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JUDICIAL BRANCH: SUPREME COURT

Please print this packet and use the resources to prepare Judicial Delegates for the Model Government Conference.

Judicial delegates will defend a position or decision in the Supreme Court by interpreting the Constitution and creating a persuasive case.

THINGS JUDICIAL DELEGATES WILL ACCOMPLISH

- Compose the required Brief document summarizing the arguments for the assigned case
- Meet all deadlines - Brief due Jan 19, 2024
    - Brief submission link: https://bit.ly/wiyiqbrief
- Be aware and informed of the responsibilities and duties of Court officials and knowledgeable of the facts involved in the assigned case
- Study your case, apply the existing law and prepare a court document
- Prepare an oral argument
- Attend Pre-Gov
- Present your oral argument and act as a justice at Model Gov
- Adhere to the Code of Conduct

Along the way, you will also have the chance to become a better speaker. And as an added benefit, you may even find out a little more about what is going on in the world around you!

Your whole position revolves around studying case law, discussing them, reviewing them, applying them to your case fact pattern, and writing arguments based on them.

HOW THE COURTS WORK

The role of the courts is to interpret the law. Sounds easy, right? WRONG! The law can be very complicated depending on the situation at hand. The way the judicial system operates and how a court hearing runs is different from what you see on TV; you will learn this through your participation. Here is a very basic description of how the courts operate in the United States.

THE TYPES OF COURTS:

In the United States, the court system is divided into two parts:

1. **TRIAL COURTS**
   These courts handle serious criminal cases and divorce cases. They can also handle civil arguments, such as trying to figure out who is responsible for an auto accident.

2. APPELLATE COURTS

The Supreme Court is where people go when they don't agree with the decision of the lower court.

The Supreme Court doesn't hear many cases—the cases they hear usually involve important issues of the law and that's why you hear about them on the news. When the Supreme Court hears a case, it will usually change the way a law is interpreted; this is called *setting precedent* and is considered Constitutional Law.

FEDERAL VS STATE COURTS:

The court system in the United States is broken into two basic systems: state courts and federal courts. State courts are established by the laws of each state and have broad jurisdiction. These courts can hear cases on everything ranging from criminal matters to family law disputes. In contrast, federal courts are established under the U.S. Constitution and have a much narrower jurisdiction. Federal courts generally hear cases that involve the following:

- The United States as a party to the case
- An allegation of a violation of the United States Constitution or a federal law
- Bankruptcy, copyright, patent and maritime laws
- Parties in different states when the amount in controversy is over $75,000

SUPREME COURT AT YIG

As a participant in the court program, you will participate as an attorney appearing before the Supreme Court AND you will serve as a Supreme Court Justice.

As an **ATTORNEY**, you will work with a partner to write a Brief for the Supreme Court. A brief is simply a written argument and is similar to a research paper summarizing your stance on the issues of the case.

You will also prepare oral arguments to deliver before court. As a **JUSTICE**, you will serve on a panel of Justices that will decide the case. Each Justice will be responsible for reading the parties' briefs, preparing for and participating in oral arguments, deliberating and helping to issue a final written opinion and decision.

The Wisconsin Supreme Court

Justice 6 | Justice 4 | Justice 2 | Chief Justice | Justice 3 | Justice 5 | Justice 7

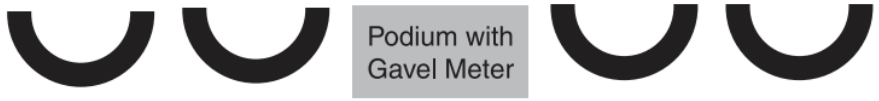
During oral argument of the Wisconsin Supreme Court, the justices often ask questions of the attorneys presenting their cases.
The Supreme Court hears cases that relate to the development or clarification of a law or that have statewide legal significance.
The Supreme Court is not an error-correcting court.

THE BENCH

THE MARSHAL'S DESK
The marshal calls the Court to order, monitors the gavel meter, and maintains the security and decorum of the proceeding.

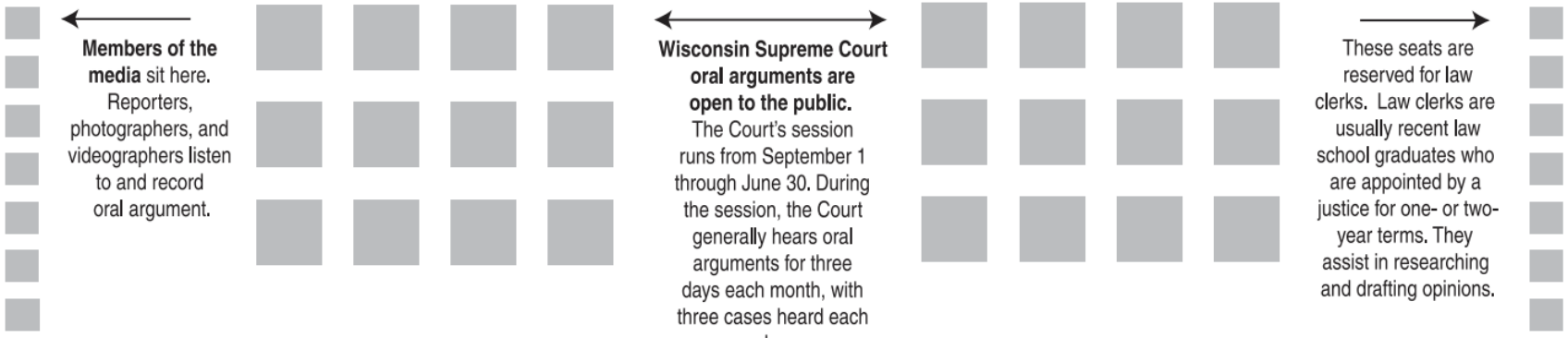
THE ATTORNEY'S TABLE

One or two attorneys for each side of the case sit at the attorneys' table.
Each side has 30 minutes to present its arguments.



Podium with Gavel Meter

The Gavel Meter tells the attorneys how much time they have to present their arguments. First a green light appears telling the attorney to begin. A yellow light appears when five minutes remain, and a red light appears telling the attorney to stop his/her presentation.



Members of the media sit here. Reporters, photographers, and videographers listen to and record oral argument.

Wisconsin Supreme Court oral arguments are open to the public. The Court's session runs from September 1 through June 30. During the session, the Court generally hears oral arguments for three days each month, with three cases heard each day.

These seats are reserved for law clerks. Law clerks are usually recent law school graduates who are appointed by a justice for one- or two-year terms. They assist in researching and drafting opinions.

Created by the Wisconsin Supreme Court, Sept. 2020
(updated December 2020)

Wisconsin Supreme Court: From Petition to Opinion

The Court holds a **petition conference** to review requests from parties for Supreme Court review of a case. For each case accepted, a "reporting justice" is assigned.

At the **pre-argument conference** the reporting justices for that day's cases brief the other members of the Court on the details and important issues of the cases scheduled to be heard that day.

Attorneys present their cases at **oral argument**. Typically, three cases are heard in one day, each lasting one hour.

The Court holds a post-argument **decision conference** where the reporting justices present their analysis of the cases heard that day and the justices cast tentative votes on the cases. For each case, a justice is assigned by random lot to draft the opinion.

At a later date, the justices meet in an **opinion conference** to discuss and vote on draft opinions. At this point, justices announce their intentions to write concurring or dissenting opinions.

The Clerk of the Supreme Court Office **mandates an opinion** (making the Court's decision available to the parties and public) when all members of the Court have voted to release it. Concurring and dissenting opinions are released at the same time.

The Court's official **opinion is published** in *Callaghan's Wisconsin Reports* as the law of the state.

The Court will **reconsider an opinion** in very rare cases when a party can show that the Court has overlooked controlling legal precedent, important policy considerations, or a significant fact appearing in the record.

ACTIVITY: MOOT COURT

A moot court is a simulation of an appellate court argument and decision. This moot court case is based on a 1985 Wisconsin Supreme Court case in which the issue was a police search of a person's garbage without a warrant. Other U.S. or Wisconsin Supreme Court cases that raise constitutional issues can be used in this activity.

Delegates will study the facts of this case, as well as the governing constitutional provisions and previous court decisions in similar cases. Delegates will then serve as Wisconsin Supreme Court justices, attorneys for the petitioner (David Stevens, whose garbage was searched by the police), or attorneys for the respondent (State of Wisconsin).

Structure for Moot Court

Read the facts of the case. Complete the Case Analysis in small groups and then discuss. Select an odd number of students to be justices. Divide the remaining students into two teams. One team will represent the petitioner. The other team will represent the respondent.

- The chief justice officially opens the court session and calls the case.
- Attorneys for David Stevens have five minutes to present their formal arguments. The justices then have three minutes to ask questions of Stevens' counsel.
- Attorneys for the State of Wisconsin have five minutes to present their formal arguments. The justices then have three minutes to question the State's attorney.
- The justices retire to deliberate. Each justice must make a decision about how she/he will vote on the case and why.
- The justices come back to the courtroom and announce their decision and give a brief explanation. If there is a dissent from the majority opinion, that is also announced and explained.
- After the delegates share their opinion, the leader will explain how the case was actually decided by the Wisconsin Supreme Court.

Facts of the Case: State v. Stevens (1985)

In 1979, Deputy Sheriff David Lushewitz of the Drug Enforcement Unit of the Milwaukee County Sheriff's Office was in charge of investigating the alleged drug dealing activities of David Stevens at his residence in River Hills, Milwaukee County. Deputy Lushewitz was informed by the River Hills Department of Public Works that garbage at the Stevens' residence was normally picked up every second Friday morning.

The deputy then met with the garbage collector and told him to go about his normal routine of picking up garbage at the Stevens' house. After he picked up Stevens' garbage, he was to turn it over to Lushewitz. When the garbage collector arrived at Stevens' house he found that the garbage had not been put outside of the garage where it was normally collected. The garage door was locked. The collector then went to the door of the house, and knocked. When Stevens came to the door, the collector asked if he could get the garbage. Stevens then opened the garage door, allowing the collector access to the

garbage. Stevens testified that he opened the garage door so the collector could do "what he wanted to do."

The garbage collector picked up four plastic garbage bags and loaded them into the truck. After leaving Stevens' property, the collector gave the garbage to Lushewitz who searched the bags.

The same procedure was repeated two weeks later during the next regularly scheduled pickup.

Later that same day, a circuit judge issued a search warrant for the search of Stevens' River Hills residence based in part on the evidence turned up in the garbage bags. The next day, when Stevens was not home, his house was searched. This search resulted in the seizure of cocaine, marijuana, drug paraphernalia, money, and other miscellaneous objects.

Lushewitz had information that Stevens, who had been on vacation, would be returning home the next day. When Stevens arrived home, the deputies arrested him on the driveway outside his home. After being told that he might be spending a lot of time in jail, Stevens was asked if wanted to bring anything with him. He indicated "in my car," and pointed to a brown leather shoulder type bag. This bag was found in the car and was subjected to an inventory search at the police station. The bag contained two grams of marijuana and one gram of cocaine.

Based upon the search of his home, Stevens was charged with possession of cocaine with intent to deliver and possession of marijuana with intent to deliver. Based upon the search of his shoulder bag, Stevens was charged with possession of cocaine and possession of marijuana.

Stevens moved to suppress the evidence seized from his home because he claimed that the warrantless search of his garbage was unlawful, and therefore, the warrant should not have been issued. The trial court denied the motion, holding that Stevens did not have a reasonable expectation of privacy in his garbage.

Stevens entered a guilty plea to the simple possession charges that were based on the shoulder bag search, and that plea was accepted. Stevens then moved to dismiss the charges of possession with intent to deliver based on a double jeopardy argument. This motion was denied. (This double jeopardy issue is not part of the moot court argument.)

After a trial, a jury returned guilty verdicts on both counts of possession with intent to deliver and Stevens was sentenced to three years in prison and a fine.

Stevens appealed to the Court of Appeals. This court issued a ruling in 1984 agreeing with the trial court that Stevens did not have a reasonable expectation of privacy in his garbage. Stevens then appealed to the Wisconsin Supreme Court, which heard the case in 1985.

Constitutional Issue:

Was Steven's garbage unlawfully searched and seized?

To address this question, consider the language of the Fourth Amendment to the U. S. Constitution—which is identical to Article 1, Section 11, of the Wisconsin Constitution:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath of affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Also, consider these important precedents:

Ball v. State (57 Wis.2d 653, 205 N.W. 2d 353 (1973)

A person in Wisconsin has a reasonable expectation of privacy in his garbage until there is clear and irrevocable abandonment. In Ball, items found in a large barrel that had been used for burning trash in the rear of the home were found not to be abandoned.

United States v. Shelby (573 F. 2d 971 (7th Cir.) cert. denied, 493 U.S. 841 (1978)

Shelby argued that he had a reasonable expectation of privacy in his trash because he thought it would be mingled with other trash and destroyed. The court disagreed, stating, "the garbage cans cannot be equated to a safety deposit box. The contents of the cans could not reasonably be expected by the defendant to be secure, not entitled to respectful, confidential and careful handling on the way to the dump." In short, the court ruled that Shelby had abandoned his garbage when "he placed his trash in the garbage cans at the time and place for anticipated collection. . . ."

Moot Court questions

- Who is the Appellant? Does the Appellant want the trial court's decision overturned or upheld?
- Who is the Respondent? Does the Respondent want the trial court's decision overturned or upheld?
- Who did the Appellate Court rule in favor of?
- What is the question that the court must answer?
- What is the answer that the Petitioner wants in response to that question? (yes or no)
- What is the answer that the Respondent wants in response to that question? (yes or no)
- Based on your understanding of the law for the issue, what facts of this case will be helpful for the APPELLANT?
- Based on your understanding of the law for the issue, what facts of this case will be helpful for the RESPONDENT?

State v. Stevens Attorneys

Attorneys for David Stevens are responsible for constructing and presenting an oral argument to the Court that Stevens' privacy rights were violated when the police searched his garbage without a warrant.

Attorneys for the State of Wisconsin will construct and present the opposite position: that Stevens' privacy rights were not violated.

As an attorney, your job is to:

Identify and discuss the best arguments supporting your team's position. These arguments can be constructed from sources such as the facts of this case, important legal precedents, and the language of the Fourth Amendment and its Wisconsin counterpart.

Working as a team, prioritize the arguments supporting your position that are the most powerful, and develop an outline for your formal presentation, which can be no longer than five minutes. Remember that the facts have already been established by the lower courts, so do not argue their accuracy.

Identify and discuss the most powerful points in favor of the opposing position, or the weak points in your team's position. This will help prepare you for questions from the Court, which will be a three-minute segment after completion of your team's formal presentation.

Select three people from your team to present the argument. You may want to divide the five minutes for the formal presentation in half, with two team members each taking half of the time. Another person may respond to the justices' questions. Remember that the justices will not interrupt the formal presentation, but the person responding to questions must be prepared to improvise based on their questions.

Wisconsin Supreme Court Justices

As a justice, your job is to:

Identify possible arguments that each side will use and develop questions to ask the attorneys. Please note that you may not interrupt the attorneys during their five-minute formal presentation. Once that has been completed, you will have three minutes for the entire Court to ask questions of the attorney designated to answer questions. Then, the other side will make its formal presentation, and you will have three minutes to ask questions of that side's attorney. Your questions should be designed to draw out and challenge the reasons each side will use to support its position.

Select a chief justice. The chief justice will begin the oral argument and will ask each side to present their arguments.

After the oral argument, discuss the arguments made by each side. Each justice must vote on a decision and be prepared to explain his/her vote.

The chief justice will announce the Court's decision to the class, then each justice will explain his/her vote.

In the 1980s and 1990s, many cases came to the courts challenging the validity of a search or seizure under the federal and state constitutions. This is one such case. In this case, a divided Wisconsin Supreme Court determined that police may seize and search a person's garbage without a warrant, affirming in part and reversing in part a decision of the Court of Appeals. Justice Roland B. Day wrote the majority opinion and Chief Justice Nathan S. Heffernan wrote the dissent. The case originated in Milwaukee County Circuit Court.

In this case, the Supreme Court determined that there is no reasonable expectation of privacy in curbside garbage. Under the facts of this case, the Court said this includes garbage obtained by a garbage collector who is working as a secret agent of the police and collects the garbage for the sole purpose of turning it over to authorities.

From the Opinion: State v. Stevens

The Supreme Court found that the seizure and search of the defendant's garbage did not violate his rights under the U.S. or Wisconsin Constitutions.*

Justice Day wrote:

(B)ecause there is no reasonable expectation of privacy in garbage that is removed by municipal garbage collectors in routine collection, the defendant had no reasonable expectation of privacy in garbage which was removed by the municipal collector pursuant to his consent.

Dissenting, Chief Justice Heffernan wrote:

It is difficult to believe that anyone would seriously contend that there is not a reasonable expectation of privacy in garbage against the prying eyes of government...Almost all the intimate details of one's personal life may be revealed by what is placed in the trash, including personal matters which would cover the gamut from how one's alimentary canal functions to the brand or quantity of liquor consumed in the household.

Furthermore, Heffernan wrote, people must dispose of garbage. Since they know that the purpose of garbage collection is destruction, it is reasonable, he wrote, that people have an expectation of privacy and an expectation that the garbage will be handled in the usual manner, without interception by state agents.

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* U. S. Constitution, Fourth Amendment and Wisconsin Constitution, Article 1, Section 11: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

PREPARING FOR THE SUPREME COURT

In the Supreme Court, there are no facts to be decided, no jury, and no witnesses. The difference between the lower courts and appellate courts is that while there isn't a dispute about the facts of the case, the disagreement is in how the law was interpreted and applied to the facts. The attorneys argue how they feel the law SHOULD be interpreted and applied to a panel of Justices. The Justices listen to the presentations, ask questions of the attorneys, deliberate, and then either uphold or overturn the decision of the lower court. Justices are allowed to interrupt the attorneys to ask questions, mostly to clarify a point in the case they are uncertain of.

READ THE STATEMENT OF FACTS

Every case starts with a statement of facts. This is the chain of events that leads to the two parties going to court. When a case is heard by the Supreme Court), it has been already decided once by a lower court (limited or general jurisdiction courts). Usually the party bringing the case to the Supreme Court is not satisfied with the decision of the lower court and wants to change or overturn the decision.

READ THE AUTHORITIES (OR CASE LAW)

These are other cases that may have been decided on similar facts in Wisconsin or other jurisdictions. Your job is to pick out the facts in these cases that are most important to your case. Remember, it's the way the law was applied to the facts that is in dispute, not the facts themselves. The important piece is that the interpretation of that case agrees with your position, the decision in that case does not have to be the same.

Support your case: Attorneys will try to convince the court to rule in their client's favor on the basis of how well you support your case using the authorities. When reading through the case authorities, there are five things to watch for and understand:

1. **FACTS:** although the facts are not in dispute, there may be some information that doesn't apply to your case. Your job is to pick out the most important pieces of information that support your position.
2. **ISSUE:** In one sentence you should be able to pick out the major question that the court must decide in the case. In some cases, there may be more than one, but remember to keep it as simple as possible.
3. **RULE OF LAW:** Most authorities will clearly state what part and type of law is in question in the specific case (i.e., Wisconsin Statutes, Constitution, federal codes/statutes, etc.).
4. **APPLICATION:** How does the rule of law (what the law says) apply to the authorities?
5. **CONCLUSION:** The decision of the court.

You should apply each of these elements to all of your case authorities. Knowing these five things will help you have a complete package of the cases without all of the "legal jargon."

ACTIVITY: CASE ANALYSIS

Use the questions from the Moot Court activity and the following pages to practice reading and understanding a case. Cases are available on the the Delegation Director hub and the WI State Supreme Court website: https://www.wicourts.gov/courts/supreme/index.htm

KNOW THE FACTS – Your job is to know the important facts of the case! Look at the statement of facts through the eyes of both sets of attorneys. What are the important facts in this case?

APPELLANT (wants decision changed)	**RESPONDENT** (wants decision to stay same)

CONSIDER – What are the legal issues that need to be discussed during your presentation?

APPLY THE LAW – It's also important to know the law so that you can interpret and apply it to your case. Read the authorities or case law and apply the law.

APPELLANT (wants decision changed)	**RESPONDENT** (wants decision to stay same)

ARGUMENTS - The argument is the foundation of your oral arguments and is the heart of your presentation. List at least 3 key arguments each side should make to build the foundation of the case.

APPELLANT (wants decision changed)	**RESPONDENT** (wants decision to stay same)

QUESTIONS – List the three questions you would hope the "other side" would not ask and the answers you would give if the other side did ask them.

APPELLANT (wants decision changed)	**RESPONDENT** (wants decision to stay same)

PREPARING YOUR COURT MATERIALS

A brief is a formal document a lawyer uses both to convince a court that the client's argument is sound and to persuade a court to adopt that position. A brief must honestly state the law, the facts of the case (as the client sees them) and the reasons for the conclusions in a clear and concise manner. The brief writer is submitting a legal argument to the opposing counsel and a Justice or panel of Justices, all of whom will subject it to close scrutiny. The brief writer must attempt to make the client's position seem as strong as possible, emphasizing favorable arguments and minimizing the force of opposing arguments. It is not enough that the client's position appears logical or even desirable—it must seem compelling.

The brief writer knows their basic conclusions in advance. Their work involves a search for arguments and materials to support those conclusions and that show their client's position is stronger and should prevail.

TIPS FOR PERSUASION IN YOUR ANALYSIS

- **BE SUBTLE.** Remember that you should maintain an objective tone in your facts. A Justice should find your statement of facts candid and reliable. In persuading, rely on organization, writing, careful selection and juxtaposition of facts and detail, and storytelling.
- **HAVE A THEME.** Make sure your statement of the facts always reflects your theory of the case.
- **TELL A STORY.** Your facts should read like a novel or short story. The story should have a clear beginning, middle and end. Instead of summarizing trial testimony or exhibits in the order in which they were entered, it should focus on the underlying story.

- **ORGANIZE YOUR FACTS TO MAXIMIZE PERSUASION.** Often, but not always a chronological organization is effective. It is often useful to begin even a chronological account with a short introduction that summarizes the key facts or highlights a particularly explosive fact that favors your side.
- **INCLUDE DETAILS THAT ADVANCE YOUR THEORY.** Details, especially vivid or sensory ones, will help the reader understand, feel and remember your story. Details enable you to show, rather than tell, and allow your reader to reach his or her own conclusions.
- **EMPHASIZE FAVORABLE FACTS.** It goes without saying that the facts that favor your side should be emphasized. You can do this by placing favorable facts in prominent locations and by providing details about them. As in any writing, there are certain places in the structure where information receives the greater emphasis. Syntax is important! You should point out and emphasize any absent facts that favor your side.
- **DE-EMPHASIZE UNFAVORABLE FACTS.** Avoid unimportant or unfavorable detail. While you must include all determinative facts, you need not include all details. Edit out details that are not important or distracting. Any detail you include will be presumptively considered important by the reader.
- **AVOID SARCASM, HYPERBOLE, AND ARGUMENT.** You don't want to sound unprofessional, it is extremely important that you maintain an intriguing and professional style, Justices will NOT take you seriously if you use sarcasm, hyperboles and an argumentative style.

SUPREME COURT BRIEF

As stated, Supreme Court delegates prepare a legal brief to get ready for the conference, primarily designed to help them design their presentation and remarks for the conference. The written brief should only be 1-2 paragraphs. Remember a brief is the time to outline the **facts** of the case. Layout all the definitions, precedents, and statistics. State a claim, provide evidence, connect the evidence to the claim. Facts should be clear, reasonable, and straightforward. Save any emotional appeals and storytelling arguments for the Oral Argument! (much easier to appeal to emotions when speaking directly to the justices!)

Before using this outline to complete a brief make sure delegates complete the Case Analysis first.

Argument

1. Start with strong and unarguable claim

a. "This is illegal because of the law..." "She broke the law according to...."

b. Get creative! You can start by answering the legal questions or start with an unarguable fact that helps your side of the argument ("he's broken the law before, so his punishment can be more severe...)

2. Support your claim with evidence

a. This is your time to lay out all your research!

b. Define an amendment, state the law in question, or talk about a precedent that helps your case

3. Reason your evidence

a. What does your evidence mean? How does it help you?

4. More evidence!

a. Define, state, quote

b. You've spent weeks on research; lay it all out!

5. Reason and restate your claim

a. Depending on your evidence and length of the paragraph, you will want to explain your evidence more and reason it

b. Or, you will want to restate your claim **in different words**

i. Do not repeat the same words and sound repetitive; if a justice reads a different viewpoint of the same idea, they will see all sides of the case

c. Every time you restate your claim, back it up with evidence

6. Concluding statement

a. End your brief with a restatement of your claim and a brief overview of your evidence to back up your thesis

b. End with an unarguable sentence

c. Does **not** have to be a separate paragraph, but it can be; whatever flows the best!

Authorities

List the cases or statutes that you referenced in your brief.

Once you write your final brief, you will submit through an assigned template.

Due Date: Jan 19, 2024 – Submission link: https://bit.ly/wiyiqbrief

Tips for Writing a Brief

- Use your research
  - The oral argument is when your writing and emotions can really show; the brief is when your research shows!
  - State and define everything! Not everyone knows all the facts of the case, so make sure you educate them
  - Use stats when applicable, and find precedents! They can make or break your case
- Define the main issues and laws being questioned
  - Normally, a case revolves around one or two questions; make sure you define them so your justices know what to look for!

PRECEDENT

A precedent (otherwise known as an 'authority') is essentially any act or decision that serves as a guide/reference for future similar cases. They are a reference that merely directs the reader to a decision of the U.S. Supreme Court or Wisconsin Supreme Court.

In June 2005, Justices Sandra Day O'Conner and Stephen G. Breyer participated in a taped interview with students in a question-and-answer session sponsored by the Annenberg Foundation Trust at Sunnylands. This interview was filmed at the Supreme Court and can be found at "Supreme Court Q and A," 2005, http://www.annenbergclassroom.org/AssetDetail.aspx?MyID=1045 When asked about what might influence the justices to overturn a precedent, Justice O'Connor said: "Well, I think you have to be able to persuade at least five members of this nine-member Court that an earlier judgment and opinion decided by this Court is now clearly wrong. That is possible to do. We can be persuaded at times that something we decided earlier has become, over time, no longer defensible. And the most clear big example of that was in Brown v. Board of Education when the Supreme Court decided to overrule the old Plessy v. Ferguson principle that you could have separate public facilities for people based on race, provided they were roughly the same. You know, the same school, one for people of the black race, one for people of the white race. That's what Plessy said was all right. The members of this Court unanimously concluded that just was not valid and it overturned [Plessy].

So what standard is required? It's just a standard of persuading at least five members of the Court that an earlier precedent is clearly wrong and shouldn't remain the law of the nation."

Justice Breyer added: "That last phrase is very important. Every one of us understands that if you change the law too often, even when it was wrong before, people cannot live their lives. They can't plan how to live; they can't plan their societies. So no one thinks just because a case is wrong that you are going to overturn it. They have to both think it was wrong and think it's harmful and causing a lot of trouble.

Now, if you said never overturn a case, we'd still live in a society that had racial segregation. That would be terrible. So, of course, sometimes you have to overturn a case. But five people [justices] have to agree it was wrong then and it's wrong now and it's causing a lot of harm to the point where even though people have to plan their lives, we better get rid of it. That happens very rarely."

John Roberts at his U.S. Senate confirmation hearing, September 2005: "The principles of stare decisis look at a number of factors. Settled expectations is one of them. ... Whether

or not particular precedents have proved to be unworkable is another consideration on the other side. ... I do think it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness."

Stephen Breyer, writing for the Court in Randall v. Sorrell, the Vermont campaign finance reform decision, 2006: "The Court has often recognized the 'fundamental importance' of stare decisis, the basic legal principle that commands judicial respect for a Court's earlier decisions and the rules of law they embody. The Court has pointed out that stare decisis 'promotes the evenhanded, predictable and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'

Stare decisis thereby avoids the instability and unfairness that accompany disruption of settled legal expectations. For this reason, the rule of law demands that adhering to our prior case law be the norm. Departure from precedent is exceptional and requires special justification."

Questions to Consider:

A. Based on what you read, why is adhering to precedent (or stare decisis) important?

B. Based on what you read, what do you think would be acceptable grounds for reversing an existing precedent?

SUPREME COURT ORAL ARGUMENT

Once your court materials are written and submitted, you must figure out how to convince everyone that your brilliant argument should be the law of the land.

At Model Government, you will present your argument in front of a bench of Justices. You need to prepare for anything the Justices may ask you, address the other side's argument, and focus the court on the three or four things that should decide the case in your favor.

As such, it is important that you prepare your argument in advance and practice it!

TIPS FOR PREPARING YOUR ARGUMENT:

1. Your argument should be written out in detail for your presentation at Model Government. Be creative!
2. A good argument will cover all facets. Use facts and reasoning from your own experiences.
3. Do not argue about facts – they are fixed by the lower court. However, you should use the most important ones to support your arguments.
4. Remember who is being blamed for what – be sure to keep the facts straight.

5. You not only need to use those authorities that help your case but distinguish or dispute those which hurt your case. Cite them in your argument; be sure to quote particularly good portions.
6. Divide your time between the two layers (look back to Step 1 – Know the Facts). Most cases are easily divided by arguments.
7. Always cite the Authorities – they are your argument's base and support. In YIG, you may not introduce any outside authorities aside from those included in the case materials. This is done so that the arguments are balanced.
8. Appeal to the justices emotion, tell stories, talk about how your client feels, and how the justices should empathize with your side

SUPREME COURT JUSTICE PROCEDURE

Every participant in the Supreme Court will have at least one chance to act as one of the seven justices. Be prepared for the case in which you will be a justice. Obtain and review a brief for your selected cases as soon as you can. It is very important that you are well-prepared as a justice, so you can make the most well-thought and rational decision.

Case Review

The case review is used to familiarize the justices with the case prior to the hearing. The justices review the brief, and ask each other questions concerning the case until all are fully aware of the aspects. This portion of the court procedure is very important, as it prepares the justices for each case. It is also helpful for justices to prepare questions during this period to ask attorneys during the case hearing.

Case Hearing

As the attorneys are presenting their cases, it is the duty of each justice to listen carefully, take notes, and ask questions to clarify certain statements. It is beneficial to the court if many questions are asked. Questions bring out debate, and debate is needed in the court if there is to be a fair and complete hearing.

Justices may ask questions at any time, even when the attorneys are speaking. Do not be afraid to interrupt the attorneys at any time by saying, "Excuse me, counsel…" After the appellant and respondent have finished presenting their cases, justices are encouraged to ask as many questions as needed to benefit the court. Please note that if you are in the middle of a question and your time expires, it is acceptable for you to finish answering the question. After all questions have been asked, the court recesses and the justices adjourn to the deliberation room.

Deliberation

After a case has been heard, the justices meet in the deliberation room. As the issues are debated, it is important that all justices become involved in the discussion. The deliberation is a friendly atmosphere in which the justices can freely discuss the aspects of the case. The statements made by the justices will be a deciding factor in each case. Provide as much input as possible to fully benefit the deliberation. Each deliberation will last between 15

and 30 minutes. The deliberation ends when all justices have voted. It is the duty of the presiding justice to function as a facilitator of debate, making an effort to involve those who seem hesitant to voice their opinion, occasionally playing devil's advocate, and refraining from making their own opinion known until the final vote has occurred.
During deliberation, the justices shall decide on each of the legal questions, determine the constitutionality of the issues, and decide in favor of the appellant or the respondent for each case. Justices may choose to not decide in complete favor for one party or the other, but instead solely make a declaration about the constitutionality of one or several issues. All decisions must be fully explained in the opinion document.
After the voting takes place, each side (assuming that the vote is not unanimous) chooses a justice to write an opinion backing their decision. For example, if 5 justices affirmed a case and 2 dissented (or reversed the past court's decision), then both the affirming and dissenting sides must appoint a justice(s) to write the opinion for their respective decisions. If the vote is unanimous (7 to 0), then ONE opinion will be written representing the decision of every justice. An opinion is generally one page written.

EXAMPLE OPINION

OPINION

Supreme Court
State of Wisconsin
Case#: 2010-110

State of Wisconsin v. Robert Hawkins

Appellant: Robert Hawkins
Respondent: State of Wisconsin

(justice), writing for the court's (affirming/dissenting) opinion.

Facts
The director of a Milwaukee day care center noticed several bruises on two young children, a sister and brother. He suspected child abuse and called the police. The police went to the home of their father, Robert Hawkins, and were refused entrance. Robert Hawkins challenged the police in court on the basis that they had to have a warrant to enter his house and take his children according to the Wisconsin and U.S. constitutions. The lower court ruled in favor of the police and Robert Hawkins appealed to the Supreme Court.

Issues
Does a phone call provide substantial evidence for police to enter a house without a warrant in cases of child abuse? (Some cases have more than one issue. Keep this in mind.)

Holding	Ruling
(1)—NO	Affirm – 0

Dissenting – 7

Reasoning
The court decided that there was not reasonable evidence for the police to take custody of the children without a warrant. Wisconsin State Statute, 49.10(5) states that a child must be "suffering from illness or injury or is in immediate danger from his surroundings and removal from those surroundings is necessary." Those circumstances were not present, and the court decided that the police couldn't make this kind of action from a mere phone call. The children's lives were not in immediate danger; therefore it was unconstitutional to take custody of the children.

AT THE CONFERENCE

TRAINING
Much of the first day of Model Government is devoted to the final preparation of youth lawyers and case preparation. The Supreme Court procedures and the appellate process are explained, reviewed and practiced at that time.

COURT HEARINGS
This is where all the magic happens! As soon as your case is called in the courtroom, you'll become an attorney and/or the Justice. This is your moment to shine, and all your practice and hard work will be put to the test. Some of your time will be spent either listening to presentations by other divisions of the court or making your own presentation. Listen carefully and be respectful towards everyone's presentation so they will do the same for you.

JUDICIAL REVIEW COMMITTEE (JRC)
The power to determine constitutionality is called the power of judicial review. The Supreme Court delegates participate in a model Judicial Review Committee. JRC is tasked with considering the constitutionality of certain legislative bills that pass through the chambers.

A NOTE ON FACILITIES
We are the only teen program to be permitted to use the prestigious chambers and our relationship with the courts and the Capitol are very important to the future of the program. We expect that all property the YMCA is allowed to use during the course of the program will be treated with respect. The YMCA has always been known as a great organization to work with because of the caliber of its participants. Keep up the great work and thanks for your cooperation!

TIPS ON PRESENTING
- The number one thing to remember while presenting your case is to be **CONFIDENT**. With confidence comes smooth, well-worded arguments.

- Be **PREPARED** – nothing looks worse to a panel of Justices than a delegate scrambling through notes to answer a question.
- Be a **MASTER** of the case. If you know the case inside and out, upside and down, you will be beyond ready to adjust to your opponent, answer questions and win.
- Know as much as you can about both sides of the argument, even if one partner is "specializing" on either side. **QUESTIONS THAT ARE ASKED CAN BE ANSWERED BY EITHER MEMBER OF YOUR TEAM**, meaning that if one person does not know how to answer, the other might.
- **PERSUADE YOURSELF.** At Youth in Government, each team is required to argue both sides of a case, even if you don't agree with one side. This means that you need to convince yourself that what you are saying is **100% CORRECT, JUST, AND LEGAL,** even if in reality you do not. By doing this, you will not only convince yourself that you are right, but the Justices as well.
- Cut to the chase. Just because an argument is long, often this can distract 'readers' from the central and most important part of your case. You are limited in speaking time so everything you say should have meaning. Cut out the fluff, get to the point and hit it hard.
- **RELAX.** This is supposed to be fun!

SUPREME COURT HEARING PROCEDURE:

1. Presentation of the Justices – Follow the administrator's instructions.
2. Introductions
3. The Presiding Justice will ask if each of the attorney teams is ready.
4. The appellant attorneys will deliver their arguments.
    - Each side gets 20 minutes to present their argument. Each attorney on your team **MUST** deliver a portion of the presentation; typically, teams split the time in half. Remember that the Justices may interrupt at any time with questions and it is wise to prepare only about 7-10 minutes of material to present.
    - Be courteous when addressing the court. Before beginning your arguments say, "May it please the court, my name is ____. I represent the respondent/appellant, __ in the case of ___vs ___?" Each member of the attorney team should say that before their presentation.
    - One more suggestion: If you are the appellant attorney, you get time for rebuttal after the Respondent attorneys have presented their case. Rebuttal is just telling the Justices **ONE MORE TIME** why your interpretation of the case is correct. Teams have 20 minutes for their presentation in total. Most teams save five minutes for their rebuttal, leaving 15 minutes for their main argument.

- Justices and justices own their courtrooms; it is their domain to do with as they please. They can interrupt the speaker at any time to ask questions. They may ask one, or several in a row. When a Justice or justice asks a question, try to answer it as briefly and directly as possible, as this counts towards your time. If your co-counsel is going to touch upon the question, tell the Justice this. Never argue with the Justice, simply "respectfully disagree" and listen to what they have to say.

5. The Respondent attorneys deliver their arguments. (The process is the same. See #4)

6. The appellant attorneys deliver rebuttal statements (if they have any **AND** if they have time left).

7. The Presiding Justice thanks the attorneys and the panel of Justices leaves the chamber to deliberate the case in private.

- The Justices will argue the case among themselves to determine points of law and how it should be interpreted and applied.
- The Justices base their decision on both the authorities/case law, and the persuasiveness of the arguments of the attorneys.
- Oftentimes, the Justices cannot agree on a decision and they will have "majority" and "minority" opinions (you see this A LOT with the real-life Supreme Court). Or they will agree with the result, but not the reasoning. In these cases, each side of the ruling will write an opinion (a paper that states how they came to their conclusion). The reasons are very important since they will be the authority, or precedent, for later cases. The opinions are posted.

COURT SCRIPT

Below is an example of what a Court Hearing will look like.

SUPREME COURT SCRIPT

1. CALL TO ORDER Administrator/Bailiff

"ALL RISE FOR THE HONORABLE JUSTICES OF THE **WISCONSIN SUPREME COURT, THE HONORABLE JUSTICE _____ PRESIDING"**

2. **"YOU MAY BE SEATED"** Presiding Justice

3. **"ARE THE APPELLANTS READY?"** Presiding Justice

4. **"YES, YOUR HONOR"** Appellant's Attorneys

5. **"ARE THE RESPONDENTS READY?"** Presiding Justice

6. **"YES, YOUR HONOR"** Respondent's Attorneys

7. **"APPELLANTS, DO YOU WISH TO RESERVE TIME FOR REBUTTAL?"** Presiding Justice

8. **"YES YOUR HONOR, WE WISH TO RESERVE FIVE MINUTES FOR REBUTTAL."** Appellant's Attorneys

9. **"APPELLANTS, YOU MAY BEGIN"** Presiding Justice

10. **"MAY IT PLEASE THE COURT, MY NAME IS _____ I REPRESENT THE APPELLANT, _____IN THE CASE OF _____VS._____."** Appellant's Attorneys

(Then proceed to give the overview of facts and then address each issue interweaving the law and the facts. You have a total of 10 minutes to present).

11. **JUSTICES ASK QUESTIONS** Justices/Justices
(STOP. Listen to question and answer it. Then move on with your argument.)

12. At the end of 10 minutes, state - **"WE WOULD LIKE TO RESERVE THE REMAINDER OF OUR TIME FOR REBUTTAL"** Appellant's Attorneys

13. **"RESPONDENTS, YOU MAY PROCEED"** Presiding Justice

14. RESPONDENT STANDS AND ADDRESSES THE COURT

"MAY IT PLEASE THE COURT, MY NAME IS _____ . WE REPRESENT THE RESPONDENT, _____" Respondent's Attorneys

(Address each issue interweaving the law and the facts. There is no apparent need to restate the facts unless they help you clarify your arguments. You have a total of 15 minutes to present your argument).

15. **JUSTICES ASK QUESTIONS** Justices/Justices
(STOP. Listen to question and answer it. Then move on with your argument.)

16. RESPONDENT CONCLUSION Respondent's Attorneys
(At end of argument, Respondents conclude by telling the court what they want the court to do; i.e., to affirm the lower court's decision.)

17. APPELLANT REBUTTAL Appellant's Attorneys
(Address questions raised by Respondents and conclude by telling the court what they want the court to do, i.e., Reverse the decision of the lower court).

18. **"THANK YOU, COUNSEL, THIS COURT WILL TAKE THE MATTER UNDER ADVISEMENT AND ISSUE AN OPINION SHORTLY."** Presiding Justice

19. **"ALL RISE"** Administrator/Bailiff

20. JUSTICES ADJOURN TO DISCUSS CASE IN DELIBERATION AND DRAFT COURTS OPINION.

JUDICIAL TERMS

ACQUITTED: Found by a jury to be cleared from a charge of a crime.

ACTUAL OR CONSTRUCTIVE: Actual implies a real and concrete existence: one which can be directly experienced; Constructive implies a secondhand experience established in the mind of the law through arrangement, interpretation and inference.

ADJUDICATE: To settle or determine the outcome of something through the use of the judicial authority; to litigate.

ADMISSION: A Statement made by a person affirming a fact or circumstances from which guilt may be concluded.

ADVERSE RULING: An order made by a court, which is contrary to your interests.

ADVOCACY: The art of pleading or defending a case.

AFFIRM: Generally, an affirmation is an approval of something. In the appellate court, to affirm a judgment is to declare that it is correct and that the decision of the lower court is still in effect.

AMBIGUOUS: Capable of being understood in two or more possible ways.

APPEAL: The complaint made to an appellate court of an error committed by a lower court whose judgment the appellate court is called upon to reverse or affirm.

RESPONDENT: The party who won in the trial court or lower court who is answering a petition or appellant's case in the appellate court.

APPELLANT: The party who brings an appeal to a higher court because they lost in the lower or trial court.

ARBITRARY: An action not based on any rational factors.

ARGUE: To debate on a side of a case before the court.

AUTHORITIES: The body of works, statutes, precedents, judicial decisions or textbooks of the law which deal with questions of law.

CIVIL LAW: That branch of law that relates to private rights as opposed to public wrongs.

COERCION: To be compelled in action or thought against one's will.

COMPLY: To obey or act within the boundaries of a law.

CONCLUSIVE: Beyond question or further inquiry.

CONCUR: To agree; to act together. In the appellate courts, a concurring opinion is one filed by a justice who agrees with the decision stated in the majority opinion but wishes to set forth a separate view of the case.

CONSENT: Implies a voluntary agreement in which one party accepts an action of another.

CONTENTION: Something that is maintained or asserted as truth.

CONTRACT: An agreement between two or more parties.

CONVICT: To be found guilty.

DECISION: Finding made by a court.

DEFENDANT: The party who stands accused of a civil or criminal wrong.

DISSENTING OPINION: An opinion filed by a justice which disagrees with the majority opinion and sets forth that justice's differing points of view.
DOCTRINE: A rule or well-established principle.
ENACT: To establish by law.
EVIDENCE: Anything that is introduced to a court to establish something as a fact.
EVIDENCE, DIRECT: Proof of facts by a witness who saw or heard something relevant to the case, such as an eyewitness.
EVIDENCE, CIRCUMSTANTIAL: Evidence based on a presumption and inference.
EXTRINSIC: From outside sources.
FELONY: A crime punishable by imprisonment in the state prison.
FINDING: After deliberation, the result decided upon.
FINDING OF FACT: A conclusion based on evidence arrived at.
FRAUD: An intentional action done by one party against another which deceived the party.
FUNDAMENTAL LAW: The basic law, like the constitution.
GENERAL LAW: Laws that affect the community at large.
HYPOTHETICAL: A made up set of facts.
IMMUNITY: A privilege that exempts a person from a charge.
INAPPLICABLE: Not suitable; cannot be applied.
INFERENCE: To draw conclusions from already established facts.
INHERENT: Involved with the essential character of something.
INTEND: To plan on something but not to have yet completed it.
INTRODUCED INTO EVIDENCE: Presented to a court for finding of fact.
JUDICIAL NOTICE: Official recognition of certain facts which are universally accepted.
OPINION: Written explanation filed by the court at the close of a hearing listing the reasons and authorities used.
ORDINANCE: An enactment by a city or country of a law.
OVERRULED: To void judgment or decision.
PETITIONER: The party presenting the request stated in a petition.
PRESUMPTION: An assumption that something is true without proof.
PREVAIL: To win.
PROBABLE CAUSE: A reasonable belief that an allegation is probably true.
PROCEEDINGS: The general format used to conduct judicial business.
PROSECUTE: To charge an individual with a crime and follow the case through to end.
QUASH: To make void.
RATIONALE: An explanation of how an opinion was arrived at based upon authorities.
REMAND: To send a case back to the court of origin.
RENDER: To render judgment is to announce the decision.
REVERSE: to overrule; to make void.
SHOW CAUSE: To present a court with reasons why any intended course of action should not be carried out.
SUSTAINED: A judgment made in a superior court that maintains the decision of a lower court to uphold.