



CHAPTER 9

The Judiciary

The Nature of the Judicial System

- ▶ Introduction:
 - ▶ Two types of cases:
 - ▶ Criminal Law: The government charges an individual with violating one or more specific laws.
 - ▶ Civil Law: The court resolves a dispute between two parties and defines the relationship between them.
 - ▶ Most cases are tried and resolved in state, not federal courts.
 - ▶ Cases of burglary or divorce

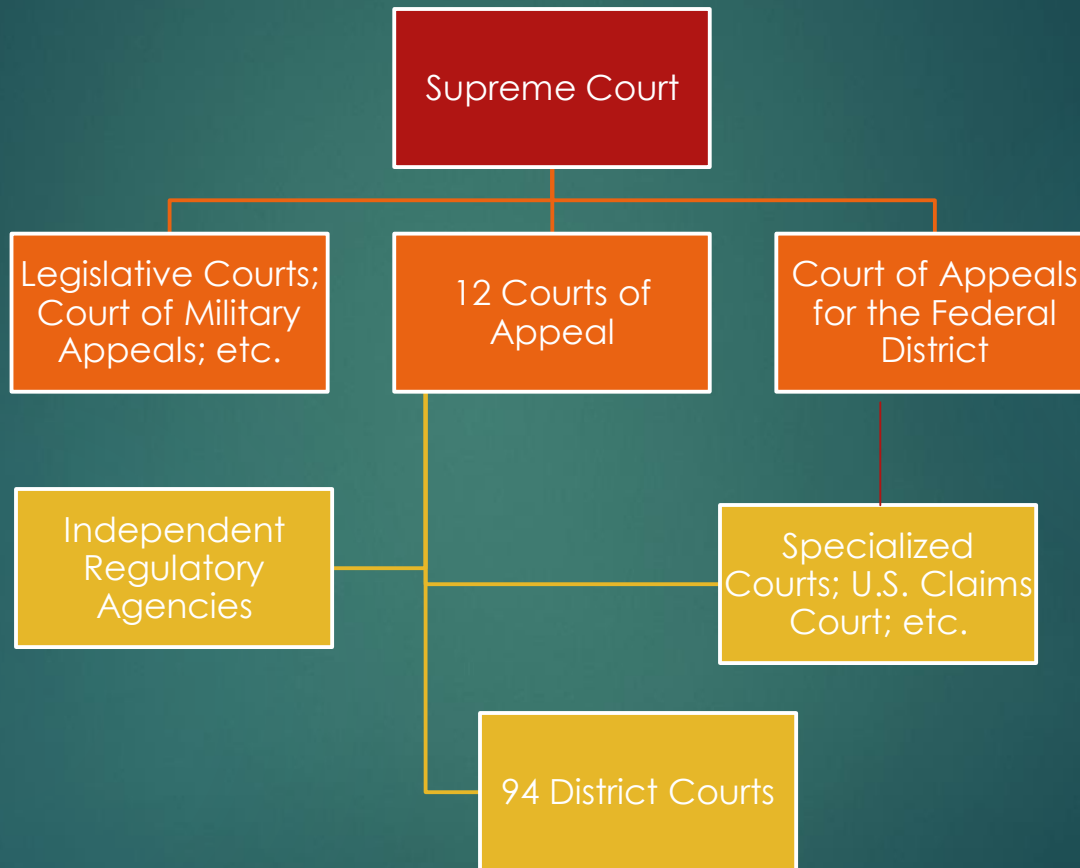
The Nature of the Judicial System

- ▶ Participants in the Judicial System
 - ▶ Litigants
 - ▶ Plaintiff—the party bringing the charge
 - ▶ Defendant—the party being charged
 - ▶ Jury—the people (normally 12) who often decide the outcome of a case
 - ▶ Important Points
 - ▶ Standing to sue: plaintiffs have a serious interest in the case; have sustained or likely to sustain a direct injury from the government
 - ▶ Justiciable disputes: a case must be capable of being settled as a matter of law.

The Nature of the Judicial System

- ▶ Participants in the Judicial System
 - ▶ Groups
 - ▶ Use the courts to try to change policies
 - ▶ *Amicus Curiae* briefs used to influence the courts
 - ▶ “friend of the court” briefs used to raise additional points of view and information not contained in briefs of formal parties
 - ▶ Attorneys
 - ▶ 800,000 lawyers in United States today
 - ▶ Legal Services Corporation: lawyers to assist the poor
 - ▶ Access to quality lawyers is not equal.

The Structure of the Federal Judicial System



The Structure of the Federal Judicial System

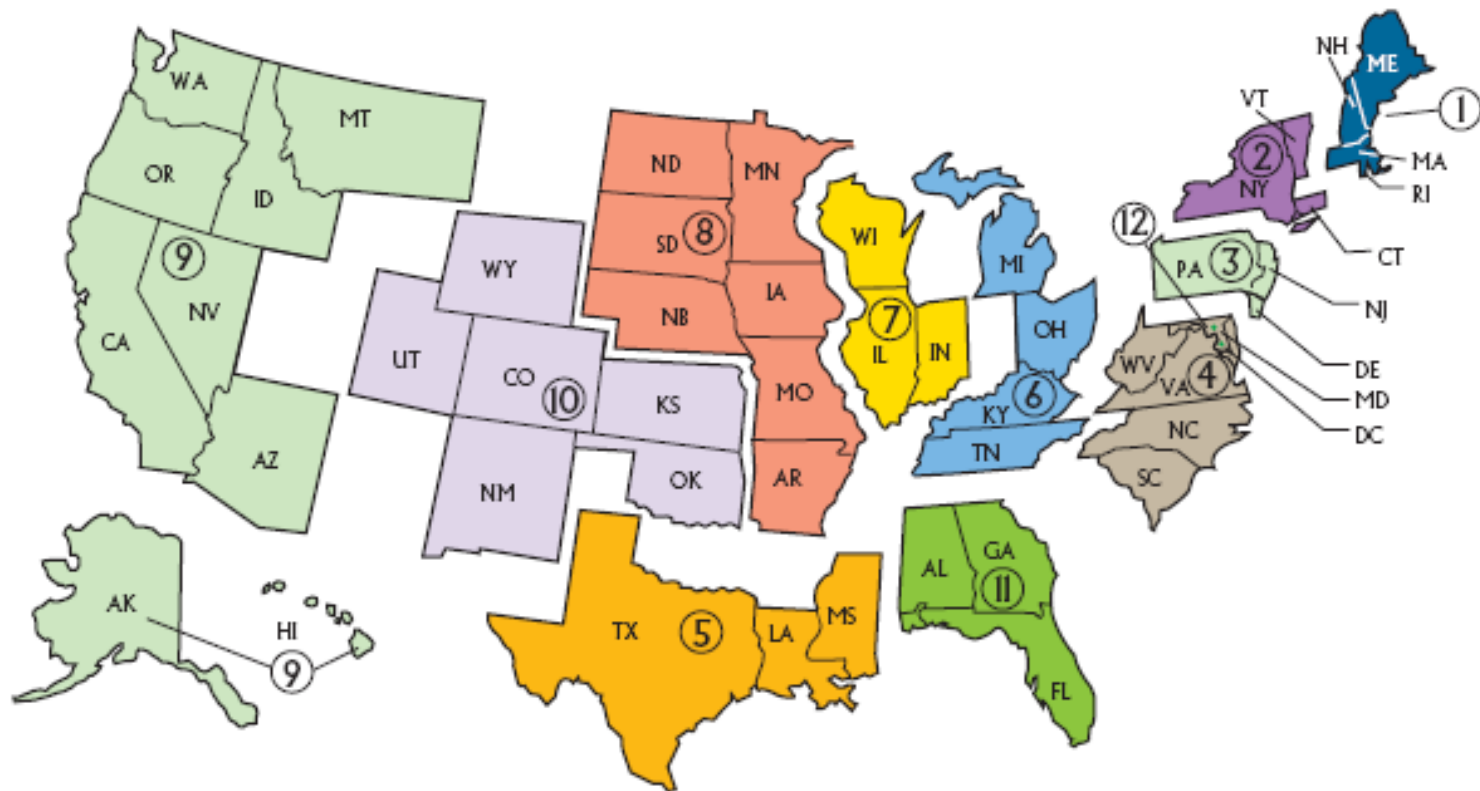
- ▶ District Courts (94 federal courts)
 - ▶ Original Jurisdiction: courts that hear the case first and determine the facts - the trial court
 - ▶ Deals with the following types of cases:
 - ▶ Federal crimes
 - ▶ Civil suits under federal law and across state lines
 - ▶ Supervise bankruptcy and naturalization
 - ▶ Review some federal agencies
 - ▶ Admiralty and maritime law cases
 - ▶ Supervision of naturalization of aliens

The Structure of the Federal Judicial System

- ▶ Courts of Appeal
 - ▶ Appellate Jurisdiction: reviews the legal issues in cases brought from lower courts
 - ▶ Hold no trials and hear no testimony
 - ▶ 12 circuit courts
 - ▶ U.S. Court of Appeals for the Federal Circuit – specialized cases
 - ▶ Focus on errors of procedure and law

The Structure of the Federal Judicial System

The Federal Judicial Circuits



Note: Not shown are Puerto Rico (First Circuit), Virgin Islands (Third Circuit), and Guam and the Northern Mariana Islands (Ninth Circuit).

TABLE 9.1 WHAT KINDS OF CASES DOES THE U.S. SUPREME COURT HEAR?

The following are the types of cases the Supreme Court was given the jurisdiction to hear as initially specified in Article III, section 2, of the Constitution:

All cases arising under the Constitution and laws or treaties of the United States

All cases of admiralty or maritime jurisdiction

Cases in which the United States is a party

Controversies between a state and citizens of another state (later modified by the Eleventh Amendment)

Controversies between two or more states

Controversies between citizens of different states

Controversies between citizens of the same state claiming lands under grants in different states

Controversies between a state, or the citizens thereof, and foreign states or citizens thereof

All cases affecting ambassadors or other public ministers

The Structure of the Federal Judicial System

- ▶ The Supreme Court
 - ▶ Ensures uniformity in interpreting national laws, resolves conflicts among states and maintains national supremacy in law
 - ▶ 9 justices – 1 Chief Justice, 8 Associate Justices
 - ▶ Supreme Court decides which cases it will hear—controls its own agenda
 - ▶ Some original jurisdiction, but mostly appellate jurisdiction
 - ▶ Most cases come from the federal courts
 - ▶ Most are civil cases

End of Part 1



The Politics of Judicial Selection

- ▶ Presidents appoint members of the federal courts with “advice and consent” of the Senate.
- ▶ The Lower Courts
 - ▶ Appointments handled through Senatorial Courtesy:
 - ▶ Unwritten tradition where a judge is not confirmed if a senator of the president’s party from the state where the nominee will serve opposes the nomination
 - ▶ Has the effect of the president approving the Senate’s choice
 - ▶ President has more influence on appellate level

The Politics of Judicial Selection

- ▶ The Supreme Court
 - ▶ Fewer constraints on president to nominate persons to Supreme Court
 - ▶ President relies on attorney general and DOJ to screen candidates
 - ▶ 1 out of 5 nominees will not make it
 - ▶ Presidents with minority party support in the Senate will have more difficulty.
 - ▶ Chief Justice can be chosen from a sitting justice, or as a new member to the Court

The Backgrounds of Judges and Justices

- ▶ Characteristics:
 - ▶ Generally white males
 - ▶ Lawyers with judicial and often political experience
- ▶ Other Factors:
 - ▶ Generally of the same party and ideology as the appointing president
 - ▶ Judges and justices may not rule the way presidents had hoped they would have.
 - ▶ Eisenhower said appointing Earl Warren chief justice was the worst mistake of his presidency

Current Members of the Supreme Court

- ▶ **Chief Justice John Roberts (GW Bush)**
- ▶ **Antonin Scalia (Reagan)**
- ▶ **Anthony Kennedy (Reagan)**
- ▶ **Clarence Thomas (GHW Bush)**
- ▶ **Ruth Bader Ginsburg (Clinton)**
- ▶ **Stephen Breyer (Clinton)**
- ▶ **Samuel Alito (GW Bush)**
- ▶ **Sonia Sotomayor (Obama)**
- ▶ **Elena Kagan (Obama)**



Name	Age when Appointed	Years on the Court	Current Age
Roberts	50	10	59
Scalia	50	29	79
Kennedy	51	27	79
Thomas	43	24	67
Ginsburg	60	22	82
Breyer	56	21	77
Alito	55	9	65
Sotomayor	55	6	61
Kagan	50	5	55

End of Part 2

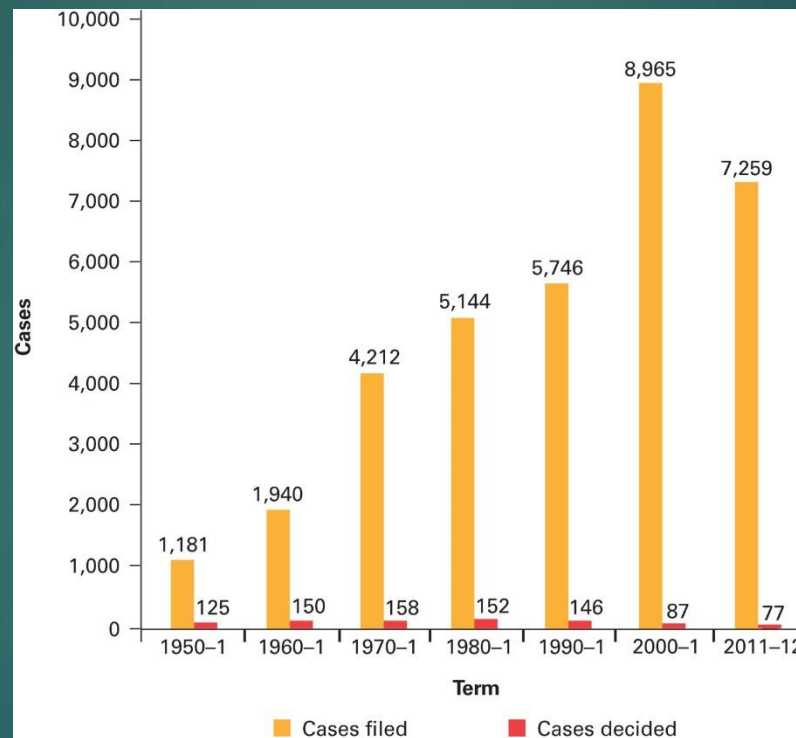


The Courts as Policymakers

▶ Accepting Cases

- ▶ Appealed from either federal or state courts
- ▶ Discussed in conference
 - ▶ 99% denied
- ▶ Use the “rule of four” to choose cases
- ▶ Issues a *writ of certiorari* to call up the case
- ▶ Placed on docket
 - ▶ Supreme Court accepts fewer than 100 cases each year

FIGURE 9.3 How Many Cases Does the Supreme Court Handle?



The Courts as Policymakers

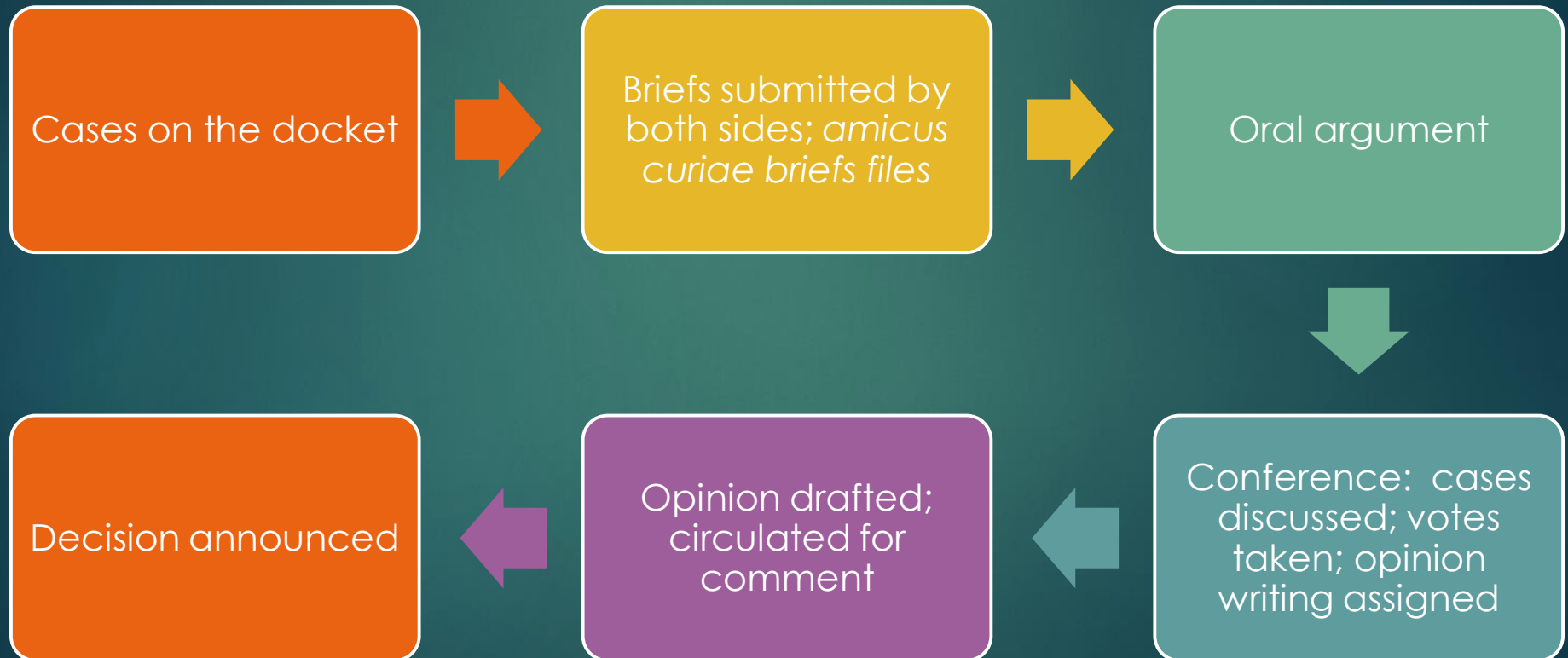
▶ Accepting Cases (continued)

▶ The Solicitor General:

- ▶ a presidential appointee and third-ranking office in the Department of Justice
- ▶ is in charge of appellate court litigation of the federal government
- ▶ Four key functions:
 - ▶ Decide whether to appeal cases the government lost
 - ▶ Review and modify briefs presented in appeals
 - ▶ Represent the government before the Supreme Court
 - ▶ Submit a brief on behalf of a litigant in a case in which the government is not directly involved

The Courts as Policymakers

► Making Decisions



The Courts as Policymakers



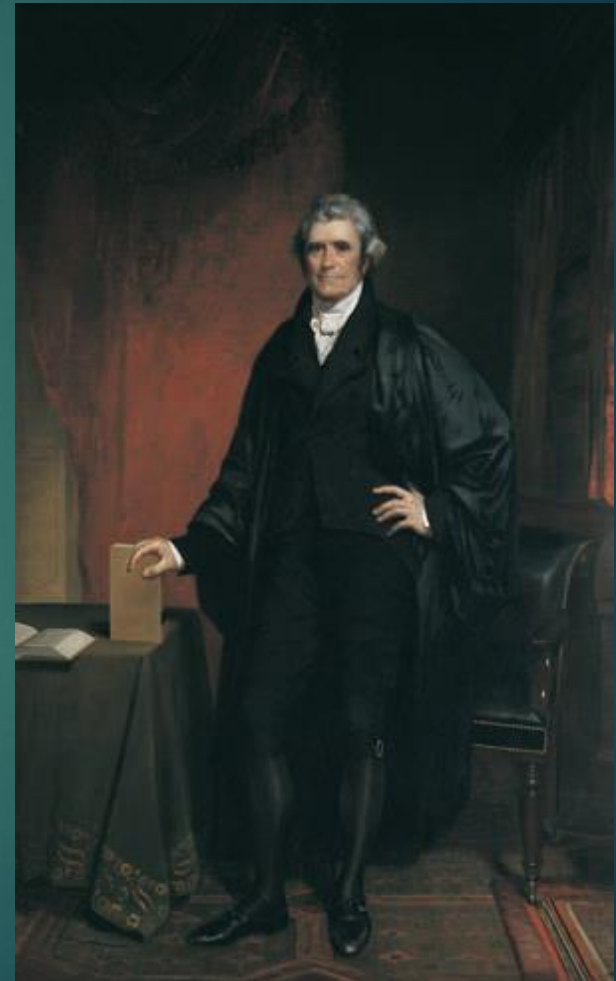
- ▶ Making Decisions (continued)
 - ▶ Dissenting opinions are written by justices who oppose the majority.
 - ▶ Concurring opinions are written in support of the majority but stress a different legal basis.
 - ▶ *Stare decisis*: let previous decision stand unchanged
 - ▶ Precedent: how similar past cases were decided
 - ▶ May be overruled
 - ▶ Original Intent: the idea that the Constitution should be viewed according to the original intent of the framers

The Courts as Policymakers

- ▶ Judicial implementation
 - ▶ How and whether court decisions are translated into actual policy, thereby affecting the behavior of others
 - ▶ Must rely on others to carry out decisions
 - ▶ Interpreting population: understand the decision
 - ▶ Implementing population: the people who need to carry out the decision—may be disagreement
 - ▶ Consumer population: the people who are affected (or could be) by the decision

The Courts and the Policy Agenda

- ▶ A Historical Review
 - ▶ John Marshall and the Growth of Judicial Review
 - ▶ *Marbury v. Madison* (1803) established judicial review—courts determine constitutionality of acts of Congress



The Courts and the Policy Agenda

- ▶ A Historical Review
 - ▶ The “Nine Old Men”
 - ▶ The Warren Court
 - ▶ The Burger Court
 - ▶ The Rehnquist Court
 - ▶ The Roberts Court

Understanding the Courts

- ▶ The Courts and Democracy
 - ▶ Courts are not very democratic.
 - ▶ Not elected
 - ▶ Difficult to remove judges and justices
 - ▶ The courts often reflect popular majorities.
 - ▶ Groups are likely to use the courts when other methods fail, which promotes pluralism.
 - ▶ There are still conflicting rulings leading to deadlock and inconsistency.

Understanding the Courts

- ▶ What Courts Should Do: The Scope of Judicial Power
 - ▶ Judicial restraint: judges should play a minimal policymaking role
 - ▶ Judicial activism: judges should make bold policy decisions and even chart new constitutional ground
 - ▶ Political questions: means of the federal courts to avoid deciding some cases
 - ▶ Statutory construction: the judicial interpretation of an act of Congress

Summary



- ▶ Judicial policymaking and implementation occur in lower federal and state courts.
- ▶ Many important questions are heard by the courts.
 - ▶ Much decision making is limited by precedent.
- ▶ Even the unelected courts promote democratic values.