



MICRO AND MACRO INFLUENCES ON JUDICIAL DECISION MAKING

THE POLITICS OF THE FEDERAL JUDICIARY

THE "MYTH" OF OUR JUDICIAL SYSTEM





THE REALITY?

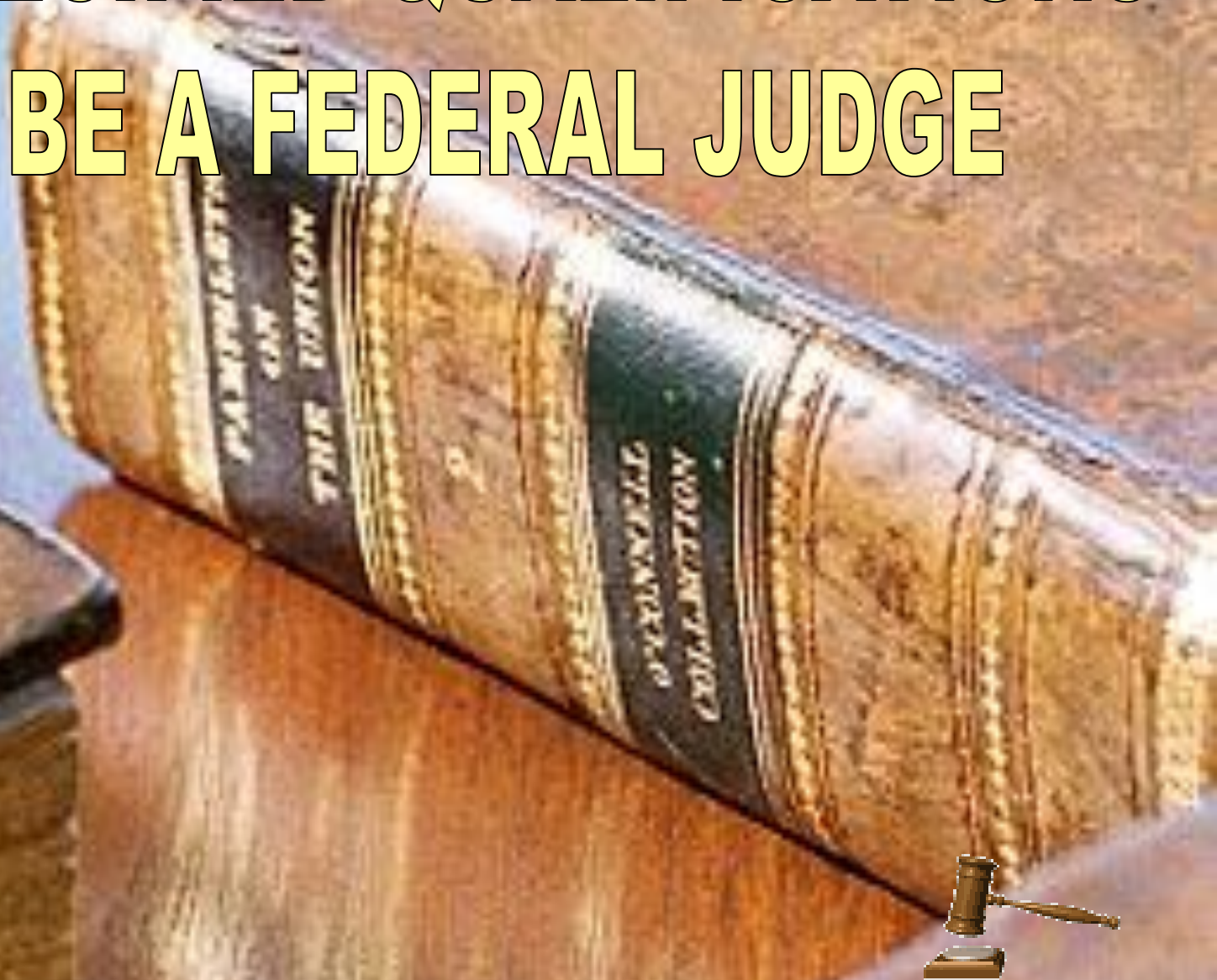




HOW DID THE
FOUNDERS PROVIDE
FOR AN
INDEPENDENT
JUDICIARY?



NO SPECIFIED QUALIFICATIONS TO BE A FEDERAL JUDGE

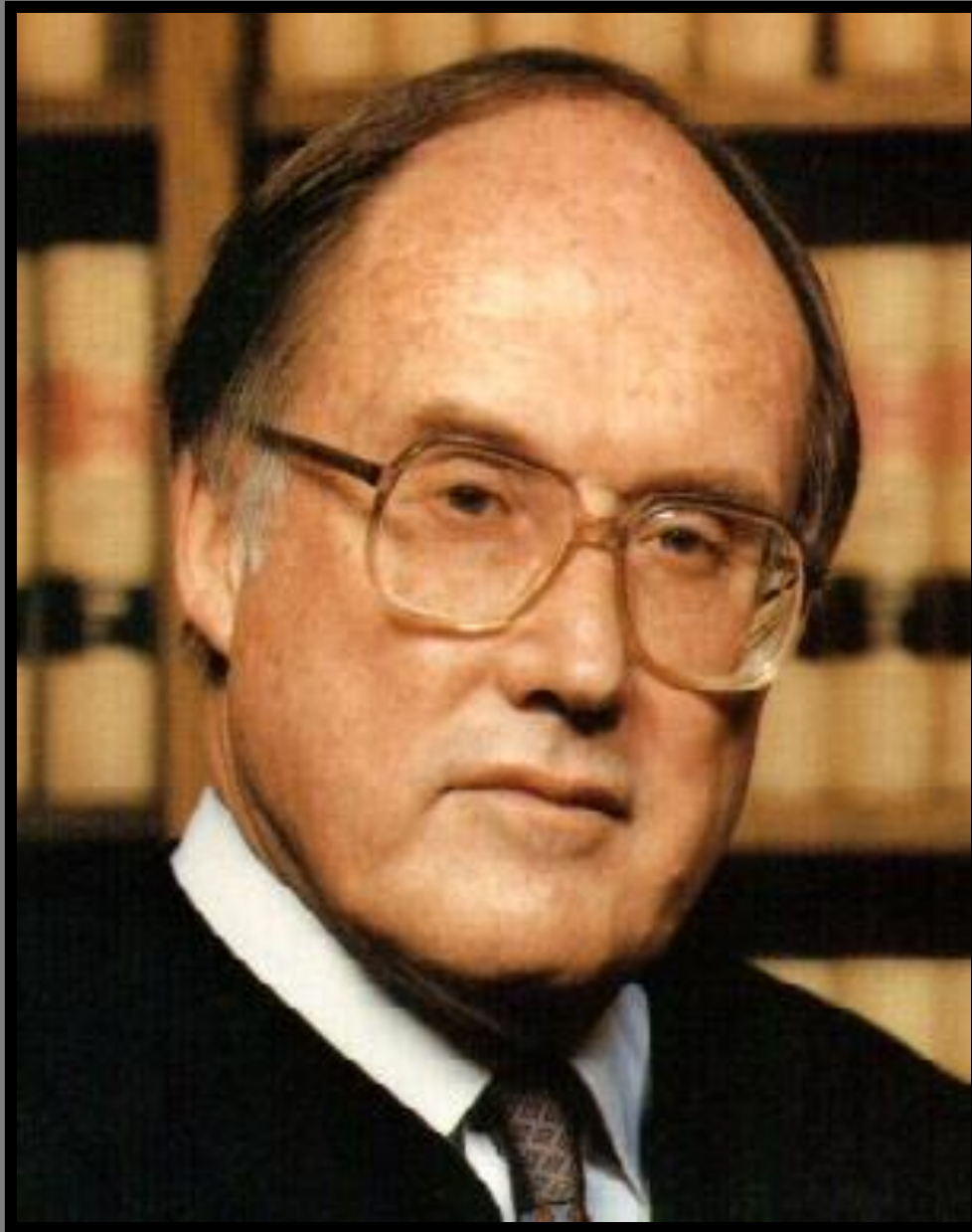


FEDERAL JUDGES SERVE FOR LIFE



Justice Wm Brennan
was on the Court
from 1956 to 1990.
34 years!





Former
Chief Justice
Wm Rehnquist-
appointed in
1973 (Nixon)
Retired 2006



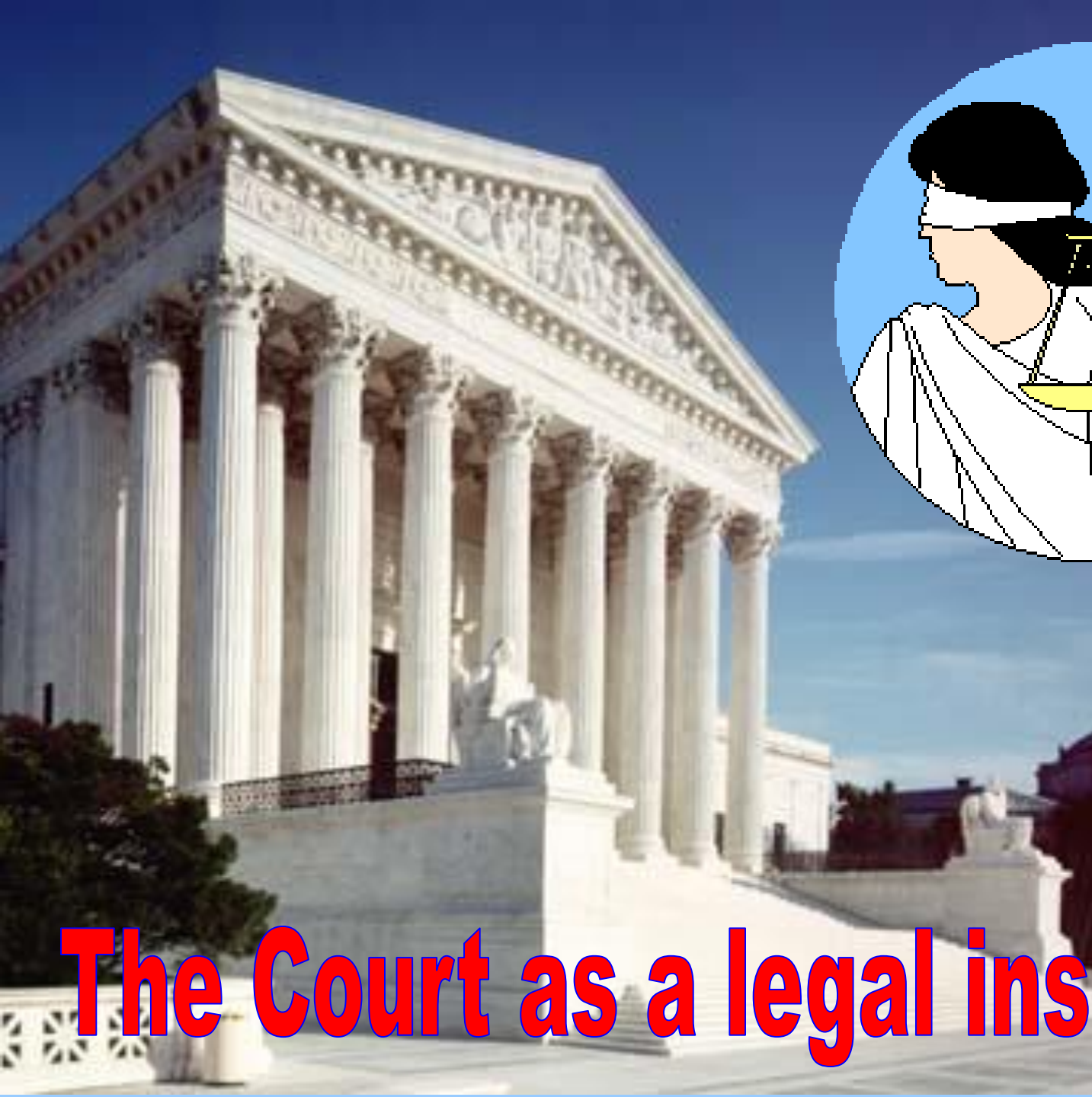
CAN ONLY BE REMOVED THROUGH IMPEACHMENT

**13 Impeachment trails, with
7 convictions since 1789**



Samuel Chase-
only Sup. Ct.
justice to be
impeached (1803)



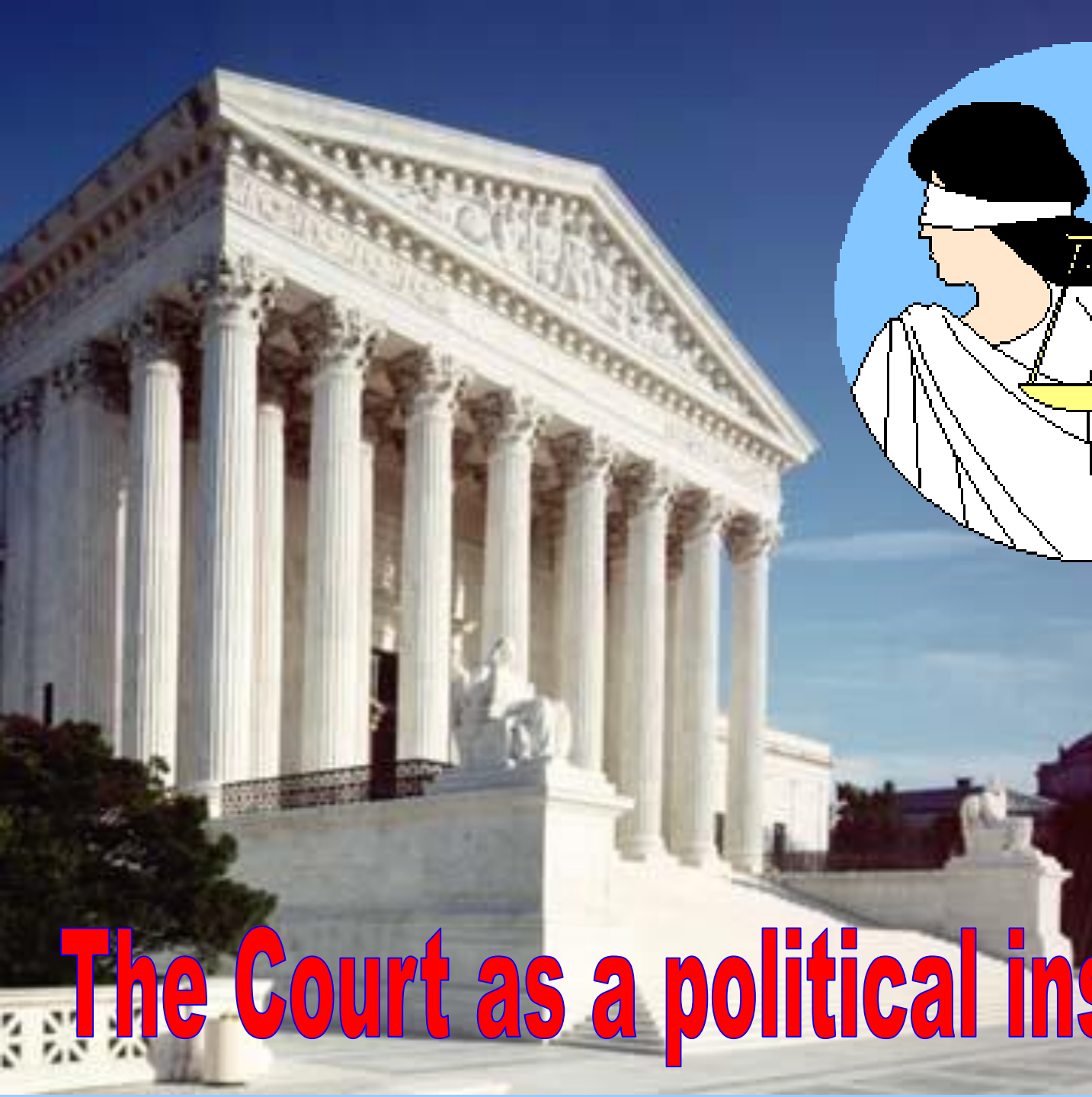


The Court as a legal institution



**The policy choices a court
makes are based on
interpretations of
existing law**





The Court as a political institution

**Federal judges are nominated
by the president**



Examples of politics?



**Federal judges are subject to
the scrutiny of the Senate**

**Senate Judiciary Cmte. room-
Examples of politics?**



**Interests bring cases and present
arguments to the Court
in an effort to affect what it does**



**"Judges' decisions are a function
of what they would prefer to do, tempered by
what they think they ought to do,
but constrained by what they perceive
is feasible to do"**



Charles A. Johnson
Texas A&M University



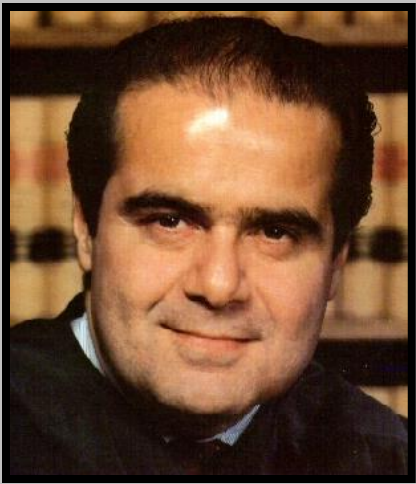


JUDICIAL IDEOLOGY

("...what they would prefer to do...")

**Judges are people too-
they are liberal and conservative
on major policy issues**



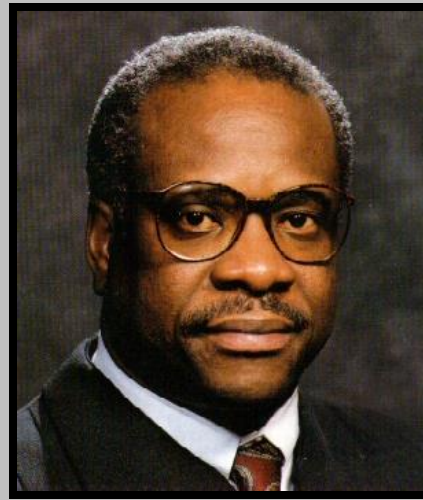


Scalia

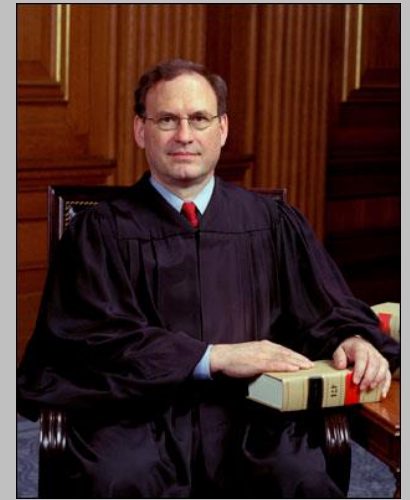


Roberts

?



Thomas



Alito

?

The "Pro-Life" Justices





Breyer



Ginsburg



Sotomayor



Kagan

The "Pro-Choice" Justices



**Judicial Ideology is based on
Personal Socialization**





Former Justice Thurgood Marshall



How do you think he ruled on civil rights policy knowing he experienced discrimination and segregation while growing up in the South?



**Judicial Ideology is based on
Professional Socialization**





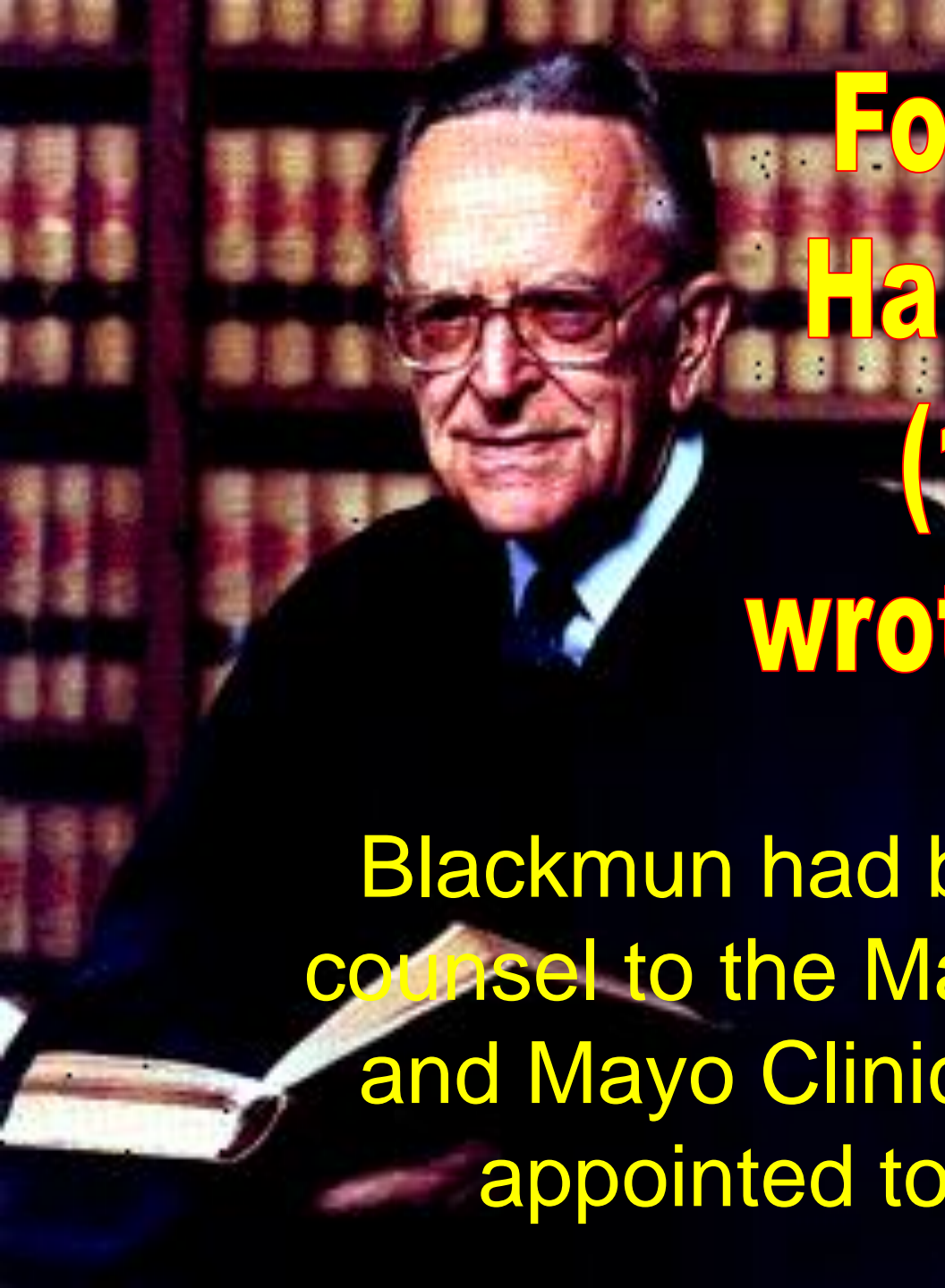
**Their legal
training is
a part of
professional
socialization**



Harvard Law School

**The type of
law practiced
before going to
the bench is
a factor**



A portrait of Harry Blackmun, an older man with glasses, wearing a dark suit and tie, holding a book. He is standing in front of a bookshelf filled with books.

Former Justice Harry Blackmun (1970-1994)- wrote Roe v. Wade

Blackmun had been in-house
counsel to the Mayo Foundation
and Mayo Clinic before being
appointed to the bench





**Did "party"
play a role
in the
decision?**

**SUPREME COURT OF THE UNITED STATES
GEORGE W. BUSH, et al., PETITIONERS v.
ALBERT GORE, Jr., et al. (2000)**



**T
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Justice	Appt. By	Party	Bush or Gore
Rehnquist	Nixon	Rep.	Bush
Stevens	Ford	Rep.	Gore
O'Connor	Reagan	Rep.	Bush
Scalia	Reagan	Rep.	Bush
Kennedy	Reagan	Rep.	Bush
Thomas	Bush 41	Rep.	Bush
Souter	Bush 41	Rep.	Gore
Ginsburg	Clinton	Dem.	Gore
Breyer	Clinton	Dem.	Gore



A cartoon illustration of a judge with a large white beard and orange hair, wearing a blue robe. He is sitting at a desk, reading a large open book. A wooden gavel is on the desk to his right. The background is a solid grey color.

JUDICIAL ROLE

("...what they think they ought to do...")



**Role is based on judges' views
about what constitutes
appropriate behavior
when interpreting the law**



**According to many, the proper
role of a judge should
be only to interpret the law-
ascertain it's meaning and not
make law**



Five sources that have guided interpretation of the Constitution: (1) the text and structure of the Constitution, (2) intentions of those who drafted, voted to propose or ratify the provision in question, (3) prior precedents (usually judicial), (4) the social, political, and economic consequences of alternative interpretations, and (5) natural law.



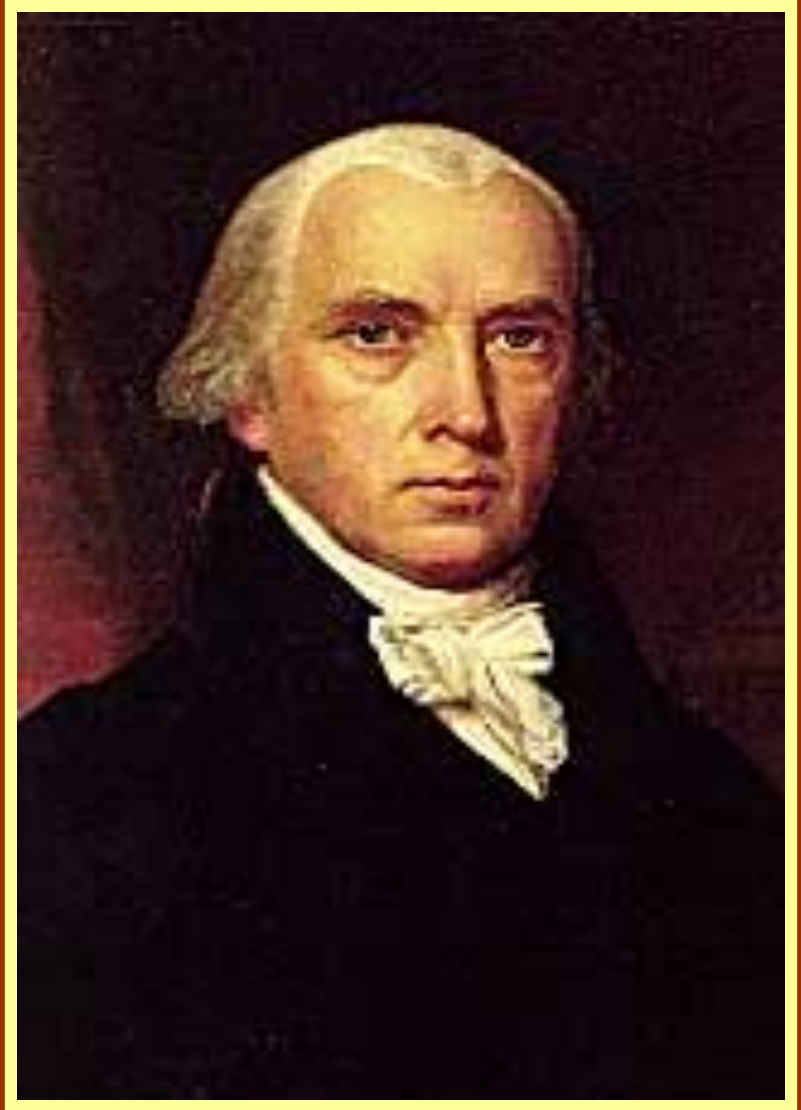
A Court/Judge is a Judicial Activist when they:

- stray from precedent or,
- make policy with their rulings or,
- make a decision contrary to the wishes of the other branches or people



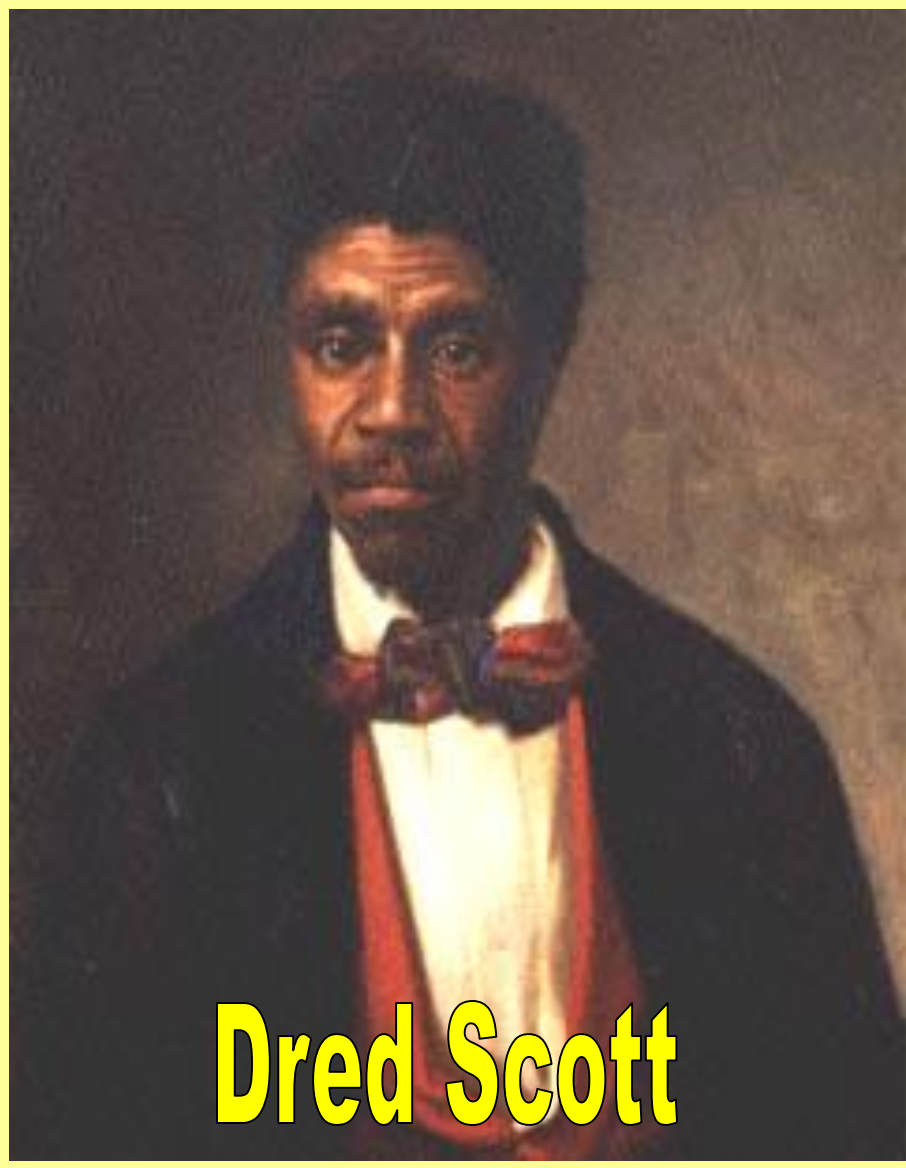
Why are the following landmark decisions considered "activist"?



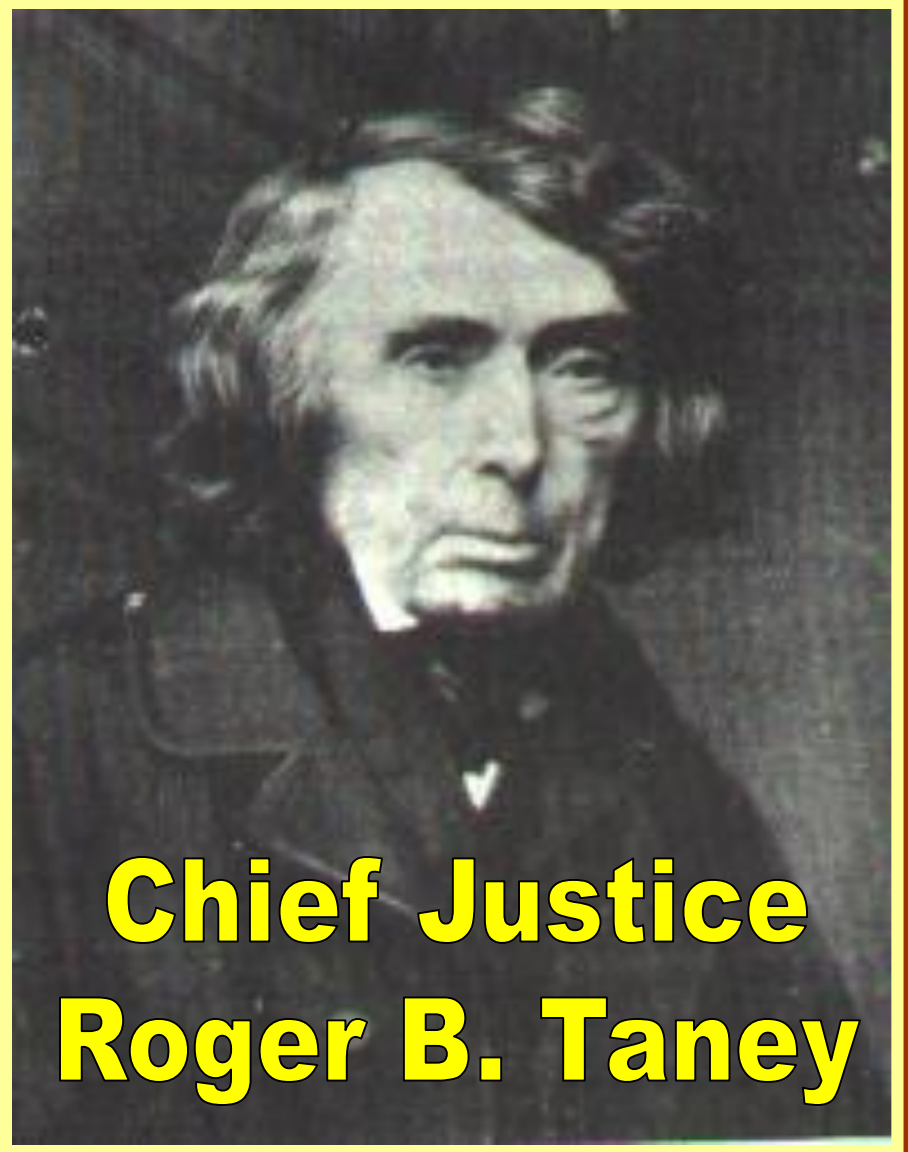


Marbury v. Madison (1803)





Dred Scott



**Chief Justice
Roger B. Taney**

Dred Scott v. Sanford (1857)

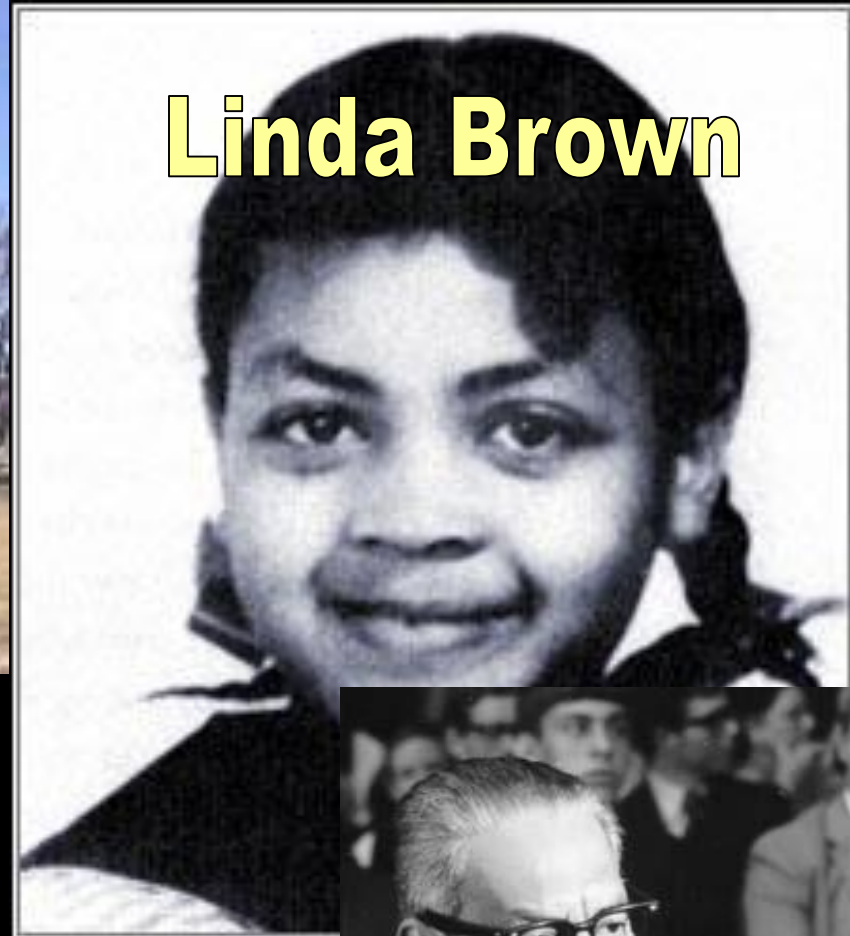




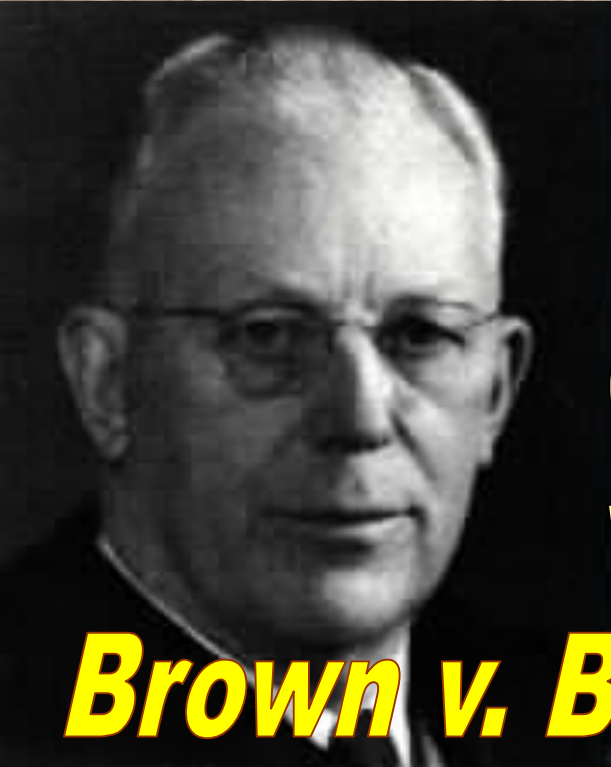
Plessy v. Ferguson (1896)



Monroe School

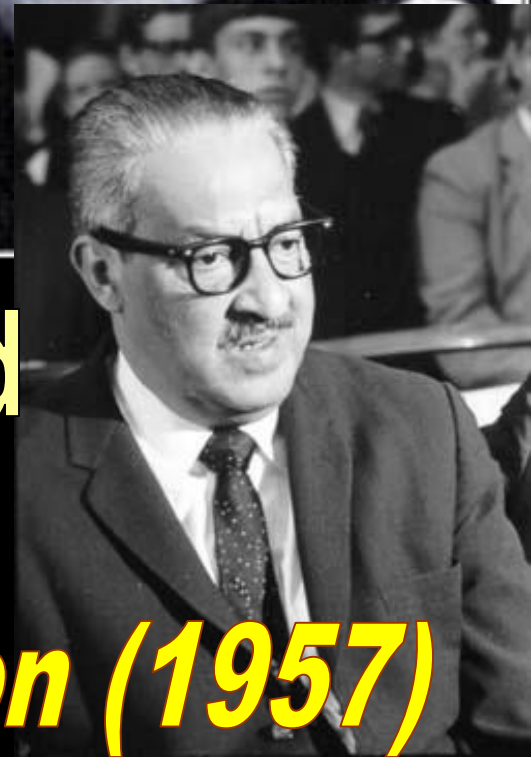


Linda Brown



CJ Earl
Warren

Thurgood
Marshall



Brown v. Brd. of Education (1957)

**“Almighty God, we acknowledge our
dependence upon Thee, and we beg
Thy blessing upon us, our parents,
our teachers and our Country.”**

Engel v. Vitale (1962)





Mapp v. Ohio (1963)





Estelle Griswold

Griswold v. Connecticut (1965)



Miranda v. Arizona (1966)

MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

WAIVER

DO YOU UNDERSTAND EACH IF THESE RIGHTS I HAVE EXPLAINED TO YOU?
HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?





Norma McCorvey then & now

Roe v. Wade (1973)



Do you favor or oppose a new amendment to prohibit the burning or other desecration of the American flag?



Gregory Lee Johnson



Texas v. Johnson (1989)



A photograph of Justice John Roberts speaking into a microphone at the Supreme Court. He is wearing a black judicial robe over a white shirt and a red tie. The background shows the ornate wooden interior of the Court, with an American flag visible on the left. The text is overlaid in yellow and white.

Liberals & Conservatives Decry the Supreme Court's Judicial Activism

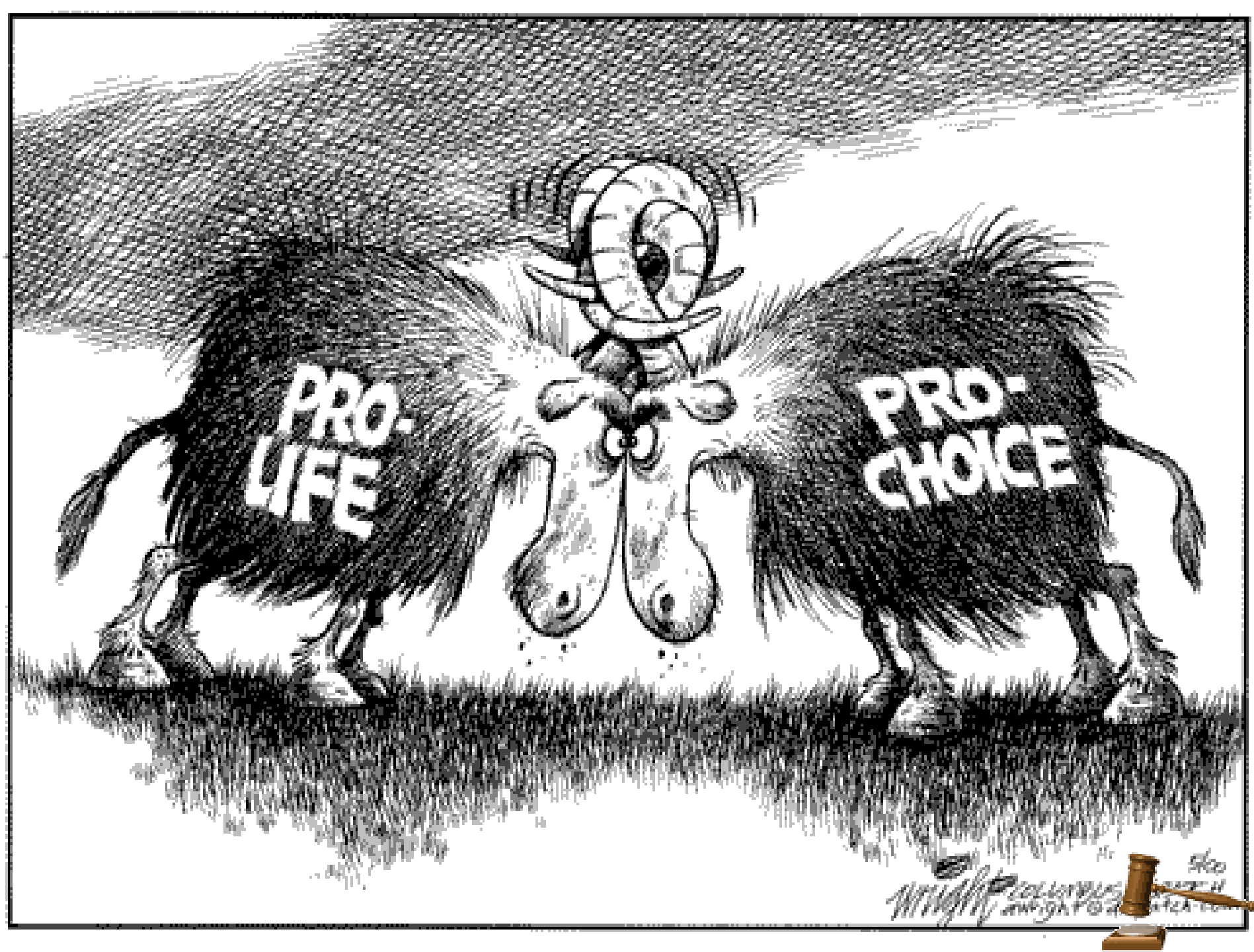
What evidence is there to support?



“As with any medical procedure, the State may enact regulations to further the health or safety of a woman seeking an abortion, but may not impose unnecessary health regulations that present a substantial obstacle to a woman seeking an abortion.”

Planned Parenthood v. Casey (1992)





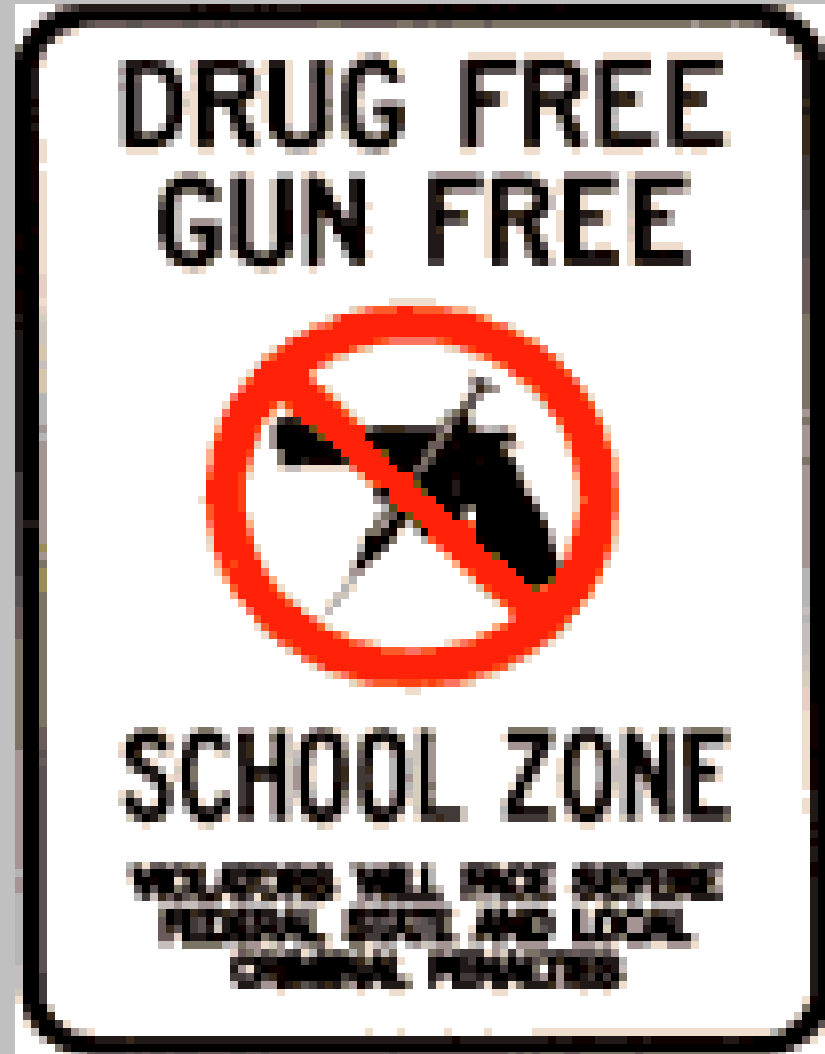
Incident to an arrest, “the officers can, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest....” The Court emphasized that the purpose of such a search is not a full search of the premises, but “may extend only to a cursory inspection of those spaces where a person may be found.”

Maryland v. Buie (1990)



Supreme Court places a limit on Congress under the Interstate Commerce Clause.

***United States v.
Lopez (1995)***



REASONS FOR INCREASE IN JUDICIAL ACTIVISM

- Growth in size and scope of govt.
- Laws are unclear and need interpretation
- Const. guidelines are vague and do not provide specific direction
- Judges see their **ROLE** as “solving problems”, not settling disputes



**A judge or court that exercises
judicial restraint will defer to the
legislative or executive branches,
rather than asserting their own view.**

Judicial Restraint



“But we are not asked in this case to say whether we think this law is unwise, or even asinine. We are asked to hold that it violates the United States Constitution. And that I cannot do.”



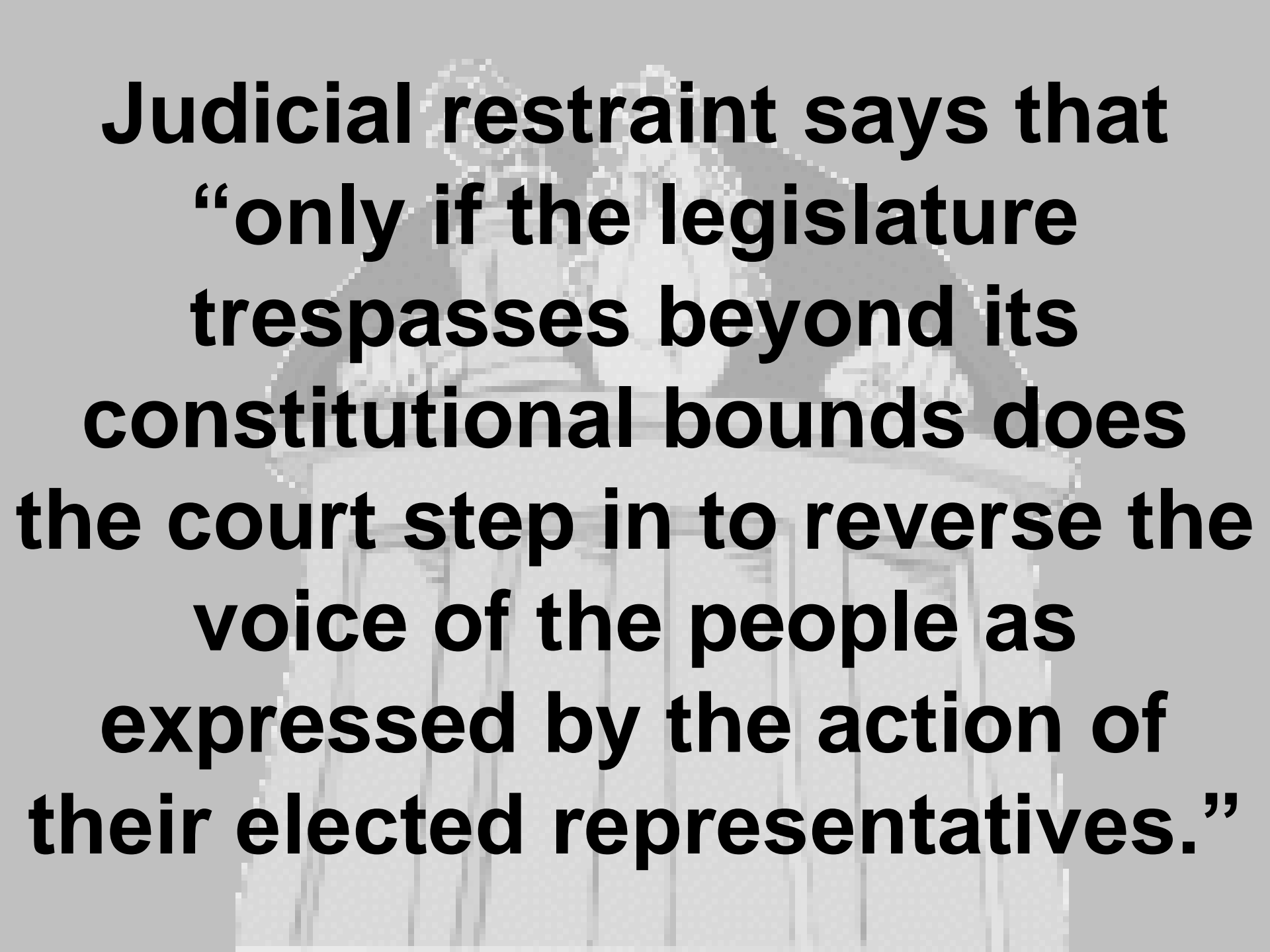
**Justice Potter Stewart
dissenting
Griswold v. CT (1965)**



**Justice Felix
Frankfurter
1939-62**



**According to
Frankfurter, the most
fundamental test for
any law which a justice
must use was the
question of Rational
Basis - if a rational
basis for a law could
be found, then the law
should be considered
constitutional.**

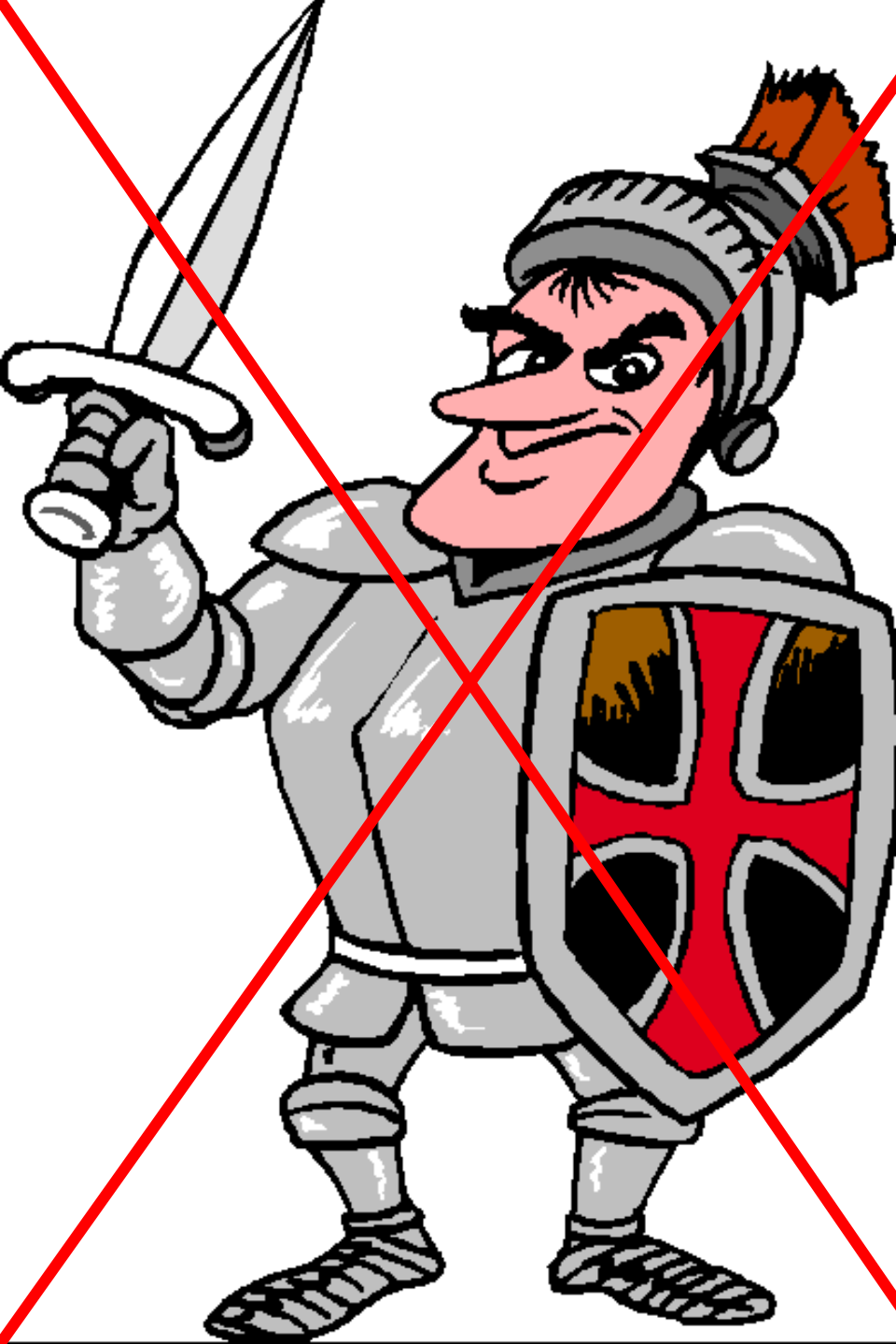


**Judicial restraint says that
“only if the legislature
trespasses beyond its
constitutional bounds does
the court step in to reverse the
voice of the people as
expressed by the action of
their elected representatives.”**



JUDICIAL ENVIRONMENT (MACRO/EXTERNAL INFLUENCES)

("...what is feasible to do...")



**"Judges are not
medieval knights
free to roam the
countryside slaying
all the evil dragons
they encounter"**



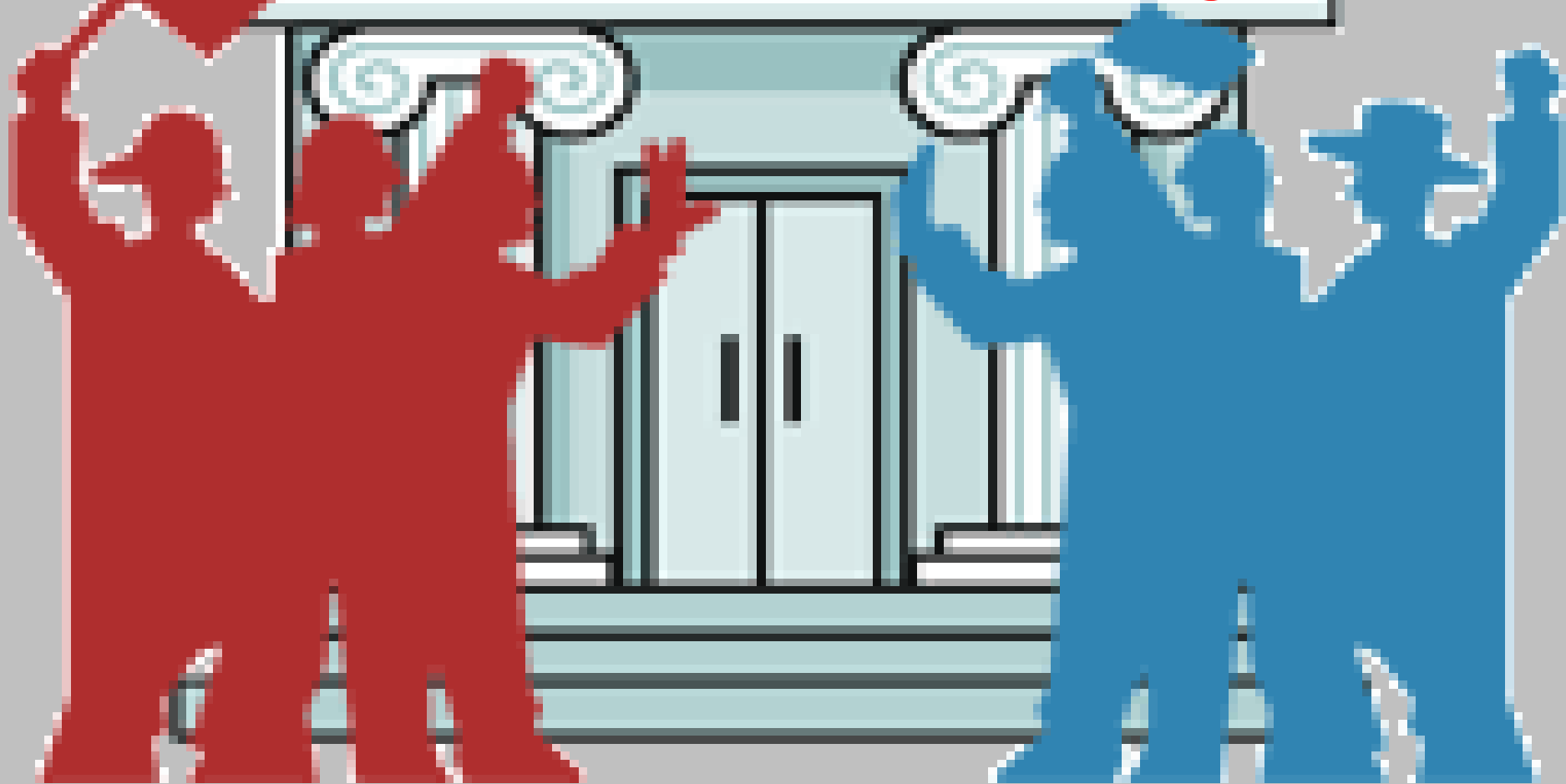
**Both institutions
are free to initiate
any policy they
desire while
courts.....**



must wait for policy issues to reach them



**Cases must be justiciable and
parties must have standing to sue**



The Collegial Court Concept

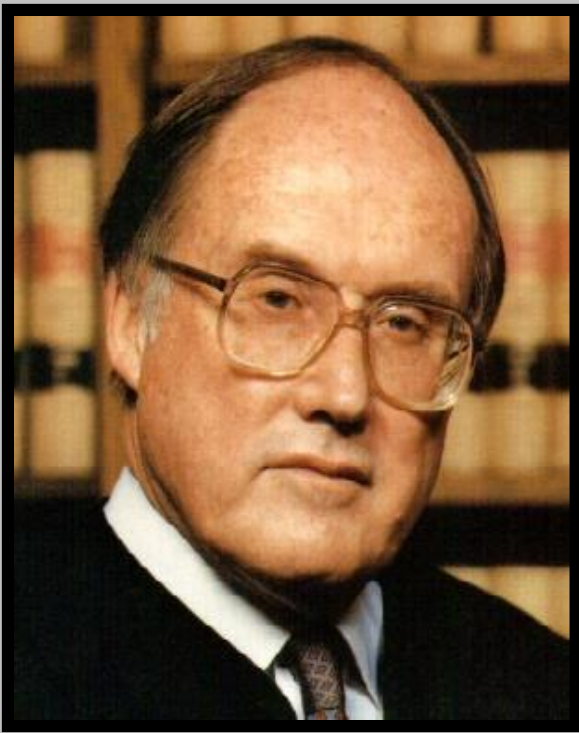


Appellate Courts work in teams

A close-up photograph of a human hand with the palm facing the viewer. The four fingers (index, middle, ring, and pinky) have red ink smudged on their tips, while the thumb is clean. This visual metaphor represents the 'Rule of Four' in legal contexts.

**4 Justices must agree to
grant certiorari**

The "Rule of Four"



**Wm Rehnquist
(1986- present)**




**Warren Burger
(1969-86)**



**Earl Warren
(1953-69)**

The influence of the Chief Justice

A close-up, slightly blurred photograph of a hand holding a black pen, writing on a document. The hand is positioned in the center-left of the frame, with the pen tip touching the paper. The background is out of focus, showing more of the document and possibly another hand or object on the right side. The overall tone is professional and focused on the act of writing or signing.

**The Chief Justice is the Court's
administrator- he determines the
"Discuss List"**

Opening conference begins on September 29, 2003

OCTOBER						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

NOVEMBER						
S	M	T	W	T	F	S
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

DECEMBER						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

2004

JANUARY						
S	M	T	W	T	F	S
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4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

FEBRUARY						
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29						

MARCH						
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

APRIL						
S	M	T	W	T	F	S
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4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

MAY						
S	M	T	W	T	F	S
						1
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23	24	25	26	27	28	29
30	31					

JUNE						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Argument days
marked in

RED

Non-argument sessions
marked in

BLUE

Conference days
marked in

GREEN

Holidays
Circled in

BLACK

Court's
"Docket"

**He presides over
"Oral Argument"**



He presides over the "Judicial Conference"

The Justices' Conference Room, where the Justices meet to discuss cases heard before the Court.



**He can write opinions if in
the majority or assign
it to an alter ego**

UNITED STATES REPORTS	UNITED STATES REPORTS	UNITED STATES REPORTS	UNITED STATES REPORTS
512	513	514	515
OCT. TERM 1993	OCT. TERM 1994	OCT. TERM 1994	OCT. TERM 1994 AMENDMENT OF RULES

OPINONS WRITTEN 2001-02 TERM

UNITED STATES

UNITED STATES

UNITED STATES

UNITED STATES

JUSTICE	#
REHNQUIST	10
STEVENS	9
O'CONNOR	7
SCALIA	8
KENNEDY	8

JUSTICE	#
SOUTER	8
THOMAS	8
GINSBURG	9
BREYER	9

The influence of fellow justices



Similar ideology & role = same vote

LIB/CONS COALITIONS- % AGREEMENT 2001-02

	R	ST	O	SC	K	SO	T	G	B
R		53	72	77	85	56	77	58	60
ST	53		62	41	57	80	47	85	83
O	72	62		61	76	58	60	63	66
SC	77	41	61		76	46	87	43	42
K	85	57	76	76		63	79	63	63
SO	56	80	58	46	63		55	89	82
T	77	47	60	87	79	55		51	48
G	58	85	63	43	63	89	51		86
B	60	83	66	42	63	82	48	86	

% OF CASES IN MAJORITY 2001-02



83.3%



72.3%



77.3%



69.3%



90.0%



76.0%



88.0%



77.3%



78.4%



**Most Congenial 2001-02
Kennedy voted with his
colleagues 70.5%**

A. Kennedy

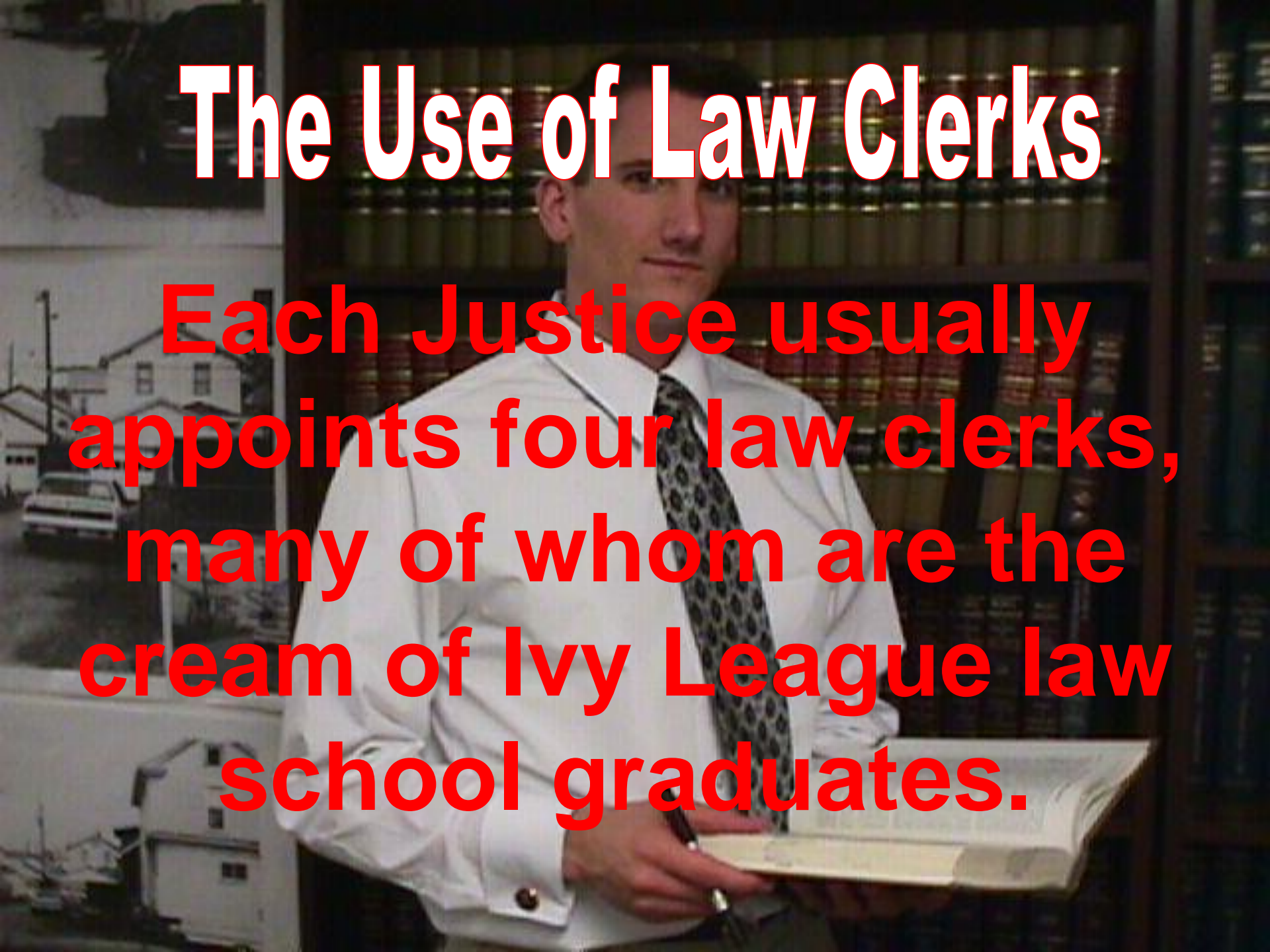
**Least Congenial 2001-02
Scalia voted with his
colleagues 59.1%**



A. Scalia

The Use of Law Clerks

Each Justice usually appoints four law clerks, many of whom are the cream of Ivy League law school graduates.



Each year, the Supreme Court receives approx. 7000 writs of certiorari. Cases must pass through the Court's screening process. The process begins with the law clerks, who sift through the petitions and settle upon a few that they deem worthy of consideration. The justices provide the clerks with their particular instructions in this process.



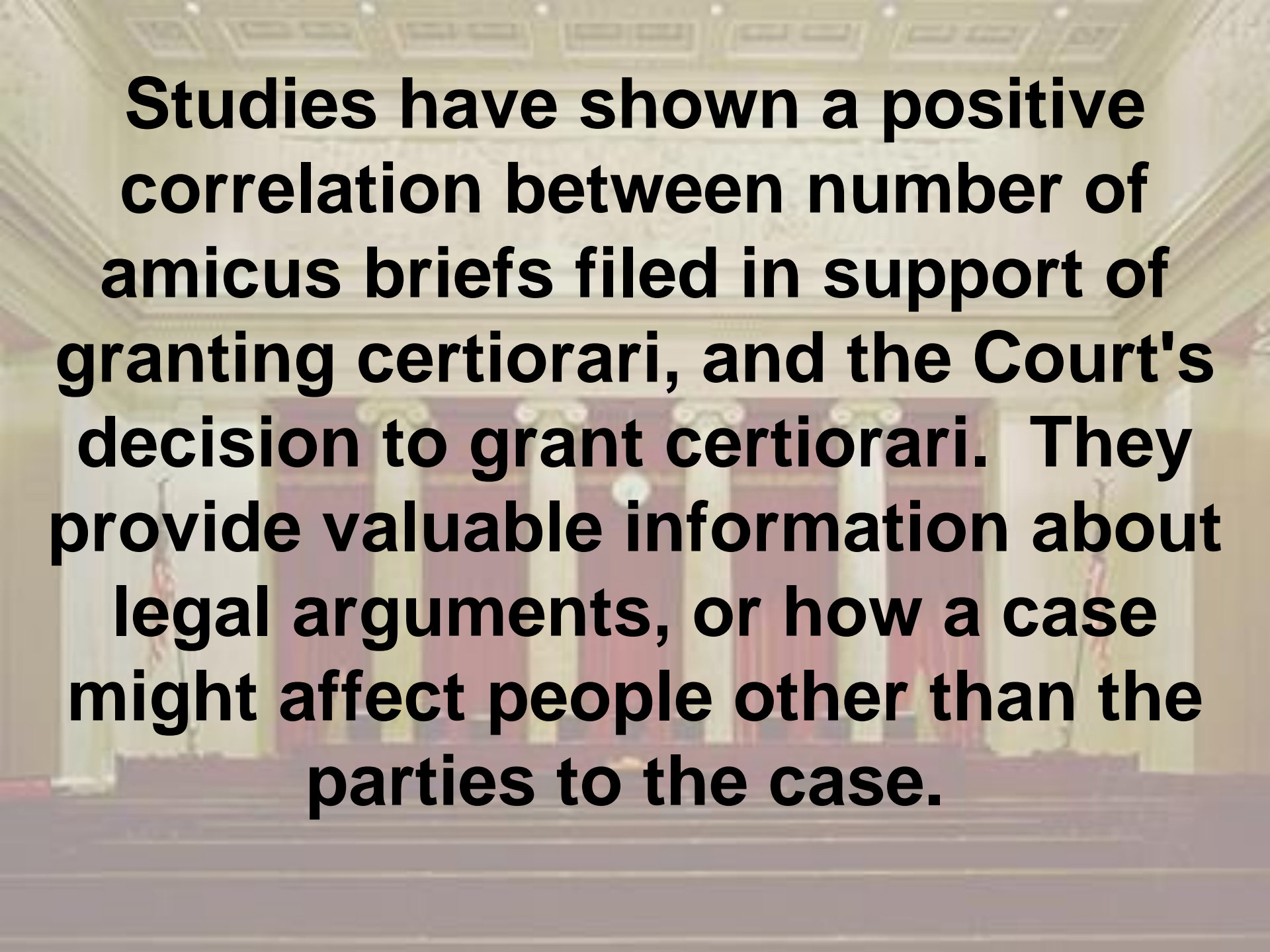
Oral Argument

Each party gets 30 minutes
to influence- the
Court often interrupts to
ask questions

Amicus Curiae

Latin for "friend of the court." Refers to a party that is allowed to provide information (usually in the form of a legal brief) to a court even though the party is not directly involved in the case at hand.

Judicial Lobbying



Studies have shown a positive correlation between number of amicus briefs filed in support of granting certiorari, and the Court's decision to grant certiorari. They provide valuable information about legal arguments, or how a case might affect people other than the parties to the case.

In regard to the 1989 abortion case *Webster v. Reproductive Health Services*, Justice Stephen Breyer later remarked that amicus briefs from medical groups "played an important role in educating judges on potentially relevant technical matters, helping to make us, not experts, but educated laypersons, and thereby helping to improve the quality of our decisions."

The United States. App 4
The Libellants & Claimants of the
Schooner Amistad, her tackle
apparel and furniture together
with her cargo, and the Africans
mentioned and described in the
several Libels and Claims.
On appeal from the Circuit
Court of the United States for
the District of Connecticut.
This Cause came on to be
heard on the transcript of the re-
cord from the Circuit Court of
the United States for the Dis-
trict of Connecticut and was ar-
gued by counsel. On considera-
tion whereof It is the opinion of this Court that there is error in that
part of the decree of the Circuit Court affirming the decrees of
the District Court which ordered the said Negroes to be delivered
to the President of the United States to be transported to Africa in
pursuance of the Act of Congress of the 3^d of March 1819; and that
as to that part it ought to be reversed; and in all other respects
that the said decrees of the Circuit Court ought to be affirmed. It is
ordered, adjudged and decreed by this Court that the decrees
of the said Circuit Court be and the same is hereby affirmed except
as to the part aforesaid; and as to that part that it be reversed;
and that the cause be remanded to the Circuit Court with di-
rections to enter in lieu of that part a decree that the said Ne-
groes be and are hereby declared to be free and that they
be dismissed from the custody of the Court and be discharged
from the suit and go thereof quit without day.
March 9. 1841.

Circulation of "Slip Opinions"



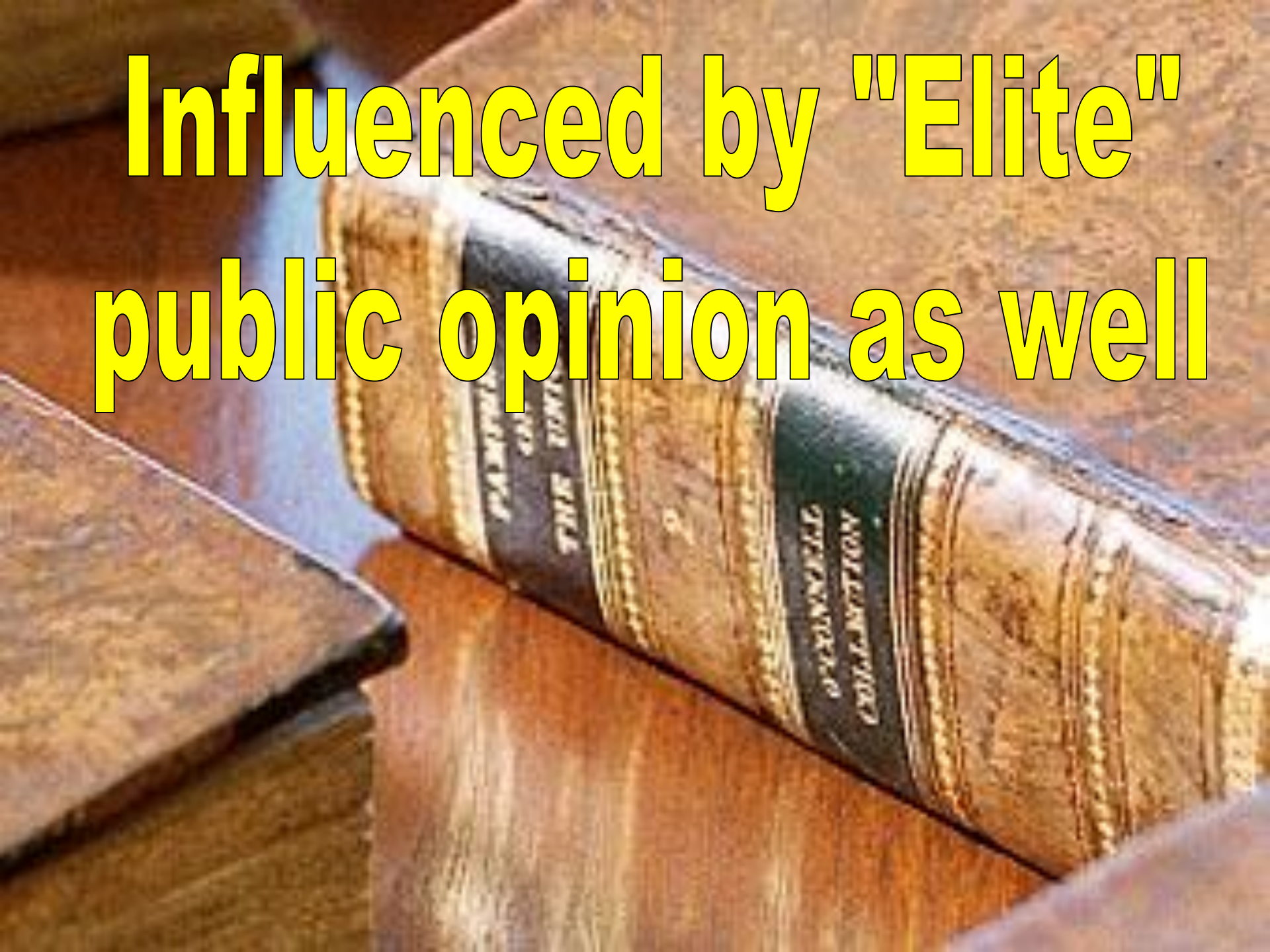
**Mass Public
Opinion can
be a major
influence**

“How much confidence to you have in the Supreme Court?”

	Great Deal/Quite a Lot	Some	Very Little/None
	%	%	%
2009	39	41	18
2008	32	44	17
2007	34	41	23
2006	40	41	16
2005	41	38	19
2004	46	37	16
2003	47	38	13

“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.”- A. Hamilton in *Federalist #78*

**Influenced by "Elite"
public opinion as well**



"The court's policy choices masquerading as constitutional law are generally accepted so long as they are well received by elites. Ironically, the Supreme Court has become what the (Constitution) framers envisioned for the role of the Senate; "I think elite public opinion is the primary guide to the Supreme Court."

- Laurence H. Silberman, a semi-retired judge on the U.S. Court of Appeals for the District of Columbia,