*Checklist/Table of Contents: Volunteers Who Coach the Student Attorneys*

**Civil Discourse and Difficult Decisions**

Legal Skills as Life Skills

**Coaches for Student Attorneys should have the following materials in their program folder.**

**Background**

1. **Program Description –** Advance Handout for the Judge, All Volunteers, and the Teacher

**Agendas**

1. **Agenda/Detailed –** Step-by-Step Guidance for the Judge, Facilitator and All Volunteers

**Courtroom Introduction to *Elonis v. U.S*. –** Presented by the Volunteer Attorneys

*All participants have copies of the following:*

1. **Elonis Facts and Case Summary**
2. **Fictional Scenario**
3. **Emojis for the Fictional Scenario –** Skull and Winking Smiley Face

**Courtroom Simulation Materials –** Only for Judge, Attorney Coaches, Student Attorneys

1. **Opening Protocol**
2. **Talking Points**
3. **Closing Arguments Worksheet**

**Evaluation**

1. **Feedback Form –** Handout for All Students

*Program Description for the Judge, Attorney Volunteers, and Teachers*

**Civil Discourse and Difficult Decisions**

Legal Skills as Life Skills – A 90-Minute Virtual Courtroom Experience with a Federal Judge and Attorneys

**For More Information, Contact:** Rebecca Fanning,National Educational Outreach Manager for the Federal Courts. 202-502-2611.

**Civil Discourse and Difficult Decisions** is a national initiative of the federal courts that brings high school and college students into federal courthouses for legal proceedings that arise from situations in which law-abiding young people can find themselves. These court hearings (not mock trials) now are being conducted in the distance-learning environment.

**The 90-minute program** is presided over by a federal judge, assisted by volunteer attorneys who coach the students through the process. The distance learning environment gives every student the opportunity to serve as a lawyer and then as a juror. The program is conducive to every learning style and gives everyone the opportunity to speak.

**Learning Objectives – Benefits to Students:** Participants leave these virtual programs with sharpened tools for civil discourse and decision-making and a heightened awareness of situations they may not realize can have legal and long-term consequences. They have a rare opportunity to interact in a small group with a federal judge and attorneys. In doing so, they experience the differences between media portrayals of court personnel and processes and what happens in real life. Student feedback indicates that their virtual courtroom experience motivates them to serve willingly on juries when called.

**Time Commitment. Preparation -- Teachers and Students:** There is about 20 minutes of pre-reading for the students and teachers, listed below.

**Virtual Event:** The program takes90 minutes.

**What Happens**

**1. Reality Check Quiz:** In advance of the program, students take an attention-getting Reality Check Quiz to test their knowledge of situations that can put them in legal jeopardy. They are asked to go over the quiz with an adult in their lives – at home or at school. At the end of the program, the presiding judge leads students in a discussion that leaves them with insights that have practical applications beyond the specific anecdotes in the quiz.

**2. Civil Discourse Skill Building:** Also in advance of the program, students use a civility self-reflection tool to assess their typical responses to conflict and discuss them with an adult in their lives – at home or at school. They also review with an adult an activity on setting ground rules for a civil discussion. During the event, they discuss their own civil discourse attitudes, behaviors, language, and standards of behavior.

**3.** **Scenario:** Before the event, students read a one-page fictional scenario that is the subject of the simulation.

**4. Virtual Simulation:** All students serve as lawyers who advocate, then as jurors who must decide the outcome of a fictional, teen-relevant scenario that is based on a landmark Supreme Court case that the attorney coaches review with the students after their simulation.

**5. Reality Check Discussion:** The program concludes with a candid conversation with the host judge about the real-life scenarios in the Reality Check Quiz that can have legal consequences for teens. The closing question-and-answer session with the judge and attorneys on any topic is a highly rated part of the program.

**Go to Case-Specific Program Agenda:** *(Elonis; TLO; Texas v. Johnson; Tinker v. Des Moines) Courtroom Handout for All*

*Agenda for 1 Judge and 4 Attorney Coaches*

**Civil Discourse and Difficult Decisions**

Legal Skills as Life Skills

*90-Minute Distance-Learning Module*

**Virtual Program Ground Rules**

* All participants’ cameras are on throughout the program.
* Access to chat box for student-to-student communication is turned off.
* Student access to large-group chat moderated by the teacher is turned on.
* Students may raise questions in the chat box, but also verbalize them using their camera and microphone when addressing the judge and attorneys.

**Advance Work for Students** *(less than 30 minutes, plus discussion with an adult)*

1. **Students Complete Two Quizzes and Discuss Them with an Adult at Home or School**
* Civility Self-Reflection Quiz: To be discussed at the beginning of the program.
* Pre-Test Reality Check Quiz: To be discussed with the Judge at the end of the program.
1. **Students Review One Handout to Prepare for the Civil Discourse Activity**
* How to Set Ground Rules for a Civil Discussion: Guidance for Setting Civility Rules
1. **Students Read One Handout to Prepare for the Simulation**
* One-Page Fictional Scenario: Andy Jackson v. Government-- Meme Version

**Advance Request for Teachers – Please Assign Students to Two Groups – Group #1 and Group #2 of Approximately Equal Numbers. They will receive their group assignments during the program.**

**Two Attorneys are Assigned to Group #1 Throughout. They are Group #1 Atty Coaches.**

**Two Attorneys are Assigned to Group #2 Throughout. They are Group #2 Atty Coaches.**

**The Online Program Begins**

**PART I: INTRODUCTIONS AND OVERVIEW**

**9:00—9:10 a.m. Introductions, Civil Discourse Discussion and Activity, and Scenario Review**

*(10 minutes***) The Judge Welcomes Everyone, Explains Role of a Judge, and the Program**

Four Attorney CoachesIntroductions: *Heart Reason --* *Why I Chose the Law*

**9:10 –9:20 Group #1 Atty Coaches (2) Lead Discussion and Activity with All Students**

*(10 minutes) Students have already gone over these two handouts, so will be ready to briefly discuss.*

**Discussion:** Civility Self-Reflection Quiz

Attorney Coach Draws Out Students to Discuss Three Self-Awareness Questions Selected by the Attorney Coach.

**Activity: Setting Civil Discourse Ground Rules**

Attorney Coach Calls on Students to Briefly Name Three Basic Rules the Group will Abide By.

 **Presentation of the Fictional Scenario**

 Two Attorney Coaches briefly review the fictional scenario with all students before they get into their two small groups. One attorney points out facts relevant to Andy Jackson’s position. The other attorney points out facts relevant to the Government’s position.

**PART II: ALL STUDENTS SERVE AS ATTORNEYS: PREPARATION FOR ARGUMENTS**

**9:20 – 9:35 Small Group Preparation. All Students are Attorneys.**

*(15 minutes)* **Group 1 –** Represents the Government Coached by **Group #1 Atty Coaches**

**Group 2 –** Represents Andy Jackson Coached by **Group #2 Atty Coaches**

 **Objective:**  Students are introduced to issue spotting and prepare for arguments.

 With their pair of attorney coaches, each group fills out and discusses the **Arguments Worksheet.** Each group:

* Identifies: Arguments on both sides. *(~5 minutes)*
* Discusses: Their best arguments. *(~5 minutes)*
* Discusses: The best argument the other side is likely to present and how they will refute it. *(~5 minutes)*

 **Instructions for All Coaches During Small Groups:** **A coach for Group #1** asks for a volunteer to make the group’s best argument *(~2 minutes)* for Andy Jackson in the hearing. **What is your key message to the Judge and the jury? All students are expected to help that student.**

 **A coach for Group #2** asks for a volunteer to make the group’s best argument *(~2 minutes)* for the Government. **What is your key message to the Judge and the jury? All students are expected to help that student.**

 **The first student speakers are the only pre-designated speakers.**  **Important:** **The Judge’s follow-up questions are for all students.**

**9:35 – 9:50 Return to the Large Group. All Students are Attorneys.**

*(15 minutes)* **The Judge Guides the Presentation of Arguments.** *(~7 minutes each side)*

 The Judge starts by raising the overarching issue in the form of a question:

 **The Issue Before the Court Is: Does the First Amendment require proof that a defendant is serious about following through on a statement before the defendant may be convicted of making a true threat against another person?**

1. **The Judge asks for Andy Jackson’s counsel to make the group’s best argument on his behalf.** The student who volunteered in the small-group to speak first at the hearing answers the question with a two-minute (approximately) summary of the group’s best argument.

1. The Judge’s follow-up questions are for all students representing Andy Jackson. The Judge calls on students who use the raise-hand function. This gives all interested students the opportunity to participate.

 **The Judge turns to counsel for the Government** and raises the same overarching issue in the form of a question.

 **The Issue Before the Court Is: Does the First Amendment require proof that a defendant is serious about following through on a statement before the defendant may be convicted of making a true threat against another person?**

* + - 1. **The Judge asks the Government’s counsel to make the group’s best argument on its behalf.** The student who volunteered in the small-group to speak first at the hearing answers the question with a two-minute (approximately) summary of the group’s best argument.
			2. **The Judge’s follow-up questions are open to any student** representing the Government. The judge calls on students who use the raise-hand icon.

**PART III: ALL STUDENTS SERVE AS JURORS**

**9:50—10:05** **All Students Return to the Main, Large Group as Impartial Jurors.**

*(15 minutes)* The Judge releases students from their small groups and the positions taken by their groups. The Judge administers the jurors’ oath.

 **The Judge tells students that they now are impartial jurors and explains the different roles and obligations of advocates and jurors.**

 **JURY DELIBERATIONS**

 **Group #2 Atty Coaches (2) Facilitate the Deliberations to Ensure that Everyone Who Wishes to Speak Has an Opportunity. They draw out the students to participate. When deliberations wind down:**

 **Verdict Poll is Put on Screen:** **Results are the Verdict.**

 The Judge announces the verdict. The Judge asks students who have not yet spoken to explain their rationale.

 **Landmark Case:** An Attorney Coachbriefly reports onthe decision and rationale in Elonis v. U.S. as a landmark Supreme Court case that dealt with a similar issue and summarizes the decision.

**PART IV: REALITY CHECK QUIZ DISCUSSION AND GENERAL Q/A**

**10:05 – 10:25 The Judge Goes Over the Answers to the Reality Check Quiz**

*(20 minutes)* **Based on Advance Input from the Teacher, the Judge Pinpoints Two Anecdotes to Discuss with Students.**

 The Judge Opens the Floor to Questions on any Topic.

**10:25 -- 10:30 The Judge Makes Concluding Remarks**

*(5 minutes)* **Students Complete Feedback Form**

*Quiz Questions for Participants to Fill Out as They Wait for the Program to Start*

**Reality Check Quiz: Sometimes There Are No Do-Overs**

*Today’s Decisions Can Have Legal and Long-Term Consequences*

1. Because I’m 18, if I’m convicted of a federal crime, a lot of factors come into play and it won’t, necessarily, have an impact on the rest of my life. **True False**

1. My parents know that my friends and I are going to drink and they want to keep us off the road, so they buy the beer and we get together at our house, where my parents can keep an eye on us. If the party gets busted, anyone who is underage is breaking the law, but my parents won’t get charged. Of course, they’re over the legal age and they won’t be drinking because they are driving some kids home. **True False**
2. My friends and I have been driving for two years. One of my friends has never been caught speeding and she’s never had an accident. But, she’s got a lot of unpaid parking tickets stuffed in her glove compartment. I keep telling her that if she ever gets stopped, they could take her license. **True False**

1. When I go to a bar, I use the fake I.D. I bought it on the Internet. I’ve heard that the site could be part of a national ring, but I’m not going to get caught. Besides, if I do, the worst that will happen is that they’ll take my I.D. and kick me out of the bar. **True False**
2. If I’m hiking in Colorado, where pot is legal, and my friends bring some back to our home state where it’s not legal, they could end up in federal court, if they’re caught with it. **True False**
3. I order nutritional supplements off the Internet that I get in the mail. I use them to improve my athletic performance. I need every edge I can get to win a college scholarship. These are pharmaceuticals and not illegal drugs that I’m getting from some street dealer, so I’m okay.

**True False**

1. If I ever did get convicted of something in federal court, because of my age, I’d get probation. My older brother says that means I might not be able to travel with my tennis team. **True False**
2. My buddies on the football team were joking around in the locker room after a big win. One of the guys popped open a bottle of sparkling cider that looked like champagne. He dropped his towel while he was guzzling from the bottle on his way into the shower. It was hysterical so, when he turned his back, I captured some video on my phone. I sent it to the other guys on the team who weren't in the showers at the time. I thought it was a harmless moment that we'll laugh about at our high school reunion, some day. The coach says we could be in big trouble. **True False**
3. My classmates and I were sitting in first period when our teacher was called to the office for an emergency. Before he left, we noticed that he was in the middle of posting an announcement on the class website. We thought it would be funny to change the message and post it. I kept watch while my friends posted a music video and a message that our class will be cancelled next week. I figured he’d have a good laugh and just delete it later.

**True False**

1. A friend of mine was a witness to a car wreck and now she has to testify before a grand jury. She’s not sure that she’s willing to tell the whole truth because it implicates her and could jeopardize her scholarship. The details are not that important because she’s not the one on trial. Since the proceedings aren’t in court, the standard of “telling the truth, the whole truth, and nothing but the truth” doesn’t apply. **True False**

*Quiz Answer Key and Discussion Prompts for the Judge or Discussion Leader*

**Reality Check: Sometimes There Are No Do-Overs**

*Today’s Decisions Can Have Legal and Long-Term Consequences*

1. Because I’m 18, if I’m convicted of a federal crime, a lot of factors come into play and it won’t, necessarily, have an impact on the rest of my life.

**FALSE**

A felony conviction affects many important civil rights: You lose the right to vote, the right to hold public office, the right to serve on a jury, and the right to possess any type of firearm. In addition, if you are not a U.S. citizen, you may be subject to deportation or exclusion from the United States. A conviction can affect your ability to become a U.S. citizen. There are also collateral consequences that can affect your driving privileges and certain employment and business opportunities. You can be barred from professional licenses in nursing, transportation or teaching. You can be denied access to government benefits, student loans, or public housing.

1. My parents know that my friends and I are going to drink and they want to keep us off the road, so they buy the beer and we get together at our house, where my parents can keep an eye on us. If the party gets busted, anyone who is underage is breaking the law, but my parents won’t get charged. Of course, they’re over the legal age and they won’t be drinking because they are driving some kids home.

**FALSE**

Parents may be charged with a criminal offense, for example, contributing to the delinquency of a minor or hosting an “open house” party.

1. My friends and I have been driving for two years. One of my friends has never been caught speeding and she’s never had an accident. But, she’s got a lot of unpaid parking tickets stuffed in her glove compartment. I keep telling her that if she ever gets stopped, they could take her license.

 **TRUE**

Her license may be suspended until the tickets are paid, and her car may be impounded.

1. When I go to a bar, I use the fake I.D. I bought it on the Internet. I’ve heard that the site could be part of a national ring, but I’m not going to get caught. Besides, if I do, the worst that will happen is that they’ll take my I.D. and kick me out of the bar.

**FALSE**

Possession of a fake ID is a third-degree felony in some states. Use of another person’s identifying information is a federal offense of aggravated identity theft that may carry 24 months in federal prison.

1. If I’m hiking in Colorado, where pot is legal, and my friends bring some back to our home state where it’s not legal, they could end up in federal court, if they’re caught with it.

**TRUE**

The federal government and most states prohibit the possession of marijuana. Transporting marijuana across state lines is a federal offense.

1. I order nutritional supplements off the Internet that I get in the mail. I use them to improve my athletic performance. I need every edge I can get to win a college scholarship. These are pharmaceuticals and not illegal drugs that I’m getting from some street dealer, so I’m okay.

**FALSE**

The distribution and transport of a controlled substance is a serious criminal offense. Depending on the quantity of the controlled substance, there may be mandatory minimum penalties that can be imposed. A controlled substance includes any anabolic steroid, narcotic, hallucinogenic, stimulant or depressant drug

1. If I ever did get convicted of something in federal court, because of my age, I’d get probation. My older brother says that means I might not be able to travel with my tennis team.

**TRUE**

For most federal offenses, probation or supervised release is mandatory and limits your ability to travel, restricts employment opportunities. Supervision is conducted on a weekly basis and may be conducted over the course of several years.

1. My buddies on the football team were joking around in the locker room after a big win. One of the guys popped open a bottle of sparkling cider that looked like champagne. He dropped his towel while he was guzzling from the bottle on his way into the shower. It was hysterical so, when he turned his back, I captured some video on my phone. I sent it to the other guys on the team who weren't in the showers at the time. I thought it was a harmless moment that we'll laugh about at our high school reunion, some day. The coach says we could be in big trouble.

**TRUE**It is a serious federal crime to create or distribute child pornography, which would include pictures like this. Even though it was consensual and done as a joke, it’s still a crime.

1. My classmates and I were sitting in first period when our teacher was called to the office for an emergency. Before he left, we noticed that he was in the middle of posting an announcement on the class website. We thought it would be funny to change the message and post it. I kept watch while my friends posted a music video and a message that our class will be cancelled next week. I figured he’d have a good laugh and just delete it later.

**FALSE**

Accessing the computer of a school or a business is illegal hacking. As the lookout, you are still in trouble. Helping someone else commit a crime is called aiding and abetting. Legally, you are considered just as responsible as the person who did it.

1. A friend of mine was a witness to a car wreck and now she has to testify before a grand jury. She’s not sure that she’s willing to tell the whole truth because it implicates her and could jeopardize her scholarship. The details are not that important because she’s not the one on trial. Since the proceedings aren’t in court, the standard of “telling the truth, the whole truth, and nothing but the truth” doesn’t apply.

**FALSE**

Lying while under oath may result in a federal conviction for false declarations before a grand jury, otherwise known as perjury, which carries with it a maximum penalty of up to five years imprisonment.

*Civility Self-Reflection for Students to Fill Out While Waiting for the Program to Start*

**Civil Discourse Self Reflection and Discussion Starter**

**Instructions:** Circle the option that best applies to you when you are with your peers.

**1. When a conversation gets heated, I contribute to the conversation.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**2. When peers disagree about an issue, I remain silent.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**3. I take an active role in creating a welcoming environment for differing opinions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**4. I give my peers eye contact and my full attention when they speak, even when I disagree.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**5. When I disagree with someone, I keep an open mind and, momentarily, put aside what I plan to say next.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**6. I can’t control others’ behavior or opinions, so I focus on my own actions and civility.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**7. When I’m speaking, sometimes, I use silence to get the attention of others.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**8. I speak respectfully to people with whom I disagree, even if they disrespect me.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**9. I ask clarifying questions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**10. I am careful not to take over a conversation by talking longer than others**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**11. When I get excited, I interrupt the person speaking.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**12. I have side conversations that distract the person I’m talking with – and others -- from the person who has the floor.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**13. I listen for what people mean – not just what they say -- when I disagree with them.** Very Frequently • Frequently • Occasionally • Rarely • Never

**14. When peers disagree, I find common ground and call attention to areas of agreement.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**15. Sometimes I tune out, then realize I’ve repeated something that already has been said.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**16. I roll my eyes, or make subtle faces when I disagree with someone’s opinion.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

*Civility Self-Reflection and Discussion Prompts for a Volunteer*

**Civil Discourse Self Reflection: Discussion Starter**

*Volunteer’s Copy with Possible Follow-Up Questions*

**Instructions:** Circle the option that best applies to you when you are with your peers.

**1. When a conversation gets heated, I contribute to the conversation.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***Would people say you, typically, are an inflamer, an informer, an inquirer, an influencer, a good listener, a comedian? What other roles do people take in heated conversations?***

**2. When peers disagree about an issue, I remain silent.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***Why do you tend to remain silent? Can that be a good thing? What makes you comfortable enough to speak?***

**3. I take an active role in creating a welcoming environment for differing opinions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What do you say and do?***

**4. I give my peers eye contact and my full attention when they speak, even when I disagree.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***When people are really listening to you, what difference does that behavior make to you? What difference does it make in the conversation?***

**5. When I disagree with someone, I keep an open mind and, momentarily, put aside what I plan to say next.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What do you say to yourself so that you really listen, not just wait for your turn to speak?***

**6. I can’t control others’ behavior or opinions, so I focus on my own actions and civility.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What does that mean? How does it work?***

**7. When I’m speaking, sometimes, I use silence to get the attention of others.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do you use silence? How effective is it?***

**8. I speak respectfully to people with whom I disagree, even if they disrespect me.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***Why? Give an example of what you can say or do/not do when someone is disrespectful to you.***

**9. I ask clarifying questions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***Give examples of clarifying questions.***

**10. I am careful not to take over a conversation by talking longer than others**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What limits do you put on yourself to keep from talking too much? On the other hand, what do you do/say when you can’t get a word in edgewise?***

**11. When I get excited, I interrupt the person speaking.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***When you feel strongly about a subject, how do you monitor yourself so that you don’t interrupt?***

**12. I have side conversations that distract the person I’m talking with – and others -- from the person who has the floor.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do you feel when someone is whispering while you’re talking, even when they’re trying not to be disruptive?***

**13. I listen for what people mean – not just what they say -- when I disagree with them.** Very Frequently • Frequently • Occasionally • Rarely • Never

***What do people do/say when they are listening just to the words? What do they do/say when they are listening for what the person means?***

**14. When peers disagree, I find common ground and call attention to areas of agreement.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What are some phrases you can use to bridge the gap when you are trying to find common ground?***

**15. Sometimes I tune out, then realize I’ve repeated something that already has been said.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do you feel when someone repeats a point that already has been made?***

**16. I roll my eyes, or make subtle faces when I disagree with someone’s opinion.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do nonverbals detract from the civility of the conversation, even when the speaker doesn’t see you rolling your eyes or making faces?***

*Guidance for the Facilitator Giving the Courtroom Tour*

**Courtroom Tour – Program Icebreaker** *(~5 minutes)*

Roles for Participants

A good attention getter is a verbal courtroom tour that involves the participants by having them sit in designated places around the courtroom for the brief duration of the tour.

The activity demonstrates that the program is interactive. It gets students moving around and acclimated quickly and helps them visualize themselves working in the courts.

The facilitator asks the following questions. Students raise their hand, and a teacher selects volunteer students because he/she knows who will act appropriately. The facilitator directs students to the different places in the courtroom where they sit for the duration of the tour.

* **Courtroom Deputy:** Who is really organized and maintains a schedule or a calendar?
* **Court Reporter**: Who is a fast texter?
* **Court Interpreter:** Who speaks another language *(2 students)*
* **Bailiff**: Who is a peacemaker?
* **Attorneys: Who would like to present arguments to the Court but doesn’t want to volunteer to be a presenter in the full program today? You just want to know what it’s like to sit at the counsel tables.**

For the Government? (*4 students*)

For the Defendant? (*4 students)*

* **Jurors:** Who is fair minded? *Fill up the jury box.*
* **Jury Foreperson**: Who likes to be a spokesperson for a group?

*Handout for Setting Ground Rules**for All Participants and the Facilitator*

**Civil Discourse and Difficult Decisions**

*Setting Ground Rules for a Civil Discussion*

In courtrooms, it’s not the loudest voice that prevails. Opposing arguments are grounded in reason and evidence and they are put forward within strict guidelines for courtroom decorum. Each side tests the arguments of the other side, and a judge holds everyone to the same protocol and standards of appropriate behavior. Asking questions of each side is an integral part of the process. The adversarial system is no place for incivility. In fact, court proceedings are set up to promote effective civil discourse.

**Put an X next to the actions and attitudes that are most important to you.**

**1. Be mindful of your own behavior**. Notice how you internally are reacting/responding when others speak. Pay attention to how your words and your silence are impacting the experience for others in the group.

**What are you doing to create a welcoming environment for differing** **opinions?** Are you looking at each speaker and giving your full attention? Are you listening with an open mind – momentarily putting aside what you will say next?

Are you asking clarifying questions? Are you being careful not to take over the conversation by talking longer than others? Are you refraining from subtle, but disrespectful behavior or not paying attention when others speak?

**2.**  **Wait** to be recognized by the moderator before speaking. This allows time – before you speak -- for reflection on what the previous speaker(s) have said.

**3. Don’t interrupt** or talk over someone else who is speaking, even when you are excited.

**4. No side conversations.** They are disrespectful to the speaker and distract listeners from the person who has the floor.

**5. Listen for content** inthe statements of others, especially when you disagree. Listen for what the speakers are trying to communicate, even if they aren’t expressing their points concisely.

**6. Find common ground.** Identify and call attention to areas of agreement.

**7. Follow the direction** **of the discussion.**  Don’t repeat what already has been said. **Relate** your comments to those of previous speakers.

**8. Ask questions.** Don’t assume that you know what someone else means**.** Ask the speaker to help you understand perspectives different from your own.

**9. Don’t embarrass yourself or disrespect others by making** demeaning or inappropriate comments, facial expressions, or gestures. No eye rolling, sighing, or checking out of the conversation.

**10. Differentiate between facts and opinions**. Both are valid when expressed appropriately.

**WHAT WOULD YOU ADD?**

*Handout: Facts and Case Summary for Everyone (Volunteers and Participants)*

**Facts and Case Summary**

***Anthony Douglas* *Elonis v. United States, 135 S. Ct. 2001 (2015)***

Anthony Elonis was arrested on December 8, 2010 and charged with five counts of violating a federal anti-threat statute, 18 U.S.C. § 875(c).  Specifically, he was charged with threatening his ex-wife, co-workers, a kindergarten class, the local police, and an FBI agent.

Elonis had posted statements on his Facebook page that appeared to threaten his ex-wife and other people in his life.  Prior to the postings, his wife and family had left him and he had lost his job at an amusement park. Shortly after this chain of events, Elonis posted several statements on his Facebook page that were interpreted as threats.

At his trial, Elonis asked the court to dismiss the charges, stating that his Facebook comments were not true threats.  He argued that he was an aspiring rap artist and that his comments were merely a form of artistic expression and a therapeutic release to help him deal with the events in his life.

In an apparent attempt to underscore that his comments should not be taken seriously, he posted links to YouTube videos that he parodied, and noted that a popular rap artist often uses similar language in his lyrics.  For several of his comments, he also posted a disclaimer stating: “This is not a threat.”

Despite the fact that his ex-wife, an FBI agent, and others viewing his comments might have perceived his statements as threats, Elonis argued that he could not be convicted of making a threat because he did not intend to threaten anyone with his postings. In other words, he claimed that he didn’t mean what he said in a literal sense. In legal terms, he said that he did not have a subjective intent to threaten anyone.

The trial court denied his motion to dismiss the case.  The court held that the proper legal test for determining whether someone made a threat is an objective one:  whether reasonable people hearing the comment would perceive it to be a threat.  Elonis was convicted of four of the five counts.  He was sentenced to 44 months imprisonment, and three years of supervised release. [1] He appealed to the U.S. Court of Appeals for the Third Circuit, which affirmed his conviction.  The U.S. Supreme Court, granted certiorari (agreed to hear the case).  Oral arguments were heard on Monday, December 1, 2014.

*[1]Please Note:  After the trial, Elonis, through his lawyers, filed post-trial motions with the trial court in an attempt to overturn the conviction.  These attempts also were unsuccessful.*

On June 1, 2015, the Supreme Court reversed the lower courts and held that the reasonable person standard is not sufficient for a criminal statute and that for a person to be criminally charged, he or she must be aware of his or her wrongdoing. The case was remanded to the lower court

**THE FIRST AMENDMENT PROVIDES THAT**

“Congress shall make no law . . . abridging the freedom of speech [.]”

**APPLICABLE LAW**

It is a federal crime to “transmit [ ] in interstate or foreign commerce any communication containing…any threat to injure the person of another, 18 U.S.C. § 875(c). Numerous states have adopted similar statutes.

**PROCEDURE**

**Lower Court 1:** U.S. District Court for the Eastern District of Pennsylvania

**Lower Court Ruling 1:** The U.S. District Court rejected Elonis’ argument that a subjective (i.e., individual) intent to threaten is required to secure a conviction under the federal anti-threat statute.

**Lower Court 2:** U.S. Court of Appeals for the Third Circuit

**Lower Court Ruling 2:** The Court of Appeals affirmed the U.S. District Court. It held that a reasonable person (i.e., objective) standard is the correct legal test for determining whether Elonis could be convicted of communicating a threat under federal law.

**ISSUE BEFORE THE SUPREME COURT OF THE UNITED STATES**

Does a conviction of threatening another person under federal anti-threat statute18 U.S.C. § 875(c) require proof that the defendant meant what he said in a literal sense?

**STATUS**

**Oral Arguments:** Heard at the Supreme Court of the United States on Monday, December 1, 2014.

**Judgment**: [Reversed and remanded](http://www.supremecourt.gov/opinions/14pdf/13-983_7l48.pdf), 8-1, in an opinion by Chief Justice Roberts on June 1, 2015. Justice Alito filed an opinion concurring in part and dissenting in part. Justice Thomas filed a dissenting opinion.

*Handout: Fictional Scenario for Everyone (Volunteers and Students)*

**Fictional Scenario: Memes as Artistic Expression or True Threats?***Elonis v. U.S.* Applied to Teen Social Media Posts

Andy Jackson is an 18-year-old junior at Bay State High School where he is on the championship basketball team and is gearing up to be scouted by colleges. He and Sarah Somers are debate partners who have gone to the state finals every year. Being on a winning debate team is important for Sarah’s scholarship chances. Due to the demands of his training schedule, Andy decides to break up the partnership, after which he says Sarah started rumors alleging that he tested positive for the coronavirus but didn’t report his status to his basketball coach.

If true, Andy could lose opportunities for an athletic scholarship for violating the team’s zero-tolerance COVID-19 health and safety regulations that require reporting. Even rumors could hurt his chances. His friends show him Sarah’s Instagram video of him having a coughing spell while dribbling a basketball on his driveway basketball court. Andy, who has severe allergies, becomes enraged at the possibility that he might lose an opportunity to play college basketball, but he has to go to his DJ job after school at the Boys & Girls Club where he volunteers. He has to act as if everything is okay.

Andy is a popular DJ and rapper at these and other events. He is known for lyrics that have clever, PG-rated messages with controversial double meanings. That night, he posts a meme of himself performing a parody of some well-known rap lyrics saying that “players know how to even the score” when liars make false accusations against them. Andy includes in the meme a series of skull emojis and a wink emoji superimposed on a basketball.

When Sarah sees the meme, she feels threatened in light of the fact that friends have told her how angry Andy is with her. She is concerned enough about the posts that she goes to the school police safety officer and asks how to get a restraining order against Andy. She also reports the post to the basketball coach and the assistant principal. Andy says Sarah is just playing dumb if she claims she doesn’t know what he means by “players know how to even the score.” It’s an obvious basketball reference.

Ultimately, Andy is charged with two counts of violating 18 U.S.C. § 875(c), which makes it a federal crime to “transmit [ ] in interstate or foreign commerce any communication containing…any threat to injure the person of another.”

At today’s hearing in federal court, Sarah’s attorneys will argue that whether the lyrics were referring to the coronavirus, or physical injury, or basketball they could be weaponized to hurt Sarah. The skull emojis confirm that the lyrics are death threats. As such, the statements are true threats.

Andy’s attorneys will argue that Andy’s statements were not true threats, but artistic free speech protected by the Constitution.

*Opening Protocol: ONLY for the Judge, Attorney Coaches, and 8 Student Attorneys*

***Elonis v. United States* Applied to Students Facing Off on Facebook**

**Note:** Always stand when addressing the Judge.

**A Law Clerk Announces the Judge.**

**The Judge takes the bench, welcomes the group, and says:** The issue before us today is – Does the First Amendment require proof that a defendant is serious about following through on a threat before the defendant may be convicted of threatening another person?

**Judge: Is Counsel for the Defendant ready?**

**Andy Jackson’s Attorney #1** *(Stands at counsel table)* Yes, Your Honor.

**Judge : Is Counsel for the Government ready?**

**Government’s Attorney #1** *(Stands at counsel table)* Yes, Your Honor.

**Judge:**  **Counsel for the Defendant may proceed.**

**Attorneys for Andy Jackson, the Defendant**

**Attorney #1 *(Goes to the lectern)***

"May it please the Court. My name is \_\_\_\_\_\_\_\_\_\_\_\_. I am from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. My colleagues and I are counsel for Mr. Andy Jackson, the Defendant before this Court today. There are three issues before the Court. I will argue the first issue. Seated at the Defendant’s counsel table are my colleagues who will handle the other issues and closing arguments. They will introduce themselves and tell you where they are from. *(Attorney #1 sits down)*

**Attorney #2 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and I will be handling Issue #2.

*(Sits down)*

**Attorney #3 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and I will be handling Issue #3. *(Sits down)*

**Attorney #4 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_ and I will be handling the closing arguments for the Defendant. *(Sits down)*

**Judge: Counsel for the Government may proceed with your introductions.**

**Attorneys for the Government**

**Attorney #1** ***(Goes to the lectern)***

"May it please the Court. My name is \_\_\_\_\_\_\_\_\_\_\_\_. I am from \_\_\_\_\_\_\_\_\_\_\_ and I will be arguing the first issue on behalf of the Government, the United States. Seated at the Government’s counsel table are my colleagues who will handle the other issues and closing arguments. They will introduce themselves and tell you where they are from. *(Sits down)*

**Attorney #2 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and I will be handling Issue #2. *(Sits down*)

**Attorney #3 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and I will be handling Issue #3. *(Sits down*)

**Attorney #4 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_ and I will handle the closing arguments for the Government. *(Sits down)*

**Judge: Now we will turn to the major questions about this issue. The attorneys will make their arguments, then we will open the floor to you, in the audience, to join in the debate as jurors. The moderator will facilitate your deliberations so that everyone has the opportunity to speak. At the end, we will take a vote to determine the verdict.**

*Talking Points: ONLY for the Judge, Attorney Coaches, and the Eight Student Attorneys*

***Elonis v. United States* Applied to Teen Facebook Postings** *Talking Points – Can be Modified by Student Attorneys.*

**Judge: The issue before us today is – Does the First Amendment require proof that a defendant is serious about following through on a threat before the defendant may be convicted of threatening another person?**

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| --- | --- |
| **Judge: We will start with Question #1.****Does the First Amendment protect Mr. Andy Jackson’s comments, even though they may be potentially upsetting? Because Mr. Andy Jackson is the Petitioner bringing this case, his attorney will go first.** | **Judge: Now we will hear from the Respondent. Does the First Amendment protect Mr. Andy Jackson’s comments, even though they may be potentially upsetting?** |
| **Andy’s Attorney #1** | **Government’s Attorney #1** |
| **YES*** The First Amendment protects unpopular and offensive speech. A bedrock principle of the First Amendment is that speech cannot be prohibited simply because it is uncomfortable or offensive.
* Andy’s speech is no different from other speech that has been recognized as constitutionally protected. Angry and even offensive lyrics are constitutionally protected artistic expression.
* Andy was simply expressing his anger in an artistic, therapeutic, and constitutionally protected manner. His comments were based on the lyrics of his favorite artist. He also put out a disclaimer that he was not threatening anyone.

**The Judge asks follow-up questions.**Examples of the kinds of follow-up questions the Judge may ask:* Should the First Amendment protect all forms of artistic expression? Why/Why not?
* What artistic expression should not be protected?
* Should there be limits on First Amendment protections of emotional expressions?
* What emotional expressions should be limited?
* Should it matter if someone uses a disclaimer saying the expression is not a threat?
* Does it matter that the statement is anonymous?
 | **NO*** Not all speech is protected by the First Amendment. The First Amendment protects political discourse and the free flow of ideas. However, the courts have determined that obscenity, fighting words, and true threats are not protected speech.
* Andy’s online statements are unprotected true threats. Among other things, he tells Sarah that she will “regret this day.” He says Sam should watch himself because “The Gunner is locked and loaded” -- a reference to shooting a firearm.
* Andy cannot avoid criminal liability for his threats simply by imitating the lyrics of a musical artist. He can’t avoid responsibility for threats just by putting a disclaimer on them. Defendants who issue true threats can’t get off the hook by simply by saying they didn’t mean it or by adding ambiguous emojis.

**The Judge asks follow-up questions.**  |
| **Judge: Let’s turn our attention to Question 2****Is it necessary to determine if the speaker means what he says in the threat in order to suppress it?**  | **Judge: Same question for the Government.****Is it necessary to determine if the speaker means what he says in the threat in order to suppress it?** |
| **Andy’s Attorney #2** | **Government’s Attorney #2** |
| **YES*** When a threat is judged by a subjective standard, the idea is to determine if the speaker means what is said. When a threat is judged by an objective standard, the question is asked: “How would a reasonable person interpret it?” That standard is too vague because reasonable people can disagree.
* An objective or “reasonable person” standard allows the majority to silence dissenting or minority views. It also has a chilling effect that might silence offensive, unpopular, or controversial statements to avoid the risk of criminal prosecution. The posts include a skull and winking smiley face emoji. They clearly convey that the sender is just kidding.
* The objective standard, based on what a “reasonable person” would think, is too ambiguous. What is meant by “a reasonable person?” Would the standard be based on a reasonable adult? A reasonable teenager? A reasonable person with average knowledge of pop culture? This standard simply leaves too much ambiguity to adequately protect freedom of speech.

**The Judge asks follow-up questions:**Examples of the kinds of follow-up questions the Judge may ask:* What impact should the skull and winking emojis have on our understanding of Mr. Jackson’s intent?
* How would a “reasonable person” interpret the skull in this post?
* Does it make a difference that the skull is paired with the winking smiley face?
 | **NO*** Laws are frequently passed to prohibit conduct regardless of the intent of the defendant. For instance, a person who calls in a bomb threat may be prosecuted regardless of whether or not he actually intended to carry out the threat.
* Even if the individual makes the threat as some sort of warped joke with no intention of doing damage, he could still be prosecuted. Anti-bomb threat laws are meant, in part, to protect the public from the fear that such threats cause, regardless of whether the threat turns out to be credible. Andy’s posts include a skull emoji and winking smiley face emoji. The skull is a recognized symbol of death. The wink indicates that the sender gets pleasure from issuing the threat.
* When a threatening statement is made, the damage is done when the victim hears the statement and takes it seriously. A perceived threat can be just as emotionally damaging as a real threat. In light of that, the Government may legitimately prohibit such threatening statements.
* Employing an objective standard would not automatically subject every unpopular or offensive utterance to criminal prosecution. The context of the statement would help the finder of fact determine whether or not s statement is a true threat.

**The Judge asks follow-up questions:** |
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| --- | --- |
| **Judge: We turn our attention now to Question #3. Should comments on social media be given any additional protections beyond comments made in person or by other means of communication?** | **Judge: Question #3 for the Government is the same. Should comments on social media be given any additional protections beyond comments made in person or by other means of communication?** |
| **Andy’s Attorney #3** | **Government’s Attorney #3** |
| **YES*** People make all kinds of exaggerated statements that, if taken out of context, can be construed as threats. This is particularly true for statements posted on social media. The person making the statements cannot control who sees them or how they are interpreted. Someone unfamiliar with the context could perceive an innocent statement as a threat.
* There are many examples in the law where the legality of an action depends upon context. For instance, the Government may outlaw speech that is intended to incite imminent lawless action. However, the Government may not prohibit offensive speech if it is not a direct incitement to unlawful action.
* If the government tries to interpret the intentions behind speech, people will self-censor rather than risk criminal prosecution. In addition, people may be prosecuted for comments that were not intended as threats.

**The Judge asks follow-up questions. Examples:*** Should online content have the same protections as news media content?
* Should the government try to interpret people’s intentions and decide if the content is meant to threaten or entertain the reader or audience?
* How important is context when determining if speech is a threat or not? Could you say the same thing in two different settings and have two different interpretations?
 | **NO*** There is no reason to give added protection to comments made on social media. Anti-threat laws address statements that arouse fear and intimidation, regardless of the forum in which they appear. Existing laws are adequate. There is no need to carve out an exception for online social media.
* Individuals should not be allowed to engage in threatening and/or otherwise illegal behavior simply because it is done online. A threat is a threat no matter how it is communicated. Government has a legitimate right to combat online harassment and bullying.
* If reasonable people construe statement s as threats, then they may be prosecuted as threats. Regardless of the intent of the person making them, such statements can cause intimidation and fear. If the possibility of prosecution causes individuals to think twice before making threats online, that is the price to be paid for living in a safe and civilized society.

**The Judge asks follow-up questions.** |

**Judge: And now we will have closing arguments from each side. After closing arguments, I will turn the program over to the moderator who will facilitate the jury deliberations.** |

**ATTORNEY #4 FOR EACH SIDE PRESENTS CLOSING ARGUMENTS**

Attorney #4 on each side refers to his/her worksheet and notes to deliver the closing arguments, summarizing the key points for Elonis and for the Government.

**After the Last Closing Argument**

**Judge***:* **Now that you’ve heard the closing arguments, I will turn over the program to the moderator who will facilitate the jury deliberations.**

*Closing Arguments Worksheet: ONLY for Judge, Attorney Coaches, and 8 Student Attorneys*

*Elonis v. U.S.* Applied to Teen Facebook Postings

Worksheet Specifically for Student Attorney #4

**Purpose of Closing Arguments:** To persuade the jurors to adopt your view of the significant points favoring your team’s position on each issue. Attorneys **argue the merits** of their case.

**Each Student Attorney Addresses the Judge and Jurors, Starting with:**

“I would like to review with you the key points presented today.”

**Read Aloud: Issue #1** -- **Does the First Amendment protect Mr. Andy Jackson’s comments, even though they may be potentially upsetting**?

*Write the key word from the main point that you want to emphasize.*

*Why should the jury support your position on this point?*

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**Read Aloud: Issue #2—Is it necessary to determine if the speaker means what he says in the threat in order to suppress it?**

*Write a key word from the main point that you want to emphasize.*

Why should the jury support your position on this point?

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**Read Aloud: Issue #3 -- Should comments on social media be given any additional protections beyond comments made in person or by other means of communication?**

*Write the key word from the point that you want to emphasize.*

Why should the jury support your position on this point?

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**Exhibit J** *Jury Preparation Handout: Arguments Worksheet for Student Jurors*

**Civil Discourse and Difficult Decisions**

Legal and Life Skills for Civil Discussion and Decision Making

***Elonis v. United States* Applied to Teen Facebook Postings**

**Directions:** Put an **A** byarguments for Andy and a **G** by arguments for the Government.

1. The First Amendment protects unpopular and even offensive speech. Such protections are necessary to preserve the free flow of ideas in a democracy.
2. The First Amendment does not protect all types of speech. For instance, obscenity, fighting words, and true threats are not protected and may be prosecuted.
3. To be considered a threat, a person must have the internal, subjective intent to make the threat. If threats are judged by an external, objective standard, this could lead to the prosecution of unpopular ideas simply because they offend the majority.
4. Using an objective standard to analyze threats would result in even more vagueness in the law. How is the objective standard to be determined? Is the standard a reasonable adult, or child, or some expert? An objective standard is too ambiguous.
5. Laws are frequently passed to prohibit conduct regardless of the intent of the defendant. For instance, a person who calls in a bomb threat may be prosecuted regardless of whether the caller ever actually intended to follow through with the threat.
6. Defendants should not be permitted to escape criminal responsibility for making threats simply by hiding behind disclaimers or saying that their threats are simply artistic expression or emotional venting.
7. When a threatening statement is made, the damage is done when the intended victim hears the statement. The defendant should still be punished for this type of conduct whether the defendant intends to carry out the threat or not.
8. People make all kinds of exaggerated statements that, if taken out of context, can be construed as threats. This is particularly true for anonymous statements that are made on the Internet and social media. People should not have to choose either to remain silent or run the risk of a criminal conviction.
9. The context of a statement can be used to determine whether or not it is a true threat. When deciding a case, the jury will review all of the facts and put them in the proper context to make this decision.
10. Free expression is about pushing limits. If the majority can determine what speech is a threat and what speech is not, this could have a chilling effect on First Amendment freedoms by leading to self-censorship.

*Jury Preparation Handout: Arguments Worksheet Answer Key – ONLY for Jury Coaches*

**Civil Discourse and Difficult Decisions**

Legal and Life Skills for Civil Discussion and Decision Making

***Elonis v. United States* Applied to Teen Facebook Postings**

**Directions:** Put an **A** by arguments for Andy and a **G** by arguments for the Government

1. The First Amendment protects unpopular and even offensive speech. Such protections are necessary to preserve the free flow of ideas in a democracy. **A**
2. The First Amendment does not protect all types of speech. For instance, obscenity, fighting words, and true threats are not protected and may be prosecuted. **G**
3. To be considered a threat, a person must have the internal, subjective intent to make the threat. If threats are judged by an external, objective standard, this could lead to the prosecution of unpopular ideas simply because they offend the majority. **A**
4. Using an objective standard to analyze threats would result in even more vagueness in the law. How is the objective standard to be determined? Is a reasonable adult, or child, or some expert the standard? An objective standard is too ambiguous. **A**
5. Laws are frequently passed to prohibit conduct regardless of the intent of the defendant. For instance, a person who calls in a bomb threat may be prosecuted regardless of whether the caller ever actually intended to follow through with the threat. **G**
6. Defendants should not be permitted to escape criminal responsibility for making threats simply by hiding behind disclaimers or saying that their threats are simply artistic expression or emotional venting. **G**
7. When a threatening statement is made, the damage is done when the intended victim hears or reads the statement. The defendant should still be punished for this type of conduct whether the defendant intends to carry out the threat or not. **G**
8. People make all kinds of exaggerated statements that, if taken out of context, can be construed as threats. This is particularly true for anonymous statements that are made on the Internet and social media. People should not have to choose either to remain silent or run the risk of a criminal conviction. **A**
9. The context of a statement can be used to determine whether or not it is a true threat. When deciding a case, the jury will review all of the facts and put them in the proper context to make this decision. The emojis in this case – especially, the knife -- are convincing evidence that this is a true threat. **G**

10. Free expression is about pushing limits. If the majority can determine what speech is a threat and what speech is not, this could have a chilling effect on First Amendment freedoms by leading to self-censorship**. A**

*Feedback Form for Students*

**Civil Discourse and Difficult Decisions**

*Student Feedback*

**Judge’s Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_**

**Your Name** \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(first) (last)*

**School \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ City \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Your Grade \_\_\_\_\_\_\_**

**\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***

*Feel free to use the back for additional comments.*

**1. Setting.** What was it like to have the program in a courtroom?

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**2. Judge.** How is this judge different from television/movie judges?

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**3. Volunteer Attorneys.** How were the attorneys different from television/movie lawyers?

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**4. Student Attorneys:** If you were a student attorney, what was the experience like for you?

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**5. Student Jurors:** If you were a student juror, what were the deliberations like for you?

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**6. As a result of this program:**  How do feel about serving on a real jury?

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**7. What will you remember from the Reality Check discussion?**

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**8. What civility skill do you plan to practice in class?**

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**9. Would you recommend the program?** Yes \_ No \_ What will you tell your peers about it?



*Checklist/Table of Contents for Attorney Volunteers Working with Jurors*

**Civil Discourse and Difficult Decisions**

*Legal Skills as Life Skills*

**Volunteer attorneys working with student jurors****should have the following materials.**

**Background**

1. **Program Description –** Advance Handout for the Judge, All Volunteers, and the Teacher

 **Agendas**

1. **Agenda/Detailed –** Step-by-Step Guidance for the Judge, Facilitator, and All Volunteers

**Courtroom Introduction to *Elonis v. U.S. –*** Presented by Volunteer Attorneys

*All participants and volunteers have copies of the following:*

1. **Elonis Facts and Case Summary**
2. **Fictional Scenario**
3. **Emojis for the Fictional Scenario –** Skull and Winking Smiley Face

**Student Attorney Preparation – Background for Attorneys Working with Jurors**

1. **Talking Points –**  For the Judge, Coaches and Student Attorneys

*Student Jurors Do Not Receive this Handout*

 **Student Juror Preparation – Activity Facilitated by Attorneys Working with Jurors**

1. **Jury Worksheet** *(Blank – No Answers)* **–** Handout for Student Jurors and Jury Coaches
2. **Jury Worksheet Answer Key –** Only for the Jury Coaches

*Program Description for the Judge, Attorney Volunteers, and Teachers*

**Civil Discourse and Difficult Decisions**

Legal Skills as Life Skills – A 90-Minute Virtual Courtroom Experience with a Federal Judge and Attorneys

**For More Information, Contact:** Rebecca Fanning,National Educational Outreach Manager for the Federal Courts. 202-502-2611.

**Civil Discourse and Difficult Decisions** is a national initiative of the federal courts that brings high school and college students into federal courthouses for legal proceedings that arise from situations in which law-abiding young people can find themselves. These court hearings (not mock trials) now are being conducted in the distance-learning environment.

**The 90-minute program** is presided over by a federal judge, assisted by volunteer attorneys who coach the students through the process. The distance learning environment gives every student the opportunity to serve as a lawyer and then as a juror. The program is conducive to every learning style and gives everyone the opportunity to speak.

**Learning Objectives – Benefits to Students:** Participants leave these virtual programs with sharpened tools for civil discourse and decision-making and a heightened awareness of situations they may not realize can have legal and long-term consequences. They have a rare opportunity to interact in a small group with a federal judge and attorneys. In doing so, they experience the differences between media portrayals of court personnel and processes and what happens in real life. Student feedback indicates that their virtual courtroom experience motivates them to serve willingly on juries when called.

**Time Commitment. Preparation -- Teachers and Students:** There is about 20 minutes of pre-reading for the students and teachers, listed below.

**Virtual Event:** The program takes90 minutes.

**What Happens**

**1. Reality Check Quiz:** In advance of the program, students take an attention-getting Reality Check Quiz to test their knowledge of situations that can put them in legal jeopardy. They are asked to go over the quiz with an adult in their lives – at home or at school. At the end of the program, the presiding judge leads students in a discussion that leaves them with insights that have practical applications beyond the specific anecdotes in the quiz.

**2. Civil Discourse Skill Building:** Also in advance of the program, students use a civility self-reflection tool to assess their typical responses to conflict and discuss them with an adult in their lives – at home or at school. They also review with an adult an activity on setting ground rules for a civil discussion. During the event, they discuss their own civil discourse attitudes, behaviors, language, and standards of behavior.

**3.** **Scenario:** Before the event, students read a one-page fictional scenario that is the subject of the simulation.

**4. Virtual Simulation:** All students serve as lawyers who advocate, then as jurors who must decide the outcome of a fictional, teen-relevant scenario that is based on a landmark Supreme Court case that the attorney coaches review with the students after their simulation.

**5. Reality Check Discussion:** The program concludes with a candid conversation with the host judge about the real-life scenarios in the Reality Check Quiz that can have legal consequences for teens. The closing question-and-answer session with the judge and attorneys on any topic is a highly rated part of the program.

**Detailed Agenda** *-- Guidance for the Judge, Facilitator, and Other Attorney Volunteers*

**Civil Discourse and Difficult Decisions**

Legal Skills as Life Skills

*90-Minute Distance-Learning Module*

**Virtual Program Ground Rules**

* All participants’ cameras are on throughout the program.
* Access to chat box for student-to-student communication is turned off.
* Student access to large-group chat moderated by the teacher is turned on.
* Students may raise questions in the chat box, but also verbalize them using their camera and microphone when addressing the judge and attorneys.

**Advance Work for Students** *(less than 30 minutes, plus discussion with an adult)*

1. **Students Complete Two Quizzes and Discuss Them with an Adult at Home or School**
* Civility Self-Reflection Quiz: To be discussed at the beginning of the program.
* Pre-Test Reality Check Quiz: To be discussed with the Judge at the end of the program.
1. **Students Review One Handout to Prepare for the Civil Discourse Activity**
* How to Set Ground Rules for a Civil Discussion: Guidance for Setting Civility Rules
1. **Students Read One Handout to Prepare for the Simulation**
* One-Page Fictional Scenario: Andy Jackson v. Government-- Meme Version

**Advance Request for Teachers – Please Assign Students to Two Groups – Group #1 and Group #2 of Approximately Equal Numbers. They will receive their group assignments during the program.**

**Two Attorneys are Assigned to Group #1 Throughout. They are Group #1 Atty Coaches.**

**Two Attorneys are Assigned to Group #2 Throughout. They are Group #2 Atty Coaches.**

**The Online Program Begins**

**PART I: INTRODUCTIONS AND OVERVIEW**

**9:00—9:10 a.m. Introductions, Civil Discourse Discussion and Activity, and Scenario Review**

*(10 minutes***) The Judge Welcomes Everyone, Explains Role of a Judge, and the Program**

Four Attorney CoachesIntroductions: *Heart Reason --* *Why I Chose the Law*

**9:10 –9:20 Group #1 Atty Coaches (2) Lead Discussion and Activity with All Students**

*(10 minutes) Students have already gone over these two handouts, so will be ready to briefly discuss.*

**Discussion:** Civility Self-Reflection Quiz

Attorney Coach Draws Out Students to Discuss Three Self-Awareness Questions Selected by the Attorney Coach.

**Activity: Setting Civil Discourse Ground Rules**

Attorney Coach Calls on Students to Briefly Name Three Basic Rules the Group will Abide By.

 **Presentation of the Fictional Scenario**

 Two Attorney Coaches briefly review the fictional scenario with all students before they get into their two small groups. One attorney points out facts relevant to Andy Jackson’s position. The other attorney points out facts relevant to the Government’s position.

**PART II: ALL STUDENTS SERVE AS ATTORNEYS: PREPARATION FOR ARGUMENTS**

**9:20 – 9:35 Small Group Preparation. All Students are Attorneys.**

*(15 minutes)* **Group 1 –** Represents the Government Coached by **Group #1 Atty Coaches**

**Group 2 –** Represents Andy Jackson Coached by **Group #2 Atty Coaches**

 **Objective:**  Students are introduced to issue spotting and prepare for arguments.

 With their pair of attorney coaches, each group fills out and discusses the **Arguments Worksheet.** Each group:

* Identifies: Arguments on both sides. *(~5 minutes)*
* Discusses: Their best arguments. *(~5 minutes)*
* Discusses: The best argument the other side is likely to present and how they will refute it. *(~5 minutes)*

 **Instructions for All Coaches During Small Groups:** **A coach for Group #1** asks for a volunteer to make the group’s best argument *(~2 minutes)* for Andy Jackson in the hearing. **What is your key message to the Judge and the jury? All students are expected to help that student.**

 **A coach for Group #2** asks for a volunteer to make the group’s best argument *(~2 minutes)* for the Government. **What is your key message to the Judge and the jury? All students are expected to help that student.**

 **The first student speakers are the only pre-designated speakers.**  **Important:** **The Judge’s follow-up questions are for all students.**

**9:35 – 9:50 Return to the Large Group. All Students are Attorneys.**

*(15 minutes)* **The Judge Guides the Presentation of Arguments.** *(~7 minutes each side)*

 The Judge starts by raising the overarching issue in the form of a question:

 **The Issue Before the Court Is: Does the First Amendment require proof that a defendant is serious about following through on a statement before the defendant may be convicted of making a true threat against another person?**

1. **The Judge asks for Andy Jackson’s counsel to make the group’s best argument on his behalf.** The student who volunteered in the small-group to speak first at the hearing answers the question with a two-minute (approximately) summary of the group’s best argument.

1. The Judge’s follow-up questions are for all students representing Andy Jackson. The Judge calls on students who use the raise-hand function. This gives all interested students the opportunity to participate.

 **The Judge turns to counsel for the Government** and raises the same overarching issue in the form of a question.

 **The Issue Before the Court Is: Does the First Amendment require proof that a defendant is serious about following through on a statement before the defendant may be convicted of making a true threat against another person?**

* + - 1. **The Judge asks the Government’s counsel to make the group’s best argument on its behalf.** The student who volunteered in the small-group to speak first at the hearing answers the question with a two-minute (approximately) summary of the group’s best argument.
			2. **The Judge’s follow-up questions are open to any student** representing the Government. The judge calls on students who use the raise-hand icon.

**PART III: ALL STUDENTS SERVE AS JURORS**

**9:50—10:05** **All Students Return to the Main, Large Group as Impartial Jurors.**

*(15 minutes)* The Judge releases students from their small groups and the positions taken by their groups. The Judge administers the jurors’ oath.

 **The Judge tells students that they now are impartial jurors and explains the different roles and obligations of advocates and jurors.**

 **JURY DELIBERATIONS**

 **Group #2 Atty Coaches (2) Facilitate the Deliberations to Ensure that Everyone Who Wishes to Speak Has an Opportunity. They draw out the students to participate. When deliberations wind down:**

 **Verdict Poll is Put on Screen:** **Results are the Verdict.**

 The Judge announces the verdict. The Judge asks students who have not yet spoken to explain their rationale.

 **Landmark Case:** An Attorney Coachbriefly reports onthe decision and rationale in Elonis v. U.S. as a landmark Supreme Court case that dealt with a similar issue and summarizes the decision.

**PART IV: REALITY CHECK QUIZ DISCUSSION AND GENERAL Q/A**

**10:05 – 10:25 The Judge Goes Over the Answers to the Reality Check Quiz**

*(20 minutes)* **Based on Advance Input from the Teacher, the Judge Pinpoints Two Anecdotes to Discuss with Students.**

 The Judge Opens the Floor to Questions on any Topic.

**10:25 -- 10:30 The Judge Makes Concluding Remarks**

*(5 minutes)* **Students Complete Feedback Form**

**BACKGROUND FOR ATTORNEY VOLUNTEERS WORKING WITH JURORS**

*Civility Self-Reflection for Students to Fill Out While Waiting for the Program to Start*

**Civil Discourse Self Reflection and Discussion Starter**

**Instructions:** Circle the option that best applies to you when you are with your peers.

**1. When a conversation gets heated, I contribute to the conversation.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**2. When peers disagree about an issue, I remain silent.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**3. I take an active role in creating a welcoming environment for differing opinions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**4. I give my peers eye contact and my full attention when they speak, even when I disagree.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**5. When I disagree with someone, I keep an open mind and, momentarily, put aside what I plan to say next.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**6. I can’t control others’ behavior or opinions, so I focus on my own actions and civility.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**7. When I’m speaking, sometimes, I use silence to get the attention of others.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**8. I speak respectfully to people with whom I disagree, even if they disrespect me.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**9. I ask clarifying questions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**10. I am careful not to take over a conversation by talking longer than others**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**11. When I get excited, I interrupt the person speaking.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**12. I have side conversations that distract the person I’m talking with – and others -- from the person who has the floor.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**13. I listen for what people mean – not just what they say -- when I disagree with them.** Very Frequently • Frequently • Occasionally • Rarely • Never

**14. When peers disagree, I find common ground and call attention to areas of agreement.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**15. Sometimes I tune out, then realize I’ve repeated something that already has been said.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**16. I roll my eyes, or make subtle faces when I disagree with someone’s opinion.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**BACKGROUND FOR ATTORNEY VOLUNTEERS WORKING WITH JURORS**

*Civility Self-Reflection and Discussion Prompts for a Volunteer*

**Civil Discourse Self Reflection: Discussion Starter**

*Volunteer’s Copy with Possible Follow-Up Questions*

**Instructions:** Circle the option that best applies to you when you are with your peers.

**1. When a conversation gets heated, I contribute to the conversation.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***Would people say you, typically, are an inflamer, an informer, an inquirer, an influencer, a good listener, a comedian? What other roles do people take in heated conversations?***

**2. When peers disagree about an issue, I remain silent.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***Why do you tend to remain silent? Can that be a good thing? What makes you comfortable enough to speak?***

**3. I take an active role in creating a welcoming environment for differing opinions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What do you say and do?***

**4. I give my peers eye contact and my full attention when they speak, even when I disagree.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***When people are really listening to you, what difference does that behavior make to you? What difference does it make in the conversation?***

**5. When I disagree with someone, I keep an open mind and, momentarily, put aside what I plan to say next.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What do you say to yourself so that you really listen, not just wait for your turn to speak?***

**6. I can’t control others’ behavior or opinions, so I focus on my own actions and civility.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What does that mean? How does it work?***

**7. When I’m speaking, sometimes, I use silence to get the attention of others.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do you use silence? How effective is it?***

**8. I speak respectfully to people with whom I disagree, even if they disrespect me.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***Why? Give an example of what you can say or do/not do when someone is disrespectful to you.***

**9. I ask clarifying questions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***Give examples of clarifying questions.***

**10. I am careful not to take over a conversation by talking longer than others**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What limits do you put on yourself to keep from talking too much? On the other hand, what do you do/say when you can’t get a word in edgewise?***

**11. When I get excited, I interrupt the person speaking.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***When you feel strongly about a subject, how do you monitor yourself so that you don’t interrupt?***

**12. I have side conversations that distract the person I’m talking with – and others -- from the person who has the floor.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do you feel when someone is whispering while you’re talking, even when they’re trying not to be disruptive?***

**13. I listen for what people mean – not just what they say -- when I disagree with them.** Very Frequently • Frequently • Occasionally • Rarely • Never

***What do people do/say when they are listening just to the words? What do they do/say when they are listening for what the person means?***

**14. When peers disagree, I find common ground and call attention to areas of agreement.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***What are some phrases you can use to bridge the gap when you are trying to find common ground?***

**15. Sometimes I tune out, then realize I’ve repeated something that already has been said.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do you feel when someone repeats a point that already has been made?***

**16. I roll my eyes, or make subtle faces when I disagree with someone’s opinion.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

***How do nonverbals detract from the civility of the conversation, even when the speaker doesn’t see you rolling your eyes or making faces?***

*Handout: Facts and Case Summary for Everyone (Volunteers and Participants)*

**Facts and Case Summary**

***Anthony Douglas* *Elonis v. United States, 135 S. Ct. 2001 (2015)***

Anthony Elonis was arrested on December 8, 2010 and charged with five counts of violating a federal anti-threat statute, 18 U.S.C. § 875(c).  Specifically, he was charged with threatening his ex-wife, co-workers, a kindergarten class, the local police, and an FBI agent.

Elonis had posted statements on his Facebook page that appeared to threaten his ex-wife and other people in his life.  Prior to the postings, his wife and family had left him and he had lost his job at an amusement park. Shortly after this chain of events, Elonis posted several statements on his Facebook page that were interpreted as threats.

At his trial, Elonis asked the court to dismiss the charges, stating that his Facebook comments were not true threats.  He argued that he was an aspiring rap artist and that his comments were merely a form of artistic expression and a therapeutic release to help him deal with the events in his life.

In an apparent attempt to underscore that his comments should not be taken seriously, he posted links to YouTube videos that he parodied, and noted that a popular rap artist often uses similar language in his lyrics.  For several of his comments, he also posted a disclaimer stating: “This is not a threat.”

Despite the fact that his ex-wife, an FBI agent, and others viewing his comments might have perceived his statements as threats, Elonis argued that he could not be convicted of making a threat because he did not intend to threaten anyone with his postings. In other words, he claimed that he didn’t mean what he said in a literal sense. In legal terms, he said that he did not have a subjective intent to threaten anyone.

The trial court denied his motion to dismiss the case.  The court held that the proper legal test for determining whether someone made a threat is an objective one:  whether reasonable people hearing the comment would perceive it to be a threat.  Elonis was convicted of four of the five counts.  He was sentenced to 44 months imprisonment, and three years of supervised release. [1] He appealed to the U.S. Court of Appeals for the Third Circuit, which affirmed his conviction.  The U.S. Supreme Court, granted certiorari (agreed to hear the case).  Oral arguments were heard on Monday, December 1, 2014.

*[1]Please Note:  After the trial, Elonis, through his lawyers, filed post-trial motions with the trial court in an attempt to overturn the conviction.  These attempts also were unsuccessful.*

On June 1, 2015, the Supreme Court reversed the lower courts and held that the reasonable person standard is not sufficient for a criminal statute and that for a person to be criminally charged, he or she must be aware of his or her wrongdoing. The case was remanded to the lower court

**THE FIRST AMENDMENT PROVIDES THAT**

“Congress shall make no law . . . abridging the freedom of speech [.]”

**APPLICABLE LAW**

It is a federal crime to “transmit [ ] in interstate or foreign commerce any communication containing…any threat to injure the person of another, 18 U.S.C. § 875(c). Numerous states have adopted similar statutes.

**PROCEDURE**

**Lower Court 1:** U.S. District Court for the Eastern District of Pennsylvania

**Lower Court Ruling 1:** The U.S. District Court rejected Elonis’ argument that a subjective (i.e., individual) intent to threaten is required to secure a conviction under the federal anti-threat statute.

**Lower Court 2:** U.S. Court of Appeals for the Third Circuit

**Lower Court Ruling 2:** The Court of Appeals affirmed the U.S. District Court. It held that a reasonable person (i.e., objective) standard is the correct legal test for determining whether Elonis could be convicted of communicating a threat under federal law.

**ISSUE BEFORE THE SUPREME COURT OF THE UNITED STATES**

Does a conviction of threatening another person under federal anti-threat statute18 U.S.C. § 875(c) require proof that the defendant meant what he said in a literal sense?

**STATUS**

**Oral Arguments:** Heard at the Supreme Court of the United States on Monday, December 1, 2014.

**Judgment**: [Reversed and remanded](http://www.supremecourt.gov/opinions/14pdf/13-983_7l48.pdf), 8-1, in an opinion by Chief Justice Roberts on June 1, 2015. Justice Alito filed an opinion concurring in part and dissenting in part. Justice Thomas filed a dissenting opinion.

*Handout: Fictional Scenario for Everyone (Volunteers and Students)*

**Fictional Scenario: Memes as Artistic Expression or True Threats?***Elonis v. U.S.* Applied to Teen Social Media Posts

Andy Jackson is an 18-year-old junior at Bay State High School where he is on the championship basketball team and is gearing up to be scouted by colleges. He and Sarah Somers are debate partners who have gone to the state finals every year. Being on a winning debate team is important for Sarah’s scholarship chances. Due to the demands of his training schedule, Andy decides to break up the partnership, after which he says Sarah started rumors alleging that he tested positive for the coronavirus but didn’t report his status to his basketball coach.

If true, Andy could lose opportunities for an athletic scholarship for violating the team’s zero-tolerance COVID-19 health and safety regulations that require reporting. Even rumors could hurt his chances. His friends show him Sarah’s Instagram video of him having a coughing spell while dribbling a basketball on his driveway basketball court. Andy, who has severe allergies, becomes enraged at the possibility that he might lose an opportunity to play college basketball, but he has to go to his DJ job after school at the Boys & Girls Club where he volunteers. He has to act as if everything is okay.

Andy is a popular DJ and rapper at these and other events. He is known for lyrics that have clever, PG-rated messages with controversial double meanings. That night, he posts a meme of himself performing a parody of some well-known rap lyrics saying that “players know how to even the score” when liars make false accusations against them. Andy includes in the meme a series of skull emojis and a wink emoji superimposed on a basketball.

When Sarah sees the meme, she feels threatened in light of the fact that friends have told her how angry Andy is with her. She is concerned enough about the posts that she goes to the school police safety officer and asks how to get a restraining order against Andy. She also reports the post to the basketball coach and the assistant principal. Andy says Sarah is just playing dumb if she claims she doesn’t know what he means by “players know how to even the score.” It’s an obvious basketball reference.

Ultimately, Andy is charged with two counts of violating 18 U.S.C. § 875(c), which makes it a federal crime to “transmit [ ] in interstate or foreign commerce any communication containing…any threat to injure the person of another.”

At today’s hearing in federal court, Sarah’s attorneys will argue that whether the lyrics were referring to the coronavirus, or physical injury, or basketball they could be weaponized to hurt Sarah. The skull emojis confirm that the lyrics are death threats. As such, the statements are true threats.

Andy’s attorneys will argue that Andy’s statements were not true threats, but artistic free speech protected by the Constitution.

**BACKGROUND FOR ATTORNEY VOLUNTEERS WORKING WITH JURORS**

**STUDENT JURORS TO NOT RECEIVE THIS**

*Talking Points: ONLY for the Judge, Attorney Coaches, and the Eight Student Attorneys*

***Elonis v. United States* Applied to Teen Facebook Postings** *Talking Points – Can be Modified by Student Attorneys.*

**Judge: The issue before us today is – Does the First Amendment require proof that a defendant is serious about following through on a threat before the defendant may be convicted of threatening another person?**

|  |  |
| --- | --- |
| **Judge: We will start with Question #1.****Does the First Amendment protect Mr. Andy Jackson’s comments, even though they may be potentially upsetting? Because Mr. Andy Jackson is the Petitioner bringing this case, his attorney will go first.** | **Judge: Now we will hear from the Respondent. Does the First Amendment protect Mr. Andy Jackson’s comments, even though they may be potentially upsetting?** |
| **Andy’s Attorney #1** | **Government’s Attorney #1** |
| **YES*** The First Amendment protects unpopular and offensive speech. A bedrock principle of the First Amendment is that speech cannot be prohibited simply because it is uncomfortable or offensive.
* Andy’s speech is no different from other speech that has been recognized as constitutionally protected. Angry and even offensive lyrics are constitutionally protected artistic expression.
* Andy was simply expressing his anger in an artistic, therapeutic, and constitutionally protected manner. His comments were based on the lyrics of his favorite artist. He also put out a disclaimer that he was not threatening anyone.

**The Judge asks follow-up questions.**Examples of the kinds of follow-up questions the Judge may ask:* Should the First Amendment protect all forms of artistic expression? Why/Why not?
* What artistic expression should not be protected?
* Should there be limits on First Amendment protections of emotional expressions?
* What emotional expressions should be limited?
* Should it matter if someone uses a disclaimer saying the expression is not a threat?
* Does it matter that the statement is anonymous?
 | **NO*** Not all speech is protected by the First Amendment. The First Amendment protects political discourse and the free flow of ideas. However, the courts have determined that obscenity, fighting words, and true threats are not protected speech.
* Andy’s online statements are unprotected true threats. Among other things, he tells Sarah that she will “regret this day.” He says Sam should watch himself because “The Gunner is locked and loaded” -- a reference to shooting a firearm.
* Andy cannot avoid criminal liability for his threats simply by imitating the lyrics of a musical artist. He can’t avoid responsibility for threats just by putting a disclaimer on them. Defendants who issue true threats can’t get off the hook by simply by saying they didn’t mean it or by adding ambiguous emojis.

**The Judge asks follow-up questions.**  |
| **Judge: Let’s turn our attention to Question 2****Is it necessary to determine if the speaker means what he says in the threat in order to suppress it?**  | **Judge: Same question for the Government.****Is it necessary to determine if the speaker means what he says in the threat in order to suppress it?** |
| **Andy’s Attorney #2** | **Government’s Attorney #2** |
| **YES*** When a threat is judged by a subjective standard, the idea is to determine if the speaker means what is said. When a threat is judged by an objective standard, the question is asked: “How would a reasonable person interpret it?” That standard is too vague because reasonable people can disagree.
* An objective or “reasonable person” standard allows the majority to silence dissenting or minority views. It also has a chilling effect that might silence offensive, unpopular, or controversial statements to avoid the risk of criminal prosecution. The posts include a skull and winking smiley face emoji. They clearly convey that the sender is just kidding.
* The objective standard, based on what a “reasonable person” would think, is too ambiguous. What is meant by “a reasonable person?” Would the standard be based on a reasonable adult? A reasonable teenager? A reasonable person with average knowledge of pop culture? This standard simply leaves too much ambiguity to adequately protect freedom of speech.

**The Judge asks follow-up questions:**Examples of the kinds of follow-up questions the Judge may ask:* What impact should the skull and winking emojis have on our understanding of Mr. Jackson’s intent?
* How would a “reasonable person” interpret the skull in this post?
* Does it make a difference that the skull is paired with the winking smiley face?
 | **NO*** Laws are frequently passed to prohibit conduct regardless of the intent of the defendant. For instance, a person who calls in a bomb threat may be prosecuted regardless of whether or not he actually intended to carry out the threat.
* Even if the individual makes the threat as some sort of warped joke with no intention of doing damage, he could still be prosecuted. Anti-bomb threat laws are meant, in part, to protect the public from the fear that such threats cause, regardless of whether the threat turns out to be credible. Andy’s posts include a skull emoji and winking smiley face emoji. The skull is a recognized symbol of death. The wink indicates that the sender gets pleasure from issuing the threat.
* When a threatening statement is made, the damage is done when the victim hears the statement and takes it seriously. A perceived threat can be just as emotionally damaging as a real threat. In light of that, the Government may legitimately prohibit such threatening statements.
* Employing an objective standard would not automatically subject every unpopular or offensive utterance to criminal prosecution. The context of the statement would help the finder of fact determine whether or not s statement is a true threat.

**The Judge asks follow-up questions:** |
|

|  |  |
| --- | --- |
| **Judge: We turn our attention now to Question #3. Should comments on social media be given any additional protections beyond comments made in person or by other means of communication?** | **Judge: Question #3 for the Government is the same. Should comments on social media be given any additional protections beyond comments made in person or by other means of communication?** |
| **Andy’s Attorney #3** | **Government’s Attorney #3** |
| **YES*** People make all kinds of exaggerated statements that, if taken out of context, can be construed as threats. This is particularly true for statements posted on social media. The person making the statements cannot control who sees them or how they are interpreted. Someone unfamiliar with the context could perceive an innocent statement as a threat.
* There are many examples in the law where the legality of an action depends upon context. For instance, the Government may outlaw speech that is intended to incite imminent lawless action. However, the Government may not prohibit offensive speech if it is not a direct incitement to unlawful action.
* If the government tries to interpret the intentions behind speech, people will self-censor rather than risk criminal prosecution. In addition, people may be prosecuted for comments that were not intended as threats.

**The Judge asks follow-up questions. Examples:*** Should online content have the same protections as news media content?
* Should the government try to interpret people’s intentions and decide if the content is meant to threaten or entertain the reader or audience?
* How important is context when determining if speech is a threat or not? Could you say the same thing in two different settings and have two different interpretations?
 | **NO*** There is no reason to give added protection to comments made on social media. Anti-threat laws address statements that arouse fear and intimidation, regardless of the forum in which they appear. Existing laws are adequate. There is no need to carve out an exception for online social media.
* Individuals should not be allowed to engage in threatening and/or otherwise illegal behavior simply because it is done online. A threat is a threat no matter how it is communicated. Government has a legitimate right to combat online harassment and bullying.
* If reasonable people construe statement s as threats, then they may be prosecuted as threats. Regardless of the intent of the person making them, such statements can cause intimidation and fear. If the possibility of prosecution causes individuals to think twice before making threats online, that is the price to be paid for living in a safe and civilized society.

**The Judge asks follow-up questions.** |

**Judge: And now we will have closing arguments from each side. After closing arguments, I will turn the program over to the moderator who will facilitate the jury deliberations.** |

*Jury Preparation Handout: Arguments Worksheet for Student Jurors*

**Civil Discourse and Difficult Decisions**

Legal and Life Skills for Civil Discussion and Decision Making

***Elonis v. United States* Applied to Teen Facebook Postings**

**Directions:** Put an **A** byarguments for Andy and a **G** by arguments for the Government.

1. The First Amendment protects unpopular and even offensive speech. Such protections are necessary to preserve the free flow of ideas in a democracy.
2. The First Amendment does not protect all types of speech. For instance, obscenity, fighting words, and true threats are not protected and may be prosecuted.
3. To be considered a threat, a person must have the internal, subjective intent to make the threat. If threats are judged by an external, objective standard, this could lead to the prosecution of unpopular ideas simply because they offend the majority.
4. Using an objective standard to analyze threats would result in even more vagueness in the law. How is the objective standard to be determined? Is the standard a reasonable adult, or child, or some expert? An objective standard is too ambiguous.
5. Laws are frequently passed to prohibit conduct regardless of the intent of the defendant. For instance, a person who calls in a bomb threat may be prosecuted regardless of whether the caller ever actually intended to follow through with the threat.
6. Defendants should not be permitted to escape criminal responsibility for making threats simply by hiding behind disclaimers or saying that their threats are simply artistic expression or emotional venting.
7. When a threatening statement is made, the damage is done when the intended victim hears the statement. The defendant should still be punished for this type of conduct whether the defendant intends to carry out the threat or not.
8. People make all kinds of exaggerated statements that, if taken out of context, can be construed as threats. This is particularly true for anonymous statements that are made on the Internet and social media. People should not have to choose either to remain silent or run the risk of a criminal conviction.
9. The context of a statement can be used to determine whether or not it is a true threat. When deciding a case, the jury will review all of the facts and put them in the proper context to make this decision.
10. Free expression is about pushing limits. If the majority can determine what speech is a threat and what speech is not, this could have a chilling effect on First Amendment freedoms by leading to self-censorship.

*Jury Preparation Handout: Arguments Worksheet Answer Key – ONLY for Jury Coaches*

**Civil Discourse and Difficult Decisions**

Legal and Life Skills for Civil Discussion and Decision Making

***Elonis v. United States* Applied to Teen Facebook Postings**

**Directions:** Put an **A** by arguments for Andy and a **G** by arguments for the Government

1. The First Amendment protects unpopular and even offensive speech. Such protections are necessary to preserve the free flow of ideas in a democracy. **A**
2. The First Amendment does not protect all types of speech. For instance, obscenity, fighting words, and true threats are not protected and may be prosecuted. **G**
3. To be considered a threat, a person must have the internal, subjective intent to make the threat. If threats are judged by an external, objective standard, this could lead to the prosecution of unpopular ideas simply because they offend the majority. **A**
4. Using an objective standard to analyze threats would result in even more vagueness in the law. How is the objective standard to be determined? Is a reasonable adult, or child, or some expert the standard? An objective standard is too ambiguous. **A**
5. Laws are frequently passed to prohibit conduct regardless of the intent of the defendant. For instance, a person who calls in a bomb threat may be prosecuted regardless of whether the caller ever actually intended to follow through with the threat. **G**
6. Defendants should not be permitted to escape criminal responsibility for making threats simply by hiding behind disclaimers or saying that their threats are simply artistic expression or emotional venting. **G**
7. When a threatening statement is made, the damage is done when the intended victim hears or reads the statement. The defendant should still be punished for this type of conduct whether the defendant intends to carry out the threat or not. **G**
8. People make all kinds of exaggerated statements that, if taken out of context, can be construed as threats. This is particularly true for anonymous statements that are made on the Internet and social media. People should not have to choose either to remain silent or run the risk of a criminal conviction. **A**
9. The context of a statement can be used to determine whether or not it is a true threat. When deciding a case, the jury will review all of the facts and put them in the proper context to make this decision. The emojis in this case – especially, the knife -- are convincing evidence that this is a true threat. **G**

10. Free expression is about pushing limits. If the majority can determine what speech is a threat and what speech is not, this could have a chilling effect on First Amendment freedoms by leading to self-censorship**. A**



