

Benchmarks Activity 3

Benchmarks Activity 3

What the Law Means

Topics addressed:

- Role of the judicial branch
- Introduction to judicial review

Time **needed:** 30 minutes

Overview: You will review the role of the judge in the judicial branch and how this branch/official is different from other branches of government and other elected officials. You will provide a practical, easy-to-understand introduction to judicial decision-making and judicial review.

Format: This is an activity that requires audience participation and interaction. This is not a speech.

Preparation: Review activity in-depth before presentation. Quotes from quotes page should be cut into individual strips for group work. Make multiple copies depending on group size.

Group Size: This activity will work with any size group. Smaller subgroups will be needed for quote analysis component.

Handouts:

- ✓ Quotes page
- ✓ Pocket Constitution (National Center for Constitutional Studies 208-645-2625 [.nccs.net/](http://nccs.net) 50 cents per copy).

Presentation Materials: PowerPoint on judicial review

Equipment: Computer and LCD projector for PowerPoint presentation. Talk with event coordinator.

Timing: Five minutes to name Supreme Court cases and summarize them; five minutes to review phrases from Constitution and the need for judicial interpretation; 12 minutes to distribute quotes and lead discussion; eight minutes for summary and close.

Getting started

Opening: Ask participants to name Supreme Court cases. Take several answers and make sure individuals summarize each case including issues and outcomes. Help facilitate accurate summaries. If Internet access is available, use www.oyez.org to highlight case summaries while continuing discussion. Highlight six or seven cases. Ask audience members how they learned about these cases.

Ask participants what the U.S. Constitution says about the courts. Take several

**30 minutes
needed**



Activity works well with any size group

Quotes page

Cut into slips with one quote per slip. No names.

Ask if you need your **laptop and projector**



Look up cases at www.oyez.org

**Allow 5
minutes to
open**



Hand out **Pocket Constitutions**

answers. Distribute copies of the Pocket Constitution. Review with the audience Article III, which addresses the judicial branch. Show PowerPoint slide on constitutional structure and explain while highlighting information noted below. Also locate any relevant statements from other Articles such as Article I, which highlights the role of the chief justice during impeachment. Highlight specific sections:

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. . . .”

Article I, Section 3: Role of the chief justice in impeachment proceedings (Presides over the Senate.)

Ask the audience which branch of government has the power to establish additional courts. (Answer: Congress.) (The original “s” in supreme was lower-cased meaning it was an adjective to describe the court rather than a title or type of court.)

Point out important elements of Article III as well as other parts of the Constitution that address the courts. Ask questions to identify what the Constitution says or doesn’t say about the number of justices, how long they can serve, etc.

What does it mean?

Interpreting: Let participants know that certain sections of the Constitution are Specific and clear and need no interpretation. Ask for examples. Make sure to include several examples such as:

- **Minimum age of a presidential candidate.** (Found in Article II, Section 1, paragraph 5.)
- **Number of senators.** (Found in Article I, Section 3.)

The Constitution is also filled with words and principled terms that need defining or interpreting. Ask for examples and ask who gets to decide what these terms mean. Make sure to include the concepts of:

- **Unreasonable searches and seizures** from the Fourth Amendment. (What is unreasonable?)
- **Cruel and unusual punishment** from the Eighth Amendment. (What is cruel and unusual?)

Ask participants if it is unreasonable for the government (school board) to require urine samples from students to test for drugs if the students want to play football. What about if the students want to participate in Latin Club instead? Is it different? Is it an unreasonable search for government officials to use thermal imaging to measure the heat emitted from your house if they suspect that you are growing marijuana? These are examples from actual cases of the kinds of decisions judges must make to determine if a government action violates the Constitution.

Remember there are three branches of government:

- The legislative branch makes the law.
- The executive branch enforces the law.
- The judicial branch interprets the law.

If the law is unclear or a term needs interpreting, **it is the job of the judicial branch to**

Discuss what
U.S.
Constitution
says about
the courts

We the People

Allow 5
minutes to
discuss
meaning of
judicial
interpretation



Use phrases
from
Constitution
as examples

say what the law means.

Ask participants what is the supreme law of the land. If a statute or law violates U.S. Constitution, ask participants what they think should happen.

Let the audience know that the courts do not reach out to find controversial cases. People bring cases to the courts to decide.

Judicial review

Introduce the concept of judicial review by defining it according to Black's Law Dictionary:

“A court’s power to review the actions of other branches or levels of government; especially the courts’ power to invalidate legislative and executive actions as being unconstitutional.”

The main check that the judicial branch has over the legislative branch is the power of judicial review. This was established in the 1803 case of Marbury v. Madison. The Marbury ruling was the first time the U.S. Supreme Court decided a statute passed by Congress was unconstitutional.

Reiterate that the U.S. Constitution is the supreme law of the land. If a law or ordinance is passed that is in conflict with the U.S. Constitution, it can be deemed null and void by the courts. However someone has to bring an action before the Court. The Court cannot just reach out and review any law that the legislature passes.

Quotes

Who said it? Next depending on the size of the group and the seating arrangements, the following activity can be done as a whole group or in small groups. If participants are seated around tables, distribute quotes for table discussions first. Using the handouts provided, cut out the quotes ahead of time and bring copies for participants. **Do not include the authors’ names on your quote slips.** Save this for the debrief component. Provide enough copies of each quote so that everyone at each table has a different quote. Ask participants to take several minutes to share quotes and discuss their meaning.

“We must never forget that the only real source of power that we as judges can tap is the respect of the people.” Justice Thurgood Marshall, *Chicago Tribune*, Aug.15, 1981

“If citizens have respect for the work of the courts, their respect for law will survive the shortcomings of every other branch of government; but if they lose their respect for the work of the courts, their respect for law and order will vanish with it.” Arthur Vanderbilt

“It is the business of judges to be indifferent to popularity.” Chisholm, 501 U.S, at 401 n. 29

“They (judges) must strive to do what is legally right, all the more so when the

Read definition of **judicial review** from Black’s Law Dictionary

Distribute **quotes about judges and the courts**

“ Q ”

Quotes can be handed out to whole group or smaller subgroups

You have the names of the authors but the quote slips do not have the names



Allow 12 minutes to discuss quotes



result is not the one the ‘home crowd’ wants.” Chief Justice William Rehnquist, Dedicatory Address, 1980

“We cannot ask a man what he will do on the Court, and if we should, and he should answer us, we should despise him for it.” Abraham Lincoln

“The greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt, or a dependent judiciary.” Chief Justice John Marshall

“Judges . . . rule on the basis of law, not public opinion, and they should be totally indifferent to pressures of the times.” Chief Justice Warren E. Burger

“Deference to the judgment and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn depends upon their acting without fear or favor.” Commentary, ABA Model Code of Judicial Ethics, 1990.

“This is a government of laws, not of men . . . It is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule by law and rule by whim or caprice.” Justice William O. Douglas

“It is confidence in the men and women who administer the judicial system that is the true backbone of the rule of law. Time will one day heal the wound to the confidence that will be inflicted by today’s decision. One thing, however, is certain. Although we may never know with complete certainty the identity of the winner of this year’s Presidential election, the identity of the loser is the Nation’s confidence in the judge as an impartial guardian of the rule of law. I respectfully dissent.” Justice John Paul Stevens, *Bush v. Gore*, Dec. 12, 2000.

“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes [changing nature] of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.” Justice Robert H. Jackson, from the majority Supreme Court opinion, *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943)

“It is emphatically the province and duty of the judicial branch to say what the law means.” Chief Justice John Marshall

Following group discussion, post each quote individually with the PowerPoint and seek audience reaction. Ask certain tables to share their quotes and reactions to the quotes. For some, ask who authored. When you get to the Abraham Lincoln quote, ask the audience who they think said the quote. Take answers and then announce. End the discussion with the last quote listed above.

As you lead discussion, **have quotes on the screen**

Ask the audience: to share their quotes and reactions

End quotes discussion with one from Chief Justice John Marshall

Summary: **8 minutes for summary and closing**



Review the **3 branches of government:**
Legislative
Executive
Judicial

Summarize

Which branch does what: Briefly review the responsibilities of the three branches of government:

- The legislative branch makes the laws.
- The executive branch enforces the laws.
- The judicial branch interprets the laws.

If a law is not specific or clear, or if a case involves interpreting how the Constitution is to be applied to a specific set of facts, it is the duty of the judicial branch to say what the law means.

Selecting judges: Generate discussion by asking participants:

- If you were selecting judges, what would you look for? What about candidates' knowledge, skills and dispositions?
- How are judges different from other elected officials such as legislators?

Emphasize that legislators may make decisions based on their constituents who elected them or their political parties. **The only constituent that judges should have is the law.** Highlight:

- Judges should not be influenced by political pressures or public opinion when making judicial decisions.
- Emphasize that judges cannot make decisions based on their personal feelings. They must apply the law.
- Use the death penalty as an example. Even if judges personally disagree with the death penalty, they cannot let those personal feelings interfere with applying the law.

Checks on judges: Let the audience know that there are numerous checks on judges. Include the following:

- U.S. Constitution
- Statutes
- Sentencing requirements
- Prior case law (precedent)
- Rules (procedural)
- Code of judicial conduct
- Appellate review
- Disciplinary process (Judicial Qualifications Commission)
- Election and retention (state court judges)
- Impeachment
- Legislative bills passed to address issues raised in court decisions

This is a good primer for a short, substantive presentation to follow on judicial review. End with quote on screen.

“It is emphatically the province and duty of the judicial branch to say what the law means.” Chief Justice John Marshall

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Expand about judges:

Judges must apply the law



Conclude with discussion about **judicial selection and checks on judges**

End with quote from **Chief Justice John Marshall**



Benchmarks Activity 3
Quotes
What the law means

“We must never forget that the only real source of power that we as judges can tap is the respect of the people.”

“If citizens have respect for the work of the courts, their respect for law will survive the shortcomings of every other branch of government; but if they lose their respect for the work of the courts, their respect for law and order will vanish with it.”

“It is the business of judges to be indifferent to popularity.”

“They (judges) must strive to do what is legally right, all the more so when the result is not the one the “home crowd” wants.”

“We cannot ask a man what he will do on the Court, and if we should, and he should answer us, we should despise him for it.”

“The greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt, or a dependent judiciary.”

“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes [changing nature] of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.”

"Judges . . . rule on the basis of law, not public opinion, and they should be totally indifferent to pressures of the times."

"Deference to the judgment and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn depends upon their acting without fear or favor."

"If there is a bedrock principle of the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

"This is a government of laws, not of men . . . It is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule by law and rule by whim or caprice."

"It is confidence in the men and women who administer the judicial system that is the true backbone of the rule of law. Time will one day heal the wound to the confidence that will be inflicted by today's decision. One thing, however, is certain. Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law. I respectfully dissent."

"It is emphatically the province and duty of the judicial branch to say what the law means."

The Judicial Branch

It is emphatically the province and duty of the judicial department to say what the law is. . . . If two laws conflict with each other, the courts must decide on the operation of each. . . . This is of the very essence of judicial duty.

Chief Justice John Marshall

Source: *Marbury v. Madison*, 1803

Introduction

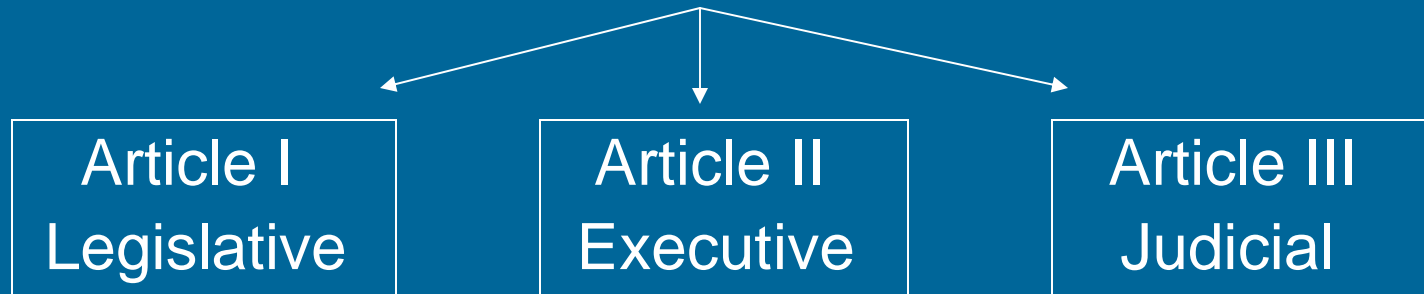
- What Supreme Court decisions can you name?
 - What do they have in common?
-

What does it mean?

- Section 1 of the 14th Amendment provides in part:
“No State shall...deny to any person within its jurisdiction the equal protection of the laws.”
- The 8th Amendment prohibits in relevant part:
“cruel and unusual punishments.”
- The Fourth amendment provides protection against
“unreasonable searches and seizures.”
- What do these Constitutional Provisions mean?
- Who Decides?

Articles of the US Constitution

■ Federal Government – Three Branches



■ Article III

- Section I: “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....”

■ Checks and Balances/Separation of Powers.

Judicial Review

- What is it?
 - The Black's Law Dictionary Definition:

“A court’s power to review the actions of other branches or levels of government; esp. the courts’ power to invalidate legislative and executive actions as being unconstitutional.”

Judicial Review

- Where does it come from?
 - The Constitution
 - Marbury v. Madison, 5 U.S. 137 (1803)
 - Election of 1800
 - Facts of case
 - Chief Justice John Marshall
 - What did the Court do?
 - Perhaps the most important sentence in American Constitutional Law:

“It is emphatically the province and duty of the judicial department to say what the law is.”

Quotes

- *“We must never forget that the only real source of power that we as judges can tap is the respect of the people.”* -Justice Thurgood Marshall, Chicago Tribune, August 15, 1981

Quotes

- “If citizens have respect for the work of the courts, their respect for law will survive the shortcomings of every other branch of government; but if they lose their respect for the work of the courts, their respect for law and order will vanish with it.”

Arthur Vanderbilt

Quotes

- “It is the business of judges to be indifferent to popularity.” *Chisom*.501 U.S., at 401 n. 29
- “They (judges) must strive to do what is legally right, all the more so when the result is not the one the “home crowd” wants.” Chief Justice William Rehnquist, Dedicatory Address 1980



Quotes...who said these

- “We cannot ask a man what he will do on the Court, and if we should, and he should answer us, we should despise him for it.”
- “The greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt, or a dependent judiciary.”

Quotes

- “It is emphatically the province and duty of the judicial branch to say what the law means.” Chief Justice John Marshall

Judges

- If you were responsible for selecting all of the judges in your state...what would you look for?
- How are judges different from political officials such as legislators?

Checks on judges

- **CONSTITUTION**
- **STATUTES (SENTENCING)**
- **PRIOR CASE LAW (PRECEDENT)**
- **RULES (PROCEDURAL; JUDICIAL CONDUCT)**
- **APPELLATE REVIEW**
- **DISCIPLINARY PROCESS (JQC) Florida**
- **ELECTION AND RETENTION (state court judges)**
- **IMPEACHMENT**

Food for thought

- “It is emphatically the province and duty of the judicial branch to say what the law means.” Chief Justice John Marshall
-