

A SYMPOSIUM PRÉCIS

*Thomas E. Baker**

In commemoration of the Bicentennial of the Constitution in 1987, Congress established a permanent endowment at Drake University Law School "to encourage graduate study of the American Constitution, its roots, its formation, its principles, and its development."¹ The Constitutional Law Center's programs and activities seek to broaden and deepen the understanding of the Constitution. Our Belin Lamson McCormick Zumbach Flynn Constitutional Law Symposium is one of the highlights of the academic year. It is named to show our appreciation to the sponsoring law firm for its generous support of the Symposium.

This year's Symposium, *Judicious Choices: Nominating and Confirming Supreme Court Justices*, was held on Saturday, March 2, 2002. The Constitution provides for an exercise in the separation of powers in characteristically simple and straightforward terms: "The President . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court . . . "² Writing in *The Federalist Papers*, Alexander Hamilton insisted at the time that "It is not easy to conceive a plan better calculated than this to promote a judicious choice of men for filling the offices of the Union . . . "³ These procedures have been followed to yield the 108 Justices who have sat on the High Court.⁴

We invited two of the most knowledgeable and original thinkers on the selection of Supreme Court Justices—two scholars who will be on the Senate Judiciary Committee's witness list—to inform us and to provoke us to contemplate how the constitutional processes have worked and how they should be expected to work. In short, we set out to consider the "is" and the "ought" of choosing Supreme Court Justices.

This is a timely topic. It has been seven years since the last appointment to the Supreme Court—the second longest span in history—and the vacancy-watch

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1. 20 U.S.C. § 4501 (1994).
2. U.S. Const., art. II, § 2.
3. THE FEDERALIST PAPERS at 455 (Clinton Rossiter, ed., 1961).
4. The Appendix to this Précis provides a summary list of those who have been confirmed and have served on the Supreme Court of the United States.

has intensified as of late. Indeed, Court-watchers are on full alert, busy speculating who might leave and whom might be selected to the High Court.⁵

This is a timeless topic, as well. Now is the time to contemplate the selection process for Supreme Court Justices, free from the partisan posturing and without the political pressure of an actual nomination and confirmation. It has been fourteen years since the name "Bork" was turned into a verb of attack.⁶ We need to look to the past for understanding. We need to take the long view on such an important matter. We need to contemplate our higher purposes. Now is the time to ask what "We the People" have a constitutional right to expect from the President and the Senate.

The questions and concerns almost suggest themselves.⁷ How ought the President approach the constitutional task of nomination? How ought the Senate approach its constitutional responsibility to give advice and consent? Are there lessons to be learned from appointments too recent to be called history? What of so-called "litmus tests"? Is it proper to inquire into judicial ideology? What should we expect from a nominee to qualify for a lifetime judicial appointment? What is the proper role for the press? How ought interest groups, organizations and the general public participate? How well has the selection process performed in the past? What sort of Justices does it yield? Taking the long view, is Alexander Hamilton still right or—with the benefit of two hundred years of hindsight—can we imagine a better plan to make judicious choices in appointing Supreme Court Justices? Ultimately, we must ask and answer these questions against the realistic recognition of the transformative role the Supreme Court can play in our modern polity.

The word "symposium" has a Greek origin, of course, and described a convivial meeting for drinking, music, and intellectual discussion among the ancient Greeks.⁸ We had no retsina wine or Bouzouki music. But we did have a wonderful intellectual discussion with our two presenters, whose many accomplishments and relevant experiences were amply demonstrated:

5. For a comprehensive compilation of the pundits' predictions, see generally *Jurist: the Legal Education Network, Honorable Mentions* at <http://jurist.law.pitt.edu/mentions.htm>.

6. RANDOM HOUSE HISTORICAL DICTIONARY OF AMERICAN SLANG 249 (J.E. Lighter, ed., 1994) ("bork v. . . . Pol. To attack (a candidate or the like) systematically, esp. in the media."). See generally Thomas E. Baker, *Bob Borks Amerika*, 44 U.C.L.A. L. REV. 1185, 1187-88 (1997).

7. The literature is extensive. See, e.g., HENRY J. ABRAHAM, JUSTICES, PRESIDENTS, AND SENATORS—A HISTORY OF THE U.S. SUPREME COURT APPOINTMENTS FROM WASHINGTON TO CLINTON (1999); MARK SILVERSTEIN, JUDICIOUS CHOICES—THE NEW POLITICS OF SUPREME COURT CONFIRMATIONS (1994); LAURENCE H. TRIBE, GOD SAVE THIS HONORABLE COURT—HOW THE CHOICE OF SUPREME COURT JUSTICES SHAPES OUR HISTORY (1985); NORMAN VIEIRA & LEONARD GROSS, SUPREME COURT APPOINTMENTS—JUDGE BORK AND THE POLITICALIZATION OF SENATE CONFIRMATIONS (1998); DAVID ALISTAIR YALOF, PURSUIT OF JUSTICES—PRESIDENTIAL POLITICS AND THE SELECTION OF SUPREME COURT NOMINEES (1999).

8. THE AMERICAN HERITAGE COLLEGE DICTIONARY 1375 (3d ed. 1993).

Stephen L. Carter: Professor Carter is the William Nelson Cromwell Professor, Yale Law School. A recent review in the *New York Times* called him one of the nation's leading public intellectuals, and, in 1994, he was selected by *Time* magazine as one of fifty leaders for the new millennium. He is the author of *The Confirmation Mess: Cleaning Up the Federal Appointments Process* (1994). He was a member of the National Commission on Judicial Discipline and Removal from 1991-93. He served as law clerk to Justice Thurgood Marshall, Supreme Court of the United States and to Judge Spottswood W. Robinson, III, U.S. Court of Appeals for the District of Columbia. He was an associate with Shea & Gardner, Washington, D.C., and has taught at Yale since 1982. Professor Carter's writings have won praise from across the political spectrum. His most recent book, *God's Name in Vain: The Wrongs and Rights of Religion in Politics*, was published in 2000 to admiring reviews. His 1993 book, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion*, was lauded by commentators as diverse as Anna Quindlen, William F. Buckley, and President Bill Clinton. His 1998 book, *Civility: Manners, Morals, and the Etiquette of Democracy*, was praised by, among others, Marian Wright Edelman, the late John Cardinal O'Connor, and former Senator Bill Bradley. His other books include *The Dissent of the Governed: A Meditation on Law, Religion, and Loyalty* (1998); *Integrity* (1996); and *Reflections of an Affirmative Action Baby* (1991). His first novel, *The Emperor of Ocean Park*, will be published in 2002 by Knopf. Professor Carter is a member of the American Law Institute and a fellow of the American Academy of Arts and Sciences. He is a trustee of the Aspen Institute, where he moderates seminars for executives on values-based leadership. He has received honorary degrees from six schools, among them Notre Dame, Colgate, and the Virginia Theological Seminary. He was the first non-theologian to receive the prestigious Louisville-Gravemeyer Award in religion. He publishes widely in law reviews and the popular press, and has been a frequent guest on such television shows as *Nightline*, *The News Hour with Jim Lehrer*, and *Face the Nation*. Professor Carter teaches courses on constitutional law; contracts; intellectual property; law, secrets and lying; and law and religion. He received his B.A. from Stanford University and his J.D. from the Yale Law School.

Michael J. Gerhardt: Professor Gerhardt is the Arthur B. Hanson Chair in Constitutional Law at The College of William & Mary, Marshall-Wythe School of Law. He is one of the nation's leading and most visible constitutionalists. His most recent book is *The Federal Appointments Process—A Constitutional Analysis* (2000). He served as Special Consultant to both the White House Counsel's Office for the Confirmation

of Justice Stephen Breyer and the National Commission on Judicial Discipline and Removal. During President Clinton's impeachment proceedings, he consulted widely with members of Congress and the media. Professor Gerhardt had the distinction of being the only joint witness to testify before the House Judiciary Committee in its special hearing on the scope of impeachable offenses and served throughout most of the proceedings as CNN's designated expert on the federal impeachment process. He taught at William and Mary from 1990-1996 and rejoined the faculty in 1998. He clerked for Judge Gilbert Merritt, U.S. Court of Appeals for the Sixth Circuit and Chief Judge Robert McRae, Jr., U.S. District Court for the Western District of Tennessee. He practiced law at Miller, Cassidy, Larroca & Lewin in Washington, D.C., and Bondurant, Miller, Hishon & Stephonson in Atlanta, Georgia. He served as Dean of Case Western University School of Law, taught at Wake Forest University School of Law, and was a visiting professor at Cornell and Duke University law schools. He also is the author of *The Federal Impeachment Process: A Constitutional & Historical Analysis* (1996) and the coauthor of *Constitutional Theory: Arguments and Perspectives* (2d ed. 2000). He has published articles in the Harvard Journal of Law and Public Policy, The Green Bag 2d and the law reviews of: Georgetown, Chicago-Kent, University of Chicago, DePaul, Boston University, George Washington, Southern California, Case Western Reserve University, Cornell, Duke, Northwestern, Vanderbilt, and Texas, among others. He teaches constitutional law; Congress and the presidency seminar; and federal courts. In addition, he has testified before the Senate on judicial and executive appointments, including most recently, John Ashcroft as Attorney General. Professor Gerhardt earned a B.A. from the Yale University, a M.Sc. from the London School of Economics and a J.D. from the University of Chicago.

This is the appropriate opportunity to reconcile earlier announcements and promotions of the Symposium with this published version "for the record." As originally announced, the program included a presentation from the Honorable Viet D. Dinh, Assistant Attorney General for the Office of Legal Policy, United States Department of Justice, who is the Executive Branch official in the Bush Administration responsible for vetting judicial nominees. But winter weather conditions prevented Assistant Attorney General Dinh from attending the March 2 Symposium in person. Then, for reasons beyond the control of either the *Drake Law Review* or the Constitutional Law Center, we did not obtain a written submission from the Assistant Attorney General. We regret each of these developments. However, we are pleased and proud to present the reader with a lasting record of what was an outstanding live Symposium with significant enhancements in these pages. Our hope is that this issue of the *Drake Law*

Review will contribute to the national debate on this most important subject of selecting Supreme Court Justices and that it will help inform decision makers in the Executive Branch and the Senate.

Supreme Court Justice Robert Jackson once said, "We are not final because we are infallible but we are infallible only because we are final."⁹ In his paper, Professor Carter seems to be worried that the Supreme Court has been transformed into a constitutional *curia* of nine Popes pretending to infallibility and claiming to speak *ex cathedra* in matters of constitutional faith and morals.¹⁰ This has resulted in a weakening of "We the People's" capacity for serious moral conversations and political self-determination. Given our Court-centeredness, the selection process of Supreme Court justices has become the be-all and end-all for the President, the Senate, interest groups, the press and the public. Thus, the nomination and confirmation process is still pretty much a "mess."¹¹ For the Symposium, he borrows a page from C.S. Lewis and *The Screwtape Letters* to teach us the lesson of what has gone wrong and how it might be righted.¹²

It is impossible to have a conversation about constitutional law without using a metaphor.¹³ Be reminded of some of the more common ones: "wall of separation," "color-blindness," "balancing," "standing," "states as laboratories," *et cetera*. Professor Gerhardt explores the significance of the fact that the most popular metaphor for describing the process of selecting Supreme Court Justices is "war."¹⁴ Being a student of history and a scholar of the nomination and confirmation process,¹⁵ he concludes that war is not inevitable but the potential for war is immense. He offers models of conflict between the President and the Senate as well as models when conflict has been avoided. He explores some implications from the rhetoric of war for Presidents and Senates and future nominees.

We ended the wintry morning of the Symposium with a Roundtable discussion that afforded Professor Carter and Professor Gerhardt the opportunity

9. Brown v. Allen, 344 U.S. 443, 540 (1953) (Jackson, J., concurring).

10. Stephen L. Carter, *A Devilish Look at the Confirmation Process*, 50 DRAKE L. REV. 369 (2002).

11. STEPHEN L. CARTER, THE CONFIRMATION MESS—CLEANING UP THE FEDERAL APPOINTMENTS PROCESS (1994).

12. C.S. LEWIS, *THE SCREWTAPE LETTERS* (1943).

13. See, e.g., Thomas Morawetz, *Metaphor and Method: How Not to Think About Constitutional Interpretation*, 27 CONN. L. REV. 227 (1994); Gary Peller, *The Metaphysics of American Law*, 73 CAL. L. REV. 1151 (1985).

14. Michael J. Gerhardt, *Supreme Court Selection as War*, 50 DRAKE L. REV. 393 (2002).

15. MICHAEL J. GERHARDT, THE FEDERAL APPOINTMENTS PROCESS—A CONSTITUTIONAL & HISTORICAL ANALYSIS (2000).

to hear comments and respond to questions from the Symposium participants.¹⁶ This animated discussion demonstrated the depth of interest and the intensity of opinion that runs through the body politic on matters of judicial selection. We all came away with some better understanding of what is at stake in a Supreme Court appointment and how and why the players on the stage perform the way they do as we watch the constitutional drama unfold on C-SPAN. We further benefited from the wisdom and insights of Professor Carter and Professor Gerhardt as they went back-and-forth with each other to agree and disagree on the finer points of the history and politics of judicial selection.

The timeliness and timelessness of this year's Symposium topic are demonstrated by the fact that the Committee of the Judiciary Subcommittee on Administrative Oversight and the Courts recently held two significant hearings that we reproduce for the interested reader. These hearing materials—published for the first time in print here—add layers of contemporary understanding to the two-century-old process of selecting Supreme Court Justices. Here are the thoughts and views of some of the key players in the Senate today along with the commentary and analysis of some of the leading lights from the academy. These testimonies will echo throughout upcoming episodes of the nomination and confirmation process. These hearings and these themes certainly resonate with the Symposium on *Judicious Choices* led by Professor Carter and Professor Gerhardt, and, therefore, it is altogether fitting and proper to incorporate them into the published version of the Symposium.

On June 26, 2001, the Subcommittee held a hearing on *Should Ideology Matter?: Judicial Nominations 2001*. Senator Charles E. Schumer (Democrat-New York), Senator Orin G. Hatch (Republican-Utah) and Senator Mitch McConnell (Republican-Kentucky) delivered statements as members of the Judiciary Committee. The witness list for the hearing included, in order of appearance: Lloyd Cutler, Constitutional Project Courts Initiative Co-Chair and former White House Counsel; C. Boyden Gray, former White House Counsel and member, Wilmer, Cutler & Pickering, Washington, D.C.; Laurence H. Tribe, the Ralph S. Tyler, Jr. Professor of Constitutional Law, Harvard Law School; Stephen B. Presser, the Raoul Berger Professor of Legal History, Northwestern University School of Law; Cass Sunstein, the Karl N. Llewellyn Distinguished Service Professor of Jurisprudence, University of Chicago Law School; Eugene Volokh, Professor, the UCLA School of Law; Marcia Greenberger, Co-president, National Women's Law Center, Washington, D.C.; Clint Bolick, Vice-President and Director of Litigation, Institute for Justice, Washington, D.C.

16. *A Roundtable Discussion with Stephen L. Carter & Michael J. Gerhardt*, 50 DRAKE L. REV. 411 (Thomas E. Baker moderator & ed., 2002).

On September 4, 2001, the Subcommittee held a second hearing on *The Senate's Role in the Nomination and Confirmation Process: Whose Burden?* The witness list for the hearing included, in order of appearance: Paul Simon, former United States Senator (Democrat-Illinois); Sanford Levinson, the W. St. John Garwood and W. St. John Garwood, Jr. Regents Chair in Law, University of Texas Law School and Professor, Department of Government, University of Texas; Ronald D. Rotunda, the Albert E. Jenner, Jr. Professor of Law, University of Illinois College of Law and Visiting Professor of Law, George Mason University School of Law; Judith Resnik, the Arthur Liman Professor, the Yale Law School; Douglas Kmiec, Dean and St. Thomas More Professor of Law, Catholic University of America Law School; and Mark Tushnet, Carmack Waterhouse Professor of Constitutional Law, Georgetown University Law Center.

In conclusion, there are many people to whom I owe thanks. My first thank you is to the members of the law firm of Belin Lamson McCormick Zumbach Flynn whose generous sponsorship made the Symposium possible. I particularly appreciate the encouragement and support of Roger Stetson, a member of the firm and a valued friend of the law school. Thank you to Linda Quinn for her able administrative assistance. I also want to thank Jane Baker, Jessica Braeger, Rachel Exline, Karen Hermann, Bill Miller, Keith Miller, Cheryl Murad and Karla Westberg for their help. I am especially grateful to the members of the United States Senate and the witnesses before the Senate Committee on the Judiciary Subcommittee on Administrative Oversight of the Courts for their willingness to have their statements reproduced and included in the published Symposium issue. My thanks to the members of the Drake Law Review—especially Editor in Chief Brad Perri and Executive Editor Jessica L. Braeger—for their diligent work towards publishing the Symposium.

Finally, exercising the prerogative of the Director of the Constitutional Law Center, I note that this is the third and the last Symposium I will lead at Drake University Law School.¹⁷ It has been a good run, if I say so myself. In the Fall Semester 2002, I will join the founding faculty at the newly established College of Law at Florida International University. That will be an exciting "hello," but leaving the faculty and students at Drake will be a sad "good bye" for me.

17. See generally Thomas E. Baker, *A Symposium Précis*, 50 DRAKE L. REV. 359 (2002) (*Judicious Choices: Nominating and Confirming Supreme Court Justices*); Thomas E. Baker, *A Symposium Précis*, 49 DRAKE L. REV. 391 (2001) (*The Constitution and the Internet*); Thomas E. Baker, *A Symposium Précis*, 48 DRAKE L. REV. 433 (2000) (*The Constitution Inside the Schoolhouse Gate: Student Rights Thirty Years After Tinker v. Des Moines School District*).

APPENDIX

Members of the Supreme Court of the United States

| NAME | State App't From | Appointed by President | Judicial Oath Taken | Date Service Terminated |
|------------------------------|---------------------|---------------------------|------------------------|----------------------------|
| Chief Justices | | | | |
| Jay, John | New York | Washington | (a) October 19, 1789 | June 29, 1795 |
| Rutledge, John | South Carolina | Washington | August 12, 1795 | December 15, 1795 |
| Ellsworth, Oliver | Connecticut | Washington | March 8, 1796 | December 15, 1800 |
| Marshall, John | Virginia | Adams, John | February 4, 1801 | July 6, 1835 |
| Taney, Roger Brooke | Maryland | Jackson | March 28, 1838 | October 12, 1864 |
| Chase, Salmon Portland | Ohio | Lincoln | December 15, 1864 | May 7, 1873 |
| Waite, Morrison Remick | Ohio | Grant | March 4, 1874 | March 23, 1888 |
| Fuller, Melville Weston | Illinois | Cleveland | October 8, 1888 | July 4, 1910 |
| White, Edward Douglass | Louisiana | Taft | December 19, 1910 | May 18, 1921 |
| Taft, William Howard | Connecticut | Harding | July 11, 1921 | February 3, 1930 |
| Hughes, Charles Evans | New York | Hoover | February 24, 1930 | June 30, 1941 |
| Stone, Harlan Fiske | New York | Roosevelt, F. | July 3, 1941 | April 22, 1946 |
| Vinson, Fred Moore | Kentucky | Truman | June 24, 1948 | September 8, 1953 |
| Warren, Earl | California | Eisenhower | October 5, 1953 | June 23, 1969 |
| Burger, Warren Earl | Virginia | Nixon | June 23, 1969 | September 26, 1986 |
| Rehnquist, William H. | Virginia | Reagan | September 26, 1986 | |
| Associate Justices | | | | |
| Rutledge, John | South Carolina | Washington | (a) February 15, 1790 | March 5, 1791 |
| Cushing, William | Massachusetts | Washington | (c) February 2, 1790 | September 18, 1810 |
| Wilson, James | Pennsylvania | Washington | (b) October 5, 1790 | August 21, 1798 |
| Blair, John | Virginia | Washington | (c) February 2, 1790 | October 25, 1795 |
| Iredell, James | North Carolina | Washington | (b) May 12, 1790 | October 20, 1798 |
| Johnson, Thomas | Maryland | Washington | (a) August 6, 1792 | January 16, 1793 |
| Paterson, William | New Jersey | Washington | (a) March 11, 1793 | September 9, 1806 |
| Chase, Samuel | Maryland | Washington | February 4, 1796 | June 19, 1811 |
| Washington, Bushrod | Virginia | Adams, John | (c) February 4, 1799 | November 26, 1829 |
| Moore, Alfred | North Carolina | Adams, John | (a) April 21, 1800 | January 26, 1804 |
| Johnson, William | South Carolina | Jefferson | May 7, 1804 | August 4, 1834 |
| Livingston, Henry Brockholst | New York | Jefferson | January 20, 1807 | March 18, 1823 |
| Todd, Thomas | Kentucky | Jefferson | (a) May 4, 1807 | February 7, 1826 |
| Duvall, Gabriel | Maryland | Madison | (a) November 23, 1811 | January 14, 1835 |
| Story, Joseph | Massachusetts | Madison | (c) February 3, 1812 | September 10, 1845 |
| Thompson, Smith | New York | Monroe | (b) September 1, 1823 | December 18, 1843 |
| Trimble, Robert | Kentucky | Adams, J. Q. | (a) June 16, 1826 | August 25, 1828 |
| McLean, John | Ohio | Jackson | (c) January 11, 1830 | April 4, 1861 |
| Baldwin, Henry | Pennsylvania | Jackson | January 18, 1830 | April 21, 1844 |
| Wayne, James Moore | Georgia | Jackson | January 14, 1835 | July 5, 1867 |
| Barbour, Philip Pendleton | Virginia | Jackson | May 12, 1836 | February 25, 1841 |
| Catron, John | Tennessee | Van Buren | May 1, 1837 | May 30, 1865 |
| McKinley, John | Alabama | Van Buren | (c) January 9, 1838 | July 19, 1862 |
| Daniel, Peter Vivian | Virginia | Van Buren | (c) January 10, 1842 | May 31, 1860 |
| Nelson, Samuel | New York | Tyler | February 27, 1846 | November 28, 1872 |
| Woodbury, Levi | New Hampshire | Polk | (b) September 23, 1846 | September 4, 1851 |
| Grier, Robert Cooper | Pennsylvania | Polk | August 10, 1846 | January 31, 1870 |
| Curtis, Benjamin Robbins | Massachusetts | Fillmore | (b) October 10, 1851 | September 30, 1857 |
| Campbell, John Archibald | Alabama | Pierce | (c) April 11, 1853 | April 30, 1861 |
| Clifford, Nathan | Maine | Buchanan | January 21, 1858 | July 25, 1881 |
| Swayne, Noah Haynes | Ohio | Lincoln | January 27, 1862 | January 24, 1881 |
| Miller, Samuel Freeman | Iowa | Lincoln | July 21, 1862 | October 13, 1890 |
| Davis, David | Illinois | Lincoln | December 10, 1862 | March 4, 1877 |
| Field, Stephen Johnson | California | Lincoln | May 20, 1863 | December 1, 1897 |
| Strong, William | Pennsylvania | Grant | March 14, 1870 | December 14, 1880 |
| Bradley, Joseph P. | New Jersey | Grant | March 23, 1870 | January 22, 1882 |
| Hunt, Ward | New York | Grant | January 9, 1878 | January 27, 1882 |
| Harlan, John Marshall | Kentucky | Hayes | December 10 1877 | October 14, 1911 |
| Woods, William Burnham | Georgia | Hayes | January 5, 1881 | May 14, 1887 |
| Matthews, Stanley | Ohio | Garfield | May 17, 1881 | March 22, 1889 |
| Gray, Horace | Massachusetts | Arthur | January 9, 1882 | September 15, 1902 |
| Blatchford, Samuel | New York | Arthur | April 3, 1882 | July 7, 1893 |
| Lamar, Lucius Quintus C. | Mississippi | Cleveland | January 18, 1888 | January 23, 1893 |
| Brewer, David Josiah | Kansas | Harrison | January 6, 1890 | March 28, 1910 |
| Brown, Henry Billings | Michigan | Harrison | January 5, 1891 | May 28, 1906 |
| Shiras, George, Jr. | Pennsylvania | Harrison | October 10, 1892 | February 23, 1903 |

| | | | | |
|---------------------------|----------------|---------------|--------------------|---------------------|
| Jackson, Howell Edmunds | Tennessee | Harrison | March 4, 1893 | August 8, 1885 |
| White, Edward Douglass | Louisiana | Cleveland | March 12, 1894 | December 18, 1910* |
| Peckham, Rufus Wheeler | New York | Cleveland | January 5, 1896 | October 24, 1909 |
| McKenna, Joseph | California | McKinley | January 26, 1898 | January 5, 1925 |
| Holmes, Oliver Wendell | Massachusetts | Roosevelt, T. | December 8, 1902 | January 12, 1932 |
| Day, William Rufus | Ohio | Roosevelt, T. | March 2, 1903 | November 13, 1922 |
| Moody, William Henry | Massachusetts | Roosevelt, T. | December 17, 1906 | November 20, 1910 |
| Lurton, Horace Harmon | Tennessee | Taft | January 3, 1910 | July 12, 1914 |
| Hughes, Charles Evans | New York | Taft | October 10, 1910 | June 10, 1916 |
| Van Devanter, Willis | Wyoming | Taft | January 3, 1911 | June 2, 1937 |
| Lamar, Joseph Rucker | Georgia | Taft | January 3, 1911 | January 2, 1916 |
| Pitney, Mahlon | New Jersey | Taft | March 18, 1912 | December 31, 1922 |
| McReynolds, James Clark | Tennessee | Wilson | October 12, 1914 | January 31, 1941 |
| Brandeis, Louis Dembitz | Massachusetts | Wilson | June 5, 1916 | February 13, 1939 |
| Clarke, John Hessian | Ohio | Wilson | October 9, 1916 | September 18, 1922 |
| Sutherland, George | Utah | Harding | October 2, 1922 | January 17, 1938 |
| Butler, Pierce | Minnesota | Harding | January 2, 1923 | November 16, 1939 |
| Sanford, Edward Terry | Tennessee | Harding | February 19, 1923 | March 8, 1930 |
| Stone, Harlan Fiske | New York | Coolidge | March 2, 1925 | July 2, 1941* |
| Roberts, Owen Josephus | Pennsylvania | Hoover | June 2, 1930 | July 31, 1945 |
| Cardozo, Benjamin Nathan | New York | Hoover | March 14, 1932 | July 9, 1938 |
| Black, Hugo Lafayette | Alabama | Roosevelt, F. | August 18, 1937 | September 17, 1971 |
| Reed, Stanley Forman | Kentucky | Roosevelt, F. | January 31, 1938 | February 25, 1957 |
| Frankfurter, Felix | Massachusetts | Roosevelt, F. | January 30, 1939 | August 28, 1962 |
| Douglas, William Orville | Connecticut | Roosevelt, F. | April 17, 1939 | November 12, 1975 |
| Murphy, Frank | Michigan | Roosevelt, F. | February 5, 1940 | July 18, 1949 |
| Byrnes, James Francis | South Carolina | Roosevelt, F. | July 8, 1941 | October 8, 1942 |
| Jackson, Robert Houghwout | New York | Roosevelt, F. | July 11, 1941 | October 9, 1954 |
| Rutledge, Wiley Blount | Iowa | Roosevelt, F. | February 15, 1943 | September 10, 1949 |
| Burton, Harold Hitz | Ohio | Truman | October 1, 1945 | October 18, 1958 |
| Clark, Tom Campbell | Texas | Truman | August 24, 1949 | June 12, 1967 |
| Minton, Sherman | Indiana | Truman | October 12, 1949 | October 15, 1956 |
| Harlan, John Marshall | New York | Eisenhower | March 28, 1953 | September 23, 1971 |
| Brennan, William J., Jr. | New Jersey | Eisenhower | October 16, 1956 | July 20, 1990 |
| Whittaker, Charles Evans | Missouri | Eisenhower | March 25, 1957 | March 31, 1963 |
| Stewart, Potter | Ohio | Eisenhower | October 14, 1958 | July 3, 1981 |
| White, Byron Raymond | Colorado | Kennedy | April 16, 1962 | June 28, 1993 |
| Goldberg, Arthur Joseph | Illinois | Kennedy | October 1, 1962 | July 25, 1965 |
| Forts, Abe | Tennessee | Johnson, L. | October 4, 1965 | May 14, 1969 |
| Marshall, Thurgood | New York | Johnson, L. | October 2, 1967 | October 1, 1991 |
| Blackmun, Harry A. | Minnesota | Nixon | June 8, 1970 | August 3, 1984 |
| Powell, Lewis F., Jr. | Virginia | Nixon | January 7, 1972 | June 26, 1987 |
| Rehnquist, William H. | Arizona | Nixon | January 7, 1972 | September 26, 1986* |
| Stevens, John Paul | Illinois | Ford | December 19, 1975 | |
| O'Connor, Sandra Day | Arizona | Reagan | September 25, 1981 | |
| Scalia, Antonin | Virginia | Reagan | September 28, 1986 | |
| Kennedy, Anthony M. | California | Reagan | February 18, 1988 | |
| Souter, David H. | New Hampshire | Bush | October 9, 1990 | |
| Thomas, Clarence | Georgia | Bush | October 23, 1991 | |
| Ginsburg, Ruth Bader | New York | Clinton | August 10, 1993 | |
| Breyer, Stephen G. | Massachusetts | Clinton | August 3, 1994 | |

Notes: The acceptance of the appointment and commission by the appointee, as evidenced by the taking of the prescribed oaths, is here implied; otherwise the individual is not carried on this list of the Members of the Court. Examples: Robert Hanson Harrison is not carried, as a letter from President Washington of February 9, 1790 states Harrison declined to serve. Neither is Edwin M. Stanton who died before he could take the necessary steps toward becoming a Member of the Court. Chief Justice Rutledge is included because he took his oaths, presided over the August Term of 1795, and his name appears on two opinions of the Court for that Term.

The date a Member of the Court took his/her Judicial oath (the Judiciary Act provided "That the Justices of the Supreme Court, and the district judges, before they proceed to execute the duties of their respective offices, shall take the following oath . . .") is here used as the date of the beginning of his/her service, for until that oath is taken he/she is not vested with the prerogatives of the office. The dates given in this column are for the oaths taken following the receipt of the commissions. Dates without small-letter references are taken from the Minutes of the Court or from the original oath which are in the Curator's collection. The small letter (a)

denotes the date is from the Minutes of some other court; (b) from some other unquestionable authority; (c) from authority that is questionable, and better authority would be appreciated.

[The foregoing was taken from a booklet prepared by the Supreme Court of the United States, and published with funding from the Supreme Court Historical Society.]

*Elevated.