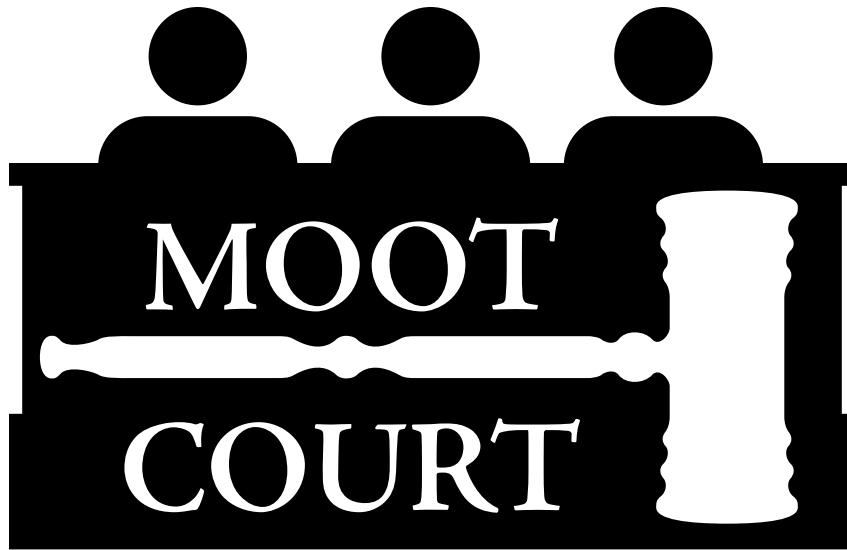


Artist Ron Leone

Student Packet



Artist Ron Leone

Exploring the Appellate Process

The Teacher's Guide and the hand-out materials for *Moot Court – Exploring the Appellate Process* have been excerpted and adapted from a simulation on the judicial branch called *Puttin' on the Robes – Exploring the Legal Process*. This simulation is available through our nonprofit corporation, Center for Economic and Civic Education (CE2). For more information see our Web site <http://cesqd.org/Cts.html>. All materials were developed by Carla Young Garrett, except for the Moot Court competition format and rules which were developed by Carla Young Garrett and Ron Leone. The U.S. Supreme Court case, *Ricci v. DeStefano* is a public record.

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Student Materials for Ricci v. DeStefano

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Moot Court Introduction

Getting There – The Appellate Courts

In the United States when one side loses or is unhappy with something about the outcome of their trial they have a right to appeal.¹ The lawyer representing the party or parties appealing (called the “Appellant” or “Petitioner”) usually files a Notice of Intent to Appeal with the trial court. A transcript of the trial is prepared and sent to the appellate court.² The appellate lawyer files a brief laying out the legal³ errors made at trial and what law applies in this case. The lawyers representing the other party (called the “Respondent” or “Appellee”) files a reply brief. Then there’s oral argument where both lawyers appear before a three-judge court to present their sides of the case. The appellate judges ask questions and then “take the case under submission” (reserve making a decision until a later date).

The judges have a conference to see where they stand on the cases they’ve heard. When two or three judges agree on the outcome (who wins), one of them volunteers to write the “opinion,” which lays out not only the “holdings” (legal rulings) in the case, but also the legal rationale for their decision. A judge who agrees with the judgment or outcome but has other or different reasons, can write a “concurring” opinion. A judge who disagrees with the outcome can write a “dissenting” opinion.

What You Do (Classroom Instructions)

Student lawyers: You read the *Ricci v. DeStefano* case materials. Alone or in pairs, attorneys for the Petitioners write the appellate brief; attorneys for Respondents write the reply brief. There’s a set of sample forms and a “Brief Writing Organizer” to use as a guide (see A1–A5). Additionally, your teacher may have you use the “Brief Template” which is an MS Word document that’s designed for you to type your brief right into. You can download the file at <http://cesqd.org/mootcourt.html>.

After you’ve written and submitted your brief, you’ll argue before a three-judge appellate court. This is called “oral argument.” Be ready to respond to the judges’ questions and to counter your opponents’ arguments. Use the “Oral Argument Notemaker” (see A6–A8) to help you. Petitioner argues first, then the Respondent has a turn. After that, both sides have the chance to rebut the other side’s arguments. (In real life only the Petitioner has rebuttal because they have the burden.)

Student judges: You need to read the briefs and case materials and then write out some good, tough, probing questions to ask the lawyers. Then, during the hearings, the lawyers argue their cases and the judges interrupt and ask them questions. This is called “oral argument.”

After argument, each judge should write one opinion—majority (outcome, rule, and rationale), concurring (agreeing with the outcome but for different reasons), and/or dissenting (disagreeing with both the outcome and the reasoning).

1 In a criminal case, only the defendant can appeal a conviction. The state cannot appeal an acquittal, as this would violate the Fifth Amendment’s “double jeopardy” provision.

2 Appellate courts are required to hear all the appeals filed within their jurisdiction, whereas the USSC—and the state supreme courts—only hear the cases they want to.

3 Appeals deal only with legal issues, not factual ones. For example, the facts regarding who did or did not pass the exams would not be appealable. But the issue of whether the exams were fair, is a legal issue, and therefore subject to appeal.

What You Do (Competition Instructions)

Your team's job is to write two briefs (one for Petitioners/Appellants and one for the Respondents)¹ citing the facts, arguments and case law you think most persuasive for each side. In making your arguments, you need to use and quote from the case materials (pages 1–11.) You can use the "Oral Argument Notemaker" to help you organize your thoughts.

There is also a separate file called, "Brief Template" which can also be downloaded from our Web site at <http://cesqd.org/mootcourt.html>. This file (in MS Word format) is designed for you to type your brief right into it.

On competition day, you'll come out to the courthouse and present your argument before a three-judge appellate court. This is called "oral argument." Be ready to respond to the judges' questions and counter your opponents' arguments. You'll have a total of six minutes (including rebuttal) to argue. You can divide the time up as you please. If you have a partner, each of you can do part of the argument-in-chief (main argument) and part of the rebuttal, or one of you can do the main argument and one can do the rebuttal. Rebuttal is used only to counter your opponents' argument, not to raise new issues. (In real life only the Petitioner has rebuttal because they have the burden.)

How Court Opinions Are Organized and Used in Real Life

In the legal world, after judges write their opinions, they're usually published in large books (often more than 1500 pages). The books are numbered consecutively, and contain opinions going back to the beginning of the court system. These opinions are then cited by later courts when those courts are in the process of deciding the same or a related issue. The earlier case opinions are precedent for the later ones. The books are organized as follows:

For the Federal District Court (which is the federal trial court) trial opinions can be found in volumes called "Federal Supplement," which is currently in its third series so it's called "F.Supp.3d." Similarly, the circuit court opinions (the intermediate appellate level) are published in Federal Reporter 3rd (F.3d). The fictitious Twentieth Circuit (which will be hearing *Ricci v. DeStefano* for this activity) would be at this level. The USSC opinions are published in the volumes "U.S." (United States).

For example, the case of *Griggs v. Duke Power Co.*, 401 U. S. 424 (1971) would be found in the 401st volume of USSC cases. The case, which was decided in 1971, begins on page 424. State court decisions also follow a similar numbering system.

When and How to Cite Case Law

When you quote from a case, you need to include a case citation. Use the following rules:

- When writing a brief, the first time a case is referenced, use the full citation. For example, *Griggs v. Duke Power Co.*, 401 U. S. 424 (1971).
- Use italics for the case name and put the date in parenthesis.
- In oral argument, the first time a case is mentioned, use the full case name. For example, "as the U.S. Supreme Court in *Griggs v. Duke Power* said ..."
- After the case has been cited once, just use a short case name like *Griggs*.

As the court in *Griggs* held "....", or

As the court in the *Griggs* case held, "...." , or

As the *Griggs* court held, "...."

¹ Written briefs are not required (nor accepted) for the competition, but they're good preparation.

Ricci v. DeStefano

1 **Instructions**

2 This is your case packet. The hearing at trial level has already taken place. You are now in
3 the fictitious 20th Circuit Court of Appeal. The materials that follow have been taken from
4 the court opinions in the cases you will be citing when you make your arguments. To get the
5 flavor of how judges think and write, some of their actual words and turns of phrase have
6 been kept, and they are in quotation marks. In writing your briefs, one for the Petitioners
7 (who are white firefighters) and one for Respondents (the City of New Haven, CT), cite the
8 facts, reasoning, and case law you think most persuasive for each side. When making your
9 arguments, you need to use, quote, and cite these materials. Legal terms and other possibly
10 unfamiliar words and phrases are defined in brackets [].

11
12 After you've written your briefs, you'll argue before a three-judge appellate court. This is
13 called "oral argument." Be ready to respond to the judges' questions and your opponents'
14 arguments. The Petitioner argues first, then the Respondent has a turn. After that, both sides
15 have the chance to rebut the other side's arguments. (In real life only the Petitioner has
16 rebuttal because they have the burden of proof.)

17 **Parties**

18 *Petitioners:* A number of white firefighters including Frank Ricci.

19 *Respondents:* John DeStefano (Mayor of New Haven) the City of New Haven and others

20 **Background Information**

21
22 In 1971, the Commission on Civil Rights (USCCR) issued a report which found racial
23 discrimination in municipal employment even "more pervasive [widespread] than in the
24 private sector." According to the report, overt [open] racism was partly to blame, but so
25 too was hiring and promotion decisions, made based on nepotism [family connections] or
26 political patronage. The USCCR report singled out police and fire departments for having
27 "barriers to equal employment . . . greater . . . than in any other area of State or local
28 government," with African-Americans "holding almost no positions in the officer ranks."
29 The City of New Haven (City) was no exception. In the early 1970's, African-Americans and
30 Hispanics were 30 percent of New Haven's population, but only 3.6 percent of the City's
31 502 firefighters. The racial divide in the officer ranks was even more pronounced: "Of the
32 107 officers in the Department only one was African-American, and he held the lowest rank
33 above private." A lawsuit was filed and settled. As part of the settlement agreement, the City
34 began efforts to increase minorities in the fire department (Department). Currently, nearly 40
35 percent of the City's residents are African-American and more than 20 percent are Hispanic.
36 As of 2003, African-Americans and Hispanics are 30 percent and 16 percent of the City's
37 firefighters, respectively. In supervisory positions, senior officer (captain and higher) are nine
38 percent African-American and nine percent Hispanic. Only one of the Department's 21 fire
39 captains is African-American.
40

1 **Current Situation/Origin of this Lawsuit**

2 In 2003, the City of New Haven (City) had openings for fire department lieutenants and
3 captains. To fill these types of vacancies, the City is required to use competitive examinations.
4 The City hired an outside company (IOS) to create the exams and study materials. The City's
5 civil service rules specify that such examinations "shall be practical in nature, shall relate to
6 matters which fairly measure the relative fitness and capacity of the applicants to discharge
7 the duties of the position which they seek" [i.e., measure an applicant's ability to do the job],
8 "and shall take into account character, training, experience, physical and mental fitness."
9 The City may choose among a variety of testing methods, including written and oral exams
10 and "performance tests to demonstrate skill and ability in performing actual work."
11

12 **Legal/Procedural History**

13 **How the Test Was Created**

14 IOS representatives interviewed current captains and lieutenants and their supervisors. They
15 rode with and observed other on-duty officers. Using information from those interviews and
16 ride-alongs, IOS wrote job-analysis questionnaires and gave them to most of the current
17 battalion chiefs, captains, and lieutenants in the Department. At every stage of the job
18 analyses, IOS deliberately oversampled minority firefighters [i.e., interviewed more minority
19 officers than non-minority officers] to ensure that the results—which IOS would use to
20 develop the examinations—would not unintentionally favor white candidates.
21

22
23 Next, IOS developed the written examinations to measure the candidates' job-related
24 knowledge. For each test, IOS compiled a list of training manuals, Department procedures,
25 and other materials to use as sources for the test questions. IOS presented the proposed
26 sources to the New Haven fire chief and assistant fire chief for their approval. Then, using
27 the approved sources, IOS created a multiple-choice test for each position. Each test had
28 100 questions, as required by City rules, and was written below a 10th-grade reading level.
29 The City then opened a 3-month study period. It gave candidates a list that identified the
30 source material for the questions, including the specific chapters from which the questions
31 were taken [i.e., made it clear what candidates should study for the test].
32

33 For the oral examination, IOS wrote hypothetical situations to test, among other things,
34 incident-command skills [how to handle fires or other emergencies], firefighting tactics,
35 interpersonal skills [how to handle communication and conflicts between employees],
36 leadership, and management ability. Candidates would be presented with these hypotheticals
37 and asked to respond before a panel of three assessors [interviewers]. IOS assembled a pool
38 of 30 assessors who were superior in rank to the positions being tested. At the City's insistence
39 (because of controversy surrounding previous examinations), all the assessors came from
40 outside the state of Connecticut. IOS submitted the assessors' résumés to City officials

1 for approval. They were battalion chiefs, assistant chiefs, and chiefs from departments of
2 similar sizes to New Haven's throughout the country. Sixty-six percent of the panelists were
3 minorities, and each of the nine three-member assessment panels contained two minority
4 members. IOS trained the panelists for several hours on the day before it administered
5 the examinations, teaching them how to score the candidates' responses consistently using
6 checklists of desired criteria.

7
8 However, New Haven did not consider what sort of "practical" examination would "fairly
9 measure the relative fitness and capacity of the applicants to discharge the duties" of a fire
10 officer. Instead, the City simply adhered to [used] the testing regime outlined in its two-
11 decades-old contract with the local firefighters' union. When soliciting bids from exam
12 development companies (such as IOS), New Haven made clear that it would consider only
13 "proposals that include a written component that will be weighted at 60%, and an oral
14 component that will be weighted at 40%."

15 16 **Test Results**

17 Candidates took the examinations in November and December 2003.

18
19 **Lieutenant examination:** Seventy-seven candidates took the lieutenant examination—43
20 whites, 19 African-Americans, and 15 Hispanics. Thirty four (34) candidates passed—25
21 whites, 6 African-Americans, and 3 Hispanics. Eight lieutenant positions were vacant at the
22 time of the examination. As the rule of three operated [a hiring rule stating that employees
23 must be selected from among the three top eligible candidates], the top 10 candidates were
24 eligible for an immediate promotion to lieutenant. All 10 were white. If more positions
25 opened up, at least three African-American candidates could have been considered for
26 promotion to lieutenant.

27
28 **Captain examination:** Forty-one candidates completed the captain examination—25
29 whites, 8 African-Americans, and 8 Hispanics. Of those, 22 candidates passed—16 whites,
30 3 African-Americans, and 3 Hispanics. Seven captain positions were vacant at the time
31 of the examination. Under the rule of three, 9 candidates were eligible for an immediate
32 promotion to captain—7 whites and 2 Hispanics.

33
34 **Passing Percentage:** On the captain exam, the pass rate for white candidates was 64 percent
35 but only 37.5 percent for both African-American and Hispanic candidates. On the lieutenant
36 exam, the pass rate for white candidates was 58.1 percent; for African-American candidates,
37 31.6 percent; and for Hispanic candidates, 20 percent. The averaged pass rate for the minority
38 candidates was approximately one half the pass rate for white candidates.

1 Because of the test results and an application of the “rule of three,” certifying the examinations
2 would have meant that the City could not have considered African-American candidates for
3 any of the then-vacant lieutenant or captain positions. After a number of public hearings the
4 New Haven Civil Service Commission (CSC) voted not to certify the results. This meant that
5 no one was promoted as a result of this test. A number of white firefighters including Frank
6 Ricci sued the city.

8 **Test Results Interpretation**

9 The Equal Employment Opportunity Commission (EEOC) is required to set forth guidelines
10 for interpreting Title VII of the Civil Rights Act. Its guidelines are: “a selection rate that is
11 less than four fifths (4/5) or 80 percent of the rate for the group with the highest rate will
12 generally be regarded by the Federal enforcement agencies as evidence of adverse impact”
13 [i.e., if 80% of minority candidates don’t score as well as non-minority candidates, the test
14 is having a negative effect on hiring minorities]. Since these test results fell well below the
15 80-percent standard, this fact alone meant that the City faced a disparate impact lawsuit
16 [i.e., minority candidates could sue for unfair employment practices] if it certified the results
17 and allowed the promotions.

18 **Should the result be certified?**

19 Many people (including experts) debated this issue. One of the experts was Christopher
20 Hornick who was asked to evaluate the test. He stated that adverse impact (on minorities)
21 in standardized testing “has been in existence since the beginning of testing,” and that the
22 disparity in New Haven’s test results between whites and minorities was “somewhat higher
23 but generally in the range that we’ve seen professionally.”

24
25
26 Chad Legel, from IOS, Inc., stated that the City never asked whether alternative methods
27 might better measure the qualities of a successful fire officer, including leadership skills and
28 command presence (qualities considered in testing fire officers in other cities). “I was under
29 contract and had responsibility only to create the oral interview and the written exam.”

30
31 A representative of the Northeast Region of the International Association of Black
32 Professional Firefighters, Donald Day, also spoke. Statistical disparities had been present
33 in the Department’s previous promotional exams. On earlier tests, however, a few minority
34 candidates had fared well enough to earn promotions. Day contrasted New Haven’s
35 experience with that of nearby Bridgeport, Connecticut, where minority firefighters held
36 one-third of lieutenant and captain positions. Bridgeport, Day observed, had once used
37 a testing process similar to New Haven’s, with a written exam accounting for 70 percent
38 of an applicant’s score, an oral exam for 25 percent, and seniority for the remaining five
39 percent. Bridgeport recognized, however, that the oral component, more so than the written
40 component, addressed the sort of “real-life scenarios” fire officers encounter on the job.

1 Accordingly, that city “changed the relative weights” to give to the most weight to the oral
2 exam. Since that time, Day reported, Bridgeport had seen minorities “fairly represented” in
3 its exam results.
4

5 **Arguments**

6 **Petitioners:** (the white firefighters) Argue that the test was neutral in its construction and
7 therefore it should have been certified so that those who passed the test could be promoted
8 and fill the vacant positions. They want the lower court’s ruling reversed.
9

10 **Respondents:** (the City) Argue that the results show prima facie [first look] evidence of
11 disparate impact and so properly were not certified. The remedy is to create a new test that
12 more accurately reflects job performance and which will not have such a disparate impact
13 on African-Americans and Hispanics. They want the lower court’s ruling upheld.
14

15 **Questions Presented**

16 Should the city of New Haven have certified the tests even though there was prima facie
17 evidence of disparate impact? Were Petitioners’ constitutional rights violated by the City?
18

19 **Legal Authorities**

20 **U.S. Constitution, Amendment XIV**

21 “All persons born or naturalized in the United States, and subject to the jurisdiction thereof,
22 are citizens of the United States and of the State wherein they reside. No State shall make or
23 enforce any law which shall abridge the privileges or immunities of citizens of the United
24 States; nor shall any State deprive any person of life, liberty, or property, without due process
25 of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
26

27 **Federal Civil Rights Legislation**

28 The main federal civil rights act is found in the U.S. Codes (U. S. C.) at 42 U. S. C. §1983 et
29 seq. [and following], which is also known as Title VII of the Civil Rights Act. Title VII prohibits
30 both intentional discrimination [known as “disparate treatment”] as well as practices that
31 are not intended to discriminate but in fact have a disproportionately adverse effect on
32 minorities [known as “disparate impact”]. The relevant sections of that act are:
33

34 *42 U. S. C. §2000e-2 (a) (1), (2)*

35 (a) Employer practices

36 It shall be an unlawful employment practice for an employer

37
38 (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate
39 against any individual with respect to his compensation, terms, conditions, or privileges of
40 employment, because of such individual’s race, color, religion, sex, or national origin; or

1 2) to limit, segregate, or classify his employees or applicants for employment in any way
2 which would deprive or tend to deprive any individual of employment opportunities or
3 otherwise adversely affect his status as an employee, because of such individual's race,
4 color, religion, sex, or national origin.

5
6 *42 U. S. C. §2000e-2 (k) (1) (A) (i) and (ii)*

7 (k) Burden of proof in disparate impact cases

8 (1)(A) An unlawful employment practice based on disparate impact is established under this
9 subchapter only if

10
11 (i) a complaining party demonstrates that a respondent uses a particular employment practice
12 that causes a disparate impact on the basis of race, color, religion, sex, or national origin
13 and the respondent fails to demonstrate that the challenged practice is job related for the
14 position in question and consistent with business necessity; or

15
16 (ii) the complaining party makes the demonstration described in subparagraph (C) with
17 respect to an alternative employment practice and the respondent refuses to adopt such
18 alternative employment practice.

19
20 **Equal Employment Opportunity Commission (EEOC)**

21 Equal Employment Opportunity Commission has regulations which set forth the "80% rule."
22 These are found in the Code of Federal Regulations (CFR) as follows:

23
24 *29 CFR §1607.4(D) (2008)*

25 Adverse Impact and the 4/5 Rule

26 "A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) or
27 eighty percent of the rate for the group with the highest rate will generally be regarded by
28 the Federal enforcement agencies as evidence of adverse impact ..."

29
30 **Strict Scrutiny Test**

31 This is a very brief overview of a complex legal topic. When a court looks at the constitutionality
32 of a governmental action, there are three levels of test they use. The highest, hardest standard
33 is called "strict scrutiny." This test is usually applies (as in our case) when the law involves
34 the use of a "suspect classification" such as race or national origin.

35
36 To pass strict scrutiny, the government action or policy must satisfy three prongs [tests]:
37 First, it must be justified by a "compelling governmental interest" (which the Court has not
38 clearly defined). Getting rid of **specific** racial discrimination generally is considered to be a
39 "compelling governmental interest."

1 Second, it must be “narrowly tailored” to achieve that goal or policy. If the law or policy is
2 overly broad, it could conflict with other constitutional rights.

3
4 Third, the law or policy must be the “least restrictive means” for achieving that goal.
5 The question here is, “Is there a less restrictive way to effectively achieve the compelling
6 government interest?”
7

8 **Case Law**

9 *Griggs v. Duke Power Co.*, 401 U. S. 424 (1971)

10 **Facts:** Willie Griggs filed a class action lawsuit on behalf of himself and several other African-
11 American employees, against his employer Duke Power Company. Griggs challenged Duke’s
12 “inside” transfer policy, which affected anyone seeking a position above the lowest paying
13 ones. This policy required candidates for higher positions to receive a minimum score on
14 two separate aptitude tests in addition to having a high school education. Griggs claimed
15 that Duke’s policy discriminated against African-American employees in violation of Title VII
16 of the 1964 Civil Rights Act.
17

18 **Question:** Did Duke Power Company’s intradepartmental transfer policy, requiring a high
19 school education and the achievement of minimum scores on two separate aptitude tests,
20 violate Title VII of the 1964 Civil Rights Act?
21

22 **Quotes/Holding:** Yes. the Court held that Duke’s standardized testing requirement prevented
23 a disproportionate number of African-American employees from being hired by, and
24 advancing to higher-paying departments within, the company. The Court stated that the
25 actual result of the aptitude test and graduation requirement was not a “reasonable measure
26 of job performance” but rather a way of giving preferable jobs to its white employees. The
27 Civil Rights Act “proscribes not only overt discrimination but also practices that are fair in
28 form but discriminatory in operation.”
29

30 The Court said, “There was no showing of a discriminatory purpose in the adoption of
31 the diploma and test requirements.” The policy, however, “operated to render ineligible a
32 markedly disproportionate number of [African-Americans].” In North Carolina, where the
33 Duke Power plant was located, 34 percent of white males, but only 12 percent of African-
34 American males, had high school diplomas. African-Americans also failed the aptitude tests
35 at a significantly higher rate than whites.
36

37 The Court unanimously held that the company’s diploma and test requirements violated Title
38 VII. “To achieve equality of employment opportunities,” the Court comprehended, Congress
39 “directed the thrust of the Act to the consequences of employment practices, not simply the
40 motivation.” “The touchstone” for determining whether a test or qualification meets Title

1 VII's measure, the Court said, is not "good intent or the absence of discriminatory intent";
2 it is "business necessity." Matching procedure to substance, the Court observed, Congress
3 "placed on the employer the burden of showing that any given requirement . . . has a
4 manifest relationship to the employment in question." In the *Duke* case, neither requirement
5 had been "shown to bear a demonstrable relationship to successful performance of the jobs
6 for which it was used."
7

8 The Court also said, "Even if the employer meets that burden, however, a Petitioner may still
9 succeed by showing that the employer refuses to adopt an available alternative employment
10 practice that has less disparate impact and serves the employer's legitimate needs."
11

12 *Albemarle Paper Co. v. Moody*, 422 U. S. 405 (1975)

13 **Facts:** Following a reorganization at the Albemarle Paper plant, under a new collective
14 bargaining agreement [union contract], the Negro employees appeared to have been "locked"
15 in the lower paying job classifications," They sued for unfair hiring practices. Albemarle also
16 administered personnel tests which had undergone validation studies and had arguably
17 been proven to be job-related.
18

19 **Question:** Did Albemarle Paper's collective bargaining agreement and the testing program
20 violate Title VII?
21

22 **Quotes/Holding:** Yes. The Court, again without dissent, elaborated on *Griggs*. When an
23 employment test "selects applicants for hire or promotion in a racial pattern significantly
24 different from the pool of applicants," the employer must demonstrate a "manifest relationship"
25 between test and job. Such a showing, the Court cautioned, does not necessarily mean
26 the employer prevails, "It remains open to the complaining party to show that other tests
27 or selection devices, without a similarly undesirable racial effect, would also serve the
28 employer's legitimate interest in efficient and trustworthy workmanship."
29

30 *Wygant v. Jackson Bd. of Ed.*, 476 U. S. 267 (1986)

31 **Facts:** The Board of Education and the teachers' union in Jackson, Michigan added a "layoff
32 provision" to their collective bargaining agreement. The provision required that in the event
33 of layoffs, "teachers with the most seniority ... shall be retained, except that at no time will
34 there be a greater percentage of minority personnel laid off than the current percentage of
35 minority personnel employed at the time of the layoff" [i.e., adjust the racial make up of the
36 people being laid off to keep the level of minorities the same.] The Jackson school district
37 had a goal of increasing the percentage of minority teachers in the school system. The
38 purpose of this provision was to keep that goal in place. When layoffs became necessary, the
39 board stuck with the policy and laid off some non-minority teachers who had more seniority
40 than the minority teachers, who did not lose their jobs. The non-minority teachers sued.

1 **Question:** Did the collective bargaining agreement provision for race-based layoffs violate
2 the Fourteenth Amendment’s Equal Protection Clause?

3
4 **Quotes/Holding:** Yes. The Court held:

5 (1) any governmental classification or preference based on racial or ethnic criteria must be
6 justified by a compelling governmental interest, and the way the government addresses that
7 interest must be narrowly tailored to the achievement of that goal. It is not narrowly tailored
8 if a less intrusive means, such as the adoption of hiring goals, are available to accomplish
9 similar purposes.

10
11 (2) such means are subject to strict scrutiny (see pages 6 to 7 for an explanation).

12
13 (3)“A public employer like the Board must ensure that, before it embarks on an affirmative-
14 action program, it has convincing evidence that remedial action is warranted. That is, it must
15 have sufficient evidence to justify the conclusion that there has been prior discrimination,
16 which becomes crucial when the remedial program is challenged in court by nonminority
17 employees.” The desire to provide racially balanced faculty role models to students or to
18 fight against societal discrimination was not enough to justify a race-based layoff system.

19
20 (4) in order to remedy the effects of prior racial discrimination, a state may implement a
21 race-based plan under which innocent parties are called upon to bear some of the burden,
22 provided that their share of the burden is relatively light and diffused among society generally.
23 The desire to keep minority teachers cost junior members of the faculty their jobs. Even
24 though the teachers had agreed to this section of their contract, teachers with the most
25 seniority cannot be allowed to violate the constitutional rights of junior members.

26
27 *Johnson v. Transportation Agency, Santa Clara County., 480 U. S. 616 (1987)*

28 **Facts:** A municipal employer had a voluntary affirmative action plan. Pursuant to [following]
29 the plan, the employer selected a woman for a road-dispatcher position, a job category
30 traditionally regarded as “male.” A male applicant who had a slightly higher interview score
31 brought suit under Title VII.

32
33 **Question:** Did the plan violate the male applicant’s constitutional rights?

34
35 **Holding/Quotes:** No. The Court rejected his claim and approved the plan, which allowed
36 consideration of gender as “one of numerous factors.” Such consideration, the Court said,
37 is “fully consistent with Title VII” because plans of that order can aid “in eliminating the
38 vestiges of discrimination in the workplace.”

1 *Richmond v. J. A. Croson Co.*, 488 U. S. 469, 500 (1989)

2 **Facts:** Richmond, Virginia had an African-American population of just over 50 percent.
3 Based on its findings that patterns of discrimination at the local, state, and national levels
4 had resulted in almost complete lack of access for minority-owned businesses, it set a goal
5 in awarding city construction contracts, to have 30 percent of them go to minority-owned
6 firms. The J.A. Croson Co., which lost a contract because of the 30 percent “set-aside,” sued
7 the city.

8
9 **Question:** Did the Richmond, Virginia law violate the Equal Protection Clause of the
10 Fourteenth Amendment?

11
12 **Quotes/Holding:** Yes. The Court held that “generalized assertions” of past racial discrimination
13 could not justify “rigid” racial quotas for the awarding of public contracts. The Court found
14 that the city failed both to identify the need for remedial action and to show that other
15 non-discriminatory remedies would be insufficient. “To accept Richmond’s claim that past
16 societal discrimination alone can serve as the basis for rigid racial preferences would be to
17 open the door to competing claims for remedial relief for every disadvantaged group.”

18
19 *Grutter v. Bollinger*, 539 U. S. 306, 327 (2003)

20 **Facts:** In 1997, Barbara Grutter, a white resident of Michigan, was denied admission to
21 the University of Michigan Law School. Grutter’s undergraduate GPA (3.8) and LSAT score
22 (161) were higher than that of some minority students who were accepted. The Law School
23 admitted that it used race as a factor in making admissions decisions because it serves a
24 “compelling interest in achieving diversity among its student body.”

25
26 **Question:** Did the University of Michigan Law School’s use of racial preferences in student
27 admissions violate the Equal Protection Clause of the Fourteenth Amendment or Title VI of
28 the Civil Rights Act of 1964?

29
30 **Quotes/Holding:** No. The Court held that the Equal Protection Clause of Constitution “does
31 not prohibit the law school’s narrowly tailored use of race in admissions decisions to further
32 a compelling interest in obtaining the educational benefits that flow from a diverse student
33 body.” The Court reasoned that, because the Law School conducts a highly individualized
34 review of each applicant, no acceptance or rejection is based automatically on a variable
35 such as race and that this process ensures that all factors that may contribute to diversity are
36 meaningfully considered alongside race.

Table of Citations

U.S. Constitution

XIV Amendment.....	5
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Federal Civil Rights Law

The Civil Rights Act of 1964, as amended (42 USCA 1983 et. seq.) Title VII	
42 U. S. C. §2000e-2(a)(1) and (2).....	5-6
42 U. S. C. §2000e-2(k)(1)(A)(i) and (ii)	6

Equal Employment Opportunity Commission (EEOC) Regulations

29 Code of Federal Regulations (CFR) 1607.4 (D).....	6
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U.S. Supreme Court Cases

Griggs v. Duke Power Co., 401 U. S. 424 (1971).....	7-8
Albemarle Paper Co. v. Moody, 422 U. S. 405, 425 (1975).....	8
Wygant v. Jackson Bd. of Ed., 476 U. S. 267 (1986)	8-9
Johnson v. Transportation Agency of Santa Clara, 480 U.S. 616 (1987)	9
Richmond v. J. A. Croson Co., 488 U. S. 469, 500 (1989)	10
Grutter v. Bollinger, 539 U. S. 306, 327 (2003)	10

Appellate Brief Format

1 Adam Smythe
Chau Nguyen
2 1 Wright Way
Cityville, CA 00000
3 (000) 999-0000

4 Attorney for Petitioner FRANK RICCI, et al

5

6 IN THE TWENTIETH CIRCUIT COURT OF APPEALS

7 IN AND FOR THE UNITED STATES OF AMERICA

8 FRANK RICCI,)

9 Petitioner)

NO. 09-456

10 vs.)

APPELLATE BRIEF

11)

JOHN DESTEFANO,)

12 Respondent)

13)

14 **Introduction/Legal History/Facts**

15 In 2003, FRANK RICCI and other New Haven firefighters took lieutenant or captain
16 promotional exams. These exams (designed and written by an outside agency) were fair,
17 appropriate and properly created. Because only white (including Mr. Ricci) and two Hispanic
18 firefighters scored high enough to be promoted to one of the 15 vacancies, the City threw out
19 the exam results due to its fear that minority firefighters would file a lawsuit.

20 **Legal Argument**

21 The failure to certify the results of the duly and properly created exams violated
22 Petitioners' Title VII and Fourteenth Amendment rights in that ...

23 Wherefore, Petitioner prays that the lower court's ruling be reversed, that the exam
24 results be certified and those in line for promotions receive them.

25

26 Dated: October 16, 2009

Adam Smythe

27

Adam Smythe
Attorney for Petitioner

28

Reply Brief Format

1 José Martinez
LaKisha Johnston
2 1 Green Street
Cityville, CA 00000
3 (000) 999-1111

4 Attorneys for Respondent JOHN DESTEFANO, MAYOR, NEW HAVEN

5

6 IN THE TWENTIETH CIRCUIT COURT OF APPEALS

7 IN AND FOR THE UNITED STATES OF AMERICA

8	FRANK RICCI,)	
)	
9	Petitioner)	NO. 09-456
)	
10	vs.)	
)	REPLY BRIEF
11)	
12	JOHN DESTEFANO,)	
	Respondent)	
13	_____)	

14 **Introduction/Legal History/Facts**

15 In 2003, New Haven had 15 vacant lieutenant and captain positions. The promotional
16 tests that were created to fill these vacancies were seriously flawed and had a disparate
17 impact on minority candidates whose pass rates was approximately one half that of the white
18 candidates.

19 **Legal Argument**

20 Title VII of the Civil Rights Act prohibits disparate impact in employment situations like
21 the instant case. There is a prima facie case of disparate impact under EEOC regulation 29
22 CFR §1607.4(D) (2008) which says, "... "

23 Wherefore, Respondent prays that the lower court’s ruling barring certification of the
24 tests results be upheld and that the court order the City to create new, fairer exams.

25

26 Dated: October 16, 2009

27

La Kisha Johnston
La Kisha Johnston
Attorney for Respondent

28

Writing a Legal Brief – Overview

Parts of a Brief¹

A legal brief should consist of four parts.

- Introduction/Legal History
- Short statement of facts
- Body of the legal argument(s) with citations
- Conclusion (summary of grounds with request restated)

INTRODUCTION/LEGAL HISTORY

Give a brief legal/procedural history. Next, tell the Court what you want it to do (for example, overturn the lower court ruling) and give a very short summary of the legal grounds (reasons) for this request.

“After the City decided not to certify the promotional exam results, Frank Ricci, a white firefighter who had passed the exam, sued the City ...”

FACTS

Use the facts most helpful to your side.

- Petitioner Frank Ricci was a white New Haven, CT firefighter who passed a promotional exam but was not promoted because the city failed to certify the test results.
- Respondent John DeStefano was New Haven’s mayor. He was sued as a representative of the City when due to its disparate impact on minorities, the city refused to certify the promotion examination results.

BODY OF THE LEGAL ARGUMENT WITH CITATIONS

Address each issue. Begin each one with a topic sentence (very short summary) in your own words. Use the “Brief Writing Organizer” to help you. Address the issues of how Title VII and the Equal Protection Clause of the Fourteenth Amendment apply.

CONCLUSION

Summarize the ground for relief (the legal reasons why the court should grant your prayer (request) and the relief sought (what you want the court to do).

Use “Wherefore, the Petitioner or the Respondent respectfully requests that ...”

Citing Case Law in Your Argument

HOW TO CITE CASES

There are fairly standard ways that cases are cited in briefs (see page iv of your Moot Court “Introduction”).

USING CATCH PHRASES

the instant case (this case, *Ricci v. DeStefano*)

¹ There is a sample brief and format in this packet (see pages A1–A2).

Brief Writing Organizer

Use this organizer to brainstorm and organize your thoughts before typing your brief.

INTRODUCTION

The introduction gives a brief legal/procedural background. Then it tells the court what you want it to do and gives a short explanation of the legal reasons why. "Petitioner Frank Ricci is a white New Haven firefighter who passed a promotional exam but wasn't promoted because the city failed to certify the test results"

FACTS

Use the facts most helpful to your side.

- Petitioner: The promotional exams were fair and should have been certified.
- Respondent: The promotional exams had a disparate impact on minority firefighters and therefore it was proper to not certify them.

LEGAL ARGUMENTS

You should argue the points and cite cases as you see fit. Begin each argument with a topic sentence and end with a conclusion (see next page for more writing space). For example:

"There was prima facia evidence of disparate impact in that ..."

LEGAL ARGUMENTS

Continue your argument here and then use the back, if needed.

CONCLUSION

Summarize your legal points and end with a what you want the court to do.

“Wherefore, the Petitioner/Respondent respectfully requests that the court ...”

Giving an Oral Argument – Overview

Parts of an Argument

Your oral argument will be very similar to your brief. The main differences are that you will be addressing the judges in person, you'll have to respond to their questions and your opponents arguments, and you'll have time for rebuttal (a presentation where you explain what's wrong with your opponents' arguments).

An oral argument consists of the same four parts as the brief.

- Introduction/Legal History
- Short statement of facts
- Body of the legal argument(s) with citations
- Conclusion (summary of grounds with request restated)

INTRODUCTION/LEGAL HISTORY

The introduction tells the Court what you want it to do (i.e., certify the test results") and a gives a very short summary of the legal grounds (reasons) for this request. The judges are addressed as "Your Honors."

"Your Honors, Petitioner Frank Ricci is a white New Haven firefighter who passed a promotional exam but wasn't promoted because the city failed to certify the test results ...

FACTS

Use the facts most helpful to your side.

- Petitioner: Frank Ricci was a white New Haven firefighter who passed a promotional exam but was not promoted because the city wrongfully failed to certify the test results.
- Respondent: Due to its disparate impact on minorities, the city refused to certify the promotion examination results.

BODY OF THE LEGAL ARGUMENT WITH CITATIONS

Use the "Oral Argument Notemaker" to brainstorm what questions the judges might ask and your responses to your opponents' arguments.

CONCLUSION

Summarize the ground for relief (the legal reasons why the court should grant your prayer (request) and the relief sought (what you want the court to do).

"In conclusion, the City violated Mr. Ricci's rights ... Wherefore, Petitioners respectfully request that this court reverse the lower court's ruling and order the City to certify the exam results. Thank you."

Citing Case Law in Your Argument

Cases are cited in oral argument in the same way they're cited in briefs (see page iv of your Moot Court "Introduction"). You can use legal "catch phrases" like "the instant case", "on point"

Speaking

Oral argument is a persuasive speech designed to get the judges to rule in your favor. Good lawyers:

- Make eye contact
- Speak slowly and clearly
- Advocate for their side, have passion

Oral Argument Notemaker

Use this form to make notes on how to answer the judges' questions and respond to your opponents' arguments (use back if necessary). You can also outline your rebuttal here.

Judge Questions	Your Responses	Your Rebuttal and/or Response to Opponents' Arguments

Oral Argument Notemaker page 2

Judge Questions	Your Responses	Your Rebuttal and/or Response to Opponents' Arguments

Oral Argument Notemaker page 3

Judge Questions	Your Responses	Your Rebuttal and/or Response to Opponents' Arguments

Sample Courtroom Dialog for Appellate Argument

The room is arranged as a courtroom (see Appellate Court Diagram, Appendix D). The lawyers are seated at counsel table (appellant at the right, respondent on the left).

All are present except the three judges. The Clerk/Timer (CI/Timer) stand and speaks.

CI/Timer	All rise. The Court of Appeal for the Twentieth Circuit is now in session. The Honorable Luke George, Presiding Judge; the Honorable June Sommers and Stan Nord presiding.
-----------------	---

All three judges enter the courtroom and sit down. The PJ (presiding judge) raps the gavel once.

CI/Timer	Please be seated and come to order. Calling the case of <i>Ricci v. DeStefano</i> .
PJ	Counsel, please state your names and appearances for the record.

Lawyers stand. (Lawyers ALWAYS stand when addressing the judges.)

Each in turn says:

Attys	Good morning your honors, Adam Smythe, representing the Petitioner in this action. I will be delivering the argument-in-chief (main argument). Good morning your honors, Chau Nguyen, representing the Petitioner in this action. I will be delivering the rebuttal argument. Good morning your honors, José Martinez, representing the Respondent in this action. I will be delivering part of both the argument-in-chief and the rebuttal. Good morning your honors, LaKisha Johnston, representing the Respondent in this action. I will also be delivering part of both the argument-in-chief and the rebuttal. Good morning your honors, Dalbir Singh, I'll be your clerk and official timer this morning. Good morning your honors, Fran Jones, I'm the unofficial timer.
PJ	Before we begin, I'm going to read some preliminary instructions.

PJ reads instructions or asks to skip reading them. Then the PJ addresses the P Attys.

PJ	Mr. Smythe, please proceed with your argument.
P Atty	Yes, your honor

Adam Smythe stands and delivers his argument-in-chief.

On this team only Mr. Smythe is delivering the main argument.

Personnel are:

(PJ) Presiding Judge (P Atty) P Petitioner's attorney; (R Atty) Respondent's attorney; (Attys) All or some of the attorneys

After Mr. Smythe has delivered his arguments-in-chief, then the PJ asks the R Atty(s) to give their arguments.

PJ	Mr. Martinez please proceed with your argument.
P Atty	Yes, your honor.

Mr. Martinez and then Ms. Johnston stand and deliver their arguments-in-chief.

On the Martinez/Johnston team, Martinez and Johnston are sharing both the main argument and the rebuttal.

Then the PJ addresses P Attys

PJ	Ms. Nguyen you may proceed with rebuttal. Remember that this time may only be used to rebut opposing counsel's argument and not to raise new issues.
-----------	--

Ms. Nguyen delivers her rebuttal.

On the Smythe/Nguyen team, only Ms. Nguyen is doing the rebuttal.

When she is finished (or time is called) the PJ addresses the R Attys

PJ	Ms. Johnston you may proceed with rebuttal.
-----------	---

When Ms. Johnston and then Mr. Martinez have finished rebuttal (or time is called) the PJ addresses everyone:

PJ	This concludes the oral argument in <i>Ricci v. DeStefano</i> . Thank you counsel. Before we make any comments , would my fellow justices please put their score sheets in this envelope? <i>Now seal the envelope and hand it to the official timer/clerk.</i> Would the clerk please take this envelope with the score sheets and bring it to the Moot Court staff?
CI/Timer	All rise.

After the judges are off the bench.

CI/Timer	You may be seated.
-----------------	--------------------

Fill-in Courtroom Dialog for Appellate Argument

The room is arranged as a courtroom (see Appellate Court Diagram, Appendix D). The lawyers are seated at counsel table (appellant at the right, respondent on the left).

All are present except the three judges. The Clerk/Timer (CI/Timer) stand and speaks.

CI/Timer	All rise. The Court of Appeal for the Twentieth Circuit is now in session. The Honorable _____ presiding.
-----------------	--

All three judges enter the courtroom and sit down. The PJ (presiding judge) raps the gavel once.

CI/Timer	Please be seated and come to order. Calling the case of _____.
PJ	Counsel, please state your names and appearances for the record.

Lawyers stand. (Lawyers ALWAYS stand when addressing the judges.)

Each in turn says:

Attys	Good morning your honors, _____, representing the Petitioner in this action. I will be delivering the _____.
	Good morning your honors, _____, representing the Petitioner in this action. I will be delivering the _____.
	Good morning your honors, _____, representing the Respondent in this action. I will be delivering the _____.
	Good morning your honors, _____, representing the Respondent in this action. I will be delivering the _____.
	Good morning your honors, _____, I'll be your clerk and official timer this morning.
	Good morning your honors, _____, I'm the unofficial timer.
PJ	Before we begin, I'm going to read some preliminary instructions.

PJ reads instructions or asks to skip reading them. Then the PJ addresses the P Attys

PJ	_____, please proceed with your argument.
P Atty	Yes, your honor

One of the P Attys stands and delivers his/her argument-in-chief (main argument). Then, if appropriate, the other P Atty stands and delivers his/her argument-in-chief.

Personnel are:

(PJ) Presiding Judge (P Atty) P Petitioner's attorney; (R Atty) Respondent's attorney; (Attys) All or some of the attorneys

After the P Atty(s) have delivered their arguments-in-chief, then the PJ asks the R Atty(s) to give their arguments.

PJ	_____, please proceed with your argument.
P Atty	Yes, your honor.

The R Atty(s) stand and deliver their arguments-in-chief. Then the PJ addresses P Atty(s):

PJ	_____, you may proceed with rebuttal. Remember that this time may only be used to rebut opposing counsel's argument and not to raise new issues.
-----------	--

When P Atty(s) have finished rebuttal, (or time is called) the PJ addresses R Atty:

PJ	_____, you may proceed with rebuttal.
-----------	---------------------------------------

When R Atty(s) have finished rebuttal (or time is called) the PJ addresses everyone:

PJ	This concludes the oral argument in _____. Thank you counsel. Before we make any comments , would my fellow justices please put their score sheets in this envelope? <i>Now seal the envelope and hand it to the official timer/clerk.</i> Would the clerk please take this envelope with the score sheets and bring it to the Moot Court staff?
Cl/Timer	All rise.

After the judges are off the bench:

Cl/Timer	You may be seated.
-----------------	--------------------

2009 MOOT COURT

THE CALIFORNIA HIGH SCHOOL APPELLATE COMPETITION

THE RULES

- § 100. Competition Administration
- § 101. Teams, Fees and Deadlines
- § 102. Assistance, Research and Workshop
- § 103. Briefs
- § 104. Oral Arguments
- § 105. Preliminary Rounds
- § 106. Semifinal Round and Championship Match
- § 107. Participant Conduct, Sportsmanship and Ethics
- § 108. Interpretation of Rules
- § 109. Announcements of Scores
- § 110. Awards
- § 111. Event Itinerary
- Appendix

§ 100. Competition Administration

This competition is hosted by the Contra Costa County Bar Association (CCCBA). Ron Leone and Carla Garrett (the Committee) have the authority to interpret and to amend these rules and to resolve any issues about the competition. Decisions by the Committee in regards to any aspect of this competition are final. The Committee can be contacted as follows:

By phone: (925) 947-4356

By email: mootcourt2009@cesqd.org

By mail: Center for Economic and Civic Education, PO Box 23841, Pleasant Hill, 94523

§ 101. Teams, Fees and Deadlines

- (1) A team consists of two to five members. In each round, one or two members will present the oral argument and one member of the **Petitioner's** team keeps time. The decision as to which team members perform which tasks is up to the team, **but a timekeeper is mandatory.**
- (2) Team members must be enrolled at the same high school and can only be on one team. Homeschoolers may participate in one of two ways.
 - a) as a member of a team at the public school she/he would attend if not homeschooled, or
 - b) as a member of an independent team exclusively comprised of homeschooled students.
- (3) A school may have more than one team. A team is registered when the Committee receives the registration fee and the following entry forms: 1) the team's registration/roster form, 2) the ethics form, 3) signed permission slip/medical and liability release, 4) photo/video/Web/submission release. After receiving these items, confirmation will be sent to the contact

person listed on the registration form. (Teams are responsible for providing and updating their contact person's current email address and phone number.) The registration fee is not refundable. In addition, to avoid misspellings, teams must submit via email a list of team member names, to the Committee's email address: mootcourt2009@cesqd.org (see page 6 for a sample email).

- (4) The registration fee for the Moot Court competition is \$25 per team member. (Scholarships may be available. Contact the Committee.)
- (5) **The registration deadline is Wednesday, October 7, 2009.** Applications will be accepted on a first-come, first-served basis. If we reach capacity, teams will be placed on a waiting list.
- (6) Substitution of team members may be made provided the Committee receives signed permissions slips, ethics forms, releases and an updated roster.

§ 102. Assistance, Research and Workshop

- (1) Teams may receive assistance (including attorney help) in preparing their briefs and developing strategies for their oral arguments.
- (2) Additional background research may supplement students' understanding of the constitutional issues at hand, but anything that is not included in the official "Moot Court Case Packet" may not be quoted in oral argument.
- (3) We will hold Moot Court workshops for students, teachers and coaches. See the competition's Web page: <http://cesqd.org/mootcourt.html> for details. There will be no charge.

§ 103. Briefs

- (1) Briefs are helpful in preparing for the competition, **but no briefs are to be submitted.** In real life, attorneys are required to write and submit briefs before oral argument. It is recommended that each team write two (2) briefs, one for the petitioner (appellant) and one for the respondent.
- (2) A team's oral arguments may vary from their briefs.

§ 104. Oral Arguments

- (1) Oral arguments will be held in the Contra Costa County Superior Court, Martinez, California, on October 17, 2009.
- (2) Each side will be allowed a total of six (6) minutes for argument-in-chief (main argument) and for rebuttal. Teams may allocate the six minutes between two speakers and between argument in chief and rebuttal in any reasonable way, but **non-performance of any part will result in a score of 0** (see page R-7). The Court **will** interrupt argument for questions, but neither questions nor answers to them, will be timed.
- (3) In order to present a position in the most persuasive manner, students should carefully review and become familiar with the materials provided in the Moot Court case packet. Additional background research may supplement their understanding of the constitutional issues at hand, but such supplemental materials may not be cited in arguments.
- (4) Team members will introduce themselves using the introduction format (see the sample courtroom dialog in the case packet) at the beginning of the argument but must not reveal

the name of their high school. Judges must neither ask nor know the identity of the teams arguing before them either before or after grading the arguments.

- (5) In scoring, judges may not take into consideration the merits of the real case, but will base their scoring on the performance of the students (using the scoring criteria in “Procedures and Scoring Criteria for Moot Court”—see page 6 and 7 of these rules).
- (6) Judges may not disclose winners or scores to anyone other than the Committee or its designee. They may comment (very briefly) on the performance of speakers or teams after the scores have been submitted for tabulation.
- (7) During a round, only the one (1) or two (2) participating speakers from each team may sit at the counsel table. The petitioner’s timer will be denoted as the official timer. The respondent’s timer will act as the unofficial timer. The timers will sit together.
 - A. The clock will be stopped when judges question attorneys, when attorneys respond to questions, and when judges make observations.
 - B. Only issues that were addressed in an opponent’s argument may be raised during rebuttal. Reservation of rebuttal time is not required.
 - C. Total time for each round is 40 minutes.
 - D. Stopwatches will be provided, but teams must be prepared to use them.
- (8) Three-, two-, one-minute and 30 second verbal warnings must be given before the end of each team’s total time. The clerk will automatically stop students at the end of each team’s allotted time. Thus, there will be no allowance for overtime.
- (9) The unofficial timer must be identified before argument begins and may check time with the official timer at the end of each side’s argument-in-chief. Any objections to the official time must be made by this unofficial timer during those time checks or at the end of rebuttal. The presiding judge (PJ) shall determine whether or not to accept the official time or make a time adjustment at this point.
- (10) Other persons from the same high school may be present in the room but may not be seated with and may not confer with those seated at the counsel table.
- (11) The Committee may direct that any round or portions thereof be recorded or transmitted. By participating in the competition, all teams consent to such recording or transmission.
- (12) With the consent of both **teams**, teams may video or audio tape their own competitions. The Committee will NOT accept any video or audio tapes for complaint purposes.

§ 105. Preliminary Rounds

- (1) Each team will argue in two preliminary rounds (once per side). The Committee will pair teams randomly in the first and second rounds and may (at the Committee’s sole discretion) use limited power matching for third and fourth rounds.
- (2) The total scores for the four (4) preliminary rounds will be added and then averaged to determine the top four (4) teams for the semifinal round. Scores in these preliminary rounds only, will be used to determine the top individual award winners.

§ 106. Semifinal Round and Championship Match

- (1) The four (4) top-scoring teams that have won both of their preliminary rounds will compete in the semifinal round.
- (2) The winners of that round will compete in the Moot Court Championship Match.
- (3) The sides for the two finalist teams will be the opposite of the semifinals, if possible, otherwise sides will be chosen by a coin toss.

§ 107. Participant Conduct, Sportsmanship and Ethics

- (1) Participants are expected to display proper courtroom decorum and courtesy throughout the competition.
- (2) Participants are expected to act with good sportsmanship and respect for others in both victory and defeat throughout the competition.
- (3) Participants are expected to be polite and patient with Moot Court and courthouse staff.
- (4) Participants must follow all rules and regulations as specified in the Moot Court packet or disseminated by Contra Costa County Bar Association (CCCBA) or the Moot Court staff. Failure of any member or affiliate of a team to adhere to the rules may result in disqualification of that team.
- (5) The Moot Court materials are protected by copyright and may not be modified, adapted, revised or reprinted anywhere, including on the Internet, without express permission from the Committee. Any violation of this rule may result in disqualification of a team, as well as litigation. However, we hereby grant to all participants a license to reproduce the pages in this document **strictly for their own use**.
- (6) Plagiarism* of any kind is unacceptable. Students' written and oral work must be their own. (***Webster's Dictionary defines plagiarism as, "to steal the words, ideas, etc. of another and use them as one's own."**)
- (7) Laptop computers at the courthouse on competition day are prohibited. Use of cell phones, pagers, text messaging and/or other electronic communication devices is prohibited in the courtrooms.
- (8) Teacher sponsors, attorney coaches, Moot Court participants and spectators are to remain in the courtroom throughout the round (about 40 minutes).
- (9) No scouting is allowed (see the "Code of Ethics" which defines scouting as "watching other teams compete and recording their words by any means—taping, electronic, writing)."
- (10) The presiding judge is the ultimate authority throughout the trial. If there is a rule infraction, it is solely the student attorneys' responsibility to bring the matter to the presiding judge's attention, before the end of a round. There will be no bench conferences allowed. The presiding judge will confer with the other two judges to determine if a rule was, in fact, violated. Their ruling on this issue is final. The official timer **must have** a copy of these Rules for reference. Unless a specific point deduction for a particular infraction is provided in these rules, each scorer will determine the appropriate amount of deduction individually.
- (11) All team members participating must be in the courtroom at the appointed time, ready to begin the round. **Incomplete teams must begin without their missing members.** If a team

is not present within 5 minutes after the scheduled start of a round, that team will forfeit the round and be subject to disqualification.

- (12) Once a round has begun, there must be no spectator contact with student team members. Sponsors, teacher and attorney coaches, other team members and spectators may not talk, signal, or otherwise communicate with the students. There will be an automatic deduction of two (2) points per score sheet if the presiding judge finds that this rule has been violated or if such conduct is observed by Moot Court staff.

§ 108. Interpretation of Rules

The Committee will review all questions about the rules and the case and will make its interpretations. Questions can be submitted to the Committee on or before **October 8, 2009** to: mootcourt2009@cesqd.org. The Committee will post all questions and answers on the competition's Web page: <http://cesqd.org/mootcourt.html>. Such interpretations will be final.

§ 109. Announcements of Scores

At the discretion of the Committee, scores will not be announced during the rounds, but may be available at the end of the competition.

§ 110. Awards

Awards will be given to the top teams. There may also be individual awards.

§ 111. Event Itinerary:

8:30– 9:00 am	Registration (M Group)
9:00–9:50 am	Round One (Group M)
9:10–9:40 am	Registration (C Group)
9:50–10:40 am	Round Two (C Group)
10:40–10:55 am	Break
10:55–11:45 am	Round Three
11:45–12:35	Round Four
12:35–1:05 pm	Lunch (Announce Top 4 teams)
1:05–1:55 pm	Semifinal Round
2:00–3:00 pm	Championship Match
3:00–3:30	Award Presentation

Sample Team Email

To: mootcourt2009@cesqd.org
From: jroberts@courtsareus.gov
Re: MC Team Names from Your High School
Here are the correctly spelled names of our team members.
1) Adam Smythe
2) Chau Nguyen
3) José Martinez
4) LaKisha Johnston
5) Dalbir Singh

E) EVALUATION CRITERIA

You will be scoring students in four areas: 1) The quality of their main arguments; 2) How well they responded to questions during their main argument; 3) The quality of the rebuttal; 4) How well they respond to questions during their rebuttal argument. Students are to be rated on the eleven point scale (**no fractions or decimals are allowed**) for each category, as appropriate. On a 0 to 10 scale (with 10 being the best) rate the student lawyers on the following criteria. The lawyer:

- Covered the issues presented (see case packet page 2)
- Had a well-developed and well-reasoned argument
- Presented the argument in a well organized and easy to follow manner
- Cited appropriate authorities
- Showed solid understanding of the legal reasoning behind the arguments
- Responded well to questions
- Used rebuttal to effectively respond to and counter what other side actually said
- Used judges questions to show weakness in other side's argument
- Demonstrated the ability to weave questions into argument
- Showed poise, passion and persuasiveness
- Was audible, understandable and did not speak too fast or slow
- Had good courtroom demeanor
- Used time effectively

F) SCORING CRITERIA GUIDELINES FOR 0-10 SCORING METHOD

The following are general guidelines to be applied to each category on the score sheet. These guidelines provide a framework on which to base your judgment. The system is designed to give you flexibility. For example, if you think both arguments-in-chief were excellent, but one attorney was better than the other, then you can give one a "9" and the other an "8."

10: FLAWLESS

9–8: EXCELLENT (Exceptional performance)

- Highly developed understanding of task
- Superior ability to think on his/her feet
- Superior ability to answer questions
- Resourceful, original and innovative approaches
- Presentation was extraordinary and not overly rehearsed or memorized

7–8: ABOVE AVERAGE (Good solid performance)

- Well developed understanding of task
- Good ability to think on his/her feet
- Good ability to answer questions
- Well prepared
- Very good presentation

5–6: AVERAGE (Meets required standards)

- Basic understanding of task
- Ability to think on his/her feet
- Ability to answer questions
- Adequate preparation
- Acceptable but uninspired performance

4: BELOW AVERAGE (Weak performance)

- Inadequate understanding of task
- Limited ability to think on his/her feet
- Limited ability to answer questions
- Inadequate preparation
- Awkward presentation

3: FAR BELOW AVERAGE (Unacceptable performance)

- Poor understanding of task
- No ability to think on his/her feet
- No ability to answer questions
- Shows lack of preparation
- Disorganized presentation

0: PENALTY (Nonperformance of required part)

- Failure to conduct rebuttal (no time or no argument ready)
- Can apply to rule violations

2009 MOOT COURT TIME SHEET

Round # _____ Trial # _____

Clerk/Timer _____

PJ _____

 Petitioner's Team (Names and Team #) v. _____
 Respondent's Team (Names and Team #)

Instructions:

- Total time for each round is 40 minutes. In the "Round began" box below, note the time when the judges took the bench. Add 40 minutes and note that time in the "Round to end" box. Please tell the judges when five minutes is left in the round and when time is up.
- Start your stopwatch when attorneys begin their arguments.
- Stop the clock when judges question attorneys, when attorneys respond to questions and when judges make observations.
- Each side is allowed a total of six (6) minutes for argument-in-chief and for rebuttal. Teams may use reasonable discretion in allocating the six minutes between two speakers and between argument-in-chief and rebuttal.
- The petitioner's timer is the official timer. The respondent's timer will act as the unofficial timer. The timers sit together.
- The official timer gives three-, two-, one-minute and 30 second verbal warnings before the end of each team's total time. Stop students at the end of each team's allotted time. Say, "Time! You must stop now."
- The unofficial timer must be identified before argument begins and may check time with the official timer at the end of each side's argument-in-chief. Any objections to the official time must be made by this unofficial timer during those time checks or at the end of rebuttal. The presiding judge (PJ) shall determine whether or not to accept the official time or make a time adjustment.

TIMING

Round began		
Petitioner	Time Used	Time Left
Main Argue		
Rebuttal		
Total Time		

Round to end		
Respondent	Time Used	Time Left
Main Argue		
Rebuttal		
Total Time		

SAMPLE TEAM COMBINATIONS¹

2-Person Teams

Option A: 1 lawyer and dedicated timekeeper

Round 1:

Anne argues for the Petitioner. *Tim* keeps time.

Round 2:

Anne argues for the Respondent. *Tim* keeps time.

Option B: 2 lawyers who also act as timekeepers for each other

Round 1:

Anne argues for the Petitioner. *Alejandro* keeps time.

Round 2:

Alejandro argues for the Respondent. *Anne* keeps time.

3-Person Teams

Note: These configurations can have several different lawyer/timekeeper combinations.

Option A: 2 lawyers, dedicated timekeeper

Round 1:

Blanca and *Ben* argue for the Petitioner. *Takahiro* keeps time.

Round 2:

Blanca and *Ben* argue for the Petitioner. *Takahiro* keeps time.

Option B: 3 lawyers, 2 of whom act as timekeepers

Round 1:

Beatriz and *Bruce* argue for the Petitioner. *Bashir* keeps time.

Round 2:

Beatriz and *Bashir* argue for the Petitioner. *Bruce* keeps time.

Option C: 2 lawyers for Petitioner, 1 lawyer for Respondent, dedicated timekeeper

Round 1:

Carol and *Cesar* argue for the Petitioner. *Tiffany* keeps time.

Round 2:

Carol argues for the Petitioner. *Tiffany* keeps time.

¹ Pages 9–11 are meant for the competition only. Feel free to use them in your classroom for scoring and/or team setup.

Option D: 1 lawyer for Petitioner, 2 lawyers for Respondent, dedicated timekeeper

Round 1:

Dabir argues for the Petitioner. *Tami* keeps time.

Round 2:

Dalbir and Denzel argue for the Petitioner. *Tami* keeps time.

4-Person Teams

Note: These configurations can have several different lawyer/timekeeper combinations.

Option A: 4 lawyers, 2 of whom act as timekeepers

Round 1:

Evie and Eduardo argue for the Petitioner. *Eckhardt* keeps time.

Round 2:

Elise and Eckhardt argue for the Respondent. *Eduardo* keeps time.

Option B: 2 lawyers for Petitioner, 1 for Respondent, dedicated timekeeper

Round 1:

Farouk and Fran argue for the Petitioner. *Tom* keeps time.

Round 2:

Felipe argues for the Respondent. *Tom* keeps time.

Option C: 1 lawyers for Petitioner, 2 for Respondent, dedicated timekeeper

Round 1:

Graciela argues for the Petitioner. *Terry* keeps time.

Round 2:

Gita and George argues for the Respondent. *Terry* keeps time.

5-Person Teams

Note: This configuration can have several different lawyer/timekeeper combinations.

Option A: 4 lawyers, 1 dedicated timekeeper

Round 1:

Hernando and Harriet argue for the Petitioner. *Tracy* keeps time.

Round 2:

Hannah and Henry argue for the Petitioner. *Tracy* keeps time.

Scoring Examples

**Teams may divide up the tasks in a variety of ways.
Please score students ONLY on the tasks they perform.**

Sample 1: **One Student Does Main Argument and Rebuttal**

1: Main Argument: Quality	7	George	Student A's First Name
2: Main Argument: Ability to Answer Questions	6		
3: Rebuttal: Quality	7		Student A gets all four scores.
4: Rebuttal: Ability to Answer Questions	6		
1: Main Argument: Quality			Student B's First Name
2: Main Argument: Ability to Answer Questions			
3: Rebuttal: Quality			Since there is only one student, Student B is Blank.
4: Rebuttal: Ability to Answer Questions			

Sample 2: Main Argument and Rebuttal Are **Divided up**

1: Main Argument: Quality	7	Wilma	Student A's First Name
2: Main Argument: Ability to Answer Questions	7		
3: Rebuttal: Quality			Student A does the Main Argument. Student A is scored on Tasks 1 and 2 ONLY
4: Rebuttal: Ability to Answer Questions			
1: Main Argument: Quality		Manuel	Student B's First Name
2: Main Argument: Ability to Answer Questions			
3: Rebuttal: Quality	6		Student B does the Rebuttal. Student B is scored on Tasks 3 and 4 ONLY.
4: Rebuttal: Ability to Answer Questions	6		

Sample 3: **Both Students Do Main Argument and Rebuttal**

1: Main Argument: Quality	8	Chau	Student A's First Name
2: Main Argument: Ability to Answer Questions	7		
3: Rebuttal: Quality	8		Student A is scored on all 4 tasks
4: Rebuttal: Ability to Answer Questions	7		
1: Main Argument: Quality	7	LaKisha	Student B's First Name
2: Main Argument: Ability to Answer Questions	5		
3: Rebuttal: Quality	6		Student B is scored on all 4 tasks
4: Rebuttal: Ability to Answer Questions	5		

2009 MOOT COURT THE CALIFORNIA HIGH SCHOOL APPELLATE COMPETITION

ENTRY FORMS

Instructions:

1. Please fill out the attached forms.
2. Write a check(s) for \$25 per participant, payable to “**Center for Econ and Civic Ed.**”
3. Mail the forms and check(s) to:

Center for Economic and Civic Education
PO Box 23841
Pleasant Hill, CA 94523

Team Participation and Roster	2
(Submit one form per team)	
Ethics Form	3
(Submit one <i>signed</i> form per team)	
Permission Slip; Medical and Liability Release.....	4
(Submit one signed form per participant)	
Photo/Video/Web/Submission Release and Preference	5
(Submit one signed form per participant)	

Upon receipt of all forms and money, we will send registration confirmation to the contact person listed on the team roster.

2009 MOOT COURT TEAM PARTICIPATION FORM

We, the undersigned, wish to participate in Moot Court – The California High School Appellate Competition. We all attend the same school whose address is shown below:

School (or Homeschool) name _____

School address _____

School Phone # _____ School Fax # _____

Team Contact Information

Contact Person (Name) _____ Contact Phone _____

Contact Type (team member parent, teacher, coach, lawyer, etc.) _____

Contact Address (if different from above)

2009 TEAM ROSTER

DATED _____ (On the lines below, **neatly and legibly** print or type names)

Member #1 _____ T-Shirt Size _____

Member #2 _____ T-Shirt Size _____

Member #3 _____ T-Shirt Size _____

Member #4 _____ T-Shirt Size _____

Member #5 _____ T-Shirt Size _____

For office use only. Teams don't fill in!

2009 CONFIRMATION OF REGISTRATION

This application has been received and processed and your team is now registered.

You've been assigned TEAM NUMBER _____.

Please use this number on all entries and communications with the committee.

DATED _____

Committee member signature

2009 TEAM CODE OF ETHICS, CONDUCT AND SPORTSMANSHIP

As a condition of participation in the Moot Court – The California High School Appellate Program, each student participant must carefully read the statement below, then sign to acknowledge her/his commitment to the statement.

As a participant in the Moot Court Program, I pledge to adhere to the same high standards of scholarship that are expected of me, as a student, in my academic performance. I understand that plagiarism of any kind is unacceptable. I agree that all written and oral work done in conjunction with this program will be my own.

In relation to other teams and individuals with whom I come in contact through participation in this program, I pledge to make a commitment to act with good sportsmanship and respect for others in both victory and defeat. I acknowledge that my actions will reflect upon my whole team, and I promise to take personal responsibility for my own actions throughout the competition.

I further understand that “scouting,” defined as watching other teams compete and recording their words by any means (taping, electronic, writing) is prohibited.

Please list names **alphabetically**. Print or type neatly. Names that are undecipherable on this form may be misspelled on official moot court paperwork (including certificates).

School _____ Date submitted _____

1. Name (print): _____ Signature: _____

2. Name (print): _____ Signature: _____

3. Name (print): _____ Signature: _____

4. Name (print): _____ Signature: _____

5. Name (print): _____ Signature: _____

2009 Student Permission Slip and Release
Moot Court – The California High School Appellate Competition

(Student's name) _____ has my permission to participate in the Moot Court with

(Student's school) _____ in Martinez, on Saturday, October 11, 2009.

We have reviewed and understand the rules of the competition.
Health or Special Needs. Check as apply.

___ My child had NO special needs the staff should be made aware of.

___ My child has a special need and instructions are attached.

___ Other: _____

Release and Covenant Not to Sue/Authorization for Medical Care

In consideration for their participation in The California High School Appellate Competition, I agree to indemnify, defend and hold harmless the Contra Costa County Bar Association (CCCBA), the Constitutional Rights Foundation, program organizers and sponsors for any and all claims, damage, costs and expenses resulting from lawsuits and other proceedings by any third parties arising out of any acts, omissions or conduct of my child while he/she is participating in Moot Court – California High School Appellate Competition.

Parent/Guardian Signature _____ Date _____

The undersigned acknowledges that participation in the competition is completely VOLUNTARY. I agree to have my child receive any emergency medical services deemed necessary by the authorities in charge. It is understood that the resulting expenses will be the responsibility of the parent/guardian.

Parent Name (please print) _____

Parent Signature _____

Address _____ Home Phone _____ Business Phone _____

If I cannot be reached in case of emergency, please notify:

Name _____ Home Phone _____ Business Phone _____

Medical Insurance _____
Insurance Company _____ Policy Number _____ Phone Number _____

2009 PHOTO/VIDEO/CONTEST SUBMISSION/WEBSITE RELEASE AND PREFERENCE FORM

Dear Parent/Guardian:

On occasion, representatives from the media, the Contra Costa County Bar Association (CCCBA) or the Center for Economic and Civic Education, a California nonprofit organization (CE²) will be photographing, videotaping, and/or interviewing students in connection with school programs developed by CE². Educating the public is one of our objectives. The entire community benefits from knowing about the needs and abilities of our students and about the programs we offer to children and families.

In order to release student photos, video footage, comments, or program submissions (such as briefs and/or other student drawings or writings) and/or post any of these items on the CCCBA or CE² (or other authorized) Web sites, we need written permission. To give your consent, please complete the form below.

I, _____, parent/guardian of _____ give permission for my child to be photographed, videotaped, and/or interviewed by representatives from the media, the CCCBA or CE² for the purpose of publicizing educational programs. I authorize the use and reproduction by the CCCBA or CE², or anyone authorized by the CCCBA or CE², of any and all photographs, or videotapes taken of my child, and/or any program submissions created by my child, without compensation to me/my child. All of these photographs/video recordings and program submissions shall be the sole property of the CCCBA or CE². I waive any right to inspect or approve the finished photographs/videotapes, and the sound track, script or printed matter that may be used in conjunction with them. Permission is also granted to edit any program submission and to use my child's name (or a fictitious name) in editorials or for purposes of publicizing our programs.

Signature of parent or guardian: _____ Date: _____

Address: _____

OR I am 18 years of age or older and I give my consent without reservation to the foregoing on my own behalf.

Signature of subject: _____ Date _____

Address: _____

OR I, _____, parent/guardian of _____

DO NOT give permission for my child to be photographed, videotaped, and/or interviewed by representatives from the media, the CCCBA or CE² for the purpose of publicizing educational programs.

2009 MOOT COURT COMPETITION

STUDENT PARTICIPANT EVALUATION FORM

Scale 1 to 5 for questions 1 to 4.

5 = greatly increased; 4 = increased; 3 = remained the same; 2 = decreased; 1 = greatly decreased

After participating in the Moot Court program:

- 1) My ability to think on my feet _____
- 2) My understanding of how an appellate argument works _____
- 3) My respect for the judicial system. _____
- 4) My respect for the role of law in society _____
- 5) Is the level of difficulty of these materials too high? too low? about right?
- 6) The activity was enjoyable. _____ Yes No (circle) Please comment.

7) *Ricci v. DeStefano* was a good choice for this activity. Yes No (circle)

8) Would you participate in the program again? Yes No (circle)

(If you're a Senior check put an "X" here. ____)

9) Would you recommend it to a classmate? Yes No (circle)

Other comments, suggestions for improvement, etc.