2020 CLEVELAND MOCK TRIAL WRITING COMPETITION

Students are invited to write a persuasive essay based on any of the writing prompts included here, based on the 2020 Cleveland Mock Trial Competition modified for remote learning and the Police Encounters lesson of The 3Rs: Rights●Responsibilities●Realities, a program of the Cleveland Metropolitan Bar Association.

Papers should be between four and ten pages in length. Please be conscientious about grammar, spelling, and neatness, as well as substantive content. The essays are due on Monday, May 25, 2020, and must be clearly marked with students’ names, teachers, and schools.

The essays may be emailed to:

Jessica Paine, Director of Community Programs
Cleveland Metropolitan Bar Association
Email: jpaine@clemetrobar.org

Cash prizes will be awarded to the first, second, and third place winners. Scoring rubric available at tinyurl.com/EssayRubric2020.

POLICE ENCOUNTERS

Police encounters have been a “hot button” topic locally and nationally. In 2014, there were riots in Ferguson, Missouri in the aftermath of the shooting of an unarmed young man named Michael Brown by a police officer, and news that state criminal charges would not be brought against the officer. Locally, a Cleveland officer was tried in 2015 for felony manslaughter stemming from his role in the shooting of Timothy Russell and Malissa Williams in their vehicle after a long chase in 2012. The officer was found not guilty by the judge hearing the case. Also locally, Tanisha Anderson’s death in 2015 arose from an encounter with the Cleveland Police, who were called to the scene by her family when they were seeking help with her mental health issues. And in 2014, a 12-year-old boy named Tamir Rice died after a police encounter on the west side of Cleveland, which sparked rallies and protests after the police officer who shot him was not brought to trial.

In these incidents and more nationally, those who died were African-American, raising questions of whether race played a role and whether bias affects police interactions with citizens in many communities. And in many of them, questions were also raised about whether violence could have been avoided when the victims initially encountered the police.

The Fourth Amendment of the U.S. Constitution guarantees citizens the right to be free of unreasonable searches and seizures, which includes stops by police as part of their duty to protect citizens and prevent and investigate crime. The Fourth Amendment reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

1 Adapted from the Police Encounters lesson of The 3Rs: Rights●Responsibilities●Realities, a program of the Cleveland Metropolitan Bar Association in partnership with the Cleveland and East Cleveland schools (full lesson available online at www.clemetrobar.org/3Rs).
Case law under the Fourth Amendment has developed what is known as a “Terry” or “pat-down” search, after a landmark case originating in Cleveland, Ohio called *Terry v. Ohio*, 392 U.S. 1 (1968). In *Terry*, a Cleveland policeman did a stop and frisk/pat-down search of a suspect outside a jewelry store in the Playhouse Square area (there is a plaque marking the spot). The U.S. Supreme Court held that if police have a reasonable suspicion of criminal activity, they can conduct a limited search for weapons to protect the officer and others from possible harm.

The Fifth Amendment guarantees the right of citizens to “due process,” the requirement that the government must take certain action before taking their life (i.e. capital punishment), their property (e.g. confiscation of material goods or real estate as in eminent domain), or their liberty (e.g. arrest or sentencing to prison). The Fifth Amendment reads in relevant part: “No person shall be … deprived of life, liberty, or property, without due process of law.”

Case law from these amendments has given rise to procedures and requirements of law enforcement officers well-established over the years, including that staple of TV police procedurals: the reading of a suspect’s Miranda rights. Arising from the *Miranda v. Arizona* U.S. Supreme Court case in 1966 (*Miranda v. Arizona*, 384 U.S. 436 (1966)), this is the requirement that the accused must be told of certain rights upon arrest, including their right to an attorney and to not make incriminating statements, and that if the rights are not communicated, any information obtained may not be used against the accused.

But what happens when a situation occurs between citizens and law enforcement in which the citizen’s rights appear not to be recognized? The reality is, in the heat of the moment, police officers may act in what they feel is self-defense or in defense of others, in a way that violates citizen’s constitutional rights, causes injury, or even death. Many people, including those who have protested in Ferguson, New York City, and here in Cleveland, believe that systemic biases have resulted in the targeting of minorities and citizens from poorer communities. Government officials and law enforcement have said that in cases where officers have been accused of excessive force, they are performing a dangerous job and that use of force is justified to carry out their duties. As with any issue, there is more than one side, and many ways to analyze it.

The laws in the U.S. provide for several remedies if citizens’ rights have been violated by police misconduct, including 1) civil lawsuits: hiring an attorney to sue the police involved and their employer; 2) criminal charges: government prosecutors pursue charges against the police officers in a criminal trial; and 3) administrative proceedings: a review process to investigate claims of police misconduct, the results of which may include suspension, demotion, and/or firing of police officers.

With this in mind, it is still important to note that citizens may be able to protect themselves at the time of their encounter with police officers. What can you do to protect your safety and avoid misunderstandings?

The brochure included in these case materials – “The Law and You” – was developed by the NAACP, the National Organization of Black Law Enforcement Executives, and Allstate Insurance Company. It provides guidelines for young people to follow in police encounters.

**Consent decree**: The U.S. Department of Justice (DOJ) conducted -- at the request of Cleveland Mayor Frank Jackson -- a two-year investigation of the Cleveland Division of Police (CPD) use-of-force policies and practices. The investigation included review of 600 use-of-force incidents from 2010-2013 and thousands of interviews. The DOJ investigation revealed systematic patterns of insufficient accountability, inadequate training, ineffective polices, and inadequate community engagement.

On May 26, 2015, the DOJ and the city of Cleveland entered into a consent decree (another term for a settlement agreement) enforceable by Chief U.S. District Judge Solomon Oliver.

The full language of the consent decree can be found at [http://tinyurl.com/ClevelandConsentDecree](http://tinyurl.com/ClevelandConsentDecree), but a few highlights are:

- There will be an emphasis on de-escalation of incidents and use of force, through policies, training, and improved guidance.
• Officers will face higher standards on unholstering and firing weapons and no longer will be allowed to use guns to strike suspects. Taser use will be revised to require more reporting and justification for use.

• All uses of force must be described in detail in police reports and must be subject to more than a perfunctory review by their supervisors. Retaliatory force — such as tussling with a suspect at the end of a chase or to mete out punishment for disrespecting an officer — is to be explicitly prohibited. Officers will be required to take immediate steps to provide or secure first aid for suspects they injure.

• Revision of policies and training to ensure that all stops and searches are conducted in accordance with the Constitution and in a manner that takes into account community values.

• Development of a bias-free policing strategy — with community input — that prohibits detention solely on racial stereotypes.

• Development of a recruiting plan with specific strategies for attracting a diverse group of applicants.

• A Force Investigation Team and Force Review Board will be established to look into the most serious cases of use of force.

• A 13-member Community Police Commission (CPC) composed of Cleveland-area citizens will be created to create a bias-free policing strategy and take aim at racial profiling and discrimination. Stricter search and seizure policies to protect against unjust police stops will also be a CPC focus. The CPC will conduct public hearings to obtain input from the community regarding its work.

• The city of Cleveland will expand a computer database to better track police conduct.

• An independent monitor will be appointed who will report to the court on progress in implementing the consent decree.

WRITING PROMPTS

1. Research the current status of the DOJ/Cleveland consent decree since it was entered into. What progress if any has been made? What issues have arisen and how have they been addressed? What is your opinion regarding the status of the consent decree? Interview police, neighbors, friends, community leaders, fellow students and others regarding it — including knowledge of it and likelihood it will result in positive change.

2. Why has minority recruitment and retention for police officers been a problem in Cleveland and other urban cities? What are the percentages of minorities on the police force? What have been the trends? What recruitment and retention polices are in place now? What policies might be adopted to increase minority recruitment and retention? Are there cities that have had success increasing minority recruitment and retention? If so, how did they do it? Does an increase in the percentage of minority police officers lead to better police/community relations and a reduction of deadly use of force incidents? What research exists regarding that question? What are the findings?

3. Read the court’s opinion in the Officer Brelo case (Cleveland officer found not guilty in the Russell/Williams shooting in East Cleveland), which is at: https://localtvww.files.wordpress.com/2015/05/odonnell-ruling.pdf. Do you agree with the verdict? Why? Why not? The Cuyahoga County Prosecutor appealed the verdict. Why? What was the result of the appeal? What difference would it make if the County Prosecutor won, as the officer cannot be tried again for violations of state law (because of the constitutional right to be free from double jeopardy)? Why did Brelo waive (choose not to insist on) his right to a jury? Should defendants be permitted to waive a jury trial? Why? Why not?

4. Research the Hough and Glenville riots in the late 1960s in Cleveland. What were their causes? What was the cost to Cleveland and those neighborhoods? What was the impact on businesses? What role did the race of our mayor play in both riots, if any? Interview people who lived through
the riots — including residents, police, and business owners — and gain their perspectives. Why have we not had any race riots in Cleveland since then?

5. The additional use of cameras during police encounters has been advocated by some as a way to better document problematic encounters. Body cameras are now available that police can wear that would document encounters. Further explore this technology and write your essay discussing the pros and cons of their use and then take a position on whether their use should be required. Consider making your position known to your local police department and/or city council.

6. Research the police policies in your community that cover automobile chases, automobile stops, and the use of deadly force during them. What are the policies and do you agree with them? Why or why not? What alternative policies would you propose, if any? Are there any nationally recognized guidelines and if so, do they compare to those in your city? What are your thoughts about any such national guidelines?

7. Interview a police officer regarding their job, including police encounters with citizens, a “Terry Stop,” an automobile stop, a domestic dispute, and an arrest. Include in your interview questions about the officer’s background, reasons for becoming an officer, and likes/dislikes about the job.

8. Research police encounters that have resulted in claims of excessive force, including the following: Michael Brown’s death in Ferguson, Missouri; the 2012 Cleveland Police shooting of Timothy Russell and Malissa Williams after a long car chase; the 2014 death of 12-year-old Tamir Rice on the west side of Cleveland; the New York City death of Eric Garner, who died after being put in a chokehold during his arrest; the videotaped death of Walter Scott, who was shot while fleeing after fighting with a policeman in the Charleston, South Carolina area; Freddie Gray in Baltimore, who was arrested and died of spinal injuries sustained during his ride to the police station in the back of a police van; Taniasha Anderson, who died during an encounter with the Cleveland Police when her family sought help with her mental health issues; Philando Castile, whose girlfriend videotaped interactions with police following their fatal shooting of Castile during a traffic stop near St. Paul; Alton Sterling, whose death by police shooting led to protests in Baton Rouge, Louisiana and requests for civil rights investigations; and/or Korryn Gaines, who was shot and killed by police following an hours-long stand-off when she refused to allow police to enter her apartment in Baltimore. In each case, what happened? Identify what is known and unknown at this point. What are objective and subjective facts? What are opinions and what are facts? What does the police department say happened? What do those who feel the force was unjustified say happened? What were the police encounter policies in place and were they followed? What civil and criminal charges could or have been brought against the officer(s) involved? Any resolution to date and if so, what was the resolution? What are your thoughts regarding what happened, and what if any action(s) should be taken against the officer(s)? Compare and contrast the incidents, noting similarities and differences.

9. Research public opinion polls regarding police/citizen encounters. What do the most recent polls show? How can age, gender, race, and other factors account for any differences shown in the polls of those interviewed? Poll your classmates, teachers, and school administrators, asking the same questions. Before starting, determine how to properly conduct a poll so that it is a representative sample of those questioned. With the poll you conducted, what differences do you find by age, gender, race, or other factors? Are your results similar or different than the national polls? Why or why not?

10. Research police questioning/interrogation during the types of police encounters referenced in The Law and You. What information must be provided to the police? Section 2921.29 of the Ohio Revised Code addresses the issue and requires some basic information be shared and in what context. What is that information and what context? Name, address, ID? Anything beyond that? Must you answer all of the police officer’s questions? What if your response to the questions might incriminate you? What if your response could incriminate someone else? At what point can you or should you exercise your Fifth Amendment right to not incriminate yourself, and how do
you do so properly? What are the rules about when you can end police questioning? How can you determine when that point is reached and how can you or should you tell the police you want to leave? Does Ohio’s law align with the U.S. Supreme Court’s decision in *Kolender v. Lawson* (a 1983 case where a man refused to provide basic identification information and alleged the police questioning was unconstitutional)?

11. Police encounter guidelines have been published by the American Civil Liberties Union (ACLU), the Criminal Defense Attorney’s Association, as well as police and related organizations. Research these guidelines and list what the differences are among them. Why do you think those differences exist? What would you change?

12. The Black Lives Matter and Say Her Name movements began as a way for people to protest, document, and challenge systemic racial bias in police interactions and reduce violence. Research these groups and others like them. How did they start? Who leads them? What are their goals? How do they say they will achieve them? Do you agree with their beliefs? What protests/actions have they taken in the past? Do you agree with their methods? What are some of the criticisms people have against them? What would you do if you were a leader of these groups?

13. Do a report on the City of Cleveland Office of Professional Standards and Civilian Police Review Board. How does the process work, does it work properly in your opinion, and would you recommend that citizens utilize it? If it is not working properly in your opinion, what changes are necessary so that it does? Do other cities have similar programs and are there aspects of their systems Cleveland should consider?
Today’s headlines are full of stories detailing encounters between law enforcement officials and young people. Unfortunately, some of these stories do not have happy endings. While most officers of the law have standard procedures to follow, most young people do not. As a result, there is often a breakdown in communication between law enforcement officials and young adults.

In a collaborative effort, the National Association for the Advancement of Colored People (NAACP), the National Organization of Black Law Enforcement Executives (NOBLE) and Allstate Insurance Company have joined together to develop “The Law and You: Guidelines for Interacting with Law Enforcement Officials.” This guide offers suggested procedures to follow if you are stopped by a police officer or law enforcement official, regardless of the reason. These suggestions should be used as guidelines until professional legal advice and guidance can be obtained.

**THE CARDINAL RULE**

The easiest way to avoid negative run-ins with law enforcement officials is simply to stay out of trouble. If you hang out with the wrong crowd, you increase your chances of being approached by officers in pursuit of those suspected of, or associated with, criminal activities. If confronted by law enforcement, approach the officer as you would a friend, not an enemy.

REMEMBER THE FIRST WORDS SPOKEN BY EITHER THE OFFICER(S) OR THE CITIZEN(S) INVOLVED MAY VERY WELL DETERMINE THE TONE OF THE ENCOUNTER AND EVEN THE EVENTUAL OUTCOME.

Law enforcement is both a difficult and dangerous profession. Many police officers are killed each year and thousands are more injured. Police are trained to place a great deal of emphasis on their safety and survival. In some instances, the safety procedures that officers use may appear offensive and unnecessary to citizens. However, police know that even the most routine stop for a traffic violation has the potential for danger. Consequently, the officers may maintain a defensive posture until they believe that the risk of confrontation or injury is diminished. As a result, there is sometimes a breakdown in communication between law enforcement officials and the public, especially young adults. If you are stopped, questioned or detained by a law enforcement official, approach him or her with respect, not disrespect. It is in your best interest to cooperate with the law enforcement official, even if you feel as though you are being unjustly stopped or questioned. Retain your composure and conduct yourself in a mature manner. Avoid any action or language that might trigger a more volatile situation, possible endangering your life or personal well-being.

**YOUR BASIC RIGHTS & RESPONSIBILITIES**

Your basic rights and responsibilities may not always be clearly defined by law enforcement officials. If stopped or detained, politely ask the officer “why” in a manner that is not confrontational. Remember, your priority should be to alleviate or minimize the potential charges and/or use of excessive force against you. In some states, there are no clear statutes or laws which delineate the use of deadly force by law enforcement officials. In these instances, the courts will decide on a case-by-case basis, what is considered deadly or excessive force.

**IF YOU ARE STOPPED ON THE STREET**

- Answer all questions. Your answers should be factual to the best of your knowledge.
- Remember, you are not required to give testimony against yourself. You have Fifth Amendment rights.
- Do not “bad mouth” or walk away from law enforcement officials, even in instances where you feel they are wrong. If the police officer behaves inappropriately, report his or her misconduct to a supervisor or officer at a later time.
- If an officer has a “reasonable suspicion” that you may be carrying a weapon or illegal substance, you may be subjected to a “pat-down” search. Do not resist the search. Obey all requests made of you unless the request poses a risk to your personal safety or well-being. In that case, ask for a meeting with the officer’s supervisor.

A word of Caution... Laws and law enforcement procedures may vary from state to state. You should consult an attorney or law enforcement representative who is familiar with the laws in your state.
IF YOU ARE STOPPED IN YOUR CAR

• Slow down; pull over safely when you can. If the police vehicle is unmarked and you cannot identify the driver as a uniformed police officer, drive below the speed limit to a well-lit, populated spot and then pull over.
• Stay in the driver’s seat with both hands in sight on the steering wheel. Do not get out of your car unless asked to do so. Getting out of your car can be perceived as aggressive behavior and as a threat to the officer’s safety.
• Turn on your interior lights if stopped at night.
• Comply with the officer’s request to see your driver’s license and registration. If they are in the glove box or under the seat, state that and then retrieve them slowly.
• If the officer has “probably cause,” your car can be searched without a court-issued warrant. If you are the driver and/or owner of the car, and do not want your vehicle searched, clearly inform the officer of your non-consent in a polite manner.
• If you are issued a ticket, sign it. Signing a ticket is not an admission of guilt — only an acknowledgment of receiving the ticket. However, refusal to sign a ticket could result in your being arrested and facing additional charges.
• If you are suspected of drunk driving, cooperate with the officer(s) on the scene. If you refuse to submit to breath, blood or performance tests, your refusal may be interpreted as an indication of guilt in later court proceedings. This could result in loss of driving privileges, and/or heavy fines.
• Get out of the automobile if asked to do so.

IF LAW ENFORCEMENT COMES TO YOUR DOOR

• First, make sure each individual is really a law enforcement representative by requesting to see a badge and/or identification card. Be pleasant but serious.
• Make sure the officers are at the correct house by asking “How can I help you?” and/or “What brings you to my residence?” They should have a warrant, be actively investigating a crime, or be in “hot pursuit” of an individual suspected of committing a crime and running into your house. If the officers do not have a warrant or are not in hot pursuit, you can deny entry.
• Determine the type of warrant — body or search. A body warrant means that the officers are seeking an individual and, therefore, cannot search drawers and places not large enough for an individual to hide. A search warrant allows officers to search all places in which the items listed on the warrant can be hidden.

IF YOU ARE ARRESTED

• When you are taken into custody, make sure that your house or car is secure.
• Make sure you have been informed as to why you are being arrested.

NOTE: A lawyer should be called as soon as possible. The advice of an attorney is extremely important early in the process.
• Under no circumstances should you make incriminating statements which might be used against you at a later time.
• In most states, you must be taken before a judge, magistrate, constable or court commissioner within 24 hours of your arrest. You should secure legal representation before this initial court appearance.
• Ask to telephone your parent, guardian, or lawyer immediately. You have the right to make one phone call to the person of your choice; use it. You also have the right to privacy during the call. If this right is denied, do not cause confrontation that might result in additional charges being filed against you.
• You should always have the number of a lawyer or person you can rely on to get you an attorney if your lawyer is unavailable. Keep a record of that number, as well as the name and number of a lawyer from the local Public Defender’s office, in your wallet or purse.

OFFICER MISCONDUCT & YOUR RESPONSE

• Law enforcement misconduct is loosely defined as “improper and/or illegal action(s) and/or conduct by an officer.” Some of the more frequent types of misconduct are:
  1. Physical Abuse — slaps, kicks, punches, choke-holds, beatings, flashlight and night stick blows, tight handcuffs, unnecessary use of firearms
  2. Verbal Abuse — name calling, use of racial slurs
• The best way to avoid officer misconduct is to not provoke the officers while having a discussion about law enforcement matters. Showing off for friends and family will only get you arrested and possibly injured. Comply first and then seek an explanation from the officer or his/her supervisor later.
• Innocent individuals are often offended, angered, or both as a result of being detained by an officer for questioning. Although the delay might be inconvenient for you, the officer believes that there is a reason (probable cause) to stop you and ask questions. Examples of probable cause might include questioning about a crime or incident which occurred recent in the area, someone placing a complaint about your presence, or suspicious activity. The police officer usually does not want to detain you any longer than necessary. A few minutes of cooperation will speed up the process and get you on your way.
• Do no resist arrest for any reason.
• Control your emotions.
• Do not make threatening motions or statements to the officers talking to you.
• Never attempt to interfere with the arrest of others who may be with you.
• Always note the name of the officers with whom you come in contact.
• Report cases of officer misconduct immediately following your release from police custody.
• Record, document and describe any case of officer misconduct in a typewritten statement. Have your summary of the incident notarized within 72 hours of its occurrence.

Information for Law and You published by the NAACP, the National Organization of Black Law Enforcement Executives, and Allstate Insurance.