**The Judicial Branch - The Supreme Court – MT. 2, LT. 3**

Congress created all federal courts except for the **United States Supreme Court**. The Supreme Court was specifically created by the Constitution. The Supreme Court is the final authority on the meaning of the Constitution. The Constitution gives special protection to the Supreme Court chief justice and associate justices. The president appoints justices and the Senate confirms them. Once confirmed, federal judges and Supreme Court justices serve for life. Only judges on the Supreme Court are granted the title of justice.

The Supreme Court is not like a trial court. It does not decide criminal cases. Instead, the Supreme Court has what are called original and appellate jurisdiction. Original jurisdiction means that the case begins and ends in the Supreme Court. There are only two types of cases that may be heard by the Court in its original jurisdiction. One class includes cases in which a U.S. state is a party. The other class includes cases that involve ambassadors, public ministers, and consuls.

Appellate jurisdiction means that the Supreme Court can review decisions made by other courts. Approximately 4,000 to 5,000 cases are appealed to the Supreme Court yearly. However, it generally hears only 75 to 200 of these. Cases come to the Supreme Court by **appeal** when one party submits a petition to the Court that asks it to review a lower court's decision. When a case is agreed to be heard, ***writ of certiorari***, meaning "made more certain," is granted. Four of the nine justices must believe that a mistake has been made by the lower court for *writ of certiorari* to be granted.

Once the Supreme Court accepts an appellate case, all nine justices sit together and decide the case. Each party presents its case in the form of a **brief**, which is a document that presents the facts of a case, summarizes the lower court's decision, and argues the party's opinion. The court can also grant oral arguments, during which both parties have 30 minutes to argue their case in person before the Court. The justices then convene to discuss the case before handing down their opinion.

There are three types of opinions that the Court can hand down. The first is the **majority opinion**, which states the decision of the majority of the Court, usually at least five of the justices. The next type is a **concurring opinion**, which is the opinion of one or more justices who voted with the majority, but for different reasons. Finally, the Court can offer a **dissenting opinion**, which states the minority opinion of one or more justices who voted against the majority.

Dissenting opinions can be important if a similar case is ever brought before the Court and the Court considers reversing an earlier decision. John Harlan's dissenting opinion in *Plessy v. Ferguson* became the basis on which Charles Houston and Thurgood Marshall sought to have the Court reverse the "separate but equal" doctrine. Justices also use dissenting opinions to state legal doctrine that they hope will gain acceptance over time.

The Supreme Court has the power to make and change policies that affect the lives of all Americans. However, many judges and scholars support the idea of **judicial restraint**. According to this philosophy judges should play a limited role in policymaking. They believe that judges should simply decide cases and leave the duty of policymaking to the legislature. Others support **judicial activism**. They believe that the Supreme Court should use its power of judicial review to overturn previous bad decisions. These people believe the Supreme Court should try to promote political and social justice

Judicial review and construction are closely tied to the concepts of judicial activism and restraint. **Judicial review** gives the Court the power to determine whether acts of the government are constitutional. Judicial review is the Supreme Court's primary tool in the system of checks and balances on which the American government is based. The power of judicial review makes the Supreme Court the final authority on the interpretation of the Constitution.

The concept of construction is concerned with exactly how the Constitution is interpreted. **Loose construction** is the belief that the Constitution is a dynamic, living document that must change as the nation develops. Loose constructionists believe in a flexible approach to interpreting the Constitution, taking into account changes in society.

**Strict construction** is the belief that the Constitution is a static document that should be followed to the letter. Strict constructionists believe that the interpretation of the Constitution should be either based on the literal meaning of its words or the **original intent** of the Founders.

The United States' president and Congress each hold a great deal of political power, but their authority is checked by the **Supreme Court**. The Supreme Court is responsible for interpreting the Constitution and ensuring that government actions and laws do not violate the principles of the Constitution. Serving on the Supreme Court is one of the highest honors a person can attain in this country and an achievement that does not come easily.

The modern Supreme Court consists of eight associate justices and one **chief justice**. Each of these nine members is nominated by the President of the United States and confirmed or approved by the Senate. Although judicial experience is not required to serve as a Supreme Court justice, all of the current justices had extensive experience as attorneys and judges before being nominated to the Supreme Court. In fact, the Constitution makes no reference to qualifications for justices, nor does it impose limits on a justice's term of office, except to state in Article III, Section I that a justice has life term to serve the Court "during good behavior."

When a vacancy occurs on the Supreme Court, the president nominates a replacement. He often consults with his advisors and thoroughly checks the background of potential nominees before making this decision. Presidents will usually nominate someone with extensive experience as a lawyer or federal judge. The President will also usually nominate someone who shares his same political beliefs. Finally, the President must make sure they nominate someone who can be approved by the Senate. Whomever the President nominates must go through a senatorial confirmation process before being seated in their new position. This ensures that the "checks and balances" concept of government applies to the judiciary system and that neither the president nor Congress has too much power in the appointment and confirmation process.

After the president, with the help of his advisors, has selected a suitable candidate for the Supreme Court, the Senate has the opportunity to conduct a **confirmation hearing**. The nominee is present for this hearing and must answer questions about his or her background and qualifications. Senatorial confirmation ensures that a president will not be able to pack the court with his friends and political partners rather than qualified candidates. Because of this, the Senate hearings can also delve into personal matters, such as a candidate's financial dealings or other aspects of the nominee's personal life.

After the confirmation hearing, the entire Senate votes whether to approve or reject the President’s nomination. If a majority of the Senators approves the nomination, that person takes his or her seat on the Supreme Court. If the majority of the Senate rejects the nomination, the President must nominate a new replacement and the process starts over again.