*Student Jury Preparation Exercise*

***Elonis v. U.S. and Counterman v. Colorado Applied to Facebook Postings***

*Arguments Worksheet – Answer Key for Jury Coaches*

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

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