

Appellate Courts: Let's Take It Up

Time Needed: One to two class periods

Materials Needed:

Student worksheets

Scissors (*optional*)

Copy Instructions:

Anticipation Activity (*class set*)

Reading (*1 page; class set*)

Cutout Cards (*optional; 1 set per pair of students*)

Worksheets (*2 or 3 pages; class set*)

Learning Objectives. Students will be able to:

- Explain the purpose of the appellate courts.
- Describe how appellate courts work.
- Compare the Court of Appeals and the Supreme Court.
- Define the following terms: precedent, opinion, dissent, brief, oral argument, en banc, petition.

STEP BY STEP

- DISTRIBUTE** the anticipation activity and reading page to the class.
- ANTICIPATE** by reading the introduction to the anticipation activity with the class. Review the activity instructions with students. Make sure students understand that all the questions are valid, but only some of the questions will help Gabby and Bob find out what is going to happen to them.
- TIME** 5 minutes while students mark the questions they think they will need to answer.
- POLL** students quickly to find out how many marked each question. If you wish, briefly discuss why each question might or might not help Gabby and Bob.
- REMIND** students that while they read the *School Strip Search!* selection, they should be on the lookout for answers to Gabby and Bob's questions.
- READ** the *School Strip Search!* handout with students. Have them raise their hands when they think they spot an answer to one of Gabby and Bob's questions. Pause to discuss.
- CHECK** for understanding using the true/false activity (see Active Participation Guide)

OPTION A

- PAIR** students together.
- DISTRIBUTE** a set of cutout cards to each pair.
- ASSIGN** pairs to match each fact card with a reason card. The answers are not directly in the reading. Students must use reasoning skills to build on what they learned.
- REVIEW** the answers as a class. (Answers are on the Active Participation Guide.)
- ASSIGN** worksheet pages 1 and 2 individually or as homework.

OPTION B

- ASSIGN** worksheets pages 1, 2, and 3.
- PREVIEW** the worksheets with students to be sure they understand the directions.
- FOCUS** on page 3. Matching facts with reasons will require students to think carefully about what they have learned. The answers are not directly in the reading. Students must use reasoning skills to extrapolate from what they know.

- CLOSE** by asking students to recall one vocabulary word from the lesson and its definition (without looking). Call on students until all words have been identified.

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Name: _____

Help! I Lost My Case!

Gabby just walked out of the courthouse, and she's furious! That's why she's on her cell phone calling you. That's what friends are for, right? Gabby just lost her case in a trial. The judge found in favor of the other side! Can you believe it? There must be something she can do, but Gabby isn't sure. Can she take her case to the Court of Appeals? What about the Supreme Court? And if she can take her case "up," what will happen there? Do those courts work just like the trial court?



You don't know the answers, but you feel sorry for Gabby (and she's yelling in your ear), so you promise her you'll find out. You've barely hung up when you get a call from Bob. He's got a problem just like Gabby's, but he just heard Gabby lost her case! Does that mean he shouldn't bother taking his own case to court? If he does take his case to court, will the outcome of Gabby's case affect whether he can win?

Once you're off the phone, you brainstorm a quick list of things you'll need to find out. They're all great questions, but only some will help you tell Gabby and Bob what to expect. You need to cut down your list! *Put an X next to the questions that will help you answer Gabby and Bob. Leave the rest blank.*

A spiral-bound notebook with a white cover and a list of 18 questions. Each question is preceded by a blank line for an answer.

- ___ 1. Will the Court of Appeals hold a trial all over again?
- ___ 2. How tall is the Supreme Court building?
- ___ 3. Does the Court of Appeals have to accept every case?
- ___ 4. Will there be a jury to decide the case at the Court of Appeals?
- ___ 5. Are there any women justices on the Supreme Court?
- ___ 6. Is there only one judge at the Court of Appeals?
- ___ 7. Why do we have a Court of Appeals?
- ___ 8. If Gabby doesn't like what happens at the Court of Appeals, does the Supreme Court have to take her case?
- ___ 9. What kinds of cases does the Supreme Court take?
- ___ 10. How many justices will decide the case at the Supreme Court?
- ___ 11. Who is the Chief Justice of the Supreme Court?
- ___ 12. If Gabby wins at the Supreme Court, will Bob automatically win his case?
- ___ 13. Do people get to testify at the Supreme Court like they do in a trial court?
- ___ 14. How many cases did the Supreme Court hear last year?
- ___ 15. When did the Supreme Court hear its first case?
- ___ 16. If Gabby loses at the Court of Appeals, will Bob automatically lose his case?
- ___ 17. Do people get to testify at the Court of Appeals like they do in a trial court?
- ___ 18. Do Supreme Court justices get elected?

Now that you've got your list pared down, read the true story of what happened when a middle school girl took her own case "up" the judicial system. As you read, look for the answers to the questions on your list and raise your hand each time you spot one.

School Strip Search!



Savana Redding must have been furious when she lost her court case in the trial court. It all started when someone told the school principal Savana was giving pills to other students. Even though Savana had never been in trouble before and denied doing anything wrong, the principal ordered the school nurse and a female school employee to search Savana. They took Savana into a room and told her to take off her outer clothing and shake out her underwear. They didn't find any pills.

Savana believed her rights had been violated. After all, the **Fourth Amendment** to the Constitution is supposed to protect people against unreasonable searches. So Savana took her case to court, arguing that the strip search violated her Fourth Amendment rights.

The trial court didn't see it that way. The judge decided the school had a right to conduct the search, based on two factors: 1) the school had a good reason to believe the search needed to be done, and 2) the search did not go too far, considering that drugs are very serious.

Savana's lawyer filed a written **brief** in the Court of Appeals for the Ninth Circuit, arguing the school did not have a good reason to conduct a strip search and that the search *did* go too far. Both lawyers went to court for an **oral argument** in front of a **panel** of three Court of Appeals judges. Savana couldn't tell the judges her story, but she could sit in the courtroom and listen. During the oral argument, her lawyer explained his reasoning to the judges. They peppered him with questions to be sure they understood his point of view.

In private, the Court of Appeals judges considered whether the trial court judge correctly analyzed the two factors. Two of the three judges agreed that she did. They issued a written **opinion** explaining their decision and giving the judge who disagreed a chance to explain his **dissent**. But it was two against one, so Savana lost again.

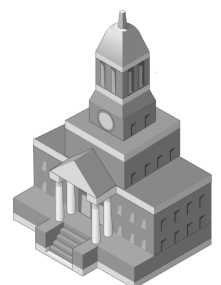
There was still hope. Savana's lawyer took a chance and asked for something that doesn't happen very often: He asked all the Ninth Circuit judges to reconsider the decision together. They agreed! It would be too crowded for all 48 judges in the circuit to be in the courtroom, so they chose eleven judges to sit on the **en banc** panel and hear the case again. Everyone filed more briefs, and there was a new oral argument. This time, Savana had six judges on her side. She won!

But the school wasn't giving up. It still believed the first two courts had interpreted the law correctly. Unless they kept fighting, the Ninth Circuit decision would become a **precedent**: In a future case with very similar facts as this one, judges in all Ninth Circuit states would have to decide in the student's favor. The Court of Appeals was not going to hear this case again, so the school only had one shot: the Supreme Court.

But there was a problem. Unlike the Court of Appeals, the Supreme Court gets to choose which cases to take—and most get rejected. The Supreme Court only listens to cases with very important issues. If the Supreme Court rejected this case, the Court of Appeals decision would be final.

The school filed a **petition** asking the Supreme Court to take the case. It worked! The lawyers filed more briefs. Groups who cared about the case filed **friend of the court briefs** in support of Savana or the school. There was one final oral argument where each lawyer spoke in front of all nine Supreme Court justices, who fired tough questions about how the law applied in the case.

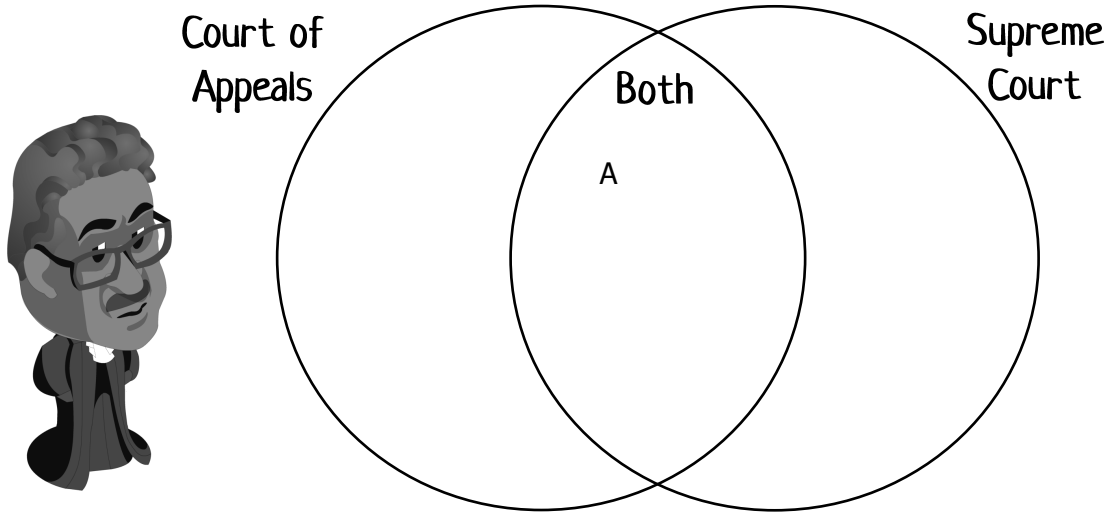
Afterward, weeks passed. Finally, the Court issued a written opinion. Although the Court found that the school had a good reason to believe a search should be done, the Court said that a strip search went too far. Savana won! Because she decided to take her case "up" as far as it would go, this Supreme Court decision is now precedent for everyone in the country.



Appellate Courts: Let's Take it Up

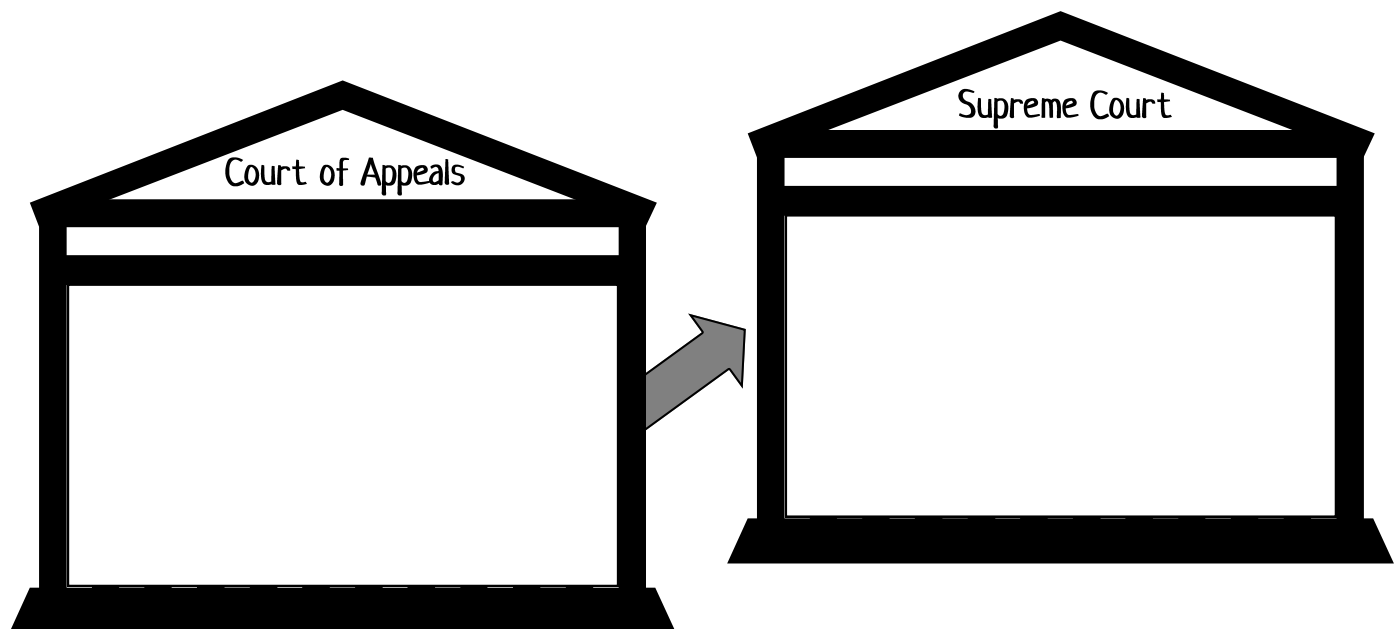
Name: _____

A. Compare! Decide whether each description fits the Court of Appeals only, Supreme Court only, or both, and write the letter of the description in the correct part of the diagram. The first one is done for you.



- | | | |
|--|--|--|
| A. There is no jury | G. Has nine justices | L. Judges ask the lawyers questions |
| B. Judges are called "justices" | H. Lawyers file briefs | M. Requires a majority vote of judges to win |
| C. Issues a written opinion | I. There is an oral argument | N. Decisions are precedent for the whole country |
| D. Must take all cases | J. Decisions are precedent only within the circuit | BONUS: Always sits en banc (use the letter X) |
| E. Receives friend of the court briefs | K. Gets to choose which cases to take | |
| F. Usually has three-judge panels | | |

B. Draw! Use what you learned about each court to draw the inside of the courtrooms.



Appellate Courts: Let's Take it Up

Name: _____

C. Appellate Court Crossword. Use what you have learned about the Court of Appeals and the Supreme Court to complete this crossword activity. Go back to the reading if you get stuck!



Down

1. Briefs filed by groups that care about how a case turns out
3. Written document a lawyer files with the court to explain his or her arguments
4. Appellate court judges ask these during oral argument
7. The Fourth Amendment protects against this kind of search
10. What happens to most cases appealed to the Supreme Court
11. Written document asking the Supreme Court to take a case; doubles as a brief
13. Lawyers take turns making arguments to the judges and answering the judges' questions
14. A group of several judges who hear a case together
16. Written document issued by the court explaining the reasoning behind its decision

Across

2. The person who represents someone in court
5. All the judges from an appeals circuit (or a large group of them) hearing a case again to reconsider the decision
6. The highest court you can appeal to
8. A separate opinion written by a judge who does not agree with the majority of the judges
9. The Supreme Court only hears cases with this kind of issue
12. A decision made by an appellate court that acts as a law to cases with very similar facts
15. The court where a case begins
17. A Court of Appeals often has this many judges in the courtroom

Appellate Courts: Let's Take it Up

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D. Why Is It That Way? Explain each fact by correctly matching it with a reason. Write the number of the reason in the correct box of the magic square below.

FACTS

- A. The Court of Appeals does not hold a trial all over again...
- B. The Court of Appeals must accept every case...
- C. Decisions from the Court of Appeals and the Supreme Court are precedent for new cases...
- D. Cases in the appellate courts are heard by more than one judge...
- E. Oral argument is an important part of an appeal...
- F. The Supreme Court does not have to take every case that comes along...
- G. Cases decided by the Supreme Court are particularly important...
- H. If someone loses or wins a Supreme Court case, another person with a similar case will not automatically lose or win...
- I. People do not get to testify at the Supreme Court...

REASONS

- 1. because its decisions affect the whole country by setting precedent for similar cases in the lower courts.
- 2. because precedent cases help people know what to expect. Otherwise, judges could make wildly different decisions in very similar cases.
- 3. because it allows the appeals court judges or Supreme Court justices to ask specific questions about the case.
- 4. because people have an automatic right of appeal after a decision is made in trial court. This helps ensure that the law is applied correctly.
- 5. because appellate court decisions are precedent for many people, so it's important to have more than one judge think about the decisions.
- 6. because testifying is a way of telling what happened, and the Supreme Court does not decide what happened. It only decides whether the Court of Appeals judges made the right decision.
- 7. because there are too many petitions for one court to hear.
- 8. because the other person's case might have special facts that make it different from the Supreme Court case.
- 9. because trials are for finding out what really happened, and the Court of Appeals decides whether the lower court judge correctly applied the law.

How to Use the Magic Square:

Match statements and reasons above. Write the numbers of the correct answers in the boxes next to the letters. To check your answers, add the rows across and down. All rows and columns will add up to the same number.

Magic Number:

Magic Square		
A	B	C
D	E	F
G	H	I

1) FACT The Court of Appeals does not hold a trial all over again...	2) FACT The Court of Appeals must accept every case...	3) FACT Decisions from the Court of Appeals and the Supreme Court are precedent for new cases...
4) FACT Cases in the appellate courts are heard by more than one judge...	5) FACT Oral argument is an important part of an appeal...	6) FACT The Supreme Court does not have to take every case that comes along...
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REASON ...because its decisions affect the whole country by setting precedent for similar cases in the lower courts.	REASON ...because testifying is a way of telling what happened, and the Supreme Court does not decide what happened. It decides whether the Court of Appeals judges made the right decision.	REASON ...because precedent cases help people know what to expect. Otherwise, judges could make wildly different decisions in very similar cases.
REASON ...because It allows the appeals court judges or Supreme Court justices to ask specific questions about the case.	REASON ...because Trials are for finding out what really happened, and the Court of Appeals only decides whether the lower court judge correctly applied the law.	REASON ...because appellate court decisions are precedent for many people, so it's important to have more than one judge think about the decisions.
REASON ...because there are too many petitions for one court to hear.	REASON ...because the other person's case might have special facts that make it different from the Supreme Court case.	REASON ...because people have an automatic right of appeal after a trial court's decision. This helps ensure that the law is applied correctly.

School Strip Search!



Savana Redding must have been furious when she lost her court case in the trial court. It all started when someone told the school principal Savana was giving pills to other students. Even though Savana had never been in trouble

before and denied doing anything wrong, the principal ordered the school nurse and a female school employee to search Savana. They took Savana into a room and told her to take off her outer clothing and shake out her underwear. They didn't find any pills.

Savana believed her rights had been violated. After all, the Fourth Amendment to the Constitution is supposed to protect people against unreasonable searches. So Savana took her case to court, arguing that the strip search violated her Fourth Amendment rights.

The trial court didn't see it that way. The judge decided the school had a right to conduct the search, based on two factors: 1) the school had a good reason to believe the search needed to be done, and 2) the search did not go too far, considering that drugs are very serious.

Savana's lawyer filed a written **brief** in the Court of Appeals for the Ninth Circuit, arguing the school did not have a good reason to conduct a strip search and that the search did go too far. Both lawyers went to court for an **oral argument** in front of a **panel** of three Court of Appeals judges. Savana couldn't tell the judges her story, but she could sit in the courtroom and listen. During the oral argument, her lawyer explained his reasoning to the judges, and they peppered him with questions to be sure they understood his point of view.

In private, the Court of Appeals judges considered whether the trial court judge correctly analyzed the two factors. Two of the three judges agreed that she did. They issued a written **opinion** explaining their decision and giving the judge who disagreed a chance to explain his **dissent**. But it was two against one, so Savana lost again.

This was a real case. The pills were prescription-strength Ibuprofen, a fact the Supreme Court ultimately said pointed away from the search being reasonable, because of the pills' relative lack of danger.

The school personnel didn't "see" anything, but Savana's private areas were briefly exposed.

4th Amendment: "The right of the people to be secure in their persons . . . , against unreasonable searches and seizures, shall not be violated."

These factors come from a 1985 Supreme Court case establishing that both factors must be true in order for a school's search of a student to be reasonable.

Both sides file briefs supporting their arguments. Appeals court judges read the briefs carefully and are well-prepared when they arrive in court for oral argument.

An oral argument is like a conversation between the judges and the lawyers. Savana's lawyer would get to speak first for a set amount of minutes, then the school's lawyer would speak, then Savana's lawyer would have a few minutes to reply.

The dissenting opinion is tacked on to the end of the main opinion.

En banc (pronounced "on bonk") is a French phrase that means "on the bench." In a circuit with a smaller number of judges, all the judges in the circuit re-hear the case together. For example, the Second Circuit has twelve active judges, all of whom sit on the en banc panel.

Even in a case with substantially similar facts, judges must follow precedent. If the facts of a case were weaker or stronger, the judge would still have to use the same analysis but might be justified in coming to a different conclusion.

The Supreme Court decision suggests that if the pills had been more dangerous than Ibuprofen and there was reason to believe Savana was hiding them in her underwear, a strip search might have been reasonable.

When the Supreme Court takes a case, that is called granting "certiorari." (SIR-show-RAHR-ee) The Court gets over 10,000 petitions for certiorari each year, but only grants about 100.

The petition doubles as a brief arguing the petitioner's side of the case. The school's petition was 37 pages long.

Friend of the court briefs in this case were filed by groups such as the National School Boards Association, for the school, and the American Society for Adolescent Psychiatry, for Savana.

The opinion in *Safford v. Redding* was issued on June 25, 2009.

There was still hope. Savana's lawyer took a chance and asked for something that doesn't happen very often: He asked all the Ninth Circuit judges to reconsider the decision together. They agreed! It would be too crowded for all 48 judges in the circuit to be in the courtroom, so they chose eleven judges to sit on the **en banc** panel and hear the case again. Everyone filed more briefs, and there was a new oral argument. This time, Savana had six judges on her side. She won!

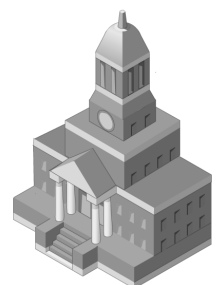
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Afterward, weeks passed. Finally, the Court issued a written opinion. Although the Court found that the school had a good reason to believe a search should be done, the Court said that a strip search went too far. Savana won!

Because she decided to take her case "up" as far as it would go, this Supreme Court decision is now precedent for everyone in the country.



True/False Active Participation Activity

Read each statement to the class. Have students answer "true" or "false" as a chorus or show you thumbs-up for true or thumbs-down for false.. Pause to discuss each answer.

True or false...	
1. Lawyers don't have to file any kind of paperwork at the Court of Appeals.	F
2. To ask the Supreme Court to take your case, you file a petition	T
3. A panel of three judges in the Court of Appeals is called an "en banc" panel.	F
4. Higher courts use totally different factors to judge a case than the lower court used.	F
5. There are nine justices on the Supreme Court.	T
6. The Court of Appeals only hears a case en banc in very important situations.	T
7. In an oral argument, the lawyers yell at each other and while the judges listen.	F
8. The Court of Appeals must take every case appealed to it.	T
9. A precedent case acts like a law for future cases with very similar facts.	T
10. The Supreme Court must take every case appealed to it.	F

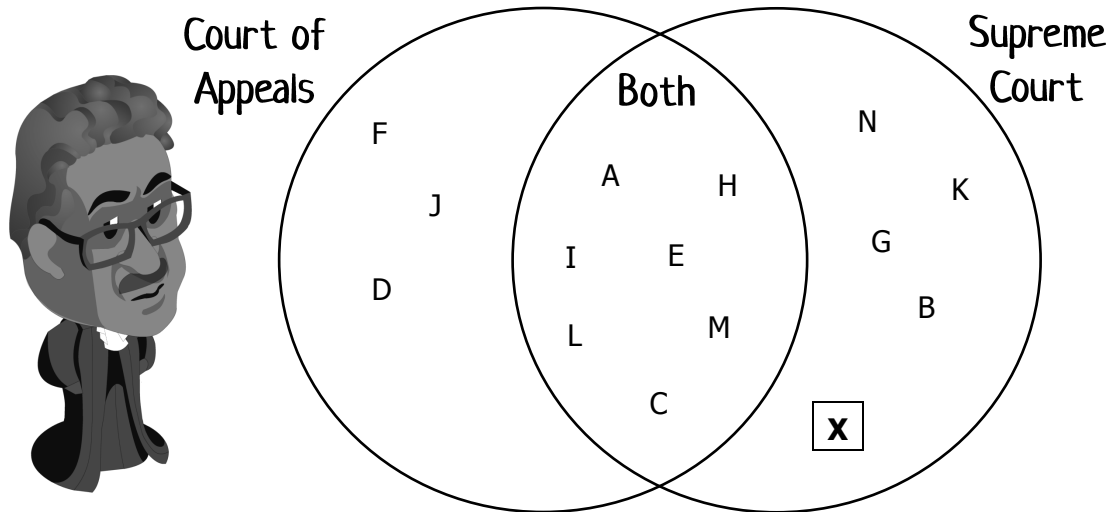
Sentence Matching Cards (Answers)

- The Court of Appeals does not hold a trial all over again** because trials are for finding out what happened, and the Court of Appeals decides whether the lower court judge correctly applied the law.
- The Court of Appeals must accept every case** because people have an automatic right of appeal after a decision is made in trial court. This helps ensure that the law is applied correctly.
- Decisions from the Court of Appeals and the Supreme Court are precedent for new cases** because precedent cases help people know what to expect. Otherwise, judges could make wildly different decisions in very similar cases.
- Cases in the appellate courts are heard by more than one judge** because appellate court decisions are precedent for many people, so it's important to have more than one judge think about the decisions.
- Oral argument is an important part of an appeal** because it allows the appeals court judges or Supreme Court justices to ask specific questions about the case.
- The Supreme Court does not have to take every case that comes along** because there are too many petitions for one court to hear.
- Cases decided by the Supreme Court are particularly important** because its decisions affect the whole country by setting precedent for similar cases in all the lower courts.
- If someone wins or loses a Supreme Court case, another person with a similar case will not automatically win or lose** because the other person's case might have special facts that make it different from the Supreme Court case.
- People do not get to testify at the Supreme Court** because testifying is a way of telling what happened, and the Supreme Court does not decide what happened. It only decides whether the Court of Appeals judges made the right decision.

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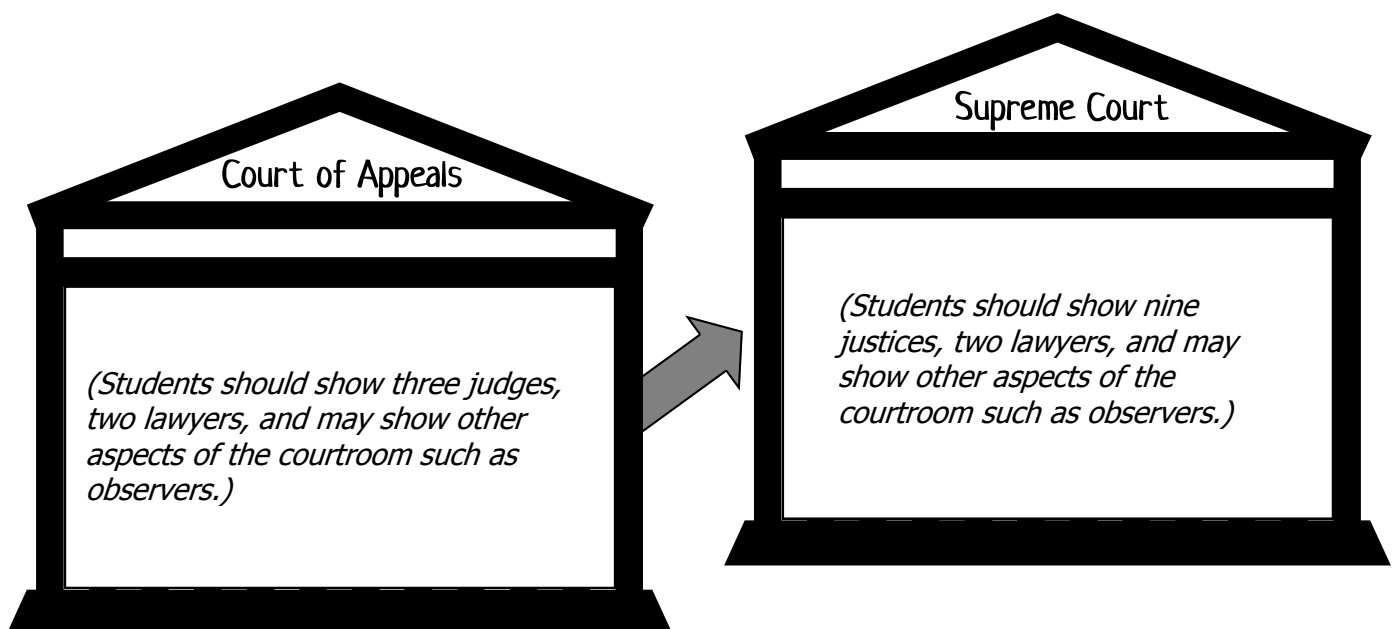
** TEACHER GUIDE **

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B. Draw! Use what you learned about each court to draw the inside of the courtrooms.



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										I									
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										⁴ Q									
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										⁸ D I S S E N T									
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Down

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Across

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Appellate Courts: Let's Take it Up

**** TEACHER GUIDE ****

D. Why Is It That Way? Explain each fact by correctly matching it with a reason. Write the number of the reason in the correct box of the magic square below.

FACTS

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Magic Number:

15

Magic Square		
A	B	C
9	4	2
D	E	F
5	3	7
G	H	I
1	8	6