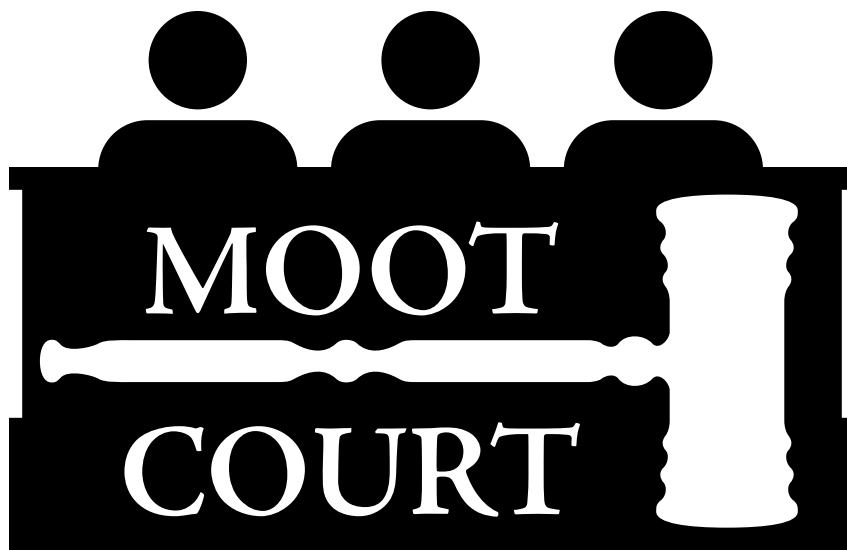


Artist Ron Leone

Teacher Packet



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, *J. D. B. v North Carolina* 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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Teacher Materials for J. D. B. v North Carolina

Table of Contents

I Teacher’s Guide

Classroom Instructions	1–2
Standards	3
Case Outcome Summary.....	4–5
Appellate Courtroom Diagram	6
Case Quotes from the Justices	7–9

II Case Materials¹

Overview of the Appellate Process	iii–iv
Case.....	1–10
Table of Citations	11
Appendix	A1–C2
Appellate Brief Format	A1
Reply Brief Format	A2
Brief Writing Organizer	A3–A5
Oral Argument Notemaker.....	A6–A9
Courtroom Dialog (Sample)	B1–B2
Courtroom Dialog (Fill-in)	C1–C2

III Assessment and Evaluation

Grade Sheet	D1
Self Grade	D2
Activity Evaluation	D3–D4
Rubric for Oral Argument.....	D5
Listening/Speaking Rubric	D6
Brief Writing Rubric	D7
Rubric for Student Justice	D8
Opinion Writing Rubric for Student Justice.....	D9
Sample Student-Written Briefs and Opinions.....	D10–D16

IV Competition: Rules, Forms and Evaluation²

Rules.....	R1–R7
Time sheet.....	R8
Sample Team Combinations	S9–S10
Scoring Examples	S11
Forms	CF1–CF5
Competition Evaluation	CE1

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.¹ 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.² The appellate lawyer files a brief (see sample and blank forms, Appendix A1–A2), laying out the legal³ 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 6). 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.

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, whether or not the police read him his rights, would not be appealable. But the issue of whether they should have done so 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:

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For example, the case of *Miranda v. Arizona* 384 U.S. 436 (1966) would be found in the 384th volume of USSC cases. The case, which was decided in 1966, begins on page 436. 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, *Miranda v. Arizona* 384 U.S. 436 (1966).
- 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 *Miranda v. Arizona* said ...”
- After the case has been cited once, your students can just use a short case name like *Miranda*.
As the court in *Miranda* held “...”, or
As the court in the *Miranda* case held, “...” , or
As the *Miranda* court held, “...”

Assessment and Evaluation

The Grade/Rubric⁴ 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)

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

Case Background and Outcome¹

Introduction

This year's case involves the Fifth and Sixth Amendments. The question is: If the person being questioned by police is a minor, should this fact be taken into account when applying the custodial analysis of *Miranda v. Arizona* 384 U.S. 436 (1966). Since the Court found that age **was** relevant, this may open up a Miranda "can of worms." For this reason, we decided to have students address those potential issues in this year's Moot Court activity (see "Questions Presented" on page 2 of the case packet).

Legal Background

The 1966 case of *Miranda v. Arizona* laid down for rules questioning suspects. But as you'll see with the cases in the packet, the first issue is always **was the defendant in custody?** This requirement is based on the proposition that the risk of unconstitutional coercion is heightened when a suspect is placed under formal arrest or is subjected to some functionally equivalent limitation on freedom of movement. When this custodial threshold is reached, Miranda warnings must precede police questioning, if not then no warnings are required. The Court in *Miranda* said,

"Prior to any [custodial] questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."

Since that time, courts have struggled with what constitutes custody. They have looked at various factors such as: 1) where the questioning occurred, 2) how long it lasted, 3) what was said, 4) any physical restraints placed on the suspect's movement, 5) and whether the suspect was allowed to leave when the questioning was through. The totality of these circumstances—the external circumstances, that is, of the interrogation itself—is what has mattered.

One thing the Court's majority opinion made clear was that the *Miranda* standard is an **objective, reasonable person** one rather than what was in the mind of the police officer or suspect. While one or two cases touched on the issue of age, this is the first time that the USSC has held that age (i.e. one's status as a minor) is a factor that needs to be taken into account.

The dissent, on the other hand, contends that this muddies the waters and opens the door to changing *Miranda* from an objective to a subjective test, thereby making it harder for police (and by extension the courts) to apply, thus hampering them.

Case Background

Petitioner J. D. B. was a 13-year-old, seventh-grade student attending class at Smith Middle School in Chapel Hill, North Carolina when he was removed from his classroom by a uniformed police officer, escorted to a closed door conference room, and questioned by police for at least half an hour. This was the second time that police questioned J. D. B. in the span of a week. Five days earlier, two home breakins occurred, and various items were stolen. Police stopped and questioned

¹ 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.

J. D. B. after he was seen behind a residence in the neighborhood where the crimes occurred. That same day, police also spoke to J. D. B.'s grandmother—his legal guardian—as well as his aunt.

Police later learned that a digital camera matching the description of one of the stolen items had been found at J. D. B.'s middle school and seen in J. D. B.'s possession. Investigator DiCostanzo, the juvenile investigator on the case, went to the school to question J. D. B. Upon arrival, DiCostanzo informed the school resource officer, the assistant principal and an administrative intern that he was there to question J. D. B. about the break-ins. J. D. B. was removed from the classroom and escorted to a school conference room. There, J. D. B. was met by DiCostanzo, the assistant principal and the administrative intern. The door to the conference room was closed. With the two police officers and the two administrators present, J. D. B. was questioned for the next 30 to 45 minutes. Prior to the commencement of questioning, J. D. B. was given neither Miranda warnings nor the opportunity to speak to his grandmother. Nor was he informed that he was free to leave the room.

The questioning began with small talk—discussion of sports and J. D. B.'s family life. DiCostanzo asked, and J. D. B. agreed, to discuss the events of the prior weekend. Denying any wrongdoing, J. D. B. explained that he had been in the neighborhood where the crimes occurred because he was seeking work mowing lawns. The assistant principal urged J. D. B. to “do the right thing,” warning J. D. B. that “the truth always comes out in the end.”

Eventually, J. D. B. asked whether he would “still be in trouble” if he returned the “stuff.” In response, DiCostanzo explained that return of the stolen items would be helpful, but “this thing is going to court” regardless. “What’s done is done; now you need to help yourself by making it right.” DiCostanzo then warned that he may need to seek a secure custody order if he believed that J. D. B. would continue to break into other homes. When J. D. B. asked what a secure custody order was, DiCostanzo explained that “it’s where you get sent to juvenile detention before court.”

After learning of the prospect of juvenile detention, J. D. B. confessed that he and a friend were responsible for the break-ins. DiCostanzo only then informed J. D. B. that he could refuse to answer the investigator’s questions and that he was free to leave. Asked whether he understood, J. D. B. nodded and provided further detail, including information about the location of the stolen items. Eventually J. D. B. wrote a statement, at DiCostanzo’s request. When the bell rang indicating the end of the school day, J. D. B. was allowed to leave to catch the bus home.

Two juvenile petitions were filed against J. D. B., charging him with breaking and entering and with larceny [theft]. His public defender moved to suppress [have the court throw out] his statements and any evidence found as a result, arguing that: 1) J. D. B.'s constitutional rights were violated since he had been interrogated in a custodial setting without being given the Miranda warnings and 2) that his statements were involuntary. The trial court denied the motion and adjudicated [found] him delinquent. The North Carolina Court of Appeals and the North Carolina State Supreme Court affirmed. The U.S. Supreme Court granted certiorari.

USSC Opinion Line-up

The case was argued on April 22, 2011 and decided on June 29, 2011.

The “line up” was 5–4, with SOTOMAYER, J¹ delivering the majority opinion in which KENNEDY, GINSBURG, BREYER AND KAGAN JJ., joined

ALITO filed a dissenting opinion in which Chief Justice ROBERTS, SCALIA and THOMAS JJ., joined.²

1 For a longer quote from Sotomayer, see pages 7–8

2 For a longer quote from Alito, see page 9

Setting up an Appellate Courtroom

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



B

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 Sotomayor’s majority opinion

The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Like this Court’s own generalizations, the legal disqualifications placed on children as a class— e.g., limitations on their ability to alienate [sell or give away] property, enter a binding contract enforceable against them, and marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal.

Indeed, even where a “reasonable person” standard otherwise applies, the common law has reflected the reality that children are not adults. As this discussion establishes, “[o]ur history is replete with laws and judicial recognition” that children cannot be viewed simply as miniature adults. *Eddings v Oklahoma*¹. We see no justification for taking a different course here. So long as the child’s age was known to the officer at the time of the interview, or would have been objectively apparent to any reasonable officer, including age as part of the custody analysis requires officers neither to consider circumstances “unknowable” to them, *Berkemer*², nor to “anticipate the frailties or idiosyncrasies” of the particular suspect whom they question, *Alvarado*³. The same wide basis of community experience that makes it possible, as an objective matter, to determine what is to be expected of children in other contexts, likewise makes it possible to know what to expect of children subjected to police questioning.

In other words, a child’s age differs from other personal characteristics that, even when known to police, have no objectively discernible relationship to a reasonable person’s understanding of his freedom of action. *Alvarado*, holds, for instance, that a suspect’s prior interrogation history with law enforcement has no role to play in the custody analysis because such experience could just as easily lead a reasonable person to feel free to walk away as to feel compelled to stay in place. Because the effect in any given case would be “contingent on the psychology” of the individual suspect, the Court explained, such experience cannot be considered without compromising the objective nature of the custody analysis. A child’s age, however, is different. Precisely because childhood yields objective conclusions like those we have drawn ourselves—among others, that children are “most susceptible to influence,” *Eddings* and “outside pressures,” *Roper v Simmons*⁴—considering age in the custody analysis in no way involves a determination of how youth “subjectively affects the mindset” of any particular child.

In fact, in many cases involving juvenile suspects, the custody analysis would be nonsensical absent some consideration of the suspect’s age. This case is a prime example. Were the court precluded from taking J. D. B.’s youth into account, it would be forced to evaluate the circumstances present here through the eyes of a reasonable person of average years. In other words, how would a reasonable adult understand his situation, after being removed from a seventh-grade social studies class by a uniformed school resource officer; being encouraged by his assistant principal to “do the right thing”; and being warned by a police investigator of the prospect of juvenile detention and separation from his guardian and primary caretaker?

1 *Eddings v. Oklahoma*, 455 U.S. 104 (1982),

2 See page 5 of case packet for excerpt.

3 See page 8 of case packet for excerpt.

4 *Roper v. Simmons* 543 US 551 (2005)

To describe such an inquiry is to demonstrate its absurdity. Neither officers nor courts can reasonably evaluate the effect of objective circumstances that, by their nature, are specific to children without accounting for the age of the child subjected to those circumstances.

Thus, contrary to the dissent's protestations, today's holding neither invites consideration of whether a particular suspect is unusually meek or compliant nor expands the *Miranda* custody analysis, into a test that requires officers to anticipate and account for a suspect's every personal characteristic. Neither officers nor courts can reasonably evaluate the effect of objective circumstances that, by their nature, are specific to children without accounting for the age of the child subjected to those circumstances.

Indeed, although the dissent suggests that concerns regarding the application of the *Miranda* custody rule to minors can be accommodated by considering the unique circumstances present when minors are questioned in school, the effect of the schoolhouse setting cannot be disentangled from the identity of the person questioned. A student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position than, say, a parent volunteer on school grounds to chaperone an event, or an adult from the community on school grounds to attend a basketball game. Without asking whether the person questioned in school is a minor the coercive effect of the schoolhouse setting is unknowable.

In summary, "the question in this case is whether the age of a child subject to police questioning is relevant to the custody analysis of *Miranda v. Arizona* 384 U.S. 436 (1966). It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or court to blind themselves to that commonsense reality, we hold that a child's age properly informs the *Miranda* custody analysis."

Excerpts from Alito's dissenting opinion

The Court's decision in this case may seem on first consideration to be modest and sensible, but in truth it is neither. It is fundamentally inconsistent with one of the main justifications for the *Miranda* rule: the perceived need for a clear rule that can be easily applied in all cases. And today's holding is not needed to protect the constitutional rights of minors who are questioned by the police.

Miranda's prophylactic regime places a high value on clarity and certainty. Dissatisfied with the highly fact specific constitutional rule against the admission of in-voluntary confessions, the *Miranda* Court set down rigid standards that often require courts to ignore personal characteristics that may be highly relevant to a particular suspect's actual susceptibility to police pressure. This rigidity, however, has brought with it one of *Miranda*'s principal strengths—the ease and clarity of its application by law enforcement officials and courts. A key contributor to this clarity, at least up until now, has been *Miranda*'s objective reasonable-person test for determining custody.

Miranda's custody requirement is based on the proposition that the risk of unconstitutional coercion is heightened when a suspect is placed under formal arrest or is subjected to some functionally equivalent limitation on freedom of movement. When this custodial threshold is reached, *Miranda* warnings must precede police questioning. But in the interest of simplicity, the custody analysis considers only whether, under the circumstances, a hypothetical reasonable person would consider himself to be confined.

Many suspects, of course, will differ from this hypothetical reasonable person. Some, including those who have been hardened by past interrogations, may have no need for *Miranda* warnings at all. And for other suspects—those who are unusually sensitive to the pressures of police questioning—*Miranda* warnings may come too late to be of any use. That is a necessary consequence of *Miranda*'s rigid standards, but it does not mean that the constitutional rights of these especially sensitive suspects are left unprotected. A vulnerable defendant can still turn to the constitutional rule against actual coercion and contend that that his confession was extracted against his will.

Indeed, it has always been the case under *Miranda* that the unusually meek or compliant are subject to the same fixed rules, including the same custody requirement, as those who are unusually resistant to police pressure nor “expands” the *Miranda* custody analysis, into a test that requires officers to anticipate and account for a suspect's every personal characteristic.

Today's decision shifts the *Miranda* custody determination from a one-size-fits-all reasonable-person test into an inquiry that must account for at least one individualized characteristic—age—that is thought to correlate with susceptibility to coercive pressures. Age, however, is in no way the only personal characteristic that may correlate with pliability, and in future cases the Court will be forced to choose between two unpalatable alternatives. It may choose to limit today's decision by arbitrarily distinguishing a suspect's age from other personal characteristics—such as intelligence, education, occupation, or prior experience with law enforcement—that may also correlate with susceptibility to coercive pressures. Or, if the Court is unwilling to draw these arbitrary lines, it will be forced to effect a fundamental transformation of the *Miranda* custody test—from a clear, easily applied prophylactic rule into a highly fact-intensive standard resembling the voluntariness test that the *Miranda* Court found to be unsatisfactory.

Student Materials for J. D. B. v North Carolina

Table of Contents

Case Materials

Introduction to the case – <i>J. D. B. v North Carolina</i>	iii–iv
Case	1–10
Table of Citations.....	11
Appendix	
Appellate Brief Format	A1
Reply Brief Format	A2
Brief Writing Organizer.....	A3–A5
Oral Argument Notemaker.....	A6–A9
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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.¹ 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.² The appellate lawyer files a brief laying out the legal³ 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).

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What You Do (Classroom Instructions)

Student lawyers: You read the *J. D. B. v North Carolina* 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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3 Appeals deal only with legal issues, not factual ones. For example, whether or not the police read him his rights, would not be appealable. But the issue of whether they should have done so 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)¹ 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 *Miranda v. Arizona* 384 U.S. 436 (1966) would be found in the 384th volume of USSC cases. The case, which was decided in 1966, begins on page 436. 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, *Miranda v. Arizona* 384 U.S. 436 (1966).
- 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 *Miranda v. Arizona* said ..."
- After the case has been cited once, just use a short case name like *Miranda*.

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

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

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

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

J. D. B. v North Carolina

1 **Instructions**

2 This is your case packet. The trial has already taken place. You are now in the fictitious 20th
3 Circuit Court of Appeal. The materials that follow have been taken from the court opinions
4 in the cases you will be citing when you make your arguments. To get the flavor of how
5 judges think and write, some of their actual words and turns of phrase have been kept. In
6 writing your briefs, one for the Petitioner (J. D. B.) and one for Respondents (the State of
7 North Carolina), cite the facts, reasoning, and case law you think most persuasive for each
8 side. When making your arguments, you need to use, quote, and cite these materials. Legal
9 terms and other possibly unfamiliar words and phrases are defined for you in brackets [].
10

11 After you've written your briefs, you'll argue before a three-judge appellate court. This is
12 called **oral argument**. Be ready to respond to the judges' questions and your opponents'
13 arguments. The Petitioner argues first, then the Respondent has a turn. After that, both sides
14 have the chance to rebut the other side's arguments. (In real life only Petitioners have rebuttal
15 because they have the burden of proof.)
16

17 **Parties**

18 *Petitioner:* J. D. B. (a minor who was questioned at school for possession of stolen items)
19

20 *Respondent:* State of North Carolina (the courts of which adjudicated [found] J. D. B.
21 delinquent)
22

23 **Background Information**

24 Police stopped and questioned petitioner J. D. B., a 13-year-old seventh-grader, when they
25 found him near the site of two home break-ins. Five days later, after a digital camera matching
26 one of the stolen items was found at J. D. B.'s school and seen in his possession, Investigator
27 DiCostanzo went to the school. The school resource officer took J. D. B. from his classroom
28 to a closed-door conference room, where police and school administrators questioned him
29 for at least 30 minutes. Before beginning, they did not give him Miranda warnings or the
30 opportunity to call his grandmother, his legal guardian; nor did they tell him he was free
31 to leave the room. He first denied his involvement, but later confessed after officials urged
32 him to tell the truth and told him about the prospect of juvenile detention. Only then did
33 DiCostanzo tell him that he could refuse to answer questions and was free to leave. Asked
34 whether he understood, J. D. B. nodded and provided further detail, including the location
35 of the stolen items. At DiCostanzo's request, he also wrote a statement. When the school day
36 ended, he was permitted to leave to catch the bus home.
37
38
39
40

1 **Legal/Procedural History**

2 Two juvenile petitions were filed against J. D. B., charging him with breaking and entering
3 and with larceny [theft]. His public defender moved to suppress [have the court throw out]
4 his statements and any evidence found as a result, arguing that: 1) J. D. B.'s constitutional
5 rights were violated since he had been interrogated in a custodial setting without being
6 given the Miranda warnings and 2) that his statements were involuntary. The trial court
7 denied the motion and adjudicated him delinquent.

8
9 **Arguments**

10 **Petitioner:** J. D. B. should argue that this **was** a custodial setting and that his status as a minor
11 is relevant to the Miranda analysis because a juvenile's perception of whether or not he was
12 in custody might be different than an adult's. He wants the lower court's ruling reversed.

13
14 **Respondent:** State of North Carolina should argue that this was **not** a custodial setting. The
15 Miranda standard is well settled, and looking at subjective factors such as status as a minor
16 will make the standard less clear. Respondent wants the lower court's ruling upheld.

17
18 **Key Issue/Questions Presented**

19 The key issue in any Miranda analysis is whether a person is in custody when being
20 questioned by the police. To make the rules clearer and more usable for the police, courts
21 use an objective, reasonable person standard to make that determination, rather than using
22 a subjective standard (for example, what is in the mind of the police or a suspect).

- 23 1) If the person being questioned by police is a minor, should this fact be taken into
24 account when applying the Miranda custodial analysis? If so, how?
25 2) Will there be a harmful effect on police practices if they have to take the suspect's
26 status as a minor into account when applying this analysis? And will this open the door
27 to other subjective tests? If yes, what harm might occur as a result?

28
29 **Legal Authorities**

30 **U.S. Constitution, Amendment V**

31 No person ... shall be compelled in any criminal case to be a witness against himself, nor
32 be deprived of life, liberty, or property, without due process of law. ...

33
34 **U.S. Constitution, Amendment VI**

35 In all criminal prosecutions, the accused shall enjoy ... the right to have the Assistance of
36 Counsel for his defence.

37
38 **U.S. Constitution, Amendment XIV**

39 Section 1. No State shall ... deprive any person of life, liberty, or property, without due
40 process of law; ...

1 **Case Law**

2 *Haley v. Ohio*, 332 U.S. 596 (1948)

3 **Facts:** A 15-year-old boy was arrested about midnight on a charge of murder, and questioned
4 by a tag team of police officers from shortly after midnight until about 5 a.m. without
5 benefit of counsel or any friend to advise him. When confronted with alleged confessions
6 of his alleged accomplices around 5 a.m., he signed a confession typed by the police. This
7 confession was admitted in evidence over his protest and he was convicted.

8
9 **Questions:** Were Haley's constitutional rights violated?

10
11 **Quotes/Holding:** Yes. The coercive [forceful] methods used in obtaining this confession
12 violated the Due Process Clause of the Fourteenth Amendment and the conviction cannot
13 be sustained. The fact that this 15-year-old boy was formally advised of his constitutional
14 rights just before he signed the confession does not alter the result. "Formulas of respect
15 for constitutional safeguards may not become a cloak for inquisitorial [excessively harsh]
16 practices and make an empty form of due process of law."

17
18 *Miranda v. Arizona* 384 U.S. 436 (1966)

19 **Facts:** Ernesto Miranda was arrested and charged with the kidnapping and rape of an 18 year-
20 old woman. After two hours of questioning, Miranda signed a voluntary confession to the
21 rape charge. Miranda was not informed of his right to remain silent nor of his right to counsel.

22
23 **Questions:** Was the confession voluntary and were Miranda's Fifth and Sixth Amendment
24 rights violated?

25
26 **Quotes/Holding:** The confession was not voluntary and was in violation of both the Fifth
27 and Sixth Amendments.

28
29 "By custodial interrogation, we mean questioning initiated [begun] by law enforcement
30 officers after a person has been taken into custody or otherwise deprived of his freedom of
31 action in any significant way. The prosecution may not use statements, whether exculpatory
32 [tending to show lack of guilt] or inculpatory [tending to show guilt], stemming from custodial
33 interrogation of a defendant unless it demonstrates the use of procedural safeguards effective
34 to secure the privilege against self-incrimination [until the prosecution shows that it has
35 not forced a confession]. As for the procedural safeguards to be employed, unless other
36 fully effective means are devised to inform accused persons of their right of silence and to
37 assure a continuous opportunity to exercise it, the following measures are required. Prior
38 to any questioning, the person must be warned that he has a right to remain silent, that any
39 statement he does make may be used as evidence against him, and that he has a right to the
40 presence of an attorney, either retained or appointed."

1 *Oregon v. Mathiason* , 429 U. S. 492, 495 (1977)

2 **Facts:** A police officer contacted the suspect after a burglary victim identified him. The
3 officer arranged to meet the suspect Mathiason at a nearby police station. At the outset of
4 the questioning, the officer stated his belief that the suspect was involved in the burglary but
5 that he was not under arrest. During the 30-minute interview, the suspect admitted his guilt.
6 He was then allowed to leave.

7
8 **Questions:** Was the suspect in custody and therefore required to be given his Miranda
9 warnings?

10
11 **Quotes/Holding:** No. The Court held that the questioning was not custodial because there
12 was "there is no indication that the questioning took place in a context where respondent's
13 freedom to depart was restricted in any way. He came voluntarily to the police station,
14 where he was immediately informed that he was not under arrest. At the close of a 1/2-hour
15 interview respondent did in fact leave the police station without hindrance. It is clear from
16 these facts that Mathiason was not in custody or otherwise deprived of his freedom of action
17 in any significant way."

18
19 *Fare v. Michael C.*, 442 U. S. 707, 718 (1979)

20 **Facts:** Michael C., at the time 16 and a half years old, was taken into custody by police on
21 suspicion of murder. Before being questioned at the station house, he was fully advised of
22 his rights under *Miranda v. Arizona*. At the outset of the questioning, Michael C., who was on
23 probation to the Juvenile Court, asked to see his probation officer, a trusted adult required
24 to represent his interests. When the police denied this request, Michael C. stated he would
25 talk without consulting an attorney, and the statements he made led to a charge of murder.
26 He moved to suppress the incriminating statements and sketches on the ground that they
27 had been obtained in violation of his Miranda rights. Michael C. argued that his request to
28 see his probation officer constituted an invocation of [was a claim to] his Fifth Amendment
29 right to remain silent, just as if he had requested the assistance of an attorney.

30
31 **Questions:** Was Michael C's request to have his probation officer present to give him advise
32 and assistance, an invocation of his Fifth and Sixth Amendment rights?

33
34 **Quotes/Holding:** No. Michael C.'s request for his probation officer was not a per se [by itself]
35 invocation of his Fifth Amendment Miranda rights. Therefore, the statements and sketches
36 made during the interrogation were properly admitted at trial and can be used against him.

1 *California v. Beheler*, 463 U.S. 1121 (1983)

2 **Facts:** The respondent, Jerry Beheler, and several acquaintances, attempted to steal a quantity
3 of hashish from Peggy Dean, who was selling the drug in the parking lot of a liquor store.
4 Dean was killed by Beheler's companion and stepbrother, Danny Wilbanks, when she refused
5 to give them her hashish. Shortly thereafter, Beheler called the police, and gave information
6 about the murder and location of the weapon. Later that evening, Beheler voluntarily agreed
7 to accompany police to the station house, although the police specifically told Beheler that
8 he was not under arrest.

9
10 At the station house, Beheler agreed to talk to police about the murder, although the police
11 did not advise Beheler of his Miranda rights. After a 30-minute interview, Beheler was
12 permitted to return to his home. Five days later, Beheler was arrested in connection with the
13 Dean murder.

14
15 **Questions:** Were the police required to read Beheler the Miranda warnings prior to
16 conducting the interview?

17
18 **Quotes/Holding:** No. Miranda warnings were not required at respondent's interview with
19 the police. For *Miranda* purposes, custodial interrogation means questioning initiated by law
20 enforcement officers after a person has been taken into custody or otherwise deprived of his
21 freedom of action in any significant way. Beheler was neither taken into custody during the
22 interview nor significantly deprived of his freedom of action. Although the circumstances of
23 each case must influence a determination of whether a suspect is in custody, the ultimate
24 inquiry is merely whether there is a formal arrest or restraint on freedom of movement of
25 the degree associated with [equal to] a formal arrest. Miranda warnings are not required
26 simply because the questioning takes place in a coercive environment in the station house
27 or because the questioned person is one whom the police suspect.

28
29 *Berkemer v. McCarty*, 468 US 420 (1984)

30 **Facts:** A police officer stopped a suspected drunk driver and asked him some questions.
31 Although the officer had reached the decision to arrest the driver at the beginning of the
32 traffic stop, he did not do so until the driver failed a sobriety test and acknowledged that he
33 had been drinking beer and smoking marijuana.

34
35 **Questions:** Was this a custodial interrogation requiring Miranda warnings to be given?

36
37 **Quotes/Holding:** No. The Court decided that the motorist was not in custody for purposes
38 of *Miranda* because the officer never communicated his intention to arrest the motorist
39 during the questioning. "The only relevant inquiry is how a reasonable man in the suspect's
40 position would have understood his situation." The Court went on to say that an objective

1 test was preferable to a subjective test in part because it does not “place upon the police
2 the burden of anticipating the frailties or idiosyncrasies of every person whom they question
3 [the police don’t have to figure out whether a given person feels that he is in custody].”
4

5 Other U.S. Supreme Court cases have been consistent with this custody element of *Miranda*,
6 saying “Nor is the requirement of warnings to be imposed simply because . . . the questioned
7 person is one whom the police suspect. Miranda warnings are required only where there
8 has been such a restriction on a person’s freedom as to render him in custody.”
9

10 The Court also said that they have stressed on numerous occasions, “One of the principal
11 advantages of *Miranda* is the ease and clarity of its application.”
12

13 *Moran v. Burbine* 475 U.S. 412 (1986)

14 **Facts:** After Moran was arrested by the Cranston, Rhode Island, police in connection with a
15 breaking and entering, the police obtained evidence suggesting that he might be responsible
16 for the murder of a woman in Providence earlier that year. Moran never requested an attorney,
17 although his sister had contacted the public defender. The public defender telephoned the
18 Cranston detective division, stated that she would act as respondent’s counsel if the police
19 intended to question him. She was told that he would not be questioned further until the next
20 day. The attorney was not informed that the Providence police were there or that respondent
21 was a murder suspect. Less than an hour later, the Providence police began a series of
22 interviews with respondent, giving him warnings pursuant to *Miranda v. Arizona*, before
23 each session and obtaining three signed waivers [document giving up rights] from him prior
24 to eliciting [before getting] three signed statements admitting to the murder..
25

26 **Questions:** Were Moran’s Sixth Amendment rights violated?
27

28 **Quotes/Holding:** No. “Custodial interrogations implicate two competing concerns [create
29 tension between two opposite needs]. On the one hand, “the need for police questioning as
30 a tool for effective enforcement of criminal laws cannot be doubted. Admissions of guilt are
31 more than merely desirable, they are essential to society’s compelling [necessary] interest
32 in finding, convicting, and punishing those who violate the law.” On the other hand, the
33 Court has recognized that “the interrogation process is inherently coercive and that, as a
34 consequence, there exists a substantial risk that the police will inadvertently traverse [cross]
35 the fine line between legitimate efforts to elicit admissions and constitutionally impermissible
36 compulsion [police may cross the line between acceptable and unconstitutional].” *Miranda*
37 attempted to reconcile these opposing concerns by giving the defendant the power to exert
38 some control over the course of the interrogation. Declining to adopt the more extreme
39 position that the actual presence of a lawyer was necessary to dispel the coercion inherent in
40 custodial interrogation [refusing to say that a defendant in custody must have a lawyer present

1 before being questioned], the *Miranda* Court found that the suspect's Fifth Amendment rights
2 could be adequately protected by less intrusive means. Police questioning, often an essential
3 part of the investigatory process, could continue in its traditional form, the Court held, but
4 only if the suspect clearly understood that, at any time, he could bring the proceeding to
5 a halt or, short of that, call in an attorney to give advice and monitor the conduct of his
6 interrogators.

7
8 *Stansbury v California* 511 U.S. 318 (1994)

9 **Facts:** The police discovered a 10 year-old girl's body in a flood control channel and learned
10 that in the hours before her disappearance, the girl had talked with two ice cream truck
11 drivers, one being petitioner Robert Edward Stansbury.

12
13 A detective and three other plainclothes officers surrounded the door of Stansbury's trailer
14 and knocked. When Stansbury answered, the officers said they were investigating a homicide
15 to which Stansbury was a possible witness and asked if he would accompany them to the
16 police station to answer some questions. Stansbury agreed to the interview and rode to the
17 station in the front seat of the police car. At the station, the two questioning officers did
18 not issue Miranda warnings. Stansbury made several statements incriminating himself. The
19 interview was terminated at this point and Stansbury was advised of his Miranda rights.

20
21 **Questions:** Was Stansbury in custody when being questioned by the police and thus entitled
22 to the warnings required by Miranda?

23
24 **Quotes/Holding:** No. The Court explained that "the initial determination of custody depends
25 on the objective circumstances of the interrogation, not on the subjective views harbored
26 by either the interrogating officers or the person being questioned." Courts must examine
27 "all of the circumstances surrounding the interrogation" and determine "how a reasonable
28 person in the position of the individual being questioned would gauge the breadth of his
29 or her freedom of action [would decide how free he or she was to leave]." An officer's
30 obligation to administer Miranda warnings attaches, however, "only where there has been
31 such a restriction on a person's freedom as to render him in custody."
32

33 *Thompson v. Keohane, Warden, et al.* 516 U.S. 99 (1996)

34 **Facts:** Responding to a press release asking for help identifying a woman's body, Thompson
35 called Alaska state troopers to inform them that his former wife, Dixie Thompson, fit the
36 description. Although the trooper's real objective was to question Thompson about the
37 murder, he asked Thompson to come to headquarters for the purpose of identifying the
38 victim's personal items.

1 Thompson drove to the troopers' headquarters, identified the items as Dixie's, and then
2 remained at headquarters answering questions for two more hours. The troopers did not
3 inform Thompson of his Miranda rights. Although they constantly assured Thompson he was
4 free to leave, they also told him repeatedly that they knew he had killed his former wife.
5 Eventually, Thompson told the troopers he killed Dixie.

6
7 As promised, the troopers permitted Thompson to leave, but impounded his truck. Left
8 without transportation, Thompson accepted the troopers' offer of a ride to his friend's house.
9 Two hours later, the troopers arrested Thompson and charged him with first degree murder.

10
11 **Questions:** Were Thompson's Miranda rights violated?

12
13 **Quotes/Holding:** Applying an objective test to resolve the custody question, the Court asked
14 whether a reasonable person would feel he was not free to leave and break off police
15 questioning. The Court indicated that the following features were key: Thompson arrived
16 at the station in response to a trooper's request; two unarmed troopers in plain clothes
17 questioned him; Thompson was told he was free to go at any time; and he was not arrested
18 at the conclusion of the interrogation. Although the trial court held that, under the totality
19 of the circumstances [considering all the facts together], a reasonable person would have
20 felt free to leave, it also observed that the troopers' subsequent actions (releasing and shortly
21 thereafter arresting Thompson) rendered the question very close.

22
23 The Court offered the following description of the Miranda custody test: "Two discrete
24 inquiries are essential to the determination: first, what were the circumstances surrounding
25 the interrogation; and second, given those circumstances, would a reasonable person have
26 felt he or she was not at liberty to terminate the interrogation and leave [not free to stop talking
27 and leave]. "Once the scene is set and the players' lines and actions are reconstructed, the
28 court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest
29 or restraint on freedom of movement of the degree associated with a formal arrest?"

30
31 *Yarborough v. Alvarado*, 541 US 652 (2004)

32 **Facts:** Paul Soto and respondent Michael Alvarado, who was 17 and a half years old at
33 the time, attempted to rob a man and hijack his truck, resulting in the death of the victim,
34 Francisco Castaneda.

35
36 After being contacted by police, Alvarado's parents brought him to the Sheriff's Station to
37 be interviewed. Alvarado contends [claims] that his parents asked to be present during the
38 interview but were rebuffed [turned down].

1 Detective Cheryl Comstock brought Alvarado to a small interview room. The interview lasted
2 about two hours, and was recorded by Comstock with Alvarado’s knowledge. Alvarado was
3 not given a Miranda warning. At first, Alvarado denied involvement. But Comstock persisted
4 [continued] saying, “So why don’t you take a deep breath, like I told you before, the very
5 best thing is to be honest. . . . Now all I’m simply doing is giving you the opportunity to tell
6 the truth.”
7

8 At this point, Alvarado slowly began to change his story. First he acknowledged being
9 present when the carjacking occurred but claimed that he did not know what happened or
10 who had a gun. When he hesitated to say more, Comstock tried to encourage Alvarado to
11 discuss what happened by appealing to his sense of honesty and the need to bring the man
12 who shot Castaneda to justice. “What I’m looking for is to see if you’ll tell the truth. I know
13 it’s very difficult when it comes time to drop the dime on somebody. If that had been your
14 parent, your mother, or your brother, or your sister, you would darn well want the killer to
15 go to jail cause no one has the right to take someone’s life like that.”
16

17 Alvarado then admitted to helping steal the truck and hide the murder weapon. Comstock
18 twice asked Alvarado if he needed to take a break. Alvarado declined. When the interview
19 was over, Comstock returned with Alvarado to the lobby of the sheriff’s station where his
20 parents were waiting. The State of California charged Soto and Alvarado with first-degree
21 murder and attempted robbery. Citing *Miranda*, Alvarado moved to suppress his statements
22 from the Comstock interview.
23

24 During cross-examination at his trial, Alvarado agreed that the interview with Comstock
25 was a pretty friendly conversation, that there was sort of a “free flow” between Alvarado
26 and Detective Comstock, and that Alvarado did not feel coerced or threatened in any way
27 during the interview.
28

29 **Questions:** Should the officer have given Miranda warnings prior to questioning Alvarado?
30

31 **Quotes/Holding:** No. The Court concluded that Alvarado was not in custody when being
32 questioned by Detective Comstock. The Court said, “It can be said that fairminded jurists
33 could disagree over whether Alvarado was in custody. On one hand, certain facts weigh
34 against a finding that Alvarado was in custody. The police did not transport Alvarado to
35 the station or require him to appear at a particular time. They did not threaten him or
36 suggest he would be placed under arrest. Alvarado’s parents remained in the lobby during
37 the interview, suggesting that the interview would be brief. During the interview, Comstock
38 focused on Soto’s crimes rather than Alvarado’s. Instead of pressuring Alvarado with the
39 threat of arrest and prosecution, she appealed to his interest in telling the truth and being
40 helpful to a police officer. Comstock twice asked Alvarado if he wanted to take a break. At

1 the end of the interview, Alvarado went home. All of these objective facts are consistent with
2 an interrogation environment in which a reasonable person would have felt free to terminate
3 the interview and leave. . . .”
4

5 Other facts point in the opposite direction. Comstock interviewed Alvarado at the police
6 station. The interview lasted two hours, four times longer than the 30-minute interview
7 in *Mathiason*. Unlike the officer in *Mathiason*, Comstock did not tell Alvarado that he was
8 free to leave. Alvarado was brought to the police station by his legal guardians rather than
9 arriving on his own accord, making the extent of his control over his presence unclear.
10 These facts weigh in favor of the view that Alvarado was in custody. Ultimately, the Court
11 went on to hold that Alvarado was not in custody for *Miranda* purposes.”
12

13 *Yarborough v. Alvarado* **Dissent**

14 The law in this case asks judges to apply, not arcane [hidden] or complex legal directives,
15 but ordinary common sense. Would a reasonable person in Alvarado’s position have felt free
16 simply to get up and walk out of the small room in the station house at will during his 2-hour
17 police interrogation? I ask the reader to put himself, or herself, in Alvarado’s circumstances
18 and then answer that question: Alvarado hears from his parents that he is needed for police
19 questioning. His parents take him to the station. On arrival, a police officer separates him
20 from his parents. His parents ask to come along, but the officer says they may not. Another
21 officer says, “What do we have here; we are going to question a suspect.”
22

23 The police take Alvarado to a small interrogation room, away from the station’s public area.
24 A single officer begins to question him, making clear in the process that the police have
25 evidence that he participated in an attempted carjacking connected with a murder. After two
26 hours, by which time he has admitted he was involved in the attempted theft, knew about
27 the gun, and helped to hide it, the questioning ends.
28

29 What reasonable person in the circumstances—brought to a police station by his parents
30 at police request, put in a small interrogation room, questioned for a solid two hours, and
31 confronted with claims that there is strong evidence that he participated in a serious crime,
32 could have thought to himself, “Well, anytime I want to leave I can just get up and walk
33 out?” If the person harbored any doubts, would he still think he might be free to leave once
34 he recalls that the police officer has just refused to let his parents remain with him during
35 questioning? Would he still think that he, rather than the officer, controls the situation?
36

37 “There is only one possible answer to these questions. A reasonable person would not have
38 thought he was free simply to pick up and leave in the middle of the interrogation.”
39
40

Table of Citations

U.S. Constitution

Amendment V	2
Amendment VI	2
Amendment XIV.....	2

U.S. Supreme Court Cases

<i>Haley v. Ohio</i> , 332 U.S. 596 (1948)	3
<i>Miranda v. Arizona</i> 384 U.S. 436 (1966)	3
<i>Oregon v. Mathiason</i> , 429 U. S. 492, 495 (1977)	4
<i>Fare v. Michael C.</i> , 442 U. S. 707, 718 (1979)	4
<i>California v. Beheler</i> , 463 U.S. 1121 (1983).....	5
<i>Berkemer v. McCarty</i> , 468 U. S. 420 (1984).....	5
<i>Moran vs Burbine</i> 475 U.S. 412 (1986)	6
<i>Stansbury v California</i> 511 U.S. 318 (1994)	7
<i>Thompson v. Keohane</i> , Warden, et al. 516 U.S. 99 (1996).....	7
<i>Yarborough v. Alvarado</i> , 541 US 652 (2004).....	8
<i>Yarborough Dissent</i> , 541 US 652 (2004).....	10

Appellate 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 J. D. B.,)

9 Petitioner)

NO. 11-456

10 vs.)

APPELLATE BRIEF

11)

NORTH CAROLINA,)

12 Respondent)

13)

_____)

14 Introduction/Legal History/Facts

15 Petitioner J. D. B. is a 13 year old who was questioned by police in a closed room at
16 school without being given his Miranda warnings. He was adjudicated delinquent. Petitioner
17 sues to overturn this determination on the grounds that ...

18 Legal Argument

19 Petitioner's age should have been taken into account when making the custody analysis
20 under *Miranda v Arizona*. Using that standard, he should have been given the warnings. Since
21 he wasn't, Petitioner's statements were illegally obtained and cannot be used ...

22 Wherefore, Petitioner prays that the lower court's ruling be reversed and that this court
23 find his statements were made in violation of his constitutional rights.

24

25 Dated: October 15, 2011

26

Adam Smythe

27

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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	J. D. B.,)	
)	
9	Petitioner)	NO. 11-456
)	
10	vs.)	
)	REPLY BRIEF
11)	
	NORTH CAROLINA,)	
12	Respondent)	
)	
13	_____)	

14 **Introduction/Legal History/Facts**

15 Petitioner J. D. B. is a 13 year old who was questioned by police at school for about 30
16 minutes during which is confessed to committing burglary. He was adjudicated delinquent.
17 This determination is proper on the grounds that ...

18 **Legal Argument**

19 Petitioner’s age should not be taken into account when making the custody analysis
20 under *Miranda v Arizona*. *Miranda* is a well established, clear objective, standard that is
21 designed to curtail subjective factors such as age, intelligence, education, thus giving the
22 police clear guidelines. Petitioner was not in custody when questioned therefore ...

23 Wherefore, Petitioner prays that the lower court’s ruling be upheld and that this court
24 find his statements were properly admitted.

25

26 Dated: October 15, 2011

27

La Kisha Johnston
La Kisha Johnston
Attorney for Respondent

28

Writing a Legal Brief – Overview

Parts of a Brief¹

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.

Police questioned Petitioner at school and when they were done, he was allowed to go home. This indicates that Petitioner was not in custody and therefore *Miranda* warnings were not needed.

FACTS

Use the facts most helpful to your side.

- Petitioner: J. D. B. was a 13 year old seventh grader. He was questioned by police and school officials in a closed conference room.
- Respondent: The questioning of Petitioner did not take place in a custodial setting. He was at school, the interview was short and he was allowed to leave when it was over.

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: 1) If the person being questioned by police is a minor, should this fact be taken into account when applying the *Miranda* custodial analysis? If so, how? 2) Will there be a harmful effect on police practices if they have to take the age of a suspect into account when applying this analysis? And will this open the door to other subjective tests? If yes, what harm might occur as a result?

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

USING CATCH PHRASES

the instant case (this case, *J. D. B. v North Carolina*)

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. "Police questioned Petitioner at school and when they were done, he was allowed to go home. Since he was not in custody, he was not entitled to the Miranda warnings ..."

FACTS

Use the facts most helpful to your side.

- Petitioner: J. D. B. was a 13 year old seventh grader. He was questioned by police and school officials in a closed conference room.
- Respondent: The questioning of Petitioner did not take place in a custodial setting. He was at school, the interview was short and he was allowed to leave when it was over.

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:

"J. D. B. was in custody when being questioned. *Miranda* warnings should have been given ..."

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., include age as a factor in the Miranda analysis in that") and a gives a very short summary of the legal grounds (reasons) for this request. The judges are addressed as "Your Honors."

"Your Honors, the age of the defendant must be taken into account when deciding whether or not he/she was in custody "

FACTS

Use the facts most helpful to your side.

- Petitioner: J. D. B. was a 13 year old seventh grader. He was questioned by police and school officials in a closed conference room.
- Respondent: The questioning of Petitioner did not take place in a custodial setting. He was at school, the interview was short and he was allowed to leave when it was over.

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, Petitioner was in custody and should have been read his Miranda rights ... Wherefore, Petitioner 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.

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

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 (Cl/Timer) stand and speaks.

Cl/Timer	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.

Cl/Timer	Please be seated and come to order. Calling the case of <i>J. D. B. v North Carolina</i> .
PJ	Counsel, please state your names and appearances for the record.

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

Each in turn says:

Attys	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.
PJ	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.

PJ	Mr. Smythe, please proceed with your argument.
P Atty	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.

PJ	Mr. Martinez please proceed with your argument.
P Atty	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

PJ	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

PJ	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:

PJ	This concludes the oral argument in <i>J. D. B. v North Carolina</i> . Thank you counsel. Before we make any comments , 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?
Cl/Timer	All rise.

After the judges are off the bench.

Cl/Timer	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 (Cl/Timer) stand and speaks.

Cl/Timer	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.

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

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

Each in turn says:

Attys	<p>Good morning your honors, _____, representing the Petitioner in this action. I will be delivering the _____.</p> <p>Good morning your honors, _____, representing the Petitioner in this action. I will be delivering the _____.</p> <p>Good morning your honors, _____, representing the Respondent in this action. I will be delivering the _____.</p> <p>Good morning your honors, _____, representing the Respondent in this action. I will be delivering the _____.</p> <p>Good morning your honors, _____, I'll be your clerk and official timer this morning.</p> <p>Good morning your honors, _____, I'm the unofficial timer.</p>
PJ	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

PJ	_____, please proceed with your argument.
P Atty	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.

PJ	_____, please proceed with your argument.
P Atty	Yes, your honor.

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

PJ	_____, 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:

PJ	_____, you may proceed with rebuttal.
----	---------------------------------------

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

PJ	This concludes the oral argument in _____. Thank you counsel. Before we make any comments , 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?
Cl/Timer	All rise.

After the judges are off the bench:

Cl/Timer	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)	
12	SHAWN BRUNETTI ,)	
	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

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26

27

28

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LaKisha Johnston
2 1 Green Street
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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

19

20

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2011 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: mootcourt2011@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**. The Respondent team may designate an unofficial (shadow) timer, if desired.
- (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: mootcourt2011@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 Monday, October 10, 2011.** 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 22, 2011.**
- (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 14, 2011** to: mootcourt2011@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

Scores will not be announced during the rounds. At the discretion of the Organizer, they may be available subsequently.

§ 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: mootcourt2011@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 COMBINATIONS¹

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.

¹ 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	George	Student A's First Name
2: Main Argument: Ability to Answer Questions	6		
3: Rebuttal: Quality	7		Student A gets all four scores.
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, Student B is Blank.
4: Rebuttal: Ability to Answer Questions			

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

1: Main Argument: Quality	7	Wilma	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 Tasks 1 and 2 ONLY
4: Rebuttal: Ability to Answer Questions			
1: Main Argument: Quality		Manuel	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 Tasks 3 and 4 ONLY.
4: Rebuttal: Ability to Answer Questions	6		

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

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

2011 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 Form3
(Submit one **signed** form per team)

Permission Slip; Medical and Liability Release4
(Submit one signed form per participant)

Photo/Video/Web/Submission Release and Preference5
(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.

2011 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)

2011 TEAM ROSTER

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

Member #1 _____

Member #2 _____

Member #3 _____

Member #4 _____

Member #5 _____

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

2011 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

2011 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: _____

2011 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 22, 2011.

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 (including CESQD) 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

2011 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 (CESQD) will be photographing, videotaping, and/or interviewing students in connection with school programs developed by CESQD. 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 CESQD (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 CESQD for the purpose of publicizing educational programs. I authorize the use and reproduction by the CCCBA or CESQD, or anyone authorized by the CCCBA or CESQD, 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 CESQD. 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 CESQD for the purpose of publicizing educational programs.

2011 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) *J. D. B. v North Carolina* 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.