

# Transcript

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## MORE SPLIT DECISIONS, by John Patrick Quigley

In our last newsletter (August 2008), we briefly described some recent split decisions by the Supreme Court. In this article, we describe a few more and also provide more information on the current Justices of the Court.

### LIBERAL JUSTICES:

- John Paul Stevens, born in 1920, nominated by President Ford;
- Ruth Bader Ginsburg, born in 1933, nominated by President Clinton;
- Stephen G. Breyer, born in 1938, nominated by President Clinton;
- David Hackett Souter, born in 1939, nominated by the elder President Bush.

**SWING JUSTICE:** Anthony Kennedy, born in 1936, nominated by President Reagan.

### CONSERVATIVE JUSTICES:

- Antonin Scalia, born in 1936, nominated by President Reagan;
- Clarence Thomas, born in 1948, nominated by the elder President Bush;
- Samuel A. Alito, born in 1950, nominated by President Bush;
- John G. Roberts, born in 1955, nominated as Chief Justice by President Bush.

Below, we describe the decisions, with references to the Constitution and West's Supreme Court Reporter, GEN3 KF101.A3S9 and Westlaw. For more detail, Google "wall street journal split decisions", which list them and others, with links to the cases.

**BANKRUPTCY:** Marrama v. Citizens Bank of Massachusetts, 127 S.Ct. 1105 (2007)

After the Bankruptcy Court found that

Petitioner had fraudulently tried to conceal assets in his Chapter 7 proceeding, he moved to convert the proceeding to one under Chapter 13. Motion dismissed by Bankruptcy Court, affirmed by the Appellate Court.

Justice Kennedy and the four liberal Justices held that the Bankruptcy court had inherent power to deny Petitioner's motion, based on his bad faith.

The four conservative Justices recognized the problem of bad faith in Bankruptcy proceedings, but argued that the Bankruptcy Court had other powers to deal with the alleged fraud, and that the Bankruptcy Code did not permit the action taken in this case.

**GLOBAL WARMING:** Massachusetts, et al. v. Environmental Protection Agency, et al., 127 S.Ct. 1438 (2007)

Massachusetts and others petitioned the EPA to regulate the emission of four greenhouse gases, under the Clean Air Act. The EPA denied the petition and the D.C. Circuit Court denied review.

Justice Kennedy and the four liberal Justices held "that EPA must ground its reasons for action or inaction in the statute." (p. 1463), and that they failed to do so in the instant case.

The four conservative Justices argued that the EPA satisfied statutory requirements, and also that the Petitioners lacked standing to sue.

**IMMIGRATION:** Dada v. Mukasey, 128 S.Ct. 2307 (2008)

Nigerian appellant overstayed his temporary nonimmigrant visa. An Immigration Judge found him eligible for removal and granted his request for voluntary departure, which had certain benefits over forcible departure. He was ordered

(Continued on page 2)

### INSIDE THIS ISSUE:

Recent Acquisitions 3

Ask a Librarian 3

Do you Know Your Assigned Judge? 3

Looking at the Web 4

On Display 4

Free Legal Clinics 4

Research Guides 4

How Well Do You Know the Justices? 5

to depart within 30 days, but two days before the end of that period, he tried to withdraw his request and reopen the removal proceedings, based on new evidence. It was denied by the Board of Immigration Appeals (BIA), affirmed by the Fifth Circuit Court of Appeals.

Justice Kennedy, joined by the four liberal Justices, reversed, ruling that BIA must allow withdrawal requests made before the end of the departure period.

The four conservative Justices argued that the Appellant knowingly waived his right to reopen the removal proceeding by requesting voluntary departure.

**FEDERAL JURISDICTION:** Sprint Communications Co. L. P., et al. v. APCC Services, Inc., et al., 128 S.Ct. 2531 (2008)

*“The Judicial Power shall extend to all cases . . . to controversies . . .”* – Article III

Respondent was an assignee of some 1400 pay-phone operators, hired to collect charges owed them by Appellant long distance carrier. All proceeds from trial or settlement were given to the operators, Respondent being paid a fee for its services.

Justice Kennedy and the four liberal Justices affirmed rejection of Appellant’s motion to dismiss, granting assignees the right to sue in Federal Court for “injury in fact.”

The four conservative Justices argued that the constitutional limitation of federal court jurisdiction to actual “cases and controversies” precludes allowing assignees to sue in their own name for injuries to a third party not before the Court.

**DEATH PENALTY:** *Uttecht v. Brown*, 127 S.Ct. 2218 (2007)

Respondent was sentenced

to death by a Washington jury for robbery, rape, torture and murder, affirmed by the Washington Supreme Court. Habeas Corpus writ was denied by a Federal District Court, reversed by the Ninth Circuit Court of Appeals.

Justice Kennedy joined the four conservative Justices and wrote the opinion reversing the Ninth Circuit, ruling that a juror whom the Court found was substantially impaired in his ability to impose the death penalty was properly excused for cause.

The four liberal Justices argued that the majority “...appeared to be under the impression that trial courts should be encouraging the inclusion of jurors who will impose the death penalty, rather than only ensuring the exclusion of those who say that, in all circumstances, they cannot,...” (p. 2243)

**CHURCH & STATE:** *Hein v. Freedom From Religion Foundation, Inc.* et al., 127 S.Ct. 2553 (2007)  
*“Congress shall make no law respecting an establishment of religion,...”* – First Amendment

Taxpayers sued to enjoin the Bush administration’s funding of conferences advising faith-based community groups on how to compete for federal financial support.

Justice Kennedy and the four conservative Justices held that taxpayers had no standing to object to the expenditure of general administration funds. Taxpayer suits have generally not been allowed, and the Justices, in three separate opinions, refused to extend an exception for objections to Congressional actions, used in *Flast v. Cohen*.

The four liberal Justices felt that the exception should be applied.

**NATIVE AMERICANS:** *Plains Commerce Bank v. Long Family Land and Cattle Company, Inc.*, et al., 128

S.Ct.2709 (2008)

A Tribal Court gave judgment against Appellant non-Indian bank, concerning property it owned on the tribe’s reservation, based on a jury finding that the bank had discriminated against members of the tribe in offering the property for sale. Appellant’s request for relief was denied in Federal District Court, affirmed by the Eighth Circuit.

Justice Kennedy and the four conservative Justices reversed, finding that the tribal court had no jurisdiction over land not owned by Indians for over 50 years.

The four liberal justices agreed that there was no jurisdiction over the land, but argued that the tribal court could award damages for discrimination in sale of the land, based on Appellant’s business dealings with Respondent members of the tribe.

**CAMPAIGN FINANCING:** *Davis v. Federal Election Commission*, 128 S. Ct. 2759 (2008)

*“Congress shall make no law ... abridging the freedom of speech, ...”* – First Amendment

Financing law required a self-financing candidate to advise his opponent if he intended to spend more than \$350,000 of his own money. The opponent was then free of restrictions on funds from other parties, but the self-financer was still subject to them.

Justice Kennedy and four conservative Justices held that this unconstitutionally limited Petitioner’s First Amendment right to use personal funds for campaign speech.

The four liberal Justices argued that the Amendment was a “constitutional attempt by Congress to minimize the advantages enjoyed by wealthy candidates.” (p. 2778).📖

## “Read In” the New Year: Some Notable Recent Acquisitions

by Steven Nadolny, Catalog Technician

The holiday season is upon us and seems to start earlier each year! Looking for some year-end reading or something to listen to besides holiday music? Before 2008 is over you may want to “check out”:

- ◇ Looking to do a power of attorney? How about the new CEB title *California Powers of Attorney and Health Care Directives* (ANNEX, GEN3, DESK: KFC336 .C3522 2008);
- ◇ Need to relax, get centered or want a good new year’s resolution? *The Reflective Counselor: Daily Meditations for Lawyers*, by F. Gregory Coffey and Maureen C. Kessler may be just what you need (GEN4: KF298 .C56 2008);
- ◇ Wondering what will happen to you? *Your Day in Court*, by Annette Heath and the Kern County Law Library (GEN A: KFC995 .Y687 2007);
- ◇ Stay on the cutting edge with Paul R. Rice’s *Electronic Evidence: Law and Practice* (GEN4: KF8935 .R485 2008);
- ◇ Celebrate your age: *When You Become 18: a Survival Guide for Teenagers* (GEN3: KFC81 .W45 2008);
- ◇ Need some plain speaking help? *Lay Words for Lawyers*, by William Drennan (GEN A: K50 .D742 2008);
- ◇ Intellectual property got you down? Try Jim Bullock’s *The IP Licensing Lawyer’s Job: a Survival Guide* (GEN4, DESK: KF2980 .B78 2008);
- ◇ Is a career change in your future? Consider *Staying at Home, Staying in the Law: a Guide to Remaining Active in the Legal Profession While Pursuing Your Dreams*, by Julie Tower-Pierce (GEN4: KF299.W6 T68 2008).

Also look for many recent additions to our MCLE collection and material in the areas of estate planning, domestic violence, class action, copyright, divorce, drunk driving, horses, landlord and tenant, immigration, trade secrets, legal research, Social Security, law office management, franchises, workers compensation, workplace violence, immigration, e-discovery, and more.

Happy reading and listening. And don’t forget to renew your Library membership. You depend on us. And we depend on You!📖

## Ask a Librarian

by Mora Prestinary, Reference Librarian

**Q**:When do the new California laws go into effect?

**A**:”...a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute and a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed.” Article IV, §8(c) California Constitution.📖

## Do You Know Your Assigned Judge?

**H**ow well do you know the judge that will hear your case? The Law Library has *Judicial Profiles* published by the Daily Journal Corporation. A typical profile includes the judge’s personal interests, history, a list of recent cases, comments on courtroom procedure, and a formal biography. Our holdings include coverage for all of Northern California, Southern California, Federal Courts, State Courts and Private Judges. This multivolume loose-leaf set may be found on the 3<sup>rd</sup> floor starting at call number KFC 980.A6j 84.📖

## Looking at the Web

by Mora Prestinary, Reference Librarian

- ◇ Do you want to know how people voted on Ballot Measures?  
[http://www.votesmart.org/election\\_ballot\\_measures.php](http://www.votesmart.org/election_ballot_measures.php)
- ◇ For new California legislation go to the California Courts Review web page and click on Legislative Summary Supplement  
<http://www.courtinfo.ca.gov/reference/ccr.htm>
- ◇ Biographical Directory of Federal Judges  
[http://www.fjc.gov/history/home.nsf/judges\\_frm](http://www.fjc.gov/history/home.nsf/judges_frm)
- ◇ Bios of California Supreme Court Justices  
<http://www.courtinfo.ca.gov/courts/supreme/justices.htm>
- ◇ This web site will tell you everything you need to know about the United States Supreme Court:  
[www.supremecourtus.gov/about/about.html](http://www.supremecourtus.gov/about/about.html)
- ◇ Recent Supreme Court Decisions  
<http://www.supremecourtus.gov/opinions/08slipopinion.html>
- ◇ Cases from the *More Split Decisions* article can be found on this web site by name or cite:  
<http://www.findlaw.com/casecode/supreme.html> 📖

## ON DISPLAY

Our winter book display celebrates the beginning of a new term for the United States Supreme Court, with a historical review of past terms. 📖



## FREE LEGAL CLINIC

The Orange County Community Legal Clinic offers legal services at the Howard Johnson Conference Room, 7039 Orangethorpe Ave., Buena Park, the first Saturday of each month. Call Joshua Kim at 310-622-3366 for more information. Services offered: criminal record issues, making/reading a contract, bankruptcy, federal tax issues, small claims, landlord-tenant issues, identity theft, and wills and trusts. 📖

# How well do you know the United States Supreme Court Justices?

By Kelsey Chrisley

**L**et's see how well you know the U.S. Supreme Court Justices. Match the information provided to the picture of the Supreme Court Justice.

1. From 1965 to 1988, a Professor of Constitutional Law at the McGeorge School of Law, University of the Pacific, who continues to teach students; known as the longest serving active faculty member at the school. A member of the California National Guard in 1961 and of the board of Federal Judicial Center from 1987-1988. Nominated by President Reagan after the Robert Bork and Douglas Ginsberg nominations were rejected. Associate Justice of the Supreme Court since February, 18, 1988.

2. Born in Chicago, Illinois. In 1970, was the Second Vice President of the Chicago Bar Association. Served as a Judge of the United States Court of Appeals for the Seventh Circuit. Nominated by President Ford, and has served as an Associate Justice of the Supreme Court since December 19, 1975. Currently the most senior Associate Justice and the only one to serve under three Chief Justices.

3. Received B.A. from Cornell University and LL.B. at Columbia Law School. Professor of Law at Rutgers University School of Law from 1963-1972 and Columbia Law School from 1972-1980. Co-authored book on judicial procedure in Sweden. ACLU's General Counsel from 1973-1980, and on the National Board of Directors from 1974-1980. Nominated by President Clinton, and has served as an Associate Justice of the Supreme Court since August 10, 1993.

4. Born in Melrose, Massachusetts. Attorney General for New Hampshire in 1976. Appointed to the Supreme Court of New Hampshire as an Associate Justice in 1983, and in May 1990, became Judge of the United States Supreme Court of Appeals for the First Circuit. Nominated by President Bush, and has served as an Associate Justice of the Supreme Court since October 9, 1990.

5. Served as an Assistant Special Prosecutor of the Watergate Special Prosecution Force in 1973. Professor at Harvard Law School from 1967 to 1994—leading expert on Administrative Law. Authored *Active Liberty* in 2005. Speaks fluent French. Nominated by President Clinton, and has served as an Associate Justice of the Supreme Court since August 3, 1994.

6. Served as law clerk for then-Associate Justice William H. Rehnquist of the U.S. Supreme Court of the United States during the 1980 term. From 1982 to 1986 served as Associate Counsel to the President under White House Counsel Fred Fielding. Argued 39 cases before the Supreme Court as head of Hogan & Hartson's appellate practice. Nominated by President George W. Bush, and has served as Chief Justice of the United States since September 29, 2005.

7. Born in Trenton, New Jersey. Under the Nixon Administration, worked as general counsel for the Office of Telecommunications Policy and formulated policy for cable television. Chairman of the American Bar Association's Section on Administrative Law from 1981-1982. Served as Judge of the United States Court of Appeals for the District of Columbia Circuit from 1982-1986. Nominated by President Reagan, and has served as an Associate Justice of the Supreme Court since September 26, 1986.

8. Born in Pin Point, Georgia. Graduated in 1971 from College of the Holy Cross in Worcester, Massachusetts. Attorney with the Monsanto Company from 1977-1979. Served as Assistant Secretary for Civil Rights, U.S. Department of Education from 1981-1982. From 1982 to 1990, served as Chairman of the US Equal Employment Opportunity Commission. In 1994, performed wedding ceremony for Rush Limbaugh's third marriage. Nominated by President George W.



Bush, and has served as an Associate Justice of the Supreme Court since October 23, 1991.

9. From 1981 to 1985 served as Assistant to Solicitor General Rex E. Lee. At that time, argued 12 cases before the Supreme Court. From 1985 to 1987, served as Deputy Assistant to Attorney General Edwin Meese. Married a law librarian in 1985. Appointed to the United States Court of Appeals for the Third Circuit in 1990. Nominated by President George W. Bush, and has served as an Associate Justice of the Supreme Court since January 31, 2006.

To learn more about the United States Supreme Court Justices, please consult *Judicial Profiles*, published by the Daily Journal Corporation. This loose-leaf publication is located on the third floor at call number KFC 980.A6J844 v1. pt1., under the volume titled *Judicial Profiles, Supplemental Profiles, Vol 1*. To read the actual nomination hearings of all nominees to the United States Supreme Court since Louis D. Brandeis, please see *The Supreme Court of the United States Hearings and Reports on Successful and Unsuccessful Nominations*. This publication is located on Floor A and may be found using the call number KF 8744.J8

Answers: 1D Anthony M. Kennedy, 2B John Paul Stevens, 3G Ruth Bader Ginsburg, 4E David H. Souter, 5H Stephen G. Breyer, 6A John Glover Roberts, Jr., 7C Antonin Scalia, 8F Clarence Thomas, 9I Samuel Anthony Alito, Jr.

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