**Mock Appellate Argument**

***Teacher Instructions***

In appellate arguments, lawyers present their sides of a case to a panel of judges who will consider the issues and write an opinion that states the decision of the court and explains the court’s reasoning.

In presenting their case, the lawyers review the facts, discuss the issues, and present prior cases, laws, and public policies that support their position. The judges may stop the lawyers at any time to ask questions.

Each side has a limited amount of time in which to make their argument. When the arguments are completed, the judges meet and discuss the issues and then issue an opinion.

**Preparation**

1. Select a case that raises questions that are relevant to the concept being studied.

1. Instruct students about the substantive issues raised in the case by doing a case study.
2. Using the facts of the case, review the facts, issues, and law involved with the entire class.
3. Divide the class into three groups. One group represents the appellants in the case (the party that has filed the lawsuit), one group represents the respondents in the case (the party being sued), and the third group represents the judges.
4. Provide each group with the case summary, relevant law and cases, and Instructions for Appellate Argument Attorneys. Ask the two lawyer groups to review the materials, to brainstorm arguments for their side, and find supporting cases, laws, or public policy to support their position. Then each group will develop and refine their arguments and select the person(s) who will present the argument. Ask the judges group to review the law, cases, and facts of the case and brainstorm questions they would like to ask during the oral argument.

**Oral Argument**

1. Begin court with a student court marshal calling the case using the Supreme Court Call to Order.
2. Appellant presents his or her argument (5-10 minutes). He or she can reserve 2-3 minutes for rebuttal. See below.
3. Judges ask questions (2-3 minutes). They can also ask questions at any time during the lawyer’s presentation.
4. Respondent presents his or her argument (5-10 minutes).
5. Judges ask questions (2-3 minutes). They can also ask questions at any time during the lawyer’s presentation.
6. If the appellant has reserved time for rebuttal, he or she can respond to the respondent’s argument.

**Supreme Court Conference**

1. At the conclusion of the oral argument, the judges meet so that the other members of the class can observe the conference discussion. Remind students that actual Supreme Court Conferences, during which they discuss the case, decide the outcome, and select the author of the majority opinion, are confidential.
2. Tell students they will follow the procedures used by the U.S. Supreme Court in conference to discuss and decide a case:

* As justices enter the conference room, they traditionally shake hands all around.
* The chief justice announces a case for discussion. A free discussion of the case among various justices is held (ten minutes is suggested for this activity). Justices will want to try to persuade others and try to form coalitions in order to reach a majority opinion.
* The chief justice then formally discusses the case first, followed by each of the other justices in order of seniority, each person giving his/her vote.\* Each justice should keep a tally of the other justices' vote for or against and make note of key reasons for the opinions.
* If the chief justice votes with the majority, he/she assigns one of the associate justices to write the majority opinion. If the chief justice is a dissenter, the most senior associate justice voting with the majority will make the assignment. The other justices in this group should help because all must sign the opinion. Dissenting justices may write one opinion together or each write his/her own. If they choose to write one opinion, all must sign it. Concurring justices traditionally each write a separate opinion.

1. In the alternative, the judges may issue an oral opinion if a writing assignment is not part of the class work. Judges should

* Discuss strongest points made by appellant
* Discuss strongest points made by respondent
* Discuss weak points on both sides
* Issue the opinion

1. Discuss the court’s decision.

* Do you agree? Why or why not?
* What language of the Constitution and the amendments, other law, or previous cases was relied upon in the Court’s decision?
* What were the key principles involved?
* What was the significance of the court’s decision?
* Did the decision change the meaning of the Constitution?
* Was this the best way to solve the problem? What are alternative ways?
* Can you predict problems arising out of the court’s decision?
* What role did the other branches of government play? What role should they have played?
* What, if anything, should happen next?

1. If the case is an actual case, explain the actual Supreme Court decision

**Alternative Procedures**

1. Divide students into groups of 5-7. Within each group, two students will act as petitioner’s lawyers, two as respondent’s lawyers, and the remaining students will act as judges. The groups conduct their hearings simultaneously, sharing and comparing the judges’ decisions at the end of the activity.
2. Class will be divided into groups of nine. A chief justice will be appointed in each group. Remaining justices should be numbered two to nine. Provide justices with the facts of the case, the law, and selected prior case decisions. Using the information and the conference procedure, the judges should write their decisions. Compare decisions.

\*NOTE: In *The Brethren*, by Bob Woodward and Scott Armstrong (1979), voting by the Supreme Court is described as being from least to most seniority, with the chief justice voting last. However, in Chief Justice William Rehnquist's 1987 book, *The Supreme Court: How It Was How It Is*, Rehnquist states that since he has been on the Court the chief justice has always voted first.

Adapted from Common Law-Related Education Strategies, LegalWays, Minnesota Center for Community Legal Education, TACO (Teacher Access to Court Opinions) published by the State Bar of Texas, and Preparing Citizens: Linking Authentic Assessment and Instruction to Civic/Law-Related Education, Social Science Education Consortium.

**Instructions for Appellate Argument Attorneys**

Review and discuss the background materials that have been provided. Working in your team, write down the following:

* A clear, brief statement of your position.
* At least two facts from the case that support your position with an explanation of how each fact supports your position.
* At least one previous court decision that supports your position, describing why it supports your case.
* At least one reason why your position is fair to your client.
* At least one reason why a court decision in your favor will benefit society.

Using the information you have written down, prepare your argument for the Supreme Court. Remember, 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.

**Attorney Mock Appellate Argument Guide**

“May it please the court, my name is\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and I and my co-counsels represent \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in this case.”

“Today’s case involves . . .” (summarize the facts of the case and present the specific issue before the court. Remember the facts of the case are generally not in dispute in an appellate argument because the facts have been decided at the trial court level.)

“I would like to begin with . . .” (present the arguments, focus on relevant facts concerning the issue. Include the law and relevant cases. Explain why the cases are relevant. Remember to discuss the opposing sides’ strongest arguments, explaining why their arguments are not relevant.)

“Thank you.”

**Instructions for Supreme Court Justices**

* 1. Read through the facts of the case. Outline the facts below.
  2. Discuss the law; list the elements of any standards that are used in analyzing the case.
  3. List arguments you might hear from both sides

Appellant (side appealing the case)

Respondent (side responding to the appeal)

* 1. List questions you have for each side

Appellant

Respondent

# Supreme Court Call to Order

**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.**

**We’ll hear arguments today in No.\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­­­­­\_\_\_\_\_\_\_\_, v.**

**(name of appellant)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

**(name of respondent)**

**Is the attorney for the appellant ready?**

**Is the attorney for the respondent ready?**