

Courts of the Supreme Court



Getting to Court



■ Standing to Sue

- Plaintiff has serious interest in case – either sustaining or likely to sustain injury or damages (\$\$\$) from defendant
- Simply being opposed to a law does not give standing

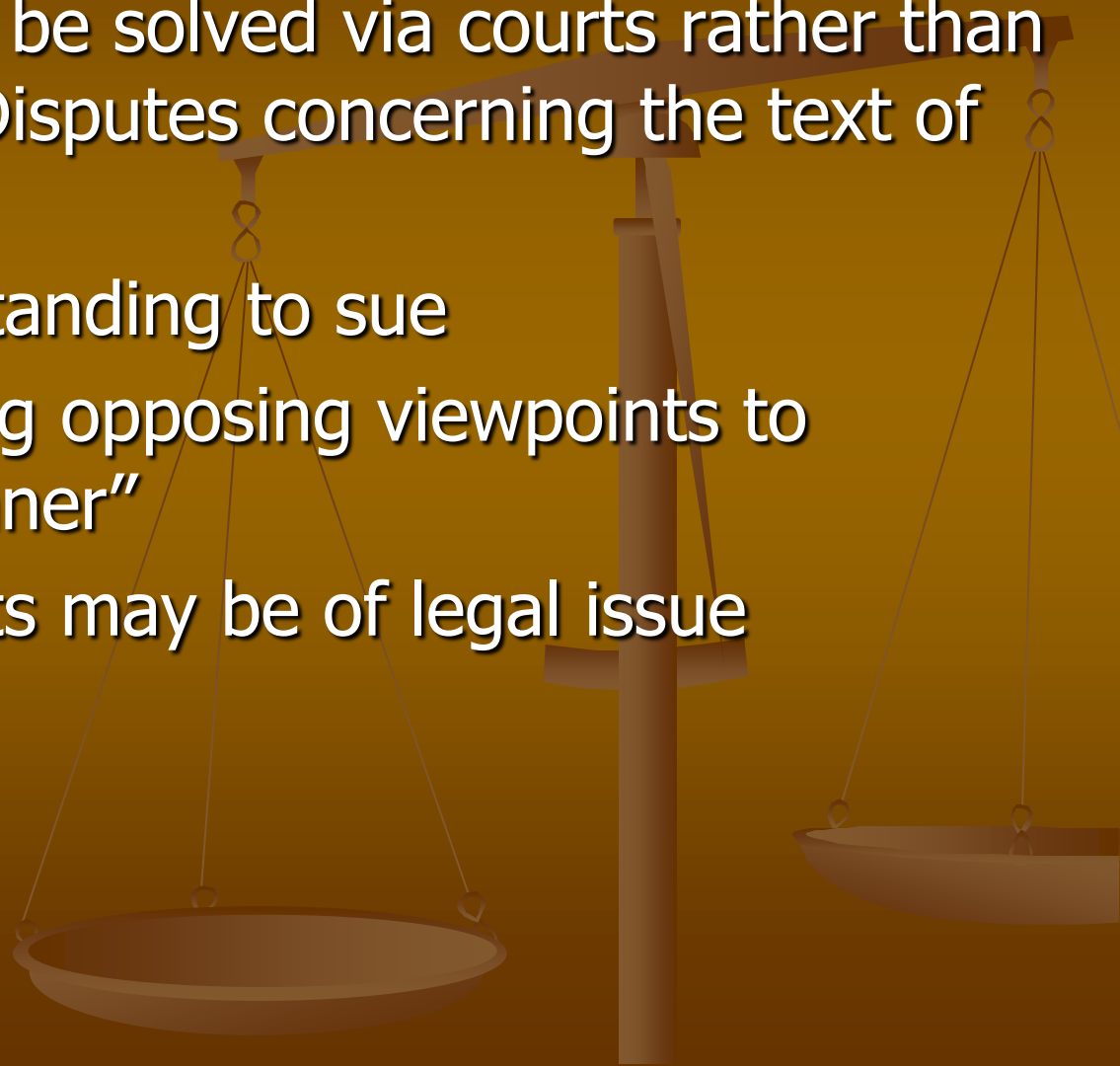
■ Class Action Suits

- Small number of people representing a larger group of grievors in same situation
- “on behalf of all...”

Getting to Court

■ Justiciable Disputes

- Issues that must be solved via courts rather than legislatively ex. Disputes concerning the text of legislation
- Still must have standing to sue
- Two sides arguing opposing viewpoints to determine a “winner”
- Not all statements may be of legal issue



District Courts



- Entry level of federal courts
- Only original jurisdiction courts in federal system – trials and juries
- 94 courts – at least one in each state and one in D.C. and one in Puerto Rico
- 677 district court judges rule over cases individually
- Each district court has 2-28 judges depending on the work load for that court
- Cases brining state statutes into question of constitutionality require a panel of 3 judges

District Courts



- Hears cases concerning:

- Federal claims
- Civil suits under federal law
- Civil suits between citizens of different states in amounts over \$50,000
- Bankruptcy proceedings *special division of courts
- Review actions of federal administration agencies
- Admiralty and maritime law
- Naturalization of aliens

Only 2% of all cases are federal – even fewer go to trial

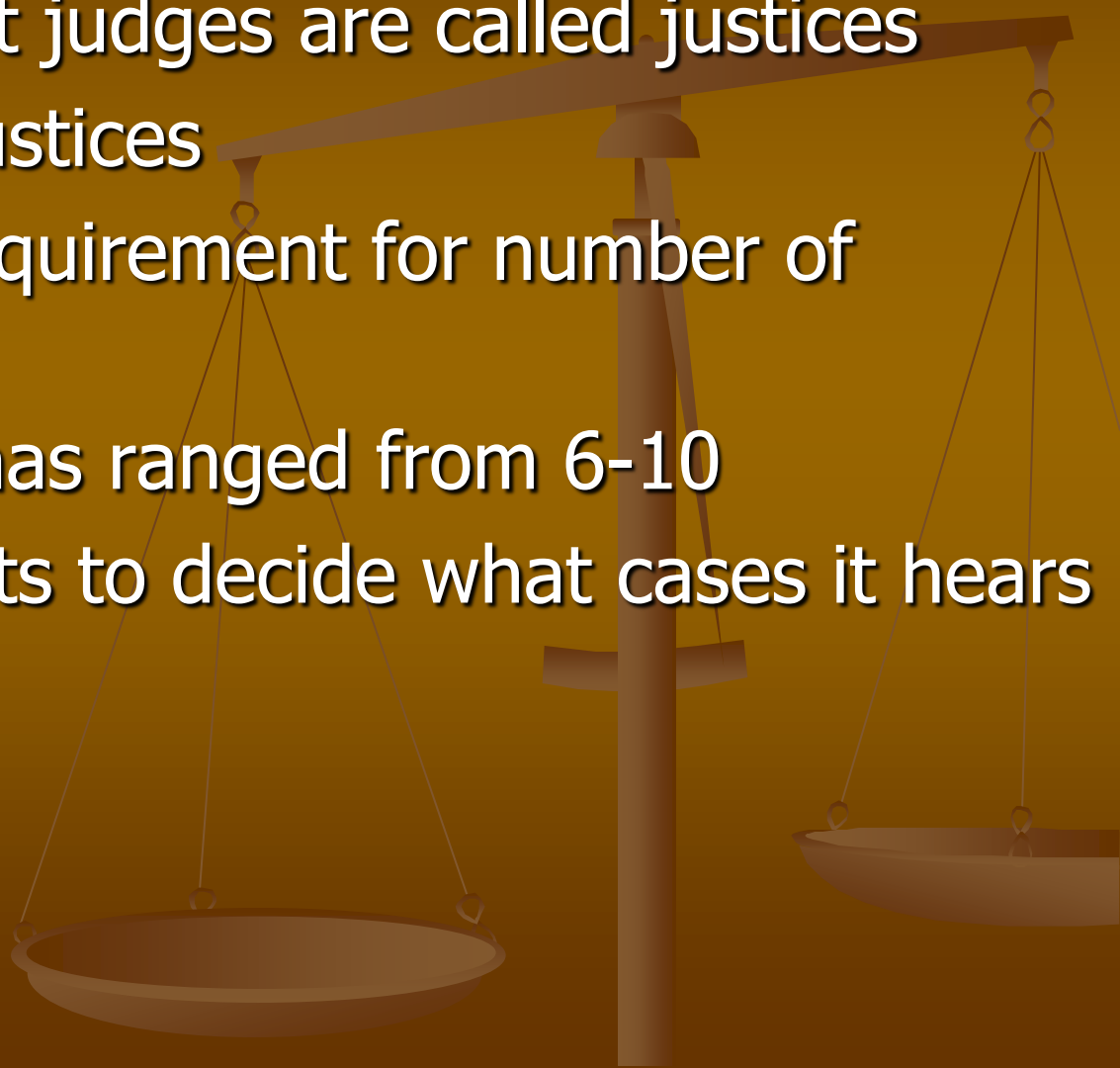
U.S. Courts of Appeals



- 13 courts – 179 justices
 - 12 courts serving at least 2 states
 - 6-28 judges per court
 - Usually has a panel of 3 judges or en banc – all judges present for significant/important cases
- U.S. Court of Appeals for the Federal Circuit
 - 12 judges created in 1982
 - Specializes in patents, claims against US and International trade
- Looking for errors by judge in lower proceedings
- Sets precedent at this level

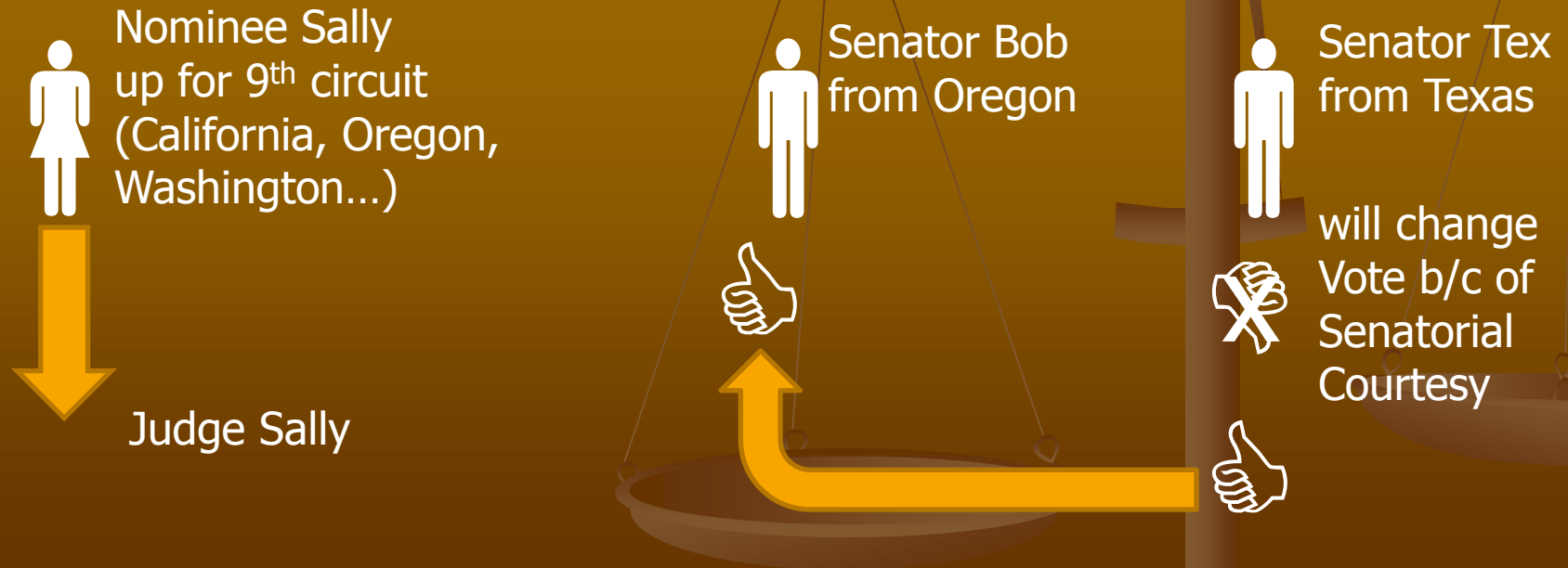
Supreme Court

- 9 Justices
 - Only Supreme Court judges are called justices
 - 1 chief justice / 8 justices
 - No constitutional requirement for number of judges
 - Number of judges has ranged from 6-10
- ***only court that gets to decide what cases it hears



Appointment Process

- Federal Courts/Judges
- Appointed by president to a term of good behavior
- Approved by simple majority of Senate
- Senatorial Courtesy – going with the vote of senators from states effected by appointment



Supreme Court



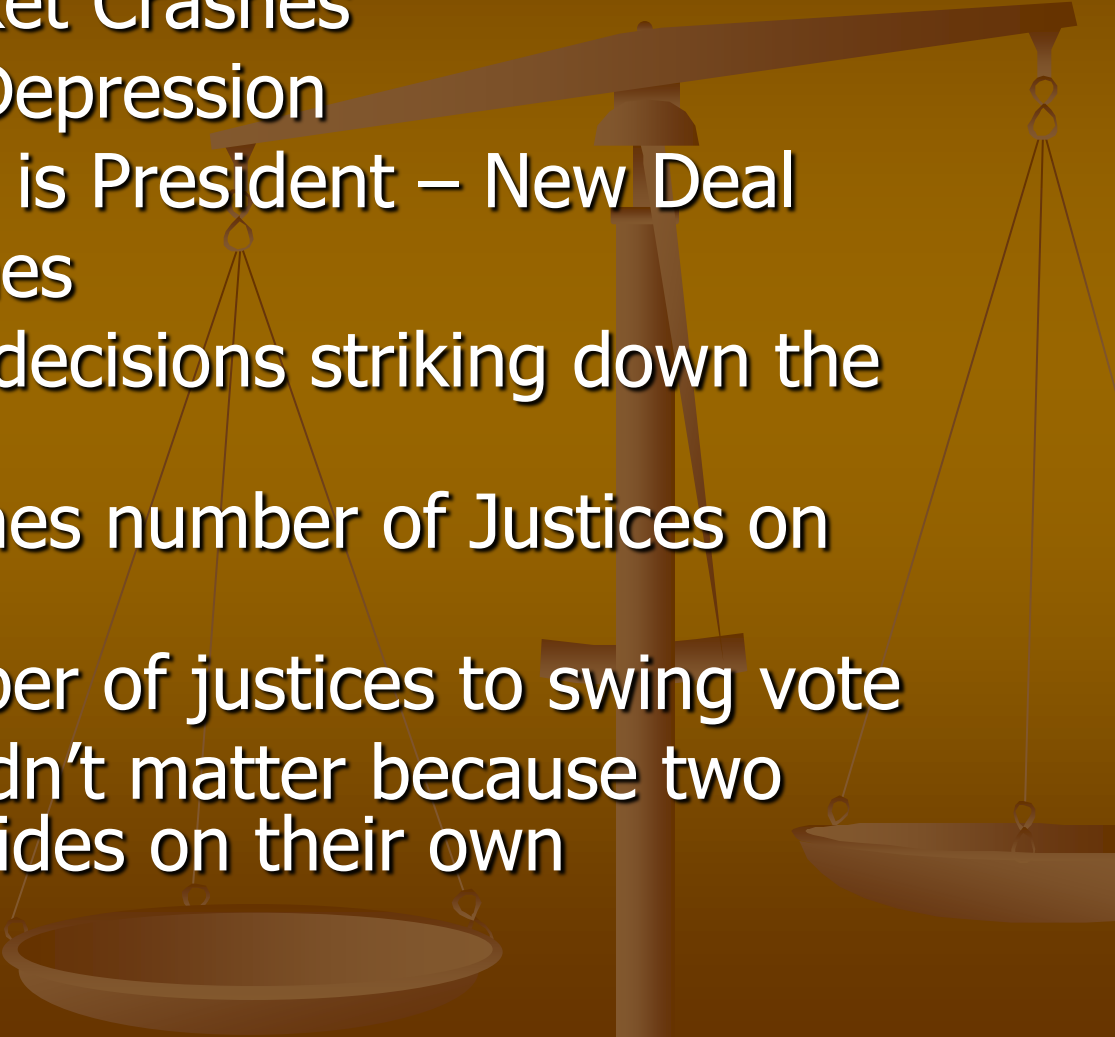
- Justice retires, dies or impeached
- President turns to attorney general and department of justice for nominee suggestions
 - Experience
 - Clean personal background
 - Represents similar values as president
- Nominate Judge Sally from 9th Circuit court
 - Background checks / investigation
- Senate Committee Hearing
 - Background
 - Any questionable past actions
 - Position on controversial issues

Marshall Court

- 1801-1835
- *Marbury v. Madison* – Judicial Review
- *McCulloch v. Maryland* – Federalism
- *Gibbons v. Ogden* – Interstate Commerce

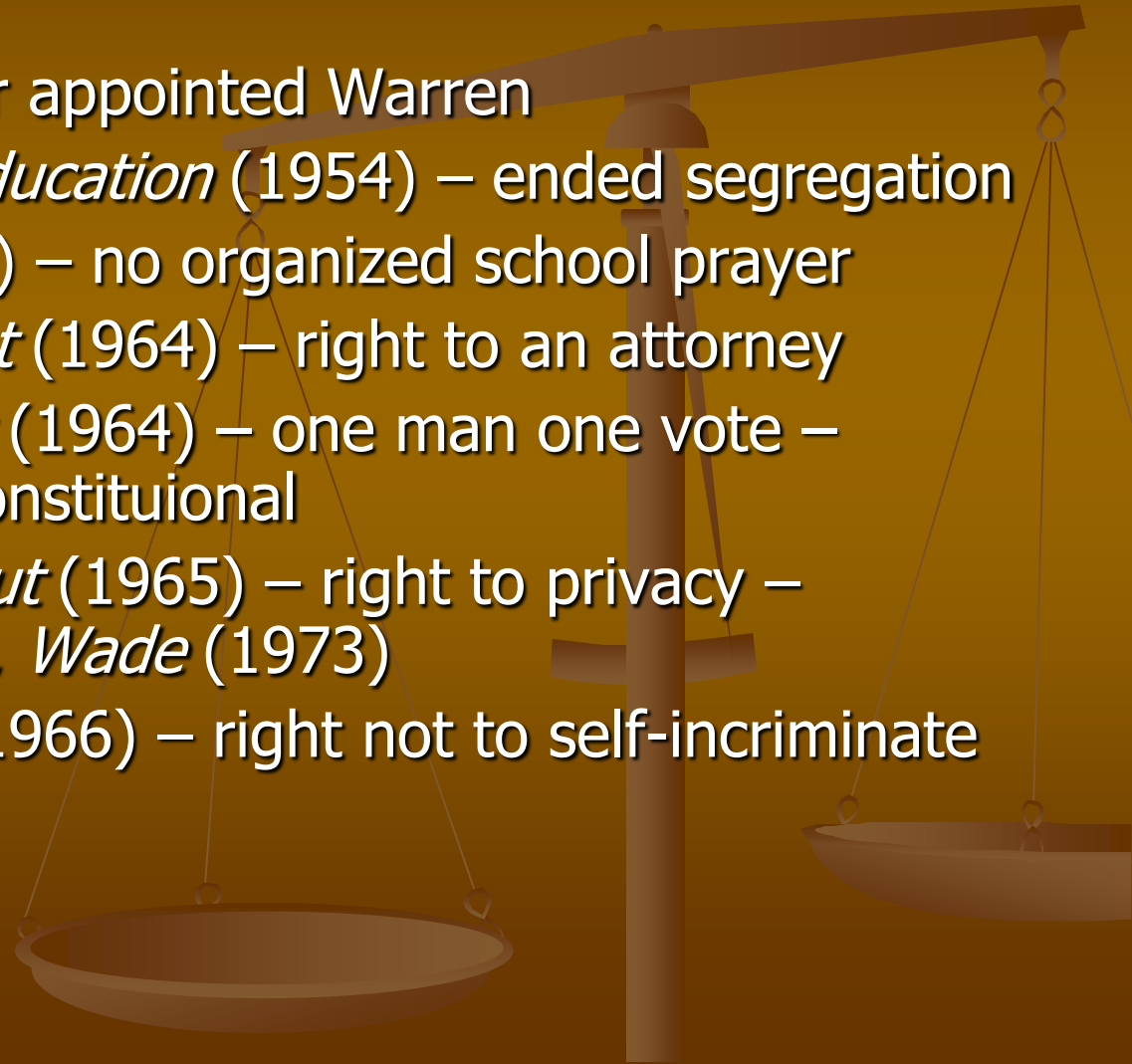


“Nine Old Men”

- 1929 – Stock Market Crashes
 - Leading to Great Depression
 - Franklin Roosevelt is President – New Deal
 - Chief Justice Hughes
 - Three unanimous decisions striking down the New Deal
 - Congress determines number of Justices on court
 - Increase the number of justices to swing vote
 - Never passed – didn't matter because two justices changed sides on their own
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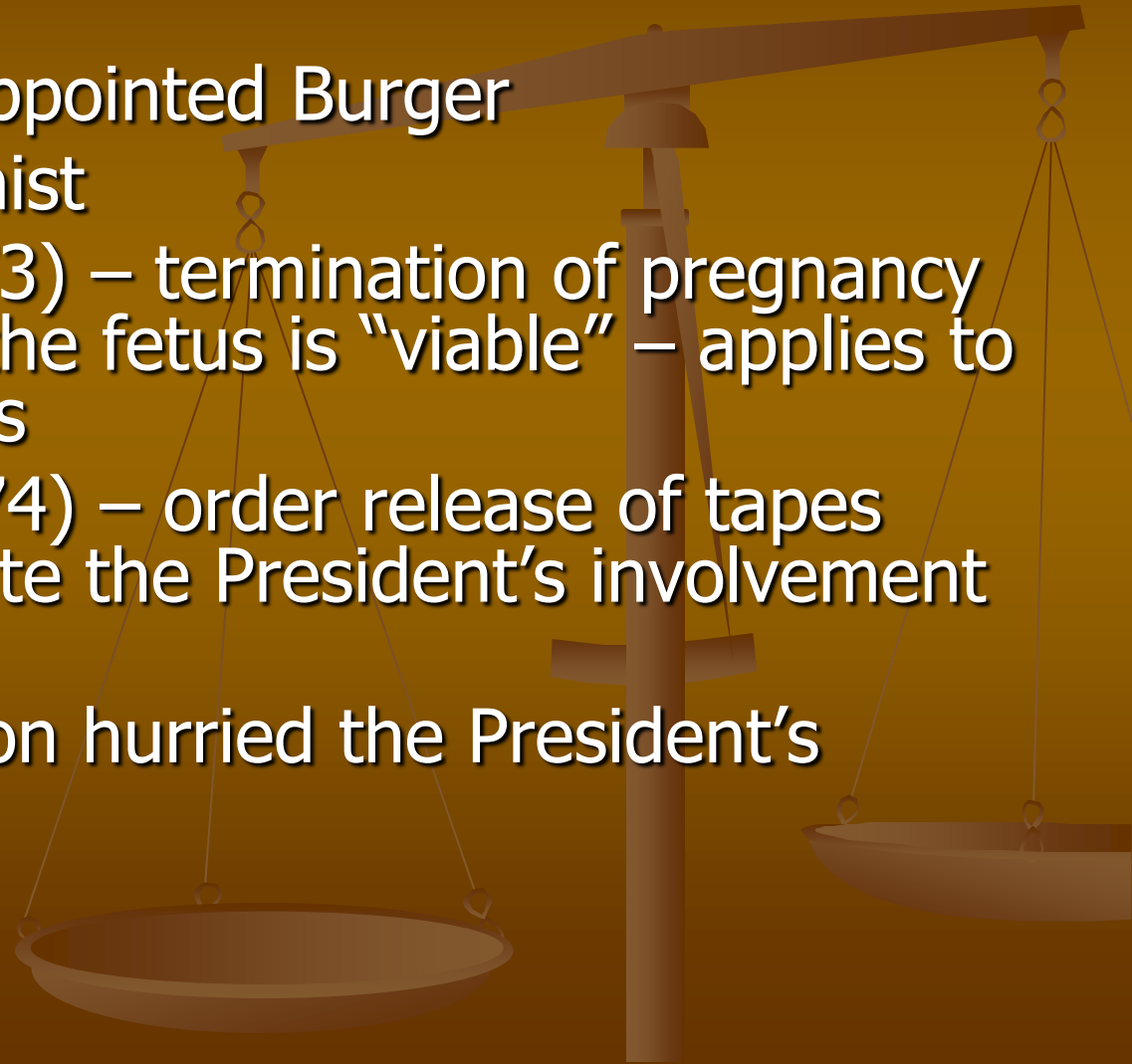
The Warren Court

- 1953-1969
- President Eisenhower appointed Warren
- *Brown v. Board of Education* (1954) – ended segregation
- *Engle v. Vitale* (1962) – no organized school prayer
- *Gideon v. Wainwright* (1964) – right to an attorney
- *Wesberry v. Sanders* (1964) – one man one vote – gerrymandering unconstitutional
- *Griswold v. Connecticut* (1965) – right to privacy – foundation for *Roe v. Wade* (1973)
- *Miranda v. Arizona* (1966) – right not to self-incriminate



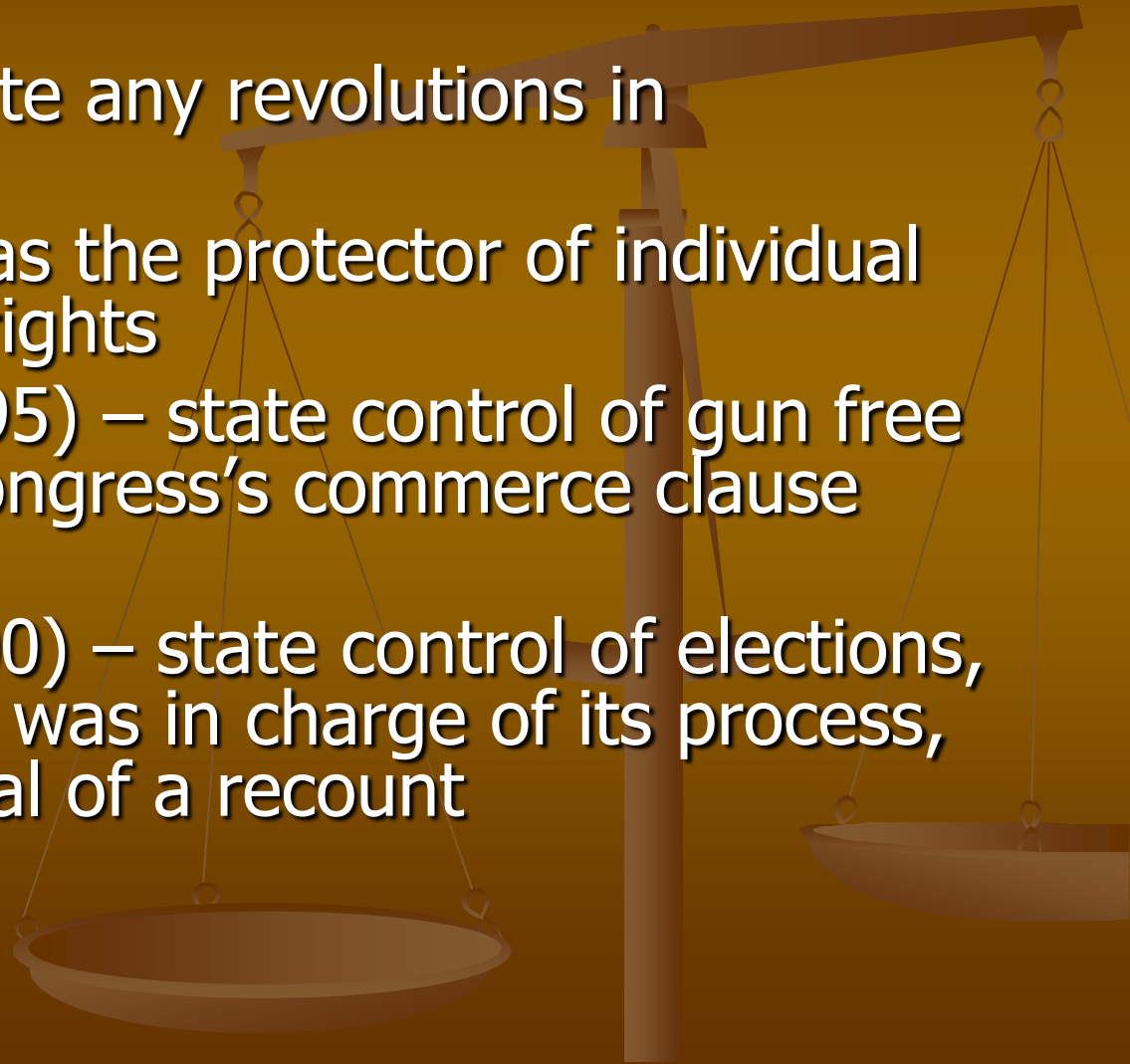
The Burger Court

- 1969-1986
- President Nixon appointed Burger
- Strict Constructionist
- *Roe v. Wade* (1973) – termination of pregnancy is allowable until the fetus is “viable” – applies to first two trimesters
- *U.S. v. Nixon* (1974) – order release of tapes that might implicate the President’s involvement in Watergate
- Unanimous decision hurried the President’s resignation



The Rehnquist Court

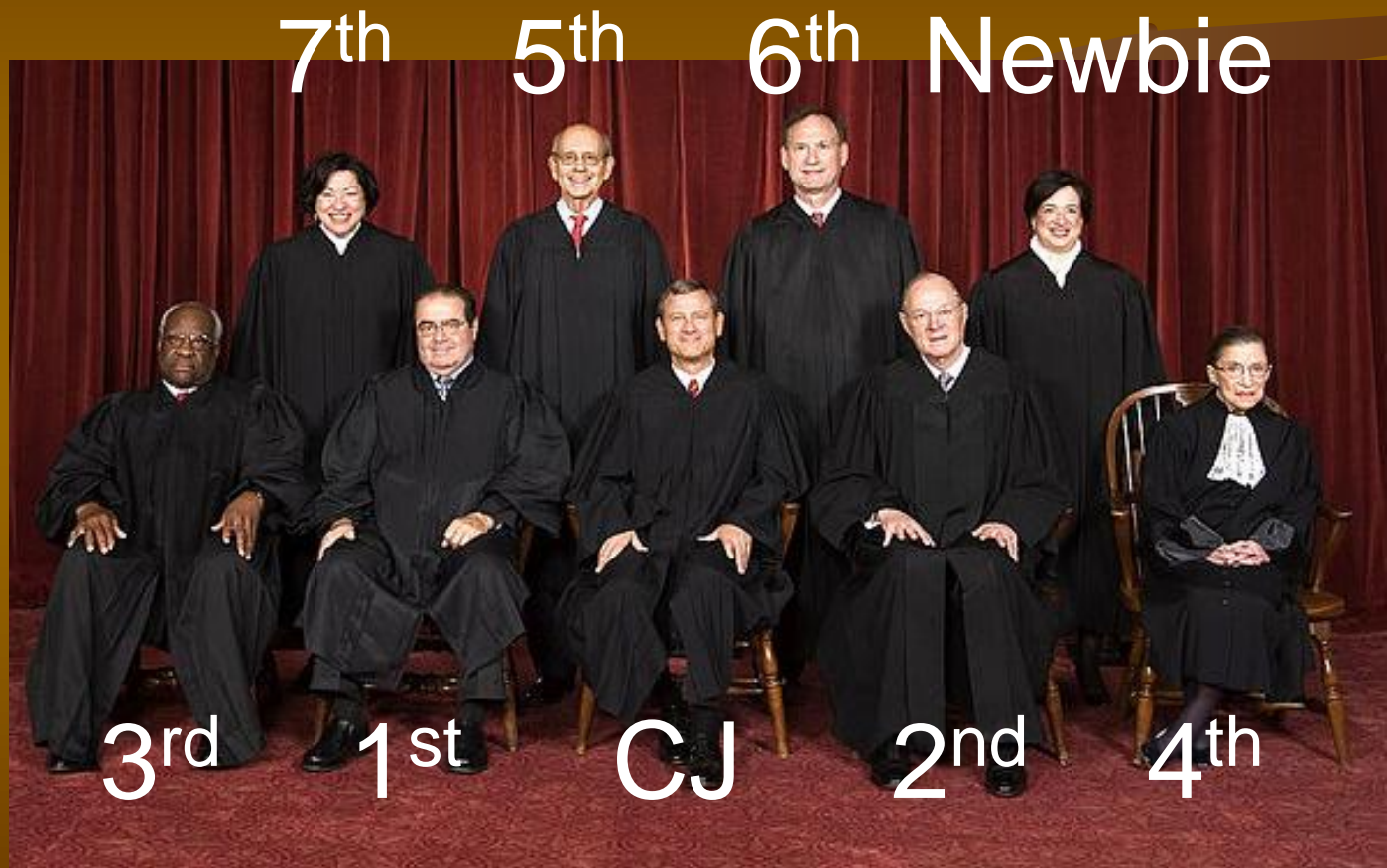
- 1986-2005
- Court did not create any revolutions in constitutional law
- Did not see itself as the protector of individual liberties and civil rights
- *U.S. v. Lopez* (1995) – state control of gun free zones – limited Congress's commerce clause powers
- *Bush v. Gore* (2000) – state control of elections, found that Florida was in charge of its process, including the denial of a recount



The Roberts Court

- 2005-Present
- *Morse v. Frederick* (2007) – student’s free speech rights may be limited if connected to criminal conduct and made during a school sanctioned event “Bong Hits 4 Jesus”
- *Citizens United v. FEC* (2010) – contributions by corporations and non-profits to campaigns is protected speech
- *Snyder v. Phelps* (2011) – free speech protection for protestors at funeral processions if statements are of public interest and on public sidewalks, even if the speech is “outrageous”
- *US v. Windsor* (2013) – provision of the Defense of Marriage Act defining marriage between one man and one woman is unconstitutional under the 5th Amendment Due Process clause, thus allowing married same-sex couples access to federal spousal benefits.
- *Shelby County v. Holder* (2013) – struck down section of Voting Rights Act of 1965 requiring certain states to get approval of districting due to history of discrimination

The Roberts Court (2005-Present)



The Roberts Court (2005-Present)



Chief Justice John Roberts

W. Bush nominee – since September 29, 2005

The Roberts Court (2005-Present)



Justice Antonin Scalia

Reagan nominee – since September 26, 1986

The Roberts Court (2005-Present)



Justice Anthony Kennedy

Reagan nominee – since February 18, 1988

The Roberts Court (2005-Present)



Justice Clarence Thomas

H. W. Bush nominee – since October 23, 1991

The Roberts Court (2005-Present)



Justice Ruth Bader Ginsburg

Clinton nominee – since August 10, 1993

The Roberts Court (2005-Present)



Justice Stephen Breyer

Clinton nominee – since August 3, 1994

The Roberts Court (2005-Present)



Justice Samuel Alito

W. Bush nominee – since January 31, 2006

The Roberts Court (2005-Present)



Justice Sonia Sotomayor

Obama nominee since August 8, 2009

The Roberts Court (2005-Present)



Justice Elena Kagan

Obama nominee since August 7, 2010

Accepting Cases



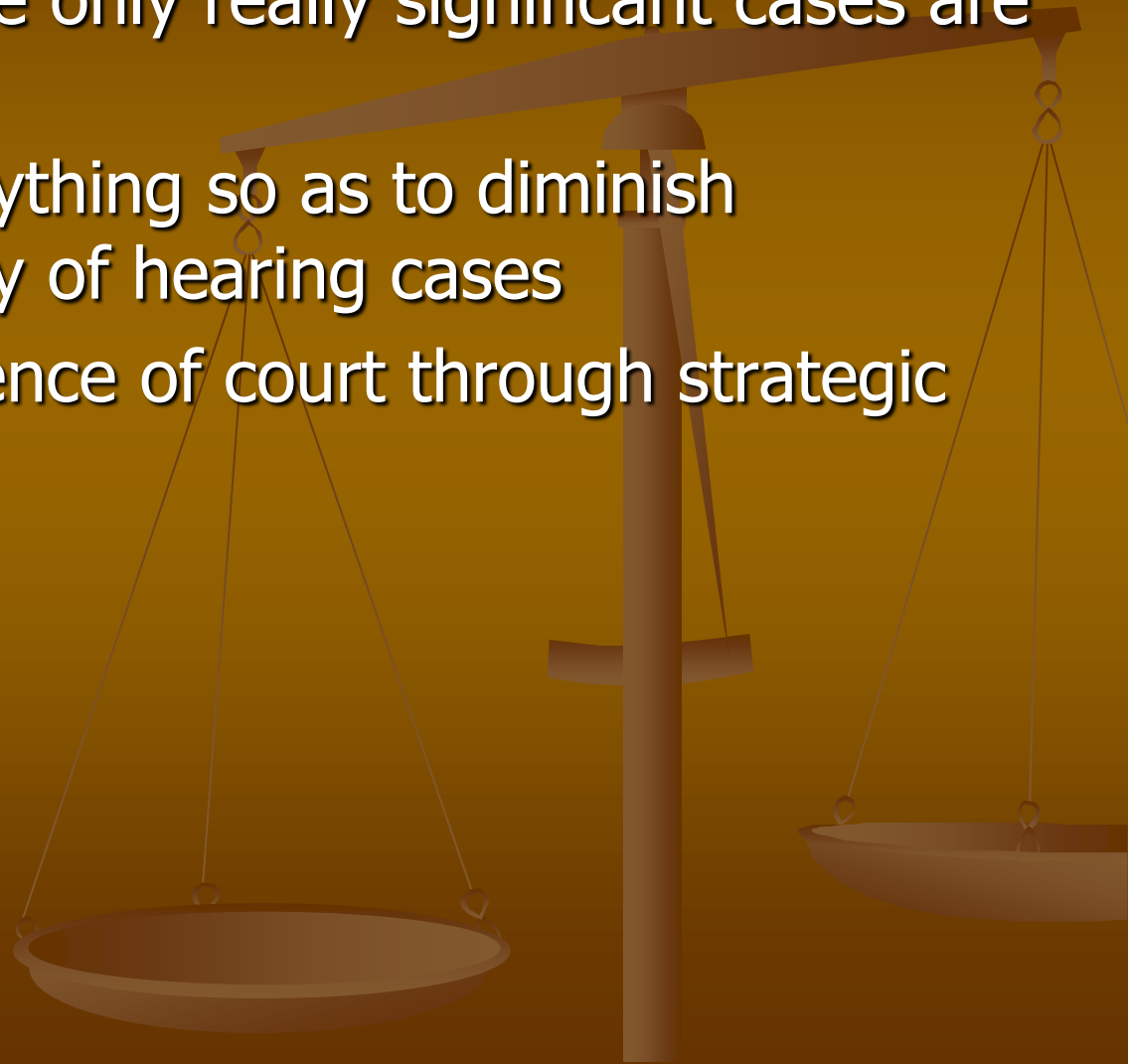
■ Solicitor General

- President appointment
 - 3rd highest member in Justice Department
 - In charge of appellate court litigation in federal courts
 - With staff (approximately 2 dozen attorneys)
- (1) Whether to appeal a case the government has lost in lower court
 - (2) Review and modify the briefs presented in government appeals
 - (3) Represent the government before the Supreme Ct
 - (4) Submit a brief on behalf of a party in a case the government is not a direct party

Accepting Cases

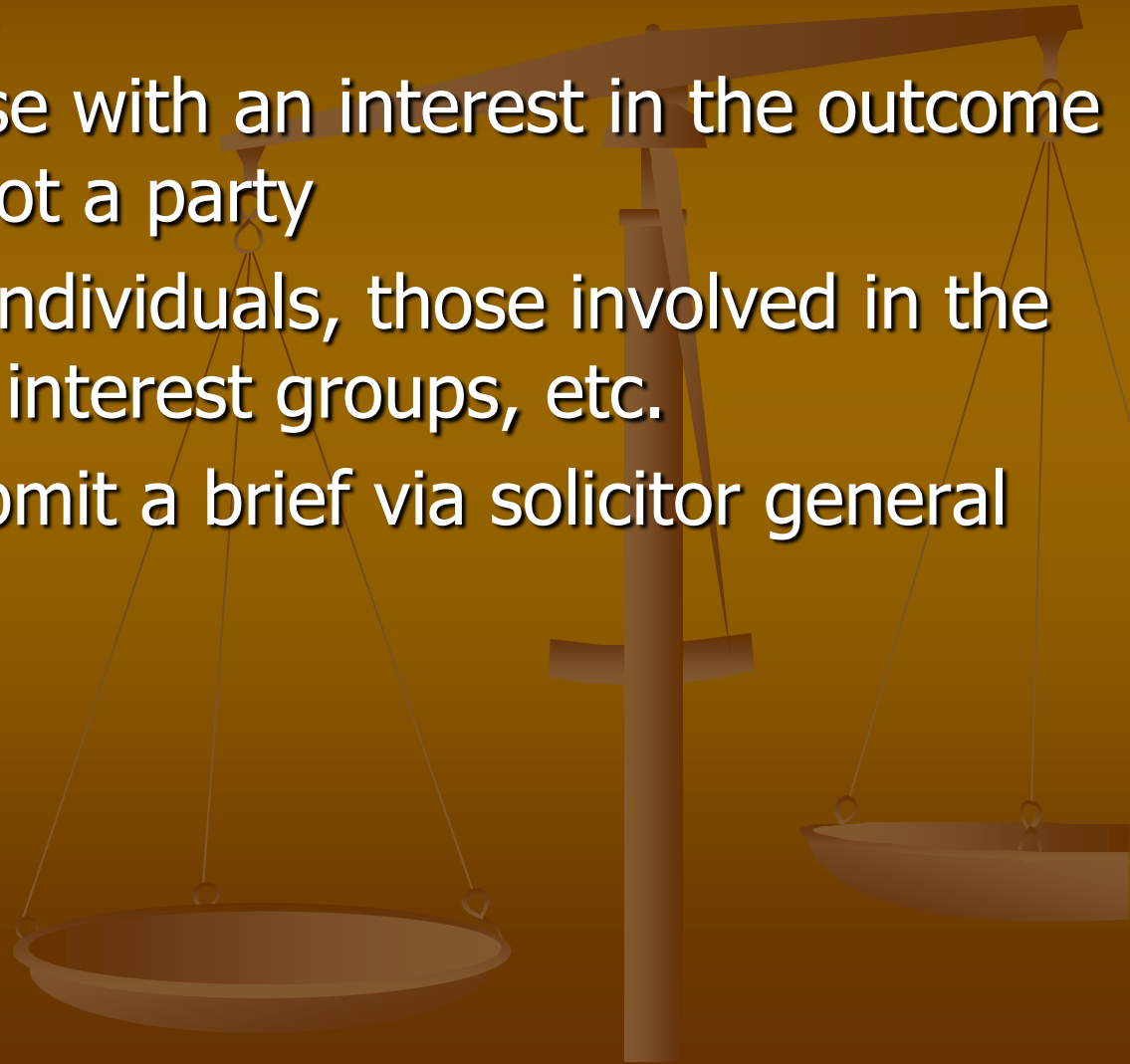
■ Solicitor General

- Wants to make sure only really significant cases are appealed
- Not appealing everything so as to diminish importance/urgency of hearing cases
- Earning the confidence of court through strategic recommendations



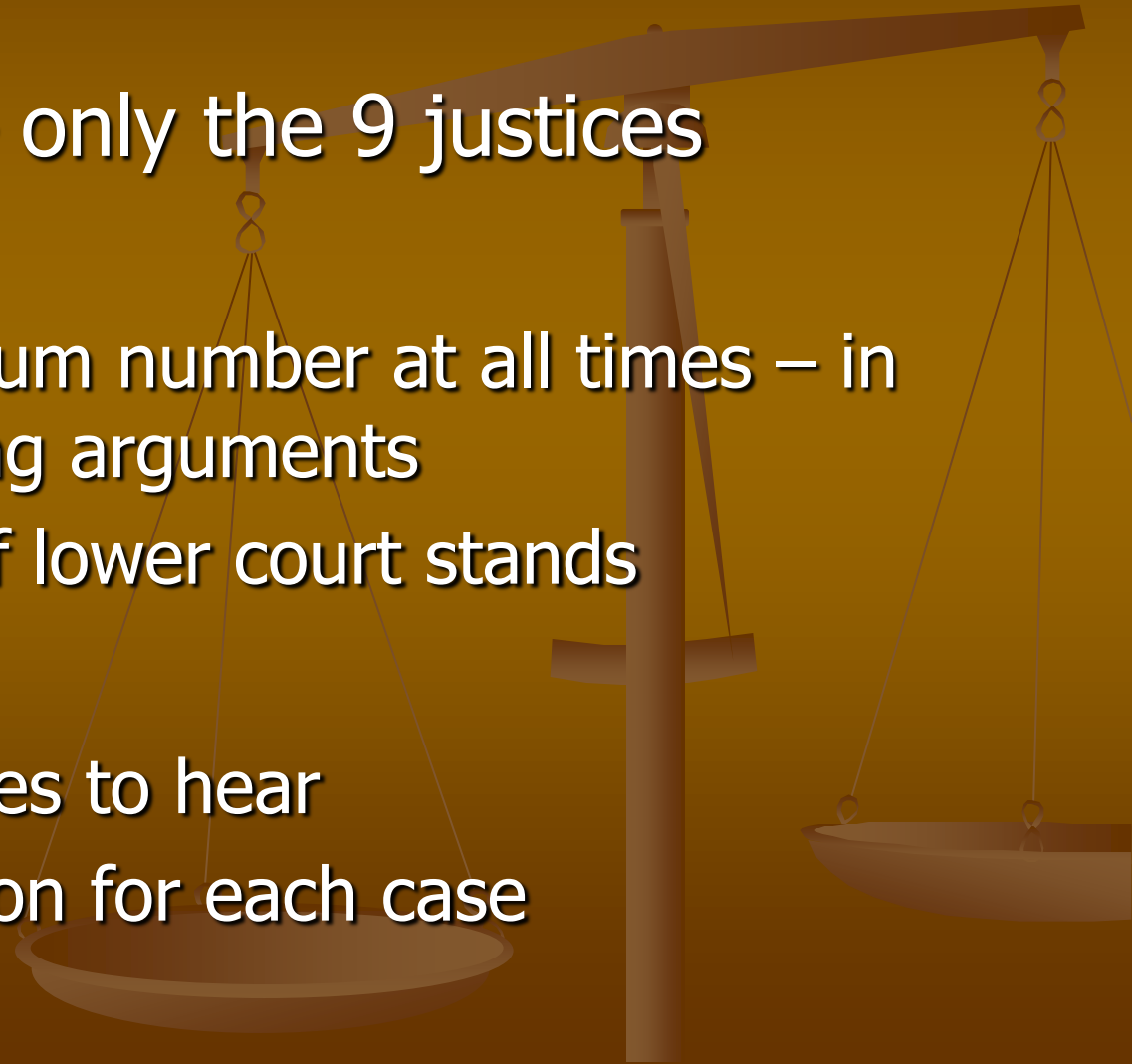
Accepting Cases

- Amicus Curiae Briefs
- “Friends of the Court”
- Briefs written by those with an interest in the outcome of the case but are not a party
- Could be prominent individuals, those involved in the law being discussed, interest groups, etc.
- Government may submit a brief via solicitor general



Accepting Cases

- Wednesday afternoon/Friday morning meet in conference
- Strictest secrecy – only the 9 justices
- Quorum
 - 6 justices – minimum number at all times – in conference, hearing arguments
 - If a tie, decision of lower court stands
- 2 parts
 - Deciding what cases to hear
 - Deciding the opinion for each case



Seating Arrangements

In conference:



usually speaking on pending cases in order of seniority
Seniority following the Justice supporting the case
NO ONE other than the justices enters this chamber!

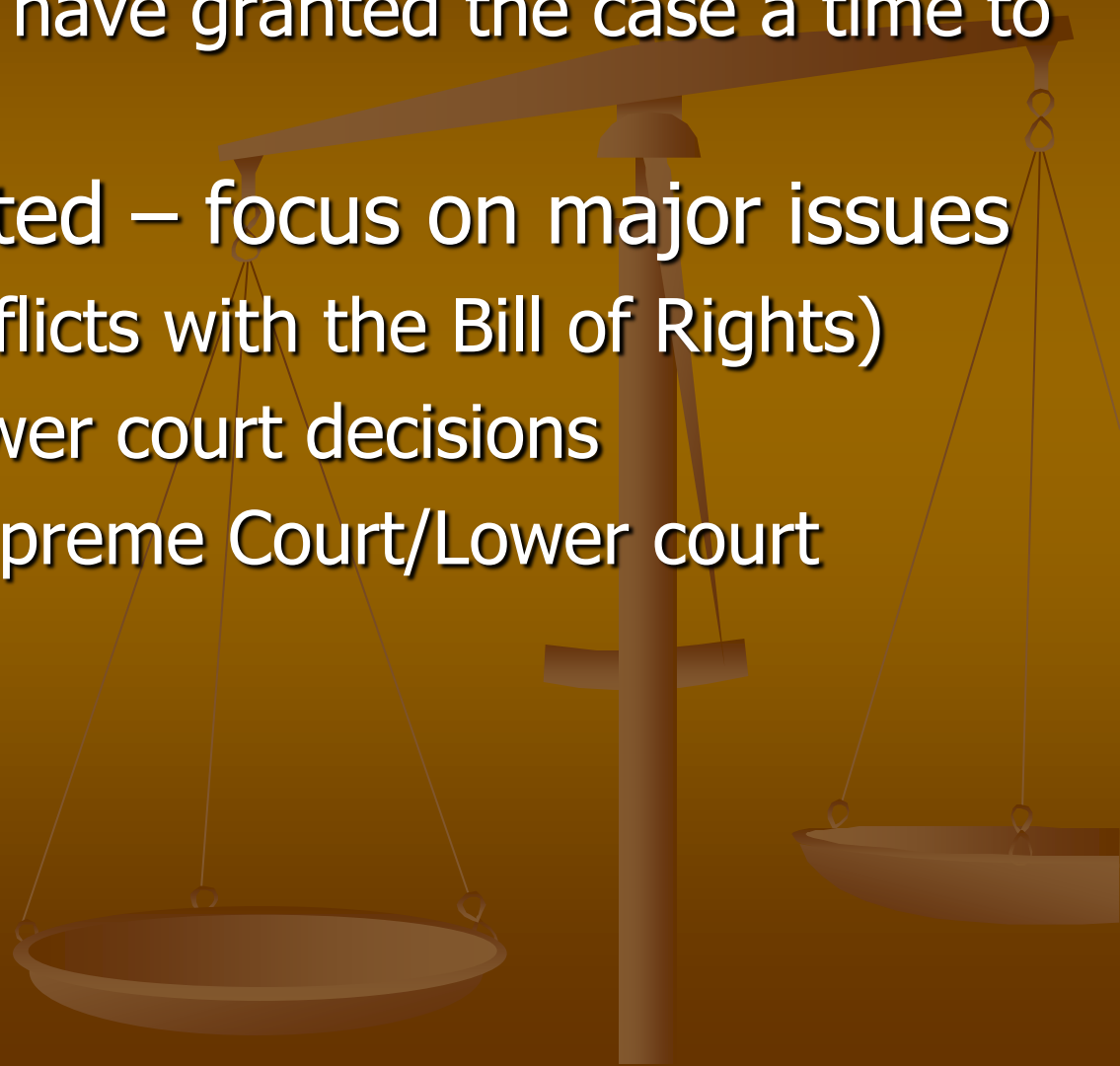
Accepting Cases



- Part I
- Accepting Cases
 - 7500 cases submitted by federal courts of appeals and state Supreme Courts to US Supreme Court
 - 98% of Appeals are denied or not heard
 - Only hear approximately 150 cases per year
 - Cases heard must have substantial impact
- Individuals discuss cases based on clerks' research and opinions
- Rule of 4 – if four justices want to hear a case, then it is placed on the docket

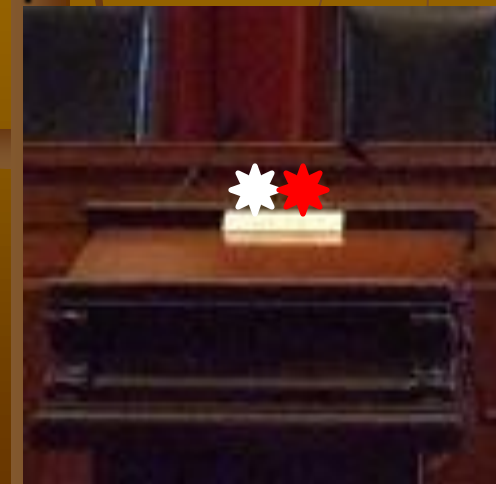
Accepting Cases

- With four votes, granted writ of certiorari
 - Meaning that they have granted the case a time to be heard
- Cases to be accepted – focus on major issues
 - Civil Liberties (conflicts with the Bill of Rights)
 - Clarify differing lower court decisions
 - Clarify differing Supreme Court/Lower court decisions



Hearing Cases

- Each side has 30 minutes to address court
- “You have the argument you planned to make, the argument you make, and the argument you wish you had made.”
Justice Ruth Bader Ginsburg, justice having argued more cases before the Supreme Court prior to her appointment
- Usually time is spent answering questions by the Justices
- Justices usually using the attorney as a vehicle to make a point to a fellow justice by asking particular questions
- Podium that cranks up and down according to height
- After 25 minutes pass – white light goes on
- At end of 30 minutes – red light goes on & argument is done even in mid sentence



Seating Arrangements

On the Bench:



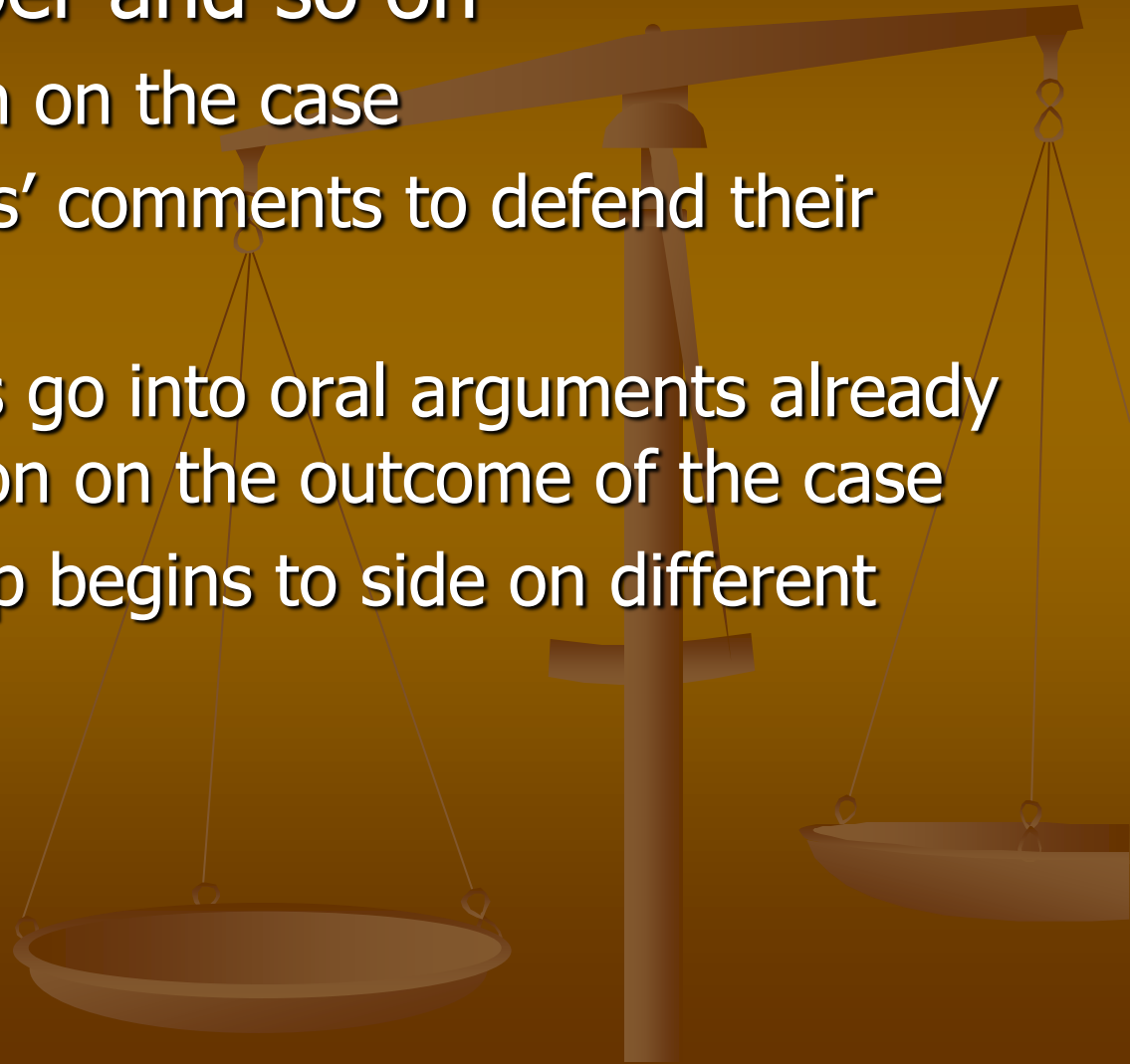
7th 5th 3rd 1st CJ 2nd 4th 6th Newbie

Conference

- Chief Justice opens discussion beginning with most senior member and so on
- Presents their position on the case
- May respond to others' comments to defend their position

***Many times, Justices go into oral arguments already having made a decision on the outcome of the case

In conference, the group begins to side on different outcomes



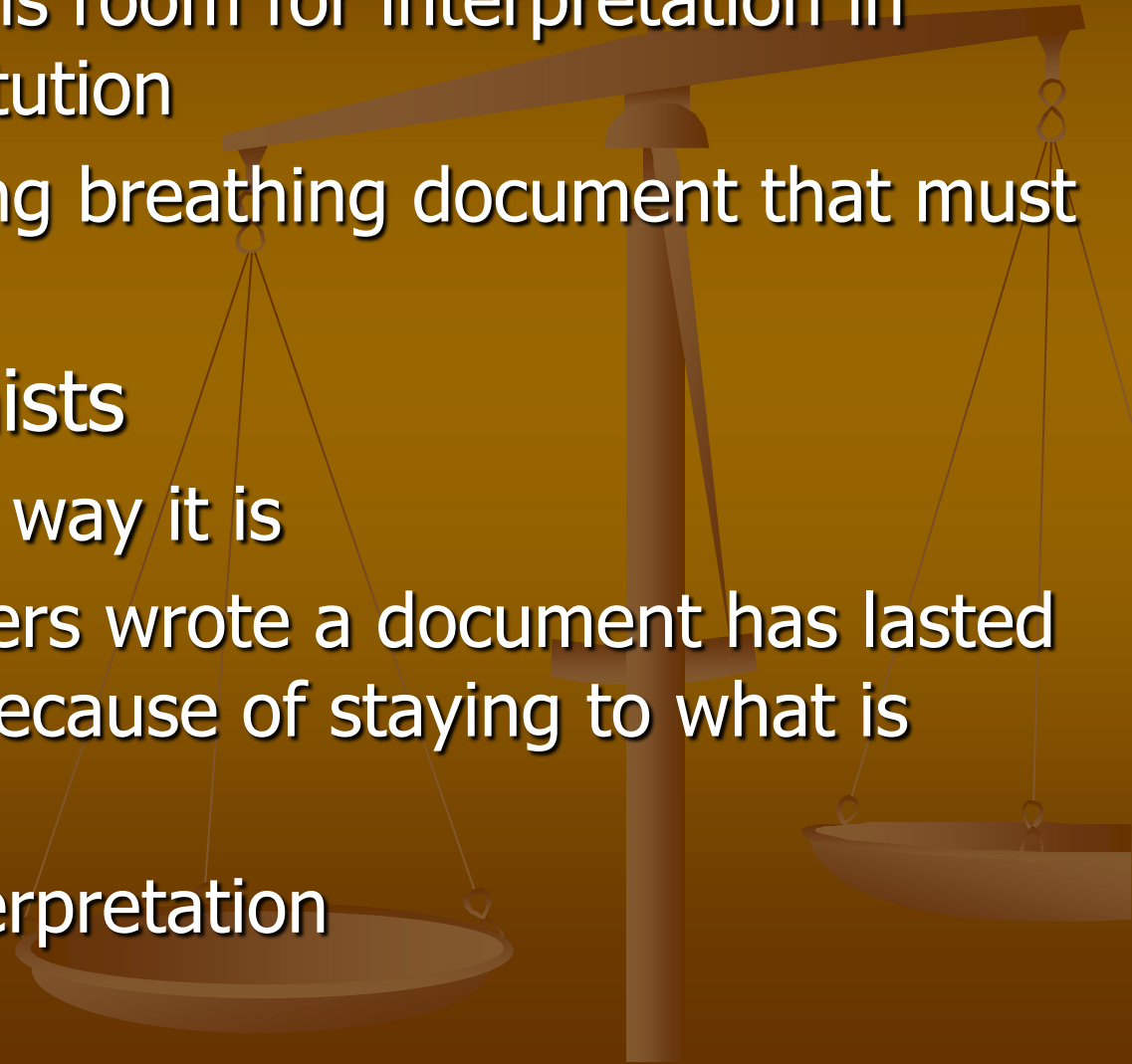
Interpreting the Law

■ Loose Constructionist

- Believe that there is room for interpretation in reading the constitution
- Constitution is living breathing document that must expand over time

■ Strict Constructionists

- Constitution is the way it is
- The founding fathers wrote a document has lasted as long as it has because of staying to what is written
- Little room for interpretation



Interpreting the Law



■ Judicial activism

- The position that the Supreme Court takes a major role in changing and interpreting American law
- Leads to more policy making

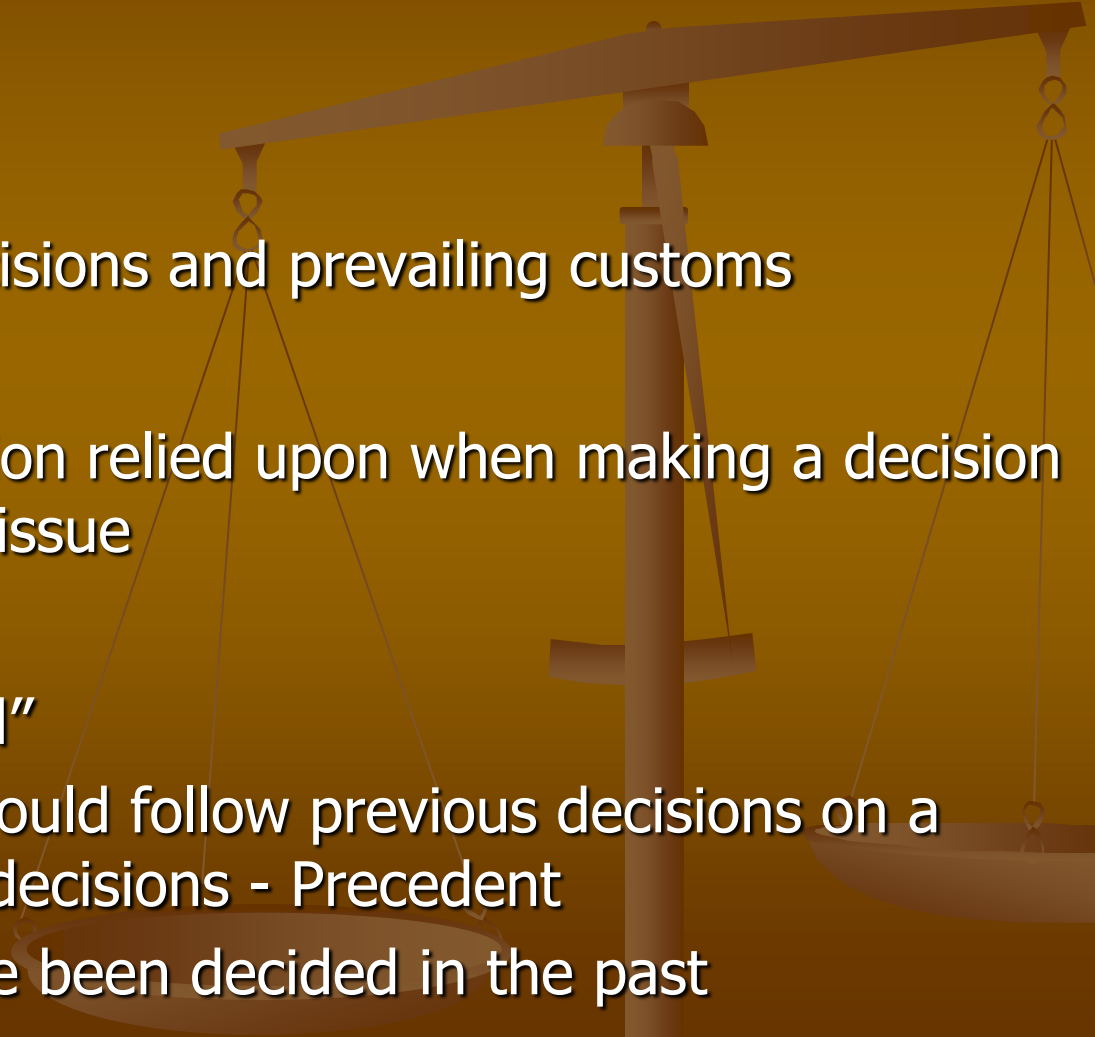
■ Judicial restraint

- The position that the Supreme Court merely settles disputes using the law that has already been established
- Supreme court should not make policy

***Tends to be little or no relation to
republican – democrat – liberal – conservative

Interpreting the Law

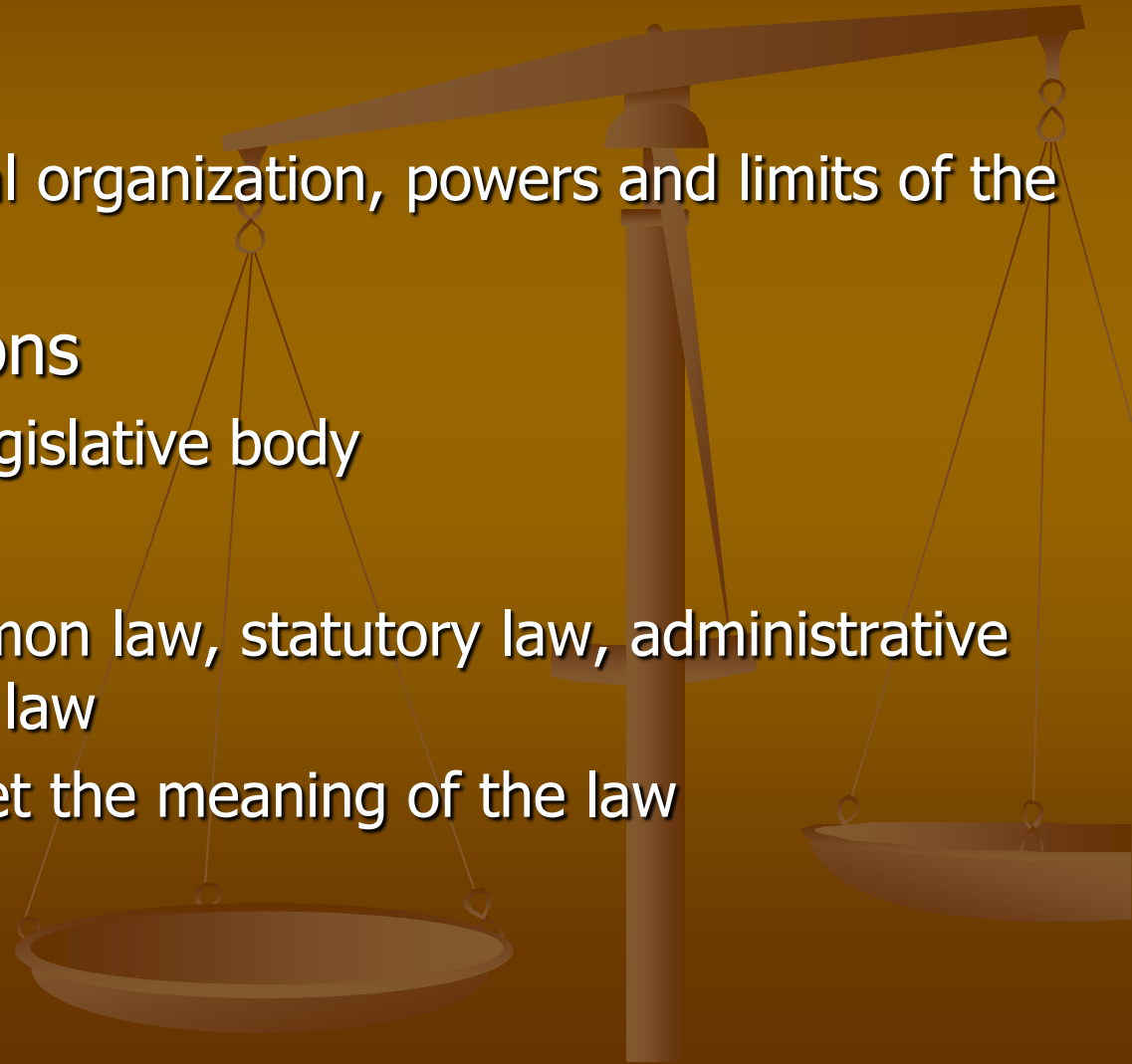
Sources of Decisions

- Common law
 - Judge-made law
 - Originated in England
 - Based on previous decisions and prevailing customs
 - Precedent
 - A previous court decision relied upon when making a decision on a case with similar issue
 - Stare Decisis
 - “Let the decision stand”
 - Premise that courts should follow previous decisions on a subject when making decisions - Precedent
 - How similar cases have been decided in the past
- 

Interpreting the Law

Sources of Law

- Constitutions
 - Federal and State
 - Sets forth the general organization, powers and limits of the government
- Statutes and regulations
 - Laws passed by the legislative body
- Case law
 - Interpretation of common law, statutory law, administrative law and constitutional law
 - Court decisions that set the meaning of the law



Types of Decisions



■ Opinions

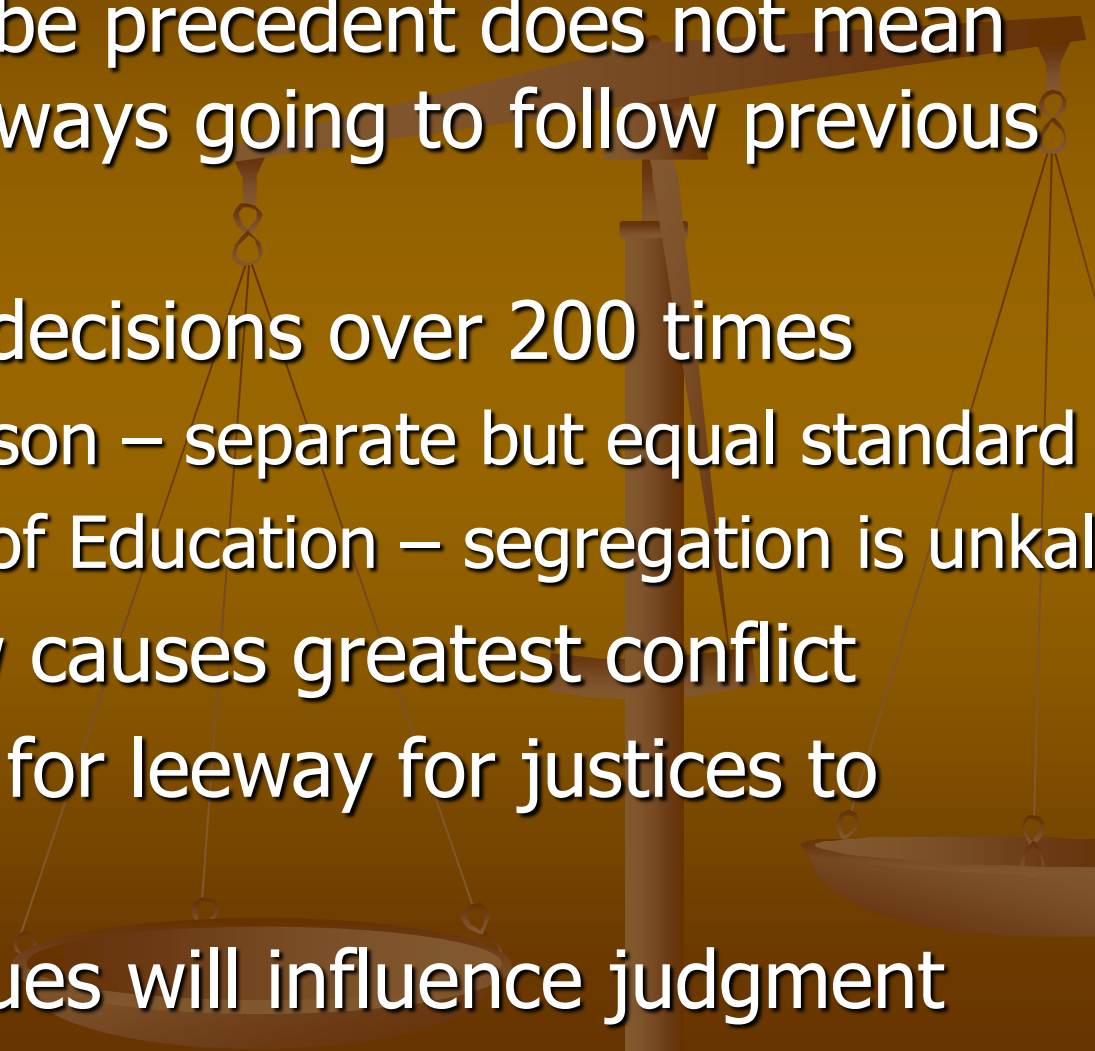
- Address the arguments of both sides, the court's finding and why they found that way or the reasoning

■ Author of opinions

- Most senior justice either writes opinion or assigns it to another member of the same opinion
- If Chief Justice is a member of the opinion, he writes opinion or assigns the writing to another member of the same opinion
- Authorship will go to those particularly connected to the case or significant opinions to seniority

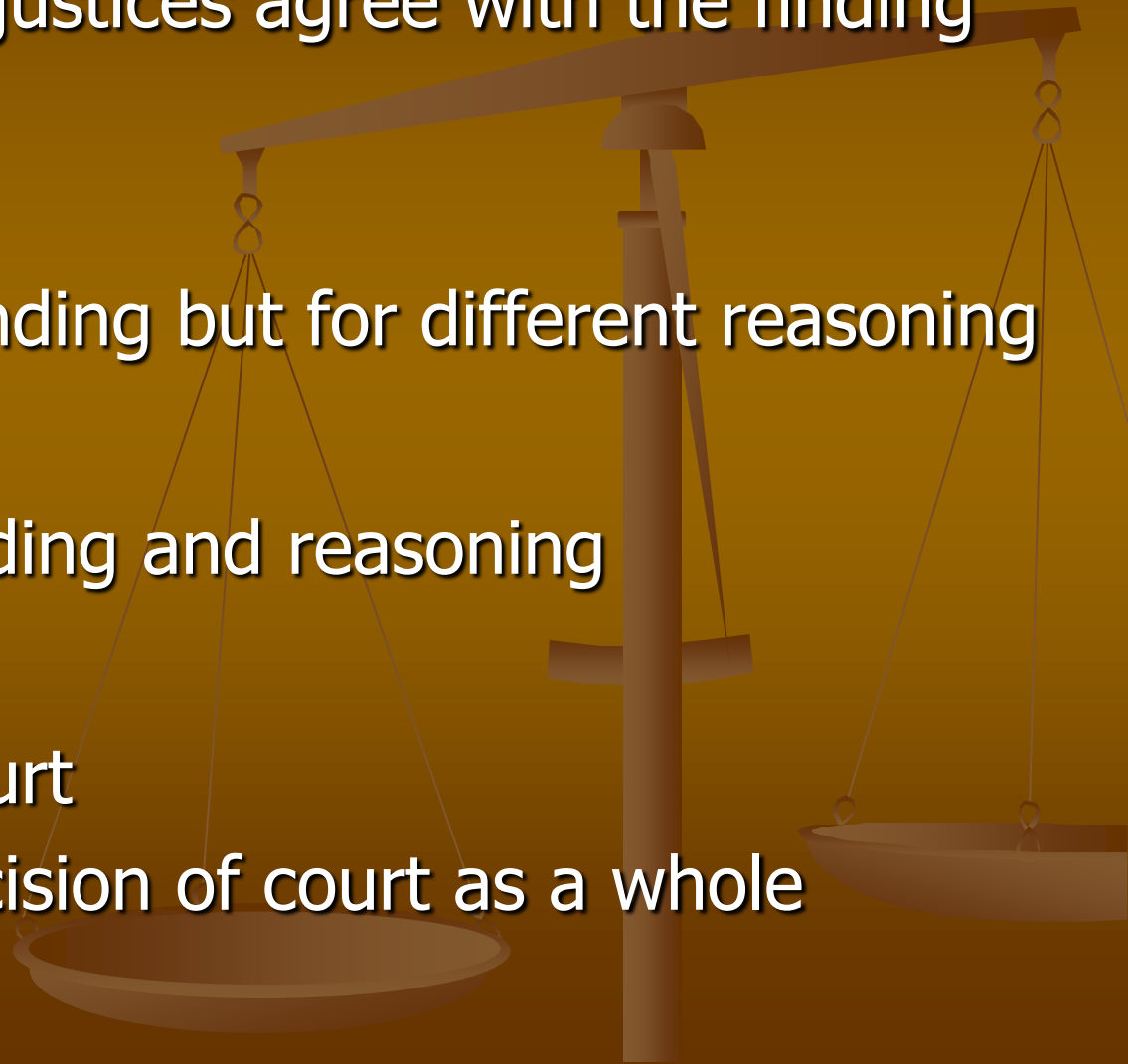
Types of Decisions

Opinions

- While there may be precedent does not mean that courts are always going to follow previous decisions
 - Overturned own decisions over 200 times
 - Plessey v. Ferguson – separate but equal standard
 - Brown v. Board of Education – segregation is unkal
 - Vagueness of law causes greatest conflict
 - Ambiguity allows for leeway for justices to disagree
 - This is where values will influence judgment
- 

Types of Decisions

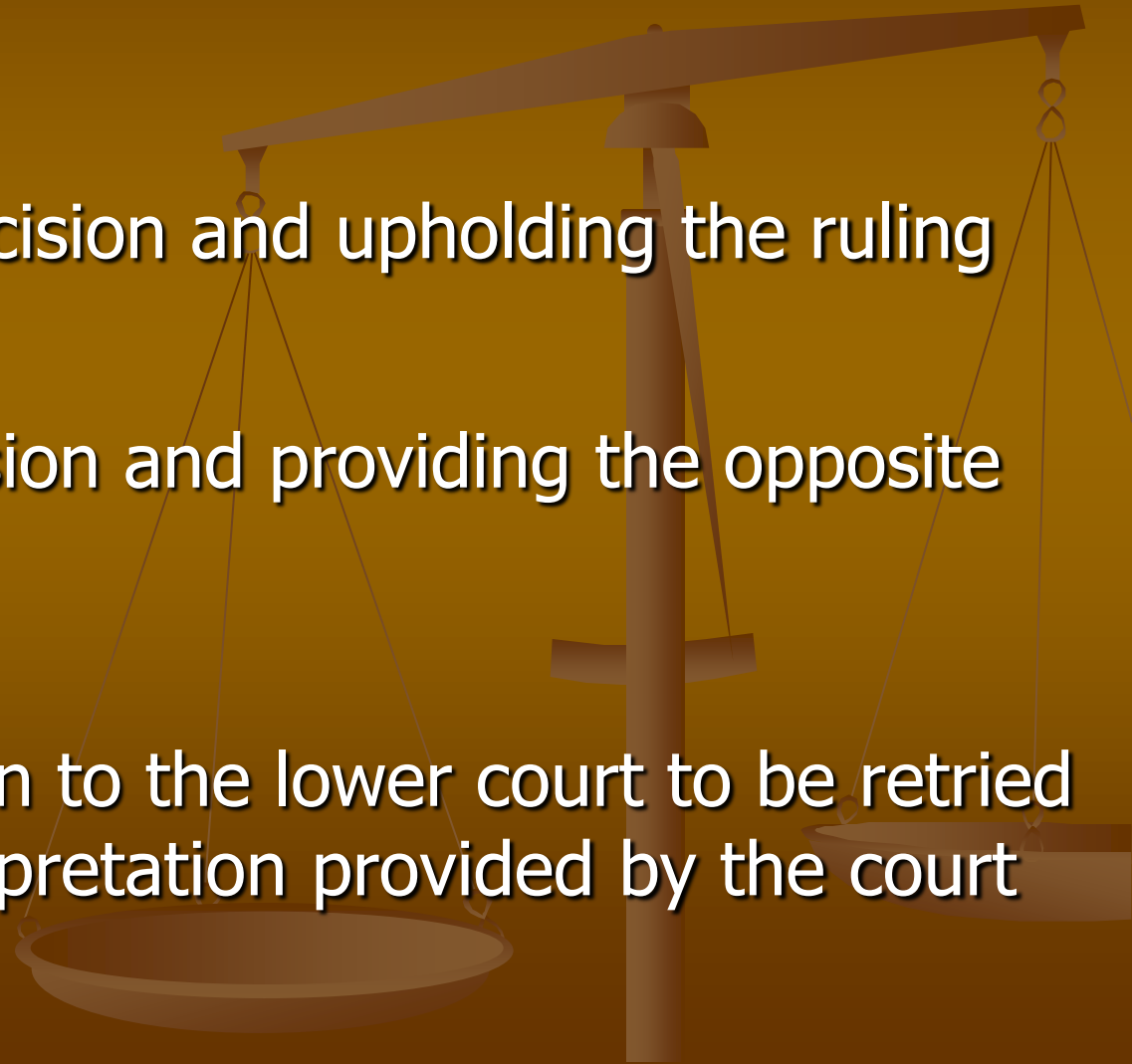
- Majority
 - Having 5 or more justices agree with the finding and the reasoning
- Concurring
 - Agrees with the finding but for different reasoning
- Dissent
 - Disagrees with finding and reasoning
- Per Curium
 - Decision of the court
 - No signatures, decision of court as a whole



Types of Decisions

What the court can decide to do to the lower court's decision:

- Affirmed
 - Supporting the decision and upholding the ruling
- Reversed
 - Overturn the decision and providing the opposite ruling
- Remand
 - Sending back down to the lower court to be retried with the new interpretation provided by the court



A Case's Journey Through the Supreme Court

State Supreme Courts

Federal Courts of Appeals

Appeals come to Supreme Court

Briefs from parties & Amicus Curiae briefs submitted

October Supreme Court meets in conference to look at appeals
Done in total secrecy

Rule of 4
Four Justices must vote to hear case to be approved

If case receives 4 votes, it is granted a writ of certiorari

Case is placed on Supreme Court Docket or Calendar
2 wks - arguments
2 wks - conference

Arguments are heard before the Supreme Court
Appellant - 30 mins
Appellee - 30 mins

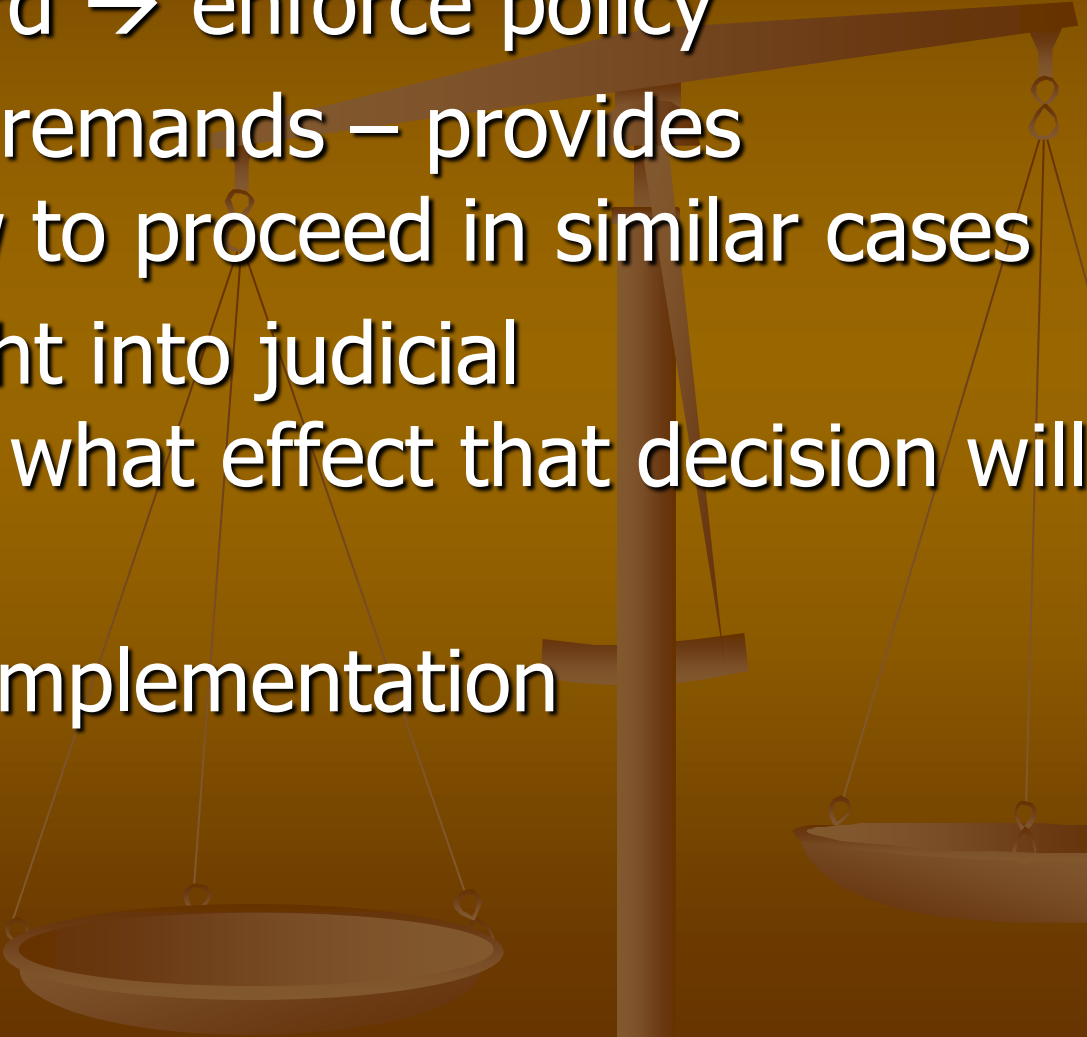
Conference Justices hear comments in order of seniority on the court

Once a decision is made, the writing of opinions is assigned by the Chief Justice or the most senior justice for that opinion

Majority, Concurring or Dissenting
Per Curiam - decision of entire court with little or no explanation

June Presentation of Decisions

Implementation

- Congress has purse → pay for policy
 - President has sword → enforce policy
 - Supreme Court → remands – provides instruction for how to proceed in similar cases
 - Litigation flows right into judicial implementation or what effect that decision will have
 - 3 parts to judicial implementation
 1. Interpretation
 2. Enactment
 3. Enforcement
- 

Implementation



- 3 different populations that deal with decisions
 1. Interpreting Population
 - What Supreme Court meant
 - Lawyers and judges who must adhere to decisions due to their occupation
 2. Implementing Population
 - Who must enforce decision and put into everyday practice
 3. Consumer Population
 - Who decision effects on a daily basis
- ***always inconsistency between what court says and what is actually done***

	Interpreting Population	Implementing Population	Consumer Population
School Prayer	Lawyers & Judges	School Administration	Teachers, Parents & Students
Miranda Rights	Lawyers & Judges	Police Officials and Interrogators	U.S. Citizens
Gun Control	Lawyers & Judges	Local law makers and gun distributors	Gun owners or potential gun owners

Checks on the Court



■ Legislative

- court relies on legislature to pay/appropriate funds to implement decisions
- One of the few ways the courts may be overruled is through constitutional Amendment
- Laws may be altered/amended to attempt to comply but still avoid a disagreeable decision

■ Executive

- Court relies on executive to enforce/enact decisions
- Judicial implementation
- U.S. Solicitor general – part of executive branch decides what cases to take to court

Checks on the Court

■ Public Opinion

- Unless enforced by executive/legislative decision
- May simply be ignored (Little Rock 9)

Ex. Prayer in school – while deemed unconstitutional and not allowed in schools – many public schools still have prayer – and will until questioned

