Chapter 14
The Courts

The History of the Courts

• Chief Justice John Marshall claims judicial review in *Marbury v. Madison*.
• Judicial Review not specified in the Constitution
• A logical step for courts.
• The English “Constitution” was (and is) a compilation of judicial decisions; with a written Constitution it is logical to have all laws evaluated by that written document

Judiciary Act of 1789

• Judges can execute a writ of mandamus
• Literally means “We Command” in Latin.
• They can compel an official to act
• “… Commanding the performance of a particular act specified.” *Black’s Law Dictionary*

The Dred Scott Decision

• *Dred Scott v. Sanford* (1857)
• Racist court decides slaves are not citizens.
• Inconsistent with the Constitution where African American slaves were counted in the census and for apportionment of Congress
• Contributes to start of Civil War

Segregation Found Constitutional

• *Plessy v. Ferguson* (1896)
• “Separate but equal” is Constitutional
• Makes racial segregation legal
• A man who was 1/8\textsuperscript{th} African descent was asked to leave the “White car” on a railroad train by someone who recognized him and knew his heritage.

• Racist definition of racial identity.

**Segregation Found Unconstitutional**

• *Brown v. Board of Education of Topeka, Kansas.* (1954)

• Finds separate but equal unconstitutional.

• Evidence finds equality not practiced.

• Ends legal sanction of segregation

• Chief Justice Earl Warren becomes target of racists. “Impeach Earl Warren’” billboards throughout South

**Abortion Becomes Constitutional**

• *Roe v. Wade* (1973)

• Establishes woman’s right to an abortion.

• How late an abortion can be administered is established by present-day medicine, not law

• Science has changed that date.

• The courts have not changed it, yet.

**The First Amendment**

• *The Pentagon Papers* (1971)

• Courts refuse to allow prior restraint, that is, censorship

• Nixon’s Administration claims research project which drew negative conclusions about America’s involvement in Vietnam was “Top Secret” to keep out of newspapers

• Court claims of national security specious.
Executive Privilege

- The Nixon Tapes (1972)
- During the Watergate investigation it is discovered that Nixon taped every conversation.
- The Special Prosecutor believes evidence of President’s involvement on tapes
- Claims of executive privilege doesn’t apply to evidence in a criminal proceeding.

Judicial Activism

- Interpretation of the law establishes policy.
- The courts have taken the law and the Constitution where politicians could not.
- The courts reflect the philosophies of judges.
- Throughout the Civil Rights Era judicial activism was considered a liberal tool.
- On December 12, 2000 that changed.

How the Federal Courts are organized

- 94 federal district courts
- courts of original jurisdiction
- 12 Circuit Court of Appeals
- Opinions vary among circuits
- Something found legal in the Fifth Circuit might not be in the Seventh Circuit
- Until the Supreme Court decides

Supreme Court

- Accepts appeals from Appellate Courts
- Accepts appeals from states highest courts.
• Accepts special cases from district court
• Appointments to federal courts
• Appointed by president, approved by Senate
• Appointed for life (and good behavior).