

**THE COLORADO LAWYERS COMMITTEE**

**PRESENTS**

**HATE CRIMES? YOUTH DECIDE**

**“THE SCRIPT”**

**PEOPLE V. PATRICK WITTEN**

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**INTRODUCTION TO THE MATERIALS**

This document is part of a package of materials that was prepared by the Colorado Lawyers Committee in connection with its interactive Hate Crimes Education Program that has been offered free to schools and community groups throughout Colorado since 1994.

The purpose of the Hate Crimes Education Program is to promote the discussion of diversity and inclusion, and seek to prevent the spread of community division, racial slurs and hateful actions. The program is in the form of a fictional trial. At the conclusion of the trial, the students (or community members) break into small "jury" groups to discuss the issues presented and, with the assistance of a facilitator, reach a verdict. The group then reconvenes to discuss the verdicts and the importance of the statute.

**If you have participated in this program before, please note that the "script" was substantively revised in early 2020. Please discard any old materials and review the new package in its entirety.**

The package of materials includes five documents and two videos, all of which are on the Colorado Lawyers Committee website<sup>1</sup>:

- **Hate Crimes Script:** *People v. Patrick Witten.* Patrick Witten, a high school student, is charged with four hate crimes against a Muslim teacher, a perceived LGBT student and others at his school (including by way of a social media threat). The script includes Colorado's Hate Crimes Statute (C.R.S. § 18-9-121) on which the presentation is based.
- A **Volunteer Guide** which describes each part of the presentation and provides guidance about the most effective presentation techniques. This Guide is accompanied by a one-hour **Training Video** which serves as an introduction to the program for volunteers and includes tips and take-aways.
- A **Teacher Guide** which offers details on the program for teachers, including suggestions for effective classroom curriculum before the presentation. This Guide is accompanied by a short **Video Trailer** designed to introduce the program.
- A **Teacher Survey** which can be completed by teachers after the presentation.
- **Program Coordinator Manual.** While this program is available for free using Colorado Lawyers Committee volunteers, the manual explains how organizations that wish to put on the program themselves can do so. The manual includes tips on working with teachers and with lawyer and non-lawyer volunteers (who will play the roles of prosecutor, defense attorney, judge and facilitators).

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<sup>1</sup> [www.ColoradoLawyersCommittee.org](http://www.ColoradoLawyersCommittee.org). The script refers to four exhibits which are not online but are available upon request from the Colorado Lawyers Committee.

## **INTRODUCTION TO THE “SCRIPT”**

This is the “script” of the Colorado Lawyers Committee program called “*Hate Crimes? Youth Decide*”. The term “script” is used very loosely, because, except for the judge’s reading of The Statement of Evidence, the script is not a verbatim transcript of the fictional trial. Instead, the script outlines educational points to be covered, while allowing volunteers flexibility to incorporate their own styles into the presentation.

Here is the general schedule for the fictional trial:

- Opening Remarks and Judge’s Introduction: 8-10 minutes
- Prosecutor Voir Dire: 15 minutes
- Defense Voir Dire: 15 minutes
- Judge gives jurors the Oath: 2-3 minutes
- Judge reads The Statement of Evidence and Oral Jury Instructions: 5-7 minutes
- Prosecutor Closing Argument: 12-13 minutes
- Defense Closing Argument: 15 minutes
- Prosecutor Rebuttal Closing: 2-3 minutes
- Jury Deliberations: until 20-30 minutes remain
- The Verdicts and Lessons Learned: the final 20-30 minutes

This schedule can be modified if you are under time constraints.

**NOTE:** Some of the language in this presentation (particularly in two of the exhibits) may be offensive to individual students. Before you begin the presentation, make sure the teacher has seen the exhibits, that the teacher is aware of the language and has made appropriate accommodations for students, if necessary and if permitted/required by school policies and practices.

## **OPENING REMARKS**

### **INTRODUCTION**

#### **Stereotypes**

Without going into too much detail about the program, tell the students you want to start with an exercise. Tell the students you are going to give them a name, and you want them to shout out the first words that come to their mind about that person. Give the students a gender-neutral name that will sound unremarkable to them, like "Avery" or "Pat" and ask about that person – what do they look like, how do they dress, what sports/activities do they like to do. They will probably have generic, sometimes nonsensical, responses to that name, but not be able to proffer much. Then tell the students you are going to reverse the exercise and describe certain jobs and ask them to tell you something about the person who has that job – their gender, age, interests, income level, neighborhoods, etc. Discuss several of the follow jobs: Engineer, Nurse, Pro Basketball Player, Fashion Designer, Chef, Plumber, Race Car Driver, Harley Davidson rider, Librarian. Listen for any students assuming the gender, race, age or other characteristic of the person and ask about that assumption. Tell them you can handle anything, you've heard it all, and no one will get in trouble for any answer.

Ask the students what they just did – they usually will quickly figure out they are stereotyping. Briefly discuss how stereotyping is common and how it might make the person they are stereotyping feel (e.g., belittled, fearful, alienated), particularly when it is a negative characteristic. Tell them to remember that feeling, because it will be a constant theme through their experience during this presentation.

#### **Background Information to Share**

The Colorado Lawyers Committee started in 1978, and is a group of more than 80 Colorado law firms committed to improving conditions for children and the underprivileged by donating their time and money to give free legal work to groups of people. Volunteers use various methods to accomplish their goals: they advocate and try to persuade lawmakers to change laws; they negotiate with opponents; they educate students and adults; and they even file lawsuits if necessary. All of us do this for free because we believe very strongly in improving Colorado and its communities affected by hate incidents and hate crimes.

One of the CLC's major projects is the *Hate Crimes? Youth Decide* program you will be part of today. We are lawyers, paralegals, law students, and others who have volunteered our time, resources, and money to increase awareness of Colorado's Bias-Motivated Crimes Statute, commonly called the "Hate Crimes Law." The Task Force started in April 1992 in reaction to a Ku Klux Klan rally at the State Capitol in downtown Denver on January 20, 1992. As the Los Angeles Times reported:

DENVER — Martin Luther King Day observances turned violent Monday when police, clad in riot gear, clashed with thousands of demonstrators protesting a Ku Klux Klan rally on the state capitol steps. Three police officers were injured by rocks and bottles and at least five protesters were treated at Denver General Hospital, said police spokesman Det. Dave Metzler. Police said they arrested 21 people, including six juveniles.

A few months later, lawyers in Denver created this fictional trial program, and we have been presenting the program ever since, including updating the material when needed. We have presented the program all over Denver and throughout Colorado – from Fort Collins and Greeley in the north, to La Junta in the south, and Durango, Cortez, Carbondale, Rifle, Parachute, and Glenwood Springs in the west. We also recently worked with the Lawyers Committee for Civil Rights Under the Law in Washington D.C. to create a program that can be offered in any school or community in the country.

Here is how it will work today.

**Warning: [PLEASE READ THIS VERBATIM TO THE STUDENTS]**

You will see some offensive language as part of this trial, including racial slurs and homophobic insults. We do not use these words in our materials because we think they are acceptable, but rather to make the trial more realistic. We do not approve of the use of these words and they are banned by your school for good reason. We make an exception to our policy about the use of hate speech for this fictional trial program, because we believe that this program is that important. These deplorable words and symbols are the frequent tools for people who commit hate crimes, and using them is an attack on our whole community, and not just the individual.

**DESCRIBE THE TRIAL**

You will be participating as jurors today in a fictional trial. The case you will hear will be a criminal case, not a civil case. It is important to understand the difference. In a civil trial, someone can be ordered to pay money or to stop illegal speech, but the person would not go to jail or be charged with a crime. Today's presentation is a criminal trial, which means the defendant is charged with a crime and you, the jury, will decide if he is guilty of that crime. If you find he is guilty, he may be sentenced to prison.

**The Trial.** In this case, a high school student named Patrick Witten has been charged with four counts of violating Colorado's Hate Crimes Law. The prosecutor (the lawyer for the government) will argue Patrick is guilty of all the criminal charges; the defense attorney (the lawyers representing Patrick) will argue Patrick is not guilty. The judge will read and instruct you on the evidence in the case. You will be the jurors.

**The Jury.** As the jury, you will decide today if the Patrick Witten is guilty or not guilty of committing hate crimes. All criminal defendants have a right to a fair and impartial jury made up of their peers. So, just like a real trial, we will start with what is called "voir dire", which is asking questions of the jury. The prosecutor and defense attorney will ask you questions to determine whether you will be a fair juror in this case. For example, if you were the victim of a crime last night, you might not be very fair in this case, where someone is being charged with a crime. And that's ok; we are all affected by what we experience in life. In a real trial, the judge would excuse you. You might not be a fair juror in this case, but you might be a fair juror for another type of case. You will see that the lawyers' questions are designed to get a feeling of who you are, and what thoughts and decisions you might have in this case. Please answer their questions – it is nothing more than a discussion of your experiences and opinions; it is not a test that you will be graded on and will not affect whether you will participate as a juror today.

**Jurors' Oath.** After the lawyers finish their questions, just like in a real trial, the judge will swear you in as jurors. This means that you will take an oath to consider all the evidence fairly and apply the law as written, to render a verdict.

**The Evidence and Jury Instructions.** Next, the judge will read you the evidence in the case and give you certain orders and instructions. Instead of bringing in the defendant, Patrick Witten, and other witnesses to testify, which would make this trial last for several days, the prosecutor and the defense have agreed to the facts; they have agreed to what happened. Just like in a real trial, you need to pay very close attention to what the judge reads, because you will not have the opportunity to ask the judge to re-read the facts.

**Closing Arguments.** After you hear the evidence, the attorneys will have a chance to argue how you should interpret the facts and the law: the prosecutor will argue that Patrick Witten is guilty of each of the four charges; the defense will argue he is not guilty. The prosecutor will have the last word, because the prosecutor has the burden of proving the defendant guilty. What is the defendant Patrick Witten presumed to be? (Presumed innocent.) What is the burden of proof? (Beyond a reasonable doubt.) The defense does not need to prove anything.

**Jury Deliberations.** After the closing arguments, you will move into small jury groups to discuss the trial and reach your verdict. A volunteer will help you with the process.

**The Verdicts.** After you have reached your verdicts, we will get back together as one group to hear all the verdicts and discuss the trial, the hate crimes statute and how each of you can protect your community against hate incidents.

**Final Note.** The law applied in this case is the actual Colorado Hate Crimes Statute, and the attorneys will be making the same arguments they would make if this case were in a courthouse. The facts presented in this trial are based on real events--things that happen in our communities--and experiences many people have faced because of the way they look, who they like, what they believe in, or the color of their skin.

The judge will now introduce the lawyers.

## **JUDGE'S INTRODUCTION**

Ladies and Gentlemen:

The case we are about to try is a criminal case.

The prosecutor in this trial representing the People of the State of Colorado is Mr./Ms.\_\_\_\_\_.

The defendant or the accused in this case is Mr. Patrick Witten. He is being represented by Mr./Ms.\_\_\_\_\_.

The attorneys will now ask you some questions as part of the jury selection process.

Please be truthful and candid in your responses to the attorneys' questions.

Mr/Ms. \_\_\_\_\_, you have [15 minutes]. [Give each side a 2-minute warning.]

## SUGGESTIONS FOR PROSECUTOR'S VOIR DIRE

The Defendant in this case, Patrick Witten, has been charged with committing hate crimes.

What do you think of when someone says, "hate crime"?

- Has anyone here been the victim of a hate crime or know someone who has been the victim of a hate crime? Tell us what happened.
  - How did that make you / him / her feel? Intimidated? Harassed? Lonely? Embarrassed? Wondering what might happen in the future?
  - [If no victims or stories, ask them to imagine being truly hated, not just teased, because of their skin, hair, eyes, accent, religion, name, people they liked, the way they talked, a learning disability.]
  - Also ask them if they can think of hate crimes in the news – like the Pittsburgh synagogue shooting, or the Orlando night club shooting [or other local hate crimes in the news].
- Does anyone here think that being scared, intimidated or harassed is not suffering a real injury?
- Can words alone intimidate? Harass? Put someone in fear? How? Give me some examples.
- How are victims of hate crimes/hate incidents affected differently than victims of more generic crimes? (Can't change their characteristics; makes them feel ashamed or wanting/need to blend in instead). Why does a victim assaulted while being called racial slurs hurt differently than a victim in any other type of assault? How long can injuries from a hate crime last? (Compare a bruise or broken arm to mental and emotional distress, which can last much longer).
- Do you think others with the same characteristics as the victim might also feel fear, intimidation, or harassment if they witness or learn about the racial crime? (Helps explain how this affects entire communities). This is a crime with broader impact.

Why is there a hate crime law when we already have laws that cover assault, vandalism, etc.?

- For example, damage to property is vandalism. Isn't it enough that we have a law against vandalism?
- Who is hurt by a hate crime? Is it only the victim or also the community too?
- Do hate crimes send a message to the victim that they are not wanted in the community and that everyone who is like the victim is not wanted in the community either?

Can you say anything you want, anytime you want, anywhere you want, to whomever you want?

- Can you shout fire in a crowded auditorium, knowing you will cause panic when there isn't a fire?
- Can you say anything you want in a text?
- Can you post anything you want to Instagram or say whatever you want in the comments of someone else's post?
- What are some types of things you are not allowed to say in public? [Categorize student's answers where appropriate as: Fighting Words, Offensive Words, True Threats and Incitement.] These are some of the limits to the right free speech.

Ok, so we know there are limits on our right to talk and express ourselves. What about actions?

- Who has ever been disappointed or mad about something? We all have, right? How do you act when you are mad? [usually these stories involve parents, siblings, classmates or friends].
- Is it OK to hurt someone or damage their property because you are mad? Can you say, "Well, I was just mad" and be excused? We don't punish people just for being mad, right? We don't punish them for their feelings or beliefs, right? But we do punish them if they act out on their anger or beliefs in a way that hurts people or property, right? We do punish people for their harmful actions, right?

Let's talk about intent.

- What if I crumple up a piece of paper and toss it in the direction of the trash can and it hits the defense attorney? What was my intention?
- Does your answer change if you know that the defense attorney took my parking spot this morning and I'm mad at him/her?
- Does it change if I call the defense attorney a name?
- Does it change if the name I call the defense attorney is a racial slur?

The court will instruct you on the law, and you are not responsible for sentencing. Can you swear to follow the law as written and instructed by the judge? Even if you disagree with the law?

## SUGGESTIONS FOR DEFENSE ATTORNEY'S VOIR DIRE

This case involves First Amendment issues.

- What is the First Amendment? What does it protect [speech, assembly, press, religion].
- There is a famous quote about the 1st Amendment: "I might disagree with what you say, but I will defend to the death your right to say it." Do you agree with the idea that in this country we get to express our opinions? Why? [Promotes the free and open exchange of ideas.]
- If you didn't have the right to free speech, what are some things you could not say? [Couldn't disagree with someone in authority.]
- [Consider starting by saying you are going to read some words out loud, and that you want them to tell you if it should be illegal to say such things – then read lyrics from a song, movie, book, magazine, or other source of obscene, offensive language.] Should this be forbidden?

Let's talk about our right to protest in this country, or in the actual words of the First Amendment, "the right of the people peaceably to assemble."

- Has anyone been involved in a protest? It doesn't have to be formal or big; it can be any type of protest. Tell us what you did.
- Was it a peaceful protest...did you advocate violence or non-violence?
- Do you value the right to protest? Why?
- Can we protest against popular opinions? Put another way, can we protest in support of things that others might not agree with? (e.g., Can a white supremacist peacefully protest at an equal rights parade? Can gun owners peacefully protest at a gun control rally?)

This case involves charges of prejudice.

- What does it mean to be prejudiced?
- Just because you hate someone who isn't like you, is it a crime? Why not?
- The case will invoke strong reactions - it involves very offensive language, including racial and ethnic slurs. Even though my client Patrick Witten used racial slurs and other derogatory labels, he is entitled to an unbiased jury.
- Can you be unbiased even if you are offended by the language he uses?
- Can you set aside your emotion...your prejudice...and judge him based on the law and not on whether you like him? It might not be easy for you to do, but can you do it?
- Would you want to be treated the same way if you were charged with a crime? Would you want to be judged on the law and not on whether someone on the jury liked you? Would you want your criminal trial to be a popularity contest?
- Does the fact that Patrick Witten used offensive language automatically make him a criminal, no matter what? Why not?

Has anyone here ever gotten mad and said or done something that they regretted?

- Have you ever gotten into a fight with their brother or sister...or parents and called someone a name? Did that make you a bad person?
- If you called someone a name because they wore glasses, does that mean you hate everyone with glasses? Would it make you a criminal? Why or why not?

Patrick Witten is presumed innocent.

- How many of you – and be honest – tend to presume that someone charged with a crime is guilty?
- Is everyone okay with the fact that the defendant does not need to prove anything? That the burden of proof is on the prosecution?
- Do you agree that if you have a reasonable doubt about the case presented by the prosecution, you must find Patrick Witten not guilty? Even if you don't like him or the things he said or did?
- If you were charged with a crime, would you want to be presumed innocent?

## **JUROR OATH**

### **(PLUS ADMISSION OF EVIDENCE AND JURY INSTRUCTIONS)**

“Mr./Ms. [prosecutor], do you have any objections to the jury panel?”

“Mr./Ms. [defense attorney], do you have any objections to the jury panel?”

“Mr./Ms. [prosecutor], do you have any objection to admitting the exhibits into evidence? Do you have any objection to the jury instructions?”

“Mr./Ms. [defense attorney], do you have any objection to admitting the exhibits into evidence? Do you have any objection to the jury instructions?”

Ladies and gentleman, you have been selected as jurors in the case of *People v. Patrick Witten*. Please raise your right hand for me to administer your oath as jurors:

“Does each and every one of you promise under penalty of law to be a juror who is fair and impartial, and to render your verdict on the evidence according to the laws of the State of Colorado?”

“Bailiffs, will you please distribute the evidence and law packets to the jury. Thank you.”

[Print the jury form and jury instructions (pp 21-23) and the exhibits (available separately). You can clip/staple the exhibits and jury instructions together before you distribute them. Be sure to collect all of them at the end of the presentation.]

[Before you start the next section, give the students two or three minutes to look at the exhibits. When they've had a chance to look at all the exhibits, move to the next page.]

## JUDGE'S ORAL STATEMENT OF THE EVIDENCE

I am going to read you the evidence in this case. Before I do, I want to remind you that this trial involves some very offensive language. We do not approve of the use of these words and they are banned by your school for good reason. We make an exception to our policy about the use of hate speech for this fictional trial program, because we believe that this program is that important.

Here is what happened. Please pay close attention because this is your only chance to hear the evidence you will use to decide your verdicts. You may look at the exhibits, but you must listen carefully to me while I read the facts.

On May 1st, Dr. Mohamed Mustafa, head of the Math Department at \_\_\_\_\_ [say name of the high school you are in or the high school in the area] in Colorado, announced he had chosen a senior, Ms. Kate Bradley, as "Math Student of the Year." The recipient of this award receives a \$20,000 scholarship for college and a personal recommendation for college applications from Dr. Mustafa. Dr. Mustafa, who is Muslim, received his bachelors, masters and doctorate degrees from Harvard, and the students he chooses each year have gone on to distinguish themselves in mathematics. Everyone knows Dr. Mustafa has been a popular and very active supporter of civil rights for all people.

Patrick Witten, a Caucasian senior at the high school, has coveted this award since he was a freshman. Over the last four years, he worked very hard to distinguish himself in Dr. Mustafa's eyes. He earned straight A's in math every semester. He worked 10 hours a week after school for the last three years tutoring his fellow students. Witten is on the yearbook staff and has done everything possible to be named "Math Student of the Year." But Dr. Mustafa chose Kate Bradley, whom Patrick Witten perceives is lesbian.

Upon learning the news on Wednesday, Witten became extremely angry. Ignoring the fact that Kate Bradley had the same grades, and worked just as hard to win the award, Witten was convinced Dr. Mustafa chose Bradley solely because of her perceived sexual orientation. Witten went home full of hate and bent on "getting even" with Dr. Mustafa and Kate Bradley. But before he went to sleep Wednesday night, he went shopping for materials.

The next evening, Thursday night, at 10:00 p.m., Witten used his yearbook staff access to log into the school's Instagram account. During the year, he had seen many people taunting and bullying Kate Bradley on social media and at school because they thought she was gay. Patrick posted a picture of Kate Bradley's house, "tagged" her on the post, and included a homophobic slur in the caption followed by this message: "12:00 Midnight, Go To 3961 Orion Lane and THROW ROCKS at Kate Bradley's House to Make Her Leave!"

After he finished his post, Witten drove to Dr. Mustafa's house, parked around the corner, and quietly walked up to his front porch. Witten put an unloaded replica assault rifle which he had purchased the night before next to the garage door where it could be seen by others and by Dr. Mustafa in the morning when he left for school. Witten also took a red spray paint can from his pocket and painted "Muslim Terrorists Go Home" on Dr. Mustafa's garage door, covering the entire door with permanent paint. Patrick then drove over to Kate's house at 3961 Orion Lane, and at 12:00 midnight, met up outside her house with the usual group of bullies.

Around the same time, Kate saw the post on the school's Instagram account, told her parents, and called her friends. They had seen the post too. While Kate's parents were on the phone calling the police, a rock thrown by someone shattered one of the front windows. Kate heard several cars peeling out and driving away. Kate and her friends decided to stay home from school the next day, even though it meant missing the assembly scheduled that day to announce student awards, including Kate as "Math Student of the Year."

Early Friday morning, Dr. Mustafa walked out his front door towards his car and was startled to find what appeared to be a real gun next to his garage door. He looked to his right and saw the red spray-painted message on his garage door. He quickly looked around, but did not see anyone. He hurried back inside and locked the door behind him, not knowing who had done these things or why.

At 10:00 a.m. on Friday morning, as students were filing into the auditorium for the assembly, Patrick Witten stood outside handing out flyers that began with a list of racial, religious, LGBTQ and other slurs and insisted that those groups are "getting awards and privileges because some people think we need to coddle everyone who is inferior." The flyer tells students to "boycott the award ceremony and protest for the resignation of the Anti-American Dr. Mohamed Mustafa" if they are sick of it too.

After reading one of the flyers, a group of Hispanic students surrounded Witten so that he could not escape. One of them yelled, "You trailer trash redneck! We should beat your face in!" Witten, who thought the Hispanic students were about to "jump" him, pushed Jorge Rodriguez, one of the Hispanic students who had yelled at him. Many students who were standing nearby yelled at Witten and the Hispanic students to stop, and found some teachers to stop the fight. The police arrived and arrested Witten. Jorge Rodriguez was treated for bruises caused by Witten pushing him into some lockers.

Ladies and Gentlemen, that is the evidence...the only evidence...in this case. The prosecutor has charged Witten with four counts of committing a hate crime.

### **JUDGE'S ORAL INSTRUCTIONS TO THE JURY**

Now that you have heard the evidence, you will use the law--the jury instructions--in your deliberations to decide whether Patrick Witten is guilty or not guilty. As a member of the jury, you are to decide whether the prosecution proved Patrick Witten guilty beyond a reasonable doubt as to the following:

- Count 1: Did Patrick Witten commit a hate crime when he put the unloaded replica assault rifle next to Dr. Mustafa's garage door and spray painted "Muslim Terrorists Go Home" on the garage door?
- Count 2: Did Patrick Witten commit a hate crime when he posted on the school's Instagram page a picture of Kate Bradley's house, "tagged" Kate on the post, and included a homophobic slur with the message "12:00 Midnight, Go To 3961 Orion Lane and THROW ROCKS at Kate Bradley's House to Make Her Leave!" and then met up outside her house with the usual group of bullies?
- Count 3: Did Patrick Witten commit a hate crime when he handed out the flyers as students were walking into the assembly?
- Count 4: Did Patrick Witten commit a hate crime when he pushed Jorge Rodriguez?

Each count represents a separate and distinct offense. This means you can find Patrick Witten guilty on all counts, some counts, or none of the counts. You must decide each count separately.

You must follow all of the rules of law stated in the written jury instructions. Even if you disagree or do not understand the reasons for some of the rules, you must follow them.

Now the attorneys will give their closing arguments.

[CLOSING ARGUMENTS: A total of 15 minutes for each attorney]

## SAMPLE CLOSING ARGUMENT FOR THE PROSECUTOR

### **You will want to reserve 2-3 minutes for rebuttal**

- This is not a case about beliefs – it is a case about actions. Actions deliberately taken for the purpose of harassing and intimidating others just because of who they are, what they look like, how they talk, who they like, where they came from, what they believe in.
- The evidence shows Patrick Witten is a racist and a bigot. But he is not being prosecuted for having those beliefs. He is entitled to believe whatever he wants. It doesn't matter if he is racist or not, the reason the State has brought these charges is because of Mr. Witten's actions and conduct.
- He is being prosecuted for using his beliefs to take actions designed and intended to damage others' property and to hurt other people and make them feel scared.
- But how do we know Patrick Witten is guilty on all four counts of committing hate crimes? We have two things. We have the facts--what Mr. Witten admits happened--and we have the law. When you apply the law to the facts, Mr. Witten is guilty beyond a reasonable doubt on all charges.

[Feel free to use the written jury instructions in the packet to guide the students through the questions and definitions they will use for each count.]

### **Count 1**

- We know Patrick Witten admitted doing these acts, in Colorado.
- We also know he knowingly caused damage to Dr. Mustafa's property – Mr. Witten admits using red spray paint to scrawl the message across the garage door, permanently defacing it until someone spends money and time to fix it.
- The key issue in Count 1 is did Patrick Witten intend to intimidate or harass Dr. Mohamed Mustafa because of his actual or perceived religion? How do we decide what Patrick Witten's intent was?
  - The law says that a defendant acts because of another person's religion when his religion was (in whole or in part) a factor that caused the defendant to act in a certain way. The other person's religion *needs only to be a part of the reasons or one factor* that caused the defendant to act in a certain manner.
  - Patrick Witten admits that after hearing the news on Wednesday that Kate Bradley was getting the award, he went home "full of hate and bent on getting even with Dr. Mustafa and Kate Bradley." He then went shopping for the materials he used the next day.
  - He had time to cool off, to get over it, to talk with someone about it. He even slept on it.
  - Yet the next night, Thursday night, more than 24 hours later, he went to Dr. Mustafa's house and intimidated and harassed him because of his religion. Witten used symbols and words of violence tied directly to Dr. Mustafa's religion – the reference to Muslims – and the stereotypes that have been created about Muslims and people from the Middle East in general...that they are violent and carry assault rifles and bombs to commit acts of terrorism.
  - Mr. Witten wanted to be "Math Student of the Year." He had worked hard, and he really wanted to get the award. He didn't get it. It was understandable that he was disappointed when he didn't get the award. He was entitled to be disappointed. He was entitled to disagree. But his reaction went far beyond natural disappointment or disagreement. He let his hate overwhelm his reason. And he first used his hate to harass and intimidate Dr. Mustafa by using his religion to hurt him.
  - To be guilty of a hate crime, religion does not need to be the only factor why Patrick Witten harmed Dr. Mustafa. The *statutory language* is "in whole or in part." Not getting the math award also can be a factor in the way Patrick Witten acted. People often do things for several reasons, but if one or part of the reason is illegal, then it is a crime. If Dr. Mustafa's religion was part of the reason Patrick Witten acted, then it is an illegal reason, and Patrick Witten is guilty on Count 1.
  - Patrick Witten could have used words and symbols that had nothing to do with religion, but he didn't, he chose words directly tied to Dr. Mustafa's religion and to the perceptions and stereotypes created about Muslims and people from the Middle East. Patrick Witten's choice to use those particular words and symbols tells you what you need to know about his intent. If Dr. Mustafa had not been Muslim, would Patrick Witten have chosen those words and symbols?

## **Count 2**

- Patrick Witten could have stopped there. He didn't. He turned his hateful thoughts into harmful acts against Kate Bradley. And this is the morning after he started his campaign of hate the night before against Dr. Mustafa. Witten again had a chance to sleep on it, to cool off.
- He again assumed the role of coward, and posted a message about Kate Bradley on the school's Instagram account. And not just a message like "She is a Teacher's Pet" or other message related to the math award.
- He chose a homophobic slur followed by "12:00 Midnight, Go To 3961 Orion Lane and THROW ROCKS at Kate Bradley's House to Make Her Leave!" He knew others had been bullying Kate on social media and at school, and he knew Kate and others would see the harmful, inflammatory message.
- Just like in Count 1, we need to first ask: Did Patrick Witten intend to intimidate or harass Kate Bradley because of her actual or perceived sexual orientation?
  - How do we decide what Patrick Witten's intent was?
  - The law says that a defendant acts because of another person's sexual orientation when in whole or in part it causes the defendant to act in a certain way. The other person's sexual orientation need only be a part of the reason that caused the defendant to act in a certain manner.
  - Well, why did Patrick Witten choose the words he used? The only logical explanation is that he was motivated by his racist, bias perception, discriminatory, narrow-minded hatred. He had decided that Kate Bradley had received the Math Student of the Year award solely because Patrick thinks she is a lesbian. That is the only possible explanation why he chose to use the word that he did.
  - The evidence doesn't tell us whether Kate was a lesbian or not. And you know what, it doesn't matter. You commit a hate crime if you perceive, if you believe, if you think, someone is in one of the protected classes of victims – it is enough that you think someone is Jewish, Mexican, gay – even if you are wrong, you are committing a hate crime if you harm them because you think they are a member of that group.
  - But what we do know is that Kate was, in fact, harassed and intimidated because she called her friends, and told her parents, and her parents called the police. Another reason we know Kate was harassed and intimidated is because she and her friends stayed home from school the next day, even if it meant missing the school assembly where she would be recognized for her \$20,000 scholarship award and personal recommendation from Dr. Mustafa as Math Student of the Year.
- The next question in Count 2 is: Did Patrick Witten knowingly place another person in fear of imminent lawless action directed at that person or that person's property?
  - Of course he did. Patrick Witten admits he posted the message to the school's Instagram account during the year, he had seen many people taunting and bullying Kate because they thought she was gay. He used a homophobic slur and the message "12:00 Midnight, Go To 3961 Orion Lane and THROW ROCKS at Kate Bradley's House to Make Her Leave!" because he wanted to put her in fear of harm, and he knew she would fear harm. And we know Kate was in fear of imminent – immediate – harm because she immediately told her parents, her parents called the police, and Kate stayed home from school the next day, even missing the assembly.
- The final question in Count 2 is: "Did Patrick Witten know his words and conduct were likely to produce bodily injury to that person or damage to that person's property?"
  - You know the answer...it's yes. Again, Patrick Witten admits he posted the message on the school's Instagram account because during the year, he had seen many people taunting and bullying Kate because they thought she was gay. And he posted a picture of her house, her exact address, a specific meeting time, and a specific violent action – throwing rocks, in all caps, at her house – for a specific reason, to make her leave.
  - He knew, or had reason to know, that the bullies were going to see that post and take advantage of the situation. He then met up with those very bullies outside of Kate's house at the time Patrick wanted, 12 midnight. And one of the bullies threw a rock that shattered one of Kate's windows. Patrick was aware his conduct was practically certain to cause this result. He knew that the bullies had been taunting and bullying Kate all year, and here it was, the end of the year, students ready to leave with a bang, thinking they could avoid all accountability, all punishment, because Patrick had created circumstances of fear, intimidation and violence.

### **Count 3**

- Now you think that would have been enough. You think even Patrick Witten – who admittedly was full of hate and bent on getting even – would have had enough. But he was still not done. Later that morning, after he had more time to think about his actions, he went to the auditorium and passed out his hateful flyers. Now don't get me wrong. There is nothing wrong about handing out flyers. But when you look at the wording Mr. Witten chose, it is clear he crossed the line separating permissible speech and "fighting words."
- He designed and intended the flyers to disrupt the awards ceremony by inciting a riot – they were part of his plan to "get even." These flyers were not a legitimate attempt to convey a message. They were not intended to cause debate or peaceful protest about what was right and what was wrong. No, Mr. Witten deliberately chose to use vicious racial and ethnic slurs. He wanted a reaction, a physical one, a big one, and he got it.
- Patrick Witten's flyers are not speech protected by the First Amendment. The law says The First Amendment protects speech in this country; even offensive speech. But this freedom is not absolute. Speech is not protected when it creates a "clear and present danger" by inciting or producing imminent lawless action...such as a riot or immediate physical violence...like we see in this case.
- Looking at the questions you need to answer for Count 3, you will find that Patrick Witten intended to intimidate or harass other people because of their actual or perceived race, color, religion, ancestry, national origin, disability, gender identity/expression, or sexual orientation. He only needs to have intended to intimidate or harass one, but he hit them all. He wanted to make sure he incited anger and chaos.
- You will find that Patrick Witten knowingly placed other people in fear of imminent lawless action directed at them. He was passing the flyers out to everyone, the tall, the short, the big, the small, the strong and the weak. He wanted to intimidate and create fear in those in the minority, who already have been oppressed and unfairly targeted, who already must work harder than everyone to overcome stereotypes and bias. You know students feared what was going to happen, and it happened.
- You will find Patrick Witten knew passing out the flyers at that time, at that place, to those students, would likely produce bodily injury to people, or damage to property. Do you think for a moment that 100% of the students in that environment were going to read past the fiery racial slurs Patrick used to start his message? Do you think they were going to study the flyers in a calm, controlled environment like we have right now, and conclude at the very end that Patrick just wanted a nonviolent protest? No way. No way. Patrick Witten cannot be believed if he claims all he wanted was a peaceful protest and debate about the math award selection process.

### **Count 4**

- The final count is Patrick pushing Jorge Rodriguez. After getting the chaos he wanted, Patrick took advantage of the mayhem and pushed a Hispanic student, causing bruises from the lockers. Patrick Witten admits causing bodily injury to Jorge, so the only issue you need to decide in the questions for Count 4 is: Did Patrick Witten intend to intimidate or harass Jorge Rodriguez in whole or in part because of his actual or perceived ancestry or national origin?
  - You know the answer is yes, because you know Patrick wanted a fight...he handed out flyers with fighting words. He knew his vicious racial slurs would enrage other students, and he made sure someone was going to start a fight because he insulted everyone who wasn't like him, and used vicious words to dig the hurt deep into their bones.
- He intimidated, he harassed, he provoked, and now he says he is not guilty. It really makes no sense...it is like lighting a fuse, and then claiming that it is the bomb's fault that it exploded.

Ladies and Gentlemen of the jury, the prosecution brings this case to you, the people, the jury, for you to decide. You, not me, decide what behavior and conduct you want in your community.

Don't worry about the potential punishment. That is for the judge to decide – not you – and finding him guilty doesn't automatically mean he is going to jail.

You know the difference between free speech and a hate crime. You know where the law draws the line. And you know Patrick Witten stepped way over the line several times.

- Patrick Witten could have chosen to focus his message and actions on his disagreement with the math award and why he should have received it. He didn't. He chose a campaign of hate, using religious, sexist, racial and other slurs to harm everyone in his way.

It's time to send a message to Patrick Witten and your community. This type of conduct simply is not legal and certainly not acceptable. I look forward to your guilty verdicts on all four counts.

## **SAMPLE CLOSING ARGUMENT FOR THE DEFENSE ATTORNEY**

- I said during voir dire that you probably would not like my client, Patrick Witten. You don't have to like him; this is not a popularity contest. He admits he did some stupid things, some immature things. He made some offensive comments, and I'm not asking you to agree with his opinions. But these are not hate crimes, and you shouldn't punish him for his beliefs and for exercising his First Amendment rights.
- Don't let emotions you may feel overwhelm reason and logic, and the law. You must judge whether the prosecution proved each and every element of each count beyond a reasonable doubt. Let's look at each.
- The prosecution bears the burden of proving each of the counts they bring against Mr. Witten beyond a reasonable doubt, and when you hold the prosecution to that burden, you will arrive at the correct decision – Patrick Witten is not guilty on all counts.

[Feel free to use the written jury instructions in the packet to guide the students through the questions and definitions they will use for each count.]

### **Count 1**

- The key issue in Count 1 is Patrick Witten's intent, his reason for acting. You know why Patrick Witten acted out in response to Dr. Mustafa – it is because Dr. Mustafa did not give Patrick the very valuable math award Patrick had coveted since he was a freshman.
- Patrick Witten had worked very hard the last four years. He earned straight A's in math every semester. He worked 10 hours a week after school for the last three years tutoring his fellow students. Patrick felt Dr. Mustafa had cheated him out of the award by giving it to Kate Bradley, and Patrick thought it was because Dr. Mustafa wanted to favor minorities. Ask yourself this – Would any of this have happened if Patrick Witten had received the math student of the year award?
- You certainly could find him guilty of vandalism, but that is all. Being mad and damaging property because you did not get a math award is vandalism, and Patrick would have pled guilty to that and we never would have needed this trial. But vandalism is not a hate crime.

### **Count 2**

- Patrick Witten is being charged with a hate crime for posting something on the internet. How could that be a hate crime?
- First, you know why Patrick Witten lashed out at Kate Bradley – again, it is because she got the very valuable award Patrick felt he deserved. It is not a hate crime to say offensive things when you feel you have been cheated out of an award, a \$20,000 scholarship.
- Second, he did not cause Kate any bodily injury or property damage, and how could she really be put in fear of imminent danger because of something she read on the Internet? Was it offensive, sure, but offensive speech is protected and is not criminal.
- Third, how was Patrick Witten ever to know that a group of bullies would see the post and do something to Kate's house? How can we hold Patrick Witten responsible for something other students did by their own choice?
- Patrick Witten posted an offensive message on the Internet. It happens all the time, and we know that Patrick acted out because Kate got the math award that Patrick desperately wanted. This might have been a stupid way for Patrick to show his frustration, but being stupid is not a crime, and this does not rise to the high level of a hate crime.

### **Count 3**

- Patrick Witten passed out flyers. There is nothing wrong about handing out flyers, even flyers that contain offensive opinions. Patrick Witten is allowed to express his opinion and has the First Amendment right to peaceably assemble and protest using free speech. He simply called for a boycott and a protest for the resignation of Dr. Mustafa. We are taught to use nonviolent means to accomplish change, and that is exactly what Patrick Witten did.

- So you will find when answering the questions for Count 3, that Patrick Witten was not trying to intimidate or harass other people, and certainly not because of their actual or perceived race, color, religion, ancestry, national origin, disability, gender identity/expression, or sexual orientation.
- And you will find that Patrick Witten was not knowingly placing other people in fear of imminent lawless action directed at them. Patrick may have been placing himself in harm's way, but he was not encouraging anyone to hurt someone else. He did not threaten anyone, let alone a specific person.
- And you will find that Patrick Witten did not know his words and conduct were likely to produce bodily injury to another person. Again, maybe he was putting himself in danger, but he was not advocating for injury to others. He did not mention anyone by name.
- As with Patrick's other statements, you may not like what he said, and you may find it offensive, but the First Amendment right to free speech is a very important and a very powerful right in this country. I'm confident you will agree with me. Patrick's handing out paper flyers may be a violation of his school's rules, but it is not a hate crime.

#### **Count 4**

- The final count charges Patrick Witten for a hate crime when he protects himself against the only people that injected violence into these events – a group of students surrounding Patrick so that he couldn't escape, calling him a trailer trash redneck, and yelling "We should beat your face in!" The prosecution admits to the facts, including that Witten thought the students were about to jump him.
- Patrick Witten wasn't trying to intimidate or harass Jorge Rodriguez because of his actual or perceived ancestry or national origin. It could have been anyone surrounding Patrick and he would have protected himself using self-defense. There is no hate crime if Patrick did not have the intent to intimidate or harass Jorge because of his ancestry, and there is no evidence Patrick said anything to Jorge about his national origin.
- You have to wonder, why aren't the Hispanic students being prosecuted for a hate crime? They used race combined with physical threats to a specific person, Patrick, while surrounding him so he couldn't escape. The Hispanic students had a choice...they could have hailed a teacher or someone to help stop Patrick from handing out the offensive flyers...but instead they introduced violence and physical threats into a call for non-violent protest. Who is the victim?

You are reasonable and fair people. And you have promised to set aside emotion in favor of following the law. At minimum, the prosecution has failed to prove hate crimes beyond a reasonable doubt. But even more, you know that Patrick Witten has the First Amendment right to free speech, and to protest, even if his opinions and beliefs are unpopular or offensive.

I'm confident you will recognize that, even if Patrick's language was offensive and inappropriate, he was simply exercising his constitutional right to free speech, which isn't a crime, much less a hate crime. I'm confident your common sense will lead you to find Patrick Witten not guilty on all four counts.

## **TIPS FOR THE PROSECUTOR'S REBUTTAL ARGUMENT**

The Prosecutor's rebuttal will depend in large part on what arguments were covered in both your closing and the defense attorney's closing.

- Make sure to remind the jury of the "in whole or in part" language of the statute.
- The defense closing will most likely focus on the math award and that none of this would have happened if Patrick had received the award.
- The "in part" language is a powerful way to point out that Patrick's actions were not motivated solely because of the math award. It does not matter if the math award was what tipped Patrick over the edge into criminal behavior. The way he chose to act out was clearly motivated at least in part by his bias against those specifically protected by the hate crimes statute.

## **DELIBERATION INSTRUCTIONS BY THE JUDGE**

At this time, you will break into jury groups to begin your deliberations. You will be joined by a volunteer who will assist you in choosing a foreperson and in your discussions to reach your verdicts.

[Break the students into groups of 6-8; have them count off.]

[Each juror should have a copy of the exhibits (available separately) and the Written Jury Instructions (pages 22-23). Each facilitator should have a copy of the Jury Verdict Form (page 21) to give to the Foreperson of each group.]

## JURY VERDICT FORM

***People v. Witten***

Jury Group # _____	Date _____	School _____
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**PLEASE INDICATE THE NUMBER OF JURORS WHO VOTE GUILTY AND NOT GUILTY ON EACH COUNT**

Count 1: Did Patrick Witten commit a hate crime when he put the unloaded replica assault rifle next to Dr. Mustafa's garage door and spray painted "Muslim Terrorists Go Home" on the garage door?

Guilty \_\_\_\_\_ Not Guilty\_\_\_\_\_

Count 2: Did Patrick Witten commit a hate crime when he posted on the school's Instagram page a picture of Kate Bradley's house, "tagged" her and included a homophobic slur in the caption "12:00 Midnight, Go To 3961 Orion Lane and THROW ROCKS at Kate Bradley's House to Make Her Leave!" and then met up outside her house with the usual group of bullies?

Guilty \_\_\_\_\_ Not Guilty\_\_\_\_\_

Count 3: Did Patrick Witten commit a hate crime when he handed out the flyers as students were walking into the assembly?

Guilty \_\_\_\_\_ Not Guilty\_\_\_\_\_

Count 4: Did Patrick Witten commit a hate crime when he pushed Jorge Rodriguez?

Guilty \_\_\_\_\_ Not Guilty\_\_\_\_\_

## WRITTEN JURY INSTRUCTIONS

### ***People v. Witten***

#### **Basic Definition from the Statute**

Patrick Witten is guilty of committing a hate crime if he:

1. Has the intent to intimidate or harass another person in whole or in part because of that person's actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, gender identity/expression, or sexual orientation;

AND does AT LEAST ONE of the following three things:

- 2.a Knowingly causes bodily injury to another person; or
- 2.b Knowingly uses words or conduct to place another person in fear of imminent lawless action directed at that person or that person's property, AND such words or conduct are likely to produce bodily injury to that person or damage to that person's property; or
- 2.c Knowingly causes damage to property of another person.

#### **Helpful Instructions**

A defendant acts "because of" another person's race, color, religion, ancestry, national origin, physical disability, mental disability, gender identity/expression, or sexual orientation where one of these traits either in whole or in part causes the defendant to act in a certain way. The other person's race, color, religion, ancestry, national origin, physical disability, mental disability, gender identity/expression or sexual orientation need not be the sole motivating factor causing the defendant to act in a certain manner, it can simply be a part of or one of the motivating factors.

The First Amendment protects freedom of speech in this country; even offensive speech. But this freedom is not absolute. Speech is not protected when it creates a "clear and present danger" by inciting or producing imminent lawless action such as a riot or immediate physical violence.

A person acts "knowingly" with respect to a result of his conduct when he is aware his conduct is practically certain to cause the result.

#### **Questions for Jury to Answer**

To find Patrick Witten guilty on a count, the prosecution must prove beyond a reasonable doubt an answer "yes" to each question under that count.

##### **Count 1: Did Patrick Witten commit a hate crime when he put the unloaded replica assault rifle next to Dr. Mustafa's garage door and spray painted "Muslim Terrorists Go Home" on the garage door?**

1. Did Patrick Witten knowingly cause damage or destruction to the property of Dr. Mohamed Mustafa? If yes, go to question #2. If no, stop here and vote not guilty.
2. Did Patrick Witten intend to intimidate or harass Dr. Mohamed Mustafa in whole or in part because of his actual or perceived religion? If yes, then you must vote guilty. If no, then you must vote not guilty.

**Count 2: Did Patrick Witten commit a hate crime when he posted on the school's Instagram page a picture of Kate Bradley's house, "tagged" her and included a homophobic slur in the caption "12:00 Midnight, Go To 3961 Orion Lane and THROW ROCKS at Kate Bradley's House to Make Her Leave!" and then met up outside her house with the usual group of bullies?**

1. Did Patrick Witten intend to intimidate or harass Kate Bradley in whole or in part "because of" her actual or perceived sexual orientation? If yes, go to question #2. If no, stop here and vote not guilty.
2. Did Patrick Witten knowingly place another person in fear of imminent lawless action directed at that person or that person's property? If yes, go to question #3. If no, stop here and vote not guilty.
3. Did Patrick Witten know his words and conduct were likely to produce bodily injury to that person or damage to that person's property? If yes, then you must vote guilty. If no, then you must vote not guilty.

**Count 3: Did Patrick Witten commit a hate crime when he handed out the flyers as students were walking into the assembly?**

1. Did Patrick Witten intend to intimidate or harass other people in whole or in part because of their actual or perceived race, color, religion, ancestry, national origin, disability, gender identity/expression, or sexual orientation? If yes, go to question #2. If no, stop here and vote not guilty.
2. Did Patrick Witten knowingly place another person in fear of imminent lawless action directed at that person or that person's property? If yes, go to question #3. If no, stop here and vote not guilty.
3. Did Patrick Witten know his words and conduct were likely to produce bodily injury to that person or damage to that person's property? If yes, then you must vote guilty. If no, then you must vote not guilty.

**Count 4: Did Patrick Witten commit a hate crime when he pushed Jorge Rodriguez?**

1. Did Patrick Witten knowingly cause bodily injury to Jorge Rodriguez? If yes, go to question #2. If no, stop here and vote not guilty.
2. Did Patrick Witten intend to intimidate or harass Jorge Rodriguez in whole or in part because of his actual or perceived ancestry or national origin? If yes, then you must vote guilty. If no, then you must vote not guilty.

## THE STATUTE

### **C.R.S 18-9-121 (“Bias Motivated Crimes”)**

- (1) The general assembly hereby finds and declares that it is the right of every person, regardless of race, color, ancestry, religion, national origin, physical or mental disability, or sexual orientation to be secure and protected from fear, intimidation, harassment, and physical harm caused by the activities of individuals and groups. The general assembly further finds that the advocacy of unlawful acts against persons or groups because of a person's or group's race, color, ancestry, religion, national origin, physical or mental disability, or sexual orientation for the purpose of inciting and provoking bodily injury or damage to property poses a threat to public order and safety and should be subject to criminal sanctions.
  - (2) A person commits a bias-motivated crime if, with the intent to intimidate or harass another person ~~in whole or in part~~ because of that person's actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation, he or she:
    - (a) Knowingly causes bodily injury to another person; or
    - (b) By words or conduct, knowingly places another person in fear of imminent lawless action directed at that person or that person's property and such words or conduct are likely to produce bodily injury to that person or damage to that person's property; or
    - (c) Knowingly causes damage to or destruction of the property of another person.
  - (3) Commission of a bias-motivated crime as described in paragraph (b) or (c) of subsection (2) of this section is a class 1 misdemeanor. Commission of a bias-motivated crime as described in paragraph (a) of subsection (2) of this section is a class 5 felony; except that commission of a bias-motivated crime as described in said paragraph (a) is a class 4 felony if the offender is physically aided or abetted by one or more other persons during the commission of the offense.
- (3.5)
- (a) In determining the sentence for a first-time offender convicted of a bias-motivated crime, the court shall consider the following alternatives, which shall be in addition to and not in lieu of any other sentence received by the offender:
    - (I) Sentencing the offender to pay for and complete a period of useful community service intended to benefit the public and enhance the offender's understanding of the impact of the offense upon the victim;
    - (II) At the request of the victim, referring the case to a restorative justice or other suitable alternative dispute resolution program established in the judicial district pursuant to [section 13-22-313, C.R.S.](#).
  - (b) In considering whether to impose the alternatives described in paragraph (a) of this subsection (3.5), the court shall consider the criminal history of the offender, the impact of the offense on the victim, the availability of the alternatives, and the nature of the offense. Nothing in this section shall be construed to require the court to impose the alternatives specified in paragraph (a) of this subsection (3.5).
- (4) The criminal penalty provided in this section for commission of a bias-motivated crime does not preclude the victim of such action from seeking any other remedies otherwise available under law.
  - (5) For purposes of this section:
    - (a) “Physical or mental disability” refers to a disability as used in the definition of the term “person with a disability” in [section 18-6.5-102\(11\)](#).
    - (b) “Sexual orientation” means a person's actual or perceived orientation toward heterosexuality, homosexuality, bisexuality, or transgender status.



## INSTRUCTIONS FOR FACILITATORS

To get the most out of your experience and deliver the best service to the students, **before you attend**, please read these materials from start to finish. The materials provide invaluable background and context, and will allow you to enjoy the presentation before the case is turned over for you to lead your own jury group. You will be better prepared to customize your assistance to the students in reaction to the trial everyone just witnessed. You will have an excellent foundation from which you can tailor the jury deliberations to the actual arguments they heard in the trial (which will vary from trial to trial depending on which volunteers are playing the attorney roles).

As an initial matter, introduce yourself (first name only is fine) and ask each student juror to do the same. You may want to write down each student's name, so you can call on them if necessary later. Then, ask whether someone is willing to volunteer to serve as the foreperson who will be responsible for keeping track of the verdicts and announcing them to the large group when everyone reconvenes. Give the Jury Verdict Form to the foreperson.

Using the written jury instructions, your main job is to make sure the students have a robust discussion and reach verdicts on all counts.

To begin the process, you may want to take a "straw poll" by asking students to raise their hands if they think Patrick Witten is guilty or not guilty on each count. Then return to Count 1 and go through the questions for each count. After reading each question, ask the students if they agree or disagree and then ask them to explain why. Even if they all agree on a verdict immediately, ask them to explain, play devil's advocate, and encourage them to discuss their reasoning.

Some groups may launch into a productive, educated discussion with little help from you. Let them go as far as they can, and you may find you need only to harness them and get them to vote before time is up. You may need to correct fundamental or material errors in the students' recollection of the undisputed facts or their understanding of the law. When they seem to have talked through the statute and come to a decision, call for a final vote on Count 1, and ask the foreperson to record the vote.

You should encourage each student to actively participate, and call on them if necessary.

At the appropriate time, move to the next count. Figure out approximately how much time you have for each count and watch the clock, cutting off discussion if necessary to make sure you have time to discuss all counts.

### **Count 1**

The **intent element**/how we evaluate the reason(s) someone acts. One way is by looking at the choices they make. In this case, the words and symbols Patrick Witten chose were consistent with negative stereotypes about Dr. Mustafa's religion. Patrick could have chosen words and symbols unrelated to religion to express his anger and disappointment. If he had, he could still have been charged with trespassing and vandalism, but he would not have been charged with a hate crime.

A defendant acts because of another person's religion when religion is a **factor** (in whole or in part) in causing the defendant to act in a certain way. The other person's religion need only be part of what caused the defendant to act in a certain manner. Patrick Witten could have acted in part because he didn't get the math award, but it is still a hate crime if religion was a factor in whole or in part in his actions. You might need to guide the students into distinguishing between why Patrick Witten got mad (because he didn't get the math award) and how he chose to act after he got mad (used attacks relating to religion to intimidate and harass Dr. Mustafa).

The anonymity of the actions enhances the impact on the victim. If Patrick Witten had made sure Dr. Mustafa knew Patrick or a student had done it, Dr. Mustafa might not have been so alarmed; he might have shrugged it off as Patrick being mad about the math award or another disgruntled student. A victim of a hate crime who doesn't know who did it will be constantly looking over his/her shoulder, wondering what might happen next, and by whom.

This count is designed to arrive at a guilty verdict.

### **Count 2**

Again, like with Count 1, the **intent** element is important but you can spend less time on this point than you did with Count 1 since you already discussed it.

The actual or perceived **characteristics of victims**. It doesn't matter whether Kate was a lesbian or not. If Patrick Witten thought she was, and that was either in whole or in part a factor in his actions, then he has the requisite intent.

The issues of "**knowingly placing** another person in fear of imminent lawless action directed at that person or that person's property" and "**knowing his words and conduct**" were likely to cause Kate bodily injury or property damage." Was he aware his conduct was practically certain to cause this result?

- What Patrick knew about Kate being victimized in the past by bullies must be considered in assessing the "knowingly" piece of the issue...especially in combination with his choice of words.
- The prevalence of social media and how speech gets disseminated very quickly, and without the benefit of non-verbal cues for people to use in interpretation. It isn't easy, or even possible sometimes, to see sarcasm, a joking manner, a light-hearted teasing tone.
- It is possible to find Patrick Witten guilty under the "knowingly causes damage to or destruction of the property of another person" prong of the statute. It does not matter if it is Kate's property or not, just that it is the property of "another person." It also doesn't matter that Patrick didn't throw the rock that broke the window – the prosecutor only has to show that Patrick's "words or conduct are likely to produce ... damage to ...property."
- That is because the purpose of the Hate Crimes laws is to protect more than just the victim's property or even the immediate victim's feelings. The statutes are intended to protect against the more pervasive harm to the entire community (or at least those portions of the community similarly situated to the victim) from the severe damage caused by hate crimes. Hate crimes generally are regarded as "message" crimes, intended to harass and intimidate (i.e., send a message to) all those persons in the community who share the traits of the immediate victim.

Students, particularly younger/middle school students, often believe it is permissible to say almost anything on social media. Putting the students in Kate Bradley's shoes is useful – imagine if it was you? How does this differ from normal bullying or derogatory statements seen on social media? Does the picture of her house and address change things?

This count is designed to arrive at a guilty verdict, although not as easily as Count 1.

### **Count 3**

Now Patrick is handing out flyers (speech) directly to people, face-to-face, in a crowded, relatively disorganized environment. This raises time, place and manner issues related to the First Amendment. The First Amendment is powerful, protecting even offensive speech, but it is not unlimited. Did Patrick cross the line into fighting words? This involves assessing the content of the speech itself (i.e., how explosive the speech is) and the context in which the speech takes place (i.e., how volatile the situation is).

He used offensive, fiery language as an attention-getter. This probably satisfies the question of whether he intended to intimidate or harass other people because of their actual or perceived race, color, religion, ancestry, national origin, disability, gender identity/expression, or sexual orientation. Reasonable minds could differ though.

Did he knowingly place other people in fear of imminent lawless action directed at them...and did he know passing out the flyers at that time, at that place, to those students, would likely produce bodily injury to people, or damage to property? In contrast to Count 2, he calls for nonviolent means to accomplish protest and change. But would the students receiving those flyers even read the end of the flyer? We are in a calm environment in the jury room, but the scene was much different outside that auditorium.

What would happen if this incident played out in your school? Would there be a riot, pushing and shoving, or a heated confrontation? Or would students reach out to adults, throw away the flyers, or perhaps nothing would happen? If there was physical violence, would a Patrick Witten-like person at your school be able to believably claim that he didn't know physical violence would happen? Again, reasonable minds could differ.

This count is designed to leave it in the hands of the students – particularly in assessing what would happen at their school. At some schools, the person handing out the flyer would be ignored, and the flyers tossed in the trash. In other schools, there would be an immediate riot. Because our jury system determines a defendant's guilt or innocence using a jury of peers, it is perfectly appropriate for the students to decide what verdict someone like Patrick Witten in their community would receive.

Be careful to emphasize that regardless of the verdict on the criminal charges, Patrick Witten is almost certainly breaking school rules, and would face different punishment under that system (up to and including expulsion).

#### **Count 4**

After reading the flyers, a group of Hispanic students surrounded Witten. One of them yelled, "You trailer trash redneck! We should beat your face in!" Witten, could not escape and thought the Hispanic students were about to "jump" him. He pushed Jorge Rodriguez, who was treated for bruises caused by the lockers. Did Patrick Witten intend to intimidate or harass Jorge Rodriguez in whole or in part because of his actual or perceived ancestry or national origin?

The discussion should focus on the absence of any evidence that Patrick made statements about Jorge's ancestry or national origin while pushing him – it likely cannot be found beyond a reasonable doubt that Jorge's ancestry or national origin in whole or in part caused Patrick to push him...self-defense appears to be the only factor. It seems likely that Patrick Witten would have responded in the same way if he had been surrounded by a group of white students, or by a multi-racial group from the marching band, and had been threatened by them. You might need to distinguish this count from Count 3, where Patrick was using racial slurs in a more targeted manner in the way he was acting – i.e., handing out flyers.

This count is designed to arrive at a not guilty verdict.

You should engage the students in discussion regarding whether the Hispanic students should be charged with a hate crime. This discussion gives the facilitator the opportunity to explain to the students that the Hate Crime statute is not limited to the protection of any specific race or religion. Rather, it essentially is a neutral statute which will punish anyone who attempts to harass and intimidate a person in whole or in part because of that person's race, color, religion, ancestry, national origin, physical disability, mental disability, gender identity/expression, or sexual orientation.

## **RECEIVING AND DISCUSSING THE VERDICTS**

### **INTRODUCTION**

After bringing the smaller groups back into the large group, have each foreperson report on the verdicts reached by his/her jury. Record the verdicts for everyone to see (perhaps on a smartboard or blackboard). Most often, there will be some differences in the verdicts. Discuss the “correct” verdicts on each count, as discussed in the Instructions for Facilitators.

Highlight the importance of a “jury of your peers” and talk about how different the verdicts are, particularly the hung versus unanimous or divergent ones, despite the fact that all the students hear the same facts and arguments by the same lawyers at the same time in the same setting.

Review each count and ask students to talk about why they found Patrick guilty or not guilty on each count. Use this time to engage the students in discussion among the larger group. Call on different students and encourage everyone to listen to one another’s points of view and to continue the dialogue after the program is over.

If time permits, close by having the volunteers introduce themselves, sharing their full names, occupations (or schools, if law students), area(s) of practice and why/how long they have been volunteering, as well as any observations they have from their student jury groups or the day’s program. Reserve 5 minutes for any questions the students may have, whether about the trial, the law or the volunteers.

**Before dismissing the students, ask everyone in the room to return the jury instructions and exhibits.**

### **LESSONS LEARNED**

You should feel some freedom to play off the flow and substance of your particular trial presentation, but make sure these two points are made and emphasized:

#### **Point 1 – This is a real law, with real punishment**

What you might think is a teasing, funny comment based on your right to free speech could end up being a crime, if it is racist or otherwise motivated by negativity or stereotypes involving race, color, religion, ancestry, national origin, physical disability, mental disability, gender identity/expression, or sexual orientation. Teasing and joking can lead to bullying, which can easily escalate and lead to hate crimes.

Hate speech and behavior, and especially that which starts out as bullying, can have a devastating impact on a person, their family and the community. It can range from isolation and loneliness, to anxiety and depression, to anger and revenge against the perpetrators. There are documented cases of students committing suicide as a direct result of bullying and hate speech/conduct. There are documented cases of victims snapping back at perpetrators of hate crimes, resulting in horrible acts of retaliation and revenge, which only multiplies the number of victims and amount of damage to a community. There are documented cases of severe community unrest as a result of hate crimes.

If time permits, discuss other consequences from Patrick’s actions. He could be suspended from school, as schools and school districts have their own set of rules governing his conduct. How would handing out such a flyer be handled at your school? Patrick’s actions can also negatively impact him with college applications, jobs in the future (if convicted), and employment. You may want to discuss real-life CEOs, CFOs and other C-suite executives who have been fired for hate-filled, misogynistic or similar e-mails and “legal” conduct. And it is not only highly visible employees who can be let go – companies have been

known to fire employees for things they have posted on social media sites. We live in a state/country with “at-will” employment and having supportive and inclusive cultures are paramount to good business.

### **Point 2 – Spread the word and be strong**

Hate crimes are message crimes – the person who commits hate crimes wants to hurt not only an individual victim, but the whole community, because the person feels inferior and cowardly. There is a famous quote: *“Hatred is the anger of the weak.”*

Don’t be weak. Take what you’ve learned today and make your community stronger by telling bullies and other people who spread hate that they could be committing crimes, and that they will not get away with it. You saw from the facts in this case that the reason the escalating incident stopped was because other kids had the courage to tell Patrick Witten and the Hispanic students to stop and to get teachers and authorities involved.

### **ADDITIONAL TALKING POINTS**

Sentencing: It is valuable to inform the students about sentencing issues.

- The judge, not the jury will impose the sentence, and will base it on many factors, including the nature of the offense, the victim impact statements from the various victims, the impact on the community, the defendant’s previous criminal record (if any), educating and rehabilitating the defendant, and satisfying the need for punishment and for deterrence.
- Patrick Witten could be convicted in the same trial of underlying crimes, such as criminal trespass, damage to property, inciting a riot and third-degree assault. Hate crimes are independent and separate crimes, and have the effect of enhancing the sentence for the underlying crime(s). In this case, Patrick’s sentence could include additional jail time or fines if he is convicted of the hate crimes.

Civil Suit: Patrick might also face the possibility of a civil lawsuit for his conduct. The victims might be able to sue him and he would be required to pay any damages they suffered, including damage to property, medical bills, and punitive damages.

**Remember to collect the jury instructions and exhibits.**