**The Judicial Branch**

The Executive and Legislative branches are elected by the people. Members of the **Judicial Branch** are **appointed** by the **President** and **confirmed by the Senate**.

**Article III of the Constitution**, which **establishes the Judicial** Branch, leaves Congress the option to determine how the federal justice system will be shaped. Even the number of Supreme Court Justices is left to Congress — since 1869 we have had **9 Supreme Court Justices**. **The Constitution also grants Congress the power to establish courts inferior to the Supreme Court**. Therefore, Congress has established the United States district courts, which try most federal cases, and 13 United States courts of appeals, which review appealed district court cases.

Federal judges can only be removed through impeachment and judgment by the Legislative Branch. Judges and justices **serve for life**! — They serve until their death, retirement, or conviction by the Senate. This is a great idea because they are not worried about being elected by people and being “popular”- this assures they are fair and consider only the law!

Generally, Congress determines the **jurisdiction** of the federal courts. In some cases, however — such as in the example of a dispute between two or more U.S. states — the Constitution grants the Supreme Court **original jurisdiction**, an authority that cannot be stripped by Congress.

The courts only try actual cases and disagreements — someone must show that it has been harmed in order to bring a lawsuit in court. Cases brought before the judiciary typically start in district court, then go to appellate court and may even end at the Supreme Court. The Supreme Court hears very few cases each year compared to district and appellate courts.

Federal courts have the power to interpret the law, determine the constitutionality of the law, and apply it to individual cases. The courts, like Congress, can make people involved bring forth evidence and testimony through the use of a **subpoena**. The lower courts must follow decisions of the Supreme Court — once the Supreme Court interprets a law, lower courts must apply the Supreme Court's interpretation to the facts of a particular case- they are setting precedent in this way (as if Mrs. Furgi gave 1 detention per tardy on the first day of school to a student, any other student that came late to class would receive the same consequence).

**The Supreme Court of the United States**

The Supreme Court of the United States is the highest court in the land and the only court created by the Constitution (all others were created by Congress!- Do you remember from the first page of this reading?)

The Constitution does not determine the number of Supreme Court Justices; the number is set by Congress. Since 1869 there have been nine Justices, including one Chief Justice. **All Justices are nominated by the President, confirmed by the Senate, and hold their offices under life *tenure***.

The Supreme Court is the final place that a case may be appealed to! They may consider appeals from the highest state courts or from federal appellate courts. The Court also has original jurisdiction in cases involving ambassadors and other diplomats, and in cases between states.

The Supreme Court's task is to interpret the meaning of a law, to decide whether a law is applicable to a particular set of facts, or to rule on how a law should be applied. Lower courts are obligated to follow the precedent set by the Supreme Court when rendering decisions.

The Supreme Court hears appeals after one side of a case petitions the Court for a **writ of certiorari**. It is the Court's custom and practice to **"grant cert"** **if four of the nine Justices decide that they should hear the case**. Of the approximately 7,500 requests for certiorari filed each year, the Court usually “grants cert” to fewer than 150. The Court only picks very important cases to review; a common example is the occasion when two or more of the federal courts of appeals have ruled differently on the same question of federal law- it is up to the Supreme Court to decide which court has it right! (Think about you and a sibling as two U.S. Court of Appeals, you do not agree on something and need your “Parent”, The Supreme Court to hear your cases!)

If the Court **grants certiorari**, before they make a decision (issue a ruling), they will hear oral arguments, where different parties in the suit present their arguments and the Justices ask them questions. If the case involves the federal government, the Solicitor General of the United States presents arguments on behalf of the United States. The Justices then hold private conferences, make their decision, and (often after a period of several months) issue the Court's **opinion**, along with any **dissenting arguments** that may have been written.

**The Judicial Process**

**Article III of the Constitution** of the United States guarantees that every person accused of wrongdoing has the right to a fair trial before a competent judge and a jury of one's peers.

Criminal proceedings can be conducted under either **state or federal law**, depending on the crime (is it a **misdemeanor** or a **felony**?!). A criminal legal procedure typically begins with an arrest by a law enforcement officer. If a grand jury chooses to deliver an indictment, the accused will appear before a judge and be formally charged with a crime, at which time he or she may enter a **plea**.

The defendant is given time to review all the evidence in the case and to build a legal argument. Then, the case is brought to **trial** and decided by a **jury (a group of citizens just like you and me!)**. If the defendant is determined to be not guilty of the crime, the charges are dismissed. Otherwise, the judge determines the sentence, which can include prison time, a fine, or even execution.

**Civil cases** are similar to criminal ones, but instead of judging between the state and a person or organization, they deal with **arguments between individuals or organizations.** After the suit is filed and evidence is gathered and presented by both sides, there is a trial. If the parties involved waive their right to a jury trial, the case can be decided by a judge (when only a Judge decides the case this is called a **bench trial**!); otherwise, the case is decided and damages awarded by a **jury**.

After a criminal or civil case is tried, it may be **appealed** to a higher court — **a federal court of appeals or state appellate court**. ***Someone who files an appeal, known as an "appellant," must show that the trial court or administrative agency made a legal error that affected the outcome of the case.*** An appellate court makes its decision based on what happened in the trial court — **it does not receive additional evidence or hear witnesses**. It may also review the factual findings of the trial court or agency, but typically may only overturn a trial outcome on factual grounds if the findings were "clearly mistaken." If a defendant is found not guilty in a criminal proceeding, he or she cannot be retried on the same set of facts.

**Federal appeals are decided by panels of three judges**. The appellant presents legal arguments to the panel, in a written document called a "brief." **In the brief, the appellant tries to persuade the judges that the trial court made an error, and that the lower decision should be reversed.** On the other hand, the party defending against the appeal, known as the "appellee" or "respondent," tries in its brief to show why the trial court decision was correct, or why any errors made by the trial court are not significant enough to affect the outcome of the case.

The court of appeals usually has the final word in the case, unless it sends the case back to the trial court for additional proceedings. In some cases the decision may be reviewed **en banc** —this means a larger group of judges of the court of appeals for the circuit will review the case.

If a litigant loses in a **federal court of appeals**, OR in **the highest court of a state**, may file a petition for a ***"writ of certiorari," which is a document asking the Supreme Court to review the case***. The Supreme Court, however, is not obligated to grant review. The Court typically will agree to hear a case only when it involves a new and important legal principle, or when two or more federal appellate courts have interpreted a law differently. (There are also special circumstances in which the Supreme Court is required by law to hear an appeal.) When the Supreme Court hears a case, the parties are required to file written briefs and the Court may hear oral argument.