

The U.S. Supreme Court

The framers of the Constitution, through Article III, called for the creation of a Supreme Court and a federal judiciary, but left to members of Congress the task of spelling out the details, which they did in the Judiciary Act of 1789. Under the act, district courts were created in 13 major cities, with circuit courts established to serve the other areas of the country. Above these, Congress placed the Supreme Court.

The first session of the Supreme Court was on February 1, 1790 in the Royal Exchange in New York City. However, only three justices had reached New York, and the court was adjourned. Required by law to sit twice a year, it began its first term with a crowded courtroom and an empty docket. For the first three years, the court had almost no business at all. During the first term, the justices appointed a court crier and a clerk and admitted lawyers to the bar, but heard no cases. The first Supreme Court case of consequence concerned the pension claims of veterans of the Revolutionary War.

Meeting infrequently, the justices often held court in taverns in New York and Philadelphia. Later, court convened in a remote basement room in the north wing of the Capitol. Just because there were no cases to hear did not mean the court was not busy. The Judiciary Act of 1790 required the justices to travel twice each year to remote areas of the country to preside over the circuit courts. “Stagecoaches jolted the Justices from city to city. Sometimes they spent 19 hours a day on the road. An example of the hazards of travel by coach, Justice John Marshall’s death was hastened as a result of injuries suffered in a stagecoach crash while he was riding circuit.” *Equal Justice Under Law*

The Constitution says nothing about the size of the Supreme Court. At first, there were six members: one chief justice and five associate justices. For more than 100 years, the Supreme Court has consisted of one chief justice and eight associate justices. The lifetime appointment of the chief justice has been considered to have a greater historical impact than does the Presidency.

The judiciary was considered to be the least important branch of government by the framers. In fact, they thought it so insignificant that when the federal government moved to Washington in 1800, the capitol architects did not design or build a special place for the court to meet. Until moving to its current home in 1935, the Court used the old Senate chambers after the Senate moved to its new chambers in the north wing of the Capitol in 1859.

Although the importance of the Court has changed over the past 200 years, its role has not. The Court’s duty is to answer questions in “cases and controversies.” (Article III, Section 2) This means that the court can only hear cases that deal with important legal issues in actual disputes with parties on both sides who have stakes in the outcome (have been damaged, etc.). Because of this requirement, the court is not able to issue advisory opinions. This principal was laid down in 1793 when the Supreme Court refused President Washington’s request for advisory opinions on questions dealing with American neutrality arising out of the war between England and France.

The U.S. Supreme Court has the power to accept or reject cases brought to it for hearing. Through a “*writ of certiorari*,” an individual asks the U.S. Supreme Court to review a decision of a lower court. If the Court agrees to hear the case, if they “*grant certiorari*,” both sides to the dispute are given the opportunity to present their arguments to the Court.

Today, there are nine justices on the Court, eight men and one woman: Chief Justice William Rehnquist and Associate Justices Harry Blackmun, Thurgood Marshall, John Paul Stevens, Byron White, Sandra Day

The U.S. Supreme Court cont.

O'Connor, Anthony Kennedy, Antonin Scalia, and David Souter.

Each year the Court meets from the first Monday in October through June. The Court is in session for two weeks each month, when it hears oral arguments, and in recess for two weeks, when it decides petitions, researches cases, and write opinions. Six justices must participate in each decision, which is then decided by a majority of those participating. If there is a tie vote, the decision of the lower court stands.

The Court's schedule is very predictable. Exactly at 10:00 a.m. Monday through Thursday, the curtains are parted in the courtroom allowing the Justices to enter. The clerk cries out:

“Oyez, Oyez, Oyez! All persons having business before the Honorable, the 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.”

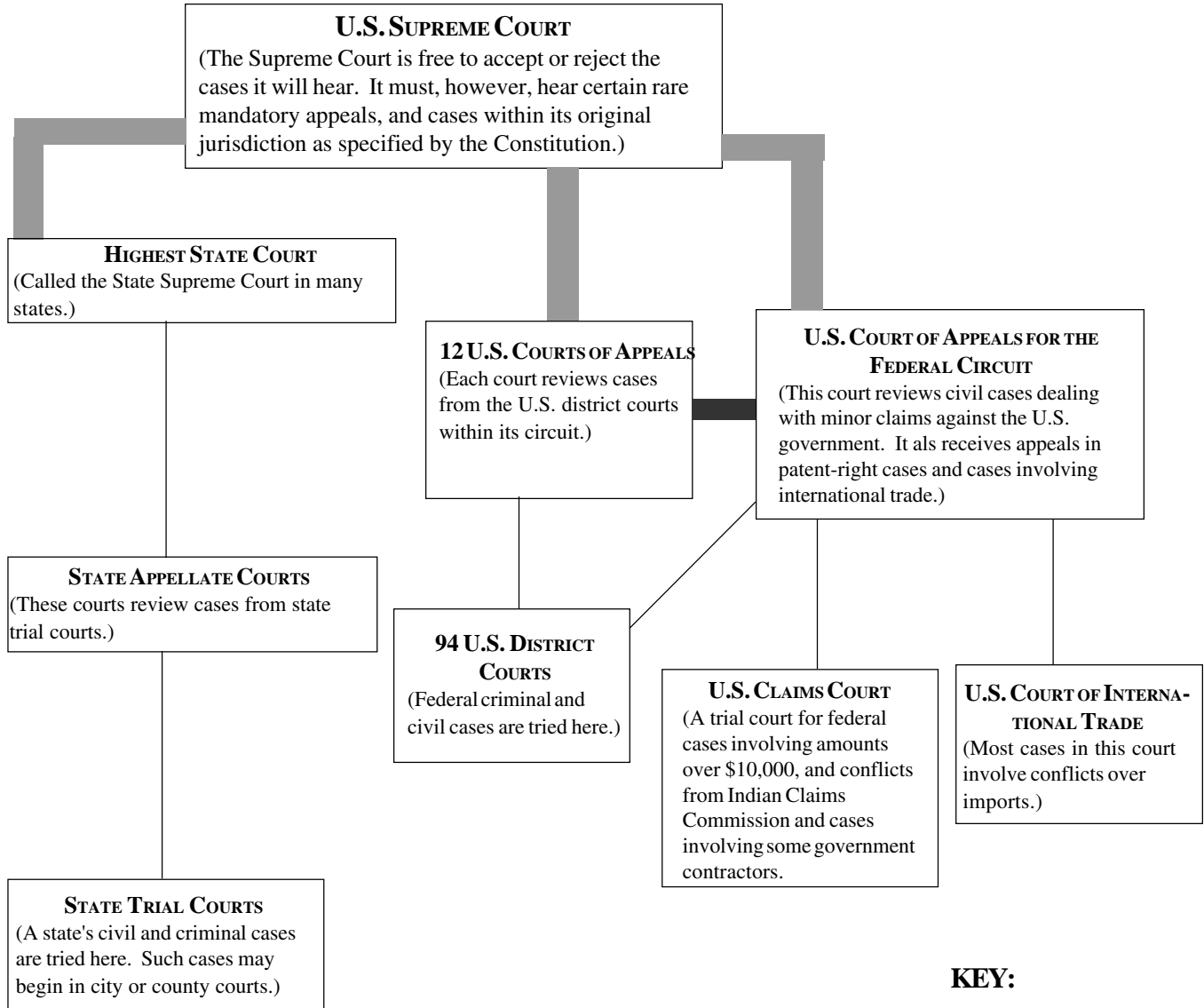
The Court usually hears two cases before noon and two cases after lunch. When the Court is in recess studying appeals, petitions, and writing opinions, the justices meet in conference regularly. These meetings are strictly confidential. There are no clerks, no stenographers, no tape recorders. If it is necessary to obtain materials from outside the conference room or to answer the door, the most recently appointed judge acts as doorkeeper.

The chief justice begins the discussion by giving the history of the case and presenting the legal question before the Court. Beginning with the most senior justice down to the most junior justice, the justices report. There is no time limitation, the order is never altered, and the speaker is never interrupted. When all justices have been heard, there is a more informal and sometimes heated discussion. Once the chief justice decides that there is nothing more to be said, there is a vote, with the most junior justice voting first. The chief justice votes last, exercising a swing vote that can be very important, especially in five to four decisions.

The chief justice can write the opinion for the case or assign it to another justice who agrees with the majority position. Justices can sign an opinion, agreeing with it as written, write a concurring opinion which agrees with the majority's result but not with the reasoning, or write a dissenting opinion, which disagrees with the result.

The opinions are shared with the public in open court, where they are sometimes read word for word. The reading of the opinions can take from fifteen minutes to several hours depending upon the length, the number of concurring and dissenting opinions, or the importance of the case. The opinions are published in legal publications where they guide future court decisions and arguments made by lawyers.

**HOW CASES TRAVEL
 THROUGH AMERICA'S JUDICIAL SYSTEM**



Taken from: "I'll See You In Court:
 A Consumer Guide to the Minnesota Court System
 Court Information Office, MN Supreme Court

Teaching about the Supreme Court

A person desiring to learn more about the Supreme Court would probably either study the decisions the court hands down, identifying the issues and the holdings, or study the procedure used by the court to arrive at its decisions. One could also study the personalities of the individual judges and the effect that these personalities have on the substance of the decisions and on the court procedures followed, and in this way speculate about court trends, but this is a more difficult and time consuming endeavor.

The lessons contained in this book focus on the first two methods. First, each lesson contains a case summary, in addition to another activity, that will easily lend itself to a case study. Instructions for teaching with the case study method and student handouts are included in this introductory section.

Second, to explore the procedures used by the court, a moot court simulation is also included. This activity will teach students about Supreme Court oral arguments. It will also require that the students fully consider the issues before the court and the arguments (including legal precedents) surrounding the issues. In this way, student will learn not only procedure but also the substance of the law. Moot courts are highly participatory and are generally very popular with students. Each case presented in these materials can be taught using a moot court. However one lesson, *Minnesota v. Murphy*, is designed specifically for this activity.

Case Study Activity

The case study method is an integral law-related education tool. An inquiry-oriented teaching technique, it is designed to help students understand and apply legal theory. The students are required to analyze problem situations, understand actions taken by the courts, and determine the impact of the actions. Case studies can take many forms including legal cases based on written opinions by the courts; hypothetical situations involving some conflict or dilemma; and real life situations drawn from newspapers, magazines, books, or other sources.

Learner Outcomes:

Students will:

1. Become familiar with court procedure.
2. Identify legal issues.
3. Understand and evaluate decisions made by the courts.
4. Explore their own ideas and develop solutions to the problems.

Materials needed: *Copies of Student Handout: CASE STUDY*

Time needed: 1 class period

Grade level: Grades 7-12

Procedure:

1. Ask students to read the **CASE SUMMARY**.
2. Discuss introductory information about the case. Who are the parties? What are the basic facts?
3. Help students frame the issues. Although cases before the Supreme Court have as their basis a legal question that must be answered in the decision, other issues might exist. These might include public policy issues, ethical issues, and practical issues. Students should frame the issues in the form of questions.
4. Have students study the case by completing the **Student Handout: CASE STUDY**.
5. Review the answers to the questions. Ask students how they would have decided the case and why.
6. There are variations to this activity. Students can be given an entire Supreme Court opinion, which is much more difficult but also more enlightening. (Citations for the opinions included in this publication are provided to aid in the location of the entire opinions.) Also, students might be given only the facts and asked to decide the case. The students are later given the court's decision which they can compare with their own decision.

Student Handout: CASE STUDY

Case Name:

Who originated the suit?

What court gave the ruling?

What was the date of the decision?

What were the facts of the case? (Who did what to whom, where, when, under what circumstance?)

What was the question before the court? (Issue)

What were the legal arguments on each side?

What were the legal grounds for the appeal?

What was the decision of the court?

What reasons supporting the decision were provided?

Did every justice agree? Who agreed? Who disagreed?

Student Handout: CASE STUDY ACTIVITY cont.

If a dissent opinion was issued, what did it say?

What was the legal significance of the case? (What legal standard was established? Settled? Developed?)

What was the significance of the decision for the parties to the case?

Moot Court Simulation

Moot court simulations conducted within one or two class periods help students learn about appellate procedure as well as provide a deeper look at constitutional issues argued on appeal. The format is adaptable to any trial court decision subject to appeal or as a reenactment of Supreme Court Decisions. Students can research prior case law as precedent for the issue before the court or simply apply their understanding of the law to the case. However the simulation is used, students will have the opportunity to prepare and present arguments that support their side of the case before judges on an appellate court.

Learner Outcomes

Students will:

1. Know the role of an appellate court in our judicial system.
2. Understand appellate court procedure and decorum.
3. Analyze issues of constitutional law.

Materials needed: *Copies of* **Student Handout: CASE STUDY FOR MOOT COURT ACTIVITY**
INSTRUCTIONS FOR ATTORNEY TEAMS
INSTRUCTIONS FOR JUSTICES
INSTRUCTIONS FOR LAW CLERKS

Time needed: 2 class periods

Grade level: Grades 9-12

Procedure:

1. Begin the class session by asking, “Who decides if a trial has been fair?” “Who has the last word in deciding what the Constitution means?” “What is meant by a court of last resort?” “What is a ‘higher’ court?”
2. Explain background on appellate procedure:
A case begins in a trial or district court. It is here where witnesses testify, lawyers ask questions, and judges or juries make decisions. A trial court is said to have *original jurisdiction* because it hears a case for the first time.

Procedure cont.

If a person who loses a case in a trial court wishes to appeal a decision, he or she would take the case to a court with appellate jurisdiction. In the federal court system, the U.S. Court of Appeals is the first court of appellate jurisdiction. After that a case would go to the U.S. Supreme Court which has the final say.

There are no jury trials in appellate courts. Rather, they are *courts of review* which determine whether or not the rulings and judgment of the lower court are correct. The party who brings the suit to the reviewing court is referred to as the *petitioner* or *appellant*. The petitioner argues that the lower court erred in its judgment and seeks a *reversal* of the lower court's decision. The party who won at the lower court must now argue against the setting aside of the judgment. This party, the *respondent* or *appellee*, wants the appellate court to *affirm* or agree with the lower court's decision.

The first step in the appellate process, after the filing of a *Notice of Appeal*, is the submission of *briefs* by each party. Each brief identifies the facts of the case, the issues of fact and law, how the trial court ruled, and legal arguments using case law that will persuade the appellate court to affirm or reverse the lower court.

After the briefs are completed, *oral arguments* might be scheduled to answer questions the judges might have. Unlike trial court procedure where many witnesses testify in court, oral arguments are only presented by attorneys. Each lawyer is given a limited amount of time (usually 30 minutes) to present their argument before a panel of judges. The petitioner argues first because their client has brought the appeal to the higher court. Respondent's argument will immediately follow. Before petitioner begins, he or she may reserve time for a rebuttal following the respondent's argument. Judges frequently interrupt the attorneys to ask clarifying questions.

Following the oral argument, judges meet together and discuss the merits of the case. Judges will vote, and the majority viewpoint becomes the judgment. A judge for the majority will write the *majority opinion*. Those judges who disagree with the majority may write a *minority* or *dissenting opinion*.

3. Select a case for the moot court. Review the background and facts of the case. Identify which parties are the petitioner and respondent. Determine each side's position before the appellate court. Clarify the issues in the case by listing arguments for each side.

4. Divide the class into attorney teams of four to six students and assign to each team the position of petitioner or respondent. They will prepare arguments to support their positions and present these to a court of nine justices. Each side is allowed four minutes for its presentation. (See **INSTRUCTIONS FOR ATTORNEYS**)

An uneven number of justices should be selected including a chief justice. (The Minnesota Supreme Court has seven justices and the U.S. Supreme Court has nine.) They will listen to the attorney arguments and interrupt to ask questions. After oral arguments, the chief justice will lead a five-minute conference in which justices present their views of the case. Each justice will try to persuade the others to agree with his or her interpretation of the case. At the end of the conference, the justices take a final vote. The chief justice may assign a justice to present the decision of the court to the class. (See **INSTRUCTIONS FOR JUSTICES**)

Procedure cont.

5. Remaining students might act as law clerks in helping justices understand the case. (In Minnesota, judges on the Court of Appeals and the Supreme Court each have two law clerks that help research the law and develop the opinions. Law clerks are lawyers who are recent law school graduates.) Assign each clerk to a particular justice. They will meet together during preparation time and discuss the case. (**See INSTRUCTIONS FOR LAW CLERKS**)

As an alternative, select second attorney teams to present additional arguments.

6. Depending on the purpose of the activity, preparation time will vary. A complex case requiring additional research may be an outside assignment. A simpler “self-contained” case need only take fifteen minutes of preparation time as students work together.

7. Conduct the Moot Court Activity.

A. Room Set-Up. Justices should be seated together in a row facing the class. Attorneys can present their arguments by standing in front of the court or seated as a group.

B. Oral Argument. (15 minutes)

Have one student announce that court is in session and have students rise as the justices enter the room. The chief justice will open court by announcing the name of the case. He or she will then ask the petitioner’s attorneys to begin their four-minute argument. At any time, the justices may ask questions. Attorney teams should answer questions before continuing the argument. Respondent’s attorney will follow. (You may adapt format by allowing a rebuttal by petitioner. This offers student attorneys a second chance to make their argument after they become comfortable with the format.) After oral arguments, the chief justice adjourns the court.

C. Follow-Up Conference (5 minutes)

Justice conferences are done in private. However, for this activity a “fishbowl conference” will allow the class to observe the discussion. Justices sit in a circle in the middle of the room with the rest of the class forming an outer circle where they can easily hear and see the discussion.

The chief justice will ask each justice for his or her view of the case. He or she will then facilitate an open discussion before calling for a final vote.

8. Debrief the Moot Court activity. Encourage all students to participate in the discussion. Questions that facilitate discussion include:

A. Do you agree or disagree with the decision of the court? Compare the class’s decision with the actual case.

B. What attorney arguments were most convincing to you? Why?

C. Were the questions asked by the justices helpful to the process?

D. What do justices consider in deciding how to vote on a case?

E. Did you change your mind about the case after listening to the attorney arguments? Judge’s conference?

F. Why are appellate courts important to our judicial system?

INSTRUCTIONS FOR ATTORNEY TEAMS

Organize your argument in outline form including the following information:

1. A clear, brief statement of your position and at least two arguments or reasons why the court should adopt your position.

If you represent the petitioner your position is that the lower court made a wrong decision.

Why? Your argument may focus on whether or not a law is constitutional, trial procedure was fair, or actions by government officials were proper.

If you are representing the respondent your position is that the lower court made the right decision.

Why? Defend the lower court's position as well as counter the charges made by the other side.

2. Facts from the case that support each argument with an explanation of how each fact supports it.
3. Explanations of any Supreme Court decisions that support your arguments.

Sample Outline

1. Petitioner's Case
 - A. Introduction and statement of position
 - B. Supreme Court decisions that support argument
 - C. Request for action (uphold trial court or reverse trial court)

Use this outline in your four-minute presentation. Decide which team member(s) will present the information.

Finally, assign at least one team member to answer the justices' questions. He or she should prepare by carefully reviewing the case description.

Oral Argument:

Begin your argument by saying:

"May it please the court, my name is _____ and I represent _____ in this case."

Then continue with your argument. Be prepared to stop when a justice asks a question. The attorney team member assigned to questions should answer. Continue presenting your case until the next question is asked. Try to conclude your argument by restating the action you would like the court to take. Remember that your time may be taken up with answering questions.

INSTRUCTIONS FOR JUSTICES

To prepare for oral arguments, justices should meet with their assigned clerk and review the case. What is unclear to you? What facts do you want clarified? Does a position need more explanation? Together develop questions to be asked by justices during oral arguments. Remember justices can interrupt attorney presentations to ask questions.

Justices and clerks can also review previous court decisions that relate to the issue presented in the case. The court tries to follow previous decisions in order to promote consistency and stability in the legal system. Should the court follow its earlier decisions (*precedent*) or should the court abandon precedent and create new rules? As a justice, you must decide this case.

ROLE OF CHIEF JUSTICE

During the Moot Court Activity you may:

1. Extend the time limits of the attorneys' presentations if you or another judge feel it is necessary.
2. Maintain order in the courtroom by insisting that only one individual speak at any one time and that all statements by the attorneys be directed to the court and not to the attorneys representing the other side in the case.

At the follow-up conference:

3. Insist that each judge be initially allowed to express his or her views regarding the case without any comments or questions from the other judges.
4. Provide the judges with the opportunity to question the positions of the other judges and convince them of the merits of their own views.
5. Take a formal poll of the judges and assign one judge to be in charge of presenting the court's majority opinion. If a dissenting or minority opinion exists, provide dissenting judges an opportunity to present their opinion.

INSTRUCTIONS FOR LAW CLERKS

Law clerks are responsible for such tasks as reading all the appeals filed with the court, writing memos summarizing the key issues in each case, and helping prepare court opinions by doing research and writing drafts.

In this activity, law clerks should read carefully all documents about the case and any relevant Supreme Court decisions. You will discuss the case with your assigned justice and help him or her prepare questions to be asked during oral arguments.