
2011-2012 MSBA High School Mock Trial Case & Competition



Managed by
the Citizenship Law Related Education Program
www.clrep.org

In cooperation with the
Maryland Judicial Conference Public Awareness Committee,
Executive Committee on Law Related Education,
& Maryland State Department of Education

Important Contacts for the Mock Trial Competition

During LOCAL CIRCUIT COMPETITIONS, your first point of contact is your LOCAL COORDINATOR.

Call your local coordinator regarding your local competition schedule.

Your second point of contact is the State Mock Trial Director:

Shelley Brown Wojciechowski, 410-706-5362/0

sbw@clrep.org

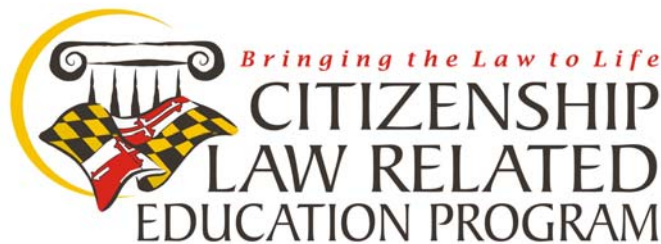
Citizenship Law Related Education Program

Maryland Bar Center

4th floor

Baltimore, Maryland 21201

Circuit	Counties/ City	Local Coordinators
1	Dorchester, Somerset, Wicomico, Worcester	Erin Michael McCormack 443-742-8330 emichael48@gmail.com
2	Caroline, Cecil, Kent, Queen Anne's, Talbot	Same as above
3	Baltimore, Harford	Mr. Tim Rualo 410-887-4017 trualo@bcps.org
4	Allegany, Garrett, Washington	Mr. Jim Zamagias 301-724-5360 x213 izamagias@bishopwalsh.org
5	Carroll, Howard	Mrs. Mary Pizzo 410-480-7777 MPizzo@opd.state.md.us
	Anne Arundel	Ms. Terry Poisson 410-222-5440 mpoisson@aacps.org
6	Frederick	Mr. Michael Bunitsky 301-644-5265 mike.bunitsky@fcps.org
	Montgomery	Mr. Scott Zanni 301-840-4627 Scott_A_Zanni@mcpsmd.org
7	Calvert, Charles, Prince George's, St. Mary's	Ms. Sue Strickland 301-449-4900 Susan.Strickland3@verizon.net
8	Baltimore City	Mr. Erik Atas eatas@opd.state.md.us



EXECUTIVE COMMITTEE

Hon. Diane O. Leasure
Chairperson
Circuit Court, Howard County

Hon. Arthur M. Monty Ahalt (Ret)
Chairman Emeritus

Jonathan Ilsong Ahn
Attorney at Law

Jane Anders
Teacher Consultant

Sara H. Arthur
B&F Liaison

Gilbert Austin
Educational Research & Evaluation

Hon. Mary Ellen Barbera
Court of Appeals

Hon. Pamila Brown
BOG Liaison

William A. Beale
Attorney at Law

Alan S. Carmel
Attorney at Law

Adam Sean Cohen
Attorney at Law

John E. Davenport
Attorney at Law

Delegate Kathleen M. Dumais
District 15

Suzanne K. Farace
Attorney at Law

Michael I. Gordon
Attorney at Law

Shannon McClellan
University of MD School of Nursing

Stacy W. McCormack
Office of the Public Defender

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

Hon. Irma S. Raker (Ret)
Court of Appeals

Annabelle Sher
Assistant Director, MD D-BED

Victor A. Sulin
Attorney at Law

Kathleen J. P. Tabor
Attorney at Law

Charles S. Winner
Attorney at Law

November 10, 2011

Dear Students & Coaches:

Welcome to the 2011-2012 Maryland State Bar Association Statewide High School Mock Trial Competition. This is the 29th year for Mock Trial—over 50,000 students have participated in this competition since its inception. We are pleased that you are joining in this exciting opportunity.

This year's case explores the topic of youth sports in hot, humid weather. Participation in athletics during extreme heat and/or humidity can cause life-threatening heat illnesses, such as heat exhaustion, heat cramps, and heat stroke. According to the American Academy of Pediatrics, teenagers and children who participate in sports are more likely than adults to experience dehydration and heat illness. Guidelines for safety during hot weather emphasize prevention, and understanding how young people acclimate to heat, humidity and fluid loss. This is an important topic, and one of growing concern for coaches, athletes, and school administrators across the country.

Our four primary objectives for the MSBA Mock Trial competition are:

- To further understanding and appreciation of the rule of 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.

Mock Trial works best when everyone competes fairly and honestly. Your goal should be learning, rather than winning. Mock Trial provides opportunities to learn through case preparation with your attorney advisor, teacher coach, and teammates, as well as during each of the competitions.

Please remember that Mock Trial parallels the real world in terms of proceedings, interpretations, and decisions by the Bench. Decisions will not always go your way and you will not always prevail. BUT—you will succeed if you learn from both wins and losses!

We ask that you read carefully through the rules, guidelines and score sheet included in this casebook. We wish you a very successful year and a rewarding learning experience.

Sincerely,

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

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

TABLE OF CONTENTS

Organizational Rules	3
Preparing for Competition: Helpful Hints	5
Trial Procedures	6
Simplified Rules of Evidence & Procedure	9
Courtroom Diagram	15
Fact Pattern	16
Witnesses for the Prosecution	
Charlie Shunn, Paramedic	18
Dr. Reese Wright, Principal	20
Tyler Gordon, Team Member & Student	22
Witnesses for the Defense	
Drew Hunter, Head Soccer Coach	24
Dr. Jamie Zamaiyas, Emergency Room Physician	26
Bobbie Palin, Assistant Soccer Coach	28
Evidence & Exhibits	
Emergency Medical Form	30
Incident Response Form	31
Blood Pressure Chart	32
Personnel Warning	33
Memorandum to Coaches	34
MCPS Hot Weather Policy for Athletic Teams	35
Air Quality Index	36
Heat Index	37
Statutory Law	38
Case Law	
<i>Reginald T. Holbrook v. State of Maryland</i>	40
<i>Manokey v. Waters, US Court of Appeals for the Fourth Circuit</i>	49
Appendices	
Guidelines for Attorney Advisors	56
Helpful Hints for Competition Judges	57
Sample Score Sheet	58
Calendar	Inside Cover
State Champions	Back Cover

2011-2012
MSBA HIGH SCHOOL MOCK TRIAL COMPETITION

PART I: ORGANIZATIONAL RULES

1. **Forfeits are prohibited.** As a registered team, you agree to attend all scheduled competitions. If a team does not have an adequate number of students (i.e. due to illness, athletics, or other conflicts), it is still expected to attend and participate in the competition. In these instances, a team will “borrow” students from the opposing team. While this is treated as an automatic win for the opposition, both teams still gain the practice experience. Further, it maintains the integrity of the competition and is respectful of the Court, Presiding Judge, attorneys and the other team that has prepared and traveled to the competition. If this occurs, coaches should make every effort to notify the local coordinator AND the other coach in advance of the competition. When an opposing team does not have enough students to assist the other team, students may depict two or more of the roles (i.e. they may depict 2 witnesses or play the part of 2 attorneys).
2. 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.
3. Local competitions must consist of enough matches that each participating high school presents both sides of the Mock Trial case at least once.
4. A team must be comprised of no fewer 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.
5. 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 competition, 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. (Note: In Circuits 1 and 2, where teams typically participate in two competitions per evening – once as prosecution and once as defense – students may change roles for the second competition.)
6. 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 or more teams, each team must have a different teacher coach and a different attorney coach than the other team. Additionally, if a high school has multiple teams, then those teams MUST compete against one another in local (circuit) competition.
7. 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. If willing, the second place team from the specified circuit will advance to the regional competitions to fill the opening. If that team is unable to advance, 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.

2011-2012	Circuit 8	2015-2016	Circuit 4
2012-2013	Circuit 1	2016-2017	Circuit 5
2013-2014	Circuit 2	2017-2018	Circuit 6
2014-2015	Circuit 3	2018-2019	Circuit 7

8. 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 11 or 12, 2012.
9. The dates for the Regionals, the Semi-Finals, and the Finals will be set and notice given to all known participating high schools by Thursday, November 10, 2011. Changes will only occur due to conflicts in judicial schedules.
10. District Court judges, Circuit Court judges, and attorneys may preside and render decisions for all matches. If possible, a judge from the Court of Appeals or Court of Special Appeals will preside and render a decision in the Finals.
11. 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.
12. 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 local circuit schedule.
13. 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.
14. 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.
15. 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.
16. 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. **Upon the coaches' review of, and signature on the score sheet, THE OUTCOME IS FINAL.**

17. 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; and team members must have their cell phones and all other electronic devices turned off during competition as texting may be construed as coaching. Teacher and Attorney Coaches **MAY NOT** sit directly behind their team during competition as any movements or conversations may be construed as coaching.
18. 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.
19. 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. The student attorney who handles the opening statement may not perform the closing argument.
20. Judging and scoring at the Regional, Semi-Final and Statewide Final Competitions are distinct from judging and scoring in some local 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 team performance at 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 tie point without informing the attorney scorers. The Tie Point will only be added into the final score only in the case of a tie. 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.
21. **Evidentiary materials that have been modified for use during trial (e.g., enlarged), must be made available during the trial for the opposing team's use. During witness identification exchanges, please alert the other team if you plan to use modified materials.**

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. The Prosecution/ Plaintiff statement should include a description of the facts and circumstances surrounding the case, as well as a brief summary of the key facts that each witness will reveal during testimony. The Opening Statement should avoid too much information. It should also avoid argument, as the statement is specifically to provide facts of the case from the client's perspective.
- 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 (or deny the validity of the case) which the plaintiff has made. It includes facts that tend to weaken the opposition's case, as well as key facts that each witness will reveal during testimony. It should avoid repetition of facts that are not in dispute, as well as strong points of the plaintiff/ prosecution's case. As with the Plaintiff's statement, Defense should avoid argument at this time.

3. Direct Examination by the Plaintiff/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. It also allows counsel for each side to establish the credibility of each of their witnesses. (If opposing counsel chooses to voir dire a witness, 2 minutes are permitted, in addition to the 7 minutes allowed for direct examination.)

General Suggestions:

- Ask open-ended questions, rather than those that draw a "yes" or "no" response. Questions that begin with "who," "what," "where," "when," and "how" or "explain..." and "describe..." are helpful during direct examination.
- Questions should be clear and concise, and should help guide your witness through direct examination. Witnesses should not narrate too long, as it will likely draw an objection from opposing counsel.
- Do not ask questions that "suggest" a specific answer or response.

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. These 2 minutes are typically allotted during the witness' direct examination.)

General Suggestions:

- Use narrow, leading questions that "suggest" an answer to the witness. Ask questions that require "yes" or "no" responses.

- In general, it is never a good idea to ask questions to which you do not know the answer – unexpected responses can be costly and may leave you unprepared and off-guard.
 - Never ask “why.” You do not want to give a well-prepared witness an opportunity to expand upon a response.
 - Avoid questions that begin with “Isn’t it a fact that...”, as it allows an opportunistic witness an opportunity to discredit *you*.
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. (See #3 above for suggestions.)
 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. (See #4 above for suggestions.)
 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 (or not at fault) 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, or fault on the part of the defense. 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. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probable than it would be without the evidence. It is that which helps the trier of fact decide the issues of the case. However, if the relevant evidence is unfairly prejudicial, confuses the issues, or is a waste of time, it may be excluded by the Court.

Example of a Relevant Question: "Charlie, how many calls did your team respond to on the morning of August 25, 2011?"

Example of an Irrelevant Question: "Charlie, what was the average high temperature in the days leading up to August 25, 2011?"

Objection:

"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.

Objection:

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

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, on the other hand, is one that implies, suggests or prompts the witness to answer in a particular manner -- typically a "yes" or "no" answer.

Example of a Direct Question:

The State asks, "Dr. Reese, please tell the Court how long you have worked as Principal for Abe Lincoln high School."

Example of a Leading Question:

The State asks, "Dr. Reese, isn't it true that you have served as Principal of Abe Lincoln High School for 9 years?"

Objection:

"Objection: Counsel is leading the witness."

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:

"Dr. Reese, please explain in your own words what occurred on August 25, 2011."

Objection:

"Objection. Question asks for narration."

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.

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: On direct examination, a witness is not questioned about a given topic, and the opposing attorney asks a question 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. Hearsay is a statement, other than one made by the declarant while testifying at the trial, offered in evidence to prove the truth of the matter asserted made outside of the courtroom. Statements made outside of the courtroom are usually not allowed as evidence if they are offered in court to show that the statements are true. The most common hearsay problem occurs when a witness is asked to repeat what another person stated to him or her. **For the purposes of the Mock Trial Competition, if a document is stipulated, you may not raise a hearsay objection to it.**

Example: Tyler states, “I overheard one of our teammates say that several people were feeling really bad because of the heat.”

Objection: *“Objection. The statement is hearsay, Your Honor.”*

Possible Response to the Objection: *“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: *“Charlie, do you believe the Coach should be held legally responsible for the injury sustained by Kendall?”*

Objections:

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

“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: (Prior to being qualified as an expert) “Dr. Johnson, please explain how prehypertension can caused more rapid onslaught of heatstroke.”

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”

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 only **if it is contained within the casebook** and 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 if there is one, 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 and evidence provided in the casebook. If a witness testifies in contradiction of a fact given in the witness’ statement, opposing counsel should impeach (prove untrue) 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.)

Example:

“Coach Palin, how many times would you approximate Coach Hunter has purposely defied county policy?”

Coach Palin replies: “Oh, at least a half dozen times in my tenure as assistant coach.”

Objections:

“Objection, your honor, the witness is creating facts which are not in the record.”

“Objection. The witness is inventing facts that directly contradict case material.”

“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.

8. SPECULATION

RULE 801: Speculation, or someone’s idea about what *might* have occurred, is generally not permitted. A witness may not jump to conclusions that are not based on actual experiences or observations, as this is of little probative value. Some leeway is allowed for the witness to use their own words, and greater freedom is allowed with expert witnesses.

Example:

On Cross Examination, Defense asks Dr. Wright, “The fact of the matter is, Dr. Wright, if you had fired Coach Hunter after the first two allegations of wrongdoings, Kendall would be perfectly fine today. Isn’t that right?”

Objection:

“Objection. This calls for speculation on part of the witness.”

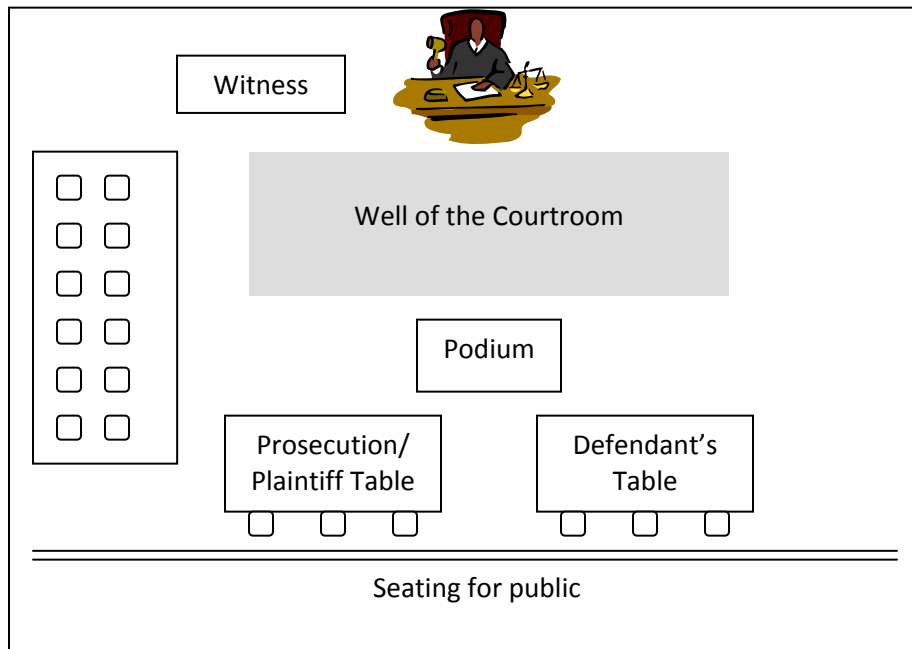
9. PROCEDURE RULES

RULE 901: 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 902: MOTIONS TO DISMISS. Motions for dismissal at the end of the prosecution's case are NOT permitted.

RULE 903: CLOSING ARGUMENTS. Closing arguments must be based on the evidence and testimony presented during the trial. Offering new information at this point is prohibited.



IN THE CIRCUIT COURT OF THE STATE OF MARYLAND
IN AND FOR MONTGOMERY COUNTY

State of Maryland,)
)
Prosecution,)
)
v.)
)
Drew Hunter,)
)
Defendant.)

STATEMENT OF STIPULATED FACTS

Drew Hunter is the soccer coach at Abraham Lincoln High School in Montgomery County, Maryland. Coach Hunter is known as one of the best soccer coaches in Maryland, with multiple county and state championships to prove it. Students, parents, and the community adore the coach; not just because of the reputation brought to Lincoln High, but also for the coach’s insistence on excellence, hard work, dedication and sportsmanship, on and off, the field.

As was Coach’s practice at the end of each school year, the team members who would be returning in the fall were called together to meet one last time before summer break. On Wednesday, June 8, 2011, the coach and the assistant coach, Bobbie Palin, met with the players and informed them that Fall season soccer practice, or Fall Ball, would begin on August 15, 2011. Coach Hunter impressed upon the team that it was important to stay in shape over the summer, to stay acclimatized to the heat, and to hydrate well during exercise so that they would always be able to give their best performances on the field.

Coach Hunter also overviewed their pre-season practice schedule which was adopted from the National Athletic Trainers’ Association Pre-Season Heat Acclimatization Guidelines for Secondary School Athletics. The NATA recommends a 14-day pre-season schedule, which has been modified in Montgomery County to ten days. During the first six days, players participate in one 2-hour training; during the final 4 days, the team rotates between one-a-day and two-a-day practices. On Monday, August 15, 2011, and through the following Monday, practice was held from 8:00-10:00am on Lincoln High School’s soccer field. On Tuesday, August 23, Coach Hunter held the first two-practice day. The team met from 8-10 in the morning, and again from 3-5 in the afternoon.

As is the policy of all Montgomery County Public Schools, Lincoln High follows the hot weather guidelines put forth by the Metropolitan Washington Council of Governments. The guidelines factor in temperature, humidity, heat index, and air quality. The HI is determined by factoring the humidity and temperature into a complex equation to derive the human-perceived “felt air temperature”. The heat index is regularly reported on local radio and television weather forecasts, as is air quality; furthermore, the County Athletic Director issues an email by 7:00am during hot weather to each school’s principal and sports director with any necessary weather alerts. Coaches are expected to check email prior to beginning any athletic practice in case modifications to the schedule are needed.

During the first week of ALHS’s soccer practice, weather was of little concern, as temperatures and humidity were low, especially for August. This wasn’t the case during the second week of practice, however. Each day, the temperature and humidity levels rose, and the air quality decreased. On Wednesday, August 24, Coach Hunter and Assistant Coach Palin held their typical morning practice. At the beginning of practice, it was 86° and 70% humidity - with a heat index (HI) of 95°. By the end of practice, the heat index had risen to 99°. Several players complained of fatigue and dizziness while running drills, and two of the players vomited during sprints at the end of practice. The coach was not pleased with the lackluster performance of the players after eight days of practice, and said as much at the end of practice.

By 8am on the morning of August 25th, the heat index was already measuring 103°. The humidity was at 75 percent and the temperature was 88 degrees, creating a Code Red/Urgent weather day. Despite the County cancelling afternoon and evening practices, and shortening morning practices, Coach Hunter pushed practice nearly 45 minutes

past the scheduled 9:30am finish. The team participated in a scrimmage that lasted until approximately 9:55am. After that, Coach Hunter had the players do suicide shuttles. The team members were told to form five lines and starting on cone one, run to cone two and back, then cone three and back, four and back, then five and back. The sprint should be flat out and players should turn sharply off a different foot at each cone. They should rest for thirty seconds and repeat, rest another thirty seconds and repeat for a third time. This is one set. Now rest for two minutes and repeat for a second set (i.e. three lots of shuttle runs with thirty seconds rest between each).

Just before 10:15am, during the second set of sprints, between the second and third cones, senior Kendall Kneifen collapsed face down on the field. Teammates stopped to help Kendall up, but Coach Hunter barked for them to keep going. Players continued to run shuttles while Kendall lay motionless on the field. On the next pass, junior Tyler Gordon collapsed between cones one and two; senior Casey Smyth fell at cone four. Coach Hunter called an immediate halt to the shuttles. The players gathered around Kendall, who was not moving. Coach Palin had grabbed a water jug and towels, doused two towels in the cold water, and placed them on the heads of Casey and Tyler. Coach Palin then raced to the side of the Kneifan and began putting wet towels over Kneifan’s head, neck, and arms. Coach Hunter grabbed the First Aid kit and cell phone and placed a call to 911 and then tended to Casey and Tyler.

The EMS team arrived at 10:25am and found Kendall unconscious and non-responsive. The victim had a rapid pulse, a temperature of 40.5°C, and hot, red skin. They placed cold packs around Kendall’s head, neck, armpits and groin, and proceeded with haste to the Montgomery County General Hospital. The EMS team relayed the victim’s vital signs to the hospital until arriving just after 10:45am. Tyler Gordon and Casey Smyth were taken to the hospital in the second ambulance that had arrived shortly after the first. Dr. Jamie Zamaiyas, who serves as part of the emergency pediatric department, was the first to examine Kendall.

In the days that followed, Kendall’s parents appeared before the Commissioner and filed a Statement of Charges against Drew Hunter for reckless endangerment and child abuse. Upon a follow-up investigation and questioning of the coach, players, EMS team, paramedic and emergency room doctor, a summons was ordered for Drew Hunter to appear in court. Hunter was subsequently charged and indicted on three counts of reckless endangerment and one count of child abuse.

STATEMENT OF CHARGES AND DEFENSES

The State of Maryland charges Drew Hunter with the following violations of the Maryland Code:

MD Code §3–204. Reckless endangerment, 3 counts

MD Code §3-601. Child abuse, 1 count

STIPULATIONS

The parties have stipulated to the authenticity and factual accuracy of the following items. The parties have also agreed that the items are not in dispute:

1. Student Emergency Medical Form
2. EMT Incident Response Form
3. Blood Pressure Chart
4. Personnel Warning
5. Memorandum to Coaches
6. Montgomery County Hot Weather Guidelines for Athletic Practice
7. NOAA National Weather Service Heat Index
8. Air Quality Index
9. Kendall Kneifan remains too ill to appear in court.
10. Drew Hunter denies all charges and claims and pleads not guilty.

WITNESSES TO APPEAR BEFORE THE COURT

<p><u>Witnesses for the Prosecution</u> Charlie Shunn, Paramedic Dr. Reese Wright, Principal Tyler Gordon**, Player</p>	<p><u>Witnesses for the Defense</u> Drew Hunter, Head Coach Dr. Jamie Zamaiyas, Emergency Room Doctor Bobbie Palin, Assistant Coach</p>
---	---

***The gender of the student portraying Tyler Gordon will determine the gender of the soccer team.*

1 **CHARLIE SHUNN**
2 Witness for the Prosecution
3

4 My name is Charlie Shunn. I am 28 years old. I live at 12963 Silver Court in Rockville, MD. I am an EMT-Paramedic
5 with the State of Maryland. I have been in the emergency medical field for 12 years and worked as an Emergency
6 Medical Technician and Cardiac Rescue Technician before becoming a Paramedic. When most teenagers are
7 vying to get their license, I was pushing to get my First Responder state certification. Maryland requires you to be
8 at least 16 years old to apply for certification or licensure, and you must have parental permission. Because I was
9 always a good student, my parents had no problem allowing me to take the required classes on the weekends.
10 And, I really enjoyed knowing exactly what I'd be doing during my junior and senior year summers. When
11 everyone else was working at the Mall or neighborhood pool, I was getting real work experience.
12

13 I attended UMBC where I majored in biology and was accepted into the Paramedic Clinical Track. In order to be
14 accepted into the paramedic program, you have to submit a formal application, EMT-Basic Certification, active
15 CPR certifications, verification of immunizations, and a host of other items. You also complete a formal interview
16 process. They limit the course to a small number, so it is highly competitive. The clinic is no joke – you have to
17 purchase medical malpractice insurance through the University because you are working with patients beginning
18 the first day. I graduated with a Bachelor of Science in Biology, and was well prepared to jump right into the
19 emergency medical profession.
20

21 I have continued schooling so that I stay on top of the latest techniques, equipment, and so on – the field is
22 always changing. Most recently, I finished courses on HazMat response and emergency response to terrorism. I
23 plan to register next for Leadership courses, as I would like to move into Instruction, and possibly Supervision, at
24 some point down the road.
25

26 Once you've worked in this field for a few years, you know before you ever get to work if it's going to be a busy
27 day. One of the best indicators is the weather – at either extreme, be it very cold or very hot, we're going to get a
28 lot of emergency calls. That day in August was no exception. In fact, most of that week was hopping at work – but
29 on that particular day, the heat index had soared, and the air quality was horrible.
30

31 At approximately 10:20am on Thursday, August 25, we were dispatched to Abe Lincoln High School. By the time
32 we got this call, we had already responded to four heat-related cases that morning. The dispatcher informed us
33 that there were three students in need of medical assistance. Upon arrival, we saw three kids on the ground. Two
34 of them appeared conscious and responsive, and the third – Kendall - was not moving. My partner called to make
35 sure there was another emergency team on the way, and we went to work on Kendall.
36

37 One of the first - and most important - things you learn with emergency response to heatstroke is to treat first,
38 and then transport. Minutes are precious, and often mean the difference between total recovery and permanent
39 injury. We placed ice packs in all heat-loss areas – the groin, armpits, and neck. After covering Kendall's exposed
40 skin with wet towels that had been immersed in ice water, we moved the patient onto a stretcher and into the
41 ambulance.
42

43 Kendall was suffering from tachycardia, heatstroke, and severely elevated core body temperature of 40.6°C.
44 Kendall was non-responsive to outside stimuli. During these few minutes, we were in constant contact with
45 MGHS' emergency department so that they would be prepared for the arrival of the victim.
46

47 The forecast had predicted a heat index of 118° that day. The thermometer gauge on the ambulance registered
48 104° outside; granted, it was sitting in direct sun – but so were the players. And, that's before you factor in the
49 humidity. It was unbearable. I don't know how they were practicing in that heat. It's not my job to judge why
50 people make the decisions they do, but good common sense would tell you to limit outside physical activity
51 during temperatures like that. The coach kept saying, "practice was almost over," but no one should have been
52 outside running around in that weather.

53 It is my understanding that the two other students who collapsed during practice were also admitted to the
54 hospital because of heat-related complications. In a matter of time, I'm convinced that several more of the
55 players – beyond the first three – would have needed medical intervention. I told the coach to get them inside
56 and into cool showers immediately.

57 Charlie Shunn

1 **Witness for the Prosecution**

2 Dr. Reese Wright

3
4 My name is Reese Wright. I am 49 years old. I am currently employed as the Principal of Abraham Lincoln High
5 School in Montgomery County, MD, where I have worked for 9 years. Prior to that, I was a Vice Principal and
6 teacher at Mt. Hebron High School in Howard County. I attended Loyola College for both my undergraduate and
7 graduate degrees. I have a BA in English and my Master of Education in Administration & Supervision. I obtained
8 my Ph.D. from Towson University.

9
10 I have always been a believer of extra-curricular activities for students. As a student, I played sports year-round,
11 and also enjoyed a number of after-school clubs. I think it is one of the best ways for students to get a well-
12 rounded, enriching, and fulfilling educational experience. One of the goals I had for ALHS was to strengthen the
13 athletic program and bring our teams up to a more competitive level. Of course, as every Principal knows, money
14 talks. A bigger budget means better incentives for coaches, better equipment, and more modern facilities and
15 fields. I am pleased that we have been successful in this endeavor. We've nearly tripled our budget for athletics,
16 which has enabled us to purchase new equipment and redo the athletic fields.

17
18 We've also been incredibly fortunate to hire excellent teachers who bring extensive coaching experience to our
19 ranks. The sport that had suffered the most at ALHS was soccer. There was virtually no support for the sport, and
20 little commitment to fielding a team. However, just a couple of years after I came to ALHS, I hired Drew Hunter
21 who happened to be a well-respected educator and soccer coach. I think Coach Hunter ("C.H.") was not only
22 excited about the prospect of building a team, but saw it as a personal challenge. I liked that attitude from the get-
23 go.

24
25 In our very first year, we made the county playoffs. By year two, we had our first county championship. By year
26 four, C.H. led ALHS to a state championship victory. Of course, I am happy about this on a number of levels – it
27 brings positive publicity to our school; but more than that, it gets our students thinking about collegiate athletics
28 and opens a whole other venue for students to obtain college scholarships. It puts us on the radar of college
29 recruiters, which ultimately strengthens all of our programs.

30
31 Coach Hunter brought energy to our athletic program. I saw it from the moment of hire. Certain people just have a
32 flair for developing rapport with students – no doubt Coach Hunter has it with students, parents, and colleagues.
33 Unfortunately, people's strengths sometimes become their weaknesses. I glimpsed this in Coach Hunter off and on
34 during the first couple of years, but it seemed to worsen after our soccer team won the state championship. I
35 heard it, too, from a number of people – particularly parents. We weren't two weeks into Fall Ball the season after
36 the championship when I received a call from an irate parent whose child had attended a "voluntary" practice on
37 an unbearably warm day. When the County had cancelled afternoon practices due to a Code Red, C.H. called a
38 voluntary scrimmage. The child came home very ill, apparently because of the heat.

39
40 I received two other complaints from parents regarding that same practice. Upon investigating, I confirmed that
41 C.H. had indeed conducted the scrimmage. While C.H. stated that it was a "voluntary" scrimmage, and therefore
42 not a violation of county policy, it clearly crossed the line. Needless to say, I followed up with the Coach, and
43 documented the meeting in C.H.'s personnel file. After meeting with the parent, she seemed satisfied in knowing
44 the Coach had received a written warning.

45
46 During the very next season, I was contacted by a parent who told me that his child came home complaining of not
47 being allowed a water break during drills. When I spoke with Coach about it, I was told, very matter-of-factly, that
48 players get ample water breaks. I don't often use the "Principal Card," but on that occasion I did. I pulled every
49 coach of every sport into a meeting and said in no uncertain terms our players are to have water breaks whenever
50 they need them. We decided that we would purchase water bottles for all of our athletes and make sure that
51 water jugs were available during every practice and competition.

53 Around that same time, I met with Coach Hunter and explained my ongoing concerns. I also said if I received one
54 more complaint regarding coaching conduct, C.H. would be dismissed as the soccer coach. This was all
55 documented in C.H.'s file, and the Assistant Superintendent was made aware of the matter as well. I think C.H.'s
56 intent was good. I believe the Coach wanted to help the players grow stronger, and sometimes stretched the
57 players beyond their comfort zone. It is my opinion that at times, however, C.H. exhibits a bit of a God complex,
58 acts as if the rules don't apply to the soccer team. This is not a "one-man" or "one-woman" show. There is a reason
59 for the policies and procedures that are in place here in the County; we don't want students harmed and will do
60 everything we can to ensure they practice and compete safely. We may not be able to control the weather, but we
61 can certainly control when and if our students play – as long as we are working together and playing by the same
62 rules.

63
64 After the incident of August 25th we conducted an internal investigation; from the evidence gathered, I concluded
65 that Coach Hunter had exceeded the specified practice times and violated school and county policy and
66 procedures. When I met Kendall's parents and they stated that they were going to file a criminal complaint, I -- as
67 a parent and educator -- could not disagree with their decision. I've consulted with our Assistant Superintendent,
68 and we have relieved Drew of any and all coaching duties. It always disappoints me to have to terminate an
69 employee, but the safety of our students comes first.

70 Reese E. Wright

1 **Witness for the Prosecution**

2 Tyler Gordon

3
4 My name is Tyler Gordon. I reside at 128 Wickham Road in Olney, Maryland. I am sixteen years old and in my junior
5 year at Abraham Lincoln High School. This is my third year on the Lincoln High soccer team, and I have been playing
6 varsity soccer as a midfielder for the last two years. Even though I am a junior, I was made co-captain of the team.

7
8 Soccer practice started on August 15, 2011, and we all met on the field. Coach Hunter welcomed us all back and
9 introduced the freshman and other students who were trying to make the team this year. Coach Palin handed out
10 water bottles and athletic guides. The coach and assistant coach are always making sure we have the right
11 equipment, and as they say, on and off the field they want us to be the best we can be.

12
13 During the first week, we had only one practice each day. I know, from past participation, that we were only allowed
14 three hours of practice each day during that first week because we're trying to get back in shape and get acclimated
15 to the heat. After the first week we had two-a-day practices—once in the morning for two hours and then another
16 in the afternoon for two hours. These are brutal. I am not complaining, but two-a-days are rough. Coach would
17 always tell us that unless we gave 110 percent at practice we would not be able to give 100 percent on game-day.
18 Coach's office had those motivational posters all over the walls, and many were coach's own sayings. Coach would
19 also hang them in the locker room, and often had them put up at practice so we could be reminded of what was
20 expected. There were four sayings I will never forget.

21
22 **You are never a loser until you quit trying**

23 **There is no such thing as bad weather, just soft people**

24 **If it's not broken you're choken**

25 **If you're not chuckin you're duckin**

26
27 Practice typically includes stretching exercises, jogging around the field, and passing and dribbling skill sets. The
28 team then rotates in small group drills on including receiving and control, two-two-two, and basic strength training.
29 Then we do a short scrimmage against each other. Following the scrimmage, the team usually does half and full-field
30 sprints. Nothing changed that morning. I know a couple of the players complained that they were sick or dizzy, but I
31 think we all felt that way. This is one of the reasons Coach Hunter wants us returning in shape and accustomed to the
32 heat. Believe me, I've learned from experience.

33
34 Practice on Thursday, August 25, 2011, began just like every other practice. It was ridiculously hot that morning. I
35 had a headache within about 30 minutes of starting, and it only got worse throughout the morning. That's one of the
36 toughest days of practice I have ever had. I mentioned to the assistant coach that some of us were feeling sick, and
37 Coach P went to talk to Coach Hunter. Not long after we were told to take a break. As we were coming back on the
38 field, coach looked at us and said, "There is no such thing as bad weather, just soft people." We knew we needed to
39 turn up our efforts. We did our scrimmage as usual, but Coach kept us going for a lot longer than usual. In fact, we
40 thought we were done when the scrimmage was finally called, because we had already gone well past when we
41 should've ended. Some of the new players grabbed their bags and water bottles and started walking off the field,
42 thinking we were done. That's a big mistake. BIG. Players never end practice – only coaches.

43
44 Coach Hunter yelled out to everyone, "We're not done. Where are you going?" They were setting up the cones for
45 suicide shuttles. In the best of weather, everyone hates those things, but in hot weather, they are sheer torture. I
46 was a little surprised that everyone pulled it together though – but maybe it was because they knew afternoon
47 practice was cancelled and this was it for the day.

48
49 It was really hot when we started those suicide drills. There was a part of me that wanted so badly to walk off the
50 field. Coach held us at practice almost 45 minutes longer than the scheduled end. But I just told myself to suck it up
51 – that it would be over soon. Plus, I had worked too hard up to this point to be benched for the first game, and
52 possibly even lose my position as co-captain. As we were lining up, Kendall joined our line and was talking in what

53 seemed like jibberish. We all thought it was Kendall being Kendall – trying to get everyone laughing and in better
54 spirits. Now, I’m not so sure.

55
56 It was during the second set of sprints that I saw Kendall collapse on the field. Several of us stopped to help Kendall,
57 but Coach yelled, “If it’s not broken you’re a-choken, so keep going!” So that is just what I did. You don’t question
58 Coach. As soon as I got to the next cone and was making my pivot to run back, I felt a wave of nausea hit me and I
59 got so dizzy I just went down to the ground. I remember holding my head and rolling back and forth it hurt so badly.

60
61 I don’t know how long I was down, but I remember cold, wet towels being placed around my neck and being told to
62 sip some water. I remember most of the ambulance ride, although the siren made my head hurt worse.

63
64 At the hospital, I remember ice packs around my neck and head, wet towels on my skin, and an IV in my arm. They
65 diagnosed me with heat exhaustion and kept me for a couple of days, even though I felt better the day after it
66 happened.

67
68 Tyler P. Gordon

1 **DREW HUNTER**

2 Witness for the Defense

3
4 My name is Drew Hunter. I am 38 years old. I am married with two children. I live in Gaithersburg, Maryland at 112
5 Muncaster Hill Rd.

6
7 I have been the varsity soccer head coach for the past six years at Abe Lincoln High School in Montgomery County. I am
8 also a tenured physical education teacher at the high school. When I started coaching, the soccer program here was just
9 about non-existent. There was little excitement and enthusiasm around the sport – everyone was focused on lacrosse
10 and football. During my time as coach, we’ve not only built a great respect for the sport, but we’ve won several county
11 championships and one state championship. In fact, we’ve been county champs for five of the past six years. Almost all
12 of our players have gone on to 4-year colleges and many have received full or partial athletic scholarships. At ALHS, we
13 pride ourselves on fostering the desire for excellence among our students. I believe in the old fashioned notion of hard
14 work, dedication, and good sportsmanship on - and off - the field.

15
16 I would do anything for my players. What happened here is a horrible, tragic accident, but I would never intentionally
17 hurt anyone. When they try out for my team, they know that I’m tough. I make no bones about that. I don’t take it easy
18 on them, nor will I, as long as I am coaching. All of that said, however, their well-being is of the utmost importance to me
19 and my assistant coach. If my players aren’t growing stronger, then I’m not doing my job.

20
21 At the end of each school year, I call all returning players together one last time before summer break. The assistant
22 coach, Madison Palin, and I, met with them during the last week of school and informed them that summer soccer
23 practice would begin on August 15, 2011. As part of school and county-wide requirements, we provide each player with
24 the Lincoln’s athletic guide that overviews our expectations. Parents and students must read the guide, sign the last
25 page of the handbook, and return it to us prior to beginning practice. No one may participate in a practice until we have
26 a signed contract. They are not even allowed to stay and watch practice. The contract explains all county and school
27 related guidelines including those on inclement weather. Hot weather has become more and more of a concern,
28 particularly with the number of injuries to high school football players in recent years. I impressed upon the students
29 how important it is to stay in shape over the summer, to stay accustomed to exercising in the heat, and to keep
30 hydrated before, during, and after exercise.

31
32 We had our first practice on Monday, August 15, 2011, at 8:00am on the high school soccer field. As is our practice
33 every year, we hand out water bottles with an imprint of the Panthers’ Logo to each player. Following the
34 recommendations established by the National Athletic Trainers’ Association Pre-Season Heat Acclimatization Guidelines
35 for Secondary School Athletics, I scheduled a 2-hour practice once a day, each day, for the first six days of practice.

36
37 On Tuesday, August 23, the seventh day of practice, I began two-a-day practices beginning at 8am and ending at 10am,
38 and again from 3 – 5:00pm. I realize that some people think four hours of practice is too much, but it is only one week
39 out of the year that we do this, and since we rotate two-practice and one-practice days, it winds up being just 2 or 3
40 days where we actually practice that long. As far as I’m concerned, it’s an important part of the “weeding out” process –
41 to determine who has the gusto, skill, and dedication necessary to play for the Panthers. Those athletes who are still
42 with me at the end of the week have heart, and that’s who I want on my team.

43
44 At each practice, we place four 5-gallon water containers and a pile of towels on the sideline at mid-field. Every thirty
45 minutes we break for 5 minutes so that players can hydrate and relax. On hotter days, we break more frequently as a
46 team. And, several years ago, we instituted a school-wide policy that athletes have their own water bottle and drink
47 from it as often as needed, even between formal breaks.

48
49 The County Athletic Director sends an email to all sports coordinators and principals throughout the county regarding
50 weather restrictions. The sports coordinators at each school are expected to notify all coaches so that they can make
51 any necessary modifications to the schedule. They are pretty reliable in terms of getting the email out in a timely
52 manner, which is helpful for those of us who like to get in an early practice. We still take it upon ourselves, however, to
53 obtain the heat index from the local weather channel or to calculate it ourselves if necessary.

54 The Heat Index (HI) and Air Quality Index determine whether there is a weather warning for the day – usually
55 announced as “code orange,” “code red,” or “code purple”. The HI is determined by the humidity and temperature in a
56 very complicated equation; however, we have a handy chart that provides the heat index for you if you know the
57 humidity and temperature levels. And, because we practice in the morning and afternoon, we keep a close watch on the
58 HI throughout the day.

59
60 On the morning of Tuesday, August 23, the HI was 83. Before the afternoon practice session began, the heat index was
61 95°. We held both practice sessions without any problems.

62
63 Coach Palin and I had planned just one practice session on Wednesday, August 24, from 8 to 10am. The weather
64 channels were cautioning everyone to limit outdoor activity. The County subsequently issued a Code Red and cancelled
65 all afternoon practice, so we were lucky to get in a morning practice. We allowed water breaks every 20 minutes – no
66 question it was an uncomfortably hot day. Two of the players vomited towards the end of practice. This was not due to
67 the heat – it was due to their being completely out of shape. If we even thought of repeating as county champs, let
68 alone making the state finals, the players needed to get themselves in shape quickly.

69
70 On Thursday, the 25th, the HI was at 103° by 8am. The County issued a Code Red/Urgent, forcing us to cancel afternoon
71 practice, and shorten morning practice to 90 minutes – barely enough time to get anything accomplished. We took
72 water breaks every twenty minutes, and encouraged the kids to keep their water bottles handy in case they needed a
73 drink in between breaks. With the afternoon session being cancelled, we needed this practice more than ever.

74
75 I called a quit to the scrimmage just before 10am. We should have ended at 9:30am, but being so used to two hours of
76 practice, I lost all track of time. I believe Coach Palin may have mentioned that we were over, but as my players know – I
77 get into a bit of a zone when I’m in coach-mode. We challenged the kids to suicide shuttles before we finished up for the
78 day. This is one of the best drills for soccer, because the sprinting mirrors the kind of running players have to do in a
79 game. It is fantastic conditioning, and I thought it a good way to finish up. I set up cones at ten yard intervals down the
80 field, and have the players form five lines. Starting at the first cone, each player runs to cone two, then back; cone three,
81 then back; cone four, then back; and cone five, and back. They rest for thirty seconds and repeat, rest another thirty
82 seconds and repeat, and run a third round. This is one set. They rest for 2 minutes and repeat a second full round, and
83 then a third round.

84
85 During the second set of sprints, between the second and third cones, I saw Kendall Kneifen fall face down on the field.
86 Players stopped to see what the matter was, but I told them to keep going, stating that if it’s not broken you’re a
87 choken! On the next pass, Tyler Gordon fell between cones one and two and then Casey Smyth fell at cone four. Seeing
88 this, I called an immediate halt to the shuttles. At this point, the players gathered around Kendall, who was not moving.
89 Coach Palin grabbed towels and a water jug, put wet towels on each of the downed players. Kendall was unconscious. I
90 grabbed the First Aid kit and called 911. Coach Palin continued to soak towels in the ice water and put them on Kendall.
91 As the paramedics treated the downed players, I instructed the rest of the players to go to the locker room for showers
92 to cool down and to hydrate. I wanted to keep an eye on the team to make sure no one else had any problems.

93
94 I had no idea that the players were overheated to the point of being ill. We went a little over the scheduled end time –
95 but we had a lot of work to do as a team. We took plenty of breaks that morning, and both Coach Palin and I kept watch
96 over the team as a whole. The old adage about hindsight being 20-20 is so true. Had we known what was happening
97 with some of the team, we would have called an end to practice immediately.

98
99 I am so upset about what Kendall has had to endure. I am relieved that Casey and Tyler are all right and playing on the
100 team this year. I work the players hard; that’s my job and it’s why we have been so successful in the county. I’ve had
101 parents come up to me and say they are sorry I’m going through this; they know it wasn’t intentional and they like the
102 fact that I demand the best from our players. But, I don’t think that makes me a criminal.

103
104 *Drew Hunter*

1 **DR. JAMIE ZAMAIYAS**

2 Witness for the Defense

3
4 My name is Dr. Jamie Zamaiyas. Everyone calls me “Dr. Z.” I am a Board Certified Emergency Physician at Montgomery
5 General Hospital in Olney, Maryland. I specialize in pediatric medicine. I am 42 years old. I am married and live at 601
6 Apple Tree Drive in Gaithersburg.

7
8 I have a degree from Harvard Medical School and completed my residency at the University of Maryland’s Department
9 of Emergency Medicine in Baltimore. I am also an instructor in the Department of Emergency Medicine at the
10 University of Maryland, where I teach emergency pediatric medicine.

11
12 On Thursday, August 25, 2011, I was on call in the Howard R. Gudelsky Emergency Department of Montgomery
13 General Hospital. We follow a TEAM care model (team-based, proactive care) with a comprehensive team of
14 registered nurses, licensed practical nurses and emergency department technicians. Our physicians and nurses are
15 experts in rapid assessment, diagnosis, and treatment of injuries and illnesses. Our care for a patient often begins
16 before a victim reaches the hospital. The Emergency Medical Services (EMS) personnel are frequently the first to
17 render medical treatment to a patient. We're always in communication with incoming ambulances and we're fully
18 prepared for patient arrivals. Upon arrival at the ED, a registered nurse will assess the patient using a 5-tier triage
19 system called the Emergency Severity Index (ESI). The most emergent patients are seen first; in cases such as this,
20 protocols and care begin upon arrival because we have a good idea of what we’re facing.

21
22 At approximately 10:30am, we received a call from one of our EMS teams. They were treating an apparent heat stroke
23 victim -- seventeen years of age, unconscious, non-responsive, hot to the touch, with tachycardia. The patient was at
24 Abe Lincoln High School which is located just a few miles away from us; the decision was made to have EMS transport
25 the patient to the pediatric emergency room at Montgomery General Hospital. During that time, we were in constant
26 communication with the team, and there was no change in the patient’s condition before arriving at approximately
27 10:45am.

28
29 Upon arrival, our team began assessing the patient’s condition. The initial exam corroborated the EMS team’s
30 findings: the patient was still unconscious, unresponsive, with an elevated pulse. Kendall’s body temperature was
31 40.0°C upon arrival; down slightly from when the paramedics began their treatment. We knew that the patient’s
32 temperature had been elevated for at least 20 minutes and likely longer. Our first priority was to work aggressively to
33 lower that temperature.

34
35 Extreme heat is a problem for a lot of people. Infants, elderly, and those with chronic medical conditions are at risk for
36 all sorts of complications. There are also a great many people who work outdoors who experience heat stroke. When
37 the heat and humidity are high, we are typically very busy.

38
39 Ultimately, Kendall was diagnosed and treated for exertional heatstroke. EHS is commonly observed in otherwise
40 healthy, young individuals whose thermoregulatory system becomes overwhelmed during strenuous physical activity.
41 Excess heat, generated by muscular exercise, exceeds the body’s heat-dissipation rate. In cases of classic heatstroke,
42 the victim’s sweat mechanism fails which caused body temperature to rise very quickly. In EHS cases, the victim may
43 possess the ability to sweat but the body still can’t cool itself adequately. If the condition is not resolved quickly
44 enough, serious injury will result. Vital organs, such as the kidneys, liver and brain swell in response to heatstroke, and
45 damage may be irreversible if the swelling does not subside quickly.

46
47 The most important treatment for a heatstroke victim is to lower their core body temperature as soon as possible.
48 There are two accepted methods for treating heatstroke At MCGH, we use an evaporative technique to cool the body
49 temperature: clothing is removed and misting fans are placed around the patient. We also placed ice packs around the
50 patient’s armpits, neck and groin. It is the evaporation that begins the cooling process, not the water itself.

51
52 The alternative method is ice-water immersion. While it has been proven very effective, it can also be extremely
53 uncomfortable for patients – and may inadvertently cause subcutaneous vasoconstriction, preventing the transfer of

52 heat via conduction. Immersion in ice water also causes shivering, which increases internal heat production.

53 The goal is to reduce the body temperature to 39°C and we have had very positive outcomes with the evaporation
54 process. We were able to bring Kendall's temperature down gradually to 38.8°C in thirty minutes. Kendall began to
55 regain consciousness and showed some initial improvement in vital signs, but complications emerged soon after.

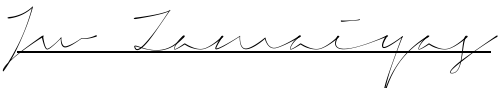
56 After consulting with Kendall's regular pediatrician, we learned that Kendall was previously diagnosed with
57 prehypertension at the age of 16. The systolic pressure is the first, or upper, number which measures the pressure in
58 your arteries when your heart beats. The second, or bottom, number measures the pressure in your arteries between
59 beats; this is the diastolic pressure. Prehypertension is an elevated blood pressure above normal, (systolic pressure
60 from 120-139 mmHg or a diastolic pressure from 80-89 mmHG), but not high enough to be classified as hypertension.
61

62 The body reacts to heat in various ways, but the two that most people will recognize are perspiration and an elevated
63 heart beat. Even if you are sitting perfectly still, when you're hot, your heart will beat faster. This is because your heart
64 is, in effect, working harder to push blood to the skin and muscles. As blood moves closer to the surface of the body, it
65 cools down.
66

67 This system works pretty well in a perfectly healthy person. However, when someone suffers from chronic illness –
68 even prehypertension – it can interfere with the body's natural cooling system and lead more rapidly to heat stroke.
69 Kendall's prehypertension was not at a level that required medication, but rather mandated lifestyle and diet changes.
70 Ironically, Kendall's low-salt diet may very well have lowered the threshold for heatstroke.

71 As is frequently the case with heatstroke victims, Kendall showed initial confusion upon regaining consciousness.
72 These symptoms subsided after a few hours. Kendall also exhibited symptoms of ataxic dysarthria, which indicated
73 damage to the cerebellum. While some patients experience these symptoms only for a short time, Kendall continues
74 to struggle with the condition. In a person with dysarthria, a nerve, brain, or muscle disorder makes it difficult to use
75 or control the muscles of the mouth, tongue, larynx, or vocal cords, all of which work together to make speech. The
76 muscles may be weak or completely paralyzed, or it may be difficult for the muscles to work together. In Kendall's
77 case, the damage is likely permanent though may become less severe over time. Kendall continues to work with
78 speech and physical therapists toward regaining speech and fine motor abilities. It is a long, uphill battle that Kendall
79 faces.

80 As for the other two players, Tyler Gordon suffered from a serious case of heat exhaustion including heat rash,
81 nausea, dehydration, and headache. Tyler was given intravenous fluids, monitored for any complications, and
82 released after 48 hours. Casey Smyth suffered from dehydration and severe muscle cramps; IV fluids and electrolytes
83 were administered in the emergency room, and Casey was released that evening.
84
85

86 

1 **BOBBIE PALIN**

2 Witness for the Defense

3
4 My name is Bobbie Palin. I am 30 years old and I am married with one child. I live in Montgomery Village, at 243
5 Amity Drive in Gaithersburg, Maryland.

6
7 I am a tenured English teacher at Abraham Lincoln High School in Olney. I have also been the assistant coach for the
8 varsity soccer team for the past three years. I grew up playing soccer and love being involved as a coach.

9
10 It is complete misfortune what happened to three of our team members over the summer. You read about things like
11 that happening to others but you never think an accident like that can happen to your own team. I am saddened that
12 Kendall has faced so many complications, and I can only pray for a complete recovery.

13 As the assistant coach, I help the head coach evaluate athletes' strengths and weaknesses both in practices and in
14 games. I typically arrive a few minutes before practice is scheduled to start. I help the head coach set up equipment
15 and go over the drills and strategies that will be utilized during practice. Once practice begins, I observe players, in
16 tandem with the head coach. I essentially provide an extra set of eyes. I take an active role in instructing players
17 during practice, taking advantage of opportunities to correct mistakes and offer praise for good play.

18 After practice sessions, I pack up any soccer gear from practice and consult with the head coach regarding player
19 progress and any other issues. I may also be called upon to help plan for the next practice or an upcoming game.
20 During an actual game, there can only be one leader and that is the head coach. I focus on watching the game, and
21 quietly offering input to the head coach if required. After a game, I talk to Coach Hunter about the overall
22 performance of the team and any issues that may require further attention. I also spend some time encouraging
23 individual players and providing feedback.

24 At the end of the last school year, in the final week of classes, we had a team meeting. Coach Hunter and I informed
25 the players that summer practice would begin on August 15, 2011, and reminded players to bring the signed
26 student/parent contract with them on the first day of practice. We also reviewed expectations of summer with the
27 players – plenty of exercise, rest, hydration and good nutrition. Coach was a real stickler for the players returning for
28 practice in good shape and encouraged the players to stay acclimated to the heat.

29 We held the first practice of the new school year on Monday, August 15, 2011, at 8:00 am. As we do in the beginning
30 of every year, we hand out water bottles to all new and returning players. Players are required to sign and return the
31 athlete contract, which is the last page of ALHS' athletic guide; this overviews everything from proper
32 nutrition/hydration to sportsmanlike conduct on and off the field. We spend a lot of time on that first day of practice
33 discussing the content of the guide – it's been written for a reason and we expect the best from our players.

34
35 We held practice for two hours each day, for the first six days of practice, as is recommended by the National Athletic
36 Trainers' Association. One of the toughest aspects of Fall Ball is the hot weather. It's critical that players acclimatize to
37 the heat, and this is a gradual process. We want the kids returning in shape and ready to play hard, but we know that
38 doesn't always happen.

39
40 On Tuesday, August 23, Coach began two-a-day practices beginning at 8am and ending at 10am in the morning, and
41 again beginning at 3pm ending at 5pm. I fill four 5-gallon water containers which I place, along with towels, at mid-
42 field for each practice. We also make sure that the players got breaks to rest and hydrate every thirty minutes. Coach
43 Hunter and I check the local heat index at the beginning of each practice. Like every Montgomery County High School,
44 our school follows the recommendations of the National Athletic Trainers' Association during hot weather. The HI is
45 determined by the factoring both humidity and temperature; we had a chart that we could consult to check the heat
46 index.

47
48 On the morning of Tuesday, August 23, the humidity was 70 percent and the temperature was 80 degrees. Based on
49 those numbers, the chart indicated that the heat index (HI) was 83. When the afternoon session began, the humidity

50 was 50 percent and the temperature was 90 degrees making the HI 95. We held both practice sessions without any
51 problems.
52

53 We only held one practice session on Wednesday, August 24, as the guidelines for hot weather recommended that
54 two-practice days be rotated with one-practice days. We held one practice from 8 to 10am; the humidity at the time
55 practice began was 70 percent and the temperature was 86 degrees, creating a HI of 95. I heard several players
56 complain of dizziness while running the sprints at the end of practice; two of the players vomited during the three-
57 hour practice. Coach was not happy with the kids' performance on that day, or the day before, and told the players as
58 much. I tended to agree, but C.H. tends to be a little tougher than I am.
59

60 On Thursday, August 25th, the HI was 103 before we ever started practice. The County sent out a Code Red/Urgent
61 notice which forced the cancellation of practices or games that afternoon and evening. It also shortens the duration of
62 morning practice to 90 minutes. The first part of practice went well, despite the weather. The players stretched,
63 jogged around the field, and then completed passing /dribbling skill sets, and goal kicks. We typically conduct a 15-
64 minute scrimmage, but on this particular day, Coach Hunter allowed it to go 40 minutes, which pushed practice till just
65 before 10am. When Coach called an end to the scrimmage, some of the newbies started packing up their stuff to
66 leave. Coach yelled to the players, "Where are you going? We're not done." Despite it being past the scheduled end,
67 Coach told the players to put their bags down, and come back for sprints.
68

69 I rarely do it, but I pulled Coach aside to ask if it was smart to continue practice. It was obvious the kids were feeling
70 the heat. Several players had already been complaining of dizziness and nausea. I heard Coach tell them, "If you're
71 not chuckin you're duckin, so let's finish strong." Coach loves those motivational sayings. I knew Coach was
72 concerned that players were way behind schedule and had a lot more work to do if they were going to rise to the
73 same level of excellence that they showed last year. The fact that we were only days away from cuts, I think some of
74 the players probably felt they had to give it their all if they wanted to make the team. I have all the faith and
75 confidence in the world in Coach's ability to lead the team to victory, so when C.H. responded back, "Of course I think
76 it's smart," I backed off. I believe Coach had only the best of intentions, and wanted to squeeze as much as possible
77 from the morning practice since we were losing the benefit of afternoon practice.
78

79 Coach had already set up the cones for suicide shuttles. I didn't think the kids had much left in them, but they really
80 pushed themselves during the sprints. During the second set of sprints, though, I saw one of our players, Kendall, go
81 down. Some of the team went over to help Kendall, but Coach yelled to the kids to keep going on sprints. It couldn't
82 have been a minute later, when two more kids went down. I grabbed towels and a water jug and ran to Kendall. I
83 soaked towels in the ice water, and put one on each of the kids' heads who had gone down. I also put wet towels on
84 Kendall's neck and arms. Kendall showed no response. While I was doing this, Coach called 911 and then contacted
85 each of the parents.
86

87 Coach asked me to keep watch over the rest of the team. Once the ambulances arrived, we instructed the rest of the
88 team to cool down with showers. Coach followed the players to the hospital.
89

90 This has been horrible - watching Kendall work through so many medical problems and seeing Coach on trial like a
91 common criminal. It is a terrible situation, but no one could have predicted this happening.
92

93 *Bobbie Palin*

MONTGOMERY COUNTY PUBLIC SCHOOLS

For a Brighter Tomorrow



EMERGENCY MEDICAL FORM

This form is to be filled out completely by the parent and filed in the office of the principal before the students can participate in the school athletic program.

Student name: Kendall L. Kneifan Entering/Current Grade: 11

Address: 5707 Green Meadow Way City: Olney Zip: 20832

Home Phone Number: 443-555-9231 DOB: 08/01/1995 Age: 16

Parent's Name: Jennifer M. Kneifan Parent's Work/Cell Phone: 443-555-9898

I hereby apply for permission to participate in the following interscholastic sport(s): soccer

I certify that the information in this application is correct, and I agree to abide by the eligibility rules and regulations governing athletics as set forth by the Montgomery County Public School System. I represent that my child is in good health and able to participate in any athletic or extracurricular activity sponsored by MCPS during the 11-12 academic year. In the event that his or her medical condition changes and s/he cannot participate, I will immediately notify the Principal or the Athletic Director.

Parent Signature: Jen Kneifan Student Signature: Kendall Kneifan

MEDICAL HISTORY

Date of most recent physical: 08-02-11

Is there any known history of:

- | | | |
|---|---|--|
| 1) Birth deformities (one eye, one kidney, etc)? | <input type="checkbox"/> yes | <input checked="" type="checkbox"/> no |
| 2) Allergies? | <input type="checkbox"/> yes | <input checked="" type="checkbox"/> no |
| 3) Past illness of more than one week's duration? | <input type="checkbox"/> yes | <input checked="" type="checkbox"/> no |
| 4) Low blood pressure or high blood pressure? | <input checked="" type="checkbox"/> yes | <input type="checkbox"/> no |
| 5) Surgery requiring hospitalization? | <input type="checkbox"/> yes | <input checked="" type="checkbox"/> no |
| 6) Fractures or other disabling injuries? | <input type="checkbox"/> yes | <input checked="" type="checkbox"/> no |
| 7) Seizures? | <input type="checkbox"/> yes | <input checked="" type="checkbox"/> no |

Is the child currently being treated for any medical disorder? yes no

Explain: Kendall was diagnosed with pre-hypertension during the most recent physical. No medications were prescribed, but Kendall is to follow a low-salt diet and monitor pressure.

List all daily medications: N/A

Other pertinent facts or conditions pertaining to my child's health: N/A

INCIDENT RESPONSE FORM

Montgomery County, Emergency Medical Services

Location: *Abraham Lincoln High School*

Date : *8/25/11*

Time of call from dispatch: *10:21am*

Time of arrival: *10:25am*

Responding Team #: *8413*

Name of Dispatcher: *Michael Bumpitsky*

Was the event witnessed or non-witnessed? Witnessed Non-Witnessed

Was pulse taken at initial assessment? Yes No

Reading: *168bpm*

Was CPR administered before EMS arrived? Yes No

If yes, give name(s) of CPR rescuers:

Were shocks delivered? Yes No

Was temperature taken? Yes No

Reading: *40.5° C*

Was blood pressure taken? Yes No

Reading: *85/55*

Did victim:

Regain a pulse? *N/A* Yes No

Resume breathing? *N/A* Yes No

Regain consciousness? Yes No

Were other medical treatments rendered? Yes No

Please list or describe here: *Ice packs on heat-loss areas, cold compresses on exposed skin*

Was the procedure for transferring patient care to the local EMS agency executed?

Yes *Time of Arrival: 10:45am*

No

If no, explain:

Any problems encountered? *No*

Name of person completing form: *Charlie Shunn*

Title: *Paramedic*

TO BE COMPLETED ON ATTEMPTED OR ACTUAL USE OF EMS.

PLEASE RETURN THIS COMPLETED FORM TO:

EMS DIRECTOR

10000 GAITHERS AVENUE

GAITHERSBURG, MD 20877

Blood Pressure Chart

Classification	Systolic Blood Pressure (mm Hg) (Upper)		Diastolic Blood Pressure (mm Hg) (Lower)
Low	<90	Or	<60
Normal	<120	And	<80
Prehypertension	120-139	Or	80-89
High: Stage 1 Hypertension	140-159	Or	90-99
High: Stage 2 Hypertension	160-179	Or	100-109
High: Stage 3 Hypertension	180-209	Or	110-119
High: Stage 4 Hypertension	≥ 210	Or	≥ 120

Average Reading for Age Range	Systolic Blood Pressure (mm Hg) (Upper)		Diastolic Blood Pressure (mm Hg) (Lower)
15-19	117		77
20-24	120		79
25-29	121		80
30-34	122		81
35-39	123		82
40-44	125		83
45-49	127		84
50-54	129		85
55-59	131		86
60-64	134		87
65-69	136		88

Medical research shows that blood pressure tends to rise slightly with age to accommodate an increased demand for oxygen and nutrients. The medical community has long held that a “normal” systolic blood pressure measures roughly 100 plus your age: for example, a 30-year old’s systolic reading is about 130, which increases to 150 in a fifty year old. Female systolic readings are usually lower by about 10 mm Hg. The systolic pressure is the pressure peak with each beat of the heart (systole) and the diastolic pressure is the basal pressure that is in the blood vessels during relaxation of the heart (diastole).

MONTGOMERY COUNTY PUBLIC SCHOOLS

For a Brighter Tomorrow



Date: September 3, 2009

To: Drew Hunter, Soccer Coach

From: Dr. Reese Wright, Principal
Abraham Lincoln High School *REW*

Subject: Written Warning
Failure to abide by school/ county athletic policy

You are being issued this written warning for failure to abide by the county-wide hot weather athletic policy as stated by Montgomery County Public Schools. Specifically, you violated the following directive:

On Code Red days, practices are restricted to one 2-hour time period in the morning and must end by 10am. There may be no afternoon or evening practices.

We received multiple complaints regarding a "voluntary scrimmage" you held on Wednesday, August 26, 2009 -- the same day the county cancelled afternoon and evening athletic activities due to heat. Our first concern is always the health and well-being of our students. On this day, three athletes complained of illness suffered as a result of practicing in extreme heat.

This type of utter disregard for county policy will not be tolerated. In order for your continuance as head soccer coach, you must agree to follow all county athletic procedures and policies without any variance.

Failure to adhere to the conditions of this written warning, development of new or related problems, and/or continued disregard for county policy will lead to more serious corrective action; namely, termination as head soccer coach.

By your signature below, you acknowledge having received this warning.

Signature: *Drew Hunter* Date: *9/3/09*

You have the right to appeal this action through the Staff Dispute Resolution Procedure (Classified Staff Policy #406.0). You may review the classified staff policies referenced in this document online at www.hr.maryland.edu by clicking on "Policies & Procedures" and selecting the Classified Staff Policy Manual. You may contact an Employee Advisor from Human Resources at 555-626-0850 for assistance in reviewing options available under county policies.

xc: Human Resources Employee Records.



Office of the Chief Operating Officer
Interscholastic Athletics
Montgomery County Public Schools, Maryland

July 15, 2011

MEMORANDUM

To: Athletic Directors & Coaches

From: Scott B. Zany, Director/ MCPS Athletics

Subject: Heat Restrictions

Below are the guidelines we follow regarding athletic teams practicing on hot, humid days, when the Metropolitan Washington Council of Governments (MWCG) has declared a Code Orange, Red or Purple air quality index. These guidelines supplement other heat and weather-related guidelines contained in the “Weather” section of the MCPS High School Athletic Handbook.

- On Code Red days, teams may not practice in full gear.
- On Code Red days, practices are restricted to one 2-hour time period in the morning and must end by 10am. There may be no afternoon or evening practices.
- On Code Red/Urgent days, practices are restricted to one 90-minute time period in the morning and must end by 10am. There may be no afternoon or evening practices.
- On Code Purple days, teams may not practice or compete.
- If a particular code is updated or adjusted by the MWCG by 2pm of a particular day, the updated code will prevail and the status of practices and games will be adjusted accordingly.
- On Code Orange or Red days, water should be provided to players at least every 20 minutes, and more frequently as needed or requested by players.
- Coaches should be especially careful about practicing in dirt or high-dust areas, as well as on turf fields, on hot days.

All MCPS coaches will exercise the utmost caution on days of extreme heat and humidity. We will err on the side of caution.

Copy to:
High School Principals
Superintendent
Assistant Superintendent



Montgomery County Hot Weather Guidelines for Athletic Practice

Below are guidelines regarding athletic practices on hot, humid days when the Metropolitan Washington Council of Governments has declared a Code Orange, Code Red, Code Red/Urgent, or Code Purple air quality index. In hot, humid weather, coaches are expected to use good judgment in determining the length and type of outdoor practice. Frequent breaks and plenty of drinking water must be provided. Coaches must be aware of any at-risk individuals, and those individuals should be monitored closely. If anyone experiences breathing difficulties, they should stop immediately and move indoors.

The Systemwide Director of Athletics will issue an email to all coaches and sports directors. It is the responsibility of the coaches and sports directors to be aware of heat index, air quality, and weather alerts, during each practice.

Temperature	Humidity	Air Quality Index	Activity Level
Less than 80	N/A	Code Green Good Air Quality	No restrictions
Up to 90°	Up to 70%	Code Green Good /Moderate Air Quality	No restrictions; Monitor at-risk individuals
Up to 90°	Over 70%	Code Yellow/ Moderate Air Quality	Use caution. Frequent water breaks; 10 minutes rest each hour; observe at-risk individuals carefully
90-95°	Up to 50%	Code Orange/ Approaching Unhealthy Air Quality	Extreme caution. Water breaks at least every 20 minutes or as needed or requested; observe at-risk individuals carefully.
90-95°	Over 50%	Code Red/ Unhealthy Air Quality	Hold morning practices. No more than two hours in duration and ending by 10am. No afternoon/ evening practices. Mandatory water breaks every 20 minutes or less. Teams may NOT practice in full gear. No games may be conducted. Monitor all athletes carefully.
96+	Up to 50%	Code Red/Urgent Unhealthy Air Quality	Hold morning practices. No more than 90 minutes in duration and ending by 10am. No afternoon/evening practices. Mandatory water breaks every 20 minutes or less. Teams may NOT practice in full gear. No games may be conducted. Monitor all athletes carefully.
96+	Over 50%	Code Purple	All practices/ games cancelled.

This information is intended to assist coaches in making determinations about practice. While alerts will be issued during hot weather, it is important for coaches to watch their players carefully. Obviously, when temperatures and humidity levels reach the upper end of a given range, more caution should be taken.

Alerts are issued as a result of a high Heat Index (which is calculated by factoring the temperature and humidity) and/or the air quality index. One, or both, is sufficient to prompt a weather alert.

If a particular code is updated or adjusted by the Metropolitan Washington Council of Governments by noon of a particular day, the updated/ adjusted code will prevail and status of practices and games will be adjusted accordingly.

What is Air Quality Index (AQI)?

The AQI is an index for reporting daily air quality. It tells you how clean or polluted your air is, and what associated health effects might be a concern for you. The AQI focuses on health effects you may experience within a few hours or days after breathing polluted air. EPA calculates the AQI for five major air pollutants regulated by the Clean Air Act: ground-level ozone, particle pollution (also known as particulate matter), carbon monoxide, sulfur dioxide, and nitrogen dioxide. For each of these pollutants, EPA has established national air quality standards to protect public health. Ground-level ozone and airborne particles are the two pollutants that pose the greatest threat to human health in this country.

How Does the AQI Work?

Think of the AQI as a yardstick that runs from 0 to 500. The higher the AQI value, the greater the level of air pollution and the greater the health concern. For example, an AQI value of 50 represents good air quality with little potential to affect public health, while an AQI value over 300 represents hazardous air quality.

An AQI value of 100 generally corresponds to the national air quality standard for the pollutant, which is the level EPA has set to protect public health. AQI values below 100 are generally thought of as satisfactory. When AQI values are above 100, air quality is considered to be unhealthy-at first for certain sensitive groups of people, then for everyone as AQI values get higher.

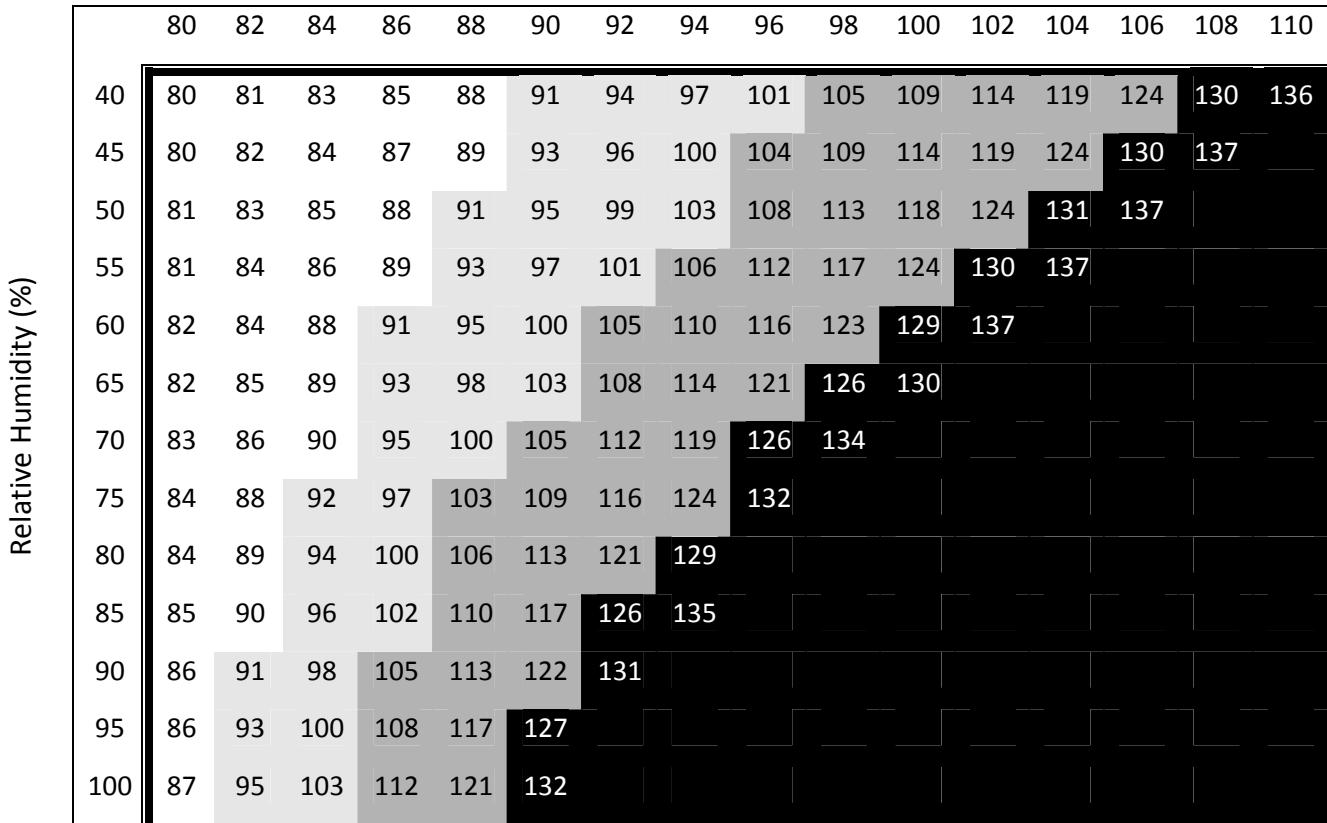
Category	AQI	Color Code	Health Statements
Good	1 - 50	Green	No health impacts are expected when air quality is in this range.
Moderate	51-100	Yellow	Unusually sensitive people should consider limiting prolonged outdoor exertion.
Unhealthy for Sensitive Groups	101-150	Orange	Active children and adults, and people with respiratory disease, such as asthma, should limit prolonged outdoor exertion.
Unhealthy	151 - 200	Red	Active children and adults, and people with respiratory disease, such as asthma, should avoid prolonged outdoor exertion; everyone else, especially children, should limit prolonged outdoor exertion.
Very Unhealthy	201-300	Purple	Active children and adults, and people with respiratory disease, such as asthma, should avoid all outdoor exertion; everyone else, especially children, should limit outdoor exertion.
Hazardous	301-500	Maroon	AQI values over 300 trigger health warnings of emergency conditions. The entire population is more likely to be affected.

Excerpted from Air Now: <http://www.airnow.gov/index.cfm?action=aqibasics.aqi>

NOAA's National Weather Service

HEAT INDEX

Temperature (°F)



Likelihood of Heat Disorders with Prolonged Exposure or Strenuous Activity

- Caution
- Extreme Caution
- Danger
- External Danger

IMPORTANT: Since heat index values were devised for shady, light wind conditions, exposure to full sunshine can increase heat index values by up to 15°F. Also, strong winds, particularly with very hot, dry air can be extremely hazardous.

The Heat Index Chart shaded zone above 105°F shows a level that may cause increasingly severe heat disorders with continued exposure or physical activity.

Excerpted from: <http://www.nws.noaa.gov/om/heat/index.shtml>

Statutory Law

Maryland Code - Criminal Law - Title 3

§3-204. Reckless Endangerment

(a) A person may not recklessly:

- (1) Engage in conduct that creates a substantial risk of death or serious physical injury to another; or
- (2) Discharge a firearm from a motor vehicle in a manner that creates a substantial risk of death or serious physical injury to another.

(b) A person who violates this section is guilty of the misdemeanor of reckless endangerment and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

(c) (1) Subsection (a)(1) of this section does not apply to conduct involving:

- (i) the use of a motor vehicle, as defined in § 11-135 of the Transportation Article; or
- (ii) the manufacture, production, or sale of a product or commodity.

(2) Subsection (a)(2) of this section does not apply to:

- (i) a law enforcement officer or security guard in the performance of an official duty; or
- (ii) an individual acting in defense of a crime of violence as defined in § 5-101 of the Public Safety Article.

§ 3-601. Child abuse.

(a) Definitions. -

(1) In this section the following words have the meanings indicated.

(2) "Abuse" means physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor's health or welfare is harmed or threatened by the treatment or act.

(3) "Family member" means a relative of a minor by blood, adoption, or marriage.

(4) "Household member" means a person who lives with or is a regular presence in a home of a minor at the time of the alleged abuse.

(5) "Severe physical injury" means:

- (i) brain injury or bleeding within the skull;
- (ii) starvation; or
- (iii) physical injury that:
 1. Creates a substantial risk of death; or
 2. Causes permanent or protracted serious:
 - A. Disfigurement;
 - B. Loss of the function of any bodily member or organ; or
 - C. Impairment of the function of any bodily member or organ.

(b) First-degree child abuse. -

(1) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor that:

- (i) results in the death of the minor; or
- (ii) causes severe physical injury to the minor.

(2) Except as provided in subsection (c) of this section, a person who violates paragraph (1) of this subsection is guilty of the felony of child abuse in the first degree and on conviction is subject to:

- (i) imprisonment not exceeding 25 years; or

(ii) if the violation results in the death of the victim, imprisonment not exceeding 30 years.

(c) Repeated offense. - A person who violates this section after being convicted of a previous violation of this section is guilty of a felony and on conviction is subject to:

(1) Imprisonment not exceeding 25 years; or

(2) If the violation results in the death of the victim, imprisonment not exceeding 30 years.

(d) Second-degree child abuse. -

(1) (i) a parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor.

(ii) a household member or family member may not cause abuse to a minor.

(2) Except as provided in subsection (c) of this section, a person who violates paragraph (1) of this subsection is guilty of the felony of child abuse in the second degree and on conviction is subject to imprisonment not exceeding 15 years.

(e) Sentencing. - A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.

[An. Code 1957, art. 27, § 35C(a)(1), (2), (4)-(6), (b); 2002, ch. 26, § 2; ch. 273, § 2; 2003, ch. 167.]

Reginald T. Holbrook v. State of Maryland, No. 88, September Term, 2000.

RECKLESS ENDANGERMENT—ARSON—SENTENCING—MERGER—REQUIRED EVIDENCE TEST—RULE OF LENITY— It was not error for the trial court to refuse to merge multiple reckless endangerment convictions with an arson conviction, arising from the same criminal conduct, where each offense has an element not present in the other and where it is clear that the General Assembly intended arson and reckless endangerment to be separate offenses subject to multiple punishments.

IN THE COURT OF APPEALS OF
MARYLAND

No. 88

September Term, 2000

REGINALD T. HOLBROOK
v.
STATE OF MARYLAND

Bell, C.J.
Raker
Wilner
Cathell
Harrell
Battaglia
Rodowsky, Lawrence F.
(retired, specially
assigned)
JJ.

Opinion by Harrell, J.

Filed: June 5, 2001

Following a non-jury trial in the Circuit Court for Wicomico County, Reginald T. Holbrook (Petitioner) was convicted of first degree arson, eight counts of reckless endangerment, and making a threat of arson. He was sentenced to: (a) 30 years imprisonment (22½ of which were suspended) for the first degree arson conviction; (b) five years for the first reckless endangerment conviction (to run consecutive to the arson sentence); (c) five years for each of the remaining seven reckless endangerment convictions (to run consecutive to the arson sentence, but concurrent to each other and the first reckless endangerment sentence); and, (d) 10 years for the threat of arson conviction (to run concurrent to the arson sentence). On direct appeal to the Court of Special Appeals, Petitioner argued that the trial court erred at sentencing in not merging the convictions for reckless endangerment with the conviction for arson. In a reported opinion, the intermediate appellate court affirmed the Circuit Court's judgments. *Holbrook v. State*, 133 Md.App. 245, 754 A.2d 1103 (2000).

We granted Petitioner's *writ of certiorari*¹, which posed the following question:

In this reported opinion on an issue of first impression, did the Court of Special Appeals err in holding that a conviction and (consecutive) sentence for reckless endangerment did not merge into the conviction and sentence for first degree arson, where the reckless endangerment was the creation of risk of harm to persons inside a dwelling where defendant set a fire, and the first degree arson was the setting of the fire at the dwelling.

I.

Pursuant to Maryland Rule 8-501(g)², the parties agreed to adopt the statement of facts contained in the opinion of the Court of Special Appeals as the statement of undisputed facts in this Court.

There is no significant dispute about the facts in this case. In 1998, Alisha Collins leased a residence at 230 Ohio Avenue in Salisbury, Maryland. Between April and May of that year, nine people lived there: Alisha Collins, her husband, and their three-year old daughter; Alisha Collins's mother and her six-year old twins; Alisha Collins's aunt, DeKota Collins, and her three-year old daughter; and, Mr. Holbrook, who was DeKota Collins's boyfriend. Mr. Holbrook resided at the home for several months and contributed to the rent.

DeKota Collins was the representative payee for Mr. Holbrook's social security payments. On May 1, 1998, Mr. Holbrook and DeKota Collins had an argument over his money during which he made a menacing gesture toward her with a screwdriver. Alisha Collins called the police. The responding officer told Mr. Holbrook that he would have to leave and not to return to the premises. The officer stayed while Mr. Holbrook removed all of his belongings. Alisha Collins testified at trial that Mr. Holbrook was "really mad."

About an hour after leaving the premises, Mr. Holbrook returned and asked to speak to DeKota. She told him, "Reggie, I don't want you no more. I just want you to leave me alone and don't come back here no more." Mr. Holbrook sat on the porch and cried. About one hour later, Alisha Collins and her husband left the premises with Mr. Holbrook. The three shared a cab ride, during which Mr. Holbrook repeatedly said "I'm going to get all of you."

On May 6, 1998, Alisha Collins observed Mr. Holbrook walking back and forth across the street from her house. She testified that he said "I'll burn this mother...up." Over the objection of defense counsel, Alisha Collins testified that a week before Mr. Holbrook left the home, she overheard an argument between him and DeKota Collins during which Mr. Holbrook said "I'll burn this mother...down" and "I got people that can hurt you that live upstate."

On the evening of May 7, 1998, Mr. Holbrook came to the door of the home and asked to see DeKota Collins. Alisha Collins lied and said that she was not home. Mr. Holbrook remained outside of the house for about 45 minutes calling DeKota's name and saying that he wanted to talk to her. That night, Alisha Collins fell asleep on the living room sofa. Sometime after midnight, she awoke to the smell of smoke. She awoke her husband, who went out the back door and discovered a pillow burning on the back porch. All of the occupants safely evacuated the house.

Kevin Ward, a firefighter with the Salisbury Fire Department, testified that the flames from the burning pillow were about 6 to 12 inches high when he arrived, and that there were char marks on the threshold to the rear door and smoke in the basement.

Alisha Collins testified that she saw Mr. Holbrook across the street 10 to 15 minutes after the fire was discovered. She told the police that Mr. Holbrook started the fire. Mr. Holbrook was questioned by the police and by the fire marshal. He was subsequently arrested and charged with arson, reckless endangerment, and threats of arson.

Holbrook, 133 Md.App. at 250-251, 754 A.2d at 1105-1106.

On 29 April 1999, Petitioner was tried in a bench trial in the Circuit Court for Wicomico County. The court found Petitioner guilty of one count of first degree arson, eight counts of reckless endangerment³, and one count of making a threat of arson⁴. At the 28 June 1999 sentencing proceeding, defense counsel requested that the trial judge merge the reckless endangerment convictions into the first degree arson conviction; the court declined. Petitioner received a 30 year sentence for the arson conviction, with all but 22½ years suspended. For the first

reckless endangerment conviction, Petitioner was sentenced to five years, to run consecutive to the arson sentence. For each of the remaining seven convictions of reckless endangerment, Petitioner received five years, to run consecutive to the arson sentence, but concurrent to the first reckless endangerment sentence, as well as to each other.

On direct appeal to the Court of Special Appeals, Petitioner presented two questions: whether the trial judge erred in refusing defense counsel's request to merge the reckless endangerment convictions into the first degree arson conviction; and, whether the trial judge erred in allowing the State to amend the criminal information immediately prior to trial, specifically, the date of the alleged arson threat, and then allowing testimony of threats made at times other than that originally charged. In a reported opinion filed on 1 July 2000, the intermediate appellate court, *inter alia*, affirmed the trial court's refusal to merge the reckless endangerment convictions (concluding so after analysis under the required evidence test and the rule of lenity) with the arson conviction. *Holbrook*, 133 Md.App. at 258, 754 A.2d at 1110.

We granted *certiorari* on 12 October 2000. *Holbrook v. State*, 361 Md. 231, 760 A.2d 1106 (2000). Petitioner contends that the Court of Special Appeals erred in holding that a conviction and consecutive sentence for reckless endangerment did not merge into the conviction and sentence for first degree arson, when the reckless endangerment was the creation of risk of harm to persons inside a dwelling where Petitioner set a fire on a porch, and the first degree arson was the setting of the fire at the dwelling.

II.

Petitioner argues that, under either the required evidence test or the rule of lenity, or for reasons of "fundamental fairness," the reckless endangerment convictions and sentences should have merged into the arson conviction and sentence. Concluding that arson and reckless endangerment are separate and distinct crimes, we disagree with Petitioner's assertion. For reasons we shall explain, we hold that, under the circumstances of this case, the Court of Special Appeals did not err when it affirmed the Circuit Court's refusal to merge reckless endangerment with arson.

III.

We reiterate that "the cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *In re Anthony R.*, 362 Md. 51, 57, 763 A.2d 136, 139 (2000) (quoting *Oaks v. Connors*, 339 Md. 24, 35, 660 A.2d 423, 429 (1995)); *Giant Food, Inc. v. Department of Labor, Licensing, and Regulation*, 356 Md. 180, 188, 738 A.2d 856, 860 (1999) (quoting *Oaks*, 339 Md. At 35, 660 A.2d at 429). When striving to determine the legislative intent of any statute, we first examine the plain language of the statute. See *In re Anthony R.*, 362 Md. at 57, 763 A.2d at 139.

Ordinarily, we afford the words of the statute their natural and usual meaning in the context of the Legislature's purpose and objective in enacting the statute. See *Roberts v. State*, 361 Md. 346, 360, 761 A.2d 885, 893 (2000) (citing *Marriott Employees Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437, 45, 697 A.2d 455, 458 (1997); *Hunt v. Montgomery County*, 248 Md. 403, 414, 237 A.2d 35, 41 (1968)). Moreover, we should avoid "resorting to subtle or forced interpretations for the purpose of extending or limiting [the statute's] operation." *Brown v. State*, 285 Md. 469, 474-5, 403 A.2d 788, 791 (1979) (quoting *Schweitzer v. Brewer*, 280 Md. 430, 438, 374 A. 2d 347 (1977)) (citing *Gietka v. Petitioner* does not challenge his multiple convictions under §12A-2(c). 6 The pertinent language of the 2000 Supplement to Maryland Code (1957, 1996 Repl. Vol.), Art. 27, § 12A-2 is the same language under which Petitioner was convicted in 1998. Article 27, § 12A-2(a)(1) contains the same language as in the now repealed Art. 27, *County Executive*, 283 Md. 24, 387 A. 2d 291 (1978); *Mazor v. State, Dep't of Correction*, 279 Md. 355, 369 A. 2d 82 (1977); *Howell v. State*, 278 Md. 389, 364 A.2d 797 (1976); *Booth v. Campbell*, 37 Md. 522 (1873); *Allen v. Insurance Co.*, 2 Md. 111 (1852)).

A. Common Law and Legislative History

1. Reckless Endangerment

Reckless endangerment is purely a statutory crime. Modeled after §211.2 of the Model Penal Code (“Recklessly Endangering Another Person”) and first enacted in Maryland by chapter 469 of the Acts of 1989, reckless endangerment was codified originally as Md. Code (1957, 1992 Repl. Vol.), Art. 27, § 120 under the subtitle DESTROYING, INJURING, ETC., PROPERTY MALICIOUSLY. Effective 1 October 1996, the Legislature repealed § 120 by Acts 1996, chapter 632, enacting in its stead Md. Code (1957, 1996 Repl. Vol.), Art. 27, § 12A-2 under the subtitle of ASSAULT. This statute presently provides, in pertinent part:

(a) *Creation of substantial risk of death or serious physical injury; penalties.*

— (1) Any person who recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person is guilty of the misdemeanor of reckless endangerment and on conviction is subject to a fine of not more than \$5,000 or imprisonment for not more than 5 years or both.
* * * *

(c) *More than one person endangered.* — If more than one person is endangered by the conduct of the defendant, a separate charge may be brought for each person endangered.⁵

Md. Code (1957, 1996 Repl. Vol., 2000 Suppl.), Art. 27, § 12A-2(a)(1).⁶

In two recent cases, we have discussed the legislative underpinnings of the reckless endangerment statute, as well as the elements of the crime. In *State v. Pagotto*, 361 Md. 528, 762 A.2d 97 (2000), we noted that

[t]his statute is aimed at deterring the commission of potentially harmful conduct before an injury or death occurs. *See Minor*, 326 Md. at 442, 605 A.2d at 141. The statute was enacted “to punish, as criminal, reckless conduct which created a substantial risk of death or serious physical injury to another person. It is the reckless conduct and not the harm caused by the conduct, if any, which the statute was intended to criminalize.” *Minor*, 326 Md. at 441, 605 A.2d at 141. Thus, the focus is on the conduct of the accused.

Pagotto, 361 Md. at 549, 762 A.2d at 108;⁷ *see also State v. Albrecht*, 336 Md. 475, 500-01, 649 A.2d 336, 348 (1994) (“Maryland’s reckless endangerment statute is aimed at deterring the commission of potentially harmful conduct before an injury or death occurs. As a consequence, a defendant may be guilty of reckless endangerment even where he has caused no injury.”). In *Jones v. State*, 357 Md. 408, 745 A.2d 396 (2000), we concluded that

[t]he elements of a prima facie case of reckless endangerment are: 1) that the defendant engaged in conduct that created a substantial risk of death or serious physical injury to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that the defendant acted recklessly. *See Albrecht*, 336 Md. at 501, 649 A.2d at 348-49.

Jones, 357 Md. at 427, 745 A.2d at 406. Noting that most Maryland cases addressing these elements discuss the requisite mental state to sustain a reckless endangerment conviction, both *Pagotto* and *Jones* cite to *Minor*, where the Court adopted and applied an objective *mens rea*:

[G]uilt under the statute does not depend upon whether the accused intended that his reckless conduct create a substantial risk of death or serious injury to another. The test is whether the appellant’s misconduct, viewed objectively, was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe, and thereby create the substantial risk that the statute was designed to punish.

Pagotto, 361 Md. at 549, 762 A.2d at 108 (quoting *Minor*, 326 Md. at 443, 605 A.2d at 141); *Jones*, 357 Md. at 427, 745 A.2d at 406 (quoting *Minor*, 326 Md. at 443, 605 A.2d at 141).

2. Arson

At common law, arson was defined as the malicious burning of the dwelling of another. See *Brown*, 285 Md. at 473, 403 A.2d at 791; *Gibson v. State*, 54 Md. 447, 450 (1880). Moreover, “at common law, arson [was] an offense against the security of habitation or occupancy, rather than against ownership or property.” *Richmond v. State*, 326 Md. 257, 264, 604 A.2d 483, 487 (1992); see also *Brown*, 285 Md. at 473, 403 A.2d at 791.

To be convicted of common law arson, the State had to establish four elements: (1) that the building burned was a dwelling house or outbuilding within the curtilage; (2) that the building burned was occupied by another; (3) that the building was actually burned, as mere scorching would not suffice; and, (4) that the accused’s *mens rea* was willful and malicious.⁸

See *Brown*, 285 Md. at 473, 403 A.2d at 791 (citing CLARK & MARSHALL, A TREATISE ON THE LAW OF CRIMES, §§ 13.09-13.13 (7th ed. 1967)).

We most recently addressed the early legislative history of arson in *Richmond*:

By Ch. 138 of the Acts of 1809 the Legislature prescribed punishments for the various common law crimes. Section 5 of that Act dealt with the crime of arson, which at common law is the willful and malicious burning of the dwelling house of another, either by night or day. R. PERKINS AND R. BOYCE, CRIMINAL LAW, 273-74 (3d ed. 1982); 3 C. TORCIA, WHARTON’S CRIMINAL LAW, § 345 (14th ed. 1980). . . . In 1904, the General Assembly slightly expanded upon the common law definition of arson by making illegal the burning of one’s own dwelling house if the intent in burning it was to injure or defraud. Ch. 267, § 6 of the Acts of 1904.

The first substantive attempt to codify the elements of the crime of arson occurred in 1929. Ch. 255, § 6 of the Acts of 1929. The wording of the statute in force today, Art. 27, § 6 [see *infra*], remains unchanged since that time. While retaining the common law definition of arson in Art. 27, § 6, other sections of Art. 27 have been added by the Legislature to cover burning of buildings not specified in § 6, burning of personal property of another, burning goods with the intent to defraud an insurer, attempted arson, and other criminal burnings. Art. 27, §§ 7-10

Richmond, 326 Md. at 263-64, 604 A.2d 486 (internal citations and footnotes omitted).

The present day arson statute, under which Petitioner was convicted, defines arson as “willfully and maliciously set[ting] fire to or burn[ing] a dwelling or occupied structure, whether the property of the person or another.” Md. Code (1957, 1996 Repl. Vol.), Art. 27, § 6(a). “Dwelling,” the term applicable in this case, is defined as “a structure, regardless of whether an individual is actually present, any portion of which has been adapted for overnight accommodation of individuals.” Md. Code (1957, 1996 Repl. Vol., 2000 Suppl.), Art. 27, § 5(b). Additionally, “maliciously” is defined as “an act done with intent to harm a person or property,” Md. Code (1957, 1996 Repl. Vol.), Art. 27, § 5(c), while “willfully” is defined as “an act which is done intentionally, knowingly, and purposefully.” Md. Code (1957, 1996 Repl. Vol.), Art. 27, § 5(f).

IV.

A. Required Evidence Test

Under the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution, the State can neither hold multiple trials nor punish a defendant multiple times for the same offense. See *Missouri v. Hunter*, 459 U.S. 359, 365-69, 103 S.Ct. 673, 677-79, 74 L.Ed.2d 535 (1983); *Whalen v. United States*, 445 U.S. 684, 688-89, 100 S.Ct. 1432, 1436, 63 L.Ed.2d 715 (1980); *Brown v. Ohio*, 432 U.S. 161, 165, 97 S.Ct. 2221, 2225, 53 L.Ed.2d 187 (1977); *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 2077, 23 L.Ed.2d 656 (1969), *overruled on other grounds by Alabama v. Smith*, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989). Where a legislature, however, specifically authorizes cumulative punishment under two statutes irrespective of whether they prohibit the same

conduct, such punishment may be imposed under the statutes in a single trial. *Jones*, 357 Md. at 156, 742 A.2d at 501 (citing *Missouri*, 459 U.S. at 368, 103 S.Ct. at 1426, 74 L.Ed.2d at 535 (“[T]he Double Jeopardy Clause does no more than prevent the sentencing court from proscribing greater punishment than the legislature intended.”)).

In the present case, Petitioner received multiple punishments for the same conduct under two statutes in a single trial. As the Court of Special Appeals noted correctly, under Maryland common law, the required evidence test⁹ is the appropriate “test for determining whether the different statutory or common law offenses, growing out of the same transaction, are to merge and be treated as the same offense for double jeopardy purposes.” *Holbrook*, 133 Md.App. at 252, 754 A.2d at 1106 (citing *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 77 L.Ed. 306 (1932); *Williams v. State*, 323 Md. 312, 593 A.2d 671 (1991); *State v. Ferrell*, 313 Md. 291, 545 A.2d 653 (1988); *Simpson v. State*, 121 Md. App. 263, 708 A.2d 1126 (1998)); see also *Dixon v. State*, ___ Md. ___ (2001) (No. 93, September Term, 2000) (filed _____) (Slip op. at 30); *Jones*, 357 Md. at 156-57, 742 A.2d at 501; *McGrath v. State*, 356 Md. 20, 23, 736 A.2d 1067, 1069 (1999). The required evidence test

is that which is minimally necessary to secure a conviction for each . . . offense. If each offense requires proof of a fact that the other does not, or in other words, if each offense contains an element which the other does not, the offenses are not the same for double jeopardy [and merger] purposes, even though arising from the same conduct or episode. But, where only one offense requires proof of an additional fact, so that all elements of one offense are present in the other, the offenses are deemed to be the same for double jeopardy [and merger] purposes.

Williams, 323 Md. at 317-18, 593 A.2d at 673 (quoting *Thomas v. State*, 277 Md. 257, 267, 353 A.2d 240, 246-47 (1976)); see also *Dixon*, slip op. at 31. As a matter of course, merger occurs when two offenses are based on the same act or acts and are deemed to be the same under the required evidence test; however, “the Legislature may punish certain conduct more severely if particular aggravating circumstances are present . . . by imposing punishment under two statutory offenses.” See *Williams*, 323 Md. at 317-18, 593 A.2d at 673 (quoting *Frazier v. State*, 318 Md. 597, 614-15, 569 A.2d 684, 693 (1990)).

In Petitioner’s view, “every first degree arson necessarily involve[s] a reckless endangerment,” but not vice versa. This assertion, however, is anomalous in light of the language of the statutes. Instead, we agree with the State’s and the Court of Special Appeal’s positions that arson and reckless endangerment do not merge under the required evidence test because each offense has an element not present in the other.

As discussed *supra*, the offense of arson requires a defendant to act “willfully and maliciously,” while the reckless endangerment offense requires proof that the defendant acted “so reckless[ly] as to constitute a gross departure from the standard of conduct that a lawabiding person would observe.” Petitioner argues that these *mens rea* are one and the same, for we concluded in *Richmond* that “setting a fire with reckless and wanton disregard for the consequences satisfies the wilful and malicious requirement of Art. 27, § 6.” *Richmond*, 326 Md. at 268, 604 A.2d at 489. While this reasoning may have been true in 1992 when *Richmond* was filed, it is not so today. With Section 3, chapter 228 of the Acts of 1993, the Legislature repealed Art. 27, § 6, and enacted a new section in lieu of it. Moreover, Section 5, ch. 28 of the Acts of 1993 provided that § 6 would take effect on 1 October 1993. Section 5 of Art. 27, which provides the definitions for the terms used within the arson statute, defines “maliciously” as “an act done with intent to harm a person or property,” and “willfully” as “an act which is done intentionally, knowingly, and purposefully.” Examining the plain language used to define “maliciously” and “willfully,” we conclude that the Legislature intended for arson to be a specific intent crime.

Conversely, the Legislature clearly intended for reckless endangerment to be a general intent crime, one whose *mens rea* requirement is the conscious disregard of the risks and indifference to the consequences to *other persons*. See *Albrecht v. State*, 105 Md. App. 45, 58, 658 A.2d 1122, 1128 (1995) (emphasis added) (concluding that “the crime of Reckless Endangerment is quintessentially a crime against persons” and holding that “the unit of prosecution for the crime of Reckless Endangerment is each person who is recklessly exposed to the substantial risk of death or serious physical injury”), *rev’d on other grounds*, *Albrecht*, 336 Md. 475, 649 A.2d 336; see also *Pagotto*, 361 Md. at 549, 762 A.2d at 108 (noting that the test to whether a defendant possessed the requisite

mens rea for reckless endangerment was not whether he *intended* to create a substantial risk of death or serious bodily harm, but whether he acted in reckless disregard of that risk (citing *Minor*, 326 Md. at 443, 605 A.2d at 141); *Jones*, 357 Md. at 247, 745 A.2d at 406 (same (citing *Minor*, 326 Md. at 443, 605 A.2d at 141))).

We distinguish further the elements of these offenses, for, in contrast with reckless endangerment, arson clearly is defined as a crime against *habitation*. See *Albrecht*, 105 Md. App. at 60, 658 A.2d at 1124 (“Arson, like burglary, is generally conceptualized as a crime against habitation.” (citing *Smith v. State*, 31 Md. App. 106, 355 A.2d 527 (1976))). To reiterate, Art. 27, § 6 provides that “[a] person may not wilfully and maliciously set fire to or burn a dwelling or occupied structure, whether the property of the person or another.” In the present case, the record reflects that, the day before the incident, Petitioner threatened to “burn this mother fucker up” and to “burn this mother fucker house down.” Applying the statute to this evidence, the Circuit Court convicted Petitioner of wilfully and maliciously setting fire to or burning the Collinses’ dwelling. Because dwelling “means a structure, *regardless or whether an individual is actually present*, any portion of which has been adapted for overnight accommodation of individuals” (emphasis added), we conclude that, in keeping with its common law roots, first degree arson is a crime against habitation, not persons or property. In contrast, reckless endangerment, in keeping with its statutory construction, is a crime against persons, not habitation or property. This is indicative, though not dispositive, of a legislative intent that the crimes may be punished separately. This bears on our later analysis of the rule of lenity with greater weight.

We therefore hold that, contrary to Petitioner’s assertion, the general intent of “reckless and wanton disregard for the consequences” applied in *Richmond* can no longer be substituted for the specific intent required to establish the *mens rea* element of arson. We reject Petitioner’s argument that, under the required evidence test, the same evidence necessary to convict on the arson offense would always be sufficient to establish the reckless endangerment offense. Accordingly, Petitioner was not convicted twice for the same offense in violation of the Double Jeopardy Clause of the United States Constitution.

B. The Rule of Lenity

When, as in the present case, two offenses do not merge under the required evidence test, we nonetheless may consider, as a principle of statutory construction, the rule of lenity, which “provides that doubt or ambiguity as to whether the legislature intended that there be multiple punishments for the same act or transaction will be resolved against turning a single transaction into multiple offenses.” *Williams*, 323 Md. at 321, 593 A.2d at 675 (quoting *White v. State*, 318 Md. 740, 744, 569 A.2d 1271, 1273 (1990) (internal quotation marks omitted) (quoting *Simpson v. United States*, 435 U.S. 6, 15, 98 S.Ct. 909, 914, 55 L.Ed.2d 70, 78 (1978) (quoting *Bell v. United States*, 349 U.S. 81, 84, 75 S.Ct. 620, 622, 99 L.Ed.2d 905, 910-11 (1955))) (citing *Monoker v. State*, 321 Md. 214, 223, 582 A.2d 525, 529 (1990) (indicating that the rule of lenity applies where both offenses are statutory in nature or where one offense is statutory and the other is a derivative of common law)). The policy behind the rule of lenity is to prohibit courts from “‘interpret[ing] a . . . criminal statute so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what [the legislature] intended.’” *Monoker*, 321 Md. at 222, 582 A.2d at 529 (quoting *White*, 318 Md. at 744, 569 A.2d at 1273 (quoting *Simpson*, 435 U.S. at 15, 98 S.Ct. at 914, 55 L.Ed.2d at 78 (quoting *Ladner v. United States*, 358 U.S. 169, 178, 79 S.Ct. 209, 214, 3 L.Ed.2d 199 (1958)))).

As we noted *supra*, the Comment to Maryland Code (1957, 1996 Repl. Vol.), Art. 27, § 12A-2 indicates that the offense of reckless endangerment was repealed under subtitle DESTROYING, INJURING, ETC., PROPERTY MALICIOUSLY and re-enacted under subtitle ASSAULT. We believe that the Legislature moved the offense of reckless endangerment to its current subtitle in an effort to avoid the very guesswork that Petitioner encourages us to engage in today: whether reckless endangerment could be a crime against property or habitation as well as against persons. We note that, like attempt to commit a crime, reckless endangerment is an inchoate crime, for it “is intended to deal with the situation in which a victim is put at substantial risk of death or serious bodily harm but may, through a stroke of good fortune, be spared the consummated harm itself.” *Albrecht*, 105 Md.App. at 58, 658 A.2d at 1128. In this case, Petitioner was convicted of recklessly endangering the Collins family by setting fire to a pillow on their porch even though, through a stroke of good fortune, he caused no injury to them. But what if

Petitioner had intended to harm the Collinses, and he in fact did cause such harm? What if his crime was no longer inchoate, but complete? It is our view that, even if Petitioner's intent was not general, but specific as to harming the Collins family, and even if the act of burning the pillow had caused an injury to one or more of the Collinses, the completion of the *mens rea* and the *actus reus* would not have ripened into the offense of arson, but rather into the offense of battery, or worse. It, however, would not have ripened under the rule of lenity into the offense of arson.

We believe that there is clear legislative intent that persons convicted of arson also may also be convicted of reckless endangerment. It is not logical to assume that the Legislature intended that reckless endangerment would merge for purposes of sentencing with arson. Rather, the General Assembly intended arson and reckless endangerment to be separate offenses subject to multiple punishments. Because there is no doubt or ambiguity as to whether the Legislature intended that there be multiple punishments for Petitioner's act, the punishments are permitted and the statutory offenses do not merge for sentencing purposes.

C. "Fundamental Fairness"

In his brief, Petitioner advances a third issue: whether the reckless endangerment convictions should merge with the arson conviction as a matter of "fundamental fairness." This argument was neither included in Petitioner's petition for *writ of certiorari* nor argued before the intermediate appellate court. Maryland Rule 8-131(b), governing our scope of review, states:

(b) In Court of Appeals — Additional limitations. (1) Prior appellate decision. Unless otherwise provided by the order granting the writ of certiorari, in reviewing a decision rendered by the Court of Special Appeals or by a circuit court acting in an appellate capacity, the Court of Appeals ordinarily will consider only an issue that has been raised in the petition for certiorari or any cross-petition and that has been preserved for review by the Court of Appeals.

In *Jones v. State*, 357 Md. 408, 745 A.2d 396 (2000), we reiterated this Rule, stating simply that "this Court will only consider matters on appeal raised in a petition for *writ of certiorari* that we have granted." *Jones*, 357 Md. at 416, 745 A.2d at 401 (citing *Walston v. Sun Cab Co.*, 267 Md. 559, 568, 298 A.2d 391, 397 (1973)). In light of Petitioner's failure to preserve this argument for our review as required by Maryland Rule 8-131(b)(1), we decline to address it.

**JUDGMENT OF THE COURT OF
SPECIAL APPEALS AFFIRMED.
COSTS TO BE PAID BY PETITIONER.**

¹ *Holbrook v. Sate*, 361 Md. 231, 760 A.2d 1106 (2000).

² Maryland Rule 8-501 provides, in pertinent part:
(g) *Agreed statement of facts or stipulation.* The parties may agree on a statement of undisputed facts that may be included in a record extract or, if the parties agree, as all or part of the statement of the facts in the appellant's brief

³ Petitioner was found guilty of one count of reckless endangerment for each of the eight persons present in the house at the time of the fire.

⁴ The sentence for the conviction of making a threat of arson, to run concurrent to the arson sentence, is not at issue before this Court.

⁵ Petitioner does not challenge his multiple convictions under §12A-2(c).

⁶ The pertinent language of the 2000 Supplement to Maryland Code (1957, 1996 Repl. Vol.), Art. 27, § 12A-2 is the same language under which Petitioner was convicted in 1998. Article 27, §12A-2(a)(1) contains the same language as in the now repealed Art. 27, §120.

⁷ At the time of the incident in question in *State v. Pagotto*, 361 Md. 528, 762 A.2d 97 (2000), the reckless endangerment statute was codified as Maryland Code (1957, 1992 Repl. Vol.) Article 27, § 120(a). The legislative intent discussed in *Pagotto* still is applicable to the present discussion, however, in light of note 6, *supra*. The pertinent language of the repealed § 120 and the enacted §12A-2 are the same.

⁸ The Legislature did not define the terms “wilfully” and “maliciously” until 1992. See Part IV.A, *infra*.

⁹ While the required evidence test is commonly referred to as the “*Blockburger*” test, see *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 77 L.Ed. 306 (1932), it has also been called the “same evidence” test, see *Dixon v. State*, Md. (2001) (No. 93, September Term, 2000) (filed _____) (Slip op. at 30), the “elements” test, see *Hagans v. State*, 316 Md. 429, 449-50, 559 A.2d 792, 801-02 (1989), and the “same elements” test, see *United States v. Dixon*, 509 U.S. 688, 696, 113 S.Ct. 2849, 2856, 125 L.Ed.2d 556, 568 (1993).

PUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

KENNETH CHATONE MANOKEY,
Petitioner-Appellee,

v.

LLOYD L. WATERS, Warden of the
Maryland Correctional
Institution; J. JOSEPH CURRAN,
JR., The Attorney General of the
State of Maryland,

Respondents-Appellants.

No. 03-6932

Appeal from the United States District Court for the District Court of Maryland, at Baltimore.
Catherine C. Blake, District Judge. (CA-02-1040-CCB)

Argued: May 4, 2004

Decided: December 02, 2004

Before WILLIAMS and TRAXLER, Circuit Judges, and Pasco M. BOWMAN, Senior Circuit Judge of the United States Court of Appeals for the Eighth Circuit, sitting by designation.

ARGUED: Mary Ann Rapp Ince, Assistant Attorney General, Office of the Attorney General of Maryland, Baltimore, Maryland, for Appellants. Justin Sanjeeve Antonipillai, Arnold & Porter, L.L.P., Washington, ON BRIEF: J. Joseph Curran, Jr., Attorney General D.C., for Appellee. Robyn M. Holtzman, of Maryland, Baltimore, Maryland, for Appellants. Susan L. Lyndrup, Geoffrey J. Michael, Kathryn E. Taylor, Arnold & Porter, L.L.P., Washington, D.C., for Appellee.

The State of Maryland appeals an order of the district court granting habeas relief on a double-jeopardy ground to Kenneth Chatone Manokey. We reverse. 2254(d).

In 1998, Manokey went to trial in state court on various charges relating to the stabbing of his former girlfriend, Phyllis Smith. The charges included first-degree assault, second-degree assault, wearing and carrying a dangerous weapon with intent to injure, and reckless endangerment. At the end of the trial, Manokey moved for a judgment of acquittal on all the charges. Pursuant to that motion, the trial judge dismissed the weapon count and the reckless-endangerment count, and the case was submitted to the jury on the first-degree-assault and second-degree-assault charges. The jury found Manokey guilty of first-degree assault and did not return a verdict on the second-degree-assault charge. Manokey was sentenced to a twenty-five-year prison term on the conviction for first-degree assault.

Manokey appealed, raising a single issue: whether the evidence was sufficient to support the first degree-assault conviction. In an unreported opinion, the Maryland Court of Special Appeals rejected Manokey's claim that the evidence was insufficient and affirmed his conviction. *Manokey v. State*, 128 Md.App. 709 (Nov. 1, 1999). Manokey then pursued his post-conviction remedy (PCR), asserting several grounds for relief and raising his double-jeopardy claim for the

first time in any court.¹ The claim stands or falls on whether first-degree assault and reckless endangerment are one and the same offense for double-jeopardy purposes. If they are, the trial court's grant of the motion for judgment of acquittal on the reckless-endangerment count created a double-jeopardy bar to submitting the first-degree-assault count to the jury. The state PCR court determined that they are not one and the same offense and denied relief on the double-jeopardy claim, as well as on all of Manokey's other claims.² Manokey then sought appellate review of the PCR court's ruling. In an unreported per curiam opinion, the Maryland Court of Special Appeals summarily denied Manokey's application for leave to appeal the post-conviction court's denial of relief. *Manokey v. State*, No 2934 (Md. Ct. Spec. App. Dec. 14, 2001). Within the one-year statute of limitations, see 28 U.S.C. §2244(d)(1), Manokey filed his §2254 petition, raising six grounds for habeas relief. The district court granted the writ on the double-jeopardy ground but denied relief on all the other grounds. The state's timely appeal followed. Manokey did not seek a certificate of appealability (COA) and has no appeal before us.

A federal court may not grant habeas corpus relief under §2254 "with respect to any claim that was adjudicated on the merits in State court proceedings" unless the state-court ruling:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;

(2) or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. §2254 (d)

The state PCR court decided the double-jeopardy claim on its merits and held that as a matter of state law, the offenses of first-degree assault and reckless endangerment are not the same. Applying *Blockburger v. United States*, 284 U.S. 299 (1932), the PCR court found that each offense required proof of an element the other offense did not, and therefore the state trial court's granting of the motion for judgment of acquittal on the reckless-endangerment charge did not raise a double-jeopardy bar to Manokey's trial and conviction on the first-degree-assault charge.

Manokey, relying on *Williams v. State*, 641 A.2d 990 (Md. Ct. Spec. App. 1994), contends the PCR court's reading of state law was clearly wrong, and hence the court's application of *Blockburger* resulted in a decision involving an unreasonable application of clearly established federal law. That is the theory on which the district court granted habeas relief. For its part, the state distinguishes *Williams* and argues that the PCR court's determination that first-degree assault and reckless endangerment each required proof of an element that the other did not was a correct statement of Maryland law.

Williams is not a double-jeopardy case. Instead, it involves an application of the common-law merger doctrine for purposes of sentencing. As in the present case, in *Williams* the charges arose from the same incident; the defendant had been convicted of both (1) assault with intent to maim and (2) reckless endangerment, and he had been sentenced on each conviction, the sentences to run concurrently. The court, rejecting the contention that the convictions were mutually inconsistent, went on to consider the merger question. After discussing the background of the reckless-endangerment statute, with additional discussion of *actus reus*, *mens rea*, and related matters, the court held that for sentencing purposes the crime of reckless endangerment merged with the crime of assault with intent to maim. Having so held, the court affirmed the sentence for assault with intent to maim (ten years) and vacated the concurrent sentence for reckless endangerment (five years). *Williams* does not say, nor, as far as we know, has any

Maryland state court ever said, that the granting of a judgment of acquittal on a reckless-endangerment charge results in a double jeopardy bar against trial and conviction on either an assault-with-intent-to-maim charge or a first-degree-assault charge.³

The Williams holding on merger of the two crimes for sentencing purposes thus is not controlling on the double-jeopardy issue presented by Manokey. The question is not whether first-degree assault and reckless endangerment merge as a matter of state law for sentencing purposes when both charges are based on the same incident but whether the granting of a motion for a judgment of acquittal on the reckless-endangerment charge results in a double-jeopardy bar against trial and conviction on the first-degree-assault charge. Under Blockburger, the answer depends on whether each crime requires an element of proof the other crime does not. We believe that a proper Blockburger analysis of the two crimes supports the state PCR court's denial of Manokey's double-jeopardy claim.

Williams itself recognizes that, although the mens rea of reckless endangerment may merge with the mens rea of assault with intent to maim, making it appropriate to sentence the defendant only on the greater crime, each crime requires proof of a mens rea different from the mens rea of the other crime. Assault with intent to maim requires proof of a specific intent to inflict physical harm upon the person of another. Reckless endangerment, however, is a lesser charge, requiring only proof of reckless indifference to a harmful consequence. In explaining its merger-for-sentencing-purposes holding, Williams goes on to say that “the subjective mens rea of reckless indifference to a harmful consequence at a certain point along the rising continuum of blameworthiness may ripen into the even more blameworthy specific intent to inflict the harm.” *Id.* at 1010. And at that point, the reasoning continues, reckless endangerment merges, for sentencing purposes, into the greater offense of assault with intent to maim. Implicit in this reasoning is the idea that when a single act is sufficient to result in convictions for both offenses, but the victim suffered only a single harm as a result of that act, then as a matter of fundamental fairness there should be only one punishment because in a real-world sense there was only one crime.⁴ Though the Williams opinion cites Blockburger, it does not purport to do a complete Blockburger-type analysis of assault with intent to maim and reckless endangerment. Instead, the opinion merely compares the mens rea of the two offenses and does not compare other elements of the offenses that might differentiate them for double-jeopardy purposes. The holding of Williams is thus a far cry from a holding that the offenses are the same for double-jeopardy purposes.

The state PCR court was aware of Williams and did not consider it to control the double-jeopardy analysis that Manokey's claim required it to undertake. *Manokey v. State*, No. 9610 (Cir. Ct. Dorchester County, Md., Dec. 7, 2000) Post-Conviction Hr'g Tr. at 19-25, 27. Instead, the PCR court stated its conclusion that for purposes of applying the Blockburger test, “there are different factors to be proven, so far as, first-degree assault and reckless endangerment.” *Id.* at 27. We believe that conclusion is entirely correct. Aside from the differences in the mens rea of the two crimes that the Williams court noted, reckless endangerment requires proof, *inter alia*, “that a reasonable person would not have engaged in that conduct,” referring to “conduct that created a substantial risk of death or serious physical injury to another.” *Holbrook v. State*, 364 Md. 354, 772 A.2d 1240, 1247 (Md. 2001) (quoting *Jones v. State*, 745 A.2d 396, 406 (Md. 2000)); see also Md. Pattern Jury Instructions-Crim. 4:26A (Reckless Endangerment). Proof of that element is not required for conviction of first-degree assault. On the other hand, first-degree assault requires, among other things, proof of all the elements of second-degree assault, which in turn requires proof, *inter alia*, that “the contact was not consented to by” the victim, an element that was correctly included in the charge to the jury at Manokey's trial. Md. Pattern Jury Instructions-Crim. 4:01 (Second Degree Assault). Proof of this element is required when the assault charged involves a battery, as in Manokey's stabbing of his victim, and is not required for conviction of

reckless endangerment. Thus, as the state PCR court held, the Maryland offenses of reckless endangerment and first-degree assault each contain elements not required for conviction of the other.⁵

Having so held, the state PCR court applied the Blockburger test, found it satisfied, and concluded that Manokey's double-jeopardy claim must fail. The Blockburger test, simply stated, is whether each of the two offenses "requires proof of a different element." Blockburger, 284 U.S. . . . If each requires proof of a different element, then "'an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other.'" Id. at 304, (quoting *Morey v. Commonwealth*, 108 Mass. 433, 434 (1871), and noting the Court's previous adoption of this language in *Gavieres v. United States*, 220 U.S. 338, 342, (1911)). Blockburger is controlling authority and is the seminal case establishing the federal standard for deciding whether two separate offenses are the same. Manokey sought leave to appeal the state PCR court's denial of post-conviction relief; the Maryland Court of Special Appeals (the same court that several years earlier had issued the Williams decision) summarily denied Manokey's application. We believe the state PCR court's double-jeopardy ruling was based upon a correct understanding of Maryland law and was also a correct application of Blockburger. At the very least, we cannot say the state PCR court's rejection of Manokey's double-jeopardy claim either was "contrary to, or involved an unreasonable application of, clearly established Federal law." 28 U.S.C. §2254(d)(1).⁶ Accordingly, we reverse the district court's grant of habeas relief to Manokey on his double-jeopardy claim.⁷

We turn now to a separate matter. Manokey, who is, of course, the appellee here, and who has not obtained a COA on any issue, argues that he is entitled to habeas relief on an alternative ground. He contends the district court erred in holding that a procedural default precluded habeas review of Manokey's claim of ineffective assistance of counsel. Ordinarily, an appellee may defend a judgment on any ground that was raised in the lower court. Federal habeas, however, is different. In a federal habeas proceeding, no claim with respect to which the district court denied relief may be appealed to the court of appeals unless the petitioner obtains a COA. See 28 U.S.C. § 2253(c)(1). A COA may issue "only if the applicant has made a substantial showing of denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requirement extends to claims that the district court has rejected on grounds of procedural default. See *Slack v. McDaniel*, 529 U.S. 473, 484, (2000) (holding that "[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling").

We are unaware of any decision from this circuit that addresses the question of whether a COA is required when a habeas petitioner, as appellee, seeks appellate review of a rejected claim, but the Second Circuit and the Eighth Circuit have answered this in the affirmative. See *Jones v. Keane*, 329 F.3d 290, 296-97 (2d Cir.) (holding that habeas petitioner who is appellee, with state appealing district court's grant of habeas relief on one or more grounds, may not seek habeas relief on alternative grounds rejected by district court without obtaining a COA specifying those grounds) (citing *Grotto v. Herbert*, 316 F.3d 198, 209 (2d Cir.2003) ("[W]e conclude that a habeas petitioner to whom the writ has been granted on one or more grounds may not assert, in opposition to an appeal by the state, any ground that the district court has not adopted unless the petitioner obtains a certificate of appealability permitting him to argue that ground.")), cert. denied 124 S.Ct. 804 (2003); *Fretwell v. Norris*, 133 F.3d 621, 623 (8th Cir.) (dismissing habeas petitioner's cross appeal where COA had been denied), cert. denied, 525 U.S. 846, 119 S.Ct. 115, 142 L.Ed.2d . . . But see *Ramirez v. Castro*, 365 F.3d 755, 762 (9th Cir. 2004) (stating,

where habeas petitioner was appellee without a COA, and with no discussion of COA requirement, that “[w]e may affirm the decision to grant a petition ‘on any ground supported by the record, even if it differs from the rationale of the district court’”) (citations omitted). We agree with the Second and the Eighth Circuits, and we hold that Manokey's appellate arguments concerning his ineffective-assistance claim cannot be reached in the absence of a COA. In addition, even if we were to consider his appellee's brief as a request for a COA, we would deny the request because he has failed to make “a substantial showing of the denial of a constitutional right,” U.S.C. 28 2253(c)(2), with respect to the rejected ineffective-assistance claim. Indeed, Manokey's brief is devoid of any argument whatsoever that would bear on the merits-of-the-claim portion of the Slack test for issuance of a COA on a claim, such as this one, that the district court has denied on procedural grounds. See *Slack*, 529 U.S. at 484.

For the reasons stated, we reverse the order of the district court insofar as it grants habeas relief and remand with instructions to dismiss Manokey's petition.

WILLIAMS, Circuit Judge, concurring in part and concurring in the judgment:

I concur fully in the portion of the majority opinion holding that habeas petitioners must obtain a certificate of appealability to raise alternate grounds for affirming a district court's grant of a habeas writ, and in the majority's judgment that the district court erred in granting a writ of habeas corpus to Manokey in this case. I write separately, however, because I do not believe we must resolve the close question of whether reckless endangerment and first degree assault are the “same offense” within the meaning of *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932). Even assuming reckless endangerment is a lesser-included offense of first degree assault, I would reverse the grant of habeas relief to Manokey because the trial court did not actually acquit Manokey of reckless endangerment, and, accordingly, Manokey was not “twice put in jeopardy of life or limb.” U.S. Const. amend. V. See 28 U.S.C.A. § 2254(a) (permitting a circuit judge to grant a writ of habeas corpus only on the ground that a petitioner is “in custody in violation of the Constitution or laws or treaties of the United States”).

A trial court's ruling constitutes a judgment of acquittal for purposes of double jeopardy “only when it is plain that the [trial court] evaluated the Government's evidence and determined that it was legally insufficient to sustain a conviction.” *United States v. Scott*, 437 U.S. 82, 97, (1978) (internal quotation marks omitted). A reviewing court must independently determine “whether the [trial court's] ruling ... actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged.” *United States v. Martin Linen Supply*, 430 U.S. 564, 571, (1977). In other words, “what constitutes a judgment of acquittal may not be determined simply by the form or caption of the United States v. Alvarez, 351 F.3d 126, 129 (4th Cir.2003).¹

It is clear from the record in this case that the trial court was refusing to charge the lesser-included offense of reckless endangerment not issuing Manokey a judgment of acquittal. At the close of the state's case, Manokey moved for acquittal on the reckless endangerment charge, arguing that the state had failed to show a substantial risk death or serious injury. (J.A. at 187.) As defense counsel explained, “[t]his is not like a stab wound to the heart or in the lung.” (J.A. at 187) Manokey renewed this motion at the close of his case. (J.A. at 209.) The trial court, after reiterating that a conviction for reckless endangerment required the state to prove Manokey engaged in conduct that created a substantial risk of harm and that he acted recklessly in doing so, concluded, “I feel that there is evidence that would support a finding that what he did would have been intentional. I'll grant your motion as to reckless endangerment.” (J.A. at 209.) Although the trial court purported to grant a motion of acquittal, its analysis does not meet the dictates of *Martin Linen* and *Scott*. Instead, the trial court's ruling is best described as a refusal to give an instruction on a lesser-included offense.

Under Maryland law, a trial court is required to give an instruction on a lesser-included offense charged in the indictment only “so long as it was a permissible verdict generated by the evidence.” *Dishman v. State*, 352 Md. 279, 721. Thus, “a defendant is not entitled to a lesser-included offense instruction unless the evidence adduced at the trial provides a rational basis upon which the jury could find him not guilty of the greater offense but guilty of the lesser offense.” *Id.* (quoting *United States v. Elk*, 658 F.2d 644, 648 (8th Cir.1981)). The record makes clear that the trial court's ruling, right or wrong, was a finding that, because the state had entered evidence that Manokey acted intentionally and Manokey had presented no evidence to the contrary, no jury could find Manokey not guilty of first degree assault but guilty of reckless endangerment.²

Accordingly, because the trial court's ruling does not constitute a judgment of acquittal on the reckless endangerment count, the limitations imposed by the Double Jeopardy Clause are not implicated in this case and Manokey cannot show that he is entitled to habeas relief under §2254(a).

FOOTNOTES

1. The state has not argued that Manokey's failure to raise this claim at trial and in his direct appeal was a procedural default, so we consider the issue as having been waived.

2. Both at the post-conviction hearing and in the order denying post-conviction relief, the PCR court described Manokey's petition as “frivolous.” *Manokey v. State*, No. 9610 (Cir. Ct. Dorchester CountyMd.) Post-Conviction Hr'g Tr. at 28 (Dec. 7, 2000) and Mem. & Order at 3 (Jan. 4, 2001).

3. Since *Williams* was decided in 1994, the Maryland General Assembly has repealed the statute that established the assault-with-intent-to-maim offense and has replaced it with Md.Code Ann., Crim. Law §3-202 assault in the first degree, which is the offense of which Manokey was charged and convicted. This newly-defined offense is different in structure and language from the former assault-with-intent-to-maim offense that was before the court in *Williams*, and it quite simply prohibits intentionally causing or attempting to cause serious physical injury to another. But we make little of this because the reasoning of *Williams* still would seem applicable to a merger-for-sentencing-purposes question arising in a case in which the defendant was convicted of violating both §3-202 and the reckless-endangerment statute.

4. See *Holbrook v. State*, 364 Md. 354, 772 A.2d 1240, 1252 (2001), where the petitioner argued that for sentencing purposes, his reckless-endangerment convictions should merge with his arson conviction as a matter of “fundamental fairness.” The court declined to address this argument because it had not been preserved for appellate review.

5. The opinion of the district court recognizes the existence of these disparate elements but fails to recognize their significance to a correct Blockburger-type analysis. See *Manokey v. Waters*, No. CCB-02-1040 (D.Md. May 12, 2003) Memorandum Opinion at 10-11.

6. Factual determinations are not at issue in this appeal. Thus §2254(d)(2) does not come into play.

7. The state, in a footnote in its brief, appears to suggest another basis for reversal: that the state trial court's dismissal of the reckless-endangerment count was not based on insufficiency of the evidence. Because the state did not develop an argument on this point, I elected not to consider

the matter in this opinion. Judge Williams, however, in her concurring opinion has independently explored the matter and has concluded that double jeopardy does not attach inasmuch as the dismissal of the reckless-endangerment count was in fact not based on insufficiency of the evidence. Having studied Judge Williams's concurring opinion, Judge Traxler and I both agree with Judge Williams's conclusion that the dismissal of the reckless-endangerment count was not a judgment of acquittal for purposes of double jeopardy. Judge Traxler also concurs in my conclusion that the first-degree-assault charge and the reckless-endangerment charge are not the same for purposes of double jeopardy. (Judge Williams simply prefers not to reach the "same offense" ground.) Accordingly, my opinion and Judge Williams's concurring opinion each have captured the adherence of at least a majority of the panel; thus each opinion, each on a different ground, operates as a reversal of the district court's grant of habeas relief.

The panel unanimously agrees that the lack of a certificate of appealability precludes our consideration of Manokey's ineffective-assistance claim.

1. For instance, in *Alvarez*, following a mistrial, the district court granted the defense's motion for judgment of acquittal, explaining "there is little likelihood that any jury will ever convict either of the defendants on the charges." *United States v. Alvarez*, 351 F.3d 126, 129 (4th Cir.2003). We held that this order was not a judgment of acquittal for double jeopardy purposes because the district court "never expressly addressed the sufficiency of the [government's] evidence." *Id.* at 130.

2. Such a reading of the trial court's ruling is buttressed by the trial court's failure to address Manokey's sufficiency of the evidence argument that stabbing an individual all the way through the arm with a butter knife does not create a substantial risk of death or serious injury.

BOWMAN, Senior Circuit Judge:

Reversed by published opinion. Senior Judge BOWMAN wrote the opinion, in which Judge TRAXLER joined. Judge WILLIAMS wrote a separate opinion, concurring in part and concurring in the judgment.

Appendix A: Guidelines for Attorney Advisors

Please also refer to Appendix B: Helpful Hints for Competition 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 attorney coaches **guide rather than instruct, or script, the students**. In law school, you learned from Socratic dialogue – try the same method with your team!

If the competition is to realize its full potential, it is crucial that you help discourage a “win-at-all-costs” attitude among 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 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 trial may not be successful in another.

After nearly thirty 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 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: Helpful Hints 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 team's 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).

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 or 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 Score 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/ Plaintiff	Defense
Opening Statements			
<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/ Use of Objections: Students were courteous, observed courtroom etiquette, spoke clearly, demonstrated professionalism, and utilized objections appropriately.			
TOTAL			
Tie Point (Before totaling score sheet, please award one point to the team you think gave the best overall performance. <u>This point will be used ONLY in a tie.</u>)			
TOTAL WITH TIE POINT (provide this score only in a tie)			

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/ CLREP
2011-2012
Statewide High School Mock Trial Competition**

Registration Deadline.....	Friday, November 4, 2011
Case Mailed to Paid/ Registered Teams.....	Thursday, November 10, 2011
Circuit Competitions (1st Level of Competition).....	January 3—March 24, 2012
CIRCUIT CHAMPIONS MUST BE DECLARED BY THURSDAY, MARCH 23, 2012.	
Regional Competitions (2nd Level of Competition)..... (The eight Circuit Champions compete in single eliminations.)	Wednesday, April 11 and Thursday, April 12, 2012
Semi-Final Competitions: Anne Arundel Circuit Court, 4pm.....	Thursday, April 19, 2012
State Championship: Maryland Court of Appeals, Annapolis, 10am*.....	Friday, April 20, 2012
LIVE WEBCAST - http://www.mdcourts.gov/coappeals/webcast.html	

**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:

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

The role of the Bar Association is:

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

The role of the Circuit Coordinator is:

- to make decisions/ mediate at the local level when problems or questions arise;
- to establish the circuit competition calendar;
- to arrange for courtrooms, judges, and attorneys for local competitions;
- to inform and attempt to recruit all schools in the circuit;
- to work with the local Bar Associations to set court dates, recruit attorney advisors, and establish local guidelines;
- to arrange general training sessions if necessary.

The role of the individual school/teacher coach is:

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

Mock Trial State Champions

2010-2011 The Park School Baltimore County	Suitland High School Prince George's County
2009-2010 Severna Park High School Anne Arundel County	1995-1996 Towson High School Baltimore County
2008-2009 Allegany High School Allegany County	1994-1995 Pikesville High School Baltimore County
2007-2008 Severna Park High School Anne Arundel County	1993-1994 Richard Montgomery High School Montgomery County
2006-2007 Severn School Anne Arundel County	1992-1993 Elizabeth Seton High School Prince George's County
2005 – 2006 Severna Park High School Anne Arundel County	1991-1992 Oxon Hill High School Prince George's County
2004-2005 Richard Montgomery High School Montgomery County	1990-1991 Westmar High School Allegany County
2003-2004 The Park School Baltimore County	1989-1990 Bishop Walsh High School Allegany County
2002-2003 Elizabeth Seton High School Prince George's County	1988-1989 Lake Clifton/Eastern High School Baltimore City
2001-2002 Towson High School Baltimore County	1987-1988 Pikesville High School Baltimore County
2000-2001 DeMatha Catholic High School Prince George's County	1986-1987 Thomas S. Wootton High School Montgomery County
1999-2000 Broadneck High School Anne Arundel County	1985-1986 Old Mill High School Anne Arundel County
1998-1999 Towson High School Baltimore County	1984-1985 High Point High School Prince George's County
1997-1998 Pikesville High School Baltimore County	1983-1984 Worcester County Team
1996-1997	