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Chapter 2

Who Controls the Courts?

CHAPTER OVERVIEW

This chapter discusses our constitutional system of government that gives legislatures and the executive branch distinct powers that serve as checks on the courts. Further, this chapter explains how legislatures have been tasked with the role of creating courts, assigning the number of judgeships, setting judicial salaries, and confirming prospective judges. It describes how executives, whether the President at the federal level or governors at the state level, appoint judges to their positions and thus have a system of checks that help ensure that court power does not become excessive. Lastly, this chapter discusses how our government consists of three branches, reflecting a desire on the framers' part to ensure each branch's independence. This has resulted in a collision of beliefs, values, and priorities that has taken a substantial toll on the courts, prompting them to react in a variety of ways to maintain and promote their independence.

CHAPTER OBJECTIVES

1. Summarize the ways legislatures exert control over the courts.
2. Summarize the ways the executive branch of the government exerts control over the courts.
3. Describe the hierarchical structure of the courts.
4. Summarize the various other ways in which control is exerted over the courts.

LECTURE OUTLINE

LEGISLATIVE CONTROL

- Legislatures exert control over the courts through various means.
- Article III of the U.S. Constitution gives Congress the power to create courts.
    - With this comes the authority to define courts' jurisdiction.
- When courts are created, Congress also authorizes a specified number of judgeships and sets judicial salaries.
- Congress further enacts rules that the courts must follow.
    - Similar arrangements are found at the state level.
- Direct controls are constitutionally authorized.
- Indirect controls are what the legislative branch can exert over the courts.
    - These include confirming judicial appointees and setting the judiciary's budget.

Jurisdiction

- Jurisdiction refers to the power of a court to resolve a dispute.

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- The U.S. Constitution's third article spells out the judicial power of the United States.
    - Congress has gone on to create several other federal courts; states have done the same.
    - Part of this court creation process involves setting courts' jurisdictional boundaries.
    - There are several types of jurisdiction.

Geographical Jurisdiction

- Geographical jurisdiction refers to the organization of courts in distinct geographic regions.
    - Within each state, courts have their own geographic boundaries.
    - At the federal level, there are federal districts and appellate districts.
    - The federal appellate districts overlap several states.

Subject Matter Jurisdiction

- Subject matter jurisdiction is concerned with what types of cases individual courts can adjudicate.
    - Some courts have limited subject matter jurisdiction because they only hear specific types of cases.
    - Higher-level courts, like state supreme courts or the U.S. Supreme Court, hear mostly appeals.

Hierarchical Jurisdiction

- Hierarchical jurisdiction is concerned with the courts' distinct functions and responsibilities at different levels within a single (state or federal) judiciary.
    - Original jurisdiction is the lawful authority of a court to hear or act upon a case from the beginning and to pass judgement on the law and the facts.
    - Appellate jurisdiction is the lawful authority of a court to review a decision made by a lower court.
    - Lower level courts tend to try specific cases and higher-level courts rarely try to resolve disputes between parties.

Federal Jurisdiction

- Federal courts have jurisdiction over federal matters and the state courts have jurisdiction over state matters.
    - The one exception to this general rule is when the U.S. Supreme Court has original jurisdiction over certain cases arising from the states.
    - Federal question jurisdiction is the authority to hear cases that touch the U.S. Constitution or other federal laws.
    - Criminal cases involving federal laws are under the jurisdiction of the U.S. District Court.

Diversity Jurisdiction

- Diversity jurisdiction refers to the authority of certain federal courts to hear cases where the parties are from different states.
    - Diversity jurisdiction cases must involve disputed amounts of more than $75,000.
    - Diversity jurisdiction also extends to disputes between U.S. citizens and foreign citizens and/or companies.

Supplemental Jurisdiction

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- Supplemental jurisdiction (also called ancillary *or* pendent jurisdiction), is the right to hear a case for which it would not ordinarily have original jurisdiction.

State Jurisdiction

- State court jurisdiction means that state courts have either original or appellate jurisdiction and do not have authority to decide on matters involving federal questions, diversity issues, or supplemental matters.

Teaching Note: Prior to moving forward it is important that students understand the concept of jurisdiction. A discussion of the different kinds of jurisdiction should also be held, as the information will be needed in the future chapters.

Types of Direct Controls

Creating Courts

- Article III of the U.S. Constitution gives Congress the authority to create courts as it sees fit.
    - This includes number of judgeships and pay.
- Legislatures perform the same functions at the state level and maintains authority to decide personnel issues.

Setting the Rules

- Legislatures also have rule-making authority.
- At the federal level, Congress has the authority to set the rules of practice, procedure, and evidence in the federal courts to reject or modify proposed rule changes.
- There are five sets of rules that dictate the procedures to be followed in federal court cases:
    - The Federal Rules of Civil Procedure govern the processing of civil cases.
    - The Federal Rules of Criminal Procedure do the same for criminal cases.
    - The federal appellate courts follow the Federal Rules of Appellate Procedure.
    - Bankruptcy cases have their own set of rules found in the Federal Rules of Bankruptcy Procedure.
    - The Federal Rules of Evidence govern the admissibility of evidence in federal cases.

Limiting their Jurisdiction

- Court-stripping is the attempt to take jurisdiction away from courts to review matters.
- Examples: Antiterrorism and Effective Death Penalty Act of 1996 and the Immigration Reform and Immigrant Responsibility Act of 1996.

Indirect Controls

- Legislatures also exert indirect control over the courts through two important indirect channels: confirmations and budgeting.
- At the federal level, the Senate must confirm judicial appointees by a simple majority.

Confirmations

- The Senate ultimately decides who becomes a federal judge.
- The president nominates potential judges to serve on the federal bench.

Budgeting.

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- Congress sets the budget and thus appropriates money for the judicial branch to operate.
- The federal judiciary is funded by Congress.
- The Committee on the Budget of the Judicial Conference of the United States presents a budget to Congress; Congress then responds.

EXECUTIVE CONTROL

Executive Appointment Process for the Judiciary

- The president is given authority, via the Constitution, to appoint federal judges.
- It is unrealistic for the president to be heavily involved in all the nominations, given the volume of federal judgeships.
- The president will routinely consult with senators and other elected officials, particularly for vacancies in the lower courts, in an effort to identify qualified candidates.
- Deference is often given to senators when there is a vacancy in their states.
- Consultations may be held with the American Bar Association.

Executive Presence in the Courts

- The executive branch influences the federal courts.
- The Department of Justice, an executive agency, is responsible for prosecuting individuals who violate federal laws and for representing the government in civil cases.
- Many other executive agencies either work in or work closely with the courts.

Teaching Note: Students should be encouraged to locate some of the more recent media accounts of the current executive appointment controversy between Congress and the Executive branches of government. A comparison of this process with the last four presidents would be instructive in learning how federal judges are appointed literally and figuratively.

CONTROL FROM ABOVE

- There is a distinct hierarchy to the court system at both the federal and state levels:
  - Higher courts have considerable influence over lower courts due to this hierarchical structure.
  - Lower courts have developed various means to cope with influential decisions from the higher courts.
  - Courts are subject to direct control from higher court officials, just as they are subject to direct control from the legislative branch.
  - Higher courts, including the judges in higher courts, exert direct control over the lower courts in jurisdictional authority and rule-setting. Higher courts also seek to influence lower-court judges' decisions.

Jurisdictional Authority

- Hierarchical jurisdiction refers to the organization of courts within a distinct state (or the federal) system.
  - This means higher courts have direct control over the lower courts.
- Related to this was geographic jurisdiction, referring to the organization of courts within distinct geographic areas.
- Jurisdictional authority thus refers to the authority of higher courts to issue decisions that are binding on the lower courts within their jurisdiction.

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- In an ideal world, lower courts would follow higher-court decisions to the letter, implementing them without any resistance or second-guessing.

Rule-Setting

- Every court is part of an administrative structure.
- At the state level, trial courts fall under the state administrative office of the courts.
- The same process occurs at the federal level.
- The Administrative Office of the U.S. Courts and its various components basically supervise the lower federal courts.

Interpretation of Higher-Court Decisions

- Lower-court judges, like prosecutors and police officers, have enormous discretion.
- Judges may have even *more* discretion than these other officials, due to the historically independent nature of the judiciary and the protections judges enjoy in their professional capacities.
- Federal judges are protected by lifetime employment and thus do not fear losing their jobs for issuing unfavorable decisions or running their courts as they see fit.
- State judges, some of whom are elected, need not fear losing their jobs so long as the electorate is satisfied with their decisions.
- Judges can take a measure of liberty in interpreting and applying higher-court decisions.

Importance of Interpretation

- Nearly all high-court decisions are subject to interpretation simply by the way they are written.
- A higher court's decision should be implemented "sparingly." Most cases are factually distinct from one another.
- Despite the judiciary's historical independence, it is very much subject to control.

Methods of Dealing with Higher-Court Decisions

- Researchers and studies show both that lower-courts mirror higher courts, but also resist higher-court decisions with which they disagree.

OTHER FORMS OF CONTROL OVER THE COURTS

- In addition to the legislature, the executive, and higher courts, America's courts are also controlled by the people through their voting behavior.
- Legal profession is also important, especially its many professional associations.

Voting Behavior

- Elections can most definitely be used to exert a measure of popular control over the courts.
    - This occurs directly through the election of judges.
    - It also occurs indirectly through the election of executives who select judges to serve on the nation's higher courts.

Election of Judges

- A number of judges are elected.
    - Judicial elections are only held, however, at the state level, and most often for judgeships in the lower courts.
- Some state supreme court justices are elected, but most judicial elections play out in the lower tier of states' court systems.

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- Elections serve as a powerful tool for voters to exert control over the judiciary.

Election of Executives

- Federal judges are appointed to their positions.
- Indirect control over the courts through executive elections is very definitely *indirect.*
- There is no way to predict how judges will behave on the bench after elections.
- Throughout history there have been examples of judges who, through their opinions, "switched sides" after assuming their posts.

Public Participation

- Openness ensures that government power does not get out of hand and that decisions are made in a transparent fashion, so as to ensure conformance with applicable laws, constitutional requirements, and the like.
- Allowing the public to openly participate in the court process thus helps ensure that judiciaries do not become excessively powerful.
- By law and custom, the American court system is an open institution.
- The Sixth Amendment requires that trials be open to the public, and the American judiciary promotes transparency and openness.

Interest Group Formation

- Interest groups have considerable influence throughout government.
- Mission is to influence political decisions and policy, do everything from contributing money to political campaigns to taking legislators out for lavish meals to sharing information and providing services to their members.
- Victims' advocacy groups also represent a powerful interest group. They often seek to influence the courts by calling for harsh punishments.

Test Cases

- Interest groups attempt to influence court cases, either as litigants in specific cases or through the provision of resources to other litigants.
- They are especially drawn to so-called test cases.
    - Test cases are cases that are likely to "test" the legality or constitutionality of a particular tactic or statute.
- Interest groups are also active in criminal justice.
- Sentencing policy has seen its share of interest group involvement.

***Amicus Curiae* Briefs**

- An *amicus curiae* brief is a written document that seeks to persuade a court to decide in a particular way.
- There is no guarantee a judge will agree with an interest group's stance on a particular issue because in controversial cases it is not uncommon for various briefs to be submitted on behalf of groups representing both sides.
    - However, a persuasive brief has the potential to shape a court's decision significantly.
- A person with strong interest in or views on the subject matter of an action, but not a party to the action, may petition in court for permission to file a brief.

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- Filing *amicus curiae* briefs is the easiest way for interest groups to get involved in cases and thereby influence court decisions and policy.

THE LEGAL PROFESSION

- The legal profession has considerable involvement in the courts.
  - The American Bar Association (ABA) accredits law schools around the country, which in turn affects the training of attorneys and thus the courts themselves.
  - The vast majority of judges are themselves attorneys.
  - The number of lawyers per person in the United States dwarfs that of many other industrialized nations.
- Most professions have their own professional associations. The legal profession has several:
  - Lawyers in this country are often members of the American Bar Association as well as their own state's bar association. In addition, there are professional associations for different types of lawyers.
  - Many defense attorneys belong to the National Association of Criminal Defense Lawyers (NACDL).
  - Many prosecutors belong to the National District Attorneys Association (NDAA).
  - Two of the most influential professional associations are the ABA and its equivalent state-level organizations.

The ABA

- Founded in 1878 and today has approximately 400,000 members.
- In addition to providing law school accreditation, the ABA provides professional training for attorneys, legal information, initiatives to improve the legal system, and most importantly, programs to assist lawyers *and* judges with their work.
- The ABA is also an interest group, and it often takes firm stances on various legal policy issues.
  - The ABA has repeatedly called for a moratorium on the use of capital punishment in the United States.
  - The ABA has offered policy recommendations on nearly all criminal justice matters, ranging from the war on drugs to domestic violence to juvenile justice to grand jury policy.
- The ABA may have shown a liberal bias in its recommendations.

State Bar Associations

- State bar associations also provide evaluations of judicial candidates to assist governors in their nominations.
- State bar associations sponsor legislation and review bills bearing on the legal profession.

Think Tanks

- Just as professions have their professional associations, most professions are of interest to various research organizations, or "think tanks".
- Two of the most visible and influential in the court context are the National Center for State Courts (NCSC) and the comparatively newer Center for Court Innovation.

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- The National Center for State Courts, with offices in Virginia and Colorado, is a think tank.
- The Center for Court Innovation was initially formed as a partnership between the New York State Unified Court System and the Fund for the City of New York.

Judicial Restraint and Activism

- Judicial restraint is the philosophy of limiting decisions to the facts of each case, deciding only the issue or issues that need to be resolved in a particular situation.
- Judicial restraint entails avoiding unnecessary decisions on constitutional questions that have yet to be posed.
- Judicial restraint is a philosophy found at the end of a larger spectrum of judicial philosophies.
- At the other end is judicial activism.
    - A judicially active judge is one who sees his or her role as more than interpreting the Constitution or laws.
    - The judicially active judge avoids precedent and hands down decisions with sweeping implications for the future.

Teaching Note: In 2013 a judge in Texas sentenced a 16-year-old to probation and a rehabilitation facility for driving while intoxicated and killing 4 people and injuring 10 others. The same judge previously sentenced a younger youth to prison for killing one person. This case gained national attention due to the former youth using the "affluenza" defense; i.e., he was too rich to know better. This case would make an excellent class discussion for judicial activism.

The Courtroom Workgroup

- In an effort to control their daily activities, courts have developed a number of informal and unwritten procedures for the processing of cases.
- In the criminal context, there are variations from one jurisdiction to the next in terms of how specific cases are handled.
- The three main parties to this relationship are the prosecutor, the defense attorney, and the judge.
- Prosecutors and defense attorneys are not mortal enemies; they work together on a daily basis, and it is in their interest to ensure the efficient movement of cases through the criminal process.
    - These attorneys frequently present their cases before the same judges, so they also learn how judges decide.
- The judges also stand to benefit from a measure of uniformity in terms of how cases are handled.
    - Uniformity in the treatment of cases allows courts to adapt to the pressures and desires of outside influences.
    - Even if prosecutors, defense attorneys, and judges cannot get along, there is still a measure of predictability that goes along with the cases they shepherd through the criminal process.

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- They may agree that the case will be plea bargained, or alternatively, they may all feel that the case will go to trial and that the sentence will be pretty standard.
- The point is that there is a degree of predictability to the criminal court process because it has to be.
- If the outcome of every case were totally unpredictable; if prosecutors, defense attorneys, and judges could not work together in a dignified manner; then the wheels of justice would slow to a crawl.

LIST OF CHANGES/TRANSITION GUIDE

- A new chapter opening story features the New York case of the so-called "cannibal cop." The case highlights the role of appellate review in the criminal process.
- A new "What Will You Do?" case at the end of the chapter features the lawsuit Oklahoma and Nebraska filed against Colorado, claiming that Colorado's marijuana legalization scheme is unconstitutional (i.e., is preempted by federal law) and causes undue harm on its neighboring states.

ADDITIONAL ASSIGNMENTS AND CLASS ACTIVITIES

Mock Trial

Purpose

While learning the details of trial process and procedures, students also develop a number of critical skills that are universally necessary. In this activity, students will become familiar with hypothetical cases and further their critical analysis skills.

Resources and Materials

The following sample cases can apply to any state in the country and lend themselves to any offense date, gender, or ethnic nationality of the parties. Instructors may choose to change the defendant from male to female or vice-versa. Students will have a lot of fun with these cases and show increased interest as they investigate the laws in your particular state. Change the dates as you deem appropriate.

Sample Hypothetical Cases

1. Mary Jones and Ed Jones were high school sweethearts who married after they both graduated from USA University in Villagetown. Mary went directly to work after college and Ed went to medical school full time. They had two children while Ed was in school. Ed met a nurse, Karly Smith, during his residency and he did not tell her that he was married or had children. Mary learned of the affair and moved out of the family home with the children, ages 12 and 16, after 18 years of marriage. Ed continued to live in the home and see his mistress, and despite learning of her pregnancy, he refused to marry her. After arriving home from a late night at the hospital, Ed was confronted by a person in his home and was shot seven times. While on the way to the

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hospital Ed told the paramedics that *"she did it."* Ed later died at the hospital without speaking another word. After a police investigation the police charged Karly with murder.

2. Sam Doolittle was a successful Wall Street trader and lived a very prosperous lifestyle. During an economic downturn, Sam lost his job and was on the brink of foreclosure with his condominium. He had accumulated a number of classic vehicles that he kept insured for large sums of money. Shortly after the bank issued a foreclosure notice, one of Sam's vehicle was found burned, and was declared a total loss. Sam promptly filed an insurance claim and was reimbursed $100,000 by his insurance company. Sam brought his bills and obligations current with the insurance proceeds. Two months later Sam was still unemployed and on the brink of foreclosure once again. While Sam was reportedly out of
town on a job interview, a second classic vehicle that he owned was burned. Investigators, who had ruled the first vehicle fire an accident, ruled the second as arson. Sam was charged with two counts of arson and related charges for both vehicles.

3. At the time of the incident, Jamie Clinton was a 23-year-old single mother of three small children, ages 2, 4, and 8, and a full-time college student majoring in Criminal Justice at USA University. Although she was receiving some scholarship assistance, Jamie was struggling to attend school full time and feed, clothe, and shelter her children. Jamie had a boyfriend, Ray, whom she saw regularly. He was not the father of any of her children, but helped her financially whenever he could. Ray was a frequent visitor to her home, and because he did not have any transportation, she drove him home after his visits. Upon making the dean's list at the university, she celebrated her success with a party in her home. After all of her friends left the house, Jamie put all three children in the bathtub for their evening bath. Ray asked Jamie to drive him to the corner store, a three-minute drive. Jamie grabbed her keys and told the children she would be back in a minute. When Jamie returned from the store and heard no sound, she ran into the bathroom and found all three of her children dead. Jamie was charged with numerous violations of her state's penal code.

4. Carter Winston, age 17, and Claudia Smith, age 18, were lifelong friends who had grown up in the same neighborhood. Claudia became involved with drugs while in junior high school; she began selling drugs at the age of 13. Although Carter did not involve himself with drugs, he still associated with Claudia. Claudia had many run-ins with the police as a juvenile for theft, burglary, and housebreaking. Claudia, with some of her other friends, performed a home invasion robbery on one her neighbor's homes and took many valuables from the home. Claudia asked Carter to hold some of the items for her, which he did. The police investigation and searches revealed the items in Carter's vehicle and he was subsequently charged under the state's penal code.

5. Susie Jones was out for a night on the town for her 21st birthday with her friends in Paris, Texas on June 25, 2013. They went to a local nightclub where her favorite boy band was playing. The club was very crowded and shortly after they arrived there was a burst of gunfire and everyone was running toward the one exit. Susie was running as quickly as she could and ran out into the street without looking. She was struck by an oncoming vehicle and died on impact. The driver did not stop and has not been located or identified. The three shooters were arrested and

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Joe McCool, one of the shooters has been charged with the death of Susie. No one in the bar was fatally wounded.

6. Junior Henpepper and his friend Fred (Bubba) Smith rented a 3 BR house in Plano, Texas from Mary Finney on a year-long lease beginning April 1, 2013. The house had an 8x20 storage shed in the rear of the property. Mary checked their references extensively and was satisfied that they were good tenants. Beginning in May, Mary started receiving complaints from neighbors about odors emanating from her house that she rented out. She called the tenants and both feigned ignorance about the complaints. On July 3, 2013, the shed blew up, and the fire which destroyed the shed caused charring to the house. Investigation has preliminarily revealed that the explosion resulted from a meth lab. The damage was in excess of $15,000. Mary never personally went to the home until the fire was reported to her. Fred was away from the home during the explosion and Junior has been charged with arson.

7. Karen Shultz, age 18, and Miasha Clinton, age 14, met while on the same basketball team at Prince Meadow High School in Rockwall, Texas. Karen was instantly attracted to Miasha and struck up a fast friendship with the younger girl. Miasha's parents did not like the attention being showered on their daughter by the older girl and forbade their daughter from having any further contact with her outside of the school and their team activities. When Karen heard this, she convinced the younger girl to ignore her parents' concerns, and because she had her own vehicle, she helped Miasha sneak out of the house at night. Eventually that friendship resulted in a sexual relationship. Initially Miasha was shocked that Karen wanted a lesbian relationship with her. Others at their school were not surprised as they knew of Karen's sexual orientation. One of Miasha's parents found them in bed one afternoon, engaged in a sexual act, when they came home early from work. They threw Karen out of the house, called the police and had Karen arrested. Karen is now charged with sexual assault. These events occurred between November 25-December 28, 2013.

8. Johnny Sanford, age 29, and Betty Sanford, age 35, met in July 2006 while both were both members of the Liberty Police Department in Liberty, Texas. Liberty is a small college town. After dating for almost one year, they married on June 25, 2007. Johnny was proud of his reputation as a ladies' man and was widely known at the local University (Liberty A&M University) as an officer who would give any cute college coed a break if they were caught speeding, shoplifting, or committing any other infraction. While Betty never witnessed any of this activity, she heard many stories over the years in this small town. Eventually Johnny became more brazen with his adulterous behavior and Betty was finding evidence that females were in her home during her absence. When she confronted Johnny about his behavior, he became violent and threatened to shoot her with his service weapon. Betty went to work on several occasions with bruises but always explained that she had fallen or she was chasing one of their 3 children. Betty began sleeping in a separate room with her service weapon under her pillow. One night Johnny came home very late, very intoxicated and dragged Betty to the master bedroom and raped her. Betty never reported the rape to anyone. Three nights later, on February 14, 2013, Johnny again came home drunk, belligerent and came to the room where Betty was sleeping. The children were not at home. As he tried to break down the locked door, Betty shot through the door. Betty called 911 and did not leave the room until police arrived. When police arrived they found Johnny on the floor dead. He had been shot twice. One of the college girls

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(Judy Henderson, age 17) was in the living room of the home near Johnny's gun and appeared to be in shock with multiple bruises on her body. Judy was not questioned by the police that evening due to her condition. Johnny's gun was never tested and Judy committed suicide 2 days later. Betty was charged with murder.

Activities and Procedures

The class will be randomly divided into teams and receive a courtroom scenario. The scenarios are general in nature, and may be developed more fully by the teams. After receiving the scenario, each team will be required to create a police report and a general write-up on the case that they have been given. These items are due one week after receiving the case.

1. Assign one of the hypothetical cases to each group or make up your own.
2. As they study the chapter, the students will become more familiar with the facts on who controls the courts and the relationships between the three branches of government.
3. Assign students a group page on Blackboard or other platform that your university uses. This procedure will allow students to communicate with each other and share case documents outside of the classroom setting. Prosecutor and defense sides for each group should be assigned separate group pages. You will provide input, as well as monitor the discussion board. If the students have any questions or concerns regarding their case, they should be directed to you via the discussion board.

The following courtroom actors will be required for this activity. Choose and agree upon the roles the students would most like to perform. The teams are not limited to these roles. If other roles are developed, professor approval is required.

- Prosecutor
- Defense attorney
- Law enforcement
- Victim (If victim is deceased, use a family member, if necessary)
- Defendant
- Witnesses
- Expert witness
- Judge

SUGGESTED ANSWERS TO END-OF-CHAPTER ASSIGNMENTS

Review Questions

Objective 1: Summarize the ways legislatures exert control over the courts.

1. **How do legislatures control the courts?**

   Legislature has direct control over the court due to constitutional authorization and indirect control by confirming judicial appointees and setting the judiciary's budget and appropriating money for the judicial branch.

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2. **What kinds of controls are available to legislatures?**

   Direct controls include setting jurisdiction, and the ability of legislative bodies to create courts, set rules they must follow, and limit jurisdiction.

Objective 2: Summarize the ways the executive branch of the government exerts control over the courts.

1. How do government executives exercise control over the courts?

The president, from the executive branch, has authority to appoint federal judges, but deference is often given to senators when the vacancies are in their states.

2. What kinds of controls are exercised by government executives?

The prosecution of federal offenders is done by the U.S. attorney general, who is employed by the executive agency, the Department of Justice. The U.S. Attorneys also represent the government in civil cases against executive-branch employees.

Objective 3: Describe the hierarchical structure of the courts.

1.What kinds of controls do the higher courts exercise over lower courts?

High-court judges at the federal level are employed for life and don't need to fear losing their jobs for issuing unfavorable decisions. Higher courts exert direct control over lower courts through their judicial authority and rule-setting. Lower courts are expected to follow precedents.

2.How does the interpretation of higher-court decisions by the lower courts help to shape such controls?

Lower courts do not have the luxury of lifetime positions and their decisions can influence their ability to maintain their position. Therefore, lower courts may sometimes not want to follow the higher court rulings. Lower courts can ignore the higher court's decisions or implement the decisions sparingly as a means to shape the controls of the higher courts.

Objective 4: Summarize the various other ways in which control is exerted over the courts.

1. What kinds of controls does the public have over the courts?

Democracy allows the people to choose and vote in legislative representatives, judges, and executives, and this in turn allows the public to have some control over the courts.

The public is also able to participate in court through its openness. This availability to observe the court allows the public to decide whether or not they would like to continue to vote this judge into office.

2. **What is the role of interest groups in exercising such controls?**

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An interest group's purpose is to influence political decisions and policy through campaigning, contributing money, and sharing information to its members and the people they are trying to influence.

3. **How does the legal profession influence the courts?**

   The American Bar Association accredits law schools and in turn affects the training of attorneys. Most judges are attorneys. The ABA is also an interest group, and makes recommendations on nearly all criminal justice matters.

   Many attorneys belong to additional associations like the National Association of Criminal Defense Lawyers, National District Attorneys Association, and in addition, most attorneys belong to their local state-level ABA. State-level ABAs sponsor legislation and review bills.

4. **What is judicial activism? How does judicial activism influence the courts?**

   Judicial activism is the philosophy of using one's powers as a judge to do more than interpret the Constitution or laws by avoiding precedent and handing down decisions with sweeping implications for the future. A judicially active judge favors "judge-made" law and looks more to the future than the past.

   Often activism decisions have broad implications and may have sweeping and general language. *Kyllo v. United States* is an example of judicial activism.

What Will You Do?

Original Jurisdiction
Answer: Answers will vary. As a Supreme Court justice it is the responsibility to review all the matters involved and write an opinion.

The Legal Profession
Answer: Each student's response will vary; however, they should discuss the authenticity of online education and its relevancy to the legal profession. They should also address the issue of each state's bar examination being different in substantive content.

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