

# THE REPORTER

Volume 18, Number 2

October 2008

Valparaiso University School of Law Library

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## FIRST MONDAY

October 6, 2008

*Celebrating the beginning of a new term of the United States Supreme Court*

by Beverly Burmeister

*A term of the Supreme Court begins, by statute, on the first Monday of October. As the Court begins its new term, increase your awareness of the Court and its justices by perusing some of our newest materials. The following have recently been added to the law library collection, and represent widely varied opinions about the Court and its justices. These books will be in the new book display throughout the month of October, then shelved in the library collection (location information available in Galileo online catalog). The new book display is on the main floor of the library, by the windows near the stairway.*

***The Next Justice: Repairing the Supreme Court Appointments Process*** by Christopher L. Eisgruber, Princeton University Press, 2007.

Eisgruber argues that the Supreme Court appointments process is broken and needs to be fixed, for the benefit of both conservatives and liberals. Because of partisan rancor, the current system does not reveal what kind of judge a nominee might make. The author proposes some new lines of inquiry that would reveal more about a nominee, such as asking the question, "When and why is it beneficial for judges to trump the decisions of elected officials?"



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*The Reporter* is published by  
the Valparaiso University  
School of Law Library

Editor: Sally Holterhoff

Style Editor and Designer:  
Susan Waldschmidt

***The Next 25 Years: The New Supreme Court and What It Means for Americans*** by Martin Garbus, Seven Stories Press, 2007.

According to First Amendment lawyer Martin Garbus, the ideological lock put on the courts by the Republican right wing constitutes a clear and present danger to the basic legal and moral assumptions of a modern democratic republic. Garbus decries what he sees as the executive branch's grip over the judiciary as an extension of its own powers, and discusses why an independent Supreme Court is a crucial check on the executive branch and essential to liberty.

***Supreme Conflict: The Inside Story of the Struggle for Control of the United States Supreme Court*** by Jan Crawford Greenburg, Penguin Press, 2007.

After many years as a successful legal reporter observing the Supreme Court for various news organizations, Greenburg is well positioned to provide a behind-the-scenes look at how decisions are made and new justices are chosen, and to describe how the Court has evolved over the last few decades. Although she does not offer major new revelations, she provides many interesting tidbits and colorful details, including further insight into the timing of Justice O'Connor's resignation. She also asserts that in the end, George W. Bush achieved what his father was unable to accomplish—remaking the Court in his conservative image.

***The Supreme Court: An Essential History*** by Peter Charles Hoffer et al., University Press of Kansas, 2007.

This history of the Supreme Court chronicles the institution as it evolved from “six men meeting in borrowed quarters” to “the most closely watched tribunal in the world.” Each chapter covers the Court under a specific chief justice, focusing on the cases representing that era. The authors, all respected historians, portray an institution defined by both eloquent and pedestrian decisions, with justices ranging from brilliant and wise to slow-witted and expedient. The text, which was praised by reviewers for its readability, is augmented by pictures that truly bring this history alive.

***The Handy Supreme Court Answer Book*** by David L. Hudson, Jr., Visible Ink Press, 2008.

With this latest book about the Supreme Court, it was Hudson's intention to both inform and entertain readers. Beginning with the first chief justice and continuing to the present, he gives the history, current events, major cases, and fun facts about each Court. The book has a question-and-answer format which is easy to read.

***The Rehnquist Court: Understanding Its Impact and Legacy*** by David L. Hudson, Jr., Praeger, 2007.

In one of the first books written to assess the Rehnquist Court, author Hudson attempts to be non-partisan and fair-minded. Although Justice Rehnquist has been perceived as conservative, Hudson argues that Rehnquist's conservatism was quite mild compared to the “ideological purity” of Justices Thomas and Scalia, and that Rehnquist did an admirable job of playing moderator. The book details Rehnquist's life and his pivotal role in the Court as well as the lives and views of the other justices on the Rehnquist Court and the areas of the law that particularly interested them.

***The Court and the Cross: The Religious Right's Crusade to Reshape the Supreme Court*** by Frederick S. Lane, Beacon Press, 2008.

Lane argues that the religious right has dedicated much of the last thirty years to molding the federal judiciary with an eye toward getting their choices onto the Supreme Court. They've used grass roots campaigns and aggressive lobbying, and provided a well-tended path for conservative law students and attorneys. The author describes the many successes achieved in this effort and his concern for the future if the present trend continues.

***Strategic Selection: Presidential Nomination of Supreme Court Justices from Herbert Hoover through George W. Bush*** by Christine L. Nemacheck, University of Virginia Press, 2007.

Why do presidents nominate certain individuals to the Supreme Court and not other equally qualified candidates? Nemacheck makes extensive use of presidential papers to reconstruct the politics of nominee selection from Hoover in 1930 to Bush in 2005. She argues that although presidents try to maximize their ideological preferences, institutional factors (such as divided government) shape and constrain their choices.

***Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk*** by Todd C. Peppers, Stanford Law and Politics, 2006.

Because law clerks to Supreme Court justices have been sworn to secrecy about many matters, little has been known about the role of clerks in the judicial process. In this book, Peppers seeks to change this by describing relationships between clerks and their justices, showing how the clerkship evolved over time, and discussing public perceptions versus realities.

***The Supreme Court on Trial: How the American Justice System Sacrifices Innocent Defendants*** by George C. Thomas, III, University of Michigan Press, 2008.

Thomas critiques the U.S. system of justice and its emphasis on procedure at the expense of true justice. He traces the history of jury trials to demonstrate that police, prosecutors, and judges have become more concerned about following the rules than ensuring that the defendant is indeed guilty. As a remedy, he suggests an independent court to review claims of innocence based on new evidence. Reviewers agreed the book was insightful and thought-provoking, whether they agreed with his conclusions or not.

***The Nine: Inside the Secret World of the Supreme Court*** by Jeffrey Toobin, Doubleday, 2007.

Exclusive “off-the-record” interviews with the justices themselves formed the basis for Toobin’s look inside the secret world of the Supreme Court, which he illuminates as both institution and collection of personalities. Narratives about each of the justices show the human side of this austere institution. The author devotes two chapters to the *Bush v. Gore* case which decided the 2000 election. Toobin wrote extensively about this case in a previous book, and he continues to consider it “one of the lowest moments in the Court’s history.”

***I Dissent: Great Opposing Opinions in Landmark Supreme Court Cases*** by Mark Tushnet, Beacon Press, 2008.

Tushnet offers thirteen famous dissents—from *Marbury v. Madison* to *Griswold v. Connecticut*—reminding the reader that Court decisions are not pronouncements issued by the utterly objective, but in fact political statements from highly intelligent but partisan people. Tushnet introduces readers to the concept of dissent and, for each case, provides a discussion of context and issues along with an overview.

## FIRST MONDAY QUIZ

These seven questions are from Hudson’s *Handy Supreme Court Answer Book*, described above. See if you can answer them yourself before looking at the correct answers at the bottom of page 4.

- 1 What did the U.S. Supreme Court decide in the 2000 presidential election case?
  - A. There should not be a manual recount of the ballots in four Florida counties.
  - B. The Florida supreme court has the final say in whether to demand a recount of ballots.
  - C. To ensure fairness, there must be a manual recount of the ballots.
- 2 In what decision did the Roberts Court examine the message “Bong Hits 4 Jesus”?
  - A. *Tinker v. Des Moines Independent Community School District*
  - B. *Morse v. Frederick*
  - C. *Smith v. Brown*

- 3 What did the Roberts Court rule on global warming?
- A. Local governments can challenge the EPA decision not to regulate the emission of gases.
  - B. The EPA can decide not to regulate emissions if regulation would jeopardize national security.
  - C. The state of Massachusetts had no legal basis to challenge the EPA's decision not to regulate the emission of gases.

- 4 What did the Roberts Court rule with respect to religious use of hallucinogenic tea?
- A. A church had indeed violated drug laws when it used hallucinogenic tea in sacraments.
  - B. The government had not met the high burden of proof required by the Religious Freedom Restoration Act.
  - C. Disallowing hallucinogenic tea in sacraments does not violate a church's First Amendment rights.

- 5 Which justice on the Roberts Court was a Rhodes Scholar?
- A. Justice Steven Breyer
  - B. Justice Antonin Scalia
  - C. Justice David Souter

- 6 Which justices on the Roberts Court earned their law degrees from Harvard?
- A. Justices David Souter, Ruth Bader Ginsberg, and Anthony Kennedy
  - B. Chief Justice John Roberts and Justices Antonin Scalia, Arthur Kennedy, David Souter, and Steven Breyer
  - C. Justices Samuel Alito, Clarence Thomas, and John Paul Stevens

- 7 What happens when a justice becomes incapacitated?
- A. There is no particular rule that applies to this situation.
  - B. The justice is not allowed to vote on Court decisions until fully recovered.
  - C. The justice is required to resign after six months of incapacitation.

*Answers to First Monday Quiz*

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- A 7
- B 6
- C 5
- B 4
- A 3
- B 2
- A 1