

CHAPTER 18

The Federal Court System

Essential Question

Does the structure of the federal court system allow it to administer justice effectively?

Section 1:
The National Judiciary

Section 2:
The Inferior Courts

Section 3:
The Supreme Court

Section 4:
The Special Courts

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Lesson Goals

SECTION 1

Students will . . .

- learn the Framers' intentions for the national judiciary by analyzing an excerpt from *The Federalist* No. 78.
- comprehend the structure and role of the federal courts by completing a jurisdiction T-chart and filling in a Venn diagram with examples of exclusive and concurrent cases.
- identify the skills, term, pay, and selection of federal judges by creating a classified advertisement for a judge.

SECTION 2

Students will . . .

- identify the structure of the inferior constitutional courts by completing a chart highlighting the various courts and their jurisdictions.
- understand how inferior constitutional courts function by constructing paths of appeals for various case scenarios.

SECTION 3

Students will . . .

- learn about the scope of the Supreme Court's jurisdiction by analyzing a political cartoon showing the power of judicial review, and by identifying the Court's original and appellate jurisdiction.
- identify how the Supreme Court operates by sequencing the appeals process, by reading a transcript of a real case, and by formulating opinions on controversial cases.

SECTION 4

Students will . . .

- identify the special courts by completing a chart highlighting the various courts' jurisdictions.
- understand how special courts function by constructing paths of appeals for case scenarios.
- analyze the constitutionality of military commissions by studying opinions for and against them.

“It is **emphatically** the province and the 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, *Marbury v. Madison*, 1803

Photo: Attorney Frank Dunham holds a news conference in front of the U.S. Supreme Court building.

Pressed for Time

Display Transparency 18E to give students an overview of the federal courts and their appellate path. Have students briefly study it, especially the “Key to Courts.” Then organize the students into four groups, with each group assigned to a section of the chapter. Groups must change each heading or subheading in their section into a question, and then answer the question. They should use these questions/answers to teach an overview of their section to the other groups. Fill in vital information that students overlook, or distribute copies of the Facts and Enduring Understandings. Finally, have each student re-create the transparency diagram, adding specific information to each level and type of courts.

DIFFERENTIATED INSTRUCTION KEY

Look for these symbols to help you adjust steps in each lesson to meet your students' needs.

L1 Special Needs

L2 Basic

ELL English Language Learners

LPR Less Proficient Readers

L3 All Students

L4 Advanced Students

GUIDING QUESTION

What are the structure and function of the national judiciary?

The National Judiciary	
Structure	Types of Jurisdiction
<ul style="list-style-type: none">• Dual court system• Supreme Court• Constitutional courts• Special courts	<ul style="list-style-type: none">• Exclusive jurisdiction• Concurrent jurisdiction• Original jurisdiction• Appellate jurisdiction

Get Started

LESSON GOALS

Students will . . .

- learn the Framers' intentions for the national judiciary by analyzing an excerpt from *The Federalist* No. 78.
- comprehend the structure and role of the federal courts by completing a jurisdiction T-chart and filling in a Venn diagram with examples of exclusive and concurrent cases.
- identify the skills, term, pay, and selection of federal judges by creating a classified advertisement for a judge.

BEFORE CLASS

Assign the section, the graphic organizer in the text, and Reading Comprehension Worksheet (Unit 5 All-in-One, p. 13) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 15)

SKILLS DEVELOPMENT

ANALYZE GRAPHIC DATA

Before students examine the “Types of Federal Courts” diagram in this section, you may want to review tips on analyzing graphic data in the Skills Handbook, p. S26.

SECTION 1

The National Judiciary



Guiding Question

What are the structure and function of the national judiciary? Use a table like the one below to take notes on the section.

The National Judiciary	
Structure	Types of Jurisdiction
<ul style="list-style-type: none">• Dual court system•	<ul style="list-style-type: none">• Exclusive jurisdiction•

Political Dictionary

- inferior courts
- jurisdiction
- concurrent jurisdiction
- plaintiff
- defendant
- original jurisdiction
- appellate jurisdiction
- judicial restraint
- precedent
- judicial activism

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 jurisdiction.
3. Outline the process for appointing federal judges, and list their terms of office.
4. Understand the impact of judicial philosophy.
5. Examine the roles of court officers.

Image Above: Judge Maryanne Trump Barry, U.S. Court of Appeals, Third Circuit

Joe steals a sports car 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? 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 vehicle 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.¹ Often, decisions by the courts in one State were ignored by 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.

¹ The Articles of Confederation did provide (in Article IX) a very complicated procedure for the settlement of such disputes, but it was rarely used.

Focus on the Basics

FACTS: • The national judiciary consists of a Supreme Court and inferior courts. • Congress created two kinds of inferior courts. • Federal courts have exclusive jurisdiction over some cases and concurrent jurisdiction in others. • The President appoints federal judges, who are subject to confirmation by the Senate. • Judges' philosophies influence their decisions.

CONCEPTS: checks and balances, federalism, role of government in public policy

ENDURING UNDERSTANDINGS: • The Constitution created the Supreme Court, its jurisdiction, and the manner and terms of federal judicial appointments. • The U.S. has dual national and State court systems. • Federal judges often shape public policy.

A Dual Court System Keep in mind this important point: There are *two* separate court systems in the United States.² On one hand, the national judiciary spans the country with its more than 100 courts. On the other hand, each of the 50 States has its own system of courts. Their numbers run well into the thousands, and most of the cases that are heard in court today are heard in those State, not the federal, courts.

Two Kinds of Federal Courts The Constitution establishes the Supreme Court and leaves to Congress the creation of the **inferior courts**—the lower federal courts beneath the Supreme Court. Over the years, Congress has created two distinct types of federal courts: (1) the constitutional courts,

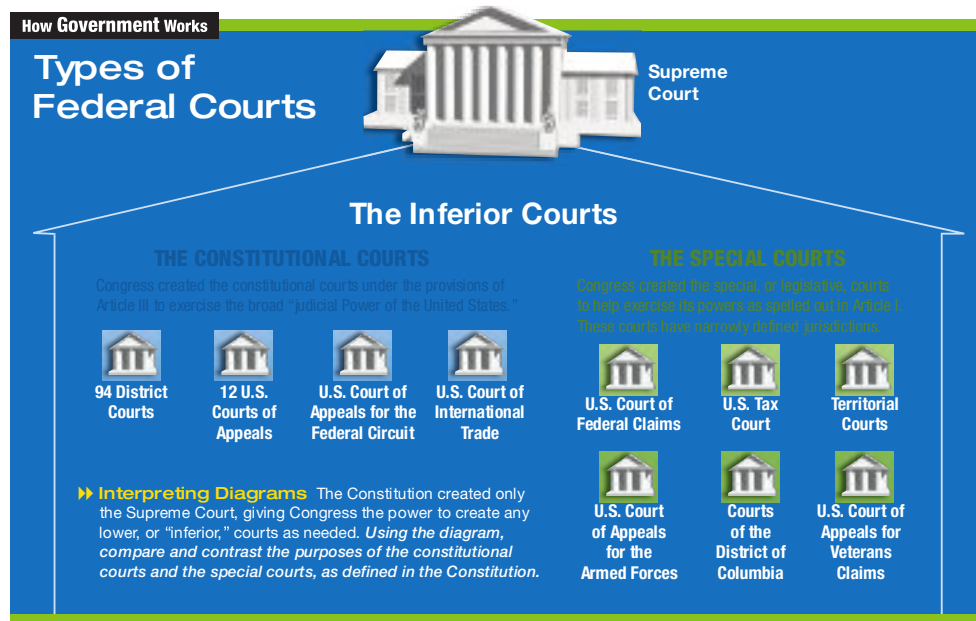
and (2) the special courts. See the diagram “Types of Federal Courts” below.

The constitutional courts are those 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 and, sometimes, 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 are also called the legislative courts and, sometimes, Article I 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. Tax

² 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.



BELLRINGER

Write the following quote and questions on the board:

“The judiciary . . . has no influence over either the sword or the purse; . . . It may truly be said to have neither FORCE nor WILL, but merely judgment.”

—Alexander Hamilton, *The Federalist No. 78*

What is Hamilton saying about the function of the judicial branch? What does he imply are NOT functions of the judicial branch?

Have students write answers to the questions in their notebooks.

L1 L2 Differentiate Have students look up definitions of the terms *sword* and *purse*. Discuss how Hamilton is using non-literal meanings of these words.

Teach

To present this topic using online resources, use the lesson presentations at PearsonSuccessNet.com.

REVIEW BELLRINGER ANSWERS

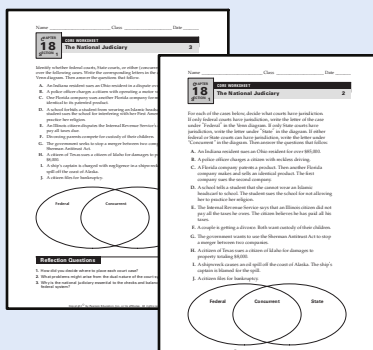
Have volunteers share their answers to the Bellringer questions. Hamilton states that the function of the judicial branch is to judge. The judiciary has no power to make (the “will”) or to enforce (the “force”) laws.

L2 ELL Differentiate Ask students how Hamilton refers to the executive and legislative branches. Why does he refer to them this way? (*He refers to the executive branch as the “sword” and the “force” because it has the power to implement laws. The legislative branch is the “purse” and the “will” because it makes the laws, and the President and the judicial branch must receive authorization from Congress before either can spend money.*)

Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 18, Section 1:

- L2** Prereading and Vocabulary Worksheet (p. 9)
- L3** Reading Comprehension Worksheet (p. 13)
- L2** Reading Comprehension Worksheet (p. 15)
- L3 L2** Core Worksheets (pp. 17, 18)
- L2** Extend Activity (p. 22)
- L3 L4** Extend Worksheet (p. 20)
- L3** Quiz A (p. 23)
- L2** Quiz B (p. 24)



Answers

Interpreting Diagrams Constitutional courts were created to exercise broad judicial powers; special courts were created to exercise narrowly defined powers.

✓ Checkpoint
What parties must bring their cases to a federal court?

tribunal
n. a judicial body, a court

infringement
n. violation

ANALYZE THE FRAMERS' INTENTIONS

Display Transparency 18A, which includes another excerpt from *The Federalist* No. 78. After a volunteer reads the excerpt aloud, ask: **What does Hamilton say is the exclusive province of the judiciary? (the power to interpret laws) Does this function make the judicial branch more powerful than the legislative branch? (no) What protects the people from unconstitutional statutes of the legislature? (Judges must interpret the legislature's laws through the fundamental laws of the Constitution.)**

L2 ELL Differentiate Point out that the word *province* in this context means “function” or “scope.” In addition, the phrase *power of the people* can be interpreted as “rights of the people.”

L4 Differentiate Have students paraphrase the excerpt from *The Federalist* No. 78.

DIFFERENTIATE TYPES OF FEDERAL COURTS

Display Transparency 18B and have students study the *How Government Works* diagram “Types of Federal Courts.” Ask: **Which is the only court mentioned in the Constitution? (the Supreme Court) What are the two levels of federal courts? (the Supreme Court and inferior courts) How are the inferior courts further delineated? (as constitutional courts and special courts) Which type of inferior courts were created by Congress? (both the constitutional courts and the special courts)**

L2 LPR Differentiate Have students re-create the “Types of Federal Courts” diagram in their notebooks, labeling the two levels of federal courts, the two general types of inferior courts, the specific courts in each type, and the other names of the inferior courts (*constitutional courts: regular or Article III; special courts: legislative or Article I*).

Court, the various territorial courts, and the courts of the District of Columbia. You will look at the unique features of these tribunals later in this chapter.

Federal Court Jurisdiction

The constitutional courts hear most of the cases tried in the federal courts. That is to say, 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 federal courts jurisdiction over only certain cases. Recall, most cases heard in court in the United States are heard in State, not federal, courts. Article III, Section 2 provides that federal courts may hear cases because of either the subject matter or the parties involved in those cases.

Subject Matter In terms of subject matter, the federal courts may hear a case if it involves a “federal question”—that is, the interpretation and application of a provision in the Constitution or in any federal statute or treaty—or a question of admiralty or maritime law. Admiralty law relates to matters that arise on the high seas or the navigable waters of the United States, such as a collision at sea or a crime committed aboard a ship. Maritime law relates to matters that arise on land but are directly related to the water, such as a contract to deliver ship supplies at dockside.

The Framers purposefully gave the federal courts exclusive jurisdiction in all admiralty and maritime cases in order to ensure national supremacy in the regulation of all waterborne commerce.

Parties A case falls within the jurisdiction of the federal courts if one of the parties involved 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 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) an American citizen suing a foreign government or one of its subjects; or

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

These criteria for determining which cases can be heard in the federal courts 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. To put the whole point of the jurisdiction of the federal courts the other way around: Those cases that are not heard by the federal courts fall within the jurisdiction of the State courts.

Types of Jurisdiction

Still more must be said on this quite complex matter of federal court jurisdiction. The federal courts exercise both exclusive and concurrent jurisdiction and, also, original and appellate jurisdiction.

Exclusive and Concurrent Jurisdiction

Most of the cases that can be heard in the federal courts fall within their exclusive jurisdiction. That is, they can be tried *only* in the federal courts. Thus, 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 one involving any other matter arising out of an act of Congress is also within the exclusive (sole) jurisdiction of the federal courts.

Some cases may be tried in either a federal or a State court. Then, the federal and State courts have **concurrent jurisdiction**, meaning they share the power to hear these 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.³

Congress has provided that a federal district court may hear a case of diverse citizenship only when the amount of money

³ Congress first gave the federal courts concurrent jurisdiction in these cases in 1789, out of a perceived need for a neutral forum to settle disputes between residents of different States. Early on, it was feared that State courts (and their juries) might be prejudiced against “foreigners,” people from other States. There seems little likelihood of such bias today.

Answers

Checkpoint the United States or one of its officers or agencies; an ambassador, consul, or other foreign official; a State if it is suing another State, a citizen of another State, or a foreign government or subject; a citizen of one State suing a citizen of another State; a U.S. citizen suing a foreign government or subject; citizens of the same State if both claim land under grants from different States

Background

FEDERAL CRIMES The federal courts hear cases concerning federal crimes. The Constitution gives the National Government the authority to punish certain crimes, such as counterfeiting, crimes committed on the high seas, and treason. “The Congress shall have Power . . . To provide for the Punishment of counterfeiting; . . . To define and punish Piracies and Felonies committed on the high Seas. . . .” (Article I, Section 8). “The Congress shall have Power to declare the Punishment of Treason. . . .” (Article III, Section 3). The authority of the National Government to punish other crimes is implied from enumerated powers. For example, the Constitution grants Congress the power to establish post offices (Article I, Section 8). Implied in this power is the authority to prosecute mail fraud.

Types of Jurisdiction

Which Court?

Two separate court systems, federal and State, hear and decide cases in the United States. Their jurisdictions and examples of types of cases that would be heard at each are shown in this Venn diagram. *How does the structure of this illustrated diagram explain the types of jurisdiction?*

Scenario: Citizen M robs a bank in California.

Jurisdiction: Federal

Why? Bank robbery violates a federal law, regardless of the State in which the crime is committed.

Scenario: Citizen X of Michigan sues Citizen Y of Massachusetts for \$80,000 in damages caused as a result of a car accident.

Jurisdiction: Concurrent

Why? When a citizen from one State sues a citizen of another State for damages greater than \$75,000, the case can be heard in either a federal or State court.

Scenario: Citizen Z of Ohio has her car repaired at AJ's, the local repair shop. Her car breaks down on her way home. She sues the repair shop for breach of contract.

Jurisdiction: State

Why? State courts usually hear cases involving events in that State. Since AJ's is an Ohio business, the State has jurisdiction over the case.

involved in that case is at least \$75,000. In such a case, the **plaintiff**—the person who files the suit—may bring the case in the proper State or federal court, as he or she chooses. If the plaintiff brings the case in a State court, the **defendant**—the person against whom the complaint is made—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. That court, the trial court, is often described as “the court of first instance.” A court that hears a case on appeal from a lower court exercises **appellate jurisdiction** over the case.

Appellate courts do not retry cases. Rather, they determine whether a trial court

has acted in accord with applicable law. The higher court—the appellate court—may uphold, overrule, or in some way modify the decision appealed from the lower court.⁴

In the federal judiciary, the district courts have only original jurisdiction, and the courts of appeals have only appellate jurisdiction. The Supreme Court exercises both original and (most often) appellate jurisdiction.

Federal 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

⁴ Appellate comes from the Latin word *appellare*, meaning “to speak to, to call upon, to appeal to.”

Tell students to go to the Interactivity for scenarios about types of jurisdiction.

DEFINE JURISDICTION

Have a student find the meaning of *jurisdiction* in the textbook (the authority of a court to hear a case; literally, the power to “say the law”). Ask another student to look up the word in the dictionary for additional meanings. (the authority of a sovereign power to govern or legislate; the power or right to exercise authority or control; the limits or territory within which authority may be exercised)

L2 Differentiate Ask students to provide samples of various jurisdictions outside the realm of the courts. For example, what are the jurisdictions of the principal and assistant principal? (*One may handle issues of truancy and failing grades; the other may handle issues of discipline.*) How far does the jurisdiction of coastal countries extend into the ocean or sea? (*Many countries claim the waters 200 nautical miles from their coasts as exclusive economic zones.*)

CHART FEDERAL COURT JURISDICTION

On the board, draw a T-chart like the one below. Have students copy the T-chart in their notebooks and work in pairs to fill in the information on both sides of the T.

Federal Court Jurisdiction	
Exclusive jurisdiction (definition)	Subject Matter
	Parties Involved
Concurrent jurisdiction (definition)	Types of cases
Original jurisdiction (definition)	Which federal courts have?
Appellate jurisdiction (definition)	Which federal courts have?

L2 Differentiate Model note-taking skills by asking volunteers to write the information on the board.

Constitutional Principles

SEPARATION OF POWERS In *The Federalist* No. 78, Alexander Hamilton discussed the importance of offering life tenure for judges. Besides enabling justices to remain independent of legislative and executive intrigue, life tenure was needed to attract qualified attorneys: “. . . [I]t will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of . . . precedents [and rules] must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. . . . [A] temporary duration in office . . . would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench. . . .”

Answers

Which Court? In some areas, federal and State jurisdiction are distinct, whereas in other areas they overlap.

DISTRIBUTE CORE WORKSHEET

Distribute the Chapter 18 Section 1 Core Worksheet (Unit 5 All-in-One, p. 17). Have students work in pairs to complete the Venn diagram by identifying federal, State, and concurrent jurisdiction, and then to answer the Reflection Questions. After the worksheets are finished, discuss why each dispute or case had its particular jurisdiction.

L2 L3 ELL Differentiate For these students, distribute the adapted Core Worksheet (Unit 5 All-in-One, p. 18).

L4 Differentiate Ask students to research current cases in the news and determine which court(s) would hear the cases, and why.

Name _____ Class _____ Date _____

CHAPTER 18 CORE WORKSHEET
Section 1 The National Judiciary **3**

Identify whether federal courts, State courts, or either (concurrent) have jurisdiction over the following cases. Write the corresponding letters in the correct location of the Venn diagram. Then answer the questions that follow.

A. An Indiana resident sues an Ohio resident in a dispute over \$85,000.
B. A police officer charges a citizen with operating a motor vehicle recklessly.
C. One Florida company sues another Florida company for marketing a product identical to its patented product.
D. A school forbids a student from wearing an Islamic headscarf to school. The student sues the school for interfering with her First Amendment right to practice her religion.
E. An Illinois citizen disputes the Internal Revenue Service's claim that he did not pay all taxes due.
F. Divorcing parents compete for custody of their children.
G. The government seeks to stop a merger between two companies based on the Sherman Antitrust Act.
H. A citizen of Texas sues a citizen of Idaho for damages to property totaling \$8,000.
I. A ship's captain is charged with negligence in a shipwreck resulting in an oil spill off the coast of Alaska.
J. A citizen files for bankruptcy.

Reflection Questions

- How did you decide where to place each court case?
- What problems might arise from the dual nature of the court system?
- Why is the national judiciary essential to the checks and balances in our federal system?

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WRITE A CLASSIFIED AD FOR A JUSTICE

Have students study samples of newspaper job ads, especially the wording of the skills required from applicants. Then ask students to write their own ads for the position of Supreme Court justice. Although the Constitution lists no formal requirements, students should list the skills and experience they believe justices should have. The ads should also list pay and other benefits. Students should provide “applicants” with information on the judicial selection process and why the presidential nomination-Senate approval process is a form of checks and balances.

Answers

Checkpoint the Senate, especially influential senators from the nominee’s home State and members of the Senate Judiciary Committee; the President’s closest legal and political aides, especially the Attorney General; interest groups

✓ Checkpoint
Who helps the President in selecting federal judges? Explain.

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

First, in the Judiciary Act of 1789, and ever since, Congress has provided the same procedure for the selection of all federal judges.

Selection of Judges The Senate has a major part in the selection of every federal judge. In effect, the Constitution says that the President can name to the federal bench anyone whom the Senate will confirm. Recall the practice of senatorial courtesy. It gives great weight to the wishes of the senators from a State in which a federal judge is to serve. In short, that unwritten rule means that the President almost always selects someone the senators from that State recommend.

As you know, the Constitution sets out formal qualifications for office for the President and for senators and representatives. It sets no age, residency, or citizenship requirements for federal judges, however. Nor does the Constitution require that a judge have legal training. Tradition alone dictates that federal judges have an educational or professional background in the law.

The President’s closest legal and political aides, especially the Attorney General, take the lead in selecting federal judges. Influential senators—especially those from the nominee’s home State and members of the Judiciary Committee, the President’s allies and supporters in the legal profession, and various other important personalities in the President’s political party also play a major role in selecting judges. Over recent years, a number of interest groups have become quite active in the process.

Today, an increasing number of those persons who are appointed to the federal bench have had prior judicial experience. 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. Elective office (in particular, a seat in the U.S. Senate) was once a well-traveled path to the Supreme Court; now, most justices reach the High Court from the courts of appeals.

In 1967, Thurgood Marshall became the first African American to be named to the High Court, followed by Clarence Thomas in 1991. Similarly, only two women have been appointed: Sandra Day O’Connor in 1981, and Ruth Bader Ginsburg in 1993.

From George Washington’s day, Presidents have looked to their own political party to fill judgeships. Republican Presidents consistently choose Republicans; Democrats usually pick Democrats. Every President knows that judges may serve for decades. So chief executives regularly look for **jurists** who tend to agree with their own views.

The Impact of Judicial Philosophy

Another major impact on the judicial selection process is judicial philosophy—in particular, the concepts of judicial restraint and judicial activism. All federal judges make decisions in which they must interpret and apply provisions in the Constitution and acts of Congress. That is, they often decide questions of public policy—and, in doing so, they inevitably *shape* public policy.

The proponents of **judicial restraint** believe that judges should decide cases on the basis of (1) the original intent of the Framers or those who enacted the statute(s) involved in a case, and (2) **precedent**—a judicial decision that serves as a guide for settling later cases of a similar nature. They say that the courts should defer to policy judgments made in the legislative and executive branches of the government and, in so doing, honor the basic **premise** of self-government: the right of the majority to determine public policy. In short, they argue that elected legislators, not appointed judges, should make law.

Those who support **judicial activism** take a much broader view of judicial power. They argue that provisions in the Constitution and in statute law should be interpreted and applied in the light of ongoing changes in conditions and values—especially in cases involving civil rights and social welfare issues. They,

jurist
n. a judge

premise
n. basis for reason

Background

SWING VOTE When Ronald Reagan, a conservative President, appointed Sandra Day O’Connor to the Supreme Court in 1981, most observers expected her to act according to judicial restraint, the more conservative philosophy. Instead, she emerged as a moderate voice on a sharply divided Court. Often during her 24-year tenure, she served as the “swing vote”—casting the deciding vote in 5–4 decisions on many controversial issues. She used her strategic role as swing vote to moderate the extreme positions of other justices. For example, she helped to limit the right to abortion, yet she also blocked attempts by more conservative justices to overturn it. When Justice O’Connor announced her retirement in 2005, President George W. Bush nominated Samuel Alito, a conservative, to replace her.

too, insist on the fundamental importance of majority rule and the value of precedents, but they believe that the courts should not be overly **deferential** to existing legal principles or to the judgments of elected officials.

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 Behaviour. . . .” This means that the judges of the constitutional courts are appointed for life; they serve until they resign, retire, or die in office. The Framers provided for what amounts to life tenure for these judges quite purposefully, to ensure the independence of the federal judiciary.

The very next words of the Constitution are directed to that same purpose. Article III, Section 1 continues: “and [they] shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.”

Federal judges may be removed from office only through the impeachment process. In 180

years, only 13 have ever been impeached. Of that number, seven were convicted and removed by the Senate, including three in the recent past.⁵

Those judges who sit in the special courts are not appointed for life. They are named, instead, to terms of 8 to 15 years—and may be, but seldom are, reappointed. 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.

Congress sets the salaries of federal judges and has provided a generous retirement for

5 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). Four other federal judges were impeached by the House but acquitted by the Senate. Two district court judges, impeached by the House, resigned and so avoided a Senate trial.

Checkpoint
How do the terms of office differ for judges of the constitutional courts and the special courts?

deferential
adj. respectful

How a Judge Decides

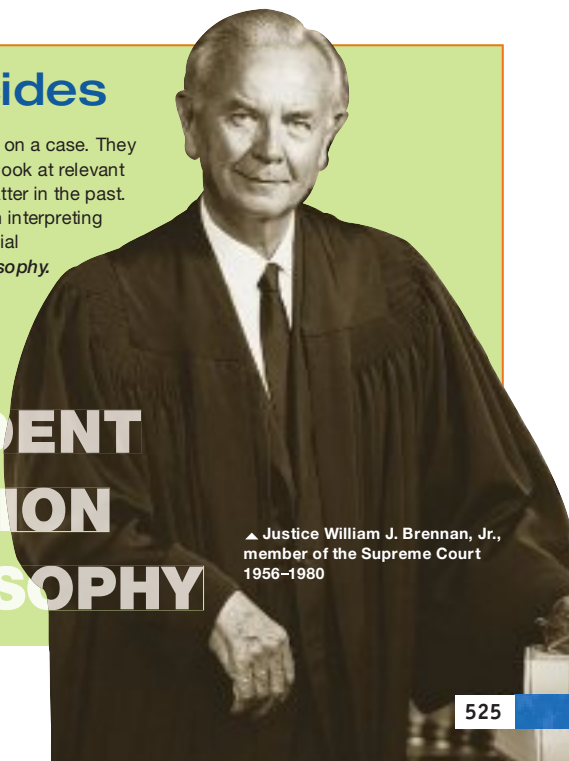
Judges weigh several factors when making a decision on a case. They must not only consider the facts of the case, but also look at relevant precedent to see how the courts have ruled on the matter in the past. They must abide by the text of the Constitution and, in interpreting this document and the law, think about their own judicial philosophy. *Over time, a judge may change his philosophy. What impact might this have?*

FACTS of the Case

Relevant **PRECEDENT**

Text of the **CONSTITUTION**

Judicial **PHILOSOPHY**



▲ Justice William J. Brennan, Jr., member of the Supreme Court 1956–1980

525

Political Cartoon Mini-Lesson

Transparency 18C features a political cartoon about filling a vacancy on the Supreme Court. Display the transparency as you discuss the selection of judges with the class. Ask: **What is the subject of this cartoon?** (*filling a vacancy on the Supreme Court*) **Whom does the person speaking represent?** **How do you know?** (*the President; because the President has the power to appoint someone to fill a vacancy on the Court*) **What is the cartoonist saying will happen?** (*The President will appoint a conservative judge from the “right” to fill the vacancy.*) **What is the impact of the President’s power to appoint judges?** (*The power to appoint judges enables the President to influence the philosophical direction of the Court, and thereby steer public policy toward the President’s views.*)

EXTEND THE LESSON

L1 L2 Differentiate Have students read the article “Chief Justice Urges Pay Raise for Judges” on the Chapter 18 Section 1 Extend Worksheet (Unit 5 All-in-One, p. 20). After answering the questions, have students debate a pay raise for federal judges, with half the class supporting and half the class opposing an increase.

Name _____	Class _____	Date _____
CHAPTER 18 Section 1	EXTEND WORKSHEET The National Judiciary	3, 4

Read the article below, and then answer the questions that follow.

Chief Justice Urges Pay Raise for Judges

Chief Justice John G. Roberts Jr. devoted his annual year-end report on the state of the nation’s courts to just one issue, albeit one he said has “now reached the level of a constitutional crisis and threatens to undermine the strength and independence of the federal judiciary.”

He continued: “I am talking about the failure to raise judicial pay.”

Roberts may have employed such dramatic language because he acknowledges that there have been frequent calls for raising the pay of federal judges, with very limited success. The chief justice points out that his predecessor, William H. Rehnquist, championed the cause for 20 years, and numerous commissions and reports advocating pay increases have failed to excite Congress and the citizenry.

... Congress has not acted on judicial pay for 2007, so for now salaries remain at their 2006 levels. That means Roberts will continue to be paid \$212,100 a year, with associate Supreme Court justices at \$203,000, appeals court judges at \$175,100 and federal district judges at \$165,200.

That’s far more than the average American worker makes, but Roberts argued that while worker wages have increased nearly 18 percent in real terms since 1969, federal judicial pay has declined nearly 24 percent. And he said that while federal judges in 1969 made more money than the deans at the nation’s top law schools, they now make only about half what deans and top law professors make.

... Supreme Court clerks are routinely given a signing bonus equivalent to a justice’s annual salary when they join one of Washington’s top law firms after a year at the court, and Roberts pointed out that beginning lawyers often make as much as the experienced federal judges before whom they practice.

Some law professors and other legal activists have said the threat to the judiciary by stagnant salaries is overblown, and that those who want to be judges aren’t drawn by compensation.

But Roberts and others—justice Antonin Scalia has also recently called for increases—say it is affecting the type of lawyer who wants to be a judge. More judges are coming from public-sector backgrounds and fewer from the practicing bar.

“The dramatic erosion of judicial compensation will inevitably result in a decline in the quality of persons willing to accept a lifetime appointment as a federal judge,” Roberts wrote, adding that the judiciary should not be made up of the independently wealthy or “people for whom the judicial salary represents a pay increase.”

The year-end statement from the chief justice is not exactly in the same category with the State of the Union address. It comes with a dense appendix of the court’s workload—the diminishing number of cases the high court itself accepts has been much commented on in legal circles—and with such arcane findings as “the national median time from filing of a civil case to its disposition was 8.3 months, which reflected a decline from the 9.5-month median period in 2005.”

SOURCE: The Washington Post, Jan. 1, 2007.

L1 L2 Differentiate Pair students who have written expression difficulties with study partners to complete the Chapter 18 Section 1 Extend Activity, “Your Role in the Legal System” (Unit 5 All-in-One, p. 22).

L4 Differentiate Have students reread this section’s Guiding Question and then the chapter’s Essential Question. Point out that the structure of the national judiciary could *not* function effectively without the thousands of court officers who perform administrative duties, which allows federal judges to preside over cases. Have students select one of the court officers discussed later in this section, or distribute slips of paper with each identifying one officer. Tell students to research their chosen or assigned officer, including required education, the duties and terms of the job, which federal court they work for (if specific), and the pay. Then have students state their findings and have the rest of the class guess which court officer is being described.

Answers

Checkpoint Judges of the constitutional courts are appointed for life terms, serving until they resign, retire, or die in office. Judges of the special courts are appointed for 15-year terms.

How a Judge Decides A judge who changes his or her philosophy may change or reshape the public policy of the current administration.

Assess and Remediate

L3 Have students draw a graphic organizer or other visual that shows the checks and balances the judicial branch has over the executive and legislative branches, and vice versa. Assess students' participation using the Rubric for Assessing a Graph, Chart, or Table (Unit 5 All-in-One, p. 240).

L3 Assign the Section 1 Assessment questions.

L3 Section Quiz A (Unit 5 All-in-One, p. 23)

L2 Section Quiz B (Unit 5 All-in-One, p. 24)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

REMIEDIATION

If Your Students Have Trouble With	Strategies For Remediation
The structure and function of the federal judiciary (Questions 1, 6)	Have students make a tree diagram showing the structure of the federal court system. Within their diagrams, students should include the specific wording of the Constitution that grants each type their powers.
The jurisdiction of the federal courts (Questions 2, 4)	Have each student create a quiz describing ten scenarios in which someone breaks a federal or State law. Have students complete each other's quizzes by naming each case's jurisdiction.
Judicial philosophy (Questions 3, 5)	Organize students into groups and have them make a list of qualifications the President might consider in selecting a justice for the Supreme Court. Have the groups rank their list of items in order from most to least important, and then defend their rankings to the class.

Answers

Checkpoint U.S. Attorneys are the government's prosecutors, bringing to trial persons charged with federal crimes. They also represent the United States in all civil actions brought by or against the Federal Government in their districts.

Assessment Answers

1. Structure: more than 100 courts nationwide; Supreme Court at top; inferior courts include constitutional courts and special courts.

Function: Supreme Court and other constitutional courts exercise broad "judicial Power of the United States"; special courts hear cases arising out of expressed powers given to Congress in Article I.

2. (a) original jurisdiction: held by court in which a case is first heard; **appellate jurisdiction:** held by the court that hears a case on appeal from lower court (b) both

3. (a) judicial decision that serves as a guide for justices to follow in similar cases **(b)** Judges look at precedents to see how courts have ruled in the past.

4. if the case involves an interpretation of the Constitution or federal statute or treaty, or relates to admiralty or maritime law; if one of the parties is: the United States or one of its officers or agencies; a foreign government or official; a State if it is suing another State, a citizen of another State, or a foreign government or subject; a citizen of one State suing a citizen of another

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, 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. A clerk, several deputy clerks, bailiffs, court reporters and stenographers, probation officers, and others provide support services.

The judges of each of the 94 district courts appoint one or more United States magistrates, of which there are now more than 400. 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. These judges handle bankruptcy cases under the direction of

the district court to which they are assigned.⁶ There are now some 300 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 they bring to trial those persons charged with federal crimes. They also represent the United States in all civil actions brought by or against the Federal 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.

⁶ 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

Essential Questions Journal To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

1. Guiding Question Use your completed graphic organizer to answer this question: What are the structure and function of the national judiciary?

Key Terms and Comprehension

- (a)** What is the difference between **original jurisdiction** and **appellate jurisdiction**? **(b)** What kind of jurisdiction does the Supreme Court have?
- (a)** What is a **precedent**? **(b)** Write a sentence using the word **precedent**

to explain why it is important in the judicial system.

- Under what circumstances do federal courts have **jurisdiction** in a case?

Critical Thinking

- Demonstrate Reasoned Judgment** What role should judicial philosophy play in the selection of judges?
- Predict Consequences** What do you think are the consequences of life tenure for federal judges?

Quick Write

Explanatory Essay: Choose a Topic Do preliminary research online or at the library to choose one of the following Supreme Court cases: *Marbury v. Madison*, *Brandenburg v. Ohio*, or *City of Boerne v. Flores*. Then write a paragraph to summarize the case you chose. Include details such as who, what, when, where, and why.

ISSUES OF OUR TIME

Judicial Restraint vs. Activism

▶▶ Track the Issue

The Court's power of judicial review has long been an important part of the governing process in this country. But from *Marbury* on, this question has been the subject of intense debate: What is the appropriate role for the Supreme Court? Throughout its history, it has exercised both judicial restraint and judicial activism.

1819

In *McCulloch v. Maryland*, the Court exercised judicial activism, expanding constitutional provisions without citing precedent.

1849

The Court's decision in *Luther v. Borden* is one of the earliest cases of judicial restraint.

1954

The decision in *Brown v. Board of Education* provides a major example of judicial activism.

1969–1986

The Burger Court exercised a combination of judicial restraint and activism.

2005

Newly appointed Chief Justice John Roberts promises judicial restraint.

Chief Justice John Roberts ▶

▶▶ Perspectives

There are two camps in the debate over judicial decision making. One side supports judicial restraint; its proponents believe that judges should consistently follow the letter of the law and apply precedent. The other supports judicial activism; its proponents think that judges should indeed consider precedent, but that they should also be willing to go further and play an active, creative role in the shaping of public policies.

"In our democratic system, responsibility for policy making properly rests with those branches that are responsible . . . to the people. It was . . . because the Framers intended the judiciary to be insulated from popular political pressures that the Constitution accords judges tenure during good behavior. . . . To the extent the term "judicial activism" is used to describe unjustified intrusions by the judiciary into the realm of policy making, the criticism is well-founded. . . . It is not part of the judicial function to make the law . . . or to execute the law."

—John Roberts at his Senate confirmation hearing

"We are under a Constitution, but the Constitution is what the judges say it is, and the judiciary is the safeguard of our liberty and of our property under the Constitution."

—Charles Evan Hughes, Chief Justice of the United States 1930–1941

▶▶ Connect to Your World

1. **Understand (a)** What reasons does Justice Roberts cite for supporting judicial restraint? **(b)** How does Justice Hughes support his argument for judicial activism?
2. **Synthesize Information** To which of these competing positions—judicial restraint or judicial activism—do you think a judge should subscribe?

GOVERNMENT ONLINE

In the News

To find out more about judicial decision making, visit PearsonSuccessNet.com

LESSON GOAL

- Students will contrast the "restraint" and "activism" roles of the Supreme Court.

Teach

DEFINE TERMS

Have students provide synonyms for *restraint* (limit, restrict, curb, self-control) and *activism* (to change, innovate, create, revise).

DISTINGUISH ACTIVISM AND RESTRAINT

Ask: **What types of Supreme Court decisions would show judicial restraint?** (*upholding a State law or a lower court's decision; following precedent; refusal to rule on a case, claiming it is the jurisdiction of the State or another branch of government*) **What decisions of the Court would show judicial activism?** (*changing a previous Supreme Court ruling; overturning a lower court's decision; halting or requiring legislative, executive, and/or State action*)

CLASSIFY COURT CASES

Have students classify the following cases as judicial restraint or judicial activism.

- The Court upholds laws requiring racially segregated facilities, *Plessy v. Ferguson*, 1896. [*restraint*]
- The Court declares that freedom of speech and press cannot be denied by either the National Government or State governments, *Gitlow v. New York*, 1925. [*activism*]

Assess and Remediate

Have students answer the Connect to Your World questions. For further clarification, discuss why the *McCulloch* and *Brown* cases are considered activism, and the *Luther* case (see background note) is considered restraint.

Answers

CONNECT TO YOUR WORLD

1. (a) Policy making rests with branches that are responsible to the people (legislative and executive). It is not part of the judicial function to make or execute the law. (b) Hughes states that judges say what the Constitution is.
2. A strong answer will provide supportive statements of an opinion either for or against restraint or activism.

GUIDING QUESTION

What are the structure and jurisdiction of the inferior courts?

The Inferior Courts	
Structure	Jurisdiction
<ul style="list-style-type: none">• District courts• Courts of appeals• Court of International Trade	<ul style="list-style-type: none">• Original jurisdiction• Appellate jurisdiction within circuit• Original jurisdiction on trade issues

Get Started

LESSON GOALS

Students will . . .

- identify the structure of the inferior constitutional courts by completing a chart highlighting the various courts and their jurisdictions.
- understand how inferior constitutional courts function by constructing paths of appeals for various case scenarios.

BEFORE CLASS

Assign the section, the graphic organizer in the text, and Reading Comprehension Worksheet (Unit 5 All-in-One, p. 25) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 26)

BELLRINGER

Write the following on the board, and have students answer the questions in their notebooks: **The DA obtained an indictment from the grand jury today in *Joe Smith v. United States*. What type of court is hearing this case? How do you know? Is this a criminal case or a civil case?**

SKILLS DEVELOPMENT

GIVE A MULTIMEDIA PRESENTATION

Before students turn their Core Worksheet cases into classroom skits, you may want to review tips on giving a multimedia presentation in the Skills Handbook, p. S21.

SECTION 2

The Inferior Courts



Guiding Question

What are the structure and jurisdiction of the inferior courts? Use a table like the one below to take notes on the structure and jurisdiction of the inferior courts.

The Inferior Courts	
Structure	Jurisdiction
<ul style="list-style-type: none">•••	<ul style="list-style-type: none">•••

Political Dictionary

- criminal case
- docket
- civil case
- record

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.

Image Above: An attorney for Napster, Inc., the online music firm, outside the 9th Circuit Court of Appeals

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 term or a musical term; it can also refer to setting up a tent, or to a high-pressure sales talk.

The word *inferior* also has various meanings. Here, it describes the lower federal courts, those courts created by an act of Congress, to function beneath the Supreme Court. The inferior courts handle nearly all of the cases tried in the federal courts.

The District Courts

The United States district courts are the federal trial courts. Their 667 judges handle more than 300,000 cases per 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 50 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 44 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. 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. One is the Foreign Intelligence Surveillance Court, created by Congress in 1978. It is composed of 11 federal district court judges, who are appointed to seven-year terms by the Chief Justice of the United States. The court, which

Focus on the Basics

FACTS: • The 94 U.S. district courts have original jurisdiction over most federal criminal and civil cases. • The 12 federal courts of appeals hear cases on appeal within their circuit. • The Court of Appeals for the Federal Circuit has nationwide appellate jurisdiction. • The Court of International Trade hears tariff and trade cases.

CONCEPTS: federalism, role of the judiciary

ENDURING UNDERSTANDINGS: • Civil and criminal laws are put in place to provide order, protect society, and settle conflicts. • Law officers have the duty to enforce the laws, and courts have the duty to interpret the law and decide punishment for those found guilty of breaking the laws. • The inferior constitutional courts form the core of the federal judicial system, hearing nearly all of the cases tried in federal courts.

meets in secret, has the power to issue secret search warrants—court orders that allow the FBI, the National Security Agency, and other federal law enforcement agencies to conduct covert surveillance of persons suspected of being spies or members of terrorist organizations.

The other is 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.

District Court Jurisdiction The district courts have original jurisdiction over more than 80 percent of the cases that are heard in the federal court system. The only federal cases that do not begin in the district courts are those few that fall within the original

jurisdiction of the Supreme Court and those cases heard by the Court of International Trade or by one of the special courts. Thus, the district courts are the main trial courts, the “courts of first instance,” in the federal judiciary.

District court judges hear a wide range of both criminal cases and civil cases. In the federal courts, a **criminal case** 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—say, a dispute over the terms of a contract or a suit in which the plaintiff seeks damages (money) for some harm done by the defendant.

The United States is always a party to a federal criminal case as the prosecutor. Most civil cases are disputes between private parties, but here, too, the United States may be a **litigant**, as either the plaintiff or the defendant.

Checkpoint
What is the principal role of the federal district courts?

litigant
n. party to a case, either plaintiff or defendant

Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

REVIEW BELLINGER ANSWERS

Discuss students' answers to the Bellringer: What type of court is hearing this case? (*a U.S. district court*) Is this a criminal case or a civil case? (*It is probably a criminal case, because the U.S. is always a party in federal criminal cases. However, the U.S. also may be a litigant in a civil case, so the case could be either.*)

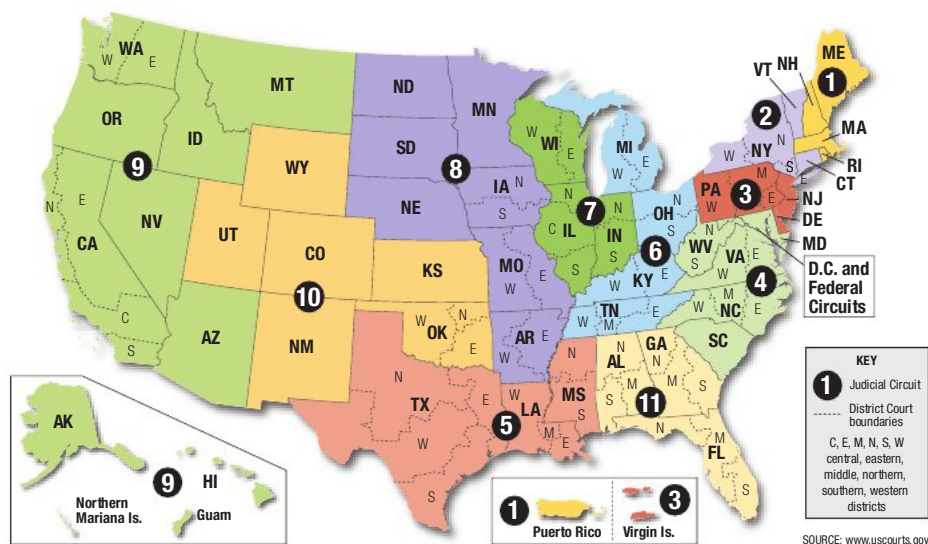
CHART INFERIOR CONSTITUTIONAL COURTS

Refer students back to the Section 1 diagram “Types of Federal Courts” or display Transparency 18B. Ask a volunteer to identify the inferior constitutional courts shown in the diagram. (*district courts, courts of appeals, Court of Appeals for the Federal Circuit, U.S. Court of International Trade*) Draw a chart on the board like the one below. Have students work in pairs to complete the columns. Then discuss the chart.

Federal Court Circuits and Districts

GOVERNMENT ONLINE
Audio Tour
Listen to a guided audio tour of the map at **PearsonSuccessNet.com**

Interpreting Maps Each State comprises at least one United States judicial district. The nation is divided into 13 judicial circuits, including the Court of Appeals for the District of Columbia and the Court of Appeals for the Federal Circuit, as shown on the map.
Which States are in the Fifth Circuit?



Chapter 18 • Section 2 529

Name of Court (and Number)	No. of Judges on Each	Type of Jurisdiction
District courts (94)	2–28	Federal trial courts; original jurisdiction over more than 80 percent of federal criminal and civil cases
Courts of Appeals (12)	6–28 (plus a district courts within their circuit; justice assigned to each circuit)	Appellate jurisdiction over the district courts within their circuit; also hear appeals from U.S. Tax Court, territorial courts, and federal regulatory agencies
Court of Appeals for the Federal Circuit	12	Nationwide appellate jurisdiction over Court of International Trade, Court of Federal Claims, Court of Appeals for Veterans Claims, and patent or copyright appeals from 94 district courts
U.S. Court of International Trade	9	Trial court; original jurisdiction of civil cases concerning customs and trade-related laws

ANALYZE CIRCUITS AND DISTRICTS MAP

Have students look at the map “Federal Court Circuits and Districts” in their text or on Transparency 18D. Ask them to use the Chapter 18 Section 2 Extend Activity “The Federal District Courts in Your State” (Unit 5 All-in-One, p. 28) to identify their circuit and district.

L3 Differentiate Ask students to research the names of their circuit and district judges, and to describe the cases they have ruled on recently.

Tell students to go to the Audio Tour for a guided audio tour of the Federal Court Circuits and Districts map.

Answers

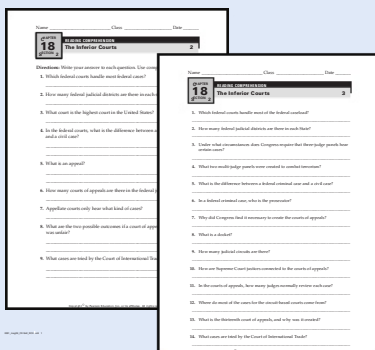
Checkpoint as federal trial courts

Interpreting Maps Texas, Louisiana, and Mississippi

Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 18, Section 2:

- L3** Reading Comprehension Worksheet (p. 25)
- L2** Reading Comprehension Worksheet (p. 26)
- L3** Core Worksheet (p. 27)
- L2** Extend Activity (p. 28)
- L3** Quiz A (p. 29)
- L2** Quiz B (p. 30)



Tell students to go to the Audio Tour for a guided audio tour of the appellate path.

TRACE THE APPELLATE PATH

Guide students through the appellate path. Display Transparency 18E, The Appellate Path in Federal Courts. Explain that students should focus only on the constitutional courts. Then present the cases below. Students should answer the questions and show where on the transparency each case would move in the appellate path.

CASE A: A citizen is accused of counterfeiting. Where does the case begin? (*district court*) What type of case is this? (*criminal case*) What is the first step in the case? (*indictment by a grand jury*) What is the next step? (*verdict by a petit jury*) Assuming the case is appealed, where would the case go next? (*court of appeals*)

CASE B: An American importer of fish claims that the U.S. Department of Commerce placed an unusually high tariff on fillets from Vietnam. Where does this case begin? (*U.S. Court of International Trade*) What type of case is this? (*civil case*) The case is lost by the American importer and then appealed. Where does the case go next? (*U.S. Court of Appeals for the Federal Circuit*)

CASE C: An Ohio company claims that a Florida company produced an identical product, and files for copyright infringement. Where does the case begin? (*district court*) What type of case is this? (*civil case*) The Ohio company loses the case and appeals. Where does the case go next? (*U.S. Court of Appeals for the Federal Circuit*)

DISTRIBUTE CORE WORKSHEET

Distribute the Chapter 18 Section 2 Core Worksheet (Unit 5 All-in-One, p. 27). Students should work in groups to create a fictional federal case and its path of appeal to the Supreme Court. Then ask students to read the description of their cases aloud. Have the class identify the types of courts that should hear the case in its original and appellate forms.

EXTEND THE LESSON

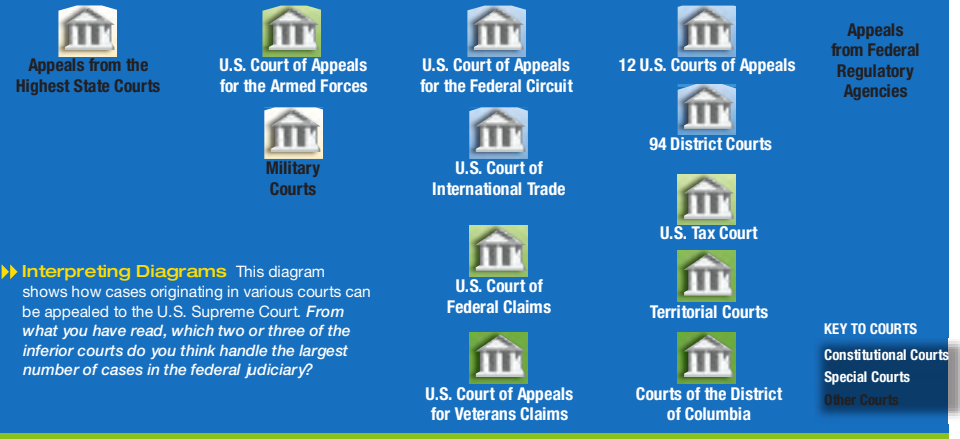
L3 Differentiate Have students turn their fictional Core Worksheet cases into two courtroom skits. In the trial portion of the case, students should create roles for the plaintiffs, defendants, witnesses, attorneys, and judges. In the appeals portion of the case, speaking roles should be created only for attorneys and judges.

L1 L2 Differentiate For these students, distribute the Extend Activity entitled “The Federal District Courts in Your State” (Unit 5 All-in-One, p. 28).

Answers

Interpreting Diagrams possible answer: district courts and courts of appeals

The Appellate Path in the Federal Courts



indict
 v. accuse, bring charges against

The district courts try criminal cases ranging from bank robbery, kidnapping, and mail fraud to counterfeiting, terrorism, and tax evasion. They hear civil cases arising under bankruptcy, postal, tax, public lands, civil rights, and other laws of the United States. These trial courts are the only federal courts that use grand juries to **indict** defendants, and petit juries to determine their guilt or innocence.

Most of the decisions made in the 94 federal district courts are final. That is, most federal cases not only begin in those courts, but they end there as well. Losing parties do not often appeal a decision to a higher court. However, a few cases are taken to the court of appeals in that judicial circuit or, in a few instances, directly to the Supreme Court.

⁷ These tribunals were originally called the circuit courts of appeals. Before 1891, each Supreme Court justice “rode circuit,” hearing appeals from the district courts within that geographic area. Congress renamed these courts in 1948, but they still are often called the “circuit courts.”

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 decisions of the district courts. Those appeals had become so numerous that the High Court was more than three years behind its **docket**—its list of cases to be heard.

There are now 13 courts of appeals in the federal judiciary.⁷ As the map on page 529 indicates, the country is divided into 12 judicial circuits, including the District of Columbia. There is one court of appeals for each of those circuits, and they hear cases on appeal from the various district courts within their circuit. The Court of Appeals for the Federal Circuit is the thirteenth of these appellate tribunals. It sits in the District of Columbia, but its jurisdiction is nationwide and it is mostly concerned with appeals of decisions in patent, copyright, and international trade cases.

Teacher-to-Teacher Network

ALTERNATE LESSON PLAN Hollywood has long been fascinated with courtroom drama. Have students watch a film you have pre-screened, such as *To Kill a Mockingbird*, *Runaway Jury*, or *Twelve Angry Men*. Lead a discussion about whether students think the courtroom scenes they viewed appeared realistic. Did the movie seem true to what students have learned about the court system?

To see this lesson plan, go to



Appellate Court Judges Each of these courts is composed of from 6 to 28 judges (179 in all). In addition, a justice of the Supreme Court is assigned to each. For example, the United States Court of Appeals for the Eleventh Circuit covers Alabama, Florida, and Georgia. The court is composed of 12 circuit judges and Associate Justice Clarence Thomas of the Supreme Court. The judges hold their sessions in a number of major cities within the circuit.

Each court of appeals usually sits in three-judge panels. Occasionally, however, and especially for an important case, a court will sit *en banc*—that is, with all of the judges in that circuit participating.

Appellate Court Jurisdiction The 13 courts of appeals have only appellate jurisdiction. For the 12 circuit-based courts, most cases come to them from the district courts within their circuit, but some are appealed from the Tax Court and some from the territorial courts. Recall, they are also empowered to hear appeals from the decisions of several federal regulatory agencies—for example, the Federal Trade Commission and the National Labor Relations Board.

Unlike the 12 circuit-based courts, the jurisdiction of the thirteenth, the Court of Appeals for the Federal Circuit, is nationwide in scope. Congress created it in 1982, with the special purpose of centralizing and speeding up the handling of appeals in certain types of federal civil cases.

The Court of Appeals for the Federal Circuit hears appeals from the decisions rendered in several different courts. Many of

its cases come from the other constitutional court, the Court of International Trade, and still others come from two of the special courts: the Court of Federal Claims and the Court of Appeals for Veterans Claims. It also hears the appeals taken in any patent, copyright, or trademark case decided in any of the 94 federal district courts.

Again, these 13 tribunals are appellate courts. They do not conduct trials or accept new evidence in the cases they hear. Instead, they review the **record**, the transcript of proceedings made in the trial court, and they ponder the oral and written arguments (the briefs) submitted by attorneys representing parties to a case. The fact that less than one percent of their decisions are appealed to the Supreme Court underscores the importance of the place these tribunals occupy.

Court of International Trade

Congress has established one other Article III court, the Court of International Trade. Often called the Trade Court, this body was originally created in 1890, and was restructured as a constitutional court in 1980.

The Trade Court now has nine judges, including its chief judge, appointed by the President and the Senate. Like the 94 district courts, it is a federal trial court, a court of first instance. It tries all civil (but not criminal) cases that arise out of the nation's customs and other trade-related laws. Its judges sit in panels of three and often hold jury trials in such major ports as New Orleans, San Francisco, Boston, and New York.

Checkpoint
Which inferior court hears appeals related to patents and copyrights?

Assess and Remediate

L2 Have students re-create from memory the diagram “The Appellate Path in the Federal Courts,” but with just the constitutional courts. Underneath each court, have students list examples of the types of cases heard in that court.

L3 Collect the Core Worksheets and assess the students’ class participation using the Rubric for Assessing Performance of an Entire Group (Unit 5 All-in-One, p. 241).

L3 Assign the Section 2 Assessment questions.

L3 Section Quiz A (Unit 5 All-in-One, p. 29)

L2 Section Quiz B (Unit 5 All-in-One, p. 30)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

REMIEDIATION

If Your Students Have Trouble With	Strategies For Remediation
The structure and functions of district courts (Questions 1, 2)	Have students draw a web diagram with “District Courts” in the center oval. In at least five outer ovals, students should list important characteristics about the structure and functions of district courts.
The structure and jurisdiction of appeals courts (Questions 3, 4, 5)	Have students make an appellate flowchart from the court of first instance to the Supreme Court for these scenarios: (1) a patent dispute; (2) an appeal from the Nuclear Regulatory Commission; (3) a federal civil case in New Mexico; (4) a federal criminal case tried in Guam; and (5) a U.S. citizen sues the federal government after her exporters’ license is revoked.

SECTION 2 ASSESSMENT

1. Guiding Question Use your completed graphic organizer to answer this question: What are the structure and jurisdiction of the inferior courts?

Key Terms and Comprehension

- What is the difference between a **criminal case** and a **civil case**?
- Why were the courts of appeals created?

Critical Thinking

- 4. Draw Conclusions** Why do you think so many of the courts in the federal judiciary are appellate courts?
- 5. Predict Consequences** What do you think might be the consequences of Congress creating entirely new types of appellate courts as needed?

Essential Questions Journal

To continue to build a response to the chapter Essential Question, go to your **Essential Questions Journal**.

Quick Write

Explanatory Essay: Research the Topic Research to gather more details on the Supreme Court case you chose in Section 1. Focus especially on the path the case took to reach the Supreme Court.

Assessment Answers

1. 94 district courts with original jurisdiction in criminal and civil cases; 12 judicial circuits have their own courts of appeals with appellate jurisdiction; Court of Appeals for the Federal Circuit has nationwide appellate jurisdiction; Court of International Trade has original jurisdiction on all civil cases arising from the nation’s customs and other trade-related issues

2. criminal case: one in which a person is tried for committing an illegal action;

civil case: one that involves a noncriminal matter, such as a dispute between parties

3. to relieve the overloaded Supreme Court docket of appeals from district courts

4. The U.S. judicial process includes many opportunities for decisions to be reviewed.

5. New appellate courts will ease the burden on existing appellate courts and speed up the judicial process. They can be specialized to handle specific kinds of cases, such as those involving just technology, immigration, or terrorism.

Answers

Checkpoint Court of Appeals for the Federal Circuit

QUICK WRITE A strong assignment will show evidence of additional research and details, including the constitutional grounds on which each side based its arguments, specific arguments each side presented, and the verdict/opinions of the courts.

GUIDING QUESTION

What is the Supreme Court's jurisdiction, and how does the Court operate?

- I. The Supreme Court
 - A. Judicial review
 1. Established in *Marbury v. Madison*, 1803
 2. Supreme Court may declare laws unconstitutional
 - B. Jurisdiction
 1. original on cases involving States or public ministers
 2. appellate most common
 - C. How cases reach Court
 1. writ of certiorari
 2. certificate
 - D. How Court operates
 1. reviews briefs
 2. hears oral arguments
 3. meets in conference
 4. announces decision, with one or more written opinions

Get Started

LESSON GOALS

Students will . . .

- learn about the scope of the Supreme Court's jurisdiction by analyzing a political cartoon showing the power of judicial review, and by identifying the Court's original and appellate jurisdiction.
- identify how the Supreme Court operates by sequencing the appeals process, reading a transcript of a real case, and formulating opinions on controversial cases.

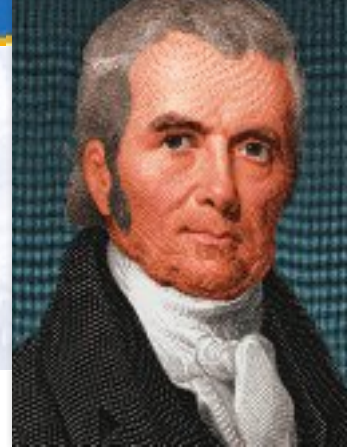
SKILLS DEVELOPMENT

DECISION MAKING

To practice decision making in this section, use the Chapter 18 Skills Worksheet (Unit 5 All-in-One, p. 41). You may teach the skills explicitly either before or after students work on Core Worksheet B. For L2 and L1 students, assign the adapted Skill Activity (Unit 5 All-in-One, p. 42).

SECTION 3

The Supreme Court



Guiding Question

What is the Supreme Court's jurisdiction, and how does the Court operate? Use an outline like the one below to take notes on the Supreme Court.

- I. The Supreme Court
 - A. Judicial review
 1. Established in *Marbury v. Madison*, 1803
 2. _____
 - B. _____
 1. _____
 2. _____

Political Dictionary

- writ of certiorari
- certificate
- brief
- majority opinion
- concurring opinion
- dissenting opinion

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.

Image Above: John Marshall, Chief Justice of the United States, 1801–1835

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 under the law. 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,⁸ and eight associate justices.⁹

The Framers quite purposely placed the Court on an equal plane with the President and Congress. As the highest court in the land, it stands as the court of last resort in all questions of federal law. That is, the Supreme Court of the United States 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. Nevertheless, there is little doubt that the Framers intended that the federal courts—and, in particular, the Supreme Court—should have this power.¹⁰

⁸ Article I, Section 3, Clause 6.

⁹ 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. The Court 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 increased to its present size of nine in 1869.

¹⁰ See Article III, Section 2, setting out the Court's jurisdiction, and Article VI, Section 2, the Supremacy Clause.

Focus on the Basics

FACTS: • The Court first asserted its power of judicial review—the power to decide the constitutionality of an act of government—in *Marbury v. Madison*. • The Supreme Court is the only court created by the Constitution. • The Supreme Court has both original and appellate jurisdiction, but usually hears cases on appeal. • The Supreme Court studies written briefs; hears oral arguments; meets in conference to discuss the cases; and renders majority, concurring, and dissenting opinions.

CONCEPTS: federalism, judicial review, checks and balances

ENDURING UNDERSTANDINGS: • The Supreme Court is the final authority on questions arising under the Constitution, an act of Congress, or a treaty of the U.S. • The power of judicial review established in *Marbury v. Madison* laid the foundation for the judicial branch's key role in government.

Marbury v. Madison The Court first asserted its power of judicial review in *Marbury v. Madison* in 1803.¹¹ (See the Landmark Decisions of the Supreme Court feature, Chapter 3.) Recall that the case arose in the aftermath of the stormy elections of 1800. Thomas Jefferson 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, and 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 promptly confirmed his appointment, and late on the night of March 3, 1801, President Adams signed the commissions of office for Marbury and a number of other new judges. The next day, Jefferson became President and discovered that

Marbury's commission and several others had not been delivered.

Angered by the Federalists' attempted court-packing scheme, President Jefferson instructed James Madison, the new secretary of state, not to deliver those commissions. William Marbury then went to the Supreme Court, seeking a writ of mandamus to force delivery.¹² Marbury based his suit on 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).

In a unanimous opinion written by Chief Justice John Marshall, the Court refused Marbury's request. It did so because it found the section of the Judiciary Act on which Marbury had based his case to be in conflict with Article III in the Constitution and, therefore, void.

The Effects of Marbury With the Court's decision, Chief Justice Marshall claimed for the Supreme Court the right to declare acts

Checkpoint
What is the significance of the case *Marbury v. Madison*?

aftermath
n. result or consequence

¹¹ 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. It found that the tax was not a direct tax and so was not one that had to be apportioned among the States in accord with Article I, Section 2, Clause 3 of the Constitution.

¹² A writ of mandamus is a court order compelling an officer of government to perform an act that the officer has a clear legal duty to perform.

Packing the Court

The Judiciary Act of 1789 created a Supreme Court of six justices, including the Chief Justice. The Court's size has fluctuated over time, reaching its present size of nine in 1869. In 1937, President Franklin D. Roosevelt asked Congress to increase the size of the Court, proposing that one additional justice be added for each sitting justice over age 70, to a maximum of 15 members. FDR claimed that his plan would make the Court a more efficient body. In reality, however, the proposal—which became known as “the Court-packing scheme”—was born out of the fact that the then-current Court had found several key pieces of New Deal legislation to be unconstitutional. Despite FDR's popularity, his plan was widely opposed, and it was roundly defeated in Congress, thereby protecting the separation of powers. **Why must a President be closely interested in the composition of the Supreme Court?**

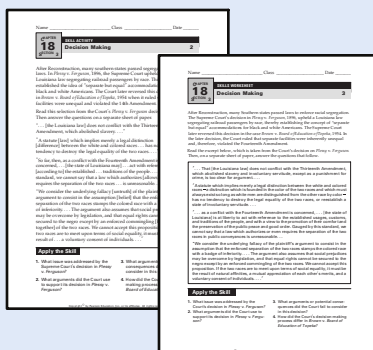


Chapter 18 • Section 3 533

Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 18, Section 3:

- L3** Reading Comprehension Worksheet (p. 31)
- L2** Reading Comprehension Worksheet (p. 33)
- L3** Core Worksheet A (p. 35)
- L3** Core Worksheet B (p. 40)
- L3** Skills Worksheet (p. 41)
- L2** Skill Activity (p. 42)
- L3** Quiz A (p. 43)
- L2** Quiz B (p. 44)



BEFORE CLASS

Assign the section, the graphic organizer in the text, and Reading Comprehension Worksheet (Unit 5 All-in-One, p. 31) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 33)

BELLRINGER

Check students' prior knowledge of the Supreme Court by writing these questions on the board: **(1) How many justices are on the Supreme Court? (2) How is the number of justices determined? (3) Does the Court have original or appellate jurisdiction or both? (4) Must the Court decide cases by a unanimous vote? Answer in your notebook.**

Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

REVIEW BELLRINGER ANSWERS

Discuss students' Bellringer answers. (1. nine 2. The Constitution established the position of Chief Justice; Congress sets the number of associate justices. 3. both 4. no, just a majority vote)

ANALYZE MARBURY v. MADISON

Have students reread the Chapter 3 discussion of judicial review. Review *Marbury v. Madison*. Have students create a storyboard of major events leading to the Court's exercise of this power.

ANALYZE JUDICIAL REVIEW IN A CARTOON

Display Transparency 18F. Ask: **What symbols in the cartoon can you identify, and what are their meanings?** (Symbols: The miner is the Supreme Court; the material in the pan is New Deal legislation; the pan is the Court's power of judicial review.) **What is the cartoonist saying about the power of judicial review?** (The Supreme Court is using judicial review to “sift out” the unconstitutional “impurities” in New Deal legislation, retaining only the constitutional parts—the “gold.”) Discuss with students the historical background of President Roosevelt's attempts to fix the problems of the Great Depression with his New Deal legislation. Many of his programs were later found by the Supreme Court to overstep his legal authority as chief executive. Refer students to the “Packing the Court” feature on this page.

Answers

Checkpoint The Court is thought to have first asserted its power of judicial review.

Packing the Court By appointing more like-minded justices, the President could steer the Court to support the administration's programs.

✓ Checkpoint
In which two types of cases does the Supreme Court have original jurisdiction?

L4 Differentiate Have students draw and analyze political cartoons illustrating the power of the Supreme Court to declare acts of Congress or the President unconstitutional through judicial review. Have the class analyze the cartoons.

IDENTIFY SUPREME COURT JURISDICTION

Have students draw a pyramid. In the bottom part, they should list the inferior constitutional courts and write the subject matter and parties involved in cases that fall within the exclusive jurisdiction of these courts. Refer students to Section 1 for this information. (*Subject matter: if the case involves an interpretation of the Constitution or federal statute or treaty, or relates to admiralty or maritime law; Parties: the U.S. or one of its officers or agencies; a foreign government or official; a State if it is suing another State, a citizen of another State, or a foreign government or subject; a citizen of one State suing a citizen of another State; a U.S. citizen suing a foreign government or subject; citizens of the same State if both claim land under grants from different States*)

In the top part of the pyramid, have students write the two classes of cases heard by the Supreme Court in its original and exclusive jurisdiction. (*all controversies involving two or more States, and all cases brought against ambassadors or other public ministers*) Ask: **What type of jurisdiction does the Supreme Court utilize the most, by far? (appellate)** **About how many cases does the Court hear each year? (a few hundred)**

L3 Differentiate State the Essential Question of this chapter. Ask students to write a paragraph answering this question after viewing the pyramid.

Government
online

All print resources are available on the Teacher's Resource Library CD-ROM and online at PearsonSuccessNet.com.

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 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 decisions. 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.

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 is precisely what the Supreme 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 Supreme 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, no more than a case or two each term.

How Cases Reach the Court

More than 8,000 cases are now appealed to the Supreme Court each term. 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.

In short, the High Court is in the somewhat enviable position of being able to set its own agenda. It decides what it wants to decide. 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 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 per term.

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 to a case can petition the Court to issue a writ. But, again, “cert” is granted in only a very 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 a denial means is that, for whatever reason, four or more justices could not agree that the Supreme Court should accept that particular 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.

implement
v. to carry out, put into effect

Myths and Misperceptions

JUDICIAL REVIEW Contrary to popular belief, judicial review involves more than simply determining whether a law “matches” the Constitution. Supreme Court justices are often unsure of what is and is not constitutional. According to Justice Charles Evans Hughes, “The history of scholarship is a record of disagreements. And when we deal with questions relating to the principles of law and their applications, we do not suddenly rise into the stratosphere of icy certainty.” Justices must interpret the Constitution as it applies to each case. Sometimes interpretations change, and the Court overturns a ruling of an earlier Court. For example, in *Plessy v. Ferguson*, 1896, the Court upheld racial segregation. A later Court reversed this decision in *Brown v. Board of Education of Topeka*, 1954.

Answers

Checkpoint cases in which a State is a party; and those affecting ambassadors, other public ministers, and consuls

Most cases that reach the Court do so from the highest State courts and the federal courts of appeals. A very few do come from the federal district courts and an even smaller number from the Court of Appeals for the Armed Forces.

How the Court Operates

The Supreme 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 2009 term runs from October 5, 2009, into the early summer of 2010.

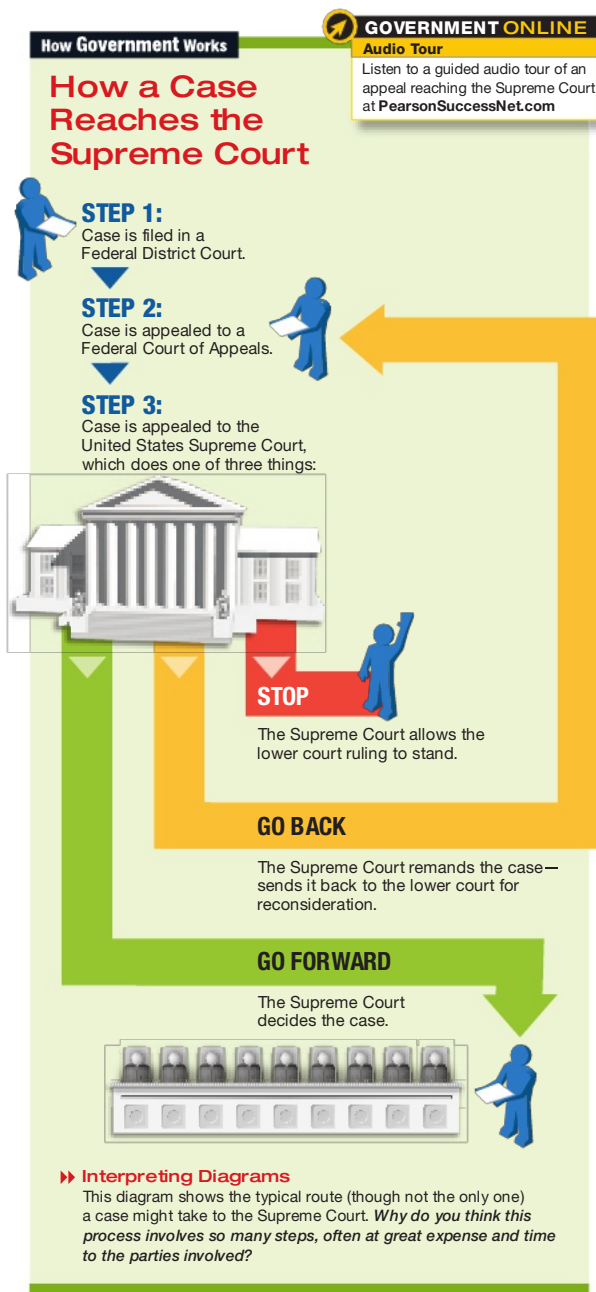
Oral Arguments Once the Supreme Court accepts a case, it sets a date on which that matter will be heard. As a rule, the justices consider cases in two-week cycles from October to early May. They hear oral arguments in several cases for two weeks; then recess for two weeks to consider those cases and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

On those days on which the Court hears arguments, it convenes at 10:00 A.M. on Mondays, Tuesdays, Wednesdays, and sometimes Thursdays. At those public sessions, the lawyers, representing the parties of those cases the Court has accepted, make their oral arguments. Their presentations are almost always limited to 30 minutes.

The justices usually listen to an attorney's arguments and sometimes interrupt them with pointed questions. After 25 minutes, a white light flashes at the lectern from which an attorney addresses the Court. Five minutes later, a red light signals the end of the presentation and it must stop, even if the lawyer is in mid-sentence.

Briefs Each party files detailed written statements—**briefs**—with the Court before they present their oral arguments. These detailed statements spell out the party's legal position and are built largely on relevant facts and the citation of precedents. Briefs often 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



Chapter 18 • Section 3 535

Tell students to go to the Audio Tour for a guided audio tour of an appeal reaching the Supreme Court.

STUDY THE COURT IN ACTION

Ask students to read the Chapter 18 Section 3 Core Worksheet A (Unit 5 All-in-One, p. 35). Students will read excerpts of the oral arguments in the case *Ward v. Rock Against Racism*, 1989. The case deals with the issue of time, place, and manner of protected speech. (Does New York City have the power to control the mix and volume of a rock concert?) Have students read the excerpts aloud, taking turns playing the parts of the justices and attorneys.

Note that there is audio on the Internet of the actual case being argued in the Supreme Court. You may locate the Web site, which has the audible and complete written transcript of the case. Students can hear the attorneys argue their cases and the justices interrupt them with questions and comments. You can also direct students to another Web site for the full text of the opinion of the Court, including concurring and dissenting opinions.

L2 Differentiate If students listen to the audio only, ask them if the Court proceedings surprised them in any way. Which questions by the justices do students think were the most important in defining the heart of the issue? How would students have ruled on the case if they had been on the Court?

Name _____ Class _____ Date _____

CHAPTER 18 **SECTION 3** **CORE WORKSHEET A** **The Supreme Court** **3**

The excerpts below are adapted from the oral arguments in the Supreme Court case *Ward v. Rock Against Racism* (RAR), 1989. Loud concerts in New York City's Central Park resulted in resident complaints. The city passed an ordinance requiring bands to use the city's technician (miser) and sound system to control the noise level. RAR claimed that the city, by controlling the mix, interfered with its 1st Amendment rights of expression. Read the excerpts, noting how the justices interrupt the attorneys with pointed questions and comments. Then answer the questions that follow.

Participants:

- Justices of the Supreme Court*
- Leonard J. Koerner, Esq.; on behalf of the Petitioners, Benjamin R. Ward, et al.
- William M. Kanner, Esq.; on behalf of the Respondent, Rock Against Racism

CHIEF JUSTICE REHNQUIST (R): We'll hear argument next in No. 88-226, *Benjamin R. Ward v. Rock Against Racism*. Mr. Koerner?

KOERNER: Mr. Chief Justice, and may it please the Court: Rock Against Racism conducted concerts in the bandshell. . . . The police attempted to lower the sound and the sound was lowered, and then it went back up. This was the pattern each year. **JUSTICE 1**: Is it your position that the quality of the sound is the same whether or not the technician is the city technician or the Rock technician?

KOERNER: Precisely. Your Honor, indeed, that goes to the heart of the issue. The testimony at trial was precisely that. The city-hired sound consultant, Gary Floyd . . . pointed out that when you reflect the mix, you do it based on your technical knowledge and the knowledge that you obtain by talking to the performers, that this happens all the time.

JUSTICE 2: So, the sound technician is not as important as . . . a conductor of a symphony?

KOERNER: That is correct. The sound technician is merely a mechanic, and he can reflect, as the testimony shows, within five minutes precisely what the performer wants.

JUSTICE 2: I might have had some trouble with that proposition if it just depended on my own knowledge, but the record seems to bear you out.

KOERNER: Not only does the testimony confirm that, but the district court on two occasions reviewed that testimony. The first time it specifically noted that the technician defers to the sponsor as to the mix.

JUSTICE 3: Well . . . if the city is going to reflect the mix a performer wants, why does the city want control of the mix?

KOERNER: Because it's the only way to also control the sound— . . .

JUSTICE 3: Well, how does . . . the city control the sound? It controls the mix and the sound.

KOERNER: And the . . . volume levels are right on the mixing board.

* Justices' comments are numbered for the purposes of sharing the dialogue in class. Source: *Opies U.S. Supreme Court Media*, www.opies.org/cases/180-189/1801180_30_250government/

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Answers

Interpreting Diagrams Because the Supreme Court has time to hear only a limited number of cases, those cases must be significant. Inferior courts and the Supreme Court discourage frivolous cases from reaching the Court through this lengthy and expensive process.

How Government Works

DIAGRAM THE APPEALS PROCESS Have students analyze the *How Government Works* diagram, “How a Case Reaches the Supreme Court,” on this page or on Transparency 18G. Working in groups, have students create a flowchart showing the path taken by a specific case from a federal district court to the Supreme Court. They should include the date and place where the case originated, the decision made by each court, how the case reached the Supreme Court, and the final decision made by the Court in the case. Suggest these cases to diagram (they are discussed in Chapter 19): *Engel v. Vitale*, *Tinker v. Des Moines School District*, *Gregory v. Chicago*, *Hazelwood School District v. Kuhlmeier*, and *Wisconsin v. Yoder*.

Tell students to go to the Online Update for additional information on the Court.

DISTRIBUTE CORE WORKSHEET B

Ask students to work in odd-numbered groups to complete the Chapter 18 Section 3 Core Worksheet B (Unit 5 All-in-One, p. 40). They will formulate opinions on controversial issues before the Supreme Court. Each group must come to a majority opinion. Tabulate the statements and opinions.

L1 L2 Differentiate Have students work individually and select one issue on Core Worksheet B that interests them. Students should analyze and make notes about their opinions. Then discuss the issues as a class.

L3 L4 Differentiate Have student pairs take opposing sides on one issue on Core Worksheet B. Students should research the issue, and debate it in class. Then have the class discuss how the evidence influenced their opinion.

Name _____ Class _____ Date _____

CHAPTER 18
SECTION 3
CORE WORKSHEET B
The Supreme Court
3

The controversial statements below are cases that have been heard in the Supreme Court. In groups, discuss the statements. Be sure that you are considerate of other views and that you cite reasons for your opinions. After discussion, vote on a majority opinion of the group. Then answer the Reflection Questions that follow.

Statement A: A U.S. citizen should be able to own a gun with a permit.

Reasons for or against: _____

Majority opinion of the group: _____

Statement B: The death penalty is a fair punishment for someone who has killed another person.

Reasons for or against: _____

Majority opinion of the group: _____

Statement C: It is acceptable for a minister to say a prayer at the beginning of a graduation commencement.

Reasons for or against: _____

Majority opinion of the group: _____

Statement D: Newspaper reporters should not have to reveal the names of their sources under any circumstances.

Reasons for or against: _____

Majority opinion of the group: _____

Statement E: The government has the right to wiretap a phone for national security.

Reasons for or against: _____

Majority opinion of the group: _____

Reflection Questions

1. Which statement did your group find the most controversial? Why?

2. With which statements did you have a dissenting opinion from the group?

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L4 Differentiate Have interested students identify the actual case described by each statement.

EXTEND THE LESSON

L3 Differentiate Discuss the role of gender in the Supreme Court. Ask students to write an editorial describing how an increase in the appointment of women might or might not change the Court.

L4 Differentiate Display and discuss Transparencies 18H and 18I. Ask students to research the justices' nomination process and write a newspaper article on the confirmation of John Roberts or Samuel Alito.

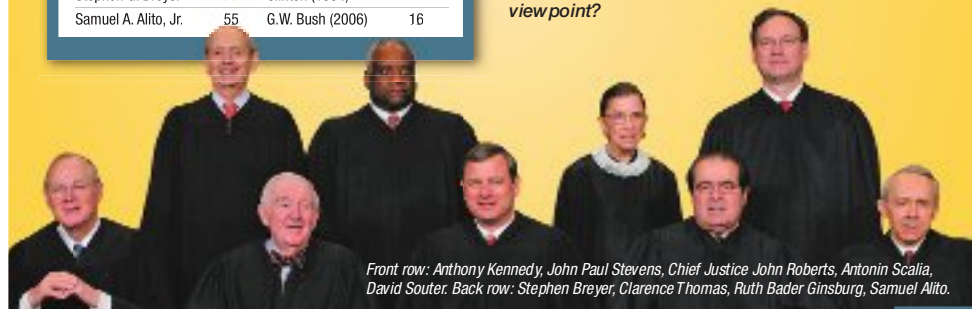
Answers

Who Is on the Court Today? Laws and public policy may need to be changed. State budgets may need to be altered because of changes in law.

Who Is On the Court Today?

Justice	Age When Appointed	Appointed by (Year)	Previous Years as a Judge
Chief Justice John G. Roberts, Jr.	50	G.W. Bush (2005)	2
John Paul Stevens	55	Ford (1975)	5
Antonin Scalia	50	Reagan (1986)	4
Anthony M. Kennedy	51	Reagan (1988)	13
David H. Souter	51	G.H.W. Bush (1990)	13
Clarence Thomas	43	G.H.W. Bush (1991)	2
Ruth Bader Ginsburg	60	Clinton (1993)	13
Stephen G. Breyer	55	Clinton (1994)	14
Samuel A. Alito, Jr.	55	G.W. Bush (2006)	16

A President seeks to appoint justices who share his or her political stance, but justices' views may change over time in unpredictable ways. Today's Supreme Court has a conservative majority and is often divided in its decisions, likely due to the controversial nature of the cases that it hears. The Court has recently made 5–4 decisions on topics such as protection for wetlands and capital punishment for juvenile offenders. *What might be the impact on society when a justice changes his or her viewpoint?*



Front row: Anthony Kennedy, John Paul Stevens, Chief Justice John Roberts, Antonin Scalia, David Souter. Back row: Stephen Breyer, Clarence Thomas, Ruth Bader Ginsburg, Samuel Alito.

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 trial lawyer. He—and, certainly, one day she—represents the United States in all cases to which it is a party in the Supreme Court and may appear and argue for the government in any federal or State court.¹³

The solicitor general also has another extraordinary responsibility. He 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.

¹³ The Attorney General may argue the government's position before the Supreme Court but rarely does so.

The Court in Conference On most Fridays through a term, the justices meet in conference. There, in closest secrecy, they consider the cases in which they have heard oral arguments; and there, too, they decide which new cases they will accept for decision.

Only the Chief Justice, who presides, and the eight other members of the Court are present at the conference. The Chief Justice leads the discussion of each case to be considered—stating the facts, summarizing the questions of law involved, and usually indicating how he thinks the Court should dispose of that case. Then each of the associate justices, in order of seniority, present their views and conclusions. A majority must decide which party wins or loses a case and whether a lower court's decision in that matter is to be affirmed or reversed.

About a third of the Court's decisions are unanimous, but most find the Court divided. The High Court is sometimes criticized for its split decisions. However, most of the cases

Myths and Misperceptions

RIISING TO THE TOP In the federal inferior courts, a judge rises to the position of chief judge based on seniority. For example, when the chief judge of a federal circuit court steps down, the position goes to the judge who has served on the court for the longest time, is 64 years old or younger, and has not previously served as chief judge. Contrary to popular belief, the top judge on the highest court in the land—the Chief Justice of the U.S. Supreme Court—does not necessarily rise to the position through long years of service. The President may elevate any associate justice to Chief Justice, or appoint someone directly to the position from outside the Court. Chief Justice John Roberts had no experience on the U.S. Supreme Court before President George W. Bush appointed him to the top position.

it hears pose difficult and complicated questions, and many present questions on which lower courts have disagreed. In short, most of the Court's cases excite controversy; the easy cases seldom get that far.

The Court's Opinions Once a case has been considered and decided in conference, the Court announces its decision in the matter and, with it, issues one or more written opinions. The decision indicates which party has won the dispute and by what margin among the justices. Where the decision is unanimous, the Chief Justice most often writes the Court's opinion. If there has been a split decision, the Chief Justice may write the majority opinion, or he may assign that task to another justice in the majority. When the Chief Justice is in the minority, the senior justice in the majority makes that assignment.

The **majority opinion**, officially called "the Opinion of the Court," sets out the facts in a case, identifies the issues it presents, and details the reasons that **underpin** the majority's decision.¹⁴

The Court's opinions are exceedingly valuable. Its majority opinions stand as precedents. The lower courts, both federal and state, are expected to follow precedent—that is, decide cases of like nature in a manner consistent with previous rulings.¹⁵

One or more of the justices on the majority side may write a **concurring opinion**, usually to make some point not made or not emphasized in the majority opinion. In effect, a justice who writes a concurring opinion agrees with (concur in) the majority decision as to the winner of a case but offers different reasons for reaching that conclusion.

One or more **dissenting opinions** may be written by those justices who do not agree with the Court's majority decision. Those dissents do not become precedent. They are, instead, expressions of opposition to the majority's views in a case. 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 High Court does reverse itself. The minority opinion of today could become the Court's majority position on some distant tomorrow.

¹⁴ Most majority opinions, and many concurring and dissenting opinions, run to dozens of pages. Some Supreme Court decisions are issued with very brief, unsigned opinions. These *per curiam* (for the court) opinions seldom run more than a paragraph or two and usually dispose of relatively uncomplicated cases. All of the High Court's opinions in every case are published online and in the *United States Reports*, the official printed record of its decisions.

¹⁵ The doctrine of precedent is often identified as *stare decisis*—Latin for "let the decision stand," or adhere to decided cases.

Checkpoint
What happens once a case has been decided?

underpin
v. to support or strengthen

Essential Questions Journal To continue to build a response to the chapter Essential Question, go to your **Essential Questions Journal**.

SECTION 3 ASSESSMENT

1. Guiding Question Use your completed graphic organizer to answer this question: What is the Supreme Court's jurisdiction, and how does the Court operate?

Key Terms and Comprehension

- (a) What does a **writ of certiorari** have in common with a **certificate**? (b) How do the two differ?
- What is **majority opinion** and why is it important?
- Explain briefly how most cases reach the Supreme Court.

Critical Thinking

- Summarize** Why was the Court's decision in *Marbury v. Madison* one of the most important cases ever decided by the Supreme Court?
- Determine Cause and Effect** How does the power of judicial review place the judicial branch on an equal plane with the other branches of the Federal Government?

Quick Write

Explanatory Essay: Create a Flowchart Using your research from Section 2, create a flowchart to show the path the case took to reach the Supreme Court. Be sure to use arrows or lines so that the sequence is clear.

Assessment Answers

- It has both original and appellate jurisdiction, but most of its cases come on appeal. It has original and exclusive jurisdiction over cases involving two or more States and all cases involving ambassadors or other public ministers. The Court studies briefs and hears oral arguments before meeting in conference to consider decisions.
- (a) Both are ways for a case from a lower court to reach the Supreme Court. (b) **writ of certiorari**: requested by either party in the case;

certificate: requested by the lower court

- A **majority opinion** sets out the facts in a case, identifies the issues, details the reasons that underpin the majority's decision, and becomes a precedent that lower courts are expected to follow.
- A case is tried in a district court or highest State court and appealed to a court of appeals. It is then appealed to the Supreme Court. At least four justices must agree before a case is put on the docket. Most cases reach the Court by a writ of certiorari; a few reach the Court by certificate.

Assess and Remediate

L3 Ask students to sketch the Supreme Court building. On at least eight "pillars" of the building, have them write facts about the Court. For example, students could write out Article III, Section 1 of the Constitution, which created the Court; the Court's jurisdiction as spelled out in Article III, Section 2; the number of justices and their names; and so on.

L3 Collect Core Worksheet B and assess students' participation using the Rubric for Assessing Performance of an Entire Group (Unit 5 All-in-One, p. 241).

L3 Assign the Section 3 Assessment questions.

L3 Section Quiz A (Unit 5 All-in-One, p. 43)

L2 Section Quiz B (Unit 5 All-in-One, p. 44)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
The scope of the Supreme Court's jurisdiction (Questions 1, 5, 6)	Have students turn each heading and subhead in this section into a question, and then answer the questions. For example, the heading "Judicial Review" in this section could be rewritten as the question "What is judicial review?" or "How did the Court obtain the power of judicial review?"
How the Supreme Court operates (Questions 1, 2, 3, 4)	Have students write and illustrate books for elementary school children that explain how a case works its way to the Supreme Court. The books should include definitions; the purpose of briefs and oral arguments; what justices do in conference; and the purpose of majority, concurring, and dissenting opinions.

Answers

Checkpoint The Court announces its decision and issues one or more written opinions.

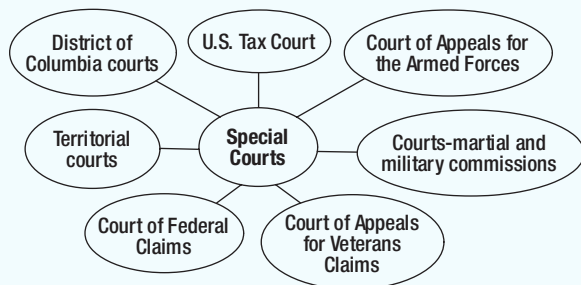
5. It established the Court's right to exercise the power of judicial review and ensured the independence and equal footing of the judicial branch with the legislative and executive branches.

6. It gives the judicial branch the authority to declare acts of Congress and executive actions unconstitutional.

QUICK WRITE A strong flowchart should include the trial court of original jurisdiction, the appellate court, and the path of the appeal to the Supreme Court.

GUIDING QUESTION

What are the special courts, and what are the jurisdictions of each?



Get Started

LESSON GOALS

Students will . . .

- identify the special courts by completing a chart highlighting the various courts' jurisdictions.
- understand how special courts function by constructing paths of appeals for case scenarios.
- analyze the constitutionality of military commissions by studying opinions for and against them.

BEFORE CLASS

Assign the section, the graphic organizer in the text, and Reading Comprehension Worksheet (Unit 5 All-in-One, p. 45) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 46)

BELLRINGER

Display Transparency 18J. Have students write answers to the questions in their notebooks.

SKILLS DEVELOPMENT

ANALYZE POLITICAL CARTOONS

To help students learn to analyze political cartoons, have them turn to the Skills Handbook, p. S22, and use the information there to complete the Bellringer activity.

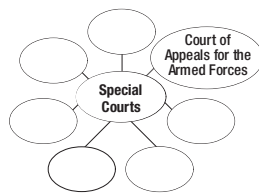
SECTION 4

The Special Courts



Guiding Question

What are the special courts, and what are the jurisdictions of each? Use a concept web to take notes on the special courts.



Political Dictionary

- court-martial
- civilian tribunal
- redress

Objectives

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

Image Above: U.S. Army attorney before a court-martial

Recall, the national court system is made up of two quite distinct types of federal courts. They are (1) the constitutional courts, sometimes called the regular or Article III courts, discussed over the last several pages, and (2) the special courts, also known as the legislative or Article I courts.

Each of the special courts was established by Congress acting under the authority delegated to it in Article I, Section 8 of the Constitution—not under the power given to it in Article III to create courts to exercise the broad “judicial Power of the United States.” That is to say, each of these courts has a very narrow jurisdiction; each hears only those cases that fall into a very limited class. And the special courts differ from the constitutional courts in one other important regard. Although their judges are all appointed by the President and Senate, they serve for a fixed term—not for life “during good Behaviour.”

Military and Veterans Claims Courts

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.”¹⁶ 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 similar to the trials held in civilian courts across the country, although there are differences. For example, in a court-martial, only two thirds of the panel, or jury, has to agree on a verdict versus the unanimous verdict required in a civilian court.

¹⁶ 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 230 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.

Focus on the Basics

FACTS: • The Court of Appeals for the Armed Forces is a civilian tribunal that hears appeals of courts-martial. • The Court of Appeals for Veterans Claims hears claims regarding veterans' benefits. • The Court of Federal Claims hears claims for damages against the Federal Government. • Congress created federal courts for U.S. territories and the District of Columbia. • The Tax Court hears civil cases concerning tax law.

CONCEPTS: federalism, role of the judiciary

ENDURING UNDERSTANDINGS: • Congress has created many special courts to handle specific types of cases. • The National Government can be taken to court only in cases in which Congress declares the U.S. to be open to suit.

The Court of Appeals for the Armed Forces 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. This appellate court is a **civilian tribunal**, a part of the judicial branch, entirely separate from the military establishment. Appeals from the court's decisions can be taken to the Supreme Court. It is, then, the court of last resort in most cases that involve offenses against military law.

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 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.

Military Commissions In 2001, President George W. Bush ordered the creation of a number of military commissions, which are court-like bodies composed of commissioned officers. Those tribunals were not to be a part of the courts-martial system. They were, instead, separate bodies set up to try “unlawful enemy combatants,” mostly suspected terrorists captured by American forces in Afghanistan and Iraq. Many of those captives are presently held in a military prison at Guantanamo Bay, Cuba.

The President, acting as commander in chief, created these commissions by executive order. However, in 2006, the Supreme Court held that he had overstepped the bounds of his authority when he did so, *Hamdan v. Rumsfeld*. It found that the Chief Executive could establish the military commissions and provide for their procedures only if empowered to do so by an act of Congress. In effect,

the Court directed the President to work with Congress to develop new procedures for the prosecution of Guantanamo Bay detainees. Those new procedures are now set out in the Military Commissions Act of 2006.

Until 2003, President Franklin Roosevelt had created the most recent military tribunal, in 1942. It tried eight Nazis, who were 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.

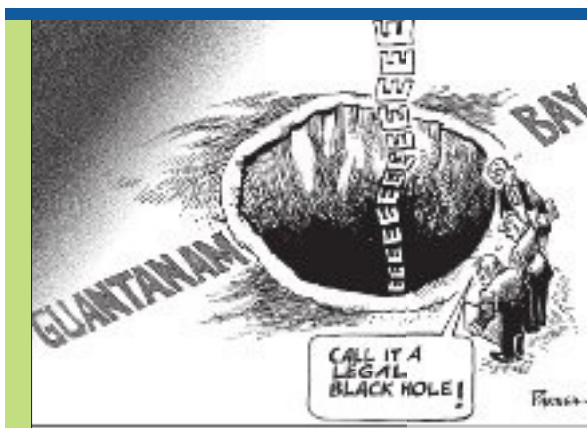
Other Special Courts

The other special courts also have very narrow jurisdictions. They include the Court of Federal Claims, the territorial courts, the District of Columbia courts, and the U.S. Tax Court.

The Court of Federal Claims The United States government cannot be sued by anyone, in any court, for any reason, without its consent.¹⁷ The government may be taken to court

¹⁷ The government is shielded from suit by the doctrine of sovereign immunity. The doctrine comes from an ancient principle of English public law: “The King can do no wrong.” The rule is not intended to protect public officials from charges of wrongdoing; 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.

valid
adj; legitimate, well-grounded



▶ **Analyzing Political Cartoons** Military tribunals have been established at various times in America's past—during the Mexican-American War, the Civil War, and World War II. **How do the bystanders in this cartoon view the military commissions at Guantanamo Bay?**

Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

REVIEW BELLRINGER ANSWERS

Discuss the political cartoon that students analyzed for the Bellringer. (*Answers: 1. Internal Revenue Service, collect taxes; 2. Students may scan the text to find the answer: United States Tax Court.*)

CHART SPECIAL COURTS' JURISDICTION

Display Transparency 18E, The Appellate Path in Federal Courts. Ask a volunteer to identify the special courts on the transparency. Draw a chart on the board like the one below. Have students work in pairs to complete the information. Then discuss the chart.

Name of Court	Jurisdiction
Court of Appeals for the Armed Forces	Appellate jurisdiction over court-martial convictions
Court of Appeals for Veterans Claims	Appellate jurisdiction over denied or mishandled veterans' claims arising from the Department of Veterans Affairs
Court of Federal Claims	Hears claims against the Federal Government
Territorial Courts	Hear cases in the Virgin Islands, Guam, and Northern Mariana Islands
District of Columbia Courts	Trial and appellate courts for residents of Washington, D.C.
U.S. Tax Court	Hears civil cases involving disputes of tax laws

TRACE APPEALS THROUGH SPECIAL COURTS

As students answer the questions in the cases below, have them point out where on Transparency 18E each case would move in the appellate path.

CASE A: A citizen in Guam is accused of kidnapping. Where does the case begin? (*territorial court*) The defendant is found guilty and appeals. Where does the case go? (*Court of Appeals for the Ninth Circuit*)

CASE B: A citizen claims that the U.S. Forest Service harmed his crops, and sues for redress. Where does this case begin? (*Court of Federal Claims*) The case is lost by the citizen and then appealed. Where does the case go next? (*U.S. Court of Appeals for the Federal Circuit*)

DISTRIBUTE CORE WORKSHEET

Have students work in groups to complete the Chapter 18 Section 4 Core Worksheet (Unit 5 All-in-One, p. 47). Students will form opinions on the constitutionality of military tribunals.

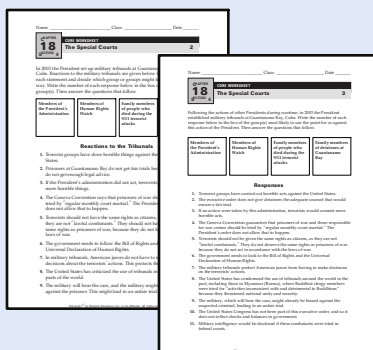
Answers

Analyzing Political Cartoons as a “black hole,” or something that swallows up detainees' rights in a mysterious, comprehensive way

Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 18, Section 4:

- L3** Reading Comprehension Worksheet (p. 45)
- L2** Reading Comprehension Worksheet (p. 46)
- L3** Core Worksheet (p. 47)
- L2** Core Worksheet (p. 49)
- L3** Quiz A (p. 51)
- L2** Quiz B (p. 52)
- L3** Chapter Test A (p. 53)
- L2** Chapter Test B (p. 56)





Checkpoint
What type of cases does
the Court of Federal
Claims hear?

EXTEND THE LESSON

Ask students to write a radio program discussing the procedures set out in the Military Commissions Act of 2006. They should write a script that might be used to interview a politician or member of the military.

Assess and Remediate

L3 Have students create a pyramid chart (or expand upon the pyramid they created in Section 3) to illustrate the different levels of the federal court system. They should label the top of the pyramid “Supreme Court,” and complete the rest of the chart with the appropriate inferior court titles and jurisdictions at each level.

L3 Assign the Section 4 Assessment questions.

L3 Section Quiz A (Unit 5 All-in-One, p. 51)

L2 Section Quiz B (Unit 5 All-in-One, p. 52)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

REMIEDIATION

If Your Students Have Trouble With	Strategies For Remediation
The jurisdiction of special courts (Questions 1, 3, 4, 6)	Ask students to briefly identify the function of each special court (and the other inferior courts) on a slip of paper. Collect and read aloud the slips for a “Which Court Am I?” quiz.
The functions of military courts and commissions (Questions 2, 5)	Have students describe characteristics of courts-martial and the Court of Appeals for the Armed Forces. Ask them to write their descriptions as part of a political cartoon or other visual that shows how appeals of courts-martial go to a civilian court.

Answers

Checkpoint claims for damages against the Federal Government

only in cases in which Congress has declared the United States to be open to suit. Originally, any person with a money 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.¹⁸ That body was renamed the United States Court of Federal Claims in 1992.

The Court of Federal Claims holds trials throughout the country, hearing claims for damages against the Federal Government. Those claims it upholds 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 (Article IV, Section 3, Clause 2) to “make all needful Rules and Regulations

¹⁸ Congress acted under its expressed power to pay the debts of the United States, Article I, Section 8, Clause 1.

respecting the Territory . . . belonging to the United States,” Congress has created courts for the nation’s territories. These courts sit in the Virgin Islands, Guam, and the Northern Mariana Islands. They function much like the local courts in the 50 States.

The District of Columbia Courts Acting under its power to “exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may . . . become the Seat of the Government of the United States” (Article I, Section 8, Clause 17), Congress has set up a judicial system for the nation’s capital. Both the federal district court and the federal Court of Appeals for the District of Columbia hear cases 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 United States Tax Court Acting under its power to tax (Article I, Section 8, Clause 1), Congress created the United States Tax Court in 1969 as “an independent judicial body” in the legislative branch. It is not, in fact, a part of the federal court system. 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.

Essential Questions Journal To continue to build a response to the chapter Essential Question, go to your **Essential Questions Journal**.

SECTION 4 ASSESSMENT

1. Guiding Question Use your completed graphic organizer to answer this question: What are the special courts and what are the jurisdictions of each?

Key Terms and Comprehension

- What is the difference between **civilian tribunals** and **courts-martial**?
- What does it mean to seek **redress** in a court?
- How do the special courts differ from the constitutional courts?

Critical Thinking

- Synthesize Information** When, if ever, do you think the establishment of a military commission is justified?
- Determine Relevance** Why do you think Congress has created the several special courts, rather than simply providing that all federal cases are to be tried in the regular courts?

Quick Write

Explanatory Essay: Write a Thesis Statement A thesis states specifically what you will cover in your essay. Write a thesis statement for an explanatory essay on your chosen case’s path to the Supreme Court. You will use your thesis as a guide to develop an organizational plan for your essay.

Assessment Answers

1. The special courts (and their jurisdictions): courts-martial (trial courts for the military), Court of Appeals for the Armed Forces (reviews court-martial convictions), Court of Appeals for Veterans Claims (hears appeals regarding VA benefits), military commissions (try “unlawful enemy combatants”), Court of Federal Claims (hears claims against the Federal Government), territorial courts (courts in U.S. territories), District of Columbia courts (trial and appellate courts in Washington, D.C.), U.S. Tax Court (civil cases involving disputes over tax laws).

2. civilian tribunals: appellate courts, separate from the military, which review serious court-martial convictions; **courts-martial:** courts composed of military personnel that try cases concerning military law

3. satisfaction or payment of a claim

4. Special courts have a narrower jurisdiction, and judges serve a fixed term, not for life.

5. Some students might support military commissions for terrorists; others might say terrorists should be tried in federal district courts.

6. Special courts relieve caseload in constitu-

tional courts. Congress wanted courts with special expertise.

QUICK WRITE Thesis statements may include the general constitutional grounds on which the cases worked their way to the Supreme Court.

Guiding Question
Section 2 What are the structure and jurisdiction of the inferior courts?

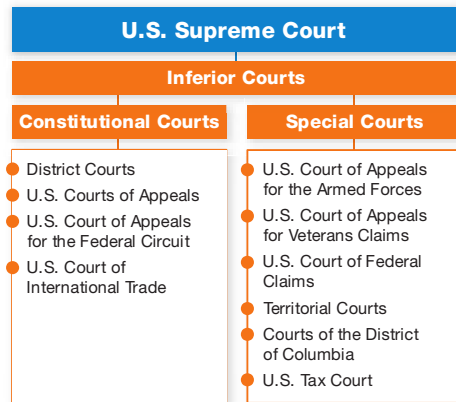
Guiding Question
Section 3 What is the Supreme Court's jurisdiction, and how does the Court operate?

Guiding Question
Section 1 What are the structure and function of the national judiciary?

CHAPTER 18
Essential Question
Does the structure of the federal court system allow it to administer justice effectively?

Guiding Question
Section 4 What are the special courts, and what are the jurisdictions of each?

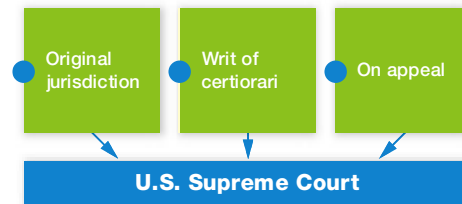
The Federal Courts



Political Dictionary

inferior courts p. 521
jurisdiction p. 522
concurrent jurisdiction p. 522
plaintiff p. 523
defendant p. 523
original jurisdiction p. 523
appellate jurisdiction p. 523
judicial restraint p. 524
precedent p. 524
judicial activism p. 524
criminal case p. 529
civil case p. 529
docket p. 530
record p. 531
writ of certiorari p. 534
certificate p. 534
brief p. 535
majority opinion p. 537
concurring opinion p. 537
dissenting opinion p. 537
court-martial p. 538
civilian tribunal p. 539
redress p. 540

How Cases Reach the Court



Have students download the digital resources available at Government on the Go for review and remediation.

STUDY TIPS

Set Goals for Study Sessions Setting goals can help students achieve both long- and short-term goals. Setting goals for study sessions makes it more likely that students will stay on task and accomplish the necessary work. Ask students to write down a study goal for each subject for the week. Then ask them to write down a study goal for today's study session. Goals should keep in mind upcoming tests and assignments that are due. Explain that it is important to prioritize tasks for each study session, in order to meet the goal for that session. It can be helpful to assign a length of time to each task, both to organize study time effectively and to help with concentration. Remind students to make goals realistic. For example, a study goal for one session might be to read the chapter, or to review the class notes for the day. Have students create a "goal chart" that lists today's study goals and the priority of each, as well as the length of time to complete the task. Suggest that students reward themselves for meeting each day's goals with something they enjoy doing.

ASSESSMENT AT A GLANCE

Tests and Quizzes

Section Assessments
Section Quizzes A and B, Unit 5 **All-in-One**
Chapter Assessment
Chapter Tests A and B, Unit 5 **All-in-One**
Document-Based Assessment
Progress Monitoring Online
ExamView Test Bank

Performance Assessment

Essential Questions Journal
Extend the Lesson, p. 530
Assessment Rubrics, **All-in-One**

For More Information

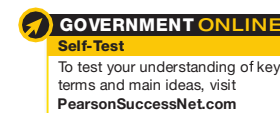
To learn more about the federal court system, refer to these sources or assign them to students:

- L1** McElroy, Lisa. *Sandra Day O'Connor: Supreme Court Justice*. Millbrook Press, 2003.
- L2** January, Brendan. *The Supreme Court*. Franklin Watts, 2005.
- L3** Jacobs, Thomas A. *Teens Take It to Court: Young People Who Challenged the Law—and Changed Your Life*. Free Spirit Publishing, 2006.
- L4** Trachtman, Michael G. *The Supremes' Greatest Hits: The 34 Supreme Court Cases that Most Directly Affect Your Life*. Sterling, 2006.

Chapter Assessment

CHAPTER 18

Chapter Assessment



COMPREHENSION AND CRITICAL THINKING

SECTION 1

- (a) to define and apply laws in a uniform way for all States (b) Possible answer: An independent judiciary keeps the separation and balance of power in government, thus assuring fair trials as well as judicial decisions not dependent on political pressure.
- (a) subject matter a “federal question” and parties involved (b) Some students may note that the Constitution kept the principles purposefully broad to allow for interpretation. Other students may note that the principles are too broad and should be narrowed to reduce the federal caseload. Still others may find the principles not broad enough, citing cases heard in State courts that would be better tried by a nonelected judge in the federal judiciary.
- (a) The President nominates, and the Senate confirms. The President usually nominates judges recommended by that State’s senators. (b) Possible answer: If either the executive or legislative branch had the sole power to appoint a judge, the other branch would always suspect a lack of impartiality and would not support the work of the judge.

SECTION 2

- (a) The room is in disorder, and the justices are frazzled and overwhelmed. (b) The court is beset with cases it cannot hear.
- (a) both civil and criminal cases (b) More than 80 percent of federal cases are tried in district courts.
- (a) They hear appeals from the decisions of the district courts. (b) They were created to relieve the Supreme Court of its overloaded docket.

SECTION 3

- (a) the power to decide the constitutionality of an act of government (b) yes, because judicial review serves as a check on actions of all three branches of government
- (a) both original and appellate jurisdiction (b) “Easy” cases involve simple points of law, or their decisions are not appealed. The Supreme Court hears only those cases that it feels involve significant points of law or that were not decided properly in the lower court.

Comprehension and Critical Thinking

Section 1

- (a) Why did the Framers see a need for a national court system? (b) Why did the Framers believe that an independent judiciary was so important?
- (a) What are the two general principles that determine whether the federal courts have jurisdiction over a case? (b) Do you think these principles are broad enough? Why or why not?
- (a) Outline the process by which most federal judges are nominated and approved. (b) Why did the Framers create a system of judicial selection that requires the cooperation of the President and the Senate?

Section 2

- Analyze Political Cartoons** (a) What is happening in this scene? (b) What point is the cartoonist making?



Apply What You’ve Learned

- Essential Question Activity** Interview a federal judge or lawyer who has experience with federal cases. Ask:
(a) What do you think is the purpose of the law?
(b) What is the role of the courts in our system of government?
(c) What do you think are the advantages of trying a case in federal court, as compared to a State or local court? The disadvantages?
- Essential Question Assessment** Based on the interview you conducted and the content you have

learned in this chapter, write an op-ed that helps to answer the Essential Question: **Does the structure of the federal court system allow it to administer justice effectively?** An op-ed is an opinion piece that you could submit to your local newspaper for publication. Op-eds present an informed view and should be engaging. Include facts and statistics to support your opinion.

Essential Questions Journal To respond to the chapter Essential Question, go to your **Essential Questions Journal**.

- (a) **concurring**: written by a judge who agrees with the majority decision but offers different reasons for reaching that conclusion; **dissenting**: explanation written by a justice who does not agree with the Court’s majority decision (b) Possible answer: Concurring and dissenting opinions enable justices to express different points of view; in future cases, they may form the basis for majority opinions.

SECTION 4

- (a) The special courts (and their jurisdictions) include courts-martial (trial courts for the

military); Court of Appeals for the Armed Forces (reviews courts-martial convictions); Court of Appeals for Veterans Claims (hears appeals regarding VA benefits); military commissions (try “unlawful enemy combatants”); Court of Federal Claims (hears claims for damages against the Federal Government); territorial courts (courts in U.S. territories); District of Columbia courts (trial and appellate courts in Washington, D.C.); and U.S. Tax Court (hears civil cases involving disputes over tax laws). (b) Each of these courts hears only those cases that fall into a very limited class.

Document-Based Assessment

Term Limits for Federal Judges

Over recent years, many have questioned the wisdom of the provision of life tenure for federal judges, as illustrated in Document 1 below. The debate has often focused on the Supreme Court. Article III, Section 1 of the Constitution gives Supreme Court justices lifetime appointments. A Framers' viewpoint is set out in Document 2. Any change in the tenure of Supreme Court justices would require a constitutional amendment. Although both supporters and opponents of such action agree that such a change is unlikely any time soon, the issue has led to lively debate.

Document 1

[L]ifetime tenure should be abolished. . . . [A]s the judiciary has become almost as polarized [divided] along partisan lines as the elective branches, Presidents have been seeking out younger and younger judgeship appointees at every level of the judiciary, hoping to influence the courts long after they leave the White House.

The insularity produced by lifetime tenure, combined with youthful appointment and long service, often means that senior judges represent the views and outlooks of past generations better than the current day.

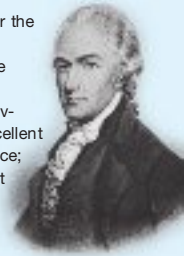
Therefore, a nonrenewable term of fifteen years is an attractive innovation. . . . This is a long time to serve—nearly four current presidential terms. . . . At the same time, it is short enough to prevent justices from becoming too detached and generationally removed from the American mainstream.

—Larry J. Sabato, *A More Perfect Constitution*

Document 2

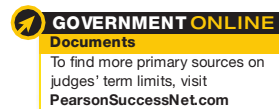
The standard of good behavior for the continuance in office of the judicial magistracy [judges], is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

—Alexander Hamilton, *The Federalist No. 78*



Use your knowledge of the terms of Supreme Court justices and Documents 1 and 2 to answer Questions 1–3.

- What concern does the author of Document 1 have about life tenure for judges?
 - Justices who are appointed to the Court at a young age lack the knowledge and experience of older justices.
 - Justices should be required to retire from the Court at a specified age.
 - Justices who serve long terms on the Court can become out of touch with the challenges of society today.
 - Justices who have life tenure do not understand the concerns of young people.
- What reasons does the author of Document 2 give for his opinion about lifetime tenure for justices?
- Pull It Together** Would you support or oppose term limits for Supreme Court justices? Why or why not?




DOCUMENT-BASED ASSESSMENT

- C
- Lifetime tenure is a barrier to the encroachments and oppressions of the representative body; and it secures a steady, upright, and impartial administration of the laws.
- A strong essay will include a thesis statement and a summary of the writer's opinion in the first paragraph. The second paragraph should include relevant support information and points that address counterarguments.

L2 Differentiate Students use all the documents on the page to support their thesis.

L3 Differentiate Students include additional information available online at **PearsonSuccessNet.com**.

L4 Differentiate Students use materials from the textbook, the online information at **PearsonSuccessNet.com**, and do additional research to support their views.

 **Go Online to PearsonSuccessNet.com** for a student rubric and extra documents.

11. (a) to hear appeals of serious courts-martial convictions (b) Possible answer: to introduce impartiality by having nonmilitary personnel review the appeal

WRITING ABOUT GOVERNMENT

12. Have students refine their explanatory essays before submitting them. They should be sure each paragraph has a topic sentence and supporting sentences, and that all related points are grouped together into one paragraph. They should also review sentence patterns, adding variety by inserting a short sentence between two long ones or by combining two short sentences

into one longer, compound sentence. Finally, have them look for vague words and replace them with more concise, active (not passive) terms.

APPLY WHAT YOU'VE LEARNED

13. Students should write a list of open-ended, neutral questions before the interview. Researching the subject's background will direct students to a thoughtful line of questioning. During the interview, students should listen closely for central ideas and what seems important to the interviewee. Have students clarify any misunderstanding by

repeating in their own words the subject's responses.

14. Students' op-eds should answer the Essential Question using facts and statistics for support. Ask for volunteers to read their pieces to the class, followed by discussion, or to stage a debate using pro and con arguments.

Introduce the Chapter

Essential Questions:

UNIT 5

What should be the role of the judicial branch?

CHAPTER 19

How can the judiciary balance individual rights with the common good?

ACTIVATE PRIOR KNOWLEDGE

Have students examine the photo and quotation on these pages. Ask: **What do the photo and quotation suggest about civil liberties?** (*that Americans have had to fight for civil liberties*) In this chapter, students will learn about First Amendment freedoms. Then tell students to begin to further explore civil liberties by completing the Chapter 19 Essential Question Warmup activity in their **Essential Questions Journal**. Discuss their responses as a class.

BEFORE READING

L2 ELL Differentiate Chapter 19 Prereading and Vocabulary Worksheet (Unit 5 All-in-One, p. 68)

SUCCESSNET STUDENT AND TEACHER CENTER

Visit PearsonSuccessNet.com for downloadable resources that allow students and teachers to connect with government “on the go.”

DIGITAL LESSON PRESENTATION

The digital lesson presentation supports the print lesson with activities and summaries of key concepts. Activities for this chapter include:

- **The Lemon Test**
- **Freedoms of Speech and Press**

SKILLS DEVELOPMENT

ANALYZE SOURCES

You may wish to teach analyzing sources as a distinct skill within Section 1 of this chapter. Use the Chapter 19 Skills Worksheet (Unit 5 All-in-One, p. 77) to help students learn the steps in analyzing sources. The worksheet asks students to read and identify two sources as primary or secondary, to find the main idea, and to evaluate the sources for point of view and bias. For L2 and L1 students, assign the adapted Skill Activity (Unit 5 All-in-One, p. 78).



The chapter WebQuest challenges students to answer the chapter Essential Question by asking them about civil liberties.



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Block Scheduling

BLOCK 1: Teach Section 1 lesson, including Transparency 19A, Core Worksheet 19.1, and the Strategies for Remediation. Begin Section 2 Lesson, including Bellringer and Draw a Wall of Separation. Assign Core Worksheet 19.2; have students discuss it.

BLOCK 2: Review Transparency 19C. Begin Section 3; discuss Bellringer and Chart Restrictions on Speech. Allow time for groups to complete Core Worksheet 19.3. Discuss the rulings. Go over Recognize Limits and Protections of the Media; organize groups for dramatizations.

BLOCK 3: Have groups dramatize their media cases. Display and discuss Transparency 19F. Introduce Section 4 with Transparency 19G and Identify Time-Place-Manner Rules. Distribute Core Worksheet 19.4; have students prepare their scenarios. Present cases before “judges.” Complete Strategies for Remediation.