*A moot court is a role-play of a Supreme Court hearing. The Supreme Court of the United States is the highest court in the nation and the court of last resort. A decision by the Supreme Court is the law of the land. The Court, comprised of a panel of justices, is asked to rule on a lower court’s decision. There is no trial; no witnesses are called, and the basic facts in a case are not disputed. Arguments are prepared and presented on a legal question (e.g., the constitutionality of a law or government action).  The following procedures are a slight adaptation of how the United State Supreme Court operates.* **ADVANCED GOVERNMENT MOOT COURT PROCEDURES**

* The justices will be seated at the front of the room.  The attorneys for each side will sit on opposite sides of the room facing the justices.
* The chief justice should ask each side to present its arguments in the following order:
* Opening Petitioner **(8 minutes)**
* Opening Respondent **(8 minutes)**
* Closing Petitioner **(8 minutes)**
* Closing Respondent **(8 minutes)**
* Each lawyer will have the above time per argument. Justices may not interrupt a lawyer/speaker with questions until five minutes of the allotted time has elapsed for each of those speakers. If a speaker finished early, the justices may step in and utilize the “Dead Time.” If the justices do not use their allotted time, the attorneys should be prepared to utilize the “Dead Time.”
* I will hold a sign up announcing when the justices may ask questions as well and when the time has expired. A yellow card will announce when there are thirty seconds before questions will start or end, green card will announce when the justices may ask questions and a red card signifies justice question time is completed.
* During each argument presentation, the justices can and should question the attorney in an effort to clarify the arguments. Attorneys may ask for time to consult with other members of their team before answering questions. (This time is included in the total time allowed for the presentation and the lawyer should ask for a sidebar or to consult with his/her colleague.)
* After all arguments have been presented the justices will exit the room to a predetermined location for deliberation.
* After coming back from deliberations, each justice will announce their decision and must give reasons for his or her decision.
* The chief justice will then tally the votes and announce the decision of the court. A decision is reached by a majority of votes.

 *Case: Matal v. Tam* (Argued: January 18, 2017, Decided: June 19, 2017)

Topic: **First Amendment: Hate Speech**

Legal Question: Does the section of federal law that requires the federal government to refuse to register “disparaging” trademarks violate the First Amendment’s guarantee of free speech?

PETITIONER RESPONDENT JUSTICES\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
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LAWYERS: As an attorney for the petitioner and respondent your job is to:

* PETITIONER: the person/organization/company who appeals the lower court decision to a higher court
* RESPONDENT: the person/organization/company who argues that the lower court decision was correct

1. Discuss the case and develop arguments to persuade the Supreme Court to uphold/overturn the lower court decision. Arguments do not need to be rooted in legal technicalities.  Any argument that is persuasive from a philosophical, theoretical, conceptual or practical standpoint can be made.  Teams should rely on principles found or implied in the United States Constitution. Arguments can only be developed with the use of resources dispersed in class and discussion between members of the group, with the help of the lawyer provided, or something we learned in class.

2. When addressing the Court each lawyer should begin by saying; ***“Mr./Ms. Chief Justice, and may it please the Court my name is \_\_\_\_ and I represent \_\_\_\_ in this case. The issue of this case is…”***

3. When answering questions from the justices, each lawyer should respond with the appropriate decorum addressing the specific justice by name by saying; ***“ Justice \_\_\_\_ or Mr./Ms. Chief Justice, …***

4. Be prepared to answer any questions the justices may ask you. If a question is posed by the justices that you do not know or should not know based upon material given in class, respond “It’s in the record...” This means it was included in the brief “you filed”. Attorneys may ask for time to consult with other members of their team before answering questions. (This time is included in the total time allowed for the presentation and the lawyer should ask for a sidebar or to consult with his/her colleague.)

5. If there is any **“dead time”** wherein the justices are not asking questions, this time should be utilized by the attorney to elaborate on any information that was not able to be discussed before the questioning session began.

6. Remember to rise when the justices enter or exit the room or when you are addressing the Court.

**Tips:**

* **Treat the Moot Court not as a specific case but as a Constitutional principle.**
* **This is about the Constitution, political liberties, and the law. Don’t argue the facts, argue the Constitution (not a should or shouldn’t, instead it’s a can or can’t).**
* **Articulate your side’s position and what you believe is the issue or interest; Personal liberties v. Society’s needs. Why is your side’s interest more important?**
* **Answer questions briefly and directly**
* **Try to help the justices figure out a way to decide the case your way. Don’t fight them.**

 **Reflection Questions : To Be Completed and Turned in with Self Evaluation Form**
1. Explain the role you played during the moot court. Did your role have any influence on the decision? Explain why/why not.

2. Name 3 specific things you learned from the moot court experience.

3. How do you think this court simulation went overall? Were you happy with this simulation or unhappy with some aspect of what occurred? What improvements can be made to improve this activity? Explain

4. What could your TEAM have done differently to have performed better in this Mini Moot Court? Who did what and would you want to work with them again?

5. Explain. What could YOU have done differently to have performed better in this Mini Moot Court? Did you find the grading system fair? What could be changed? Explain. How would you grade your overall performance? Justify your grade.

**ASSOCIATE JUSTICES:** As a United States Supreme Court Justice, your job is to:

1. Select a student to serve as Chief Justice ( I chose the Chief Justice for this go around).

2. Create an individual placard that references your position: Justice \_\_\_\_.

3. Review the case and think of questions to ask the attorneys. Prepare questions to ask of each side. Questions should be clarifying, trying to get more information from the attorneys to make a decision. When designing the questions you need to ask yourself what sort of information you as a justice need to know before you can reasonably decide this case. Questions should include EACH of the following:
 *a)* ***the Constitution****: questions concerning the meaning and application of the principle addressed
 b)* ***precedent****; how should earlier court decision affect this case
 c)* ***hypothetical****; possible ramifications if you decide in the favor of either side.
 d)* ***clarification****; what about this particular case do you want to know more about***Tips:**

* **Treat the Moot Court not as a specific case but as a Constitutional principle.**
* **Don’t argue the facts. This is about the Constitution and the law.**
* **Think about (write down) questions for both sides**
* **Prepare questions, not speeches.**
* **Consider how a ruling in the case might affect other cases – ask hypotheticals. (cheeseburgers v. guns-If regulating guns is about saving lives, can you ban cheeseburgers).**
* **Remember, we are always willing to infringe upon other rights but what if this affected you or a loved one, would that change our opinion (voting criteria-what if we end on the wrong side of that voting criteria, how to boil a live frog).**
* **Remember that the lawyers only have the material you’ve seen –don’t ask about the “record below” or about precedents not in the materials you’ve received.**

4. Listen carefully to the arguments. Participants should consider all of the facts that have been **established** at the trial. Teams may not argue the accuracy of the facts.
 **Reminders: a. Let the lawyers finish answering your question(s) before you ask a new question. b. Only interrupt if there is an error in logic, law, or they are filibustering.**

5. Be sure to consider the impact of your decision on other situations that may arise in the future.

6. Announce your decision, whether you think the decision of the lower court should be upheld or overturned, after each side has presented its case. Each justice must give reasons for his or her decision. You do not have to agree. The decision will be based on the majority vote.

 **Reminder: Make sure the lawyers are allowed to finish answering the question(s) before other justices ask a new question. Only allow interruptions if there is an error in logic, law, or they are filibustering.

 Reflection Questions: To Be Completed and Turned in with Self Evaluation Form**

1. What was the most effective argument on the petitioner side of the debate? Why was it effective? What was the most effective argument on the respondent side of the debate? Why was it effective?

2. Name 3 specific things you learned from the moot court experience.

3. How did the Justice Question time go? Did you perform well during the question time? The justices as a group?

4. How do you think this court simulation went overall? Were you happy with this simulation or unhappy with some aspect of what occurred? What improvements can be made to improve this activity? Explain

5. Explain. What could YOU have done differently to have performed better in this Mini Moot Court? Did you find the grading system fair? What could be changed? Explain. How would you grade your overall performance? Justify your grade.

6. Why did you vote for the team you chose as winner?

**CHIEF JUSTICE:** As the United States Supreme Chief Justice, your job is to: Preside over the moot court. As the presiding officer of the Court, you will be in charge of the hearing and those duties will include, but are not limited to:

1. Create an individual placard that references your position: Chief Justice\_\_\_\_

2. Take charge of the proceedings of the Court by:

* Leading justices to the bench
* Seating the audience and lawyers;
 **“Please be seated”; ‘We will now here the case of \_\_\_\_. The questions we are asked to resolve today is \_\_\_\_.”**
* Call on the attorneys to present their arguments;
**“Petitioner/Respondent, are you ready to present your arguments?**

**“Petitioner/Respondent, you have 8 minutes… You may begin”**

* Initiate Justice questions and recognize other justices to ask questions when applicable. I will hold a sign up announcing when questioning can begin as well and when the time has expired.
* End questioning period of lawyers by justices and time allotted per lawyer presentation
 **“ Thank you \_\_\_\_, your time is up…**
* Lead discussion after oral argument and determine order in which justices will vote. Focus on the following:
* Which team presented the best evidence (cited cases) to back up their points and quoted from the materials?
* Which team’s arguments were more logical and coherent?
* Which team best anticipated your concerns and addressed them?
* Did either team not use language that was correct, clear, and appropriate?
* Which team persuaded you by what the speakers said and/or the manners in which they delivered the speech?

2. Announce the Court’s decision by:
 a) Calling on each associate justice to give reasons for his or her decision.
 b) Tally the vote of the Court and determine which side received the majority vote.

 c) Announce whether the decision of your Court upheld or overturned the lower court’s decision.

 **Reflection Questions: To Be Completed and Turned in with Self Evaluation Form**

1. What was the most effective argument on the petitioner side of the debate? Why was it effective? What was the most effective argument on the respondent side of the debate? Why was it effective?

2. Name 3 specific things you learned from the moot court experience.

3. How did the Justice Question time go? Did you perform well during the question time? The justices as a group?

4. How do you think this court simulation went overall? Were you happy with this simulation or unhappy with some aspect of what occurred? What improvements can be made to improve this activity? Explain

5. Explain. What could YOU have done differently to have performed better in this Mini Moot Court? Did you find the grading system fair? What could be changed? Explain. How would you grade your overall performance? Justify your grade.

6. Why did you vote for the team you chose as winner?

***Matal v. Tam***

**Argued:** January 18, 2017

**Decided:** June 19, 2017

## *Background*

**Free Speech**

The First Amendment protects people’s communication from government censorship. Generally, the government cannot punish a speaker or censor speech based on its content or viewpoint. That is, the government cannot typically penalize private speech, or deny someone a government benefit, simply because it disapproves of a speaker’s message.

**Trademarks**

A trademark is a word, name, or symbol that identifies a product. For example, Coca-Cola and Pepsi are trademarked names. The federal government registers trademarks when individuals or companies request that they do so, which adds the trademark to a searchable database of registered trademarks.

A trademark registration makes it easier for trademark owners to enforce their rights to the name or logo to prevent others from using it. Owners can do that by filing a lawsuit against someone who tries to use a trademarked name or logo. (While people can also enforce their rights to an unregistered trademark, registration makes that process easier and cheaper.) Trademarks help consumers buy products with confidence. You know if you see the Coca-Cola trademark that you are getting a Coca-Cola product and not an imposter.

This is a case about when trademark protection and the First Amendment collide—what happens when someone wants to register a trademark but the government isn’t willing to issue the registration because the name offends many people? Is this a violation of the First Amendment?

## *Facts*

Simon Tam, the leader of the band “The Slants,” applied for a trademark registration for the band’s name, but the U.S. Patent and Trademark Office (USPTO), a part of the federal government, denied the application.

Under federal law, the USPTO is required to refuse to issue registration for trademarks that may disparage (mock or denigrate) people. The USPTO said that “The Slants” was disparaging to people of Asian descent because it is “a negative term regarding the shape of the eyes of certain persons of Asian descent” that has a “long history of being used to deride and mock a physical feature of those individuals.” Simon Tam, who is Asian-American, said he was trying to reclaim the word, and for him it was a source of pride. The USPTO acknowledged his good intentions, but said that did not change the fact that many Asian-Americans object to that term.

Simon Tam appealed this decision. Eventually, the U.S. Court of Appeals for the Federal Circuit ruled that the USPTO did have to register the band’s trademark—because the federal law that required them to refuse was unconstitutional. The court said that it violated the First Amendment protection of free speech. The government cannot refuse to issue a trademark registration because it might disparage someone. The federal government appealed to the U.S. Supreme Court, and the Supreme Court agreed to hear the case.

## *Issue*

Does the section of federal law that requires the federal government to refuse to register “disparaging” trademarks violate the First Amendment’s guarantee of free speech?

## *Precedents*

***Walker v. Texas Division, Sons of Confederate Veterans* (2015**): The Supreme Court ruled that Texas could reject certain specialty license plate designs because the state objected to the message conveyed. Texans who wanted the state to issue particular specialty license plates could propose a design or slogan to the state Department of Motor Vehicles. The DMV could approve or reject the proposals. When a citizen group requested a plate featuring the confederate battle flag, the DMV rejected it. The Supreme Court upheld this decision, saying that the messages on Texas’s license plates are government speech, not private speech. People who see the license plates would reasonably believe that the state endorses the messages on them. Therefore, the government could restrict which plates it approves based on the content and viewpoint of the message.

***Reed v. Town of Gilbert, Arizona* (2015):** The Supreme Court ruled that a town in Arizona could not enforce different regulations for the posting of signs based on the type of sign being posted. Gilbert, Arizona, had a complex set of rules defining how large different signs could be, and how long they could be posted along the roads in town. Signs that communicate messages or ideas could stay up indefinitely, while temporary directional signs had to be much smaller and could only be posted on the day of an event. The Supreme Court said that those rules were based on the content of the signs, and it is unconstitutional for the government to regulate speech based on the message conveyed.

## *Arguments for the federal government (Joseph Matal, acting director of the USPTO)*

* The First Amendment prevents the government from restricting speech. It does not require that the government help people speak—and issuing a trademark registration is a way to help people get a message out.
* The government is not preventing Tam or the band from naming itself anything, from saying anything they want to, or from how they can advertise. The government is simply choosing not to spend government money to issue legal protection for a name it (and many others) find objectionable.
* The Supreme Court recently ruled that a state does not have to issue an image on its specialty license plates if the design is offensive to the public. That is similar to this case, where the government does not want to issue a registration for a trademark that may be offensive to the public, or include such a trademark in its public database.
* By issuing the trademark, it could be perceived that the federal government approves of the message conveyed in the trademark.
* If the federal law that allows the USPTO to refuse to register trademarks is unconstitutional, then there would be no reasonable limit. The federal government would be required to give trademark protection to obscene words, graphic logos, racial slurs, hate speech, and more.

## *Arguments for Simon Tam*

* The federal government is discriminating based on the content of the band’s speech and the viewpoint it presents, and that is unconstitutional.
* The refusal to issue a trademark does have serious negative consequences for the speaker, because trademarks give their owners important legal rights. For example, trademark holders can sue in federal court if the trademark is copied by someone else, and they can enlist the help of the Customs and Border Patrol in preventing counterfeit or copies of the trademark from being imported from foreign countries.
* The registration of a trademark is not government speech; it is private speech. No one sees the name of a product or a band or a logo and assumes that the government is endorsing the message. They are not like government-issued license plates.
* We don’t want to put the government in a position of deciding what speech is “disparaging” and what speech is ironic, satirical, or important public protest. What may be disparaging in one decade is not in another, and vice versa.
* Even though the government is not preventing the band from using the name it chooses, it is strongly discouraging them from doing so. If the band wants to benefit from the government’s trademark protection, it will have to choose a different name.