2013 NATIONAL STUDENT TRIAL ADVOCACY COMPETITION (STAC)

OFFICIAL RULES

and

FACT PATTERN

Endowed by Baldwin & Baldwin, LLP
Important Dates:

Requests for fact pattern clarification due: December 12, 2012
Team Roster forms due (students must be AAJ members): February 1, 2013
    Regional Competitions: March 7-10, 2013
    National Final Competition: April 4-7, 2013

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AAJ’s 2013 Fact Pattern is authored by A. Michael Gianantonio of Pittsburgh, PA.
AAJ extends its thanks and appreciation to Mr. Gianantonio for developing the 2013 Fact Pattern.

Please note:

All information regarding the 2013 Student Trial Advocacy Competition is also available at www.justice.org/STAC and will be updated frequently.

All questions and correspondence should be addressed to:

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GENERAL INFORMATION

One of AAJ’s goals is to inspire excellence in trial advocacy through training and education for both law students and practicing attorneys. One way AAJ accomplishes this goal is by sponsoring a national student mock trial competition. This is an exceptional opportunity for law students to develop and practice their trial advocacy skills before distinguished members of the bar and bench.

Because the purpose of this competition is to give law students the opportunity to develop their trial skills, the actual merits of the plaintiff’s case and the defendant’s case presented are irrelevant to this purpose. Competition rounds are decided not on the merits of a team’s side but on the quality of a team’s advocacy.

Requests for Clarification

Requests for clarifications of the rules or fact pattern must be made in writing and received by Nyle Grimes via e-mail at nyle.grimes@justice.org no later than 5:30 p.m. (EST) on December 12, 2012. Each school is limited to five (5) questions. No school, regardless of the number of teams it has in the competition, may submit more than five questions. Each subpart of a question is counted as a question.

RULE VIOLATION AND FILING OF COMPLAINTS

A competitor or coach violating any of the rules governing the national Student Trial Advocacy Competition may be penalized or disqualified. If a team wants to file a complaint under the rules, the team’s coach should immediately notify the regional coordinator at a regional competition or the final round coordinator at the final competition. The coordinator will review the complaint and make a ruling, which shall be binding for that round of competition. The coordinator’s rulings will be governed by the rules of the competition and the objectives of the program.

Complaints after a regional competition or after the national competition must be filed in writing with Emmah Schramke at the address provided above no later than the seven (7) days following the last day of the regional or final round, as appropriate. The AAJ Law Schools Committee will promptly consider and rule on any such complaints.

LAW SCHOOL AND STUDENT ELIGIBILITY

The competition is open to all law schools nationwide. A law school may enter up to two teams. Each team shall be comprised of four law students. A school’s selection method of its trial team(s) is left for the school to determine. However, for a student to be eligible, he or she must be enrolled for a J.D. degree and be a student member of AAJ.
Students who graduate in December 2012, are eligible to participate only if the competition counts toward their credits for graduation and they will not be admitted to practice prior to March 2013.

*Each student participant must be an AAJ student member by February 1, 2013 in order to participate.*

**REGISTRATION PROCEDURES**

**Refund Policy**

Requests for a refund of a school’s registration fee were due in writing before November 9, 2012. It is inevitable that a few teams drop out of the competition in the months leading up to the regionals. Teams placed on the waiting list because the competition is full will be contacted for participation in the order that their registrations were received. Teams on the waiting list will also be issued a refund check if it is determined that the team will not be competing. Schools that registered two teams but are only able to enter one team because the competition is full will receive a refund of the registration fee for the second team.

**AAJ Student Membership**

Student team members must be AAJ members by February 1, 2013 in order to participate. Please call AAJ’s member hotline at (202) 965-3500, ext. 8611, to determine whether students on the team are current members and that their memberships will be active at the time of the competition. AAJ Law Student membership dues are $15. To become a member or to renew a membership, you may complete an application online at [www.justice.org](http://www.justice.org), or call AAJ’s member hotline at (202) 965-3500, ext. 8611, and join over the phone. Students should indicate that they are Student Trial Advocacy Competition participants.

**Student and Coach Registration**

AAJ must receive the names of the participating students and coach for each team. Each team must complete a team registration form and return it to AAJ by February 1, 2013. *Please be sure to include the complete mailing address, date of birth, and graduation date for each student on the team registration form.* This information is required to process the team registration.

**Student Substitution Policy**

Substitution of team members after February 1, 2013 is not permitted except in the case of personal emergencies. Requests for substitution after the February 1 deadline must be made in writing with an explanation of why the substitution is needed and sent to Emmah Schramke at AAJ for consideration.
REGIONAL AND FINAL COMPETITION ASSIGNMENTS

Entering teams will be assigned to one of 14 regional competitions based on geographical convenience to the extent possible. Teams from the same law school will be assigned to the same region. If a school’s second team is waitlisted, there is no guarantee that second team will be sent to the same region as the first team. Teams will be notified of any date changes when regional assignments are made. Please remember that a school’s second team will not be officially registered until one team from each law school has entered the mock trial competition. Then the second teams will be registered on a first-come, first-served basis until all the team slots are filled. If you paid for two teams and only one team is able to participate, you will receive a refund for the second team.

In order to officially compete in the competition, a team must receive their regional assignment. If a team is not informed by AAJ that it is able to compete, that team is not registered for the competition.

Coaches

A coach must accompany each team to the regional and the final competitions. The coach for a team that goes to the final competition does not have to be the person who coached the team at the regional competition.

A coach may be a law student, but may not be a student who is competing in the competition.

Only team coaches are permitted to attend the coaches’ meeting. If a coach is unable to attend, he or she must notify AAJ and the regional coordinator. Only then can students be permitted to attend in the coach’s absence.

Team Expenses

Travel expenses for the regional and final competitions are the responsibility of the participants. Teams competing in past competitions have obtained funds from law school deans and alumni associations, members of the local legal community, state and local trial associations, and AAJ law school chapters.

COMPETITION FORMAT

This is a trial skills competition. There is no motion or trial brief writing component. Each team will consist of four law students. Two students will be advocates and two students will play the witnesses for their side in each round. Advocates and witnesses may change their roles from round to round, but roles must remain consistent throughout each individual trial.
In the regional competitions:
- Each team will compete in three qualifying rounds
- The top four teams from the qualifying rounds will advance to a single elimination semifinal round
- The top two teams from the semifinal round will compete to determine which one team will advance to the National Final Competition

In the final competition:
- Each team will compete in three qualifying rounds
- The top eight teams from the qualifying rounds will advance to a single elimination quarter-final round
- The top four teams from the quarter-final round will advance to a single elimination semifinal round
- The top two teams from the semifinal round will advance to a single elimination final round

Regional Team Pairings in Qualifying Rounds

Pairing of teams in the qualifying rounds will be at random and conducted during the coaches’ meeting prior to each competition. Teams may also be pre-assigned by the regional coordinator prior to the coaches’ meeting. Each team will represent both plaintiff and defendant in the first two rounds. No two teams shall compete against each other more than once in the qualifying rounds. Teams from the same school will not compete against each other during any of the rounds of the regional competition or in the qualifying rounds of the national final competitions.

Team Rankings in All Other Rounds

In the semifinal round, the first-ranked team will meet the fourth-ranked team, and the second-ranked team will meet the third-ranked team.

Regional semifinal round (Normal pairings: 1 v. 4; 2 v. 3)
- Situation 1: Teams ranked 1 and 4 are from the same school
  - New pairings: 1 v. 3; 2 v. 4

- Situation 2: Teams ranked 2 and 3 are from the same school
  - New pairings: 1 v. 3; 2 v. 4

The ranking of teams to determine the semifinalists and finalists will be determined by the following factors (in this order):

1. Win/loss record
2. Number of winning votes
3. Number of total points awarded to the team
Each succeeding criterion above will be used only if the prior criterion does not fully rank the teams, and will be used only to break ties created by the use of the prior criterion.

If paired regional semifinal teams have met in the qualifying rounds, they will each represent different sides than in the previous meeting. If they have not yet met, each team will take the side they represented only once in qualifying rounds. If matched teams represented the same side only once, the winner of a coin toss will choose sides.

In the regional finals, the teams will represent a different side than in the semifinal round. If two opposing teams each represented the same side in the semifinal round, the winner of a coin toss will choose sides. The two regional finals teams will represent a different side than in the semifinal round. If matched teams in the final round represented the same side in the semifinal round, the winner of a coin toss will choose sides.

When an odd number of teams compete at a regional competition, one randomly chosen team will receive a “bye” in each qualifying round. For ranking purposes, a bye will count as a win and the team with the bye will be deemed to have had three votes and the points equal to the average of the team’s points from the two other qualifying rounds.

**NATIONAL FINALS**

**Quarter-final round** (Normal pairings: 1 v. 8; 2 v. 7; 3 v. 6; 4 v. 5)

| Situation 1: Teams ranked 1 and 8 are from the same school |
| New pairings: 1 v. 7; 2 v. 8; 3 v. 6; 4 v. 5 |

| Situation 2: Teams ranked 2 and 7 are from the same school |
| New pairings: 1 v. 7; 2 v. 8; 3 v. 6; 4 v. 5 |

| Situation 3: Teams ranked 3 and 6 are from the same school |
| New pairings: 1 v. 8; 2 v. 7; 3 v. 5; 4 v. 6 |

| Situation 4: Teams ranked 4 and 5 are from the same school |
| New pairings: 1 v. 8; 2 v. 7; 3 v. 5; 4 v. 6 |

**Semifinal round** (Normal pairings: 1 v. 4; 2 v. 3)

| Situation 1: Teams ranked 1 and 4 are from the same school |
| New pairings: 1 v. 3; 2 v. 4 |

| Situation 2: Teams ranked 2 and 3 are from the same school |
| New pairings: 1 v. 3; 2 v. 4 |

If teams from the same school are matched to compete based on rank in the semifinal and final rounds of a regional competition, regional hosts will re-pair teams according to the following scenarios:
Determination of Team Representation

If the four national and regional semifinal teams have already met in the qualifying rounds, they will represent different sides from the previous confrontation. If they have not yet met, each team will take the side they represented only once in qualifying rounds. If matched teams represented the same side only once, the winner of a coin toss will choose sides.

The national finals semifinal teams will represent a different side than in the quarter-final round. If matched teams represented the same side in the quarter-final round, the winner of a coin toss will choose sides. The two national final teams will represent a different side than in the semifinal round. If matched teams represented the same side in the semifinal round, the winner of a coin toss will choose sides.

THE TRIAL

The competition this year involves the trial of a civil lawsuit. The same fact pattern will be used in the regional and final competitions. The trial judge previously ruled that the case would be bifurcated, and the case being tried in the competition is the first phase of the case—the liability phase. Only evidence relevant to the liability issue will be received. There are no pending third-party claims.

The Federal Rules of Evidence (FRE) and Federal Rules of Civil Procedure (FRCP) are the applicable rules of evidence and civil procedure. Only these rules, and the law provided in the fact pattern, shall be used in argument. Specifically, no statutory, regulatory, or case law shall be cited unless such law is provided in the fact pattern.

Students may argue based upon the comments or advisory notes to the Federal Rules of Evidence but may not cite the cases contained therein. No written briefs or motions, trial notebooks, or other written materials may be presented to the judge hearing a case.

No pretrial motions of any kind are allowed.

Motions for a judgment as a matter of law and evidentiary objections are permitted.

The trial will consist of the following phases by each team in this order:

- Opening statements for plaintiff followed by defendant
- Plaintiff’s case-in-chief
  - Plaintiff’s direct of plaintiff’s witness #1
  - Defendant’s cross of witness
  - Plaintiff’s redirect of witness
  - Similar for plaintiff’s witness #2
- Defendant’s case-in-chief
  - Defendant’s direct of defendant’s witness #1
  - Plaintiff’s cross of witness
• Plaintiff’s redirect of witness
• Similar for defendant’s witness #2
• Closing argument
• Plaintiff’s closing
• Defendant’s closing
• Plaintiff’s rebuttal closing

Each side is limited to two live witnesses whom they may call in any order.

• Plaintiff must call Morgan Groat and Jackie Ellis
• Defendant must call Alex Johns and Chris Nutting

The trial has six (6) major advocacy opportunities for each team: opening statement; direct/redirect examinations (2); cross-examinations (2); and closing argument. Each member of a team must handle three of the six opportunities. Opening statement and closing argument may not be done by the same person, and may not be split between team members. Each team member must do a direct and cross.

During the competition, each team will represent both parties. Pairing in the qualifying rounds will be at random, with each team representing both plaintiff and defendant at least once in the three rounds.

Except in the final round, the courtrooms will be off-limits to all team members, coaches, friends, and family members who are not associated with either team competing, unless their team has already been eliminated from the competition.

No team may receive any coaching from anyone in any form during a round, including any recesses or breaks. The regional or national coordinator, as applicable, has the authority to punish any violation of this rule by disqualifying the team from the remainder of the competition.

A team may record its trial if: (1) no additional lighting is required; (2) recording of the trial does not interfere with or delay its conduct; and, (3) all participants of the round, including the presiding and scoring judges and the regional or national coordinator, as applicable, agree.

**Timing of the Trial**

• Each team will have 80 minutes to complete its argument.
• The time limit will be strictly enforced, although it is not necessary that all time allotted be used.
• There will be no time limits for specific aspects of the trial.
• Time on cross-examination is charged against the team conducting the cross-examination.
• Time will be stopped for objections and responses to objections.
• Performance at trial will be evaluated by a panel of judges and/or attorneys, one of whom will preside over the trial as Judge, making rulings as necessary, and the remainder (up to three) of whom will act as the jury.

Facts Outside the Record

Lawyers must confine the questions and witnesses must confine their answers to the facts given in the fact pattern and inferences which may reasonably be drawn therefrom (“the Record”), and any matters judicially noticeable under Rule 201 of the Federal Rules of Evidence. An “inference” is not any fact that a party might wish to be true; rather, it is a fact that is likely to be true, given the other facts in the case.

Except during closing argument, no objection may be made to the effect that the opposing team is going outside the Record. Instead, instances of a party going outside the record may be addressed by means of impeachment of the offending witness or by contradiction using another witness or document.

When true, witnesses must admit, if asked, that the “facts” they have testified to are not in their deposition or otherwise in the record. Witnesses may not qualify this response in any misleading way by saying, for example, that they were not asked about the fact at deposition, or that the facts were contained in some other portion of the deposition, which was omitted from the record. The answer from the witness who is asked to admit the material was not in the deposition must be that the questioner is correct; to wit, “Yes, I did not say that in my deposition.” All judges will be instructed as to the significance of this form of impeachment, and are likely to take into account unfair additions to the record (i.e., inferences which may not reasonably be drawn from the record) in their scoring of the witness’s team.

Witnesses

Any witness may be played by a person of either gender. Before the opening statement, each team should notify the other team of the gender of each witness they intend to call and any witness they could call but are choosing not to call.

Assume that all witnesses have seen the exhibits and depositions. Witnesses know only the facts contained in the background information, exhibits, and depositions.

All depositions are signed and sworn. The same attorney conducting direct examination of a witness shall also conduct any redirect examination.

The only lawyer who may object during witness testimony is the lawyer who will be examining that witness.

Witnesses may not be recalled. Witnesses will not be sequestered.
JURY INSTRUCTIONS

The instructions provided in the fact pattern are the only instructions that will be given. The instructions are the only statements of the applicable substantive law. Instructions will not be eliminated or modified. No additional instructions may be tendered or will be given.

EXHIBITS

The use of demonstrative evidence is limited to that which is provided in the fact pattern, but participants are free to enlarge any diagram, statement, exhibit, or portion of the fact pattern if it is identical to the item enlarged, or if any changes provide no advantage to the party intending to use it.

Subject to rulings of the court, counsel and witnesses may draw or make simple charts or drawings in court for the purpose of illustrating testimony or argument. These materials may not be written or drawn in advance of the segment during which they are being used.

No demonstrative evidence, including charts or drawings, may reflect facts outside the record. Participants must clear all demonstrative evidence with the regional or national coordinator, as applicable, at the coaches’ meeting preceding the competition.

All exhibits are stipulated as authentic and genuine for purposes of trial.

SCORING CRITERIA

Performances at trial will be evaluated by a panel of three judges and/or attorneys, one of whom will preside as the trial judge, with the others sitting as jurors. The trial judge will rule on any objections or motions for judgment as a matter of law.

Each member of the jury may award up to five points in each phase of trial for each party. A sample score sheet is attached.

If at the end of the trial, an evaluator awards the same number of points to both the plaintiff and the defendant, the evaluator will award one additional point to either the plaintiff or the defendant for effectiveness of objections and/or overall case presentation in order to break the tie.

Evaluators have been instructed not to score teams on the merits of the case.

The following criteria for scoring trial performances are set forth to assist both judges and student advocates. Evaluators are not limited to these criteria and may consider other aspects of strategy, technique, and so forth, which they view as important.
Evaluator Shortage

For each match, there must be three votes from evaluators. In the event that, due to circumstances beyond AAJ’s control, there are not three evaluators in a particular match, “ghost” evaluator(s) will be used to score the round.

The vote of a ghost evaluator is determined by calculating the average of all other evaluators in the session. If there is only one evaluator for a trial, the score for each of the absent evaluators will be the same as the score for the evaluator who is present.

Suggested Evaluation Criteria

**OPENING STATEMENT**

**Did Counsel:**
1. Generally confine statement to an outline of the evidence that would be presented?
2. Clearly present counsel’s theory of the case?
3. Persuasively present counsel’s theory of the case?
4. Personalize self and client?
5. Allow opposing attorney to make argument during opening statement?
6. Make unnecessary objections?

**EXAMINATION OF WITNESSES**

**Did Counsel:**
1. Ask questions that generated minimal valid objections?
2. Make/fail to make objections with tactical or substantial merit?
3. Respond appropriately to objections?
4. Know the rules of evidence and express that knowledge clearly?
5. Develop rapport with the witness?
6. Maintain appropriate general attitude and demeanor?
7. Address the court and others appropriately?
8. Demonstrate awareness of ethical considerations?

**Did Direct-Examiner:**
9. Use leading questions unnecessarily?
10. Develop testimony in an interesting and coherent fashion?
11. Follow up on witness’ answers?
12. Present the witness in the most favorable light?

**Did Cross-Examiner:**
13. Appropriately use leading questions?
14. Control witness?
15. Follow up on answers and elicit helpful testimony?
16. Use impeachment opportunities?
CLOSING ARGUMENT

Did Counsel:
1. Present a cohesive theory of the case, pulling all the positive arguments together?
2. Deal effectively with the weakness(es) in his or her own case?
3. Make an argument that was persuasive?
4. Have an effective style of presentation?
5. Utilize the law effectively in the argument?
6. Inappropriately interrupt the argument of the opposing counsel?
7. Properly confine rebuttal to rebuttal matters?
8. Effectively counter the opponent’s speech in rebuttal

Discrepancies in Remaining Match Time

Often, bailiffs are unavailable to keep time for rounds. In such cases, one or more judges in each match should be instructed to keep time according to the timekeeping rules. Teams may keep track of time used for their own purposes. They may not, however, report their time used or that of an opposing team to the bailiff or judge for any purpose. Moreover, time use improperly reported by any team may not be considered or used by a bailiff or judge for any purpose.

Notwithstanding this limitation, in the event that the match judge or judges declare the time remaining as less than the team requires for closing or other parts of the trial. The coach or team member (whoever records the time discrepancy\(^1\)) should immediately consult with the Regional Coordinator during the break, who should then evaluate the circumstances and decide the amount of time remaining. Neither the team coach nor the team member should discuss the discrepancy with the match judge. Should the team be unable to consult with the Regional Coordinator before completion of the trial and the team requires additional time to complete the trial, the team may elect to complete the trial beyond the time allotted. When the trial is complete, the time will be evaluated by the Regional Coordinator. The team will lose one point for every five minutes—or fraction thereof—of time in excess of its allotment.

Viewing of Score Sheets by Teams

Viewing of the score sheets is done at the discretion of the regional coordinator(s). Each team will have the right to view their score sheets for each round. Teams may only view score sheets after the completion of the second regional round. This should be done one team at a time. Teams are not allowed to take score sheets with them or make any markings to the score sheets. Teams may view score sheets only in the presence of the regional coordinator(s).

\(^1\)Note that coaches and team members may not communicate between rounds.
2013 STUDENT TRIAL ADVOCACY COMPETITION (STAC)
JUDGE'S SCORE SHEET

Teams are to be scored on their trial skills only, NOT on the merits of the case.
Do not give half-points. Do not tie teams. There must be a winner.

ROUND:

REGIONAL LOCATION: __________________________

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<tr>
<th>TEAM ____ -- PLAINTIFF</th>
<th>GOOD</th>
<th>AVERAGE</th>
<th>POOR</th>
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<tbody>
<tr>
<td>Opening Statement</td>
<td>5</td>
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<tr>
<td>Direct Exam of</td>
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<td>Plaintiff's Lay Witness</td>
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<td>Defendant's Expert Witness</td>
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<tr>
<td>Summation</td>
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Total points awarded to PLAINTIFF __________________________

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Total points awarded to DEFENDANT __________________________
THE MISSION OF THE AMERICAN ASSOCIATION FOR JUSTICE

The Mission of the American Association for Justice is to promote a fair and effective justice system—and to support the work of attorneys in their efforts to ensure that any person who is injured by the misconduct or negligence of others can obtain justice in America’s courtrooms, even when taking on the most powerful interests.

ABOUT TRIAL LAWYERS

Trial lawyers ensure access to the civil justice system for the powerless in America: working families, individual workers, and consumers who often lack the resources to take their grievances to court.

Trial lawyers play a valuable role in protecting the rights of American families. They champion the cause of those who deserve redress for injury to person or property; they promote the public good through their efforts to secure safer products, a safe workplace, a clean environment and quality health care; they uphold the rule of law and protect the rights of the accused; and they preserve the constitutional right to trial by jury and seek justice for all.

Some of the types of cases our attorneys handle include:

- A child paralyzed after being struck by a drunk driver;
- A young woman unable to have children because of a medical mistake;
- A person denied a promotion due to racial discrimination;
- An elderly man injured in a nursing home; and,
- A community whose water was made toxic by a local manufacturer.

ABOUT AAJ

As one of the world’s largest trial bars, AAJ promotes justice and fairness for injured persons, safeguards victims’ rights—particularly the right to trial by jury—and strengthens the civil justice system through education and disclosure of information critical to public health and safety. With members worldwide, and a network of U.S. and Canadian affiliates involved in diverse areas of trial advocacy, AAJ provides lawyers with the information and professional assistance needed to serve clients successfully and protect the democratic values inherent in the civil justice system.
AAJ LAW STUDENT MEMBERSHIP BENEFITS

Law Student Resources
Visit www.justice.org/lawstudents for information on law school scholarships and networking opportunities. We make communication between law students nationwide easy with our Law Student list server—also accessible through the Law Student Information Web Page.

AAJ’s Annual Student Trial Advocacy Competition
You will be eligible to compete in AAJ’s annual Student Trial Advocacy Competition (STAC), the nation’s premier mock trial competition. The winning team receives complimentary airfare, hotel accommodation, and registration for AAJ’s Annual Convention. Each team member also receives a $2,000 Stanley Preiser Law Student Award for Trial Advocacy sponsored by the Melvin M. Belli Society and tickets to the Belli Society black tie dinner, held during AAJ’s Annual Convention.

AAJ’s Authoritative Legal Publications
Stay up-to-date with your subscription to TRIAL, AAJ’s award-winning monthly magazine. Your monthly TRIAL e-mail is full of information every well-rounded law student should know, featuring analyses of up-to-date news, cases, and trends in litigation.

Law Student Chapters
Chapter programs contribute to your law school experience and provide resources for your future legal career. AAJ works closely with student chapters and provides lecturers and program ideas. If you are interested in working with AAJ to start a chapter at your school, contact AAJ Education at education@justice.org.

Networking and Education at Conventions
Attend AAJ’s Annual and Winter Conventions, where you will learn about the hottest litigation areas and network with attorneys, judges, and other law students. Enjoy 11 education programs at AAJ’s Winter Convention and nearly 50 programs at Annual Convention, including the Law Student education program with presentations geared specifically to you. You will have the opportunity to learn from those at the top of their field, attend social events, and meet attorneys in all stages of their professional careers. Visit www.justice.org/convention to learn more.

AAJ Education Throughout the Year
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IN THE UNITED STATES DISTRICT COURT 
FOR THE DISTRICT OF STEELTON

MORGAN GROAT, on behalf of the 
Estate of LYNN GROAT;

Plaintiff,

v.

STEELTON STATE UNIVERSITY;

Defendant.

COMPLAINT

AND NOW, comes Plaintiff, Morgan Groat, on behalf of the Estate of Lynn 
Groat, and files the within Complaint, the following of which is a statement:

I. PARTIES

1. Plaintiff, Morgan Groat, is the Administrator of the Estate of Lynn Groat, 
and resides at 1979 Weir Fam Lane, Penns Woods, the District of Steelton.

2. The decedent, Lynn Groat, was Morgan Groat’s daughter.

3. Defendant, the Steelton State University (“SSU”), is a publically-funded 
institution of higher education located at 1 Cougar Way in the District of Steelton.

4. From 1977 until the present, the Steelton State University Cougars were 
one of the most successful collegiate baseball teams in the nation.

5. The Cougars were guided by legendary manager, Terry Toledo, who 
prided himself on his graduation rates and winning without violating any collegiate rules.

6. Toledo was active with youth charities, and often times selected young 
children from these charities to serve as batboys/batgirls for the Cougars.
7. These children would travel with the team, and often be away from home either attending practices, games or tournaments.

8. At the age of 10, Lynn Groat was selected as the batgirl for the Cougars and served in that position for two years, in 2001-2003, until suddenly and without warning Toledo informed her she would no longer be a batgirl.

9. Upon termination as a batgirl, Lynn became withdrawn from her parents and from her daily social life.

10. From that day forward, Lynn began demonstrating symptoms of severe depression and anxiety.

11. Lynn refused to attend counseling or otherwise discuss why she was experiencing her symptoms.

12. In January of 2010, Toledo was indicted by a grand jury for a series of ongoing inappropriate relationships with young children, many of whom served as batboys/batgirls for the Cougars.

13. In August of 2010, several credible sources reported that various members of the Steelton State University administration were aware that Toledo was involved with several inappropriate relationships with young children.

14. On September 4, 2010, Lynn took her own life and left behind a one-sentence note that read, “It was because of him.”

15. Upon information and belief, Toledo either had, or attempted to have, an inappropriate relationship Lynn.

16. As a result of Toledo’s conduct, Lynn suffered severe psychological and emotional damage eventually resulting in her suicide.
17. Because several members of the Steelton State University administration were aware of Toledo’s conduct, but did nothing to prevent him from continuing his predatory assaults of young children, Lynn, upon information and belief, was inappropriately touched by Toledo.

18. As a direct and proximate result of the Steelton State University administration’s failure to prevent Toledo from harming young children such as Lynn, the Steelton State University administration’s conduct directly and proximately caused Lynn’s death.

COUNT I
Wrongful Death Act

19. Plaintiff incorporates by reference paragraphs 1 through 18 of the Complaint as if set forth in their entirety herein.

20. Plaintiff brings this action on behalf of the beneficiaries under and by virtue of the Wrongful Death Act, Steelton Consolidated Statutes § 1977, and the applicable Rules of Civil Procedure and decisional law.

21. Lynn Groat left surviving her the following persons who are beneficiaries under the Wrongful Death Act:
   a. Morgan Groat;

22. As a result of the conduct of Defendant, as set forth herein, Plaintiff’s decedent was caused grave injuries and death resulting in the entitlement to damages by the beneficiary under the Wrongful Death Act.

23. Plaintiff, Administrator of the Estate of Lynn Groat, claims all expenses recoverable under the Wrongful Death Act, including, but not limited to, damages for medical funeral and burial expenses of expenses of administration necessitated by reason
of injuries causing Plaintiff’s decedent’s death.

24. On behalf of the Wrongful Death Act beneficiary, Plaintiff claims damages for monetary support that Plaintiff’s decedent would have provided to the beneficiaries during Plaintiff’s decedent’s lifetime, including, but not limited to, the support provided or which could have been expected to have been provided to the beneficiaries.

25. On behalf of the Wrongful Death Act beneficiary, Plaintiff claims damages for the services provided or which could have expected to have been performed in the future by Plaintiff’s decedent.


27. On behalf of the Wrongful Death Act beneficiary, Plaintiff claims damages for all pecuniary loss suffered by the beneficiaries.

28. On behalf of the Wrongful Death Act beneficiary, Plaintiff claims damages for the full measure of damages allowed under the Wrongful Death and decisional law interpreting said Act.

WHEREFORE, Plaintiff demands judgment against Defendant, under the Wrongful Death Act in a an amount in excess of the prevailing arbitration limits, exclusive of prejudgment interest, post-judgment interest and costs.
COUNT II
Negligent Supervision

29. Plaintiff incorporates by reference paragraphs 1 through 28 of the Complaint as if set forth in their entirety herein.

30. Defendant had a duty to supervise Toledo.

31. Defendant knew, or should have known, that Toledo was maintaining ongoing inappropriate relationships with young children before Lynn became a batgirl for the Cougars.

32. Defendant’s failure to supervise Toledo caused Lynn to fall victim to Toledo’s pattern of maintaining inappropriate relationships with young children.

33. As a result of Defendant’s failure to supervise, Lynn sustained injury eventually resulting in her death.

34. Because Defendant knew of problems of the nature described herein and in a similar nature and acted in conscious disregard of a known risk to public safety, its conduct was wanton, willful and reckless, warranting the imposition of punitive damages.

35. As a direct and proximate result of Defendant’s failure to supervise, Plaintiff sustained and will continue to sustain injuries and damages.

36. As a direct and proximate result of Defendant’s failure to supervise, Plaintiff has suffered substantial loss of financial support, loss of love, companionship, affection, society, and advice, as have all of the legal heirs of Lynn Groat.

WHEREFORE, Plaintiff demands judgment against Defendant, in an amount in excess of the prevailing arbitration limits, exclusive of prejudgment interest, post-judgment interest and costs; for punitive damages; and for such other relief as this Court seems fit to award.
COUNT III
Negligent Retention

37. Plaintiff incorporates by reference paragraphs 1 through 36 of the Complaint as if set forth in their entirety herein.

38. Defendant had a duty to terminate Toledo once it learned that Toledo was maintaining on-going inappropriate relationships with young children before Lynn became a batgirl for the Cougars.

39. Defendant’s failure to terminate Toledo caused Lynn to fall victim to Toledo’s pattern of maintaining inappropriate relationships with young children.

40. As a result of Defendant’s failure to terminate Toledo, Lynn sustained injury eventually resulting in her death.

41. Because Defendant knew of problems of the nature described herein and in a similar nature and acted in conscious disregard of a known risk to public safety, its conduct was wanton, willful and reckless warranting the imposition of punitive damages.

42. As a direct and proximate result of Defendant’s failure to terminate Toledo, Plaintiff sustained and will continue to sustain injuries and damages.

43. As a direct and proximate result of Defendant’s failure to terminate Toledo, Plaintiff has suffered substantial loss of financial support, loss of love, companionship, affection, society, and advice, as have all of the legal heirs of Lynn Groat.
WHEREFORE, Plaintiff demands judgment against Defendant, in an amount in excess of the prevailing arbitration limits, exclusive of prejudgment interest, post-judgment interest and costs; for punitive damages; and for such other relief as this Court seems fit to award.

Respectfully submitted

/s/ Roberto Stargell
Stargell, Clemente and Mazeroski
Attorneys for Plaintiff
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STEELTON

MORGAN GROAT, on behalf of the
Estate of LYNN GROAT;

Plaintiff,

v.

STEELTON STATE UNIVERSITY;

Defendant.

ANSWER AND AFFIRMATIVE DEFENSES

AND NOW, comes Defendant, Steelton State University ("SSU"), and files the
within Answer and Affirmative Defenses to Plaintiff’s Complaint, the following of which
is a statement:

1-7. Admitted.

8-12. Upon reasonable investigation and inquiry, Defendant is without
information sufficient to form a belief as to the allegations of the averments of
Paragraphs 8-12 of Plaintiff’s Complaint. As such, the averments are denied.


14-17. Denied.

18-43. As the averments of Paragraphs 18-43 of Plaintiff’s Complaint constitute
conclusions of law, no responsive pleading is required.
AFFIRMATIVE DEFENSES

1. Plaintiff’s Complaint fails to set forth a cause of action.

2. Plaintiff’s Complaint is barred as any claim for negligence is precluded by a superseding intervening cause.

3. Defendant could not have known, nor should it have known, that Toledo was molesting children.

/s/ __________________________
Sidney Bream, Esquire
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF STEELTON  

MORGAN GROAT, on behalf of the  
Estate of LYNN GROAT;  

Plaintiff,  

v.  

STEELTON STATE UNIVERSITY;  

Defendant.  

STIPULATIONS  

AND NOW, comes the parties to this matter, and file the within Stipulations to be used at Trial, which shall have the binding effect of being taken as established facts if so offered:  

1. Terry Toledo was arraigned for committing repeated and ongoing sexual assaults with 11 children.  
2. Eight of the children were males, ranging in age from 7-10 years old.  
3. Three of the children were females, ranging in age from 8-10 years old.  
4. Mr. Toledo was found guilty on all charges with respect to the eight males.  
5. Mr. Toledo was acquitted with respect to all but one charge with respect to the three females. Mr. Toledo was convicted of one charge of sexual assault against one of the female accusers.  
6. The testimonial transcripts and evidence presented to the grand jury have been sealed and are not available.  
7. Lynn Groat did not testify against Mr. Toledo.
8. The attorney general for the District of Steelton did not file charges against Mr. Toledo pertaining to Lynn Groat.

9. The attorney general for the District of Steelton filed charges against Alex Johns and Mark McClymonds for child endangerment, but the charges were dismissed due to insufficient evidence.

10. Mark McClymonds is unavailable to testify and is outside of the subpoena power of the jurisdiction.

11. The parties agree that Mr. McClymonds’ deposition may be used at trial and the deposition testimony itself is not subject to a hearsay objection. As such, the deposition testimony may be used for any purpose so long as the intended use is otherwise admissible under the Federal Rules of Evidence.

12. The press release issued by the National College Association is admissible so long as its relevance is established.

13. The District Court for the District of Steelton follows the Federal Rules of Evidence.


15. The depositions are signed and sworn to by each respective deponent as being accurate and authentic.

16. The expert reports were produced by the parties simultaneously before trial. Experts have reviewed all documents contained within this case file and may testify to the same, however, the expert’s testimony is limited to the fair scope of the expert’s report.
17. The expert reports have been prepared and signed by each respective expert.

18. Plaintiff must call Morgan Groat and Jackie Ellis as witnesses.

19. Defendant must call Alex Johns and Chris Nutting as witnesses.

20. This case has been bifurcated into a liability phase and a damages phase.

For purposes of this trial, the parties will try the liability phase only.
Deposition of Morgan Groat

And now, this 10th day of October 2012, Morgan Groat, being duly sworn by the undersigned appeared at the offices of Stargell, Clemente and Mazeroski for the purposes of deposition by oral questioning.

(Questioning by Sidney Bream)

Q. Good morning. We met earlier today before your deposition, but for purposes of the record, can you please state your name?

A. Sure, my name is Morgan Groat.

Q. And when do you live?

A. 1979 Weir Fam Lane, Penns Wood, in Steelton

Q. Who do you live there with?

A. My spouse, Lindsey Franks.

Q. Anybody else?

A. Our daughter, Ellie, and, until a couple of years ago, my older daughter Lynn.

Q. How old is Ellie?

A. She is 10.

Q. Okay, I am going to ask you some questions about your daughter in a few minutes, and I know that may be difficult for you, but right now I have to ask you some background questions. I need to make sure that we establish a complete record.

A. Sure, I’m sorry, it’s just been so traumatic on our family.

Q. I am sure it has. Do you work?

A. Yes, I am a nurse in a psychiatric ward at Mercy Hospital, it is part of the University of Steelton Medical Center.
Q. How long have you been doing that?
A. I would say about twenty years?

Q. Can you tell me a little about the work that you do as a nurse at Mercy Hospital?
A. Sure, I work in a ward in which a majority of the patients are suffering from severe depression and delusions. It is a very stressful and difficult job. Many of the patients who suffer from delusions can be dangerous and violent, and, of course, with the patients who are severely depressed, we have to be constantly on guard for suicide attempts. We have so many restrictions that make it nearly impossible for a patient to harm himself, but some of these folks are very crafty, and they find some interesting ways to attempt to take their own lives.

Q. What type of training have you had?
A. What do you mean?
Q. Well, let’s try it this way, did you graduate from high school?
A. Oh, sure, I graduated from Steelton High about 25 years ago.
Q. And did you go to college?
A. Yes.
Q. Where did you go?
A. I graduated from the University of Steelton. I obtained a bachelor’s in nursing.
Q. After graduating from college, did you go right into the work force?
A. Yes.
Q. Where did you go to work?
A. Straight into Mercy Hospital. I was on a scholarship that required me to give five years of service to a University of Steelton Medical Center Hospital. I felt like I
had a talent working with the severely depressed patients when I was school, so
that is where I went to work and I never changed jobs.

Q. Did you have any training other than what you learned in school?

A. I have had training in suicide prevention, spotting suicide warning signals and
dealing with delusional patients. We receive yearly refresher seminars in these
areas.

Q. Now, I know this part may get difficult for you, but I need to ask you about your
daughter. She committed suicide, right?

A. Are you seriously trying to say this is my fault?

Q. No, I am not. That is not my intention at all, but I do have to ask these questions.
Now, Lynn committed suicide on September 4, 2010?

A. Yes, she did.

Q. Do you know why she did so?

A. She did so because he was sexually assaulted by Terry Toledo.

Q. Did she ever tell you that?

A. She never came out and said it, but it was not hard to figure out.

Q. Why do you say that?

A. Because of everything that happened.

Q. What do you mean by that?

A. What do you mean, what do I mean by that? After the investigation, they finally
figured out what we knew, Toledo was molesting kids. And my daughter was one
of them.

Q. But I thought you said she never told you that?
A. She did not, but I always knew something was wrong.

Q. Okay, let’s talk about this. Did your daughter know Mr. Toledo?

A. Know him? She spent a lot of her childhood at Mr. Toledo’s foundation, the Third Kilometer.

Q. What was your understanding of what the Third Kilometer was?

A. I was a single parent when Lynn was young. My spouse walked out on us when she was eight years old and I had to work numerous jobs to make sure that we had food to eat and a roof over our head. In fact, my brother had to move in just to help take care of Lynn. Because I was working so much, I could not spend nearly as much time with Lynn as I wanted to. That is where the Third Kilometer came in. It was a charity that assigned somebody to essentially be what I would describe as a surrogate big brother/sister to Lynn. Lynn started going there when she was nine.

Q. I will ask you about the Third Kilometer in a moment. What was your brother’s name?

A. Jed Griggs.

Q. What was Lynn’s relationship with your brother like?

A. Odd.

Q. What do you mean by that?

A. Well, my brother was a weird guy. He kind of marched to the beat of his own drummer. He really kind of kept to himself. He never had a real job. Normally, I would not think he was good to have around, but with my situation, sometimes you have to take what you can get. Anyway, my brother did not speak much to
Lynn all that much, at least not in front of me, but he talked about her all the time. He always told me how pretty she was, and that she was a special child, even an angel. He would always stare at her, but never really talk to her.

Q. Was your brother ever alone with Lynn?

A. Of course. With my work schedule, that is one of the reasons that he moved in.

Q. Did Lynn ever talk to you about your brother?

A. Not much. She did not seem to like him very much. After he left, she really never mentioned him again.

Q. I have seen reports that Jed got into some trouble with one of the local schools while he was staying with, can you tell me a little about that?

A. That was a bunch of nonsense. Like I said, he was a weird guy, but he was harmless. We live pretty close to an all-girl’s school. Jed often watched the children play during recess. He said it reminded him of what it was like when he was a child, or at least what he wanted it to be like when he was a child.

Q. What do you mean by that?

A. He did not have a good childhood. My father beat him a lot, and Jed kept to himself.

Q. Okay, so how did he get in trouble?

A. Well, as I mentioned, he would watch the kids play during recess. Apparently this made some of the parents uncomfortable and the school called the police on him.

Q. Was he charged with anything?

A. No. The police just asked him to knock it off and he did.
Q. How long did your brother stay with you?
A. Not very long. When he finally got his act together, he decided to join the Marines, where he stayed until he passed.

Q. How did he die?
A. He was killed in Afghanistan. It happened a few weeks before Toledo was convicted.

Q. I am sorry for your loss.
A. I appreciate it. Lynn seemed to take it harder than me, which is odd, because she never really liked him.

Q. When you say that she took it hard, what do mean by that?
A. She just clammed up. She did not talk. It was like something happened to her.

Q. Did you keep in contact with your brother?
A. No. But he did occasionally send letters to Lynn.

Q. Now, you were supposed to bring certain documents with you, did you bring any of these letters?
A. I could only find one, it was the last one.

Q. Counsel, I am going to request that you have that copied for me. Before Lynn started going to the Third Kilometer, what was she like?
A. Angry. I was never home, and she could not figure out why her other parent left. There was a lot of confusion and hate in her. She would not talk and often secluded herself in her room.

Q. Okay, so when she started going to the Third Kilometer, who was Lynn’s surrogate big brother?
A. At first, it was actually a female, Helen Foolin. After about a year and a half, Mr. Toledo took an interest in her. At first, you can imagine that we were all pretty excited. This is one of the most famous coaches in college sports and Mr. Toledo, the founder of the Third Kilometer, wants to hang out with Lynn.

Q. Do you know what type of activities Lynn and Mr. Toledo did together?

A. At first, it was nothing much. Mr. Toledo would spend one or two days a week with Lynn and they would go fishing or to a baseball game. After a few months, they started doing more and more together, and for longer periods of time.

Q. Like what?

A. Well, Mr. Toledo made Lynn a batgirl for the baseball team, so she spent a lot of time there. Then he started having Lynn over to his house. This would happen a few times a week, and then the sleepovers started.

Q. Didn’t you think it was odd that Lynn was staying overnight at Mr. Toledo’s house?

A. No, not at that time. Why would I? I mean, you never really assume somebody is molesting your daughter. Based upon all the articles and awards, Mr. Toledo seemed like an exceptional personal who truly cared about people.

Q. But I thought you said everybody knew that he was molesting children?

A. Well, I did not know that at that time. Nobody did. People only started suspecting it when about the time the investigation began. Nobody could have had any reason to know before then.

Q. Aren’t you saying Steelton State knew?

A. I was not Toledo’s boss or supervisor.
Q. Well, what happened when Lynn started staying overnight at Mr. Toledo’s house?
A. Nothing at first. She would leave happy, and come home happy.

Q. Did she tell you about what they did on their overnight visits?
A. Not really. She mentioned they would watch movies and sometimes engaged in horseplay such as wrestling.

Q. Did Lynn ever tell you Mr. Toledo touched her inappropriately or molested her?
A. No. Never mentioned it once.

Q. Not even later before she passed?
A. You mean before she killed herself because of what Mr. Toledo did? No, she never told me he was attacked by that pedophile bastard. I’m sorry. I normally do not talk like that.

Q. Then, if Lynn never told you she was assaulted, what is the basis of your suit against Steelton State?
A. She didn’t have to tell me. I could tell something was wrong.

Q. How so?
A. After a few months of these overnight trips, Lynn was not herself. She would come home and not really talk to me. At the time I thought it was because I started dating Lindsey, who later became her step-parent, and it was just some resentment. However, Mr. Toledo called the house one day to see how Lynn was doing. I told him that Lynn seemed more quiet than normal, but that she seemed okay otherwise. And then Mr. Toledo told me that because he was busy was some sports camps that he was running, he would have to turn Lynn back over to Ms. Foolin.
Q. How did Lynn respond?

A. Not well, she thought she did something wrong, that Mr. Toledo did not like her anymore. As much I tried to explain it was nothing Lynn did, she sunk further into a shell and she really did not talk or eat for a long time.

Q. And how old was she at this time?

A. She was almost 12.

Q. How old was she when she died?

A. It was a couple of weeks before her 19th birthday.

Q. Did anybody at the Third Kilometer ever comment on her mood change?

A. Ms. Foolin did a couple of times. In fact she called and emailed me expressing concern about Lynn’s behavior.

Q. We will talk about the emails in a minute. Let’s talk about the phone calls. What did Ms. Foolin tell you?

A. She said that Lynn wanted to know why Ms. Foolin did not wrestle with her. She said that she guessed it was because Ms. Foolin was not a boy and Ms. Foolin did not like to wrestle. She wanted to see if she was acting oddly in any other manners. I mentioned that Lynn was not eating and was somewhat concerned that Mr. Toledo did not like her anymore. Ms. Foolin mentioned to me that Mr. Toledo was very popular with the children and often would pick one boy or girl to devote his time to, and because he was so popular, he tried to spend as much time as he could with as many children as he could. Anyway, I told her that I was dating somebody new and we agreed that it was most likely the cause of her depression.
Q. I want to show you these emails I have marked as Exhibit A. Do you recognize these?

A. Yes.

Q. What are they?

A. These are emails between myself and Ms. Foolin. That is my email address and that is her email address.

Q. Okay, thank you. Do you recall these conversations?

A. Yes.

Q. Do you have any reasons to dispute what is said in the emails?

A. I do not.

Q. I would like to switch gears now if we could. From the time Lynn stopped seeing Mr. Toledo until the time that she died, could please describe what she was like.

A. Well, she became more withdrawn, as I mentioned. She really stopped playing the sports that she played, and she did not seem to have many friends. After a couple of years, I took her to a psychiatrist. She was not doing well in school and she was getting into a lot of trouble. She was suspended a few times for getting into a fight, and was almost expelled.

Q. What did the psychiatrist tell you?

A. She told me that Lynn was depressed. I mean, come on, I knew she was depressed, that is why I took her to see the psychiatrist. Lynn only saw her a few times. She did not like her, and quite frankly, neither did I. I did not need to pay somebody money to tell me something I already knew, or, at least, what I thought I knew. I wish I had that back. I wish I could have done more.
Q. Can you tell me anything else?
A. No, that is pretty much it.
Q. I would like to talk to you a bit about the events leading up to your daughter’s
death. How soon was Mr. Toledo convicted before your daughter took her own
life?
A. Lynn killed herself the night the jury reached its verdict.
Q. Was there anything that caused you to believe something was wrong with Lynn
before her death?
A. Well, once the story broke about Toledo, Lynn was visibly shaken. I immediately
thought the worst about Lynn and Toledo. And I asked her about it.
Q. Well, how did she respond?
A. She did not. She did not answer. She did not speak. She did not eat. I
practically had to pull her out of her room to speak with her. She refused to talk
to anybody,
Q. How old was Lynn at the time she died?
A. She was almost 19.
Q. Was she in school?
A. She graduated high school and was thinking about going to college. But in her
junior year, this story broke and things changed.
Q. What do you mean by that?
A. Well, Lynn really seemed to shake those problems she was having when she was
younger when she got into junior high. She was not getting into trouble at school,
she was getting good grades, and she was very active at school. I don’t want to
say that we forgot about Lynn’s relationship with Toledo, but it was certainly was not affecting the family the way that it did when Toledo first stopped seeing Lynn. Then it was like the guy was back in our life again. We could not turn on the TV, pick up a newspaper or even have a conversation without the guy’s name being mentioned. Lynn just went back into a shell.

Q. Did you ever contact the police to discuss Lynn’s interaction with Mr. Toledo?
A. You mean before we were contacted about the grand jury?
Q. Yes.
A. No. I mean, I thought about it, but it is one of those things that you did not want to think was true. We tried treatment and I spoke to Lynn many times about Toledo. She just never told me that anything improper happened.

Q. Did Lynn testify at Mr. Toledo’s criminal trial?
A. No. She testified before the grand jury, but she just could not bring himself to face Toledo. She did not want to testify.

Q. Do you know what Lynn told the grand jury about Mr. Toledo?
A. I have no idea. The proceedings were sealed and she never talked about it.

Q. When did she testify?
A. It would have been in the fall of her senior year.

Q. Who found Lynn?
A. I did. She was in her room. She hung herself.

Q. Is this a copy of the note you found in her room?
(Counsel shows witness what has been marked as Exhibit B)
A. Yes.
Q. Where did you find it?

A. It was in her hand.

Q. Thank you. I do not have any further questions for you.

Whereupon the deposition was concluded.
Deposition of Alex Johns

And now, this 12th day of October, 2012, Alex Johns, being duly sworn by the undersigned appeared at the offices of Bonds, Bonilla and Van Slyke for the purposes of deposition by oral questioning.

(Questioning by Roberto Stargell)

Q. Please state your name for the record?
A. My name is Alex Johns.

Q. How old are you?
A. I am 56.

Q. Where do you live?
A. I live in Steelton. Until recently, my housing was provided to me by the school as part of my position. I was expected to maintain a presence on campus at all times.

Q. Are you married?
A. I am divorced.

Q. When did that happen?
A. About five or six years ago. We were married for 25 years.

Q. What happened?
A. Well, I guess we just grew apart. We stopped communicating. After years of living, like, I guess instead of trying to make the relationship work, I gave up and started seeing other people. My spouse found out and left me. I am not proud of what happened, but I am human and sometimes you can only stand to be alone for so long before you have to do anything drastic.
Q. Okay, you don’t need to explain yourself to me, but thank you for offering that information. I know that it can be difficult. Does anybody live you with you in your home?

A. I have a special needs son, Robert. My ex-spouses’s job makes caring for Robert nearly impossible, so Robert stayed with me.

Q. How old is Robert?

A. He is 22.

Q. Anybody else?

A. Just our dog, Lola.

Q. Where did you go to school?

A. College or high school?

Q. College?

A. Oh, here at Steelton State.

Q. When did you graduate?

A. In 1978. I graduated from the school of history magna cum laude.

Q. What did you do after you graduated?

A. I went to the University of Michigan to obtain my master’s degree in history with a concentration on Eastern European history during the communist era. I graduated in 1980 with honors.

Q. What did you do after you left Michigan?

A. I went to Stanford to obtain my Ph.D.

Q. What was the subject of your dissertation?
A. The cyclical nature of Russian politics and the effects on the Slavic people. It was a real page turner.

Q. I take it you received you doctorate?

A. I did, in 1983.

Q. Then what?

A. I began teaching in a tenured track position here at Steelton State. However, I found that I preferred the administrative side of post-secondary education, so I left to go the University of Pittstown where I was the dean of historical studies.

Q. When was that?


Q. What did you do next?

A. In 1993 I was promoted to dean of education, and then in 1997, I was asked if I was interested in taking my current position at Steelton State.

Q. Were you?

A. Absolutely. That was my dream job. I was so excited that my alma matter even thought about me for the position. There was no debate about it, and the moment the job was offered to me, I interviewed for the position.

Q. I take it that you were hired?

A. I received overwhelming support for my retention.

Q. What are your duties as university president?

A. First and foremost, I am the liaison between the administration of the university and the board of trustees. The board is appointed by the governor of the District of Steelton. I have several members of the university that report to me for which I
am responsible to oversee. These would include the various deans of the different undergraduate and graduate schools, the chair of the recruiting office and the athletic director, just to name a few. I am responsible for the university’s budget, and it is my responsibility to ensure that all university records are properly preserved. Most importantly, I think, I am responsible for the overall health and well being of the university.

Q. Can you tell me a little about your duties as they relate to the athletic department?

A. Sure. The athletic department is organized to promote athletic activities that are meant for the health and benefit of the student body. While there are various intramural sports that the athletic department oversees, it is primarily responsible for ensuring that our various organized sports teams are in compliance with the National College Association’s, or the NCA’s, interscholastic regulations. The department must ensure that all of our student athletes are academically eligible to participate, that all of various teams are properly scheduled for their different events with the necessary transportation and lodging, and that competent personnel are supervising the student athletes.

Q. Does the athletic department hire all of the coaches for the university’s sports teams?

A. Well, yes and no. The department performs the interviews and then makes recommendations to me. I then take these recommendations, and, after interviewing the candidates, make a final recommendation to the board of trustees. The board ultimately hires the candidate.

Q. Once a candidate is hired, who is responsible for supervising the coach?
A. That is a shared responsibility between the athletic director and myself.

Q. Does the university have a policy or procedure in place for supervising one of its coaches?

A. Well, I am not quite sure there is a specific policy. Each year, at the end of a season, we review several factors concerning a coach and his or her program. We look at the graduation rate of the students, we look at the students’ grades while they are participating in the sport, and we look at the wins or losses of the team.

Q. What about the coach himself? Do you perform any review of the manner in the coach interacts with the students, other coaches and other teams?

A. Well I am sure that plays into it. However, there has to be a report of some issue before we go down that road. If a coach is causing problems in his sport, or is discouraging academic study, that is certainly a problem that I would be interested in.

Q. Well, what if you learned that a coach was on a road trip and got into some trouble, such a bar scuffle, or was inappropriately involved with one of your student athletes?

A. We would open an investigation and interview all of those involved. Depending on the results of the investigation, we could elect to do nothing at all if there is no cause, or we could take any appropriate disciplinary measure up to termination.

Q. Who makes the ultimate decision on disciple?

A. I make the decisions, and then recommend them to the board. They are free to accept my recommendation or alter it.
Q. Okay, I would like to move to a somewhat related topic. Did you hire Mr. Toledo?
A. No, he was here before I began. I think he was hired in the early 1980s.
Q. Were you responsible for supervising Mr. Toledo?
A. Yes.
Q. When did you first learn that Mr. Toledo was abusing young children?
A. Not until I was contacted by the state attorney general’s office with respect to testifying before the grand jury.
Q. When was that?
A. That would have been in the winter of 2008.
Q. What did the attorney general’s office tell you?
A. Well, they said there had been numerous reports that Mr. Toledo abusing young boys, sometimes on campus, sometimes on trips to baseball games. This came as quite a shock because I have known Mr. Toledo since I was hired and he was always a kind and gracious man. I even volunteered at his charity, the Third Kilometer, and I donated a good sum of money there.
Q. Did you testify in front of the grand jury?
A. Yes, but I am not supposed to talk about it.
Q. Okay, I do not want to get into any of your testimony, I just wanted to know if you testified. Do you know Mark McClymonds?
A. Yes, he was the third base coach under Mr. Toledo.
Q. Are you aware that Mr. McClymonds has testified in this matter?
A. I am.
Q. Are you aware that he says he contacted you in the summer of 2000 to tell you that he witnessed Mr. Toledo sexually abusing a young boy in the team dugout here on campus?

A. I am aware that is what he said, but that is not what happened. While I am not disputing what Mark said about the attack is true, I do dispute that Mark ever told me that Mr. Toledo was sexually assaulting a boy. Mark has had an axe to grind with the university when we refused to make him the manager of the baseball team. While Mr. Toledo was a great manager, and very well respected, we wanted to move in a different direction. However, because he was so respected, we could not get him to leave.

Q. It is my understanding you tried to fire him and he said no?

A. That is somewhat true. We asked him to step down and he said he would go when he was ready. We weighed our options about termination and determined that it would not be a good move for the university with its alumni, so we determined to keep things as they were. Mark got really upset because he wanted that job so badly. I think I became the focus of his anger as he just stopped talking to me altogether.

Q. Okay, so now that we know you disagree with Mr. McClymonds’ recollection, can you tell me what your recollection is concerning those events?

A. Mark contacted me in late July of 2000. He said that he had something terrible to tell me. He wanted to meet with me. I was on vacation so I told him that as soon as I returned, we would meet up and talk.

Q. Did that meeting occur?
A. Yes, it did. I was overseas, so when I returned, we met on August 8 to discuss what he witnessed.

Q. What did he tell you?

A. He told me that Mr. Toledo was wrestling with one of those Third Kilometer kids in the dugout. He was upset because the season was over and he did not think he should be bringing those kids into the team facilities when the season was over. His primary concern was that there was nobody else around, and you never know what that kid could say if his parents wanted to get rich.

Q. How did you respond?

A. I arranged a meeting with Mr. Toledo to discuss the incident. I asked what he was doing and Mr. Toledo told me that one of the Third Kilometer kids loved baseball and he wanted to show him the dugout. I said I could see his heart was in the right place, but that for liability purposes, he could not bring kids into the dugout when nobody else was around. He agreed and said that it would never happen again.

Q. I would like to show you this email that I have marked as Exhibit C. Do you recognize this email?

A. I do.

Q. Is that your email address on the document?

A. It is.

Q. Who is this email address to?

A. Robby Bricken, our head of security.
Q. Well, if you did not think that Mr. Toledo was doing anything wrong, or that he was sexually assaulting children, why did you send this email?

A. Let me repeat this one more time, Mark never told me that Mr. Toledo was sexually assaulting that boy. I told Robby we needed to keep an eye out on the dugout because Mr. Toledo was seen taking kids there to show them the facilities. Even though Mr. Toledo gave me his word, I wanted to make sure it did not happen again.

Q. So you used the phrase “serious transgressions” to describe Mr. Toledo showing the dugout to a child?

A. It was a serious transgression.

Q. And why did you think if anybody found out it would be a serious PR nightmare for the university.

A. You never know what people would read into an event as innocent as that. Or at least as innocently as it was described to me. That was the last thing we needed to deal with.

Q. Did you go to the police?

A. Based upon what I was told, there was no need to go to the police.

Q. Would you agree with me that if you learned that Mr. Toledo was abusing children, you should have gone to the police?

A. Yes. That is absolutely what I would have done.

Q. Would you agree with me that if word got out that Mr. Toledo was abusing children, the university would have some serious problems, both with the public and the law?
A. Well, I guess I would have to say yes. You see what kind of trouble we are in now.

Q. So if these allegations would have been true, there would have been an incentive for you to cover them up.

A. I did not cover anything up.

Q. I understand that is what you are saying, but you would have reason to lie about it if it were true, right.

A. If we were those kind of people, then yes, there would be an incentive to hide this. But we are not those kind of people.

Q. When did you actually learn that Mr. Toledo was abusing children?

A. When the state attorney general contacted me.

Q. So you expect us to believe that for 10 years under your watch this man abused all of those children and you had no idea it was going on?

A. That is exactly what I want you to believe because that is the truth.

Q. What did you do with Mr. Toledo once you learned about the allegations?

A. He was placed on administrative leave while we performed our own internal investigation that was performed alongside with the attorney general’s office. Once he was formally charged, Mr. Toledo was terminated and the university severed all ties with him.

Q. Do you believe there was anything the university could have done to discover Mr. Toledo’s abuse before you learned about it for the attorney general?
A. I wish we could have learned about it. I wish we could have done something about. The fact is, because of the way he operated, there is nothing that we could have done to discover the truth.

Q. You’re aware that children who are sexually abused often suffer depression and may commit suicide, right?

A. I’m not a psychologist. I really couldn’t say.

Q. I know that’s not your training. But isn’t it fairly commonly known that victims who suffer sexual abuse generally also suffer from depression and other mental anguish?

A. I would agree that it’s common sense that sexual abuse can lead to other problems for children and adults but would not generalize beyond that.

Q. Now, you were fired as well as a result of Mr. Toledo’s actions.

A. I would not say I was fired as much as the board and I agreed to part ways.

Q. Didn’t the board ask for your resignation because they believed you knew this was going on?

A. They thought that if Mark’s story was believed or given any credibility, it would look like I hid this so that it would be better if I were no longer involved with university. I agreed to leave on my own accord because I agreed with them.

Q. Do you know if the university believed Mr. McClymonds’ version of the events?

A. I know that some board members did. I know that some of those members thought I protected a child abuser to protect the university.

Q. Thank you, that is all of the questions that I have for you.

Whereupon the deposition was concluded.
Deposition of Mark McClymonds

And now, this 17th day of August, 2012, Mark McClymonds, being duly sworn by the undersigned appeared at the offices of Bonds, Bonilla and Van Slyke for the purposes of deposition by oral questioning.

(Questioning by Roberto Stargell)

Q. Please state your name for the record?
A. Mark McClymonds.

Q. Mr. McClymonds, where do you live
A. 901 State St., Carson City, Nevada.

Q. Does anybody live there with you?
A. My wife, Megan, and my two year old daughter, Lauren.

Q. What do you do in Carson City.
A. I work construction.

Q. How long have you been doing that?
A. Since the Toledo story broke and I was fired from Steelton State University. I have been unable to get a job in coaching.

Q. Do you know why you were fired?
A. The university president, Alex Johns, and I, had a serious disagreement about how the Toledo situation was handled.

Q. What do you mean by that?
A. Well, in the summer of 2000, I was doing some work in my office when I decided to head home. The field had just been resodded so I decided to swing by to see how it looked. I saw some lights on it the dugout, and that was not normal
because the field was locked, so I went to check it out. I thought maybe some 
kids had broken and were having a party or doing something else.

Q. What did you find when you got to the dugout?

A. Something that is burned into my memory that I cannot forget. I saw Toledo, not 
wearing any pants or underwear, touching a little boy who was completely naked.

Q. What did you do?

A. Nothing. I was in shock, here is the head of our team, a Steelton State icon, 
touching a young child. I immediately call Alex to report what I saw.

Q. You did not try to stop the abuse?

A. I am ashamed to say that I did not. My first reaction was to get the hell out of 
there. It was so much for me to process. I recognize that is not an excuse, but it 
is the only explanation I have for what I saw.

Q. Did you call the police?

A. No, I called Alex. Alex was on vacation, but after the third or fourth time I 
called, Aled finally returned my call and said that we would talk when we got 
back.

Q. Did you tell Alex what you saw when you spoke on the phone?

A. Not exactly. I told him that I saw Toledo and a boy fumbling around in the 
dugout and that I thought it was wrong.

Q. When did you meet with Alex to discuss the matter?

A. Shortly after Alex returned from vacation.

Q. What did you tell Alex?

A. That I saw Toledo wrestling around naked with a little boy, who was also naked.
Q. Did you tell Alex that Toledo was molesting the boy?
A. I said that Toledo was doing inappropriate things with the boy.

Q. What did Alex do?
A. Alex thanked me for reporting the incident and said the university would handle it from there.

Q. To your knowledge, did the university do anything?
A. No. The man was still coaching there right until the story broke.

Q. Well, what about you, why didn’t you do anything.
A. I told my superiors what I saw. They told me they would handle it. I believed them. In hindsight, I should have contacted the police. I did not and I regret it.

Q. Did you want to be the manager for the university baseball team?
A. Yes.

Q. Were you upset with the university about the fact that they never made you the manager?
A. Of course I was. On top of the fact that he was a serial abuser, Toledo was losing it on the diamond. The game passed him by.

Q. Thank you, I have no further questions.

Whereupon the deposition was concluded.
January 8, 2013

Roberto Stargell, Esquire
Stargell, Clemente and Mazeroski
21 Three Rivers Place
District of Steelton, USA 12345

Re: Terry Toledo’s Molestation of Lynn Groat

Dear Mr. Stargell:

You have asked me to render an opinion as to whether or not Lynn Groat was sexually molested by Terry Toledo and, if so, whether or not this abuse was the cause of Lynn Groat’s suicide. In summary, my opinions are, to a reasonable degree of professional certainty, that Terry Toledo molested Lynn Groat, and that these attacks were the direct cause of Lynn Groat’s suicide.

In an effort to understand that this matter, you forwarded to me copies of the pleadings, depositions, exhibits and photographs. I used these materials in formulating my opinions. In addition to these materials, I have used my experience, training and professional knowledge in arriving at my opinions. While I have already provided you with the summary of my opinions, please let me explain the underlying basis for reaching them.

I. Sexual Abuse of Children

Initially, it is important to note that it is tremendously difficult to identify the sexual abuse of a child. Oftentimes, for reasons such as fear, embarrassment or intimidation, children are afraid to come forward and admit they have been abused. The abuse continues unnoticed and untreated while the child is irreparably damaged.

Although young children may not be emotionally advanced enough to fully comprehend the harm they are suffering while they are being abused, they are able, in a general sense, to understand what they are experiencing is improper. The confusion generated by acts of sexual abuse is compounded by the fact that the abuser is a family member or someone close to the child. While they understand that something wrong is happening to them, children are unable to process why a family member (or somebody else in a position of trust) is doing something that is so harmful. The child is afraid to report the abuse for fear that they will lose their relationship with the person who is abusing them, they may hurt the abuser in some fashion or that the child is the person who is doing something wrong.

Children who suffer sexual abuse over a lengthy period will often develop low self-esteem, a sense of low self-worth and an abnormal view of sex. The child will often become distrustful of adults, prefer to be alone, and they may become suicidal. The
abuse may manifest itself in other fashions such as difficulty sleeping, frequent or recurring nightmares, depression, anger issues and secretiveness.

Overall, the abuse is something that victim is just unable to process. A child’s lack of maturity and experience precludes them from fully appreciating the situation in which they are involved, however, they are fully cognizant of the fact that what is occurring is something that is abnormal and wrong.

II. Suicide Among Teenagers

There is little question that teens are prone to experience dramatic highs and lows. While we expect teenagers to be somewhat carefree, they are exposed to stress and confusion just like their adult counterparts, which is often brought about, for example, by a pressure to succeed, perceived or actual, or by financial uncertainty in their family lives. Divorce or a new family that may include step parents, step-siblings or half siblings will often have an emotional impact that teens are unable to process due to a lack of maturity.

When considering suicide, a parent may notice a change in eating habits, a change in sleeping habits, removal from the family, violent behavior, alcohol abuse, personality and mood changes and a loss of interest in activities.

III. Lynn Groat Was Molested by Terry Toledo

Lynn Groat committed suicide on September 4, 2010. In her hand, there was a handwritten note stating “This is because of him.” Sometime in the 1999 time frame, Lynn became involved in the Third Kilometer charity. My understanding of the Third Kilometer is that it is a charitable foundation formed by Mr. Toledo that was meant to help underprivileged children.

Right before Lynn began attending Third Kilometer functions, one of her parents walked out on her. Her remaining parent was forced to work multiple jobs to ensure that they could make ends meet. The abandonment by a parent would have most likely caused tremendous feelings of depression, anger, revolt and a sense of self-loathing. Although it would have been helpful to have medical and/or psychiatric records to review for this time period, I understand that there are none available. However, Morgan Groat’s testimony about Lynn reveals all that I need to know.

Immediately before attending any programs with the Third Kilometer, Lynn was angry and confused. She apparently expressed a lot of anger toward her remaining parent. This anger appeared to be abated for a short time upon enrolling in the Third Kilometer and, Lynn even expressed signs of being a happy child.

However, any sense of normalcy seemed to disappear once Lynn became involved with Terry Toledo on a regular basis. While Lynn seemed to act like a normal child when with Toledo, this was simply a part of the abuse process. It is my opinion that Lynn was being abused by Toledo, but Lynn believed this was a normal relationship
between an adult and child. I understand that Lynn did not really have any strong family relationships, so being abused possibly would have seemed normal to her.

The evidence of abuse is most prominent by Lynn’s reaction upon Toledo’s termination of the relationship. Lynn demonstrated symptoms of low-self worth and believed that she did something wrong. Lynn believed that Toledo did not want to be with her anymore because of something that she did. These are classic signs of an abused child.

Signs of Toledo’s abuse are also prominently demonstrated by Lynn’s behavior once the story about Toledo attacking all of the children became public knowledge. There was a complete change in Lynn’s personality and activity level. This was a young woman who was involved in school activities and was outgoing. She was thinking about going to college.

Then, immediately after the story broke, Lynn decided not to go to college and she stopped talking to everybody. I also acknowledge that Lynn was depressed and angry when her parent left her when she was 8 years old. I understand that these behaviors are also consistent with abuse, but based upon my review of the facts, this could not possibly be the case. Further, I do not believe that Lynn’s uncle abused her in any fashion. There is absolutely no indication, other than some very circumstantial evidence requiring numerous logical leaps, that this would have been something that happened. There is not way to opine with any certainty that this is the case, and anybody who does have that opinion would be doing nothing more than guessing.

These events ultimately culminated with Lynn’s suicide on September 4, 2010. Lynn was found holding a note with the phrase “This is because of him” written on it. I believe the “him” Lynn was referring to most certainly was Mr. Toledo.

Accordingly, based upon the above facts, it is my opinion, with a reasonable degree of professional certainty, that Lynn was sexually abused by Mr. Toledo, and that Lynn’s suicide was directly caused by that abuse.

All of the opinions contained herein have been rendered with a reasonable degree of professional certainty. I reserve the right to supplement this report, and the opinions contained therein, in the event that there are supplemental documents disclosed or other evidence comes to light.

Very truly yours,

Jackie “Doc” Ellis
Curriculum Vitae of Jackie “Doc” Ellis

Education

1979 Bachelor’s in Psychology, University of Akron
1981 Master’s Degree in Psychology, University of Minnesota
1985 Ph.D. in Psychology, University of Minnesota

Work History

1979-1987 Minnesota Department of Corrections, Clinical Psychologist. Treated inmates in a variety of settings, including group and one-on-one sessions; advised on parole hearings

1987-present Ellis and Associates, Clinical Psychologist. Private practice with an emphasis in adult and adolescent behavioral studies. Particular emphasis placed on eating disorders, sleep disorders, and general depression disorders. Also provide litigation support as an independent consultant providing expert insight. Services are provided to a majority of plaintiffs; however I performed approximately 15% of my work for defendants.

Publications

Eating Disorders in Females Ages 20-25, American Scientific, March 1989
Going the Extra Kilometer. The Terry Toledo Story, work in progress.

Consulting Rates

$400 per hour pre-trial work

$600 per hour for trial preparation and testimony
January 8, 2013

Sidney Bream, Esquire
Bonds, Bonilla and Van Slyke, PC
1013 60th St.
District of Steelton, USA 12345

Re: Groat v. Steelton State University

Dear Ms. Bream:

Pursuant to your request, I am writing to offer you my opinions concerning the alleged sexual assault of Lynn Groat. In order to assist me in rendering my opinions, you have forwarded to me a copy of the pleadings, discovery materials and depositions from this matter. I have reviewed these materials, and, after doing so, I have arrived as the conclusion that Lynn Groat was sexually assaulted when she was a child, however, the assault was not perpetrated by Mr. Toledo. Rather, it is my opinion, within a reasonable degree of professional certainty, that Lynn Groat was assaulted by her uncle, Jed Griggs.

A. Characteristics of Pedophiles

Before attempting to undertake an analysis of this issue, the dominant societal image of a pedophile must be disregarded. Too often, most people believe a child abuser is the creepy old man in a trench coat, driving around in a dilapidated minivan and offering candy to children. It is not that this image is not warranted, or does not have a place in our social conscience, but the image is one that presents a very real danger in identifying actual dangers to our children. More often than not, instead of driving the minivan, the pedophile is actually in already in our home, our school and our places of recreation.

Mr. Toledo is a prime example of this. While I do not believe he abused Lynn, he has certainly been accused and convicted of committing sexual abuse against children. This is a man of national prominence, a successful baseball manager and the founder of the one the largest charity organizations of its kind. He is married and has children. He was trusted with other people’s children. He is, unfortunately, a perfect example of the dangers that are presented with actual pedophiles—they are often times those we least expect.

It is no secret that pedophiles will excel in their relationships with children but they will usually struggle in having meaningful relationships with adults. A relationship with a child is much easier for them to handle. In that regard, a pedophile is typically attracted to children of a specific gender and age range. Those attracted to females usually prefer 8 to 10-year-old girls while those who prefer males usually seek out 11 to 13-year-old boys.
When discussing a child that the pedophile is pursuing, they will talk about the child as if they were talking about their spouse or lover, often referring to them with terms of affection. Pedophiles are usually anti-social and have very few friends. They are introverts who share few details about their personal history.

In some cases, pedophiles attempt to put themselves in a position where they will have primary responsibility (such as a becoming a babysitter) for their victims. This scenario of having the victim alone permits easier control and access.

Of course, one of the hallmark characteristics of a pedophile is that they seek out children who are in need of attention and/or affection. These children are generally more susceptible to manipulation and easier for the aggressor to break down.

**B. Indicators of Suicidal Behavior**

A diagnosis of depression carries a strong red flag that the individual may commit suicide. It is not my point to say that all those with depression are suicidal, however, depression is an condition that is often related to suicide and, therefore, one that must be considered. In fact, approximately 90% of those who commit suicide have been diagnosed with depression or another type of mental disorder. Clinical depression is generally displayed by a deep sadness, loss of interest, trouble sleeping and trouble eating.

Generally, the decision to commit suicide will follow a traumatic life event. Another major factor in such a traumatic decision is the occurrence of physical or sexual abuse. When these factors are cumulative, the risk grows exponentially.

**C. Lynn Groat was not Molested by Toledo**

I am of the opinion that Lynn Groat was never molested by Terry Toledo. First and foremost, as I mentioned, a pedophile will generally confine themselves to a specific gender. Although not unheard of, pedophiles infrequently seek relationships with both sexes.

While the number of Mr. Toledo’s victims are not yet fully realized, and it appears there are more children affected than those that have come forward, there is one factor that ties all of the known victims together—most were boys. Based upon the evidence of record, it is abundantly clear that Mr. Toledo was interested in young males.

This is not to say that Lynn was not sexually abused. To the contrary, every fact presented to me indicates that she was. However, in direct contradiction of the Groat family’s accusations, every indication is that Lynn was abused by Jed Griggs, her uncle.

While we know little of Mr. Griggs’s history, we know enough to demonstrate that he fits the pattern of a pedophile. This was a young man who was physically abused and neglected by his father. He was reclusive and did not speak to many in the Groat household. Yet when he did speak, he would often discuss Lynn in very selective
terminology, such as angel, that one would expect would be used to describe a spouse or significant other.

In addition to this fact, Mr. Griggs was often left alone with Lynn while Lynn’s parent was working. Lynn, at the time, was very despondent, demonstrated signs of depression and overall poor mental health. What is even more troubling is the fact that Mr. Griggs would spend his free time watching the young girls at a near-by elementary school play outside while on recess.

All of these factors, combined with Lynn’s corresponding personality changes, demonstrate that Mr. Griggs was likely molesting her while he stayed with the Groat family. Interestingly, Lynn’s personality changed for the better when Mr. Toledo became her big brother through the Third Kilometer. If she were being molested by Mr. Toledo, it would be expected that she would sink further into depression, and that she would be much more difficult. Instead, the evidence demonstrates that she was receiving positive reinforcement, and despite Mr. Griggs’s actions, she was actually growing as a person.

While I admit that it was inappropriate, if true, for Mr. Toledo to wrestle with a young female, there is no indication that he did anything improper. Again, it is not my purpose to find something redeeming in Mr. Toledo as an excuse for his sins, I just do not find it likely that Mr. Toledo sexually abused Lynn.

D. The Cause of Lynn’s Suicide is Unknown

It is entirely reckless, based upon the facts that are known, to point the finger at one person and say they are the cause of Lynn’s suicide. The Groat family bases its accusations upon a dissimilar abuse pattern and a non-descript note an effort to blame Mr. Toledo for their daughter’s death.

Lynn was a troubled young adult with a troubled childhood. One of her parents walked out on her, her other parent did not maintain much of a presence in the home, she was left alone with an uncle who sexually abused her while her parent was working or dating, her only role model was taken away from her and later accused and convicted of committing a heinous series of crimes. Essentially this is a recipe for disaster.

Taking these factors into consideration, it is not difficult to see that Lynn was most likely severely depressed and troubled immediately before her suicide. However, there are several key factors that are of critical importance to note. The day she committed suicide, Mr. Toledo was convicted on numerous offenses of sexual abuse of young boys. This was a man she trusted and looked up to. This would have been devastating news for a person of sound mind to stomach. Second, in the weeks preceding her death, she received a letter from Mr. Griggs. While this letter was non-descript as well, Mr. Griggs did apologize for all that he had done while staying with her when she was young. Third, Mr. Griggs died in combat immediately preceding her suicide. Lynn was deprived of any chance she would ever have of confronting him with the horrors he visited upon her.
Taking all of these events into consideration, as is prudent among respectable doctors, there is no way to base her suicide upon a single, solitary event or purpose. As such, I cannot see how Steelton State could possibly be liable for these events.

All of the above opinions that I have offered have been made with a reasonable degree of professional certainty.

Very truly yours,

Chris Nutting
Curriculum Vitae of Chris Nutting

Education

2008  Bachelor’s in Psychology, Texas A.M. University
2011  Master’s in Psychology, Steelton State University

Work History

2008-present  Steelton State University Adolescent Behavioral Clinic. I am a senior supervisor of staff responsible for caring to children ages 2-18. Most work is performed on children who have been abused physically, verbally and/or sexually. I also provide volunteer services to homeless shelters speaking with veterans. This is my first time testifying as an expert witness.

Publications

Betrayal of trust: The abuse of child movie stars, Maximum Magazine, Fall 2011.

Consulting Rates

$250 per hour
IN THE DISTRICT COURT OF STEELTON
THE UNITED STATES OF AMERICA

MORGAN GROAT,

Plaintiff,

v.

STEELTON STATE UNIVERSITY,

Defendant.

JOINT EXHIBIT LIST

A. E-mail correspondence between Helen Foolin and Morgan Groat
B. Suicide note
C. E-mail correspondence between Alex Johns and Robby Bricken
D. E-mail correspondence between Terry Toledo and Morgan Groat
E. Photo of Steelton State University dugout
F. NCA Press Release
G. Letter from Jed Griggs
Okay, thank you for the information. I will place these communications into the file and make sure that we monitor the situation (I keep all email communications for our records, so all future communications will also be kept in our file). If you have any additional questions about us, or what we are doing, please let me know.

Helen
Senior Counselor
Third Kilometer
“Going the Extra Kilometer for Children’s Sake”

Helen, I understand your concerns. Before my spouse Pat left, Pat was very abusive to Lynn. Pat was always calling her names, but Pat never hit her. There were times when Pat would come home drunk and go into Lynn’s room at night, but I have no idea what Pat was doing in there.

I have not noticed that Lynn was depressed, but with my work schedule, we do not see each other very often. I wish I could tell you more. All that I know is that Lynn has been getting in trouble in school for being disruptive and combative. She has not been in any fights, but she does not like to listen to her teachers.

Lynn does like sports. In fact, she is very big SSU baseball fan and wants to play there someday. No matter what she is doing, Lynn will watch the SSU ball games whenever they are on
1. Do you know how long Lynn has been depressed? I know that she may not have been clinically diagnosed, but she is definitely suffering from depression.

2. What are the things that make her happy? We were able to get her interested in activities dealing with sports, and she seemed to want to get involved, but she was nervous interacting with the other kids.

3. I hope this does not sound too inappropriate, but I need to ask? Was Lynn ever abused? I know it sounds terrible for me to ask, but she is showing signs that she has been abused in some manner. Specifically, she does not like to talk, she keeps to herself and she seems very distrustful of adults.

Trust me, I would much rather ask these questions in person, but I know that with your schedule, it is difficult for us to talk.

Helen Foolin
Senior Counselor
Third Kilometer
“Going the Extra Kilometer for Children’s Sake”

***************

-----Original Message-----
From: Morgan Groat [sgroat@geemail.com]
Sent: April 30, 2001
To: Foolin, Helen [mailto:hfoolin@the3k.org]
Subject: RE: Lynn

Helen, thank you so much for your help. I know that you tried your very best, but Lynn is just having such a tough time.

-----Original Message-----
From: Foolin, Helen [mailto:hfoolin@the3k.org]
Sent: April 30, 2001
To: Morgan Groat
Subject: RE: Lynn

Of course you can tell her. Now that you have signed the form, this is a done deal. I will keep this form with our records. It has been a pleasure helping Lynn out over the past year. I know she has not made much progress, but I am positive this is going to be great for her.

Please let me know if you have any questions.

Helen
Senior Counselor
Third Kilometer
“Going the Extra Kilometer for Children’s Sake”

-----Original Message-----
From: Morgan Groat [sgroat@geemail.com]
Sent: April 30, 2001
To: Foolin, Helen [mailto:hfoolin@the3k.org]
Subject: RE: Lynn

Helen, this is wonderful news indeed. Can I tell Lynn? She will be so excited. I have attached the completed form for your records.

-----Original Message-----
From: Foolin, Helen [mailto:hfoolin@the3k.org]
Sent: April 30, 2001
To: Morgan Groat
Subject: RE: Lynn

I have some very exciting news. I know that we have discussed the fact that Lynn is a huge SSU baseball fan. As I am sure you know, Mr. Toledo, the manager for the SSU team, has heard about Lynn’s interest and wants to take her as his little sister.

We usually do not pair men and women together, but given the circumstances, I think this would be a very good experience for Lynn. Mr. Toledo has indicated he would take Lynn to baseball games and let her sit with team in the dugout.

I have not told her yet as I do not have your permission, but this could be exactly what the doctor ordered to get Lynn out of her depression.

Let me know so that I can get the administrative paperwork taken care of. You will have to sign a form saying that you do not object to your daughter having a male big brother. It is standard protocol.

I have attached it for your review and signature.

Helen Foolin
Senior Counselor
Third Kilometer
“Going the Extra Kilometer for Children’s Sake”
It was because of him.
-----Original Message-----
From: Alex Johns [ajohns@ssu.edu]
Sent: August 8, 2000
To: Robby Bricken [rbricken@ssu.edu]
Subject: RE: Coach T

Robby, I just met with McClymonds. Apparently he found Coach in the dugout. I do not know why he is always hanging out in that place, but you need to have your men put a stop to this. He can’t keep doing this kind of thing there. Somebody could really read way too far into this and assert there are serious transgressions going on. This could be a PR nightmare.
Morgan, I really enjoyed meeting you and Lynn today. I think this is going to be a great experience for her. It was nice to see her smile. From my conversations with Helen, I understand this does not happen very often.

-T

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-----Original Message-----
From: Terry Toledo [ttoledo@ssu.edu]
Sent: August 21, 2003
To: Morgan Groat [sgroat@geemail.com]
Subject: RE: Lynn

Morgan, after two full seasons of helping out our baseball team, it is hard for me to describe to you the improvement I have seen in Lynn’s demeanor. She seems to be generally happy now.

Unfortunately, as we discussed, I can no longer be Lynn’s big brother. There are just so many children who need my help here at 3K, and now that Lynn’s condition has improved, I am afraid I need to help other children.

Please know this has nothing to do with Lynn or you, it is just a nature of the business. I truly cherish my time with Lynn, and I wish you both the best.

-T
NCA Press Release
January 1, 2011

Following a lengthy investigation of the Terry Toledo sexual abuse allegations at SSU, and in light of the criminal conviction of Mr. Toledo for the sexual abuse 8 minors, the NCA, in an effort to preclude this type of heinous criminal activity to occur again at a member school, issues the following sanctions. While it is true that SSU has been forthcoming cooperative in the NCA investigation in this matter, we find that certain administrative members of SSU permitted this type of abuse to go forward in an effort to simply avoid bad publicity. As a result, SSU will be fined 10 million dollars, its baseball team will be precluded from postseason play for a period of 6 years, and Mr. Toledo will receive a lifetime ban from participating in any NCA sports.
Dear Lynn,

Things are pretty rough here, and I have a bad feeling about not making it out. I have been doing a lot of thinking lately, and although it does not mean much, I just wanted to say I am sorry.

Semper Fi

Jed
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STEELTON

MORGAN GROAT, on behalf of the
Estate of LYNN GROAT;

Plaintiff,

v.

STEELTON STATE UNIVERSITY;

Defendant.

JURY INSTRUCTIONS

1. It is Plaintiff’s burden to prove a cause of action by a preponderance of the
   evidence against Defendant.

2. If you find that Plaintiff has established by a preponderance of the
   evidence that SSU knew, or should have known, that Terry Toledo was a danger to Lynn
   Groat, and that Lynn Groat’s suicide was caused by this failure to supervise Terry
   Toledo, then you must find in favor of Plaintiff.

3. A person conducting activity through servants or other agents is liable for
   harm to others if the person is negligent or reckless:
   
   a. in employing an improper person in work involving risk of harm to
      others;
   
   b. in supervising the activity; or
   
   c. in permitting, or failing to prevent, negligent or other wrongful
      conduct by persons, whether or not his or her servants or agents,
      upon premises under his or her control.

In determining whether Steelton State University was negligent or reckless in supervising
and/or retaining Terry Toledo, you should consider whether Steelton State University
knew, or should have known, that Terry Toledo possessed certain characteristics or propensities, or was engaging in behavior or conduct that rendered him unfit or incompetent to work in the position with Steelton State University.

3. If Steelton State is able to demonstrate that it did not, or could not, have known about Terry Toledo’s criminal activities, then you should find in favor of Steelton State University.

4. If defendant’s negligent conduct led to or made it reasonably foreseeable that the deceased would commit suicide, then suicide is not an independent intervening cause breaking the chain of legal causation.

5. Suicide will not break chain of causation if it was a foreseeable result of defendant’s tortious act.

6. You are the sole judges of whether testimony should be believed. In making this decision, you may apply your own common sense and everyday experiences.

7. In determining whether a witness should be believed, you should carefully judge all the testimony and evidence and the circumstances under which each witness has testified. Among the factors that you should consider are the following:

   a. the witness’s behavior on the stand and way of testifying;

   b. the witness’s opportunity to see or hear things about which testimony was given;

   c. the accuracy of the witness’s memory;

   d. whether the witness has a motive not to tell the truth;

   e. whether the witness has an interest in the outcome of the case;

   f. whether the witness’s testimony was consistent;
g. whether the witness’s testimony was supported or contradicted by other evidence; and

h. whether and the extent to which the witness’s testimony in the court differed from the statements made by the witness on any previous occasion.

8. You need not believe any witness even though the testimony is uncontradicted. You may believe all, part, or none of the testimony of any witness.

9. An expert is a witness who has special training or experience in a given field. You should give expert testimony the weight and value you believe it should have. You are not required to accept any expert’s opinion. You should consider an expert’s opinion together with all the other evidence.
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STEELTON

MORGAN GROAT, on behalf of the
Estate of LYNN GROAT;

Plaintiff,

v.

STEELTON STATE UNIVERSITY;

Defendant.

JURY INTERROGATORIES

1. Do you find that Lynn Groat was sexually abused by Terry Toledo?
   Yes____  No____

If your answer to this question is yes, proceed to question 2. If your answer is no, then you are finished. Please inform the bailiff that you have completed the interrogatories.

2. Do you find that Lynn Groat committed suicide because she was abused by Terry Toledo?
   Yes____  No____

3. Did SSU know, or should it have known, that Terry Toledo was committing acts of sexual abuse against minors while he was the manager of SSU’s baseball team?
   Yes____  No____

4. Could SSU have known, or through the use of reasonable diligence should it have known, that Terry Toledo’s conduct could have resulted in the death of a child that he sexually assaulted?
   Yes____  No____

Please inform the bailiff that you have completed the interrogatories.