

Moot Court Activity

A moot court is a role play of an appeals court or Supreme Court hearing. The court, composed of a panel of justices, is asked to rule on a lower court's decision. No witnesses are called. Nor are the basic facts in a case disputed. Arguments are prepared and presented on a legal question (e.g., the constitutionality of a law or government action). Since moot courts are not concerned with the credibility of witnesses, they are an effective strategy for focusing student attention on the underlying principles and concepts of justice.

The following procedures are a slight adaptation of appellate procedures. The changes make the moot court an appropriate educational activity for high school students.

1. Select a case that raises a constitutional issue. Adapt the case information to suit your class.

When selecting a case you may wish to consider the following factors:

- Is the content of the case relevant to your course, to a specific school outcome (e.g., civic literacy or citizenship), or worth knowing?
- Is it interesting to students?
- Is it a topic of current interest in your community?
- Are community resource people available to assist with the lesson?
- Is there an underlying value conflict that is important for students to examine?

2. Read, review, and clarify the facts of the case. Have pairs of students ask each other the following questions:

- What happened in this case?
- Who are the people/organizations/companies involved?
- How did the lower court rule on this case?
- Who is the petitioner, the respondent?

3. Review these terms with the students:

- **Petitioner/Appellant:** The person/organization/company who appeals the lower court decision to a higher court.
- **Respondent/Appellee:** The person/organization/company who argues that the lower court decisions were correct.

4. Ask the class to identify the issue(s) involved in the case. An issue should be posed in the form of a question. Ask the students to phrase the issue as a question by thinking about these questions:

- Who was the actor(s)?
- What is the specific part of the Constitution involved?
- Who was affected by the action(s)?
- What caused the controversy?

Example: Did the Virginia Military Institute (the actor) violate the Fourteenth Amendment's right to equal protection (part of the Bill of Rights) of women (affected by the action) by not allowing them to attend VMI (cause of the controversy)?

5. Select an odd number of students (7 or 9) to be the justices of the court.

6. Divide the remaining students into two teams. One team will represent the person or group appealing the lower court decision (the petitioner or appellant). The other team will represent the party that won in the lower court (the respondent or appellee).

7. To increase student participation, several students can be selected to play the role of journalists.

8. Each team of litigants should meet to prepare arguments for its side of the case. The team should select one or two students to present the arguments to the court.

When discussing the arguments, students should consider:

- What does each side (party) want?
- What are the arguments in favor of and against each side?
- Which arguments are the most persuasive? Why?
- What are the legal precedents and how do they influence this case? (A precedent is a previously decided case recognized as the authority for future cases on that issue. Using precedents allows for the development of more sophisticated arguments.)
- What might be the consequences of each possible decision? To each side? To society?
- Are there any alternatives besides what each side is demanding?

9. The justices should meet to discuss the issue involved and any case precedents. They should prepare at least 5 questions for each side that they need answered in order to reach a decision. The justices should select one student to serve as chief justice. The chief justice will preside over the hearing. He or she will call for each side to present its case as well as recognize other justices to ask questions.

10. Participants should consider all of the facts that have been established at the trial. Teams may not argue the accuracy of the facts.

11. Arguments do not need to be rooted in legal technicalities. Any argument that is persuasive from a philosophical, theoretical, conceptual or practical standpoint can be made. Teams should rely on principles found or implied in the United States Constitution.

12. Seat the justices at the front of the room. The attorneys for each side should sit on opposite sides of the room facing the justices. The other team members should sit behind their respective attorneys.

13. The chief justice should ask each side to present its arguments in the following order. The justices may ask questions at any time.

- Initial Presentation Petitioner/Appellant
- Initial Presentation Respondent/Appellee
- Rebuttal Petitioner/Appellant
- Rebuttal Respondent/Appellee

14. Each side should have three to five minutes for its initial argument and two minutes for rebuttal. (This time may need to be lengthened if the justices ask a lot of questions. The teacher should decide on a time limit based on the students' verbal skills.)

15. During and/or after each presentation, the justices can and should question the attorney in an effort to clarify the arguments. Attorneys may ask for time to consult with other members of their team before answering questions. (This time is included in the total time allowed for the presentation.)

16. After all arguments have been presented, the justices should organize into a circle to deliberate on a decision. The rest of the class can sit around the outside of the circle and listen, but they cannot talk or interrupt the deliberations of the court.

17. In the circle, the justices should discuss all of the arguments and vote on a decision. Each justice should give reasons for his or her decision.

18. The chief justice should then tally the votes and announce the decision of the court and the most compelling arguments for that decision.. A decision is reached by a majority of votes. A dissenting opinion may be given.

19. Conclude with a class discussion of the decision and the proceedings. If you are using an actual case, share the court's decision with the students after the student court has reached a decision. In the event the student's decision and the Court's are different, it is helpful for the students to understand the reasoning in the dissenting opinions as well as the majority. The students are not wrong, but the majority of the real Court was influenced by different compelling arguments. Ask the students to evaluate the reasoning the Court used in the majority and dissenting opinions and compare these to their reasoning. (They think just like some of the justices...). Continue to debrief the activity by discussing what the decision means for the both sides and for society.