

the Gov

**“The Third Branch:
Supreme Court”
Language Arts Curriculum**

the Gov
is a feature of

the News

**A daily news broadcast for High School and Middle School students
now under development by MacNeil/Lehrer Productions**



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“The Third Branch: Supreme Court” Language Arts Curriculum

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Fall, 2009

Dear Educator,

the.News online video reports for *the.Gov* provide middle and high school students with a valuable exercise in democracy. This video report on the “The Third Branch: The Supreme Court” that launched on September 25, 2009 looks at the Court, the newest Justice, and the new term during the first year of the Obama administration.

Each video report is supported by a social studies and language arts curriculum. All videos and curricula have been informed by *the.News* instructional design that can be found on the website www.pbs.org/newshour/thenews. *the.Gov* is open-captioned. The curriculum includes content-based standards, discussion questions, student activities, vocabulary and primary reference sources. A complete transcript of each video report includes time codes to assist in isolating specific segments of the video. This material is presented as options to fit teachers’ instructional needs.

We welcome our new partners at the Omaha Public Schools who have joined *the.News* in a special pilot project during the 09-10 school year. In addition to national standards from McRel and the Partnership for 21st Century Skills we have included Nebraska curriculum standards. We are also launching a new authoring tool for students called *YOU.edit*, to launch in early 2010. It will give students an online tool to remix the content of *the.Gov* reports (as well as all the other *the.News* videos), so they can create their own multimedia presentations. This editing tool will reside on our website so that it will be available to all students with an internet connection. It will be password protected so that it can serve as a viable educational asset that allows classroom teachers to assign multimedia projects within the security and content safety of *the.News* website.

For more information and questions about this material contact me at kjaffe@newshour.org

Sincerely,

Karen W. Jaffe
Manager, Education Projects, *the.News*
MacNeil/Lehrer Productions
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“The Third Branch: Supreme Court” Language Arts Curriculum

This lesson was designed to support *the.News* video “The Third Branch: Supreme Court.” The video can be found online at <http://www.pbs.org/newshour/thenews/thegov/> and clicking on the title on the left side of the page.

Grade Level: Middle School/High School

Content Areas: Language Arts /Media Literacy

Key Concept: Students will analyze how members of the legal profession, especially those who are members of the highest court in the country, use language to frame ideas and concepts. Students will also explore in depth the economic, environmental and First Amendment issues related to Supreme Court cases on the fall docket and from history. They will use this information to analyze the arguments involved and derive their own conclusions from the evidence presented.



Omaha Public Schools Language Arts Standards

<http://www.ops.org/district/CENTRALOFFICES/CurriculumandLearning/ContentStandardsfor20072008/tabid/912/Default.aspx>

Grade 7

- Students will build literary, general, academic and content specific grade-level vocabulary.
- Students will write for a variety of purposes and audiences in a variety of genres.
- Students will research, summarize and communicate information in a variety of media and formats (textual, visual, and digital).

Grade 9-12

- Students will build literary, general, academic and content specific grade-level vocabulary.
- Students will write for a variety of purposes and audiences in a variety of genres.
- Students will research, synthesize, and communicate information in a variety of media and formats (textual, visual, and digital)

Key Vocabulary:

Compelling state interest -- a governmental interest (as in educating children or protecting the public) which is so important that it outweighs individual rights.

Deposition -- a statement that is made under oath by a party or witness (as an expert) in response to oral examination or written questions and that is recorded by an authorized officer (as a court reporter).

Apportion -- to distribute based on some proportion.

Writ of certiorari -- an extraordinary writ issued by a superior court (as the Supreme Court) to call up the records of a particular case from an inferior judicial body (as a Court of Appeals).



Original jurisdiction – the jurisdiction granted a court to try a case in the first instance, make findings of fact, and render a usu. appealable decision.

Appellate jurisdiction -- the jurisdiction granted to particular courts to hear appeals of the decisions of lower tribunals and to reverse, affirm, or modify those decisions.

Estoppel -- a bar to the use of contradictory words or acts in asserting a claim or right against another.

Amicus Brief – a brief filed by one (as an individual or organization) that is not a party to a particular lawsuit but is allowed to advise the court regarding a point of law or fact directly concerning the lawsuit.

Merit Brief -- a concise statement of a client's case written for the instruction of an attorney usually by a law clerk.

McRel Standards

<http://www.mcrel.org/compendium/SubjectTopics.asp?SubjectID=7>

Level III (Grades 6-8)

Uses content, style, and structure (e.g., formal or informal language, genre, organization) appropriate for specific audiences (e.g., public, private) and purposes (e.g., to entertain, to influence, to inform)

Writes expository compositions (e.g., states a thesis or purpose; presents information that reflects knowledge about the topic of the report; organizes and presents information in a logical manner, including an introduction and conclusion; uses own words to develop ideas; uses common expository structures and features, such as compare-contrast or problem-solution)

Writes persuasive compositions (e.g., engages the reader by establishing a context, creating a persona, and otherwise developing reader interest; develops a controlling idea that conveys a judgment; creates and organizes a structure appropriate to the needs and interests of a specific audience; arranges details, reasons, examples, and/or anecdotes persuasively; excludes information and arguments that are irrelevant; anticipates and addresses reader concerns and counter arguments; supports arguments with detailed evidence, citing sources of information as appropriate)

Writes business letters and letters of request and response (e.g., uses business letter format; states purpose of the letter; relates opinions, problems, requests, or compliments; uses precise vocabulary)

Understands the different purposes of various media (e.g., to provide entertainment or information, to persuade, to transmit culture, to focus attention on an issue)

Uses reading skills and strategies to understand a variety of informational texts (e.g., electronic texts; textbooks; biographical sketches; directions; essays; primary source historical documents, including letters and diaries; print media, including editorials, news stories, periodicals, and magazines; consumer, workplace, and public documents, including catalogs, technical directions, procedures, and bus routes)

Precedent -- a judicial decision that should be followed by a judge when deciding a later similar case.

Jurist -- an individual having a thorough knowledge of law.

<http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=61/610d76026e388dc5e6c88e6a8ddcef8d>

Mock – feigned; not real; sham: *a mock battle*.

<http://dictionary.reference.com/browse/mock>

Special Master – A "special master" is appointed by a court to carry out some sort of action on its behalf.

Theoretically, a "special master" is distinguished from a "master". A master's function is essentially investigative, compiling evidence or documents to inform some future action by



the court, whereas a special master carries out some direct action on the part of the court.

http://topics.law.cornell.edu/wex/special_master

Blue Dog conservative -- The Democratic Blue Dog Coalition is a group of currently 52 moderate and conservative Democratic Party members of the United States House of Representatives, first formed in 1995. The Blue Dogs promote, among other things, fiscal conservatism and accountability.

<http://dictionary.reference.com/browse/blue+dog+democrat>

Tipping justice – A Supreme Court justice who “tips” the court in a particular direction—either liberal or conservative.

<http://writ.news.findlaw.com/dean/20070223.html>

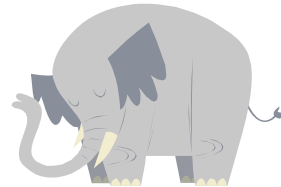
Swing justice -- Many controversial issues have been decided by a 5-4 vote of the US Supreme Court. The swing vote is the person who is vote number five. It's called a swing vote because the person does not always vote with either "side" of the court.

http://uspolitics.about.com/od/supremecourt/p/swing_vote.htm



Wings – Supreme Court justices who consistently side with a particular political “wing,” either the liberal or conservative wing.

<http://www.npr.org/templates/story/story.php?storyId=103694193>



Playmakers – Supreme Court justices who are consensus-builders, forming coalitions of five colleagues and writing decisions that clarify the law and, sometimes, change American society.

<http://www.washingtonpost.com/wp-srv/national/longterm/supcourt/brennan/brennan1.htm>

Strict constructionist – a justice who believes the Supreme Court should interpret the Constitution using only its specific wording and the original intentions of its authors.

http://encarta.msn.com/encyclopedia_1741500781_6/united_states_government.html

Loose constructionist – a justice who favors a liberal interpretation of the Constitution. They hold that the authors of the Constitution did not intend to preserve an unchanging society, but instead meant the Constitution to adapt as the needs of the nation changed.

http://encarta.msn.com/encyclopedia_1741500781_6/united_states_government.html



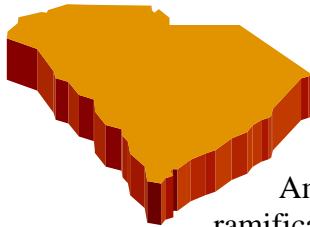
Materials:

- Computer with a browser access to the Internet
- Microsoft PhotoStory
- Windows Media Player 10
- Segment 1 of *the.News*
- Pens and highlighters
- Scratch paper



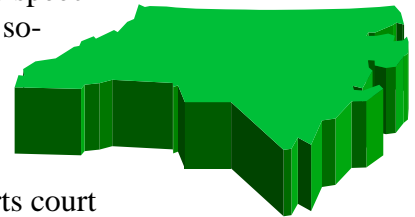
Background: The nine justices on the Supreme Court, including Sonia Sotomayor, the newest jurist on the nation’s highest court, are given lifetime appointments and are all perceived to be neutral, detached interpreters of the Constitution who will review clear and convincing evidence and render unbiased decisions devoid of political bias. As the highest appellate court in the federal court system, the Supreme Court gets thousands of petitions of certiorari a year, although it only takes less than 1% of them. Despite its discriminating tastes, the Roberts court already has a full docket of socially, economically and politically-charged cases to adjudicate this fall. More information on upcoming Supreme Court cases may be found here:

<http://www.abanet.org/publiced/preview/briefs/oct09.shtml>



According to the Constitution, the Supreme Court has the power to resolve conflicts that arise between different states. In *South Carolina v. North Carolina*, South Carolina seeks to get its “fair share” of the water resources of the Catawba River. The court will also consider the unusual First

Amendment case of *U.S. v. Stevens* which has free speech ramifications related to the distribution of controversial so-called “crush video” material thought to be illegally depicting animal cruelty.



Questions about the direction the court will go under the new Obama administration are causing a stir in political circles: (1) Will the Roberts court continue to shift to the right even as the recent elections moved the nation to the left? (2) How will the views of Sonia Sotomayor, who will succeed liberal Justice Souter, affect court decisions? (3) What will the addition of Justice Sotomayor do to decisions related to environmental issues as in the Carolinas case or to decisions related to First Amendment rights as in the Stevens case?



Partnership for 21st Century Skills

http://www.21stcenturyskills.org/documents/p21_framework_definitions_052909.pdf

Media Literacy

- Understanding how media messages are constructed, for what purposes and using which tools, characteristics and conventions.

Critical Thinking and Problem Solving

- Framing, analyzing and synthesizing information in order to solve problems and answer questions.

Communication and Collaboration

- Articulating thoughts and ideas clearly and effectively through speaking and writing

Information Literacy

- Accessing information efficiently and effectively, evaluating information critically and competently and using information accurately and creatively for the problem at hand.

Civic Literacy

- Participating effectively in civic life through knowing how to stay informed and understanding governmental processes.

ICT Literacy

- Using digital technology, communication tools and/or networks appropriately to access, manage, integrate, evaluate and create information in order to function in a knowledge economy.

Make Judgments and Decisions

- Effectively analyze and evaluate evidence, arguments, claims and beliefs.
- Analyze and evaluate major alternative points of view.
- Interpret information and draw conclusions based on the best analysis.



Lesson Plan (Time Frame: 5 class periods)



The main question in the *U.S. v. Stevens* case is whether Robert J. Stevens' conviction under 18 U.S.C. § 48 based exclusively on the content of his "crush video" films violates the Free Speech Clause of the First Amendment. The law makes it a federal felony, punishable by up to five years of imprisonment, to "knowingly create, sell, or possess a depiction of animal cruelty," if done "with the intention of placing that depiction in interstate or foreign commerce for commercial gain." Consider the facts of this case and determine whether you think the Third Circuit's decision to overturn Stevens' lower court conviction will be upheld. More information on the Stevens case may be found here: http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/08-769_Respondent.pdf

Project

- Use Microsoft's Photo Story 3 to develop a three to five minute mini-documentary on the *U.S. v. Stevens* case or other "free speech" cases from history such as *Hazelwood School District v. Kuhlmeier* or *Tinker v. Des Moines Independent Community School District*.

Facts of other "free speech" Cases:

- Every three weeks at Hazelwood East High School in Missouri, the Journalism II class published a paper called *Spectrum*. Because *Spectrum* was sponsored by the school, the articles that the class proposed had to be approved by school administrators. The principal of Hazelwood East found two articles—one on pregnant students and one on how Hazelwood students were affected by their parents' divorces—objectionable and instructed the journalism teacher to leave the articles out of the paper. The principal's decision resulted in the question: is it a violation of the First Amendment for high school authorities to exercise editorial control over the content of a school-sponsored newspaper produced in a journalism class? Students may listen to the full audio and read a written transcript of the case, *Hazelwood School District v. Kuhlmeier* 484 U.S. 260 (1988), which may be found at the following web site: http://www.oyez.org/cases/1980-1989/1987/1987_86_836/argument



- During the Vietnam War, a group of adults and students in Des Moines, Iowa protested the war by wearing black armbands to school. The school board adopted a policy stating that anyone who wore an armband to school would be asked to remove it—refusal to do so would result in suspension. The school board's decision resulted in the question: is it a violation of the First Amendment promise of freedom of speech for school officials to prohibit students from wearing armbands to symbolize political protest? The full audio and a



written transcript of the case, *Tinker v. Des Moines Independent Community School District* 393 U.S. 503 (1969), may be found at the following web site:

http://www.oyez.org/cases/1960-1969/1968/1968_21/argument

Your mini- documentary's goal:



- Summarize a landmark free speech case by focusing on the main question, listing the issues involved and describing how the case was decided and what the decision said about First Amendment constitutional rights. Finally, try to describe the future implications of the case.

Using Photo Story 3

- Photo Story 3 is free to download from the Internet and helps you create digital stories using text, graphics and music. The first step after downloading is to upload your pictures into your “story” (a total of around 15-20 pictures is enough for a three to five-minute film).
- Next, you will be given some limited options to edit each picture when you click on it— make sure you save your changes before you move on to the next picture. It’s important to follow the adage “Save Early, Save Often” when working with Photo Story 3. As you continue through the program, you can create title slides, add motion, narration and music until you finally save your project in a .wmv format.
- Share your documentary with the class!

Photo Story 3 may be downloaded here:

<http://www.microsoft.com/windowsxp/using/digitalphotography/PhotoStory/default.mspx>

Lesson 2 (Time Frame: 2 Class Periods)

Kristen Myles is the first woman in history to be assigned by the Supreme Court as Special Master, an investigative role in which evidence and documents are compiled to inform the court about a particular case in which it has original jurisdiction—in this instance the matter of *South Carolina v. North Carolina*, a case being heard by the Supreme Court this fall. Normally thought of as only having appellate jurisdiction, the court will have original jurisdiction and act as a trial court in this compelling case, the result of which will have profound environmental, economic and political consequences for not only the two neighboring southern states but also other states having similar disputes over diminishing water resources.





So far, Ms. Myles has had to analyze evidence and gather information to answer such difficult questions such as:

How should the Catawba River, a body of water said to be one of the most endangered rivers in the United States, be apportioned between North Carolina and South Carolina? Has South Carolina met the legal burden of showing substantial injury—environmental and economic harm—from North Carolina’s diversion of the water resources of the Catawba River? Is there clear and convincing evidence to show substantial injury?



To enhance students’ ability to write in a variety of genres” ask them to play the role of a Special Master and to write a mock legal brief that captures the essence of the issues associated with the *South Carolina v. North Carolina* “water war” case.

Student briefs are documents put together by students to summarize and analyze a case for use in a classroom discussion. The student brief is a set of notes, presented in a logical, structured way with the goal of sorting out the parties and identifying the issues.

The elements of a comprehensive student brief include such elements as:

1. Title and Citation
2. Facts of the Case
3. Issues
4. Reasoning
5. Analysis

To better prepare students to complete their brief, ask them to read the instructions provided at the John Jay College of Criminal Justice Lloyd Sealy Library’s “How to Brief a Case” found here:

<http://www.lib.ijay.cuny.edu/research/brief.html>



Extension Activity (Time Frame: 3 Class Periods)

The Senate’s approval of Sonia Sotomayor as the next associate justice of the United States highlights the importance of the president’s appointment power. Sotomayor is only the third woman and the first Latina on the United States Supreme Court. The 55-year old judge rose from relative poverty in the Bronx to achieve a seat on the nation’s highest court. Many praised President Obama’s appointment of Sotomayor as a breakthrough achievement



for the country, believing that the current makeup of the court more clearly reflects who we are as a nation. President Obama may not be finished—with as many as three justices of retirement age (Justice John Paul Stevens is 88 years old), Obama has a chance to reshape the conservative-leaning court for years to come. Will the president’s future appointments become more liberal, left of center or “Blue Dog” conservative?

- Break students into small groups and ask each group to list the qualifications, personal characteristics and individual qualities that are necessary to be viable candidates for the job of Supreme Court Justice. Students should define terms such as strict constructionist, loose constructionist, tipping justice and swing justice, wings and playmakers in their deliberations on potential candidates.
- Groups may also develop lists of interview questions and conduct mock interviews to identify satisfactory responses from prospective candidates.
- Students should share prepare a “short list” of candidates from the world of government and politics who they believe would be best qualified to be the next justice on the Supreme Court.
- As a follow-up, ask each group to imagine that they have been hired as a team of public relations experts, or “image makers” for a Supreme Court from history. Groups should pick a court such as the Warren Court, the Burger Court, or the Rehnquist Court and research cases that reflect the noteworthy changes in judicial power that are associated with each court. Students may develop biographical profiles of prominent court members and produce television and radio spots that reflect and promote the vision and the impact of each court. Students may also create ads that speculate about what the “Obama Court” of the future will look like. A wealth of information on the history of the Supreme Court may be found at the following web site: <http://www.oyez.org/courts/roberts/robt2>



Assessment

Evaluate students on both their analysis and ability to break down Supreme Court cases in their own words. Equally important to evaluate is the students’ ability to construct a corresponding narrative that, combined with compelling imagery, demonstrates their deep understanding of landmark cases. Students should be assessed on their grammar, spelling and depth of details in their case analyses.

Resources: The following websites are recommended for further information:

Map of the Carolinas

http://www.lib.utexas.edu/maps/united_states/north_carolina_90.jpg



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Tinker v. Des Moines Independent Community School District.

<http://www.landmarkcases.org/tinker/home.html>

Hazelwood School District v. Kuhlmeier

<http://www.landmarkcases.org/hazelwood/home.html>

StreetLaw.org

www.streetlaw.org/scsi

Activity Designer

Written by Jeffrey Litzke, a curriculum developer and social studies teacher at Connections Academy.