2017-2018
MSBA High School
Mock Trial Case & Competition

SLATER v. KAPOWSKI

In cooperation with the
Maryland Judicial Conference Public Awareness Committee,
Maryland State Bar Association,
& Maryland State Department of Education.

We would like to acknowledge our tremendous appreciation for the talented team that
developed and evaluated this casebook:
Erik Atas, Esq. & Marc Atas, Esq.

With thanks to James K. MacAlister, Esq.
for his vision and dedication of time to Mock Trial.

www.clrep.org
Find us on Facebook/MDMockTrial
**Important Contacts for the Mock Trial Competition**

Please get in touch with your local coordinator for information about your county/circuit schedule. Your second point of contact is the State Mock Trial Program Coordinator:

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Dear Students & Coaches:

Welcome to the 35th annual Maryland State Bar Association Statewide High School Mock Trial Competition. We are excited for all that awaits us in the year to come.

The focus of this year’s case, distracted driving, is something we hear about almost every day—and for good reason. At any given time, an estimated 660,000 Americans are attempting to use their phones while operating an automobile. The National Safety Council reports that cell phone use while driving leads to 1.6 million crashes each year, and that texting while driving is the cause of 25% of all car accidents in the United States—a significant statistic when you consider all of the potential distractions drivers face. According to a AAA poll, 94% of teen drivers acknowledge the dangers of texting while driving, but 35% admitted to doing it anyway. Alarming to say the least—and something we absolutely can ignore no longer. We hope that this case will serve as a reminder that no one is immune from the dangers of distracted driving. #FRIENDSDON'TLETFRIENDSTEXTANDDRIVE #DON'TDRIVEINTEXTICATED

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

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

Mock Trial works best when the primary goal of all involved is to become better educated about the law. The competition provides opportunities to increase your understanding of the law and its applicability, through case preparation with your attorney advisor, teacher coach, and teammates, as well as during each of the competitions. It will hone skills that serve you well for the rest of your life.

Mock Trial parallels the real world in terms of proceedings, interpretations, and decisions by the Bench. Decisions will not always go your way and you will not always emerge a “winner.” Judges may offer suggestions based on their own preferences—use these as guidelines rather than as “right” or “wrong” ways of doing things. The next judge who presides over your competition may prefer things just the opposite (and that, by the way, is very real-world!)

We ask that you read carefully through this entire book. Do not assume that everything is the exact same as in previous years, as even small modifications can be significant during the course of competition. Please pay close attention to the changes made to timekeeping this year.

We wish you a successful, FUN, and rewarding learning experience.

Best Regards,

Shelley Brown
Executive Director

Megan Quirk
Program Coordinator, Statewide Initiatives
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2017-2018 MSBA HIGH SCHOOL MOCK TRIAL COMPETITION
PART I: ORGANIZATIONAL RULES
1. **Forfeits are prohibited.** As a registered team, you agree to attend all scheduled competitions. If a team does not have an adequate number of students (i.e. due to illness, athletics, or other conflicts), it is still expected to attend and participate in the competition. In these instances, a team will “borrow” students from the opposing team. While this is treated as an automatic win for the opposition, both teams still gain the practice. Further, it maintains the integrity of the competition and is respectful of the Court, Presiding Judge, attorneys and the other team that has prepared for, and traveled to, the competition. If this occurs, coaches should make every effort to notify the local coordinator AND the other coach in advance of the competition. When an opposing team does not have enough students to assist the other team, students may depict two or more of the roles (i.e. they may depict 2 witnesses or play the part of 2 attorneys).

2. **The use of a Bailiff.** Each team is required to have a Mock Trial team member, who is not scheduled to compete during the match, serve as Bailiff during the course of each competition. Each Bailiff will keep time for opposing counsel. In the event that a team does not have a mock trial team member serving as a bailiff, a teacher coach or attorney advisor must serve as one. The Bailiff(s) will also announce the Judge, call the case, and swear in each witness. (Please see Trial Procedure #2 for additional information.)

3. **Time limits.**
Each team must complete its presentations within the time limits noted below. To afford students creative latitude during competition, we have combined the times permitted for direct examination, cross examination, re-cross/re-direct, and voir dire (if permitted) to 42 minutes per side. Opening Statements and Closing Arguments will remain at 5 and 7 minutes, respectively, and are not included in the 42 minutes permitted for witness examination.

Each bailiff shall have two stopwatches, cellphones, or other timing devices. The second timepiece is intended to serve as a backup device. Note- cellphones should be employed for the purposes of timekeeping only, with the expressed consent of courthouse officials. Each bailiff shall also have visual displays (e.g. cards or pieces of paper) of numbers counting down from 42 in 10 minute intervals, (for example, 40, 30, 20, 10, etc.) At the final 3 minute mark, bailiff will begin counting down on the minute (3, 2, 1, 0). As each interval elapses in a team’s presentation, the bailiff will quietly display to both teams and to the presiding judge, the number corresponding to the number of minutes remaining. When the number zero is displayed, the presiding judge will announce that the team’s presentation is concluded. Teams may ask the presiding judge for courtesy time to conclude a presentation. The extension of courtesy time is intended to permit a team to complete a sentence or thought. It should not extend for more than 15 seconds.

The bailiff will record the time taken for each element of the presentations. The two bailiffs will sit together in a place designated by the presiding judge separate from the contending teams. Bailiffs from the two teams will work together collaboratively to ensure the accuracy of their records. The “clock” will be stopped during objections (including any arguments related to those objections), bench conferences, the setting up of demonstrative exhibits prior to the examination of a witness (where such activity is permitted by the presiding judge) and court recesses.

- **Opening Statements- 5 minutes each**
- **Witness Examinations – 42 minutes (this constitutes the maximum total time permitted for each side’s witness examinations, cross examinations, re-cross/re-direct, and voir dire). It is each team’s discretion to best utilize the time provided. For example, a direct exam may be limited to 3 minutes for one witness, and another might be extended to 7 minutes. You choose how to allocate your time.**
- **Closing Arguments – 7 minutes each.**

There is no objection permitted by any party based on the expiration of time.
4. Local competitions must consist of enough matches that each participating high school presents both sides of the Mock Trial case at least once.

5. A team must be comprised of no fewer than eight (8) but a maximum of twelve (12) student members from the same high school, with the exception of high schools with a Maryland State Department of Education interscholastic 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.

6. A team may use its members to play different roles in different competitions. For any single competition, all teams are to consist of three attorneys and three witnesses, for a total of six (6) different students. (Note: In Circuits 1 and 2, where teams typically participate in two competitions per evening – once as prosecution and once as defense – students may change roles for the second competition.)

7. Any high school that fields two or more teams may NEVER allow, under any circumstances, students from Team A to compete for Team B or vice-versa. Each team must have its own teacher coach and attorney advisor, separate and apart from the other team. Additionally, if a high school has multiple teams, then those teams MUST compete against one another in the local competition.

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

B.) OR, under the discretion of a circuit coordinator and CLREP, if a circuit so chooses, it may combine with the “un-official” circuit to increase the number of opportunities to compete. In this case, a “circuit opening” arises and will be filled by the following method. To create the most equity, a sequential rotation of circuits will occur. If willing, the second place team from the specified circuit will advance to the regional competitions to fill the opening. If that team is unable to advance, the opportunity will move to the next circuit, and so on, until the opening is filled. In the event that all circuits are officially comprised of a minimum of four teams, the designated circuit will remain the next in-line to advance in future years.

| 2017-2018 | Circuit 7 | 2021-2022 | Circuit 3 |
| 2018-2019 | Circuit 8 | 2022-2023 | Circuit 4 |
| 2019-2020 | Circuit 1 | 2023-2024 | Circuit 5 |
| 2020-2021 | Circuit 2 | 2024-2025 | Circuit 6 |

9. 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 3rd or 4th, 2018.

10. The dates for the Regionals, the Semi-Finals, and the Finals will be set and notice given to all known participating high schools by November 9th, 2017. Changes will only occur due to conflicts in judicial schedules.

11. District Court judges, Circuit Court judges, and attorneys may preside and render decisions for all matches. If possible, a judge from the Court of Appeals or Court of Special Appeals will preside and render a decision in the Finals.
12. 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.

13. Winners in any single round should be prepared to switch sides in the case for the next round. Circuit Coordinators will prepare and inform teams of the local circuit schedule.

14. 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.

15. 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.

16. Every effort should be made for teams to work with an attorney advisor to prepare for competition. 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.

17. 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.

18. There shall be NO coaching of any kind during the enactment of a mock trial: i.e. student attorneys may not coach their witnesses during the other team’s cross examination; teacher and attorney coaches may not coach team members during any part of the competition; members of the audience, including members of the team who are not participating that particular day, may not coach team members who are competing; and team members must have their cell phones and all other electronic devices turned off during competition as texting may be construed as coaching. Teacher and Attorney Coaches MAY NOT sit directly behind their team during competition as any movements or conversations may be construed as coaching.

19. 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.

20. 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.

21. Judging and scoring at the Regional, Semi-Final and Statewide Final Competitions are distinct from judging and scoring in some local competitions. As in a real trial, the judge will preside, hear objections and motions, instruct counsel, and determine which team prevailed based on the merits of the law. Two attorneys will independently score team performance at the trial, using the score sheet from the official Mock Trial Guide. At the conclusion of the trial and while in chambers, the judge will award the tie point without informing the attorney scorers. The Tie Point will only be added into the final score only in the case of a tie. The attorneys will meet and work out any differences in scoring so that the two attorneys present one score sheet to the judge, and eventually, the two teams. The judge retains the right to overrule any score on the score sheet. Both teams shall receive a
copy of this score sheet, signed by the judge. Teams will not have access to the original, independent score sheets of the attorneys.

22. **Evidentiary materials that have been modified for use during trial (e.g., enlarged), must be made available during the trial for the opposing team’s use.** During witness identification exchanges, please alert the other team if you plan to use modified materials.

**PART II: HINTS ON PREPARING FOR A MOCK TRIAL COMPETITION**
The following tips were developed by long-time Mock Trial Coaches.

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

2. Examine and discuss the facts of the case, witness testimony and the points for each side. Record key information as discussion proceeds so that it can be referred to in the future.

3. Witness’ credibility is very important to a team’s presentation of the case. Witnesses: move into your roles and attempt to think as the person you are portraying. Read over your affidavits many times and have other members of your team ask you questions about the facts until you know them.

4. Student attorneys: you should have primary responsibility for deciding what possible questions should be asked of each witness on direct and cross-examination. Questions for each witness should be written down and/or recorded. Write out key points for your opening statements and closing arguments before trial; then, incorporate any 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 exits the courtroom, or whenever you address the Bench, and appropriately addressing the judge as “Your Honor,” etcetera.
- Phrasing direct examination questions that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions).
- Refraining from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, learn to limit additional questions, as they often lessen the impact of previously made points.
- Thinking quickly on your feet when a witness gives you an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at you.
Recognizing objectionable questions and answers, offering those objections quickly and providing the appropriate basis for the objection.

Paying attention to all facets of the trial, not just the parts that directly affect your presentation. All information heard is influential! Learn to listen and incorporate information so that your presentation, whether as a witness or an attorney, is the most effective it can be.

The Mock Trial should be as enjoyable as it is educational. When winning becomes your primary motivation, the entire competition is diminished. Coaches and students should prepare AT LEAST as much for losing as they do for winning/advancing. Each member of the team, student or coach, is personally responsible for his/her behavior prior to, during, and at the close of the trial. There are schools and individuals across the state that are no longer welcome to participate based on previous behavior.

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

1. Courtroom Set-Up
   a. Plaintiff/Prosecution will sit closest to the jury box.
   b. Defense – will sit on the side of the courtroom that is farthest from the jury box. This is based on the premise that the defendant is innocent until proven guilty, and so is removed (as far as possible) from the scrutiny of the court.
   c. The Bailiff will sit in either i) the jury box ii) the court reporter’s seat or iii) in another seat so designated by the Judge, that is equally visible to both parties.

2. The Opening of the Court & Swearing of Witnesses
   a. The Bailiff for the Prosecution/Plaintiff will call the Court to order through the following steps:
      i. In a loud voice, say, “All rise.” (When the judge enters, all participants should remain standing until the judge is seated.)
      ii. The Bailiff should call the case; i.e., “The Court will now hear the case of ________v.________.” And announce the judge: “The Honorable ________ presiding.”
   b. The judge will permit those in the Court to be seated; then ask the attorneys for each side if they are ready.
   c. During the course of the trial, the Bailiff for the Defense shall administer the Oath, and ask the witness to raise his or her right hand: “Do you affirm to tell the truth, the whole truth, and nothing but the truth under the pains and penalties of perjury?”

3. Opening Statements (5 minutes maximum)
   a. Prosecution (criminal case)/ Plaintiff (civil case)
      After introducing oneself and one’s colleagues to the judge, the prosecutor or plaintiff’s attorney summarizes the evidence for the Court which will be presented to prove the case. The Prosecution/ Plaintiff statement should include a description of the facts and circumstances surrounding the case, as well as a brief summary of the key facts that each witness will reveal during testimony. The Opening Statement should avoid too much information. It should also avoid argument, as the statement is specifically to provide facts of the case from the client’s perspective.
   b. Defense (criminal or civil case)
      After introducing oneself and one’s colleagues to the judge, the defendant’s attorney summarizes the evidence for the Court which will be presented to rebut the case (or deny the validity of the case) which the plaintiff has made. It includes facts that tend to weaken the opposition’s case, as well as key facts that each witness will reveal during testimony. It should avoid repetition of facts that are not in dispute, as well as strong points of the plaintiff/prosecution’s case. As with the Plaintiff’s statement, Defense should avoid argument at this time.

4. Direct Examination by the Plaintiff/Prosecutor
The prosecutor/plaintiff’s attorney conducts direct examination (questioning) of each of its own witnesses. At this time, testimony and other evidence to prove the prosecution's/plaintiff’s case will be presented. The purpose of direct examination is to allow the witness to relate the facts to support the prosecution/plaintiff claim and meet the required burden. It also allows counsel for each side to establish the credibility of each of their witnesses.

General Suggestions:

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

5. Cross-Examination by the Defendant’s Attorneys
After the attorney for the prosecution/plaintiff has completed the questioning of a witness, the judge then allows the defense attorney to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of the opposing witness. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through cross-examination.

General Suggestions:

- Use narrow, leading questions that “suggest” an answer to the witness. Ask questions that require “yes” or “no” responses.
- In general, it is never a good idea to ask questions to which you do not know the answer – unexpected responses can be costly and may leave you unprepared and off-guard.
- Never ask “why.” You do not want to give a well-prepared witness an opportunity to expand upon a response.
- Avoid questions that begin with “Isn’t it a fact that...”, as it allows an opportunistic witness an opportunity to discredit you.

6. Direct Examination by the Defendant’s Attorneys
Direct examination of each defense witness follows the same pattern as above which describes the process for prosecution’s witness. (See #3 above for suggestions.)

7. Cross-Examination by the Prosecution/Plaintiff
Cross-examination of each defense witness follows the same pattern as above for cross-examination by the defense. (See #4 above for suggestions.)

8. Re-Direct Examination by the Plaintiff/Prosecution
The Plaintiff's/Prosecution’s attorney may conduct re-direct examination of the witness to clarify any testimony that was cast in doubt or impeached during cross-examination.

9. Re-Cross Examination by the Defense Attorneys
The defense attorneys may re-cross examine the opposing witness to impeach previous testimony.

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

11. Closing Arguments (Attorneys) (7 minutes)
For the purposes of the Mock Trial Competition, the first closing argument at all trials shall be that of the Defense.

a. Defense

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

b. Prosecution/Plaintiff

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

12. The Judge’s Role and Decision

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

PART IV: SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

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

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

1. SCOPE

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

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

2. RELEVANCY

RULE 201: RELEVANCY. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. It is that which helps the trier of fact decide the issues of the case. However, if the relevant evidence is unfairly prejudicial, confuses the issues, or is a waste of time, it may be excluded by the Court.

Objection:
“I object, Your Honor. This testimony is irrelevant to the facts of the case.”

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

Objection:
“Objection. Evidence of the witness’ character is not proper given the facts of the case.”

3. WITNESS EXAMINATION

A. DIRECT EXAMINATION (attorney calls and questions witness)

RULE 301: FORM OF QUESTION. Witnesses should be asked direct questions and may not be asked leading questions on direct examination. Direct questions are phrased to evoke a set of facts from the witnesses. A leading question, on the other hand, is one that implies, suggests or prompts the witness to answer in a particular manner -- typically a “yes” or “no” answer.

Objection:
“Objection: Counsel is leading the witness.”

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

Objection:
“Objection. Question asks for narration.”

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

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

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

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

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

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

Example: On direct examination, a witness is not questioned about a given topic, and the opposing attorney asks a question about this topic on cross examination.

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

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

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

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

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

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

4. HEARSAY

A. THE RULE
RULE 401: HEARSAY. Hearsay is a statement, other than one made by the declarant while testifying at the trial, offered in evidence to prove the truth of the matter asserted made outside of the courtroom. Statements made outside of the courtroom are usually not allowed as evidence if they are offered in court to show that the statements are true. The most common hearsay problem occurs when a witness is asked to repeat what another person stated to him or her. For the purposes of the Mock Trial Competition, if a document is stipulated, you may not raise a hearsay objection to it.

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.

Objections:
“Objection. The witness has no personal knowledge that would enable him/her to answer this question/ make this statement.”
“Objection. The question asks the witness to give a conclusion that goes to the finding of the Court.”

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

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

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

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

Objection:
“Your Honor, we would like permission to voir dire the witness.” (Oftentimes, the judge will already be looking your way to see if you wish to voir dire.)

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

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

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

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

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

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

Objections:
“Objection, your honor, the witness is creating facts which are not in the record.”
“Objection. The witness is inventing facts that directly contradict case material.”
“Your Honor, the witness is intentionally creating facts which could materially alter the outcome of the case.”

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

8. SPECULATION

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

9. PROCEDURE RULES
RULE 901: PROCEDURES FOR OBJECTIONS. An attorney may object anytime the opposing attorney has violated the Rules of Evidence.

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

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

RULE 903: CLOSING ARGUMENTS. Closing arguments must be based on the evidence and testimony presented during the trial. Offering new information at this point is prohibited.
NOW COMES the Plaintiff, A.C. Slater, (hereinafter referred to as “The Plaintiff”), by and through Plaintiff’s Counsel, and respectfully states to this Honorable Court:

**COUNT I**

1. That on or about September 1st, 2015, the Plaintiff was the driver of an automobile traveling at or near Route 50 near the intersection with Max’s, a public roadway located in Bayside County, Maryland.

2. That the Plaintiff was making a left hand turn out of the parking lot of Max’s, located at Max Point Road, in an effort to ultimately be traveling westbound on Route 50.

3. That Defendant Kelly Kapowski, (hereinafter referred to as “The Defendant”), was driving in a careless, reckless, and negligent fashion, while traveling eastbound on Route 50 and struck the Plaintiff’s vehicle on the driver’s side of Plaintiff’s vehicle, near the aforementioned location, causing a collision.

4. Plaintiff alleges that as a result of the Defendant’s negligence the plaintiff was painfully and permanently injured about the head, body and limbs, suffered shock to his nervous system, incurred hospital and medical expenses in the past and will incur hospital and medical expenses in the future, lost time from work and will suffer and permanent loss of earning capacity in the future and the plaintiff was otherwise injured.

5. The Defendant had a duty of care to devote full time and attention to his/her driving, keep a proper look out, keep the motor vehicle under control, yield right of way, obey the red light, drive at a reasonable speed under the circumstances and weather conditions at the time, and follow all the laws of the State of Maryland.
6. The Defendant was careless, reckless, and negligent and breached that duty when (s)he failed to devote full time and attention to his/her driving, failed to keep a proper look out, failed to keep the motor vehicle under control, failed to yield right of way, failed to obey the traffic control device, failed to drive in a safe and proper fashion, failing to drive in a safe and proper fashion, failed to drive at a reasonable speed under the circumstances and weather conditions at the time, and failed to follow all the laws of the State of Maryland and the defendant was otherwise negligent.

7. The Plaintiff alleges that all of his/her injuries, damages and losses were caused directly by the negligence of the defendant without any negligence on the part of the plaintiff thereunto contributing.

WHEREFORE, the Plaintiff demands judgment against the Defendant in the amount in excess of $75,000.00, plus costs of this suit.

Respectfully submitted.

Plaintiff’s Counsel

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 3rd day of November 2016, a copy of the Plaintiff’s Complaint was mailed first class, postage prepaid to the Attorney for the Defendant.

Plaintiff’s Counsel

A.C. SLATER

* IN THE

Plaintiff

* CIRCUIT COURT

v.

* FOR

KELLY KAPOWSKI

* BAYSIDE COUNTY

Defendant

* Case No.: * * * * * * * * * * * * *

ANSWER TO COMPLAINT

The Defendant, Kelly Kapowski, by Defense Counsel, answers the Plaintiff’s Complaint and says:
1. The Defendant generally denies liability.

2. The Defendant asserts the affirmative defense of contributory negligence.

3. The Defendant asserts the affirmative defense of assumption of risk.

Respectfully submitted.

Defense Counsel

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 18th day of November, 2016, a copy of the Defendant’s Answer was mailed first class, postage prepaid to the Attorney for the Plaintiff.

Defense Counsel

A.C. SLATER

IN THE

CIRCUIT COURT

FOR

BAYSIDE COUNTY

Case No.:

COUNTER-CLAIM

NOW COMES the Defendant Kelly Kapowski, (hereinafter referred to as “The Defendant”), by and through Defendant’s Counsel, respectfully states to this Honorable Court:

COUNT I
1. That on or about September 1, 2015, the Defendant was the seat-belted driver of an automobile traveling at or near Route 50 near the intersection with Max’s, a public roadway located in Bayside County, Maryland.

2. On or about September 1, 2016, the Defendant was sixteen years old and a minor.

3. That the Defendant was traveling eastbound on Route 50.

4. That the Plaintiff, A.C. Slater, (hereinafter referred to as “The Plaintiff”), was driving in a careless, reckless, and negligent fashion, and while attempting a left turn out of the parking lot with a red light for Max’s, located at Max Point Road, failed to yield right of way at the red light, and caused a collision between Plaintiff and Defendant’s vehicles.

5. Defendant alleges that as a result of the Plaintiff’s negligence, the Defendant was painfully and permanently injured suffered shock to his nervous system, incurred hospital and medical expenses in the past and will incur hospital and medical expenses in the future, and will suffer and permanent loss of earning capacity in the future and the plaintiff was otherwise injured.

6. The Plaintiff had a duty of care to devote full time and attention to his/her driving, keep a proper look out, keep the motor vehicle under control, yield right of way at the stop sign, obey the traffic control device, drive at a reasonable speed under the circumstances and weather conditions at the time, and follow all the laws of the State of Maryland.

7. The Plaintiff was careless, reckless, and negligent and breached that duty when (s)he failed to devote full time and attention to his/her driving, failed to keep a proper look out, failed to keep the motor vehicle under control, failed to obey the red light, failing to drive in a safe and proper fashion, failed to drive at a reasonable speed under the circumstances and weather conditions at the time, and failed to follow all the laws of the State of Maryland and the Plaintiff was otherwise negligent.

8. The Defendant alleges that all of his/her injuries, damages and losses were caused directly by the negligence of the Plaintiff without any negligence on the part of the Defendant thereunto contributing.

WHEREFORE, the Defendant demands judgment against the Plaintiff in the amount in excess of $75,000.00, plus costs of this suit.
Respectfully submitted.

Defense Counsel

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 18th day of November, 2016, a copy of the Defendant’s Counter-claim was mailed first class, postage prepaid to the Attorney for the Plaintiff.

Defense Counsel

PLAINTIFF NAME IN THE

Plaintiff * CIRCUIT COURT

v. * FOR

DEFENDANT NAME BAYSIDE COUNTY

Defendant * Case No.:

* * * * * * * * * * * * * *

ANSWER TO COUNTER-CLAIM

The Plaintiff, A.C. Slater, by Plaintiff’s Counsel, answers the Defendant’s Counter-claim and says:

1. The Plaintiff generally dies liability.

2. The Plaintiff asserts the affirmative defense of contributory negligence.

3. The Plaintiff asserts the affirmative defense of last clear chance.

4. The Plaintiff asserts the affirmative defense of assumption of risk.

Respectfully submitted.

Plaintiff’s Counsel

CERTIFICATE OF SERVICE

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IT IS HEREBY CERTIFIED that on this 30th day of November 2016, a copy of the Plaintiff’s Answer to Counter-Claim was mailed first class, postage prepaid to the Attorney for the Defendant.

Plaintiff’s Counsel

**STIPULATIONS**

I. The parties have agreed to the verdict as to damages depending on the court’s decision on liability. The only question is whether one party, neither party, or both parties are liable. Who prevails depends on the court’s findings as to negligence, contributory negligence, last clear chance and assumption of risk.

II. The injuries suffered by both parties and outlined in their respective medical bills (Exhibits 1 & 2) were entirely caused by the automobile accident on September 4, 2015.
Affidavit of A.C. Slater, Plaintiff

1. I am twenty six years old.
2. I live at 3636 Crab Cracking Court in Bayside County, Maryland.
3. I am a high school Civics teacher at Valley High School in Bayside County, Maryland. I teach juniors and seniors.
4. I have been dating my partner, L.T. “Turtle” for two years, off and on.
5. Friday, September 4th, 2015 was a horrible day. It had started off okay. I met Turtle at our local diner, The Max, for breakfast.
6. At the Max, we ran into Turtle’s ex, and ended up getting in a huge argument.
7. I was so angry; I stormed out of the Max. Little did I know, my day was only going to get worse.
8. At that moment, I didn’t know where I was going, all that I could think about was getting as far away from Turtle as I possibly could.
9. I was driving my blue 2005 Ford Focus.
10. I was making a left hand turn out of the Max’s parking lot, when the defendant drove straight into me.
11. I definitely felt that I had more than enough time to make the turn safely.
12. I remember approaching the intersection and my light was green. I do recall my light changed to yellow before I got to the crosswalk. I’m not great with distances but I believe I was somewhere around 15 feet from the crosswalk when the light changed. I could be wrong but I really feel like that is right. I base that distance on feeling like I was a couple of car lengths away from the intersection when the light changed from green to yellow. I don’t believe I was going above 20 mph; my car just doesn’t have that kind of pickup. I guess it’s possible I was going faster. It’s not like I was looking at my speedometer. I definitely felt it would have just been safer to continue through the yellow than jam on my breaks because I know at that point I would have just come to a stop in the road anyway. Besides, I’m sure the light was still yellow when I was driving through the intersection. I remember way back to Driver’s Ed. that you have the right of way if you enter the intersection while the light is still yellow.
13. The last thing that I remember is looking out the window and seeing a silver Volvo barreling toward my car. I couldn’t see if the driver was holding anything.
14. I suffered a broken left arm, broken neck, herniated disk, and trauma to my spinal cord.
15. I have already incurred over $400,000 in medical expenses. My doctors have informed me that I will need two additional surgeries, so I anticipate that I will be spending even more in the next few years.
16. I usually wear my seatbelt but I can’t recall if I had it on at the time of the accident.
17. I usually wear my seatbelt but I can’t recall if I had it on at the time of the accident.
18. It took me months and several painful surgeries to be able to walk again, and for a while my doctors were not sure that I ever would.
19. As a high school teacher, I am very concerned with the problem of teenaged drivers texting while they are behind the wheel. I see it all the time in our school’s parking lot.
20. The defendant should have known not to be using a hand held phone while driving. At Valley, and every school in the county, we make it a point to educate students about this issue. During the 2014-15 school year, we held an assembly on the topic.

21. We had the mother of a former student who was killed due to distracted driving speak to the student body and it was very powerful. I know that she spoke at Bayside High as well.

22. After the assembly, teachers were given pamphlets, which described the dangers of distracted driving, (EXHIBIT 7) to distribute to homeroom students. I followed up with a classroom discussion on the topic.

23. Since the accident occurred the weekend before the first day of school, I was forced to be out of school for the first few months of the year, which I think is the most important time to establish relationships with students. Being out of the classroom caused me to fall into a depression.

24. My principal had to call around to find a substitute at the last minute. I have heard from many students and parents that the one they found was not up to the job.

25. To top it off, Turtle and I broke up. It was probably for the best though. No one ever seemed to make me as angry as Turtle did.

26. It really upsets me that my students’ learning was impacted by the irresponsibility of one young person.

Avery Chris Slater

Avery Chris Slater
Affidavit of Sam “Skreetch” Powers, Witness for the Plaintiff

1. I am fifteen years old and a sophomore at Bayside High School in Bayside, Maryland.
2. I reside with my mom and two brothers at 2323 Golden Gate Lane in Bayside, Md.
3. I have pretty good grades – mostly B’s with a C here and there. My mom is always on me about my schoolwork, but soccer is the only reason I care about my grades at all.
4. I spent most of the summer at a nearby youth camp, working as a counselor’s assistant with some of the younger kids.
5. On Friday, September 4th, 2015 I was riding in the front passenger seat of Kelly Kapowski’s car.
6. Kelly, a senior named Jessie Spano, and I were headed down Route 50 on our way to Ocean City for the last weekend of summer before school started. I was in the front seat and Jessie was in the back.
7. As usual, fall soccer had started a couple of weeks before school began. Coach was scheduling at least one, if not two practices a day since mid-August. I had landed on varsity in my sophomore year which I was super excited about.
8. I was actually really surprised that Kelly invited me to go with them. My mom is friends with her mom. That’s the only reason my mom even allowed me to drive to the beach with them. I always wanted to be friends with them but I never thought that they liked me very much.
9. I thought that we were having a good time. We had my playlists hooked up to the car, and we were all singing along. Jessie was glued to her/his phone as usual. S(he) literally never puts it down.
10. After the crash, when A.C. Slater’s lawyer showed me the texts that Jessie and Kelly were sending to each other (Exhibit 4) on the ride down to the beach, I realized that they had only brought me along as a joke, to make fun of me.
11. I think they were really cruel, and I am still very hurt.
12. It seems to me that Jessie should be held accountable, too. Jessie knew that Kelly was driving and continued to send her/him text messages. They were sitting right next to each other. Why couldn’t they just wait until we got to Ocean City to talk?
13. I know that everybody texts and drives and no one really thinks that it is a big deal. But obviously it is.
14. Honestly, Kelly seems more upset that her/his car was totaled than that people got hurt.
15. Kelly’s phone was beeping a lot right before the accident. With all of the beeping, I could tell really quick when Kelly was getting a text as opposed to a phone call. On the incident date, I didn’t know who was sending Kelly messages. It turns out, Jessie was texting Kelly from the back seat of the same car, and the text messages were really rude. I was pretty uncomfortable with Kelly getting texts while driving but I didn’t know them that well, so I didn’t say anything. I also remember Kelly texting while the car was stopped at other red lights but not all of Kelly’s texts were made while the car was stopped.
16. I remember that Kelly received a text right before we crashed because Kelly’s text message tone is super annoying.
17. Just prior to the accident, but definitely after I heard that annoying text tone on Kelly’s phone, I was looking straight ahead out of the front window of our car. I wasn’t paying too much attention to the street light at that moment. I do remember seeing in my peripheral vision that Kelly was holding his/her phone at shoulder height but I’m not sure if (s)he was actually looking at it.
18. The last time that I looked at our light, it was red. There could have been time for the light to change to green before we got to the light but I don’t remember if our light changed from red to green before we got to that intersection.

19. I saw that we were about to crash into a blue car and I know I screamed, “Kelly look out!” It was too late, though.

20. I also remember it feeling like a really forceful crash – way harder than I would think it would feel to hit a car at 30 or 40 miles an hour. The only other car accident of any kind that I have been in was when I was a passenger in my mom’s car and she was rear-ended by someone who didn’t stop at a light. I do remember from that case that the driver of the other vehicle was going about 10 mph. I wasn’t injured in that crash too badly... just a little whiplash.

21. I remember thinking the car had caught fire because there was smoke everywhere. I think I screamed at Jessie and Kelly that we needed to get out of the car, but then I realized that it was from the airbags.

22. I feel like it took a minute or two to fully realize what had happened. I think I was in shock. Kelly didn’t say anything, and I got so scared when I saw s(he) was knocked out. I kept calling Kelly’s name to bring him/her to, but (s)he didn’t move. Jessie had already jumped out of the car.

23. I had a really bad case of whiplash. I had to wear a neck brace for a few weeks, and I wound up missing the first four weeks of soccer, which was really annoying. My mom says that I am lucky to be alive.

24. I haven’t hung out with Kelly or Jessie since the accident. Whenever I see them at school, they totally ignore me.

25. I think that Kelly and Jessie are mad that I told everyone at school that they were texting while Kelly was driving. I swear that I only did it so other people would stop texting and driving.

Sam Powers

Sam Powers
Affidavit of Stacey Carosi, Ph.D., Witness for the Plaintiff

1. I am 38 years old.

2. After getting my Bachelors in Science in Engineering from U.M.B.C. in 2001, I went on to Purdue University’s School of Engineering where I got my Masters, in 2003, and then ultimately my Ph.D., in 2007, both in Industrial Engineering, specifically with regards to Human Factors.

3. After I got my Ph.D., I worked for Northrop Grumman. My job title the entire time I was there was Human Factors Engineer. My first two years there, my work included assessing situation awareness and workload for pilots operating unmanned vehicles (drones) and I conducted usability experiments for U.S. Navy helicopters. For the next four years, my primary responsibilities were designing and evaluating software user interfaces, conducting usability experiments, evaluating statistical results, and presenting findings. I also conducted human factors evaluations of military products and equipment.

4. I am currently a Professor of Industrial and Systems Engineering at Rutgers University. I started working there 4 years ago.

5. In 2014, I received a competitive research grant from the Chesapeake Highway Safety Organization, to study driver performance and distracted driving.

6. The product of my grant was a peer-reviewed article, that I wrote and published in 2016, entitled Calling All Drivers.

7. I launched the #Waittillyougetthere Campaign and consulted with Oprah on her No Phone Zone campaign.

8. I now get to travel the country, speaking out about the dangers of distracted driving. The notoriety is nice but I’m glad it can be on such an important subject.

9. My salary as a tenured member of the faculty of Rutgers is $90,000.00.

10. I have written a number of magazine pieces and been interviewed by newspaper and television reporters. Every time I give an interview, I get more and more lawyers calling me to ask if I will testify for them.

11. During the last 5-10 years, I have been consulted in over 100 cases and, out of those 100 consultations, I have testified in 30 trials around the country, always for the victims of a car accident involving impact by someone who was driving distracted by their cell phone usage. In each of those trials, I have been admitted as an expert in the field of “Human Factors.”

12. I average around $100,000 per year rendering opinions for lawyers and testifying as necessary. When I am consulted by attorneys, I charge an initial retainer fee of $5,000 to review a case, write up any reports and/or affidavits and for all pretrial consultations. If I need to appear in court or for depositions, I charge $5,000 for each day that I have to appear. I never appear in court without my fee being paid first. I have not ever been contacted by a party on the other side of a distracted driving case but I’d be happy to speak with any party that contacts me.

13. “Human Factors” is the scientific study of human physical and mental capabilities and limitations and the application of that knowledge to (1) the investigation of human interaction with technology and their environment, and (2) the design of human-centered systems and technology.

14. One aspect of this field of study is analyzing the concerning issue of Distracted Driving. Distracted Driving occurs when a driver’s attention is diverted from the activities critical for safe driving toward
a competing activity. Physical ways to be distracted are (1) Visual (eyes off the road), (2) Manual (hands off the wheel), and (3) Cognitive (mind off the road). Common effects of distracted driving are (1) Increased time that eyes are off road, (2) Increased reaction time to hazards, (3) Increased braking reaction time, (4) Greater speed variability and slower mean speed, (5) Increased lane deviations and lane departures, (6) Close car following, and (7) Impaired decision making and response selection.

15. There are varying levels of distraction but all can have an impact on our driving. There are mild distractions like listening to the radio in your car. There are moderate dangers like talking on hands-free phone. And there are high dangers like talking on your phone or texting.

16. I feel strongly that Distracted Driving is the new drunk driving. Arguably, drivers who are texting are equally as impaired as drivers under the influence of alcohol or drugs.

17. When you consider the risk utility test, which balances the risk of harm and severity of harm against the utility of having a phone in one’s car; it is clear that safety must come first.

18. Research has found that talking or texting on a cell phone reduces the amount of brain activity associated with driving by 37%.

19. Other experts have estimated that 5 seconds is the average time that a texter takes their eyes off the road when driving. While that may not sound like a lot of time, a car driving at 55 mph will cover the length of a football field during that span.

20. The reason that driver cell phone use is so dangerous boils down to human reaction time. A driver has to notice a hazard, appreciate the danger, and then take the appropriate action. Whether a driver is alert shortens the reaction time. According to federally funded reports, it take less than one second for an alert driver to appreciate a danger, but it can take between 1.0 and 2.0 seconds for a distracted driver to react. In other words, if a car, as in this case, drives into the path of another vehicle, and an attentive and a distracted driver see it at the same distance back from the offending car, the distracted driver will take at least one second more to process the danger, and to react to it. That reaction could include hitting the brakes, or swerving to avoid the car in the roadway.

21. Without that additional time to check to see if there is a car in the neighboring lane, or to apply the brakes, tragedies like the one that happened here are all too common.

22. Consider these statistics; in 2013, 3,154 people were killed in accidents caused by distracted driving, and 424,000 were injured. 52,734 of those crashes were in Maryland, and in 2013, 166 people across Maryland lost their lives to distracted driving. 16 people die every day in the United States due to texting while driving. It poses a substantial threat to public health and safety.

23. You are four times as likely to get into an accident serious enough to injure yourself if you are using a hand held device while driving and you are 23 times more likely to get into an accident if you are texting.

24. As though the loss of life/injuries were not enough, distracted drivers caused over 22 billion dollars in property damage.

25. We should all view driving like flying in a plane. It is a time when you cannot send or receive any calls or messages.
26. We live in a culture that values and expects immediate responses. Someone sends an email at 3am and they expect the recipient to reply immediately. These social and professional influences are really impacting safety on our highways.

27. People are not taking this seriously enough. I was outraged to learn that 56 citations have been issued to school bus drivers in Maryland for texting while driving. Can you imagine the backlash if 56 bus drivers had been caught drinking and driving while responsible for getting children to school safely?

28. I reviewed the witness affidavits and officer’s police report before formulating my opinion in this case. If any of the information contained in those reports is not accurate, I reserve the right to modify my opinion.

29. I am aware that Kelly Kapowski’s text message history shows back and forth texts in the minutes leading up to the accident. Also, according to Sam Powers, Kapowski’s phone was at shoulder height in Kapowski’s hand just before the accident; creating the strong likelihood that Kapowski was reading a text just before the accident, and at a minimum was distracted in some kind of way by not having both hands on the wheel. If Kapowski was looking at his/her phone, this would have delayed Kapowski’s reaction time because (s)he would not have been able to perceive much around him/her other than the information on his/her phone screen. At a minimum, this distraction would have caused Kapowski’s vehicle to travel further than it would have, had Kapowski already been looking at the road and have observed A.C. Slater’s vehicle in the intersection sooner.

30. Feet per second is a unit of speed. Someone traveling 1 foot per second is traveling approximately 0.682 miles per hour. To figure out how far someone traveled that is going a certain speed, it’s a simple use of cross-multiplication if you know either how far a car traveled or how fast a car was going.

31. The “Braking/Stopping Distances” chart is a very handy tool that I use. This chart is generally accepted in the relevant scientific community. It provides important information in these types of cases.

32. Both cars involved in this accident are average size cars. I just wanted to mention that because the “Braking/Stopping Distances” chart has a calculation that relates to average size cars. Based on my training and education as relates to this chart, an average car is 15 feet long.

33. During one second of time, a vehicle going 35 miles per hour travels about 51 \( \frac{1}{3} \) feet. During one second of time, a vehicle going 20 miles per hour travels about 29 \( \frac{1}{3} \) feet. During one second of time, a vehicle going 10 miles per hour travels about 14.7 feet.

34. The accident in this case took place approximately 20 feet into the intersection past the crosswalk that Kapowski crossed, and approximately 24 feet past the crosswalk that Slater’s vehicle crossed.

35. If Kapowski was traveling 35 mph prior to the accident, and was not distracted, Kapowski would have needed on average 136 feet to stop and avoid hitting Slater’s car. Change the speed in that equation to 20 mph, and Kapowski would have needed 63 feet to avoid hitting Slater’s car.

36. If you change one variable, and add in that Kapowski was looking at his/her phone while driving for at least 1 second, at 35 mph, Kapowski would have needed 187.3 feet to avoid hitting Slater. Same amount of delay at 20 mph and Kapowski would have needed 92.3 feet to avoid hitting Slater.

37. Subtract from both of the numbers in #36 the 20 feet into the intersection where the accident took place, and we can extrapolate that Kapowski was going to hit Slater’s vehicle almost to a
mathematical certainty if (s)he was looking at his/her phone for a minimum of 1 second and was within 167.3 feet of the intersection going 35 mph or 72.3 feet of the intersection going 20 mph.

38. For whatever it is worth, I am also aware that the Plaintiff stated that his/her light changed to yellow at some point. Given that the yellow light at this intersection lasts 3 seconds, if Slater was traveling at a speed of 20 mph, Stater’s vehicle would need to have been within 87.9 feet when the light first turned to yellow in order to have a chance of entering the intersection while the light was still yellow. Or, to put it in another way, if Slater had been 88 feet or more before the intersection when the light changed to yellow, and was traveling 20 mph, then (s)he would have entered the intersection when it was red.

39. Again, just for full mathematical purposes, if Slater was traveling at a speed of 10 mph, Stater’s vehicle would need to have been within 44.1 feet when the light first turned to yellow in order to have a chance at entering the intersection while the light was still yellow. Or put in another way, if Slater had been more than 44.1 feet before the intersection when the light changed to yellow, and was traveling 10 mph, then (s)he would have entered the intersection when it was red.

40. Based on my calculations above in #38 and #39, if Slater was traveling between 10 and 20 mph and his/her car was within 15 feet from the intersection when the light switched from green to yellow, then Slater’s testimony is consistent with someone who would have entered into the intersection while the light was still yellow.

41. Based on all of my knowledge, training, and experience, plus my awareness of the facts of this case from the other affidavits, it is my opinion that Kelly Kapowski’s likely use of his/her phone while driving caused him/her to fail to perceive that A.C. Slater was in the intersection. Additionally, there is mathematical proof that demonstrates how A.C. Slater could have entered the intersection while Slater’s light was still yellow. Regardless, based on the fact that Zach/Zacharia Morris’ car in Lane 2 was able to avoid Slater’s car, this information suggests to me how someone who was not distracted was able to avoid this accident. My only hesitation in this opinion, in addition to any change in the facts told to me pretrial, are those 4 cars in Lane 2 of Route 50 and whether or not that blocked Kelly Kapowski’s view on the right side of the upcoming intersection and his/her ability to see Slater’s car coming from his/her right to left, regardless of whether Kapowski was distracted or not.

Stacey Carosi
Stacey Carosi
Affidavit of Kelly Kapowski, Defendant

1. I am sixteen years old and a junior at Bayside High School in Bayside County, Maryland.
2. I live with my parents and sister at 5437 River Terrace Drive in Bayside, MD.
3. Before the accident, I was a varsity soccer player.
4. On September 4th, 2015, I was driving my 2013 Volvo XC60 Station Wagon to Ocean City for Labor Day weekend.
5. I had only had the Volvo for about two weeks. My parents bought it from our next door neighbor, and I was so excited to have my own car, even though it was a station wagon.
6. I had two passengers in my car, my friend Jessie Spano in the back and a kid named Skreetch in the front, who we didn’t know that well but were giving a ride to the beach. We were looking forward to our last carefree weekend before the school year kicked in. Skreetch was in the front passenger seat, and Jessie was sitting right behind Skreetch.
7. I know Skreetch thinks the texts we sent were mean, but we were just joking around. That is how Jessie and I are when we get together.
8. I want to be honest with everyone: to the extent that it looks like there was texting coming from my phone minutes prior to the accident, I would only have read and sent texts while my car was stopped at red lights. I would not read or send texts while my car is in motion.
9. I don’t think that it is right that everyone got to read my personal text messages after the crash. I gave Officer Belding my phone at the hospital, so that (s)he could see that I was not texting during the accident. The whole world wasn’t supposed to invade my privacy.
10. My whole life is on my phone. Now everyone at school knows about the messages I sent to Jessie, and some kids have even said “we got what we deserved.” I can’t believe how harsh people can be.
11. Before the accident, I had no points on my license, not even a ticket. Now I can’t even drive myself to my part-time job.
12. I passed my driver’s test on the first try, on my sixteenth birthday, April 23rd, 2015.
13. My parents take safety seriously. Before I could get a car they had me attend the Mellon Computing Driving Academy, in addition to the Drivers Ed. classes I took at Bayside.
14. In the minutes leading up to the crash, I wasn’t going above the speed limit, which was 35mph. I’ve lived in Bayside all my life, and I know the cops are always looking for speeders on that stretch of road.
15. I understand the importance of being a safe driver. I always try to keep my eyes on the road and truly believe my eyes were on the road on that day, including moments before the accident and all the way into the accident.
16. I remember that I was driving on Route 50 and could see from a distance that the light for me was red at the intersection where Max’s is. But I was a couple hundred feet back when I made that observation. I was trying to time the light so I slowed to a speed that was below 35 mph in order to be able to stop if the light stayed red by the time I got up to it. I probably got the car down to about 20mph. My lane had no other cars in it all the way up to the crosswalk. The lane next to me had about 3-4 cars in it back to back to back. I believe those cars were all still stopped when I approached the signal. I remember the light changing to green as I approached the intersection and I’m pretty much certain it was green before I entered the intersection.
17. I didn’t see the other car until it was literally right in front of me. I didn’t have time to react. I have no clue how they didn’t see my car. It was broad daylight.

18. At the moment of impact, my face and chest hit the airbag and I was knocked unconscious.

19. I was taken by ambulance to St. Joseph Medical Center, where I regained consciousness and was diagnosed with a severe concussion and fractured clavicle.

20. I know the airbag probably saved my life – but I also suffered pretty painful injuries when it deployed. I had horrible bruising and swelling around my face, which took weeks to go away. I also had burns on my chest and face.

21. I was elected to the Homecoming Court but I was still in too much pain and too embarrassed by the way my face looked to attend. My doctors say all of it healed really well, though.

22. I suffered a broken nose and cheekbone, and ethmoid fractures. They weren’t sure at first if any of it would require surgery, but I’m probably going to need surgery on my cheekbone.

23. The main reason I had to stay in the hospital for as long as I did was because of internal bleeding, which required surgery.

24. Ever since the crash I have been experiencing horrible headaches and short term memory loss, which has really affected my ability to study for the SAT’s and apply to college.

25. My parents say that they might have to sell the house I grew up in to pay my medical bills. They have totaled almost $300,000. That doesn’t include the facial surgery I might still need.

26. I missed the 2015 soccer season due to all my medical problems and stress from this lawsuit. That season was my chance to be scouted to play for a college. And with all of the expenses from this, I doubt I’ll even be able to go away to college now.

27. Thankfully, despite my missing the first few months of school, I was able to work with a tutor, so I wouldn’t fall behind. I’m a member of the National Honors Society and have always worked hard at school; this could have really set me back. Luckily, it looks like I will be able to graduate on time.

28. I can’t tell you the last time I had a good night’s sleep. It took weeks for me to be able to sleep even a few hours at a time, because the injuries were so painful. Now that they have gone away, for the most part, I have terrible nightmares about the accident.

29. I have been seeing a counselor to help me sort through all of this, and she says it will get better with time, but I really wonder if it will.

Kelly Kapowski
Kelly Kapowski
Affidavit of Officer R. Belding, Witness for the Defendant

1. I am forty seven years old and a twenty four-year veteran of the Bayside Police Department (BPD).
2. I live at 5454 River Terrace Drive in Bayside, Maryland.
3. Throughout my career, I have, unfortunately, been called to the scene of many vehicular accidents. I am not a certified accident reconstructionist but I am aware of the variables they use to do their job, so I try to record as much as I can when I am responding to accidents.
4. Every April, I go around to the local high schools and give talks to teenagers on the dangers of drinking and driving and distracted driving. Last spring, I went to Bayside High and Valley High School to speak about these issues.
5. Young people under the age of 20 represent the largest proportion of distracted drivers.
6. I also work the enforcement checkpoints. We take distracted driving seriously in Bayside County. We make it a point to be visible, and hope that if people know we are looking out for drivers who are distracted, then it will serve as a deterrent.
7. For me, there is nothing worse than having to knock on the door of a family’s home to inform them that they have lost a loved one due to a preventable accident.
8. On September 4th, 2015, at around 10:25 am, I was coming to the end of my shift. That day I was working from 12 a.m. to 8 a.m. but with overtime my shift was extended until 12 p.m.
9. It had been a long night and I was pretty exhausted so I stopped by my favorite coffee shop, Toni Scott’s Tea and Java, to get a coffee.
10. Toni’s is in the shopping center across Route 50 from Max’s Diner.
11. Max’s is set back from Route 50. It is separated by a parking lot approximately half a football field’s length from the intersection to the front door of Max’s. Max’s is part of a strip mall shopping center.
12. I know from my experience of working this area that the intersection near Toni’s, and across from Max’s is dangerous. It is well known in the police department that the yellow light at this intersection is one of the faster ones. I have timed it in the past, as well as on the incident date in this case, and this traffic light stays yellow for about 3 seconds in all directions. Most other yellow lights I’ve timed in Bayside County are 5-6 seconds long. Someone really should say something about that to the county council.
13. I took some measurements of the accident scene; I included those measurements in my report.
14. As I wrote in my report, the defendant, Kelly Kapowski, was driving Eastbound on Rt. 50. The speed limit for that stretch of Rt. 50 is 35 mph.
15. I didn’t witness the accident as it happened. At the time of the accident, I was sitting in my patrol vehicle sipping on my coffee. I heard the collision and turned around to see that two vehicles had been involved in the accident had already come to rest. I looked at my watch and noted the time of the accident was 10:32 a.m.
16. Kapowski’s vehicle was stopped near the middle of the intersection. Slater’s vehicle was stopped with several feet between it and Kapowski’s vehicle. In terms of where Slater’s vehicle was stopped, if you are looking at it from Kapowski’s vehicle’s perspective, it would have come to rest at Kapowski’s 10 o’clock. There were about 5-10 feet between the 2 vehicles.
17. It was not clear from this accident whether Slater’s car was trying to make the sharpest left hand turn possible or a more casual rounder left hand turn.
18. Based on where the cars came to stop, I did not see any evidence that Kapowski swerved or made any attempt to avoid the collision.

19. I was first able to interview Zach/aria Morris who told me (s)he was in lane 2 going the same direction as Kapowski. Morris recalled that his/her light was green when (s)he noticed Slater’s vehicle in the intersection effectuating a left hand turn.

20. When I interviewed A.C. Slater, (s)he explained (s)he had a green light and the light turned to yellow sometime before (s)he entered the intersection. I don’t recall Slater stating a more specific amount of time. I believe Slater just said “sometime” before entering the intersection.

21. When I interviewed Kelly at the hospital, I asked him/her about how the accident happened and (s)he advised that she was traveling in Lane 1 and explained that the other car came out of nowhere. (S)he insisted that (s)he was not using his/her phone at the time of the accident. (S)he handed the phone over to me. After looking through the call logs and not seeing any phone calls around the time of the accident, I went through Kapowski’s text history. I took a screenshot of Kapowski’s only text messages from around the time of the incident. When I compared the time of the last text to the accident time, I noticed that Kapowski had not sent a text at the time of the accident.

22. Everything that is in my screenshot includes the last few minutes of text conversation on Kapowski’s phone before the accident. There were no other texts right after the time of the accident. I know the last line cut off a little. There were no other texts after that last line.

23. I did not interview Sam Powers. I believe it is important to interview all witnesses to an accident. I must have just overlooked interviewing Sam Powers. I remember hearing that Powers was suggesting Kapowski may have been using a phone at the time of the accident. I know those texts were about Powers, and I wasn’t in the car at the time of the accident, so I really don’t want to get in the middle of a petty dispute between Powers and Kapowski.

24. Kelly’s mother is also a police officer and she is my Lieutenant, but I had never met Kelly before the day of the collision.

25. Route 50 Eastbound was closed for approximately an hour following the accident as we investigated. Unfortunately, there are no traffic cameras on that stretch of road. The only skid marks present were very light – typically called “shadow skids” – which are produced as the wheels begin to slow and just before they achieve full lock. I wasn’t even sure if they were from this incident or some other incident.

26. As part of my investigation, and because we were limited in what we could ascertain from the scene and my interviews, I knew it would be important to obtain the EDR from Kelly and A.C.’s car. The EDR, or Event Data Recorder is what is commonly referred to as a “black box.” Most people don’t realize the extent of the technology that exists in newer models. As of September 1, 2014, every newly manufactured car must have a black box installed. The National Highway Traffic Safety Administration (NHTSA) mandates that every new recorder track 15 variables, including vehicle speed, airbag deployment times, if seatbelts were worn, steering angles, and more. However, the black box only stores the information pertaining to a 20-second timeframe around the time of crash.

27. I made sure we followed protocol in obtaining a warrant to access the black boxes. We received approval for the warrant on September 5, 2015 and obtained both black boxes on September 13, 2015.
28. I turned over the black boxes to our IT department at Bayside Police, and they were able to extract the following data\(^1\):
   a. Kelly and the other occupants of Kelly’s vehicle were wearing their seatbelts at the time of the crash.
   b. A.C. was not wearing his/her seatbelt at the time of the crash.
   c. The airbags deployed as they were designed to do in both vehicles. I know from my training and experience in traffic enforcement, that airbags are designed to supplement the seat belt and enhance passenger safety, in collisions of approximately 15/mph or greater. I was taught this during the police academy and it has been repeated in subsequent years at various police trainings.
   d. Data collected pertaining to the steering angle of the vehicle indicated that neither vehicle swerved in the seconds leading up to the collision.
   e. Unfortunately, the two cars were badly enough damaged that the speed of each vehicle was lost and not able to be recorded by each vehicle’s black box computers at or around the time of the accident.

29. Toxicology screens were administered to both the plaintiff and the defendant at the hospital as part of the hospital’s normal procedures, and both came back clean. As such, it is my opinion that alcohol and drugs were not contributing factors in this accident.

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\(^1\) This data is stipulated to for the purpose of Mock Trial.
Affidavit of Zach/Zacharia Morris, Witness for the Defendant

1. I am thirty four years old.
2. I reside with my spouse and three children at 46678 Garden Path Drive in Bayside, MD.
3. At the time of the crash, my children were aged 3 months, 2 and 4 ½ years old. All of my children were riding in my Honda SUV on September 4th, 2015.
4. We were driving eastbound down Route 50 on our way to take my feverish two year old to the pediatrician, when the plaintiff’s blue car came tearing out of the parking lot by Max’s Diner.
5. Prior to the accident, I remember my 2 year old was crying up a storm; it ended up being for an ear infection. My child’s crying was so loud. I don’t want to be called a liar so I’m willing to say I’m 90% sure my light was green before I started going through it; I guess anything’s possible so I don’t ever like to say I’m 100% anything (other than I’m 100% sure my child was crying like nothing I had ever heard before).
6. When I saw the plaintiff darting out of the lot into the intersection, I didn’t feel I could just slam on the brakes; there was a car behind me. If that other car had not been behind me, I definitely believe that I would have had enough time to brake. I do recall, after the fact, that there was more than one car behind me but I don’t remember if it was more than two.
7. Because I had a red light originally, I began driving from a stopped position. Once my light changed to green and I started to move forward, I swerved out of the way of that car coming out of Max’s.
8. Everything happened so fast. I don’t recall any cars being in the lane to my left prior to the light changing to green. It took me a few minutes to gain my composure. I was shaking and my two year old was definitely still screaming. All of my kids were terrified. The sound of the crash was so loud and scary.
9. Thank goodness I was paying attention to the road and was able to react quickly, or we all could have been killed.
10. I really believe the light was green when I entered the intersection, but I can’t say for sure what color it was for the plaintiff when (s)he darted out because that was not my light to be looking at. I was looking up at my light waiting for it to change prior to the accident. I am comfortable saying that the plaintiff’s car had to have been going at least 20 to 30mph, maybe more.
11. That driver in the blue car caused me to have a panic attack, and ever since then, I have gotten them even more than I usually do.
12. I am fed up with drivers who act like they own the road!
13. Every day I see idiots behind the wheel who are putting on make-up, drinking coffee, looking everywhere but the road. Sure, all of that concerns me greatly. But, so do the drivers, who tailgate, flash their high beams, weave in and out of traffic, and use the shoulder as a through lane!
14. In 2010, I lost my father when he was rear-ended by a driver who was late for a meeting, and driving like a maniac. We were fortunate in some respects, because witnesses actually stopped to give their accounts of what led to the accident. That man, who had a lengthy record of aggressive driving, served a small amount of time in prison for vehicular manslaughter. But, that doesn’t bring my Dad back. Now my children are growing up without a grandfather.
15. In my grief, I became a vocal advocate against aggressive driving.
16. Driving distractions fall into four major categories: Visual (taking your eyes off the road), Auditory (hearing something that is not related to driving), Manual (using your hands to manipulate something other than the steering wheel) and cognitive (thinking about something other than driving.)

17. Cognitive distractions are a big issue – but they are the ones we hear about much less frequently. Drivers who are daydreaming or tired also pose a danger. When someone is emotional or angry and they get behind the wheel, it is very likely that their rage will transfer into erratic driving.

18. It’s not that I don’t get it. I live in the real world. People make us angry. Just this morning I was furious with my spouse for leaving dirty dishes in the sink, again. I was fuming when I got in the car to take the kids to the doctor. Luckily, I was able to recognize that I was not ready to drive safely and took a few minutes to listen to a meditation app and cool down before I started the engine.

19. Driving is a privilege, not a right. If you can’t exercise that right responsibly, you shouldn’t have the right to exercise it at all. Not when you’re endangering other people.

20. The driver of that blue car was extremely aggressive. There is no way that they were paying attention to anyone else on the road. If they were, I would not have had to swerve to the right!

Zach Morris

Zach Morris
BAYVIEW TRAUMA CENTER  
1010 OCEAN WAY  
HARBORVIEW, MD 21082

To:  
AVERY CHRIS SLATER  
3636 Crab Cracking Court  
BAYSIDE, MD 21666

Invoice Date: 10/03/2016  
Account #: 1983627L5M-1304

<table>
<thead>
<tr>
<th>DATE</th>
<th>DESCRIPTION</th>
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Please be aware that all costs may not be reflected on this invoice. For billing inquiries, please call 1.555.657.5555. Please remit payment online at [www.bayviewtrauma.com](http://www.bayviewtrauma.com).
<table>
<thead>
<tr>
<th>DATE</th>
<th>SUMMARY OF PATIENT CHARGES</th>
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<td>08/31/2016</td>
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<td>Radiology – Diagnostic – Gene*</td>
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<td>301,663.67</td>
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</table>

The Medical Center provides payment plans upon request. Please contact Billing Assistance at 555.932.1000 x555.

Please make payments via check to “Saint Joseph Medicine” or pay online at www.stjopaymybill.com

THANK YOU FOR YOUR PROMPT PAYMENT!
VEHICLE 1 (FORD FOCUS) WAS PROCEEDING THROUGH TRAFFIC LIGHT, MAKING A LEFT TURN ONTO WESTBOUND ROUTE 50 FROM MAX'S PARKING LOT, CROSSING EASTBOUND LANES OF TRAFFIC. VEHICLE 1 WAS STRUCK BY VEHICLE 2 ON THE DRIVER'S SIDE. VEHICLE 2 WAS PROCEEDING THROUGH TRAFFIC LIGHT, DRIVING EASTBOUND ON ROUTE 50.

AT THIS INTERSECTION, RTE 50 IS APPROXIMATELY 48’ WIDE WITH TWO LANES GOING EACH WAY. EACH LANE ON RTE 50 MEASURES 12’ IN WIDTH. THE CROSS STREET, MAX POINT RD, MEASURES 40’ WIDE WITH ONE LANE GOING EACH WAY. EACH LANE MEASURES ABOUT 20’ IN WIDTH. TRAFFIC LIGHTS ARE LOCATED ABOVE CROSS WALKS; THAT ARE OPPOSITE THE SIDE OF INTERSECTION FOR EACH DIRECTION OF TRAVEL: 40’ AWAY FROM RTE 50 DRIVERS, 48’ AWAY FROM MAX PT RD DRIVERS.

*PICTURE NOT TO SCALE
### At Fault/Citation(s)
- **At Fault:**
- **Citation Issued:**
- **Citation Code:**

### Owner of Vehicle One:
- **First:** Avery Chris
- **Last:** Slater
- **City:** Bayside
- **Phone:** 555.410.9876
- **Other Phone:**
- **State:** MD
- **Zip:** 21621

### Driver
- **DL#:** S436-075-115-344
- **DL State:** MD
- **DL Class:** C
- **First:** Avery
- **Middle:** Chris
- **Last:** Slater
- **Street:** 3636 Crab Cracking Court
- **City:** Bayside
- **Home:**
- **Other:**
- **DL State:** MD
- **Home:**
- **Zip:** 21666

### Driver—Safety Information:
- **Safety Equip:** seatbelt, airbag
- **Equip Problem:** n/a
- **Airbag Deployed:** yes
- **Alch. Test Given:** n/a
- **Alch. Test Type:** n/a
- **BAC:** n/a
- **Substance Use:** Not detected
- **Injury Severity:** severe, flown out
- **Ejected:** no
- **EMS Unit:** A
- **EMS Run Number:**
- **Impact & Damage**
  - **First Impact:** driver’s side
  - **Main Impact:** driver’s side
  - **Most Harmful Event:** driver’s side
  - **Damage Extent:** Considerable damage
  - **Areas Damaged:** area from front panel to back door on driver’s side
  - **Fire:** no
- **Circumstances**
  - **Direction:** turning westbound
  - **Continuing Direction:** NW
  - **Vehicle Movement:** left turn
  - **Speed Limit:** 10mph

### Occupant—Information
- **First:**
- **Middle:**
- **Last:**
- **Street:**
- **City:**
- **State:**
- **Zip:**
- **Phone:**
- **Other Phone:**
- **Safety Equip:**
- **Equip Problem:**
- **Airbag Deployed:**
- **Seating Placement:**
- **Alch. Test Given:** yes
- **Alch. Test Type:** blood taken by hospital
- **BAC:** 0.0
- **Substance Use:** None detected
- **Injury Severity:**
- **Ejected:**
- **EMS Unit:** A
- **EMS Run Number:**

### Contrib. Circumstances Person:
- **Driver Distracted By:**
- **Contrib. Circumstances Vehicle:**
## Vehicle TWO Basic Information:
<table>
<thead>
<tr>
<th>Registration</th>
<th>Year: 2015</th>
<th>VIN# 2HGFA1F59BH508368</th>
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<tbody>
<tr>
<td>Insurer: AllState</td>
<td>Make: Volvo</td>
<td>Policy #: TD2005BRO671</td>
</tr>
<tr>
<td>Towed Vehicle: yes, Jimmy's tow service</td>
<td>Model: X60</td>
<td></td>
</tr>
</tbody>
</table>

## Owner of Vehicle Two:
| First: Susan          | Phone: 555.333.1067 |
| Last: Kapowski        | Other Phone: 555.895.4458 |
| City: Bayside         | State: |

## Driver
<table>
<thead>
<tr>
<th>DL# K120-465-012-724</th>
<th>DL State: MD</th>
<th>DL Class: C</th>
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</thead>
<tbody>
<tr>
<td>First: Kelly</td>
<td>Middle:</td>
<td>Last: Kapowski</td>
</tr>
<tr>
<td>Street: 5437 River Terrace Drive</td>
<td>State: MD</td>
<td>Home: 555.333.1067</td>
</tr>
<tr>
<td>City: Bayside</td>
<td>Zip: 21621</td>
<td>Other: 555.895.2992</td>
</tr>
</tbody>
</table>

### Driver—Safety Information:
- Safety Equip: seat belt, airbag
- Equip Problem: n/a
- Airbag Deployed: yes
- Alch. Test Given: n/a
- Alch. Test Type: n/a
- BAC: n/a
- Substance Use: Not detected
- Injury Severity: severe, flown out
- Ejected: no
- EMS Unit: A

### Impact & Damage
- First Impact: front impact
- Main Impact: front hood/windshield
- Most Harmful Event: front impact
- Damage Extent: appears totaled
- Areas Damaged: front body, hood, windshield
- Fire: no

### Circumstances
- Direction: Eastbound
- Continuing Direction: E
- Vehicle Movement: straight
- Speed Limit: posted speed 35 mph

## Occupant—Information
<table>
<thead>
<tr>
<th>First:</th>
<th>Safety Equip:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Middle:</td>
<td>Equip Problem:</td>
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<tr>
<td>Last:</td>
<td>Airbag Deployed:</td>
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<tr>
<td>Street:</td>
<td>Seating Placement:</td>
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<tr>
<td>City:</td>
<td>Alch. Test Given: yes</td>
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<tr>
<td>State:</td>
<td>Alch. Test Type: blood taken by hospital</td>
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<td>Zip:</td>
<td>BAC: 0.0</td>
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<td>Phone:</td>
<td>Substance Use: None detected</td>
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<td>Other Phone:</td>
<td>Injury Severity:</td>
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<td>Safety Equip:</td>
<td>Ejected:</td>
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<tr>
<td>Equip Problem:</td>
<td>EMS Unit: A</td>
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<tr>
<td>Airbag Deployed</td>
<td>EMS Run Number:</td>
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</table>
omg - Skretch needs to shut up. I can't deal with him for another hour

So cringey

I can't with him. Who's idea was it to give the loser a ride??

Lol ur savage

Nah, just honest. Thts why ur friends with me

Ugh, can we please leave Skretch at a gas station somewhere 😫

jk

What time are we meeting up
Perception Reaction Distance = (Feet per second) times 1.5 seconds.

Braking Deceleration Distance is based on the average size car.

<table>
<thead>
<tr>
<th>MPH</th>
<th>Ft./Sec.</th>
<th>Braking Deceleration Distance</th>
<th>Perception Reaction Distance</th>
<th>Total Stopping Distance</th>
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<tr>
<td>10</td>
<td>14.7</td>
<td>5</td>
<td>22</td>
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<td>55</td>
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<td>132</td>
<td>386</td>
<td>198</td>
<td>584</td>
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</table>
DISTRACTED DRIVING is the single most important step to save your life in the event of a crash.

Pull over or pull until they arrive at a safe place if you sense they are using a handheld cell phone. Ask if they are using a passenger and if the driver is using a handheld cell phone, ask them to stop.

Take Responsibility for your messages. For your safety, do not send or read text messages while driving.

Manage your time. Driving is not the time to text or email. Turn off your phone when you need to drive.

Park your phone. Set a good example.

What can you do?

And a fine of up to $500.

Prison sentence of up to 10 years.

A driver that causes serious injury or death while texting or using a handheld cell phone may be charged and receive a

Take the Law.

You drive before

PARK THE PHONE

MARYLAND'S CELL PHONE

CELL PHONE USE AND TEXTING ARE

LEADING CAUSES OF

MARYLAND'S ROADS AT A RESULT OF

20,000 people are INJURED annually.

$110 and 3 points

To a crash, the fine may increase to:

If the use of the device contributes

$70 and 1 point

while driving. The fine is:

Drivers also can be cited.

(3 and subsequent offenses)

$160 third offense

$140 second offense

$83 first offense

Including court costs of:

Drivers will face fines

for using a handheld cell phone.

Police can stop and ticket drivers

The Fine:

or texting while driving.

use of a handheld cell phone

MARYLAND LAW PROHIBITS THE

The Law:

YOU DRIVE

BEFORE

PARK THE PHONE
6 OUT OF 10 teen crashes involve driver distraction.

The most common forms of distraction leading to a teen driver crash include:

- **15%** Interacting with one or more passengers
- **12%** Using a cellphone
- **10%** Looking at something in the vehicle
- **9%** Looking at something outside the vehicle
- **8%** Singing/dancing to music
- **6%** Grooming
- **6%** Reaching for an object

For teen driving tips, visit TeenDriving.AAA.com

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§ 21-202. Traffic lights with steady indication

(a) In general. --

(1) Where traffic is controlled by traffic control signals that show different colored lights or colored lighted arrows, whether successively one at a time or in combination, only the colors green, red, and yellow may be used.

(2) These lights apply to drivers as provided in this section.

(b) Green indication. -- Vehicular traffic facing a circular green signal may proceed straight through or, unless a sign at the place prohibits the turn, turn right or left.

(c) Entering intersection on green arrow. -- Vehicular traffic facing a green arrow signal, whether shown alone or with another indication, cautiously may enter the intersection, but only to make the movement indicated by the arrow or to make another movement permitted by other indications shown at the same time.

(d) Steady yellow indication. --

(1) Vehicular traffic facing a steady yellow signal is warned that the related green movement is ending or that a red signal, which will prohibit vehicular traffic from entering the intersection, will be shown immediately after the yellow signal.

(2) A motorist facing a steady yellow signal may lawfully enter and drive through an intersection however this does not excuse such motorist from the requirements of otherwise proceeding with due care in its entry and passage through an intersection.

(e) Steady red indication -- In general. --

(1) Vehicular traffic facing a steady circular red signal alone:

(i) Shall stop at the near side of the intersection:

1. At a clearly marked stop line;
2. If there is no clearly marked stop line, before entering any crosswalk; or
3. If there is no crosswalk, before entering the intersection; and

(ii) Except as provided in subsections (i), (j), and (k) of this section, shall remain stopped until a signal to proceed is shown.

(2) Vehicular traffic facing a steady red arrow signal:

(i) May not enter the intersection to make the movement indicated by the arrow;

(ii) Unless entering the intersection to make a movement permitted by another signal, shall stop at the near side of the intersection:

1. At a clearly marked stop line;
2. If there is no clearly marked stop line, before entering any crosswalk; or
3. If there is no crosswalk, before entering the intersection; and

(iii) Except as provided in subsections (i), (j), and (k) of this section, shall remain stopped until a signal permitting the movement is shown.

(f) Steady red indication -- Entering intersection for right turn or for left turn from one-way street onto one-way street. -- Unless a sign prohibiting a turn is in place, vehicular traffic facing a steady red signal, after stopping as required by subsection (h) of this section, cautiously may enter the intersection and make:

(1) A right turn; or
(2) A left turn from a one-way street onto a one-way street.
(g) Steady red indication -- Entering intersection to make turn indicated by sign. -- If a sign permitting any other turn is in place, vehicular traffic facing a steady red signal, after stopping as required by subsection (h) of this section, cautiously may enter the intersection and make the turn indicated by the sign.

(h) Applicability of section. -- Except for those provisions of this section that by their very nature cannot apply, this section applies to a traffic control signal placed at a location other than an intersection. Each stop required by the signal shall be made at a sign or marking on the pavement indicating where the stop shall be made or, if there is no sign or marking, at the signal.

Md. TRANSPORTATION Code Ann. § 21-1124
Current through October 1, 2017, of the 2017 Regular Session of the Maryland General Assembly.


§ 21-1124. Prohibition against use of wireless communication device while driving by minor holding learner's permit or provisional license

(a) Definitions. --
(1) In this section the following words have the meanings indicated.
(2) "9-1-1 system" has the meaning stated in § 1-301 of the Public Safety Article.
(3) "Wireless communication device" means a handheld or hands-free device used to access a wireless telephone service.

(b) Applicability of section. -- This section does not apply to the use of a wireless communication device:
(1) To contact a 9-1-1 system; or
(2) As a text messaging device as defined in § 21-1124.1 of this subtitle.

(c) Prohibition. -- An individual who is under the age of 18 years may not use a wireless communication device while operating a motor vehicle.

(d) Suspension of license. --
(1) If the Administration receives satisfactory evidence that an individual has violated this section, the Administration:
   (i) May suspend the individual's driver's license for not more than 90 days; and
   (ii) May issue a restricted license for the period of suspension that is limited to driving a motor vehicle:
      1. In the course of the individual's employment;
      2. For the purpose of driving to or from a place of employment; or
      3. For the purpose of driving to or from school.
(2) An individual may request a hearing as provided for a suspension or revocation under Title 12, Subtitle 2 of this article.
Md. TRANSPORTATION Code Ann. § 21-1124.1


§ 21-1124.1. Text messaging prohibited

(a) Definitions. --

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

(2) "9-1-1 system" has the meaning stated in § 1-301 of the Public Safety Article.

(3) "Text messaging device" means a handheld device used to send a text message or an electronic message via a short message service, wireless telephone service, or electronic communication network.

(b) In general. -- Subject to subsection (c) of this section, an individual may not use a text messaging device to write, send, or read a text message or an electronic message while operating a motor vehicle in the travel portion of the roadway.

(c) Exceptions. -- This section does not apply to the use of:

(1) A global positioning system; or

(2) A text messaging device to contact a 9-1-1 system.

(d) Sanctions. --

(1) If the Administration receives satisfactory evidence that an individual who is under the age of 18 years has violated this section, the Administration:

(i) May suspend the individual's driver's license for not more than 90 days; and

(ii) May issue a restricted license for the period of suspension that is limited to driving a motor vehicle:

1. In the course of the individual's employment;

2. For the purpose of driving to or from a place of employment; or

3. For the purpose of driving to or from school.

(2) An individual may request a hearing as provided for a suspension or revocation under Title 12, Subtitle 2 of this article.

Md. TRANSPORTATION Code Ann. § 21-1124.2


§ 21-1124.2. Communications Traffic Safety Act

(a) Definitions. --

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

(2) "Handheld telephone" means a handheld device used to access wireless telephone service.

(3) "9-1-1 system" has the meaning stated in § 1-301 of the Public Safety Article.

(b) Exceptions to applicability of section. -- This section does not apply to:

(1) Emergency use of a handheld telephone, including calls to:

(i) A 9-1-1 system;

(ii) A hospital;

(iii) An ambulance service provider;

(iv) A fire department;
(v) A law enforcement agency; or
(vi) A first aid squad;

(2) Use of a handheld telephone by the following individuals when acting within the scope of official duty:
   (i) Law enforcement personnel; and
   (ii) Emergency personnel;

(3) Use of a handheld telephone as a text messaging device as defined in § 21-1124.1 of this subtitle; and

(4) Use of a handheld telephone as a communication device utilizing push-to-talk technology by an individual operating a commercial motor vehicle, as defined in 49 C.F.R. Part 390.5 of the Federal Motor Carrier Safety Regulations.

(c) Persons prohibited from use of handheld telephone while driving. -- The following individuals may not use a handheld telephone while operating a motor vehicle:

   (1) A driver of a Class H (school) vehicle that is carrying passengers and in motion; and
   (2) A holder of a learner's instructional permit or a provisional driver's license who is 18 years of age or older.

(d) Prohibited use of handheld telephone while vehicle is in motion. --

   (1) This subsection does not apply to an individual specified in subsection (c) of this section.
   (2) A driver of a motor vehicle that is in motion may not use the driver's hands to use a handheld telephone other than to initiate or terminate a wireless telephone call or to turn on or turn off the handheld telephone.

(e) Penalties. --

   (1) A person convicted of a violation of this section is subject to the following penalties:
      (i) For a first offense, a fine of not more than $75;
      (ii) For a second offense, a fine of not more than $125; and
      (iii) For a third or subsequent offense, a fine of not more than $175.
   (2) Points may not be assessed against the individual under § 16-402 of this article unless the offense contributes to an accident.

(f) Penalties -- Waiver. -- The court may waive a penalty under subsection (e) of this section for a person who:

   (1) Is convicted of a first offense under this section; and
   (2) Provides proof that the person has acquired a hands-free accessory, an attachment or add-on, a built-in feature, or an addition for the person's handheld telephone that will allow the person to operate a motor vehicle in accordance with this section.
Negligence is doing something that a person using reasonable care would not do, or not doing something that a person using reasonable care would do. Reasonable care means that caution, attention, or skill a reasonable person would use under similar circumstances.

**Comment**

**A. Elements:**

1. The elements of a negligence action are:
   
   (a) Duty or obligation, recognized by law, requiring conformance to a certain standard of conduct for the protection of others against unreasonable risks;
   
   (b) Failure to conform to that standard (breach of duty);
   
   (c) Reasonably close causal connection and resulting injury (proximate cause); and
   
   (d) Actual damage or loss by others.

For the plaintiff to recover damages, the plaintiff's injuries must be a direct result and a foreseeable consequence of the defendant's negligence. [There may be more than one cause of an injury, that is, several negligent acts may work together to cause the injury. Each person whose negligent act is a substantial factor in causing an injury is responsible.]

There can be additional causes for the injury that occur after the defendant's conduct. If a later event or act could have been reasonably foreseen, the defendant is not excused for responsibility for any injury caused by the defendant’s negligence. But if an event or act is so extraordinary that it was not reasonably foreseeable, the defendant’s conduct is not a legal cause of the injury.

A plaintiff cannot recover damages if the plaintiff’s negligence is a cause of the injury.

The defendant has the burden of proving by a preponderance of the evidence that the plaintiff’s negligence was a cause of the plaintiff’s injury.
A child is not expected to use the same degree of care as an adult. A child is held to that degree of care ordinarily exercised by children of similar age, intelligence, experience, and development under the same circumstances.

A plaintiff cannot recover damages if the plaintiff has assumed the risk of an injury. A person assumes the risk of an injury if that person knows and understands, or must have known and understood, the risk of an existing danger and voluntarily chooses to encounter that danger.

A plaintiff who was contributorily negligent may nevertheless recover damages if the plaintiff was in a dangerous situation caused by the negligence of the defendant and the plaintiff, and thereafter the defendant had a fresh opportunity of which defendant was aware to avoid injury to the plaintiff but failed to do so.

The driver of a motor vehicle must use reasonable care. Reasonable care is that degree of caution and attention that a person of ordinary skill and judgment would use under similar circumstances. What constitutes reasonable care depends upon the circumstances of a particular case.

Under Maryland law, certain roads or highways are given the status of a favored highway. A motor vehicle on a favored highway is the favored vehicle, and the motor vehicle on the unfavored highway is the unfavored motor vehicle. The driver of the unfavored motor vehicle must stop before entering upon the favored highway and yield the right-of-way to the favored motor vehicle, provided the favored driver is operating lawfully. The favored driver may assume that the unfavored driver will stop and yield the right-of-way.

A driver of a motor vehicle has a duty to keep a proper lookout. The driver must reasonably observe traffic and other conditions that confront him or her.
18:4 Reasonable Speed

A driver may not operate a vehicle at a speed that is greater than is reasonable and prudent under the conditions then existing.

18:5 Vehicles Traveling in the Same Direction

When motor vehicles are traveling in the same direction, one behind the other, both drivers have a duty to operate their vehicles reasonably. The rear driver has a duty to keep his/her vehicle under proper control so as to avoid striking the front vehicle. The front driver must exercise reasonable care to avoid a collision between the two vehicles. The degree of care that each driver must take depends upon the particular facts and circumstances presented.

18:6 Vehicle Turning Left or Making A U-Turn

A driver of a vehicle intending to turn left or make a U-turn has a duty to yield the right of way to any other vehicle approaching from the opposite direction that is in his/her path or so near as to be an immediate danger.

18:8 Violation of Statute

The violation of a statute, which is a cause of the plaintiff's injuries or damages, is evidence of negligence.
Ritter v. Portera

Court of Special Appeals of Maryland

May 8, 1984

No. 981, September Term, 1983

Reporter
59 Md. App. 65 *; 474 A.2d 556 **; 1984 Md. App. LEXIS 357 ***

Peggy RITTER et al. v. Salvatore Anthony PORTERA et al.


Prior History: APPEAL FROM THE CIRCUIT COURT FOR HOWARD COUNTY RAYMOND J. KANE, JR., JUDGE.

Disposition: JUDGMENT AFFIRMED AS TO VINCENZO PORTERA. JUDGMENT REVERSED AS TO SALVATORE ANTHONY PORTERA AND CASE REMANDED FOR A NEW TRIAL. COSTS TO BE PAID BY APPELLEE, SALVATORE ANTHONY PORTERA.

Counsel: John E. Harris, with whom was Larry L. Lockhart, Baltimore, on the brief, for appellants.

M. King Hill, III, Towson, with whom were Joseph C. Wich, Jr. and Cook, Howard, Downes & Tracy, Towson, on the brief, for appellees.

Judges: Gilbert, C.J., and Garrity and Bell, JJ.

Opinion by: GILBERT

Opinion

[*67] [**557] The parties seem to agree that the appellant, Sherry Lee Schiller (Schiller), 1. was guilty of contributory negligence when she started to perch herself on the hood of the motor vehicle of the appellee, Salvatore Anthony Portera (Portera), 2. in order to ride "maybe fifty feet." The parties seem to agree that Portera, the operator of the vehicle, was primarily negligent in moving the car while Schiller was sitting on or about to sit on the hood of the automobile. Where the parties disagree is over the conclusion by the trial judge that the "doctrine of last clear [***2] chance" was inapplicable and that Schiller's contributory negligence barred recovery from Portera as a matter of law.

At the conclusion of the evidence offered by Schiller, the trial judge granted a directed verdict in favor of Portera. Schiller appealed to this Court. We reverse because we think the last clear chance doctrine to be apposite. Accordingly, we shall remand the matter to the Circuit Court for Howard County in order that the case may be retried. We now explain why we take that action.

[*68] The Facts

The accident occurred in the daylight hours of October 20, 1978, on a dry and clear day. Schiller, who was then age seventeen years, testified that she and her friends, Margie Kelly and Consetta Portera, the sister of the appellee, were [***3] walking on the side of Greenway Drive when the appellee drove up and stopped his 1969 Dodge Polara automobile near where they were standing. The Portera car was then approximately "one or two houses away" from the Portera residence. Schiller told the judge and jury in the circuit court:

"At that time he [Portera] stopped his car, right next to us, in the middle of the road, we were to the side and he said, do you want a ride. Consetta, his sister said, yes, and motioned with her hand, . .

1. Sherry Schiller's mother, Peggy Ritter, was also a party plaintiff and an appellant in this case.

2. Vincenzo Portera, the father of Salvatore, was joined as a party defendant on the theory of respondeat superior and is an appellee here.
and said come on. She got on the car in front of . . . [appellee] and Margie got on the center of the car and I was starting to get on when . . . [appellee] all of a sudden took off. I had never sat down yet - - -

I had my feet on the bumper. I hadn't sat down yet and the car took off. I fell forward and I guess I started to fall to the side and finally, with the car moving, I had a hold of the bumper . . . and it was dragging my body."

The car accelerated very fast, as if it had been "floored," and Schiller was dragged for 20 to 25 feet.

With respect to the cross-examination of Schiller, the transcript disclosed:

"Q. [As I understand it, you] got your feet up on the bumper of the automobile?
A. Yes, that's right.

Q. And you had your hands on the hood of the automobile?
A. Um-hum.
Q. To brace yourself?
A. Yes.

[*69] Q. Was there anything else there to hold on to. Any gadget that cars have on the . . . hood?

[**558] A. There may -- there may have been but I had . . . no time to get anything. I was just beginning to sit down.

Q. Okay, now when Mr. Portera asked -- made this statement about a ride, did you get in the door or anything or start to open the door of the automobile?
A. Well, no, I hadn't -- I hadn't moved when Consetta said yeah, come on and headed for the front of the car. So Margie went and my natural instincts, I went and followed. I assume that's what he was -- he wanted because he didn't say anything else and he -- he just took off."

When asked whether she knew that riding on the car was dangerous, she replied:

"Well, his house was one or two houses down the street and being seventeen, you might look and not think of those kind of things."

Later, in response to a question of her consideration vel non of the danger involved, she said: [***5] 49

"[T]he shorter the distance, the less it [the danger] seemed. You have to remember his house was maybe fifty feet away and I did not expect him to do what he did."

Contributory negligence occurs whenever the injured party acts or fails to act in a manner consistent with the knowledge and appreciation, actual or implied, of the danger or injury that his or her conduct involves. Menish v. Polinger Company, 277 Md. 553, 560-61, 356 A.2d 233 (1976).

In the instant case Schiller knew or should have known that riding on the hood of a motor vehicle was a dangerous and perilous act. Furthermore, she knew or should have known that because of the motion of the vehicle she was subject to being thrown from or falling [*70] from the car with the ever present possibility of injury. In today's mechanized society any normally intelligent 17 year old person knows that riding on the hood of a motor vehicle is dangerous and irresponsible. We think the trial judge correctly ruled that Schiller's conduct amounted to contributory negligence as a matter of law.

We turn now to a discussion of last clear chance. This doctrine first arose in Davies v. Mann, 10 Mees. & W. [***6] 548, 152 Eng.Reprint 588, 19 Eng.Rul.Cas. 190 (1842). It involved a plaintiff who fettered his ass on a highway in such a manner that the animal could not avoid carriages travelling on the road. The plaintiff was allowed to recover from the defendant who collided with the plaintiff's donkey. The Court reasoned that "although the ass may have beenwrongfully there, still the defendant was bound to go along the road at such a pace as would be likely to prevent mischief." Parke, B. in Davies. Not
unexpectedly, the doctrine arising from Davis v. Mann, supra, is nicknamed the "jack-ass doctrine." W. Prosser, Law of Torts (4th ed. 1971) § 66.

The rationale behind the concept of last clear chance is that "if the defendant has the last clear opportunity to avoid the harm, the plaintiff's negligence is not a 'proximate cause' of the result." Id.

Maryland first subscribed to Davies v. Mann, supra, in the case of The Northern Central Railway Company v. The State of Maryland, use of Adeline Price, 29 Md. 420, 96 Am.Dec. 545 (1868). There, Judge Alvey for the Court wrote:

"The mere negligence or want of ordinary caution on the part of the deceased, as was decided [***7] in Tuff v. Warman, 5 C.B.N.S. 573, would not disentitle the plaintiff to recover, unless it were such that, but for such negligence or want of ordinary caution, the misfortune would not have happened; nor, if the defendant might, by the exercise of care on its part, have avoided the consequences of the neglect or carelessness of the deceased. And, as an [*71] illustration of this principle, Davies v. Mann, 10 M. & W. 545, may be referred to." 29 Md. at 436.

Subsequently, in Kean v. B. & O.R.R. Co., 61 Md. 154, 167 (1884), then Chief Judge Alvey said for the Court:

[**559] "This general proposition [of contributory negligence], . . . is subject to another which is equally well established, and that is, that though the plaintiff may have been guilty of negligence, and that negligence may, in fact, have remotely contributed to the production of the accident, yet, if the defendant could, in the result, by the exercise of reasonable care and diligence, in view of the circumstances of the case, have avoided the accident, the plaintiff's negligence, being the more remote cause, will not excuse the defendant."

To the same effect, see Md. Central R.R. [***8] Co. v. Neubeur, 62 Md. 391 (1884); State, use of Kolish v. Wash., B. & A.R. Co., 149 Md. 443, 131 A. 822 (1926). "Knowledge . . . on the part of the person causing the injury, superior to that of the injured person, is the ultimate basis of the doctrine, and it follows that time is an essential element thereof, because the doctrine is not applicable unless the defendant discovered the plaintiff's peril in time, by the exercise of ordinary care, to have avoided the accident." 149 Md. at 457.


In Benton v. Henry, 241 Md. 32, 215 A.2d 226 (1965), the Court upheld a circuit court's ruling [***9] that an infant plaintiff who fell from the running board of an ice cream truck was [*72] guilty of contributory negligence as a matter of law. The Court, in brushing aside an argument based on the doctrine of last clear chance, opined that even if the truck driver were negligent in failing "to ascertain the presence of the boy on the truck, there was a total failure to prove a new or second act of negligence by the appellee. The defendant's act of primary negligence may not be used again to serve as the last clear chance of avoiding the injury."

The Court then stated:

"To invoke the doctrine, the negligence of the defendant must be sequential to that of the plaintiff and not concurrent." (Emphasis added.) 241 Md. at 35, 215 A.2d 226.

When we view the facts of the matter sub judice, we observe that Schiller negligently sat or was about to sit on the hood of Portera's automobile. She thus placed
herself in a position of grave peril. By so doing, she was, as we have previously said, guilty of contributory negligence as a matter of law. Benton v. Henry, supra. Yet, Schiller's contributory negligence was not as a matter of law the proximate cause of the [*10] accident. It is crystal clear that Portera saw his sister, another young woman, and Schiller on the hood of his car. He could have, and indeed should have, refused to move the vehicle while they were so situate. Nevertheless, for whatever reason, he, according to the evidence offered by Schiller, "took off," "like somebody would floor the car or something."

The uncontradicted evidence of Schiller and her witness established that Portera undoubtedly, by the exercise of ordinary care, had the last clear chance to avoid the accident. In our view, it is difficult to conceive of a set of facts that would more clearly demonstrate the last clear chance to avoid injury to a person in peril.

[*73] We think Portera's sequential negligence satisfied Benton, and that the trial judge should not have taken the case from the jury on the motion for directed verdict. 3.

[***11] [**560] There was, however, no evidence to support the conclusion that Salvatore was acting as an agent of his father when the accident occurred. We, therefore, affirm the directed verdict entered in favor of Vincenzo Portera.

JUDGMENT AFFIRMED AS TO VINCENZO PORTERA.

JUDGMENT REVERSED AS TO SALVATORE ANTHONY PORTERA AND CASE REMANDED FOR A NEW TRIAL.

COSTS TO BE PAID BY APPELLEE, SALVATORE ANTHONY PORTERA.

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3. The allegation of Portera's conduct, if true, approaches an intentional act or reckless disregard of the safety of Schiller. See 2 Restatement of Torts 2d (1965) § 479.
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 Score Sheet.

   A. Tie Point
      Always award the Tie 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.

   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 the score sheet.

   D. Providing Feedback to the Team
      Please be mindful that students have often traveled considerable distance for the competition, and still have other obligations (E.G. HOMEWORK). Feedback should be limited to a maximum of 10 minutes.

II. Time Limitations
   Students have been asked to limit their presentations to the timeframes listed in #2 of the Organizational Rules (page 1). The competition will include two bailiff(s), who will keep time throughout the match. They will utilize visual displays to denote ten minute intervals throughout the competition (i.e. 40, 30, 20, 10 minutes remaining) and the final three minutes will also be visually displayed (3, 2, 1, 0). You may permit a student to finish a sentence if time stops in the middle of a thought. Additional time permitted should not exceed 15 seconds.

   Competitions will last approximately 2 hours INCLUDING your deliberation and feedback!

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. 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, opposing team members should object or request a bench conference if this occurs.

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

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

   C. Direct and Cross Examinations
      Each attorney (three for each side) must engage in the direct examination of one witness and the cross-examination of another.
**Mock Trial Performance Rating Sheet**

**Schools:** [School A] vs. [School B]

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<th>Prosecution/Plaintiff</th>
<th>Defense</th>
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<td><strong>Opening Statements (5 minutes max each)</strong></td>
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<td><strong>PLAINTIFF/PROSECUTION</strong></td>
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<td>First Witness</td>
<td>Direct &amp; Re-Direct Examination by Attorney</td>
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<td>Cross &amp; Re-Cross Examination by Attorney</td>
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<td>Witness Performance</td>
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<td>Direct &amp; Re-Direct Examination by Attorney</td>
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<td>Witness Performance</td>
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<td>Third Witness</td>
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<td><strong>Closing Arguments (7 minutes max each)</strong></td>
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**Decorum/ Use of Objections:** Students were courteous, observed courtroom etiquette, spoke clearly, demonstrated professionalism, and utilized objections appropriately.

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<th>Prosecution/Plaintiff</th>
<th>Defense</th>
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<td><strong>TOTAL</strong></td>
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<tr>
<td><strong>Tie Point</strong> (Before totaling score sheet, please award one point to the team you think gave the best overall performance. This point will be used ONLY in a tie.)</td>
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<td>TOTAL WITH TIE POINT (provide this score only in a tie)</td>
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*I have checked the scores and tallies, and by my signature, certify they are correct:*

Presiding Judge: ___________________________ Date: ___________________________

Teacher Coach, Defense: ___________________________ Teacher Coach, P: ___________________________
The Citizenship Law-Related Education Program will:
- provide Mock Trial Guides and rules for each State competition; disseminate information to each circuit;
- provide technical assistance to Circuit Coordinators; provide certificates to all registered participants who compete for the season;
- assist in recruitment of schools; act as a liaison in finding legal professionals to assist teams;

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 and from 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

2017: The Park School (Baltimore County)
2016: Annapolis High School (Anne Arundel County)
2015: Severna Park High School (Anne Arundel County)
2014: Richard Montgomery High School (Montgomery County)
2013: Annapolis High School (Anne Arundel County)
2012: The Park School (Baltimore County)
2011: The Park School (Baltimore County)
2010: Severna Park High School (Anne Arundel County)
2009: Allegany High School (Allegany County)
2008: Severna Park High School (Anne Arundel County)
2007: Severn School (Anne Arundel County)
2006: Severna Park High School (Anne Arundel County)
2005: Richard Montgomery High School (Montgomery County)
2004: Park School of Baltimore (Baltimore County)
2003: Elizabeth Seton High School (Prince George's County)
2002: Towson High School (Baltimore County)
2001: DeMatha Catholic High School (Prince George's County)
2000: Broadneck High School (Anne Arundel County)
1999: Towson High School (Baltimore County)
1998: Pikesville High School (Baltimore County)
1997: Suitland High School (Prince George's County)
1996: Towson High School (Baltimore County)
1995: Pikesville High School (Baltimore County)
1994: Richard Montgomery High School (Montgomery County)
1993: Elizabeth Seton High School (Prince George's County)
1992: Oxon Hill High School (Prince George's County)
1991: Westmar High School (Allegany County)
1990: Bishop Walsh High School (Allegany County)
1989: Lake Clifton/ Eastern High School (Baltimore City)
1988: Pikesville High School (Baltimore County)
1987: Thomas S. Wootton High School (Prince George's County)
1986: Old Mill High School (Baltimore County)
1985: High Point High School (Prince George's County)
1984: Worcester County Team