

**NINETEENTH ANNUAL
NATIONAL CRIMINAL JUSTICE TRIAL ADVOCACY COMPETITION**

sponsored by
**The Criminal Justice Section of the American Bar Association
and
The John Marshall Law School
April 2 - 3 - 4, 2009**

PARTICIPANTS

Arizona State University, Sandra Day O'Connor College of Law	(AZ)
Barry University, Dwayne O. Andreas School of Law	(FL)
George Mason University School of Law	(VA)
Georgetown University Law Center	(DC)
The George Washington University Law School	(DC)
Harvard Law School	(MA)
Hofstra University School of Law	(NY)
The John Marshall Law School	(IL)
The Honourable Society of King's Inns	(Ireland)
The University of Houston Law School	(TX)
University of Maryland School of Law	(MD)
Mercer University Law School	(GA)
Mississippi College School of Law	(MS)
Northern Kentucky University, Salmon P. Chase College of Law	(KY)
St. John's University School of Law	(NY)
University of San Diego School of Law	(CA)
South Texas College of Law	(TX)
Tulane University Law School	(LA)
West Virginia University School of Law	(WV)
William and Mary School of Law	(VA)

The Competition's case file, *People v. Dunkirk*, has been prepared by Brendan Shiller, Esq., and Professor Ronald C. Smith, Director of The National Criminal Justice Trial Advocacy Competition. Mr. Arthur Tan-Chi Yuan, Esq., a patent attorney with the law firm of Senniger Powers, Saint Louis, MO, provided indispensable technical assistance. John Marshall law student Regina Walsh assisted most ably with research and logistics.

Copyright 2009, Ronald C. Smith and Brendan Shiller. All rights reserved.

The Competition is grateful to Gwen Konigsfeld and Darlene C. Voight for the time and talent they contributed to the preparation of the 2009 Competition's materials. Any reproduction of these materials must prominently assign credit to the authors, Brendan Shiller, Esq. and Ronald C. Smith; The John Marshall Law School; and The National Criminal Justice Trial Advocacy Competition. A copy of the reproduced material should be sent to Professor Ronald C. Smith at The John Marshall Law School.

**THE NATIONAL CRIMINAL JUSTICE
TRIAL ADVOCACY COMPETITION**

APRIL 2, 3, 4, 2009

TABLE OF CONTENTS

	<u>Page</u>
Information for Participants	1
Sample Score Sheet, Sample Comment Sheet	5
News Articles	7
Statutes	10
Statement of Terry Smith	11
Statement of Chris Dunkirk	12
Statement of Terry Smith to MCPD IAD	14
Incident Reports Barking Dog,	20
Summary of DUI Arrests	23
Car Title	24
Photo of Car	25
Motion to Suppress Evidence	26
Hughes Criminal History	53
Photos of Homes	54
Map of Area	55
Four Citations Issued to Dunkirk	56
Breath Test Record	58
Pretrial Order	59
Jury Instructions	62
Verdict Form	68

INFORMATION FOR PARTICIPANTS
2009 NATIONAL CRIMINAL JUSTICE TRIAL ADVOCACY COMPETITION

The 2009 National Criminal Justice Trial Advocacy Competition is sponsored by The John Marshall Law School and the Criminal Justice Section of the American Bar Association. This invitational competition is being held in Chicago, Illinois, on Thursday, Friday, and Saturday, April 2, 3, and 4, 200. Law school teams will prosecute and defend the case of *People v. Chris Dunkirk* (Operating a Motor Vehicle While Under the Influence of Drugs or Alcohol).

The John Marshall Law School will set aside its East Building's third floor reception area for the participants, from midday Thursday until Saturday evening. Some exhibits may be distributed to the participants at that time. The Competition begins with an advisors' meeting and informal reception for the teams on Thursday afternoon, April 2, at 3:30 p.m. in the Baim Courtroom on floor 3E of the Law School.

The Competition consists of three initial rounds of mock trials, a semifinal round between the four teams with the highest scores, and a final round matching the winners of the semifinal round. During each mock trial each student advocate is expected to conduct a direct examination of a witness, a cross examination of a witness, and present either the opening statement or the closing argument of the case. The advocates are also evaluated on their professionalism in making routine objections and handling exhibits. A judge and a "jury" of experienced criminal trial attorneys will score the performances.

During the three preliminary rounds each team will present the prosecution and defense of the case at least once. In the semifinal and final rounds, teams will prosecute or defend as follows: if the teams have met before (which is unlikely), the teams will switch sides; otherwise they may agree on which side to represent, or have a coin toss determine the assignment of sides.

The first round of mock trials will be held Thursday evening, April 2, starting at about 5:30 p.m.; the second round, Friday morning beginning at approximately 9 a.m., according to the availability of sitting judges and courtrooms; the third round, Friday evening. The four teams with the most wins according to the highest scores (and other factors in the event of ties) will proceed to the semifinal round on Saturday morning. The two teams winning these trials will meet in the championship round on Saturday afternoon. Each trial should last about three hours, followed by a short period of comment by the evaluators.

The final trial will be evaluated by several outstanding trial practitioners. The trial and the ensuing comments by the evaluators and judge will be videotaped. A complimentary copy of this videotape will be made available to each participating team.

On Saturday evening there will be an awards ceremony and reception for all the participants, evaluators, and their guests, at The John Marshall Law School.

THE TRIAL PROBLEM AND THE GENDER OF STUDENT-WITNESSES

Each team must consist of four law students, i.e., students who are enrolled, in good standing, currently attending the law school which they represent, and working towards a J.D. degree or its equivalent. A team should be accompanied by a faculty advisor.

In each trial round, two students will be advocates and two students will be witnesses for their own trial team. A student may be an advocate or a witness in any trial, but cannot be both advocate and witness in the same trial. For example, the two student advocates who act as prosecutors may act as witnesses when their team is handling the defense: the students who are the prosecution witnesses would then be defense counsel when the team represents the defendant. Or, two students may act as advocates for both sides throughout the competition, while the other two student team members act as witnesses. Or, one student may be both prosecution and defense advocate, with the second student being a witness throughout the competition, the third student being a prosecutor and defense witness, and the fourth student being a defense attorney and prosecution witness--according to which side the team represents in any round. This choice is for each participating team to make.

The witnesses may be either male or female. Witnesses for the prosecution: Officer Pat Davis and Terry Smith. Witnesses for the defense: Robbie Hughes and the defendant Judge Chris Dunkirk

The file will contain copies of "news articles" that carry some information about the events surrounding the indictment of the defendant. These articles may or may not be admissible, and may contain matters that cannot be brought into evidence at trial, or matters that cannot be verified by any available witness.

The file may also contain exhibits.

All these materials will be published on the website [www.abacrimtrial.com] and in the printed materials sent to the participants.

EVALUATIONS

PRELIMINARY ROUNDS:

A judge will preside over each trial and will rule according to the Federal Rules of Evidence. During the first three rounds, each mock trial will be evaluated by at least three attorneys (or two attorneys and a judge). These evaluators will act as jurors and will give scores to the advocates. If three people are evaluating a trial, all will have scoring ballots; three ballots will be pre-marked for use in breaking ties; the Director of the Competition has sole discretion as to which three ballots will be tie-breaking ballots.

Because the rules provide that evaluators not award the same score to more than one student advocate in a round, in effect the scoring system requires that the evaluators rank the participants.

The evaluators are also asked to prepare written comments on each advocate's performance, and to render a verdict independently of the performance scores. The written comments and verdicts are not considered in the scores, and are only for the instruction of the participants.

The team with the higher number of performance points from all the ballots wins that round. In the event an evaluator gives a tie in the number of points awarded, the points are counted but (for tie-breaking purposes) the defendant wins that ballot. While the directions to the judges and evaluators forbid ties, it happens that evaluators sometimes ignore directions. As the burden of proof is on the prosecution, a tie indicates that the prosecution has not sustained its burden.

The four teams progressing to the semifinals will be determined as follows:

- 1) Teams with best win records (e.g., if only four teams have 3 - 0 win-loss records based on the above rules, these four teams progress without further consideration of scores).
- 2) Teams with the best evaluator scoring for wins. (E.g., if only two teams have 3 - 0 records, they progress to the semifinal round; the other two teams to progress will be selected according to the number of wins based on the evaluators' performance scores. Suppose six teams have 2 - 1 records, and only two of those teams have won based on the scores of seven of the nine evaluators [i.e., they have evaluators' votes of 3 - 0, 3 - 0, and 1 - 2 , for a record of 7 - 2 votes], then those two teams progress. Or, suppose five teams have 3 - 0 records, and four of the teams have won unanimously; the team which did not win unanimously would not participate in the semifinal round.)
- 3) Teams with highest total point scores. (E.g., three teams have won 3 rounds, these three teams progress to the semifinal round; of the teams which have won two rounds, only two teams have won evaluator votes 7 - 2. Between these two teams, the team which has the higher number of total points progresses. [The highest number of points any team can acquire in three rounds is 63 points: 10.5 points x 2 advocates x 3 rounds].)
- 4) If there are still teams tied, then the scores on the evaluations given by the trial judges will be used to break these ties.
- 5) Finally, if there is still a tie, then the tie will be resolved by a coin toss. The team winning the toss will progress to the semifinal round and will act as surrogate for the team losing the toss of the coin. Arrangements will be made to provide awards to any team which ties but which does not win the coin toss.

SEMIFINAL AND FINAL ROUNDS:

An uneven number of evaluators will vote in each of these trials. If there is an even number of evaluators in the jury box, the judge's evaluation will count so that there will be an uneven number of votes. Therefore there cannot be ties. Each evaluator's award of points will determine the vote of that evaluator. If the evaluator awards a tie, the team representing the defense wins that evaluator's vote.

During the Competition, participants will be identified by number, and not by the school they attend. The judges and evaluators will award points to each team member's number. Teams are not to identify the school they are representing to the evaluators or judges, and are asked to exercise caution and good faith in this respect. If a judge or evaluator comes to learn the identity of the school a team represents, the judge should immediately refer the matter to the director or his representative so that a substitution can be made promptly.

SCORING STANDARDS (see sample score sheet, next page)

<u>Points</u>	<u>Definition</u>
9 to 10.5	The highest quality performance I would expect a law student to give.
7 to 8.5	Above average performance.
5 or 6	Adequate performance.
4	Falls below being the adequate performance I expect from a law student.

THE 2008 NATIONAL CRIMINAL JUSTICE TRIAL ADVOCACY COMPETITION
sponsored by
THE JOHN MARSHALL LAW SCHOOL
and
THE CRIMINAL JUSTICE SECTION OF THE A.B.A.
EVALUATOR'S SCORE SHEET
ROUND I [or II or III]

Directions: The overall performance of a student, including the opening statements, direct examination, cross examination, objections, foundations, use of exhibits, closing argument, etc., should be considered in arriving at a score. Each student advocate will wear a number, and you are asked to note the number throughout your notes and comments. The students are permitted to introduce themselves by name, and to refer to each other by name throughout the trial, but your score should be awarded to the identification number the student wears.

RANK THE FOUR ADVOCATES BY AWARDING DIFFERENT SCORES.

YOU MUST AWARD FOUR DIFFERENT SCORES TO THE FOUR PARTICIPANTS. (FOR EXAMPLE, YOU MAY CIRCLE ONLY ONE "10", ONE "9", etc.) DO NOT AWARD POINTS FOR A "WINNING" TEAM. SCORE PERFORMANCES ONLY.

CIRCLE ONE SCORE:	<u>FAIR</u>	<u>GOOD</u>	<u>EXCELLENT</u>								
PROSECUTOR # _____	4	5	6	7	8	8.5	9	9.5	10	10.5	
PROSECUTOR # _____	4	5	6	7	8	8.5	9	9.5	10	10.5	
DEFENSE ATTY # _____	4	5	6	7	8	8.5	9	9.5	10	10.5	
DEFENSE ATTY # _____	4	5	6	7	8	8.5	9	9.5	10	10.5	

Prosecution points from above: _____

Defense points from above: _____

During the trial, did the student advocates present all the facts promised in their opening statement? If not, deduct one point. Prosecution _____ / Defense _____.

Did the student advocates in the closing argument refer to or argue facts not placed in evidence during the trial? If so, deduct one point. Prosecution _____ / Defense _____.

Net Prosecution points: _____ }
 Net Defense points: _____ } Please do not give a tie.

THE TEAM RECEIVING THE HIGHER NUMBER OF POINTS WINS THE ROUND.

Signature _____
Signature of Judge/Evaluator

[Sample Comment Sheet: Four of these forms will be provided to each evaluator and judge: one pre-marked by number for each student advocate. The evaluators will be asked to make their notes on the appropriate sheet. These evaluation sheets and the score sheets will be distributed to the participants, by team, at the reception on Saturday evening at the conclusion of the Competition.]

EVALUATOR'S COMMENTS, NOTES PROSECUTOR [DEFENSE] # _____

JUDGE/EVALUATOR: THIS IS FOR YOUR USE DURING THE TRIAL. Please make your notes and comments for the above-numbered participant on this form. At the end of the Competition, the students will receive these written observations, criticisms, and compliments. You may wish to use this form to keep notes on during the trial. Please take a few moments after the trial to write out at least one or two additional comments. As you listen to the presentations you may wish to circle an evaluation on this sheet. **THIS IS NOT THE OFFICIAL SCORE SHEET.** The official score sheet requires that you rank the competitors by assigning each competitor a different numerical score. Fill out that official score sheet only when the trial is over.

OPENING STATEMENT or CLOSING ARGUMENT	(weak)	(fair)	(good)	(very good)	(excellent)
DIRECT EXAMINATION	(weak)	(fair)	(good)	(very good)	(excellent)
CROSS EXAMINATION	(weak)	(fair)	(good)	(very good)	(excellent)
OBJECTIONS, FOUNDATIONS, USE of EXHIBITS	(weak)	(fair)	(good)	(very good)	(excellent)
STYLE, DEMEANOR	(weak)	(fair)	(good)	(very good)	(excellent)

BASED ON HOW I BELIEVE A JURY WOULD HAVE REACTED OVERALL TO THIS CASE, I FIND FOR THE:

PROSECUTION	(Trafficking Count)	_____
	(Conspiracy Count)	_____
DEFENDANT	(Trafficking Count)	_____
	(Conspiracy Count)	_____

(Please let each student how you think a real jury would have decided this case. This jury verdict is not part of the score.)

Signature of Judge/Evaluator