

**SECTION 1**

## The National Judiciary

- **ESSENTIAL QUESTIONS:**
- Why did the Constitution create a national judiciary?
- What is the structure of the national judiciary?
- What criteria are used to determine the jurisdiction of a federal court case?
- How are federal judges appointed, and what are their terms and salaries?
- What are the roles of federal court officers?

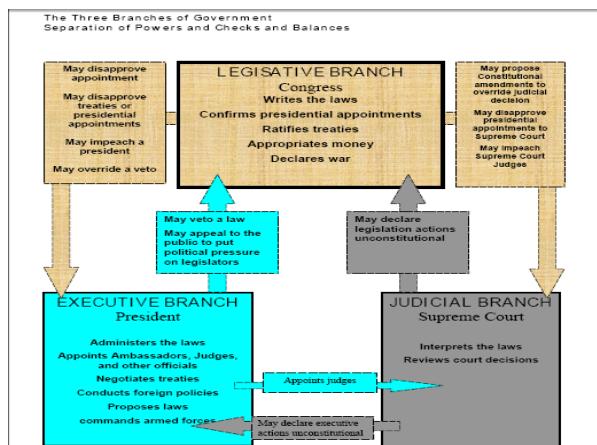
### Warm Up: Review Activity “Declare your Powers”

Directions: Your teacher will divide you up into three large groups each representing one of the three branches of government. Then give one of two partners to review the chart below and check for balances of power. After your review your teacher will lead the class in an activity to identify which branch of government has the power to perform the action described in the list of circumstances below this chart. Follow these directions:

1. After the circumstance is read aloud by the teacher, decide if your group has the power to perform this action and indicate by raising your hands.
2. If your group does not have the power to "check" the branch that did have the power.
3. When asked by your teacher, indicate that your group does have a check on the power exercised by raising your hands
4. Be prepared to explain what power your branch has to check the other branch's power.

Circumstances:

- A. Homeland Security officials have been ordered to open suspicious packages they believe might be from terrorists.
- B. A bill recently passed to allow citizens to choose their own health care plan under Medicare.
- C. The United States has signed a peace treaty with Iran.
- D. A law, recently passed in a state legislature banning gay marriages, is being challenged as unconstitutional.
- E. A law has passed ordering American citizens from making contributions to charities organizations from the Middle East.
- F. A replacement for the Attorney General has been given to Congress.
- G. A recent law closing a tax reduction for US companies establishing off shore companies to is unconstitutional.
- H. A recent bill to increase funding for education was passed over the President's rejection of the bill.
- I. A health care insurance company has been ordered to pay for additional treatment requested by a patient.



### Handout 1A: Declare your Powers Answer Key:

- A. Homeland Security opening suspicious packages  
Branch responsible: Homeland Security officials are part of the Executive Branch.  
Possible Check(s) on the power:  
  - Legislative Branch disagreed, it could stop funding the Homeland Security department or program responsible.
  - Citizens who felt the order violated their rights could take the issue to Judicial Branch.
- B. A bill passed for citizens to choose their own health care program  
Branch responsible: Bills are passed in the Legislative Branch  
Possible Check(s) on the power:  
  - The President (Executive Branch) could veto the bill
- C. A peace treaty with Iran is signed.  
Branch Responsible: Treaties are made by the Executive Branch  
Possible Check(s) on the power:  
  - All treaties must be confirmed by the Senate (Legislative Branch)
- D. A ban on gay marriage is challenged for its Constitutionality  
Branch Responsible: the courts (Judicial Branch) would hear a case regarding any constitutional question.  
Possible Check(s) on power:  
  - Depending on which judicial level the case was heard, if the desired ruling was unsatisfactory to the either side, the case could go to a higher court.
  - If the court ruling was considered "unfavorable" by any citizen, legislator, or leader, they could urge passage of a constitutional amendment, initiated by the Congress (Legislative Branch) or by calling for a Constitutional convention to overturn the court ruling.
  - Citizens dissatisfied with the Court's ruling could ask the President (Executive Branch) to appoint and approve judges or Justices more favorable to their side.

- E. A bill is passed outlawing American citizens from making contributions to Middle East charitable organizations  
Branch Responsible: The Legislative Branch could pass such a law.  
Possible Check(s) on the power:  
  - The President (Executive Branch) could veto the bill
  - If the bill was signed by the President, citizens who felt the law violated their rights could take the case to Judicial Branch.
- F. A replacement for the Attorney General has been given to Congress.  
Branch Responsible: The President (Executive Branch) makes appointments to his cabinet.  
Possible Check(s) on power: The Senate (Legislative Branch) can accept or reject the appointment.
- G. A recent law closing a tax reduction for US companies establishing off shore companies to is ruled unconstitutional.  
Branch Responsible: The Judicial Branch would hear a challenge to a tax-law and make a decision as to its constitutionality.  
Possible Check(s) on power:  
  - The Congress (Legislative Branch) could rewrite the law to make it more inclusive.
  - If the court ruling was considered "unfavorable" by the companies, they could urge passage of a constitutional amendment, initiated by the Congress (Legislative Branch) or by calling for a Constitutional convention to overturn the court ruling.
- H. A recent bill to increase funding for education was passed again after it was rejected.  
Branch Responsible: the Congress (Legislative Branch) can override a veto (rejection) of a bill if 2/3rds of both houses vote to do so.  
Possible Check(s) on power:  
  - The president (Executive Branch) can make an appeal to the citizens to get Congress to change its mind.
  - Citizens can take the matter to court (Judicial Branch) stating the law is unconstitutional.
- I. A health care insurance company has been ordered to pay for additional treatment requested by a patient.  
Branch Responsible: The Judicial Branch would hear cases where a citizen felt they were being illegally hurt by the actions of a company or individual.  
Possible Check(s) on power:  
  - Depending on which judicial level the case was heard, if the desired ruling was not satisfactory to the insurance company, the case could go to a higher court.
  - If the ruling was considered "unfavorable" by the company they could go back to Congress (Legislative Branch) to have the tax-telephone law rewritten to pass constitutional scrutiny.

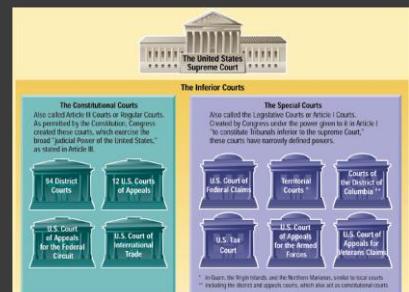
## Creation of a National Judiciary

- The Framers created the national judiciary in **Article III** of the Constitution.
- There are two court systems in the United States: the national judiciary that spans the country, and the courts run by each of the 50 States.
- The Constitution created the Supreme Court and left Congress to establish the **inferior courts**—the lower federal courts.
- There are two types of federal courts: (1) **constitutional courts** and (2) **special courts**.



## Types of Federal Courts

The Constitution created only the Supreme Court, giving Congress the power to create any lower, or "inferior," courts as needed.



## Federal Court Jurisdiction

- **Jurisdiction** is defined as the authority of a court to hear (to *try* and to *decide*) a case.
- Article III, Section 2 of the Constitution provides that the federal courts may hear a case because either:
  - (1) the subject matter or
  - (2) the parties involved in the case.



## Types of Jurisdiction

### Exclusive and Concurrent Jurisdiction

- Some cases can only be heard in federal courts. In that case, federal courts have **exclusive jurisdiction**.
- Many cases may be tried in a federal court or a State court. In such an instance, the federal and State courts have **concurrent jurisdiction**.

### Original and Appellate Jurisdiction

- A court in which a case is first heard is said to have **original jurisdiction** over that case.
- A court that hears a case on appeal from a lower court has **appellate jurisdiction** over that case.
- The Supreme Court exercises both original and appellate jurisdiction.

## Appointment of Judges

- The power to appoint judges to federal courts falls on the President.
- The President nominates Supreme Court justices, as well as federal court judges, who are then subject to the approval of the Senate.
- Most federal judges are drawn from the ranks of leading attorneys, legal scholars and law school professors, former members of Congress, and State courts.

### Handout II: "Supreme Court Confirmation Flow Chart"

Name \_\_\_\_\_ Date \_\_\_\_\_

The Supreme Court is the highest court in the United States. It hears appeals from decisions of lower federal courts and state supreme courts, and it resolves issues of constitutional and federal law. It stands as the ultimate authority in constitutional interpretation, and its decisions can be changed only by a constitutional amendment.

**Directions:**  
Review the description of the *Supreme Court Confirmation Process* described below in your small groups. As you discuss the confirmation process with your group members, complete the flow chart below.

The Supreme Court Confirmation process is part of the Checks and Balances system described in the Constitution. Article III, Section 2, grants the power to nominate and appoint judges to the President including, "He [the President] shall have Power, by and with the Advice and Consent of the Senate, to...nominate...Judges of the Supreme Court..." Once the President has announced his appointment, he submits the names to the Senate. All nominees are thoroughly investigated by the FBI looking at their past and any possible encounters with the law, and must complete detailed paperwork, including a financial disclosure. A White House Review conducted by White House staff, ensures that nominees support the President's nominee for the position. Then the Legislative branch becomes involved making sure that the Supreme Court nominees are well qualified by conducting Senate Confirmation Hearings. During this process, Senators from the Senate Judicial Committee interview and question nominees about a wide range of topics related to their qualifications for the job and ideas about how they decide the law. When the hearings are completed, the full Senate votes for or against confirmation and if a nominee receives the majority of the Senate's votes, he/she will be confirmed.

The Supreme Court Confirmation Process exemplifies the system of Checks and Balances. It allows the Executive Branch to identify qualified candidates that support the President's agenda, while requiring a review of the nominees by the Legislative Branch to ensure that all nominees are qualified.

Confirmation Process Information Chart

Steps	Description of the process	Explain the power granted and how it serves as a check on another branch
President Nomination		
White House Review		
Paperwork Financial Disclosure		
FBI Investigation		
Senate Confirmation Hearings		
Senate Vote		

Answer Key to Handout II: "Supreme Court Confirmation Flow Chart"

Steps	Description of the process	Explain the power granted and how it serves as a check on another branch
President Nomination	President nominates candidates and submits the names to the Senate	Gives the President power choose nominees for key government jobs and power to select members of another branch (the Judicial branch)
White House Review	Members of the Executive Branch review the qualifications of the nominee	Ensures other members of the Executive Branch approve of the nominee and help ensure he/she supports the President's efforts
Paperwork Financial Disclosure	Nominee fills out forms (after all this is the government) and discloses information about their financial status.	
FBI Investigation	FBI investigates nominees for past actions and any possible encounters with the law.	
Senate Confirmation Hearings	Members of the Senate Judicial Committee interview and question nominees about a wide range of topics related to their qualifications and past cases.	Senate hearings ensure that representatives from the Legislative Branch (representing the citizens) has an opportunity to verify the nominee's qualifications.
Senate Vote	The full Senate confirms or rejects the appointment of the nominee by a majority vote	Majority vote from Senate ensures the Legislative Branch is in favor of the executive branch's choice or rejects it because they feel the person isn't qualified



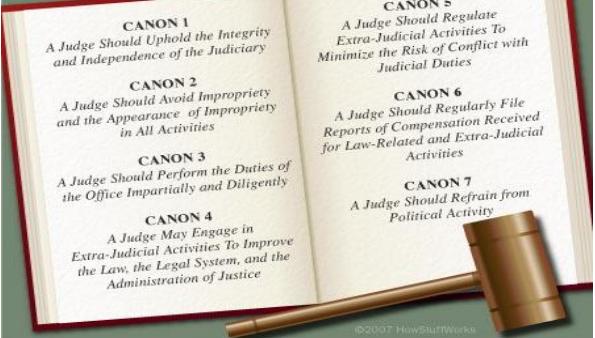
## Terms and Pay of Judges



- Judges appointed to the constitutional courts, including the Supreme Court, are appointed for life.
- Judges of constitutional courts may only be removed by their own will or through impeachment. Only 13 federal judges have ever been impeached, and of them, seven were convicted.
- Judges who sit in the special courts are appointed for terms varying from 4 to 15 years.
- Congress determines salaries for federal judges.

## How the Judicial System Works

Code of Conduct for United States Judges



## Court Officers

### **Federal judges have many levels of support in order to fulfill their roles:**

- United States magistrates are appointed by each federal district court judge to handle duties ranging from issuing warrants to setting bail in federal criminal cases.
- Each federal district judge appoints one bankruptcy judge for their district.
- The President nominates, and the Senate approves, a United States attorney for each federal judicial district.
- The President and the Senate also select a United States marshal to serve each of the district courts. Marshals act much like county sheriffs in regard to federal crimes.

## Review

### **1. Which of the following is the only court established by the Constitution?**

- (a) the United States Court of Appeals
- (b) the United States Supreme Court
- (c) the Supreme Court of Texas
- (d) the United States Court of Federal Claims

### **2. Federal judges are appointed by**

- (a) governors of States with federal courts.
- (b) the Vice President.
- (c) the President.
- (d) State legislatures.

## Assignment:

- Complete “**THE UNITED STATES FEDERAL COURT SYSTEM STUDENT WORKSHEET**”

SECTION 2

## The Inferior Courts

### **○ ESSENTIAL QUESTIONS:**

- What is the structure and jurisdiction of the federal district courts?
- What is the structure and jurisdiction of the federal courts of appeals?
- What is the structure and jurisdiction of other constitutional courts?

## The District Courts

### Federal Judicial Districts

- The 94 federal judicial districts include at least one district in each State, the District of Columbia, and Puerto Rico.
- Larger and more populous States are divided into two or more districts, reflecting the larger amount of judicial work done there.

### District Court Jurisdiction

- District courts have original jurisdiction over most cases that are heard in federal courts.
- The district courts hear a wide range of **criminal cases** and **civil cases**.
- A criminal case, in the federal courts, is one in which a defendant is tried for committing some action that Congress declared by law to be a federal crime. A federal civil case is one which involves noncriminal matters.

## The Courts of Appeals

The courts of appeals were created in 1891 to handle much of the burden that the Supreme Court faced in ruling on appealed cases.

### Appellate Court Judges

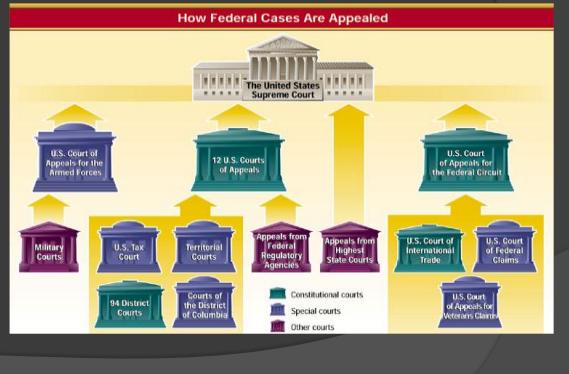
- Altogether, 179 circuit judges sit in the 12 appeals courts.
- A Supreme Court justice is also assigned to each of the circuits.

### Appellate Court Jurisdiction

- The courts of appeals only have appellate jurisdiction, hearing cases on appeal from lower federal courts.



## How Federal Cases AreAppealed



## Other Constitutional Courts

### The Court of International Trade

- The Court of International Trade hears civil cases arising out of tariff and other trade-related laws.

### The Court of Appeals for the Federal Circuit

- This appellate court has nationwide jurisdiction and hears cases from several different courts.
- Most cases heard arise from the U.S. Court of International Trade, the U.S. Court of Federal Claims, and the U.S. Court of Appeals for Veterans Claims.

## Review

### 1. The Federal District Courts have

- (a) original jurisdiction over most cases that are heard in the federal courts.
- (b) appellate jurisdiction over federal cases.
- (c) original jurisdiction in matters involving two or more of the States.
- (d) appellate jurisdiction over all cases.

### 2. The courts of appeals hear which types of cases?

- (a) cases in which the Supreme Court has already made a decision
- (b) cases in which they have appellate jurisdiction
- (c) cases in which they have original jurisdiction
- (d) cases brought to them by State supreme courts

## THE SUPREME COURT

### ○ ESSENTIAL QUESTIONS:

- What is the concept of judicial review?
- What is the scope of the Supreme Court's jurisdiction?
- How do cases reach the Supreme Court?
- How does the Supreme Court operate?



## Judicial Review

- **Judicial review** refers to the power of a court to determine the constitutionality of a government action.
- The Supreme Court first asserted its power of judicial review in the case of *Marbury v. Madison* (1803).
- The Court's decision laid the foundation for its involvement in the development of the American system of government.

Video: “Judicial Interpretation” with Supreme Court Justices Scalia and Breyer (36 min)

- **Writing Prompt:** How do these judges define and use “judicial interpretation?” Is this an important power? Explain. Moreover, in your opinion, is it a necessary and justifiable power, especially since it is NOT explicitly stated in the constitution?  
200 words

## Supreme Court Jurisdiction

- The Supreme Court has both original and appellate jurisdiction.
- The Court has original jurisdiction over cases involving two or more States and all cases brought against ambassadors or other public ministers.
- Most cases heard by the Court are appeals cases. The Court hears only one to two cases in which it has original jurisdiction per year.

## How Cases Reach the Supreme Court

For a case to be heard by the Court, four of nine judges must agree that it should be placed on the Court's docket.

### Writ of Certiorari

- Most cases reach the Court via **writ of certiorari**, an order to a lower court to send a record in a given case for its review.



### Certificate

- Cases can reach the Court by **certificate** when a lower court asks for the Court to certify the answer to a specific question in the matter.



### Supreme Court

- Highest court in the federal system
- Nine Justices, meeting in Washington, D.C.
- Appeals jurisdiction through *certiorari* process
- Limited original jurisdiction over some cases



### Courts of Appeal

- Intermediate level in the federal system
- 12 regional "circuit" courts, including D.C. Circuit
- No original jurisdiction; strictly appellate

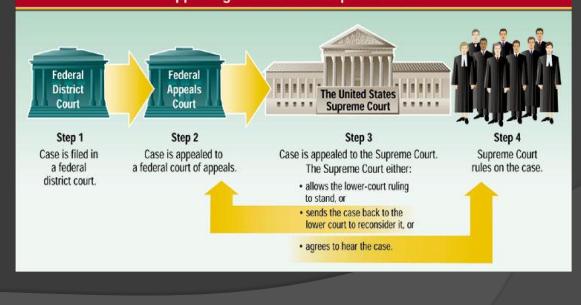


### District Courts

- Lowest level in the federal system
- 94 judicial districts in 50 states & territories
- No appellate jurisdiction
- Original jurisdiction over most cases

## Appealing a Case to the Supreme Court

### Appealing a Case to the Supreme Court



## How the Supreme Court Operates

### Oral Arguments

- Once the Supreme Court accepts a case, it sets a date on which lawyers on both sides will present oral arguments.

### Briefs

- Briefs are written documents filed with the Court before oral arguments begin.

### The Court in Conference

- The Chief Justice presides over a closed-door conference in which justices present their views on the case at hand.

## Opinions of the Court

Once the Court finishes its conference, it reaches a decision and its opinion is written.

### Majority Opinion

The **majority opinion**, formally called the Opinion of the Court, announces the Court's decision in a case and its reasoning on which it is based.

### Precedents

The majority opinions stand as **precedents**, or examples to be followed in similar cases as they arise in the lower courts or reach the Supreme Court.

### Concurring Opinions

**Concurring opinions** are sometimes authored by justices to add or emphasize a point that was not made in the majority opinion.

### Dissenting Opinions

**Dissenting opinions** are often written by those justices who do not agree with the Court's majority opinion.

## Review

### 1. The Supreme Court has which type of jurisdiction?

- (a) only original jurisdiction
- (b) only appellate jurisdiction
- (c) appellate and original jurisdiction
- (d) none of the above

### 2. The majority opinion of a Supreme Court case is

- (a) the decision made on a case by the Court.
- (b) written by those justices that voted in favor of a case.
- (c) never used as precedent in a court of law.
- (d) often authored by the justice holding the least seniority.

### WEBS QUEST ON THE FEDERAL JUDICIARY

**Introduction**  
In this short Webquest you will learn about the federal courts of the United States and about the justic system. You will compare state courts in comparison to federal courts; how federal judges are selected; and the growth, duties, and jurisdiction of the Supreme Court. In this activity you will visit the Federal Judiciary Web site to take a closer look at the law-interpreting branch of government.

Destination: <http://www.uscourts.gov>

#### Directions

Start at the Federal Judiciary home page.

- Click on *Educational Outreach*.
- Click on *What is the Federal Court and Structure of the Federal Courts*.
- Return to the *Educational Outreach* page and click on *Frequently Asked Questions*.
- Read through the information presented under these topics, taking notes as you go.

After you have read through the information, answer the following questions:

1. Who is the public generally allowed access to court proceedings?

2. Briefly describe the jurisdiction of federal courts.

3. Look at the structure of the federal courts. Where would a case be heard after it has passed through the U.S. District Court?

4. What qualifications are required to serve as a juror?

5. Now that you are familiar with the general powers and duties of the federal courts, write a "curriculum vitae" for a federal judge. To help you get started, decide in what type of court in the federal court system this judge will be working, and think about what qualifications would make a person a successful and competent judge.

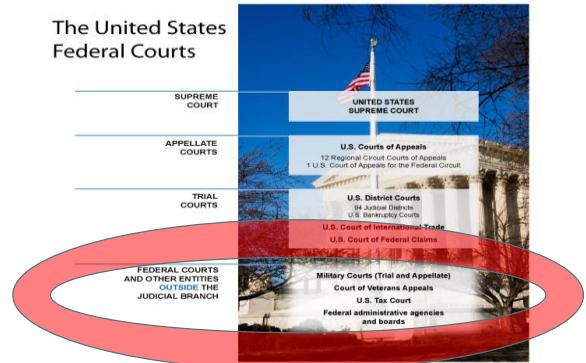
**SECTION 4**

## The Special Courts

⦿ **ESSENTIAL QUESTIONS:**

- ⦿ How can citizens sue the government in the U.S. Court of Federal Claims?
- ⦿ What are the roles of the territorial courts and of the District of Columbia courts?
- ⦿ What functions do the U.S. Court of Appeals for the Armed Forces and the U.S. Court of Appeals for Veterans Claims have?
- ⦿ What types of cases are brought to the U.S. Tax Court?

### The United States Federal Courts



### The Court of Federal Claims and the Territorial Courts

#### The Court of Federal Claims

- ⦿ The U.S. Court of Federal Claims handles all pleas against acts of the United States government.
- ⦿ Those who have claims against the United States can possibly secure **redress**—satisfaction of a claim, usually through payment—through this court.



#### The Territorial Courts

- ⦿ Under its power to govern the territories of the United States, Congress created courts for the nation's territories.
- ⦿ These courts are in places such as Guam and the Virgin Islands, and function much like the local courts in the 50 States.

### The District of Columbia Courts and the U.S. Tax Court

#### The District of Columbia Courts

- ⦿ As directed in the Constitution, Congress established a system of courts for the "Seat of Government of the United States."
- ⦿ The District of Columbia handles all local judicial matters for the district, including trials and appeals.

#### The United States Tax Court

- ⦿ The U.S. Tax Court was created by Congress in 1969.
- ⦿ The Tax Court hears civil but not criminal cases involving disputes over the application of the tax laws.
- ⦿ Its decisions may be appealed to the federal courts of appeals.

## Military Appeals Courts

### The Court of Appeals for the Armed Forces

- This court is a civilian tribunal, a court operating as part of the judicial branch, entirely separate from the military establishment.
- The court reviews the more serious convictions of members of the armed forces at a **court-martial**, or trial involving military law.

### The Court of Appeals for Veterans Claims

- The Court of Appeals for Veterans Claims hears cases in which individuals claim that the Department of Veterans Affairs has denied or otherwise mishandled valid claims for veterans' benefits.



## Review

### 1. The U.S. Court of Federal Claims handles

- (a) citizens wishing redress from the government.
- (b) veterans affairs.
- (c) cases heard in the District of Columbia.
- (d) cases heard in U.S. territories.

### 2. A court-martial is a court which tries cases involving

- (a) civilians.
- (b) military personnel.
- (c) diplomats.
- (d) ambassadors.

## Assignment:

- **Directions:** Read "Understanding Federal and State Courts." Then, complete the attached case study as well as "Can you make a federal case out of it?"

## POSSIBLE END OF THE YEAR ASSESSMENT:

- Read "Important Cases in Supreme Court History" and go to the following website: <http://www.supremecourtcases.org/index.html>

○ Browse the reading summaries of the following cases:

○ *Mapp v. Ohio (1961)*

*Gideon v. Wainwright (1963)*

*Miranda v. Arizona (1966)*

*Tinker v. Des Moines (1969)*

*Roe v. Wade (1973)*

*U.S. v. Nixon (1974)*

*Regents of CA v. Bakke (1978)*

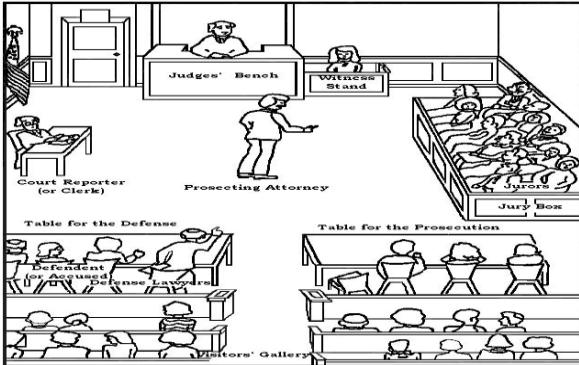
*New Jersey v. T.L.O. (1985)*

*Hazelwood v. Kuhlmeier (1983)*

*Texas v. Johnson (1989)*

- As a class we will decide upon one case to complete ALL readings and activities associated with the case on the website. Then, we will host a mock court trial on the case. The main difference this time: I will serve as Supreme Court Justice and other teachers, as well as Mr. Trautwein himself, may serve as judges! Your completion of the written assignments as well as your preparation and performance for the mock court trial will determine your final exam grade!

**SAMPLE COURTROOM SETTING\***



This is an approximation of what a courtroom looks like during a jury trial.

\*Source: Elementary Law Related Activities. A joint project of: The Devils Lake Public Schools, North Dakota Department of Public Instruction, State Bar of America, North Dakota, and North Dakota Combined Law Enforcement Council 1978.

**Simplified Steps in a Trial:**

1. Calling of Case by Bailiff: "All rise. The Court of \_\_\_\_\_ is now in session. Honorable Judge \_\_\_\_\_ presiding."
2. Opening Statement: First the prosecutor (criminal case) or plaintiff's attorney (civil case), then the defendant's attorney, explain what their evidence will be and what they will try to prove.
3. Prosecution's or Plaintiff's Case: Witnesses are called to testify (direct examination) and other physical evidence is introduced. Each witness called is cross-examined ('questioned so as to break down the story or be discredited) by the defense.
4. Defendant's Case: Same as the third step except that defense calls witnesses for direct examination; cross-examination by prosecution/plaintiff.
5. Closing Statement: An attorney for each side reviews the evidence presented and asks for a decision in his/her favor.
6. Jury Instructions (Jury Trials Only): The Judge explains to the jury appropriate rules of law that it is to consider in weighing the evidence. As a general rule, the prosecution (or the plaintiff in a civil case) must meet the burden of proof in order to prevail. In a criminal case this burden is very high. In order for the accused? Are some parts of the trial more important than others? Would you trust a jury of your peers to determine your guilt or innocence? Students should also explore their reactions to playing attorneys, witnesses, jurors, and the judge. What roles do each play in the trial process?