



Actors as Supreme Court justices in last year's re-enactment of *Boy Scouts of America v. Dale*, by Mixed Blood Theatre Company in Minneapolis.

# Courtroom drama

*Re-enacting landmark cases a lesson in civics and much more*

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HAVE YOU EVER watched a case being argued before the U.S. Supreme Court? Probably not, unless you've attended in person, because Supreme Court proceedings are not televised. However, if you have attended, you know how dramatic and theatrical the event can be. The judges wear costumes (black robes), as do the lawyers (their best business suits). There are characters in conflict (the petitioner and respondent), and suspense: only one side will emerge victorious from this contest. The stakes are high, because the verdict will affect the nation's laws and culture, so thousands if not millions of people await the outcome. The arguments themselves are feisty affairs in which justices engage lawyers in a battle of evidence, precedent, interpretation, and wit. And there's a dramatic structure, with an inciting incident (the original controversy), a progression of rising conflicts (lower court hearings) that lead to a climax (the oral argument at the Supreme Court), and finally the denouement (the Opinion of the Court).



What a great educational experience it is to witness a case being argued, with lessons in citizenship and political science, as well as the theatrics of our judicial process. Unfortunately, few students have the opportunity to visit the U.S. Supreme Court, and it's difficult to generate the same kind of student enthusiasm for the legal system through conventional research and discussion. However, since the oral arguments are recorded and then both the audio version and transcribed text are posted on the Internet, it is possible to re-enact these historic events. These three observations—the value of the experience, the difficulty of attending, and the option to re-enact—provided the inspiration for our pilot project at Goucher College, “The Case is Submitted...,” which embraces an interdisciplinary approach, actively engages students with the course material, and imparts lessons about their roles as citizens.

Though we worked with students at the college level, the lessons and activities of this project are equally relevant to theatre and civics classes in secondary schools. So, while we describe the design and implementation of this pilot project at Goucher College, we also include suggestions on how lessons and activities can be modified for high school students.

## **The case for re-enactment**

The goals of this project are very much aligned with the philosophy of a liberal arts education. The re-enactment



process takes students' declared interests (political or cultural) in a new direction, while instilling values that are central to any liberal education, such as citizenship, free expression, and informed dissent. This project impresses on all students the importance of being active in the political realm, as the reach of politics extends to all members of a community, not just the interested.

Another objective is to use a Supreme Court ruling dealing with discrimination so as to bring this topic into our thoughts and conversations. Discrimination remains an issue of critical importance in our society; it's a form of injustice our young people might already have encountered themselves, and one we hope they'll have the courage to combat as adults. Again, to have the insight and perspectives of a broad range of students will add greater depth to our discussions and perhaps provide fresh ways of thinking about a common issue.

Taking an interdisciplinary approach, we looked to combine two courses: Introduction to American Politics and Introduction to Dramaturgy. We wanted to use aspects of political science and theatre to engage students in civic issues through role-playing activities. The project was designed as a two-week unit focusing on the substance of individual cases as well as the decision-making process of the U.S. Supreme Court. There were five pedagogical components:

1. Study of and attendance at Supreme Court oral arguments (Goucher College is located in Baltimore, which is forty-five miles from Washington, D.C.).
2. Selection of a case with research and review of the case briefings.
3. Re-enactment of the oral argument with improvisational elements.
4. Debate and decision-making among student participants.
5. Analysis and comparison of the participant decision with the majority opinion of the Court.

While the relevance and magnitude of civic issues become clear to students in the course of this project, it's role-playing that turns this intellectual inqui-

ry into something much more. The exercise encourages them to engage their personal passions and beliefs in the constitutional debate. It builds character by asking students to portray roles that have authority and consequence, roles they don't normally play in their daily lives. It also presents students with a unique acting challenge: they must express themselves in the particular rhythms and hesitations of another person's thought and speech. This can be an extreme challenge, but when successfully achieved, the irregular and interrupted speech patterns of Supreme Court Justices and high-powered lawyers add tremendously to the authenticity and humanity of the debate.

For example, the following exchange between Justice Ruth Bader Ginsburg and George Davidson, the lawyer for the plaintiff in the case of *Boy Scouts of America v. Dale*, illustrates the interruptive and conversational dynamic of the oral argument, which students need to master for their performance:

**JUSTICE GINSBERG:** But somebody who was homosexual and celibate, but who said, in my view it isn't morally wrong, would such a person be excluded?

**MR. DAVIDSON:** Justice Ginsburg, I'm not sure I got the 'nots' right in that question, but if somebody said it was morally wrong, and that they didn't engage in it but did have homosexual inclinations, I believe that that person would be eligible for leadership, as I understand the policy.

**JUSTICE GINSBERG:** So again you're saying it's not the status of being gay or being candid about who you are, but—

**MR. DAVIDSON:** It's about the message that would go to youth in the program. The youth—in accordance with a desire to—

**JUSTICE GINSBERG:** Well, I'm—I just—I don't understand what is the Boy Scouts' policy, and I think we've all asked about that. Is it—I took it from one of your answers that it is don't ask, don't tell. Am I wrong about that?

## Other cases of interest

The success of your re-enactment project will depend on finding the right case—one that will capture your students' interest yet be age-appropriate, relate to a larger issue such as discrimination, and be accessible for research. A few suggestions:

*PGA Tour, Inc., v. Casey Martin* (2001). This case pits the Professional Golf Association Tour's right to play by its own rules against Casey Martin's right to ride a golf cart between golf strokes as an accommodation for his disability, per the Americans with Disabilities Act.

*United States v. Alfonso Lopez, Jr* (1995). Mr. Lopez challenges the right of Congress to create the Gun-Free School Zones Act, making it unlawful for any individual to possess a firearm within a distance of 1,000 feet from the grounds of an elementary or secondary school.

*Parents Involved in Community Schools v. Seattle School District No. 1* (2007). This case considers the rights of a school district in considering race as a factor while assigning students to schools within the district.

**MR. DAVIDSON:** The practice is not to inquire into the sexual orientation of leaders.

Furthermore, this project invites students to exercise their imaginations: what's it like to be a justice, to have such power and status? It motivates students by opening up the possibilities of their own actions, because it works out of the magical "What if...?" What if I ask this question? What if I can convince four other justices to vote with me? There are no foregone conclusions in this role-play activity. This isn't purely a lesson in civics; it's also an opportunity to change history, at least within the context of the performance and decision-making. It requires empathy. A student may disagree with the voting record of a particular justice, but when asked to play the part of that justice,

the student is forced to come to terms with that person's reasoning. It's a tall order sometimes, but in a civil society, empathy—the keystone of tolerance—is a necessity.

Finally, this project offers an excellent opportunity to introduce students to the history and forms of political theatre. From ancient Greek tragedy to Russian agitprop in the early twentieth century, and from Bertolt Brecht's Epic Theatre to Anna Deavere Smith's docudramas and Augusto Boal's Theatre of the Oppressed, all political theatre has a common agenda: to bring its audience to a greater consciousness through the transformative power of drama. Methods range from simplistic propaganda to the subtle staging of conflicting truths. In "The Case is Submitted..." students awaken to the complexities of constitutional justice through their own active participation in this re-enactment and the deliberations that follow.

Even so, your fellow teachers and administrators might need some convincing as to the educational merits of this project. To win their support and cooperation, you'll want to correlate these activities and lessons with your state's curriculum learning objectives, while emphasizing the benefits of experiential learning.

Of course, curricular standards vary from state to state, but for government they likely include court structure, rule of law, and constitutional rights, while theatre standards would include character development, theatrical production, and critique of dramatic form and content. Also, a Supreme Court case can be selected that raises constitutional issues relevant to the students' grade level. This project incorporates all elements of experiential learning: active involvement, reflection, critical thinking, problem-solving, and decision-making. Educational goals for the project would thus meet curricular standards and promise a fertile environment for student learning through active participation.

### Advance planning

The biggest challenge will be scheduling. Our advice: start early. Once you have chosen which classes will partici-

## More online

Here are some websites to get you started:

[www.oyez.org](http://www.oyez.org) contains a database of Supreme Court cases. From this website you can find cases by category; you can access oral argument transcripts, audio/video, and links to full opinions of the Court.

[www.supremecourt.gov](http://www.supremecourt.gov), the official website of the Supreme Court. You can read the "Visitors Guide to Oral Arguments" found under the "Visiting the Court" section, find information about the nine justices, and find links to databases that contain briefs submitted to the Court.

[www.law.cornell.edu/supct/](http://www.law.cornell.edu/supct/), where you'll find opinions of the Supreme Court.

pate (perhaps an advanced acting class and a civics or contemporary U.S. history class), you should immediately schedule a period during the semester to conduct the project (two weeks worked for us; more or less time might suit your circumstances better). Ideally the classes would share class meeting times; ours did not, but we were able to cancel regularly scheduled classes and create a common evening meeting time. Perhaps your students could assemble during lunch, or your administration would allow some other schedule shift over the short term of the project. If your class periods are fifty- to sixty-minute blocks, you should also attempt to schedule at least one extended period for the actual re-enactment. This can be done after school or in the evening hours.

To kick off our project, both classes planned on taking a field trip to the Supreme Court to hear oral arguments. Keep in mind that if you also plan on taking a field trip to hear oral arguments, you will need to schedule that for a day on which the Court is in session. If you do not live in proximity to Washington, D.C., perhaps you can schedule a field trip to the closest federal district court. Court proceedings are open to the public, and while the procedure will be different from

<http://www.uscourts.gov/Home.aspx>, where you can find information about visiting the nearest federal district court.

To see how an oral argument might be edited down to a more workable length, go to [www.schooltheatre.org/court-argument](http://www.schooltheatre.org/court-argument) to review Michael Dixon's twenty-minute transcript of "Oral Argument for Boy Scouts of America, Monmouth Council v. James Dale," created for Mixed Blood Theatre Company.

Recommended documentary: *The Supreme Court*. This four-part documentary was directed by Thomas Lennon and aired on PBS. It is available through Netflix and using one part of the four could be a good option—view excerpts at <http://www.pbs.org/wnet/supremecourt/>.

that of oral arguments at the Supreme Court, the experience can serve as a good introduction to the federal court system. If a field trip is out of the question, then you might consider showing a documentary on the Supreme Court as your first scheduled activity. Whatever your inaugural event, if you are using an interdisciplinary approach, it should be attended jointly by both classes.

Next you need to choose a case, which will depend on your students' maturity level and the goals established for your project. We wanted a case centering on discrimination and found *Boy Scouts of America v. Dale* (2000) compelling; it was one to which students likely could relate. In this case, the Boy Scouts dismissed James Dale from his position as troop leader because he was known to be gay. Lawyers based their arguments for both sides on the freedoms of speech and assembly guaranteed by the First Amendment in the Bill of Rights. This case was also narrowly decided, which allowed students to witness disagreement among the justices.

### Preparing for court

After holding the inaugural event, either a field trip to hear oral argu-

## A basic lesson plan and some optional assignments

*Here's a timeline and summary of a ten-day courtroom drama unit*

1. View Supreme Court documentary or visit federal court.
2. Explain and discuss Supreme Court procedures.
3. Read and discuss the petitioner brief and precedents.
4. Read and discuss the respondent brief and precedents.
5. Study current Supreme Court justices—discussion and video/audio review.
6. Study script and read aloud.
7. Re-enactment and decision-making.
8. Read and dissect Court opinions
9. Discuss student decision versus that of the Court.
10. Debrief of the project.

*The following assignment can help give your students a better understanding of the Court and how it works; after you do this project once, you'll probably come up with your own assignments.*

- Have students read the briefs and identify the precedents upon which each party makes its argument. Then have your students read summaries of those precedent cases on [www.oyez.org](http://www.oyez.org). You might also ask them to identify the important questions being asked of the Court in regards to the briefs being studied.
- Have students find amicus curiae briefs submitted for the case you're using for your project. (Direct them to the Supreme Court's website "Briefs" section as a starting point.)

- Direct students to research as much biographical information about individual justices as they can find—in print and online—and to do a presentation before the rest of the class.
- Have students read the opinions of the Court on an individual case (either the project case or another one) and to write a summary.
- As a reflection paper, ask students to consider ways in which the project case has impacted society since the Court has decided it or, as an alternative, ask that they think about how society might be different if the Court had decided the case the other way.

—M.B.D. and N.T.K.

ments or watching a documentary on the Court, you can begin preparing students for the role-play. All the background and briefing research you and your students should need is available on the Internet (see sidebar on page 6). There are several preparation activities we strongly recommend for your students (a basic lesson plan and some optional assignments are listed above).

One class period might be devoted to discussing the process of how the Supreme Court hears and decides a case. Students should understand that most of the argumentation occurs in writing, and that oral arguments are the one opportunity the Court has to question the counsel representing both sides. Give students copies of both the petitioner and respondent briefs to read as homework, with discussion and clarification planned for the next class. Make sure they also understand the precedents each party relies upon to make its case—and grasp the importance of precedents more generally in the legal process.

Another class period should be devoted to character research. If your students are going to act these roles, they will be curious to see how the justices look and to hear how they speak. There are video clips of all the justices

on YouTube (C-Span is one good source for recent one-on-one interviews), and students can take note of vocal characteristics, posture, gestures, and general deportment. Is there an accent? Is the speech delivered rapidly or in more measured rhythms? Is the justice leaning forward or back, smiling or frowning? The more specific the students' observations, the more colorful and recognizable their "characters" become.

In the next class period you might have the students begin reading the script aloud. By now you should have assigned the roles of the nine justices and the attorneys representing both parties. (Other students will play the audience, although they should be allowed to have a copy of the transcripts so that they can follow along during the re-enactment.) Make sure your students know correct pronunciations, can handle irregularities of speech, and understand the purpose of their characters' comments. Is there an attitude the students can detect in the questioning—friendly or hostile, helpful or challenging? Are the justices satisfied or frustrated by the answers? For the students playing the lawyers, which of the justices' questions are easily answered and which cause

them to struggle? By the end of each lawyer's allotted time, are the justices convinced or even more skeptical? Which lawyer leaves with the certainty that he or she carried the day?

### All rise: the performance

A highlight of the project is the re-enactment itself. If possible, it's worthwhile tracking down nine black choir robes for the justices. They reinforce the authenticity of the re-enactment while conveying the severity of the occasion. The space can also contribute to the formal atmosphere—if possible, find a conference room or meeting space (perhaps a board room or local courtroom) that feels more official than a classroom.

In the space, all you need are nine chairs lined up behind several tables. Name placards on the tables identify each of the justices. The lawyers can stand at opposite ends of the tables, facing each other and the justices. This placement makes the lawyers more visible and clears the audience view of the justices. The lawyers can use podia or music stands to rest their scripts, while the justices can place their scripts on the tables before them. Students should be familiar enough with the script to raise their eyes from

the page occasionally when speaking, and when they are not speaking, to look at those who are.

It's extremely helpful to have an audience for this performance. Viewers increase an actor's energy, require the actors to speak loudly, and reinforce the idea that this legal event is, in fact, a civic performance. If people in the audience are not members of the class, it's also helpful to prepare a handout summarizing the case history and identifying the constitutional issues involved.

You can expect the re-enactment to take about an hour. (It is possible to edit the oral arguments to twenty or so minutes, while maintaining the main points of the case and colorful conversation of the justices and lawyers. This approach was used in June 2010 at Mixed Blood Theatre Company in Minneapolis, which employed professional actors to perform edited transcripts for a Continuing Legal Education program.) Be sure to share a schedule with students prior to the event so they can plan accordingly. Following the re-enactment you can allow a five-minute break for students and the audience.

### **The verdict**

The primary objective of this project is to engage students in a civic debate—not just to see but to *experience* how our Constitution is interpreted and applied in law. So now the real fun begins. Following the presentation of oral arguments, students can be divided into small groups to consider the case and voice their opinions.

It's possible to send the justices away to decide the case for themselves, or they can be divided amongst the small groups. The latter method helps break down the hierarchy of performer and audience in the decision-making process and also integrates students from each of the participant classes. Encourage everyone to consider the case, the submitted briefs, and the oral arguments. You can allow anywhere from fifteen to thirty minutes for small-group discussions.

A representative from each group should be invited to share how they decided the case. Once each group has had an opportunity to report to the others, you can hand down the actual ruling of the Court.

### **The follow-up**

The last step involves analysis of the majority opinion of the Court and dissenting opinion(s). What are the justices' reasons in the opinion, and what other views do the dissenting justices put forward? Which opinion do the students side with? How did precedents influence the decision? Are differences between constitutional interpretation and personal beliefs clear?

This discussion can occur on a later day, if necessary, with both classes participating jointly or separately in each individual class. In addition to deconstructing and analyzing the opinions, students should be asked to reflect on the project as a whole. This can be done either in discussion or by having students put their reflections in writing. Student feedback can be used to modify the project for future use.

An important topic of discussion in one of the final classes should be the interdisciplinary approach taken. Students may not have stopped to consider why their class was partnered with another for this project. They likely have had the benefit of hearing perspectives on the case different from their own, but so what? This is a chance to discuss citizenship more broadly and the importance of tolerance and understanding in a democracy. Similarly, you might touch on the educational importance of being exposed to different activities, situations, and subjects. This can be done in tandem with any of the debriefing discussions or separately, but it should not be overlooked.

### **Closing arguments**

Political theatre has a long history, and we should therefore not be surprised at how well theatre and political science students came together for a lesson in citizenship. For two weeks out of

the semester these students embarked on a distinctive project in which re-enactment of Supreme Court oral arguments gave them access to the judicial process and immersed them in a moral and legal conversation about discrimination in our society.

Increasingly, teachers and instructors at all levels are turning to simulations and role-playing as pedagogical tools. Simulations are touted as bringing lessons to life for students, challenging them to be flexible and swift in their thinking, and providing them with skills that can be applied in virtually any field of study. Theatre has an enduring history of breaking down barriers and making difficult subjects accessible to the masses; role-playing does the same, on a much smaller scale in the classroom. Allowing students to take on roles not only enlivens material for them and sharpens their thinking skills, but it also gives them an opportunity to practice speaking in public.

Our students used a re-enactment of Supreme Court oral arguments to engage in a discussion about civil rights, all the while learning much about the legal process and reasoning behind the opinions of the Court. This lesson could have been delivered in a number of other ways, but we chose an approach that reinforced other lessons regarding the broad reach of politics and the importance of engaged citizenship. Stepping inside the rarefied atmosphere of the Supreme Court—both literally and imaginatively—only heightened the students' enthusiasm and interest. They're sure to remember this lesson far into their futures.

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