

## How Well Do You Know Your U.S. Supreme Court?

1. Name the nine justices currently on the Court.
2. Historically, the Court's members have been Protestant. At various times there has been discussion of the "Catholic seat" or the "Jewish seat" on the Court. How many members of the current Court are Protestant? Catholic? Jewish?
3. TRUE or FALSE? In a typical term the Court decides more cases 5 to 4 than 9 to 0.
4. Court watchers are typically hesitant to predict voting patterns among justices because the labels of "liberal" and "conservative" are not always clear or consistent and justices are not always in one "camp" or another. However, typically, which justices tend to be considered most "conservative"?
5. Which justices tend to be considered most "liberal"?
6. Which justice(s) tends to be considered a swing voter(s) – sometimes voting with liberals and sometimes voting with conservatives?
7. Approximately how many cases are appealed to the U.S. Supreme Court each year? Approximately how many are accepted for briefing and oral argument? Approximately what percent are accepted?
8. TRUE OR FALSE? When the Supreme Court decides not to hear a case (denies *certiorari*) it is saying that it agrees with the lower court's opinion and that the lower court decision should become a precedent.
9. Which court system generates most of the cases accepted by the U.S. Supreme Court—state or federal? Explain your answer.
10. TRUE or FALSE? Most experts who study the Court believe that the primary reason the Court decides to hear a case is to correct a legal error made by a court below.
11. Which justices, if any, had no prior judicial experience before joining the Court?

## How Well Do You Know Your Supreme Court? (Answers)

1. The justices are John Roberts, Antonin Scalia, Anthony Kennedy, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer, Samuel Alito, Sonia Sotomayor and Elena Kagan.

(Additional background notes: This list is in order of seniority. Antonin Scalia has been the longest serving but the chief justice is considered by tradition most senior. Elena Kagan is the newest of the justices.)

2. Given the tradition of the Court as almost exclusively Protestant, the current group is quite unusual and historical. The following are Catholic: Kennedy, Roberts, Alito, Scalia, Thomas, and Sotomayor. The following are Jewish: Breyer, Ginsburg and Kagan. The Court is now composed entirely of Catholic and Jewish justices for the first time in its history.

As a historical note, the first Catholic justice was Roger Taney, who took the bench in 1836, and the first Jewish justice was Louis D. Brandeis, whose service began in 1916.

3. FALSE. In a typical term, the Court issues more unanimous decisions than 5-4 decisions.

(Additional background notes: In the previous term (2011–2012), 20% of the total cases were decided five to four, and 45% were decided unanimously. The trend in recent years has been for 15 – 20% of the cases to be decided 5-4 and 40 – 50% of the cases to be decided 9-0.)

4. Most Court watchers believe the more conservative justices are: Roberts, Alito, Scalia, and Thomas.
5. Most Court watchers believe the more liberal justices are: Ginsberg, Breyer, Sotomayor, and Kagan.
6. With new members joining the Court in recent years, alliances are somewhat less certain. For the last several terms, Justice Kennedy has tended to be a swing vote on cases where the justices were narrowly divided (i.e., 5-4 votes). This past year he was in the majority in 80% % of the 5-4 decisions (and in the majority for 88% of all split decisions). By contrast, Justice Ginsburg was in the majority for only 40% of the 5-4 decisions in the 2011-2012 term (and in the majority for 45% of all split decisions). She was least often in the majority in these cases.

7. In recent years the Court has received approximately 8,000 petitions for *certiorari* each term. In recent years the Court has averaged about 75 decisions per term; generally, fewer than 1% of cases are accepted. During the 2011-2012 term, the Justices issued 65 signed opinions after full briefing and argument (though with summary reversals this number rises to 75). This is slightly lower than past terms in part due to the fact that several big cases, including the Affordable Care Act cases, were consolidated into one opinion. The Justices issued 75 opinions after full briefing and argument in the 2010-2011 term and 72 opinions after full briefing and argument in the 2009-2010 term.
8. FALSE. When *certiorari* is not granted, no precedent is set. The decision below simply stands. The media frequently (and incorrectly) report a denial of *certiorari* as a decision on the merits (e.g., the Court today approved a lower court decision...).
9. The majority of cases handled by the Supreme Court come from the federal courts (specifically the federal courts of appeal). While state courts decide about 30 times as many cases as the federal courts, most state court decisions do not raise a federal constitutional question or a question of federal law. Unless such questions are raised, the U.S. Supreme Court has no power to decide the case. In a typical term, about 10% of cases came from state courts.
10. FALSE. The primary reason the Court decides to hear a case is to resolve a conflict between lower courts as to the resolution of a particular legal question. The U.S. Supreme Court is not a court of error and does not attempt to correct legal errors from other courts.
11. Justice Kagan. Before her appointment, all the justices on the Court had previous judicial experience. The last justice who was appointed without having first served as a judge elsewhere was William Rehnquist in 1972.

NOTE – SCOTUSblog (at [www.scotusblog.com](http://www.scotusblog.com)) provides a great source of statistics about current and past Supreme Court terms.

# THE LANGUAGE OF THE LAW

*“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.” – Fourth Amendment to the U.S. Constitution*

1. Who is protected by the Fourth Amendment?
2. Whose actions are limited by the Fourth Amendment?
3. What is a search? What is a seizure?
4. What kinds of searches and seizures are prohibited?
5. What is a warrant? How is one obtained?
6. Are warrantless searches ever permitted? If so, in what circumstances?
7. What individual interests and what government interests are considered by the Court when deciding Fourth Amendment cases?

# JIGSAW

The elements of a **JIGSAW** include:

1. **Task Division:** A task or a passage of text materials is divided into several component parts (or topics).
2. **Home Groups:** Each group member is given a topic on which to become an expert.
3. **Expert Groups:** Students who have the same topics meet in expert groups to discuss the topics, master them, and plan how to teach them.
4. **Home Groups:** Students return to their original groups and teach what they have learned.

## JIGSAW: Graphic Organizer

Expert Group – Color \_\_\_\_\_ Home Group – Number \_\_\_\_\_

Expert Case: \_\_\_\_\_

With your expert group members, you have 40 minutes to study your assigned case.

1. Read the case summary and articles (you can divide the articles among group members)
  2. Discuss the case, focusing on (a) summarizing the facts, (b) identifying the issues, and (c) summarizing the arguments for both sides. Take notes:
- 

FACTS:

ISSUE:

PRECEDENTS:

**ARGUMENTS:**

	<b>Petitioner:</b>	<b>Respondent:</b>
<b>Arguments based on precedent</b>		
<b>Arguments based on policy</b>		

**DECISION:**

3. Decide how to teach this case to your HOME group colleagues. Underline or put a \* by the key points in your notes above. You will have 10 minutes to teach the case.

If the case is undecided, you might choose to vote on how it should be decided after teaching the facts, issue & arguments.

Now meet with your HOME group (assigned by number). Each of the three people in your group should have studied a different case. You should each take 10 minutes to teach the other group members about your case. Take notes about the other two cases in the boxes provided below.

CASE:	FACTS	ISSUE	ARGUMENTS	DECISION
A.  _____ V.  _____				
B.  _____ V.  _____				



# ***Florida v. Jardines***

Argued: October 31, 2012

Decided: March 26, 2013

## **Background**

The Fourth Amendment protects people from unreasonable searches by the government. A search occurs when the police look for anything in an area where a person has a reasonable expectation of privacy. People have their greatest expectation of privacy in their homes. Police must usually get a warrant before searching a person's home in order for the search to be considered reasonable. If the police officer demonstrates to a judge that probable cause (a good reason to search) exists, the judge will issue a search warrant.

However, there are also certain exceptions that permit officers to search people and their belongings without a warrant. For example, police are allowed to search if an individual consents to an officer's request to search, or if something connected to a crime is plainly visible from a place where an officer has a right to be. This case is about whether or not the use of a drug-sniffing dog at the front door of a house is a search and, if so, whether a search warrant is required.

## **Facts**

The Miami-Dade police department received an anonymous tip that Joelis Jardines was growing marijuana in his home. Police went to investigate, and observed the house for about fifteen minutes until Detective Bartelt arrived with his trained drug-detection dog named Franky. Detective Bartelt approached the house with Franky, following their usual drug-detection procedures. Franky went onto the porch, sniffed around, and sat down immediately after smelling the base of the front door. This was his way of alerting Bartelt that he detected the scent of illegal drugs. Detective Bartelt then returned to his car and prepared the information necessary to request the investigation's first search warrant, using Franky's alert as evidence of probable cause. A judge issued the warrant and the subsequent search led to the discovery of over 25 pounds of marijuana. Jardines was arrested and charged with drug trafficking.

At his trial, Jardines argued that using a drug-sniffing dog at his house was an illegal search. The trial court agreed, and said that the state could not use the evidence discovered by the dog. Florida's appellate court reversed that decision, saying that the evidence could be used because dog sniffs are not searches. Jardines appealed to the Florida Supreme Court, which agreed with the trial court. Florida appealed and the Supreme Court of the United States agreed to hear the case.

## **Issue**

Is the use of a trained drug-sniff dog on a homeowner's porch a search?

## Constitutional Amendment and Precedents

### *Fourth Amendment*

“The right of the people to be secure... against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause.”

### *Katz v. United States* (1967)

Charles Katz was using a public payphone, and the FBI recorded his conversations using a device attached to the exterior of the phone booth. The Supreme Court said that this was an intrusion into Katz’s reasonable expectation of privacy, because people would typically believe their telephone conversations to be private after they had entered a booth and closed the door. Based on this decision, courts deciding Fourth Amendment issues will often first determine whether an individual who has been searched had an expectation of privacy that society recognizes as reasonable.

### *Kyllo v. United States* (2000)

Danny Kyllo was suspected of growing marijuana in his home. A federal agent used a thermal imaging device to scan the house from across the street. He wanted to see if Kyllo was using high-intensity lamps normally used in marijuana growing operations. The Supreme Court ruled that using this device to gather information about what was inside a home was a search. The Court said this technology was not something generally used by the public and that it detected information that would have been previously unknowable without a physical intrusion into the house. Therefore, its use violates the reasonable expectation of privacy that people generally have regarding the inside of their homes.

### *Illinois v. Caballes* (2005)

Roy Caballes was legally stopped by a state trooper for speeding on the highway. While his ticket was being issued, a second trooper walked a drug-sniffing dog around his car, which led to the discovery of marijuana. The Supreme Court decided that the use of a dog-sniff around a car during a lawful traffic stop is not a “search” because it does not violate a reasonable expectation of privacy. As long as the police are already allowed to be where they are, like on a public highway, it is not reasonable to believe you should be able to keep illegal things from being discovered there.

## Arguments for Jardines

- In *Kyllo v. United States*, the Court decided that using a specialized tool that was unavailable to the public was a search. Drug-sniffing dogs are very specially trained and use special skills in a process for investigating, which Detective Bartelt used with Franky. They are very different from your neighbor's dog next door, and are not widely used by the public.
- The thermal imaging device in *Kyllo* was also an unreasonable search because it detected things that were unknowable without intruding into the home. The use of a drug-sniffing dog is the same type of intrusion into the home, and is therefore a search.
- Your home is a reasonable place to expect to have privacy. Therefore, anything contained within Jardines' home, and not exposed to the public, was protected from search because the police did not first obtain a valid search warrant.
- People have a greater expectation of privacy in their homes than elsewhere, such as travelling through public in a vehicle. This is why the dog-sniff of Jardines' front door should be treated differently than the dog-sniff of an automobile stopped for speeding on the highway in *Illinois v. Caballes*.
- In order to have the dog conduct the sniff-test, the police had to enter the porch area of the house, where they were visitors to Jardines' home. A normal visitor is not allowed to use tools to conduct a search of someone's home from the front porch. Therefore, it is unreasonable for the police to bring a specially trained dog onto a porch for the sole purpose of seeing whether the dog will alert.

## Arguments for Florida

- Dogs are not a specialized technology –they are commonly seen and utilized among the general public. They have been aiding law enforcement for centuries. They are widely available and familiar to the public, unlike the thermal imaging device in *Kyllo*.
- In *Illinois v. Caballes*, the Court stated that it was not reasonable to expect to hide drugs from police in the trunk of a car because society does not generally recognize an interest in keeping illegal activities hidden from law enforcement. Jardines therefore had no reasonable expectation of privacy in concealing his marijuana plants from the detectives.
- A major concern with the thermal imaging devices in *Kyllo v. United States* was that they could possibly intrude into private information about normal and lawful activities occurring inside a house. As a drug-sniffing dog can only detect unlawful activities, the dog-sniff is not an intrusion.
- It is highly unlikely that Jardines planned for the odor on his porch to only be strong enough for a dog to detect it, but not a human. Reasonable people understand that odors coming from a home may change, and grow strong enough to be detected by a human from locations that are open to the public. Therefore, it is unreasonable to expect to keep the odor of marijuana private when it can be detected from an area accessed by the public, such as a front porch.
- Like any member of the public, the police can come and knock at your door. In fact, officers routinely approach homes to gather evidence by asking questions of the people who live there. From the front door, drug-sniffing dogs can only detect odors that have travelled outside the home. Any regular visitor can bring his dog on a leash to a neighbor's door. Therefore, when officers bring a dog to the door, even if it is to gather evidence, it should not be seen as unreasonable.

## **Decision**

In a 5-4 decision, the Court ruled in favor of Jardines, agreeing that the use of a drug-sniffing dog in this instance is a search. In the majority opinion, Justice Scalia said that any investigation of a home and its porch is a search because it is trespassing. Justices Thomas, Kagan, Ginsburg, and Sotomayor joined his opinion. Justice Kagan wrote a concurrence which said that the use of a drug-sniffing dog on the front porch also violated Jardines' reasonable expectation of privacy in his home. Justices Ginsburg and Sotomayor joined this concurring opinion. Justice Alito wrote a dissent, which Chief Justice Roberts and Justices Kennedy and Breyer joined.

## **Majority**

Justice Scalia focused on how the Fourth Amendment protects property. The majority stated that a search can be defined as a physical intrusion into someone's property without permission. This is an unreasonable thing to do, and is also trespassing. The use of a drug-sniffing dog on a homeowner's porch is a physical intrusion without permission, and is therefore a search.

## **Concurrence**

The concurring justices agreed with Justice Scalia's rationale, but they also said that using a drug-sniffing dog on the front porch violated Jardines' reasonable expectation of privacy. Traditionally, courts have decided that there are special protections around people's homes. Homeowners can reasonably expect the things that are inside to be kept private. Even though visitors can approach a home, they cannot use a tool to investigate what is inside, because that might enable the visitor to know things the homeowner expected to keep private. Taking a drug-sniffing dog to a front door could allow a person to know what is inside a house, like the thermal-imaging device in *Kyllo*. Therefore, using a drug-sniffing dog on someone's home is a search and, without a properly executed warrant, a violation of his Fourth Amendment rights.

## **Dissent**

The dissenting justices said that dogs should not be seen as a specialized tool because they are generally used by the public. Dogs only discover the smell of an illegal substance and do not reveal any private information, like the thermal imaging device in *Kyllo*. The dissenting justices also say that there was no reasonable expectation of privacy here, as it is not reasonable to expect that the odor of marijuana will never be smelled by a human outside your home.

The dissenters also strongly disagree with the idea of calling this a trespass. They say that approaching the front entrance used by all visitors and observing for one to two minutes (as the officers did here) does not violate the normal amount of time and space that a visitor is allowed.

"Social is just now emerging from the Dark Ages." **PIVOT** CONFERENCE

August 28, 2013

## HUFFPOST MIAMI

# Drug Dog's Sniff Is An Unconstitutional Search, Rules U.S. Supreme Court

By JESSE J. HOLLAND 03/26/13 01:45 PM ET EDT **AP**



In this Dec. 6, 2011 file photo, Miami-Dade retired narcotics detector canine Franky looks on during a demonstration in Miami. Franky the drug dog's super-sensitive nose was at the heart of a question put to the U.S. Supreme Court: Does a police K-9's sniff outside a house give officers the right to get a search warrant for illegal drugs, or is the sniff itself an unconstitutional search? (AP Photo/Alan Diaz, File)

WASHINGTON -- The Supreme Court ruled Tuesday that police cannot bring drug-sniffing police dogs onto a suspect's property to look for evidence without first getting a warrant for a search, a decision which may limit how investigators use dogs' sensitive noses to search out drugs, explosives and other items hidden from human sight, sound and smell.

The high court split 5-4 on the decision to uphold the Florida Supreme Court's ruling throwing out evidence seized in the search of Joelis Jardines' Miami-area house. That search was based on an alert by Franky the drug dog from outside the closed front door.

Justice Antonin Scalia said a person has the Fourth Amendment right to be free from the government's gaze inside their home and in the area surrounding it, which is called the curtilage.

"The police cannot, without a warrant based on probable cause, hang around on the lawn or in the side garden, trawling for evidence and perhaps peering into the windows of the home," Justice Antonin Scalia said for the majority. "And the officers here had all four of their feet and all four of their companion's, planted firmly on that curtilage -- the front porch is the classic example of an area intimately associated with the life of the home."

He was joined in his opinion by Justices Clarence Thomas, Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan.

The four justices who dissented were Chief Justice John Roberts, Justice Stephen Breyer, Justice Anthony Kennedy and Justice Samuel Alito.

It's not trespassing when a mail carrier comes on a porch for a brief period, Alito said. And that includes "police officers who wish to gather evidence against an occupant," Alito said. "According to the court, however, the police officer in this case, Detective Bartelt, committed a trespass because he was accompanied during his otherwise lawful visit to the front door of the respondent's house by his dog, Franky. Where is the authority evidencing such a rule?"

Alito also said that the court's ruling stretches expectations of privacy too far. "A reasonable person understands that odors emanating from a house may be detected from locations that are open to the public, and a reasonable person will not count on the strength of those odors remaining within the range that, while detectable by a dog, cannot be smelled by a human."

It was not the dog that was the problem, Scalia said, "but the behavior that here involved use of the dog."

"We think a typical person would find it 'a cause for great alarm' to find a stranger snooping about his front porch with or without a dog," Scalia said. "The dissent would let the police do whatever they want by way of gathering evidence so long as they stay on the base path, to use a baseball analogy -- so long as they 'stick to the path that is typically used to approach a front door, such as a paved walkway.' From that vantage point they can presumably peer into the house with binoculars with impunity. That is not the law, as even the state concedes."

Thousands of dogs are used by governmental organizations around the United States to track criminals, sniff out illegal items like explosives at airports and search wreckage sites like bombed buildings and hurricane or earthquake-destroyed homes for injured people.

On the morning of Dec. 5, 2006, Miami-Dade police detectives and U.S. Drug Enforcement Administration agents set up surveillance outside a house south of the city after getting an anonymous tip that it might contain a marijuana growing operation. Detective Douglas Bartelt arrived with Franky and the two went up to the house, where Franky quickly detected the odor of pot at the base of the front door and sat down as he was trained to do.

That sniff was used to get a search warrant from a judge. The house was searched and its lone occupant, Jardines, was arrested trying to escape out the back door. Officers pulled 179 live marijuana plants from the house, with an estimated street value of more than \$700,000.

Jardines was charged with marijuana trafficking and grand theft for stealing electricity needed to run the highly sophisticated operation. He pleaded not guilty and his attorney challenged the search, claiming Franky's sniff outside the front door was an unconstitutional law enforcement intrusion into the home.

The trial judge agreed and threw out the evidence seized in the search, but that was reversed by an intermediate appeals court. In April a divided Florida Supreme Court sided with the original judge.

That ruling was upheld by the Supreme Court's decision, the latest in a long line of disputes about whether the use of dogs to find drugs, explosives and other illegal or dangerous substances violates the Fourth Amendment protection against illegal search and seizure. The court has OK'd drug dog sniffs in several other major cases. Two of those involved dogs that detected drugs during routine traffic stops. In another, a dog hit on drugs in airport luggage. A fourth involved a drug-laden package in transit.

The difference in this case, the court said, is that Franky was used at a home.

"A drug detection dog is a specialized device for discovering objects not in plain view (or plain smell)," Kagan wrote in a concurring opinion. "That device here was aimed at a home – the most private and inviolate (or so we expect) of all the places and things the Fourth Amendment protects. Was this activity a trespass? Yes, as the court holds today. Was it also an invasion of privacy? Yes, that as well."

This is the second decision this year on the use of drug-sniffing dogs by police. The court unanimously ruled earlier in another Florida case that police don't have to extensively document the work of drug-sniffing dogs in the field to be able to use the results of their work in court.

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The case was Florida v. Jardines, 11-564.

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# CONDUCTING A MOOT COURT

## PROCEDURES

A moot court is a role-play of an appeals court or Supreme Court hearing. The court, composed of a panel of justices, is asked to rule on a lower court's decision. No witnesses are called. Nor are the basic facts in a case disputed. Arguments are prepared and presented on a legal question (e.g., the constitutionality of a law or government action). Since moot courts are not concerned with the credibility of witnesses, they are an effective strategy for focusing student attention on the underlying principles and concepts of justice.

The following procedures are a slight adaptation of appellate procedures. The changes make the moot court an appropriate educational activity for high school students.

1. Select a case that raises a constitutional issue. Adapt the case information to suit your class. When selecting a case you may wish to consider the following factors:
  - Is the content of the case relevant to your course, to a specific school outcome (e.g., civic literacy or citizenship), or worth knowing?
  - Is it interesting to students?
  - Is it a topic of current interest in your community?
  - Are community resource people available to assist with the lesson?
  - Is there an underlying value conflict that is important for students to examine?
2. Read, review, and clarify the facts of the case. Have pairs of students ask each other the following questions:
  - What happened in this case?
  - Who are the people/organizations/companies involved?
  - How did the lower court rule on this case?
  - Who is the petitioner, the respondent?
3. Review these terms with the students:

Petitioner/Appellant - The person/organization/company who appeals the lower court decision to a higher court.

Respondent/Appellee - The person/organization/company who argues that the lower court's decision was correct.

4. Ask the class to identify the issue(s) involved in the case. An issue should be posed in the form of a question. Ask the students to phrase the issue as a question by thinking about these questions:
  - Who was the actor(s)?
  - What is the specific part of the Constitution involved?
  - Who was affected by the action(s)?
  - What caused the controversy?



*Example: Did the Virginia Military Institute (the actor) violate the 14th Amendment's right to equal protection (part of the Bill of Rights) of women (affected by the action) by not allowing them to attend VMI (cause of the controversy)?*

5. Select an odd number of students (7 or 9) to be the justices of the court.
6. Divide the remaining students into two teams. One team will represent the person or group appealing the lower court decision (the petitioner or appellant). The other team will represent the party that won in the lower court (the respondent or appellee). To increase student participation, several students can be selected to play the role of journalists or clerks.
7. Each team of litigants should meet to prepare arguments for its side of the case. The team should select one or two students to present the arguments to the court.

When discussing the arguments, students should consider:

- What does each side (party) want?
  - What are the arguments in favor of and against each side?
  - Which arguments are the most persuasive? Why?
  - What are the legal precedents and how do they influence this case? (A precedent is a previously decided case recognized as the authority for future cases on that issue. Using precedents allows for the development of more sophisticated arguments.)
  - What might be the consequences of each possible decision? To each side? To society?
  - Are there any alternatives besides what each side is demanding?
8. The justices should meet to discuss the issue involved and any case precedents. They should prepare at least 5 questions for each side that they need answered in order to reach a decision. The justices should select one student to serve as chief justice. The chief justice will preside over the hearing. He or she will call for each side to present its case as well as recognize other justices to ask questions.
  9. Participants should consider all of the facts that have been established at the trial. Teams may not argue the accuracy of the facts.
  10. 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.
  11. Seat the justices at the front of the room. The attorneys for each side should sit on opposite sides of the room facing the justices. The other team members should sit behind their respective attorneys.
  12. The chief justice should ask each side to present its arguments in the following order. The justices may ask questions at any time.
    - Initial Presentation    Petitioner/Appellant

- Initial Presentation    Respondent/Appellee
  - Rebuttal                Petitioner/Appellant
  - Rebuttal                Respondent/Appellee
13. Each side should have three to five minutes for its initial argument and two minutes for rebuttal. (This time may need to be lengthened if the justices ask a lot of questions. The teacher should decide on a time limit based on the students' verbal skills.)
  14. During and/or after each 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.)
  15. After all arguments have been presented, the justices should organize into a circle to deliberate on a decision. The rest of the class can sit around the outside of the circle and listen, but they cannot talk or interrupt the deliberations of the court.
  16. In the circle, the justices should discuss all of the arguments and vote on a decision. Each justice should give reasons for their decision.
  17. The chief justice should then tally the votes and announce the decision of the court and the most compelling arguments for that decision. A decision is reached by a majority of votes. A dissenting opinion may be given.
  18. Conclude with a class discussion of the decision and the proceedings.

If you are using an actual case, share the court's decision with the students after the student court has reached a decision. In the event the student's decision and the Court's are different, it is helpful for the students to understand the reasoning in the dissenting opinions as well as the majority. The students are not wrong, but the majority of the real Court was influenced by different compelling arguments. Ask the students to evaluate the reasoning the Court used in the majority and dissenting opinions and compare these to their reasoning. (They think just like some of the justices...). Continue to debrief the activity by discussing what the decision means for the both sides and for society.

# Moot Court Preparation & Presentation

## Agenda for Preparation

### 1:00-1:45 Overview and introduction

- What is a moot court? (How does it differ from a mock trial?)
- Steps in a Moot Court; Tips for Attorneys and Justices
- Introduction to our case (*Florida v. Jardines*) and the Fourth Amendment

### 1:50-3:00 Group work

- Justices, Petitioners, and Respondents work with their respective resource experts to prepare for the case.

### 3:00-3:15 Break and move to moot courtroom

### 3:15-3:45 Conduct moot court

### 3:45-4:15 Discuss moot court

- What was the experience like?
- How was this case actually decided by the Court?
- What were the most authentic aspects of our moot court?
- What value did our resource experts bring to the activity?
- What knowledge and skills are developed through this activity and how can it be used/ adapted for high school students?

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## Steps in a Moot Court

1. The justices enter and the marshal or clerk says,  
“The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God Save the United States and this Honorable Court!”
2. The chief justice calls the case: “We’ll hear argument today in case number 11-564, *Florida v. Jardines*.”
3. Petitioner’s Argument (5 minutes\*)
4. Respondent’s Argument (5 minutes\*)
5. Petitioner’s Rebuttal (3 minutes)
6. Respondent’s Rebuttal (3 minutes)
7. Justices Deliberate and Announce Decision  
*Street Law’s civility rule – no questions from the justices for the first 30 seconds*

### **TIPS FOR ATTORNEYS**

- Your first words: “Mr./Ms. Chief Justice and may it please the court. My name is XXX and I represent XXX in this case.”
- Don’t argue the facts. This is about the law.
- Have a strong opening sentence or two.
- Answer questions briefly and directly.
- Have a theory (or two) of the case and return to this argument when you can.
- Try to help the justices figure out a way to decide the case your way. Don’t fight them.

### **TIPS FOR JUSTICES**

- 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.
- 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.