

CONSTITUTIONAL RIGHTS FOUNDATION



PEOPLE V. BRUNETTI

ISSUES OF HOMICIDE, CONSPIRACY, GUN CONTROL,
AND THE RIGHT TO BEAR ARMS

Featuring a pretrial argument on the
Second and Fourteenth Amendments of the U.S. Constitution

Co-Sponsored by:

State Department of Education
State Bar of California
California Young Lawyer's Association
Daily Journal Corporation

**OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL PROGRAM**

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PROGRAM OBJECTIVES

For the students, the Mock Trial Program will:

1. Increase proficiency in basic skills (reading and speaking), critical thinking skills (analyzing and reasoning), and interpersonal skills (listening and cooperating).
2. Develop an understanding of the link between our Constitution, our courts, and our legal system.
3. Provide the opportunity for interaction with positive adult role models in the legal community.

For the school, the program will:

1. Provide an opportunity for students to study key concepts of law and the issues of homicide, conspiracy, gun control, and the right to bear arms.
2. Promote cooperation and healthy academic competition among students of varying abilities and interests.
3. Demonstrate the achievements of young people to the community.
4. Provide a hands-on experience outside the classroom from which students can learn about law, society, and themselves.
5. Provide a challenging and rewarding experience for teachers.

CODE OF ETHICS

At the first meeting of the Mock Trial team, this code should be read and discussed by students and their teacher.

All participants in the Mock Trial Competition must adhere to the same high standards of scholarship that are expected of students in their academic performance. Plagiarism* of any kind is unacceptable. Students' written and oral work must be their own.

In their relations with other teams and individuals, students must make a commitment to good sportsmanship in both victory and defeat.

Encouraging adherence to these high principles is the responsibility of each team member and teacher sponsor. Any matter that arises regarding this code will be referred to the teacher sponsor of the team involved.

***Webster's Dictionary defines plagiarism as, "to steal the words, ideas, etc. of another and use them as one's own."**

1 **CHARGES:**

2
3 The prosecution charges Shawn Brunetti with three counts:

4
5 Count 1 - Murder (California Penal Code sections 187, 188, 189, and 192)

6
7 Count 2 - Conspiracy to commit murder (California Penal Code sections 182 and
8 184)

9 Overt Act 1: Loading the murder weapon

10 Overt Act 2: Providing the murder weapon

11
12 Count 3 - Unlawful possession of an assault weapon
13 (California Penal Code sections 12276, 12280, and 12285)

14
15
16 **EVIDENCE:**

17
18 Only the following items may be introduced at trial. The prosecution is responsible for
19 bringing:

- 20
21 1. A faithful reproduction of the diagram of the crime scene, which appears in this
22 packet. The reproduction should be no larger than 22" x 28".
23 2. A faithful reproduction of the diagram of the defendant's apartment, which appears in
24 this packet. The reproduction should be no larger than 22" x 28".
25 3. A faithful reproduction of the cartoon by the defendant, which appears in this packet.
26 The reproduction should be no larger than 22" x 28".
27
28

29 **STIPULATIONS:**

30
31 Prosecution and defense stipulate to the following:

- 32
33 1. There are no Fourth, Fifth or Sixth Amendment issues.
34 2. Nicky Blanc killed Jackie Potomski.
35 3. Shawn Brunetti is the owner of both the hunting rifle and the AK47, and the AK47 is
36 not registered, as required by law.
37 4. The cartoon drawn by Shawn Brunetti depicts Shawn holding a gun in the air while
38 stepping on a bear with the initials J.P.
39 5. A telephone call between Nicky Blanc's home and Shawn Brunetti's apartment is a
40 local call.
41 6. For the pretrial motion, only arguments related to the Second Amendment should
42 be made.

PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

This section of the mock trial contains materials and procedures for the preparation of a pretrial motion on an important constitutional issue. The **judge's ruling** on the pretrial motion will have a **direct bearing** on the admissibility of certain pieces of evidence and the possible outcome of the trial. The pretrial motion is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of factual situations, and analyze and debate constitutional issues. These materials can be used as a classroom activity or incorporated into a local mock trial competition.

The pretrial motion challenges the constitutionality of the Roberti-Roos Assault Weapons Control Act of 1989, codified in California Penal Code Section 12275 et seq. The outcome of the pretrial motion will have a direct bearing on the retention or dismissal of Count III against the defendant.

ARGUMENTS

The defense will argue that Shawn Brunetti's Second Amendment right to keep and bear arms is infringed by California Penal Code Sections 12276 and 12280, which prohibit the manufacture, sale, transfer and unregistered possession of certain weapons. The defense will argue that the Second Amendment confers an individual right to keep and bear arms, and that the Second Amendment applies to states as well as to the federal government.

The prosecution will assert that the pertinent California Penal Code Sections do not violate any of Shawn Brunetti's personal rights. It will argue that the right conferred by the Second Amendment is a collective right on behalf of state militias, and as such is not infringed by California law. Alternatively, the prosecution will argue that even if the Second Amendment confers an individual right, it applies only to the federal government and not to states.

SOURCES

The sources for the pretrial motion arguments consist of excerpts from the U.S. Constitution, the California Penal Code, court opinions, and legal commentary. Only the factual situation on pages 12-13 and the sources on pages 15-25 can be used for the purposes of the pretrial motion.

The U.S. Constitution is the ultimate source of citizens' rights to keep and bear arms. But its language is subject to interpretation. Both federal and state courts have the power to interpret the Constitution. The U.S. Supreme Court's holdings are binding and must be followed by California courts. However, in general, the Supreme Court makes very narrow decisions based on the specific facts of the case before it. In developing arguments, either side can make arguments distinguishing the factual patterns of cited cases from one another and from pretrial motion facts.

California Appellate and Supreme Court cases possess the same binding effects on lower courts and must be followed as well. Cases from states outside of California, however, as well as legal commentary and dissenting opinions in cited cases, can be used for persuasive purposes only and are not binding on a California judge.

IMPORTANT NOTE: Because there are few Supreme Court and other appellate decisions on the Second Amendment, the packet includes other legal materials for students to use, including excerpts from dissenting opinions and law review articles dealing with gun control issues. The objective is to encourage students to argue the pretrial motion in broader legal and policy terms. Because the few relevant cases on the topic are relatively dated, these other legal materials are appropriate sources for the public policy focus of this year's pretrial motion.