New Jersey’s Judiciary

Lesson Creator: New Jersey Center for Civic Education, Rutgers University, Piscataway, NJ

Grade Level: Secondary

Objectives: Students will be able to:

- Identify the role of the judiciary
- Describe how the judicial system in New Jersey is structured
- Examine the jurisdiction of the New Jersey courts
- Compare and contrast the proceedings of New Jersey’s trial and appellate courts
- Explain why judicial independence is important
- Engage in a mock trial or moot court proceeding

New Jersey Student Learning Standards for Social Studies (2020):

6.3.8.CivicsPI.4: Investigate the roles of political, civil, and economic organizations in shaping people’s lives and share this information with individuals who might benefit from this information.

6.3.8.CivicsPD.3: Construct a claim as to why it is important for democracy that individuals are informed by facts, aware of diverse viewpoints, and willing to take action on public issues.

6.3.8.CivicsDP.2: Make a claim based on evidence to determine the extent and the limitations of First Amendment rights (e.g., U.S. Supreme Court decisions).

6.3.8.CivicsDP.3: Use historical case studies and current events to explain why due process is essential for the protection of individual rights and maintenance of limited government.

6.3.8.CivicsPR.5: Engage in simulated democratic processes (e.g., legislative hearings, judicial proceedings, elections) to understand how conflicting points of view are addressed in a democratic society.
6.1.12.CivicsPI.13.a: Craft an argument as to the effectiveness of the New Jersey Constitution of 1947, New Jersey Supreme Court decisions (i.e., *Hedgepeth and Williams v. Trenton Board of Education*), and New Jersey’s laws in eliminating segregation and discrimination.

6.1.12.EconET.14.a: Use current events to judge what extent the government should intervene at the local, state, and national levels on issues related to the economy.

6.1.12.HistoryCA.14.b: Create an evidence-based argument that assesses the effectiveness of actions taken to address the causes of continuing racial tensions and violence.

6.1.12.CivicsPD.16.a: Construct a claim to describe how media and technology has impacted civic participation and deliberation.

6.1.12.CivicsPR.16.a: Analyze government efforts to address intellectual property rights, personal privacy, and other ethical issues in science, medicine, and business that arise from the global use of new technologies.

6.3.12.HistoryCA.1: Analyze the impact of current governmental practices and laws affecting national security and/or First Amendment rights and privacy (e.g., immigration, refugees, seizure of personal property, juvenile detention, listening devices, deportation, religion in schools).

**Focus Questions:**

- How does the state judicial system in New Jersey work?
- How are judges selected?
- Why is judicial independence important?
- What is the scope of jurisdiction of the New Jersey State Supreme Court?
- What is the difference between trial and appellate courts?
- What is a moot court proceeding?

**Vocabulary.**

Share *Handout One*: Vocabulary with your students and discuss the meaning of each term:

1. **The Judiciary** is the system of courts that interprets and applies the law in the name of the state.

2. **The Plaintiff** is the person (or corporation) who brings a legal action in court.

3. **The Defendant** a person (or corporation) who is being sued or accused of a crime in a court of law.

4. **A Hearing** is a proceeding before a judge.
5. **A Jury** is a group of citizens summoned to and sworn by a court to hear evidence and render a verdict in a trial.

6. **Trial Court**—Court of original jurisdiction where a case is first heard. Evidence (physical and testimony) is presented for the judge and jury to determine its veracity and to apply the law to the facts and to make a determination regarding the guilt or innocence of a defendant in a criminal case or a decision regarding a civil issue.

7. **Appellate Court**—hears appeals from trial courts and reviews their decisions to determine if there were procedural errors and if the law was applied correctly. They can affirm or reverse the trial court’s decision.

8. **A Mock Trial** is a simulation or enactment of a judicial proceeding in a trial court. The focus is on the evidence provided by witnesses and physical evidence.

9. **A Moot Court** is a mock appellate court hearing. No witnesses are called, nor are the basic facts of the case in dispute. The focus is on the application, fairness or constitutionality of the law.

10. **Opening Statement** is made by the Prosecutors (for a criminal case) or the plaintiff’s attorney (for a civil case) to explain what their evidence will be and what they will try to prove; or in an appellate court, a summary of the case below and why you are appealing the decision.

11. **Rebuttal** is evidence or an argument that is presented to contradict or nullify the evidence or argument that has been presented by an opposing party.

12. **Closing Statement** is made by the attorney for each side including a concise summary of the evidence that emphasizes that which is most favorable for your side. Each side asks for a decision in its favor and explains why. On appeal, it is a summary of the case law, constitutional application, public policy and/or practical reasons why your side should prevail.

**Anticipatory Set:**

Find out what students know about the judiciary. Do a quick quiz with your students using Kahoot, a free game-based learning platform, which lets you set up a quiz and responses where the students can click the answers on their chromebooks, ipads or cellphones and the teacher can see how many answered correctly. Go to [https://kahoot.com/](https://kahoot.com/). Or simply ask your students the following questions:
• What is the role of a judge? (Answer: The role of the judge is to assure that disputes brought to court are resolved fairly and impartially in accordance with the law)

• What court hears traffic violations? (Answer: Municipal courts)

• How are judges selected in New Jersey? (Answer: Except for municipal court judges in a single municipality, members of the judiciary are appointed by the Governor with the advice and consent of the State Senate.)

The Judicial Branch

Ask students: Why do courts exist?
The role of the Judicial Branch is to:
• Review laws
• Explain laws
• Resolve disputes (disagreements)
• Decide if a law is contrary to the Constitution

Ask students and discuss: What are the purpose of the Courts?
• To do individual justice in individual cases
• To provide a forum for the resolution of legal disputes
• To protect citizens against the arbitrary use of Government power
• To make a formal record of legal status
• To deter criminal behavior
• To help rehabilitate persons convicted of crimes
• To separate persons convicted of serious offenses from society

Background: Why do we have state and federal courts?

Federal court jurisdiction is limited to certain types of cases listed in the U.S. Constitution (U.S. Constitution, Art. III, Sec. 2). For the most part, federal courts only hear cases in which the United States is a party, cases involving violations of the Constitution or federal law, crimes on federal land, and bankruptcy cases. Federal courts also hear cases based on state laws that involve parties from different states. The majority of cases—from parking violations to murder and simple contracts to violations of the state constitution—are brought in state courts. Unlike legislative bodies or governmental executives (mayors, governors or the President of the United States) which can proactively address public policy problems, courts only address public policy issues when they arise in a law suit brought before the court for adjudication. The federal courts address issues that arise under federal law. State courts address issues arising under state law.
Background: The Structure of New Jersey’s Judiciary

Prior to the 1947 New Jersey State Constitution, the court system in New Jersey was cumbersome, fragmented and slow-moving, following the judicial system in England from the 1700s which even England had abandoned. That all changed with the 1947 New Jersey State Constitution which unified, centralized, streamlined and organized the state judiciary and is still being followed today. Share and discuss Handout Two with your class:

There are three trial courts in New Jersey: Municipal Court, Tax Court and Superior Court. The Superior Court is the trial court of general jurisdiction. Trial courts also include the municipal courts and the Tax Court, both with specifically limited jurisdiction. The appellate courts include the Appellate Division and the New Jersey Supreme Court.

What do New Jersey Trial Courts do?

Tax Court

New Jersey Tax Court is a court of limited jurisdiction. It is located in Trenton, NJ. Tax Court judges hear appeals of tax decisions made by County Boards of Taxation regarding local tax assessments. They also hear appeals on decisions made by the Director of the Division of Taxation on such matters as state income, sales and business taxes, and homestead rebates. There are 12 Tax Court judgeships, appointed by the governor. The cases are presented directly
to the judge. There are no juries in tax court. Appeals from Tax Court decisions are heard in the Appellate Division of Superior Court. See https://www.njcourts.gov/courts/tax.html?lang=eng

Municipal Courts

Municipal Courts are operated by the city, township or borough in which the courts are located and municipal court judges are appointed by the mayor of the municipality. By far, most of the cases filed in New Jersey's courts are heard in the Municipal Courts. The Municipal Courts carry out most of the day-to-day work in the New Jersey courts, where simple traffic tickets, minor criminal offenses, and small civil matters are heard.

Municipal Courts are courts of limited jurisdiction. They handle:
- Traffic and Motor Vehicle Violations
- Town Ordinance Violations (such as dog parking or building code violations)
- Disorderly Persons Offenses (minor criminal-type offenses like bad checks or assaults)
- Fish, Game and Navigation Violations

A Municipal Court usually has jurisdiction only over cases that occur within the boundaries of its municipality. There 532 Municipal Courts statewide in New Jersey. Municipal Judges are appointed by local governing body for a three-year term. Municipal court case are appealed to the trial Division of Superior Court. See https://www.njcourts.gov/courts/mcs.html?lang=eng

Superior Courts

The Superior Courts are courts of general jurisdiction. It conducts trials in:
- Criminal cases
- Civil cases
- Chancery or Equity
- Family

Criminal Cases

Criminal cases are those in which a defendant is accused of a serious crime, such as robbery, theft, drug possession or murder. In a criminal case, a prosecutor tries to prove that the defendant committed a crime. The prosecutor is an attorney who represents the State of New Jersey, and the defense attorney represents the defendant. The judge oversees the proceedings and ensures that they are conducted according to the law and the rules of court.

Most criminal trials are decided by a jury consisting of 12 citizens. The jury represents the community in which the crime occurred. The jury's role is to hear the evidence presented by the prosecutor and the defense attorney. Evidence is presented to the jury by witnesses who testify. After all the evidence has been presented, the jury discusses the case in private. If all
the jurors believe the evidence proves beyond a reasonable doubt that the defendant committed the crime, the jury convicts the defendant by returning a guilty verdict. After a defendant is convicted, the judge imposes a sentence, such as a term in prison. If the jurors do not believe the evidence proves the defendant committed the crime, then the jury acquits the defendant by returning a verdict of not guilty. If the jurors are unable to decide between conviction and acquittal, the judge can declare a mistrial, and a new trial can be held with different jurors.

Not every criminal case is decided by a trial. Many cases are resolved through a plea bargain. In a plea bargain, the defendant agrees to plead guilty by admitting that he or she committed a crime. In return, the prosecutor asks the judge to impose a sentence that is less severe than if the defendant had gone to trial and been convicted. The judge, however, is not required to agree to the recommendation and may choose to ignore it. A plea bargain ensures that a guilty defendant is punished. Plea bargains can be entered either before or even during the trial.

Civil Cases

Civil lawsuits are cases in which a plaintiff claims that he or she has been injured by the actions of the defendant. Injury is a legal term meaning any harm done to a person's body, property, reputation or rights. In some civil cases, the plaintiff seeks damages, or money, from the defendant as compensation for injuries allegedly caused by the defendant. Examples are cases involving car accidents, age, race or gender discrimination in the workplace, medical malpractice, defective products, differences over the terms of contracts, and disputes between landlords and tenants. Civil juries consist of six members.

General Equity

Not all civil cases, however, involve attempts to receive compensation for injuries. People also file lawsuits to enforce their rights. In New Jersey, these kinds of non-monetary lawsuits are called General Equity cases. A General Equity case may involve the right of a terminally ill person to refuse life-sustaining medical treatment, or a dispute between labor and management over rights in the workplace, or even a company's ability to protect its trade secrets, such as how it makes or markets a product. Instead of money, the plaintiff in a General Equity case may ask the court to order the defendant to do something: remove a feeding tube, for instance, or end a strike and return to work. General Equity cases are decided by judges instead of juries. As in criminal cases, the parties in civil cases often agree to settle their disputes without a trial. Settlements may occur before a trial starts or even during a trial. A settlement allows each side to resolve the dispute satisfactorily rather than risk losing at a trial.

Family Cases
Family cases are civil cases in which the disputes involve children, spouses or domestic partners. Examples of family cases are those involving divorce, adoption, juvenile delinquency, child abuse, child support, and domestic violence. Most cases in the Family Court are decided by a judge instead of a jury. To protect the privacy of children, judges are permitted to close some types of Family Court cases to the public.

Jury Trials

A jury trial is a legal proceeding in which the jury decides the questions of fact while the judge decides the questions of law. The U.S. Constitution (Art. III, Sec. 2, para. 3; and the Sixth Amendment) require criminal trials to be jury trials. The right to a jury trial in civil cases in New Jersey must arise either by state statute or under the state constitution. Article I, Section 9 of the New Jersey Constitution explicitly provides that "the right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes by a jury of six persons. However, this language has never been interpreted to require a jury trial in all civil cases. In fact, New Jersey has precluded jury trials in many civil cases. See New Jersey Developments: The Right to a Civil Jury Trial in New Jersey, 47 Rutgers L. Rev. 1461 (1995). Typically, there is no right to a jury trial for purely statutory causes of action unless the statute provides such a right. In Jersey Central Power & Light Co. v. Melcar Utilities Co., decided January 24, 2013, the Court held that the State Constitution guarantees the right of trial by jury for a statutory cause of action that is rooted in the common law.

The United States jury system and the jury system in New Jersey have their source in English history. The right to trial by jury in this country dates back to the colonial period. It is both an honor and a duty to participate in our judicial process as a juror. In New Jersey, jurors are chosen at random from among a county’s registered voters and licensed drivers, as well as from among residents who file state income tax returns. In order to serve as a juror in New Jersey, a person must be a U.S. citizen at least 18 years old and able to read and understand English. The entire group summoned to serve as jurors is called the jury panel. The first step in a trial is to select from the panel the number of jurors required to try the case. In a civil case there are usually eight jurors seated, with six deliberating and the others selected as alternates. In criminal cases, there are usually 14 jurors selected so that alternates are available.

After a short statement is given describing the case and the parties involved, the judge will question the prospective jurors to determine if they are qualified to act fairly impartially and have no interest in the result of the case. There are certain legal grounds for which a juror may be challenged for cause and excused, such as a juror being incapable of being impartial due to prior dealings with a party, witness, or attorney involved in the case. In addition, each side can excuse a certain number of jurors without giving any reason. These are called peremptory challenges. Peremptory challenges may be used, for example, when a party believes that a prospective juror has had some experience with the issues or facts in the case, and that experience could impact how that juror will decide the matter. In that situation, a party may
simply prefer to have another juror seated. The lawyers or the judge may ask prospective jurors questions about their personal lives and beliefs. If there is any reason prospective jurors feel they should not serve, that reason should be made known during this questioning. The entire process of juror questioning is called "voir dire", which is French for "speak the truth." See https://www.judiciary.state.nj.us/jurors/jurorprocess.html

A law suit is first heard at the trial level, which focuses on determining the facts and then applying the law. If a jury is involved, the jury determines what the facts are. Since this often involves contradictory testimony by witnesses, a large part of the jury’s role is to determine the credibility of the witnesses and which version of the facts they believe to be true. The judge decides issues of law and instructs the jury on the law. The jury’s verdict is based on an application of the law to the facts.

Trial judges assess the evidence presented, and control how hearings and trials unfold in their courtrooms and interpret the law. Legal cases are contests between opposing sides, which ensures that evidence and legal arguments will be fully and forcefully presented. The judge, however, remains above the fray, providing an independent and impartial assessment of the facts and how the law applies to those facts. The judge presides over the trial from a desk, called a bench, on an elevated platform.

The judge has five basic tasks:
- To preside over the proceedings and see that order is maintained
- To determine whether any of the evidence that the parties want to use is illegal or improper
- Before the jury begins its deliberations about the facts in the case, to give the jury instructions about the law that applies to the case and the standards it must use in deciding the case
- In bench trials (without juries), the judge must also determine the facts and decide the case
- To sentence convicted criminal defendants. Trials include civil and criminal cases.

Superior Courts operate either at the county level or by vicinage—a court management region consisting of one or more counties:
- Vicinage 1 Atlantic and Cape May Counties
- Vicinage 2 Bergen County
- Vicinage 3 Burlington County
- Vicinage 4 Camden County
- Vicinage 5 Essex County
- Vicinage 6 Hudson County
- Vicinage 7 Mercer County
- Vicinage 8 Middlesex County
• Vicinage 9 Monmouth County
• Vicinage 10 Morris and Sussex Counties
• Vicinage 11 Passaic County
• Vicinage 12 Union County
• Vicinage 13 Somerset, Hunterdon and Warren Counties
• Vicinage 14 Ocean County
• Vicinage 15 Cumberland, Gloucester and Salem Counties

The Superior Courts review decisions of municipal courts. Decisions from Superior Court trials are appealed to the Appellate Division. See https://www.njcourts.gov/courts/scco.html?lang=eng

What is the role of New Jersey’s Appellate Courts?

The losing party in the trial court may appeal that court’s decision to an appellate court. An appellate court consists of a panel of two or three judges (seven justices in the case of the New Jersey Supreme Court and nine justices in the case of the United States Supreme Court). Unlike the trial court, the appellate court reviews the application of the law and not the facts. Therefore, the party losing at the trial level, who is bringing the appeal, can only assert arguments based on the law, such as the constitutionality or unfairness of the application of the law. Unlike a trial, no evidence is presented: no witnesses are called and the facts are not in issue. The appellate court relies on the facts as established by the trial court.

The appellant (the party bringing the appeal) writes a detailed brief addressing these issues and then submits this to the court in a timely manner. The respondent (the party winning at the trial level and responding to the appeal) has an opportunity to address the appellant’s arguments in his/her brief. After the appellate court reviews the litigants’ briefs and the trial record, oral arguments are held, giving the judges an opportunity to question the attorneys. Appellate courts review the process and evidence presented at the trial court level and determine whether the process meets constitutional requirements of due process (fairness) and whether the law has been interpreted and applied correctly to the facts. The appellate court subsequently makes a decision either overturning or upholding the trial court’s decision. The losing party at the appellate level may appeal the case to the Supreme Court of the specific state or the United States Supreme Court.

Trials from the Tax Courts and the Superior Courts are first reviewed by the Appellate Division. The Appellate Division’s decision is reviewed by the N.J. State Supreme Court if there is a constitutional question, dissent in the Appellate Division, a certification, or appeal from other causes as provided by the law. Formerly, capital cases involving murder where the defendant was sentenced to death, had automatic appeals to the NJ State Supreme Court. However, since New Jersey abolished the death penalty in 2007, this is no longer relevant.
### Activity: Compare trial and appellate courts

Ask students to compare the function, structure and process of trial and appellate courts in New Jersey by using the graphic organize, *Handout Three*. A completed chart might look like the following:

<table>
<thead>
<tr>
<th></th>
<th>Trial Courts</th>
<th>Appellate Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of judges</strong></td>
<td>One judge</td>
<td>• NJ Appellate Division sits in panels of 2-3 judges</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• NJ Supreme Court has 7 members</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• US Supreme Court has 9 members</td>
</tr>
<tr>
<td><strong>Jury</strong></td>
<td>In all criminal cases and some civil cases.</td>
<td>No</td>
</tr>
<tr>
<td><strong>Evidence</strong></td>
<td>Physical evidence and testimony from witnesses</td>
<td>No new evidence is presented</td>
</tr>
<tr>
<td><strong>Role</strong></td>
<td>The trial courts determine the facts and then apply the law to render a decision.</td>
<td>Appellate courts review the process and evidence presented at the trial court level and determine whether the process meets constitutional requirements of due process (fairness) and whether the law has been interpreted and applied correctly to the facts.</td>
</tr>
<tr>
<td><strong>Number in NJ</strong></td>
<td>532 Municipal Courts</td>
<td>One State Supreme Court</td>
</tr>
<tr>
<td></td>
<td>10 Tax Courts</td>
<td>32 Appellate Court judges meet in panels of 2 or 3</td>
</tr>
<tr>
<td></td>
<td>15 Superior Courts (Trial courts), one in each vicinage</td>
<td></td>
</tr>
<tr>
<td><strong>Jurisdiction</strong></td>
<td>Municipal Courts hears cases involving motor vehicle and parking tickets, disorderly person offenses, and municipal ordinance and other offenses that occur within the boundaries of its municipality</td>
<td>The Appellate Division courts are intermediate courts that hear appeals from decisions of the trial courts, the tax court and state administrative agencies.</td>
</tr>
<tr>
<td></td>
<td>Tax Courts—jurisdiction limited to appeals of tax decisions by</td>
<td>The NJ Supreme Court is the court of last resort and hears cases that raise a constitutional question, where there is dissent in the Appellate</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

11
How are judges selected in New Jersey?

The colonists brought over from England the tradition of appointing judges. The United States Constitution follows the tradition of appointing federal court judges, including the U.S. Supreme Court. However, by the early 1800s, appointing judges had become increasingly unpopular and many states began to select judges by popular vote. By the end of the 19th century, in an era when political corruption was a growing problem, the idea of choosing judges using a nonpartisan, commission-selection process became more prevalent. Currently, states use a variety of methods to select judges, including partisan and non-partisan elections, appointments by the governor or legislature, nominations by commissions and retention elections after appointments.

New Jersey’s 1947 Constitution continued the practice of an appointed judiciary. In New Jersey, members of the judiciary are appointed by the Governor with the advice and consent of the Senate. The only exceptions are municipal judges who are appointed by the governing body of the municipality. Unlike most other states, there are no elections for judges in New Jersey. New Jersey state court judges stand for reappointment after seven years in office, and once reappointed, they serve until they reach the age of 70. By unwritten institutional tradition, the New Jersey judiciary is balanced between the political parties. The majority of states have partisan or non-partisan elections or retention elections or appointments based on the recommendations of a commission.

Activity: Using Handout Four: Article VI of the NJ State Constitution, 1947, updated to 2020, summarize the requirements and process for judicial appointments in New Jersey.

Why is judicial independence important?

Judicial independence refers to the insulation of the judiciary from the influence of other political institutions, interest groups, and the general public. Judicial independence is important because it fosters impartial judgment by judges in individual cases. Judicial independence permits judges to make decisions that they believe are correct, fair and just, even though their decisions may sometimes be unpopular.

The impartial administration of justice and the accountability of government officials to the public are two of the most strongly held American values. Yet these values are sometimes in direct conflict with one another. At the national level, the U.S. Constitution resolves this tension
in favor of judicial independence, insulating judges from the undue influence of other political institutions, interest groups, and the general public. Federal judges are appointed by the president with the advice and consent of the Senate. However, at the state level, the debate has continued as to the proper balance between judicial independence and judicial accountability.

**Research and Critical thinking activity**

Compare the advantages and disadvantages of an elected or an appointed judiciary. Have students break into pairs, research the costs and benefits of elected versus appointed judges. Some possible sources of information include the following:


Have students prepare a summary of the advantages and disadvantages by completing the graphic organizer, *Handout Five*. A completed chart might look as follows:

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
</table>
| **Appointed Judiciary**     | • Judges are non-partisan  
  • Judges can make decisions based on the law without losing their position if a decision is unpopular with the public. | • The people do not have a direct say in the selection of judges.  
  • The governor might only appoint those who agree with his or her political views. |
| **Elected Judiciary**       | • Appears to be more democratic  
  • If a judge is not being accountable to the people, they can elect someone else. | • Judges may not make independent decisions because they feel pressured to make decisions based on public opinion or politics rather than a fair application of the law. |

Alternatively, have your students argue for an appointed or an elected judiciary. Follow with a class discussion and conclusions.
Analyze a Political Cartoon

Have students look at Handout Six: a political cartoon from the Star Ledger in 2011. Ask students: What is happening in the political cartoon? What is the point that it is trying to make?

Assessment

Have students write a short essay explaining why judicial independence is important to democracy and the rule of law.

Essays should explain why we need an independent judiciary (so that cases will be decided on their merits rather than for political purposes), note factors that might threaten the independence of a judge, and suggest what will help ensure that the judiciary will be independent.

The impact of New Jersey’s State Supreme Court

New Jersey’s highest court has been the source of many precedent-setting decisions. In 1944, the New Jersey Supreme Court held in Hedgpeth-Williams V. Trenton Board of Education that racial segregation in schools violated the state constitution. This case was cited in the U.S. Supreme Court’s 1954 decision in Brown v. Board of Education.

While the U.S. Supreme Court held in a 5/4 decision in San Antonio v. Rodriguez in 1973 that there was no constitutional right to an equal education, the New Jersey Supreme Court found a right to a “thorough and efficient education” under the state constitution in Robinson v. Cahill (1973), which led to a series of lawsuits that required the state to equalize funding for public schools.

In 1975, the State Supreme Court in Southern Burlington County NAACP v. Mt. Laurel held that exclusionary zoning that bars the poor was unconstitutional and a system for requiring municipalities to provide their fair share of low- and moderate-income housing followed.

In re Quinlan, the New Jersey Supreme Court found a state constitutional basis for the right to refuse medical treatment (70 NJ 10 (1976), which the U.S. Supreme Court let stand and has become the law of the land.

Performance Assessment: Conduct a Mock Trial

A mock trial is a simulation or enactment of a judicial proceeding in a trial court. Mock trials may be based on a hypothetical fact pattern, school situations, historical events or a current event. They are designed to provide students with knowledge about the legal process and
courtroom procedure, including the roles of the various actors in the legal system. The simulation will also help develop student critical thinking skills and oral presentation skills.

The New Jersey State Bar Foundation has a Law Adventure mock trial program for 7th and 8th grades classes. The Constitutional Rights Foundation has a variety of mock trials available online.

Here are the directions for conducting a mock trial in your classroom:

**Preparation for a Mock Trial**
- Distribute the mock trial materials to all students (the hypothetical, historical facts or current events) for all students to read.
- Review the various roles:
  - Attorneys
  - Witnesses
  - Jurors
  - Bailiff
  - Court Reporter
  - Observers
  - Judge—You may want to invite a real judge, an attorney, or a law student to be the judge.
- Assign students roles and divide them into plaintiff and teams to prepare
- Review the Simplified Rules of Evidence (share and review Handout 7 with students)
  - Introduction of Physical Evidence
    - Ask the judge for permission to have the item marked for identification
    - Show the item to each side
    - Ask the witness on the stand to identify the item
    - Move the item into evidence
  - Forms of questions
    - Only direct questions (“can you please tell me...”) can be used during the direct examination to evoke a narrative answer
    - Leading questions (isn’t it true that....?) can only be asked during cross examination
  - Witness opinions
    - Witnesses should confine their testimony to what they did, saw, heard, smelled, etc.)
    - Witnesses generally may not give their opinions unless they are expert witnesses testifying about their area of expertise.
  - Hearsay
    - Hearsay is an out-of-court statement offered to prove the truth of what is asserted. (“I heard that Sam was a wild kid”)
    - Hearsay is generally not permitted.
e. Relevancy
   o Evidence or testimony that has nothing to do with the issues of the case are “irrelevant” and may not be presented

f. Impeachment
   o If a witness contradicts facts in his or her previous statements, the opposing side can impeach the witness on cross-examination.
   o To do this, the opposing side must show the witness the statement, ask “Is this your sworn statement?”, and then read the portion that in contradictory and point out the contradiction.

Conducting the Mock Trial (Handout 8)

- Set up your classroom as a courtroom would be set up
- Bailiff calls the case “All rise. The Court of ____________ is now in session. The Honorable Judge ________________ presiding.
- Opening statement by the Prosecutors (for a criminal case) or the plaintiff’s attorney (for a civil case) explains what their evidence will be and what they will try to prove.
- Opening statement by the Defendant’s attorney explains their evidence and what they will try to prove.
- Prosecutor or plaintiff’s attorney calls witnesses to testify (direct examination) and introduces other physical evidence.
- Each prosecutor/plaintiff witness may be cross-examined by the defense attorney.
- Defendant’s attorney calls witnesses to testify (direct examination).
- Each defense witness may be cross-examined by the prosecutor/plaintiff’s attorney.
- Closing Statements. The lawyer for the plaintiff or government usually goes first to review the evidence presented. Then the defense presents its closing reviewing the evidence and emphasizing that most favorable. Each side asks for a decision in its favor and explains why.
- Jury instructions (for jury trials). The judge explains to the jury the appropriate rules of law that it is to consider in weighing the evidence.
- Deliberations and decision by the jury (or judge, if no jury trial) based on the evidence presented and the credibility of the witnesses.

Debrief the Mock Trial
Have students review their performances and what they might do differently to improve it. Clarify and correct anything that was not done properly.

Performance Assessment: Conduct A Moot Court

A moot court is a mock appellate court hearing. The court, composed of a panel of judges or justices, is asked to rule on a lower court’s decision. No witnesses are called, nor are the basic facts of the case in dispute. The focus is on the application, fairness or constitutionality of the law. In many ways, a moot court is like a debate. Each side presents arguments for
consideration by the judges. A moot court is an effective strategy for focusing student attention on the underlying principles and concepts of justice.

**Preparation:**

1. Select an actual or hypothetical case
2. Ask the class to identify the issue involved.
3. Select an odd number of students (3-9) to be the panel of appellate judges or justices.
   - Select or have the panel select one person to be the chief judge or justice
4. Divide the remaining students into two teams.
   - One team will represent the person or group appealing the lower court decision (the appellant or petitioner).
   - The other team will represent the person or team defending the lower court’s decision (the respondent).
   - Alternatively, you can do mini moot courts with three members (a judge, an appellant and a respondent) in each group.
5. Each team should meet to prepare arguments for its side of the case. The team should select one or two students to present their arguments.
   - Develop a brief statement of your position
   - Cite facts from the case to support your position
   - Explain how the facts support your position
   - Cite and apply previous court decisions that supports your position
   - Explain why a ruling in your favor is best for policy reasons (social, health, educational, etc.).
6. The judges should meet to discuss the issue involved and to develop questions to ask the counsel for the opposing sides in order to clarify the facts, the law or the social impact. The judges or justices should select one student to serve as the chief judge or justice, who will preside over the hearing. He or she will call for each side to present its case as well as recognizing other judges to ask questions. The judges will:
   - Develop questions to clarify facts
   - Develop questions to clarify the relationship between previous court decisions and this case
   - Develop questions to clarify the policy implications of a ruling in favor of each side
7. The teams may NOT argue that any of the facts are inaccurate. They must assume that all of the facts have been established at the trial court as they have been presented to them.
8. The panel of judges should be seated in front of the room. The attorneys for each side should sit on opposite sides of the room facing the judges. The other team members should sit behind their respective attorneys.

**The Hearing:** *(Handout 9)*

1. Opening Statement and Argument
The chief judge/justice should ask each side to present its arguments in the following order:

- Appellant/Petitioner: 1-2 minute Opening Statement explaining what happened during the lower court’s proceedings, followed by a 5-10 minute argument based on the U.S. or NJ Constitution, statute, case law, and/or public policy or practical considerations.
- Respondent/Appellee: 1-2 minute Opening Statement followed by a 5-10 minute argument.
- Teachers may want to make the time shorter or longer depending on the case and the level of sophistication of the students.

2. Questions by the judges
   - During and/or after each presentation, the justices can and should actively question the attorney in an effort to clarify the arguments.
   - Questions should be short and to the point.
   - Attorneys may ask for time to consult with other members of their team before answering questions.

3. Rebuttal and Closing
   - The rebuttal entails listening to the other side’s arguments and formulating a response. The attorney must listen to the arguments of the other side and then formulate a response. A thorough and detailed reply to the arguments is necessary.
   - The closing should be a concise summary of the arguments for your side.
   - First the Respondent makes a 3-5 minute rebuttal and closing
   - Then the Appellant makes a 3-5 minute rebuttal and closing.

The Judicial Conference and Decision:
1. After all arguments have been presented, the justices may remove to another room for deliberations or hold an open judicial conference by remaining in the room to discuss the arguments and make a decision.
2. The rest of the class should listen to the members of the court deliberate but they cannot talk or interrupt the deliberations.
3. The judges should discuss:
   - The strongest arguments presented by each side, as well as points that could/should have been raised but weren’t.
   - Each judge should explain his or her initial thinking on how to decide and the reasons.
   - If there are differences of opinion, and adequate time, the judges should try to convince the other judges to change their views.
4. The chief justice should ask for a decision by a majority vote.
5. The decision and the basis for it should take into account the facts, the law, precedent and any public policy considerations.

Debriefing:
1. If you are using an actual case, share the court’s decision with the class after the student court has reached its decision.
2. If you are using a purely hypothetical set of facts or a case which has not yet been decided, discuss the strength and weaknesses of the arguments that were made, and any other arguments that should or might have been made.
3. If the moot court is based on an historical case, place the decision within its historical context.
4. In order to dispel the idea that there is always one “right” decision, help your students to understand the reasoning behind any dissenting opinions along with the reasoning of the majority of the court at the time the decision was made.

**Alternative Mini Moot Court**

This is a method for ensuring that every student is involved in the moot court, by having students work in groups of three.

1. Make sure that everyone understands the factual and legal background.
2. Divide your class into triads or groups of three.
3. In each group of three, one person is the judge or justice, one the attorney for the appellant/petitioner and one the attorney for the respondent.
4. Assign or let the students decide which role each person will play.
5. The roles are the same for the judges and two attorneys as they would be in a full class moot court.
6. Give the triads 10-30 minutes to make their arguments, depending on the complexity of the case.
7. After the arguments have been made and the judges have announced their decisions to their two litigants, ask all of the judges to come to the front of the room and have an “open court hearing” where the judges discuss their opinions and reasons. Some judges may decide to change their views after they have heard from their colleagues.
8. Debrief the activity by discussing the actual ruling in the case, if a decision has been rendered, or the strongest and weakest arguments if a decision is still pending, or if it is a purely hypothetical case.
Handout One: **Vocabulary**

The Judiciary

Plaintiff

Defendant

Hearing

Jury

Trial Court

Appellate Court

Mock Trial

Moot Court

Opening Statement

Rebuttal

Closing Statement
Handout Two:

NEW JERSEY JUDICIAL SYSTEM

Supreme Court

Appellate Division of Superior Court (8 parts)

Superior Court

Municipal Court

Tax Court
Handout Three: **New Jersey Courts**

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<th>Trial Courts</th>
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ARTICLE VI: JUDICIAL

SECTION I

1. The judicial power shall be vested in a Supreme Court, a Superior Court, and other courts of limited jurisdiction. The other courts and their jurisdiction may from time to time be established, altered or abolished by law.

SECTION II

1. The Supreme Court shall consist of a Chief Justice and six Associate Justices. Five members of the court shall constitute a quorum. When necessary, the Chief Justice shall assign the Judge or Judges of the Superior Court, senior in service, as provided by rules of the Supreme Court, to serve temporarily in the Supreme Court. In case the Chief Justice is absent or unable to serve, a presiding Justice designated in accordance with rules of the Supreme Court shall serve temporarily in his stead.

2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution.

3. The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

SECTION III

1. The Superior Court shall consist of such number of judges as may be authorized by law, each of whom shall exercise the powers of the court subject to rules of the Supreme Court. The Superior Court shall at all times consist of at least two judges who shall be assigned to sit in each of the counties of this State, and who are resident therein at the time of appointment and reappointment.

2. The Superior Court shall have original general jurisdiction throughout the State in all causes.

3. The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division, which shall include a family part. Each division shall have such other parts, consist of such number of judges, and hear such causes, as may be provided by rules of the Supreme Court. At least two judges of the Superior Court shall at all times be assigned to sit in each of the counties of the State, who at the time of their appointment and reappointment were residents of that county provided, however, that the number of judges required to reside in the county wherein they sit shall be at least equal in number to the number of judges of the county court sitting in each of the counties at the adoption of this amendment.

4. Subject to rules of the Supreme Court, the Law Division and the Chancery Division
shall each exercise the powers and functions of the other division when the ends of justice so require, and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

SECTION V

1. Appeals may be taken to the Supreme Court:

(a) In causes determined by the appellate division of the Superior Court involving a question arising under the Constitution of the United States or this State;

(b) In causes where there is a dissent in the Appellate Division of the Superior Court;

(c) In capital causes;

(d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the inferior courts; and

(e) In such causes as may be provided by law.

2. Appeals may be taken to the Appellate Division of the Superior Court from the law and chancery divisions of the Superior Court and in such other causes as may be provided by law.

Article VI, Section V, paragraphs 1 and 2 amended effective December 7, 1978.

3. The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.

4. Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

SECTION VI

1. The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and associate justices of the Supreme Court, the Judges of the Superior Court, and the judges of the inferior courts with jurisdiction extending to more than one municipality; except that upon the abolition of the juvenile and domestic relations courts or family court and county district courts as provided by law, the judges of those former courts shall become the Judges of the Superior Court without nomination by the Governor or confirmation by the Senate. No nomination to such an office shall be sent to the Senate for confirmation until after 7 days' public notice by the Governor.

2. The justices of the Supreme Court and the judges of the Superior Court shall each prior to his appointment have been admitted to the practice of law in this State for at least 10 years.
3. The Justices of the Supreme Court and the Judges of the Superior Court shall hold their offices for initial terms of 7 years and upon reappointment shall hold their offices during good behavior; provided however, that, upon the abolition of the juvenile and domestic relations courts or family court and county district courts as provided by law, the judges in office in those former courts who have acquired tenure and the Judges of the Superior Court who have acquired tenure as a judge in those former courts prior to appointment to the Superior Court, shall have tenure as Judges of the Superior Court. Judges of the juvenile and domestic relations courts or family court and county district courts who have not acquired tenure as a judge of those former courts shall hold their offices for the period of their respective terms which remain unexpired and shall acquire tenure upon reappointment to the Superior Court. Such justices and judges shall be retired upon attaining the age of 70 years. Provisions for the pensioning of the Justices of the Supreme Court and the Judges of the Superior Court shall be made by law.

Article VI, Section VI, paragraph 3 amended effective December 8, 1983.

4. The Justices of the Supreme Court and the Judges of the Superior Court shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The Judges of the Superior Court shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court or Judge of the Superior Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the justice or judge from office, on pension as may be provided by law.

Article VI, Section VI, paragraphs 4 and 5 amended effective December 7, 1978.

6. The Justices of the Supreme Court and the Judges of the Superior Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment, except for deductions from such salaries for contributions, established by law from time to time, for pensions as provided for under paragraphs 3 and 5 of Section VI of this Article, health benefits, and other, similar benefits. They shall not, while in office, engage in the practice of law or other gainful pursuit.

7. The Justices of the Supreme Court and the Judges of the Superior Court shall hold no other office or position, of profit, under this State or the United States. Any such justice or judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

SECTION VII

1. The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an Administrative Director to serve at his pleasure.

2. The Chief Justice of the Supreme Court shall assign Judges of the Superior Court to the Divisions and Parts of the Superior Court, and may from time to time transfer Judges
from one assignment to another, as need appears. Assignments to the Appellate Division shall be for terms fixed by rules of the Supreme Court.

3. The Clerk of the Supreme Court and the Clerk of the Superior Court shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law.
Handout Five: **Advantages and Disadvantages of Appointed and Elected Judges**

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<tr>
<td><strong>Elected Judiciary</strong></td>
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Consider the political cartoon. What is happening?

Explain why judicial independence is important to democracy and the rule of law.
Handout Seven: Simplified Rules of Evidence

1. Introduction of Physical Evidence
   - Ask the judge for permission to have the item marked for identification
   - Show the item to each side
   - Ask the witness on the stand to identify the item
   - Move the item into evidence

2. Forms of questions
   - Only direct questions (“can you please tell me...”) can be used during the direct examination to evoke a narrative answer
   - Leading questions (isn’t it true that....?) can only be asked during cross examination

3. Witness opinions
   - Witnesses should confine their testimony to what they did, saw, heard, smelled, etc.)
   - Witnesses generally may not give their opinions unless they are expert witnesses testifying about their area of expertise.

4. Hearsay
   - Hearsay is an out-of-court statement offered to prove the truth of what is asserted. (“I heard that Sam was a wild kid”)
   - Hearsay is generally not permitted.

5. Relevancy
   - Evidence or testimony that has nothing to do with the issues of the case are “irrelevant” and may not be presented

6. Impeachment
   - If a witness contradicts facts in his or her previous statements, the opposing side can impeach the witness on cross-examination.
   - To do this, the opposing side must show the witness the statement, ask “Is this your sworn statement?”, and then read the portion that in contradictory and point out the contradiction.
Handout 8: **Conducting a Mock Trial**

1. Bailiff calls the case” All rise. The Court of ____________ is now is session. The Honorable Judge ________________ presiding.

2. Opening statement by the Prosecutors (for a criminal case) or the plaintiff’s attorney (for a civil case) explains what their evidence will be and what they will try to prove.

3. Opening statement by the Defendant’s attorney explains their evidence and what they will try to prove.

4. Prosecutor or plaintiff’s attorney calls witnesses to testify (direct examination) and introduces physical evidence.

5. Each prosecutor/plaintiff’s witness may be cross-examined by the defense attorney.

6. Defendant’s attorney calls witnesses to testify (direct examination).

7. Each defense witness may be cross-examined by the prosecutor/plaintiff’s attorney.

8. Closing Statements. The lawyer for the plaintiff or government usually goes first to review the evidence presented, emphasizing that which is most favorable to the plaintiff/prosecution. Then the defense presents its closing, reviewing the evidence and emphasizing what is most favorable. Each side asks for a decision in its favor and explains why.

9. Jury instructions (for jury trials). The judge explains to the jury the appropriate rules of law that it is to consider in weighing the evidence.

10. Deliberations and decision by the jury (or judge, if no jury trial) based on the evidence presented and the credibility of the witnesses.

Handout 9: **Conducting a Moot Court**

**The Hearing:**

1. Opening Statement and Argument
   - The chief judge/justice should ask each side to present its arguments in the following order:
     - Appellant/Petitioner: 1-2 minute Opening Statement explaining what happened during the lower court’s proceedings, followed by a 5-10 minute argument based on the U.S. or NJ Constitution, statute, and case law.
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   - The closing should be a concise summary of the arguments
   - First the Respondent makes a 3-5 minute rebuttal and closing
   - Then the Appellant makes a 3-5 minute rebuttal and closing.

**The Judicial Conference and Decision:**

1. After all arguments have been presented, the justices may remove to another room for deliberations or hold an open judicial conference by remaining in the room to discuss the arguments and make a decision.
2. The rest of the class should listen to the members of the court deliberate but they cannot talk or interrupt the deliberations.
Conducting a Moot Court continued:

3. The judges should discuss:
   a. The strongest arguments presented by each side, as well as points that could/should have been raised but weren't.
   b. Each judge should explain his or her initial thinking on the decision and the reasons.
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2. If you are using a purely hypothetical set of facts or a case which has not yet been decided, discuss the strength and weaknesses of the arguments that were made, and any other arguments that should or might have been made.
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