**THE JUDICIAL BRANCH**

1. The Power of Judicial Review

1. The Supreme Court has become an important branch because it can

    declare acts of legislation unconstitutional (called judicial review),

    thereby eliminating them.

2.In Britain, the Parliament is supreme, and no court can overturn laws.

3.The two ways of using judicial review are:

 a.  a strict-constructionist approach..... a judge uses only what is written in the Constitution in judging if a law is right or not.

b.  an activist approach..... a judge relies on his own opinions and philosophies in addition to what is written in the Constitution.

B.The Development of Courts

1.  The Founders probably wanted the Supreme Court to have some sort of judicial review, but they never expected the Court to grow as powerful as it is today.

2.  The rise of judicial activism occurred when judges questioned the traditional view of simply applying existing law instead of doing what the judge felt right.

C.The Structure of the Federal Courts

1.  Only the Supreme Court is referred to in the Constitution, other federal courts

     can be created by Congress.

2.  Congress has created constitutional courts that include 94 district courts

and 11courts of app eals.

3.  Appointing judges

a.  The tradition of "senatorial courtesy" allows senators to control who serves in their states

b   the Senate won’t approve a district judge if the senior senator from the state in which he is to judge objects

c.  Presidents have tried to get more judges who support their ideas by asking a potential judge a series of questions to determine his political inclinations and then chosing or rejecting based on that.

Some people call that unfair, and some judges have purposely answered vaguely saying that they haven’t made up their decisions on those topics yet.

The Supreme Court nominations have no senatorial courtesy traditions, so the President and the Senate must agree over who should serve or not.

D.The Jurisdiction of the Federal Courts

1.Federal courts can hear:

a.  cases “arising under the Constitution, the laws of the United States, and

     treaties” (federal-question cases)

b.  cases involving citizens of different states (diversity cases).

2   Cases selected by the Supreme Court via a writ of certiorari.

a.  Writs of certiorari are often granted when two federal appeals courts have decided differently and/or there is a claim that a law violates the Constitution.

b. The Supreme Court’s problem is that giving seeing too many cases swamps it with work, but seeing too few lets lower federal courts make final decisions on the interpretation of the Constitution and on federal laws.

E.Getting to Court

1.  Anyone can technically get their case up to the highest federal courts, but in truth, the Supreme Court rejects over 96% of the cases it sees, and the costs of getting a case up is huge, with all the fees that must be paid, plus, settling time is often long.

a.  If a poor person in a criminal case can’t afford a lawyer, the federal

     government will give him one for free.

b.  Special interest groups often take up cases for people and support them all the way through the case

c.  To sue, a person must have standing, a concept which prevents frivolous, stupid cases:

There has to be a real controversy, not just a friendly bet between two people.

It must be shown that the person suing was actually harmed by a practice.

2. Sometimes, a person can benefit from a case decision without actually having gone to court due to the fact that it was a class-action suit—it was filed not just for one person but on behalf of a whole group or race of people

F.The Supreme Court in Action

1. In an actual Supreme Court case, the nine justices hear briefs (information,

facts, and statements about the case) and then hear arguments from each lawyer— usually for no more than 30 minutes.

2.  The U.S. gov’t is a plaintiff or defendant to about half of the cases that the

     Supreme Court hears.

3.  Justices consult legal periodicals like the Harvard Law Review and the Yale

     Law Journal.

4.  They retire to the conference room, where they secretly deliberate, with the

each judge giving his opinions in order of seniority and then the judges voting in order of reverse-seniority.

a.  A majority is needed for a decision, and in ties, the lower court’s decision

     stands.

b.  The Court issues an opinion explaining its rulings

An opinion of the Court explains the winning side’s views.

A concurring opinion explains the views of a member of the winning side who chose that side for different reasons.

A dissenting opinion explains the views of the losing side.

G. The Power of the Federal Courts

1. Most federal court cases don’t change public policy

2.  Courts follows the idea of precedent,  because the principle of equal justice

     demands that similar cases be decided in similar manners..

H. Checks on Judicial Power

1. Judges have no police or army, so their decisions can’t be enforced unless others

    enforce them for the courts.

2. Courts heed public opinion, even though their members are not elected, and

    they keep in mind cases when ignoring public opinion nearly destroyed the

    Court’s ability to have their ruling enforced.