olds would have dropped Isabel off at her home and would not have even made sure she got inside safely. So I think you'll agree that there are many ways that Brianna acted responsibly toward her friend.

Ladies and gentlemen of the jury, we are dealing with many issues here. Isabel Vasquez, an eighteen-year-old, was served alcohol at Ralphie's Bar and Grill. They are the ones who served alcohol to someone who was under the legal drinking age. One has to wonder why the Vasquezes have chosen Brianna Driscoll as their target instead of Ralphie's. Perhaps it's because the Driscoll family is a wealthy family; perhaps they don't like Brianna Driscoll. Perhaps they want to blame Brianna because it is so very painful to see the truth—the person to blame was Isabel herself. This was not the first time that Isabel drank alcohol. It was Isabel who ordered more Jell-O shots, not Brianna. As a matter of fact, Brianna said that she had stopped drinking. It was Isabel who kept drinking. It doesn't make her death any less tragic, it doesn't mean that her family is going to grieve any less, but it does mean that Brianna Driscoll was not responsible for Isabel Vasquez's death. And when it came time to bring her home, how was Brianna to know exactly how much Isabel had been drinking? Brianna brought her in the house, covered her up, and tried not to get her friend in trouble. Did we expect Brianna to be a paramedic? Did we expect her to know the difference between drinking a lot and drinking enough to die? That's a lot to put on a nineteen-year-old, don't you think?

Ladies and gentlemen, I know you will join me in sympathy for the Vasquez family, but please don't join them in taking out their pain and their own regret on Brianna Driscoll. Thank you.

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