



Citizenship Law-Related Education Program for the Schools of Maryland

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November 8, 2005

Dear Mock Trial Participant:

Welcome to the 2005-2006 Maryland State Bar Association Statewide High School Mock Trial Competition. This is the 23rd year for Mock Trial—over 34,000 students have participated in this competition since its inception. We are pleased that you are joining in this exciting learning experience.

It is important for you to understand and remember our four primary objectives for this competition:

- To further understanding and appreciation for the law, court procedures, and the legal system;
- To increase proficiency in basic life skills such as listening, speaking, reading, and critical thinking;
- To promote better communication and cooperation between the school system, the legal profession, and the community at large;
- To heighten enthusiasm for academic studies as well as career consciousness for law-related professions.

Our objectives can only be accomplished, however, if you agree to compete fairly and honestly. Your primary objective should be to learn—not to win. Mock Trial provides opportunities to learn—through case preparation with your attorney advisor, teacher coach, and teammates, the competition with other schools, and various interpretations and perspectives of our law and legal system. It is vital for you to remember that Mock Trial parallels the real world in terms of proceedings, interpretations, and decisions in the courtroom and by the Bench. Decisions will not always go your way and you will not always prevail. If you observe and remember this, you will enjoy the competition and succeed regardless of your win-loss record.

This year's case focuses on two critical issues that have garnered attention in recent news. The first issue concerns a non-custodial parent who snatches their child and the custodial parent's efforts to have the child safely returned. The second issue explores the degree to which a reporter's confidential source may be protected by the First Amendment and the Maryland Reporter's Privilege statute.

We ask that you read carefully through the rules and guidelines included in this casebook, as some modifications have been made. As always, we wish you a very successful year and a rewarding learning experience.

Sincerely,

Diane O. Leasure
Honorable Diane O. Leasure
Chair, Executive Committee

Ellery M. "Rick" Miller, Jr.
Ellery M. "Rick" Miller, Jr.
Executive Director, CLREP

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**2005-2006
MSBA HIGH SCHOOL MOCK TRIAL COMPETITION**

PART I: ORGANIZATIONAL RULES

1. Local competitions must consist of at least two rounds with each participating high school presenting both sides of the Mock Trial case.
2. A team must be comprised of no less than eight (8) but a maximum of twelve (12) student members from the same high school, with the exception of high schools with a Maryland State Department of Education inter-scholastic athletics designation of Class 2A or Class 1A, which may combine with any other schools in the LEA in those classifications to field a team. Two "alternate" students are permitted during the local competition only. If a team advances beyond the local competition, an official roster must be submitted not exceeding 12 students.
3. A team may use its members to play different roles in different competitions. (See Part II: Hints on Preparing for the Competition). For any single contest round, all teams are to consist of three (3) attorneys and three (3) witnesses, for a total of six (6) different students. **For any single competition, a student may depict one role only of either witness OR attorney.**
4. Any high school which fields more than one team (Team A and Team B, for example) may NEVER allow, under any circumstances, students from Team A to compete for Team B or vice-versa. If a high school fields two teams, each team must have a different teacher coach and a different attorney coach than the other team. Additionally, if a high school has two teams, then those teams MUST compete against one another in local (circuit) competition.
5. A. Areas of competition coincide with the eight Judicial Circuits of Maryland. Each circuit must have a minimum of four (4) teams. However, in order to provide the opportunity for as many teams to participate as possible, if a circuit has two (2) or three (3) teams, they may compete in a "Round Robin" to determine who will represent the circuit in the circuit playoff. The runner-up team from another circuit would be selected to compete based upon their winning record and average points scored during local competition rounds. This team would compete with the circuit representative in a playoff prior to the Regional Competition. When a circuit has only one registered team, CLREP may designate another circuit in which this team may compete.

B. OR, under the discretion of a circuit coordinator and CLREP, if a circuit so chooses, it may combine with the "un-official" circuit to increase the number of opportunities to compete. In this case, a "circuit opening" arises and will be filled by the following method. To create the most equity, a sequential rotation of circuits will occur; this year, it is Circuit Two's turn. If willing, the second place team from this circuit will advance to the regional competitions to fill the opening. If that team is unable to advance, or if Circuit Two is not comprised of at least 4 teams, the opportunity will move to the next circuit, and so on, until the opening is filled. In the event that all circuits are officially comprised of a minimum of four teams, the designated circuit will remain the next in-line to advance in future years.

2005-2006	Circuit 2	2009-2010	Circuit 6
2006-2007	Circuit 3	2010-2011	Circuit 7
2007-2008	Circuit 4	2011-2012	Circuit 8
2008-2009	Circuit 5	2012-2013	Circuit 1

6. Each competing circuit must declare one team as Circuit Champion by holding local competitions based on the official Mock Trial Guide and rules. That representative will compete against another Circuit Champion in a single elimination competition on April 4 or 5, 2006.
7. The dates for the Regionals, the Semi-Finals, and the Finals will be set and notice given to all known participating high schools by Wednesday, November 9, 2005. Changes may occur due to conflicts in judicial schedules.

8. District Court judges, Circuit Court judges, and attorneys may preside and render decisions for all matches. If possible, a judge from the Court of Special Appeals or the Court of Appeals will preside and render a decision in the Finals.
9. Any team that is declared a Regional Representative must agree to participate on the dates set for the remainder of the competition. Failure to do so will result in their elimination from the competition and the first runner-up in that circuit will then be the Regional Representative under the stipulations.
10. Winners in any single round should be prepared to switch sides in the case for the next round. Circuit Coordinators will prepare and inform teams of the circuit schedule.
11. CLREP encourages Teacher Coaches of competing teams to exchange information regarding the names and gender of their witnesses at least 1 day prior to any given round. The teacher coach for the plaintiff/prosecution should assume responsibility for informing the defense teacher coach. A physical identification of all team members must be made in the courtroom immediately preceding the trial.
12. Members of a school team entered in the competition—including Teacher Coaches, back-up witnesses, attorneys, and others directly associated with the team's preparation—are NOT to attend the enactments of ANY possible future opponent in the contest.
13. All teams are to work with their attorney coach in preparing their cases. It is suggested that they meet with their Attorney Advisor at least twice prior to the beginning of the competition. For some suggestions regarding the Attorney Advisor's role in helping a team prepare for the tournament, see PART II: Hints on Preparing for Mock Trial and Appendix A.
14. THERE IS NO APPEAL TO A JUDGE'S DECISION IN A CASE. CLREP retains the right to declare a mistrial when there has been gross transgression of the organizational rules and/or egregious attempt to undermine the intent and integrity of the Mock Trial Competition.
15. There shall be NO coaching of any kind during the enactment of a mock trial: i.e. student attorneys may not coach their witnesses during the other team's cross examination; teacher and attorney coaches may not coach team members during any part of the competition; members of the audience, including members of the team who are not participating that particular day, may not coach team members who are competing. Teacher and Attorney Coaches MAY NOT sit directly behind their team during competition as any movements or conversations may be construed as coaching.
16. It is specifically prohibited before and during trial to notify the judge of students' ages, grades, school name or length of time the team has competed.
17. The student attorney who directly examines a witness is the only attorney who may raise objections when that same witness is being cross-examined. The student attorney who raises objections on direct examination must be the same attorney who then cross-examines that same witness. This same principle applies if a student attorney calls for a bench conference; i.e., it must be the attorney currently addressing the Court.
18. Judging and scoring at the Semi-Final and Statewide Final Competition are distinct from judging and scoring in some local competitions and the regional competitions. As in a real trial, the judge will preside, hear objections and motions, instruct counsel, and determine which team prevailed based on the merits of the law. Two attorneys will independently score the trial, using the score sheet from the official Mock Trial Guide. At the conclusion of the trial and while in chambers, the judge will award the special point without informing the attorney scorers. The attorneys will meet and work out any differences in scoring so that the two attorneys present one score sheet to the

judge, and eventually, the two teams. The judge retains the right to overrule any score on the score sheet. Both teams shall receive a copy of this score sheet, signed by the judge. Teams will not have access to the original, independent score sheets of the attorneys.

19. Student attorneys are expected to keep their presentations limited to specific time guidelines. It is the presiding judge's sole discretion as to how or if the time guidelines will be implemented during each competition. Teams should NOT object if they perceive a violation of these *guidelines*.
 - Opening statements/closing arguments—5 minutes each;
 - Direct examination—7 minutes per witness;
 - Voir Dire, if necessary— 2 minutes per expert witness (in addition to the time permitted for direct and cross examination)
 - Cross-examination—5 minutes per witness;
 - Re-Direct and Re-Cross Examination—3 minutes and a maximum of 3 questions per witness.

PART II: HINTS ON PREPARING FOR A MOCK TRIAL COMPETITION

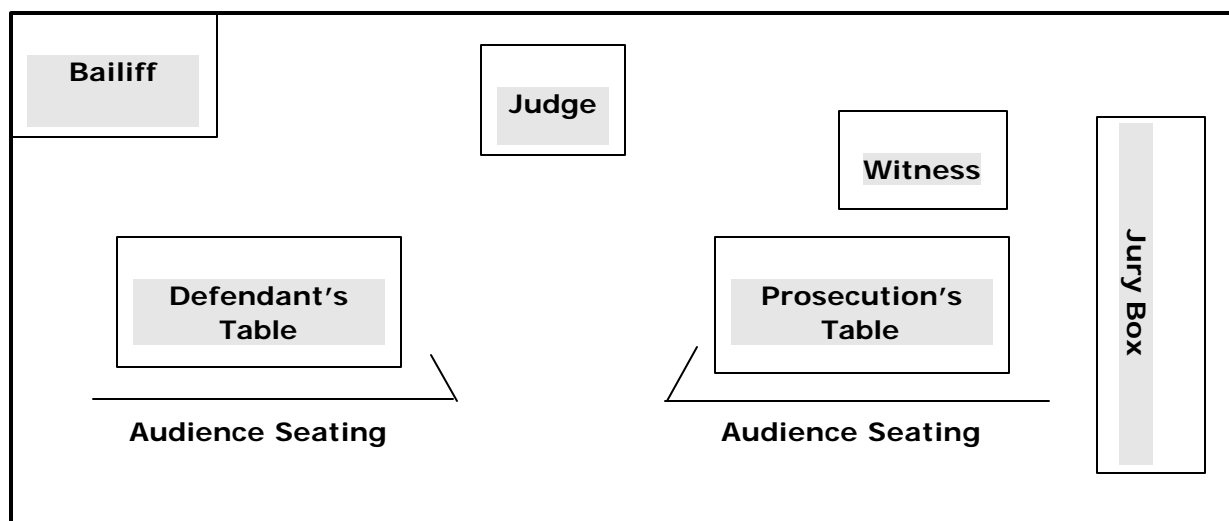
The following tips were developed by long-time Mock Trial Coaches.

1. Every student, teacher and attorney participating in a team's preparation should read the entire set of materials (case and guide) and discuss the information, procedures and rules used in the mock trial competition. Students: you are ultimately responsible for all of this once Court is in session.
2. Examine and discuss the facts of the case, witness testimony and the points for each side. Record key information as discussion proceeds so that it can be referred to in the future.
3. Witness' credibility is very important to a team's presentation of the case. Witnesses: move into your roles and attempt to think as the person you are portraying. Read over your affidavits many times and have other members of your team ask you questions about the facts until you know them.
4. Student attorneys: you should have primary responsibility for deciding what possible questions should be asked of each witness on direct and cross-examination. Questions for each witness should be written down and/or recorded. Write out key points for your opening statements and closing arguments before trial; then, incorporate additional points that arose during the competition for inclusion in your closing argument to highlight the important developments that occurred during the trial. Concise, summary, pertinent statements which reflect the trial that the judge just heard are the most compelling and effective. Be prepared for interruptions by judges who like to question you, especially during closing arguments.
5. The best teams generally have student attorneys prepare their own questions, with the Teacher and Attorney Coaches giving the team continual feedback and assistance. Based on these practice sessions, student attorneys should continue revising questions and witnesses should continue studying their affidavits.
6. As you approach your first round of competition, you should conduct at least one complete trial as a dress rehearsal. All formalities should be followed and notes should be taken by everyone. Evaluate the team's presentation together. Try to schedule this session when your Attorney Coach can attend.
7. **Some of the most important skills for team members to learn are:**
 - Deciding which points will prove your side of the case and developing the strategy for proving those points.

- Stating clearly what you intend to prove in an opening statement and then arguing effectively in your closing that the facts and evidence presented have proven your case.
- Following the formality of court; e.g., standing up when the judge enters or whenever you address the Bench, and appropriately addressing the judge as “Your Honor,” etcetera.
- Phrasing direct examination questions that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions).
- Refraining from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, learn to limit additional questions, as they often lessen the impact of previously made points.
- Thinking quickly on your feet when a witness gives you an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at you.
- Recognizing objectionable questions and answers, offering those objections quickly and providing the appropriate basis for the objection.
- Paying attention to all facets of the trial, not just the parts that directly affect your presentation. All information heard is influential! Learn to listen and incorporate information so that your presentation, whether as a witness or an attorney, is the most effective it can be.
- The Mock Trial should be as enjoyable as it is educational. When winning becomes your primary motivation, the entire competition is diminished. **Coaches and students should prepare AT LEAST as much for losing as they do for winning/advancing.** Each member of the team—student or coach— is personally responsible for his/her behavior prior to, during, and at the close of the trial. There are schools and individuals across the state that are no longer welcome to participate based on previous behavior.

PART III: TRIAL PROCEDURES

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom, as well as with the events that generally take place during the competition and the order in which they occur. This section outlines the usual steps in a “bench” trial— that is, without a jury.



1. The Opening of the Court
 - a. Either the clerk of the Court or the judge will call the Court to order.
 - b. When the judge enters, all participants should remain standing until the judge is seated.
 - c. The case will be announced; i.e., "The Court will now hear the case of _____ v. _____."
 - d. The judge will then ask the attorneys for each side if they are ready.
2. Opening Statements (5 minutes maximum)
 - a. Prosecution (criminal case)/ Plaintiff (civil case)

After introducing oneself and one's colleagues to the judge, the prosecutor or plaintiff's attorney summarizes the evidence for the Court which will be presented to prove the case.
 - b. Defense (criminal or civil case)

After introducing oneself and one's colleagues to the judge, the defendant's attorney summarizes the evidence for the Court which will be presented to rebut the case which the prosecution or plaintiff has made.

3. Direct Examination by the Prosecutor (7 minutes plus 2 minutes for Voir Dire)

The prosecutor/ plaintiff's attorney conducts direct examination (questioning) of each of its own witnesses. At this time, testimony and other evidence to prove the prosecution's/plaintiff's case will be presented. The purpose of direct examination is to allow the witness to relate the facts to support the prosecution/plaintiff claim and meet the required burden. (If an attorney chooses to voir dire a witness, 2 minutes are permitted, in addition to the 7 minutes allowed for direct examination.)

NOTE:

The attorneys for both sides, on both direct and cross-examination, should remember that their only function is to ask questions; attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

4. Cross-Examination by the Defendant's Attorneys (5 minutes)

After the attorney for the prosecution/plaintiff has completed the questioning of a witness, the judge then allows the defense attorney to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of the opposing witness. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through cross-examination. (If an attorney chooses to voir dire a witness, 2 minutes are permitted, in addition to the 5 minutes allowed for cross examination.)
5. Direct Examination by the Defendant's Attorneys (7 minutes plus 2 minutes for Voir Dire)

Direct examination of each defense witness follows the same pattern as above which describes the process for prosecution's witness.
6. Cross-Examination by the Prosecution/ Plaintiff (5 minutes)

Cross-examination of each defense witness follows the same pattern as above for cross-examination by the defense.
7. Re-Direct Examination by the Plaintiff/ Prosecution (3 minutes and/or 3 questions)

The Plaintiff's/Prosecution's attorney may conduct re-direct examination of the witness to clarify any testimony that was cast in doubt or impeached during cross-examination. (Maximum of three minutes or three questions.)
8. Re-Cross Examination by the Defense Attorneys (3 minutes and/or 3 questions)

The defense attorneys may re-cross examine the opposing witness to impeach previous testimony. (Maximum of three minutes or three questions.)

9. Voir Dire Examination by Either the Plaintiff/ Prosecution or the Defense Attorneys (2 minutes)
Voir Dire is the process of asking questions to determine the competence of an alleged expert witness. Before giving any expert opinion, the witness must be qualified by the court as an expert witness. The court must first determine whether or not the witness is qualified by knowledge, skills, experience, training or education to give the anticipated opinion. After the attorney who called the witness questions him/her about his/her qualifications to give the opinion, and before the court qualifies the witness as an expert witness, the opposing counsel shall (if he/she chooses to do so) have the opportunity to conduct a brief cross-examination (called "voir dire") of the witness' qualifications.

10. Closing Arguments (Attorneys) (5 minutes)

For the purposes of the Mock Trial Competition, the first closing argument at all trials shall be that of the Defense.

a. Defense

A closing argument is a review of the evidence presented. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not substantiate the elements of a charge or claim, stresses the facts and law favorable to the defense, and asks for a finding of not guilty for the defense.

b. Prosecution/ Plaintiff

The closing argument for the prosecution/plaintiff reviews the evidence presented. The prosecution's/plaintiff's closing argument should indicate how the evidence has satisfied the elements of a charge, point out the law applicable to the case, and ask for a finding of guilt. Because the burden of proof rests with the prosecution/plaintiff, this side has the final word.

11. The Judge's Role and Decision

The judge is the person who presides over the trial to ensure that the parties' rights are protected and that the attorneys follow the rules of evidence and trial procedure. In mock trials, the judge also has the function of determining the facts of the case and rendering a judgment, just as in actual bench trials.

PART IV: SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. **The burden is on the attorneys to know the rules, to be able to use them to present the best possible case, and to limit the actions of opposing counsel and their witnesses.**

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this Mock Trial Competition, the rules of evidence have been modified and simplified. Not all judges will interpret the rules of evidence or procedure the same way, and you must be prepared to point out the specific rule (quoting it, if necessary) and to argue persuasively for the interpretation and application of the rule you think proper. **No matter which way the judge rules, attorneys should accept the ruling with grace and courtesy!**

1. SCOPE

RULE 101: SCOPE. These rules govern all proceedings in the mock trial competition. The only rules of evidence in the competition are those included in these rules.

RULE 102: OBJECTIONS. An objection which is not contained in these rules shall not be

considered by the Court. However, if counsel responding to the objection does not point out to the judge the application of this rule, the Court may exercise its discretion in considering such objections.

2. RELEVANCY

RULE 201: RELEVANCY. Only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, confuses the issues, or is a waste of time, it may be excluded by the Court. This may include testimony, pieces of evidence, and demonstrations that have no direct bearing on the issues of the case and have nothing to do with making the issues clearer.

Example:

The attorney for the plaintiff asks Pat Mason, on cross-examination, "Is it not true that, when you were in high school, you flunked gym class?"

Objections to Irrelevant Questions/Testimony:

"Objection. This testimony is unduly prejudicial."

"I object, Your Honor. This testimony is irrelevant to the facts of the case."

RULE 202: CHARACTER. Evidence about the character of a party or witness (other than his or her character for truthfulness or untruthfulness) may not be introduced unless the person's character is an issue in the case.

Examples:

Whether one spouse has been unfaithful to the other may be a relevant issue in a civil trial for divorce, but is generally not an issue in a criminal trial for assault. A person's violent temper may be relevant in a criminal trial for assault, but is not an issue in a civil trial for breach of contract.

Objections:

"Objection. Evidence of the witness' character is not proper given the facts of the case."

"Objection. Only the witness' reputation for truthfulness is at issue here."

3. WITNESS EXAMINATION

A. DIRECT EXAMINATION (attorney calls and questions witness)

RULE 301: FORM OF QUESTION. Witnesses should be asked direct questions and may not be asked leading questions on direct examination. Direct questions are phrased to evoke a set of facts from the witnesses. A leading question is one that suggests to the witness the answer desired by the examiner -- typically a "yes" or "no" answer.

Example of a Direct Question:

An attorney for the Plaintiff asks Thomas Howard, "How many hours each work do you work?"

Example of a Leading Question:

An attorney for the Plaintiff asks Thomas Howard, "Isn't it true that you work approximately 45 hours each week?"

Narration: While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or narrate an entire story. Narrative questions are objectionable.

Example of Narrative Question:

An attorney for the plaintiff asks Thomas Howard, "Describe for the Court a typical week at your place of work."

Narrative Answers:

At times, a direct question may be appropriate, but the witness' answer may go beyond the facts for which the question was asked. Such answers are subject to objection on the grounds of narration.

Objections:

"Objection: Counsel is leading the witness."

"Objection: Witness is being narrative."

"Objection: Question asks for a narration."

RULE 302: SCOPE OF WITNESS EXAMINATION. Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.

RULE 303: REFRESHING RECOLLECTION. If a witness is unable to recall a statement made in an affidavit, the attorney on direct may show that portion of the affidavit that will help the witness to remember.

B. CROSS EXAMINATION (questioning the other side's witness)

RULE 304: FORM OF QUESTION. An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions that tend to evoke a narrative answer should be avoided in most instances.

RULE 305: SCOPE OF WITNESS EXAMINATION. Attorneys may only ask questions that relate to matters brought out by the other side on direct examination or to matters relating to the credibility of the witness. This includes facts and statements made by the witness for the opposing party. Note that many judges allow a broad interpretation of this rule.

Example:

If on direct examination a witness is not questioned about a topic, the opposing attorneys may not ask questions about this topic on cross examination.

Objection:

"Objection. Counsel is asking the witness about matters which did not arise during direct examination."

RULE 306: IMPEACHMENT. On cross-examination, the attorney may impeach a witness (show that a witness should not be believed) by (1) asking questions about prior conduct that makes the witness' credibility (truth-telling ability) doubtful, or (2) asking questions about previous contradictory statements. These kinds of questions can only be asked when the cross-examining attorney has information that indicates that the conduct actually happened.

C. RE-DIRECT EXAMINATION

RULE 307: LIMIT ON QUESTIONS. After cross-examination, up to three (3), but no more than three (3), questions may be asked by the direct examining attorney, and such questions are limited to matters raised by the attorney on cross-examination. (The presiding judge has considerable discretion in deciding how to limit the scope of the re-direct.)

NOTE:

If the credibility or the reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to “save” the witness’ truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Please note that at times it may be more appropriate NOT to engage in re-direct examination.

D. RE-CROSS EXAMINATION

RULE 308: LIMIT ON QUESTIONS. Three (3) additional questions, but no more than three (3), may be asked by the cross-examining attorney, and such questions are limited to matters on re-direct examination and should avoid repetition. (The presiding judge has considerable discretion in deciding how to limit the scope of the re-cross.) Like re-direct examination, at times it may be more appropriate not to engage in re-cross examination.

Objection:

“Objection. Counsel is asking the witness about matters that did not come up on re-direct examination.”

4. HEARSAY

A. THE RULE

RULE 401: HEARSAY. Any evidence of a statement made by someone who is not the witness on the stand, which, if offered to prove the truth of the matter asserted in that out-of-court statement, is hearsay, and is not permitted. **For the purposes of the Mock Trial Competition, if a document is stipulated, a hearsay objection may not be raised with regard to it.**

Example:

An attorney for the Defense asks Max Davis, “What did other staff members say to Randy Bates about the issue of confidentiality as it pertains to this case?”

Objection:

Objection. Counsel’s question is seeking a hearsay response.

Example:

Max Davis states, “I overheard several of the other staff saying that they agreed that the Sun should not give up on our fight to protect confidentiality.”

Objection:

“Objection. The witness’ answer is based on hearsay. I ask that the statement be stricken from the record.”

Response to the Objections: “Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show....”

B. EXCEPTIONS

- RULE 402: ADMISSION AGAINST INTEREST. A judge may admit hearsay evidence if it was said by a party in the case and contains evidence which goes against the party's side.
- RULE 403: STATE OF MIND. A judge may admit hearsay evidence if a person's state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person's state of mind.
- RULE 404: BUSINESS RECORDS. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of the information or the method of circumstances of preparation indicate lack of trustworthiness, shall be admissible. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and callings of every kind, whether or not conducted for profit.
- RULE 405: EXCITED UTTERANCE. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

5. OPINION AND EXPERT TESTIMONY

- RULE 501: OPINION TESTIMONY BY NON-EXPERTS. Witnesses who are not testifying as experts may give opinions which are based on what they saw or heard and are helpful in explaining their story. A witness may NOT testify to any matter of which the witness has no personal knowledge, nor may a witness give an opinion about how the case should be decided.

Example:

(General Opinion)

Plaintiff attorney asks Sandy Browne, "Do you think that these sorts of child-snatching cases are occurring more frequently than ten years ago?"

Objection:

"Objection. Counsel is asking the witness to give an opinion."

Example:

(Lack of Personal Knowledge)

Defense attorney asks Randy Bates, "How often did Johnny interact with other children while he has been living with his mother?"

Objection:

"Objection. The witness has no personal knowledge that would enable him/her to answer this question/ make this statement."

Example:

(Opinion on Outcome of Case)

The Plaintiff asks Sandy Browne, "Should the Sun be forced to give up confidentiality in this case?"

Objection:

“Objection. The question asks the witness to give a conclusion that goes to the finding of the Court.”

RULE 502: OPINION TESTIMONY BY EXPERTS. Only persons qualified as experts may give opinions on questions that require special knowledge or qualifications. An expert may be called as a witness to render an opinion based on professional experience. An expert must be qualified by the attorney for the party for whom the expert is testifying. This means that before the expert witness can be asked for expert opinion, the questioning attorney must bring out the expert’s qualifications, education and/or experience.

Example:

Defense attorney asks Randy Bates, “From your experience as a newspaper reporter and investigator in these sorts of cases, do you believe the incidence of child snatching has increased in recent years?”

Objection: “Objection. Counsel is asking the witness to give an expert opinion for which the witness has not been qualified.”

RULE 503: VOIR DIRE. (“To speak the truth.”) After an attorney who has called a witness questions him/her about his/her qualifications, and before the court qualifies the witness as an expert, the opposing counsel shall have the opportunity, if he/she chooses, to conduct voir dire. After the voir dire examination has been conducted, the cross-examining attorney should advise the court as to whether there are any objections to the witness being qualified as an expert witness and/or whether there are any objections to the witness’ expertise to give the specific opinion the opposing counsel is trying to elicit from this witness.

Example:

(after questioning by an attorney to create a foundation for his/her witness to be qualified by the Court as an expert witness): “At this time, your Honor, I request that the Court accept and qualify the witness as an expert in the field of child snatching.”

Objection:

“Your Honor, we would like permission to voir dire the witness.”

6. PHYSICAL EVIDENCE

RULE 601: INTRODUCTION OF PHYSICAL EVIDENCE. Physical evidence may be introduced if it is relevant to the case. Physical evidence will not be admitted into evidence until it has been identified and shown to be authentic or its identification and/or authenticity has been stipulated. That a document is “authentic” means only that it is what it appears to be, not that the statements in the document are necessarily true.

Physical evidence need only be introduced once. The proper procedure to use when introducing a physical object or document for identification and/or use as evidence is (for example):

- a. Show the exhibit to opposing counsel.
- b. Show the exhibit and have it marked by the clerk/judge. “Your Honor, please have this marked as Plaintiff’s Exhibit 1 for identification.”
- c. Ask the witness to identify the exhibit. “I now hand you what is marked Plaintiff’s Exhibit 1. Would you identify it, please?”
- d. Ask the witness about the exhibit, establishing its relevancy.

- e. Offer the exhibit into evidence. "Your Honor, we offer Plaintiff's Exhibit 1 into evidence at this time."
- f. The Judge will ask opposing counsel whether there is any objection, rule on the objection, and admit or not admit the exhibit into evidence.
- g. If the exhibit is a document, hand it to the clerk/judge.

NOTE:

After an affidavit has been marked for identification, a witness may be asked questions about it without its introduction into evidence.

7. INVENTION OF FACTS (Special Rules for the Mock Trial Competition)

RULE 701: DIRECT EXAMINATION. On direct examination, the witness is limited to the facts provided in the casebook. If a witness testifies in contradiction of a fact given in the witness' statement, opposing counsel should impeach the witness' testimony during cross-examination. **If the witness goes beyond the facts given, such that they directly conflict with the stipulated facts or witness affidavits, a bench conference may be requested by opposing counsel, at which time the counsel may object to invention of facts.** (It should be noted that the granting of a bench conference is a discretionary decision of the judge. A request for a bench conference might not be granted.)

Objection to be made at a bench conference:

"Your Honor, the witness is creating facts which are not in the record."

"Your Honor, the witness is intentionally creating facts which could materially alter the outcome of the case."

RULE 702: CROSS-EXAMINATION. Questions on cross-examination should not seek to elicit information that is not contained in the fact pattern. If on cross-examination a witness is asked a question, the answer to which is not contained in the witness' statements of the direct examination, the witness may respond with any answer which does not materially alter the outcome of the trial. An answer which is contrary to the witness' affidavit may be impeached by the cross-examining attorney. If the witness invents facts material to the case, a bench conference may be called and, if granted, an objection made to the invention of facts.

Objection:

"Objection. The witness' answer is inventing facts which materially alter the case."

8. PROCEDURE RULES

RULE 801: PROCEDURES FOR OBJECTIONS. An attorney may object anytime the opposing attorney has violated the Rules of Evidence.

NOTE: The attorney who is objecting should stand up and do so at the time of the violation. When an objection is made, the judge will usually ask the reason for it. Then the judge will turn to the attorney who asked the question and that attorney will usually have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether to discard a question or answer because it has violated a rule of evidence ("objection sustained"), or whether to allow a question or answer to remain on the trial record ("objection overruled").

RULE 802: MOTIONS TO DISMISS. Motions for dismissal at the end of the prosecution's case are NOT permitted.

RULE 803: CLOSING ARGUMENTS. Closing arguments must be based on the evidence and testimony presented during the trial. Offering new information at this point is incorrect.

THE CIRCUIT COURT FOR THE STATE OF MARYLAND

Thomas Howard
Plaintiff,

v.

The Baltimore Sun Company

Defendant

STATEMENT OF THE ISSUE

Whether the best interests of a child and a father's right to custody outweigh a reporter's and a newspaper's right to maintain the confidentiality of their sources.

STATEMENT OF STIPULATED FACTS

All parties agree to the following facts in this case:

June Harris and Thomas Howard were married on May 22, 1995. On December 9, 1998, their son Johnny was born. The family resided in Talbot County. On July 11, 2005, June and Thomas were divorced. Custody of Johnny was awarded to Mr. Howard, with weekend visiting privileges granted to June.

On September 10, 2005, as part of the regular weekend visitation, June left Thomas' home with Johnny. She told Thomas that she and the child were going to the park. June and Johnny did not return home that evening and Mr. Howard has not seen either his ex-wife or child since that date. Thomas has not spoken to either person and has no knowledge of their whereabouts.

On December 12, 2005, a story appeared in The Baltimore Sun describing the case of the mother who snatched her child from the custodial father and then fled into the City. The mother and child were in hiding. Identifying characteristics in the news story led Thomas to believe that the mother and child were, in fact, June and Johnny.

On January 2, 2006, Thomas Howard instituted proceedings of his custody decree and to seek an order directing June to return the child.

Randy Bates is the reporter for The Baltimore Sun who wrote the child-snatching story. Bates and the editor, Max Davis, were subpoenaed by Mr. Howard to testify at the custody enforcement proceeding regarding of his wife and child.

The Baltimore Sun Company, on behalf of Bates and Davis, filed a motion to quash the subpoena, citing the reporter's privilege to protect the confidentiality of sources and information. This motion was based on Maryland State Code §80-8001 (a) and the protections of the First Amendment to the Constitution. Thomas Howard petitioned for a hearing on the issue of the reporter's privilege, as allowed under Maryland State Code §80-8001 (b) and (c). This hearing is the proceeding currently before the court.

DEFENSES AND PRIVILEGE

§80-8001 Reporter's Privilege*

- (a) A person ("reporter") connected with or employed by the news media for the purpose of gathering or disseminating news for the general public is presumed to have a privilege to refuse to disclose in any legal proceeding the source from whom any information was obtained, and any other information obtained in the course of investigating a story.
- (b) This presumption may be rebutted by clear and convincing evidence showing that:
 - (1) information held by a reporter is necessary, material, and relevant for the exercise or protection of a Constitutional or substantial public interest: and

*This is a mock statute and is only for the purpose of this Mock Trial. It has been designed in order to explore the many issues involved in this case. Maryland State does have a "Shield Law" and it can be found at Section 9-112 of the Courts & Judicial Proceedings Article of the Annotated Code of Maryland (2005). 15

- (2) all reasonable means to uncover other sources of that information have been exhausted, and that, therefore,
 - (3) no reasonable means, other than compelling the reporter to disclose the information, exists to obtain the necessary information.
- (c) A petition seeking to implement Part (b) of this statute shall be filed in the Circuit Court. Upon receipt of such a petition the Court shall conduct a fact-finding hearing to determine whether the privilege asserted by the reporter is overcome by clear and convincing evidence shown by the plaintiff.
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First Amendment

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.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

At this hearing, Plaintiff Thomas Howard is seeking to demonstrate by clear and convincing evidence that:

- (a) the best interests of his child create a substantial public interest in finding and rescuing his child from potential abuse, and that he has a due process interest in his rights under the initial custody order and the newly instituted custody proceedings;
- (b) that Randy Bates has information concerning the location of his ex-wife and child that is necessary, material, and relevant to the protection of his interests cited in (a), supra;
- (c) that all other sources of information sought have been exhausted.

Therefore, the plaintiff asks this Court to order the reporter to produce information for the custody proceeding.

Defendants Randy Bates and The Baltimore Sun Company answer that:

- (a) the evidence presented by Plaintiff is not clear and convincing, and therefore insufficient to rebut the privilege asserted;
- (b) even if the evidence is clear and convincing, the statute is unconstitutional in light of the fundamental right to Freedom of the Press guaranteed by the First Amendment to the Constitution.

Therefore, the Defendant asks the court to quash the subpoena issued for the custody hearing.

Stipulated Documents

Custody decree

The Baltimore Sun article by Randy Bates

Witnesses for the Plaintiff

Thomas Howard, Plaintiff and father of the snatched child

Jackie Mills, Social Worker who investigated the family for custody proceeding

Sandy Browne, Baltimore Police Department, Child Protection Investigation Unit

Witnesses for the Defendant

Randy Bates, Defendant and reporter for The Baltimore Sun who wrote the story

Max Davis, *Sun* editor who directed Randy on the story

Pat Mason, friend

**Statement of Thomas Howard
Witness for the Plaintiff**

My name is Thomas Howard. I am 33 years old. I live at 4522 Landover Road in Oxford, Maryland. I am a systems analyst for a bank.

June Harris and I were married in 1995. We have one child, Johnny, born in 1998. June and I divorced in 2005. She initiated the divorce action. Custody of Johnny was awarded to me, with visiting privileges for June. June was awarded a rather large lump-sum payment from me, which I paid promptly. The divorce was at June's request. I loved her, and did not feel any ill-will toward her. However, she had, and still has, a lot of problems, particularly with drinking. While we were together, her drinking got out of hand on several occasions, and she seriously abused Johnny while she was drunk.

In 2004, after the worst drinking bout, I convinced her to go away for a while to get herself straightened out. She went to live with her mother, and Johnny stayed with me. I sent her whatever money she asked for. Johnny and I visited her once a month. About 6 months later, June asked us to stop visiting. She said she'd call when she wanted to see Johnny, but she never did. Then, after almost a year of no contact, June filed for divorce in April of 2005. I would not have contested, except that she also sought custody of Johnny. Of course, I couldn't let that happen. Not only did June have a history of alcoholism with instances of child abuse, she had abandoned both of us for a year.

Jackie Mills, the social worker sent to investigate the case, was very understanding, and presented the picture to the judge fairly and honestly. The divorce was granted and the judge determined that it was in Johnny's best interests to be in my custody. June was allowed weekend visitation rights, twice each month. I didn't like the fact that the court said she could visit with Johnny by herself and take him on day trips, but I didn't want to appear mean, so I didn't fight it.

In September of 2005, on the second or third visit, June told me that she was taking Johnny to the park. I never saw either of them again. The first night, when I realized that she wasn't bringing him back, was the worst night of my life. I imagined all kinds of horrible things happening to my son. I couldn't concentrate on work. My boss finally let me take November off to search for them.

Then, in early January, like a shot out of the blue, this story appeared in the Baltimore Sun. A friend at work pointed it out to me. I immediately knew that story was about June and Johnny: the scar on his chin, a result of one of her drunken attacks on him when he was a toddler; the scar on her arm, not my abuse as she claimed in the story, but her own clumsy attempt at suicide one day, when she put her arm through a window.

For a few minutes, as I read the story, I just stood there, in shock. Then it suddenly hit me: those cigarette burns! They're new! Johnny didn't have a mark on him when he left me that day, way back in September. She's torturing my son, keeping him confined in some shabby room. I went right down to the Sun to see that reporter. Bates refused to talk to me. So did the editor. I couldn't believe it! I didn't know where else to turn, so I called the police. I was referred to the Child Protection Unit. I was delighted to learn that Officer Browne was already at work on the case. I was happy to cooperate fully with them, even to the extent of providing pictures, names of all of June's friends and relatives, and a description of her usual patterns. We've been searching over a month with no leads.

I also began these proceedings, in the hope that the court could help me find my son and return him to my custody where he belongs. The police and I have done everything we humanly can to find out where June and Johnny are. My son's life and health are in danger, and we've already lost valuable time. The Sun has no right to endanger any child's life for the sake of some technical legal principle. I can't believe they're willing to sacrifice my son. All they care about is selling newspapers.

Thomas Howard
Thomas Howard

**Statement of Jackie Mills
Witness for the Plaintiff**

My name is Jackie Mills. I am 36 years old. I live at 3204 Bunker Hill Road in Hyattsville, Maryland. I am a Court-appointed social worker and a Child Custody Investigation Specialist.

On May 7, 2005, I was assigned to the Howard case. I first met June Howard at her mother's home on May 11, 2005. I tried to interview her at that time, although she was very hostile toward me and refused to answer most of my questions. I suspected that she had been drinking.

I met Thomas Howard on May 19, 2005, and interviewed him at that time in his home. Actually, Mr. Howard and I had met once before through some mutual friends. During the May 19th interview, I had the opportunity to meet Thomas' son, Johnny, and to observe their relationship. As a result of these interviews and my observations of the family, I recommended to the Court that Thomas be given full legal custody of Johnny. My findings and recommendations were incorporated into the custody order.

At the time of that case, I recommended to the Court that June be allowed only very limited, closely-guarded visiting privileges. I've become all-too-familiar with the pattern of the child-snatching parent. That person, of course, doesn't care a bit about the child's welfare—doesn't even really want custody. The typical child-snatcher uses the child as a weapon against the other parent, to continue to vent his or her hostility and aggression. I had a feeling that, given June's history of drinking and abusive activities, and her anger toward Thomas, she might just try something like this child-snatching.

I believe, from the many experiences I have had with child custody and child-snatching cases, that Johnny is now in extreme danger. The newspaper report only confirms my fears. A careful reading of the article shows that Johnny never once responded positively to June. He can't seem to get far enough away from her. He wants his father desperately.

Even more alarming, as the article reveals, Johnny has been horribly abused. Johnny did not have any cigarette burns on him on the day June left with him. I had just visited Thomas and Johnny on the previous day; in fact, since I've become involved with this case, I've become rather close to them. I was out with them for an afternoon swim in a neighbor's pool. Johnny did not wear a shirt while he was swimming, and I did not observe any marks on him. That was the day before June snatched him. June smokes like a chimney. Thomas does not smoke.

The child described in Bates' article is not the same full-spirited child I saw last October. He seems dull and listless, fearful and timid. Johnny, as I knew him, was a bright, articulate, fun-loving child. Now he's locked away somewhere. Perhaps the greatest cruelty is being kept out of school, not allowed to associate with children his own age. This bright, vibrant child is withering away, and he must be found immediately.

I am receiving a standard \$450.00 expert witness fee to testify in this case. However, I am going to use this money to help Thomas hire a private investigator. I love Thomas and Johnny too much to take money from Thomas and then turn away. I will continue to pursue this with him. I hope that the newspaper will not be allowed to persist in concealing the information it has.

Jackie Mills
Jackie Mills

**Statement of Sandy Browne
Witness for the Plaintiff**

My name is Sandy Browne. I am 28 years old. I live at 1970-C Street in Baltimore, Maryland. I am a lieutenant with the Child Protection Unit of the Baltimore Police Department. I have worked with this unit for three years.

On December 12, 2005—a Monday—my boss, Inspector Hayes, called me at home at about 3:30 pm. He told me to report to Headquarters right away. When I arrived at Headquarters at about 3:50 pm, I reported to the Inspector's office, and was surprised to see the Chief. Hayes told me that this meeting was to begin immediate mobilization in response to a case of suspected child abuse reported in The Baltimore Sun that morning. Hayes handed me a copy of that story. As I was reading, the Chief remarked that he had orders "from the top"—meaning the Mayor. We were ordered to make this case our top priority, and to, essentially, "turn the city upside-down and inside-out" to find the child. The article was written by Randy Bates. It described a situation involving a mother who had kidnapped her son from the father's legal custody. The mother and child, according to the story, were hiding somewhere in Baltimore.

In reading the article, I was immediately aware that this child was a likely victim of serious abuse and neglect. I've worked in this area for three years, and the symptoms were clear in the story: the cigarette burns; apparent signs of the child's withdrawal from the mother; restlessness and fear. The simple fact that she's been keeping the kid out of school for months, and away from children his own age, is a sure sign of neglect and a cause for grave concern.

Inspector Hayes told me that I would be the chief investigator on this case and that all of the resources and personnel of the department were at my disposal. I went to work immediately, knowing that swift investigation was essential, because of the apparent danger to the child, and because of the likelihood that the publicity would force the woman to leave the city. During the next seven days, I worked around the clock, with at least ten other officers rotating on ten-hour shifts.

We talked to every source we had around the city. We staked out apartment buildings that overlooked playgrounds and school yards, according to the little bit of description we eked from the story. We talked to tenants and landlords, and even secured warrants to enter several apartments where we had probable cause to believe the mother and child were hiding—but nothing turned up. Of course, we alerted hospitals and other public agencies, and the major food and drug store chains to be on the look out. However, after seven days, still nothing. We were delighted when Mr. Thomas Howard called us several days after the story appeared. He told me that he believed that the woman and child in the story were his family. He was able to provide us with a description of his wife and son, as well as with photographs and information on friends of the wife. Howard told us that he didn't know of any friends his wife had in Baltimore. We tried to talk to his ex-wife's mother, with whom June lived for a while before the divorce was finally granted. However, Mrs. Harris was away from her Saratoga residence and we were unable to locate her.

We tried to talk to the reporter and people at the newspaper, but of course, they were thoroughly uncooperative. Our legal counsel advised us to pursue all of our other sources before trying to get a subpoena to force the newspaper to give us the information as to the whereabouts of the mother and child. We're still investigating new leads. Just last week, for example, we found out about Pat Mason, who is a friend of June Howard's and who claims to have seen both mother and child recently. Mason claims that s/he has no knowledge of the present location of the individuals we seek. However, I believe Mason is withholding information, and probably thinking that it's the right thing to do in order to protect the child. Unfortunately, it could be causing considerable harm to the child.

The problem with all of this, however, is that this case has already dragged on for some time. Because the newspaper thinks that confidentiality it is more important than a child's life, Johnny may now be dead or in serious danger. Clearly, confidentiality is an important issue and not something to be taken lightly, but every rule—every law—has its exceptions. If we can find out everything the newspaper knows, we still may be able to save Johnny, but time is getting short.

Sandy Browne
Sandy Browne

**Statement of Randy Bates
Witness for the Defendant**

My name is Randy Bates. I am 23 years old. I am a reporter for the City section of the Baltimore Sun. I have worked for the Sun for two years, since I graduated from the University of Maryland. At school, I was a journalism major, with a minor in Sociology. I was Managing Editor of the daily student newspaper. In my senior year, I investigated and wrote a five-part series on child-snatching. That series landed me my current job.

Soon after I began my job with the Sun, my editor, Max Davis, told me to keep up my interest in the child-snatching issue. I covered some of the City Council hearings on proposed legislation as well as a few State legislature hearings.

Despite all of my work on the subject, I had never actually talked with someone who had snatched their child. I did learn, during my research, that secrecy is very important for the parent who has taken the child. The "snatcher" is always afraid that the other parent will take the child away again. The last thing these parents want is publicity, so they're not about to call reporters.

However, Max soon asked me to try and get a story from the point of view of the parent who had taken a child. I investigated around town with no luck for several months. I went to every social service agency and shelter house I could think of. Everybody acted like I was crazy for trying to get this kind of an interview.

Breaks come in this business when you're least expecting them. I was sitting in a new bar on 18th Street one night, telling a friend about my frustration with this investigation. We were sitting at the bar. A woman was sitting alone next to me but I didn't really notice her at first. Then I turned and saw she was looking at me very closely. As I continued my conversation with my friend, this woman wrote something on napkin, pushed it over to me, and walked out. I read the message on the napkin. It said to call a phone number at a certain time the next day. I checked the phone number with the phone company that night; it was for a pay phone at the corner of 6th and H Streets.

The next day, about ten minutes before I was supposed to place the call, I got a call at my desk at the Sun. The caller, a woman, identified herself as the person from the bar. The caller told me she could give me the child-snatching story I wanted. However, she said that I and the Sun would have to guarantee absolute secrecy. She expressed serious concern that any publicity might result in her ex-husband's finding her hiding place. I asked my editor, Max, to pick up another phone. With Max on the line, I asked the caller to explain what information she had for us, and why secrecy was so important. The caller said she was hiding with her son, whom she had taken from the custody of her ex-husband. I asked her why she was willing to risk exposure to tell her story to a reporter. She said she wanted people to know that she and her child were alive and well. She also said that she wanted the public to understand her side of the case. However, she also said that she was not willing to risk much and that without an absolute promise of confidentiality, she would not go any further with us.

Max and I quickly conferred, with the woman still on the line, and we agreed that we should pursue the story. We also agreed that we would promise secrecy for the woman's identity and her location. The caller seemed satisfied with our promise. She told me where and when to meet her.

When I arrived at the location where I was instructed to meet her, I found a note telling me to wait by a pay phone at the corner of the street. I waited one half-hour. Finally the phone rang. The same woman's voice told me to go to a certain apartment in the building across the street. The woman later told me that she had taken these precautions so that she could observe me from her apartment window to be sure that I was the reporter she met in the bar, and that I was alone. This woman, June, was clearly terrified of discovery.

The place where we met was sparse of furniture or personal items, but clean and neat. The child appeared to be a little shy, but well-dressed, and cared for. I could not observe any immediate danger to the child in this environment. I did observe scars on the child, which I reported in my story. However, all of the scars appeared to be healed, indicating injuries inflicted some time ago.

June conversed with me in a calm, self-possessed manner. I felt that it was clear that she trusted me, both to tell her story well and to preserve her privacy. I fully intend to live up to this trust, both for the sake of my source, as well as for my own career as a journalist.

Randy Bates
Randy Bates

Statement of Max Davis Witness for the Defense

My name is Max Davis. I am 55 years old. I am the City editor for the Baltimore Sun. I have been a journalist for 25 years and have spent the last 15 years at the Sun. I have been the City Editor for 5 years.

In May of 2005, I assigned Randy Bates to investigate cases of parents who were hiding here in Baltimore with children whom they snatched from custodial parents in other states. Randy is a fine young reporter and has developed significant expertise on the issue of child-snatching.

We don't assign reporters to investigations on mere whims. My colleagues and I on the editorial staff agreed that this particular investment of Randy's time was important because of the epidemic of child-snatching around the country. Additionally, because of the federal child-snatching legislation, we felt that the public needed to know more—about the issue in general—and about the motivation of parents who snatch their children.

After months of fruitless investigation, Randy finally stumbled upon a lead. I was at my desk one morning when Randy asked me to pick up the phone. Randy was talking to a woman who explained that she was a parent who had snatched her child and was now hiding in the city. This woman expressed an interest in talking with Randy, but only if she could be promised absolute secrecy.

A promise of confidentiality, particularly with this sort of sensitive issue, is not easily granted, nor is it taken lightly. With the woman listening on the line, Randy and I discussed our options. We could refuse to promise secrecy, and thus lose this source that we had tried so hard and so long to find. We could promise secrecy, and take the risk that we would find information that would make it very hard for us to keep our promise of confidentiality. We knew then that our promise could be threatened by two situations: one, in which a court ordered us to break our promise; and two, in which we might find the situation so extreme, if the child were clearly abused, for example, that our moral, ethical, and legal consciences would prohibit us from keeping our oath to her.

In this case, Randy and I finally agreed that this woman had an important story to tell—and that we had an obligation as journalists to tell it. If the pursuit of the story required a promise of confidentiality, so be it. We assured the woman that her identity and location would not be revealed. She then told Randy where to meet her.

Randy's case is not unique. As an editor, I have made countless decisions about confidential sources. As a reporter, I was involved in many such choices myself. Confidential sources are essential to maintaining a free press. If reporters did not have the ability to promise secrecy, few people would give us vital information.

There are many examples of cases in which I have granted reporters my support and approval for a promise of confidentiality. Some of the most important cases have included:

- (1) A report of a police cover-up of a local official's involvement in a kick-back scheme. The source for a story was someone within the police department in question. The story led not only to the conviction of the official involved but to the prosecution of the responsible police officials as well. The informant would never have given us this lead and information without confidentiality.
- (2) A story pinpointing mysterious activities in the dispensary of a local hospital, which led to the uncovering of a major drug ring. Again, the source for the story was a hospital employee whose information resulted in the arrest and indictment of superiors, including a doctor. This story would not have been possible without our promise of secrecy.
- (3) A series of reports on the deliberate mislabeling of grades of meat at a meat-packing house. This story prompted the FDA to investigate the account, and resulted in consumer groups demanding more stringent controls. Many sources from within the industry in question contributed to the series, but most would not talk without our promise.

I could continue with the list. The point is that, without the ability to promise and keep our promise of confidentiality, none of these extremely important stories would have come to the attention of the public, and none of the subsequent action would have been taken. I'm proud that the press can serve this valuable role in society. This is a basic civil liberty. The ramifications would be huge if the courts force us to reveal our sources. Confidentiality is vital to our continued existence.

Max Davis
Max Davis

**Statement of Pat Mason
Witness for the Defendant**

My name is Pat Mason. I am 32 years old. I live at 2737 Longfellow Street in Baltimore, Maryland. I am an office clerk.

June Harris and I were high school friends. Over the years, since we finished school, we have maintained regular contact. I was in June's wedding to Thomas. Since that time, we would talk by phone at least once a week, and we would see each other maybe once a month. Our regular communication stopped last September, when June was driven to take her son Johnny from that crazy ex-husband of hers. I couldn't blame June a bit. She was scared to death that Johnny was going to get hurt. June was forced to flee from her husband in 2004. She couldn't take his abuse any more—and he seemed just as happy to have her move in with her mother. Thomas would not let Johnny go with June, however, and rarely let her see the child. June was very upset during the first few months of the separation and I spent a lot of time with her.

Finally, June began to pull out of her depression about the separation. She began to work as a temporary, and began saving some money. She started to talk about hiring a lawyer to get a divorce and to get Johnny back. Several times during this period, she tried to contact Thomas by phone, but he wouldn't speak to her. Once, in the summer of 2004, June and I had a few drinks and then drove over to Thomas' house together, hoping we could see Johnny. Thomas met us at the door and threatened to kill us if we ever came by again.

In 2005, June finally decided to hire an attorney and proceed with a divorce and custody action. Little did any of us know that the cards were stacked against her. That social worker sent by the court to investigate the Howard's clearly had something going with Thomas. I was there the day the social worker was supposed to interview June. Mills was three hours late, stayed 45 minutes, and asked only very antagonistic questions. The social worker didn't take a single note, and didn't have a tape recorder. She made no other attempts to contact or interview June.

June was devastated by the court's award of custody to Thomas. She told me that she was scared that Thomas would really hurt the child now. She didn't tell me what she was planning, but I wasn't surprised when I finally learned that she had run away with the child. I guess the last time I talked with June before the snatching was in late August of 2005. From September until December, I didn't hear a word from her. I called her mother a few times, but Mrs. Harris simply told me that June wasn't available, and that she would have her call me.

Then, in early December, I got a call from June late one night. She said we had a lot to catch up on and asked if I could meet her the next day. We met for lunch the following day at the Shrimp Boat on Benning Road. June told me the whole story; how she finally decided to snatch Johnny, in a last attempt to save him from Thomas. She didn't tell me anything about the cigarette burns that Bates wrote about, but I could deduce from what June was telling me that Johnny had been abused while with Thomas.

Johnny was with June that day and he seemed in excellent spirits and health. He chattered away about a recent trip they had taken downtown to do some Christmas shopping. I learned from June that they were staying in various places around the city, and that her mother was helping her with finances. Then, toward the end of lunch, June began to break down a little, saying how tired and afraid she was. She said that she didn't realize how lonely and confusing it would be for her to go into hiding. She was worried for Johnny, and said, "This was no way for a little boy to live."

I suggested that maybe I could help her, call her lawyer, find some other routes to take. June rejected all of these ideas, expressing fear that any word as to her location would bring Thomas running to her doorstep. She also voiced concern that I would be get into trouble trying to help her. When we left that day, June promised to call me again. However, I didn't hear from June again until about two weeks after the Sun story. This time we met at a restaurant on Good Hope Road. She seemed more upset and fearful than before. She was afraid that Thomas would find out about her location, with all of the publicity. She was annoyed with the Sun for not doing a better job of disguising her identity, and she hoped the reporter and editors would live up to the rest of their agreement not to reveal her location.

Johnny was not with June that day. Since the story, she said that she preferred that he stay indoors during the day because she knew the police were looking for them and that their pictures were circulating around town. June told me that her mother had come to live with her for a while, and that this was helping the situation. I contacted The Sun because I thought it important that June's side of the story be told.

Pat Mason

Pat Mason

THE CIRCUIT COURT FOR THE
STATE OF MARYLAND

CASE: HOWARD V. HOWARD

NO. 0987

FINDING OF THE FACTS AND
ORDER OF CUSTODY

DATE: July 11, 2005

JUDGE: HON. B. R. Higgins

Having awarded a divorce to the parties in this case, the court is now asked to determine which party shall have custody of the child produced during the marriage. After a hearing on the custody issue, the Court finds these facts:

- (1) June Harris and Thomas Howard were married in 1995, and had a child, Johnny, in 1998. In 2004, at the urging of her husband, June voluntarily separated from Thomas and Johnny, and went to live for a temporary period with her mother. The purpose of this separation was to assist June in securing and maintaining treatment for an alcohol problem. During the first six months of this separation, June saw Thomas and Johnny on a regular weekly basis. For about the next year, Thomas and Johnny had no significant contact with June. In April of 2005, June Howard filed for divorce from Thomas Howard, and sought custody of Johnny.
- (2) As a result of the Social Services investigation into the households involved in this case, and into the history of the family, the Court also finds that during the years of June's residence with the family, there were several isolated instances in which she did not exhibit proper care for Johnny. Since we are not here engaged in neglect or abuse proceedings and so will not use those terms in these findings, we do find that on several occasions Mrs. Howard slapped, cut, and otherwise hurt her child while he was in her care; she was apparently drinking on those occasions.
- (3) We also find that during the months in which Johnny has been in his father's sole custody, he has been well cared-for and that Thomas and Johnny enjoy an excellent relationship. The Court also takes notice of the Social Services report which indicates that Johnny prefers to live with his father.

Under Maryland law, the best interests of the child is standard by which custody decisions must be made. The fitness of one parent, the length of custody with another parent, the health of the family relationships, the home and community circumstances, and the preferences of an older child contribute to the difficult task of making such a decision. No factor is absolute or predominant, and each case must be decided on its unique facts.

In this case, the Court finds that Johnny is already in the best possible care, that June is not a fit custodian at this time, and that Johnny's best interests will be served by awarding permanent custody to Thomas. June may visit privately with Johnny on one day of each weekend, for an eight hour period, during which she may take him on excursions.

So ordered.

Bernadette Higgins

Bernadette Higgins, Judge
July 11, 2005



MOTHER HIDING CHILD

By Randy Bates

December 12, 2005

"I'm no criminal. I'm not a kidnapper. I just couldn't leave my child with that monster, no way. Just look at what he did to Johnny."

Joan lifted the back of her son's green and blue striped shirt to reveal an ugly patch of scars on her child's back, cigarette burn marks. Johnny, 10 years old, pulls away uncomfortably, and squirms deep into the corner of the tattered couch. His eyes are tired fearful. A scar running from the edge of his mouth across and under his chin marks his otherwise handsome face.

Johnny's mother, Joan, fumbles for another Marlboro. She too, has scars: a long stripe rolls up her forearm and disappears into the rolled sleeve of her shirt. "He got me good with a knife one day," she comments when asked about the scar. Like Johnny, however, not all of Joan's scars are visible.

Joan is a child snatcher. Several months ago she lost custody of her child to her ex-husband. He was able to convince the court that she was an unfit mother, and that the child would be better off with him. His victory, Joan claims, was based on lies and distortion.

"The social worker who investigated the case started dating him. He got her to report that I was abusing Johnny, and drinking. The truth was just the opposite. I couldn't believe it when I heard the social worker's testimony. After all the torture he inflicted on me and Johnny, it was the cruelest thing I ever heard. He was so smooth at the hearing. I just went out of my mind. I didn't have a chance.

After the custody order, Joan began planning to seize the child and to escape. Last October,

Joan decided to carry through with those plans. It was the cigarette burns that finally convinced her.

"I got there one Saturday, for my regular weekend visit. I was helping Johnny get changed, to take him to the park. When I took off his shirt, I saw the marks. I knew then that I had to get him out of there right away. I didn't say anything to Johnny because I didn't want him to get upset. In fact, we did go to the park, as I had promised. Then we went over to my girlfriend's house for dinner, and she put us up that night. We've been around quite a lot since then, haven't we Johnny?"

Joan pats her son's arm and smiles at him; he squirmed away, slipped off the couch, and walked over to the window.

"He just doesn't understand why I can't let him go outside," Joan explained. "He wants to play, and to go to school with the other kids, but I just can't risk it."

Originally, Joan thought she might get a new custody order in another State, but recent federal child-snatching legislation designed to require states to enforce each other's child custody orders seems to make that possibility unlikely. More important, now that Joan's in hiding, the fear that she might be discovered by her ex-husband is paralyzing.

The story of Joan, Johnny and the anonymous father out there searching for them is not unusual. Nationally, thousands of parents and children are caught up in this tragic game of hide-and-seek.

CASE LAW - REPORTER'S PRIVILEGE NOT UPHELD

Branzburg v. Hayes, 408 U.S. 665 (1972)

- **Facts:** After observing and interviewing a number of people synthesizing and using drugs in a two-county area in Kentucky, Branzburg, a reporter, wrote a story which appeared in a Louisville newspaper. *Id.* at 667-668. On two occasions he was called to testify before state grand juries which were investigating drug crimes. *Id.* Branzburg refused to testify and potentially disclose the identities of his confidential sources. *Id.* Similarly, in the companion cases of *In re Pappas* and *United States v. Caldwell*, two different reporters, each covering activity within the Black Panther organization, were called to testify before grand juries and reveal trusted information. *Id.* at 672-675. Like Branzburg, both Pappas and Caldwell refused to appear before their respective grand juries. *Id.*
- **Issue:** Whether requiring a newsman to appear and testify before state or federal grand juries abridges the freedom of speech and press guaranteed by the First Amendment?
- **Supreme Court:** News reporters have the same obligation as other citizens to respond to grand jury subpoenas and to answer questions relevant to an investigation into the commission of crime, regardless of any state shield laws.
- **Reasoning:**
 - The sole issue before the court is the obligation of reporters to respond to grand jury subpoenas as other citizens do and to answer questions relevant to an investigation into the commission of a crime. *Id.* at 682.
 - It has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally. *Id.* at 684.
 - The court perceives no basis for holding that the public interest in law enforcement and insuring effective grand jury proceedings is insufficient to override the consequential, but uncertain, burden on news gathering that is said to result from insisting that reporters, like other citizens, respond to relevant questions put to them in the course of a valid grand jury investigation. *Id.* at 689.
- **Concurrence (Powell):**
 - The court does not hold that newsmen, subpoenaed to testify before a grand jury, are without constitutional rights with respect to the gathering of news or in safeguarding their sources. *Id.* at 709.
 - If a newsman is called upon to give information bearing only a remote or tenuous relationship to the subject of the investigation, or if he has some reason to believe that his testimony implicates confidential source relationship without a legitimate need of law enforcement, he will have access to the court on a motion to quash and an appropriate protective order may be entered. *Id.* at 710.
- **Note:** This case did not seek to prohibit confidential sources or require their indiscriminate disclosure. The case only involved whether reporters were, like other citizens, obliged to comply with grand jury subpoenas and respond to questions relevant to a criminal investigation.

Prince George's Co. v. Hartley, 150 Md. App. 581 (2003)

- **Facts:** Three reporters filed motions to quash administrative subpoenas directing them to attend and give testimony at a police department hearing regarding Officer Brian Lott of the Prince George's County police department. *Id.* at 583. Each of the reporters had been covering a trial at the federal courthouse involving allegations of misconduct by two Police Officers. *Id.* at 584. Newspaper articles written by the reporters alleged that, during a lunch break at the courthouse, Officer Lott stated, "I wish I would have been there in '95. I would have shot the [boys]. And we wouldn't have all this [stuff to deal with]." *Id.* In response to the publications, the County initiated an investigation and filed an administrative charge against Officer Lott. *Id.* The three reporters were summoned to testify in front of the administrative review board. *Id.* The circuit court dismissed the summons finding that although the reporters were in possession of information relevant to Officer Lott's misconduct: (1) there were alternative sources to testify regarding the statement; (2) the newspaper articles could be considered persuasive evidence of the statement;

(3) one of the reporter's offered to provide an affidavit which was a reasonable alternative to testimony; and (4) the reporters could assert a qualified new media privilege under Maryland's Shield Law and the First Amendment. *Id.* at 585.

- **Issue:** Did the Circuit Court err by holding that the reporters did not have to testify based on Maryland's Shield Law and The First Amendment of the Constitution?
- **Holding:** The newspaper reporters are not protected by Maryland's Shield Law in this case and must testify.
- **Reasoning:**
 - The Shield Law is not applicable to protect reporters when they are eyewitness to an event, as opposed protecting sources of information. *Id.* at 592.
 - Even if the Shield Law applied, the court would compel the witnesses to testify because:
 - It is beyond dispute that the appellees are eyewitnesses to a relevant event and, despite their contention to the contrary, Officer Lott's statements are not obtainable from an alternative source. *Id.* at 595.
 - The newspaper articles themselves and an affidavit offered by one of the reporters will not suffice as evidence because they are hearsay and would deprive the officer of his fundamental right to cross-examine the interested witnesses. *Id.*
 - The officer's ability to adjudicate the merits of a disciplinary hearing is essential to the public trust in the system to deal with police misconduct. *Id.* at 547.

CASE LAW - REPORTER'S PRIVILEGE UPHELD

Baker v. F & F Investment, 470 F.2d 778 (2d Cir. 1972)

- **Facts:** Appellants African American homeowners filed a civil rights class action in the Southern District of New York on behalf of all African Americans who purchased homes from approximately 60 named defendants between 1952 and 1969 in Chicago. *Id.* at 780. In connection with its discovery, appellants deposed a journalist for the *Saturday Evening Post* who wrote an article entitled "Confessions of a Block-Buster" which was based upon information supplied by an anonymous real estate agent in Chicago, given the pseudonym "Norris Vitchek" for purposes of publication. *Id.* The record discloses that "Vitchek" was unwilling to make his information available unless the publishers agreed not to reveal the true identity of its source. *Id.* The article exposed details of real estate practices in the Chicago area including racially discriminatory activities on the part of unscrupulous landlords and real estate speculators. *Id.* The trial court held that the reporter did not have to disclose his source, and the appellants brought this appeal. *Id.*
- **Issue:** Did the trial judge err by holding that the reporter did not have to reveal his source?
- **Second Circuit:** No. The First Amendment protections of the reporter does not yield in this case, and therefore the reporter does not have to reveal his source.
- **Reasoning:**
 - Following *Branzburg*, its safe to say that federal law does not recognize an absolute or conditional journalist's testimonial "privilege", and neither does the federal law require disclosure of confidential sources in each and every case. *Id.* at 781.
 - Absent a federal statute, courts must rely on both judicial precedent and a well-informed judgment as to the proper federal public policy to be followed in each case. *Id.*
 - Though a journalist's right to protect confidential sources may not take precedence over that rare overriding and compelling interest, the court is of the view that there are circumstances, at the very least in civil cases, in which the public interest in non-disclosure of sources outweighs the public and private interest in compelled testimony. *Id.* at 783

This case is one where First Amendment protections do not yield:

 - (1) the reporter was not a party to the underlying actions;
 - (2) there were other available sources of information that might have disclosed the real identity of "Norris Vitchek" which appellants have not exhausted;
 - (3) the true identity of the source did not go to the heart of the appellant's case. *Id.*

LaRouche v. National Broadcasting Co., 780 F.2d 1134 (4th Cir. 1986)

- **Facts:** A political candidate, Lyndon LaRouche, filed a complaint against a network television broadcaster and others for defamation conspiracy. *Id.* at 1136. NBC broadcasted two news stories about LaRouche in 1984, which included statements to the effect that LaRouche believed that Jews were responsible for all evils in the world, that any serious investigation of LaRouche by the IRS would lead to criminal indictment, and that LaRouche once proposed the assassination of President Carter and several of his aides. *Id.* LaRouche filed a motion to compel NBC to disclose the confidential sources of its stories and a US Magistrate denied that request finding that LaRouche had not exhausted other possible sources of this information. *Id.* at 1137. After taking only a couple depositions of potential sources, LaRouche renewed his motion to compel and once again the court denied the motion. *Id.* LaRouche then moved the court to preclude NBC from relying at trial on any information received from confidential sources, and the court denied this motion ruling that NBC could rely on information received from confidential sources who had appeared on the broadcast in disguised form and from those sources who did not appear on camera. *Id.* At trial, the jury found for NBC. *Id.* at 1138.
- **Issue:** Did the District Court properly deny LaRouche's motions to compel?
- **Holding:** Yes. The journalist's privilege was properly used to protect the sources in this situation because LaRouche failed to demonstrate that he had exhausted all other possible sources of the information.
- **Reasoning:**
 - In determining whether the journalist's privilege will protect the source in a given situation, it is necessary for the district court to balance the interests involved. *Id.* at 1139.
 - To aid in the balancing of these interests, courts have developed a three part test: (1) whether the information is relevant; (2) whether the information can be obtained by alternative means, and (3) whether there is a compelling interest in the information. *Id.*
 - The district court judge properly grounded his decision on the fact that LaRouche had not exhausted reasonable alternative means of obtaining the same information. *Id.*
 - LaRouche did not depose a critical public source of the Carter assassination story. *Id.*
 - He did not exhaust all his non-party depositions before filing his original motion. *Id.*
 - He failed to demonstrate to the court unsuccessful, independent attempts to gain the requested information. *Id.*
 - A publication by LaRouche claimed that he knew the names of all of NBC's principal sources prior to the publication of the two reports.

Appendix A: Guidelines for Attorney Coaches

Please also refer to Appendix B: Guidelines for Judges.

I. Approaches to Student Coaching

A. Initial Sessions

The first session with a student team should be devoted to the following tasks:

- Answering questions that students may have concerning general trial practices;
- Discussing court etiquette
- Explaining the reasons for the sequence of events/procedures found in a trial;
- Listening to the students' approach to the assigned case; and
- Discussing general strategies as well as raising key questions regarding the enactment.

B. Subsequent Sessions

Subsequent sessions should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here, an attorney can best serve as a constructive observer and critical teacher—listening, suggesting, and demonstrating techniques to the team.

Students develop a better understanding of the case and learn more from the experience if the attorney coaches **do not** figure out the angles, fill in the gaps, and determine trial strategy for the team. Coaching, guiding, and asking questions of the students is far more beneficial than telling them how to proceed.

If the competition is to realize its full potential, it is crucial that you help discourage a “win-at-all-costs” attitude among your team members. Please coach your team on proper decorum when a case, or decisions throughout the case, are not decided in their favor.

It is extremely important that students are coached on and understand the “human” element of judging and how that fits into the nature of our judicial process. Part of your focus should rest upon the fact that law is not black and white, and that individuals will interpret the law differently. Similarly, as in the real world, court proceedings will vary in relation to the presiding judge; accordingly, scores, interpretations, and outcomes will vary. What is permitted in one courtroom may not be permitted in another; what is successful in one case, may not be successful in another.

After twenty successful years, it has been shown time and time again that the best teams are those that view defeats as opportunities to learn. Debriefing with team members after wins and losses helps everyone to improve their skills and increase their understanding of the law.

II. Time Commitment

There is no pre-determined amount of time that attorney coaches are expected to spend coaching their teams. Some attorneys are available for one to two sessions per month, and others are available on a daily or weekly basis. Attorneys who have caseloads which do not permit them to coach in the afternoons have worked with teams on weekday evenings or weekends.

While most teams work with one attorney coach throughout the competition season, there are a handful of teams which have opted for a “team” of attorney coaches, so that the time commitment of each attorney is decreased.

Appendix B: Guidelines for Competition Judges

I. Procedures for Scoring Competitions

Rankings are determined by both wins and points. Therefore, it is essential that the presiding judge carefully rate each team on all elements listed on the Performance Rating Sheet.

A. Special Point

Always award the Special Point immediately after the close of the trial, and before adding the scores. This point will be used only in the event of a tie.

B. Decorum

Please be sure to score each teams' overall performance in decorum in the space provided on the rating sheet.

C. Announcing Your Decision

1. After awarding, tallying and double-checking the rest of the scores, your first announcement to the teams should focus on the general student performance, decorum, and legal understanding that you just witnessed.
2. Your second announcement should be which team prevailed, based on the merits of the case.
3. Your last announcement should declare who prevailed based on student performance (the score sheet).

II. Time Limitations

Students have been asked to limit their presentations to the timeframes listed below. It is particularly helpful for teams to know in advance how you will handle the time guidelines. Some judges prefer to give a warning, for instance, when there is one minute left; others expect students to be mindful of the time on their own. Still others prefer not to watch the time at all, though this has, at times, led to lengthy competitions. Students should not base an objection on the time. This is left to your discretion as the presiding judge. Competitions should last approximately 1 ½ to 2 hours.

Opening/Closing Statements	5 minutes each
Direct Examination	7 minutes/witness
Cross-Examination	5 minutes/witness
Voir Dire, as part of cross-examination	2 minutes per expert witness (in addition to the 5 minutes permitted for the cross-examination)
Re-Direct and Re-Cross Examination	3 minutes a maximum of 3 questions

III. Mock Trial Simplified Rules of Evidence

The rules of evidence governing trial practice have been modified and simplified for the purposes of mock trial competitions. They are to govern proceedings. Other more complex rules are NOT to be raised during the trial enactment.

Attorneys and witnesses may neither contradict the Statement of Facts or Affidavits, nor introduce any evidence that is not included in this packet of materials. As with any perceived violation of a rule of evidence, students should object or request a bench conference.

IV. Trial Procedures

A. Motions to Dismiss

The purpose of the competition is to hear both sides; therefore, motions to dismiss, etcetera, are not allowed. There shall be no sequestration of witnesses at any time during the trial. If such a motion is made, the motion MUST be denied.

B. Opening/ Closing Arguments

Competition procedures permit only one opening statement and one closing argument for each team. In Mock Trial Competition, the Defense Team will always make the first closing argument, followed by the Prosecution/Plaintiff. There is no rebuttal in Mock Trial.

C. Direct and Cross Examinations

Each attorney (three for each side) must engage in the direct examination of one witness and the cross-examination of another.

Mock Trial Performance Rating Sheet

Schools: _____ vs. _____
Plaintiff/Prosecution Defense

1=Fair 2=Satisfactory 3=Good 4=Very Good 5=Excellent

Please note that you are asked to give each attorney a composite score for their overall presentation: direct and re-direct or cross and re-cross. If re-direct or re-cross is NOT used, the attorney should NOT be penalized for not using this technique if there was nothing to be gained by using re-direct or re-cross.

****Please do not use fractions in scoring.****

		Prosecution	Defense
<u>OPENING STATEMENTS</u>			
<u>PLAINTIFF/PROSECUTION</u> First Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>PLAINTIFF/PROSECUTION</u> Second Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>PLAINTIFF/PROSECUTION</u> Third Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> First Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> Second Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> Third Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
Closing Arguments			
Decorum: All team members were courteous, observed courtroom decorum and spoke clearly.			
Total			
Special Point (BEFORE totaling score sheet, please award one point to the team you think gave the best overall performance. This point will be used <u>ONLY</u> in the event of a tie.)			
Final Total			

I have checked the scores and tallies, and by my signature, certify they are correct:

Presiding Judge: _____ Date: _____

Teacher Coach, Defense: _____ Teacher Coach, Plaintiff: _____

**Maryland State Bar Association
2005-2006**

Statewide High School Mock Trial Competition

Registration Deadline.....Friday, November 4, 2005
Mock Trial Guides mailed to teams who have registered and paid by 11/4/05.....Wednesday, November 9, 2005

Circuit Competitions (1st level of competition).....January 2-March 24, 2006

Note: All Circuit competitions MUST be declared to CLREP (attention: sbw@clrep.org) no later than 3:00 p.m. on Friday, March 24, 2006.

Regional Competitions (2nd Level).....Tuesday, April 4- Wednesday, April 5, 2006
(The eight Circuit Champions compete against one another in a single elimination round)

Semi-Final Competitions: Annapolis, MD.....Thursday, April 27, 2006

Statewide Finals: Annapolis, MD.....Friday, April 28, 2006

**Note: All competition dates are final.
A change by the Chief Judge of the State of Maryland is the only exception.**

Organizing Local Competitions

The Citizenship Law -Related Education Program will:

- a. provide Mock Trial Guides and rules for each State competition;
- b. disseminate information to each circuit;
- c. provide technical assistance to Circuit Coordinators;
- d. provide all registered participants who compete for the season with a certificate of participation;
- e. assist in recruitment of schools;
- f. act as a liaison in finding legal professionals to assist teams;
- g. develop press releases, beginning at the Regional Level of Competition.

The role of the Bar Association is:

- a. to advocate involvement of local attorneys in preparing teams and hearing trials;
- b. to provide support to schools;
- c. to assist the Circuit Coordinator.

The role of the Circuit Coordinator is:

- a. to make decisions/ mediate at the local level when problems or questions arise;
- b. to establish the circuit competition calendar;
- c. to arrange for courtrooms, judges, and attorneys for local competitions;

- d. to inform and attempt to recruit all schools in the circuit;
- e. to work with the local Bar Associations to set court dates, recruit attorney advisors, and establish local guidelines;
- f. to arrange general training sessions if necessary.

The role of the individual school/teacher coach is:

- a. to DEMONSTRATE that winning is secondary to learning;
- b. to coach and mentor students about the "real-world" aspect of judging in competitions;
- c. to teach sportsmanship, team etiquette and courtroom decorum;
- d. to recruit students for the team;
- e. to arrange training sessions and scrimmages;
- f. to arrange transportation to competition
- g. to supervise the team during practices and competitions;
- h. to work with partners to recruit attorney advisors;
- i. to ensure that the team arrives at all scheduled mock trial competitions