

19th Annual
Maryland State Bar Association
Statewide High School
Mock Trial Competition



C L R E P
MSBA ♦ MSDE

2001-2002

Coordinated by
Citizenship Law Related Education Program
for the Schools of Maryland

Sponsored by
The Maryland State Bar Association
and Executive Committee on Law-Related Education

In cooperation with
The Maryland Judicial Conference
Public Awareness Committee



Citizenship Law-Related Education Program for the Schools of Maryland

Maryland Bar Center
520 W. Fayette Street
Baltimore, MD 21201

Phone: 410 706-5360
Fax: 410 706-5576

EXECUTIVE COMMITTEE

November 8, 2001

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Chairperson
Howard County

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BOG Liaison
CLREP Counsel

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Dear Mock Trial Participant:

Welcome to the 2001-2002 Maryland State Bar Association Statewide High School Mock Trial Competition. We are thrilled to begin our 19th year of competition and look forward to working with you!

As in past years, the Maryland State Bar Association, the Maryland State Department of Education and the Maryland Judicial Conference Public Awareness Committee are sponsoring this exciting educational program.

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

1. To further understanding and appreciation for the law, court procedures, and the legal system.
2. To increase proficiency in basic life skills such as listening, speaking, reading, and critical thinking.
3. To promote better communication and cooperation between the school system, the legal profession, and the community at-large.
4. 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 an array of opportunities to learn – through cordial competition with other schools, the advice of both legal professionals and teacher coaches, and various interpretations and perspectives of our law and legal system. **It is vital that you remember that Mock Trial closely parallels the “real world” in terms of proceedings, interpretations, and decisions in the courtroom and by the Bench.** If you observe and remember this, you will triumph regardless of your win/loss record and, hopefully, enjoy the competition!

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 wonderful learning experience.

Sincerely,

Honorable Diane O. Leasure
Chair, Executive Committee

Ellery M. “Rick” Miller, Jr.
Executive Director, CLREP

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2001-2002
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 Contest). 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.
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 in local (circuit) competition.
5. 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 will designate another circuit in which this team may compete.

Those Regional circuit slots not filled due to lack of sufficient team participation will be filled by runners-up in other circuits based on 1) the highest average number of points accumulated in the rounds of the local competition, and 2) the lowest margin of loss in the championship match within the circuit.

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 8 or 9, 2002.
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 November 8, 2001. 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 two distinct functions. 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/closing statements—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

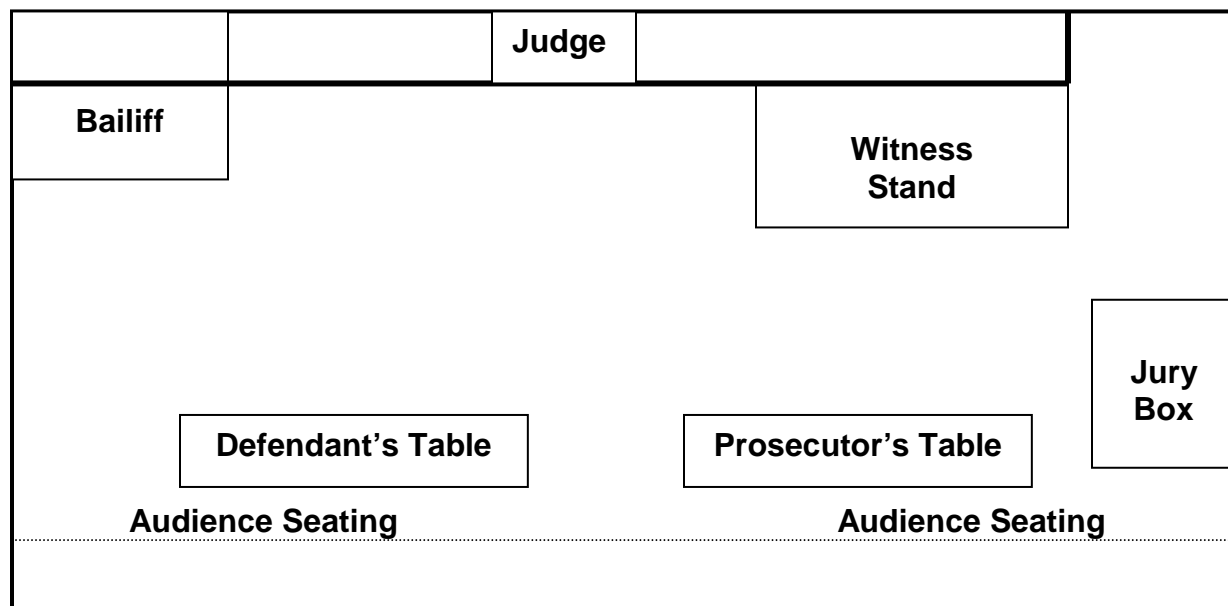
The following tips were developed by long-time Mock Trial Coaches.

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 in your opening and closing statements before trial, as they are supposed to highlight the important developments that have 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 revise their own questions and witnesses should again study the parts of their affidavit they need to learn better.
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 are the most important to prove your side of the case and making sure such proof takes place.
 - 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 appropriately addressing the judge as "Your Honor," etc.

- 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 exercise, and the order in which they occur. This section outlines the usual steps in a “bench” trial—that is, without a jury.



Steps in a Mock Trial

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 conduct a hearing— Macafee versus ZTV, Inc.”
 - 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 the prosecution has made.

3. Direct Examination by the Prosecutor
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
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
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
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
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

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

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)

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 statement 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/ Prosecution

The closing statement for the prosecution reviews the evidence presented. The prosecution’s closing statement should indicate how the evidence has satisfied the elements of a charge, points out the law applicable to the case and asks 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.

Examples:

Defendant's Attorney: Lee Macafee, isn't it true that your ex-spouse was convicted last week of armed robbery?

Objections:

"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 -- often a "yes" or "no" answer.

Example of a Direct Question:

(directed to Lynn Bones) “What happened at the mall to interest you and your friends in the WWCTV competition?”

Example of a Leading Question:

(directed to Lynn Bones) “You were interested in the competition because you saw it as an opportunity to raise your social status at school, isn’t that correct?”

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:

(directed to Lee Macafee) “Lee, tell the Court about Sean’s life before he became paralyzed.”

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 questions which did not come up on 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, but 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, but 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.

Example:

"What did Sandy Mathers think about the contest?"

Objection:

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

Example:

Lynn Bones stated, "Sandy told me that she was going to do a crazy, outrageous stunt."

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.

Example:

“Bobby told me he didn’t think airing the show was wise, but it brought in good ratings.”

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.

Example:

Lynn said: “Sandy screamed, it’s my fault; it’s my fault.” (Offered not to show fault, but to show Sandy was really upset.)

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.

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)

Defense Attorney asks Dr. Braker, “Do you believe that ZTV took necessary precautions to warn participants of the dangers involved?”

Objection:

“Objection. Counsel is asking the witness to give an opinion.”

Example:

(Lack of Personal Knowledge)

“Dr. Smithfield, do television producers come from moral families?”

Dr. Smithfield states: “These television producers did not have disciplined child rearing.”

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)

Plaintiff’s attorney asks Dr. Smithfield: “Should ZTV be held liable 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:

“Dr. Braker, was the rope used by the boys adequate for the stunt they were performing?”

Objection:

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

RULE 503: VOIR DIRE. 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 do so, 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 expert 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 psychology.”

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:

- 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 his or her affidavit without its introduction into evidence; but to read from it or submit it to the judge, it must first be admitted 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 given. 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.”

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 a question or answer must be discarded because it has violated a rule of evidence (“objection sustained”), or whether to allow the questions 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.

Statement of Stipulated Facts

At approximately 8:30 a.m. on July 25, 2001, Sandy Mathers, aged 16, and Sean Macafee, aged 17, were severely injured in Leverton State Park. Mathers was swinging on a rope over a craggy ravine when she hit Macafee who was on his daily run.

Mathers, along with friends Gerry Lowsmith, aged 15, and Lynn Bones, aged 16, were performing and videotaping a stunt they intended to submit to ZTV's "Wildest Wackiest Craziest Teen Video Competition" (WWCTVC). The competition proclaims a grand prize of \$10,000.

The "World's Wildest Wackiest Craziest Teen Video Competition" is an extremely popular show on ZTV which features three to four videos each week submitted by teens. The audience votes on the wildest, wackiest teen video of the week. The competition continues through the end of the season and the top four contenders are flown to Florida for the grand finale show. In this final show, the season's wackiest video is selected and the grand prize is awarded.

Past grand prize winners have included backyard wrestlers who slam one another onto boards with nails sticking out of them that have been set afire and a person who has leapt over a Honda Civic that was driving toward them at 20 miles per hour. Another grand prize winner jumped between two ten story buildings while wearing a blind fold. The most recent winner was Viking Burial, where one person wearing a flame-repellant suit sat in a row boat on a lake, while his friends shot flaming arrows onto the gasoline doused-boat; when the boat caught fire, the person in the suit jumped off.

Reviewing the show's catalog of submissions to the adult and teen programs, the plaintiff says that 20 percent of the submissions over three years resulted in serious injury and more than 50 percent resulted in at least some injury.

While swinging across the ravine, Mathers hit the side of the cliff and returned out of control toward the running path where she collided with Macafee. Macafee did not see anyone else in the area. Although doctors were unable to determine whether the initial blow or the subsequent fall was the cause of Macafee's broken neck, they were able to determine that the cause of the injury was blunt force trauma.

It is stipulated that the victim, Sean "Kicker" Macafee, is paralyzed from the neck down and must use a ventilator to breathe. Further recovery is not expected under current medical technology. Due to the severe nature of Kicker's injuries and the potential danger of further injury if moved, the victim cannot testify on his own behalf. Park Ranger, Michael Stamp, radioed for help and emergency workers arrived shortly thereafter. Kicker and Sandy were transported via helicopter to the local trauma hospital.

Macafee was permanently paralyzed as a result of his collision with Mathers. Macafee will need specialized medical care for the rest of his life. Lee Macafee, parent, filed this lawsuit on behalf of Sean. Charges of trespassing and disorderly conduct are pending against Mathers, Lowsmith, and Bones.

The video camera and tape were lost in the confusion of the injury.

Claims and Defenses

The Macafees are suing the producers of the "Wildest Wackiest Craziest Teen Video Competition" and ZTV, the station that airs WWCTVC, for negligence in broadcasting a program that encourages teenagers

to perform reckless stunts. The Macafees argue that the first amendment does not protect gross negligence. Maryland has no case law on the issue of the liability of broadcaster for injuries.

The Macafees claim that Sean's injury was the result of WWCTVC and ZTV's negligence. Sean has incurred, and will continue to incur, substantial medical expenses due to relevant injuries.

ZTV and WWCTVC claim that the injury was caused by Sandy Mathers, that ZTV's actions were reasonable, and that they did not encourage teenagers to do death-defying stunts. They also argue that their contest is protected speech under the first amendment of the U.S. Constitution, adding that the Plaintiff needs to prove that they incited the teens to do something lawless.

ZTV and WWCTVC argue that even if there is no constitutional protection, the facts do not support a finding of negligence on their part. The Defendant argues that the disclaimer on its flyers, television commercials, and entry form shields the Station from any liability or responsibility and further highlights that all promotional materials include language that states stunts and video-taping should be conducted in a safe manner. Additionally, the defendant maintains the entry form specifies that participants do the stunts at their own risk.

Relief Requested

The Macafees are asking the court to make a finding of negligence against the Defendants. The Macafees are requesting the following damage awards: \$45,350 in actual medical expenses (including costs for emergency and intensive care services, surgical procedures, inpatient hospital services, prescription medications, specialized equipment, physician's office visits, and other services); \$720,000 for future medical expenses (representing \$15,000 per year of estimated expenses for 48 years of estimated remaining life expectancy); \$500,000 for pain and suffering; and \$1 million in punitive damages.

ZTV and WWCTVC are asking the court to find no negligence on their part and to deny the damages sought by the Plaintiff. In the event the court finds that Sean Macafee contributed to his own injury, they are asking the court to reduce the damages in accordance with the extent of their liability.

Additional Stipulations

The parties have stipulated to the authenticity of the following items:

- The invoice from Leverton Hospital to Lee Macafee, containing the current medical expenses for Sean Macafee along with an estimate for future expenses.
- The Flyer and Application for the "World's Wildest Wackiest Craziest Teen Video Competition".
- The Memorandum exchanged between Gene Folger and Bobby Burstin.
- The Spinal Cord Fact Sheet.

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

Witnesses for the Plaintiff

Lee Macafee, Parent of Sean Macafee
Lynn Bones, Friend who Helped Plan Stunt
Chris Smithfield, Ph.D., Child Psychologist

Witnesses for the Defendant

Bobby Burstin, Producer of WWCTVC
Gene Folger, ZTV Station Manager
Dr. I Boone Braker, Child Behavior Expert

Dr. Chris Smithfield
Child Psychologist

Witness for the Plaintiff

My name is Chris Smithfield. I earned a Ph.D. in child psychology from Occidental Providence Professional University in Balboa, Georgia in June of 1988. I completed my dissertation on the impact of visual and auditory marketing on adolescent behavior. I am a psychologist at Balboa Department of Youth Detention, Youth Mental Health Services Branch.

I earned my bachelor of arts degree in psychology, with a minor in marketing, from Lynnwood State College in Lynnwood, Virginia in June, 1979. I am a member of the American Psychological Association. I have taught psychology courses at Occidental Providence Professional University. I have performed 200 mental health evaluations of children and adolescents.

I spoke to Sandy Mathers, Lynn Bones, and Gerry Lowsmith for 30 minutes each. I found three youngsters with poor self-esteem. They each expressed a profound sorrow for the injury to Kicker Macafee. Sandy Mathers shows a mixture of sadness for Macafee and anger at the television company. Sandy told me that she feels stupid for allowing them to “get under her skin.” They say they were at first prompted by the money, but ultimately, by the opportunity to prove something to the world. They wanted to prove that they were “not nerds”. The TV program tapped into this common teenage difficulty of establishing a firm self-identity. While all of these kids had wonderful skills and talents, they were not socially savvy.

From my examination, I determined that the teens were and are suffering from a mild depression related to their perceptions of their place in the adolescent social order. It is also my opinion that the television program in this case preyed on that common mental state of teenagers to encourage them to do something rash. Recent studies indicate that the levels of intelligence among teenagers are higher than once thought, but lack of experience leads to a lower ability to reason—consequently, this allows them to be persuaded into unreasonable acts. They often look for easy solutions to complex problems and don’t have the patience to wait for situations to resolve themselves.

This is exactly what the television executives were successful in exploiting. We accept exploitation when the end result is selling athletic shoes or jeans, but not when it leads to injury. So, when they saw that flyer and then the television commercials for the contest, they were presented with a way to solve their problems and they became obsessed with winning the contest. They knew that the kids at school would not be impressed by the stunt alone. They knew that being on television would answer their prayers. They would go for whatever the television show required.

We all know about the power of peer pressure. In our society, television becomes an electronic friend to children. They go to this friend for consolation, for information... and sometimes, that friend or peer can pressure kids into doing just about anything. Sometimes girls want Jennifer Anniston’s hair cut or they dress up like the Back Street Boys or a rap musician.... others go on killing sprees spurred on by Oliver Stone’s Natural Born Killers. We know that children may not have the maturity to weigh the risks that they are taking. We should force the media to accept responsibility for deliberately taking advantage of vulnerable children.

Chris Smithfield
Chris Smithfield, Ph.D.

**Statement of Lee Macafee
Parent of Injured Runner Sean “Kicker” Macafee**

Witness for the Plaintiff

Sean loved running—it was his passion. Sean used to tell me that running created a certain connection with the world. Sean was a lonely child, but I believe running was the one thing that finally drew Sean out of his shell. Sean’s confidence level grew out of this passion—he won cross country races and received recognition from classmates. The local newspaper even featured him on a couple of occasions. Sean’s grades soared and we developed a closer relationship as he opened up to me. Sean’s interests broadened—he became involved with the Special Olympics program, and even began an environmental awareness group at school. But running, ultimately, was Sean’s identity. He ran 10 miles minimally everyday, rain or shine. The depressed and withdrawn child that I had worried about was suddenly bright and alive.

I told Sean never to run on the roadway because I feared that he would be hit by a reckless driver. So I was happy when Sean started running in the park. He once took me for a walk on the regular route. Sean learned the names of the trees growing along the path, knew the history of the trail names, and always helped keep the area clear of rubbish.

Sean had hoped to compete in the 2002 Olympic Games. Now, that has all been taken away. Today, my son who was once so alive, is depressed – confined to a wheelchair and unable to breathe without assistance. I blame those money grubbing TV execs. They don’t care. They just don’t care! They knew that the show would hurt people. I bet they think Sean’s injury is just going to boost the ratings. Everybody wants to see the show that nearly killed a kid.

Sean was running along listening to the radio on headphones. He was wearing a hooded sweatshirt pulled tightly over his head. Sean said it was a normal day and a normal run. Sean rarely sees anyone on runs. Sean said he never saw what hit him. Sean only remembers flying through the air, feeling sharp pain and finally, passing out.

When Sean didn’t return from running at the normal time, I became worried. I drove to the park and saw his car in the lot. Then, I saw the emergency workers. I ran to the scene. Sean wasn’t there, but I saw the tape player on the ground and blood on the sweatshirt he had been wearing.

Sean spent two weeks in intensive care and seemed to be in constant pain. During the first week, I slept in the hospital room. Sean’s eyes were constantly tearful— and the pain was so obvious. I had great hopes for Sean to lead a satisfying and happy life.

I hope he will discover that there is still a life to live, despite not being able to run or walk or move. I brought this suit on Sean’s behalf because I want the best chance for improving his quality of life. That is the least Sean deserves.

Lee Macafee

Lee Macafee

**Lynn Bones
Friend of Victim**

Witness for the Plaintiff

My name is Lynn Bones. I am 16 years old and I attend Leverton High School.

During the summer, we normally play soccer or mess around with computers. One day, me, Sandy and Gerry went to the mall for something different. We were going to the game store when this kid gave us a flyer. We were just outside Bill's Extreme Sports Store. The kid said: "Oh, you nerds. Don't bother. This contest ain't for wimps." We looked at the flyer. Almost at the same time, we said: "Ten Thousand Bucks!" I had a cool digital video camera. Gerry had a video editor. We laughed. We could each buy a used car for next year. We could get faster computer systems.

We decided we'd think about it more the next day. We were a little uneasy about the contest, but if we at least got on the show, we knew they wouldn't call us wimps anymore. I have to admit that we aren't the most popular kids in school. We aren't invited to any parties. They don't hate us, we're just at the bottom of the social food chain. We wanted the money, but we wanted a shot at building up our reputation too.

The next day we met at my house. We first discussed riding our skateboards down steep steps in a local park, dressing up like Santa and the Elves and attempting to climb down a chimney of a local historic mansion with presents. Sandy agreed that these were good ideas, but reminded us that the flyer said "The More Outrageous the Better." We decided to do some research by watching the program and the television ads.

On television, we saw people who appeared to be teenagers using skateboards and ramps to jump over speeding cars, wrestling in a backyard ring surrounded by fire, using trampolines to jump into the back of moving pick-up trucks, jumping from television towers with a parachute, and building a human pyramid in a row boat in a river running through a state park.

While the ad was running, we saw a continuous crawl across the bottom of the screen that said: "Go for the Gusto. Make your video today before it is too late to win. You decide: Be a WIMP or Be a WINNER. Don't be a chump, be a champ. Don't Wait, Don't Think. Do it and Win 10,000 bucks. Entries for the final show of the season must be postmarked by July 28. You MUST ACT NOW TO BE A WINNER.

We came to one conclusion: to win that money we had to include some danger. We needed something incredible AND we had no time to wait. Then, Sandy suggested the old state park rope swing; she and her friends used to swing from one ledge and drop into the swimming hole. But just swinging from a rope and dropping into water was not enough. We decided that swinging over jagged rocks in a deep ravine would be just the trick.

When we went to scout the area we saw that authorities had posted warning signs around the rocky area, removed the rope swing, and patrolled the area regularly as it had become a hangout for unruly teens. There was a sign that read: USING THIS AREA FOR CLIMBING, REPELLING, AND SWINGING IS STRICTLY PROHIBITED.

We knew that there was danger, but we had used the rope swing before and nobody got hurt. This would look cool and dangerous, but it was something we thought we could handle. We would put up the rope swing again, and swing high enough from it to reach the cliff ledge on the other side. To add a little

spice, we would dress like saber-wielding pirates and carry a banner with the contest name and logo. Then, we started working on the logistics and mechanics of the stunt, working with all types of rope swings until we finally calculated the correct length. The next morning, everything was going as planned. But Sandy completely lost her grip on the swinging rope while reaching for the ledge—and fell onto Kicker. We didn't mean it. We didn't see Kicker coming down the trail that was below us; a boulder obstructed our view of the trail until it was really close.

We are sorry. It was an accident. I wish we would have never seen that flyer. The ad just got to us. They had one ad that showed a guy sitting at a computer screen singing that Beck song: "I'm a loser baby, so why don't you kill me." We didn't want to be losers. Sean was unconscious right after the accident; Sandy was rolling around. "It's my fault," Sandy said. I think she was talking about not completing the stunt. But we are sorry. Sometimes I wake up in the middle of the night and all I see is Sean and Sandy's blood on the trail.

Lynn Bones
Lynn Bones

Bobby Burstin
Producer of The WWCTVC

Witness for the Defense

I've been a television producer for 13 years. We produced a program for syndication called *The Wackiest Things People Do*. It was successful, bringing in a 25 percent market share in its time slot. From our demographic studies, we discovered that a third of our viewers were teenagers. We also discovered that despite limiting the contestants to people over 18 years old, we received many submissions from teenagers. We know that because some of the people on the tapes looked young and others (after we selected the video for airing) could not prove their ages.

To capitalize on the interest of teens, we decided to produce a spin-off just for teens. We made sure that the teens got permission from their parents before we used the tape; we made sure that all marketing materials included clear warnings and cautions to avoid extreme risks. We never aired tapes that showed stunts that were too dangerous or injuries too severe.

We know that accidents happen, but we did not think that the accidents would be severe if people use reasonable judgment. These kids were not tricked into making the video; they are old enough to know what kind of risk is reasonable. I remember when I was a kid, I loved a show called: *Those Magnificent Men in Their Flying Machines*. The program showed early attempts to build an airplane. That included a lot of film footage of crashes. I was really excited by the program and decided to build a flying machine. I knew the risk and I was smart enough to know that I shouldn't try to fly my machine off a cliff.

I've made some independent films. I won a director's award at Sundance and I was nominated for an Emmy for a movie on teen drug abuse called *I Don't Know Where Sara Lives, So Go Away: the Story of the PCP Prom Queen*. It was a moving story.

We never expected the contestants to do something too crazy. We just want to produce good entertainment, showcasing the ingenuity of the world's youth. This show is almost like the Science Fair Meets the Drama Club.

I've heard of cheerleaders being paralyzed after stunts. The play Romeo and Juliet suggests some unreasonable acts, but we don't ban the play or try to hold Shakespeare liable for the actions of teens. And the number of head injuries sustained by teenage football players— nobody sues those school sanctioned activities. Everybody wants to blame us, yet everybody has a television.

Of the 10,000 video submissions that the show receives each season, 20 percent of them show people being injured doing stunts. While we sometimes air tapes that show injuries, we will not air the videos that show serious injuries.

Bobby Burstin
Bobby Burstin

Gene Folger
Station Manager, ZTV, Leverton

Witness for the Defense

I am a local business person. I live in this community. We buy programming from networks and independent producers. We present news, entertainment, and sports (local and national). There is a wide spectrum of programming available for viewers in their homes. We offer many programs that show potentially dangerous activities that teens enjoy. Stock car races have their share of crashes; hockey has its share of fights. We can't expect to control the actions of our viewers. We also can't control how producers assemble material for their shows. The producer didn't advocate hurting anyone or doing anything too risky, but relied on the common sense of the viewers and their families.

The application says: "Don't take unreasonable risks. Consult your parents." Those kids should have known better.

At the station, we have sponsored a SAFEKIDS campaign for years. This includes public service announcements, personal appearances, posters and an essay contest. We care about kids. We wouldn't purposely show a program to hurt kids. That's ridiculous.

Yes, we were cited once by the Federal Communications Commission for not having enough children's educational programming. But it was just a misunderstanding of complex regulations and we had an honest disagreement on how to characterize whether a particular program was "educational in nature". The Romeo and Juliet Dance Party had educational components, but the FCC disagreed. I really don't see how this is relevant.

I'll sue anyone who brings up my children's problems or the problems I've had with alcohol abuse.

We met our obligations and I believe the TV program did also. We can't be held responsible for every crazy thing our viewers do.

We air racy soap operas in the afternoon and professional wrestling at night. We are a responsible programmer.

This program has been on for months now and we have not received one complaint. No one thought this show was such a risk that they asked to have it removed. If my viewing audience does not like something, I have incentive to pull it. This was a consistent rating winner. Now, with all of the bad publicity, I don't think I'll be airing it any longer. Ratings for the show since the accident have increased, but I just can't do it.

Yes, WWCTVC was a profitable program for me. We were able to earn good advertising revenue because we had a strong audience demographic. I'm not going to apologize for looking out for my own bottom line.

I now need to look at my programs and possibly cancel teen activity programs for fear I am going to be sued if a kid takes an idea too far.

Gene Folger
Gene Folger

Dr. I. Boone Braker, author
Child Development/Deviant Behavior Expert

Witness for the Defense

I earned my Ph.D. in biology from Joseph Otis Klark Eastern University, Wonetka, Ohio. My Masters Degree is in Psychology, with a focus on television marketing and audience analysis.

I have worked as a group home counselor for incorrigible youth for 10 years. I worked as a prison guard for 5 years in WoHoller County Detention Center, Slamoeciv, Ohio.

I've authored the books: *Let 'Em Watch It, It Won't Hurt 'Em* and *Coddling Kids: Bumps and Bruises Build Character.*

When will parents stop coddling their children? People need to understand that part of the maturation process is learning to take risks and understanding the difference between reckless acts and calculated risks. If we didn't want children to be injured, we would never encourage them to stop crawling and begin to walk. Kids do risky things that cause injuries all the time. When a child's friends dare him or her to jump out of a tree and that child breaks an arm, we don't sue the child or his parents for the injuries incurred. We know that a broken arm is part of growing up. We need children to take risks, so they can develop their judgment. These injuries will build the character of these young people. This is just nature. Biologically speaking, a butterfly risks the safety of the cocoon, the chicken risks the safety of the egg – all for the sake of growth and maturation.

This television program challenges teens to go beyond themselves, to use critical thinking skills and physical ability. Do children get hurt? Of course. They get hurt in tree houses and swimming pools and playgrounds. We can't – and shouldn't – shield children from hurt and pain. And we shouldn't blame society – or television and the media – for the actions of children. Television portrays thousands of risky acts each day and children see those acts; however, thousands of kids each day do not take television inspired risks. There was a movie that portrayed athletes laying in the middle of a major road to test whether they would be afraid of passing cars. Some kids tried to mimic the movie. Did the movie spark an idea? Maybe. But only the foolish attempted to replicate pure fiction. Did the movie cause those kids to do that? Of course not. We can't blame the deep pocket defendant to mask our culpability in the incident.

Parents want to be there when the child gets an award or accolades. But when there is trouble parents want to blame someone else. Part of being a parent is teaching a child to act responsibly and to accept responsibility for their actions. This lawsuit tells teens that when they do something wrong they should blame someone else.

I hate to be the one who says this, but the young person who was injured should have been looking where s/he was running. That child should have known that other people use the park and anything could happen. As for the young people performing the stunt, they took a risk and that risk was not a good one. Don't blame television, blame the children. Make them take responsibility.

My work with teenagers has taught me that children are too often coddled. They need to be given responsibility and be held accountable for their acts. The teens in this case should have known better and they should have been more careful. If you want to lay blame, lay it at the door of the parents, not television. This was an unfortunate accident, but we can't blame television for events that happen in the normal course of living this life.

Dr. I Boone Braker

Dr. I. Boone Braker

LEVERTON HOSPITAL CENTER
 5400 BANDAGE DRIVE
 LEVERTON, MARYLAND 23509
 (410) 555-5544

PATIENT: Sean Macafee

SENT TO: Lee Macafee
 3308 Murray Ripken Way
 Leverton, MD 23301

DATE: August 31, 2001

CURRENT MEDICAL EXPENSES

Emergency and Intensive Care Services	\$10,000.00
Surgical Procedures	\$20,000.00
Inpatient Hospital Services	\$11,000.00
Prescription Medication.....	\$350.00
Specialized Equipment	\$2,000.00
Physical Therapy	\$2,000.00
Total Due	\$45,350.00

ESTIMATED FUTURE EXPENSES

The following are mere estimates based on the best information currently available. These estimates have been prepared at the request of the billing recipient Lee Macafee.

Estimate annual medical expenses for Sean Macafee, 17:
 15,000 x (Estimated remaining life expectancy of 48 years) = \$720,000.00

Interoffice Memo

Date: 5/24/01
To: Bobby Burstin, Producer
From: Gene Folger, Station Manager GF
RE: TV Show Stats
Priority: [Urgent]

Bobby:

I thought the following information might be of interest. We just received the results from our preliminary analysis of injuries resulting from individuals attempting to create videos for submission to the Teen Video Competition. It doesn't look good— more than 30% of people who have sent in videos this year alone have been involved in serious injury (i.e. broken bones, fractures, etcetera). As we have previously discussed, some injuries have been far worse. Many of the injuries have been caught on the footage they have submitted. I think we should call a meeting about this soon.

Gene F.

Gene—Let's not panic. This probably isn't as bad as it looks. We'll let the season run until the end and then revisit this subject—ratings are way too good right now to call a halt to the show or raise concerns.

Bobby

Z-TV's

The World's
wildest, wackiest
craziest teen video
competition

The Wilder ...
The wackier...
The more outrageous ..
The better!!!
You got ta go
for it to win!



Contestants must send a video tape of themselves performing the wildest, wackiest stunts that the world has ever seen. Put the Matrix to shame, have the National Wrestling Federation copying you, show the world what you're made of!

Grand Prize \$10,000
plus \$5,000 in
Cool Stuff!

Don't be a chump Be a champ Push the envelope.
Go for it. The more outrageous the better!

Dare to shock the world!

Entries judged on originality, creativity, outrageousness, and craziness. Bonus points for display of Contest Name and Name of the Program. Super Bonus Points for proof of the number of people seeing the stunt.

Name of contestant: (First): _____ MI: _____ Last: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Date of Birth: ____/____/____

High School: _____

Name of contestant: (First): _____ MI: _____ Last: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Date of Birth: ____/____/____

High School: _____

Name of contestant: (First): _____ MI: _____ Last: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Date of Birth: ____/____/____

High School: _____

Name of Stunt: _____

Date Stunt Performed: ____/____/____ Number of Witnesses: _____

Z-TV will select and air videos each week. The top four contenders will be selected by the audience and flown to Florida for the season finale. The Grand Prize winner will receive \$10,000 plus \$5,000.00 in additional prizes. All winners will be featured on Z-TV's WWCTVC® airing between January and March, 2002. All entries must be postmarked by midnight, 07-28-01. Sorry, videos will not be returned.

Warning: All stunts should be performed in the safest manner possible. Don't take unreasonable risks. Consult your parents or other responsible adults if you have questions about performing the stunt. WWCTVC and its producer ZTV, and its parent company, xxxx Broadcasting Inc. take no responsibility for injuries. Submission of a contest entry constitutes a knowing waiver of liability for any injuries that result from the planning or execution of the stunts.

Facts about Spinal Cord Injury (SCI)

- Spinal Cord Injury is damage to the spinal cord that results in a loss of function such as mobility or feeling. Frequent causes of damage are trauma (car accident, gunshot, falls, etc.) or disease (polio, spina bifida, etc.). The spinal cord does not have to be severed in order for the loss of functioning to occur. Damage to the spinal cord may cause a loss of functioning or paralysis.
- The spinal cord is about 18 inches long and extends from the base of the brain, down the middle of the back, to about the waist. The spinal cord is the major bundle of nerves that carry nerve impulses to and from the brain to the rest of the body. The brain and the spinal cord constitute the Central Nervous System.
- The effects of SCI depend on the type of injury and the level of injury. SCI can be divided into two types of injury: complete and incomplete. A complete injury means that there is no function below the level of injury; no sensation and no voluntary movement. An incomplete injury means that there is some functioning below the primary level of the injury. Incomplete injuries are becoming more common with advances in medical technology.
- The level of injury is very helpful in predicting the parts of the body that may be affected by paralysis and loss of function. Levels range from C-1 (near the base of the brain) to S-5 (near the waist). Very high injuries, such as cervical or neck injuries (C-1 and C-2), usually result in quadriplegia and often cause a loss of involuntary functions including the ability to breathe, necessitating breathing aids such as mechanical ventilators or diaphragmatic pacemakers.
- There are an estimated 250,000 – 400,000 spinal cord injured individuals living in the United States. On average, 11,000 new injuries are reported every year. A new spinal cord injury occurs every 49 minutes.
- Vehicular accidents cause 44% of these spinal cord injuries. About twenty six percent (26%) are the result of violence and 22% are the result of falls. Sports injuries account for 7% of these injuries. The remaining 1% of spinal cord injuries result from work-related or other accidents.
- More than half (55%) of the SCI population was injured between the ages of 16 and 30; the average age of injury is 31 years. 80% of SCI individuals are male and approximately half (46.5%) are married at the time of injury. The majority (90%) of SCI individuals survive and live near-normal life spans.
- Initial hospitalization—an average of 15 days in acute care, then 44 days in rehabilitation—adaptive equipment, and home modification costs following injury average \$140,000.
- Additional lifetime costs incurred by SCI individuals average \$400,000 and can reach as high as \$2.1 million depending on the level of injury.

Information provided by the *Spinal Cord Injury Information Network*

Applicable Law

Related Statutes:

Statute Limiting Pain and Suffering Damages

Relevant Case Law:

U.S. Constitutional Cases Law: First Amendment Questions:

Freedom of Speech

Under the U.S. Constitution's first amendment, federal and state legislatures do not have the power to make laws that hinder speech, except in a few specific instances. While the states have the power to make law governing personal injuries, it can not do so when the law would limit a person's freedom of speech. In most cases, a media outlet could not be sued because of something aired on a broadcast or written flyer because its speech and is protected.

Some Speech Unprotected: Incitement

However, a few cases, in Georgia, California, and Rhode Island suggest that the media outlet could be sued if the media outlet engaged in unprotected speech. They cite a U.S. Supreme Court case called *Brandenburg v. Ohio* (395 U.S. 444, 1969) Under *Brandenburg*, speech is unprotected when such speech is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." It is not enough to show that the media outlet was reckless or negligent in airing a program, you must show that they incited the person to act. The broadcast can NOT merely be the stimulus for the act, it must urge the act on. See *Olivia N. National Broadcasting Co.*, 126 Cal. App. 3d. 488. 1981; Court of Appeals of California, First Appellate District.

Maryland Law on Unintentional Torts (Negligence)

Negligence is doing something that a person using ordinary care would not do, or not doing something that a person using ordinary care would do. Ordinary care means that caution, attention or skill a reasonable person would use under similar circumstances.

The elements of actionable negligence are:

- (a) A duty or obligation, recognized by law, requiring conformance to a certain standard of conduct for the protection of others against unreasonable risks.
- (b) Failure to conform to that standard (breach of duty)
- (c) Reasonably close causal connection and resulting injury (proximate cause)
- (d) Actual Damage or Loss by others.

BN v. KK, 312 Md 135, 538 A2d 1175 (1988)

Foreseeable Circumstances

A reasonable person changes conduct according to the circumstances and the danger that is known or should be known. Therefore, if the foreseeable danger increases, a reasonable person acts more carefully.

Orfanos v. Athenian, Inc., 66 Md App. 507 (1986)

Proximate Cause

To recover damages or to be barred from recovery, the negligence must be a cause of the injury. [There may be more than one cause of an injury, that is several negligent acts may work together. Each person whose negligent act is a cause of an injury is responsible.]

Lashley v. Dawson, 162 MD 549 (1932)

Yonce v. Smithkline Beecham Clinical Labs 111 Md App. 124 (1996)

Concurring Cause: *Yellow Cab Co. v. Bonds*, 245 Md 86 (1966)

Assumption of the Risk

A person who, with full knowledge and understanding of an existing danger, voluntarily chooses to expose himself or herself to that danger, cannot recover for injury resulting from that danger.

Voluntariness of Exposure to Danger: *Johnson v. County Arena, Inc.* 29 Md App. 674 (1976)

Relevant Non-Maryland Court Opinions

Ronald A. Weirum, Plaintiff, v. RKO General Inc, 15 Cal. 3d. 40; 539 P2d 36 (1975)

A rock radio station with an extensive teenage audience conducted a contest which rewarded the first contestant to locate a peripatetic disk jockey. Two minors driving in separate automobiles attempted to follow the disk jockey's vehicle to the next stop. In the course of their pursuit, one of the minors negligently forced a car off the highway, killing its sole occupant. In the suit filed by the surviving wife and children of the decedent, the jury rendered a verdict against the radio station. The Supreme Court of California, upheld the verdict, saying "If the likelihood that a third person may react in a particular manner is a hazard which makes the actor negligent, such reaction whether innocent or negligent does not prevent the actor from being liable for the harm caused thereby. Here reckless conduct by youthful contestants, stimulated by defendant broadcast, constitute a hazard to which the decedent was exposed..

It is true, of course, that virtually every act involves some conceivable danger. Liability is imposed only if the risk of harm, resulting from the act is deemed unreasonable....

We need not belabor the grave danger inherent in the contest broadcast by the defendant. The risk of a high speed automobile chase is the risk of death or serious injury. Obviously, neither the entertainment

afforded by the contest nor its commercial rewards justify the creation of such a grave risk. Defendant could have accomplished its objectives of entertaining its listeners and increasing advertising revenues by adopting a contest format which would have avoided danger to the motoring public.

Defendant's contention that the giveaway contest must be afforded the deference due to society's interest in the First Amendment is clearly without merit. The issue here is civil accountability for the foreseeable results of a broadcast which created an undue risk of harm to the decedent. The First Amendment does not sanction the infliction of physical injury merely because achieved by word, rather than act.

Olivia N., a Minor v. National Broadcasting Company, 126 Cal App. 3d 488; (1981)

Olivia N. appealed a judgment of nonsuit for terminating her action against the National Broadcasting Company for physical and emotion injury inflicted by assailants who had seen a television broadcast of a film drama depicting a sexual assault. On the first appeal of this case, the court recognized that certain narrowly limited classes of speech may be prevented or punished by the state consistent with the First Amendment."

Although the First Amendment is not absolute, the television broadcast of "Born Innocent" does not, on the basis of the opening statement of appellant's attorney, fall within the scope of unprotected speech. Appellant concedes that the film did not advocate or encourage violent acts and did not constitute an "incitement" within the meaning of *Brandenburg v. Ohio*, 395 US 444. *Brandenburg* views as unprotected speech that is "directed to inciting or producing imminent lawless action and ... likely to incite or produce such action." Notwithstanding the pervasive effect of the broadcasting media and the unique access afforded to children, the effect of the imposition of liability could reduce the U.S. adult population to viewing only what is fit for children.

Appendix A

Guidelines for Attorney Coaches

I. Overview

The rules of evidence governing trial practice have been modified and simplified for the purposes of this mock trial competition (see Part IV: Simplified Rules of Evidence). 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” for the case, nor introduce any evidence that is not included in this packet of materials.

The decision of the judge regarding the quality of the students’ performance (see Rating Sheet) determines which team advances during the single elimination competition.

II. Coaching your 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, questioning, and guiding your students is far more beneficial than telling them how to proceed.

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

- Answering questions that students may have concerning general trial practices;
- 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.

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.

III. Instilling a Positive Team Attitude

Finally, 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. Students should use that experience to learn and improve.

After eighteen years of running this competition, time has shown that the best teams by far are those that learn from their defeats, rather than those who have never lost.

Appendix B

Guidelines for Competition Judges

I. Scoring and Rendering Your Decision

Always award the Special Point immediately after the close of the trial, although it will not be counted unless there is a tie. Then, 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. Next, please announce which team prevailed, **based on the merits of the case**. Your last announcement should declare who prevailed based on the performance (scoring).

Local 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.

II. Time Limits

Student attorneys have been asked to keep their presentations to the following time guidelines.

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

It is particularly helpful for the 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 timeframe on their own. Others prefer not to watch the time at all, though this has, at times, led to lengthy competitions. Time violations should not be a basis for objections, rather left to your discretion. Most competitions last approximately 1 ½ - 2 hours.

III. General Procedures

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.

The rules of evidence governing trial practice have been modified and simplified for the purposes of this mock trial competition. 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.

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

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

IV. Procedural Violations

Any procedural violation of rules should be brought to the attention of the presiding judge during the trial through a bench conference or objection. Once a decision has been rendered by the judge, it is considered final. (See page 8, Part IV: Simplified Rules, first paragraph.)

**Maryland State Bar Association
2001-2002
STATEWIDE HIGH SCHOOL MOCK TRIAL COMPETITION**

Last Date for High School Teams to Enter.....Thursday, November 8, 2001
Mock Trial Guides Distributed.....Monday, November 12, 2001
Circuit Competitions (1st level of competition).....January 2-March 20, 2002

**Note: All Circuit Champions MUST be declared to CLREP no later than 5:00 p.m.
on Wednesday, March 20, 2002.**

Regional Competitions (2nd Level).....Monday, April 8- Tuesday, April 9, 2002
(Circuit Champions compete against one another)

Semi-Final Competitions: Annapolis, MD.....Thursday, April 18, 2002

Statewide Finals: Annapolis, MD.....Friday, April 19, 2002

**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.

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;

Role of Circuit Coordinator continued...

- b. to establish the circuit 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 recruit students for the team;
- c. to arrange training sessions and scrimmages;
- d. to arrange transportation and supervision of the team;
- e. to work with partners to recruit attorney advisors;
- f. to ensure that the team arrives at all scheduled mock trial competitions.

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
Opening Statements			
Plaintiff/Prosecution First Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
Plaintiff/Prosecution Second Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
Plaintiff/Prosecution Third Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
Defense First Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
Defense Second Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
Defense Third Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
Closing Statements			
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: _____ Teacher Coach, Defense: _____

Date: _____ Teacher Coach, Prosecution: _____

Mock Trial State Champions

2000-2001

DeMatha Catholic High School, Prince George's County

1999-2000

Broadneck High School, Anne Arundel County

1998-1999

Towson High School, Baltimore County

1997-1998

Pikesville High School, Baltimore County

1996-1997

Suitland High School, Prince George's County

1995-1996

Towson High School, Baltimore County

1994-1995

Pikesville High School, Baltimore County

1993-1994

Richard Montgomery High School, Montgomery County

1992-1993

Elizabeth Seton High School, Prince George's County

1991-1992

Oxon Hill High School, Prince George's County

1990-1991

Westmar High School, Allegany County

1989-1990

Bishop Walsh High School, Allegany County

1988-1989

Lake Clifton/Eastern High School, Baltimore City

1987-1988

Pikesville High School, Baltimore County

1986-1987

Thomas S. Wootton High School, Montgomery County

1985-1986

Old Mill High School, Anne Arundel County

1984-1985

High Point High School, Prince George's County

1983-1984

Worcester County Team