

# Moot Supreme Court

By Scott Jones  
Hazelwood West High School

## Description:

This semester long lesson plan will develop an intimate understanding of the Supreme Court and how constitutional arguments are developed, argued and decided in the Court.

## Objectives:

During the moot Court process, students will

1. develop an understanding of the various processes of the Supreme Court of the United States,
2. practice the development of Constitutional case making,
3. experience the process of case defense in a public setting, and
4. work cooperatively in semester-long groups.

## Grade Levels:

9-12

## Materials:

Library access with Internet research and word processing capabilities and handouts attached.

## Procedures:

1. After they have been given the four cases that are to be researched and argued, have students form into two teams based on the cases that have been selected for the semester. If possible, allow teams to develop along their own beliefs on the topics, but make sure teams are equally balanced in numbers. Cases can be based on any constitutional question, but try to keep the cases based on a theme. The Fall 2007 Hazelwood West moot Court theme is free speech and the cases used are found at [http://www.mysocialstudiesclass.com/honors\\_american\\_government.htm](http://www.mysocialstudiesclass.com/honors_american_government.htm). For other case overviews see [www.landmarkcases.org](http://www.landmarkcases.org) or Street Law's Supreme Court case overviews at <http://www.streetlaw.org/content.asp?ContentID=298>. (This is where the cases for the Hazelwood West moot Court have come from) In addition, give students handouts 1-3 that explain the process and roles for preparing to argue before the Supreme Court.
2. Have students begin researching their case and develop their arguments through Internet research. The best site to begin the research is at [www.oyez.org](http://www.oyez.org). Oyez has great case overviews as well as links to the opinions, briefs and audio of the oral arguments for

most cases. The schedule should allow for at least four class days reserved for research over a month-long period.

3. On the Tuesday before oral arguments, team leaders are to turn in their teams Merit Brief on the case. The Merit Brief should be a written version of their arguments in the case and include previous Court decision, statistical research or any other information to help them develop their case. For samples of student written briefs, see [www.mysocialstudiesclass.com/court\\_decisions\\_and\\_opinions\\_fall\\_2007.htm](http://www.mysocialstudiesclass.com/court_decisions_and_opinions_fall_2007.htm). Sample briefs, using *Mapp v. Ohio* as a model, for student handouts are at [http://www.mysocialstudiesclass.com/honors\\_american\\_government.htm](http://www.mysocialstudiesclass.com/honors_american_government.htm).
4. By Thursday before oral arguments, teams have the option of turning in a response brief based on their opponent's argument and their attempt to refute that argument.
5. On oral argument day, have the 4 colleagues (principals, teachers, office workers, etc) that have agreed to help for the semester join you as moot Court justices. The team leaders will have 15 minutes to defend their argument before the Court and answer all questions posed to them by the justices. Have students read the first 14 pages of the Supreme Court's "Guide for Counsel" at [http://www.supremecourtus.gov/oral\\_arguments/guideforcounsel.pdf](http://www.supremecourtus.gov/oral_arguments/guideforcounsel.pdf). See appendixes A-B for a suggested seating arrangement and procedure for conducting oral arguments.
6. Students not involved in the oral arguments before the moot Court must write a critique of the overall team from the beginning of research through oral arguments. See handout 4 for the content of the critique. The critique is due on the first library day reserved for research for case 2.
7. On the first library day for case 2, students should discuss the strengths and weaknesses of their team's effort during the first case and develop a game plan for improvement for case 2.
8. While students are discussing their critiques, the five justices should meet "in conference" to decide the case. After deciding, an opinion should be written for the students, because that decision should become controlling for the future cases. See [www.mysocialstudiesclass.com/court\\_decisions\\_and\\_opinions\\_fall\\_2007.htm](http://www.mysocialstudiesclass.com/court_decisions_and_opinions_fall_2007.htm) for written opinions from the Hazelwood West moot Court process.
9. Repeat process for cases two and three. In the Hazelwood West model, the final case is a fictitious case based on real law and people, but on a hypothetical arrest and case development. This allows students to review all of the cases they have argued and researched, as well as the opinion of the moot Court in the first three cases, and form an original Constitutional argument on the case.

**Additional Information:**

1. The grading process can be completely at the teacher's discretion. Generally, the pressure of knowing that four other teachers will read the briefs and examine their arguments during oral arguments have motivated students to do well. In addition, bonus can be awarded for the winning side either in a winner-take-all format or dividing bonus points based on the decision of the justices.
2. Additional student handouts can include "How to Case" at <http://www.csun.edu/~dgd61315/casing.html>, "Twelve Things Debaters Should Know About Law" at <http://www.csun.edu/~dgd61315/aboutlaw.html>, and "Ten Things Debaters Should Know About Economics" at <http://www.csun.edu/~dgd61315/aboutecon.html>. These documents are mirrored at [http://www.mysocialstudiesclass.com/honors\\_american\\_government.htm](http://www.mysocialstudiesclass.com/honors_american_government.htm).
3. In order to gauge overall student learning throughout the process, have students write a final reflection/critique of the moot Court process after the final decision has been announced. See handout 5 for this.
4. For sample calendar that incorporates four moot Court cases into a semester see [http://www.mysocialstudiesclass.com/honors\\_american\\_government.htm](http://www.mysocialstudiesclass.com/honors_american_government.htm).
5. Four cases for a semester is what has been at Hazelwood West in a semester-long class. The number of cases can be easily increased, or the time devoted to each individual case increased, to fit a year-long class. If four cases are too much for a particular class, the number of cases can be easily reduced.

## STUDENT HANDOUT 1

### CASE DEVELOPMENT AND ORAL ARGUMENT DAY

#### CASE DEVELOPMENT

**As lead counsel:**

As lead counsel it is your job, as well as the other leaders on the particular case, to lead the entire team throughout the case development process. You assign the researcher supporters to look up cases and summarize them for the case presentation before the Court. It is important for the lead counsel to remember that they must assign at least one researcher to look into developing what the other side might argue. This would be a great role for a researcher(s) that might not believe in your side's case with one-hundred-percent conviction.

In addition, the lead counsel is in charge of developing and writing the summary brief that details your final case arguments. It is also your role to mediate any disputes that arise over assigned roles during case development.

**As supporting researcher:**

If you are a researcher for a particular case, you are simply to follow the instructions of the lead counsel(s). As you research cases remember that the better you summarize your assigned cases, the better your leaders will be able to develop a great brief and oral argument, which increases the chances your side will win the case.

#### ORAL ARGUMENT DAY

**As lead counsel:**

Before oral argument day, make sure you have read over the guide published by the Supreme Court on what to expect and how to handle yourself during oral arguments. Also, make sure you know your case completely, and the other side's arguments as well.

As you address the Court, make sure you dress in an appropriate manner. While a coat and tie is not necessary for the gentlemen and a homecoming dress is not necessary for the ladies, khakis and a dress shirt is appropriate for the gentlemen and a blouse and skirt/pants is appropriate for the ladies.

When it is time for your oral arguments, make sure that you do not talk over one another and address the justices individually as they ask questions. You will have fifteen minutes to present your case. If you finish before the fifteen minutes expires, that is okay, but make sure you have addressed all the major points of your case.

**As supporting researcher:**

Your job during oral arguments is to help your leaders as they are questioned by the justices. Sometimes it is easier to remember certain cases when you are not on-stage. Discretely hand case summaries to one of the leaders that would help them as they might get bogged down during this examination of the case.

Since you'll be required to write an overall critique of the case preparation and oral argument presentation, it would be wise to take notes during the proceedings so that you can write on how well your team did, the other team did and the types of questions asked by the panel.

Most importantly, sit quietly and do not distract the lead counsels. This is especially important during the examination of the other side's case. The justices will notice your lack of respect, which might bias them against your side even though you might have presented a better case.

## STUDENT HANDOUT 2

### Moot Supreme Court Justice Role and Responsibility

Thank you for agreeing to serve as a justice on my moot Supreme Court. I just wanted to brief on you what will happen during the first case, which will serve as the model for the three other cases.

During the week of the oral argument, both petitioner and respondent teams will turn in summary briefs on Tuesday morning. I will get them to you as soon as possible. In addition, both teams will be able to turn in response briefs on Wednesday if they so desire. I will also get these to you as soon as possible. In the briefs, both teams will be giving their constitutional arguments concerning the case and why their side should win the case. In most cases, the briefs will not win the case for the side, but will serve as a place where you will be able to preview their arguments and develop any constitutional questions you might have that will help you develop your decision.

During oral arguments, you will be free to ask any questions that you have of the team's argument at anytime during their allotted 15 minutes to argue their case before the moot Court's justices. Often, justices on the Supreme Court will not care much about individual facts of the case, but will focus on the broad constitutional questions and national impact of any decision reached by the Court. However, feel free to ask whatever you need to have answered to help make up your mind concerning the issues of the case.

Once oral arguments have concluded, I will adjourn the Court. We will meet on the following Tuesday "in conference" to decide the case. After we discuss and vote on the case, we'll assign a majority opinion writer. After a first draft of a majority opinion is finished, it will circulate among the justices (both majority and minority). Justices in the majority can either decide to join the majority opinion or write a separate concurring opinion if they believe the reasoning behind the majority opinion to be faulty. At this time, those in the minority will indicate if they plan to write a dissenting opinion, which will then be circulated among the justices and those in the minority can choose to join the dissent or write a separate dissent.

Once all of the opinions have been written and joined, I will read a summary of the decision to the class. Any justice who wishes to be present during the reading of the argument is welcome to join me. If you wish to read a summary of your dissent to the class, just let me know before I read the summary opinion.

Thanks for your time in helping me give students as authentic of a citizenship education experience that I can create in class.

## STUDENT HANDOUT 3

Moot Supreme Court  
Important Precedent Supreme Court Decisions

### ***Marbury v. Madison (1803)***

Establishes the right of the Supreme Court to review laws passed by Congress and determine the Constitutionality of such legislative action.

### ***Fletcher v. Peck (1810)***

Establishes the right of the Supreme Court to review laws passed by state legislatures and determine the Constitutionality of such legislative actions.

### ***McCulloch v. Maryland (1819)***

Affirms the Constitutional principle of national sovereignty over the States.

### ***Gibbons v. Ogden (1824)***

Affirms the Constitutional principle of Congress' power over interstate commerce.

### ***Munn v. Illinois (1877)***

Establishes the principle of using a State's police (regulatory) power to guarantee the public good, even if it means regulating private property.

### ***Muller v. Oregon (1908)***

"The Brandeis Brief" – Louis Brandeis argues before the Court using statistics and research instead of previous case law. The Court's opinion is justified using these statistics instead of previously determined case law.

### ***Bunting v. Oregon (1917)***

The Court turns to international standards as reason for upholding a maximum work hours law in Oregon.

### ***Schenck v. United States (1919)***

The Court limits the rights of citizens when the police power of the State or Federal Government is needed. The "clear and present danger" principle is established.

### ***Gitlow v. New York (1925)***

Establishes that the "privileges and immunities" clause of the Fourteenth Amendment does mean States have to guarantee a citizen's rights in the Bill of Rights if that right is deemed fundamental. The Court will "selectively incorporate" the rights on a case-by-case and right-by-right basis (see *Mapp*, *Engel*, *Miranda*, *Gideon*, *Furman*, etc).

***Wickard v. Filburn (1942)***

Broadens Congress' interstate commerce power to include almost any economic activity within the borders of the nation.

***Brown v. Board of Education (1954)***

Defines the Fourteenth's Amendment's "equal protection" clause as pertaining to the economic inequality due to segregation laws, which in this case concerns public education.

***Griswold v. Connecticut (1965)***

As it applies to medical records, in this case contraception, the Constitution implies a right to privacy in the Bill of Rights.

***New York Times v. Nixon (1971)***

Defines a limit to the police powers of the State in denying rights. The government must prove clear and present dangers will exist if it does not act to limit the rights of people or organizations.

***United States v. Nixon (1972)***

Defines the "separation of powers" doctrine to allow that executive privilege is not absolute and the "rule of law" must not be hindered.

***Roe v. Wade (1973)***

Because of the implied right to privacy, a woman's complete medical records, in this case concerning pregnancy, are private and not a matter of public record. Therefore, the public cannot restrict the aborting of a pregnancy.

***Planned Parenthood v. Casey (1992)***

If a State must regulate abortions in order to fulfill the police power needs of the state, the regulation must not present an "undue burden" on a woman seeking an abortion.

***Bush v. Gore (2000)***

Establishes the right of the Federal Government to oversee the administration of powers historically reserved (this case might only apply to election procedures) for the States.

## STUDENT HANDOUT 4

### **OUTLINE OF ORAL ARGUMENT CRITIQUE**

**(You'll need to be taking notes during the oral arguments in order to fully develop this critique)**

**This critique should be written as prose. Prose writing is easier to read and analyze.**

These are just sample questions that can be included in the critique. Any other issues or analysis that you can provide will only help your team develop better cases in the future.

- I. General Overview of the case (One paragraph should suffice)**
  - Basic background facts
  - Constitutional question argued
  
- II. The Case Your Side Presented (Should be several paragraphs)**
  - Who is arguing the case?
  - Strongest point in written brief
  - Places where the brief needs to be stronger
  - Types of questions asked by justices during argument
  - How were the questions answered?
  - Strongest arguments made during oral arguments
  - Weakest arguments exposed during oral arguments
  
- III. Critique (Should be several paragraphs)**
  - Which Justice(s) do you believe is voting for your side? Why?
  - Which Justice(s) do you believe is voting for the other side? Why?
  - Why do you believe your team will win/lose this case when the decision is announced?
  - What team weaknesses developed during case preparation?
  - What worked well for your team during the researching of the case?
  - What did not work well for your team during the researching of the case?
  - What did you observe the other team doing that would help your team on future cases?
  - What weaknesses of your case argument developed during oral examination and how can your team avoid this for future cases?
  - How well did your team's lead council perform during oral argument day?
  - What could/should have been done differently during oral arguments?
  - What needs to be done in order to guarantee success for your team next time?

**YOU NEED TO PRINT TWO COPIES OF YOUR CRITIQUE. THE TEACHER WILL COLLECT ONE COPY FOR GRADING AND THE TEAM WILL READ THE OTHER COPY DURING REFLECTION TIME BEFORE BEGINNING THE NEXT CASE'S PREPARATION.**

## STUDENT HANDOUT 5

### Moot Supreme Court and Debate Days Evaluations for final critique

Evaluate the process of researching the cases. Was it too rigorous? Did you find your opinions about topic changing as you researched further? What did you learn about the process of developing a legal opinion on a topic? Any other aspects of researching the case on which you want to comment.

Did you find the process of researching the case, writing the briefs for the Court and arguing before the assembled Court to be a fair way to determine Constitutional questions? Please explain in terms of the real process as to how the Supreme Court makes its very influential decisions, but relate it to your experience in this mock court setup.

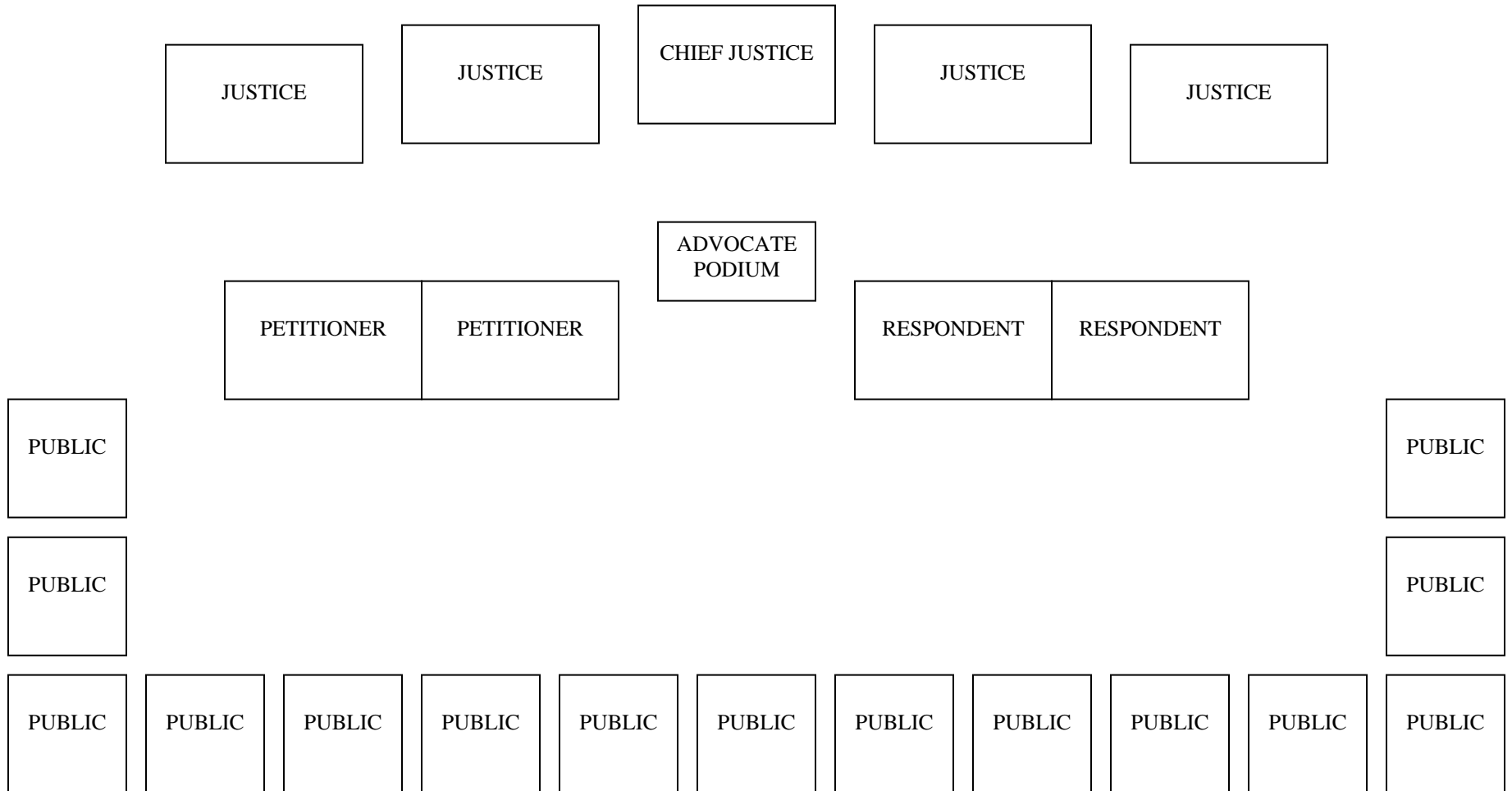
Did the five formal debates compliment the rigors of the Moot Supreme Court in terms of helping you understand the rigors of solid argument construction and defense of an argument? If yes, please explain how it helped in the development of court arguments (also include possible ideas for future improvement of the both components of the debate structure of the class). If no, please describe how I can develop the formal debates to be more complimentary to the other aspect (Mock Supreme Court) of the debate component of this class.

Did the Moot Supreme Court improve your knowledge of the Constitution of the United States? Yes or no, please explain in what ways.

I would appreciate any other comments that you could give so that I can continue to develop this aspect of the class in the best possible way.

APPENDIX A

SEATING CHART



## APPENDIX B

**BEFORE TAKING BENCH, THE JUSTICES TAKE TIME TO SHAKE HANDS WITH EACH OTHER (COURT TRADITION) TO REMIND THEY MAY HAVE DIFFERENCES OF OPINION, BUT THOSE DIFFERENCES WILL NOT INTERFERE WITH THEIR FOCUS ON JUSTICE**

*Marshall taps the gavel twice and proclaims: "ALL RISE"*

**MARSHALL:** "The Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! All persons having business before the Honorable Supreme Court of the United States are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!"

**JUSTICES FILE TO THEIR CHAIRS AS THE MARSHALL ANNOUNCE THE COURT IS IN SESSSION**

**CHIEF JUSTICE:** "We'll hear argument now in Number xx-xxx, XXXXXXXXXXXX V. XXXXXXXXXXXX. Advocates for the Petitioner, XXXXXXXXXXXX, you may begin."

*After Petitioner's case is wrapped:*

**CHIEF JUSTICE:** "Advocates for the Respondent, XXXXXXXXXXXX, you may begin."

*After respondent's case is wrapped, Chief Justice will call petitioner back to podium if they've reserved time to rebut.*

*After all oral arguments*

**CHIEF JUSTICE:** "This Court is now adjourned until a time in the near future to render decisions or hear new oral arguments. The Clerk will issue a schedule shortly."

*As the Chief Justice and the Justices stand to exit, the Marshall taps the gavel once and proclaims: "ALL RISE"*