

Artist Ron Leone

## **Teacher Packet**

# Teacher Materials for McDonald v. Chicago

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1 Also in Student Packet.

2 Also in Student Packet.

# Overview of Moot Court

## Getting There – The Appellate Courts

In the United States when one side loses or is unhappy with something about the outcome of their trial they have a right to appeal.<sup>1</sup> The lawyer representing the party or parties appealing (called the "appellant" or "Petitioner") usually files a Notice of Intent to Appeal with the trial court. A transcript of the trial is prepared and sent to the appellate court.<sup>2</sup> The appellate lawyer files a brief (see sample and blank forms, Appendix A1–A2), laying out the legal<sup>3</sup> errors made at trial and what law applies in this case. The lawyers representing the other party (called the "Respondent" or "appellee") files a reply brief. Then there's oral argument (see Courtroom Dialog B1–C2), where both lawyers appear before a three-judge court to present their sides of the case (see the diagram "Setting Up an Appellate Courtroom," page 5). The appellate judges ask questions and then "take the case under submission" (reserve making a decision until a later date).

The judges have a conference to see where they stand on the cases they've heard. When two or three judges agree on the outcome (who wins), one of them volunteers to write the "opinion," which lays out not only the "holdings" (legal rulings) in the case, but also the legal rationale for their decision. A judge who agrees with the judgment or outcome but has other or different reasons, can write a "concurring" opinion. A judge who disagrees with the outcome can write a "dissenting" opinion. Your students replicate this process.

## Materials Provided

Included in this packet:

- Teacher's Guide
- Case materials
- Sample appellate forms
- Sample and fill-in courtroom dialog
- Courtroom setup diagram
- Assessment and Evaluation materials

On our Web site (<http://cesqd.org/mootcourt.html>) there is also a file called "Brief Template" (MS Word format) which students can download and type their briefs in.

## What Your Students Do

Student lawyers (in pairs or singly) read the case materials. Attorneys for the gun owners (Petitioners) write the appellate brief; attorneys for the City (Respondents) write the reply brief. There's a "Brief Writing Organizer" which your student can use to help them (see pages A3–A5). You set the cases for oral argument, giving your students a few days to write their briefs. You can either have the losing side write an appellate brief and "file it" (hand it in to you), and then give the other side a day or so to respond, or you can have both sides write and file their briefs at the same time.

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1 In a criminal case, only the defendant can appeal a conviction. The state cannot appeal an acquittal, as this would violate the Fifth Amendment's "double jeopardy" provision.

2 Appellate courts are required to hear all the appeals filed within their jurisdiction, whereas the USSC—and the state supreme courts—only hear the cases they want to.

3 Appeals deal only with legal issues, not factual ones. For example, the facts regarding who did or did not pass the exams would not be appealable. But the issue of whether the exams were fair, is a legal issue, and therefore subject to appeal.

The judges need to read the briefs and case materials and then write out some good, tough, probing questions to ask the lawyers. Then, during the hearings, the lawyers argue their cases and the judges interrupt and ask them questions. This is called “oral argument.” Lawyer can use the “Oral Argument Notemaker” to prepare for this hearing (see pages A6–A8).

After argument, each judge should write one opinion—majority (outcome, rule, and rationale), concurring (agreeing with the outcome but for different reasons), and/or dissenting (disagreeing with both the outcome and the reasoning).

## **How Court Opinions Are Organized and Used in Real Life**

In the legal world, after judges write their opinions, they’re usually published in large books (often more than 1500 pages). The books are numbered consecutively, and contain opinions going back to the beginning of the court system. These opinions are then cited by later courts when those courts are in the process of deciding the same or a related issue. The earlier case opinions are precedent for the later ones. The books are organized as follows:

For the Federal District Court (which is the federal trial court) trial opinions can be found in volumes called “Federal Supplement,” which is currently in its third series so it’s called “F.Supp.3d.” Similarly, the circuit court opinions (the intermediate appellate level) are published in Federal Reporter 3rd (F.3d). The fictitious Twentieth Circuit (which will be hearing *McDonald v. Chicago* for this activity) would be at this level. The USSC opinions are published in the volumes “U.S.” (United States).

For example, the case of *Presser v. Illinois*, 116 U. S. 252 (1886) would be found in the 116th volume of USSC cases. The case, which was decided in 1886, begins on page 252. State court decisions also follow a similar numbering system.

## **When and How to Cite Case Law**

Just as with any paper in which a source is quoted, a case citation **MUST** be included in any brief, opinion or oral argument. Your students should use the following rules:

- When writing a brief, the first time a case is referenced, use the full citation. For example, *Presser v. Illinois*, 116 U. S. 252 (1886).
- Use italics for the case name and put the date in parenthesis.
- In oral argument, the first time a case is mentioned, use the full case name. For example, “as the U.S. Supreme Court in *Presser v. Illinois* said ...”
- After the case has been cited once, your students can just use a short case name like *Presser*.  
As the court in *Presser* held “...”, or  
As the court in the *Presser* case held, “...” , or  
As the *Presser* court held, “...”

## Assessment and Evaluation

The Grade/Rubric<sup>4</sup> Sheets (Appendix E1–E9) contain the following:

### TEACHER GRADE

- Grades for the oral and written parts of the activity.

### SUMMARY/ANALYSIS

- A student summary of the appeals process, using words, drawings, etc.
- A two-page questionnaire that evaluates the activity and student learning styles, and gives students a chance to critique their classmates.

### SELF GRADE

- Student impressions and experiences while participating in this activity.
- Students grade themselves on their level of preparation and performance.

### ORAL ARGUMENT, LISTENING AND SPEAKING RUBRICS

- Rubric for Briefs and Oral Argument
- Listening/Speaking Rubric for Speech or Oral Argument

## Standards

American Government 12.2.1 and 12.5.1

High School Language Arts Standards

### LA 9-10

Reading Comprehension: 2.3

Writing Applications: 2.3 (a) (b)(d) (f), 2.6 (a) (b) (c)

Listening and Speaking Strategies: 1.1, 1.3

Speaking Applications: 2.5 (a) (b) (d)

### LA 11-12

Reading Comprehension: 2.4

Written and Oral Language Conventions: 1.1

Listening and Speaking Strategies: 1.6, 1.7, 1.8 (b) (c)

Speaking Applications: 2.5 (a) (b) (d)

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<sup>4</sup> I suggest you tell your students in advance what the assessment criteria will be.

# Case Background and Outcome<sup>1</sup>

## Introduction

This year's case involves the Second and Fourteenth Amendments. Since the instant case *McDonald v. Chicago*, struck down Chicago's handgun regulations [laws], the constitutionality of other state and local gun legislation is called into question. As arguments over these types of laws will likely rage in the courts for years to come, we decided to have students address them in this year's Moot Court activity (see "Questions Presented" on page 2 of the case packet).

## Legal Background

When the Bill of Rights was ratified in 1791, it applied only to Congress. But when the Fourteenth Amendment was enacted after the Civil War, the courts began *incorporating* [applying] those amendments to the states through its Due Process Clause.

In 2008, the U.S. Supreme Court decided *District of Columbia v. Heller*. The Court noted that the Second Amendment has two parts: 1) "A well regulated Militia, being necessary to the security of a free State, 2) the right of the people to keep and bear arms, shall not be infringed." In striking down a District of Columbia ordinance banning handguns, the Court held that the Second Amendment provides an individual (rather than a collective—as part of a militia—right). They did not rule on the issue of incorporation. The instant case ruled on that question. The Court held that the Second Amendment **was** incorporated to the states, thus restricting the ability of states to enact gun regulation laws.

## Case Background

The Chicago petitioners Otis McDonald and others filed suit against the City of Chicago (the City). They sought a declaration [court ruling] that the handgun ban and several related Chicago ordinances violate the Second and Fourteenth Amendments to the United States Constitution. Another action challenging the Oak Park law was filed in the same District Court by the National Rifle Association (NRA) and two Oak Park residents. In addition, the NRA and others filed a third action challenging the Chicago.

The District Court (in Illinois) rejected petitioners' argument that the Chicago and Oak Park laws are unconstitutional. The court noted that the Seventh Circuit had "squarely upheld the constitutionality of a ban on handguns a quarter century ago," (citing *Quilici v. Morton Grove*, and that the *Heller* case had explicitly refrained from "opin[ing] on the subject of incorporation of the Second Amendment." The court observed that a district judge has a "duty to follow established precedent in the Court of Appeals to which he or she is beholden, even though the logic of more recent case law may point in a different direction."

The Seventh Circuit affirmed, relying on three 19th century cases—*United States v. Cruikshank*, *Presser v. Illinois* and *Miller v. Texas*. The Seventh Circuit described the rationale of those cases as "defunct" and recognized that they did not consider the question whether the Fourteenth Amendment's Due Process Clause incorporates the Second Amendment's right to keep and bear

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<sup>1</sup> Here is some additional background to help you work on this activity with your class. The student materials do **not** tell the outcome of this case. We suggest that you refrain from telling them as well, as it is not relevant to the activity and gives both sides the sense that they could win.

arms. Nevertheless, the Seventh Circuit observed that it was obligated to follow Supreme Court precedents that have “direct application,” and it declined to predict how the Second Amendment would fare under this Court’s modern “selective incorporation” The U.S. Supreme Court granted certiorari.

### USSC Opinion Line-up

The case was argued on April 22, 2010 and decided on June 29, 2010.

The “line up” was 5–3, with ALITO, J delivering the majority opinion. Chief Justice ROBERTS, along with Justices SCALIA, KENNEDY and THOMAS joined in this opinion, but each wrote concurring opinions (agreeing with the outcome, but giving different reasoning) for several parts.<sup>2</sup>

SCALIA, J., filed a concurring opinion.

THOMAS, J., filed an opinion concurring in part and concurring in the judgment.

STEVENS, J., filed a dissenting opinion.

BREYER, J., filed a dissenting opinion, in which GINSBURG and SOTOMAYOR, JJ., joined.<sup>3</sup>

(It appears the SOUTER did not participate.)

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2 For a longer quote from Alito, see page 6

3 For a longer quote from Breyer, see page 7

## Setting up an Appellate Courtroom

### CA, Federal and other state courts of appeal (Three-Judge Courts)



A Podium

B You can have one or two courts going at the same time. Students sit in the area near their assigned “courtroom” waiting their turn to argue or judge.

## Excerpts from Alito's majority opinion

"Two years ago, in *District of Columbia v. Heller*, we held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and we struck down a District of Columbia law that banned the possession of handguns in the home. The city of Chicago (City) and the village of Oak Park, a Chicago suburb, have laws that are similar to the District of Columbia's, but Chicago and Oak Park argue that their laws are constitutional because the Second Amendment has no application to the States. We have previously held that most of the provisions of the Bill of Rights apply with full force to both the Federal Government and the States. Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States."

"With this framework in mind, we now turn directly to the question whether the Second Amendment right to keep and bear arms is incorporated in the concept of due process. In answering that question, as just explained, we must decide whether the right to keep and bear arms is fundamental to our scheme of ordered liberty, or as we have said in a related context, whether this right is "deeply rooted in this Nation's history and tradition."

"Our decision in *Heller* points unmistakably to the answer. Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is "the central component" of the Second Amendment right (stating that the "inherent right of self-defense has been central to the Second Amendment right"). Explaining that "the need for defense of self, family, and property is most acute" in the home, we found that this right applies to handguns because they are "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family," (noting that handguns are "overwhelmingly chosen by American society for the lawful purpose" of self-defense). "The American people have considered the handgun to be the quintessential self-defense weapon"). Thus, we concluded, citizens must be permitted "to use [handguns] for the core lawful purpose of self-defense."

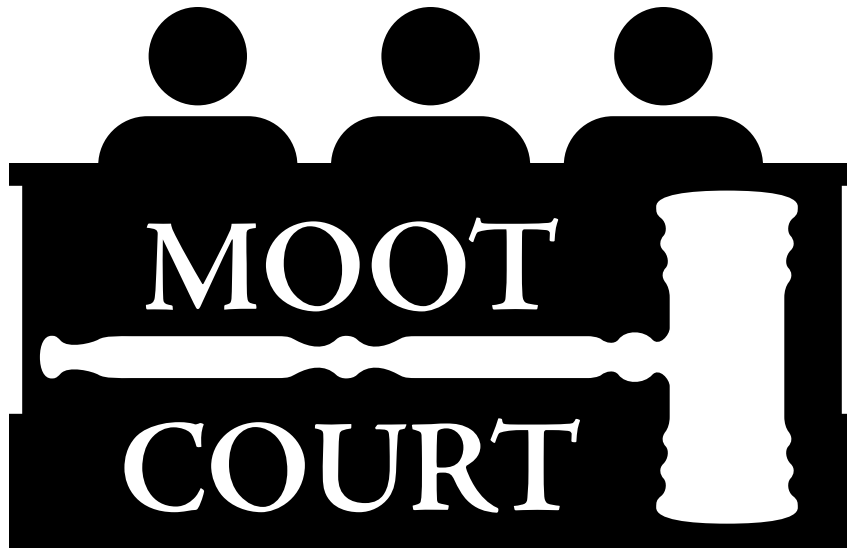
"It is important to keep in mind that *Heller*, while striking down a law that prohibited the possession of handguns in the home, recognized that the right to keep and bear arms is not "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as "prohibitions on the possession of firearms by felons and the mentally ill," "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." We repeat those assurances here. Despite municipal respondents' doomsday proclamations, incorporation does not imperil every law regulating firearms."

## Excerpts from Breyer's dissenting opinion

"Consider too that countless gun regulations of many shapes and sizes are in place in every State and in many local communities. Does the right to possess weapons for self-defense extend outside the home? To the car? To work? What sort of guns are necessary for self-defense? Handguns? Rifles? Semiautomatic weapons? When is a gun semi-automatic? Where are different kinds of weapons likely needed? Does time-of-day matter? Does the presence of a child in the house matter? Does the presence of a convicted felon in the house matter? Do police need special rules permitting patdowns designed to find guns? When do registration requirements become severe to the point that they amount to an unconstitutional ban? Who can possess guns and of what kind? Aliens? Prior drug offenders? Prior alcohol abusers? How would the right interact with a state or local government's ability to take special measures during, say, national security emergencies? As the questions suggest, state and local gun regulation can become highly complex, and these "are only a few uncertainties that quickly come to mind."

"In sum, the Framers did not write the Second Amendment in order to protect a private right of armed self-defense. There has been, and is, no consensus that the right is, or was, "fundamental." No broader constitutional interest or principle supports legal treatment of that right as fundamental. To the contrary, broader constitutional concerns of an institutional nature argue strongly against that treatment.

"Moreover, nothing in 18th-, 19th-, 20th-, or 21st-century history shows a consensus that the right to private armed self-defense, as described in *Heller*, is "deeply rooted in this Nation's history or tradition" or is otherwise "fundamental." Indeed, incorporating the right recognized in *Heller* may change the law in many of the 50 States. Read in the majority's favor, the historical evidence is at most ambiguous. And, in the absence of any other support for its conclusion, ambiguous history cannot show that the Fourteenth Amendment incorporates a private right of self-defense against the States. With respect, I dissent."



Artist Ron Leone

## Exploring the Appellate Process

The Teacher's Guide and the hand-out materials for *Moot Court – Exploring the Appellate Process* have been excerpted and adapted from a simulation on the judicial branch called *Puttin' on the Robes – Exploring the Legal Process*. This simulation is available through our nonprofit corporation, Center for Economic and Civic Education (CESQD). For more information see our Web site <http://cesqd.org/Cts.html>. All materials were developed by Carla Young Garrett, except for the Moot Court competition format and rules which were developed by Carla Young Garrett and Ron Leone.

The U.S. Supreme Court case, *McDonald v. Chicago* is a public record.

We'd also like to thank contributors John Muir Health and The Mechanics Bank for their continuing support of the Moot Court competition.

A special thanks goes to Contra Costa County Bar and Bar Association for being our sponsor and to the attorneys and judges who volunteer their time to score the competition. We gratefully acknowledge encouragement of the Constitutional Rights Foundation (CRF).

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# Student Materials for McDonald v. Chicago

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Scoring Examples.....	S11
Forms.....	CF1–CF5
Competition Evaluation.....	CE1

# Moot Court Introduction

## Getting There – The Appellate Courts

In the United States when one side loses or is unhappy with something about the outcome of their trial they have a right to appeal.<sup>1</sup> The lawyer representing the party or parties appealing (called the “Appellant” or “Petitioner”) usually files a Notice of Intent to Appeal with the trial court. A transcript of the trial is prepared and sent to the appellate court.<sup>2</sup> The appellate lawyer files a brief laying out the legal<sup>3</sup> errors made at trial and what law applies in this case. The lawyers representing the other party (called the “Respondent” or “Appellee”) files a reply brief. Then there’s oral argument where both lawyers appear before a three-judge court to present their sides of the case. The appellate judges ask questions and then “take the case under submission” (reserve making a decision until a later date).

The judges have a conference to see where they stand on the cases they’ve heard. When two or three judges agree on the outcome (who wins), one of them volunteers to write the “opinion,” which lays out not only the “holdings” (legal rulings) in the case, but also the legal rationale for their decision. A judge who agrees with the judgment or outcome but has other or different reasons, can write a “concurring” opinion. A judge who disagrees with the outcome can write a “dissenting” opinion.

## What You Do (Classroom Instructions)

**Student lawyers:** You read the *McDonald v. Chicago* case materials. Alone or in pairs, attorneys for the Petitioners write the appellate brief; attorneys for Respondents write the reply brief. There’s a set of sample forms and a “Brief Writing Organizer” to use as a guide (see A1–A5). Additionally, your teacher may have you use the “Brief Template” which is an MS Word document that’s designed for you to type your brief right into. You can download the file at <http://cesqd.org/mootcourt.html>.

After you’ve written and submitted your brief, you’ll argue before a three-judge appellate court. This is called “oral argument.” Be ready to respond to the judges’ questions and to counter your opponents’ arguments. Use the “Oral Argument Notemaker” (see A6–A8) to help you. Petitioner argues first, then the Respondent has a turn. After that, both sides have the chance to rebut the other side’s arguments. (In real life only the Petitioner has rebuttal because they have the burden.)

**Student judges:** You need to read the briefs and case materials and then write out some good, tough, probing questions to ask the lawyers. Then, during the hearings, the lawyers argue their cases and the judges interrupt and ask them questions. This is called “oral argument.”

After argument, each judge should write one opinion—majority (outcome, rule, and rationale), concurring (agreeing with the outcome but for different reasons), and/or dissenting (disagreeing with both the outcome and the reasoning).

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1 In a criminal case, only the defendant can appeal a conviction. The state cannot appeal an acquittal, as this would violate the Fifth Amendment’s “double jeopardy” provision.

2 Appellate courts are required to hear all the appeals filed within their jurisdiction, whereas the USSC—and the state supreme courts—only hear the cases they want to.

3 Appeals deal only with legal issues, not factual ones. For example, the facts regarding who did or did not pass the exams would not be appealable. But the issue of whether the exams were fair, is a legal issue, and therefore subject to appeal.

## What You Do (Competition Instructions)

Your team's job is to write two briefs (one for Petitioners/Appellants and one for the Respondents)<sup>1</sup> citing the facts, arguments and case law you think most persuasive for each side. In making your arguments, you need to use and quote from the case materials (pages 1–9.) You can use the "Oral Argument Notemaker" to help you organize your thoughts.

There is also a separate file called, "Brief Template" which can also be downloaded from our Web site at <http://cesqd.org/mootcourt.html>. This file (in MS Word format) is designed for you to type your brief right into it.

On competition day, you'll come out to the courthouse and present your argument before a three-judge appellate court. This is called "oral argument." Be ready to respond to the judges' questions and counter your opponents' arguments. You'll have a total of six minutes (including rebuttal) to argue. You can divide the time up as you please. If you have a partner, each of you can do part of the argument-in-chief (main argument) and part of the rebuttal, or one of you can do the main argument and one can do the rebuttal. Rebuttal is used only to counter your opponents' argument, not to raise new issues. (In real life only the Petitioner has rebuttal because they have the burden.)

## How Court Opinions Are Organized and Used in Real Life

In the legal world, after judges write their opinions, they're usually published in large books (often more than 1500 pages). The books are numbered consecutively, and contain opinions going back to the beginning of the court system. These opinions are then cited by later courts when those courts are in the process of deciding the same or a related issue. The earlier case opinions are precedent for the later ones. The books are organized as follows:

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For example, the case of *Presser v. Illinois*, 116 U. S. 252 (1886) would be found in the 116th volume of USSC cases. The case, which was decided in 1886, begins on page 252. State court decisions also follow a similar numbering system.

## When and How to Cite Case Law

When you quote from a case, you need to include a case citation. Use the following rules:

- When writing a brief, the first time a case is referenced, use the full citation. For example, *Presser v. Illinois*, 116 U. S. 252 (1886).
- Use italics for the case name and put the date in parenthesis.
- In oral argument, the first time a case is mentioned, use the full case name. For example, "as the U.S. Supreme Court in *Presser v. Illinois* said ..."
- After the case has been cited once, just use a short case name like *Presser*.

As the court in *Presser* held "...", or

As the court in the *Presser* case held, "...", or

As the *Presser* court held, "..."

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<sup>1</sup> Written briefs are not required (nor accepted) for the competition, but they're good preparation.

# McDonald v. Chicago

## **Instructions**

This is your case packet. The trial has already taken place. You are now in the fictitious 20th Circuit Court of Appeal. The materials that follow have been taken from the court opinions in the cases you will be citing when you make your arguments. To get the flavor of how judges think and write, some of their actual words and turns of phrase have been kept, and they are in quotation marks. In writing your briefs, one for the Petitioners (gun owners) and one for Respondents (the City of Chicago, IL), cite the facts, reasoning, and case law you think most persuasive for each side. When making your arguments, you need to use, quote, and cite these materials. Legal terms and other possibly unfamiliar words and phrases are defined in brackets [ ].

After you've written your briefs, you'll argue before a three-judge appellate court. This is called "oral argument." Be ready to respond to the judges' questions and your opponents' arguments. The Petitioner argues first, then the Respondent has a turn. After that, both sides have the chance to rebut the other side's arguments. (In real life only Petitioners have rebuttal because they have the burden of proof.)

## **Parties**

*Petitioners:* A number of gun owners (including McDonald) who live in Chicago and suburbs.  
*Respondents:* Chicago (the City) and its suburb Oak Park, IL.

## **Background Information**

Otis McDonald, Adam Orlov, Colleen Lawson, and David Lawson (Chicago petitioners) are Chicago residents who would like to keep handguns in their homes for self-defense, but are prohibited from doing so by Chicago's firearms laws. A City ordinance [local law] provides that "No person shall . . . possess . . . any firearm unless such person is the holder of a valid registration certificate for such firearm." However, the Code then prohibits registration of most handguns, thus effectively banning handgun possession by almost all private citizens who reside in the City. Oak Park has a similar law.

Chicago enacted its handgun ban to protect its residents "from the loss of property and injury or death from fire- arms." However, Otis McDonald, who is in his late seventies, lives in a high-crime neighborhood. He is a community activist involved with alternative policing strategies, and his efforts to improve his neighborhood have subjected him to violent threats from drug dealers. Colleen Lawson is a Chicago resident whose home has been targeted by burglars. "In Mrs. Lawson's judgment, possessing a handgun in Chicago would decrease her chances of suffering serious injury or death should she ever be threatened again in her home." McDonald, Lawson, and the other Chicago petitioners own handguns that they store outside of the city limits, but they would like to keep their handguns in their homes for protection.

1       **Legal/Procedural History**

2       Petitioners, the Chicago residents and two other groups filed suit in Federal District Court  
3       against the City of Chicago. They sought a declaration [court ruling] that the handgun ban  
4       and several related Chicago ordinances violate the Second and Fourteenth Amendments to  
5       the United States Constitution. Another action [lawsuit] challenging the Oak Park law was  
6       filed in the same District Court.

7  
8       **Arguments**

9       **Petitioners:** (the gun owners) Should argue that the Second Amendment **is** incorporated to  
10      the states [applies to the states] through the Fourteenth Amendment and so, **like** the federal  
11      government, states (and cities) are limited in their ability to enact [make] gun control laws.  
12      Also be prepared to argue what types of regulations would and would not be permitted.  
13      They want the lower court’s ruling reversed.

14  
15     **Respondents:** (the City) Argue that the Second Amendment is **not** incorporated to the states  
16     through the Fourteenth Amendment and so, **unlike** the federal government, states (and cities)  
17     are **not** limited by the Constitution in their ability to enact [make] gun control laws. Also be  
18     prepared to argue what types of regulations would and would not be permitted. They want  
19     the lower court’s ruling upheld.

20  
21     **Questions Presented**

- 22     1) Is the Second Amendment incorporated to the states through the Fourteenth Amendment?  
23     2) Can states and cities legally ban (or limit) personal gun ownership?  
24     3) How far, if at all, can laws regulating hand gun possession go? For example, can cities ban  
25     felons from possessing a gun?

26  
27     **Legal Authorities**

28  
29     **U.S. Constitution, Amendment II**

30     A well regulated Militia, being necessary to the security of a free State, the right of the  
31     people to keep and bear arms, shall not be infringed.

32  
33     **U.S. Constitution, Amendment XIV**

34     All persons born or naturalized in the United States, and subject to the jurisdiction thereof,  
35     are citizens of the United States and of the State wherein they reside. No State shall make or  
36     enforce any law which shall abridge the privileges or immunities of citizens of the United  
37     States; nor shall any State deprive any person of life, liberty, or property, without due process  
38     of law; nor deny to any person within its jurisdiction the equal protection of the laws.

# 1      **Incorporation Doctrine**

## 2 3      **The Principle of Incorporation of the of the Bill of Rights to the States Through the** 4      **Fourteenth Amendment**

5  
6      The Bill of Rights (the first 10 amendments to the U.S. Constitution), did not originally  
7      apply to actions by state governments. For example, the First Amendment, which begins  
8      “Congress shall make no law respecting an establishment of religion,” explicitly says that it  
9      only applies to Congress. Following the Civil War, the 14th Amendment was added to the  
10     Constitution. Its due process clause declared that no state shall “deprive any person of life,  
11     liberty, or property, without due process of law.” Beginning in the 1920s, the Supreme Court  
12     interpreted this clause to mean that states could not deprive the people of certain rights.  
13     These rights are “incorporated” into the Due Process Clause of the 14th amendment. But  
14     what rights should be incorporated? The Court took the following approach:

15  
16     In *Twining v. New Jersey* (1908), the Court explained that the only rights the Due Process  
17     Clause prevents states infringing [taking away] were those rights which were “immutable  
18     [unchangeable] principles of justice which inhere [exist] in the very idea of free government  
19     which no member of the Union may disregard.” In *Snyder v. Massachusetts* (1934), the  
20     Court spoke of rights that are “so rooted in the traditions and conscience of our people as  
21     to be ranked as fundamental.” Following this rule over the years, the Supreme Court has  
22     incorporated almost all the rights found in the Bill of Rights, except, however, the Second  
23     Amendment’s right to bear arms.

## 24 25      **Case Law**

26  
27      *Slaughter-House Cases*, 16 Wall. 36, 62, 83 U.S. 36 (1873)

28      **Facts:** The state of Louisiana wanted to regulate the placement of slaughterhouses in cities.

29  
30      **Question:** Was this an appropriate use of the state's *police powers* [making laws for the  
31      common good] to regulate use of private property?

32  
33      **Quotes/Holding:** Yes. Police Powers are may be exercised “on the general and rational  
34      principle that every person ought so to use his property as not to injure his neighbors, and  
35      that private interests must be made subservient [less important] to the general interests of the  
36      community. The Court went on to say that. “Police power ... is much easier to perceive and  
37      realize the existence and sources of it, than to mark its boundaries, or prescribe limits to its  
38      exercise [it is easier to say what it is and where it comes from than to say where it should  
39      stop].  
40

1 “This power is, and must be from its very nature, incapable of any very exact definition or  
2 limitation [no one should can or should define exactly where police power should stop].  
3 Upon it depends the security of social order, the life and health of the citizen, the comfort  
4 of an existence in a thickly populated community, the enjoyment of private social life, and  
5 the beneficial use of property. It extends to the protection of the lives, limbs, health, comfort,  
6 and quiet of all persons, and the protection of all property within the State, . . . and persons  
7 and property are subjected to all kinds of restraints and burdens [people must sacrifice  
8 some liberty] in order to secure the general comfort, health, and prosperity of the State. Of  
9 the perfect right of the legislature to do this, no question ever was, or, upon acknowledged  
10 general principles, ever can be made, so far as natural persons are concerned.”  
11

12 *Presser v. Illinois*, 116 U.S. 252 (1886)

13 **Facts:** Defendant was indicted for violating an Illinois statute, which prohibited parading  
14 with arms through city streets by anyone other than U.S. troops or members of the organized  
15 volunteer militia. Defendant contended that the statute [law] was invalid for conflicting with  
16 the Constitution, including the Second Amendment.  
17

18 **Question:** Did the Illinois law violate the Constitution?  
19

20 **Quotes/Holding:** No. The Illinois statute did not infringe [violate] the right of the People  
21 to keep and bear arms. Additionally, the Second Amendment is a limitation only upon the  
22 power of Congress and the national government.  
23

24 “The [Second] Amendment is a limitation only upon the power of Congress and the national  
25 government, and not upon that of the state. The Second Amendment declares that it shall not  
26 be infringed, but this, as has been seen, means no more than that it shall not be infringed by  
27 Congress. This is one of the amendments that has no other effect than to restrict the powers  
28 of the national government...”  
29

30 *Palko v. Connecticut*, 302 U.S. 319 (1937)

31 **Facts:** Connecticut law permitted the state to appeal criminal cases (which appeared to be a  
32 violation of the Fifth Amendment’s *double jeopardy* clause).  
33

34 **Question:** Does this law violate the Due Process Clause of the Fourteenth Amendment?  
35

36 **Quotes/Holding:** No. Justice Benjamin Cardozo, writing for the court in *Palko*, decided that  
37 incorporation should apply only to those rights essential to “a fair and enlightened system  
38 of justice,” “implicit in the concept of ordered liberty” or “so rooted in the traditions and  
39 conscience of our people as to be ranked as fundamental.”  
40

1 *United States v. Miller*, 307 U.S. 174 (1939)

2 **Facts:** Miller carried an unregistered sawed-off shotgun from one state into another in  
3 violation of Section 11 of the National Firearms Act of 1934. The trial court voided [threw  
4 out] Miller's indictment [charges] on the ground that the Firearms Act violated Miller's right  
5 to keep and bear arms under the Second Amendment.

6  
7 **Question:** Did the National Firearms Act violate the Constitution?

8  
9 **Quotes/Holding:** No. The Supreme Court reversed the trial court, holding that the Second  
10 Amendment protects only those kinds of weapons that could be used by a member of the  
11 militia and saying that there was no proof that the shotgun qualified.

12  
13 In the absence of any evidence tending to show that possession or use of a "shotgun having  
14 a barrel of less than 18 inches in length" at this time has some reasonable relationship to the  
15 preservation or efficiency of a well regulated militia [because Miller failed to prove that the  
16 sawed-off shotgun would be necessary to defend a state's liberty], we cannot say that the  
17 Second Amendment guarantees the right to keep and bear such an instrument. Certainly it  
18 is not within judicial notice that this weapon is any part of the ordinary military equipment  
19 or that its use could contribute to the common defense.

20  
21 The Constitution as originally adopted granted to the Congress power "To provide for  
22 calling forth the Militia to execute the Laws of the Union, suppress Insurrections [put down  
23 uprisings] and repel [fight off] Invasions; To provide for organizing, arming, and disciplining,  
24 the Militia, and for governing such Part of them as may be employed in the Service of the  
25 United States...With obvious purpose to assure the continuation and render possible the  
26 effectiveness of such forces [in order to preserve and strengthen state militias] the declaration  
27 and guarantee of the Second Amendment were made. It must be interpreted and applied  
28 with that end in view."

29  
30 *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Circuit 1982)

31 **Facts:** The Village of Morton Grove passed an ordinance prohibiting the possession of  
32 handguns within the Village's borders. Local handgun owners brought an action to challenge  
33 the ordinance, in part on the grounds that it violated the Second Amendment.

34  
35 **Question:** Does this ordinance violate the Constitution?

36  
37 **Quotes/Holding:** No. The Second Amendment does not apply to the states.

38  
39 For the sake of completeness...we briefly comment on what we believe to be the scope of  
40 the second amendment... "It seems clear that the right to bear arms is inextricably connected

1 to the preservation of a militia. This is precisely the manner in which the Supreme Court  
2 interpreted the Second Amendment in *United States v. Miller*...the only Supreme Court case  
3 specifically addressing that amendment's scope.... Because the Second Amendment is not  
4 applicable to Morton Grove and possession of handguns by individuals is not part of the  
5 right to keep and bear arms, [this city ordinance banning handguns] does not violate the  
6 Second Amendment.”

7  
8 **Quilici dissent:** [This decision is] “particularly disturbing as it sanctions [approves]  
9 governmental action which...impermissibly interferes with basic human freedoms.

10  
11 “The majority cavalierly [without concern] dismisses the argument that the right to possess  
12 commonly owned arms for self-defense and the protection of loved ones is a fundamental  
13 right guaranteed by the Constitution. Justice Cardozo...defined fundamental rights as those  
14 rights ‘implicit in the concept of ordered liberty.’ Surely nothing could be more fundamental  
15 to the concept of ordered liberty than the basic right of an individual, within the confines of  
16 the criminal law, to protect his home and family from unlawful and dangerous intrusions.”

17  
18 *United States v. Salerno*, 481 U. S. 739, 755 (1987)

19 **Facts:** Congress passed a bill allowing certain defendants to be kept in jail prior to trial, in  
20 possible violation of the Fourteenth Amendment's Due Process Clause.

21  
22 **Questions:** To what extent can Congress take the safety of citizens into account when passing  
23 laws?

24  
25 **Quotes/Holding:** “We have repeatedly held that the Government's regulatory interest in  
26 community safety can, in appropriate circumstances, outweigh an individual's liberty  
27 interest. ... And it may require this kind of analysis in virtually every case.”

28  
29 *District of Columbia v. Heller*, 554 U.S. \_\_\_\_ (2008)

30 **Facts:** District of Columbia law banned handgun possession by making it a crime to carry  
31 an unregistered firearm and prohibiting the registration of handguns; the law provided  
32 separately that no person may carry an unlicensed handgun, but authorized the police chief  
33 to issue one-year licenses; and required residents to keep lawfully owned firearms unloaded  
34 and disassembled or bound by a trigger lock or similar device. Respondent Heller, a D.C.  
35 special policeman, applied to register a handgun he wished to keep at home, but the District  
36 refused. He filed this suit seeking, on Second Amendment grounds, to enjoin [prevent] the  
37 city from enforcing (1) the ban on handgun registration, (2) the licensing requirement since  
38 it prohibits carrying an unlicensed firearm in the home, and (3) the trigger-lock requirement  
39 since as it prohibits the use of functional firearms in the home.

1 **Questions:** Do these D.C. laws violate the Constitution?  
2

3 **Quotes/Holding:** Yes. The Court made several points as follows:  
4

5 1. “The Second Amendment protects an individual right to possess a firearm unconnected  
6 with service in a militia, and to use that arm for traditionally lawful purposes, such as  
7 self-defense within the home.  
8

9 (a) “The introductory clause—a well regulated militia ...—goes along with the Court's  
10 interpretation of the main clause—the right to keep and bear arms .... The militia  
11 is comprised of all males physically capable of acting in concert [together] for the  
12 common defense. The Antifederalists feared that the Federal Government would  
13 disarm the people in order to disable this citizens' militia, enabling a politicized  
14 standing army or a select militia to rule. The response was to deny Congress power  
15 to abridge the ancient right of individuals to keep and bear arms, so that the ideal of  
16 a citizens' militia would be preserved.  
17

18 2. “Like most rights, the Second Amendment right is not unlimited. It is not a right to keep  
19 and carry any weapon whatsoever in any manner whatsoever and for whatever purpose:  
20 For example, concealed weapons prohibitions have been upheld under the Amendment.  
21 The Court's opinion should not be taken to cast doubt on longstanding prohibitions on  
22 the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of  
23 firearms in sensitive places such as schools and government buildings, or laws imposing  
24 conditions and qualifications on the commercial sale of arms. *Miller's* holding that the  
25 sorts of weapons protected are those “in common use at the time” finds support in the  
26 historical tradition of prohibiting the carrying of dangerous and unusual weapons.  
27

28 3. “The handgun ban and the trigger-lock requirement (as applied to self-defense) violate the  
29 Second Amendment. The District’s total ban on handgun possession in the home amounts  
30 to a prohibition on an entire class of arms that Americans overwhelmingly choose for the  
31 lawful purpose of self-defense. Under any of the standards of scrutiny [review] the Court  
32 has applied to enumerated [specifically named] constitutional rights, this prohibition—  
33 in the place where the importance of the lawful defense of self, family, and property is  
34 most acute—would fail constitutional muster [would not be constitutional]. Similarly,  
35 the requirement that any lawful firearm in the home be disassembled or bound by a  
36 trigger lock makes it impossible for citizens to use arms for the core lawful purpose of  
37 self-defense and is hence unconstitutional.  
38  
39  
40

1 Finally, since Petitioners agreed that D. C. licensing law is permissible [allowable] if it is  
2 not enforced arbitrarily and capriciously [unfairly], the Court did not address [rule on] the  
3 licensing requirement part of the law.  
4

5 **Heller dissent by Justice Breyer**  
6

7 “At the same time the majority ignores a more important question: Given the purposes for  
8 which the Framers enacted the Second Amendment, how should it be applied to modern-  
9 day circumstances that they could not have anticipated? Assume, for argument’s sake, that  
10 the Framers did intend the Amendment to offer a degree of self-defense protection. Does  
11 that mean that the Framers also intended to guarantee a right to possess a loaded gun near  
12 swimming pools, parks, and playgrounds? That they would not have cared about the children  
13 who might pick up a loaded gun on their parents’ bedside table? That they (who certainly  
14 showed concern for the risk of fire, would have lacked concern for the risk of accidental  
15 deaths or suicides that readily accessible loaded handguns in urban areas might bring?  
16 Unless we believe that they intended future generations to ignore such matters, answering  
17 questions such as the questions in this case requires judgment—judicial judgment exercised  
18 within a framework for constitutional analysis that guides that judgment and which makes  
19 its exercise transparent.  
20

21 “The argument about method, however, is by far the less important argument surrounding  
22 today’s decision. Far more important are the unfortunate consequences that today’s decision  
23 is likely to spawn. Not least of these, as I have said, is the fact that the decision threatens to  
24 throw into doubt the constitutionality of gun laws throughout the United States. I can find  
25 no sound legal basis for launching the courts on so formidable and potentially dangerous a  
26 mission. In my view, there simply is no untouchable constitutional right guaranteed by the  
27 Second Amendment to keep loaded handguns in the house in crime-ridden urban areas.  
28

29 “For these reasons, I conclude that the District’s measure is a proportionate, not a  
30 disproportionate, response to the compelling concerns that led the District to adopt it. And,  
31 for these reasons as well as the independently sufficient reasons set forth by Justice Stevens,  
32 I would find the District’s measure consistent with the Second Amendment’s demands.”  
33  
34  
35  
36  
37  
38  
39  
40

## Table of Citations

### **U.S. Constitution**

Amendment II .....	4
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### **U.S. Supreme Court Cases**

<i>Twining v. New Jersey</i> , 211 U. S. 78, 99 (1908) .....	3
<i>Snyder v. Massachusetts</i> , 291 U. S. 97 (1934) .....	3
<i>Slaughter-House Cases</i> , 16 Wall. 36, 62, 83 U.S. 36 (1873) .....	3
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<i>United States v. Salerno</i> , 481 U. S. 739, 755 (1987) .....	6
<i>District of Columbia v. Heller</i> , 554 U.S. ____ (2008).....	6–8

# Appellate Brief Format

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4 Attorney for Petitioner OTIS MCDONALD, et al

5

6 IN THE TWENTIETH CIRCUIT COURT OF APPEALS

7 IN AND FOR THE UNITED STATES OF AMERICA

8	OTIS MCDONALD,	)	
		)	
9	Petitioner	)	NO. 10-456
		)	
10	vs.	)	
		)	APPELLATE BRIEF
11		)	
	CITY OF CHICAGO,	)	
12	Respondent	)	
		)	
13	_____	)	

## 14 Introduction/Legal History/Facts

15 Petitioner Otis McDonald is a Chicago handgun owner. Due to handgun control laws,  
16 Petitioner is not permitted to keep his handguns in his home. He sued to overturn these laws  
17 on the grounds that ...

## 18 Legal Argument

19 The Second Amendment applies to the states through the Due Process Clause of the  
20 Fourteenth Amendment. Therefore, the Chicago handgun control laws violate Petitioner's right  
21 "to keep and bear arms" and are unconstitutional in that ...

22 Wherefore, Petitioner prays that the lower court's ruling be reversed and that this court  
23 declare the Chicago laws unconstitutional.

24

25 Dated: October 15, 2010

26

Adam Smythe  
Adam Smythe  
Attorney for Petitioner

27

28

**Reply Brief Format**

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5

6 IN THE TWENTIETH CIRCUIT COURT OF APPEALS

7 IN AND FOR THE UNITED STATES OF AMERICA

8	OTIS MCDONALD,	)	
		)	
9	Petitioner	)	NO. 10-456
		)	
10	vs.	)	
		)	REPLY BRIEF
11		)	
	CITY OF CHICAGO,	)	
12	Respondent	)	
		)	
13	_____	)	

14 **Introduction/Legal History/Facts**

15 In order to reduce violent crime, Respondent, City of Chicago enacted laws which  
16 restrict private hand handgun possession. The lower court found these laws constitutional and  
17 a proper use of the City’s police powers. ...

18 **Legal Argument**

19 The Second Amendment does not apply to the states through the Due Process Clause  
20 of the Fourteenth Amendment. Therefore, the Chicago handgun control laws are constitutional  
21 in that ...

22 Wherefore, Respondent prays that the lower court’s ruling that the handgun laws are  
23 constitutional, be upheld.

24

25 Dated: October 15, 2010

La Kisha Johnston  
La Kisha Johnston  
Attorney for Respondent

26

27

28

# Writing a Legal Brief – Overview

## Parts of a Brief<sup>1</sup>

A legal brief should consist of four parts.

- Introduction/Legal History
- Short statement of facts
- Body of the legal argument(s) with citations
- Conclusion (summary of grounds with request restated)

### INTRODUCTION/LEGAL HISTORY

Give a brief legal/procedural history. Next, tell the Court what you want it to do (for example, overturn the lower court ruling) and give a very short summary of the legal grounds (reasons) for this request.

“Petitioner Otis McDonald is Chicago handgun owner. Chicago’s handgun control legislation, in practice, resulted in an almost complete ban on handgun possession in the City. McDonald and the other owners asked the court to declare Chicago’s law unconstitutional on the grounds that ...”

### FACTS

Use the facts most helpful to your side.

- Due to handgun control laws, Petitioner is not permitted to keep his handguns in his home.
- Respondent City of Chicago, passed handgun control laws that were aimed at reducing crime. These laws restricted possession of handguns within the city limits.

### BODY OF THE LEGAL ARGUMENT WITH CITATIONS

Address each issue. Begin each one with a topic sentence (very short summary) in your own words. Use the “Brief Writing Organizer” to help you. Address the issues of a) how/whether the Second Amendment applies to the states and b) what type of handgun control legislation state can enact.

### CONCLUSION

Summarize the ground for relief (the legal reasons why the court should grant your prayer (request) and the relief sought (what you want the court to do).

Use “Wherefore, the Petitioner or the Respondent respectfully requests that ...”

## Citing Case Law in Your Argument

### HOW TO CITE CASES

There are fairly standard ways that cases are cited in briefs (see page iv of your Moot Court “Introduction”).

### USING CATCH PHRASES

the instant case (this case, *McDonald v. Chicago*)

---

1 There is a sample brief and format in this packet (see pages A1–A2).

## Brief Writing Organizer

Use this organizer to brainstorm and organize your thoughts before typing your brief.

### INTRODUCTION

The introduction gives a brief legal/procedural background. Then it tells the court what you want it to do and gives a short explanation of the legal reasons why. "Petitioner Otis McDonald is a Chicago handgun owner. Due to handgun control legislation, Petitioner is not permitted to keep his handguns in his home. He sued to overturn these laws ..."

### FACTS

Use the facts most helpful to your side.

- Petitioner: The effect of the Chicago handgun control legislation was essentially a complete ban on handgun possession, a violation of the Second and Fourteenth Amendments.
- Respondent: In order to reduce violent crime, Respondent, City of Chicago enacted laws which restrict private hand handgun possession.

### LEGAL ARGUMENTS

You should argue the points and cite cases as you see fit. Begin each argument with a topic sentence and end with a conclusion (see next page for more writing space). For example:

"The Chicago handgun legislation was a proper use of the City's police powers in that ..."

**LEGAL ARGUMENTS**

Continue your argument here and then use the back, if needed.

**CONCLUSION**

Summarize your legal points and end with a what you want the court to do.

“Wherefore, the Petitioner/Respondent respectfully requests that this court ...”

# Giving an Oral Argument – Overview

## Parts of an Argument

Your oral argument will be very similar to your brief. The main differences are that you will be addressing the judges in person, you'll have to respond to their questions and your opponents arguments, and you'll have time for rebuttal (a presentation where you explain what's wrong with your opponents' arguments).

An oral argument consists of the same four parts as the brief.

- Introduction/Legal History
- Short statement of facts
- Body of the legal argument(s) with citations
- Conclusion (summary of grounds with request restated)

### INTRODUCTION/LEGAL HISTORY

The introduction tells the Court what you want it to do (i.e., overturn the handgun ban ...) and a gives a very short summary of the legal grounds (reasons) for this request. The judges are addressed as "Your Honors."

"Your Honors, Chicago's handgun control legislation, in practice, resulted in an almost complete ban on handgun possession in the City ..."

### FACTS

Use the facts most helpful to your side.

- Petitioner: The effect of the Chicago handgun control legislation was essentially a complete ban on handgun possession, a violation of the Second and Fourteenth Amendments.
- Respondent: The Chicago handgun legislation was a proper use of the City's police powers.

### BODY OF THE LEGAL ARGUMENT WITH CITATIONS

Use the "Oral Argument Notemaker" to brainstorm what questions the judges might ask and your responses to your opponents' arguments.

### CONCLUSION

Summarize the ground for relief (the legal reasons why the court should grant your prayer (request) and the relief sought (what you want the court to do).

"In conclusion, Chicago's handgun ordinance is unconstitutional ... Wherefore, Respondent respectfully requests that this court reverse the lower court's ruling. Thank you."

## Citing Case Law in Your Argument

Cases are cited in oral argument in the same way they're cited in briefs (see page iv of your Moot Court "Introduction"). You can use legal "catch phrases" like "the instant case", "on point"

## Speaking

Oral argument is a persuasive speech designed to get the judges to rule in your favor. Good lawyers:

- Make eye contact
- Speak slowly and clearly
- Advocate for their side, have passion

## Oral Argument Notemaker

Use this form to make notes on how to answer the judges' questions and respond to your opponents' arguments (use back if necessary). You can also outline your rebuttal here.

<b>Judge Questions</b>	<b>Your Responses</b>	<b>Your Rebuttal and/or Response to Opponents' Arguments</b>

## Oral Argument Notemaker page 2

Judge Questions	Your Responses	Your Rebuttal and/or Response to Opponents' Arguments

### Oral Argument Notemaker page 3

Judge Questions	Your Responses	Your Rebuttal and/or Response to Opponents' Arguments

## Sample Courtroom Dialog for Appellate Argument

The room is arranged as a courtroom (see Appellate Court Diagram, Appendix D). The lawyers are seated at counsel table (appellant at the right, respondent on the left).

All are present except the three judges. The Clerk/Timer (CI/Timer) stand and speaks.

<b>CI/Timer</b>	All rise. The Court of Appeal for the Twentieth Circuit is now in session.  The Honorable Luke George, Presiding Judge; the Honorable June Sommers and Stan Nord presiding.
-----------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

*All three judges enter the courtroom and sit down. The PJ (presiding judge) raps the gavel once.*

<b>CI/Timer</b>	Please be seated and come to order. Calling the case of <i>McDonald v. Chicago</i> .
<b>PJ</b>	Counsel, please state your names and appearances for the record.

*Lawyers stand. (Lawyers ALWAYS stand when addressing the judges.)*

*Each in turn says:*

<b>Attys</b>	Good morning your honors, Adam Smythe, representing the Petitioner in this action. I will be delivering the argument-in-chief (main argument).  Good morning your honors, Chau Nguyen, representing the Petitioner in this action. I will be delivering the rebuttal argument.  Good morning your honors, José Martinez, representing the Respondent in this action. I will be delivering part of both the argument-in-chief and the rebuttal.  Good morning your honors, LaKisha Johnston, representing the Respondent in this action. I will also be delivering part of both the argument-in-chief and the rebuttal.  Good morning your honors, Dalbir Singh, I'll be your clerk and official timer this morning.  Good morning your honors, Fran Jones, I'm the unofficial timer.
<b>PJ</b>	Before we begin, I'm going to read some preliminary instructions.

*PJ reads instructions or asks to skip reading them. Then the PJ addresses the P Attys.*

<b>PJ</b>	Mr. Smythe, please proceed with your argument.
<b>P Atty</b>	Yes, your honor

*Adam Smythe stands and delivers his argument-in-chief.*

On this team only Mr. Smythe is delivering the main argument.

Personnel are:

(PJ) Presiding Judge (P Atty) P Petitioner's attorney; (R Atty) Respondent's attorney; (Attys) All or some of the attorneys

After Mr. Smythe has delivered his arguments-in-chief, then the PJ asks the R Atty(s) to give their arguments.

<b>PJ</b>	Mr. Martinez please proceed with your argument.
<b>P Atty</b>	Yes, your honor.

*Mr. Martinez and then Ms. Johnston stand and deliver their arguments-in-chief.*

On the Martinez/Johnston team, Martinez and Johnston are sharing both the main argument and the rebuttal.

*Then the PJ addresses P Attys*

<b>PJ</b>	Ms. Nguyen you may proceed with rebuttal. Remember that this time may only be used to rebut opposing counsel's argument and not to raise new issues.
-----------	------------------------------------------------------------------------------------------------------------------------------------------------------

*Ms. Nguyen delivers her rebuttal.*

On the Smythe/Nguyen team, only Ms. Nguyen is doing the rebuttal.

*When she is finished (or time is called) the PJ addresses the R Attys*

<b>PJ</b>	Ms. Johnston you may proceed with rebuttal.
-----------	---------------------------------------------

*When Ms. Johnston and then Mr. Martinez have finished rebuttal (or time is called) the PJ addresses everyone:*

<b>PJ</b>	This concludes the oral argument in <i>McDonald v. Chicago</i> . Thank you counsel. <b>Before we make any comments</b> , would my fellow justices please put their score sheets in this envelope? <i>Now seal the envelope and hand it to the official timer/clerk.</i> Would the clerk please take this envelope with the score sheets and bring it to the Moot Court staff?
<b>CI/Timer</b>	All rise.

*After the judges are off the bench.*

<b>CI/Timer</b>	You may be seated.
-----------------	--------------------

## Fill-in Courtroom Dialog for Appellate Argument

The room is arranged as a courtroom (see Appellate Court Diagram, Appendix D). The lawyers are seated at counsel table (appellant at the right, respondent on the left).

All are present except the three judges. The Clerk/Timer (CI/Timer) stand and speaks.

<b>CI/Timer</b>	All rise. The Court of Appeal for the Twentieth Circuit is now in session. The Honorable _____ presiding.
-----------------	--------------------------------------------------------------------------------------------------------------

*All three judges enter the courtroom and sit down. The PJ (presiding judge) raps the gavel once.*

<b>CI/Timer</b>	Please be seated and come to order. Calling the case of _____.
<b>PJ</b>	Counsel, please state your names and appearances for the record.

*Lawyers stand. (Lawyers ALWAYS stand when addressing the judges.)*

*Each in turn says:*

<b>Attys</b>	Good morning your honors, _____, representing the Petitioner in this action. I will be delivering the _____. Good morning your honors, _____, representing the Petitioner in this action. I will be delivering the _____ Good morning your honors, _____, representing the Respondent in this action. I will be delivering the _____ Good morning your honors, _____, representing the Respondent in this action. I will be delivering the _____ Good morning your honors, _____, I'll be your clerk and official timer this morning. Good morning your honors, _____, I'm the unofficial timer.
<b>PJ</b>	Before we begin, I'm going to read some preliminary instructions.

*PJ reads instructions or asks to skip reading them. Then the PJ addresses the P Attys*

<b>PJ</b>	_____, please proceed with your argument.
<b>P Atty</b>	Yes, your honor

*One of the P Attys stands and delivers his/her argument-in-chief (main argument). Then, if appropriate, the other P Atty stands and delivers his/her argument-in-chief.*

Personnel are:

(PJ) Presiding Judge (P Atty) P Petitioner's attorney; (R Atty) Respondent's attorney; (Attys) All or some of the attorneys

After the P Atty(s) have delivered their arguments-in-chief, then the PJ asks the R Atty(s) to give their arguments.

<b>PJ</b>	_____, please proceed with your argument.
<b>P Atty</b>	Yes, your honor.

*The R Atty(s) stand and deliver their arguments-in-chief. Then the PJ addresses P Atty(s):*

<b>PJ</b>	_____, you may proceed with rebuttal. Remember that this time may only be used to rebut opposing counsel's argument and not to raise new issues.
-----------	--------------------------------------------------------------------------------------------------------------------------------------------------

*When P Atty(s) have finished rebuttal, (or time is called) the PJ addresses R Atty:*

<b>PJ</b>	_____, you may proceed with rebuttal.
-----------	---------------------------------------

*When R Atty(s) have finished rebuttal (or time is called) the PJ addresses everyone:*

<b>PJ</b>	This concludes the oral argument in _____. Thank you counsel. <b>Before we make any comments</b> , would my fellow justices please put their score sheets in this envelope? <i>Now seal the envelope and hand it to the official timer/clerk.</i> Would the clerk please take this envelope with the score sheets and bring it to the Moot Court staff?
<b>Cl/Timer</b>	All rise.

*After the judges are off the bench:*

<b>Cl/Timer</b>	You may be seated.
-----------------	--------------------

Name \_\_\_\_\_

Overall Grade \_\_\_\_\_

## Grade/Rubric Sheet for Moot Court the Appellate Process

### PERFORMANCE AND WORK PRODUCT

#### **Attorneys:**

Oral Argument \_\_\_\_\_ /50

- Had well organized argument that was easy to follow
- Appeared knowledgeable on issues; was able to respond well to questions
- Showed poise, passion and persuasiveness
- Countered opponents arguments in rebuttal
- Cited cases (if required)

Written Brief \_\_\_\_\_ /50

- Showed clear reasoning
- Made all important arguments
- Was well written and edited
- Used proper format
- Cited cases to support arguments (if required)

Total \_\_\_\_\_ /100

#### **Judges:**

Bench Performance \_\_\_\_\_ /50

- Asked the lawyers good questions
- Had good judicial temperament (looked an acted like a judge)

Written Opinion \_\_\_\_\_ /50

- Showed clear reasoning
- Covered all important issues
- Was well written and edited
- Used proper format
- Cited cases to support arguments (if required)

Total \_\_\_\_\_ /100

SUMMARY AND ANALYSIS GRADE ( ) \_\_\_\_\_

- A) Summary of Appellate Process
- B) Activity and Learning Evaluation
- C) Analysis of participant performance

SELF GRADE ( ) \_\_\_\_\_

- Self-Assessment Sheet

Name \_\_\_\_\_

Due on \_\_\_\_\_

## **Self-Assessment for Moot Court Exploring the Appellate Process**

### YOUR JOURNAL

- 1 Describe your ideas on how appellate process works. Tell whether you think it is effective and fair and your reasons for your opinion.
- 2 Write about your personal experiences, impressions, and thoughts during and after participating in the appellate process.

### SELF GRADE

Please grade yourself on a scale of 1 to 5 (with 5 being the best) for your **participation** in the “Moot Court – Exploring the Appellate Process,” focusing on how well you prepared for and performed your part.

I feel my grade for Moot Court should be \_\_\_\_\_ because....

## **Questionnaire for Moot Court Exploring the Appellate Process**

- A. Summarize the appellate process. Use graphs, flowcharts, pictures, graphics, essays, music, dance, electronics media, or a combination of these. Be creative!
- B. Evaluate the activity and your learning style (Please attach sheet.)

### ***The Activity***

1. How valuable was the simulation in helping you understand the appeals process?
2. What worked well in the simulation? Why?
3. What didn't work well? Why?
4. What was your favorite part? Least favorite? Explain why.
5. What things made you most frustrated about oral arguments? The appeals process in general?
6. Did participating in this activity change any preconceived ideas you had about how the appeals process works? What were they and how did they change?
7. How would you improve this activity for next year?

### ***Your Learning Style***

Think about how you like to learn (reading, listening to lectures, participating in simulations, a combination of those) when you answer the following questions.

1. Did taking part in this activity give you a better overall idea of how the appeals process works than reading or listening to lectures would have. Why/why not?
2. In terms of remembering details and vocabulary (for example, what "brief" means), which form(s) of learning works best for you? Why?
3. Five years from now, do you think you'll remember more about how appeals work than you would have from just reading and lectures? Explain.
4. Is your understanding of the appeals process deeper and/or broader than it would have been had you learned about it through reading and lectures? Why/why not?
5. Was doing this activity more enjoyable than reading and lectures? Why/why not?
6. Did doing this activity make you want to come to class more? Why/why not?

**C. Analyze the Participants**

List the judges and the lawyers whose courtroom presentations you watched and/or participated in. Comment on each person's overall performance. Include specific examples. (Use the back if necessary.)

Name \_\_\_\_\_

Overall Grade \_\_\_\_\_

## **Rubric for Oral Argument**

Evaluate the presentation on a 1 to 5 scale (5 is the highest) using the following criteria:

### **Preparation and Organization of Main Argument**

Introduces all attorneys using introduction form \_\_\_\_\_

Begins with overview of issues \_\_\_\_\_

Gives brief summary of facts \_\_\_\_\_

Makes request for relief (what you want the court to do) \_\_\_\_\_

Has clear main argument that shows good grasp of legal principles \_\_\_\_\_

Cites authorities (cases) \_\_\_\_\_

### **Answering questions**

Shows ability to think on feet \_\_\_\_\_

Responds well to the judges (shows understanding of judges' questions) \_\_\_\_\_

Weaves questions into argument \_\_\_\_\_

Transitions smoothly between answers and prepared argument \_\_\_\_\_

Uses questions to his/her advantage (ie to point out weaknesses in opponent's position) \_\_\_\_\_

### **Performance and Persuasiveness**

Makes eye contact \_\_\_\_\_

Has pleasant and audible tone of voice \_\_\_\_\_

Has good rate of speaking, pronunciation, grammar \_\_\_\_\_

Uses advocacy tone (strongly arguing one's side without being obnoxious) \_\_\_\_\_

Avoids reading as much as possible \_\_\_\_\_

Uses notes effectively (ie to get quotes exactly right) \_\_\_\_\_

Uses time effectively \_\_\_\_\_

Uses natural gestures, abstains from annoying mannerisms, has good posture \_\_\_\_\_

### **Courtroom Conduct**

Has appropriate attire \_\_\_\_\_

Exhibits proper counsel table behavior (assists co-counsel, pays attention when not presenting) \_\_\_\_\_

Avoids inappropriate use of first person and slang \_\_\_\_\_

Is deferential towards the bench \_\_\_\_\_

Name of speaker \_\_\_\_\_

## **Listening/Speaking Rubric for Speech or Oral Argument**

While listening to your classmates speak, evaluate the speeches on a 1 to 5 scale (5 is the highest) using the following criteria:

1. The speech/argument was well organized. \_\_\_\_\_
2. The speaker presented evidence (cited cases) to back up his/her points and quoted from the materials. \_\_\_\_\_
3. The arguments were logical and coherent. \_\_\_\_\_
4. The speech anticipated your concerns and addressed them. \_\_\_\_\_
5. The speaker used language that was correct, clear and appropriate. \_\_\_\_\_
6. The speaker did not use logical fallacies in the speech (e.g. false cause and effect, red herring, overgeneralization, bandwagon effect. \_\_\_\_\_
7. The speaker had good diction (pronounced words clearly and spoke loudly enough to be heard). \_\_\_\_\_
8. The speaker used effective and interesting language and had a speaking style that was enjoyable to listen to. \_\_\_\_\_
9. You were persuaded by what the speaker said and/or the manner in which he/she delivered the speech. \_\_\_\_\_

Name \_\_\_\_\_

Overall Grade \_\_\_\_\_

## Brief Writing Rubric

Evaluate the brief on a 1 to 5 scale (5 is the highest) using the following criteria:

The brief:

Used proper format (see Brief Formats pages A1-A2) \_\_\_\_\_

Followed Brief Writing Organizer pages A3–A5 as follows:

- Introduction included short legal history
- Introduction made clear request for relief (what you want the court to do) \_\_\_\_\_
- Introduction gave short overview of issues \_\_\_\_\_
- Presented the facts most helpful to your side of the case \_\_\_\_\_
- Addressed all arguments \_\_\_\_\_
- Had a conclusion that restated what you want the court to do \_\_\_\_\_

Had clear arguments that showed good grasp of legal principles \_\_\_\_\_

Was well structured and easy to follow \_\_\_\_\_

Was well written and carefully edited \_\_\_\_\_

Cited precedent (cases, treaties, etc.) to support each conclusion \_\_\_\_\_

Name \_\_\_\_\_

Overall Grade \_\_\_\_\_

## **Rubric for Student Justice Performance**

Evaluate the presentation on a 1-5 scale (5 is the highest) using the following criteria:

### **Preparation and Organization of Main Argument**

Introduces himself/herself using introduction form \_\_\_\_\_

### **Asking Questions**

Shows ability to think on feet \_\_\_\_\_

Interrupts speaker in an appropriate manner \_\_\_\_\_

Weaves in hypothetical questions \_\_\_\_\_

Asks questions that pertain to the point being argued \_\_\_\_\_

Uses questions to point out strengths in opponent's position \_\_\_\_\_

Gives verbal prompts to provide smooth transitions in each part of the oral arguments \_\_\_\_\_

Clearly indicates when the attorneys are to proceed with their argument \_\_\_\_\_

### **Performance and Persuasiveness**

Makes eye contact \_\_\_\_\_

Has pleasant and audible tone of voice \_\_\_\_\_

Has good rate of speaking, pronunciation, grammar \_\_\_\_\_

Uses professional tone (does not indicate favoritism) \_\_\_\_\_

Uses natural gestures, abstains from annoying mannerisms, has good posture \_\_\_\_\_

### **Courtroom Conduct**

Has appropriate attire \_\_\_\_\_

Exhibits proper behavior during oral arguments \_\_\_\_\_

Avoids inappropriate use of first person and slang \_\_\_\_\_

Name \_\_\_\_\_

Overall Grade \_\_\_\_\_

## **Opinion Writing Rubric (for Student Justices)**

Evaluate the brief on a 1 to 5 scale (5 is the highest) using the following criteria:

The opinion:

Used proper format (see Opinion Format and Sample) \_\_\_\_\_

- Introduction included short legal history
- Introduction gave short overview of issues \_\_\_\_\_
- Introduction indicated what the justice thought the outcome should be \_\_\_\_\_

Covered all relevant issues addressed by the attorneys \_\_\_\_\_

Had clear arguments that showed good grasp of legal principles \_\_\_\_\_

Was well structured and easy to follow \_\_\_\_\_

Was well written and carefully edited \_\_\_\_\_

Cited precedent (cases, treaties, etc.) to support each conclusion \_\_\_\_\_

# Appellate Argument and Opinion Samples

## Instructions

You have been provided with a packet of materials that include part of the constitution, statutes and case law excerpts. You're free to quote from these materials to write your briefs. Judges are also free to use **any** materials in the case packet to write their opinions and are **not** limited just to what the attorneys cited in their briefs. However, nothing outside the case packet can be cited by anyone.

Note: Be sure to use the caption format for this year's case (see pages A1 and A2 of the case packet).

## Issue Presented

The constitutionality of California Penal Code §12280, a statute that bans possession of certain assault weapons and requires registration of others. Defendant and Petitioner, Shawn Brunetti was convicted of possessing an unregistered AK-47 assault rifle in violation of this statute.

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Chau Nguyen  
2 1 Wright Way  
Cityville, CA 00000  
3 (000) 999-0000

4 Attorney for Petitioner SHAWN BRUNETTI

5

6 IN THE TWENTIETH CIRCUIT COURT OF APPEALS

7 IN AND FOR THE UNITED STATES OF AMERICA

8 THE PEOPLE,	)	
	)	
9 Plainiff and Respondent	)	NO. 00-456
	)	
10 vs.	)	
	)	APPELLATE BRIEF
	)	
11 SHAWN BRUNETTI,	)	
	)	
12 Defendant and Petitioner	)	
	)	
13 _____	)	

14 **Introduction/Legal History**

15 Petitioner SHAWN BRUNETTI, was convicted of violating California Penal Code  
16 §12280, a ban on possession of assault weapons. Petitioner requests that his conviction be  
17 reversed on the grounds that this ban on assault weapons violates his Second Amendment  
18 rights.

19 **Facts**

20 Petitioner owned an AK-47 assault rifle which was not registered.

21 **Legal Argument**

22 The Second Amendment confers an individual right to keep and bear arms. This  
23 individual right is also a fundamental right, and its incorporation through the due process  
24 clause of the Fourteenth Amendment entitles him to its protection. Because this statute  
25 constitutes an unreasonable prohibition on this fundamental, individual right, his conviction is  
26 unconstitutional.

27

28

1     **I     Individual Rights**

2             The Constitution grants Congress the power to call forth, provide for, organize, arm, and  
3 discipline the militia. The founding fathers intended the Second Amendment as a check on this  
4 Congressional power. The plain language of the amendment’s operative clause, “the right of  
5 the people to keep and bear arms, shall not be abridged,” is evidence that the founding fathers  
6 intended this amendment to confer an individual right. This “right of the people” is the same  
7 language used in the First and Fourth amendments. Since it is well established that the First and  
8 Fourth Amendments protect individuals, the use of the same phrase in the Second amendment  
9 strongly implies that the right to keep and bear arms is also an individual’s right.

10            The U.S. Supreme Court, and several commentators of the time, such as Thomas  
11 Cooley, *Principles of Constitutional Law* (1898), have all interpreted the Second amendment  
12 as a right of every single individual. In 1939, the United States Supreme Court confirmed this  
13 interpretation in *U.S. v. Miller* 300 U.S. 174 (1937). The court held that the possession of a  
14 firearm by an individual, so long as the firearm had a military application, would be protected  
15 by the Second amendment. And more recently, Justice Thomas noted in *Printz v. U.S.* 117  
16 S. Ct. 2365 (1997) “the impressive array of historical evidence, a growing body of scholarly  
17 commentary indicates that the right to keep and bear arms is, as the text suggests, a personal  
18 right.”

19     **II     Incorporation**

20            But the right to bear arms is more than personal, it’s fundamental. Justice Benjamin  
21 Cardozo wrote in *Palko v. Conn.* 302 U.S. 319 (1937) that those rights that are “implicit in  
22 the concept of ordered liberty or rooted in the traditions and conscience of our people as  
23 to be ranked as fundamental” should be incorporated to the states through the Fourteenth  
24 Amendment. In deciding whether a provision of the Bill of Rights is so fundamental as to justify  
25 incorporation, the Supreme Court has traditionally used two tests: how highly the Founders  
26 valued the right, and the extent to which the right is rooted in our common heritage.

27  
28

1           That the Founders felt the right to bear arms was fundamental and part of ordered liberty  
2 is hardly in dispute. As Don Kates in law review article explained, “The right to arms in the  
3 Founders’ day hailed as not only fundamental to their legal and political heritage, but implicit in  
4 the premier and seminal natural right of self-defense.” Further, as the dissent in *Quillici v. Village*  
5 *of Morton Grove* 564 F.2d 916 (1st Circuit 1942) makes clear, “Surely nothing could be more  
6 fundamental to the concept of an ordered liberty than the basic right of an individual, within  
7 the confines of the criminal law, to protect his home and family from unlawful and dangerous  
8 intrusions.” The right to bear arms is a fundamental right, and therefore applies to the states.

9       **III     Unreasonable Prohibition**

10           Because this statute is an outright ban, it is an unreasonable restriction on a citizen’s  
11 fundamental right to bear arms. In *State v. Dawson*, 272 N.C. 535 (1968) the court said that  
12 the right of an individual to bear arms is not absolute, but subject to regulation. There is no  
13 dispute that firearms require regulation that’s why age requirements, background checks, and  
14 registration are all necessary and reasonable requirements of firearm ownership. An outright  
15 ban, however, is neither necessary nor reasonable. It is a violation of Mr. Brunetti’s and every  
16 citizen’s constitutional rights.

17       **Conclusion**

18           The right to bear arms is an individual right and is applicable to the states through the  
19 Fourteenth Amendment. Therefore, PC §12280 is unconstitutional.

20           Wherefore, Petitioner, Shawn Brunetti respectfully requests that his conviction be  
21 reversed.

22

23   Dated: October 10, 0000

24

Adam Smythe  
Adam Smythe  
Attorney for Petitioner

25

26

27

28

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4 Attorneys for Respondent THE PEOPLE

5

6 IN THE TWENTIETH CIRCUIT COURT OF APPEALS

7 IN AND FOR THE UNITED STATES OF AMERICA

8	THE PEOPLE,	)	
9	Plainiff and Respondent	)	NO. 00-456
10	vs.	)	
11		)	REPLY BRIEF
12	SHAWN BRUNETTI ,	)	
13	Defendant and Petitioner	)	
	_____	)	

14 **Introduction/Legal History**

15 SHAWN BRUNETTI was convicted of violating California Penal Code §12280, a ban  
16 on possession of assault weapons. Respondent requests that his conviction be affirmed on the  
17 grounds that this ban on assault weapons does not violate his Second Amendment rights.

18 **Facts**

19 Petitioner owned an AK-47 assault rifle which was not registered.

20 **Legal Argument**

21 For the Petitioner to persuade this court that California PC §12280 is unconstitutional,  
22 they must clear three hurdles. They must show that the Second Amendment limits the power  
23 of the states to regulate firearms; they must show that it grants an individual right to possess  
24 firearms, and finally they must show that the statute in question constitutes an unreasonable  
25 restriction on possessing firearms. The Petitioner cannot clear any of these hurdles.

26

27

28

1 **I The Second Amendment Does Not Limit the Power of States to Regulate Firearms**

2 The Supreme Court has squarely rejected the Petitioner’s contention that the Second  
3 Amendment applies to the states. In *Presser v. Illinois*, 116 U.S. 252 (1886) the court held that  
4 the Second Amendment “is a limitation only upon the power of Congress and the national  
5 government, and not upon that of the state.”

6 The Presser ruling has never been disturbed. In fact, as recently as 1982, in *Quilici v.*  
7 *Village of Morton Grove* 564 F.2d 916 (1st Circuit 1942), the court recognized that even though  
8 *Presser* was decided a hundred years ago, it is as good law today as it was in 1886. In *Quilici*  
9 the Seventh Circuit reaffirmed *Presser’s* ruling that the Second Amendment does not apply to the  
10 states. In *Quilici* case, the village passed an ordinance banning the possession of all handguns.  
11 Gun owners filed suit, claiming that the ordinance violated the Second Amendment. The court  
12 upheld the ordinance, ruling, as in *Presser*, that the Second Amendment does not apply to the  
13 states.

14 The Petitioner also claims that the Second Amendment applies to the states by virtue  
15 of incorporation through the due process clause of the Fourteenth Amendment. This claim,  
16 however, is wholly unsupported by case law. Although the Supreme Court has incorporated  
17 almost all the amendments found in the Bill of Rights, it has never, not in the 80 years that it  
18 has been incorporating amendments, ever incorporated the Second. Lower courts that have  
19 been asked to consider whether the Second Amendment is incorporated, such as the *Quilici*  
20 court, have rejected the Petitioner’s claim that it is. The Second Amendment is not incorporated,  
21 leaving states free to regulate firearms. The Petitioner, then, cannot claim the Second  
22 Amendment’s protection against a state law.

23 **II The Second Amendment Grants Only a Collective, Not Individual Right**

24 The Petitioner also contends that the Second Amendment grants an individual right to  
25 possess firearms. Again their contention lacks legal foundation. The right that the amendment  
26 grants is a collective one, as shown by the Supreme Court in *U.S. v. Miller* 300 U.S. 174  
27 (1937). In *Miller*, the court held that Second Amendment had the “obvious purpose to assure  
28 the continuation and render possible the effectiveness of such forces” as the militias. The *Miller*

1 court goes on to state that the amendment “must be interpreted and applied with that end in  
2 view.” *Miller* clearly establishes that the purpose of the Second Amendment is to preserve the  
3 effectiveness of the militias. Since privately-owned weapons do not contribute to this purpose,  
4 the amendment does not protect them. This rule was followed in *Cases v. United States*, 131  
5 F.2d 916 (1st Circuit 1942) where the circuit court reaffirmed that the Second Amendment  
6 “was designed to foster a well-regulated militia as necessary to the security of a free state, and  
7 therefore does not confer an individual right to keep and bear arms.”

8 **III The Statue Is a Reasonable Restriction on Assault Weapons**

9 Finally, the Petitioner attacks the statue because it bans assault weapons outright. Courts  
10 such as *Quilici*, however, have validated statutes that ban entire classes of firearms. California’s  
11 ban on assault weapons is therefore constitutional.

12 **Conclusion**

13 To find in favor of the Petitioner you must accept all three of their arguments. And as  
14 we have shown, all three of Petitioner’s arguments run counter to law. California Penal Code  
15 §12280 is constitutional.

16 Wherefore, we respectfully request that you affirm Mr. Brunetti’s conviction.

17

18 Dated: October 10, 0000

La Kisha Johnston  
La Kisha Johnston  
Attorney for Respondent

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27

28

IN THE TWENTIETH CIRCUIT  
IN AND FOR THE UNITED STATES OF AMERICA

PEOPLE OF THE STATE OF CALIFORNIA )  
Plaintiff and Respondent )  
v. )  
SHAWN BRUNETTI, )  
Defendant and Petitioner )  
\_\_\_\_\_ )

Appeal from the United States District Court  
for the Northern District of California  
John Doe, District Judge, Presiding  
Argued and submitted October 20, 2000—Martinez, California

Filed October 20, 2000  
Before: Anne Pierce, George Stein, and  
Kazu Nakanishi, Circuit Judges.

Opinion by Anne Pierce; Concurring opinion by George Stein  
Dissent by Judge Kazu Nakanishi

APPEARANCES OF COUNSEL

Victoria Potts and George Peck argued for the Petitioner/Appellant  
Mark Easton and Scott Ramirez argued for Respondent

OPINION OF THE COURT

Judge Ann Pierce delivered the majority opinion.

It is the opinion of the court that California Penal Code § 12280 is constitutional.

**Facts**

Petitioner, Shawn Brunetti was convicted of violating Penal Code §12280 because he was found to be in possession of an unregistered AK-47 assault rifle.

## **I Incorporation**

As Justice Benjamin Cardozo so elegantly wrote in *Palko v. Conn.* 302 U.S. 319 (1937) “those rights implicit in the concept of ordered liberty or rooted in the traditions and conscience of our people as to be ranked as fundamental should be incorporated to the states through the Fourteenth Amendment.” This Court finds that the Second Amendment is a fundamental right and is therefore incorporated to the states through the Fourteenth.

## **II Collective versus Individual Right**

In *Cases v. United States*, 302 U.S. 319 (1937) the U.S. Supreme Court reaffirmed that the Second Amendment “was designed to foster a well-regulated militia as necessary to the security of a free state, and therefore does not confer an individual right to keep and bear arms.” Based on this reasoning, we hold that the words of the Second Amendment, “A well regulated militia, as being necessary to the security of a free State, the right of the people to keep and bear arms shall not be abridged” indicates a collective, not individual right.

## **III Reasonableness**

The legislation in question, PC §12280, defines assault weapons as: semiautomatic firearms including the AK series. Assault weapons are a major problem in our state. As this legislation does not ban all hand guns, it is a good balance between our citizens’ right to bear arms and the need to protect innocent victims from gun violence.

## **Conclusion**

We therefore affirm Petitioner’s conviction under Penal Code §12280, for failing to register his AK-47 assault weapon as required.

So ordered.

# 2010 MOOT COURT

## THE CALIFORNIA HIGH SCHOOL APPELLATE COMPETITION

### THE RULES

- § 100. Competition Administration
- § 101. Teams, Fees and Deadlines
- § 102. Assistance, Research and Workshop
- § 103. Briefs
- § 104. Oral Arguments
- § 105. Preliminary Rounds
- § 106. Semifinal Round and Championship Match
- § 107. Participant Conduct, Sportsmanship and Ethics
- § 108. Interpretation of Rules
- § 109. Announcements of Scores
- § 110. Awards
- § 111. Event Itinerary
- Appendix

#### § 100. Competition Administration

This competition is hosted by the Contra Costa County Bar Association (CCCBA). Carla Garrett (the Organizer) has the authority to interpret and to amend these rules and to resolve any issues about the competition. Decisions by the Organizer in regards to any aspect of this competition are final. The Organizer can be contacted as follows:

By phone: (925) 947-4356

By email: mootcourt2010@cesqd.org

By mail: Center for Economic and Civic Education, PO Box 23841, Pleasant Hill, 94523

#### § 101. Teams, Fees and Deadlines

- (1) A team consists of two to five members. In each round, one or two members will present the oral argument and one member of the **Petitioner's** team keeps time. The decision as to which team members perform which tasks is up to the team, **but a timekeeper is mandatory.**
- (2) Team members must be enrolled at the same high school and can only be on one team. Homeschoolers may participate in one of two ways.
  - a) as a member of a team at the public school she/he would attend if not homeschooled, or
  - b) as a member of an independent team exclusively comprised of homeschooled students.
- (3) A school may have more than one team. A team is registered when the Organizer receives the registration fee and the following entry forms: 1) the team's registration/roster form, 2) the ethics form, 3) signed permission slip/medical and liability release, 4) photo/video/Web/submission release. After receiving these items, confirmation will be sent to the contact person listed on the registration form. (Teams are responsible for providing and

updating their contact person's current email address and phone number.) The registration fee is not refundable. In addition, to avoid misspellings, teams must submit via email a list of team member names, to the Organizer's email address: [mootcourt2010@cesqd.org](mailto:mootcourt2010@cesqd.org) (see page R-5 for a sample email).

- (4) The registration fee for the Moot Court competition is \$25 per team member. (Scholarships may be available. Please contact the Organizer for details.)
- (5) **The registration deadline is Thursday, October 7, 2010.** Applications will be accepted on a first-come, first-served basis. If we reach capacity, teams will be placed on a waiting list.
- (6) Substitution of team members may be made provided the Organizer receives signed permissions slips, ethics forms, releases and an updated roster.

### § 102. Assistance, Research and Workshop

- (1) Teams may receive assistance (including attorney help) in preparing their briefs and developing strategies for their oral arguments.
- (2) Additional background research may supplement students' understanding of the constitutional issues at hand, but anything that is not included in the official "Moot Court Case Packet" may not be quoted in oral argument.
- (3) We will hold Moot Court workshops for students, teachers and coaches. See the competition's Web page: <http://cesqd.org/mootcourt.html> for details. There is no charge.

### § 103. Briefs

- (1) Briefs are helpful in preparing for the competition, **but no briefs are to be submitted.** In real life, attorneys are required to write and submit briefs before oral argument. It is recommended that each team write two (2) briefs, one for the petitioner (appellant) and one for the respondent.
- (2) A team's oral arguments may vary from their briefs.

### § 104. Oral Arguments

- (1) Oral arguments will be held in the Contra Costa County Superior Court, Martinez, California, on **Saturday, October 16, 2010.**
- (2) Each side will be allowed a total of six (6) minutes for argument-in-chief (main argument) and for rebuttal. Teams may allocate the six minutes between two speakers and between argument in chief and rebuttal in any reasonable way, but **non-performance of any part will result in a score of 0** (see page R-7). The Court **will** interrupt argument for questions, but neither questions nor answers to them, will be timed.
- (3) In order to present a position in the most persuasive manner, students should carefully review and become familiar with the materials provided in the Moot Court case packet. Additional background research may supplement their understanding of the constitutional issues at hand, but such supplemental materials may not be cited in arguments.
- (4) Team members will introduce themselves using the introduction format (see the sample courtroom dialog in the case packet) at the beginning of the argument but must not reveal the name of their high school. Judges must neither ask nor know the identity of the teams

arguing before them either before or after grading the arguments.

- (5) In scoring, judges may not take into consideration the merits of the real case, but will base their scoring on the performance of the students (using the scoring criteria in “Procedures and Scoring Criteria for Moot Court”—see page 6 and 7 of these rules).
- (6) Judges may not disclose winners or scores to anyone other than the Organizer or her designee. They may comment (very briefly) on the performance of speakers or teams after the scores have been submitted for tabulation.
- (7) During a round, only the one (1) or two (2) participating speakers from each team may sit at the counsel table. The petitioner’s timer will be denoted as the official timer. The respondent’s timer will act as the unofficial timer. The timers will sit together.
  - A. The clock will be stopped when judges question attorneys, when attorneys respond to questions, and when judges make observations.
  - B. Only issues that were addressed in an opponent’s argument may be raised during rebuttal. Reservation of rebuttal time is not required.
  - C. Total time for each round is 40 minutes.
  - D. Stopwatches will be provided, but teams must be prepared to use them.
- (8) Three-, two-, one-minute and 30 second verbal warnings must be given before the end of each team’s total time. The clerk will automatically stop students at the end of each team’s allotted time. **Thus, there will be no allowance for overtime.**
- (9) The unofficial timer must be identified before argument begins and may check time with the official timer at the end of each side’s argument-in-chief. Any objections to the official time must be made by this unofficial timer during those time checks or at the end of rebuttal. The presiding judge (PJ) shall determine whether or not to accept the official time or make a time adjustment at this point.
- (10) Other persons from the same high school may be present in the room but may not be seated with and may not confer with those seated at the counsel table.
- (11) The Organizer may direct that any round or portions thereof be recorded or transmitted. By participating in the competition, all teams consent to such recording or transmission.
- (12) With the consent of both **teams**, teams may video or audio tape their own competitions. The Organizer will NOT accept any video or audio tapes for complaint purposes.

### **§ 105. Preliminary Rounds**

- (1) Each team will argue in two preliminary rounds (once per side). The Organizer will pair teams randomly in the first and second rounds and may (at the Organizer’s sole discretion) use limited power matching for third and fourth rounds.
- (2) The total scores for the four (4) preliminary rounds will be added and then averaged to determine the top four (4) teams for the semifinal round. Scores in these preliminary rounds only, will be used to determine the top individual award winners.

## § 106. Semifinal Round and Championship Match

- (1) The four (4) top-scoring teams that have won both of their preliminary rounds will compete in the semifinal round.
- (2) The winners of that round will compete in the Moot Court Championship Match.
- (3) The sides for the two finalist teams will be the opposite of the semifinals, if possible, otherwise sides will be chosen by a coin toss.

## § 107. Participant Conduct, Sportsmanship and Ethics

- (1) Participants are expected to display proper courtroom decorum and courtesy throughout the competition.
- (2) Participants are expected to act with good sportsmanship and respect for others in both victory and defeat throughout the competition.
- (3) Participants are expected to be polite and patient with Moot Court and courthouse staff.
- (4) Participants must follow all rules and regulations as specified in the Moot Court packet or disseminated by Contra Costa County Bar Association (CCCBA) or the Moot Court staff. Failure of any member or affiliate of a team to adhere to the rules may result in disqualification of that team.
- (5) The Moot Court materials are protected by copyright and may not be modified, adapted, revised or reprinted anywhere, including on the Internet, without express permission from the Organizer. Any violation of this rule may result in disqualification of a team, as well as litigation. However, we hereby grant to all participants a license to reproduce the pages in this document **strictly for their own use**.
- (6) Plagiarism\* of any kind is unacceptable. Students' written and oral work must be their own. (**\*Webster's Dictionary defines plagiarism as, "to steal the words, ideas, etc. of another and use them as one's own."**)
- (7) Laptop computers at the courthouse on competition day are prohibited. Use of cell phones, pagers, text messaging and/or other electronic communication devices is prohibited in the courtrooms.
- (8) Teacher sponsors, attorney coaches, Moot Court participants and spectators are to remain in the courtroom throughout the round (about 40 minutes).
- (9) No scouting is allowed (see the "Code of Ethics" which defines scouting as "watching other teams compete and recording their words by any means—taping, electronic, writing)."
- (10) The presiding judge is the ultimate authority throughout the trial. If there is a rule infraction, it is solely the student attorneys' responsibility to bring the matter to the presiding judge's attention, before the end of a round. There will be no bench conferences allowed. The presiding judge will confer with the other two judges to determine if a rule was, in fact, violated. Their ruling on this issue is final. The official timer **must have** a copy of these Rules for reference. Unless a specific point deduction for a particular infraction is provided in these rules, each scorer will determine the appropriate amount of deduction individually.
- (11) All team members participating must be in the courtroom at the appointed time, ready to begin the round. **Incomplete teams must begin without their missing members.** If a team

is not present within 5 minutes after the scheduled start of a round, that team will forfeit the round and be subject to disqualification.

- (12) Once a round has begun, there must be no spectator contact with student team members. Sponsors, teacher and attorney coaches, other team members and spectators may not talk, signal, or otherwise communicate with the students. There will be an automatic deduction of two (2) points per score sheet if the presiding judge finds that this rule has been violated or if such conduct is observed by Moot Court staff.

### § 108. Interpretation of Rules

The Organizer will review all questions about the rules and the case and will make its interpretations. Questions can be submitted to the Organizer on or before **October 8, 2010** to: mootcourt2010@cesqd.org. The Organizer will post all questions and answers on the competition's Web page: <http://cesqd.org/mootcourt.html>. Such interpretations will be final.

### § 109. Announcements of Scores

At the discretion of the Organizer, scores will not be announced during the rounds, but may be available at the end of the competition.

### § 110. Awards

Awards will be given to the top teams. There may also be individual awards.

### § 111. Event Itinerary:

8:30– 9:00 am	Registration (M Group)
9:00–9:50 am	Round One (Group M)
9:10–9:40 am	Registration (C Group)
9:50–10:40 am	Round Two (C Group)
10:40–10:55 am	Break
10:55–11:45 am	Round Three
11:45–12:35	Round Four
12:35–1:05 pm	Lunch (Announce Top 4 teams)
1:05–1:55 pm	Semifinal Round
2:00–3:00 pm	Championship Match
3:00–3:30	Award Presentation

#### Sample Team Email

To: mootcourt2010@cesqd.org  
From: jroberts@courtsareus.gov  
Re: MC Team Names from Your High School  
Here are the correctly spelled names of our team members.  
1) Adam Smythe  
2) Chau Nguyen  
3) José Martinez  
4) LaKisha Johnston  
5) Dalbir Singh

## E) EVALUATION CRITERIA

You will be scoring students in four areas: 1) The quality of their main arguments; 2) How well they responded to questions during their main argument; 3) The quality of the rebuttal; 4) How well they respond to questions during their rebuttal argument. Students are to be rated on the eleven point scale (**no fractions or decimals are allowed**) for each category, as appropriate. On a 0 to 10 scale (with 10 being the best) rate the student lawyers on the following criteria. The lawyer:

- Covered the issues presented (see case packet page 2)
- Had a well-developed and well-reasoned argument
- Presented the argument in a well organized and easy to follow manner
- Cited appropriate authorities
- Showed solid understanding of the legal reasoning behind the arguments
- Responded well to questions
- Used rebuttal to effectively respond to and counter what other side actually said
- Used judges questions to show weakness in other side's argument
- Demonstrated the ability to weave questions into argument
- Showed poise, passion and persuasiveness
- Was audible, understandable and did not speak too fast or slow
- Had good courtroom demeanor
- Used time effectively

## F) SCORING CRITERIA GUIDELINES FOR 0-10 SCORING METHOD

The following are general guidelines to be applied to each category on the score sheet. These guidelines provide a framework on which to base your judgment. The system is designed to give you flexibility. For example, if you think both arguments-in-chief were excellent, but one attorney was better than the other, then you can give one a "9" and the other an "8."

### **10: FLAWLESS**

#### **9–8: EXCELLENT** (Exceptional performance)

- Highly developed understanding of task
- Superior ability to think on his/her feet
- Superior ability to answer questions
- Resourceful, original and innovative approaches
- Presentation was extraordinary and not overly rehearsed or memorized

#### **7–8: ABOVE AVERAGE** (Good solid performance)

- Well developed understanding of task
- Good ability to think on his/her feet
- Good ability to answer questions
- Well prepared
- Very good presentation

**5–6: AVERAGE** (Meets required standards)

- Basic understanding of task
- Ability to think on his/her feet
- Ability to answer questions
- Adequate preparation
- Acceptable but uninspired performance

**4: BELOW AVERAGE** (Weak performance)

- Inadequate understanding of task
- Limited ability to think on his/her feet
- Limited ability to answer questions
- Inadequate preparation
- Awkward presentation

**3: FAR BELOW AVERAGE** (Unacceptable performance)

- Poor understanding of task
- No ability to think on his/her feet
- No ability to answer questions
- Shows lack of preparation
- Disorganized presentation

**0: PENALTY** (Nonperformance of required part)

- Failure to conduct rebuttal (no time or no argument ready)
- Can apply to rule violations

# MOOT COURT TIME SHEET

Round # \_\_\_\_\_ Trial # \_\_\_\_\_

Clerk/Timer \_\_\_\_\_

PJ \_\_\_\_\_

\_\_\_\_\_  
 Petitioner's Team (Names and Team #) v. \_\_\_\_\_  
 Respondent's Team (Names and Team #)

**Instructions:**

- Total time for each round is 40 minutes. In the "Round began" box below, note the time when the judges took the bench. Add 40 minutes and note that time in the "Round to end" box. Please tell the judges when five minutes is left in the round and when time is up.
- Start your stopwatch when attorneys begin their arguments.
- Stop the clock when judges question attorneys, when attorneys respond to questions and when judges make observations.
- Each side is allowed a total of six (6) minutes for argument-in-chief and for rebuttal. Teams may use reasonable discretion in allocating the six minutes between two speakers and between argument-in-chief and rebuttal.
- The petitioner's timer is the official timer. The respondent's timer will act as the unofficial timer. The timers sit together.
- The official timer gives three-, two-, one-minute and 30 second verbal warnings before the end of each team's total time. Stop students at the end of each team's allotted time. Say, "Time! You must stop now."
- The unofficial timer must be identified before argument begins and may check time with the official timer at the end of each side's argument-in-chief. Any objections to the official time must be made by this unofficial timer during those time checks or at the end of rebuttal. The presiding judge (PJ) shall determine whether or not to accept the official time or make a time adjustment.

## TIMING

Round began		
Petitioner	Time Used	Time Left
Main Argue		
Rebuttal		
Total Time		

Round to end		
Respondent	Time Used	Time Left
Main Argue		
Rebuttal		
Total Time		

# SAMPLE TEAM COMBINATIONS<sup>1</sup>

## 2-Person Teams

### ***Option A: 1 lawyer and dedicated timekeeper***

Round 1:

*Anne* argues for the Petitioner. *Tim* keeps time.

Round 2:

*Anne* argues for the Respondent. *Tim* keeps time.

### ***Option B: 2 lawyers who also act as timekeepers for each other***

Round 1:

*Anne* argues for the Petitioner. *Alejandro* keeps time.

Round 2:

*Alejandro* argues for the Respondent. *Anne* keeps time.

## 3-Person Teams

Note: These configurations can have several different lawyer/timekeeper combinations.

### ***Option A: 2 lawyers, dedicated timekeeper***

Round 1:

*Blanca* and *Ben* argue for the Petitioner. *Takahiro* keeps time.

Round 2:

*Blanca* and *Ben* argue for the Petitioner. *Takahiro* keeps time.

### ***Option B: 3 lawyers, 2 of whom act as timekeepers***

Round 1:

*Beatriz* and *Bruce* argue for the Petitioner. *Bashir* keeps time.

Round 2:

*Beatriz* and *Bashir* argue for the Petitioner. *Bruce* keeps time.

### ***Option C: 2 lawyers for Petitioner, 1 lawyer for Respondent, dedicated timekeeper***

Round 1:

*Carol* and *Cesar* argue for the Petitioner. *Tiffany* keeps time.

Round 2:

*Carol* argues for the Petitioner. *Tiffany* keeps time.

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<sup>1</sup> Pages 9–11 are meant for the competition only. Feel free to use them in your classroom for scoring and/or team setup.

***Option D: 1 lawyer for Petitioner, 2 lawyers for Respondent, dedicated timekeeper***

Round 1:

*Dalbir* argues for the Petitioner. *Tami* keeps time.

Round 2:

*Dalbir and Denzel* argue for the Petitioner. *Tami* keeps time.

**4-Person Teams**

Note: These configurations can have several different lawyer/timekeeper combinations.

***Option A: 4 lawyers, 2 of whom act as timekeepers***

Round 1:

*Evie and Eduardo* argue for the Petitioner. *Eckhardt* keeps time.

Round 2:

*Elise and Eckhardt* argue for the Respondent. *Eduardo* keeps time.

***Option B: 2 lawyers for Petitioner, 1 for Respondent, dedicated timekeeper***

Round 1:

*Farouk and Fran* argue for the Petitioner. *Tom* keeps time.

Round 2:

*Felipe* argues for the Respondent. *Tom* keeps time.

***Option C: 1 lawyers for Petitioner, 2 for Respondent, dedicated timekeeper***

Round 1:

*Graciela* argues for the Petitioner. *Terry* keeps time.

Round 2:

*Gita and George* argues for the Respondent. *Terry* keeps time.

**5-Person Teams**

Note: This configuration can have several different lawyer/timekeeper combinations.

***Option A: 4 lawyers, 1 dedicated timekeeper***

Round 1:

*Hernando and Harriet* argue for the Petitioner. *Tracy* keeps time.

Round 2:

*Hannah and Henry* argue for the Petitioner. *Tracy* keeps time.

## Scoring Examples

**Teams may divide up the tasks in a variety of ways.  
Please score students ONLY on the tasks they perform.**

### Sample 1: **One Student Does Main Argument and Rebuttal**

1: Main Argument: Quality	7	<b>George</b>	Student A's First Name
2: Main Argument: Ability to Answer Questions	6		
3: Rebuttal: Quality	7		<b>Student A gets all four scores.</b>
4: Rebuttal: Ability to Answer Questions	6		
1: Main Argument: Quality			Student B's First Name
2: Main Argument: Ability to Answer Questions			
3: Rebuttal: Quality			Since there is only one student, <b>Student B is Blank.</b>
4: Rebuttal: Ability to Answer Questions			

### Sample 2: Main Argument and Rebuttal Are **Divided up**

1: Main Argument: Quality	7	<b>Wilma</b>	Student A's First Name
2: Main Argument: Ability to Answer Questions	7		
3: Rebuttal: Quality			Student A does the Main Argument. Student A is scored on <b>Tasks 1 and 2 ONLY</b>
4: Rebuttal: Ability to Answer Questions			
1: Main Argument: Quality		<b>Manuel</b>	Student B's First Name
2: Main Argument: Ability to Answer Questions			
3: Rebuttal: Quality	6		Student B does the Rebuttal. Student B is scored on <b>Tasks 3 and 4 ONLY.</b>
4: Rebuttal: Ability to Answer Questions	6		

### Sample 3: **Both Students Do Main Argument and Rebuttal**

1: Main Argument: Quality	8	<b>Chau</b>	Student A's First Name
2: Main Argument: Ability to Answer Questions	7		
3: Rebuttal: Quality	8		Student A is scored on <b>all 4 tasks</b>
4: Rebuttal: Ability to Answer Questions	7		
1: Main Argument: Quality	7	<b>LaKisha</b>	Student B's First Name
2: Main Argument: Ability to Answer Questions	5		
3: Rebuttal: Quality	6		Student B is scored on <b>all 4 tasks</b>
4: Rebuttal: Ability to Answer Questions	5		

# 2010 MOOT COURT THE CALIFORNIA HIGH SCHOOL APPELLATE COMPETITION

## ENTRY FORMS

### Instructions:

1. Please fill out the attached forms.
2. Write a check(s) for \$25 per participant, payable to “**Center for Econ and Civic Ed.**”
3. Mail the forms and check(s) to:

Center for Economic and Civic Education  
PO Box 23841  
Pleasant Hill, CA 94523

Team Participation and Roster .....	2
(Submit one form per team)	
Ethics Form .....	3
(Submit one <i>signed</i> form per team)	
Permission Slip; Medical and Liability Release.....	4
(Submit one signed form per participant)	
Photo/Video/Web/Submission Release and Preference .....	5
(Submit one signed form per participant)	

Upon receipt of all forms and money, we will send registration confirmation to the contact person listed on the team roster.

## 2010 MOOT COURT TEAM PARTICIPATION FORM

We, the undersigned, wish to participate in Moot Court – The California High School Appellate Competition. We all attend the same school whose address is shown below:

School (or Homeschool) name \_\_\_\_\_

School address \_\_\_\_\_

School Phone # \_\_\_\_\_ School Fax # \_\_\_\_\_

### Team Contact Information

Contact Person (Name) \_\_\_\_\_ Contact Phone \_\_\_\_\_

Contact Type (team member parent, teacher, coach, lawyer, etc.) \_\_\_\_\_

Contact Address (if different from above)  
\_\_\_\_\_

## 2010 TEAM ROSTER

DATED \_\_\_\_\_ (On the lines below, **neatly and legibly** print or type names)

Member #1 \_\_\_\_\_ T-Shirt Size \_\_\_\_\_

Member #2 \_\_\_\_\_ T-Shirt Size \_\_\_\_\_

Member #3 \_\_\_\_\_ T-Shirt Size \_\_\_\_\_

Member #4 \_\_\_\_\_ T-Shirt Size \_\_\_\_\_

Member #5 \_\_\_\_\_ T-Shirt Size \_\_\_\_\_

For office use only. Teams don't fill in!

### 2010 CONFIRMATION OF REGISTRATION

This application has been received and processed and your team is now registered.

You've been assigned TEAM NUMBER \_\_\_\_\_.

Please use this number on all entries and communications with the committee.

DATED \_\_\_\_\_

\_\_\_\_\_  
Committee member signature

## 2010 TEAM CODE OF ETHICS, CONDUCT AND SPORTSMANSHIP

As a condition of participation in the Moot Court – The California High School Appellate Program, each student participant must carefully read the statement below, then sign to acknowledge her/his commitment to the statement.

As a participant in the Moot Court Program, I pledge to adhere to the same high standards of scholarship that are expected of me, as a student, in my academic performance. I understand that plagiarism of any kind is unacceptable. I agree that all written and oral work done in conjunction with this program will be my own.

In relation to other teams and individuals with whom I come in contact through participation in this program, I pledge to make a commitment to act with good sportsmanship and respect for others in both victory and defeat. I acknowledge that my actions will reflect upon my whole team, and I promise to take personal responsibility for my own actions throughout the competition.

I further understand that “scouting,” defined as watching other teams compete and recording their words by any means (taping, electronic, writing) is prohibited.

Please list names **alphabetically**. Print or type neatly. Names that are undecipherable on this form may be misspelled on official moot court paperwork (including certificates).

School \_\_\_\_\_ Date submitted \_\_\_\_\_

1. Name (print): \_\_\_\_\_ Signature: \_\_\_\_\_

2. Name (print): \_\_\_\_\_ Signature: \_\_\_\_\_

3. Name (print): \_\_\_\_\_ Signature: \_\_\_\_\_

4. Name (print): \_\_\_\_\_ Signature: \_\_\_\_\_

5. Name (print): \_\_\_\_\_ Signature: \_\_\_\_\_

**2010 Student Permission Slip and Release**  
**Moot Court – The California High School Appellate Competition**

(Student's name) \_\_\_\_\_ has my permission to participate in the Moot Court with

(Student's school) \_\_\_\_\_ in Martinez, on Saturday, October 16, 2010.

We have reviewed and understand the rules of the competition.  
Health or Special Needs. Check as apply.

\_\_\_ My child had NO special needs the staff should be made aware of.

\_\_\_ My child has a special need and instructions are attached.

\_\_\_ Other: \_\_\_\_\_

**Release and Covenant Not to Sue/Authorization for Medical Care**

In consideration for their participation in The California High School Appellate Competition, I agree to indemnify, defend and hold harmless the Contra Costa County Bar Association (CCCBA), the Constitutional Rights Foundation, program organizers and sponsors for any and all claims, damage, costs and expenses resulting from lawsuits and other proceedings by any third parties arising out of any acts, omissions or conduct of my child while he/she is participating in Moot Court – California High School Appellate Competition.

Parent/Guardian Signature \_\_\_\_\_ Date \_\_\_\_\_

The undersigned acknowledges that participation in the competition is completely VOLUNTARY. I agree to have my child receive any emergency medical services deemed necessary by the authorities in charge. It is understood that the resulting expenses will be the responsibility of the parent/guardian.

Parent Name (please print) \_\_\_\_\_

Parent Signature \_\_\_\_\_

Address \_\_\_\_\_ Home Phone \_\_\_\_\_ Business Phone \_\_\_\_\_

If I cannot be reached in case of emergency, please notify:

Name \_\_\_\_\_ Home Phone \_\_\_\_\_ Business Phone \_\_\_\_\_

Medical Insurance \_\_\_\_\_  
Insurance Company \_\_\_\_\_ Policy Number \_\_\_\_\_ Phone Number \_\_\_\_\_

## 2010 PHOTO/VIDEO/CONTEST SUBMISSION/WEBSITE RELEASE AND PREFERENCE FORM

*Dear Parent/Guardian:*

*On occasion, representatives from the media, the Contra Costa County Bar Association (CCCBA) or the Center for Economic and Civic Education, a California nonprofit organization (CE<sup>2</sup>) will be photographing, videotaping, and/or interviewing students in connection with school programs developed by CE<sup>2</sup>. Educating the public is one of our objectives. The entire community benefits from knowing about the needs and abilities of our students and about the programs we offer to children and families.*

*In order to release student photos, video footage, comments, or program submissions (such as briefs and/or other student drawings or writings) and/or post any of these items on the CCCBA or CE<sup>2</sup> (or other authorized) Web sites, we need written permission. To give your consent, please complete the form below.*

I, \_\_\_\_\_, parent/guardian of \_\_\_\_\_ give permission for my child to be photographed, videotaped, and/or interviewed by representatives from the media, the CCCBA or CE<sup>2</sup> for the purpose of publicizing educational programs. I authorize the use and reproduction by the CCCBA or CE<sup>2</sup>, or anyone authorized by the CCCBA or CE<sup>2</sup>, of any and all photographs, or videotapes taken of my child, and/or any program submissions created by my child, without compensation to me/my child. All of these photographs/video recordings and program submissions shall be the sole property of the CCCBA or CE<sup>2</sup>. I waive any right to inspect or approve the finished photographs/videotapes, and the sound track, script or printed matter that may be used in conjunction with them. Permission is also granted to edit any program submission and to use my child's name (or a fictitious name) in editorials or for purposes of publicizing our programs.

Signature of parent or guardian: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

**OR** I am 18 years of age or older and I give my consent without reservation to the foregoing on my own behalf.

Signature of subject: \_\_\_\_\_ Date \_\_\_\_\_

Address: \_\_\_\_\_

**OR** I, \_\_\_\_\_, parent/guardian of \_\_\_\_\_

**DO NOT** give permission for my child to be photographed, videotaped, and/or interviewed by representatives from the media, the CCCBA or CE<sup>2</sup> for the purpose of publicizing educational programs.

# 2010 MOOT COURT COMPETITION

## STUDENT PARTICIPANT EVALUATION FORM

Scale 1 to 5 for questions 1 to 4.

5 = greatly increased; 4 = increased; 3 = remained the same; 2 = decreased; 1 = greatly decreased

After participating in the Moot Court program:

- 1) My ability to think on my feet \_\_\_\_\_
- 2) My understanding of how an appellate argument works \_\_\_\_\_
- 3) My respect for the judicial system. \_\_\_\_\_
- 4) My respect for the role of law in society \_\_\_\_\_
- 5) Is the level of difficulty of these materials      too high?      too low?      about right?
- 6) The activity was enjoyable. \_\_\_\_\_ Yes      No      (circle)      Please comment.

7) *McDonald v. Chicago* was a good choice for this activity. Yes      No      (circle)

8) Would you participate in the program again? Yes      No      (circle)

(If you're a Senior check put an "X" here. \_\_\_\_)

9) Would you recommend it to a classmate? Yes      No      (circle)

Other comments, suggestions for improvement, etc.