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2024-2025  
MYLaw High School Mock Trial  
Case & Competition

State of Maryland vs. Dana Luna



We would like to acknowledge our deep appreciation for our talented  
MYLaw Mock Trial Committee  
which includes the Honorable Erik Atas, Mike Baruch, Esq., Jhonell  
Campbell, Esq., Daniel Moore, Esq., Amy Orsi, Esq., & Iyanna Williams.

A very special thank you to  
the Honorable Erik Atas who authored this case.

With gratitude to the Administrative Office of the Courts,  
Maryland Judiciary & Legal Profession

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## **Important Contacts for the Mock Trial Competition**

Please call your local coordinator for information about your county/circuit schedule.

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

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Judge Erik Atas  
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#### Important Dates:

Team rosters must be submitted by December 20th  
Circuit Champions must be declared by March 3rd  
Regional Competitions: March 11th & 12th/ snow date: March 13th  
Semi-Finals: Thursday, March 20th  
State Championship: Friday, March 21st

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October 31, 2024

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Dear Coaches, Advisors and Students:

Welcome to a new school year and to the 2024-25 MYLaw Mock Trial Competition! It takes a small army of volunteers to facilitate this program each year; thank you to all who have a hand in helping Mock Trial run smoothly throughout Maryland. We know there are many of you — coaches, advisors, parents, attorneys, judges and the many unsung heroes who didn't make the list but have our humble gratefulness.

The 2024-25 Mock Trial case involves a high school student election that escalates and becomes— arguably—criminal. When student election campaigns cross boundaries, the consequences can be damaging and irreparable. And, as is now too frequently the case, harassing behavior quickly spills into social media which is nearly impossible to escape.

The ultimate issue in this case is: has it gone too far or is it still within the confines of a legitimate school election?

As it is every year, our primary goal is to provide students an exciting and enriching opportunity to learn about the rule of law. The competition provides opportunities to hone skills that will 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 “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!

As always, we hope you enjoy the case, learn a great deal, and love your experience! Please take the time to read through the entire casebook, as rules and procedures change from year to year. We appreciate you participating in MYLaw's Mock Trial, and wish you so much success and a great deal of fun in this year's competition.

Best Regards,

Shelley Brown  
Executive Director  
shelley@mylaw.org

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## I. GENERAL COMPETITION RULES

### 1. GENERAL

**1.1. Applicability.** These rules shall apply to all MYLAW Mock Trial competitions. Participants are cautioned that the absence of enforcement of any rule within the local circuit competition does not mean the rule will not be enforced at the Regional, Semi-Final, and/or State competition.

**1.2. Diversity and inclusion.** MYLAW has a policy of inclusion, and welcomes all participants regardless of race, color, religion, gender, sex, sexual orientation, gender identity, national origin, age, disability, ancestry, genetic information, or any other category protected by federal, state or local law.

**1.3. Expectation of participants, coaches, hosts and volunteers.** Ethical and professional behavior is expected at all times during all phases of the MYLAW Mock Trial Competition. MYLAW prohibits discrimination, retaliation, or harassment in all its forms, by any individual or team. Inappropriate behavior includes but is not limited to:

- Discriminatory comments based upon any ground listed in 1.2;
- Failure to show respect;
- Violating any of the rules outlined within the casebook;
- Adhering strictly to the “No Coaching” rule;
- Engaging in irresponsible behavior that puts oneself or others at risk, including intoxication at any time during competitions;
- Illegal conduct of any sort.

**1.4. Ideals of MYLAW Mock Trial.** 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; and to heighten enthusiasm for academic studies as well as career consciousness of law-related professions.

**1.5. Integrity.** Individuals, teams, coaches and volunteers shall at all times demonstrate the highest standard of ethical conduct, courtesy, legal professionalism, competence and integrity.

**1.6. Damage to property.** No participant shall intentionally take, move, or cause damage to any property of any school, courthouse, or facility hosting any part of a MYLAW Mock Trial competition.

### 2. ROLES

**2.1. Teacher Coach.** The team’s teacher coach is considered the primary contact for each school. The Coach’s primary responsibility is to demonstrate that winning is secondary to learning.

a. Coaching goals. The Teacher Coach shall coach and mentor students about the “real world” aspects of judging in competitions; including but not limited to competition rules, sportsmanship, team etiquette, procedures, and courtroom decorum.

b. Coaches’ responsibilities. The Teacher Coach shall recruit students for the team; arrange practice sessions and scrimmages; coordinate transportation to and from competitions; supervise the team during practices and competitions; work within the school and greater community to recruit an attorney advisor; communicate with opposing teams prior to competition regarding any relevant issues including the identification of witnesses; and ensure that the team arrives at all scheduled

mock trial competitions. Every coach has an obligation to instill by example in every student, respect for Judges, officials and other members of the MYLAW Mock Trial community.

**2.2. Circuit Coordinator.** Maryland is divided into eight judicial circuits. For the purpose of the Maryland Mock Trial Competition, local competitions will be divided and organized according to the eight judicial circuits. Each circuit shall have a Circuit Coordinator, who will serve as the primary contact for coaches and advisors. Circuit Coordinator contact information is listed on the inside front cover of this book.

MYLAW will send official communication to the Circuit Coordinator who is then responsible for disseminating the information to all Teacher Coaches within their respective circuit. The Circuit Coordinator shall make decisions or mediate at the local level when problems or questions arise; establish the circuit competition calendar; arrange for courtrooms, Judges, and attorneys for local competitions; and arrange general training circuit-wide or county-wide sessions if necessary.

**2.3. Local and State Bar Associations.** The Bar Associations shall advocate involvement of local attorneys in advising teams and hearing/scoring trials.

**2.4. Attorney Advisors.** It is the role of the Attorney Advisor to teach basic court processes and procedures, to review and explain modified rules of evidence and their application to the case at hand, and most importantly, to exemplify fairness, professionalism, integrity, and the ideals of the American justice system. In the absence of an Attorney Advisor, these responsibilities become that of the Teacher Coach.

**2.5. MYLaw.** MYLaw shall provide Mock Trial Guides and rules for the 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; and act as liaison in finding legal professionals to assist teams.

### **3: REGISTRATION AND PAYMENT**

**3.1. Registration information.** Registration information is available on the MYLAW.org website. Registration may be completed online or by mail.

**3.2. Team Payment.** Payment is expected by the registration deadline. Payments may be made by check or submitted through the PayPal link found on the MYLAW.org website. An invoice is available on the MYLAW.org website for your convenience.

**3.3. Primary Contact/Teacher Coach.** Each school must have a primary contact person, in most cases the Teacher Coach, in order to register. The Teacher Coach shall be the person MYLAW and/or the Circuit Coordinator communicates with when applicable. All primary contact persons' information shall be current, and shall be listed on the registration form at the time of registration. If a teacher is not available to serve as the primary contact, a parent, administrator or other school affiliate may do so with the permission of the school principal.

### **4. TEAMS**

**4.1. Team make-up.** A team must be comprised of no fewer than eight (8) but a maximum of twelve (12) student members from the same high school, with the exception of high schools with a Maryland State Department of Education inter-scholastic athletics designation of Class 2A or Class 1A, which may combine with any other schools in the LEA in those classifications to field a team.



- a. Two “alternate” students are permitted during the local competition only. If a coach wishes to carry those two alternates forward to state competitions, any related expenses are the responsibility of the school.
- b. If a team advances beyond the local competition, an official roster must be submitted not to exceed twelve (12) students and two (2) alternates.

**4.2. Team Roles.** Teams may use its members to play different roles in different competitions.

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

**4.3. Fielding teams.** High schools that field two or more teams shall not, under any circumstances, allow students from Team A to compete for Team B or vice-versa.

- a. Each team must have its own Teacher Coach and Attorney Advisor, separate and apart from the other team.
- b. If a high school has multiple teams, then those teams must compete against one another during the local competition.

**4.4. Team Information.** Teacher Coaches of competing teams are to exchange information regarding the names and gender of their witnesses at least 24 hours prior to any given round.

- a. Teacher Coach for the plaintiff/prosecution should assume responsibility for informing the defense Teacher Coach.
- b. A physical identification of all team members must be made in the courtroom immediately preceding the trial.

**4.5. Attorney Advisor.** Every effort should be made for teams to work with an Attorney Advisor to effectively prepare for competition.

**4.6. Attendance of an opponent’s competition is prohibited.** 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, shall not attend the enactments of any possible future opponent in the contest.

## **5. COMPETITION**

**5.1. Forfeits are prohibited.** All registered teams agree to attend all scheduled competitions.

- a. Team with inadequate number of students (i.e. due to illness, athletics, or other conflicts), are expected to attend and participate in the competition, regardless.
- b. In these instances, a team will “borrow” students from the opposing team, in order to maintain the integrity of the competition, and respect for the Court, Presiding Judge, attorneys and the other team that has prepared for, and traveled to, the competition.
- c. The competition will be treated as an automatic win for the opposition.
- d. Coaches should make every effort to notify the local coordinator and the other coach in advance of the competition if there are an inadequate number of team members.
- e. 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).

**5.2. Local competitions.** Local competitions must consist of enough matches that each participating high school presents both sides of the Mock Trial case at least once.

**5.3. Areas of competition.** Areas of competition coincide with the eight Judicial Circuits of Maryland.

Circuit #1: Worcester Wicomico, Somerset Dorchester	Circuit #2: Kent, Queen Anne’s, Talbot, Caroline	Circuit #3: Baltimore Co., Harford (Cecil has been adopted into Ct.3)	Circuit #4: Allegany, Garrett, Washington
Circuit #5: Anne Arundel, Carroll, Howard	Circuit #6: Frederick, Montgomery	Circuit #7: Calvert, Charles, Prince George’s, St. Mary’s	Circuit #8: Baltimore City

**5.4. “Unofficial” Circuit.**

- a. Each circuit must have a minimum of four teams. Circuits that have less than four teams must abide by the following:
  - 1. If a circuit has up to three teams but less than the required minimum of four participating teams, the teams may compete in a “Round Robin” that advances the winner to the competition that determines circuit representative. The runner-up team from another circuit would then compete with the circuit representative in a playoff prior to the Regional Competition (see chart in 5.4).
  - 2. Or, when a circuit has less than four registered team, MYLAW may designate another circuit in which these teams will compete. Geographic location will be the primary factor in making this determination.
  - 3. Or, under the discretion of a circuit coordinator and MYLAW, if a circuit chooses, it may combine with the “un-official” circuit to increase the number of opportunities to compete.
- b. When a “circuit opening” arises, it will be filled by a sequential rotation of circuits. The second-place team from the specified circuit will advance to the regional competitions to fill the opening. If the 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.

2024-2025	Circuit 6	2028-2029	Circuit 3
2025-2026	Circuit 7	2029-2030	Circuit 4
2026-2027	Circuit 8	2030-2031	Circuit 5
2027-2028	Circuit 1/2	2031-2032	Circuit 6

**5.5. Circuit Competition.** Each competing circuit shall declare one team as Circuit Champion by holding a local Mock Trial playoff competition. The Circuit Champion shall be declared by the date set forth in this casebook. It is at the discretion of the Circuit Coordinator(s) and MYLaw as to the process by which the champion is declared, particularly if there is more than one county in the circuit.

**5.6. Rendered decisions.** Attorneys and Judges may preside over, and render decisions, for all matches. If possible, a Judge from the Court of Appeals or Court of Special Appeals will preside over, and render a decision at the State Finals.

**5.7. Regional/ Quarterfinal Competitions.** Each Circuit Champion will compete against another Circuit Champion in a single competition, in order to determine which team advances to the Final Four.

**5.8. Dates for MYLAW Final Competitions.** Dates for the Regionals, Semi-Finals, and Final competitions will be set by MYLAW and notice will be given to all known participating high schools. Teams that enter into the current year's competition agree to participate on all scheduled dates of the competition as set forth on the MYLaw website and their local Coordinator.

**5.9. Declared winner of the Regional Competition must agree to participate on the scheduled dates for the remainder of the competition or be eliminated.** Any team that is declared a Regional Representative ("Circuit Champion") must agree to participate on the dates set forth for the remainder of the competition. Failure to do so will result in the team's elimination from the competition and the first runner-up in that circuit will then be the Regional Representative under the stipulations.

## **6. JUDGING AND SCORING**

**6.1. The Mock Trial Scoring Scale.** The scoring scale has been changed from 1-5 to 1-10 in order for judges to better discern between teams' performances. A rubric is provided so that scorers may utilize consistent criteria for purpose of evaluation.

**6.2. Reserved, with information to be provided at a later date.**

**6.2. All Judges' decisions are final.** Appeals are not allowed. MYLaw retains the right to declare a mistrial in the event of a gross transgression of the organizational rules and/or egregious attempt to undermine the intent and integrity of the Mock Trial Competition.

## **7. DIRECTLY PROHIBITED**

**7.1. No coaching.** There shall be no coaching of any kind during the enactment of a mock trial:

- a. Student Attorneys may not coach their witnesses during the other team's cross examination;
- b. Teacher and Attorney Coaches may not coach team members during any part of the competition;
- c. Members of the audience, including members of the team who are not participating that particular day, may not coach team members who are competing;
- d. Except for the express purpose of keeping time, team members must have their cell phones and all other electronic devices turned off during competition as texting may be construed as coaching.
- e. Teacher and Attorney Coaches shall not sit directly behind their team during competition as any movements or conversations may be construed as coaching.

**7.2. Notice of team demographic information is prohibited.** Team members or other affiliated parties, shall not, before or during the trial, notify the Judge of the students' ages, grades, school name or length of time the team has competed.

**7.3. Attendance of an opponent's competition is prohibited.** Members of a school team entered in the competition, including Teacher Coaches, back-up witnesses, attorneys, and any others directly associated with the team's preparation, shall not attend the enactments of any possible future opponent in the contest.

**7.4. Use of Electronics.** Except for the express purpose of keeping time, the use of electronics (phone, laptop, iPad, etc.) is completely prohibited.

## **8. GENERAL TRIAL PROCEDURES**

**8.1 Time limits.** Each team must complete its presentation within forty-two (42) minutes.

- a. Each side has a combined total time of forty-two (42) minutes for direct examination, cross examination, re-cross/re-direct and voir dire (if permitted);
- b. Opening statements and closing arguments are five (5) and seven (7) minutes respectfully and are not included in the forty-two (42) minutes permitted under 8.1a.
- c. 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;
- d. There is no objection permitted by any party based on the expiration of time.

**8.2 Use of a Bailiff.** Each team is mandated to have a non-competing Mock Trial team member serve as a Bailiff during the course of each competition.

- a. Each Bailiff will keep time for the opposing counsel. 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;
- b. In the event that only one team brings a Bailiff, that person shall keep time for both sides;
- c. The Bailiff(s) will also announce the Judge, call the case, and swear in each witness;
- d. While the use of a Bailiff is discretionary (by circuit) during local competitions, it is mandated in state competitions.
- e. 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.*
- f. Each Bailiff shall 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, the 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 time-card 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 complete a presentation, but the extension of courtesy time is intended to permit a team to complete a sentence or thought. It should not extend beyond 15 seconds.

**8.3 Student Attorneys.**

- a. Roles. 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.
- b. Addressing the Court. When addressing the Judge, always stand.
- c. Attire. Professional attire, or attire appropriate for the witness’ roles, should always be worn during competition.

**8.4 Evidentiary Materials.** Any 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.

**9. INVENTION OF FACT**

This rule shall govern the testimony of all witnesses. Mock Trial competitors shall advocate as persuasively as possible based on the facts contained in the casebook. Teams must rely on the facts as stated in the case rather than creating new facts or denying existing facts in order to benefit their parties.

**9.1. Judges’ scoring.** If a team demonstrates through impeachment that its opponent has made an Improper Invention, judges should reflect that violation in the scores by penalizing the violating team, rewarding the impeaching team, or both.

**9.2. Improper Invention.** There are two types of Improper Invention: 1) Any instance in which a witness introduces testimony that contradicts the witness’s affidavit and/or 2) Any instance on direct or redirect in which an attorney offers, via the testimony of a witness, material facts not included in or reasonably inferred from the witness’ affidavit.

*Facts are material if they affect the merits of the case. Facts are not material if they serve only to provide background information or develop the character of a witness.*

*A reasonable inference must be a conclusion that a reasonable person would draw from a particular fact or set of facts contained in the affidavit. An answer does not qualify as a “reasonable inference” just because it is consistent with the witness affidavit.*

*For the purposes of Rule 9, an affidavit includes the witness’ sworn statement, as well as any document in which the witness has stated their beliefs, knowledge, opinions or conclusions.*

**9.3. Trial Remedy for Violations.** If the cross-examining attorney believes the witness has made an Improper Invention, the only available remedy is to impeach the witness using the witness’s affidavit. Impeachment may take the form of demonstrating either (1) an inconsistency between the witness’s affidavit and trial testimony (“impeachment by contradiction”) or (ii) that the witness introduced material facts on direct or redirect that are not stated in or reasonably inferred from the witness’s affidavit (impeachment by omission”). The cross-examiner is not permitted to raise an objection to the Judge on the basis of “invention of fact.”

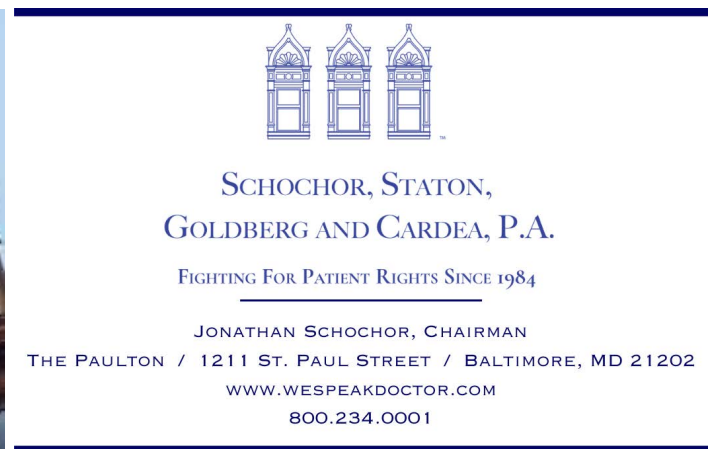


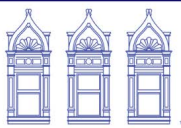
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We're proud to support  
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Best of luck to all the teams!

Authorized by Nancy W. Greene, Chairman





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## II. MARYLAND MOCK TRIAL PROCEDURES

### I. 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.

### II. The Opening of the Court and the Swearing of Witnesses (5 minutes maximum)

- a. The Bailiff for the Prosecution/Plaintiff will call the Court to order through the following steps:
  1. In a loud, clear voice, say, "All rise. The Court will now hear the case of State of Maryland v. Dana Luna. The Honorable \_\_\_\_\_presiding."
  2. The judge will permit those in the court to be seated, and then ask each side if they are prepared to begin.
- b. During the course of the trial, the Bailiff for the Defense shall administer the Oath (*See Rule #603*), and ask the witness to raise his or her hand: "Do you affirm to tell the truth, the whole truth, and nothing but the truth under the pains and penalties of perjury?"

### III. Opening Statement

- a. Prosecution (criminal case)/ Plaintiff (civil case)

After introducing oneself and 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 opening 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 intended to provide facts of the case from the client's perspective.
- b. Defense (criminal or civil case)

After introducing oneself and colleagues to the judge, the defendant's attorney summarizes the evidence for the court which will be presented to rebut (or deny the validity) of the case which the Prosecution/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 prosecution/plaintiff's case. As with the Prosecution/Plaintiff's statement, Defense should avoid argument at this time.

### IV. Direct Examination

The Prosecution/Plaintiff's attorney conducts direct examination of each of its own witnesses. During direct exam, testimony and other evidence to prove or strengthen the Prosecution/Plaintiff's case will be presented. The purpose of direct examination is accomplish one or more of the following goals:

- a. Introduce undisputed facts – No facts or information can be considered by the judge or jury until they are placed in evidence through a witness' testimony.
- b. Enhance the likelihood of disputed facts – Direct examination is your opportunity to set forth your client's version of the undisputed facts and persuasively introduce evidence which supports that version.

- c. Lay foundation for the introduction of exhibits – Documents, photos, writings, reports or other forms of evidence will often be central to your case. In most instances, it is necessary to lay a foundation for the admission of exhibits through direct testimony of witnesses.
- d. Reflect upon the credibility of witnesses – The credibility of a witness is always an issue. For this reason, direct examinations should begin with some background information about the witness. After an introduction, the judge/jury should learn why the witness is testifying. Your job is to help the witness tell their story, through open-ended questions. But, be careful to avoid questions that elicit narrative answers.

#### **V. Cross Examination**

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 purpose of the cross-examination is to cast doubt upon the testimony of the opposing witness. Inconsistency in stories, bias, and other damaging facts may be pointed out to

#### **VI. Redirect Examination**

Redirect examination is an additional direct examination conducted following a witness' cross examination. The purpose is to allow the witness to clarify any testimony that was cast in doubt during cross examination. It is limited to the scope of the cross examination.

#### **VII. Recross Examination**

Recross examination is an additional cross examination, following a redirect. The purpose is to respond to matters that may have arisen during the re-examination of a witness. Recross can only deal with those subjects that were addressed during redirect.

#### **VIII. Voir Dire**

Pronounced "vwahr deer," and translated from French "to speak the truth." The phrase has two meanings, only one of which applies to Mock Trial. People are most commonly introduced to the term when they are called for jury duty. The judge and/or attorneys conduct voir dire to determine if any juror is biased and/or feels unable to deal with issues fairly. The voir dire that is applicable to mock trial is the process through which questions are asked to determine the competence of an alleged expert witness.

#### **IX. How to Admit Evidence**

- a. Premark the exhibit.
- b. Show it to opposing counsel.
- c. Request permission from the judge to approach the witness.
- d. Show it to the witness.
- e. Ask the right questions to establish a foundation:
  - a. I am handing you what has been marked as Exhibit X. Do you recognize this?
  - b. What is it?
  - c. Is it a fair and accurate copy?
- f. Ask the court to admit the evidence.
- g. Hand it to the judge (or clerk) to mark the exhibit into evidence.

## X. How to Impeach a Witness

Counsel can challenge the credibility of opposing witnesses by showing the judge or jury that the witness made inconsistent statement in the past and/or by demonstrating a witness is biased or has personal interest.

- a. Get the witness to repeat the wrong statement. Ask, "Is it your testimony that [insert exact quote of oral testimony if possible]?"
- b. Get the affidavit of the witness.
- c. Ask permission to approach the witness.
- d. Ask,
  - a. "Do you remember making this statement?"
  - b. "And you were under oath?"
  - c. "This is your deposition, correct?"
  - d. "And this is your signature?"
  - e. "Now read silently as I read aloud."
  - f. "I read that correctly, didn't I?"
- e. The purpose is to emphasize the disparity between the witness' current testimony and prior statement; the goal being to point out that the witness has changed their answer, *not* to give them a chance to affirm the truth of their most recent statement.

## XI. Closing Arguments

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 the 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. Their closing argument should indicate how the evidence has satisfied the elements of the 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.

## III. RULES OF EVIDENCE

### INTRODUCTION

In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). Rules of Evidence 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.

1. Judge decides whether a 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.
2. 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.

## **ARTICLE I. GENERAL PROVISIONS**

**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. Purpose and Construction.** These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and ascertain the truth and secure a just determination.

## **ARTICLE IV. RELEVANCE AND ITS LIMITS**

### **Rule 401. Test for Relevant Evidence**

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action

### **Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible**

Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible.

### **Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons.**

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

### **Rule 404. Character Evidence; Crimes or Other Acts.**

(a) Character Evidence:

(1) Prohibited Uses: Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(b) Exceptions in a Criminal Case:

(1) Evidence of a person's character or character trait may be admissible for another purpose, such as proving motive, opportunity, intent, plan, or knowledge.

(2) Evidence of the character or character trait of the defendant, the victim, or any witness testifying in a case may also be admissible if it shows a pertinent trait. Pertinent traits are character traits that relate directly to a particular element of the crime charged or a defense to that alleged crime.

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*That is to say, mention of a person's typical behavior is not usually admissible when trying to prove that the person behaved in a way that matches the behavior discussed in the current case.*

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### **Rule 405. Methods of Proving Character**

(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow inquiry into relevant specific instances of the person's conduct.

- (b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

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*The general rule is that Character Evidence is not admissible to prove conduct in a civil case. Character evidence is admissible in a civil case if a trait of character has been placed in issue by the pleadings and character is a material issue. Character is a material issue in a civil defamation case when the defamatory statement falsely accuses the plaintiff of a general flaw, but not at issue if the defamatory statement falsely accuses the plaintiff of a specific act. For example, character is a material issue when accusing a plaintiff of being a liar, but not at issue if the defamatory statement falsely accuses the plaintiff of a specific act; for example, accuses the plaintiff of lying about a specific event.*

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**Rule 408. Compromise and Offers to Compromise**

The following evidence is not admissible to prove the validity, invalidity, or amount of a civil claim in dispute:

- (1) Furnishing or offering or promising to furnish a valuable consideration for the purpose of compromising or attempting to compromise the claim or any other claim;
- (2) Accepting or offering to accept such consideration for that purpose; and
- (3) Conduct or statements made in compromise negotiations or mediation.

**ARTICLE VI. WITNESSES/ WITNESS EXAMINATION**

**Rule 601. Competency to Testify in General.** Every person is competent to be a witness unless these rules provide otherwise.

**Rule 602. Need for Personal Knowledge.** A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

**Rule 603. Oath or Affirmation to Testify Truthfully.**

Before testifying, every witness is required to declare that the witness will testify truthfully, by oath provided in these materials. The bailiff shall swear in all witnesses as they take the stand:

*Do you promise to tell the truth, the whole truth, and nothing but the truth, under the pains and penalties of perjury?*

**Rule 607. Who May Impeach a Witness.** Any party, including the party that called the witness, may attack the witness's credibility.

**Rule 608. A Witness' Character for Truthfulness or Untruthfulness.**

- (a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.
- (b) Specific Instances of Conduct. Extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

- (1) the witness; or
- (2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

**Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence.**

- (a) Control by the Court; Purposes. The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
  - (1) make those procedures effective for determining the truth;
  - (2) avoid wasting time; and
  - (3) protect witnesses from harassment or undue embarrassment.

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*Scope of Direct Examination: Direct questions shall be phrased to elicit facts from the witness. Witnesses may not be asked leading questions by the attorney who calls them for direct. A leading question is one that suggests the answer that is anticipated or desired by counsel; it often suggests a "yes" or "no" answer. Example of Leading Question: "Mr/s. Smith: "Is it not true that you made several stops after work before returning home?" Example of a Direct Question: Mr/s. Smith: "Did you do anything after work, before returning home?"*

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**Ice**Miller

- (b) Scope of Cross-Examination. The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.

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*Cross examination is the questioning of a witness by an attorney from the opposing side. An attorney may ask leading questions when cross-examining the opponent's witnesses.*

*In Mock Trial, attorneys are allowed to ask any questions on cross examination about any matters that are relevant to the case. Witnesses must be called by their own team and may not be recalled by either side. All questioning of a witness must be done by both sides in a single appearance on the witness stand.*

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- (c) Leading Questions. Leading questions should not be used on direct examination. Ordinarily, the court should allow leading questions:
- (1) on cross-examination; and
  - (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.
- (d) Redirect/Recross. After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on recross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.
- (e) Permitted Motions. The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

**Rule 612. Writing Used to Refresh a Witness's Memory.** 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.

## **ARTICLE VII. OPINIONS AND EXPERT TESTIMONY**

**RULE 701. Opinion Testimony by Lay Witnesses.** If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of [Rule 702](#).

### **Rule 702. Testimony by Expert Witnesses.**

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine:

- (a) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
- (b) the appropriateness of the expert testimony on the particular subject, and
- (c) whether a sufficient factual basis exists to support the expert testimony.

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*A witness cannot give expert opinions under Rule 702 until they have been offered as an expert by the examining lawyer and recognized as such by the court. To have an expert witness admitted by the court, first ask the witness to testify as to their qualifications: education, experience, skills sets, etc. Then, ask the presiding judge to qualify the witness as an expert in the field of \_\_\_\_\_. The presiding judge then asks opposing counsel if they wish to Voir Dire [“vwahr deer”] the witness.*

*Voir dire is the process through which expert witnesses are questioned about their backgrounds and qualifications before being allowed to present their opinion testimony or testimony on a given subject, in court. After an attorney who has called a witness questions them about their qualifications, and before the court qualifies the witness as an expert, the opposing counsel shall have the opportunity to conduct voir dire.*

*Once voir dire is completed, opposing counsel may 1) make an objection as to their being qualified as an expert, 2) request that the court limit their expert testimony to a more specific matter or subject, or 3) make no objection about the witness being qualified as an expert. The presiding judge will then make a ruling regarding the witness being qualified as an expert.*

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**Rule 703. Bases of an Expert.** An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, the need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

**Rule 704. Opinion on the Ultimate Issue.**

- (a) In General. Except as provided in section (b) of this Rule, testimony in the form of an opinion or inference otherwise admissible is not objectionable merely because it embraces an ultimate issue to be decided by the trier of fact.
- (b) Opinion on Mental State or Condition. An expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may not state an opinion or inference as to whether the defendant had a mental state or condition constituting an element of the crime charged. That issue is for the trier of fact alone.

**Rule 705. Disclosing the Facts or Data Underlying an Expert.** Unless the court requires otherwise, the expert may testify in terms of opinion or inference and give reasons without first testifying to the underlying facts or data. The expert may in any event be required to disclose the underlying facts or data on cross examination.

**ARTICLE VIII. HEARSAY**

**RULE 801. Definitions That Apply to This Article; Exclusions from Hearsay.**

The following definitions apply under this article:

- (a) Statement. “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

- (b) Declarant. "Declarant" means the person who made the statement.
- (c) Hearsay. "Hearsay" means a statement that:
  - (1) the declarant does not make while testifying at the current trial or hearing; and
  - (2) a party offers in evidence to prove the truth of the matter asserted in the statement.
- (d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:
  - (1) *A Declarant-Witness's Prior Statement*. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
    - (A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
    - (B) is consistent with the declarant's testimony and is offered:
      - (i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
      - (ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or
    - (C) identifies a person as someone the declarant perceived earlier.
  - (2) *An Opposing Party's Statement*. The statement is offered against an opposing party and:
    - (A) was made by the party in an individual or representative capacity;
    - (B) is one the party manifested that it adopted or believed to be true;
    - (C) was made by a person whom the party authorized to make a statement on the subject;
    - (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
    - (E) was made by the party's conspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C);

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*Hearsay generally has a three-step analysis:*

*1) Is it an out of court statement?*

*2) If yes, is it offered to prove the truth of what it asserts?*

*3) If yes, is there an exception that allows the out-of-court statement to be admitted despite the fact that it is hearsay?*

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the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

**RULE 802. The Rule Against Hearsay.** Hearsay is a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted made outside of the courtroom. Statements made outside 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. For the purposes of the Mock Trial Competition, if a document is stipulated, you may not raise a hearsay objection to it.

**RULE 803. Exceptions to the Rule Against Hearsay.**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

- (a) Statement by Party-Opponent. A statement that is offered against a party and is:
  - (1) The party's own statement, in either an individual or representative capacity; or
  - (2) A statement of which the party has manifested an adoption or belief in its truth;

(b) Other Exceptions.

- (1) Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
- (2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
- (3) Then-Existing Mental, Emotional or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.
- (4) Business Records. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of the information or the method of circumstances of preparation indicate lack of trustworthiness, shall be admissible. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and callings of every kind, whether or not conducted for profit.
- (5) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical treatment or medical diagnosis in contemplation of treatment and describing medical history, or past or present symptoms, pain, or sensation, or the inception or general character of the cause or external sources thereof insofar as reasonably pertinent to treatment or diagnosis in contemplation of treatment.

**Rule 805. Hearsay within Hearsay**

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statement confirms with an exception to the rule.

**ARTICLE IX. AUTHENTICATION AND IDENTIFICATION**

**Rule 901.** Evidence may be introduced only if it is contained within the casebook and relevant to the case. 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. Evidence may be admitted before trial upon stipulation of both parties.

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. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is. Evidence that satisfies this requirement may include:

- (a) Testimony of a Witness with Knowledge. Testimony that an item is what it is claimed to be.
- (b) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.
- (c) Opinion about a Voice. An opinion identifying a person's voice – whether heard firsthand or through mechanical or electronic transmission or recording – based on hearing the voice at any time under circumstances that connect it with the alleged speaker.



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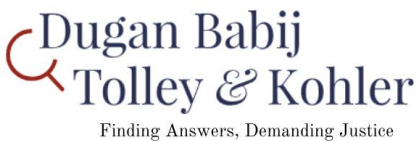


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Good Luck to all Mock Trial Teams



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#### IV: MYLAW MOCK TRIAL OBJECTIONS

Objection	Rule	Description
Relevance	401	Evidence is irrelevant if it does not make a fact that a party is trying to prove as part of the claim or defense more or less probable than it would be without the evidence.
More prejudicial than probative	403	A court may exclude relevant evidence if its probative value is substantially outweighed by unfair prejudice. By its nature, all relevant evidence is prejudicial to one side. This rule generally applies to evidence that not only hurts your case but is not relevant enough to be let in.
Improper character evidence	404; 608	A number of rules govern whether it is appropriate to introduce affirmative or rebuttal evidence about the character of a witness and the notice required to introduce such evidence. This objection is made when improper character evidence has been given as testimony in court.  <i>Example: "The defendant has always been very rude to me, and was particularly rude on the day of the incident."</i>
Lack of personal knowledge/ speculation	602	A witness may only testify to a fact after foundation has been laid that the witness has personal knowledge of that fact through observation or experience. Many teams refer to testifying to an assumption or fact without personal knowledge as "speculation." Whenever proper foundation has not been laid under this rule or others for testimony, "lack of foundation" is also a proper objection.  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 generally allowed with expert witnesses.
Lacks foundation	602	This objection is made when counsel asks a question without first establishing that the witness has a basis to answer it. This most frequently occurs when the examining attorney is going too quickly and not asking preliminary questions that demonstrate the witness' familiarity with the facts. A witness may testify to a matter only if sufficient evidence is introduced to support a finding that the witness has personal knowledge of the matter.
Beyond the scope	611	In Maryland Mock Trial, the initial cross examination is <u>not</u> limited to the content of the direct examination. All subsequent examinations (beginning with redirect) must fall within the scope of the prior examination.

Form of question - leading	611	This objection is made when counsel starts arguing with the witness, badgering a witness, or becoming overly aggressive. This objection is made by an attorney to protect a witness during cross examination.
Form of question - compound	611	This objection is made when counsel asks a compound question. A compound question asks multiple things.
Form of question - narration	611	This objection is made when either a witness begins telling a narrative as part of their answer, or counsel's question calls for a narrative. It is admissible for a witness to testify about what happened, but they must do so in response to a question. This objection prevents long winded witness answers.
Form of question - argumentative	611	This objection is made when counsel starts arguing with the witness, badgering a witness, or becoming overly aggressive. This objection is made by an attorney to protect a witness during cross examination.
Unresponsive	611	This objection is made when a witness does not answer the question being asked by the attorney. This objection can help an attorney corral the witness and get a straight answer to questions the witness may be trying to avoid. Be careful to avoid making this objection when the witness simply gives a different answer than what was expected or desired.
Asked and answered	611	This objection is made when counsel has asked a question and received an answer, and asks the same question again. If an answer is given, a new question must be asked. Counsel can ask a question multiple times if the witness is not giving a full answer, is being uncooperative or unresponsive.
Hearsay	801-802	An out-of-court statement (including a statement by the witness on the stand) may not be used to prove the truth of the matter asserted. That said, there are many exceptions to the hearsay rule.
Hearsay exceptions	803	Provides for exceptions to the hearsay rule in instances when the evidence is technically hearsay, but circumstances would suggest that it will be reliable, including, for example: <ul style="list-style-type: none"> <li>- Excited Utterance – a statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused</li> <li>- Recorded Recollection – a record that is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately; was made or adopted by the witness when the matter was fresh in the witness' memory; and accurately reflects the witness' knowledge.</li> </ul>

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### **SPECIAL INSTRUCTIONS FOR THE 2024-25 MYLAW MOCK TRIAL CASE**

1. This is a criminal jury trial set in the Circuit Court for Chesapeake County.
2. Because this is a jury trial, competitors should direct their arguments to the “members of the jury.” No judge should ever instruct students to argue this case as a bench trial.
3. Before the trial begins, each team must provide the other team with their selected call order and the pronouns for each witness who will testify at trial.
4. The use of the name “Daniel(le)” in exhibits and the Instagram profile, @Truth\_Or\_Daniel(le), with the parentheses is intentional, and not a typo. It was formatted this way so that the exhibits and affidavits accommodate whichever name the student participating as Daniel(le) identifies with. Both parties should proceed as if the exhibits visually say “Daniel” or “Danielle,” depending on the participant’s preference.
5. The Defendant has been charged with three crimes. The State shall proceed with only one count from the indictment. This is designed to streamline the trial for time constraints, as it is a mock trial. The Defense cannot argue at any point that the State’s decision not to pursue the other counts indicates that the case was overcharged. However, the Defense may argue that the defendant is not guilty of the charges being prosecuted, and, if applicable, could have been charged, and potentially convicted, under other crimes listed in Maryland Code Criminal Law § 3-805.

The State must provide notice before trial about which count the State intends to call. The State must provide such notice twenty-four (24) hours before trial by electronic communication to the Defense team’s designated contact person. On the day of trial, after the case has been called, but before Opening Statements, the State shall inform the Court of which count the State will be proceeding upon. The way to do this is for the State to say, “Your honor, preliminarily, the State moves to enter counts (insert #) and (insert #) nolle prosequi (or nol pros for short).”

6. Both parties are directed to pay close attention to Jury Instruction “MISUSE OF ELECTRONIC MAIL (Maryland Code, Criminal Law, § 3-805).” The “Notes On Use” paragraph at the end of this instruction explains that only one of the three sets of elements will be applicable in a given trial (A, B, or C), and which set is determined by which counts are proceeded upon (Counts 1, 2, or 3).
7. Witnesses must acknowledge authorship of any document, phone record, social media post that their affidavit or report states that they themselves authored and the authenticity of any signature that purports to be theirs. A witness whose affidavit or report states that the witness is familiar with a particular document must acknowledge, if asked, that the witness is familiar with that document and that the referenced document is the same version as the corresponding document in the current case.
8. This is a closed universe case packet. The only legal materials that competitors may mention or rely upon are the Rules of Evidence, Statutes, Jury Instructions, and Case Law provided in this packet. All participants must acknowledge this if asked by a judge.

9. Other than the use of the First Amendment as a potential defense, all parties have waived objections specifically related to the United States Constitution and no party may raise any other objections specifically related to the United States Constitution.
10. No witness may refuse to answer any questions and no attorney may instruct a witness not to respond to a question based on the witness's Fifth Amendment right to remain silent.
11. Witnesses should feel free to use distinctive accents, speech patterns, and mannerisms - but these elements must never become material inventions of fact. For example, a witness may not testify using a distinctive accent and then have an attorney argue in closing that a certain statement must not have been said by that witness because the person who heard the statement did not state that they heard the distinctive accent.
12. The provided case law (*Virginia v. Black*, 538 U.S. 343 (2003), *Watts v. United States*, 394 U.S. 705 (1969), *Elonis v. United States*, 575 U.S. 723 (2015), and *Schiff v. State*, 254 Md. App. 509 (2022)) are accurate recitations from each of those cases. For each student's knowledge, these are excerpts from much longer published opinions. These cases were reduced in length to include what is relevant to this case. Internal citations from other cases and quotations have been omitted throughout these four cases. Additionally, emphasis has been added occasionally by the author of this Mock Trial problem by either bolding/italicizing/underlining. Both parties are to use this case law as verbatim copies of the case, as if this was how the case was originally published.
13. The AI app, "**pic kAIIng**", is a fictitious app created specifically for this Mock Trial problem. For the purposes of this problem, the app is treated as if it exists in the real world, and neither party is allowed to challenge its existence or functionality.

### **STIPULATIONS FOR THE 2024-25 MYLAW MOCK TRIAL CASE**

1. For the convenience of all parties, all potential exhibits have been pre-labeled and pre-numbered. These numbers should be used for all purposes at trial regardless of which party offers an exhibit or what order exhibits are offered.
2. The parties stipulate that every witness whose affidavit appears in this casebook has signed their affidavit and the signature appearing is that respective witness's signature. As such, witnesses must acknowledge authorship of any document that purports to be authored by them and the authenticity of any signature that purports to be theirs.
3. Regarding Authenticity, the parties stipulate all documents contained in this casebook are considered authentic for admissibility purposes. Admitting them into evidence does still requiring applying the other provided rules of evidence.
4. The parties stipulate that all parties and witnesses are of at least normal intelligence, and none has or ever has had a mental condition that would impact a person's perception, memory, or ability to respond to questions on cross examination.
5. The parties stipulate that all notice requirements have been satisfied for all evidence and exhibits in the case packet and no party may object at any time that they did not receive proper notice that the other side intended to use a particular document or piece of evidence. Notice is still required if any of these materials are modified or enlarged, as discussed in General Competition Rule 8.4.
6. The parties have jointly submitted the Jury Instructions and Verdict Sheet. The parties further agree that the jury instructions are the full and complete interpretations of the law to be applied in this case. The parties also agree the questions on the verdict sheet are the correct and only questions for consideration by the jury.
7. The parties stipulate that Nanticoke High School is located within Chesapeake County. Additionally, the parties stipulate that all witnesses reside in Chesapeake County, and all events in this case took place in Chesapeake County.
8. The parties stipulate that both the State and the Defendant have properly noted, in advance of trial, their intention to call their respective expert witnesses: Detective Cameran Ali and Simon(e) Marshall, Esq. Detective Ali will be offered by the State as an expert in the recognition, investigation, identification, prevention, and digital forensics of Cyberabuse. Simon(e) Marshall, Esq. will be offered by the Defendant as an expert in First Amendment law. Each side must still follow the procedure for admitting their respective witness as an expert, if they choose to do so. The opposing party retains the right to voir dire and argue against the admission of the witness as an expert. This stipulation does not preclude both parties from agreeing to stipulate to a witness' expertise before trial. If both parties agree to stipulate, they should inform the presiding judge before the witness testifies, specifying the terms of the stipulation.
9. The parties stipulate the @NanticokeHighMdSpirit Instagram page is a public profile, with settings that allow for anyone following the page to be able to tag automatically to it, so that the original post appears on this page, and that no administrator needs to approve of the post before it appears.

STATE OF MARYLAND VS. DANA LUNA

IN THE CIRCUIT COURT FOR CHESAPEAKE COUNTY

INDICTMENT

FIRST COUNT

The Jurors of the State of Maryland, for the body of Chesapeake County, do on their oath present that DANA LUNA, on or between September 26, 2024 through October 5, 2024, in Chesapeake County, did without legal purpose, maliciously engage in a course of conduct, through the use of electronic communication that alarmed and/or seriously annoyed Daniel(le) Benoît with the intent to harass, alarm and/or annoy Daniel(le) Benoît, after receiving a reasonable warning and/or request to stop by Daniel(le) Benoît for themselves, in violation of Criminal Law Article, Section 3-805(b)(1) of the Annotated Code of Maryland, against the peace, government, and dignity of the State.

***This Charge Is Classified As A Misdemeanor And Is a Jailable Offense With A Maximum Penalty of Incarceration Up to 3 Years And Fines Of Up To \$10,000.00.***

SECOND COUNT

The Jurors of the State of Maryland, for the body of Chesapeake County, do on their oath present that DANA LUNA, on or between September 26, 2024 through October 5, 2024, in Chesapeake County, did with intent, use electronic communication to maliciously engage in a course of conduct to wit: posting Memes on Instagram, and had the effect of intimidating and/or harassing a minor, Daniel(le) Benoît, and causing serious emotional distress to said minor, in violation of Criminal Law Article, Section 3-805(b)(4) of the Annotated Code of Maryland, against the peace, government, and dignity of the State.

***This Charge Is Classified As A Misdemeanor And Is a Jailable Offense With A Maximum Penalty of Incarceration Up to 3 Years And Fines Of Up To \$10,000.00.***

THIRD COUNT

The Jurors of the State of Maryland, for the body of Chesapeake County, do on their oath present that DANA LUNA, on or between September 26, 2024 through October 5, 2024, in Chesapeake County, did with intent, maliciously engage in electronic conduct to wit: posting Memes on Instagram, that had the effect of intimidating and/or harassing a minor, Daniel(le) Benoît, and causing serious emotional distress to said minor, in violation of Criminal Law Article, Section 3-805(b)(5) of the Annotated Code of Maryland, against the peace, government, and dignity of the State.

***This Charge Is Classified As A Misdemeanor And Is a Jailable Offense With A Maximum Penalty of Incarceration Up to 3 Years And Fines Of Up To \$10,000.00.***

THE GRAND JURY further avers and alleges that the offenses charged hereinabove were against the peace, government, and dignity of the State.

1 **Affidavit of Daniel(le) Benoît**

2 Witness for the State

3

4 I, Daniel(le) Benoît, being duly sworn, hereby state as follows:

5

6 My name is Daniel(le) Benoît. I am 17 years old, and I am a senior at Nanticoke High School. I currently  
7 have a 2.9 GPA. In addition to my classes, I am a member of the Movie Watching Club and was  
8 previously a member of the now defunct Modeling Club. The Movie Watching Club is exactly what it  
9 sounds like; nothing fancy. In the Modeling Club, we would get together and practice our modeling walk,  
10 and our year would culminate with having a fashion show at a school assembly sometime in the Spring.  
11 The Modeling Club is now indefinitely suspended by our school because we made the decision to have  
12 last year's fashion show be in the spirit of the *Derelict* campaign from a famous comedy movie. I  
13 concede I was part of the group that made that decision to have that theme. I thought it was funny.  
14 Can't anyone take a joke anymore? Besides, first amendment or something, right? Anyways, the school  
15 administration absolutely did not think it was funny. They told us that our program was offensive and  
16 inappropriate, and then they put an indefinite end to our club.

17

18 I am providing this affidavit to detail the events that have occurred during the recent student council  
19 election campaign, which have involved serious harassment and intimidation of me through electronic  
20 communication.

21

22 It was announced in school that the Student Council elections were going to be taking place. Exhibit 1 is  
23 the poster that was posted around school announcing the details of the elections. I was very excited  
24 about this because I wanted to improve the strength of my college applications, and this seemed like the  
25 perfect way to do it; my college advisor always advises me to have diverse experiences so that I can  
26 stand out from other college applicants. Also, I guess government is cool too.

27

28 Anyway, I decided I was going to run for Student Body President. I've always believed myself to be very  
29 popular in my class because I try to get along with everyone and steer clear of as much social drama as  
30 possible. What can I say... as we used to say in the Modeling Club, when you've got it, strut it.

31

32 I was talking with my parents about my interest in running for Student Council. They were very excited  
33 for me. My parents mentioned to me that I should consider running as a slate with other candidates.  
34 They explained that in an election, a slate is like a team of people who are all running together for  
35 different jobs and decide to work together and help each other out, so they can pool resources and,  
36 hopefully, work together to all win their respective positions. Like when you have a soccer team and you  
37 want everyone on the team to win the game, not just one person. The slate works in the same way—  
38 they want to win together.

39

40 I formed a campaign slate with my best friends: Tina Moore, Chris Hogan, Debbie O'Malley, and  
41 Jameson Ehrlich. We called ourselves: "The Crabcakes & Football Slate." I came up with the name. It's a  
42 joke from a movie and now everyone in Maryland repeats it. Tina ran for vice president, Chris for  
43 secretary, Debbie for treasurer, and Jameson for member-at-large. We didn't have grand plans for the  
44 positions. We thought it could be a fun way to represent our school and be leaders of school spirit at  
45 different events. If we were opposed, our plan for a platform was to focus on organizing the best prom  
46 ever. I really wanted to do a "Roaring Twenties" party since we are in the 2020s, and our mascot is the  
47 Bears. I know it's a bit of a dad joke, but whatever. Go Bears!



48 Anyway, things were going very well. My whole slate registered to run for our various positions on the  
49 first day you could register, Monday September 9, 2024. That week we told everyone we were running.  
50 Everything started out going so well that no one else was signing up to run against any of us. That was  
51 until on Monday September 16, 2024, Dana Luna decided to run against me.

52  
53 I was very upset that Dana ran against me. The whole week went by, and no one signed up. Winning was  
54 a sure thing. And then Dana got involved. Even worse, no one signed up to run against the rest of my  
55 slate.

56  
57 We displayed our first poster on the designated boards around school for election activity on September  
58 17, 2024, the first day posters could go up. Our first poster is Exhibit 2. I designed and created the first  
59 poster using some free online tools that seem to be common knowledge these days; I don't remember  
60 the name of website I used.

61  
62 I tried not to let it bother me that Dana was running against me, and I even introduced myself to Dana in  
63 the hallway on September 18 and welcomed them to the race. Dana said something to me about the  
64 spirit of the American election system and the important issues. I didn't know what they were talking  
65 about. But then I heard Dana say something about wanting to divert funds from the football program  
66 and put it into the science program. They shared with me a flyer they were passing around, which is  
67 Exhibit 3. Dana made a big mistake with that topic. Football is a big deal at Nanticoke High School. Like,  
68 really big. We absolutely love our team. They are, after all, the winningest team in the school's sports  
69 history.

70  
71 I knew just how to respond, and I created and put up a response poster on September 19, which is  
72 Exhibit 4, using probably the same free AI website from before. I will concede that this is when things  
73 started to take a change in the race. My campaign poster highlighted that Dana was not for the values of  
74 our student body, i.e. football; that's all I believe I was symbolizing. The broken glass from the beakers in  
75 the poster was just imagery—like, to show how fragile Dana's science funding ideas were compared to  
76 our strong football spirit. It wasn't meant to suggest destruction or chaos; it was just supposed to be  
77 eye-catching. From there, it all broke loose.

78  
79 It started with the next campaign posters from Dana on September 23. Those are Exhibits 5a through  
80 5d. Dana posted a series of posters around the school, and handed out flyers with the same images, that  
81 started out with "Dana wonders..." and then each poster would say something different implying that I  
82 was not from Maryland. While it is technically true that I was born in New England, geographically I  
83 would have to say it is barely true. I moved to Maryland when I was 2 years old from Stamford,  
84 Connecticut, when my parents relocated for work. Stamford's like 20 minutes outside of New York, and  
85 New York is definitely not New England. I have lived here ever since. How did Dana even find that out  
86 anyway? I barely even remember that I was born there. My whole life has been in Maryland. Besides, I  
87 don't even like Boston teams. If you want to be honest, my whole family are Yankees and Giants fans. I  
88 try to keep that on the down-low though. Between the Orioles baseball fans and Commanders football  
89 fans in this state, my family's allegiances aren't going to help me be popular anyway.

90  
91 Even though I consider myself very well-liked, I could tell I wasn't running away with the race. I could  
92 feel people changing towards me because they thought I wasn't from around here. I remember that  
93 when the "Dana wonders..." posters started, occasionally people would ask me weird questions, like  
94 "What's your favorite state flag anyway?" and "Crab cakes or Clam chowder?" It was just strange. What  
95 does that have to do with being President of the Student Council?

96 Then the social media campaign started, and it was like pouring gasoline on a fire. It took place on  
97 Instagram. The student body, and not the school administration, has an Instagram page run by the  
98 students on the Spirit Committee. The name of the page is @NanticokeHighMdSpirit. All of the students  
99 in the school are encouraged to follow this page so that they know about fun events going on around  
100 the school. I have followed it throughout high school. The problem, I found out, is no one is closely  
101 monitoring the posts when someone post comments to this account. Students can simply tag posts with  
102 @NanticokeHighMdSpirit to share their photos and stories and have them posted on our school spirit  
103 page.  
104

105 So, out of nowhere, an anonymous profile called @Truth\_or\_Daniel(le) would start posts falsely  
106 accusing me of having a strong bias for New England traditions and against Maryland traditions. The  
107 anonymous posts escalated in aggression, and included claims that my personal preferences made me  
108 unfit for leadership. The pictures in those posts are Exhibits 6a through 6j and they were posted  
109 between September 26 through October 5. The full posts with comments are Exhibit 7a through 7j and  
110 each lettered photo in Exhibit 6 corresponds to each lettered photo in Exhibit 7. Other students, some of  
111 whom I was friends with on social media, started commenting on these posts. Eventually, between the  
112 original @Truth\_or\_Daniel(le) posts and the subsequent comments, the dialogue got really aggressive  
113 towards me. It's one thing for @Truth\_or\_Daniel(le) to post what they did; I tried really hard to ignore it.  
114 They were very hurtful. But the subsequent comments were like daggers. And if @Truth\_or\_Daniel(le)  
115 never posted, those comments would never have come. It was like @Truth\_or\_Daniel(le) was the  
116 ringleader.  
117

118 After the posts started from @Truth\_or\_Daniel(le), other students began to target me with their own  
119 negative messages and comments online. You can see what the comments are from the Instagram  
120 posts. Additionally, students began calling me "Lobster" and "Crab Hater" in person at school. These  
121 derogatory nicknames spread quickly, making me feel isolated and ridiculed. Some students started  
122 spreading false rumors that I was planning to cancel the annual Crab Feast, an event that is highly  
123 cherished by our school community. This rumor incited further backlash against me, with some students  
124 accusing me of trying to ruin school traditions. I also received several private messages from students  
125 threatening to make sure I lost the election. One message, which came from a blocked number, stated,  
126 "If you think you can get rid of our Crab Feast, you'll regret it." I questioned if I should feel fear because  
127 of this. It definitely made me feel some anxiety, perhaps even significant anxiety. I don't have a copy of  
128 those blocked number messages anymore because I deleted them from my phone right away; I just  
129 didn't want to be able to look at them whenever on my phone.  
130

131 To make matters worse, no one would talk to me anymore at school. My slate even ditched me. I could  
132 see my popularity slipping away. No one would sit with me at lunch, and I'd walk down the halls feeling  
133 like I didn't exist. People would look at me and then turn away, whispering, and if anyone said anything  
134 to me, it would be something cruel like yelling, "Go back to Boston, Lobster" from a distance. Detective  
135 Ali shared with me once the elements of the crime, Misuse of Electronic Mail, and I definitely believe  
136 these messages were designed to harass and intimidate me and cause me serious emotional distress,  
137 and they did. Every day, it felt like I was being humiliated. I started feeling paranoid, constantly  
138 wondering who would mock me next or what someone would post about me. It got to the point where I  
139 couldn't focus on schoolwork, and I was having trouble sleeping at night, thinking about how much  
140 people apparently hated me now. I felt trapped, like I was suffocating, or something. My heart would  
141 race every time I walked into school. My parents told me they thought I was having panic attacks, and  
142 told me I should stay home from school one day, just to get a break from it all. And no, I didn't miss that day  
143 because I had a quiz that coincidentally I wasn't prepared for. I still had to take it the next day; it was my

144 parents' decision for me not to go to school, not mine. My parents have been very concerned about me  
145 and have suggested I consider therapy. I really don't think I need to go that route yet, but I will keep an  
146 open mind to that option.

147  
148 Ultimately, with the help of my parents, on October 7, I reported the issue to our school principal. The  
149 principal informed me that while she could make announcements about the student policy on social  
150 media, there was limited internal action she could take because there was no way to know who  
151 specifically was starting the original postings on the @Truth\_Or\_Daniel(le) page. I believe my principal  
152 did ultimately make that announcement, but I'm not exactly sure when she did, and if it was that day or  
153 some other day that week or month. Also on October 7, my principal advised me to contact the police to  
154 address the issue further. She was aware they had a cyber unit that might be able to help.

155  
156 And that's what I did. I contacted the police that same day and ultimately spoke with Detective Cameran  
157 Ali. From there, Detective Ali conducted an investigation. Detective Ali ultimately advised me that  
158 Robert(a) López and Dana Luna were behind the posts. I want to say I was relieved when I found this  
159 out. But, it didn't stop the hurt I felt. People still don't talk to me at school. And, obviously, the election  
160 did not go my way. I wish I never ran for Student Council President. What they did was so frightening,  
161 and it definitely caused me severe psychological distress. They knew what they were doing. How could  
162 they not? Well, they got what they wanted. I lost the election. Hope it was worth it.

163  
164 I swear or affirm that everything in this affidavit is true. Before I wrote this affidavit, I was instructed  
165 that I should include everything I know that could possibly be relevant to my testimony in this case, and I  
166 carefully followed those instructions. I am fully aware that I must update this affidavit with any new or  
167 additional information I remember from now until the moment I take the stand to testify at trial.

168  
169 *Danielle/Benoît*

170  
Daniel(le) Benoît

1 **Affidavit of Robert(a) López**

2 Witness for the State

3

4 I, Robert(a) López, being duly sworn, hereby state as follows:

5

6 My name is Robert(a) López. I am 18 years old, and I am a senior at Nanticoke High School. I have a 3.5  
7 GPA, and I'm a member of the Chess Club and the Fortnite Club. In both clubs, we meet to compete in  
8 our favorite game.

9

10 Prior to Student Council election season from this school year, Dana Luna and Daniel(le) Benoît were  
11 students that I recognized around school, but I didn't know either of them well.

12

13 I decided to get involved in the student council elections when I saw Dana Luna promoting the issue of  
14 how the school allocated so many resources to sports, and what I believed were too few resources to  
15 the classroom. Like the message I saw being promoted by Dana Luna, I consider myself a computer geek;  
16 I like to build my own computers at home. I have always wished there could be a computer  
17 programming class in our school and have asked our Principal about that possibility and always get the  
18 same answer from her: not enough money in the budget.

19

20 I approached Dana one day in the middle/late part of the week on September 16th and offered to help  
21 them with their campaign. We communicated pretty regularly, I guess, in-person and through text  
22 messages about the campaign and how to use social media to our advantage. I believe Dana was very  
23 happy to have my support. Dana had mentioned originally that their sibling, Andre(a), helped create  
24 their "Dana wonders..." posters and Andre(a) was the sinister one in the family.

25

26 Dana and I discussed various strategies for the campaign, and we agreed that using social media could  
27 help influence more students. We had several conversations, both text and in person, about how to  
28 best use this platform. We decided that I would create and manage the anonymous  
29 @Truth\_or\_Daniel(le) account on Instagram, while Dana would stay focused on the more in-person  
30 aspects of the campaign. After our discussion, I created the @Truth\_Or\_Daniel(le) account and posted  
31 simultaneously to Instagram on @Truth\_Or\_Daniel(le) and @NanticokeHighMdSpirit. Like most students  
32 in my school, I follow @NanticokeHighMdSpirit. I went with the campaign strategy of tagging  
33 @NanticokeHighMdSpirit because I know all students at our school are encouraged to follow this page  
34 and it is by far the easiest way to reach the most students on social media. Initially, the posts were  
35 about Daniel(le)'s background, particularly their being from Boston and their, what I could only assume,  
36 preference for lobsters over crabs.

37

38 Our text conversations are Exhibits 8 through 10; and those are all of our messages over text. I'm pretty  
39 sure we discussed the use of social media before these text messages, but I'm not totally sure of that  
40 sequence; it makes sense in my head that it would have been before, but I could be wrong about that.  
41 Regardless, it was in one of our earlier text conversations that I suggested that social media could really  
42 help our campaign and Dana agreed with that approach. After my first post on September 26, I saw that  
43 we got a lot of feedback from students, and I suggested, by text, to Dana, that we should keep going  
44 with this strategy. I'll concede Dana expressed some reservations in that text exchange, but not really  
45 that much, and I believe that when Dana didn't respond to my last message in that conversation about  
46 "a little heat," I took that to mean that we were on the same page of ratcheting up the language in our  
47 social media campaign. Plus, once I did start posting even stronger language, Dana never asked me to  
48 stop. I thought I had text message exchanges with Dana that makes clear that Dana wanted to ratchet

49 things up against Daniel(le), but I must have mistaken that for in-person conversations. Regardless, one  
50 time, Dana and I were talking in-person and I said, “The posts are getting good traction, but I think we  
51 need to ramp it up a bit. Maybe be a bit more direct.” And Dana told me to my face, “If you think it will  
52 work, go ahead, but don’t make it too obvious that it’s connected to me specifically.” Dana also added  
53 some line about really sticking it to Daniel(le); something like that, I can’t really remember. I’m pretty  
54 sure it was Dana that suggested that I not only use crabs to represent students, and instead sometimes  
55 use bears because of our school mascot. Dana also added that if I ever had any writer’s block for posts,  
56 to reach out to them and we could spitball ideas back and forth. I think that was the conversation, but it  
57 could have been another time, Dana even suggested they could put me in touch with Andre(a) if I  
58 needed help creating more images. I never needed the help, but I believed it was there if I needed it.  
59 True, no one else was around for that conversation, but it happened. We were standing right at my  
60 locker for this conversation. I swear. Oh, and in another in-person conversation, I told Dana, “I’m going  
61 to make it clear that Daniel(le)’s views are a threat to our school’s traditions.” For that conversation, I  
62 remember Dana responded, “As long as it’s convincing.” For that conversation, I would describe Dana as  
63 being more cautious when they spoke to me, almost like they may be having second thoughts about this  
64 strategy. But, again, they never told me to stop. And if they had told me to stop, I would have. After all,  
65 this wasn’t my campaign, it was Dana’s.

66  
67 With this encouragement, I made posts that were increasingly aggressive, but I didn’t tell Dana exactly  
68 how far I was going, knowing it was possible they might have reservations. All of the posts I made are  
69 Exhibits 7a through 7j. The photos contained in those posts, which are Exhibits 6a through 6j, were  
70 created by me using a free online AI software, “**pic kAIing**,” that I was able to find.

71  
72 I became aware that Daniel(le) started getting verbally bullied around school. I knew what Dana and I  
73 were doing was going to create a stir, but I didn’t expect it to get so out of control. Honest. Besides, this  
74 all happened in less than two weeks ... it just happened so fast.

75  
76 When Detective Cameran Ali came to my home, I told them everything I knew and admitted to creating  
77 and running the @Truth\_Or\_Daniel(le) account. I also agreed to hand my phone over to Detective Ali.  
78 That’s how Detective Ali made the screenshots that are Exhibits 8 through 10. I’ve seen Detective Ali’s  
79 affidavit, and the prompts quoted that I used to create images in **pic kAIing** are accurately transcribed. I  
80 take a lot of issue with Detective Ali’s interpretation of what I intended with those prompts, but seeing  
81 Detective Ali’s perspective is an eye opener that I need to be mindful of what I put out into the world  
82 and how others may view and react to it. But, for example, I created several different images with each  
83 of those prompts and chose ones that I could stomach; I don’t have access to those other options  
84 anymore but there were far worse and more suggestive options. And consistently using “cartoon image”  
85 in my prompts was my attempt to lighten things up.

86  
87 Also, the message exchanges between me and Dana Luna, that Detective Ali put in their report, are  
88 accurate recitations of our conversations and the time of day that each was made or received. I know  
89 this because I can verify that I was the one who was posting on my end; no one else has access to my  
90 phone. And as for Dana, Dana provided me their phone number, and I saved their name into my phone  
91 as Dana Luna. Also, we would see each other around school. If Dana didn’t like the outcome of what was  
92 being posted, shouldn’t it be significant that they never told me to my face to stop what I was doing?

93  
94 I have also been charged with conspiring with Dana Luna to commit misuse of electronic mail and have  
95 agreed to a plea agreement where I will cooperate with the State’s investigation and testify truthfully. In  
96 exchange for my cooperation and testimony, the State’s Attorney has agreed to recommend a Probation

97 Before Judgment (PBJ) disposition for my case, which is real probation, but I can honestly say I have not  
98 been found guilty of anything because I have a PBJ instead. Also, I can more quickly expunge this whole  
99 thing from my criminal record three years after my probation ends because of the PBJ result instead of a  
100 guilty verdict. Sounds like a great deal to me, all things considered. Certainly, it is a lot better than facing  
101 three years in jail. Too bad I don't live in Baltimore City, and I'm not a juvenile anymore. Had I been, I  
102 would have been eligible for MYLaw's Teen Court diversion program. I absolutely would have preferred  
103 that opportunity to an adult probation. Unfortunately, Chesapeake County is one of the Maryland  
104 counties that does not have a Teen Court diversion program.

105  
106 I regret the extent to which the @Truth\_Or\_Daniel(le) account escalated, especially how it impacted  
107 Daniel(le). And creating a forum for the people that commented... I just couldn't predict that would have  
108 happened. I was aware of what people were posting as comments on my original post, but I didn't think  
109 it would do any damage other than hopefully assist Dana to win the election. My actions were intended  
110 to help Dana's campaign, but I now realize they totally crossed the line. I am prepared to testify  
111 truthfully about everything that happened, including Dana's involvement.

112  
113 I swear or affirm that everything in this affidavit is true. Before I wrote this affidavit, I was instructed  
114 that I should include everything I know that could possibly be relevant to my testimony in this case, and I  
115 carefully followed those instructions. I am fully aware that I must update this affidavit with any new or  
116 additional information I remember from now until the moment I take the stand to testify at trial.

117  
118 Robert(a) López

119 Robert(a) López

1 **Affidavit of Detective Cameran Ali**  
2 Expert Witness for the State in the field of Cyberabuse.

3  
4 I, Detective Cameran Ali, being duly sworn, hereby state as follows:  
5

6 **Training and Experience:**

7 I am a sworn law enforcement officer with the Chesapeake County Police Department with over ten  
8 years of experience in the field of criminal investigations. My current rank is Detective, and I am  
9 assigned to the Electronic Crimes Task Force (ECTF), where I specialize in the investigation of cyber-  
10 related offenses, including cyberbullying, electronic harassment, and other forms of cyberabuse.  
11 Throughout my career, I have completed extensive training and have worked on numerous cases  
12 involving cybercrime.

13  
14 I have received specialized training in the investigation of cyberabuse and electronic harassment. I was  
15 selected to participate in the National Cybercrime Training Partnership's (NCTP) training program, which  
16 was held virtually because of COVID, in June 2020, where I completed an intensive four-week course  
17 focused on digital forensics, cyber harassment, and online investigative techniques. In October 2021, I  
18 attended the FBI's Cyber Crimes Investigative School, a two-week specialized program offering advanced  
19 training in metadata extraction, cell phone analysis, and the legal framework for cyberabuse  
20 investigations. In March 2022, I also completed a two-week certification course with the International  
21 Association of Computer Investigative Specialists (IACIS), where I gained expertise in electronic evidence  
22 collection and cyber harassment mitigation strategies.

23  
24 Collectively, this training has taught me how to identify, preserve, and analyze digital evidence, as well  
25 as understand the unique challenges posed by online platforms and social media. Additionally, this  
26 advanced training has taught me techniques in extracting and analyzing metadata from cell phones.  
27 Finally, this training has given me the ability to retrieve information such as timestamps, geolocation  
28 data, call logs, and other relevant digital footprints that can provide critical evidence in cyberabuse  
29 investigations. I am now proficient in using forensic tools to conduct these analyses while ensuring the  
30 integrity of the evidence.

31  
32 As part of my investigative duties, I have conducted dozens of interviews with victims and witnesses of  
33 cyberabuse. My training includes trauma-informed interviewing techniques, which allow me to obtain  
34 accurate and detailed information from individuals who may be experiencing distress or emotional harm  
35 as a result of online harassment. This training also ensures that interviews are conducted in a manner  
36 that respects the rights and dignity of those involved.

37  
38 In addition to my specialized training, I have extensive experience with general investigative techniques,  
39 including the collection and preservation of physical and digital evidence, conducting surveillance, and  
40 collaborating with other law enforcement agencies and experts in the field of digital forensics. I am also  
41 proficient in drafting and serving search warrants related to both physical and digital evidence. I have  
42 worked closely with legal professionals to ensure that warrants are thorough and comply with the legal  
43 standards required for obtaining electronic communications and other forms of digital data.

44  
45 I am not paid anything additional for my testimony. I am a salaried employee for the Chesapeake County  
46 Police Department, and testifying in court is part of my job description. The only overtime I receive for  
47 my job is when I work longer than a typical 40-hour shift. If I need to testify during a time not already  
48 during my shift, I do receive overtime pay for this, since testifying is part of my duties.

49 I have previously been admitted as an expert in the field of recognition, investigation, identification,  
50 prevention, and digital forensics of Cyberabuse, in both the Circuit and District Courts located in  
51 Chesapeake County, in approximately thirty trials, give or take. Cyberabuse broadly includes  
52 cyberbullying and electronic harassment, while digital forensics refers to the collection and analysis of  
53 digital evidence from online platforms, computers, and cellular phones. I have never not been admitted  
54 as an expert, when offered, for these purposes.

55  
56 On only one occasion has a court found that my testimony was unreliable. In June 2022, I testified here  
57 in the Circuit Court for Chesapeake County in a case involving cyberstalking through shared household  
58 devices. I claimed that the digital activity from a computer suggested the defendant was responsible for  
59 the harassment. However, the defense demonstrated that multiple individuals in the household had  
60 access to the device, and I failed to account for this possibility in my analysis and do the necessary  
61 follow-up investigation to rule out those other suspects. The court ruled that I had overstretched my  
62 conclusions, and my testimony was considered unreliable due to the lack of evidence distinguishing the  
63 user responsible. Other than this one case, my testimony has never been ruled to be unreliable.

64  
65 **Below is a summary of my findings:**

### 66 Investigation Report

#### 67 **Incident Overview:**

68  
69 This investigation pertains to an online harassment campaign directed at Daniel(le) Benoît, a candidate  
70 for student council president at Nanticoke High School. The harassment was executed through an  
71 Instagram account titled @Truth\_Or\_Daniel(le) that posted defamatory and aggressive content directed  
72 at a student enrolled in the Nanticoke High School. The account was reported to school authorities and  
73 law enforcement, leading to an investigation by Officer Cameran Ali.

#### 74 **Instagram Profile:**

75  
76 The @Truth\_Or\_Daniel(le) Instagram account was set to public, allowing anyone with an Instagram  
77 account to view its messages. Additionally, the @Truth\_Or\_Daniel(le) Instagram posted ten messages  
78 that tagged the @NanticokeHighMdSpirit Instagram account, an account that practically all students at  
79 Nanticoke High School view and interact with its content online. The @Truth\_Or\_Daniel(le) account  
80 regularly posted derogatory memes, with captions and images, aimed at discrediting Daniel(le),  
81 generating significant attention and negative sentiment during the election for Nanticoke Student  
82 Council.

#### 83 **Initial Investigation:**

84  
85 On October 7, 2024, I responded to a call for service regarding electronic harassment reported by  
86 Daniel(le) Benoît. Daniel(le) Benoît is a student at Nanticoke High School, and Nanticoke High School is  
87 located within Chesapeake County. Additionally, Daniel(le) Benoît resides in Chesapeake County. Upon  
88 arrival, I met with Daniel(le) and gathered initial information regarding the anonymous social media  
89 account, @Truth\_Or\_Daniel(le), and its interaction with the @NanticokeHighMdSpirit Instagram  
90 account. Daniel(le) provided details about the nature of the posts and the tremendous distress they  
91 were apparently causing. Specifically, I would describe Daniel(le)'s demeanor, when speaking with me,  
92 as visibly distressed. Daniel(le) spoke in a soft, almost trembling, voice. There were moments when  
93 Daniel(le) seemed on the verge of tears. They expressed a sense of isolation regarding the ongoing  
94 harassment. Daniel(le) was fidgeting with their hands and avoided direct eye contact, which I



96 interpreted as significant discomfort and emotional strain. It was clear to me that the events had taken a  
97 toll on Daniel(le)'s mental and emotional well-being.

98  
99 Using Daniel(le)'s phone, I was able to view the posts on the @NanticokeHighMdSpirit Instagram  
100 account. I took screenshots of those posts and the associated comments. The screenshots I took are  
101 now Exhibits 7a through 7j. The photos within those posts are Exhibits 6a through 6j. I could tell by  
102 viewing the posts that all comments associated with each post were made on the same day as the  
103 original post.

104  
105 **Content Analysis**  
106 I next focused on the posts made by the @Truth\_Or\_Daniel(le) account. At first, these posts highlighted  
107 Daniel(le)'s background, especially the lobster vs. crab debate, but they quickly escalated. Over time, the  
108 language became increasingly hostile, directly contributing to the severe emotional distress I saw in  
109 Daniel(le) Benoît. Additionally, and especially, the comments from other students that this generated  
110 were very alarming.

111  
112 I noted the progression of these posts and assessed their potential psychological impact. Based on my  
113 analysis, it's clear that the posts were designed to humiliate, harass, and intimidate Daniel(le). The  
114 aggressive tone and the frequency of the posts show a concerted effort to cause harm.

115  
116 **Account Identification & Tracing**  
117 My next actions were to request metadata from Instagram and cross-reference the account activity with  
118 the school's student records. The investigation ultimately revealed that the account was accessed from  
119 a phone linked to Robert(a) López, a student at Nanticoke High School.

120  
121 In the course of my investigation, I initiated efforts to trace the origins of the Instagram account  
122 @Truth\_Or\_Daniel(le).

- 123
- 124 ● **Subpoena(s):** Working with Meta, the parent company of Instagram, I obtained a subpoena to  
125 retrieve user data associated with the account.
    - 126 ○ **Account Information:** In response to my subpoena, I was provided with the name, email  
127 address, and phone number tied to the account. The name on the account was  
128 Robert(a) López. The phone number linked to the account sign-up was 410-555-1234.  
129 And the email address was [rlopez12345@mail.com](mailto:rlopez12345@mail.com).
    - 130 ○ I next made contact with the Nanticoke High School administrative office and requested  
131 the home address and any phone numbers listed to student Robert(a) López. In addition  
132 to a home address and phone numbers for parents of this student, a phone number and  
133 emailed address was listed for Robert(a) López was provided. That number was 410-  
134 555-1234. The email address was [rlopez12345@mail.com](mailto:rlopez12345@mail.com).
  - 135 ● **IP Logs and Address Tracing:** I then reviewed the IP addresses used to access the account and  
136 matched them with known devices and locations associated with Robert(a). By cross-referencing  
137 the timestamps with Robert(a)'s known whereabouts during that time, I was able to confirm  
138 Robert(a) was the individual posting from the account.
    - 139 ○ **IP (Internet Protocol)** address tracing was a critical component of this investigation.  
140 Each time a device connects to the internet, it is assigned a unique IP address by its  
141 Internet Service Provider (ISP). These addresses can be traced back to a general  
142 geographic location or, in some cases, a specific physical address.

- 143 ○ **Data Acquisition:** I used **Wireshark**, a network protocol analyzer, to capture and  
144 examine the IP logs provided by the social media platform. Wireshark enabled me to  
145 analyze the packet data associated with each login session to the @Truth\_Or\_Daniel(le)  
146 account.
- 147 ○ **Cross-Referencing:** I cross-referenced the IP addresses obtained from the logs with  
148 **IP2Location**, a geolocation database, to map the IP addresses to specific geographic  
149 locations.
- 150 ○ **Correlation with Known Locations:** By mapping the IP addresses to known locations  
151 associated with Robert(a) (e.g., home, school), I established a consistent pattern of  
152 usage that tied the account activity to Robert(a)'s known whereabouts.

153  
154 Forensic tools, such as **Magnet AXIOM**, helped me analyze the data further, reinforcing the conclusion  
155 that Robert(a) was indeed behind the account activity.

156  
157 **Interview with Robert(a) López:**

158 Once I accumulated all of this information, I then drove to the home of Robert(a) López. I arrived at the  
159 López home at about 5:00 p.m. on October 23, 2024. When I arrived, both of Robert(a) López's parents  
160 were there, as well as Robert(a) López. With the permission of Robert(a) López's parents, and in both of  
161 their presence, I mirandized and interviewed Robert(a) López. During my interview, Robert(a) López  
162 revealed that they had in fact been responsible for the social media posts on the @Truth\_Or\_Daniel(le)  
163 account. Robert(a) López also advised me that Dana Luna was working in concert with Robert(a) López  
164 to publish these posts for the purpose of enhancing Dana Luna's chance of winning an election at  
165 Nanticoke High School.

166  
167 According to Robert(a)'s statements, the initial idea to use social media to boost the campaign came  
168 from an earlier text conversation between Robert(a) and Dana. Robert(a) suggested that social media  
169 could help sway student opinions, and Dana agreed to the approach. Robert(a) reported that after the  
170 first post gained significant feedback from students, they suggested to Dana via text that they should  
171 continue ramping up the social media strategy.

172  
173 While Dana expressed reservations about going too far, Robert(a) took Dana's silence after a message  
174 about applying "a little heat" as implicit approval to escalate the campaign's tone. Robert(a) further  
175 disclosed that Dana never instructed them to stop posting as the campaign grew more aggressive.

176  
177 **Communication Between Dana and Robert(a)**

- 178 ● **Established Communication and Potential Coordination:** The analysis revealed that Dana and  
179 Robert(a) had communicated through text messaging. These messages suggest that Dana and  
180 Robert(a) agreed to collaborate on using social media to influence the election, with Robert(a)  
181 taking the lead on posting under the @Truth\_Or\_Daniel(le) anonymous account. While Dana's  
182 messages indicate a desire to keep the content factual and respectful, Robert(a)'s role as the  
183 poster gives them the ability to shape the tone and direction of the messaging. Below are the  
184 communications that I downloaded and copied from Robert(a)'s phone (these messages are also  
185 contained in Exhibits 8 through 10):

186 **First Conversation (September 24, 2024, between 4:45 p.m. and 8:15 p.m.):**

187 **Robert(a) to Dana (4:45 p.m.):**  
188 “You know, you’ve got some great ideas for this campaign, but we could reach a lot  
189 more people if we used social media to our advantage.”

190 **Dana to Robert(a) (5:00 p.m.):**  
191 “Agreed. We need to get the word out beyond just the posters at school. But we should  
192 be careful. I don’t want to get into trouble.”

193 **Robert(a) to Dana (5:20 p.m.):**  
194 “No worries. I can handle the social media side of things. I’ve been thinking about  
195 creating an anonymous account to spread the message. What do you think?”

196 **Dana to Robert(a) (6:00 p.m.):**  
197 “That could work, as long as it stays focused on the issues. We can’t let it turn into  
198 something negative.”

199 **Robert(a) to Dana (7:10 p.m.):**  
200 “Of course. I’ll set it up and keep it on point. Maybe something like ‘Truth or Daniel(le)?’  
201 to keep people thinking just like your ‘Dana wonders...’ posters.”

202 **Dana to Robert(a) (7:25 p.m.):**  
203 “Okay, that sounds good. Just remember, we’re sticking to facts, not personal attacks.”

204 **Robert(a) to Dana (8:15 p.m.):**  
205 “Absolutely. I’ll take care of the posts, and you keep up with the official campaign stuff.”

206 **Second Conversation (September 25, 2024, between 4:50 p.m. and 8:20 p.m.):**

207 **Dana to Robert(a) (4:50 p.m.):**  
208 “The Daniel(le)’s from New England thing is getting traction. People here love crabs  
209 more than lobsters. Might be something to point out, don’t you think?”

210 **Robert(a) to Dana (5:05 p.m.):**  
211 “That’s a good angle. Maybe I’ll make it clear how much they hate crabs.”

212 **Dana to Robert(a) (6:30 p.m.):**  
213 “Just don’t go overboard. We don’t need to cause a scene, just a shift in opinion.”

214 **Robert(a) to Dana (7:00 p.m.):**  
215 “Don’t worry, I’ll keep it low-key... at least at first 😊😊.”

216 **Dana to Robert(a) (7:45 p.m.):**  
217 “Make sure the focus stays on the facts, not on attacking them personally. We’re better  
218 than that.”

219 **Robert(a) to Dana (8:20 p.m.):**  
220 “Yeah, but a little heat never hurt, right? Keeps things interesting.”

221 **Third Conversation (September 26, 2024, between 8:05 p.m. and 8:55 p.m.):**

222 **Robert(a) to Dana (8:05 p.m.):**  
223 “Hey, you saw that last post, right? Getting lots of reactions. Maybe we should turn up  
224 the heat even more.”

225 **Dana to Robert(a) (8:25 p.m.):**  
226 “I saw it. Just be careful not to cross any lines. We’re trying to win an election, not make  
227 enemies.”

228 **Robert(a) to Dana (8:45 p.m.):**  
229 “No worries, I’ve got this. They won’t even know what hit them.”

230 **Dana to Robert(a) (8:55 p.m.):**  
231 “Remember, we want to win on merit, not just by tearing someone else down.”

- 232 ● **Interpretation of Communications:** These text messages could be interpreted in different ways.  
233 On one hand, Dana’s messages suggest that they wanted to keep the campaign focused on  
234 legitimate issues and avoid personal attacks. On the other hand, Robert(a)’s increasingly  
235 aggressive tone and Dana’s awareness of it could imply that Dana knew or should have known  
236 that Robert(a) might escalate the situation beyond what was appropriate.
- 237 ● **Uncertain Conclusion:** Based on the data reviewed, there is a possibility that Dana was aware of  
238 or indirectly influenced Robert(a)’s posts, but this evidence alone does not necessarily  
239 conclusively prove that Dana directed or encouraged Robert(a) to engage in the illegal electronic  
240 harassment. The analysis of just the text message conversations leaves much room for  
241 interpretation.
- 242 ● **In-Person Communications:** In addition to the text exchanges, Robert(a) shared details of two  
243 significant face-to-face conversations with Dana Luna that occurred during the campaign:
  - 244 1. **First Conversation at Robert(a)’s Locker:**  
245 Robert(a) recalled a discussion where they informed Dana that the posts were gaining  
246 traction and suggested that they “ramp it up” by using stronger language. According to  
247 Robert(a), Dana replied, “If you think it will work, go ahead, but don’t make it too  
248 obvious that it’s connected to us.” Dana also reportedly added a remark about “really  
249 sticking it to Daniel(le),” though Robert(a) couldn’t remember the exact wording.  
250 Robert(a) recalled that the statements had to do with offering some suggestions about  
251 new messaging and offering potential assistance with creating new images. Robert(a)  
252 emphasized that although no one else witnessed this conversation, it took place at their  
253 locker and left them with the impression that Dana was fully supportive of the strategy.
  - 254 2. **Second Conversation About Daniel(le)’s Views:**  
255 In another in-person conversation, Robert(a) told Dana they planned to post that  
256 Daniel(le)’s views were a threat to the school’s traditions. Dana responded cautiously,  
257 stating, “As long as it’s convincing and doesn’t backfire.” Robert(a) noted that Dana  
258 seemed to be more reserved during this exchange, potentially having second thoughts  
259 about the aggressive strategy, but nonetheless never told Robert(a) to stop.  
260

#### 261 **Phone Analysis and Metadata Collection:**

262 During that interview, Robert(a) agreed to turn over their phone for forensic analysis. I used **Magnet**  
263 **AXIOM** and **Cellebrite** to download and analyze the phone’s metadata contents, including:

- 264 ● **Saved Credentials:** I found stored data confirming that the phone had been used to log into the  
265 @Truth\_Or\_Daniel(le) Instagram account.

- 266 ● **Message History:** Texts exchanged between Robert(a) and Dana Luna. Those details of that  
 267 content are provided above.
- 268 ○ I also took screenshots of the above text message conversations between Robert(a) and  
 269 Dana. Those screenshots are saved in my file.
- 270 ● **App Data Recovery from “pic kAIIng”:**
- 271 As part of my forensic analysis of Robert(a) López’s phone, I recovered data from an AI image-  
 272 generation app called **pic kAIIng**, which was used to create visual content that was part of the  
 273 ongoing harassment campaign targeting Daniel(le) Benoît. The app allows users to prompt the  
 274 creation of custom photo images. I extracted the following prompts from Robert(a)’s phone,  
 275 each of which generated several image options. One image from each prompt was ultimately  
 276 selected by Robert(a) for posting to Instagram. Below are the prompts submitted on **pic kAIIng**,  
 277 with the corresponding exhibit noted in parentheses:
- 278 ○ **Prompt 1** (*which is now the image in Exhibit 6a*): “Create a cartoon image of a crab  
 279 wearing a Ravens football jersey and a lobster wearing a Patriots jersey. Have them be  
 280 inside a football stadium.”
- 281 ▪ This image makes a pointed reference to the rivalry between crabs (associated  
 282 with Maryland) and lobsters (associated with New England), a recurring theme  
 283 in the campaign targeting Daniel(le), who was not from Maryland.
- 284 ○ **Prompt 2** (*which is now the image in Exhibit 6b*): “Create a cartoon image of Edgar Allen  
 285 Poe posing with a raven.”
- 286 ▪ This prompt incorporates Maryland symbolism, using Edgar Allan Poe and the  
 287 raven to reinforce a sense of regionalism. Although not directly tied to the  
 288 lobster-crab dynamic, it subtly reinforces Maryland’s identity, perhaps as a  
 289 contrast to Daniel(le)’s outsider status.
- 290 ○ **Prompt 3** (*which is now the image in Exhibit 6c*): “Create a cartoon image of a lobster  
 291 walking into a house party full of crabs. The crabs should be laughing at the lobster.”
- 292 ▪ This image heightens the humiliation theme, showing the lobster being ridiculed  
 293 in a social setting, targeting Daniel(le) directly.
- 294 ○ **Prompt 4** (*which is now the image in Exhibit 6d*): “Create a cartoon image of a crab  
 295 smashing a lobster with a mallet. The crab should be angry and trying to really hurt the  
 296 lobster.”
- 297 ▪ This image depicts direct violence and aggression, symbolizing the intent to  
 298 harm or intimidate. The aggressive posture of the crab (a Maryland symbol)  
 299 against the lobster (symbolizing Daniel(le)) represents an escalation from  
 300 ridicule to outright hostility. This image is particularly significant because it was  
 301 the first in the campaign to introduce graphic violence, intensifying the  
 302 harassment.
- 303 ○ **Prompt 5** (*which is now the image in Exhibit 6e*): “Create a cartoon image of a sad  
 304 lobster eating alone in a cafeteria, while bears are sitting happy at other tables eating.”
- 305 ▪ This image perpetuates isolation and mockery, further escalating the targeted  
 306 harassment by depicting Daniel(le) as an outcast.
- 307 ○ **Prompt 6** (*which is now the image in Exhibit 6f*): “Create a cartoon image of a lobster  
 308 wearing very preppy clothing.”
- 309 ▪ This image suggests that the lobster, symbolizing Daniel(le), is being mocked for  
 310 not fitting in, particularly with local or cultural norms. The “preppy” appearance  
 311 adds another layer of teasing or belittling Daniel(le)’s perceived social or  
 312 regional identity.

- 313 ○ **Prompt 7** (*which is now the image in Exhibit 6g*): “Create a cartoon image of a scared  
314 lobster being boiled alive in a pot.”
- 315     ▪ This image portrays the lobster in a vulnerable and terrifying situation,  
316 symbolizing intense fear and helplessness. The act of being boiled alive reflects  
317 a desire to cause psychological harm or intimidation, amplifying the hostile tone  
318 of the campaign. It is also suggestive to other students to consider doing  
319 physical harm to Daniel(le).
- 320 ○ **Prompt 8** (*which is now the image in Exhibit 6i*): “Create a cartoon image of a bear  
321 swiping at the water trying to catch a fish. But, instead of a fish, make it a very scared  
322 lobster.”
- 323     ▪ This image plays on the theme of intimidation, as the lobster, symbolizing  
324 Daniel(le), is portrayed as a fearful and vulnerable figure, and the bears,  
325 symbolizing the student body, are physically attacking the Daniel(le) figure,  
326 reinforcing the harassment narrative, as well as the possibility of suggesting that  
327 others should do physical harm to Daniel(le).
- 328 ○ **Prompt 9** (*which is now the image in Exhibit 6j*): “Create a scary cartoon image of Edgar  
329 Allan Poe clutching an injured lobster.”
- 330     ▪ This image uses regional symbolism (Edgar Allan Poe, representing Maryland)  
331 and portrays Daniel(le) in a frightening and injured context.

- 332
- 333 ● These prompts and their resulting images demonstrate a consistent and escalating effort to  
334 ridicule, intimidate, and harass Daniel(le) Benoît. The specific imagery of lobsters being isolated,  
335 ridiculed, and placed in adversarial situations with crabs—combined with regional symbols like  
336 Edgar Allan Poe and ravens—clearly indicate an intent to target Daniel(le) based on their  
337 outsider status. The images selected from the app, **pic kAIing**, reinforce a pattern of harassment  
338 that escalates from social exclusion and mockery to physical intimidation and fear.

339

340 It is important to note that viewing these images without the context of the prompts may alter  
341 one’s perception of their meaning. Without the prompts, some may interpret the images as  
342 simple illustrations or even cartoonish humor. However, when considered alongside the  
343 associated prompts, the images take on a much more nefarious tone, revealing a deliberate and  
344 calculated effort to cause psychological distress to Daniel(le) Benoît. These visual elements, now  
345 exhibits available in this case, corroborate the harassment pattern established by the text  
346 messages and Instagram posts.

- 347
- 348 ● With the combination of Instagram data, IP logs, and the forensic evidence from Robert(a)’s  
349 phone, it was clear that, at the very least, Robert(a) López was responsible for the account’s  
350 operation and the ongoing harassment of Daniel(le) Benoît.

351

352 **Conclusion:**

353 Clearly, the social media campaign that Robert(a) López has admitted to, as well as the information  
354 contained on their phone, are emblematic of someone maliciously intent on harassing and intimidating  
355 another with the intent to cause at least serious emotional distress, as well as doing so through the use  
356 of building a fake social media profile. When viewing this information, as well as Robert(a) López’s  
357 admissions and the details from their affidavit, it is clear that Dana Luna played a significant role in the  
358 social media campaign as well. I never attempted to interview Dana or Dana’s family or attempt to hear  
359 their side. I also never sought out a warrant or consent to view Dana’s phone, computer, or any other of  
360 their electronic devices. My conclusions are based off of the evidence and statements that I gathered.

361 Although Dana expressed caution and some reservations in their text and face-to-face conversations  
362 with Robert(a), Dana’s failure to stop the posts and their suggestion to “not make it too obvious”  
363 indicate express support for the increasingly aggressive nature of the @Truth\_Or\_Daniel(le) Instagram  
364 posts.

365  
366 Finally, I am aware that the comments made here in these posts would be legal if they were peaceable  
367 activity intended to express a political view or provide information to others or conducted for a lawful  
368 purpose. On the one hand, as we are talking about high schoolers here, I want to believe this was just  
369 misguided youth who did not understand the law or the ramifications of their actions. But at the end of  
370 the day, I just can’t quite get myself there to seeing how this behavior was peaceable or intended to do  
371 anything other than harass a minor.

372  
373 Given the combination of text message evidence, face-to-face conversations, and Robert(a)’s detailed  
374 testimony, my investigation concludes that Dana Luna was involved and responsible for electronically  
375 harassing Daniel(le) Benoît. Dana’s approval of the social media strategy, despite reservations, coupled  
376 with the lack of action to prevent the escalation, points to their complicity in the campaign of  
377 harassment.

378  
379 The findings of this investigation warrant further legal action against both Robert(a) López and Dana  
380 Luna for their roles in the harassment of Daniel(le) Benoît.

381  
382 I hereby affirm that the above information and information contained in my report is true and accurate  
383 to the best of my knowledge and professional judgment.

384  
385 *Cameran Ali*  
386

Detective Cameran Ali

1 **Affidavit of Dana Luna**

2 Witness for the Defendant

3

4 I, Dana Luna, being duly sworn, hereby state as follows:

5

6 My name is Dana Luna. I am 18 years old and I am a senior at Nanticoke High School.

7

8 I am proud to report that I'm the Student Council President for my school and I'm a straight-A student.

9 Because of my 4.0 GPA, I am also a member of the National Honor Society. I'm also in the Mathletes

10 Club. My goal is to be the valedictorian of my class. One day, I hope to work somewhere in the field of

11 STEM; maybe as a surgeon, but I'm keeping my options open.

12

13 I believe all of these issues started in the first 2 weeks of school. I was taking Biology and we were going

14 to be dissecting frogs. I was particularly excited because of my interest in possibly becoming a surgeon

15 someday. On dissection day, each student was given a tray with a frog specimen, scalpels, forceps, and

16 pins to secure the frog to the dissection board. Our teacher, Ms. Hohman, instructed us to begin by

17 making a small incision along the belly of the frog. I was having trouble with my scalpel. It seemed very

18 dull. Frustrated by the dull scalpel, I pressed harder on the blade. Suddenly, as I was cutting, the scalpel

19 slipped, causing my hand to jerk. This unexpected movement caused the frog's internal fluids to splatter

20 out of the specimen and onto the table. All of the sudden, my tray tipped over, and before anyone could

21 react, the frog and its contents—formaldehyde, tissues, and fluids—spilled onto the floor in a soggy,

22 unpleasant mess. The classroom erupted in laughter and groans as the smell filled the room, and the

23 slippery mess spread across the tile floor. No one was hurt, but the sight of the frog and its insides

24 scattered across the floor was enough to make a few students back away in disgust. Ms. Hohman rushed

25 over with paper towels and a mop, trying to clean up the mess before it spread further. Ms. Hohman

26 explained to me soon after that this all happened because, due to budget constraints, our schools does

27 not replace scalpel blades as frequently as they should, leading to the use of dull blades over time.

28 Though the situation was messy and a bit embarrassing for me, I left the situation very upset that our

29 school did not provide us with updated tools so that we could properly conduct our experiments.

30

31 That afternoon, my walk home from school took me past the football fields where our Varsity, Junior

32 Varsity, and Fresh-Soph teams were practicing. I saw how all three levels of teams were practicing on

33 beautiful, manicured fields, all of the students had pads, new looking uniforms, blocking sleds, tackling

34 dummies, etc. etc. You name it, our teams appeared to have it. They even had a training staff standing

35 by for any medical issues. While I was happy everyone appeared as safe as one could be on the field, it

36 didn't seem like our school was having budget constraints.

37

38 That night, I went home and brought up my awkward happening in class. I told my parents and sibling,

39 Andre(a) Luna, about my dissatisfaction with how my school allocated funds to programs like sports

40 instead of science. My parents were understanding but didn't give me much hope. I remember my

41 father telling me about how important the football team was at Nanticoke High School and not to

42 expect any changes anytime soon.

43

44 On Monday, September 16, 2024, I saw Exhibit 1, the flyer, at school promoting the Student Council

45 Elections. I decided right then that to give my issues a chance to see the light of day, I would run for

46 President of the Student Council.



47 The next day, I got right to campaigning. I was aware another student was running as well, but I  
48 campaigned at first just on the issue most important to me: STEM funding. On September 17, 2024,  
49 after school, I drafted some posters and flyers with the slogan, “Score Big with STEM: Elect Dana Luna  
50 for a Winning Game Plan!” and passed them around on September 18, 2024 to other students, while  
51 introducing myself. I also posted them on approved poster boards at school. That poster/flyer is Exhibit  
52 3. My younger sibling, Andre(a) Luna, assisted me to create the images for that poster. Andre(a) is a  
53 sophomore at Nanticoke. I’m not really sophisticated to image generating technology, but Andre(a) is;  
54 they are really good at it, in fact. They found the task boring, but helped me anyway.  
55

56 While walking around school and campaigning on September 18, I met Daniel(le) Benoît. I gave them my  
57 flyer and I thought we had a very cordial conversation. It was nice to have a conversation about the  
58 political process and the energy one gets from a spirited debate. Those good vibes lasted until the next  
59 day when I walked around school and saw large posters posted on bulletin boards around campus. It  
60 was an image similar to the one I created, but now it had a strong anti-science message. That is Exhibit  
61 4. I didn’t think much of it, and just chalked it up to that I had to embrace the democratic spirit of a  
62 challenging campaign. But, as I continued walking around school to pass out my flyers, I noticed a tone  
63 change from students. Frequently, they had no interest in my candidacy. Some of the students would  
64 quickly end conversations with me by calling me “Nerd” and “Dork.” I didn’t appreciate that too much. I  
65 knew I needed to do something, or I would have no chance of winning the election.  
66

67 That night, at home, I spoke again with my sibling, Andre(a). Andre(a) shared with me that they were  
68 aware that Daniel(le) was originally from the New England area. I didn’t really understand why that  
69 would matter but my sibling explained that I should try to make up a campaign issue out of Daniel(le)  
70 not being from Maryland. That night, Andre(a) helped me to create new campaign literature. They used  
71 the same software as before on the computer to create it. Plus, Andre(a) has a more devilish mind for  
72 these types of things. That’s when Andre(a) created a series of campaign posters called “Dana  
73 wonders...” I acknowledge that what followed that tagline of what I was wondering were stereotypes about  
74 people from New England. But to be clear, not my idea.  
75

76 I started hanging the “Dana wonders...” posters around school and noticed the mood around school was  
77 starting to even itself out. Those posters are Exhibit 5a through 5d. Students just seem to be more  
78 receptive to what I had to say over what Daniel(le) had to say. In fact, not being from Maryland seemed  
79 more important to my fellow students than how our classes were funded. But, I could also tell I was not  
80 the clear cut leader. It was at that time that Robert(a) López approached me about campaigning online.  
81 It turned out that Robert(a) López was a big supporter of my fight for funding in the classroom. I didn’t  
82 have a good sense for how to campaign online, but Robert(a) López assured me they could take that  
83 over run that for me. It made me nervous to involve someone else, especially someone I didn’t know  
84 well. I tried to ensure Robert(a) López did not go too negative.  
85

86 I was aware that Robert(a) López created the anonymous Instagram account @Truth\_Or\_Daniel(le) to  
87 support my campaign. While I knew about the account, I did not anticipate or approve of its use for  
88 posting negative or hurtful messages. I communicated with Robert(a) about general campaign strategies  
89 and encouraged Robert(a) to use social media effectively, but I was clear that the campaign should  
90 remain focused on the issues and not become personal. I did see Robert(a)’s first post but can’t say for  
91 sure if I saw the other posts at or near the time that they were posted. After all, I was busy campaigning  
92 and worried about meeting the people in person. Also, while I have an Instagram account, I don’t go on  
93 it very much.

94 I have thoroughly reviewed Robert(a)'s affidavit, in which Robert(a) claims that we had offline  
95 conversations where I supposedly approved or encouraged more aggressive messaging. I categorically  
96 deny these claims and every statement they attribute to me. I never had such conversations with  
97 Robert(a), nor did I instruct Robert(a) to make the posts more negative or offer any other assistance. I  
98 have also thoroughly reviewed Detective Ali's affidavit. The quotes from my text message exchanges  
99 with Robert(a) are accurate and represent all of the text conversations that I ever had with Robert(a).  
100 That's pretty much all I will agree with from that report. I disagree with all of Detective Ali's conclusions  
101 about me. My goal was always to maintain a respectful and issue-oriented campaign.

102  
103 I want to assure everyone, especially Daniel(le) Benoît, that I did not intend to post any negative or  
104 hurtful messages. My awareness of the @Truth\_Or\_Daniel(le) account was not accompanied by any  
105 support for using it in a harmful manner. Guided by the teachings of my American Government teacher,  
106 Simon(e) Marshall, Esq., my campaign strategy operated under the belief that my activities were  
107 protected by the First Amendment. And, not that I am adopting the statements in those Instagram  
108 posts, but I don't understand why they aren't protected speech under the First Amendment. Aren't  
109 they? If I had been aware of those posts at the time of their creation, I would have thought they were  
110 protected speech. Anyway, I am deeply concerned by the accusations. Any perceived negativity in my  
111 campaign was never part of my intentions. If Daniel(le) has been hurt by all of this, I am sorry about that.  
112 But my feelings of sorrow are because someone's feelings are hurt, and not because I believe I did  
113 anything to cause that.

114  
115 I swear or affirm that everything in this affidavit is true. Before I wrote this affidavit, I was instructed  
116 that I should include everything I know that could possibly be relevant to my testimony in this case, and I  
117 carefully followed those instructions. I am fully aware that I must update this affidavit with any new or  
118 additional information I remember from now until the moment I take the stand to testify at trial.

119  
120 *Dana Luna*  
121

Dana Luna

1 **Affidavit of Andre(a) Luna**

2 Witness for the Defendant

3

4 I, Andre(a) Luna, being duly sworn, hereby state as follows:

5

6 My name is Andre(a) Luna. I am 15 years old and I am a sophomore at Nanticoke High School. I am Dana  
7 Luna's sibling. I've known Dana my whole life and we have always lived in the same home together. I  
8 have a 3.8 GPA, and I am a member of the Robotics Club and my school's MYLaw Mock Trial team; I'm a  
9 witness and I love it! Go Witnesses! Can't wait though to try out the attorney role. Next year, I really  
10 hope to attend MYLaw's Summer Law Academy. That program takes students on field trips and has lots  
11 of guest speakers. I heard you get to visit the Maryland State Office of the Forensic Medical Examiner!  
12 So cool!

13

14 I recall when Dana first came home and asked for my advice about the campaign. The first occasion was  
15 to assist with creating their initial poster. I told them their poster wouldn't grab my attention, but I  
16 helped them anyway. When they came back to me a second time after Daniel(le) posted their response  
17 poster, I kind of wondered what took them so long to get the picture. I've heard people describe Dana  
18 as book smart, and not street smart. I'd have to say that makes a lot of sense to me. Me? I'm the  
19 opposite.

20

21 When Dana asked for my advice on the second occasion, I was excited to help them. We spent a lot of  
22 time that one night brainstorming ideas for posters and ways to make their campaign stand out. It was a  
23 lot of fun. I was aware from a friend of a friend of a friend of a friend that Daniel(le) Benoit was originally  
24 from the New England area; something like they moved from there to Maryland when they were really  
25 young. But does that really matter? As far as I'm concerned, Daniel(le) is New England, and we are  
26 Maryland. I shared this information with Dana, believing it very well could be a useful part of their  
27 campaign strategy.

28

29 That night, I came up with the "Dana wonders..." idea and created the images in the posters. Dana isn't  
30 good with that kind of online technology, so that's why I took the lead in creating these images and  
31 memes. Dana approved of the idea; that's why Dana assisted with some of the taglines, allowed me to  
32 print the posters and then posted the posters herself around school. Those posters are Exhibits 5a  
33 through 5d. The idea I had focused on was for Dana to point out to the student body that Daniel(le) was  
34 not from Maryland, that they were not "one of us," and perhaps didn't really understand the needs of  
35 our school, such as Dana's focus on pointing the money back into the classroom. My focus was always  
36 on helping Dana promote their ideas in a positive and fun way.

37

38 I want to make it clear that I had no involvement in the @Truth\_Or\_Daniel(le) account or the specific  
39 messages Robert(a) posted. I am only now aware that Robert(a) was the one who posted because of the  
40 information I learned from my sibling when they too were charged in this case. I never would have  
41 supported or encouraged any truly hurtful content. Based on what I know about my sibling, Dana, I  
42 believe that they would never want to hurt anyone else either or say anything mean-spirited.

43 I was not aware of the crafting of negative or hurtful messages that were ultimately posted on  
44 Instagram by the account @Truth\_Or\_Daniel(le) until after everything happened and I saw the messages  
45 for myself on social media. I did of course see them when they were being posted; who didn't? They  
46 were posted on Instagram to a page the entire student body is invited to follow. I was aware that Dana  
47 and Robert(a) were working together a little on some aspects of the campaign, like for using social

48 media. However, I did not know the details of their collaboration or that Robert(a) was posting under an  
49 anonymous account. And I was definitely never asked by Dana to assist Robert(a).

50

51 Dana has sworn to me they didn't know negative messages would be posted on social media by  
52 Robert(a) and I absolutely believe Dana. Dana is basically incapable of telling a lie. That being said, I also  
53 have to admit that Dana has been grounded before for lying to our parents on more than one occasion  
54 about things like taking out the garbage and other chores around the house. But what kid hasn't wanted  
55 to get out of doing chores. But Dana has never hurt anyone, nor would they ever hurt a fly. Given that, I  
56 am at least 97% sure that Dana was very careful about how they presented their ideas and running a  
57 clean, issue-focused campaign.

58

59 I swear or affirm that everything in this affidavit is true. Before I wrote this affidavit, I was instructed  
60 that I should include everything I know that could possibly be relevant to my testimony in this case, and I  
61 carefully followed those instructions. I am fully aware that I must update this affidavit with any new or  
62 additional information I remember from now until the moment I take the stand to testify at trial.

63

64

65

*Andre(a) Luna*

Andre(a) Luna

1 **Affidavit of Simon(e) Marshall, Esq.**  
2 Expert Witness for the Defendant in the field of First Amendment Law

3  
4 I, Simon(e) Marshall, Esq., being duly sworn, hereby state as follows:

5  
6 **Introduction**

7  
8 I am Simon(e) Marshall, Esq., an American Government teacher at Nanticoke High School. I am also a  
9 retired attorney with extensive experience in civil rights law, particularly in First Amendment cases. In  
10 addition to what I know about the students involved in this case based on my capacity as a teacher at  
11 their school, I am also providing this affidavit to offer expert testimony regarding the implications of the  
12 First Amendment and the provisions of Maryland Code, Criminal Law, § 3-805 in relation to the recent  
13 student council election at Nanticoke High School.

14  
15 **Qualifications**

16  
17 I hold a Juris Doctor (JD) Degree from the University of Baltimore Law School, and I was admitted to  
18 practice law in Maryland in 1989. I spent my first 10 years as an attorney working for the ACLU. I left  
19 there to go into private practice at various law firms. My legal career always focused on civil rights  
20 litigation, and defending First Amendment rights was something I handled on a healthy number of  
21 occasions. I would say I have handled numerous cases involving the boundaries of free speech and  
22 political expression. One unique thing I miss from practicing law was hosting a MYLaw Law Links intern  
23 each summer. I got to do a lot of good as an attorney, and one of those things worth highlighting was  
24 providing a high school student an opportunity to intern in a real law firm through this internship  
25 program offered by MYlaw; now that was really special! What attorney wouldn't want to give a high  
26 schooler an opportunity to significantly boost their resume at a young age?

27  
28 After retiring from the legal practice, I have been teaching American Government at Nanticoke High  
29 School for the last five years. I have no record or memory of Daniel(le) Benoît or Robert(a) López having  
30 ever enrolled in my class. Dana Luna was a student in my American Government class during the fall  
31 semester of 2023. While I don't recall the exact grade Dana received, I believe it was likely an A, as Dana  
32 is one of our school's top academic achievers. My lesson plan has been the same over the years in that  
33 class, so I know they would have received my lesson on the First Amendment and how it protects  
34 certain, but not all, speech.

35  
36 I am not being paid for my testimony and am using preapproved leave from school to be here today, but  
37 it does count against my vacation days.

38  
39 **Teaching Experience**

40  
41 My class is an elective that can be taken by sophomores, juniors, and seniors. My curriculum includes  
42 instruction on the First Amendment, specifically focusing on the rights to freedom of speech and  
43 freedom of the press, along with the legal limits of these rights.

44 The students are educated about the legal boundaries of political expression, including what constitutes  
45 protected speech and what actions might cross into harassment or intimidation.

47 **The First Amendment**

48 The First Amendment enshrines the right to free speech as one of the cornerstones of American  
49 democracy, particularly protecting political speech. This protection is especially pertinent in election  
50 contexts, where the public’s ability to criticize, debate and critique candidates, and advocate for one’s  
51 beliefs is vital for informed voting and fundamental to a healthy democracy.  
52

53 The following are highlights of certain terms and topics in the First Amendment debate when the  
54 conversation overlaps with potential violations of criminal law.  
55

- 56 1. **The First Amendment, generally just as to Speech:** The First Amendment prohibits Congress  
57 from abridging the freedom of speech. This prohibition is applicable to the states through the  
58 Fourteenth Amendment.
- 59 2. **What is Speech:** Speech includes words, symbols, and expressive conduct. Expressive conduct is  
60 any kind of conduct that is either inherently expressive or conduct that is intended to convey a  
61 message and reasonably likely to be perceived as conveying a message.
- 62 3. **Unprotected Speech:** Some categories of speech lack First Amendment protection and generally  
63 may be fully or partially censored. See *Virginia v. Black*, 538 U.S. 343 (2003). Some examples of  
64 speech that can be censored are Incitement and Fighting Words, and True Threats. There are  
65 many other examples of speech that can be censored, but those are omitted from this  
66 discussion because they are not relevant to this case inquiry.
  - 67 A. **Incitement:** Speech can be censored as incitement if it is (1) intended to produce  
68 imminent lawless action, and (2) likely to produce such action. For example, at a rally, it  
69 is not incitement for a group to urge its members to take revenge if the government  
70 continues to suppress their group. But it would be incitement if that same group urged  
71 its members to take action now.
  - 72 B. **Fighting Words:** Fighting words are personally abusive words that are likely to incite  
73 immediate physical retaliation in an average person. These types of words are not  
74 protected by the First Amendment. Words that are merely annoying cannot be  
75 censored. For example, in an argument, calling someone an explicative-filled name to  
76 their face would be using fighting words that are not protected by the First Amendment.  
77 But, wearing a jacket in the hallway of a courthouse with a statement printed on the  
78 jacket expressing a political point of view, and the printed statement includes  
79 expletives, are not fighting words.
  - 80 C. **True Threats:** True threats are words that are intended to convey to someone a serious  
81 threat of bodily harm, and are not protected by the First Amendment. To qualify as a  
82 true threat, the speaker must have had some subjective understanding that their  
83 threats were of a threatening nature, but a mental state of recklessness is sufficient  
84 (that is, the speaker is aware that others could regard the statements as threatening  
85 violence and delivers them anyway). For example, burning a cross at a rally would be  
86 protected speech, but burning a cross on a victim’s yard is not protected speech.
- 87 4. **Political Speech:** Political speech is accorded the highest level of protection under the First  
88 Amendment, as it is essential for public discourse and the functioning of democracy. See *Watts*  
89 *v. United States*, 394 U.S. 705 (1969).
- 90 5. **Harassment vs. Free Speech:** It is crucial to delineate between speech that may be perceived as  
91 harsh or critical and speech that constitutes harassment. According to the *Virginia v. Black*, 538  
92 U.S. 343 (2003) decision, speech that is critical or mocking does not automatically qualify as a  
93 true threat or an act of harassment unless it incites imminent lawless action or poses a direct  
94 threat of violence. See also *Schiff v. State*, 254 Md. App. 509 (2022).

- 95 6. **Context Matters:** The context in which speech occurs is crucial in determining its protection. In  
96 fact, not always is a case governed by the First Amendment if it can be shown that the elements  
97 of a crime are lacking in the evidence presented to the trial of fact. For example, the intent to  
98 convey a true threat must be shown. See *Elonis v. United States* 575 U.S. 723 (2015).  
99

## 100 **Analysis**

101  
102 The facts of this case center on an allegation that Dana Luna participated in a social media campaign  
103 that amounted to electronic harassment under Maryland Code, Criminal Law, § 3-805. I have viewed  
104 Exhibits 1 through 10, as well as the affidavits of the five other witnesses in this case. After examining  
105 the nature of the conduct in light of First Amendment protections, there are several reasons why the  
106 Instagram posts in this case do not meet the threshold for criminal liability.  
107

### 108 **1. Nature of Political Speech and the First Amendment**

109 At the core of the First Amendment is the protection of political speech, which is afforded the highest  
110 level of scrutiny by the courts. This is particularly relevant in the context of an election, where robust  
111 discourse, including criticism, debate, and the free exchange of ideas, is critical to a functioning  
112 democracy. Courts have consistently held that speech, even if critical, negative, or controversial, is  
113 generally protected unless it crosses specific legal boundaries, such as incitement, true threats, or  
114 fighting words.  
115

116 In this case, the content of the social media posts attributed to Dana Luna and the “Truth or Daniel(le)”  
117 account, including Dana and Robert(a)’s posts about Daniel(le)’s background, and the use of the imagery  
118 of Daniel(le)’s as a lobster and the rest of the school body as crabs or bears, falls squarely into the  
119 category of political speech. The tone and aggressiveness of the posts, while perhaps questionable in  
120 taste, do not necessarily remove them from the protection of the First Amendment. The posts involved  
121 criticism of an opposing candidate in a student election, which is a form of political expression. It is my  
122 opinion that the content included in the original posts did not express direct calls for imminent lawless  
123 action or incitement of violence, nor does it appear to rise to the level of true threats or fighting words,  
124 which would remove it from First Amendment protection.  
125

- 126 ○ I should add that I am aware through my reading of Dana Luna’s affidavit that Dana has  
127 denied being a part of what was posted online about Daniel(le). Since Dana was enrolled  
128 in my class, I have not met with Dana at all, nor have I discussed these allegations with  
129 Dana. My opinions throughout this affidavit about the events in this case and whether  
130 the First Amendment is implicated assume that Dana was aware of the postings as they  
131 were being posted, and if so, the implication of that awareness. I make this assumption  
132 simply because if Dana was unaware of the posts, they would not be guilty of any  
133 crimes.  
134

### 135 **2. Distinction Between Harassment and Free Speech**

136 While Maryland’s law against electronic harassment is designed to prevent harmful online conduct, it  
137 must be balanced against the First Amendment’s protections. The key question is whether the conduct  
138 in question amounted to “harassment” under the legal standard.  
139

140 For speech to constitute harassment, it must be more than merely offensive or upsetting. The Maryland  
141 statute requires that the speech involve malicious intent to intimidate, harass, alarm, or annoy. Here,  
142 the evidence suggests that Dana may have been aware of the “Truth or Daniel(le)” account, but their

143 involvement was, at best, passive, and there is insufficient evidence that they were the author of, or  
144 even directly endorsed, the posts.

145  
146 Furthermore, criticism or commentary during an election, even if unflattering, does not automatically  
147 amount to harassment. Courts have emphasized that harassment laws cannot be applied in a way that  
148 chills or restricts political expression. There must be a clear line between protected political discourse  
149 and conduct that becomes harassing, which often involves repeated, targeted, and malicious behavior.  
150 Based on the evidence, there is no clear showing that Dana's actions crossed this line.

151  
152 **3. Subjective Intent and "True Threat" Doctrine**

153 To qualify as a "true threat," speech must be intended to convey a serious expression of intent to  
154 commit violence. In *Elonis v. United States*, 575 U.S. 723 (2015), the Supreme Court ruled that for speech  
155 to be classified as a true threat, there must be some level of subjective intent to threaten harm. The  
156 speaker must either have known or been reckless as to whether their statements would be perceived as  
157 threatening.

158  
159 In this case, even if Dana was aware and conspired to post these messages on Instagram, there is no  
160 clear evidence that Dana intended for the social media posts to be interpreted as a serious threat of  
161 harm. Actually, Dana's intent appears to have been political rather than malicious, aiming to sway  
162 opinions rather than to intimidate. Of course, when I say "appears," I can't truly know what was in one's  
163 head. But the context of what appears in these posts seem squarely in the category of political  
164 speech. That being said, without evidence of subjective intent or recklessness on Dana's part, the  
165 postings cannot meet the statutory burdens of the electronic harassment statute. And, yes, I am aware  
166 of the prompts in creating these posts. I believe Detective Ali's conclusions are simply their own beliefs  
167 and there are many other interpretations to those prompts. Among other explanations, I can see how  
168 someone would have to be colorful in language to generate images using AI software.

169  
170 **4. Maryland Case Law on Harassment generally and Lawful Purpose**

171 Recent Maryland case law also emphasizes the high standard required for speech to be classified as  
172 harassment. In *Schiff v. State*, 254 Md. App. 509 (2022), the Maryland Court of Special Appeals  
173 reiterated that not all offensive speech rises to the level of harassment under criminal law. Specifically,  
174 *Schiff* discussed the impact of a lawful purpose to a fact finder's analysis.

175  
176 Based on my review of the Instagram posts, their message solely related to the Student Council election  
177 and consistently seeks to discredit one candidate in favor of another by discussing specific attributes of  
178 the disfavored candidate. Such expressions are to be expected in political campaigns. Certainly, I can  
179 understand that a high school student may not be emotionally prepared for such attacks, but I fail to see  
180 how these communications are some sort of personal abuse not covered by the First Amendment. In my  
181 opinion, there is no clear evidence of a sustained or repeated pattern of behavior that could be  
182 classified as electronic harassment under Maryland law.

183  
184 **Conclusion**

185  
186 First, I want to note that I do not believe there is evidence that Dana conspired to post any harassing  
187 messages, assuming it is found that they did work with Robert(a) to create and post these 10 messages  
188 on Instagram,

189 But, assuming Dana and Robert(a) are found to have worked together, based on my qualifications and  
190 experience, I believe that Dana's and Robert(a)'s actions, while potentially controversial, are protected



191 under the First Amendment as political speech and had a lawful purpose. The content, context, and  
192 intent behind the messages suggest they were part of a legitimate, if aggressive, campaign strategy.  
193 While the speech may have caused discomfort, it does not rise to the level of unlawful harassment  
194 under the standards of the First Amendment.

195  
196 In my professional opinion, the actions taken by Dana and Robert(a) should be viewed as protected  
197 speech, and not as criminal conduct.

198  
199 I hereby affirm that the above information and information contained in my report is true and accurate  
200 to the best of my knowledge and professional judgment.

201

202 *Simon(e) Marshall*

203

Simon(e) Marshall, Esq.

## Case Law

### ***Virginia v. Black*, 538 U.S. 343 (2003)**

This is a case that was heard and ruled on by the United States Supreme Court.

Respondents Barry Black, Richard Elliott, and Jonathan O'Mara were convicted separately of violating Virginia's cross-burning statute, § 18.2-423. That statute provides:

"It shall be unlawful for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway or other public place. Any person who shall violate any provision of this section shall be guilty of a Class 6 felony.

"Any such burning of a cross shall be prima facie evidence of an intent to intimidate a person or group of persons."

On August 22, 1998, Barry Black led a Ku Klux Klan rally in Carroll County, Virginia. Twenty-five to thirty people attended this gathering, which occurred on private property with the permission of the owner, who was in attendance. The property was located on an open field just off Brushy Fork Road (State Highway 690) in Cana, Virginia.

When the sheriff of Carroll County learned that a Klan rally was occurring in his county, he went to observe it from the side of the road. During the approximately one hour that the sheriff was present, about 40 to 50 cars passed the site, a "few" of which stopped to ask the sheriff what was happening on the property. Eight to ten houses were located in the vicinity of the rally. Rebecca Sechrist, who was related to the owner of the property where the rally took place, "sat and watched to see what was going on" from the lawn of her in-laws' house. She looked on as the Klan prepared for the gathering and subsequently conducted the rally itself.

During the rally, Sechrist heard Klan members speak about "what they were" and "what they believed in." The speakers "talked real bad about the blacks and the Mexicans." One speaker told the assembled gathering that "he would love to take a .30/.30 and just random[ly] shoot the blacks." The speakers also talked about "President Clinton and Hillary Clinton," and about how their tax money "goes to ... the black people." Sechrist testified that this language made her "very ... scared."

At the conclusion of the rally, the crowd circled around a 25- to 30-foot cross. The cross was between 300 and 350 yards away from the road. According to the sheriff, the cross "then all of a sudden ... went up in a flame." As the cross burned, the Klan played Amazing Grace over the loudspeakers. Sechrist stated that the cross burning made her feel "awful" and "terrible."

When the sheriff observed the cross burning, he informed his deputy that they needed to "find out who's responsible and explain to them that they cannot do this in the State of Virginia." The sheriff then went down the driveway, entered the rally, and asked "who was responsible for burning the cross." Black responded, "I guess I am because I'm the head of the rally." The sheriff then told Black, "[T]here's a law in the State of Virginia that you cannot burn a cross and I'll have to place you under arrest for this." Black was charged with burning

a cross with the intent of intimidating a person or group of persons.

With that factual picture in mind, the Supreme Court gave the following analysis in *Virginia v. Black*:

The First Amendment, applicable to the States through the Fourteenth Amendment, provides that “Congress shall make no law ... abridging the freedom of speech.” The hallmark of the protection of free speech is to allow free trade in ideas—even ideas that the overwhelming majority of people might find distasteful or discomforting. Thus, the First Amendment ordinarily denies a State the power to prohibit dissemination of social, economic and **political** doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence. The First Amendment affords protection to symbolic or expressive conduct as well as to actual speech.

The protections afforded by the First Amendment, however, are not absolute, and we have long recognized that the government may regulate certain categories of expression consistent with the Constitution. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. The First Amendment permits restrictions upon the content of speech in a few limited areas, which are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

Thus, for example, a State may punish those words which by their very utterance inflict injury or tend to **incite** an immediate breach of the peace. We have consequently held that **fighting words**—those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction—are generally proscribable under the First Amendment. Furthermore, the constitutional guarantees of free speech do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. And the First Amendment also permits a State to ban a true threat. Threats of violence are outside the First Amendment.

**True threats** encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. “Political hyperbole” is not a true threat. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur. Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.

After providing this legal background, the Supreme Court upheld the state law that banned cross burning with the intent to intimidate, and ruled specifically that this type of law does not run afoul of the First Amendment. The Supreme Court noted that such a law outlawing cross burnings done with the intent to intimidate is legal under the First Amendment because burning a cross is a particularly virulent form of intimidation, and this form of intimidation is most likely to inspire fear of bodily harm.

But the Supreme Court continued to explain that burning a cross, in and of itself, is not always intended to intimidate. “Sometimes the cross burning is a statement of ideology, a symbol of group solidarity. It is a

ritual used at Klan gatherings, and it is used to represent the Klan itself. Thus, burning a cross at a political rally would almost certainly be protected expression. [...] Indeed, occasionally a person who burns a cross does not intend to express either a statement of ideology or intimidation. Cross burnings have appeared in movies such as *Mississippi Burning*, and in plays such as the stage adaptation of Sir Walter Scott's *The Lady of the Lake*. [...] It may be true that a cross burning, even at a political rally, arouses a sense of anger or hatred among the vast majority of citizens who see a burning cross. But this sense of anger or hatred is not sufficient to ban all cross burnings."

Thus, the Supreme Court held that cross burning with the intent to frighten was not protected speech, but cross burning for other non-criminal purposes was protected speech.

### ***Elonis v. United States, 575 U.S. 723 (2015)***

This is a case that was heard and ruled on by the United States Supreme Court.

After his wife left him, petitioner Anthony Douglas Elonis, under the pseudonym "Tone Dougie," used the social networking Web site Facebook to post self-styled rap lyrics containing graphically violent language and imagery concerning his wife, co-workers, a kindergarten class, and state and federal law enforcement. These posts were often interspersed with disclaimers that the lyrics were "fictitious" and not intended to depict real persons, and with statements that Elonis was exercising his First Amendment rights. Many who knew him saw his posts as threatening, however, including his boss, who fired him for threatening co-workers, and his wife, who sought and was granted a state court protection-from-abuse order against him.

When Elonis's former employer informed the Federal Bureau of Investigation of the posts, the agency began monitoring Elonis's Facebook activity and eventually arrested him. He was charged with five counts of violating 18 U.S.C. § 875(c), which makes it a federal crime to transmit in interstate commerce "any communication containing any threat ... to injure the person of another."

In their opinion, the Supreme Court overturned Elonis' conviction and declined to view this issue through the lens of the First Amendment. Instead, the Supreme Court observed that Section 875(c) does not indicate whether the defendant must intend that the communication contain a threat, and the parties can show no indication of a particular mental state requirement in the statute's text. [...] Elonis's conviction was premised solely on how his posts would be viewed by a reasonable person, a standard feature of civil liability in tort law inconsistent with the conventional criminal conduct requirement of "awareness of some wrongdoing," This Court "ha[s] long been reluctant to infer that a negligence standard was intended in criminal statutes." Section 875(c)'s mental state requirement is satisfied if the defendant transmits a communication for the purpose of issuing a threat or with knowledge that the communication will be viewed as a threat.

### ***Watts v. United States, 394 U.S. 705 (1969)***

This is a case that was heard and ruled on by the United States Supreme Court.

After a jury trial in the United States District Court for the District of Columbia, petitioner was convicted of violating a 1917 statute which prohibits any person from 'knowingly and willfully (making) any threat to take the life of or to inflict bodily harm upon the President of the United States. The incident which led

to petitioner's arrest occurred on August 27, 1966, during a public rally on the Washington Monument grounds. The crowd present broke up into small discussion groups and petitioner joined a gathering scheduled to discuss police brutality. Most of those in the group were quite young, either in their teens or early twenties. Petitioner, who himself was 18 years old, entered into the discussion after one member of the group suggested that the young people present should get more education before expressing their views. According to an investigator for the Army Counter Intelligence Corps who was present, petitioner responded: 'They always holler at us to get an education. And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.' 'They are not going to make me kill my black brothers.' On the basis of this statement, the jury found that petitioner had committed a felony by knowingly and willfully threatening the President. [...] The United States Court of Appeals for the District of Columbia Circuit affirmed. We reverse.

At the close of the Government's case, petitioner's trial counsel moved for a judgment of acquittal. He contended that there was 'absolutely no evidence on the basis of which the jury would be entitled to find that (petitioner) made a threat against the life of the President.' He stressed the fact that petitioner's statement was made during a political debate, that it was expressly made conditional upon an event-induction into the Armed Forces-which petitioner vowed would never occur, and that both petitioner and the crowd laughed after the statement was made. He concluded, 'Now actually what happened here in all this was a kind of very crude offensive method of stating a political opposition to the President. What he was saying, he says, I don't want to shoot black people because I don't consider them my enemy, and if they put a rifle in my hand it is the people that put the rifle in my hand, as symbolized by the President, who are my real enemy.' We hold that the trial judge erred in denying this motion.

Certainly the statute under which petitioner was convicted is constitutional on its face. The Nation undoubtedly has a valid, even an overwhelming, interest in protecting the safety of its Chief Executive and in allowing him to perform his duties without interference from threats of physical violence. Nevertheless, a statute such as this one, which makes criminal a form of pure speech, must be interpreted with the commands of the First Amendment clearly in mind. What is a threat must be distinguished from what is constitutionally protected speech.

The judges in the Court of Appeals differed over whether or not the 'willfulness' requirement of the statute implied that a defendant must have intended to carry out his 'threat.' [...] But whatever the 'willfulness' requirement implies, the statute initially requires the Government to prove a true 'threat.' We do not believe that the kind of political hyperbole indulged in by petitioner fits within that statutory term. For we must interpret the language Congress chose 'against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wideopen, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.' The language of the political arena is often vituperative, abusive, and inexact. We agree with petitioner that his only offense here was 'a kind of very crude offensive method of stating a political opposition to the President.' Taken in context, and regarding the expressly conditional nature of the statement and the reaction of the listeners, we do not see how it could be interpreted otherwise.

The case is remanded with instructions that it be returned to the District Court for entry of a judgment of acquittal.

### ***Schiff v. State*, 254 Md. App. 509 (2022)**

This is a case that was heard and ruled on by the Appellate Court of Maryland.

In *Schiff v. State*, 254 Md. App. 509 (2022), Mr. Schiff was convicted of harassment based on several incidents of unwanted communications with multiple individuals. Schiff sent numerous emails and messages to an Assistant State’s Attorney (ASA), and even a judge, which were found by the trial court to be harassing and intimidating.

For context, Maryland’s harassment law, Criminal Law § 3-803(a), provides that harassment is: follow[ing] another in or about a public place or maliciously engag[ing] in a course of conduct that alarms or seriously annoys the other:

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

One of the key issues in the case involved Schiff’s interactions with the ASA, who had prosecuted him in a prior case. Schiff repeatedly sent emails to the ASA, which contained disturbing and unwelcome content. The ASA felt targeted by these communications, which were not just persistent but also menacing in tone, causing significant distress.

Additionally, Schiff sent a message to a judge who was involved in his previous case. This communication was seen as inappropriate and harassing, further establishing Schiff’s pattern of using messages to intimidate individuals involved in his legal matters. The trial court found that these actions crossed the line from free speech into harassment because they were aimed at causing fear and discomfort.

In upholding Schiff’s conviction for the conduct in the letters to the ASA, but overturning any conviction related to the conduct in the letter to the judge, the Appellate Court of Maryland discussed first the “legal purpose” element of the harassment law. The Court explained:

We agree with the State that merely because a piece of correspondence serves *some* legal purpose does not isolate all other parts of the correspondence from scrutiny. We see no reason why a factfinder could not separate out parts of a communication unrelated to a legal purpose and find those to be harassing. Thus, language from Schiff’s July 17 e-mail where he asks ASA#1 to be his girlfriend, and language from his July 18 e-mail to ASA#2 where he calls ASA#1 a “mentally unstable histrionic [expletive redacted],” are not so related to a legal purpose that they shield Schiff from scrutiny for harassment. Perhaps more to the point, as we view them, neither of those e-mails serve a clear “legal purpose” to begin with. Although they reference pending legal matters, they do not ask for any formal legal action, legal advice, or seek to start some legal process.

But we have difficulty extending this same analysis to Schiff’s letters to Judges Salant and Bair. Distinct from the communication to ASA#2, the judges do not work directly with ASA#1, such that it could be automatically assumed that they would share these communications with ASA#1. And we conclude, notwithstanding Schiff’s references to his feelings for ASA#1 in both communications, that both letters primarily relate to legal matters, pending cases and motions Schiff wanted each judge to act upon. For example, in Schiff’s letter to Judge Bair—which has many more references to ASA#1—Schiff’s discussion of ASA#1 is ostensibly for the purpose of explaining his behavior and demonstrating why his actions did not amount to stalking and harassment charges. And in

his letter to Judge Salant, Schiff asked the judge to dismiss his pending case. We hold that the majority of both letters' references to ASA#1 were for a broadly legal purpose.

We acknowledge the inappropriateness of many of Schiff's references and the harmful effect they likely had on ASA#1 upon learning of them. For example, in Schiff's letter to Judge Salant, Schiff included hearts after ASA#1's name, referred to her as a "goddess," said that "love is painful," referring to the fact that ASA#1 refused to communicate with Schiff, and concluded by inappropriately referencing his sexual attraction to ASA #1. And in Schiff's letter to Judge Bair, Schiff repeatedly referred to ASA#1 as his "goddess," and made a rude comment about being excited by girls who lie, in a clear reference to ASA#1. Nonetheless, we decline to hold that communication (even when distasteful and inappropriate) *about* the victim to persons sufficiently removed from the victim will constitute harassment, because doing so could violate the First Amendment.

[...]

In conclusion, Schiff's July 17 e-mail to ASA#1 and the July 18 e-mail to ASA#1's colleague ASA#2, were sufficiently without legal purpose to constitute potential harassment under CR § 3-803(a)(3). We do not conclude that the letters Schiff sent to the judges were harassing because they were sufficiently removed from ASA#1 and although inappropriate, touched on legitimate legal issues which could be covered by the First Amendment.

The Appellate Court of Maryland added discussion in their opinion about the distinction between protected speech and harassment. Specifically, the Appellate Court of Maryland held that "speech integral to criminal conduct" is not protected speech under the First Amendment. The Court explained:

We think it plain that it is not an abridgment of the constitutional right of free speech to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language. It is the substance rather than the form of communication to which the First Amendment protection attaches, and regulation of the form is constitutional where it arises from a legitimate State interest and not for the sole purpose of censoring the underlying thought or idea.

The State may, therefore, prevent and punish some classes of speech, among which are the lewd and obscene, the profane, the libelous, and the insulting or fighting' words-those which by their very utterance inflict injury or tend to incite an immediate breach of the peace (since) such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

[Resorting to] personal abuse is not in any sense communication of information or opinion safeguarded by the Constitution.

**MD Code, Criminal Law, § 3-801. “Course of conduct” defined**

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

**MD Code, Criminal Law, § 3-803. Harassment**

- (a) Prohibited: A person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other:
  - (1) with the intent to harass, alarm, or annoy the other;
  - (2) after receiving a reasonable warning or request to stop by or on behalf of the other; and
  - (3) without a legal purpose.
- (b) Exception: This section does not apply to a peaceable activity intended to express a political view or provide information to others.
- (c) Penalty: A person who violates this section is guilty of a misdemeanor and on conviction is subject to:
  - (1) for a first offense, imprisonment not exceeding 90 days or a fine not exceeding \$500 or both; and
  - (2) for a second or subsequent offense, imprisonment not exceeding 180 days or a fine not exceeding \$1,000 or both.

**MD Code, Criminal Law, § 3-804. Misuse of telephone facilities and equipment**

- (a) Prohibited: A person may not use telephone facilities or equipment to make:
  - (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another;
  - (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another; or
  - (3) a comment, request, suggestion, or proposal that is obscene, lewd, lascivious, filthy, or indecent.
- (b) Penalty: A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$500 or both.

**MD Code, Criminal Law, § 3-805. Misuse of electronic mail**

- (a) Definitions
  - (1) In this section the following words have the meanings indicated.
  - (2) “Electronic communication” means the act of transmitting any information, data, writing, image, or communication by the use of a computer or any other electronic means, including a communication that involves the use of e-mail, an instant messaging service, an Internet website, a social media application, a network call, a facsimile machine, or any other Internet-based communication tool.



- (3) "Electronic conduct" means the use of a computer or a computer network to:
  - (i) build a fake social media profile;
  - (ii) pose as another, including a fictitious person in an electronic communication; (iii) disseminate or encourage others to disseminate information concerning the sexual activity, as defined in § 3-809 of this subtitle, of a minor;
  - (iv) disseminate a real or doctored image of a minor;
  - (v) engage or encourage others to engage in the repeated, continuing, or sustained use of electronic communication to contact a minor;
  - (vi) make a statement to provoke a third party to stalk or harass a minor; or
  - (vii) subscribe a minor to a pornographic website.
- (4) "Instant messaging service" means a computer service allowing two or more users to communicate with each other in real time.
- (5) "Interactive computer service" means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a system that provides access to the Internet and cellular phones.
- (6) "Social media application" means any program, software, or website that allows a person to become a registered user for the purpose of establishing personal relationships with one or more other users through:
  - (i) direct or real-time communication; or
  - (ii) the creation of websites or profiles capable of being viewed by the public or other users.
- (7) "Social media profile" means a website or profile created using a social media application.
- (8) "Course of conduct" means a persistent pattern of conduct, composed of a series of acts over time, that shows a continuity of purpose.

(b) Prohibited

- (1) A person may not maliciously engage in a course of conduct, through the use of electronic communication, that alarms or seriously annoys another:
  - (i) with the intent to harass, alarm, or annoy the other;
  - (ii) after receiving a reasonable warning or request to stop by or on behalf of the other; and
  - (iii) without a legal purpose.
- (2) A person may not use an interactive computer service to maliciously engage in a course of conduct that inflicts serious emotional distress on a minor or places a minor in reasonable fear of death or serious bodily injury with the intent:
  - (i) to kill, injure, harass, or cause serious emotional distress to the minor; or
  - (ii) to place the minor in reasonable fear of death or serious bodily injury.
- (3) A person may not maliciously engage in an electronic communication if:
  - (i) the electronic communication is part of a series of communications and has the effect of:
    - 1. intimidating or harassing a minor; and
    - 2. causing physical injury or serious emotional distress to a minor; and
  - (ii) the person engaging in the electronic communication intends to:
    - 1. intimidate or harass the minor; and
    - 2. cause physical injury or serious emotional distress to the minor.

- (4) A person may not maliciously engage in a single significant act or course of conduct using an electronic communication if:
- (i) the person's conduct, when considered in its entirety, has the effect of:
    - 1. intimidating or harassing a minor; and
    - 2. causing physical injury or serious emotional distress to a minor;
  - (ii) the person intends to:
    - 1. intimidate or harass the minor; and
    - 2. cause physical injury or serious emotional distress to the minor; and
  - (iii) in the case of a single significant act, the communication:
    - 1. is made after receiving a reasonable warning or request to stop;
    - 2. is sent with a reasonable expectation that the recipient would share the communication with a third party; or
    - 3. shocks the conscience.
- (5) A person may not maliciously engage in electronic conduct if:
- (i) the act of electronic conduct has the effect of:
    - 1. intimidating or harassing a minor; and
    - 2. causing physical injury or serious emotional distress to a minor; and
  - (ii) the person intends to:
    - 1. intimidate or harass the minor; and
    - 2. cause physical injury or serious emotional distress to the minor.
- (6) A person may not violate this section with the intent to induce a minor to commit suicide.
- (c) It is not a violation of this section for any of the following persons to provide information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic communication or to conduct surveillance of electronic communication, if a court order directs the person to provide the information, facilities, or technical assistance:
- (1) a provider of electronic communication;
  - (2) an officer, employee, agent, landlord, or custodian of a provider of electronic communication; or
  - (3) a person specified in a court order directing the provision of information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic communication or to conduct surveillance of electronic communication.
- (d) Subsection (b)(1) through (5) of this section does not apply to a peaceable activity:
- (1) intended to express a political view or provide information to others; or
  - (2) conducted for a lawful purpose.
- (e) Penalty
- (1) A person who violates subsection (b)(1), (2), (3), (4), or (5) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.
  - (2) A person who violates subsection (b)(6) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.

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  - (2) after receiving a reasonable warning or request to stop by or on behalf of the other; and
  - (3) without a legal purpose.
- (b) Exception: This section does not apply to a peaceable activity intended to express a political view or provide information to others.
- (c) Penalty: A person who violates this section is guilty of a misdemeanor and on conviction is subject to:
  - (1) for a first offense, imprisonment not exceeding 90 days or a fine not exceeding \$500 or both; and
  - (2) for a second or subsequent offense, imprisonment not exceeding 180 days or a fine not exceeding \$1,000 or both.

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  - (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another; or
  - (3) a comment, request, suggestion, or proposal that is obscene, lewd, lascivious, filthy, or indecent.
- (b) Penalty: A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$500 or both.

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  - (1) In this section the following words have the meanings indicated.
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- (3) "Electronic conduct" means the use of a computer or a computer network to:
  - (i) build a fake social media profile;
  - (ii) pose as another, including a fictitious person in an electronic communication; (iii) disseminate or encourage others to disseminate information concerning the sexual activity, as defined in § 3-809 of this subtitle, of a minor;
  - (iv) disseminate a real or doctored image of a minor;
  - (v) engage or encourage others to engage in the repeated, continuing, or sustained use of electronic communication to contact a minor;
  - (vi) make a statement to provoke a third party to stalk or harass a minor; or
  - (vii) subscribe a minor to a pornographic website.
- (4) "Instant messaging service" means a computer service allowing two or more users to communicate with each other in real time.
- (5) "Interactive computer service" means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a system that provides access to the Internet and cellular phones.
- (6) "Social media application" means any program, software, or website that allows a person to become a registered user for the purpose of establishing personal relationships with one or more other users through:
  - (i) direct or real-time communication; or
  - (ii) the creation of websites or profiles capable of being viewed by the public or other users.
- (7) "Social media profile" means a website or profile created using a social media application.
- (8) "Course of conduct" means a persistent pattern of conduct, composed of a series of acts over time, that shows a continuity of purpose.

(b) Prohibited

- (1) A person may not maliciously engage in a course of conduct, through the use of electronic communication, that alarms or seriously annoys another:
  - (i) with the intent to harass, alarm, or annoy the other;
  - (ii) after receiving a reasonable warning or request to stop by or on behalf of the other; and
  - (iii) without a legal purpose.
- (2) A person may not use an interactive computer service to maliciously engage in a course of conduct that inflicts serious emotional distress on a minor or places a minor in reasonable fear of death or serious bodily injury with the intent:
  - (i) to kill, injure, harass, or cause serious emotional distress to the minor; or
  - (ii) to place the minor in reasonable fear of death or serious bodily injury.
- (3) A person may not maliciously engage in an electronic communication if:
  - (i) the electronic communication is part of a series of communications and has the effect of:
    - 1. intimidating or harassing a minor; and
    - 2. causing physical injury or serious emotional distress to a minor; and
  - (ii) the person engaging in the electronic communication intends to:
    - 1. intimidate or harass the minor; and
    - 2. cause physical injury or serious emotional distress to the minor.

- (4) A person may not maliciously engage in a single significant act or course of conduct using an electronic communication if:
- (i) the person's conduct, when considered in its entirety, has the effect of:
    - 1. intimidating or harassing a minor; and
    - 2. causing physical injury or serious emotional distress to a minor;
  - (ii) the person intends to:
    - 1. intimidate or harass the minor; and
    - 2. cause physical injury or serious emotional distress to the minor; and
  - (iii) in the case of a single significant act, the communication:
    - 1. is made after receiving a reasonable warning or request to stop;
    - 2. is sent with a reasonable expectation that the recipient would share the communication with a third party; or
    - 3. shocks the conscience.
- (5) A person may not maliciously engage in electronic conduct if:
- (i) the act of electronic conduct has the effect of:
    - 1. intimidating or harassing a minor; and
    - 2. causing physical injury or serious emotional distress to a minor; and
  - (ii) the person intends to:
    - 1. intimidate or harass the minor; and
    - 2. cause physical injury or serious emotional distress to the minor.
- (6) A person may not violate this section with the intent to induce a minor to commit suicide.
- (c) It is not a violation of this section for any of the following persons to provide information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic communication or to conduct surveillance of electronic communication, if a court order directs the person to provide the information, facilities, or technical assistance:
- (1) a provider of electronic communication;
  - (2) an officer, employee, agent, landlord, or custodian of a provider of electronic communication; or
  - (3) a person specified in a court order directing the provision of information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic communication or to conduct surveillance of electronic communication.
- (d) Subsection (b)(1) through (5) of this section does not apply to a peaceable activity:
- (1) intended to express a political view or provide information to others; or
  - (2) conducted for a lawful purpose.
- (e) Penalty
- (1) A person who violates subsection (b)(1), (2), (3), (4), or (5) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.
  - (2) A person who violates subsection (b)(6) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.

STATE OF MARYLAND

\*

IN THE

v.

\*

CIRCUIT COURT FOR

DANA LUNA

\*

CHESAPEAKE COUNTY

\* \* \* \* \*

**JURY INSTRUCTIONS**

**BINDING NATURE OF INSTRUCTIONS (MPJI-Cr 2:00)**

Members of the jury, the time has come to explain the law that applies to this case. The instructions that I give about the law are binding upon you. In other words, you must apply the law as I explain it in arriving at your verdict. On the other hand, any comments that I may have made or may make about the facts are not binding upon you and are advisory only. You are the ones to decide the facts and apply the law to those facts.

**JURY’S DUTY TO DELIBERATE (MPJI-Cr 2:01)**

The verdict must be the considered judgment of each of you. In order to reach a verdict, all of you must agree. In other words, your verdict must be unanimous. You must consult with one another and deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. During deliberations, do not hesitate to reexamine your own views. You should change your opinion if convinced you are wrong, but do not surrender your honest belief as to the weight or effect of the evidence only because of the opinion of your fellow jurors or for the mere purpose of reaching a verdict.

**PRESUMPTION OF INNOCENCE AND REASONABLE DOUBT (MPJI-Cr 2:02)**

The defendant is presumed to be innocent of the charges. This presumption remains throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. This means that the State has the burden of proving, beyond a reasonable doubt, each and every element of the crimes charged. The elements of a crime are the component parts of the crime about which I will instruct you shortly. This burden remains on the State throughout the trial. The defendant is not required to prove (pronoun) innocence. However, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty. Nor is the State required to negate every conceivable circumstance of innocence.

A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs. If you are not satisfied of the defendant’s guilt to that extent for each and every element of a crime charged, then reasonable doubt exists and the defendant must be found not guilty of that crime.

### **UNANIMOUS VERDICT (MPJI-Cr 2:03)**

Your verdict must represent the considered judgment of each juror and must be unanimous. In other words, all 12 of you must agree.

### **IMPARTIALITY IN CONSIDERATION (MPJI-Cr 2:04)**

You must consider and decide this case fairly and impartially. You are to perform this duty without bias or prejudice as to any party. You should not be swayed by sympathy, prejudice, or public opinion.

### **PERSONAL PRONOUN USE (MPJI-Cr 2:04.1)**

The parties, witnesses, and attorneys in this case may use the personal pronouns he, she, or they. The use of this pronoun must not affect how you decide the issues in this case.

### **DELIBERATIONS BASED SOLELY ON EVIDENCE (MPJI-Cr 2:05)**

During your deliberations, you must decide this case based only on the evidence that you and your fellow jurors heard together in the courtroom.

You must not do any outside research or investigation. Do not use any outside sources such as books, electronic devices, computers, or phones to do research about this case even if you believe the information would be helpful.

While you are deliberating, you cannot have in the jury room any computers, cell phones, or other electronic devices, and you must not communicate with anyone outside the jury room. If there are breaks in deliberations, I may allow you to communicate with your family or friends, but do not communicate about the case or your deliberations.

### **IMPLICIT BIAS (MPJI-Cr 2:06)**

You must consider and decide this case fairly and impartially, without bias or prejudice as to any party. We all have personal likes and dislikes, opinions and preferences based on our own experiences and backgrounds. We are aware of some of these preferences or biases. We may not be aware of others, which are called implicit biases. You should consider the possibility that you may have implicit biases and guard against allowing them to influence your decisions.

You must not make decisions in this case based on personal sympathies, prejudices, or known or implicit biases. You must not consider public opinion. You must decide this case without bias in favor of, or against, any person based on race, ethnicity, national ancestry, religion, gender, sexual orientation, age, disability, or socioeconomic status. Your verdict must be based solely on the evidence presented.

### **WHAT CONSTITUTES EVIDENCE (MPJI-Cr 3:00)**

In making your decision, you must consider the evidence in this case; that is

- (1) testimony from the witness stand;
- (2) physical evidence or exhibits admitted into evidence;
- (3) stipulations; and
- (4) facts that I have judicially noticed.

In evaluating the evidence, you should consider it in light of your own experiences. You may draw any reasonable conclusion from the evidence that you believe to be justified by common sense and your own experiences.

The following things are not evidence, and you should not give them any weight or consideration:

- (1) any testimony that I struck or told you to disregard and any exhibits that I struck or did not admit into evidence;
- (2) questions that the witnesses were not permitted to answer and objections of the lawyers; and
- (3) the charging document. The charging document is the formal method of accusing the defendant of a crime. It is not evidence of guilt and must not create any inference of guilt.

When I did not permit the witness to answer a question, you must not speculate as to the possible answer. If after an answer was given, I ordered that the answer be stricken, you must disregard both the question and the answer.

During the trial, I may have commented on the evidence or asked a question of a witness. You should not draw any conclusion about my views of the case or of any witness from my comments or my questions.

Opening statements and closing arguments of lawyers are not evidence. They are intended only to help you to understand the evidence and to apply the law. Therefore, if your memory of the evidence differs from anything the lawyers or I may say, you must rely on your own memory of the evidence.

### **DIRECT AND CIRCUMSTANTIAL EVIDENCE (MPJI-Cr 3:01)**

There are two types of evidence--direct and circumstantial. An example of direct evidence that it is raining is when you look out the courthouse window and see that it is raining. An example of circumstantial evidence that it is raining is when you see someone come into the courthouse with a raincoat and umbrella that are dripping water.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. No greater degree of certainty is required of circumstantial evidence than of direct evidence.

In reaching a verdict, you should weigh all of the evidence presented, whether direct or circumstantial. You may not convict the defendant unless you find that the evidence, when considered as a whole, establishes (pronoun) guilt beyond a reasonable doubt.



### **STIPULATIONS OF FACT OR TESTIMONY (MPJI-Cr 3:02)**

The State and the defense have agreed to certain facts discussed in the Special Instructions and Stipulations section of this book. These facts are now not in dispute and should be considered proven. Additionally, the State and the defense have agreed that the following case law are relevant explanations of law that could be useful to the jury's determination of this case and understanding of the elements of the crime and the defenses to that crime: *Virginia v. Black*, 538 U.S. 343 (2003), *Watts v. United States*, 394 U.S. 705 (1969), *Elonis v. United States*, 575 U.S. 723 (2015), and *Schiff v. State*, 254 Md. App. 509 (2022).

### **DISMISSAL OF SOME CHARGES AGAINST DEFENDANT (MPJI-Cr 3:05)**

At the beginning of the trial, I described the charges against the defendant. Some of those charges are no longer part of the case. You should not consider those charges or the reasons those charges are no longer before you.

### **CREDIBILITY OF WITNESSES (MPJI-Cr 3:10)**

You are the sole judge of whether a witness should be believed. In making this decision, you may apply your own common sense and life experiences.

In deciding whether a witness should be believed, you should carefully consider all the testimony and evidence, as well as whether the witness's testimony was affected by other factors. You should consider such factors as:

- (1) the witness's behavior on the stand and manner of testifying;
- (2) whether the witness appeared to be telling the truth;
- (3) the witness's opportunity to see or hear the things about which testimony was given;
- (4) the accuracy of the witness's memory;
- (5) whether the witness has a motive not to tell the truth;
- (6) whether the witness has an interest in the outcome of the case;
- (7) whether the witness's testimony was consistent;
- (8) whether other evidence that you believe supported or contradicted the witness's testimony;
- (9) whether and the extent to which the witness's testimony in court differed from the statements made by the witness on any previous occasion; and
- (10) whether the witness has a bias or prejudice.

You are the sole judge of whether a witness should be believed. You need not believe any witness, even if the testimony is uncontradicted. You may believe all, part, or none of the testimony of any witness.

### **TESTIMONY OF ACCOMPLICE (MPJI-Cr 3:11)**

You have heard testimony from Robert(a) López, who may have been an accomplice. You must first decide if Robert(a) López was an accomplice. An accomplice is one who, with the intent to make the crime happen, knowingly and voluntarily cooperated with, aided, counseled, commanded, or encouraged the commission of the crime, or communicated to the defendant that Robert(a) López was ready, willing, and able to lend support.

If you do find that Robert(a) López was an accomplice, you may consider their testimony, but you should examine their testimony with greater caution than you would that of an ordinary witness, because an accomplice may be motivated by self-interest to testify falsely.

You may not convict the defendant based only on an accomplice's testimony unless the testimony convinces you of the defendant's guilt beyond a reasonable doubt.

If you do not find that Robert(a) López was an accomplice, you may consider their testimony as you would that of any other witness.

#### **WITNESS PROMISED BENEFIT (MPJI-Cr 3:13)**

You may consider the testimony of a witness who testifies for the State as a result of a plea agreement. However, you should consider such testimony with caution, because the testimony may have been influenced by a desire to gain leniency and/or freedom by testifying against the defendant.

#### **EXPERT OPINION TESTIMONY (MPJI-Cr 3:14)**

An expert is a witness who has knowledge, skill, experience, education, or special training in a given field and therefore is permitted to express opinions in that field. You should consider an expert's testimony together with all the other evidence. In weighing the opinion portion of an expert's testimony, in addition to the factors that are relevant to any witness's credibility, you should consider the expert's knowledge, skill, experience, training or education, as well as the expert's knowledge of the subject matter about which the expert is expressing an opinion. You should give expert testimony the weight and value you believe it should have. You are not required to accept an expert's testimony, even if it is uncontradicted. As with any other witness, you may believe all, part, or none of the testimony of any expert.

#### **NUMBER OF WITNESSES (MPJI-Cr 3:16)**

The weight of the evidence does not depend on the number of witnesses who testified, or who called those witnesses. In deciding what testimony to believe, you should rely on the quality of the evidence that was presented.

#### **PRESENCE OF DEFENDANT (MPJI-Cr 3:25)**

A person's presence at the time and place of a crime, without more, is not enough to prove that the person committed the crime. The fact that a person witnessed a crime, made no objection, or did not notify the police does not make that person guilty of the crime. However, a person's presence at the time and place of the crime is a fact in determining whether the defendant is guilty or not guilty.

#### **PROOF OF INTENT (MPJI-Cr 3:31)**

Intent is a state of mind and ordinarily cannot be proven directly, because there is no way of looking into a person's mind. Therefore, a defendant's intent may be shown by surrounding circumstances. In determining the defendant's intent, you may consider the defendant's acts and statements, as well as the surrounding circumstances. Further, you may, but are not required to, infer that a person ordinarily intends the natural and probable consequences of their acts and/or omissions.

### **MOTIVE (MPJI-Cr 3:32)**

Motive is not an element of the crime charged and need not be proven. However, you may consider motive or lack of motive in this case. Presence of motive may be evidence of guilt. Absence of motive may suggest innocence. You should give the presence or absence of motive the weight you believe it deserves.

### **MISUSE OF ELECTRONIC MAIL (Maryland Code, Criminal Law, § 3-805)**

The defendant is charged with the crime of misuse of electronic mail. In order to convict the defendant of misuse of electronic mail, the State must prove:

#### **A. § 3-805(b)(1)**

- (1) That, between September 26, 2024 and October 5, 2024, the defendant maliciously engaged in a course of conduct, through the use of electronic communication, that alarmed and/or seriously annoyed Daniel(le) Benoît;
- (2) That the defendant intended to harass, alarm, and/or annoy Daniel(le) Benoît;
- (3) That the defendant engaged in the conduct after receiving a reasonable warning and/or request to stop by Daniel(le) Benoît;
- (4) That the defendant did not have a lawful purpose for the behavior; and
- (5) That the defendant did not intend to express a political view or provide information to others.

#### **B. § 3-805(b)(4)**

- (1) That, between September 26, 2024 and October 5, 2024, the defendant maliciously engaged in a course of conduct using an electronic communication;
- (2) That the course of conduct using electronic communication, when considered in its entirety, had the effect of intimidating and/or harassing a minor, Daniel(le) Benoît, and causing serious emotional distress to said minor;
- (3) That the defendant intended to intimidate and/or harass the minor, Daniel(le) Benoît and cause serious emotional distress to said minor;
- (4) That the defendant did not have a lawful purpose for the behavior; and
- (5) That the defendant did not intend to express a political view or provide information to others.

#### **C. § 3-805(b)(5)**

- (1) That, between September 26, 2024 and October 5, 2024, the defendant maliciously engaged in electronic conduct;
- (2) That the electronic conduct had the effect of intimidating and/or harassing a minor, Daniel(le) Benoît, and causing serious emotional distress to said minor;
- (3) That the defendant intended to intimidate and/or harass the minor, Daniel(le) Benoît and cause serious emotional distress to said minor;
- (4) That the defendant did not have a lawful purpose for the behavior; and
- (5) That the defendant did not intend to express a political view or provide information to others.

Electronic conduct means the use of a computer or a computer network to (1) build a fake social medial profile, (2) pose as another, including a fictitious person in an electronic communication, (3) engage or encourage others to engage in the repeated, continuing, or sustained use of electronic

communication to contact a minor, or (4) make a statement to provoke a third party to stalk or harass a minor.

Electronic communication means the act of transmitting any information, data, writing, image, or communication by the use of a computer or any other electronic means, including a communication that involves the use of e-mail, an instant messaging service, an Internet website, a social media application, a network call, a facsimile machine, or any other Internet-based communication tool.

Course of conduct means a persistent pattern of conduct, composed of a series of acts over time that shows a continuity of purpose.

Notes on Use:

Use version "A" if the State proceeded on Count 1 in the Indictment. Use version "B" if the State proceeded on Count 2 in the Indictment. Use version "C" if the State proceeded on Count 3 in the Indictment.

**MPJI-Cr 6:00 ACCOMPLICE LIABILITY**

The defendant may be guilty of Misuse of Electronic Mail as an accomplice, even though the defendant did not personally commit the acts that constitute that crime. In order to convict the defendant of Misuse of Electronic Mail as an accomplice, the State must prove that the Misuse of Electronic Mail occurred and that the defendant, with the intent to make the crime happen, knowingly aided, counseled, commanded, or encouraged the commission of the crime, or communicated to a participant in the crime that they were ready, willing, and able to lend support, if needed.

A person need not be physically present at the time and place of the commission of the crime in order to act as an accomplice.

The mere presence of the defendant at the time and place of the commission of the crime is not enough to prove that the defendant is an accomplice. If presence at the scene of the crime is proven, that fact may be considered, along with all of the surrounding circumstances, in determining whether the defendant intended to aid a participant and communicated that willingness to a participant.

STATE OF MARYLAND

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IN THE

v.

\*

CIRCUIT COURT FOR

DANA LUNA

\*

CHESAPEAKE COUNTY

\* \* \* \* \*

**VERDICT SHEET**

1. How do you find the Defendant on the charge of Misuse of Electronic Mail between September 26, 2024 and October 5, 2024?

\_\_\_\_\_ Not Guilty

\_\_\_\_\_ Guilty

\_\_\_\_\_  
Jury Foreperson

\_\_\_\_\_  
Date

## MYLaw Mock Trial Performance Rating Form

9-10: Exceptional
7-8: Strong
5-6: Good
3-4: Ineffective
1-2: Poor

SCORERS: Do not use fractions. Please score as you go.  
Do not wait until the conclusion of the competition to record scores.

		Plaintiff/ Prosecution	Defendant	
<b>Opening Statements (5 minutes max each)</b>				
42 minutes max each (This time includes the sum time used for examination on direct, cross, re-direct, and re-cross, as well as voir dire. Note: the clock stops to argue objections.)	<u>PLAINTIFF/PROSECUTION</u> First Witness	Direct & Re-Direct Examination by Attorney		
		Witness Performance on Direct/ Re-Direct		
		Cross & Re-Cross Examination by Attorney		
		Witness Performance on Cross/ Re-Cross		
	<u>PLAINTIFF/PROSECUTION</u> Second Witness	Direct & Re-Direct Examination by Attorney		
		Witness Performance on Direct/ Re-Direct		
		Cross & Re-Cross Examination by Attorney		
		Witness Performance on Cross/ Re-Cross		
	<u>PLAINTIFF/PROSECUTION</u> Third Witness	Direct & Re-Direct Examination by Attorney		
		Witness Performance on Direct/ Re-Direct		
		Cross & Re-Cross Examination by Attorney		
		Witness Performance on Cross/ Re-Cross		
	<u>DEFENDANT</u> First Witness	Direct & Re-Direct Examination by Attorney		
		Witness Performance on Direct/ Re-Direct		
		Cross & Re-Cross Examination by Attorney		
		Witness Performance on Cross/ Re-Cross		
	<u>DEFENDANT</u> Second Witness	Direct & Re-Direct Examination by Attorney		
		Witness Performance on Direct/ Re-Direct		
		Cross & Re-Cross Examination by Attorney		
		Witness Performance on Cross/ Re-Cross		
	<u>DEFENDANT</u> Third Witness	Direct & Re-Direct Examination by Attorney		
		Witness Performance on Direct/ Re-Direct		
		Cross & Re-Cross Examination by Attorney		
		Witness Performance on Cross/ Re-Cross		
	<b>Closing Arguments (7 minutes max each)</b>			
	<b>Decorum/ Use of Objections:</b> Students were courteous, observed courtroom etiquette, spoke clearly, demonstrated professionalism, and <b>utilized objections appropriately.</b>			
	<b>TOTAL SCORE</b>			
	<b>TIE POINT</b>			

**MYLAW HIGH SCHOOL MOCK TRIAL COMPETITION RUBRIC**

	<b>Opening Statement</b>	<b>Attorneys (Examination)</b>	<b>Witnesses (Examination)</b>	<b>Closing Argument</b>
<b>9-10: Exceptional</b>	<p><b>Presentation</b> - Outstanding command of the courtroom, makes proper introductions, speaks articulately, moves with confidence, follows all rules of courtroom decorum, demonstrates an exceptional understanding of materials and trial procedures, presents the case without notes.</p> <p><b>Theme/Theory and Case Story</b> - Presents a highly organized, cohesive and persuasive case theory and story, including key facts, and very clear summary of expected witness testimony.</p> <p><b>Law</b> - Provides an outstanding explanation of the law and the burden of proof, requests a desired verdict.</p>	<p><b>Presentation</b> - Outstanding command of the courtroom, speaks and moves with confidence, follows all rules of courtroom decorum, demonstrates a superior understanding of trial procedures.</p> <p><b>Questions</b> - Appropriate for the type of examination; compelling, logically organized, effectively control the flow of direct and cross-examination. The decision to/ not to re-direct or re-cross is correct; when performed, re-direct/ re-cross is responsive and relevant.</p> <p><b>Evidence &amp; Objections</b> - Use of/response to objections and rulings shows superior resilience in adjusting questions as needed and arguing objections by accurately citing rules of evidence; properly enters and appropriately uses exhibits consistently.</p>	<p><b>Presentation</b> - Outstanding command of the courtroom, maintains appropriate courtroom demeanor, speaks clearly and audibly with confidence.</p> <p><b>Witness Persona</b> - Develops a credible and compelling witness persona by demonstrating exceptional knowledge of the affidavits and exhibits, chooses and maintains character attributes that are interesting and appropriate, responds to questions in a way that is natural (not scripted), thorough and persuasive; is not unnecessarily combative/ uncooperative on cross, maintains persona on cross examination.</p>	<p><b>Presentation</b> - Outstanding command of the courtroom, speaks confidently and articulately, limited use of notes specific to quotes from the trial. Moves confidently in physical space. Follows all rules of courtroom decorum and trial procedures.</p> <p><b>Argument</b> - Effectively and clearly organizes facts of the case and witness testimony brought out during trial; summarizes the case and persuasively supports each component of the law to meet the required burden of proof. Persuasively uses facts from the trial to show weaknesses in opposing counsel's case. Closing argument is fully aligned with facts brought out during trial.</p>
<b>7-8: Strong</b>	<p><b>Presentation</b> - Strong command of the courtroom, makes introductions, speaks articulately, moves with confidence, follows most rules of courtroom decorum, demonstrates a solid understanding of materials and trial procedures; presents the case with limited notes.</p> <p><b>Theme/Theory and Case Story</b> - Presents a cohesive and persuasive case theory and story, includes most key facts, provides summary of expected witness testimony.</p> <p><b>Law</b> - Provides a clear explanation of the law and the burden of proof, requests a desired verdict.</p>	<p><b>Presentation</b> - Strong command of the courtroom, mostly speaks and moves with confidence, follows most rules of courtroom decorum, demonstrates a solid understanding of trial procedures.</p> <p><b>Questions</b> - Mostly appropriate for the type of examination and logically organized; mostly controls the flow of direct and cross-examination; the decision to/not to re-direct/ re-cross is correct, and mostly responsive and relevant.</p> <p><b>Evidence &amp; Objections</b> - Use of/response to objections and rulings showing resilience in adjusting questions and arguing objections by accurately citing some rules of evidence; properly enters and appropriate uses exhibits most of the time.</p>	<p><b>Presentation</b>- Solid command of the courtroom, appropriate courtroom demeanor, speaks clearly and audibly with confidence.</p> <p><b>Witness Persona</b> - Develops a mostly credible and convincing witness persona by showing a solid understanding of case materials and choosing interesting character attributes. Does not always maintain character attributes throughout performance and at times seems scripted. Is unnecessarily combative on cross-examination at times.</p>	<p><b>Presentation</b> - Demonstrates solid command of the courtroom, speaks with confidence, some reading of notes that may or may not be specific to events from the trial. Uses the physical space appropriately. Follows most rules of courtroom decorum and trial procedures.</p> <p><b>Argument</b> - Organizes facts of the case and witness testimony brought out during trial to summarize the case and persuasively support most components of the law to meet the required burden of proof. Uses facts from the trial to show weaknesses in opposing counsel's case. Closing argument is somewhat scripted, but includes most facts brought out during trial.</p>

**MYLAW HIGH SCHOOL MOCK TRIAL COMPETITION RUBRIC**

<p align="center"><b>5-6: Good</b></p>	<p><b>Presentation</b> - Some command of the courtroom, makes introductions; shows some confidence, articulation, courtroom decorum; demonstrates a general understanding of case materials and trial procedures; may read substantial portions from notes.</p> <p><b>Theme/Theory and Case Story</b> - Presents a case theory and story, includes some key facts, provides limited summary of expected witness testimony.</p> <p><b>Law</b> - Provides some explanation of the law, references burden of proof, may struggle to recover after rulings. May request desired outcome, but not specific verdict.</p>	<p><b>Presentation</b> - Some command of the courtroom, speaks with some confidence, does not use the physical space, follows some rules of courtroom decorum, shows some understanding of courtroom procedures.</p> <p><b>Questions</b> - Some are appropriate for the type of examination, some organization, some irrelevant questions; direct and cross-examination sounds rehearsed; re-direct/re-cross is somewhat responsive but at times irrelevant.</p> <p><b>Evidence &amp; Objections</b> - Some response to objections and rulings, some adjustment of questioning, may miss opportunities to make key points in case and struggles to recover from rulings. Argues objections with little citation of the rules of evidence; enters and uses exhibits but must sometimes be prompted to do so.</p>	<p><b>Presentation</b> - Maintains courtroom demeanor with some exceptions, may exhibit nervousness in speech.</p> <p><b>Witness Persona</b> Develops a somewhat credible and convincing witness persona by showing some understanding of affidavits and exhibits, and choosing some discernable character attributes. May not be especially interesting or compelling, largely appears to be rehearsed and not portraying a character. Is unnecessarily combative or evasive on cross-examination.</p>	<p><b>Presentation</b> - Demonstrates general command of the courtroom, speaks with some confidence, reads substantial portions of notes that may or may not be specific to events from the trial. Limited use of the physical space. Follows some rules of courtroom decorum, demonstrates a general understanding of courtroom procedures.</p> <p><b>Argument</b> - Organizes some facts of the case and witness testimony brought out during trial to summarize the case and support some components of the law to meet the required burden of proof. Uses some facts from the trial to show weakness in opposing counsel’s case. Closing argument is scripted, but includes some facts brought out during trial.</p>
<p align="center"><b>3-4: Ineffective</b></p>	<p><b>Presentation</b> - Little to no command of the courtroom, hard to understand, lacks consistent courtroom decorum, struggles to understand case materials/ trial procedures, reads verbatim from notes.</p> <p><b>Theme/Theory and Case Story</b> - Case theory is weak or fragmented; few key facts with limited or no summary of expected witness testimony.</p> <p><b>Law</b> - Provides little or no explanation of the law or burden of proof; does not request outcome or desired verdict. Misses many opportunities to use/respond to objections, often struggles to recover after rulings.</p>	<p><b>Presentation</b> - Little command of the courtroom, nervous, fidgeting, hard to understand, does not use the physical space, weak demonstration of courtroom decorum and trial procedures.</p> <p><b>Questions</b> - Inappropriate for the type of examination, disorganized questioning, irrelevant questions; direct and cross examination sounds rehearsed, argues with witnesses; re-direct/re-cross is mostly irrelevant.</p> <p><b>Evidence &amp; Objections</b> - Little response to objections and ruling, does not adjust questioning, misses opportunities to make key points in case, and struggles to recover from rulings. Limited argument of objections with no citation of the rules of evidence; does not enter or use exhibits and/or must be instructed on procedures.</p>	<p><b>Presentation</b> - Inconsistent in courtroom demeanor; nervous, inaudible or jumbled speech; limited eye contact; does not follow instruction by the Court.</p> <p><b>Witness Persona</b> - Witness persona is not convincing; shows limited understanding of the affidavits and exhibits; direct examination responses sound stiff and rehearsed; fails to answer on cross, evades response, argues with hostility, or is unresponsive. Testimony is impeached on cross-examination.</p>	<p><b>Presentation</b> - No command of the courtroom, nervous, hard to understand, lacks confidence, reads entirely from notes and does not make necessary adjustments. Does not use physical space. Follows few rules of courtroom decorum, demonstrates little understanding of trial procedures.</p> <p><b>Argument</b> – Lacks organization of facts, little or no use of witness testimony brought out during trial, limited or no summary of the case. Few components of the law supported or addressed with little/no reference to burden of proof. Does not address weaknesses in opposing counsel’s case. Closing argument is read verbatim.</p>
<p align="center"><b>1-2</b></p>	<p align="center"><b>A score of 1 or 2 should be reserved for students who demonstrate disrespect for the process or whose performance shows little to no preparation or effort.</b></p>			



**40**

**30**

**20**

**10**

**5**

**2**

**1**





## NOTES

## NOTES



**POTTER LAW, LLC**

ATTORNEY AT LAW



CAR CRASHES | MEDICAL MALPRACTICE | PERSONAL INJURY

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## **Celebrating 41 years of Mock Trial State Champions!**

2024: Allegany High 2024 (Allegany County)  
2023: Richard Montgomery High School (Montgomery County)  
2022: The Park School (Baltimore County)  
2021: The Park School (Baltimore County)  
River Hill High School (Howard County)  
2020: Not applicable  
2019: Richard Montgomery High School (Montgomery County)  
Beth Tfiloh, Co-Champion (Baltimore County)  
2018: Allegany High School (Allegany County)  
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: Park School of Baltimore (Baltimore County)  
2011: Park School of Baltimore (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 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 Schools

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MYLaw is pleased to coordinate the following programs, in addition to Mock Trial:

**Baltimore City Law Links**

**Baltimore City Teen Court**

**Baltimore City Council Page Program**

**Moot Court**

**Summer Law Academy**