

# Unit 9

## The Courts: Our Rule of Law

### Learning Objectives

After completing this session, you will be able to:

- Identify and explain the differences between criminal and civil courts.
- Describe the variety of court systems in America.
- Discuss the vital role that courts play in the American system.
- Explain the origins of judicial power and describe the controversy over its use.
- Explain how judges are selected in the various American court systems.

### Topic Overview

This unit explores the unique role that courts play in American society. The unit explores the variety of courts and assesses their role in the governmental system, questioning, for instance, the source of judicial power. The unit also examines how we select judges and raises questions about how this should be done.

The U.S. Judiciary is made up of 51 separate court systems: 50 **state courts** and the U.S. court system, also known as the **federal court**. While there are significant variations among these 51 courts, all are divided between trial courts and appellate courts. **Trial courts** concentrate their activities on ascertaining facts, largely through the testimony of witnesses and the examination of physical evidence. A single judge presides over the trial and either the judge or a jury of citizens renders the decision. **Appellate courts** review the decisions of lower courts. These courts hear arguments that deal with the application of the law to the facts that have already been ascertained by trial courts. In appellate courts, decisions are rendered by groups of judges.

**Judicial federalism** is the term used to describe the relationships between these independent court systems at the state and national levels, and the various ways individual cases can move between different court systems. Under the Articles of Confederation, each state maintained its own courts, and there was no federal court system. The U.S. Constitution also allows for states to maintain their own individual court systems that derive their authority from state constitutions and state laws. But if a case originally heard in state courts raises a **federal question**, which involves the meaning and application of federal laws and the U.S. Constitution, parties to the case can try to appeal their case to the federal appeals court, or directly to the U.S. Supreme Court.

The U.S. Constitution in **Article III** vests judicial power “in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish.” With the **Judiciary Act of 1789**, Congress created a system of lower federal courts under its authority granted in Article III. These courts, also known as **constitutional courts**, include the 13 district courts, which are the trial courts of the federal system. Congress also created courts of appeals, known as appellate courts, which can hear appeals of district court decisions, or from state appellate

## Topic Overview, cont'd.

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courts. Today, excluding separate special courts (specialized courts created by Congress, including the U.S. Court of Military Appeals, U.S. Tax Court, and bankruptcy courts) there are 94 U.S. District Courts, 13 U.S. Courts of Appeals, and one **U.S. Supreme Court**, which is the highest court in the United States.

For most federal cases, the U.S. District Court is the first and last court of hearing. The **adversarial process** dominates in District Court, where two sides to a dispute argue their cases before either a judge or a jury. At the appellate level, a panel of judges (usually three) decides cases based on briefs filed by attorneys representing both sides in a dispute. Appellate judges generally decide narrow questions of constitutional law or procedure. Their decisions either *affirm* a lower court's decision, or *overturn* it. If a case is overturned, the decision of the lower court is overruled and the higher court's decision prevails.

The U.S. Supreme Court can choose to hear cases on appeal from lower state or federal courts. Under its Article III powers, the Supreme Court must hear some cases first, under **original jurisdiction**. This small number of cases includes disputes between two or more states, or cases involving actions brought against the U.S. by ambassadors of foreign countries. The bulk of cases heard by the Supreme Court are accepted under its **appellate jurisdiction**, which allows it to choose cases it will hear on appeal from lower state or federal courts. Ever since the landmark case of *Marbury v. Madison* (1802), the Supreme Court has exercised **judicial review**, or the power to nullify acts of state or federal governments based on what the words and phrases in the U.S. Constitution actually mean in specific cases.

The exercise of judicial review by federal courts remains a controversial issue. Some people who advocate **judicial restraint** argue that judicial review should only be used sparingly, while those who advocate **judicial activism** believe that courts should exercise judicial review whenever governments act in ways that violate an expansive view of constitutional rights and liberties.

A Supreme Court's ruling in a given case is final. However, its opinion on central and related constitutional questions can be used as **precedent** to help future courts decide similar issues. Sometimes a Supreme Court might overrule or reverse a past Supreme Court decision, and replace the previous precedent with a new interpretation of law.

An important element of judicial power in the United States is the assumption that courts are independent of politics. But the realities associated with the way judges are selected and the procedures they use to decide cases often inject politics into the judicial process. Most state judges must face the voters, either for election or retention. No doubt some judges are more swayed by public opinion in rendering judicial decisions than others. The debate over what constitutes an independent judiciary in American government continues.

## Pre-Viewing Activity and Discussion (30 minutes)

Before viewing the video, discuss the following questions:

- Why does "Federalist No. 78" say that the courts are the "least dangerous branch"? Do you agree with this assessment?
- Discuss Chief Justice John Marshall's reasoning in *Marbury v. Madison*. Do you find his argument for judicial review convincing?
- Which branch of government best protects individual rights?
- Are judges independent of politics?

## Watch the Video (30 minutes) and Discuss (30 minutes)

The video includes three segments. If you are watching on videocassette, watch each segment and pause to discuss it, using the questions below. If you are watching a real-time broadcast on the Annenberg/CPB Channel, watch the complete video and then discuss.

### 1. The Rodney King Reversal

This segment examines the case of Los Angeles police officers Stacey Koon, Laurence Powel, Timothy Wind, and Theodore Briseno, who were indicted for the beating of Rodney King. In March of 1991, after a high-speed chase, the officers apprehended King but were recorded on videotape kicking, stomping, and beating King during his arrest for speeding. A local TV station aired the images of a seemingly defenseless African American man being beaten by L.A. police, and shock swept across the nation. While a vast majority of the American public believed the videotape showed the L.A. police officers used excessive force, proving that in a court of law was different. On April 29, 1991, the Semi Valley jury acquitted the defendants on all charges. Although acquitted in state court, the police officers were not completely exonerated. Federal prosecutors subsequently indicted them on federal charges.

#### Discussion Questions

- Why was the trial of the police officers moved out of Los Angeles?
- Why wasn't the federal trial of the officers considered double jeopardy?
- What are the advantages to having overlapping court systems? What are the disadvantages?

### 2. The Night the Supreme Court Decided Who Would Be President

While few Americans today doubt that the Supreme Court has the ultimate power to say what the Constitution means (judicial review), the exercise of judicial review in specific cases often embroils the Court in controversy. This was the case when the Supreme Court, in 2000, intervened for the first time ever in a presidential election.

Exactly five weeks after Election Day, the U.S. Supreme Court, in a five to four decision, reversed the Florida Supreme Court's decision and effectively handed Florida's 25 electoral votes (and the presidency) to George W. Bush.

#### Discussion Questions

- Should the Supreme Court have intervened in this controversy?
- Does the Supreme Court's decision enhance the image of courts as nonpolitical?
- The Supreme Court's exercise of power in *Bush v. Gore* is, of course, grounded in Chief Justice John Marshall's assumption of the power of judicial review. Is this the kind of power that the founders envisioned for the courts?

### 3. The Crocodile in the Bathtub: Judicial Recalls in California

In 1934, California voters passed a state constitutional amendment designed to make appointed judges more accountable to the public. In the new system, judges in all state appeals courts, including the California Supreme Court, would be appointed by the governor and confirmed by a non-partisan commission. Then, using what are called "judicial retention elections," the public would periodically vote on whether to keep or unseat the judges. For many years this system worked without creating any significant controversy, but in 1986, three justices on the California Supreme Court were up for retention, and the potential for conflict between politics and the judicial appointment process was high. During their public campaign to oust three justices, conservatives built their case around the justices' record in reversing several death sentences. This frontal attack against several judges was something new to California, and some people became concerned that the judicial opposition that was building might influence the justices' judicial decisions.

## Watch the Video and Discuss, cont'd.

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### Discussion Questions

- How does the California judicial selection system differ from that used for federal judges?
- Did the retention elections in 1986 demonstrate a threat to judicial independence or does it demonstrate a valid exercise of the public's right to hold judges accountable?
- How should judges be selected?

## Post-Viewing Activity and Discussion (30 minutes)

### 1. At the Storm's Center: Your Supreme Court at Work (15 minutes)

The U.S. Supreme Court finally moved to its present location on Capitol Hill in the mid-1930s. Prior to that, the Court worked in various locations, including the basement of the U.S. Capitol. Elevated by grand marble stairs, supported by 16 grand columns on its west front, and adorned with a portico and architrave that is inscribed, "Equal Justice Under the Law," the Supreme Court building reinforces the Court's status as a coequal branch of government. Further symbols employed by the Court, including an elevated court platform and the Justices' black robes, suggest that the Court deliberates issues free from politics and personal concerns. However, the actual processes of the Court including the selection of cases, the shaping of majority opinions, and the use of precedent, do not occur in isolation from the social, legal, and political conflicts of the day. The following discussion outlines the Court's procedures to help demystify the process of rendering decisions. Use this summary of the Court's process to reflect on the nature of the judicial process. Does this process demonstrate that judges are removed from politics?

#### Choosing Cases for Full Hearing

In its 200-plus years of existence, the Supreme Court has gained greater discretion to pick and choose cases it will hear in a given term. Today the Court receives approximately 4,000 requests per year from litigants to hear their cases on appeal, but typically chooses to accept about 150 cases with full opinion. The so-called "rule of four" governs case selection; if four or more justices agree to hear a case, the case is accepted. A case may be accepted for various reasons, including:

- If the case involves a major issue, such as civil rights.
- If two or more lower courts differ in their interpretation of federal law.
- If a majority of the Supreme Court disagrees with a lower court's decision.

#### Oral Arguments

From October to the end of April, the justices hear oral arguments on Mondays, Tuesdays, and Wednesdays of two consecutive weeks (from 10 a.m. until 3 p.m., with an hour at noon reserved for lunch). The following two weeks are set aside for writing opinions. The Court's process of hearing cases and rendering judgment is unique. Lawyers on both sides of a case have only 30 minutes each to argue their case. During that time the justices can ask questions or otherwise interrupt a lawyer's argument. There are no witnesses called during oral arguments, and there is no introduction of evidence. Lawyers for the plaintiff and defendant submit written briefs prior to the court date. Outside interests may submit *amicus curiae*, or "friend of the Court" briefs outlining their group's position on the issues central to the case.

#### Judicial Conference

Judicial conference takes place in closed session on Wednesdays and Fridays, with only the justices present. Beginning with the Chief Justice and proceeding from the most senior on to the most junior Associate Justice, each justice provides his or her analysis of the case and the relevant law, and announces a proposed decision. After reaching a decision that is supported by at least five justices, the decision is assigned to a justice who then writes the majority opinion. If the Chief Justice is in the majority, he or she assigns the case to a justice (or to him- or herself) who will write the majority opinion. If the Chief Justice is in the minority, the most senior justice in the majority assigns the **majority opinion**. Who actually writes the opinion is not a trivial matter, as the opinion's content and style may affect the ultimate size of the majority, and the number and nature of any

## Post-Viewing Activity and Discussion, cont'd.

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concurring opinions or dissenting opinions. **Concurring opinions** may be written by justices who accept the majority decision but don't agree with the majority's entire reasoning. **Dissenting opinions** are written by the justices to explain their differences with the majority.

### 2. Should We Have Elections and Term Limits for Supreme Court Justices? (15 minutes)

Alexander Hamilton characterized the courts as the "least dangerous branch" of government, having neither the power of the sword or purse. Yet ever since the Supreme Court took for itself the power of judicial review, the Court has periodically come under intense criticism for certain rulings. Federal judges are appointed for life, and can only be removed through impeachment in the House of Representatives, and conviction in the Senate. Only a handful of federal judges have ever been impeached, and no justice of the Supreme Court has ever been impeached.

Discuss the possible pros and cons of a reform which subjects Supreme Court justices, and all federal judges, to retention elections after a certain term expires after their initial appointment. Voters nationwide could review a justice's record and decide whether or not to retain her or him for another term. What might be some positive effects of such a reform? What might be some negative consequences? In weighing the potential pros and cons, consider the experiences of retention elections for judges in states that have them. Does the experience in California, as profiled in this unit's video segment, support or undermine the case for retention elections at the national level?

Another reform to consider is judicial term limits. Rather than appointing federal and Supreme Court justices for life, under term limits judges would be appointed for a fixed term, say, six, 10, or 12 years, and then would be ineligible for another term. What might be the pros and cons of such a change? In considering the possible merits of this reform, keep in mind the original intentions of the Constitution's framers that the judiciary be insulated from electoral politics. Also consider whether judges are insulated under the current system where judicial appointments have become another partisan conflict between Republicans and Democrats.

## Homework

Read the following Readings from Unit 10 to prepare for next week's session.

- Introduction—Understanding Media: The Inside Story
- Tocqueville, *Democracy in America*: "Liberty of the Press in the United States"
- Milton, *Areopagitica*
- Hume, "On the Liberty of the Press"
- *New York Times v. Sullivan*

Read next week's Topic Overview.

**Critical Thinking Activity:** Go to the course Web site and try the Critical Thinking Activity for Unit 9. This is a good activity to use with your students, too.

[www.learner.org/channel/courses/democracy](http://www.learner.org/channel/courses/democracy)

## Classroom Applications

You may want to have your students do the post-viewing activities: At the Storm's Center, Your Supreme Court at Work and Should We Have Elections and Term Limits for Supreme Court Justices? They are provided for you as blackline masters in the Appendix.

## Web-Based Resources

[www.supremecourthistory.org](http://www.supremecourthistory.org)—The **Supreme Court Historical Society's** Web site contains colorful histories of the courts and judges, a research database of cases and people, and a learning center.

[www.supremecourtus.gov/](http://www.supremecourtus.gov/)—The official Web site of the **Supreme Court** contains information on cases in the current term and provides extensive information about the Court's procedures and processes.

[www.findlaw.com/](http://www.findlaw.com/)—**FindLaw** is a comprehensive resource for researching specific cases, and quickly finding many cases and opinions under general areas of law. FindLaw contains useful summaries about courts and judges that can be adapted for classroom use.