UNIT 4

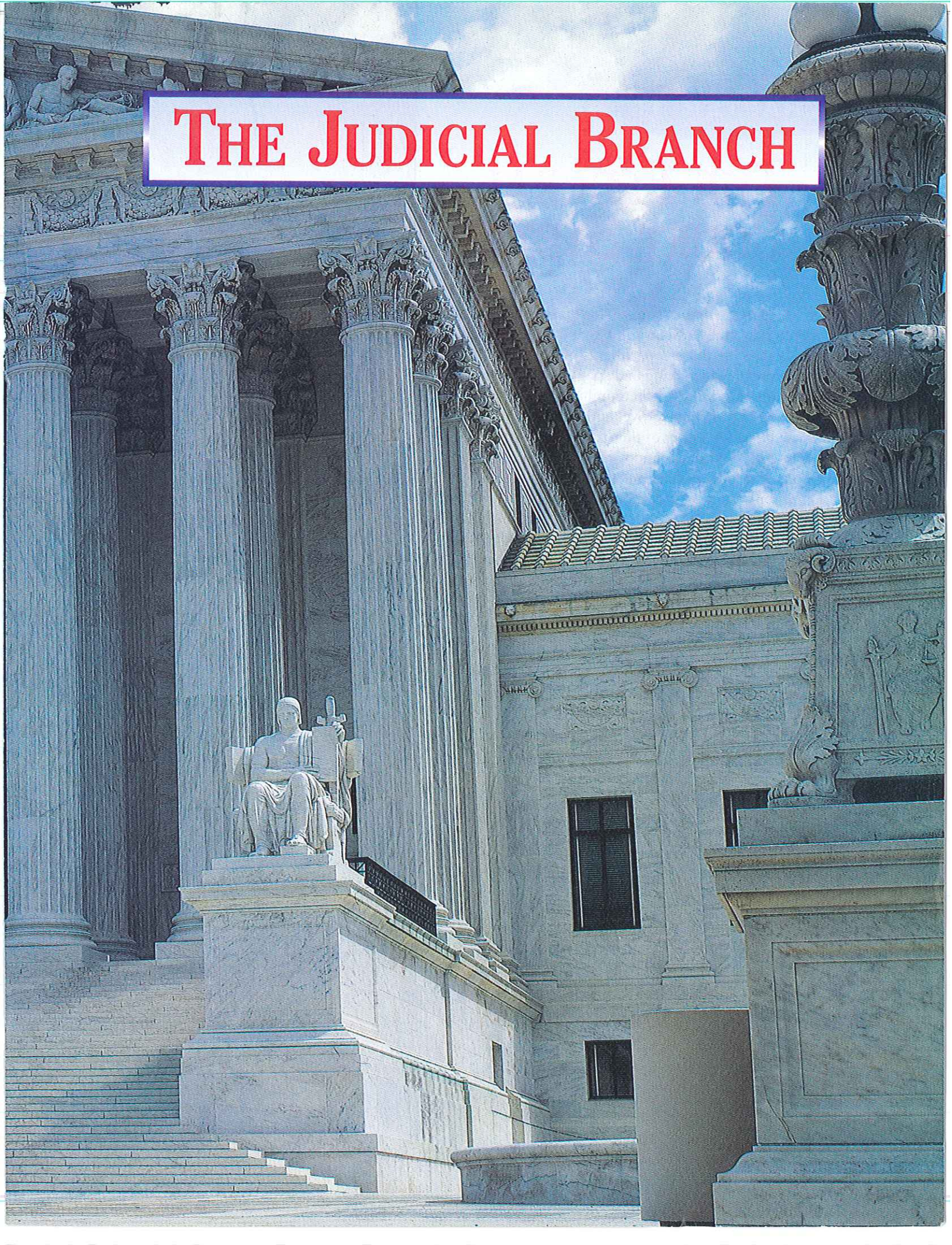
CHAPTER 11
THE FEDERAL COURT SYSTEM

CHAPTER 12
THE U.S. LEGAL SYSTEM

PUBLIC POLICY LAB

Do police officers have the right to search people's homes without a search warrant? Find out by reading this unit and taking the Public Policy Lab challenge on pages 290–93.

THE JUDICIAL BRANCH



CHAPTER 11

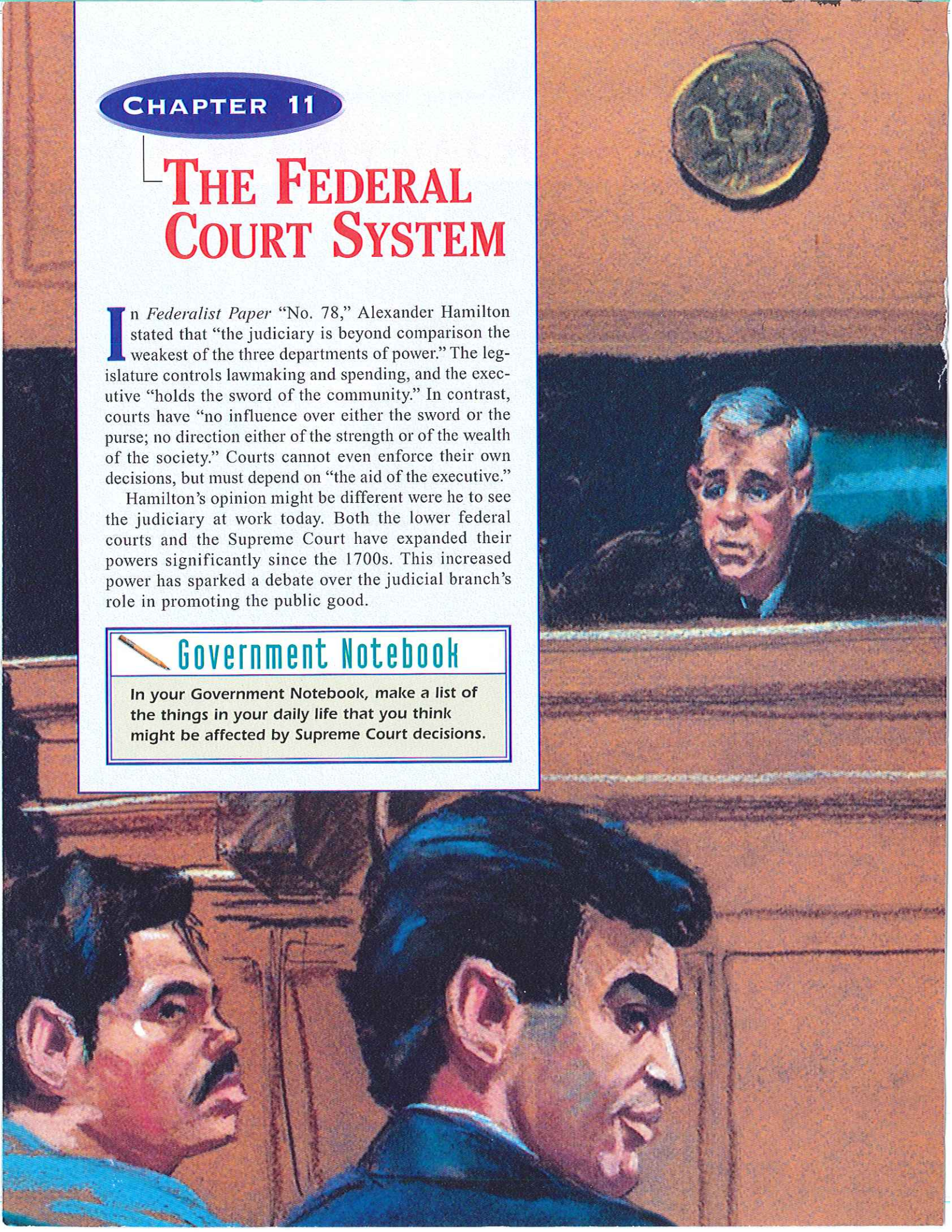
THE FEDERAL COURT SYSTEM

In *Federalist Paper* "No. 78," Alexander Hamilton stated that "the judiciary is beyond comparison the weakest of the three departments of power." The legislature controls lawmaking and spending, and the executive "holds the sword of the community." In contrast, courts have "no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society." Courts cannot even enforce their own decisions, but must depend on "the aid of the executive."

Hamilton's opinion might be different were he to see the judiciary at work today. Both the lower federal courts and the Supreme Court have expanded their powers significantly since the 1700s. This increased power has sparked a debate over the judicial branch's role in promoting the public good.

Government Notebook

In your Government Notebook, make a list of the things in your daily life that you think might be affected by Supreme Court decisions.



SECTION 1

THE LOWER COURTS

Political Dictionary

RESEARCHER CD-ROM

precedent
strict constructionist
loose constructionist
jurisdiction
original jurisdiction
district court
court of appeals
circuit
appellate jurisdiction
brief
senatorial courtesy

Objectives

- What are the role and the authority of the lower courts?
- How are the lower courts organized?
- How are lower-court judges selected?

The federal court system consists of the lower courts and the Supreme Court. The Supreme Court is more fully explained in Section 2. This section discusses the lower courts—their role, authority, organization, and judges.

Role of the Courts

The lower federal courts perform the day-to-day work of the judicial branch. That is, they hear and decide thousands of cases that are brought to the federal court system each year. In performing this duty, the courts resolve disputes, set precedents, and interpret the law.

Resolving Disputes The lower courts hear "cases and controversies," reviewing and resolving specific disputes between specific parties. For example, suppose you apply for a job at Acme, Inc., but are not hired because the company has an illegal, discriminatory hiring policy. You, as a job applicant of Acme, may contest the company's policy in court. If you had not applied to Acme, however, and only had heard about its policy from a friend, you could not sue Acme merely on general principles as a concerned citizen. Rather, the law allows only people who have suffered a specific injury to bring suit.

Setting Precedents Although the courts rule only on specific cases, their decisions can have much broader and more far-reaching consequences. This is because in addition to announcing their specific decisions, the courts also provide the legal grounds, or reasoning, for these decisions. These grounds serve as **precedents**, or guiding principles, for determining what is legal in situations that involve similar issues. Judges, lawmakers, government officials, companies, and citizens look to these precedents to guide their actions.

Interpreting the Law What philosophy should judges apply when resolving disputes and setting precedents? Some people are **strict constructionists**. They believe that laws and the Constitution should be interpreted strictly according to the words they contain. If any wording is vague, the courts should examine the historical record to determine the authors' intended meaning. These records might include transcriptions of debates over bills and proposed amendments, discussions and debates at the Constitutional

"Maybe I'm in the minority here, but aren't we becoming obsessed with constitutionality?"

CONSTITUTIONAL GOVERNMENT *Some judges believe that the Constitution should be interpreted strictly according to the words it contains.* ***What tools do the courts use to interpret the meaning of any vague wording in the Constitution?***

Convention, and documents such as the *Federalist Papers*.

For example, Article I of the Constitution gives Congress the power "to regulate commerce . . . among the several states." A review of historical records shows that the framers wanted to prevent states from setting their own rules regarding trade and business with other states. Such practices had damaged the national economy under the Articles of Confederation. Strict constructionists argue that the framers did not mean for Congress to use this power to design other business regulations, such as minimum-wage laws. They instead believe that the proper way to address changing circumstances is not by reinterpreting the Constitution and the laws passed by Congress but by passing constitutional amendments or new laws.

Other people prefer a "living Constitution." These **loose constructionists** believe that the Constitution and other laws must be interpreted in light of current political and social conditions. In other words, judges should consider *current* standards in applying to specific cases the general intentions of the documents' authors.

For example, the Eighth Amendment to the Constitution prohibits "cruel and unusual punishment." A punishment is considered cruel if it inflicts more pain or humiliation than the lawbreaker deserves, given the nature of the crime. When the framers wrote these words, public beatings were in common practice. Examples of what society considers cruel have changed over the years, however, and today most people would consider public beatings to be cruel and unusual. Loose constructionists thus argue that the courts should now interpret the Eighth Amendment to mean that public beatings are unconstitutional.

Authority of the Courts

Article III of the Constitution states that "the judicial power of the United States shall be vested in one supreme Court, and in such inferior courts as the Congress may . . . establish." The First Congress used this constitutional power to set up a system of federal courts under the Judiciary Act of 1789. Congress was given the power to establish the lower federal courts, but the courts receive their **jurisdiction**, or authority to interpret and administer the law, from the Constitution.

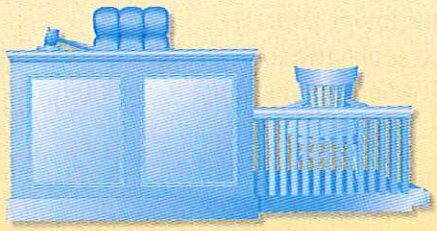
Lower federal courts have **original jurisdiction**—the authority to hear a case's initial trial—only over cases arising under the Constitution and other federal laws, and over those involving diplomats, treaties, state governments, the U.S. government, and citizens of other countries or of more than one state. (See the chart on this page for the extent of lower courts' jurisdiction.)

In addition, a few special types of disputes, which are discussed in Section 2, fall under the original jurisdiction of the Supreme Court. All other disputes are left to state, county, and municipal courts, which are discussed in Unit 7.

Extent of the Jurisdiction of Lower Courts

The lower courts hear cases in which

- a person is accused of disobeying the U.S. Constitution,
- a person is accused of violating a U.S. treaty,
- a person is accused of breaking federal laws passed by Congress,
- the U.S. government or a U.S. citizen is charged with an offense by a foreign nation,
- a person is accused of committing a crime on a U.S. ship at sea,
- a U.S. ambassador or other foreign-service official is accused of breaking the laws of the country in which he or she is stationed,
- a person is accused of committing a crime on certain types of federal property, and
- a citizen of one state brings a lawsuit against a citizen of another state.



The Constitution outlines the jurisdiction of the nation's courts. Federal courts administer the law for many types of federal crimes. ***Why do you think that the federal courts hear cases in which a citizen from one state sues a citizen of another state?***

Linking Government and Philosophy

Philosophy and the U.S. Court System

"You and I, my dear friend," wrote Constitutional Convention delegate John Adams to a fellow delegate, "have been sent into life at a time when the greatest lawgivers of antiquity (ancient times) would have wished to live." Few people, he concluded, had the chance to create their own laws. To write these laws and—just as importantly—build the court system to uphold them, the delegates at the Constitutional Convention drew on the writings of political philosophers dating back to the ancient Greeks.

The writings of Aristotle, a Greek who lived from 384 to 322 B.C., provided the basic ideas on the functions and purpose of government. Aristotle argued that the main goal of government should be to promote the public good, a novel idea for his time. He believed that law and justice helped people achieve a good life. "For man, when perfected, is the best of animals," he argued, "but when separated from law and justice, he is the worst of all."

Later philosophers echoed Aristotle's belief in the connection between the law and the public good. In his *Two Treatises of Government* (1690), English philosopher John Locke agreed that people formed governments to preserve the public good. In exchange for giving up some of their liberties, people accepted their government's "right of making laws . . . and of employing the force of the community in execution of such laws." Courts and laws protected individual rights and property, rather than threatening citizens' liberty.

The Granger Collection, New York

In 1748 Baron Charles de Montesquieu published Spirit of the Laws, *in which he argued for the separation of government powers.*

Baron Charles de Montesquieu, a French philosopher, believed that the main aim of government should be to promote liberty. He argued that government could most effectively achieve this goal by dividing its authority among executive, legislative, and judicial branches.

In *Spirit of the Laws*, published in 1748, Montesquieu called for this bold concept of the separation of powers to defend people's freedom from a too-powerful government. He argued that a combined executive and legislative branch would abuse its power and destroy liberty. He also stated that the judiciary would become too powerful if joined with the legislative branch, which was a common practice at the time.

The writings of Locke and Montesquieu particularly influenced the framers of the Constitution. In the *Federalist Papers*, James Madison praised Montesquieu's separation of powers as an "invaluable precept (precious principle) in the science of politics." Thomas Jefferson, advising a friend who wanted to study law, also "generally recommended" Montesquieu's *Spirit of the Laws* and cited Locke's "little book of Government" as "perfect as far as it goes."

Drawing on these philosophers, the framers of the Constitution created a separate court system that sought to protect liberty as it enforced the Constitution. As a separate body, the judiciary could check the power of the legislative branch, which the framers saw as the greatest threat to liberty. Judges could make sure that legislators did not create new laws that violated the Constitution.

What Do You Think?

1. How did Montesquieu build upon Aristotle's belief that the main goal of government should be to promote the public good?
2. In what ways could a judiciary combined with the legislative branch become too powerful?

Lower Court Organization

The lower courts are divided into district courts and courts of appeals. These two types of courts play different roles in the legal system. The lower court system also includes several specialized courts.

District Courts The trial courts of the federal system are called **district courts**. These courts are assigned to specific geographic areas and have original jurisdiction over federal cases that arise there. The District of Columbia has one district court, and each state has from one to four, generally depending on the size of its population.

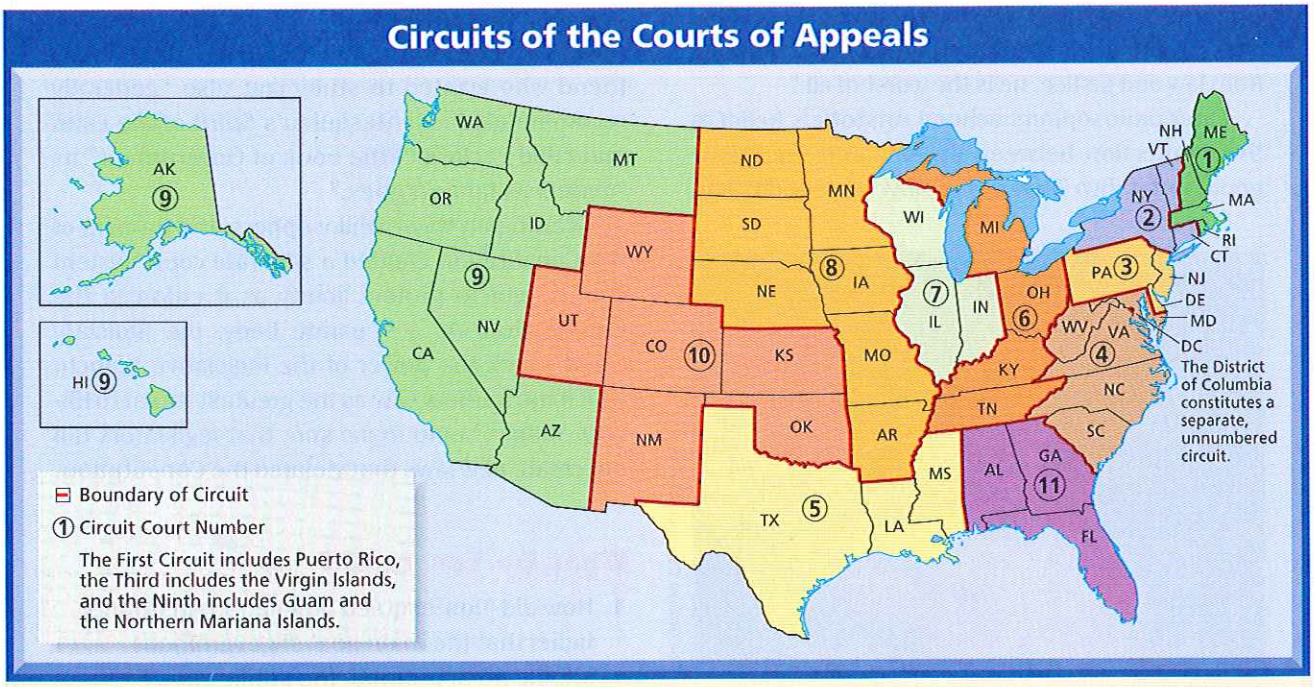
District courts engage in the oldest and most fundamental judicial activity—making a decision in a dispute. Any trial decision is based on the *facts* of the case (the specifics of what happened) as well as the *law* (the general, established rules of society). The basic task of district courts is to determine the facts and then reach a verdict by applying the law to them.

Cases are tried before a district court judge and a jury, though the defendant can waive, or give up, the right to a jury. Both sides support their position by providing evidence, some of which may be supplied by witnesses. In criminal cases a U.S. attorney from the Justice Department serves as the prosecutor. In civil cases the opposing parties are represented by their own attorneys. Some district court civil cases are tried before a jury as well as a judge, though the right to a jury is typically waived in such cases.

Courts of Appeals Appeals of cases from the U.S. district courts are heard by the **courts of appeals**. Although about one third of district court decisions are appealed, only around one fifth of them are actually reviewed. The remainder are settled out of court.

There are 13 U.S. courts of appeals, each of which covers a large judicial district called a **circuit**. The 50 states are divided into 11 circuits. There is also a circuit for the District of Columbia and a Federal Circuit, which hears certain kinds of cases involving federal agencies. The Federal Circuit has jurisdiction over all states and territories. Each court of appeals has a total of 6 to 28 judges. There are no juries in a court of appeals, so cases are heard by the judges alone. Usually, only three of a circuit's judges hear any one case, although some important cases may be decided by the entire court.

Appeals courts were established to give individuals who have received an unfavorable decision another chance to be heard. This opportunity is



The U.S. federal court system is divided into 13 circuits, including one for the District of Columbia and a federal circuit. ***In which circuit court is your state located?***

Special Courts

- U.S. Court of Claims
- U.S. Court of International Trade
- U.S. Court of Appeals for the Armed Forces
- U.S. Territorial Courts
- U.S. Tax Court
- U.S. Court of Veterans Appeals

These special courts were established by Congress to handle specific types of cases. ***What court handles cases in which a veteran of the U.S. armed services brings a lawsuit against the federal government?***

rooted in the U.S. legal and cultural tradition. The appeals courts' **appellate jurisdiction** means they have the power to review cases previously decided by a lower court.

Appeals courts are limited in the scope of their examination. They may not review a trial's determinations of the *facts,* such as whether a defendant robbed a store. Therefore, no new facts are presented to a court of appeals. Rather, courts of appeals may review only issues of *law,* such as whether a defendant's confession to a robbery was legally obtained. They only determine whether the person appealing the case received his or her full rights under the law during the district court trial.

Thus, courts of appeals do not hold another trial of the cases they review. Judges make their decisions based on two types of information: the written record from the district court trial and **briefs**, or written legal arguments, submitted by both sides in the case. Thus, whereas a district court trial is basically an oral proceeding, an appeal is basically a written one, although oral arguments are often allowed.

There are a variety of decisions that the judges may make in an appealed case, including reversing the decision, affirming it, or sending the case back to district court for a retrial if the court finds that an individual's legal rights were not fully protected. If the court of appeals finds that his or her rights were observed and the law was properly applied to the facts, it upholds, or affirms, the district court's decision. If it finds that the law was not properly applied, the court of appeals reverses the lower court's decision.

Other Courts In addition to the district courts and courts of appeals, Congress has set up several special courts to handle specific types of cases. For example, the U.S. Claims Court hears cases involving money claims against the federal government. (See the chart on this page for a list of special courts.)

Federal Judges

Most federal judges, not including those who preside over special courts, serve for life, although Congress can impeach and convict them for serious crimes. The framers established life terms for these judges so that they could remain independent of political pressure.

Delegates at the Constitutional Convention discussed various methods for choosing federal

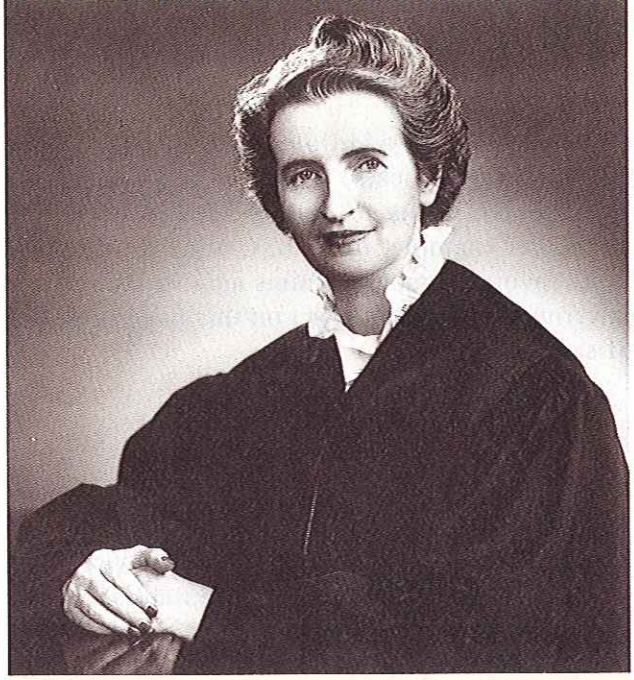
Comparing Governments

Russian Courts

After 74 years of communist rule, the Soviet Union disbanded in 1991, and Russia, a former Soviet republic, became independent. As part of the restructuring of its government, Russia is struggling to build a democratic court system. Yet many judicial practices from the old system remain. For example, illegal tactics are often used by investigators to gather evidence, which prompts defense attorneys to ask for the dismissal of large portions of the testimony.

In 1993 Russia adopted a new constitution and set out to reform the courts. Under the new constitution, people accused of a crime have the right to a jury trial, the right to a lawyer, and the right to an appeal. The constitution also includes strict new standards for collecting evidence.

However, the courts are still a long way from putting the reforms into effect. Only about 1 trial in 4,000 is a jury trial. Significant opposition to jury trials comes from police officers and prosecutors, who complain that such trials are expensive and bring fewer guilty verdicts.



POLITICAL PROCESSES *Burnita Shelton Matthews was the first woman to be appointed U.S. district court judge. President Harry Truman appointed her to the District of Columbia federal district court in 1949.* ***Who handles most of the nominations for district court judges?***

judges. Some favored a system in which the president would have independent appointment powers, while others feared that this would give the president too much power. The resulting compromise established the same system as that used for appointing top officials of the executive branch: nomination by the president and approval or rejection by a simple majority of the Senate. Today this selection process varies somewhat, depending on the position being filled.

District Court Appointments By far the largest number of judicial appointments are those to the district courts. Because there are so many district court positions, the nominations of district court judges are handled mostly by the Department of Justice and by White House staffers, not by the president.

The traditional principle in making district court nominations has been **senatorial courtesy**. That is, the executive branch allows senators in the president's party to approve or disapprove each potential nominee for a position in a district in their state before the official nominations are made. The other senators then almost always follow the lead of those senators and approve the nominee. In return for this courtesy, the Senate confirms almost all of the president's nominations for the district courts.

Courts of Appeals Appointments Individual senators have less influence over appeals court nominations. Appeals court appointments involve several states, so senatorial courtesy does not play a role.

On the other hand, because of the vital role of courts of appeals in interpreting the law and setting precedents, the Senate examines appeals court nominations far more carefully than those for district courts. Another reason for this closer examination is that appeals court judges are more likely to wind up serving on the Supreme Court. For example, seven of the nine current Supreme Court judges formerly served in the U.S. courts of appeals.

SECTION 1 — REVIEW

1. Define the following terms: precedent, strict constructionist, loose constructionist, jurisdiction, original jurisdiction, district court, court of appeals, circuit, appellate jurisdiction, brief, senatorial courtesy.
2. Describe how the lower courts resolve disputes, interpret the law, and set precedents.
3. What are the functions of the district courts and the courts of appeals? List the special federal courts.
4. How does judicial appointment differ for district courts and courts of appeals?
5. **Thinking and Writing Critically** Why might some people say that loose constructionist interpretations endanger the integrity of the Constitution?
6. **Applying CONSTITUTIONAL GOVERNMENT** Conduct an Internet search for information on the appeals process in the federal courts. Briefly describe the information.

SECTION 2

THE SUPREME COURT

Political Dictionary

writ of *certiorari*
docket
amicus curiae brief
majority opinion
concurring opinion
dissenting opinion
stare decisis

Objectives

- ★ How has the role of the Supreme Court changed over time?
- ★ How are Supreme Court justices appointed, and what are their terms of office?
- ★ How does the Supreme Court operate?

As noted in Chapter 5, Pierre-Charles L'Enfant designed the capital of Washington, D.C., in 1791. L'Enfant's original plans for the city did not include a building for the Supreme Court. In a revised plan, though, L'Enfant did include a home for the Court—in marshland about halfway between the Capitol Building and the president's mansion. This building was never constructed, however, because of the high cost of draining the marsh. Such an expense was viewed as unjustified due to the Court's small size and small caseload.

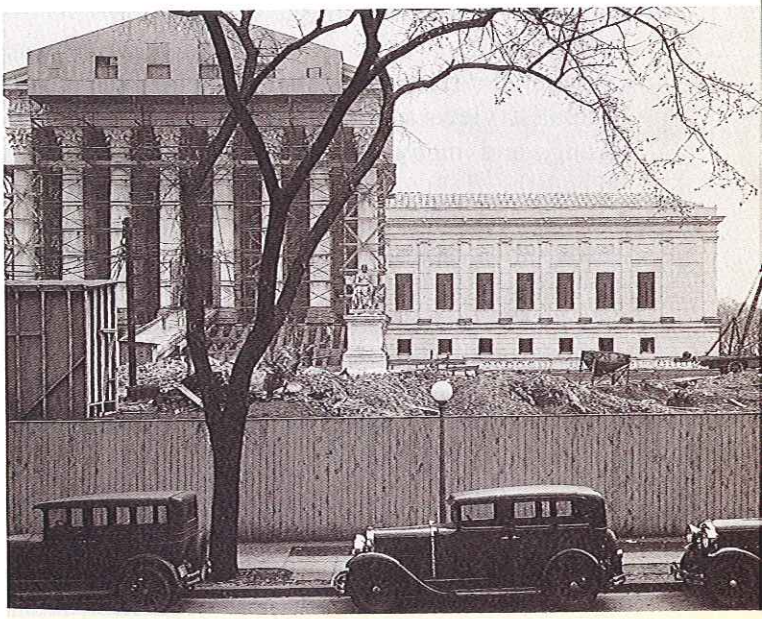
Lacking other quarters, the Supreme Court met in chambers in the Capitol Building. (During one year, while the Capitol was under construction, the Court met in a tavern.) In 1824 a newspaper reporter described the Court's quarters in the Capitol as "not in a style which comports [is consistent] with the dignity" of the Supreme Court, complaining that "the room is on the basement story in an obscure [unnoticeable] part of the north wing. . . . A stranger might traverse [cross] the dark avenues of the Capitol for a week, without finding the remote corner in which Justice is administered to the American Republic." The Supreme Court did not gain its own building until 1935.

This modest position of the Supreme Court has changed considerably. Today the Court is held in higher esteem, with a far-reaching impact on the public policies that influence people's day-to-day lives. For example, the Supreme Court's decisions affect where you go to school, the conditions where you work, the laws protecting your environment, and where and when you may vote.

Development of the Supreme Court

Initially, the Supreme Court was part of the weakest branch of government. Over time, however, the Supreme Court has become in some respects the most powerful institution in the country.

The Early Years Much of the first session of Congress was taken up with discussion of the organization of the judicial branch. The result was the Judiciary Act of 1789. This law established the three-level structure of the federal courts, which are made up of district courts, courts of appeals, and the Supreme Court.



CONSTITUTIONAL GOVERNMENT *The construction of the Supreme Court building was completed in 1935.* ***Where was the Supreme Court housed before its permanent quarters were finished?***

CONSTITUTIONAL GOVERNMENT *John Jay (1745–1829) was the first chief justice of the Supreme Court. This portrait of him was begun by artist Gilbert Stuart and is believed to have been finished by John Trumbull.* ***What is the role of the chief justice?***

President George Washington appointed a number of distinguished people, many of whom had been present at the Constitutional Convention, to serve on the Court. The first chief justice—the justice who presides over the Court—was John Jay, a coauthor of the *Federalist Papers* and a leader in New York's battle over ratification of the Constitution.

During its early years the Supreme Court was considered a fairly insignificant institution. Antifederalist views against the judiciary were still strong, and many people felt that Jay's Court lacked the right to serve as the nation's highest judicial body. During the first decade the Court heard only around 50 cases. Unsurprisingly, given the lack of Court activity, Jay's position was a part-time job. In fact, in 1794 Jay took off to lead a U.S. diplomatic mission to Britain, and he was a candidate for governor of New York while sitting on the bench. After winning that election in 1795, Jay resigned from the Court. Asked to return as chief justice in 1800, Jay declined, stating his belief that the Court could never "obtain the energy, weight, and dignity which were essential to its affording due support for the National Government."

The Marshall Court The modest role of the Court changed abruptly with John Marshall's 1801 appointment as chief justice. The Court handed down several landmark decisions during the time that Marshall served as its chief (1801–35), including *Marbury* v. *Madison,* which established the principle of judicial review. As noted in Chapter 3, judicial review gives the Court the final voice in deciding the constitutionality of government laws and policies.

Through this and other decisions, Marshall made the Supreme Court a significant force in government. These decisions gave the Court the power to influence whether and how Congress and the president may pursue specific public policies.

The Justices

Who are the Supreme Court justices who make these far-reaching decisions? How long do they serve and how are they appointed?

Supreme Court justices do not have to meet any constitutional age or professional requirements, such as having had experience serving as a lawyer or a judge. However, all Supreme Court justices have had legal training, and today most are graduates of top law schools and have previously served as federal judges.

The Constitution does not state the size of the Supreme Court. Rather, the number of justices is set by Congress. The Judiciary Act of 1789 set the number of justices at six. The current number of nine justices was set in 1869. The chief justice, who presides over the group, is the highest judicial officer of the United States.

Like other federal judges, Supreme Court justices serve for life, although they, too, may be impeached by Congress for serious crimes. Typically, justices have chosen to stay on the Court up to an advanced age—often into their seventies and eighties. During the 1800s a majority died in office. More recent justices almost always have retired. The average age of justices retiring from the Court since 1970 is 78.

Several justices have continued serving despite serious illnesses, often because they did not want a president with political views that were different from their own to nominate their successor. For example, Justice Harry Blackmun retired in 1994 at age 85, purposely staying in office long enough to give a president closer to his political ideology—Democrat Bill Clinton, as it turned out—the chance to make an appointment to replace him. Also fearing that he might be replaced by a conservative appointee if he retired, Justice Thurgood Marshall once told his clerks, "If I die, prop me up and keep on voting."

Justices of the Supreme Court

	Year Appointed	President by Whom Appointed
Chief Justice		
William H. Rehnquist	1972*	Nixon
Associate Justices		
John Paul Stevens	1975	Ford
Sandra Day O'Connor	1981	Reagan
Antonin Scalia	1986	Reagan
Anthony M. Kennedy	1988	Reagan
David H. Souter	1990	Bush
Clarence Thomas	1991	Bush
Ruth Bader Ginsburg	1993	Clinton
Stephen G. Breyer	1994	Clinton

*Appointed as chief justice in 1986 by President Reagan

The president has the power to appoint justices to the Supreme Court. ***Which of the justices was appointed most recently?***

Terms The Supreme Court's regular annual term begins on the first Monday in October. Justices hear cases throughout the year until summer recess, usually the last week in June.

Court Appointments Supreme Court justices, including the chief justice, are appointed by the president with the approval of the Senate. In view of their importance and contrary to the previously mentioned procedure of appointing lower court judges, these nominations have the president's personal attention. Unlike cabinet appointments, though, the opportunity to appoint justices to the Supreme Court is not guaranteed to every president. Such appointments depend on a vacancy occurring in the Court. All but four presidents, however, have had the chance to make at least one appointment. These appointments have become among the most important ones that presidents make. After all, because justices usually serve very long terms, a president's judicial appointments can influence national politics for years after he or she leaves office.

Presidential nominations to the Supreme Court never have been approved automatically by the Senate. In fact, between 1789 and 1996 the Senate refused to confirm or took no action on 28 of 148 Supreme Court nominees. Such negative reactions were more common in the last century than in this one, however. For example, five of the six justices nominated by President John Tyler and three of the four nominated by President Millard Fillmore were either rejected or not acted upon. In contrast, only 7 of the 63 nominations between 1900 and 1996 met this fate.

Although the number of rejections has decreased significantly in this century, the degree of care with which the Senate examines appointments has increased. Since 1939 the Senate Judiciary Committee has subjected nominees to intense background investigations and lengthy public hearings to examine their personal lives and legal views. As a result, several nominations have produced bruising political battles that ended with dramatic final votes broadcast on television. As recently as 1991, for example, hearings for the appointment of Clarence Thomas, who faced charges of sexual harassment by a former coworker, were broadcast on television for days and received front-page newspaper coverage.

CASE STUDY

Packing the Court

CONSTITUTIONAL GOVERNMENT **In 1935 and 1936 the Supreme Court declared unconstitutional about a half dozen pieces of federal legislation regulating business. These laws had been passed under President Franklin D. Roosevelt's New Deal program to fight the Great Depression of the 1930s.**

Frustrated by the Court's overthrow of key legislation, President Roosevelt proposed at the beginning of his second term in 1937 to change the Court fundamentally by raising the number of justices up to 15. His proposal would have allowed presidents to nominate an additional justice to the Court each time a justice who had served at least 10 years reached the age of 70. It was no coincidence that between 1933 and 1937 four of the justices—each around 70 years old—had formed a voting block that declared much of President Roosevelt's legislation unconstitutional.

Opponents denounced the idea, saying that it would give the president the power to "pack" the

Court with justices who were friendly to him. The new plan was never tested, however. Within three months of Roosevelt's presenting his proposal, but before it was considered in congressional committees, the Court upheld the constitutionality of two key pieces of Roosevelt's legislation—on labor and the minimum wage. As a result, Roosevelt backed off from pushing for his court-packing plan, which Congress later rejected decisively. The verdicts were the result of one justice—Owen Roberts—shifting his opinion to support Roosevelt's legislation. "A switch in time," as a contemporary saying put it, had "saved nine."

Roosevelt eventually achieved his goal of influencing the Court's composition, however. During the next few years, all of Roosevelt's judicial opponents on the Court either died or resigned. This allowed Roosevelt to appoint a total of nine justices with ideals closer to his own.

CONSTITUTIONAL GOVERNMENT *Here, the U.S. Supreme Court justices assemble for a portrait. Standing (left to right): Ruth Bader Ginsburg, David Souter, Clarence Thomas, and Stephen Breyer. Sitting (left to right): Antonin Scalia, John Paul Stevens, William Rehnquist, Sandra Day O'Connor, and Anthony Kennedy.* ***How are Supreme Court justices selected?***

The Supreme Court at Work

How does the Supreme Court decide which cases to hear, and how are cases argued before the Court? Once a case is selected, it goes through five stages: briefs, oral argument, conference, preparation of opinions, and announcement of decisions.

Choosing Cases The Supreme Court serves chiefly as an appeals court, reviewing cases that have been tried and appealed in the lower federal courts, and decisions of the highest state courts that involve alleged violations of the Constitution or other federal laws. Twelve percent of the cases heard by the Supreme Court have come from the state courts. The Supreme Court does, however, have original jurisdiction in cases that involve these listed situations

- ★ diplomatic representatives of other nations,
- ★ disputes between two or more states, and
- ★ disputes between a state and the federal government.

Compared to the president and Congress, the Supreme Court might seem to have little control over what it considers. The president and members of Congress may pursue public policies addressing any number of possible issues—from job growth and civil rights to health-care reform and protection of the environment. In contrast, the Supreme Court may not take such initiative. It may act on only the "cases and controversies" that are appealed to it by others.

The Supreme Court is not merely a cork bobbing in the currents, however. On closer inspection, it has considerable control over which issues it considers. Each year thousands of cases on many public policy issues are appealed to the Court. The Court can choose to hear—or, more often, not to hear—any case from among this vast pool. Thus, the Court has the freedom to set its agenda by addressing cases that involve the public policy issues it believes are most pressing. Similarly, the Court also can shape public policy by refusing to hear a case, thus quietly supporting the lower court's decision.

Who May Appeal Anyone may appeal a high state court or federal appeals case to the Supreme Court if a violation of the U.S. Constitution is

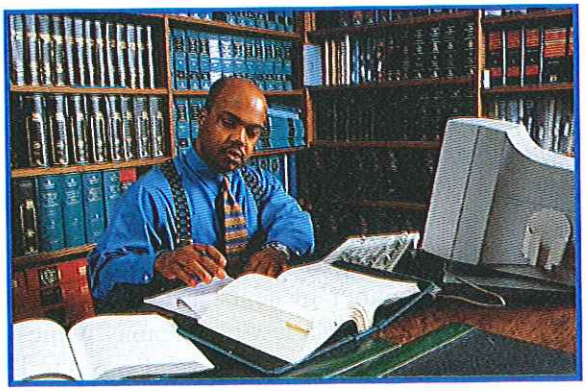
Careers in Government

RESEARCHER CD-ROM

Law Clerk

Like the Supreme Court, the lower federal courts employ law clerks. These lawyers gain an insider's view of judicial decision making as they work with federal judges on important legal issues.

Law clerks in the federal district courts help judges try a wide range of civil and criminal cases, involving everything from civil rights violations to drug smuggling. Law clerks in the appeals courts research cases decided in the district courts. Special federal courts such as the U.S. Tax Court and U.S. Court of Veterans Appeals also employ law clerks who assist judges with cases.



Law clerks spend much of their time in law libraries, researching legal issues.

Before judges make a decision, law clerks put in countless hours summarizing the case or appeal at hand, researching the legal issues involved, and writing down their conclusions. They often prepare the judge's final written draft of the decision, review and proofread the argument, and check the accuracy of the document.

The application process for federal clerkships is extremely competitive. Judges require that clerks have a law degree, and often they must have passed the appropriate state bar exam. In making decisions about whom to hire, judges weigh the applicants' grades, writing ability, work experience, recommendations from professors, and extracurricular activities.

About 12 percent of graduating law students begin their careers as clerks for either federal or state courts. According to Supreme Court clerk Julia Shelton, "Clerkships are a great way to make the transition from law student to lawyer." Clerks get direct experience in the major areas of the law and learn from an experienced judge.

Many lawyers go on to use the experience they gain during their one- or two-year clerkships to further their law careers. Private law firms heavily recruit lawyers who have had experience as federal clerks. Other former clerks go on to distinguished careers in government service or teaching.

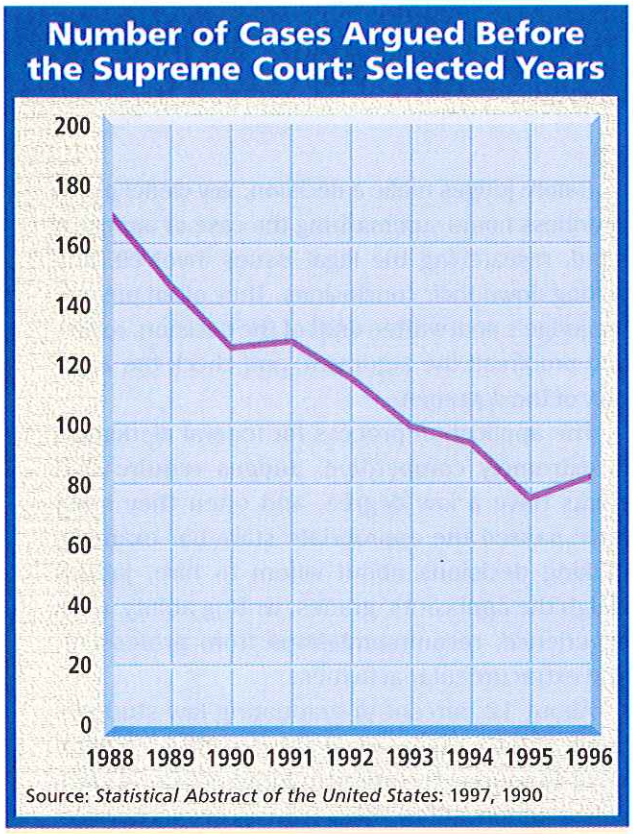
charged. Unlike the lower courts of appeals, however, the Supreme Court is not required to hear an appeal.

Most petitioners who appeal to the Supreme Court do so by requesting a **writ of *certiorari*** (suhr-shuh-RAR-ee). In legal terms the Supreme Court "grants *cert*" if it agrees to hear the appeal and "denies *cert*" if it refuses. Four of the nine justices must agree to grant *cert* for an appeal to be heard by the Court. If such an agreement is reached, the case is placed on the Court's **docket**, or schedule. If, however, the Supreme Court denies *cert*, the lower court decision is left standing. The Court does not have to provide a reason for denying *cert*.

Although the number of appeals has grown dramatically over the years, the number of cases the Court has agreed to hear has steadily declined—from an average of around 180 a year between 1981 and 1987 to only 80 in 1996. Even at its highest, however, this number is far below the number of decisions made by Congress, let alone the number made by executive agencies.

Most participants in a case are represented by a lawyer who is a member of the Supreme Court bar. To be admitted into this group, a lawyer must have been a member of a state bar for at least three years and must be known to be of good moral and professional character.

Filing Briefs The lawyer for each party in the case generally files a written brief. When the federal government is a party, its brief is filed by



The Supreme Court hears many cases each year. ***Why do you think that the number of cases the Court agrees to hear has declined since 1988?***

the solicitor general of the United States, an official of the Department of Justice.

Groups that are greatly affected by a case but are not one of the parties involved may be granted the Court's permission to file ***amicus curiae*** (uh-MEE-kuhs KYOOR-ee-eye) **briefs**. (*Amicus curiae* means "friend of the court" in Latin.) These briefs state the group's concerns and arguments regarding the case. For example, the federal government may be allowed to file an *amicus curiae* brief in a water rights disagreement between two states, as this issue involves the nation's water supply.

These briefs usually make arguments relating the case to precedents and to provisions in the Constitution, other federal laws, and state laws. Sometimes, however, briefs make an argument about why a certain decision would make good public policy. For example, in *Brown* v. *Board of Education of Topeka,* a brief presented psychological data about the harmful effects of segregation on the social development of African American children. This information formed a significant part of the Court's reasoning for outlawing segregation in public schools.

Oral Argument The most dramatic stage of a Supreme Court case is the oral argument that lawyers make before the justices. In the early years of the Supreme Court, there were no written briefs, only oral argument. Because no time limits existed on oral arguments, some of them went on for days. In 1848 the Court imposed its first limit on the length of oral argument—eight hours per case. Limits have since been tightened further and now stand at 30 minutes per side, except in rare cases of extreme importance.

The Court uses an official timer to time lawyers' arguments. When a red light goes on, the chief justice notifies the lawyer that his or her time is up. Chief Justice Charles Evans Hughes supposedly stopped lawyers in midword when their time expired. A later chief justice, Warren Burger, referred to this practice by stating that the Court is "more liberal now. We allow a lawyer to finish the sentence . . . provided, of course, the sentence is not too long."

During oral argument, lawyers seldom have the chance to make prepared speeches. Rather, justices often interrupt them to ask questions about the case. The public may witness this process, but because the number of seats in the courtroom is extremely small, only a few people may witness the entire argument, while others are allowed to listen

CONSTITUTIONAL GOVERNMENT *The photo above shows the timer used in the Supreme Court to time lawyers' oral arguments.* ***How many minutes does each side have to present its argument?***

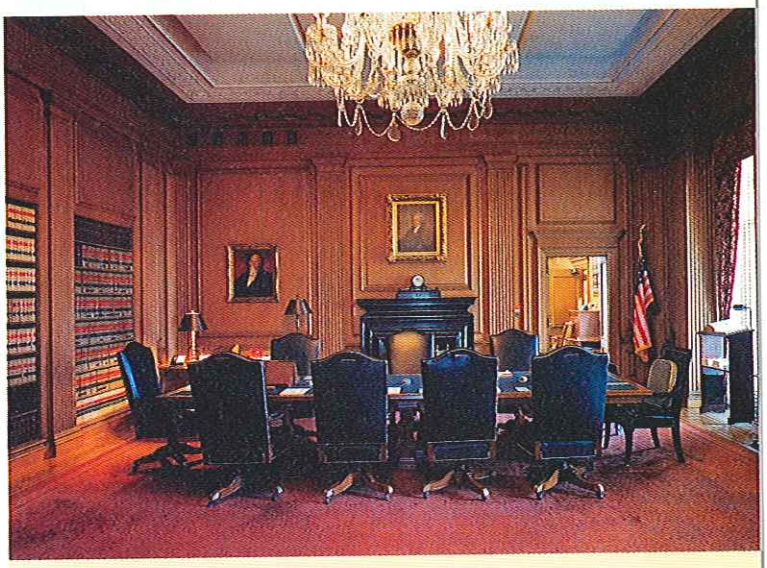
for only about three minutes before being ushered out to make way for the next group. People are seated to view Supreme Court proceedings on a "first-come, first-served" basis.

Conference The justices meet in private conference twice a week to review petitions for new cases, debate current cases, and conduct other Court business. The chief justice presides at this conference and is first to speak, offering his or her views. The remaining justices then present their views, in order of seniority on the Court. The atmosphere of the conferences varies from case to case, but discussion of cases is limited to some degree. Some controversial cases may involve greater dialogue among the justices. After the newest member of the Court has spoken, a tally of the votes is generally taken (unless the justices have all made their votes clear during their initial comments). The decision reached during this conference can change, however, as the justices prepare the Court's official opinion, or decision, on the case.

Preparing Opinions When the chief justice votes with the majority of the justices, he or she decides who will draft the Court's opinion. Otherwise, the most senior justice voting with the majority makes the assignment. The assignment of a justice to an opinion can have a decisive effect on the Court's ruling in a case. An opinion that is drafted by a fairly liberal justice will be much different from one drafted by a fairly conservative justice. Thus, the chief justice or senior justice assigning the case must take such considerations into account, particularly if the preliminary vote on a case is close. An opinion written by a moderate justice may have a better chance of keeping—and maybe increasing—majority support for the ruling.

The chosen justice writes a draft opinion and circulates it among the other justices for comment. During this process, justices often discuss the content of the opinion, negotiating about whether the grounds, or reasoning given for the opinion, should be changed.

The eight justices reviewing the draft opinion can endorse—or refuse to endorse—the draft depending on whether certain changes are made in the grounds for the opinion. Through such negotiations, votes on the case's outcome may shift from what they had been in conference, affecting the size of the majority supporting the Court's decision or changing the decision itself.



CONSTITUTIONAL GOVERNMENT *The room shown in the photo above is the Supreme Court justices' conference room. Justices meet here to review petitions for new cases.* ***What role does seniority play in the Supreme Court justices' procedure for reviewing petitions?***

There are three main kinds of opinions that the Court may issue in a case. Most cases include a **majority opinion** that reflects the views of the majority of the Court—both on the outcome of the case and on the grounds for deciding it. A justice may also issue a **concurring opinion** that agrees with the majority *outcome* but disagrees with all or part of the *grounds* stated in the majority opinion. A concurring opinion instead offers other grounds for the decision. A justice also may issue a **dissenting opinion** that disagrees with the one reached by the majority and explains the grounds for the dissent. In addition, in some cases the Court will issue a plurality decision, in which the justices agree on a certain result but disagree on the grounds for the decision. In such instances the Court will issue no majority opinion, only a series of separate opinions in which justices explain the reasons for their votes.

Dissenting opinions often are addressed more to Supreme Courts of the future than to the present court. One study shows that about three fourths of Supreme Court decisions that overrule earlier Court precedents are based on previous cases' dissenting opinions.

The Supreme Court rarely reverses its decisions, however. Most justices place great weight on ***stare decisis*** (STER-ee di-SY-suhs), or upholding precedents set by earlier courts. (*Stare decisis* is a Latin

CONSTITUTIONAL GOVERNMENT *Clerks for the Supreme Court justices often use the reading room in the Court library.* ***What are the primary responsibilities of law clerks in the Supreme Court?***

term meaning "let the decision stand.") For example, some experts believe that some of the more conservative justices on the current Court disagree with the *Roe* v. *Wade* decision, which supports women's right to an abortion. However, say the experts, these justices have refused to vote to revisit and overturn the decision because their support of *stare decisis* has outweighed their views on the constitutionality of the right to an abortion.

Justices' Staffs Writing and rewriting opinions is a time-consuming, lengthy process. To help in this enormous task, justices employ a personal staff of clerks. Compared to congressional and presidential staffs, each justice's staff is tiny. At its largest, a justice's staff generally consists of four law clerks, two secretaries, and one messenger.

Justice Horace Gray began the practice of hiring law clerks in the Supreme Court in 1882. Each year, he hired at his own expense a new law school graduate to assist him. Gradually, the practice spread. Usually, clerks serve one year, although this has not always been so. A clerk to Justice Pierce Butler served for 16 years in the 1920s and 1930s.

Clerks generally read the cases that are appealed to the Court and make recommendations about which ones the Court should hear. Clerks also help draft the justices' opinions. A clerk's role in this task depends on the justice for whom he or she works. A clerk to Justice Louis Brandeis said of their division of labor, "He wrote the opinion; I wrote the footnotes." Other clerks write almost all of an opinion, with the justices making editorial changes.

Announcing Decisions Although justices once read lengthy parts of their opinions in public sessions, they no longer do so. Also, before 1965, Court decisions were announced only on Mondays. Today they are announced on other days as well, to allow more media coverage. Decisions also are now announced earlier in the day to make it easier for reporters to meet press deadlines. The Supreme Court does not hold press conferences, however, to explain its rulings or to answer questions about them.

SECTION 2 — REVIEW

1. Define the following terms: writ of *certiorari*, docket, *amicus curiae* brief, majority opinion, concurring opinion, dissenting opinion, *stare decisis*.
2. How did the Marshall Court increase the power of the Supreme Court?
3. What roles do the president and the Senate play in appointing Supreme Court justices?
4. Describe what happens to a case once it is granted *cert* by the Supreme Court. How many cases does the Court hear each year?
5. **Thinking and Writing Critically** Do you agree with the current practice of appointing Supreme Court justices to life terms? Is the Court less responsive to the people because its members are not elected? Explain your answers.
6. **Applying CONSTITUTIONAL GOVERNMENT** Why is it important that presidents are unable to pack the Court? If each president were allowed to add to or change the Court's membership at will, what might happen to its decisions?

SECTION 3

THE COURTS AND THE PUBLIC GOOD

Political Dictionary

RESEARCHER CD-ROM

judicial restraint
judicial activism

Objectives

- ★ What are the main criticisms of the judiciary?
- ★ How can the courts' power be checked?

The judiciary, like the other branches of the federal government, has its share of critics. The two main criticisms of the courts are that federal justices are appointed rather than elected and that the courts often overstep their powers. Are these criticisms valid? How is the courts' power checked?

Appointment Versus Election

As you have learned, Supreme Court justices and other federal judges serve for life. Although they may be impeached by Congress for serious crimes, once on the bench they are largely immune from the actions of the president, Congress, and other outside influences. Interest groups do submit briefs in some court cases, but they neither contribute money to judges and justices nor target them in lobbying campaigns as they do in the case of presidential and congressional candidates.

Critics charge that a system in which justices can make unpopular decisions and still keep their positions for life invites the abuse of judicial power. Instead of putting power into the hands of elected officials who must answer to the people, the current system of judicial appointment results in an enormously powerful judiciary that answers to no one.

Are the critics right? Are the courts capable of ignoring many of the outside influences that affect other institutions of U.S. government? In fact, when interest groups have tried to lobby the courts through demonstrations and letter-writing campaigns, the courts have criticized these attempts to influence their decisions and refuse to submit to political pressure. In addition, judges do not participate in party politics. Justice Sandra Day O'Connor, for example, declined an invitation to appear as a guest of honor of the National Federation of Republican Women at that party's 1984 convention.

Few people would agree, however, that this independence of the courts has resulted in the abuse of judicial power. The framers set up a free judiciary in the Constitution so that judges could make decisions based on the public good, including protecting minority rights, rather than simply bowing to the wishes of the majority. Elected justices would undoubtedly fear handing down unpopular decisions that might prevent them from being reelected. As one observer notes, "Few American politicians would care to run on a platform of desegregation, pornography, abortion, and the 'coddling' of criminals." (In this context "pornography" refers to expansive court decisions regarding free speech, and "coddling of criminals" refers to expansive decisions regarding the constitutional rights of convicted criminals.)

POLITICAL PROCESSES *In 1981 Sandra Day O'Connor, the first female Supreme Court justice, was sworn into office. She is shown here on the day of her swearing-in with President Ronald Reagan and Chief Justice Warren Burger.* ***Why are Supreme Court justices appointed rather than elected?***

In addition, although the courts do maintain much independence, they are not wholly unresponsive to the public. Long-term changes in the Supreme Court's opinions generally follow long-term public opinion trends. Many of those changes are determined by new personnel on the Court. That is, as public opinion shifts on issues, voters elect new presidents with contemporary views who in turn appoint justices with similar views. As a result, the Court's opinions also shift, although with a bit of a lag, as justices serve much longer terms than presidents and generally value continuity in the Court's decisions.

The combination of changes in opinion and new justices on the Court therefore is critical to how strictly the court will adhere to precedent. This is why the courts have reversed themselves on some issues, such as segregation. By reflecting the change in public opinion on certain issues, the courts show some responsiveness to the needs and wishes of the majority.

Judicial Restraint Versus Judicial Activism

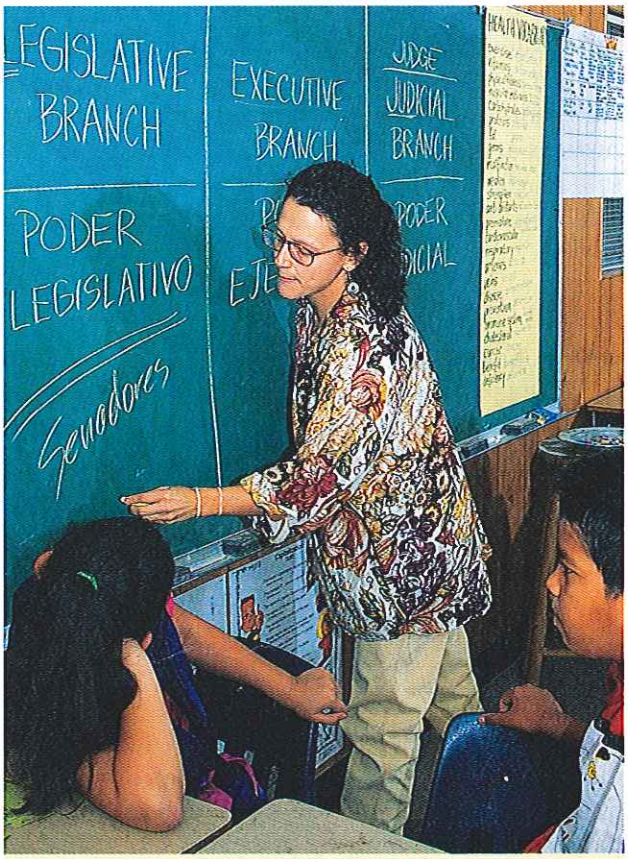
Another criticism of the courts is that they have overstepped their constitutional powers. It is true that since the 1960s the intervention of the federal courts in the administration of government programs, for example, has grown dramatically. The courts have become involved in the management of state prisons, schools, mental health facilities, and many other institutions. Consider the following examples.

In 1969 a federal judge ruled that an Arkansas prison's officials did not fulfill their constitutional duties to protect inmates. Prisoners had filed numerous petitions, saying that they were housed in overcrowded dormitories, clothing was inadequate, and the food was insufficient. Agreeing with many of their complaints, the federal district court ordered the state to improve conditions.

In school desegregation cases, judges often have issued detailed orders telling school districts how to run their school system. In one 1986 case a judge ordered Kansas City to scrap its existing school system and to spend more than a billion dollars for various school improvements. The city's taxpayers funded the cost of the improvements.

In Alabama in 1971, Judge Frank Johnson ruled that the state's mental health system in effect unconstitutionally denied adequate treatment to patients. In his ruling, Johnson issued orders, developed in cooperation with mental health experts, for specific actions that the state was to undertake. In addition, Johnson ordered that state funds necessary to carry out his court order were to have priority over nonessential state functions in the state's budget and said that he himself would ensure that the funds were provided if the legislature failed to appropriate them.

Not surprisingly, rulings such as these have been controversial, sparking a debate over the judiciary's role. Critics argue that courts should not establish priorities for a state's budget because this is a legislative responsibility and because the courts are inexperienced in the running of government agencies. Critics also fear that such intervention prevents states and communities from pursuing the policies that best meet the specific needs of their citizens. In general, these critics support **judicial restraint**,



POLITICAL PROCESSES *The courts have ruled that school districts must provide bilingual education to students whose first language is not English.* ***What are some other examples of federal courts' intervention in the administration of government programs?***

or a limited use of judicial power.

In contrast, those who support judicial intervention, or **judicial activism**, believe that judges should intervene when unacceptable conditions have been ignored or constitutional rights have been violated. Judicial activism can take many forms, however. In the early 1900s, for example, judges taking an activist role struck down legislation designed to protect children from harsh labor conditions. In recent years, conservative justices have held some federal laws unconstitutional for violating the principles of federalism.

CONSTITUTIONAL GOVERNMENT *The Sixteenth Amendment overturned a Supreme Court ruling that declared the federal income tax unconstitutional.* ***How can Congress check the Supreme Court's power?***

As noted in previous chapters, Congress tends to represent the concerns of localities and organized groups, while the president advances the concerns of the nation as a whole. Like Congress, the federal courts sometimes give special weight to intense concerns of a minority of the population. Unlike Congress, however, the courts allow people to have their interests heard even if they are not well funded or well organized like the interest groups that lobby members of Congress. As a result, many people believe that judicial activism is sometimes necessary to ensure that the views and rights of the minority are heard and protected.

Checking the Courts' Power

The Constitution provides important checks on the judiciary's power just as it does for the other branches of government. Among the more important of these checks are the president's and Senate's power to appoint and confirm justices. In addition, Congress can check court decisions by amending the Constitution and sometimes by simply passing suitable laws. States and individuals sometimes have even attempted to check the courts' power illegally by refusing to obey judicial decisions.

Passing Amendments If the Supreme Court rules that a certain policy violates the Constitution, Congress could legalize the policy by passing a constitutional amendment. At least 3 of the 27 amendments to the Constitution have been passed in direct response to Supreme Court decisions:

- ★ the Eleventh Amendment, which deals with lawsuits against a state, overturned one of the Supreme Court's first decisions;
- ★ the Sixteenth Amendment, which authorizes a federal income tax, overturned a Supreme Court ruling that declared such a tax to be unconstitutional;
- ★ the Twenty-sixth Amendment, which lowers the voting age to 18 in national elections, overturned a Court decision stating that Congress had no constitutional power to set the voting age.

Refusing to Obey Court Decisions As you recall from the beginning of the chapter, Alexander Hamilton noted in the *Federalist Papers* that the courts have no "sword" with which to enforce their decisions. Rather, they must rely on the executive branch for enforcement.

As a result, court rulings sometimes have been resisted, gotten around, or ignored. President Andrew Jackson, for example, when balking at a Supreme Court decision regarding the applicability of Georgia law over Indian lands, supposedly remarked "[Chief Justice] John Marshall has made his decision; now let him enforce it."

CONSTITUTIONAL GOVERNMENT *U.S. Army troops escort African American students from Central High School in Little Rock, Arkansas, in 1957. In some states, federal troops had to enforce the Supreme Court's decision to integrate public schools.* ***Why do you think there have been so few challenges to Supreme Court decisions?***

Recent examples include resistance by some state governments in the 1950s and 1960s to Supreme Court decisions calling for the integration of public schools. In some of these instances, the president was forced to call out federal troops to enforce the Supreme Court's decisions.

What is surprising, however, is not that some court decisions have been resisted but just how few challenges there have been. Even powerful groups and individuals have acknowledged the courts' authority over them. No president, for example, has ever defied a Supreme Court decision regarding him personally. The most dramatic court order to a president was the unanimous 1974 Supreme Court decision ordering President Richard M. Nixon to deliver transcripts of tape recordings of White House conversations about the Watergate cover-up. Nixon accepted the decision and delivered the transcripts, which revealed his part in the cover-up of the Watergate break-in and forced his resignation a few days later.

SECTION 3 — REVIEW

1. Define the following terms: judicial restraint, judicial activism.
2. What are the advantages and disadvantages of the appointment system for federal judges?
3. Describe the argument over judicial restraint and judicial activism.
4. What action can possibly check the courts' power? What other checks exist on the judiciary?
5. **Thinking and Writing Critically** Do you support judicial restraint or judicial activism? Why?
6. **Applying CONSTITUTIONAL GOVERNMENT** Refer to President Andrew Jackson's comment regarding the Supreme Court's power to enforce its decision. How is such an attitude dangerous to the power of the Court? What might happen if today's executive branch assumed such an attitude?

CHAPTER 11 — SUMMARY

SECTION 1 The judiciary, which consists of the lower courts and the Supreme Court, has expanded its powers significantly over the nation's history. The lower courts perform the day-to-day work of the judicial branch, hearing and deciding the thousands of cases that are brought before the federal court system each year. In performing this duty, the courts resolve disputes, set precedents, and interpret the law. The courts' jurisdiction, or authority to interpret and administer the law, is established by the Constitution.

The lower courts are divided into district courts and courts of appeals. The district courts are the trial courts of the federal system. The courts of appeals hear appeals of cases from the district courts. In addition, Congress has set up several special courts to handle specific types of cases.

Federal judges serve for life, although Congress can impeach and convict them for serious crimes. Judges are nominated by the president and approved by the Senate. By far the largest number of judicial appointments are those to the district courts. These nominations are handled by the Department of Justice and by White House staffers. The executive branch, however, allows senators in the president's party to approve or disapprove each potential nominee for a position in a district in their state before the official nominations are made. This practice is called senatorial courtesy.

SECTION 2 At its creation, the Supreme Court did not hold the power and influence that it holds today. Although L'Enfant made plans to construct a building in which to house the Court, these quarters were never built, and the Court met in the basement of the Capitol. The Court heard few cases in its early years. This changed after John Marshall became chief justice, however. One of the most critical decisions of this period was *Marbury* v. *Madison*, which established the principle of judicial review.

The Supreme Court is the highest court of appeals in the nation. Anyone may appeal a case to the Supreme Court from a federal appeals court or from a state supreme court if a violation of the U.S. Constitution is charged. The Supreme Court does not have to hear any specific case, however. Any case that the Court agrees to hear undergoes five stages. These stages are briefs, oral argument, conference, preparation of opinions, and announcement of decisions.

As with other federal court judges, Supreme Court justices serve for life. They are appointed by the president and approved by the Senate. Justices employ a personal staff of clerks to help them in their work.

SECTION 3 The judiciary, like the other branches of the federal government, has its share of critics. One criticism of the courts is that judges are appointed rather than elected. This system, however, ensures an independent judiciary whose decisions are not influenced by a desire to be elected. A second criticism is that the courts often overstep their powers. Vital checks are in place, however, to prevent judicial abuse of power.

Government Notebook

Review what you wrote in your Government Notebook at the beginning of this chapter about the areas of your daily life that are affected by Supreme Court decisions. Now that you have studied this chapter, how would you revise your list? Are there any additional areas that you would include? Explain your answer in your Notebook.

CHAPTER 11
REVIEW

REVIEWING CONCEPTS

1. How has the Supreme Court's power changed since the late 1700s?
2. Describe the organization of the lower federal courts.
3. What is the selection process for lower-court judges? Supreme Court justices?
4. How do the executive and legislative branches check the Supreme Court's power?
5. Describe the process a case goes through in the Supreme Court.
6. Name some common criticisms of the judiciary.

THINKING AND WRITING CRITICALLY

1. **POLITICAL PROCESSES** Do you think that the principle of senatorial courtesy is an efficient method for nominating and appointing district court judges? What problems could occur if senatorial courtesy were no longer practiced? Why does the principle of senatorial courtesy not play a role in appeals court nominations?
2. **POLITICAL PROCESSES** What are the arguments for both judicial restraint and judicial activism? If you were a Supreme Court justice, which would you practice, and why?
3. **CONSTITUTIONAL GOVERNMENT** Do you think that the Supreme Court places too much emphasis on *stare decisis*? Explain your answer.
4. **PUBLIC GOOD** The president appoints federal judges and the Senate confirms them. How does this sharing of power promote the public good?

CITIZENSHIP IN YOUR COMMUNITY

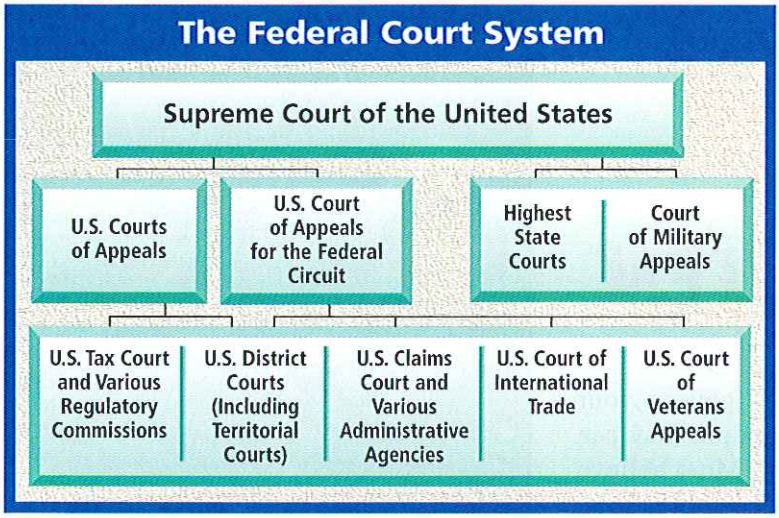
Research the U.S. district courts in your state. How many districts does your state have? In which district do you live? Who are the judges in your district? Where in your state are the district courts located? Create a poster containing the information you gather. Be sure to include a list of the judges in your district. You might also want to include photographs of the judges.

COOPERATIVE PORTFOLIO PROJECT

With a group, create a notebook of newspaper articles with information on Supreme Court cases. Organize the articles according to the court from which each case was appealed. Divide the notebook into three sections: Highest State Courts, U.S. Courts of Appeals, and U.S. Court of Appeals for the Federal Circuit. (You may need a fourth section if you find any articles on original jurisdiction Supreme Court cases.) Assign to group members the task of writing short summaries for each article, describing the issues being examined and stating the Court's final decision, if one has been made.

PRACTICING SKILLS: UNDERSTANDING CHARTS AND GRAPHS

An effective way to visualize the structure of the federal court system is to use an organizational chart. Organizational charts have two basic parts: boxes and lines. Study the chart on the following page. The boxes represent certain types of courts and the lines represent the flow



of authority. Examine the chart and answer the following questions.

1. Which court reviews cases appealed from the highest state courts?
2. The U.S. Court of Appeals for the Federal Circuit hears cases from which four different types of courts?
3. Which court reviews cases appealed from the U.S. Tax Court?

The Internet: Learning Online

Conduct an Internet search for information on the federal courts. You might start with search words such as *U.S. federal courts, Supreme Court,* and *U.S. judicial system.* Sketch a World Wide Web page titled "Learning About the Federal Courts." On the page, illustrate how citizens could use the Internet to learn about the federal court system. Be sure to include the addresses of the sites you find and brief descriptions of the information available at those sites.

Analyzing Primary Sources

Brown v. Board of Education of Topeka

As you have read, the Supreme Court ruled against public school segregation in the 1954 case *Brown* v. *Board of Education of Topeka,* leading to the integration of U.S. schools. Read the excerpt from the Court's majority opinion, and answer the questions that follow.

> *"These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised [based] on different facts . . . but a common legal question justifies their consideration together. . . . In each of the cases, minors of the Negro race . . . seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission . . . under laws requiring or permitting segregation according to race. This segregation was alleged [claimed] to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a . . . federal District Court denied relief to the plaintiffs on the so-called "separate but equal" doctrine. . . .*
>
> *In approaching this problem, we . . . must consider public education in the light of . . . its present place in American life. . . .*
>
> *We come then to the question presented: Does segregation of children in public schools . . . , even though the physical facilities and other "tangible" [material] factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. . . .*
>
> *To separate them from others . . . solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."*

1. On what basis have the federal district courts denied relief to the plaintiffs?
2. What right is guaranteed under the Fourteenth Amendment?
3. How is the decision in this case an example of judicial activism?