BASICSPLAINER – THE FEDERAL COURTS

The U.S. Constitution's Article III provides only a rough outline for the judiciary branch of government. There must be a single **Supreme Court**, but the Constitution says little about its powers and nothing about the number of judges that must sit on the court. There must be lower courts, but the Constitution is silent on how many levels of lower courts there must be or how they should be organized. Judges serve for "good behaviour" and their salaries cannot be lowered, but the Constitution does not define "good behaviour" or set specific salaries.

Congress filled in most of the structural gaps in the **Judiciary Act of 1789** and succeeding laws. The current federal court system is topped by the Supreme Court, a nine-member body. Below the Supreme Court are thirteen regional **Circuit Courts of Appeals** – multi-member appeals courts – and below them, 94 federal trial courts (also called district courts). The president appoints all of the judges on these courts, subject to confirmation by the Senate, and they all serve for life.[1]

Chief among the powers of the federal courts is **judicial review**, the ability to declare a legislative enactment void if it contradicts the U.S. Constitution. First enunciated in the 1803 case of *Marbury* v. *Madison*, this power is unstated in – though implied by – the Constitution.[2] Federal judges spend more of their time on matters of **statutory interpretation**, that is, interpreting regular laws, than on **constitutional interpretation**, interpreting the Constitution, however.

The Constitution grants federal courts jurisdiction only if there is a "case" or "controversy" at hand.[3] This means that the Supreme Court does not, for instance, offer 'advisory opinions' to members of Congress who might want to know if a proposed law would be considered unconstitutional. A case originates in one of two ways: 1) The government brings charges against an individual for violating a law (this is a criminal case); or 2) one person or entity sues another for violating the law (a civil case). Courts examine issues of both 'law' and 'facts' (that is, the details of what happened), but in general, only the lowest level of the court system (the trial courts) evaluate the facts of a case. Appeals courts and the Supreme Court consider issues of 'law'. Was the law fairly applied in this case? Is the law being interpreted correctly by law enforcement officials? Is the law constitutional?

A case may originate in federal or state court. In order to be appealed to a federal court – and to, perhaps, eventually reach the Supreme Court – a case must involve an issue of federal law or of the U.S. Constitution. If only state law is at issue, the case remains at the state level.

Since the enactment of the federal Judge's Bill of 1925, the Supreme Court has been free to refuse most appeals, if it chooses. Of the approximately 8,000 cases that are appealed to the Supreme Court each year, the Court only hears about 75.[4] In accepting a case, the Court issues a "**writ of certiorari**," or "cert" (Latin for "a formal written order to be informed of" the case at hand). After the justices read written briefs and hear oral arguments from attorneys on both sides, the Court issues its ruling via a written **opinion**. One or more justices may also issue a **dissent**, if they disagree with the outcome, or a **concurrence**, if they agree with the outcome but differ on the reasoning behind it. Agreement from five justices, a majority, is required for a ruling to count as the official opinion of the Supreme Court.

[1] As with other federal officials, judges may be impeached and removed for misconduct.
[2] See Alexander Hamilton's argument to this effect in *Federalist 78*.
[3] See the Constitution, Article III, Section 2.
[4] See the data available at the Federal Judicial Center, https://www.fjc.gov/history/exhibits/graphs-and-maps/supreme-court-caseloads-1880-2015