

Introduction to Two Cases and Important Information About What Is to Come

In 1998, Robert Keith Woodall, having pled guilty to kidnapping, raping, and murdering a sixteen-year-old girl, was sentenced to death in a Kentucky trial court on the recommendation of a jury. More than ten years later, a United States District Judge ruled that the procedures under which Mr. Woodall had been sentenced violated the U.S. Constitution and ordered the case back to the Kentucky courts for resentencing. The state of Kentucky contested this order all the way to the U.S. Supreme Court, where it won in April, 2014, leading to the reinstatement of the death sentence nearly sixteen years after it was first imposed. Mr. Woodall presently resides on Kentucky's Death Row.¹

Woodall's case is highly unusual in some respects, especially in that it reached the Supreme Court: these days, out of the millions of cases that start out in the judicial system each year, fewer than one hundred end up there. But in many other respects the case is fairly typical. Many criminal convictions in state courts are reviewed by federal courts, and many of these cases take a decade or more to reach a final resolution. In this book, we will explain how a case such as Woodall's can make it all the way from a small Kentucky court to the highest court in the land, and we will explain why this process takes so long. We will also introduce you to the prosecutors, defense lawyers, jurors, and judges who had Woodall's life in their hands and explain the role these people played in deciding his fate.

¹ A list of inmates on Kentucky's Death Row can be found at: <http://corrections.ky.gov/communityinfo/Pages/DeathRowInmates.aspx>

In a criminal case, like Woodall's, the government seeks punishment for some crime. Criminal cases constitute a large percentage of the work of American courts, but every year American courts also resolve many non-criminal disputes. These are called "civil" cases. The term "civil" refers to the nature of the laws at issue rather than to how the parties conduct themselves: in civil cases, one *party* claims that (a) the other party acted improperly (or failed to act properly) and (b) the law allows the first party to obtain relief from the second for its improper actions (or inaction). For instance, if you are injured in a car wreck because of someone else's negligent driving, you could sue that person for injury to yourself and to your car under civil laws that provide a remedy for injuries caused by another person's *negligence*. If you win your civil case, you will receive a *judgment* from a court ordering the other person to pay you a sum of money to compensate you for the personal injuries and property damage you suffered in the wreck.

Although a state or federal agency may be a party in a civil case, none of the laws at issue in civil cases will authorize the judge or jury to impose a punishment of incarceration or death. However, the law in a civil case may authorize a judge or jury to impose a large monetary penalty, called *punitive damages*, to punish a party and deter similar misconduct by that party or others who might be thinking of misbehaving. In addition to differences in the form of punishment that may be imposed, civil cases differ from criminal cases in many other respects. This book will take you through the full legal process for both criminal and civil cases, from how each type of case makes it to court in the first place to how each proceeds through the different levels of courts built into the American system until it reaches a final conclusion.

■ WHAT IS A CASE?

The term "case" is shorthand for a dispute that has formally reached a court. A case involves two or more parties who disagree about something of legal significance. For instance, in Woodall's case, the Commonwealth of Kentucky contended that Woodall had violated Kentucky's criminal laws and that Woodall should be sentenced to death under these laws. Woodall did not dispute that he broke Kentucky's laws against kidnapping, rape, and murder, but he denied that he should be condemned to death under Kentucky law. We will follow Woodall's case as it makes its way through a succession of courts at different levels within Kentucky's court system and the U.S. government's court system.

Although you were probably already familiar with the term “case,” American courts use lots of other jargon that will be unfamiliar to you. Rather than stop in the middle of the text to define all of this jargon, we provide a glossary at the end of the book that defines and translates much of this jargon for you. If a word is italicized, that means it can be found in the glossary.

The complexity of the American legal system can seem overwhelming to students thinking of pursuing law as a profession or to laypeople who get caught up in the system as *litigants* or as *jurors*. A central aim of this book is to cut through that complexity and help readers become much more familiar and comfortable with how the American legal system works. But we hope to do more than demystify the American judicial process—we hope to give you the knowledge and conceptual apparatus needed to judge how well the American system functions in resolving disputes. Each of the many formal rules and informal norms that make up the American legal system can have implications for who prevails in the case and for what the winner wins and what the loser loses. For citizens to evaluate their judicial system, they need a solid understanding of its intricacies.

But learning about a highly complex, jargon-filled system can be quite tedious (just ask anyone who has gone to law school). The challenge when explaining a complex system is to present the details in a way that is absorbing and makes the details memorable. Our strategy begins with recognition that what fascinates most people about American courts are the cases themselves and the unique way these cases are dealt with in the United States. All the rules and norms only matter to the extent they affect real cases, and these rules and norms are best understood in the context of real cases. Accordingly, every important concept and procedure covered in this book will be illustrated through two real cases, one criminal and one civil. For each of these cases we provide excerpts from real court documents and provide links to the full set of case documents so that you can explore the cases—and the operations of the legal system—in more detail.²

Commonwealth of Kentucky v. Woodall

To take you through the twists and turns of a criminal case, we will examine Robert Woodall’s case, from his arrest and sentencing to his attempts, initially

² <http://www.amcourtsbook.com>

promising but ultimately unsuccessful, to have his death sentence invalidated. This journey involves visits over many years to many different courts between the state trial court and the U.S. Supreme Court. We will not dwell on the details of Mr. Woodall's crime, but it is important to understand that, in American courts, even those who have committed horrendous crimes are (at least theoretically) entitled to the same treatment as innocent persons who have been falsely accused of a crime. And there is no doubt that the crime that Mr. Woodall ultimately confessed to was horrendous.

Early in the evening of January 25, 1997, sixteen-year-old Sarah Hansen drove the family minivan to a Minit Mart in Greenville, Kentucky to rent a movie. When Ms. Hansen did not return within a couple of hours, her parents alerted the police, who began a search. Later that night, after locating her vehicle and following a long trail of blood to the lake's edge, the police found Ms. Hansen's body floating in nearby Luzerne Lake. A coroner's examination concluded that Ms. Hansen's throat had been cut twice by a box cutter or similar sharp instrument, completely severing her windpipe, that she had been raped, and that she had been left in the lake while still alive.

At the time, Woodall was twenty-two years old and had been released from prison only ten months earlier, after serving three years for sexual abuse of a minor. Woodall had been seen at the Minit Mart on the night in question



Robert Keith Woodall,
courtesy Kentucky Dept.
of Corrections

and was known by police to be a former sex offender. Accordingly, the police questioned Woodall about his possible involvement in the Hansen crime. Woodall gave conflicting statements about his whereabouts. A police officer noticed that Woodall wore sneakers that might match shoeprints found at the crime scene and confiscated his shoes. The police also consulted fingerprint records from his prior conviction for comparison with fingerprints recovered from Ms. Hansen's vehicle. When Woodall's shoeprints and fingerprints were found to match the crime scene prints, he was arrested. A search of his home led to the seizure of a bag of wet, muddy, and bloody clothes from underneath

his bed, and his DNA was found to match DNA recovered from Ms. Hansen's body. On March 18, 1997, a *grand jury*, after hearing the state's evidence against Woodall, indicted him for violations of Kentucky's laws proscribing murder, rape, and kidnapping. Following the indictment, the *prosecuting attorney* for Muhlenberg County (the county in which the crime occurred) filed papers with the Muhlenberg Circuit Court (the trial court in Kentucky that handles serious crimes) giving notice that he intended to seek the death penalty in the case.

At his appearance before a judge to enter a plea of guilty or not guilty (this proceeding is known formally as the *arraignment*), Woodall pled not guilty. After entering this plea, Woodall's court-appointed attorney asked that the site, or *venue*, of Woodall's trial be moved two counties to the west, from Muhlenberg County to Caldwell County, for fear that pretrial publicity and community members' familiarity with the victim and her family would make it impossible to assemble an impartial jury in Muhlenberg County.³ The trial judge granted this change of venue *motion*, and trial was set to begin in the Caldwell County Circuit Court in April of 1998.⁴ However, just days before the trial was to begin, Woodall changed his plea to guilty on all charges in the indictment.

AOC-320 Rev. 8-91 Commonwealth of Kentucky Court of Justice RCr 6.06, 6.08, 6.10	[SEAL]	Indictment No. <u>97-CR-00035</u> County <u>MULHENBERG</u> Circuit Court Division
INDICTMENT		
(Filed Mar. 18, 1997)		
COMMONWEALTH OF KENTUCKY, v. ROBERT KEITH WOODALL, DEFENDANT		KRS: 507.020 509.040 510.040
<p>The Grand Jury charges: That on or about the 25th day of <u>January</u>, 1997, in <u>Muhlenberg</u> County, Kentucky, the above-named defendant(s):</p> <p>COUNT 1: committed the capital offense of murder by cutting Sarah Hansen with a sharp object and drowning her;</p> <p>COUNT 2: committed the capital offense of kidnapping Sarah Hansen in which she was not released alive;</p> <p>COUNT 3: committed first-degree rape by engaging in sexual intercourse with Sarah Hansen through the use of forcible compulsion in which she received serious physical injury;</p>		

Against the peace and dignity of the Commonwealth of Kentucky.

/s/ Paul G. Moore
Foreman

Presented by the foreman of the grand jury to the court, in the presence of the grand jury, and received from the court by me and filed in open court this 18th day of March, 1997.

/s/ Janet (Illegible) Clerk

BAIL \$ _____ ARRAIGNMENT: _____, 19__ at _____ a.m./p.m.

Defendant's date of birth _____ Social Security # _____

The following appeared before the grand jury as witnesses:

Mike Drake
Dr. Mark LeVaughn
Terry Lohrey
Donna Harrison
Matthew Clements
Sylvester Johnson
Mark Johnson
Brian Turner
Catherine Tarrants
Amanda Daugherty
Barbara Woodall
Angie Phelps

Indictment of Robert Keith Woodall

³ Approximately 5,000 people lived in Muhlenberg County at the time of the crime, and many of those people probably were acquainted with the Hansen family or with friends of the Hansen family. By all accounts, Sarah Hansen was a well-liked and successful student who was a member of the school band and local swim team.

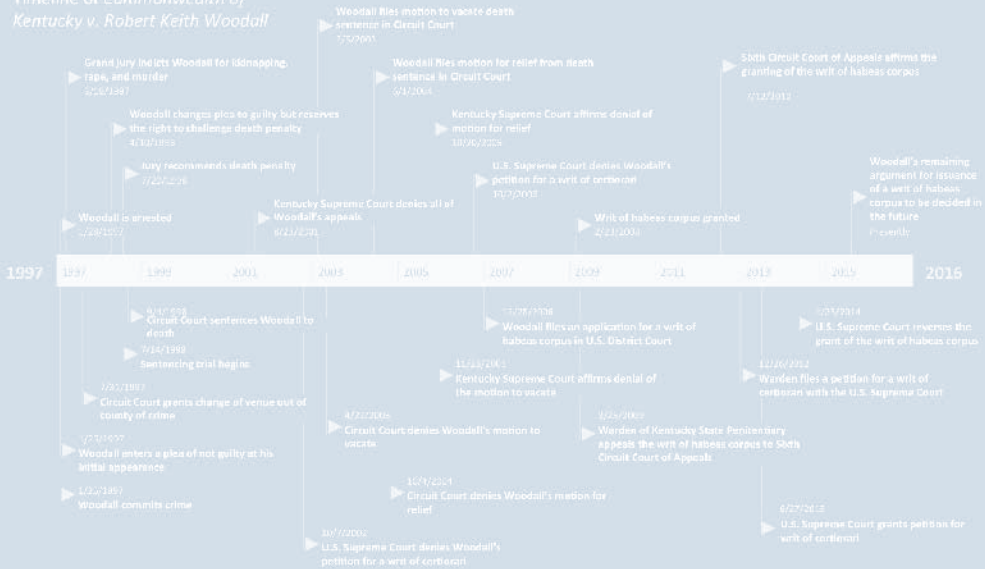
⁴ Outrage over the crime extended beyond Muhlenberg County. Within a year of the crime, the Kentucky legislature passed the Sarah Hansen Act, which requires that convicted sex offenders first complete the sex offender treatment program before they may receive good behavior credits that can be used to shorten their period of incarceration (codified at Ky. Rev. Stat. Ann. § 197.045). The Act was designed to motivate sex offenders to participate in the treatment program. Woodall had not completed the voluntary sex offender treatment program before his release from prison for his sexual abuse convictions.

In light of this change in plea, a trial on guilt became unnecessary, but a sentencing hearing was still needed to determine whether Woodall's crimes warranted the death penalty that the prosecuting attorney sought. At a four-day penalty trial, the Commonwealth presented testimony from eleven witnesses, all of whom were cross-examined by Woodall's attorneys, and Woodall presented testimony from fourteen witnesses. The Commonwealth put on evidence aimed at demonstrating the brutal nature of the crime and its impact on the victim's family. The main theme of Woodall's defense was that deficiencies in his upbringing and personality caused him to fail to appreciate the consequences of his actions. Woodall did not testify in his own defense, and his lawyers asked the trial judge to instruct the jury not to draw any negative conclusions from Woodall's choice not to testify. The judge refused to give this instruction to the jury, however. (Although Mr. Woodall would subsequently complain about a number of things that occurred at his penalty trial, the question whether the trial judge properly refused to give this jury instruction is what ultimately would bring the case to the U.S. Supreme Court.) The jury rejected Woodall's defense and recommended the death penalty for the murder charge and two life-without-parole sentences for the rape and kidnapping charges.⁵ The trial judge agreed with the jury's sentencing recommendations and, on September 4, 1998, imposed two life sentences and condemned Woodall to death by lethal injection.⁶ As we will see, however, the trial judge's death sentence was just the first chapter in a long history of Woodall's experiences with American courts. We will follow Woodall as he exhausts all legal avenues at several different courts in his attempt to avoid execution by the Commonwealth of Kentucky.

5 Alternatively, the jury could have recommended life without possibility of parole until twenty-five years had been served, life without the possibility of parole until twelve years had been served, or a fixed number of years of incarceration up to fifty years. (Sentences are imposed for all of the crimes because longer sentences may have to be served after shorter sentences are completed. Where the sentence for one crime is death, sentences for the other crimes are still imposed in case the conviction of the death penalty crime is overturned.)

6 Woodall became the second person sentenced to die by lethal injection in Kentucky, which previously had used the electric chair for executions.

TIMELINE: COMMONWEALTH OF KENTUCKY v. WOODALL

Timeline of *Commonwealth of Kentucky v. Robert Keith Woodall*

Promotion in Motion, Inc. v. Beech-Nut Nutrition Corporation

To take you through the twists and turns of a civil case, we will examine *Promotion in Motion, Inc. v. Beech-Nut Nutrition Corporation*. This civil law dispute began in 2008 when a product made for Beech-Nut by Promotion in Motion—a product known as Fruit Nibbles™—generated complaints from toddlers and their parents about the supposedly revolting appearance, smell, and flavor of the product, which one customer described as “shriveled, disgusting-looking snacks.” These customer complaints, along with Beech-Nut’s own quality control checks, prompted much discussion between Promotion in Motion and Beech-Nut about whether problems existed with the manufacturing and packaging of the product and, if so, how best to correct those problems.



When Promotion in Motion could not rectify the problems to Beech-Nut's satisfaction, Beech-Nut withdrew Fruit Nibbles from the market and refused to accept, or pay for, any more Fruit Nibbles made by Promotion in Motion.⁷ In response, Promotion in Motion sued Beech-Nut for breach of contract, claiming that it had met its obligations under the contract and had produced acceptable Fruit Nibbles. Beech-Nut not only denied the validity of Promotion's legal claims but instituted a counter-suit of its own, seeking money to compensate it for the economic injury caused by Promotion in Motion's shoddy manufacture of the Fruit Nibbles that had been marketed under the Beech-Nut brand name.



A photo from Beech-Nut's investigation showing normal (left) versus degraded (right) Fruit Nibbles™

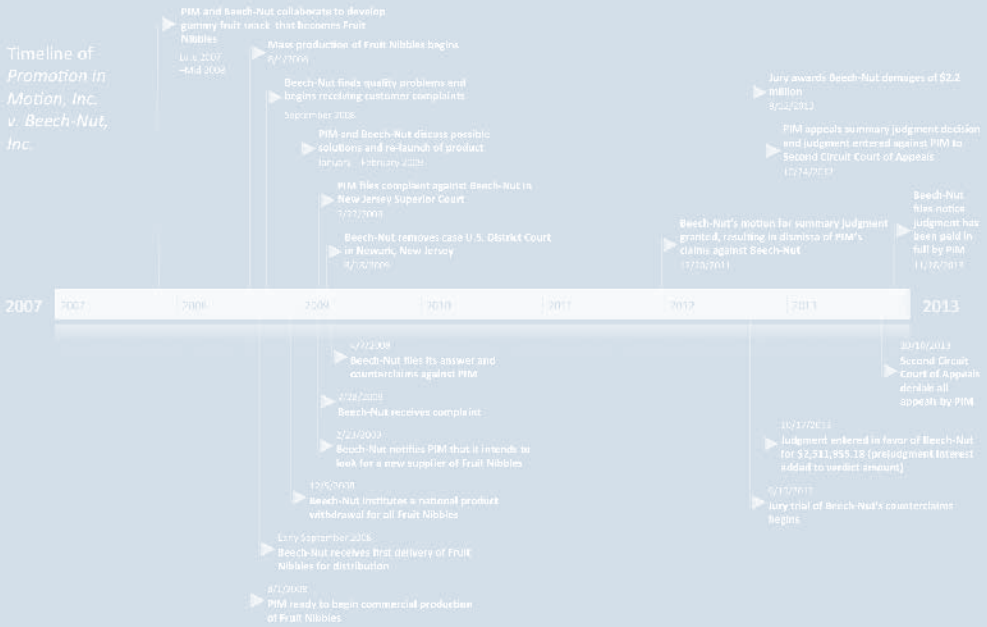
Using a device known as a *summary judgment motion*, Beech-Nut convinced the federal district court judge who was presiding over the case that Promotion in Motion's legal claims against Beech-Nut had no merit.⁸ Promotion did not pursue a similar motion with respect to Beech-Nut's counterclaims, and Beech-Nut's counterclaims against Promotion went before a jury in 2012. On September 12, 2012, the jury decided the case in Beech-Nut's favor, awarding Beech-Nut *damages* of \$2.2 million (i.e., Promotion in Motion was ordered to pay this sum to Beech-Nut). Promotion appealed the jury's verdict to the court of appeals, but it lost again. Ultimately, this civil *lawsuit* that began with Promotion in Motion suing Beech-Nut for an alleged breach of contract ended four years later with Promotion in Motion having to pay millions of dollars to Beech-Nut for its own breach of contract. That sum came on top of the many thousands of dollars in legal fees that Promotion in Motion surely had to pay to its own lawyers.

This brief sketch of the dispute between Promotion in Motion and Beech-Nut omits many important details about how this case turned out as it did. We will examine this case in much more detail because it is a wonderful microcosm of the full civil litigation process. It is rare nowadays to find a civil

⁷ Initially, Beech-Nut used a different supplier to produce Fruit Nibbles, but eventually Beech-Nut discontinued the Fruit Nibbles™ product.

⁸ In federal courts, the trial court is called the district court. In the next chapter, we will provide an overview of the various kinds of courts found within the state and federal legal systems that comprise the American court system.

TIMELINE: PROMOTION IN MOTION V. BEECH-NUT



case that goes all the way through jury trial and appeal and ends with the losing party satisfying the judgment from the trial court by making full payment to the prevailing party. Relatively few civil cases reach trial, with most cases being resolved through a voluntary *settlement* or being dismissed by the judge before trial, and of those few cases that do go to trial and result in a verdict for one of the parties, many settle voluntarily after the losing party has appealed the jury's verdict to a higher court but before the appellate court has ruled.

The Rest of the Book⁹

This chapter has introduced you to the cases that will serve as our tour guides through the federal and state court systems that collectively make up the American legal system. Our first extended stop on this tour will be an overview

⁹ Please do read this section of the chapter. It is not your usual boring preview that gives cryptic summaries of what is to come but actually contains some interesting information that will help you understand the lifecycle of a case.

of both the federal and state court systems, which will provide you with the foundation needed to understand the relationship between state courts and federal courts within the American legal system. If you have ever wondered why some criminal cases are tried in federal court and some are tried in state court, Chapter 2 will answer this question for you as it explains the division of labor between courts run by state governments and courts run by the federal government.

If you have ever bought a product over the internet that turned out to be defective and wondered where you could pursue a civil lawsuit against the seller of that product, Chapter 3 will answer this question for you as it explains the law that sets limits on when state and federal courts can issue *orders* and *judgments* that are binding on persons located outside the territorial boundaries of the state in which the injury occurred. Chapter 3 also explains the mechanics of beginning a criminal case and a civil case. It examines the steps that the Commonwealth of Kentucky had to follow to initiate and pursue criminal charges against Mr. Woodall and the steps that Promotion in Motion had to follow to initiate the civil lawsuit against Beech-Nut that ended so disastrously for Promotion in Motion.

After touring the “where and how” of the beginnings of criminal and civil cases, Chapter 4 examines what happens between the start of the case and the start of the trial in that case. This period in a case’s life is often called the pretrial phase, and it may last between a few months and many, many years.¹⁰ The pretrial procedures that apply in civil cases differ considerably from the pretrial procedures that apply in criminal cases, and the pretrial phase is typically much longer in civil cases than criminal cases.¹¹

One very important difference between civil and criminal cases during the pretrial phase concerns the acquisition and exchange of case-relevant information. In civil cases, the parties can use several legally-authorized maneuvers to obtain information about the other party’s case and to gather information helpful to their own case that they might not otherwise be able to obtain. To many people’s surprise, the information-gathering process, which is known formally as the *discovery* process, is much less extensive in criminal cases. Indeed, a criminal defendant has relatively few legal devices at his disposal to obtain information that might be helpful to his defense. Chapter 4 explains

10 For instance, one of the authors of this book (Mitchell) practiced law full time before becoming a professor. One of the very first cases that he worked on when he joined a law firm had begun approximately a year before. When he left the firm six years later, it had not yet reached trial.

11 One reason for shorter pretrial periods in criminal cases is that the Sixth Amendment to the U.S. Constitution guarantees criminal defendants a right to a “speedy trial.”

why this disparity in information-gathering exists: the short answer is that the police and prosecuting attorney are supposed to investigate crimes vigorously and turn over to the person accused of a crime evidence that could be helpful to his defense.

The approach to information-gathering in civil cases is very different: each party is expected to do its own investigation, with relatively little information having to be disclosed to the other party until that other party has asked for it.

In both civil and criminal cases, the information gathered about each side's case will be very valuable, for it will influence the willingness of criminal defendants to enter into plea agreements with the prosecuting attorney and will influence the willingness of civil parties to settle a case rather than take it to trial. But the gathering and exchange of case-relevant information are not the only important things that occur during the pretrial phase. During this period, the judge will rule on criminal defendant's motions to suppress (i.e., bar the use of) evidence that the government allegedly obtained improperly, the judge will rule on motions by civil parties to dismiss legal claims for factual or legal deficiencies, and in civil cases new parties may be added where the discovery process has revealed additional persons or companies who may have some responsibility or interest in the case.

After we visit this very important period in a case's life, we will attend trial. People who are familiar with the American court system primarily through their viewing of television and films may believe that jury trials are common, but in fact jury trials are quite rare in both criminal and civil cases, usually making up less than five percent of both types of cases annually. When we add trials in which a judge, rather than a jury, renders the verdict (trials before only a judge are commonly known among lawyers as *bench trials*), the percentage goes up a bit, but trials by judge or jury still only occur in a small percentage of all cases decided by state and federal courts. (In any given year, between five to ten percent of cases filed go to trial.) Nonetheless, trials are an essential part of the American legal system: the mere possibility of a trial by jury casts a shadow over the pretrial phase of a case that can greatly influence whether a criminal case ends in a plea agreement between the prosecuting attorney and defendant or whether a civil case ends through a settlement agreement. But not all criminal and civil cases are automatically eligible for trial by jury. Chapter 5 explains the limits of the constitutional right to a trial by jury. Chapter 5 also walks you through the trial process itself, from pretrial motions, opening statements by the lawyers, the presentation of evidence, closing arguments by the lawyers, the judge's instructions to a jury in a jury trial, and the verdict,

as well as the post-trial motions that can be made by the parties to try to get out from under an unfavorable verdict.

Chapter 6 stops at a destination where no party or lawyer ever wants to go, the court of appeals, because a visit to the court of appeals means that a loss has occurred in the trial court. The power of courts of appeals to overturn verdicts and orders from trial courts is somewhat limited: courts of appeals are supposed to defer to the judgment of the jury or trial judge on matters of fact, such as who pulled the trigger that fired the fatal shot. However, courts of appeals do not have to defer to trial courts on matters of law, such as how best to interpret a statute that imposes penalties for murder. Chapter 6 will help you understand the role and power of courts of appeals relative to the trial court.

It will also introduce you to a controversial process that closely resembles an appeal and raises difficult questions about the relationship between state and federal courts. This is the *writ of habeas corpus*, which allows federal courts to determine whether state prisoners are being held lawfully. Woodall's case made it to the Supreme Court through his invocation of this habeas corpus procedure, and detainees from the Iraq war who have been held at Guantanamo have invoked the *writ of habeas corpus* to try to obtain release.

Chapter 7 will help you understand the status of the U.S. Supreme Court in relation to all of the other courts in the U.S., whether state or federal and whether a trial court or a court of appeal. The Supreme Court truly is supreme in that it has the power to overturn decisions by any other court in the U.S., but there are limits to the Supreme Court's power. We will discuss these limits, will explain why so few cases make it to the Supreme Court, and will study how opinions by the Supreme Court justices get written.

One of the most important functions served by the U.S. Supreme Court is being the final arbiter on legal decisions: the litigation process must end somewhere. But another very important function of the Supreme Court is to serve as a check on the other branches of the federal government, the legislative and executive branches. Chapter 7 gives more attention to these two functions served by the Supreme Court: the Court's role overseeing lower courts and as protector of the Constitution against encroachments by Congress or the Presidency. The Supreme Court's role as protector of the Constitution is achieved through a doctrine known as *judicial review*. This doctrine, because it gives American courts the power to overturn acts of Congress and the President, is important and controversial and consequently has provoked much scholarly debate. We do not take a position on the proper conception and application of judicial review, but you should leave the chapter with a good understanding of what is at issue in the debate over the doctrine of judicial review.

By the time you reach Chapter 8, you should have all of the information you need to understand how American courts handle most criminal and civil cases. Chapter 8 complicates things just a bit by discussing an important, but less common type of case—*class actions*—and examines some details that were omitted previously but are important to understanding how

American courts operate. A class action lawsuit is a type of civil case in which one or more persons sue on behalf of a group of persons who all have allegedly been injured by the same defendant in the same way. Many of you have probably been members of one or more class action lawsuits without even knowing it, because in a class action someone can sue on behalf of a large group of people without first getting the consent of all those people. For instance, if you have a contract for wireless internet service, you have probably been a member of a class action lawsuit accusing the provider of your internet service of some kind of deceptive or inappropriate billing practice, such as allowing young children to make in-game purchases without parental approval. Because the persons affected by a class action lawsuit usually will not have authorized the case or had any personal involvement in the lawsuit, American courts impose special requirements on class actions that are aimed at protecting the interests of those absent persons.

Chapter 8 will also contrast the legal process with alternative forms of dispute resolution, especially the use of *arbitration*. Many civil law disputes are decided today by an arbitrator rather than a judge or jury because many contracts require this form of dispute resolution rather through a lawsuit filed in court. For instance, the current default contract for wireless customers of AT&T includes a clause establishing that arbitration will be the

2.2 Arbitration Agreement

(1) AT&T and you agree to arbitrate all disputes and claims between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- claims that may arise after the termination of this Agreement.

References to "AT&T," "you," and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or Devices under this or prior Agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into this Agreement, you and AT&T are each waiving the right to a trial by jury or to participate in a class action. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

Excerpt from AT&T's Wireless Customer Agreement
(for the latest version, go to <http://www.att.com/legal/terms.wirelessCustomerAgreement.html#howDoIResolveDisputesWithAtt>)

exclusive means of resolving disputes between the customer and AT&T. (An excerpt from this contract is provided for you so you can read the detailed language). One of the benefits of choosing arbitration over a lawsuit is that you can have some say about who will be your arbitrator, whereas your filing in court will most likely be randomly assigned to a judge.

Chapter 8 also contains some sobering and perhaps disturbing information. A final, unappealable judgment in a criminal case ends the case and sends the defendant home or to his punishment. A final, unappealable judgment in a civil case in favor of the defendant also brings the litigation process to an end. However, a final, unappealable judgment in favor a civil plaintiff is equivalent to a promissory note: the plaintiff still needs to convert the favorable judgment into money or action. It is this feature of the American civil court system that perhaps more than any other encourages the parties to enter into a settlement agreement: a settlement agreement is not effective until one of the parties has been paid. A civil court's judgment is a very valuable piece of paper, but it is not money. In order to convert the judgment to money, a prevailing party must take steps to enforce or collect on that judgment, and this collection process may spawn a whole new round of litigation.

You should leave this book with a detailed, realistic understanding of how American courts work. There will still be much more to learn about American courts and American law—and many of you will probably do just that by going to law school—but you will have the basic information you need to critically evaluate the structure and functioning of the American legal system (and to debunk courtroom dramas that you see at the movies). ■