

Chapter 9: Judiciary

The Federal Court System

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Study Guide Questions

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What article in the Constitution explains the federal courts, what does the Constitution say about how long a judge can serve in the federal court system, and what is the only requirement they have in order to keep their job? Pages 249-252

What term is used to determine which court in the federal system has the authority to hear it? Page 248

What are the different types of courts in the United States, how are they different, and how many are there for each type? Pages 252-255

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The Federal Court System

- Supreme Court**
 - Highest court in the federal system
 - Nine Justices, meeting in Washington, D.C.
 - Appellate jurisdiction through certiorari process
 - Limited original jurisdiction over some cases
- Courts of Appeal**
 - Intermediate level in the federal system
 - 12 regional "circuit" courts, including D.C. Circuit
 - No original jurisdiction; strictly appellate
- District Courts**
 - Lowest level in the federal system
 - 94 judicial districts in 50 states & territories
 - No appellate jurisdiction
 - Original jurisdiction over most cases

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The judicial system in the United States can best be described as a dual system consisting of the federal court system and the judicial systems of the fifty states. The federal court system is described in Article 3 of the U. S. Constitution. Section 1 calls for “one Supreme Court” and the “inferior courts.”

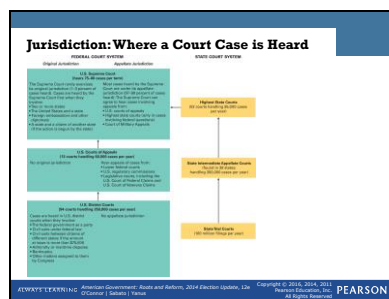
Only a few details are provided regarding the job of a federal judge. Section 2 states, “The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be

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diminished during their continuance in office.”

At the bottom of the system are trial courts, where litigation begins. In the middle are appellate courts, which generally review only findings of law made by trial courts. At the top of both the federal and state court systems sits the court of last resort. In the federal court system, trial courts are called district courts, appellate courts are termed courts of appeals, and the court of last resort is the Supreme Court.

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Article 3, section 2 of the U. S. Constitution also states which courts in the federal system are responsible for different types of cases.

Original jurisdiction is where a court case begins. Once a court rules on a case, that decision may be appealed at a higher court.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

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The Supreme Court has original jurisdiction over “cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.”

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The District Courts

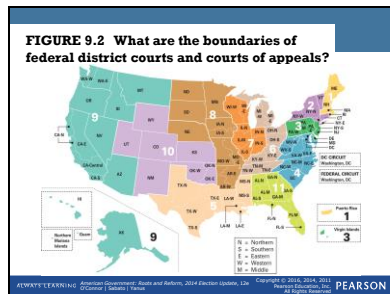
- Each state has at least one
 - More populous states have more
- Jurisdiction
 - Must involve federal or multi-state issue
- U.S. Attorney General
 - Nominated by president; confirmed by Senate

Congress created the U.S. District Courts when it enacted the Judiciary Act of 1789. District courts are federal trial courts. Right now we have 94. Each state has at least one, and the most populous states, California, Texas, and New York, each have four.

Cases which are heard in the federal district courts generally fall into one of three categories: 1) They involve the federal government as a party; 2) they present a federal question based on a claim under the U.S. Constitution, a treaty with another nation, or a federal statute; or 3) they involve civil suits in which citizens are from different states and the amount of money involved is more than \$75,000.

Each federal judicial district has a U.S. Attorney General, who is nominated by the president and confirmed by the Senate.

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This map shows the location of each U.S. court of appeals and the boundaries of the federal district courts in states with more than one district. Note that there are 11 numbered and two unnumbered courts of appeals. There are also 94 district courts. States are divided into between one and four districts; no district court crosses state lines.

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The Courts of Appeals

- Eleven Courts of Appeals
 - A twelfth is restricted to federal regulatory commissions and a thirteenth to patents
- Number of judges varies
 - Depends on workload and complexity
- No original jurisdiction
 - No new testimony

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There are currently 11 numbered courts of appeals. A twelfth handles most appeals involving federal regulatory commissions and agencies including, for example, the National Labor Relations Board. A thirteenth is the U.S. Court of Appeals for the Federal Circuit, which deals with patents and contracts and financial claims against the federal government.

The number of judges within each court of appeals varies depending on the workload and complexity of the cases. It can range from six judges to nearly 30. In deciding cases, judges are

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divided into rotating panels of three judges.

The courts of appeals have no original jurisdiction. They hear appeals from criminal and civil cases, and appeals from administrative agencies. In general, courts of appeals try to correct errors of law and procedure. They hear no new testimony.

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Sometimes cases reviewed by the Supreme Court involve highly controversial issues. The Court hears only cases from U.S. Courts of Appeal and those from state supreme courts and other courts of last resort. Since 1869, there have been eight associate justices and one chief justice who serve on the court. Each has four clerks, and the entire court employs just 400 staff members.

Decisions of the U.S. Supreme Court are extremely important because they are binding throughout the entire country and establish national precedents, or rules for settling subsequent cases of similar nature. The practice of adhering to precedent when deciding cases is called *stare decisis*. Who can translate this Latin phrase for us?

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United States Foreign Intelligence Surveillance Court

The United States Foreign Intelligence Surveillance Court (FISC, also called the FISA Court) is a U.S. federal court established and authorized under the [Foreign Intelligence Surveillance Act of 1978 \(FISA\)](#) to oversee requests for surveillance warrants against foreign spies inside the United States by federal law enforcement and intelligence agencies. Such requests are made most often by the National Security Agency (NSA) and the Federal Bureau of Investigation (FBI). Its powers have evolved to the point that it has been called "almost a parallel Supreme Court".

https://en.wikipedia.org/wiki/United_States_Foreign_Intelligence_Surveillance_Court



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The **United States Foreign Intelligence Surveillance Court (FISC, also called the FISA Court)** is a U.S. federal court established and authorized under the Foreign Intelligence Surveillance Act of 1978 (FISA) to oversee requests for surveillance warrants against foreign spies inside the United States by federal law enforcement and intelligence agencies. Because of the sensitive nature of its business, the court is a "secret court" – its hearings are closed to the public. While records of the proceedings are kept, they also are unavailable to the public, although copies of some records with classified information redacted have been made public. Due to the classified nature of its proceedings, usually only attorneys licensed to practice in front of the US government are permitted to appear before the court. Because of the nature of the matters heard before it, court hearings may need to take place at any time of day or night, weekdays or weekends; thus, at least one judge must be "on call" at all times to hear evidence and decide whether or not to issue a warrant.

The court's judges are appointed solely by the Chief Justice of the United States without confirmation or oversight by the U.S. Congress. This gives the chief justice the ability to appoint like-minded judges and create a court without diversity. Theodore Ruger, a professor at the University of Pennsylvania Law School, said with respect to Chief Justice John Roberts. "The way the FISA is set up, it gives him unchecked authority to put judges on the court who feel the same way he does."

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9.2 Which conditions must be met before a case may be heard in federal district court?

- a. It must involve the federal government as a party.
- b. It must present a federal question based on a claim under the U.S. Constitution.
- c. Both A and B
- d. Either A or B

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Before we move on to judicial selection, let's answer a multiple-choice question about federal appeals.

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9.2 Which conditions must be met before a case may be heard in federal district court?

- a. It must involve the federal government as a party.
- b. It must present a federal question based on a claim under the U.S. Constitution.
- c. Both A and B
- d. Either A or B**

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Cases heard by the federal district courts general fall into either one of these categories.

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How Federal Court Judges Are Selected

- ▣ Who Are Federal Judges?
- ▣ Nomination Criteria
- ▣ The Confirmation Process
- ▣ Appointments to the U.S. Supreme Court

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The selection of federal judges is often a highly political process with important political ramifications because the president must nominate judges and the U.S. Senate must confirm them. Presidents, in general, try to select well-qualified men and women for the bench. But, these appointments also provide a president with the opportunity to put his philosophical stamp on the federal courts.

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TABLE 9.2 How does a president affect the federal judiciary?

TABLE 9.2 HOW DOES A PRESIDENT AFFECT THE FEDERAL JUDICIARY?

President	Appointed to Supreme Court	Appointed to Courts of Appeals	Appointed to District Courts ^a	Total Appointed	Total Number of Judgeships ^b	Percentage of Judgeships Filled by President
Carter (1977-1981)	0	55	223	278	657	39
Reagan (1981-1989)	3	83	290	376	763	50
Bush (1989-1993)	2	42	145	192	625	32
Clinton (1993-2001)	2	66	309	377	841	44
Bill Clinton (2001-2008)	2	62	241	325	686	47
Obama (2009-P)	2	62	223	287	694	41

^aIncludes district courts in the territories.
^bIncludes positions not filled by presidents and positions not open to office.
Source: Clinton data through October 2014.
NOTE: Figures on the Bench: ©2014 Heritage Report (January 18, 2014): 173. Reprinted by permission of Copyright Clearance Center on behalf of Congressional Quarterly, Inc. Updated by authors. Source data from Federal Judiciary Center. Not shown by presidential administration/term.

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This table shows how many judges presidents from Carter to Obama have appointed to the federal courts.

Source: *Imprints on the Bench*, "CQ Weekly Report (January 19, 2001): 173. Reprinted by permission of Copyright Clearance Center on behalf of Congressional Quarterly, Inc. Updated by authors. Obama data from Senate Judiciary Committee, www.judiciary.senate.gov/nominations/112thCongress.cfm and www.judiciary.senate.gov/nominations/111thCongress.cfm.

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Who Are Federal Judges?

- ▣ Background
 - Generally have held other judicial jobs
 - Active in politics
 - Diversity growing



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Typically, federal district court judges have held other political offices, such as state court judge or prosecutor. Most have been involved in politics, which is what usually brings them into consideration for a position on the federal bench.

White males continue to dominate the federal courts, but since the 1970s, most presidents have pledged (with varying degrees of success) to do their best to appoint more African Americans, Hispanics, women, and

other underrepresented groups to the federal bench.

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Nomination Criteria

- Experience
- Ideology or Policy Preferences
- Rewards
- Pursuit of Political Support
- Religion
- Race, Ethnicity, and Gender

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When a president has a vacancy to fill on a federal court, six criteria tend to stick out as most important when he considers a nominee: experience, ideology, rewards, pursuit of political support, religion, and race, ethnicity, and gender. Most nominees have had at least some judicial, legal, or governmental experience. For example, in 2014, all nine sitting Supreme Court justices but one—former Solicitor General Elena Kagan—had prior judicial experience.

When it comes to ideology, most presidents also seek to appoint individuals who share their policy preferences, and almost all have political goals in mind when they appoint a judge or justice. Many of those appointed to the judiciary have been personal friends or supporters of the president. Some presidents use their nominees to garner political support, especially from groups that have not shown a strong liking of the president. For example, President Ronald Reagan pledged during his 1980 campaign to nominate the first woman to the Supreme Court.

