

# Long Arms of the Law

*How the Role of the Supreme Court and Its Justices Shapes the Judicial Branch of U.S. Government*



BY J. SCOTT APPLEWHITE—ASSOCIATED PRESS

Justices of the U.S. Supreme Court pose for a group portrait in 1994 at the court in Washington, D.C. Seated are Associate Justices (front, left) Antonin Scalia, John Paul Stevens, Chief Justice William Rehnquist, Associate Justices Sandra Day O'Connor and Anthony Kennedy. Standing is Associate Justices Ruth Bader Ginsburg, left, David Souter, Clarence Thomas and Stephen Breyer.

## INSIDE

3 Supreme Information

6 Order in the Court

11 First Monday in October

16 Ideal Supreme Court Appointment

## An Integrated Curriculum For The Washington Post Newspaper In Education Program

## Long Arms of the Law

**Lesson:** An introduction to the role of the Supreme Court and the judicial branch of government and a consideration of the attributes a justice should have.

**Level:** Middle to high

**Subjects:** Government, civics, U.S. history

**Related Activity:** Language arts

National, state and local elections lend themselves to a look at the requirements, process and impact of elections. This is the last of five online guides that focus on the broad question: Whose vote really counts? In this guide, we examine the Supreme Court.

The U.S. Constitution provides for three branches of government. Article III establishes the judicial branch, composed of the Supreme Court and other federal courts that Congress may establish. The Supreme Court is the highest court, adjudicating cases and controversies involving the interpretation of the Constitution and federal laws. The U.S. District Court of Appeals, U.S. District Courts, and the U.S. Customs Court, and four district judges for U.S. territories are part of the judicial branch.

"The powers of the branches are not completely distinct and detached," according to *We the Students*. "For example, the Senate must confirm (or reject) the president's nominations to the Supreme Court and other judgeships. The House has power to impeach the president, which it did to President Bill Clinton in 1998, and the Senate has power to convict him and remove him from office, which it refused to do in Clinton's case. In impeachment trials in the Senate, the Chief Justice presides (as William Rehnquist did in Clinton's

case). Each branch has a distinct function, but the Constitution overlaps and blends these functions."

This guide provides educators with a variety of activities and resources to complete them.

### Make a Judicial Timeline

Review "Giving Order to Important U.S. Supreme Court Cases." Production of timelines begins in the earliest grades; fifth and sixth grade students can easily complete this activity. You may wish to do the "Find and Summarize" part of the activity before giving students a copy of the worksheet. They could do the matching for an in-class assessment of their understanding of the time order of the cases.

The timeline activity can be modified or expanded depending on your students and the time you have. Possible variations include:

- Discussion of the following topics before completing the timeline assignment—Checks and balances, branches of government (executive, legislative, judicial), appeals and appeals courts, civil rights, civil rights movement, chronological order and summary of data.

- After completing the timeline, have older students list the cases in order of importance. They will have to read more about the cases and then decide what was important about these cases.

- If time allowed, hold a mock trial based upon the facts of the case. Students could be given sides that they need to argue. Web sites in "Supreme Information" give sufficient background material on all of these cases.

CONTINUED ON PAGE 3

## A Supreme Life

*Learn about the Supreme Court through the lives of justices.*

Freedman, Suzanne.  
*Louis Brandeis, the People's Justice*

Douglas, William O.  
*Go East, Young Man*

Henry, Christopher E.  
*Ruth Bader Ginsburg*

White, C. Edward.  
*Oliver Wendell Holmes, Sage of the Supreme Court*

Feinberg, Barbara.  
*John Marshall, the Great Chief Justice*

Kallen, Stuart A.  
*John Marshall*

Dunham, Montrew.  
*Thurgood Marshall: Young Justice*  
(Childhood of Famous Americans Series)

Adler, David.  
*A Picture Book of Thurgood Marshall*

McElroy Lisa Tucker.  
*Meet My Grandmother, She's a Supreme Court Justice—*  
*Sandra Day O'Connor*

Hill, Mary.  
*Sandra Day O'Connor*

O'Connor, Sandra Day.  
*Lazy B.: Growing Up on a Cattle Ranch in the American Southwest*

Doharty, Kieran.  
*William Howard Taft*

Collins, David R.  
*Clarence Thomas: Fighter With Words*



## An Integrated Curriculum For The Washington Post Newspaper In Education Program

CONTINUED FROM PAGE 2

- Have students choose one of the cases that they feel has affected their lives the most. Ask them to write a persuasive argument as to why it is important to them.

- Students could be asked to choose any of these years and find four important historical events that took place that year. This may give more context to why the decision was made that way in that year. For example, as the Civil Rights movement took place, views changed not only in the country, but also on the court.

- For the lower grades, this could be adapted by having the dates or the cases in order on a line, and the students then match up the cases with the dates. Or, the teacher could draw illustrations with captions referring to case and date, the students then cut out the pictures and paste down on the paper in order.

- In the first and second grades, the teacher may just want to focus on the branches of government and then have students create a triptych illustrating the important aspects of each branch; for example, Executive = President, Legislative = Congress and Laws, Judicial = Courts; or Executive: Enforces the Laws, Legislative: Makes the Law, Judicial: Interprets the Laws.

### Test Your Supreme Knowledge

Give students "Supreme Legacy." This quiz focuses on the history of the Court and some of the more notable justices.

Give students "First Monday in October." This excerpt from a Post quiz focuses on the law clerks who serve the justices. Use it as a tool to discuss the procedures of the Supreme Court and

the handling of the caseload. You might use as a Web treasure hunt.

### Get an Outlook

Two commentaries from The Washington Post are provided to stimulate discussion and/or to prepare students for the "Appoint a New Justice" activities. You may wish to review the following terms before reading the selections: constitutional, ideological, judicial activism, judiciary, partisan, strict construction(ist).

E.J. Dionne Jr. comments on a series of lectures given by Justice Stephen Breyer at Harvard University. He presents Breyer's concept of "active liberty" as an "alternative to the theories of conservative jurists" and "why it is important to raise our national argument over court appointments above the level of slogans and campaign speeches."

Former Supreme Court law clerk Edward Lazarus explains the roles of Justice Sandra Day O'Connor and Justice Anthony Kennedy in creating "a right-of-center equilibrium" to the Supreme Court.

### Appoint a New Justice

Review the judicial branch of government. Give students "The Role of the U.S. Supreme Court and Supreme Court Justices." Distinguish "original jurisdiction" from "appellate jurisdiction." If the Supreme Court is in session, check The Washington Post's Supreme Court Calendar to see which case is being heard by the Court. Is it an example of original or appellate jurisdiction? You may wish to review the Eleventh Amendment, which addresses sovereign immunity for the states.

## Supreme Information

<http://www.supremecourtus.gov/>

### Supreme Court of the United States

"About the Supreme Court" is composed of a collection of PDFs, covering traditions, procedures, caseload, biographies and "The Court and Constitutional Interpretation."

<http://supct.law.cornell.edu/supct/cases/judges.htm>

### Historic Supreme Court Decisions—By Justice

Cornell University's Legal Information Institute provides an alphabetical list of all justices who have served on the Supreme Court. In addition to a short biography, justices' names link to their opinions in historic cases.

[http://supreme.lp.findlaw.com/supreme\\_court/justices/presjustices.html](http://supreme.lp.findlaw.com/supreme_court/justices/presjustices.html)

### Supreme Court Justices

Findlaw adds a personal dimension to the short bios of each justice. Longer complete biographies link to other online legal sites, articles and documents.

<http://www.oyez.org/oyez/frontpage>

Oyez  
For each justice get the quick stats, cases heard by the justice or play Oyez Baseball. Worthy features include archives, advocates and virtual tour.

<http://www.supremecourthistory.org/>

### The Supreme Court Historical Society

Founded in 1974 to expand public awareness of the Court's history and heritage, the Society's online site includes "Timeline of the Justices," "The Current Court" and informative quizzes.

<http://www.washingtonpost.com/wp-dyn/nation/courts/supremecourt/>

### Supreme Court

Select "About the Supreme Court" for biographies on The Washington Post site.

CONTINUED ON PAGE 4

## An Integrated Curriculum For The Washington Post Newspaper In Education Program

CONTINUED FROM PAGE 3

After discussing the role of the Supreme Court within the judicial branch, give students "Sitting Supreme Court Justices." Following this quick background review of the present Court, you may wish to divide students into nine groups to find more information on the justices in The Washington Post and online at <http://www.washingtonpost.com/wp-dyn/nation/courts/supremecourt/>. Select "About the Supreme Court" for biographies. Older students may be asked to do a more in-depth study of the cases heard in the 2003-04 term and their justice's voting patterns; select "The Supreme Court: Major Cases of the 2003-04 Term."

In addition to introducing students to the present members of the Supreme Court, "Sitting Supreme Court Justices" may be used as an exercise in categorizing. Categories might include liberal, conservative; Republican-, Democratic-appointed; educated at Harvard, Stanford, other institutions of higher education; believes in strict construction, moderate interpretation, judicial activist. "Law and Order" in the August 3, 2004, Post online guide, "Extending the Legacy," explains the concepts of judicial activism and judicial restraint.

Give students "The Ideal Supreme Court Appointment." This activity provides students with a vacancy on the Supreme Court. Students are to compose a profile of their ideal nominee to the Court. If a vacancy occurs on the Supreme Court, students might compare their profiles with those of the individuals considered for nomination and the president's nominee.

**Extension**

1. For further study of a Supreme Court case that affected the lives of school children, download the May 25, 2004, NIE guide at [www.washingtonpost.com/nie](http://www.washingtonpost.com/nie). The Boom and Brown guide featured *Brown v. Board of Education* and introduced Justice Thurgood Marshall.

2. Want to clarify judicial review and activism? Turn first to the Law and Order feature in the November 18, 2003, NIE guide. *Marbury v. Madison* and the establishment of judicial review are explored. The Law and Order feature in the August 2004 NIE guide focused on judicial activism and the work of Justice William O. Douglas.

**ANSWERS****Giving Order to Important U.S. Supreme Court Cases**

Matching. **1.** 1954; **2.** 1978; **3.** 1896; **4.** 1966; **5.** 1857; **6.** 1803; **7.** 1974.

**Supreme Legacy**

Multiple Choice. **1.** b, in the Merchants Exchange Building; **2.** c, The senior associate justice sits to the immediate right, the next to the immediate left, and alternate; **3.** c; **4.** b, William O. Douglas served 36 years and six months, retiring on Nov. 12, 1975. Field served 34 years and six months from 1863-1897. Black served 34 years and one month. Holmes served 29 years and one month. **5.** d, Fuller instituted the "conference handshake" to remind all that harmony of purpose can exist in spite of differences of opinion. **6.** a; **7.** b.

Matching. **1.** e. John Jay, appointed by President Washington, served Oct. 19, 1789, to June

**Read About The Court**

Barnes, Peter and Cheryl.

*Marshall, the Courthouse Mouse*

Narrative poetry playfully recounts the story of restrictive laws affecting mice and their cheese. Sure to give youngsters a working knowledge of the judiciary branch of the federal government.

Cornelius, Kay.

*The Supreme Court*

Like other Chelsea publications, the title is a comprehensive and significant contribution to literature for young people about how the Supreme Court works.

DeJohn, Heather.

*The Chief Justice of the Supreme Court*

Intended to amplify encyclopedia overviews, this recent 32-pager describes the role of the chief justice in the court's interpretation of the Constitution.

Epstein, Lita.

*The Complete Idiot's Guide to the Supreme Court*

Familiarity with idiot guides to other topics will allow readers to breeze through a recent 2004 issue and locate information specific to their interests about the court.

Kowalski, Kathiann.

*Order in the Court*

This 2004 cartoon book provides a simplistic version of the checks and balances of the Federal government as provided by the Judiciary Branch.

Woodward, Bob and Scott Armstrong.

*The Brethren: Inside the Supreme Court*

Covering the terms 1969-1975, includes 14 justices, their personalities and judicial decisions. Content includes information gained on background and deep background.

CONTINUED ON PAGE 5

## An Integrated Curriculum For The Washington Post Newspaper In Education Program

CONTINUED FROM PAGE 4

29, 1795. **2. h.** President Ronald Reagan nominated Sandra Day O'Connor. She began her term on the court Sept. 25, 1981. **3. f.** John Marshall wrote *The Life of George Washington*, published between 1804 and 1807. It was the first biography of Washington.

**4. b.** James F. Byrnes served briefly on the Court in 1941 and 1942. During the War, he essentially managed domestic issues so that Roosevelt could devote his attention to military and foreign affairs. Subsequently, Byrnes was Secretary of State under Truman, and later, Governor of South Carolina. **5. i.** William Howard Taft was Chief Justice of the U.S. 1921-30. **6. d.** Justice Arthur Goldberg was appointed Ambassador to the United Nations by President Lyndon B. Johnson in 1965. **7. a.** Chief Justice Warren Burger resigned in

1986 to serve as Chairman of the Commission on the Bicentennial of the U.S. Constitution. **8. g.** Thurgood Marshall was appointed by President Lyndon Johnson. Marshall served Oct. 2, 1967 to Oct. 1, 1991.

**First Monday in October**

**1. b;** **2.** Stevens; **3.** True; **4. d;** **5.** True; **6.** William T. Coleman, who clerked for Justice Felix Frankfurter in the 1948-1949 term; **7.** Lucille Lomen, who clerked for Justice William O. Douglas in the 1944-1945 term; **8.** False, only the justices are allowed in; **9.** True; **10. d.**

Sources for "Supreme Legacy" and "First Monday in October":

Supreme Court Historical Society (<http://www.supremecourthistory.org>) and Supreme Court of the United States (<http://www.supremecourtus.gov/>); "Supreme Trivia," The Washington Post, Oct. 4, 2004.

**Supreme Court Calendar**

The Supreme Court will hear oral arguments beginning at 10 a.m. today in the following cases:

*City of Rancho Palos Verdes v. Abrams*, No. 03-1601. Can the limits on state and local zoning and land-use authority established by Section 332(c)(7)(B) of the Telecommunications Act be enforced through an action for damages and attorney's fees? (One hour.)

*Clingman v. Beaver*, No. 04-37. Does Oklahoma's semi-closed primary election law, which allows a political party to invite nonaffiliated voters but not voters registered with another political party to vote in its partisan primary, violate the First Amendment right of a political party and its members to associate? (One hour.)

In January 2005, Justices Scalia and Breyer met at Washington College of Law to discuss "The Relevance of Foreign Law for American Constitutional Adjudication." They considered whether non-American court precedent should be used in deciding U.S. constitutional cases and to what extent changing world standards on social and moral issues should influence American judges. Visit <http://www.wcl.american.edu/secl/founders/2005/050113>.

**When the Supreme Court is in session, The Washington Post publishes the cases that will be heard by the justices.**

**Breyer****Scalia****What Justices Say**

Burger, Warren E.

*It Is So Ordered: A Constitution Unfolds* Chief Justice Burger, 1969-1986, utilizes 14 cases to introduce "some of the great cases and controversies that have shaped America's judicial, political, and economic history." Teachers and upper-level students will find this work, exemplifying the Constitution's goal of "ordered liberty," readable and informative.

Holmes, Oliver Wendell, Jr.

*The Common Law*

A demanding, but classic work on the origins of our legal doctrines will give AP and IB students a challenge.

O'Connor, Sandra Day.

*The Majesty of the Law*

The first female justice shares her life as a justice, examines "Women and the Law" and discusses the history of the Court and notable cases from the era of Chief Justice John Marshall to the 1950s. Students will enjoy her profiles of previous justices such as Taft, Charles Evans Hughes and Lewis Powell Jr.

Rehnquist, William H. *The Supreme Court*

Chief Justice of the U.S. Rehnquist states his purpose is to convey "a better understanding of the role of the Supreme Court in American government." Includes a history of the Court and its current procedures.

Scalia, Antonin.

*A Matter of Interpretation*

Justice Scalia provides insight into his philosophy of interpreting the law. Another challenging work.

Name: \_\_\_\_\_

## Giving Order to Important U.S. Supreme Court Cases

**Find and Summarize.** After reading about each Supreme Court case, summarize the key concept of each case and the Court's decision. Begin your Web search at the following Web sites: [www.supremecourthistory.org](http://www.supremecourthistory.org) and [www.landmarkcases.org](http://www.landmarkcases.org).

**Matching:** Pair the following dates with the cases listed: **1966, 1857, 1803, 1974, 1978, 1896, 1954**

- \_\_\_\_\_ 1. *Brown v. Board of Education of Topeka*—Separate but equal schools are unconstitutional.
- \_\_\_\_\_ 2. *Regents of the University of California v. Bakke*—Quota system used by the University of California at Davis medical school is unconstitutional, but race can be used as a “plus” in the application process.
- \_\_\_\_\_ 3. *Plessy v. Ferguson*—Separate but equal accommodations for blacks and whites are constitutional.
- \_\_\_\_\_ 4. *Miranda v. Arizona*—Police must read a person his or her constitutional rights before questioning him or her about a crime.
- \_\_\_\_\_ 5. *Dred Scott v. Sanford*—Dred Scott sues for his freedom from slavery. The U.S. Supreme Court rules against him.
- \_\_\_\_\_ 6. *Marbury v. Madison*—Supreme Court has the power to review acts of other branches to determine their constitutionality; this is known as “judicial review.”
- \_\_\_\_\_ 7. *United States v. Nixon*—Executive privilege power of the president is not absolute. Nixon resigned August 8 after Supreme Court orders him to turn over tapes.

**Create a Timeline:** Organize the dates in chronological order on a horizontal line, moving from left to right. Add an illustration for each of the dates. Make sure to include the case name and an explanation of the court case for each date. Title the timeline Important U.S. Supreme Court Cases.

---

### Scoring Rubric

**Excellent:** Very well organized, neatly completed, dates and cases are matched correctly and chronologically ordered, and illustrations show creativity. Title is present.

**Satisfactory:** Decently organized, but there is some crowding. Generally neat, but it could be neater. No more than two of the dates are incorrectly identified or not in order, illustrations are good but lack creativity. Title is present.

**Unsatisfactory:** Very poorly organized, dates are incorrectly ordered and poorly identified.



An Integrated Curriculum For The Washington Post Newspaper In Education Program

# Outlook: Talking Sense On Court Choices

## **E. J. Dionne Jr.**

Justice Stephen Breyer performed an enormous service for our country last week. He clarified what is at stake in the coming fights over judicial nominations. He made clear why it is important to raise our national argument over court appointments above the level of slogans and campaign speeches.

Breyer, in a series of lectures at Harvard University, offered a bold challenge to conservative judicial activism. While he was respectful of his colleagues, Breyer put forward an alternative to the theories of conservative jurists such as Justice Antonin Scalia.

Conservative politicians, including President Bush, say that they oppose judges who “legislate from the bench” and that they hope to fill the judiciary with “strict constructionists.” That sounds good, because we want democratically elected politicians, not judges, making the crucial decisions. Yet, at this moment in our history, it is conservative judges who want to restrict the people’s right to govern themselves.

That may sound sweeping, but the current trend among conservatives is to read the Constitution as sharply limiting the ability of Congress and the states to make laws protecting the environment, guaranteeing the rights of the disabled and regulating commerce in the public interest.

This new conservatism is actually a very old conservatism. It marks a return to the time before the mid-1930s when judges struck down all sorts of decent laws—for example, regulating the number of hours people had to work without overtime pay—reasoning that such statutes violated contract and property rights. Such rulings denied legislators the ability to resolve social problems

and make our society more just. The pre-New Deal judiciary that many conservatives are now trying to restore was the truly “imperial judiciary.”

The new conservative judicial activism is a greater threat to our democracy than the prospect of some future court striking down the *Roe v. Wade* decision on abortion. If *Roe* is lost (and I doubt it will be), states will still be free to pass liberal abortion laws. But if extreme conservative judges limit the authority of Congress and state legislatures to pass environmental, civil rights, labor and consumer laws, our democracy will be less robust, less effective and less just.

Breyer’s worries about the new trends are rooted in his criticisms of the courts of the late 19th and early 20th centuries. He argues that they “under-emphasized the constitutional importance of participation by black citizens in our representative democracy and overemphasized the importance of constitutional protections of property.”

Later courts—the New Deal and the Warren courts—“emphasized the Constitution’s protection of the citizen’s freedom to participate in government” and thereby expanded “the scope of democratic self-government.”

Breyer’s master concept is “active liberty.” He argues that the point of our Constitution is democracy—to guarantee “the principle of participatory self-government” that gives the people “room to decide and leeway to make mistakes.”

He suggests that justices who focus primarily on the Constitution’s text and “the Framers’ original expectations narrowly conceived” miss the Founders’ basic intention. Their purpose, Breyer says, was “to create a framework for democratic government—a government that, while

protecting basic individual liberties, permits citizens to govern themselves, and to govern themselves effectively.”

Breyer’s argument leads not to judicial activism but to judicial humility. He insists that courts take care to figure out what the people’s representatives intended when they passed laws. You might say that justices should not behave like imperious English professors who insist they can interpret the true meaning of words better than those who actually wrote them.

The power of Breyer’s idea of “active liberty” is that it links freedom to democracy. The point of our system of self-government is not simply to protect us from the wrongs government can commit but to give all of us the opportunity to shape what government does.

Breyer’s lectures, which discuss key cases in detail, deserve broad attention because they lay down an intellectually coherent marker in the critical debates we are about to have over the president’s judicial choices. Almost all of the journalism about judicial nominations focuses on filibusters, personal conflicts and partisan advantage. But this battle is so much more important than that.

Will judges invoke their own narrow, ideological readings of the Constitution to void progressive legislation? Or will they join Breyer in viewing the Constitution as a framework that “foresees democratically determined solutions, protective of the individual’s basic liberties”? The fight over judges is not about politics, narrowly conceived. It is a struggle over what kind of democracy we will have. Breyer has helped us understand that.

---

*A Post columnist since 1993, E.J. Dionne Jr. is a senior fellow in government studies at the Brookings Institution. He may be reached at postchat@aol.com.*

An Integrated Curriculum For The Washington Post Newspaper In Education Program

# Outlook: Why the Scales Won't Tip

## Edward Lazarus

The moment Ohio's election results became clear, my BlackBerry started buzzing with messages from friends and colleagues panicked that George Bush's reelection will result in a radical right-wing takeover of the Supreme Court as Bush makes as many as four new appointments, including a successor for the seriously ill Chief Justice William Rehnquist. Only time will tell, but such fears are likely exaggerated. In the next four years, the court's center of gravity will probably change only modestly, if at all.

By tradition, the chief justice lends his name to the court era over which he presides. In ideological terms, however, the current court is not the "Rehnquist Court" but, as some wags have put it, the "O'Kennedy Court." Either Sandra Day O'Connor or Anthony Kennedy holds the swing vote on virtually every major issue—abortion rights, affirmative action, voting rights, separation of church and state, the death penalty and the balance of power between the states and the federal government.

Under the controlling influence of O'Kennedy, a slender majority has driven the court steadily to the right during the last 15 years. But, for the most part, Kennedy or O'Connor (or both) have put the brakes on radical change. In many areas of law, they have reached the limit of their acquiescence in the aggressive agenda that Rehnquist, Antonin Scalia and Clarence Thomas have pursued.

Simply put, O'Connor and Kennedy have brought the court to a right-of-center equilibrium. For example, while they voted in 1992 to limit the right to abortion announced in *Roe v. Wade*, they prevented the court from overturning *Roe* and explic-

itly endorsed *Roe*'s core principles. While they cut back on affirmative action in 2003, they stopped the court from banning it entirely. And while they helped undermine the protections provided by the famous Miranda warnings, they cast key votes in 2000 in *Dickerson v. United States* to reaffirm Miranda itself.

On a few occasions, much to the consternation of their more conservative brethren, O'Connor and Kennedy have expanded constitutional protections. Two years ago, Kennedy authored the lead opinion (with O'Connor joining in the result) that granted constitutional status to homosexual relationships and recognized the right of homosexuals to engage in consensual sex in the privacy of their homes.

The court's approach to these and many other areas of law will not change if, as now seems inevitable, Bush appoints a successor to Rehnquist. True, GOP gains in the Senate last Tuesday may make it easier for Bush to name an ideological conservative in the mold of Scalia or Thomas (although Arlen Specter, a key Republican on the Senate Judiciary Committee has warned Bush against nominating extremists).

Even assuming Bush ignores Specter's advice, the president would merely be exchanging one hard-core conservative vote for at most a marginally harder-core vote. The basic arithmetic of the court's three-on-the-right, two-in-the-middle, four-on-the-left configuration would hold steady. Given the central truth that, as the late Justice William Brennan used to like to say, "It takes five votes to change anything around here," this means both O'Connor and Kennedy still would have to acquiesce in any further rightward shift in legal doctrine.

There is already speculation that

Justice John Paul Stevens—the oldest justice at 84 and the senior member of the court's more liberal wing—will also retire during Bush's renewed tenure. But this is no certainty. Being a Supreme Court justice is a splendid job accompanied by myriad support systems, including a cadre of doting law clerks who make the workday only as taxing as an individual justice chooses.

The disincentives to retirement, moreover, are substantial. To name only the most obvious, the justices who have retired over the last 20 years or so have all declined rapidly, as often happens to the elderly when they lose the organizing core of their daily life. Stevens shows few signs of slowing down. Oliver Wendell Holmes served until he was 90. Stevens may well make it to 88, and the end of Bush's second term.

Suppose Stevens steps down. Predictions of a radical shift rest on the belief that Senate Democrats, along with moderate Republicans, would fail to prevent the confirmation of two Scalia-mold conservatives.

But, even assuming that the Senate does confirm another Scalia type to replace Stevens, O'Kennedy would still have the power to prevent significant departures from the jurisprudential status quo that they have forged simply by aligning themselves in key cases with the remaining three more liberal justices (David Souter, Ruth Bader Ginsburg, and Stephen Breyer). O'Connor and Kennedy both keenly understand the role they play in restraining a full-fledged dismantling of the liberal civil rights and civil liberties precedents of the 1960s and '70s. It is hard to see why they would not steer the court together just as they have steered it independently for the last decade and a half.

Of course, all bets are off if O'Connor,



An Integrated Curriculum For The Washington Post Newspaper In Education Program

# Outlook: Why the Scales Won't Tip

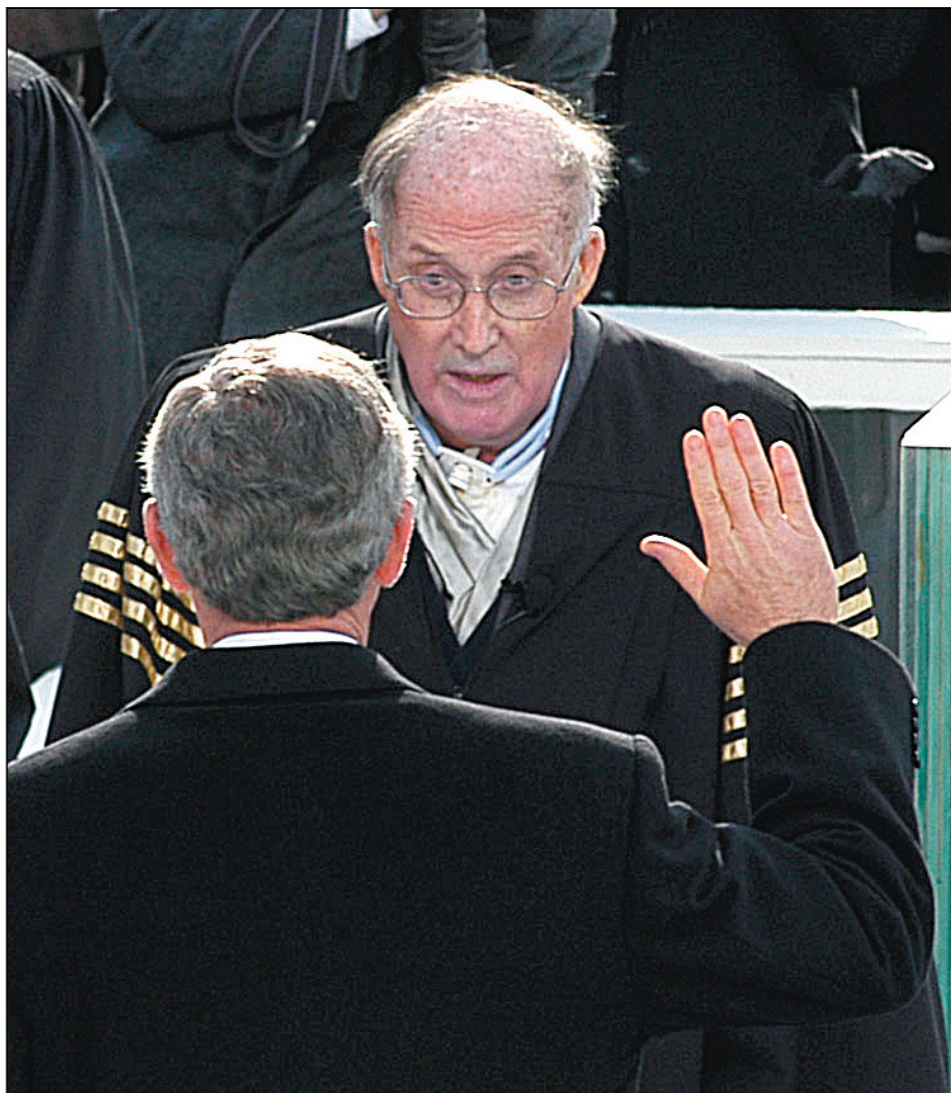
now in her mid-70s, decides to retire as well. But why should she? O'Connor wields more power than any other judge on this planet; she seems to enjoy the role; and she is a heroine to huge national constituencies. Rumors of her impending retirement notwithstanding, she stays.

The prospect of Rehnquist's retirement presents Bush with an opportunity of a different kind. The chief justice sets a tone for the court's internal life and he also, by dint of seniority, gets to author a large number of high-profile and broadly significant opinions.

Rehnquist's 18-year stewardship has been troubling in both respects. To begin with, by his own candid account, Rehnquist discourages internal debate among the justices. He does not believe that substantive discussion around the court's conference table changes anyone's mind—and is, thus, a useless hindrance to the efficient administration of court's business on which Rehnquist places a high priority.

In addition, Rehnquist has adopted a peremptory style for his opinions. Even in important cases, they often lack a deep level of reasoning and rarely take account of criticisms leveled by other justices. In law, this is known as an *ipse dixit* approach: It is so because I say so.

Regardless of ideology, these are not salutary qualities for the court. After all, as a matter of democratic theory, the nation yields extraordinary power to the nine, unelected, life-tenured justices because we believe that the court's decisions reflect a higher level of deliberation and reasoning than decisions made through the elected branches of government. When a chief justice discourages deliberation and eschews deep reasoning, he undermines the court's very reason for being.



BY WALLY HINDS—ASSOCIATED PRESS

**Chief Justice William Rehnquist administers the oath of office to President George W. Bush on Jan. 20, 2005. Despite Rehnquist's poor health, the chief justice was determined to fulfill one of his judicial duties.**

Whether Bush chooses a chief with the judicial politics of Scalia or O'Connor or Souter, it would be best to select someone who cherishes the values of debate and persuasion—and sees the court as a forum for a principled engagement on the issues that cleave us so terribly and

not simply as a mirror in which to observe our most divided selves.

*Edward Lazarus, a former law clerk to Justice Harry A. Blackmun, is the author of Closed Chambers: The Rise, Fall, and Future of the Modern Supreme Court (Penguin Books).*

Name: \_\_\_\_\_

# Supreme Legacy

**Multiple Choice.** *Select the answer that most accurately completes the sentence or answers the question.*

\_\_\_\_\_ 1. The Supreme Court first convened

- a. July 10, 1776, in Philadelphia
- b. February 1, 1790, in New York City
- c. March 20, 1800, in Washington, D.C.
- d. July 4, 1812, in Washington, D.C.

\_\_\_\_\_ 2. The Chief Justice sits in the center chair. Where does the associate justice with seniority on the Bench sit?

- a. To the Chief Justice's far left
- b. To the Chief Justice's far right
- c. To the Chief Justice's immediate right
- d. To the Chief Justice's immediate left

\_\_\_\_\_ 3. Son of a famous writer, this Civil War veteran and Massachusetts justice, was appointed to the Supreme Court by President Theodore Roosevelt. He believed the law should develop along with the society it serves ("The life of the law has not been logic; it has been experience.") and that judges should not let their personal opinions influence their judicial decisions.

- a. Louis D. Brandeis
- b. John Marshall Harlan
- c. Oliver Wendell Holmes Jr.
- d. Byron R. White

\_\_\_\_\_ 4. Justices serve for life or retirement. Who served the longest term?

- a. Justice Hugo Black, Aug. 19, 1937-Sept. 17, 1971
- b. William O. Douglas, April 17, 1939-Nov. 12, 1975
- c. Stephen J. Field, May 20, 1863-Dec. 1, 1897
- d. Oliver Wendell Holmes Jr., Dec. 8, 1902-Jan. 12, 1932

\_\_\_\_\_ 5. Before going to the Bench and at the beginning of private conferences at which decisions are discussed, Justices shake hands with each other. Which Chief Justice instituted the "Conference handshake"?

- a. Benjamin Cardozo
- b. Abe Fortas
- c. Felix Frankfurter
- d. Melville W. Fuller

\_\_\_\_\_ 6. Day on which a new session of the Supreme Court begins is

- a. First Monday in October
- b. First Tuesday in February
- c. Last Wednesday in May
- d. First Monday after Labor Day

7. How many men have served as Chief Justice of the United States from October 1789 to January 2005?

- a. 10
- b. 16
- c. 24
- d. 37

**Matching.** *Pair the justice with the information that is true of him or her.*

\_\_\_\_\_ 1. First Chief Justice of the United States

\_\_\_\_\_ 2. First female associate justice

\_\_\_\_\_ 3. This justice wrote a five-volume biography of George Washington.

\_\_\_\_\_ 4. Only person in American history to serve as a congressman, senator, Cabinet officer, governor of a state and Supreme Court justice. He was from South Carolina.

\_\_\_\_\_ 5. First and only president to serve on the U.S. Supreme Court

\_\_\_\_\_ 6. Justice who resigned at the request of the president to become ambassador to the United Nations.

\_\_\_\_\_ 7. Justice who left to devote his time to the celebration of the Bicentennial of the U.S. Constitution

\_\_\_\_\_ 8. First African American justice of the Supreme Court

- |                        |                        |
|------------------------|------------------------|
| a. Warren Burger       | f. John Marshall       |
| b. James F. Byrnes     | g. Thurgood Marshall   |
| c. Ruth Bader Ginsberg | h. Sandra Day O'Connor |
| d. Arthur Goldberg     | i. William Howard Taft |
| e. John Jay            |                        |

# First Monday in October

---

Every year The Washington Post presents a “First Monday in October” quiz. The following items were part of reporter Charles Lane’s Oct. 4, 2004, quiz that focused on the behind-the-scenes helpers—the Supreme Court law clerks. Young, smart, industrious and (almost always) discreet, clerks put in long hours wading through eye-glazing paperwork for their bosses. What they get in return is a modest salary, the thrill of helping the high court through one year of historic decision making—and a ticket to a future career in the upper echelons of American law, business or government.

- \_\_\_\_\_ 1. Each of the following Supreme Court justices except one is a former Supreme Court law clerk. Who is the exception?
  - a. William H. Rehnquist
  - b. Antonin Scalia
  - c. Stephen G. Breyer
  - d. John Paul Stevens
  
- \_\_\_\_\_ 2. Eight of the nine members of the court participate in a “cert pool,” a system designed to streamline the task of reading through the thousands of appeal petitions that come to the court each term. The pool clerks divide up the stack of petitions each week, producing a single memo on each case to help the justices decide whether to hear the case. Who is the only justice who has his own law clerks read and summarize all the cases separately for him?
  
- \_\_\_\_\_ 3. True or false? According to *Legal Times*, former Supreme Court law clerks are so highly prized by law firms that some can expect to receive compensation totaling more than \$300,000 for their first year’s work after leaving the court.
  
- \_\_\_\_\_ 4. Which of the following people was not a Supreme Court law clerk:
  - a. Warren Christopher, former secretary of state
  - b. Laura Ingraham, conservative TV pundit
  - c. Alan Dershowitz, defense lawyer
  - d. Alberto Gonzales, White House counsel and Attorney General nominee
  
- \_\_\_\_\_ 5. True or false? Supreme Court law clerks are prohibited from representing clients before the court until at least two years after their clerkships end.
  
- \_\_\_\_\_ 6. Who was the first African American to be a Supreme Court law clerk, and which justice did he serve?
  
- \_\_\_\_\_ 7. Who was the first woman to be a Supreme Court law clerk, and which justice did she serve?
  
- \_\_\_\_\_ 8. True or false? One of the most important functions of a law clerk is to accompany his or her justice as a note taker during the conferences at which justices discuss and vote on cases.
  
- \_\_\_\_\_ 9. True or false? Each law clerk is expected never to reveal the confidential inner workings of the court.
  
- \_\_\_\_\_ 10. According to the introduction of their 1979 book, *The Brethren*, how many former law clerks provided authors Bob Woodward and Scott Armstrong inside information on the court?
  - a. None
  - b. One
  - c. Twelve
  - d. More than 170



An Integrated Curriculum For The Washington Post Newspaper In Education Program

# The Role of the U.S. Supreme Court and Supreme Court Judges

## **Constitutional Origin: Art. III, § 1 states**

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

## **Jurisdiction: What cases may the Supreme Court hear?**

### **Art. III, § 2 states:**

The judicial Power shall extend to all Cases arising under this Constitution ... to Controversies to which the United States shall be a party, between two or more States, between a State and Citizens of another State, between Citizens of different States, and between a State and foreign States.

### **ORIGINAL JURISDICTION**

The Supreme Court may hear these cases without any procedural history, but such cases are very limited: cases affecting ambassadors, other public ministers and consuls; maritime jurisdiction; and where a state is a party.

### **APPELLATE JURISDICTION**

The Supreme Court may hear on appeal cases arising in the various federal district and state courts of the United States.

If a party is appealing from a State Court decision, the Supreme Court may only grant *certiorari* if the case contains valid federal questions.

### **Identities of the Parties**

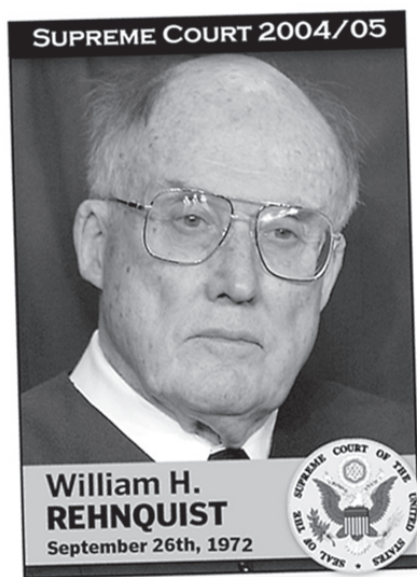
The United States; two or more states; citizens of different states; between states and foreign states.

Must be a case or controversy involving a question of Federal Law: In *Marbury v. Madison*, the Court definitively stated that "it is emphatically the province of the judicial department to say what the law is."

## An Integrated Curriculum For The Washington Post Newspaper In Education Program

## Sitting Supreme

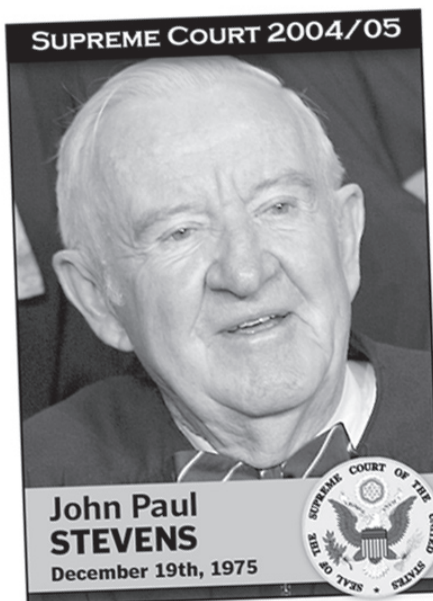
*Read the brief biographies of the current Chief Justice of the United States and the eight associate justices of the Supreme Court. Using the information given, group the justices into different categories.*



### Chief Justice William H. Rehnquist

Born in Milwaukee, Wis., October 1, 1924, Rehnquist served in the U.S. Army Air Force from 1943-46. Following his military service, Rehnquist received several advanced degrees from Stanford University before pursuing law at Harvard. Rehnquist was appointed to the Supreme Court by President Richard Nixon in 1972.

Rehnquist quickly became the leader of the conservative wing of the Court with his ideological view of the Constitution and the role of government. A committed adherent to Federalism and judicial deference, Rehnquist scrutinizes what he views as the intrusion of the national government on states' rights, even if he believes state decisions are based on poor judgment.



### Justice John Paul Stevens

Born in Chicago, Ill., April 20, 1920, Stevens studied at the University of Chicago and received his J.D. from Northwestern University. After service in the Navy, Stevens was a Supreme Court law clerk to Justice Wiley Rutledge during the 1947 term. He was a member of the U.S. Court of Appeals for the Seventh Circuit, 1970-1975.

President Gerald Ford nominated Stevens to the Supreme Court in 1975. Since his appointment, Stevens has become increasingly identified with the liberal "bloc" of the Court; however, many consider him the least predictable justice sitting today. He typically examines the facts of each case individually and often consults with experts before arriving at his own conclusions. Stevens is noted for his colloquies and exploration into legal theory.



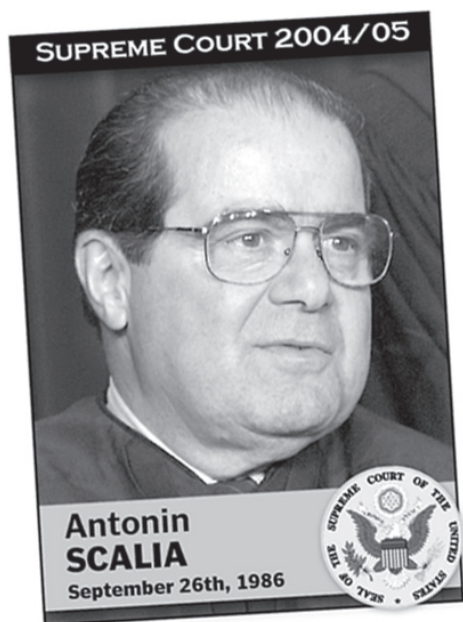
### Justice Sandra Day O'Connor

Born in El Paso, Texas, March 26, 1930, O'Connor received her undergraduate and law degrees from Stanford. After serving in the Arizona State Senate for two two-year terms, the Maricopa County Superior Court, and the Arizona Court of Appeals, O'Connor, the first female associate justice, was appointed to the Supreme Court by President Reagan in 1981.

She has been identified as one of the more conservative, if not libertarian, members of the Court. Her faithful deference to State Court decisions has become a predictive element of the Court as she argues against concern for wisdom and for strict constitutional adherence. She has joined Justice Kennedy in several moderating decisions.

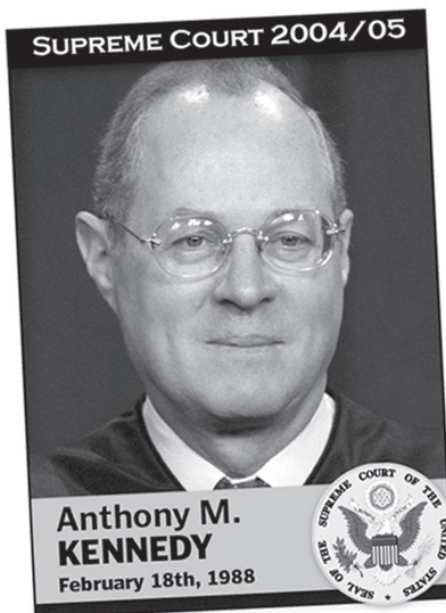
## An Integrated Curriculum For The Washington Post Newspaper In Education Program

## Sitting Supreme



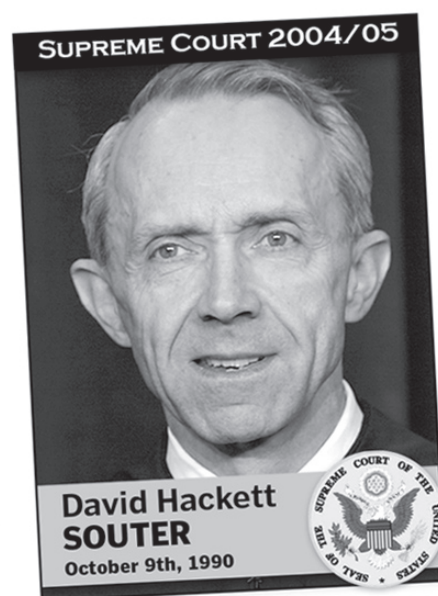
### Justice Antonin Scalia

Born in Trenton, N.J., March 11, 1936, Scalia studied at Georgetown University and the University of Fribourg in Switzerland, receiving his legal education at Harvard. President Reagan in 1986 appointed Scalia to the U.S. Court of Appeals for the District of Columbia; Scalia rose to the Supreme Court after William Rehnquist replaced Warren Burger as Chief Justice. Scalia continues to be a staunch federalist, concerned primarily with the separation of powers within the federal government, though he has been known to cast unexpected votes in the direction of liberalism on several occasions.



### Justice Anthony M. Kennedy

Born in Sacramento, Calif., July 23, 1936, Kennedy received his B.A. from Stanford University and the London School of Economics and studied law at Harvard. Appointed by President Ronald Reagan in 1988, Kennedy typically serves as the tie-breaking vote between the liberal and conservative sides of the Court, adhering to a strict interpretation of judicial restraint. Kennedy has, however, interpreted some First Amendment cases from a liberal perspective, upsetting the imbalance that he was understood to create.



### Justice David H. Souter

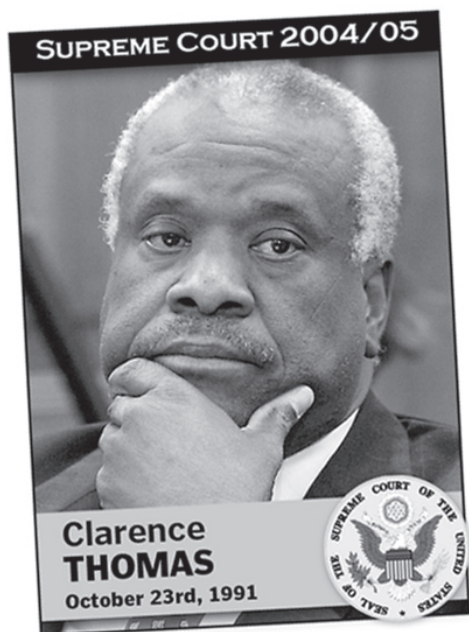
Born in Melrose, Mass., September 17, 1939, Souter attended Harvard for his undergraduate education, during which time he was a Rhodes Scholar. He received an A.B. in Jurisprudence from Oxford University and an MA in 1989; his LL.B. is from Harvard Law School. Although he was appointed by George H.W. Bush, a Republican, in 1990, Souter has tended to be more moderate, dissenting in the 2000 election case, *Bush v. Gore*.

A staunch critic of televised court proceedings, he stated in 1996, "the day you see a camera come into our courtroom, it's going to roll over my dead body."



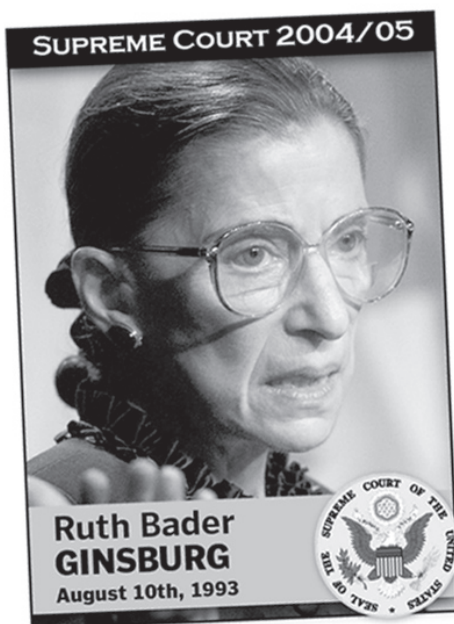
## An Integrated Curriculum For The Washington Post Newspaper In Education Program

## Sitting Supreme



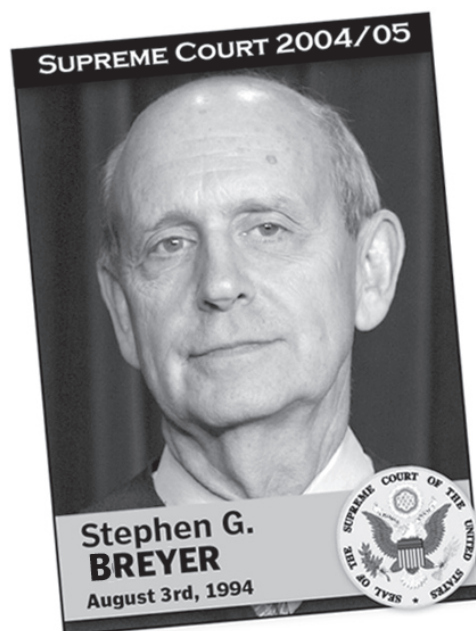
### Justice Clarence Thomas

Born outside of Savannah, Ga., June 23, 1948, Thomas received his A.B. from Holy Cross College and his J.D. from Yale University. Justice Thomas was appointed to the Supreme Court by President Bush in 1991. Thomas, the only black justice in the Court, has carved a name for himself in many divisive racial issues, taking a strong opposition stance against affirmative action and pushing for states to allot greater resources toward school integration in urban areas. Although he is generally considered conservative, he has taken liberal views on First Amendment expansion.



### Justice Ruth Bader Ginsburg

Born in Brooklyn, N.Y., March 15, 1933, Ginsburg studied at Cornell, attended law school at Harvard and received her L.L.B. from Columbia Law School. President Clinton appointed Ginsburg in 1993. Noted for her moderate approach to judicial interpretation, Ginsburg consistently encourages dialogue with the legislative branch. Though she has been a staunch supporter of women's abortion rights, Ginsburg criticizes the Court's decision in *Roe v. Wade* as being too broad and a barrier to reform.



### Justice Stephen G. Breyer

Born in San Francisco, Calif., August 15, 1938, Breyer studied at Stanford, Oxford and Harvard, where he received his J.D. Breyer was appointed by President Bill Clinton in 1994. Breyer tends to approach cases in a pragmatic manner, opting for coherence rather than strict constitutional interpretation and governmental separation. Breyer also contends that the Supreme Court should cite international law in its decisions. While his views are fundamentally liberal, Breyer consistently defers to the role and judgment of federal law enforcement when writing opinions.

## An Integrated Curriculum For The Washington Post Newspaper In Education Program

# The Ideal Supreme Court Appointment

Suppose that you are the next President of the United States. As an Independent candidate, you were not expected to win; however, your views on major issues as well as your personal convictions spoke to a majority of

## YOU AND YOUR RIGHTS

voters. Your first major task in office is to fill the vacancy left by retiring Supreme Court Justice Albert Fatt. Justice Fatt was regarded as the most conservative member of the Court, strongly adhering to the constitutional role of the Court as an interpreter rather than a vehicle for social or political change.

The most pressing issues for your first term in office fall within these areas:

1. Public education reform

2. Medical research, including use of stem cells
3. Protection of the environment
4. Immigration policy
5. Maintaining national security and First Amendment rights

The current composition of the Court is deadlocked: Four justices adhere to a strict, constitutional interpretation of judicial review, while the four others consider the court's role to be interpreters of the intent of the law, advocating broad Article III powers.

Given your knowledge of the Supreme Court's powers, as well as the backgrounds of the current Supreme Court justices, consider the characteristics of your ideal appointee for the vacancy. What are you looking for in your potential nominee's

- educational foundation and professional experience,
- judicial philosophy,
- views expressed on any of the pressing issues, and
- personal qualities.

Compose a profile of the ideal nominee to be an Associate Justice of the Supreme Court.

**REMEMBER:** You are Independently affiliated, and have greater latitude in policymaking decisions. You are establishing your administration, so you must do your best to avoid favoring one side or the other of the traditional two-party system. Don't be afraid to justify your decision with your personal views on the above-mentioned issues.

## ABOUT THE AUTHOR

Shaun Owens, a Washington, D.C., area native, is a second-year law student at American University Washington College of Law. He teaches Constitutional law through the Marshall-Brennan Constitutional Literacy Project at H.D. Woodson High School in Northeast D.C.

## A Great Justice

Chief Justice John Marshall, who served on the Court February 4, 1801, to July 6, 1835, is considered one of the great justices. What qualities make him stand out? He possessed a brilliant legal mind and complete dedication to his service at the Court. A practical decision maker and a man of unquestioned integrity, Marshall is well respected by followers of the Court.

- His early education came from frontier life (Fauquier, Va.) and his parents. After fighting in the Revolutionary War and studying law a few months at the College of William and Mary, he was admitted to the bar in 1780.
- His skill in framing arguments and his belief in the Constitution gained him respect.
- Serving for 34 years and six months, Marshall was dedicated to establishing a strong and enduring Supreme Court. He respected the provisions of the Constitution, while viewing it as a living document to be interpreted by justices.
- He participated in more than 1,000 decisions and authored more than 500 opinions.
- Marshall viewed the Constitution as giving the outline of power, and it is he who is the single most important figure in constitutional law. Marshall showed wisdom in making decisions that became the precedents for today's Court. "Other justices will surpass his single accomplishments," according to Jerry Goldman (Oyez Baseball), "but no one will replace him as the Babe Ruth of the Supreme Court."

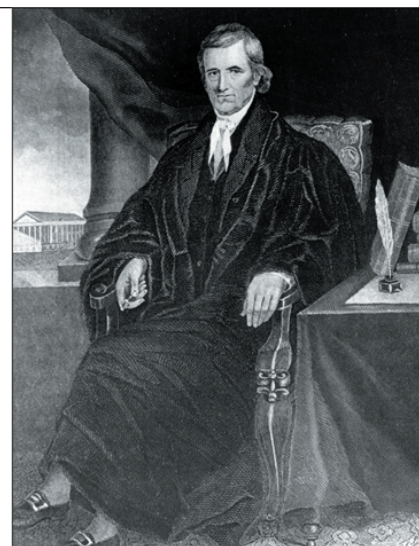


ILLUSTRATION BY ALONZO CHAPPEL VIA ASSOCIATED PRESS

**Chief Justice John Marshall, who headed the U.S. Supreme Court from 1801 to 1835.**

## An Integrated Curriculum For The Washington Post Newspaper In Education Program

### Academic Content Standards

*This lesson addresses academic content standards of Maryland, Virginia and the District of Columbia.*

#### Maryland

##### *Social Studies, Political Science, Grade 8.*

Students will describe the evolution of the U.S. political system as expressed in the United States Constitution, and the Bill of Rights.

- Describe how the three branches of government interact to protect people's sovereignty

##### *Government*

Political Systems. The student will demonstrate an understanding of the historical development and current status of principles, institutions, and processes of political systems.

1.1.2: The student will evaluate how the principles of government assist or impede the functioning of government.

Political Systems. The student will evaluate how the United States government has maintained a balance between protecting rights and maintaining order.

1.2.1: The student will analyze the impact of landmark Supreme Court decisions on governmental powers, rights, and responsibilities of citizens in our changing society.

##### *English*

Students will read, comprehend, interpret, analyze and evaluate informational texts. Develop comprehension skills by reading a variety of self-selected and assigned informational texts. Grade 3: newspapers; Grade 8: editorials and commentary.

A complete list of State Content Standards of Maryland can be found at <http://www.mdk12.org/mspp/standards/>.

#### Virginia

##### *Government*

The student will demonstrate knowledge of the organization and powers of the national government by

- examining the legislative, executive, and judicial branches;
- analyzing the relationship between the three branches in a system of checks and balances.

Government. The student will demonstrate knowledge of the operation of the federal judiciary by

- explaining the jurisdiction of the federal courts;
- comparing the philosophies of judicial activism and judicial restraint.

##### *Civics and Economics*

The student will demonstrate knowledge of how public policy is made at the local, state, and national levels of government by

- examining the roles and powers of the executive branch.

##### *English*

Reading, Grade 7: The student will read and demonstrate comprehension of a variety of informational texts. Describe how word choice and language structure convey an author's viewpoint.

Writing, Grade 7: The student will develop narrative, expository and persuasive writing.

A complete list of Standards of Learning of Virginia can be found on the Web at <http://www.pen.k12.va.us/>.

#### Washington, D.C.

##### *Social Studies*

Chronology and Space in Human History. Grade 5: The student makes a time line of significant events in the development of the United States.

Political Ideas, Turning Points, and Institutions. Grade 3: The student distinguishes among local, state, and national government and identifies representative leaders at these levels.

##### *American Government.*

Authority, Responsibility and Power. The student identifies elected and appointed officials and their authority and responsibilities; investigates relationships among governmental authority, social justice, individual liberty, and public safety.

##### *Principles and Practices.*

The student explains the roles and responsibilities of the branches of government—executive, legislative and judicial system—in the United States.

##### *English*

Language as Meaning Making. Students comprehend and compose a wide range of written, oral and visual texts in the process of making meaning.

A complete list of Standards for Teaching and Learning of the District of Columbia Public Schools can be found at <http://www.k12.dc.us>.