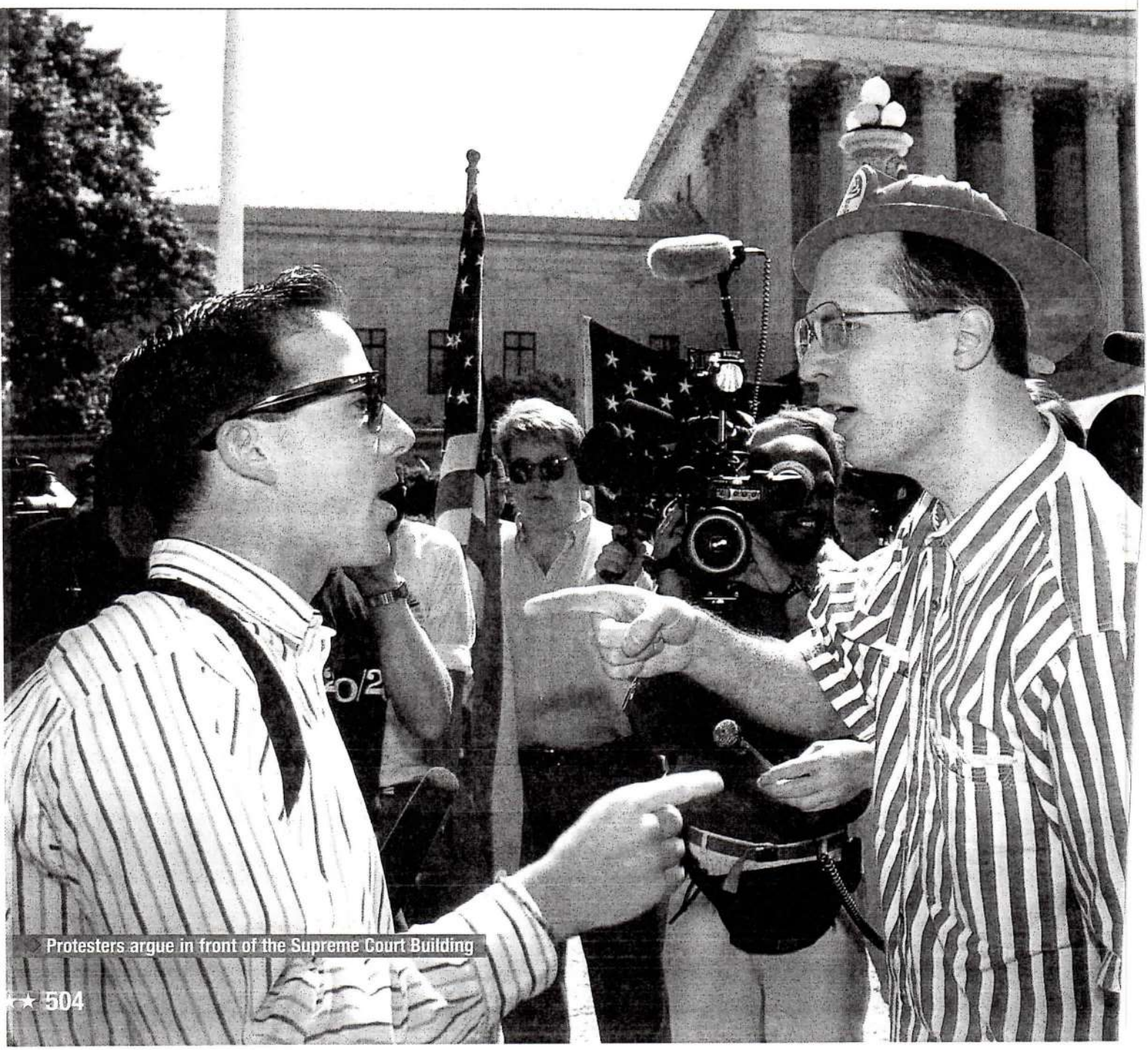
CHAPTER 18

The Federal Court System

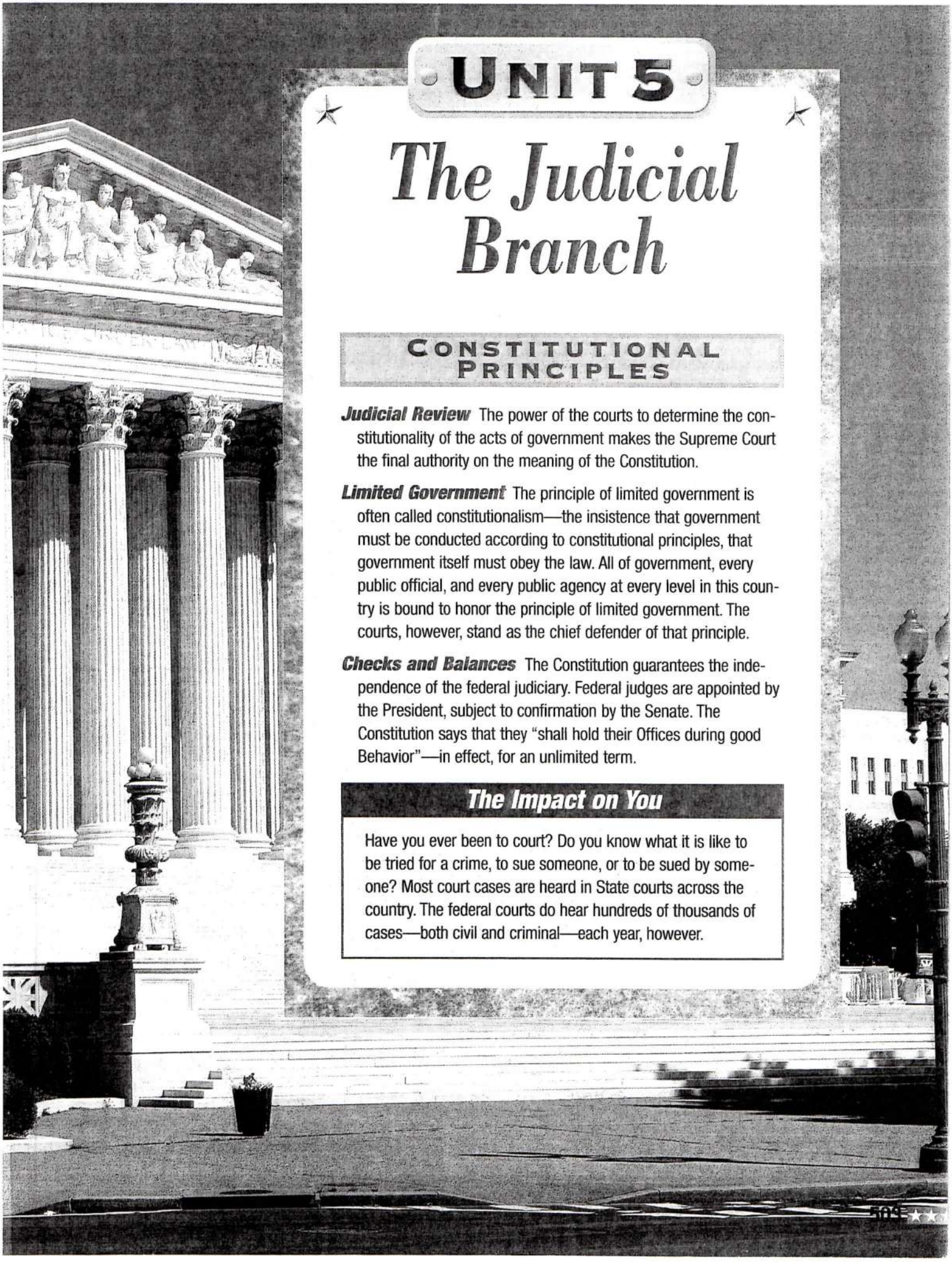
"It is emphatically the province and duty of the judicial department to say what the law is. . . . If two laws conflict with each other, the courts must decide on the operation of each."

—Chief Justice John Marshall (1803)

The Framers provided for a national system of courts to correct a major weakness in the Articles of Confederation. The Constitution provides for a Supreme Court and for other courts created by Congress. The federal courts operate in a dual court system, alongside the courts of each of the fifty States.



Protesters argue in front of the Supreme Court Building



UNIT 5

The Judicial Branch

CONSTITUTIONAL PRINCIPLES

Judicial Review The power of the courts to determine the constitutionality of the acts of government makes the Supreme Court the final authority on the meaning of the Constitution.

Limited Government The principle of limited government is often called constitutionalism—the insistence that government must be conducted according to constitutional principles, that government itself must obey the law. All of government, every public official, and every public agency at every level in this country is bound to honor the principle of limited government. The courts, however, stand as the chief defender of that principle.

Checks and Balances The Constitution guarantees the independence of the federal judiciary. Federal judges are appointed by the President, subject to confirmation by the Senate. The Constitution says that they "shall hold their Offices during good Behavior"—in effect, for an unlimited term.

The Impact on You

Have you ever been to court? Do you know what it is like to be tried for a crime, to sue someone, or to be sued by someone? Most court cases are heard in State courts across the country. The federal courts do hear hundreds of thousands of cases—both civil and criminal—each year, however.

Chapter 18 in Brief

★ You Can Make a Difference

THE ROLE OF THE JUDICIAL BRANCH is to interpret and apply the law. It is up to the courts to see that justice is done, but that sometimes takes a long time. In 1999, six journalism students at Northwestern University in Evanston, Illinois, helped the courts correct a 17-year-old injustice. The students in the investigative journalism class of Professor David Protess worked together to help free Anthony Porter, a death-row inmate who had been wrongfully convicted of a double murder. They asked questions, searched police records, and tracked down witnesses to find new evidence in the 1982 case. Finally, their work paid off, and another man confessed to the crime. Porter was freed after nearly 17 years in prison.

Keep It Current

Items marked with this logo are periodically updated on the Internet. Keep up-to-date with what's in the news. To get current information on issues related to the federal court system, go to **www.phschool.com**

SECTION 1

The National Judiciary (pp. 506–511)

★ The Framers created a national judiciary consisting of a Supreme Court and inferior courts to be created by Congress.
★ The federal courts have exclusive or concurrent and original or appellate jurisdiction over the cases they hear.
★ Federal judges are appointed by the President, subject to confirmation by the Senate.
★ Supreme Court and inferior court judges serve for life, removable only by impeachment, while special court judges serve 15-year terms; Congress sets the salaries of federal judges.
★ Federal court officers, such as magistrates, U.S. attorneys, bailiffs, and clerks, serve in administrative and judicial roles.

SECTION 2

The Inferior Courts (pp. 512–515)

★ The 94 U.S. district courts handle about 80 percent of the federal caseload; they have original jurisdiction over most federal criminal and civil cases.
★ The 12 federal appeals courts have appellate jurisdiction only.
★ The Court of International Trade hears tariff and trade cases; the Court of Appeals for the Federal Circuit has nationwide appellate jurisdiction from various federal courts.

SECTION 3

The Supreme Court (pp. 517–522)

★ All federal and most State courts have the power of judicial review, deciding the constitutionality of an act of government.
★ The U.S. Supreme Court has both original and appellate jurisdiction, but usually hears cases on appeal; the Court decides only a handful of cases each year.
★ The Supreme Court is in session from October through June; it hears oral arguments, studies written briefs, meets in conference to discuss the cases, and renders majority, concurring, and dissenting opinions.

SECTION 4

The Special Courts (pp. 524–526)

★ The U.S. government may not be sued without its consent; those who seek damages must take their cases to the U.S. Court of Federal Claims.
★ Congress has created federal courts for U.S. territories, as well as for the District of Columbia.
★ The U.S. Court of Appeals for the Armed Forces is a civilian tribunal that hears appeals of court-martial cases.
★ The U.S. Court of Appeals for Veterans Claims hears claims regarding veterans' benefits.
★ The U.S. Tax Court hears civil cases concerning tax law.

1 The National Judiciary

Section Preview

Objectives

1. **Explain** why the Constitution created a national judiciary, and describe its structure.
2. **Identify** the criteria that determine whether a case is within the jurisdiction of a federal court, and compare the types of federal court jurisdiction.
3. **Outline** the process for appointing federal judges.
4. **List** the terms of office for federal judges and explain how their salaries are determined.
5. **Examine** the roles of federal court officers.

Why It Matters

The Framers of the Constitution believed in the need for a national judicial system. The Constitution outlines the structure of the federal judiciary, the jurisdiction of the courts, and the functions of federal judges.

Political Dictionary

- ★ **inferior courts**
- ★ **jurisdiction**
- ★ **exclusive jurisdiction**
- ★ **concurrent jurisdiction**
- ★ **plaintiff**
- ★ **defendant**
- ★ **original jurisdiction**
- ★ **appellate jurisdiction**

Joe Smith steals a brand-new sports car, a bright red convertible, in Chicago. Two days later, he is stopped for speeding in Atlanta. Where, now, will he be tried for car theft? In Illinois, where he stole the car? In Georgia, where he was caught? In point of fact, Joe may be on the verge of learning something about the federal court system—and about the Dyer Act of 1925, which makes it a federal crime to transport a stolen automobile across a State line.

Creation of a National Judiciary

During the years the Articles of Confederation were in force (1781–1789), there were no national courts and no national judiciary. The laws of the United States were interpreted and applied as each State saw fit, and sometimes not at all. Disputes between States and between persons who lived in different States were decided, if at all, by the courts in one of the States involved. Often, decisions by the courts in one State were ignored by the courts in the other States.

Alexander Hamilton spoke to the point in *The Federalist* No. 22. He described "the want of a judiciary power" as a "circumstance which crowns the defects of the Confederation." Arguing the need for a national court system, he added: "Laws are a dead letter without courts to expound and define their true meaning and operation."

The Framers created a national judiciary for the United States in a single sentence in the Constitution:

> FROM THE Constitution *"The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."*
>
> —Article III, Section 1

Congress also is given the expressed power "to constitute Tribunals inferior to the supreme Court" in Article I, Section 8, Clause 9.

A Dual Court System

Keep in mind this important point: There are *two* separate court systems in the United States.[1] On one hand, the national judiciary spans the country with its more than 120 courts. On the other hand, each of the 50 States has its own system of courts. Their numbers run well into the thousands. These State courts hear most of the cases in this country.

[1] Federalism does not require two court systems. Article III provides that Congress "may" establish lower federal courts. At its first session, in 1789, Congress decided to construct a complete set of federal courts to parallel those of the States. In most of the world's other federal systems, the principal courts are those of the states or provinces; typically, the only significant federal court is a national court of last resort, often called the supreme court.

Types of Federal Courts

The Inferior Courts

The Constitutional Courts
Also called Article III Courts or Regular Courts. As permitted by the Constitution, Congress created these courts, which exercise the broad "judicial Power of the United States," as stated in Article III.

- 94 District Courts
- 12 U.S. Courts of Appeals
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of International Trade

The Special Courts
Also called the Legislative Courts or Article I Courts. Created by Congress under the power given to it in Article I "to constitute Tribunals inferior to the supreme Court," these courts have narrowly defined powers.

- U.S. Court of Federal Claims
- Territorial Courts *
- Courts of the District of Columbia
- U.S. Tax Court
- U.S. Court of Appeals for the Armed Forces
- U.S. Court of Appeals for Veterans Claims

*in Guam, the Virgin Islands, and the Northern Marianas, similar to local courts

Interpreting Diagrams The Constitution created only the Supreme Court, giving Congress the power to create any lower, or "inferior," courts, as needed. ***Using this diagram, compare and contrast the purpose of the constitutional courts and the special courts, as defined in the Constitution.***

Two Kinds of Federal Courts

The Constitution creates the Supreme Court and leaves to Congress the creation of the **inferior courts**—the lower federal courts, those beneath the Supreme Court. Over the years, Congress has created two distinct types of federal courts: (1) the constitutional courts and (2) the special courts. The diagram on this page sets out these several federal courts.

The constitutional courts are the federal courts that Congress has formed under Article III to exercise "the judicial Power of the United States." Together with the Supreme Court, they now include the courts of appeals, the district courts, and the U.S. Court of International Trade. The constitutional courts are also called the regular courts or Article III courts.

The special courts do not exercise the broad "judicial Power of the United States." Rather, they have been created by Congress to hear cases arising out of some of the expressed powers given to Congress in Article I. The special courts hear a much narrower range of cases than those that may come before the constitutional courts.

These special courts sometimes are called the legislative courts. Today, they include the U.S. Court of Appeals for the Armed Forces, the U.S. Court of Appeals for Veterans Claims, the U.S. Court of Federal Claims, the U.S. Tax Court, the various territorial courts, and the courts of the District of Columbia. You will look at the unique features of these courts later in this chapter.

What Cases Come Under Federal Jurisdiction?

Most cases in this country are heard in State courts, not federal courts. Article III, Section 2, Clause I provides that to be heard in a federal court, a case must fall into one of the two categories below.

The Subject Matter of the Case

A case falls within the jurisdiction of the federal courts if it concerns:

(1) the interpretation and application of a provision in the Constitiution or in any federal statute or treaty;

(2) a question of admiralty law (matters that arise on the high seas or navigable U.S. waters)

EXAMPLE collision at sea or crime committed aboard ship

(3) a question of maritime law (matters arising on land but directly relating to the water)

EXAMPLE a contract to deliver a ship's supplies at dockside (The Framers gave the federal courts exclusive jurisdiction in admiralty and maritime cases to ensure national supremacy in the regulation of all waterborne commerce.)

The Parties Involved in the Case

A case falls within the jurisdiction of the federal courts if any of the parties in the case is:

(1) the United States or one of its officers or agencies;

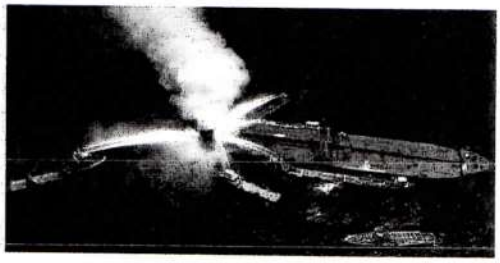
(2) an ambassador, consul, or other official representative of a foreign government;

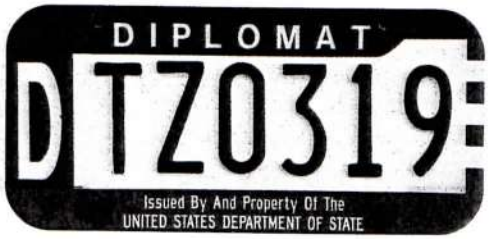
(3) one of the 50 States suing either another State, a resident of another State, or a foreign government, or one of its subjects;

(4) a citizen of one State suing a citizen of another State;

(5) a U.S. citizen suing a foreign government or one of its subjects;

(6) a citizen of one State suing a citizen of that same State where both claim land under grants from different States.





As the table at left explains, federal courts hear cases involving certain subject matter, such as accidents at sea. (Top photo shows a Norwegian oil tanker ablaze in waters off Galveston, Texas.) Federal cases also may involve certain people, such as foreign diplomats. (Diplomatic license plates, above, are a familiar site in Washington, D.C.)

Critical Thinking Why are such cases heard in federal courts instead of State courts?

Federal Court Jurisdiction

The constitutional courts hear most of the cases tried in the federal courts. That is, those courts have **jurisdiction** over most federal cases. Jurisdiction is defined as the authority of a court to hear (to *try* and to *decide*) a case. The term means, literally, the power "to say the law."

The Constitution gives the federal courts jurisdiction over certain cases. Article III, Section 2 provides that the federal courts may hear a case because of either (1) the subject matter or (2) the parties involved. The details of this matter are set out in the table above. See, too, the 11th Amendment, page 773.

The criteria for deciding what are federal cases may seem quite complicated, and they are. But the matter is also a reflection of federalism and, so, of the dual system of courts in this country. Stating the whole point of federal court jurisdiction in another way: All cases that are not heard by the federal courts are within the jurisdiction of the States' courts.

Types of Jurisdiction

The federal courts have several different types of jurisdiction, depending on whether or not (1) they share the power to hear the case with State courts and (2) they are the first court to hear the case.

Exclusive and Concurrent Jurisdiction

In some of the cases listed in the table above, the federal courts have **exclusive jurisdiction.** That is, those cases can be heard *only* in the federal courts. For example, a case involving an ambassador or some other official of a foreign government cannot be heard in a State court; it must be tried in a federal court. The trial of a person charged with a federal crime, or a suit involving the infringement of a patent or a copyright, or a case involving any other matter arising out of an act of Congress also falls within the exclusive jurisdiction of the federal courts.

Many cases may be tried in either a federal court or a State court, however. Then the federal and State courts have **concurrent jurisdiction;**

they share the power to hear those cases. Disputes involving citizens of different States are fairly common examples of this type of case. Such cases are known in the law as cases in diverse citizenship.[2]

Congress has provided that the federal district courts may hear cases of diverse citizenship only if the amount of money involved in a case is more than $75,000. In such cases the **plaintiff**—the person who files suit—may bring the case in the proper State or federal court, as he or she chooses. If the case is brought before the State court, the **defendant**—the person whom the complaint is against—can have the trial moved, under certain circumstances, to the federal district court.

Original and Appellate Jurisdiction

A court in which a case is first heard is said to have **original jurisdiction** over that case. A court that hears a case on appeal from a lower court has **appellate jurisdiction** over that case. The higher court—the appellate court—may uphold, overrule, or in some way modify the decision appealed from the lower court.[3]

In the federal court system, the district courts have only original jurisdiction, and the courts of appeals have only appellate jurisdiction. The Supreme Court exercises both original and appellate jurisdiction.

Appointment of Judges

The manner in which federal judges are chosen, the terms for which they serve, and even the salaries they are paid are vital parts of the Constitution's design of an independent judicial branch. The Constitution declares that the President

FROM THE Constitution

> *"shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court . . ."*
>
> —Article II, Section II, Clause 2

Congress has provided the same procedure for the selection of all other federal judges.

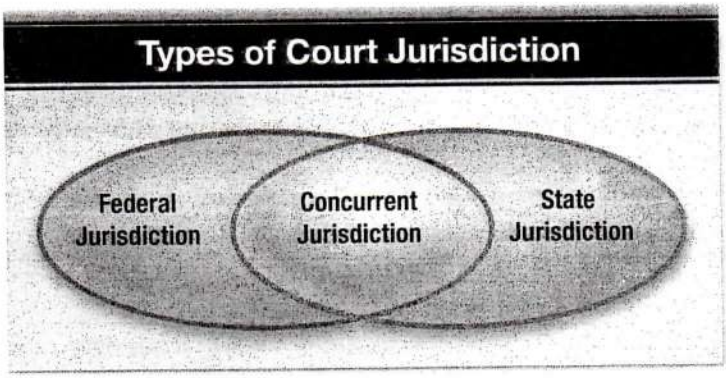
The Senate has a major part in the selection of all federal judges, and in particular those who sit in the nation's 94 district courts. The constitutional provision just cited says, in effect, that the President is free to name to the federal bench anyone the Senate will confirm. Recall the practice of senatorial courtesy. That unwritten rule, which is closely followed in the Senate, gives great weight to the preferences of the senators from the State in which a federal judge is to serve. In short, senatorial courtesy means that the President almost always nominates someone who has been recommended by the senators from the State involved.

Most federal judges are drawn from the ranks of leading attorneys, legal scholars and law school professors, former members of Congress, and State court judges. A President applies the same sorts of political considerations to his judicial selections as he does to his other appointments.

From George Washington's day, Presidents have looked to their own political party in making judicial appointments. Republican Presidents regularly choose Republicans; Democrats usually pick Democrats.

Every President knows that the judges he appoints may serve for decades. So the chief executive regularly looks for judges who tend to agree with his own legal, political, economic, and social views.

The concepts of judicial activism and judicial restraint often play a part in the judicial



Interpreting Diagrams While many countries have a single court system leading to a supreme court, the United States has a two-level system of federal and State courts. Their jurisdictions are shown in this Venn diagram. ***How does the structure of the diagram explain the types of jurisdiction?***

[2]The major reason that cases of diverse citizenship may be heard in federal courts is to provide a neutral forum to settle the disputes involved. That reason reflects an early fear that State courts (and their juries) might be prejudiced against "foreigners," residents of other States. There seems little likelihood of such bias today.

[3]Appellate comes from the Latin word *appellare*, meaning "to speak to, to call upon, to appeal to."

The National Judiciary

Court	Created	Number of Courts	Number of Judges	Term of Judges
Supreme Court	1789	1	9	Life
District Court	1789	94	642	Life
Court of Appeals	1891	12	179	Life
Trade Court	1926	1	9	Life
Court of Appeals for the Armed Forces	1950	1	5	15 years
Tax Court	1969	1	19	15 years
Court of Appeals for the Federal Circuit	1982	1	12	Life
Court of Federal Claims	1982	1	16	15 years
Court of Appeals for Veterans Claims	1988	1	7	15 years

Interpreting Tables This table provides key statistics for the major U.S. federal courts. ***Why do you think some judgeships are for life and others are for only 15 years?***

selection process—especially at the Supreme Court level. Generally, *judicial activists* believe that a judge should use his or her position to promote desirable social ends—for example, in cases involving civil rights or social welfare issues. (See, for example, *Gitlow* v. *New York* and other cases discussed on pages 535–574. See also *Engel* v. *Vitale* and other cases involving school prayer on pages 539–542, as well as cases on pages 566–568 and 573–574.) The proponents of *judicial restraint* hold that in making their decisions, judges should defer to the actions of the executive and legislative branches—except in cases where those actions are clearly unconstituional. They frequently note that the President and members of Congress are elected by the people, but federal judges are not.

The President and his closest political and legal aides, especially the attorney general, take the lead in selecting federal judges, of course. Major roles also are played regularly by influential senators (notably those from the nominee's home State); by the President's allies and supporters in the legal profession; and by various other important personalities in the President's political party.

Terms and Pay of Judges

Article III, Section 1 of the Constitution reads, in part: "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior. . . . " This means that the judges of the constitutional courts are appointed for life—until they resign, retire, or die in office. They may be removed only through the impeachment process. Only 13 federal judges have ever been impeached. Of them, seven were convicted and removed by the Senate, including three in the recent past.[4] The grant of what amounts to life tenure for most judges ensures the independence of the federal judiciary.

The judges who sit in the special courts are not appointed for life. Those who hear cases in the U.S. Court of Federal Claims, the U.S. Court of Appeals for the Armed Forces, the U.S. Tax Court, and the U.S. Court of Appeals for Veterans Claims serve 15-year terms. In the District of Columbia, Superior Court judges are chosen for four-year terms; those who sit on the District's Court of Appeals are chosen for a period of eight years.

The Constitution also declares that federal judges

FROM THE Constitution

> *"shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."*
>
> —Article III, Section 1

Congress sets the salaries of all federal judges and has provided a generous retirement arrangement for them. They may retire at age 70, and if they have served for at least 10 years, receive full salary for the rest of their lives. Or,

[4]The judges removed from office were John Pickering of the district court in New Hampshire, for judicial misconduct and drunkenness (1804); West H. Humphreys of the district court in Tennessee, for disloyalty (1862); Robert W. Archbald of the old Commerce Court, for improper relations with litigants (1913); Halsted L. Ritter of the district court in Florida, on several counts of judicial misconduct (1936); Harry E. Claiborne of the district court in Nevada, for filing false income tax returns (1986); Alcee Hastings of the district court in Florida, on charges of bribery and false testimony (1989); and Walter Nixon of the district court in Mississippi, for perjury (1989).

Alcee Hastings was removed in 1989 even though earlier he had been acquitted of the bribery charge. Hastings won election to the House of Representatives in 1992. Four other federal judges were impeached by the House but acquitted in the Senate. Two other district court judges, impeached by the House, resigned and so avoided a Senate trial.

they may retire at full salary at age 65, after at least 15 years of service. The Chief Justice may call any retired judge back to temporary duty in a lower federal court at any time.

Court Officers

Today, federal judges have little involvement in the day-to-day administrative operations of the courts over which they preside. Their primary mission is to hear and decide cases. The support services they need in order to perform that task are provided by a clerk, several deputy clerks, bailiffs, court reporters and stenographers, probation officers, and other court personnel.

The judges of each of the 94 district courts appoint one or more United States magistrates. There are now more than 400 of these magistrates. They are appointed to eight-year terms and handle a number of legal matters once dealt with by the judges themselves. They issue warrants of arrest and often hear evidence to decide whether or not a person who has been arrested on a federal charge should be held for action by a grand jury. They also set bail in federal criminal cases, and even have the power to try those who are charged with certain minor offenses.

Each federal judicial district also has at least one bankruptcy judge. They handle bankruptcy cases under the direction of the district court to which they are assigned.[5] There are now some 350 bankruptcy judges, all of them appointed to 14-year terms by the judges of each federal court of appeals. The President and the Senate appoint a United States attorney for each federal judicial district. The U.S. attorneys and their many deputies are the government's prosecutors. They work closely with the FBI and other law enforcement agencies, and bring to trial those persons charged with federal crimes. They also represent the United States in all civil actions brought by or against the government in their districts.

The President and Senate also select a United States marshal to serve each of the district courts. These marshals, and their several deputy U.S. marshals, perform duties much like those of a county sheriff. They make arrests in federal criminal cases, hold accused persons in custody, secure jurors, serve legal papers, keep order in courtrooms, and execute court orders and decisions. They also respond to such emergency situations as riots, mob violence, and other civil disturbances, as well as terrorist incidents. All United States attorneys and marshals are appointed to four-year terms—and members of the Senate are usually closely involved in their selections.

[5]Recall that bankruptcy is a legal proceeding in which a debtor's assets are distributed among those to whom the bankrupt person, business, or other organization owes money. Although some bankruptcy cases are heard in State courts, nearly all of them fall within the jurisdiction of the federal district courts.

Section 1 Assessment

Key Terms and Main Ideas

1. Why were the **inferior courts** created?
2. **(a)** What is **jurisdiction? (b)** Explain the difference between **exclusive jurisdiction** and **concurrent jurisdiction.**
3. Describe the roles of **plaintiff** and **defendant.**
4. **(a)** Contrast **original jurisdiction** and **appellate jurisdiction. (b)** What kind of jurisdiction does the Supreme Court have?

Critical Thinking

5. **Expressing Problems Clearly** Reread Alexander Hamilton's comments about the need for a national judiciary. Restate Hamilton's argument in your own words.
6. **Drawing Inferences** Make a list of steps for selecting a federal judge. Next to each step, indicate whether it is a legal requirement or simply a matter of custom. For the steps labeled as a custom, explain why it might be wise for a President to observe such a custom.

Take It to the Net

7. Use the Internet to answer these questions: **(a)** How does the jurisdiction of State courts differ from that of federal courts? **(b)** Give two examples of cases that might be tried in State court. **(c)** Give two examples of cases that might be tried in federal court, and explain the rationale for having a federal court hear those cases rather than a State court. Use the links provided in the Social Studies area at the following Web site for help in completing this activity. **www.phschool.com**

2 The Inferior Courts

Section Preview

Objectives

1. **Describe** the structure and jurisdiction of the federal district courts.
2. **Describe** the structure and jurisdiction of the federal courts of appeals.
3. **Describe** the structure and jurisdiction of the two other constitutional courts.

Why It Matters

The inferior courts, those beneath the Supreme Court, are the core of the federal judicial system, hearing nearly all of the cases tried in federal courts. They hear cases, both originally and on appeal, and both criminal and civil cases.

Political Dictionary

- ★ **criminal case**
- ★ **civil case**
- ★ **docket**

You know that the particular meaning of a word often depends on the context—the setting—in which it is used. Thus, *pitch* can be either a baseball or a musical term; or it can refer to the setting up of a tent, or to a high-pressure sales talk.

The word *inferior* has various meanings as well. Here it describes the lower federal courts, those courts created by Congress to function beneath the Supreme Court. The inferior courts handle most of the cases tried in the federal courts.

The District Courts

The United States district courts are the federal trial courts. Their 654 judges handle more than 300,000 cases a year, about 80 percent of the federal caseload. The district courts were created by Congress in the Judiciary Act of 1789. There are now 94 of them.

Federal Judicial Districts

The fifty States are divided into 89 federal judicial districts, and there are also federal district courts for Washington, D.C., Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. Each State forms at least one judicial district. Some are divided into two or more districts, however—usually because of the larger amount of judicial business there. At least two judges are assigned to each district, but many districts have several. Thus, New York is divided into four judicial districts; one of them, the United States Judicial District for Southern New York, now has 28 judges.

Cases tried in the district courts are most often heard by a single judge. However, certain cases may be heard by a three-judge panel.[6]

District Court Jurisdiction

The district courts have original jurisdiction over most cases that are heard in the federal courts (except those few cases that fall within the original jurisdiction of the United States Supreme Court and those cases that are heard by the U.S. Court of International Trade or by one of the special courts). Thus, these district courts are the principal trial courts in the federal court system.

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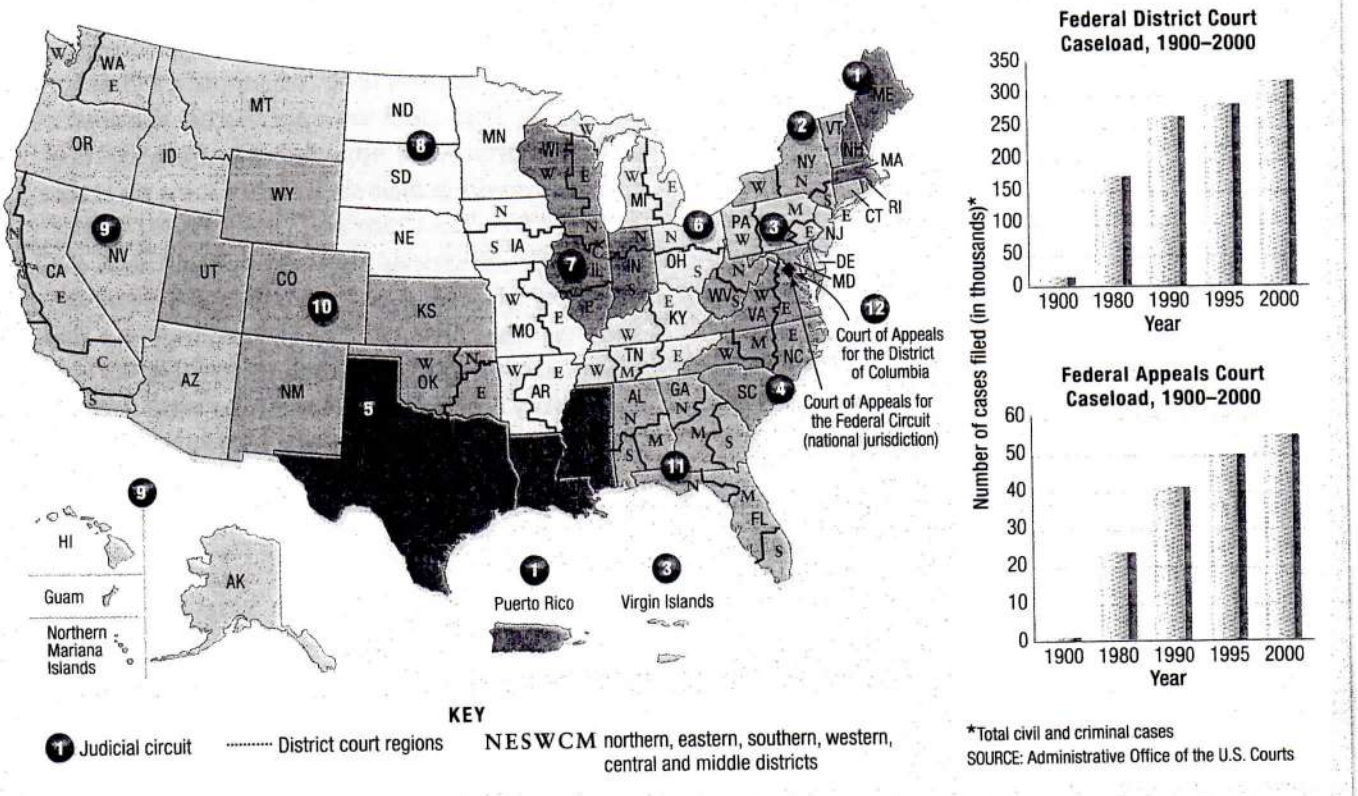
[6]Congress has directed that three-judge panels hear certain cases. Chiefly, these are cases that involve congressional districting or State legislative apportionment questions, those arising under the Civil Rights Act of 1964 or the Voting Rights Acts of 1965, 1970, 1975, and 1982, and certain antitrust actions.

Two little-known multi-judge panels play a key role in ongoing efforts to combat terrorism in this country and abroad. Both are shrouded in secrecy. (1) The Foreign Intelligence Surveillance Court, created by Congress in 1978. This tribunal is composed of 11 federal district court judges, appointed to seven-year terms by the Chief Justice of the United States. The court, which meets in secret, has the power to issue secret search warrants—court orders that allow the FBI, the CIA, and other federal law enforcement agencies to conduct covert surveillance of persons suspected of being spies or members of terrorist organizations. (2) The Alien Terrorist Removal Court, created by Congress in 1996. It is made up of five district court judges, appointed by the Chief Justice to five-year terms. This court has the power to decide whether those persons identified as "alien terrorists" by the Attorney General of the United States should be expelled from this country.

U.S. Federal Court Districts and Circuits



*Total civil and criminal cases

SOURCE: Administrative Office of the U.S. Courts

SOURCE: Federal Judiciary Home Page

Interpreting Maps Each State comprises at least one United States judicial district. The nation is divided into twelve judicial circuits, as shown on the map. The graphs show increasing federal caseloads. ***Explain how this increase relates to the trend in Congress toward designating more crimes as federal offenses.***

The district courts hear a wide range of both **criminal cases** and **civil cases.** A criminal case, in the federal courts, is one in which a defendant is tried for committing some action that Congress has declared by law to be a federal crime. A federal civil case involves some noncriminal matter, such as a dispute over the terms of a contract or a claim of patent infringement.[7] The district courts try cases ranging from bank robbery and mail fraud to counterfeiting and tax evasion. They hear civil cases arising under bankruptcy, postal, tax, labor relations, public lands, civil rights, and other laws of the United States. The district courts are the only federal courts that regularly use grand juries to indict defendants and petit juries to try defendants.

Most of the decisions made in the 94 federal district courts are final. However, some cases are appealed to the court of appeals in that judicial circuit or, in a few instances, directly to the Supreme Court.

The Courts of Appeals

The courts of appeals were created by Congress in 1891. They were established as "gatekeepers" to relieve the Supreme Court of much of the burden of hearing appeals from the district courts. Those appeals had become so numerous that the Supreme Court was then three years behind its **docket**—its list of cases to be heard.

There are now 12 courts of appeals in the judicial system.[8] The United States is divided into

▲ Seal of the U.S. Court of Appeals for the Fifth Circuit

[7]The United States is always a party to a federal criminal case, as the prosecutor. Most civil cases involve private parties; but here, too, the United States may be a litigant, as either plaintiff or defendant.

[8]These tribunals were originally known as the circuit courts of appeals. Before 1891, Supreme Court justices "rode circuit" to hear appeals from the district courts. Congress renamed these courts in 1948, but they still are often called the circuit courts.

12 judicial circuits, including the District of Columbia, with one court of appeals for each circuit, as shown on the previous page.

Appellate Court Judges

Altogether, 179 circuit judges sit on these appellate courts. In addition, a justice of the Supreme Court is assigned to each of them. Take, for example, the United States Court of Appeals for the Eleventh Circuit. The circuit covers three States: Alabama, Georgia, and Florida. The court is composed of 12 judges, and Supreme Court Justice Anthony Kennedy is also assigned to the circuit. The judges hold sessions in a number of cities within the circuit.

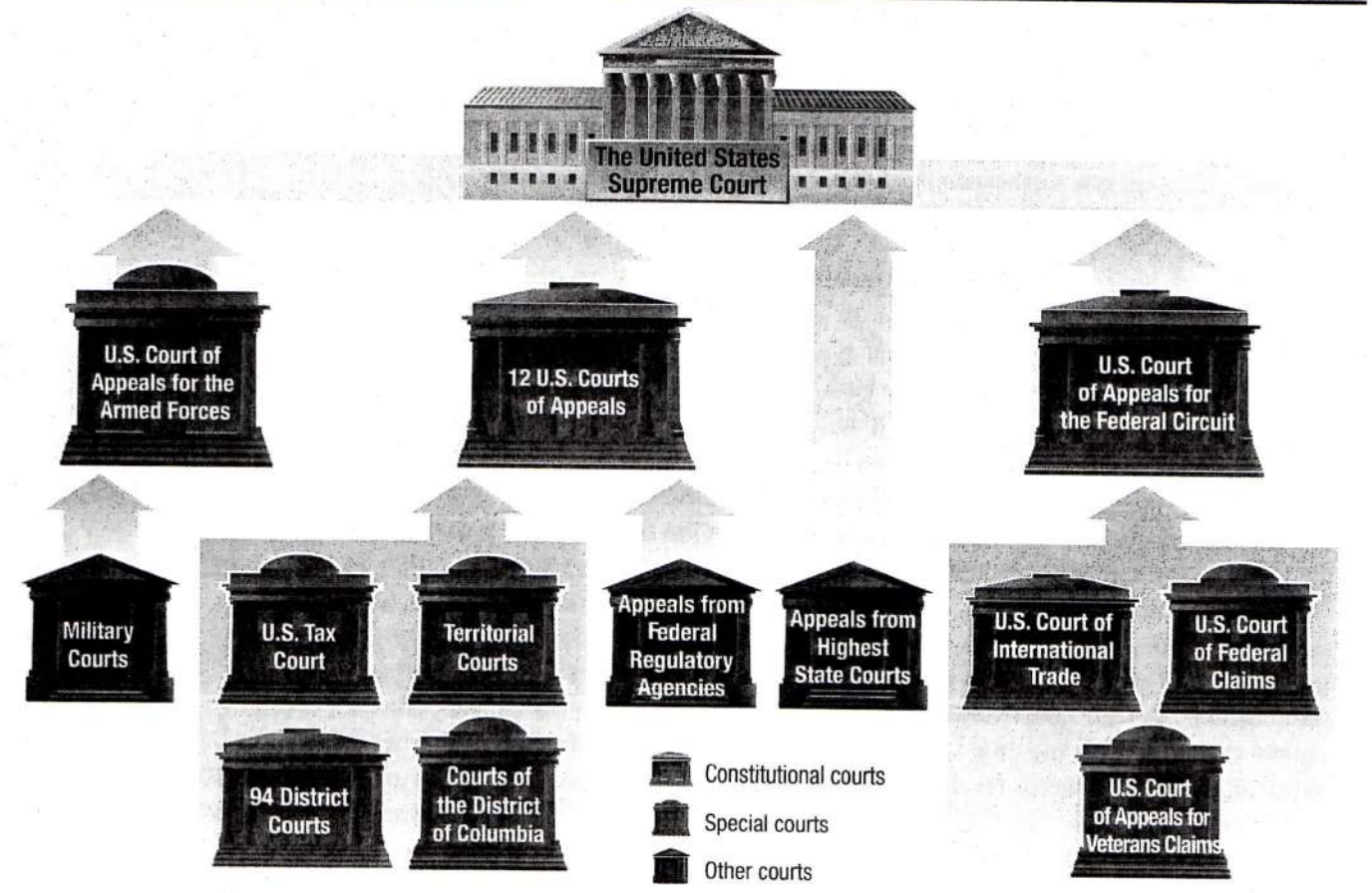
Each of the courts of appeals usually sits in panels of three judges. However, occasionally, to hear an important case, a court will sit *en banc*—that is, with all of the judges for that circuit participating.

Appellate Court Jurisdiction

The courts of appeals have only appellate jurisdiction. They hear cases on appeal from the lower federal courts. Most appeals come from the district courts within their circuits, but some do come from the U.S. Tax Court and the territorial courts. The courts of appeals also hear appeals from the decisions of several federal regulatory agencies, such as the Federal Trade Commission, the National Labor Relations Board, and the Nuclear Regulatory Commission. (See diagram below.)

The courts of appeals now handle more than 55,000 cases a year. Their decisions are final, unless the Supreme Court chooses to hear appeals taken from them.

How Federal Cases Are Appealed



Interpreting Diagrams The diagram above shows how cases originating in various courts can be appealed to the U.S. Supreme Court. ***From what you have read so far, what do you think are the two or three inferior courts that handle the largest proportion of cases in the country?***

Other Constitutional Courts

Congress has created two other Article III courts. They are the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit.

The Court of International Trade

The Trade Court was created originally in 1890 as the Board of United States General Appraisers. That body became the Court of Customs in 1926, and Congress restructured and renamed that court in 1980.

The Court of International Trade now has nine judges, one of whom is its chief judge. It hears civil cases arising out of tariff and other trade-related laws. The judges of the Trade Court sit in panels of three and often hold trials at such major ports as New Orleans, San Francisco, Boston, and New York. Appeals from decisions of the Trade Court are taken to the Court of Appeals for the Federal Circuit.

The Court of Appeals for the Federal Circuit

Congress created the Court of Appeals for the Federal Circuit in 1982. It established the new court to centralize, and so speed up, the handling of appeals in certain kinds of civil cases. This appellate court, unlike the 12 other federal courts of appeals, hears cases from all across the country. That is, it has a nationwide jurisdiction.

The Court of Appeals for the Federal Circuit hears appeals from several different courts. Many of its cases come from the U.S. Court of International Trade, and others from the U.S. Court of Federal Claims and the U.S. Court of Appeals for Veterans Claims, two of the special courts. It also hears appeals in patent, trademark, and copyright cases coming from the 94 district courts around the country. Then, too, it takes cases that arise out of administrative rulings made by the International Trade Commission, the Patent and Trademark Office in the Department of Commerce, and the Merit Systems Protection Board.

The Court of Appeals for the Federal Circuit has 12 judges. It sits in panels of three or more judges on each case and also may hear or rehear a case *en banc*. The court usually hears cases in Washington, D.C., but it may also do so wherever any of the other federal courts of appeals sits. Appeals from the court may be taken to the Supreme Court, but they rarely are.

Interpreting Political Cartoons This 1885 cartoon shows a Supreme Court swamped by appeals. **(a) *Describe what is going on in this scene.* (b) *What is the man in the foreground doing?* (c) *What point is the artist making?***

Section 2 Assessment

Key Terms and Main Ideas

1. What is the difference between a **criminal case** and a **civil case?**
2. What action did Congress take in the late 1800s to relieve the Supreme Court's overloaded **docket?**
3. Summarize the main purpose of the federal district courts and the federal courts of appeals.

Critical Thinking

4. **Drawing Conclusions** Most of the courts in the federal judiciary are appellate courts. What does this fact suggest about the American judicial process?
5. **Expressing Problems Clearly** What kind of problems might have prompted Congress to create an entirely new type of appellate court in 1982?

Take It to the Net

6. Follow the Internet links to the federal appeals court for the circuit that includes your State. Choose one current case and write one paragraph explaining why this case falls within the jurisdiction of the Federal Court of Appeals. Use the links provided in the Social Studies area at the following Web site for help in completing this activity. **www.phschool.com**

CLOSE UP FOUNDATION

on Primary Sources

Choosing Federal Judges

The Constitution says the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint. . . Judges of the supreme Court." Although most Presidents choose judges who agree with their policy viewpoints, Nadine Strossen, President of the American Civil Liberties Union, argues that the Senate should play a more assertive role in the judicial selection process.

The President and Senate work together to appoint federal judges such as Surpreme Court Justice Sandra Day O'Connor.

The Constitution's appointment clause . . . clearly confers upon the president unfettered [unlimited] discretion to name federal judges of his choosing, subject to the Senate's "advice and consent." It specifies no minimal criteria or essential qualifications for such judges . . . and by failing to set out any limits on that power [to nominate judges], the constitutional text indicates that the president's judicial nominations could also appropriately take the nominees' views into account.

The Constitution is as silent about criteria for the Senate's confirmation decision as it is about those for the president's initial nomination. Accordingly, the text assigns the Senate as open-ended a discretion in the confirmation process as it assigns the president in the nomination process. In exercising that discretion, it is as appropriate for the Senate to consider a candidate's constitutional and judicial philosophy as it is for the president.

The Senate's concurrent role in the judicial selection process is also confirmed by the proceedings at the 1787 Constitutional Convention which led to the adoption of the appointment clause. Indeed, until the final days of the Convention, the proposed constitutional text gave the Senate—or, in some versions, the Senate and the House of Representatives—the sole power to appoint federal judges, including Supreme Court Justices.

In contrast, the delegates roundly rejected all attempts to confer this power on the president alone. Referring to the significant separation of powers concerns implicated by the judicial appointment process, Virginia delegate George Mason said that an exclusively presidential appointment power constituted "a dangerous prerogative" that "might even give him an influence over the Judiciary Department itself."

Only near the end of the Convention did the delegates agree to give the president any role at all in the judicial selection process, by adopting the current appointment clause. The president and the Senate should have a "partnership" relationship in the judicial appointment process. Structural aspects of the Constitution dictate that, in fulfilling their respective roles in the process, each of these partners should consider candidates' constitutional and judicial philosophies.

Analyzing Primary Sources

1. According to the author, how did the Founding Fathers feel about giving the President the power to appoint federal judges?
2. How does the nomination process reflect the principle of separation of powers?
3. Many people believe that a judicial nominee should not be pressured to give his or her opinions on Constitutional issues before the nominee takes a seat as a judge. How would the author respond?

3 The Supreme Court

Section Preview

Objectives

1. **Define** the concept of judicial review.
2. **Outline** the scope of the Supreme Court's jurisdiction.
3. **Examine** how cases reach the Supreme Court.
4. **Summarize** the way the Court operates.

Why It Matters

The Supreme Court, the only court created by the Constitution, is the final authority on questions of federal law. It enjoys broad jurisdiction but usually limits its caseload to appeals involving constitutional questions and interpretations of federal law.

Political Dictionary

- ★ **writ of certiorari**
- ★ **certificate**
- ★ **majority opinion**
- ★ **precedent**
- ★ **concurring opinion**
- ★ **dissenting opinion**

The eagle, the flag, Uncle Sam—you almost certainly recognize these symbols. They are used widely to represent the United States. You probably also know the symbol for justice: the blindfolded woman holding a balanced scale. She represents what is perhaps this nation's loftiest goal: equal justice for all. Indeed, those words are chiseled in marble above the entrance to the Supreme Court building in Washington, D.C.

The Supreme Court of the United States is the only court specifically created by the Constitution, in Article III, Section 1. The Court is made up of the Chief Justice of the United States, whose office is also established by the Constitution,[9] and eight associate justices.[10] The Framers quite purposely placed the Court on an equal plane with the President and Congress. As the highest court in the land, the Supreme Court stands as the court of last resort in all questions of federal law. That is, it is the final authority in any case involving any question arising under the Constitution, an act of Congress, or a treaty of the United States.

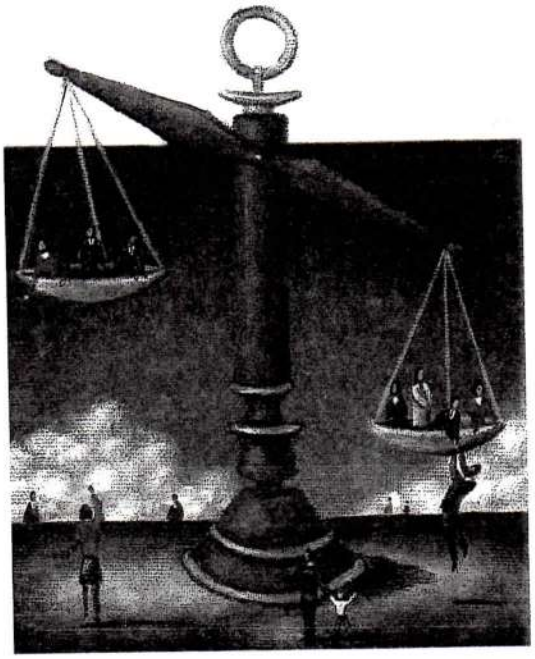
Judicial Review

Remember, most courts in this country, both federal and State, may exercise the critically important power of judicial review. They have the extraordinary power to decide the constitutionality of an act of government, whether executive, legislative, or judicial. The ultimate exercise of that power rests with the Supreme Court of the United States. That single fact makes the Supreme Court the final authority on the meaning of the Constitution.

The Constitution does not in so many words provide for the power of judicial review. Still, there is little doubt that the Framers intended

[9] Article I, Section 3, Clause 6.

[10] Congress sets the number of associate justices and thus the size of the Supreme Court. The Judiciary Act of 1789 created a Court of six justices, including the Chief Justice. Its size was reduced to five members in 1801 but increased to seven in 1807, to nine in 1837, and to 10 in 1863. It was reduced to seven in 1866 and raised to its present size of nine in 1869.



▲ A scale is often used to represent justice.

that the federal courts—and, in particular, the Supreme Court—should have this power.[11]

Marbury v. *Madison*

The Court first asserted its power of judicial review in the classic case of *Marbury* v. *Madison* in 1803.[12] The case arose in the aftermath of the stormy elections of 1800. Thomas Jefferson and his Democratic-Republicans had won the presidency and control of both houses of Congress. The outgoing Federalists, stung by their defeat, then tried to pack the judiciary with loyal party members. Congress created several new federal judgeships in the early weeks of 1801; President John Adams quickly filled those posts with Federalists.

William Marbury had been appointed a justice of the peace for the District of Columbia. The Senate had confirmed his appointment and, late on the night of March 3, 1801, President Adams signed the commissions of office for Marbury and for a number of other new judges. The next day Jefferson became the President, and discovered that Marbury's commission and several others had not yet been delivered.

Angered by the Federalists' attempted court-packing, Jefferson at once told James Madison, the new secretary of state, not to deliver those commissions to the "midnight justices." William Marbury then went to the Supreme Court, seeking a writ of mandamus[13] to force delivery.

Marbury based his suit on a provision of the Judiciary Act of 1789, in which Congress had created the federal court system. That law gave the Supreme Court the right to hear such suits in its original jurisdiction (not on appeal from a lower court).

[11] See Article III, Section 2, setting out the Court's jurisdiction, and Article VI, Section 2, the Supremacy Clause.

[12] It is often mistakenly said that the Court first exercised the power in this case, but in fact the Court did so at least as early as *Hylton* v. *United States* in 1796. In that case it upheld the constitutionality of a tax Congress had laid on carriages.

[13] A writ of mandamus is a court order compelling a government officer to perform an act which that officer has a clear legal duty to perform.

An Early Supreme Court Drama: *Marbury* v. *Madison*

The Players

John Adams, outgoing Federalist President of the United States

Thomas Jefferson, incoming Democratic-Republican President of the United States

James Madison, incoming secretary of state

William Marbury, appointed a justice of the peace for the District of Columbia

John Marshall, Chief Justice of the United States Supreme Court

The Case

1. The night before leaving office, Adams signs several judicial commissions.
2. Angered by Adams' actions, Jefferson orders Madison to withhold any commissions not yet delivered.
3. Hoping to force Jefferson to give him the judgeship, Marbury files suit in the Supreme Court. He argues that the Judiciary Act of 1789 allows him to take his case directly to the high court.

The Decision

Marshall, writing for a unanimous court, declares that the Judiciary Act violates Article III, Section 2 and is therefore unconstitutional. Marbury loses, having based his case on an unconstitutional law.

The Impact

The case established the Supreme Court's power of judicial review—its power to determine the constitutionality of a governmental action. The power extends to the actions of all governments in the United States—national, State and local. The Court's decision in *Marbury* assured the place of the judicial branch in the system of separation of powers.

Interpreting Charts In the landmark case *Marbury* v. *Madison,* the Supreme Court ruled against William Marbury because he had based his case on a part of the Judiciary Act of 1789, which was found to be in conflict with the Constitution. ***How did the Court's decision affect the role of the judicial branch in our system of government?***

In a unanimous opinion written by Chief Justice John Marshall, the Court refused Marbury's request.[14] It did so because it found the section of the judiciary act on which Marbury had based his case to be in conflict with the Constitution and, therefore, void. Specifically, it found the statute in conflict with the section of the Constitution that reads:

FROM THE Constitution

"In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction. . . ."

—Article III, Section 2, Clause 2

Marshall's powerful opinion was based on three propositions. First, the Constitution is, by its own terms, the supreme law of the land. Second, all legislative acts and other actions of government are subordinate (inferior) to the supreme law and cannot be allowed to conflict with it. Third, judges are sworn to enforce the provisions of the Constitution, and therefore must refuse to enforce any government action they find to be in conflict with it.

The Effects of *Marbury*

The impact of the Court's decision goes far beyond the fate of an obscure individual named William Marbury. In this decision, Chief Justice Marshall claimed for the Supreme Court the right to declare acts of Congress unconstitutional, and so laid the foundation for the judicial branch's key role in the development of the American system of government.

The Court has used its power of judicial review in thousands of cases since 1803. Usually it has upheld the constitutionality of federal and State actions.

The dramatic and often far-reaching effects of the Supreme Court's exercise of the power of judicial review tends to overshadow much of its other work. Each year it hears dozens of cases in which questions of constitutionality are not raised, but in which federal law is interpreted and applied. Thus, many of the more important statutes that Congress has passed have been brought to the Supreme Court time and again for decision. So, too, have many of the lesser ones. In interpreting those laws and applying them to specific situations, the Court has had a real impact on both their meaning and their effect.

[14]Marshall was appointed Chief Justice by President John Adams, and he took office on January 31, 1801. He served in the post for 34 years, until his death on July 6, 1835. He also served as Adams's secretary of state from May 13, 1800, to March 4, 1801. Thus, he served simultaneously as secretary of state and Chief Justice for more than a month at the end of the Adams administration. What is more, he was the secretary of state who had failed to deliver Marbury's commission in a timely fashion.

Voices on Government

David Souter was named a Supreme Court justice by President George Bush in 1990. From his experience as New Hampshire attorney general and a State court judge, Souter knew that judges' decisions are more than abstract legal ideas. Here are his thoughtful insights on justice:

"Whether we are on a trial court or an appellate court, at the end of our task some human being is going to be affected. . . . If indeed we are going to be trial judges, whose rulings will affect the lives of other people and who are going to change their lives by what we do, we had better use every power of our minds and our hearts and our beings to get those rulings right."

Evaluating the Quotation

Think of an issue that reflects the "human" effects of court decisions that Souter refers to. In what ways did a court decision affect the daily lives of Americans?

Supreme Court Jurisdiction

The Supreme Court has both original and appellate jurisdiction. Most of its cases, however, come on appeal—from the lower federal courts and from the highest State courts.

Article III, Section 2 of the Constitution spells out two classes of cases that may be heard by the High Court in its original jurisdiction: (1) those to which a State is a party and (2) those affecting ambassadors, other public ministers, and consuls.

Congress cannot enlarge on this constitutional grant of original jurisdiction. Recall, that

► No Anonymous Tips In *Florida* v. *J.L.*, 2000, the Supreme Court ruled that under ordinary circumstances, an anonymous tip to police about a concealed firearm was not sufficient to prompt a legal "stop and frisk" search.

is what the Court held in *Marbury*. If Congress could do so, it would in effect be amending the Constitution. Congress can implement the constitutional provision, however, and it has done so. It has provided that the Court shall have original and exclusive jurisdiction over (1) all controversies involving two or more States, and (2) all cases brought against ambassadors or other public ministers, but not consuls.

The Court may choose to take original jurisdiction over any other case covered by the broad wording in Article III, Section 2 of the Constitution. Almost without exception, however, those cases are tried in the lower courts. The Supreme Court hears only a very small number of cases in its original jurisdiction—in fact, only a case or two each term.

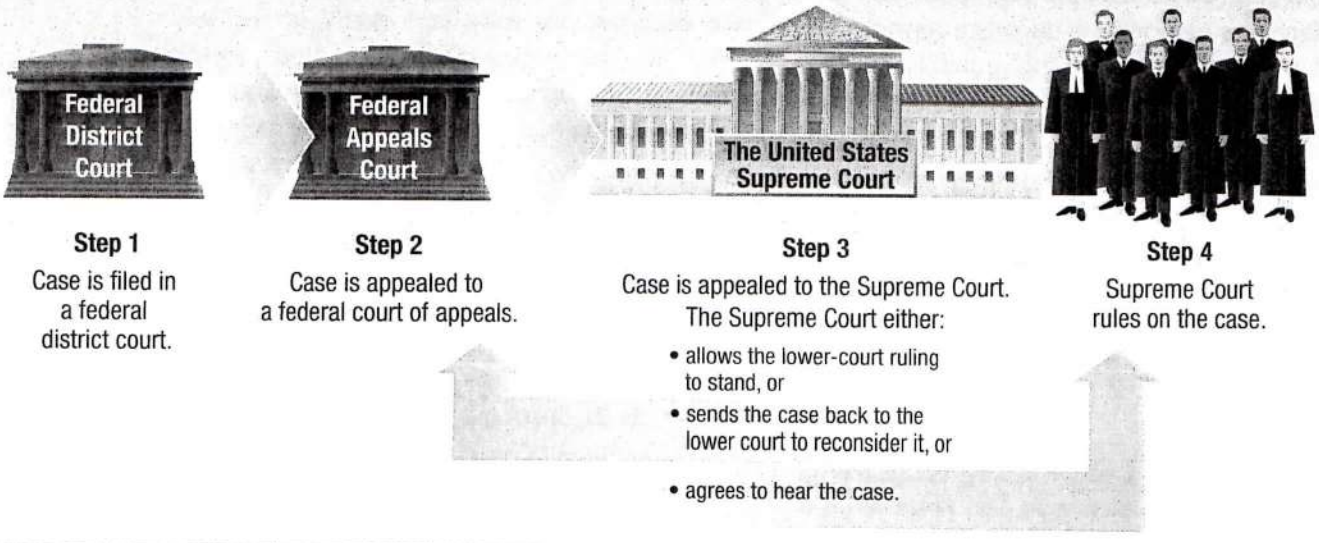
How Cases Reach the Court

Some 8,000 cases are now appealed to the Supreme Court each year. Of these, the Court accepts only a few hundred for decision. In most cases, petitions for review are denied, usually because most of the justices agree with the decision of the lower court or believe that the case involves no significant point of law. The Court selects those cases that it does hear according to "the rule of four": At least four of its nine justices must agree that a case should be put on the Court's docket.

More than half the cases decided by the Court are disposed of in brief orders. For example, an order may remand (return) a case to a lower court for reconsideration in the light of some other recent and related case decided by the High Court. All told, the Court decides, after hearing arguments and with full opinions, fewer than 100 cases a year.

Most cases reach the Supreme Court by **writ of certiorari** (from the Latin, meaning "to be made more certain"). This writ is an order by the Court directing a lower court to send up the record in a given case for its review. Either party

Appealing a Case to the Supreme Court



Interpreting Diagrams The diagram above shows the typical route (though not the only one) a case might take to the Supreme Court. ***Why do you think this process requires so many steps to reach the Supreme Court—often at great expense and time to the parties involved?***

to a case can petition the Court to issue a writ. But, again, "cert" is granted in a limited number of instances—typically, only when a petition raises some important constitutional question or a serious problem in the interpretation of a statute.

When certiorari is denied, the decision of the lower court stands in that particular case. Note, however, that the denial of cert is not a decision on the merits of a case. All that a denial means is that, for whatever reason, four or more justices could not agree that the Supreme Court should accept that case for review.

A few cases do reach the Court in yet another way, by **certificate.** This process is used when a lower court is not clear about the procedure or the rule of law that should apply in a case. The lower court asks the Supreme Court to certify the answer to a specific question in the matter.

Most cases that reach the Court do so from the highest State courts and the federal courts of appeals. A few do come, however, from the federal district courts and a very few from the Court of Appeals for the Armed Forces.

How the Court Operates

The Court sits from the first Monday in October to sometime the following June or July. Each term is identified by the year in which it began. Thus, the 2003 term ran from October 1, 2003, into the early summer of 2004.

Oral Arguments

Once the Supreme Court accepts a case, it sets a date on which that case will be heard. As a rule, the justices consider cases in two-week cycles from October to early May. They hear oral arguments in several cases for two weeks; then the justices recess for two weeks to consider those cases and handle other Court business.

While the Supreme Court is hearing oral arguments, it convenes at 10:00 A.M. on Mondays, Tuesdays, Wednesdays, and sometimes Thursdays. At those public sessions, the lawyers make their oral arguments. Their presentations are almost always limited to 30 minutes.[15]

Briefs

Briefs are written documents filed with the Court before oral arguments begin. These detailed statements support one side of a case, presenting arguments built largely on relevant facts and the citation of previous cases. Many briefs run to hundreds of pages.

The Court may also receive *amicus curiae* (friend of the court) briefs. These are briefs filed by persons or groups who are not actual parties to a case but who nonetheless have a substantial interest in its outcome. Thus, for example, cases involving such highly charged matters as abortion or affirmative action regularly attract a large number of amicus briefs. Notice, however, that these briefs can be filed only with the Court's permission or at its request.

The solicitor general, a principal officer in the Department of Justice, is often called the Federal Government's chief lawyer. He—and, certainly, one day she—represents the United States in all cases to which it is party in the Supreme Court and may appear for the government for any federal State court.[16]

The solicitor general also has another extraordinary responsibility. He or she decides which cases the government should ask the Supreme Court to review and what position the United States should take in those cases it brings before the High Court.

The Court in Conference

On most Wednesdays and Fridays through a term, the justices meet in conference. There, in closest secrecy, they consider the cases in which they have heard oral arguments.[17]

The Chief Justice presides over the conference. He speaks first on each case to be considered and usually indicates how he intends to vote. Then each associate justice summarizes his or her views. Those presentations are made in order of seniority, with the justice most recently named to the Court speaking last. After the justices are "polled," they usually debate the case.

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[15]The justices usually listen closely to a lawyer's oral arguments and sometimes interrupt them with questions or requests for information. After 25 minutes, a white light comes on at the lectern from which the lawyer addresses the Court; five minutes later a red light signals the end of the presentation, even if the lawyer is in mid-sentence.

[16]The attorney general may argue the government's position before the Supreme Court but rarely does.

[17]At conference, the justices also decide which new cases they will accept for decision.

▲ The current members of the Supreme Court pose for their official photograph. Front row: Antonin Scalia, John Paul Stevens, Chief Justice William H. Rehnquist, Sandra Day O'Connor, Anthony Kennedy. Back Row: Ruth Bader Ginsburg, David Souter, Clarence Thomas, Stephen Breyer.

About a third of all the Court's decisions are unanimous, but most find the Court divided. The High Court is sometimes criticized for its split decisions. But, notice, its cases pose very difficult questions, and many also present questions on which lower courts have disagreed. In short, most of the Court's cases are controversial ones; the easy cases seldom get that far.

Opinions

If the Chief Justice is in the majority on a case, he assigns the writing of the Court's opinion. When the Chief Justice is in the minority, the assignment is handled by the senior associate justice on the majority side.

The Court's opinion is often called the **majority opinion.** Officially called the Opinion of the Court, it announces the Court's decision in a case and sets out the reasoning on which it is based.[18]

The Court's written opinions are exceedingly valuable. The majority opinions stand as **precedents,** or examples to be followed in similar cases as they arise in the lower courts or reach the Supreme Court.

Often, one or more of the justices who agree with the Court's decision may write a **concurring opinion**—to add or emphasize a point that was not made in the majority opinion. The concurring opinions may bring the Supreme Court to modify its present stand in future cases.

One or more **dissenting opinions** are often written by those justices who do not agree with the Court's majority decision. Chief Justice Charles Evans Hughes once described dissenting opinions as "an appeal to the brooding spirit of the law, to the intelligence of a future day." On rare occasions, the Supreme Court does reverse itself. The minority opinion of today could become the Court's majority position in the future.

[18]Most majority opinions, and many concurring and dissenting opinions, run to dozens of pages. Some decisions are accompanied by very brief and unsigned opinions. These *per curiam* (for the court) opinions seldom run more than a paragraph or two and usually dispose of relatively uncomplicated cases.

Section 3 Assessment

Key Terms and Main Ideas

1. **(a)** What does a **writ of certiorari** have in common with a **certificate? (b)** How do the two differ?
2. Explain how a **majority opinion,** a **concurring opinion,** and a **dissenting opinion** differ.
3. **(a)** Why are **precedents** important? **(b)** Write a sentence using the word *precedent* in a judicial context.
4. Explain why "easy" cases generally do not reach the Supreme Court.

Critical Thinking

5. **Drawing Conclusions** Why do you think the Supreme Court justices often write concurring and/or dissenting opinions in a case?
6. **Determining Cause and Effect** How does the Court's power of judicial review affect the balance of power in the Federal Government?

Take It to the Net

7. Visit the Exploring Constitutional Conflicts site on the Internet and use the information provided to write a brief essay that answers either question # 1 or # 5 on that page. Use the links provided in the Social Studies area at the following Web site for help in completing this activity. **www.phschool.com**

SKILLS FOR LIFE

TECHNOLOGY
CITIZENSHIP
CRITICAL THINKING
CHARTS and GRAPHS

Drawing Conclusions

A caravan of police cars converges on a Chicago neighborhood known for illegal drug trafficking. A man sees the police and flees the scene. Suspicious, the police chase him down and "frisk" him for weapons. They find a handgun. They arrest him.

Was this a legal search and seizure? The 4th Amendment to the Constitution protects U.S. citizens from "unreasonable searches and seizures." Did the police officers have sufficient reason to suspect that the fleeing man had committed a crime, even though they did not see him do anything wrong? In *Wardlow* v. *Illinois*, 2000, the Supreme Court ruled that the police acted legally when they drew this conclusion.

Drawing a conclusion means arriving at an idea or opinion that is suggested, indirectly, from given information. How did the officers reach their conclusion? Instinctively, within seconds, they used a process like this:

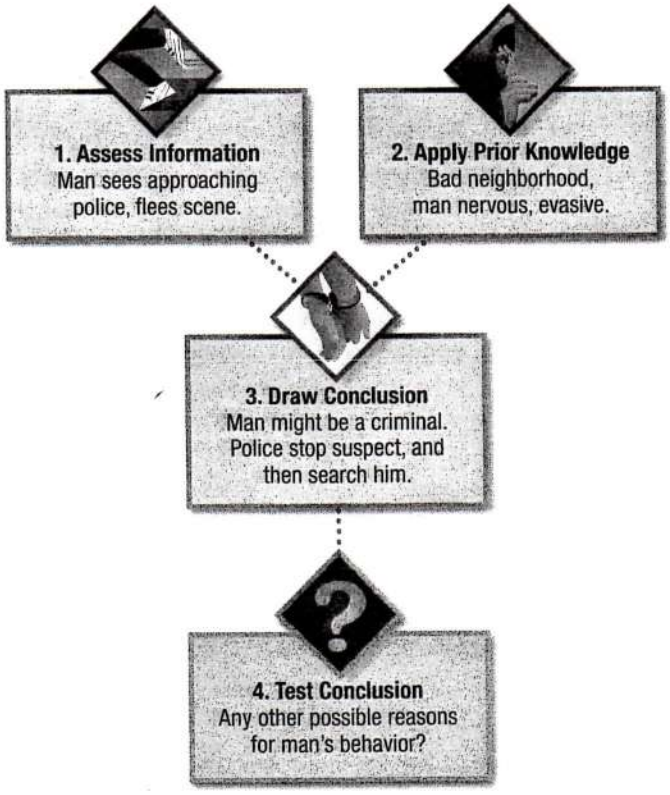
1. Assess information. Analyze a fact or set of facts to see if they suggest other ideas. Sometimes a given piece of information may imply a cause-effect relationship. In the Chicago case, what did police actually observe when they arrived on scene?

2. Apply prior knowledge. To come to a conclusion, you usually combine new information with facts you already know. What relevant information did the police already know when they arrived on scene?

3. Reach a conclusion. Often a conclusion can be stated in this form: *X, therefore Y*. Use this format to state the conclusion that the police drew from the scene.

4. Test your conclusion. It's possible to draw the wrong conclusion from a set of facts. Always test the validity of your conclusion by considering whether any other conclusion is possible from the information given. Is there another possible explanation for what the Chicago police saw? If so, is it a likely explanation? Explain.

What did the Supreme Court think of the police officers' conclusions? In a ruling in early 2000, the Court said that "An individual's presence in a 'high crime area,' standing alone, is not enough to support a reasonable, particularized suspicion of criminal activity," but the man's "nervous, evasive behavior" and "unprovoked flight" were "sufficiently suspicious to warrant further investigation." The officers' conclusions, the Court found, were sufficiently valid to justify their actions.



Test for Success

Use the steps above and the facts in the following paragraph to draw a conclusion about *Plessy* v. *Ferguson*. State your conclusion as *X, therefore Y*.

In Plessy *v.* Ferguson *(1896) the Supreme Court ruled that racially segregated facilities were constitutional as long as the facilities were "separate but equal." In 1954 the Court overturned* Plessy *in* Brown *v.* Board of Education.

4 The Special Courts

Section Preview

Objectives

1. **Explain** how a citizen may sue the government in the Court of Federal Claims.
2. **Examine** the roles of the territorial courts and of the District of Columbia courts.
3. **Contrast** the functions of the Court of Appeals for the Armed Forces and the Court of Appeals for Veterans Claims.
4. **Explain** what types of cases are brought to the Tax Court.

Why It Matters

Over time, Congress has enlarged the structure of the federal court system by creating many special courts to handle cases that are outside the mainstream judicial process. Each of these courts has a very narrow jurisdiction.

Political Dictionary

- ★ **redress**
- ★ **court-martial**
- ★ **civilian tribunal**

Recall that the federal court system is made up of two quite distinct types of courts. They are: (1) the constitutional, or regular courts, which you have read about, and (2) the special courts, which you'll now explore.

The special courts were created by Congress to hear certain cases involving the expressed powers of Congress. These courts, also known as legislative courts, were not established under Article III, so they do not exercise the broad "judicial Power of the United States." Rather, each has a very narrow jurisdiction.

▲ The White Mountain Apaches have long complained that the National Park Service has failed to maintain Fort Apache, in Arizona. It has even sued the United States in the Court of Federal Claims, in an (unsuccessful) attempt to force the Park Service to act. ***Critical Thinking Why did the tribe file suit in the Court of Federal Claims?***

The Court of Federal Claims

The United States government cannot be sued by anyone, in any court, for any reason, without its consent. The government may be taken to court only in cases in which Congress declares that the United States is open to suit.[19] Originally, a person with a claim against the United States could secure **redress**—satisfaction of a claim, payment—only by an act of Congress. In 1855, however, Congress set up the Court of Claims to hear such pleas.[20] That body became the United States Court of Federal Claims in 1993.

The Court of Federal Claims is composed of 16 judges appointed by the President and approved by the Senate for 15-year terms. They

[19]The government is shielded from suit by the doctrine of sovereign immunity. The doctrine comes from an ancient principle of English public law summed up by the phrase: "The King can do no wrong." The rule is not intended to protect public officials from charges of corruption or any other wrongdoing. Rather, it is intended to prevent government from being hamstrung in its own courts. Congress has long since agreed to a long list of legitimate court actions against the government.

[20]Congress acted under its expressed power to pay the debts of the United States, Article I, Section 8, Clause 1.

hold trials throughout the country, hearing claims for damages against the Federal Government. Those claims they uphold cannot in fact be paid until Congress appropriates the money, which it does almost as a matter of standard procedure. Appeals from the court's decisions may be carried to the Court of Appeals for the Federal Circuit.

Occasionally, those who lose in the Claims Court still manage to win some compensation. Some years ago, a Puget Sound mink rancher lost a case in which he claimed that low-flying Navy planes had frightened his animals and caused several of the females to become sterile. He asked $100 per mink. He lost, but then his congressman introduced a private bill that eventually paid him $10 for each animal.

The Territorial Courts

Acting under its power to "make all needful Rules and Regulations respecting the Territory . . . belonging to the United States," Congress created courts for the nation's territories. These courts sit in the Virgin Islands, Guam, and the Northern Marianas and function much like the local courts in the 50 States.

The District of Columbia Courts

Acting under its power (Article I, Section 8, Clause 17) to "exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may . . . become the Seat of the Government of the United States," Congress has set up a judicial system for the nation's capital. Both the District Court and the Court of Appeals for the District of Columbia hear many local cases as well as those they try as constitutional courts. Congress has also established two local courts, much like the courts in the States: a superior court, which is the general trial court, and a court of appeals.

The Court of Appeals for the Armed Forces

Beginning in 1789, Congress has created a system of military courts for each branch of the nation's armed forces, as an exercise of its expressed power to "make Rules for the Government and Regulation of the land and naval forces."[21] These military courts—**courts-martial**—serve the special disciplinary needs of the armed forces and are *not* a part of the federal court system. Their judges, prosecutors, defense attorneys, court reporters, and other personnel are all members of the military; most of them are officers. They conduct trials of those members of the military who are accused of violating military law. Today, the proceedings in a court-martial are very much like the trials held in civilian courts across the country.

In 1950, Congress created the Court of Military Appeals, now titled the Court of Appeals for the Armed Forces, to review the more serious court-martial convictions of military personnel. The Court of Appeals for the Armed Forces is a **civilian tribunal,** a court operating as part of the judicial branch, entirely separate from the military establishment. Its five judges—a chief judge and four associate judges—are appointed by the President and Senate to 15-year terms.

Appeals from the decision of the Court of Appeals for the Armed Forces can be, but almost never are, taken to the Supreme Court. It is, then, the court of last resort in most cases that involve offenses against military law.

Military Tribunals

At the President's direction, the Defense Department is currently drawing plans for special military tribunals. These panels, also composed of American military personnel, will likely try some captured members of al-Qaida and of other terrorist organizations and other foreigners accused of committing acts of terror against the United States.

Once established, these tribunals will not be a part of the military's courts-martial system. They will, instead, be basic elements in a special system of justice designed to meet the needs of

[21] Article I, Section 8, Clause 14. This provision allows Congress to provide for the regulation of the conduct of members of the armed forces under a separate, noncivil legal code. The present-day system of military justice has developed over more than 225 years. Today, the Uniform Code of Military Justice, enacted by Congress in 1950, and the Military Justice Acts of 1968 and 1983 are the principal statutes that set out the nation's military law.

national security and the continuing threat posed by alien terrorists here and abroad.

The President provided for the creation of these tribunals by executive order. His power to do so came from (1) his constitutional role as commander in chief and (2) the fact that Congress has authorized him to use "all necessary and appropriate force" to combat global terrorism.

Military tribunals have been established at various times in America's past—most notably during the Mexican-American War, the Civil War, and World War II. To this point, President Franklin Roosevelt created the most recent one, in 1942. It tried eight Nazi saboteurs, who had been landed on the East Coast by German submarines. They had planned various acts of sabotage aimed at the disruption of this nation's war effort. All eight were convicted. Six were executed; the other two, who had turned on their comrades and cooperated with the tribunal, were sentenced to long terms in prison.

The Court of Appeals for Veterans Claims

Acting under its power (Article I, Section 8, Clause 9) to "constitute Tribunals inferior to the supreme Court," Congress created the Court of Veterans Appeals in 1988 and changed its name in 1999 to the Court of Appeals for Veterans Claims. This newest court in the federal judiciary is composed of a chief judge and up to six associate judges, all appointed by the President and approved by the Senate to 15-year terms.

The court has the power to hear appeals from the decisions of an administrative agency, the Board of Veterans Appeals in the Department of Veterans Affairs (VA). Thus, this court hears cases in which individuals claim that the VA has denied or otherwise mishandled valid claims for veterans' benefits. Appeals from the decisions of the Court of Appeals for Veterans Claims can be taken to the Court of Appeals for the Federal Circuit.

The United States Tax Court

Acting under its constitutionally granted power to tax, Congress established the United States Tax Court in 1969.[22] The Tax Court has 19 judges, one of whom serves as chief judge. Each of these 19 judges is named by the President and approved by the Senate for a 15-year term. The Tax Court hears civil but not criminal cases involving disputes over the application of the tax laws. Most of its cases, then, are generated by the Internal Revenue Service and other Treasury Department agencies. Its decisions may be appealed to the federal courts of appeals.

[22]Article I, Section 8, Clause 1.

Section 4 Assessment

Key Terms and Main Ideas

1. Explain this statement: *The special courts have very narrow jurisdictions.*
2. What does it mean to seek **redress** in a court?
3. What is the difference between a **civilian tribunal** and a **court-martial**?
4. Who created the special courts?

Critical Thinking

5. **Drawing Inferences** Why do you think Congress has seen a need to create special courts instead of sending all federal cases to the regular courts?
6. **Expressing Problems Clearly** Brainstorm a type of case that a citizen might take to the U.S. Court of Federal Claims. Explain your reasoning.
7. **Drawing Inferences** Why, do you think, did Congress establish a civilian tribunal to hear appeals of serious court-martial convictions?

Take It to the Net

8. Examine the Web site of the U.S. Court of Appeals for the Armed Forces to find answers to these questions: **(a)** Give two reasons that Congress created the court. **(b)** What makes the Court of Appeals for the Armed Forces different from other federal courts? **(c)** What characteristics of the current judges qualify them to hear military cases? Use the links provided in the Social Studies area at the following Web site for help in completing this activity. **www.phschool.com**

May Congress Regulate States' Business Activities?

Under the 10th Amendment, the powers that the Constitution does not delegate to the Federal Government or deny to the States are "reserved to the States." This core principle of federalism restricts the government's ability to interfere with the States. Does it mean that the Federal Government cannot regulate State business activities?

Reno v. *Condon* (2000)

State departments of motor vehicles require drivers and automobile owners to provide personal information in order to receive a driver's license or to register a vehicle. This information typically includes name, address, telephone number, Social Security number, photograph, and some medical information. Many States then sell this information to businesses, earning significant revenues.

After learning about this sale of personal information, and the dangers encountered by some individuals whose information had been sold, Congress enacted the Driver's Privacy Protection Act of 1994 (DPPA). The law prohibits States from disclosing a driver's personal information without the driver's consent. States can still disclose information on vehicular accidents, driving violations, and driver's status without the driver's consent, and can disclose personal information with the driver's consent.

South Carolina was one of the States that sold motor vehicle records for a fee. Following enactment of the DPPA, Attorney General Charles M. Condon of South Carolina filed suit against the United States Attorney General, Janet Reno, in federal district court. The suit charged that the DPPA violated the division of power between State and Federal governments as established by the 10th and 11th Amendments. The district court agreed with the plaintiff, as did the court of appeals. The Supreme Court accepted the case for review in 1999.

Arguments for Reno

1. Among the purchasers of drivers' personal information are businesses engaged in interstate commerce. Therefore, the DPPA is a proper exercise of Congress's authority to regulate interstate commerce under the Commerce Clause.
2. The DPPA regulates States as owners of information databases but does not interfere with States' power to regulate their own citizens. The DPPA does not require the States to enact laws or to help enforce federal laws regulating private individuals.

Arguments for Condon

1. Drivers' personal information is not an article of interstate commerce because information is not an article of commerce. The gathering, maintaining, and selling of information by the States occur primarily within States. Thus these activities are not subject to congressional regulation under the Commerce Clause.
2. The DPPA violates the principles of federalism contained in the 10th Amendment because it requires States to implement federal regulations.

Decide for Yourself

1. Review the constitutional grounds on which each side based its arguments and the specific arguments each side presented.
2. Debate the opposing viewpoints presented in this case. Which viewpoint do you favor?
3. Predict the impact of the Court's decision on federalism. (To read a summary of the Court's decision, turn to the Supreme Court Glossary on page 799.)

CHAPTER 18 Assessment

Political Dictionary

inferior courts (p. 507)
jurisdiction (p. 508)
exclusive jurisdiction (p. 508)
concurrent jurisdiction (p. 508)
plaintiff (p. 509)
defendant (p. 509)
original jurisdiction (p. 509)
appellate jurisdiction (p. 509)
criminal case (p. 513)
civil case (p. 513)
docket (p. 513)
writ of certiorari (p. 520)
certificate (p. 521)
majority opinion (p. 522)
precedent (p. 522)
concurring opinion (p. 522)
dissenting opinion (p. 522)
redress (p. 524)
civilian tribunal (p. 525)
court-martial (p. 525)

Practicing the Vocabulary

Matching *Choose a term from the list above that best matches each description.*

1. Jurisdiction shared by a State court and a federal court
2. A court made up of non-military judges
3. The Supreme Court's official decision of a case
4. A court's caseload
5. A person who initiated a lawsuit
6. An example to follow in similar cases in the future
7. A court of military personnel, used to try those accused of violating military law

Fill in the Blank *Choose a term from the list above that best completes the sentence.*

8. A _____ would be filed in a claim of patent infringement.
9. Satisfaction of a legal claim is called_____.
10. The Supreme Court issues a _____ when a case relates to the interpretation of law.
11. The Constitution left the creation of the _____ to Congress.
12. A Supreme Court justice may choose to write a _____ if he or she believes that a point in the Court's opinion needs additional emphasis.

Reviewing Main Ideas

Section 1

13. Why did the Framers see a need for a national judiciary?
14. Identify two provisions that the Constitution makes regarding the federal courts and their jurisdictions.
15. Which courts hear most of the cases in this country, the State courts or the federal courts?
16. Describe the process by which most federal judges are nominated and approved.

Section 2

17. **(a)** What jurisdiction do the inferior courts have? **(b)** What kinds of cases do they hear?
18. When the Supreme Court's docket became overloaded in the late 1800s, what did Congress do to ease the burden?
19. In the federal judicial system, what is a circuit?
20. Where do most of the cases that reach the federal courts of appeals come from?
21. How does the Court of Appeals for the Federal Circuit differ from other federal courts of appeals?

Section 3

22. **(a)** Why is it so important for courts to have the power of judicial review? **(b)** What famous court case established the Supreme Court's right to exercise the power of judicial review?
23. **(a)** What kinds of jurisdiction does the Supreme Court have? **(b)** What kind of cases does it usually accept?
24. What is the "rule of four"?
25. If the Supreme Court decides not to hear a case, what then becomes the final result (decision) in that case?
26. Describe how oral arguments are presented before the Supreme Court.

Section 4

27. **(a)** Who creates the special courts? **(b)** Why have they been created?
28. Under what circumstances can an American citizen sue the United States?
29. What kind of claims are heard by the Court of Appeals for Veterans Claims?