

#1325

Pop Quiz

A Paper Presented to the Sphex Club of Lynchburg, Virginia
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Ignoring the Sphex Club's bylaw #7, Counselor Woos did not submit "a short autobiography before the meeting" to be read to the membership. More details concerning this will be found in the meeting's minutes.

SPHEX CLUB
POP QUIZ
FEBRUARY 18, 2010
ROBERT C. WOOD, III

Put on your sunglasses. Pretend you are back in college. You have entered your classroom – uncomfortable because you are unprepared – ready to hide behind your sunglasses in the back row. Your professor enters.

Good evening class. Welcome to Political Science 101. I know you are expecting an inspiring lecture during which you could close your eyes and take a nap. Well surprise, close your books, open your eyes, off with those sunglasses, on with your thinking cap . . . we're having a "pop quiz."

Have there ever been more dreaded words from a professor than "pop quiz." I expect all of us have shuffled into a classroom, maybe a little late, a bit drowsy or hung over, and unprepared to hear these dreaded words "pop quiz." There is panic, accompanied by gnashing of teeth, growling stomach, nagging headache and maybe even an eraser thrown at the professor while he had his back to the class. Unfortunately, I must confess that this was my reaction when a little, nerdy, biology instructor (who was not much older than I), popped a quiz on a Saturday morning (yes there were Saturday morning classes at Washington & Lee in 1958), and I reacted by launching an eraser towards the blackboard that barely missed his head. Fortunately, I was not expelled from either the classroom or Washington &

Lee. For this reason alone, my brain will be forever infected with irreverence for pop quizzes.

Well, tonight I'm getting even: you are going to have a pop quiz on what James Madison predicted in the federalist papers "[the branch of government that] will always be the least dangerous to annoy or injure our political rights of the Constitution," that branch being the judiciary and the Supreme Court."

Class will be divided between those members to my right (shall I call you strict constructionists) who are inclined to practice "judicial restraint," and those members to my left, shall I refer to you as liberals who think that the Constitution is a document that breathes to reflect the policies and public opinion at any moment in our history, sometimes derogatively referred to by conservatives as judicial activists, and I may keep score. If there's any dispute about an answer to any question, I've asked Judge Moon and Judge Perrow to resolve any disagreement among you about your answers. I asked Judge Moon's former colleague on the University of Virginia Law faculty to attend, Judge Anthony Scalia, but he politely declined. He said he was too busy trying to discern the original intent of the framers of our Constitution.

Don't be bashful; if there is total silence I may call on you.

The first questions will test your knowledge of our Constitution and the amendments of which there are "how many?"

Answer: 27. It prohibits Congress from raising their salaries until the next general election for House of Representatives.

Then I will shift to cases decided by the Supreme Court which you will probably recognize by the style or name of the case and test your knowledge of Supreme Court decisions that have shaped the development of law and order and justice in our great country. I want to leave at least 30 minutes for you to ask questions, vent, praise or just comment about our Supreme Court, its judges, and the decisions that you like or dislike.

Second question - In what year was the Constitution adopted by a convention of the states?

Answer: 1787.

Who was the first member of the convention to sign the Constitution?

Answer: George Washington.

We all know that Thomas Jefferson wrote the Declaration of Independence.

Did Jefferson participate in the convention and sign the Constitution?

Answer: No. Why: He was in France.

Which state was the first to ratify the Constitution?

Answer: Delaware, December 7, 1787.

How many of the original thirteen colonies had to ratify the Constitution before it became the supreme law of the U.S?

Answer: Nine.

In what year was the Constitution ratified?

Answer: June 21, 1788.

Was Virginia among the first nine states originally to ratify the Constitution?

Answer: No, Virginia didn't ratify the Constitution until June 25, 1788.

Which article of the Constitution prescribes the judicial power of the United States?

Answer: Article 3, Sections 1, 2 and 3.

Article 3 provides for the establishment of how many courts?

Answer: It provides only for a Supreme Court and such other courts as Congress may, from time to time, ordain and establish. Thus, the Supreme Court is the only constitutional court; other federal courts had to be established by an act of Congress, and Congress can define their jurisdiction. The First Judiciary Act was passed in 1789 establishing district and appellate courts.

Judges of both the Supreme Court and other inferior federal courts hold their offices for life upon only one condition? What is that?

Answer: Good behavior – which really means life tenure.

Does the Supreme Court have original jurisdiction.

Answer: Yes, but only in three types of cases.

What are they?

Answer: Cases affecting (1) ambassadors, (2) public ministers and counsels, and (3) those in which a state shall be a party.

Why did I ask such an obscure question?

Answer: Because the Supreme Court's original jurisdiction was the basis of the Court's ruling in *Marbury v. Madison*, which most constitutional scholars say is the most important decision of the Supreme Court.

Who was the first chief justice of the Supreme Court?

Answer: John Jay. Jay was a prominent New Yorker; he participated with James Madison in writing the Federalist Papers -- he served from 1789 to 1795; an aristocrat by birth, his favorite maxim was "those who own the country ought to govern it."

Is this still an appropriate maxim to do? I understand that the Senate is known as the millionaire club, and it now takes millions of dollars to get elected to any chamber of Congress. So was Jay right?

Does anybody know the name of the second chief justice?

Answer: John Rutledge, a recess appointed by George Washington, who was never confirmed by the Senate. He was allegedly senile and an alcoholic. In the first years of the Supreme Court, these were

not necessarily unacceptable qualifications because the court had few cases and was not held in high esteem.

A famous Virginian was approached by Washington to succeed Rutledge as chief justice. Who might that be?

Answer: Patrick Henry, but he declined.

A delegate to the constitutional convention, Henry spoke against adoption of the Constitution. When Henry declined the nomination, Oliver Ellsworth was appointed and confirmed as chief justice in 1796 – most scholars consider him a flop.

Who was the fourth chief justice of the Supreme Court?

Answer: John Marshall. He was appointed by Adams in 1801. Marshall was a staunch federalist (supported a central government v. states' rights) and was an adversary of Thomas Jefferson who was an anti-federalist and advocate and protector for states' rights). These two giants could not have differed more on the role of the judiciary in the division of power among the three branches of government.

Marshall and Jefferson's views of the role of the Supreme Court still permeates judicial philosophy – the liberals v. conservative, views also known today as judicial activism v. judicial restraint.

How do you define judicial restraint?

Answer: Generally, these lawyers or politicians believe that the legislature should have the primary say on policy consideration through the legislative process. Thus, it is not part of the judicial functions to strike down laws, either state or federal, simply because a judge may disagree with the law, even if the judge might believe that a law embodies economic or social mistakes . . . in other words courts should give deference to the legislature.

So what is a judicial activism?"

Answer: Judges who are more likely than not to assert a personal, political view or judgment, particularly in the area of civil rights, and more likely than not, to refuse to give deference to laws that they find infringe on personal liberties.

I am sure all of you have heard the phrase stare decisis. What is stare decisis?

Answer: A court should rely upon precedent and follow past court decisions. Its purpose is to make the law predictable.

In what year were the first ten amendments ratified by the states?

Answer: 1791.

In the First amendment, Congress was prohibited from enacting laws in three specific areas: what were they?

Answer: (1) Congress can make no laws respecting the establishment of religion or prohibiting the free exercise; (2) Congress shall make no law abridging the freedom of speech or the press; (3) Congress shall make no law prohibiting the right of the people peacefully to assemble and to petition the government for redress of grievances.

What rights are secured to the people in the Fourth amendment?

Answer: The right to be secure in their persons and homes and papers against unreasonable searches and seizures. The right to have no warrant issued without probable cause.

There are the four rights guaranteed to the people in the Fifth amendment?

What are they?

Answer: (1) No person shall be subject for the same offense to be twice put in jeopardy, better known as double jeopardy. (2) No person shall be compelled in any criminal to be a witness against himself. (3) No person shall be denied life, liberty, or property without due process of law. (4) Private property shall not be taken for public use without compensation.

Four rights are guaranteed to citizens in the Sixth amendment. What are they?

Answer: (1) The right to a speedy and public trial by an impartial jury.
(2) To be informed of the nature and cause of the accusation. (3)
To have the right to confront witnesses against him, and (4) to
have the assistance of counsel for his defense.

What about the Tenth amendment?

Answer: Powers not delegated to the U.S. by the Constitution are reserved to the States, respectively, or to the people.

This amendment has been the subject of controversy since its adoption. What powers are not delegated to the U.S? You can make your own list for homework.

At the time of the passage of the first ten amendments, they did not apply to the states, but only the federal government. What is the only crime defined in the Constitution?

Answer: Treason, and to be convicted the prosecution must have two witnesses.

What president has appointed the most number of justices to the Supreme Court?

Answer: George Washington.

How many?

Answer: Eleven.

As I mentioned, these justices were a motley crew and were not known at all outside the legal community. One spent time in a debtor's prison for defaulting on loans; one returned his commission after five days to serve in a state office; one never attended a single court session; one was impeached for political bias on the bench; one was insane; and another was senile. John Jay, the first chief justice campaigned for state office from the bench and spent much of tenure on diplomatic missions.

What president takes second place in number of appointments?

Answer: Franklin Roosevelt: he appointed eight justices to the Supreme Court over his twelve years as president.

How many justices sit on the Supreme Court?

Answer: Nine.

Is this required in Article Three of the Constitution?

Answer: No, Article Three of the Constitution does not specify the number of justices to sit on the Supreme Court. At one time, there were ten justices on the court and at other times there have been less than 9.

Class, I am sure all of you can name the last five presidents of the United States.

Answer: Obama, George Bush, Clinton, George Bush Sr., Reagan and Carter.

How many of you can name the last five chief justices of the Supreme Court?

Answer: John Roberts, William Rehnquist, Warren Burger, and Fred Vinson.

Vinson died shortly after the Supreme Court heard the first of two oral arguments in a very important case.

What is this case?

Answer: *Brown v. Board of Education.*

Who was the last Virginian to be appointed to the Supreme Court?

Answer: Lewis Powell

Can you name all the current members of the Supreme Court?

Answer: Roberts, Stevens, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, and Sotomayor.

Who was the first woman justice of the Supreme Court?

Answer: Sandra Day O'Connor.

Who was the first African American justice of the Supreme Court?

Answer: Thurgood Marshall.

Who succeeded Thurgood Marshall for the “black seat” on the court upon his retirement from the Supreme Court in 1991?

Answer: Clarence Thomas. When Marshall was asked by a reporter whether President Bush should feel obligated to replace him with another black justice, his reply, laced with cynicism, was: “My dad told me way back that there’s no difference between a white snake and a black snake.”

Now let’s test your knowledge of some of the important cases decided by the Supreme Court

What is the most important opinion of the Supreme Court in our Constitutional history?

Answer: *Marbury v. Madison*.

Why?

Answer: *Marbury v. Madison* answered a question that was not resolved in the Constitutional Convention.

What was the unresolved question: which branch of the government decides whether a law is constitutional?

Background

Answer: When Jefferson took office in 1801, he instructed his Secretary of State, James Madison, not to deliver a judicial commission to *Marbury*, who had been appointed a U.S. Magistrate by John Adams pursuant to the Judiciary Act of 1801 passed by the Federalist Congress just before Adam's presidency ended sometimes called the midnight judge (after a bitter campaign between Jefferson and Adams). *Marbury* filed a writ of mandamus in the Supreme Court; a writ of mandamus asked the Court to order Madison to deliver the commission to *Marbury*. The lawyer for *Marbury* thought the Supreme Court could enter such an order under the Judiciary Act of 1789, which had given the Supreme Court original jurisdiction to issue a writ of mandamus.

What was the legal problem?

Answer: The Supreme Court had original jurisdiction as set forth in Article 3 of the Constitution in only three types of cases: cases involving ambassadors, public ministers and when a state was a party to the case. Under the Constitution, the Supreme Court had no original jurisdiction to issue a writ of mandamus. Thus, Marshall ruled that the Judiciary Act of 1789 was

unconstitutional, and the Supreme Court did not have the power to enter an order requiring Madison to deliver the commission.

Marshall opined that, "It is emphatically the province and duty of the judicial department to say what the law is" (now known as judicial review). He rejected arguments, advanced by Jefferson and the anti-federalists, that the Supreme Court did not have the power to declare a law unconstitutional. Marshall concluded by saying, "if the courts could close their eyes to the Constitution, such a legal principal would subvert the very foundation of all written constitutions." Marshall affirmed for all future generations that the Supreme Court holds the power to say what the law is and most importantly to bind the Congress and the President to the decisions of the Supreme Court.

The effect of Marshall's opinion was monumental. It meant that no person, including the President of the United States is above the law. Remember, Richard Nixon and the Watergate tapes and the Pentagon papers.

Over his thirty-four years on the court as Chief Justice, Marshall wrote many opinions that transformed the court from what has been called a trickling stream, into a mighty river of American law and politics. He turned the Supreme Court from "the least dangerous branch of government into a "judicial juggernaut."

A digression here - party labels in the 1800's changed and maybe is confusing today. Federalists changed its name to the Whig Party between 1836

and 1856 when they became the Republican Party, actually adopting the name of their former opponents. The anti-federalists, lead by Jefferson, were first called Republicans, a label they abandoned in 1828 and after several years and became known as the Democrats.

Have you heard of the case of *McCulloch v. Maryland*? This case arose when the state of Maryland levied an annual tax of \$15,000 on banks not chartered by state law. In effect, the tax applied only to the Bank of the United States located in Maryland.

The question was: could a state pass a law that was superior to federal law and override a law passed by Congress which chartered the Second National Bank in 1816.

Article I, Section 8 sits out the powers of Congress. The problem was: the power of Congress to charter a bank was not one of its enumerated powers in Article 1, Section 8. However, Section 8 did include a provision that Congress could make all laws which shall be necessary and proper for carrying into execution the powers mentioned in Article 1, Section 8. Marshall used the necessary and proper clause to hold that Congress had the constitutional authority to charter a national bank, and most critically, federal law was superior to any state law. Therefore, Maryland did not have the power to tax the national banks. In his

opinion, Marshall penned words that are still quoted today. Do you recall what are these words: “the power to tax involves the power to destroy.”

Many legal constitutional scholars laud the *McCulloch* case as Marshall’s greatest triumph: The Constitution clearly stood “as the supreme law of the land,” and was “intended to endure for ages to come and to be adapted to the various crises of human affairs.” Marshall’s view of the Constitution does not resonate with the strict constructionist.

Fletcher v. Peck and the *Dartmouth College* case. Show of hands – the importance of these two cases.

These cases held that contracts between parties were protected from impairment by state legislatures under Article I, Section 10. The background of each of these cases is lengthy and time does not allow a review of these facts. What most of us may remember are the eloquent words of Daniel Webster arguing for *Dartmouth College* when he said to Justice Marshall, “Sir, you may destroy this little institution; it is weak, it is in your hands.” Holding back tears, Webster concluded “It is, sir, as I have said, a small college. And, yet there are those who love it.”

How about *Gibbons v. Ogden*? Raise your hand if you have. Why was this case so significant? This is the court’s first major decision involving the Congress’ power to regulate commerce among the several states under the commerce clause.

Of note this case involved the operation of a steamboat in New York Harbor by a company of which Robert Fulton was an original partner.

Who was Roger Taney?

Answer: He was Chief Justice of the Supreme Court from 1836 to 1864.

What was his most infamous opinion?

Answer: The Dred Scott case.

Why is this case the most infamous of all decisions of the Supreme Court?

Answer: Taney held that all blacks, free or slaves, were not citizens of the United States, rather they were personal property and had no rights under the Constitution. Taney's words are chilling, shocking and indefensible. He wrote that blacks were "regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations, and so far inferior they had no rights that the white man was bound to respect; and that the negro might justifiably and lawfully be reduced to slavery for his own benefit."

What is also interesting is that Taney looked primarily to European law at the time the Constitution was adopted for precedent to support his opinion about black people. (He could find no precedent in American jurisprudence.) Today,

looking to foreign law is a contentious issue as some Supreme Court justices, primarily Kennedy, look to foreign law as precedent for current decisions.

What is the significance of the Thirteenth amendment?

Answer: It abolished slavery.

Interesting enough the first state to ratify the Thirteenth amendment was the confederate state of Louisiana.

When was the Fourteenth amendment to the Constitution adopted?

Answer: July 9, 1868.

I am sure all of you are familiar with the Fourteenth amendment? This amendment applied to the states. No state shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction equal protection of the laws. What else did the Fourteenth amendment include that abolished original language in the Constitution?

Answer: It abolished the provision in the Constitution that slaves shall only count for 3/5 of a person. This first sentence in the Fourteenth amendment reversed the 20,000 words of Chief Justice Taney's Dred Scott decision.

What is the significance of the Fifteenth amendment?

Answer: The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude.

Do you know what the Sixteenth amendment provides for?

Answer: Congress had the power to lay and collect taxes on incomes. The Income Tax.

Who was Homer Plessy?

Answer: He was the plaintiff in the infamous case of *Plessy v. Ferguson*. where the Supreme Court held that separate, but equal, facilities did not violate the Fourteenth amendment.

Did this case rise out of a school segregation case?

Answer: No, it arose out of a Louisiana law that required railroads to provide equal but separate facilities for people of different races. *Plessy* was arrested after he bought a ticket on the East Louisiana railroad and sat in the white section.

The separate but equal doctrine was the law until the Supreme Court's 1954 opinion in *Brown*.

Were Oliver Wendell Holmes and Sherlock Holmes in the same profession?

Answer: No. Holmes was appointed by Teddy Roosevelt to the Supreme Court in 1902 and stayed on the court for thirty years. In 1927,

he wrote an opinion in a case arising in the Lynchburg community.

Do you know the case?

Answer: *Buck v. Bell*. It upheld the constitutionality of a Virginia law.

Do you know what that law was?

Answer: Virginia's Eugenic Sterilization Law under which several thousand feeble-minded or morally-delinquent women had their fallopian tubes cut by court order.

Holmes penned his most famous sentence in this opinion. Do you remember what Holmes said?

Answer: "Three generations of imbeciles are enough."

Holmes was known as a social Darwinist, an advocate of the principle of judicial restraint, disclaiming any desire to rescue the people from their ignorance and prejudice. He once told Judge Harlan Fisk, "When the people want to do something that I can't find anything in the Constitution especially forbidding them to do, I say, whether I like it or not, goddamit, let them do it."

Who was the only person to hold the positions of President of the United States and Chief Justice of the Supreme Court?

Answer: William Howard Taft.

The case of *Lochner v. New York* is important. Do you know why?

Answer: In 1898, the Supreme Court struck down a New York law limiting the working hours of bakers to ten hours per day and sixty hours per week as a violation of the freedom of contract protected under the Constitution. The court rejected the state's argument that the law was a proper exercise of the police power of the state. The Court stated that the statute necessarily interferes with the right of contract between employer and employee in New York bakeries, finding that the right to make a contract is part of the liberty of the individual protected by the Fourteenth amendment.

Lochner became the law of the land until the justices appointed by President Roosevelt rejected the principle that liberty of contract precluded states from passing minimum wage laws or other laws to protect the working class.

However, there was one exception; the case of *Muller v. Oregon*. The court upheld an Oregon law that limited the working hours of women in laundries to ten hours per day. Although the court cited *Lochner* for the right to contract over working hours, Justice Bernard turned to biology cited with a well-known brief written by Louis Brandeis, a future member of the Supreme Court (in that "It is impossible to close one's eyes to the fact that women have always been dependent

upon man, and that her physical structure and a proper discharge of per maternal functions, having in view not merely her own health, but the well-being of the race – justify legislation to protect her from the greed as well as the passion of man.”)

Are minimum wage laws constitutional?

Answer: They are now.

In 1937, what scholars have dubbed as a “constitution revolution.” Justice Charles Evans Hughes in *West Coast v. Parrish*, sounding more like a socialist than a Republican, in calling the exploitation of a class of workers, like Elsie Parrish, the plaintiff in the case, a compelling reason to protect them from unconscionable employers like the West Coast Hotel, who had refused to pay her a minimum wage. He said, “Liberty in each of its phases has its history and connotation, but the liberty safeguarded is liberty in a social organization which requires the protection of law against evils which menace the health, safety, morals, and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process and regulation which is reasonable in relation to the subject as adopted in the interest of the community is due process.

Justice Holmes penned the most quoted sentence about a citizen’s First amendment right of free speech. What is the quote?

Answer: “The most stringent protection of free speech would not protect a man in falsely shouting ‘fire’ in a theatre and causing a panic.”

Justice Holmes’ famous parsing of the First amendment was written in the case of *Schenck v. The United States* involving a petition circulated by socialist, Charles J. Schenck, who had been found guilty of urging citizens to resist and protest draft laws.

Schenck lost.

Holmes also wrote memorable words in construing the First amendment in affirming the conviction of *Schenck* for violation of the espionage laws. “The question in every case is whether the words used are used in such circumstances and are of such a nature to create a clear and present danger that they will bring about the substance of evil that Congress has a right to prevent.”

What Supreme Court justice was a member of the Ku Klux Klan?

Answer: Hugo Black, as a young Alabama politician who did not graduate from high school or college.

May a state require a student to salute the flag of the United States?

Answer: No.

In the case of *West Virginia Board of Education v. Barnett*, the court overruled a prior decision of the Supreme Court known as the *Gobitis* Case and held that a state could not compel a student to salute the flag. This decision

infuriated Felix Frankfurter (a proponent of judicial restraint), who staunchly upheld state laws requiring the saluting of a flag.

Who were Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu?

Answer: They were the plaintiffs in a case against the United States that tested the legality of Executive Order 9066 issued on February 19, 1942, after the invasion of Pearl Harbor. Roosevelt's order authorized the Secretary of War, Henry L. Stimson, to designate military zones from which any or all persons may be excluded. The Supreme Court held that the Order was constitutional.

In the last several years Congress apologized for this abridgement of these Japanese citizens' rights, and paid reparations.

Who was Chief Justice when the case of *Brown v. Board of Education*, was argued for the second time in 1953?

Answer: Earl Warren. President Eisenhower appointed Earl Warren five days before the 1953 term began as a political favor. He had no prior judicial experience.

Brown v. Board was a monumental decision reversing *Plessy v. Ferguson* and 70 years of constitutional jurisprudence that undergird the legality of Jim Crow laws passed by state legislatures.

Other than the opinion itself, what else was significant about this decision?

Answer: It was unanimous.

What famous American argued for the defendants in *Brown v. Board*?

Answer: John W. Davis, former candidate for President of the United States in the 1924 election and an 1892 graduate of Washington & Lee – where he and Lea Booth were classmates, and an 1895 graduate of the Washington & Lee Law School.

After the *Board* decision, Thurgood Marshall said: “I think it’s a damn good decision. Southern politicians have got to yield to the Constitution. You can say all you want but those white crackers are going to get tired of having Negro lawyers beating them everyday in court. They’re going to get tired of it.”

Thurgood Marshall was half right and half wrong. Civil rights lawyers routinely beat recalcitrant states’ attempts to thwart desegregation; but southern politicians did not meekly yield to the decision and fought back with massive resistance.

Senator James Eastland called *Brown v. Board* a legislative decision by a political court, but Peter Irons, a constitutional scholar, has observed, “The court has always been a political body.” The court’s historic opinions such as *Marbury*, *Dred Scott* and *Brown* have all been legislative decisions; they “made new law to replace old laws. To claim that justices simply interpret the Constitution denies reality; the court necessarily plays a role in the political process.” This view does not reflect Chief Justice Roberts’ view that a judge is an umpire. Recent examples of the

political nature of the court include *Baker v. Carr* and *Reynolds v. Sims*. What did these cases hold?

Answer: In *Baker*, the court rules that federal judges had power to hear case reapportionment of state legislatures, and in *Reynolds*, the court imposed the one person, one vote standard. The *Baker* case arose out of Georgia where the largest senatorial district had forty-one times more votes than the smallest. These cases reshaped America's political landscape with both Congress and state legislatures now dominated by lawmakers who represent cities and suburbs.

What is the importance of *Shelley v. Kramer*?

Answer: It prohibited the courts from enforcing any covenant in a deed that restricted the sale of property on the basis of race.

What was the Smith Act?

Answer: It was an act sponsored by Delegate Howard W. Smith of Virginia, which made it a crime to advocate the overthrow of the United States Government. This law was originally held constitutional, but today, while still on the books, it is not enforced.

How did the Supreme Court define obscenity?

Answer: It did not. In a case that reversed an “obscenity conviction,” Justice Stewart penned the famous words concerning the difficulty of defining hardcore pornography: “I know it when I see it, and the motion picture (a movie called “The Lovers”) is not that. Stewart looked at each case like a movie critic, putting his thumbs up or down without reference to any constitutional standard.”

What was the significance of *Engel v. Vitale*?

Answer: The Supreme Court struck down a New York Regent’s prayer in the opinion by Justice Hugo Black. He cited Jefferson’s well known quote about “wall of separation,” between religion and government, and stated that the establishment clause “must at least mean that in this country it is no part of official business of government to compose official prayers for any group of people to recite as part of a religious program carried out by the government.” In another opinion, in *Abington Township v. Schempp*, the Supreme Court struck down a devotion ritual banishing the Lord’s Prayer and the Bible from classrooms.

Who is the only Supreme Court justice to play professional football?

Answer: Whizzer White, an all-American player at Colorado played for the Pittsburg Steelers and the Detroit Lions.

What was the significance of the case of *Gideon v. Wainwright*?

Answer: Every indigent defendant must be given counsel. Very interestingly, a future justice of the Supreme Court, Abe Fortas, argued for *Gideon*. From 1953 through 1969, the Warren Court was controlled by liberal judges – William Brennan, Hugo Black, William Douglas, Abe Fortas and then Arthur Goldberg. Brennan said, “With five votes you can do anything around here.”

What is the name of the Supreme Court case that required police to give warnings to a person taken into custody?

Answer: It's *Miranda v. Arizona*.

What was the importance of *New York Times v. Sullivan*?

Answer: A public figure has to prove actual malice in order to recover for defamation. Actual malice is proof that the defendant knew his statement was false, or acted in reckless disregard of the truth.

This is a very high standard.

Roe v. Wade – why is it so controversial from a constitutional perspective?

Answer: The court recognized for the first time that there was a right to privacy which was included in the liberties of the Fourteenth amendment.

As you know, *Roe* has been under attack ever since and rages today as a political, a judicial, and moral issue.

In the case of *Casey v Planned Parenthood*, the Court adopted a new standard of review on state laws restricting abortion: A state law may not impose an undue burden on women's right to abortion

Who was the first woman justice on the Supreme Court?

Answer: Sandra Day O'Connor.

How many females are currently on the Supreme Court?

Answer: Two – Justice Ginsburg and Justice Sotomayor.

Who was the last Virginian to serve on the Supreme Court?

Answer: Louis Powell.

Is the burning of a flag a right protected, and if so, by what amendment?

Answer: Yes, protected by the First amendment in the case of *Texas v. Johnson*.

Bush v Gore –you remember the case, I am certain. What did the Supreme Court order?

Answer: Under the Equal Protection Clause of the Fourteenth amendment, the Court ordered the state of Florida to stop the recount of votes that had been ordered by the Florida Supreme Court under its interpretation of the Florida election laws, thereby assuring the election of George Bush. (This is an example of judicial activism by conservative judges).

Can you name two recent cases of the Supreme Court that have generated a lot of discussion?

Answer: *Citizens United v Federal Election Commission* and
Melendez-Diaz v Massachusetts.

What did these cases hold?

So class, it is your turn. Let's hear from you on our judiciary, the Supreme Court and its decisions.