

# Resources for Public Speaking: The Judiciary During the Gilded Age

## Topic at a Glance

**Introduction.** During the Gilded Age (ca. 1865–1893), the federal courts underwent significant changes to their structure and jurisdiction. These changes sometimes reflected broader transformations in American society, including post-war reconstruction, the so-called “redemption” of the South by white supremacists, and the explosive growth of industrial capitalism.

**Congress Enhances Access to Federal Trial Courts (1865–1875).** Congress passed several pieces of landmark legislation in the decade following the end of the Civil War, many of which opened the federal courts to new or broader classes of cases. Some of this legislation was designed to enable freedpeople to avoid discriminatory state venues. Other new laws were designed to empower federal courts to hear the increasing number of cases generated by the growth of industry, particularly the railroads. Among the most important of these laws, successive civil rights acts made federal courts the venue of choice for civil rights plaintiffs and criminal defendants seeking removal, most of whom were previously restricted to state courts. Likewise, the Habeas Corpus Act of 1867 for the first time permitted federal habeas petitions from those held in state custody. More broadly, the Fourteenth Amendment (ratified in 1868) created a host of new federal rights against discriminatory or oppressive state actions. The Jurisdiction and Removal Act of 1875 ensured that many of the challenges to state power were brought in federal courts, as it extended full federal question jurisdiction to federal trial courts for the first time since a brief period in 1801–1802 and expanded the availability of removal in civil cases.

**Circuit Judges.** In 1869, Congress for the first time since 1802 (aside from courts located in the District of Columbia (1801–1863) and California (1855–1863)), authorized bespoke judgeships for U.S. circuit courts, which had previously been staffed by a combination of district judges and Supreme Court justices riding circuit. Though circuit riding remained in place, this change reduced the need for justices to travel.

**The Evarts Act.** In the late nineteenth century, the expansion of federal jurisdiction and broad-based growth in litigation created a caseload crisis that threatened to overwhelm the federal judiciary. The Evarts Act of 1891 aimed to ease this crisis by authorizing the creation of a new court of appeals in each of the nine existing circuits as well as an additional judgeship for each circuit (leaving the Second Circuit with three judgeships and all other circuits with two). Court of appeals judges held concurrent commissions to serve on U.S. circuit courts. The act stripped the U.S. circuit courts of their appellate jurisdiction over district court matters but left them to operate as trial courts concurrently with the district courts. Congress granted the new courts of appeals appellate jurisdiction over most cases from the district and circuit courts, while some cases, such as those involving constitutional issues, could be appealed directly from a trial court to the Supreme Court. In diversity cases and in some other categories of suits, no appeal as of right from a court of appeals to the Supreme Court was available, but the Supreme Court could hear cases on a discretionary basis by issuing a writ of certiorari. Some aspects of the Evarts Act system required further refinement—most notably, Congress eventually disbanded the circuit courts in 1911—but the Act, coupled with ambient changes to the courts’ jurisdiction and structure during the Gilded Age, arguably laid the template for the modern federal judicial system.