

**ILLINOIS YMCA YOUTH AND GOVERNMENT**

**JUDICIAL PROGRAM**

**APPEAL HANDBOOK**

**For Use By:**

**Youth Attorneys**  
**Youth Clerk-Bailiffs**  
**Advisors**  
**Advising Attorneys**



**Sixty-Third Model Assembly**

**2011-2012**

AH-1

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"Logic...history...custom...utility, and the accepted standards of right conduct are the forces which singly or in combination shape the progress of the law."

--Benjamin Cardozo

## **PART 1.**

# **INTRODUCTION**

This handbook is a guide to the appeal portion of the Illinois YMCA Youth and Government Judicial Program, the primary phase of the program. For delegations not participating in the Mock Trial, the appeal phase runs from registration through the Springfield Assembly in March. For delegations that do participate in the Mock Trial, the appeal phase should begin after the Mock Trial.

The mock appeals, like the mock trials, are based on two sets of fictionalized "facts" (Cases "A" and "B"). The Appeal Facts build on the Trial Facts for the case of the same letter. Where the two sets of Facts are in conflict, the Appeal Facts take precedent. Only facts in the Trial and Appeal Facts are considered "facts" for the purpose of the appeal. No special circumstances from your local trial may be included.

Unlike the mock trial, in the mock appeal portion of the Judicial Program each Youth Attorney and Youth Clerk-Bailiff participates in both Cases A and B. Youth Attorneys handle an appeal as an "attorney" for the same case that they handled at the trial level as an attorney, and they do so on the same side (prosecution or defense) as before; however, they will be paired against a team of Youth Attorneys from another delegation. Youth Attorneys preside over the other case as Supreme Court Justices. If a Clerk-Bailiff participated at the trial in a team with a Youth Attorney, the Clerk-Bailiff should continue as a partner to the Youth Attorney. Clerk-Bailiffs will not act as judges during the oral arguments.

All Clerk-Bailiffs will continue to act at the appeal level as a research assistant to a Youth Attorney team. They also are assigned to, and serve one of the several mock Supreme Courts as clerk, both in the courtroom during oral arguments and outside of the courtroom as a research assistant.

A separate handbook is published for the optional trial portion of the program. This handbook has characteristics in common with the trial handbook: (1) It was written to make sure that all Judicial participants -- Youth Attorneys/Youth Justices, Youth Clerk-Bailiffs, Advising Attorneys and Advisors -- have the necessary information about the program, (2) Copies will be distributed to all participants electronically(in case anyone is missed, extra copies can be made at will or requested from the Youth and Government Office), (3) It complements information in the Advisor Manual and (4) Suggestions for its improvement are solicited. Send them and any other inquires about Youth and Government, including the Judicial Program, to:

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## **PART 2.**

### **WHO SHOULD USE THIS HANDBOOK**

This handbook is for anyone who is involved with the mock appeal portion of the Judicial Program of Illinois YMCA Youth and Government. Participation includes these principle categories:

- Youth Attorney: A high school student who is registered with the Youth and Government Programs as a Youth Attorney.
- Youth Clerk-Bailiff: A high school sophomore or junior who is registered with the Youth and Government Program as a Clerk-Bailiff.
- Advisor: An adult who is registered with the Youth and Government Program as an Advisor.
- Advising Attorney: A real-life attorney who is helping with the mock appeal portion of the Judicial Program but not necessarily registered with the Youth and Government Program as an Advisor.

## **PART 3.**

### **GETTING STARTED**

#### **Have a Judicial Organizational Meeting**

The Advisors of each delegation should meet with all Youth Attorneys and Clerk-Bailiffs to discuss the Appellate process and the deadlines associated with the second phase of the Judicial program.

#### **Complete Everyone's Collection of Documents**

Here is a checklist of various documents that everyone involved with Judicial needs:

- Both sets of Trial Facts.
- Both sets of Appeal Facts.
- This handbook.

#### **Assign Clerk-Bailiffs**

Each Clerk-Bailiff should be assigned to a Youth Attorney team as a research assistant involved with either case and either side. This may be a different Youth Attorney team than that which they assisted during the mock trial phase of the program.

As in the mock appeal phase, the Clerk-Bailiff who is working with a Youth Attorney team will function as a research assistant. Youth Attorneys are urged to involve Clerk-Bailiffs in their work.

The assignment of each Clerk-Bailiff to a mock Supreme Court will be done by the Illinois YMCA Youth and Government Office.

This is a good time to make sure all Clerk-Bailiffs know about the position of Head Clerk-Bailiff. This person should be good at averages and well-organized. This position will be voted on by the Clerk-Bailiffs near the beginning of the Springfield weekend.

## **Arrange For an Advising Attorney For Each Youth Attorney Team**

With respect to Advising Attorneys, remember:

- Keep the Illinois YMCA Youth and Government Office updated on the name, address and telephone number of all Advising Attorneys, including any who have dropped out. A copy of this handbook will be sent to all Advising Attorneys.
- Make sure that each Advising Attorney has the documents listed above.
- Invite the Advising Attorney to the Pre-Leg II Judicial training session.

## **Study This Handbook**

The Pre-Leg I and II training sessions will be much easier to digest if this handbook has been studied. Youth Attorneys who do this will appreciate their early start when the deadline for submitting Bench Memos looms.

## **Judicial Youth Meet With the Advising Attorneys**

It is a good idea to work on understanding in general how the appeal process and legal analysis work before starting on the Bench Memo. The Illinois YMCA Youth and Government Judicial Program is a closed world appellate process, where the precedential case law is provided to the students.

Once the appeal process and legal analyses in general have been discussed, start to focus on the set of Appeal Facts on which the brief will be written; the other set can be considered once the Bench Memo is finished.

Remember: If a Youth Attorney was, for example, a Case B prosecutor during the mock trial phase, he or she also writes a Bench Memo as a Case B prosecutor. The Youth Attorney teams also stay the same. Clerk-Bailiffs simply need to pick a Youth Attorney team with which to work.

It may be helpful to break down into as many as four groups (by Cases A and B and by prosecution and defense).

## **PART 4.**

### **STAGES OF A CRIMINAL APPEAL**

An appeal in a criminal case is a proceeding by which either the defense or prosecution seeks to correct errors supposedly made by the trial court.

It is important to understand the differences between the trial phase and the appeal phase. In the trial phase, Youth Attorneys were concerned with the guilt or innocence of a defendant. In the appeal phase, it is assumed for purposes of the program, that the defendant was found guilty. The focus of the Youth Attorneys now shifts so that the focus is on questions of law. The focus is not on the testimony and evidence as provided in the trial handouts (although, this may play a part), but is on whether the defendant's constitutional rights were violated -- whether he got a fair trial.

As with the Mock Trial, with the Mock Appeal it is also important to understand the differences between real court procedures and those followed in Youth and Government.

The differences between real courts and Youth and Government are significantly less pronounced with the Mock Appeal than they were with the Mock Trial. This is due to the nature of an appeal. The parties in the appeal work with a given set of facts that emerged from the trial court. The major difference is that the parties in an appeal must review the record to discover the issues that will emerge, whereas the Youth Attorneys are given the issues for appeal in the Mock Appeal. It then will be their responsibility to argue the significance of the facts and the questions of law on appeal.

Illinois' statutes give the Illinois Supreme Court near total discretion to determine the procedures to be followed in appeals. These procedures are set forth in the Supreme Court Rules in the Illinois Compiled Statutes.

#### **Final Disposition by the Trial Court**

In real life, except in relatively rare cases, there is no appeal until the trial court has finished with a case. The exceptions usually pertain to appeals of the bond (bail) set by the trial court.

In a case where a conviction is obtained, usually the appeal will be filed following the sentencing of the defendant. In a case in which the defendant is acquitted in a trial, often the prosecution can not appeal because of the constitutional provisions against requiring a defendant to stand trial more than once for the same offense.

#### **An Appeal is Filed**

In real courts an appeal is filed by submitting a simple written notice of that fact to the appropriate appellate court. The party filing the appeal is the "Appellant" and the party defending the appeal is the "Appellee".

A defendant who does not have an attorney often can simply orally inform the court of his or her desire to appeal and the court clerk will prepare the written notice and submit it to the appellate court. In Youth and Government, Youth Attorneys do not need to prepare or file a written notice of appeal; the Appeal Facts indicate that this was done.

Indigent defendants convicted of offenses for which the punishment could be jail are entitled to a court-appointed attorney to handle their appeal. The Office of the State Appellate Defender employs attorneys for this purpose.

Most states, including Illinois, and the federal courts have a two-tier appellate court system with initial appeal to an intermediate appellate court and appeal from there to a Supreme Court. Illinois is divided into five geographic districts covered by what commonly are referred to as "appellate courts", although this is somewhat imprecise in that the Illinois Supreme Court also is an appellate court. The Illinois Supreme Court, however, usually is called just that; since the U. S. Supreme Court also usually is called that, there is some potential for confusion.

Illinois' First Appellate District is comprised of Cook County and, as one would suspect, is by far the busiest of the appellate courts. The four down-state districts stretch east-west across the state, average 25 counties and are headquartered in Elgin (District 2), Ottawa (District 3), Springfield (District 4) and Mount Vernon (District 5).

A defendant is guaranteed only one appeal, usually to the Appellate Court. The Illinois Supreme Court usually is not required to consider the Appellate Court decision and, in fact, accepts less than 10 per cent of the cases it is asked to consider. A small number of cases are appealed directly from the trial court to the Illinois Supreme Court, most frequently those in which the defendant received the death penalty.

A decision of a state's Supreme Court can be appealed from there to the United States Supreme Court, although the court can decline to hear it and does so far more often than even the Illinois Supreme Court. The cases that are accepted usually involve issues that are common to so many other cases that the decision is expected to establish a precedent that supposedly will be followed by the lower courts and thereby impact on many more cases. The influence of the U. S. Supreme Court has much less to do with the number of cases it decides than with the precedents that it establishes.

Since Youth and Government does not have two tiers of state appellate courts, all of our appeals are directly to the mock Illinois Supreme Court. Also, Youth and Government simultaneously runs more than a dozen mock Illinois Supreme Courts.

Illinois Appellate Courts each have several justices but only three hear each case. Which justices hear a case is determined by the court. The Illinois Supreme Court has seven members, all of whom hear each case.

## **The Trial Court's Records Are Filed With the Appellate Court**

During the trial court's proceedings, detailed records are kept of what happens. When an appeal is filed, those records are transmitted to the court in which the appeal is filed.

They usually include all documents filed with the trial court and a verbatim transcript of the trial and some of the hearings, especially those on pre-trial motions and the sentencing.

In Youth and Government, the information necessary to argue the appeal is provided by the Appeal Facts, which are read in conjunction with the Trial Facts.

## **Written Arguments Are Submitted**

Both sides in a criminal appeal write down their arguments and contentions in a document known as a "brief". These contentions essentially concern what mistakes supposedly were made

or not made by the trial court and what constitutional provisions, statutes and legal precedents exist to support that view.

In real Courts, the appellant (the party who files the appeal) submits a brief first, then the appellee. Often third and fourth briefs are submitted.

In Youth and Government, the attorneys prepare a Bench memo, which is a simplified version of a brief. Additionally, each of the appellants and appellees submit a single Bench Memo **by e-mail** ([ilyg@illinoisymca.org](mailto:ilyg@illinoisymca.org)) at the same time, by the deadline.

A copy of each Bench Memo then will be sent to the Youth Justices who sit on the model Supreme Court that will hear that particular appeal, all of whom are determined by the Youth and Government Office. At this time, Youth Attorneys will be sent a copy of the Bench Memo of their opposing team.

Clerk-Bailiffs will be sent a copy of the Bench Memo of the Youth Attorney team that opposes the Youth Attorney team for which they are acting as a research assistant and the Bench Memos of the Youth Attorney teams appearing before the model court to which they are assigned. If a Clerk-Bailiff switches Youth Attorney teams, the Youth and Government Office must know or the correct Bench Memo will not be sent.

## **The Written Arguments Are Studied and the Cases Cited in Them Are Read**

Prior to oral argument, the justices read and study the written arguments and the cases cited in them. A real court might look up additional cases, although an attorney should not fail to thoroughly research the issues in expectation that the court will do so. This study is absolutely essential to a productive oral argument. Of course, the lawyers must carefully study and research the arguments of opposing counsel.

**It is disheartening for attorneys who are well prepared to argue a case before justices who are not. The court's work is easier if it is properly prepared for oral argument.**

Because in Youth and Government the Youth Attorneys and the Clerk-Bailiffs who are acting as their research assistant act as attorneys in one case and justices in the other, they must do more than read the Bench Memo of the Youth Attorney team they oppose: They must give equal attention to the Bench Memos of the Youth Attorneys who are appearing before their model court.

This study should start as soon as the various Bench Memos are received, which is as soon after the Bench Memo submission deadline as it is possible to get the Bench Memos reviewed and sent out electronically.

## **Oral Argument**

Oral argument is what it sounds like: a chance for the attorneys to meet with the judges and formally discuss the case. Usually it is the only court appearance involved with an appeal.

An appellate court does not hear witnesses as at a trial because the purpose of an appeal is not to duplicate the trial; accordingly, during an appeal the court considers what happened at the trial level and hears oral arguments concerning the significance of those events.

The purpose of an oral argument is not for the attorneys to read their Bench Memos to the court, as the judges obviously can read for themselves. The essence of oral argument is for the judges to ask questions of the attorneys in order to sharpen their understanding of the case as a means of arriving at a better decision. It is the exchange of ideas and the give-and-take that makes oral argument so interesting.

Obviously oral argument places a premium on a Youth Attorney's ability to think on his or her feet. However, what may not be immediately apparent is that those who are the best at it almost always are those who are the best prepared. In other words, the foundation of an effective oral argument is preparation-familiarity with the facts of the case, the law and the arguments of opposing counsel. As already mentioned, it is just as important that the justices be well prepared.

Each Youth and Government oral argument is scheduled for one hour. They are held at various locations in the State Capitol complex. The appellant opens the argument, the appellee goes next and then the appellant once again. Each team has 15 minutes to divide among their issues. (The appellant divides the time between two issues and their rebuttal.) The justices may interrupt at any time with questions. If there is a great deal of questioning, Youth Attorneys may request, but are not always granted additional time. Clerk-Bailiffs help the Assistant Chief Justice preside, such as by keeping time. More detailed information about oral argument is set forth in Part 13 of this handbook.

## **The Court Deliberates, Decides and Writes One or More Opinions**

Following oral argument the justices meet to discuss the case. Eventually they decide how they believe the case should be resolved. It takes a majority of the court to resolve the case, or decide whether the lower court is affirmed (upheld) or reversed (overruled). In the case of a reversal, a majority of the court also must agree on how to remedy the mistake. (For example, is a conviction merely reversed without further proceeding? Is the trial court to hold additional proceedings?)

Those justices who think alike work together to write a written opinion that expresses their reasoning.

A real court is not held to any particular deadline in making a decision. Sometimes decisions are rendered as long as a year after the oral arguments, although some states have established deadlines.

Obviously Youth and Government must operate on a much shorter time frame: Decisions must be reached and opinions written within 24 hours or less-all the more reason to begin preparing as early as possible.

## **The Court's Decision is Announced**

The decisions of real appellate courts are "announced" in rather unspectacular manner: They simply are mailed to the parties. Of course, important decisions may show up first in the news media.

In Youth and Government, the model courts are assembled in the State Capitol on Sunday to announce their decisions and read their opinions. This procedure is discussed in Part 20 of this handbook.

## PART 5.

# RESEARCHING THE BENCH MEMO

### Define the Issues

Before you can write a Bench Memo, you have to do some research, and that means you need some idea of what you are looking for and how to find it.

Consider the Appeal Facts, which set up two basic issues on appeal. Each Youth Attorney should take primary responsibility for one issue. (Remember to involve any Clerk-Bailiff who is assigned as a research assistant.)

The Appeal Facts should be read and reread until the Youth Attorneys are familiar with them. Otherwise, it will be difficult to recognize precedents when they are encountered.

Also, obtain a photocopy of whatever constitutional provisions apply to the issue and become familiar with them. And: **Do not forget the deadline!**

### Consider What Constitutional and Statutory Provisions Apply

Appeals are decided by applying the law to the facts of a case. You already know the facts because they are fully set forth in the Appeal Facts. Now you have to learn what law applies.

Law comes from several sources, but some are more important than others. In the United States, the federal Constitution is the single most important source of law. It is pretty easy to find: Check just about any library, textbook on American government, or the internet.

**Consider what provisions might apply to the case. The most likely provisions of the U. S. Constitution that might apply are the Fourth, Fifth, Sixth and Fourteenth Amendments. As important as constitutional provisions are to consider, by no means do they give a complete understanding of the applicable law; for example, they do not even attempt to define what is criminal behavior.**

Although the U. S. Congress, through the passage of statutes, defines some behavior as criminal, mostly it is related to the federal government's role (for example, collecting federal income taxes or issuing currency). The states are left to write most of the criminal laws-but they must be consistent with the U. S. Constitution, which is why that document is relevant to any criminal case.

In an Illinois state court, which is the setting for a Youth and Government mock appeal, the Illinois Constitution applies. As with the U. S. Constitution, read it to identify provisions that apply to the case. You will find that they echo what the U. S. Constitution says. Learn to refer to the provisions of both.

Like the U. S. Constitution, the Illinois Constitution sets forth certain protections for persons accused of a crime but does not define what is criminal behavior. That is done by the Illinois General Assembly through the passage of laws known as statutes.

Illinois statutes are compiled in a collection known as the Illinois Compiled Statutes. Most public and school libraries have a copy, as well as being available on the Internet at <http://www.ilga.gov/legislation/ilcs/ilcs.asp>.

The Compiled Statutes are divided for convenience into more than a hundred chapters. The chapter on Criminal Law is No. 720. However, this is not the only chapter to consider; for example, some of the procedures established for criminal cases are determined by the Illinois Supreme Court and are found under Supreme Court Rules.

You will find that the statutes are organized in such a way that, if you stick with it, you should be able to find what you are looking for. Remember to be thorough. As you can see, there is a lot to check out, which makes it easy to miss something that applies to your case. Unless this step is performed well, your later research will be much less efficient-and the Youth Attorneys opposing you might find something that you do not!

## **Understand the Significance of Precedents and Case Law**

There is so much room for interpreting constitutions and statutes that the "gray areas" somehow have to be filled in. This is done by considering how past cases that involve the issues that have been decided and applying that information to the case at hand. The decisions in earlier cases are known as "precedent", the idea being that courts generally will follow precedents in order to be consistent in their decisions. So, an attorney who wants to convince the court to resolve an issue in a certain way helps his or her cause by convincing the court that other cases already have decided that way--that is, that the precedents establish a rule of law that agrees with their view of the case.

The significance of a precedent depends on several factors. For example, how similar are the facts to the case at hand? In which court was the precedent established? (In the Illinois Supreme Court, which is the setting for a Youth and Government mock appeal, decisions of the United State Supreme Court are the most influential, followed by those of the Illinois Supreme Court and the Illinois Appellate Court. There are others, but they are less likely to enter the picture.)

Precedents can be either favorable or unfavorable to one side's position. Whether the precedent is favorable or unfavorable to one side's position, and to what extent it is favorable or unfavorable, is subject to interpretation and, therefore, can be a subject of disagreement.

The important decisions of the appellate courts at both the federal and state level, and the reasoning behind them, are put in writing and published. These are known as "opinions". At the federal level, even the trial ("district") courts' opinions are published. However, this is not done at the state level.

The precedents that the opinions establish commonly are referred to as "case law". Virtually all law libraries have at least some books that compile such opinions, known as "reports" or "reporters". A particular opinion is located by its "citation".

## Learn How to Read a Citation and Understand the Source of Court Opinions

A citation tells several bits of information about a case. Consider, for example, the following citation of one of the most influential and controversial criminal cases ever decided: Miranda v. Arizona, 384 U.S. 364 (1966). Here is what the citation tells us:

1. "Miranda" tells the name of the defendant.
2. "384" tells the number of the report volume, or book, in which the opinion is found.
3. "U.S." tells that the opinion is found in the United States Reports and is one issued by the United States Supreme Court.
4. "364" tells the page on which that particular opinion begins in the volume in which it is found.
5. "(1966)" tells the year that the case was decided.

There are many different types, and therefore names of, the reporters. This is for two reasons: There are different levels of courts and the same opinions are compiled by both the government and private publishers.

The United States Reports is the official publication of U. S. Supreme Court Opinions. The two most frequently used privately published reporters of the decisions of the United States Supreme Court are the Supreme Court Reports, abbreviated as "S.Ct." and the Lawyer's Edition, abbreviated as "L.Ed." Sometimes the volume number of a report gets so high that the volume numbers are started over in a second series. The Lawyer's Edition, like other reporters, has started a second series; it is known as Lawyer's Edition Second, abbreviated as "L.Ed.2d".

In the Supreme Court Reports, the Miranda case is found at page 1602 of volume 86; in Lawyer's Edition Second, at page 694 of volume 16. A more useful citation, then, is: Miranda v. Arizona, 384 U.S. 364, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Opinions of the Illinois Supreme Court published by the government are found in the Illinois Reports, abbreviated as "Ill." As with the Lawyer's Edition, there is a second series, known as Illinois Second and abbreviated as "Ill.2d". Example: People v. Stewart, 105 Ill.2d 22 (1984).

Opinions of the Illinois Appellate Court published by the government are referred to as the Illinois Appellate Reports which has not only a second series but also a third. Example: People v. Wallace, 106 Ill.App.3d 567 (1982).

The opinions of both the Illinois Supreme Court and the Illinois Appellate Court are compiled by a private publisher in the North Eastern Reporter, which has a second series abbreviated as "N.E.2d", and Illinois Decisions, abbreviated as "Ill.Dec". The Illinois citations in the previous paragraphs, then would be People v. Stewart 105 Ill.2d 22, 473 N.E.2d 840, 85 Ill.Dec. 341 (1984) and People v. Wallace 106 Ill.App.3d 567, 435 N.E.2d 960, 62 Ill.Dec. 162 (1982).

Note that the citations for the privately-published decisions of the Illinois state courts do not distinguish between those of the Supreme Court and the Appellate Court.

Here is a chart that summarizes the reporters for the opinions of the courts already mentioned and the other federal courts.

<u>Court</u>	<u>Official Reporter</u>	<u>Private Reporter(s)</u>
U. S. Supreme	U.S.	S.Ct. (West) L.Ed. L.Ed.2d
U. S. Appellate 1/	None	F. (West) F.2d (West)
U. S. District 2/	None	F.Supp. (West)
Ill. Supreme	Ill. Ill.2d	N.E. (West) N.E.2d (West) Ill.Dec. (West)
Ill. Appellate	Ill.App Ill.App.2d Ill.App.3d	N.E. (West) N.E.2d (West) Ill.Dec. (West)

1/The lower federal appellate courts are known formally as the U.S. Circuit Courts of Appeal, of which there are 11 circuits nationally. Illinois is in the Seventh Circuit. "F." stands for Federal Reports.

2/The federal trial courts are known formally as the U.S. District courts. Illinois has three districts. "F.Supp." stands for Federal Supplement

Note that when a case is cited as supposedly providing a precedent on a certain point, the citation for at least one of the reporters (usually the one that the researcher used) also indicates the page at which that particular part of the opinion may be found if it is possible to be that precise; this follows immediately after indication of the page at which the opinion begins. Example: People v. Stewart, 105 Ill.2d 22, 27, 473 N.E.2d 840, 85 Ill.Dec. 241 (1984).

## **Learn How To Read a Court Opinion**

Pages AH-14 and AH-15 are a copy of a real-life appellate court opinion from a reporter. We will use it to better understand how to read a case, or opinion.

Twenty different locations on the opinion reproduced here have been numbered for the purpose of this explanation. Using those numbers, which are circled, their significance is as follows:

1. The short title of the case we are looking at, People v. Martinez.
2. A short citation to the reporter we are using, Volume 501 of the North Eastern Reporter, Second Series, the case being found at page 1003. The information in parentheses tells us the case was decided by the Illinois Appellate Court, Second District, in 1986.
3. The number of the page in Volume 501 that is reproduced, 1003.
4. The citations to the other reporters, the Illinois Appellate Reports and the Illinois Decisions. (Keep track of all citations, you will need them for formal cites.)

5. The long title of the case. It tells us that defendant, the appellant, filed the appeal, and the state, the appellee, is defending it.
6. Another indication that the opinion was issued by the Second District of the Illinois Appellate Court.
7. The date the opinion was issued.
8. A brief summary of what happened in the lower court and what the Court's holding is here. (Note: This is only a summary and may NOT be quoted in your Bench Memo.)
9. An indication that the trial court was reversed in this case.
10. The first of five summaries of points of law made in this case and their West Publishing Co. topic classification number.
11. The names of the attorneys who handled the case.
12. Which Justice took primary responsibility for writing the opinion.
13. The start of text of the opinion. (This is the only place from which you may quote text.)
14. The number of the page in Volume 501 that is reproduced, 1004.
15. The volume in which the page is found.
16. The point in the opinion where summarized points Nos. 1-3 are found.
17. The point in the opinion where summarized points Nos. 4 and 5 are found.
18. Again, what the Court did here to the lower court's ruling.
19. What other justices participated in the decision and that they join in the opinion.

You can see that a court usually states a rule of law and then cites an earlier case as a precedent. Often it is profitable to read the cited case, since it may be more helpful than the case you are reading.

① PEOPLE v. MARTINEZ

Ill. 1003

② Cite as 201 N.E.2d 1088 (12 App. 3 Dist. 1986)

④ [5] Finally, while the estate listed in the statement of issues presented for review portion of its brief whether, even if we reverse the order below, a sale of the property prior to completion of the appeal will place the property beyond recall, the estate has not presented any argument in the brief on this statement thereby waiving our review of the issue. 103 Ill.2d R. 341(e)(7); *Jenkins v. Wu* (1984), 102 Ill.2d 468, 483, 82 Ill.Dec. 382, 468 N.E.2d 1162.

For the foregoing reasons, the order of the trial court allowing the \$48,000 claim of John and Pauline Morrow against Richard Morrow's estate is reversed, and the cause is remanded.

REVERSED and REMANDED.

NASH, P.J., and HOPF, J., concur.



⑤ 150 Ill.App.3d 516  
103 Ill.Dec. 686

⑥ PEOPLE of the State of Illinois,  
Plaintiff-Appellee,

v.

Roberto MARTINEZ,  
Defendant-Appellant.

No. 2-86-0318.

⑦ Appellate Court of Illinois,  
Second District.

⑧ Dec. 10, 1986.

⑨ Defendant appealed from order of the Nineteenth Judicial Circuit Court, Lake County, Fred A. Geiger, J.P., sentencing him to six-month term of confinement following his admission to allegations contained in petition to revoke his probation. The Appellate Court, Reinhard, J., held that trial court was without jurisdiction to revoke defendant's probation after probation term expired.

⑩ Reversed.

⑪ 1. Criminal Law ¶92, 98

Jurisdiction over defendant in criminal matter requires both subject matter and personal jurisdiction.

2. Criminal Law ¶979(1)

Generally, subject matter jurisdiction over probationer is coexistent with duration of sentence of probation.

3. Criminal Law ¶982.9(3)

Absent tolling of period of probation, court has no authority to revoke defendant's probation after period of probation has expired. S.H.A. ch. 38, § 1005-6-4(a)(3).

4. Criminal Law ¶1186.6

State's confession of error is not conclusive on jurisdictional issue, and does not relieve court of its duty to make independent determination of question.

5. Criminal Law ¶982.9(3)

Trial court was without jurisdiction to revoke defendant's probation after probation term expired.

⑫ G. Joseph Weller, Deputy Defender, Office of State Appellate Defender Mary Kay Schick, Elgin, for defendant-appellant.

Fred L. Foreman, State's Atty., Waukegan, Kenneth R. Boyle, Director, State's Atty. Appellate Service Com'n, Springfield, William L. Browsers, Deputy Director, State's Atty. Appellate Service Com'n, David A. Bernhard, Elgin, for plaintiff-appellee.

⑬ Justice REINHARD delivered the opinion of the court:

⑭ The defendant, Roberto Martinez, appeals from the trial court's order sentencing him to a six-month term of confinement in the Lake County jail following his admission to the allegations contained in a petition to revoke his probation. He contends on appeal that the trial court's order was void because the court lacked the jurisdiction to enter it.

On February 13, 1985, the defendant pleaded guilty to unlawful possession of cannabis (Ill.Rev.Stat.1985, ch. 56½, par. 704(d)) and was sentenced to a one-year term of probation. On February 13, 1986, the State filed a petition to revoke the defendant's probation for his failure to pay court costs, to make restitution (later amended to failure to pay a fine), to complete public service employment, and to report to his probation officer, all of which were conditions of the order of probation. On February 25, 1986, the defendant admitted the allegations in the petition and, on March 17, 1986, was sentenced to six months in the county jail.

The defendant's contention on appeal is that as his probation term expired as of midnight on February 12, 1986, the court was without jurisdiction to revoke his probation on February 13, 1986. The State confesses error. Although we note that this issue was not raised below, the question of the trial court's jurisdiction may be raised at anytime. See *People v. Gregory* (1974), 59 Ill.2d 111, 112, 319 N.E.2d 483.

(17) [1-3] Jurisdiction over a defendant in a criminal matter requires both subject matter jurisdiction and personal jurisdiction. Generally, subject matter jurisdiction over a probationer is coexistent with the duration of his sentence of probation. (*People v. Green* (1980), 91 Ill.App.3d 127, 129, 46 Ill.Dec. 515, 414 N.E.2d 237.) The period of probation shall be tolled by personal service of the petition for violation of probation or the issuance of such warrant, summons or notice, and the period shall not run until the hearing and disposition of the petition for violation. (Ill.Rev.Stat.1985, ch. 38, par. 1005-6-4(a)(3).) Absent such a tolling, the court, however, has no authority to revoke a defendant's probation after the period of probation has expired. *In re Pacheco* (1978), 67 Ill.App.3d 396, 397, 24 Ill.Dec. 119, 384 N.E.2d 936.

(18) [4.5] The question to be determined is whether the trial court retained jurisdiction on February 13, 1986, such that it had the authority on that date to entertain a petition to revoke the defendant's probation.

The defendant argues, and the State concedes, that the probation term expired at midnight on February 12, 1986, the 365th day of the sentence. (See *People v. Cahill* (1921), 300 Ill. 279, 287, 133 N.E. 228.) The State's confession of error is not conclusive of this issue, and it does not relieve this court of its duty to make an independent determination of the question. (*People v. Patrick* (1977), 46 Ill.App.3d 122, 124, 4 Ill.Dec. 679, 360 N.E.2d 792; see *People v. Greer* (1980), 79 Ill.2d 103, 116, 37 Ill.Dec. 313, 402 N.E.2d 203.) In this case, after making an independent assessment of the issue, we must agree that the defendant's term of probation expired as of midnight on the 365th day following the imposition of the sentence. Therefore, we reverse the trial court's order of March 17, 1986, sentencing defendant to six months in the county jail for violating the terms of his probation.

(19) REVERSED.

(20) NASH, P.J., and HOFF, J., concur.



150 Ill.App.3d 319  
103 Ill.Dec. 687

PEOPLE of the State of Illinois,  
Plaintiff-Appellee,

v.

Willie KENNEDY, Defendant-Appellant.

No. 5-83-0793.

Appellate Court of Illinois,  
Fifth District.

Dec. 10, 1986.

Defendant was convicted of murder and armed robbery by the Circuit Court, Madison County, Edward C. Ferguson, J., and he appealed. The Appellate Court, Kasserman, J., held that: (1) defendant was not denied constitutional right to cross-

## **PART 6.**

# **WRITING THE BENCH MEMO**

### **A Checklist**

If you have done the following you are ready to start writing the Bench Memo:

- Identified and obtained a copy of all applicable constitutional statutory provisions.
- Identified, read and obtained a copy of the court opinions cited in the Appeal Facts – every case that is cited in the Appeal Facts **MUST** be included in the legal analysis in the Bench Memo.

### **Review the Evaluation Point Reference**

An evaluation point reference schedule is attached in this Appeal Handbook. Each Youth Attorney and Advising Attorney should refer to this schedule to assist them in maximizing the point total that will be given when the Bench Memo is evaluated.

### **Learn The Components of a Bench Memo**

Do not try to write at this point; just read and learn the proverbial big picture.

Below is a list of the components of an appellate Bench Memo for purposes of the Judicial Program. It should be noted that the appellate Bench Memo used in this program is not as extensive as an appellate brief that would be filed in a real Illinois Appellate Court. Instead, the appellate Bench Memo for the Judicial Program takes on the form of a memo that concentrates on the legal arguments regarding the issues on appeal. As an example, an edited version of one of the Bench Memos submitted during the 1998-1999 Judicial Program is provided herein. The relevant portions of this Bench Memo, which won several awards, appears in this handbook as Part 7.

The components are:

1. Cover page-Credit also should be given to any Clerk-Bailiff who worked on the Bench Memo; identify them as such. Obviously, names and dates will change, but this is the basic form.
2. Argument

There are several elements that are crucial. First, your Argument should be organized. There are any number of methods of organizing your Argument. One such methodology is known as IRAC:

**Issue** - state the key issue involved in your argument

**Rule** - state the general rule of law applicable to your issue

**Application** -

- a.) analyze the facts of the cases that you cite in your Argument
- b.) analyze the statements of law that are discussed in your cited cases
- c.) compare the facts of the cited cases to the case at bar.
- d.) apply the law of the cited cases to the case at bar. Make sure

to apply any applicable statutes or Constitutional Conclusion  
Conclusion: State your conclusion and request that the court decide in your favor.  
(You will want to do this with **EACH** case that you cite.)

3. Conclusion-A brief statement of what action you want the Court to take, the signature of the Youth Attorneys who wrote the Bench Memo and a repetition of their personal information.

## Write a First Draft

Look over more thoroughly the partial sample Bench Memo provided in this handbook. Then write your argument. Follow the form.

A basic outline usually makes for better writing and, in the long run, saves time. Essentially, an outline clarifies the order in which basic ideas will be presented. When this is done well, it keeps the argument focused on those ideas. The idea is not just to write, but to convince, and that starts with clarity.

Start to write. There is no particular "right" length. (The sample in this handbook is partial).

The best legal writing is that which is clear. Refrain from extensive quotations from the opinions cited, although short quotations may sometimes be helpful. Try to bring out the details of the facts of the case at hand and of the precedents that support the propositions being argued.

## Write at Least One More Draft

It has been said that there is no good writing, only good rewriting. Given the complexities of a legal argument, that is even more true when writing a Bench Memo.

Those who are working on the Bench Memo should discuss the first draft. Take a moment to consider what has been written so far. Were the right precedents chosen? Does every sentence in some way support the proposition that is being argued? Should the flow of ideas be reorganized? Are the grammar and sentence construction correct?

Write at least one more draft before there is any typing.

You may want to have your Advisor read it as well as someone not associated with the program. This will enable you to have legal feedback, as well as ensuring that it is clear and well supported so that someone unfamiliar with the case can understand.

## Type

Follow the form used by the partial sample Bench Memo in this handbook.

## Make Copies

Make at least two copies of the finished Bench Memo to keep. Also save your Bench Memo electronically.

## E-Mail:

The finished Bench Memo should be e-mailed to the Youth and Government Office ([ilyg@illinoisymca.org](mailto:ilyg@illinoisymca.org)) **Do not miss the deadline!**

No. 1998-1999-B  
IN THE YOUTH AND GOVERNMENT  
SUPREME COURT

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Joseph Taylor	)	
Appellant-Defendant	)	Appeal from the Circuit Court
	)	of Youth and Government
	)	Circuit of Illinois
	)	
vs.	)	No. 1998-99-B
	)	
People of the State of Illinois	)	Honorable Charles Tramel
Appellee-Plaintiff	)	Presiding Judge

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BRIEF AND ARGUMENT FOR THE APPELLEES-PLAINTIFFS

Youth Attorney Name  
Address  
Phone  
Email address

Youth Attorney Name  
Address  
Phone  
Email address

Attorneys for the Appellees-  
Plaintiffs, the People of the  
State of Illinois

## ARGUMENT

- I. THE TRIAL JUDGE DID NOT ERR WHEN HE DENIED THE DEFENSE COUNSEL'S OBJECTION TO THE ADMISSION OF A STATEMENT, "OH NO--OH NO, JOE!" MADE BY THE VICTIM NICOLE BEAN TAYLOR.

The Appellee maintains that the trial judge did not err when he overruled the defense counsel's hearsay objection and properly admitted the statement as evidence. This decision was correct, in accordance with the Constitution of the United States of America and the Constitution of the State of Illinois. Amendment V of the Constitution of the United States of America states that no person shall "be deprived of life, liberty, or property, without due process of law." Amendment XIV of the Constitution of the United States of America states that

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law."

Article I, section 2 of the Constitution of the State of Illinois states that "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

Article I, section 8 of the Constitution of the State of Illinois states that

"In criminal prosecutions, the accused shall have the right to appear and defend by counsel...and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed."

The hearsay issue is complex, because it concerns the definitions of legal terms and how each condition is met by the existing facts of the case. The facts of individual cases can be wholly similar or completely dissimilar. Since there is a wide latitude given between case facts and how the hearsay rule is applied, there must be a set standard to what constitutes hearsay.

Hearsay is defined as:

“Testimony in court or written evidence of statement made out of court, such statement being offered as assertion to show truth of matters asserted therein, and thus resting for its value upon credibility of out of court asserter.” People v. Carpenter, 28, Ill.2d 116, 190 N.E.2d 738 (1963)

The reason that hearsay exists is because the rule concerning it is not absolute. There are exceptions to the rule, and because of these exceptions, the facts in each individual case must be weighed carefully so that any statement that is included is admissible under the exception to the hearsay rule.

For example, in the case at bar, there are two general rules of law that apply and provided exceptions to the hearsay rule. These two rules of law are the spontaneous declaration exception to the hearsay rule and the dying declaration exception to the hearsay rule. The State contends that the statement made by Nicole Bean Taylor is admissible under the spontaneous declaration exception to the hearsay rule. For testimony to

qualify under this exception, three elements must occur:

"(1) An occurrence sufficiently startling to produce a spontaneous and unreflecting statement; (2) absence of time to fabricate; and (3) the statement must relate to the circumstances of the occurrence." People v. Robinson, 383 N.E.2d 165, 73 Ill.2d 192, 22 Ill.Dec. 688 (1978), 199

Furthermore, the State contends that the statement made by Nicole

Bean Taylor qualifies as a dying declaration.

"In order to establish a dying declaration exception to the hearsay rule, the statement must be made by the victim under a fixed belief that death is impending, without opportunity for repentance, and with a belief that death is inevitable, considering that the declarant must be in the possession of his or her mental faculties." People v. Cobb, 186 Ill.App.3d 898, 134 Ill.Dec. 664, 542 N.E.2d 1171 (1991), 899

The issue of hearsay exists because of the inability of the defendant to have the opportunity to cross-examine the out-of-court declarant as to what is being offered as testimony or evidence against the defendant. Thus, since the out of court declarant is unable to be sworn in and their testimony reviewed under cross-examination, the situation of whether such testimony is considered hearsay arises. If testimony is considered admissible, and such testimony is considered hearsay, there must be an exception to provide for that evidence to be allowed into court.

The statement that is considered hearsay in the case at bar was made by Nicole Bean Taylor before she was shot. She uttered, "Oh no-oh no, Joe!" When Mary Bean testified about this statement during the trial, the defense objected, because the statement was made by an out-of-court asserter who

could not be cross-examined as to the validity of such statement.

In the case at bar, the People contend that the statement is hearsay in fact, but is admissible in application, because it falls under the necessary conditions set forth by the spontaneous declaration exception to the hearsay rule and the dying declaration exception to the hearsay rule.

An example of the purpose of the dying declaration is to allow into evidence the final words made by the out-of-court declarant because he or she makes such statement when mortally wounded and death is apparent. An example of this is a common will. The will's owner may not be alive to dictate in person what he or she wanted, but because the will is an exception to the hearsay rule, it is admissible in a court of law. It represents the final wishes of the deceased, with the view that death is apparent and likely to happen.

The issue of hearsay is further complicated by the erroneous belief that any conversations that are held without the defendant's presence is considered hearsay. Such is not the case, but the belief that all conversations are hearsay is what complicates the situation. For the situation to be resolved, there must be a noted exception to allow the testimony or evidence to be admitted.

The appellees believe that the statement made by Nicole Bean Taylor does follow the exceptions noted above and is admissible in a court of law

even if the testimony or evidence is hearsay in fact, but not in application.

The court's decision is supported by the case of People v. Robinson 383 N.E.2d 165, 73 Ill.2d 192, 22 Ill.Dec. 688 (1978). In that case, the defendant, Jackie Robinson, was convicted of rape, armed robbery, and two counts of deviate sexual assault. For his crimes, he was sentenced to concurrent terms of 30 to 50 years on each of the four convictions.

The Robinson case and the case at bar are similar in facts and in the application of the law. In Robinson, the complainant identified her attacker, Robinson, because he had been at her table the previous night at a local nightclub. In the case at bar, Nicole Bean Taylor had also previously seen Joseph Taylor because of their relationship and eventual marriage. In both cases, the victim was able to identify their assailants.

In Robinson, the complainant's sister received a phone call at 6:30 a.m. from her sister. The complainant's victimization started at approximately 1 a.m. and ended at approximately 2:45 a.m., and she remained in the garage for the next three and one half hours until she called her sister. The defense filed a post-trial motion claiming that the testimony provided by the complainant's sister and that of Officer Glick was in error. The State in Robinson contended that the testimony provided by those two witnesses was an exception to the hearsay rule classified as a spontaneous declaration.

In the case at bar, Nicole Bean Taylor yelled out loud as soon as she saw that her estranged husband, Joseph Taylor, a trained marksman, was pointing a gun at her. Under the spontaneous declaration rule, the statement is admissible if there was "no time for fabrication." Since Nicole Bean Taylor yelled as soon as she saw the gun, there can be no complaint that she could have fabricated the statement because there is no time to fabricate such a statement.

In the case at bar, Nicole Bean Taylor saw a gun in Joseph Taylor's hand and yelled "Oh no--oh no, Joe!" Before the statement can be admissible, the three elements of the spontaneous declaration must be met. The first element is whether there was an "occurrence sufficiently startling to produce a spontaneous statement." This first element is seen by the fact that Joseph Taylor, the victim's estranged husband, is pointing a gun at her. The second element that must be present is whether or not there is an "absence of time to fabricate." In the case at bar, there was no absence of time because the statement was made as soon as the victim saw that Joseph Taylor was pointing a gun at her. The third element that must be present is whether or not the "statement must relate to the circumstance of the occurrence." The third element is present and can be viewed if the statement is not taken just as a spontaneous declaration, but also a plea that Joseph Taylor not continue

with the action that is most likely about to happen. In other words, Nicole Bean Taylor is pleading with Joseph Taylor not to shoot her.

In Robinson, for the testimony provided by the complainant's sister to be admissible, the three elements of the spontaneous declaration must be present. The first element is whether or not there was "an occurrence sufficiently startling to produce a spontaneous and unreflecting statement." This element was present due to the fact that the victim had been raped and forced to engage in deviate sexual conduct in her garage. The second element that must be present is whether or not there is an "absence of time to fabricate." While the victim did wait three and a half hours to report her victimization to her sister, she was under duress and possibly in shock from both the victimization and the threats, that she may have believed that if she left her position, the assailant would hurt her again as he threatened to do. While there is an absence of time to fabricate, the circumstances, which the victim was in, does not allow for her to fabricate a different or plausible scenario for what had happened to her. The third element that must be present is whether or not the "statement must relate to the circumstance of the occurrence." The third element is present because the victim phoned her sister to tell her that she had been raped and forced to participate in deviate sexual conduct. The testimony that the defense has questioned is what the

sister had testified to and what Officer Glick had testified to as a result of the complainant's sister's testimony.

At trial, in the case of People v. Robinson, the complainant's sister testified

"that complainant stated that she had been raped and forced to submit to deviate sexual conduct in the garage, and that the person who sat at the table at the nightclub was her assailant."(197)

At trial, Officer Glick testified

"that he received a call from complainant at 7 a.m., and when he arrived at the apartment, complainant's sister and brother-in-law were present. He corroborated the sister's physical description of the complainant and then testified to the details of the crime as they were related to him by the complainant that morning."(197)

In the case at bar, the statement made by Nicole Bean Taylor was corroborated with the testimony of Mary Bean and did not correlate to any fact of the crime, other than the identification of the attacker. In both Robinson and the case at bar, the statement made by the victim could be corroborated by other testimony. The testimony of Mary Bean included Nicole's statement and the fact that a 1988 white Pontiac that was owned by Joseph Taylor was at the scene of the crime. This evidence was used to place Joseph Taylor at the scene of the crime. The very fact that the statement was corroborated by other evidence shows both its inherent reliability and the fact that it is admissible in a court of law.

In Robinson, the court said,

"There also was substantial corroborative evidence, in addition to the hearsay testimony, e.g., defendant's identification at the nightclub, his inculpatory statement, his ownership of a pale-yellow auto and of a beige and burnt-orange striped sweater, the discovery of a fingernail clipper in his car, and the presence of extraneous Negroid hairs on the victim." People v. Robinson, 383 N.E.2d 165, 73 Ill.2d 192, 22 Ill.Dec. 688 (1978), 200

As in the case at bar, the hearsay testimony in Robinson can be corroborated by other evidence and is admissible in court.

Also at trial, the State presented the testimony of two other officers. The defense counsel did not object to these two officers' testimony. One officer established that the complainant could identify her attacker, the defendant, from a group of photographs, while the other stated that the complainant was able to pick the defendant out of a lineup.

In Robinson, the court said,

"We observe that no fact regarding the crime was introduced by the State through hearsay testimony which fact was not later established by the complainant's own testimony. The hearsay testimony was merely cumulative." People v. Robinson, 383 N.E.2d 165, 73 Ill.2d 192, 22 Ill.Dec. 688 (1978), 200

Also in Robinson, the court said,

"Aside from the unsworn and sometimes cumulative nature of hearsay evidence, its most objectionable feature, and the main rationale underlying its exclusion, is the opposing party's inability to test the real value of the testimony by exposing the source of the assertion to cross-examination." People v. Robinson, 383 N.E.2d 165, 73 Ill.2d 192, 22 Ill.Dec. 688 (1978), 200

In Robinson, the court said,

"Here, defense counsel had an opportunity to and in fact did cross-examine the out-of-court declarant (complainant). We, therefore, find no reversible error in the admission of the sister's and the police officer's hearsay testimony." People v. Robinson, 383 N.E.2d 165, 73 Ill.2d 192, 22 Ill.Dec. 688 (1978), 200

In Robinson, the defense counsel was given the opportunity to cross-examine the victim. When the victim is present and can be cross-examined, the spontaneous declaration is admissible because the value of the statement can be seen in court. Although in the case at bar the witness is not available for cross-examination, the statement is admissible because the statement fits the rule of law of the spontaneous declaration.

The court in Robinson also said,

"This court has held that where, as here, the complaining witness' identification is positive, and where corroborative circumstantial facts are present, the admission of hearsay identification testimony will not constitute reversible error." People v. Robinson, 383 N.E.2d 165, 73 Ill.2d 192, 22 Ill.Dec. 688 (1978), 201

In the case at bar, the statement made by Nicole Bean Taylor was corroborated by the testimony of Mary Bean. The statement was merely cumulative and was corroborated by other testimony. The statement is admissible as a spontaneous declaration because it has all three elements that the rule requires. As in Robinson, the trial judge in both cases properly allowed into evidence the testimony that was considered hearsay.

The court's decision in the case at bar is further supported by the case of People v. Cobb, 186 Ill.App.3d 898, 134 Ill.Dec. 664, 542 N.E.2d 1171 (1991). The defendant, Thomas Cobb, was charged by indictment with one count of murder and one count of armed violence to each prevalent statute.

After the jury trial, the Prosecution nol-prossed the armed violence count, and the jury returned a verdict of guilty on the murder charge. Cobb was sentenced to a 32-year term of imprisonment.

On November 3, 1986, Cobb was at the home of the victim, Betty Rogers. That night, both Cobb and Rogers had been arguing. The argument ended when Cobb stabbed Rogers. There were approximately four stab wounds that were centered on the back of the neck and near both shoulders. Before the victim died, she told her niece, Shawn Johnson, "Help me. He killed me." Shawn Johnson looked out the back door and saw Cobb get into his automobile and drive away. Johnson ran to another neighbor's house to find help.

The rule in Illinois states that

"In order to establish a dying declaration exception to the hearsay rule, the statement must be made by the victim under a fixed belief that death is impending, without opportunity for repentance, and with a belief that death is inevitable, considering that the declarant must be in the possession of his or her mental faculties." People v. Cobb, 186 Ill.App.3d 898, 134 Ill.Dec. 664, 542 N.E.2d 1171 (1991), 899

In Cobb, the court said,

"A dying declaration is a statement of fact made by the victim, relating the cause and circumstances of the homicide." People v. Cobb, 186 Ill.App.3d 898, 134 Ill.Dec. 664, 542 N.E.2d 1171 (1991), 907

The dying declaration in Cobb was made by the victim to her niece,

Shawn Johnson, that he, as in Cobb, had killed her. To qualify as a dying declaration, the statement must be made by a victim who in his or her own mind knows that he or she is going to die. In Cobb, the victim tells her niece that Cobb was the one that killed her. At the time of the statement, the victim was dying from asphyxiation, and that because of her circumstance, she knew that she was going to die. From this account, the statement made by the victim does qualify as a dying declaration.

In Cobb, the court said,

"Before such statements are admitted,...the trial court must be convinced beyond a reasonable doubt that the elements of a dying declaration are present. The court takes into account all the facts and circumstances surrounding the declarant before, during and after the statement is made." People v. Cobb, 186 Ill.App.3d 898, 134 Ill.Dec. 664, 542 N.E.2d 1171 (1991), 908

In the case at bar, the facts and circumstances show that the estranged husband, Joseph Taylor, was a sharpshooter, was pointing a gun at his estranged wife Nicole Bean Taylor, and that she screamed "Oh no--oh no, Joe!" before he shot her. The declarant, Nicole Bean Taylor knew from her marriage that he could hit a target at long distances and still be accurate. This knowledge shows that he could kill her and that her last words were a dying declaration.

In Cobb, the court said,

"Our supreme court has stated that it is 'reluctant to disturb the ruling of the trial judge on the admissibility of a purported dying declaration.'" The court in Cobb went on to say that [in] "Applying this standard of review to the principles set forth

above and the facts of this case, we find that the court did not err in admitting the victim's statement." People v. Cobb, 186 Ill.App.3d 898, 134 Ill.Dec. 64, 542 N.E.2d 1171 (1991), 908

When applying the principle stated above in Cobb to the case at bar and the case of Robinson, the above principle will show that the facts and circumstances of both cases, as well as the rule of law concerning dying declarations, proves that the trial judge in both cases did not err in admitting the victim's statement.

In Cobb, the court also said,

"In this case, there is no evidence that the declaration was not clearly enunciated. In the factual context of the case, defendant was the only 'He' in the vicinity of the homicide. The fact that the declarant did not identify the person who stabbed her by name bears on the weight of the testimony and not its admissibility. The court correctly admitted the statement as a dying declaration." People v. Cobb, 186 Ill.App.3d 898, 134 Ill.Dec. 664, 542 N.E.2d 1171 (1991), 909

In the case at bar, the declarant Nicole Bean Taylor made the statement before being shot. At that time, she was in possession of all her mental faculties; the statement itself shows this because she was able to identify her assailant by name. Also, there is no evidence to the contrary that she was intoxicated.

Also in the case at bar, the victim identified the person who would shoot her and that declaration was clearly enunciated because it was clearly overheard by Mary Bean, the victim's stepmother. In both cases, the trial judge did not err and properly admitted into evidence the statement made as a

dying declaration.

The court's decision is also supported by the case of People v. Poland 22 Ill.2d 175 (1961). The defendant was convicted of the murder of his wife and sentenced to the penitentiary for a term of 99 years. In this case, the most important question concerns the admission of testimony of a neighbor, Patricia Hansen, as to what the defendant's mother, Sophia Poland, made to her. This testimony was admitted in evidence, over an objection by the defense, as an exception to the hearsay rule.

Mrs. Hansen testified that she heard a commotion in the apartment that was above hers. Mrs. Hansen resides on a first-floor apartment and the apartment above hers belongs to the defendant and his mother, Sophia Poland. Mrs. Hansen heard Maria Poland, the wife of the defendant, say the word "Buster" five to six times during the course of the commotion. Mrs. Hansen testified that she heard Maria yell, "No, Buster, don't" People v. Poland, 22 Ill.2d 175 (1961), 179, which was then accompanied by a loud thud that she attributed to someone falling to the floor. Three minutes after the last thud, Mrs. Hansen heard Maria yell "No, Buster, don't" People v. Poland, 22 Ill.2d 175 (1961), 179, as she ran down the front stairs. After Maria yelled out, Mrs. Hansen heard three shots. Mrs. Hansen then heard a banging on her back door, which she opened to reveal Sophia Poland.

Mrs. Poland said, "Oh, my God, Pat, Buster just shot Maria, and he is going up to school to kill the kids and himself." People v. Poland, 22 Ill.2d 175 (1961), 179. This testimony is what the defense objected to. The testimony as to the declaration of Sophia Poland was admitted under the *res gestae* exception to the hearsay rule. The defense contends

"That the declaration was improperly admitted for three reasons: (1) the declaration is not a *res gestae* declaration, (2) no proper foundation has been laid for the admission of the declaration since there was nothing to show that the declarant was present when the shooting occurred, and (3) the contents of the declaration are not competent evidence, but merely represent the declarant's conclusion." People v. Poland, 22 Ill.2d 175 (1961)

In Poland, the court said,

"We see no useful purpose to be served in dealing with the problem by using the term "*res gestae*." That amorphous concept has been applied indiscriminately to a multitude of situations, some of which contain no element of hearsay at all, while others involve true exceptions to the hearsay rule. As applied to the situation involved here, we think that the term "*res gestae*" not only fails to contribute to an understanding of the problem but may actually inhibit any reasonable analysis." People v. Poland, 22 Ill.2d 175 (1961)

The court in Poland has said that the "*res gestae*" People v. Poland, 22 Ill.2d 175 (1961), 180, principle has been used too indiscriminately to be used in just one instance. In the case at bar, the rule of law for admitting the statement made by Nicole Bean Taylor was the spontaneous declaration and the dying declaration.

In Poland, the court said,

"Where a declaration is made under the immediate influence of the occurrence to which it relates and so near it time as to negative any probability of fabrication, such declaration is admissible provided the occurrence was sufficiently relating to

the circumstances of the occurrence, and it is not necessary that such a statement be made by a participant, or that it be made at the exact time and place of the occurrence, the controlling question being whether there was a lack of sufficient time to allow an opportunity for reflection and invention." People v. Poland, 22 Ill.2d 175 (1961), 181

In the case at bar, the statement made by Nicole Bean Taylor was made as soon as she saw her estranged husband, Joseph Taylor pointing a gun at her. This occurrence provoked an emotional response that occurred without time for "reflection and invention." Furthermore, the statement was made by the participant at the time and place of the occurrence, that being at the Bean home at 10:00 p.m. at night.

In Poland, the court said,

"There has emerged, as a recognized exception to the hearsay rule, the principle that, under certain conditions, what have been variously characterized as 'spontaneous declarations' or 'excited utterances' are properly admissible as an exception to the hearsay rule." People v. Poland, 22 Ill.2d 175 (1961), 180

In the case at bar, the Appellee contends that the statement made by Nicole Bean Taylor was a spontaneous declaration and is therefore admissible as an exception to the hearsay rule.

In Poland, the court went on to say,

"Perhaps the classic statement of the reason underlying this exception is that of Wigmore" (6 Wigmore, Evidence, 3d ed., sec. 1747): "This general principle is based upon the experience that, under certain circumstances of physical shock, a stress of nervous excitement may be produced which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since the utterance is made under the immediate and uncontrolled domination of the senses, and during the brief period when considerations of self-interest could not have been brought fully to bear by reasoned reflection, the utterance may be taken as particularly trustworthy (or, at

least, as lacking the usual grounds of untrustworthiness), and thus as expressing the real tenor of the speaker's belief as to the facts just observed by him; and may therefore be received as testimony to those facts." People v. Poland, 22 Ill.2d 175 (1961) 180-181

Following this rule of evidence, the statement made by Nicole Bean Taylor was in response to a physical shock, that being having a gun pointed at her, as the physical shock removed the control to fabricate a response to the situation. In essence, the spontaneous utterance or declaration was made in a sincere way to the external circumstances of the situation.

In Poland, the statement made by Sophia Poland must fit three factors to be admitted as a spontaneous declaration. The first factor is "an occurrence sufficiently startling to produce a spontaneous and unreflecting statement." The second factor is an "absence of time to fabricate." Finally, the third factor is "the statement must relate to the circumstances of the occurrence."

People v. Poland, 22 Ill.2d 175 (1961), 181

In Poland, the court said,

"Clearly, all three factors appear present with respect to the statement of Sophia Poland. Defendant argues that this is not a "classic *res gestae* declaration" since it was not made by a participant in the exciting occurrence, nor was it made at the exact time and place of the occurrence. Under the foregoing analysis, however, these factors are not controlling. The declaration need not have been made by a participant, but may be that of a bystander. Nor does the fact that the statement did not coincide exactly in time and place with the event control. The pertinent point is whether there was a lack of sufficient time to allow an opportunity for reflection and invention. We think that requirement is fully satisfied here." People v. Poland, 22 Ill.2d 175 (1961), 181

In the case at bar, the spontaneous declaration made by Nicole Bean

Taylor fits all three factors of the rule of law. (1) The occurrence that produced this statement was having a gun pointed at Nicole Bean Taylor. This occurrence is startling enough to produce a statement in anyone because it deals with physical harm to oneself. (2) There was no time to fabricate because the statement was made as soon as Nicole Bean Taylor saw her estranged husband, Joseph Taylor, point a gun at her. (3) The statement made by Nicole Bean Taylor related to the fact that her estranged husband was pointing a gun at her. Her statement was made in fright to this event.

In Poland, the defendant argued that the admission of Sophia Poland's statement was in error because there was no evidence to suggest that she was in the second-floor apartment when the occurrence occurred and that if she was in the apartment, there was no evidence to suggest that she saw the actual shooting.

In Poland, the court said,

"The first part of the argument is without merit. The evidence shows that Sophia Poland, resided in the upstairs apartment with her son and his wife, and there was testimony definitely establishing her presence there at an earlier hour on the day of the shooting. Under the circumstances, the sudden appearance on a November day of this elderly woman at Mrs. Hansen's back door, immediately after the shooting, clad in night dress and slippers, and the fact that she at once voiced the excited utterance in question, leave no room for any inference but that she had come directly from the upstairs apartment and had been present during the commotion." People v. Poland, 22 Ill.2d 175 (1961) 182

In the case at bar, the testimony of Mary Bean shows that she saw and

heard the victim yell out and that she also saw Joseph Taylor point a gun at Nicole Bean Taylor. Mary Bean corroborated the statement that was made and that it was made when Nicole Bean Taylor saw the defendant, Joseph Taylor, point a gun at her. In both cases, the trial judge did not err when admitting the statement as a spontaneous declaration.

The court's decision can also be supported by the case of People v. Carpenter, 28, Ill.2d 116, 190 N.E.2d 738 (1963). The defendant, Earl Carpenter, was found guilty of unlawful sale of narcotic drugs. After a bench trial, he was sentenced to a term of 20 to 25 years imprisonment.

In Carpenter, the defendant claims that a conversation between Agents Jackson and Parson was erroneously admitted because the conversation took place outside the presence of the defendant. The defense objected to the admissibility of the testimony and the court said,

"Seemingly, this type of objection, frequently appearing in the trial records before this court, arises from a misconception of the rules of evidence, and a belief that any statement or conversation occurring in the absence of defendant is inadmissible. Such is not the law." People v. Carpenter, 28, Ill.2d 116, 190 N.E.2d 738 (1963), 120

The court in Carpenter is clarifying the misconception that for a conversation to be admitted into evidence, the defendant must be in the presence of it for it to be properly admitted. The misconception is that any conversation that does not fit these parameters and is therefore admitted was

done so erroneously. In the case at bar, the defendant was in the presence of the statement made by Nicole Bean Taylor. To argue that the defendant was not aware of the statement is a misconception and the misconception does not make the statement inadmissible.

The hearsay rule is not without exception, though, as seen in the previous cases. In the case at bar, the Appellee contends that the statement made by Nicole Bean Taylor was a spontaneous declaration and a dying declaration, both of which qualify as exception to the hearsay rule stated above.

In Carpenter, the court said,

"The fundamental purpose of the hearsay rule was and is to test the real value of testimony by exposing the source of the assertion to cross-examination by the party against whom it is offered. While the administration of an oath and the right of confrontation are also spoken of as necessary elements, the essential feature, without which testimonial offerings must be rejected, is the opportunity for cross-examination of the party whose assertions are offered to prove the truth of the act asserted." People v. Carpenter, 28, Ill.2d 116, 190 N.E.2d 738 (1963), 121

In the case at bar, the victim does not need to be available for cross-examination if the statement was admitted as a dying declaration. Under the rule for dying declaration, the statement can be admitted as such if the victim knows that he or she is going to die. Nicole Bean Taylor's statement was her dying declaration, an assertion as to who her assailant was. Her knowledge of her impending death comes from her knowledge of his skills as a

sharpshooter.

In Carpenter, the court said,

"If this requirement is met, with the exception of instances such as those where the silence of the defendant is claimed to constitute an implied admission, the presence or absence of the defendant is immaterial." People v. Carpenter, 28, Ill.2d 116, 190 N.E.2d 738 (1963), 121

In the case at bar, the defendant was present when the statement was made. He was in his car with his head and shoulders out the window. The statement itself was overheard by Mary Bean, whose testimony was used to corroborate the statement and where the defendant was.

In Carpenter, the court said,

"Here the witness Jackson was present in court. He testified under oath as to only what he saw and heard, and was cross-examined with reference thereto. His testimony was relevant to the issue of defendant's guilty, and was clearly connected to the subsequent delivery of narcotics to the witness by the defendant. The objection to this testimony was properly overruled." People v. Carpenter, 28, Ill.2d 116, 190 N.E.2d 738 (1963), 121-122

In the case at bar, the trial judge properly denied the defense counsel's objection to the admission of Nicole Bean Taylor's statement. The statement was made in the presence of the defendant and was corroborated by the testimony of Mary Bean. In both cases, the trial judges did not err in admitting the statements that were made.

The court's decision can be further supported by the case of People v. Odum, 27 Ill.2d 237, 188 N.E.2d 720 (1963). The defendant, Joseph Odum,

was found guilty of murder and sentenced to a term of 35 years in the penitentiary. Prior to trial, the judge conducted a lengthy preliminary hearing on whether the statement made by the decedent can be admitted during the trial as a dying declaration. After the hearing, the trial judge ruled that he was convinced beyond a reasonable doubt that the statement made by the decedent was admissible because he believed that the statement was made when the decedent believed that he could die.

The victim, Pennegar, was shot about 12:30 a.m. on May 4, 1956. Pennegar died later that day at approximately 5:00 a.m. of three bullet wounds. Police officers Anglin and Lindsay found Pennegar bleeding from three bullets on the night in question.

Pennegar told the officers that "Glenn and Jules Taylor and another fellow (shot him)." People v. Odum, 27 Ill.2d 237, 188 N.E.2d 720 (1963) 239-240. Officer Lindsay told Pennegar that he was in "bad shape" and "would probably be dying." People v. Odum, 27 Ill.2d 237, 188 N.E.2d 720 (1963), 240

In the case at bar, Nicole Bean Taylor made a dying declaration before being shot. In Odum, it was after he was shot. Furthermore, in Odum, it was not the victim who believed he would die, but rather the officers who were with him. For a declaration to qualify as a dying declaration, the victim must

be the person to believe he that he is going to die, not a different witness. This clear distinction shows that in Odum, the statement made by the victim was improperly admitted.

Sergeant Traut testified that he talked to Pennegar and said, "I said you are hit bad, real bad." People v. Odum, 27 Ill.2d 237, 188 N.E.2d 720 (1963), 240

Pennegar said to officer Younger, "It looks like they got me." People v. Odum, 27 Ill.2d 237, 188 N.E.2d 720 (1963), 241

In Odum, the court said,

"The discrepancies already apparent in the statement relayed by the seven police officers indicate the need for the safeguards which the law has placed about dying declarations. No two witnesses of the extraordinary large number of men who interrogated the victim told the same story." People v. Odum, 27 Ill.2d 237, 188 N.E.2d 720 (1963), 241

The rule of law concerning dying declarations state that

"In order to establish a dying declaration exception to the hearsay rule, the statement must be made by the victim under a fixed belief that death is impending, without opportunity for repentance, and with a belief that death is inevitable, considering that the declarant must be in the possession of his or her mental faculties." People v. Cobb, 186 Ill.App.3d 898, 134 Ill.Dec. 664, 542 N.E.2d 1171 (1991), 899

In Odum, the victim did not know that he was going to die. He was told conflicting statements by the officers, who are not trained medical personnel, and the opinion that he was going to die was ascertained by an officer of no medical skill. Since it was not the victim who believed he would die, the trial

judge was in error when he allowed the statement into evidence.

In Odum, the court said,

"The doctor, the resident who was in charge of the emergency room, had no independent recollection of the case. On direct examination he said nothing concerning the condition of the patient. He had no recollection of examining the victim, nor did he remember any of the events of the morning of May 4, 1956. The medical report the doctor prepared at the time was admitted in evidence. It disclosed that the victim was grievously wounded." People v. Odum, 27 Ill.2d 237, 188 N.E.2d 720 (1963), 242

The doctor in Odum has no recollection of the patient, Pennegar. He and the nurse on call are the only trained medical personnel that are qualified to ascertain whether the victim would live or die. The medical report only showed that the victim was badly wounded, but not that he was dying. Furthermore, since the victim was told that he was in bad shape and that he was "not in a fixed belief...that death was impending," People v. Odum, 27 Ill.2d 237, 188 N.E.2d 720 (1963), 242, then the statement was admitted improperly.

In Odum, the court said,

"In this case the testimony shows that none of the medical personnel advised the victim that he faced imminent death. What the victim himself cannot be construed as indicating that he had abandoned hope. While the police officers frequently state that the victim was dying, it is the state of mind of the deceased and not that of any other person which determines admissibility." People v. Odum, 27 Ill.2d 237, 188 N.E.2d 720 (1963), 234-244

In the case at bar, Nicole Bean Taylor knew that she was going to die.

Her knowledge of her estranged husband's abilities as a sharpshooter gave her

the prior knowledge to show that death was at hand. In Odum, it was other people who said that the victim was going to die. The victim himself is the only one that can say that he has abandoned any hope for survival. In this regard, the trial judge in Odum erred by allowing into evidence the statement made by Pennegar.

In Odum, the court said,

"The belief of the dying man and not the belief of those around him furnishes the guaranty of truthfulness that makes his dying declaration admissible into evidence."  
People v. Odum, 27 Ill.2d 237, 188 N.E.2d 720 (1963), 244

In the case at bar, the victim, Nicole Bean Taylor, said her statement before being shot. She yelled out loud with the knowledge that death was imminent. She knew this because her husband was a sharpshooter and could hit a target very accurately. The victim, Pennegar, in Odum did not believe that he was going to die; it was the belief of the other officers who said that he was going to die. For a dying declaration to be admissible, the victim must believe that he or she is going to die, not from the fact that someone else said so. That is hearsay in form, in character, and in words. The trial judge in Odum was in err, and the case was properly reversed and remanded back to trial.

Therefore, because the statement was properly admitted as a

spontaneous declaration as well as a dying declaration, and that the defense's hearsay objection was properly denied, based upon the rule of law, evidence, and cases to support the defendant's claim, the court should affirm the trial court's decision.

### CONCLUSION

For the foregoing reasons, the Appellees-Plaintiffs respectfully requests this Honorable court to affirm the conviction in the case at bar.

Respectfully submitted,

Youth Attorney Name

Youth Attorney Name

Attorneys for Appellees-Plaintiffs,  
The People of the State of Illinois

## **PART 7.**

### **PRE - LEG I and II**

The Judicial training sessions at Pre-Leg I and II focus on the appeal, especially how to write the Bench Memo. Obviously it will be an advantage there to have read this handbook and discussed it with an Advising Attorney.

Pre-Leg I and II are opportunities for a Youth Attorney team that is unsure what to do next to get this clarified. It also is a good opportunity to update the Advising Attorney Information Form.

Generally, the training will include the following components:

- An overview of the Appeal process.
- An explanation of precedents, citations, how to read a case and how to construct an argument.
- A review of the Appeal Facts.
- This will be the first real opportunity for the Youth Attorneys to consider their responsibilities as a judge.

## **PART 8.**

### **AFTER THE BENCH MEMO IS WRITTEN**

#### Until the Other Bench Memos Arrive

At this point each Judicial Youth should begin to consider the other case, the one to which the Bench Memo just written does not pertain. Remember: Each Youth Attorney also is a Youth Justice and each Clerk-Bailiff also will act as a research assistant for one Model Supreme Court.

Until the several other Bench Memos that each Judicial Youth receives arrive, now is a good time to read the other set of Appeal and Trial Facts, get a photocopy of the cases cited in the Appeal Facts, and read them.

You will have at least three weeks to analyze the other case in your role as a judge. Make sure that you concentrate on judging at this time. You should consider how the Youth Attorneys will apply the facts and the law of the cited cases to the case at bar. You should prepare questions that will require the Youth Attorneys that you will be judging to stake out their positions. Prepare questions that will require that the Youth Attorneys defend their positions and distinguish the positions of their opponents.

#### Once the Other Bench Memos Arrive

Each Youth Attorney team, as well as any Clerk-Bailiff working with it, will receive a copy of the Bench Memo of the Youth Attorney team against which it will argue. The Bench Memo should be read, a copy of each case cited in it obtained and those opinions read.

The upcoming oral argument should be considered. For example, what should be said during the planned presentation portion of the oral argument, in particular points that respond to the other team's Bench Memo? What sort of questions might be asked by the Youth Justices?

Each Youth Attorney, as a Youth Justice, and each Clerk-Bailiff, in their capacity as research assistants, also will receive the Bench Memo of each Youth Attorney team to appear before the court to which he or she is assigned. Usually this will amount to either four to six Bench Memos.

These Bench Memos must be considered like the other: Read them, get copies of the cited cases and read those. There simply is not enough time to do this during the Springfield weekend, so do it now.

## **PART 9.**

### **FINAL PREPARATION FOR SPRINGFIELD**

Much of what can be said at this point is obvious: Be sure to bring plenty of supplies and copies of all of your Judicial materials, including both sets of Trial and Appeal Facts, all Bench Memos and copies of the opinions cited in the Bench Memos.

Otherwise, note that it is absolutely essential that each Youth Attorney and Youth Justice be as prepared as possible before reaching Springfield. Although there will be time set aside there for preparation, there really is not very much available--and there are many other demands on one's time. So, make a final push to be prepared; the weekend will be much more enjoyable and rewarding for it.

## **PART 10.**

### **FRIDAY MORNING AND AFTERNOON IN SPRINGFIELD**

Clerk-Bailiffs meet shortly after arrival on Friday morning for a training session and voting for the Head Clerk-Bailiff. Check the schedule for the time and place.

After the campaign speeches and voting on Friday afternoon, the Judicial participants meet apart from the other Youth and Government delegates to discuss Judicial matters. The matters to be covered:

- Introduction of the Advisors and Advising Attorneys working with Judicial during the weekend.
- Acknowledgment of the candidates for Chief Justice.
- Announcement of the winner of the election for Head Clerk-Bailiff.
- An overview of the rest of the weekend, including the schedule, what Judicial meetings are mandatory and their location.
- A discussion of the appropriate use of facilities.
- A mock oral argument.
- Preparation for oral argument divided by case.

## **PART 11.**

### **FRIDAY EVENING IN SPRINGFIELD**

Although there also will be some time for Youth Attorneys to polish their oral arguments, first they meet in courts as Youth Justices following the Friday evening banquet. Here is a guide to the evening:

#### **The Courts Meet**

The meetings start as soon as possible upon arrival at the meeting place.

#### **Introduction and Attendance**

If anyone assigned to the court is absent, the Clerk-Bailiff should report this to the adult court advisor or Judicial Coordinator

#### **Elect an Assistant Chief Justice**

Each Youth Justice who wishes to be considered by his or her court for election as Assistant Chief Justice to preside over the court should indicate this to the court. Votes are cast by the Youth Justices only and on a piece of paper. The votes are counted by the Clerk-Bailiff, who does not vote.

If there is only one candidate, there is no need to vote. If there are more than two candidates and one does not receive a majority of the votes, only the two candidates who received the most votes are considered in another ballot. Ties are broken by chance, such as the flip of a coin.

Before the court recesses, the newly-elected Assistant Chief Justice should be sure that everyone knows when and where to convene the next day and then report to the Chief Justice.

#### **Preparation for being a Justice**

- Separate into cases the courts are judging
- What facts of the cases and/or precedents seem particularly persuasive?
- What questions should be asked during the oral arguments?  
Back-and-forth discussion is encouraged; so is note-taking. The idea is to constantly refine one's view of the cases.

#### **The Courts Recess and the Assistant Chief Justices Meet with the Chief Justice**

Once the courts recess for the evening, Youth Attorneys and Clerk-Bailiffs are free to work on whatever Judicial matters they wish.

Assistant Chief Justices will meet with the Chief Justice to tend to any other matters that may need attention.

## **PART 12.**

# **SATURDAY MORNING AND AFTERNOON IN SPRINGFIELD**

### The Schedule and Required Attendance

Generally, Saturday morning and afternoon are when oral arguments are conducted and the courts get started on their opinions. It is important that all Judicial Youth understand when their attendance is mandatory; those who are not present at such times face disciplinary action.

All Judicial youth are required to be at the designated Judicial Headquarters at certain times on Saturday, those being all times from 8:30 a.m. to 5:15 p.m. except:

- When one is appearing in court as a Youth Attorney, Youth Justice or Clerk-Bailiff. Clerk Bailiffs also are allowed to attend court during the oral argument of a Youth Attorney team that he or she has assisted.
- During a two-hour break, which is scheduled according to which court one is assigned. The break differs among the courts. The schedule for each court will be announced no later than Saturday morning.
- During the dinner break, which is 5:00 to 6:15 p.m. Judicial Youth also are required to attend:
  - All oral arguments to which they are assigned as a Youth Attorney, Youth Justice or Clerk-Bailiff. They also must be there at least 10 minutes before the start of each oral argument.
  - All meetings of the court to which one is assigned, as indicated by the Assistant Chief Justice of that court. The Clerk-Bailiffs will confirm attendance at required meetings.

### The Courts' Work

Each court should have at least one meeting during the day to discuss the cases; again, the Assistant Chief Justice of each court will announce the time of all such meetings no later than Saturday morning.

Given the variations in the schedule, some courts will meet before their members have conducted their oral arguments as Youth Attorneys and some after. It also will vary as to whether each court has sat through all of the oral arguments assigned to it or even started them. Each court must work around such scheduling problems to continue its discussion of the cases.

Essentially, the discussion during the day on Saturday is a continuation of that from Friday evening. The Youth Justices and Clerk-Bailiffs should trade their thoughts and questions about the case in whatever fashion seems inclined to move the court toward a decision.

## **PART 13.**

# **ORAL ARGUMENTS**

Each Judicial delegate will be involved with three or four oral arguments on Saturday.

The point of oral argument is to allow the judges to ask questions of the attorneys concerning their view of the case. Real-life attorneys have a saying: "Rejoice when the court asks

questions," since that gives them some insight into the justices' thinking. So treat it as a challenge and opportunity to convince the court to decide the case the "right" way.

Step-by-step:

### **Arrive At Least 10 Minutes Early**

All Youth Attorneys should be sure to arrive at the courtroom at least 10 minutes early so they can catch their breath and get organized.

Youth Justices and Clerk-Bailiffs also should be sure to arrive at the courtroom at least 10 minutes early for the same reasons. For example, the Youth Justices need to find and don their robes.

### **Court Is Convened**

At a signal from the Assistant Chief Justice, the Clerk-Bailiff convenes court. The procedure for doing this is set forth in Part 21 of this handbook.

The Assistant Chief Justice presides. Usually he or she will ask each team of Youth Attorneys if it is ready to proceed. If so, the appellant is asked to proceed.

### **The Appellant Argues The First Issue**

One of the Youth Attorneys who represent the Appellant steps to the podium. Traditionally, each Attorney prefaces his or her presentation with "May it please the court..."

The Youth Attorney is allowed six minutes to discuss one of the issues. The Clerk-Bailiff will rap on the table and announce when one minute remains and, when the time is up, will so announce. At that point, the Youth Attorney should bring his or her remarks to a close quickly.

The presentation should not amount to simply reading the corresponding portion of the Bench Memo. The Youth Attorney should try to make the same points in different words and also address the contents of the Appellee's Bench Memo.

### **The Appellant Argues the Second Issue**

The procedure and the time limits are the same.

### **The Appellee Argues the First Issue**

The procedure is the same, although seven and a half minutes are allowed.

### **The Appellee Argues the Second Issue**

Same procedure, seven and a half minutes.

### **The Appellant Team Argues in Rebuttal**

In some combination, the Youth Attorneys for the appellant have three minutes to rebut the appellees. Again, there will be a knock on the table when one minute of the time remains.

### **Questions By The Court**

The members of the court may ask questions throughout the argument of the Youth Attorneys.

### **Court Is Adjourned**

Once the Assistant Chief Justice announces that court is adjourned, the Clerk-Bailiff performs the ceremonial closing, discussed in Part 21 of this handbook.

## **PART 14.**

### **JUDGING & EVALUATING AN ORAL ARGUMENT**

The Assistant Chief Justice will have been elected by his or her fellow associate justices. The Assistant Chief Justice will preside over the court.

All members of the court are encouraged/required to ask questions of the Youth Attorneys during Oral Arguments. Remember, it is disheartening for attorneys who are well prepared to argue a case before justices who are not. The court's work is easier if it is properly prepared for oral argument. So make sure you have read the Bench Memos and supporting cases, discussed them as a court, and prepared questions prior to hearing arguments.

Additionally, the Youth Justices will be evaluating the oral arguments of the Youth Attorneys. Part of the evaluation involves the ability of the Youth Attorney to respond to questions. It is difficult, if not impossible, for the Youth Justices to evaluate the ability of a Youth Attorney to respond to questions if pertinent questions are not asked of the Youth Attorneys by all the Youth Justices.

The Youth Justices have the ability to extend the Argument beyond the allotted time limits. This decision is up to the discretion of the Youth Justices. The Youth Justices should consider whether they would want the Argument extended if they had been the Youth Attorneys presenting the Argument rather than the Youth Justices hearing the Argument. Consideration also should be given as to whether an extension of the Argument will add substantial knowledge to the case.

An evaluation point reference schedule follows in the next section. Each Youth Justice, Adult Court Advisor, and College Staff participant should refer to the schedule when preparing to be a judge and when evaluating the Youth Attorneys.

**PART 15.**  
**SAMPLE EVALUATION FORM**  
**ILLINOIS YMCA YOUTH AND GOVERNMENT**  
**EVALUATION OF BENCH MEMO AND ORAL ARGUMENT**

Attorney(s):

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Case:

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**BENCH MEMO**

- \_\_\_ Format & Appearance (5)
- \_\_\_ Writing Quality (5)
- \_\_\_ Legal Reasoning (12)
- \_\_\_ Legal Research (3)

**ORAL ARGUMENT**

- \_\_\_ Professionalism (5)
- \_\_\_ Delivery (5)
- \_\_\_ Language (5)
- \_\_\_ Response to Questions (5)
- \_\_\_ Legal Reasoning (5)

\_\_\_ **TOTAL OF BENCH MEMO AND ORAL ARGUMENT**

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(Signature) Asst. Chief Justice

OR

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(Signature) Judicial Advisor

## **PART 16.**

### **EVALUATION FOR A BENCH MEMO**

#### **\* Format and Appearance**

- 5) All components of the Bench Memo are present, and are in the proper order. There should be virtually no typographical errors. The spacing on the page should be uniform. The Bench Memo must be professional in appearance.
- 4) All components of the Bench Memo are present, and are in the proper order. Typographical errors are minimal, but they do exist. The spacing on the pages is fairly uniform. The Bench Memo appears as professional as possible.
- 3) All components of the Bench Memo are present. Typographical errors are not prevalent, but there are more than a few. The spacing on the pages is not completely uniform, but is not random. The Bench Memo may not appear completely professional.
- 2) A poor effort has been made to follow the required format. There are numerous typographical errors. The appearance is not very professional.
- 1) Don't ask.

#### **\*Writing Quality**

- 5) The Bench Memo is written concisely and clearly. Grammar is impeccable. Cases are cited properly. The Bench Memo is written in a professional manner. The language is easy to follow. The Bench Memo holds the interest of the reader.
- 4) The Bench Memo is written concisely and clearly. Grammar is good, but not perfect. Adequate citations are made, but the citations are not complete. The Bench Memo is well-written, but it could be better. The language is easy to follow. The Bench Memo usually holds the interest of the reader, but at times the meaning of the words or the flow of the language is not clear.
- 3) The Bench Memo is written in an adequate manner. Grammar is adequate, but there is much room for improvement. Citations are included, but they are incomplete. There are many instances where the writing can be better. The language at times is torturous. The Bench Memo sometimes holds the interest of the reader, but often the meaning of the words is not clear.
- 2) The Bench Memo is not particularly well-written. Grammar is not very good. Citations are incomplete. The writing is not very clear. Often the Bench Memo does not hold the interest of the reader.
- 1) Don't ask.

### **\*Legal Reasoning**

- 12) A thorough and complete understanding of the law is exhibited. The Argument begins with a statement of the issue of law is involved and a discussion of the general rule of law applicable to that issue. The Argument includes a thorough and knowledgeable analysis of the facts of the cited cases to the facts of the case at bar, and applies the law to the case at bar. The Argument then concludes with a statement of the desired outcome. The Bench Memo should include a complete analysis and discussion of any constitutional provisions and statutes that are involved and an excellent application of those provisions and/or statutes to the case at bar. The cases cited in the Appeal Facts that appear to contradict your position are distinguished in a thorough and knowledgeable manner.
- 11) A very good understanding of the law is exhibited. The Argument is written in the way as described above for 12 points, although there are some points that are not covered thoroughly and knowledgeably. The Argument is very good, but not quite perfect. The cases cited in the Appeal Facts that appear to contradict your position are distinguished in a somewhat knowledgeable manner.
- 10) A very good understanding of the law is exhibited. The Argument is written in the way as described above for 12 points, although one of the Arguments is not as good as the other. One of the Arguments includes a thorough analysis of the facts of the cited cases and the applicable law. The other Argument includes a discussion of the facts of the cited cases and the applicable law, but it is not particularly knowledgeable or persuasive. The cases cited in the Appeal Facts that appear to contradict your position are distinguished, but in a less knowledgeable manner than described above to obtain ten points.
- 8) A good understanding of the law is shown. One of the Arguments is written in a manner described above for 12 points, but the other Argument concentrates either on the facts of the cited cases or on the applicable law, not both. Or, both Arguments are above average, including a discussion of the facts of the cited cases and the applicable law, but neither is particularly persuasive. The contradictory cases are mentioned, but are not completely distinguished.
- 7) An understanding of the law is shown. One of the Arguments exhibits a knowledge of the difference between the facts of the cited cases and the applicable law, but does not do a particularly effective job of explaining how they relate to the case at bar. The other Argument merely discusses the facts of the cited cases or the applicable law, but not both. Or, both Arguments discuss the facts of the cited cases and the applicable law, but neither Argument is particularly effective in presenting their case. The contradictory cases are mentioned, but not effectively dealt with.
- 6) An understanding of the law is shown. Both Arguments discuss either the facts of the cited cases or the applicable law, but not both. The Arguments are meandering and not particularly persuasive.

- 5) The general knowledge presented in the Argument is not very high. Neither Argument is particularly persuasive. Only one of the partners presents an Argument that is very persuasive. The other Argument is incomplete and unpersuasive.
- 4) Only a minimal amount of effort has been expended. Neither Argument displays a thorough understanding of the law. The facts of the cited cases and the applicable law are discussed in a haphazard manner, at best.
- 2) Very little effort is exhibited. A few paragraphs restating the applicable law and the issue on appeal are included, but not much more.
- 1) Don't ask.

**\*Legal Research**

- 3) All cases cited in the Appeal Facts are cited in the Bench Memo. All cases that are cited are used effectively in the Bench Memo. Any constitutional provisions and/or statutes involved also are used effectively.
- 2.5) All cases cited in the Appeal Facts are cited in the Bench Memo. All cases that are cited are mentioned in the Argument. The pertinent constitutional provisions and/or statutes involved are addressed, but not thoroughly understood.
- 2) All cases cited in the Appeal Facts are cited in the Bench Memo. Only passing attention is given to the constitutional provisions and statutes involved.
- 1.5) A weak effort is given to utilizing the cases cited in the Appeal Facts.
- 1) Don't ask.

## **PART 17.**

### **ORAL ARGUMENT GRADING STANDARDS**

**\*Professionalism**

- 5) The attorney is polite to the judges and to his opponent (no eye rolling or exasperated looks at the judges' questions or the opponents' argument); the attorney is wearing suitable, neat clothing; his hair is combed; he does not fidget while arguing (tapping of extremities or playing unnecessarily with their materials).
- 4) The polite treatment of other parties is as above, as is the appearance, however, there is some nervous fidgeting.
- 3) The attorney is polite, does not fidget but is wearing inappropriate clothing and or did not groom himself.
- 2) The attorney is polite, but is wearing inappropriate clothing and fidgets.
- 1) The attorney is rude, but dressed properly and does not fidget.
- 0) The attorney is rude, poorly dressed and fidgets.

### **\*Delivery**

- 5) The attorney speaks clearly, in a voice that can be comfortably heard, and makes good eye contact with the judges; he does not simply read from a sheet of paper.
- 4) The attorney is still clear and can be heard, but is not able to maintain sufficient eye contact with the judges, although he is not reading from his paper.
- 3) The attorney is clear and can be heard, but there is insufficient eye contact and there is too much reliance on reading from the paper.
- 2) The attorney is not clear and/or too quiet, but maintains eye contact and does not read from the paper.
- 1) The attorney is not clear and or too quiet, there is little eye contact.
- 0) The attorney mumbles as he reads his argument without ever looking up from the paper.

### **\*Language**

- 5) The attorney is comfortable using legal terms such as prima facie, and in explaining legal issues using clear and concise language that makes the issues readily understood, the facts of the case are clearly and concisely described.
- 4) The attorney stumbles over some of the legal terms, but is clear and concise in describing the legal issues and the facts.
- 3) The attorney gets the terms right but is convoluted in discussing the legal issues, however, the facts of the case are clear.
- 2) The attorney is unclear on the legal terms and issues but is clear and concise on some of the facts.
- 1) The attorney is able to express some of the issues and facts but is not consistent.
- 0) The attorney is unable to express any coherent ideas.

### **\*Response to Questions**

- 5) The attorney answers the question, if applicable, admitting things that clearly go against his position but explaining why the court should still rule in his favor.
- 4) The attorney answers most questions easily and admits points where necessary, but is not able to tell the court why the concession of that point does not undermine his case.
- 3) The attorney stumbles on some questions that favor his position but is able to answer some questions that go against his position.
- 2) The attorney easily answers questions that are clearly in his favor but doesn't answer any questions that go against him.
- 1) The attorney stumbles over questions supporting his position that he should be able to easily answer but is unable to answer questions that are inconsistent with his position.

- 0) The attorney is not able to answer any questions.

**\*Legal Reasoning**

- 5) The attorney demonstrates an understanding of the legal issues involved, (what the rule of law is) and the underlying legal rationale for the policy (public interest, constitutional support, fundamental fairness, etc.) The attorney explains how these issues relate to the facts of the case.
- 4) The attorney demonstrates an understanding of the legal issue but can't explain the underlying rationale for why the issue works as it does. The attorney explains how these issues relate to the facts of the case.
- 3) The attorney doesn't completely understand the legal issues but understands the rationale for the general area of law. The attorney is able to relate the issues to the facts.
- 2) The attorney doesn't completely understand the legal issues or rationale but is able to relate the general issues to the facts.
- 1) The attorney doesn't understand the legal issues or rationale enough to explain the facts in a way that supports his position.
- 0) The attorney doesn't understand the legal issues or rationale and is so unfamiliar with the facts that he cannot express his position.

## **PART 18.**

### **SATURDAY EVENING IN SPRINGFIELD**

Assistant Chief Justices meet with the Chief Justice at 6:45 p.m. at the Judicial Headquarters. The purpose of the meeting is to get a progress report on each court, iron out any problems and ensure that all Assistant Chief Justices understand what should happen next.

All Judicial delegates should be at Judicial Headquarters by the time designated in the Judicial Schedule. This is a required meeting; Clerk-Bailiffs will report any absences.

### **Write the Courts' Opinions**

Each court should hear from its members as to whether they vote to affirm or reverse and why. If there is much doubt as to how the cases should be resolved, there should be additional discussion as seems appropriate.

Once the court's vote seems more or less clear, the Assistant Chief Justice should organize the court into as many groups as is appropriate for the drafting of opinions. In essence, this is according to who votes to affirm as opposed to reverse and the reasons for that vote.

For example, four of a court's seven members may vote to affirm the trial court. If these four Youth Justices pretty much agree on their reasons, they should write a joint opinion. It will be

known as the "majority" opinion. If their reasons are rather different, there should be more than one opinion drafted by the majority.

The three members of the court described in the example who vote to reverse the trial court also should write at least one opinion, known as a "dissenting" opinion; depending on their reasoning, perhaps there should be two or three.

Each member of the court should join in and at least assist in writing one opinion.

Note:

- Since each court will hear two or three cases, they should be decided and discussed together.
- Decisions are based on the law as it is understood by each court.
- In the process of writing opinions, a Youth Justice may change his or her mind as to either how the case should be decided or the reasons for the decision. This should be reported immediately to the Assistant Chief Justice.
- Although Clerk-Bailiffs may not vote, they may participate in the court's discussion and help with the written opinions.
- The court's decisions and opinions also are discussed in Part 19 of this handbook.

Finally, the opinions should be approved by one of the designated Judicial Adult Advisors. Opinions must be approved by the designated advisor BEFORE leaving the Capital Complex.

## **Hand In the Opinion**

After the opinion is approved by the designated Judicial Adult Advisor, the Youth Justices will be dismissed by Court at the end of the training session when transportation arrives. The Court Opinions will be redistributed Sunday to the Associate Chief Justice.

## **PART 19.**

### **THE COURTS' OPINIONS**

The culmination of each model court's work is the issuance of one or more written opinions, which simply set forth the views of one or more justices on a case. Although theoretically each justice can write his or her own opinion, presumably at least some of them will think alike, in which case it makes sense that they join in a common opinion. The types of opinions are:

- Majority opinions, which set forth the views of a majority of the court (and, therefore, how the case is decided by the court). There will not be a majority opinion if a majority of the court's members do not agree on one.
- Concurring opinions, which agree with the result reached by the court but for at least somewhat different reasons than those expressed by other members of the majority. If there is no majority opinion, there should be at least two concurring opinions. And,
- Dissenting opinions, joined in by justices who would decide the case differently than the majority.

Cases are decided by applying the law to the facts. In real life, cases with different, but usually similar, facts are often discussed in a single opinion because the law, at least supposedly, is a constant.

The practice of discussing more than one case in a single opinion is even more appropriate in Youth and Government since even the facts are a constant, given our practice of, in essence, arguing the same case several times.

Each model court hears the same case either two or three times. There is every reason to deal with all of them in the same opinion.

Although different Youth Attorney Teams no doubt will argue different precedents, a case is decided according to the law, as opposed to what precedents are argued. So, a model court can consider and rely upon precedents not cited by either of the Youth Attorney teams arguing a particular case.

These additional precedents could be brought to the court's attention by the other Youth Attorney teams arguing before it. A limitation is placed upon the citation of precedents by Youth Attorneys to make it possible for the model court to be sure to consider the most important precedents.

Because of the Judicial Program's structure, an opinion will address more than one case in the sense that each oral argument presents a different case even though the names of the parties, the facts and the applicable law are identical, when a unique argument is presented by a particular Youth Attorney team, an attempt should be made to give that team credit in the opinion. Even though such arguments probably will be considered by the Court on all of the cases before it, such a practice recognizes the exceptional efforts and abilities of particular Youth Attorney teams.

### Getting Started

As discussed in Part 17 of this handbook, no later than Saturday evening it should emerge how each justice believes the cases should be decided and for what reasons.

The Assistant Chief Justice for each court should divide the court into appropriate groups to write opinions and see that each group gets started on drafting its opinion.

Imagine a court with seven members, five of whom vote to affirm and two to reverse. If at least four of the five who vote to affirm agree on their reasoning, they will join together in a majority opinion; less than four, in one or more concurring opinions. The other two either will join together in a dissenting opinion or each write their own.

### The Form of an Opinion

The form is informal. The opinion is handwritten (legibility being of obvious importance) with basic information noted at the top: The court, the names of the members who join in the opinion and whether the opinion is majority, and concurring or dissenting.

The opinion is written in a style similar to the argument portion of the Bench Memo. There is no set length; the opinion simply should be as long as it needs to be to explain the reasoning behind the vote. Given the amounts of effort expended by the Youth Attorneys, it is suggested that each opinion attempt to respond to the principal arguments of each side and explain why they are accepted or rejected, as the case may be.

### A Partial Sample Majority Opinion

Here is what part of a relatively simple majority opinion might look like:

#### Court 5 Majority Opinion

By Assistant Chief Justice Burns  
and Justices Collins, Franklin and White

We hereby affirm the defendant's conviction but reverse the sentence imposed and remand to the trial court for a new sentencing hearing.

#### The Defendant's Pre-Trial Statement

We believe the trial court did not err when it admitted defendant's pre-trial statement into evidence because she did not make a request for counsel such that the police were bound to stop their interrogation pursuant to Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981).

We believe this court's opinion in People v. Krueger, 82 Ill.2d 305, 412 N.E.2d 537 (1980) to be controlling. In that case, this court also had occasion to consider what language by a defendant acts as an effective request for counsel.

In Krueger, the court found that an effective request for counsel had not been made when the defendant said "Maybe I ought to have an attorney." The "request" in this case was even less definite: The defendant indicated that she would like an attorney but quickly and without pressure, then indicated that she was not sure and soon, still without pressure, retracted her request. This clearly is a knowing waiver of rights as envisioned in Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 694 (1966).

We disagree with the defendant that this holding is in any way inconsistent with our previous decision in People v. Medina, 71 Ill.2d 254, 375 N.E.2d 78 (1978). Although we said then, and say now, that the pressures during an interrogation can cause even the strongest-willed defendant to succumb to an involuntary "waiver" of his or her rights if only a little pressure is applied, that is not the case here. The interrogating officers did not in any way pressure the defendant to waive her rights; she did so freely once the officers further explained her rights to her.

#### The Sentencing Hearing

We agree with the defendant that incorrect procedures were followed during the sentencing hearing (and so forth).

### A Partial Sample Concurring Opinion

Here is a sample of a very simple concurring opinion:

#### Court 5 Concurring Opinion

By Justice Young

I agree with the result reached by the majority but for different reason with respect to the issue of the admissibility of the defendant's pre-trial statement.

I believe a clear request for an attorney was made but then clearly waived. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.694 (1966) and its line do not in any way prohibit police interrogation of defendants who waive their rights.

Note that it is common for a concurring opinion to refer to any majority opinion rather than attempt to reiterate its points. Members of a court who are working on different opinions should make their drafts available to each other. The justices reasoning already should be fairly well known to each other from the court's deliberations.

### A Partial Sample Dissenting Opinion

Here is a partial sample of a relatively simple dissenting opinion:

Court 5 Dissenting Opinion

By Justices Biel and Drake

We would reverse the trial court on the question of the admissibility of the defendant's pre-trial statement.

Initially the defendant made a clear request to forego further questioning by the police until she had obtained the advice of an attorney. However, the police did not terminate the interrogation at that point. Instead, they continued the discussion by reiterating to the defendant her right to counsel, a right which she already had indicated she would not waive.

After this additional explanation, the defendant again indicated her wish to consult with an attorney before making a statement. The police again continued to discuss her rights and asked her if she wished to waive the rights that she already has asserted twice. This time, she was unsure and eventually waived her rights.

We agree with the defendant that the state's obligation under Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed 378 (1981) was to cease the interrogation session once the requests for counsel were made.

In this case, the discussion between the defendant and the officers was prolonged because the police supposedly wished to explain her rights more clearly. However, she already had indicated that she understood them and did not wish to waive them, so there was no legitimate purpose to be served by continued discussion of the matter (and so forth).

## **PART 20.**

### **ANNOUNCING THE COURTS' OPINIONS**

The opinions are read during a scheduled session at the State Capitol on Sunday. The basic format is that the model courts take turns convening at the front of the room and reading their opinions.

The model courts proceed in numerical order. In order to keep the session running without breaks, the first two model courts should report to the side door at least 10 minutes before the start of the session.

The extra time gives the justices a chance to be robed. Also, each Assistant Chief Justice should determine who will read each written opinion and give the opinion to that person. The Assistant Chief Justice should make a note of which justices will read which opinions and make sure he or she is ready to summarize the court's decision.

The attorneys who argued in front of the first model court are seated at tables near the front of the room.

After a Clerk-Bailiff has the audience rise, the Chief Justice enters alone. Once he or she is seated, the first model court enters. A Clerk-Bailiff at the side door tells the court when it is time to enter.

The Assistant Chief Justice gives the following information:

- That a decision has been reached.
- What the court's decision is. And,
- How many opinions have been written and what type each opinion is.

For example:

"Mr./Ms. Chief Justice, a decision has been reached by Court No. 1. The majority of the court has voted to affirm the trial court in all respects. There are four opinions by the court, a majority opinion, a concurring opinion and two dissenting opinions."

Next the Assistant Chief Justice calls for the majority opinion to be read. For example:

"Justice Green, will you please read the majority opinion?"

The Opinions are read in this order: Majority, concurring and dissenting. If the Assistant Chief Justice is reading an opinion then:

"I will now read the concurring opinion."

Each justice who reads an opinion prefaces it by indicating which justices join in it. For example.

"This dissenting opinion is joined in by Justices Anderson and Barnes."

Then the opinion is read. When all of the opinions have been read, the Assistant Chief Justice says:

"That concludes the reading of our opinions."

A Clerk-Bailiff asks the audience to rise and for Court No. 1 to leave the room. The Attorneys that argued before Court No.2 are asked to the tables at the front of the room. A Clerk-Bailiff asks the audience to rise, Court No. 2 is then brought in. The procedure then is repeated until all of the courts' opinions have been read.

## **PART 21.**

### **SPECIAL INFORMATION FOR CLERK-BAILIFFS**

#### Getting Involved

Remember that you are considered a Youth-Attorney-in training. Essentially, out of court you do pretty much everything that a Youth Attorney does. In court, you act as a Clerk-Bailiff.

Just as in the trial phase of the program, you will have to make sure that you are paired with a Youth Attorney team with which to work as a research assistant. If you have problems with this, tell an Advisor.

Prior to the Springfield Assembly you should read all of the Bench Memos sent to you and the cases cited in them as would a Youth Attorney. You also might want to consider running for Head Clerk-Bailiff, especially if you are good at calculating averages.

#### Working With the Court

Clerk-Bailiffs do research like the Youth Justices, participate in the courts' discussions, although they do not vote, and help write opinions. There also are some administrative duties coordinated by the Head Clerk-Bailiff.

When in court, the Clerk-Bailiff assists the Assistant Chief Justice with convening and recessing court and keeps time.

Out of court, the Clerk-Bailiff takes attendance at all meetings of the court (report to the Head Clerk-Bailiff), counts the votes for the Assistant Chief Justice and generally assists the Assistant Chief Justice.

#### In Court

Prior to the start of court, remind the Youth Attorneys of the time limitations and how you will give the one-minute reminder.

When the Assistant Chief Justice indicates that it is time, before the Youth Justices enter the courtroom, the Clerk-Bailiff says:

"All please rise. (When the Youth Justices are at their places) The Youth and Government Model Supreme Court is hereby in session. Please be seated and quiet in the courtroom."

When court is in session the Clerk-Bailiff sits in front of the bench near the Youth Attorneys.

During the arguments, the Clerk-Bailiff keeps time and gives one-minute reminders as indicated in Part 14 of this handbook. Once a time limit is exceeded, announce this to the Youth Attorney who is speaking.

Once the Assistant Chief Justice announces that court is in recess, announce:

"Will all please rise?"

There is no need to tell everyone to sit back down. As soon as the Youth Justices have left the courtroom they simply can move as they will.

#### At the Announcement of the Opinions

The Clerk-Bailiffs should take turns announcing the model courts and asking the audience to stand and sit.

## **PART 22.**

### **GLOSSARY**

**ADMISSIBLE EVIDENCE:** Information about a court case that is placed into the official court record for consideration by the court.

**ADVISING ATTORNEY:** A real-life attorney who is not registered with Youth and Government as an Advisor but who is helping with the Judicial Program.

**ADVISING ATTORNEY INFORMATION FORM:** A form that is sent by each delegation's Head Advisor to the Youth and Government State Office as soon as possible after registration that indicates the name, address and telephone number of each Youth Attorney team's Advising Attorney. It should be updated on an ongoing basis.

**ADVISOR:** An adult who is registered as an Advisor with Youth and Government

**ADVISOR MANUAL:** A manual for Advisors that covers Youth and Government in general, available from the Youth and Government State office.

**AFFIRM:** A decision by an Appellate Court to uphold a decision by a lower court.

**APPEAL:** In Illinois state courts, a legal proceeding filed by a party to contest the disposition of a case by the circuit (trial) court.

**APPEAL FACTS:** A fictional set of facts upon which Youth and Government mock appeals are based. Two sets are written each year.

**APPELLANT:** The party that files an appeal.

**APPELLEE:** The party that defends an appeal.

**ASSISTANT CHIEF JUSTICE:** The Youth Justice who is elected to preside over a particular model court.

**BENCH MEMO:** A written explanation of a party's arguments in an appeal.

**CASE LAW:** The legal precedents established by cases already decided by the courts.

**CHIEF JUSTICE:** The Youth Attorney who is elected to preside over the Youth and Government Judicial Program.

**CITATION:** A reference to a case that already has been decided which gives the title of the case and indicates where it can be found.

**CLERK-BAILIFF:** A high school student who is registered with Youth and Government as a Clerk-Bailiff.

**CONCURRING OPINION:** An opinion written by a minority of the court in an appeal that agrees with the result reached by the majority, although for different reasons.

**DEFENDANT:** An accused person in a criminal case.

**DIGEST:** Legal reference books that summarize precedents and give their citation according to topic.

**DISSENTING OPINION:** An opinion written by a minority of the court in an appeal that disagrees with the result reached by the majority.

**HEAD CLERK-BAILIFF:** The Clerk-Bailiff who is elected to coordinate the work of the other Clerk-Bailiffs and otherwise serves as an assistant to the Chief Justice.

**ILLINOIS COMPILED STATUTES:** A compilation of the statutes of the state of Illinois. Criminal statutes are found mostly in Chapter 720.

**LEGAL ENCYCLOPEDIA:** Legal reference books that discuss various subjects and list generalized precedents and citations.

**MAJORITY OPINION:** An opinion written by the majority of the court in an appeal that sets forth the decision of the court.

**OPINION:** A written explanation of how one or more justices believe an appeal should be decided.

**ORAL ARGUMENT:** A court session during which the attorneys handling an appeal explain their view of the case and answer any questions by the justices.

**PRECEDENT:** A past court decision that is given as a reason to decide a later case a certain way because the results supposedly would be consistent.

**PRE-LEG II:** A large Youth and Government meeting held at two locations on the same Saturday in December at which Judicial participants discuss the mock appeal.

**REPORT or REPORTER:** A legal reference book that compiles court opinions.

**REVERSE:** A decision by an Appellate court to overrule a decision by a lower court.

**SHEPARD'S CITATIONS:** A legal reference book that, among other information, tells whether an appellate case has been reversed on further appeal.

**SMITH-HURD ANNOTATED ILLINOIS REVISED STATUTES:** A set of legal reference books that indicate what precedents have been established concerning a given statute.

**SUPREME COURT RULES:** Various rules adopted by the Illinois Supreme Court that supplement the Illinois Revised Statutes with respect to procedures to be followed in Illinois state courts, to be found in Chapter 110A of the Revised Statutes.

**YOUTH ATTORNEY:** A high school student who is registered with Illinois YMCA Youth and Government as an attorney.

**YOUTH JUSTICE:** A member of a Youth and Government Model Supreme Court.