



Engaging Youth In Democracy™

SELECTING A CHIEF JUSTICE FOR THE UNITED
STATE SUPREME COURT: THE SENATE
CONFIRMATION HEARINGS OF JUDGE JOHN
ROBERTS, JR.

A SPECIAL UNIT PREPARED FOR SECONDARY CLASSROOMS BY
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Selecting a Supreme Court Justice

Overview

On September 5, President Bush announced that Judge John G. Roberts, Jr. is his selection for Chief Justice of the United States Supreme Court in light of the death of Chief Justice William H. Rehnquist.

Retiring Associate Justice Sandra Day O'Connor, the first woman to serve on the Court, agreed to continue to serve on the bench until President Bush nominates and the Senate confirms her successor. When the president selected Judge Roberts to in July, 2005, to replace Justice O'Connor, he said of the process, "...it is one of the most consequential decisions a president makes."

This unit focuses on the Senate confirmation hearings of Judge Roberts. It offers strategies for helping students understand the workings of the confirmation process for nominees to the Supreme Court by monitoring, observing, and even contributing to the process.

Objectives

- Introduce a Constitutional context for the powers and responsibilities of the President and the Senate in the confirmation process of nominees to the Supreme Court of the United States
- Decide the types of issues and questions a Supreme Court nominee should be asked to address in confirmation hearings
- Promote the skills of asking questions and gathering information to make a decision
- Provide tools and resources for observing and assessing the confirmation hearings
- Offer opportunities for citizen action by students during the confirmation process

Materials

Reading: The Senate Confirmation Hearings on Judge Roberts

Activity: Issues and Questions for Judge Roberts

Handout A: Selected U.S. Supreme Court Web Sites

Handout B1: Interview with Sen. Arlen Specter (R-PA)

Handout B2: Interview with Sen. Patrick Leahy (D-VT)

Handout C: Issues and Questions Chart

Handout D: Reflection on the Confirmation Process

Extension Activity 1: Monitoring the Roberts Confirmation

Extension Activity 2: Expressing Your Opinion to the U.S. Senate

Selecting a Supreme Court Justice: Resources

Reading: The Senate Confirmation Hearing on Judge Roberts

On September 5, President Bush announced that Judge John G. Roberts, Jr. is his selection for Chief Justice of the United States Supreme Court in light of the death of Chief Justice William H. Rehnquist.

Retiring Associate Justice Sandra Day O'Connor, the first woman to serve on the Court, agreed to continue to serve on the bench until President Bush nominates and the Senate confirms her successor. When the president selected Judge Roberts to in July, 2005, to replace Justice O'Connor, he said of the process, "...it is one of the most consequential decisions a president makes." Judge Roberts' nomination to the high court is the first in nearly 11 years.

The Role of the Senate

The Constitution states that the President ...shall nominate, and by the Advice and Consent of the Senate, shall appoint ...Judges of the supreme Court.... (U.S. Constitution Article II, Section 2, Clause 2). Under the federal constitution, judges and Supreme Court justices serve a **life term**. One of the Senate's original standing committees, the Committee on the Judiciary was first authorized on December 10, 1816. The Committee has one of the broadest jurisdictions in the Senate, ranging from criminal justice to antitrust and intellectual property law.

The Hearings

Beginning on September 6, 2005, the Senate Judiciary Committee will hold hearings to determine whether Judge John Roberts, Jr. will be recommended to the full Senate for confirmation as an Associate Justice to the U.S. Supreme Court. Illinois Senator Richard J. Durbin, D-Ill., along with 17 other senators sit on the Judiciary Committee. Committee members will likely ask Judge Roberts questions on his qualifications, judgment, and philosophy in the hearings. They may also ask about his experiences as both an attorney and as a federal judge. After the hearings, the Committee will vote on the his nomination and send its recommendation – to confirm, to reject, or no recommendation – to the U.S. Senate.

Assessing a Justice: Views from the Judiciary Committee Leadership

Arlen Specter, Republican from Pennsylvania and Chairman of the Committee, a veteran of nine Senate confirmation hearings in his 25 years in the Senate, was asked what he had learned from his experiences that will inform him in the Roberts hearings. Senator Specter commented, "I have learned that the justices have enormous power in our society and on their five to four decisions they decide all of the cutting-edge questions" ("Newsmaker: Interview with Senator Specter," August 24, 2005).

Senator Patrick Leahy of Vermont, the ranking Democrat on the Committee characterized the role of the senators in the confirmation process as, "101 people get a say in this: The president, of course, most importantly in making the nomination, and then the 100 senators. We have to stand in the shoes of 280 million Americans" ("Newsmaker: Interview with Senator Leahy," August 29, 2005).

In a recent interview on *The NewsHour with Jim Lehrer*, Senators Specter and Leahy were asked about the kind of questions they think should be asked Judge Roberts and what Americans should be listening from in the judges' responses.

In response to the type of questions he thinks are fair to ask Judge Roberts, Senator Specter stated, "Well, I believe that when you are confirming a United States Supreme Court Justice, that it really isn't Democratic or Republican; it's American. And I believe that all of us have a duty to ask dignified, appropriate, probing questions to find out where Judge Roberts stands.

Responding to what Americans who watch the hearings should be listening for, Senator Leahy said, "They should listen to those senators who actually ask questions...and see if those questions give you a view of a justice who could fairly hear your case, no matter who you are in America. Do you feel satisfied this man could hear a case involving me? If you're satisfied with that, then you've got a good justice. If you're not satisfied with that, you have reason for concern."

The basic question the Senators have to answer in these upcoming hearings is: Should Judge Roberts be confirmed as Chief Justice of the United States Supreme Court?

Activity: Issues and Questions for Judge Roberts

Overview

This lesson is designed to have students consider which issues and questions they think are important to explore in Roberts' confirmation hearings. The lesson is also designed to give students an opportunity to communicate their personal views and questions directly to Illinois Senator Richard Durbin (D), a member of the Senate Judiciary Committee.

Focus Question

During the Senate confirmation hearings on Judge John Roberts Jr., nominee for Chief Justice of the Supreme Court, what questions and issues are *essential to ask* and which, if any, should be *off limits*?

Objectives

- Introduce the role of the Senate in choosing a U.S. Supreme Court Justice
- Decide the types of issues and questions a Supreme Court nominee should be asked to address in confirmation hearings
- Promote the skills of asking questions and gathering information to make a decision

Materials

Reading: The Senate Confirmation Hearings on Judge Roberts

Activity: Issues and Questions for Judge Roberts

Handout A: Selected U.S. Supreme Court Web Sites

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Handout C: Issues and Questions Chart

Handout D: Reflection on the Confirmation Process

Procedures

Explain the objectives of this lesson. Then create small groups, each comprised of a student in the role of Senator Durbin and 2-3 students in the role of Judicial Advisors. Tell students that as Judicial Advisors, they are members of the senator's staff and responsible for researching three issues they think Judge Roberts should address in the upcoming confirmation hearings.

Tell students that they will be asked to create questions that they think are both "essential" to ask and those that are "off limits" on issues they suggest. To get an idea of the kinds of questions they may want to ask and the role of senators on the Judiciary Committee, have students read excerpts from interviews with Committee Chairman, Arlen Specter (R-PA), and Ranking Democratic Senator, Patrick J. Leahy (D-VT) using B1 "Interview with Senator Specter" and Handout B2 "Interview with Senator Leahy." Also direct students to Joan Biskupic's article, "Roberts' record vs. O'Connor's on major questions." USA TODAY

http://news.yahoo.com/news?tmpl=story&u=/usatoday/20050902/pl_usatoday/robertsrecordvs_oconnorsonmajorquestions

Students may get an idea for their questions by reading an editorial by Senator Dick Durbin (D-IL) from the Chicago Tribune, September 2, 2005, in which he outlined his views about what he thinks is at stake in the Robert confirmation. The editorial is reprinted with permission at <http://www.crfc.org/pdf/tribune.pdf>.

Tell students that as a group composed of one student playing the role of Senator Durbin (D-IL) and 2-3 students playing the role of the senator's Judicial Advisors, they will complete Handout C, "Issues and Questions Chart," and that they should be prepared to share their reasoning with the class.

Upon completion of the chart, have each "Senator Durbin" (1) report out the 3 issues the group felt were most important and (2) their list of "essential to ask" and "off limits" questions.

Create a chart on the board or overhead and record the topics and questions from each group.

Questions for Discussion

- What were the strongest arguments for choosing the issues you did?
- How did you decide which questions were essential and which were off limits?
- What, if any, patterns do you see in the types of questions in each category?
- At the actual hearing, should Senator Durbin ask Judge Roberts how he might decide a specific case? Why or why not?
- At the hearing, should Judge Roberts be able to refuse to answer or not comment on an issue or questions put to him? Why or why not?

Handout A: Selected U.S. Supreme Court Web Sites*

1. **Supreme Court Center at FindLaw.com**

(http://supreme.lp.findlaw.com/supreme_court/resources.html)

The Supreme Court Center allows you to choose from a variety of researching sources. Users can search cases from the current docket by month or subject, read about the justices and landmark cases, and find case briefs and opinions. The Supreme Court Center also has the Court's calendar and rules. The site also includes articles and reviews commenting on Supreme Court decisions.

2. **The Oyez Project** (<http://www.oyez.org>)

The Oyez Project, maintained by Northwestern University, is a Supreme Court audio database. The site is organized to provide information on the justices, cases sorted by subject, an online tour of the Court, a series of discussion forums, articles about cases on the docket this term, as well as links to other U.S. Supreme Court sites.

3. **Website of the Supreme Court of the United States** (<http://www.supremecourtus.gov>)

The official website for the United States Supreme Court allows access to a variety of information on the Court. The home page provides links within the site, including a calendar and schedule for the current term, how to visit the Court, oral arguments, and additional information from related web sites. There is also an overview of the Supreme Court where you can research the Court's procedures and biographies of justices.

4. **SCOTUSblog** (<http://www.scotusblog.com>)

The weblog provides timely information on current cases before the Supreme Court including links to relevant editorial pieces and news on those cases.

5. **On the Docket** (<http://docket.medill.northwestern.edu/>)

On the Docket, run by Northwestern University's Medill School of Journalism, provides articles on cases currently before the Supreme Court including features on selected cases. It is also possible to search archived material and link to case lists by year. There are also links to other law related sites and news sites.

6. **Washington Post Supreme Court Page** (<http://www.washingtonpost.com/wp-dyn/content/linkset/2005/03/24/LI2005032400136.html>)

The Washington Post site contains current news articles about recent Supreme Court decisions as well as general information about the Supreme Court, current and past justices, and historic cases. The site also archives the paper's coverage of cases from the past five years and has links to other Supreme Court websites. There are also quizzes to test your knowledge about the Supreme Court.

7. **Slate Magazine** (<http://slate.msn.com>)

The site hosts a regular column by Dahlia Lithwick called Supreme Court Dispatches that provides engaging and accessible information on current issues before the Supreme Court. Search for "Supreme Court Dispatches" for articles.

8. **Duke Law Supreme Court Online** (<http://www.law.duke.edu/publiclaw/supremecourtonline/>)

The site is geared towards teaching the general public about Supreme Court decisions. There are "plain English" descriptions of the certiorari grants (including facts and legal issues), the full text opinion as well as edited opinions which are quite user friendly. The site also includes commentary from legal scholars about the impact of the decisions.

* Excerpted from "List of U.S. Supreme Court Internet Sites," <http://www.streetlaw.org/content.asp?ContentId=188>

Handout 2B: Interview with Sen. Arlen Specter (R-PA)

GWEN IFILL: In your 25 years in the Senate you've been through nine of these kinds of hearings, these Supreme Court confirmation hearings. Now you're chairman -- What have you learned from those past experiences that will inform you in this one?

SEN. ARLEN SPECTER: I have learned that the justices have enormous power in our society and on their five to four decisions they decide all of the cutting-edge questions, that they have taken over a great deal of Congress' authority in striking down very important legislation which we enact. For example, to protect women against violence, key provisions are declared unconstitutional because the court does not think we have a sufficient factual record where I think we have a very extensive record. They have challenged our method of reasoning, and I do not believe they have any stature to say that our reasoning is deficient to theirs so that when we select people for the Supreme Court, I think that the Senate is under a very heavy responsibility to do our best to have a proper allocation of power among the branches of government.

GWEN IFILL: Talk about the questions that are fair to ask.

SEN. ARLEN SPECTER: Well, I believe that when you are confirming a United States Supreme Court Justice, that it really isn't Democratic or Republican; it's American. And I believe that all of us have a duty to ask dignified, appropriate, probing questions to find out where Judge Roberts stands. And I'm not going to cross the line or come near the line of asking him how he's going to decide specific questions.

GWEN IFILL: As you pursue these areas of inquiry, what should Americans, who we assume will be paying great attention to these proceedings, what should they be listening for? And what would you be listening for?

SEN. ARLEN SPECTER: We should be listening to see how he approaches these issues. When he talked about stability, that is a very important item; one of the big considerations in these hearings is obviously going to be Roe versus Wade and a woman's right to choose. And when you talk about stability, we have had the decision standing as U.S. law since 1973.

GWEN IFILL: So stability to you means maintaining that record?

SEN. ARLEN SPECTER: Stability means respecting precedents. Now it is not an absolute rule and if you take a case like segregation where you had Plessey versus Ferguson, separate but equal to keep the races apart, that was overruled 58 years after it was in the law where times had changed and expectations were -- it was a different America in 1954 than 1896 -- so it's a matter of judgment. And I want to find out about Judge Roberts' judgment as you approach these big issues.

GWEN IFILL: Thank you very much for joining us, Senator.

SEN. ARLEN SPECTER: A great pleasure to be with you.

* Excerpted from "Newsmaker: Sen. Arlen Specter," *The Newshour with Jim Lehrer*, August 24, 2005, at http://www.pbs.org/newshour/bb/politics/july-dec05/specter_8-24.html. Reprinted with permission.

Handout B2: Interview with Sen. Patrick Leahy (D-VT)

GWEN IFILL: What should Americans who are watching these hearings next week be listening for?

SEN. PATRICK LEAHY: They should listen to those senators who actually ask questions. And those who want to just simply give a speech, either for or against Judge Roberts without asking questions, frankly I'd ignore them. I don't care which party they belong to.

Listen to those asking questions and see if those questions give you a view of a justice who could fairly hear your case, no matter who you are in America. Do you feel satisfied this man could hear a case involving me? If you're satisfied with that, then you've got a good justice. If you're not satisfied with that, you have reason for concern.

GWEN IFILL: And what will you be listening for as he answers those questions?

SEN. PATRICK LEAHY: Basically the same thing. You know, there's only 101 people that get a say in this: The president, of course, most importantly in making the nomination, and then the 100 senators. We have to stand in the shoes of 280 million Americans.

I think some of my fellow senators sometimes don't realize the responsibility that is. It's not a responsibility to jump to an instant conclusion. It's a responsibility to take your time, really pay attention because we're representing all 280 million Americans. And I want to make sure that when I vote -- at this moment I have absolutely no idea how I will vote -- but I want to know when I vote I feel I've carried that responsibility.

GWEN IFILL: In all of the years that you've been following this process and been involved in it, what have you learned from past Supreme Court nomination processes that you would apply to this one?

SEN. PATRICK LEAHY: I've learned that it is wise to wait to make up your mind. I look at the both the right and the left cite the case of Robert Bork without appearing as though they were actually at the hearing.

Before the Bork hearing began, I suspect he had a majority if not all of the members of the Judiciary Committee were going to vote for him. Now at that hearing went on and as the answers to his questions came out, some of them were actually rather strange answers, you could see the change within the committee.

And ultimately the committee voted against him. Ultimately the Senate Republicans and Democrats voted against him. But also the American public watching the hearing, you could tell from the calls to the offices to all of us, Republicans and Democrats that public opinion turned very strongly against him.

So the thing is wait until you get in there. Sandra Day O'Connor, when she was nominated there was a lot of concerns expressed by some of the liberal groups that, well, she's a conservative from Arizona, a conservative legislator and all. The vote on her was 99-0. It was a very good vote. Some of these same groups that were critical of her when she was first nominated are now the ones who say, boy, we need another justice just like Sandra Day O'Connor. Keep your powder dry.

GWEN IFILL: Thank you very much for joining us, Senator.

SEN. PATRICK LEAHY: A great pleasure to be with you.

* Excerpted from "Newsmaker: Sen. Patrick Leahy," *The Newshour with Jim Lehrer*, August 29, 2005, at http://www.pbs.org/newshour/bb/law/july-dec05/leahy_8-29.html. Reprinted with permission.

Handout C: Issues and Answers Chart

You are on a Judicial Advisory Team in the role of either Illinois Senator Richard J. Durbin or one of Senator Durbin’s Judicial Advisors. Your task is to decide on the three most important issues to explore with nominee, Judge John Roberts, Jr., in his upcoming Senate confirmation hearings.

Brainstorm a list of potential issues. Talk about why the views of a nominee to the Supreme Court on these issues is important to you. You might consider the following:

- Is the issue likely to come before the Court?
- Does the issue raise important questions about interpreting the Constitution?
- Does the issue raise important questions in your mind?

Narrow the list to three issues. As a group – Senator Durbin and his Judicial Advisors – create questions for each issue that are “essential” to ask and those your team thinks should be “off limits.” Be ready to share your reasoning.

ISSUE	“ESSENTIAL TO ASK” QUESTIONS	“OFF LIMITS” QUESTIONS

For Discussion

- What were the strongest arguments for choosing the issues your team did?
- How did you decide which questions were essential and which were off limits? What, if any, patterns do you see in the types of questions in each category?
- At the actual hearing, should Senator Durbin ask Judge Roberts how he might decide a specific case? Why or why not?
- At the hearing, should Judge Roberts be able to refuse to answer or not comment on an issue or questions put to him? Why or why not?

Handout D: Reflection on the Confirmation Process

Now that the hearings have concluded and a recommendation has been sent to the full Senate, take some time to reflect on what you have learned.

1. How close were you and your classmates' in predicting the issues and questions the senators actually asked Judge Roberts in the hearings? What issues were covered and/or questions asked that did not come up in class?
2. What issues or questions that were addressed by the senators were of interest or importance to you?
3. To what extent were Judge Roberts' responses to the questions he was asked helpful to you in deciding whether you think he should be confirmed?
4. Do you agree/disagree with the Judiciary Committee recommendation on Judge Robert's nomination? Give your reasons.

Extension Activity 1: Monitoring the Roberts' Confirmation

Objectives

- Predict the issues that may arise in the Roberts' confirmation hearings
- Consider ways to monitor the Judiciary Committee Hearings

Procedure

Before the Hearings. Have students get into pairs. Have one student from each group predict the two issues Judge Roberts will **most likely** be asked about in the actual Senate Judiciary Hearings. Have the other student in each pair predict the two issues Judge Roberts will **least likely** be asked about in the actual hearings. Allow two minutes for each side to share their predictions. Have a student record the class predictions.

Information about the hearings can be found on www.pbs.org, www.cnn.com, and the Senate Judiciary Committee website at <http://judiciary.senate.gov/members.cfm>.

After the Hearings. Compare the class predictions to the actual ones addressed in the confirmation hearings.

Extension Activity #2 Expressing Your Opinion to the U.S. Senate

Objectives

- Provide opportunities for students to share their views with Illinois Senator Richard J. Durbin and other Senators

Procedures

Before the Hearings. Have students write a letter or email Senator Durbin. Include questions they personally think he should ask nominee Judge Roberts in the hearings. Remind them to be sure to include their reasons. Have students introduce themselves and tell Senator Durbin which Illinois high school they attend.

After the Hearings. Have students write a follow up letter or email Senators Durbin and Obama. Encourage students to take a stand on whether they agree or disagree with the Judiciary Committee's recommendation on Judge Roberts. Remind them to be sure to include their name, school, email (if applicable) and reasons for their views.

Contact Information for Illinois Senators

U.S. Senator Richard J. Durbin Email <http://durbin.senate.gov> OR send a letter to:

Office of Senator Richard J. Durbin
332 Dirksen Senate Bldg.
Washington, DC 20510
(202) 224-2152
(202) 228-0400 fax

For U.S. Senator Barak Obama Email <http://obama.senate.gov> OR send a letter to:

Office of Senator Barak Obama
713 Hart Senate Office Building
Washington, DC 20510
(202) 224-2854
(202) 228-4260 fax
(202) 228-1404 TDD

Contact Information for Members of the Senate Judiciary Committee

Senate Judiciary Committee
<http://judiciary.senate.gov/members.cfm>

Be advised that senators respond more quickly to email (letters take longer because of postal security screening procedures put into place after the 2001 anthrax and ricin attacks against members of the United States Congress).

Selecting a Supreme Court Justice: Resources

"Independence of the Judiciary," *Bill of Rights in Action*, Spring 1998 (14:2). This entire issue, prepared by the Constitutional Rights Foundation, provides good background on the federal judiciary. http://www.crf-usa.org/bria/bria14_2.html

Interview with Senator Arlen Specter, R-Pa., Chairman of the Senate Judiciary Committee Senator Arlen Specter, R-Pa., discusses the upcoming confirmation process with Gwen Iffil in an interview, August 24, 2005. Senator Specter chairs the Senate Judiciary Committee. A transcript of his interview on can be found at http://www.pbs.org/newshour/bb/politics/july-dec05/specter_8-24.html

Interview with Senator Patrick J. Leahy, D-Vt., Ranking Democratic Member of the Senate Judiciary Committee Senator Patrick J. Leahy, D-Vt., discusses the upcoming confirmation process in this interview with Gwen Iffil in an interview, August 28, 2005. Senator Leahy is the ranking democratic member on the Senate Judiciary Committee. A transcript of his interview can be found at http://www.pbs.org/newshour/bb/law/july-dec05/leahy_8-29.html

Editorial by Senator Richard J. Durbin, D-Ill., Member of the Senate Judiciary Committee from Illinois Senator Richard J. Durbin, D-Ill, outlines his views on the issues he feels are at state in the Roberts Confirmation hearings in an editorial which appeared in the Chicago Tribune, September 2, 2005. It is reprinted with permission at <http://www.crfc.org/pdf/tribune.pdf>. Senator Durbin is one of 18 senators who sit on the Judiciary Committee.

Article by Joan Biskupic, USA TODAY. "Roberts' record vs. O'Connor's on major questions." Joan Biskupic reports on the several major questions that may be addressed at the confirmation hearings and offers a comparison of Roberts' record and that of Justice Sandra Day O'Connor. http://news.yahoo.com/news?tmpl=story&u=/usatoday/20050902/pl_usatoday/robertsrecordvs_oconnorsonmajorquestions

Coverage of the Senate Confirmation Hearings

The *NewsHour with Jim Lehrer* plans special live coverage of the confirmation hearings *in September* with analysis from political and legal experts. Teaching Materials are included on the website at http://www.pbs.org/newshour/bb/law/supreme_court/roberts/index.html

Senate Judiciary Committee

<http://judiciary.senate.gov/members.cfm>