**U.S. Courts of Appeals and Their Impact on Your Life**

*What are the Courts of Appeals and what is their role?*

What happens when the Supreme Court denies review of a case decided by one of the 13 Circuit Courts of Appeals? What happens when there is a vacancy on the Supreme Court and the eight justices come to a 4-4 decision on a case? The simple answer to both questions is that the decision made by the particular Court of Appeals stands.

The Supreme Court annually hears about 100 cases and rejects about 7,000 requests for review. The decisions made by the Courts of Appeals in many of those cases are the last word. In light of that, Courts of Appeals have a major impact on the everyday life of law-abiding citizens, including teens. However, the Courts of Appeals aren’t as visible as the Supreme Court and they are not as widely known or understood.

This courtroom or classroom activity gives every student the opportunity to serve as an appellate judge and as an appellate lawyer to gain a working knowledge of these vital appellate courts. Use the teen-relevant cases decided by Courts of Appeals and the supporting resources to discover more about the U.S. Courts of Appeals’ place in the federal court system.

**What’s Different About This Activity?**

* Need-to-Know Information
* Every Learning Style is Involved
* Teen-Relevant Cases
* Flexible Approach to Activities

**Activity Resources**

* The Evarts Act: Creating the Modern Appellate Courts
* The U.S. Courts of Appeals: What You Should Know
* The Last Word: Court of Appeals Cases You Should Know

**Related Content**

* Courts of Appeals [Cases Related to *Miranda v. U.S.*](http://www.uscourts.gov/educational-resources/educational-activities/related-circuit-court-cases-miranda-v-arizona)

**In Advance of the Activity**

* Teachers prepare students for the activity by covering the material in**:** the Evarts Act: Creating the Modern Appellate Courts and the U.S. Courts of Appeals: What You Should Know.

**Activity Overview -- Each Three, Teach Three**

Students are organized into teams of three members for a round robin of modified, appellate court oral arguments. All students prepare and present as lawyers. All students have the opportunity to serve on three-judge panels, just like the Courts of Appeals.

**Round #1**

**Each Three-Person Team:**

* Prepares arguments for a case they choose from the provided list;
* Anticipates and prepares questions (and answers) that the student-judges might use during the oral arguments.

**Round #2**

**Each Three-Person Team**

* In Round #2, students switch roles and repeat the exercise with the lawyers serving as judges and the judges serving as lawyers.

**In the Courtroom or Classroom**

**Teams**. To begin the activity, students form three-person teams. Teams stay together for the duration of the activity, and all team members have the opportunity to be judges and lawyers.

From the provided list, teams select one of the real-life cases of interest to them. They collect information about their case by doing Internet research. Once they organize and analyze the research, student-attorneys work with volunteer, adult attorneys to write talking points and questions and answers for the oral arguments. The same, three-person team develops arguments and questions for both sides of the issue.

**Phase I**

**Student-Attorney Roles.** Student Attorney #1 prepares arguments to present on behalf of the government’s position. Student-Attorney #2 prepares arguments to present on behalf of the defendant’s position. Attorney #3 anticipates and writes the questions and answers the three-judge panel can use or modify when addressing each side during the hearing.

**Written Arguments/Briefs.** Panels make a copy of their talking points and Q/A sheets and give their folders to the facilitator. Student-attorneys keep their originals. The facilitator redistributes the materials to student-judges sitting on three-judge panels who will hear the arguments

**Phase II**

**Student-Judge Roles**. Student judges prepare for oral arguments by reading the student-attorney briefs distributed to them. They are to do no outside research or reading about the case in order to base their decision on their review of the record that is put before them.

**Student-Attorney Preparation.** First, each team prepares to be attorneys who present their selected case to a three-judge peer panel. For both sides of their case, the student attorneys 1) develop talking points for arguments; and 2) write questions and answers.

 1. **Oral Arguments.** Each three-person, student-attorney team presents arguments to its assigned, three-judge panel. The judges ask questions. They may use the questions drafted by the arguing team and/or add their own questions.

**2. Conference.** The three-judge panels go into conference and decide which side prevails. They return to the courtroom. Each panel announces its decision and the rationale for it.

3. **Wrap Up**. The judge joins the students and conducts a mutual Q/A session with the students on the exercise and any topic of interest to the students. The question period is followed by informal socializing with the judge and the volunteer attorneys.

**Courts of Appeals (COA) Cases – Flexible Template for a Courtroom Simulation**

*Duration: 1.5 to 2 Hours*

**Use, modify, or adapt this agenda for use with the COA teen-relevant cases posted with it.**

*15 minutes* **Facilitator Gives Program Overview.**

 Attorney volunteers introduce themselves by telling why they chose a career in the law.

 Attorneys use a ready-to-go Prezi that establishes the Court of Appeals’ purpose, place in the system, and how appellate courts are different from trial courts.

*10 minutes* **Lawyers Present Facts and Case Summary**

 **The Participants Form Three Groups:**

1. **Petitioner’s Student Attorneys and Attorney Coach –** Identify and classify argumentsusing the worksheet provided. (Meet in the courtroom.)
2. **Respondent’s Student Attorneys and Attorney Coach –** Identify and classify arguments using the worksheet provided. (Meet in the courtroom.)
3. **Appellate Student Judges and Presiding Judge Coach –** Prepare questions that they will ask the student lawyers from the bench during the hearing. (Meet in an adjacent room.)

 *20 minutes* **The Three Groups Prepare for the Hearing with Their Respective Coaches**

 **1. Petitioners and Their Attorney Coach** – The Coach asks for two students in their group to volunteer to represent the team and argue before the Judge during the hearing.

 **2. Respondents and Their Attorney Coach –** The Coach asks for two students in their group to volunteer to represent the team and argue before the Judge during the hearing.

 **3. Judges and Their Presiding Judge Coach –** Teachers ask for two student volunteers to serve as appellate judges – one on each side of the Presiding Judge. If the Judge would like to have an en banc hearing, teachers could select more students to be judges and sit on the bench.

 **Note:** To keep all students engaged, 1) the Presiding Judge and the student judges ask questions of the student attorneys and 2) the Presiding Judge asks questions of the students in the audience on a) the petitioner’s side of the courtroom and b) the respondent’s side of the courtroom.

*10 minutes**All students take a break --except the students who volunteered to be judges or attorneys -- if they need more time to prepare.*

 *5 minutes* The Presiding Judge, joined by the student judges, takes the bench and explains the role of the appellate courts. The Presiding Judge opens the hearing and explains the process.

 *10 minutes* Petitioner’s student attorneys present arguments to the bench. The Presiding Judge and student judges ask questions of the student attorneys. The Presiding Judge asks questions of the students in the audience.

*10 minutes* Respondent’s student attorneys present arguments to the bench. The Presiding Judge and student judges ask questions of the student attorneys. The Presiding Judge asks questions of students in the audience.

*15 minutes* The student judges, facilitated by the Presiding Judge, leave the bench, deliberate for 10 minutes, and come to a decision. During this time, the volunteer attorneys lead a discussion among the students in the courtroom on how they would decide the case. The judges return to the bench and announce their collective decision. If there is a majority opinion and dissenting opinion(s), the Presiding Judge asks one student judge from each faction to explain their rationale. The Presiding Judge asks the students in the audience to express their opinions by a show of hands. If there is time, the Presiding Judge asks volunteers in the audience for their rationale.

*15 minutes* Q/A Session with the Judge on any Topic

*10 minutes* Group Photo in the Courtroom and Adjournment.

**The Evarts Act: Creating the Modern Appellate Courts**

*The Evarts Act of 1891 Accomplished the Following:*

**Created Courts of Appeals by Region/Circuit**

Congress, in the Judiciary Act of 1891, commonly known as the Evarts Act, established nine Courts of Appeals, one for each judicial circuit at the time. The Act created another judge position for each circuit, identified in the legislation as the circuit justice. Appeals from trial court decisions were heard by three-judge panels made up of the circuit justice, a court of appeals judge, and a district court judge. The Act recognized nine circuits. Today 12 Circuits hear appeals.

*Fast Fact*

**The Evarts Act established the structure of the appellate courts -- one Court of Appeals in every Circuit. Over time, Congress expanded the types of cases appellate courts could hear.**

**Established the Role of the U.S. Courts of Appeals**

The U.S. Courts of Appeals were the first federal courts designed exclusively to hear cases on appeal from trial courts. Creating the appellate courts in 1891 was an effort to relieve the Supreme Court’s overwhelming caseload by dealing with the dramatic increase in federal appeals filings.

*Fast Fact*

**By increasing the number of appellate courts, the Evarts Act made possible and feasible the right to appeal trial court decisions.**

**Gave Appellate Courts Jurisdiction Over Most Appeals**

The Evarts Act gave the U.S. Courts of Appeals jurisdiction over the great majority of appeals from trial court decisions. The Act sharply limited the categories of cases that routinely could be appealed to the Supreme Court of the United States. The Judiciary Act of 1925 and later statutes continued that trend while expanding the jurisdiction of the U.S. Courts of Appeals. By the 1930s, the appellate courts’ jurisdiction included administrative appeals of decisions made by federal regulatory agencies**.**

*Fast Fact*

**The Evarts Act limited the types of cases that routinely could be appealed to the Supreme Court of the United States. It gave the U.S. Courts of Appeals jurisdiction over the rest of the cases.**

**Set the Stage for Internal Governance of the System by Judges**

The 1922 law that established the Conference of Senior Circuit Judges was the forerunner of the Judicial Conference of the United States, the administrative body of the federal courts. It gave the senior judge in each circuit official administrative authority over the district courts in each circuit. Congress expanded the administrative responsibilities of Courts of Appeals judges in 1939 with the creation of the Circuit Judicial Councils.

*Fast Fact*

**Laws passed by Congress after the Evarts Act set up a model of self-governance for the Circuit Courts that has evolved into the governance structure of the federal court system today.**

**The U.S. Courts of Appeals: What You Should Know**

*In the federal system, 94 district courts are organized into 13 Circuits, or regions. Each has its own U.S. Court of Appeals that reviews cases brought to it from the district courts in its Circuit. Circuit Courts handle all appeals, except for about 100 cases taken every year by the Supreme Court of the United States.*

**Significance of U.S. Circuit Courts of Appeals**

The Supreme Court of the United States hears about 100--150 appeals of the more than 7,000 cases it is asked to review every year. That means the decisions made by the 12 Circuit Courts of Appeals across the country and the Federal Circuit Court are the last word in thousands of cases.

**How Appellate Courts are Different from Trial Courts**

At a trial in a U.S. District Court, witnesses give testimony and a judge or jury decides who is guilty or not guilty -- or who is liable or not liable. The appellate courts do not retry cases or hear new evidence. They do not hear witnesses testify. There is no jury. Appellate courts review the procedures and the decisions in the trial court to make sure that the proceedings were fair and that the proper law was applied correctly.

**The Right to Appeal**

An appeal is available if, after a trial in the U.S. District Court, the losing side has issues with the trial court proceedings, the law that was applied, or how the law was applied. Generally, on these grounds, litigants have the right to an appellate court review of the trial court’s actions. It should be noted that, in criminal cases, the government does not have the right to appeal.

**Grounds for Making an Appeal**

The reasons for an appeal vary. However, a common reason is that the dissatisfied side claims that the trial was conducted unfairly or that the trial judge applied the wrong law, or applied the law incorrectly. The dissatisfied side may also claim that the law the trial court applied violates the U.S. Constitution or a state constitution.

**Roles and Terms**

The side that seeks an appeal is called the petitioner. It is the side that brings the petition (request) asking the appellate court to review its case. The other side is known as the respondent. It is the side that comes to court to respond to and argue against the petitioner’s case.

**Preparing for an Appellate Argument**

Before lawyers come to court to argue their appeal, each side submits to the court a written argument called a brief.  Briefs can actually be lengthy documents in which lawyers lay out the case for the judges prior to oral arguments in court.

**The Last Word: Court of Appeals Cases You Should Know**

*For These Teen-Relevant Issues, Courts of Appeals’ Decisions Were the Last Word*

Of the approximately 7,000 cases that are appealed to the Supreme Court of the United States every year, about 100 are decided by the highest court in the land. In the rest of these cases, the decisions made by judges on the 12 Circuit Courts of Appeals and the D.C. Circuit are the last word.

**First Circuit**

**On the Street: Recording Public Officials in Public**

[**Glik v. Cunniffe**](http://caselaw.findlaw.com/us-1st-circuit/1578557.html)(2011)

A private citizen has the right to record video and audio of public officials in a public place. This case, which involved filming police making an arrest in a public park, was the first case in which a U.S. Court of Appeals explicitly ruled that private citizens have a right to film police officers in public spaces. The Court of Appeals also ruled that the right to film public officials was subject to reasonable limitations with respect to time, place, and manner in which the recording is made.

**Second Circuit**

**Reading Assignment: Ulysses is Not Obscene**

[***United States v. One Book Called Ulysses***](https://en.wikipedia.org/wiki/United_States_v._One_Book_Called_Ulysses) (1933)

The Second Circuit Court of Appeals affirmed a trial court decision that offensive language in James Joyce’s novel *Ulysses* was not obscene. The trial court opinion, written by U.S. District Court Judge John M. Woolsey, is widely known even today as an erudite affirmation of free expression in literature.

**Third Circuit**

**Middle School Health Advocates Have First Amendment Rights, Too**

[***Hawk v. Easton Area School District***](http://blog.constitutioncenter.org/2014/03/supreme-court-could-reject-or-accept-boobies-case-on-monday/)(2013)

When the Supreme Court of the United States denied a final appeal from a Pennsylvania school district, the ruling of the [Third Circuit Court of Appeals was the last word](http://blog.constitutioncenter.org/2013/08/circuit-court-sent-clear-message-in-boobies-case/) in what has become known as the “I Heart Boobies” case. In August, 2013 the Third Circuit Court of Appeals upheld a federal district court decision that protected the free speech rights of two middle school girls who wore the popular “I Heart Boobies (Keep a Breast)” bracelets to promote breast cancer awareness at their school for several weeks.

**Fourth Circuit**

**Religious Rituals in Prison Have Limits**

[***Dettmer v. Landon***](https://en.wikipedia.org/wiki/Dettmer_v._Landon)(1986)

Although the Fourth Circuit Court of Appeals recognized Wicca as a religion, it ruled that a Virginia prisoner did not have a right, in the practice of this religion, to possess ritual objects, including knives, which are contraband in a prison setting. The court found that the decision to prohibit the prisoner from possessing the items did not discriminate against him on the basis of his unconventional religious beliefs. This case was the first time a court recognized Wicca as a religion.

**Fifth Circuit**

**Students Can’t Be Expelled Without Due Process**

[***Dixon v. Alabama***](https://en.wikipedia.org/wiki/Dixon_v._Alabama)(1961)

State-funded colleges and universities cannot expel a student without due process. Alabama State College (now Alabama State University), an historically black college in Montgomery, expelled for unspecified reasons six students. The students had participated in Civil Rights demonstrations. The Fifth Circuit Court of Appeals ruled that a public college cannot expel students without at least minimal due process. The case was decided by Judges John Minor Wisdom, Richard Rives, and Benjamin Franklin Cameron. Thurgood Marshall was among the counsel for the students.

**Sixth Circuit**

**First Amendment Protects False Statements in Political Advertising**

[***Susan B. Anthony List; Coalition Opposed to Additional Spending & Taxes v. Steven Driehaus***](http://www.ca6.uscourts.gov/opinions.pdf/16a0048p-06.pdf)(2016)

Ohio’s laws that make political false statements illegal are unconstitutional. The Sixth Circuit Court of Appeals ruled that the Ohio laws are content-based restrictions on protected political speech and they are too broad. The issue was brought to a trial court in 2010 by then-Congressman Steven Driehaus who claimed that the Susan B. Anthony List violated Ohio’s political false-statements law when it issued a news release accusing him of endorsing “taxpayer-funded abortion” by voting for the Affordable Care Act.

**Seventh Circuit**

**School Administrators May Decide if College Newspaper Content is Appropriate**

[***Hosty v. Carter***](--%20Campbell%20Library%20in%20Chicago.%20%20312-435-5660.)(2005)

The Seventh Circuit Court of Appeals held that college newspapers were subject to the same school administration controls and limitations as high school newspapers under *Hazelwood v. Kuhlmeier (*1988). After the university newspaper criticized the Governors State University administration, Dean Patricia Carter told the editor that future editions could not be published until approved by the school administration despite the policy that the newspaper staff would “determine content and format of their respective publications without censorship or advance approval.”

**Eighth Circuit**

**It’s Okay for this Ice Cream Truck Brand to be Used in a Violent Video Game**

[***Frosty Treats, Inc. v. Sony Computer Entertainment America, Inc.***](https://en.wikipedia.org/wiki/Frosty_Treats%2C_Inc._v._Sony_Computer_Entertainment_America%2C_Inc.)(2005)

In this trademark case, the U.S. Court of Appeals for the Eighth Circuit held that Frosty Treats, the name of one of the largest ice cream truck franchises in the country, was neither distinctive enough nor famous enough to receive protection against being used in a violent video game.

*or*

**Eighth Circuit**

**In This Instance, School Officials Can Ban the Confederate Flag**

[***B.W.A. v. Farmington R-7 School District***](http://media.ca8.uscourts.gov/opndir/09/01/073099P.pdf)(2009)

Farmington, Missouri, school officials were justified in suspending students for wearing Confederate flag clothing in what was considered a racially tense school environment following incidents of violence and degradation targeting African American students.

[First Amendment Center Commentary](http://www.firstamendmentcenter.org/8th-circuit-sides-with-mo-school-in-dispute-over-confederate-flag)

**Ninth Circuit**

**Segregating Students by Ethnicity is Unconstitutional**

[***Mendez, et al v. Westminster***](http://www.uscourts.gov/educational-resources/educational-activities/background-mendez-v-westminster-re-enactment) ***School District of Orange County, et al (***1947)

The Ninth Circuit Court of Appeals, sitting en banc, held that the segregation of Mexican and Mexican American students into separate schools from those attended by the majority student population was unconstitutional. It was the first ruling in the United States in favor of desegregation. Several organizations joined the case as amicus curiae, including the NAACP, represented by Thurgood Marshall.

**Tenth Circuit**

**Courts of Appeals Upholds a Bomber’s Death Penalty Sentence**

[***United States of America v. Timothy James McVeigh***](http://law2.umkc.edu/faculty/projects/ftrials/mcveigh/mcveigh10thcircuit.html)(1998)

Timothy J. McVeigh was tried, convicted and sentenced to death on eleven counts stemming from the April 19, 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. The bombing resulted in the deaths of 168 people. This case is an example of how an appellate court reviews a death penalty case.

**Eleventh Circuit**

**Textbook Review: Particular Book Does Not Promote or Inhibit Religious Beliefs**

[***Smith v. Board of School Commissioners of Mobile County***](https://en.wikipedia.org/wiki/Smith_v._Board_of_School_Commissioners_of_Mobile_County)(1987)

The U.S. Court of Appeals for the Eleventh Circuit held that schools in Mobile County, Alabama could use textbooks that some parents believed promoted secular humanism as a religion. The Court found that the textbooks -- which presented the values of tolerance, self-respect, and logical decision making -- neither unconstitutionally advanced a nontheistic religion nor inhibited theistic religion.

**D.C. Circuit**

**Restricting Some TV and Radio Content to Certain Hours is Not Unconstitutional**

[***Action for Children’s Television v. Federal Communications Commission***](https://scholar.google.com/scholar_case?case=8830201487101391893&q=action+for+children%27s+television+v.+fcc+1995&hl=en&as_sdt=20006&as_vis=1.) **(**1995)

In an en banc ruling, the D.C. Circuit Court of Appeals found that the government has a compelling interest in protecting children under the age of 18 from exposure to indecent broadcasts. The Court ruled that restricting television and radio broadcasting of indecent material to the hours between midnight and 6:00 a.m. is not unconstitutional. It decided that such a policy would not unduly burden the First Amendment.