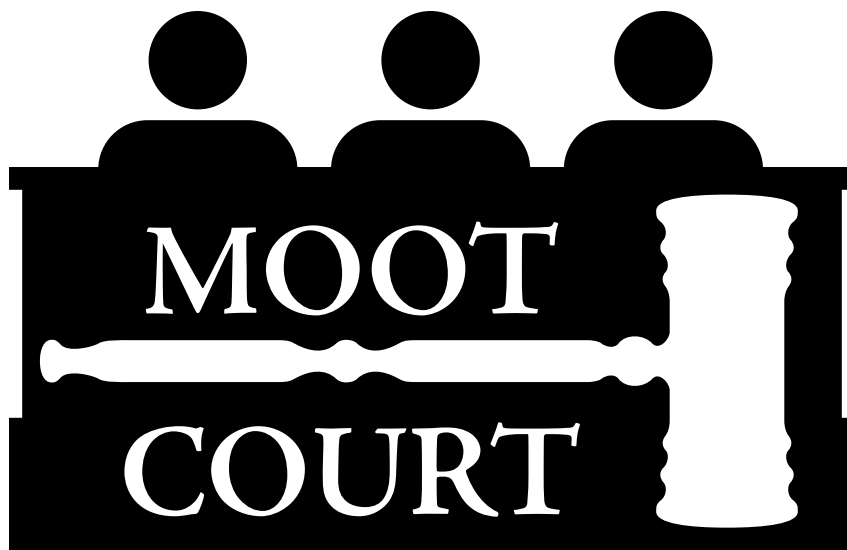


Artist Ron Leone

Teacher's Guide

Teacher materials only



Artist Ron Leone

Exploring the Appellate Process

The Teacher's Guide and the hand-out materials for *Moot Court – Exploring the Appellate Process* have been excerpted and adapted from a simulation on the judicial branch called *Puttin' on the Robes – Exploring the Legal Process*. This simulation is available through our nonprofit corporation, Center for Economic and Civic Education (CE²). For more information see our Web site <http://cesqd.org/Cts.html>. Materials developed by Carla Young Garrett, except for the Moot Court competition format and rules which were developed by Carla Young Garrett and Ron Leone. The U.S. Supreme Court case of *Roper vs Simmons* is a public record.

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Teacher Materials for Roper vs Simmons

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1 See Student Packet.

2 See Student Packet.

Overview of Moot Court

Getting There – The Appellate Courts

In the United States when one side loses or is unhappy with something about the outcome of their trial they have a right to appeal.¹ The lawyer representing the party or parties appealing (called the "appellant" or "petitioner") usually files a Notice of Intent to Appeal with the trial court. A transcript of the trial is prepared and sent to the appellate court.² The appellate lawyer files a brief (see sample and blank forms, Appendix A1–A2), laying out the legal³ errors made at trial and what law applies in this case. The lawyers representing the other party (called the "respondent" or "appellee") files a reply brief. Then there's oral argument (see Courtroom Dialog B1–C2), where both lawyers appear before a three-judge court to present their sides of the case (see the diagram "Setting Up an Appellate Courtroom," page 4). The appellate judges ask questions and then "take the case under submission" (reserve making a decision until a later date).

The judges have a conference to see where they stand on the cases they've heard. When two or three judges agree on the outcome (who wins), one of them volunteers to write the "opinion," which lays out not only the "holdings" (legal rulings) in the case, but also the legal rationale for their decision. A judge who agrees with the outcome but has other or different reasons, can write a "concurring" opinion. A judge who disagrees with the outcome can write a "dissenting" opinion. Your students replicate this process.

Materials Provided

Included in this packet:

- Teacher's Guide
- Case materials
- Sample appellate forms
- Sample and fill-in courtroom dialog
- Courtroom setup diagram
- Assessment and Evaluation materials

On our Web site (<http://cesqd.org/mootcourt2006.html>) there is also a file called "Brief Template" (MS Word format) which students can download and type their briefs in.

What Your Students Do

Student lawyers (in pairs or singly) read the *Roper vs Simmons* case materials. Attorneys for Roper (Petitioner) write the appellate brief; attorneys for Simmons (Respondent) write the reply brief. There's a "Brief Writing Organizer" which your student can use to help them (see pages A3–A5). You set the cases for oral argument, giving your students a few days to write their briefs. You can either have the losing side write an appellate brief and "file it" (hand it in to you), and then give the other side a day or so to respond, or you can have both sides write and file their briefs at the same time.

1 In a criminal case, only the defendant can appeal a conviction. The state cannot appeal an acquittal, as this would violate the Fifth Amendment's "double jeopardy" provision.

2 Appellate courts are required to hear all the appeals filed within their jurisdiction, whereas the USSC—and the state supreme courts—only hear the cases they want to.

3 Appeals deal only with legal issues, not factual ones. For example, the jury found Simmons guilty of murder and sentenced him to death. Factual testimony about how he committed the murder is not appealable. But the issue of whether this or that testimony should or should not have been admitted in evidence is a legal issue, and therefore subject to appeal.

The judges need to read the briefs and case materials and then write out some good, tough, probing questions to ask the lawyers. Then, during the hearings, the lawyers argue their cases and the judges **interrupt** and ask them questions. This is called “oral argument.” Lawyer can use the “Oral Argument Notemaker” to prepare for this hearing (see pages A6–A8).

After argument, each judge should write one opinion—majority (outcome, rule, and rationale), concurring (agreeing with the outcome but for different reasons), and/or dissenting (disagreeing with both the outcome and the reasoning).

How Court Opinions Are Organized and Used in Real Life

In the legal world, after judges write their opinions, they’re usually published in large books (often more than 1500 pages). The books are numbered consecutively, and contain opinions going back to the beginning of the court system. These opinions are then cited by later courts when those courts are in the process of deciding the same or a related issue. The earlier case opinions are precedent for the later ones. The books are organized as follows:

For the Federal District Court (which is the federal trial court) trial opinions can be found in volumes called “Federal Supplement,” which is currently in its third series so it’s called “F.Supp.3d.” Similarly, the circuit court opinions (the intermediate appellate level) are published in Federal Reporter 3rd (F.3d). The fictitious Twentieth Circuit (which will be hearing *Roper vs Simmons* for this activity) would be at this level. The USSC opinions are published in the volumes “U.S.” (United States).

For example, the case of *Atkins v. Virginia*, 536 U.S. 304 (2002) would be found in the 536th volume of USSC cases. The case, which was decided in 2002, begins on page 304. State court decisions also follow a similar numbering system.

When and How to Cite Case Law

Just as with any paper in which a source is quoted, a case citation **MUST** be included in any brief, opinion or oral argument. Your students should use the following rules:

- When writing a brief, the first time a case is referenced, use the full citation. For example, *Atkins v. Virginia*, 536 U.S. 304 (2002). Use italics for the case name and put the date in parenthesis.
- In oral argument, the first time a case is mentioned, use the full case name. For example, “as the U.S. Supreme Court in *Atkins vs Virginia* said ...”
- After the case has been cited once, just use a short case name like *Atkins*.

As the court in *Atkins* held “...”, or

As the court in the *Atkins* case held, “...”

Assessment and Evaluation

The Grade/Rubric⁴ Sheets (Appendix E1–E6) contain the following:

TEACHER GRADE

- Grades for the oral and written parts of the activity.

SUMMARY/ANALYSIS

- A student summary of the appeals process, using words, drawings, etc.
- A two-page questionnaire that evaluates the activity and student learning styles, and gives students a chance to critique their classmates.

SELF GRADE

- Student impressions and experiences while participating in this activity.
- Students grade themselves on their level of preparation and performance.

ORAL ARGUMENT, LISTENING AND SPEAKING RUBRICS

- Rubric for Briefs and Oral Argument
- Listening/Speaking Rubric for Speech or Oral Argument

Standards

American Government 12.2.1 and 12.5.1

High School Language Arts Standards

LA 9-10

Reading Comprehension: 2.3

Writing Applications: 2.3 (a) (b)(d) (f), 2.6 (a) (b) (c)

Listening and Speaking Strategies: 1.1, 1.3

Speaking Applications: 2.5 (a) (b) (d)

LA 11-12

Reading Comprehension: 2.4

Written and Oral Language Conventions: 1.1

Listening and Speaking Strategies: 1.6, 1.7, 1.8 (b) (c)

Speaking Applications: 2.5 (a) (b) (d)

⁴ I suggest you tell your students in advance what the assessment criteria will be.

Case Background and Outcome

At trial, Defendant Christopher Simmons was convicted of murder and sentenced to death by a Missouri jury. On appeal, a Missouri appellate court upheld both the conviction and the death sentence. The Missouri Supreme Court upheld the conviction but overturned the death sentence. The State of Missouri appealed to the U.S. Supreme Court (USSC). The USSC issued a writ of certiorari (agreed to hear the case).

The case was argued on October 13, 2004 and the USSC handed down its decision on March 1, 2005. The outcome was as follows, “The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. The judgment of the Missouri Supreme Court setting aside the sentence of death imposed upon Christopher Simmons is affirmed.”

The 5 to 4 “line-up” was as follows:

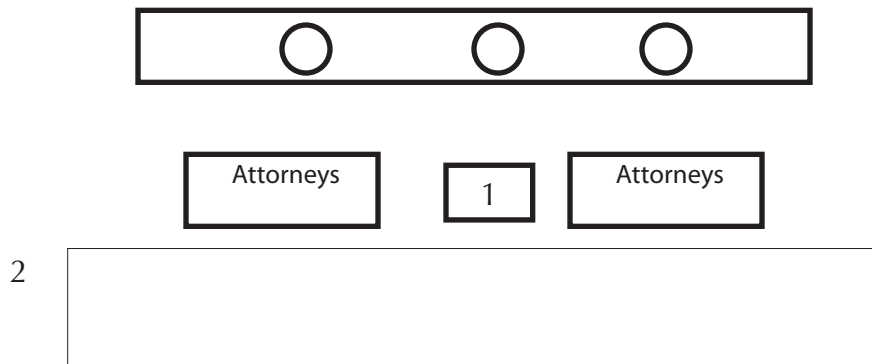
- Mr. Justice Kennedy wrote the majority opinion. Justices Souter and Breyer joined in that opinion.
- Justice Stevens wrote a concurring opinion which was joined by Justice Ginsburg.
- Justice Scalia wrote a dissenting opinion. Justices Thomas and the then Chief Justice Rehnquist joined in that dissent.
- Justice O’ Connor also wrote a dissenting opinion.

Justices write concurring opinions when they agreed with the outcome, but not the reasoning, and dissenting opinion when they disagree with both the outcome and the reasoning.

The issues that your students were asked to address were the same ones that the justices addressed in their opinions. The case materials are excerpts from the actual opinion. The justices words were left intact, except where necessary to editing purposes and to make the language more accessible for high school students.

Setting up an Appellate Courtroom

CA, Federal and other state courts of appeal (Three-Judge Courts)



1 Podium

2 You can have one or two courts going at the same time. Students sit in the area near their assigned “courtroom” waiting their turn to argue or judge.

Name _____

Overall Grade _____

Grade/Rubric Sheet for Moot Court the Appellate Process

PERFORMANCE AND WORK PRODUCT

Attorneys:

Oral Argument _____ /50

- Had well organized argument that was easy to follow
- Appeared knowledgeable on issues; was able to respond well to questions
- Showed poise, passion and persuasiveness
- Countered opponents arguments in rebuttal
- Cited cases (if required)

Written Brief _____ /50

- Showed clear reasoning
- Made all important arguments
- Was well written and edited
- Used proper format
- Cited cases to support arguments (if required)

Total _____ /100

Judges:

Bench Performance _____ /50

- Asked the lawyers good questions
- Had good judicial temperament (looked an acted like a judge)

Written Opinion _____ /50

- Showed clear reasoning
- Covered all important issues
- Was well written and edited
- Used proper format
- Cited cases to support arguments (if required)

Total _____ /100

SUMMARY AND ANALYSIS GRADE () _____

- A) Summary of Appellate Process
- B) Activity and Learning Evaluation
- C) Analysis of participant performance

SELF GRADE () _____

- Self-Assessment Sheet

Name _____

Due on _____

Self-Assessment for Moot Court Exploring the Appellate Process

YOUR JOURNAL

- 1 Describe your ideas on how appellate process works. Tell whether you think it is effective and fair and your reasons for your opinion.
- 2 Write about your personal experiences, impressions, and thoughts during and after participating in the appellate process.

SELF GRADE

Please grade yourself on a scale of 1 to 5 (with 5 being the best) for your **participation** in the “Moot Court – Exploring the Appellate Process,” focusing on how well you prepared for and performed your part.

I feel my grade for Moot Court should be _____ because....

Questionnaire for Moot Court Exploring the Appellate Process

- A. Summarize the appellate process. Use graphs, flowcharts, pictures, graphics, essays, music, dance, electronics media, or a combination of these. Be creative!
- B. Evaluate the activity and your learning style (Please attach sheet.)

The Activity

1. How valuable was the simulation in helping you understand the appeals process?
2. What worked well in the simulation? Why?
3. What didn't work well? Why?
4. What was your favorite part? Least favorite? Explain why.
5. What things made you most frustrated about oral arguments? The appeals process in general?
6. Did participating in this activity change any preconceived ideas you had about how the appeals process works? What were they and how did they change?
7. How would you improve this activity for next year?

Your Learning Style

Think about how you like to learn (reading, listening to lectures, participating in simulations, a combination of those) when you answer the following questions.

8. Did taking part in this activity give you a better overall idea of how the appeals process works than reading or listening to lectures would have. Why/why not?
9. In terms of remembering details and vocabulary (for example, what "brief" means), which form(s) of learning works best for you? Why?
10. Five years from now, do you think you'll remember more about how appeals work than you would have from just reading and lectures? Explain.
11. Is your understanding of the appeals process deeper and/or broader than it would have been had you learned about it through reading and lectures? Why/why not?
12. Was doing this activity more enjoyable than reading and lectures? Why/why not?
13. Did doing this activity make you want to come to class more? Why/why not?

C. Analyze the Participants

List the judges and the lawyers whose courtroom presentations you watched and/or participated in. Comment on each person's overall performance. Include specific examples. (Use the back if necessary.)

Name _____

Overall Grade _____

Rubric for Briefs and Oral Argument

Evaluate the presentation on a 1 to 5 scale (5 is the highest) using the following criteria:

Preparation and Organization of Main Argument

Introduces all attorneys using introduction form _____

Begins with overview of issues _____

Gives brief summary of facts _____

Makes request for relief (what you want the court to do) _____

Has clear main argument that shows good grasp of legal principles _____

Cites authorities (cases) _____

Answering questions

Shows ability to think on feet _____

Responds well to the judges (shows understanding of judges' questions) _____

Weaves questions into argument _____

Transitions smoothly between answers and prepared argument _____

Uses questions to his/her advantage (ie to point out weaknesses in opponent's position) _____

Performance and Persuasiveness

Makes eye contact _____

Has pleasant and audible tone of voice _____

Has good rate of speaking, pronunciation, grammar _____

Uses advocacy tone (strongly arguing one's side without being obnoxious) _____

Avoids reading as much as possible _____

Uses notes effectively (ie to get quotes exactly right) _____

Uses time effectively _____

Uses natural gestures, abstains from annoying mannerisms, has good posture _____

Courtroom Conduct

Has appropriate attire _____

Exhibits proper counsel table behavior (assists co-counsel, pays attention when not presenting) _____

Avoids inappropriate use of first person and slang _____

Is deferential towards the bench _____

Name of speaker _____

Listening/Speaking Rubric for Speech or Oral Argument

While listening to your classmates speak, evaluate the speeches on a 1 to 5 scale (5 is the highest) using the following criteria:

1. The speech/argument was well organized. _____
2. The speaker presented evidence (cited cases) to back up his/her points and quoted from the materials. _____
3. The arguments were logical and coherent. _____
4. The speech anticipated your concerns and addressed them. _____
5. The speaker used language that was correct, clear and appropriate. _____
6. The speaker did not use logical fallacies in the speech (e.g. false cause and effect, red herring, overgeneralization, bandwagon effect. _____
7. The speaker had good diction (pronounced words clearly and spoke loudly enough to be heard). _____
8. The speaker used effective and interesting language and had a speaking style that was enjoyable to listen to. _____
9. You were persuaded by what the speaker said and/or the manner in which he/she delivered the speech. _____