2007-2008
Maryland State Bar Association
Statewide High School
Mock Trial Competition

State of Maryland v. Jessie Malloy

Managed by
the Citizenship Law Related Education Program
for the Schools of Maryland
www.crep.org

In cooperation with the
Maryland Judicial Conference Public Awareness Committee,
Executive Committee on Law Related Education,
& Maryland State Department of Education
# Important Contacts for the Mock Trial Competition

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November 6, 2007

Dear Mock Trial Participant:

Welcome to the 2007-2008 Maryland State Bar Association Statewide High School Mock Trial Competition. This is the 25th year for Mock Trial—over 38,000 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 the issues of aggressive/reckless driving. Automobile accidents are the #1 killer of teens in America so we hope that by exploring the issues in this case that everyone connected with mock trial will be more careful and cautious behind the wheel.

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.
Executive Director, CLREP
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PART I: ORGANIZATIONAL RULES

1. Local competitions must consist of at least two rounds with each participating high school presenting both sides of the Mock Trial case.

2. A team must be comprised of no less than eight (8) but a maximum of twelve (12) student members from the same high school, with the exception of high schools with a Maryland State Department of Education inter-scholastic athletics designation of Class 2A or Class 1A, which may combine with any other schools in the LEA in those classifications to field a team. Two “alternate” students are permitted during the local competition only. If a team advances beyond the local competition, an official roster must be submitted not exceeding 12 students.

3. A team may use its members to play different roles in different competitions. (See Part II: Hints on Preparing for the Competition). For any single contest round, all teams are to consist of three (3) attorneys and three (3) witnesses, for a total of six (6) different students. **For any single competition, a student may depict one role only of either witness OR attorney.**

4. Any high school which fields more than one team (Team A and Team B, for example) may NEVER allow, under any circumstances, students from Team A to compete for Team B or vice-versa. If a high school fields two teams, each team must have a different teacher coach and a different attorney coach than the other team. Additionally, if a high school has two teams, then those teams **MUST** compete against one another in local (circuit) competition.

5. A. Areas of competition coincide with the eight Judicial Circuits of Maryland. Each circuit must have a minimum of four (4) teams. However, in order to provide the opportunity for as many teams to participate as possible, if a circuit has two (2) or three (3) teams, they may compete in a “Round Robin” to determine who will represent the circuit in the circuit playoff. The runner-up team from another circuit would be selected to compete based upon their winning record and average points scored during local competition rounds. This team would compete with the circuit representative in a playoff prior to the Regional Competition. When a circuit has only one registered team, CLREP may designate another circuit in which this team may compete.

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

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

6. Each competing circuit must declare one team as Circuit Champion by holding local competitions based on the official Mock Trial Guide and rules. That representative will compete against another Circuit Champion in a single elimination competition on April 8 or 9, 2008.

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 7, 2007. 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. Upon the coaches’ review of, and signature on the score sheet, the outcome is final.

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. The student attorney who handles the opening statement may not perform the closing argument.

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.

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**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/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 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:
Relevant: Mr. Taylor, how closely were you following the pick up truck in front of you
when you first spotted the defendant’s car?

Irrelevant: Lieutenant Commander Tate, do any of the friends with whom you spent the
weekend have a reputation for heavy partying?

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.

Example:
Q. Is it true that Mrs./Mr. Taylor gave a fraudulent report to the insurance adjustor on his
last claim to your insurance company?

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: Corporal Smith, were you working on Sunday, June 24th?

Example of a Leading Question: Isn’t it true you were in a rush to see your family after
a long semester at school?

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: Corporal Smith, what happened on the afternoon of Sunday, June 24th?

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.

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: If Morgan Taylor testifies that one of the bystanders said, “You could have been killed!” and is doing so to illustrate the accident was a near fatality, this is hearsay because the bystander isn’t testifying—the witness is repeating something he or she heard.

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

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

B. EXCEPTIONS

RULE 402: ADMISSION AGAINST INTEREST. A judge may admit hearsay evidence if it was said by a party in the case and contains evidence which goes against the party’s side.

RULE 403: STATE OF MIND. A judge may admit hearsay evidence if a person’s state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person’s state of mind.

RULE 404: BUSINESS RECORDS. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of the information or the method of circumstances of preparation indicate lack of trustworthiness, shall be admissible. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and callings of every kind, whether or not conducted for profit.

RULE 405: EXCITED UTTERANCE. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

5. OPINION AND EXPERT TESTIMONY

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

**Example:** (Opinion on Outcome of Case) On direct examination by prosecution: Mr./Mrs. Austin, should Jessie Malloy be held responsible for leaving the scene of the Volvo accident?

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

**Example:** (Lack of Personal Knowledge)
Mr./Mrs. Austin, do you believe the defendant caused the accident because s/he was hurrying home to be with family after a long semester?

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

**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:** “Mr./Mrs. Austin, could the Volvo driver have stopped without hitting the defendant’s vehicle?”

**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.

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. Witness Taylor states that the family’s children were seriously injured and traumatized.

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

During Cross-Examination
Q: Witness Jones states that the pick up truck was going 55 mph when it “spiked the brakes.”

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

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: Mr./Mrs. Tate, what did the defendant do after swerving to the side of the road?"

A: S/he pulled off the highway, probably because s/he was shocked at being shot at while driving." (The witness doesn’t know why the defendant pulled over or even definitely that the car was shot, so this is speculation.)

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.
STATEMENT OF STIPULATED FACTS

Jessie Malloy is an A student at the University of Maryland in College Park, majoring in criminal justice. In the spring of 2007, Jessie completed junior year. After attending a criminal justice conference at the college on the weekend of June 23rd Jessie was going home to Gaithersburg.

On Sunday afternoon, June 24, Jessie was heading home going west on Route 50/301 driving a 2000 lime green two door Honda Civic with license plate PMPMYRD. The traffic was heavy with people returning from Ocean City. As Jessie passed exit 37, on Route 50/301, where the traffic was entering from Route 18 west onto Route 50/301, a black pickup truck raced in front of Jessie’s car coming close to sideswiping the Honda. Jessie swerved out of the way and beeped the horn several times. As the pickup pulled out in front of Jessie, the back window slid open and something resembling a gun barrel protruded from the window. It disappeared and then reappeared. The next thing Jessie knew was that a hole appeared in the windshield of the Honda as the pickup sped away. Jessie swerved to the side of the road and came to a stop on the shoulder.

After realizing that the car had been shot at, Jessie was determined to get the license and make of the pickup so the police could be informed. Jessie drove along the shoulder until s/he was able to merge. Jessie then began to weave through the cars, changing lanes frequently. On several occasions, Jessie found it faster to drive on the shoulder to make progress through the heavy traffic. As Jessie started to cross the Chesapeake Bay Bridge, a black pickup could be seen on the bridge ahead. Jessie slowly continued to close the gap between the two vehicles, beeping the horn and cutting in and out of lanes. At the end of the bridge, the traffic had slowed, so Jessie swerved onto the shoulder to the left of the passing lane to get closer to the black pickup—which was moving very slowly in the middle lane, caught in traffic.

Jessie saw that the traffic was beginning to thin out as it got closer to the toll booths, located on the eastbound side, and was able to cut back into the passing and then the middle lanes with no real trouble. The black pickup then moved into the right hand lane and picked up speed, so Jessie beeped the horn, and made several attempts to get over to the right lane. An opening appeared and Jessie cut over directly behind the pickup. All of a sudden, the pickup spiked the brakes and stopped short just as Jessie entered the lane behind it, forcing Jessie to do the same, just missing the pickup.

A 2007 Volvo V70 station wagon, now directly behind Jessie, swerved to miss Jessie’s Honda and ran into the guardrail. A family of four, including a mother, father, and young son and daughter, were in the Volvo. They all sustained minor injuries as the front and right side airbags deployed.

Jessie continued chasing the black pickup, which was still in sight. A truck diver, seeing the accident unfold, immediately called 911 to report the accident. While doing so, the truck driver witnessed the driver of the lime green Honda Civic with the license plate PMPMYRD, leaving the scene. The truck driver gave this information to the emergency operator. A Maryland state police trooper, who heard the description of the car leaving the scene of the accident, was just pulling onto Route 50 from East
College Parkway heading west at exit 32, when the lime green Honda passed by the state police car and was immediately pulled over.

Jessie Malloy was arrested and taken to the Maryland State Police Barrack J in Annapolis and the Honda was impounded.

The Maryland State Police and the Anne Arundel County Rescue Squad arrived on the scene of the accident shortly thereafter. The family was treated on the scene and taken to the local hospital for observation.

STATEMENT OF CHARGES AND DEFENSES

The State of Maryland charges Jessie Malloy with the following violations of the Maryland Code:

Count 1 - § 20-102. Driver to remain at scene -- Accidents resulting in bodily injury or death

Count 2 - § 20-104. Duty to give information and render aid

Count 3 - § 21-901.1. Reckless and negligent driving

Count 4 - § 21-901.2. Aggressive driving
   (1) Passing on right in violation of section 21-304 of the title;
   (2) Overtaking and passing vehicles section in violation of section 21-303 of this title;
   (3) Driving on laned roadways in violation of 21-309 of this title;
   (4) Following too closely in violation section 21-310 of this title; and,
   (5) Failure to yield right-of-way in violation of section 21-403 of this title.

Jessie Malloy denies all charges and claims and pleads not guilty.

WITNESSES TO APPEAR BEFORE THE COURT

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<td>Jamie Austin, Truck Driver</td>
<td>Dominique Tate, Driver of car also shot</td>
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<td>Casey Smith, Trooper, Maryland State Police</td>
<td>Tyler Jones, Forensic Ballistics Crime Scene Consultant</td>
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My name is Morgan Taylor. I am 35 years old. I am married and have two children. I have worked for ten years as an administrator for the United States Social Security Administration located in Baltimore. I live in Ellicott City.

On Sunday, June 24, 2007, at approximately 2:30 in the afternoon, I was driving my family home from Ocean City, where we had spent the weekend at the beach. We were heading west on Route 50/301. The driving was slow because of all the beach traffic. We were moving, however, and had just crossed the Chesapeake Bay Bridge in the right hand lane and were coming up to where the tollbooths are located on the eastbound side of the highway. Like I said, the traffic was heavy, but moving, and I had made sure to give about two car lengths between me and the black pickup directly ahead of me, when all of a sudden and seemingly out of nowhere, this lime green car cuts right in front of me from the middle lane and squeezes in between me and the pickup. Before I even had a chance to slow down, I saw the brake lights go on in front of me and could see that the car was skidding and the tires were smoking. It all happened so fast, all I could do not to hit the car was turn hard to the right . I ending up running into the guardrail along the side of the road.

The impact was hard enough to set off the front and right side airbags. I am so thankful we had purchased a 2007 Volvo V7 station wagon because I am sure it prevented my family from being seriously hurt. As it was, we were all in shock and slightly scraped and bruised from the airbags deploying. I also sustained a broken wrist. At first I could not see much because the passenger compartment had filled with dust or gas or whatever happens when airbags go off. But then I heard car doors shutting. The next thing I knew, there were a bunch of people coming to see if we were all OK. It is nice to know that people still do care about others.

About fifteen minutes later, the state police and emergency rescue people arrived. They took us to the hospital where we spent the rest of our day being treated for minor scrapes and bruises and my broken wrist. It was not until sometime in the evening that we were released to go home.

There was substantial damage to the front end and right side of our car, but the passenger compartment stayed intact. The repair cost to fix the damage was $8,224. I am so glad we bought a Volvo, but it all could have been avoided if the driver of that lime green car had not been so reckless and thoughtless about the safety of others on the road.

Morgan Taylor
Morgan Taylor
My name is Jamie Austin. I am 45 years old. I live in Cumberland. I am a truck driver by profession. I am an independent long-haul driver and deliver loads all over the country. I am also a member of the Million Mile Club. I have driven over one million miles and I have not had one accident. I have been driving trucks most of my life.

On June 24, 2007, I was driving a load from Wilmington, Delaware to Richmond, Virginia. I normally do not drive on a Sunday, but I had been away from home for too long and after this run that was where I was headed. The best way of getting there in my experience is taking 301 to 95 and heading south. That route takes me west right over the Chesapeake Bay Bridge and that is where I was at around 2:30 on Sunday afternoon. Driving an eighteen-wheeler over the bay bridge is quite an experience because you sit way up and the view is incredible. It also helps you see the traffic coming up from behind and way ahead of you on that bridge. It was about that time when I heard and spotted a lime green Honda Civic weaving in and out of the lanes on the bridge, and beeping. The little car passed me on the right and then pulled in front of me to pass another car, beeping all the while, before pulling back into the right hand lane. I remember thinking to myself, what an angry jerk. Why they put those noisemaker exhausts on a little bitty car makes no sense to me.

As I was coming off the bridge, the traffic had slowed down some, but I could see that it was thinning again at the end of the bridge. That is when I saw that same lime green car drive onto the shoulder of the road on the left to pass more cars. It cut back into the passing lane again and then into the middle lane.

Drivers were braking all over the place in order to avoid hitting that lime green car. In all my years of driving, I knew this was not going to end well. Sure enough, that little car cut right in front of a station wagon and right behind a black pickup. Then I saw red brake lights and tire smoke from skidding and I watched that station wagon just miss the lime green Civic and run right in to the guard rail. The Honda just kept on going and cut right back into traffic.

I used my radio to call 911 about the accident and told them that the car that caused it had left the scene. I described the car as a lime green two door Honda Civic and that it had a fancy noise making exhaust system and a license plate that I would never forget — PMPMYRD. I also told the operator that the driver of that car had to be really angry as I had witnessed the car cutting in and out of lanes and driving on the shoulder of the highway before the accident.

A number of people stopped to offer assistance and as I drove by the station wagon I saw that it was a family of four and that in general they appeared to be all right. The vehicle, on the other hand, had sustained significant front-end damage. Even though I wanted to finish my route I knew I should pull over so that I could let the police know that I had witnessed the accident and had made the call reporting it.
Witness for the Prosecution
Corporal Casey Smith

My name is Casey Smith. I am a Corporal with the Maryland State Police. I have been with the state police for almost eight years. Before joining, I was with the military police of the United States Army for four years. I am currently posted to Barrack J, which is located in Annapolis. Barrack J covers the southern areas of Anne Arundel County, which includes the Chesapeake Bay Bridge.

On Sunday, June 24, 2007, at approximately 2:35 in the afternoon I was just merging from exit 32 onto U.S. Route 50/301 heading west when I heard the dispatcher putting out an alert for a vehicle that had left the scene of an accident near the bay bridge. The vehicle was described as a lime green two door Honda Civic with the license plate PMPMYRD. It was also said to have a distinctive exhaust system. As I heard the alert going out over the radio, I immediately saw a lime green Honda Civic ahead of me on U.S. Route 50/301 with the PMPMYRD plate. There is nothing like being in the right place at the right time. I hit the lights and siren and told the driver of that vehicle, through my loud speaker, to pull over to the side of the road.

The Honda pulled over to the shoulder of the highway and I pulled up a short distance behind the automobile. At that point, the driver exited the vehicle and was coming back to my patrol car. I opened my door and staying behind it, stood and directed the driver to stop, turn around and place both hands on the trunk of the Honda. I informed the dispatcher that I had pulled over a lime green Honda Civic with the same license plate as mentioned in the alert.

The suspect complied with my request and I proceeded to walk over to the vehicle and asked the driver to show me a driver’s license and vehicle registration. The driver complied. After determining that the driver was Jessie Malloy and that the vehicle was registered in that name, I informed Malloy that it had been reported that said vehicle in question had been involved in an accident and that it had left the scene. I placed the driver under arrest and read the suspect the Miranda warning. Malloy was saying that a black pickup was involved in something and that s/he was trying to catch it to get the make and license plate. I said I saw no pickup and suggested that it might be better not to say anymore at this time.

I informed the suspect that we were going to the Maryland State Police Barrack J in Annapolis, and that the Honda would be towed to and impounded at a state police facility.

That same day, the 24th of June, I learned of the accident involving the Volvo that had taken place just west of the bay bridge in the westbound lanes of U.S. Route 50/301 and almost adjacent to the tollbooths located in the eastbound lanes. I also learned from Trooper Dale Smyth, the responding trooper to the scene, that witnesses had identified a lime green two door Honda Civic with license plate PMPMYRD as having caused the accident. We also received a phone call from a Lt. Commander Tate who reported that someone in a black pickup had allegedly shot at Mr. Malloy’s vehicle and may have also shot at the Lt. Commander’s vehicle. In our inspection of Malloy’s car, we found a small hole in his windshield but it was impossible to determine when the hole was made. We had no other corroboration of these allegations. Based upon the totality of evidence, we charged Mr. Malloy. As Trooper Stuart’s supervising officer, I was responsible for signing the accident report that he submitted concerning the matter.

Casey Smith
Casey Smith
My name is Jessie Malloy. I am twenty-one years old. I am a senior at the University of Maryland located in College Park where I am majoring in criminal justice. I have a 3.75 cumulative average.

After attending a criminal justice conference at Chesapeake College on the eastern shore after the semester had ended in June, I was planning to go home. I live in Gaithersburg. So on Sunday, June 24th, I was finally going home after a long but successful semester and a great conference.

I own a 2000 two-door Honda Civic DX Hatchback. It is bright lime green. I added the APEXi GT Spec Catback exhaust system, which makes the car look and sound like a real sports car in my opinion. I also splurged and got one of those special "vanity" license plates; it was done more as a joke because my mom and dad had made fun of my car for its color and the exhaust system. My license plate says PMPMYRD. People always stare at me when I get out of the car. I suppose I am not what they expect to see in a car like that and with that license plate.

As I always do, I got onto Route 50/301 to head back to Gaithersburg. On Sunday afternoon in late spring, I knew there would be a lot of traffic heading home from the beaches. As I passed exit 37 where Route 18 can enter Route 50, this huge black extended cab pickup merged into the traffic almost hitting me as it pulled in front of me. I slammed on my brakes and laid on the horn. I was upset that we almost collided. Then I saw the back window slide open and what appeared to me to be a long pipe stick out from the back window of the cab. I saw it disappear and then reappear. Then of a sudden I heard a noise and saw a hole appear in my windshield. I immediately pulled over to the side of the road and just sat there stunned, wondering what had just happened to me. I looked more closely at the windshield and saw a small hole with little spider-like legs all around it in the glass. I looked at the passenger seat and saw a small hole in the leather of the seatback. Whoever was in that pickup had shot at me. I knew it was important to get the make and license of the pickup to give to the police before they really hurt someone, so I was determined to get that information. I pulled back into the traffic heading toward the bridge and began my effort to catch up so I could make an identification of the perpetrator.

The traffic was heavy but I am a good driver and by weaving through the cars I knew I had a chance. When the traffic slowed, I found I could make better time by riding on the shoulder of the road. and When the traffic was moving, I moved back into the regular lanes. I was able to keep this up until I got to the bridge. Then I merged into the passing lane and that is when I noticed the top of the black pickup ahead of me on the bridge. The pickup was almost at the highest point of the bridge, which is just before you begin heading down toward the west end of the bridge. That is where I saw the pickup and I knew I might be able to get close enough to make out what make and model and more importantly get the license plate number. So, by beeping my horn and cutting in and out of lanes and passing the slower moving cars, I was able to really close the gap between us. As I left the bridge the traffic was slowing. I used the shoulder on the left of the road this time and was able to close the gap between us. The pickup was moving slowly in the middle lane of traffic, but I was still unable to get the license plate and make of the truck.

I noticed that the traffic was thinning as it got closer to the toll booths located on the eastbound side, and I was able to cut back into first the passing and then the middle lane. The black pickup moved into the right hand lane and I knew I had to make a move so I could read that plate. I saw an opening and cut over right behind the truck. The pickup was almost at the highest point of the bridge, which is just before you begin heading down toward the west end of the bridge. That is where I saw the pickup and I knew I might be able to get close enough to make out what make and model and more importantly get the license plate number. So, by beeping my horn and cutting in and out of lanes and passing the slower moving cars, I was able to really close the gap between us. As I left the bridge the traffic was slowing. I used the shoulder on the left of the road this time and was able to close the gap between us. The pickup was moving slowly in the middle lane of traffic, but I was still unable to get the license plate and make of the truck.

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the scene of an accident. I did not understand what the trooper was talking about, though. I didn’t hit anyone, and someone had shot at me.

I tried to tell the officer this, but the officer just said that no one was aware of any pickup and that it might be in my best interests if I said nothing further. The officer then placed me in the patrol car and informed me that my car would be towed and impounded.

I have an impeccable driving record. I have never received a ticket—in fact, I’ve never been pulled over prior to this incident. I do not make a habit of driving recklessly or erratically, and this was not my intent in this situation. All I wanted to do was get the make and model of that black pickup and the license plate. I never did get the number of the plate, but I do think it was either a Ford 150 or Toyota Tundra. I know for sure is that it was a large black pickup. If anyone caused the accident it was the pickup that shot at me and then slammed on its brakes when I finally caught up.

Jessie Malloy
Jessie Malloy
Witness for the Defense  
Dominique Tate

My name is Dominique Tate. I am 44 years old. I live in Annapolis, Maryland. I am a professor of mathematics at the Naval Academy and I hold the rank of Lt. Commander in the United States Navy.

I had just spent the weekend with friends at Ocean City staying at the Commander Hotel, where we have met on and off for over 20 years after graduating from the Academy. I was on my way back to Annapolis on June 24, 2007, driving west on Route 50/301 heading toward the Chesapeake Bay Bridge when I saw a black extended cab pickup enter the highway from exit 31. The truck was traveling at a high rate of speed in my opinion, directly in front of a lime green two-door Honda Civic Hatchback. I was about six or seven cars back but I heard the Honda lay on the horn. I saw what appeared to me to be the barrel of a gun, and I have seen a number in my time, stick out through the back sliding window of the pickup, and this was repeated twice. I heard what sounded like a plunk and plink on the front of my car. Shortly thereafter, I saw the Honda swerve to the side of the road and come to a stop on the right hand shoulder of the highway. I kept on going as everything appeared to be all right. I pulled off the highway just before the bridge to get a cold drink because I knew as soon as I crossed the bridge I would just head straight home without stopping.

When I left the store and was walking back to my car, I noticed that my right front head light was broken. I took a look at it and sure enough it had been shot out. I then realized that whoever was in that black pickup had shot at me and maybe even that lime green Honda. I got back on Route 50 and noticed that although the traffic was heavy it moved along rather well for a Sunday afternoon filled with people heading home from the beach. After crossing the Chesapeake Bay Bridge I saw that a Volvo had run into the guardrail on the right side of the road almost across from where the tollbooths are located on the eastbound lanes. Just as everyone else had done, I slowed down and saw that there had been a family in the car but there were a number of people already assisting so I proceeded on.

It was not much farther up the highway that I saw that the lime green Honda Civic had been pulled over and the driver was sitting in the back of a state trooper’s car. I was not sure why the car had been pulled over but if it had to do with that black pickup I thought what I had seen might be important. So I got in touch with the state police, reported what had occurred and after a few days and several phone calls, I was able to learn who was driving the Honda and I was able to get in touch with Jessie Malloy.

If I had known my car had taken a bullet, I also would have attempted to get the make and model of that truck and the license plate number so I could turn it over to the proper authorities. We just can’t let these crazy people take over our country. The wrong person was charged in this incident and I want to see justice prevail.

Dominique Tate  
Dominique Tate
Witness for the Defense
Tyler Jones

My name is Tyler Jones. I am 42 years old. I am a professor at the University of Maryland College Park in the Department of Criminology and Criminal Justice. I have been teaching for eight years and I have a Ph.D. from Rutgers University in criminal justice and a Master’s Degree in forensic science from John Jay College. Before teaching full time I served as a federal crime scene investigator for a number of years. I also have a forensics consulting business, “Be Sure” that provides forensics support to both the prosecution and defense when requested. I have served as an expert witness eighteen times in both state and federal cases.

I became involved in this matter because Professor Moriarty, who is Jessie’s professor asked me to look into the case. I was intrigued by Jessie’s story and so I agreed to take the case pro bono. I am not receiving a fee to testify. I am well known by the Maryland State Police as I have done work for them many times and I was also known for my crime scene work with the federal government. They had no problem allowing me to examine the car while it was still impounded. I also examined the accident scene where the Volvo had impacted the guardrail on Route 50.

I examined Jessie’s automobile and found a small hole, with spider webbing around the circumference, in the lower right side of the windshield. The hole was approximately 4.5mm in diameter and was obviously made by a projectile of some kind. After examining the interior of the vehicle, I found a small hole in the leather upholstery of the seatback of the front passenger seat. Imbedded in the back of the seat was a small performance ballistic alloy 4.5 mm or .177 caliber pellet. It was the one of the Gamo type ammo made for hunting. It is made of an alloy—not lead, and therefore has tremendous impact power and can travel at about 1200fps. This ammunition could be fired from almost any air or gas pellet gun. As you will note from the photograph of the pellet itself, it maintains most of its original shape even after impact as it is designed for penetrating a target.

I visited the site of the accident on Thursday, June 28, where the Volvo had driven into the guardrail on the west bound lanes of Route 50/301 after exiting the Chesapeake Bay Bridge, almost due north of the tollbooths located on the eastbound lanes. It had not rained since the accident on June 24th, so I was still able to see the black tread marks made by Jessie Malloy’s Honda. I was also able to view the marks left by the black pickup truck when it spiked its brakes. I could see clearly where both vehicles had used their brakes and left tire tread marks. I also noted that the Volvo left no tread marks which indicates that the driver did not try to brake, but rather swerved to avoid the car directly ahead and drove into the guardrail.

I have no way to determine what speed the pickup was traveling to create the tread marks, because they were only five feet in length. It appears that the vehicle only applied the brakes to start a tread mark and then stopped braking almost immediately and continued on. This action would, however, cause the driver traveling directly behind the vehicle that “spiked the brakes” to assume, in a split second, that the vehicle directly ahead was stopping quickly. Consequently, the second driver would also slam on his or her brakes. The second set of tire tread marks that I found behind the first set of tire marks had to be from Jessie Malloy’s vehicle. Everything that Jessie recounted to me solidifies my theory.

Based on the forty-foot length of the tread marks made by Jessie’s car, the vehicle could not have been doing more than 30 mph at that time. Based on the conditions of the road, which were dry on June 24th, and the road being made of concrete, I used the accepted formula to determine the speed of Jessie’s vehicle.

The equation that is used in determining a vehicle’s speed from the tread marks found is:

\[ \text{Speed} = \sqrt{30 \times d \times f} \]

\[ S = \text{speed}, \quad 30 \text{ is a constant, } d = \text{distance of skid}, \quad f = \text{coefficient of friction or drag factor} \]
What this equation states is that the square root of the sum of: 30 x d x f will equal the vehicle’s speed calculated from skid marks. What this means is that the formula calculates a vehicle’s speed if it had skidded to a stop without striking anything. The Coefficient of Sliding Friction on clean surfaces has been determined in general to be .65 - .85 for tires on dry concrete or asphalt.

On further analysis of the accident scene it is also my professional opinion that, based upon where Jessie first began braking and skidding to a stop, and where the Volvo must have left the road in order to crash into the guardrail where it did, it is possible that had the Volvo tried to stop, it would not have run into the rear of the Jessie Malloy’s vehicle — if the traffic had been moving at roughly the same speed.

Tyler Jones

Tyler Jones
Two photographs of comparison of pellet recovered from Jessie Malloy’s vehicle on left with same ammo not fired on the right

1. [Image of comparison photograph]

2. [Image of comparison photograph]

GAMO RAPTOR P.B.A. PELLETS  Cal: .177 / 4.5mm

Raptor Performance Ballistic Alloy, the first non-lead Alloy Airgun Ammunition that increases velocity up to 25% over lead, while maintaining match grade accuracy. Specifically designed as a hunting load, the new P.B.A. enables airguns which normally shoot 1000 f.p.s. to shoot up to 1200 f.p.s., with tremendous penetration. In fact, the ammunition is 50% harder than lead causing penetration to be enhanced by up to 100% in tests in actual hunting situations as well as ballistic mediums. Raptor P.B.A. test results show ballistic stability at super-sonic speeds and up to 90% weight retention using the new semi-pointed design. 177cal / 4.5mm
How to use the chart:

1. To Determine the speed in mph after the vehicle has stopped sliding. This might be zero, but generally won’t be zero. If the vehicle strikes something at the end of the skid, it is still moving and this residual velocity must be allowed for when using the chart.

2. Move out (horizontally) on a speed line until it hits one of the curves, the lower is for a 0.7 drag factor, the upper is for 0.8. This is the starting point for finding the speed drop associated with a given length of skid marks with a given residual speed after the mark ends.

3. Move out the length of the longest single skid mark, then move up until you hit the curve again to find the original speed.
**State of Maryland Motor Vehicle Accident Report**

**INVESTIGATING OFFICER ID:** Trooper Dale Stuart  
**AGENCY AND AREA:**  
**SUPERVISING OFFICER ID:** Cpl. Casey Smith  
**REVIEWER #:**  
**CODE - NAME OF MUNICIPALITY:** Annapolis, MD  
**COUNTY:**  

**RD CHN #**  
**RD COND #**  
**RD DIV #**  
**DIR COND #**  
**DIR DIV #**  
**CELL #**  
**LIGHT #**  
**WEATHER #**  
**UNIT #**  
**NAME (First, Middle, Last):** Morgan Taylor  
**ADDRESS (No., City, State, Zip):** 7 Hill St. Ellicott City, Md. 21043  
**DRIVER’S LICENSE NUMBER:** M-152-406-568-003  
**TYPE OF UNIT:**  
**SHIPMENT #**  
**SUPPORTING INJURY:**  
**VOCATION:**  
**IDENTIFICATION #:**  
**DATE OF BIRTH:**  
**SEX:**  
**HEIGHT:**  
**WEIGHT:**  
**DAMAGED VEHICLE ID:**  
**MILEPT:**  
**DIST. OF ACCR TO INJ-RT/REF:**  
**NORTH:**  

**ACCIDENT DATE:** 06 24 07  
**ACCIDENT TIME:** 14 30  
**REPORT #:** 08140220  
**RESEARCH:**  
**LOCAL CASE NUMBER:** 7968  
**LOCAL CODES:**  
**PHOTOS #:**  
**NO:**  

**INJURED #**  
**INJURED NAME:** Dakota Taylor  
**INJURED ADDRESS:** 7 Hill Street Ellicott City, MD 21043  
**INJURED SEX:**  
**INJURED AGE:** 99  
**INJURED EQUIP:**  
**INJURED SEVER:**  
**INJURED ELEC:**  
**INJURED SMS UNIT:**  
**INJURED公社 TO:** AA Medical Center  
**INJURED RUN #:** 679  
**INJURED #**  
**INJURED NAME:** Kendall Taylor  
**INJURED ADDRESS:** 7 Hill Street Ellicott City, MD 21043  
**INJURED SEX:**  
**INJURED AGE:** 00  
**INJURED EQUIP:**  
**INJURED SEVER:**  
**INJURED ELEC:**  
**INJURED SMS UNIT:**  

**Vehicle:**  
(a lime green Honda Civic-PMPYRMD) cut into lane.  
Vehicle One was in Right Hand Lane almost across from toll booths on Eastbound side. Vehicle One turned right and crashed into guardrail of Westbound lane. Sustained front end and side right damage. All passengers (4) injured and taken to hospital.
Statutory Law

§ 20-102. Driver to remain at scene -- Accidents resulting in bodily injury or death

[Maximum penalty: $3000 fine &/or 1 year of incarceration]

(a) Bodily injury. --
(1) The driver of each vehicle involved in an accident that results in bodily injury to another person immediately shall stop the vehicle as close as possible to the scene of the accident, without obstructing traffic more than necessary.
(2) The driver of each vehicle involved in an accident that results in bodily injury to another person immediately shall return to and remain at the scene of the accident until the driver has complied with § 20-104 of this title.


§ 20-104. Duty to give information and render aid.

[Maximum penalty: $500 fine &/or 60 days of incarceration]

(a) Rendering assistance. - The driver of each vehicle involved in an accident that results in bodily injury to or death of any person or in damage to an attended vehicle or other attended property shall render reasonable assistance to any person injured in the accident and, if the person requests medical treatment or it is apparent that medical treatment is necessary, arrange for the transportation of the person to a physician, surgeon, or hospital for medical treatment.

(b) Duty to give certain information. - The driver of each vehicle involved in an accident that results in bodily injury to or death of any person or in damage to an attended vehicle or other attended property shall give his name, his address, and the registration number of the vehicle he is driving and, on request, exhibit his license to drive, if it is available, to:
   (1) Any person injured in the accident; and
   (2) The driver, occupant of, or person attending any vehicle or other property damaged in the accident.

(c) Exhibiting license. - The driver of each vehicle involved in an accident that results in bodily injury to or death of any person or in damage to an attended vehicle or other attended property shall give the same information described in subsection (b) of this section and, on request, exhibit his license to drive, if it is available, to any police officer who is at the scene of or otherwise is investigating the accident.

(d) If no one able to receive information. - If a police officer is not present and none of the specified persons is in condition to receive the information to which the person otherwise would be entitled under this section, the driver, after fulfilling to the extent possible every other requirement of § 20-102 of this title and subsection (a) of this section, immediately shall report the accident to the nearest office of an authorized police authority and give the information specified in subsection (b) of this section.

§ 21-901.1. Reckless and negligent driving

(a) Reckless driving. -- A person is guilty of reckless driving if he drives a motor vehicle:
   (1) In wanton or willful disregard for the safety of persons or property; or
(2) In a manner that indicates a wanton or willful disregard for the safety of persons or property.

[Maximum penalty: $1000 fine]

(b) Negligent driving. -- A person is guilty of negligent driving if he drives a motor vehicle in a careless or imprudent manner that endangers any property or the life or person of any individual.

[Maximum penalty: $500 fine]


§ 21-901.2. Aggressive driving

[Maximum penalty: $500 fine]

A person is guilty of aggressive driving if the person commits three or more of the following offenses at the same time or during a single and continuous period of driving in violation of:

(1) § 21-202 of this title (Traffic lights with steady indication);
(2) § 21-303 of this title (Overtaking and passing vehicles);
(3) § 21-304 of this title (Passing on right);
(4) § 21-309 of this title (Driving on laned roadways);
(5) § 21-310 of this title (Following too closely);
(6) § 21-403 of this title (Failure to yield right-of-way); or
(7) § 21-801.1 of this title (Exceeding a maximum speed limit or posted maximum speed limit).

[2001, ch. 520.]
Defendant was convicted in the Circuit Court, and Anne Arundel County, H. Chester Goudy, Jr., J., of leaving the scene of a personal injury accident, negligent driving, changing lanes when unsafe, and driving vehicle with unsafe tires, and he appealed. The Court of Special Appeals, Garrity, J., held that: (1) defendant whose vehicle went from the right southbound lane to the left southbound lane, crossing the middle lane without stopping, cutting off victim's vehicle, and allegedly causing victim to swerve into northbound lane and collide head-on with tractor trailer truck, resulting in victim's death, was “involved in an accident” within meaning of “hit and run” statute, even though driver's vehicle did not collide with another vehicle. Code, Transportation, § 20-102.

[2] Statutes 361 241(1)

361 Statutes
361VI Construction and Operation
361VI(B) Particular Classes of Statutes
361k241 Penal Statutes
361k241(1) k. In General. Most Cited Cases
Rule that penal statutes should be strictly construed does not suggest that statute must be construed in its narrowest possible light; indeed, interpretations of criminal statute that are unreasonable, illogical, or inconsistent with common sense are avoided whenever possible.


48A Automobiles
48AVII Offenses
48AVIII(A) In General
48Ak336 k. Neglect of Duty After Accident. Most Cited Cases
Physical contact is not required for one to be “involved in an accident” within meaning of “hit and run” statute. Code, Transportation, § 20-102.


48A Automobiles
48AVII Offenses
48AVIII(A) In General
48Ak336 k. Neglect of Duty After Accident. Most Cited Cases
Purpose of “hit and run” statute is to discourage driver of vehicle which has been involved in injury-causing accident from abandoning persons in need of medical care and to prevent driver from attempting to avoid possible liability. Code, Transportation, § 20-102.

We shall be concerned with whether a driver whose vehicle has not made physical contact with another may be considered to have been “involved” in a personal injury “accident” and convicted of leaving its scene.

*747 The appellant, Christopher John Comstock, was convicted in the Circuit Court for Anne Arundel County (Goudy, Jr., J.) of leaving the scene of a personal injury accident, negligent driving, changing lanes when unsafe, and driving a vehicle with unsafe tires. On appeal, he presents the following questions for our consideration:

I. Whether the trial court properly found that the appellant was “involved in an accident” for purposes of the crime of leaving the scene of a personal injury accident (Transp. Art. § 20-102) after it specifically found that the appellant's vehicle did not strike that of the victim;

II. Whether knowledge of the accident or injury is a necessary element of the crime of leaving the scene of a personal injury accident; and

III. Whether the evidence was sufficient to support the appellant's conviction of leaving the
scene of a personal-injury accident.

Factual Background

On February 15, 1989, Pamela Kitchen was killed in an automobile accident as she was driving south on Ritchie Highway near its intersection with Arnold Road in Arnold, Maryland. The circumstances surrounding the accident were detailed at trial in the testimony of various eyewitnesses.

Witness John Hopkins, who was driving in the southbound middle lane of Ritchie Highway, observed the appellant's car pass him on the right at what he deemed a fairly high rate of speed, pull into the middle lane and continue "right on across into what was the left lane" without stopping. Hopkins observed that Kitchen's vehicle, also proceeding southbound in the left lane, "slammed on the brakes" and "swerved to the left" to avoid the appellant's approaching car. Hopkins stated that after this collision, the appellant did not slow or stop his vehicle.

Witness Thomas Tamburello was driving behind Kitchen's vehicle in the left lane. He also testified that the appellant went from the far right lane to the left lane "without any hesitation," simply passing through the middle lane. Hopkins observed that Kitchen's vehicle, also proceeding southbound in the left lane, "slammed on the brakes" and "swerved to the left" to avoid the appellant's approaching car. Kitchen's car continued left into and beyond the median and struck a tractor trailer truck head on as it was traveling northbound on Ritchie Highway. Hopkins stated that after this collision, the appellant did not slow or stop his vehicle.

Witness Virginia Shay was also traveling southbound in the middle lane and observed the appellant's car pass on the right, cut in front of her, and immediately pull into the left lane without pausing in the middle lane. She stated that she initially thought that the appellant's car had struck Kitchen's car, and testified that "the [appellant's] car straddled both lanes to avoid [Kitchen's] car and went straight, and [Kitchen's] car veered off into the median strip and then slipped into the northbound lane and ran into the tractor trailer." She, too, testified that the noise from the collision was "very loud," and that the appellant continued in the left lane without stopping.

Witness Mike Wetklow was a passenger in the back of the vehicle driven by the appellant. He related that after the appellant drove through the Arnold Road traffic light, he crossed from the far right lane into the left lane. Wetklow stated that he saw Kitchen's car in the left lane and warned the appellant of it. He stated that the appellant came "pretty close" but did not collide with Kitchen's car.

Witness Thomas Tamburello was driving behind Kitchen's vehicle in the left lane. He also testified that the appellant went from the far right lane to the left lane "without any hesitation," simply passing through the middle lane. He stated that the appellant came "within an eyebrow" of Kitchen's car, before Kitchen maneuvered to the left. Tamburello further related that the noise from the impact of the collision was "quite loud" and that, following the collision, he did not see the brake lights on the appellant's car go on.

At the time of the accident, witness Tamburello was employed as a Special Agent with the Secret Service branch of the Department of Treasury. He testified that after witnessing the collision he pursued the appellant's vehicle and was able to ascertain its license tag number, which he reported to the police.

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Witness Mike Wetklow was a passenger in the back of the vehicle driven by the appellant. He related that after the appellant drove through the Arnold Road traffic light, he crossed from the far right lane into the left lane. Wetklow stated that he saw Kitchen's car in the left lane and warned the appellant of it. He stated that the appellant came "pretty close" but did not collide with Kitchen's car.

The appellant then "jerked back" into the right lane as Kitchen swerved to the left, lost control of her car and crossed the median strip. He also heard the sound of the collision. He elaborated:

Officer Scott Pittaway of the Anne Arundel County Police investigated the accident. Based on the description and tag number of the appellant's vehicle given to him by the above witnesses, Officer Pittaway located the vehicle in the appellant's driveway five days after the accident. After examining both the appellant's and victim Kitchen's cars, he concluded that the appellant's vehicle had not actually struck Kitchen's.
I heard the crash. I looked back. Saw her car with the truck on the other side of the road across the median strip. Chris slowed down. He asked me what had happened and like if it was his fault. And, I guess I just told him that he just cut her off and she lost control of her car.

Wetklow stated that the appellant slowed down to about 20 miles per hour and pulled over to the side of the road, but did not **120 stop. Wetklow opined that the appellant “just didn't know what to do.”

The appellant testified that as he started moving his vehicle into the left lane, he heard witness Wetklow's warning and he immediately turned his car back into the right lane. The appellant recalled Wetklow's saying, “[y]ou almost hit that lady.” The following interchange then occurred on cross-examination between the State's Attorney and the appellant:

Q: Okay, but, Mike [witness Mike Wetklow] told you that there was a car coming and that you shouldn't get in that lane. That might not have been the words, but that's what you understood he was telling you, right?
A: Right, I pulled back, yes.
Q: And, he also told you that that was the car that got in the accident?

* * * * * *

**750 A: I didn't know what car, you know, it happened so fast, you know, it was just a loud noise. You know it's not something you hear every day. I didn't know how, you know.
Q: I think in response to [defense counsel’s] questioning, you said that he told you that car hit a truck?
A: Yes.
Q: And, that car is the car that you were cutting in front of?
A: Yes.
* * * * * *

Q: Were you curious as to what had happened?
A: Yeah.
Q: Did you do anything as a result of that curiosity?
A: I kept driving in the right lane. And, then heard a noise. And, I said, I was like what was that. And, Mike said that that car hit the truck. I guess he saw that. I started pulling over and ...
Q: Pulling over in which direction?
A: Onto the shoulder.
Q: Okay.
A: I slowed down and I looked out my window. I looked back and I couldn't see anything.

In finding the appellant guilty of the above-noted offenses, the trial judge concluded as follows:
The incident involved three vehicles going in parallel directions. And, what you did was violate the law and didn't keep a proper lookout and you made an illegal lane change. You made an illegal lane change too close to other vehicles. You caused the vehicle in the left lane to lose control, go left of center, lose control in the median ... It's just simple negligence yes, gross negligence no.

* * * * * *

There's no evidence of impact between you and the other vehicle. And, of course, no evidence of impact on your car. There is substantial evidence of impact on Ms. *751 Kitchen's car and for that reason the court finds you heard the impact and had to know that there was a substantial impact, know that personal injuries occurred or beyond a reasonable doubt had occurred.

As I mentioned before there’s no damage to your vehicle. The court finds that you did slow down, pull off. The other passenger told you that you cut the vehicle off. The question is not whether you were at fault for the accident, the question is whether you were involved in an accident. And, the Court finds the cutting-off nature of your operation of the vehicle involved you in the incident and that you left the scene of the accident.

I.

(a) Stopping vehicle at the scene of accident.-The driver of each vehicle involved in an accident that results in bodily injury to or death of any person
immediately shall stop the vehicle as close as possible to the scene of the accident, without obstructing traffic more than necessary.

(b) Returning to scene of accident. The driver of each vehicle involved in an accident that results in bodily injury to or **121 death of any person immediately shall return to and remain at the scene of the accident until he has complied with § 20-104 [entitled “Duty to give information and render aid”] of this title.

The appellant argues that he was not “involved in an accident” within the meaning of § 20-102, as the evidence indicated, and the trial court found that there was no physical contact between the appellant's and Ms. Kitchen's vehicles. According to the appellant, by failing to require physical contact as an element of the offenses described in § 20-102, the statute is “void for vagueness, in that a driver on the road is left to immediately speculate as to whether or not he is ‘involved.’ ” We disagree.

*752 [2] It is clear that penal statutes are to be strictly construed. State v. Fabritz, 276 Md. 416, 422, 348 A.2d 275 (1975). This rule, however, does not suggest that we must construe a statute in the narrowest possible light. Indeed, interpretations of criminal statutes that are “unreasonable, illogical, or inconsistent with common sense are avoided whenever possible.” Jones v. State, 304 Md. 216, 221, 498 A.2d 622 (1985). In Fabritz, supra, Chief Judge Murphy observed on the Court’s behalf:

[1]t is the intention of the Legislature that governs in the construction of all statutes so that penal statutes, like other statutes, are to be fairly and reasonably construed and courts should not, by narrow and strained construction, exclude from their operation cases plainly within their scope and meaning. In the final analysis, in construing any statute requiring construction, courts must consider not only the literal or usual meaning of words, but their meaning and effect in light of the setting, the objectives and purposes of the enactment, with the real intention prevailing over the literal intention even though such a construction may seem to be contrary to the letter of the statute.

276 Md. at 422, 348 A.2d 275 (citations omitted).

The sole decision interpreting § 20-102 and other Maryland vehicle laws that is relevant for our purpose was reached in State Farm Mutual Automobile Insurance Co. v. West, 149 F.Supp. 289 (D.Md.1957) in which the Court defined the term “accident” as generally relating “solely to occurrences actually resulting in death, or personal injury or property damage.” Id. at 308. There was no occasion for the Court in State Farm to comment on whether the word ‘occurrences’ included both contact and non-contact events.

In Steen v. State, 640 S.W.2d 912 (Tex.Cr.App.1982). The defendant steered his pickup truck into a southbound passing lane, forcing a vehicle that was already traveling in that lane into oncoming northbound traffic. Faced with conflicting testimony, the trial court found that the State had failed *753 to prove an actual collision between the defendant and the victim. Nonetheless, the trial court convicted the defendant of failing to stop and render assistance, under a statute nearly identical in language to that of the Maryland statute in question. FN4 The Court of Criminal Appeals of Texas affirmed the sufficiency of the evidence supporting the conviction stating:

FN4. The defendant in Steen was convicted under Article 6701d, Section 38(a), Vernon’s Ann.Civ.St., which reads: The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 40. Every such stop shall be made without obstructing traffic more than is necessary.

The natural consequence of appellant’s actions was the subsequent head-on collision. Regardless of appellant’s claimed ignorance of the accident, it is clear that there was sufficient evidence to demon-
strate appellant caused the accident. Without ensnaring ourselves in the definition or implications of the term “involved in an accident,” we hold that appellant was indeed involved in the collision between [the victim] and the northbound vehicle. *Id.* at 914.

In a civil context, it is instructive that Maryland courts have consistently refused to interpret contract or statutory terms referring to “accidents” as requiring physical contact. In *State Farm v. Maryland Automobile Insurance Fund*, 277 Md. 602, 356 A.2d 560 (1976), the Court of Appeals held that an insurance policy excluding coverage for accidents that did not involve physical contact was void as against public policy. The Court ruled that, as Md.Code, Art. 48A, § 243H(a) (entitled “Types of claims which may be made against Fund”) insures drivers against a non-impact phantom driver who causes an accident, and as § 541(c) of Art. 48A prohibits a motor vehicle insurance policy from providing coverage that is less than that provided under the Maryland Accident Insurance Fund (MAIF), State Farm’s *754 exclusion was in violation of § 541(c). See also *Lee v. Wheeler*, 310 Md. 233, 234-35, 528 A.2d 912 (1987), holding that a Maryland insurance policy limiting coverage to accidents involving physical contact is void as applied to accidents occurring outside the State of Maryland.

Again in a civil context, in *Royal Insurance Company v. Austin*, 79 Md.App. 741, 558 A.2d 1247 (1989), we were presented with the issue of whether the undefined term “hit and run” in an automobile insurance policy excluded coverage where there had been no contact between the insured’s vehicle and a phantom vehicle. In *Royal*, a truck driven by the appellee was forced off the road by a phantom vehicle which had failed to negotiate a turn and crossed the double yellow line coming into the appellee’s lane. In order to avoid striking the phantom vehicle head on, the appellee turned his truck to the right, striking a dirt embankment causing his truck to overturn, thus injuring himself. At no time did the phantom vehicle and the appellee’s truck come into contact with one another.

In agreeing with the “vast majority of cases” construing the inclusion of the phrase “hit and run” as requiring insurance coverage even in non-physical contact situations, we relied on *Pin Pin H. Su v. Kemper Ins. Co.*, 431 A.2d 416 (R.I.1981), in which the Court opined:

In interpreting the language “hit and run,” we believe, as did the Supreme Court of Washington, that the term is merely a shorthand colloquial expression that is designed to describe a motorist who has caused, or contributed by his negligence to, an accident and flees the scene without being identified. Thus, there is no inherent connotation that physical contact is an essential part of its definition.

*79 Md.App.* at 747, 558 A.2d 1247.

[3][4] The above cases clearly support the proposition that physical contact is not necessary to one's involvement in an accident. We further believe that the legislative intent of § 20-102 is to discourage the driver of a vehicle which has been involved in an injury-causing accident from *755 abandoning persons who are in need of medical care and to prevent that same driver from attempting to avoid possible liability. To require physical contact as a prerequisite to involvement, then, would circumvent the purposes we believe § 20-102 was designed to advance. The construction urged upon us by the appellee would exonerate the many drivers who cause accidents but are not involved in an actual collision, and would further put the victims of such negligent driving at risk of being left injured and perhaps unattended at the scene. Such an interpretation, to use the language of *Jones, supra*, would be unreasonable, illogical and inconsistent with common sense.

Unquestionably, the collision of Ms. Kitchen's vehicle with the oncoming northbound truck was a natural consequence of the appellant's negligent driving. The appellant, in every sense of the word, caused this accident. There was absolutely no basis for him to speculate as to whether he was involved in it. Accordingly, we hold that the trial court was correct in finding the appellant “involved in an accident” within the meaning of § 20-102, despite the
court's contemporaneous finding that the vehicles involved did not collide.

II. & III.

[5] The appellant next argues that, even assuming physical contact is not a requirement of §20-102, the evidence was nonetheless legally insufficient to support his conviction for leaving the scene of a personal injury accident. Specifically, he argues that knowledge of the occurrence of the accident and resulting injury is an element of the offense, and maintains that there was insufficient evidence presented at trial that he knew the accident had occurred.

[6][7] We agree that knowledge of both the underlying accident and injury is logically and legally necessary for one to be guilty of leaving the scene of a personal injury accident under §20-102. In general, whether scienter is a necessary element of a statutory crime is a question of legislative intent to be answered by a construction of the statute. *McCallum v. State*, 81 Md.App. 403, 413, 567 A.2d 967 (1990). FN2 On its face, §20-102 prescribes no particular mental state. Obviously, however, one cannot stop at or return to the scene of a personal injury accident he does not know has occurred. Cognizance of the accident, then, is implicit in the obligations imposed by the statute. We further note that both the Supreme Court and the Court of Appeals have repeatedly expressed the contemporary view disfavoring strict liability criminal offenses. *Liparota v. United States*, 471 U.S. 419, 426, 105 S.Ct. 2084, 2088, 85 L.Ed.2d 434 (1985); *Dawkins v. State*, 313 Md. 638, 650, 547 A.2d 1041 (1988).

FN5. In *McCallum*, we held *mens rea* to be an element of the crime of driving with a suspended license (Transportation Article, §16-303). We noted that a violation of §16-303 could be penalized by incarceration, and found the existence of a potential prison term suggestive that the Legislature did not intend to create a public welfare offense and, therefore, that *mens rea* should be an element of the crime. We note that under §27-101(c)(14) of the Transportation Code, a person convicted under §20-102 may be fined $500 and imprisoned for two months.

Accordingly, we conclude that the mere absence of the word “knowingly” from the language of §20-102 should not be construed as evidencing a legislative intent to create a strict liability offense. Indeed, a strong majority of state courts that have interpreted hit and run statutes, silent as to mental culpability, have nevertheless held knowledge of the accident to be an element of the crime. See generally Annot., 23 A.L.R.3d 497, §3 (1969 & Supp.1989); 7A Am.Jur.2d, Automobiles and Highway Traffic §290 (1980 & Supp.1990); *Micinski v. State*, 487 N.E.2d 150 (Ind.1985); *People v. Hager*, 124 Misc.2d 123, 476 N.Y.S.2d 442 (1984); *Commonwealth v. Kauffman*, 323 Pa.Super. 363, 470 A.2d 634 (1983); *State v. Feintuch*, 150 N.J.Super. 414, 375 A.2d 1223 (1977); *People v. Hamilton*, 80 Cal.App.3d 124, 145 Cal.Rptr. 429 (1978). We concur with the view of these courts that, before a defendant can be convicted under a “hit and run” statute, the State must first show knowledge by the accused of the “hit,” and that the “run” or leaving was also knowing.

[8] As with any case in which *mens rea* is an element, it may be proved circumstantially. The trier of fact may infer from an examination of the circumstances of the event that a defendant knew that an accident occurred or that people were injured. Where conditions were such that the driver should have known that an accident occurred, or should have reasonably anticipated that the accident resulted in injury to a person, the requisite proof of knowledge is present. See *Micinski, supra*, at 153. We note that this interpretation of §20-102, holding the defendant driver to a “reasonable person” standard as to the fact of accident or injury, has met with approval in numerous jurisdictions. *Touchstone v. State*, 42 Ala.App. 141, 155 So.2d 349 (1963); *Kimoktoak v. State*, 584 P.2d 25 (Alaska 1978); *State v. Blevins*, 128 Ariz. 64, 623 P.2d 853 (App.1981); *State v. Porras*, 125 Ariz. 490, 610 P.2d 1051 (App.1980); *State v. Carpenter*, 334
**124** In reviewing the appellant's claim relating to sufficiency of evidence, we determine “whether, after viewing the evidence in the light most favorable to the prosecution, any trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Bloodsworth v. State*, 307 Md. 164, 167, 512 A.2d 1056 (1986). When a case is tried by the court, as was the one *sub judice*, the judgment of the trial court on the evidence will not be set aside unless clearly erroneous; and we accord great weight to the court's determination regarding credibility. *Jordan v. State*, 72 Md.App. 528, 534, 531 A.2d 1028 (1987); *Maryland Rule 8-131(c)*.

*758* As recited above, the trial court found that the appellant’s passenger, witness Wetklow, warned him that he had nearly struck Ms. Kitchen's vehicle in the left traffic lane. The evidence indicated that, in response to this warning, the appellant “jerked back” his vehicle into the right traffic lane. Wetklow further testified that he heard the crash between Kitchen's car and the oncoming truck, after which the appellant slowed down and asked Wetklow what had happened. “like if it was his fault.” Wetklow then informed the appellant that he had cut Ms. Kitchen off the highway, and that she had lost control of her vehicle. The appellant himself testified that he had heard the collision, inquired about it, and was told of the accident by Wetklow.

In light of this record, we hold that any rational trier of fact could have found that the appellant knew or should have known that he was “involved in an accident” after he learned that he had forced Kitchen's car off the road due to his lane change. We further hold that, under the circumstances of this case, a rational trier of fact could have found that the appellant was aware or should have been aware of probable injury resulting from the accident. Accordingly, we hold that the evidence was sufficient to support his convictions.

JUDGMENTS AFFIRMED; COSTS TO BE PAID BY APPELLANT.


Comstock v. State
82 Md.App. 744, 573 A.2d 117
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.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Time Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening/Closing Statements</td>
<td>5 minutes each</td>
</tr>
<tr>
<td>Direct Examination</td>
<td>7 minutes/witness</td>
</tr>
<tr>
<td>Cross-Examination</td>
<td>5 minutes/witness</td>
</tr>
<tr>
<td>Voir Dire, as part of cross-examination</td>
<td>2 minutes per expert witness (in addition to the 5 minutes permitted for the cross-examination)</td>
</tr>
<tr>
<td>Re-Direct and Re-Cross Examination</td>
<td>3 minutes or a maximum of 3 questions</td>
</tr>
</tbody>
</table>

III. Mock Trial Simplified Rules of Evidence

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

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

IV. Trial Procedures

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

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

C. Direct and Cross Examinations
   Each attorney (three for each side) must engage in the direct examination of one witness and the cross-examination of another.
Maryland State Bar Association
2007-2008
Statewide High School Mock Trial Competition

Registration Deadline………………………………………………………………………..Friday, November 2, 2007
Mock Trial Guides Distributed to teams who have registered and paid by 11/2/07……………………………Wednesday, November 7, 2007
Circuit Competitions (1st level of competition)………………………………………………January 2, 2008-March 20, 2007

Note: All Circuit competitions must be declared to CLREP no later than March 21, 2007.

Regional Competitions (2nd Level of competition)………………………………………………Tuesday, April 8, 2008—Wednesday, April 9, 2008
(The eight Circuit Champions compete against one another in a single elimination round)

Semi-Final Competitions: Annapolis, MD……………………………………………………..Thursday, April 24, 2008
(The top four teams compete against one another in a single elimination round.)

Statewide Finals: Annapolis, MD…………………………………………………..LIVE WEBCAST……………………………………………...…Friday, April 25, 2008

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

Organizing Local Competitions

The Citizenship Law-Related Education Program will:
• provide Mock Trial Guides and rules for each State competition;
• disseminate information to each circuit;
• provide technical assistance to Circuit Coordinators;
• provide all registered participants who compete for the season with a certificate of participation;
• assist in recruitment of schools;
• act as a liaison in finding legal professionals to assist teams;
• develop press releases, beginning at the Regional Level of Competition.

The role of the Bar Association is:
• to advocate involvement of local attorneys in preparing teams and hearing trials;
• to provide support to schools;
• to assist the Circuit Coordinator.

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

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

2006-2007
Severn School, Anne Arundel County

2005 – 2006
Severna Park High School, Anne Arundel County

2004-2005
Richard Montgomery High School, Montgomery County

2003-2004
The Park School, Baltimore County

2002-2003
Elizabeth Seton High School, Prince George's County

2001-2002
Towson High School, Baltimore County

2000-2001
DeMatha Catholic High School, Prince George's County

1999-2000
Broadneck High School, Anne Arundel County

1998-1999
Towson High School, Baltimore County

1997-1998
Pikesville High School, Baltimore County

1996-1997
Suitland High School, Prince George's County

1995-1996
Towson High School, Baltimore County

1994-1995
Pikesville High School, Baltimore County

1993-1994
Richard Montgomery High School, Montgomery County

1992-1993
Elizabeth Seton High School, Prince George's County

1991-1992
Oxon Hill High School, Prince George's County

1990-1991
Westmar High School, Allegany County

1989-1990
Bishop Walsh High School, Allegany County

1988-1989
Lake Clifton/Eastern High School, Baltimore City

1987-1988
Pikesville High School, Baltimore County

1986-1987
Thomas S. Wootton High School, Montgomery County

1985-1986
Old Mill High School, Anne Arundel County

1984-1985
High Point High School, Prince George's County

1983-1984
Worcester County Team