



Moot Court
An Appellate Court Simulation

People of the State of Michigan v Booker T. Hudson, Jr.

**Teacher
Guide**



Michigan Supreme Court Learning Center

925 W. Ottawa St.
P.O. Box 30205
Lansing, MI 48909
517-373-7171
web: courts.mi.gov/plc/

Contents

Introduction	2
Grade Level & Curriculum.....	2
Suggestions for Collaboration.....	2
<i>People v Hudson</i> : Background	3
Sequence of Activities.....	4–7
Tips for Teachers	8
Statement of the Case.....	9–10
Case History	11
Questions Involved	12
Constitutional & Legislative Provisions.....	13
Job Descriptions	14–20
Tips for Legal Research	21
Guide for Attorneys.....	22–24
Guide for Justices	25–28
Order of Business.....	29
Glossary	30–34
Further Resources	35–36

Introduction

Simulations, such as mock trials and moot court, can be excellent ways to engage students in real-life situations that require higher-order thinking. They allow students to practice skills related to public discourse and decision making.

Moot court replicates the conversation between attorneys and judges/justices at the appellate level. This structured discourse requires those involved to understand the case from all angles and to project the impact of decisions on future cases.

People v Hudson is based upon a court case of the same name, which proceeded through the Michigan court system and was eventually heard by the U.S. Supreme Court in 2006. *These materials are written as if the case was being heard and decided by the Michigan Supreme Court.*

The case, which examines Fourth Amendment rights related to search and seizure, was originally written for the high school session of the Learning Center’s Exploring Careers in the Law, 2006. Participants were 10th–12th grade students interested in pursuing legal careers. The students played all of the roles required for moot court, including justice, attorney, court crier, and public information officer. For more information about Exploring Careers in the Law, contact Rachael L. Drenovsky, Learning Center Coordinator, at 517-373-5027 or drenovskyr@courts.mi.gov.

Grade Level & Curriculum

These materials are intended for use at the high school or undergraduate level. They align with multiple standards and strands of the Michigan Curriculum Framework, including:

Social Studies

SOC III.3.HS.1, SOC III.3.HS.2, SOC V.1.HS.1, SOC V.1.HS.2, SOC V.2.HS.1, SOC V.1.HS.2, SOC VI.1.HS.1, SOC VI.2.HS.1, SOC VI.3.HS.1

English Language Arts

CE 1.3.1, CE 1.3.2, CE 1.3.5, CE 1.3.6, CE 1.3.7, CE 1.3.8, CE 1.3.9, CE 1.5.1, CE 1.5.2, CE 1.5.3, CE 1.5.5, CE 2.1.1, CE 2.1.3, CE 2.1.4, CE 2.1.7, CE 2.1.10, CE 2.1.11, CE 2.2.2, CE 2.2.3, CE 2.3.1, CE 2.3.3, CE 2.3.4, CE 2.3.5, CE 4.1.1, CE 4.1.2, CE 4.1.3, CE 4.1.4, CE 4.2.1, CE 4.2.2

Suggestions for Collaboration

Moot court can provide an excellent opportunity for collaboration across the curriculum and with members of the community. In addition enlisting those who teach social studies, speech, and debate, teachers may also wish to involve experts from the legal field, including lawyers, judges, law professors, and law students. Moot court competitions are a popular extra-curricular activity in law schools, so many members of the legal community have experience in preparing and presenting a moot court.

People v Hudson: Background

Real Case

People of the State of Michigan v Booker T. Hudson, Jr. is based upon a court case of the same name, which proceeded through the Michigan court system. The case was appealed to the Michigan Supreme Court, which declined to hear the case—“denied application for leave to appeal.” The case was then appealed to the U.S. Supreme Court, which agreed to review the case—“granted *certiorari*”—and issued a decision in June 2006. (See Further Resources for materials related to the federal case.)

At Issue

The case is important because it deals with the constitutional issue of unreasonable search and seizure. Not only are protections offered by the Fourth Amendment of the U.S. Constitution, but they also appear in Article I, Section 11, of the Michigan Constitution. Further, Michigan law under the “knock and announce” statute (MCL 780.656) requires police officers to announce themselves before entering a dwelling.

The case, which began with the search of the home of Booker T. Hudson of Detroit and the discovery of crack cocaine, centers on the following questions:

- Did the search of the defendant’s house violate the constitutional protections from unreasonable search and seizure and the requirements of the “knock and announce” statute?
- Should the evidence be excluded as a result of any violations?

State v Federal

The materials for this case were prepared as if the case were being heard by the Michigan Supreme Court. The briefs emphasize state law and precedents of state courts. The case can be used to compare and contrast the state and federal governments. It can also give students an idea about the workings of the state court system. The great majority of court cases in Michigan are undertaken by the state courts, and citizens are more likely to have direct contact with Michigan’s one court of justice than the federal courts.

Sequence of Activities

Time Required

The simulation can be completed in 1–2 weeks.

- Steps 1–2 1–2 class periods
- Step 3 1 class period
- Step 4 1–3 class periods
- Step 5–6 1–2 class periods
- Step 7–8 1–2 class periods

1. Discuss the structure of the Michigan court system, explaining the difference between trial courts, which conduct trials, and appellate courts that review those trials to see if they were conducted fairly. The Michigan Supreme Court, which is the highest state court, is the final word on the law in the State of Michigan.

Resources

- Michigan’s One Court of Justice, Michigan Supreme Court Learning Center
<http://courts.michigan.gov/lc-gallery/mich-court-system.htm>
 - One Court of Justice, State Court Administrative Office
<http://courts.michigan.gov/scao/resources/publications/pamphlets/onecourt.pdf>
 - Self-Help Center: Going to Court, State Court Administrative Office
<http://courts.michigan.gov/scao/selfhelp/intro/court.htm>
2. Discuss how a court case proceeds to the Michigan Supreme Court and the role that oral arguments play in the Court’s decision-making process. Oral arguments are structured, highly stylized conversations between the attorneys and judges or justices about a case. It is very helpful for students to see and/or hear how they are conducted. Several resources are available.

Resources

- Oral Arguments in the Michigan Supreme Court, MSC Learning Center
This video resource and companion classroom discussion guide examine the role of oral arguments in the appellate process of the Michigan Supreme Court. The resource uses the civil case *Wayne County v Hathcock* as a case study. The case decided issues related to eminent domain and property rights.
Discussion Guide <http://courts.michigan.gov/plc/orals-discussion-guide.pdf>
VHS/DVD Request Form <http://courts.michigan.gov/plc/orals-loan-form.pdf>
- Overview, Michigan Supreme Court
http://courts.michigan.gov/supremecourt/AboutCourt/msc_over.htm
- Supreme Court Processing of Cases, Michigan Supreme Court
http://courts.michigan.gov/supremecourt/2003-48_02-03-05.pdf
- Live Coverage of the Michigan Supreme Court, Michigan Government Television
<http://www.mgtv.org/>
- Video Stream of *People v Kazmierczak* (1999), Michigan Government Television
<http://www.mgtv.org/video.html> (scroll down)

3. Distribute the statement of the case to students. Review the facts of the case and debate the merits of each side.
 - What happened in the case? (See Case History)
 - Who is the appellant/appellee?
 - What are the issues involved? (See Questions Involved, Constitutional & Legislative Provisions)
 - How did the lower courts rule?
 - Why was the ruling controversial? What are the implications for the future?

Resources

- Academic Controversy Primer, PBS
Detailed handouts and instructions for engaging students in a type of debate and problem-solving that encourages participants to see both sides of an issue.
<http://www.pbs.org/wnet/wideangle/classroom/controversy.html#procedure>

4. Familiarize students with the Fourth Amendment and search and seizure, including search warrants, warrantless searches, and the exclusionary rule by completing the activities related to the important precedent, *Mapp v Ohio* (1961), available through the Landmark Cases web site. Review the search warrant form used by Michigan courts.

Resources

- *Mapp v Ohio*, Landmark Cases
Activities <http://www.landmarkcases.org/mapp/home.html>
Answers <http://www.landmarkcases.org/keys/mapp.htm> (hidden)
- Affidavit for Search Warrant and Search Warrant, State Court Administrative Office
<http://courts.michigan.gov/scao/courtforms/generalcriminal/mc231.pdf>.

5. Ask students to select their roles. Depending upon the size of the class, you may vary the number of students in each role. If the class has few students, the roles of court crier, court clerk, and public information officer can be combined.
 - Justices (7)
 - Court crier (1)
 - Court clerks (1–2)
 - Public information officers (1–3)
 - Attorneys for the appellant (2–6)
 - Attorneys for the appellee (2–6)
 - Journalists (2–10)
6. Distribute the tip sheets to the justices and attorneys and make the briefs for both sides available to all the groups. The justices and employees of the Court, the attorneys for each side, and the journalists should gather as groups to discuss the case.
 - **Journalists** may listen to the conversations of the other groups to write their news stories. They may obtain statements from the attorneys and speak with the public information officers; however, the public information officers may not discuss which arguments the justices favor.

- **Justices** should select a chief justice to lead this discussion and other proceedings of the Court. Then, the justices and the employees of the Court should examine the issues and study important precedents, which may be listed in the briefs. Each justice should develop questions to ask the attorneys. (Sample questions are included in the tip sheet.) The justices may not speak with the attorneys or the media.
- **Public information officers** should act as liaisons between the Court and the media. In addition, they should prepare their press release about the case.
- **Attorneys** should select two–three students to argue for each side. Then, they should examine the arguments, including important precedents, which may be listed in the briefs. If possible, they should develop tests or rules for the Court to adopt.

Resources

- Cases and Codes, Findlaw
<http://www.findlaw.com/cascode/>
 - Opinion Search for the Michigan Supreme Court and Court of Appeals
<http://courtofappeals.mijud.net/resources/opinions.htm>
Includes published opinions since 2001. Use “field search” to look for party names or case types. “Text search” allows for keyword searching of the opinions.
People of the State of Michigan v Christopher Lamar Hawkins (2003)
http://courtofappeals.mijud.net/DOCUMENTS/OPINIONS/FINAL/SCT/20030620_S121698_63_hawkins13-14dec02.PDF
This opinion discusses the exclusionary rule and important precedents, including two Michigan Supreme Court cases, *People v Eugene Stevens* (1999) and *People v Michelle Ann Sobczak-Obetts* (2001).
 - Search Warrants Seminar Materials, Michigan Judicial Institute
<http://courts.mi.gov/mji/webcast/searchWarrants/search-warrants-final.pdf>
Detailed information for state judges about search warrants, constitutional protections, and case law. Includes a discussion of “knock and announce.”
 - Press Releases, Michigan Supreme Court Public Information Office
<http://courts.michigan.gov/supremecourt/Press/index.htm>
7. Arrange the classroom to replicate the Michigan Supreme Court courtroom. Then, undertake oral argument, following the procedures outlined in Order of Business. Allow 10–15 minutes for each side’s arguments, including questions from the justices and rebuttal. If the justices still have relevant questions after the full time has elapsed, you may allow the attorneys to continue answering questions.
- **Journalists** should listen carefully to the arguments and then write a follow up news story about the impact of the Court’s decision.
 - **Justices** should listen carefully to the arguments and ask questions to clarify issues. After arguments, the justices should meet to discuss and come to a decision. Once the Court has a majority decision, the “author” of the majority opinion should announce the decision and reasoning. Justices with dissenting opinions should do the same. Note: The Michigan Supreme Court only releases opinions in writing. The Court does not announce opinions from the bench.

- **Attorneys** should make their best arguments for each issue and answer the justices' questions as completely as possible. You may wish to allow the attorneys to confer on their answers.

Resources

- Michigan Hall of Justice, Michigan Supreme Court Learning Center
<http://courts.michigan.gov/plc/misc/HOJbrochure.pdf>
- Ten Tips for Presenting Better Oral Argument, Sacramento Bar Association
http://www.sacbar.org/members/saclawyer/mar_apr2005/law_motion.html
- UCLA Law School Moot Court Program
http://www.law.ucla.edu/moot/materials_on_advocacy.htm

8. Debrief the experience with the students.
 - What went well? What did not?
 - What surprised you about the arguments?
 - What were the similarities/differences in the arguments?
 - What were the most forceful arguments and why?

You may also wish to discuss the outcome of the case at the U.S. Supreme Court. If the students do not make the same decision as the federal Court, their conclusions are not wrong, only different. They heard different arguments and their decisions were based upon state law and precedents as opposed to federal law.

Michigan v Hudson (2006), Oyez: U.S. Supreme Court Media
http://www.oyez.org/cases/case/?case=2000-2009/2005/2005_04_1360

Tips for Teachers

- For added pomp and circumstance, swear in the lawyers and justices using the official oaths. For more information, see the lesson on legal ethics in the Careers in Law and Legal Studies curriculum guide, <http://courts.michigan.gov/plc/resources.htm>.
- It also helps to ask students to dress for their roles, including conservative business attire for the attorneys and robes for the justices. Graduation gowns and choir robes make good stand-ins for judicial robes. Although black is traditional for judicial robes in the United States, they can be of any color.
- To lend authenticity to the briefs, copy the cover of the appellant's brief on blue paper and the appellee's brief on red, as is the practice of the Michigan Supreme Court clerk's office.
- During oral argument, the justices sit according to seniority. The chief justice sits in the center. Associate justices are seated according to seniority, alternating to the right and left of the chief justice. Thus, the justice with the most seniority sits to the chief justice's immediate right and the justice second in seniority is on the chief justice's left. The pattern continues in this way, ending with the justice having the least seniority sitting to the chief justice's far left. Using the age of the students is an easy way to determine "seniority" for moot court.
- Consider placing name cards on the bench to assist attorneys in addressing the justices during their argument.
- The briefs list two issues, so it is easiest to divide the arguments according to the issues. A third student can make the rebuttal for the appellant.
- Although the justices are allowed to ask questions at any time during the argument, justices in moot court often find it difficult to interrupt their peers, waiting till the end to ask their questions.
- Justices should be prepared for persuasive arguments to sway their preliminary votes.
- If the moot court will be held in front of spectators, students may find it helpful to stage a dry-run, completing the formalities only, or a mini-moot court, allowing students to make limited arguments.

Statement of the Case

At 3:35 in the afternoon of April 27, 2003, Detroit police officers executed a warrant for narcotics and weapons at the Detroit residence of Booker T. Hudson, Jr. The first officer to the door, the so-called “shotgun man” testified that the officers yelled “Police, search warrant!” as they approached the premises. He also testified that it took “maybe 3 to 5 seconds” before the premises were entered; this occurred “real fast.” The officer did not knock, did not wait for someone to answer the door, and he did not hear anything inside before entering. He testified that he entered by simply opening the door and going inside. This officer had been shot at in the execution of previous search warrants.

After the entry was made, Mr. Hudson was directed to stand, and individually wrapped rocks of crack cocaine in a plastic bag were discovered in the chair where he had been sitting, at which point he was arrested. In the search after that arrest Mr. Hudson was found to have five rocks of crack cocaine in his pocket when searched by the same officer. It was the latter contraband upon which Mr. Hudson was convicted.

Before trial, an evidentiary hearing was held on Mr. Hudson’s claim that the officers executing the warrant had failed to wait a reasonable period after announcing their presence and purpose, and that accordingly, the evidence obtained after the illegal entry should be suppressed.¹

The trial judge agreed with Mr. Hudson that the entry was unlawful, and entered an order suppressing the evidence.

The prosecutor appealed this decision immediately, before trial – an interlocutory appeal.² This was necessary because without the evidence of the contraband, the case against the defendant could not proceed successfully. The Michigan Court of Appeals accepted the case and peremptorily reversed the trial court. The Michigan Supreme Court did not grant leave for defendant to appeal the interlocutory order.

Defendant Hudson was then convicted at a bench trial.³ That conviction was affirmed by the Court of Appeals. The Michigan Supreme Court then granted leave to appeal.

The defendant, called “appellant” in the pleadings is appealing on the bases raised in the evidentiary hearing and interlocutory appeal. His argument will be that, 1) the entry was unlawful for several reasons, and 2) any evidence obtained as a result of that entry should

¹ “Suppression” of evidence means that the evidence is not permitted to be presented against the witness at trial. “Exclusion” is another term that means the same, and the “exclusionary rule” is the law that has developed to establish the basis for excluding evidence from trial.

² An “interlocutory” appeal is of a ruling made by a judge before a trial is conducted and jury verdict entered.

³ A “bench trial” is a trial conducted before a judge, without a jury. A defendant may waive his right to trial by jury.

have been suppressed under the exclusionary rule. He will request that the Supreme Court reverse his conviction.

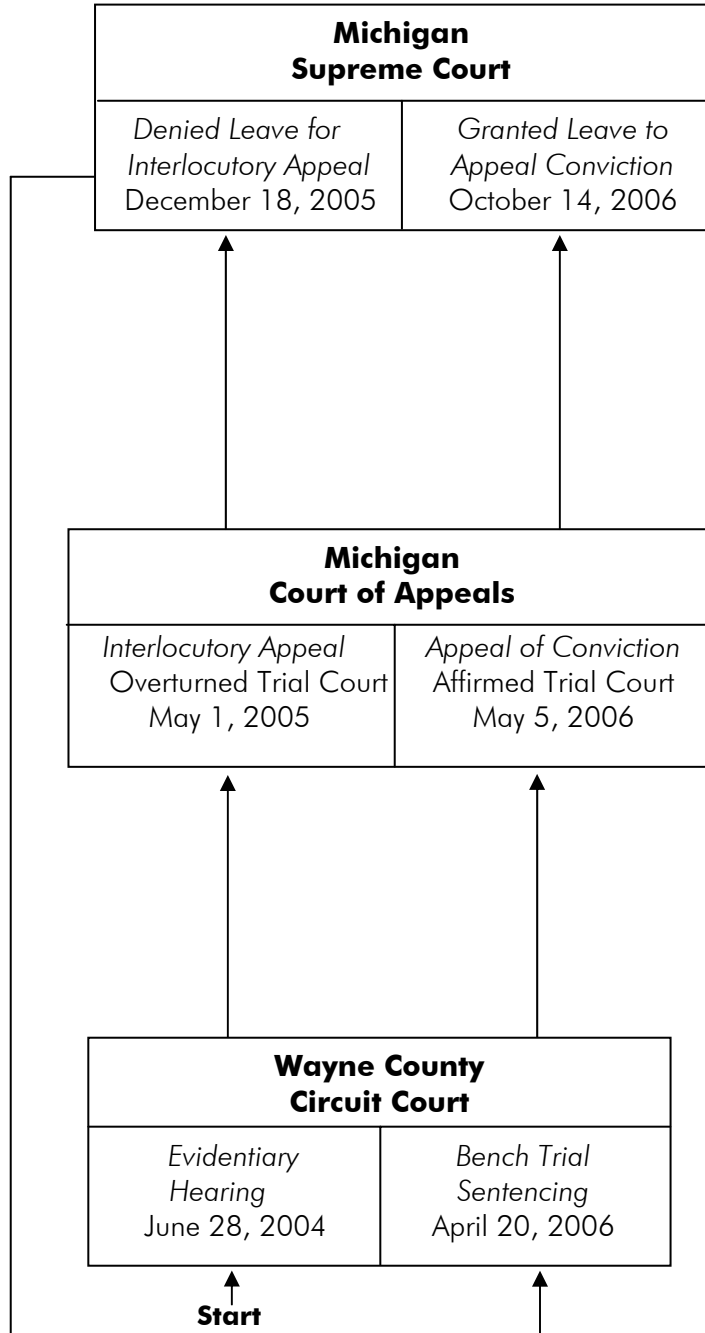
The prosecution, which is the State of Michigan in this case, and termed “appellee” in this appeal, will argue that the entry was not unlawful because of 1) exigent circumstances,⁴ particularly concerns that the drugs they expected to find could have been quickly disposed of, and 2) the concern that the defendant posed an immediate threat to the officers, since the warrant was also for weapons. The appellee will also argue that, even if the entry was found to be unlawful, the exclusionary rule does not apply here and suppression of evidence would be inappropriate. The appellee will request that the conviction and the decision of the Court of Appeals be affirmed.

A note – if the Supreme Court had granted leave for the interlocutory appeal, and decided the issues then, the appellant would have been unable to appeal for the same reasons, based on the doctrine of *res judicata*, which bars appeals based on issues already decided by the Court. (In other words, once the Court decides on an issue in a case, there is no second chance on that issue.) Here, however, the Supreme Court did not rule on the merits of the case, so the appeal may proceed.

⁴ “Exigent circumstances” require immediate action, as in “now or never.” They can be justification for a warrantless search.

Case History

People of the State of Michigan v Booker T. Hudson, Jr.



Questions Involved

First Issue

Did the search of the defendant's house violate the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Michigan Constitution and/or the requirements of MCL 780.656?

Second Issue

Does the exclusionary rule require suppression of evidence obtained as a result of the violation of the Fourth Amendment of the United States Constitution and/or Article 1, Section 11 of the Michigan Constitution and/or MCL 780.656?

Constitutional & Legislative Provisions

US Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Michigan Constitution 1963, Article, Section 11

The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state.

Constitutionality: The last sentence of this section was held invalid as in conflict with U.S. Const., Amend. IV. *Lucas v. People*, 420 F.2d 259 (C.A. Mich. 1970)

MCL 780.656

Service of warrant; officer's authorization to use force:

Sec. 6.

The officer to whom a warrant is directed, or any person assisting him, may break any outer or inner door or window of a house or building, or anything therein, in order to execute the warrant, if, after notice of his authority and purpose, he is refused admittance, or when necessary to liberate himself or any person assisting him in execution of the warrant.

History: 1966, Act 189, Eff. Mar. 10, 1967

Job Description

Justices

The Michigan Supreme Court is the highest court in the state. It is the last word on the law in the State of Michigan. All lower courts must follow the precedent set by the Supreme Court.

Oral arguments are the only public portion of the Court's decision-making process. Proceedings are based upon the evidence presented at the trial courts. There are no witnesses or juries.

The justices will:

- Select a chief justice from the seven-member panel. The chief justice leads proceedings and conferences.
- Review the case and think of questions to ask the attorneys.
- Listen to the arguments and ask questions at any time.
- Discuss the case with other justices to determine if the lower court's decision should be upheld or overturned. The final decision will be based upon the majority, and dissents are allowed.
- Announce the decision with reasons.

Job Description

Attorneys for the Appellant

The Michigan Supreme Court is the highest court in the state. It is the last word on the law in the State of Michigan. All lower courts must follow the precedent set by the Supreme Court.

Oral arguments are the only public portion of the Court's decision-making process. Proceedings are based upon the evidence presented at the trial courts. There are no witnesses or juries.

Attorneys for the appellant will:

- Discuss the case and develop arguments to persuade the Supreme Court to overturn the lower court's decision.
- Select two or more students to present your arguments and rebuttal within the time allowed.

Job Description

Attorneys for the Appellee

The Michigan Supreme Court is the highest court in the state. It is the last word on the law in the State of Michigan. All lower courts must follow the precedent set by the Supreme Court.

Oral arguments are the only public portion of the Court's decision-making process. Proceedings are based upon the evidence presented at the trial courts. There are no witnesses or juries.

Attorneys for the appellee will:

- Discuss the case and develop arguments to persuade the Supreme Court to affirm the lower court's decision.
- Select two or more students to present your arguments within the time allowed.

Job Description

Court Crier

The Michigan Supreme Court is the highest court in the state. It is the last word on the law in the State of Michigan. All lower courts must follow the precedent set by the Supreme Court.

Oral arguments are the only public portion of the Court's decision-making process. Proceedings are based upon the evidence presented at the trial courts. There are no witnesses or juries.

The court crier will:

- Review the case and work with the justices to develop questions.
- Open the session with the crier's speech:

Hear ye, Hear ye! The Honorable Chief Justice and Justices of the Supreme Court of Michigan. All persons having business before this honorable Court are admonished to draw nigh and give their attention, for the Court is now sitting. God save the United States, the State of Michigan, and this honorable Court.

- Listen carefully to the arguments.
- Give input to the justices before they go to conference.
 - What do you think is the most compelling argument?
 - How do you think the justices should vote?
 - What do you think you may need to clarify for the justices?

Job Description

Court Clerks

The Michigan Supreme Court is the highest court in the state. It is the last word on the law in the State of Michigan. All lower courts must follow the precedent set by the Supreme Court.

Oral arguments are the only public portion of the Court's decision-making process. Proceedings are based upon the evidence presented at the trial courts. There are no witnesses or juries.

The court clerks will:

- Review the case and work with the justices to develop questions.
- Listen carefully to the arguments.
- Give input to the justices before they go to conference.
 - What do you think is the most compelling argument?
 - How do you think the justices should vote?
 - What do you think you may need to clarify for the justices?

Job Description

Public Information Officers

The Michigan Supreme Court is the highest court in the state. It is the last word on the law in the State of Michigan. All lower courts must follow the precedent set by the Supreme Court.

Oral arguments are the only public portion of the Court's decision-making process. Proceedings are based upon the evidence presented at the trial courts. There are no witnesses or juries.

The public information officers will:

- Review the case and write a press release, describing the questions at issue and highlighting the aspects most interesting to the public.
- Work with the journalists to clarify their questions about the issues, discussing the case with the court clerks and justices as necessary.
- Distribute the press release to the journalists and any spectators at the arguments.

Job Description

Journalists

The Michigan Supreme Court is the highest court in the state. It is the last word on the law in the State of Michigan. All lower courts must follow the precedent set by the Supreme Court.

Oral arguments are the only public portion of the Court's decision-making process. Proceedings are based upon the evidence presented at the trial courts. There are no witnesses or juries.

The journalists will:

- Review the case and press release written by the public information officers.
- Write a news story about the case before oral argument.
- Attend oral arguments, listening carefully and taking notes.
- Write a news story about the decision and its potential impact.

Tips for Legal Research

Legal research can be fascinating but technical. Law school courses are devoted to the topic, and legal research can take years to master. The following resources can help you get started.

What Do Those Letters & Numbers Mean?

Case Names

<i>People</i>	v	<i>Stevens,</i>	460	Mich	626	(1999)
Plaintiff	Versus	Defendant	Volume	Court	First Page	Year Decided

F#d United States Court of Appeals; number indicates which circuit
Mich Michigan Supreme Court
Mich App Michigan Court of Appeals
NW2d Michigan Supreme Court; "parallel citation," leading to the same opinion as Mich
US United State Supreme Court

Codes (Laws)

MCL	780.	656
Code	Section	Subsection

18	USC	§	3109
Title	Code		Section

§ Section
MCL Michigan Compiled Laws
MCLA Michigan Compiled Laws Annotated
Mich Const Michigan Constitution
USC United States Code
US Const United States Constitution

Try These Web Sites

FindLaw

<http://www.findlaw.com/>

Legal Information Institute, Cornell Law School

<http://www.law.cornell.edu/>

Michigan Legislature

<http://www.legislature.mi.gov/>

Opinion Search for the Michigan Supreme Court and Court of Appeals

<http://courtofappeals.mijud.net/resources/opinions.htm>

Oyez: U.S. Supreme Court Media

<http://www.oyez.org/>

Guide for Attorneys

Style of Oral Argument

Argument is formal, polite, and serious.

- Court rules require that attorneys treat everyone involved in a case with respect.
- When addressing members of the Court by name, always use the format “Chief Justice [last name]” or “Justice [last name].” You may also use “Your Honor” or “Your Honors.”
- Justices typically address the attorney before them as “Counselor.”
- Always refer to others involved in the case, including clients and other attorneys, as “Mr. [last name]” or “Ms. [name].”
- Avoid using jokes since they may be misinterpreted as a lack of respect.
- Always say “thank you” at the end of your argument.

Prepare a well-organized set of notes but be prepared to speak “off the cuff.”

- You may not read directly from a prepared script.
- Time passes quickly, especially with questions from the Court. Be prepared to skip over much of your planned argument and stress your strongest points.

Address issues from your opponent’s argument.

- If your opponent has a strong point, plan to address that issue at the beginning of argument or rebuttal argument.
- If your opponent answered a point weakly or incorrectly, plan to cover that issue during your argument.

There is no requirement that you use all your allotted time. If you have made your point, you may thank the Court and then stop.

Content of Oral Argument

In a divided argument, inform the Court of the argument plan. For example, “I will cover the Fourth Amendment aspects of this case and counsel for the *amicus* will argue the Fifth Amendment issues.”

Argument focuses on legal theories and interpretation of the law.

- The Court relies upon the evidence presented at trial. It only rules on the facts of a case if they are clearly erroneous and have no evidence to support them. The facts are not disputed in this case.
- Be prepared to explain what public policy issues are involved and what other impacts would happen when ruling one way or another. The Supreme Court only accepts cases of great importance to the general populace.

Be prepared to offer “bright line” rules and standard tests.

- The standard should be clear and enforceable by lower courts, which must follow the precedent set by the Michigan Supreme Court.
- For example, a rule could state that the police must allow “15 seconds or more” before entering after announcing themselves. How will this be resolved when the suspect claims that only 13 second passed? And if the difference is only one second, is that “close enough” or will the issue have to be litigated?

Avoid saying “I think” or “I believe.” Instead, use “we argue” or “our position is.”

Concluding statement

- Develop a one-sentence theme that ties together your arguments.
- Do not restate your entire argument. Instead, say why the Court should adopt your view.

General Tips

Stand straight, make eye contact with all justices, be clear and persuasive, and believe in the argument you are presenting.

Speak clearly and distinctly.

- Speak loudly enough to be heard by everyone in the courtroom.
- Use a natural (yet formal) speaking style. Talking slowly and carefully will help calm your nerves.

Work to control your fidgets, nervous tics, and distracting mannerisms.

- Practice your argument in front of someone who will give you honest, helpful feedback.
- Use appropriate hand gestures but avoid pointing at the justices with your finger, a pen, or another object.
- Remove any coins, keys, or other items that may rattle in your pockets.
- Allow yourself short, silent pauses as you speak instead using fillers such as “um” or “you know.”

Do not make faces, sigh, shake your head, or do anything else distracting during your opponents’ arguments or when listening to a justice’s question. This is considered disrespectful.

Questions from the Justices

The justices will have specific questions related to your case.

- The justices may interrupt your argument to ask their questions. If so, stop speaking immediately—even mid-sentence, listen carefully, and then answer the question. Questions are important clues about the issues in which the Court is most interested.

- Try to answer the Court’s questions directly. Begin with “yes,” “no,” or “I respectfully disagree,” and then expand upon your answer before returning to your argument. For example:
 - “No, your Honor, because”
 - “Appellant respectfully disagrees, your Honor. This case differs from _____ v _____, since the facts in that case involved [a warrantless search], [a known violent offender who was known to be armed and dangerous]”
- Although oral argument requires quick thinking, you should admit politely if you do not know the answer to a question.
- If a justice asks a hypothetical question, you should respond to that question with the facts given, even if they are different from your case.
- A justice may ask: “Do any cases from the Court support your position?” Be careful to cite only those cases that truly support your position. Do not distort the meaning of a precedent.

If other justices ask questions before you complete your answer to the first justice, use your best judgment in answering. Depending upon the situation, you may do either of the following:

- Answer the follow-up question but indicate that you will return to the prior question.
- Politely indicate that you will return to the follow-up question after concluding your answer to the first justice’s question.

When a justice makes a point that is against your case, admit that the justice is correct and then proceed with your argument.

Guide for Justices

Seniority & Leadership of the Court

In Michigan, members of the Supreme Court appoint a chief justice from amongst themselves.

- The chief justice leads proceedings and conferences of the justices.
- Any of the justices may serve as chief justice if a majority of the Court agrees.
- You may nominate and vote for yourself.

Justices file into the courtroom in the order they will be seated.

- The chief justice sits in the center.
- Associate justices are seated according to seniority, alternating to the right and left of the chief justice.

Style of Oral Argument

Argument by counsel is formal, polite, and serious.

- When addressing members of the Court by name, attorneys will use the format “Chief Justice [last name]” or “Justice [last name].” They may also use “Your Honor” or “Your Honors.”
- Justices typically address the attorney before them as “Counselor.”
- When referring to parties in the case, use the formal “Mr. [last name]” or “Ms. [name].”
- Attorneys will speak from notes, not a prepared script.

Speak clearly and distinctly.

- Speak loudly enough to be heard by everyone in the courtroom.
- Use a natural (yet formal) style.

Content of Oral Argument

Argument focuses on legal theories and interpretation of Michigan law.

- The Court relies upon the evidence presented at trial. It only rules on the facts of a case if they are clearly erroneous and have no evidence to support them.
- Concentrate on public policy issues and what impact particular rulings would have. The Supreme Court only accepts cases of great importance to the general public.

Counsel may offer suggestions for “bright line” rules and standard tests to guide the lower courts in future rulings.

- The Court must assure that the standards are clear and enforceable.
- For example, a rule could state that the police must allow “15 seconds or more” before entering after announcing themselves. How will this be resolved when the suspect claims that only 13 second passed? And if the difference is only one second, is that “close enough” or will the issue have to be litigated?

Counsel may discuss rulings from lower courts, other states, or federal appellate courts.

- These rulings are not binding upon the Court in reaching its decision.
- The Court may look to decisions from other courts for guidance, and to see what arguments were used to reach their conclusions.
- The Court should also see if they are helpful or “instructive” in interpreting Michigan law.

Timing of Oral Argument

Oral arguments are strictly timed, and the Court tries to keep to that schedule.

- If you are asking a question when time is up, you may complete your question and the attorney may respond. If the justices have additional questions, they may ask them as well.
- At the end of the time, the chief justice should acknowledge the attorney by saying, “Thank you, and sir,” or “Thank you, ma’am.”

Questions from the Justices

Attorneys will attempt to anticipate your questions and discuss those ideas in their arguments. You may have further questions, which you may ask at any time during the argument.

- As you prepare, write down a list of issues and questions and listen for these ideas during argument. If the attorneys have satisfied your questions, either through their arguments or by answering another justice’s question, you do not need to repeat the issues.
- The argument may lead you to other questions or a need for clarification. Be prepared to think of new questions during argument.
- The attorneys’ arguments will focus on interpreting the law and legal theories. Your questions may cover points of fact or procedure as long as they help you understand how the case fits within the argument.
- Your attitude and questions will not necessarily indicate the direction of your potential vote. Justices do not reveal their opinions about a case publicly until the opinion is released in writing.
- You may ask hypothetical questions.

You may interrupt an attorney *at any time* and expect that the attorney will stop and listen.

Although you should always remain courteous to the attorneys, you may ask questions that are difficult and that reveal weaknesses in the argument.

Sample Questions

First Issue

The so-called “knock-and-announce” rule is not stated in the Fourth Amendment, Article 1, Section 11, or MCL 780.656, but has been developed by case law interpreting these provisions. May this Court choose to change this interpretation?

Don't the United States Supreme Court and this Court overturn prior decisions, when they believe a different result is warranted? Why or why not would this be appropriate here?

If this Court were to hold that the knock-and-announce provision is not necessary under Article 1, Section 11, or MCL 780.656, what state Supreme Court or Court of Appeals cases would be necessary to overturn or uphold?

If this Court were to hold that the knock-and-announce provision is a necessary inquiry for the reasonableness of under Article 1, Section 11, or MCL 780.656, and that it requires a time passage of at least 15 seconds between the announcement and the entry, what state Supreme Court or Court of Appeals cases would be necessary to overturn or uphold?

Counselor, the _____ v _____ case was decided [in the Michigan Court of Appeals] [in the Ohio Supreme Court] [in the Sixth Circuit Court of Appeals] e.g. Is this Court bound to follow that decision?

Is it possible and appropriate to set a “bright line” standard for the length of time that must pass between the announcement and the entry?

If a “bright line” standard is established for the time required between announcement and entry, how would this be enforced as a practical matter? Would we just be letting ourselves in for appeals based on 13 versus 15 seconds, for example, thus exchanging one argument for another?

Should inquiries of reasonableness proceed on a case-by-case basis or is there a standard we can apply or a rule we can adopt that would resolve this issue for future similar cases?

Does the knock-and-announce rule require an actual knock?

What are the public policy issues?

Second Issue

May this Court adopt an interpretation of the exclusionary rule under Michigan's constitution that is different from the US Supreme Court's interpretation of the Fourth Amendment, where this Court has held that the two constitutional provisions are virtually identical and parallel analysis is appropriate?

Are the United States Supreme Court rulings on the application of the exclusionary rule to Fourth Amendment violations binding on this Court, requiring the reversal of this Court's ruling in *People v Stevens*?

If we hold today that the exclusionary rule does not apply where a knock-and-announce-violation has occurred in the execution of a search warrant, is there another remedy for the violation, or another way to deter police from violating the rule in the future?

If the evidence found for a violation of Fourth Amendment and Article 1, Section 11 rights does not result in exclusion, as a practical matter, doesn't it make the Fourth Amendment meaningless?

What other Fourth Amendment and Article 1, Section 11 rights might be affected by our ruling on this issue

How do you think the Framers of the United States Constitution intended to enforce the Fourth Amendment, and what support do you have for this?

Is there any case law to support that Article 1, Section 11 or its earlier equivalents were adopted with a different intent than the Fourth Amendment?

If the "inevitable discovery" exception applies to a search after virtually no time passage between the announcement and the entry, won't it be used as a basis for exclusion of any evidence found after a search in violation of the knock-and-announce rule?

Counselor, the _____ v _____ case was decided [in the Michigan Court of Appeals] [in the Ohio Supreme Court] [in the Sixth Circuit Court of Appeals] e.g. Is this Court bound to follow that decision?

What are the public policy issues?

Can a "bright line" rule be adopted here that may be uniformly applied?

Order of Business

1. The court crier bangs the gavel, and everyone in the courtroom stands.
2. The justices file behind the bench in the order in which they are seated.
3. The court crier opens with the crier's speech.
4. The court crier bangs the gavel, and everyone sits.
5. The chief justice welcomes everyone and calls a case to be heard. He or she might say:

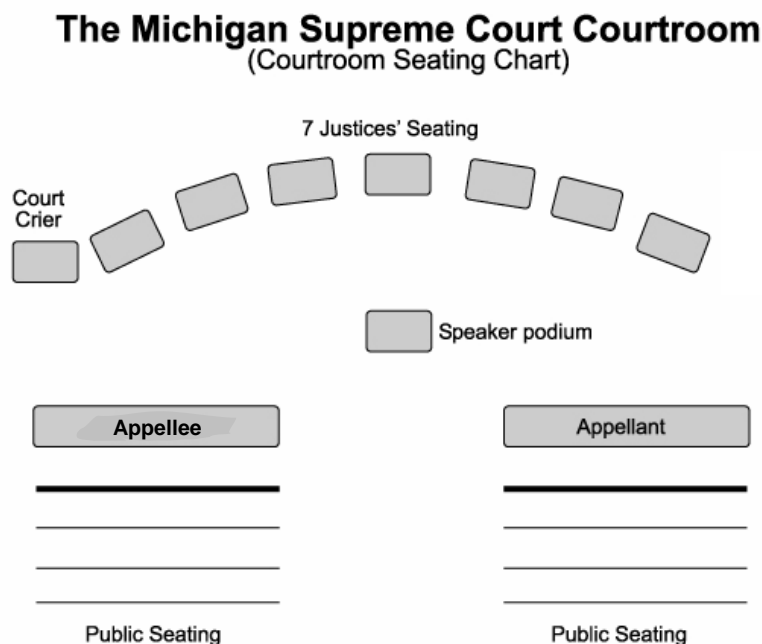
Good morning, and welcome to the session of the Michigan Supreme Court on June 30, 2007. Our case is *People v Hudson*.

6. The attorney for the appellant comes forward, introduces himself/herself and co-counsel, and requests time for rebuttal (if desired) by saying:

May it please the Court, Chief Justice [last name], Justices. I am [first name, last name] and this is [names of other attorneys] for [client]. I would like to save two minutes for rebuttal.

After the introduction, counsel presents the argument for initiating the appeal.

7. The attorney for the appellee introduces himself/herself and presents that side's argument.
8. Afterward, the justices meet in conference for a vote.



Glossary

§. See Section.

Amicus curiae /a-mee-cuhs kyur-ee/. Literally, friend of the court. In a case with broad public interest, a person or organization with strong interest in or views on the subject of an action, but not a party to the action, may petition a court for permission to file a brief on behalf of its own views. For example, a civil rights organization might submit a brief in a civil rights case.

Appeal. A review of the decision of a lower court.

Appellant. In a case on appeal in the Michigan courts, the party is appealing the lower court's decision. In the federal courts, this party is called the "petitioner."

Appellate court. A court that reviews the decisions of lower courts.

Appellee. In a case on appeal in the Michigan courts, the party who is not appealing the lower court's decision. In the federal courts, this party is called the "respondent."

Appendix. A document on file in which the important parts of the record have been assembled under one cover for the convenience of the Court.

Application for leave to appeal. A request to an appellate court for an appeal in the Michigan courts. The Michigan Supreme Court considers every application but "grants leave to appeal" (selects) only the most important cases, granting leave in about 10 percent of cases per year. The remaining cases are "denied application for leave to appeal," allowing the lower court's ruling to stand. In the federal courts, an application is called a "petition for a writ of *certiorari*."

Bench trial. A trial conducted before a judge, without a jury. A defendant may waive the right to trial by jury if the judge will allow.

Brief. A written statement prepared by counsel arguing a case in court. It contains a summary of the facts of the case, the pertinent laws, and an argument of how the law applies to the facts supporting counsel's position. Briefs are limited to 50 pages by the Michigan Court Rules.

Calendar. A list of cases to be heard by a court.

Calendar number. A number, separate from the docket number, indicating where in the list of cases on call the case will be heard that month. For example, the ninth case heard in a month would be calendared as "9."

Cases on call. The cases to be heard in a specific court session.

Chief justice. The justice who leads the Supreme Court. In Michigan, the justices elect one of their colleagues to serve as chief justice for a two-year term.

Clearly erroneous. The rule providing that findings of a trial court will not be set aside unless they are based upon a substantial error in proceedings or misapplication of the law.

Closed-ended question. A question with a “yes” or “no” answer.

Code. A collection of laws.

Commissioners’ Office. The Michigan Supreme Court’s permanent legal staff. The commissioners review applications for leave to appeal to the Court and report to the justices on the contents of those applications. The commissioners also provide research and support to the Court on a wide variety of other matters.

Common law. Rules and principles for government derived from custom, dating back to English and colonial law; the body of law developed through judicial decisions.

Conference. Meetings of the Michigan Supreme Court justices where they discuss applications for leave to appeal, opinions, and administrative matters.

Court clerk. Maintains court records with the assistance of staff.

Court crier. Opens and closes all sessions of the Michigan Supreme Court and provides security in the courtroom. At the U.S. Supreme Court, the title is “Marshal of the Court.” A recording of the Marshal’s speech is at <http://www.oyez.org/>.

Curtilage. For search and seizure purposes, includes land and out-buildings adjoining a house. A lawn, garage, shed, and garden are usually considered within the curtilage. The word is derived from Latin and French words roughly equivalent to courtyard.

De novo /dee no-vo/. Anew; a second time.

Defendant. The party being brought to court by the plaintiff. In a criminal case, the defendant has been accused of a crime.

Divided argument. More than one counsel argues for the appellant or appellee.

Docket number. A number assigned to a case to distinguish it from all other cases filed with a court.

Exclusionary rule. This rule commands that where evidence has been obtained in violation of the search and seizure protections guaranteed by the Constitution, the illegally obtained evidence cannot be used at the trial of the defendant. There are exceptions to the rule, including “inevitable discovery,” in which evidence would have been discovered even if the violation had not occurred, and “good faith,” in which officers act in a reasonable, though mistaken, belief that they are allowed to take an action.

Exigent circumstances. Situations that demand unusual or immediate action. In relation to a search warrant, “exigent circumstances” can justify a warrantless search if officers believe they will be unable to make the arrest, search, or seizure if they do not act immediately.

General jurisdiction. The power of a court to hear all types of cases. The Michigan Supreme Court is a court of general jurisdiction.

Holding. The legal principle to be drawn from a decision of a court.

Hypothetical question. A question asked with a set of circumstances given. This type of question may include the phrase, “what if.”

Index of authorities. A list of references to court cases, laws, and the Constitution within a brief. It includes page numbers for each citation.

Interlocutory appeal. An appeal of a ruling made by a judge before a trial is conducted.

Justice. A judge of the Supreme Court. Seven justices sit on the Michigan Supreme Court, and they are elected for eight-year terms. Justices are sometimes referred to as “members of the Court,” and they call each other “colleagues.”

“Knock and announce statute.” A Michigan law (MCL 780.565) intended to ensure that police communicate to occupants of a dwelling that they are present and why. Exceptions allow police to enter without announcing if they have reason to conclude that evidence will be destroyed or lives will be endangered by delay. In *People v Fetterly* (1998), the Michigan Court of Appeals ruled that it is not necessary to knock. Announcing over a loud speaker, “Police. Search warrant,” from a clearly marked police vehicle 30–60 seconds before entry is sufficient. In *People v Stevens* (1999), the Michigan Supreme Court ruled that a police officer’s violation of the statute in executing a valid search warrant did not warrant exclusion of seized drug evidence.

Leave to appeal. Permission to go to a higher court to review the decision of a lower court. The Michigan Supreme Court “grants leave to appeal” in the cases that it chooses to hear.

MCL (Michigan Compiled Laws). The body of laws applicable in the State of Michigan. They are often cited in the style of the following example: MCL 780.656. The Michigan Legislature maintains an online version: <http://www.legislature.mi.gov/>.

MCR (Michigan Court Rules). Rules adopted by the Michigan Supreme Court to govern Michigan’s legal system and the judges, lawyers, and other legal professionals. Michigan Court Rules cover many topics, including specific court procedures, civil procedures, criminal procedures, rules of evidence, and the conduct of judges and lawyers. They are often cited in following format: MCR 1.101. See <http://courtofappeals.mijud.net/rules/public/default.asp>.

Memoranda. A document circulated to discuss a topic, such as the merits of a case.

Michigan Court of Appeals (COA). The intermediate appellate court in Michigan that reviews the decisions of the state’s lower courts. Only the Michigan Supreme Court may overrule the Court of Appeals. It is sometimes referred to as the “COA.”

Michigan Supreme Court (MSC). The highest court in the State of Michigan. Its decisions are binding on lower courts, meaning that lower courts must follow the ruling in similar or identical cases. It is sometimes referred to as “the Court” or the “MSC.” See also—Chief justice, Justice, Precedent.

Motion. An application made to a court or judge to obtain an order to direct an action in favor of the applicant. For example, a “motion for a new trial” is a request for a judge to set aside a judgment or verdict and order a new trial on the basis that the trial was unfair.

Open-ended question. A question that requires an explanation rather than a simple “yes” or “no.”

Opinion. The written statement by a judge or court of the decision reached in a case, describing the law as applied to the case and the reasons upon which the judgment is based.

Oral argument. Conversation between attorneys and judges of an appellate court, explaining reasons for affirming or reversing a decision; generally limited in time by a court rule.

Order. Direction of a court or judge made in writing that decides an issue or directs a step in the proceedings. An application for an order is a motion.

Per curiam /per kyoor-ee-am/. Literally, by the court. A phrase that distinguishes an opinion of the whole court from an opinion written by one judge. Sometimes, a brief announcement of the decision, not accompanied by a written opinion.

Plaintiff. Party bringing the case. In a criminal case, the People of the State of Michigan, represented by the prosecutor, are the plaintiff.

Precedent. A court decision that serves as an example for identical or similar cases. Courts attempt to decide cases on principles based in prior cases that are close in facts or legal principles. The Michigan Supreme Court sets precedent for lower courts in Michigan.

Public information officer. Serves as the primary contact with the media and public to provide information about the Michigan court system and its actions.

Record. An official written account of a court proceeding designed to be permanent evidence. The term usually means accounts, correspondence, memorandums, tapes, disks, papers, books, transcriptions, or other documents.

Remand. To send back to the lower court from which it was appealed, with instructions as to what further proceedings should be had there.

Res judicata /rees joo-duh-kay-tuh/. A thing or matter settled by judgment. This rule bars an appeal on the basis of the same issue already having been decided.

Section (§). In codes, statutes, or other writings, the smallest numbered subdivision. Sometimes called “articles” or “paragraphs.”

Statute. A law; a written enactment of a legislative action.

Suppression of evidence. To suppress a court record is to prevent its release; to suppress evidence is to forbid it from being introduced at a trial or other court proceeding.

Trial court. A lower court, such as district court, circuit court, or probate court.

V. See Versus.

Versus. Against; often abbreviated as “v” or “vs.”

Further Resources

Michigan Courts, Cases, & Law

Michigan Courts

<http://courts.mi.gov/>

Includes links to the Michigan Supreme Court, Court of Appeals, trial courts, and the State Court Administrative Office.

Court Forms, State Court Administrative Office

<http://courts.michigan.gov/scao/courtforms/index.htm>

Includes forms used by state courts. Scroll down to search by category (e.g. Appeals, Criminal—General).

Opinion Search for the Michigan Supreme Court and Court of Appeals

<http://courtofappeals.mijud.net/resources/opinions.htm>

Includes published opinions since 2001. Use “field search” to look for party names or case types. “Text search” allows keyword searching of the opinions.

Michigan Legislature

<http://www.legislature.mi.gov/>

Offers searchable versions of the Michigan Constitution and Michigan Compiled Laws. The Michigan “knock and announce statute” is MCL 780.656.

U.S. Supreme Court Case Synopses, *Michigan v Hudson* (2006)

Medill News Service, Northwestern University

<http://docket.medill.northwestern.edu/archives/002753.php>

Oyez, U.S. Supreme Court Media

http://www.oyez.org/cases/case/?case=2000-2009/2005/2005_04_1360

U.S. Supreme Court, *Michigan v Hudson* (2006)

Docket, No. 04-1360

<http://www.supremecourtus.gov/docket/04-1360.htm>

Questions Presented

<http://www.supremecourtus.gov/qp/04-01360qp.pdf>

Oral Argument Transcript, January 9, 2006 (Argued)

http://www.supremecourtus.gov/oral_arguments/argument_transcripts/04-1360.pdf

Oral Argument Transcript, May 18, 2006 (Reargued)

http://www.supremecourtus.gov/oral_arguments/argument_transcripts/04-1360b.pdf

Opinion, June 15, 2006

<http://www.supremecourtus.gov/opinions/05pdf/04-1360.pdf>

Brief Links

<http://www.abanet.org/publiced/preview/briefs/jan06.html#hudson>

Legal Research, General

FindLaw

<http://www.findlaw.com/>

An excellent source of information related to law, including essays and court opinions. Searching under “For the Public” and under “For Legal Professionals” will yield different results.

Garner, Bryan A. (ed.). *Black’s Law Dictionary*, 8th ed. Egan, MN: Thomson West, 2004

Handbook of Legal Terms, Michigan Judicial Institute

<http://courts.michigan.gov/mji/resources/holt/holt.htm>

Legal Information Institute, Cornell Law School

<http://www.law.cornell.edu/>

An ad-free resource that includes links to many types of legal information, including an Introduction to Basic Legal Citation (<http://www.law.cornell.edu/citation/>).

Moot Court Simulations

Instructions for Moot Court, Landmark Cases

<http://www.landmarkcases.org/mootcourt.html>

Putting on Mock Trials, American Bar Association

<http://www.abanet.org/abastore/index.cfm?section=Main&fm=Product.AddToCart&pid=2350206>

Includes instructions for moot court exercises.

Supreme Court Simulation, U.S. Courts

<http://www.uscourts.gov/outreach/resources/mootcourt05.pdf>