



THE JUDICIAL BRANCH

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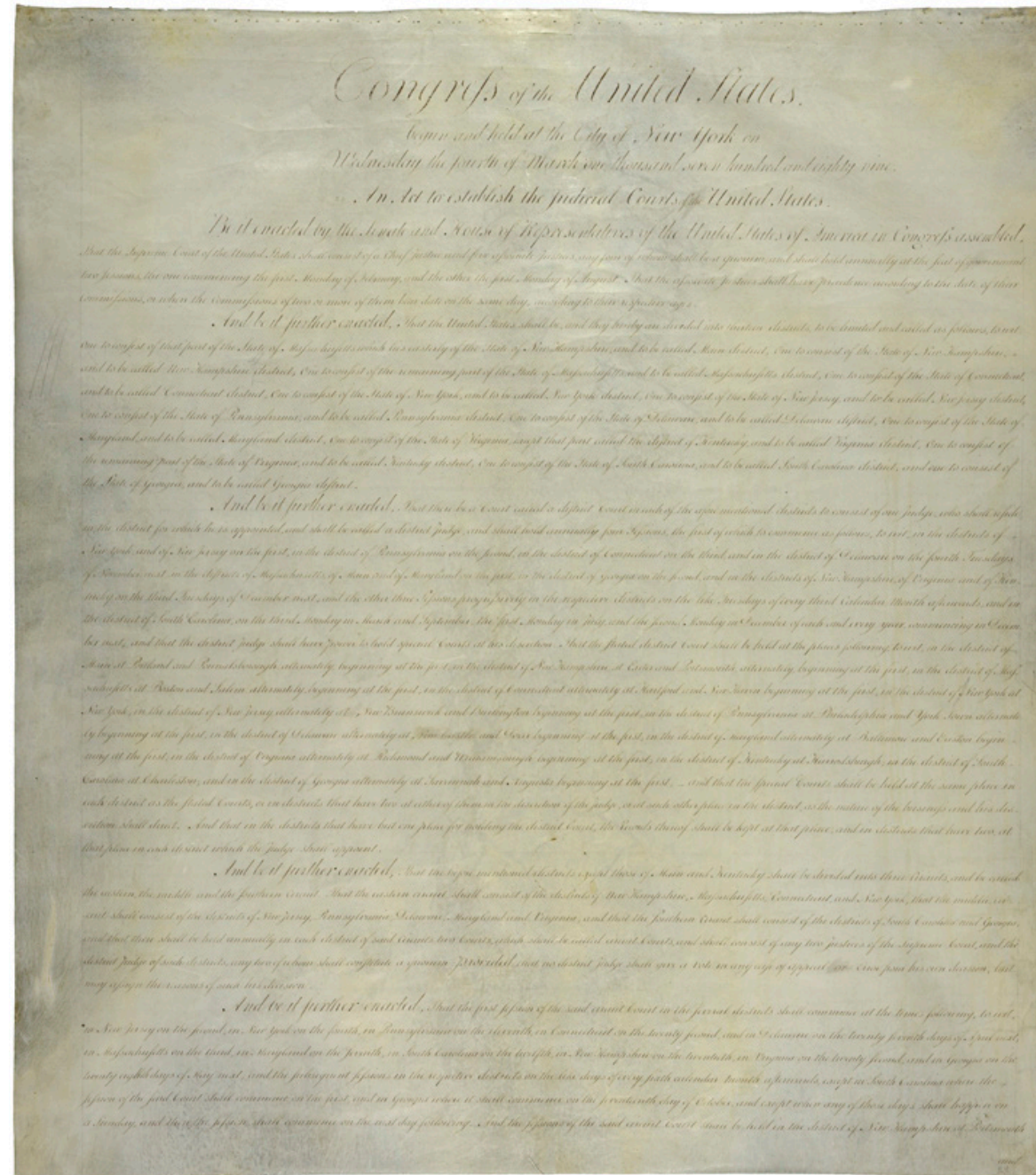


*U.S. Supreme Court Courtroom.
Courtesy of supremecourt.gov*

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THE JUDICIAL BRANCH



Judiciary Act of 1789.

Courtesy of the National Archives and Records Administration.

The Judicial branch of our government was established by Article III of the U.S. Constitution. The primary duty of the Judicial branch is to interpret the laws that are created by the Legislative branch and enforced by the Executive branch. Unlike Articles I and II, which laid out the Legislative and Executive branches with a fair amount of detail, Article III of the Constitution established the U.S. Supreme Court, the highest court in the land, but left it up to Congress to develop the rest of the federal court system.

The Judicial branch is the only branch for which the major officials are appointed, not elected. Federal judges and Supreme Court justices are appointed by the president, with the advice and consent of the Senate. They serve for life, or until they decide to resign, or retire, or are impeached for bad behavior. These lifetime appointments are meant to safeguard judges and justices from making rulings based on the desire for reelection.



Prior to the construction of the current U.S. Supreme Court Building, the court met in the Old Senate Chamber of the U.S. Capitol. This is how the chamber looked in 1905. Courtesy of the Library of Congress.

The Supreme Court meets in the Supreme Court Building, directly behind the U.S. Capitol in Washington, D.C. The current building was completed in 1935. Prior to 1935, the Supreme Court convened in the U.S. Capitol. Each federal judicial district across the country has at least one federal courthouse.

What is the Judiciary Act of 1789, and what did it do?

The Judiciary Act of 1789 was created in order to fulfill the directive of Article III of the Constitution to establish the federal court system under the U.S. Supreme Court. It was passed by the first U.S. Congress, following the ratification of the Constitution, and signed into law on September 24, 1789, by President George Washington.

The Judiciary Act set up a three-part federal court system consisting of district courts, courts of appeal, and the Supreme Court, and outlined the structure and jurisdiction



The U.S. Supreme Court Building as it appeared shortly after its completion in 1935, Washington, D.C. Courtesy of the Library of Congress.



of each. It also created the positions of U.S. Attorney General and U.S. Marshal, and set the original number of Supreme Court justices at six.

In many ways, the U.S. Supreme Court is the most unchanged of our country's constitutionally established institutions. Apart from a few minor changes, the powers established by the Judiciary Act of 1789 are the same system we employ today.

How is the modern federal court system structured?

The Judiciary Act created two levels of courts under the U.S. Supreme Court—district courts and circuit courts of appeal. There are currently 94 district courts and 13 circuit courts across the country. Federal courts only hear cases pertaining to federal law or constitutional issues, such as the right to privacy (14th Amendment, *Roe v. Wade*), the right against self-incrimination (5th Amendment, *Miranda v. Arizona*), and freedom of the press (1st Amendment, *New York Times Co. v. United States*). There are instances where cases involving state law can be heard in federal court, such as cases when state law overlaps with federal law or when a case involves plaintiffs and defendants from different states. This is only allowed for civil cases—criminal cases originating in a state must be tried in state courts, under state law. In cases where state and federal

law overlap, the prohibition against double jeopardy does not apply. A person can be tried in federal court even after being tried in state court for the same crime.

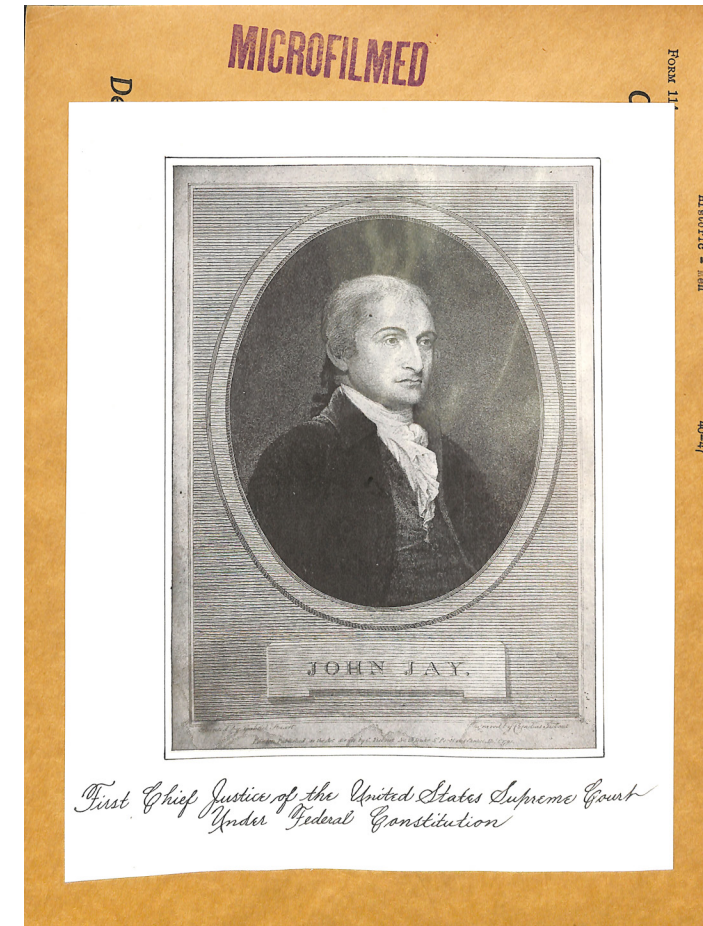
District courts

The United States is divided into 94 judicial districts, each with at least one district courthouse and district judge, one U.S. Attorney, and one U.S. Marshal. Many districts have more than one courthouse and judge. District courts hear both civil and criminal cases, and are the general trial courts of the federal court system.

District courts can also have federal magistrate judges, who are appointed by the district judges for four-year (part-time) to eight-year (full-time) terms. Magistrate judges are assigned certain duties by the federal district judge that include overseeing search warrants, arrest warrants, and bail, as well as preliminary and post-judgment hearings. Magistrate judges cannot handle federal felony charges.

As authorized by the Judiciary Act, each court also employs a court clerk. Clerks are appointed by the court, and serve at the pleasure of the court. The clerk is responsible for non-judicial activities—court filings, record-keeping, collecting and processing fines and fees, etc. The clerk for each district court also serves as the clerk for the corresponding circuit court.

ABOVE: Judge Isaac C. Parker Federal Building, Fort Smith, Arkansas. Courtesy of the U.S. Probation and Pretrial Services, Western District of Arkansas.



District courts have original jurisdiction in the following areas: civil actions pertaining to constitutional laws and treaties, civil actions between citizens of different states or citizens of the United States and foreign countries (this is called “diversity jurisdiction”), civil actions involving maritime jurisdiction of the United States, criminal cases involving federal law, and civil cases brought against the United States. States may only prosecute state criminal cases in state court, and the federal government may only prosecute federal criminal cases in federal court.

Circuit courts of appeal

Federal district court decisions can be appealed to the circuit courts of appeal, the next step in the federal court process. The 94 judicial districts are divided into 12 circuits, or regions. Each circuit has its own court of appeals, which hears appeals from district courts in that

ABOVE: John Jay, first Chief Justice of the U.S. Supreme Court. Courtesy of the National Archives and Records Administration.

region. In addition, there is a U.S. Court of Appeals for the Federal (D.C.) Circuit, which can hear cases from across the country, bringing the total number of circuit courts of appeal to 13. Each federal circuit court has an assigned number of judges, determined by Congress.

Circuit courts of appeal are appellate courts, so they do not hold trials. The dictionary defines appellate as “concerned with or dealing with applications for decisions to be reversed.” The circuit courts of appeal simply review cases. There are no witnesses, no juries, and no new evidence can be presented. The court hears reasons for appeal, and reviews the lower court’s records, proceedings, and applied laws. If these are deemed fair and appropriate, the lower court ruling will stand. If they are not, the case may be sent back to the lower court to be re-heard. Cases heard in the courts of appeal may be appealed to the U.S. Supreme Court.

Other federal courts

There are other, smaller courts that are also part of the federal court system. Each district court has an associated U.S. Bankruptcy Court. The U.S. Court of International Trade hears cases involving international trade and customs issues. The U.S. Court of Federal Claims hears disputes pertaining to federal contracts, the unlawful seizure of property by the U.S. government, and on-the-job injuries of federal employees. The U.S. Tax Court has jurisdiction in cases of tax disputes.

How is the U.S. Supreme Court structured?

The U.S. Supreme Court is the highest court in the land, and is sometimes referred to as “the court of last resort.” The Supreme Court has the sole ability to declare laws unconstitutional. This is called “judicial review.” Judicial review was established by the Supreme Court in the

case *Marbury v. Madison* in 1803. Because of this power, decisions of the Supreme Court can have a profound impact on our society, from allowing high-school student protests (*Tinker v. Des Moines Independent Community School District*, 1969) to deciding who we can marry (*Loving v. Virginia*, 1967, and *Obergefell v. Hodges*, 2015).

The Court is made up of one Chief Justice and eight associate justices. An uneven number of justices ensures a case never ends in a tied ruling. Supreme Court justices are appointed by the president, with the advice and consent of the Senate, and they serve until they resign or die, or they can be impeached and removed by Congress for bad behavior.

There have been attempts throughout our country's history to increase the number of justices on the Court, but the number has been set at nine since 1869. Prior to 1869, the number ranged from five to 10, with an original count of six set in the Judiciary Act of 1789. The number of justices is not set in the Constitution, but is determined by Congress. Over the years, politicians have tried to influence Congress to increase the number, allowing the sitting president to appoint more justices. This is referred to as "court packing." For example, President Franklin



ABOVE: U.S. Supreme Court Campus
Courtesy of aoc.gov



D. Roosevelt proposed a plan to increase the number of justices to as many as 15, allowing him to appoint several new justices, arguably to appoint justices who would support his New Deal legislation.

How is a case heard before the U.S. Supreme Court?

The U.S. Supreme Court term runs from October to October. The Court usually hears oral arguments from early October through early July. Each year, the Court receives over 7,000 requests to hear cases, but only 100–150 are chosen. Unlike other courts, the Supreme Court decides which cases it will hear and which it will not. The justices vote on the cases they would like to hear, and four of the nine justices must agree in order to hear a case. If the Court decides not to hear a case, the decision of the lower court stands.

There are three ways a case might reach the U.S. Supreme Court:

Original Jurisdiction — Original jurisdiction involves cases between two or more states (*New York v. New Jersey*, 1998). Original jurisdiction is the only jurisdiction established by the Constitution (Article III, Section 2), but it is the least common way cases reach the Supreme Court.

ABOVE: Anti-busing picketers outside the U.S. Supreme Court.
Courtesy of the Library of Congress



Circuit Court Appeal — This is most common way a case reaches the Supreme Court. If a party is not satisfied with a lower court ruling, they can appeal their case to the Supreme Court. The Court is asked to grant a *writ of certiorari*, which means the Court will request and review the records of the lower court.

State Court Appeal — Each state has its own supreme court that hears appeals, but the U.S. Supreme Court will sometimes accept appeals from state supreme courts when it is a constitutional issue.

To adjudicate any of the three types of cases, the justices will hear oral arguments by the attorneys representing the two sides. Both sides have up to 30 minutes to present their arguments, and the justices are allowed to interrupt the attorneys to ask questions. The Court generally hears cases on Mondays, Tuesdays, and Wednesdays, and hears two cases each day. Arguments are open to the media and the public on a first-come, first-served basis, as there is limited space in the courtroom.

Following oral arguments, the justices meet and discuss each case in what is called the Justices' Conference. One justice is appointed to write the decision of the Court, and if there are justices who disagree with the decision, one is chosen to write the dissenting opinion. If a justice agrees with the majority opinion, but not with the reasoning, that justice may write a separate (but

ABOVE: U.S. Supreme Court Associate Justice Ruth Bader Ginsburg being sworn in to the U.S. Supreme Court.
Courtesy of the National Archives and Records Administration.

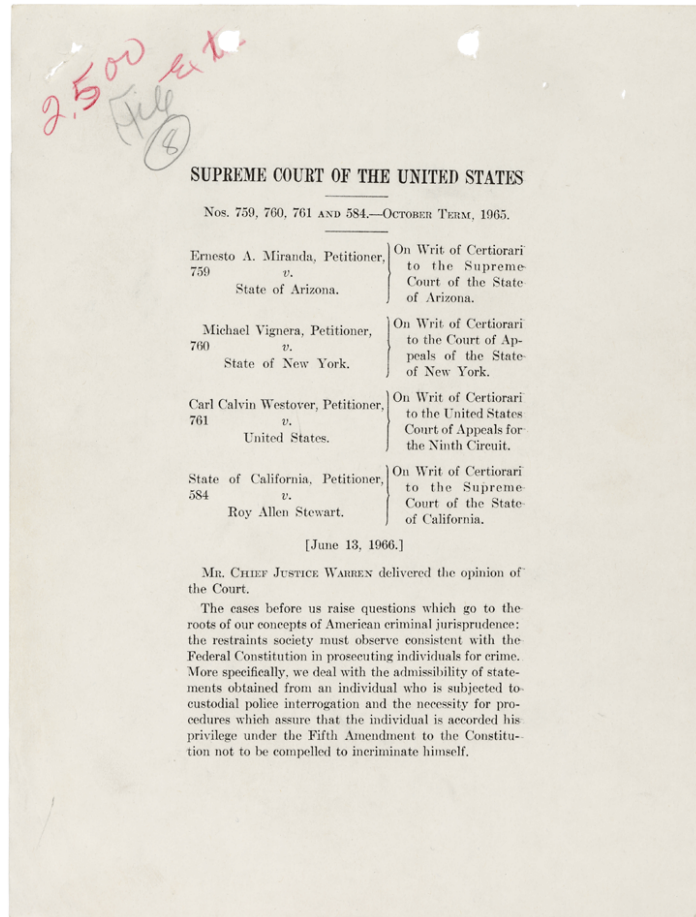
concurring) opinion. It often takes several months for Supreme Court opinions to be handed down. The earliest decisions are usually handed down in December, but some may not be handed down until the last day of the term. A decision is considered official once it has been presented in open court and/or made available to the public.

What was the 11th Amendment, and what did it do?

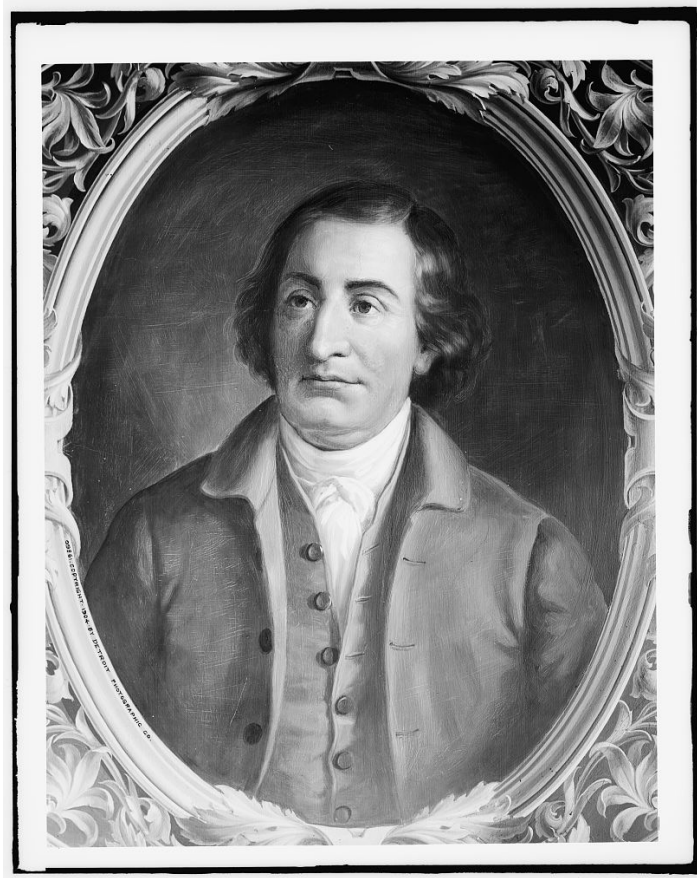
The 11th Amendment to the Constitution was one of the biggest early changes to the federal court system. It came on the heels of the unpopular 1792 Supreme Court decision in *Alexander Chisholm v. State of Georgia* to allow a private citizen of one state to sue the government of another state. The Amendment (ratified in 1795) prohibited the courts from hearing cases in which states were sued by citizens of another state or another country. It did not prohibit lawsuits against states by citizens of the state being sued or in matters of federal law or constitutional questions.

Conclusion

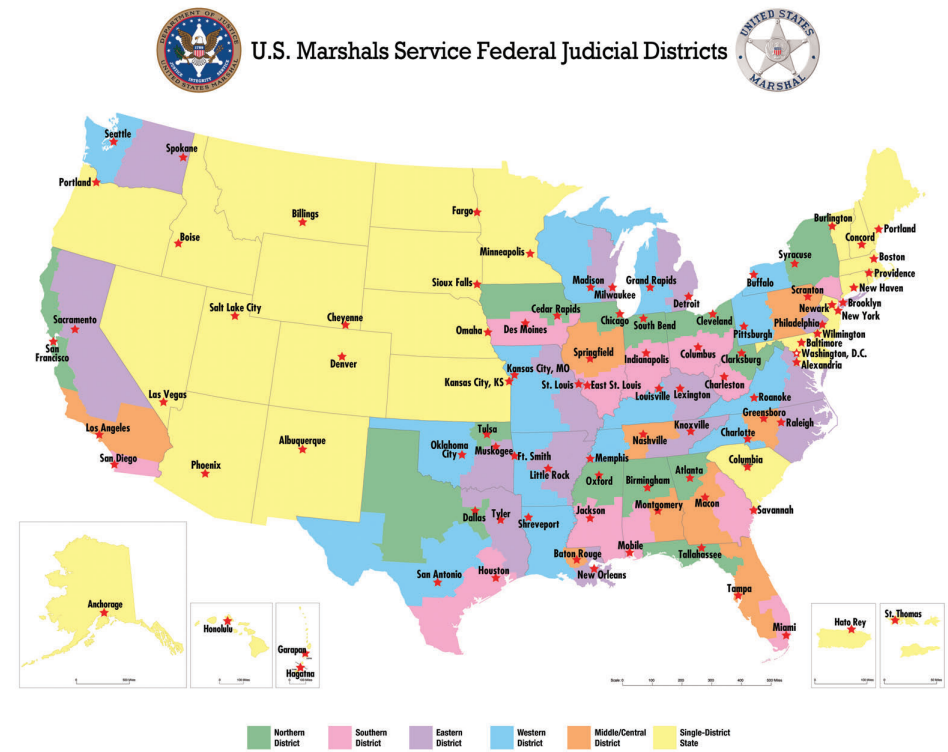
The Judicial branch of the United States government has the responsibility of protecting citizens from unconstitutional laws created and enforced by the other two branches. Most politicians are not constitutional lawyers or scholars, and it is up to the federal judiciary, especially the Supreme Court, to ensure that the laws they pass and expect American citizens to abide by fall within constitutional boundaries. Some argue that this makes the Judicial branch the most important of the three branches. As one of our most unchanged branches, its original design has stood the test of time, and is still a vital part of our democracy.



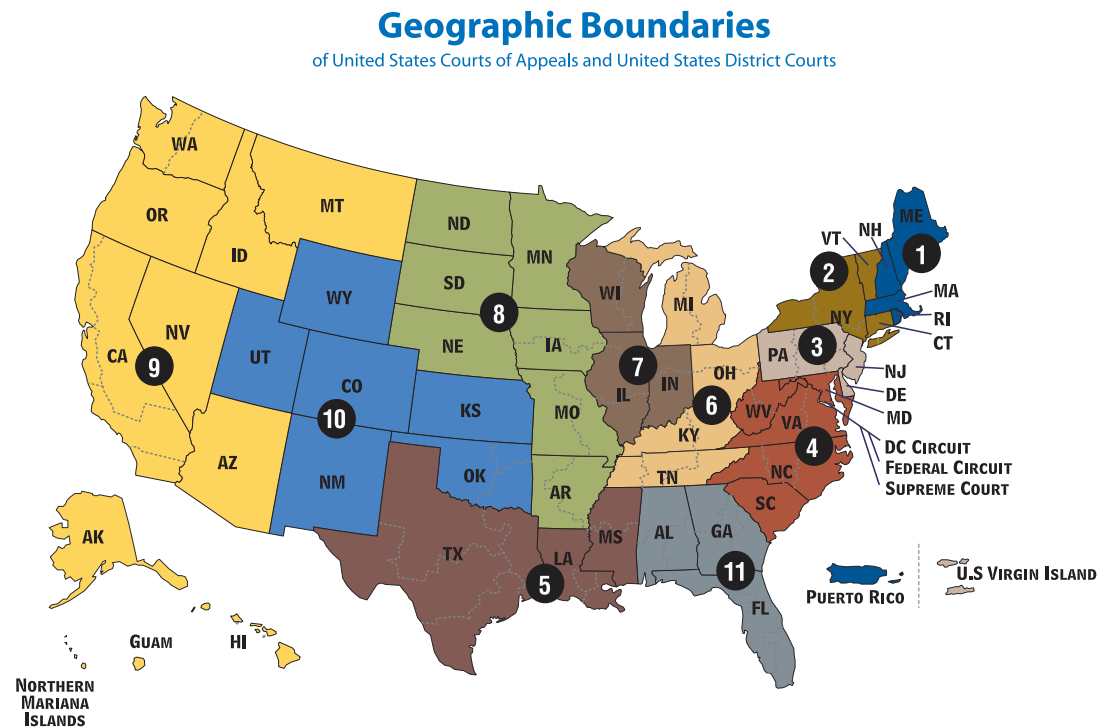
Opinion of the Court by Chief Justice Earl Warren in the case of *Miranda v. Arizona*.
Courtesy of the National Archives and Records Administration.



Edmund Randolph, first Attorney General of the United States.
Courtesy of the Library of Congress



United States Judicial District Map
Courtesy of the U.S. Marshals Service



U.S. Circuit Court Boundaries
Courtesy of uscourts.gov



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