

1 **I. Introduction**

2 This lecture answers  
3 four final exam questions.  
4 There are three key points  
5 about court decisions. First,  
6 the judiciary is an extremely  
7 important **policymaking**  
8 body; some of its rulings are  
9 as consequential as nearly any  
10 law passed by Congress or any  
11 executive action taken by the  
12 president. Second, federal  
13 courts have considerable  
14 discretion in their rulings, can  
15 go beyond the literal reading  
16 of the law and include the  
17 justices' own interpretation of  
18 the Constitution's provisions  
19 for individual rights. Third,  
20 the judiciary is a political as  
21 well as a legal institution, as  
22 illustrated by conflicts  
23 surrounding recent Supreme  
24 Court nominations.

25 Once a law is  
26 established, it is expected to  
27 be administered in an  
28 evenhanded way; however,  
29 the law itself is a product of  
30 contending political forces, is  
31 developed through a political  
32 process, has political content

33 and is applied by political  
34 appointees.

35 **II. The Federal Judicial**  
36 **System**

37 The Framers of the  
38 Constitution intended for the  
39 judiciary to be a separate and  
40 independent institution of the  
41 federal government. Federal  
42 judges are nominated by the  
43 president and confirmed by  
44 the Senate to serve terms of  
45 life or good behavior. The  
46 Constitution places no age,  
47 residency or citizenship  
48 qualifications on federal  
49 justices. (Article III).

50 1. The Supreme Court of  
51 the U.S. is the nation's  
52 highest court. The  
53 Constitution gives it  
54 both original (first court  
55 to hear and decide cases)  
56 and appellate jurisdiction  
57 (reviews cases that have  
58 already been heard in  
59 lower courts). Its  
60 original jurisdiction  
61 includes exclusive  
62 jurisdiction over cases  
63 involving diplomats and  
64 other foreign officials

1	and an ability to hear	36	<u>Court accepts only about</u>
2	cases involving disputes	37	<u>one hundred cases for a</u>
3	between states. E.g., The	38	<u>full hearing and written</u>
4	Supreme Court	39	<u>opinion that explains the</u>
5	accepting a case that	40	<u>basis for the Court's</u>
6	involves a dispute	41	<u>decision.</u> The Court
7	between New York and	42	issues another one
8	New Jersey over the	43	hundred to two hundred
9	plans of New York to	44	per curiam (unsigned)
10	build a hotel on Ellis	45	decisions that are made
11	Island is an example of	46	summarily without a
12	original jurisdiction	47	hearing and simply state
13	2. The primary function of	48	the facts of the case and
14	the judiciary is to	49	the Court's decision. A
15	interpret the law in such	50	majority of cases heard
16	a way that rules made in	51	by the Supreme Court
17	the past can be applied	52	come to it through its
18	reasonably in the	53	appellate jurisdiction.
19	present. The court	54	4. A key element of the
20	focuses on broad legal	55	Supreme Court's
21	questions.	56	influence is its ability to
22	3. Cases come to the	57	set legal precedents that
23	Supreme Court through	58	guide lower courts. A
24	approval of a <i>writ of</i>	59	<b>precedent</b> is a judicial
25	<i>certiorari</i> that the Court	60	decision that serves as a
26	may grant in response to	61	rule for settling
27	a request from the losing	62	subsequent cases of a
28	party in a lower-court	63	similar nature. <u>A</u>
29	case. Four of the nine	64	<u>Supreme Court that</u>
30	justices must agree to	65	<u>creates precedent is</u>
31	accept a case before it is	66	<u>described as one that</u>
32	granted a writ. <u>Each</u>	67	<u>relies on judicial</u>
33	<u>year about seven</u>	68	<u>activism.</u> <u>The doctrine of</u>
34	<u>thousand parties apply</u>	69	<u>judicial activism</u>
35	<u>for a certiorari, but the</u>	70	<u>suggests the Supreme</u>

1 Court should interpret 36  
 2 the law to protect rights 37  
 3 of individuals to achieve  
 4 social justice and protect  
 5 people from  
 6 unreasonable  
 7 government interference  
 8 in their lives.  
 9 5. The court hears cases  
 10 involving violations of  
 11 the U.S. Constitution,  
 12 federal laws and treaties.  
 13 6. Some cases are heard in  
 14 oral argument and all  
 15 cases are decided in  
 16 judicial conferences of  
 17 the nine Supreme Court  
 18 justices.  
 19 7. Judicial decisions  
 20 indicate which party the  
 21 Court supports and by  
 22 how large a margin.  
 23 8. Judicial opinions include  
 24 the reasons behind the  
 25 decision. Types of  
 26 opinions are the majority  
 27 opinion (a majority of  
 28 justices agree; their  
 29 opinion is binding),  
 30 concurring opinion (a  
 31 separate view written by  
 32 a justice who agrees with  
 33 the majority but for  
 34 different reasons), and  
 35 dissenting opinion

(disagrees with the  
 majority opinion).

38 While there is only one  
 39 U.S. Supreme Court at the top  
 40 of the judicial system, there  
 41 are other federal courts with  
 42 important jurisdiction. The  
 43 "upper-court myth" contends  
 44 that the appellate courts and  
 45 the Supreme Court in  
 46 particular are the only truly  
 47 significant courts and that  
 48 lower courts dutifully follow  
 49 the rulings handed down by  
 50 the appellate level.

51 1. Federal district courts  
 52 are trial courts that hear  
 53 most federal cases,  
 54 exercising considerable  
 55 discretion in their  
 56 judgments. Most of their  
 57 decisions are not  
 58 appealed to a higher  
 59 court. These are the  
 60 lowest level of federal  
 61 courts.

62 2. Cases are appealed from  
 63 the district courts to the  
 64 federal courts of appeals  
 65 that make up the second  
 66 level of the federal court  
 67 system. They review  
 68 trial-court decisions and

1 correct what they  
2 consider to be legal  
3 errors.

4 3. Special U.S. courts  
5 include the Claims  
6 Court, Court of  
7 International Trade, and  
8 Court of Military  
9 Appeals.

10 4. Each state has its own  
11 court system that has  
12 trial courts at the bottom  
13 level and appellate  
14 courts at the top. Each  
15 state can decide how to  
16 select its own justices  
17 with some preferring  
18 short appointment (merit  
19 plan) and others using  
20 general elections. The  
21 "Missouri Plan" applies  
22 to selection of judges at  
23 the state level.

24 The "**federal court**  
25 **myth**" inaccurately  
26 maintains that the federal  
27 judiciary is the most  
28 significant part of the  
29 judicial system and that  
30 state courts play a  
31 subordinate role. More than  
32 95 percent of the nation's  
33 legal cases are decided in  
34 state courts. State cases that

35 involve federal issues can  
36 be appealed to the federal  
37 court system.

### 38 **III. Federal Court** 39 **Appointees**

40 Supreme Court justices and  
41 federal judges are nominated  
42 by the president and  
43 confirmed by the Senate.

- 44 1. Presidents prefer to  
45 nominate justices who  
46 share their own political  
47 and ideological beliefs.  
48 Partisanship is an  
49 important factor in the  
50 nomination process.
- 51 2. The Senate approves  
52 nearly 80 percent of  
53 presidential nominees.
- 54 3. The informal rule of  
55 senatorial courtesy  
56 governs appointments to  
57 the lower federal courts.  
58 Senatorial courtesy holds  
59 that a senator from the  
60 state in which a vacancy  
61 has arisen should be  
62 given a say in the  
63 nomination if the senator  
64 is of the same party as  
65 the president. It is  
66 customary for the Senate

1 to reject the nominee if  
2 his home state senator  
3 does not support him.

4 4. Partisan backgrounds of  
5 judges are a significant  
6 influence on their  
7 decisions, but all judicial  
8 decision-making may  
9 not reflect partisan  
10 differences.

11 5. Prior judicial experience  
12 has become an important  
13 criterion for recent  
14 judicial appointments.

15 6. The federal court system  
16 over-represents white  
17 males and under-  
18 represents females and  
19 minorities. Whether the  
20 courts should mirror the  
21 demographic  
22 characteristics of the  
23 American people is a  
24 matter of debate.

#### 25 **IV. The Nature of Judicial** 26 **Decision Making**

27 Federal judges can issue  
28 decisions only in actual cases  
29 that come before them. They  
30 have less discretionary power  
31 than elected officials. Justices  
32 are required to identify the  
33 facts of a case, determine and

34 sometimes formulate the  
35 relevant legal principles or  
36 rules, and then apply them to  
37 the case at hand. Although  
38 federal district courts are  
39 theoretically bound by  
40 Supreme Court precedents,  
41 they sometimes deviate  
42 because the facts of a case are  
43 seldom precisely the same as  
44 those of a similar case decided  
45 by the Supreme Court, federal  
46 judges may misunderstand the  
47 Court's position on a previous  
48 case, or the opinion of a  
49 Supreme Court case may be  
50 sufficiently broad so that  
51 lower federal courts can  
52 reasonably interpret it in  
53 somewhat different ways.

- 54 1. Justices are constrained  
55 by the facts of a case as  
56 determined by trial  
57 courts. These are the  
58 relevant circumstances  
59 of a legal dispute or  
60 offense and determine  
61 which law or laws are  
62 applicable to the case.
- 63 2. They are constrained by  
64 the existing laws that  
65 apply to the situation.  
66 These include  
67 constitutional provisions,

1	legislative statutes, or	36	who must make choices
2	judicial precedents.	37	on the basis of their
3	3. Judicial interpretation is	38	understanding of how
4	restricted by the purpose	39	the law has been applied
5	and intent of the U.S.	40	in previous situations. A
6	Constitution, federal	41	business firm that is
7	statutes and	42	seeking to comply with
8	administrative	43	environmental protection
9	regulations, and	44	laws, for example, can
10	interpretation of	45	develop company
11	<u>precedents (holding that</u>	46	policies that will keep
12	<u>a court's decision should</u>	47	the company safely
13	<u>be consistent with</u>	48	within the law if court
14	<u>previous rulings). This</u>	49	decisions in this area are
15	<u>principle is known as</u>	50	predictable. But if
16	<u>precedent and reflects</u>	51	courts routinely ignore
17	<u>the philosophy of stare</u>	52	precedent, a firm might
18	<u>decisis (Latin for "to</u>	53	unintentionally engage
19	<u>stand by things that have</u>	54	in activity that a court
20	<u>been settled"):</u>	55	could arbitrarily
21	<u>doctrine that principles</u>	56	conclude was unlawful.
22	<u>of law, once established,</u>	57	In addition, Congress
23	<u>should be accepted as</u>	58	may structure its debate
24	<u>authoritative in all</u>	59	on legislation in such a
25	<u>subsequent similar cases.</u>	60	way as to make its intent
26	Precedent is important	61	clear to the courts and
27	because it gives	62	thus influence
28	predictability to the	63	subsequent court
29	application of law. If	64	decisions on the
30	courts routinely ignored	65	legislation.
31	how similar cases had		
32	been decided in the past,	66	
33	they would create	67	Government has an
34	confusion and	68	obligation to citizens and
35	uncertainty among those		

1	1. Rulings made by justices	33	of a litigant's
2	reflect not only legal	34	position.
3	influences but also political	35	c. Elected officials
4	ones, which come from both	36	try to persuade the
5	outside and inside the judicial	37	judiciary to hand
6	system.	38	down rulings
7		39	avored by their
		40	constituents.
8	1. Outside influences on	41	Congress can
9	court decisions include	42	exercise authority
10	public expectations as	43	over the appellate
11	well as pressure from	44	jurisdiction of the
12	interest groups and	45	Courts. The
13	elected representatives.	46	executive branch
		47	can choose which
14	a. Justices are	48	aspects of law it
15	responsive to	49	wants to
16	public opinion,	50	implement, while
17	though less so than	51	presidents can
18	are elected	52	influence the
19	officials.	53	courts through
20		54	their judicial
21	b. Interest groups can	55	appointments.
22	influence the	56	Changes in
23	courts by filing	57	membership on the
24	<i>amicus curiae</i>	58	Supreme Court,
25	briefs. These are	59	political trends,
26	briefs filed by non-	60	and public opinion
27	litigants in support	61	all may influence
28		62	major shifts in the
29		63	U. S. Supreme
30		64	Court's positions
31		65	on broad issues.
32		66	2. Inside influences on
		67	court decisions include

1	the justices' own	33	guiding principle
2	political beliefs.	34	that governs
3	a. Most justices	35	legislative
4	maintain consistent	36	apportionment is
5	political beliefs	37	one man, one vote.
6	throughout their	38	With the exception
7	tenure.	39	of its decision in
8	b. Major shifts in the	40	<i>Brown v. Board of</i>
9	Supreme Court's	41	<i>Education</i> , no
10	positions follow	42	decision of the
11	changes in court	43	Supreme Court in
12	personnel.	44	recent years has
		45	had such an impact
13		46	on the social and
		47	political fabric of
14	<b>V. Judicial Power and</b>	48	the country. State
15	<b>Democratic Government</b>	49	legislatures that
		50	had long been
16	The courts are not	51	under the control
17	a majoritarian	52	of minority rural
18	institution since	53	populations would
19	federal judges are	54	now be elected by
20	not elected and	55	a true majority of
21	cannot be held	56	the people.
22	directly	57	Legislatures more
23	accountable by the	58	representative of
24	public for their	59	the people would
25	decisions. Yet, the	60	radically change
26	Supreme Court's	61	funding formulas
27	decisions can have	62	for schools, roads
28	profound affects on	63	and social services.
29	the entire nation.	64	In terms of
30	E.g. <i>Reynolds v.</i>	65	inclusion, a large
31	<i>Sims</i> (1964)—The	66	number of people,
32	Court held that the	67	urban and

<p>1 suburban residents</p> <p>2 in once-rural states</p> <p>3 could now exercise</p> <p>4 their vote on an</p> <p>5 equal basis.</p> <p>6 1. Court decisions often</p> <p>7 reflect the political</p> <p>8 philosophy of the judges,</p> <p>9 who constitute a tiny</p> <p>10 political elite that wields</p> <p>11 significant power.</p> <p>12 2. The court can act as a</p> <p>13 check on lawmaking</p> <p>14 majorities.</p> <p>15 3. Courts exercise judicial</p> <p>16 review when declaring</p> <p>17 executive or legislative</p> <p>18 action unconstitutional.</p> <p>19 This power was first</p> <p>20 asserted in the landmark</p> <p>21 <i>Marbury v. Madison</i></p> <p>22 (1803) when the</p> <p>23 Supreme Court rebuked</p> <p>24 both the president and</p> <p>25 Congress. Another</p> <p>26 example is the Court's</p> <p>27 decision in <i>U. S. TERM</i></p> <p>28 <i>LIMITS, INC., et al.,</i></p> <p>29 <i>PETITIONERS 93-1456</i></p> <p>30 <i>v. RAY THORNTON et</i></p> <p>31 <i>al. WINSTON BRYANT,</i></p> <p>32 <i>ATTORNEY GENERAL</i></p> <p>33 <i>OF ARKANSAS,</i></p> <p>34 <i>PETITIONER 93-1828</i></p>	<p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p>	<p>(1995)-- Allowing</p> <p>individual States to</p> <p>adopt their own</p> <p>qualifications for</p> <p>congressional service</p> <p>would be inconsistent</p> <p>with the Framers' vision</p> <p>of a uniform National</p> <p>Legislature representing</p> <p>the people of the United</p> <p>States. If the</p> <p>qualifications set forth in</p> <p>the text of the</p> <p>Constitution are to be</p> <p>changed, that text (the</p> <p>Constitution) must be</p> <p>amended.</p> <p>The question of the proper</p> <p>role of a judiciary in a</p> <p>democratic political system</p> <p>centers on the issue of</p> <p>legitimacy. There are two</p> <p>schools of thought regarding</p> <p>how far the judiciary should</p> <p>go in asserting its authority</p> <p>over that of state legislatures,</p> <p>Congress and the presidency.</p> <p>1. <b><u>Judicial restraint</u></b> holds</p> <p><u>that the judiciary should</u></p> <p><u>respect precedent and</u></p> <p><u>defer to the judgment of</u></p> <p><u>legislatures. The judges'</u></p> <p><u>role is to discover the</u></p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

1	<u>application of legislation</u>	36	<u>judicial power and</u>
2	<u>and precedent to specific</u>	37	<u>involve themselves</u>
3	<u>cases rather than to</u>	38	<u>extensively in</u>
4	<u>search for new principles</u>	39	<u>interpreting and</u>
5	<u>that essentially alter the</u>	40	<u>enlarging upon the law.</u>
6	<u>meaning of a law.</u>	41	<u>Liberal activists make</u>
7	a. Advocates of	42	<u>decisions that attempt to</u>
8	judicial restraint	43	<u>further social justice</u>
9	contend that when	44	<u>while conservative</u>
10	the judiciary	45	<u>activists restrict</u>
11	assumes policy	46	<u>governmental</u>
12	functions that	47	<u>intervention in the</u>
13	traditionally belong	48	<u>economy and restrict</u>
14	to elected	49	<u>application of due</u>
15	institutions, it	50	<u>process to protect the</u>
16	undermines the	51	<u>accused.</u>
17	fundamental	52	3. The proper role of the
18	premise of self-	53	judiciary often hinges on
19	government: the	54	value judgments
20	right of the	55	regarding the conflicting
21	majority to choose	56	concepts of majority rule
22	society's policies.	57	and protecting individual
23	b. Secondly, judicial	58	rights and minority
24	self-restraint is	59	interests.
25	supported because	60	4. In his 84-page response
26	it preserves the	61	to the Senate Judiciary
27	public support that	62	Committee's request to
28	is essential to the	63	expound on "judicial
29	long-term authority	64	activism" and respond to
30	of the courts. It	65	criticism that "the
31	often upholds the	66	judicial branch has
32	<i>status quo.</i>	67	usurped many of the
33	2. <b><u>Judicial activists</u></b>	68	prerogatives of other
34	<u>suggest that the courts</u>	69	branches and levels of
35	<u>take a generous view of</u>	70	government", U. S.

1	Supreme Court nominee	36	commission to solve
2	John Roberts wrote in	37	society's problems, as
3	August 2005: (a) "To the	38	they see the, but simply
4	extent the term 'judicial	39	to decide cases before
5	activism' is used to	40	them according to the
6	describe unjustified	41	rule of law....Second, a
7	intrusions by the	42	judge needs the humility
8	judiciary into the realm	43	to appreciate that he is
9	of policy making, the	44	not necessarily the first
10	criticism is well-	45	person to confront a
11	founded." (b) "It is not	46	particular issue.
12	'judicial activism' when	47	Precedent plays an
13	the courts carry out their	48	important role in
14	constitutionally-assigned	49	promoting the stability
15	function and overturn a	50	of the legal
16	decision of the	51	system....Third, a judge
17	Executive or Legislature	52	must have the humility
18	in the course of	53	to be fully open to the
19	adjudicating a case or	54	views of his fellow
20	controversy properly	55	judges on the court."
21	before the courts." (c)	56	Roberts wrote, "It is
22	"The proper exercise of	57	difficult to comment on
23	the judicial role in our	58	either 'judicial activism'
24	constitutional system	59	or judicial restraint' in
25	requires a degree of	60	the abstract, without
26	institutional and personal	61	reference to the
27	modesty and humility.	62	particular facts and
28	This essential modesty	63	applicable law of a
29	manifests itself in	64	specific case. He added,
30	several ways: First,	65	"Precedent plays an
31	judges must be	66	important role in
32	constantly aware that	67	promoting the stability
33	their role, while	68	of the legal system." A
34	important, is limited.	69	sound judicial
35	They do not have a	70	philosophy should

1 reflect recognition of the  
2 fact that the judge  
3 operates within a system  
4 of rules developed over  
5 the years by other judges  
6 equally striving to live  
7 up to the judicial oath.”  
8 Roberts went on to write  
9 that although their role  
10 in deciding major social  
11 issues of the day should  
12 be “limited,” justices are  
13 fully within their power  
14 to overturn acts of  
15 Congress and the  
16 president if those  
17 branches overstep their  
18 authority.<sup>1</sup>

## 20 Major Concepts

21 **Appellate jurisdiction** - The  
22 authority of a given court to  
23 review cases that have already  
24 been tried in lower courts and  
25 are appealed to it by the losing  
26 party; such a court is called an  
27 appeals court or appellate  
28 court.  
29

---

<sup>1</sup> Yen, Hope, *The Associated Press*, in *The Ann Arbor News*, 3 August 2005, A5

30 **Compliance** - The issue of  
31 whether a court's decision will  
32 be respected and obeyed.

33  
34 **Concurring opinion** - A  
35 separate opinion written by a  
36 Supreme Court justice who  
37 votes with the majority in the  
38 decision on a case but who  
39 disagrees with the majority's  
40 reasoning.

41  
42 **Decision** - A vote of the  
43 Supreme Court in a particular  
44 case that indicates which party  
45 the justices side with and by  
46 how large a margin.

47  
48 **Dissenting opinion** - The  
49 opinion of a justice in a  
50 Supreme Court case that  
51 explains the reasons for  
52 disagreeing with the majority's  
53 decision.

54  
55 **Facts (of a court case)** - The  
56 relevant circumstances of a  
57 legal dispute or offense as  
58 determined by a trial court.

59  
60 **Judicial activism** - The  
61 doctrine that the courts should  
62 develop new legal principles  
63 when judges see a compelling  
64 need, even if this action places

1 them in conflict with the  
2 policy decisions of elected  
3 officials.  
4  
5 **Judicial conference** - A  
6 closed meeting of the justices  
7 of the U.S. Supreme Court to  
8 discuss the points of the cases  
9 before them; the justices are  
10 not supposed to discuss  
11 conference proceedings with  
12 outsiders.  
13  
14 **Judicial restraint** - The  
15 doctrine that the judiciary  
16 should be highly respectful of  
17 precedent and should defer to  
18 the judgment of legislatures.  
19 The doctrine claims that the  
20 job of judges is to work within  
21 the confines of laws set down  
22 by tradition and law-making  
23 majorities.  
24  
25 **Judicial review** - The power  
26 of courts to decide whether a  
27 governmental institution has  
28 acted within its constitutional  
29 power and, if not, to declare  
30 its action null and void.  
31  
32 **Jurisdiction (of a court)** - A  
33 given court's authority to hear  
34 cases of a particular kind. It  
35 may be original or appellate.

36  
37 **Laws (of a court case)** - The  
38 constitutional provisions,  
39 legislative statutes, or judicial  
40 precedents that apply to a  
41 court case.  
42  
43 **Legitimacy (of judicial  
44 power)** - The issue of the  
45 proper limits of judicial  
46 authority in a political system  
47 based in part on the principle  
48 of majority rule.  
49  
50 **Majority opinion** - A  
51 Supreme Court opinion that  
52 results when a majority of the  
53 justices are in agreement on  
54 the legal basis of the decision.  
55  
56 **Opinion (of a court)** - A  
57 court's written explanation of  
58 its decision, which serves to  
59 inform others of the legal  
60 basis for the decision.  
61  
62 **Original jurisdiction** - The  
63 authority of a given court to  
64 be the first court to hear a  
65 case.  
66  
67 **Plurality opinion** - A court  
68 opinion that results when a  
69 majority of justices agree on a  
70 decision in a case but do not

1 agree on the legal basis for the  
2 decision. In this instance, the  
3 legal position held by most of  
4 the justices on the winning  
5 side is called a plurality  
6 opinion.

7  
8 **Precedent** - A judicial  
9 decision in a given case that  
10 serves as a rule of thumb for  
11 settling subsequent cases of a  
12 similar nature.

13  
14 **Senatorial courtesy** - The  
15 tradition that a U.S. senator

16 from the state in which a  
17 federal judicial vacancy has  
18 arisen should have a say in the  
19 president's nomination of the  
20 new judge if the senator is of  
21 the same party as the  
22 president.

23  
24 **Writ of certiorari** -  
25 Permission granted by a  
26 higher court to allow a losing  
27 party in a legal case to bring  
28 the case before it for a ruling.