

VOCAB QUIZ:**TEST:****AMERICAN GOVERNMENT/CIVICS****The Judicial Branch**

*The **judiciary** is simply the judicial branch of government, which includes the court system and the judges.

SSCG14: Demonstrate knowledge of the criminal justice process.

e. Contrast the procedures related to civil suits with criminal proceedings.

- **Criminal** cases involve violation of a law and are brought by a local, state, or federal government.
- **Civil** cases do not involve a crime. Civil cases are generally brought by private individuals or corporations seeking to collect money owed or monetary damages. Civil cases also include divorce or issues related to child custody.
- The **defendant** is the person whom the complaint is filed against. This is the person accused of committing a crime or injuring another person.
- The **prosecution** is the government (state) side of a legal case that argues that the person accused of a crime is guilty
- The **plaintiff** is the person who files suit in a civil case. This person claims to have suffered an injury.
- **Criminal cases** are those cases in which a defendant is charged with committing a crime that Congress or a state has declared by law to be a federal or state crime.

In a criminal case, the victim does not bring the case against the defendant. The state or federal government serves as the prosecution. The prosecution seeks jail time, fines, or both for a defendant.

- **Civil cases** involve a non-criminal matter, such as disputes over contracts, property disputes, divorce, or child custody.

A civil case begins when a person or entity, called the plaintiff, claims that another person or entity has failed to carry out a legal duty owed to the plaintiff. Both parties are referred to as 'litigants'. The plaintiff may ask the court to order the defendant to carry out certain duties or make compensation. The plaintiff does not have to prove beyond a reasonable doubt, as is required in a criminal case.

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b. Categorize different types of crimes.

*There are different levels of seriousness of crimes. A **misdemeanor** is a less serious crime that usually carries a fine and a term of less than one year in jail, if at all. A **felony** is a more serious crime that carries a sentence of one year or greater in a state or federal prison.

***Personal crimes** are offenses against a person and are crimes that result in physical or mental harm to another person. Examples of personal crimes include:

- **Assault** – an intentional act that causes fear of harmful or offensive touching, even if contact does not occur. The act **MUST** be intentional.
- **Battery** – intentional physical contact or offensive touching where the victim has not given consent to be touched.
- **Homicide** – the killing of another human being.

***Property crimes** are offenses against property and involve an interference with another person's property.

Examples include:

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- **Larceny (theft)** – taking and carrying away someone else’s property with the intent to permanently deprive that person of their property. Ex: stealing another person’s vehicle
- **Burglary** – breaking and entering into another person’s home with the intent to commit a felony once inside the home. Ex: home break-in and stealing another’s property from the home
- **Robbery** – theft by force; taking property from another person through the use of force, intimidation, or the threat of force. Ex: an individual holding up the cashier in a convenience store demanding money from the cash register
- **Arson** – the willful and malicious burning of a property or structure. Ex: the intentional forest fires set in the Great Smoky Mountains in late 2016
- **Forgery** – the creation, altering, forging, or imitating of any document with the intent to defraud another person. Ex: stealing someone’s checks and imitating their signature and then cashing the check

***Statutory crimes** are violations of specific state or federal statutes and can involve personal or property offenses. Ex: drunk driving (DUI) or selling alcohol to a minor

SSCG14: Demonstrate knowledge of the criminal justice process.

c. Analyze the procedures in the criminal justice process.

The criminal justice system varies from state to state and from the state to federal level; however, the criminal justice process generally includes the following stages:

- **Investigation** – Police investigate a crime to gather evidence to identify a suspect and support an arrest.
- **Arrest** – An arrest is when police take a suspect into custody until he or she can be brought before the court. There must be probable cause for a suspect to be arrested.
- **Indictment** – An indictment is a formal charge brought by a grand jury or filed by a prosecutor. An indictment is required for capital offenses. The grand jury only hears evidence presented by the prosecutor. The grand jury determines whether there is sufficient evidence to formally charge the defendant.
- **Arraignment** – A judge conducts arraignments; this occurs before trial. The defendant makes his or her plea. The most common pleas are guilty or not guilty.
- **Bail** – Depending on the crime the defendant is charged with, a judge has the option of granting bail. Bail is money or property that a defendant puts forth as security to make sure they will show up for further criminal proceedings such as trial and sentencing. If the crime is serious or if the judge believes that the defendant may flee out of the court’s jurisdiction, bail may be denied or set so high that it would be impossible to post bail.
- **Plea bargain** – Plea bargains usually involve the defendant pleading guilty to a lesser charge, fewer charges than originally charged with in an indictment, or a reduced statement. Plea bargaining helps both the prosecution and defense avoid a potentially long, expensive trial.
- **Trial** – A trial is held before a judge or a jury. The defendant has the choice whether he or she wants a trial by a jury of peers or before a judge alone, called a bench trial. Evidence is presented by both the prosecution and the defense.
- **Verdict** – The verdict is a decision of guilt or innocence. If a defendant is found guilty, it must be ‘beyond a reasonable doubt’, meaning that the judge or jury is 100% certain that the evidence supports a verdict of guilty. If there are multiple charges, the judge or jury may find the defendant guilty on all or some of the charges or may find the defendant guilty of a lesser charge.
- **Sentencing** - The sentencing is determined by the judge. Possible sentences include: a fine, community service, probation, or a period of incarceration in a jail or prison, or a combination of the above.
- **Appeal** – A defendant found guilty of charges has the right to appeal the verdict to an appellate court. The defendant files an appeal in the hopes that he or she will have the verdict reversed or be granted a new trial.

SSCG14: Demonstrate knowledge of the criminal justice process.

d. Examine the different types of sentences a convicted person can receive.

***Sentences** are punishments for convicted defendants. The following are the most common types of sentences:

- **Death penalty/capital punishment** – this is the most serious sentence and is reserved for the most heinous crimes, such as murder. Each state decides whether or not the death penalty is a sentencing option for defendants in their state. The most common methods used to carry out the death penalty include lethal injection and the electric chair.
- **Incarceration** is when a defendant is sent to a jail or prison. A **jail** is a short-term lockup center usually run by counties and operated by sheriff's departments. Inmates housed in jails include defendants awaiting trial and defendants convicted of misdemeanors. **Prisons** are long-term facilities operated by state and federal governments. Most prison inmates are convicted felons serving longer than one year in prison.
- **Probation** is the most frequently used criminal sanction and is served in lieu of incarceration. Probationers are required to adhere to strict conditions, such as regularly reporting to a probation officer, obeying all laws, and staying away from drugs. If a probationer violates any of the conditions of his or her probation, the judge may revoke the probation and send the defendant to jail or prison.
- **Boot camps** are typically reserved for first-time offenders or teenagers. The offenders live in military type barracks and undergo rigorous physical and behavioral training for three to nine months. Offenders who successfully complete boot camp avoid incarceration.
- **Fines** are common for first-time offenders of less serious crimes, such as shoplifting, or a minor drug possession.
- **Community service** is a way to pay the community back through doing work that benefits the public, such as picking up trash and washing away graffiti.

Steps in a Criminal Trial

Directions: Listed are the basic steps in criminal due process. Number the steps 1 to 7 in logical order for the criminal process.

_____ The accused appeals the sentence.

_____ The accused is indicted

_____ The accused is arrested

_____ The accused receives the verdict.

_____ The accused is informed of his or her right to counsel and his or her right to remain silent.

_____ The accused receives the sentence.

_____ The accused is tried by a jury.

Civil Law versus Criminal Law comparison chart

	Civil Law	Criminal Law
Definition	Civil law deals with the disputes between individuals, organizations, or between the two, in which compensation is awarded to the victim.	Criminal law is the body of law that deals with crime and the legal punishment of criminal offenses.
Purpose	To deal with the disputes between individuals, organizations, or between the two, in which compensation is awarded to the victim.	To maintain the stability of the state and society by punishing offenders and deterring them and others from offending.
Jury opinion	In cases of civil law, the opinion of the jury may not have to be unanimous. Laws vary by state and country. Juries are present almost exclusively in criminal cases; virtually never involved in civil actions. Judges ensure law prevails over passion.	In the criminal justice system, the jury must agree unanimously before a defendant is convicted.
Case filed by	Private party	Government
Decision	Defendant can be found liable or not liable, the judge decides this.	Defendant is convicted if guilty and acquitted if not guilty, the jury decides this.
Standard of proof	"Preponderance of evidence." Claimant must produce evidence beyond the balance of probabilities.	"Beyond a reasonable doubt"
Burden of proof	Claimant must give proof; however, the burden may shift to the defendant in situations of Res Ipsa Loquitur (The thing speaks for itself).	"Innocent until proven guilty": The prosecution must prove defendant guilty.
Type of punishment	Compensation (usually financial) for injuries or damages, or an injunction in nuisance.	A guilty defendant is subject to Custodial (imprisonment) or Noncustodial punishment (fines or community service). In exceptional cases, the death penalty.
Examples	Landlord/tenant disputes, divorce proceedings, child custody proceedings, property disputes, personal injury, etc.	Theft, assault, robbery, trafficking in controlled substances, murder, etc.
Appeals	Either party (claimant or defendant) can appeal a court's decision.	Only the defendant may appeal a court's verdict. The prosecution is not allowed to appeal.

SSCG14: Demonstrate knowledge of the criminal justice process.

- a. Explain an individual's due process rights (e.g., 4th, 5th, 6th, and 14th Amendments).

*Under **due process**, the government must act fairly and in accord with established rules in all that it does. Due process requires that both the ways in which the government acts and the laws under which it acts must be fair. There are two categories of due process: **procedural due process** and **substantive due process**. Procedural due process looks at how the law is implemented and enforced. Substantive due process looks at whom the law will impact and what impact the law will have.

*The **4th Amendment** protects American citizens from unreasonable searches and seizures and arbitrary arrests, and is the basis of laws regarding search warrants, wire taps, other methods of surveillance, and topics related to privacy. This amendment introduces the term probable cause; police cannot search or seize property without a warrant or reasonable grounds or suspicions of wrong doing.

*The **5th Amendment** provides that the federal government cannot deprive any person of life, liberty, or property without due process. There are several clauses incorporated into the 5th Amendment. Overall, this amendment imposes restrictions on the government's prosecution of persons accused of crimes including: due process law and the prohibition of double-jeopardy and self-incrimination.

*The **6th Amendment** guarantees certain rights to criminal defendants: right to a speedy and public trial, the right to legal representation, the right to an impartial jury, the right to know who your accusers are, and the nature of the criminal charges brought against you. All of these elements represent the concept of due process.

*The **14th Amendment** provides that state and local governments cannot deprive any person of life, liberty, or property without due process. The provisions in the Bill of Rights applied to the national government only; the 14th Amendment extends these rights to include actions by state and local governments and provides for 'equal protection under the laws' for all.

Supreme Court Cases

SSCG13: Demonstrate knowledge of the operation of the judicial branch of government.

b. Explain the jurisdiction of the Supreme Court, federal courts and the state courts.

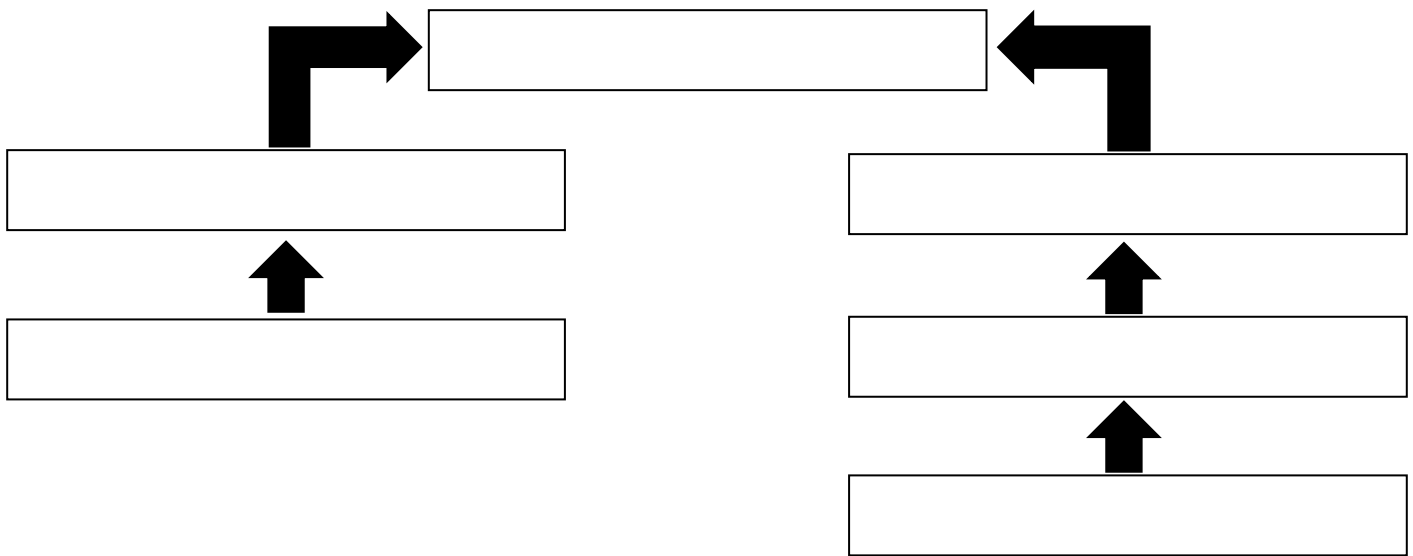
***Jurisdiction** is defined as the authority of a court to hear (try and decide) a case.

***Exclusive jurisdiction** means that a case can ONLY be heard in a federal court. Examples of cases that fall under exclusive jurisdiction include: cases involving an ambassador or other official of a foreign government, the trial of a person charged with a federal crime, a suit involving the infringement of a patent or a copyright, or any other case involving a matter arising out of an act of Congress.

***Concurrent jurisdiction** is when a case can be heard in either a state court or a federal court. Concurrent jurisdiction means that the state and federal courts share the power to hear a case. An example of this type of case would include disputes between citizens of different states if the amount of money at issue is \$75,000 or greater.

***Original jurisdiction** is the court where a case is first heard.

***Appellate jurisdiction** is when a court hears a case on appeal from a lower court. The higher court, or appellate court, may uphold or overrule the decision of the lower court. Courts of appeals only have appellate jurisdiction.



*The **Supreme Court** is the highest federal court in the United States and was established in the Constitution in Article III. The Supreme Court is known as the court of last resort. A decision issued by the Supreme Court cannot be appealed. The Supreme Court has both original and appellate jurisdiction. The court has original jurisdiction in cases of suits between states or cases involving ambassadors or public ministers. It has appellate jurisdiction on almost any other case on appeal that involves a point of constitutional and/or federal law.

There are nine Justices on the Supreme Court; there are eight associate justices and one chief justice.

***Federal courts** have limited jurisdiction and may only hear cases authorized by the U.S. Constitution or federal statutes. The federal courts have three levels: district courts (the trial courts), circuit courts (first level of appeals), and the Supreme Court. There are 94 district courts, 13 circuit courts of appeal, and one Supreme Court in the United States.

***State courts** are courts of general jurisdiction, meaning that they hear cases that are not specifically selected for federal courts. State courts interpret state laws.

SSCG13: Demonstrate knowledge of the operation of the judicial branch of government.

a. Describe the selection and approval process for federal judges.

*The **Senate Judiciary Committee** is a standing committee in the Senate currently comprised of 20 members. This committee conducts hearings prior to Senate votes on the confirmation of federal judges, including Supreme Court Justices, who are nominated for the positions by the President.

*Federal judgeship appointments and Supreme Court Justice appointments are for life, and because these judges serve lifetime appointments, their decisions can have significant impacts that last beyond one election cycle. There are basically nine steps for federal judicial nominations (from vacancy to confirmation):

1. A vacancy occurs when a judge dies, retires, is impeached, or decides to step down.
2. The White House consults the Senators who represent the state in which the vacancy has occurred to get recommendations for potential candidates to fill the vacancy.
3. Potential candidates are thoroughly vetted; background checks are extensive. The Senate Judiciary Committee requires the candidates to complete a detailed questionnaire. The candidate's legal qualifications, past employment history, decisions on cases, tax compliance history, reputation with legal colleagues and community members, medical examination results, and criminal background history are all part of this vetting process.
4. Once the president makes a nomination, the process moves to the Senate Judiciary Committee members.
5. The Senate Judiciary Committee conducts a hearing. This is the time when all committee members are given the opportunity to ask the nominee questions.
6. The Senate Judiciary Committee votes. Once the nominee is favorably voted out of the committee, with a majority vote, the nomination is forwarded to the Senate floor for consideration by the entire Senate.
7. The Senate majority leader schedules a full vote in the U.S. Senate and debate ensues.
8. The nominee is confirmed if he or she receives a majority of the votes by the Senators.
9. Lifetime appointment begins after the President signs the nominee's commission.

*This entire process can take weeks or months from beginning to end.

*Most federal judges are drawn from the ranks of leading attorneys, legal scholars, law school professors, and State court judges. Political party is important in this process; the President typically chooses candidates from his or her own political party. The President also looks for candidates who share similar views on economic, social, and legal issues. The concepts of judicial activism and judicial restraint play a role in the decision-making process.

*Federal judges can only be removed through impeachment. They are given lifetime appointments to ensure the independence of the federal judiciary and reduce the chances of decisions based on politics or political pressures.

SSCG13: Demonstrate knowledge of the operation of the judicial branch of government.

d. Describe how the Supreme Court selects and decides cases.

*The Supreme Court typically receives around 7,000 requests each year. On average, they choose to hear arguments on 80 cases and decide another 50 cases without hearing arguments. The cases chosen by the Supreme Court usually address issues of constitutionality or federal law.

*Some cases reach the Supreme Court through a **writ of certiorari**, which is an order to a lower court to send up the record in a given case for review by the Supreme Court in a decision where there is a question of constitutionality or the interpretation of a statute. A party who wants the Supreme Court to review a decision of a federal or state court files a "petition for writ of certiorari" in the Supreme Court.

*The **'rule of four'** states that at least four of the nine justices must agree to hear a case in order for that case to be placed on the court's docket, or calendar. If they agree to hear a given case, the petition for certiorari is granted.

*The Supreme Court sits from the first Monday in October to sometime in late June or early July. Once the Supreme Court accepts a case, it sets a date on which the case will be held. The justices consider cases on two-week cycles. They

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hear oral arguments for two weeks and then recess for two weeks to consider those cases and handle other court business. The oral arguments by the lawyers are typically limited to 30 minutes per side. Prior to oral arguments, the lawyers prepare briefs, which are written documents filed with the court that outline detailed statements and arguments that support each side of the case. In some cases, an individual or group not directly involved in a case may file an **amicus brief**. An amicus brief serves to educate the court on points of law that are in doubt, gathers or organizes information, or raises awareness about some aspect of the case that the court might otherwise miss.

When the justices meet to decide cases, they are said to be in conference. The Chief Justice presides over the conferences. The Chief Justice speaks first, and then each associate justice summarizes his or her views. The presentations are made in the order of seniority. After discussion and debate, the justices vote on the case. A quorum of six justices is required to hear a case, and decisions are based on majority votes.

*The court's opinion on a case is known as the **majority opinion**. It is officially called the opinion of the court and announces the court's decision in a case. The opinion sets out the reasoning for the decision. If the Chief Justice is in the majority on a case, he assigns the writing of the court's opinion.

***Precedents** are past examples to be followed in similar cases. The majority opinions serve as precedents for future cases. **Stare decisis** is a legal doctrine which dictates that courts look to precedents when overseeing an on-going case with similar circumstances.

*Sometimes justices may decide to write **concurring opinions**. This is when one or more of the justices agree with the court's opinion and want to add or emphasize points not made in the majority opinion.

***Dissenting opinions** are written by those justices who do not agree with the court's majority decision. This is also known as the minority opinion.

SSCG13: Demonstrate knowledge of the operation of the judicial branch of government.

e. Compare the philosophies of judicial activism and judicial restraint and provide relevant examples (e.g., marriage, 2nd Amendment, death penalty, etc.).

***Judicial restraint** is the idea that judges should limit the exercise of their own power. This theory contends that judges should uphold all laws and decisions, unless they go against the Constitution.

***Judicial activism** refers to judicial rulings that appear to be based on personal opinions or political considerations rather than the laws or the Constitution. It is the opposite of judicial restraint.

*The recent controversial issue of same-sex marriage was brought before the Supreme Court, and in July, 2015, the Supreme Court made a ruling that the Constitution did not address marriage. Therefore, same sex marriage was declared legal in the United States by the Supreme Court.

Supporters of the decision have stated that although marriage is not explicitly addressed in the Constitution, the 14th Amendment protects the rights of all Americans to enjoy liberty. The argument is that the Founding Fathers could not possibly include every scenario, particularly for events that may arise over 200 years after the ratification of the Constitution. Critics state that this decision represents judicial activism and that justices have used personal opinions and political pressures to allow same-sex marriage.

*The 2nd Amendment provides the right for all Americans to bear arms. Judicial restraint proponents might argue that law-abiding American citizens should have the right to bear arms, while judicial activists might argue that in cases of gun violence, the government should be allowed to redefine the terms under which Americans have the right to bear arms.

*The death penalty has long been the subject of debate between judicial activists and those supporting judicial restraint. The supporters of judicial restraint might argue that even though the 8th Amendment prohibits cruel and unusual punishment, the 5th Amendment provides that no person shall be deprived of life without due process of law. Therefore, if an individual is indicted by a grand jury, is found guilty of a capital crime by one's peers, and is provided due process of law, then the death penalty can be upheld. Meanwhile, judicial activists may argue that the 8th Amendment's ban on cruel and unusual punishment is enough to make this type of punishment unconstitutional and may insert personal and political opinions as to why consideration of the 8th Amendment without consideration of the 5th Amendment is justified.



Due Process in Criminal Proceedings

Directions: Each of the following statements describes the importance of one of the terms from this lesson. Match the terms from the list with the descriptions that follow by writing the letter of the term in front of the appropriate statement.

- | | |
|---------------------------------|------------------------------|
| A. bail | K. indictment |
| B. capital punishment | L. jury |
| C. Contempt of court | M. Miranda Rule |
| D. Cruel and unusual punishment | N. Probable cause |
| E. Double jeopardy | O. Right of confrontation |
| F. Due process of law | P. Right to compel witnesses |
| G. Exclusionary rule | Q. Right to counsel |
| H. Ex post facto law | R. Self-incrimination |
| I. Grand jury | S. Speedy and public trial |
| J. Writ of habeas corpus | T. Search warrant |

- ____ 1. Evidence cannot be extracted from a witness by physical force or torture
- ____ 2. Our society no longer condones the barbaric punishments of earlier eras.
- ____ 3. Unknown persons cannot present secret accusations against a citizen.
- ____ 4. The accused deserves an expert defense in order to get a fair trial.
- ____ 5. In order to prevent the development of a police state, police must have a reason for detaining a person.
- ____ 6. A person should not be held in custody or jailed without a legal basis.
- ____ 7. The state needs to determine whether or not there is sufficient evidence against the accused to justify the cost and inconvenience of a trial.
- ____ 8. Police cannot, at will, invade people's privacy.
- ____ 9. A fair trial depends upon open and complete disclosure of the facts in a case.
- ____ 10. The state cannot "get even" with an individual by enacting a law to punish an individual.
- ____ 11. People judged innocent should no longer be harassed by the state for the same charge.
- ____ 12. Only after the grand jury has determined that there is sufficient evidence can the state charge an individual with a crime.
- ____ 13. In most cases, the court recognizes the advantage to the accused being free to prepare the best possible defense for the trial.
- ____ 14. Unless the state is restricted, it could incarcerate an individual without trial forever.
- ____ 15. For the individual to gain a fair and just trial, the state must adhere to specific guidelines from arrest to sentencing.
- ____ 16. In order to insure a fair trial that would not be disrupted or disturbed, the court can enforce certain rules of conduct.
- ____ 17. Since the burden of proof rests outside the accused, a person is not obligated to put himself or herself in jeopardy.
- ____ 18. Some states use death to deter others from performing violent crimes.
- ____ 19. Judgement by one's peers is perceived to offer the fairest form of justice.
- ____ 20. The individual should understand that he or she need not incriminate himself or herself and may have the counsel of a lawyer.

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- Which type of case has a prosecutor instead of a plaintiff?
A. Criminal B. Civil
- Which type of case is based on liability and preponderance of evidence?
A. Criminal B. Civil
- What is a type of case usually fought for damages and money?
A. Criminal B. Civil
- Which of the following is the correct order of steps in a criminal case?
A. indictment, arraignment, bail, trial, sentencing
B. arraignment, bail, indictment, trial, sentencing
C. indictment, trial, sentencing, arraignment, bail
D. arraignment, trial, sentencing, indictment, bail
- What was the legal case that established the right to legal representation
A. Johnson v. Texas
B. Roe v. Wade
C. Gideon v. Wainwright
D. Tinker v. Des Moines Independent School District
- What is a negotiation by a prosecutor that offers a lesser charge for a guilty plea?
A. Arraignment B. Indictment C. Plea Bargain D. Appeal
- What is a defendant?
A. The judge who hears both sides of a case and makes a decision
B. The main juror who leads the discussion of a case
C. The person who brings charges against someone else
D. The person who defends themselves in court
- What happens during an arraignment?
A. The judge reads the formal charges and the defendant enters a plea
B. A person is booked
C. The jury debates the evidence presented before them in court
D. Bond/bail is set
- What is the difference between a criminal trial and civil suit?
A. Civil suits are when one person sues another
B. Civil suits take place when someone commits a crime
C. Criminal trials are when one person sues another
D. None of the above
- Federal judges and Supreme Court Justices are appointed by the
A. Congress and approved by the President
B. House and approved by the Senate
C. President and approved by Congress
D. President and approved by the Senate
- How long is the term of office for a justice?
A. 9 years B. 14 years C. 20 years D. life
- Laws that are based on earlier decisions by judges and are used as models for future decisions are called
A. Precedents B. Charters C. Criminal Laws D. Amendments
- The first court that hears a case is said to have
A. appellate jurisdiction B. concurrent jurisdiction C. exclusive jurisdiction D. original jurisdiction
- What is the court of last resort?
A. Federal District Courts B. Supreme Court C. D.C. Court D. U.S. Tax Court
- The "rule of four" concerns
A. how the Supreme Court makes its final decisions in a case
B. how the chief justice is chosen
C. who decides which justice will write a majority opinion
D. how the Supreme Court decides which cases it will hear
- Once the court has decided to hear a case, the lawyers for both sides must file a
A. brief B. docket C. writ of certiorari D. concurring opinion
- Any justices who voted against a ruling can write a(n) _____ that tells why they did not vote for the decision.
A. opinion of the court B. majority opinion C. concurring opinion D. dissenting opinion
- The Supreme Court consists of how many justices?
A. 5 B. 7 C. 9 D. 12
- Which is an example of judicial activism?
A. A judge review laws and studies the constitution
B. A judge hears a case brought up from a lower court
C. A judge strikes down a law that she does not agree with
D. A judge strikes down a law that violates the Constitution
- A person who threatens, but does not touch another person, may have committed the crime of _____.
A. Arson B. Assault C. Battery D. Burglary