The background of the slide is a stylized American flag with a blue field of white stars and red and white stripes. The flag is slightly faded and has a soft, wavy texture.

Edwards, Wattenberg, and Lineberry
Government in America: People, Politics, and Policy
Fourteenth Edition

Chapter 16

The Federal Courts

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
- 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

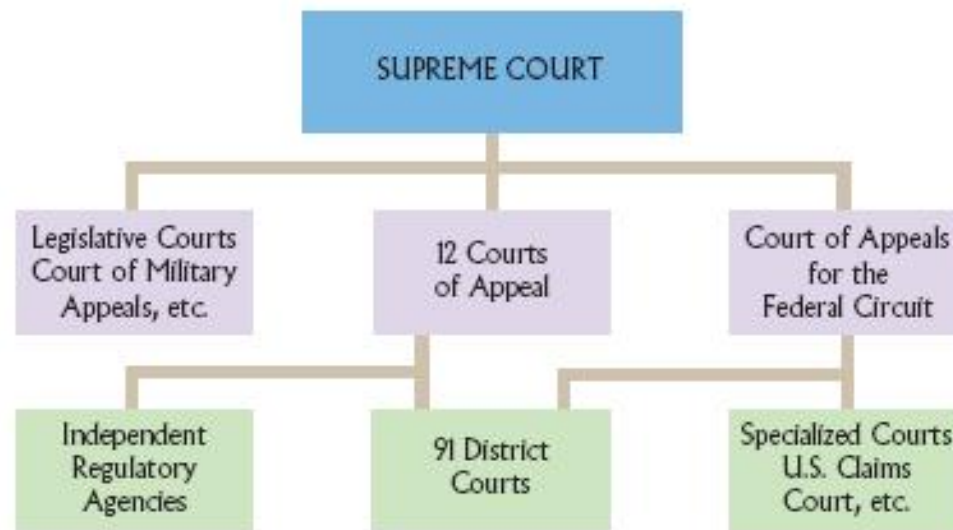
– Attorneys

- 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

FIGURE 16.1

Organization of the Federal Court System



The Structure of the Federal Judicial System

■ District Courts (91 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

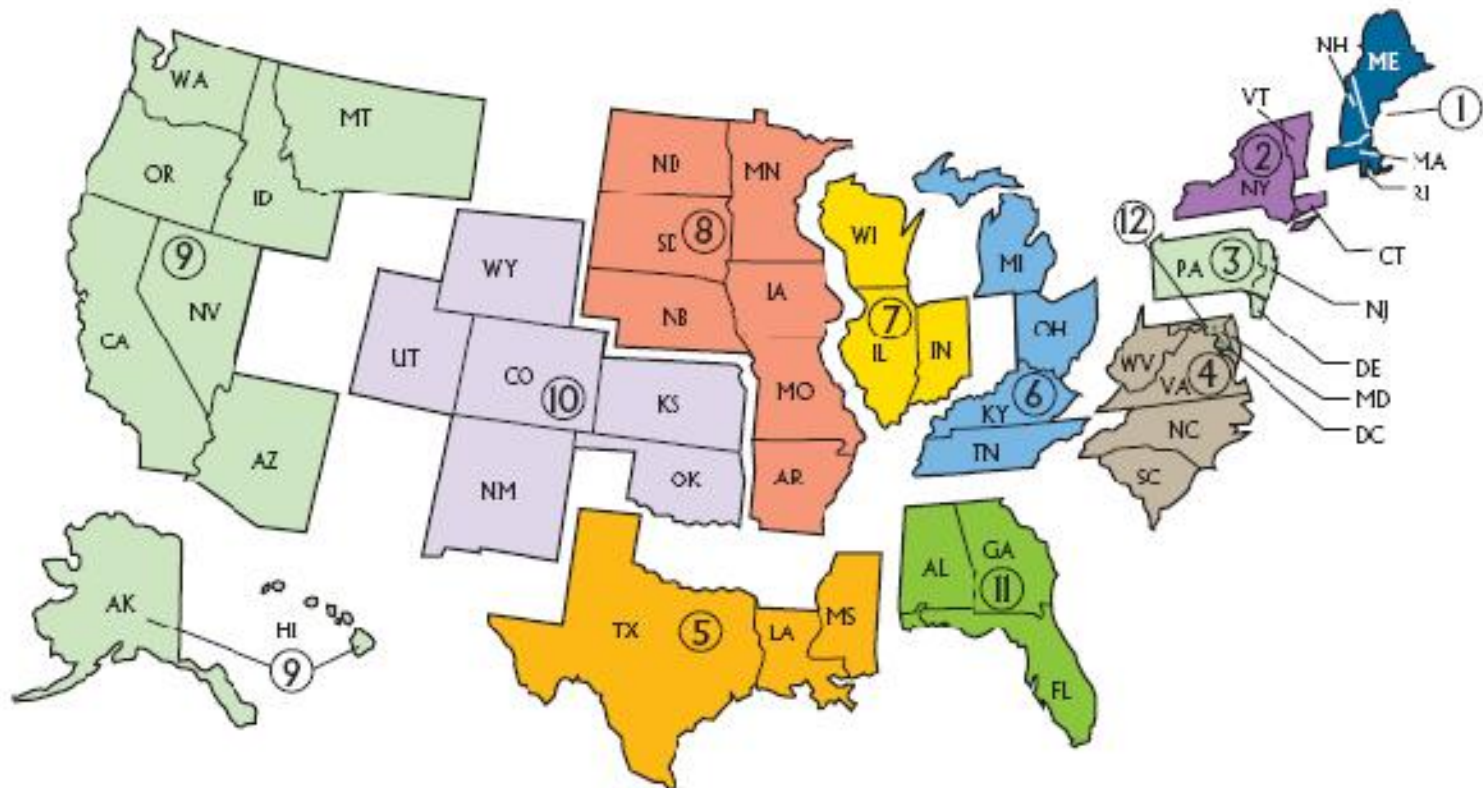
The Structure of the Federal Judicial System

■ 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).

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

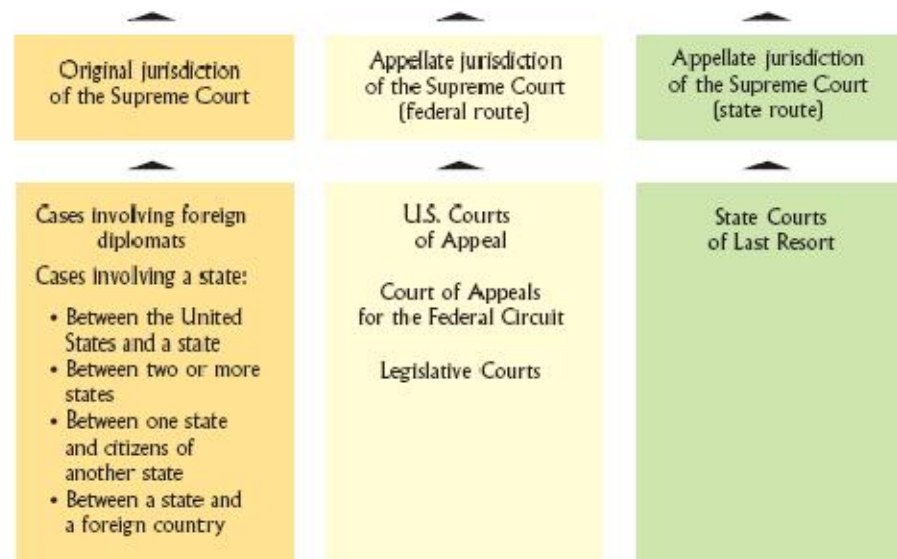
The Structure of the Federal Judicial System

FIGURE 16.2

The Organization and Jurisdiction of the Courts



UNITED STATES SUPREME COURT



The Structure of the Federal Judicial System

TABLE 16.1

Sources of Full Opinions in the Supreme Court, 2007

TYPE OF CASE	NUMBER OF CASES
Original jurisdiction	0
Civil actions from lower federal courts	47
Federal criminal and <i>habeas corpus</i> cases	17
Civil actions from state courts	4
State criminal cases	3
Total	71

Source: "The Supreme Court, 2006 Term: The Statistics," *Harvard Law Review* 121 (November 2007): 447-449.

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 Politics of Judicial Selection

TABLE 16.2

Unsuccessful Supreme Court Nominees since 1900

NOMINEE	YEAR	PRESIDENT
John J. Parker	1930	Hoover
Abe Fortas ^a	1968	Johnson
Homer Thornberry ^b	1968	Johnson
Clement F. Haynesworth Jr.	1969	Nixon
G. Harrold Carswell	1970	Nixon
Robert H. Bork	1987	Reagan
Douglas H. Ginsburg ^a	1987	Reagan
Harriet Miers ^a	2005	G. W. Bush

^aNomination withdrawn. Fortas was serving on the Court as an associate justice and was nominated to be chief justice.

^bThe Senate took no action on Thornberry's nomination.

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.

The Backgrounds of Judges and Justices

TABLE 16.3

Backgrounds of Recent Federal District and Appeals Court Judges

CHARACTERISTIC	Appeals Court					District Court				
	G. W. BUSH ^a	CLINTON	BUSH	REAGAN	CARTER	G. W. BUSH ^a	CLINTON	BUSH	REAGAN	CARTER
Total number of nominees	49	61	37	78	56	203	305	148	290	202
Occupation (%)										
Politics/government	22	11	6	5	8	12	11	13	4	
Judiciary	47	53	60	55	47	47	48	42	37	45
Large law firm	12	18	16	14	11	21	15	26	18	14
Moderate-size firm	6	13	11	9	16	10	13	15	19	19
Solo or small firm	4	2	—	1	5	6	8	5	10	14
Professor of law	4	8	3	13	14	2	2	1	2	3
Other	4	—	—	1	2	2	1	1	1	1
Ethnicity or race (%)										
White	82	74	89	82	79	83	75	89	92	79
African American	12	13	5	7	16	6	17	7	2	14
Hispanic	6	12	5	11	4	11	6	4	5	7
Asian	—	2	—	1	2	1	1	—	1	1
Gender (%)										
Male	78	67	81	74	80	80	72	80	92	86
Female	22	33	19	21	20	20	28	20	8	14
Average age	50	51	49	49	52	50	50	48	49	50
Party (%)										
Democrat	6	85	5	7	82	7	88	6	5	91
Republican	92	7	89	85	7	85	6	89	92	5
Independent	2	8	8	8	11	8	6	5	3	5
Past party activism (%)	65	54	70	49	73	51	50	64	60	61

The Backgrounds of Judges and Justices

TABLE 16.4

Supreme Court Justices, 2009

NAME	YEAR OF BIRTH	PREVIOUS POSITION	NOMINATING PRESIDENT	YEAR OF CONFIRMATION
John G. Roberts Jr.	1955	U.S. Court of Appeals	G. W. Bush	2005
John Paul Stevens	1920	U.S. Court of Appeals	Ford	1975
Antonin Scalia	1936	U.S. Court of Appeals	Reagan	1986
Anthony M. Kennedy	1936	U.S. Court of Appeals	Reagan	1988
David H. Souter	1939	U.S. Court of Appeals	Bush	1990
Clarence Thomas	1948	U.S. Court of Appeals	Bush	1991
Ruth Bader Ginsburg	1933	U.S. Court of Appeals	Clinton	1993
Stephen G. Breyer	1938	U.S. Court of Appeals	Clinton	1994
Samuel A. Alito Jr.	1950	U.S. Court of Appeals	G. W. Bush	2006

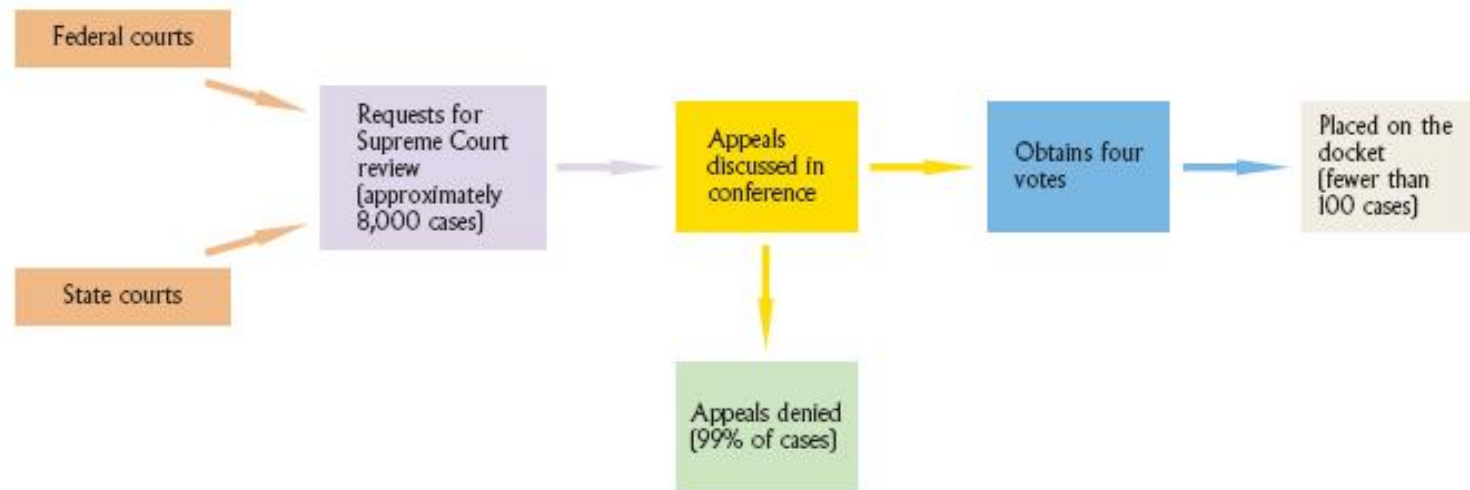
The Courts as Policymakers

■ Accepting Cases

- Use the “rule of four” to choose cases
- Issues a *writ of certiorari* to call up the case
- Supreme Court accepts few cases each year

FIGURE 16.3

Obtaining Space on the Supreme Court's Docket



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

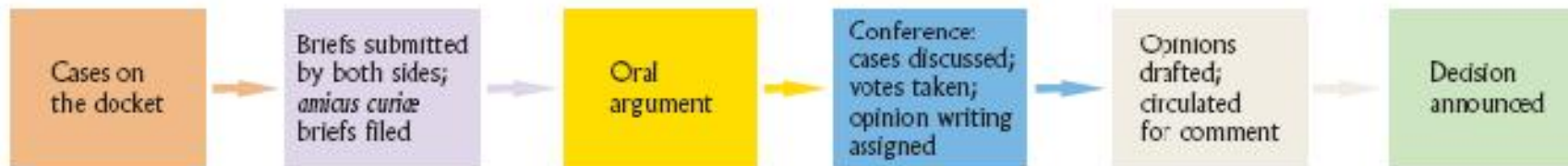
The Courts as Policymakers

■ Making Decisions

- Oral arguments heard by the justices
- Justices discuss the case
- One justice will write the majority opinion (statement of legal reasoning behind a judicial decision) on the case

FIGURE 16.4

The Supreme Court's Decision-Making Process



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 “Nine Old Men”
- The Warren Court
- The Burger Court
- The Rehnquist 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

Understanding the Courts

TABLE 16.5

Supreme Court Rulings in Which Federal Statutes Have Been Found Unconstitutional^a

Period	Statutes Voided
1798-1864	2
1864-1910	33 (34) ^b
1910-1930	24
1930-1936	14
1936-1953	3
1953-1969	25
1969-1986	35
1986-present	38
Total	174

^aIn whole or in part.

^bAn 1883 decision in the *Civil Rights Cases* consolidated five different cases into one opinion declaring one act of Congress void. In 1895, *Pollock v. Farmers Loan and Trust Co.* was heard twice, with the same result both times.

Source: Henry J. Abraham, *The Judicial Process: An Introductory Analysis of the Courts of the United States, England, and France*, 7th ed. (Oxford: Oxford University Press, 1998), 309. Used by permission of Oxford University Press, Inc. Updated by the authors.

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.**