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Clerk-Bailiff

Manual

2020-2021



Welcome to the Clerk-Bailiff Program!

You have elected to participate in the Illinois YMCA Youth & Government Program as a Clerk-Bailiff. As a Clerk-Bailiff, you will have several roles, which include attorney-in-training, oral advocate, court room manager, and participant in Judicial Review.

The Clerk-Bailiff position is intended to be an introductory role in the Judicial program. If you are a Freshman, it is the only role you can elect in the Judicial program. If it is your first year in Judicial, regardless of your grade, it is highly recommended that you start as a Clerk Bailiff. However, if you are a Sophomore that has been a Clerk-Bailiff, a Junior, or a Senior, you can elect to be either a Clerk-Bailiff or a Youth Attorney.

Overview of the Judicial Program

The Judicial program includes (1) an optional Mock Trial, (2) an Appeal, including a written submission and an Oral Argument, and (3) Judicial Review of two bills passed into law in Springfield.

The Mock Trial and the Appeal are based upon two fictionalized scenarios (Case A and Case B) set forth in a closed world set of Trial Facts and Appeal Facts. Youth Attorneys can choose which of the two cases they will handle, which Issue they will argue on appeal, and whether they will represent the Plaintiff or the Defendant. **Clerk-Bailiffs are all assigned to Case A. Clerk Bailiffs can choose whether to argue Issue I or Issue II, and whether to represent the Plaintiff or Defendant, as long as delegations attempt to have an equal division of Clerk-Bailiffs arguing for each side.**

(Optional) Mock Trial

If your delegation does not participate in the Mock Trial, you can skip this section, and go on to the next section.

For delegations that choose to participate in the Mock Trial phase, it is recommended that this portion of the program be conducted between the beginning of the program up until Pre-Leg II, generally from September to the end of November, and that the appeal phase be primarily conducted from Pre-Leg II through the Assembly in Springfield at the end of the program, generally from December to March. It should be noted that the training Pre-Leg I, at the beginning of November, will be directed to introducing the Appellate phase of the program. It is understood, however, that delegations participating in the Mock Trial may not be able to finish the trials prior to Pre-Leg I.

Each Clerk-Bailiff should be assigned to work with and assist a team of Youth Attorneys during the time in which the delegation is preparing for the Mock Trial. The Clerk-Bailiff should participate in strategy discussions, research, and question preparation. The Clerk-Bailiff can also be a good assistant in preparing and practicing Opening Statements and Closing Arguments.

During the Mock Trial, each Clerk-Bailiff should act as the courtroom organizer and assistant to the Judge.

Greeting the Jury

On the day of the mock trial, one or more Clerk-Bailiffs should be present to greet the members of the jury and tell them where to sit. Where should they sit? Ask the Mock Trial Judge.

As the jurors arrive, get their names and make a list. This will allow you to inform the Mock Trial Judge of which jurors are present and to poll them after their verdict if this is requested.

Swearing in the Jury.

Before the opening statements are given, the Mock Trial Judge will ask a Clerk-Bailiff to swear in the Jury. At that point, stand, face the jury, raise your own right hand and say:

"Would you please rise and raise your right hand?"

When the jury has done so, say:

"Do you solemnly swear to perform faithfully your duties as a juror, including to follow the court's instructions and to refrain from discussing with any other person, including your fellow jurors, the facts of the case before all of the evidence has been heard?"

Where to Sit During Court

Consult with the Mock Trial Judge as to where to sit during the mock trial. If more than one Clerk-Bailiff is assigned to the mock trial, determine how they will work together. Discuss this with the Mock Trial Judge.

How to Open and Close Court

It is up to the Mock Trial Judge to indicate when court will convene. Everyone else enters the courtroom before the Mock Trial Judge. As the Mock Trial Judge enters the courtroom, the Clerk-Bailiff says:

"Everyone please rise."

If this is the first time that the court has convened, then say:

"The Honorable Circuit of the Illinois YMCA Youth and Government Model Court is now in session, the Honorable (please insert name of the Mock Trial Judge here) presiding. Everyone please be seated and quiet in the courtroom."

After the first time the court convenes, the second part is reduced to:

"Please be seated and quiet in the courtroom."

The procedure for recessing or adjourning court always is the same. The Mock Trial Judge will announce the recess or adjournment. At that point, announce:

"Everyone please rise."

There is no need to make any further announcement. Once the Mock Trial Judge is out of the room, people will tend to move about naturally.

Bringing the Jury In or Out of the Courtroom

If the jury is brought into or taken from the courtroom while court is in session, the spectators and participants in the room should be told to rise while this is being done and to be seated when it is.

Swearing in a Witness

When a Youth Attorney announces the name of a witness who is being called to testify, the witness will walk toward the bench. As the witness approaches, the Clerk-Bailiff stands, raises his or her own right hand, and says:

"Please raise your right hand."

When the witness stops and raises his or her right hand, the Clerk-Bailiff says:

"Do you solemnly swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth?"

If a witness declines, for religious reasons, to "swear", then change that word in the oath to "affirm".

Marking and Handling Exhibits

A list should be kept during the Mock Trial of what exhibits have been marked and admitted. If a Youth Attorney wants an exhibit marked, he or she brings it to the Clerk-Bailiff and asks that it be marked. The item will be marked according to whether it is from the People or the Defendant, the number of exhibits already marked by that party (check your list) and the fact that it is "for identification". For example, the fifth exhibit marked by the People is marked "People's Ex. 5 for ID"; the third exhibit marked by the defendant is marked "Defendant's Ex. 3 for ID".

Once an exhibit is marked, the Youth Attorney will take it back, usually to hand to the witness. If an exhibit is admitted into evidence by the Mock Trial Judge, the "for ID" portion of the marking is crossed out by the Clerk-Bailiff.

When court is in recess, the Clerk-Bailiff is responsible for the safekeeping of the exhibits.

The Jury Deliberations

Those Clerk-Bailiffs who are attending the jury will accompany them to the jury room and remain outside the room. Remember to give the jury all exhibits that were admitted; however, this should not include those exhibits that only were marked for identification.

If the jury has a question or indicates that it has reached a verdict, the Mock Trial Judge is informed. The Mock Trial Judge will indicate when the jury should be moved from the jury room. Do not forget to get the exhibits out of the jury room.

Announcement of the Verdict

Presumably the Mock Trial Judge will convene court and then bring in the jury, so be sure to have everyone rise.

The Mock Trial Judge will ask the jury foreperson if the jury has reached a verdict and presumably the answer will be that it has. A Clerk-Bailiff should take any signed verdict from the jury foreperson and hand it to the Mock Trial Judge, who then will read it.

Introduction to 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, the determination to be made is 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 now shifts to the question of whether the Defendant received a fair trial.

The parties in the appeal work with a given set of facts that emerged from the trial court (as set forth in the Trial Facts and the Appeal Facts), the relevant precedential case law (4 cited cases per issue are provided). It is then their responsibility to argue the significance of the facts and the questions of law on appeal. Clerk-Bailiffs must choose two out of the four cited cases provided to address in the Clerk-Bailiff Oral Argument.

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 cannot 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, delegates do not need to prepare or file a written notice of appeal; the Appeal Facts indicate that this was already done.

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% 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. Every member of the Judicial program serves as a Justice of the mock Illinois Supreme Court during the Springfield weekend.

Clerk-Bailiff Case Summaries (due at Second Registration)

Clerk-Bailiffs are required to complete a Case Summary worksheet for each of the cited cases that they choose to address (two worksheets total). There are four cited cases, and each Clerk-Bailiff must address two of those cases (Youth Attorneys have to address all four).

The Case Summary worksheets are due **January 15, 2021**. The Case Summary worksheet can be given to your head advisor, or uploaded to the website at <http://www.ilymcayq.org/students/submit-forms/>

The Case Summary worksheet is attached as Appendix A to this Handbook. It should also be available on the Youth & Government website (www.ilymcayq.org/students/help/), or through your advisor. It is preferred that you use a computer to fill out each worksheet that is handed in. So, while you are free to take notes during delegation meetings and Pre-Legs, please organize your notes and provide a final, organized, typed worksheet for each cited case. Typeface should be 12 pt font and spacing should be 1.5 or double spaced. It is not necessary for each worksheet to remain a single page, so write out as much information as you think is necessary and sufficient to respond to the question.

Your advisor or advising attorney should spend time during delegation meetings explaining the Case Summary worksheet and assisting you in finding the information. We will also spend time during Pre-Leg I and II going over the material to help you determine your responses for the worksheets. However, if you are struggling at any point, please send an e-mail to ilyqjudicial@gmail.com, or use the Youth & Government website (www.ilymcayq.org) ☺ Students, Handbooks, Templates & Guides ☺ For Attorneys ☺ contact a judicial volunteer by e-mail) to ask any relevant question you may have.

Clerk-Bailiff Oral Argument (Friday in Springfield)

Oral argument is what it sounds like: a chance for the Clerk-Bailiff to meet with the judges and formally explain the case and why the court should rule in favor of the Plaintiff or Defendant. An appellate court does not hear witnesses as at a trial because the purpose of an appeal is not to duplicate the trial. Instead, the Appellate Court examines whether the Defendant received a fair trial. In trying to answer that question, the Appellate Court considers what happened at the trial level and hears oral arguments concerning the significance of those events in light of precedential

case law. The purpose of an oral argument is thus to persuade the court to decide the case in your favor.

The Clerk-Bailiff Oral Argument will be held Friday evening in Springfield. Each Clerk-Bailiff Oral Argument will be up to 5 minutes in length. During that time, each Clerk-Bailiff must discuss two of the four cited cases that are provided for Case A, and provide answers to the following questions:

- What happened that resulted in this issue being appealed, and how does it affect whether the Defendant received a fair trial?
- What is the Rule of Law for your issue (and what test, if any, is used to determine which way a court should rule under the Rule of Law)?
- Why is each of the cases you chose important to consider in deciding the case?
- What are the material (important/key) facts from each cited case that caused the court to rule the way it did?
- Why should the court rule in your favor (e.g., how are the facts of Case A different or similar from the facts in the cited cases in a way that shows the outcome here should be in your favor)?

Youth Attorneys are interrupted during their Oral Arguments for the judges to ask any question they feel is appropriate. In contrast, Clerk-Bailiffs will not be interrupted with questions, and must instead prepare your Oral Argument to address the questions listed above.

You do not have to use your full time, but you do need to use enough time to explain to the judges why the Defendant did or did not receive a fair trial and address the questions using each of your two chosen cited cases.

The Clerk-Bailiff with the best overall argument will be appointed to the office of Head Clerk-Bailiff.

Youth Supreme Court Sessions and Oral Argument Evaluations (Saturday at Assembly)

The Youth Attorney Oral Arguments occur throughout the day on Saturday at Assembly. Each Youth Attorney Oral Argument is scheduled for one hour, and the Youth Attorneys are divided into Courts that hear those cases. The judges on each Court are Youth Attorneys who are arguing the other case (e.g., if a Youth Attorney is arguing Case A, they will be a Judge for Case B). Each Clerk-Bailiff will be assigned to one or more Courts and must be present in the courtroom for each Youth Attorney Oral Argument at which the Clerk-Bailiff's Court presides. The Clerk-Bailiff acts as a courtroom manager, time-keeper, and Court assistant. Please note that the following duties of the Clerk-Bailiff may be modified in the event of a virtual Assembly. The duties of the Clerk-Bailiff are:

In the Courtroom

1. The Clerk-Bailiff must arrive several minutes before the Youth Attorney Oral Argument is scheduled to begin, lay out two Evaluation sheets for each of the judges on the Court. (Each Court evaluates the Youth Attorneys that argue before it, and there are Evaluation Sheets present in each courtroom).
2. The Clerk-Bailiff must determine when all of the Youth Attorneys are present (both teams for the Appellant-Defendant and the Appellee-State), and establish how much time each expects to use. The Appellant opens the argument (addressing both Issues I and II), the Appellee goes next (addressing both Issues I and II), and then the Appellant goes once again to rebut the arguments made by the Appellee. Each team has 15 minutes to divide among their issues. So, the Clerk-Bailiff must establish how much time will be scheduled for each of the following segments:
 - a. Appellant Issue I
 - b. Appellant Issue II
 - c. Appellee Issue I
 - d. Appellee Issue II
 - e. Appellant Rebuttal
3. The Clerk-Bailiff should notify the Court and the Youth Attorneys when all of the judges and Youth Attorneys are present.
4. When the Court enters the courtroom, the Clerk-Bailiff should announce loudly and clearly: "All Rise, the honorable Illinois Youth & Government Model Supreme Court is now in session."
5. When the justices are seated, the Clerk-Bailiff should announce loudly and clearly: "Please be seated and quiet in the courtroom."
6. The Clerk-Bailiff acts as an alarm clock during the Youth Attorney Oral Argument. For each segment, the Clerk-Bailiff should track the time used (you must have a watch or stop-watch, mobile phones with these features can be used), and provide loud, clear oral warnings when there is one minute remaining ("One Minute") and when time is up ("Time"). **DO NOT WAIT FOR THE ATTORNEY TO FINISH THEIR SENTENCE OR THOUGHT, JUST GIVE THE TIME WARNING AT THE RIGHT TIME.**
7. The Clerk-Bailiff must keep track of any extra time granted. 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. The Clerk-Bailiff must keep track of the additional time granted, and continue to give warnings at "One Minute" and "Time."

8. When the Youth Attorney Oral Argument is over, the justices will rise and leave the courtroom. When the Associate Chief Justice stands, the Clerk-Bailiff should announce loudly and clearly: "Please rise. The Illinois Youth & Government Model Supreme Court is now adjourned."

Evaluations

1. The Clerk-Bailiff must collect the completed Evaluation sheets. After the Oral Argument, the Court will meet, confer, and fill out the Evaluation Sheets (oral argument section only). The Clerk-Bailiff should check that each justice has filled out one sheet per Youth Attorney Team (one for Appellant-Defendant team and one for Appellee-State team), and collect all of the Evaluation sheets before the justices leave.
2. The Clerk-Bailiff must use the completed Evaluation sheets to fill out a Master sheet for each side of each Oral Argument (one for Appellant-Defendant team and one for Appellee-State team). This entails finding total scores and average scores (you must have a calculator, mobile phones with this feature can be used).
3. The Clerk-Bailiff must return the completed Master sheets with the underlying Evaluation sheets to the Court Packet in the Attorney General's office.
4. The Clerk-Bailiff must assist the Head Clerk-Bailiff Saturday evening during Opinion writing to ensure that all of the Evaluations are correctly collected and tallied.

Judicial Review (Sunday in Springfield)

Every Clerk-Bailiff acts as a Youth Judge (*i.e.*, voting member of the Illinois Youth & Government Model Supreme Court) during Judicial Review on Sunday.

Judicial Review is the third section of the Youth Judicial Program. Traditionally, Youth Attorneys and Clerk-Bailiffs (acting in their roles as Youth Judges) experience both their training and the performance of this aspect of the program on Sunday (the final day) of the Springfield Assembly.

I. Judicial Review – An Historical Lesson

To aid in the understanding of the basis for, and purpose of, the Judicial Review section of the Judicial Program, here is a description of the first instance of judicial review experienced in our nation:

Marbury v. Madison (1803)

Just as George Washington helped shape the actual form that the executive branch would take, so the third Chief Justice, John Marshall, shaped the role that the courts would play.

Under the administrations of Washington and his successor, John Adams, only members of the ruling Federalist Party were appointed to the bench, and under the terms of the Constitution, they held office for life during "good behavior." Thus, when the opposing Republicans won the election of 1800, the Jeffersonians found that while they controlled the presidency and Congress, the Federalists still dominated the judiciary. One of the first acts of the new administration was to repeal the Judiciary Act of 1800, which had created a number of new judgeships. Although President Adams had attempted to fill the vacancies prior to the end of his term, a number of commissions had not been delivered, and one of the appointees, William Marbury, sued Secretary of State James Madison to force him to deliver his commission as a justice of the peace.

The new Chief Justice, John Marshall, understood that if the Court awarded Marbury a writ of mandamus (an order to force Madison to deliver the commission) the Jefferson administration would ignore it, and thus significantly weaken the authority of the courts. On the other hand, if the Court denied the writ, it might well appear that the justices had acted out of fear. Either case would be a denial of the basic principle of the supremacy of the law.

Marshall's decision in this case has been hailed as a judicial tour de force. In essence, he declared that Madison should have delivered the commission to Marbury, but then held that the section of the Judiciary Act of 1789 that gave the Supreme Court the power to issue writs of mandamus exceeded the authority allotted the Court under Article III of the Constitution, and was therefore null and void. Thus he was able to chastise the Jeffersonians and yet not create a situation in which a court order would be flouted.

The critical importance of Marbury is the assumption of several powers by the Supreme Court. One was the authority to declare acts of Congress, and by implication acts of the president, unconstitutional if they exceeded the powers granted by the Constitution. But even more important, the Court became the arbiter of the Constitution, the final authority on what the document meant. As such, the Supreme Court became in fact as well as in theory an equal partner in government, and it has played that role ever since.

This description of the beginning of judicial review, as well as many other interesting facts about the United States, can be found at <http://usinfo.state.gov/usa/infousa/facts>, sponsored by the United States Department of State.

III. Judicial Review – Youth and Government Procedure

During the Springfield Assembly, many Bills are passed by both houses of the Youth Legislature and are signed into law by the Youth Governor. Some of the Bills relate to areas that are directly governed by provisions of the Illinois State Constitution and/or the United States Constitution. When new Youth and Government laws implicate the State and/or Federal Constitution in this manner, they may be subject to Judicial Review.

Laws Are Selected for Review

During the Springfield Assembly, the Chief Justice meets with Program Board and Judicial Committee members who administer the Judicial Program in order to review all new Youth and Government laws and determine which ones will be presented to the court as a whole for consideration during Judicial Review.

It should be noted that the number of new Youth and Government laws eligible for consideration will vary from year to year, depending upon the subject matter addressed in the Bills considered by the Youth Legislature.

Once the Chief Justice has determined which new Youth and Government laws will be presented for consideration during Judicial Review, the Chief Justice works with the administrators of the Judicial Program to create mock scenarios in which the new Youth and Government laws are applied to fictional citizens of Illinois. This is a necessary component of the process because courts do not give advisory opinions. Courts only make decisions based upon laws when those laws are being applied and/or challenged in court.

The mock scenarios contain a fictional fact pattern describing how the new Youth and Government law has been applied to an individual or group of individuals, and present the issue of whether the law as applied has resulted in a violation of constitutional rights. The mock scenarios also provide

excerpts from case law on the subject matter of the issue presented (e.g., court decisions regarding the constitutionality of real laws that have implicated the same constitutional provisions).

The Process of Judicial Review

The Chief Justice presides over the Judicial Review session, both with respect to interviewing friends of the court regarding the legislative history of the new Youth and Government law being considered, and with respect to the debate and decision of the court.

Friends of the Court

The Youth Governor is notified of the specific new Youth and Government laws that will be considered during Judicial Review. The members of the Youth Legislature that drafted the new Youth and Government laws are also notified. Both the Governor and the Youth Legislators are invited, as friends of the court, to attend the Judicial Review session and speak to the Youth Judges about the legislative history of the new Youth and Government laws.

In real life, the judiciary has written records of Congressional debate to lay out the purpose and intent behind a law. Because the Youth Judges do not have such written records, the oral presentations regarding the legislative history of the new Youth and Government laws is very helpful to the Youth Judges.

At the beginning of the Judicial Review session, the friends of the court are asked by the Chief Justice to provide the Youth Judges with information regarding the purpose and intent behind the new Youth and Government law. While the Chief Justice, and sometimes Associate Chief Justices, may ask questions to aid in their understanding of the new Youth and Government law, this aspect of the Judicial Review session is not an adversarial process. The friends of the court are not in the roles of defendants in a trial, instead they are vital resources in the process by which the Youth Judges gain an understanding of the background for the new Youth and Government law.

Debate of the Court

After the friends of the court have provided information regarding the legislative history of the new Youth and Government law being considered, they are asked to step down (though they are certainly invited to remain in the room), and the debate portion of the Judicial Review session begins.

The Chief Justice presides over a debate between the Youth Judges regarding whether the new Youth and Government law being considered is constitutional. This debate should focus on the mock scenario under which the new Youth and Government law has been applied, and whether the new Youth and Government law as applied has resulted in the violation of the constitutional rights of the fictional Illinois citizen(s) challenging the law. The mock scenario facts, the applicable constitutional provisions, the provided case law, and the personal opinions of the Youth Judges are all topics that may be addressed during the debate.

At the conclusion of the debate, the Chief Justice calls for a vote regarding the constitutionality of the new Youth and Government law, and the majority vote results in the court's decision.

Only Youth Judges can participate in the debate of the court. Friends of the court can listen to the debate, but they cannot speak further. Likewise, advisors who may be attending to observe the debate cannot speak to the group, or to their individual students. Just as the procedure followed by the Youth Legislature, the Youth Judges cannot be coached on what to say during debate or on how to vote. Anyone who attempts to interfere with the debate and/or vote of the court will be asked to leave the session.

Decision of the Court

The Chief Justice will announce the decision of the court based upon the majority vote. If the new Youth and Government law is declared to be constitutional, the appeal in the mock scenario is affirmed and the new Youth and Government law remains in force. If, however, the new Youth and Government law is declared to be unconstitutional, the appeal in the mock scenario is reversed and new Youth and Government law is no longer in force. In such cases, the Youth Governor is provided with a Court Order preventing the new Youth and Government law to be enforced.

APPENDIX A

ILLINOIS YMCA YOUTH AND GOVERNMENT JUDICIAL PROGRAM

Case Summary

Name of Cited Case	
Court Issuing Opinion	
Issue on Appeal	
Why is this case important?	
Standard of Review	
Rule of Law	
Test/Factors for the Rule	
Relevant Facts Similar to Case at Bar	
Relevant Facts Different From Case at Bar	
Holding on Issue	
Why Case at Bar Should Have same/Different Outcome	