

# The Court System

In the United States, there are many court systems. Each state has its own court system, and the federal court system exists at the national level. Each of these systems has trial and appeals courts. There are also a number of tribal justice systems. The highest court in the land is the Supreme Court of the United States. The Supreme Court hears appeals from the other court systems.



**Chapter Overview** Visit [glencoe.com](http://glencoe.com) and enter **QuickPass** code **StreetLaw8u1** for an overview, a quiz, and other chapter resources.

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The use of juries builds the values of democracy into the court system.

## Trial Courts

**Trial courts** listen to testimony, consider evidence, and decide the facts in disputed situations. Evidence is provided by witnesses who are called to testify in the case. In a trial there are two **parties**, or sides, to each case. In a civil trial, the party bringing the legal action is called the **plaintiff**. In a criminal trial, the state or federal government initiates the case and serves as the **prosecutor**. In both civil and criminal trials, the party responding to the plaintiff (civil) or prosecution (criminal) is called the **defendant**. Once a trial court has made a decision, the losing party may be able to appeal the decision to an appellate, or appeals, court.





Judges play a more active role under the inquisitorial system (left) than they do in the adversarial system (below). *In what ways are judges more involved in the court proceedings of an inquisitorial system?*

The trial system in the United States is an **adversarial system**. This means it is a contest between opposing sides, or adversaries. The theory is that the trier of fact (the judge or jury) will be able to determine the truth if the opposing parties present their best arguments and show the weaknesses in the other side's case.

The adversarial process is not the only method for handling legal disputes. Many countries have different trial systems. Some European countries use the **inquisitorial system**, in which the judge is active in questioning witnesses and controlling the court process, including the gathering and presenting of evidence. These judges can order witnesses to appear, conduct searches, present and comment on evidence, and, in general, take the lead role in trying to uncover the truth. This differs from the adversarial process, in which these matters are left to the competing parties, with a decision being made by the judge or jury based on the arguments and evidence presented.

The adversarial process is sometimes criticized. Critics say that it is not the best method for discovering the truth with respect to the facts of a specific case. They compare the adversarial process to a battle in which lawyers act as enemies, making every effort *not* to present *all* the evidence. According to this view, the goal of trial is "victory, not truth or justice." Despite its drawbacks, the adversarial process is the cornerstone of the American legal system. Most attorneys believe that approaching the same set of facts from adversarial perspectives will uncover more truth than would other methods.



## Problem 5.1

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- a. Do you think the adversarial system is the best method for solving disputes? Why or why not?
  - b. Indicate whether you agree or disagree with the following statement: “It is better that ten guilty persons go free than that one innocent person suffer conviction.” Explain your answer.
  - c. In a criminal case, should a lawyer defend a client he or she knows is guilty? Would you defend someone you knew was guilty? Explain.
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Judges and juries are essential parts of our legal system. The judge presides over the trial and has the duty of protecting the rights of those involved. Judges also make sure that attorneys follow the rules of evidence and trial procedure. In nonjury trials, the judge determines the facts of the case and renders a judgment. In jury trials, the judge instructs the jury as to the law involved in the case. Finally, in criminal trials in most states, judges sentence individuals convicted of committing crimes.

The Sixth Amendment to the U.S. Constitution guarantees the right to trial by jury in criminal cases. This right applies in both federal and state courts. The Seventh Amendment guarantees a right to trial by jury in civil cases in federal courts. This right has not been extended to state courts, but many state constitutions confer a right to jury trial in civil cases. However, the fact that a constitution protects the right to trial by jury does not mean that a jury is required in every case. Juries are not used as often as one might think. In civil cases, either the plaintiff or the defendant may request a jury trial. In criminal cases, the defendant decides whether there will be a jury. Most civil cases result in out-of-court settlements or trials by a judge. Most criminal cases are never brought to trial. Instead a **plea bargain**, or pretrial agreement between the prosecutor and the defendant and his or her lawyer, disposes of the case without a trial.

If a jury trial is requested, a jury is selected and charged with the task of determining the facts and applying the law in a particular case. To serve on a jury, you must be a U.S. citizen, at least 18 years old, able to speak and understand English, and a resident of the state. As citizens we have a duty to serve on juries when called upon. At one time, people from certain occupations were exempt from jury service. These included members of the clergy, attorneys, physicians, police officers, firefighters, and persons unable to undertake juror tasks because of mental or physical disability. In some places, these persons are no longer excluded. Convicted felons are usually ineligible for jury service unless their civil rights have been restored. People who are not exempt and are called for jury duty are sometimes excused if they can show “undue hardship or extreme inconvenience.”





## For Your Information . . .

### Steps in a Trial

#### **Step 1. Opening Statement by Plaintiff or Prosecutor**

The plaintiff's attorney (in civil cases) or the prosecutor (in criminal cases) explains to the trier of fact (the judge or jury) the evidence to be presented as proof of the allegations (unproven statements) in the written papers filed with the court.

#### **Step 2. Opening Statement by Defense**

The defendant's attorney explains evidence to be presented to disprove the allegations made by the plaintiff or prosecutor.

#### **Step 3. Direct Examination by Plaintiff or Prosecutor**

Each witness for the plaintiff or prosecution is questioned. Other evidence in favor of the plaintiff or prosecution is presented.

#### **Step 4. Cross-Examination by Defense**

The defense has the opportunity to question each witness. Questioning is designed to break down the story or to discredit the witness.

#### **Step 5. Motions**

If the prosecution's or plaintiff's basic case has not been established from the evidence introduced, the judge can end the case by granting a motion (oral request) made by the defendant's attorney.

#### **Step 6. Direct Examination by Defense**

Each defense witness is questioned.

#### **Step 7. Cross-Examination by Plaintiff or Prosecutor**

Each defense witness is cross-examined.

#### **Step 8. Closing Statement by Plaintiff or Prosecutor**

The prosecutor or plaintiff's attorney reviews all the evidence presented and asks for a finding of guilty (in criminal cases) or a finding for the plaintiff (in civil cases).



A cross-examination

#### **Step 9. Closing Statement by Defense**

This is the same as the closing statement by the prosecution or plaintiff. The defense asks for a finding of not guilty (in criminal cases) or for a finding for, or in favor of, the defendant (in civil cases).

#### **Step 10. Rebuttal Argument**

The prosecutor or plaintiff may have the right to make additional closing arguments that respond to points made by the defense in its closing statement.

#### **Step 11. Jury Instructions**

The judge instructs the jury as to the law that applies in the case.

#### **Step 12. Verdict**

In most states, a unanimous decision by the jury is required for a verdict. If the jury cannot reach a unanimous decision, it is called a hung jury, and the case may be tried again by a new judge or jury.



Attorneys for both the defense and the prosecution screen prospective jurors through the process of voir dire examination. *Why might a prospective juror be dismissed?*

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Jury service is an important civic duty that is necessary to preserve the constitutional right to trial by jury. To determine who is called for jury duty, the clerk of the court uses a list with names of registered voters, licensed drivers, or some combination of the two. Usually a questionnaire is sent to potential jurors to determine whether they are eligible to serve. Employers are required to let their employees take time off for jury service. Most courts pay jurors a small daily stipend, and some courts also provide a transportation fee. Some employers

pay their employees during their jury service, but they are not required to do so. To reduce the burden of jury service, many courts have instituted a one-day, one-trial plan. Jurors must show up on the day they are called. A juror selected for a trial on that day must then return for the duration of the trial. If not selected, the juror will not be called again for some period of time, usually at least a year.

After they are selected, jurors are assigned to specific cases after being screened through a process known as **voir dire** examination. In this process, opposing lawyers question each prospective juror to discover any prejudices or preconceived opinions concerning the case. After questioning each juror, the opposing attorneys may request the removal of any juror who appears incapable of rendering a fair and impartial verdict. This is called **removal for cause**. In addition, each attorney is allowed a limited number of **peremptory challenges**. This means the attorneys can have prospective jurors removed without stating a cause.

Juries range in size from 6 to 12 persons, although all federal criminal cases require 12-person juries. In the federal system and most state systems, conviction in a criminal case requires a unanimous verdict. However, about half of the state systems allow for nonunanimous verdicts in civil cases.

## **Problem 5.2**

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- a.** What reasons can you give for excluding from jury service members of the clergy, attorneys, physicians, police officers, and convicted felons? Should everyone be required to serve on juries? Give your reasons.
  - b.** If you were a defense attorney questioning jurors at the voir dire in a murder trial, what questions would you ask potential jurors?
  - c.** For what reasons might an attorney use a peremptory challenge?
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## Appeals Courts

In an **appeals court**, one party presents arguments asking the court to review the decision of the trial court. The other party presents arguments supporting the decision of the trial court. There are no juries or witnesses, and no new evidence is presented. Only lawyers appear before the judges to make legal arguments.

Not everyone who loses a trial can appeal. Usually, an appeal is possible only when there is a claim that the trial court has committed an error of law. An **error of law** occurs when the judge makes a mistake as to the law applicable in the case. For example, a judge might give the wrong instructions to the jury or permit evidence that should not be allowed. A judge's error is considered minor as long as it does not affect the outcome of the trial. In cases involving minor errors of law, the trial court decision will not be reversed.

When an appeals court decides a case, it issues a written opinion or ruling. This opinion sets a **precedent** for similar cases in the future. All lower courts in the area where the decision was made must follow the precedent set in the opinion. This is what is meant by courts "making law." However, a higher court has the power to reverse or change the precedent. Courts in other parts of the country are not required to follow the precedent. A court in another jurisdiction or state can disagree with this precedent.

Typically, a panel of judges—or justices, as appellate judges are sometimes called—decides such cases. The panel may consist of three or more judges. Nine justices hear cases argued before the Supreme Court of the United States.

When these judges disagree on a decision, two or more written opinions may be issued in the same case. The majority opinion states the decision of the court. Judges who disagree with the majority opinion may issue a separate document called a **dissenting opinion**, which states the reasons for the disagreement. In some instances, judges who agree with the majority's outcome, but for reasons different from those used to support the majority opinion, may write a **concurring opinion**.

Dissenting opinions are important because their reasoning may become the basis of future majority opinions. As society and the views of judges on appellate courts change, so can legal opinion. An example is the 1896 case of *Plessy v. Ferguson*, which upheld racial segregation in railroad cars as long as facilities for whites and African Americans were "separate but equal."

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Only lawyers make legal arguments before judges in an appellate court. *When is an appeal possible?*



### Taking a Car by Mistake

**J**oe Harper left the key in his 2008 blue sports utility vehicle (SUV) while he ran an errand. When he came back an hour later, he got into someone else's blue SUV by mistake. This car also had the key in the ignition. Harper, who did not notice it was a different car, started it and drove away. He was arrested for auto theft as a result of his mistake.

At the trial, the judge told the jury it was not necessary for them to consider whether Harper intended to steal the car. Instead, the judge instructed the jury that to find Harper guilty of auto theft, they had to decide only whether he was caught driving a car that was not his. Using these guidelines, the jury found Joe Harper guilty.

This case illustrates an error of law that could be appealed. Auto theft law requires that the accused person must have intended to steal the car. Because Harper did not intend to steal the car, the guilty verdict could be reversed by an appellate court.



U.S. Supreme Court Justice John Marshall Harlan dissented from the majority opinion because it allowed a state to pass regulations based solely on race, which he believed violated the U.S. Constitution. In the 1954 precedent-setting case of *Brown v. Board of Education*, some of the reasoning expressed in Justice Harlan's dissent in *Plessy* was accepted by the Supreme Court, and the "separate but equal" doctrine was declared unconstitutional.

## State and Federal Court Systems

Figure 5.1 illustrates the two separate court systems in the United States—state and federal. State courts are courts of general jurisdiction. They can hear cases that deal with state law as well as many areas of federal law. The federal courts are courts of limited jurisdiction. Their power is limited to deciding certain types of cases. Federal courts hear criminal and civil cases involving federal law. They also hear some civil cases involving parties from different states when the amount in dispute is more than \$75,000. Federal trial courts are known as U.S. District Courts. If you lose a trial in the U.S. District Court, you may be able to appeal to the U.S. Circuit Court of Appeals in your region. The United States has 94 district courts and 13 circuit courts. The court of final appeal is the U.S. Supreme Court.

### State Courts

Most state court systems resemble the federal court system in both structure and procedure. All states have trial courts. These are called superior, county, district, or municipal courts, depending on the state.



State trial courts are often specialized to deal with specific types of legal issues. Examples include family, traffic, criminal, probate, and small claims courts.

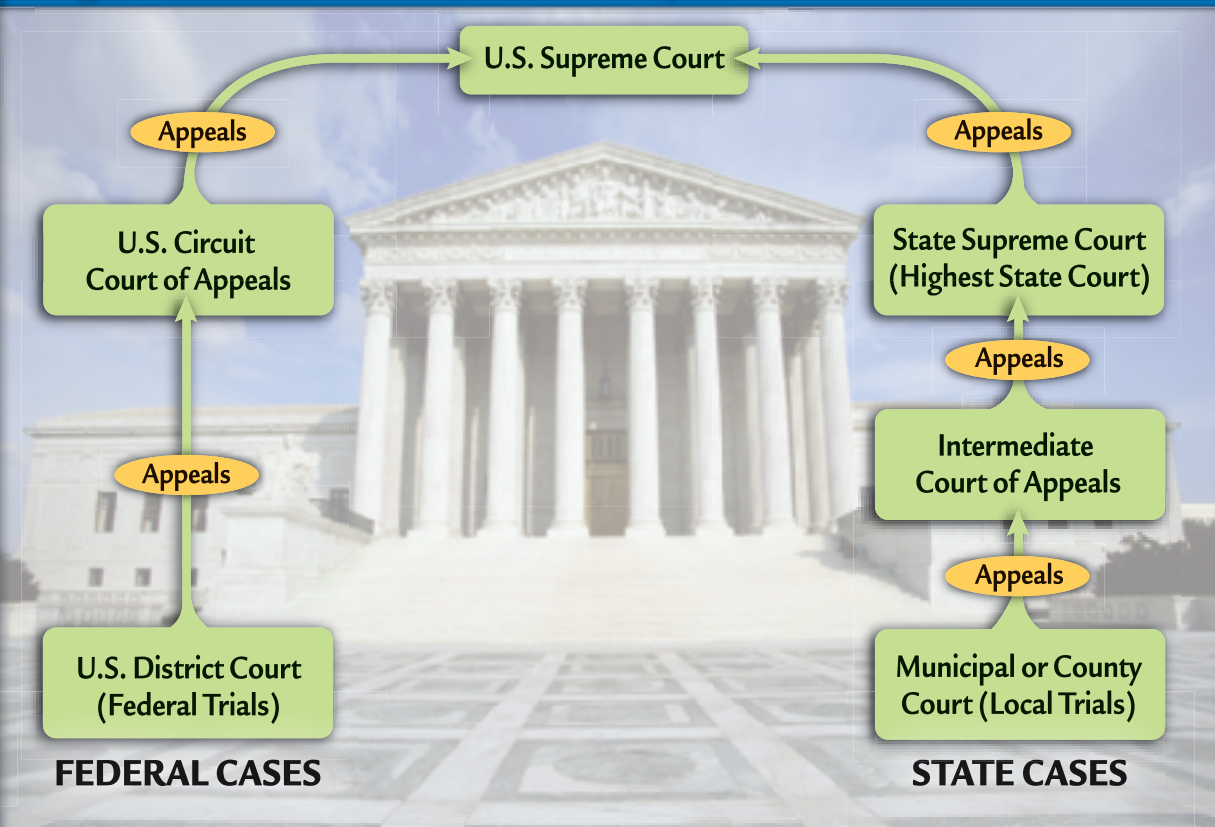
Family or domestic relations courts hear actions involving divorce, separation, and child custody. Cases involving juveniles and intrafamily offenses (fights within families) may also be heard. Sometimes, cases involving juveniles are heard in a special juvenile court. Traffic courts hear actions involving violations committed by persons driving motor vehicles. Criminal courts hear cases involving violations of laws for which the violators could go to jail. Frequently, criminal court is divided between felony and misdemeanor cases. **Probate** courts handle cases involving wills and claims against the estates of persons who die with or without a will. Small claims courts hear cases involving small amounts of money (maximums of \$500, \$750, \$1,000, or more, depending on the state). Individuals may bring cases to small claims court without lawyers, though it is sometimes advised that lawyers be present. Filing procedures are easy, and the court fees are low.



**The Law Where You Live**

**Find out** what courts exist in your community. What kinds of cases do they handle? How are the appeals handled in your state? What is the highest court in your state? Where is it located?

**Figure 5.1 Federal and State Court Systems**



The U.S. judiciary consists of parallel systems of federal and state courts. **ANALYZE THE DATA** How are the systems the same? How are they different?



If you lose your case in the trial court, you may be able to appeal to an intermediate court of appeals or, in some states, directly to the state's highest court. If a state supreme court decision involves only state law, it can be appealed no further. Each state's highest court has the final say on interpretation of state laws and the state constitution. If a state supreme court decision involves federal law or a federal constitutional issue, it may be possible for the losing party to appeal to the U.S. Supreme Court.

## Federal Courts

Article III of the U.S. Constitution creates a Supreme Court and gives Congress the power to create lower courts. Congress has divided the United States into 94 federal judicial districts, with a district court known as a federal trial court in each district. The district courts handle a variety of federal criminal and civil cases. Each district court has at least 2 judges and some have more than 20. There are also federal bankruptcy and tax courts that only handle certain kinds of cases. As the map in Figure 5.2 on the next page shows, some federal judicial districts cover an entire state, while other states have several districts within their boundaries.

Congress placed the 94 districts in 12 regional circuits, each of which has a court of appeals. Court of appeals judges handle appeals of trial court decisions to determine whether district court judges applied the law correctly. Most courts of appeals have between 10 and 15 judges. However the largest court of appeals (for the Ninth Circuit, which includes California) has nearly 30 judges. There is also a U.S. Court of Appeals for the Federal Circuit. This court, which meets in Washington, D.C., hears appeals from federal trial courts from all over the country. However, it only hears cases dealing with certain legal topics—primarily international trade, patent law, money claims against the federal government, and veterans issues. In creating the U.S. Court of Appeals for the Federal Circuit, Congress believed that its judges would develop special expertise in these complex cases. There is also a U.S. Court of Military Appeals that hears appeals from lower military courts.

Overall, the federal courts handle more than 300,000 cases per year. The federal courts also handle about 1,000,000 bankruptcy petitions each year. All together, the state court systems handle about 35,000,000 cases per year. About 1,700 federal judges decide the former, and about 30,000 state court judges decide the latter. Federal court judges are appointed by the president and confirmed by the Senate. The U.S. Constitution protects the independence of these judges by providing that they hold office “during good behavior.” For the most part, federal judges serve until they resign, retire, or die. Removal of federal judges requires that Congress follow formal impeachment procedures.

## Problem 5.3

For each case, decide whether it will be tried in a federal or state court. To what court could each case be appealed? Explain. Then give an example, different from those listed, of a case that could be heard in a state court and a case that could be heard in a federal court.

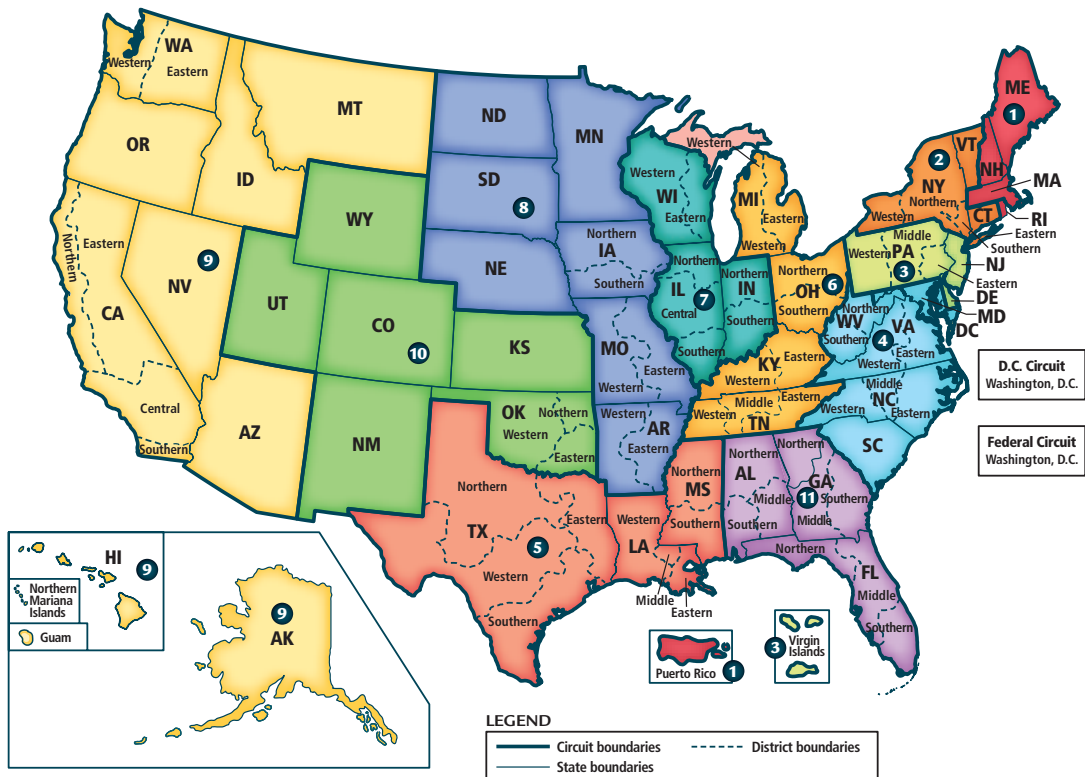
- A state sues a neighboring state for dumping waste in a river that borders both states.
- A wife sues her husband for divorce.
- A person is prosecuted for assaulting a neighbor.
- Two drivers crash their cars into each other. One driver sues the other for medical bills and car repairs.
- A group of parents sues the local school board, asking that their children's school be desegregated.



### The Law Where You Live

**Research** to learn more about the federal judicial district in which you live. Which federal court of appeals handles appeals from your local federal trial court?

**Figure 5.2** The Federal Judicial Circuits



Congress created district courts to serve as trial courts for federal cases. **ANALYZE THE DATA** Which federal judicial circuit hears cases from the state where you live?



# YOU BE THE JUDGE

## Independent Courts

**A** key element of a democracy is that courts must act impartially and make fair decisions without undue influence by outside forces.

One method of trying to ensure an independent judiciary is to appoint judges for a life term. This is done in the federal system and in a few states. Federal judges are nominated by the president and confirmed by the Senate. Judges who are appointed for a life term can make decisions in cases without being concerned about how it might affect their reelection.

In most state courts, judges are elected. Some believe that the need to raise funds for elections can result in a judge's being biased when deciding a particular case. Others believe that a system of electing judges ensures accountability and is appropriate in a democracy.

Another method of trying to preserve the independence of judges is known as merit selection. Using this approach, a judicial commission made up of lawyers, judges, and sometimes laypeople either decides who will be a judge or

sends names of judicial candidates to the governor, who then chooses judges from that list.

In addition to issues of judicial selection and retention, independent courts must have fair procedures, the power of judicial review, and the benefit of an executive branch that will enforce court orders if necessary.

In some countries, judges and courts are not independent. They are influenced or in some cases controlled by the legislature or the president.

Read each of the following situations carefully. For each one, determine whether the actions violate judicial independence. Explain your reasons.

- a. Marsha Monroe is running for election to be a judge on her state's supreme court. She visits the offices of George Sanchez, the president of a large corporation, and asks for a donation of \$1,000 to help in her campaign.
- b. Some U.S. senators are unhappy about decisions of some federal judges. When the budget for the federal judiciary comes before Congress, these senators propose a reduction in salary for federal judges.
- c. Judge Max Kaufman presides over a case involving a corporation. A distant cousin of his is employed by that corporation and is a witness for the corporation at the trial. Judge Kaufman rules for the corporation.
- d. Judge Maureen Kim is running for reelection and knows that crime is a big issue with the voters in her state. In the months just before the election, she hands down some unusually long sentences for drug offenses.

**Supporters of a district court judge**





## Tribal Courts

Many people, especially those who live in states with small Native American populations, do not realize that several hundred Indian tribal groups govern reservations in the United States today. Native American tribal groups are no longer completely independent sovereigns, as they were when Europeans first made contact with North America. As a result of their relationship with the federal government, the groups no longer possess complete authority over their reservations; they do, however, retain some of their original authority.

Sometimes the tribal powers that remain are called **inherent powers**. These powers include the power to regulate family relationships, tribal membership, and law and order among tribal members on the reservation. Occasionally Congress grants power, such as environmental regulation, to a tribal group in a certain area. This is called a **delegated power**. Most Native American groups have justice systems, often called tribal court systems. Tribal courts hear a broad range of both criminal and civil cases involving both Native Americans and non-Native Americans.

Some tribal justice systems—for example, those of the Pueblos in the southwestern United States—are traditional and show little influence of American culture. Many tribal justice systems, however, resemble Anglo-American court systems, primarily because of federal influence. Still, the work of tribal courts strongly reflects the culture of the people who work in them.

Some confusion and controversy surround the power of tribal governments and tribal courts. The jurisdiction of such courts varies based on such factors as the location of the offense (on or off the reservation) and the status of both the defendant and the plaintiff (Native American or non-Native American). Federal law and tribal law determine the jurisdiction of tribal courts. In the criminal area, for example, federal law gives federal courts jurisdiction over many felonies committed by Native Americans on the reservation. The criminal sentencing authority of tribal courts is limited to imprisonment for no longer than one year and a fine of no more than \$5,000. Therefore, some tribal groups have chosen to criminalize only minor offenses, while others also criminalize more serious offenses. The U.S. Supreme Court has ruled that inherent tribal authority over the reservation no longer includes the authority to prosecute non-Native Americans for crimes committed on the reservation.

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Navajo Supreme Court Associate Justices Lorene Ferguson and Marcella King-Ben question counsel during oral arguments. *Why are many tribal court systems similar to Anglo-American court systems?*



The power of a tribal court to hear civil matters on the reservation appears to be very broad. The Court has issued several decisions supporting tribal court authority and recognizing tribal courts as essential to the preservation of contemporary tribal self-government.

## The Supreme Court of the United States

The most important legal precedents are established by the U.S. Supreme Court, where nine justices hear each case and a majority rules. All state and federal courts in the United States must follow U.S. Supreme Court precedents. Some of these precedents, such as *Brown v. Board of Education*, which ended state-sponsored segregation in public education, are fairly well known by the public. Surveys show, however, that the public has little understanding of how the Court operates.

### The Case of . . .

#### *Gideon v. Wainwright*


In 1963, a case called *Gideon v. Wainwright* came before the U.S. Supreme Court. In this case, a Florida man named Clarence Gideon was charged with unlawful breaking into and entering a poolroom. Gideon asked the trial court to provide him with a free lawyer because he was too poor to hire one himself. The state court refused to provide him with an attorney. It said that state law provided free attorneys only to defendants charged with capital offenses (those crimes that carry a penalty of death or life imprisonment).

The Fourteenth Amendment to the U.S. Constitution says that no state may deprive a person of life, liberty, or property without **due process of law**. Due process means fair treatment. Gideon argued that to try someone for a felony without providing him or her with a lawyer violated the person's right to due process of law. State courts were split on the question of whether a free attorney had to be provided to an indigent defendant in a felony case. One powerful argument against Gideon

was that the Supreme Court should not be telling the states how to administer their criminal justice systems. However, the Supreme Court agreed with Gideon.

#### Problem 5.4

- In the case of *Gideon v. Wainwright*, what was the precedent that the Supreme Court set? Who has to follow this precedent?
- Who would have had to follow the precedent if the case had been decided by a judge in a state supreme court?
- Does the *Gideon* case apply if you are charged with a misdemeanor? Does it apply if you are sued in a civil case?



Landmark  
Supreme Court Cases

Visit the Landmark Supreme Court Cases Web site at [landmarkcases.org](http://landmarkcases.org) for information and activities about *Gideon v. Wainwright*.

The Supreme Court does not accept all appeals that are brought to it. Each year, more than 8,000 cases are appealed to the Court. The justices hear oral arguments and issue written opinions in about 80 cases each year.

More than half of the cases each year come from people who cannot afford to pay the \$300 filing fee. Usually, these petitioners are incarcerated. Very few of these **petitions for certiorari**—a request of a lower court to send up its records—are granted by the Court. In fact, nearly 99 percent of all requests for petitions for certiorari are denied. With few exceptions (such as federal voting rights cases), the Court does not have to hear a case appealed to it. With so many cases to choose from, it is able to set its own agenda. Most often petitions for certiorari are granted when lower courts have decided the same issue differently. The Court also takes cases that it believes deal with critical national issues.

The party who appeals to the Supreme Court is generally the losing party in an appellate case that was argued in a federal circuit court of appeals or a state supreme court. This party's first step is to request in writing that the Court hear the case. The written legal briefs, or legal arguments, initially submitted to the Court emphasize *why* the case should be heard rather than how it should be decided. The party who has won the case in the lower court submits a brief arguing why the case should not be heard. If the party appealing gets four of the nine justices to agree to hear the case, then the petition for certiorari is granted. This is the one exception to majority rule of the Court.

If the Court decides to hear the case, the parties then write briefs arguing *how* the case should be decided, and an oral argument is scheduled with the Court. During this hour-long argument, which is open to the public, each side has 30 minutes to present its case to the justices. The justices, who have already read the briefs and studied the case, ask many questions of the lawyers. After the case has been argued, the justices meet in a private conference to discuss the case, and the process of drafting an opinion begins. While the media tend to emphasize the disagreements among the justices, in a typical term the Court decides more cases 9 to 0 than 5 to 4.

The federal government participates in a significant number of the cases before the Court. Sometimes the U.S. government is a party to the case. More often, it is involved through the Office of the Solicitor General of the United States. The solicitor general's office represents the United States in court.

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In 2007, the justices of the U.S. Supreme Court included (from bottom left) Anthony Kennedy, John Paul Stevens, Chief Justice John Roberts, Antonin Scalia, David Souter, Samuel Alito, Ruth Bader Ginsburg, Clarence Thomas, and Stephen Breyer. *How does the Court determine which cases it will hear?*





When a party files a petition for certiorari and the solicitor general's office also asks the Court to take the case, the Court is much more likely to grant review. In these cases a lawyer from the solicitor general's office may also participate in the oral argument, presenting the federal government's views—and answering the justices' questions—during 10 of the 30 minutes allotted to the party whose side the government supports.

The Court's term begins on the first Monday of each October, and final decisions on cases argued during that term are handed down by the end of June of the following year. In a typical year, about 75 percent of the cases the Court hears come from the federal courts, and 25 percent from state courts. In more than half of the cases argued before the Court, the lower court opinion is reversed.

The nine U.S. Supreme Court justices are nominated by the president and confirmed by the Senate. They have the authority to interpret the meaning of the U.S. Constitution and federal laws. All lower courts must follow these interpretations and other rules of law established by the Supreme Court. The Court's opinions are released electronically the same day they are issued. Later they are published in law books.

In recent years, many of society's most controversial issues have ended up before the Court. These include the death penalty, freedom of speech, and civil rights. Because these issues are so significant and because justices are appointed for life, the views of persons nominated to become justices have become very important.

Some individuals criticize the practice of appointing justices on the basis of their personal or political viewpoints. These critics say appointees should be above politics because they sit for life and the Court makes its decisions in private. They say that other criteria should be used to select justices, such as demonstrated experience and expertise as a lawyer or a judge, as well as intelligence, integrity, and good moral character. Others say that the process—presidential nomination and Senate confirmation—is inherently political and that it is impossible to be above politics when it comes to judicial nominations to the Court.

As noted, all lower courts in the United States must follow legal precedent established by the Supreme Court. The rule that precedent must be followed is called **stare decisis**. This Latin phrase literally means “to stand by that which is decided.” Following precedent gives the legal system predictability and stability. While the Court usually follows its precedents, it has the power to overturn a rule of law established in a prior case. This sometimes occurs when society's prevailing views change and the justices want the law to reflect these changes. It also occurs when one or more justices who voted a certain way in an earlier case leaves the Court, and new justices are appointed who disagree with the prior decision. If this happens, the justices may overrule the existing precedent. When the Court decided *Brown v. Board of Education*, it voted to overturn the “separate but equal” rule it had established more than 50 years earlier in *Plessy v. Ferguson*.

# LAW AND DEMOCRACY *in Action*

## Who Should Be on the Supreme Court?

The president of the United States selects nominees for all federal judgeships, including the U.S. Supreme Court justices, “with the advice and consent of the Senate.” The Senate must approve all nominees before they are appointed. Once appointed, justices serve for life unless they resign or are impeached. When the Senate receives a nomination from the president, it sends the nomination to the Senate Judiciary Committee for consideration. The committee schedules a hearing on the nomination. After the hearing, the committee votes. If a majority votes in favor of the nominee, the nomination is sent to the full Senate for consideration. If the majority of the Senate also votes for the nominee, the nominee is confirmed.

### Problem 5.5

- a. You are legal counsel to the president. One of the Supreme Court justices has just announced his resignation. Many groups and individuals are suggesting names of people they think should be nominated by the president. Write a memo to the president describing the type of person who should be nominated to the U.S. Supreme Court.
- b. As legal counsel to the president, look at the following characteristics of potential Supreme Court nominees. Rank them from most important to least important. Be prepared to give your reasons.
- 45 years old
  - Hispanic American
  - female
  - graduated first in class from a top law school
  - respected trial court judge
  - smoked marijuana while a law professor 20 years ago
- c. Assume you are a member of the Senate Judiciary Committee. A nominee for the Supreme Court has an excellent reputation as a lawyer and lower court judge but is likely to vote, if confirmed, to overturn the case that established a woman’s right to choose an abortion. Voters in your state tend to support the right to choose. How would you vote on the nominee?



U.S. Supreme Court building

## International Courts

A number of international courts have been set up by the United Nations (UN) and other international organizations to apply and enforce international law. The first and most important one is the International Court of Justice (ICJ), the principal judicial organ of the UN. It is located at The Hague in the Netherlands. This court may settle any dispute based on international law that a country submits to it. Both countries involved must agree to have the ICJ settle the dispute. As of 2006, this court had rendered decisions in more than 90 cases as well as issuing 25 advisory opinions.

The International Criminal Court, created by the UN in 1998, began operating in 2003. This court has jurisdiction to try individuals for crimes such as genocide, crimes against humanity, war crimes, and crimes of aggression. Initially, more than 80 UN member countries ratified the treaty setting up the International Criminal Court, but the United States opposed ratification. Opposition in this country is based on the belief that this court might put American citizens, including U.S. military personnel, on trial for political reasons. For example, a member of the U.S. military might be tried because some countries oppose U.S. military policy in some part of the world.

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The International Court of Justice, also known as the World Court, is located in the Peace Palace in The Hague, the Netherlands. *What kind of disputes does the International Court of Justice settle?*

