CONGRESSIONAL QUARTERLY'S

Guide to the U.S. Supreme Court

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Introduction

The Founding Fathers, greatly influenced by the writings of Locke and Montesquieu, divided governmental powers into three parts. The judicial branch, headed by the Supreme Court, was placed third, and last. As Hamilton wrote in *The Federalist Papers* (No. 78), "The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution." But Hamilton also wrote (*Federalist Papers* No. 22) that "Laws are a dead letter without courts to expound and define their true meaning and operation."

Over the years, the United States Supreme Court has played a pivotal role not only in the interpretation of the laws, but also in the development of the country. In the early days, the decisions of the court did much to unify the nation, to assist in its orderly economic growth and to broaden federal powers. One of the most important early decisions was *Marbury v. Madison* (1803), where the court held that it had the power to pass on the constitutionality of laws enacted by Congress, and to hold a statute to be invalid if, in the opinion of the court, Congress was not authorized to enact it. This decision has been fundamental in making the United States subject to "the rule of law." It is a power rarely given to the courts by the constitutions of other countries, and it is the basis for the special role which the Supreme Court plays in the government of the United States.

Congressional Quarterly's *Guide to the U.S. Supreme Court* helps us to a better understanding of the history of the Supreme Court and the importance of its decisions in shaping our system of government.

The Role of the Court

The Supreme Court has played a key role in defining the powers of government. In some cases, as in *Marbury v. Madison* on judicial review, the result reached by the court is not expressed directly in the Constitution, but is said to be a necessary implication from the governmental structure set up by the Constitution. This is true, for example, of decisions involving separation of powers among the three branches of government. It is also true of certain other questions which have been prominent in recent years, such as the power of the president to "withhold" money appropriated by Congress, or the extent of "executive privilege." On other problems, such as the regulation of interstate commerce, the results reached may turn on the interpretation of the power over commerce expressly granted to Congress by the Constitution and on doctrines which the court has found to be necessarily implied from this grant.

In addition to its role in defining the powers of the government, the Supreme Court has also in this century acted as the conscience of the country. Under the original Constitution, and especially in the amendments, it has been assigned vast responsibilities.

Shortly after the Constitution went into force in 1789, ten amendments were adopted, effective in 1791, and these are known collectively as the Bill of Rights. These include the First Amendment, guaranteeing freedom of speech and of the press; the Fourth Amendment, providing safeguards against unreasonable searches and seizures; the Fifth Amendment, providing that no person shall be deprived of life, liberty, or property without due process of law; and the Sixth Amendment, providing for a speedy and public trial of criminal cases by jury, and that the accused shall have compulsory process for obtaining witnesses and the assistance of counsel for his defense. These amendments applied to the federal government only, but they were supplemented after the Civil War by the Fourteenth Amendment, which provides that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." In recent years, the court has held that this guarantee makes most of the provisions of the original Bill of Rights applicable to the states.

Some of these provisions in the amendments are quite general, and leave considerable room for construction by the Supreme Court. In considering the decisions interpreting them, it is necessary to pay close attention to the facts of the cases in which the questions have arisen, and to consider very carefully the reasoning which the court has adopted in reaching its conclusions.

These aspects of the court's role in American life are important not only to lawyers, but to all students of government and to citizens generally. In the past, Congressional Quarterly has performed an important public service in providing its *Guide to U.S. Elections* and its *Guide to Congress.* Now this *Guide to the U.S. Supreme Court* is being added to the series. This will be a very useful volume for teachers, students, lawyers, journalists, for here can be found much of the material necessary for an understanding of the role of the court and the impact of its decisions over the years.

The work of the court is best comprehended through a careful examination of its decisions. This book will be a great aid in that task. *McCulloch v. Maryland, Gibbons v. Ogden, Dred Scott v. Sandford, The Slaughterhouse Cases, Pollock v. Farmers' Loan & Trust Co., Plessy v. Ferguson, Ashwander v. Tennessee Valley Authority, Brown v. Board of Education of Topeka,* The Pentagon Papers case *(New York Times v. United States), United States v. Nixon,* and many more, are all here, clearly discussed and analyzed in non-technical terms.

The Justices

This volume also provides valuable background material on the operations and traditions of the court, as well as biographical information on the 101 men who have served on the court. To many the Supreme Court is remote and impersonal. No one votes for Supreme Court justices, and they rarely make speeches. They are not seen about the country for they do their work in a marble building in Washington where they are virtually inaccessible. Yet, as Anthony Lewis has written, "The court is the least abstract of institutions. It is nine men, nine very human men, participating in a process that can be impressive or disturbing, grave or funny. And contrary to the general impression, the process is more visible than most of what goes on in government."

The Supreme Court sits and works in its own building in Washington, across the plaza from the Capitol. Over the portal of the building, the legend "Equal Justice Under Law" is carved into the pediment, and in many eyes this is in effect the motto of the court. With minimum aid, the justices "do their own work," and accept direct responsibility for what they do. Despite the pressures of their task, the court is not a bureaucracy, and we may fervently hope that it stays that way.

In the course of history, the court has been thrown into the center of many highly controversial questions and has been the subject of complaint and even of denunciation. As Justice Holmes once said: "We are quiet here, but it is the quiet of a storm center." The court has never shirked its duty, or failed to exercise conscientiously the great powers which have been entrusted to it under the Constitution. It deserves to be understood, and we are all greatly indebted to the publishers of Congressional Quarterly for providing this *Guide to the U.S. Supreme Court* and its work.

Erwin N. Griswold
Washington, D.C.
August 1979

Editor's Note

In his introduction to this volume, Dean Erwin Griswold has highlighted the importance of the U.S. Supreme Court and the need for increased understanding of the court as an institution and as a vital force shaping life in the United States.

This note offers suggestions to readers and users of the *Guide to the U.S. Supreme Court* to facilitate their locating material of interest to them. It also identifies the persons responsible for writing the various portions of the *Guide*.

Research Aids

There are three primary research aids in the *Guide* — the Table of Contents, the Subject Index and the Case Index.

The Summary Table of Contents offers, at a glance, an overall view of the organization of the *Guide*. The Detailed Table of Contents provides a closer look at the organization of each major portion of the volume.

The Subject Index pinpoints references to the particular subjects and persons mentioned throughout the book. The Case Index pinpoints references to the hundreds of Supreme Court cases and decisions described and analyzed in various chapters of the *Guide*.

The Organization of the *Guide*

Part I, Origins and Development of the Court, traces the growth of the Supreme Court from an idea into the world's most powerful judicial institution. It takes the court from its beginnings in the discussions of the Constitutional Convention in 1789 to the decisions of 1979.

Part II, The Court and the Federal System, analyzes the impact which the court's decisions have had upon the U.S. system of government. It consists of four chapters — The Court and the Powers of Congress, The Court and the Powers of the President, The Court and Judicial Power, The Court and the States.

Part III, The Court and the Individual, examines the effect of the court's rulings on the rights and freedoms of the individual. Its five sections include an Introduction; Freedom for Ideas, focusing on the freedoms guaranteed by the First Amendment; The Rights of Political Participation, concerned with the court's rulings defining voting rights and the freedom of political association; Due Process and Individual Rights, which traces the use of the concept of due process to guarantee a widening category of rights to the individual; and Equal Rights, a look at the court's use of the equal protection guarantee to move the nation toward the goal of equal opportunity.

Part IV, Pressures on the Court, analyzes some of the factors influencing the work of the Supreme Court — congressional pressure, presidential pressure, public opinion, and the press.

Part V, The Court At Work, examines the operations of the court, past and present, its traditions, its personnel, and its meeting places through history.

Part VI, Members of the Court, surveys the characteristics of the select group of 101 men who have served the nation as Supreme Court justices. This part also includes brief biographies outlining the personal background and public career of each of these men — from John Jay to John Paul Stevens.

Part VII, Major Decisions of the Court, consists of capsule summaries of the court's major decisions from 1790 to the summer of 1979. These summaries provide the case name, citation, date announced, vote, author of the major opinion, dissenters and a summary statement of the significance of the ruling.

The Appendix includes a variety of documents important to those interested in the history of the court — from the Constitution, through the various major judiciary acts, to the court-packing proposals of 1937, to the present.

In addition, each major chapter is followed by footnotes indicating the Supreme Court cases cited and the

sources used throughout the chapter. At the end of each chapter is a selected bibliography.

The Writers

Martha V. Gottron wrote the chapters of the *Guide* on The Court and the Powers of Congress, Freedom for Ideas, Equal Rights, and Congressional Pressure.

W. Allan Wilbur wrote the chapters on The Court and the Powers of the President, The Rights of Political Participation, Due Process and Individual Rights, and Presidential Pressure.

Elder Witt wrote the chapters on Origins and Development of the Court, The Court and Judicial Power, The Court and the States, and the Introduction to The Court and the Individual.

Warren Weaver wrote the chapter on The Court and the Press.

Park Teter wrote the chapter on Public Opinion.

Mary Costello wrote the chapter on The Court At Work.

Warden Moxley wrote the introductory section to Members of the Court, as well as a number of the individual biographies. In addition, biographies were written by Suzanne de Lesseps, Michael Glennon, and Barbara Risk.

The chapter entitled Major Decisions was written by Martha V. Gottron, W. Allan Wilbur and Elder Witt.

Barbara Risk served as editorial coordinator of the *Guide to the U.S. Supreme Court.*

Elder Witt
Editor

Photographs

Most of the photographs appearing in the *Guide to the U.S. Supreme Court* were obtained from the collection of the Library of Congress, including the photographs of the individual members of the court, the group pictures of the justices, the meeting places of the court and the lithograph on page 869.

The Architect of the Capitol provided the photographs of the aerial view of the court building, page ii; the Supreme Court chamber, page 3; the west front of the Supreme Court, page 61; and the justices' bench, page 781.

The photograph of the facade of the Supreme Court building on page 371 was taken by Dan De Vay; the photograph of the statue in front of the court, page 651, by Laura B. Weiss; and the court building, page 770, by Steven Karafyllakis.

Ankers Capitol Photographers provided the photograph of the court in 1954, page 51; United Press International, the photograph of the Supreme Court building at night, page 729; and Wide World Photos Inc., the Abe Fortas photograph, page 862.

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