

PERSPECTIVES ON THE AMERICAN EXPERIENCE

A Teaching American History Grant

***The First Amendment
Religion and Education:
Moot Court Trials***



By,
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SAN DIEGO COUNTY OFFICE OF EDUCATION

Perspectives on the American Experience

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Courtroom to Classroom

The First Amendment: Religion and Education: Moot Court Trials

Overview of Project

1. Project Summary

Students will analyze two modern history Supreme Court cases and the precedent each case set as to alternative theories for the source of life and how they are taught in public schools. Reasoning for this specific issue deals with our student population's conflicting religious beliefs and the theories taught in modern science classes. Students will examine the social and political implications of religion in America and the continued struggle with interpreting the establishment clause and the belief of separation of church and state.

2. Standards

11.3.5 Describe the principles of religious liberty found in the Establishment and Free Exercise clauses of the First Amendment, including the debate on the issue of separation of church and state.

3. Learning Objective

Students will be able to demonstrate an understanding of the First Amendment and the subsequent consequences of the establishment clause.

4. Planning and Implementation Process

In order to supplement our Constitutional History within the U.S. History curriculum, project teachers decided to focus an in-depth understanding of the First Amendment in order to give students a broader understanding of the U.S. History standards through a First Amendment filter. With the thought in mind to have the project be student driven, teachers discussed several First Amendment clauses and implications. Teachers concluded students would be interested in researching the establishment clause. Using a Moot Court project to fulfill and complete a thorough investigation of the establishment clause and First amendment's affect on U.S. History and perceived mainstream views of religion in the U.S. In the interest of giving students context of the establishment clause, students were introduced to several different Supreme Court cases in different mediums to examine the history of the Court's interpretation of the establishment

clause and First Amendment. Students first watched a PBS documentary detailing the “Kitzmiller v. Dover” case in order to better understand the procedures of a Moot court as well as the question of intelligent design being introduced into Science curriculum. The “Lemon Test”, (“Lemon v, Kurtzman”) was used to familiarize students with precedent and how Supreme Court decisions use prior decisions to determine constitutionality. This set students up to analyze the purpose of Moot Court not only from a legal perspective but in order for them to personally see how the Constitution is used to establish boundaries between the majority opinion and the minority’s rights.

Lesson Outline/Process Timeline:

Over the course of the project, students will have the opportunity to review Supreme Court Cases that have challenged this relationship, culminating in a moot-court. This courtroom to classroom project will have both individual and group requirements, all of which will be completed in class.

Student Work:

Students will be responsible for the following:

1. Brief written history of the changes to United States law regarding the relationship religion and government.
2. Case studies of past Supreme Court Cases
3. Moot-Court procedures and examples.
4. Final Moot Court presentation

5. Assessment

By participating in a successful Moot Court and succeeding in fulfilling the requirements of the attached rubric.

6. Resources

***Draft Mock Trial LAEP can be obtained by contacting Keri Dogget, CRF (keri@crf-usa.org)**

Background: <http://www.pbs.org/wgbh/nova/beta/evolution/intelligent-design-trial.html>

Lesson design and Research: <http://www.rutherford.org/>

Lesson Design and Research: <http://religiousfreedom.lib.virginia.edu/court/>

Research and Project Design: Constitutional Rights Foundation www.crf-usa.org

Implementation: www.landmarkcases.org/pdf/petitioner.pdf

Video: The Supreme Court, Ambrose Video Publishing, Inc. 2007

Workbook: Constitution Study Guide, Prentice Hall, Inc. Upper Saddle River, NJ. 2001

See Attached for the following handouts:

1. Syllabus for Courtroom to Classroom Project

2. Written History Assignment
3. Courtroom to Classroom Rubric

7. Tips for Success:

Keys to successful implantation of this lesson are scaffolding the students with a strong background in Constitution history. Students must also understand federalism in relation to the state and federal responsibilities and how the Supreme Court's decisions can override and interpret for the nation and states, the rights given to individuals by the Constitution.

U.S. Supreme Court

EPPERSON v. ARKANSAS, 393 U.S. 97 (1968)

393 U.S. 97

EPPERSON ET AL. v. ARKANSAS.
APPEAL FROM THE SUPREME COURT OF ARKANSAS.

No. 7.

Argued October 16, 1968.

Decided November 12, 1968.

Appellant Epperson, an Arkansas public school teacher, brought this action for declaratory and injunctive relief challenging the constitutionality of Arkansas' "anti-evolution" statute. That statute makes it unlawful for a teacher in any state-supported school or university to teach or to use a textbook that teaches "that mankind ascended or descended from a lower order of animals." The State Chancery Court held the statute an abridgment of free speech violating the First and Fourteenth Amendments. The State Supreme Court, expressing no opinion as to whether the statute prohibits "explanation" of the theory or only teaching that the theory is true, reversed the Chancery Court. In a two-sentence opinion it sustained the statute as within the State's power to specify the public school curriculum. Held: The statute violates the Fourteenth Amendment, which embraces the First Amendment's prohibition of state laws respecting an establishment of religion. Pp. 102-109.

(a) The Court does not decide whether the statute is unconstitutionally vague, since, whether it is construed to prohibit explaining the Darwinian theory or teaching that it is true, the law conflicts with the Establishment Clause. Pp. 102-103.

(b) The sole reason for the Arkansas law is that a particular religious group considers the evolution theory to conflict with the account of the origin of man set forth in the Book of Genesis. Pp. 103, 107-109.

(c) The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion. Pp. 103-107.

(d) A State's right to prescribe the public school curriculum does not include the right to prohibit teaching a scientific theory or doctrine for reasons that run counter to the principles of the First Amendment. P. 107.

(e) The Arkansas law is not a manifestation of religious neutrality. P. 109.

242 Ark. 922, 416 S. W. 2d 322, reversed. [[393 U.S. 97, 98](#)]

Eugene R. Warren argued the cause for appellants. With him on the brief was Bruce T. Bullion.

Don Langston, Assistant Attorney General of Arkansas, argued the cause for appellee. With him on the brief was Joe Purcell, Attorney General.

Briefs of amici curiae, urging reversal, were filed by Leo Pfeffer, Melvin L. Wulf, and Joseph B. Robison for the American Civil Liberties Union et al., and by Philip J. Hirschkop for the National Education Association of the United States et al.

Facts of the Case:

The Arkansas legislature passed a law prohibiting teachers in public or state-supported schools from teaching, or using textbooks that teach, human evolution. Epperson, a public school teacher, sued, claiming the law violated her First Amendment right to free speech as well as the Establishment Clause. The State Chancery Court ruled that it violated his free speech rights; the State Supreme Court reversed.

Question:

Does a law forbidding the teaching of evolution violate either the free speech rights of teachers or the Establishment clause of the First Amendment?

It is true that state governments do and should have the authority to decide what sorts of things taught in public schools; nevertheless, just how far should such authority extend? Many state governments have in the past outlawed the teaching of evolution - but is that a valid use of state power? Are there any secular reasons for banning the teaching of evolution, or are there only religious reasons?

Background Information

As the site of the Scopes trial, Tennessee is probably the most famous of the states which outlawed the teaching of evolution, but it wasn't the only one - and it wasn't their anti-evolution law which was challenged before the United States Supreme Court.

An Arkansas teacher challenged the constitutionality of a statute prohibiting the teaching of evolution in all schools, included universities. In Arkansas, no teacher was permitted "to teach the theory or doctrine that mankind ascended or descended from a lower order of animals," or "to adopt or use in any such institution a textbook that teaches" this theory.

In Little Rock, a high school biology teacher found herself in a dilemma when she realized that her district had adopted a book containing evolution: she could either use the book and violate a criminal law, or refuse to use the book and risk disciplinary action from the school board. She chose to try to eliminate the dilemma by eliminating the law.

A Supreme Court Hearing — Petitioner

The Supreme Court of the United States is the highest court in the land and the court of last resort. A decision by the Supreme Court is the law of the land. The Court, composed of a panel of justices, is asked to rule on a lower court's decision. There is no trial; no witnesses are called, and the basic facts in a case are not disputed.

The arguments to be presented can be based on the Constitution, the applicable law, and previous court precedents. The arguments do not need to be rooted in legal technicalities. In this activity you will be preparing and presenting an argument before the court.

Attorneys for the Petitioner

Your job is to:

1. Discuss the case and develop arguments to persuade the Supreme Court to overturn the lower court decision. Be prepared to answer any questions the justices may ask you.

In preparing your arguments, you should think about the following questions:

- What decision do you want?
- What are the arguments in favor of and against each side? (Anticipating the opposition can strengthen your argument.)
- Which arguments are the most persuasive? Why?
- What are the precedents and how do they influence this case?
- What might be the consequences of each possible decision?
- To the parties? To society?
- Are there any alternatives besides what each side is demanding?

2. Select two students to present your arguments. The other two or three attorneys must write down all points made by the other side to discuss for the rebuttal. They also must assist in writing the presentation of the case. Anyone in the group may answer questions from the justices.

3. You will have 3 minutes to present your case. You will have 2 min. to answer questions from the Justices. You will then have 5 min to discuss a rebuttal and 2 min to present your rebuttal.

4. You will then listen to the justices deliberate, reach their decision and announce their opinions.

A Supreme Court Hearing — Respondent

The Supreme Court of the United States is the highest court in the land and the court of last resort. A decision by the Supreme Court is the law of the land. The Court, composed of a panel of justices, is asked to rule on a lower court's decision. There is no trial; no witnesses are called, and the basic facts in a case are not disputed.

The arguments to be presented can be based on the Constitution, the applicable law, and previous court precedent. The arguments do not need to be rooted in legal technicalities. In this activity you will be preparing and presenting an argument before the court.

Attorneys for the Respondent

Your job is to:

1. Discuss the case and develop arguments to persuade the Supreme Court to uphold the lower court decision. Be prepared to answer any questions the justices may ask you. In preparing your arguments, you should think about the following questions:

- What decision do you want?
- What are the arguments in favor of and against each side? (Anticipating the opposition can strengthen your argument.)
- Which arguments are the most persuasive? Why?
- What are the precedents and how do they influence this case?
- What might be the consequences of each possible decision? To the parties? To society?
- Are there any alternatives besides what each side is demanding?

2. Select two students to present your arguments. The other two or three attorneys must write down all points made by the other side to discuss for the rebuttal. They also must assist in writing the presentation of the case. Anyone in the group may answer questions from the justices.

3. You will be giving your presentation of your case AFTER the petitioner. Use this time to write down points you would like to argue for your rebuttal. You will have 3 minutes to present your case. You will have 2 min. to answer questions from the Justices. You will then have 5 min to discuss a rebuttal and 2 min to present your rebuttal.

4. You will then listen to the justices deliberate, reach their decision and announce their opinions.

Miranda v. Arizona (1966)

Background Summary

Ernesto Miranda was a poor Mexican immigrant living in Phoenix, Arizona, in 1963. Miranda was arrested after a crime victim identified him in a police lineup. Miranda was charged with rape and kidnapping and interrogated for two hours while in police custody. The police officers questioning him did not inform him of his Fifth Amendment right against self-incrimination, or of his Sixth Amendment right to the assistance of an attorney.

As a result of the interrogation, he confessed in writing to the crimes with which he was charged. His written statement also included an acknowledgement that he was aware of his right against self-incrimination. During his trial, the prosecution used his confession to obtain a conviction, and he was sentenced to 20 to 30 years in prison on each count.

Miranda's defense attorney appealed to the Arizona Supreme Court. His attorney argued that his confession should have been excluded from trial because he had not been informed of his rights, nor had an attorney been present during his interrogation. The police officers involved admitted that they had not given Miranda any explanation of his rights. They argued, however, that because Miranda had been convicted of a crime in the past, he must have been aware of his rights. The Arizona Supreme Court denied his appeal and upheld his conviction.

The case comes down to this fundamental question: What is the role of the police in protecting the rights of the accused, as guaranteed by the Fifth and Sixth Amendments to the Constitution? The Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself. . . ." The Sixth Amendment states that, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." The Supreme Court of the United States had made previous attempts to deal with these issues. In *Brown v. Mississippi* (1936), the Court had ruled that the Fifth Amendment protected individuals from being forced to confess. In *Gideon v. Wainwright* (1963), the Court held that persons accused of felonies have a fundamental right to an attorney, even if they cannot afford one. In 1964, after Miranda's arrest, the Court ruled that when an accused person is denied the right to consult with his attorney, his or her Sixth Amendment right to counsel is violated (*Escobedo v. Illinois*). But do the police have an obligation to ensure that the accused person is aware of these rights?

If so, at what point in the criminal justice process must the defendant learn of these rights?

In 1965, the Supreme Court of the United States agreed to hear Miranda's case. At the same time, the Court agreed to hear three similar cases, *Vignera v. New York*, *Westover v. United States*, and *California v. Stewart*. The Court combined the four cases. Since Miranda was listed first among the four cases considered by the Court, the decision came to be known by that name. The decision in *Miranda v. Arizona* was handed down in 1966.

Background Questions

Questions to Consider:

1. What rights of the accused does the Fifth Amendment protect?
2. The Sixth Amendment?
3. How might knowledge of these rights have changed what Ernesto Miranda did when the police questioned him?
4. Individual rights must be balanced against the values of society at large. For instance, the right to free speech must be balanced against our desire for an orderly society. This is why demonstrations, while protected by the First Amendment, can have certain restrictions placed on them. In Miranda, what values must be balanced against the right against self-incrimination and the right to counsel?
5. You are probably learning about the rights of the accused in a government or history class. Some would argue that it is the individual's responsibility to know what his or her rights are under the Constitution, and the government can assume that accused persons know their rights without informing them. Do you think the government should have to inform each individual who is arrested of his or her rights? Why or why not?

Supreme Court of the Arizona

Affirmed the conviction and held that Miranda's constitutional rights were not violated in obtaining the confession and admitting it at trial.

State v. Miranda (1965)



Superior Court, Maricopa County

Conviction was entered against Miranda for kidnapping and rape on the basis of a written confession that was admitted into evidence despite defense objections that Miranda had not been informed of his right to an attorney and his right to remain silent during the police interrogation.

State v. Miranda (1965)

A Supreme Court Hearing – Justices

The Supreme Court of the United States is the highest court in the land and the court of last resort. A decision by the Supreme Court is the law of the land. The Court, composed of a panel of justices, is asked to rule on a lower court's decision. There is no trial; no witnesses are called, and the basic facts in a case are not disputed.

The arguments to be presented can be based on the Constitution, the applicable law, and previous court precedents. The arguments do not need to be rooted in legal technicalities. In this activity you will be making a decision in the case.

Supreme Court Justices

Your job is to:

1. Review the case and each Justice must write 3 different questions each to ask the attorneys.
2. Select a student to serve as Chief Justice. He or she will be in charge of the hearing and call on the attorneys to present their arguments.
3. Listen carefully to the arguments and each Justice ask questions whenever you like.
4. Be sure to consider the impact of your decision on other situations that may arise in the future.
5. Discuss the case with the other justices and decide whether you think the decision of the lower court should be upheld or overturned. All Justices must reach the same decision. You will have 5 min. for discussion and to reach a decision. You will have 10 min. to write your opinion.
6. Announce your decision and your reasons.

Tracking the Issue:

Separation of Church and State: Religion in **Public** Schools

1. Students will investigate the relationship between gov. and religion.
 - a. Answering the following questions:
 - i. What is the proper relationship between gov. and religion?
 - ii. How have different time periods in U.S. history dealt with this issue?
 - iii. How does the constitution deal with this issue?
 - iv. What have been key court cases in U.S. history dealing with the issue of religion in public schools?
 - Skills: Research the fundamental ideas surrounding the 1st amendment and the idea of separation between church and state
 - Presentation skills, expository writing skills, reflecting on prior learning, building of vocabulary, making connections between past, present, future.
2. Students will understand the evolution of the issue of religion in public schools.
 - a. Answering the following questions:
 - i. What key court decisions have influenced this issue and how?
 - ii. What religious rights do students currently have in our classrooms?
3. Students will compare and contrast the different court cases chosen to discuss religion in public schools
 - a. Answering the following questions:
 - i.

United States History Courtroom to Classroom

Overview:

Historically, the Judicial Branch of the United States government has played an important role in shaping the development of law. Throughout history, individuals and groups have used the court system to fight for their rights as citizens.

Throughout the course of the year, we have learned about many Supreme Court cases that have had an impact on the history of the United States. For example:

Marbury v. Madison
Dred Scott v. Sandford
Plessy v. Ferguson
Schenck v. United States
Scopes Trial
Korematsu v. United States

Brown v. Board of Education
Escobedo v. Illinois
Gideon v. Wainwright
Miranda v. Arizona
Roe v. Wade

One issue that has been brought to the United States Supreme Court repeatedly is citizens' rights under the First Amendment, specifically the proper relationship between government and religion. The First Amendment says that government may not establish an official church or interfere with the free exercise of religion. However, throughout history, Americans have differed over whether "separation of church and state" is meant to keep government out of religion or religion out of government.

Over the next few weeks, you will have the opportunity to review Supreme Court Cases that have challenged this relationship, culminating in a moot-court.

This courtroom to classroom project will have both individual and group requirements, all of which will be completed in class. Over the next few weeks, you will be responsible for the following:

Brief written history of the changes to United States law regarding the relationship religion and government.
Case studies of past Supreme Court Cases
Moot-Court

The final project will be worth 200 points.

Timeline:

Thursday April 22nd – Project Introduction

Monday April 26th - How the Supreme Court Works

Friday April 30th – Brief history of the establishment issue

Tuesday May 4th – Case studies

Thursday May 6th – Moot Court Prep

Monday May 10th - Moot Court Prep

Wednesday May 12th – Moot Court

Guidelines:

1. Brief written history of the changes to United States law regarding the relationship religion and government

You will be required to write a one page summary of the development and changes to the relationship between religion and government in the United States. Background examples of cases that deal with this issue will be discussed in class and will provide a framework for the summary you will write.

The summary needs to reference actual cases that have been brought before the United States Supreme Court and discuss how the case challenged and changed existing law.

This summary will be worth **30 points** and will be due on **Friday April 30th**.

2. Case Studies

Using documents and excerpts from Supreme Court cases, you will develop the critical thinking skills necessary to prepare for the moot court experience. This year, you have already completed two assignments connected to this project, both of which asked you to review Supreme Court cases (*Sante Fe Independent School District v. Doe* & *Mapp v. Ohio*) and answer questions focused on how the cases affected the rights of citizens guaranteed by the United States Bill of Rights.

Reviewing these cases help provide context as you are asked to think about and consider abstract concepts like *free expression*, *due process*, and *equal protection*.

These case studies will be worth **70 points** (20 points have already been assigned) and will be due on **Tuesday May 4th**.

3. Moot Court

In a moot court, students take the roles of attorneys and appellate court justices. They argue a Constitutional issue or a fact of law. There are no witnesses in a Moot Court.

You will be put into different groups and each group will be assigned a Supreme Court case that deals with the relationship of religion and government, focusing specifically on schools. Each person in the group will be assigned a role (attorneys or judges) and will be responsible for carrying out the moot court in front of the class.

The assigned groups, cases, and roles will be announced on Thursday May 6th. Time will be given in class for groups to prepare for the moot court.

The moot court will be worth **100 points** and will take place on **Wednesday May 12th**.

Points will include preparation work leading up to the actual moot court, as well as the actual moot court presentation.

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- *Dred Scott v. Sandford*
- *Plessy v. Ferguson*
- *Schenck v. United States*
- Scopes Trial
- *Korematsu v. United States*
- *Brown v. Board of Education*
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2. Case studies of past Supreme Court Cases
3. Moot-Court

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The moot court will be worth **100 points** and will take place on **Wednesday May 12th**.

Points will include preparation work leading up to the actual moot court, as well as the actual moot court presentation.

**United States History
Courtroom to Classroom**

**Written History of Key Supreme Court Cases
Free Exercise & Public Education
Government Aid to Public Education
Governmental Aid to Church Related Schools**

Assignment: Create a brief (1-2) page written summary of key Supreme Court Cases in the argument of separation of church and state.

All of the provided cases deal specifically with the relationship between religion and schools.

Steps:

1. Organize the provided Supreme Court Cases into a chronological timeline.
2. Read through the provided Supreme Court Case summaries that represent key decisions in the development of the constitutionality of the relationship between religion and government.
3. Based on your reading, Select the five cases that you believe are the most influential and circle them on your timeline.
4. Using the facts from those cases, write a summary of the development of the relationship between religion and government, specifically in schools. **You must include a rationale about why you selected those cases and the most influential.**