

The Judiciary

US Government POS 2112

ch. 9

For Discussion...

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- Do you view our courts as non-political institutions?
 - Should judges be appointed or elected?
 - Does the position favor the legal profession?

Court cases proceed under 2 broad categories

- Criminal Laws
 - Gov brings charges against individual for for violating laws
 - Gov acts as plaintiff (the one that brings the charges)
 - Charges are brought against a defendant

Civil Laws

- Civil Laws
 - Cases involving disputes between individuals, groups, corporations & other private entities
 - No criminal penalties involved
- 2 kinds:
- **Contracts:** involves disputes in agreements between individuals or corporations.
- **Torts:** disputes involving negligence that led to injuries of another. Example; medical practices cases.

Structure of the Courts

- Courts were established by both Federal & State gov
- Each has several levels

At state level:

- **trial courts**
- **appeals court**
- **state supreme court**

Appellate Court

- State Supreme Court- the highest appellate court at state level.
- Appellate courts do not entertain juries & witnesses
- Mainly lawyers for or against
- These courts do not assess guilt or innocence
- Evaluate the legal arguments

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- Second only to the U.S. Supreme Court
 - Ultimate interpreters of their states' constitutions

Appeals Process

- Prejudicial error: Error that affects case outcome
- Discretionary: Jurisdiction of the court whether to grant review of the case

vs.

- Mandatory jurisdiction: Court must hear every case being presented to it

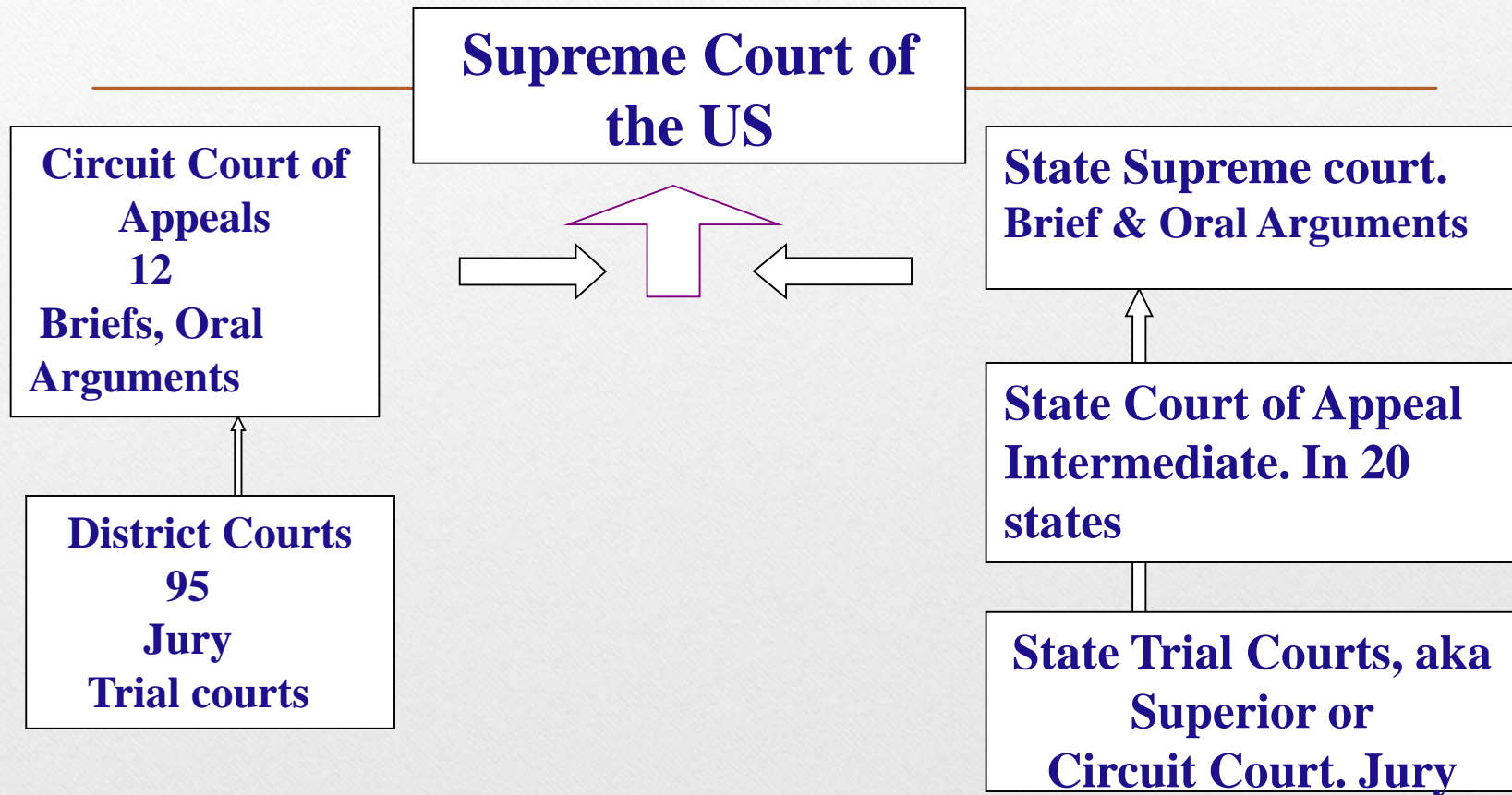
Appeals cont.

En banc Session : Case is heard by all judges in the same sessions

vs.

- Panels: Usually 3 judges would hear the case

Federal & State Court System



Jurisdiction at state court level

- Authority over most criminal cases given that states pass most criminal laws
- No always clear cut
- Sometimes some cases move from state courts to fed courts
- When state & fed statues are involved, constitutional rights
- Eg. search & seizures

Differences between states

- Criminal cases: murder, theft, etc. are illegal across the nation
- But prostitution is not
- Some issue death penalty; others don't
- More similarities exist with respect to civil laws across the states

Judicial Appointments

- Falls into :
- i) Pure appointive systems: Used by Federal system
- ii) Merit selection systems (the Missouri Plan): relies on nominating committee
 - Avoids political intrusion
- Retention elections judge runs uncontested
- Judicial independence

Judicial Activism v Non-Activism / Restraint

- Difference in judicial philosophy from the bench
- Activists believe that judges should go beyond the words of the Constitution, sort of advocates
- Judicial restraints: do not interpret beyond the words of the Constitution, aka “Constructionists”
- Current SC would fall under the activist label
- Activist judges lead to attempts to reverse previous decisions – civil rights & abortion

Terms of office

- Life term – Rhode Island
- Until age 70 – Massachusetts and New Hampshire
- Fixed terms – length varies

Florida: Nominating Commission

- Screens potential candidates
- Finalizes a list of 3 to 6 nominees to the governor
- Governor obligated to appoint a judge from the list
- 26 Nominating Commissions in FL.

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- Includes 7 State Supreme Justices
 - 60 District Court justices
 - New appointees serve for 1 year
 - Their names are then submitted to next general election for yes or no vote
 - If they receive a yes vote they will serve for a 6 year term

Qualifications

Conditions:

- Reside in Florida
- A qualified elector;
- Practicing law in Fl. for 10 years prior to be selected to the bench
- Be under the age of 70
- All justices must retire at 70 years

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Fl. Chief Justices

- Chief Justices for appeals courts are selected by peer vote
- Serve for two years

Interim vacancies

- Judicial nominating commission prepares short list for 3 - 6 candidates
- Governor selects successor from that list
- The appointee serves one year after which he/she submits to the next general election

Circuit & County Judges

- Also selected through a nonpartisan election
- Serve 6 year term & must run for re-election
- 597 Circuit Court Judges
- County may use merit system but first to be approved by voters

Judicial Nominating Commissions

- Since 2001
- 9 members, all appointed by the governor

Must consider;

- Racial, ethnic & gender diversity, & geographical distribution when making his or her appointments.

Other Judicial Actors

- Prosecutors
- Defense attorneys
- Public defenders
- Juries

Sentencing guidelines

- Indeterminate Sentencing: min & max time in prison but parole board determines release;

vs.

- Determinate sentencing: Prison duration set by sentencing judge

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- Mandatory minimum sentencing; shortest time court can sentence an offender
 - Habitual offender laws: Harsh sentencing time for repeated offender
 - Truth-in-sentencing laws: Laws that restrict Parole board's ability to reduce sentencing time

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- <https://www.youtube.com/watch?v=ibpapm0zG4w>
 - <https://www.rawstory.com/2019/09/msnbcs-joy-reid-drops-mic-on-gop-for-siding-with-the-nra-over-americans-choose-guns-or-our-kids/>
 - <https://www.msnbc.com/am-joy/watch/gun-control-arguments-florida-congressman-on-nra-gop-1176523331840>
 - <https://www.youtube.com/watch?v=w4U0GPaijZg>

Key Terms

- Plaintiff
- Defendant
- *En Banc*
- Plea bargain
- Amicus curiae
- Habeas corpus
- Indictment: formal criminal charge
- Recidivism
- Grand Jury: Group of 16-23 citizens who determine if a case goes to trial
- Judicial activism & restraint
- Stare Decisis