

The Michigan Judicial System

Objective:

Students will gain a basic understanding to the organization and function of the Michigan Judicial system and how it applies to their lives.

Rationale:

Before embarking on the other activities and lessons of The Verdict of History project, students should have a basic understanding of the Michigan judicial system and how cases appear before the Michigan Supreme Court. More citizens are exposed to the court system than any other branch of government. Ninety percent of all cases appear in the state rather than the federal court systems. From a practical standpoint, learning about the Michigan court system may be one of the most important life lessons for students.

Methods:

Option 1) Reproduce the chart on an overhead or the whiteboard and explain each court's jurisdiction and function. Although this method seems rather mundane and routine, students are usually interested because someone in the class has had a first-hand experience at the trial court level, i.e. traffic court, family court, or drug court.

Option 2) Remove the notations from the chart and give the information via lecture method.

Option 3) Assign small groups to research each court and present their findings to the class.

Lecture Notes:

Judges:

All judges in the Michigan court system are chosen by voters in non-partisan elections. In the case of a vacancy created during a judge or justice's term, the Governor appoints a judge to fill the position. That judge must run in the next election to retain his/her seat.

Qualifications to be a judge include the following: the person...

- must be a qualified elector of the district
- must be licensed to practice law in the state
- must have five years of experience practicing law
- must be less than 70 years of age at the time of appointment or election

Courts:

There are two types of courts: trial and appeal courts.

Trial courts are courts of *fact* and, as the court with original jurisdiction for cases, are the first contact litigants have with the system. Trial courts conduct hearings and decide civil and criminal cases. The Michigan trial courts include district courts, probate courts, municipal courts, circuit courts, and the court of claims, which handles cases in which the state of Michigan is sued. These courts serve as the "triers of fact" providing attorneys to argue the case, witnesses, a judge and, in some cases, juries. There are six jurors in civil cases and misdemeanor criminal cases and twelve in felony criminal cases; typically, in civil cases 5 of 6 jurors must agree to a verdict unless otherwise stipulated by the parties.

Almost all cases are resolved at the trial court level. Four million cases per year are decided by the trial courts, only 7,000 are appealed to the Court of Appeals, and only about 2,500 are appealed to the Michigan Supreme Court.

Additionally, district and probate court cases may be appealed to the circuit court.

Appeals courts are courts of *law*, which review the findings and actions of a lower court based on statutory or constitutional questions in a case. Cases are brought to the appeals courts through the submission of briefs from the parties' attorneys and some are then heard through oral arguments by the attorneys. The intermediate appeals court in Michigan is the Court of Appeals, which primarily reviews cases from circuit courts and the court of claims. Although there are four election districts for the Court of Appeals in Michigan, all Court of Appeals judges serve statewide. Three of the 28 judges sit *en banc* to hear the cases at one of three court locations throughout the state.

The court of last resort in the Michigan system is the Michigan Supreme Court. The Michigan Supreme Court has the final say on state constitutional and statutory questions and occasionally rules on federal constitutional issues, which could be a call for appeal to the U.S. Supreme Court. The Court hears oral arguments from October through May. Seven justices serve on the Michigan Supreme Court for eight-year terms.

The Michigan Supreme Court has discretion over what cases they will decide or hear. As cases are appealed to the Michigan Supreme Court, they are analyzed by the members of the Court and the Court's Commissioners' Office. The Commissioners' Office prepares approximately 200 reports per month for the Court to consider. Members of the Court meet in conference on Wednesdays to determine which cases they will consider. Of the 2,500 cases that are appealed to the Michigan Supreme Court annually, only about 250 (10%) are granted leave by the Court.

Approximately one-third of the commissioners' cases are considered for conference. For a case to be considered by the Court, a majority of justices (4) must agree to take action on the case. Lawyers for the appellant (losers in the lower court) and appellee (winners in the lower court) file briefs on the legal issues for their side. Interested parties may file *amicus* (friend of the court) briefs to lobby the justices. The justices may decide not to allow an appeal, to issue a *per curiam* opinion, which is a decision made by the Court without an oral argument, or to hear the case in oral argument.

Oral arguments are hearings before the Michigan Supreme Court. Each side has 30 minutes to argue their case before the Court. These arguments are verbal presentations including question and answer sessions between the justices of the Court and the lawyers. The appellant may reserve five minutes of his or her time for rebuttal.

At a conference session after oral argument, the justices discuss their preliminary views. After this discussion, a justice in the majority is randomly assigned by the Chief Justice to write the majority opinion. This opinion is circulated among the justices to allow revisions and memoranda to be proposed. At the opinion conference, justices choose to support the opinion, write a concurrent opinion (agreeing with the result of the Court but not the rationale of the majority opinion), or write a dissenting opinion. The justices attempt to reach the strongest majority in each case, preferably a unanimous decision. When these opinions are complete, the Court publishes the decision, mailing it to the participating parties, posting it on the Court's website, and printing it in the official court record the *Michigan Reports*.

For additional information on the Michigan Court system, please visit these links:

- Michigan's One Court of Justice at <http://courts.michigan.gov>
- The Learning Center website at <http://courts.mi.gov/education/learning-center/Pages/default.aspx>
- High school lesson plans at <http://www.micourthistory.org/high-school-education-resources-from-the-mschs/lesson-5-procedures-of-the-court/>
- Middle school lesson plans <http://www.micourthistory.org/middle-school-education-resources-from-the-mschs/> (for grades 6–8)

You are the Justice

Objective:

Each student will be exposed to the Michigan Supreme Court by examining summaries of significant cases through classroom discussion and decision-making.

Rationale:

By using the case method, each student will gain knowledge of the significant cases found below and gain an appreciation for the work of the Michigan Supreme Court.

Method:

The instructor will read each case aloud while students read the case from a handout or an overhead. On notebook paper, students will write down the title of the case. Below the title, they will write the word "Decision" and, on the next line, the word "Reasoning." On the "Decision" line, the student simply writes down the side he/she believes should win (for example using the case below the student may write "Decision: The DeBoers). On the "Reasoning" line, the student will write a short explanation of how he/she made the decision. The teacher gives the students about 5 minutes to make their decision and to write the reasons for it. After going through all seven cases, the teacher returns to the first case, leads a short discussion on the case, and provides the Michigan Supreme Court's decision for the case.

In Re Clausen (1993)

In February 1991, single mother Cara Clausen gave birth to a baby girl in Cedar Rapids, Iowa. Unable to raise the girl on her own, Cara Clausen arranged to give the baby up for adoption to a Michigan couple, Jan and Roberta DeBoer. The DeBoers took the baby girl home to Ann Arbor, Michigan, and named her Jessica.

Jessica's natural father, Dan Schmidt, did not consent to the adoption. Cara changed her mind about giving up the baby. In March 1991, planning marriage, Dan Schmidt and Cara Clausen asked the Iowa District Court to have the baby returned. The Iowa district court decided that the adoption was not valid and ordered the DeBoers to return Jessica. Schmidt and Clausen won appeals at every level of the Iowa court system. The DeBoers failed to appear in the Iowa courts.

The DeBoers, refusing to return Jessica, filed suit in the Michigan Circuit Court claiming that the Iowa courts were not entitled to decide the case. The Michigan Circuit Court, relying on a national law, claimed that it could determine the best interests of the child. The Michigan Court of Appeals overruled the Circuit Court decision, deciding that Michigan courts could not overrule the Iowa court and the DeBoers had no legal standing to challenge an Iowa court order.

The DeBoers appealed to the Michigan Supreme Court. How would you decide?

O'Neill v. Morse (1971)

While walking with a friend on a cold December day, Carol Pinet, eight months pregnant, was struck by a car as a result of an automobile accident that occurred at the intersection where she was standing. Pinet sustained minor injuries, but the baby boy she carried was stillborn.

Pinet, through her son's estate administrator, James O'Neill, chose to sue the driver of the car that slid through a stop sign and caused the accident. The estate asked the court to declare a wrongful death judgment and asked for financial compensation on the grounds that the unborn child was protected by an 1848 public act and the U.S. Constitution's 14th Amendment due process and equal protections clauses.

The Michigan circuit court decided not to take the case. The circuit court decided that the unborn child was not a person and was thus not entitled to any damage compensation. O'Neill appealed to the Michigan Court of Appeals, seeking the right to sue for damages. O'Neill lost the appeal by a 2-1 decision.

O'Neill appealed to the Michigan Supreme Court. How would you decide?

The People v. Hildabridle (1958)

Although obscenity is hard to define, it is perhaps best described by U.S. Supreme Court Justice Potter Stewart's quote, "I know it when I see it." But does obscenity have to be seen for the legal system to become involved? This was a primary question in the Hildabridle case.

Sunshine Gardens operated as a nudist camp in a secluded area outside of Battle Creek, Michigan. The camp had been operating for 14 years with no community complaints when two state police officers decided to investigate the camp in June 1956. Their observations at the camp allowed them to successfully obtain warrants to arrest several campers for indecent exposure. Days later, the police returned to Sunshine Gardens, and several campers, including Earl Hildabridle, were arrested.

Hildabridle and the others, were held for trial in the Calhoun Circuit Court. Hildabridle argued that the search of the camp was illegal; that the state law on indecent exposure was vague; that the search had been conducted on private property not open to the public; and that nudity in itself was not indecent exposure if the campers were not offended. The Calhoun Circuit Court did not agree with these arguments. Hildabridle and the others were convicted; each was sentenced to 30 days in jail and two years probation and ordered to pay a \$250 fine.

Hildabridle appealed to the Michigan Supreme Court. How would you decide?

Haynes v. Lapeer County Judge (1918)

In 1913, following a period when many states created eugenics* laws, the Michigan Legislature enacted a law that called for the sterilization of “mentally defective persons maintained wholly or in part by public expense.” The law called for such procedures to be performed only at state mental institutions.

H.A. Haynes, the medical superintendent at the Michigan Home and Training School at Lapeer, ordered the fallopian tubes of Nora Reynolds, a 27-year-old inmate with the mental capability of a ten year old, to be removed. Reynolds had already given birth to two illegitimate children. Reynolds’ guardian challenged the procedure in the Lapeer County Probate Court. Citing the 14th Amendment to the U.S. Constitution, the probate court judge refused to allow the sterilization and decided that the Michigan eugenics law was unconstitutional. The Lapeer Circuit Court also refused to permit the procedure, calling the law “class legislation” because it targeted inmates in state institutions while excluding similar patients in private institutions.

Haynes appealed to the Michigan Supreme Court. How would you decide?

*Eugenics is a social philosophy that promotes the improvement of human hereditary traits through various forms of intervention. It is defined by American Heritage Dictionary as “the study of hereditary improvement of the human race by controlled selective breeding.”

Bolden v. Grand Rapids Operating Corporation (1927)

Michigan Public Act 130, first enacted in 1885 and amended in 1919, is known as the “Civil Rights Act.” The Act guaranteed to everyone in the state “full and equal accommodations, advantages, facilities and privilege of inns, restaurants, eating houses, barbershops, public conveyances on land and water, theaters, motion picture houses, and all other places of public accommodation and amusement and recreation and all public educational institutions.” The Act also provided for fines and imprisonment for those who violated the statute.

On December 12, 1925, Emmet Bolden, an African-American dentist, tried to purchase a first-floor ticket at a Grand Rapids movie theater; at the time, African-Americans were only allowed to sit in the balcony. Bolden was denied admission to the first floor of the theater.

Although the Civil Rights Act was a criminal law, Bolden decided to sue in civil court for \$1,000. The theater denied that restricting African-Americans to the balcony violated the Act or, in the alternative, that the act did not provided for civil damages. The Grand Rapids trial court ruled in favor of the theater.

Bolden appealed to the Michigan Supreme Court. How would you decide?

People v. Beardsley (1907)

In 1905, Carroll Beardsley worked as a clerk and a bartender at the Columbia Hotel in Pontiac, Michigan. Although he was married, Beardsley had a lengthy affair with another hotel employee, Blanche Burns. In March 1905, Beardsley spent a weekend with Burns at his residence. Both were reportedly intoxicated for much of the weekend, receiving a steady supply of whiskey and beer from a young Columbia Hotel employee. On Monday, Blanche Burns requested that the young man go to the local drug store to buy morphine for her. Burns took three to four grams of morphine with beer and passed out. After some time, Beardsley phoned the young man to come move Blanche to the basement residence occupied by Mr. Skoba. The young man moved Burns to Skoba's residence. Later that night, Skoba, alarmed by Burns' condition, called the police and a doctor. Burns was pronounced dead by overdose.

Oakland County charged Beardsley with involuntary manslaughter. The prosecution argued that Beardsley had a legal duty to look after Burns and was negligent when doing so. Beardsley argued that he had no legal relationship with Burns; that Burns had engaged in drunken and drug-laden bouts many times previously; and that she was responsible for her own actions. The Oakland County Court returned a guilty verdict. Beardsley was sentenced to Jackson Prison for a term up to five years.

Beardsley appealed to the Michigan Supreme Court. How would you decide?

Workman v. Detroit Board of Education (1869)

In the mid-nineteenth century the city of Detroit had a segregated school system. The state Legislature established the city as a single, autonomous school district in 1842 and gave the district broad powers in regards to the establishment of schools and educational policies. One such policy was racial segregation, which the district justified by claiming that racial tension could harm the educational process. By 1868 the city had established three "colored" schools. The colored schools were "primary," providing rudimentary education for six years without grades, and were often located farther away than neighborhood schools reserved for whites. Blacks were excluded from graded secondary and high schools. In 1867 the state Legislature enacted a school law calling for racial equality in schools throughout the state.

In April 1868, Joseph Workman attempted to enroll his biracial son in a Tenth Ward school, where he lived and paid school taxes. The Workman child was denied admission to the "white" school. The Detroit school district argued that the newly enacted state law did not apply to them because the Legislature had previously passed a law specifically providing the city broad discretionary powers in regards to education.

Joseph Workman brought suit in the Supreme Court for a *writ of mandamus*—a judicial order compelling a public officer to do his duty. How would you decide?

Student Legal Brief Writing

Objective:

Students will conduct legal research, analyze cases, and produce a legal brief supporting a position in a Michigan Supreme Court case.

Rationale:

Legal briefs are documents submitted to the Michigan Supreme Court (MSC) and other courts that outline points of fact or law for use in conducting a case. Briefs are written by the attorneys participating in the case or, as with *amicus* briefs, by interested parties attempting to lobby the Court for a participating side. A brief writing activity for students can be extremely useful in helping them understand a case, organizing their research and thoughts, and writing an argument for a position.

Method:

Brief writing should be a guided writing process. After studying the Michigan judicial system, the teacher selects a case and works with the students to write an individual legal brief. Brief writing will take the better part of two class periods.

If brief writing is being combined with the mini-moot court activity, assign students a role using the mini-moot court instructions. If the student is assigned a lawyer role, the student will write the brief defending that side or position. The brief is due the day of the mini-moot court activity. The students assigned to the role of justices will write an opinion the next day (following the same format as the brief) announcing their decision.

If the brief writing activity is to be done independently of the mini-moot court, all students will act as lawyers. The teacher may assign a side to defend or may allow the students to choose a side to defend.

When assigning the brief, teachers should allow students to do some research and draft writing during class. Teachers should look over the briefs and make suggestions for improvement. Brief writing can be a good overnight assignment. With many students having access to the internet and other resources, students should be able to research and write briefs over a period of two nights.

Tips for Legal Research

Legal research can be fascinating but technical. Entire law school courses are devoted to the topic, and legal research can take years to master. The following resources can help you get started.

What Do Those Letters & Numbers Mean?

Case Names

<i>People</i>	<i>v</i>	<i>Stevens,</i>	460	Mich	626	(1999)
Plaintiff	Versus	Defendant	Volume	Court	First Page	Year Decided

F#d United States Court of Appeals; number indicates which circuit
Mich Michigan Supreme Court
Mich App Michigan Court of Appeals
NW2d Michigan Supreme Court; “parallel citation,” leading to the same opinion as Mich
US United States Supreme Court

Codes (Laws)

MCL	780.	656
Code	Section	Subsection

18	USC	§	3109
Title	Code		Section

§ Section
MCL Michigan Compiled Laws
MCLA Michigan Compiled Laws Annotated
Mich Const Michigan Constitution
USC United States Code
US Const United States Constitution

Research can be conducted using the following resources:

- FindLaw: www.findlaw.com
- Handbook of Legal Terms: <http://courts.mi.gov/education/mji/Resources/Documents/HOLT.pdf>
- Legal Information Institute: <http://www.law.cornell.edu>
- Introduction to Basic Legal Citation: <http://www.law.cornell.edu/citation/>
- Michigan Legislature: <http://www.legislature.mi.gov/>
- Opinion Search for the Michigan Supreme Court and Court of Appeals: http://courts.mi.gov/opinions_orders/opinions_orders/Pages/default.aspx

Student legal briefs are designed to be done in one-typed page. The brief has four sections. They include:

1. **Issue**-What is the legal or constitutional question in the case? The issue should always be written in question form and include the specific legal or constitutional issues.
2. **Facts**-What happened? Why is the case before the Michigan Supreme Court? The facts summarize what happened to bring the case to the legal system, help describe the legal issues, and briefly outline the decision and reasoning in the lower courts. The facts and the reasoning should be the largest sections of the brief.
3. **Decision**-Who wins? The decision can be very short and possibly one line. The teacher may instruct the students to simply write “Justice Roberts rules in favor of (the winning side).”
4. **Reasoning**-Why did you select this side? For lawyers, this section is the key to defending their position. For the justices, it is the opportunity to announce and explain their decision. The reasoning develops a rationale for the decision. Students should be encouraged to do some legal research to defend their decision and use *precedent* or similar cases to explain their reasoning. The teacher can stipulate the number of cases necessary to develop an effective brief, and this can even be incorporated into the grading procedure.

A sample brief is provided below.

Bush v. Gore Dec. 12, 2000

Issue: Did the Florida Supreme Court violate Article II Section 1 Clause 2 of the U.S. Constitution by making new election law? Do standard less manual recounts violate the Equal Protection and Due Process Clauses of the Constitution?

Facts: By the day after Election Day 2000, enough votes had been counted in all 50 states to determine that the winner of the majority of electoral votes would depend on which candidate (Bush or Gore) had the most votes in the state of Florida. After the initial machine count and automatic recount in Florida, Bush led Gore by just 327 votes.

Al Gore believed that since the Florida machine counts were so close, there was a good chance that there were enough uncounted votes to change the outcome of the election. He asked the Florida Supreme Court to order a manual recount of those votes. The Florida Supreme Court agreed and ordered a recount of the under-votes in all counties in Florida and also hand tabulation of 9,000 contested ballots from Miami-Dade County on December 8, 2000.

Governor George W. Bush and his running mate Dick Cheney filed a request for review in the U.S. Supreme Court, seeking an emergency petition for a stay of the Florida Supreme Court's decision. The U.S. Supreme Court granted review and issued the stay on December 9.

Decision: The U.S. Supreme Court issued a *per curiam* (no names attached) opinion of 7-2 that the Florida Supreme Court's scheme for recounting ballots was unconstitutional, noting that the Equal Protection clause guarantees individuals that their ballots cannot be devalued by "later arbitrary and disparate treatment."

Reasoning: Even if the recount was fair in theory, it was unfair in practice. The record suggested that different standards were applied from ballot to ballot, precinct to precinct, and county to county in Florida. Because of those and other procedural difficulties, the Court held that no constitutional recount could be fashioned in the time remaining. Loathe to make broad precedents, the *per curiam* opinion limited its holding to the present case.

Chief Justice Rehnquist (in a concurring opinion joined by Justices Scalia and Thomas) argued that the recount scheme was also unconstitutional because the Florida Supreme Court's decision made new election law, which only the state legislature may do.

Justices Breyer and Souter (writing separately) concurred with the *per curiam* decision holding that the Florida Supreme Court's recount scheme violated the Equal Protection Clause, but they dissented with respect to the remedy, believing that a constitutional recount could be fashioned. According to their analysis, time is insubstantial when constitutional rights are at stake.

Justices Ginsburg and Stevens (writing separately) argued that for reasons of federalism, the Florida Supreme Court's decision ought to be respected. Moreover, the Florida decision was fundamentally right; the Constitution requires that every vote be counted.

Mini-Moot Court Activity

Objective:

Using the mini-moot court method, the student will analyze facts and law to determine a potential outcome for a Michigan Supreme Court case.

Rationale:

Just as mock trials simulate jury trials, moot courts simulate an appeals court proceeding. Arguments for a moot court are prepared and presented on a legal question (such as the constitutionality of a law or government action) rather than on the facts of a case. Moot courts require students to focus on points of the law, and are an effective strategy for focusing student attention on the underlying principles and concepts of justice. Moot courts are easy to set up and use in a classroom setting, and they allow for more student participation and a broader use of student skills than a mock trial format.

Method:

The mini-moot court method involves all students in a class. It allows each student to engage in a verbal activity without putting them in front of the entire class. It can be used in conjunction with brief writing or as an independent exercise to be completed in one class period. The competitive component serves as an incentive for students to perform well.

1. Case Selection

The teacher selects one of the seven cases and supplies students with a page-long summary of the case and additional materials as desired. The teacher may select the case using the following questions: 1) Is the case and topic relevant to the coursework? 2) Will the case be interesting for the students and encourage thoughtful discussion? 3) Is there an underlying value conflict that is important for students to examine?

2. Case Evaluation

The teacher does a guided reading with the class—explaining, reviewing, and clarifying the points of law. The guided reading should address the following questions: 1) What happened in the case? 2) Who is involved? 3) How did the lower court rule on this case? 4) Who is the appellant and who is the appellee? 5) What is the primary question the Court is being asked to resolve?

3. Preparing for Roles

It is a good idea for the teacher to explain how the mini-moot court procedure works before beginning so students can understand and visualize the process. Explain that each student will randomly be assigned a role; he/she will be an attorney for the appellant, an attorney for the appellee, or a justice. Once students have been assigned their role, they will prepare arguments or questions for oral argument. After preparations are complete (teacher will determine how much time to allow for preparation), students will each participate in a mini-moot court. One attorney for each side will present an oral argument before one justice. Each attorney will be

given 5 minutes to speak. Each justice will be expected to listen to arguments, ask questions, and maintain order in their court.

4. Defining Roles

The justices will:

- Review the case and think of questions to ask the attorneys
- Maintain order in their courtroom, including timing the attorney's arguments
- Listen to oral arguments and ask questions at any time
- Determine if the lower court's decision should be upheld or overturned
- Announce their decision and give reasons for it

The attorney for the appellant will:

- Discuss the case with other attorneys and develop arguments to persuade the supreme court justice to overturn the lower court's decision
- Present (not read) arguments to the justice and answer any questions the justice might have

The attorney for the appellee will:

- Discuss the case with other attorneys and develop arguments to persuade the supreme court justice to uphold (affirm) the lower court's decision
- Present (not read) arguments to the justice and answer any questions the justice might have

5. Group Students/Assign Roles

Class members are divided into three groups regardless of individual convictions. Random numbering of the class in threes works well. Group one (1s) will act as attorneys for the appellant. Group two (2s) will act as attorneys for the appellee. Group three (3s) will act as justices. These groups will prepare for their roles as a team, but will perform as individuals in their roles.

Instruct all of the attorneys for the appellant (1s) to meet together in an area of the room to prepare their arguments. Instruct all of the attorneys for the appellee (2s) to do the same. Finally, instruct all of the justices (3s) to meet together in an area of the room to prepare questions they might need to ask the attorneys who present oral arguments to them. Hand out "Guide for Attorneys" instruction sheet to all attorneys and "Questions from the Justices" sheets to all justices.

After receiving their roles, each of the groups brainstorms ideas on how to defend their side using the law. In each of their roles, students should discuss common arguments and points of law that could be used in their mini-moot court arguments. The justices attempt to understand the case and come up with questions they can ask both sides.

After arguments and questions have been prepared, each student will be assigned to a court. Each court will have one attorney for the appellant (from group 1), one attorney for the appellee (from group 2), and one justice presiding (from group 3). In a class of

24 students, the teacher will have 8 mini-moot courts operating at the same time. The teacher may try to couple opposing lawyers by intellectual strength, speaking ability, personality, etc. The teacher should also use the same considerations when assigning a justice. The teacher announces the court assignments to the class.

6. Oral Argument

The attorney for the appellant (1) presents (not reads) his/her argument for five minutes. While the 1s are presenting, the justice is allowed, even encouraged, to interrupt and ask questions to better understand the case and help him/her make a decision. While this is happening, the attorney for the appellee is completely quiet; unlike a trial court, there are no objections or comments made to the justice. After five minutes have passed, the appellees (2) enact the same procedure. The justice is completely in command of their mini-moot court. In a true appeals court, the appellant would have a chance for rebuttal; however, in the mini-moot court process, during the final five minutes the justice allows the two lawyers to interact with each other. The justice is encouraged to ask questions or make comments to spur discussion. This is often the most spirited portion of the mini-moot court, and the teacher must instruct the students to be respectful of each other. The total amount of time for oral argument is 15 minutes.

7. Decision

After fifteen minutes the teacher stops the activity and asks the justice from each court to make a decision in their court and give one or two reasons for the decision. The teacher can make tally marks on the dry erase board, noting the reasoning from the justices. After canvassing the justices, the teacher tells the class how the actual Michigan Supreme Court decided the case and debriefs the class. The debriefing often creates discussions of the case by the entire class.

8. Logistics

This is an activity that could be completed in one class period without the brief writing. However, the brief writing requires students to better understand the case and its legal concepts. Brief writing also provides structure for cross-curricular application of writing and social studies.

Teachers may choose to repeat the process for the other cases found in this packet or do the mini-moot court activity with another case without the brief writing. You'll find this activity engaging, diverse in the educational strategies utilized, and a lot of fun!

Tips for Teachers

- For added pomp and circumstance, swear in the lawyers and justices using the official oaths. For more information, see the lesson on legal ethics in the Careers in Law and Legal Studies curriculum guide
<http://courts.mi.gov/education/learning-center/Curriculum/Careers-in-Law-Teacher-Resources.pdf>
- It also helps to ask students to dress for their roles, including conservative business attire for the attorneys and robes for the justices. Graduation gowns and choir robes make good stand-ins for judicial robes. Although black is traditional for judicial robes in the United States, they can be of any color.
- To lend authenticity to the briefs, copy the cover of the appellant's brief on blue paper and the appellee's brief on red, as is the practice of the Michigan Supreme Court Clerk's Office.
- During oral argument, the justices sit according to seniority. The chief justice sits in the center. Associate justices are seated according to seniority, alternating to the right and left of the chief justice. Thus, the justice with the most seniority sits to the chief justice's immediate right and the justice second in seniority is on the chief justice's left. The pattern continues in this way, ending with the justice having the least seniority sitting to the chief justice's far left. Using the age of the students is an easy way to determine "seniority" for moot court.
- Consider placing name cards on the bench to assist attorneys in addressing the justices during their argument.
- The briefs list two issues, so it is easiest to divide the arguments according to the issues. A third student can make the rebuttal for the appellant.
- Although the justices are allowed to ask questions at any time during the argument, justices in moot court often find it difficult to interrupt their peers, waiting till the end to ask their questions.
- Justices should be prepared for persuasive arguments to sway their preliminary votes.
- If the moot court will be held in front of spectators, students may find it helpful to stage a dry-run, completing the formalities only, or a mini-moot court, allowing students to make limited arguments.

Guide for Attorneys—Style of Oral Argument

Argument is formal, polite, and serious.

- Court rules require that attorneys treat everyone involved in a case with respect.
- When addressing the Justice, always use the format “Justice [last name].” You may also use “Your Honor.”
- Justices typically address the attorney before them as “Counselor.”
- Avoid using jokes since they may be misinterpreted as a lack of respect.
- Always say “thank you” at the end of your argument.

Prepare a well-organized set of notes but be prepared to speak “off the cuff.”

- You may not read directly from a prepared script.
- Time passes quickly, especially with questions from the Court. Be prepared to skip over much of your planned argument and stress your strongest points.

Address issues from your opponent’s argument.

- If your opponent has a strong point, plan to address that issue at the beginning of your argument.
- If your opponent answered a point weakly or incorrectly, plan to cover that issue during your argument.

There is no requirement that you use all your allotted time. If you have made your point, you may thank the Court and then stop.

Content of Oral Argument

Argument focuses on legal theories and interpretation of the law.

- The Court relies upon the evidence presented at trial. It only rules on the facts of a case if they are clearly erroneous and have no evidence to support them.
- Be prepared to explain what the public policy issues are and what the effect would be by ruling one way or another. The Supreme Court only accepts cases of great importance to the general populace.

Avoid saying “I think” or “I believe.” Instead, use “we argue” or “our position is.”

Concluding statement

- Develop a one-sentence theme that ties together your arguments.
- Do not restate your entire argument. Instead, say why the Court should adopt your view.

General Tips

Stand straight, make eye contact with the justice, be clear and persuasive, and believe in the argument you are presenting.

Speak clearly and distinctly.

- Speak loudly enough to be heard by everyone in the courtroom.

- Use a natural (yet formal) speaking style. Talking slowly and carefully will help calm your nerves.

Work to control your fidgets, nervous tics, and distracting mannerisms.

- Use appropriate hand gestures but avoid pointing at the justices with your finger, a pen, or another object.
- Remove any coins, keys, or other items that may rattle in your pockets.
- Allow yourself short, silent pauses as you speak instead using fillers such as “um” or “you know.”

Do not make faces, sigh, shake your head, roll your eyes, or do anything else distracting during your opponents’ arguments or when listening to a justice’s question. This is considered disrespectful.

Answering Questions from the Justices

The justices will have specific questions related to your case.

- The justices may interrupt your argument to ask their questions. If so, stop speaking immediately—even mid-sentence, listen carefully, and then answer the question. Questions are important clues about the issues in which the Court is most interested.

Try to answer the Court’s questions directly. Begin with “yes,” “no,” or “I respectfully disagree,” and then expand upon your answer before returning to your argument. For example:

- “No, your Honor, because . . . ”
- “Appellant respectfully disagrees, your Honor.
- Although oral argument requires quick thinking, you should admit politely if you do not know the answer to a question.
- If a justice asks a hypothetical question, you should respond to that question with the facts given, even if they are different from your case.

Guide for Justices

Style of Oral Argument

Argument by counsel is formal, polite, and serious.

- When addressing members of the Court by name, attorneys will use the format “Justice [last name].” They may also use “Your Honor.”
- Justices typically address the attorney before them as “Counselor.”
- Attorneys will speak from notes, not a prepared script.

Speak clearly and distinctly.

- Speak loudly enough to be heard by everyone in the courtroom.
- Use a natural (yet formal) style.

Content of Oral Argument

Argument focuses on legal theories and interpretation of Michigan law.

- The Court relies upon the evidence presented at trial. It only rules on the facts of a case if they are clearly erroneous and have no evidence to support them.
- Concentrate on public policy issues and what impact particular rulings would have. The Supreme Court only accepts cases of great importance to the general public.

Timing of Oral Argument

Oral arguments are strictly timed, and the Court tries to keep to that schedule.

- If you are asking a question when time is up, you may complete your question and the attorney may respond.
- At the end of the time, the justice should acknowledge the attorney by saying, “Thank you, sir,” or “Thank you, ma’am.”

Questions from the Justices

Attorneys will attempt to anticipate your questions and discuss those ideas in their arguments. You may have further questions, which you may ask at any time during the argument.

- As you prepare, write down a list of issues and questions and listen for these ideas during argument. If the attorneys have satisfied your questions you do not need to repeat the issues.
- The argument may lead you to other questions or a need for clarification. Be prepared to think of new questions during argument.
- The attorneys’ arguments will focus on interpreting the law and legal theories. Your questions may cover points of fact or procedure as long as they help you understand how the case fits within the argument.
- Your attitude and questions will not necessarily indicate the direction of your potential vote. Justices do not reveal their opinions about a case publicly until the opinion is released in writing.
- You may ask hypothetical questions.

You may interrupt an attorney *at any time* and expect that the attorney will stop and listen.

Although you should always remain courteous to the attorneys, you may ask questions that are difficult and that reveal weaknesses in the argument.

In Re Clausen (1993)

On February 9, 1991, an unwed woman named Cara Clausen gave birth to a baby girl in Cedar Rapids, Iowa. Cara named her boyfriend at the time, Scott Seefeldt, as the baby's father. Unable to raise the girl on her own, Cara, with the aid of an attorney, prearranged to have the baby girl adopted by a Michigan couple, Jan and Roberta DeBoer. On February 25, 1991, at a routine court hearing, Clausen and Seefeldt relinquished their parental rights. After the court hearing, the DeBoers, with the baby girl they named Jessica in tow, returned to Ann Arbor, Michigan.

Days later, Cara had a change of heart and decided she wanted to keep the baby after all. Cara admitted to having lied about the identity of the child's father; the biological father was actually Dan Schmidt, Cara's previous boyfriend. Since the birth of the baby, they had reconciled and were now planning marriage. Although Cara had severed parental rights, Dan had not. In March 1991, Cara and Dan each asked the Iowa district court to have the baby girl returned to them. This development prevented the DeBoers from finalizing the adoption. The DeBoers refused to give up their parental rights and fought back in court.

In November 1991, the Iowa district court determined that Schmidt was the biological father and that he had not abandoned baby Jessica. The adoption was declared void and the court ordered that the child be returned to Clausen and Schmidt. The DeBoers appealed the decision and received a legal stay allowing them to keep baby Jessica during the appeals process. Clausen and Schmidt won appeals in the Iowa Court of Appeals and in the Iowa Supreme Court. The Iowa Supreme Court remanded the case back to the district court where the DeBoers' temporary guardianship was terminated in December 1992.

At the same time their guardianship was terminated, the DeBoers filed a petition in the Michigan circuit court. The DeBoers asked the Michigan circuit court to assume jurisdiction under the Uniform Child Custody Jurisdiction Act (UCCJA) of 1968. The UCCJA outlined formal criteria to guide courts in such disputes by deferring decisions to the state where the child had the most significant contacts. The DeBoers requested that the Michigan circuit court find the Iowa order not enforceable under the UCCJA. The Michigan circuit court assumed jurisdiction and, with consideration for the best interests of the child, ruled that the DeBoers could keep the baby. Upon appeal, the Michigan Court of Appeals reversed that decision, concluding the Michigan circuit court lacked jurisdiction.

The case was appealed to the Michigan Supreme Court in July of 1993.

O'Neill v. Morse (1971)

While walking with a friend on a cold December day, Carol Pinet, eight months pregnant, was struck by a car as a result of an automobile accident that occurred at the intersection where she was standing. Mrs. Bernice May Morse, driving a Ford Falcon, skidded through a stop sign and struck a Nash Rambler driven by Gary Root. Root's car was pushed off the road onto the sidewalk where Pinet and her friend stood, injuring both women. Pinet sustained minor injuries, but the baby boy she carried was stillborn.

The administrator of Baby Boy Pinet's estate, James O'Neill, sued Mrs. Morse, the driver of the car that ran the stop sign and caused the accident, for the wrongful death of the baby. O'Neill sought damages for his client under Michigan's 1848 wrongful death statute. The statute allows for recovery of damages, "Whenever the death of a person or injuries resulting in death shall be caused by wrongful act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages..."

The defendants raised the issue of whether or not an unborn fetus was a "person" within the meaning of the statute. O'Neill argued that Baby Boy Pinet was a person within the context of the U.S Constitution's 14th Amendment; any other conclusion would deprive Baby Boy Pinet of his property rights without the due process of law.

O'Neill's case was dismissed by the Michigan Circuit Court on the basis that Baby Boy Pinet was not a person and thus had no standing before the court.

O'Neill appealed to the Michigan Court of Appeals. This court also rejected O'Neill's claim by a 2-1 vote. In his dissent, Judge S. Jerome Bronson noted that the definition of a person had evolved and "should include the unborn, just as Indians, aliens, convicted felons, corporations and labor unions had come to be treated as persons."

O'Neill exhausted his final state appeal to the Michigan Supreme Court. The Court decided the case in July 1971.

People v. Hildabridle (1958)

Although obscenity is hard to define, it is perhaps best described by U.S. Supreme Court Justice Potter Stewart's quote, "I know it when I see it." But does obscenity have to be seen for the legal system to become involved? This was a primary question in the *Hildabridle* case.

The Sunshine Gardens nudist camp is located in a secluded private area outside of Battle Creek, Michigan. Since its founding in 1942, nudists have sought refuge and relaxation there. Sunshine Gardens operated without complaints from the public well into the mid-1950s. The Michigan State Police, however, decided to investigate the nudist colony and visited it on June 15, 1956. There, officers observed nudists, obtained names, and sought warrants for the arrest of several campers on the charge of indecent exposure. When state troopers returned on June 30, 1956, to serve the warrants, they observed the six adult nudists named in the warrants as well as several nude young boys and girls. The six adult nudists, including Earl Hildabridle, were arrested and held over to the Calhoun County Circuit Court.

The trial court ruled against Hildabridle and the others. According to court records, the "defendants were convicted of knowingly making open and indecent exposures of their persons." Citing case law of the day, the court ruled that nudism was obscenity and thus was not protected as a First Amendment right of freedom of speech. Each was sentenced to 30 days in jail and two years probation and received a \$250 fine.

Hildabridle appealed to the Michigan Supreme Court on Fourth Amendment grounds. He contended that the search was illegal and that the Michigan statute on indecent exposure was vague. He further asserted that nudity on private property was not obscene as it could not be witnessed by the public at large—willing participants at the nudist colony did not offend each others' morals or sense of decency. Hildabridle argued that the Sunshine Gardens search was unreasonable and that the charges should be dismissed.

Bolden v. Grand Rapids Operating Corporation (1927)

Although most famous court cases involving racial segregation emanate from Southern states, Michigan was not immune from these issues. As far as enacting laws, Michigan was far ahead of many other states, passing its Civil Rights Act, Public Act 130, in 1885. The Act, which was amended in 1919, guaranteed to everyone in the state “full and equal accommodations, advantages, facilities and privilege of inns, restaurants, eating houses, barbershops, public conveyances on land and water, theaters, motion picture houses, and all other places of public accommodation and amusement and recreation and all public educational institutions.” The Act also provided for fines and imprisonment for those who violated the statute.

It is one thing to enact a law, but, as history has shown, a very different thing to enforce it.

Emmet Bolden was an African-American dentist with an established practice in Grand Rapids. On December 12, 1925, Bolden tried to buy a first-floor ticket at the Grand Rapids Operating Corporation movie theater; at the time, African-Americans were only allowed to sit in the balcony. Bolden was denied admission to the first floor of the theater.

With the assistance of the local chapter of the NAACP, Bolden decided to sue the owners of the movie theater for damages. Although the Civil Rights Act was a criminal statute, meaning that the state of Michigan should have prosecuted the movie theater for violating the law, Bolden took a different route—he decided to sue the theater for \$1,000 in civil damages. Bolden contended that since a Michigan statute was broken and the movie theater refused to comply with the law, he was entitled to damages for a law intended to protect him.

The owners of the movie theater contended that the Civil Rights statute did not apply to them and asked for the suit to be dismissed. The theater brought up two points. First, they argued that the law was unconstitutional—as a private enterprise the state could not exercise police power over the movie theater. They argued that the intent of the law was to monitor the health, morals, and welfare of the people, not to monitor the use of private property like a movie theater, and thus it violated the U.S. Constitution’s 14th Amendment’s due process clause. Second, they argued, the Civil Rights Act called for criminal prosecutions and not civil actions. Nowhere in the Act did it allow for victims such as Bolden to seek personal claims.

The Grand Rapids Superior Court upheld the theater’s due process claim and ruled in favor of the theater. Bolden then appealed to the Michigan Supreme Court in April 1927.

Haynes v. Lapeer County Judge (1918)

Entering the 20th century, some academics and others sought to apply Darwinian concepts to American society. Many Midwestern states passed eugenics* laws in the early 1900s. In 1913, the Michigan Legislature passed Public Act number 34, a law permitting the state to sterilize “mentally defective persons maintained wholly or in part by public expense.” The act also made it a felony to perform sterilization operations outside of state institutions except in cases of medical necessity.

H.A. Haynes, the medical superintendent at the Michigan Home and Training School at Lapeer, ordered the fallopian tubes of Nora Reynolds, a 27-year-old inmate with the mental capability of a ten-year-old, to be removed. Reynolds had already given birth to two illegitimate children. Reynolds’ guardian, John Roach, objected and challenged the procedure in the Lapeer County Probate Court.

Citing the 14th Amendment to the U.S. Constitution, the probate court judge, Daniel F. Zuhlke, refused to allow the sterilization. Judge Zuhlke ruled that the Michigan eugenics law was unconstitutional. Haynes appealed to the Lapeer Circuit Court. Lapeer Circuit Court Judge William B. Williams affirmed the lower court ruling, calling the law “class legislation” because it targeted inmates in state institutions while excluding similar patients in private institutions or at large. Williams did not disagree with the intent of the legislation and even stated, “The result sought to be reached is much to be desired.” However, he determined that targeting mental defectives in only state institutions violated the equal protection clause of the 14th Amendment. Williams cited a similar sterilization case in the New Jersey Supreme Court.

Haynes appealed to the Michigan Supreme Court in January 1918.

*Eugenics is a social philosophy that advocates the improvement of human hereditary traits through various forms of intervention. It is defined by American Heritage Dictionary as “the study of hereditary improvement of the human race by controlled selective breeding.”

People v. Beardsley (1907)

In 1905, Carroll Beardsley worked as a clerk and a bartender at the Columbia Hotel in Pontiac, Michigan. Although he was a married man, Beardsley had a lengthy affair with another hotel employee, Blanche Burns. In March 1905, Beardsley and Burns spent a weekend together at his residence while Beardsley's wife was out of town. Both were reportedly intoxicated for much of the weekend, receiving a steady supply of whiskey and beer from a young Columbia Hotel employee.

On the Monday following their weekend together, Burns requested that the young man go to the local drug store and buy morphine for the couple. Purchasing morphine was legal at the time and it was readily accessible as an over-the-counter drug. When the young man returned, Burns consumed three to four grams of morphine with beer and passed out. After some time, Beardsley, too drunk to carry Burns himself, phoned the young man to come move Burns to the basement residence occupied by a Mr. Skoba. The young man moved Burns to Skoba's place of residence. Later that night, Skoba, alarmed by Burns' condition, called the police and a doctor. Burns was officially pronounced dead by overdose.

Oakland County charged Beardsley with involuntary manslaughter. The prosecution argued that Beardsley had a legal duty to look after Burns. Beardsley, the prosecution contended, was well aware of Burns' condition and, in his drunken stupor, was grossly negligent when looking after her. This negligence led to Burns' death. After weighing the evidence, the Oakland County court agreed with the prosecution and returned a guilty verdict. Beardsley was sentenced to Jackson Prison for a one- to five-year term.

Beardsley appealed to the Michigan Supreme Court. He asked the Michigan Supreme Court to set aside the conviction, arguing that he had no legal relationship with Burns. Burns had engaged in drunken and drug-laden bouts many times with Beardsley and others. She, in effect, was responsible for her own behavior. Although Beardsley spent the weekend with Burns, there was no legal relationship and Beardsley could not be held responsible or negligent.

The Michigan Supreme Court decided the case in December 1907.

Workman v. Detroit Board of Education (1869)

Like many cities throughout the United States in the mid-nineteenth century, Detroit's public schools were segregated by race. This occurred largely because the Detroit Board of Education was given broad discretionary powers to determine the establishment of schools and educational policies. By 1839 the city had established several "colored" schools within the city limits.

In 1842, the state Legislature established Detroit as a single, autonomous school district with "full power and authority to make by-laws and ordinances relative to anything that may advance the interests of education, the good government and prosperity of the free schools in said city, and the welfare of the public concerning the same." By 1865, Detroit had established three African-American schools for 185 students of all grades in a system of approximately 7,000 white students. The colored schools were "primary," providing rudimentary education for six years without grades, and were often located farther away than neighborhood schools reserved for whites. Blacks were excluded from graded secondary and high schools.

Demonstrating a level of progressivism unseen at the time, the Michigan Legislature passed an 1867 law guaranteeing racial equality in Michigan public schools. The new law proclaimed, "All residents of any district shall have an equal right to attend any school therein." Despite the new law, however, Detroit continued its segregation policy.

In April 1868 Joseph Workman attempted to enroll his biracial son in their neighborhood school, Duffield Elementary School, which was an all-white school. The boy was denied admission. Joseph Workman brought suit in the Michigan Supreme Court for a *writ of mandamus*—a judicial order compelling a public officer to do his duty.

The school district contended that the new law did not apply to them. The state Legislature had created a charter for the city of Detroit unlike any other city in the state. The Detroit Board of Education had been given broad powers and discretion and was able to determine the best interests of the city. In addition, the Board claimed that the segregation policy served the public good. Attorneys of the Board said, "There exists among a large majority of the white population of Detroit a strong prejudice or animosity against colored people, which is largely transmitted to the children in the schools, and this feeling would engender quarrels and contention if colored children were admitted to the white schools." The School Board argued that keeping peace between groups was a priority and segregated schools would help ensure this.

Joseph Workman's case was heard by the Michigan Supreme Court in May 1869.