



**2005 PENNSYLVANIA STATEWIDE
HIGH SCHOOL MOCK TRIAL COMPETITION**

**LINDA and JON GALLO, as Executors of
the Estate of KEITH GALLO, Deceased,
and Individually in their Own Right**

v.

**RILEY URBANSKI, a/k/a SKEE POLL, Individually
and d/b/a THUGS & SKEES, a Sole Proprietorship**

***SPONSORED BY THE YOUNG LAWYERS DIVISION
OF THE PENNSYLVANIA BAR ASSOCIATION***

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Problem Questions & Contact Information

Questions regarding these case materials should be sent to David Keller Trevaskis at the Pennsylvania Bar Association (PBA). Case material questions will be answered in cooperation with the Statewide Mock Trial Executive Committee. Questions regarding mock trial procedure, including any questions involving the Rules of Competition or Rules of Evidence (Pennsylvania Mock Trial Version), should be directed to your District or Regional Mock Trial Coordinators.

Answers to legitimate and non-repetitive questions will be posted on the mock trial Web site www.pabar.org under the Young Lawyer's Division (YLD) link (direct access at www.pabar.org/yldstatewidemock.shtml). The questions and answers will be posted in a single supplemental memo; the memo will be continually updated through January 21, 2005.

You may begin submitting questions anytime. **The deadline for submitting questions is January 14, 2005.** The last update to the supplemental memo will be posted by January 21, 2005. The January 21, 2005, memo will become the official supplemental memo and may be used in the Competition. Earlier dated copies may not be used. Please consult Rules of Competition regarding the evidentiary value teams are to give the official supplemental memo.

Questions must be sent in writing by one of the methods listed below. Please be sure to include return contact information in the event we need to reach you to clarify a question.

NO QUESTIONS WILL BE CONSIDERED UNLESS SUBMITTED UNDER THIS PROCEDURE.

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PO Box 186
Harrisburg, PA 17108-0186

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Teams without access to the Web site can request paper copies from Jayanne Hayward at the PBA (jayanne.Hayward@pabar.org). She has the same address and fax number as above). Please be sure to include your return address.

Introduction and Acknowledgments

Welcome to the 2005 Statewide High School Mock Trial Competition - the twenty-first anniversary of one of the top secondary level academic competitions in the Commonwealth! The Competition, started in 1984, is sponsored by the Young Lawyers Division of the Pennsylvania Bar Association (PBA/YLD). It provides high school students with a firsthand experience of the American judicial system.

The problem arises from a tragedy at a concert. This year's case materials were created by third year Temple University Beasley School of Law student Matt Sauerwald, a member of that school's nationally ranked mock trial team. Philadelphia attorney Gwen Stern and staff of the Temple-LEAP Project helped review initial drafts of the problem.

The 2005 case materials were revised and edited for competition purposes by members of the Statewide Mock Trial Committee which is co-chaired by Allegheny County attorney Jillian Duhl and Bedford County District Attorney Bill Higgins. A special thanks is given to YLD leadership under Chair James Wells of Westmoreland County for assistance in developing the problem materials and organizing the competition. Past Mock Trial Chair Jane Meyer provided invaluable assistance throughout the development process and completed the final version of the problem.

Early drafts of the problem benefited from the careful editing of Montgomery County attorney Donna Adelsberger, Philadelphia lawyer Amy Niedzalkoski and Anne Panfil, Chief Counsel for the Criminal Rules Committee of the Pennsylvania Supreme Court. Past mock trial authors and now practicing attorneys Gerald Plourde of Philadelphia and Rob Stapleton of Washington, D.C. also provided their assistance, as did PBA Pro Bono Coordinator David Trevaskis and Harrisburg lawyer Alan Boynton.

We thank, as well, the hundreds of volunteers who annually contribute their time and energy to the overall organization and running of the program, particularly Mock Trial Co-chairs Higgins and Duhl. Last, but certainly not least, we thank the PBA staff, headed by Executive Director Barry Simpson and Deputy Executive Director Fran O'Rourke. Many PBA staffers, too numerous to mention, provide valuable time and talent throughout the mock trial season. Without their help the Competition would not be a success. However, a special thanks is given to Jayanne Hayward, the YLD Coordinator at the PBA, who serves as the main point of contact for the entire program.

We hope that teams find the materials interesting and wish them the best of luck!

FOREWORD

This year's fictional civil action is brought by the parents of a young man who died from injuries caused by a crowd-crushing incident at a rap concert. The parents claim that the performer Skee Poll incited the crowd to charge the stage while performing a song, resulting in the death of their son. One of the issues raised by the performer is that s/he cannot be liable because music lyrics are protected speech under the First Amendment.

Entertainment, in the form of motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works, have been afforded the utmost First Amendment protection since such forms of expression are considered political speech. Political speech is not limited to the political arena per se, but includes any form of speech that addresses societal values. Speech does not lose First Amendment protection merely because the ideas are offensive; the protection extends regardless of the truth, popularity, or social utility of the ideas and beliefs offered. Radical, and even dangerous ideas are all equally entitled to First Amendment protection including the abstract advocacy of lawlessness. This principle was recognized by the United States Supreme Court in the seminal case of Brandenburg v. Ohio. The Court recognized, somewhat paradoxically, that the right to advocate lawlessness is one of the ultimate safeguards of liberty. Nevertheless, speech is not entitled to First Amendment protection under Brandenburg if it incites imminent lawless action. It is under this theory of incitement that the plaintiffs in this year's case seek to hold Skee Poll liable for their son's death.

This case represents a somewhat growing trend in American jurisprudence whereby injured parties have sought to hold members of the entertainment industry liable for violent acts allegedly incited by some form of entertainment. The most notable cases include allegations that violence in the movie Boulevard Nights incited an audience member to shoot another audience member, that the TV movie Born Innocent incited assailants to rape a young girl in the manner depicted in the movie, that the movie Boyz In The Hood incited violence, that the violent gang movie The Warriors incited an audience member to stab another audience member, that the movie Natural Born Killers incited two viewers to go on crime spree seriously wounding a convenience store clerk during a robbery, that violent programming on the major TV networks incited a boy to shoot his neighbor, that a stunt on The Tonight Show with Johnny Carson incited a child to imitate the act and hang himself, that the game Dungeons and Dragons incited a young boy to commit suicide, that the music of rock performer Ozzy Osbourne incited two separate acts of suicide, that the music of Judas Priest incited a suicide, and that violent lyrics from Tupac Shakur's 2Pacalypse Now album incited a listener to murder a police officer.

8. Total Watchoverya Arena capacity was 6,350 for the concert on June 18, 2003.
9. At approximately 11:40 p.m., the Defendant performed the song Fire It Up.
10. During the performance of Fire It Up, the audience in the festival seating area on the floor of the Watchoverya Arena surged forward to the stage causing a crush near the front of the stage.
11. Decedent Keith Gallo was located in the festival seating area during the performance of Fire It Up.
12. During the performance of Fire It Up, the audience surge caused Keith Gallo to be trampled and pushed to the ground by other audience members, resulting in a severe head injury.
13. After having fallen to the ground by the audience surge, other audience members fell on top of Keith Gallo and crushed him, resulting in asphyxiation.
14. The combined head trauma and asphyxiation were so severe that Keith Gallo retained no cognitive functioning at any time after June 18, 2003.
15. As a result of the injuries sustained on June 18, 2003, Keith Gallo was pronounced dead on July 5, 2003.
16. Keith Gallo, decedent, left the following persons surviving him, entitled to recover damages for his death under the laws of the Commonwealth of Pennsylvania:
 - (a) Linda Gallo – Mother
 - (b) Jon Gallo – Father
 - (c) Kate Gallo – Sister
 - (d) Reggie Gallo – Brother

COUNT 1: WRONGFUL DEATH / LIABILITY IN TORT (INCITEMENT)

17. Plaintiffs Linda and Jon Gallo, duly appointed and acting as Executors of the Estate of Keith Gallo, deceased, incorporates Paragraphs 1 through 16 as if set forth at length.
18. This civil action is brought pursuant to the Wrongful Death Act.
19. Decedent Keith Gallo did not bring any other action during his lifetime and no other action for his death has been commenced against the Defendant.
20. This action is brought to recover, on behalf of all the statutory beneficiaries of the decedent, all damages legally available under the Wrongful Death Act.
21. The audience surge and resultant trampling and crushing in the festival seating area were directly and proximately caused by Defendant's act of inciting the audience.

22. Fire It Up contains flagrantly violent lyrics likely to incite imminent lawless conduct by the audience members.
23. As performed by Defendant on June 18, 2003, Fire It Up in fact incited imminent lawless conduct by the audience members, including but not limited to, disorderly conduct and illegal entrances by audience members onto the festival seating area.
24. During the performance of Fire It Up, the Defendant repeatedly commanded and directed the audience to disregard the Watchoverya Arena security guards and to fight and/or rush to the stage.
25. During the performance of Fire It Up, the Defendant repeatedly commanded and directed the audience to “burn the place down” and to “tear it all down, the walls to the ground.”
26. Defendant’s repeated directions and commands during Fire it Up incited audience members in assigned arena seating areas to breach security and join the festival seating audience on the concert floor.
27. Defendant’s repeated directions and commands during Fire it Up incited the audience in the festival seating area to violently surge to the stage.
28. Defendant knew, or should have known, that it was likely that his/her incitements during the song Fire It Up would cause imminent lawless action by the audience.
29. As a direct and proximate result of Defendant’s incitements, the audience in the festival seating area of the Watchoverya Arena surged forward.
30. As a direct and proximate result of Defendant’s incitements, the audience surge caused Keith Gallo to be trampled and crushed resulting in severe head injury and asphyxiation, leading to his death.
31. By reason of Keith Gallo’s death, his survivors have incurred funeral and burial expenses and have sustained severe pecuniary loss including support, comfort, counsel, services and companionship.

WHEREFORE, Plaintiffs Jon and Linda Gallo, as Executors of the Estate of Keith Gallo, seek judgment against the Defendant Riley Urbanski/ Skee Poll in an amount in excess of the compulsory arbitration limits of Barrister County.

COUNT 2: SURVIVAL ACTION / LIABILITY IN TORT (INCITEMENT)

32. Plaintiffs Linda and Jon Gallo, duly appointed and acting as Executors of the Estate of Keith Gallo, deceased, incorporates Paragraphs 1 through 31 as if set forth at length.
33. Plaintiffs bring this action pursuant to the Pennsylvania Survival Act.

34. The occurrence of the aforesaid incident and resultant fatal injuries to Keith Gallo were caused by the Defendant as set forth above in Paragraphs 21 through 30.
35. As a direct and proximate result of Defendant's incitements, Keith Gallo sustained severe injuries that caused him great physical and mental pain and anguish and resulted in his death, July 5, 2003.
36. As a direct and proximate result of Defendant's incitements, Keith Gallo ceased to be a productive member of the workforce and thus a claim is made for lost wages.
37. By reason of his death, Keith Gallo's surviving relatives have incurred funeral and burial expenses and have sustained severe pecuniary loss including support, comfort, counsel, services and companionship.

WHEREFORE, Plaintiffs Jon and Linda Gallo, as Executors of the Estate of Keith Gallo, seek judgment against the Defendant Riley Urbanski/ Skee Poll in an amount in excess of the compulsory arbitration limits of Barrister County.

Respectfully submitted,

/s/ _____

Attorney For Plaintiff

Dated: September 27, 2004

15. Admitted.

16. It is admitted that the persons named in paragraph 16 survived the decedent. Proof of their damages is demanded at trial.

COUNT 1: WRONGFUL DEATH / LIABILITY IN TORT (INCITEMENT)

17. Defendant incorporates his/her responses to Paragraphs 1 through 16 as if fully set forth here at length.

18. Admitted.

19. Admitted.

20. Admitted.

21. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that the Defendant incited the audience.

22. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that the lyrics from Fire It Up were likely to have incited imminent lawless conduct by audience members.

23. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that the Defendant incited imminent lawless conduct.

24. This averment sets forth a legal conclusion to which no response is required.

25. Denied.

26. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that the Defendant incited the audience in assigned seating areas.

27. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that the Defendant incited the festival seating audience.

28. This averment sets forth a legal conclusion to which no response is required.

29. This averment sets forth a legal conclusion to which no response is required.

30. It is admitted that the audience surge caused injuries to Keith Gallo as described. Otherwise, this averment sets forth a legal conclusion to which no response is required.

31. It is admitted that the Plaintiffs incurred funeral and burial expenses. Proof of damages for pecuniary loss is demanded at trial.

COUNT 2: SURVIVAL ACTION / LIABILITY IN TORT (INCITEMENT)

32. Defendant incorporates his/her responses to Paragraphs 1 through 31 as if fully set forth here at length.
33. Admitted.
34. This averment sets forth a legal conclusion to which no response is required. Defendant otherwise incorporates his/her responses to Paragraphs 21 through 30 as if fully set forth here at length.
35. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that Keith Gallo suffered any conscious pain and suffering.
36. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that Keith Gallo was employed at the time of death, or that he had intentions to be employed.
37. It is admitted that the Plaintiffs incurred funeral and burial expenses. Proof of their damages for pecuniary loss is demanded at trial.

NEW MATTER

38. Plaintiffs' action is barred by the First Amendment to the United States Constitution. The music performed by Defendant Riley Urbanski, as Skee Poll, on the evening of June 18, 2003, is protected speech for which Defendant cannot be punished through a civil action.
39. Watchoverya Arena was responsible for crowd security and is liable for the injuries and death caused to Keith Gallo.
40. Third parties in the crowd, not known to Defendant, are liable for the injuries and death caused to Keith Gallo.
41. Keith Gallo contributed to his own injuries by leaving his assigned seat in Section 110, Row A, Seat 1, and illegally entering the festival seating area at the Watchoverya Arena.

Respectfully Submitted

/s/ _____
Attorney for the Defendant

October 15, 2004

LINDA GALLO and JON GALLO, as Executors of the Estate of KEITH GALLO, Deceased, and Individually in their Own Right, <p style="text-align: center;">Plaintiffs</p> <p style="text-align: center;">v.</p> RILEY URBANSKI, a/k/a SKEE POLL, Individually and d/b/a THUGS & SKEES, A Sole Proprietorship, <p style="text-align: center;">Defendant</p>	: IN THE COURT OF COMMON PLEAS OF : BARRISTER COUNTY, PENNSYLVANIA : : : : : No. 2003 CV 2419 : : : : CIVIL ACTION - JURY TRIAL DEMANDED
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OPINION

Currently before the court is a summary judgment motion filed by defendant Riley Urbanski individually and in his/her capacity as sole proprietor of Thugs & Skees, a producer and promoter of music. Defendant is also known as the rap singer Skee Poll. For the reasons set forth below, defendant’s motion will be denied and this matter will be directed to a jury trial.

Background

On June 18, 2003, at a concert featuring Skee Poll, Keith Gallo was seriously injured when he was asphyxiated and trampled on the concert floor of the Watchoverya Arena. The injuries occurred when the crowd surged forward during the song Fire It Up. Keith Gallo was later determined to be brain dead. He died July 5, 2003, after his parents removed him from life support.

In January of 2004, Keith Gallo's parents, Linda and Jon Gallo, filed a Complaint under the wrongful death and survival statutes. That Complaint named as defendants Watchoverya Arena and Riley Urbanski. Watchoverya Arena was named as the owner of the venue and the party responsible for concert security. After both defendants had answered the Complaint and after discovery had been completed, plaintiffs entered into and reached a settlement with Watchoverya Arena. Accordingly, the plaintiffs filed an Amended Complaint September 27, 2004, solely against the defendant Riley Urbanski. Plaintiffs allege in their Amended Complaint that the defendant caused the death of their son through his violent lyrics and commands for the crowd to -break through security and rush the stage. Defendant has filed a motion for summary judgment seeking dismissal of plaintiffs' Amended Complaint.

Legal Discussion

Defendant first seeks summary judgment arguing that the plaintiffs’ cause of action for incitement is barred by the First Amendment since the song Fire it Up is protected speech and defendant is thus shielded from any potential liability.

The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment's protection of our freedom of speech is made applicable to the Commonwealth through the Fourteenth Amendment. J.S. v. Bethlehem Area Sch. Dist., 807 A.2d 847 (Pa. 2001). The heart of the right to free speech is the "ineluctable relationship between the free flow of information and a self-governing people." Id. at 854. The First Amendment prevents government from proscribing speech because of disapproval of the ideas expressed. Id. Courts have jealously guarded the right to free speech. Id. The First Amendment protection of the freedom of speech and of the press is "not based on the naive belief that speech can do no harm but on the confidence that the benefits society reaps from the free flow and exchange of ideas outweigh the costs society endures by receiving reprehensible or dangerous ideas." Herceg v. Hustler Magazine, Inc., 814 F.2d 1017, 1024 (5th Cir. 1987).

While the freedom of speech is rightfully cherished, it is also clear that this right of free speech is not absolute at all times and under all circumstances. For example, certain types of speech can be regulated if they are likely to inflict unacceptable harm. These narrow categories of unprotected speech include: (1) obscene speech; (2) libel, slander, misrepresentation, perjury, false advertising, solicitation of crime, complicity by encouragement, conspiracy, and the like; (3) speech or writing used as an integral part of conduct in violation of a valid criminal statute; and (4) speech that incites imminent lawless action.

In this case, Plaintiffs have asserted the speech at issue incited others to imminent lawless action. This exception to First Amendment protection was addressed by the United States Supreme Court in Brandenburg v. Ohio, 395 U.S. 444 (1969). Under Brandenburg, a plaintiff seeking to hold a defendant liable for injuries caused by speech that incites, has the burden of proving, by a preponderance of evidence, that the speech (1) was directed or intended toward the goal of producing imminent lawless conduct, and (2) was likely to produce imminent lawless conduct. Brandenburg at 447.

Summary judgment is appropriate only when there is no dispute as to the material facts and the party seeking judgment is entitled to prevail as a matter of law, without resort to trial. Only when the facts are so clear that reasonable minds cannot differ, may a trial court properly enter summary judgment. In this case, this court's review of the record indicates that there exists factual disputes as to whether defendant's speech was directed or intended toward the goal of producing imminent lawless conduct and also whether defendant's speech was likely to have produced such conduct. Thus, the issue of whether defendant incited the crowd and caused Keith Gallo's death is for the jury to decide. As a result, defendant's summary judgment motion is denied on this issue.

Defendant's second argument in favor of summary judgment is that third persons in the crowd were the intervening causes of Keith Gallo's death, thus severing any possible connection needed for the plaintiffs to establish that the defendant was the cause of Keith Gallo's injuries.

Under Pennsylvania law, the fact that the acts of a third person or persons intervened between defendant's conduct and the plaintiff's injury does not automatically sever the causal connection necessary to establish liability if that intervening act is a normal or foreseeable consequence of the situation created by the defendant's conduct. This court's review of the record indicates that there exists a dispute of material fact as to whether the intervening acts by third persons who crushed and trampled Keith Gallo were a normal or foreseeable consequence of the situation created by defendant's conduct. Thus, the issue of whether intervening forces were the cause of Keith Gallo's death is for the jury to decide. As such, defendant is not entitled to summary judgment on this issue.

Accordingly, this Court enters the following:

PRE-TRIAL ORDER

AND NOW, this 12th day of December, 2004, Defendant's summary judgment motion is DENIED. This case is hereby scheduled for a one-day trial during the January - March 2005 Barrister County Civil Trial Term.

BY THE COURT:

Honorable M. Sauerwald

Distribution:
Plaintiff's counsel
Defendant's counsel

Applicable Law (Mock Trial Version)

Burden of Proof: In civil cases such as this one, the plaintiffs have the burden of proving their case by a preponderance of the evidence. In this case, the plaintiffs have the burden of proving that the defendant incited the crowd, and that the incitement was the factual cause of plaintiffs' harm.

Incitement: Speech incites if it (1) was directed or intended toward the goal of producing imminent lawless conduct and (2) was likely to produce imminent lawless conduct.

Incite defined: "Incite" means to arouse, stir up, urge, provoke, encourage, spur on, or goad.

Disorderly conduct: Disorderly conduct occurs when a person, with intent to cause public disturbance, disorder or alarm, or recklessly creating a risk thereof: (1) engages in violent or tumultuous behavior; (2) makes unreasonable noise; (3) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

Contributory negligence: General Rule -- In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than the causal negligence of the defendant against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

Negligence defined: the absence of ordinary care that a reasonably prudent person would exercise in the circumstances here presented. Negligent conduct may consist of either an act or a failure to act when there is a duty to act. To prove negligence a plaintiff must show the defendant had a duty, breached that duty, proximately caused the injury and the damages caused by the injury. A duty may be provided by law or relationship or may be created by a reasonably foreseeable outcome of events.

LINDA GALLO and JON GALLO, as Executors of the Estate of KEITH GALLO, Deceased, and Individually in their Own Right,	:	IN THE COURT OF COMMON PLEAS OF BARRISTER COUNTY, PENNSYLVANIA
	:	
Plaintiffs	:	
	:	
v.	:	No. 2003 CV 2419
	:	
RILEY URBANSKI, a/k/a SKEE POLL, Individually and d/b/a THUGS & SKEES, A Sole Proprietorship,	:	
	:	
Defendant	:	CIVIL ACTION - JURY TRIAL DEMANDED

Stipulations

The parties have stipulated to the following:

1. Keith Gallo’s injuries were caused by a combination of compressive asphyxiation and head trauma suffered during a crowd surge on June 18, 2003, at a Skee Poll concert in Reidville, Pa. Keith Gallo’s death was a direct result of these injuries.
2. Keith Gallo’s injuries occurred during the defendant’s performance of the song Fire It Up.
3. Total capacity for the Watchoverya Arena concert on June 18, 2003 was 6,350. Total capacity for the festival seating area was 750. A total of 6,299 ticketed fans actually attended the Skee Poll concert June 18, 2003, including 746 fans admitted to the festival seating area.
4. Based upon review of all discovery materials, the parties agree that by the conclusion of the song Fire It Up, between 100 to 150 fans had entered the festival seating area from assigned seating areas and joined the festival seating crowd, making the total floor crowd between 846 and 896.
5. Issues of liability and damages will be tried separately (bifurcated) for the purposes of trial.
6. Defense witness D’Arcy Ace will be recognized as an expert in the field of crowd safety and crowd management.
7. Evidence of the settlement reached between plaintiffs and Watchoverya Arena is not admissible at trial for any purpose.
8. The parties have stipulated to the authenticity of the following items:

A. The Pleadings: Amended Complaint, Answer with New Matter, Reply to New Matter

B. Exhibits 1 through 4 and their pre-markings

The parties reserve the right to dispute any legal or factual conclusions based on these items and to make objections other than to authenticity.

/s/
Attorney for Plaintiffs

/s/
Attorney for Defendant

January 10 , 2005

Question 3:

Was the Defendant's speech a factual cause of Keith Gallo's injuries and ultimate death?

Yes _____

No _____

If your answer is "Yes," proceed to Question 4. If "No," plaintiffs cannot recover and you should not answer any more questions and return to the courtroom.

Question 4:

Was Keith Gallo contributorily negligent?

Yes _____ No _____

If your answer was "Yes", proceed to Question 5. If "No", please return to the courtroom.

Question 5:

Was Keith Gallo's contributory negligence a factual cause of his injuries and death?

Yes _____ No _____

If your answer was "Yes", proceed to Question 6. If "No", please return to the courtroom.

Question 6:

You may only answer Question 6 if you answered "Yes" to all of the Questions listed above.

Percentage of causal negligence attributable to Defendant _____%

Percentage of causal negligence attributable to Keith Gallo _____%

Your total must add up to 100%

Jury Foreperson

Please return to the Courtroom

WITNESS LIST

The 2005 mock trial problem provides statements from two witnesses on each side. Each side must call each of these witnesses. All witnesses can be played by either boys or girls.

The named plaintiffs, parents Linda and Jon Gallo, are not included on the witness list. Teams representing the plaintiffs at trial are permitted, however, to sit **one** student at the plaintiffs' table to represent a plaintiff/parent. Additionally, teams representing the defense may choose to sit the defendant at the defense table. Please consult the Rules of Competition as to any limits on communications between counsel and those seated at counsel table.

Plaintiffs

1. Cameron Campbell
2. Chris Zimmerman

Defense

1. Riley Urbanski a/k/a Skee Poll
2. D'Arcy Ace

Statement of Cameron Campbell

1
2
3 My name is Cameron Campbell. I'm nineteen years old and currently a freshman at Penn
4 State. Keith Gallo and I were cousins. He died on July 5, 2003, from injuries caused while at a
5 Skee Poll concert. He was only eighteen. We were both raised in Barrister County and had been
6 close since we were small. Keith would have been twenty years old today. My aunt and uncle are
7 devastated. Same for Keith's little brother and sister, my cousins. I miss him. I loved Keith.
8

9 Keith was basically good at everything he did: sports, school, music. You name it. He
10 couldn't wait to get to college. He'd been accepted at Penn State beginning in Fall 2003. He
11 wanted to study business, history and music and try to make the baseball team as a walk-on. Keith
12 was one of the best people I knew. He always made everyone around him better. He even got me
13 to take the SAT's. I was just going to get a job after school but I scored high and now I'm at PSU.
14 That's where Keith would be now if it weren't for Skee Poll.
15

16 Keith loved music and wanted to be a performing artist. He did some metal-rap and
17 performed at small clubs. He drew real diverse crowds and kept misogyny, homophobia and racism
18 out of his stuff, just like Skee Poll. As a graduation present, Keith's parents scraped up some
19 money and bought us both tickets to see Skee Poll on his Rap Mogul tour at the Watchoverya Arena
20 in Reidville. They knew he loved Skee, and they wouldn't let him go when Skee toured here in
21 2000 and 2002 because he was too young. Keith thought the whole act was hot: the fact that Skee
22 Poll grew up around here and rapped about the streets. He liked the whole rags to riches story line,
23 the flashy cars, and the tough talk.
24

25 Keith first became a Skee fan in 1999 when he was fourteen, when Skee came out with his
26 first CD called Skee Poll. I know Skee's like a god in this area, but I'm lukewarm on Skee, no
27 disrespect to my dear cousin, who had kind of a Skee obsession. The album Skee Poll is, was,
28 Keith's second favorite of Skee's albums. That CD went Platinum, which is over one million
29 copies sold. It was an amazing debut. Keith liked that it had both "body and mind"; raw, explosive
30 energy but clever and thoughtful too. Keith did prefer the harder, more raw stuff like the song Riot.
31 I personally liked Gil Scott's Revolution which was about what constructive things you can do with
32 all that energy and anger.
33

34 Keith didn't like Skee's second CD, Black Diamond (2002), too much. Keith didn't think it
35 had much "body" or "mind." He thought it was self-indulgent and too toned down. Most songs
36 were about Skee complaining how tough it was being a phat rich star. It was real tedious. Black
37 Diamond sold only half of what the first album had. Keith did like one cut from Black Diamond, a
38 song called Beat You Down. It was the only really raw emotional song on the CD; the only one
39 with any "street cred" according to Keith.
40

41 Another song from Black Diamond was called FOS Crush. I hadn't recalled the song until I
42 saw a TV report about Keith's death that mentioned the song. I remembered it was one of the few
43 songs from Black Diamond I liked although I forget the lyrics and I never understood the title. But
44 the TV reporter said that FOS crush stands for "front of stage crush"; that's how Keith died. I find
45 that more than a little ironic. The local press really jumped all over Skee Poll then, blaming Skee
46 for Keith's death.
47

48 On June 18, 2003, we got to the show early to tailgate. We hung out in my parent's car and
49 listened to Rap Mogul on the CD player. I drank a little bit of the vodka but Keith declined. Keith
50 loved Rap Mogul and bought it the day it was released in April 2003. It was his favorite CD. I
51 disliked it a lot. It had too much gangsta rap in it; lots of tracks were about violence and making or
52 spending money. You know, bang and bling. The songs have little artistic value. But I knew Keith
53 understood the difference between listening to violent lyrics and being violent.

54
55 Keith especially liked the songs Fire It Up, Riot2 and My Revenge. Right before we left the
56 car, Keith listened to Fire It Up two times straight and screamed along with Skee Poll. Keith, who
57 was often reserved and quiet, told me the song freed him in some way. It was like he had an altar
58 ego who could let loose with songs like Fire It Up. It was very emotional for him. I wasn't thrilled
59 about the lyrics or sound which included the DJ sampling in noises like gunfire, sirens and a martial
60 beat. Even so, Fire It Up does have bottomless energy and really makes you want to move. About
61 everybody in the parking lot seemed to be playing it and screaming along with Skee even though I'd
62 never heard Fire It Up until that night.

63
64 I thought the whole album, and especially the cut Fire It Up, was a gimmick to increase
65 Skee's sales of Rap Mogul since the second album, Black Diamond, had tanked. It might not have
66 been working anyway, since Rap Mogul was only doing a little better than Diamond. Skee was
67 only able to sell out three half-stage shows at the Watchoverya Arena.

68
69 We went inside at around 9:00 p.m. to catch the end of Babysweet, the opening act. We
70 took our seats in Section 110, Row A, Seats 1 and 2, right behind the hockey rink wall. We were
71 near the action but since we were so low, it was hard to see the stage. Keith hated where we were
72 sitting. He told me he wished his parents could have afforded tickets for the festival seating in the
73 front of the stage, but those tickets were three times as much as our \$30 tickets. Festival seating is
74 an area with no seats, just open floor and kids packed like lemmings. We both knew Skee Poll
75 shows had a reputation for frenzied floor crowds, even by Hip Hop standards, with lots of crowd
76 surfing, moshing and even some violence. Crowd surfing is when someone is picked up and passed
77 over the heads of the crowd. Moshing is kids body slamming into each other and can get real
78 violent. I was kind of glad not to be there.

79
80 The first half of the show was pretty much fun. I was surprised. Everyone was so pumped
81 up our hometown hero was back in town. Skee did a nine-song set. There was some moshing and
82 surfing on the floor in front of us but security was evicting them. Keith was having a ball but he
83 mentioned that we should get to the floor and join the action. That didn't seem likely since there
84 were like a gazillion security guys the size of football players, all in fluorescent pink shirts, ringed
85 around the floor looking directly at us. I've never seen so much security at the Watchoverya Arena,
86 and I'd been there maybe ten times, including to some real frenzied shock rock bands like L7, Gwar
87 and Insane Clown Posse. It seemed hopeless we could get to the floor, which was fine by me.

88
89 The second set was also nine songs. Over the middle three, Skee started to really fire up the
90 crowd. The body surfing and moshing were picking up too, keeping security real busy as the crowd
91 frenzy grew. While rapping the sixth song, Beat You Down, Skee screamed in the chorus from Fire
92 It Up while the DJ was sampling in some martial sounding music with occasional gunfire sounds.
93 This really stirred up the moshers and they started pushing to create space for their pits. Keith
94 yelled to me, "I can feel it, Skee's calling me up." That's not quite what I heard Skee say. But
95 then, while doing the Fire It Up chorus a second time, a group of kids near us made this mass move

96 to the floor. Some got caught but some got through and were chased by pink shirts in front of us.
97 Just like that, Keith said “let’s do it” and he jumped to the floor and I followed. We ran as fast as
98 we could to the back of the floor crowd and melted in. My heart was pounding. Keith and I just
99 looked at each and burst out laughing. He gave me this huge grin. I’ll never forget that moment.

100
101 Because of all the moshing, the floor was pulsating. It was exciting and felt slightly
102 dangerous. We could still move in the crowd and we began to push our way closer to the stage.
103 Beat You Down finished and we continued to push ahead. By the beginning of Riot2, we were near
104 the middle of the floor crowd. At that point, the show was building and building, getting more and
105 more intense. During Riot2 was the most frenzied crowd I had ever been in. Skee was preening all
106 over the stage. The crowd was starting to pack together a little bit and we were getting pushed
107 around a few feet this way and that. Then came Fire it Up.

108
109 As soon as the crowd recognized the song, they went insane. We could still move around a
110 little, although we were elbow to elbow. Unfortunately, things changed dramatically about midway
111 through Fire It Up. The whole arena chanted the first stanza and the chorus. There was a noticeable
112 surge forward to the stage as Skee screamed “fight to your stage.” Skee absolutely owned the
113 crowd; it was chanting along, raising fists and bobbing heads. I think the crowd would have jumped
114 off a cliff had Skee told them to do so.

115
116 Skee had just finished the second chorus when we felt the crowd push real hard again. We
117 moved so quickly we couldn’t control where we were standing. We got pushed about ten feet. At
118 one point, I was lifted off my feet. It was scary and hard to breathe. Then things stabilized;
119 however, just a moment later, during the third chorus, we felt this tremendous surge and were
120 pushed forward. I grabbed for Keith’s hand as the crowd was moving like a tidal wave. I was lifted
121 up so high at one point I rose above the wave, then got churned back down. Then I lost Keith’s
122 hand.

123
124 The crowd’s movement seemed to concentrate in on us and the crushing got more intense. I
125 was feeling pressure from all directions but mostly from the back. The power of the crowd was
126 incredible and it was very hot. Things were so tight I was struggling to breathe; I couldn’t expand
127 my lungs. It was terrifying. I thought for certain I would die. There was no movement where I
128 was, just a crush. It seemed to go on forever, although I think it was only a few minutes. I felt like
129 I would soon faint but soon there was some room coming from the front. After I caught my breath,
130 I saw four or five people fall to the ground once there was room for them to fall. They all had
131 apparently fainted but all got up within a minute or so. I couldn’t find Keith, however. I could hear
132 that Skee was into the last song, Gil Scott’s Revolution. Skee didn’t even have the courtesy to stop
133 the concert after Keith was hurt.

134
135 Then I saw Keith on the ground. I ran over and security appeared. I was crying and
136 screaming. I nearly fainted again when I saw Keith. He was bleeding and his face was swollen.
137 Someone in the crowd told me they were near him during the crush and that he had fainted, fallen to
138 the ground, been trampled before others started tripping over and falling on him, unable themselves
139 to get up. Security called for first aid and they arrived with a stretcher. Skee had finished by then
140 and the house lights were up and the crowd was gawking at Keith as they left.

141

142 I went to the hospital in the ambulance. Keith's parents came along a short while later. The
143 next day, they told me Keith was brain dead. It was all such a blur. His parents made the
144 excruciating decision to take him off life support and Keith died July 5, 2003.

145
146 Skee Poll killed my cousin. This would never have happened had Skee not incited the
147 crowd to rush the stage during Fire It Up. I think Skee wanted this crowd crush. Maybe Skee
148 didn't want anybody killed, but Skee wanted the publicity to sell more Rap Mogul records. Singers
149 do it all the time, like Janet Jackson's outfit malfunction at the 2004 Super Bowl, or when Ozzy
150 Osbourne bit the head off of a bat on stage. Those were publicity stunts. And they worked. They
151 become more famous, or infamous, after that. Just like Skee Poll is now.

152
153
154 Signed and sworn to under oath on the 5th day of January, 2005.

155 /s/ Cameron Campbell

156 Signed before me this 5th day of January, 2005.

157 /s/ Jennie Jacoby, Notary Public

Statement of Chris Zimmerman

1
2 My name is Chris Zimmerman. I was employed as the crowd manager for the Watchoverya
3 Arena from the time it opened in Reidville June 1998, through June 2004. Prior to that I held
4 security positions at the Chocolate Center. I'm a 1989 graduate of East Stroudsburg University
5 with a degree in security management. In June of last year, I took a more lucrative job as a crowd
6 manager in Chicago.

7
8 The Watchoverya Arena is home to Flying Puffins hockey and Steagles Arena Football, as
9 well as the host of many music concerts and other events. Over the years, I managed approximately
10 700 entertainment events, including about 150 music concerts there. I oversaw all security for
11 Watchoverya Arena events, including crowd ingress and egress, and security in and around the
12 arena; basically making sure all events were safe for the patrons. Our security staff includes
13 uniformed and pink t-shirted security, hence our nickname, Pink Security.

14
15 Reidville's own Skee Poll was scheduled to play Watchoverya Arena June 18, 19 and 20,
16 2003, to three half-house concerts. It was originally three full-house crowds but sales sagged. This
17 was only Skee's third stop on this tour having done two concerts each, earlier in June, in Richmond
18 and Baltimore. We negotiated with Thugs & Skees on seating arrangements. Thugs & Skees is
19 Skee's company which produced and promoted Rap Mogul. Thugs & Skees requested festival
20 seating and we agreed. Watchoverya Arena retains veto power over whether festival seating is
21 appropriate. Festival seating is basically open or standing only seating in front of the stage. It's
22 pretty standard in the industry now so long as the audience can stand for an entire concert.

23
24 The total floor area available for festival seating was 60 by 60 feet (3600 square feet). That
25 takes into account buffers between the floor crowd and the lower level on the sides, back and in
26 front of the stage. There are some industry guidelines created by the National Fire Association
27 (NFA) recommending that each fan requires between four to five square feet of room in a festival
28 seating area. Thus, 750 festival seat tickets were issued. Total half-house capacity was 6,350.

29
30 I love managing crowds for heavy metal, shock rock, hardcore rap and the like because it's a
31 challenge and requires more creativity than say managing Puffin games or Barry Manilow concerts.
32 Those crowds are, frankly, boring and predictable. These concerts required extra preparation and
33 flexibility on concert day. It's vital to know your performer and audience. This will determine your
34 security needs.

35
36 In compiling data I needed for my security plan, I reviewed Skee Poll and his/her music. I
37 knew a little bit about Skee since I'd managed four full-house sell outs during the 2000 debut tour
38 and two full-house sellouts on the 2002 Black Diamond tour. Full house capacity is 10,000. I
39 reacquainted myself with Skee's music and the proposed concert playlist. The first CD, Skee Poll,
40 had some hard rap on it, but it was mixed with lighter, clever stuff too: mostly mainstream with
41 some nice vocals and keyboard. I recalled that during the first tour, Skee had great rapport with the
42 crowd, was very charismatic and active and animated on stage. There were a few songs that caused
43 some crowd frenzy up front, but Pink Security handled it. The second CD, Black Diamond from
44 2002, was timid and the concerts pretty uneventful. I took notes on a couple of songs.

45
46 I thought Rap Mogul from 2003 was a departure from mainstream rap. Skee seemed to be
47 flirting with gangsta rap; you know, dropping vocals, keyboard and guitar from many cuts and using
48 the DJ more to sample in different tracks and street sounds, including occasional gunfire and sirens.

49 It was well produced though and I could see that an audience would really respond to it. I'm not
50 sure why the change. Some say it was to increase sales. Who knows. I can tell you from my
51 experience, however, that the trend is declining audience share for hard core rap. I think Skee was
52 caught in that cycle.

53
54 Skee's proposed playlist included eighteen songs, plus an encore. The majority were from
55 Rap Mogul. I saw a major problem with the song My Revenge. It's exceedingly violent and
56 graphic, and too dangerous to be performed live. That's not my personal opinion – I don't ever
57 bring that in to my assessments. I don't do this often, and I know this runs into free speech issues,
58 but we told Thugs & Skees about our concerns and they agreed to replace it.

59
60 Additionally, in order to compile data necessary for my security plan, I contacted the
61 Richmond and Baltimore concert managers. I normally contact these people and take notes in order
62 to get a feel for what the performer's earlier concerts were like. They confirmed what I already
63 suspected; the most intense crowd reaction would be to Riot2 and Fire It Up, numbers 16 and 17 on
64 the playlist. Also of note was the 15th song, Beat You Down. All were pretty powerful and would
65 be played consecutively. Out of these, Fire It Up was notable because it seemed to encourage or
66 direct certain crowd reactions. Whenever a musician does this, we need to be extra vigilant. The
67 other managers noted some concern when Skee played Fire It Up, noting there were substantial
68 increases in attempts by fans to get to the festival areas and that both venues had to evict dozens of
69 fans. Both managers reported that police at their venues also made a few arrests for disorderly
70 conduct and the like. They suggested the situation was manageable though with a good ratio of
71 security, something I already understood.

72
73 Finally, I knew that this concert would be a challenge; Skee Poll's crowds are normally in
74 their late teens and early twenties, are ethnically mixed, energetic, predominantly male, and coming
75 to watch an aggressive and possibly provocative performer. This is the type of challenge I get for
76 maybe four or five concerts per year. Like for shock rockers Audioslave, Marilyn Manson or a
77 metal rap artist like Limp Bizkit, for instance.

78
79 Based upon all this information, I chose a really high concert guard to fan ratio of 1:40, or
80 about 160 guards, even though this would cut into the Arena's profit. The general rule is a ratio of
81 1:100 for medium stuff like hockey games, 1:150 for mild stuff, like Barry Manilow. I decided to
82 use the extra personnel mainly on the floor by adding to the ring we normally create right below the
83 rink wall to keep fans off the floor. In addition, we added another ring behind this first ring,
84 something I never did before. I used our biggest and most experienced Pink Security guys in these
85 rings. The rest of the extra floor security was stationed in front of the stage or within the edges of
86 the floor crowd. They were responsible for keeping body surfing and moshing under control and
87 keeping the floor crowd from the stage.

88
89 I took other security measures including strict enforcement of underage drinking in the
90 tailgate/parking area, body searches upon entry, no alcohol sales, and periodic announcements about
91 evicting all body surfers and moshers. Pink Security staff was also directed to be extra vigilant near
92 the end of the playlist and avoid provocative actions toward the crowd.

93
94 During the show, I was located behind Section 109. Everything went smoothly through
95 intermission. After intermission, there were only a couple of attempted breaches onto the floor but
96 they were easily quelled. The crowd's mood was really stoked though by the middle of the second
half of the concert. During the 15th song, Beat You Down, Skee added the chorus from Fire It Up

97 at two places and had the DJ sample in sirens and gunfire to a martial-like beat. This wasn't in the
98 recorded version and I didn't hear that Skee had done this in Richmond or Baltimore. I became a
99 bit concerned. After the new chorus, there was increased movement from the upper levels. Fans
100 started leaving their seats and collecting at the top of the stairways to the lower levels. Security was
101 holding them off though and most were sent back to their seats. There was also increased crowd
102 surfing and minor moshing injuries. There had been very little of either prior to Beat You Down.
103

104 During one of the Fire It Up choruses in Beat You Down, kids in Section 110 made a mass
105 break for the floor. Four were caught immediately but four others got through the security rings and
106 were pursued. They were caught, and all were evicted, but this created a temporary weakness in the
107 rings and it was then that I saw two kids from Section 110, first row, run for the floor. I later
108 learned this was Keith Gallo and his friend. The guards watching the festival crowd were informed
109 to look for them and the ring was re-established in front of Section 110.
110

111 My attention was then directed by security chatter to the stairways. There were some small
112 groups forming in some of the stairways leading to the floor. I was in constant communication with
113 the guards, working on resolving those problems. The show continued to build in intensity.
114

115 Then came Fire it Up. When Skee started, the crowd roared. It was deafening. They
116 screamed through the first chorus. This song hadn't even been released yet as a single and I was
117 surprised the crowd knew it so well. I don't get surprised by much. I hadn't gotten a feel from
118 either of the concert managers I spoke with that this song was this explosive. Plus, during the first
119 chorus, Skee was extremely animated, more so than at any point up until then. Skee seemed to be
120 directing the crowd to "fight to your stage" and "let loose all that rage." The fans on the stairways
121 began to push down toward the floor and were lining up on the stairs.
122

123 After Skee's second chorus, dozens of kids started to jump over the rink wall to the floor.
124 Most were stopped, but they emboldened others and now fans in the front rows were also jumping
125 over. Pink Security was doing all it could but I was afraid the crowd was starting to outnumber the
126 pink shirts. During the third chorus, Skee let out a long yell to "fight to your stage." Then Skee
127 directed the crowd to "rush forward to your stage and feel the scream." At that point, the breaches
128 became endemic. There were by then hundreds of fans from the lower levels jumping over the rink
129 wall to the floor. About one out of three were getting through. Later estimates from photos,
130 discussions with our staff and eyewitnesses indicated that between approximately 100 to 150 fans
131 successfully ran onto the floor at that time. Pink Security did an awesome job keeping the numbers
132 that low.
133

134 The floor area was big enough to contain the extras because of the buffers; however, these
135 fans didn't just join in, they aggressively pushed forward into the crowd. I knew this could be
136 trouble. I communicated with security at the front stage to move the barricades back against the
137 stage, so as to provide room for the crowd to move forward and avoid a potential crushing. This
138 seemed to relieve the pressure. Fortunately, by the end of Fire It Up, the breaches stopped and the
139 floor crowd relaxed out of its frenzy. Pink Security intervened and turned a bunch of fans over to
140 the police. Fifteen were arrested for disorderly conduct and three were ultimately convicted. I'm
141 not sure what happened to the rest of the cases.
142

143 I thought we had avoided disaster; however, I received a report about a number of people
144 fainting. And then I heard about Keith Gallo. First aid staff said he was unconscious. I moved

145 towards the stage area. I waited off stage until Skee Poll had finished Gil Scott's Revolution. By
146 then, I had been told Keith was seriously injured. Skee came off stage to get ready for the encore
147 and I told Skee there was a serious injury. Skee seemed shaken and agreed to skip the encore. We
148 directed that the house lights be put up and I went out and told the audience there would be no
149 encore because of an injury. Some of them actually booed, although given that it's Reidville, not
150 unprecedented. Seven fans besides Keith Gallo were rendered unconscious and fainted during Fire
151 It Up. They all regained breathing on their own. None were hospitalized.

152

153 The next morning, I told Skee that Keith Gallo was brain dead. Skee said, "that's awful,
154 send the family my condolences." After a long silence, Skee said "I guess we need to cancel the
155 rest of the shows." I learned later that the whole Rap Mogul tour was canceled, although I did see
156 in the trade papers Rap Mogul sales jumped considerably after June 18 and knowing what tour
157 contracts are worth, this more than made up for lost touring revenue.

158

159 Keith Gallo died under my watch. This will effect me forever. I can't tell you how sorry I
160 am for Keith's family. I played everything by the book though. I never saw a crowd like this. It
161 was like they were possessed. I never heard a performer so directly encourage a crowd to try to
162 break through security or to get to the stage. I have no doubt that the crowd directly responded to
163 each one of Skee's commands about getting to the stage, and rushing forward. I can't imagine that
164 Skee had no idea that the chorus from Fire It Up would not entice the crowd forward, especially
165 after teasing the crowd with the Fire It Up chorus two songs earlier. Skee was indeed playing with
166 fire. I can't believe Skee didn't know something was happening in the crowd. Even with the house
167 lights down, performers can see into the front rows. In the end, it was a numbers game. There were
168 more of them then there were of us. Skee pitted the crowd against us and encouraged that they act
169 lawlessly.

170

171 We got criticized in the press for allowing festival seating but it is here to stay and I
172 followed the NFA's recommended guidelines in choosing floor capacity. I know there are stricter
173 guidelines out there, like the one put out by consumer advocate D'Arcy Ace. But they are too
174 draconian and haven't really been accepted industry-wide. Plus, only a few places outlaw festival
175 seating. Cincinnati, for instance, doesn't permit it as a consequence of an ingress crushing incident
176 prior to The Who's 1979 concert there left eleven dead from asphyxiation. There hadn't been a
177 front of stage crushing death in the U.S. since 1991 when three died at an AC/DC concert in Salt
178 Lake City. The main reason is because most venues follow the NFA guidelines on festival seating.

179

180 In any event, it is not festival seating alone that causes injuries. It takes something, or
181 someone, to incite the crowd and get it moving forward in a frenzied manner. Skee Poll's lyrics
182 were the cause of this tragedy.

183

184 Signed and sworn to under oath on the 5th day of January, 2005.

185 /s/ Chris Zimmerman

186 Signed before me this 5th day of January, 2005.

187 /s/ Jennie Jacoby, Notary Public

Statement of Riley Urbanski / Skee Poll

I am Riley Urbanski, better known as Skee Poll. I'm 30 years old and my profession is rap artist and music producer. I've recorded three CDs: Skee Poll in 1999, Black Diamond in 2002 and Rap Mogul in 2003. Skee Poll sold 1.1 million, Diamond sold about a half million and Rap Mogul is still selling, now up to 1.4 million. In 2002, I created my own business, Thugs & Skees, a sole proprietorship. Thugs & Skees produces and promotes my stuff as well as three other music artists. Once upon a time I was very poor. Now I am very rich. Amazing.

Most people know I'm from Reidville originally, the west side. The west side is the other side of the tracks: it's gloom, it's doom. It's got that special American urban cocktail of poverty, violence and drugs. My escape growing up was hip hop. My favorites rappers were loud, gritty and authentic. I got a typical West Reidville High education and then went to Temple University undergrad. In 1996, after only three years, I got my Bachelor of Music degree in voice performance and music theory. I knew I wanted a music career but I also knew the industry is virtually impossible to break into. But my education equipped me well, plus I'm a workaholic and a perfectionist. I gave myself four years to make it and went to work, selling myself, playing area clubs and doing odd jobs on the side to survive.

In 1998, an old professor gave me the number for Shug Day, who was starting a recording label in Barrister County. I called and Ms. Day offered me a minimum wage job doing this and that. I jumped at it. At least I had a boot in the music industry door. I eventually got Shug to listen to one of my demos. She loved it and offered me the five-year contract. She helped me recruit a band and we finished my first CD, Skee Poll, in late 1999. I was really pleased with it. Shug managed to finesse a pretty mainstream sound from it. She pushed the fun, youthful stuff on it and I pushed for some stuff. It wasn't heavily promoted but caught on with East Coast cities and suburbs. It had cross-appeal to African-American, white, Hispanic, Asian, male, female, rich, poor ... you name it. The album got as high as eight on the hip hop charts. I toured in 2000 and ended up with the fifth highest grossing hip hop tour.

Shug wasn't paying what I was worth so I sued to get out of my contract. While that was litigating, I took classes and got my MBA in early 2002. After my case with Shug settled, I started Thugs & Skees. I released my second CD, Black Diamond, in the Spring of 2002, under my new label. Looking back, I can see why it didn't do well. Between the litigation, school and starting the business, I didn't have enough time. Plus, it was self-indulgent; it was CZ, cubic zirconium, faux bling. Not surprisingly, tour revenue was lower than expected and Thugs & Skees struggled a little as a result. I vowed never to put out such a dog again.

I worked tirelessly on Rap Mogul, my third CD, released in April 2003. I focused on getting back to who I was and where I came from. As a result, Rap Mogul was less mainstream. I cut down on the vocals, guitar and keyboard on most tracks and went with just DJ and drums. Sales were not my major concern. My goal was quality. Some thought it a gimmick to go "gangsta." That's not fair criticism. To me, gangsta rap is about violence for violence' sake, with liberal sprinklings of misogyny, racism and homophobia. That's not my game. The reviews were mixed, but I didn't care too much. Most of the criticism was for the cut My Revenge. It's a very graphic fantasy piece about revenge against this cretin who assaulted my sister way back, and about others acting on those fantasies we all have. When Thugs & Skees negotiated this tour, we agreed not to do it live. I do have limits.

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I won't deny Rap Mogul speaks to violence, just as I can't deny who I am and where I came from. I've seen stuff you wouldn't believe. I survived a whole lot of turmoil; broken everything: buildings, schools, families, people. That I am successful because I have this particular talent for the word is luck. My hometown loves my story cause they can say, "look, with a little hard work, anyone can make it." But that's a lie. You may succeed some places in America without talent or hard work, but that never happens for people from places like West Reidville. There's tons of good folks I knew who had talent and worked, but they got nothing for it. That success is random and conferred on so few is maddening. Everyone should be furious about that. This is my motivation and my life's work is to stir things up. I love words and I love beat. And that I can make my living telling my stories and talking to those people I left behind, and educate others who have no idea, is an unbelievable blessing. Rap Mogul was about getting back to all this, and to the extent violence is part of that story, so be it.

Rap Mogul did decently on the charts, better than Black Diamond, but not as good as Skee Poll. The tour started in June with two shows in Richmond, two in Baltimore, then three in Reidville. My people at Thugs & Skees negotiated crowd logistics and security with each venue, although I was occasionally involved. The Rap Mogul tour was to continue throughout the summer in fifteen more cities, but I canceled it after Keith Gallo died.

The opening concerts in Richmond in early June were nerve racking. I had a new DJ, keyboardist and new backup vocalists, I was doing new stuff, plus I had to win back a lot of fans after the Black Diamond debacle. The first half of each concert was solid; however, the second half was near perfect. I discovered from the first four shows that Beat You Down, Riot2 and Fire It Up, played in a row, was near explosive. Fire It Up was evolving into the most successful live song I've done. It was becoming my signature song; one of those songs the crowd shouts out before I can rap the words. I was surprised since I hadn't yet released it as a single.

The tour was off to a good start but I strive for perfection. I hold a debriefing after every concert. This includes meeting the band, production people and arena people. We discuss what went right and wrong, any crowd problems, whatever. Regarding the festival seating, the Richmond dude indicated the crowds were manageable although really hyped. The Baltimore manager confirmed to me that during Fire It Up, there were some manageable crowd surges and that kids tried for the floor but they held them off and had to make a few arrests for disorderly conduct. In any event, the crowds were better than I could have ever expected.

I had a lot of friends at the June 18th concert and there was definitely extra electricity in the air, even though the opening act bombed. The first half was unspectacular but solid. I had tweaked the first half playlist but was keeping the second half the same. The crowd kept its buzz though through intermission. Our second half was really tight and the crowd was spectacular. What a rush. Just like in Richmond and Baltimore, the crescendo started to build during Beat You Down.

I wanted to take everything up a notch so during Beat You Down, I twice inserted the chorus from Fire It Up as a teaser to the crowd. I noticed it was having some effect up front. I could only see maybe ten rows or so into the crowd because the stage lights were in my eyes and the house lights down. The kids up front were really active, jumping up and down and pumping their fists. There was also some pretty frenzied mosh pits, surfers and some pushing near the front stage

96 barricades. But there were a lot of pink shirts on the floor keeping control. More than were in
97 Richmond and Baltimore.

98
99 The crowd was pulsating by Riot2. It was maybe the best crowd I'd ever had. There is an
100 amazing power an entertainer has over a crowd. Most people will never have any idea what that is
101 like. I knew Fire It Up would make the place explode. Just like in Richmond and Baltimore, the
102 crowd recognized Fire It Up immediately. They screamed the first stanza and chorus. I could
103 hardly hear myself. The crowd was wild, but it didn't seem out of hand. I did notice some pushing
104 up front during Fire It Up, but I was concentrating on the song. As it was, I had added a number of
105 metal riffs after each chorus for the live performance to extend the song, just like I had done in
106 Richmond and Baltimore.

107
108 I ended with Gil Scott's Revolution because it suggests to the crowd what to do with its
109 ferocity and anger. I want the crowd stoked, but I also want it to think that violence leads to rebirth.
110 I know you can only do so much about telling your audience what to think. A real artist translates
111 the personal into universal truths, and you have to let the audience realize those truths on their own.
112 You can never know how people will perceive your language and it would be a conceit for any
113 artist who thinks they can.

114
115 I came off stage to get ready for the encore when Zimmerman told me there had been some
116 serious injuries, I assumed from surfing or moshing. I was really upset and agreed to skip the
117 encore. Zimmerman told the audience and the show ended. Zimmerman called the next morning
118 and told me Keith Gallo had been declared brain dead. I decided to cancel the tour after that. I
119 didn't learn until later that Keith Gallo's injuries were caused by crowd crushing. I learned that
120 during Fire It Up, the pink security force lost control as a hundred or so kids got to the floor,
121 including Keith Gallo.

122
123 I've been accused of inciting the crowd with Fire It Up, both in this lawsuit and in the press.
124 But all raucous songs, while maybe not inciting, are about getting the crowd to their feet, letting
125 them release their energy. It's my goal to get the crowd to emotional freedom. Every band and
126 performer lives for a crowd reaction like what I was getting on the Rap Mogul tour. From my
127 perspective, the crowd responded like they did other nights. There was nothing that distinguished
128 what I was doing from any other performer doing an exciting arena song.

129
130 It is my job is to entertain. It was Watchoverya Arena's job to control the crowd. It's a
131 pretty simple division of labor. I'm a professional and I expect the professionals I deal with to be
132 up to the task. Pink Security failed. If they couldn't handle it, then they shouldn't have approved
133 festival seating. Every arena I've ever played has used festival seating, except Cincinnati, and I've
134 never had any problem with it.

135
136 Is it possible some fans hear the language from Fire It Up literally? Sure. But what of it.
137 Nobody at my concerts literally tried to fire up the arenas, or literally tried to tear down the walls.
138 Art has no single meaning. It can't. It's not my job to decide how the listener should hear my
139 words. Sure, Fire It Up is edgy and angry, but it seems to me that the most reasonable interpretation
140 is that it's a metaphor. It speaks about the establishment, about "the man" holding you down,
141 finding inner fire or courage to get beyond limits. It's a metaphorical call to throw off shackles.
142 It's ridiculous that I should have to guess at what my music should mean to others. If I do, the
143 you've got self-censorship and I'm not planning on that anytime soon.

144 I do want to explain another thing. I got criticized after Keith's death for having recorded a
145 song called FOS Crush from Black Diamond. First of all, I didn't even play that on the Rap Mogul
146 tour. And second, if you actually listen to the lyrics, it alludes to the tragedy in Denmark in 2000
147 when nine kids died during a front of stage crush at a Pearl Jam concert. Everyone in the music
148 industry heard about that. Pearl Jam was exonerated but the tragedy almost caused them to quit.
149 The song touched on the lives of kids snuffed out too early and the emotional effect on Pearl Jam.

150
151 I was also accused by the press of deliberately starting a crowd disaster at my concert to
152 improve my album and touring sales. That is grassy knoll conspiracy stuff. I canceled the tour after
153 Keith Gallo died and I lost lots of revenue because of that. It is true that Rap Mogul record sales
154 increased after Keith Gallo died but I haven't exploited it, the press has. They love death and rock
155 and roll stories. It's absurd I would want to make even one cent on Keith Gallo's death. I am
156 devastated that Keith died, and really nothing can describe the sadness and anguish I've felt over
157 this. I offer my sympathy, prayers and compassion to his family and friends. I've lost friends who
158 were way too young too. The loss of his life will impact mine forever.

159
160
161 Signed and sworn to under oath on the 6th day of January, 2005.

162 /s/ Riley Urbanski

163 Signed before me this 6th day of January, 2005.

164 /s/ Jennie Jacoby, Notary Public

Statement of D'Arcy Ace

1
2
3 My name is D'Arcy Ace and I have been asked to render a professional opinion on the cause
4 of Keith Gallo's injuries, sustained at a concert staged by the rap artist Skee Poll on June 18, 2003.
5 I am currently an independent consultant to the entertainment industry on issues of crowd control
6 and safety. I received my doctorate in public security from Mansfield University in 1992, my
7 masters in event planning and engineering from Bucknell University in 1986 and my B.A. in
8 criminal justice from Slippery Rock in 1981. Currently, I operate a company called Crowd Safety
9 Plans, or CSP, of which I am president and CEO. I have operated CSP since 1993. I suggest
10 improvements through consulting and through my CSP website and monthly newsletter, available to
11 subscribers. Additionally, I have presented dozens of seminars on concert safety at trade
12 conventions throughout the U.S. and abroad, and been published in numerous trade and popular
13 journals. I have testified or been deposed as an expert on concert crowd safety thirty times, most
14 often on the side of the consumer-fan. I receive between \$150 and \$300 per hour, depending upon
15 the services offered.

16 My interest in crowd safety was piqued in 1979 when eleven young people died in
17 Cincinnati during a crowd ingress crush prior to a concert by The Who. I felt compelled to become
18 active and I spearheaded a group that persuaded Cincinnati to adopt guidelines for mass crowd
19 gatherings and to outlaw general admission seating, also called festival seating. That incident should
20 have, but didn't, awake this country to the dangers of mass crowd gatherings. This usually comes
21 as a shock to most people, but here in the U.S., birthplace of rock and roll, the concert industry has
22 never adopted any type of crowd safety guideline, rule, or standard for concerts and outdoor events.
23 They are under no duty to report anything, and as result, concert injuries and deaths remain the
24 music concert industry's dirty little secret.

25 The National Fire Association (NFA), which has created all sorts of guidelines for building
26 safety, has ventured into this void with its own festival seating guidelines, but they have been
27 adopted in a haphazard manner. Furthermore, it is my opinion that the NFA guidelines are deficient
28 as regards festival seating. I publish my own Suggested Concert Crowd Safety Guidelines©. It is
29 my hope that these Guidelines will one day be adopted nationally, and approximately fifteen
30 municipalities have already done so. I testified before Congress in 1992 in favor of these
31 Guidelines. Those hearings were prompted by the deaths of three young fans at a 1991 AC/DC
32 concert in Salt Lake City. That was the last concert crushing death in the U.S. prior to Keith
33 Gallo's. Unfortunately, the industry had too much money and influence and the bill failed.

34 As part of my work, my company compiles statistics on crowd injuries and deaths. I mostly
35 discover such incidents through press reports and my vast contacts in the music concert industry. I
36 know, however, that there are many incidents I don't hear about and are quietly settled by the
37 venue, promoter or artist.
38

39 The main causes of injuries and death at music concerts are from crushing incidents,
40 whether by ingress, egress or at the front of the stage, falls from upper level seating areas, falls by
41 crowd surfers, moshing injuries and assaults in and around the arena grounds. The injuries suffered
42 by Keith Gallo were caused by a front of stage crush, or FOS crush, in the festival seating area.
43 Festival seating is, of course, a misnomer. There is no actual seating. It is more accurately called
44 festival standing. It brings in more money than assigned seating and it's a tempting way to oversell
45 a show. Generally, you can fit twice as many fans into a festival seating area than into actual seats.
46 Most fans prefer festival areas because it's where the fun and action are.
47

48 There are two factors that come into play to create a crowd crushing disaster in a festival
49 seating area. The first is crowd density and the second is a triggering event. As to density, or
50 occupancy load, adults need about 20 square feet to move about freely in a public area. At 10
51 square feet, people move about on an "excuse me" basis. At 5 square feet, a person can stand
52 without touching others but can't move freely. At 3 square feet, people cannot avoid touching each
53 other. This is a threshold that should never be reached in public because it causes stress. At 2
54 square feet and below, there is potential for dangerous crowd forces and significant psychological
55 stress.

56 At about 1½ square feet per person, people lose control over movement and a phenomenon
57 known as shock waves occur through the crowd causing sudden uncontrolled surges. The crowd
58 becomes almost a fluid mass. Shock waves can lift people off of their feet, and sometimes out of
59 their shoes and clothing, carrying them up to ten feet. Forces within a crowd crush can reach more
60 than 1,000 pounds. Crowd mass can create phenomenal forces. At its most dense, it is almost
61 impossible to stop. For instance, at Joseph Stalin's 1953 funeral in Russia, the crowd surge was so
62 powerful that it lifted horses and crushed them to death, not to mention up to a thousand people.

63 It is asphyxia, and not trampling, that is the most common cause of death and injury in
64 crowd crushing situations. Asphyxia occurs when people fall and are stacked up vertically, or from
65 horizontal pushing and leaning forces. The intense crowd pressures make breathing very difficult
66 and the heat of surrounding bodies, as well as panic, causes weakness and fainting. Prolonged
67 crushing can result in death by compressive asphyxiation. In this case, Keith Gallo died from a
68 combination of compressive asphyxia and head trauma caused by trampling.

69 The second factor required to create a crowd crush incident is some triggering event. There
70 are two basic triggers, panic or craze. Panic is a logical response by a crowd that experiences a real
71 or perceived threat such as an explosion, loud noise or severe weather, for example. A mass craze,
72 on the other hand, is usually the result of a competitive rush to obtain a highly valued objective,
73 such as getting closer to the entertainer. Festival seating concerts are notorious for causing this
74 craze like competition for positions closer to the stage.

75 With regard to this case, it is my opinion, within a reasonable degree of professional
76 certainty, that the critical injuries sustained by Keith Gallo on June 18, 2003 at the Watchoverya
77 Arena resulted from Watchoverya Arena's failure to provide a safe crowd environment.
78 Specifically, Watchoverya Arena failed to act reasonably by permitting too many people on the
79 floor of the concert during the crowd-crushing incident. Alternatively, Watchoverya Arena failed to
80 act reasonably by permitting festival seating at a Skee Poll concert. As in most cases, I arrived at
81 my opinion by conducting dozens of interviews with eyewitnesses, arena security personnel and
82 review of any audio or visual aids available. Additionally, I spoke with the crowd managers from
83 the earlier tour stops in Richmond and Baltimore and reviewed Skee Poll's music.

84
85 The first failure by Watchoverya Arena was that it allowed too many fans onto the festival
86 floor. Watchoverya Arena chose its 750 fan capacity figure by using the NFA guidelines, which
87 suggest that each fan needs between 4 to 5 square feet of space. Seven-hundred and fifty fans in a
88 3,600 square foot area leaves each fan with 4.8 square feet of space. In reality, 746 ticketed fans
89 were admitted and due to Watchoverya Arena's security failures, an additional 100 to 150 fans got
90 onto the floor by the end of the song Fire It Up, leaving each fan with between only 4.25 and 4.0

91 square feet per fan. That is much too small an area for fans in a concert like the one given by Skee
92 Poll.

93
94 For a Skee Poll concert, or for any other performer in the hardcore rap genre, or the shock
95 rock genre, for instance, the minimum square footage per fan should be no less than 7, or a total
96 maximum floor occupancy load of 514 ticketed fans in this case. It is my professional opinion that
97 at that occupancy load, there would have been too much space in the crowd for densities to build to
98 the critical mass required to cause asphyxiation. Additionally, had the floor space been initially
99 limited to 7 square feet per fan, or to 514 fans or less, the addition of another 100 to 150 fans, like
100 those who ran onto the floor during Fire It Up, would also probably not have created sufficient force
101 to cause the types of injuries that were created with the larger occupancy load permitted by
102 Watchoverya Arena.

103
104 Watchoverya Arena failed to provide a safe environment by relying upon the NFA's
105 guidelines of 4 to 5 square feet per fan. It's a cookie-cutter, one-size-fits-all guideline. The trend in
106 setting festival seating crowd densities is to alter the square footage according to your crowd and
107 performer. Square footage of 4 to 5 feet are the absolute minimum that should be permissible, and
108 that figure should be used only for more mild floor crowds, say a bubble gum pop act, for instance.
109 The audience certainly shrieks a lot but it is generally less aggressive. More aggressive performers,
110 with younger and predominantly male crowds, clearly call for more space.

111
112 The major reason for the increased space for each fan is that it greatly reduces the chance of
113 a crushing incident should the fans surge to the stage for any reason. In this case, the extra space
114 was required because the floor crowd did in fact surge to the stage during the song Fire It Up. Fire
115 It Up is a highly energetic song and the Watchoverya Arena's crowd manager should have known
116 that a crowd surge was possible during its performance. Another reason needed for the increased
117 space for fans is that there are more mosh pits at these types of concerts and each pit requires more
118 space as the crowd boundaries are constantly pushed.

119
120 Alternatively, the second failure by Watchoverya Arena was approving festival seating in
121 the first place, given the unique type of crowd Skee Poll was likely to draw. The Watchoverya
122 Arena staff should have known that, given a 750 fan capacity on the concert floor, they could not
123 ensure crowd safety even with high ratios of guards to fans. It is true that Watchoverya Arena did
124 employ a high guard to fan ratio of 1:40 and its Pink Security force has a solid reputation for
125 competence. However, it was highly likely the crowd for Skee Poll would include young people,
126 would be predominantly male, and motivated to attend a concert by an artist that some have
127 characterized as a "gangsta" rapper. Many fans who buy tickets to the floor for concerts like this do
128 so mainly to mosh or take part in other frenzied activities, making the floor a dangerous place. One
129 of the unintended consequences of frenzied floor crowds is that those fans seated outside the festival
130 area, the "have nots" so to speak, desperately want to join in. Plus, to the have nots, the buffer
131 zones on the floor appear to be wasted space, there for the taking. Thus, the seated audience is extra
132 motivated to get to the floor at this type of concert. This most certainly appears to have happened in
133 this case.

134
135 Finally, Skee Poll had given hints that s/he was a very charismatic entertainer and clearly
136 had the potential for what I call the "Elvis Effect." That is an almost messianic adulation for an
137 entertainer and creates a kind of mass temporary insanity. While few entertainers or bands attain
138 the Elvis Effect, the Watchoverya Arena and its concert manager should have recognized that Skee

139 Poll had Elvis Effect-like potential, particularly since the concert was being held in Skee Poll's
140 hometown and also because there were indications from earlier tour concerts that Skee's crowds
141 were close to the verge of hysteria. In light of all these factors – the crowd makeup, the likelihood
142 of a frenzied floor crowd, the enticement of the non-floor crowd by the floor crowd, a charismatic
143 performer in his/her hometown and indications of earlier concert hysteria on the tour - the
144 Watchoverya Arena should never have permitted festival seating for this Skee Poll concert.

145
146 While FOS crushing deaths are rare, arenas and concert managers must ensure that there
147 exists sufficient square footage so that crushing cannot occur if a crowd surge should occur.
148 Alternatively, arenas and concert managers must be prepared to make the decision not permit such
149 seating when they cannot ensure crowd safety. Had the Watchoverya Arena staff performed as it
150 should have, Keith Gallo would still be alive.

151
152 Signed and sworn to under oath on the 18th day of January, 2005.

153 /s/ D'Arcy Ace

154 Signed before me this 18th day of January, 2005.

155 /s/ Jennie Jacoby, Notary Public

EXHIBIT LIST

Exhibit 1 - Diagram of Watchoverya Arena and Half-House Seating Capacities

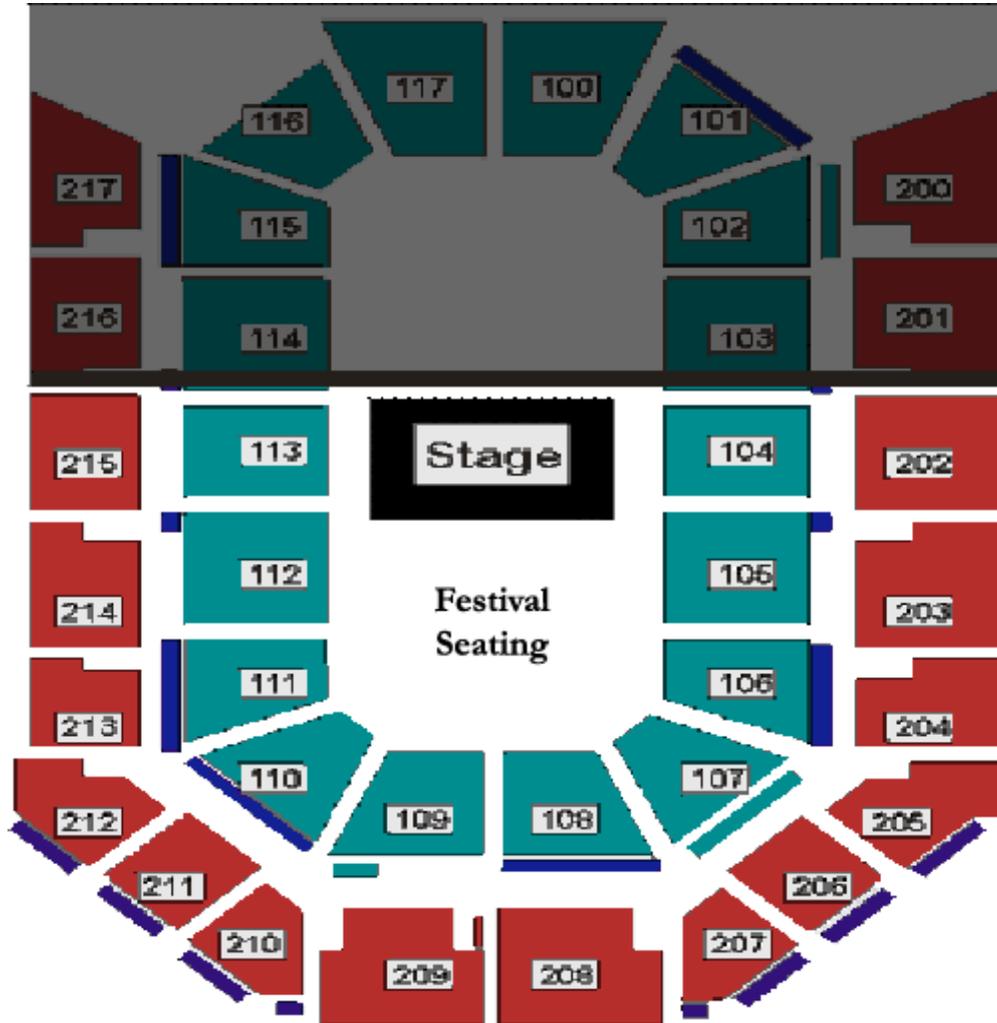
Exhibit 2 - Concert Ticket (*Separate Document*)

Exhibit 3 - Lyrics to “Fire it Up”

Exhibit 4 - Concert Playlist

EXHIBIT 1

Watchoverya Arena Seating Diagram - Half House
6,350 Capacity



Floor – Festival Seating

Lower Level (Aqua)

Handicapped (Blue)

Upper Level (Red)

750

2250

200

3150

EXHIBIT 2

Concert Ticket

[Exhibit 2 is a separate PDF document posted on the mock trial website.]

EXHIBIT 3
“Fire It Up” Written by Riley Urbanski
© Thugs & Skees Inc. 2003

I bear a witness, to the unfitness of this status quo
All that I know all I've been a told a show, well I'll show
With thrift commitment, as I slice through the throat to the belly of the beast
I can't cease, A release, Rest, test, rest in peace.

I attack I'll go blow for blow with any clan
In the front run it, as I chop and swing 'til no one can stand
A fin in the water, I slice through liquids and sea
Never a mother, never a father, never to be, never to be.

Chorus:

Fire it Up! Burn the Place Down
Tear it all down, the walls to the ground
Guardians be damned, fight to your stage
My children let loose all that rage.
Fire it Up! Burn the Town Down.
All will rise up from the Burnt Ground.

Cuz Change brings the price of pain and my boots strapped go stomp
Bring the agent of change to your brain trapped under
Reigns, a network woven, fear is the main frame
My spit, my fire, a flame they can't tame
Feel the Flame!

Chorus:

Fire it Up! Burn the Place Down
Tear it all down, the walls to the ground
Guardians be damned, fight to your stage
My children let loose all that rage.
Fire it Up! Burn the Town Down.
All will rise up from the Burnt Ground.

Death, destruction, chaos, mayhem We bear the torch
Feel the scorch, learn or burn, join the team.
Rush forward and feel the scream.

Disbelieve, you can't leave the circle of flames
All y'all without no names break through the chains
Sentinels of the gate, your fate awaits
Fire it Up! Burn the Town Down.

Chorus:

Fire it Up! Burn the Place Down
Tear it all down, the walls to the ground
Guardians be damned, fight to your stage
My children let loose all that rage.
Fire it Up! Burn the Town Down.
All will rise up from the Burnt Ground.

EXHIBIT 4

Playlist

June 18, 2003 Skee Poll Concert

- 1. Riot**
- 2. Fare N Square**
- 3. Pop Goes the Cristal**
- 4. Susquehanna Dreamin'**
- 5. Allegheny River Deep Six**
- 6. 911**
- 7. Six Feet Down**
- 8. Your Nightmare**
- 9. Smarty Jonze**

Intermission

- 10. Who's Your Mama?**
- 11. Bling Bling**
- 12. Scaredy Jonze**
- 13. Who's Your Daddy?**
- 14. Botox Nation**
- 15. Beat You Down**
- 16. Riot2**
- 17. Fire It Up**
- 18. Gil Scott's Revolution**