**Exhibit H:** *Talking Points: for the Judges, Attorney Coaches, and the Eight Student Attorneys*

***Elonis v. United States* Applied to Student’s Rap Posts** *Questions for Consideration in Developing Talking Points*

**Judge: “The issue before us today is – Does the First Amendment require proof that a defendant is serious about following through on a threat before the defendant may be convicted of threatening another person?”**

**ISSUE #1**

**Judge: “We will start with Issue #1. Does the First Amendment protect Mr. Andy Jackson’s comments, even though they may be potentially upsetting?”**

Andy’s Attorney #1 goes first.

Government’s Attorney #1 goes second.

Potential Follow-up Questions:

* Should the First Amendment protect all forms of artistic expression? Why/Why not?
* What artistic expression should not be protected?
* Should there be limits on First Amendment protections of artistic expressions?
* What artistic expressions should be limited?
* Should the First Amendment be underinclusive or overinclusive in protection of artistic expression?
* How do Mr. Jackson’s posts compare to Anthony Elonis’ posts and Billy Counterman’s messages?

**ISSUE #2**

**Judge: “Let’s turn our attention to Issue 2. Is it necessary to determine if the speaker means what he says in the threat in order for it to be a crime instead of protected free speech?”**

Andy’s Attorney #2 goes first.

Government’s Attorney #2 goes second.

Potential Follow-up Questions:

* What impact should the emojis have on our understanding of Mr. Jackson’s intent?
* How would a “reasonable person” interpret the lyrics and emojis in these posts?
* Who is a “reasonable person” in free speech cases? Should it be narrowed in some way considering the speaker or potential victim’s background?
* What evidence is there that Mr. Jackson intended to communicate a true threat, as that term is defined in the Jury Instruction? What evidence is there that he did not intend to communicate a true threat?
* What evidence is there that Mr. Jackson was reckless as that term is defined in the Jury Instruction?
* What impact should the call from Campus Police or the information that Sarah is considering withdrawing from school due to Mr. Jackson’s posts have on our understanding of Mr. Jackson’s intent?
* Should it matter if someone uses a disclaimer saying the expression is not a threat?
* Does the Government prosecute people in other situations for making threats regardless of whether they intend to carry the threats out? How similar are those situations to here?

**ISSUE #3**

**Judge: “We turn our attention now to Issue #3. Should comments on social media be given any additional protections beyond comments made in person or by other means of communication?”**

Andy’s Attorney #3 goes first.

Government’s Attorney #3 goes second.

Potential Follow-up Questions:

* Should online content have the same protections as news media content or artistic content?
* Should the government try to interpret people’s intentions and decide if the content is meant to threaten or entertain the reader or audience?
* How important is context when determining if speech is a threat or not? Could you say the same thing in two different settings and have two different interpretations?
* Is there a potential for chilling effect on speech?

Judge: And now we will have closing arguments from each side. After closing arguments, I will turn the program over to the moderator who will facilitate breaking into jury deliberations.

**CLOSING ARGUMENTS**

Attorney #4 on each side refers to his/her worksheet and notes to deliver the closing arguments, summarizing the key points for Elonis and for the Government.

**Judge***:* **Now that you’ve heard the closing arguments, I will turn over the program to the facilitator who will coordinate the jury deliberations.**