

Guide to the Supreme Court

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INTRODUCTION

Harvard Model Congress Asia's Supreme Court program is a simulation of the nation's highest level of judicial decision-making. As part of the Supreme Court program, you will serve both as counsel and judge, arguing legal principles and ruling on **constitutional** matters.

In the **federal** court system, many cases begin with a trial in the federal district court. The decisions of federal district courts can be **appealed** to federal courts of appeal and from there to the US Supreme Court. The Supreme Court then decides whether or not to hear these appeals. At HMCA, you will work with two cases that have been decided by a district court, appealed to courts of appeal, and appealed again to the Supreme Court, which has agreed to hear and rule on those appeals.

Within each case, you will find the decision of the court of appeals. These rulings will outline the facts of each case and describe the legal issues at stake. Before the conference, you will submit a list of questions for each case—two in all. At the conference, you alternately will act as counsel for the petitioner, as counsel for the respondent, and as an associate justice. As counsel, you will give oral arguments and answer justices' questions. As associate justices, you will hear oral arguments and ask questions of counsel.

THE SUPREME COURT IN REAL LIFE

The Supreme Court was created by the **Constitution** in Article III, Section I. The Court was organized by an act of Congress — the Judiciary Act of September 24, 1789. The Court dictates the supreme law of the land. Its jurisdiction extends to all cases dealing with the Constitution, the laws of the United States, treaties, all ambassadors and public officials, conflicts between citizens of different states, conflicts between the states, between a state and citizens of another state, and land disputes. Supreme Court decisions are the highest authority on any legal matter.

The Supreme Court has one chief justice and eight associate justices, all of whom are appointed by the president, confirmed by a two-thirds vote of the Senate, and who serve a life term. The Supreme Court has the power of judicial review, which allows it to consider the constitutionality of laws passed by Congress. It may strike down laws it finds



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Constitutional—*having to do with the Constitution.*

Federal—*relating to the national government rather than an individual state.*

Appeal—*if a person has lost a case during the first trial and disagrees with the ruling, he can appeal it, and a higher court will review the case.*

Constitution—*the document that establishes the government and sets up how it will run in the future. All laws must conform to the constitution. The Supreme Court interprets the constitution to*



unconstitutional. The Supreme Court has no real powers of enforcement: it relies on Congress and the President to enforce its decisions. When a case is decided, justices draw up opinions about the case, creating new precedent for future cases dealing with similar issues.

The Supreme Court, unlike other committees or bodies that legislate issues, deals exclusively with individual cases. Although it may seem obvious, the Supreme Court can only address issues if they are brought before its justices in the form of an actual case. Thus the Court might accept a case challenging a law passed by Congress about patients' rights; the Court chooses whether to hear that case. However, the Court cannot independently declare a law unconstitutional without a case challenging that law.

The Supreme Court resolves legal issues — controversies over laws, civil rights disputes, even the legal claims surrounding the 2000 presidential election. The justices work together to listen to the issues raised by lawyers who present briefs — one for the **petitioner** and one for the **respondent**. Ideologies about legal issues are the driving forces behind the Court's opinions.

DELEGATE PREPARATION

Before attending the conference, delegates should read the briefings extremely closely. Unlike factual House or Senate briefings, the Supreme Court briefing contains judicial opinions from lower appellate courts. These opinions will guide the decisions and arguments that the delegates, as Supreme Court justices and lawyers, will make.

Supreme Court opinions refer extensively to precedent, or previously decided Supreme Court cases that set up a framework for understanding future cases. The Supreme Court rests on a principle of “stare decisis”—Latin for “let the decision stand.” This phrase means that the Supreme Court tries not to veer too dramatically from prior decisions, and tries to create consistency through its historical case law. Because precedent has such important influence on Supreme Court decisions, delegates should have a good understanding of the key cases that will affect the outcome of the cases tried here at HMCA.

Delegates should have written lists of questions for each of the cases, these are the questions they might start asking when taking the role of associate justice. The questions should expose the weaknesses in the arguments. They should refer to some of the same cases outlined in the opinions. Delegates will not need to do extensive research beyond the scope of the cases cited in the judicial opinions. They need only be sure they understand the materials provided. The better their understanding, the easier delegates will find their oral arguments at the conference.

Unconstitutional—*a law or policy violates some portion of the constitution and is therefore rendered invalid by the Supreme Court.*

Petitioner—*the person who files for an appeal. Since they are appealing, this means they lost at trial.*

Respondent—*those who do not file the appeal but are still part of the case. Since they did not appeal, they won at trial.*



WRITING BRIEFS

Overview

Writing out your arguments, in the form of a brief might help you as counsel. Your briefs can provide you with an important foundation for your oral arguments. You will not know which role you will play for each case until the conference, so you need to study each case be prepared to present both sides. To be clear, you are not required to submit a written brief. We ask, however, that you come prepared. Writing a brief is one way to prepare yourself to argue effectively before the Court. But there are others. You might feel comfortable merely outlining your arguments. Whatever your method of preparation, remember, if you are thoroughly prepared, you will have more fun at the conference and feel more successful as an attorney and a justice.

Briefs are systematic statements of your arguments to the Court. Briefs begin with accurate, precise facts. They assert strong general principles and develop clear, focused arguments. They provide appropriate, relevant legal authorities. Above all, briefs persuade.

Your job is to put the case in terms that favor your client, to show the issues supporting your side. Characterize every fact, every argument, and every precedent with one goal in mind — bolstering your case.

When you write the petitioner’s brief, you are writing for the side that lost in the court of appeals. You are petitioning the Supreme Court to reverse the appeals court ruling. When you write the respondent’s brief, you are writing for the party that won the appeal. You are asking the Court to affirm the appeals court ruling.

Use language economically and precisely and try to avoid convoluted language that sounds “lawyerly.” Such language can often complicate the issue without adding meaning to the argument.

Statement of Legal Questions

Begin your brief by stating each legal question that the Supreme Court is called on to decide. Each question should be stated in one sentence and correspond to a separate, numbered paragraph in the body of your argument. This is your opening shot at convincing the Court: state the questions accurately but leave no doubt that these questions should be decided in your favor. Introduce your arguments and dazzle the Court with your analysis.

Statement of Facts

By the time a case is presented to the US Supreme Court, the facts are generally not disputed. Recite the facts briefly and succinctly. Use accurate facts that do not blatantly distort the situation, but characterize those facts in a way that persuades the Court of the justice of your cause. Emphasize striking facts that favor your side. The story you tell here will be the basis for your arguments.

At some point in your statement of facts, you will need to give the procedural history of the case, which might read: “Party A filed this discrimination action against Party B. The District Court entered summary judgment for Party A. Party B appealed. The Court of Appeals reversed and ordered that summary judgment be entered for Party B. Party A filed the appeal now before this Court.”

Arguments

Taking each legal principle in turn, offer solid, well-structured arguments that support your portrayal of the case. Do not dilute the quality of your strong arguments by adding weak ones just for the sake of making more arguments. Support every argument with statutes and case law. Explain why the precedents you cite are relevant and why they favor your side.

Feel free to use ideas you find in the court of appeals decision but do not restrict yourself to these arguments. Read the Supreme Court decisions cited in the court of appeals opinions and develop your own analysis of what the decisions say and how they apply to the cases at hand. Often there will be **concurring opinions** that the appeals court decisions do not cite and that may be more relevant for your argument. **Dissenting opinions** may help you to discredit the other side’s use of certain precedents. If you have access to the Lexis service or to a law library, you can find Supreme Court decisions either way. But Supreme Court decisions are also easily available—and for free—on the Internet at www.findlaw.com. This site includes a feature called a “citor” that allows you to look up all subsequent Supreme Court opinions that cite a particular decision. The citor helps you see how the Court itself has used the precedents referred to in the court of appeals opinion.

Concurring Opinion—*if a justice agrees with a ruling but not the reasoning for the ruling, he may write a concurring opinion to express where his views differ.*

Dissenting opinion—*if a justice disagrees with the court’s ruling he may write a dissenting opinion to express his disagreement.*

Conclusion

Although it comes at the end of your argument, which may be complex and detailed, the conclusion is no time to be drab. Be concise, convincing, and creative. Finally, conclude your brief with the phrase “respectfully submitted” and date it.



ORAL ARGUMENTS

During the simulation, you will present oral arguments to the Court. This is your opportunity to shine, to highlight what you think are the most important arguments, and to generally behave in a “lawyerly” manner. Therefore, you should not use this time to read out a prepared statement; instead use it to explain key points to the court. While the briefs can be important to establishing your legal reasoning fully, the oral arguments are your chance to make profound impressions on the justices. Be prepared not only to argue your case coherently, but also to respond articulately to justices’ inquiries. Remember, you will not have much time, so do not waste time on unnecessary details or less important points. Be sure to prepare thoroughly and answer the justices’ questions clearly.

You will be assigned two partners during each round of the Supreme Court, with whom you will present your case. If you and your partners represent the petitioner you will go first. The Chief justice will tell you and your partners to begin your arguments. All of you will stand up. You should determine in advance how to divide up your time. You and both of your partners should speak. You might split your time equally, or one of you might answer all questions, or one of you might handle your rebuttal, if any. No person should speak for fewer than five minutes. Regardless, whoever speaks first should introduce your side to the Court by saying:

May it please the Court, my name is _____; my partners’ names are _____. We represent the petitioner (or respondent) in this action _____ (give the name of the case). We would like to reserve _____ minutes for rebuttal.

Note that counsel for the petitioner has the right to reserve rebuttal time. This allows you to respond to the arguments of the respondent. Counsel for the respondent does not have this right. You will present a short statement of the facts and then explain and justify your legal arguments to the justices.

Periodically, the justices will interrupt you with a question. Stop, listen to the question, answer the question directly and immediately, and move on. Do not insult the justices by passing over or evading their questions.

You will have a total of twenty minutes, including rebuttal time. Note that the twenty minutes does include the time taken by the justices to ask questions, as well as the time taken by counsel to answer questions. After your time has expired, you will sit down. Counsel for the respondent will stand up and argue for their side for twenty minutes. If



you reserved time for rebuttal, you will then stand up and respond to the arguments made by counsel for the respondent. After, the session ends and the lawyers are temporarily excused from the room while the justices decide the case.

Oral Argument as Associate Justice

As an associate justice, you should confront counsel about the arguments they make. Be assertive in asking questions. Interrupt counsel and probe the logic of their arguments. Ask about the relevance of precedents. Create hypothetical situations where you test the bounds of attorneys' arguments by asking how they would respond if certain facts of the case were slightly different.

In order to be an effective associate justice, you will need to be able to ask good questions. And in order to ask good questions, you must understand the legal questions and facts of each case. To help you develop an understanding of the cases, and to prepare you for your roles in Supreme Court, you must submit to us a list of ten questions for each case before the conference. These are questions you will use as an associate justice. We will provide you with feedback, via email, on your lists of questions before the conference so that you can come better prepared.

After arguments, you and the other associate justices will talk about the case with the chief justice. You will vote on the case and assign justices to write the **majority opinion**. If you agree with the majority opinion but want to qualify your support or explain your reasoning separately, you can write a concurring opinion instead of contributing to the majority opinion. If you disagree with the majority decision, you can write a dissenting opinion that is contrary to the logic and conclusion reached by the majority.

Opinions explain justices' reasoning. In opinions, justices assess the arguments given in briefs and in oral argument. Just as attorneys do, justices reason through legal principles and cite precedents to support their decisions. The chief justices know the cases thoroughly and can answer your questions as you write opinions.

Majority opinion—*the decision that represents the opinion of more than 50% of the justices. Also called the "opinion of the court."*

After the Arguments

The lawyers are excused after oral arguments, but this does not mean the case is over. While oral arguments and spirited debate may be the most "glamorous" aspects of the Supreme Court, they are by no means the only parts that count. Historic precedents can only be set when justices sit down together and write their opinions, and while it may sometimes be difficult to get everyone (or even half of the justices) to agree, this is one of the most important parts of the judicial process.



Opinions of the Court

Once the lawyers have finished, they will be excused, and the justices will retire to their chambers. They will then decide the case and write up majority and dissenting opinions. The justices will do the actual writing, assisted by the chief justice. Remember that when you are writing your decisions, you should base your arguments on legal issues, not personal convictions or who gave the most convincing argument. Lawyers can be very persuasive: after all, their job is to make the facts appear to be in their favor. Justices, however, should remain somewhat aloof from courtroom drama. Remember, you should embody of impartiality.

CITATION INFORMATION FOR RESEARCH

There are standard formats for citing statutes and case law that ensure that everyone will be able to find the authorities to which you refer. This information should be used to help you identify rulings you may encounter during research.

Federal Statutes

Federal laws are published in the United States Code. The Code organizes laws into titles and sections. For example, 42 U.S.C. § 1983 refers to title 42, Section 1983 of the United States Code. This statute reads in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage...subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution...shall be liable to the party injured in an action at law....

A particular phrase might be quoted, for instance:

“[A]ny citizen of the United States” is protected. 42 U.S.C. § 1983.

Decisions of the Supreme Court

Supreme Court decisions are collected in volumes that are published by the federal government and are cited by their location in these volumes. Citations may come after the sentence or be set off by commas within a sentence. For instance:



The Court has “departed from the rule...that all government aid that directly assists the education function of religious schools is invalid.” *Agotini v. Felton*, 521 U.S. 203, 225 (1997).

This citation refers to the Court’s decision in *Agotini v. Felton*, which was decided in 1997 and published in volume 521. The decision begins on page 203 of that volume and the quotation is taken from page 225.

Decisions of the US Courts of Appeals

Federal appeals court decisions are published in the Federal Reporter. A sample citation reads:

- *Kohl v. Woodhaven Learning Center*, 865 F. 2d 930 (8th Cir. 1989)

This citation indicates that the decision was issued by the Eighth Circuit of the US Court of Appeals in 1989. The decision can be found in volume 865 or the second series of the reporter on page 930.

Decisions of the US District Court

District court rulings are published in the Federal Supplement of the US District Court Reporter. They may be cited as follows:

- *Thomas v. Atascadero Unified School District*, 662 F. Supp. 376 (C.D. Cal. 1989).

This citation indicates a case decided by the District Court for the Central District of California in 1989. The case begins on page 376 of volume 662.

SKILLS TO DEVELOP

Students have often asked about what types of skills will serve them well before the Supreme Court. After some long thinking about the characteristics of successful lawyers, the chief justices suggest working on the following criteria:

- Originality of and support for arguments
- Command and comprehension of legal issues exhibited throughout oral arguments.
- Ability to express thoughts clearly.



- Ability to think, speak, and respond extemporaneously to justices' inquiries.
- Ability to formulate questions which raise critical legal issues and challenge counsel to demonstrate their understanding of constitutional law.
- Active participation in deliberations

CONCLUSION

Do not be alarmed by the complexity of these proceedings. While it may seem like a needlessly complicated system of arguments and opinions, our goal is to simulate the actual Court. Unfortunately, the real world is rather complicated. If you simply continue to think clearly throughout your preparations and presentations, you will do well.