

TEACHING TOOLS: NYS UNIFIED COURT SYSTEM

MIDDLE SCHOOL INTRODUCTION

This set of four projects was developed to create a series of teaching tools geared toward middle school students in grades 6 through 8. Drawing on concepts from the core curriculum, with a particular focus on Social Studies Standards 1 and 5, these activities were developed to help students build on their knowledge of the role of the judiciary in our society. These projects are geared toward equipping students with the ability to apply the fundamental concepts of justice, fairness and due process to the circumstances they encounter every day.

1. “Fairness – In the Classroom and in the Courtroom”

This project is intended to teach students about the concept of fairness and to foster an appreciation for the difficult responsibilities judges fulfill when they decide a case. A visit to a New York civil court and/or a meeting with a civil court judge is suggested to maximize students’ comprehension of the process that takes place in an actual courtroom. Finally, a negotiation/case settlement exercise allows students to utilize what they have learned about the civil court system in a hands on problem-identification/problem-solving setting.

2. “History and Judicial Review”

This project focuses on the concept of fundamental rights that are preserved in the Constitution and protected by our independent judiciary. These exercises provide an interesting way to integrate information about the appellate process, particularly at the level of the United States Supreme Court, with the social, economic, and political history that is the focus of the Core Curriculum. A day of detailed analysis of some Supreme Court cases allows the students to see how these decisions can affect the rights of individuals and of certain groups in society. These cases highlight both “judicial independence,” as well as the interdependence of the judiciary with the political atmosphere of any given period. A follow up research project allows students to delve into the details and subsequent history of one of the cases. Finally, the students are given the opportunity to “re-argue” the case they researched in an exercise that emphasizes the importance of gathering all of the facts, understanding all of the law, and being able to support and rationalize the final decision.

3. “Justice: The Constitution and the Criminal Courtroom”

This project is designed to teach students about the fundamental right to justice that they enjoy as citizens of the United States, as governed and protected by the Constitution. The first exercise will provide experience analyzing primary documents and learning the litany of rights, including due process, guaranteed to a person accused of a crime. The second exercise allows students to demonstrate that they have mastered the significance of these rights and can recognize when the rights are being applied in actual criminal trial situations. The third exercise involves inviting a criminal law authority from the community into the classroom.

4. “Citizenship and the Immigration Experience”

This project is designed to encourage students to investigate the reasons why various groups of people were and are interested in immigrating to the United States and becoming United States citizens. The first activity involves research projects meant to provide basic information and historical perspective regarding general immigration patterns and also provides students

the opportunity to learn about how their own ancestors came to the United States. The second activity provides an opportunity for students to utilize the Department of Justice's web sites to learn about the naturalization process and encourages them to become involved in a local Immigration and Naturalization ceremony.

We hope that each component will prove useful in educating students regarding the legal system, and that teachers will choose to use all or part of these materials to implement the lessons mandated by the Social Studies core curriculum.

ACKNOWLEDGMENTS

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Law, Youth and Citizenship Program of the New York State Bar Association and the New York State Education Department.

Thomas O'Donnell, former Director of Project P.A.T.C.H. and retired educator.

Stephen L. Schechter, Professor of Political Science and Director of the Council for Citizenship Education, Russell Sage College, Troy, New York.

TEACHING TOOLS: NYS UNIFIED COURT SYSTEM

MIDDLE SCHOOL LEVEL

FAIRNESS - IN THE CLASSROOM AND IN THE COURTROOM*

LEARNING CONTEXT

Purpose:

Students will learn about the importance of fairness in our society and how our emphasis on fairness leads us to value justice, due process, equality, and majority rule with respect for minority rights. Students will see how fairness is applied in our justice system and will learn how to address conflict scenarios in a manner that considers the rules, rights, and responsibilities pertaining to themselves and other people.

Grade Level:

Grades 6, 7, and 8

Learning Standard:

Social Studies Standards 1, 4 and 5

Core Curriculum (includes excerpts from the Social Studies Resource Guide with Core Curriculum):

Grade 6: The grade 6 social studies program emphasizes the interdependence of all people, keying on the Eastern Hemisphere. Sixth graders learn that governments change over time and place to meet the changing needs and wants of their people. As an example, students should understand the history of civil law, from family, clan, and tribal groups acting to maintain law and order, to Hammurabi's Code and the Roman's Justinian Code, to the present government-established civil (common law) courts. In modern political states, such formalized governmental structures play a major role in maintaining social order and control.

Grade 7/8: Social studies content in grades 7 and 8 focuses on a chronologically organized study of United States and New York State history. Course content ties political, geographic, economic, and social trends in United States history to parallel trends and time frames in New York State history. The federal and state governments constantly reevaluate their roles with respect to everything from fiscal and monetary policies to social programs and technology changes as efforts toward justice for all citizens continue.

*Developed with the assistance of Thomas O'Donnell, Past Director of Project P.A.T.C.H. and retired educator; Jack Hurley, Coordinator of Law Magnet Programs, Rochester City Schools; Aaron Banks, LRE Program, Law Magnet Program, Yonkers School District, Charles E. Gorton High School

Concepts/Themes:

- Understanding how the courts insure justice, fairness, and due process for all people who seek to utilize or otherwise become involved in the court system.
- Understanding the role of government in meeting the needs and wants of communities.
- Understanding and examining how rules and laws are developed to govern conflicts.
- Examining how government protects the rights of individuals and promotes the common good.
- Understanding how civil problems are solved.

Prior Knowledge:

Students should be able to grasp the concepts of fairness, justice, due process and equality. They should be able to understand the basic purpose of our justice system, the role of the courts in that system, and the purpose of a trial.

Students should be at a stage where they are able to develop problem-identification and problem-solving skills. They should be able to gather, process, and present information in verbal and written form.

PROCEDURE

The teacher should devote adequate time to discussing the fundamental concepts involved in a manner relevant to the particular grade level. These fundamental concepts will then serve as a backdrop for learning about the justice system, using small claims courts as an example.

The culmination of these activities will be some simple mock small claims hearing scenarios that foster problem solving in a rational manner.

Special Message to Teachers

The activities within each Teaching Tool are designed to build on each other to, first, develop students' knowledge of basic law-related concepts; then, show students how the concepts are utilized or implemented in the court system; and, finally, demonstrate how students should apply the concepts in their everyday lives. However, the various activities that comprise each tool may also be used as stand-alone exercises. For example, you may choose to incorporate only Day 1 or Day 3 into your course work. Or, you may choose to use Day 1 in connection with one unit and then use Day 2 in a later unit.

There is more than one way to utilize the Teaching Tools – the proper use is the use that is beneficial to your classroom.

Day 1 – Overview: Fairness

The teacher should discuss the concept of fairness by incorporating various age appropriate scenarios into the course materials. For example, the teacher may ask, “What is fairness?” and guide the discussion, or provide some fact patterns and ask the class to discuss a “fair” resolution. The teacher should make it clear that it is our desire for fairness that has resulted in a justice system that ensures due process and equal protection for all people seeking to use our courts.

The teacher will explain that the courts use civil law to resolve conflicts and differences between people. Students should understand the difference between a civil case and a criminal case. The teacher should explain that small claims courts use civil law to provide fair process to people with minor disputes over relatively small amounts of money.

If the teacher is interested in providing a detailed discussion of small claims courts, there is helpful material annexed in the appendix, together with suggested evaluation materials.

Day 2 – Civil Court Field Trip

The teacher should plan a field trip to a local small claims court or other civil court where a case is being heard. (Note that many small claims courts meet after business hours, so it may not be convenient to visit a local small claims court while claims are being heard.) In preparation, the teacher should discuss with the appropriate court personnel a proposed agenda for the students and agree on the time frame for the visit. The teacher should also utilize the New York State Unified Court System’s virtual courtroom tour to help set the context of the court visit.

Students will be able to see how civil court judges (and juries) consider different points of view, how they interpret these points of view, and how a civil court judge may negotiate a compromise to resolve disagreements and problems. Depending on which court they visit, they may witness a small claims hearing, opening or closing arguments, direct or cross examination of witnesses, or a judge’s instructions to the jury. Court personnel should inform the students about what they will see before they enter the courtroom.

In the alternative, the teacher may try to arrange for the students to meet a small claims or other civil court judge. The judge will be able to answer questions and may be able to demonstrate what happens during a hearing by taking the students into the courtroom and conducting mock hearings with the students as parties. The Joe Smith v Smalltown Newspaper scenario (see Appendix) could be provided to the judge for use as an example.

Day 3 – The Students’ Court

The teacher should advise the class that they are going to conduct mock negotiations like the parties to a small claims court case do when they are trying to settle the case.

The teacher should explain some background information about negotiations – that the purpose is to avoid a full scale trial or hearing and to reach a fair compromise before the end of the trial or hearing -- ideally before the hearing even starts.

Small Claims Court Settlement Strategy

Divide the class into groups of three: one student judge, one student claimant, and one student defendant. Each group will be provided with a scenario set forth on three separate sheets of paper. The claimant and defendant will receive a set of facts, including the amount of the claim. The judge will receive some general information about the case and a settlement number that the judge will try to have the parties agree on. It is up to the parties to convey the details of their position to the judge.

The students should understand that it is not the result that is important in this exercise, it is the manner in which a result was reached and whether all of the parties agree that the result was fair. The three students in each group should be able to see all sides of the story but present their own position in a rational manner. This exercise should help students understand the role of the judge in reaching a decision that is fair to all parties and the fundamental aspect of due process -- letting both sides tell their stories.

Negotiating scenarios:

Scenario 1 – the dog bite case

Information for claimant:

The defendant's dog bit your finger. You had to go to the emergency room and incurred medical expenses of \$300. You are suing for \$500.

Information for defendant:

Your dog bit the claimant's finger, but the dog has never bitten anyone before. You think that the claimant was teasing the dog and do not think you should have to pay. However, you want to get out of court as soon as possible, so you are willing to pay to get the case over with.

Information for the judge:

The defendant's dog bit the claimant's finger. The claimant is suing for \$500. You think that the claimant is probably exaggerating the claim and want to see evidence of the bill. However, you also think the defendant should be more responsible about his dog. You think the parties should compromise and the case should settle for \$100.

Scenario 2 – the car accident case

Information for claimant:

The defendant drove into your lane and hit your car. Your car was damaged, and you are suing for \$3000. You have two estimates for the damage: one is low and one is high. You

do not want to have to hand over the lower estimate, so you are willing to settle the case before the end of the hearing.

Information for defendant:

You hit the claimant because you were stung by a bee while driving and you don't think you should have to pay anything. You know the claimant has estimates that will be given to the judge if the case goes to a hearing. You fear that the estimates are high and are now willing to pay to avoid having the claimant give the estimates to the judge.

Information for the judge:

The defendant accidentally hit the claimant's car. The claimant is suing for \$3000, but by law you will need to see two estimates of the damage to the car. You think the claimant may not have two estimates for \$3000. You think the parties should compromise and the case should settle for \$1000.

Scenario 3 – the ballpark case

Information for the claimant:

You were at the ballpark, sitting in a certain area even though you saw a sign that said "Danger Zone – No Sitting." You were hit by a baseball. You missed the next three days of work and lost \$300. You would be willing to take less because you know you saw that "Danger Zone" sign.

Information for the defendant:

When the claimant was hit at the ballpark, you rushed over to help. You noticed that the "No Sitting" sign must have been blown over by the wind, and no one could read it. However, you've seen the claimant at the ballpark before, and you think the claimant should have known not to sit there. You are willing to pay some money, though, to avoid a hearing.

Information for the judge:

The claimant was hit by a ball at the defendant's ballpark. The claimant is suing for \$300. You know there are areas of the ballpark marked "Danger Zone" and wonder where the claimant was sitting when the claimant was hit. You think the parties should compromise and the case should settle for \$100.

Scenario 4 – the sidewalk case

Information for the claimant:

You signed a contract with the defendant and paid the defendant \$200 to shovel your driveway in the winter. The contract says that no matter what happens with the weather, the defendant gets to keep the money. However, it never snowed during the winter, and you want your money back.

Information for the defendant:

You signed a contract with the claimant, who paid you \$200 to shovel the claimant's driveway in the winter. The contract says that no matter what happens with the weather,

you are allowed to keep the money. It never snowed during the winter, so you gave back \$50 to some of your customers. You think the claimant found out about that, so you are willing to give back some money.

Information for the judge:

The claimant signed a snow shoveling contract with defendant and paid \$200 to the defendant. It never snowed and now the claimant wants the money back. You don't know the details of the contract, but you think the parties should compromise and settle for \$100.

Scenario 5 – the reward case

Information for the claimant:

You were in a store and saw someone shoplifting. You saw a sign that offered a \$300 reward for turning in a shoplifter. You reported the shoplifter, but it was actually a store detective performing a training exercise. The store refused to pay you the reward, and you are suing for \$300.

Information for the defendant:

You are a store owner and have a sign in your store offering a \$300 reward for turning in a shoplifter. The claimant saw a store detective performing a shoplifting training exercise and reported the apparent shoplifting. You do not want to pay the reward because it was not actual shoplifting, but you are willing to pay some money in order to keep the claimant as a satisfied customer.

Information for the judge:

The claimant reported a shoplifter to the defendant store owner. The defendant did not pay the promised shoplifting reward of \$300, and the claimant is suing for \$300. You don't know why the defendant did not pay, but you think the case should compromise and settle for \$150.

INSTRUCTIONAL/EDUCATIONAL MODIFICATIONS

The three-person negotiation teams should be assigned with student needs and abilities in mind. If necessary, the teacher can allocate more time to the students to review and conduct their scenarios in order to provide individualized group instruction.

This tool can become a large case study experience or a mock trial experience by adding more facts, witnesses and more trial procedure.

ASSESSMENT PLAN

The teacher can use a rating sheet (sample attached) to measure the skills involved in the negotiating experience. Additionally, the teacher may ask students to take careful notes during the meeting with the judge or any other arranged discussion, collect the notes, review them and offer comment.

The teacher can also use any age-appropriate activities from the New York State Unified Court System Activity Book.

NEGOTIATION EXERCISE RATING SHEET

Give each student a rating of 1 – 5 in each category; 5 is the highest score possible. Share and discuss the results with each student

Knowledge/Use
Of Facts

Clarity of Discussion

Reasonableness of Result/
Ability to Compromise

CLAIMANT
(Student's Name)

DEFENDANT
(Student's Name)

JUDGE
(Student's Name)

APPENDIX

Small Claims Court Terms and Phrases

The teacher should explain the following process and vocabulary relating to small claims court conflict resolution:

1. The person who brings the suit in small claims court is the “claimant”; the person who is sued is the “defendant.” Together, these people are referred to as the “parties” to the case. Anyone over 18 years old can sue as a claimant, and parents or guardians can sue on behalf of a younger claimant. A corporation may not be a claimant, but corporations may be sued as defendants.
2. Parties usually represent themselves in small claims court cases; usually attorneys are not involved, but they are permitted to be involved if a party so desires.
3. The claimant in a small claims court matter files a “claim,” an informal lawsuit in which the claimant seeks to recover a specific amount of money from the defendant. The claimant must pay a filing fee to the small claims court and file papers that include a statement of the facts involved. In addition to the claim, the claimant can also request recovery of the cost of the filing fee from the defendant.
4. The claimant must request a specific amount of money. The largest claim the claimant can make in small claims court is \$3,000 -- this amount is, by law, the “jurisdictional limit” of small claims court. There are other jurisdictional limits, too. For example, the only kind of remedy available in small claims court is a financial remedy, meaning that you cannot sue for “equitable relief.” Equitable relief is when a party asks the court to stop someone from doing something or to make someone do something, other than pay money.
5. It is a fundamental principle of civil law that a defendant must be notified of any action against him or her before the claimant may be granted relief. Once the claimant’s papers are filed with the court, the court will select a court date and notify the parties. The claimant must provide the clerk with the defendant’s street address (not a post office box number). The court clerk “serves” a “notice” of the claim on the defendant by mailing the notice, which contains a brief statement of the claim, the amount of money requested, and the date to appear in small claims court regarding the claim.
6. The defendant is entitled to defend against the claim by providing an explanation as to why he or she does not owe the claimant money. The defendant may also file a “counterclaim” within a certain amount of time. If the defendant needs more time in which to file a counterclaim, the defendant may request an “adjournment.” The defendant may use the counterclaim to assert a claim against the claimant. With the counterclaim, the defendant requests money from the claimant. If the defendant’s counterclaim is successful, it effectively reduces the amount of money that the defendant may owe the claimant if the claimant is successful; the claimant may even end up owing the defendant money on the counterclaim. The amount of the counterclaim cannot be more than \$3000.

7. If the claimant does not appear at the court date, the case is dismissed. If the defendant does not appear at the court date, the judge will hear evidence in the defendant's absence. If the claimant presents sufficient evidence, the claimant may win a "default judgment" in the defendant's absence.
8. If the parties do appear in court, the judge will conduct a "hearing," an informal trial, to gather "evidence." Evidence may be in the form of receipts, documents, "testimony" from witnesses, and testimony from the parties. Small claims court has some evidentiary rules to follow; for example, if you are seeking the cost of services or repairs, you must present two itemized estimates for services or repairs. Also, if you want to compel someone to appear as a witness and testify at the hearing, you may serve a "subpoena".
9. The judge may ask the parties and witnesses questions during their testimony. After hearing all the evidence, the judge will decide the claim, and the parties are usually notified of the decision by mail. The judge's decision to award one of the parties money is the "judgment." If one of the parties is not satisfied with the judge's decision, they may bring an "appeal," but appeals are rarely successful in small claims cases.
10. In order to avoid a hearing in court, the parties may try to "settle" their case, meaning that they will reach a resolution without a hearing, after all. Judges encourage settlement and are always interested in hearing that the parties did undertake settlement efforts to resolve the matter out of court.

Small Claims Court Rules and Procedures

From the information set forth above, examples of jurisdictional and procedural rules may be discussed because it is important for students to know that the justice system is available to every citizen and treats every citizen equally and fairly. In court, the parties are accorded due process and treated with dignity as they and their adversaries seek and receive justice. Examples regarding these important rules follow:

- Smalltown Newspaper Corporation wants to sue Joe Smith. He signed a contract to receive daily newspapers for six months and agreed to a payment plan that allowed him to pay \$10 per month for the papers. He paid his bill for the first month but then never paid again. Smalltown Newspaper Corporation continued to deliver for all six months and wants the \$50 that Mr. Smith still owes.
Can the Newspaper Corporation sue in Smalltown's small claims court?
NO. It is a corporation, and corporations cannot sue in small claims court. This rule is a jurisdictional rule because it prevents corporations from bringing any suit in the small claims court.
- Using the same six month contract-for-delivery scenario, suppose instead that Joe Smith's 16-year old son, Steve, wanted to give his Dad a birthday gift of daily newspapers. Steve told his father that he paid \$60 up front, but Smalltown Newspaper Corporation never delivered a single paper. Steve wants his money back.
Can Steve sue in small claims court?

NO. Steve is not old enough to sue in small claims court, but he could ask his father to sue on his behalf. This is another jurisdictional rule because it prevents Steve from bringing a lawsuit on his own since he is under 18.

- Using the same scenario, suppose that Joe Smith went to small claims court to sue Smalltown Newspaper on Steve's behalf. Joe has never been to Smalltown Newspaper, but he had their mailing address.
Can Joe sue without ever visiting Smalltown Newspaper?
YES. In order to commence his suit, Joe must simply pay the filing fee and provide the clerk with Smalltown Newspaper's address. He is legally able to bring the suit on Steve's behalf, but the procedural rules require him to provide an address for the defendant so that the court can serve notice upon the defendant.
- Using the same scenario, suppose that when Joe to small claims court, he told the clerk that he didn't want money; instead, he wants Smalltown Newspaper to start delivering daily papers to him for the next six months.
Can Joe sue for the daily delivery?
NO. Joe can only request money in small claims court. This is a jurisdictional rule that prevents Joe from being able to sue in that court for that relief.
- Using the same scenario, suppose that Joe brought his claim for \$60. Smalltown Newspaper's president comes to the hearing with a chart indicating that the paper delivery person delivered papers to the Smith house for six months. The delivery person is also present and is willing to testify that he delivered papers to the Smith house. The president wants to counterclaim for \$60, stating that Steve Smith never paid Smalltown Newspaper any money. Joe has come to court without Steve and without any receipts or indication that Steve ever paid any money.
Will Joe win?
NO. Joe has failed to provide any evidence to support his claim. Meanwhile, Smalltown Newspaper has provided evidence that it is owed \$60 for its delivery services. Procedural rules require that once claims are filed, the parties must provide evidence to support their claims.

Students should understand that these jurisdictional and procedural rules protect the rights of everyone involved in a small claims case. For example, requiring the defendant to be notified of the claim and given the opportunity to defend against the claim is similar to the requirement in a criminal trial that the defendant is considered innocent until proven guilty. Requiring that evidence be provided ensures that the judge will be presented with all the relevant facts in order to make an informed decision about the case. Precluding corporations and young children from suing also helps ensure that the parties to a case will be on equal footing so that the justice system provides a fair environment for those who seek to use it.

Name:

Date:

Small Claims Court Vocabulary Test

Directions: Describe what each of the following terms or procedures means in Small Claims Court.

3. Adjournment
4. Claimant
5. Corporation
6. Counterclaim
7. Default Judgment
8. Defendant
9. Equitable Relief
10. Estimates
11. Filing Fee
12. Hearing
13. Money Judgment
14. Jurisdictional Limitation
15. Negotiations

16. Parties

17. Procedural Rules

18. Serving Notice

19. Settlement

20. Small Claims Court

21. Subpoena

22. Testimony

Name:

Date:

Small Claims Court Rules Test

Directions: Are the following statements true or false? If the statement is false, explain why.

1. A corporation can bring a lawsuit in Small Claims Court.
2. There is no need to present evidence to the judge in Small Claims Court.
3. A person who wants to bring a claim in Small Claims Court will have to pay a filing fee.
4. A defendant can counterclaim against a claimant in Small Claims Court for \$10,000.
5. A claimant can win a claim against his or her neighbor in Small Claims Court, and the neighbor will never know.
6. The judge will be happy to know that the parties tried to settle the claim before the hearing.
7. If the defendant cannot respond to the claim in time, there is nothing the defendant can do.
8. The claimant must present two estimates of repairs in order to win a claim for the cost of repairs in Small Claims Court.
9. The claimant must know the defendant's address.
10. The Small Claims Court judge can order the defendant to give the claimant a ride to work every day.

TEACHING TOOLS: NYS UNIFIED COURT SYSTEM

MIDDLE SCHOOL LEVEL

HISTORY AND JUDICIAL REVIEW*

LEARNING CONTEXT

Purpose:

Students will learn about the importance of “due process” and equal treatment under the law in our society. Students will see how our emphasis on these concepts has led us to value an independent judiciary that will protect and preserve fundamental rights. Students will learn how the judiciary, especially through the appellate process that takes place at the United States Supreme Court, has helped shape our nation’s history.

Grade Level:

7 and 8

Learning Standard:

Social Studies Standards 1 and 5

Core Curriculum (includes excerpts from the Social Studies Resource Guide with Core Curriculum):

Social studies content in grades 7 and 8 focuses on a chronologically organized study of United States and New York history. Course content ties political, geographic, economic, and social trends in United States history to parallel trends and time frames in New York State history. The federal and state governments constantly reevaluate their roles with respect to everything from fiscal and monetary policies to social programs and technology changes as efforts toward justice for all citizens continue.

Concepts/Themes:

- Understanding how the courts insure justice, fairness and due process for all people who seek to utilize or otherwise become involved in the court system.
- Understanding and appreciating the role of government in meeting the needs and wants of communities.
- Understanding and examining how rules and laws are developed to govern conflicts.
- Understanding the meaning and significance of “judicial independence”.
- Analyzing the sources of the nation’s values as embodied in federal and state constitutions, statutes and case law; appreciating the principles, ideals and core values of our democracy (human dignity, liberty, justice, and equality).
- Examining how government protects the rights of individuals and promotes the common good.
- Analyzing how our government is premised on majority rule that simultaneously protects minority rights.

Prior Knowledge:

Students should be able to grasp the concepts of fairness, justice, due process and equality. They should be able to understand the basic purpose of our justice system and the role of the courts in that system.

The students should have a basic understanding of the role of an appellate court.

The students should be able to develop problem-identification and problem-solving skills. They should also be able to gather, process, and present information in verbal and written form.

PROCEDURE

The teacher should devote adequate time to discussing the fundamental concepts involved in a manner relevant to the particular grade level. These concepts will then serve as a backdrop for learning about the justice system and our appellate courts. For example, during a Civil War unit, the teacher may choose to discuss the concepts of liberty and equality by using one or more of the “racial discrimination” cases listed below.

The teacher may use the Supreme Court background information set forth in the Appendix to provide details about the appellate process that occurs at the United States Supreme Court. The worksheets set forth in the Appendix provide evaluation opportunities with respect to this material. Also, the teacher may use the mock appellate argument activity set forth in the appendix if the students are interested in performing an “oral argument” similar to that which occurs in the Supreme Court.

Special Message to Teachers

The activities within each Teaching Tool are designed to build on each other to, first, develop students’ knowledge of basic law-related concepts; then, show students how the concepts are utilized or implemented in the court system; and, finally, demonstrate how students should apply the concepts in their everyday lives. However, the various activities that comprise each tool may also be used as stand-alone exercises. For example, you may choose to incorporate only Day 1 or Day 3 into your course work. Or, you may choose to use Day 1 in connection with one unit and then use Day 2 in a later unit.

There is more than one way to utilize the Teaching Tools – the proper use is the use that is beneficial to your classroom.

Day 1 – Fundamental Rights, Constitutional Law, and History

The teacher should discuss the concept of fundamental rights – the rights that are protected by our Constitution. The United States Supreme Court’s interpretation of the Constitution with respect to these rights has helped shape our history by virtue of the fact that the Supreme Court has the ability to alter our treatment of people and their fundamental rights, as exemplified by the cases listed below.

For example, the Civil Rights movement focused on equality and democracy, and the goals of this movement inherently included the preservation of the concepts of justice, equality and due process. The result was that, in Brown v. Board of Education, the Supreme Court enforced the end of segregation in public schools.

The teacher should select from among the cases set forth below to demonstrate how the decisions of the United States Supreme Court impact basic rights in our nation. These cases should be studied with an explanation and acknowledgment of the time period (pre-Civil War, Industrial Age, WWII, the Civil Rights movement, the Vietnam War, etc.) and political context (segregation/desegregation, women’s rights movement, free speech, protecting the rights of the indigent, *laissez-faire* economics/labor regulation, etc.) in which each case was decided.

Students should also know that a case is brought on appeal when the party who loses at trial asks judges of a higher court to reconsider the issues and possibly alter the trial court’s decision. Because appellate courts may make decisions that change the law, we value the concept of an independent judiciary – the notion that judges are not influenced by the other branches of government. If the teacher is interested in providing a detailed discussion of judicial independence, there is helpful material annexed in the appendix.

Racial Discrimination

- *Dred Scott v Sandford (1857)*: the Supreme Court stated that no African-American -- free or slave -- could be considered a citizen of a state or of the United States; this decision was effectively overruled after the Civil War by the Fourteenth Amendment
- *Plessy v. Ferguson (1896)*: the Supreme Court rejected the argument that racial segregation in railroad facilities gave the impression that African-Americans were inferior; the Court stated that segregation was acceptable as long as the result was “separate but equal facilities”
- *Korematsu v. United States (1944)*: the Supreme Court infamously upheld the incarceration of persons of Japanese origin on the West Coast after the bombing of Pearl Harbor; the Court justified its decision by relying on “the judgment of the military authorities” that there were “disloyal members of that population”
- *Brown v. Board of Education (1954)*: the Court determination was almost the exact opposite of the *Plessy* decision in a case regarding racially segregated public schools; the Supreme Court stated that “separate educational facilities are inherently unequal” because they create a feeling of inferiority as to status in the community

Gender Discrimination

- *Goesart v Cleary (1948)*: the Court upheld a state statute which provided that only women who were the wives or daughters of the male owner of the bar could work in that bar -- women who were not supervised in this manner could not be licensed as bartenders; the Court reasoned that the male supervision assured the protection of the females from the “hazards” that might otherwise confront a “barmaid”
- *Craig v Boren (1976)*: the Court invalidated state statutes that distinguished between males and females for purposes of a minimum drinking age: women were allowed to start drinking certain alcoholic beverages at 18, but men had to wait until 21; the Court expressed disdain for the “social stereotypes” that formed the basis for the differentiation – that all young men were reckless and would drink and drive, while all young women would find a chivalrous escort home – and found that the reasoning was not enough to support the gender-based age differential

Rights of Personal Expression

- *United States v. O'Brien (1968)*: the Supreme Court upheld the conviction of a young man who burned his draft card to protest the Vietnam War; the Court found that the statute, which made it a felony to knowingly destroy a card advanced the government interest in the draft, which was needed in a time of crisis
- *Tinker v. Des Moines (1969)*: the Supreme Court reversed lower court decisions that permitted a school to prohibit students from wearing black armbands in the classroom to protest the Vietnam War; the Court said that the First Amendment permitted “reasonable regulation of speech-connected activities in carefully restricted circumstances” but found that there was no “evidence that school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school”
- *New York Times Co. v. United States (1971)*: the United States government wanted to prevent some prominent newspapers from publicizing the Pentagon Papers, classified documents regarding the Vietnam War; the government argued that publication would embarrass the United States and provoke the enemy, but the Court did not find this reason enough to stop the publication and so regulate free speech

Rights of Criminal Defendants

- *Mapp v. Ohio (1961)*: required that the federal rule, which required the exclusion of evidence obtained through an improper search and seizure, be applied in all of the states
- *Gideon v. Wainwright (1963)*: in order to insure that everyone receives “fair trials before impartial tribunals in which every defendant stands equal before the law,” the Supreme Court required appointed counsel for every indigent criminal defendant accused of a felony

- *Miranda v. Arizona (1966)*: the Supreme Court enumerated certain rights of accused criminals (“You have the right to remain silent . . .”), including a re-affirmation that indigent persons were to be afforded counsel in criminal prosecutions – prior to police interrogation, the accused must be expressly informed that he or she has the right to appointed counsel if s/he cannot otherwise afford an attorney

Trade/Labor Rights

- *Gibbons v. Ogden (1824)*: the Supreme Court established the scope of the power of the “Commerce Clause” -- interpreted as a grant of power to Congress to regulate trade among the states -- and provided the basis for an era of Supreme Court decisions; the decision itself held that a New York grant of a steamboat monopoly between New York and New Jersey conflicted with a federal statute permitting interstate commerce
- *In re Debs (1895)*: during the Pullman Strike of 1895, the Supreme Court upheld the power of President Cleveland to keep the railroads operating and to stop the strike on the ground that it threatened the free flow of the mail and would “affect the public at large”; Debs violated the Circuit Court’s injunction that was intended to keep the trains moving, and the Supreme Court upheld his jailing for contempt of court; subsequent federal legislation negated the power of this case as a precedent in labor disputes
- *Lochner v. New York (1905)*: New York, due to concern over employees’ health, enforced a 60 hour work week in the bakery profession; however, the Supreme Court rejected this “labor law” because it interfered with the rights of the workers to contract for their own hours, while it did not protect the workers’ health enough to justify this imposition; for a certain period, the Court became known for choosing not to accept the states’ reasons behind laws that regulated labor, and the Court’s skeptical reasons for striking down the laws became known by some critics as “Lochnerizing”

Day 2 – Appellate Court Field Trip

The teacher should plan a field trip to a local appellate court if location permits. In preparation, the teacher should discuss with the appropriate court personnel a proposed agenda for the students and agree on the time frame for the visit.

Court personnel should discuss with students what they may expect to see in the courtroom. Students will be able to see how appellate arguments are conducted, how the appellate judges interact with the attorneys, and how various court personnel (such as the clerk) perform their duties.

In the alternative, the teacher may try to arrange for an appellate judge to visit the classroom. The judge will be able answer questions and demonstrate what happens during an appellate argument, perhaps using a case or two that the class has discussed on Day 1.

Day 3 – Appellate Research

The teacher may wish to supply the students with case briefs for any of the Day 1 cases that are available from <http://www.tourolaw.edu/patch/CaseSummary.html>. Also, check the following for resources: www.findlaw.com; <http://www.abanet.org>; www.nysba.org.

The teacher should assist the students in reviewing the case briefs with an eye toward identifying the legal issues and identifying the arguments from each side regarding the legal issues.

Students should select or be assigned a case to research. The students may go to the library to research the subsequent history of their topic; for example, if they choose the *Dred Scott* case, they may research the development of the Fourteenth Amendment by way of Lincoln's Emancipation Proclamation. Or, if the students have access to the Internet, they may search for other cases or news articles about events related to their topics. For example, research regarding the gender discrimination cases may yield information regarding the proposed Equal Rights Amendment. Students should present their results to the classroom or to the teacher either in verbal or written form.

The teacher should explain to the students that this process is similar to the one used to prepare an appellate brief. Attorneys research similar cases that have preceded their current case, research what has happened with the law since those similar cases, and use the results to help persuade the Court to decide one way or the other.

ASSESSMENT PLAN

The assessment will be based upon the results of the research activity and on the worksheets (see Appendix) if the teacher deems them appropriate for use.

APPENDIX

Supreme Court Background Information

The teacher may wish to provide the following background information regarding how a case reaches the Supreme Court of the United States:

- typical cases arrive through the federal court system, where they are tried in District Court, appealed at a Federal Circuit Court of Appeals, and then “*certiorari*” (permission to appeal) is sought from the Supreme Court
- cases may also arrive through the state court systems; after a case is determined by a particular state’s highest court, *certiorari* may be sought from the Supreme Court
- the Supreme Court’s “*certiorari* review” insures that the Court hears significant cases (cases that will affect the rights of a vast amount of people), cases of “first impression” (cases involving issues that have not been raised before), or cases where there is a conflict among the courts just below the Supreme Court level (the Federal Circuit Courts of Appeals or the highest courts of different States)
- the person bringing the appeal is the “appellant”; the person responding to the appeal is the “respondent”; respondents may also “cross-appeal” if there is a different issue that they want to raise on appeal; parties may only appeal the issues that they lost at the court below
- the parties write “legal briefs” to present their cases; then, they appear at the court for “oral argument” to further explain their case and to answer any questions the Justices may have
- the decision of the Court is issued after all of the Justices have had time to consider the briefs and the oral argument; the crucial part of the decision, which provides a final answer to the issue at hand, is called the “holding”

The teacher should also discuss the role of the court and the implication of differing theories of judicial review.

- judges are our government’s objective decision makers; they hear all sides of a case and apply the law in a fair manner to determine the outcome of the case – if they believe they cannot do their job properly because they want a case to be decided a certain way before they hear all of the facts, they “recuse” themselves from the case so they are not involved in the decision.
- there are nine United States Supreme Court Justices; one is the Chief Justice; the Justices are appointed by the President of the United States, with the approval (advise and consent) of the United States Senate – the approval process is called the “confirmation hearing”

- Justices are appointed for life terms
- the interpretation of the law by a judge is called “judicial review”; often, Supreme Court cases require the Court to interpret the meaning of the Federal Constitution; this review has resulted in a body of case law known as “Constitutional Law”
- the power of judicial review was established by the first Chief Justice of the United States, John Marshall, in an early constitutional law case, *Marbury v. Madison* (1803) – Thomas Jefferson was elected President, but before he was inaugurated, sitting President Adams made last minute appointments (the “Midnight Judges”) to the federal bench. The judges needed signed commissions to begin their work, and, as one of the last appointments, would-be Judge Marbury’s commission was not delivered to him before Jefferson’s inauguration. Madison (Jefferson’s secretary of State) refused to deliver the commission to Marbury, and Marbury sued. The suit involved a federal statute, and Chief Justice John Marshall asserted that a federal court had the power to refuse to pay heed to congressional legislation that was inconsistent with the court’s interpretation of the Constitution – even though the Constitution says nothing about such a “final say” by the courts. Interestingly, Marshall had signed Marbury’s commission before assuming the role of Chief Justice. Not surprisingly, he found Madison’s refusal to deliver the commission to be illegal.
Was Marshall’s decision a bold exercise of “judicial independence” or was this case an instance where Marshall should have recused himself?
- Justices are usually selected by the executive branch (President) and approved by the legislative branch (Senate), the members of which have obvious political affiliations; however, as one of the checks and balances in our system of government, judges function independently of the executive and legislative branches and their inherent involvement with the political process – this important concept is known as “judicial independence”
- some Justices are “strict constructionists,” meaning that they believe they must take the meaning of the Constitution very literally; other Justices are “activists,” meaning that they consider the basic tenets of the Constitution but do not feel confined by the document’s literal meaning when deciding a case for example, the First Amendment provides that “Congress shall make no law. . . abridging the freedom of speech.” A strict constructionist might interpret that statement to mean that any law that infringes upon free speech is prohibited. An activist might interpret that statement to mean that any unreasonable government regulation of free speech is prohibited.
- this difference in interpretation is often the reason that a Justice will write a “dissent,” indicating that he or she does not agree with the “majority” opinion, which contains the holding of the case; the ability to dissent is one aspect of judicial independence
- sometimes, there are noticeable trends in the overall “ideology” of the court; for instance, if there are several Republican presidential administrations in a row, the Supreme Court may include several Justices who have a more “conservative” slant until a Democratic president makes appointments, which may place more “liberal” judges on the Court – and vice versa

- because of the shifts in ideology or general shifts in society, it is possible that the Court may take what was once a dissenting position and turn it into a majority stance, and vice versa; generally, however, the Court will follow its own “precedents” in a process known as “*stare decisis*”
- the Court’s ability to carefully choose when it should not follow precedent is one of the most important aspects of judicial independence

Students should complete the two worksheets annexed below to demonstrate their understanding of the pertinent terms and concepts. Note that more sophisticated students may be asked to define the terms and briefly describe what happened in each case, rather than complete a matching exercise.

Mock Appellate Arguments

The students may be interested in participating in mock appellate arguments that re-enact a United States Supreme Court case. The students may be asked to prepare a one page type-written appellate brief and present a five minute oral argument to a panel of three “judges” (older students, teachers, administrators, visiting attorneys or judges). The panel should be provided copies of the students’ briefs in advance, together with any other materials that teachers may find appropriate to prepare the panel. Panel members may question students about their briefs, their statements made during argument, or about pertinent historical events that may impact the case. Students should draft and submit a one page brief of their position in the selected case (one student should have the appellant’s position; one the respondent’s). The brief should include the main issues and the arguments in support of the decision sought on the issues. Obviously, the students will know what has actually happened to the case since the Supreme Court case was originally argued, but they should argue the case as if this information is not available.

Appellate advocates may be assessed based on their presentation of the one page written brief, the five minute oral argument by each side, and the fielding of questions from the judges during that argument. A rating sheet is provided below.

Name: _____

Date: _____

Supreme Court Background Worksheet

Directions: Match each of these terms with the proper phrases.

activism

appellant

certiorari review

confirmation hearing

Circuit Court

Constitutional Law

dissenting opinion

first impression

holding

ideology

legal briefs

precedent

respondent

stare decisis

strict constructionism

1. the written product that tells the Justices about the case
2. may be either conservative or liberal
3. the practice of following what the court has said in prior cases
4. the person who brings the appeal
5. the product of a disagreement with the majority
6. the process of deciding whether a case will be heard by the Supreme Court
7. the first level federal appellate court
8. may cross-appeal
9. a factor that may encourage the Court to take a case
10. precisely following the words of Constitution
11. the process of evaluating a candidate for Supreme Court
12. the most important part of the majority opinion
13. loosely interpreting the Constitution
14. case law that results from interpretation of the Constitution
15. prior cases

Name: _____

Date: _____

Supreme Court Cases Worksheet

Directions: Match the name of each United States Supreme Court case with the correct subject matter of the case.

Case Names

Marbury v. Madison (1803)

Gibbons v Ogden (1824)

Dred Scott v. Sanford (1857)

Plessy v. Ferguson (1896)

Lochner v. New York (1905)

Korematsu v. United States (1944)

Brown v Board of Education of Topeka (1954)

Gideon v Wainwright (1963)

Miranda v Arizona (1966)

Tinker v Des Moines Independent School District (1969)

1. denied African-Americans equal rights to citizenship during the pre-Civil War era
2. established the power of judicial review
3. enforced desegregation in public schools because "separate" is not "equal"
4. permitted discrimination against Japanese residents in the US during WWII
5. struck down a NY labor law on the basis that it interfered with the individual right to contract
6. involved an early use of the Commerce Clause
7. protected the various right of accused criminals
8. permitted segregation, using the justification of "separate but equal"
9. guaranteed criminal defendant's right to trial counsel
10. involved freedom of expression issues

Name: _____

Date: _____

**Rating Sheet for Attorneys:
Appellate Argument in the Classroom**

| Categories | Excellent | Good | Fair |
|--|------------------|-------------|-------------|
| 1. General Oral Presentation | _____ | _____ | _____ |
| 2. General Clarity of Brief | _____ | _____ | _____ |
| 3. Understanding of Facts | _____ | _____ | _____ |
| 4. Identification of Legal Issues | _____ | _____ | _____ |
| 5. Understanding of Relevant Law | _____ | _____ | _____ |
| 6. Understanding of Arguments | _____ | _____ | _____ |
| 7. Understanding of Historical Context | _____ | _____ | _____ |
| 8. Ability to Respond to Questions | _____ | _____ | _____ |
| 9. Ability to Return to Argument after Questions | _____ | _____ | _____ |
| 10. Overall Enthusiasm for Project | _____ | _____ | _____ |

TEACHING TOOLS: NYS UNIFIED COURT SYSTEM

MIDDLE SCHOOL LEVEL

Justice: The Constitution and the Criminal Courtroom*

LEARNING CONTEXT

Purpose:

The purpose of this exercise is to have students become familiar with the concept of justice, which includes preserving the Constitutional rights of those accused of committing crimes. Students will see how provisions in the United States Constitution and in case law preserve these constitutional rights to due process and equal and fair treatment under the law.

Grade Level:

6, 7 and 8

Learning Standard:

Social Studies Standards 1 and 5.

Core Curriculum (includes excerpts from the Social Studies Resource Guide with Core Curriculum):

Grade 6: The grade 6 social studies program emphasizes the interdependence of all people, keying on the Eastern Hemisphere. Sixth graders learn that governments change over time and place to meet the changing needs and wants of their people. As an example, students should understand that the Bill of Rights addresses some basic human rights that the Framers of the Constitution feared were not otherwise protected in the governments they had witnessed. The extent to which human rights are protected becomes a key issue in the totalitarian societies of the Eastern Hemisphere that the sixth graders learn about, and understanding the United States' human rights guarantees will provide a useful basis for comparison.

Grade 7/8: Social studies content in grades 7 and 8 focuses on a chronologically organized study of United States and New York State history. Course content ties political, geographic, economic, and social trends in United States history to parallel trends and time frames in New York history. The federal and state governments constantly reevaluate their roles with respect to everything from fiscal and monetary policies to social programs and technology changes, as efforts toward justice for all citizens continue.

Concepts/Themes:

- Examining how government protects the rights of individuals and promotes the common good.
- Understanding how the courts insure justice, fairness and due process for all people who seek to utilize or otherwise become involved in the court system.
- Analyzing the sources of the nation's values as embodied in federal and state constitutions, statutes and case law; appreciating the principles, ideals and core values of our democracy (human dignity, liberty, justice, and equality).

* Developed with the assistance of Kevin O'Hagan, Garden City High School, Garden City Union Free School District

Prior Knowledge:

Students should be able to grasp the concepts of justice, due process, fairness and equality. They should be able to understand the basic purpose of our justice system, the role of the courts in that system, and the purpose of a trial.

Students must be able to read primary documents and present information in verbal and written form.

PROCEDURE

The teacher should devote adequate time to discussing the fundamental concepts involved in a relevant manner. Students will learn about the rights embodied in the Bill of Rights and case law (see Day 1) that preserve justice and assure due process for those accused of committing crimes. These exercises are intended to provide students a detailed appreciation of some of the fundamental rights they enjoy as American citizens.

Special Message to Teachers

The activities within each Teaching Tool are designed to build on each other to, first, develop students' knowledge of basic law-related concepts; then, show students how the concepts are utilized or implemented in the court system; and, finally, demonstrate how students should apply the concepts in their everyday lives. However, the various activities that comprise each tool may also be used as stand-alone exercises. For example, you may choose to incorporate only Day 1 or Day 3 into your course work. Or, you may choose to use Day 1 in connection with one unit and then use Day 2 in a later unit.

There is more than one way to utilize the Teaching Tools – the proper use is the use that is beneficial to your classroom.

INSTRUCTIONAL/EDUCATIONAL MODIFICATIONS

The instructional approach can be easily modified based on class dynamics. Independent written activity can be substituted for verbal activities. Cooperative learning strategies allow for the pairing of students with varying abilities and help free the teacher to assist those that require more individualized instruction.

Day 1 – Document Analysis

The teacher should discuss the notion of justice and of being accorded due process and fair treatment under the law. Students should understand that the Colonists had not received the benefit of all of these rights when they left their home nations, and the Framers of the Constitution sought to remedy those problems. The teacher may wish to discuss historical examples that demonstrate what happens when justice is not served – the Salem witch hunts, racially motivated lynchings, McCarthyism – in order to demonstrate how our government has evolved to prevent such events from occurring again.

Students should be given the primary materials containing relevant law (for pertinent excerpts, see Relevant Law, attached). Either individually, or as a group, they should read the materials and be able to identify the provisions that protect the following rights:

1. protection against unreasonable searches and seizure (4th Amendment)
2. requirement of probable cause for search or arrest warrants (4th Amendment)
3. guarantee of a Grand Jury indictment (5th Amendment)
4. protection against double jeopardy (5th Amendment)
5. the right to not testify against yourself (5th Amendment)
6. guarantee of due process (5th Amendment, 14th Amendment – makes the 5th Amendment apply to all of the States)
7. the right to a trial by an impartial jury of your peers (6th Amendment)
8. the right to cross-examine witnesses that testify against you (6th Amendment)
9. the right to trial counsel (6th Amendment)
10. no cruel and unusual punishment (8th Amendment)

The teacher should spend some time discussing the significance of each of these rights. When it is evident that the class understands the origin of these rights, the teacher may have the students read and discuss excerpts from significant case law that demonstrate the application of some of these rights. Some of the cases particularly highlight the Court's weighing of the rights of an individual against the action taken by law enforcement authority.

Students may be asked to complete the Worksheet for assessment purposes.

Relevant Law

Constitutional Provisions:

Amendment IV

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.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Case Law:

Mapp v. Ohio (1961):

Cleveland police officers received a tip that a suspect in a bombing case was hiding in Miss Mapp's home. The officers knocked on her door and demanded entrance, but Mapp refused to admit them without a search warrant. Subsequently, more officers arrived and the police forcibly opened the door to Mapp's home and entered her apartment. They began a general search of her apartment, including looking through papers. In the basement, the officers found obscene

materials and arrested Mapp for possession of the obscene materials. The police were unable to demonstrate that they had obtained a search warrant to permit them to enter the Mapp home. The United States Supreme Court determined that the Fourth Amendment applied to protect Mapp from the warrantless search and seizure even though it was the state (of Ohio) and not the federal government that arrested and prosecuted her. The Court determined that the Fourteenth Amendment's Due Process Clause guarantees that Fourth Amendment rights apply to state, as well as federal, police action.

"Why should not the same rule apply to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effects, documents, etc.? * * * our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense. * * * Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. * * * Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice."

Gideon v. Wainwright (1963):

Mr. Gideon was charged with a felony in Florida and requested a court appointed attorney due to his lack of money, which request was denied. Gideon represented himself at trial and was found guilty. Specifically overruling a prior Supreme Court case, the Court found that Gideon's Sixth Amendment rights had been violated by the denial of appointed counsel.

"* * * reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

Escobedo v. Illinois (1964):

Mr. Escobedo's brother-in-law was shot and killed one night. The next morning, the police arrested Escobedo without a warrant and interrogated him. Escobedo made no statement and was released later in the afternoon with the help of a lawyer Escobedo had retained. Subsequently, Escobedo and his sister were arrested and taken to police headquarters. On the way, Escobedo requested to speak to his lawyer for advice. The lawyer arrived at police headquarters but was denied the opportunity to meet with Escobedo, who was being interrogated even though he kept

requesting to speak to his lawyer. Escobedo made statements that indicated knowledge of who committed the crime and, at trial, was convicted of murder. The Supreme Court favorably cited decisions of the New York Court of Appeals and found that the use of the statements at trial violated Escobedo's Sixth Amendment right to counsel.

"We have also learned the companion lesson of history that no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights. No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system. We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment to the Constitution as 'made obligatory upon the States by the Fourteenth Amendment,' (*Gideon v. Wainwright*, 372 US, at 342) and that no statement elicited by the police during the interrogation may be used against him at a criminal trial. * * * Nothing we have said today affects the powers of the police to investigate an 'unsolved crime,' * * * We hold only that when the process shifts from investigatory to accusatory – when its focus is on the accused and its purpose is to elicit a confession – our adversary system begins to operate, and, under the circumstances here, the accused must be permitted to consult with his lawyer."

Miranda v. Arizona (1966):

The Court considered multiple cases in which statements were obtained from defendants and admitted at trial. Each of the defendants had been questioned while in custody and cut off from the outside world, without being given a full and effective warning of their rights at the outset of the interrogation process.

"We start here, as we did in Escobedo, with the premise that our holding is not an innovation in our jurisprudence, but is an application of principles long recognized and applied in other settings. We have undertaken a thorough re-examination of the Escobedo decision and the principles it announced, and we reaffirm it. That case was but an explication of basic rights that are enshrined in our Constitution – that 'No person . . . shall be compelled in any criminal case to be a witness against himself,' and that 'the accused shall . . . have the Assistance of Counsel' – rights which were put in jeopardy in that case through official overbearing. These precious rights were fixed in our Constitution only after centuries of persecution and struggle. * * * Our holding * * * briefly stated is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant

may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.”

The teacher may also wish to check www.tourolaw.edu/patch for summaries of these cases.

Day 2 – Recognizing and Prioritizing Your Rights

Prioritizing Your Rights

This exercise can be done in group (one large or several small), verbal form or in individual, written form. The teacher will ask students to pick five of the rights discussed on Day 1, prioritize them, and explain their selection and prioritization in detail -- “If you were one of the Framers of the Constitution and had to pick only five rights to put into the Bill of Rights, name which five you would select in order of their importance, and explain your choices.”

It does not matter which rights are selected for discussion; rather, the point of the exercise is to determine whether students truly appreciate the meaning and significance of each of the amendments.

Recognizing Your Rights

Students should be provided with newspapers to review or given a homework assignment to find newspaper articles regarding recent high profile criminal cases in their community that may contain an indication that the rights of the accused were preserved.

For example, the articles may indicate that evidence was suppressed, which means that 4th Amendment search and seizure principles were at stake; or, the articles may simply provide quotations from the attorney for the accused, highlighting the fact that the accused was entitled to counsel.

Day 3 – Visit from a Criminal Law Authority

The teacher should arrange for a criminal court judge (contact your local court using the Unified Court System’s web page for information), prosecutor (contact the local prosecutor’s office), or criminal defense attorney (contact the local Bar Association) to visit the classroom and discuss the practical aspects of rights of the accused.

The visitor will be able to answer questions regarding the arraignment process, Miranda rights, probable cause hearings, and other pre-trial evidentiary hearings that determine what evidence will be admissible against the criminal defendant. Students should be given the opportunity to work in groups or individually to formulate questions for the visitor. If time allows, the teacher may wish

to provide the speaker with a list of questions to answer before the visit. The visitor may also be willing to conduct mock hearings or mock interrogations to demonstrate how Constitutional rights protect people who are falsely accused of a crime.

ASSESSMENT PLAN

The teacher may evaluate the students based on responses to the Worksheet, the prioritization exercise and the newspaper review. The teacher may also informally evaluate students based on their enthusiasm for and participation with the guest speaker.

Name: _____

Date: _____

Bill of Rights and the Rights of the Accused

Directions: Indicate which Amendment from the Bill of Rights guarantees the each of the rights listed below.

1. trial by jury _____

2. no unreasonable search and seizure _____

3. representation by counsel _____

4. Grand Jury indictment _____

5. due process _____

and _____

6. no double jeopardy _____

7. the right to remain silent _____

8. cross-examination of witnesses _____

9. probable cause for arrest _____

10. no cruel and unusual punishment _____

TEACHING TOOLS: NYS UNIFIED COURT SYSTEM

MIDDLE SCHOOL LEVEL

Citizenship and the Immigration Experience*

LEARNING CONTEXT

Purpose:

The purpose of these activities is to highlight some of the benefits and responsibilities of being or becoming a United States citizen. Students will learn about the immigration and naturalization experience in order to better understand the privileges and duties associated with citizenship.

Grade Level:

6, 7, and 8

Learning Standard:

Social Studies Standards 1, 2, 3, 4, and 5

Core Curriculum (includes excerpts from the Social Studies Guide with Core Curriculum):

Grade 6: The grade 6 social studies program emphasizes the interdependence of all people, keying on the Eastern Hemisphere. Sixth graders learn that the citizens of the nations of the Eastern Hemisphere have rights and responsibilities as defined by their constitutions and by other laws of their nations. A thorough knowledge of the rights and responsibilities of citizens in the United States will provide a solid foundation for comparing the rights of citizens in Eastern Hemisphere nations with the rights of citizens in the United States. Such a comparison will help students understand why individuals from those nations would want to immigrate to the United States.

Grade 7/8: Social studies content in grades 7 and 8 focuses on a chronologically organized study of United States and New York State history. Course content ties political, geographic, economic, and social trends in United States history to parallel trends and time frames in New York State history. The national history of immigration in this country is closely linked with New York State history, since many immigrants entered the United States through New York City. It is important for students to understand how the immigrant population continuously impacts the cultural, economic, and political development of our State and Nation. It is also important for students to understand the basis for various government positions regarding immigration, in light of the constant reevaluation of the role of government in our society.

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Concepts/Themes:

- Understanding and appreciating the role of government in meeting the needs and wants of communities.
- Examining how government protects the rights of individuals and promotes the common good.
- Analyzing the source of the nation's values as embodied in federal and state constitutions, statutes and case law; appreciating the principles, ideals and core values of our democracy (human dignity, liberty, justice and equality).
- Analyzing how our government is premised on majority rule that simultaneously protects minority rights.

Prior Knowledge:

The teacher and students should have some experience with locating and utilizing Internet resources.

PROCEDURE

Teachers and students will utilize web sites to research their genealogy, immigration trends, and to learn about the naturalization process.

Special Message to Teachers

The activities within each Teaching Tool are designed to build on each other to, first, develop students' knowledge of basic law-related concepts; then, show students how the concepts are utilized or implemented in the court system; and, finally, demonstrate how students should apply the concepts in their everyday lives. However, the various activities that comprise each tool may also be used as stand-alone exercises. For example, you may choose to incorporate only Day 1 or Day 3 into your course work. Or, you may choose to use Day 1 in connection with one unit and then use Day 2 in a later unit.

There is more than one way to utilize the Teaching Tools – the proper use is the use that is beneficial to your classroom.

Day 1 – Ancestry, Genealogy, and Immigration

The teacher should explain to the students that unless they are descendants solely of Native Americans, then their ancestors immigrated to the United States at some point in time. The social studies curriculum emphasizes the different phases of immigration to the United States, from the Colonists to recent immigrants, and the teacher should be prepared to highlight points of interest

from these various phases. Collectively, students should comprehend what their ancestors gave up and hoped to gain by immigrating to America. The students should divide into groups to select a topic to research from the following time periods:

- Explorers first entering the New World
- 1840s - 1890s
- 1890s - 1920s
- Post WWII
- present day

Students should understand the social, economic, political, and religious consequences that caused and resulted from the immigration topic that they select. They should be able to name famous immigrants and historical events from their respective time periods.

Using the Internet, students may sign onto www.rootsweb.com to research their own genealogy or search for information regarding other people bearing their family names. Various projects may be developed by the teacher to utilize this website, depending on student interest.

Day 2 – Immigration and Naturalization

Students should explore the information provided at the following websites:

www.ins.usdoj.gov

www.usdoj.gov

The teacher may make up a sample test so that students will become aware of the information that may appear on a naturalization test (see Sample Questions, attached).

Students should understand and be able to discuss the following concepts:

- why they or their ancestors may have wanted to immigrate to the United States
- whether it is fair to have tests and interviews for people who wish to become citizens; whether an immigrant should know United States history in order to become a citizen
- what would happen if there was an “open door” policy regarding immigrants who wish to become citizens
- whether older immigrants should be excused from testing requirements

After grasping an understanding of what is necessary to become a United States Citizen, the class may visit an Immigration and Naturalization ceremony. The students may also create a ceremony or host an INS ceremony to honor any recently naturalized students or children from other countries who have been adopted by United States citizens.

ASSESSMENT

Oral or written presentations may be used to share results with the rest of the class and for purposes of evaluating student performance with respect to these projects.

SAMPLE QUESTIONS

What is the executive branch of government?
What is the judicial branch of government?
What are the duties of the Supreme Court?
What is the Bill of Rights?
Who said, "Give me liberty or give me death?"
Which countries were our enemies during WWII?
What are the 49th and 50th states of the Union?
How many terms may the President serve?
Who was Martin Luther King, Jr.?
Who is the chief executive of a local government?
According to the Constitution, what are the requirements to become President?
Why are there 100 Senators in the Senate?
Who selects the Supreme Court Justices?
How many Supreme Court justices are there?
Why did the Pilgrims come to America?
What is the chief executive of state government called?
Who was the main author of the Declaration of Independence?
When was the Declaration of Independence adopted?
What is the basic meaning of the Declaration of Independence?
What is the national anthem of the United States?
Who wrote it?
Where is the notion of freedom of speech guaranteed?
What is a minimum voting age in the United States?
Who signs bills into law?
Who was the President during the Civil War?
What did the Emancipation Proclamation do?
What is the name of the group of the President's closest advisors?
Which President is called the "Father of our country"?
What Immigration and Naturalization Service form is used to apply to become a naturalized citizen?