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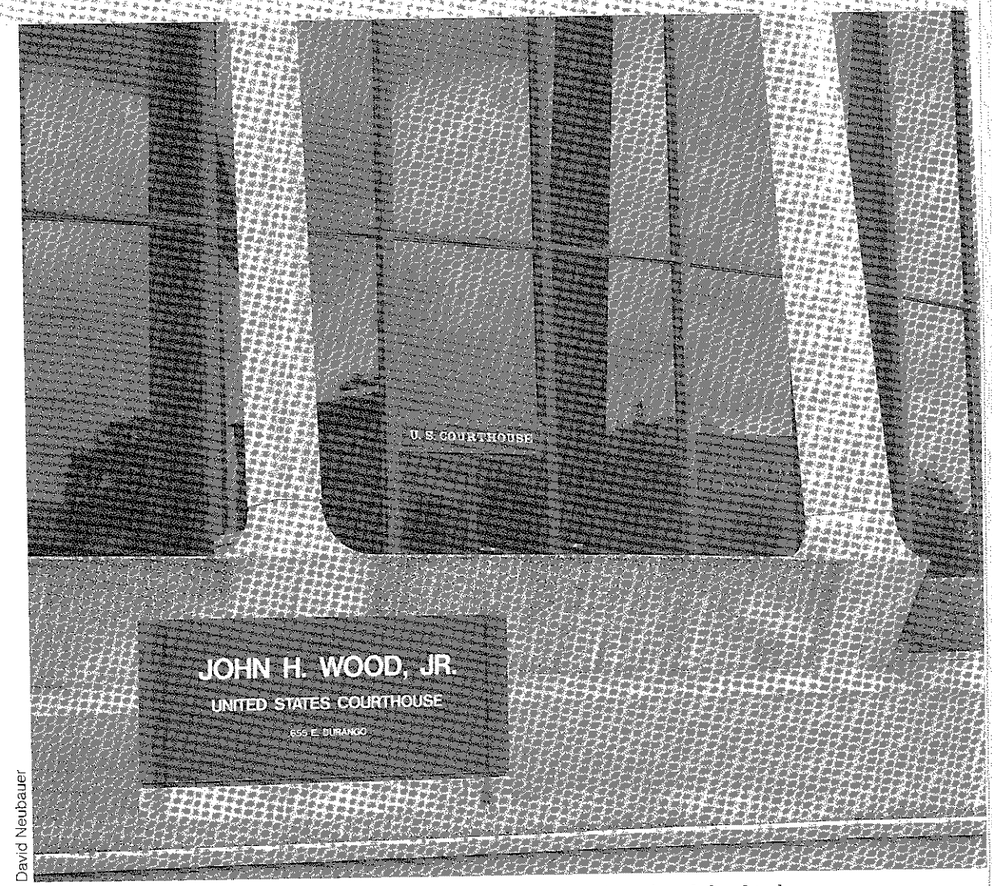
CHAPTER

FEDERAL COURTS



David Neubauer

The U.S. courthouse in San Antonio, Texas, is named in honor of the first federal judge assassinated in the twentieth century. Although the design of this building is modern, the federal courts date to 1789.

Debates about whether disputes should be decided by federal courts (this chapter) or state courts (Chapter 4) are as old as the country. Since September 11, 2001, however, there has also been disagreement among the president, Congress, and the Supreme Court about what role, if any, the federal courts should play in reviewing the rights of detainees in the so-called War on Terrorism. President Bush has consistently argued that the federal courts do not have jurisdiction over detainees in the "War on Terrorism." Referring to these detainees as enemy combatants, the executive branch and military have preferred to try and judge them outside of the federal court system. The Supreme Court has been skeptical of this view, siding 6–3 against the president in *Rasul v. Bush* (2004) and stating that U.S. courts do have jurisdiction to hear cases coming from the detainees at Guantánamo Bay. The military responded by creating an elaborate system of military tribunals that did not mirror the processes and procedures used in federal courts. Federal district and appellate courts would subsequently disagree about the legality of these military tribunals, setting up another Supreme Court confrontation. The Supreme Court ruled (5–3) in *Hamdan v. Rumsfeld* (2006) that the military tribunals violated U.S. and international law. In responding to the decision, President Bush said, "We take the findings seriously. . . . The American people need to know that this ruling, as I understand it, won't cause killers to be put on the street" (Lane 2006). The president's exertion of war powers had experienced a significant setback.

Up until this point, the debate had largely been between the executive branch and the courts. But, following *Hamdan*, Congress got involved and in the fall of 2006 passed the Military Commissions Act. The law was passed largely along party lines, with all but a handful of Republicans in favor and most Democrats opposed. The law was a clear rebuke of *Hamdan* and was intended to authorize military tribunals for alien enemy combatants and to remove any rights they may have to secure relief from the federal courts. The law made the military (and its tribunals), not the federal courts, the sole determiner of the status and punishment of enemy combatants. It appeared the debate was over when the Supreme Court initially refused to hear an appeal of the Military Commissions Act. The president would get what he had wanted, with help from the Republicans in Congress, and the federal courts were left wondering how much authority they really had. But then, in June 2007, the Supreme Court reversed course and agreed to hear two cases from the Court of Appeals for the District of Columbia that would test again the principle of whether the president and Congress could prevent the federal courts from hearing challenges from enemy combatants about the legality of their detentions (habeas corpus petitions). The cases were combined into *Boumediene v. Bush* (2008). This would be the third time the high court had heard a case on the debate about the appropriate balance of power among the federal courts, Congress, and the president. On June 12, 2008, the Supreme Court again rejected the Bush administration's claims that habeas corpus protections did not extend to enemy combatants and rebuffed Congress as well by declaring parts of the 2006 Military Commissions Act unconstitutional. The implications of the 5–4 decision written by Justice Kennedy for appeals by enemy combatants of their detention are still being sorted out, but what is clear is that the federal courts are not afraid of asserting their primacy over Congress and the president when it comes to interpreting the Constitution and the law.

The "enemy combatant" issue is but the latest dispute over what cases federal courts should, or should not, hear. The actions by Congress to strip the federal courts of jurisdiction over enemy combatants are consistent with the recent efforts by Congress to strip the federal courts of jurisdiction over other controversial matters such as abortion and the death penalty. Rarely has the Congress acted to expand the federal courts' jurisdiction.

These issues are hardly new: The interplay between politics and the judiciary goes back to the early days of the republic. Throughout our history, there have been disputes over which cases federal courts should hear. Indeed, the Founding Fathers were deeply divided over creating any federal courts besides the U.S. Supreme Court. The principal tasks of this chapter, therefore, are to explain the organization of U.S. courts and to discuss how the current federal judicial structure—district courts, appellate courts, and the U.S. Supreme Court—is a product of 200 years of political controversy and compromise about the proper role of the federal judiciary. The remainder of the chapter focuses on the three-tier system of federal courts, the specialized courts, and the administrative structure. Finally, a discussion of the contemporary debate over how many cases are too many for the federal courts to handle will illustrate that the controversies continue.

Principles of Court Organization

The U.S. court system is complicated and technical. Even lawyers who use the courts regularly sometimes find the details of court organization confusing. Court nomenclature includes many shorthand phrases that mean something to those who work in the courts daily but can be quite bewildering to the outsider who tries to read the words in their literal sense. Learning the language of courts is like learning any foreign language—some of it can come only from experience. Before exploring the specifics of federal and state courts, this section will discuss the basic principles of court organization. Three concepts—jurisdiction, the dual court system, and trial versus appellate courts—underlie the structure of the American judiciary.

Jurisdiction

Court structure is largely determined by limitations on the types of cases a court may hear and decide. **Jurisdiction** is the power of a court to decide a dispute. A court's jurisdiction can be further subdivided into geographical, subject matter, and hierarchical jurisdiction.

Geographical Jurisdiction Courts are authorized to hear and decide disputes arising within a specified geographical jurisdiction. Thus, a California court ordinarily has no jurisdiction to try a person accused of committing a crime in Oregon. Courts' geographical boundaries typically follow the lines of other governmental bodies such as cities, counties, or states.

Two principal complications arise from geographical jurisdiction. First, events that occur on or near the border of different courts may lead to a dispute over which court has jurisdiction. If the law of the two jurisdictions differs significantly, then determination

of which law applies can have important consequences for the outcome of the case. Second, a person accused of committing a crime in one state may, for whatever reason (flight or happenstance), be in another state when he or she is arrested. **Extradition** involves the surrender by one state (or country) of an individual accused of a crime outside its own territory and within the territorial jurisdiction of the other. If an American fugitive has fled to a foreign nation, then the U.S. secretary of state will request the return of the accused under the terms of the extradition treaty the United States has with that country. (A few nations do not have such treaties.)

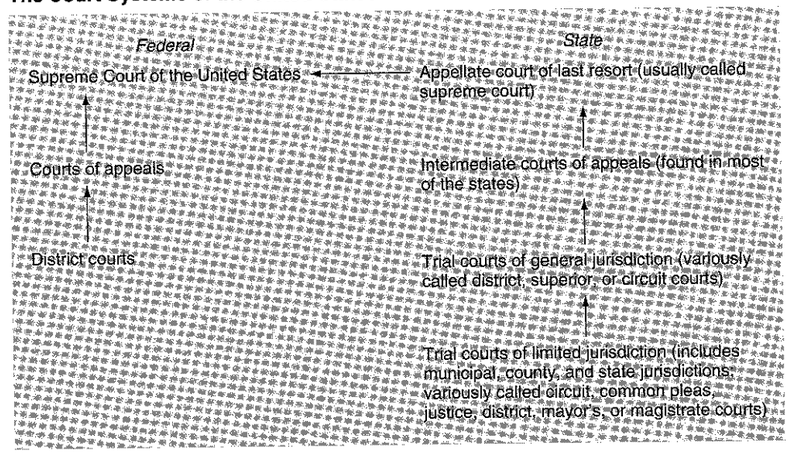
Subject Matter Jurisdiction Court structure is also determined by subject matter jurisdiction. Trial courts of limited jurisdiction are restricted to hearing only a limited category of cases, typically misdemeanors and civil suits involving small sums of money (termed small claims). U.S. bankruptcy courts, for example, are restricted to hearing bankruptcy cases. State courts typically include traffic courts and juvenile courts, both of which are examples of subject matter jurisdiction. Trial courts of general jurisdiction are empowered to hear all other types of cases within the jurisdictional area. In state court systems (discussed in Chapter 4), the county trial court fits here.

Hierarchical Jurisdiction This subdivision refers to differences in the courts' functions and responsibilities. Original jurisdiction means that a court has the authority to try a case and decide it. Appellate jurisdiction means that a court has the power to review cases that have already been decided by another court. Trial courts are primarily courts of original jurisdiction, but they occasionally have limited appellate jurisdiction, for example, when a trial court hears appeals from lower trial courts (such as mayor's courts or a justice of the peace court). Appellate courts often have a very limited original jurisdiction. The U.S. Supreme Court has original jurisdiction involving disputes between states, and state supreme courts have original jurisdiction in matters involving disbarment of lawyers.

Dual Court System

America has a **dual court system**: one national court system and separate court systems in each of the fifty states, plus the District of Columbia and the U.S. territories. The result is more than fifty-one separate court systems. You will find federal courts in every state and territory of the union. Furthermore, a federal court in Alabama operates in essentially the same way as its counterpart in Wyoming. However, the structural uniformity does not mean that actual practices are identical. On the contrary, these courts exhibit important variations in how they interpret and apply the law—an indication of the federal courts' heritage of independence, decentralization, and individualism. Figure 3.1 shows the ordering of cases in the dual court system. The division of responsibilities is not as clear-cut as it looks, however. State and federal courts share some judicial powers. Some acts, such as selling drugs or robbing banks, are crimes under federal law and under the laws of most states, which means that the accused could be tried in either a federal or a state court. Furthermore, litigants in state court may appeal to the U.S. Supreme Court, a federal court.

FIGURE 3.1
The Court Systems of the United States and the Routes of Appeal



Trial and Appellate Courts

The third concept embodied in the American court system is the relationship between trial and appellate courts. Virtually all cases, whether civil or criminal, begin in the **trial court**. In a criminal case, the trial court arraigns the defendant, sets bail, conducts a trial (or takes a guilty plea), and, if the defendant is found guilty, imposes sentence. In a civil case, the trial court operates in much the same fashion, ensuring that each party is properly informed of the complaint, supervising pretrial procedures, and conducting a trial or accepting an out-of-court settlement. Because only trial courts hear disputes over facts, witnesses appear only in trial courts. Trial courts are considered finders of fact, and the decision of a judge (or a jury) about a factual dispute normally cannot be appealed.

The losing party in the trial court generally has the right to request an appellate court to review the case. The primary function of the **appellate court** is to ensure that the trial court correctly interpreted and applied the law. In performing that function, appellate courts perform another important function: They re-examine old rules, devise new ones, and interpret unclear language of past court decisions or statutes. Appellate and trial courts operate very differently, because their roles are not the same. In appellate courts, no witnesses are heard, no trials are conducted, and juries are never used. Moreover, instead of a single judge deciding (as in trial courts), a group of judges makes appellate court decisions, typically a three-judge panel but there may be as many as twenty-eight judges, as in the U.S. Court of Appeals for the Ninth Circuit. In addition, appellate judges often provide written reasons justifying their decisions; trial court judges rarely write opinions.

The principal difference between a trial and an appeal is that a trial centers on determining the facts, whereas an appeal focuses on correctly interpreting the law. This distinction is not absolute, however. Fact finding in the trial courts is guided by law, and appellate courts are sensitive to the facts of a case.

The History of the Federal Courts

The organization of the federal judiciary has been a major political issue for more than 200 years. The current structure of district courts, courts of appeals, and the U.S. Supreme Court reflects a long-standing debate over the organization of U.S. government. Questions about the jurisdiction of the federal courts are not mere details of procedure. Rather, they go to the heart of the federal system of government and affect the allocation of governmental power between the national government and the state governments.

Any study of the federal courts in the twenty-first century must begin with two eighteenth-century landmarks: Article III of the U.S. Constitution and the Judiciary Act of 1789. Although important changes have occurred since, the decisions made at the very beginning of the republic about the nature of the federal judiciary have had a marked impact on contemporary court structure.

The Constitutional Convention

One major weakness of the Articles of Confederation was the absence of a national supreme court to enforce federal law and resolve conflicts and disputes between courts of the different states. Thus, when the delegates gathered at the Constitutional Convention in Philadelphia in 1787, there was widespread agreement that a national judiciary should be established. Early in the convention, a resolution was unanimously adopted that "a national judiciary be established." Considerable disagreement arose, however, on the specific form that the national judiciary should take. Article III was the subject "of more severe criticism and greater apprehension than any other portion of the Constitution" (Warren 1926, 7).

Two schools of thought arose as to whether there should be a federal court system separate from the state systems. Advocates of states' rights (later called Anti-Federalists) feared that a strong national government would weaken individual liberties. More specifically, they saw the creation of separate federal courts as a threat to the power of state courts. As a result, the Anti-Federalists believed that federal law should be adjudicated first by the state courts and that the U.S. Supreme Court should be limited to hearing only appeals from state courts. On the other hand, the Nationalists (who later called themselves Federalists because they favored ratification of the Constitution) distrusted what they saw as the provincial prejudices of the states and favored a strong national government that could provide economic and political unity for the struggling new nation. As part of that approach, the Nationalists viewed state courts as incapable of developing a uniform body of federal law that would allow businesses to flourish. For those reasons, they backed the creation of lower federal courts.

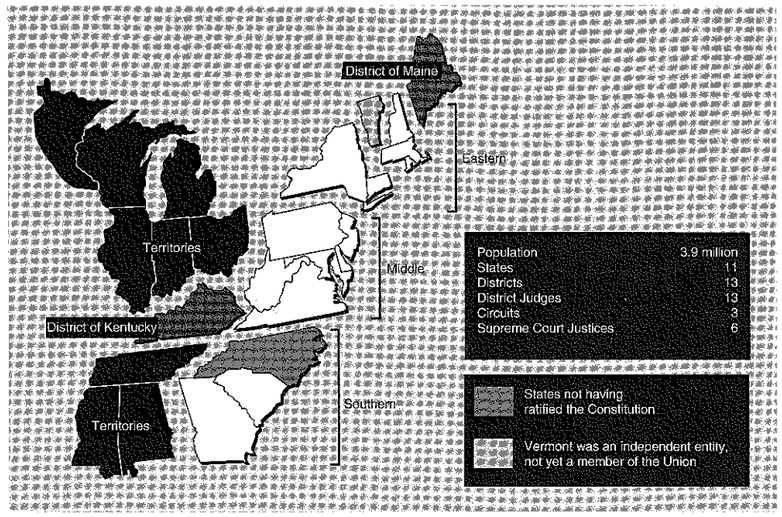
The conflict between states' rights advocates and Nationalists was resolved by one of the many compromises that characterized the Constitutional Convention. Article I

set out the authority of Congress in considerable detail, and Article II described the executive authority, albeit somewhat less specifically. But Article III is brief and sketchy, providing only an outline of a federal judiciary: "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." The brevity of that provision left Congress with the task of filling in much of the substance of the new judicial system. As one observer of the period commented, "The convention has only crayoned in the outlines. It is left to Congress to fill up and color the canvas" (Goebel 1971, 280).

The Judiciary Act of 1789

Once the Constitution was ratified, action on the federal judiciary came quickly. Indeed, the first bill introduced in the Senate dealt with the unresolved issue of inferior federal courts. The congressional debate included many of the same participants, who repeated all the arguments heard in the judiciary debates at the Constitutional Convention. After extensive debate, Congress passed the Judiciary Act of 1789, which laid the foundation for the current U.S. national judicial system by creating a complex three-tier system of federal courts. At the top was the U.S. Supreme Court, consisting of a chief justice and five associate justices. At the base were thirteen district courts, each presided over by a district judge. In the middle was a circuit court in every district, each composed of two Supreme Court justices, who rode the circuit, and one district court judge. Figure 3.2 shows the location of the district and circuit courts in 1789.

FIGURE 3.2
The Federal Judiciary in 1789



The Judiciary Act of 1789 represented a major victory for the Federalists: They were successful in creating separate federal district courts. At the same time, the act was a compromise that allayed some of the Anti-Federalists' fears. In at least three ways, the organization of the federal judiciary supported state interests (Richardson and Vines 1970).

First, the boundaries of the district courts were drawn along state lines; no district encompassed more than one state. Thus, from the outset, the federal judiciary was "state contained." Even though district courts enforced national law, they were organized along local lines with each district court responsible for its own work under minimal supervision.

Second, by custom, the selection process ensured that federal district judges would be residents of their districts. Although nominated by the president, district judges were to be (and are today) local residents, approved by senators from the state, presiding in their home area, and, therefore, subject to the continuing influence of the local social and political environment.

Third, the act gave the lower federal courts only limited jurisdiction. The Federalists wanted the full range of federal jurisdiction granted by the Constitution to be given to district and circuit courts. However, to achieve a lower federal court system, they were forced to reduce that demand greatly. The 1789 act gave the newly created lower courts far less jurisdiction than outlined in the Constitution.

1789 to 1891

The Judiciary Act of 1789 provided only a temporary compromise on the underlying issues between Federalists and Anti-Federalists. The Federalists pushed for expanded powers for the federal judiciary. Those efforts culminated in the passage of the Judiciary Act of 1801, which eliminated circuit riding, created many new judgeships, and greatly extended the jurisdiction of the lower courts. The Federalist victory was short-lived, however. With the election of Thomas Jefferson as president, the Anti-Federalists in Congress quickly repealed the act and returned the federal judiciary to the basic outlines of the previous circuit court system. The 1801 law is best remembered for the resulting lawsuit of *Marbury v. Madison* (1803). (See Case Close-Up: *Marbury v. Madison* 1803.)

Between 1789 and 1891, observers generally agreed on the inadequacy of the federal judicial system, but the underlying dispute persisted. Congress passed numerous minor bills that modified the system in a piecemeal fashion. Dissatisfaction centered on two principal areas: circuit riding and the appellate court workload.

One of the most pronounced weaknesses of the 1789 judicial structure was circuit riding. The Supreme Court justices, many of them old and ill, faced days of difficult and often impossible travel. In 1838, for example, the nine justices traveled an average of 2,975 miles. Justice McKinley, whose circuit included Alabama, Louisiana, Mississippi, and Arkansas, traveled 10,000 miles a year, yet found it impossible to make it to Little Rock. The justices complained about the intolerable conditions that circuit-riding duties imposed on them—which occasionally included physical danger. In 1888, while traveling in his home state of California, Justice Stephen Field was almost murdered by an unhappy litigant.

Beyond the personal discomforts some justices encountered, the federal judiciary confronted a more systemic problem—mounting caseloads. Initially, the federal judges of the newly created trial courts had relatively little to do because their jurisdiction was very limited. The Supreme Court also had few cases to decide. But the initially sparse workload began to expand as the growth of federal activity, the increase in corporate business, and the expansion of federal jurisdiction by court interpretation created litigation for a court system that was ill equipped to handle it. From the end of the Civil War

CASE CLOSE-UP

■ Marbury v. Madison *(1803)*

The Power of Judicial Review

The defeat of John Adams for re-election in 1800 greatly alarmed the Federalists. As a party, they feared political extinction, and to make matters worse, the new president was Thomas Jefferson, a man loathed by the establishment of the day. In an effort to preserve some of their political power, the Federalists sought to pack the federal judiciary with as many of their number as possible. Thus, the lame-duck Congress passed the Judiciary Act of 1801, which created fifty-eight new judgeships (an overwhelming number for such a small nation). Adams's nominations were confirmed by the Senate on March 2, signed by the president, and sealed by Secretary of State John Marshall on March 3. Marshall had already delivered the commission of the new chief justice of the Supreme Court—John Adams had appointed John Marshall. However, Marshall was unable to deliver four of the commissions before midnight. Those four became known as the "midnight judges," and William Marbury was among them.

When, on the morning of March 4, Thomas Jefferson took the oath of office of president, he was angered by the efforts of the Federalists to pack the federal bench. His secretary of state, James Madison, therefore, refused to deliver the appointment papers. Marbury filed suit with every expectation that he would receive a favorable decision. After all, the John Marshall who had been secretary of state was now the chief justice of the United States. Moreover, Marshall was known as a staunch Federalist and a leading opponent of the dangerous radical Thomas Jefferson. Marbury contended that, under the Judiciary Act of 1789, Madison was compelled to deliver the papers commissioning him as a federal judge. Meanwhile, Congress—now dominated by Jeffersonian Republicans—repealed the Judiciary Act of 1801.

The case presented Chief Justice Marshall with a dilemma. If the Court upheld Marbury's claim, then the Jefferson administration might refuse to comply, and the Court had no means to enforce compliance. If, on the other hand, the Court failed to uphold Marbury's claim, it risked surrendering judicial power to Jefferson and the hated Republicans. Marshall's response has been called a "masterwork of indirection." He wrote that the Jefferson administration had failed to properly deliver the commission papers. But, at the same time, Marshall ruled that the section of the Judiciary Act of 1789 in question was unconstitutional, and, thus, the Supreme Court did not have jurisdiction in the case. The result was clear; seemingly in the same breath, Marbury both won and lost. The rationale, though, is not so clear. Nowhere does the Constitution grant the Supreme Court the explicit right to declare actions of other branches of government unconstitutional. Rather, Marshall argued that this authority was based on a principle essential to "all written constitutions, that a law repugnant to the constitution is void; and that *courts*, as well as other departments, are bound by that instrument" (italics added).

John Marshall's opinion in *Marbury v. Madison* (1803) remains the classic argument for the power of judicial review. Although *Marbury* is today considered to have established the key powers of the Supreme Court, this facet of the case was little noticed at the time. Indeed, the Court would not strike down another act of Congress as unconstitutional for fifty-four more years (*Dred Scott v. Sandford* 1857). But the case is also a fascinating example of the interaction between the legal institutions and the political institutions of government. Although we are now accustomed to thinking of the Court in political terms, we are still somewhat taken aback by the overt politics of this case. Consider, for example, that it was John Marshall as chief justice who decided what to do about the problems created by John Marshall, acting secretary of state. Today, a disqualification (termed a *recusal*) would be automatic.

until 1891, it was not uncommon for a case to wait two or three years after being docketed before it was argued before the Supreme Court. Indeed, by 1890, the high court's docket contained more than 1,800 cases. The essential cause was that the high court had to decide every case appealed to it.

Court of Appeals Act of 1891

Some historians have viewed the creation of the court of appeals as a response to increased federal litigation resulting from a rapidly expanding population and the growth of business following the Civil War. That explanation suggests that the court of appeals appeared on the American scene as a logical, painless, almost automatic response to changing social conditions. Such an assumption is erroneous. The creation of the court of appeals in 1891 was the culmination of "one of the most enduring struggles in American political history" (Richardson and Vines 1970, 26). There was no debate over the difficulties facing the federal court system. All parties in the controversy agreed that the federal judiciary needed relief; what was in dispute, as in 1801, was the nature of the relief. (See Table 3.1.)

To relieve the burden of mounting litigation in the federal courts, the supporters of states' rights wanted to return cases to the state level by reducing the jurisdiction of federal courts. The supporters of national power, on the other hand, argued for expanding the jurisdiction of federal courts by creating a system of federal appellate courts that

TABLE 3.1 Key Developments in the Federal Judiciary

U.S. Constitution	1787	Article III creates U.S. Supreme Court and authorizes lower federal courts.
Judiciary Act of 1789	1789	Congress establishes lower federal courts.
Marbury v. Madison	1803	The Supreme Court has the authority to declare an act of Congress unconstitutional.
Courts of Appeals Act	1891	Modern appellate structure created.
Judges Bill	1925	Supreme Court given control over its docket.
Court Packing Plan	1937	FDR's attempt to pack the Court is defeated.
Administrative Office Act	1939	Current administrative structure created, including judicial conference and judicial councils.
Federal Judicial Center	1967	Research and training unit created.
Federal Magistrate Act	1968	Commissioners replaced by U.S. magistrates. (Later, the name is changed to magistrate judges.)
Sentencing Commission	1984	Charged with developing sentencing guidelines.
Congressional Act of 1988	1988	Some mandatory appeals to the Supreme Court are eliminated.
Antiterrorism and Effective Death Penalty Act	1996	Severely limits rights of state prisoners to file habeas corpus petitions in federal court.
USA Patriot Act	2001	Expands the government's ability to gather domestic antiterrorism intelligence, allowing for less court scrutiny and closing some court proceedings to the public.
Military Commissions Act	2006	Restrictions on habeas corpus rights of alien enemy combatants.

would take a great deal of the burden off the high court and also allow the trial courts to function as true trial courts.

The landmark Court of Appeals Act of 1891 represented the climactic victory of the Nationalist interests. The law created nine new courts known as circuit courts of appeals. Under this new arrangement, most appeals of trial decisions went to the circuit court of appeals, although, in some instances, the act allowed direct review by the Supreme Court. In short, the creation of the circuit courts of appeals released the high court from hearing many types of petty cases. The high court now had much greater control over its workload and could concentrate on deciding major cases and controversies.

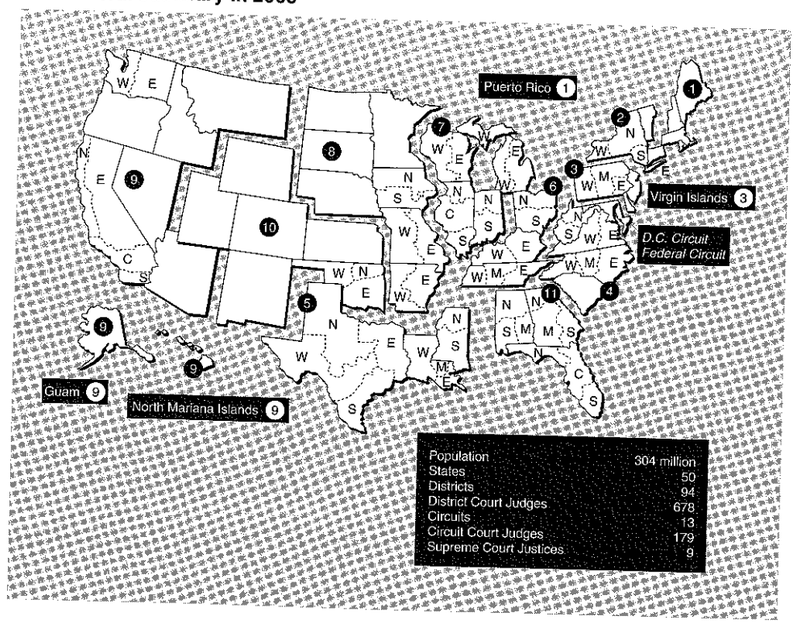
The period from 1891 to the present has been referred to as principally a "mopping up" operation (Richardson and Vines 1970). In 1925, Congress passed the Judges Bill, which, among other things, gave the Supreme Court much greater control over its docket. In 1988, Congress eliminated even more mandatory appeals to the high court (Chapter 14). The basic structure and jurisdiction of the federal courts have not changed much since the Judges Bill of 1925, which finalized the current organizational arrangement of district courts, courts of appeals, and the Supreme Court. To be sure, there have been some modifications: Several important administrative structures have been created, and from time to time, specialized courts have been added. But those changes are essentially refinements on the eighteenth-century organizational structure first created by the Judiciary Act of 1789 and modified by the Court of Appeals Act of 1891.

United States District Courts

The current court system includes ninety-four U.S. district courts. There is at least one district court in each state and one each in the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. Furthermore, based on the compromise that produced the Judiciary Act of 1789, no district court crosses state lines (see Figure 3.3). Some states have more than one district court: California, New York, and Texas, for instance, each have four. Because district courts often encompass large geographical areas, some hold court in various locations, or divisions. Some districts have only one division; others have as many as eight. In the U.S. territories, the district courts may also be responsible for local and federal matters.

Congress has authorized 678 district court judgeships for the ninety-four districts. The president nominates district judges, who must be confirmed by the Senate. Once they take the oath of office, they serve during "good behavior," which, for practical purposes, means for life. The number of judgeships in each district depends on the amount of judicial work as well as the political clout of the state's congressional delegation and ranges from 1.5 in sparsely populated eastern Oklahoma to 28 in densely inhabited southern New York (Manhattan) and central California. Judges are assisted by an elaborate supporting cast consisting of clerks, secretaries, law clerks, court reporters, probation officers, pretrial services officers, and U.S. marshals. The larger districts also have a federal public defender. Another important actor at the district court level is the U.S. attorney. There is one U.S. attorney in each district, nominated by the president and confirmed by the Senate, but, unlike the judges, he or she serves at the pleasure of the

FIGURE 3.3
The Federal Judiciary in 2005



president. The U.S. attorney and his or her staff prosecute violations of federal law and represent the U.S. government in civil cases, which constitute about one-third of all civil lawsuits.

U.S. district courts also incorporate three special types of courts and/or judges. Depending on the nature of the lawsuit, a case may be decided by three-judge district courts, magistrate judges, or bankruptcy judges. Their roles are discussed next.

Three-Judge District Courts

Three-judge district courts illustrate how public policy issues interact with court structure. Special three-judge district courts were first created early in the twentieth century at a time when federal district judges were striking down state and federal laws regulating social and economic conditions. Congress, deciding to apply some brakes to that process, prohibited single federal judges from making such decisions and provided that when litigants challenged certain types of laws as unconstitutional, they would have to try to persuade three judges, not just one. Through the years, Congress extended the limited jurisdiction of such three-judge courts in statutes such as the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Presidential Election Campaign Fund Act of 1974.

Three-judge district courts are created on an ad hoc basis and disbanded after the case has been decided. They are convened in the following manner: (1) A party files a suit in a district court, (2) the district judge assigned to the case immediately notifies the chief judge of the court of appeals for that district, and (3) the chief judge appoints two other judges to sit with the district court judge who received the case. Furthermore, at least one of the two judges appointed by the chief judge must be a member of the court of appeals of that circuit, all three members of this temporary panel must put aside their ongoing cases and hear the case, and appeals of these decisions go directly to the Supreme Court.

For many years, three-judge district courts were a rarity (Burger 1975). In 1956, for example, there were only fifty such cases. The advent of widespread civil rights litigation changed that pattern, however. The decisions of these courts figured prominently in many of the most controversial issues reaching the federal judiciary, such as racial discrimination, reapportionment, and abortion (Carp and Stidham 1990). Thus, in 1973 alone, 320 cases were heard.

The increased use of three-judge courts led critics, such as Chief Justice Warren Burger, to question whether the conditions that led to the enactment of the three-judge court statutes continued to exist. Their principal argument was that this hybrid body made poor use of judicial personnel. Bringing together three judges (each already busy with many other cases) was always difficult, whereas the court of appeals was readily available. In addition, the direct appeal to the Supreme Court forced the Court to review many cases of minor importance, with lengthy records and extreme technicalities adding heavily to the burden of the Court (Wright 1970).

In 1976, in response to calls for complete abolition, Congress greatly restricted the use of three-judge district courts. A three-judge district court can now hear cases only if the litigation involves legislative reapportionment or if the cases are specifically mandated by Congress in legislation such as the 1964 Civil Rights Act or the 1965 Voting Rights Act. (Chapter 14 discusses Supreme Court jurisdiction in these special cases.) This change in jurisdiction has had a dramatic effect. From a high of 320 three-judge district court cases in 1973, the number dropped to just 13 in 2007 (1 reapportionment case and 12 civil rights cases).

United States Magistrate Judges

The work of the district judges is significantly aided by a system of U.S. magistrate judges, who are the federal equivalent of state trial court judges of limited jurisdiction. In passing the Federal Magistrates Act of 1968, Congress sought "to provide a new first echelon of judicial officers in the federal judicial system and to alleviate the increased workload of the United States District Courts" (Puro 1976, 141). But the magistrates were unhappy over their title, and in 1990, Congress responded to their concerns by including the word *judge*; thus, they are now known officially as magistrate judges (Smith 1992).

Magistrate judges are selected by the district court judges. Full-time magistrate judges are appointed for eight-year terms and part-time magistrate judges for four years. They may, however, be removed for "good cause." Except in special circumstances, all must be lawyers and members of the state bar. In 2007, there were 505 full-time and 45 part-time magistrate judges.

Creation of the office raised several constitutional issues, some of which remain under active discussion (Administrative Office 1993). Although magistrate judges perform quasi-judicial tasks and work within the judicial branch of government, they are not Article III judges. (That is, they are not nominated by the president or confirmed by the Senate and do not serve for life.) The major question is, When does the involvement of a magistrate judge in a case reflect the exercise of judicial power, rather than mere administrative functions? Several Supreme Court decisions limited the powers of the magistrates, holding that only Article III judges were authorized to perform certain judicial functions. In response, Congress passed the 1976 and 1979 Federal Magistrates Acts, which clarified and expanded the scope of the magistrates' power and authority.

Magistrate judges are now authorized to perform a wide variety of duties, such as conducting the preliminary stages of all criminal cases, sentencing misdemeanor offenders, supervising civil discovery, reviewing Social Security disability benefit appeals, and even conducting full civil trials with the consent of the litigants. In short, under specified conditions and controls, magistrate judges may perform virtually all tasks carried out by district court judges, except trying and sentencing felony defendants (Smith 1987). But disputes over their authority continue. In 1991, a bare majority of the Supreme Court decided that magistrate judges may supervise jury selection in a felony trial, thus overruling a contrary decision less than two years old (*Peretz v. United States* 1991).

Magistrate judges play an increasingly important role in helping district court judges dispose of their growing caseloads. In a typical year, for example, they handle over 900,000 matters for the federal courts. However, the duties that magistrate judges perform vary considerably. Some district judges request a magistrate's assistance in hearing virtually all pretrial civil matters; others request a magistrate's assistance on a case-by-case basis (Seron 1988).

Bankruptcy Judges

The work of the district judges is also significantly aided by 352 bankruptcy judges. The bankruptcy workload of the district courts is enormous: Historically, well over one million petitions have been filed annually, but in 2007, that number fell to 801,269 and has been steadily falling since 2005, when Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act in an attempt to limit consumers from filing bankruptcy. The vast majority (97 percent) of those bankruptcy filings are typically consumers who cannot pay their bills. The others are filed by businesses—big and small. Indeed, companies valued in the billions have declared bankruptcy; obviously, such mega-filings create much more work for the judiciary than a bankruptcy petition filed by an individual consumer.

In an earlier era, district judges delegated the processing of these cases to bankruptcy referees (the title was upgraded to bankruptcy judge in 1973), who were appointed by district court judges for six-year terms. But, by the early 1970s, the continuing increase in bankruptcy filings, pressures from bankruptcy referees, and divisions between debtors and creditors created pressure for systemic change.

Ultimately, Congress passed the Bankruptcy Reform Act of 1978. Besides changing the substance of bankruptcy law, the new legislation significantly altered court procedures, including (1) requiring bankruptcy cases to be filed in bankruptcy courts rather

than in district courts; (2) providing for presidential appointment, with Senate approval, of bankruptcy judges; (3) increasing the term of bankruptcy judges to fourteen years; and (4) expanding the jurisdiction of bankruptcy judges. A system of bankruptcy courts separate from the district courts was seemingly in place, but this new structure provoked strong opposition from some federal judges who had sought to keep bankruptcy judges in a clearly subordinate role (Baum 1998).

The increased power and authority of bankruptcy judges led to legal challenges. In 1982, a deeply divided Supreme Court struck down the law, holding that certain powers granted to bankruptcy judges could be exercised only by Article III judges, who are insulated from political pressures by life tenure and protection from pay cuts (*Northern Pipeline Construction Co. v. Marathon Pipeline Co.* 1982). The Court asked Congress to quickly pass remedial legislation, but a compromise bill was enacted only after two years of stalemate. Bankruptcy judges would remain adjuncts of the district courts, but they would be appointed for fourteen-year terms by the court of appeals in which the district is located.

In 2005, Congress passed a sweeping new bankruptcy law making it easier for creditors such as credit card companies to collect from debtors. The result has been a dramatic drop in filings; in 2007, the number of filings equaled roughly that of 1990 activity.

Caseload of the U.S. District Courts

In the federal system, the U.S. district courts are the federal trial courts of original jurisdiction. Table 3.2 provides an overview of the federal courts' case volume, which is large and growing. In 2007, just over 300,000 criminal and civil cases were filed in the U.S. district courts (not including bankruptcy, misdemeanors, and the like). Those numbers reflect a dramatic increase over the caseload in the 1960s.

The district courts are the trial courts for all major violations of federal criminal law. (Magistrate judges hear minor violations.) In 2004, U.S. attorneys filed 68,413 criminal cases, primarily for drug violations, embezzlement, and fraud. For many years, federal prosecutions remained fairly constant (roughly 30,000 per year), only to shoot

TABLE 3.2 Case Filings in U.S. Courts, 2007

	Total	Criminal	Civil	Prisoner Petitions	Minor Criminal	Other
Courts of appeals	58,410	13,167	14,769	15,472	n/a	15,002[a]
District courts	325,920	68,413	203,562	53,945	n/a	n/a
Magistrate judges	948,086	165,831	274,955	22,875	100,725	383,700[b]

n/a = not applicable.
[a]Other for courts of appeals includes Administrative Agency (10,382), Bankruptcy (845), and Original Proceedings (3,775).
[b]Other for magistrate judges includes Civil Consent (10,575), Preliminary Proceedings (322,852), and Miscellaneous Matters (50,273).
Source: Data from Administrative Office of the U.S. Courts, *2007 Annual Report of the Director: Judicial Business of the United States Courts* (Washington, D.C.: U.S. Government Printing Office, 2007).

up dramatically beginning in 1980—partly because of a dramatic increase in drug prosecutions. Today, the federal criminal docket is dominated by drug offenses (25 percent), immigration violations (25 percent), and property offenses, for example, burglary and larceny (19 percent). Although there are four times more civil filings than criminal ones, in some districts the number and the complexity of criminal filings limit the ability of the district courts to address promptly the more numerous civil cases.

Although only a small percentage of all civil cases are filed in federal courts, those cases typically involve considerably larger sums of money than the cases filed in state court. Federal court jurisdiction deals primarily with questions of federal law, diversity of citizenship, and prisoner petitions.

Federal Questions Article III provides that federal courts may be given 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." Cases that fall under this type of jurisdiction are generally referred to as involving a federal question. Most federal question cases are filed alleging a violation of a congressional statute, principally Social Security, labor, civil rights, truth-in-lending, and antitrust laws.

A major reason for the dramatic increase in the civil caseloads is the passage by Congress of social welfare policies that extend the civil rights and privileges of persons residing in the United States. Thus, the federal trial courts hear a diverse array of federal question cases arising from laws such as the Age Discrimination in Employment Act, the Voting Rights Act, the Family and Medical Leave Act, the Violence Against Women Act, and the Americans with Disabilities Act.

Diversity Jurisdiction Diversity-of-citizenship cases involve suits between citizens of different states or between a U.S. citizen and a foreign country or citizen. For example, a citizen from California claims to be injured in an automobile accident in Chicago with an Illinois driver and sues in federal court in Illinois, because the parties to the suit were of "diverse citizenship." (However, the injured California driver also has the option of suing in state court in Illinois.) In deciding diversity-of-citizenship cases, federal courts apply state (not federal) law (Sloviter 1992). Overall, diversity cases constitute almost one-fourth of the civil docket of the district courts, thus making a significant contribution to their workload.

Federal jurisdiction over diversity-of-citizenship cases reflects a debate that began more than 200 years ago and continues today (Kramer 1990). This jurisdiction was first established by the Judiciary Act of 1789 because of fears that state courts would be biased against out-of-state litigants. According to the Nationalists, only federal courts could be counted on to provide a fair and impartial hearing for disputes between citizens of different states. Through the years, many have questioned whether the conditions that existed in 1789 are relevant to the contemporary necessity for diversity jurisdiction. In particular, the United States has become more centralized and also more homogeneous, thus eliminating the parochial state prejudices that characterized the colonial period. To modern-day critics, diversity jurisdiction unnecessarily adds to the caseload of already-overburdened federal district courts. Furthermore, critics believe that state courts are better equipped to decide these matters, given that most diversity cases involve automobile accidents, which state judges already handle on a day-to-day basis. For those reasons, a majority of federal judges and many legal commentators have called for eliminating, or significantly reducing, federal court jurisdiction in diversity-of-citizenship cases. But some lawyers remain concerned about local favoritism in state courts. They prefer to retain diversity jurisdiction because in some circumstances it allows them to pick which court, state or federal, will decide the case. A survey of practicing attorneys reported that the choice of courts depends somewhat on how expeditiously a court will be able to process the case, a preference for federal rules of procedure, and a desire to appear before high-quality judges (federal courts are given higher ratings) (Bumiller 1980–1981).

In 1988, Congress added another chapter to the ongoing debate over diversity jurisdiction. In an effort to restrict the types of minor disputes that may be filed in federal court, the amount-in-controversy threshold was raised from $10,000 to $50,000 and later to $75,000. Despite some speculation to the contrary, this change in jurisdictional amount has indeed significantly decreased the number of diversity cases filed in federal courts each year. In Illinois, Indiana, and Nevada (states with many diversity lawsuits), the federal caseload was reduced by half, as had been predicted. But in states such as California and Pennsylvania, the change has had a smaller impact because, even before 1988, the majority of diversity cases involved $50,000 or more in damages (Flango 1991). Overall, total diversity filings in 2004 reached nearly 68,000 and have fluctuated up and down during recent years.

Prisoner Petitions An interesting and controversial area of district court jurisdiction involves prisoner petitions. Prisoners incarcerated in either federal or state penitentiaries may file a civil suit alleging that their rights under federal law are being violated. (Similar suits may also be filed in state court, where they are called habeas corpus petitions.) Some prisoner petitions contend that the prisoners are being illegally held, because they were improperly convicted; for example, they were denied the effective assistance of counsel at trial (discussed further in Chapter 13). Other prisoner petitions relate to the conditions of confinement; for example, the penitentiary is overcrowded or provides inadequate medical assistance (see Chapter 9).

Petitions from state and federal inmates have increased significantly, from about 3,500 filings in 1960 to more than 53,000 in 2007. Those numbers are being driven by the sharp increase in the prison population. United States magistrate judges hear the vast majority of these prisoner petitions but are limited to making a recommendation to the U.S. district judge (who typically follows the recommendation). Thus, these cases add volume but take little of the district judges' time. In 1996, Congress greatly restricted the number of prisoner petitions that can be filed in federal court.

UNITED STATES COURTS OF APPEALS

In 1891, Congress created the courts of appeals to relieve the Supreme Court from having to hear the growing number of appeals. The courts of appeals are the intermediate appellate courts of the federal system. Originally called circuit courts of appeal, they were renamed and are now officially known as the United States Court of Appeals for

DEBATING LAW, COURTS, AND POLITICS

When Will the Ninth Circuit Be Overturned Next?

During its 2006 term, the Supreme Court heard twenty-one cases from the Ninth Circuit, which made up 29 percent of its entire workload. In 86 percent of these cases (18), the high court reversed or vacated the Ninth Circuit's decision, a pattern similar to 2005, when the high court reversed the Ninth Circuit in 83 percent of the cases it heard (15 of 18). Some commentators see this as continuing a trend that goes back several decades, with the Ninth Circuit's decisions being reviewed by the Supreme Court more than any other circuit (they also generate the most cases) and reversed a good portion of the time.

Over the last two decades, the Ninth Circuit has been the center of more controversy than any of the other circuits and also the most likely to be reversed—often unanimously—by the U.S. Supreme Court. Some believe the solution is to break up the Ninth Circuit to reduce its workload, but others believe it is simply a matter of partisan politics. To them, the Ninth Circuit is full of liberal judges, and the Supreme Court dominated by conservatives—thus the vigorous review of decisions and the frequent reversals.

The sprawling Ninth Circuit is by far the federal system's largest in terms of case volume and judges. The most recent proposal (passed by the House of Representatives in 2004) would create a reduced Ninth Circuit consisting of California and Hawaii, plus Guam and the Northern Mariana Islands. A new Twelfth Circuit would handle appeals from Arizona, Idaho, Montana, and Nevada; and a new Thirteenth would oversee Alaska, Oregon, and Washington (Sherman 2004).

One major argument in favor of splitting stresses judicial administration: To some, the Ninth Circuit is too large (twenty-eight appellate judges and twenty-two senior circuit judges) to create and maintain a coherent body of law to govern its territory (Scott 2004). Moreover, because the circuit is so large, cases take too long to reach final disposition (14.5 months on average compared with the national average of 10.2 months). An overwhelming number of the active judges of the circuit, however, oppose the split. They point to the fact that the circuit has undertaken many innovative administrative techniques to deal with its large size (Hellman 1990). In the words of J. Clifford Wallace (1995), a former chief judge of the Ninth Circuit: "The Ninth Circuit is strong and functioning well; there is no reason to divide it. Its size has many advantages including diversity, flexibility, and innovativeness in case management. Dividing the circuit is no panacea—the same cases will still require the same judicial attention they exercise now, and no new judgeships are proposed in this bill."

The most important issues, though, are not administrative but political. Proponents of splitting the Ninth openly articulate regional rivalries. Former Washington senator Slate Gorton argued, "My state of Washington and our Northwest neighbors are dominated by California judges and California judicial philosophy. In sum, the interests of the Northwest cannot be fully appreciated or addressed from a California perspective" (1995). In short, California judges are viewed as too liberal and too out of step with the Northwest (Dilworth 1998). Opponents are willing to speak frankly of political winners and losers. In the words of then-senator Pete Wilson (R-Calif.), "Some who are promoting a split of the Ninth Circuit believe they can gain some advantage by drawing new lines, by cordoning-off some judges and keeping others."

More recently, arguments over splitting the Ninth Circuit have taken on openly partisan tones. Simply stated, the Ninth is the court conservatives love to hate. On matters as diverse as the death penalty, medical marijuana, assisted suicide, and interpreting the Americans with Disabilities Act, the twenty-eight judges of the Ninth Circuit have tried to break new ground in a liberal direction only to be thwarted by later rulings (Liptak 2002). Conservatives also argue that the Ninth is the most reversed circuit in the nation. Indeed, during some years, the Supreme Court has reversed every criminal case it heard from the Ninth. In the words of Todd Gaziano, director of legal studies for the conservative Heritage Foundation, "The 9th is the worst . . . a sort of lawless land."

Splitting the Ninth is not likely to happen until a consensus emerges about the future of the circuit. In an attempt to reach a compromise, Congress, in 1997, created the Commission on Structural Alternatives for the Federal Courts of Appeals. The commission recommended that the Ninth be restructured but not split. Congress continues to hold hearings on those recommendations, but it is virtually impossible to enact court reform when political and partisan differences are at the center of the conflicts (Banks 2000).

It is unclear whether splitting the Ninth Circuit would improve judicial administration, but one thing that is clear is that their work continues to attract the attention of the Supreme Court. The Ninth once again generated more cases on the Supreme Court's docket in 2008 than any other circuit or state court.

What do you think? Is the Ninth Circuit more out of step with mainstream constitutional jurisprudence? Should the Ninth Circuit be split (and if so, along what lines)? Are the key issues in the debate administrative, regional, or partisan?

the __ Circuit. Eleven of the circuits are identified by number, one is called the D.C. Circuit, and another is called the Federal Circuit. (The latter two are located in Washington, D.C.; see Figure 3.3.) The skyrocketing volume of cases filed in the courts of appeals has prompted a debate over how large circuits can become and still remain effective. (See Debating Law, Courts, and Politics: When Will the Ninth Circuit Be Overturned Next?)

The courts of appeals are staffed by 179 judges nominated by the president and confirmed by the Senate. As with the district courts, the number of judges in each circuit varies—from 6 (First Circuit) to 28 (Ninth Circuit)—depending on the volume and complexity of the caseload. Each circuit has a chief judge (chosen by seniority), who has supervisory responsibilities. Several staff positions aid the judges in conducting the work of the courts of appeals. A circuit executive assists the chief judge in administering the circuit. The clerk's office maintains the records. Each judge is also allowed to hire three law clerks. In addition, each circuit has a central legal staff that screens appeals and drafts memorandum opinions.

In deciding cases, the courts of appeals normally use rotating three-judge panels. Along with active judges in the circuit, these panels may include visiting judges (primarily district judges from the same circuit) and senior judges (who are retired from active service but still participate in cases). By majority vote, all the judges (or a larger subset, such as fifteen in the Ninth Circuit) in the circuit may sit together to decide a case or rehear a case already decided by a panel. Such **en banc** hearings are relatively rare, however; in a typical year, fewer than 100 are held throughout the entire nation.

Caseload of the U.S. Courts of Appeals

The courts of appeals have very limited original jurisdiction in cases coming from some administrative agencies. Thus, their principal responsibility is appellate jurisdiction to review decisions made in some other forum. Congress has granted the courts of appeals jurisdiction over basically two categories of cases: (1) reviews of criminal and civil cases from the district courts, which constitute approximately 90 percent of all filings; and (2) appeals from administrative agencies, such as the Securities and Exchange Commission and the National Labor Relations Board. Over 3,000 administrative agency appeals are filed annually. Because so many of these administrative and regulatory bodies are based in Washington, D.C., the D.C. Circuit Court of Appeals hears an inordinate number of such cases. This court is considered the second most important court in

the nation (after the U.S. Supreme Court), because its decisions function as a check on the regulatory agencies' behavior.

In 2007, 58,410 cases were filed in the U.S. courts of appeals. Over the last three decades, the caseload has grown rapidly. This growth has not been uniform, however. Criminal appeals shot up dramatically from 1963 to 1973 but have since leveled off, today constituting 20 percent of all appeals. Thus, the largest increase has been in civil appeals. This increase in caseload has not been matched by an equivalent increase in judgeships, however. In 1960, there were 68 judgeships, compared with 179 today (Administrative Office 2007). As a result, the number of cases heard per panel has steadily increased.

A decision by the court of appeals exhausts the litigant's right to one appeal. Although the losing party may request that the Supreme Court hear its case, such petitions are rarely granted. As a result, the courts of appeals are the "courts of last resort" for virtually all federal litigation. Their decisions end the case; only a very small percentage will be heard by the nation's highest court.

The United States Supreme Court

The U.S. Supreme Court is the highest court in the nation. It is composed of nine justices: eight associate justices and one chief justice, who is nominated specifically to that post by the president. Like other judges appointed under Article III of the Constitution, Supreme Court justices are nominated by the president, require confirmation by the Senate, and serve for life.

Cases proceed to the Supreme Court primarily through the **writ of certiorari**, an order to the lower court to send up the case records so the Supreme Court can determine whether the law has been correctly applied. The Court reviews decisions from the U.S. courts of appeals and state appellate courts of last resort. Although the Supreme Court is the only court in the nation to have authority over all fifty-one separate legal systems, in reality its authority is rather limited.

Caseload of the Supreme Court

With few exceptions, the Court selects which cases it will decide out of the many it is asked to review each year. In deciding to decide, the Court employs the **rule of four**: Four judges must vote to hear a case before it is placed on the docket. As a result, only a small percentage of the requests for appeals are ever granted. By law and custom, a set of requirements must be met before a writ of certiorari (or cert, as it is often called) is granted. In particular, the legal issue must involve a "substantial federal question." That means state court interpretations of state law can be appealed to the Supreme Court only if there is an alleged violation of either federal law or the U.S. Constitution. For example, a suit contending that a state supreme court has misinterpreted the state's divorce law would not be heard because it involves an interpretation of state law and does not raise a federal question. As a result, the vast majority of state cases are never reviewed by the Supreme Court.

Through its discretionary powers to hear appeals, the high court limits itself to deciding about eighty cases a year. The Court does not operate as the court of last resort, attempting to correct errors in every case in the nation, but, rather, marshals its time and energy to decide the most important policy questions of the day (see Chapter 14). The cases granted certiorari reflect conflicting legal doctrines; typically, lower courts have decided similar cases in very different ways. Although the Supreme Court decides only a small fraction of all cases filed in the courts, those decisions set major policy for the entire nation. In this way, the Court's role may be unique when compared with the role of high courts in other countries. (See Courts in Comparative Perspective: The Federal Republic of Germany.)

Specialized Courts

The Judiciary Act of 1789 established the three levels of the federal court system in existence today. The district courts, the courts of appeals, and the Supreme Court handle the bulk of federal litigation and, therefore, are a principal focus of this book. To round out the discussion of the federal judicial system, however, a brief discussion is needed on the several additional courts that Congress has periodically created. These courts are called **specialized federal courts** because they are authorized to hear only a limited range of cases—taxes or patents, for example. They are created for the express purpose of helping administer a specific congressional statute.

The specialized federal courts are summarized in Table 3.3, which highlights two important distinctions. First, most specialized courts have permanent, full-time judges appointed specifically to that court. A few specialized courts, however, temporarily borrow judges from federal district courts or courts of appeals as specific cases arise (Baum 1991).

Article I and Article III Status

The second distinction relates to the specialized courts' constitutional status. Judicial bodies established by Congress under Article III are known as **constitutional courts**. The Supreme Court, the courts of appeals, and the district courts are, of course, constitutional courts. Judicial bodies established by Congress under Article I are known as **legislative courts**. Bankruptcy judges and U.S. magistrate judges are examples of legislative courts. The constitutional status of federal courts has important implications for judicial independence. Article III (constitutional court) judges serve for a period of good behavior, which amounts to a lifetime appointment. Article I (legislative court) judges, on the other hand, are appointed for a specific term of office. Moreover, Article III judges are protected against salary reductions while in office. Article I judges enjoy no such constitutional protection. In short, constitutional courts have a greater degree of independence from the other two branches of government.

Many of the specialized federal courts were originally established by Congress as Article I courts. During the 1980s, several of these courts were reorganized, given new names, and "officially transformed into constitutional courts" (Ball 1987, 75). The U.S.