The sole corporate sponsor of THE SUPREME COURT is New York Life Insurance Company. Funding is also provided by The John D. and Catherine T. MacArthur Foundation.

Partial funding also provided by the National Endowment for the Humanities.
Dear Educator:

New York Life is proud to be the sole corporate sponsor of The Supreme Court, a Thirteen/WNET production airing on PBS stations nationwide. This is the first major television series that explores the history of how the Court shapes American law and American life. We believe this program will help viewers better understand the role and responsibilities of our nation’s highest judicial body.

This is the fourth time New York Life has partnered with Thirteen/WNET to develop original programming which sheds new light on issues of historical significance. Past programs include The American President, The Rise and Fall of Jim Crow and the Emmy award winning series Slavery and the Making of America.

To extend the value of The Supreme Court series, New York Life is sponsoring (as we have for all our previous public television partnerships) an outreach to schools that includes a dedicated educator’s Web site: www.historyofsupremecourt.org. This valuable resource includes original essays, a timeline, lesson plans, and other materials designed to be incorporated into existing social studies curriculums.

We hope you and your students enjoy the series and gain a renewed appreciation for one of the great pillars of American democracy.

New York Life
HOW TO USE THIS GUIDE

THE SUPREME COURT is a public television series that explores the history of this fundamental American institution and goes behind the scenes to reveal the temperaments, personal beliefs and experiences of some of its most significant Justices. It tells the dramatic stories of the people whose cases have come before the Court and focuses on many of the controversial rulings that have had an impact on all Americans.

The series charts the Court’s unique evolution, using archival footage and innovative graphic techniques to help audiences grasp complex legal concepts. Interviews with some of the greatest legal minds in the country as well as exclusive access to the Court help personalize the Justices while providing context to key decisions and hotly contested issues of the day.

This discussion guide is designed to be used with the enclosed DVD and/or a tape of the broadcast series in grades 9-12 social studies classes, as well as in afterschool programs and informal educational settings. The DVD includes individual segments from the four programs in the series. The first four pages include DVD segment descriptions, discussion questions and activities. The subsequent pages are intended to be photocopied and distributed to students in class — an essay called “Why the Supreme Court Matters — To You!” and discussions about how the court’s rulings have had an impact on a typical teenager’s morning, afternoon and evening. Student activities may be adapted to other grade levels.

BROADCAST

THE SUPREME COURT will be broadcast nationally on PBS stations on January 31 and February 7, 2007 from 9 pm to 11 pm. However, broadcast times and dates may vary in some areas, so please check your local TV listings.

VIDEOTAPING RIGHTS

You have the right to tape the programs and play them for instructional purposes for one year after they are broadcast.

ON THE WEB

Check out additional SUPREME COURT information and activities on the Web at www.pbs.org/supremecourt.

STRATEGIES FOR USING THE PROGRAMS AND THE DVD

Video is most effective when used interactively, rather than passively, in class discussion. Consider using some of the following strategies when planning lessons or discussions based on THE SUPREME COURT:

1. Preview the DVD and review your lesson plans to determine suitability for your objectives and your students.
2. Select program segments that are directly relevant to your topic and appropriate for your class. The enclosed DVD includes segments from each program. While you have the right to tape the entire program and show it in class for one year after broadcast, a few well-chosen minutes may be more effective in illuminating your topic.
3. Provide a focus for interaction — choose part of the segment for students to watch out or listen for in the chosen segment. This assures that students will focus together on information most relevant to your topic.
4. Don’t be afraid to pause the program or to replay the segment to underscore or clarify a point.

When you’ve decided on the program or segments you’d like to cover with your class, review the corresponding section of this guide, obtain any materials needed for in-class activities and/or photocopy the student activities you’ll be handing out in class.
Overview

Between the birth of the Republic and the Civil War, the Supreme Court discovered its purpose and its fallibility. In Marbury v. Madison (1803), Chief Justice John Marshall asserted the power of judicial review and established the Court’s purpose. Fifty-four years later, Marshall’s successor, Chief Justice Roger Taney, exercised that power in Dred Scott v. Sandford (1857) to protect slavery and leave the fate of the Union to armies on the battlefield.

Themes

DVD Segment 1: Partisan Politics
The early republic’s politics are raw and partisan. Outgoing President John Adams packs the courts with Federalist judges and sets the stage for a constitutional crisis.

DVD Segment 2: Marbury v. Madison and Judicial Review
Chief Justice John Marshall lectures President Jefferson on the rule of law and establishes the Court as the primary interpreter of the Constitution.

DVD Segment 3: The Infamy of the Dred Scott Decision
The Supreme Court puts the Constitution squarely on the side of slavery, ruling that Congress cannot prohibit it in the new territories and further, that African Americans are not and never can be citizens of the United States. The decision solved nothing and moved the nation closer to civil war.

Discussion Questions

1. Do you think judges should take an active role in politics, as Justice Samuel Chase did in the election of 1800? Why or why not?
2. Why was the establishment of judicial review important to the concept of checks and balances?
3. What impact did the Dred Scott decision have on Congress’s efforts to find compromise and avoid war? What impact did it have on slaves and free blacks?

Activities

- Research the election of 1800 and the depth of partisan politics that prevailed. Identify the issues and negative campaigning techniques used in this election. Create campaign posters that illustrate these issues and techniques.
- Analyze a few other pre-Civil War cases in which the Court exercised judicial review, such as McCulloch v. Maryland (1819) and Gibbons v. Ogden (1824). Create a chart that summarizes each case, identifies how the Court imposed judicial review, and explains the constitutional reasons why. Then write an editorial either defending or criticizing the Court’s power of judicial review.
Overview

The original intent behind the Fourteenth Amendment was to protect and advance the civil rights of the newly freed slaves. However, the late 19th Century Supreme Court weakened the civil rights potential of the amendment, while at the same time using it to further the interests of big business. Several justices made their mark on the Court’s rulings in either affirming or opposing the Court’s decisions. After 70 years of unbridled economic growth, the wheels of American industry were ground to a halt in the Great Depression. As a result of the Court battle of 1937, the Court begins to uphold relief and reform measures passed by Congress and the states to deal with the crisis.

Themes

DVD Segment 1: The Two Faces of the Fourteenth Amendment
Originally, the Fourteenth Amendment established equal protection and due process for all citizens. As the country’s attention turns from Reconstruction to industrial revolution, the Court rules to protect big business from government regulation.

DVD Segment 2: The Power of Judicial Dissent
Dissenting opinions on the Court assume new significance in the late 19th and early 20th centuries – such as Justice Field’s dissent in Munn v. Illinois (1877); Justice Harlan’s dissent in Plessy v. Ferguson (1896); and Justice Holmes’s dissent in Lochner v. New York (1905).

DVD Segment 3: The Supremacy of Liberty of Contract
The Court devises the “liberty of contract” doctrine and creates a new vision of the Fourteenth Amendment that keeps government out of efforts to reform labor-management relations.

Leaving behind decades of precedents, the Court acknowledges the legitimate role of government in regulating some aspects of the economy and aiding people marginalized by the social and economic developments of modern times.

Discussion Questions

1. What rights are enumerated in the text of the Fourteenth Amendment? How does this further the ideals of democracy?
2. How did Court’s decision in the Civil Rights Cases (1883) change the interpretation of the Fourteenth Amendment?
3. How did Justice John Marshall Harlan’s past prepare him to write the dissenting opinion in the Civil Rights Cases? Why is this dissent important?
4. How do dissenting opinions help Congress shape new laws? How might they affect future Supreme Court decisions?
5. Evaluate the benefits and costs of the Court’s “liberty of contract” doctrine.
6. Why do you think the Court changed its view of the “liberty of contract” doctrine in West Coast Hotel v. Parrish (1937)? Do you feel this change was the right move for the Court? Why or why not?

Activity

Conduct a panel discussion with supporters of the “liberty of contract” doctrine on one side and supporters of the rights of workers on the other. Show how in each case the Fourteenth Amendment is intended to help each side.

John Marshall Harlan
(1833-1911)

John Marshall Harlan was born into a prominent slaveholding family from Kentucky. He opposed the Civil War Amendments, but supported the Union and served in the Union army. A strong supporter of Rutherford B. Hayes’s bid for the presidency, Harlan was selected by Hayes to serve on the Supreme Court in 1877. As the Court narrowed the civil rights reach of the Fourteenth Amendment, Harlan became a strong voice of dissent. In Plessy v. Ferguson (1896) he wrote, “...there is no superior, dominant, ruling class of citizens...Our Constitution is colorblind.” Harlan established the importance of dissent as a tool for future jurists to review and reconsider interpretations of the Constitution. His legacy is that in time, the Court saw the purpose of the Fourteenth Amendment as applicable to the states in securing for all citizens the protections of the Constitution and the Bill of Rights.
Overview

In the years that followed World War II, the United States faced Cold War tensions abroad and social upheaval at home. Its institutions wrestled with the meanings of freedom of conscience, “separate but equal” and equal justice under the law. The Supreme Court was placed in the position of making constitutional sense of these issues. In a series of cases, the Court moved cautiously but steadily to establish new constitutional meaning behind the power of the state and the rights of the individual.

Themes

DVD Segment 1: An Unlikely Champion of Individual Liberties
Hugo Black rises from simple origins to become a U.S. Senator. Noting his support for New Deal policies, President Roosevelt selects him for the Supreme Court.

DVD Segment 2: Separate but Equal Has No Place in the Constitution
The Supreme Court confronts segregation’s bastion, the public school system. It reverses 58 years of “separate but equal” policy, ruling that separate can never be equal.

DVD Segment 3: Poor People Deserve Due Process
The phrase “Equal Justice Under the Law” graces the Supreme Court's entrance but in practice, not the nation's system of justice. In sweeping decisions, the Court establishes protections against self-incrimination and guarantees assistance of counsel for those who can’t afford it.

Discussion Questions

1. How did World War II help redefine the United State’s image in the world?
2. Why would Hugo Black's background make him an unlikely champion of civil rights? Why do you think Hugo Black was a Ku Klux Klan member at one time?
3. Why did Chief Justice Warren feel a unanimous decision was essential in Brown v. Board of Education (1954)? What was the Court's biggest challenge in announcing its decision?
4. Explain the rights granted in the Gideon v. Wainwright (1963) and Miranda v. Arizona (1966) cases. What benefits and concerns arise from these decisions?

Activity

- From 1940 to 1972, the Supreme Court expanded the meaning of civil rights and civil liberties. Use the library and the Internet to research Court decisions made during this time that involved issues such as saluting the flag, school busing, self-incrimination, right to counsel, and others. Develop “on the scene” news reports of each Court decision complete with a brief history of the case, interviews with supporters and detractors, and an analysis on the impact of the decisions.
Overview
This program examines the attempt to reverse many of the Warren Court decisions. During the Nixon and Reagan administrations, judicial appointments reshaped the Court into what was believed to be a judicial phalanx for conservative causes. It didn’t quite go that way, as the newly appointed justices often proved to be more independent than ideological. Their decisions on abortion, gun control, and the rights of the accused were grounded in the Constitutional principles of separation of power and states’ rights rather than political agendas.

Themes

DVD Segment 1: Bringing Back Law and Order
Richard Nixon begins to restructure the Court with justices who would renounce the Warren Court decisions. One of his selections, William Rehnquist, has the credentials needed to help reform the Court.

DVD Segment 2: Abortion and Privacy
The Court rules a woman’s decision regarding abortion is between the woman and her doctor, not the state. Roe v. Wade (1973) becomes the law of the land, sparking social controversy and political activism on the part of both liberals and conservatives.

DVD Segment 3: Maintaining Judicial Supremacy
Justice Rehnquist leads the Court in striking down federal laws on gun control and attempting to limit the constitutional protections previously afforded defendants in the Miranda v. Arizona (1966) decision. While seeking to revise the liberal doctrines of the Warren Court however he also consistently supports the broad interpretive authority of the Court.

Discussion Questions
1. Why do you think President Nixon felt he needed to “revolutionize” the Supreme Court?
2. Why was William Rehnquist a good choice to lead this conservative revolution?
4. Why might pro-gun advocates support the United States v. Lopez (1994) decision? What does the Court really say about government’s power to ban gun possession?
5. Why was the Court’s decision in Dickerson v. United States (2000) such a surprise? On what constitutional principle did Chief Justice Rehnquist base his decision?

Activities
- Develop resumes for several fictitious Supreme Court justices covering the nominees’ education, legal experience, and abilities. For ideas review the biographies of the current Supreme Court justices.
- Brainstorm several controversial issues heard by the Supreme Court in the past forty years (examples: abortion, death penalty, flag burning). Develop a survey asking fellow students and/or community members for their views on these issues. Then research the Court’s decisions on each. Write an essay that compares the Court’s decisions with the views of the survey.
The Supreme Court decides cases that affect our government, the fabric of civic life, intimate family matters, and your everyday activities. Many important political controversies now reach the Court, such as President Bush’s decision to use military tribunals for enemy soldiers detained at Guantanamo (Hamdan v. Rumsfeld, 2006) and the contested 2000 presidential election between George W. Bush and Al Gore. The Court also resolves disputes over the public expression of religious beliefs, a woman or minor’s right to an abortion, and when the police can search a home, car, or student locker. Many of your own daily activities are also affected by Supreme Court decisions.

It wasn’t always this way. The Supreme Court was called the “third branch” for a reason. The power of judicial review is not mentioned in the Constitution. Although the Court reviewed and upheld acts of Congress in the early republic, it could muster the bravery to declare only parts of two statutes unconstitutional prior to the Civil War. Presidents like Andrew Jackson huffed and puffed at the idea of the Supreme Court meddling in national affairs such as Indian policy. Only in the twentieth century did the Court begin to regularly check Congress and presidents, when they brazenly reached for more power than the Constitution allowed.

Since World War II, the Supreme Court has turned its attention to the protection of individual rights and liberties for Americans of all ages. We briefly highlight two areas where the Court has expanded rights for adults and young people — speech and criminal proceedings.

The Supreme Court has vigorously protected the free exercise of speech in many settings. During the Cold War, the Court held that federal laws limiting the speech, travel, and jobs of U.S. Communist Party members were unconstitutional. And when two Iowa high school students wore black arm bands with a peace symbol to protest the war in Vietnam and were suspended as a result, the Court ruled in favor of the students, saying that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” (Tinker v. Des Moines, 1969).

Both adults and young people accused of crimes weren’t being treated fairly, the Supreme Court decided in cases beginning in the 1960s. The Court ruled that suspects have a right to remain silent during police interrogation, establishing the now-famous Miranda warnings (Miranda v. Arizona, 1966), and a right to a lawyer even if they could not pay for one (Gideon v. Wainwright, 1963). In the juvenile justice system, the Court decided that young people have most of the same rights as adults in criminal cases (In re Gault, 1967).

Democracy requires a delicate balancing act between the power of the government and the rights of the people. The Supreme Court has held Congress and the states to a high standard regarding the enactment of laws that might infringe on the Bill of Rights. Government certainly has a special interest in protecting young people from dangers you may not see or fully understand. But the Supreme Court reminds us that such protection must not come at the expense of your fundamental constitutional rights and liberties.
Brown v. Board of Education and After

When you arrive at school, you see the diverse faces of your fellow students — white, African-American, Asian, Hispanic, and/or from many parts of the world. Much of this diversity is the result of Brown v. Board of Education (1954). In this famous decision, the Supreme Court held that state laws providing for racially segregated schools violated the Constitution — in particular, the Fourteenth Amendment’s guarantee that states may not deny to any person “the equal protection of the laws.” The Court said that the separate schools blacks and whites were forced to attend were “inherently unequal.” The resources provided to black schools were inferior, and black and white students were denied the opportunity to learn together.

But schools did not immediately change; this decision challenged some of the basic attitudes of Americans at the time. Not until Congress passed the Civil Rights Act of 1964 and other laws that cut off federal funding for segregated schools did integration move forward. Today, some public schools throughout the country have little racial diversity. This is not the result of laws, but of the choices that people make — or are forced by poverty to make — about where to live.

Other Things You Do

Schools have dress codes, but students may wear clothes that express political views (Tinker v. Des Moines, 1969). You have to pay 99 cents for each song downloaded to your iPod, so as to fairly compensate producers and artists for their copyrighted material (MGM v. Grokster, 2005). Your bus takes you to a school within your district, not to another school district far away for the sole purpose of integration (Milliken v. Bradley, 1974). Your school day begins with the pledge of allegiance, but you are not required to stand, salute the flag, or recite the pledge (West Virginia v. Barnette, 1943).

Activity

Interview a parent or grandparent about what kind of school s/he attended. Ask when the family member attended, where, and whether the school was public or private. Was the school integrated or segregated? If the school was integrated, how did students from different races get along? Did students respect and learn from one another? If it was segregated, how did they feel about this? Write up your interview in a one-page report. Be prepared to share your report in small groups or before the entire class.
Conduct an inventory of religious signs and symbols in your city or town, utilizing pen, paper, and (where available) a camera. Pay special attention to government buildings and public property, as well as to your school. Think about seasons of the year, such as the winter holidays, when special religious reminders such as holiday lights, Christmas trees, menorahs, and other artifacts might be displayed. Keep a written journal of your findings and impressions and bring them to class for discussion and display.
**Reno v. A.C.L.U. and the Internet**

When you search the Internet for homework and pleasure, consider the benefits along with the potential dangers that worry parents and lawmakers. In 1996, Congress passed the Communications Decency Act (CDA), which outlawed the distribution of "obscene, indecent, or patently offensive" materials over the Internet to children under 18. On behalf of journalists and others, the American Civil Liberties Union challenged the CDA. In *Reno v. A.C.L.U.* (1997), the Supreme Court declared the law unconstitutional, because it restricted types of speech protected by the First Amendment (only obscenity and pornography are not protected). The Court said the law suppressed speech that adults have the right to send and receive.

But Congress was not satisfied and in 1998 it passed the Children’s Online Protection Act. This law required criminal penalties for commercial Web sites displaying sexually explicit material that could be viewed by children under 17. More legal challenges came, and in *Ashcroft v. A.C.L.U.* (2004) the Supreme Court said that this law was a "likely" violation of the First Amendment. The Court recommended that parents take the lead in trying to protect children from offensive materials on the Internet, just as it encouraged libraries to do through the use of software filters (*U.S. v. American Library Association*, 2003).

**Other Things You Do**

The Federal Communications Commission regulates what you hear on the radio or watch on network television, to prevent the broadcast of indecent or profane programs likely to reach children (*FCC v. Pacifica Foundation*, 1978). The government can pass laws limiting the hours that you and other young people under 18 may work (*United States v. Darby*, 1941). The Boy Scouts are a private organization that has the right to fire a scout leader because of the leader’s sexual orientation (*Boy Scouts of America v. Dale*, 2000). You have the right to be out on the street and associate with other people. Anti-loitering ordinances, even those designed to reduce gang activity, are unconstitutional (*Chicago v. Morales*, 1999). However, states may pass night curfew laws for children under 18, so long as there are exceptions for working and exercising political expression protected by the First Amendment (the Supreme Court has declined to review curfew challenges).

**Activity**

Check out the policies and practices of your school, local library, and your parents regarding the use of the Internet by young people under 18. What restrictions, if any, are placed on access or Internet use? Are there different policies for elementary school children and high school students? In your experience, how effectively are these policies enforced? Write up a revised, one-page set of guidelines for Internet use at your school or library that considers these issues as well as your own views.
ORGANIZATIONS
American Bar Association
Division for Public Education
321 N. Clark Street
Chicago, IL 60610
800.285.2221
www.abanet.org/public/schoolshome.html

Justice Learning/Justice Talking
c/o Justice Talking
Annenberg Public Policy Center
Suite 200
3535 Market Street
Philadelphia, PA 19104
215-573-8919
www.justicetalking.org
www.justicelarning.org

National Association of Urban Debate Leagues
332 S. Michigan Avenue
Suite 500
Chicago, IL 60604
312-427-8101
www.urbandebate.org

National Constitution Center
525 Arch St, Independence Mall
Philadelphia, PA 19106
215.409.6600
www.constitutioncenter.org

Street Law
1010 Wayne Avenue
Suite 870
Silver Spring, Maryland 20910
301.589.1130
www.streetlaw.org

The Supreme Court Historical Society
Opperman House
224 East Capitol Street, NE
Washington, DC 20003
202-543-0400
www.supremecourthistory.org

BOOKS


ARTICLES

