

# Understanding the U.S. Supreme Court

- Processing Supreme Court Cases
- Supreme Court Decision Making
  - The Role of Law and Legal Principles
- Supreme Court Decision Making
  - The Role of Politics
- Conducting Research on the Supreme Court

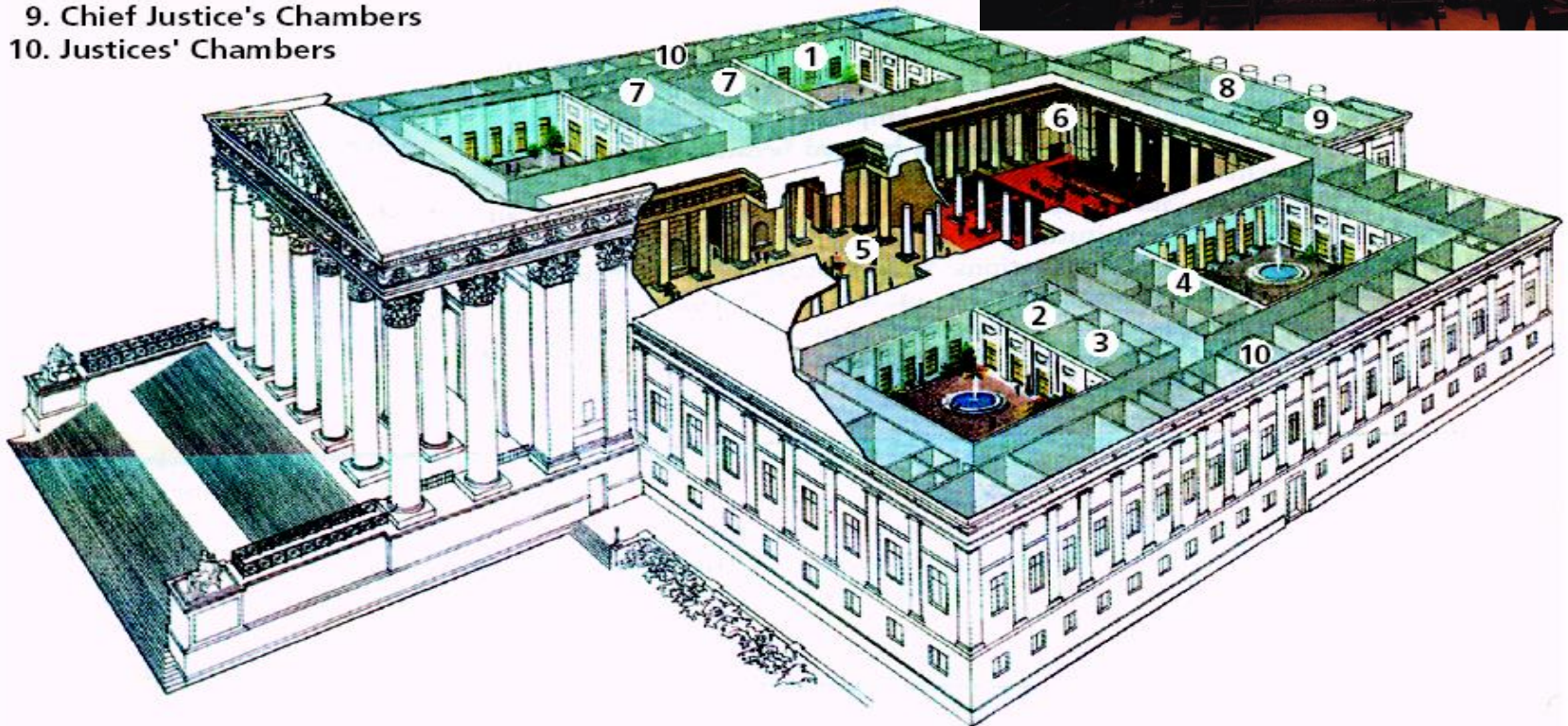


# The Supreme Court



# Inside The Supreme Court Building

1. Courtyards
2. Solicitor General's Office
3. Lawyers' Lounge
4. Marshall's Office
5. Main Hall
6. Court Room
7. Conference and Reception Rooms
8. Justices' Conference Room
9. Chief Justice's Chambers
10. Justices' Chambers



# The Supreme Court Justices



**Back Row:** Sonia Sotomayor , Stephen Breyer, Samuel A. Alito, Elena Kagan,  
**Front Row:** Clarence Thomas, Antonin Scalia, John G. Roberts, Jr., Anthony Kennedy, Ruth Bader Ginsburg

# The Supreme Court Justices

	Year of Birth	Year of Appointment	Political Party	Law School	Appointing President	Religion	Prior Judicial Experience	Prior Government Experience
John G. Roberts Jr.	1955	2005	R	Harvard	G. W. Bush	Roman Catholic	U.S. Court of Appeals	Dept. of Justice, White House counsel
Elena Kagan	1960	2010	D	Harvard	Obama	Jewish	None	Solicitor General/Law School Dean
Antonin Scalia	1936	1986	R	Harvard	Reagan	Roman Catholic	U.S. Court of Appeals	Assistant attorney general, Office of Legal Counsel
Anthony Kennedy	1936	1988	R	Harvard	Reagan	Roman Catholic	U.S. Court of Appeals	
Sonia Sotomayor	1954	2009	D	Yale	Obama	Roman Catholic	U.S. Court of Appeals	Assist. District Atty./Corp. law
Clarence Thomas	1948	1991	R	Yale	Bush	Roman Catholic	U.S. Court of Appeals	Chair, Equal Employment Opportunity Commission
Ruth Bader Ginsburg	1933	1993	D	Columbia/Harvard	Clinton	Jewish	U.S. Court of Appeals	
Stephen Breyer	1938	1994	D	Harvard	Clinton	Jewish	U.S. Court of Appeals	Chief counsel, Senate Judiciary Committee
Samuel A. Alito Jr.	1950	2006	R	Yale	G. W. Bush	Roman Catholic	U.S. Court of Appeals	Dept. of Justice, U.S. Attorney.

# The Federal Judicial System

## **Article III (Constitutional) Versus Article I (Legislative) Courts**

### **Original Jurisdiction**

**The authority of a court to hear a case "in the first instance"**

### **Appellate Jurisdiction**

**The authority of a court to review decisions made by lower courts**

# The Scope of Judicial Power

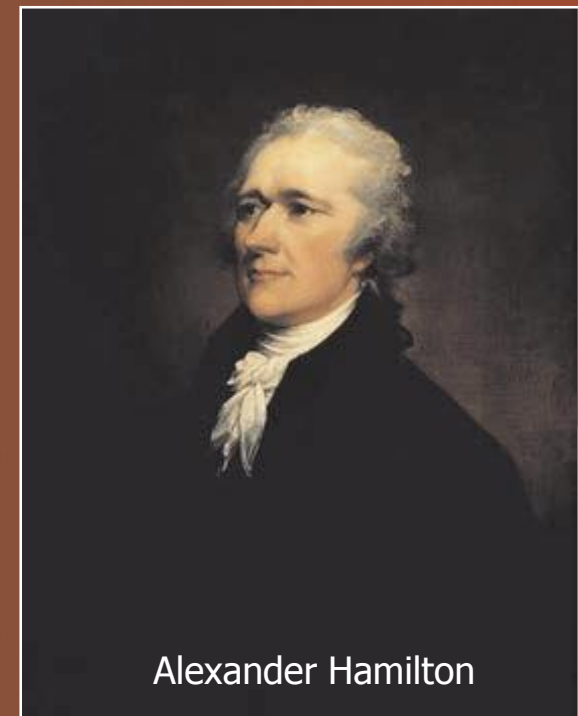
- Judicial power is *passive* and *reactive*
- Hamilton called it “the least dangerous branch.”
- Power only to decide judicial disputes
  - Cases must be *ripe*
  - Cases cannot be *moot*
  - Cases cannot be political

## Judicial Federalism: State & Federal Courts

- A Dual court system
  - Two court systems, state and federal, exist and operate at the same time in the same geographic areas

# Understanding the Federal Judiciary

- The Framers viewed the federal judiciary as an important check against Congress and the president
- But the judiciary has no influence over the “sword” or the “purse”
- Judicial power is ensured via:
  - Insulation from public opinion
  - Insulation from the rest of government



Alexander Hamilton



# Supreme Court Jurisdiction

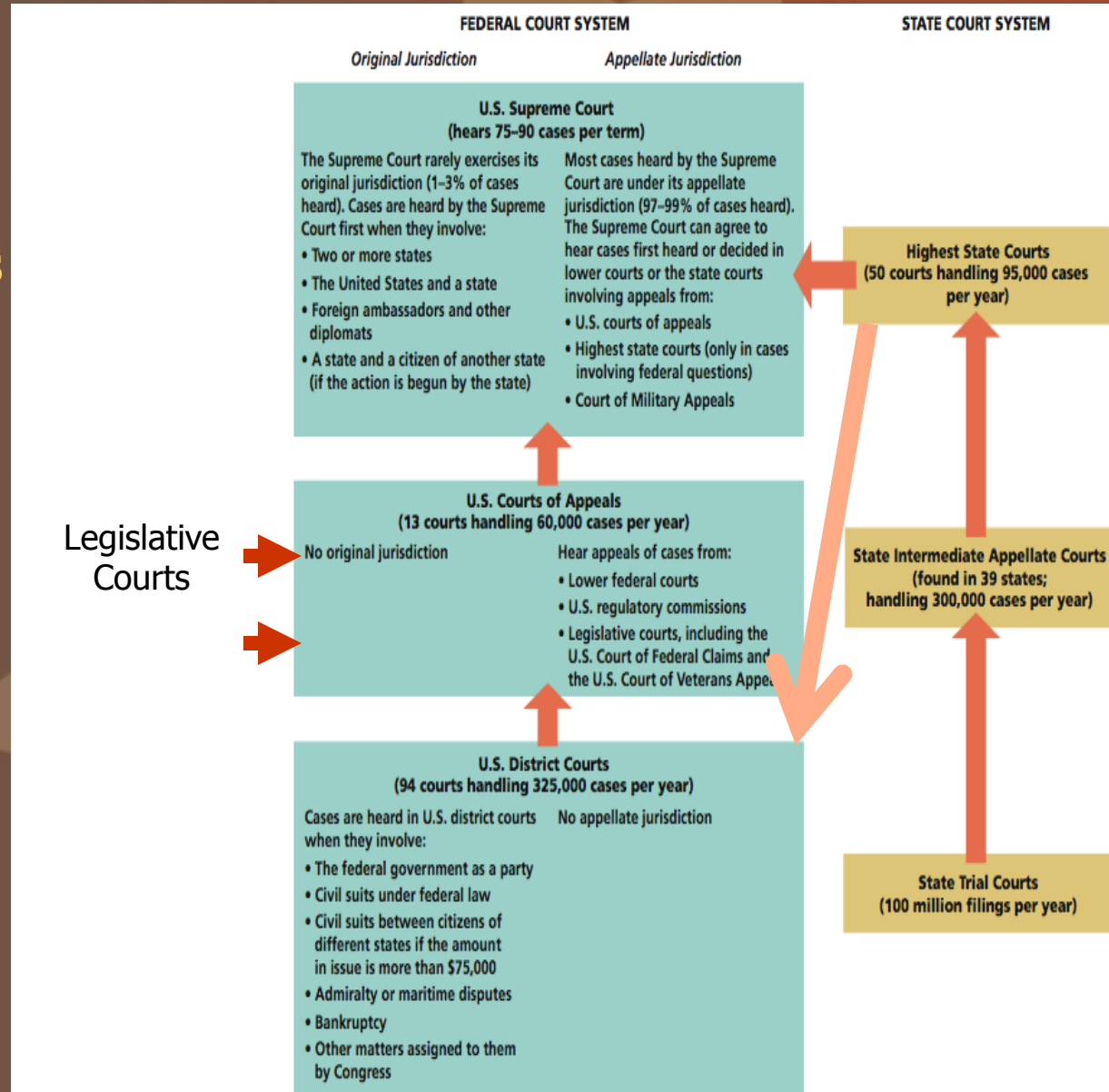
The following are the types of cases the Supreme Court was given the jurisdiction to hear as initially specified in Article III, section 2, of the Constitution:

- All cases arising under the Constitution and laws or treaties of the United States
- All cases of admiralty or maritime jurisdiction
- Cases in which the United States is a party
- Controversies between a state and citizens of another state (later modified by the Eleventh Amendment)
- Controversies between two or more states
- Controversies between citizens of different states
- Controversies between citizens of the same states claiming lands under grants in different states
- Controversies between a state, or the citizens thereof, and foreign states or citizens thereof
- All cases affecting ambassadors or other public ministers

# The Federal Judicial System

## District Courts

- District courts hear more than 258,000 civil cases and 68,000 criminal cases annually
- Use both grand juries and petit juries
- District judges are appointed by the president, subject to confirmation by the Senate, and hold office for life



# Judicial Review

- The power of a court to refuse to enforce a law or government regulation that, in the opinion of the judges, conflicts with the U.S. Constitution or, in a state court, the state constitution
- Only a constitutional amendment or a later Supreme Court can modify the Court's decisions

# Judicial Systems

## The Adversarial System

Judges serve as relatively passive and detached referees who do not argue with attorneys or challenge evidence

## The Inquisitorial System

Judges take an active role in discovering and evaluating evidence, will question witnesses, and intervene as deemed necessary

- Court of law is a neutral arena where two parties argue their differences
- The federal government brings criminal cases
- The federal judiciary decides the cases

# Types of Legal Disputes

- **Criminal Law**

- Crimes against the public order
- Liberty is at stake
- Right to government-provided attorneys
- Right to trial by jury

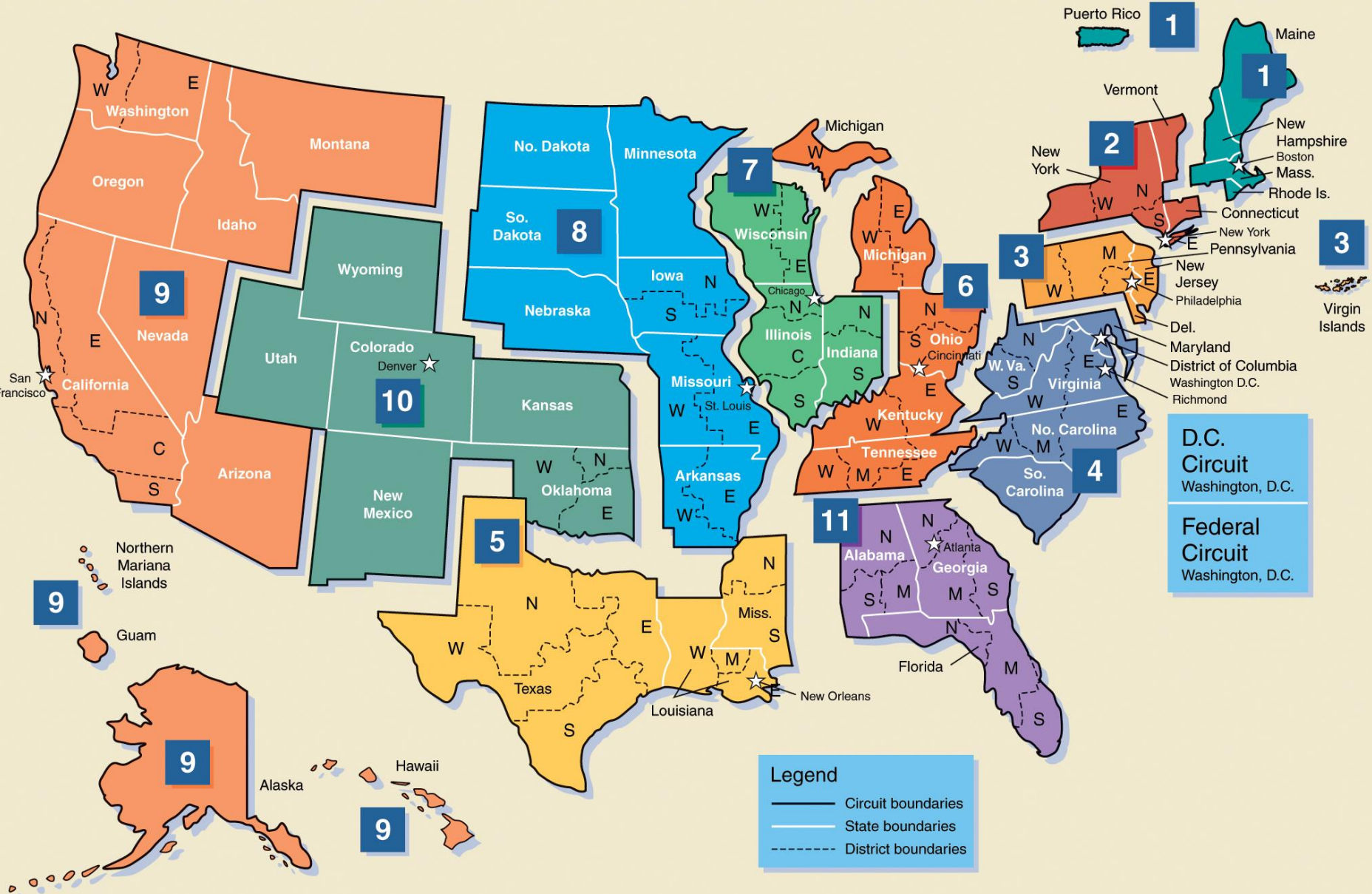
- **Civil law**

- Relations between individuals, and their legal rights
- Typically monetary punishment

## **The Great Debate over the Proper Role of the Courts**

**The contemporary debate over the Supreme Court's role is really a debate about the proper balance between government authority versus individual rights.**

# The Eleven U.S. Circuit Courts of Appeal



# The Role of Politics in Selecting Judges

- ⏏ There are no Constitutional requirements
- ⏏ The process of judicial selection is a highly partisan and political process
- ⏏ Because of the power wielded by the Supreme Court, presidents take a personal interest in selecting appointees



Judge Samuel A. Alito prior to the start of his second day of questioning before the Senate Judiciary Committee

## Judicial Tenure

- ⏏ The Constitution stipulates that federal judges “shall hold their Offices during good Behavior”
- ⏏ Judges cannot be removed for any reason by a President
- ⏏ Congress cannot impeach judges because they don’t like their decisions

# The Politics of Selecting Judges

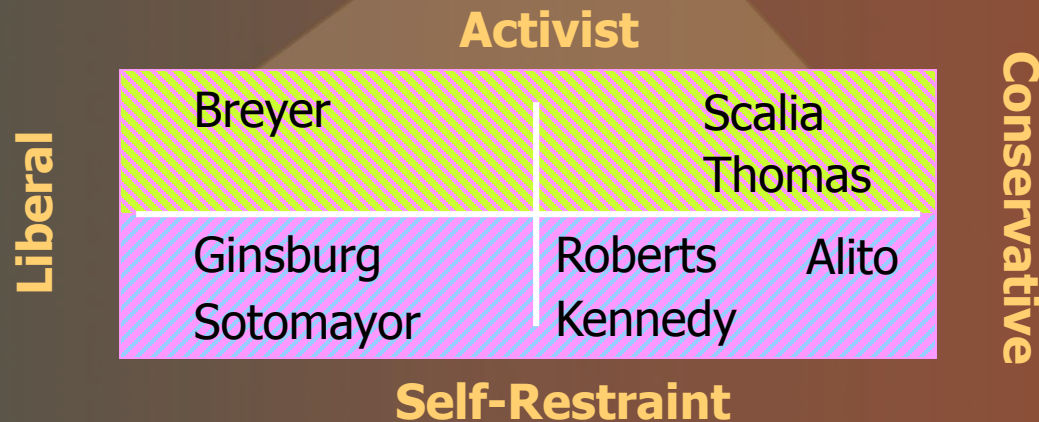
## Previous Backgrounds

<u>Number</u>	<u>Job Experience</u>	<u>Most Recent Example</u>
33	Federal Judges	Sonia Sotomayor (2009)
22	Practicing Lawyers	Lewis F. Powell (1971)
18	State Court Judges	Sandra Day O'Connor (1981)
15	Other	Elena Kagan, Solicitor General (2010)
8	Cabinet Members	Arthur Goldberg, Labor Sec. (1962)
7	Senators	Harold H. Burton, R-Oh (1945)
6	Attorney Generals	Tom Clark (1949)
3	Governors	Earl Warren, D-Ca (1953)
1	President (POTUS)	William Howard Taft (1921)



# The Politics of Appointing Federal Judges

- Political Litmus Tests
- Senate: Advice and Consent
- The Role of Party, Race, Age, and Gender
- The Role of Ideology and Judicial Experience
- The Role of Judicial Philosophy and Law Degrees



# The Process of Judicial Selection

- Submission of an appointee's name to the Senate Judiciary Committee
- Hearings are held by the Senate Judiciary Committee
- Nomination goes to the full Senate, where there is debate and, if no filibuster, a vote

## Senate Confirmation

### Filibustering Court Nominees

- Constitution requires only a majority vote of the senate to "advise and consent" to a presidential nominee
- 60 votes required to end a filibuster

# The Politics of Appointing Federal Judges

- **Do Judges Make Law?**

- **Adherence to Precedent - Stare Decisis**

The rule of precedent, whereby a rule or law contained in a judicial decision is commonly viewed as binding on judges whenever the same question is presented

- **Judicial Longevity and Presidential Tenure**

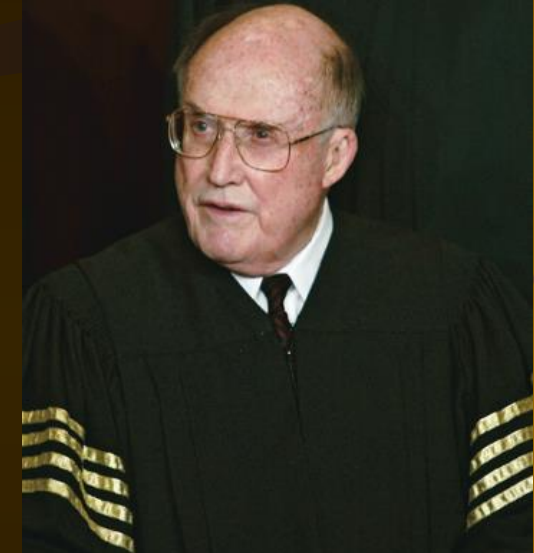
- **Reform of the Selection Process**

- **Changing the Numbers**

- **Changing the Jurisdiction**

# Party Affiliation of District Judges and Courts of Appeal Judges Appointed by Presidents

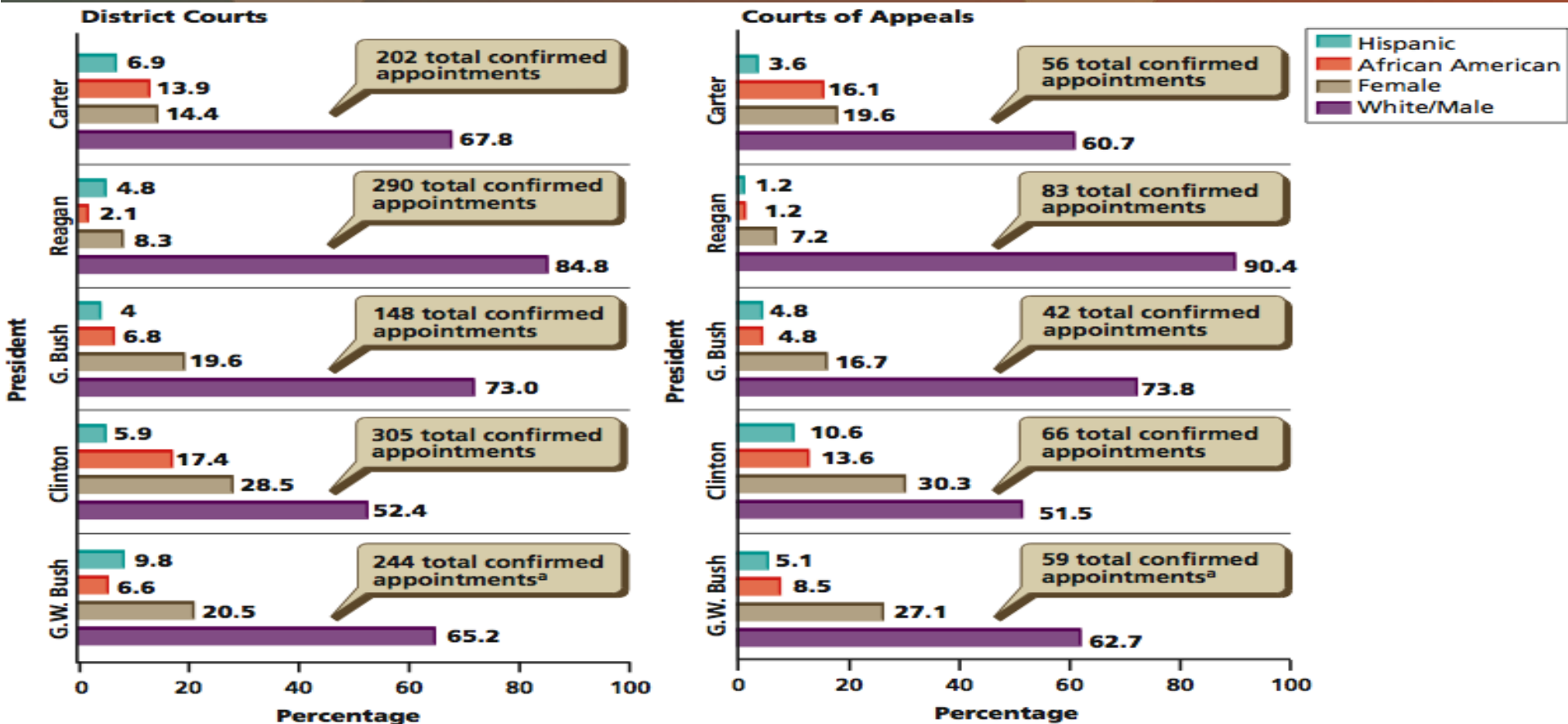
President	Party	Appointees from Same Party
Roosevelt	Democrat	97%
Truman	Democrat	92
Eisenhower	Republican	95
Kennedy	Democrat	92
Johnson	Democrat	96
Nixon	Republican	93
Ford	Republican	81
Carter	Democrat	90
Reagan	Republican	94
G.H.W. Bush	Republican	89
Clinton	Democrat	88
G.W. Bush	Republican	93



First woman appointed to the Supreme Court, by Ronald Reagan

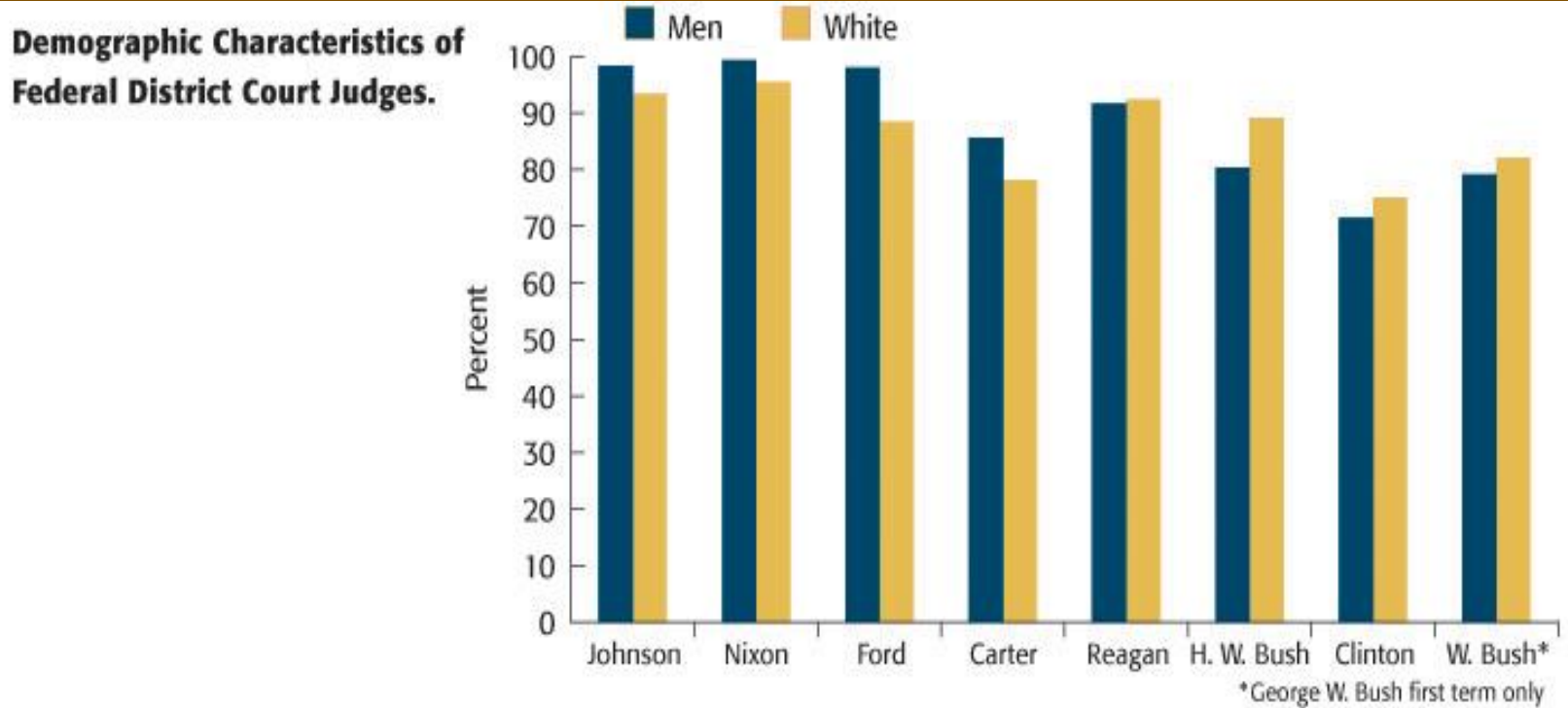
# Diversity in the Judiciary

One of the most significant changes affecting the judiciary in recent decades has been the expansion of opportunity for women and members of minority groups to serve as judges



<sup>a</sup>Through April 8, 2008.

# Female and Minority Appointments to Federal Judgeships



SOURCE: Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 2005–2006*, CQ Press, 2006, pp. 283–284.

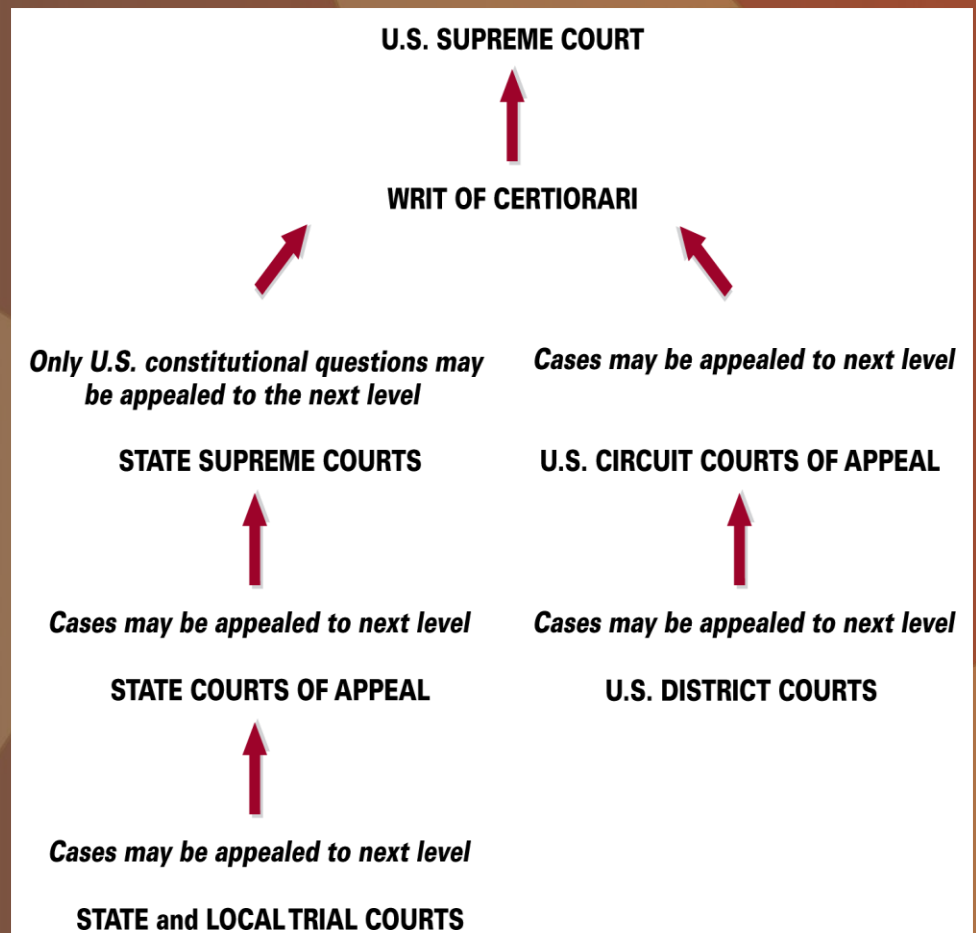
# The Supreme Court & How it Operates

## The Powers of the Chief Justice

Appointed by the president upon confirmation by the Senate

Responsible for assigning judges to committees, responding to proposed legislation that affects the judiciary, and delivering the annual Report on the State of the Judiciary

## Which Cases Reach the Supreme Court?



# The Supreme Court & How it Operates

## The Role of the Law Clerks

The number of clerks has increased over time, leading to longer and more elaborate opinions. The clerks for the nine Supreme Court Justices play a key role in the process. They are chosen by each justice. Clerks do the initial screening of petitions. The clerks of the justices participate in a pool in which they divide up the cases and write a single memorandum about each case that is sent to the justices. There is debate over how much influence clerks have on Court decisions

Supreme Court clerks are among the best and brightest recent law school graduates. Almost all first clerk for a judge on one of the courts of appeals. After their Supreme Court clerkship, former clerks are in high demand. Firms often pay signing bonuses of up to \$200,000 to attract clerks, who earn over \$180,000 their first year in private practice.

Tasks of a Supreme Court clerk include the following:

- Perform initial screening of the 9,000 or so petitions that come to the Court each term
- Draft memos to summarize the facts and issues in each case, recommending whether the case should be accepted by the Court for full review
- Write “bench memos” summarizing an accepted case and suggesting questions for oral argument
- Write the first draft of an opinion
- Serve as informal conduit for communicating and negotiating with other justices’ chambers as to the final wording of an opinion



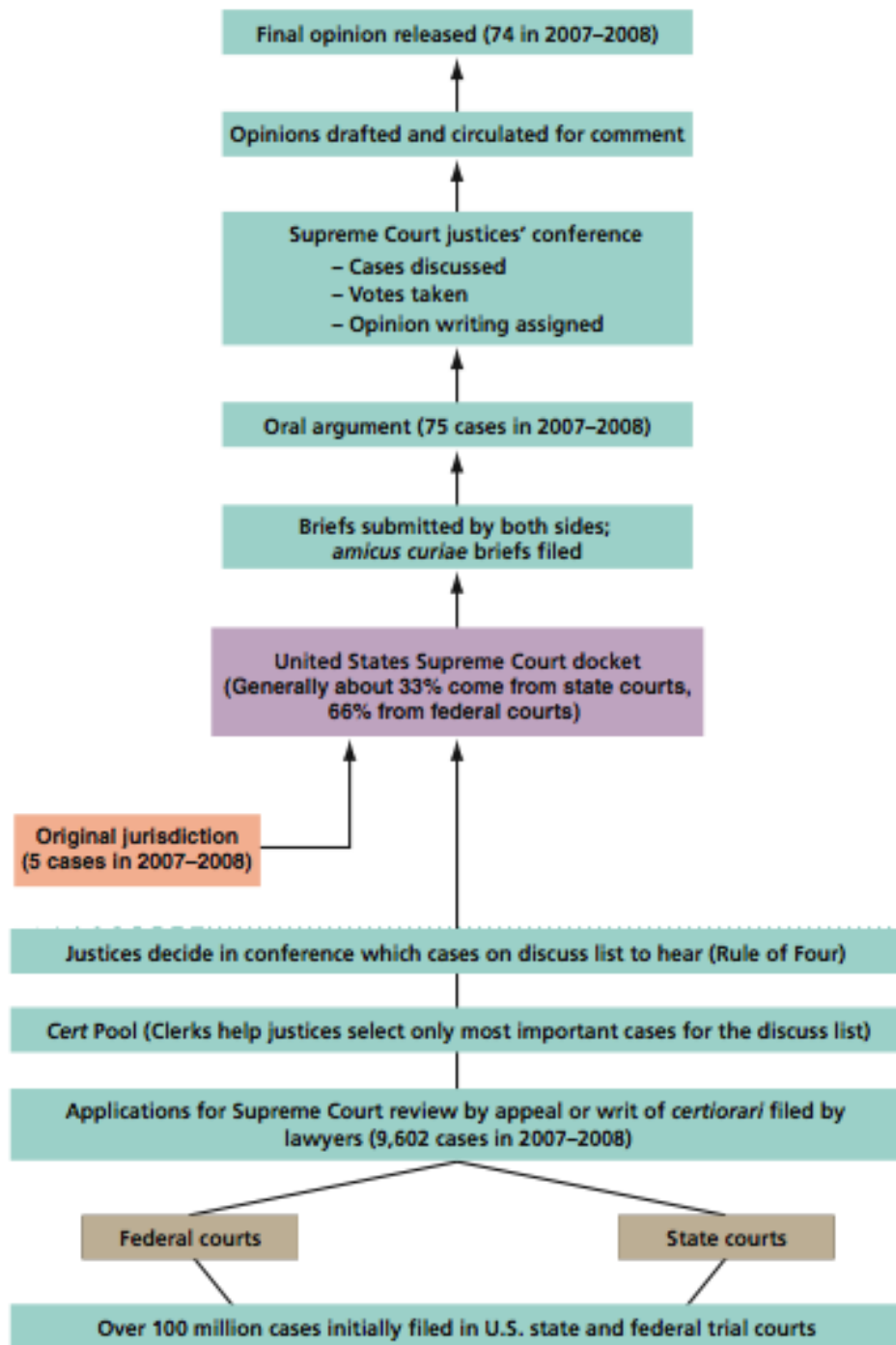
# The Supreme Court & How it Operates

- The Solicitor General
- Amicus Curiae* Briefs
- Oral Arguments
- Behind the Curtains: The Conference

On the federal level, the job of prosecution belongs to the

1. 94 U.S. Attorneys.
2. the Attorney General.
3. the Solicitor General





# The Supreme Court & How it Operates

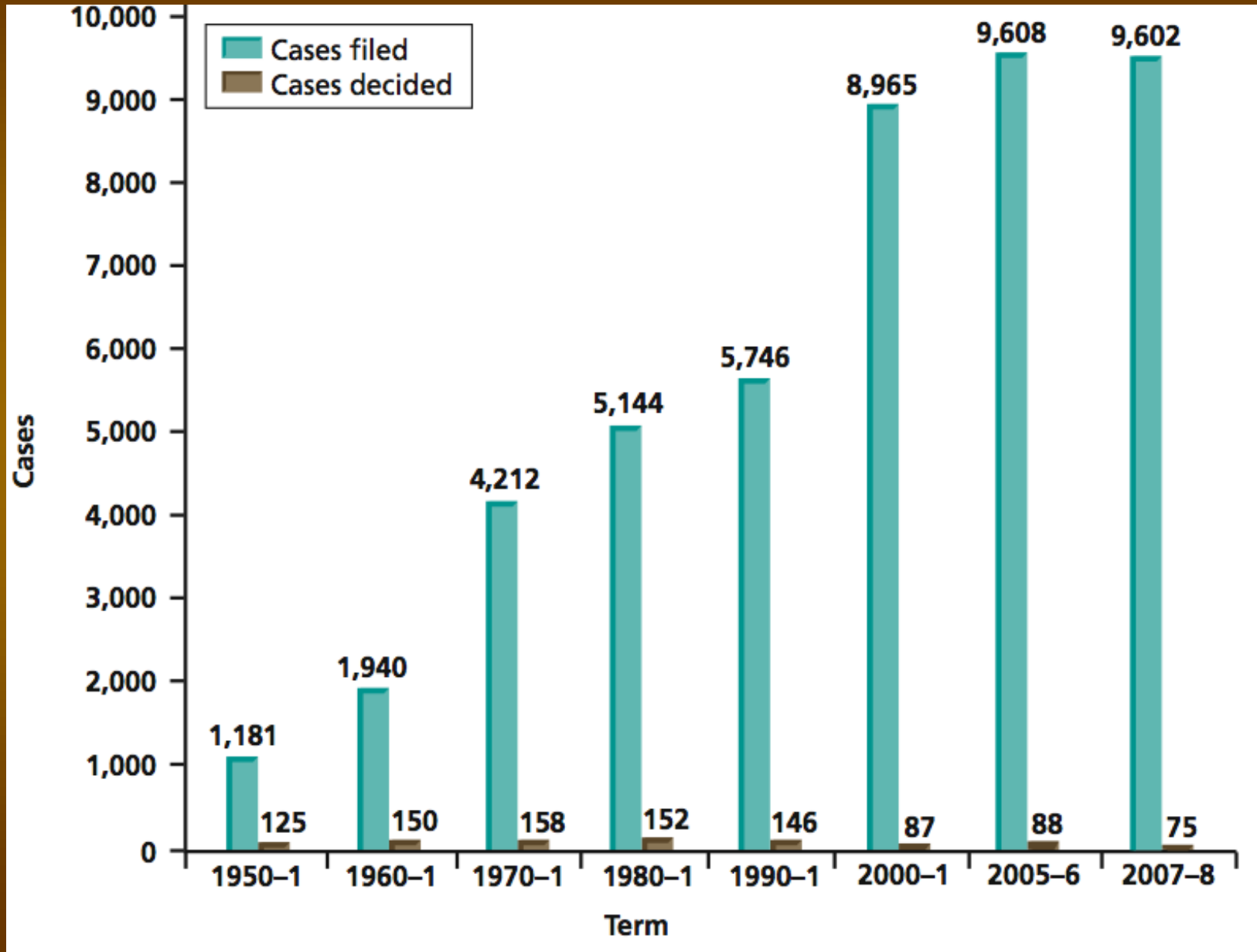
- Opinions
  - a. Majority
  - b. Dissenting
  - c. Concurring
- Circulating Drafts
- Releasing Opinions to the Public
- After the Court Decides
  - Sometimes *remands* the case
  - Uncertain effect on individuals who are not immediate parties to the suit
  - Decisions are sometimes ignored
  - Difficult to implement decisions requiring the cooperation of large numbers of officials

# Caseload of Federal Courts

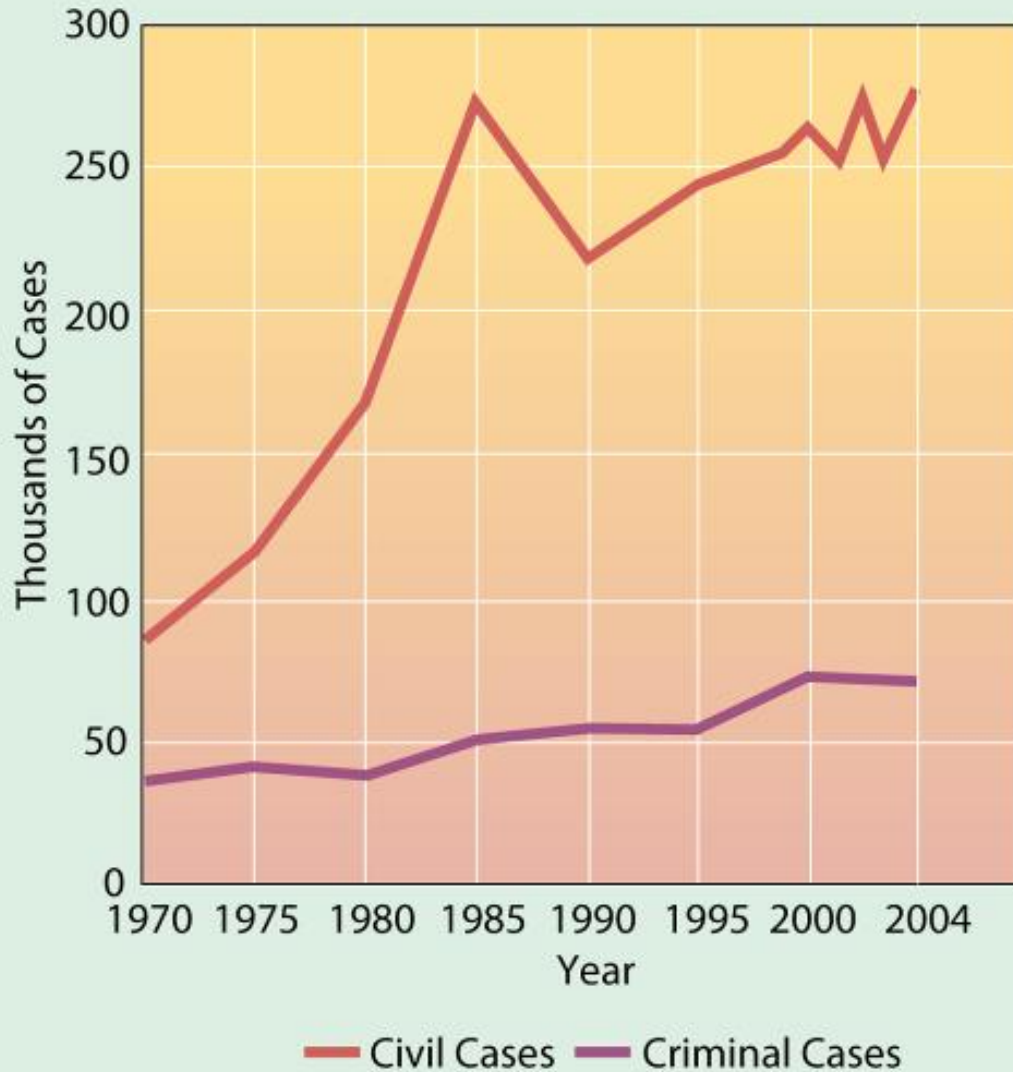
Year	District Court Caseloads	Judges	Circuit Court Caseload	Judges
1950	91,005	224	2,830	65
1960	87,421	245	3,899	68
1970	125,423	401	11,662	97
1980	196,757	516	23,200	132
1990	264,409	575	40,898	156
2000	386,200	940	84,800	430
2010	642,500	1,510	171,600	840
2020	1,109,000	2,530	325,100	1,580

SOURCE: Committee on Long Range Planning, Judicial Conference of the United States, *Proposed Long Range Plan for the Federal Courts* (Judicial Conference of the United States, 1995), pp. 14-15

# The Supreme Court's Increasing Caseload



# Caseload in Federal Court



# Judicial Power in a Constitutional Democracy

- **The Great Debate over the Proper Role of the Courts**

**The contemporary debate over the Supreme Court's role is really a debate about the proper balance between government authority versus individual rights.**

- **The People and the Court**

**What Article to the U.S. Constitution established the judicial branch of government?**

- a. I**
  - b. II**
  - c. III**
  - d. IV**
- 

**How many District Courts are there in the United States?**

- a. 50**
- b. 75**
- c. 94**
- d. 278**



**Which of the following statements about U.S. attorneys is FALSE?**

- a. They serve a four-year term.**
- b. They begin proceedings against those alleged to have broken federal laws.**
- c. They usually resign if the opposition party wins the White House.**
- d. Appointments to this position do not involve senatorial courtesy.**

**This department is responsible for prosecuting federal criminal and civil cases.**

- a. Defense**
  - b. Commerce**
  - c. State**
  - d. Justice**
- 

**The authority to try all cases that are not within the judicial power granted to the United States Supreme Court is given to**

- a. local courts.**
- b. regional courts.**
- c. state courts.**
- d. district courts.**

**What type of law governs relationships between individuals and defines their legal rights?**

- a. actionable**
  - b. criminal**
  - c. civil**
  - d. natural**
- 

**As a member of a college or university community, if you become involved in litigation as a result of that affiliation, you may become a participant in a(n)**

- a. collective action suit.**
- b. academic suit.**
- c. class action suit.**
- d. affiliated suit.**

**When a court of law is viewed as a neutral arena in which two parties argue their differences and present their points of view before an impartial arbiter, it is said to be a(n)**

- a. judicial system.**
  - b. fighting system.**
  - c. court of appeal.**
  - d. adversary system.**
- 

**In the adversarial system of justice, judges are expected to be**

- a. impartial arbiters.**
- b. passive litigants.**
- c. advocates.**
- d. active participants.**

**Which of the following statements is not correct?**

- A. Precedent is a decision made by a higher court such as the Supreme Court that is binding on all other federal courts.**
- B. The Supreme Court has both appellate and original jurisdiction.**
- C. Class-action lawsuits affect a large number of Americans.**
- D. In a criminal action, a plaintiff is the person or party accused of an offense.**