Overview

*Civil Discourse: Social Media and Cyberbullying*This cultivates legal skills as life skills in high school and college students.

Civil Discourse: Social Media and Cyberbullying is a distance-learning version of the [Civil Discourse and Difficult Decisions](file:///%5C%5CFILER1%5CAO-1%5CDATA%5CUSERS%5CCourtneyEMcilroy%5CUS%20Courts%20Migration%20PDFs-Word%20docs%5CEducational%20Resources%5CDistance%20Learning%5CActivity%20Download%5Cnode%5C16167) federal courts’ national initiative. The virtual program – like the courtroom program – cultivates legal skills as life skills in high school and college students. Federal judges preside over these simulated court hearings. They are not mock trials, but realistic approximations of court hearings. All learning styles are involved, and all students participate as attorneys, then as jurors who grapple with teen-relevant legal issues.

The fictional scenario in this virtual activity is based on the Supreme Court’s 2015 decision in Elonis v. U.S. It was the court’s first social media cyberbullying case.

## About These Resources

Start with the Activity Download to find the agenda and all of the resources needed to prepare for and conduct the virtual hearing.

### Roles and Resources

This activity requires a federal judge presiding and no fewer than 25 high school or college students. The virtual program can accommodate up to 100 students.

* **Federal Judge:** Manages the program, presides over the simulation, and converses with the students at the end of the event.
* **Students and Teacher in Advance:** Read the designated materials on their own (about 10 minutes). The teacher assigns students to two groups – Group #1 represents Andy Jackson and Group #2 represents the government. In their respective groups they identify the arguments on the Arguments Worksheet that favor their position. They make their arguments to the judge in the virtual hearing.
* **Student Attorneys:** During the virtual experience, all students serve as attorneys who argue before the judge on behalf of their client – either Andy Jackson or the government – using the microphone function and the chat box.
* **Student Jurors:** After the arguments, all students become jurors who deliberate on the issues, and come to a decision. Due to time constraints, the verdict does not have to be unanimous, but jurors should be prepared to explain the rationale for their decisions.

*Agenda for Students*

**Civil Discourse: Social Media and Cyberbullying**Legal Skills as Life Skills

*90-Minute Distance-Learning Module*

**Advance Work for Students at Home** *(~15 minutes)*

**Students Complete Two Quizzes and Share Them with an Adult or Older Sibling at Home**

* Civility Self-Reflection Quiz: To be discussed at the beginning of the program.
* Pre-Test Reality Check Quiz: To be discussed with the Judge at the end of the program.

 **Students Review One Handout to Prepare for the Civil Discourse Activity**

* How to Set Ground Rules for a Civil Discussion: Guidance for Group Activity

**Students Read Two Handouts to Prepare for the Simulation**

* One-Page Landmark Supreme Court Case: Elonis v. U.S. Facts and Case Summary
* One-Page Fictional Scenario: Government v. Andy Jackson *Meme Version*

**PART I: INTRODUCTIONS AND OVERVIEW**

**9:00—9:20 a.m. Introductions, Civil Discourse Activity, and Case Review**

*(20**minutes)*Judges Welcome the Group and Explain the Program

Four Attorney CoachesIntroduce Themselves: *Why I Chose the Law*

 **Group #1 Atty Coaches Lead Discussion and Activity with All Students**

* **Discussion:** Civility Self-Reflection Quiz
* **Activity:** Setting Civil Discourse Ground Rules

 **Group #2 Atty Coaches Briefly Review with All Students**

* The Landmark Case: Facts and Case Summary
* The Fictional Scenario

 **First-Impression Poll**

 **Question: Based on The Readings and the In-Court Review, Students**

 **Participate in a Poll Prior to the Arguments.**

*This is not a commitment to a position. It is a gauge of your first impressions. Based on the information you now have, which side do you initially favor? Andy or the Government*

**PART II: ALL STUDENTS SERVE AS ATTORNEYS**

**9:20 – 9:40 Small Group Preparation. All Students are Attorneys.**

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

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

 **Objective:** Students learn about advocacy and the role of lawyers.

 With their pair of attorney coaches, each group fills out and discusses the **Arguments Worksheet.** Identify arguments on both sides. *(~5 minutes)*

Each group discusses 1) How they will present their arguments *(~10 minutes);* and 2) how they will refute the other side’s anticipated arguments. *(~5 minutes)*

**9:40 – 10:00 a.m. Return to the Large Group. All Students are Attorneys.**

*(20 minutes)*Judges Explain the Role of the Attorneys Representing Each Side **Judges Guide the Presentation of Arguments.** *(~10 minutes each side)*

 All students have the opportunity to make arguments live and in the chat box.

**Group #2 Atty Coaches monitor and report on arguments in the chat box.**

*Brief Stretch Break in Place*

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

**10:00—10:15 a.m.** **All Students are Now in One, Large Group as Impartial Jurors.**

*(15 minutes)* Students are Released from Small Groups and Positions Taken by Their Groups.

 **Judges Administer the Oath and Give Generic Jury Instructions.**

 **JURY DELIBERATIONS**

* **Group #2 Atty Coaches Facilitate the Deliberations to Ensure that Everyone Who Wishes to Speak Has an Opportunity.**
* **Group #1 Atty Coaches monitor/report on chat box statements.**

 **Verdict Poll:** **Online Poll is Conducted to Come to a Verdict.**

The Judges announce the verdict. Attorney coaches from both sides compare Verdict Poll to First-Impression Poll.

 **If there is time,** the Judges might ask for students who changed their mind

from the first-impression poll to explain what persuaded them.

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

**10:15 – 10:30 a.m. Judges Lead a Discussion on the Reality Check Quiz**

*(15 minutes)*then Opens the Floor to Questions on any Topic.

**10:30 a.m. Adjournment and Students Complete Feedback Form**

***Student and Coach Packet:*** *Summary of Landmark Case*

**Facts & Case Summary - *Elonis v. U.S.* - No. 13-983**

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

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

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

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

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

The trial court denied his motion to dismiss the case.  The court held that the proper legal test for determining whether someone made a threat is an objective one:  whether reasonable people hearing the comment would perceive it to be a threat.  Elonis was convicted of four of the five counts.  He was sentenced to 44 months imprisonment, and three years of supervised release.[1] He appealed to the U.S. Court of Appeals for the Third Circuit, which affirmed his conviction.  The U.S. Supreme Court granted certiorari (agreed to hear the case).  Oral arguments were heard on Monday, December 1, 2014.  A decision is expected by June 2015.

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

**THE FIRST AMENDMENT PROVIDES THAT**

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

**APPLICABLE LAW**

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

**PROCEDURE**

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

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

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

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

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

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

**STATUS**

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

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

***Elonis v. U.S.* Applied to Teen Social Media Posts**

Fictional Scenario: Memes as Artistic Expression or True Threats?

Andy Jackson is a 19-year-old sophomore at Bay State College where he has a basketball scholarship. He and Sarah Somers have gone through a difficult breakup, after which he says she started rumors alleging that he tested positive for the coronavirus but didn’t report his status to his basketball coach.

If true, Andy could lose his scholarship for violating the team’s zero-tolerance COVID-19 health and safety regulations. His friends show him Sarah’s Instagram video of him having a coughing spell while dribbling a basketball in her driveway. Andy, who has severe allergies, becomes enraged at the possibility that he might lose his place on the basketball team, but he has to go to his DJ job that night and act as if everything is okay.

Andy is a popular campus DJ and rapper known for lyrics that have controversial double meanings. That night, he posts a meme of himself performing a parody of some well-known rap lyrics saying that “players know how to weaponize Corona” against liars making false accusations against them. Andy includes in the meme a series of skull emojis, a wink emoji with a beer emoji.

When Sarah sees the memes, she feels threatened and is concerned enough about the posts that she goes to the campus police and asks how to get a restraining order against Andy. She also reports the posts to the basketball coach and the director of campus life. Andy says Sarah is just playing dumb if she claims she doesn’t know what he means by “players” and “Corona.” Obviously, he is referring to guys who date a lot and drink beer.

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

At today’s hearing in federal court, Sarah’s attorneys will argue that whether the lyrics were referring to the coronavirus or Corona beer, either could be weaponized to injure or kill Sarah. The skull emojis confirm that the lyrics are death threats. As such, the statements are true threats.

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

**Student Packet:** *Students Fill Out Prior to the Program and Bring It with Them*

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

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

1. Because I’m 18, if I’m convicted of a federal crime, a lot of factors come into play and it won’t, necessarily, have an impact on the rest of my life.
**True False**
2. My parents know that my friends and I are going to drink, and they want to keep us off the road, so they buy the beer and we get together at our house, where my parents can keep an eye on us. If the party gets busted, anyone who is underage is breaking the law, but my parents won’t get charged. Of course, they’re over the legal age and they won’t be drinking because they are driving some kids home.
**True False**
3. My friends and I have been driving for two years. One of my friends has never been caught speeding and she’s never had an accident. But she’s got a lot of unpaid parking tickets stuffed in her glove compartment. I keep telling her that if she ever gets stopped, they could take her license.
**True False**

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

**True False**

1. If I ever did get convicted of something in federal court, because of my age, I’d get probation. My older brother says that means I might not be able to travel with my tennis team.
**True False**
2. My buddies on the football team were joking around in the locker room after a big win. One of the guys popped open a bottle of sparkling cider that looked like champagne. He dropped his towel while he was guzzling from the bottle on his way into the shower. It was hysterical so, when he turned his back, I captured some video on my phone. I sent it to the other guys on the team who weren't in the showers at the time. I thought it was a harmless moment that we'll laugh about at our high school reunion, some day. The coach says we could be in big trouble.
**True False**
3. My classmates and I were sitting in first period when our teacher was called to the office for an emergency. Before he left, we noticed that he was in the middle of posting an announcement on the class website. We thought it would be funny to change the message and post it. I kept watch while my friends posted a music video and a message that our class will be cancelled next week. I figured he’d have a good laugh and just delete it later.
**True False**
4. A friend of mine was a witness to a car wreck and now she has to testify before a grand jury. She’s not sure that she’s willing to tell the whole truth because it implicates her and could jeopardize her scholarship. The details are not that important because she’s not the one on trial. Since the proceedings aren’t in court, the standard of “telling the truth, the whole truth, and nothing but the truth” doesn’t apply.
**True False**

**Student Packet:** *Students Fill Out Prior to the Program and Bring It with Them.*

**Civility Self Reflection Tool**

*Civility Starts with Self Understanding*

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

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

**9. I ask clarifying questions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

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

• Very Frequently • Frequently • Occasionally • Rarely • Never

**Student Packet:**  *Setting Ground Rules - Students Fill This Out Prior to the Program*

**Civil Discourse and Difficult Decisions**

*Setting Ground Rules for a Civil Discussion*

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

**Start** by listing your pet peeves regarding the behavior of others when you’re having a difficult, heated conversation on a controversial topic. What do others do that can impede understanding? **Next,** circle the rules below that address those behaviors.

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

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

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

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

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

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

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

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

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

**8. Ask questions.** Don’t assume that you know what someone else means**.** Ask the speaker to help you understand perspectives different from your own.
**9. Don’t embarrass yourself or disrespect others by making** demeaning or inappropriate comments, facial expressions, or gestures. No eye rolling, sighing, or checking out of the conversation.

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

**Student Packet**: *Arguments Worksheet for All Students to Use During the Program*

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

Arguments Worksheet – Preparation for Arguments Before the Judge

**Directions:** Put an **A** next to arguments for Andy and a **G** next to arguments for the government.

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

**Administrative Office of the U.S. Courts**

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**Signature**

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**Print Name**

**Date** \_\_\_\_\_\_\_\_\_\_\_\_