

# THE BUREAUCRACY AND THE JUDICIARY

## THE BUREAUCRACY

A bureaucracy is a systematic way of organizing a complex and large administrative structure. The bureaucracy is responsible for carrying out the day-to-day tasks of the organization. The bureaucracy of the federal government is the single largest in the United States, with 2.8 million employees. Bureaucracies generally follow three basic principles:

- ◆ hierarchical authority - similar to a pyramid, with those at the top having authority over those below
- ◆ job specialization - each worker has defined duties and responsibilities, a division of labor among workers
- ◆ formal rules - established regulations and procedures that must be followed

### History and Growth

- ◆ Beginnings - standards for office included qualifications and political acceptability
- ◆ Spoils system - practice of giving offices and government favors to political supporters and friends
- ◆ Reform movement - competitive exams were tried but failed due to inadequate funding from Congress
- ◆ Pendleton Act - Civil Service Act of 1883, passed after the assassination of Garfield by a disappointed office-seeker; replaced the spoils system with a merit system as the basis for hiring and promotion
- ◆ Hatch Act of 1939, amended in 1993 - prohibits government employees from engaging in political activities while on duty, running for office or seeking political funding while off duty, or if in sensitive positions, may not be involved with political activities on or off duty
- ◆ Civil Service Reform Act of 1978 - created the Office of Personnel Management (replaced the Civil Service Commission) to recruit, train and establish classifications and salaries for federal employees

### Organization

The federal bureaucracy is generally divided into four basic types:

- ◆ **cabinet departments** - 15 executive departments created to advise the president and operate a specific policy area of governmental activity (Department of State, Department of Labor, Department of the Interior); each department is headed by a secretary, except the Department of Justice, which is headed by the attorney general
- ◆ **independent executive agencies** - similar to departments but without cabinet status (NASA, Small Business Administration)
- ◆ **independent regulatory agencies** - independent from the executive; created to regulate or police (Securities and Exchange Commission, Nuclear Regulatory Commission, Federal Reserve Board)
- ◆ **government corporations** - created by Congress to carry out business-like activities; generally charge for services (Tennessee Valley Authority, National Railroad Passenger Corporation [AMTRAK], United States Postal Service)

### Influences on the Federal Bureaucracy

- ◆ **executive influences** - appointing the right people, issuing executive orders, affecting the agency's budget, reorganization of the agency.
- ◆ **Congressional influences** - influencing appointments, affecting the agency's budget, holding hearings, rewriting legislation or making legislation more detailed.
- ◆ **iron triangles (subgovernments)** - iron triangles are alliances that develop between bureaucratic agencies, interest groups, and congressional committees or subcommittees. Because of a common goal, these alliances may work to help each other achieve their goals, with Congress and the president often deferring to their influence.
- ◆ **issue networks** - individuals in Washington-located within interest groups, Congressional staff, think tanks, universities, and the media-who regularly discuss and advocate public policies. Unlike iron triangles, issue networks continually form and disband according to the policy issues.

## EXECUTIVE OFFICE OF THE PRESIDENT (EOP)

The Executive Office of the President includes the closest advisors to the president. Although it was established in 1939, every president has reorganized the EOP according to his style of leadership. Within the executive office are several separate agencies.

- ◆ **White House Office** - personal and political staff members who help with the day-to-day management of the executive branch; includes the chief of staff, counsel to the president, press secretary
- ◆ **National Security Council** - established by the National Security Act of 1947; advises the president on matters of domestic and foreign national security
- ◆ **Office of Management and Budget** - helps the president prepare the annual federal budget
- ◆ **Office of Faith-Based and Community Initiatives** - created by George W Bush to encourage and expand private efforts to deal with social problems
- ◆ **Office of National Drug Control Policy** - advisory and planning agency to combat the nation's drug problems
- ◆ **Office of Policy Development** - gives the president domestic policy advice

- ◆ **Council of Economic Advisors** - informs the president about economic developments and problems
- ◆ **Office of US. Trade Representative** - advises the president about foreign trade and helps negotiate foreign trade agreements
- ◆ **Office of Administration** - provides administrative services to personnel of the EOC and gives direct support services to the president
- ◆ **Council on Environmental Quality** - coordinates federal environmental efforts and analyzes environmental policies and initiatives
- ◆ **Office of Science and Technology Policy** - advises the president on the effects of science and technology on domestic and international affairs; it also works with the private sector and state and local governments to implement effective science and technology policies
- ◆ **Office of the Vice President** - consists of the vice president's staff

## EXECUTIVE DEPARTMENTS

- ◆ **State (1789)** - advises the president on foreign policy, negotiates treaties, represents the United States in international organizations
- ◆ **Treasury (1789)** - collects federal revenues, pays federal bills, mints coins and prints paper money, enforces alcohol, tobacco and firearm laws
- ◆ **Defense (1789)** - formed from the Department of War and the Department of the Navy (1789) but changed to the Department of Defense in 1947; manages the armed forces, operates military bases
- ◆ **Interior (1849)** - manages federal lands, refuges, and parks, operates hydroelectric facilities, manages Native American affairs
- ◆ **Justice (1870)** - provides legal advice to the president, enforces federal laws, represents the United States in court, operates federal prisons
- ◆ **Agriculture (1889)** - provides agricultural assistance to farmers and ranchers, inspects food, manages national forests
- ◆ **Commerce (1903)** - grants patents and trademarks, conducts the national census, promotes international trade
- ◆ **Labor (1913)** - enforces federal labor laws (child labor, minimum wage, safe working conditions), administers unemployment and job training programs
- ◆ **Health and Human Services (1953)** - administers Social Security and Medicare/Medicaid Programs, promotes health care research, enforces pure food and drug laws
- ◆ **Housing and Urban Development (1965)** - provides home financing and public housing programs, enforces fair housing laws
- ◆ **Transportation (1967)** - promotes mass transit programs and programs for highways, railroads, and air traffic, enforces maritime law
- ◆ **Energy (1977)** - promotes development and conservation of fossil fuels, nuclear energy, research programs
- ◆ **Education (1979)** - administers federal aid programs to schools, engages in educational research
- ◆ **Veterans Affairs (1989)** - promotes the welfare of veterans of the armed forces
- ◆ **Homeland Security (2002)** - prevents terrorist attacks within the United States, reduces America's susceptibility to terrorism, minimizes damage and helps recovery from attacks that do occur; includes Coast Guard, Secret Service, Border Patrol, Immigration and Visa Services, and Federal Emergency Management Agency (FEMA)

## THE FEDERAL COURT SYSTEM

### Jurisdiction

Jurisdiction is the authority of the courts to hear certain cases. Under the Constitution, federal courts have jurisdiction in cases involving federal law, treaties, and the interpretation of the Constitution.

- ◆ **original jurisdiction** - Lower courts have the authority to hear cases for the first time; in the federal system district courts and the Supreme Court (in a limited number of cases) have original jurisdiction where trials are conducted, evidence is presented, and juries determine the outcome of the case.
- ◆ **appellate jurisdiction** - courts that hear reviews or appeals of decisions from the lower courts; Courts of Appeals and the Supreme Court have appellate jurisdiction.
- ◆ **concurrent jurisdiction** - allows certain types of cases to be tried in either the federal or state courts.

## STRUCTURE OF THE JUDICIAL SYSTEM

The federal judicial system consists of constitutional courts and legislative courts. Constitutional courts are the federal courts created by Congress under Article III of the Constitution and the Supreme Court. Also included are the district courts, Courts of Appeals, Court of Appeals for the Federal Circuit, and the U.S. Court of International Trade. Congress has created special or legislative courts (Territorial Courts, U.S. Tax Court, U.S. Court of Appeals for the Armed Forces) to hear cases arising from the powers given to Congress under Article 1. These legislative courts have a narrower range of authority than the constitutional courts.

### District Courts

Congress, under the Judiciary Act of 1789, created the district courts to serve as trial courts at the federal level. Every state has at least one district court; larger states may have several, with Washington D.C., and Puerto Rico each having one court. There are currently 94 districts. The district courts have original jurisdiction; they do not hear appeals. District courts decide civil and criminal cases arising under the Constitution and federal laws or treaties. More than 80% of all federal cases are heard in the district courts.

### Courts of Appeals

Congress created the Courts of Appeals in 1891 to help lessen the work load of the Supreme Court. The Courts of Appeals decide appeals from United States district courts and review decisions of federal administrative agencies. There are 13 United States Courts of Appeals. The states are divided into circuits, or geographic judicial districts. There is also a circuit for Washington, D.C., and a Federal Circuit, which hears cases involving federal agencies. The Courts of Appeals have appellate jurisdiction only; they may only review cases already decided by a lower court. A panel of judges decides cases in the Courts of Appeals.

### Supreme Court

The only court actually created directly by the Constitution is the Supreme Court. It is the highest court in the federal judicial system. It is the final authority in dealing with all questions arising from the Constitution, federal laws, and treaties. The Supreme Court has both original and appellate jurisdiction. Most of the cases heard in the Supreme Court are on appeal from the district and appellate courts of the federal judicial system; however, cases may come to the Supreme Court from state Supreme Courts, if a federal law or the constitution is involved. The United States Supreme Court may also hear cases of original jurisdiction if the cases involve representatives of a foreign government, or certain types of cases where a state is a party.

The decisions of the Supreme Court may have a strong impact on social, economic, and political forces in our society. Congress establishes the size of the Supreme Court, having the power to change the number of justices. The current size of the Supreme Court was set in 1869. Today, the Supreme Court consists of nine judges-eight associate justices and one chief justice. They are all nominated by the president and confirmed by the Senate.

## JUDICIAL SELECTION

The president appoints federal judges, with confirmation by the Senate. Under the Constitution, there are no formal qualifications for federal judges. Federal judges serve "during good behavior," which generally means for life. The notion of the life term was to allow judges to be free from political pressures when deciding cases. Federal judges may be removed from office through impeachment and conviction.

### Lower Courts

Because of the large number of appointments made to the lower courts, the Department of Justice and White House staff handles most of these nominations. Senatorial courtesy, the practice of allowing individual senators who represent the state where the district is located to approve or disapprove potential nominees, has traditionally been used to make appointments to the District Courts. Because the circuits for the Courts of Appeals cover several states, individual senators have less influence and senatorial courtesy does not play a role in the nomination process. The Senate tends to scrutinize appeals court judges more closely, since they are more likely to interpret the law and set precedent.

### Supreme Court

The higher visibility and importance of the Supreme Court demands that the president give greater attention to the nomination of Supreme Court justices. Presidents only make appointments to the Supreme Court if a vacancy occurs during their term of office. When making appointments, presidents often consider:

- ◆ **party affiliation** - choosing judges from their own political party
- ◆ **judicial philosophy** - appointing judges who share their political ideology

- ◆ **race, gender, religion, region** - considering these criteria may help bring balance to the court or satisfy certain segments of society
- ◆ **judicial experience** - previous judicial experience as judges in district courts, courts of appeals, state courts
- ◆ **"litmus test"** - a test of ideological purity toward a liberal or conservative stand on certain issues such as abortion
- ◆ **acceptability** - noncontroversial and therefore acceptable to members of the Senate Judiciary Committee and the Senate
  - American Bar Association - the largest national organization of attorneys, often consulted by presidents, rates nominees' qualifications
  - interest groups - may support or oppose a nominee based on his or her position on issues of importance to the interest group; use lobbyists to pressure senators
  - Justices - endorsements from members of the Supreme Court may help a nominee (O'Connor received strong support from Rehnquist)

### **Background of Judges**

Almost all federal judges have had some form of legal training, have held positions in government, or have served as lawyers for leading law firms, as federal district attorneys or as law school professors. Some federal judges have served as state court judges. Until recently, few African Americans, Hispanics, or women were appointed as judges to the lower federal courts. Lyndon Johnson appointed the first African American, Thurgood Marshall, to the Supreme Court; Ronald Reagan appointed the first woman, Sandra Day O'Connor.

## **THE COURT AT WORK**

The term of the Supreme Court begins on the first Monday in October and generally lasts until June or July of the following year.

### **Accepting Cases**

Thousands of cases are appealed to the Supreme Court every year; only a few hundred cases are actually heard. Most of the cases are denied because the justices either agree with the lower court decision or believe that the cases do not involve a significant point of law. Cases that are accepted for review must pass the rule of four - four of the nine justices must agree to hear the case. Many of the cases accepted may be disposed of in brief orders returned to the lower court for reconsideration because of a related case that was recently decided. Those cases presented to the Supreme Court for possible review may be appealed through:

- ◆ **writ of certiorari** - an order by the Court (when petitioned) directing a lower court to send up the records of a case for review; usually requires the need to interpret law or decide a constitutional question
- ◆ **certificate** - a lower court may ask the Supreme Court about a rule of law or procedures in specific cases

### **Briefs and Oral Arguments**

Once a case reaches the Supreme Court, lawyers for each party to the case file a written brief. A brief is a detailed statement of the facts of the case supporting a particular position by presenting arguments based on relevant facts and citations from previous cases. Interested parties may also be invited to submit amicus curiae ("friends of the court") briefs, supporting or rejecting arguments of the case.

Oral arguments allow both sides to present their positions to the justices during a 30 minute period. Justices may interrupt the lawyers during this time, raising questions or challenging points of law.

### **Research and Conferences**

Justices use law clerks to research the information presented in oral arguments and briefs. Throughout the term, the justices meet in private conferences to consider cases heard in oral argument, with the chief justice presiding over the conferences. Each justice may speak about the cases under discussion. An informal poll determines how each justice is leaning in the case.

### **Writing Opinions**

Once the Supreme Court has made a decision in a case, the decision is explained in a written statement called an opinion. If voting with the majority, the chief justice selects who will write the opinion; if voting with the minority, the most senior associate justice of the majority selects who will write the opinion.

- ◆ **majority opinion** - a majority of the justices agree on the decision and its reasons
- ◆ **concurring opinion** - a justice who agrees with the majority opinion but not with the reasoning behind the decision
- ◆ **dissenting opinion** - a justice or justices who disagree with the majority opinion

Opinions of the Supreme Court are as important as the decisions they explain. Majority opinions become precedents, standards or guides to be followed in deciding similar cases in the future.

## COURTS AS POLICYMAKERS

### **New Deal Era**

Controversy surrounded the Supreme Court during the New Deal era, as Congress passed numerous laws designed to end the Depression and the conservative court ruled these laws unconstitutional. In response, Franklin Roosevelt proposed what opponents termed a "court-packing plan" to increase the number of justices, allowing Roosevelt to appoint justices supportive of New Deal legislation. Although Congress did not pass Roosevelt's plan to expand the court, two justices, Chief Justice Charles Evans Hughes and Associate Justice Owen Roberts, began voting in favor of New Deal legislation (sometimes referred to as "the switch in time to save nine.")

### **The Warren Court (1953-1969)**

Often termed "the most liberal court ever," the Warren Court under Chief Justice Earl Warren was especially active in the area of civil rights and civil liberties. This court heard *Brown v. Board of Education* (1954), declaring segregation in public schools unconstitutional. The Warren Court also expanded the rights of criminal defendants in *Gideon v. Wainwright* (1963) and *Miranda v. Arizona* (1966).

### **The Burger Court (1969-1986)**

Richard Nixon's appointment of Warren Burger as chief justice returned the Supreme Court to a more conservative ideology with regard to narrowing the rights of defendants. The Burger Court permitted abortions in *Roe v. Wade* (1973) and ruled that Nixon did not have executive privilege over information in a criminal proceeding in *U.S. v. Nixon* (1974). In *Regents of the University of California v. Bakke* (1978), the Court ruled against the use of quotas in the admissions process. At the same time, the Court upheld the legality of affirmative action.

### **The Rehnquist and Roberts Courts (1986-present)**

The conservative court under Chief Justice William Rehnquist continued to limit, but not reverse, decisions of the earlier more liberal courts in the areas of defendants' rights, abortion (*Planned Parenthood v. Casey*, 1992), and affirmative action. The court of Chief Justice John Roberts (2005-present) continued the conservative ideology of the Rehnquist Court. In 2007 the Roberts Court upheld the federal Partial-Birth Abortion Act of 2003.

## JUDICIAL PHILOSOPHY

Judicial philosophy of activism or restraint is not the same as political philosophy such as liberal or conservative. Although some recent justices who supported an activist philosophy (Warren and T. Marshall) were also more liberal, this has not always been the case. The Marshall Court was activist in establishing judicial review but conservative in protecting property rights.

### **Judicial Activism**

The philosophy of judicial activism, or judicial intervention, holds that the Court should play an active role in determining national policies. The philosophy advocates applying the Constitution to social and political questions, especially where constitutional rights have been violated or unacceptable conditions exist.

### **Judicial Restraint**

The philosophy of judicial restraint holds that the court should avoid taking the initiative on social and political questions, operating strictly within the limits of the Constitution and upholding acts of Congress unless the acts clearly violate specific provisions of the Constitution. Judicial restraint involves only a limited use of judicial powers and advocates the belief that the court should be more passive, allowing the executive and legislative branches to lead the way in policymaking.