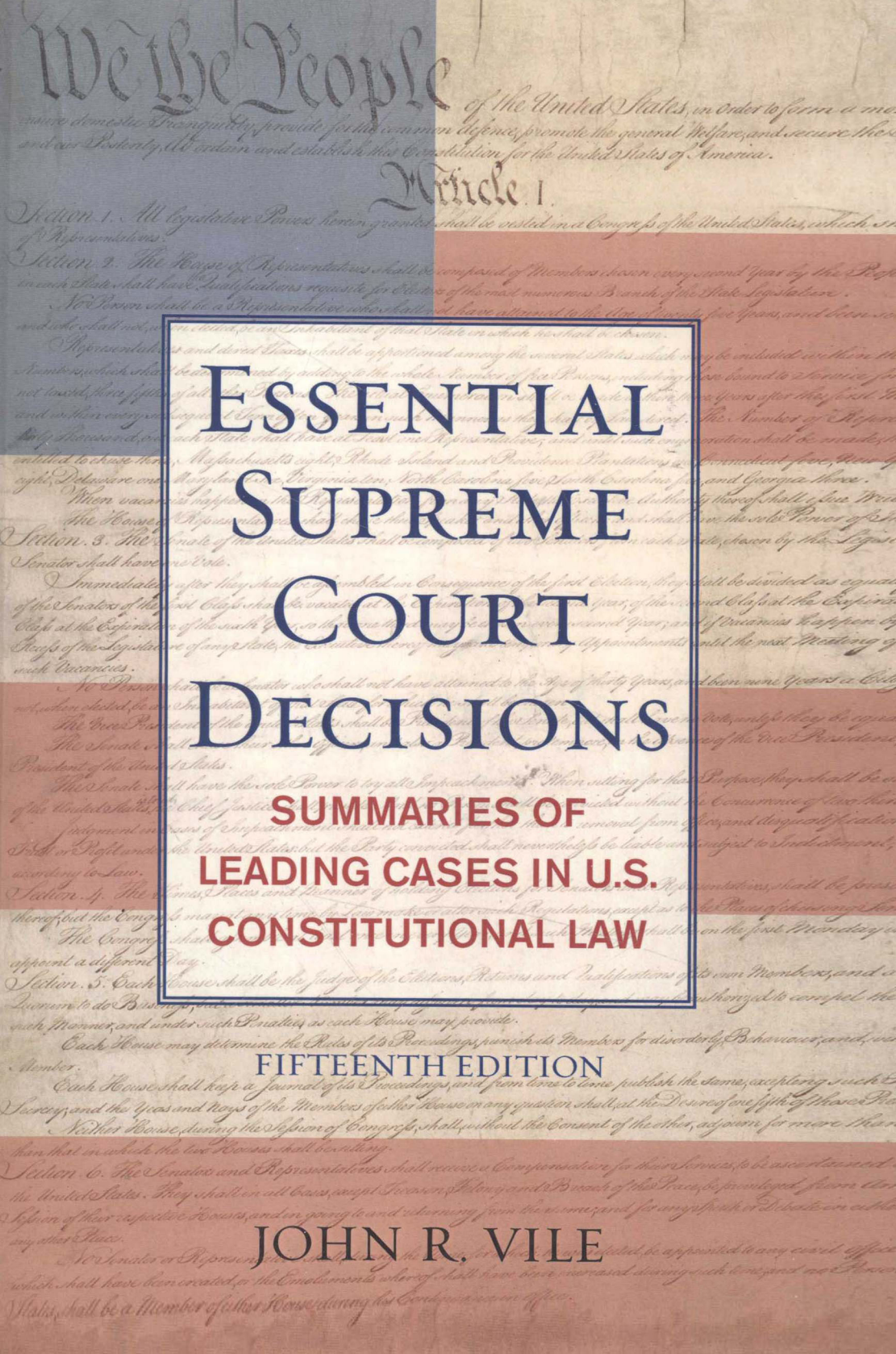
We the People
of the United States, in Order to form a more
Article. 1.
Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which
Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the
Section. 3. The
Section. 4.
Section. 5. Each
Section. 6. The Senators and Representatives
Section. 7.
ESSENTIAL SUPREME COURT DECISIONS
SUMMARIES OF LEADING CASES IN U.S. CONSTITUTIONAL LAW
FIFTEENTH EDITION
JOHN R. VILE

Essential Supreme Court Decisions

Summaries of Leading Cases in U.S. Constitutional Law

Fifteenth Edition

JOHN R. VILE

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Essential Supreme Court Decisions

PREFACE TO THE FIFTEENTH EDITION

More than fifty years and fourteen previous editions of continuous use have established the value of this volume. This value is tied to the gravity of the subject it treats. American constitutional law is as important and exciting as the dream of constitutional government. In addition to its intellectual appeal, constitutional law has practical consequences. Because the United States has a written constitution enforceable in courts, citizens find that guarantees of political participation and basic rights are realities rather than mere aspirations.

Like many important subjects, the study of constitutional law can be difficult. Undergraduates in political science and history often find constitutional law to be among the more demanding studies that they encounter within the social sciences. Similarly, law students generally find classes on constitutional law to be at least as challenging as classes on torts or contracts.

There are a variety of reasons for this. Although cases involving civil rights and liberties are often quite engaging and contemporary, cases involving judicial review and jurisdiction, separation of powers, federalism, congressional powers under the commerce and taxing clauses, and the like (typically the staple of first semester courses on U.S. constitutional law) may seem quite arcane. Moreover, the Supreme Court has a long history, and important cases frequently originate from earlier centuries. Such cases often focus on technical questions about issues that are not exactly in today's headlines or that are not generally understood. Few students who begin constitutional law understand, for example, that most rights in the first ten amendments are applied to the states not directly, but via the due process clause of the Fourteenth Amendment (see chapter 8 on the Bill of Rights and its application to the states). In addition to changes that have occurred in political circumstances and ordinary terminology during such time periods, cases often come complete with their

own language of "legalese," as recognized by the inclusion of a glossary of legal terms at the end of this volume.

Constitutional law is usually taught in classes in political science, history, and law. In classes in political science and law, students typically use a "casebook" that contains excerpts of key cases grouped according to topic. Law professors sometimes supplement such casebooks with "hornbooks," or commentaries that are often as massive as the volumes they purport to explain. In classes in constitutional law, professors expect students to read cases before coming to class, be prepared to discuss them, and leave with an understanding not only of what individual cases say but how they relate to one another. History classes are more likely to take a secondary text on constitutional developments as a point of departure, but such texts will often be supplemented by readings from key cases.

Professors in all these disciplines are likely to encourage students to "brief" cases prior to class and may even require the submission of such written briefs as part of the class grade. As the terminology suggests, a "brief" provides a skeletal outline of key aspects of a case. Professors vary in the elements they want in a brief, but this book provides those elements that professors most typically request. At a minimum, professors will generally want the name of the case followed by identification of the justice or justices writing decisions, a discussion of the most important facts of the case, the central question(s) the case poses, the opinion at which the Court arrived, its reasons for coming to this decision, and notes on major concurring and dissenting opinions. Identifying the central question in each case, the Court's answer to this question, and its reasons for it are especially important with the reasoning generally the largest part of a brief.

How long should a brief be? Briefs that are too long leave students preparing for an exam or paper with materials little shorter, and thus of little more help, than the cases reviewed. By contrast, briefs that are too short are likely to leave students struggling to remember the basic facts and issues in the cases. The length of briefs will thus typically vary with the length and complexity of individual cases.

With more than fifty years of use, this book has proven itself as a useful tool for conscientious students of the U.S. Constitution and its history, but, like other tools, it can be abused. It has been said that the ultimate touchstone of constitutionality is not what the Court or any other institution has said about it, but the Constitution itself. So too, the ultimate source for Supreme Court opinions should be the decisions themselves and not what this author or anyone else has to say about them. Students who use this book as a substitute for reading and briefing cases on their own, and for grappling with the original language and reasoning in opinions, will probably find that they will do

better than those who read neither. But students who rely solely on this book will be profoundly disadvantaged when compared with those who conscientiously begin by reading and briefing cases, attending classes, participating in class discussions and studying groups, and using this book and similar aids to check and further their understandings of such decisions.

This book is a useful guide for how to brief cases and generally points students in the right direction as to the meaning of key cases. However, wise students will quickly discover that cases often stand for more than one principle and that they might thus appear in some casebooks to illustrate issues other than the ones they illustrate here. Because it is arranged both topically and chronologically within chapters, this book will also help students to understand how cases they read fit into larger historical contexts. There is no unanimously agreed upon canon of the most important Supreme Court cases, and no two casebooks compiled by different authors will likely cover an identical list of cases. Thus, although students will undoubtedly find that many cases in their casebooks are not briefed here, they are likely to find that many cases are briefed here that are not in their books. They will thus have the opportunity to put their readings within larger contexts by reading summaries of other cases contemporary to the ones they are assigned.

In short, this book is a supplement to, and not a substitute for, reading Supreme Court decisions and scholarly commentaries on them. It can point the way to understanding court decisions, but it cannot serve in place of close reading and intellectual grappling with such cases. Briefs contained here provide skeletal outlines of the way that justices have thought, but students will need to read cases closely to understand the Court's reasoning in depth.

I began teaching just over thirty years ago, when this book, rather than I, was in mid-age. By that point it was already a widely available resource much prized by students. I am pleased to be able to continue my own teaching by continuing to update such a worthy study aid and honored that the publishers have asked me to guide this volume into its second fifty years. I have extensively revised this edition to cover important cases since the publication of the last edition, to delete cases that appeared to be of little practical usefulness, and to add significant materials on concurring and dissenting opinions to earlier cases. I hope that the volume continues to prove to be of help to those who seek better understanding of the U.S. Constitution and the Supreme Court decisions that explicate it.

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Middle Tennessee State University

ACKNOWLEDGMENTS

I am grateful to acknowledge my debt to the two previous scholars who authored the earlier editions of this volume, to those they have previously acknowledged as helping them, and to those who helped me bring this revised and expanded volume to press. The last reorganization for the last edition was the most extensive that has been done since this book was first published in 1954, but I remain grateful that I did not need to begin this book from scratch but was able to build upon the firm foundation that Professors Paul C. Bartholomew and Joseph F. Menez had already laid. I believe this book remains unique in its format, and, I hope, in its accessibility to students of U.S. constitutional law and history. As I revised and updated this book, I felt as though I was treading in huge footprints. I have aspired to maintaining both the high scholarly standards and the readability and accessibility to students of the original versions and trust that this new volume will bring continuing pride to the families of those who wrote them.

Naturally, I am grateful to Rowman & Littlefield for approaching me about revising this book. I am especially grateful to my editors, Jon Sisk and Darcy Evans, and production editor Lynda Phung. I owe special thanks to my student aide, Dawn Johnson, whose work was unflagging and whose computer and editing skills were essential. She spent countless hours separating cases into individual computer files, recombining them into new chapters, reformatting files, adding new cases, and editing my own prose. It was especially useful to have an undergraduate's perspective on what features of the existing book were most helpful and which could be most improved. I have queried numerous other students about how this book could be reorganized and improved. I continue to value my contacts with undergraduates in the classroom, and much of my confidence in the value of this book stems from the experiences that I have had in teaching undergraduate courses in constitutional law.

I also appreciate the work of my secretary Pam Davis in troubleshooting various computer glitches and other matters that I encountered when writing this book.

I continue to be awed by the way that computers have made cases increasingly accessible to scholars, and I am especially grateful to have been at an institution that has made access to Supreme Court cases available from my home and office. Middle Tennessee State University has continued to provide a supportive environment for me, and I will always be grateful for its service as my academic home. Since writing the last edition of this book, I have moved from my perch as chair of the Department of Political Science to a new position as dean of the University Honors College, and I am grateful that this job continues to allow me time to continue my research and writing.

I am pleased to dedicate this book to the two daughters who have brought such joy and pride to my wife and me.

This Is Our Supreme Court

Chief Justice Charles Evans Hughes once observed that "We are under a Constitution, but the Constitution is what the judges say it is." The chief justice was stretching a point, of course, because as Alexander Hamilton noted in *The Federalist*, the Court has neither the power of the purse nor the sword but only judgment. A good deal of its power depends on congressional grants, it must convince the executive to enforce its decisions, and when it lags or outstrips public opinion, it finds little support. The people have demonstrated that they retain ultimate power when on four occasions they have amended the Constitution to "recall" a previous Supreme Court opinion (see the Eleventh, Fourteenth, Sixteenth, and Twenty-sixth Amendments)! Judicial activists would like to push the Court forward in an ever-widening circle of cases, but as Justice John Marshall Harlan II wrote: "The Constitution is not a panacea for every blot upon the public welfare."

Of the three branches, the judicial branch is easily the most prestigious and most traditional. Alexis de Tocqueville, the very perceptive Frenchman who came to this country and in 1835 published his magisterial *Democracy in America*, noted:

> If I were asked where I place the American aristocracy, I should reply without hesitation . . . that it occupies the judicial bench and bar. . . . Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.

Unlike the presidency and Congress, the "political branches," the Supreme Court is barely visible. Its proceedings are not televised, the justices do not hold press conferences and rarely appear on television, they generally avoid the Washington social scene, and they rarely engage in public debate. And yet, the

Court remains in the center of issues. As Justice Oliver Wendell Holmes once wrote: "We are very quiet there, but it is the quiet of a storm center."

Created under Article III of the Constitution, the Supreme Court heads a co-equal branch of government that is independent of the other two "political [or elected] branches." At least since Chief Justice John Marshall's historic decision in *Marbury v. Madison* (1803), the Court has exercised the power, known as judicial review (and better grounded in general constitutional principles than in specific constitutional mandates), to declare acts of Congress or actions of governmental officials brought in cases before it to be unconstitutional and therefore void—it had previously exercised a similar power over state legislation. The Court also exercises the power of statutory interpretation, deciding on the meaning of disputed laws. Whereas only constitutional amendments or changes in judicial interpretation can overturn judicial interpretations of the Constitution, Congress can rewrite legislation that it believes the Court has misinterpreted.

The Court has nine members, a number set by statute in 1869. President Franklin D. Roosevelt attempted to "pack" the Court in 1937 when it was opposing his New Deal programs, and his failure to receive congressional approval for this proposal does not bode well for future alterations of the number of justices. Once all-male and all-white, as of 2010, two African Americans, three women, several Jews, an individual of Italian ancestry, and another of Latino ancestry have now occupied seats on the Court, and more minority appointments seem destined to follow. Although the members are lawyers and are increasingly drawn from the ranks of former judges, in contrast to the presidency and the Congress, the Constitution lays down no qualifications. Without exception, however, the justices have been active in public life. "This is a select company," said Chief Justice Warren Burger, "not because we are all-knowing, but because we were selected and we are here." Justice Louis D. Brandeis commented that "the reason the public thinks so much of the justices is that they are the only people who do their own work," a sentiment somewhat called into question by the increasing reliance of justices on their clerks, typically newly minted J.D.s from the nation's most prestigious law schools.

The president nominates all federal judges, including Supreme Court justices, and they are confirmed with the "advice and consent" of the Senate, which takes its role seriously enough to have rejected close to a fourth of the nominees to this body. In order to assure their relative independence, the Constitution guarantees that their salaries may not be lowered during their service, and they serve "during good behavior." Justices thus exit the court only through death, resignation, retirement, or (in a possibility never yet successful for a Supreme Court justice) after impeachment by the U.S. House of

Representatives and removal by a two-thirds majority vote of the Senate. Judicial nominations are often hotly contested along ideological lines (witness Robert Bork's unsuccessful fight in the Reagan administration and Clarence Thomas's barely successful efforts in the George H. W. Bush administration), and there is a good deal of journalistic and scholarly scorekeeping once justices reach the bench. Justices are often defined as "liberal," "conservative," or "centrist," or as belonging to this or that "bloc" or "camp." But neither the justices themselves nor careful Court-watchers see the membership so neatly categorized. There is a certain amount of unconscious yielding on lesser matters but no real sacrifice of principle. Although some justices share views and often vote together, there are no "blocs" in the sense of a number of persons who act in concert or as a unit. Even when one may guess how a justice might vote on the closest issues, said Justice Lewis F. Powell, "advance predictions are hazardous, even for those who serve together." Although Article III of the U.S. Constitution vests the Supreme Court with a limited number of cases of "original jurisdiction," in which it is the first and last court to hear a case, the Court is primarily an appellate court, reviewing decisions of lower federal courts and, because the United States has a federal system of government, from state courts, typically the state supreme court. The Court must thus wait for cases to come to it. Quoting Justice Oliver Wendell Holmes Jr., Justice William O. Douglas once observed that "Being a judge is like being an oyster: You've got to wait for the food to come washing up to your mouth with the high tide. And you watch many of the best mussels float by." Litigants file petitions or "writs" for the Court to review, the most common of which is called a writ of certiorari. The Court now receives close to 9,000 such writs a year and has almost complete discretion over which it chooses to hear. Clerks largely do the work of scanning through petitions for writs of certiorari to decide which cases have merit. The Court operates by a "rule of four" in which it only accepts cases that four or more justices agree to hear. When the Court decides not to accept a case, it leaves the lower court's decision in place, but this does not necessarily mean that the Court would have come to the same decision. The Court often waits until it thinks a case is "ripe" for review, and it often prefers to have several lower court rulings in place before it undertakes its own review; indeed, one of the Supreme Court's key functions is to reconcile practices in conflicting jurisdictions below it.

When Earl Warren was chief justice, the Court issued decisions in close to two hundred cases a year, but under the leadership of the subsequent three chiefs, the Court has more than cut this number in half. This, of course, is the public work of the Court. Since the Constitution provides for only one Supreme Court, this precludes the Court from separating into panels, chambers, or sections. Moreover, except in rare cases of court vacancies or when

justices recuse themselves or find themselves unable to participate because of illness, every justice passes on each case. The Court neither contains nor encourages the specialist; what the Court seeks and gets is the generalist. But justices, whose offices have been compared to nine private law firms, are fiercely individualist and independent, and thus individualist opinions now predominate over institutional opinions for the Court

Completed in 1935, the four-story Supreme Court building, measuring nearly 400 by 300 feet, is located east of the Capitol, which it faces across a wide plaza. The doors to the main entrance are sliding leaves of bronze, each weighing six and one-half tons. Eight relief panels trace the growth of law from ancient Greece and Rome to the young United States. Finished at a cost of $9,000,000, it is an imposing marble edifice dedicated to preserving the Union as one of laws and not of men. Exhibiting twenty-four massive columns and containing marble from Spain, the courtroom was deliberately made small—it measures 82 by 91 feet with a coffered ceiling 44 feet high—so that the audience would not have an impact upon the judicial proceedings. Chief Justice Rehnquist, once asked if justices were able to insulate themselves from public opinion, replied: "No, and it would probably be unwise to try. We read newspapers and magazines, we watch news and television, we talk to our friends about current events. No judge worthy of his salt would ever cast his vote in a particular case simply because he thought the majority of the public wanted him to vote that way."

In addition to the section set off for the bar and the raised area where the nine justices sit, there are benches made available for the general public. Of the 300 seats, 112 are allotted to the press, the justices' families, and members of the bar. The remaining 188 seats are available to the public on a first-come-first-served basis. On days in which very important cases are being argued, some seats in the public area are rotated every three minutes to accommodate the tourists. Close to the Court benches, there are special areas: members of the press are seated in red benches on the left side of the courtroom, the red benches on the right are for guests, the black chairs in front of the benches are for officers of the Court, or distinguished dignitaries. There is even a seat for the president if he desires to visit the Court. The Court does not permit any writing, whispering, sketching, taping, or photographing, although the Court does make audiotapes, which individuals may subsequently buy, of arguments in individual cases. In an unusual move, the Court made audiotapes of the arguments in the historic *Bush v. Gore* decision in December 2000 (effectively halting the election count in the state of Florida and thus sealing George W. Bush as the winner of the state's electoral votes) almost immediately after the arguments were made. Students may now access tapes of oral arguments at http://oyez.nwu.edu.

By statute a "term" begins in October and by custom ends the following July for "vacation." When justices are not in Washington, petitions follow them even in diplomatic pouches. On very rare occasions there is a special sitting of the Court, when it can extend its term, as in the Pentagon Papers case (1971) and the Nixon Tapes ruling (1974), and reassembles as in the case of the Nazi saboteurs (1942) and the Rosenberg espionage trial (1953). The Court is in session two weeks and in recess for two weeks. When the Court is "on" it hears oral arguments; when it is "off" it is deciding petitions, researching cases, and writing opinions. Six justices must participate in each decision, and cases are decided by a majority. In the event of a tie vote, the decision of the lower court is sustained although the case may be reargued.

At 10:00 A.M. Monday through Wednesday, the Court pages part the beautiful drapes allowing the justices, who have previously met and shaken hands all around, to enter the courtroom. The clerk cries out:

> Oyez, oyez, oyez! All persons having business before the honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this honorable Court.

The Court hears two cases before noon and, following an hour's recess, it hears two cases until it adjourns at three. Punctuality is the rule for the Court and for its litigants. The advocate's time—typically, one-half hour—is monitored by the Court Marshal. When the white light flashes at the advocate's lectern, there are five minutes left. At the red light the chief justice, promptly but firmly, says "Thank you, ... The case is submitted." Once when former President Grover Cleveland addressed the Court, he looked up at the clock and remarked that, despite the closing time, he would take only a couple of minutes to complete his argument. Melville Fuller, who was appointed chief justice by Cleveland, remarked with great courtesy: "Mr. Cleveland, we will hear you tomorrow." On another occasion, Chief Justice Charles Evan Hughes (known for being able to cut counsel off in the middle of the word "if"), when asked how much time was left, responded: "14 seconds." Solicitor Stanley Reed, who subsequently became a justice, once fainted before the Court.

Unlike the days of the Court "Greats"—attorneys Daniel Webster, Henry Clay, and John C. Calhoun—when arguing a case before the Supreme Court was a major event that brought out in attendance Washington's social set, what counts today is merit, not reputation. In cases of great public import, the one-hour-per-case limit has been increased as in the three hours for *United States v. Nixon* (1974) and two hours for *Bowsher v. Synar* (1986). The scant one-half hour provided the advocate is frequently dissipated by questions from the bench. The "Felix Problem"—called after Justice Felix Frankfurter,

a former law professor who consumed a good deal of an advocate's allotted time—treated counsels as students taking an examination; a colleague once noticed that his musings in conference were typically 50 minutes long, the length of a standard Harvard lecture. Justices Antonin Scalia and Ruth Bader Ginsburg are the most loquacious members of the current court, with Justice Clarence Thomas speaking from the bench so rarely that occasions, as in cases involving cross-burning and affirmative action, when he does so become cause for journalistic comment. The Court looks with disfavor on any oral argument that is read from a prepared text and requires an advocate to answer any question that is asked. Once when a lawyer said he was coming to a point, Justice James McReynolds snapped: "You're there already!" Justice Thurgood Marshall told a lawyer who did return to his question to forget it; he was no longer interested.

The most frequent lawyer before the Court is the solicitor general of the United States, who has his own office in the Supreme Court building. The solicitor's principal function is to decide what cases the government will or will not appeal. He is often called the ninth-and-a-half member because he has an advantage that an attorney appearing less often does not possess. He not only argues on behalf of the government, he also decides which cases to bring to the Court, and which to appeal. The solicitor general, to illustrate the extent of his visibility, participates in about half of the Court's entire docket and perhaps two-thirds of all argued cases. Robert Jackson, a former solicitor general, relates that he made three arguments in every case:

> First came the one that I planned—as I thought, logical, coherent, complete. Second was the one actually presented—interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that I thought of after going to bed that night.

However hazardous and traumatic the exchange between the justices and the advocate, it can be significant, as Chief Justice Charles Evans Hughes once commented: "I suppose . . . that the impressions that a judge has at the close of a full oral argument accords with the convictions which control his final vote."

When the Court is in recess studying appeals, petitions, and writing opinions, conferences are held on Wednesday afternoons and all day Friday. The justices are called to conference by a buzzer that rings in the several chambers five minutes before the hour. The oak-paneled conference room is lined with books containing lower court and Supreme Court opinions. There is a portrait of the fourth and arguably the greatest chief justice, John Marshall. Each justice's chair is different and bears a nameplate. Justices are seated according to seniority. The main law library has more

than 500,000 volumes in a variety of formats and a staff of twenty-five to serve the justices. Each justice has an agenda of the cases to be discussed and, in addition, a movable cart containing all the materials he might need in discussion.

There are no clerks, stenographers, pages, or even a tape recorder visible. There is absolute secrecy and confidentiality. If it is necessary to get material outside the conference chamber or answer the door, the most recently appointed justice acts as a "doorkeeper." Justice Tom Clark was the junior justice for five years and was fond of relating that he "was the highest paid doorkeeper in the world." Like chiefs before him, Chief Justice John G. Roberts, Jr. opens a session by giving the judicial history of the case and putting the precise question before the justices. Beginning with the most senior down to the most junior, the justices state their views, but some justices have noted that they and their colleagues more frequently report their position than engage in genuine dialogue. Still, discussions can be heated. If the chief justice perceives that nothing more can be said on the issue, the chief will call for a vote. The chief justice is considered to be *primus inter pares*, or first among equals. Good chiefs are expected to exercise both good "task" leadership, to help expedite the work of the Court, and good "social" leadership, to preserve relative harmony in a collective setting.

The chief has the tactical advantage of opening discussion of the cases and setting the tone of the discussion. If the chief justice votes with the majority, the chief has still another advantage. The chief can write the opinion or assign it to someone else (if the chief is in the minority, this privilege goes to the ranking dissenter). This gives the chief a special opportunity for leadership. Assignments are not made at the conference but formally in writing several days later. If the decision is considered a "landmark" one, the chief justice often writes the opinion, thus throwing the weight of the Court behind it; chiefs sometimes work very hard at getting unanimity in important cases, as was perhaps best exemplified in Chief Justice Earl Warren's successful efforts in *Brown v. Board of Education* (1954) overturning the doctrine of "separate but equal" in race relations. The chief might assign the opinion to the justice whose position is closest to his own on the issue, or the chief justice might recognize the "realities of external politics" and select a justice whose views will carry more weight.

Almost every chief justice has assigned a "conservative" opinion to a "liberal" judge, as when Justice Hugo Black wrote the opinion for the famous Japanese internment case, *Korematsu v. United States* (1944), and a "liberal" opinion to a "conservative" judge, as when Justice Tom Clark was assigned *Abington School District v. Schempp* (1963), which dealt with prayer and Bible reading in schools.

Writing an opinion is laborious as well as artful. Rufus Choate once observed: "You cannot drop the Greek alphabet and pick up the *Iliad*." At this point a legal battle is likely to occur all over again if one or more of the majority justices disputes the terminology, the content, the style, or the structure of the decision. Occasionally, the judge who wrote the opinion will not backtrack on his or her style or statements—what Justice Oliver Wendell Holmes called "pulling out all the plums and leaving all the dough"—thus provoking his or her supporters to write concurring opinions, that agree with the result but not with the reasoning of a holding. In a memo to Justice Felix Frankfurter, Justice Harlan Fiske Stone wrote: "If you wish to write, placing the case on the ground which I think tenable and desirable, I shall cheerfully join you. If not, I will add a few observations myself."

The political effect of concurring opinions, however, is to weaken the majority opinion. Not only is the force and singleness of the majority opinion lost, but its message can be scattered by dicta, that is, interesting but extraneous material. The use of individual opinions now predominates over institutional opinions for the Court. Moreover, a justice might write a dozen drafts of an opinion, circulate them for approval, and then see them disintegrate. As Justice Lewis Powell put it: "The drafting of an opinion is a process, not an event. . . . What really dismays a justice is to circulate a draft opinion, and receive no word at all except perhaps a cryptic note or two saying: 'I will wait circulation of the dissent.'" In some cases, a powerful dissent has succeeded in changing a majority into a minority opinion. After reading such a dissent, Chief Justice William H. Taft wrote his colleagues: "I think we made a mistake in this case," and wrote a new and contrary opinion that carried the Court.

Although the dissent is an appeal to what Chief Justice Charles Evans Hughes called "the brooding spirit of the law, to the intelligence of a future day," still, it is not the controlling law. It attempts to undermine the Court's reasoning and discredit its results. Justice Robert Jackson noted that a dissent was a confession of a "failure to convince the writer's colleagues, and the true test of a judge is his influence in leading, not in opposing, his court." Especially when they represent the view of a single justice who is not forced to compromise his/her views in order to muster the votes of other justices, dissents may be more sharply worded, and thus more memorable, than majority opinions.

When the majority and minority opinions are ready, they are printed in the Supreme Court's special, high-security printing room. Copies for distribution by the Public Information Office are made available to the public. Camera-ready copies of the "Bench Opinions" are sent to the Government Printing Office (GPO).