THE FIFTY-SIXTH ANNUAL NORTH AMERICAN INVITATIONAL MODEL UNITED NATIONS

Dear Delegates and Moderators,

Welcome to NAIMUN LVI and more specifically welcome to The Supreme Court of the United States (SCOTUS). The staff of NAIMUN LVI has been working day and night to make this the most rewarding and educational experience yet, and we are excited to welcome you all to DC in February!

This document is the topic abstract for The Supreme Court of the United States (SCOTUS). It contains three key elements to allow you all to prepare well in advance for the committee: topics, structure, and research avenues. The goal of this abstract is to give you a better understanding of the content in the committee. As well, it is meant to be a launch point for further research about the content of this committee. Please note that due to the docket of Supreme Court cases for the 2019 term not being announced until closer to the conference, this topic abstract will cover how the committee works and the best way that delegates can prepare in advance of the Background Guide. By reading and understanding the topic abstract, you will more fully get a sense of how this committee will be run at NAIMUN and what specific issues the NAIMUN staff want you to focus on.

We hope to be of assistance to you in your preparation for NAIMUN LVI. If you have any questions, comments, or concerns, please feel free to contact the Secretary-General or Director-General. We look forward to welcoming you to the NAIMUN family!

Best,
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Topic Abstract: SCOTUS

Structure and Role of the Supreme Court

The Supreme Court is made up of Nine Justices who are appointed by the President of the United States and confirmed by the U.S. Senate. The Supreme Court was established under Article III of the US Constitution.[1] The Constitution created the Supreme Court as the highest court in the land whose rulings supersede all other appellate court decisions, and its wide-ranging jurisdiction extends over cases between two or more States, controversies between the United States and a State, and proceedings in which ministers of foreign states are parties. The Supreme Court gained much of its true powers, however, in the landmark ruling of *Marbury v Madison* (1803). *Marbury v. Madison* established the Supreme Court's power of judicial review which is: the ability to rule on the constitutionality of the actions of the Legislative and Executive branches of government[2]. This legal principle has thus established the Supreme Court as the interpreter of the U.S. Constitution.

The U.S. Constitution enumerates what the Federal Government, and some issues pertaining to State governments, can and cannot do. It contains important clauses, articles and amendments that establish the powers and procedures of our government and prohibit the infringement upon certain rights. However, aspects of the Constitution were intentionally written quite vaguely and are subsequently open for interpretation. Thus, many issues regarding constitutionality are up to the individual judicial philosophy of the Justices and whether they prefer a strict or loose interpretation of the Constitution. Delegates when preparing for the committee should familiarize themselves with the laws and Constitutional principles pertinent to the cases, and, more broadly, the frameworks by which judges decide.

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[1] "Article III, Judicial Branch," National Constitution Center. https://constitutioncenter.org/interactive-constitution/articles/article-iii

[2] Iannacci, Nicandro. "Marbury v. Madison: The Supreme Court claims its power," National Constitution Center. https://constitutioncenter.org/blog/marbury-v-madison-the-supreme-court-claims-its-power/

Doctrine of Legal Precedent (stare decisis)

Because justices are unelected, serve for life, and hold enormous power in their ability to affect the laws of the US, the Supreme Court generally tries to remain consistent and objective by taking into consideration past cases about similar topics and citing them in order to support their arguments. Even though the Supreme Court might rule on a certain issue, this does not prohibit the Court from revisiting it in the future, since different laws or court cases might emphasize different aspects of the issue. Generally, justices will not make major decisions that fundamentally alter US laws without having legal precedents that justify their decisions as consistent.

The longer precedent stands, the more weight it carries and the less willing justices are to overturn it, though they can still sometimes change their minds. One example is the infamous case *Plessy v. Ferguson*, which allowed states to mandate racial segregation. For decades afterward, segregation cases were decided with that precedent in mind, although the Court did gradually weaken it by applying it with a stricter set of standards. Eventually, the case was overturned entirely by *Brown v. Board of Education* when the Warren Court decided the underlying logic of the precedent was faulty and unconstitutional. That said, if the Court continuously overturns precedents, it may become perceived as less consistent and more activist – substituting the personal opinions of the judges for objective interpretation of the law. Therefore, it is essential for delegates to examine relevant legal precedents of the cases listed in the background guide. Please note that the Supreme Court is not bound to follow the precedents established in lower courts, including the United States Court of Appeals for both 12 Regional Circuits and Federal Circuits; thus, the Justices can adopt, reject, or tweak these precedents when forming Supreme Court decisions.

Judicial Decision Making

The purpose of appellate advocacy is to persuade a judge or panel of judges that your position is more correct than that of your opponent, and this is best achieved by

understanding how judges decide cases. While there is a lot of complexity in the approaches Justices take, a helpful framework divides the Bench into four main camps.

The Textualists

Textualists believe that "the text is law." They guide their decisions by looking at the precise wording and grammar of statutes and regulations, except in cases when the conclusion is absurd. They do not consult legislative history (i.e. the Congressional records and circumstances pertaining to a particular piece of legislation's enactment) when reasoning a decision. Textualism has become synonymous with conservatism in recent decades, primarily under the late Justice Scalia's influence.

The Structuralists

Structuralists make decisions by interpreting the law within the greater structure of government as established by the Constitution. They put particular focus on the dynamic of Federal-State regulations, always weighing the question as to whether the Federal Government has the power to legislate on matters that a State or States may perceive as local. They tend to concentration more on preserving separation of powers, fundamental rights, and other core ideas in the Constitution.

The Consequentialists

Adapted from the philosophy school of the same name, consequentialism weighs the outcomes of the legal precedent that will be established and examines how it will affect communities and future litigants and cases. Consequentialists are cautious about what doors they're opening in the practical application of their decision. For example, when considering the legality of Obama Care's insurance mandate, a consequentialist judge would take into account the law's impact on society, possibly seeing the mandate as a public health benefit and/or compelling state interest, and then weigh those benefits against the potentially perilous cost of extending more power to the Federal Government than the Framers imagined.

The Egalitarians

Egalitarians follow the rule of "simple justice," looking at what would be most fair to the litigants and assuming a role as protector of civil rights. The most famous example

of this is the Warren Courts' *Brown v Board of Education* decision which—in breaking with the legal precedent established in Plessy v Ferguson—rode the turning tide of public opinion to enshrine the public's evolving social values which perceived segregated schooling as inherently unequal and thus in violation of the Fourteenth Amendment's equal protection clause. Egalitarians tend to be more idealistic than consequentialists, and they are often more concerned with the spirit of the law established and less with the consequences of implementation. While egalitarians are applauded for catching up to the social conscience of the public more expediently than waiting for Congress to legislate on the matter, they also garner criticism for using their position to enforce their personal views.

As you prepare for the conference, take time to research the different camps and determine which Justices fall into them. Understanding this logic will inform what kinds of questions you want to ask the Appellant and Respondent when you're portraying a Justice on the Bench; as lawyers for either side, you can also use this framework to understand which Justices will be sympathetic to your cause and how to persuade those who might be on the fence.

Other Considerations

The Constitution is an ideological document in some ways, but it is also a legal document or "rulebook" for how the country should be run. In order to allow practical governance, the Court will often avoid taking extreme positions and will allow for exceptions or clarifications. For example, the Court can consider "compelling state interests" in certain cases, such as the state's interest in providing a good education or good public health to its citizens. Sometimes exceptions will be made to fundamental rights like free speech, but only when it presents a "clear and present danger" to the public and where there is "strict scrutiny" of government restrictions to prevent abuses. There are too many examples of rules to mention here, but delegates should be very aware of their existence and should be sure to make note of them for cases that will be listed in the background guide.

Committee Structure

Throughout the weekend's committee session, we will be replicating the proceedings of the U.S. Supreme Court from the selection of cases, to oral arguments, and to the writing of opinions. Before each case, delegates will be divided into the categories of Justices, who ask questions, debate and ultimately decide and write opinions for the case, lawyers who will present their arguments and answer any questions, and special interests, private individuals or organizations who will present before the court on the behalf of a particular party in the case. While the real Supreme Court has various rankings based on seniority or position (e.g. Chief Justice), in this committee all Justices will have equal powers, privileges and sway, with the exception of the power of the Chief Justice to assign opinions that will be discussed at greater length below.

Positions for the first case will be decided and announced in advance. Over the entire weekend, several cases will be argued, and character assignments will rotate with each case. The position change will be in a manner in which each delegate will have an opportunity to present a case as a lawyer and be a Justice at some point. Additionally, the aim of this committee is that delegates will also have a chance to represent different ideologies during the weekend. Every attempt will be made by the staff of this committee to provide delegates during the weekend with the chance to view the cases and the court from multiple angles and positions. The following section describes how the committee will run, and the Chair reserves the right to change this structure at her discretion during or before the conference in order to maximize the efficiency of the committee and the overall educational experience.

What to Expect

Once the Court is called to order, the delegate representing the Appellant will have 15 minutes to present his or her case. The first 60 seconds will be uninterrupted speaking time during which the Appellant should outline the main strands of their argument. After 1 minute is up, Justices will be allowed to interrupt at any time to ask the Appellant

questions. If there is ever a lull in questions, Appellant counsel may continue to present their case, or they will have the option to end early and sit down. The Court will then move on to the Respondent's presentation. The Respondent will follow the same procedure, with 15 minutes to present his/her case, with 1 minute reserved at the beginning without interruption.

Following both presentations, the Amicus Briefs will be allowed to present their positions. Amicus Briefs are not party to the case themselves, but they are usually special interest groups which have some stake in the matter on the table. In real life, Amicus Briefs are tendered to the Court in document form and not delivered orally, and they are not subject to questions from the Justices. For our purposes, delegates portraying Amicus Briefs will have 7 minutes to address the Court and persuade them to their point of view. This will be given in speech format without interjection from the Bench.

After all parties have presented, the Justices will enter conference. Delegates representing the Appellant, Respondents, and Amicus Briefs will be constructively sequestered and thus not allowed to participate. Conference will begin with each Justice, in order of seniority, expressing their initial leanings on the case (including allusion to *how* they are making their decision, as previously discussed). The Court will then enter a discussion resembling a moderated caucus for a flexible amount of time (expect 20-30 minutes). When matters are more or less settled, voting will begin, again in order of seniority. The delegate representing the Chief Justice will then have the responsibility of assigning the majority opinion, and delegates can petition the dias for permission to file a concurring or dissenting opinion, provided there is sufficient legal basis. The dias will not indulge more than three opinions written for any one case; thus, Justices are encouraged to embrace a spirit of consensus and actively formulate opinions that the maximum number of Justices can sign onto.

The Court will go into unmoderated caucus for opinion writing and then come back together to read the decision and any opinions that need to be presented. Then the Court will go into a recess before the next case is presented.

Preparation

The best preparation is to model one's performance off the real life Supreme Court. Every case heard at Oral Arguments has an audio recording and transcript available online at SCOTUSBlog. Briefs for both sides are also publicly available and are priceless resources for understanding the strengths and weaknesses of a case and the questions lawyers anticipated being asked (and which the Justices should prepare). The cases discussed at NAIMUN will be taken from the SCOTUS Spring 2019 docket, meaning delegates should have access to the real-life briefs and the opinions of lower courts being brought up for review. It is strongly recommended that delegates have access to physical or downloaded electronic copies of these resources, and they will be encouraged to cite them in opinion writing.

Delegates should also familiarize themselves with each Justice's particular "camp" or style of judicial review (Textualist, Structuralist, Consequentialist, Egalitarian, or some combination thereof). It will be helpful to have these notes for reference throughout the conference. Please note that all delegates are expected to be active and constructive members in debate, so if you are assigned Justice Clarence Thomas, famous for staying quiet throughout oral arguments, it is not advised to replicate this aspect of his behavior.

In each case, delegates should also familiarize themselves with the key issues, and interest groups, at play in each case. Full comprehension won't be necessary to succeed, so concentrate on the main ideas and avoid getting too in the weeds on obscure legal topics or cited cases.

Evaluative Criteria

Delegates will be evaluated differently depending on their role. Below are some examples of how the dias will assess their performance.

As Justices

- portray their assigned Justice's personal philosophy/ideological leanings
- ask counsel articulate questions which get to the heart of the most important legal issues in play
- use conference as an opportunity to entice fellow Justices over to their side
- work cooperatively and incorporate multiple perspectives during opinion writing

As Appellant/Respondent

- Be poised, concise, and tie as much as you can back to one or two themes
- Thoughtfully answer the Justice's questions and nimbly pivot to reinforce their main points
- Correctly identify the key issues at play and persuasively articulate the legal merits of their side
- Demonstrate understanding of the weaknesses of their own side

As Amicus Brief

- Have a well-outlined speech with brief introduction, clearly structured middle, and conclusion
- Engage the audience with eye contact, intonation, and effective gestures when appropriate
- Constructively bolster the argument of the side they are supporting

Glossary of Helpful Terms

Amicus curiae: Latin for "friend of the court", it is a person or organization that is not a party in a case, but offers relevant information, usually in support of one side.

Appellant: A term for the person who appeals a legal decision to a higher court for reversal, although not necessarily the Supreme Court.

Appellate Jurisdiction: The power of a court to review decisions and change outcomes of decisions of lower courts. The US Supreme Court has appellate jurisdiction for all cases we will discuss.

Appellee: The respondent in a case that is appealed to a higher court for reversal, though not necessarily the Supreme Court.

As-applied challenge: A challenge to a legal statute in a certain situation, without challenging the statue in other situations. It is the opposite of a Facial Challenge.

Certiorari: Latin for "to be informed" and often abbreviated as "cert", it is a writ whereby a higher court (in this case, the Supreme Court) orders the decision of a lower court to be reviewed by it.

Common Law: A legal system originating in the United Kingdom and inherited by its colonies, including the US. It is a system emphasizing the importance of laws adopted by legislatures, as well as past cases and precedents established by judges.

Defendant: A term for the accused party of violating a civil wrong in a lawsuit, usually originating in a lower court.

Facial challenge: A challenge to a statue that is alleged to be invalid or unconstitutional in all possible instances, and therefore is void.

Formalism: A legal philosophy urging judges to be restrained or neutral when interpreting laws, and to separate legal reasoning from normative considerations.

Habeas Corpus: Latin for "you may have the body", it is a writ in English common law that requires that a person be brought before a judge or court after arrest.

Judicial activism: A usually pejorative term for judges that decide cases based on personal or political beliefs rather than objective interpretation of the law.

Legal standing: In general, it is a term for sufficient connection to and harm from a challenged law or action to allow that party's participation in the case. In the US, this requires: 1. Injury from the law (economic or non-economic, past or imminent, and non-abstract), 2. Causation between the injury and the law or action being challenged, 3. Redressability is likely, not merely speculative.

Living Constitution: Also known as loose constructionism, it is the concept that the Constitution has dynamic meaning that should be interpreted for a modern context.

Mandamus: Latin for "we order", it is a writ from a court ordering an inferior court to do or refrain from doing something that the law requires it to do or not to do.

Originalism: A judicial philosophy that holds that justices are meant to uphold laws based on their original intention or meaning.

Original Jurisdiction: The power of a court to hear a case for the first time. The US Supreme Court has original jurisdiction in cases where one of the parties is a state, or a citizen or government of a foreign nation.

Petitioner: The petitioner is the name of the party that brings the case before the Supreme Court and is the first name to appear in the name of the case (i.e., Petitioner v. Respondent). It is sometimes used interchangeably with plaintiff or appellant.

Plaintiff: A term used for someone who initiates a lawsuit, which often begins in a lower court.

Respondent: The respondent is the party in a legal case called on to respond to the allegations brought by the petitioner and is the second name to appear in the case (i.e., Petitioner v. Respondent). It is sometimes used interchangeably with defendant or appellee.

Stare decisis: Latin for "to stand by things decided", it is a concept central to common law legal systems that principles or rules established in past legal cases are either a binding or persuasive precedent for subsequent cases with similar issues or facts.

Scrutiny: The level of judicial scrutiny applied to a constitutional question determines how a court will analyze the law and its effects and which side—Appellant or Respondent—holds the burden of proof. There are three levels, the less stringent being rational basis review, followed by intermediate scrutiny (a new class created exclusively to deal with gender discrimination, and then strict scrutiny. More on the difference between these three here.

Resources for Further Research

- SCOTUS Blog: http://www.scotusblog.com/ Be sure to check out the "Plain English" section which includes biographies of the Justices and an expanded glossary of legal terms
- Oral Argument audio available at: https://www.supremecourt.gov/oral_arguments/argument_audio/2017
- Oral Argument transcripts available at: https://www.supremecourt.gov/oral_arguments/argument_transcript/2017
- Docket Search/Where to Find Briefs at: https://www.supremecourt.gov/meritsbriefs/briefsource.aspx
- *More Perfect*, a podcast by Radiolab that does in-depth reporting on some of the Supreme Court's biggest rulings. https://www.wnycstudios.org/shows/radiolabmoreperfect/about
- Posner, Richard. *How Judges Think*. Harvard University Press, 2010.
- UChicago Law's Guide: "Tips for Successful Oral Advocacy." https://www.law.uchicago.edu/files/files/Oral%20Advocacy%20Tips.pdf
- "How to Construct an Effective Moot Court," American Bar Association, 2017.https://www.americanbar.org/content/dam/aba/publications/litigation_journal/fall2017/construct-moot-court.authcheckdam.pdf