

TEACHING TOOLS: NYS UNIFIED COURT SYSTEM

MIDDLE SCHOOL LEVEL

HISTORY AND JUDICIAL REVIEW*

LEARNING CONTEXT

Purpose:

Students will learn about the importance of “due process” and equal treatment under the law in our society. Students will see how our emphasis on these concepts has led us to value an independent judiciary that will protect and preserve fundamental rights. Students will learn how the judiciary, especially through the appellate process that takes place at the United States Supreme Court, has helped shape our nation’s history.

Grade Level:

7 and 8

Learning Standard:

Social Studies Standards 1 and 5

Core Curriculum (includes excerpts from the Social Studies Resource Guide with Core Curriculum):

Social studies content in grades 7 and 8 focuses on a chronologically organized study of United States and New York history. Course content ties political, geographic, economic, and social trends in United States history to parallel trends and time frames in New York State history. The federal and state governments constantly reevaluate their roles with respect to everything from fiscal and monetary policies to social programs and technology changes as efforts toward justice for all citizens continue.

Concepts/Themes:

- Understanding how the courts insure justice, fairness and due process for all people who seek to utilize or otherwise become involved in the court system.
- Understanding and appreciating the role of government in meeting the needs and wants of communities.
- Understanding and examining how rules and laws are developed to govern conflicts.
- Understanding the meaning and significance of “judicial independence”.
- Analyzing the sources of the nation’s values as embodied in federal and state constitutions, statutes and case law; appreciating the principles, ideals and core values of our democracy (human dignity, liberty, justice, and equality).
- Examining how government protects the rights of individuals and promotes the common good.
- Analyzing how our government is premised on majority rule that simultaneously protects minority rights.

Prior Knowledge:

Students should be able to grasp the concepts of fairness, justice, due process and equality. They should be able to understand the basic purpose of our justice system and the role of the courts in that system.

The students should have a basic understanding of the role of an appellate court.

The students should be able to develop problem-identification and problem-solving skills. They should also be able to gather, process, and present information in verbal and written form.

PROCEDURE

The teacher should devote adequate time to discussing the fundamental concepts involved in a manner relevant to the particular grade level. These concepts will then serve as a backdrop for learning about the justice system and our appellate courts. For example, during a Civil War unit, the teacher may choose to discuss the concepts of liberty and equality by using one or more of the “racial discrimination” cases listed below.

The teacher may use the Supreme Court background information set forth in the Appendix to provide details about the appellate process that occurs at the United States Supreme Court. The worksheets set forth in the Appendix provide evaluation opportunities with respect to this material. Also, the teacher may use the mock appellate argument activity set forth in the appendix if the students are interested in performing an “oral argument” similar to that which occurs in the Supreme Court.

Special Message to Teachers

The activities within each Teaching Tool are designed to build on each other to, first, develop students’ knowledge of basic law-related concepts; then, show students how the concepts are utilized or implemented in the court system; and, finally, demonstrate how students should apply the concepts in their everyday lives. However, the various activities that comprise each tool may also be used as stand-alone exercises. For example, you may choose to incorporate only Day 1 or Day 3 into your course work. Or, you may choose to use Day 1 in connection with one unit and then use Day 2 in a later unit.

There is more than one way to utilize the Teaching Tools – the proper use is the use that is beneficial to your classroom.

Day 1 – Fundamental Rights, Constitutional Law, and History

The teacher should discuss the concept of fundamental rights – the rights that are protected by our Constitution. The United States Supreme Court’s interpretation of the Constitution with respect to these rights has helped shape our history by virtue of the fact that the Supreme Court has the ability to alter our treatment of people and their fundamental rights, as exemplified by the cases listed below.

For example, the Civil Rights movement focused on equality and democracy, and the goals of this movement inherently included the preservation of the concepts of justice, equality and due process. The result was that, in Brown v. Board of Education, the Supreme Court enforced the end of segregation in public schools.

The teacher should select from among the cases set forth below to demonstrate how the decisions of the United States Supreme Court impact basic rights in our nation. These cases should be studied with an explanation and acknowledgment of the time period (pre-Civil War, Industrial Age, WWII, the Civil Rights movement, the Vietnam War, etc.) and political context (segregation/desegregation, women’s rights movement, free speech, protecting the rights of the indigent, *laissez-faire* economics/labor regulation, etc.) in which each case was decided.

Students should also know that a case is brought on appeal when the party who loses at trial asks judges of a higher court to reconsider the issues and possibly alter the trial court’s decision. Because appellate courts may make decisions that change the law, we value the concept of an independent judiciary – the notion that judges are not influenced by the other branches of government. If the teacher is interested in providing a detailed discussion of judicial independence, there is helpful material annexed in the appendix.

Racial Discrimination

- *Dred Scott v Sandford (1857)*: the Supreme Court stated that no African-American -- free or slave -- could be considered a citizen of a state or of the United States; this decision was effectively overruled after the Civil War by the Fourteenth Amendment
- *Plessy v. Ferguson (1896)*: the Supreme Court rejected the argument that racial segregation in railroad facilities gave the impression that African-Americans were inferior; the Court stated that segregation was acceptable as long as the result was “separate but equal facilities”
- *Korematsu v. United States (1944)*: the Supreme Court infamously upheld the incarceration of persons of Japanese origin on the West Coast after the bombing of Pearl Harbor; the Court justified its decision by relying on “the judgment of the military authorities” that there were “disloyal members of that population”
- *Brown v. Board of Education (1954)*: the Court determination was almost the exact opposite of the *Plessy* decision in a case regarding racially segregated public schools; the Supreme Court stated that “separate educational facilities are inherently unequal” because they create a feeling of inferiority as to status in the community

Gender Discrimination

- *Goesart v Cleary (1948)*: the Court upheld a state statute which provided that only women who were the wives or daughters of the male owner of the bar could work in that bar -- women who were not supervised in this manner could not be licensed as bartenders; the Court reasoned that the male supervision assured the protection of the females from the “hazards” that might otherwise confront a “barmaid”
- *Craig v Boren (1976)*: the Court invalidated state statutes that distinguished between males and females for purposes of a minimum drinking age: women were allowed to start drinking certain alcoholic beverages at 18, but men had to wait until 21; the Court expressed disdain for the “social stereotypes” that formed the basis for the differentiation – that all young men were reckless and would drink and drive, while all young women would find a chivalrous escort home – and found that the reasoning was not enough to support the gender-based age differential

Rights of Personal Expression

- *United States v. O'Brien (1968)*: the Supreme Court upheld the conviction of a young man who burned his draft card to protest the Vietnam War; the Court found that the statute, which made it a felony to knowingly destroy a card advanced the government interest in the draft, which was needed in a time of crisis
- *Tinker v. Des Moines (1969)*: the Supreme Court reversed lower court decisions that permitted a school to prohibit students from wearing black armbands in the classroom to protest the Vietnam War; the Court said that the First Amendment permitted “reasonable regulation of speech-connected activities in carefully restricted circumstances” but found that there was no “evidence that school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school”
- *New York Times Co. v. United States (1971)*: the United States government wanted to prevent some prominent newspapers from publicizing the Pentagon Papers, classified documents regarding the Vietnam War; the government argued that publication would embarrass the United States and provoke the enemy, but the Court did not find this reason enough to stop the publication and so regulate free speech

Rights of Criminal Defendants

- *Mapp v. Ohio (1961)*: required that the federal rule, which required the exclusion of evidence obtained through an improper search and seizure, be applied in all of the states
- *Gideon v. Wainwright (1963)*: in order to insure that everyone receives “fair trials before impartial tribunals in which every defendant stands equal before the law,” the Supreme Court required appointed counsel for every indigent criminal defendant accused of a felony

- *Miranda v. Arizona (1966)*: the Supreme Court enumerated certain rights of accused criminals (“You have the right to remain silent . . .”), including a re-affirmation that indigent persons were to be afforded counsel in criminal prosecutions – prior to police interrogation, the accused must be expressly informed that he or she has the right to appointed counsel if s/he cannot otherwise afford an attorney

Trade/Labor Rights

- *Gibbons v. Ogden (1824)*: the Supreme Court established the scope of the power of the “Commerce Clause” -- interpreted as a grant of power to Congress to regulate trade among the states -- and provided the basis for an era of Supreme Court decisions; the decision itself held that a New York grant of a steamboat monopoly between New York and New Jersey conflicted with a federal statute permitting interstate commerce
- *In re Debs (1895)*: during the Pullman Strike of 1895, the Supreme Court upheld the power of President Cleveland to keep the railroads operating and to stop the strike on the ground that it threatened the free flow of the mail and would “affect the public at large”; Debs violated the Circuit Court’s injunction that was intended to keep the trains moving, and the Supreme Court upheld his jailing for contempt of court; subsequent federal legislation negated the power of this case as a precedent in labor disputes
- *Lochner v. New York (1905)*: New York, due to concern over employees’ health, enforced a 60 hour work week in the bakery profession; however, the Supreme Court rejected this “labor law” because it interfered with the rights of the workers to contract for their own hours, while it did not protect the workers’ health enough to justify this imposition; for a certain period, the Court became known for choosing not to accept the states’ reasons behind laws that regulated labor, and the Court’s skeptical reasons for striking down the laws became known by some critics as “Lochnerizing”

Day 2 – Appellate Court Field Trip

The teacher should plan a field trip to a local appellate court if location permits. In preparation, the teacher should discuss with the appropriate court personnel a proposed agenda for the students and agree on the time frame for the visit.

Court personnel should discuss with students what they may expect to see in the courtroom. Students will be able to see how appellate arguments are conducted, how the appellate judges interact with the attorneys, and how various court personnel (such as the clerk) perform their duties.

In the alternative, the teacher may try to arrange for an appellate judge to visit the classroom. The judge will be able answer questions and demonstrate what happens during an appellate argument, perhaps using a case or two that the class has discussed on Day 1.

Day 3 – Appellate Research

The teacher may wish to supply the students with case briefs for any of the Day 1 cases that are available from <http://www.tourolaw.edu/patch/CaseSummary.html>. Also, check the following for resources: www.findlaw.com; <http://www.abanet.org>; www.nysba.org.

The teacher should assist the students in reviewing the case briefs with an eye toward identifying the legal issues and identifying the arguments from each side regarding the legal issues.

Students should select or be assigned a case to research. The students may go to the library to research the subsequent history of their topic; for example, if they choose the *Dred Scott* case, they may research the development of the Fourteenth Amendment by way of Lincoln's Emancipation Proclamation. Or, if the students have access to the Internet, they may search for other cases or news articles about events related to their topics. For example, research regarding the gender discrimination cases may yield information regarding the proposed Equal Rights Amendment. Students should present their results to the classroom or to the teacher either in verbal or written form.

The teacher should explain to the students that this process is similar to the one used to prepare an appellate brief. Attorneys research similar cases that have preceded their current case, research what has happened with the law since those similar cases, and use the results to help persuade the Court to decide one way or the other.

ASSESSMENT PLAN

The assessment will be based upon the results of the research activity and on the worksheets (see Appendix) if the teacher deems them appropriate for use.

APPENDIX

Supreme Court Background Information

The teacher may wish to provide the following background information regarding how a case reaches the Supreme Court of the United States:

- typical cases arrive through the federal court system, where they are tried in District Court, appealed at a Federal Circuit Court of Appeals, and then “*certiorari*” (permission to appeal) is sought from the Supreme Court
- cases may also arrive through the state court systems; after a case is determined by a particular state’s highest court, *certiorari* may be sought from the Supreme Court
- the Supreme Court’s “*certiorari* review” insures that the Court hears significant cases (cases that will affect the rights of a vast amount of people), cases of “first impression” (cases involving issues that have not been raised before), or cases where there is a conflict among the courts just below the Supreme Court level (the Federal Circuit Courts of Appeals or the highest courts of different States)
- the person bringing the appeal is the “appellant”; the person responding to the appeal is the “respondent”; respondents may also “cross-appeal” if there is a different issue that they want to raise on appeal; parties may only appeal the issues that they lost at the court below
- the parties write “legal briefs” to present their cases; then, they appear at the court for “oral argument” to further explain their case and to answer any questions the Justices may have
- the decision of the Court is issued after all of the Justices have had time to consider the briefs and the oral argument; the crucial part of the decision, which provides a final answer to the issue at hand, is called the “holding”

The teacher should also discuss the role of the court and the implication of differing theories of judicial review.

- judges are our government’s objective decision makers; they hear all sides of a case and apply the law in a fair manner to determine the outcome of the case – if they believe they cannot do their job properly because they want a case to be decided a certain way before they hear all of the facts, they “recuse” themselves from the case so they are not involved in the decision.
- there are nine United States Supreme Court Justices; one is the Chief Justice; the Justices are appointed by the President of the United States, with the approval (advise and consent) of the United States Senate – the approval process is called the “confirmation hearing”

- Justices are appointed for life terms
- the interpretation of the law by a judge is called “judicial review”; often, Supreme Court cases require the Court to interpret the meaning of the Federal Constitution; this review has resulted in a body of case law known as “Constitutional Law”
- the power of judicial review was established by the first Chief Justice of the United States, John Marshall, in an early constitutional law case, *Marbury v. Madison* (1803) – Thomas Jefferson was elected President, but before he was inaugurated, sitting President Adams made last minute appointments (the “Midnight Judges”) to the federal bench. The judges needed signed commissions to begin their work, and, as one of the last appointments, would-be Judge Marbury’s commission was not delivered to him before Jefferson’s inauguration. Madison (Jefferson’s secretary of State) refused to deliver the commission to Marbury, and Marbury sued. The suit involved a federal statute, and Chief Justice John Marshall asserted that a federal court had the power to refuse to pay heed to congressional legislation that was inconsistent with the court’s interpretation of the Constitution – even though the Constitution says nothing about such a “final say” by the courts. Interestingly, Marshall had signed Marbury’s commission before assuming the role of Chief Justice. Not surprisingly, he found Madison’s refusal to deliver the commission to be illegal.
Was Marshall’s decision a bold exercise of “judicial independence” or was this case an instance where Marshall should have recused himself?
- Justices are usually selected by the executive branch (President) and approved by the legislative branch (Senate), the members of which have obvious political affiliations; however, as one of the checks and balances in our system of government, judges function independently of the executive and legislative branches and their inherent involvement with the political process – this important concept is known as “judicial independence”
- some Justices are “strict constructionists,” meaning that they believe they must take the meaning of the Constitution very literally; other Justices are “activists,” meaning that they consider the basic tenets of the Constitution but do not feel confined by the document’s literal meaning when deciding a case for example, the First Amendment provides that “Congress shall make no law. . . abridging the freedom of speech.” A strict constructionist might interpret that statement to mean that any law that infringes upon free speech is prohibited. An activist might interpret that statement to mean that any unreasonable government regulation of free speech is prohibited.
- this difference in interpretation is often the reason that a Justice will write a “dissent,” indicating that he or she does not agree with the “majority” opinion, which contains the holding of the case; the ability to dissent is one aspect of judicial independence
- sometimes, there are noticeable trends in the overall “ideology” of the court; for instance, if there are several Republican presidential administrations in a row, the Supreme Court may include several Justices who have a more “conservative” slant until a Democratic president makes appointments, which may place more “liberal” judges on the Court – and vice versa

- because of the shifts in ideology or general shifts in society, it is possible that the Court may take what was once a dissenting position and turn it into a majority stance, and vice versa; generally, however, the Court will follow its own “precedents” in a process known as “*stare decisis*”
- the Court’s ability to carefully choose when it should not follow precedent is one of the most important aspects of judicial independence

Students should complete the two worksheets annexed below to demonstrate their understanding of the pertinent terms and concepts. Note that more sophisticated students may be asked to define the terms and briefly describe what happened in each case, rather than complete a matching exercise.

Mock Appellate Arguments

The students may be interested in participating in mock appellate arguments that re-enact a United States Supreme Court case. The students may be asked to prepare a one page type-written appellate brief and present a five minute oral argument to a panel of three “judges” (older students, teachers, administrators, visiting attorneys or judges). The panel should be provided copies of the students’ briefs in advance, together with any other materials that teachers may find appropriate to prepare the panel. Panel members may question students about their briefs, their statements made during argument, or about pertinent historical events that may impact the case. Students should draft and submit a one page brief of their position in the selected case (one student should have the appellant’s position; one the respondent’s). The brief should include the main issues and the arguments in support of the decision sought on the issues. Obviously, the students will know what has actually happened to the case since the Supreme Court case was originally argued, but they should argue the case as if this information is not available.

Appellate advocates may be assessed based on their presentation of the one page written brief, the five minute oral argument by each side, and the fielding of questions from the judges during that argument. A rating sheet is provided below.

Name: _____

Date: _____

Supreme Court Background Worksheet

Directions: Match each of these terms with the proper phrases.

activism

appellant

certiorari review

confirmation hearing

Circuit Court

Constitutional Law

dissenting opinion

first impression

holding

ideology

legal briefs

precedent

respondent

stare decisis

strict constructionism

1. the written product that tells the Justices about the case
2. may be either conservative or liberal
3. the practice of following what the court has said in prior cases
4. the person who brings the appeal
5. the product of a disagreement with the majority
6. the process of deciding whether a case will be heard by the Supreme Court
7. the first level federal appellate court
8. may cross-appeal
9. a factor that may encourage the Court to take a case
10. precisely following the words of Constitution
11. the process of evaluating a candidate for Supreme Court
12. the most important part of the majority opinion
13. loosely interpreting the Constitution
14. case law that results from interpretation of the Constitution
15. prior cases

Name: _____

Date: _____

Supreme Court Cases Worksheet

Directions: Match the name of each United States Supreme Court case with the correct subject matter of the case.

Case Names

Marbury v. Madison (1803)

Gibbons v Ogden (1824)

Dred Scott v. Sanford (1857)

Plessy v. Ferguson (1896)

Lochner v. New York (1905)

Korematsu v. United States (1944)

Brown v Board of Education of Topeka (1954)

Gideon v Wainwright (1963)

Miranda v Arizona (1966)

Tinker v Des Moines Independent School District (1969)

1. denied African-Americans equal rights to citizenship during the pre-Civil War era
2. established the power of judicial review
3. enforced desegregation in public schools because “separate” is not “equal”
4. permitted discrimination against Japanese residents in the US during WWII
5. struck down a NY labor law on the basis that it interfered with the individual right to contract
6. involved an early use of the Commerce Clause
7. protected the various right of accused criminals
8. permitted segregation, using the justification of “separate but equal”
9. guaranteed criminal defendant’s right to trial counsel
10. involved freedom of expression issues

Name: _____

Date: _____

**Rating Sheet for Attorneys:
Appellate Argument in the Classroom**

Categories	Excellent	Good	Fair
1. General Oral Presentation	_____	_____	_____
2. General Clarity of Brief	_____	_____	_____
3. Understanding of Facts	_____	_____	_____
4. Identification of Legal Issues	_____	_____	_____
5. Understanding of Relevant Law	_____	_____	_____
6. Understanding of Arguments	_____	_____	_____
7. Understanding of Historical Context	_____	_____	_____
8. Ability to Respond to Questions	_____	_____	_____
9. Ability to Return to Argument after Questions	_____	_____	_____
10. Overall Enthusiasm for Project	_____	_____	_____