

UNIT 4

The Judicial Branch

*P*articipating IN GOVERNMENT

Informing the Citizens *Find out the current cases before the Supreme Court that may be controversial. Watch for information in periodicals and newspapers on the issues in these cases. Write a summary of one of these issues and circulate it among people you know to find out what decision they believe the Court should make. Discuss your findings with the class.*

Electronic Field Trip

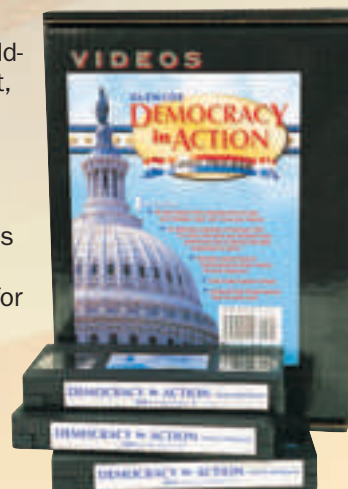
The Supreme Court

Take a virtual tour of the Supreme Court Building in Washington, D.C., and see how the judicial branch works.

Glencoe's Democracy in Action Video Program

The Supreme Court building is a nearly self-sufficient, structured community. The **Democracy in Action** video program "The Supreme Court" describes the Supreme Court's procedures and the administrative support other workers provide for the nine justices.

As you view the video program, try to identify any legal terms you recognize or any words that have a special meaning in a court of law.



◀ The marble figure *The Guardian* stands outside the Supreme Court building.



Hands-On Activity

Use library or Internet resources to research the procedures a case must follow to be heard by the United States Supreme Court. Be sure to include every level of court that hears the case and each appeal prior to the Supreme Court. Use a word processor to create an organizational chart showing the steps in this process with a brief explanation of each one.



Chapter 11

The Federal Court System



Why It's Important

Decisions, Decisions The Supreme Court and lower federal courts decide cases that affect your everyday life, from the air you breathe to the rights you enjoy. In this chapter you will see the relationship of these courts to each other and the powers of each.



To find out more about how the U.S. court system works and how it impacts you, view the **Democracy in Action** Chapter 11 video lesson:

The Federal Court System at Work



GOVERNMENT

Online



Chapter Overview Visit the *United States Government: Democracy in Action* Web site at gov.glencoe.com and click on **Chapter 11—Overview** to preview chapter information.

Powers of the Federal Courts

Reader's Guide

Key Terms

concurrent jurisdiction, original jurisdiction, appellate jurisdiction, litigant, due process clause

Find Out

- How does federal court jurisdiction differ from state court jurisdiction?
- How do Supreme Court decisions reflect the attempts of the justices to meet changing social conditions?

Understanding Concepts

Constitutional Interpretations How has the Supreme Court historically increased its power?

COVER STORY

Marshall Is Chief Justice

WASHINGTON, D.C., JANUARY 20, 1801

President John Adams surprised fellow Federalists by nominating Secretary of State John Marshall for chief justice of the United States. Quick Senate confirmation is likely. The nomination follows John Jay's refusal to be renominated, reportedly because he views the Supreme Court as having too little power. Marshall is thought to favor strengthening the Court and the federal government. Some believe these views could cause conflict between the new chief justice and the probable new president, Marshall's cousin Thomas Jefferson.



John Marshall

The Constitution provides for a Supreme Court of the United States as part of a court system that would balance the powers of the other two branches of government. Unlike the president and Congress, however, the Supreme Court played a very minor role until **Chief Justice John Marshall** was appointed in 1801. He served until 1835 and helped to increase the power of the Court.

Over the years the Court's growing role in American government met serious challenges, as a historian of the Court noted:

“Nothing in the Court’s history is more striking than the fact that, while its significant and necessary place in the Federal form of Government has always been recognized by thoughtful and patriotic men, nevertheless, no branch of the Government and no institution under the Constitution has sustained more continuous attack or reached its present position after more vigorous opposition.”

—Charles Warren, 1924

Today the judicial branch of government is well established as an equal with the legislative and executive branches.

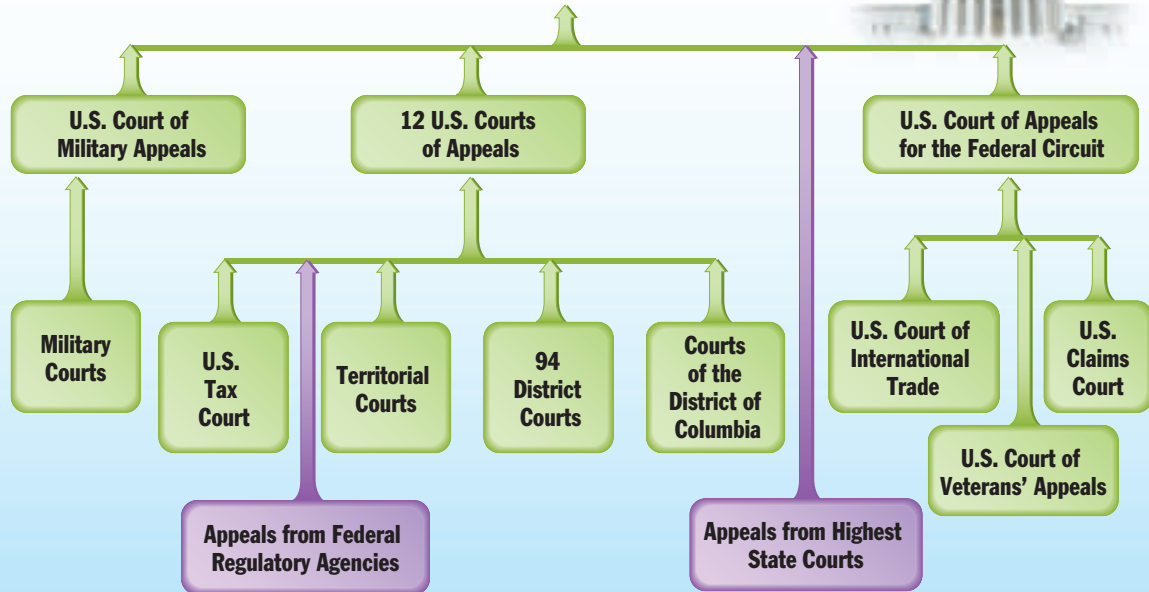
Jurisdiction of the Courts

The United States judiciary consists of parallel systems of federal and state courts. Each of the 50 states has its own system of courts whose powers derive from state constitutions and laws. The federal court system consists of the Supreme Court and lower federal courts established by Congress. Federal courts derive their powers from the Constitution and federal laws.

Federal Court Jurisdiction The authority to hear certain cases is called the **jurisdiction** of the court. In the dual court system, state

The Federal Court System

The United States Supreme Court



Source: Squire and Lindsey, et al., *Dynamics of Democracy*, 2d. ed. (Madison, WI: Brown & Benchmark, 1997).

Critical Thinking The U.S. Constitution gives Congress the authority to create lower federal courts. What court has jurisdiction over a case involving a United States veteran?

courts have jurisdiction over cases involving state laws, while federal courts have jurisdiction over cases involving federal laws. Sometimes the jurisdiction of the state courts and the jurisdiction of the federal courts overlap.

The Constitution gave federal courts jurisdiction in cases that involve United States laws, treaties with foreign nations, or interpretations of the Constitution. Federal courts also try cases involving bankruptcy and cases involving admiralty or maritime law.

Federal courts are also given the jurisdictional authority to hear cases if certain parties or persons are involved. Examples of these include: (1) ambassadors and other representatives of foreign governments; (2) two or more state governments; (3) the United States government or one of its offices or agencies; (4) citizens who are residents of different states; and (5) citizens who are residents of the same state but claim lands under grants of different states.

Concurrent Jurisdiction In most cases the difference between federal and state court jurisdiction is clear. In some instances, however, both federal and state courts have jurisdiction, a situation known as **concurrent jurisdiction**. Concurrent jurisdiction exists, for example, in a case involving citizens of different states in a dispute concerning more than \$75,000. In such a case, a person may sue in either a federal or a state court. If the person being sued insists, however, the case must be tried in a federal court.

Original and Appellate Jurisdiction The court in which a case is originally tried is known as a **trial court**. A trial court has **original jurisdiction**. In the federal court system, the district courts as well as several other lower courts have only original jurisdiction.

If a person who loses a case in a trial court wishes to appeal a decision, he or she may take the case to a court with **appellate jurisdiction**. The

federal court system provides courts of appeals that have only appellate jurisdiction. Thus, a party may appeal a case from a district court to a court of appeals. If that party loses in the court of appeals, he or she may appeal the case to the Supreme Court, which has both original and appellate jurisdiction.

Developing Supreme Court Power



Since its creation by the Constitution, the Supreme Court has developed into the most powerful court in the world. It may also be the least understood institution of American government. The role of the Court has developed from custom, usage, and history.

Early Precedents Certain principles were established early in the Court's history. Neither the Supreme Court nor any federal court may initiate action. A judge or justice may not seek out an issue and bid both sides to bring it to court. The courts must wait for **litigants**, or people engaged in a lawsuit, to come before them.

Federal courts will only determine cases. They will not simply answer a legal question, regardless of how significant the issue or who asks the question. In July 1793, at the request of President Wash-

ington, Secretary of State Jefferson wrote to Chief Justice John Jay asking the Court for advice. Jefferson submitted 29 questions dealing with American neutrality during the war between France and England. Three weeks later the Court refused to answer the questions with a polite reply:

“We have considered the previous question stated in a letter written by your direction to us by the Secretary of State. . . . We exceedingly regret every event that may cause embarrassment to your administration, but we derive consolation from the reflection that your judgment will discern what is right. . . .”



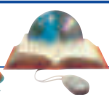
Landmark Cases

Marbury v. Madison The Court justices did not hesitate, however, to assert a judicial power previously suggested in *The Federalist*, Number 80, published in 1788. The case was **Marbury v. Madison**. As President Adams's term expired in 1801, Congress passed a bill giving the president a chance to appoint 42 justices of the peace in the District of Columbia. The Senate quickly confirmed the nominees. The secretary of state had delivered all but 4 of the commissions to the new

Judicial Review


Constitutional Interpretations On his last night in the White House, Adams stayed up signing judicial commissions for men of his party, the Federalists, defeated in the 1800 elections. The new president, Jefferson, angrily called Adams's appointees “midnight judges.” Adams's actions resulted in the landmark case *Marbury v. Madison*, which secured the power of judicial review for the Supreme Court. **Why is judicial review a key feature of the United States governmental system?**





Student Web Activity Visit the *United States Government: Democracy in Action* Web site at gov.glencoe.com and click on **Chapter 11—Student Web Activities** for an activity about the powers of the federal courts.

officers by the day Thomas Jefferson came into office. Jefferson, in one of his first acts as president, stopped delivery of the remaining commissions. William Marbury, one of those who did not receive his commission, filed suit in the Supreme Court, under a provision of the Judiciary Act of 1789.


The Court heard the case in February 1803. Chief Justice John Marshall announced the ruling that Marbury's rights had been violated and that he should have his commission. However, Marshall said that the Judiciary Act of 1789 had given the Court more power than the Constitution had allowed. Therefore, the Court could not, under the Constitution, issue a writ to force delivery of the commission. Jefferson won a victory, but it was one he did not enjoy. The chief justice had secured for the Court the power to review acts of Congress—the power of **judicial review**. 

John Marshall's Influence In several other key decisions under John Marshall, the Court carved out its power. In *Fletcher v. Peck*¹ in 1810, the Supreme Court continued to extend its power to review state laws. The Court held that a law passed by the Georgia legislature was a violation of the Constitution's protection of contracts. In 1819 in *Dartmouth College v. Woodward*,² the Court applied the protection of contracts to corporate charters.

Marshall not only extended the power of the Court, he also broadened federal power at the expense of the states. In *McCulloch v. Maryland*³ the Court declared that states could not hamper the exercise of legitimate national interests. Maryland had attempted to tax the Bank of the United States. In 1824 in *Gibbons v. Ogden*,⁴ the Court broadened the meaning of interstate commerce, further extending federal authority at the expense of the states. By 1825 the Court had declared at least one law in each of 10 states unconstitutional.



States' Rights Era and the *Scott* Case

President Andrew Jackson nominated **Roger Taney** as chief justice when John Marshall died in 1835. During his eight years in office Jackson named seven justices to the Supreme Court. The Court began to emphasize the rights of the states and the rights of citizens in an increasingly democratic society. Then, in the 1840s, states' rights became tied to the slavery issue. In *Dred Scott v. Sandford* (1857) an aging Taney read an opinion that declared African Americans were not and could not be citizens, the Missouri Compromise was unconstitutional, and Congress was powerless to stop the spread of slavery. The national furor over the *Scott* case damaged the Court. It also made an objective evaluation of the Taney era nearly impossible. 

Due Process



Following the Civil War the Supreme Court issued several rulings on the Thirteenth, Fourteenth, and Fifteenth Amendments.⁵ These Reconstruction amendments were intended to ensure the rights and liberties of newly freed African Americans, but the Court did not strongly apply the **due process clause** of the Fourteenth Amendment when individuals challenged business or state interests. The due process clause says that no state may deprive any person of life, liberty, or property without the due process of law.

Slaughterhouse Cases The first and most significant ruling on the Fourteenth Amendment came down in the 1873 *Slaughterhouse Cases*. Louisiana had granted a monopoly on the slaughtering business to one company. Competing butchers challenged this grant as denying them the right to practice their trade. They claimed that the Fourteenth Amendment guaranteed the privileges and immunities of U.S. citizenship, equal protection of the laws, and due process. The Court ruled for the state of Louisiana. It said that the



See the following footnoted materials in the *Reference Handbook*:

1. *Fletcher v. Peck* case summary, page 758.
2. *Dartmouth College v. Woodward* case summary, page 757.
3. *McCulloch v. Maryland* case summary, page 761.
4. *Gibbons v. Ogden* case summary, page 758.
5. *The Constitution*, pages 774–799.

Fighting Segregation Under the *Plessy* decision, African Americans could be legally barred from using the same public facilities as white Americans. Seven-year-old Linda Brown and her family fought for Linda's right to attend an all-white school. This battle led the Supreme Court, in the *Brown* decision, to overturn the doctrine of "separate but equal" facilities for African Americans and whites. **In what way was the *Brown* case different from previous segregation cases?**

Homer Plessy refused to leave a whites-only railroad coach, leading to the *Plessy* decision.



Fourteenth Amendment did not increase the rights of an individual. It only extended protection to those rights, privileges, and immunities that had their source in federal, rather than state, citizenship.



Landmark Cases

Plessy v. Ferguson In 1896 the Court upheld a Louisiana law that required railroads operating within the state to provide separate cars for white and African American passengers. In *Plessy v. Ferguson* the Court said that this was a reasonable exercise of state police power to preserve peace and order. "Legislation is powerless to eradicate racial instincts or to abolish distinctions," it concluded. The lone dissenter, Justice Harlan, said this decision was "inconsistent with the personal liberty of citizens, white and black."

The case established the "**separate but equal**" doctrine, which held that if facilities for both races were equal, they could be separate. This ruling would not be overturned until *Brown v. Board of Education of Topeka* in 1954.



The Court and Business The Court had refused to broaden federal powers to enforce the rights of individuals. However, it seemed willing to broaden the police power of the states to protect consumers from the growing power of business. In the 1870s, in a group of cases known as the *Granger Cases*, the Court rejected a challenge to state regulatory laws. It held that some private property, such as a railroad, was invested with a public interest. A state could properly exercise its power to regulate such property.

More often, however, the Court sided with business interests as the nation industrialized. In the 1890s, in *United States v. E.C. Knight & Co.*¹ and other cases, the Court ruled to uphold the monopoly of business trusts. In *Debs v. United States*² it upheld the contempt conviction of labor leader Eugene V. Debs, who had disobeyed an order to call off a strike against a railroad company.



See the following footnoted materials in the **Reference Handbook**:

1. *United States v. E. C. Knight & Co.* case summary, page 766.
2. *Debs v. United States* case summary, page 757.

During the Progressive era the Court upheld several federal and state laws regulating business, but it returned to its support for business by the 1920s.

A major constitutional crisis arose in the 1930s over the question of federal and state regulation of the economy. President Franklin D. Roosevelt, angered by the Court's decision in *Schechter Poultry Corporation v. United States*¹ and other cases, proposed to increase the number of Supreme Court justices. He wanted to pack the Court with supportive members. Even though this attempt failed, the Court began to uphold laws that regulated business.



Thurgood Marshall argued the *Brown* case before the Court.

Education of Topeka, the Court outlawed segregation in public schools.

In several other cases the Court issued rulings that extended equal protection in voting rights and the fair apportionment of representation in Congress and state legislatures. In other cases the Warren Court applied due process requirements and Bill of Rights protections to persons accused of crimes. Although the Court since then has not been as aggressive in advancing these decisions, it has not overruled any major decision of the Warren Court.

As the twentieth century drew to a close, it was apparent that the Supreme Court had carved out considerable power to influence policy in the United States. The legal views of the justices and their opinions on the various cases put before them would determine how the Court would use that power.



Landmark Cases

Protecting Civil Liberties The Supreme Court emerged as a major force in protecting civil liberties under Chief Justice Earl Warren, who served from 1953 to 1969. In *Brown v. Board of*

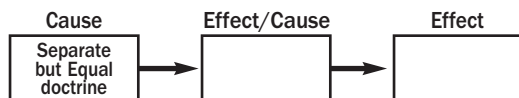
See the following footnoted materials in the **Reference Handbook**:

1. *Schechter Poultry Corporation v. United States* case summary, page 765.

Section 1 Assessment

Checking for Understanding

1. **Main Idea** Use a graphic organizer like the one below to show how the Supreme Court extended civil liberties in the 1950s and 1960s.



2. **Define** concurrent jurisdiction, original jurisdiction, appellate jurisdiction, litigant, due process clause.
3. **Identify** *Marbury v. Madison*, judicial review, "separate but equal" doctrine.
4. Identify the different jurisdictions of federal and state courts.
5. What doctrine was established by the ruling in *Plessy v. Ferguson*?

Critical Thinking

6. **Identifying Alternatives** What choice of jurisdiction would be available to a person who was being sued by a citizen of another state for damages of at least \$75,000?

Concepts IN ACTION

Constitutional Interpretations Choose one of the cases discussed in Section 1 or another case that contributed to the development of the power of the Supreme Court. Research the details of the case, including the background, the ruling, and the reasons for the ruling. Write a newspaper article or tape a news broadcast announcing the effects of the ruling.



Supreme Court CASES TO DEBATE

Yet governments often make distinctions among groups of people, such as providing medical benefits only for military veterans. Does a state college's policy of admitting only men violate the constitutional rights of women? A case involving the all-male Virginia Military Institute dealt with this issue.

United States v. Virginia, 1996

Democratic equality means all people are entitled to the same rights before the law.



A female cadet endures VMI traditions.

Background of the Case

Virginia Military Institute (VMI), a state-supported college, was created in 1839 as an all-male institution. Since then, VMI's distinctive mission had been to produce "citizen soldiers," men prepared for leadership in civilian and military life. VMI's "adversative" approach to education required students, called cadets, to wear uniforms, live in spartan barracks, and regularly participate in tough physical training. New VMI students, called "rats," were exposed to a seven-month experience similar to Marine Corps boot camp. In 1990 the U.S. government sued Virginia and VMI at the request of a female high school student seeking admission. After a long process of appeals, the Supreme Court finally took the case in 1996.

The Constitutional Issue

The U.S. government claimed that by denying women the unique educational opportunity offered to men by VMI, the state of Virginia was making a classification that violated the Fourteenth Amendment's guarantee of "equal protection of the law." Under the equal protection clause, governments

can treat different groups of people differently only if such a classification serves an important governmental objective such as promoting safety.

VMI explained that its policy should be allowed under the Constitution's equal protection principle because its school for men brought a healthy diversity to the state of Virginia's otherwise coeducational system. Further, VMI claimed that if women were admitted, the school would have to change housing arrangements and physical training requirements. Such changes, VMI claimed, would fundamentally change its distinctive "adversative" approach to education.

Finally, VMI offered to establish a separate program called the Virginia Women's Institute for Leadership (VWIL) at a small, private women's college. Unlike VMI, the women's college did not offer engineering, advanced math, or physics, and its students had SAT scores about 100 points lower than VMI's students. The VWIL program would not involve the tough physical training, uniforms, or barracks life that were key parts of the VMI's "adversative" approach. VMI cited "important differences between men and women in learning and developmental needs" as the reason for the different program.

Debating the Case

Questions to Consider

1. Did VMI's male-only policy violate the equal protection clause?
2. Was VMI's proposed remedy of a separate program a legally acceptable alternative?

You Be the Judge

In your opinion, was VMI's goal of educating citizen soldiers unsuitable for women? Was VMI's men-only policy unconstitutional? If so, what remedy should be offered?

Lower Federal Courts

Reader's Guide

Key Terms

grand jury, indictment, petit jury, judicial circuit, senatorial courtesy

Find Out

- How do constitutional courts and legislative courts differ in their jurisdiction?
- How are federal court justices chosen?

Understanding Concepts

Political Processes If federal judges are shielded from direct political influence, why do presidents try to appoint judges who share their views?

COVER STORY

E-Mail Must Be Kept

WASHINGTON, D.C., JANUARY 19, 1989


District Court Judge Barrington Parker has temporarily blocked the purging of the White House's e-mail system. Just hours before the Reagan administration was to erase eight years of staff computer messages, the judge intervened. In a courtroom exchange, acting Attorney General John Bolton likened deleting e-mail to outgoing officials cleaning out their desks before tomorrow's inauguration of President George H.W. Bush. The National Security Archive, a government watchdog group, said that the messages are public documents and are covered under federal records preservation laws. A hearing will determine if e-mail should be treated like other government records.



The National Security Archive logo

The Constitution created the Supreme Court. Congress, however, has used its constitutional authority to establish a network of lower federal courts, beginning with the Judiciary Act of 1789. A variety of lower trial and appellate courts handle a growing number of federal cases. These courts are of two basic types—constitutional federal courts and legislative federal courts.

Constitutional Courts

 Courts established by Congress under the provisions of Article III of the Constitution are **constitutional courts**. These courts include the federal district courts, the federal courts of appeals, and the United States Court of International Trade.

Federal District Courts Congress created **district courts** in 1789 to serve as trial courts. These districts followed state boundary lines. As the population grew and cases multiplied, Congress divided some states into more than 1 district. Today the United States has 94 districts, with each state having at least 1 district court. Large states—California, New York, and Texas—each have 4 district courts. Washington, D.C., and Puerto Rico also have 1 district court each. There are more than 550 judges who preside over the district courts.

United States district courts are the trial courts for both criminal and civil federal cases. (You will learn more about these types of cases in Chapter 15.) District courts use 2 types of juries in criminal cases. A **grand jury**, which usually includes 16 to 23 people, hears charges against a person suspected of having committed a crime. If the grand jury believes there is sufficient evidence to bring the person to trial, it issues an **indictment**—a formal accusation charging a person with a crime. If the jury believes there is not sufficient evidence, the charges are dropped.

A **petit jury**, which usually consists of 6 or 12 people, is a trial jury. Its function is to weigh the evidence presented at a trial in a criminal or civil case. In a criminal case, a petit jury renders a verdict of guilty or not guilty. In a civil case, the jury finds for either the plaintiff, the person bringing the suit, or the defendant, the person against whom the suit is brought. If the parties in a civil case do not wish a jury trial, a judge or a panel of three judges weighs the evidence.

District courts are the workhorses of the federal judiciary, hearing hundreds of thousands of cases each year. This caseload represents more than 80 percent of all federal cases. District courts have jurisdiction to hear cases involving federal questions: issues of federal statutory or constitutional law. They can also hear some cases involving citizens of different states. In the vast majority of their cases, district courts render the final decision. Few are appealed. One scholar explained:

“Trial judges, because of the multitude of cases they hear which remain unheard or unchanged by appellate courts, as well as because of their fact- and issue-shaping powers, appear to play an independent and formidable part in the policy impact of the federal court system upon the larger political system.”

—Kenneth M. Dolbeare, 1969

Officers of the Court Many appointed officials provide support services for district courts. Each district has a United States attorney to represent the United States in all civil suits brought against the government and to prosecute people charged with federal crimes. Each district court appoints a United States magistrate who issues arrest warrants and helps decide whether the arrested person should be held for a grand jury hearing. A bankruptcy judge handles bankruptcy cases for each district. A **United States marshal** carries out such duties as making arrests, securing jurors, and keeping order in the courtroom. With the help of deputy clerks, bailiffs, and a stenographer, a clerk keeps records of court proceedings.



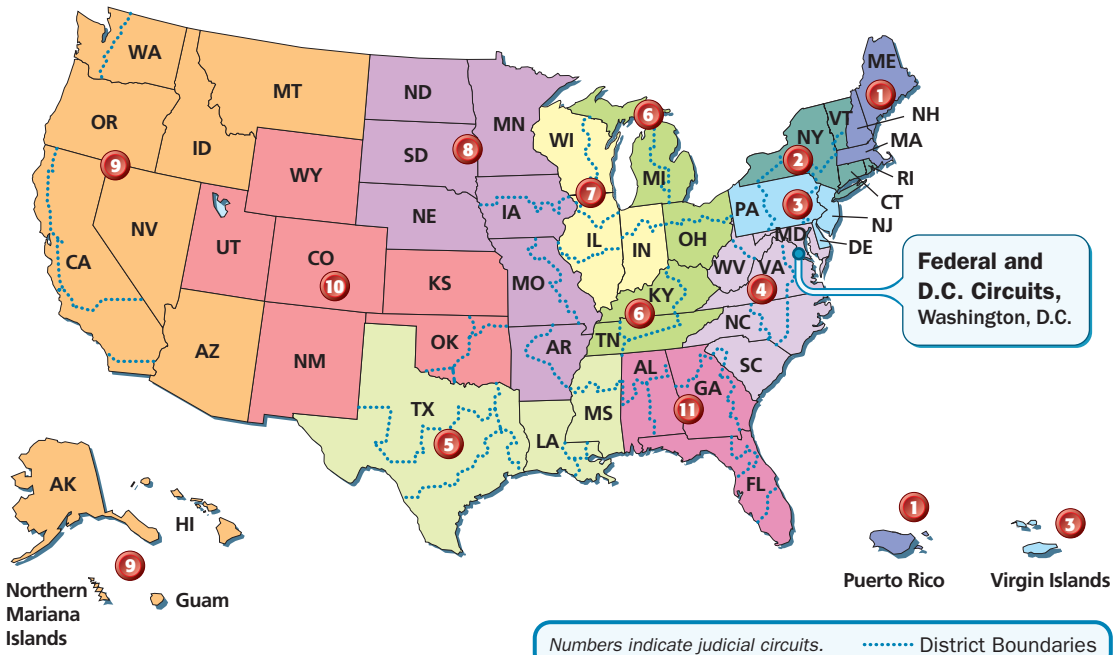
Rulings of Federal Courts

Settling Disputes Conflicts between the major league players' union and the owners disrupted baseball in 1994 and 1995. Federal District Judge Sonia Sotomayer of New York issued the ruling that ended the baseball strike. **Why was the baseball strike resolved in a federal court, rather than a state or local court?**

Federal Courts of Appeals Good records are important because a person or group that loses a case in a district court may appeal to a federal court of appeals or, in some instances, directly to the Supreme Court. Congress created the United States courts of appeals in 1891 to ease the appeals workload of the Supreme Court. The caseload of appellate courts has increased dramatically since 1980, climbing from 23,200 cases to nearly 55,000 in 1999.

The appellate level includes 13 United States courts of appeals. The United States is divided into 12 **judicial circuits**, or regions, with 1 appellate court in each circuit. The thirteenth court is a special appeals court with national jurisdiction. Usually, a panel of three judges sits on each appeal. In a very important case, all of the circuit judges may hear the case.

Federal Judicial Circuits and Districts



Critical Thinking The United States judicial system is divided into 94 district courts and 13 circuit or appellate courts. What kinds of cases do district courts hear?

As their name implies, the courts of appeals have only appellate jurisdiction. Most appeals arise from decisions of district courts, the U. S. Tax Court, and various territorial courts. These courts also hear appeals on the rulings of various regulatory agencies, such as the Federal Trade Commission and the Federal Communications Commission.

The courts of appeals may decide an appeal in one of three ways: uphold the original decision, reverse that decision, or send the case back to the lower court to be tried again. Unless appealed to the Supreme Court, decisions of the courts of appeals are final.

In 1982 Congress set up a special court of appeals, called the **United States Circuit Court of Appeals for the Federal Circuit**. This court hears cases from a federal claims court, the Court of International Trade, the United States Patent Office, and other executive agencies. The court's headquarters are in Washington, D.C., but it sits in other parts of the country as needed.

The Court of International Trade Formerly known as the United States Customs Court, this court has jurisdiction over cases dealing with tariffs. Citizens who believe that tariffs are too high bring most of the cases heard in this court.

The Court of International Trade is based in New York City, but it is a national court. The judges also hear cases in other major port cities around the country such as New Orleans and San Francisco. The Circuit Court of Appeals for the Federal Circuit hears decisions appealed from this court.

Legislative Courts

Along with the constitutional federal courts, Congress has created a series of courts referred to as legislative courts. As spelled out in Article I¹ of the Constitution, the **legislative courts**

See the following footnoted materials in the *Reference Handbook*:
1. The Constitution, pages 774–799.

help Congress exercise its powers. Thus, it was the power of Congress to tax that led to the creation of the United States Tax Court. The congressional power of regulating the armed forces led to the formation of the Court of Military Appeals. The duty of Congress to govern overseas territories such as Guam and the Virgin Islands led to the creation of territorial courts. Similarly, congressional supervision of the District of Columbia led to the establishment of a court system for the nation's capital.

U.S. Court of Federal Claims Established in 1982, the U.S. Court of Federal Claims is a court of original jurisdiction that handles claims against the United States for money damages. A person who believes that the government has not paid a bill for goods or services may sue in this court. The Claims Court's headquarters are in Washington, D.C., but it hears cases throughout the country as necessary. The Circuit Court of Appeals for the Federal Circuit hears any appeals from the Claims Court.

United States Tax Court Acting under its power to tax, Congress provided for the present Tax Court in 1969. As a trial court, it hears cases relating to federal taxes. Cases come to the Tax Court from citizens who disagree with Internal Revenue Service rulings or other Treasury Department

agency rulings about the federal taxes they must pay. The Tax Court is based in Washington, D.C., but it hears cases throughout the United States. A federal court of appeals handles cases appealed from the Tax Court.

U.S. Court of Appeals for the Armed Forces Congress established this court in 1950. It is the armed forces' highest appeals court. This court hears cases involving members of the armed forces convicted of breaking military law. As its name implies, it has appellate jurisdiction. This court is sometimes called the "GI Supreme Court." The United States Supreme Court has jurisdiction to review this court's decisions.

Territorial Courts Congress has created a court system in the territories of the Virgin Islands, Guam, the Northern Mariana Islands, and Puerto Rico. These territorial courts are roughly similar to district courts in function, operation, and jurisdiction. They handle civil and criminal cases, along with constitutional cases. The appellate courts for this system are the United States courts of appeals.

Courts of the District of Columbia Because the District of Columbia is a federal district, Congress has developed a judicial system for the nation's capital. Along with a federal district court

THE LAW and You

Serving on a Jury

If you are registered to vote or have a driver's license, you may be called for jury duty. To serve on a jury, you must be a United States citizen and at least 18 years old. You also must understand English and not have been convicted of a felony. Should you receive a jury summons, be sure to follow its instructions. Failure to do so is a crime.

When you appear for jury duty, you become part of a pool from which jurors are chosen. During the selection process you may be questioned by the judge and by attorneys for each side in a case.

Respond honestly, even if the questions seem embarrassing or irrelevant. If you are not selected, it is not a reflection of you personally. Someone

merely felt you were not right for that particular case.

It is possible to be excused from jury duty. However, remember that just as a jury trial is a citizen's right, jury service is a citizen's responsibility.



**Citizens
on a jury**

Participating IN GOVERNMENT ACTIVITY

Interview a Juror Find people from your school or city who have served on a jury. Ask them to recall their impressions of the experience. Report your findings to the class.


and a court of appeals, various local courts handle both civil and criminal cases that need to be heard within the District of Columbia.

The Court of Veterans' Appeals In 1988 Congress created the United States Court of Veterans' Appeals. The new court was to hear appeals from the Board of Veterans' Appeals in the Department of Veterans Affairs. The cabinet-level department was created to deal with veterans' claims for benefits and other veterans' problems. This court handles cases arising from unsettled claims.


Foreign Intelligence Surveillance Court Congress created this court in 1978 as part of the Foreign Intelligence Security Act (FISA). The court was authorized to secretly wiretap people suspected of spying against the United States. In the 2001 USA Patriot Act, Congress gave the court a four-year authorization to approve wiretaps and searches of anyone suspected of "terrorism or clandestine activities." FISA search warrants do not have to be made

public and can be issued without probable cause, which is not the case with most criminal cases.

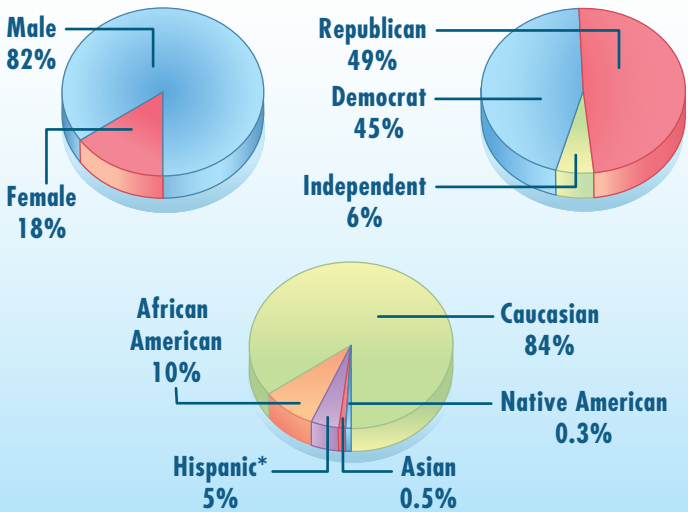
Selection of Federal Judges

 Article II, Section 2,¹ of the Constitution provides that the president, with the advice and consent of the Senate, appoints all federal judges. The legal profession regards a position on the federal bench as recognition of a lawyer's high standing in the profession. Judges in the constitutional courts serve, as the Constitution prescribes, "during good behavior," which, in practice means for life. A life term grants judges freedom from public or political pressures when deciding cases.

Party Affiliation Presidents favor judges who belong to their own political party. In recent years the percentage of appointed federal judges who

 See the following footnoted materials in the Reference Handbook:
1. The Constitution, pages 774–799.

Profile of the Federal Judicial Branch



* Hispanics can be of any race.

Note: Data for gender, political party, and ethnicity are based on U.S. Court of Appeals and U.S. District Court judgeship appointments from 1977–2000. Total may not add up to 100% due to rounding.

Source: Sourcebook of Criminal Justice Statistics (Washington, D.C.: Government Printing Office, 2002)

Number of Judicial Positions

Chief Justice of the United States	1
Associate Justices of the Supreme Court	8
U.S. Circuit Judges	179
U.S. District Judges	649
U.S. Court of International Trade Judges	9
U.S. Court of Federal Claims Judges	16
U.S. Tax Court Judges	19

Critical Thinking The judicial statistics above cover the presidential administrations from Carter through Clinton. What might account for the nearly equal percentages of Republicans and Democrats selected as judges during this time?

belong to the president's party has ranged from 81 percent in the case of President Gerald Ford's appointments to a high of 95 percent in President Jimmy Carter's case.

Another factor that emphasizes the political nature of court appointments is the power of Congress to increase the number of judgeships. Studies have shown that when one party controls both the presidency and Congress, it is more likely to increase the number of judicial posts. When President Kennedy was elected in 1960, the Democratic Congress immediately passed a new bill creating 71 new positions for the president to fill.

Judicial Philosophy Because judges are appointed for life, presidents view judicial appointments as a means of perpetuating their political ideologies even after they have left the White House. This fact has made judicial appointments a political issue rather than merely a matter of assessing a judicial candidate's qualifications. In the summer of 2001, for example, the National Association for the Advancement of Colored People (NAACP) vowed to fight President George W. Bush's attempts to appoint conservative justices to the courts, fearing that conservative judges would not generally support the civil rights issues that the NAACP considers important.

Senatorial Courtesy In naming judges to trial courts, presidents customarily follow the practice of senatorial courtesy. Under the **senatorial courtesy**

system, a president submits the name of a judicial candidate to the senators from the candidate's state before submitting it for formal Senate approval. If either or both senators oppose the nominee, the president usually withdraws the name and nominates another candidate.

The practice of senatorial courtesy is limited to the selection of judges to the district courts and other trial courts. It is not followed in the case of nominations to the courts of appeals and the Supreme Court. Circuit courts of appeals cover more than one state, so that an appointment to this court is regional in nature. A position on the Supreme Court is a national selection rather than a statewide or a regional one.

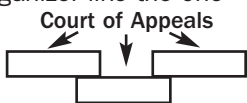
The Background of Federal Judges Almost all federal judges have had legal training and have held a variety of positions in law or government including service as law school professors, members of Congress, leading attorneys, and federal district attorneys. More than one-third of district court judges have served as state court judges.

Until very recently few women, African Americans, or Hispanics were appointed as judges in the lower federal courts. President Jimmy Carter did much to change this situation in his court appointments. President Lyndon Johnson appointed Thurgood Marshall the first African American justice to the Supreme Court. President Ronald Reagan appointed Sandra Day O'Connor the first female justice to the Supreme Court.

Section 2 Assessment

Checking for Understanding

- 1. Main Idea** Use a graphic organizer like the one shown to identify the three options a court of appeals has when deciding a case.
- 2. Define** grand jury, indictment, petit jury, judicial circuit, senatorial courtesy.
- 3. Identify** United States Circuit Court of Appeals for the Federal Circuit.
- 4.** What two major divisions of federal courts has Congress created?
- 5.** In what two ways do political parties influence the federal court system?



Critical Thinking

- 6. Demonstrating Reasoned Judgment** A judge who shares a president's views when first appointed may change views when making decisions on the bench. Why?

Concepts IN ACTION

Political Processes Review the criteria used by presidents to appoint federal judges. Develop any additional criteria that you think should be used for nominating judges. Prepare the criteria in the form of a checklist.

VERBATIM

WHAT PEOPLE SAID

“I guess this is the end of our friendship.”

PRESIDENT LYNDON JOHNSON
to Thurgood Marshall, after saying
he was going to appoint Marshall to
the Supreme Court, in 1967

**“Women’s equality under the
law does not effortlessly
translate into equal
participation in the legal
profession.”**

SANDRA DAY O’CONNOR,
first female Supreme Court
justice, in 1985

**“[Those who won our
independence] believed that
freedom to think as you will and
to speak as you think are means
indispensable to the discovery and
spread of political truth. . . .”**

JUSTICE LOUIS D. BRANDEIS,
from his opinion in *Whitney v.*
California, in 1927

“Why, to improve my mind.”

Retired Supreme Court justice
**OLIVER WENDELL HOLMES,
JR.**, then 92, in response to
Franklin Roosevelt’s question
about why he was reading Plato
in the Greek language, in 1933



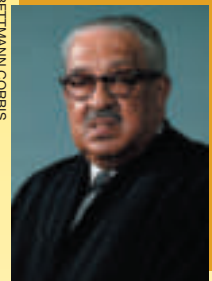
MILESTONES

**ASSEMBLED, February 2,
1790** The **FIRST MEETING** of the
U.S. Supreme Court justices
took place in New York City one
day later than originally planned
because Chief Justice John Jay
was delayed by transportation
problems. At the time, there
were six justices. In 1869, the
number was settled
permanently at nine.

**SETTLED IN, October 7,
1935. THE SUPREME COURT**
moved into its current building.
For the previous 145 years, the
Court had moved from building
to building, sharing space with
other government agencies.

SWORN IN, October 2, 1967.
**THURGOOD
MARSHALL**
became the
first African
American to be
sworn in as a
justice of the
Supreme
Court.

BETTMANN CORBIS



**SUPREME HANDSHAKE, late
1800s. CHIEF JUSTICE MELVILLE
FULLER** started the tradition of
having each Supreme Court
justice shake hands with the
other eight justices before the
start of a private conference
where decisions are discussed.
It serves as a reminder that the
justices are unified in purpose
even if they have
differences
of opinion.

CORBIS



AP PHOTO/EMAN VUCCI



DECIDING OUR FUTURE

DOES SEGREGATION—AND ITS corresponding ideas of “separate but equal”—contradict the tenets of the Constitution? This hotly debated question came to the U.S. Supreme Court in the case of *Brown v. Board of Education*. On May 17, 1954, Chief Justice Earl Warren

delivered the decision of the Court. Here is part of what he said:

“Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

“We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.”

A SLICE OF JUSTICE

The Supreme Court cannot hear all the cases that are brought before it—there’s not enough time. Here’s how the numbers break down:



5,000

Approximate number of cases the Court is petitioned to review each year.

250

Approximate number of cases it actually hears.

25

Approximate number of cases that come to the Court on appeal, such as when a state or lower federal court declares a federal law unconstitutional.

NUMBERS

9 The number of Supreme Court aides, who run errands and deliver mail. There is one aide for each justice.

2nd The floor where Ruth Bader Ginsberg chose to have her chambers because her room there is larger than those of the rest of the justices who have chambers on the first floor.



0 The number of term limits imposed on a justice (as long as he or she exhibits “good behavior”).

188 The number of seats open to the public in the visitors’ section to watch public oral arguments. Seating is on a first-come, first-served basis.

5 The number of minutes left for a lawyer making oral arguments before the Supreme Court to wrap up his or her argument once a small white light on the lectern turns on.

\$94,000 The amount returned to the U.S. Treasury upon the completion of the Supreme Court building, which cost less than the \$9,740,000 Congress had authorized for its construction.

The Supreme Court

Reader's Guide

Key Terms

riding the circuit, opinion

Find Out

- Why does the Supreme Court hear very few cases under its original jurisdiction?
- What political influences affect the selection of Supreme Court justices?

Understanding Concepts

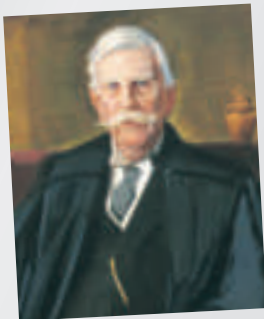
Checks and Balances Why are persons who are nominated as Supreme Court justices subject to close scrutiny?

COVER STORY

Holmes Dies

WASHINGTON, D.C., MARCH 6, 1935

Oliver Wendell Holmes, Jr., who served as an associate justice on the Supreme Court for 29 years, died at his home of pneumonia very early this morning. Appointed in 1902 by Theodore Roosevelt, Holmes wrote 873 opinions for the Court—more than any other justice. Perhaps his most famous opinion was his dissent in *Lochner v. New York* (1905), in which he supported the state's right to limit the labor of bakery workers to ten hours per day. His opinion for a unanimous court in *Schenck v. United States* (1919) established the “clear and present danger” standard in free speech cases. Holmes, son of the well-known author of the same name, will be remembered for the unique beauty and power of his written opinions.



Oliver Wendell Holmes, Jr.

The Supreme Court stands at the top of the American legal system. Article III of the Constitution created the Supreme Court as one of three coequal branches of the national government, along with Congress and the president.

The Supreme Court is the court of last resort in all questions of federal law. The Court is not required to hear all cases presented before it, and carefully chooses the cases it will consider. It has final authority in any case involving the Constitution, acts of Congress, and treaties with other nations. Most of the cases the Supreme Court hears are appeals from lower courts. The decisions of the Supreme Court are binding on all lower courts.


Nomination to the Supreme Court today is a very high honor. It was not always so. Several of George Washington's nominees turned down the job. Until 1891, justices earned much of their pay while **riding the circuit**, or traveling to hold court in their assigned regions of the country. One justice, after a painful stagecoach ride in 1840, wrote to his wife:

“I think I never again, at this season of the year, will attempt this mode of journeying. . . . I have been elbowed by old women—jammed by young ones—suffocated by cigar smoke—sickened by the vapours of bitters and w[h]iskey—my head knocked through the carriage top by careless drivers and my toes trodden to a jelly by unheeding passengers.”

—Justice Levi Woodbury, 1840

Today the Court hears all its cases in the Supreme Court building in Washington, D.C., in a large, first-floor courtroom that is open to the public. Nearby is a conference room where the justices meet privately to decide cases. The first floor also contains the offices of the justices, their law clerks, and secretaries.

Supreme Court Jurisdiction

 The Supreme Court has both original and appellate jurisdiction. Article III, Section 2,¹ of the Constitution sets the Court's original jurisdiction. It covers two types of cases: (1) cases involving representatives of foreign governments and (2) certain cases in which a state is a party. Congress may not expand or curtail the Court's original jurisdiction.

Many original jurisdiction cases have involved two states or a state and the federal government. When Maryland and Virginia argued over oyster fishing rights, and when a dispute broke out between California and Arizona over the control of water from the Colorado River, the Supreme Court had original jurisdiction.

The Supreme Court's original jurisdiction cases form a very small part of its yearly workload—an average of fewer than five such cases a year. Most of the cases the Court decides fall under the Court's appellate jurisdiction.

Under the Supreme Court's appellate jurisdiction, the Court hears cases that are appealed from lower courts of appeals, or it may hear cases from federal district courts in certain instances where an act of Congress was held unconstitutional.

The Supreme Court may also hear cases that are appealed from the highest court of a state, if claims under federal law or the Constitution are

involved. In such cases, however, the Supreme Court has the authority to rule only on the federal issue involved, not on any issues of state law. A state court, for example, tries a person charged with violating a state law. During the trial, however, the accused claims that the police violated Fourteenth Amendment rights with an illegal search at the time of the arrest. The defendant may appeal to the Supreme Court on that particular constitutional issue only. The Supreme Court has no jurisdiction to rule on the state issue (whether the accused actually violated state law). The Court will decide only whether Fourteenth Amendment rights were violated.

Supreme Court Justices



The Supreme Court is composed of 9 justices: the chief justice of the United States and 8 associate justices. Congress sets this number and has the power to change it. Over the years it has varied from 5 to 10, but it has been 9 since 1869. In 1937 President Franklin D. Roosevelt attempted to gain greater control of the Court by asking Congress to increase the number of justices. Congress refused, in part because the number 9 was well established.



See the following footnoted materials in the *Reference Handbook*:
1. *The Constitution*, pages 774–799.

The Highest Court in the Land

Judicial Ideals The nine justices meet regularly in the Supreme Court building in Washington, D.C. *What do you think the motto on the Supreme Court seal means as it applies to the Court?*

The official seal of the Supreme Court includes the motto (in Latin), “From Many, One.”



◀ CONTENTS ▶



Supreme Court Justices



Supreme Court justices occupy this bench while they hear cases.

Interpreters of the Law The members of the highest court in the land pose for an informal photograph. They are (from left to right) associate justices Sandra Day O'Connor, Anthony Kennedy, Antonin Scalia, Chief Justice William H. Rehnquist, and associate justices David Souter, Ruth Bader Ginsburg, Clarence Thomas, Stephen Breyer, and John Paul Stevens. **Why is it important that a judge or Supreme Court justice weigh all arguments equally?**


In a recent year the eight associate justices received salaries of \$173,600. The chief justice received a salary of \$181,400. Congress sets the justices' salaries and may not reduce them.

Under the Constitution, Congress may remove Supreme Court justices through impeachment for and conviction of "treason, bribery, or other high crimes and misdemeanors." No Supreme Court justice has ever been removed from office through impeachment, however. The House of Representatives impeached Justice Samuel Chase in 1804 because of his participation in partisan political activities, but the Senate found him not guilty.

Duties of the Justices The Constitution does not describe the duties of the justices. Instead, the duties have developed from laws, through

tradition, and as the needs and circumstances of the nation have developed. The main duty of the justices is to hear and rule on cases. This duty involves them in three decision-making tasks: deciding which cases to hear from among the thousands appealed to the Court each year; deciding the case itself; and determining an explanation for the decision, called the Court's **opinion**.

The chief justice has several additional duties such as presiding over sessions and conferences at which the cases are discussed. The chief justice also carries out a leadership role in the Court's judicial work and helps administer the federal court system.¹

 See the following footnoted materials in the **Reference Handbook**:
1. *Supreme Court Chief Justices*, page 769.

The justices also have limited duties related to the 12 federal judicial circuits. One Supreme Court justice is assigned to each federal circuit. Three of the justices handle 2 circuits each. The justices are responsible for requests for special legal actions that come from their circuit. In 1980, for example, a lower federal court ruled against the federal government's program of draft registration. Lawyers for the federal government then requested the Supreme Court to temporarily set aside the lower court's decision. The Supreme Court justice who was responsible for the federal judicial circuit in which the issue arose heard this request.

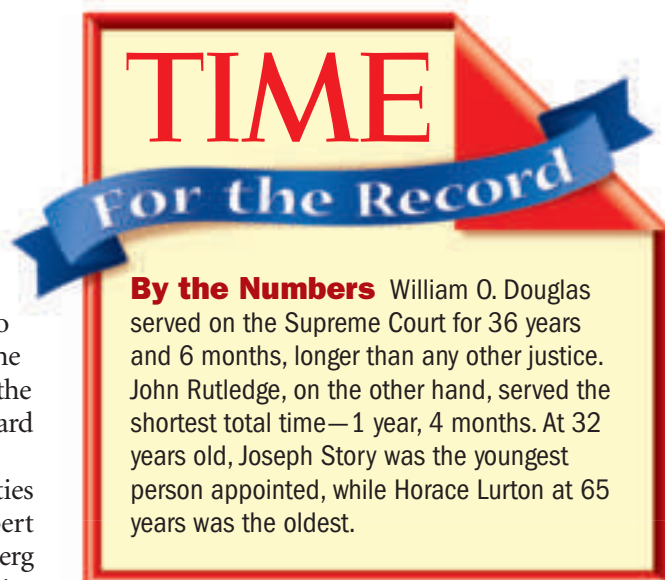
Occasionally, justices take on additional duties as their workload permits. In 1945 Justice Robert Jackson served as chief prosecutor at the Nuremberg trials of Nazi war criminals. In 1963 Chief Justice **Earl Warren** headed a special commission that investigated the assassination of President Kennedy.

To maintain their objectivity on the bench, justices are careful not to become involved in outside activities that might prevent them from dealing fairly with one side or the other on a case. If justices have any personal or business connection with either of the parties in a case, they usually disqualify themselves from participating in that case.

Law Clerks In 1882 Justice Horace Gray hired the first law clerk—mainly to be his servant and barber. Today the Court's law clerks assist the justices with many tasks, enabling the justices to concentrate on their pressing duties. Law clerks read all the appeals filed with the Court and write memos summarizing the key issues in each case. When cases are decided, the clerks help prepare the Court's opinions by doing research and sometimes writing first drafts of the opinions.

The justices each hire a few law clerks from among the top graduates of the nation's best law schools. These young men and women usually work for a justice for one or two years. After leaving the Court, many clerks go on to distinguished careers as judges, law professors, and even Supreme Court justices themselves.

Background of the Justices Throughout the Court's history more than 100 men and 2 women have served as justices. What sort of people become the top judges in the land? Although it is



not a formal requirement, a justice usually has a law degree and considerable legal experience. Most justices have been state or federal court judges, or have held other court-related positions such as attorney general. One former president, William Howard Taft, served as chief justice. Younger people are not usually appointed to the Court. Most of the justices selected in the twentieth century were in their fifties when they were appointed to the Court. Ten were younger than 50, and the remainder were more than 60 years old.

Justices have not been representative of the general population in social class, background, gender, and race. Most justices have come from upper socioeconomic levels. To date, only two African American justices, Thurgood Marshall and Clarence Thomas, and only two women, Sandra Day O'Connor and Ruth Bader Ginsburg, have been appointed. The Constitution does not require justices to be native-born Americans. Six Supreme Court justices have been born outside the United States. Of these, three were appointed by George Washington.

Appointing Justices



Justices reach the Court through appointment by the president with Senate approval. The Senate usually grants such approval, and presidents with strong support in the Senate are less likely to have their candidates rejected, but there is no guarantee. The Senate even chose to

reject one of President Washington's nominees. During the nineteenth century, more than 25 percent of the nominees failed to win Senate approval. By contrast, during the early part of the twentieth century, the Senate was much more supportive of presidential choices. More recently, the Senate rejected two of President Nixon's nominees and President Reagan's nomination of Robert Bork in 1988. The Senate closely scrutinized Justice Clarence Thomas's nomination in 1991, but finally accepted the nomination by a vote of 52 to 48.

As is the case with lower court judges, political considerations often affect a president's choice of a nominee to the Court. Usually presidents will choose someone from their own party, sometimes as a reward for faithful service to the party. But presidents must be careful to nominate people who are likely to be confirmed by the Senate. President Clinton had to decide among several choices in 1994. Bruce Babbitt was thought to be the likely nominee. However, Babbitt had some powerful

enemies among Western senators because of his decisions as secretary of the interior. So the president chose a federal judge, Stephen Breyer, who had friends among Democrats and Republicans. He was a safe choice and was easily confirmed.

Presidents prefer to nominate candidates whose political beliefs they believe are similar to their own. However, several presidents have discovered that it is very difficult to predict how an individual will rule on sensitive issues once he or she becomes a member of the Court. After securing the nomination of Tom Clark, President Truman expressed his displeasure:

“Tom Clark was my biggest mistake. No question about it. . . . I don't know what got into me. He was no . . . good as Attorney General, and on the Supreme Court . . . he's been even worse. He hasn't made one right decision I can think of. **”**

—Harry S Truman

We the People

Making a Difference

Renée Askins



Wolf Fund logo

Wildlife ecologist Renee Askins led the battle to reintroduce the gray wolf into Yellowstone National Park. The struggle lasted almost 30 years, but Askins viewed the issue as righting a wrong. “We exterminated the wolf to take control. I think people are beginning to see we’ve taken too much control,” Askins said.

No wolves had lived in Yellowstone since 1930. The Endangered Species Act of 1973 required that the federal government reintroduce the wolf. However, ranchers and farmers feared that the wolves would kill their livestock. To protect their property, ranchers went to federal courts to block the program.

Renee Askins created the Wolf Fund in Moose, Wyoming, to raise money and rally support for reintroducing the gray wolf to the park. Askins pointed out, “Lawyers are costing ranchers more money than they’ll ever lose because of the wolf.”

In 1995 a federal judge in Wyoming refused ranchers’ requests to stop the wolf reintroduction program. As a result, 30 wolves were captured in Canada. Fifteen were released in the park and fifteen in Idaho. Then, in 1997, a district court in Wyoming ordered that the wolves be removed. Supporters of the wolves appealed. Meanwhile, the wolves were allowed to remain in the park until a higher court decided the issue.

On January 13, 2000, the 10th Circuit Court of Appeals in Denver overturned the lower court’s ruling. By this time the wolves in Yellowstone and Idaho numbered more than 300. The American Farm Bureau threatened to appeal the decision before the Supreme Court but changed its mind right before the appeal deadline in April 2000. The presence of the wolves remains controversial. Courts and legislatures continue to battle over this issue.

When President Eisenhower named Earl Warren as chief justice in 1953, he expected Warren to continue to support the rather conservative positions he had taken as governor of California. The Warren Court, however, turned out to be the most liberal, activist Court in the country's history.

In identifying and selecting candidates for nomination to the Court, the president receives help from the attorney general and other Justice Department officials. The attorney general usually consults with the legal community and proposes a list of possible candidates for the president to consider. In making the final selection, the president and the attorney general may also check with leading members of Congress. In addition, they hear from several different groups that have a special interest in the selection of a justice.

In 1932 faculty members of the nation's leading law schools, labor and business leaders, judges, and senators all urged Republican president Herbert Hoover to appoint Democrat Benjamin Cardozo to the Supreme Court. Cardozo was chief judge of the New York Court of Appeals. The support for Cardozo was so great that Hoover nominated Cardozo, who was confirmed without opposition.

The Role of the American Bar Association The American Bar Association (ABA) is the largest national organization of attorneys. Since 1952, the ABA's Committee on the Federal Judiciary has been consulted by every president concerning almost every federal judicial appointment. The role of the ABA is solely to evaluate the professional qualifications of candidates for all Article III judicial positions—the Supreme Court, the United States Courts of Appeals, and the United States District Courts. The committee rates nominees as either “well qualified,”

Selecting Justices



Political Processes President Clinton chose Judge Ruth Bader Ginsburg in June 1993 as his first nominee to the Supreme Court. Ginsburg was active in civil liberties and women's rights issues before going on the federal bench, but has also advocated judicial restraint. *How do the Supreme Court appointments a president makes have long-term consequences?*

“qualified,” or “not qualified.” The ABA rating is advisory, and neither the president nor the Senate is required to follow it.

In 2001, President George W. Bush attempted to reduce the ABA's role, arguing that the liberal-oriented organization plays too large a part in the confirmation process. Democrats, on the other hand, contend that the ABA provides a fair candidate appraisal.

The Role of Other Interest Groups Interest groups that have a stake in Supreme Court decisions may attempt to influence the selection

process. Generally, these groups make their positions on nominees known through their lobbyists, or agents, and the media. Strong opposition to a nominee by one or more major interest groups may influence the senators who vote on the nominee.

Labor unions, for example, may oppose a nominee if they believe the nominee is antilabor, based upon his or her previous court decisions, speeches, or writings. Similarly, the **National Organization for Women (NOW)** may oppose a nominee who is considered to be against women's rights. This was the case with President Ford's selection of John Paul Stevens in 1975. Despite NOW's criticism, however, the Senate approved Stevens. More recently, NOW expressed its opposition to the nominations of David Souter in 1990 and Clarence Thomas in 1991. In both instances NOW was concerned that the candidates might cast deciding votes in a case that would overturn *Roe v. Wade*.¹

Civil rights groups are also usually active during the selection process. Groups such as the National Association for the Advancement of Colored People (NAACP) carefully examine nominees' views on racial integration and minority rights.



Stamp celebrates the Court's 200th anniversary.

The Role of the Justices Members of the Supreme Court sometimes have considerable influence in the selection of new justices. As leaders of the Court, chief justices have often been very active in the selection process. Justices who must work with the newcomers often participate in selecting candidates. They may write letters of recommendation supporting candidates who have been nominated, or they may lobby the president for a certain candidate.

Chief Justice William Howard Taft, for example, intervened frequently in the nominating process. He personally led a campaign for the nomination of Pierce Butler, who was named to the Court in 1922. Chief Justice Warren Burger suggested the name of Harry Blackmun, who was also confirmed. Knowing a member of the Court personally helped Sandra Day O'Connor. She received a strong endorsement from former law school classmate Justice William Rehnquist in 1981.

See the following footnoted materials in the *Reference Handbook*:
1. *Roe v. Wade* case summary, page 764.

Section 3 Assessment

Checking for Understanding

- 1. Main Idea** Use a graphic organizer like the one below to identify two kinds of cases where the Supreme Court has original jurisdiction and two kinds that may be appealed from a state court.

Original	Appeal

- 2. Define** riding the circuit, opinion.
- 3. Identify** Earl Warren, ABA, NOW.
- 4.** Under what conditions may a case be appealed from a state court to the Supreme Court?
- 5.** In your opinion, should politics influence the selection of Supreme Court justices? Explain.

Critical Thinking

- 6. Understanding Cause and Effect** Supreme Court justices have often been active in the selection of new justices. Do you think this is appropriate? Explain your answer.

Concepts IN ACTION

Checks and Balances With a partner, prepare an imaginary interview with a Supreme Court justice. The interview should provide your audience with a biographical sketch of the justice, including information about the person's place of birth, education, and work prior to being appointed.

Skills

Critical Thinking

Distinguishing Fact from Opinion

Facts are statements that can be proved by evidence such as records or historical sources. For example, it is a fact that Lewis Powell, Jr., served on the Supreme Court. Opinions are statements of preferences or beliefs not proven conclusively by evidence. One may hold an opinion that Powell was the greatest Justice ever. Some evidence may support this opinion, but contrary evidence supports other beliefs about Powell as well.

Learning the Skill

The following steps will help you to identify facts and opinions.

1. Study the information carefully to identify the facts. Ask: Can these statements be proved? Where would I find information to verify them?
2. If a statement can be proved, it is factual. Check the sources for the facts. Often statistics sound impressive, but they may come from an unreliable source, such as an interest group trying to gain support for its programs.
3. Identify the opinions. Opinions often contain phrases such as *in my view*, *I believe*, *it is my conviction*, *I think*, and *probably*. Look for expressions of approval or disapproval such as *good*, *bad*, *poor*, and *satisfactory*.

Practicing the Skill

The following excerpt concerns Supreme Court justices and their contributions to the Court. Read the excerpt and answer the questions.

“*I would say that the Court has reached—if not already passed—its capacity to deal with a [growing] caseload. . . . I believe most members of the Court will agree that we are not always able to function with the care, the deliberation, the consultation or even the basic study which are so requisite to the quality and soundness of Supreme Court decisions. In my view, we cannot continue as we are without a gradually perceptible dilution of this quality.***”**

—Lewis F. Powell, Jr., 1971



Justice Lewis Powell, Jr.

1. Identify facts. Can you prove that the caseload of Supreme Court justices is large and growing?
2. Note opinions. What phrases does Justice Powell use to signal his opinions?
3. What is the purpose of Powell's statement?
4. What action might Justice Powell suggest?

Application Activity

Record a television interview. List three facts and three opinions that were stated. Answer the following questions: Do the facts seem reliable? How can you verify the facts? Was the person being interviewed trying to convince viewers of some position? Explain.



The **Glencoe Skillbuilder Interactive Workbook, Level 2** provides instruction and practice in key social studies skills.

Chapter 11

Assessment and Activities

GOVERNMENT

Online



Self-Check Quiz Visit the *United States Government: Democracy in Action* Web site at gov.glencoe.com and click on **Chapter 11–Self-Check Quizzes** to prepare for the chapter test.

Reviewing Key Terms

Define each of the following terms and use it in a sentence.

concurrent jurisdiction
appellate jurisdiction
litigant
grand jury

indictment
petit jury
riding the circuit

Recalling Facts

1. What are the two systems of courts in the United States?
2. What principle resulted from the ruling in *Marbury v. Madison*?
3. What are the duties of a grand jury in a criminal case?
4. What kinds of cases are heard by the Court of International Trade?
5. Why do federal judges serve for life?
6. Describe the three decision-making tasks of a Supreme Court justice.
7. What are three duties of the chief justice of the United States?
8. What is the difference between courts with original jurisdiction and courts with appellate jurisdiction?

Chapter Summary

Lower Federal Courts

Constitutional courts

- Established by Congress under the provisions of Article III of the Constitution
- Include federal district courts, federal courts of appeals, and United States Court of International Trade

Legislative courts

- Created by Congress under provisions in Article I of the Constitution to help Congress carry out its powers
- Include United States Tax Court, U.S. Court of Appeals for the Armed Forces, Court of Veterans' Appeals, and others

The Supreme Court

- Original jurisdiction in cases involving representatives of foreign countries and certain cases in which a state is a party
- Appellate jurisdiction in cases that are appealed from lower courts of appeals or from a state's highest court, as well as certain cases from federal district courts in which an act of Congress was held unconstitutional
- Justices appointed by president with Senate approval

Development of Supreme Court Power

- 1801–1883: Marshall Court extended power of Supreme Court and strengthened federal power over the states
- 1803: *Marbury v. Madison* established power of judicial review
- 1953–1969: Warren Court adopted a more liberal view on civil rights and public-policy issues

Understanding Concepts

1. **Constitutional Interpretations** If the issue is whether a person's civil rights had been violated in a court decision, through what levels of courts might that person appeal?
2. **Political Processes** Federal district judges generally represent the values and attitudes of the states that they serve. How can a president assure that an appointee meets this criterion?
3. **Checks and Balances** When the Supreme Court rules on an appeal from a state court, what restriction applies to the Court's ruling?

Critical Thinking

1. **Identifying Alternatives** Use a graphic organizer like the one below to identify two alternative solutions for the high case load of the Supreme Court. Explain why you would choose one and not the other.

Alternative 1	Alternative 2

CONTENTS

Chapter 11

2. Synthesizing Information

What factors determine whether a case will be tried in a state court or a federal court?

Analyzing Primary Sources

Chief Justice Thurgood Marshall was the first African American to serve on the Supreme Court (1967–1991). Prior to this he was legal director of the NAACP. This excerpt, from a speech made before the American Bar Association in 1981, details Marshall's ideas about the purpose of the Supreme Court. Read the excerpt and answer the questions that follow.

“Bar the framers of the Constitution recognized that responsiveness to the will of the majority may, if unchecked, become a tyranny of the majority. They therefore created a third branch—the judiciary—to check the actions of the legislature and the executive. In order to fulfill this function, the judiciary was intentionally isolated from the political process and purposely spared the task of dealing with changing public concerns and problems. . . . Finally, the constitutional task we are assigned as judges is a very narrow one. We cannot make the laws, and it is not our duty to see that they are enforced. We merely interpret them through the painstaking process of adjudicating actual ‘cases or controversies’ that come before us.

We have seen what happens when the courts have permitted themselves to be moved by prevailing political pressures and have deferred to the mob rather than interpret the Constitution. Dred Scott, Plessy, Korematsu, and the trial proceedings in Moore v. Dempsey, come readily to mind as unfortunate examples.”

1. What, in Marshall's opinion, is the purpose of the Supreme Court? What is the Court not allowed to do?

Interpreting Political Cartoons Activity

1. What occurrence is this cartoon calling attention to?
2. Does the cartoonist comment on the qualities or experience of the justice?
3. How does the cartoonist feel about this event?



2. What does Marshall believe will happen to the Court if it does allow itself to become affected by the changing moods of public opinion?

Participating in Local Government

Using your local library or the Internet, research the kinds of courts located in or near your community. Find out the following:

- Are they part of the federal or state system?
 - Where are the nearest federal district courts located?
 - Where is the nearest appeals court located?
- After gathering this information, create a “court directory” map of your community area and share your findings with the class.

