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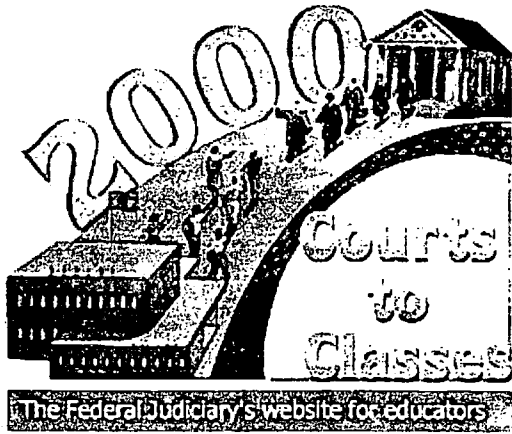
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ABSTRACT

Though the framers of the United States Constitution recognized the value of an independent judicial system, they knew that to provide justice the courts must have some accountability to the government. They knew that the system must be transparent to the public. Though the basic framework of checks and balances in the U.S. Constitution clearly gives the executive and legislative branches of government some power over the judiciary, the U.S. Constitution protects judges in their decision-making function. This lesson plan presents a structural framework for students to think about how the judiciary affects government and the public, and how government and the public affect the judiciary. The lesson plan uses excerpts provided from Federalist No. 78, the U.S. Constitution, newspaper articles, and Supreme Court decisions. It provides an overview, educational objectives, links to both civics and social studies standards, materials needed, handouts, step-by-step classroom procedures for teachers, and suggested activities and questions. (BT)



The Federal Courts in American Government

A Lesson Plan for High School Law-Related Educators to support "Understanding the Federal Courts"

SO 032 463

The Administrative Office of the U.S. Courts
 1 Columbus Circle, N.E.
 Washington, DC 20544

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2000

The Federal Courts in American Government

Content Areas: U.S. Government, Law

Grades: 9-12

Time

45 minutes

OVERVIEW

Though the framers of the Constitution recognized the value of an independent judicial system, they knew that to provide justice, the courts must have some accountability to the government. They also knew that the system must be transparent to the public. Though the basic framework of checks and balances in the Constitution clearly gives the executive and legislative branches of government some power over the Judiciary. The Constitution protects judges in their decision-making function. This lesson presents a structural framework for students to think about how the Judiciary affects government and the public, and how government and the public affect the Judiciary. Students use excerpts from Federalist No. 78, the U.S. Constitution, newspaper articles, and Supreme Court decisions to form generalizations about these relationships.

OBJECTIVES

At the end of the lesson, students will be able to :

- Examine excerpts from primary documents, quotes, and newspaper articles to determine how the Judiciary affects the executive and legislative branches of government and the public and how these branches of government and the public can affect the Judiciary
- Form generalizations from specific pieces of information
- Develop and discuss arguments for and against greater public influence over the Judiciary.

LINKS TO NATIONAL STANDARDS FOR CIVICS AND GOVERNMENT

Content Standard III (A), 1. Distributing governmental power and preventing its abuse. Students should be able to explain how the U.S. Constitution grants and distributes power to national and state governments and how it seeks to prevent the abuse of power.

Content Standard III (B), 1. The institutions of the national government. Students should be able to defend their positions on issues regarding the purposes, organization, and functions of the institutions of the U.S. government.

Content Standard III (D), 2. Judicial protection of the rights of individuals. Students should be able to defend their positions on current issues regarding the judicial protection of individual rights.

LINK TO NATIONAL COUNCIL FOR THE SOCIAL STUDIES STANDARDS

Power, Authority, and Governance

Social studies programs should include experiences that provide for the study of how people create and change structures of power, authority, and governance.

MATERIALS

Student Handout 1: Excerpt from Federalist No. 78

Student Handout 2: Relationships between the Judicial Branch and Government and the Public

Teacher's Notes or Student Handout 3: Evidence of Relationships between the Judicial Branch and Government and the Public

Teacher's Notes: Suggested Generalizations

Student Handout 4: Interviews with Supreme Court Justices Stephen Breyer and Anthony Kennedy (must be printed from the PBS Frontline internet site)

<http://www.pbs.org/wgbh/pages/frontline/shows/justice/interviews/supremo.html>

PROCEDURE

1. Focus

Distribute Student Handout 1: Excerpt from Federalist No. 78. Ask for a volunteer to read the quotation at the top of the page. When the student is finished, ask others to summarize Hamilton's argument in their own words. Then ask them these questions:

*"Does Hamilton's vision of judicial power correspond to your own impressions of judicial power?
Does the Judiciary now have more or less power than Hamilton described?"*

Students likely will answer that they believe that the judicial branch has more power than Hamilton envisioned. There may be several reasons for their impressions. Students are exposed extensively to the Judiciary in the media. Some students may be familiar with the historical development of the Judiciary, its increase in power since *Marbury v. Madison*. Students may perceive the great legitimacy of the courts as a government institution that can usually count on cooperation from the public, the executive branch, and the legislature in carrying out its decisions.

2. Transition

After discussing the power of the Judiciary, explain that this lesson will help students understand the relationship between the Judiciary and the other branches of government and the public.

3. Input and Activity

Distribute Student Handout 2: Relationships between the Judicial Branch and the Government and the Public. Explain that the diagram will help students conceptualize the relationships between the judicial branch and the other branches of government and the public. Ask them to draw arrows to indicate the flow of power among the four entities. Ask students to use the quote from Federalist No. 78 to describe several relationships between the judicial branch and the other branches of government. Students should write that the executive branch is responsible for carrying out the judgments of the judicial branch. They also should note that Congress appropriates funds to support the functions of the judicial branch.

Divide students into groups of three and distribute a set of the evidence in Teacher's Notes or Student Handout 3: Evidence of Relationships between the Judicial Branch and Government and the Public to each group. You may wish to cut up the pieces of evidence so that the students can share them more easily.

Explain to students that they should read through each piece of evidence that shows the relationships between the judicial branch and government and the public. They should use each piece of evidence to generalize about the relationships and write their generalizations on the diagram you distributed. Suggested generalizations for each piece of evidence appear in Teacher's Notes: Suggested Generalizations. Alternatives to group work include reading the evidence aloud and describing the relationships together as a class or distributing one piece of evidence to each student. Some students will have the same piece of evidence if your class is large. You may want to ask them to move around the classroom discussing their evidence with other students. As they share evidence with each another, they can fill out the diagram.

4. Checking for Understanding/Extending Understanding

When students are finished, discuss the generalizations they made and amend or correct their answers. You may create an overhead transparency of the diagram with the answers on it to help students check their understanding. Another alternative is to place the diagram on the board and call on students from the groups to help fill it out. When each piece of evidence has been discussed and a generalization made about the relationships between the judicial branch and government and the public, ask students the following focus questions:

"Based on the diagram we created, how much influence does the public have over the judicial branch? What are the advantages and disadvantages of this indirect influence?"

Discuss these questions briefly with the students. They should note from the diagram that the public only has indirect influence over the Judiciary, through their elected representatives who nominate and confirm federal judges and through organizations who submit amicus briefs to the courts and use other kinds of pressure. The advantage of this situation is that judges are supposed to render decisions according to the law, not public opinion. At times, this means that judges must make unpopular decisions to uphold the rule of law. The disadvantage of this situation is that there is little accountability to the public for poor decision-making. Judicial decision-making often requires significant interpretation of the law; reasonable judges at times disagree about what the law means. If the public disagrees with the decisions of a judge they cannot vote a federal judge out of office as they can a Member of Congress or the President.

5. Input / Extending Understanding

Inform students that state court systems have judges who are elected by the people. Remind students that, at the federal level, all judges are appointed. Recently, two Supreme Court justices were interviewed for their views on how elections and campaign financing have affected the judicial system in the state courts. Distribute Student Handout 4: Interviews with Supreme Court Justices Stephen Breyer and Anthony Kennedy. The text of the interview must be printed out by the teacher for distribution, or you may wish to ask students to access the Justice for Sale site on the PBS Frontline page. The address of the site is on the first page of the lesson plan under Materials and is listed on the student handout with questions to accompany the interview. For homework, ask students to read the interviews and answer the questions provided in Student Handout 4.

RESOURCES

- *Understanding the Federal Courts* (1999), The Federal Judiciary Home Page, Administrative Office of the U.S. Courts, Washington, D.C. <<http://www.uscourts.gov/>>
- Federalist 78 & Federalist 79, Alexander Hamilton
- "Justice For Sale," Frontline, PBS. 4 Jan. 2000
<<http://www.pbs.org/wgbh/pages/frontline/shows/justice>>
- "Judicial Reform: Courts That Work, Laws That Make Sense," Republican National Committee, Republican Platform 2000, <<http://www.rnc.org/2000/2000platform7>>
- "Judges and the Supreme Court," Democratic National Committee, Democratic National Platform 2000, <<http://www.democrats.org/hq/resources/platform/platform.html>>
- Principles of Judicial Independence and Accountability Discussed at USC Conference
Judicial Independence and Accountability Symposium, University of Southern California.
4 Jan. 2000< <http://www.snedws.com/library/judicialprinciples.htm>
- Biskupic, Joan, "Has Public Interest in Trials Become Public Pressure on the Justice System?"
Washington Post, November 12, 1997, p. A1.

FEDERALIST PAPERS

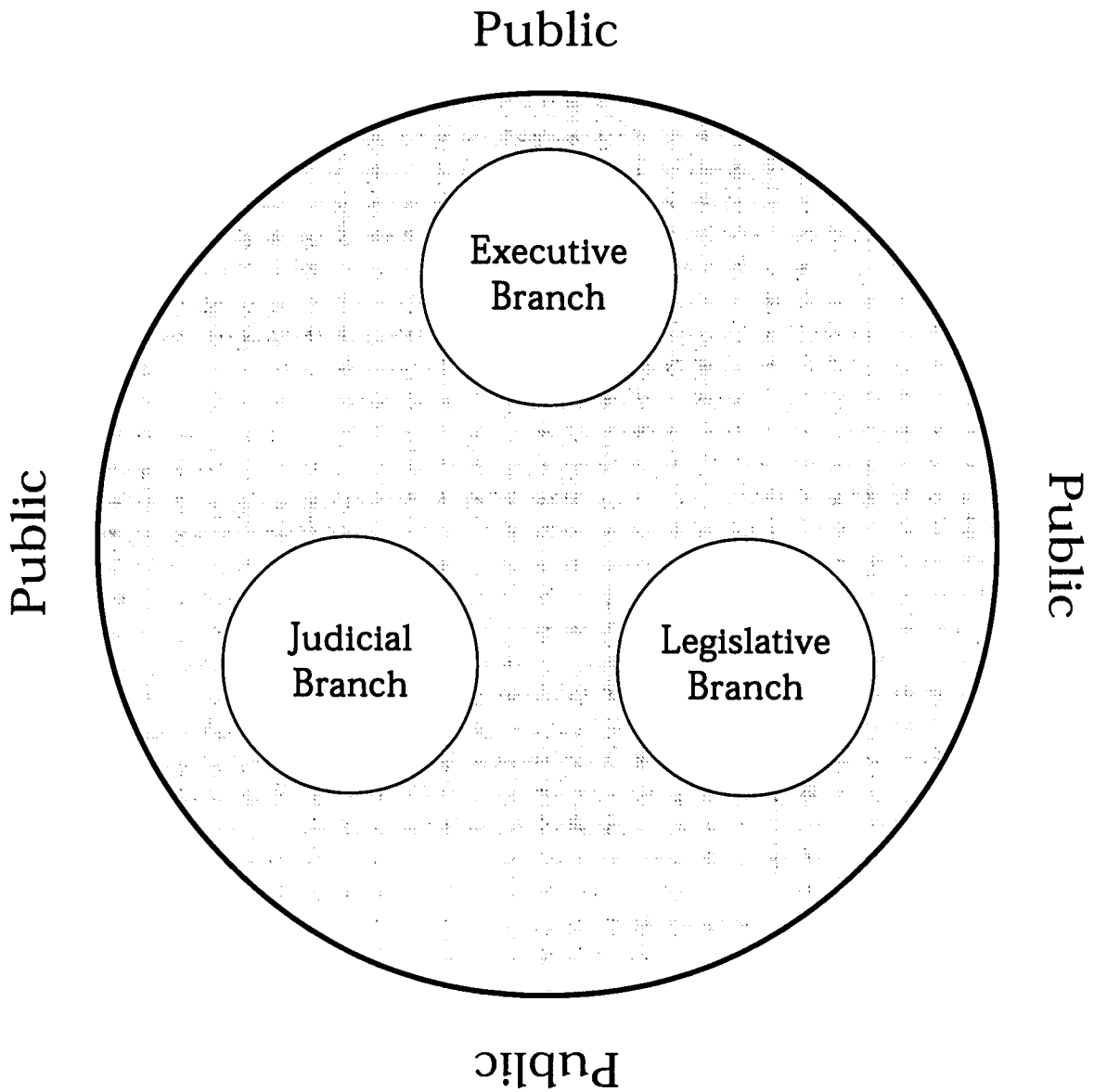
Federalist No. 78

The Judiciary Department
From McLEAN'S Edition, New York.

Author: Alexander Hamilton

"Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the Judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The Judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments."

Write Hamilton's argument in your own words:



Teachers' Notes or Student Handout 3

Evidence of Relationships between the Judiciary and Government and the Public

EVIDENCE 1 - THE UNITED STATES CONSTITUTION - ARTICLE III, SECTION 1

"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."

What is the relationship(s) between the Judiciary and the other branches of government or the public expressed in this excerpt of the Constitution?

EVIDENCE 2 - ARTICLE I, SECTION 3, CLAUSE 6

"The Senate shall have the sole Power to try all Impeachments... When the President of the United States is tried, the Chief Justice shall preside...."

What is the relationship(s) between the Judiciary and the other branches of government or the public expressed in this excerpt of the Constitution?

EVIDENCE 3 - ARTICLE II, SECTION 2, CLAUSE 2

"[H]e [the President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court...."

What is the relationship(s) between the Judiciary and the other branches of government or the public expressed in this excerpt of the Constitution?

EVIDENCE 4 - TELEGRAM FROM ROY WILKINS TO PRESIDENT KENNEDY

TEACHERS, for this piece of evidence, print out the third item at the web address below and give to students to read for the fourth piece of evidence. It is a telegram (6/22/61) from Roy Wilkins to President Kennedy reacting to the appointment of a federal judge in Mississippi. It is from the National Archives web site.

http://www.cs.umb.edu/jfklibrary/civil_rights_documents/index.html

What is the relationship(s) between the Judiciary and the other branches of government or the public expressed in this piece of evidence?

EVIDENCE 5 - EXCERPTS FROM USA TODAY (ARLINGTON, VA), JUNE 24, 1999, P. 1A

"Some of the [Supreme Court's] most important decisions through history, such as Brown vs. Board of Education in 1954, have been unanimous. But on the current court, issues such as affirmative action, public aid to parochial schools and abortion rights will ebb or flow depending on a single justice — making it more crucial which justice departs and who gets to replace him or her...."

"Already the issue has crept into the presidential campaign. Republican George W. Bush, in his first New Hampshire news conference, said he would not impose a 'litmus test' on court nominees. Conservatives Gary Bauer and Pat Buchanan attacked Bush for the statement [Gary Bauer has said he would use a potential justice's views on abortion to determine whether or not to nominate him or her]...."

"Given the effect of the Supreme Court and the federal Judiciary on the lives of Americans, it is arguable that the appointment of federal judges is a President's most important function," conservative scholar [Daniel] Troy says...."

"If you care about racial preferences, partial-birth abortions and the abortion right more generally, expanded criminal rights and school choice, then you should care about the next president's appointments to the federal courts, for they will determine whose views on these issues will prevail."

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What is the relationship(s) between the Judiciary and the other branches of government or the public expressed in this news article?

EVIDENCE 6 - BRIEFS FILED IN *TROXEL v. GRANVILLE*

In the fall of 1999, the Supreme Court agreed to hear a case, *Troxel v. Granville*, regarding the right of grandparents to visit their grandchildren. The American Civil Liberties Union (ACLU), believing that parents have the right to decide with whom their children will spend time, filed an amicus brief with the Supreme Court. An amicus brief is a written statement by a group or individual that attempts to inform the court of relevant arguments and precedents it should consider when deciding a particular case. The ACLU often files amicus briefs in civil liberties cases. The following is an excerpt from the ACLU's amicus brief in the *Troxel v. Granville* case, filed in support of the parents:

"Few ideas are more entrenched in our constitutional jurisprudence than the notion that parents, rather than the state, are presumptively entitled to make decisions about the best interests of their children...."

"The decision about what role other adults will play in a child's life is a critical one for most parents, especially when the child is too young to make that decision independently. Nothing in our constitutional tradition permits the state to override those decisions merely because a judge disagrees...."

The American Association of Retired Persons (AARP) also filed an amicus brief in *Troxel v. Granville*. The Association's web site (www.aarp.org) says that the group cited "numerous studies documenting the significant contributions grandparents make to the healthy development of their grandchildren. It also cited statistics showing that an increasing number of children are living with grandparents, due to the growth of substance abuse among parents, teen pregnancy, divorce, and child abuse and neglect.... [The]

AARP's brief included detailed comparisons of statutes nationwide (see chart at www.aarp.org/litigation/table.html)... The brief gave examples of statutes that take into consideration whether the child had lived with the grandparent and whether the parent had denied all visitation.

What is the relationship(s) between the Judiciary and the other branches of government or the public expressed in this evidence?

EVIDENCE 7 - *YOUNGSTOWN SHEET & TUBE Co. v. SAWYER (1952)*

A short time after the beginning of the Korean War (which was not a declared war), there was a labor dispute in the steel industry. The steel industry was a vital component of the U.S. economy at the time and the government was concerned that if a strike occurred in the steel industry, prices of steel would rise dramatically causing devastating inflation in the economy. A strike was called, however, and in response President Truman issued an executive order for the Secretary of Commerce Charles Sawyer to take over the steel mills to keep them operating. President Truman had no authority to take over the mills under the law. Youngstown Sheet & Tube and other steel companies sued the Commerce Secretary and the case was appealed to the Supreme Court. The Supreme Court ruled against the President's action saying:

"The [executive order to take over the steel mill] cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces....[W]e cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities....[T]he President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker."

What is the relationship(s) between the Judiciary and the other branches of government or the public expressed in this court case?

EVIDENCE 8 - *TEXAS v. JOHNSON (1989)*

Under a law passed by the Texas legislature, it was a misdemeanor to intentionally desecrate a venerated object (such as a public monument, a place of worship or burial, or a national or state flag). During the 1984 Republican National Convention in Dallas, Texan Gregory Johnson burned an American flag in protest of the policies of the Reagan administration. Johnson was convicted under the Texas law. He appealed his case and it eventually came before the Supreme Court. The Court ruled against the Texas law, citing First Amendment free speech protections:

"If we were to hold that a State may forbid flag burning wherever it is likely to endanger the flag's symbolic role, but allow it wherever burning a flag promotes that role — as where, for example, a person ceremoniously burns a dirty flag — we would be saying that...the flag itself may be used as a symbol...only in one direction. We would be permitting a State to 'prescribe what shall be orthodox....' We never before have held that the Government may ensure that a symbol be used to express only one view of that symbol...."

What is the relationship(s) between the Judiciary and the other branches of government or the public expressed in this court case?

EVIDENCE 9 - *TINKER v. DES MOINES* (1969)

John Tinker and his sister Mary Beth wore black armbands to school to protest the Vietnam War. John was in high school at the time and Mary Beth was in junior high. Both of their schools had adopted policies banning the wearing of armbands in school for the purpose of protest. Both John and Mary Beth were sent home and suspended from school until they returned without the armbands. The Tinkers filed a lawsuit against the Des Moines Independent Community School District claiming that the schools violated their right to free speech guaranteed under the First Amendment. The case was eventually appealed to the Supreme Court.

The Supreme Court ruled that wearing an armband is symbolic speech that deserves First Amendment protections. Though school officials must create policies to preserve an orderly environment for learning, “[i]n our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are ‘persons’ under our constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State....”

What is the relationship(s) between the Judiciary and the other branches of government or the public expressed in this court case?

EVIDENCE 1 - THE UNITED STATES CONSTITUTION - ARTICLE III, SECTION 1

Relationship(s)?

Congress has the power to create new courts in the federal system when they are needed.

EVIDENCE 2 - ARTICLE I, SECTION 3, CLAUSE 6

Relationship(s)?

The Senate can try the impeachment of judges. When the President of the United States is on trial, the Chief Justice of the Supreme Court presides over the proceedings.

EVIDENCE 3 - ARTICLE II, SECTION 2, CLAUSE 2

Relationship(s)?

The President has the power to nominate federal judges. The Senate has the power to confirm [consent to] those nominations.

EVIDENCE 4 - INTEREST GROUPS' ATTEMPTS TO INFLUENCE JUDICIAL NOMINATIONS

Relationship(s)?

Interest groups and individuals can apply pressure to members of Congress and the President before, during, and after the judicial selection process, in this case through a telegram.

EVIDENCE 5 - EXCERPTS FROM *USA TODAY* (ARLINGTON, VA), JUNE 24, 1999, P. 1A

Relationship(s)?

Presidents nominate judges in the federal court system. The public can influence those nominations with their vote for President.

EVIDENCE 6 - BRIEFS FILED IN *TROXEL V. GRANVILLE*

Relationship(s)?

Individuals and groups in the public can submit an amicus brief to the court to outline relevant arguments and precedents that support a particular perspective on a case. This case also demonstrates that the court resolves disputes between people.

EVIDENCE 7 - *YOUNGSTOWN SHEET & TUBE Co. v. SAWYER* (1952)

Relationship(s)?

The judicial branch has the authority to declare executive actions unconstitutional through its power of judicial review.

EVIDENCE 8 - *TEXAS v. JOHNSON* (1989)

Relationship(s)?

The judicial branch has the authority to declare legislative acts (in this example a state legislative act) unconstitutional through its power of judicial review.

EVIDENCE 9 - *TINKER v. DES MOINES* (1969)

Relationship(s)?

The judicial branch resolves disputes among members of the public and between the public and government. It interprets and establishes the law in controversial circumstances. As a separate function, the courts are also charged with protecting the fundamental rights of the people.

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Student Handout 4

Interviews with Supreme Court Justices Stephen Breyer and Anthony Kennedy

PBS Frontline, "Justice For Sale" web site

<http://www.pbs.org/wgbh/pages/frontline/shows/justice/interviews/supremo.html>

QUESTIONS TO CONSIDER:

1. According to Justice Kennedy, how does living in a constitutional democracy limit the "voice of the people" in the judicial system?
2. According to Justices Breyer and Kennedy, how is it possible for a federal judge who goes through a political appointment process to be neutral or independent?
3. How might campaign contributions affect the independence of the Judiciary according to Justices Breyer and Kennedy?
4. What can be done, according to Justices Breyer and Kennedy, about the erosion of judicial independence in states like Texas?
5. If the public does not like the decision of a judge, what is a way that the situation can be remedied without threatening judicial independence?

Teacher Answers — Student Handout 4
Interviews with Supreme Court Justices Stephen Breyer and Anthony Kennedy

From PBS Frontline: Justice for Sale web site

<http://www.pbs.org/wgbh/pages/frontline/shows/justice/interviews/supremo.html>

QUESTIONS TO CONSIDER:

1. According to Justice Kennedy, how does living in a constitutional democracy limit the “voice of the people” in the judicial system?

Public influence over government does not trump all other values. It must be balanced with other values that support a just society, such as the rule of law. Justice Kennedy defines the rule of law in three parts: the government is bound by law, people are treated equally, and they possess certain human rights that must be protected. Judges must be impartial when rendering decisions that defend these values. The boundary of the people’s voice in government occurs where the law begins. Further along in the interview, Justice Kennedy uses the example of the election where a campaign slogan of, “Who’s tougher on crime?” emerges. Though the public may want a judge who is tough on crime, a judge may have to release criminals because the law requires it.

2. According to Justices Breyer and Kennedy, how is it possible for a federal judge who goes through a political appointment process to be neutral or independent?

The justices make a distinction between the appointment process, which includes a democratic facet, and what happens after the process is over. During the confirmation of a federal judge, politicians get to ask questions and probe the positions of potential judges. People who watch confirmation hearings on television might see a viewpoint with which they disagree; they could then apply pressure on their elected representatives to reject the nomination of a federal judge. This is definitely a political process with democratic influence from the public. However, once a judge has been confirmed, he or she is beyond electoral control and independent.

3. How might campaign contributions affect the independence of the Judiciary according to Justices Breyer and Kennedy?

Judicial independence does not mean that cases are decided the way judges want. They are decided according to the law and the facts. Even the perception of outside influence can be damaging. If people perceive judges to be influenced by campaign contributions, they will lose confidence in the Judiciary. The statistics cited by Bill Moyers from Texas reflect how public confidence has been undermined there.

4. What can be done, according to Justices Breyer and Kennedy, about the erosion of judicial independence in states like Texas?

Justice Kennedy suggests that the public has a role in improving the election climate. He also believes that the bar association must return to a more neutral stance. Third, he suggests that judicial elections should be used to educate people about the importance of judicial independence. Justice Breyer

suggests that the people must become aware of this threat to the judicial system and use their democratic powers to alter the system to ensure judicial independence.

5. If the public does not like the decision of a judge, what is a way that the situation can be remedied without threatening judicial independence?

The public can always persuade their legislators to change the laws. Judges are empowered to interpret the law; if the public doesn't like an interpretation, the law should be changed so that the judge's interpretation is no longer possible. If one of the parties does not like the interpretation, they can appeal the case.



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