

Lesson 4

History of Supreme Court

Objectives: Students will study the role of Supreme Court in U.S. history including the development of judicial review

Handouts: (1) The Supreme Court - Judicial Review; (2) Judicial Philosophy by Gerrit Keopping; (3) "Interpreting the Constitution," We the People: The Citizen & the Constitution by the Center for Civic Education, (4) *Justice Weighs Desire v. Duty (Duty Prevails)*, about Assoc. Justice John P. Stevens, by Linda Greenhouse.

Extensions and Background: *Group Dynamics: Group Decision Making and the Court* by Cass R. Sunstein; "I Do Solemnly Swear," an historical perspective on the nomination, confirmation, and appointment of justices to the Supreme Court by Robert Barker. See also Federalist 78 (Lesson 2).

A. Daily Warm-Up and Current Events Alert!

Check National Constitution Center's website for relevant and timely current event news alerts. www.constitutioncenter.org.

B. The Evolving Court - A Little History

Alexander Hamilton's Federalist Paper 78 (handout from Lesson 2) explores what was in the minds of the framers. See Barbara's Notes, p7, for talking points on the relationship of the three branches, hierarchy of laws, independence of the judiciary, and qualifications for Supreme Court judge. Possible discussion question: what do you think of Hamilton's comments about "good behaviour" (beginning on line 36, p1)?

The landmark case *Marbury v. Madison* in 1803, set the wheels in motion for what is now known as the Court's power of judicial review. Using Handout 2, The Supreme Court - Judicial Review, examine what is now meant by "judicial review." Possible discussion questions:

- Is this what Hamilton had in mind?
- What is the connection between the meaning of judicial review and selecting the next Supreme Court justice?

C. Judicial Philosophy

What is meant by judicial philosophy? Using Koepping's lesson on judicial philosophy, Handout 2, review the notions such as strict constructionism and original intent.

Alternatively, use *Interpreting the Constitution*, Handout 3, for an overview on different ways to interpret the constitution. It includes a brief overview of the concepts of the strict and broad construction, judicial restraint and judicial activism.

Teachers: consider using a pie chart graphic organizer to help explain the various judicial philosophies expressed on the court. Examples may be found at: <http://www.enchantedlearning.com/graphicorganizers/piechart/>

To what extent do judges use the philosophies when deciding cases? Consider the remarks of Assoc. Justice John Paul Stevens, Handout 4.

D. Vocabulary

Consider adding to the list approaches to deciding cases: strict construction, judicial activism, etc.



E. Extensions, Homework, Journal Entry

1. Read backgrounder *Group Dynamics: Group Decision Making and the Court*. How does what the author terms "group polarization" influence the decisions of the Court?
2. How would you approach how to decide a case? Would you use a single judicial philosophy? Which one and why? Or, would you use a combination of philosophies? Which ones and why?
3. For a very readable historical perspective on the nomination, confirmation, and appointment of justices to the Supreme Court see Barker's *I Do Solemnly Swear*. Included are brief discussions on choosing justices, Senate confirmation, and judicial independence.
4. Using Koepping's lesson on judicial philosophies, complete the exercise using Judicial Excerpts (part of Handout 2).