

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-Grawemeyer 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 & Stephenson 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, 1836	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 19, 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, 1946	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 13, 1810
Wilson, James	Pennsylvania	Washington	(b) October 5, 1789	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, 1799
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, 1852
Daniel, Peter Vivian	Virginia	Van Buren	(c) January 10, 1842	May 31, 1860
Nelson, Samuel	New York	Tyler	February 27, 1845	November 28, 1872
Woodbury, Levi	New Hampshire	Polk	(b) September 23, 1845	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 30, 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, 1892
Hunt, Ward	New York	Grant	January 8, 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, 1895
White, Edward Douglass	Louisiana	Cleveland	March 12, 1894	December 18, 1910*
Peckham, Rufus Wheeler	New York	Cleveland	January 6, 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
Fitney, Mahlon	New Jersey	Taft	March 18, 1912	December 31, 1922
McReynolds, James Clark	Tennessee	Wilson	October 12, 1914	January 31, 1941
Brandeis, Louis Dembits	Massachusetts	Wilson	June 5, 1916	February 13, 1939
Clarke, John Hemin	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 Flake	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 19, 1937	September 17, 1971
Reed, Stanley Foxman	Kentucky	Roosevelt, F.	January 31, 1938	February 25, 1967
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 19, 1949
Byrnes, James Francis	South Carolina	Roosevelt, F.	July 8, 1941	October 3, 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 13, 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, 1955	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, 1962
Stewart, Potter	Ohio	Eisenhower	October 14, 1958	July 3, 1961
White, Byron Raymond	Colorado	Kennedy	April 16, 1962	June 28, 1993
Goldberg, Arthur Joseph	Illinois	Kennedy	October 1, 1962	July 25, 1965
Fortas, 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 26, 1988	
Kennedy, Anthony M.	California	Reagan	February 18, 1988	
Souter, David H.	New Hampshire	Bush	October 8, 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.