

The Federal Judiciary

I. Basic Legal Distinctions

II. Structure of Federal System

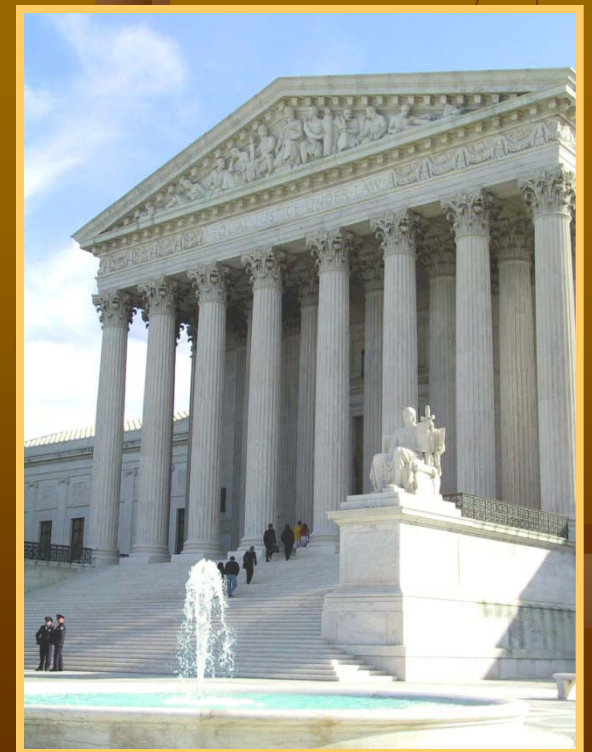
III. Supreme Court Past and Present

A. Supreme Court Eras

B. Decision-Making Procedures

C. Appointments

IV. Activism v. Restraint

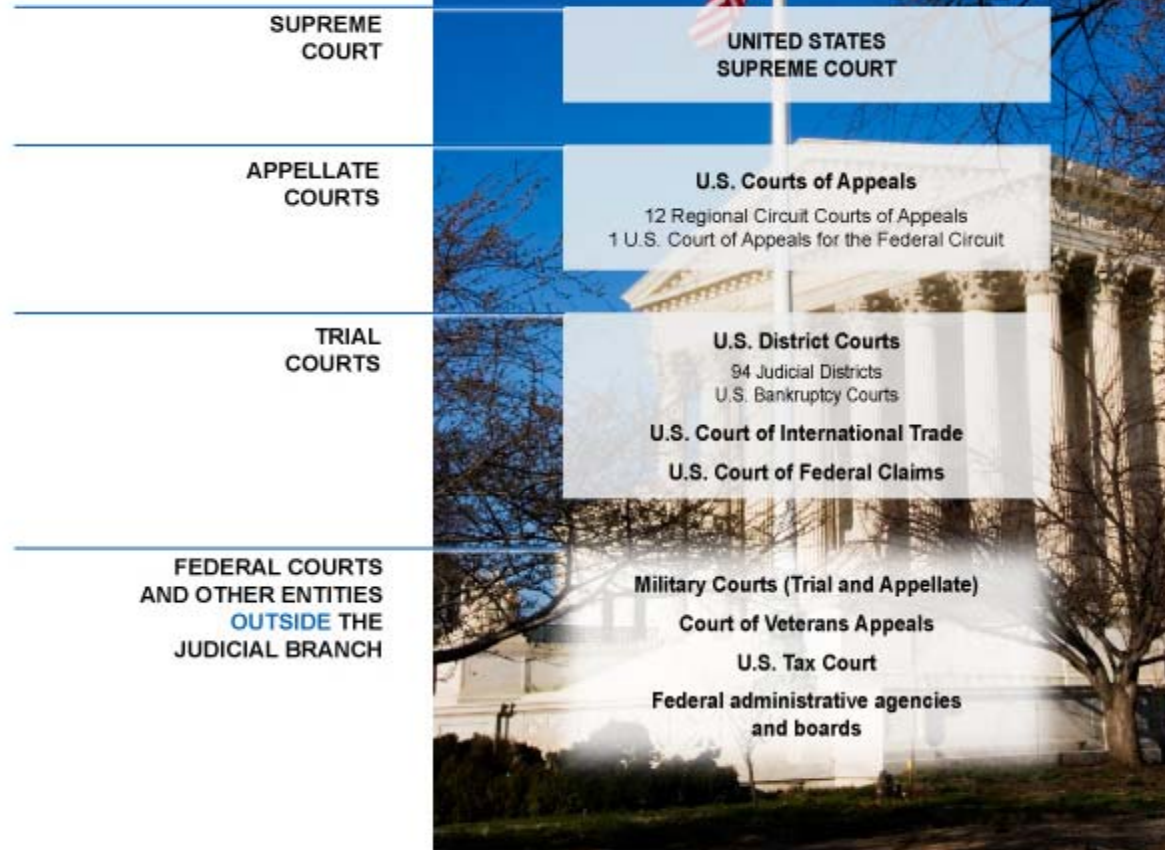


Key Distinctions



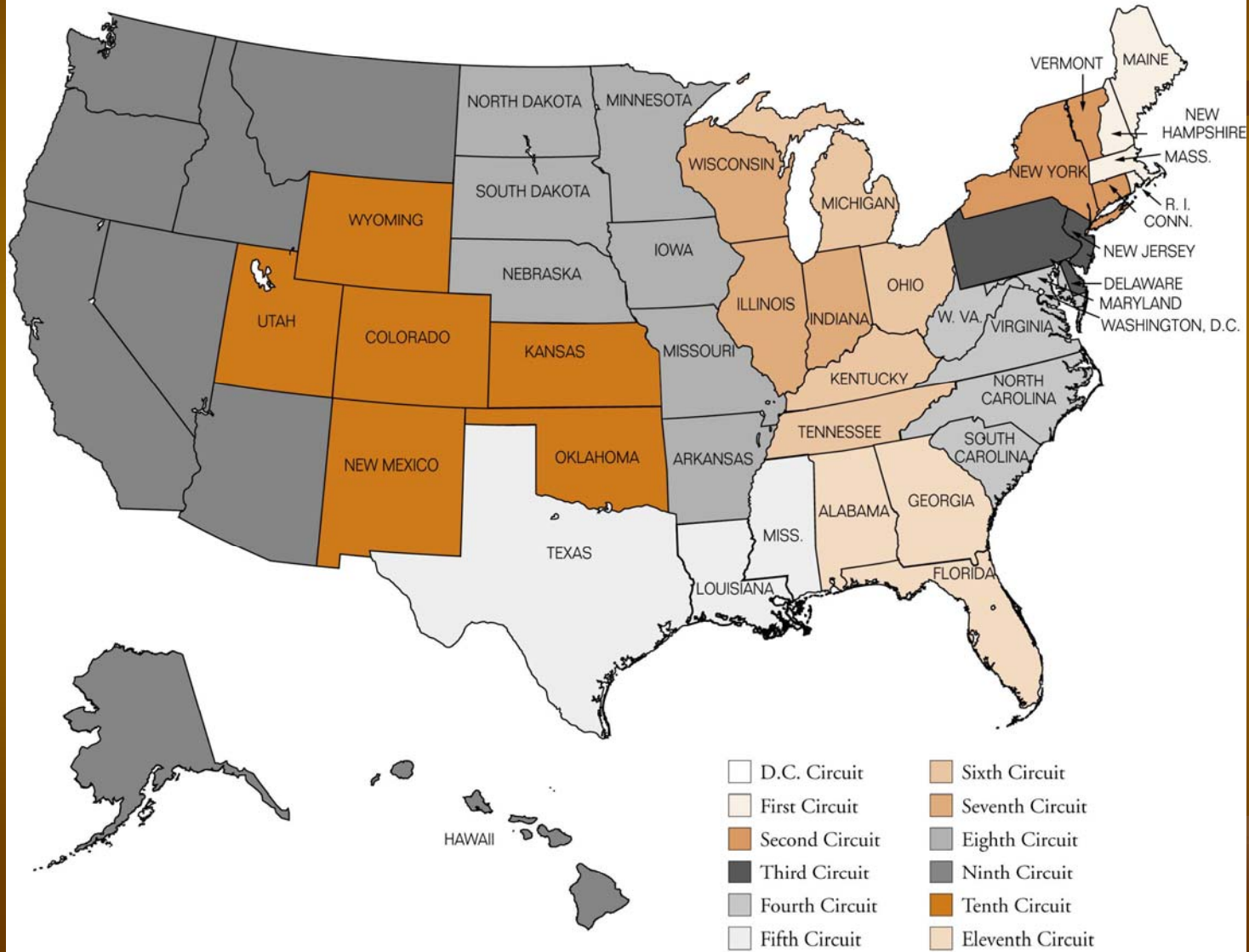
- Criminal v. Civil
- Roman law v. Common law
 - *Stare decisis* (“let the decision stand”)
- Original jurisdiction v. Appellate jurisdiction
 - Appeals on *legal grounds*, not evidence
 - Judicial panel, not jury

The United States Federal Courts



Federal Circuit Courts

Map 9-1 The Federal Judiciary



Source: Alliance for Justice.

Supreme Court Eras



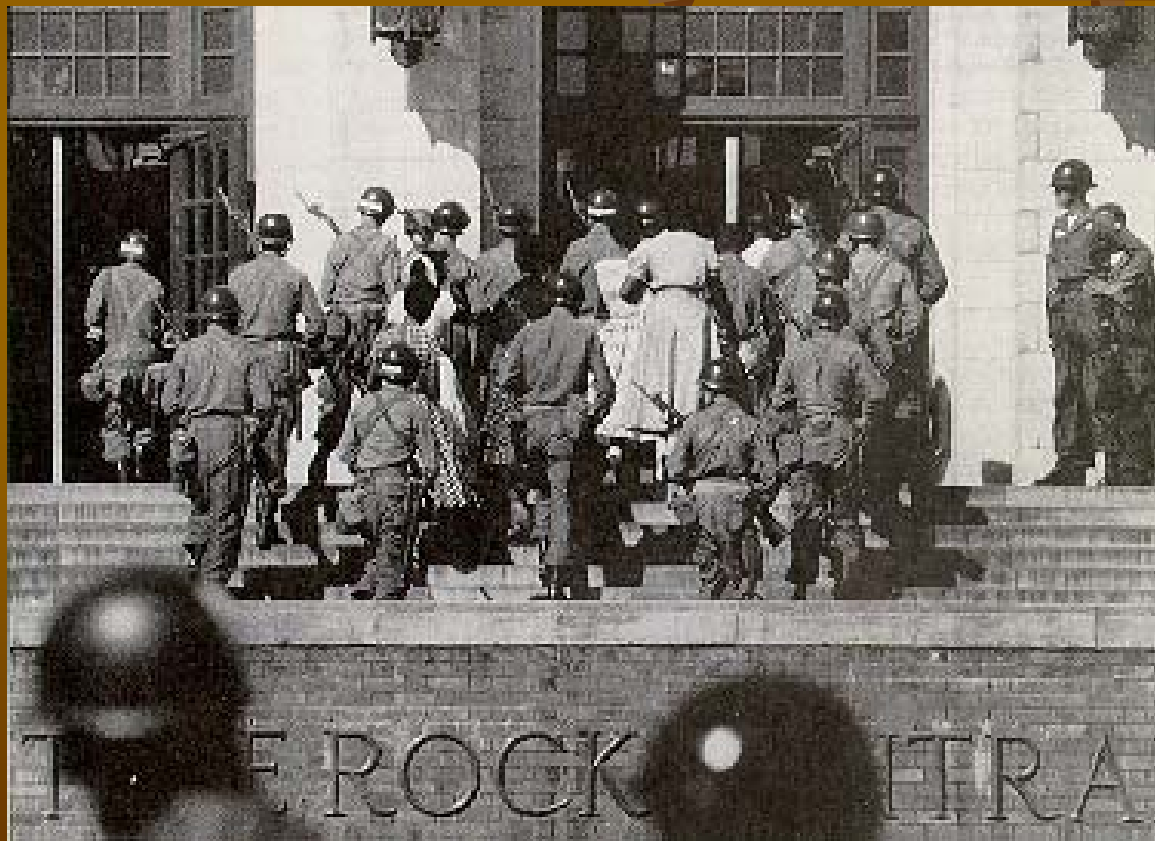
- Federal v. States (1819-Civil War)
 - *McCulloch v. Maryland* (1819)
 - *Dred Scott v. Sandford* (1857)
- Regulation of the National Economy (post-Civil War - 1930s)
 - *Lochner v. New York* (1905)
- Civil Rights and Civil Liberties (1950s-Present)
 - *Brown v. Board of Education* (1954)
 - *Griswold v. Connecticut* (1962)
 - *Roe v. Wade* (1973)

FDR's Court Packing Plan



Enforcing *Brown v. Board of Education*

- Little Rock Central High, 1957



The Roberts Court

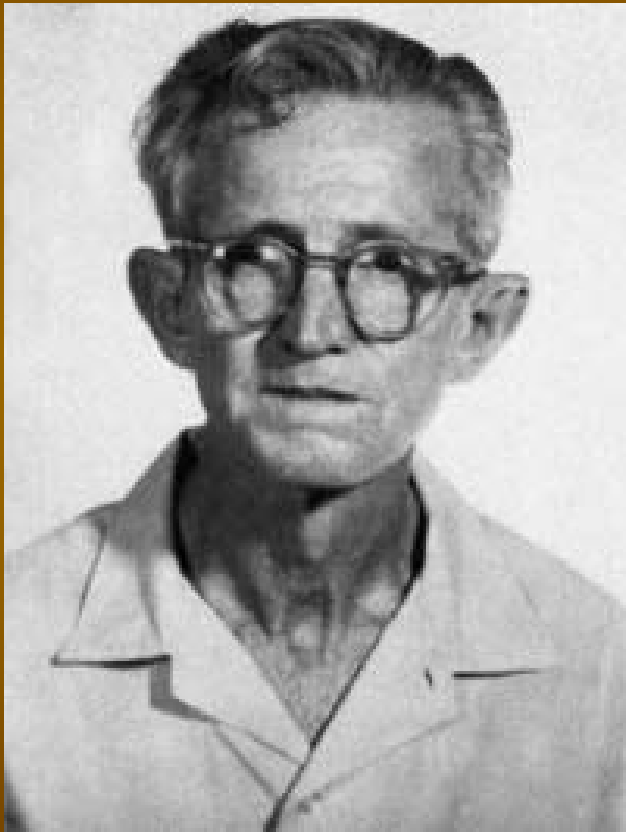


- **BACK:** Breyer, Thomas, Ginsberg, Alito.
- **FRONT:** Kennedy, Stevens, Roberts (Chief Justice) Scalia, Souter.

Supreme Court Decision-Making Procedure

- Receiving a Request for an Appeal
 - *Writ of Certiorari*
 - Do not have to hear *any* appeal!
- Deciding to accept that Request
 - Around 100 out of 7000 requests
 - 'Rule of Four'
- Hearing the Case
 - Oral Arguments - ½ Hour per side
- Making the Decision and Writing an Opinion
 - Majority, Concurring, Dissenting

Clarence Gideon and Right to Counsel



APR 21 1962
OFFICE OF THE CLERK
SUPREME COURT, U.S.

DIVISION OF CORRECTIONS
CORRESPONDENCE REGULATIONS

MAIL WILL NOT BE DELIVERED WHICH DOES NOT CONFORM WITH THESE RULES

No. 1 -- Only 2 letters each week, not to exceed 2 sheets letter-size 8 1/2 x 11" and written on one side only and if ruled paper, do not write successively. Your complete name must be signed at the close of your letter. Clipping, stamps from other people, stationary or card must not be enclosed in your letters.

No. 2 -- All letters must be addressed in the complete prison name of the inmate. Cell number, where applicable, and prison number must be placed in lower left corner of envelope, with your complete name and address in the upper left corner.

No. 3 -- Do not send any packages unless a Package Permit. Uninsured packages will be destroyed.

No. 4 -- Letters must be written in English only.

No. 5 -- Books, magazines, pamphlets, and newspapers of reputable character will be delivered only if mailed direct from the publisher.

No. 6 -- Money must be sent in the form of Postal Money Order only, in the inmate's complete prison name and prison number.

INSTITUTION _____ CELL NUMBER _____
NAME _____ NUMBER _____

In The Supreme Court of the United States
October Term, 1961
No. 810 Misc.
Clarence Earl Gideon, petitioner
-VS-
H.G. Cochran, Jr., Director, Division of
Corrections, State of Florida, respondent.

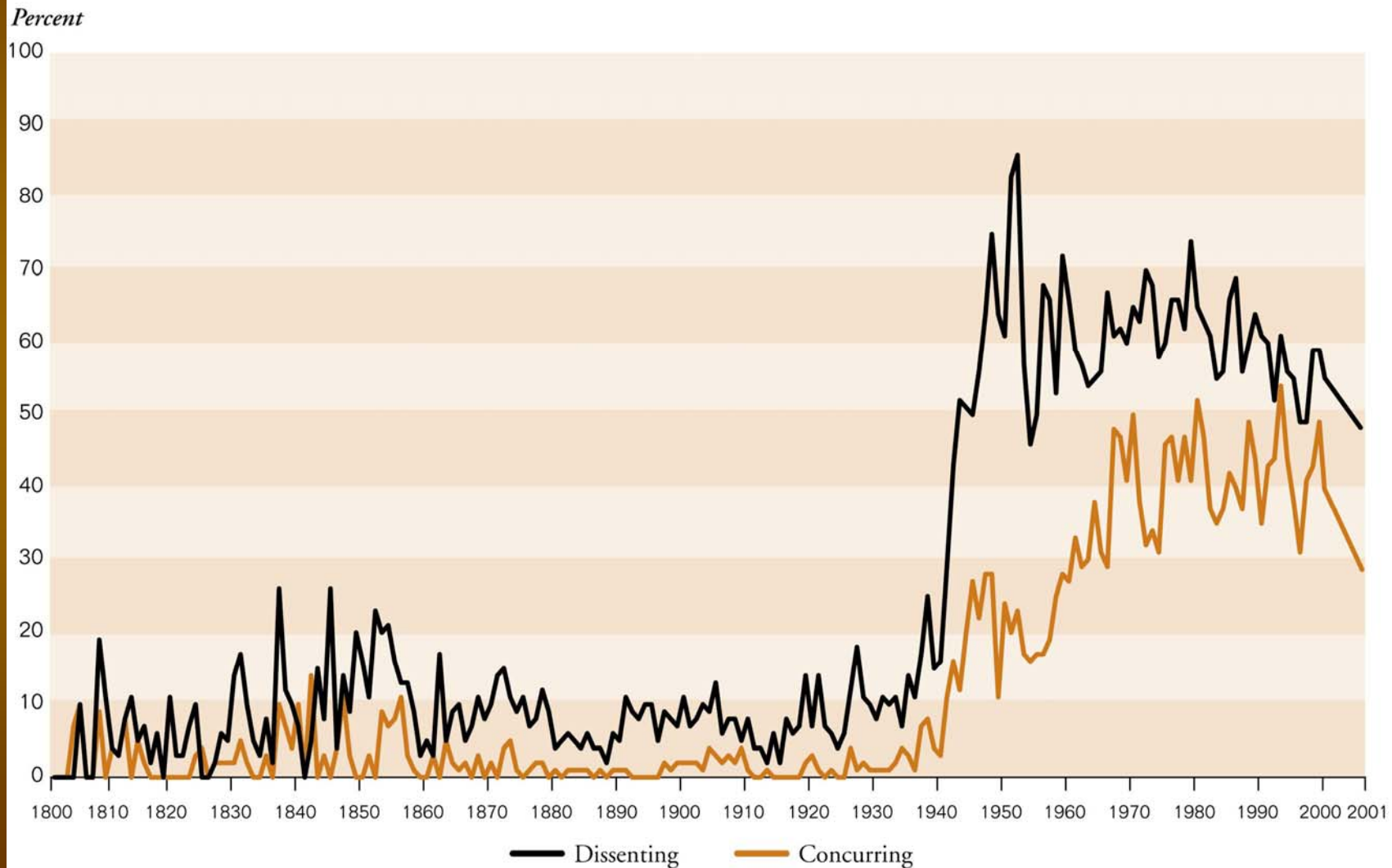
"Answer to respondent's, i.e., response to petition
for writ of certiorari."

Petitioner, Clarence Earl Gideon received
a copy of the response of the respondent
in the mail dated sixth day of April, 1962.
Petitioner, can not make any pretense
of being able to answer the learned
attorney General of the State of Florida
because the petitioner is not an attorney
or versed in law nor does not have the
law books to copy down the decisions of
this Court. But the petitioner knows
there is many of them nor would the
petitioner be allowed to do so
according to the book of Revised
Rules of the Supreme Court of the
United States sent to me by Clerk of
the same court. the response of the
respondent is out of time (Rule 24)

NATIONAL ARCHIVES
FD-36 (Rev. 4-15-64)

More and More Opinions...

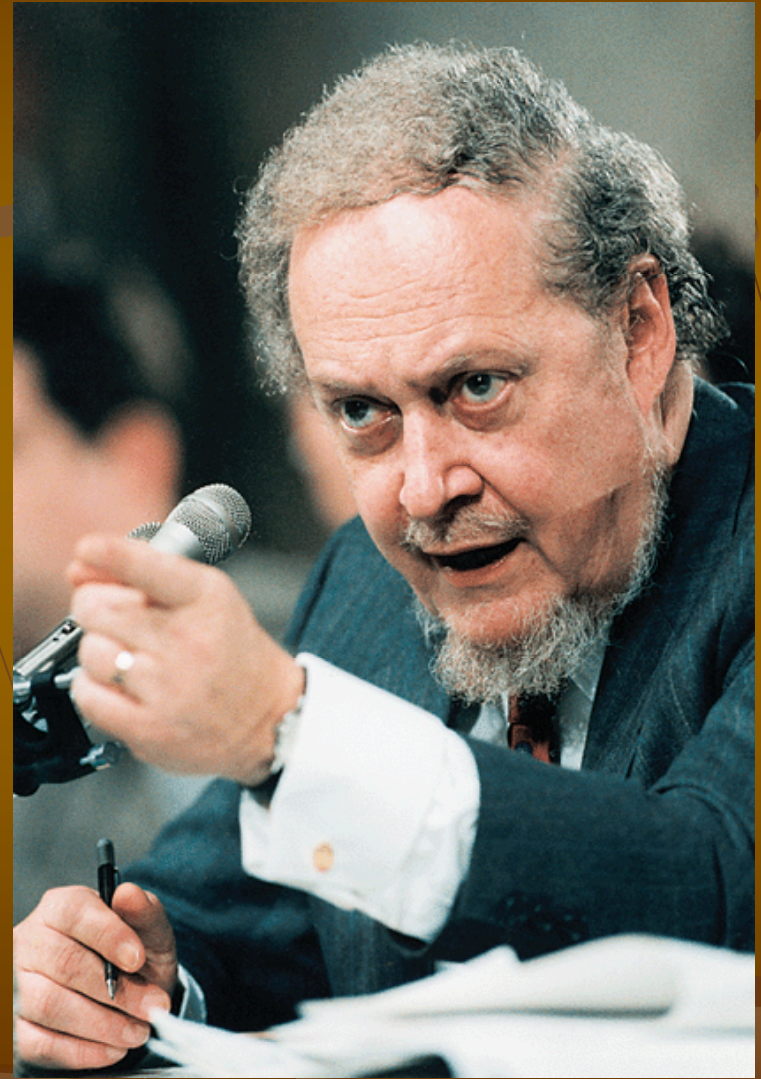
Figure 9-2 Number of Dissenting and Concurring Opinions



Source: Lee Epstein et al., *The Supreme Court Compendium: Data, Decisions and Developments*, 3rd ed. (Washington, D.C.: Congressional Quarterly, 2003), Table 3-2, 211–215; and Table 3-3, 216–220. Updates provided by Lee Epstein.

Judicial Nominations

- **Nomination Criteria**
 - No formal requirements
 - Judicial Competence
 - Ideology
 - Race/Gender
- **Nomination Process**
 - Presidential Short-List
 - Interest Group Lobbying
 - Senate Judiciary Committee
 - Full Senate for Confirmation
 - Appointed for Life



“I got ‘borked’!!”

Restraint versus Activism

- **Judicial Restraint:** A judicial philosophy that argues courts should allow the decisions of other branches of government to stand, even when they offend a judge's own sense of principles.
- **Judicial Activism:** A judicial philosophy that argues courts should use their power broadly to further justice, especially in areas of equality and personal liberty