

GETTING TO THE SUPREME COURT

How Justices and Cases Make Their Way to the High Court

by USHistory.org 2017



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The Supreme Court of the United States is the highest federal court in the United States. This article explores the intricacies of this important court, how its justices are chosen, as well as the extent of its power and impact throughout the country.

As you read, identify how Supreme Court justices are selected and how cases reach the Supreme Court.

The Supreme Court judges, or justices, are different from other well-known figures in government. They dress in long black robes.

They almost never appear on magazine covers, and they seem to stay on the court forever. They announce their decisions periodically, then disappear into their "Marble Palace."

In anger, President Franklin D. Roosevelt once called them "nine old men." What connections do they have to real-world government and politics? What, exactly, do they do? Understanding the Supreme Court is important, since the Court often shapes policy as profoundly as any law passed by Congress or any action taken by the president.

进入到最高法院

法官和案件如何进入到高等法院

By USHistory.org. 2017

美国的最高法院是最高联邦法院。这篇文章探讨这个重要法院的错综复杂，大法官如何被挑选和它如何施展它的权力并影响整个国家。**你在读的时候，了解最高法院的大法官是如何挑选的和各种案件是如何到达最高法院的。**

最高法院的大法官同政府其他重要的人物不一样。他们身穿黑色长袍。他们几乎从不出现在杂志封面，他们似乎永远在法院任职。他们定期地宣布他们的决定，然后消失在他们“大理石宫殿。”

有一次美国总统富兰克林·德拉诺·罗斯福生气地称他们是“九个老人”。他们同现实世界中的政府和政治有什么关联？确切来说，他们做什么？我们必须懂得由于最高法院经常制定很有影响力的政策同国会通过法律和总统做出决定一样是非常重要的。

HOW JUDGES AND JUSTICES ARE CHOSEN

Legendary Justice Oliver Wendell Holmes once said that a Supreme Court Justice should be a “combination of Justinian Jesus Christ, and John Marshall.”

Why are venerable former justices, such as John Marshall, sources of guidance in understanding necessary qualities for federal judges? Despite meticulously outlining qualifications for the House of Representatives, the Senate, and the presidency, the Constitution is silent on judicial qualifications. It gives no advice for judicial appointments other than stating that justices should exhibit “good behavior.” As a result, the selection process is governed primarily by tradition.

THE NOMINATION PROCESS

The Constitution provides broad parameters for the judicial nomination process. It gives the responsibility for nominating federal judges and Supreme Court justices to the president. More than 600 judges sit on district courts, almost 200 judges sit on courts of appeals, and 9 justices make up the Supreme Court. Because all federal judges have life terms, no single president will make all of these appointments. Still, many vacancies do occur during a president’s term of office, and the rarest and most important of these are the seats on the Supreme Court. To simplify the selection process, the president relies on many sources to recommend appropriate nominees for judicial posts. Recommendations often come from the Department of Justice, the Federal Bureau of Investigation, members of Congress, sitting judges and justices, and the American Bar Association. Some judicial hopefuls even nominate themselves.

SELECTION CRITERIA

Presidents must consider many factors in making their choices for federal judgeships:

- **Experience** — Most nominees have had substantial judicial or governmental experience, either on the state or federal level. Many have law degrees or some other form of higher education.
- **Political ideology** — Presidents usually appoint judges who seem to have a similar political ideology to their own. In other words, a president with a liberal ideology will usually appoint liberals to

法官和大法官是如何被挑选的

具有传奇色彩的大法官 Oliver Wendell Holmes 曾经说过最高法院的大法官应该是 Justinian 查士丁尼大帝, Jesus Christ y 耶稣基督 和 John Marshall 约翰。马歇尔的合体。

为什么可敬的前大法官, 如约翰。马歇尔, 是使人们了解联邦法官应该具备的素质的指导来源。

尽管众议员, 参议员和总统的资格被精心地描述, 宪法没有描述大法官的资格。它除了宣布大法官应该表现出“好的行为”没有特别说明如何指派法官。结果是, 挑选过程基本上还是按传统方式进行的。

推荐过程

宪法为法官的推荐过程提供了大的范围。它把推荐联邦法官和最高法院大法官的责任交给了总统。

600 多位法官在地区法院任职, 大约 200 法官任职于上诉法院, 9 名大法官组成最高法院。因为所有的法官都有终身制, 没有一位总统可以指派所有的法官。

不过, 在一位总统任职期间这些地方仍然会有很多空缺, 而最稀有和最重要的是最高法院的位置。为简化挑选过程, 总统依靠很多来源为大法官的位置推荐合适的人选。

推荐经常来自司法部, 联邦调查局, 国会会员, 现任的法官和大法官, 和美国律师学会。有些大法官甚至希望推荐他们自己。

挑选标准

总统必须在选择联邦法官时考虑多种因素:

- 经验- 大多数被推荐人不论来自州还是联邦都有着丰富的法律和政府经验。很多有法律或其他高等学位。
- 政治思想- 总统通常指派同他们有相同政治思想的法官。换句话说, 一位有着自由思想的总统通常指派有自由思想的候选人。有保守思想的总统就更可能指派有保守思想的候选人。
- 种族和性别- 直到最近, 几乎所有的联邦法官是男性白人。今天, 不管怎样, 种族

the courts. Likewise, conservative presidents tend to appoint conservatives.

- **Ethnicity and gender** — Until relatively recently, almost all federal judges were white males. Today, however, ethnicity and gender are important criteria for appointing judges. In 1967, Lyndon Johnson appointed the first African American Supreme Court justice, Thurgood Marshall. In 1981, Ronald Reagan appointed the first woman to the Supreme Court, Sandra Day O'Connor. Sonia Sotomayor later became the first Latina Supreme Court justice after she was nominated by President Obama in 2009.

Because federal judges and Supreme Court justices serve for life, a president's nomination decisions are in many ways his or her most important legacy. Many of these appointments will serve long after a president's term of office ends.

THE POWER OF CHOICE

The Court receives about 7,000 – 8,000 petitions every year. It has almost complete control over which cases it will hear. The justices choose about 90% of their 80 or so annual cases by writ of certiorari, an order to send up a case record from a lower court.

Typically, the justices discuss any cases one of them has recommended from earlier readings. The Rule of Four governs their choices: if four justices vote to hear a case, all nine agree to it.

How do they choose their cases? Generally, the Court considers only cases that have far-reaching implications beyond the two parties involved in the dispute. The justices have the power of "judicial review," which means that it is their job to determine whether or not a law is constitutional. For example, a case in which a student sues an assistant principal for searching a locker may be worthy of consideration, since it might involve the violation of privacy rights protected under the Constitution. The court also tends to hear cases in which two lower courts have reached conflicting decisions, as well as lower court cases that contradict earlier Supreme Court decisions.

HEARING AND DECIDING A CASE

Hearings begin in October every year, and the last cases are usually heard in June. The justices receive briefs, or summaries of arguments, from the lawyers ahead of time. Often they receive amici curiae, or briefs prepared by interest groups or government

和性别是指派法官重要的标准。在 1967 年, Lyndon Johnson 总统指派了第一位非裔美国人-Thurgood Marshall 做最高法院大法官。在 1981 年, 雷根总统指派了第一位女性-Sandra Day O'Connor 做最高法院大法官。Sonia Sotomayor 在 2009 年被 Obama 总统推荐并任命为第一位拉丁(西)裔最高法院大法官。

因为联邦法官和最高法院大法官是终身制, 一位总统的指派决定从很多方面来讲是总统最重要的历史遗产。很多这些法官的指派将在总统任职期满之后持续很多年。

选择的力量

法院每年接到大约 7,000-8,000 个请愿。它几乎完全控制所有听证的案件。大法官们通过复审令拿到下级法院上交的案件并从 80 个左右的案件中挑选出 90%来复审。

一般来讲, 大法官们讨论任何案件其中有一个案件可以是之前审阅过的。四人规则支配他们的选择: 如果四位大法官投票要听证一个案件, 所有九人都要同意。

他们如何选择他们的案件? 通常, 最高法院只考虑在争执双方之外能对社会造成深远影响的案件。大法官们有“司法审查”的权力, 这意味着他们的工作就是决定一个法律是否符合宪法。比如, 在一个案件中, 一个学生控告一个副校长搜查他的有锁的更衣柜。他们认为这个案件值得考虑, 因为这可能会涉及到宪法保护的人权被侵犯的问题。最高法院也愿听证两个下级法院有争执的决定和下级法院同最高法院的决定相互矛盾的案件。

庭审和定案

庭审每年在十月份开始, 而最后的案件在六月份庭审。大法官们在庭审之前就接到律师们提交的争执的简介或总结。他们经常接到法院之友或者利益集团或政府部门支持一方或另一方准备的简讯。庭审经常是公开的并且是严格限时的。各方

agencies that support one side or the other. The hearings are open to the public and are strictly timed. Each side has 30 minutes to present its case, and the justices typically ask questions and even debate one another during the allotted time. After the public hearing, the justices meet together privately to discuss the case. They share their opinions, debate the issues, and eventually come to a conclusion. Each justice takes a side individually, and because there are nine justices (an uneven number), one side always wins.

ANNOUNCING AND IMPLEMENTING A DECISION

When the Court announces a decision, the individual justices' opinions are revealed. A unanimous decision (9-0) indicates that the justices were in total agreement. This vote is rare because cases that have made it to the Supreme Court are, by nature, the most difficult ones to decide. Decisions are usually split 7-2, 6-3, or 5-4.

Along with the decisions, the justices release explanations for each side. A majority opinion is prepared (usually by the senior justice on that side), and the justices whose point of view did not prevail release a dissenting opinion. A justice who agrees with the majority decision but for different reasons sometimes presents a concurring opinion.

AFTER A RULING

The power of the Court to implement its decisions is limited. For example, in the famous 1954 case *Brown v. Board of Education of Topeka*, the justices ruled that racial segregation (separate but equal) in public places is unconstitutional. But, it took many years for school districts to desegregate. The Court has no means to force implementation. Instead, it must count on the executive and legislative branches to back its decisions. In the Civil Rights Movement, the Court led the way, but the other branches had to follow before real change could take place.

Despite the Supreme Court's limitations in implementing decisions, the justices often set policies that lead to actual social change. Therefore, even though justices do much of their work in private, and most Americans don't completely understand what the Court does, their decisions are very important.

With only nine justices on the Supreme Court, every voice matters. The Court decides some of the toughest and most controversial cases in the country, often with considerable effects on the daily lives of Americans. Because of this real, lasting social change, each new presidential appointment and Supreme Court ruling can have an immense impact on generations to come.

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有 30 分钟出庭，大法官们通常提问甚至在分配的 时间内互相辩论。

在公开庭审之后，大法官们在私下开会讨论案件。他们分享他们的意见，讨论问题并且最后得出结论。每一位支持一方，因为有九个法官（单数），总是有一方赢。

法院公告和执行决定

当最高法院宣布决定时，每一位法官的意见将被公布。一致的决定表示大法官们都同意了。这种投票结果是罕见的因为送到最高法院，实际上是最难决定的案件。决定通常是分为：7-2，6-3，或 5-4。

在做决定的同时，大法官们公布他们为各方的解释。主要一方的意见将被准备（通常是由站在那一方最有资历的大法官准备），而没有赢的那一方的大法官发表一个不同意的意见。一位同意大多数意见但有不同原因的大法官也发表了赞同的意见。

在裁决之后

最高法院执行决定的力量是有限的。例如。有名的 1954 年案件- *Brown v. Board of Education of Topeka*, 大法官裁定种族隔离（分离但平等）在公共场所是违反宪法的。但学区花了很常时间停止隔离。

最高法院没有方法加强执行。反而，它必须依靠行政和立法部门来支持它的决定。在民权运动中，最高法院带头，但其它部门必须跟随真正的变化才能发生。

尽管最高法院在执行决定时有局限性，大法官们经常决定一些导致社会变革的政策。所以，即使大法官们大部分工作在私底下做而且大多数美国人不完全懂得最高法院做什么，他们的决定是非常重要的。

最高法院只有 9 位大法官，但每一个声音都很重要。最高法院为一些全国最棘手最有争议性的案子做决定，经常是对美国人每一天的生活都有相当大的影响。由于这个真实的，持久的社会变化，每一位新总统的指派和最高法院的裁决能对我们后代有着深远的影响。

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