



# The Supreme Court of Texas

## From Courtroom to Classroom: Mock Oral Arguments

### Guide for Teachers and Students: High School

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With special thanks to the Supreme Court of Texas’s Inaugural Student Court Project Committee (2012–2013):

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# Welcome to the Supreme Court of Texas!



The Supreme Court of Texas is in Austin, the capital of the Lone Star State. The Supreme Court is the court of last resort for all *civil* matters in Texas, which means that it has the final word on any non-criminal questions about Texas law. Civil matters are typically disagreements between two or more individuals or businesses. Criminal matters involve violations of the law. The Court hears a wide variety of cases, ranging in topic from contract disputes, to insurance cases, to family law cases. Although the Court does not hear criminal cases, it is authorized to hear cases involving juvenile delinquency. In all cases, the Supreme Court's final decisions automatically become law for the *entire* state of Texas.

The Supreme Court is not the only court of last resort in our Texas court system. The Court of Criminal Appeals, located across the hall from the Supreme Court in Austin, is the court of last resort for all *criminal* cases in our State. Texas is different from most other states, because our "highest court" is actually split into two judicial bodies: the Supreme Court and the Court of Criminal Appeals. Most other states have only one court of last resort and those courts have the last word on all civil and criminal cases in that state. Today, only Texas and Oklahoma have this two-court model.

The Supreme Court is composed of one Chief Justice and eight other Justices, who are elected to six-year terms in statewide elections. Supreme Court Justices must be at least thirty-five years of age, citizens of Texas, licensed to practice law in Texas, and must have practiced law for at least ten years before being elected or appointed. When a vacancy arises before the end of a term, the Governor will appoint someone, subject to the Senate's approval, to serve out the remainder of the unexpired term until the next general election.

A case's journey to the Supreme Court (or the Court of Criminal Appeals) can be a long one. Texas's court system manages thousands of cases each year. Most cases start in a district, county, or municipal court. These are often referred to as trial courts, and are a lot like the kinds you see on TV, with only one presiding judge, witnesses, juries, and two opposing attorneys who often declare "Your Honor, I object!"

Once the jury or judge decides a case and a judgment is entered in the trial court, the losing party usually has the choice to appeal to a higher intermediate court. Fourteen intermediate courts of appeals throughout Texas hear and decide appeals in cases from trial courts in their regions. Unlike at the trial-court level, cases at the courts of appeals do not have juries or witnesses. Instead, the attorneys for each side present their arguments to a panel of three judges, and try to explain why the trial court got their case right or wrong. Sometimes the party that lost at the trial court ends up winning on appeal because the appellate court finds that the trial court misinterpreted the law. Other times, the appellate court finds that the trial court got it right, and affirms the trial court's decision.

Trial courts and courts of appeals hear civil and criminal cases. If a party loses in the court of appeals, it then might decide to file a case either at the Texas Supreme Court or the Court of Criminal Appeals. Once the Texas Supreme Court or Court of Criminal Appeals renders its decision, that decision is final. A party that loses in the Supreme Court cannot appeal its case to the Court of Criminal Appeals (or vice versa), because each court is the court of last resort for its subject area. In certain cases involving questions of federal law, if a party has lost at the Texas Supreme Court or the Court of Criminal Appeals, its only hope of appealing is directly to the Supreme Court of the United States. But its chances of succeeding are *very slim*, because the Supreme Court of the United States receives *thousands* of petitions a year and grants less than one percent of all petitions.

The United States government has its own court system. The federal court system is very similar to the Texas system, in that it, too, is made up of District Courts that conduct trials and Circuit Courts of Appeals that hear appeals of District Court decisions. The federal court system differs from the Texas court system in one important way: there is only *one* court of last resort. The United States Supreme Court is the highest court in the land, and hears both civil and criminal cases. All of its decisions automatically become effective and final for the entire country.

While each state has its own constitution, it is also bound by the United States Constitution. When a case involves a potential violation of the United States Constitution, the Texas Supreme Court has the authority to hear it, but its decision can be appealed to the United States Supreme Court. If the United States Supreme Court decides the issue, then the Texas Supreme Court is bound by that decision.

Do not worry if you find these systems difficult to understand. Each state's court system varies slightly from the next, and the distinction between the state and federal courts is one that takes even law students a long time to understand! To learn more about the Supreme Court of Texas, visit us at <http://www.supreme.courts.state.tx.us/>.

## **An Introduction to Oral Arguments**

The purpose of this section is to inform students about how a lawsuit reaches and is resolved in the Supreme Court of Texas.

### **Background:**

When a party appeals to the Supreme Court of Texas, he or she must file a petition for review. The Supreme Court of Texas is *not required* to hear all cases in which a petition for review is filed. Instead, the Court has discretionary review, which means that it has the discretion (or choice) to decide which cases are important enough to the people of Texas to warrant its decision. In fact, the Court decides only 10–12% of all petitions filed each year. The Supreme Court of Texas and the Court of Criminal Appeals are the only two Texas courts with discretionary review. Similarly, the Supreme Court of the United States also has discretionary review.

In the petition for review, the petitioner (the party requesting the review) argues why the Court should hear the case. The other party, the respondent, also submits a response that explains why the Court should not hear the case and should, instead, allow the previous court's ruling to stand. The Supreme Court then decides whether it wants to know more about the case.

If the Court chooses to learn more, the Court asks for briefs on the merits from each of the parties and the record of the case. Briefs on the merits are longer, more thorough, versions of the parties' arguments for why they should win. Typically, the petitioner will argue that the decision of the court of appeals was wrong. The respondent will argue that the court of appeals was correct. The parties will also submit the record, which is an account of everything that has happened in the case. Once the Court has looked through the briefs on the merits and the record, the Court will decide whether to grant or deny the case. Granting means that the Court intends to make a decision about the disputed law. Denying means that the Court has chosen not to review the case and the decision of the court of appeals is final.

If the Court grants the case, the next step will be oral argument. The parties have already presented their arguments to the Court on paper in their briefs on the merits. At oral argument, the parties have their chance to address the Justices directly about the case and to answer any questions that the Justices may have that the briefs did not answer.

### **Proceedings:**

In a typical oral argument at the Supreme Court of Texas, each side has a total of twenty minutes to present its case to the Justices. When it is time for oral arguments, the Justices enter the Courtroom and take their seats at a long table at the front of the room, called the bench. They typically sit in order of seniority, with the Justices who have been at the Court for the longest

amount of time seated to the Chief Justice's right and left. The Chief Justice will call the case number to make sure that the parties are ready to begin. Once the Chief Justice has called the case, the Marshal announces the petitioner's name. The petitioner will then give her primary argument, beginning with a "roadmap." Usually the parties hire lawyers to write their petitions and briefs and to make oral arguments before the Court. The petitioner is able to reserve a portion of her time to respond to what the respondent has argued—this is called reserving time for rebuttal. Once the petitioner is finished with the main part of her argument, the Marshal announces the respondent. The respondent then presents her argument. Once the respondent is finished, the petitioner is has the opportunity to argue last, using her reserved rebuttal time. After the time has elapsed, the Chief Justice will announce that the case is submitted to the Court. At that point, the lawyer's job is finished and the Court has everything it needs to decide the case.

The Justices will get together to discuss the case and make a decision about how to resolve the issues. Sometimes, all nine Justices do not agree on an outcome. The "majority," or the side with more votes, authors an opinion explaining the Court's reasoning. This becomes the law for the state of Texas. Occasionally, a Justice agrees with ultimate outcome of the majority, but bases his or her conclusion on different reasoning. He or she may write what is called a "concurring" opinion. When a Justice disagrees with the "majority" opinion, he or she may choose to write a "dissenting" opinion explaining why.

### **Decorum:**

During oral argument, an attorney for a party does not speak unless it is his turn. Each party has an opportunity to present its argument without being disturbed by the other party. This means that if the petitioner is arguing, the respondent is required to wait to respond to anything the petitioner says until it is the respondent's time to argue. Even if the respondent believes that the petitioner is saying something that is not accurate, the respondent cannot interrupt the petitioner. The respondent will need to wait until it is his or her turn to disagree with the statement.

### **Questions:**

The purpose of oral argument is to clarify concerns that the Justices may have about the case. The Justices ask questions of the attorneys while they are arguing. Justices ask as many questions as they want. Often, a Justice will ask a question while an attorney is in the middle of an argument. The attorney should listen to the question and answer it before going back to her prepared argument. A Justice asks a question because he or she wants to know the answer. An attorney should be as prepared as possible, so that she is ready to answer any questions the Justices ask. If she does not know the answer, it is acceptable to say so.

### **Attorneys:**

An attorney is a representative for a party in the case. Sometimes the attorney who argues at the Supreme Court of Texas will be the same attorney who presented the case at trial. But often, a party will hire a new attorney to represent it during the appeal. An attorney's job is to argue for the best outcome in the case for her client. Sometimes, the best outcome for the attorney's client is not the outcome that the attorney may believe to be fair. But that attorney has a duty to her client to put her own feelings aside and to argue for what is best *for the party*. The attorneys present to the Court both sides of a case, and the Court chooses. The Court's job is to make a just decision according to Texas law.

### **Amicus Curiae:**

*Amicus curiae* is a Latin term that means "friend of the court." The plural form of this term is *amici curiae*. A person or group that is concerned about the outcome of a case, but is not an actual party, may submit a brief to the Court. An *amicus* brief usually offers the Justices additional information and perspective about how the Court's decision in a case may affect other people, groups, and businesses that are not parties to that case.



## **Cast of Characters**

There are many people who participate in an oral argument, and each plays an important role. Below is a cast of characters for a typical oral argument in the Supreme Court of Texas. Students should be assigned the following roles:

### **The Chief Justice:**

During oral arguments, the Chief Justice is responsible for announcing that the Court is ready to hear a particular case, making sure the attorneys respect the time limits that they are given, and ensuring that the proceedings run smoothly and efficiently. The Chief Justice sits in the middle of the line of Justices and, like the other Justices, may ask the attorneys questions during their presentations. A script for the Chief Justice has been provided in this packet.

### **Justices:**

There are eight other Justices. During oral arguments, the Justices ask the attorneys questions. Sometimes the questions are about something an attorney has just said, and sometimes the questions are about other aspects of the case. It is not unusual for a Justice to politely interrupt an attorney to ask a question. If a Justice has asked a question, the other Justices should wait for the attorney to answer the question before asking a question of their own. After oral arguments, all of the Justices, including the Chief, meet to discuss how the case should be decided.

Sample Student Justice questions have been provided in this packet. It is great to use these as a starting point, but the Student Justices should be encouraged to be creative and think of tough, but fair, questions to ask the Student Lawyers. After each team of attorneys finishes its presentation, the Student Justices (including the Chief) will meet to determine which side's arguments were most persuasive, and why.

### **Attorneys:**

Usually one or two attorneys represent each party during an oral argument. The attorneys for the petitioner (the party that asked the Court to review the case) speak first. The attorneys for the respondent speak second. Each attorney has a total of twenty minutes to speak, and the petitioner's attorneys usually reserve (or save) five of their twenty minutes to speak again following the respondent's attorneys' arguments. This is called reserving time for rebuttal. If two attorneys are presenting arguments for one party, then the attorneys will typically argue one at a time. Each attorney gives his or her argument from the podium, which is located between the two attorney tables.

The attorneys sit at two different tables, facing the Justices. Typically only one attorney from each side will speak to the Court, but sometimes multiple attorneys who are representing one side split the total presentation time. As explained in the Introduction to Oral Arguments section, attorneys who submit *amicus curiae* briefs also occasionally address the Court.

In order to get more students involved in this project, teachers may modify the number of Student Lawyers for both the petitioner and respondent. Student Lawyers may also be assigned to represent the *amici curiae* described in the Facts section.

A few brainstorming prompts have been provided in this packet for all students to consider, but the attorneys should pay particular attention to these prompts to help them come up with arguments. As with the Justice questions, these prompts should be starting points. The students should be encouraged to create their own unique and persuasive arguments in favor of their particular client.

### **Marshals:**

There are two Court Marshals. The Marshals are in charge of announcing the opening and closing of the Court session and the names of the attorneys before they present their arguments. The Marshals also make sure that the attorneys are aware of the time limits. At the Supreme Court, an electronic system of time-keeping is used—when an attorney is nearing the end of his or her time, a yellow warning light appears on the podium he or she is using. When time has expired, a red light appears. A script for the Marshals has been provided in this packet.

### **Audience Members:**

Oral arguments at the Supreme Court are free and open to the public. Often, people who are interested in a case will come to the Court to sit in the gallery and listen to the attorneys present their arguments. Observers are expected to remain quiet during the arguments.

For this activity, each student who is an audience member can take on the role of newspaper, magazine, or blog reporter. Prompts for the audience members have been provided in this packet.

### **Time Keeper:**

An important job in any oral argument is making sure the attorneys are aware of their time limits. At the Supreme Court, the Marshals use an electronic system of timekeeping for oral arguments. For this activity, a separate student can be assigned the role of Time Keeper. At the Court, a green light appears on the podium in front of the attorney when she begins her argument. When the attorney is nearing the end of her time (typically with about 2 minutes left), a yellow warning light appears. When the time has expired, a red light appears. The timing

system can be simulated in the classroom by having the time keeper hold up green, yellow, and red colored construction paper at the appropriate time intervals.

We recommend timing the oral arguments as follows. Although only the petitioner would have the opportunity to present a rebuttal in a real oral argument, respondents are assigned rebuttal time in the interest of fairness for the classroom. Please note that these times can be adjusted according to class length and the number of students who are presenting.

	<b>Party</b>	<b>Timing</b>
1	Petitioner (Mall)'s first argument	5-9 min.
2	<i>Amicus</i> argument(s), if any	2-4 min. each
3	Respondent (Deli)'s argument	5-9 min.
4	<i>Amicus</i> argument(s), if any	2-4 min. each
5	Petitioner (Mall)'s rebuttal argument	2-5 min.
(6	Respondent (Deli)'s rebuttal argument	2-5 min.)

No. 13-4526

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IN THE  
SUPREME COURT OF TEXAS

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**GREENHILL MALL,**  
**Petitioner,**

v.

**DANIEL'S DELI,**  
**Respondent.**

**Issue:** In 2011, Greenhill Mall leased a space in the Food Court to Big Buck's Burritos. Daniel's Deli, which already has a restaurant space in the mall, sued Greenhill Mall claiming that its lease with Big Buck's Burritos violates Daniel's Deli's contract with Greenhill Mall.

**Procedure:** The trial court found in favor of Greenhill Mall. The court of appeals reversed the trial court's decision and held for Daniel's Deli.

**Facts:** Greenhill Mall opened five years ago in Springfield, Texas, to great fanfare. Daniel's Deli has been a vendor at the Greenhill Mall Food Court since the opening. Daniel's Deli is owned and operated by Daniel, a hometown businessman whose work at the Texas Legislature has significantly boosted Springfield's economy and tourism. In fact, the economic boost was the reason why the owners of Greenhill Mall decided to build a shopping mall in Springfield. Daniel's Deli's delicious sandwiches have been a big draw to the mall for local Springfield residents.

In its contract with Greenhill Mall to rent its space in the Food Court, Daniel's Deli required the following passage:

**No Competition:** Landlord *agrees not* to rent space in the Shopping Center to a bakery or restaurant reasonably expected to sell *sandwiches*.

Due to the turnover in the economy, three spaces have recently become available in the Food Court for new vendors. Greenhill Mall signed its first contract to fill one of the spaces with Big Buck's Burritos, an eatery that sells burritos.

Daniel's Deli was outraged and sued to prevent Greenhill Mall from allowing Big Buck's Burritos from becoming a vendor. Daniel's Deli claimed that Greenhill Mall violated the "No Competition" section in its contract with Daniel's Deli, because burritos are just another name for sandwiches.

Due to the disagreement between Texas trial and intermediate appellate courts concerning the definition of sandwich, several other interested eateries have joined this case as *amici curiae*.

**Amici Curiae (and their potential "sandwiches"):**

Big Buck's Burritos (pro Greenhill Mall) – Big Buck is CEO of the nation-wide chain Big Buck's Burritos, and is now trying to rent a space in Greenhill Mall. Big built his business using his Grandma Bertha's secret recipe: black beans, blue tortillas, corn salsa, sour cream, mystery spices, and steak. Big does not believe his burrito is a sandwich—"When's the last time you had black beans in *your* sandwich?!"—and thinks that he should have a space in Greenhill Mall.

Charlie's Fried Chicken (pro Greenhill Mall) – CFC would like the opportunity to sell its "Cheesy Chicken and Pig Delight"—cheese and bacon between two chicken filets—at Greenhill Mall. Charlie does not believe that his concoction is a "sandwich," so he should be able to rent space at the mall. CFC is a nation-wide chain.

CoCo's Cookies (pro Greenhill Mall) – CoCo would like all of Greenhill Mall's shoppers to enjoy her "CoCo Crazy"—ice cream or icing between two cookies. She believes that her treats are not sandwich-like at all, and she should not be prevented from setting up shop at Greenhill. CoCo's is a nation-wide chain.

Pedro's Parmesan Paradise (pro Daniel's Deli) – Pedro owns an Italian restaurant in Greenhill Mall and does not want the competition from many different restaurants. He believes that Big Buck's Burritos should be kept out of the Food Court and wants to convince the Court that burritos are like sandwiches.

The True Sandwich Eaters of America (pro Daniel's Deli) – This national historical society collects data on sandwich creation and consumption. Each year they re-enact the famed card game during which John Montagu, Fourth Earl of Sandwich, ordered the food that now bears his title. TSEA, which has a dwindling membership, is a staunch advocate of expanding the definition of "sandwich" to include many meat, vegetable, cookie, and bread combinations.

**Caselaw:** When the Supreme Court of Texas is considering a case, it will often look to how other courts in Texas have decided similar situations in the past. Often, these past cases will not be identical to the one being considered by the Supreme Court of Texas. It is up to the Justices to consider these past cases and decide if, and how, these cases can help guide their decision for the current case.

Attached, you will find two fictional cases from two hypothetical courts of appeals, the Fifteenth and Sixteenth Districts of Texas. Please use them to prepare your arguments.



COURT OF APPEALS  
FIFTEENTH DISTRICT OF TEXAS  
QUAHOG, TEXAS

Cindy RELLA	§	No. 15-11-00424-CV
v.	§	Appeal from
Belle D. BEAUTY	§	321st District Court
	§	of Griffin County, Texas

Panel consists of Justices MURIBY, BECKETT, and TSAI.

**OPINION**

MURIBY, J. delivered the opinion of the Court:

**Facts:**

Cindy and Belle are two of the most well-known names in country music today. Each has sold millions of albums all around the country, and regularly sells out football stadiums for their concerts. Cindy is known as the “firecracker” for her wild antics on stage. Belle is shy, and often suffers from stage fright before going on stage. In fact, Belle cannot go out in public without every aspect of her appearance being just right, including her hair. Backstage at a concert, Cindy and Belle began talking about the upcoming Awards for Country Stars. Cindy and Belle had both been nominated. Belle confessed to Cindy that her favorite hair dryer was broken, and that she was very nervous about how her hair would look at the awards. Because Belle was a great songwriter, Cindy offered to bring Belle a blow-dryer if Belle would help Cindy write songs for her next album. Belle agreed. They wrote out a contract that said: “If Cindy brings a blow-dryer to Awards for Country Stars, Belle will help Cindy write songs for Cindy’s new album.”

When the night of the awards arrived, Belle was in her dressing room getting ready for her performance. Cindy walked through the door carrying a small portable electric fan. Cindy informed Belle that the fan was the “blow-dryer” from their contract. Belle refused to use the fan to dry her hair and instead borrowed a traditional blow-dryer from Taylor, whose dressing room was conveniently next door. Belle later refused to help Cindy with her songwriting. Cindy sued Belle for breach of their contract.

**Analysis of the Law:**

We are asked to decide whether an electric fan is a blow-dryer as required by the contract between Cindy and Belle. When looking at contracts, we start with the contract’s words. When trying to determine what a word means, we first look at the dictionary definition. Webster’s Dictionary defines “blow-dryer” as a handheld hair dryer. This means that a blow-dryer is a machine specifically designed to dry hair. An electric fan is designed to keep a person cool, not specifically to dry their hair.

**Holding:**

We HEREBY HOLD that an electric fan is not a blow-dryer and Belle is not required to help Cindy with her songwriting.

SO ORDERED.





COURT OF APPEALS  
SIXTEENTH DISTRICT OF TEXAS  
SPRINGFIELD, TEXAS

Clark KENT	§	No. 16-12-00318-CV
v.	§	Appeal from
Bruce WAYNE	§	123rd District Court
	§	of Simpson County, Texas

Panel consists of Justices WYNANS, WU, and CRAVEN.

**OPINION**

WYNANS, J. delivered the opinion of the Court:

**Facts:**

Kent and Wayne lived in the same town most of their lives. They grew up together going to the same schools, the same church, and worked together at the local newspaper. Kent is an avid cycling enthusiast. He often reads magazines on cycling and his cubicle at work is littered with pictures of his cycling adventures. One day, Wayne offered to sell Kent his new bike. Wayne said that he had never ridden the bike and wanted it to go to a good home. Kent jumped at the chance to buy a brand new bike and offered to pay Wayne \$100 for the bike. Wayne agreed. They wrote up a quick contract that only read, "Kent will buy Wayne's bike for \$100." The next day, Wayne showed up at work with a brand new red, gas-powered dirt bike and handed Kent the keys. Kent, who despises any machine that runs on gasoline, refused to pay for the dirt bike. Wayne sued Kent to get the money he claims Kent owes him under their contract.

**Analysis of the Law:**

We are asked to determine whether the red gas-powered dirt bike delivered by Wayne to Kent is a “bike” as required by the contract. When a word is not given a definition in a contract, we will use its dictionary definition to determine what the word means. In this case, Webster’s Dictionary defines “bike” as either a “bicycle” or a “motorcycle.” Thus, we cannot know from the word “bike” whether Kent and Wayne were talking about a bicycle with pedals, or a motorcycle that is powered by gasoline. Instead, we must find out what Wayne and Kent believed they were talking about when they made the contract. Because Wayne knows that Kent is a bicycle enthusiast, he would have known that when he offered to sell Kent his “bike,” that Kent would have understood that word to mean “bicycle.”

**Holding:**

Because this is what Kent understood the word to mean, we **HEREBY HOLD** that the word “bike” in the contract between Kent and Wayne means “bicycle.” Kent is not required to pay Wayne \$100 for the dirt bike.

**SO ORDERED.**

## Dictionary Definitions of “Sandwich”

Over time, the dictionary definition of “sandwich” has changed. Consider the following definitions. Which were commonly used when Daniel’s Deli and Greenhill Mall entered into their contract? Should old definitions still be considered?

### 1. The International Dictionary of Food (published in 1913)

sand•wich: noun. A lunchtime food item consisting of two pieces of bread, filled with meat, cheese, and/or condiments. Served cold.

### 2. Leonard’s Dictionary (published in 2000)

sand•wich: noun. A food item, served either hot or cold, that consists of at least two pieces of bread, filled with meat, cheese, vegetables, legumes, and/or condiments. Sandwiches are typically served after 12:00 noon.

### 3. New School Dictionary (published in 2013)

sand•wich: noun. A food item, consisting of meat, fish, cheese, vegetables, grains, legumes, special sauces, and/or condiments, surrounded by a flour, wheat, or corn-based bread. Sandwiches may be served cold, room temperature, or hot, and may be eaten for any meal.

**You be the Judge: Sample Questions**

Below are a few sample questions for the Student Justices to ask the Student Lawyers during oral arguments. The Student Justices should read over and consider the following questions, then come up with some of their own.

1. What makes a sandwich a sandwich?
2. Should a \_\_\_\_\_ be considered a sandwich? Why or why not?  
(Try: burrito, kolache, quesadilla, corndog, hot dog on a bun, BE CREATIVE!)
3. What should the Court use to determine the definition of a sandwich? Common sense? The dictionary?
4. Should the intent of the parties matter? Daniel’s Deli believed that many types of foods could be considered “sandwiches” when it signed the contract. Greenhill Mall believed that only traditional deli sandwiches were “sandwiches” when it signed the contract. How should the Court choose one party’s understanding of the word “sandwich” over the other’s?
5. Do you think where a person is from can affect his or her views on what qualifies as a sandwich? Do you think someone from New York or California could view what a sandwich is differently than someone from Texas?

6. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. \_\_\_\_\_  
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\_\_\_\_\_

8. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Brainstorming for Lawyer and Amici Curiae Arguments

Below are some prompts for the Student Lawyers. They should use these to craft the arguments they will present to the Student Justices at oral arguments. The Student Lawyers should be creative and come up with a wide range of persuasive arguments since they do not know what the Student Justices will ask.

Optional Assignment: To practice their persuasive writing skills, Student Lawyers may prepare written briefs.

1. When deciding what the word “sandwich” means, should we use the everyday meaning or what people in the food business would define as a sandwich?

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2. What is the dictionary definition of sandwich?

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3. Is the word “sandwich” confusing? Is it anything wrapped up in something you eat? Or is it only two pieces of bread with meat in the middle?

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4. Do all these other examples of border-line cases of sandwiches (ice cream sandwiches, wraps, and club sandwiches) suggest that the word “sandwich” is confusing?

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5. Whose fault is it when a word in a contract is unclear?

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6. Should it matter what other groups like Charlie's Fried Chicken think, or should the Court just focus on the contract between the parties?

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7. Is it fair for a mall to only be able to have one sandwich shop?

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8. Is it a problem that Daniel works at the legislature and is very influential in the community? What if Daniel threatened to have the mall shut down if it didn't agree to the "No Competition" section? Or is it good that Daniel is trying to represent his hometown at Greenhill Mall?

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9. If Big Buck's Burritos sold you the ingredients and tortilla separately, and you created the burrito yourself, would that be a sandwich? If not, should Greenhill Mall be able to rent space to Big Buck's?

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10. If someone wanted to eat a sandwich, would they ever go to Big Buck's instead of Daniel's Deli? Would Big Buck's take any sandwich-seeking customers away from Daniel's Deli?

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## Oral Argument Roadmap

**Attorneys:** Below is an outline of one way to write an oral argument. Remember that an oral argument is not exactly a speech, because the Justices can interrupt in order to ask you questions. You may not be able to say everything you want to say exactly when you want to say it. Do not become frustrated or flustered. Instead, you should be prepared to answer the Justice’s questions whenever they are asked, then find a way to get back on track in order to present your points. When your time is almost over, be sure to repeat what you are asking the Court to decide!

1. Introduction: “May it please the Court, my name is \_\_\_\_\_, and I represent the (Petitioner/Respondent), \_\_\_\_\_. Today, I will argue that  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. What Happened? Give a short explanation of the background of the case.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

3. First Argument: A burrito (is/is not) a sandwich because . . .  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.





## **Audience Member Activity**

Audience members should be active participants during oral arguments. They can take notes and act as journalists, presenting written articles about the lawyers' arguments and the Court's final decision. The following are some suggested writing styles:

**Texas Times Journalist:** *The Texas Times* is a well-respected and widely read daily newspaper. *Times* journalists are thorough and seek to report stories accurately, without taking sides. Each article is approximately three paragraphs long, contains an analysis of the parties' arguments and the Court's conclusion, and usually includes at least one quote from each party. When *Times* journalists cover a Court event, they draw and caption a picture of the courtroom and the people in it to include with their article.

**National Inspector Reporter:** *The National Inspector* is a gossip magazine that is often found in grocery store check-out lines. *Inspector* articles usually have scandalous headlines and the reporters like to spread rumors about the subjects of their pieces. The main editor of the *Inspector* wants a reporter to cover the *Greenhill Mall v. Daniel's Deli* case because she believes that the National Dictionary Appreciation Club (located in Nashville, Tennessee), and its hundreds of self-proclaimed Word Nerd members, is improperly trying to influence the Court to rely on dictionary definitions to decide the case. *Inspector* reports are typically five paragraphs in length and include a creative and catchy headline.

**Internet Blogger:** The online blog, *Below the Law*, publishes articles to try to persuade their readers to be more active in their communities. *Below the Law* editors believe that the *Greenhill Mall v. Daniel's Deli* decision was wrong. They have assigned their bloggers to write a five-paragraph blog post about why the Court should have made a different decision. The site's blog posts are usually creative, persuasive, and inspirational.

## Mock Oral Argument Script

Note: Teachers may modify the script and times allotted to accommodate for multiple Student Lawyers. All students should be instructed to take notes about the proceedings so that they can contribute after the exercise. We strongly advise having the students walk through several practice runs using this Script to ensure that all students (especially the Marshals) are aware of the order of the proceedings, before the “final” mock oral argument.

\* \* \*

[Marshal One will make his announcements as the Student Justices are entering and exiting the Courtroom. Whenever a Marshal announces “All Rise,” everyone in the Courtroom must stand. “Oyez” is a call for everyone to listen and is pronounced “Oh-yay.”]

**Marshal One:** [Marshal One should stand up EVERY time he or she makes an announcement.] All Rise!! [Student Justices enter the Courtroom.] Oyez, Oyez, Oyez. The Honorable, The Supreme Court of Texas. All persons having business before The Honorable, The Supreme Court of Texas are admonished to draw near and give their attention. The court is now sitting.

[Student Justices file in and stand in front of their chairs, and remain standing until Marshal One has finished speaking.]

**Chief Justice:** Please be seated. [Everyone in the room sits down.] The Court is now ready to hear argument from the Petitioner in Case Number 13-4526, Greenhill Mall versus Daniel’s Deli.

[Greenhill Mall’s Student Lawyer stands and waits for the Marshal to introduce him or her. Once introduced, the Student Lawyer should move to the podium to begin argument.]

**Marshal Two:** May it please the Court, \_\_\_\_\_ (Student Lawyer for Greenhill Mall) will present argument for the Petitioner. Petitioner has reserved \_\_\_ minutes for rebuttal.

**Greenhill Mall’s Student Lawyer:** May it please the Court. I am \_\_\_\_\_ and I represent the petitioner, Greenhill Mall. (Petitioner’s Student Lawyer has \_\_\_ minutes to argue and answer the Justices’ questions, then he or she may be seated.)

CONTINUE to next page . . .

**Marshals, Watch Out!**  
**Are there Amici Curiae Arguing for Greenhill Mall?**

**If NOT**, skip this box and jump to your next line.

**If there ARE Amicus Curiae Student Lawyers for Greenhill Mall**, you need to announce them to the Court so they can present their arguments now. Introduce the *Amicus* Lawyers in the following manner:

**Marshal Two**: May it please the Court, \_\_\_\_\_ (Name of Student Lawyer for Amicus Curiae) will present argument for \_\_\_\_\_ (Name of Amicus Curiae).

Following all *Amicus* arguments, Daniel's Deli's Student Lawyer stands and waits for the Marshal to introduce him or her.

**Marshal Two**: May it please the Court, \_\_\_\_\_ (Student Lawyer for Daniel's Deli) will present argument for the Respondent.

**Daniel's Deli's Student Lawyer**: May it please the Court. I am \_\_\_\_\_ and I represent the respondent Daniel's Deli. (Respondent's Student Lawyer has \_\_\_\_ minutes to argue and answer the Justices' questions, then he or she may be seated.)

**Marshals, Watch Out!**  
**Are there Amici Curiae Arguing for Daniel's Deli?**

**If NOT**, skip this box and allow Greenhill Mall's attorney(s) to present their rebuttal argument.

**If there ARE Amicus Curiae Student Lawyers for Daniel's Deli**, you need to announce them to the Court so they can present their arguments now. Introduce the *Amicus* Lawyers in the following manner:

**Marshal Two**: May it please the Court, \_\_\_\_\_ (Name of Student Lawyer for Amicus Curiae) will present argument for \_\_\_\_\_ (Name of Amicus Curiae).

CONTINUE to next page . . .

**Greenhill Mall's Student Lawyer:** I would like to make my brief rebuttal arguments in response, please. (Greenhill Mall's Student Lawyer has \_\_\_ minutes to make rebuttal argument.

[Following the Petitioner's rebuttal, the Respondent's attorney may present a short \_\_\_-minute rebuttal (solely for the purpose of this exercise). If new Student Lawyers are presenting rebuttals, the Marshal may announce their names. After oral arguments are complete, Marshal One will announce that the Court's session has ended, or adjourned.]

**Marshal One:** [Stand for announcement!] All Rise!! [Everyone stands up.] Oyez, Oyez, Oyez. The Honorable, The Supreme Court of Texas now stands adjourned.

[The Student Justices file out of the classroom (or into a corner of the classroom) to discuss the Student Lawyers' arguments in Conference. Once the Justices have reached a decision, they should let the teacher know that they are ready to return to the classroom to announce what they have decided and give the Student and *Amici* Lawyers feedback.]

\* \* \*

**Marshal One:** All Rise!! [Everyone stands up as the Student Justices enter the room and are seated.]

**Chief Justice:** We have reached a decision in the case of Greenhill Mall versus Daniel's Deli. [Explain the decision and how many votes each party received and why. The other Student Justices may offer their thoughts, too.]

\* \* \*

The teacher may now invite all students to discuss the exercise and offer feedback to the Justices, Lawyers, and *Amici*.

STOP!

## **Deliberations Instructions**

Following oral arguments, the Student Justices will adjourn for deliberations, out of the presence of the other students. The Justices should decide which party presented the more convincing argument to win the case, and why. Each Justice may cast one vote. The party who receives five or more votes wins.

**Step 1:** The Student Justices should arrange themselves around a table, with the Chief Justice sitting at one end.

**Step 2:** For the first two minutes, each Student Justice should *independently* jot down his or her notes in the box corresponding to his position at the table.

**Step 3:** The Chief Justice should then select one Justice to share his or her notes with the rest of the Justices, *without revealing his or her final vote*.

**Step 4:** Each Student Justice will have the opportunity to share his or her notes. As each Justice shares his or her thoughts, the rest of the Justices should jot down any important points they hear.

**Step 5:** After one Justice is finished, the Chief Justice will call on the next Justice to speak. Justices should *not* interrupt if another Justice “has the floor.”

**Step 6:** After the first round, once every Justice has had an opportunity to share his or her thoughts, the Chief Justice will go back to the first Justice for his or her vote. Every Justice should record the votes of his or her colleagues as they are called out. After all votes are cast, the Chief should count up the total: all those in favor of Greenhill Mall, and all those in favor of Daniel’s Deli.

**Step 7:** The “majority,” or the side with more votes, should elect a representative Justice to deliver the opinion and explain the Court’s reasoning to the Student Lawyers, Marshals, and other participants upon returning to the classroom. Any concurring or dissenting Justices should do the same.

**Step 8:** The Student Justices should return to the classroom, and signal to the Marshals that they are about to enter.

**Step 9:** The Marshal should announce, “All Rise,” and everyone should stand for the Court.

**Step 10:** The Student Justices return to the bench. The Chief Justice should announce that the Court has come to a decision in case number 13-4526, *Greenhill Mall v. Daniel’s Deli*. The Chief Justice should then announce the final vote, and identify which Justices will deliver the majority and any concurring and dissenting opinions.

**Step 11:** Once the Court has finished delivering its opinion(s), the Marshal will announce, “All Rise,” and adjourn the Court.



## Glossary

***Amicus Curiae***: A “friend of the court” that is concerned about the outcome of a case but is not an actual party. An *amicus curiae* may submit briefs to the court and may sometimes participate in oral argument. The plural form is *amici curiae*.

**Attorney**: A lawyer who represents a party during a case. An attorney’s job during oral argument is to argue for the best outcome for her or his client.

**Brief on the merits**: A document that explains why a party should win the case.

**Chief Justice**: The presiding member of the Texas Supreme Court. During oral argument, the Chief Justice is responsible for announcing that the Court is ready to hear a case, making sure the attorneys respect the time limits, and ensuring that the proceedings run smoothly and efficiently. The Chief Justice, like the other Justices, casts one vote when deciding the outcome of a case.

**Justice**: One of the members of the Texas Supreme Court. Justices may ask attorneys questions during oral argument. Each Justice casts one vote when deciding the outcome of a case.

**Marshal**: A member of the court staff who announces the opening and closing of oral argument, announces the names of parties and attorneys, and helps keep time during oral argument.

**Opinion**: A document that explains the court’s decision in a case.

**Oral argument**: An event at which the parties’ attorneys explain to the court why they should win the case. The Justices may ask questions to the attorneys.

**Petitioner**: The party that brings a case before the Texas Supreme Court by filing a petition for review.

**Petition for review**: A document, filed by the petitioner, that asks the Texas Supreme Court to review a case.

**Record**: An account of everything that has happened in a case.

**Respondent**: The party against whom the petitioner brings a case before the Texas Supreme Court.

**Supreme Court of Texas**: The court of last resort (high court) for all civil (non-criminal) matters in Texas. The Texas Supreme Court consists of one Chief Justice and eight Justices.

**Texas Court of Criminal Appeals**: The court of last resort (high court) for all criminal matters in Texas. The Texas Court of Criminal Appeals consists of one Presiding Judge and eight Judges.

# **Materials for Teachers**



## Supreme Court Mock Oral Argument Suggested Lesson Plan

### Day One:

1. Review substantive materials:
  - a. Welcome to the Supreme Court of Texas—This section includes explanations of the types of cases the Court hears, the split between the civil and criminal high courts in Texas, the judicial election process, and how a disagreement between parties moves from a trial court to the Supreme Court.
    - i. For lesson reinforcement, students may be instructed to create a chart or other type of diagram while reading.
  - b. An Introduction to Oral Arguments—This section provides an overview of how a case moves through the Supreme Court, from the petition for review to the issuance of a decision by the Justices. The main focus of this portion is to provide students with an idea of what a typical oral argument looks like so that they can feel comfortable using the materials to create an in-class courtroom.
    - i. For lesson reinforcement, students may be instructed to create a flow map, timeline, or other type of diagram while reading.
  - c. Cast of Characters—The cast includes the Chief Justice, the other eight Justices, Student Lawyers, Marshals, and Time Keepers.

### Day Two:

1. Review *Greenhill Mall v. Daniel's Deli* problem
  - a. Read issue, procedure, facts, and *amici curiae* arguments
    - i. Have students paraphrase the issues to ensure understanding
  - b. Read accompanying cases—*Rella v. Beauty* and *Kent v. Wayne*
    - i. Explain that the rules from these cases can be used to make arguments
    - ii. Have students paraphrase the cases to ensure understanding
  - c. Read Dictionary Definitions
    - i. Have students compare the definitions to ensure understanding
    - ii. Brainstorm and research other definitions for “sandwich”
2. Assign roles to students (numbers may be modified depending on class size)
  - a. Justices—9 (students or the teacher should elect one Justice to be the Chief Justice)
  - b. Lawyers—4 (two for each party)
  - c. Marshal(s)—1-2
  - d. *Amicus* lawyers (if any)—5
  - e. Time Keeper(s)—1-2

3. Complete worksheets (worksheets may be submitted for writing credit)
  - a. You be the Judge—Sample Questions (for the nine students assigned to be Justices)
  - b. Brainstorming for Lawyer and Amici Curiae Arguments—This worksheet should be completed by all lawyers and may be done in pairs.
  - c. Marshals, audience members, time keepers, and court officers should be divided and instructed to participate and brainstorm with either the Justices or the lawyers.
  
4. Brainstorm unique arguments

### **Day Three:**

1. Continue brainstorming arguments
  - a. Justices should draft questions to ask the lawyers during oral arguments.
  - b. Lawyers and *Amicus* Lawyers should organize and write their arguments. They should try to anticipate questions that the Justices may ask and prepare responses.
  
2. Practice!!!!

### **Day Four:**

1. **MOCK ORAL ARGUMENT TIME!!!!**
  
2. Debrief Period (may extend to other class periods)
  - a. Following the arguments, the Justices will deliberate and present their decisions to the class.
  - b. The students may then debrief and discuss the activity. During this time, the teacher may choose to present the real case, *White City Shopping Center, LP v. PR Restaurants, LLC*.
  - c. Audience members should be given an opportunity to complete their newspaper, magazine, or blog articles, which may be presented to the class and/or submitted for writing credit.
  - d. **Note:** An optional Quiz is included as a suggested assessment for the students upon completion of the exercise. The teacher should feel free to modify the quiz as needed, or to dispense with it entirely. Its sole purpose is to serve as an additional resource for evaluation or grading.

**Mock Oral Argument Role Assignments Sheet**

**The Chief Justice** \_\_\_\_\_

**Justice 1** \_\_\_\_\_

**Justice 2** \_\_\_\_\_

**Justice 3** \_\_\_\_\_

**Justice 4** \_\_\_\_\_

**Justice 5** \_\_\_\_\_

**Justice 6** \_\_\_\_\_

**Justice 7** \_\_\_\_\_

**Justice 8** \_\_\_\_\_

**Attorneys (Petitioner)—Greenhill Mall**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

**Attorneys (Respondent)—Daniel’s Deli**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

**Attorneys (Amicus Curiae #1)—Big Buck’s Burrito (pro-Greenhill Mall)**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

**Attorneys (Amicus Curiae #2)—Charlie’s Fried Chicken (pro-Greenhill Mall)**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

**Attorneys (Amicus Curiae #3)—Coco’s Cookies (pro-Greenhill Mall)**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

**Attorneys (Amicus Curiae #4)—Pedro’s Parmesan Paradise (pro-Daniel’s Deli)**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

**Attorneys (Amicus Curiae #5)—True Sandwich Eaters of America (pro-Daniel’s Deli)**

1. \_\_\_\_\_
2. \_\_\_\_\_

**Marshals:**

1. \_\_\_\_\_
2. \_\_\_\_\_

**Time Keeper:**

1. \_\_\_\_\_

**Non-Speaking Attorneys (As needed, to help Petitioner’s attorneys write arguments)**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

**Non-Speaking Attorneys (As needed, to help Respondent’s attorneys write arguments)**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

## Real Case Debrief

### FOR TEACHERS ONLY:

*Greenhill Mall v. Daniel's Deli*, the fictional problem in these materials, is based on a real case called *White City Shopping Center, LP v. PR Restaurants, LLC*. The real case was decided by a court in Massachusetts in 2006. Below you will find a description of *White City* that you may choose to present to your students after they complete the entire mock oral argument activity. It is strongly encouraged that the real case only be discussed after the activity in order to avoid any bias or feelings amongst the students that the outcome was in some way predetermined.

It is important to inform students that sometimes real courts reach different results when making decisions about similar issues. Often, legal questions do not have clear answers and judges, even those at the United States Supreme Court, sometimes disagree about the way a case should be decided. *White City* was decided by a Massachusetts Court. A Texas court, including the one in your classroom, may reach a completely different conclusion.

### *White City Shopping Center, LP v. PR Restaurants, LLC*

The Plaintiff, White City Shopping Center, entered into a contract with the Defendant, PR. The parties agreed that PR could rent space at the White City Shopping Center in order to open a Panera Bread restaurant. Panera restaurants mainly sell items like sandwiches, coffee, and soup. As part of the agreement, White City promised not to rent any other spaces at the mall to other businesses that primarily sell sandwiches. The contract between White City and PR did not define the term “sandwiches.”

Sometime after the agreement was made, PR discovered that White City was considering renting space at the mall to Chair 5, a company that planned to open a Qdoba restaurant. Qdoba sells Mexican-style food such as burritos, tacos, and quesadillas. PR contacted White City to inform the mall that renting space to Chair 5 would be in violation of the PR-White City agreement because the burritos, tacos, and quesadillas sold by Qdoba were considered “sandwiches.” White City did not agree with PR and rented the space to Chair 5.

White City filed a lawsuit against PR. In the suit, White City asked the Superior Court of Massachusetts to declare that it did not breach, or violate, its contract with PR. PR asked the Court to decide that White City breached its agreement with PR when it leased space to Chair 5. PR requested that the court prohibit White City from doing anything that would violate the agreement any further, including allowing the Qdoba restaurant to open at the mall.

The agreement between White City and PR did not provide a definition of “sandwich,” so it was impossible for the court to determine what each party intended for the word to mean when

it signed the contract. To resolve the issue, the court used the ordinary meaning of the word “sandwich,” found in the New Webster Third International Dictionary—“two thin pieces of bread, usually buttered, with a thin layer (as of meat, cheese, or savory mixture) spread between them.” The court determined that burritos, tacos, and quesadillas were not ordinarily considered sandwiches because they did not fit this definition.

Additionally, the court determined that PR could not win the case because PR did not demonstrate that it would be harmed permanently if White City rented space at the mall to Chair 5. In other words, Qdoba was not likely to put Panera out of business. Ultimately, the Massachusetts court decided that a burrito is not a sandwich.

## Quiz

### **Multiple Choice Portion:**

- 1) What does *amicus curiae* mean?
  - a. “convicted felon”
  - b. “friend of the court”
  - c. “oral argument”
  - d. “petition for review”
  
- 2) How many members does the Texas Supreme Court have?
  - a. 9
  - b. 7
  - c. 5
  - d. 42
  
- 3) Which of the following tasks is performed by the Marshal?
  - a. casts a vote when deciding the outcome of a case
  - b. selects a new Chief Justice if the current Chief Justice resigns
  - c. issues declarations of martial law
  - d. announces the names of the attorneys during oral argument
  
- 4) True or False: In oral argument before the Texas Supreme Court, the respondent usually speaks first and reserves time for rebuttal.
  
- 5) The Texas Supreme Court chooses to decide the case in approximately what percentage of all petitions filed each year?
  - a. 99%
  - b. 3–4%
  - c. 10–12%
  - d. 65–75%

### **Short Answer/Essay Portion:**

- 6) Describe a typical case’s journey from its very beginning until it is decided by the Texas Supreme Court. Include as many details as possible. (Suggested length: 10 sentences).
  
- 7) Why do you think the Texas Supreme Court hears oral argument? Do you think it helps the Court to reach the appropriate outcome in the case? Why or why not? (Suggested length: 10 sentences).

8) What did you like most about participating in this project? What did you like least? (Suggested length: 10 sentences).

9) Describe at least one thing that a Student Lawyer did well during oral argument. Describe at least one thing that a Student Lawyer could have done better during oral argument.

10) Which party do *you* think should have won the case of *Greenhill Mall v. Daniel's Deli*? Why do you think they should have won? What was their strongest argument? (Suggested length: 10 sentences).



## Quiz Answer Key

- 1) B
- 2) A
- 3) D
- 4) False
- 5) C