



**Citizenship Law-Related  
Education Program  
for the Schools of Maryland**

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**REVISED WITH CORRECTIONS/ JANUARY 10, 2007**

Dear Mock Trial Participant:

Welcome to the 2006-2007 Maryland State Bar Association Statewide High School Mock Trial Competition. This is the 24<sup>th</sup> year for Mock Trial—over 36,000 students have participated in this competition since its inception. We are pleased that you are joining in this exciting learning experience.

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

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

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

This year's case focuses on cyber and physical stalking and explores issues of e-mail and instant messaging. The internet and technology can be of great benefit but misusing them can, in some instances, lead to criminal charges.

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

Sincerely,

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

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



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2006-2007  
MSBA HIGH SCHOOL MOCK TRIAL COMPETITION

**PART I: ORGANIZATIONAL RULES**

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

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

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

6. Each competing circuit must declare one team as Circuit Champion by holding local competitions based on the official Mock Trial Guide and rules. That representative will compete against another Circuit Champion in a single elimination competition on April 17<sup>th</sup> or 18<sup>th</sup>, 2007.
7. The dates for the Regionals, the Semi-Finals, and the Finals will be set and notice given to all known participating high schools by Wednesday, November 15, 2006. Changes may occur due to conflicts in judicial schedules.

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

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

## **PART II: HINTS ON PREPARING FOR A MOCK TRIAL COMPETITION**

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

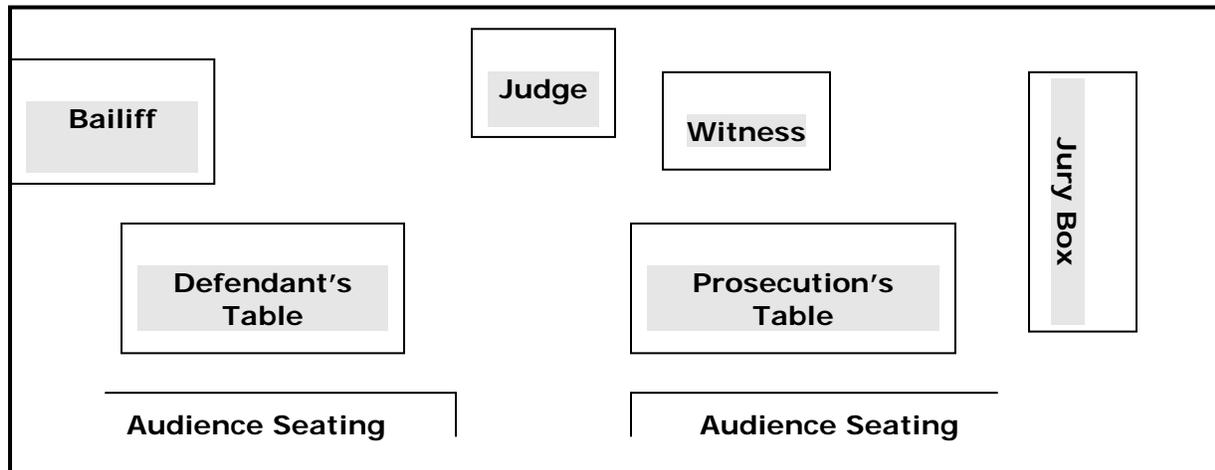
1. Every student, teacher and attorney participating in a team's preparation should read the entire set of materials (case and guide) and discuss the information, procedures and rules used in the mock trial competition. Students: you are ultimately responsible for all of this once Court is in session.
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.



Steps in a Mock Trial

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

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

After introducing oneself and one’s colleagues to the judge, the defendant’s attorney summarizes the evidence for the Court which will be presented to rebut the case which the prosecution or plaintiff has made.
3. Direct Examination by the Prosecutor (7 minutes plus 2 minutes for Voir Dire)

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

#### NOTE:

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

4. Cross-Examination by the Defendant's Attorneys (5 minutes)  
After the attorney for the prosecution/plaintiff has completed the questioning of a witness, the judge then allows the defense attorney to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of the opposing witness. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through cross-examination. (If an attorney chooses to voir dire a witness, 2 minutes are permitted, in addition to the 5 minutes allowed for cross examination.)
5. Direct Examination by the Defendant's Attorneys (7 minutes plus 2 minutes for Voir Dire)  
Direct examination of each defense witness follows the same pattern as above which describes the process for prosecution's witness.
6. Cross-Examination by the Prosecution/ Plaintiff (5 minutes)  
Cross-examination of each defense witness follows the same pattern as above for cross-examination by the defense.
7. Re-Direct Examination by the Plaintiff/ Prosecution (3 minutes and/or 3 questions)  
The Plaintiff's/Prosecution's attorney may conduct re-direct examination of the witness to clarify any testimony that was cast in doubt or impeached during cross-examination. (Maximum of three minutes or three questions.)
8. Re-Cross Examination by the Defense Attorneys (3 minutes and/or 3 questions)  
The defense attorneys may re-cross examine the opposing witness to impeach previous testimony. (Maximum of three minutes or three questions.)
9. Voir Dire Examination by Either the Plaintiff/ Prosecution or the Defense Attorneys (2 minutes)  
Voir Dire is the process of asking questions to determine the competence of an alleged expert witness. Before giving any expert opinion, the witness must be qualified by the court as an expert witness. The court must first determine whether or not the witness is qualified by knowledge, skills, experience, training or education to give the anticipated opinion. After the attorney who called the witness questions him/her about his/her qualifications to give the opinion, and before the court qualifies the witness as an expert witness, the opposing counsel shall (if he/she chooses to do so) have the opportunity to conduct a brief cross-examination (called "voir dire") of the witness' qualifications.
10. Closing Arguments (Attorneys) (5 minutes)  
For the purposes of the Mock Trial Competition, the first closing argument at all trials shall be that of the Defense.
  - a. Defense  
A closing argument is a review of the evidence presented. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not substantiate the elements of a charge or claim, stresses the facts and law favorable to the defense, and asks for a finding of not guilty for the defense.
  - b. Prosecution/ Plaintiff  
The closing argument for the prosecution/plaintiff reviews the evidence presented. The prosecution's/plaintiff's closing argument should indicate how the evidence has satisfied the elements of a charge, point out the law applicable to the case, and ask for a finding of guilt. Because the burden of proof rests with the prosecution/plaintiff, this side has the final word.
11. The Judge's Role and Decision  
The judge is the person who presides over the trial to ensure that the parties' rights are protected and that the attorneys follow the rules of evidence and trial procedure. In mock trials, the judge

also has the function of determining the facts of the case and rendering a judgment, just as in actual bench trials.

#### **PART IV: SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE**

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

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

##### **1. SCOPE**

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

RULE 102: OBJECTIONS. An objection which is not contained in these rules shall not be considered by the Court. However, if counsel responding to the objection does not point out to the judge the application of this rule, the Court may exercise its discretion in considering such objections.

##### **2. RELEVANCY**

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

Example:

Q: Defense on Cross Examination: "Is it not true, Mr. Quinn, that you were suspended for forgery in high school?"

Objections to Irrelevant Questions/Testimony:

"Objection. This testimony is unduly prejudicial."

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

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

Examples:

Q: Prosecution on Cross Examination: "Ms. Walker, is it true that you are currently on academic probation and are quite desirous, if not envious, of the academic record of Mr. Stein?"

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 is one that suggests to the witness the answer desired by the examiner -- typically a "yes" or "no" answer.

Example of a Direct Question:

Q: "Ms. Walker, how many emails did you receive from Mr. Stein?"

Example of a Leading Question:

Q: "Mr. Stein, isn't it true that you were aware of Ms. Walker's reaction to your criminology presentation on serial killers?"

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:

Q: "Ms. Walker, please explain to the court why you have a problem with Mr. Stein?"

Objection:

"Objection. Question seeks a narration."

Narrative Answers:

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

Objections:

"Objection: Counsel is leading the witness."

"Objection. Witness is being narrative."

"Objection: Question asks for a narration."

- RULE 302: SCOPE OF WITNESS EXAMINATION. Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.
- RULE 303: REFRESHING RECOLLECTION. If a witness is unable to recall a statement made in an affidavit, the attorney on direct may show that portion of the affidavit that will help the witness to remember.

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

- RULE 304: FORM OF QUESTION. An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions that tend to evoke a narrative answer should be avoided in most instances.
- RULE 305: SCOPE OF WITNESS EXAMINATION. Attorneys may only ask questions that relate to matters brought out by the other side on direct examination or to matters relating to the credibility of the witness. This includes facts and statements made by the witness for the opposing party. Note that many judges allow a broad interpretation of this rule.

##### Example:

If on direct examination a witness is not questioned about a topic, the opposing attorneys may not ask questions about this topic on cross examination. For example, the defense does not mention that Quinn Stein's favorite song is *Time is on My Side* by the Rolling Stones, nor was there any mention of him ever humming it in class.

Q: Prosecution on Cross Examination: "Is it not true that you in one of your messages to Ms. Walker, you quoted a line from the Rolling Stones, 'Time is on my side,' which just happens to have been a song you hummed walking past Ms. Walker and is your favorite song?"

##### Objection:

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

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

#### C. RE-DIRECT EXAMINATION

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

##### NOTE:

If the credibility or the reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done

and should be phrased so as to try to “save” the witness’ truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Please note that at times it may be more appropriate NOT to engage in re-direct examination.

#### D. RE-CROSS EXAMINATION

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

Objection:

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

#### 4. HEARSAY

##### A. THE RULE

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

Example:

Q: Ms. Walker states: “It’s not just me that thinks this kid [Quinn] is weird. The other kids in class think that Quinn is really weird, too, and that he went a little too far with his presentation.”

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

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: (General Opinion) On direct examination by prosecution:

Q: "Ms. Walker, do the rest of your classmates consider Mr. Stein "cool" or is he considered "weird?"

Objection:

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

Example: (Lack of Personal Knowledge) Direct examination by prosecution:

Q: "Ms. Walker, doesn't Mr. Stein's behavior resemble a person suffering from some kind of mental deficiency, perhaps socio-pathology?"

Objection:

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

Example: (Opinion on Outcome of Case) Direct examination by defense:

Q: "Mr. Stein, did you approach Ms. Walker maliciously with the intention of placing Ms. Walker in reasonable fear for her safety?"

Objection:

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

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

Example: Direct Examination by Prosecution:

Q. "Lieutenant Sears, from your investigation, does it appear that Mr. Stein was approaching Ms. Walker maliciously with the intention of placing Ms. Walker in reasonable fear for her safety?"

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

RULE 503: VOIR DIRE. ("To speak the truth.") After an attorney who has called a witness questions him/her about his/her qualifications, and before the court qualifies the witness as an expert, the opposing counsel shall have the opportunity, if

he/she chooses, to conduct voir dire. After the voir dire examination has been conducted, the cross-examining attorney should advise the court as to whether there are any objections to the witness being qualified as an expert witness and/or whether there are any objections to the witness' expertise to give the specific opinion the opposing counsel is trying to elicit from this witness.

Example:

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

Objection:

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

## 6. PHYSICAL EVIDENCE

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

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

- a. Show the exhibit to opposing counsel.
- b. Show the exhibit and have it marked by the clerk/judge. "Your Honor, please have this marked as Plaintiff's Exhibit 1 for identification."
- c. Ask the witness to identify the exhibit. "I now hand you what is marked Plaintiff's Exhibit 1. Would you identify it, please?"
- d. Ask the witness about the exhibit, establishing its relevancy.
- e. Offer the exhibit into evidence. "Your Honor, we offer Plaintiff's Exhibit 1 into evidence at this time."
- f. The Judge will ask opposing counsel whether there is any objection, rule on the objection, and admit or not admit the exhibit into evidence.
- g. If the exhibit is a document, hand it to the clerk/judge.

NOTE:

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

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

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

Example: During Direct Examination

Q. "Mr. Stein, what grade did you receive on your project for your criminology class?"

A: Mr. Stein: "I received an "A." In fact, I receive A's in all of my classes."

Objection:

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

During Cross-Examination

Q: "Mr. Stein, is it not true that you enjoyed giving your disturbing presentation on serial killers in your criminology class?"

A: Mr. Stein: "Yes, but my Professor highly suggested I work on this particular subject and had it not been for him, I would have chosen something else."

Objection:

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

Objection to be made at a bench conference:

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

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

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

Objection:

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

**8. SPECULATION**

**RULE 801**

Speculation by a witness, upon which the court may not base verdict, is the art of theorizing about a matter as to which evidence is not sufficient for certain knowledge. Speculation as to what possibly could have happened 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: Direct Examination by the Prosecution

Q: "Ms. Walker, what was the final straw that prompted you to report Mr. Stein to the campus police?"

A: Ms. Walker: "He hung a dead rat on a noose on my door, something that he probably saw one of those serial killers do."

Objection:

"Objection. Inadmissible speculation on behalf of the witness. I move that this statement be stricken from the record."

**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 incorrect.

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

State of Maryland, )  
)  
                  **Prosecution,** )  
)  
                  v. )  
)  
**Quinn Stein,** )  
)  
                  **Defendant.** )

**STATEMENT OF STIPULATED FACTS**

In the fall of 2006, Jamie Walker entered Tacoma State University as a freshman. Jamie took up residence in Cardinal Hall, one of the coed dorms on campus. Walker’s Resident Assistant (RA) in the dorm is Lane Smith, a sophomore from Walker’s hometown of Boring, Maryland, who has known Walker for some time. Freshman orientation began on Monday, August 21, 2006. On Wednesday and Thursday of the same week, students registered for classes and were informed of the university policies, one of which concerned the TSU chat room and electronic mail systems. Students were also required to sign releases for the “red-button” alert system and to acknowledge that they received the TSU electronic harassment policy statement. Classes commenced on August 28.

On September 12, Jamie logged into the chat room for the first time and was able to gather information about classes and assignments. Finding the chat room helpful, Jamie logged in regularly during the semester.

On October 2, Jamie attended criminology class where Quinn Stein was giving a formal presentation on the psychological profile of serial killers. Disturbed by the content of the presentation, Jamie was permitted to leave the class. Jamie did not return.

On October 3, while Jamie and Lane Smith were walking through the student union, they came upon Quinn Stein with a group of students. Seeing Jamie and Lane, Quinn pointed a finger at Jamie and mouthed the word “*pow*.” Startled, Jamie turned around and left the student union with Lane. As they walked away, they both heard Quinn say “There goes the Jam....the Jammer.”

On October 10, Jamie logged into the chat room and almost immediately saw references from a “SirVive” to “Jam.” “Jam’s in the window. Exercise all you want, my friend, but you won’t be able to run fast enough.” A few minutes later another reference to Jam appeared, “Jammin has been wearing school colors all week. Think blood won’t show on those dark colors?” Upset, Jamie showed Lane Smith the messages. Lane took no action other than recording the incident. Soon after Walker logged in, several more chat room messages to “Jam” were received on October 14<sup>th</sup> and 15<sup>th</sup>.

On October 16, Walker logged into the chat room and saw, after following what appeared to be a flurry of chatter about an upcoming symposium on world terrorism, a message to “Jam” that read, “Anticipation is what it’s all about...building fear. You never know when you’ll be forced to face your greatest fear...is it suffocation, torture, painful, prolonged death? Which is it, Jam?” Walker did not respond; however, someone else jumped in and wrote, “Whoever you are, ‘SirVive,’ knock it off.” “SirVive” responded, “I

admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression.” And before logging off, “SirVive” posted a final message: “The clock is ticking, Jammer. And time is on my side.”

A few minutes later, Jamie received an email with a subject line that read, “time’s a tickin.” The message was from user@TSULib.edu, which meant it was from one of the campus library computers. The message read, “SV may lose control at any time. How long will you last, my jamming friend? If you’re afraid, you better stay locked up in your second floor roost. You could be sorry. You could be dead.”

On October 22, Jamie returned from studying in the library to find a dead rat hanging from his/her dorm room door. When Jamie entered the room, a blinking light on his/her computer indicated that s/he had received an email message. It was an email from “Ace of Spades” reading: “*Jam, you dirty rat... Now you see what happens to rats, you can’t run. You can’t hide, you can’t eat cheeeeeeeese, my precious, because you’ll be mine soon!!!!*” Jamie immediately informed Lane Smith and both went directly to the campus police.

The police began an immediate investigation and on October 30 arrested Quinn Stein.

### **STATEMENT OF CHARGES AND DEFENSES**

The State of Maryland charges Quinn Stein with the following violations of the Maryland Code:

Count 1- Stalking in violation of Maryland Criminal Law Code, Section 3-802.

Count 2 – Harassment in violation of Maryland Criminal Law Code, Section 3-803.

Count 3 – Misuse of telephone and equipment in violation of Maryland Criminal Law Code, Section 3-804.

Count 4 – Misuse of electronic mail in violation of Maryland Criminal Law Code, Section 3-805.

Quinn Stein denies all charges and claims that the alleged actions do not constitute stalking, harassment, misuse of telephone and equipment and or misuse of electronic mail under any Maryland criminal law code.

#### **Additional 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. The police report
2. Snapshot of chat room messages
3. The copy of selected emails received by Jamie Walker

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

### **WITNESSES TO APPEAR BEFORE THE COURT**

#### **Witnesses for the Prosecution**

Jamie Walker, alleged victim of stalking  
Lieutenant Glenn Sears, Maryland State Police  
Lane Smith, Resident Assistant on Jamie Walker’s  
dormitory floor

#### **Witnesses for the Defense**

Quinn Stein, Defendant  
Reilly Arthur, College Professor of Computer  
Sciences  
Cameron Jones, College Webmaster and student

## **Witness for the Prosecution**

### **Jamie Walker**

My name is Jamie Walker. I currently attend Tacoma State University. I am in the fall semester of my freshman year. I live on campus in Cardinal Hall, one of the coed dorms on campus. I grew up in a small town called Boring, in rural southern Maryland. I attended a small magnet high school. My graduating class only had about 190 students, so university life has been something of an adjustment for me. TSU is situated very close to University of Maryland College Park. Even though TSU is small in size, the campus and surrounding area are fast-paced and high-tech.

One of the luxuries afforded to student-residents is the campus chat room which is sponsored as part of class registration. The chat room gives students a place to discuss classes, homework assignments, upcoming tests, as well as all the social events going on around the campus. Prior to signing in for the first time, I had to read and sign a release that discussed how the chat room is monitored by campus authorities. The release defines and prohibits electronic harassment via email, chat room and any other means of electronic communication. Campus authorities use what they call a “red-button” alert to protect students from seedy activities. It seems like you have to sign a release for everything, so I didn’t think much of it at the time.

I logged on for the first time in mid-September. I had misplaced a reading assignment for my English 102 class, so I posted a message about it. I got a reply almost instantly. It was such a positive first experience that I logged in frequently after that day. People were always logged in, talking about movies they had seen, bars and restaurants they had gone to, as well as routine information on tests, class assignments, and that sort of thing. I wouldn’t consider myself a computer-geek, but I had no problem using the chat room and campus email.

During this semester, I took a criminology class with Quinn Stein. One of the topics we explored was profiles of criminal minds, which was actually pretty fascinating in a morbid sort of way. I think most people are intrigued, to some degree, with the people who commit heinous crimes. In any case, Quinn was constantly complaining that the professor didn’t go in-depth enough about serial killers. As one of our class projects, we had to do a research paper and class report on some aspect of criminal psychology. Quinn delivered a very graphic report on the psychological profiles of some of the most notorious serial killers—Dahlmer, Gacy, and Ted Bundy. Quinn has this whole elaborate power-point presentation linking to websites that showed photos of the crime scenes and detailing the most horrific murders. I think the thing I found most chilling was how obvious Quinn’s admiration was for these criminals. At one point, Quinn even mentioned how the resolve of these criminals was “awesome.”

Quinn’s report almost made me ill. It was very graphic. Quinn seemed to feed off of the students’ discomfort. I asked the professor if I could be excused in the middle of the report because I was upset. The professor followed me into the hall and asked me what was wrong. The professor understood so I left and called home to talk with my parents. I felt better after speaking with them.

On October 3<sup>rd</sup> the day after I left criminology class, I went to the student union to meet up with a couple of friends. It just so happened that Quinn was there as well. I was turning around to leave, and when I glanced up, Quinn made this gesture as if pointing a gun at me, and then mouthed “*pow*” as if he was shooting a gun. It sort of freaked me out—there’s just something about Quinn that gives me the chills. Lane was with me at the time and saw the gesture. My reaction wasn’t exactly subtle—I pretty much grabbed Lane’s arm and we turned in the opposite direction. We could hear Quinn laughing with friends and saying, “There goes the Jam....the Jammer....”—basically making fun of my nickname.

About a week after the student union incident, I noticed a reference to my nickname “Jam” while I was in the chat room. Some people in the dorm call me “the Jam” because my dorm room is so messy that my door sometimes jams up against something. Since my real name is Jamie, it sort of fits. My chat room

and email user names are both basically the same (Jammin@TSU and Jammin@TSU.edu). In hindsight, I should have been much more careful in choosing a user name and email address.

The message read, “Jam’s in the window. Exercise all you want, my friend, but you won’t be able to run fast enough.” The previous night I’d been goofing around, doing jumping jacks and running in place in my dorm room. My room is on the second floor, so I rarely bother to close the blinds. I calmed myself down by telling myself I’m not a runner, so that must not have been intended for me. But a few minutes later, another message popped up that hit closer to home. “Jammin has been wearing school colors all week. Think blood won’t show on those dark colors?” I have a part-time job here at the university and we were promoting t-shirts, sweatshirts, and other college-logo clothes—I had been wearing school colors all week. At that point, I showed the message to my RA Lane Smith. Lane and I were both convinced that someone was trying to punk me. Lane then suggested that I keep a log so that I could track any additional incidents. If anything happens, Lane said that I should take them straight to campus security.

Over the course of the next week, I saw no reference to me in the chat room. At that point, I felt like I had made a lot out of nothing, and that this was all behind me. There was one strange incident in my criminology class with Quinn Stein again, however this was nothing more than Quinn walking by my desk humming a song. It was familiar to me but I couldn’t place it—at least not until a few hours later. The song had been running through my mind ever since class. I realized it was “Time is on My Side” by the Rolling Stones. That was on or about October 11<sup>th</sup>—I know it was definitely that week and our criminology classes run Monday-Wednesday-Friday.

And then, over the weekend of October 14<sup>th</sup> & 15<sup>th</sup>, there were three more references to “Jam” in the chat room. In all three instances, it was as if someone was waiting for me to jump into the chat room—within a second or two of my logging in, messages started appearing. Then a fourth one, the one that frightened me most, came on October 16<sup>th</sup> following what appeared to be a flurry of chatter about an upcoming symposium on world terrorism. This one read, “Anticipation is what it’s all about...building fear. You never know when you’ll be forced to face your greatest fear...is it suffocation, torture, painful, prolonged death? Which is it, Jam?”

When I didn’t respond, someone else jumped in and said, “Whoever you are, SirVive, knock it off.” As glad as I was someone else felt compelled to put a stop to it, it seemed to set the person off even more. SirVive responded, “I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression.” And, before logging off, SirVive posted a final message: “The clock is ticking, Jammer. Time is on my side.”

A short time later, I received an email with a subject line that read, “time’s a tickin.” The message was from user@TSULib.edu, which meant it was from one of the campus library computers. The campus computers allow you to sign on with your student ID, or as a “general student,” using the name “user@TSULib.edu” and your own password. The message read, “*SV may lose control at any time. How long will you last, my jamming friend? If you’re afraid, you better stay locked up in your second floor roost. You could be sorry. You could be dead.*”

The absolute final straw was the dead rat. On the 22<sup>nd</sup> of October, I came back from studying in the library and there was a dead rat hanging from a noose on my dorm room doorknob. I couldn’t believe it - it seemed like a nightmare and the nightmare was getting worse. I walked into my room and my computer was on and indicated that I had just received an email. Not really thinking, I got online and checked my email. There was one from “Ace of Spades” that read: “*Jam, you dirty rat... Now you see what happens to rats, you can’t run. You can’t hide, you can’t eat cheeeeeese, my precious, because you’ll be mine soon!!!!*” At that moment, I resolved to go to the campus police. The incident with Quinn humming that song came back in a flash. It seemed too coincidental.

I wanted someone else to see this—to reassure me that I wasn’t completely losing it. I got Lane, who immediately came down to my room. We printed the emails so that we had hard copies. I turned off the

computer, locked my dorm room, and headed straight to the campus police. The campus police immediately called Potomac County authorities. I recounted everything once we were all in the same room. That's when I learned how high-tech the campus computer system is. Every chat room discussion had been captured and was stored on disks in the security office. They had access to every chat room discussion thread and all they had to do was search for "Jam" and "Jammin" or other variations. Once they began searching, they found some vague references even I hadn't seen.

The police asked if I had any idea who might be targeting me, and I said I thought of one person—Quinn Stein—but that I didn't have any proof. I was relieved when, after their own investigations, they were led to Quinn. What I can't figure out is why Quinn would've chosen me to stalk. I keep questioning if my reaction to Quinn's report in class that day was what spurred all of this—maybe it made me an easy target.

During the investigation, we were told to keep using the chat room and not to discuss the investigation with anyone. It seemed that a few hours later people in the dorm knew about the rat thing and were making suggestions to change the name of the dorm to Rat Hall. I did not think this was funny at all. The next day some classmates approached me asking what had happened. I told them "nothing" as instructed by Lieutenant Glenn Sears and I have no idea how they knew about the emails or chat room threats. I am sure Lane said nothing either. I did notice that as soon as the investigation began and people were talking about it, the messages decreased. When that weird Quinn was arrested, the messages and everything else completely stopped.

*Jamie Walker*

Jamie Walker

**Witnesses for the Prosecution**  
**Lieutenant Glenn Sears, Maryland State Police**

My name is Glenn Sears. I am a Lieutenant with the Maryland State Police assigned to the TSU barracks. I have served with the Maryland State Police for twenty-two years. I graduated from the University of Maryland College Park campus with a Bachelor of Science in History. I then attended the University of Baltimore and completed a Master's Degree program in Criminology. We have a small barracks on campus and so we each have multi-specialties. My specialties are sex crimes, harassment, and Internet crime investigation. In 2001 I completed the FBI electronic and Internet crimes investigation course conducted at their training center at Quantico. It is a 72 hour course covering all aspects of electronic crime investigation and requires a passing grade of 90% or above for certification. I am currently certified and I have served as a resource and consultant to county and local police departments for the last five years. I co-authored with FBI Agent, Frank Nitty, the Maryland State Police Training Manual chapter on Electronic and Internet Crime Investigation. As part of my duties at TSU, I worked with Reilly Arthur of the Computer Science Department to develop the security and monitoring system for the campus chat room and email. The challenge is designing a system that provides security and monitoring while providing students and faculty free access.

On October 22, 2006, Jamie Walker and Lane Smith came to the station in an agitated state to complain about threatening messages that had been received by Jamie Walker via our university email and chat room services. The events culminated in their finding a dead rat hanging from Walker's dorm room door. Both were quite upset and I assured them that the matter would be taken seriously and that an investigation would commence immediately. During the initial meeting, I asked if they had any idea who it might be. Walker was not sure and had no proof, but did indicate that another student, a Quinn Stein, might have something to do with it.

I again assured them that we took the matter seriously and that the campus computer system had a number of security features and we would begin investigating immediately. I did explain that every university chat room discussion had been captured and was stored on disks in the security office. We had access to every chat room discussion thread and all we had to do was search for "Jam," "Jammin", or other variations of the names Jamie used or was called. I asked them not to discuss this matter with anyone, to continue acting as if nothing had changed and to use the chat room as they normally would. If anything occurred, they were to notify be immediately.

We began the investigation immediately as the messages did indicate an escalating pattern and the rat on Walker's dorm room door was significant. When we examined the chat room logs, we found that a student using the name "SirVive" and a couple of other names had posted chat messages to Walker. While some innocuous, others could be interpreted as threatening –almost as if this person was watching Walker. We determined that all the messages to the chat room had originated from the library and student union. This was possible as the campus computer system was developed so that we could monitor the chat room activities to ensure that all university protocols were being followed. Every chat room discussion had been captured and was stored on disks in the security office. So, for the period of time that began with the commencement of the semester in question and throughout our investigation, we were able to search the university chat room history on file using Walker's chat names, such as "Jammin" or "Jam," and identified those times anyone made comments to or about Walker. Once we located the references to Walker, we separated out the chats that did not apply to this case and we looked into those that did. Once we identified a chat thread that applied, we back-traced it. This allowed us to determine two things: when the person making the comments logged on and the location that the person logged into the chat room. We were also able to learn what the person's password was when he logged into the chat room. Our records indicated that the name and password used to enter the chat room by the person making the comments belonged to Quinn Stein—another student at TSU.

After examining the chat room files, we proceeded to explore the electronic mail. Email is also recorded and kept on discs in the security office. Using the same technique to search for "Jam" or "Jammin," as

we did with the chat rooms, we were able to locate all emails sent to Walker, and, upon review, we were able to isolate those that were associated to this case.

We found that all emails that were interpreted as threatening and/or harassing were sent from the library or student union. Although some were sent under different names, they had a common password. The password and names all belonged to a Quinn Stein and had been used by Stein at one time or another. There was a troubling issue related to the fact that on at least one occasion; Quinn did have an alibi as to being in a different place during the time we identified an email sent from the library to Jamie. Quinn was meeting with Professor Arthur across campus and was apparently not in the library at the time the email message was sent. However, there is software available as well as hardware that would have allowed Quinn to send a delayed email from the library while he was somewhere else. In my opinion, as Stein's minor is computer science, that would have posed him no real problem.

In our examination of the evidence surrounding the dead rat that was found hanging on Walker's dorm room door, we found no fingerprints or DNA evidence at all.

We have probable cause that Quinn Stein was stalking and harassing Jaime Walker based on the following things: My investigating and the information provided to us by Jaime Walker and Lane Smith, and the evidence we found linking Stein to the comments made in the chat room and emails. Consequently, we arrested Quinn Stein on October 30, 2006.

Glenn Sears

Glenn Sears

**Witness for the Prosecution**  
**Lane Smith**

My name is Lane Smith and I am Jamie's Resident Assistant (RA) at Tacoma State University. We both live on the second floor of Cardinal Hall. I am a sophomore at TSU. Jamie and I grew up in the same neighborhood. We both attended the same high school, but I graduated a year earlier. I do know Quinn Stein, who also lives in Cardinal Hall, but just in passing.

At our Residence Hall meeting, back in the beginning of the school year, one of the things that I discussed with the students was signing up for email and chat room capabilities. The administration requests that we cover this in the meeting in case students have any questions. I went over the procedures and university policies regarding its email and chat room, and encouraged students to take advantage of both. I explained the "red-button" alert system, and also told the students that they can come to me if they have any problems with emails or the chat room. The university instituted an electronic harassment policy some years ago when it first became a campus issue. To my knowledge, this has never happened before.

Looking back, the day everything seemed to begin was when Jamie and I had gone over to the student union. That was Tuesday, October 3<sup>rd</sup>. We were there about 5 minutes—we hadn't even gotten our coffee before Jamie grabbed my arm and spun me around to leave. I was completely baffled by Jamie's behavior. Afterwards, once we left the union hall and Jamie explained what had happened, I understood the reaction. As we were leaving, I glanced over my shoulder and saw Quinn sitting with friends. We both heard Quinn poking fun at Jamie's nickname—calling after us saying, "There goes Jam, the Jammer" or something like that. I remember Quinn making this weird little signal, as if pointing a gun and saying "pow." Honestly, I just remember thinking that this was a kid who hadn't quite grown up—the behavior was just inappropriate, or maybe immature better explains it.

The school requests that RAs keep a daily log of any and all issues that are brought to our attention. When Jamie asked me to read the chat room messages, I made sure I noted the incident in my log. Jamie did not appear to be overly upset or distressed about the situation, so I didn't push for notification of campus security. In retrospect, however, I think this was a mistake. At the time, we both figured it was nothing more than a stupid joke.

At that time, I requested that Jamie keep me notified of any additional incidents. It wasn't before long Jamie asked for my help again. On October 22, 2006, Jamie came to my room visibly upset and said "Someone hung a dead rat on my door and I got more emails." We don't often have these sorts of problems. Students will pull pranks, but this seemed really threatening and it appeared to be escalating. I suggested that Jamie make copies of the emails and that we notify campus police immediately. We went down to the room and, sure enough, there was a dead rat hanging from the door. Jamie showed me the two emails and we copied them to give to the authorities. This seemed way beyond anything I've experienced and Jamie was really upset. Jamie had missed some classes, and consequently had slipping grades. Jaime also wasn't sleeping well since the whole episode began.

The police were very helpful. Lieutenant Glenn Sears was the investigating officer and took statements from both of us. I must admit I was really relieved that the officer took it seriously. Lieutenant Sears informed us that the campus computer system has a number of security features and they would begin investigating immediately.

Lieutenant Sears also advised us not to say anything about the investigation but it seemed like only a couple of days till students were chattering about the rat attack and emails. Somebody suggested we change the name of Cardinal Hall to Rat Hall. At times I just don't understand people; they seem to love other people's misery.

Lane Smith  
Lane Smith

**Witnesses for the Defense**  
**Quinn Stein, Defendant**

My name is Quinn Stein and I do not know what is happening to me. My world has been turned upside down and I am innocent, -I have done nothing wrong. I am a student at TSU and I am working toward a B.S. in Criminology with a minor in computer science, or Information Technology. I am in the fall semester of my freshman year and I live on campus in Cardinal Hall. I live in the same dorm as Jamie Walker, but on the other side of the building.

I am not sure at all how all this began, but apparently, Jamie Walker has accused me of stalking and harassment. I think this is all bogus, to be honest. I mean Jamie was in my criminology course and ran out during my presentation on the psychological profile of serial killers. I got an "A" on that project and other students told me they thought it was solid and that it rocked. I guess Walker had a weak stomach or something. Anyway, the professor approved of Walker leaving class during my presentation. How can anyone be in a criminology program and not be able to handle crime scenes?

I have been accused of stalking Jamie Walker and I have no interest in, nor have I ever followed Walker around, -this is just plain stupid. OK, sure I have goofed around with other students and when I saw Walker I once pointed my finger and said "*pow.*" - Whoa, big deal. Jamie uses "Jam" and "Jammer" or "Jamming" or some such screen name when on line and I may have teased Walker by using those names, but I do that with a lot of students and my friends, -it is no big deal. I mean, those are the names Walker used, -I did not make them up. I now have learned that humming my favorite song, *Time is on My Side* by the Rolling Stones as I went to my seat in class is being considered harassment. I mean, what country are we living in?

I then learned that someone was apparently harassing and threatening Walker and using my nicknames in the chat room and to send emails. I did not do it, -someone else did! I do not know how they got my name or password and I have used several names such as "SirVive," "Ace of Spades," the "Hunter," and the "Detective," but never for anything important, just for the TSU chat room and email. I did not try to hide my names or password, as I did not care who knew them. I mean I never used it for anything important and I only used my Yahoo email account to buy things on line or to make payments. No one knows what password I use--that it is strictly confidential. As for the TSU chat room and email I used the password "*letmein.*" I mean come on, anyone could have figured that out and, on several occasions I even joked about using it with other students in the student union.

To top matters off, I am accused of sending Walker an email message from the library during the time that I was meeting with Professor Arthur across campus. Anyone can just ask Professor Arthur, I was with the professor for an hour from 2 to 3 in the afternoon when I "*allegedly*" sent the email at around 2:30. What kind of nonsense is this?!

I am interested in criminology because I want to become a criminologist. Why would I risk my future over this? I do not understand it.

Quinn Stein  
Quinn Stein

**Witnesses for the Defense**  
**Reilly Arthur, College Professor of Computer Sciences**

My name is Dr. Reilly Arthur. I am a professor of computer sciences at Tacoma State University. I received my Ph. D. in computer sciences and mathematics from the University of Maryland College Park and my Bachelor of Science and Master's degrees are from The John Hopkins University in Baltimore. I have been teaching at TSU for 10 years.

I was responsible for the design and development of the TSU chat room and electronic mail system. I also am responsible, with the assistance of Lieutenant Glenn Sears of the Maryland State Police, for the development of the security and monitoring of these systems. Of course, I am not responsible for the actual monitoring of the system, as we have others who perform that kind of work.

We have been pleased with the chat room and email systems in use at TSU. They have been designed to prevent the kinds of misuse and abhorrent activities found at other institutions of higher learning, we have worked well thus far. We have what we call the "red-button" alert that identifies key words and phrases and alerts the moderator to any seedy activities. I am certainly troubled that the alleged actions against Jamie Walker could have even occurred in our chat room or email system. It is obvious that the "red-button" words or phrases were not used or the system would have sent out an alert. The red-button system uses the latest computer analysis to look at individual words, phrases or threads or strings of words to determine if sexual harassment, pornographic information or threats of violence are being made. I am not sure you can even say harassment occurred if the "red-button" alert did not activate.

We designed the system to identify a student by their username and password. Each student would have their username that others would see and their password would be confidential to all but that particular student and the system. No other students would be able to access the student's username without the password and since the password was confidential, no one should be able to log on with someone else's username. That was the way the system was developed and run. Of course, students are students and they may have multiple usernames and share passwords. No system is infallible.

I am also upset that Quinn Stein, one of my better students, has been charged with the crime. I just cannot believe Quinn could have done something so dreadful. Furthermore, Quinn was meeting with me at the time Jamie Walker received an email with such inappropriate statements. If Quinn was with me at the time, does that not infer someone else must have sent the email? That is not to say it would not be impossible that a delayed email could have been sent, but to do so from a publicly accessible computer terminal in the library or student union is highly unlikely indeed. It would take a very experienced and knowledgeable person, not to mention the right kind of hardware and software, to make this happen. For that matter, there is hardware that could be utilized to uncover passwords, but similar to delayed emails, you are referring here to sophisticated hardware and experience.

I really believe that Quinn is innocent. "Quinn is such an intelligent student, with a great deal of knowledge in information technology. Someone with that type of background would surely know how to cover the tracks so as not to get caught..."

*Reilly Arthur*  
Reilly Arthur

**Witnesses for the Defense**  
**Cameron Jones, College Webmaster and student**

My name is Cameron Jones. I currently attend Tacoma State University. I am in the fall semester of my junior year and am working for a B. S. in Criminology. I live on campus in Cardinal Hall, one of the coed dorms on campus. I am working my way through school as the Webmaster for TSU. I received my Webmaster Certificate from Towson University-Terracedale. It was an intensive thirty-nine hour program. My job requires that I maintain and moderate the chat room at TSU and maintain the electronic mail and servers that TSU utilizes. The chat room at TSU is designed to give students a place to discuss classes, homework assignments, and be informed about test dates, as well the social events scheduled on the campus. A few times I have, as moderator, had to ask users to knock off what they were saying, but nothing I would call obscene or gross was ever said.

I plan to use my B.S. degree in Criminology to pursue a career in law enforcement. I am very interested in working for Homeland Security.

I am not a friend of Jamie Walker or Quinn Stein. I was in the same required criminology course as those two and knew them well enough to say hello if I ran into them on campus. I never saw them together. However, I do remember that Quinn gave one incredible presentation on serial killers and I thought it really “rocked”. I mean Quinn went into such detail regarding the murders and the mindsets of the individuals who did these killings. I sat on the edge of my seat during the presentation and was fascinated by the photos of the crime scenes and the explanations of the kind of people who commit these horrendous crimes. I do recall that during the presentation, Jamie Walker did get up and leave the classroom with the professor. Several of us wondered if Jamie was sick. The professor came back a minute later; however, I do not remember Jamie returning with him during that class period. After class, I remember several of us congratulating Quinn on the excellent presentation and laughing about how gory some of the photos were. Quinn was one of only 4 students that aced that project.

I was shocked to learn that Quinn was arrested for stalking and harassing Jamie. Quinn never appeared to me to be someone who could do those things, but I guess you just never really know about people. On the morning of October 16, I saw Quinn working in the library at a desk with no computer terminal. Quinn left for lunch around noon. This was one of the days Quinn supposedly sent Jaime and email message. I know this because Quinn stopped to say hello and told me in passing about the upcoming meeting with Professor Arthur after lunch at 2 in the afternoon. We both had the professor for a computer science class and we had commented that we thought that the professor was one of the brightest people we ever met.

I am still at a loss to think that Quinn could be responsible for such terrible things.

Cameron Jones

Cameron Jones

## POLICE REPORT

TACOMA POLICE DEPARTMENT FORM 83/11 POTOMAC Co. MARYLAND				1. NAME (LAST, FIRST, MIDDLE) AGE STEIN, QUINN 18		2. COMPLAINT NO. 1134768	
18. CAR NO N/A	19. POST TSU Campus	20. REPORTING Lt. Glenn Sears	STREET CODE 1113	3. ADDRESS 454 Cardinal Hall, Tacoma State University Maryland 20742		4. CUSTODY NO. 334TSU006	
21. TAKEN INTO CUSTODY (LOCATION & TIME) Cardinal Hall, Tacoma State University 7 PM						5. RES PHONE 301-555-5454	
22. LOCATION OF INCIDENT Tacoma State University		23. SOBRIETY N/A YES ___ NO ___		6. SCHOOL Tacoma State University		GRADE Freshman	
24. DATE & TIME OF INCIDENT N/A		25. NARCOTIC N/A YES ___ NO ___		7. ALIAS OR NICKNAME None		8. SOCIAL SEC. NO. 878-99-8989	
26. VEHICLE INVOLVED: LICENSE STATE YR N/A				10. EMPLOYEEED Student		BUSINESS PHONE N/A	
27. OFFICER IN CASE SEQ. NO. DIST. OR UNIT (1)Lt. Glenn Sears Md. State Police TSU Barracks				12. INCIDENT (EXPLAIN) Student arrested for stalking harassment and other TBD		13. COMP. FILED YES <input checked="" type="checkbox"/> NO	
28. COMPLAINANT Jamie Walker				ADDRESS CITY ZIP 212 Cardinal Hall Tacoma State University Maryland 20742		RES. PH BUS. PH 301-555-2212 N/A	
29. REPORTING PERSON Jamie Walker WITNESS Lane Smith				ADDRESS CITY ZIP 324 Cardinal Hall Tacoma State University Maryland 20742		RES. PH BUS. PH 301-555-2324 N/A	
30. ACCOMPLICE N/A				ADDRESS CITY ZIP N/A		PH NO. CUSTODY NO. N/A N/A.	
31. HOW TRANSPORTED N/A		32. CAR NO. N/A		33. SEARCHED BY SEQ NO. N/A		34. NATURE OF INJURY N/A	
35. HOSPITALIZED N/A							
36. NARRATIVE  ON OCTOBER 22, 2006 JAMIE WALKER AND LANE SMITH CAME TO THE OFFICE TO COMPLAIN ABOUT JAMIE RECEIVING THREATENING AND HARASSING EMAILS AND CHAT ROOM MESSAGES CULMINATING IN THE HANGING OF A DEAD RAT FROM JAMIE'S DORM ROOM DOOR AND THE THREAT THAT JAMIE COULD BE NEXT. AN INVESTIGATION WAS IMMEDIATELY COMMENCED ON OCTOBER 22 AND THE CHAT ROOM DISCS AND EMAIL FILES OF THE TSU COMMUNICATION SYSTEM WAS EXAMINED. THE REVIEW SHOWED A NUMBER OF HARASSING COMMENTS ON THE CHAT ROOM AND IN EMAILS THAT WERE TRACABLE TO ANOTHER STUDENT ON CAMPUS--QUINN STEIN. COMBINED WITH THE INFORMATION OBTAINED IN THE INTERVIEWS WITH JAMIE WALKER AND LANE SMITH, QUINN STEIN WAS ARRESTED AT 7:00 PM IN CARDINAL HALL ON THE TSU CAMPUS. HE DID NOT RESIST AND CAME ALONG WILLINGLY TO THE STATION AND HAS BEEN COOPERATIVE.							
37. <p style="text-align: center;">IMPORTANT NOTICE FROM THE CIRCUIT COURT OF <u>POTOMAC COUNTY</u>, DIVISION FOR <u>CRIMINAL</u></p> <p>You will receive a summons if a complaint is filed with the <u>Potomac County</u> Circuit Court. You are required to notify the Court Clerk's Office, Room 119 Courthouse, Mackly and Frankfurt Streets, 22993, 301-555-6787 of any change of address for you. Failure to obey a Court summons or give notification of change of address will result in re-arrest and a proceeding against you for Contempt of Court.</p> <p>I acknowledge receipt of this notice: <u>Quinn Stein</u> Date: <u>October 30, 2006</u></p>							

## Snapshot of chat room messages

### October 10, 2006--Chat room script

<Jammin>	-	Has entered the room - Welcome
<SirVive>	-	Jam's in the window. Exercise all you want, my friend, but you won't be able to run fast enough
<Bobcat>	-	I am outta here
<Surfer>	-	Anyone got the assignment from Bio 201 with Crabby?
<Junker>	-	Hey Sal you wanna see a movie tonight?
<SirVive>	-	"Jammin has been wearing school colors all week. Think blood won't show on those dark colors?"
<Bobcat>	-	Has left the room-Goodbye

*The record indicates that the person signing in as "SirVive" used the password "Letmein."*

### October 14, 2006--Chat room script

<Jammin>	-	Has entered the room - Welcome
<Sailor>	-	Anyone want to go sailing on the Bay with me next weekend?
<SirVive>	-	Jam is here are you Jammin?
<Sally10>	-	Hey Batman you going to the game Sunday?
<Loco22>	-	Has left the room - Goodbye
<Sandy01>	-	Lol
-	-	-
<Sirvive>	-	Jammin the Jammer

*The record indicates that the person signing in as "SirVive" used the password "Letmein."*

### October 15, 2006--Chat room script

< Jammin>	-	Has entered the room - Welcome
-	-	-
<BBQ>	-	Has left the room - Goodbye
<SirVive>	-	Well the Jam is here do not spread yourself to thin my sweet
<Honey>	-	Anyone know what time the concert starts tonight on the quad?
<Canoe>	-	Brb
<Tabby>	-	8pm Honey should be great!

*The record indicates that the person signing in as "SirVive" used the password "Letmein."*

### October 16, 2006--Chat room script

<Jammin>	-	Has entered the room - Welcome
<SirVive>	-	Anticipation is what it's all about...building fear. You never know when you'll be forced to face your greatest fear...is it suffocation, torture, painful, prolonged death? Which is it, Jam?"
<Master>	-	Whoever you are, 'SirVive', knock it off
<Whaler>	-	Has left the room - Goodbye
<SirVive>	-	I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression
<Tipper>	-	Is away from the computer
<SirVive>	-	The clock is ticking, Jammer. And, time is on my side.
<SirVive>	-	Has left the room - Goodbye

*The record indicates that the person signing in as "SirVive" used the password "Letmein."*

## Copy of two emails received by Jamie Walker

**October 16, 2006**

From: "user@TSULib.edu" <user@TSULib.edu>  
Reply-To: <user@TSULib.edu>  
To: <Jammin@TSU.edu>  
Subject: time's a tickin  
Date: Mon, 16 Oct 2006 14:29:57 -0400

SV may lose control at any time. How long will you last, my jamming friend? If you're afraid, you better stay locked up in your second floor roost. You could be sorry. You could be dead."

*The record indicates that the person signing in as "user@TSULib.edu" used the password Letmein."*

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**October 22, 2006**

From: "Ace of Spades" <AceofSpades@TSU.edu>  
Reply-To: <AceofSpades@TSU.edu>  
To: <Jammin@TSU.edu>  
Subject: Cheese  
Date: Sun, 22 Oct 2006 15:57 -0400

*Jam, you dirty rat... Now you see what happens to rats, you can't run. You can't hide, you can't eat cheeeeeeeese, my precious, because you'll be mine soon!!!!!"*

*The record indicates that the person signing in as "Ace of Spades" used the password "Letmein."*

Applicable Law

**Source:**

Maryland Code/CRIMINAL LAW /TITLE 3. OTHER CRIMES AGAINST THE PERSON/SUBTITLE 8. STALKING AND HARASSMENT /§ 3-801. "Course of conduct" defined.

**§ 3-801. "Course of conduct" defined.**

In this subtitle, "course of conduct" means a persistent pattern of conduct, composed of a series of acts over time, that shows a continuity of purpose.

[An. Code 1957, art. 27, §§ 123(a), 124(a)(1), (2); 2002, ch. 26, § 2.]

**§ 3-802. Stalking.**

(a) *"Stalking" defined.* - In this section, "stalking" means a malicious course of conduct that includes approaching or pursuing another where the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear:

(1) (i) of serious bodily injury;

(ii) of an assault in any degree;

(iii) of rape or sexual offense as defined by §§ 3-303 through 3-308 of this article or attempted rape or sexual offense in any degree;

(iv) of false imprisonment; or

(v) of death; or

(2) that a third person likely will suffer any of the acts listed in item (1) of this subsection.

(b) *Prohibited.* - The provisions of this section do not apply to conduct that is:

(1) performed to ensure compliance with a court order;

(2) performed to carry out a specific lawful commercial purpose; or

(3) authorized, required, or protected by local, State, or federal law.

(c) *Applicability.* - A person may not engage in stalking.

(d) *Penalty.* - A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

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

[An. Code 1957, art. 27, § 124(a)(1), (3), (b)-(d); 2002, ch. 26, § 2; 2003, ch. 313; 2004, ch. 25; 2005, ch. 25, § 1.]

**§ 3-803. Harassment.**

(a) *Prohibited.* - A person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other:

- (1) with the intent to harass, alarm, or annoy the other;
- (2) after receiving a reasonable warning or request to stop by or on behalf of the other; and
- (3) without a legal purpose.

(b) *Exception.* - This section does not apply to a peaceable activity intended to express a political view or provide information to others.

(c) *Penalty.* - A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both.

[An. Code 1957, art. 27, § 123(b)-(d); 2002, ch. 26, § 2.]

#### § 3-804. Misuse of telephone facilities and equipment.

(a) *Prohibited.* - A person may not use telephone facilities or equipment to make:

- (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another;
- (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another; or
- (3) a comment, request, suggestion, or proposal that is obscene, lewd, lascivious, filthy, or indecent.

b) *Penalty.* - A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$500 or both.

#### Source:

Maryland Code/CRIMINAL LAW /TITLE 3. OTHER CRIMES AGAINST THE PERSON/SUBTITLE 8. STALKING AND HARASSMENT /§ 3-805. Misuse of electronic mail.

#### § 3-805. Misuse of electronic mail.

(a) *"Electronic mail" defined.* - In this section, "electronic mail" means the transmission of information or a communication by the use of a computer or other electronic means that is sent to a person identified by a unique address and that is received by the person.

(b) *Prohibited.* - A person may not use electronic mail with the intent to harass:

- (1) one or more persons; or
- (2) by sending lewd, lascivious, or obscene material.

(c) *Construction of section.* - It is not a violation of this section for any of the following persons to provide information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic mail or to conduct surveillance of electronic mail, if a court order directs the person to provide the information, facilities, or technical assistance:

- (1) a provider of electronic mail;
- (2) an officer, employee, agent, landlord, or custodian of a provider of electronic mail; or
- (3) a person specified in a court order directing the provision of information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic mail or to conduct surveillance of electronic mail.

(d) *Exception.* - This section does not apply to a peaceable activity intended to express a political view or

provide information to others.

(e) *Penalty.* - A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$500 or both.

[An. Code 1957, art. 27, § 555C; 2002, ch. 26, § 2.]

### § 3-805.1. Spam deterrence.

(a) *Definitions.* -

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

(2) "Commercial electronic mail message" means an electronic message sent primarily for the purpose of commercial advertisement or promotion of:

(i) a commercial product;

(ii) a commercial service;

(iii) the content on an Internet website; or

(iv) a website operated for a commercial purpose.

(3) "Domain name" means any alphanumeric designation that is registered with or assigned by a domain name registrar, domain name registry, or other domain name registration authority as part of an electronic mail address on the Internet.

(4) "Electronic mail service provider" means any person, including an Internet service provider, that is an intermediary in sending and receiving electronic mail and that provides to the public the ability to send or receive electronic mail to or from an electronic mail account or on-line user account.

(5) "Financial institution" has the same meaning as provided in § 1-101 of the Financial Institutions Article.

(6) "Header information" means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying or purporting to identify a person initiating the message, and technical information that authenticates the sender of an electronic mail message for network security or network management purposes.

(7) The term "initiate", when used with respect to a commercial electronic mail message, means to originate or transmit the message or to procure the origination or transmission of the message and does not include actions that constitute routine conveyance of such message.

(8) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

(9) "Internet protocol address" means the string of numbers by which a location on the Internet is identified by routers or other computers connected to the Internet.

(10) "Materially falsified" means altered or concealed in a manner that would impair the ability of one of the following to identify, locate, or respond to a person who initiated an electronic mail message or to investigate an alleged violation of this section:

(i) a recipient of the message;

(ii) an Internet access service processing the message on behalf of a recipient;

(iii) a person alleging a violation of this section; or

(iv) a law enforcement agency.

(11) "Multiple" means:

- (i) more than 10 commercial electronic mail messages during a 24-hour period;
- (ii) more than 100 commercial electronic mail messages during a 30-day period; or
- (iii) more than 1,000 commercial electronic mail messages during a 1-year period.

(12) "Protected computer" means a computer used in intrastate or interstate communication.

(13) "Routine conveyance" means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(b) *Dissemination of spam prohibited.* - A person may not conspire to or knowingly:

- (1) use a protected computer of another to relay or retransmit multiple commercial electronic mail messages with the intent to deceive or mislead recipients or an electronic mail service provider as to the origin of the message;
- (2) materially falsify header information in multiple commercial electronic mail messages and intentionally initiate the transmission of the messages;
- (3) register, using information that materially falsifies the identity of the actual registrant, for 15 or more electronic mail accounts or on-line user accounts or two or more domain names and intentionally initiate the transmission of multiple commercial electronic mail messages from one or any combination of accounts or domain names;
- (4) falsely represent the right to use five or more Internet protocol addresses and intentionally initiate the transmission of multiple commercial electronic mail messages from the Internet protocol addresses;
- (5) access a protected computer of another without authorization, and intentionally initiate the transmission of multiple electronic mail advertisements from or through the protected computer;
- (6) violate item (1), (2), (3), (4), or (5) of this subsection by providing or selecting addresses to which a message was transmitted, knowing that:
  - (i) the electronic mail addresses of the recipients were obtained using an automated means from an Internet website or proprietary on-line service operated by another person; and
  - (ii) the website or on-line service included, at the time the addresses were obtained, a notice stating that the operator of the website or on-line service will not transfer addresses maintained by the website or on-line service to any other party for the purposes of initiating or enabling others to initiate electronic mail messages; or
- (7) violate item (1), (2), (3), (4), or (5) of this subsection by providing or selecting electronic mail addresses of recipients obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(c) *Penalties.* -

- (1) A person who violates subsection (b)(1), (2), (3), (4), or (5) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.
- (2) A person who violates subsection (b)(1), (2), (3), (4), or (5) of this section involving the transmission of more than 250 commercial electronic mail messages during a 24-hour period, 2,500 commercial electronic mail messages during any 30-day period, or 25,000 commercial electronic mail messages during any 1-year period is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

(3) A person who violates subsection (b)(3) of this section involving 20 or more electronic mail accounts or 10 or more domain names and intentionally initiates the transmission of multiple commercial electronic mail messages from the accounts or using the domain names is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

(4) A person who violates subsection (b)(1), (2), (3), (4), or (5) of this section that causes a loss of \$500 or more during any 1-year period is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

(5) A person who violates subsection (b)(1), (2), (3), (4), or (5) of this section in concert with three or more other persons as the leader or organizer of the action that constitutes the violation is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

(6) A person who violates subsection (b)(1), (2), (3), (4), or (5) of this section in furtherance of a felony, or who has previously been convicted of an offense under the laws of this State, another state, or under any federal law involving the transmission of multiple commercial electronic mail messages is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$25,000 or both.

(7) A person who violates subsection (b)(6) or (7) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$5,000 or both.

(d) *Forfeitures.* - In addition to any other sentence authorized by law, the court may direct that a person convicted of a violation of this section forfeit to the State:

(1) any moneys and other income, including all proceeds earned but not yet received by a defendant from a third party as a result of the defendant's violation of this section; and

(2) all computer equipment, computer software, and personal property used in connection with a violation of this section known by the owner to have been used in violation of this section.

(e) *Time limitations.* -

(1) An action brought under this subsection shall be commenced within 2 years after the commission of the act.

(2) The Attorney General may institute a civil action against a person who violates this section to recover a civil penalty not exceeding:

(i) \$25,000 per day of violation; or

(ii) not less than \$2 nor more than \$8 per commercial electronic mail message initiated in violation of this section.

(3) The Attorney General may seek an injunction in a civil action to prohibit a person who has engaged in or is engaged in a violation of this section from engaging in the violation.

(4) The Attorney General may enforce criminal violations of this section.

(f) *Construction.* - Nothing in this section shall be construed to have any effect on the lawfulness of the adoption, implementation, or enforcement by an electronic mail service provider of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages under any other provision of law.

[2004, ch. 470; 2005, ch. 25, § 1.]

No. 18, September Term, 2005

COURT OF APPEALS OF MARYLAND

389 Md. 387; 885 A.2d 816; 2005 Md. LEXIS 647

November 9, 2005, Filed

**PRIOR HISTORY:** [\*\*\*1] Appeal from the Circuit Court for Prince George's County pursuant to certiorari to the Court of Special Appeals. Case No. CT 02-0154X. Larnzell Martin, JUDGE. *Hackley v. State*, 161 Md. App. 1, 866 A.2d 906, 2005 Md. App. LEXIS 8 (2005)

**DISPOSITION:** JUDGMENT OF COURT OF SPECIAL APPEALS AFFIRMED, WITH COSTS.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Defendant was convicted of, among other things, stalking and was sentenced to five years in prison, all but two of which were suspended in favor of probation. The Maryland Court of Special Appeals affirmed the conviction. Defendant petitioned for certiorari.

**OVERVIEW:** At the time defendant was charged, the crime of stalking was set forth in former *Md. Code Ann., art. 27, § 124* (1996 Repl. Vol., 2001 Supp.). Defendant claimed that the crime of stalking required approaching or pursuing the victim and that the evidence failed to show that he engaged in that conduct. The instant court held that the crime of stalking did not require that defendant approach or pursue his victim. It concluded that any malicious course of conduct intended to place another person in reasonable fear of serious bodily injury or death or that a third person likely would suffer such harm constituted stalking. Notwithstanding defendant's protestations, there could be little doubt, and certainly no reasonable doubt, that his conduct satisfied that standard. There were four occasions, occurring within the period of a month - an initial vicious assault, leaving threatening letters on the victim's car, approaching the victim early in the morning in the same truck he drove on the first occasion coupled with a mysterious disappearance of the victim's dog, and leaving a book bag containing four more threatening letters on the victim's car.

**OUTCOME:** The judgment of the intermediate appellate court was affirmed.

**CORE TERMS:** stalking, approaching, pursuing, course of conduct, harassment, bodily injury, malicious, fine, threatening, reasonable person, hitting, assault, harass, kill, dog, statutory law, serious bodily injury, legislative history, period of time, specific person, family member, approached, neighbor, book bag, morning, annoy, stalk, gun, reasonable fear, third person.

**HEADNOTES**

*Criminal Law & Procedure > Criminal Offenses > Crimes Against the Person > Stalking & Intimidation*

[HN1] The crime of stalking does not require that the defendant approach or pursue his victim.

*Criminal Law & Procedure > Appeals > Standards of Review > Standards Generally*

[HN2] Where the State prevailed at trial, the appellate court views the evidence, and all inferences fairly deducible from the evidence, in a light most favorable to the State.

***Criminal Law & Procedure > Criminal Offenses > Crimes Against the Person > Stalking & Intimidation***

[HN3] The crime of stalking was set forth in former *Md. Code Ann., art. 27, § 124* (1996 Repl. Vol., 2001 Supp.). The offense is now codified, with only style changes, as *Md. Code Ann., Crim., § § 3-802*. The substantive part of the statute provided that a person could not engage in stalking and set forth the penalties for a violation. Subsection (a) defined "stalking" as a malicious course of conduct that included approaching or pursuing another person with intent to place that person in reasonable fear: (i) of serious bodily injury or death; or (ii) that a third person likely would suffer serious bodily injury or death. That subsection, in addition, defined "course of conduct" as a persistent pattern of conduct, composed of a series of acts over a period of time that evidenced a continuity of purpose.

***Governments > Legislation > Interpretation***

[HN4] In construing a statute, the court's predominant goal is to ascertain and effectuate the legislative intent. The court looks first to the words of the statute, assigning them their ordinary meaning, but reading them in the context of the statutory scheme.

***Governments > Legislation > Interpretation***

[HN5] See *Md. Code Ann. art. 1, § 30*.

***Governments > Legislation > Interpretation***

[HN6] There is no need to consider legislative history if the words of a statute are unambiguous.

***Criminal Law & Procedure > Criminal Offenses > Crimes Against the Person > Stalking & Intimidation***

[HN7] Any malicious course of conduct intended to place another person in reasonable fear of serious bodily injury or death or that a third person likely will suffer such harm constitutes stalking.

**COUNSEL:** ARGUED BY Allison E. Pierce, Assistant Public Defender (Nancy S. Forster, Public Defender, of Baltimore, MD) on brief FOR PETITIONER.

ARGUED BY Gregory D'Alesandro, Assistant Attorney General (J. Joseph Curran, Jr., Attorney General of Maryland, of Baltimore, MD) on brief FOR RESPONDENT.

**JUDGES:** ARGUED BEFORE Bell, C.J.; Raker, Wilner, Cathell, Harrell, Battaglia, Greene, JJ.

**OPINIONBY:** Wilner

**OPINION:** [\*388] [\*\*817] Opinion by Wilner, J.

Petitioner, Wendell Hackley, was convicted in the Circuit Court for Prince George's County of second degree assault, reckless endangerment, and stalking. Upon his conviction for stalking, he was sentenced to five years in prison, all but two of which were suspended in favor of probation. He appealed to the Court of Special Appeals, claiming that the crime of [\*389] stalking requires "approaching or pursuing" the victim and that the evidence failed to show that he engaged in that conduct.

The intermediate appellate court agreed that "approaching or pursuing" was an element of the offense but affirmed the conviction on the ground that Hackley's conduct amounted to approaching or pursuing his victim. *Hackley v. State*, 161 Md. App. 1, 866 A.2d 906 (2005). We granted Hackley's petition for *certiorari* to consider the two questions he raised in the Court of Special Appeals. Although we believe that the Court of Special Appeals misconstrued [\*\*\*2] the statute and shall hold that [HN1] the crime of stalking does not require that the defendant approach or pursue his victim, its erroneous interpretation does not assist Hackley. We shall affirm the judgment of that court and with it the stalking conviction.

## BACKGROUND

Most of the testimonial evidence in this case came from the victim, Devora P., and petitioner Hackley. Some of it was in dispute. [HN2] As the State obviously prevailed, we view the evidence, and all inferences fairly deducible from the evidence, in a light most favorable to the State. *State v. Albrecht*, 336 Md. 475, 649 A.2d 336 (1994), quoting *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). We therefore accept the version testified to by Ms. P.

Ms. P. had dated Hackley for an eight month period in 1991, during which she became pregnant. Her daughter, Adriana, was born in October, 1991. From the time they ended the relationship in 1991, Ms. P. had no contact of any kind with Hackley until November 17, 2001, when, about 7:30 in the morning, as she was sitting in her car in the driveway of her home about to go to work, Hackley appeared, walked over to the car [\*\*\*3] and asked "Where is my daughter?" Ms. P., surprised to see him, replied that Adriana was not there, whereupon he reached into his pocket, pulled out a gun, opened the car door, pulled Ms. P. out, and began hitting her in the head with the gun.

[\*390] Ms. P. called for her mother, who was in the house. When the mother came out, Hackley stopped hitting Ms. P., who, bloodied from the attack, ran into the house. The mother called 911. The tape of the call was admitted into evidence and played for the jury. Ms. P. went to the hospital and received at least eight stitches to close her wounds. An arrest warrant was issued two days later charging Hackley [\*\*818] with attempted murder n1 and first degree assault, although Hackley was not apprehended until December 28, 2001.

n1 There was evidence that Hackley attempted to fire the gun at Ms. P., and that he began hitting her with the weapon when it did not fire.

At some point, after November 17 and before December 16, Ms. P., as she was leaving to go to work, observed what turned out [\*\*\*4] to be two letters from Hackley under the windshield wiper of her car. With respect to the first incident - the assault - Ms. P. testified that her car was parked in her driveway, which photographic exhibits showed is immediately adjacent to her house. Ms. P. called the police. An officer responded, retrieved the letters, and gave them to Ms. P.

One of the letters is addressed to Ms. P., the other to Adriana. In the letter to Ms. P., Hackley acknowledged hitting her. He claimed that it was not really he, however, as, when he is on drugs, "another personality comes out of me, and he came over there to kill you on that day." Among other things, Hackley said in the letter that "if I see you with another man in these next few weeks I'm shooting no questions asked and that's a promise I will not break. I'm trying to warn you before I seriously hurt you, I think you now see what I'm capable of but that's nothing compared to what I have done before, and will do it again if necessary."

In his letter to Adriana, he professed great love for the child, with whom he had had no contact for nearly 10 years, although he warned her "no playing with boys and no boy friend until you are 18 years old, [\*\*\*5] No white boys or I kill with the quickness you can bet that . . ." He again acknowledged having assaulted Ms. P. and told the child "what I think I did [\*391] to her is nothing compared to what was going to happen that day. I came there to kill her and that's the truth . . ."

The surreptitious leaving of letters for Ms. P. and Adriana on Ms. P.'s car occurred on two subsequent occasions. On the first of those occasions, the letter addressed to Ms. P. began with the statement, "You have ten days left or the killing starts. Don't think police can stop me . . ." The letter to Adriana stated, "Your no good mother has only ten days before the killing starts. She thinks this is a game but she will find out very soon how real I am."

On the morning of December 14, 2001, Ms. P. and her children went briefly to a neighbor's house to arrange for the neighbor to pick up the children, presumably from school. As they left the neighbor's house, she saw Hackley coming up the street in the same truck he had used on November 17. She and the children ran into her house, and she called the police. That was the last day she saw her dog. The dog had been outside on a leash. She found the leash cut and the dog [\*\*\*6] gone.

Two days later, Ms. P. again called the police when she noticed a mysterious item on her car. The item turned out to be a book bag that Ms. P. had never seen before, inside of which were some children's clothes, a basketball, and four letters from Hackley, two addressed to Ms. P. and two to Adriana. The letters were more rambling than the earlier ones, but of the same tenor. They were threatening and asserted the futility of any attempt to stop Hackley from carrying out his mission. In one of the letters to Ms. P., Hackley advised that "I watch you almost every day, remember I have an [ ] A1 rifle that could hit you from 2 football fields away so don't play."

## DISCUSSION

At the time Hackley was charged, [HN3] the crime of stalking was set forth in [\*\*819] Maryland Code, Art. 27, § 124 (1996 Repl. Vol., 2001 Supp.). The offense is now codified, with only style changes, as § 3-802 of the Criminal Law Article. The substantive part of the statute provided that "[a] person may not [\*392] engage in stalking" and set forth the penalties for a violation. Subsection (a) defined "stalking" as "a malicious course of conduct *that includes* [\*\*\*7] approaching or pursuing another person with intent to place that person in reasonable fear: (i) of serious bodily injury or death; or (ii) That a third person likely will suffer serious bodily injury or death." (Emphasis added). That subsection, in addition, defined "course of conduct" as "a persistent pattern of conduct, composed of a series of acts over a period of time that evidences a continuity of purpose."

Hackley's defense is a stepped one. He contends, first, that, despite the fact that the statute defines "stalking" as a "malicious course of conduct that *includes* approaching or pursuing another person," approaching or pursuing another person is an essential element of the offense, and, unless the evidence showed that he approached or pursued Ms. P. in a series of acts over a period of time, his conviction for stalking cannot stand. Approaching or pursuing, he next insists, requires that the victim be aware of the fact that he or she is being approached or pursued, that the conduct must be committed in her presence. The evidence here, he avers, did not suffice to make that showing - that, at worst, it showed that he approached Ms. P. on only one occasion - when he pistol-whipped [\*\*\*8] her on November 17, 2001. Leaving letters and a book bag on her car, when she was not there to see him do it, does not, in his view, constitute approaching or pursuing her. We are not impressed. His argument has no merit.

The issue presented is one of statutory construction, and the rules for that are well defined. [HN4] Our predominant goal is to ascertain and effectuate the legislative intent. We look first to the words of the statute, assigning them their ordinary meaning, but reading them in the context of the statutory scheme. *See Cain v. State*, 386 Md. 320, 327-28, 872 A.2d 681, 685 (2005).

Section 124 did not define stalking as the approaching or pursuing of another person. It did not say that stalking "means" the approaching or pursuing of another with the [\*393] stated intent. Rather, it defined the crime as a malicious course of conduct that *includes* approaching or pursuing another person with the requisite intent. Article 1, § 30 of the Code deals directly and specifically with the meaning of "includes," when used in a statute. It states that [HN5] "the words 'includes' or 'including' mean, unless the context *requires* otherwise, includes [\*\*\*9] or including by way of illustration and not by way of limitation." (Emphasis added). Citing that statute, the Maryland Style

Manual for Statutory Law prepared by the Department of Legislative Services, an arm of the General Assembly, as "the style manual for drafting statutory law in Maryland," to "be followed in preparing any legislation for the General Assembly," directs legislative drafters to "use 'means' if the definition is intended to be exhaustive" ("Department' means the Department of Agriculture") and to "use 'includes' if the definition is intended to be partial or illustrative" ("Disinfect' includes to sterilize"). See MARYLAND STYLE MANUAL FOR STATUTORY LAW, Department of Legislative Services (Jan. 1998) at 27.

Application of those legislatively created interpretative mandates leads to the clear conclusion that "includes," as used in § 124, was intended to be illustrative of the kinds of malicious conduct that could constitute stalking, and not to limit the [\*\*820] crime to approaching or pursuing another person. The essential element is the malicious course of conduct, which, along with other things, includes approaching or pursuing another person, coupled with the stated [\*\*\*10] intent. Relying almost entirely on legislative history, Hackley asserts the contrary. He claims that, in light of a separate harassment statute and the fact that stalking statutes in other States include approaching or pursuing as elements, the Legislature, notwithstanding the language it used, must have intended for approaching or pursuing to be required elements of the Maryland offense.

[HN6] There is no need, of course, even to consider legislative history if the words of the statute are unambiguous, as we believe they are. The fact is, however, that the legislative history supports our view of the plain meaning of the language, rather than Hackley's stretched interpretation, and, as [\*394] that history is the essence of his argument, we shall comment on it.

The prohibition against stalking was first enacted in 1993. The Legislature had previously, in 1986, enacted a law against harassment which, when the stalking law was enacted, appeared in § 121A of Art. 27. The harassment law, after defining "course of conduct" precisely as it was later defined in the stalking law, made it a misdemeanor subject to a 90 day jail term and a \$ 500 fine for a person

"To follow another person in or [\*\*\*11] about a public place or maliciously engage in a course of conduct that alarms or seriously annoys another person:

- (1) With intent to harass, alarm, or annoy the other person;
- (2) After reasonable warning or request to desist by or on behalf of the other person; and
- (3) Without a legal purpose."

The stalking law emanated from two bills introduced into the 1993 session of the General Assembly - Senate Bill 7 and House Bill 433. The initial versions of the two bills were quite different, although, through the legislative process, they were conformed and were enacted in identical fashion. The initial version of Senate Bill 7 was not a stalking law, but rather an enhanced harassment law. It would have limited the existing harassment law to conduct that merely annoyed or was intended to annoy another person. The new crime of harassment would have been defined as

"engaging in a knowing and willful course of conduct that is directed at a specific person, including repeated following of a person, that

- (i) Causes the person to fear for the person's own safety or the safety of a family member;
- (ii) Would cause a reasonable person to fear for the person's own safety or the safety [\*\*\*12] of a family member; and
- (iii) serves no legitimate purpose."

[\*395] Engagement in that activity with intent to cause the other person to fear for the person's safety or that of a family member would have been a misdemeanor subject to one year in jail and a \$

1,000 fine. If the defendant, in carrying out that conduct, made a "credible threat" against the person being harassed, the penalty was increased to two years and a \$ 2,000 fine.

The Senate Judicial Proceeding Committee completely rewrote the bill and turned it into a stalking offense. With the committee amendments, which were adopted by the Senate, the bill made it a crime to "stalk another person with the intent to place that person in fear of bodily injury or death." The word "stalk" was defined as "to harass or repeatedly follow another person in such manner as (i) to cause that [\*\*821] person to suffer substantial emotional distress; and (ii) would cause a reasonable person to suffer substantial emotional distress." Three terms used in that provision - harass, repeatedly, and follow - were also defined. "Harass" was defined as "a course of conduct directed at a specific person which would cause a reasonable person to fear bodily injury [\*\*\*13] or death, including oral threats, written threats, vandalism, or nonconsensual physical contact." "Repeatedly" was defined as "two or more separate occasions," and "follow" was defined to mean "to maintain a visual or physical proximity over a period of time to a specific person in such a manner as would cause a reasonable person to fear bodily injury or death."

House Bill 433 took a somewhat different approach. The initial version prohibited stalking and defined "stalk" as "to engage in a knowing and willful course of conduct that involves an express or implied threat to kill another person or to inflict bodily injury on another person that is made: (i) with the intent to place that person in fear of bodily injury or death; and (ii) in any manner or context that causes that person to reasonably fear bodily injury or death." That conduct would have constituted a felony subject to a three year prison sentence and a fine of \$ 5,000, but, for a subsequent offense or if the person was subject to a domestic violence protective order when the conduct was committed, [\*396] the penalty would have been five years in prison and a \$ 10,000 fine. In neither version was approaching, following, or pursuing [\*\*\*14] a required element.

As occurred in the Senate with respect to Senate Bill 7, the House Judiciary Committee completely rewrote House Bill 433, to put it essentially in the form in which it was enacted. When Senate Bill 7 reached the House of Delegates, the House Judiciary Committee amended it to read precisely as House Bill 433 read with the House Judiciary Committee amendments. When House Bill 433 reached the Senate, the Senate Judicial Proceedings Committee amended it to read as Senate Bill 7 read when it passed the Senate. The two Houses were thus in disagreement, each insisting on its version of what the law should say. Both bills were referred to a Conference Committee, which opted for the House version of the bill, and, as noted, both bills were enacted in that manner. The necessary amendments were added to House Bill 433 to restore it to the form in which it passed the House, and both bills, appropriately enrolled, were signed by the Governor as 1993 Md. Laws, chs. 6 and 7.

The committee files with respect to both bills reveal two critical facts: first, that the Legislature was concerned that the existing harassment and assault laws were not adequate to deal with the kind of [\*\*\*15] conduct sought to be made criminal in the stalking law, and second, that it was well aware that many States had already adopted laws dealing with stalking and that the language used in those laws tended to differ from State to State. The Senate Judicial Proceedings Committee Floor Report on House Bill 433, as amended by that committee, notes, for example, that "a man who makes threatening telephone calls to his ex-wife several times a week would probably display the type of stalking behavior covered by the bill [, but] he would not be guilty of assault unless he showed the present intent and means to injure his ex-wife on the spot." The Floor Report also points out that "it is not always possible or feasible in [a] stalking situation for the victim to provide a reasonable warning or request to 'desist," which was a requirement of the harassment law. An intent to include a [\*397] series of threatening telephone calls as a form of stalking is clearly inconsistent with an intent to require a physical approaching or pursuing of the victim. Copies of and references to the laws in other States appear in the legislative files, [\*\*822] and the Legislature was thus aware that some of those laws defined [\*\*\*16] stalking in terms of following or pursuing the victim.

The General Assembly had before it not only that kind of information but at least four different versions of a stalking law - the original approach taken in Senate Bill 7, the original approach taken

in House Bill 433, the Senate Judicial Proceedings Committee rewriting of both bills, and the House Judiciary Committee rewriting of both bills. It ended up adopting the House Judiciary Committee version, which *included* approaching or pursuing the victim but did not limit the crime to that conduct. In light of the extensive legislative consideration given to the matter, we must assume that the ultimate articulation of the crime was deliberate and intended - that the language used denotes precisely what the Legislature intended. We thus hold that [HN7] any malicious course of conduct intended to place another person in reasonable fear of serious bodily injury or death or that a third person likely will suffer such harm constitutes stalking.

Notwithstanding Hackley's protestations, there can be little doubt, and certainly no reasonable doubt, that his conduct satisfied that standard. There were four occasions, occurring within the period [\*\*\*17] of a month - the initial vicious assault, leaving threatening letters on the victim's car, approaching the victim early in the morning in the same truck he drove on the first occasion coupled with the mysterious disappearance of the victim's dog, and leaving the book bag containing four more threatening letters on the victim's car.

**JUDGMENT OF COURT OF SPECIAL APPEALS AFFIRMED, WITH COSTS.**

#### Appendix A: Guidelines for Attorney Coaches

Please also refer to Appendix B: Guidelines for Judges.

## I. Approaches to Student Coaching

### A. Initial Sessions

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

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

### B. Subsequent Sessions

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

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

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

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

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

## II. Time Commitment

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

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

## Appendix B: Guidelines for Competition Judges

### I. Procedures for Scoring Competitions

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

- A. Special Point  
Always award the Special Point immediately after the close of the trial, and before adding the scores. This point will be used only in the event of a tie.
- B. Decorum  
Please be sure to score each 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 sheet).

## II. Time Limitations

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

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



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

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

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

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

Presiding Judge: \_\_\_\_\_ Date: \_\_\_\_\_

Teacher Coach, Defense: \_\_\_\_\_ Teacher Coach, Plaintiff: \_\_\_\_\_

Maryland State Bar Association  
2006-2007

Statewide High School Mock Trial Competition

Registration Deadline.....Friday, November 10, 2006

Mock Trial Guides mailed to teams who have registered and paid by 11/10/06 .....Wednesday, November 15, 2006

Circuit Competitions (1<sup>st</sup> level of competition)..... January 3-March 30, 2007

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**Note:** All Circuit competitions **MUST** be declared to CLREP (attention: [sbw@clrep.org](mailto:sbw@clrep.org)) no later than 3:00 p.m. on Friday, March 30, 2006.

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Regional Competitions (2<sup>nd</sup> Level)..... Tuesday, April 17- Wednesday, April 18, 2007  
(The eight Circuit Champions compete against one another in a single elimination round)

Semi-Final Competitions: Annapolis, MD..... Thursday, April 26, 2007

Statewide Finals: Annapolis, MD.....Friday, April 27, 2007

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

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### *Organizing Local Competitions*

#### **The Citizenship Law-Related Education Program will:**

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

#### **The role of the Bar Association is:**

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

#### **The role of the Circuit Coordinator is:**

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

#### **The role of the individual school/teacher coach is:**

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