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High School Legal Curricula: Teaching Methods Unit

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TEACHING METHODS UNIT

The First, Fourth, Fifth and Sixth Amendments lend themselves to the case study method of instruction. Teachers can select cases in the areas of law they wish to cover, and, in reading a court case, the student can determine the law on the particular issue presented in the case.

The case study method may be approached in several different ways. An entire case may be assigned for reading and then discussed in class. A variation is to study only the facts of the case, hold a classroom discussion, and have the class reach a decision. Then the class decision may be compared to the actual court decision.

The analysis of a case consists of four main steps:

- (1) What are the significant facts?
- (2) What legal issue is presented?
- (3) What was the court's decision?
- (4) What was the court's rationale?

Two sample case analyses are given below.¹

GIDEON v. WAINRIGHT

Facts: What crime did Gideon commit?

Was it a serious crime?

Is Florida's law, limiting the right to court-appointed counsel only in capital offense cases, a sensible law?

Issue: What legal issue is involved?

Is the right to counsel a fundamental right that everyone should enjoy?

1. For the Gideon v. Wainright and Miranda v. Arizona decisions, see pp. 412 and 430.

Decision: What did the Court decide?

What legal rule emerges from this case?

Rationale: What reasons did the Court give for its decision?

Before this case, were all defendants equal before the law?
After *Gideon*, are they?

Do you agree with the results of this case? Why?

MIRANDA v. ARIZONA

Facts: Who was Ernesto Miranda?

What crime was he accused of committing?

Was his confession really voluntary? How was it obtained? Did he know his legal rights?

Issue: What legal issue is raised?

Why was the Sixth Amendment right to counsel included in the Bill of Rights?

Did Miranda need a lawyer?

Decision: What are the arguments favoring Miranda's position?

What are the arguments favoring Arizona's position?

Should the Supreme Court have reviewed the case?

What was the Court's decision?

Rationale: What reasons did the Court give for its decision?

Do you agree with the decision? What effect do you think this decision will have upon the rights of the individual? Upon the police? Will it hamper law enforcement?

As a practical point, the case study method presents one major problem. Each student should have a copy of the Court's decision. There are some high school-level case books available but they usually only summarize in a paragraph or two the Court's holding so that the student

does not get to sample actual Court decisions. The First, Fifth, and Sixth Amendments materials included in this book² were designed to strike a balance between most overly-abridged secondary school legal education materials and the long and often complex opinions of the Court.

If teachers are interested in teaching units other than those discussed here, they must find and reproduce the actual Court decisions. Locating the case is not difficult since any law library or large law office will have the official reports. But reproduction is often costly and requires advance planning.

MOCK TRIAL AND MOOT COURT MODELS

Purpose: The mock trial and moot court models presented in this section are designed to provide two flexible role playing situations. Both provide useful vehicles wherein the students, through active participation, can gain insight into the law and the judicial process.

The mock trial, a simulated court trial procedure with a jury, provides an interesting tool for exploring the Fourth, Fifth, and Sixth Amendment rights of the criminally accused. In a mock trial, fact determination is stressed and the law as precedent takes a secondary position.

A moot court is the reproduction of court appellate procedure that allows students to study precedent cases and to apply the legal rules found in those cases to the facts of the problem case. It provides the student an introduction to legal reasoning and research. A moot court

2. See *Cases for a Moot Court*, p. 331, and *Cases for a Moot Court or Mock trial*, p. 386.

also includes oral arguments.

Mock Trial Model

Lecture and Discussion of the Trial Process: Before students can participate in a mock trial, they should receive background instruction in the structure and mechanics of the trial process. Students should have a fairly clear picture of the judicial and nonjudicial processes that occur in bringing a case to trial. Discussions should cover search and seizure, arrest, post-arrest including the right to counsel, preliminary hearings, jury selection and a brief discussion of trial tactics. Many of the issues can be handled with the help of outside resources. The material on search and seizure, arrest, and post-arrest questioning is provided in this volume. Most district attorney's offices or local bar associations will provide speakers on criminal rights and the court system. They can be helpful in explaining preliminary hearings, jury selection, and trial tactics.

Finally, a court tour is an excellent way to give students an idea of the way in which a trial is conducted and a feeling for the various roles played by the participants.

Setting the Stage: It would be a good idea to base the mock trial on an actual case since it will provide a ready-made fact situation and an appellate court discussion of at least some of the legal issues involved in the mock trial. To find a case, it may be necessary to visit a law library.

There are many roles to be played in a mock trial,³ but some can be

3. A civil trial can be conducted in place of a criminal trial. Merely insert a tort, contract or real property problem.

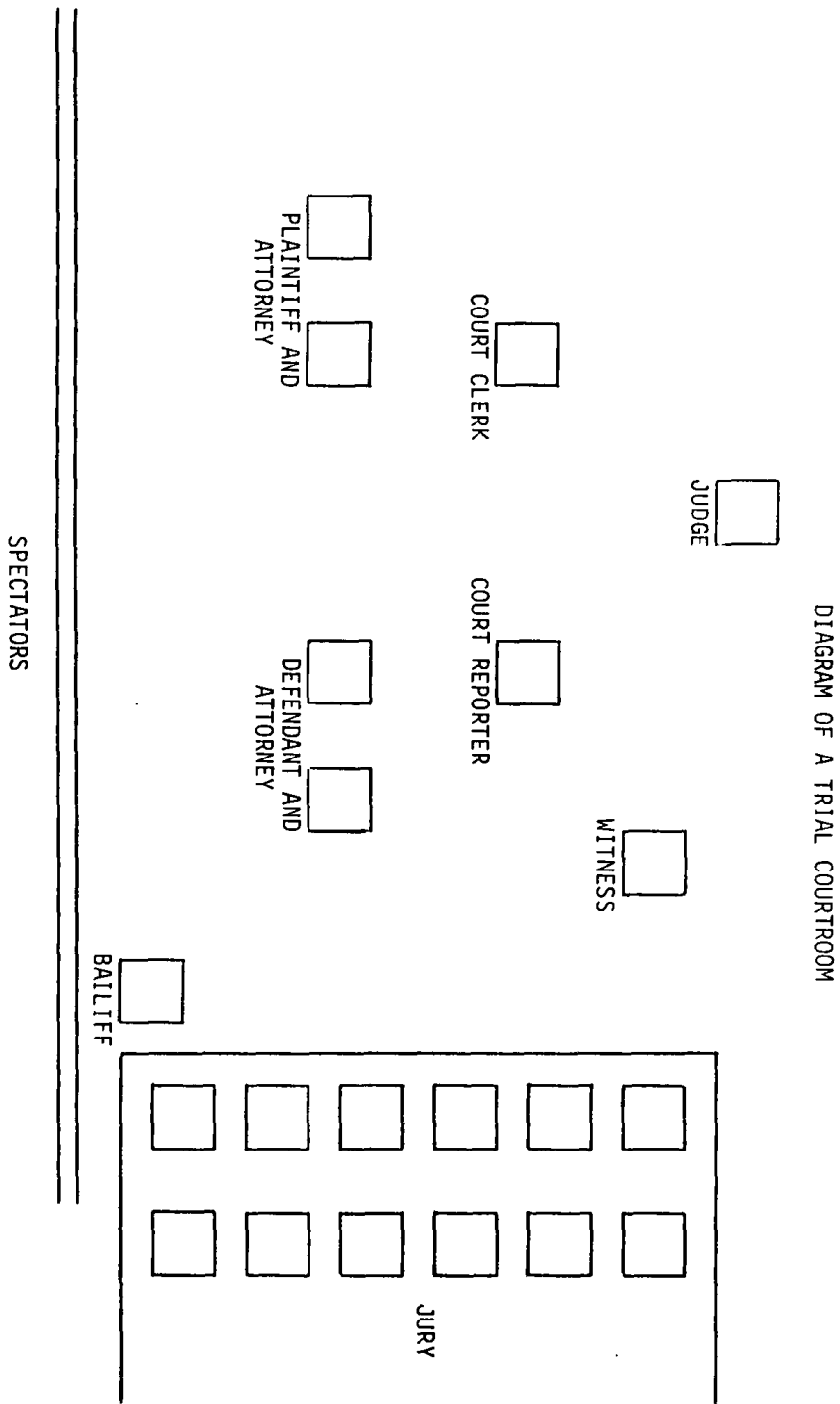
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eliminated if necessary to accommodate a small class. The roles and their functions are listed below:

- (1) Judge⁴--he keeps the trial moving in an orderly and dignified manner while making sure each side gets a fair opportunity to present its case;
- (2) Plaintiff's attorney (civil case) or prosecutor (criminal case)--he presents the evidence, primarily through questioning the witnesses, and attempts to persuade the jury to bring in a verdict for his client;
- (3) Defendant's attorney--his job is to show that the evidence is not sufficient to justify a verdict against his client by persuading the jury that the evidence as presented is untrustworthy, inconsistent or unreasonable;
- (4) Witnesses (this includes the plaintiff, or victim in a criminal case, the defendant, the plaintiff's witnesses, and the defendant's witnesses)--their job is to state the facts in response to attorneys' questions;
- (5) Jury--these people decide the case. Their job is to listen to the witnesses and, individually, determine whether or not the testimony makes sense. They must be aware of inconsistencies and mistakes, and, after all the evidence is in, they decide as a group through deliberation which party has the better case in a civil suit or if the prosecution has proved the defendant's guilt beyond a reasonable doubt in a criminal case;
- (6) Court clerk--he helps prepare the script of the trial and helps instruct the participants. On the day of the trial he prepares the courtroom (see diagram, next page), and, during the trial, he administers the oath to each witness;
- (7) Court reporter--he takes notes on the highlights of the trial and on the performances of the participants. These notes can be used in post-trial discussions;
- (8) Bailiff--he maintains order when requested to do so by the judge. He also protects the jury from any interference during their deliberation, and he carries any written messages from the jury to the judge.

4. The teacher or a strong member of the class should be selected as judge to facilitate the trial and to explain court rules. Law students also may function as judges.



Preparation for a Mock Trial: A device that can dramatically illustrate the problem of witnesses' reliability is the "rumor clinic." While the students are acting out a situation in the classroom, have six students wait outside the class. After the skit is completed, invite one student to return. Ask one student who witnessed the skit to report what he saw to this student. This student, in turn, will recount his version to the next student to return to the class, and so on, until all students have rejoined the class. The sixth student will usually present a highly distorted version of the skit.

After the "rumor clinic" has been conducted, the prosecution and defense teams should be given background material in the form of a written statement of the facts and a list of the general issues involved in the case. The students should already be familiar with the legal concepts involved from previous class discussion.

A minimum of two class periods should be set aside for the attorneys to prepare their cases for trial. Preparation should be done in consultation with the parties they are representing, e.g., defense attorneys with the defendant, and prosecution attorneys with the victim.

Trial Procedure: The actual trial procedure is as follows:

- (1) Plaintiff's opening statement--this brief statement to the jury introduces the case. The plaintiff's attorney summarizes the facts and states what he intends to prove. At this point, no discussion of law is permitted, nor is any reference to the opponent's case allowed. In a criminal case, this statement is made by the prosecution.
- (2) Defendant's opening statement--this statement summarizes the facts from the defendant's point of view and states the general theory of the defendant's case. In a criminal trial, this statement is made by the accused's attorney.

- (3) Examination of witnesses--this portion of the trial has two aspects: direct examination and cross-examination. The plaintiff's witnesses are examined first, followed by the witnesses for the defense. Each witness is sworn in and then questioned, first by the attorney representing the party for whom that witness was called, and then cross-examined by the opposing attorney. Cross-examination is optional and an attorney can decline when he has no questions. The purpose of cross-examination is to explain and clarify testimony given by the witness which may be misleading or to expose any inconsistencies or weaknesses in that testimony.

The attorney should attempt to present his witnesses in the most favorable light to convince the jury of the soundness of his case. The attorneys should also avoid "leading questions" that suggest the desired answers. In preparing for cross-examination, the attorneys should listen carefully and take notes on the testimony given. If the testimony is incomplete, the cross-examiner should get the witness to tell the rest. If the testimony does not make sense, the attorney should seek to clarify it. If the testimony is harmful to his client, the attorney should try to "discredit the witness" in some way. In order to do this, the attorney needs a thorough understanding of the facts of the case.

- (4) Plaintiff's closing argument (civil), prosecution's closing argument (criminal)--in this short statement to the jury, the plaintiff's attorney summarizes the favorable evidence and attempts to show how it leads to a verdict for his client. Here, the lawyer puts the puzzle together and tries to persuade the jury to accept his interpretation of the facts and the law. In a criminal trial, this initial closing argument is made by the prosecution.
- (5) Defendant's closing argument (civil), defense counsel's closing argument (criminal)--in this statement, the defendant's attorney sums up his case in a similar fashion as done by the plaintiff's attorney. In a criminal trial, the defense counsel's closing argument follows the prosecution's closing argument.
- (6) Plaintiff's rebuttal argument (civil)--this is an optional statement made by the plaintiff's attorney if he wishes to reply to the defendant's closing argument. In a criminal trial, there is no rebuttal.
- (7) Jury deliberation and verdict--in an actual trial, the jury deliberates in secret, but in a mock trial, the jury could reach its verdict in the presence of the entire class. The verdict in a criminal trial must be unanimous, but in a civil

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trial, a three-fourths majority is sufficient when unanimity is impossible. If the jury cannot reach a verdict, a mistrial is declared. Finally, if an actual case has been used as a model for the mock trial, the decision of the case should be read and compared.

An alternative to the jury deliberation and verdict is to poll the class as to who should win and why. The decision of the actual case can be distributed and compared with the class' results.

The amount of time necessary to present a mock trial will vary, depending primarily on the number of facts that must be introduced into evidence and the speed with which the student-attorneys examine the witnesses.

Moot Court Model

By conducting a moot court, it is possible for the class to study several related, or unrelated, legal concepts in depth. By having different groups within the class present and argue cases involving different legal concepts, every member of the class can be involved in the process.

The moot court takes less time to set up and is usually easier to conduct than a mock trial. An appellate court hearing is the process whereby several judges (at least three, and in the case of the United States Supreme Court, nine), after reading the written briefs from each attorney, listen to oral arguments presented by the opposing attorneys. The appellate court serves as a review body over the law applied by the lower court. In most cases, the appellate or review court will only consider whether the trial court applied the correct interpretation of the law in reaching its decision. It will rarely consider the factual

circumstances giving rise to the dispute and will accept the trial court's findings of facts.

In an appellate hearing, the attorneys for each side present their arguments to the appellate court judges in a written document called a brief. Frequently, the attorneys are invited to appear before the court to explain and defend the arguments set forth in their written briefs and to answer any questions the judges have.

Teacher Preparation and Class Discussion: Once the legal concepts to be explored have been selected,⁵ visit a law library and find a fact situation on which to base the case.⁶ Perhaps the simplest method of operating a moot court is to take a fact situation from a United States Supreme Court case. An actual Supreme Court case will provide a concise factual statement for presentation to the class. It will also provide a thorough discussion of the legal issues involved in the case. The Court's discussion enables the teacher to guide the student-attorneys in preparing their appellate arguments and can be compared to the decision reached by the class.

After locating a case for the fact situation, select at least two

5. If only one concept is being explored, the class can be divided in half. However, if several legal concepts are being explored, divide the class into several groups of opposing parties and give each group a case which illustrates one or two basic legal concepts. For example, one group could argue a case dealing with restrictions on "pure speech" while another could deal with a case concerning "time, place and manner" restrictions on speech. In this way, the entire class is given the chance to participate as either co-counsel or judge, and each group can learn by listening to the others' presentations.

6. See the First Amendment case materials, p. 331, and Fifth and Sixth Amendment case materials, p. 386.

other cases that can serve as precedents upon which the students can base their arguments. For example, if the moot court is to deal with limitations placed on freedom of speech, the First Amendment cases reproduced in this book, *Dennis v. United States*, 341 U.S. 494 (1951), *Feiner v. New York*, 340 U.S. 315 (1951), and *Brandenburg v. Ohio*, 395 U.S. 444 (1969),⁷ can be used. *Feiner* and *Dennis* deal with permissible restrictions on "pure speech" and are good precedents for the more recent Supreme Court decision in *Brandenburg*, which can provide the fact situation for the moot court.

After the fact situation and appropriate precedent cases have been selected, conduct a general discussion of the legal concepts to be dealt with in the moot court. Using the free speech example, a lecture and discussion on the history and purpose of the First Amendment should be given.⁸ This discussion should be followed by one on the precedent cases and the rules that emerge from them. From these discussions, the general rules and concepts involved should become clear to the class so that students can prepare written briefs and oral arguments applying the precedent cases to the moot court fact situation. An ideal way to present the precedent cases is to give each student an edited copy of the actual court decisions. If this is not possible, short typed summaries are adequate.

7. See pp. 331-385. The numbers following the cases give the volume and page numbers of the official *United States Reports*. For example, the *Brandenburg v. Ohio* case opinion can be found in volume 395 of the *United States Reports* at page 444.

8. See *First Amendment--Freedom of Speech*, pp. 171-185.

Selection of Attorneys and Judges: Once the legal concepts have been discussed, students should be assigned to the various roles. These include:

- (1) Attorney(s) for the petitioner (the party appealing the lower court's decision);
- (2) Attorney(s) for the respondent (the party contesting the petitioner's appeal); and
- (3) Judges (there may be from three to nine judges, but an odd number should be chosen).

The selection of the judges is a crucial part of the moot court proceeding because they are responsible not only for questioning the attorney's arguments, but also for rendering a written opinion at the conclusion of the case. One method of selection that has proven effective is to have the class nominate the judges. After the nomination, each candidate should be questioned about his qualifications, and the requisite number of judges, elected. Another method is to have a smaller number of student-attorneys with the rest of the class functioning as judges and writing opinions on the case.

The judges have three duties:

- (1) They must familiarize themselves with the facts of the court case so that they can question attorneys during the oral arguments;
- (2) They must prepare a written opinion based on the precedent cases and the oral and written arguments of the attorneys; and
- (3) They must announce their decision to the class.

Appellate courts sometimes overrule precedent if the rule of the precedent case is not clear or if it is felt to be wrong, unjust, or that the prior decision did not consider all the relevant facts involved in

the precedent case.

Preparation for the Moot Court: Before the oral arguments are presented, the student-attorneys should prepare a written brief setting forth their arguments. The judges should have an opportunity to read the cases before presentation of the oral arguments. Other members of the class should receive copies of the brief so that they can become familiar with the legal issues. The brief should contain (1) a statement of the main facts in the case and (2) written arguments applying the law from precedent cases to the facts of the moot court case.

Oral Argument: The attorneys for the petitioner (the person appealing the lower court's decision) present their case first. Each side should be given a specific amount of time in which to present their arguments. It is suggested that each member of the attorney team present one facet of their team's argument.

During the oral arguments, the judges may interrupt at any time to ask questions or to direct the attorneys to specific issues the judge would like to hear discussed. It will probably be impossible to hear both sides in one class period.

The Written Opinions and Announcement of the Court Decision: In the opinion, the judges should (1) state the important facts of the case; (2) discuss fully the legal concepts that apply to the case; and (3) state the court's decision.

The decision reached by the majority of judges is called a "majority decision" and becomes the law. Those judges who have decided the case differently should submit a "minority opinion" stating the reasons for

their disagreement with the majority.⁹

Comparison of the Opinions of the Supreme Court and the Student-Judges:

The actual court opinion should be distributed to the class with the opinions from the moot court judges. The two should be compared.

COMMUNITY RESOURCES: ATTORNEY, POLICE AND COURT VISITS

A visit to the classroom by an attorney, law student, or police officer is another way to teach legal subjects. They have firsthand knowledge, and their experiences can be used to dramatize the law in action. The arrangements for a visit by an attorney or law student can be made through a state bar association, a local bar association, the district attorney's office, or a nearby law school. A visit by a police officer can be arranged by contacting the police community relations officer or the offices of police commissioner or chief of police. Similarly, visits to a local police station or jailhouse and patrol car rides by students with on-duty police officers can be arranged with the cooperation of your local police department.

Ordinarily, no special arrangements need to be made for a visit to a local municipal courthouse. Courtrooms are generally open to the public, and usually the only limitation is seating space. It is advisable to contact the court's jury commissioner or calendar clerk prior to the scheduled visit to learn of any regulations or restrictions regarding

9. Instead of a majority and minority opinion, the student-judges can write separate opinions in which each states his own decision.

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group visits. Also, these people can help the teacher pick a suitable trial to attend (i.e., one that would be interesting for the students and pertinent to their class studies).

Law is a difficult subject to learn and even more difficult to teach. It consists of complex abstract concepts and theories. For this reason, it is best to keep legal instruction as fact-oriented as possible. The teaching methods suggested above are designed to accomplish this. They provide students with situations that aid in conceptualizing legal theory. The suggested teaching methods are not exhaustive; the teacher is encouraged to develop other teaching techniques.

