CHAPTER 16

The Judiciary

REVIEWING THE CHAPTER

CHAPTER FOCUS

This chapter introduces you to the final and perhaps most unusual branch of American government: the courts. The chapter explains how courts, particularly the Supreme Court, came to play a uniquely powerful role in forming public policy in this country and how that role has been played to very different effects at different stages of history. Other important considerations include how justices are selected, the jurisdictions of the various courts, and the steps that a case must go through on its way to Supreme Court review. The chapter concludes with an assessment of the power courts have in politics today, the limitations on that power, and why judicial activism seems to be on the increase. After reading and reviewing the material in this chapter, you should be able to do each of the following:

1. Explain what judicial review is, and trace its origin in this country to *Marbury* v. *Madison.*
2. List and comment on the three eras of varying Supreme Court influences on national policy from the days of slavery to the present.
3. Explain what is meant by a dual court system, and describe the effects it has on how cases are handled and appealed.
4. List the various steps that cases go through to be appealed to the Supreme Court, and explain the considerations involved at each level.
5. Discuss the dimensions of power exercised today by the Supreme Court and the opposing viewpoints on the desirability of activism by that court.
6. Develop arguments for and against an activist Supreme Court.

STUDY OUTLINE

I. Introduction
   A. Little public interest in judicial nominations but considerable congressional interest
      1. As the power of the federal government has increased, so has the power of the federal courts
      2. Expansion in federal policy has led to increased opportunities for federal judges to interpret such policies
      3. Recent Supreme Court nominations -Thomas and Bork
      4. The Nuclear Option and the Gang of Fourteen
   B. Only in the United States do judges play so large a role in policy-making
      1. Judicial review: right to rule on laws and executive acts on basis of constitutionality; chief judicial weapon in system of checks and balances
      2. In Great Britain, Parliament is supreme
      3. In other countries, judicial review means little
         a) Exceptions: Australia, Canada, West Germany, India, and a few others

C. Debate is over how the Constitution should be interpreted
   1. Strict constructionist (interpretivist) approach: judges are bound by the wording of the Constitution
   2. Activist (legislative) approach: judges should look to the underlying principles of the Constitution
   3. Not a matter of liberal versus conservative
      a) A judge can be both conservative and activist, or vice versa
      b) Today most activists tend to be liberal, most strict constructionists conservative

II. The development of the federal courts
   A. Founders' view
      1. Most Founders probably expected judicial review but not its large role in policy-making
      2. Traditional view: judges find and apply existing law
      3. Activist judges would later respond that judges make law
      4. Traditional view made it easy for Founders to justify judicial review
      5. Hamilton: courts least dangerous branch
      6. But federal judiciary evolved toward judicial activism
   B. National supremacy and slavery: 1789–1861
      1. *McCulloch* v. *Maryland:* federal law declared supreme over state law
      2. Interstate commerce clause is placed under the authority of federal law; conflicting state law void
      3. *Dred Scott* v. *Sandford:* Negroes were not and could not become free citizens of the United States; a direct cause of the Civil War
   C. Government and the economy: Civil War to 1936
      1. Dominant issue of the period: whether the economy could be regulated by state and federal governments
      2. Private property held to be protected by the Fourteenth Amendment
      3. States seek to protect local businesses and employees from the predatory activities of national monopolies; judicial activism
      4. The Supreme Court determines what is "reasonable" regulation
      5. The Court interprets the Fourteenth and Fifteenth Amendments narrowly as applied to blacks
   D. Government and political liberty: 1936 to the present
      1. Court establishes tradition of deferring to the legislature in economic cases
      2. Court shifts attention to personal liberties and becomes active in defining rights
   E. The revival of state sovereignty
      1. Supreme Court rules that states have right to resist some forms of federal action
      2. Hint at some real limits to the supremacy of the federal government

III. The structure of the federal courts
   A. Two kinds of federal courts
      1. Constitutional courts
         a) Created under Article III
         b) Judges serve during good behavior
         c) Salaries not reduced while in office
         d) Examples: District Courts (ninety-four), Courts of Appeals (twelve)
      2. Legislative courts
         a) Created by Congress for specialized purposes
         b) Judges have fixed terms
         c) No salary protection
   B. Selecting judges
      1. Party background makes a difference in judicial behavior (decisions)

2. Senatorial courtesy: judges for U.S. district courts must be approved by that state's senators
3. The litmus test
    a) Presidential successes in selecting compatible judges
    b) Concern this emphasis might downplay the importance of professional qualifications
    c) Increasing importance of ideology
        (1) Sharp drop in the confirmation rates of appeals court nominees
        (2) Even more important with respect to Supreme Court appointments

IV. The jurisdiction of the federal courts
  A. Dual court system
    1. One state, one federal
    2. Federal cases listed in Article III and the Eleventh Amendment of the Constitution
        a) Federal question cases: involving U.S. matters
        b) Diversity cases: involving citizens of different states
        c) All others are left to state courts
    3. Some cases can be tried in either court
        a) Example: if both federal and state laws have been broken (dual sovereignty)
        b) Justified: each government has right to enact laws, and neither can block prosecution out of sympathy for the accused
    4. State cases sometimes can be appealed to Supreme Court
    5. Exclusive federal jurisdiction over federal criminal laws, appeals from federal regulatory agencies, bankruptcy, and controversies between two states
  B. Route to the Supreme Court
    1. Most federal cases begin in U.S. district courts, are straightforward, and do not lead to new public policy
    2. The Supreme Court picks the cases it wants to hear on appeal
        a) Uses *writ of certiorari* ("*cert*")
        b) Requires agreement of four justices to hear case
        c) Usually deals with significant federal or constitutional question
            (1) Conflicting decisions by circuit courts
            (2) State court decisions involving the Constitution
        d) Only 3 to 4 percent of appeals are granted *certiorari*
        e) Others are left to lower courts; this results in a diversity of constitutional interpretation

V. Getting to court
  A. Deterrents
    1. The Court rejects 95 percent of applications for *certiorari*
    2. Costs of appeal are high
        a) But these can be lowered by
            (1) *In forma pauperis*: plaintiff heard as pauper, with costs paid by the government
            (2) Payment by interest groups who have something to gain (American Civil Liberties Union)
        b) Each party must pay its own way except for cases in which it is decided
            (1) That losing defendant will pay (fee shifting)
            (2) Section 1983 suits
    3. Standing: guidelines
        a) Must be controversy between adversaries
        b) Personal harm must be demonstrated
        c) Being taxpayer not entitlement for suit

- d) Sovereign immunity
- B. Class action suits
  1. Brought on behalf of all similarly situated
  2. Financial incentives to bring suit
  3. Need to notify all members of the class since 1974 to limit such suits

VI. The Supreme Court in action
- A. Oral arguments by lawyers after briefs submitted
  1. Questions by justices cut down to thirty minutes
  2. Role of solicitor general
  3. *Amicus curiae* briefs
  4. Many sources of influence on justices, such as law journals
- B. Conference procedures
  1. Role of chief justice: speaking first, voting last
  2. Selection of opinion writer: concurring and dissenting opinions
- C. Strategic retirements from the U.S. Supreme Court
  1. There has been a sharp increase in the rate of retirements (*contra* deaths)
  2. Early duties were physically onerous, adverse to one's health.
  3. More recently, retirements occur when justices and presidents share party identification

VII. The power of the federal courts
- A. The power to make policy
  1. By interpretation
  2. By extending reach of existing law
  3. By designing remedies
- B. Measures of power
  1. Number of laws declared unconstitutional (more than 120)
  2. Number of prior cases overturned; not following *stare decisis*
  3. Deference to the legislative branch (political questions)
  4. Kinds of remedies imposed; judges go beyond what justice requires
  5. Basis for sweeping orders from either the Constitution or interpretation of federal laws
- C. Views of judicial activism
  1. Supporters
     - a) Courts should correct injustices
     - b) Courts are last resort
  2. Critics
     - a) Judges lack expertise
     - b) Courts not accountable; judges not elected
  3. Various reasons for activism
     - a) Too many lawyers; but real cause adversary culture
     - b) Easier to get standing in courts
- D. Legislation and courts
  1. Laws and the Constitution are filled with vague language
     - a) Ambiguity gives courts opportunities to design remedies
     - b) Courts can interpret language in different ways
  2. Federal government is increasingly on the defensive in court cases; laws induce litigation
  3. The attitudes of federal judges affect their decisions

VIII. Checks on judicial power
- A. Judges are not immune to politics or public opinion
  1. Effects will vary from case to case
  2. Decisions can be ignored
     - a) Examples: school prayer, segregated schools

b) Usually if register is not highly visible

B. Congress and the courts
   1. Confirmation and impeachment proceedings alter the composition of the courts
   2. Changing the number of judges
   3. Revising legislation declared unconstitutional
   4. Altering jurisdiction of the courts and restricting remedies
   5. Constitutional amendment

C. Public opinion and the courts
   1. Defying public opinion, especially elite opinion, frontally is dangerous
   2. Opinion in realigning eras may energize court
   3. Public confidence in court since 1966 has varied
   4. Change caused by changes of personnel and what government is doing

D. Reasons for increased activism
   1. Growth of government
   2. Activist ethos of judges

KEY TERMS MATCH

Match the following terms and descriptions:

1. A pattern of voting behavior of two or more justices
2. Agreed to block filibusters unless there were "extraordinary circumstances"
3. Rules defining relationships among private citizens
4. A signed opinion which agrees with the majority view but for different reasons
5. The party that initiates a law suit
6. A ruling that declared that Negroes could not be federal citizens
7. An examination of the political ideology of a nominated judge
8. An individual who represents the federal government before the Supreme Court
9. An unsigned and typically brief court opinion
10. The practice, authorized by statutes, under which the plaintiff is enabled to collect costs from the defendant if the latter loses
11. The meeting at which the justices vote on cases that they have recently heard

a. activist approach
b. *amicus curiae*
c. appellate jurisdiction
d. bloc voting
e. civil law
f. class action suit
g. concurring opinion
h. constitutional court
i. criminal law
j. diversity case
k. *Dred Scott* v. *Sandford*
l. fee shifting
m. Friday conference
n. Gang of Fourteen
o. *In forma pauperis*
p. judicial restraint
q. judicial review
r. litmus test
s. *per curiam* opinion
t. plaintiff

12. A means by which one who has an interest in a case but is not directly involved can present arguments in favor of one side
13. A judicial order enforcing a right or redressing a wrong
14. A means by which one who has been injured can bring action on behalf of all similarly situated
15. A method whereby a poor person can have his or her case heard in federal court without charge
16. The power of the courts to determine the constitutionality of legislative and executive acts
17. The scope of authority by which a higher court reviews a case from a lower court
18. An issue the Court refuses to consider, believing the Constitution intends another branch to make the decision
19. The rule that a citizen cannot sue the government without the government's consent
20. A requirement that must be satisfied before a plaintiff can have a case heard on its merits
21. A tradition under which the Senate will defer to the judgment of a senator of the president's party when determining the suitability of candidates for federal judgeships from the senator's state
22. The body of rules defining offenses that are considered to be offenses against society as a whole
23. Litigation in which a citizen of one state sues a citizen of another state and the amount of money in dispute is more than $50,000
24. A court established under Article III of the Constitution

u. political question
v. remedy
w. senatorial courtesy
x. solicitor general
y. sovereign immunity
z. standing
aa. *stare decisis*
bb. *writ of certiorari*

25. A decision that permits a case to be heard by the Supreme Court when four justices approve
26. The rule of precedent
27. The idea that judges should amplify the vague language of the Constitution on the basis of their moral or economic philosophy and apply it to the case before them
28. The idea that judges should confine themselves to applying those rules stated in or clearly implied by the language of the Constitution

DATA CHECK

Figure 16.1 (Page 442): Female and Minority Judicial Appointments, 1963–2004

1. Did the highest total percentage of female and black judicial appointments take place during a Democratic or Republican presidency, and who was that president?

   _____

2. Did the highest total percentage of Hispanic judicial appointments take place during a Democratic or Republican presidency, and who was that president?

   _____

3. Did the lowest total percentage of female and Hispanic judicial appointments take place during a Democratic or Republican presidency, and who was that president?

   _____

4. Did the lowest total percentage of black judicial appointments take place during a Democratic or Republican presidency, and who was that president?

   _____

Table 16.2 (Page 449): Supreme Court Justices in Order of Seniority, 2004

5. What is the most commonly represented prior experience of the nine justices of the Court?

   _____

6. How many justices were appointed by Republican presidents?

   _____

7. Which justices have come to the Court without previous judicial experience?

   _____

8. If age is a reasonable predictor of who will retire/resign from the Court next, who should we expect to retire / resign next?

_____

9. Who is the youngest member of the Court?

_____

PRACTICING FOR EXAMS

TRUE/FALSE QUESTIONS

Read each statement carefully. Mark true statements *T*. If any part of the statement is false, mark it *F*, and write in the space provided a concise explanation of why the statement is false.

1. T F The Supreme Court has declared thousands of federal laws to be unconstitutional since 1789.

_____

2. T F Judicial review is not mentioned in the Constitution.

_____

3. T F John Marshall and the Supreme Court struck down a license the State of New York gave to Robert Fulton to navigate waterways.

_____

4. T F In the immediate aftermath of the *Marbury* decision, the Court began exercising judicial review with great frequency.

_____

5. T F Franklin Roosevelt was unable to alter the composition of the Supreme Court in his first term as president.

_____

6. T F If implemented, Roosevelt's reorganization plan for the Court would have allowed him to make two new appointments.

_____

7. T F Roosevelt actually left the presidency without ever having the opportunity to make a Supreme Court appointment.

_____

8. T F The only federal court the Constitution requires is the Supreme Court.

_____

9. T F The Constitution sets the number of justices on the Court at nine.

_____

10. T F As judges, Democrats are more likely to make conservative decisions than Republican ones.

_____

11. T F The tradition of senatorial courtesy gives great weight to the preferences of the senators from the states where judges on the U.S. Courts of Appeals are to serve.

12. T F The litmus test issue is not as important when selecting Supreme Court justices.

13. T F In recent years, Supreme Court nominations have usually been confirmed by the Senate.

14. T F Defendants may not be tried in both state and federal courts for the same offense.

15. T F Under some circumstances, a criminal case involving only a violation of state law can be appealed to the United States Supreme Court.

16. T F The text suggests that the typical district court case holds marvelous potential for broad policy-making.

17. T F The Supreme Court does not have to hear any appeal it does not want to hear.

18. T F In a typical year, the Supreme Court may consider over seven thousand petitions.

19. T F The influence of law clerks on the selection of the Supreme Court's cases and the rendering of its decisions is considerable.

20. T F In this country, each party to a lawsuit must pay its own costs.

21. T F Taxpayers automatically have standing and can challenge the constitutionality of a federal government action.

22. T F If the government kills your cow while testing a new cannon, you automatically have standing to sue the government.

23. T F A taxpayer brought a lawsuit in order to require the CIA to make its budget public and won.

24. T F The Supreme Court has made the rules governing class actions suits more lenient in recent years.

25. T F The Supreme Court begins each term in the month of August.

26. T F Interest groups politely "lobby" the Supreme Court through the use of *amicus* briefs.

27. T F In conference, the Chief Justice speaks first, followed by the other justices in order of seniority.

28. T F If a tie vote occurs on the Supreme Court, the case is held over for the next term.

29. T F The Court tends to overturn its own precedents more frequently than it exercises judicial review of federal legislation.

30. T F One valid explanation for increasing judicial activism is the dramatic increase in the number of lawyers in the United States.

31. T F The vague language in congressional statutes provide additional opportunities for courts to exercise power.

32. T F One president has gone on to become a Supreme Court justice.

33. T F The text suggests that schools all over the country were allowing prayers long after the Supreme Court ruled such activities were not allowed in public schools.

34. T F No federal judge has ever been impeached.

35. T F Congress can change the number of members who are allowed to sit on the Supreme Court.

36. T F Judicial review can be exercised in France, but only on the request of a government official.

37. T F Congress cannot alter the jurisdiction of district courts and appellate jurisdiction of the Supreme Court.

38. T F The most activist periods of the Court's history have coincided with time when the political system was calm and, by all measures, stable.

39. T F The conservative Court of Chief Justice Rehnquist has overturned most of the critical decisions that came out of the more liberal Court, headed by Chief Justice Warren.

_____

40. T F Courts have come to play a larger role in our lives because Congress, the bureaucracy and the president have come to play a larger ones.

_____

41. T F The text suggests that there has been an increase in politically conservative judges who accept the activist view of the function of courts.

_____

MULTIPLE CHOICE QUESTIONS

Circle the letter of the response that best answers the question or completes the statement.

1. With respect to a recent controversy regarding judicial appointments, the "nuclear option" focused on the possibility of
   a. requiring all judicial nominees to have federal experience.
   b. forcing all Supreme Court nominees to appear before the Senate Judiciary Committee.
   c. revising Senate rules to block filibusters.
   d. allowing "voice votes" on judicial nominations.
   e. requiring 60 votes of support to confirm judicial nominations.
2. The dramatic and sometimes bitter conflict surrounding some Supreme Court nominations can only be explained by the fact that
   a. there are only nine people on the Court at any given point in time.
   b. the Court plays such a large role in making public policy.
   c. the partisan balance of the Court is quite skewed.
   d. Presidents rarely seek the "advice" of the Senate.
   e. nominees are rarely qualified for the job.
3. In theory, restraint oriented judges differ from activist judges in that they are more likely to
   a. adopt a liberal viewpoint on such issues as states' rights and birth control.
   b. apply rules that are clearly stated in the Constitution.
   c. see, and take advantage of, opportunities in the law for the exercise of discretion.
   d. believe in the application of judicial review to criminal matters.
   e. look for and apply the general principles underlying the Constitution.
4. Seventy years ago judicial activists tended to be
   a. strict constructionists.
   b. liberals.
   c. conservatives.
   d. moderates.
   e. radicals.
5. In *Federalist* 78, Alexander Hamilton described the judicial branch as the _____ branch.
   a. most corrupt
   b. least political
   c. reliable
   d. existential
   e. least dangerous

6. Which of the following statements about *McCulloch* v. *Maryland* is correct?
   a. It established judicial review.
   b. It ruled a national bank unconstitutional.
   c. It restricted the scope of congressional power.
   d. It allowed states to tax federal agencies.
   e. It established the supremacy of national laws over state laws.
7. Who was defiant of Supreme Court rulings and supposedly taunted the Chief Justice to go and "enforce" one of its decisions?
   a. The Mayor of New York City.
   b. The Governor of New York.
   c. The Cherokee Indians of Georgia.
   d. Robert Fulton.
   e. President Andrew Jackson.
8. Roger B. Taney was deliberately chosen for the Supreme Court because he
   a. opposed the invention of the steamboat.
   b. opposed the creation of a national bank.
   c. favored a strong national government.
   d. was an advocate of states' rights.
   e. opposed slavery.
9. During the period from the end of the Civil War to the beginning of the New Deal, the dominant issue that the Supreme Court faced was that of
   a. government regulation of the economy.
   b. rights of privacy.
   c. states' rights versus federal supremacy.
   d. slavery.
   e. government regulation of interstate commerce.
10. The text suggests "judicial activism" was born in the
   a. 1970s.
   b. 1960s.
   c. 1950s.
   d. 1930s.
   e. 1890s.
11. From 1937 to 1974, the Supreme Court did not declare a single federal law dealing with _____ unconstitutional.
   a. freedom of speech
   b. communists
   c. regulation of business
   d. citizenship
   e. government benefits
12. FDR's court-packing bill is an example of a presidential action designed to
   a. help the Court reduce its backlog.
   b. influence the way in which the Court decided its cases.
   c. make the Court more impartial.
   d. discourage the Court from rendering decisions on major economic questions.
   e. allow the Court to grow with society.

13. Franklin Roosevelt's plan to reorganize the Supreme Court called for
    a. the Court to meet once every other year.
    b. the total number of justices to be increased according to the age of sitting justices.
    c. the president to select justices without senatorial confirmation.
    d. the Senate to have the power to remove justices from the Court at will.
    e. all New Deal legislation to be removed from the Court's jurisdiction.
14. Owen Roberts' change of view was a clear concession to
    a. established precedent.
    b. public opinion.
    c. his legal training.
    d. Roosevelt's court-packing plan.
    e. the Chief Justice.
15. A dramatic change in a long standing trends began in the early 1990s, when the Court struck down a congressional statute on the premise that _____did not affect interstate commerce.
    a. nude dancing
    b. racial discrimination
    c. carrying a gun
    d. commercial advertising
    e. the trucking industry
16. The two kinds of lower federal courts created to handle cases that need not be decided by the Supreme Court are
    a. constitutional and district.
    b. appeals and limited jurisdiction.
    c. district and appeals.
    d. appeals and legislative.
    e. constitutional and legislative.
17. There are ____ U.S. District Courts.
    a. 11
    b. 12
    c. 13
    d. 50
    e. 94
18. The Court of Military Appeals is an example of a(n) _____ court.
    a. district
    b. appellate
    c. legislative
    d. general jurisdiction
    e. second level appellate
19. Which of the following statements about the selection of federal judges is *correct*?
    a. The principle of senatorial courtesy applies to the selection of Supreme Court justices.
    b. Presidents generally appoint judges whose political views reflect their own.
    c. Since personal attitudes and opinions have little impact in judicial decision-making, presidents are usually not too concerned about who they nominate.
    d. Nominees for district judgeships often face tough confirmation battles in the Senate.
    e. The application of political litmus tests to Supreme Court nominees is no longer legal.

20. When politicians complain about the use of "litmus tests" in judicial nominations, they are probably
    a. Democrats.
    b. Republicans.
    c. Liberals.
    d. Conservatives.
    e. not part of the group that is currently in power.
21. The increasing importance of a political litmus test is evident in the dramatic drop in the confirmation rates of nominees to
    a. the U.S. District Courts.
    b. the U.S. Courts of Appeal.
    c. the Supreme Court.
    d. the trial courts of limited jurisdiction in the federal system.
    e. all of the above.
22. If citizens of different states wish to sue one another in a matter involving more than $75,000, they can do so in
    a. either a federal or a state court.
    b. a court in the plaintiff's state only.
    c. an intermediate court of appeals.
    d. a court in the defendant's state only.
    e. a federal court only.
23. If you wish to declare bankruptcy, you must do so in
    a. a court in the state in which you reside.
    b. a state appellate court.
    c. a federal appellate court.
    d. the U.S. Supreme Court.
    e. a federal district court.
24. *Certiorari* is a Latin word meaning, roughly,
    a. "certified."
    b. "made more certain."
    c. "without certainty."
    d. "appealed."
    e. "judicial."
25. *Cert* is issued and a case is scheduled for a hearing if _____ justices agree to hear it.
    a. 2
    b. 3
    c. 4
    d. 8
    e. all nine of the
26. What percentage of appeals court cases are rejected by the Supreme Court?
    a. 1 or 2 percent
    b. 20 percent
    c. 30 percent
    d. 50 percent
    e. 99 percent

27. Fee shifting enables the plaintiff to
    a. get paid by the Department of Justice.
    b. split costs with the court.
    c. have taxpayers pay his or her costs.
    d. split the costs with the defendant.
    e. collect costs from the defendant if the defendant loses.
28. To bring suit in a court, a plaintiff must first show that
    a. there is a defendant.
    b. the defendant is a real person.
    c. there is no true case and controversy.
    d. the defendant is a citizen of the United States.
    e. he/she has standing.
29. The doctrine of sovereign immunity prevents citizens from suing the government unless the government
    a. consents to be sued.
    b. has violated a state law.
    c. has violated both a state and federal law.
    d. is exempt from having to pay fees.
    e. has clearly been involved in manipulation of evidence.
30. In 1974, the Supreme Court discouraged class action suits by requiring
    a. lawyers to provide at least 20 *amicus* briefs supporting their claims.
    b. a special panel of judges to review all such suits.
    c. such suits to impact at least 300,000 persons.
    d. all fees in such suits be initially shifted to plaintiffs.
    e. every ascertainable member of a class be individually notified of a suit.
31. In a typical term, the federal government is party to _____ the cases that the Supreme Court hears.
    a. very few of
    b. thirty percent of
    c. about half of
    d. almost all of
    e. a limit of two of
32. The solicitor general has the job of
    a. serving as liaison between the Department of Justice and the president.
    b. deciding whether to sue large corporations.
    c. deciding who is eligible for the Supreme Court.
    d. deciding which cases the government will appeal from the lower courts.
    e. deciding which cases the Supreme Court will hear.
33. *Amicus curiae* is generally translated as meaning
    a. “friend of the court.”
    b. “amicable but curious.”
    c. “let the decision stand.”
    d. “to reveal.”
    e. none of the above.

34. Which type of opinion is typically brief and unsigned?
    a. Opinion of the Court.
    b. Majority opinion.
    c. Plurality opinion.
    d. *Per curiam* opinion.
    e. Dissenting opinion.
35. If a justice agrees with the conclusion of the Court's decision, but disagrees with the logic of the opinion of the Court, he/she would probably write a
    a. concurring opinion.
    b. majority opinion.
    c. plurality opinion.
    d. *per curiam* opinion.
    e. dissenting opinion.
36. *Stare decisis* is generally translated as meaning
    a. "friend of the court."
    b. "amicable but curious."
    c. "let the decision stand."
    d. "to reveal."
    e. none of the above.
37. The principle of precedent is not always so clear because
    a. lawyers are gifted at showing cases are different in some relevant way.
    b. records of judicial decisions are not particularly well organized.
    c. most appellate decisions are not accompanied by written decisions.
    d. the Court rarely gets a case that is at all similar to a previous case.
    e. Justices are notable for insisting that their work be original.
38. A political question is a matter
    a. involving voters.
    b. that the Constitution has left to another branch of government.
    c. that an elected state judge has dealt with.
    d. that causes conflict among average voters.
    e. that must first be acted on by Congress.
39. According to the text, the most powerful indicator of judicial power is probably
    a. the use of judicial review.
    b. the extent to which precedent is followed.
    c. the types of political questions courts are willing to handle.
    d. the kinds of remedies that courts will impose.
    e. the use of *per curiam* opinions.
40. Common criticisms of judicial activism include all of the following *except*
    a. judicial activism only works when laws are devoid of ambiguous language.
    b. judges usually have no expertise in designing complex institutions.
    c. judges are not elected and are therefore immune to popular control.
    d. judicial activism often fails to account for the costs of implementing activist rulings.
    e. judges usually have no expertise in managing complex institutions.

41. Which of the following is a major restraint on the influence of federal judges?
    a. Politics, especially the results of recent elections.
    b. Rule 17.
    c. The lack of effective enforcement power.
    d. The veto power of the president.
    e. International law.
42. Which of the following statements regarding judicial impeachments is *incorrect*?
    a. Fifteen federal judges have been impeached.
    b. Some judges have resigned in the face of probable impeachment.
    c. Seven impeached judges were acquitted.
    d. The most recent conviction of a federal judge occurred in 1989.
    e. The possibility of impeachment is an important influence on judicial policy making.
43. The 1868, case of Mississippi newspaper editor William McCardle was extraordinary because
    a. the Supreme Court accepted his appeal before it was formally filed.
    b. it seems almost certain that he would have remained in jail for the rest of his natural life despite having committed the most trivial of offenses.
    c. a federal district court insisted that he be released from jail after Congress issued a proclamation demanding such.
    d. Congress took away the Court's power to consider the case in the middle of his appeal.
    e. a unanimous Court declared Reconstruction policy (under which he was convicted) unconstitutional.
44. A major reason that the courts play a greater role in American society today than they did earlier in the century is that
    a. government plays a greater role generally.
    b. lawyers are more influential than ever.
    c. public opinion is less focused.
    d. judges are better trained.
    e. the courts are more representative of American society.

ESSAY QUESTIONS

Practice writing extended answers to the following questions. These test your ability to integrate and express the ideas that you have been studying in this chapter.

1. Explain the difference between judicial activism and restraint.
2. Summarize the point of view of the Founders with respect to courts.
3. Summarize the facts which led up to the case *Marbury* v. *Madison* and the Supreme Court's ruling in that landmark case.
4. Describe Franklin D. Roosevelt's so-called "court packing" plan.
5. Provide some examples of recent Supreme Court decisions which suggest there is something of a revival of state sovereignty in that institution.
6. Explain the difference between a constitutional and legislative court.
7. Explain how "senatorial courtesy" affects federal court nominations.
8. Generalize about the number of successful and unsuccessful nominations to the United States Supreme Court and provide some explanations for why some nominations have failed.
9. What are two circumstances where the Supreme Court will often grant *certiorari*?

10. Summarize the requirements for standing.
11. Identify and explain the difference between the types of opinions that Supreme Court justices can write and sign.
12. Discuss four manifestations of judicial power. Which is identified by the authors as “the most powerful indicator” of the power of courts to shape policy?
13. Write an essay on judicial activism in which you present arguments for and against this approach and provide an explanation for why we have activist courts.
14. Identify some ways in which Congress can check the judicial branch and identify those which appear to be the most practical and effective.

ANSWERS TO KEY TERMS MATCH QUESTIONS

1. d
2. n
3. e
4. g
5. t
6. k
7. r
8. x
9. s
10. l
11. m
12. b
13. v
14. f
15. o
16. q
17. c
18. u
19. y
20. z
21. w
22. i
23. j
24. h
25. bb
26. aa
27. a
28. p

ANSWERS TO DATA CHECK QUESTIONS

1. Democrat, Clinton.
2. Republican, Bush.
3. Republican, Nixon.
4. Republican, Reagan.

5. Judicial experience, especially federal.
6. Seven.
7. None. They all arrived with some judicial experience.
8. John Paul Stevens.
9. John G. Roberts.

ANSWERS TO TRUE/FALSE QUESTIONS

1. F The Court has declared about 160 federal laws unconstitutional.
2. T
3. T
4. F The Court did not exercise judicial review again until its decision in the *Dred Scott* case and did so very little afterward for many years.
5. T
6. F The plan would have allowed Roosevelt to expand the Court to as many as 15 members.
7. F Roosevelt was able to make 7 appointments to the Court before leaving office.
8. T
9. F The Constitution supplies no such number. Congress decides.
10. F Democrats are more likely to render liberal decisions.
11. F Senatorial Courtesy is a major factor in the appointment of U.S. district court judges and is much less important in appointments to the U.S. Courts of Appeal.
12. F The litmus test is most important in Supreme Court nominations.
13. T
14. F Under the dual sovereignty doctrine, state and federal authorities can prosecute the same person for the same conduct.
15. T
16. F The typical case involves straightforward applications of federal law.
17. T
18. T
19. T
20. T
21. F Taxpayers do not automatically have standing as taxpayers. You must, for example, show personal harm has been done to you before you can bring suit.
22. F Under the doctrine of sovereign immunity, one can only sue the government if it allows them to do so.
23. F The Supreme Court ruled against the taxpayer, saying that he did not have proper standing to bring the suit.

24. F In 1974, the Court drastically tightened the rules, requiring formal notice to all potential beneficiaries of such suits.
25. F The term begins in October.
26. T
27. T
28. F If a tie vote occurs, the decision of the last court to consider the case stands as the final outcome.
29. T
30. F The text says a more plausible reason is that we have made it easier for people to have standing and to bring class-action suits.
31. T
32. T
33. T
34. F Fifteen federal judges have been impeached.
35. T
36. T
37. F Congress can alter both jurisdictions.
38. F The most active periods have been those where the political system has undergone profound and lasting changes.
39. F As of yet, there has been no wholesale retreat from the positions staked out by the Warren Court.
40. T
41. T

ANSWERS TO MULTIPLE CHOICE QUESTIONS

1. c
2. b
3. b
4. c
5. e
6. e
7. e
8. d
9. a
10. e
11. c
12. b

13. b
14. b
15. c
16. e
17. e
18. c
19. b
20. e
21. b
22. a
23. e
24. b
25. c
26. e
27. e
28. e
29. a
30. e
31. c
32. d
33. a
34. d
35. a
36. c
37. a
38. b
39. d
40. a
41. c
42. e
43. d
44. a