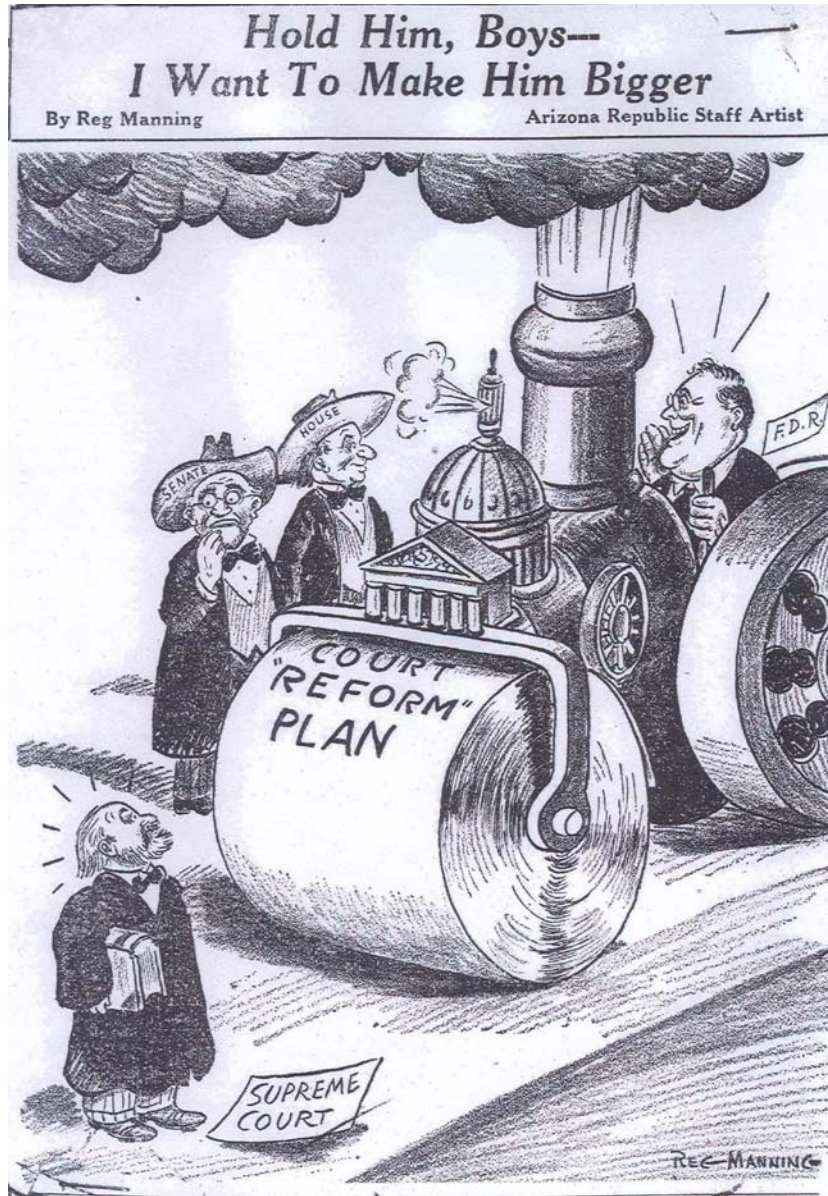




# Curriculum Guide

*The Presidency and the Supreme Court*

## Franklin D. Roosevelt Presidential Library and Museum



## *The Presidency and the Supreme Court*

Justice O'Connor's Key Note Address,  
November 11, 2007



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*The Presidency and the Supreme Court*

## Justice Sandra Day O'Connor's Key Note Address, Conference on the Presidency and the Supreme Court, November 11, 2007 Hyde Park, New York

*William J. vanden Heuvel's Introduction of Sandra Day O'Connor*

### Chapter 1

This is an easy introduction. I mean to have the possibility of bringing elation to this podium and to say a few words not about her career as a justice of the Supreme Court but about the wonderful life that she had led in the years that brought her to the Supreme Court.

### Chapter 2

Her grandfather and father were pioneers of the west, settling in New Mexico territory which later became Arizona and the Lazy B Ranch, if you read her memoir, is very much a part of her life and of her character. She was born in a Depression year and her parents and her family knew very well what the Depression was, the unemployment, the poverty, the difficulties of just staying above the line, yet her father was not a great advocate of FDR. I remember once reading about Barbara Bush who said that in her household the name Eleanor Roosevelt was not allowed to be repeated. But in the Day household there was perhaps not an admiration of FDR, but there was that extraordinary personal character and perseverance and dedication that they gave to the daughter and that character I think is one of the things that has been acknowledged in what she's done.

### Chapter 3

She went to Stanford University. She graduated in the top ten percent of her class. She was on the Law Review and she never could get a job. She was one of five women in that law school class and with that extraordinary record she was not offered a job by the major law firms, but she found other good things at Stanford, including a wonderful husband who was also a lawyer. And the friendship with Bill Rehnquist, who was in her class, also from Arizona, and that friendship was a lifelong friendship and it's extraordinary the two of them served those years together on the Court.



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### **Chapter 4**

When she graduated and she came back to Phoenix, she and her husband decided to do that, she didn't take the easy way out. She set up her own law firm, if you can imagine that responsibility and all of us here who are lawyers I think look at that very simple act as a great act of courage. Then she became an assistant attorney general. She mothered three sons and she was active in Republican politics. You know Arizona in the '50s and '60s was an extraordinary place in politics. That's where the conservative movement really began. You had Barry Goldwater in 1952 unseating the Democratic Majority Leader Ernest McFarland as I recall it. And Sandra Day O'Connor was part of the young Republican movement that brought out and supported Barry Goldwater, who was a very great friend and admirer of hers and supported him in the 1964 presidential election.

### **Chapter 5**

She was the beneficiary of a great Supreme Court ruling, one man, one vote, because that ruling caused Phoenix to gain 15 seats in the state senate that they might not otherwise have had. And because of her Republican background and having worked in the party, she asked for a nomination to that and she received that in 1969 and went to the state senate where she became a real power within the five-year career that she had there. She then ran a primary. This is quite extraordinary if you've been through the political understanding to understand what it is to run a primary within your own party for a seat on the Superior Court in Arizona and she won that, a tough primary.

### **Chapter 6**

Now, President Nixon as you know had four appointments to the Supreme Court. Sandra Day O'Connor wrote him a letter in 1970 saying that as he approached his presidency that he should really contemplate appointing a woman to the Supreme Court. There was an interesting tape that has been now revealed because of the presidential libraries that has the Nixon tapes where he is discussing whether or not he should put a woman on the Supreme Court. And he says to his aide, "I'm against it frankly. I don't want any of them around. Thank God" he said "we don't have any of them in the cabinet." But then he said, "But the cabinet's so lousy we might as well have a woman in it." But out of those appointments came the appointment of Judge Rehnquist and that, of course, Sandra Day O'Connor supported with great enthusiasm.

### **Chapter 7**

She was appointed to the highest court in Arizona by a Democrat, Bruce Babbitt, who was then governor, who many of you in this room know and he appointed her, as he said, because she was the most qualified person that he could find and he wanted a woman on that bench. So with that all in place, Potter Stewart once said about how do you get on the Supreme Court? He says "It's like lightning. You have to be in the right place at the right time." And so in 1981, when Potter Stewart talked to the Attorney General and said that he wanted to resign and then they began the search for a



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candidate, everybody recalled, and especially the president, President Reagan recalled his own commitment to the public in the 1980 campaign that he was going to appoint a woman. You know what all of that meant?

### **Chapter 8**

When Jimmy Carter came to office in 1977 only eight women in the history of the United States had sat on the federal bench. When Jimmy Carter left office in 1981, there were 43 women on the bench. And so when President Reagan heard about Sandra Day O'Connor and she went through a very tough vetting process, I mean it didn't begin just recently, and finally she had the opportunity of meeting the President himself. Well, can you imagine two people who would like each other more than those two? Here was the open west, the whole feeling about it, I can hear it, talking about the ranch, talking about horseback riding, talking about fixing fences. Oh, by the way, the Supreme Court I want to talk to you about that and so she got it. And so she was confirmed. The vote was 99-0. Senator Backus was out of town at that time. It was certainly a great historical event but it was a fulfillment of a major step forward for America.

### **Chapter 9**

And Sandra Day O'Connor has done everything that all of us, not Republicans, not Democrats, that all of us would have hoped that she would do. The focus was on her as the first woman. She said her concern was that she wouldn't be the last woman and so she knew that the responsibility she had to carry was an enormous responsibility and I can't imagine anyone having discharged it with greater success than she. I like to think of the scene on September 25, 1981 when the Attorney General of the United States brought Sandra Day O'Connor and the Marshall chair and presented her to the court. In the courtroom was President and Mrs. Reagan. In the courtroom were her father and mother and, of course, her husband and children and her siblings. What a moment in history, what a moment of personal fulfillment, what a triumphant moment for democracy. And, Justice O'Connor, that's the way we all feel today so honored to have you here. Thank you.



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## Justice Sandra Day O'Connor's Key Note Address

### Chapter 10

That was a lovely introduction. Thank you. Thank you so much. That was a wonderful introduction. You even found things I didn't know. What is this Nixon tape business? We're going to find out about that. Yeah, I'm going to have to find out more about that. Now, I'm so glad to be at Hyde Park. It's my first visit to this place and I know part of the Wallace family and I think David Douglas is sitting right there and they helped make this facility possible, which I think is marvelous and I'm so glad to see that. And tomorrow I look forward to seeing the other parts of Hyde Park in the daylight hours.

### Chapter 11

My parents were cattle ranchers, as you've heard, and many of the cattle ranchers at least in the southwest did not approve of Franklin Roosevelt's policies at all, quite the contrary, and they didn't approve of Eleanor Roosevelt either. I'm not sure why but they didn't. And when I was a child we didn't have a school near the Lazy B Ranch and I was sent off to El Paso, Texas where I lived with a grandmother to go to school and I went to this Miss Radford's School for Girls. And the head mistress, Dr. Lucinda de Leftwich Templin invited Eleanor Roosevelt to come to the school and Eleanor Roosevelt accepted and all of us were supposed to clean up and be out by the flagpole waiting for Eleanor Roosevelt to arrive.

### Chapter 12

And I can remember to this day all of us being out there waiting and I did not dare tell my parents, huh uh. And, of course, I realized that I couldn't possibly like her. And so we all stood out by the flagpole and the black car drove up and she got out of the back and she had an old black slouch hat thing on and she had an ill-fitting dress that came down to her ankles and kind of high shoes. And around her neck was a fox fur. I used to have one of my grandmother's where the fox mouth is biting the tail and it hangs out with the feet, oh, not beautiful features in any event. And so she got out and walked amongst us and started to talk and to visit and I realized this was a woman who had incredible charisma.

### Chapter 13

Within ten minutes she had charmed all these ignorant little girls who were gathered around the flagpole, including this one and I will never forget that day. She made such a wonderful impression. And I've met very few people in my life, a few, like Nelson Mandela and Eleanor



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Roosevelt, who immediately on meeting them you know they're special and she was. So I never met the president but I remember meeting her with much pleasure.

### **Chapter 14**

And I don't know what a keynote speech is. I don't like the term. I never know what you're supposed to do with a keynote so this isn't a keynote. This is just a few remarks on the topic of this conference which I think is marvelous and I'm so impressed that a number, if not all, the presidential libraries have cooperated to make this possible. You have marvelous speakers. You have a terrific topic. I adore presidential libraries. I've visited a lot of them and it's so much fun to go. And this is a great idea, [get] together, and really focus on one topic of great interest and have speakers as outstanding as those you've assembled for this. So I'm really glad to be part of it and to be here. And in thinking about what I might say I thought about the issues and conflicts between the Executive Branch and the Legislative Branch which we're seeing in our country right now to an extraordinary degree.

### **Chapter 15**

We are in the most amazing time. And if I understand correctly, you might even be addressing some of this the next time the libraries get together. It is a remarkable time to be considering the issue of separation of powers and what it means in time of stress or war. And we have some very challenging cases at the Supreme Court and have had in the last few years and there are some on the docket this term. And I couldn't help think of one particular historic figure of note, William Howard Taft, and the stories told that Mr. Taft once found himself stranded at a small country railroad station. I don't know if it was up here somewhere or where. And he was told that the express train would stop only for a large group of passengers. And Taft wired the conductor, "Stop at Hicksville, large party waiting to catch train." When the train stopped, Taft got on and then he turned to the confused conductor, "You can go ahead now" he said "I am the large party."

### **Chapter 16**

And we laugh at this story because we remember that Mr. Taft at his heaviest tipped the scales at over 300 pounds, but as the 27th president of the United States and as the tenth Chief Justice of the United States he also was the only person ever to have tipped the scales by holding both of those incredibly large offices, experiencing firsthand the large responsibility of heading two of the most significant institutions in the free world. His time in these two roles put him on two different sides of the same constitutional coin. Indeed, our remarkable Constitution recognizes the individual largeness of these governmental bodies while acknowledging that their relative strengths will at times coexist, at times collide, and nearly always manage to carry out the will of the majority while safeguarding the rights of the minority.



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### **Chapter 17**

And so tonight, I want to spend a few minutes to reflect on some moments in history in which these two large institutions, the chief executive and the Supreme Court with large constitutional obligations have intersected, overlapped and even clashed. A look at the dynamic between the two tells volumes about the genius of our Constitution.

### **Chapter 18**

To find an example of the judiciary and the presidency surviving the collision of two larger than life personalities, we don't have to travel very far into the early days of our republic. Distant cousins, John Marshall and Thomas Jefferson, were anything but the kissing kind. Indeed their relationship was privately nasty and publicly only slightly better. Their exchanges, well documented but not well mannered, planted the seeds for an all out war on the proper role of the judiciary vis-à-vis the other branches of government and set the trajectory of constitutional law as we know it today.

### **Chapter 19**

Jefferson almost was not our third president coming to the post only after the House of Representatives broke an electoral tie vote in his race with Aaron Burr. Marshall almost was not our fourth Chief Justice receiving the nomination from President John Adams only after the first choice, John Jay, declined reappointment to the Supreme Court. But once fate brought them to their respective positions of authority, Jefferson and Marshall came to blows in ways that put even today's climate of political acrimony to shame. Early in his administration, Jefferson tried to have John Marshall impeached. He accused him of irregular and censurable behavior. "In Marshall's hands," Jefferson said, "the law is nothing more than an ambiguous text to be explained by his sophistry into any meaning which may subserve his personal malice." He spoke vehemently of his bitter disappointment in his own appointees to the Supreme Court calling them lazy and weak for not standing up against the crafty Chief Judge Marshall. And Marshall in turn labeled Jefferson totally unfit for the presidency. Jefferson called the Chief Justice "a man of lax lounging manners and a profound hypocrisy." Now over time these two actors played out a rather hateful drama rooted in personal animus and fundamental disagreement as to the proper role of government and the appropriate balance between judicial and legislative branches. History teaches us that it was Marshall's decision in *Marbury v. Madison*, a case that many say might as well have been Marshall v. Jefferson that permanently legitimated and strengthened the Supreme Court and that gave the Chief Justice his least obvious but perhaps greatest victory over President Jefferson.

### **Chapter 20**

In the watershed 1800 election, Marshall's Federalist Party lost control of the Executive and Legislative branches to Jefferson's Republicans and in an effort to retain some presence in government, Adams decided to pack the judiciary on the way out the door. President Adams



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appointed Marshall who was then Secretary of State as Chief Justice and Congress passed a number of pieces of legislation to restructure the court system and provide the lame duck Senate and the outgoing president with lots of new judicial positions to fill. Adams filled them or thought he did through a series of midnight appointments, but Jefferson fought back. When he took office, he refused to deliver the commissions of some of those appointees. When Mr. Marbury, an appointed judge who did not get his commission, tried to get a court order compelling the administration to deliver it, the case made its way to the Supreme Court.

### **Chapter 21**

Chief Justice Marshall, to the surprise of many, denied the order that would have forced his nemesis to issue the judicial commissions but the victory that he handed to Jefferson came with a silver lining to himself. The order was denied on the grounds that the part of the Judiciary Act that had given the Supreme Court the power to issue such orders was contrary to the Constitution. Writing for a unanimous court, Marshall declared that courts as well as other departments are bound by the Constitution and more importantly that it is emphatically the province and duty of the judicial department to say what the Constitution means. In one fell swoop, Marshall gave up a small power that Congress had conferred on the court and took an exchange, a larger, overarching power to examine the ultimate constitutionality of all acts of Congress challenged in court. Despite the vehement disagreement of his cousin Thomas Jefferson, this bold assertion by John Marshall has survived as the official answer to this day.

### **Chapter 22**

The lessons to be learned from the story of Jefferson and Marshall are too many to recount tonight. It's the story of a government that develops and grows and changes over time. It's the story of large institutions competing and accommodating in ways that both amaze and alarm us. Perhaps even more significantly it's a story that begins a distinctively human thread that we will see woven throughout all of the historic episodes I will mention tonight. The judiciary and the presidency are inhabited by real people with real emotions, real foibles and a very real, if sometimes conflicting, commitment to do what is right.

### **Chapter 23**

A second historic moment of interaction between the presidency and the judiciary stars President Abraham Lincoln and Chief Justice Roger Taney. To my knowledge it represents one of only two times that a sitting president has deliberately defied a direct Supreme Court order. In the early days of the Civil War, the fragile American nation faced serious threats from within. The southern states had broken away. European powers were poised to intervene and to divide our young nation permanently and the war posed another sort of danger, a danger less obvious maybe than columns of soldiers





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marching through the countryside, but more insidious to a nation conceived in liberty. It was the danger that a government at war might use its extraordinary powers to stamp out political opposition.

### **Chapter 24**

In April, 1861, a trainload of Union soldiers passed through Baltimore en route to Washington, D.C. They were summoned to man the defensive fortifications around the capital. They were greeted by an angry mob of southern sympathizers in Baltimore and they had to fight their way across that city to another train station where their train to Washington, D.C. waited. Later that night, local authorities who favored the south burned some of the bridges between the two cities. They cut telegraph lines between Baltimore and Washington claiming that Union soldiers might come back looking for revenge. Congress was out of session and President Lincoln found himself in a capital city with a rebel army to the south and a secession-minded mob to the north. Invoking his power as commander-in-chief, he authorized local military leaders to suspend the writ of habeas corpus along the railroad line from Washington, D.C. to Philadelphia. Essentially, this meant that the army could arrest civilians without getting a warrant from a court or without probable cause to believe a crime had been committed by the person arrested and without providing the speedy jury trial that the Constitution guarantees.

### **Chapter 25**

A Mr. John Merriman, a member of the Maryland legislature, had been recruiting rebel soldiers. He was arrested by a Union general and hauled off to Ft. McHenry in Baltimore Harbor. This was when Supreme Court justices still rode the circuit. They would hop on their horses or other carriages to serve as federal circuit judges around the country. When Merriman filed his request with his local circuit judge he went to none other than Chief Justice Roger Taney, who was the circuit judge for that location. Taney was no friend of the Republican administration and when he received Merriman's petition he ordered the commander of Ft. McHenry to bring Merriman to his court in Baltimore. Instead of complying, the commander sent back an aide bearing the message that the president had authorized the colonel, the commander, to suspend the writ of habeas corpus.

### **Chapter 26**

This, as you can imagine, incensed Chief Justice Taney. He wrote a fiery opinion saying that only Congress had the power to suspend habeas corpus. The president's job, he said, was merely to see that the laws be as the Constitution says faithfully executed. President Lincoln did not publicly respond to Taney's opinion until Congress met a month later on July 4th, and taking aim at Taney's assertion he noted that in the confederacy the Constitution itself was being ignored and that had he not acted when he did Washington, D.C. would have fallen into southern hands and there would have been no Congress to act in response to the rebellion. Lincoln famously asked, "Are all the laws but one to go unexecuted and the government itself go to pieces less that one be violated?" Merriman



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stayed in jail and scholars still debate whether President Lincoln had the authority as president to invoke the constitutional provision suspending habeas corpus during the early days of the war. And I'm not going to wade into that debate tonight but it suffices to note that in March, 1863, Congress was in session and gave President Lincoln express legislative authority to suspend the writ, which then removed any constitutional obstacle to the detention of the enemy southerners.

### **Chapter 27**

And I think to President Lincoln's immense credit he did not use the authority he asserted to trample on the civil liberties that the writ of habeas corpus was meant to protect. I think recent studies have made pretty clear that President Lincoln did not try to suppress political dissent and he understood that a democracy grows stronger by allowing people to voice their opposition to government even in the midst of war. Now he appreciated that the strength of the Union lay not only in force of arms but in the liberties that were guaranteed by the open and sometimes heated exchange of ideas. And he no doubt would have been pleased to know that after his assassination and the conclusion of the war, President Lincoln's predictions that habeas corpus would quickly be reinstated came to pass. In Lincoln's words, "What constitutes the bull work of our own liberty and independence is not our frowning battlements, our bristling sea coasts, the guns of our war steamers, or the strength of our gallant and disciplined army, but rather the love of liberty and the preservation of the spirit which prizes liberty as the heritage of men in all lands everywhere." In this way, what might otherwise be remembered as a clash between these two large historic figures can be seen as a moment of large respect really for the rule of law by both the President and the Chief Justice.

### **Chapter 28**

The constitutional debate they spark continues even now but I think we can appreciate the character of the two men behind this story and their sincere, even if conflicting examples of dedication to principle and to the people of this nation loom large even today.

### **Chapter 29**

Now a third well-known account of the intersection between the large spokes of influences of the judiciary and the presidency is, of course, contained in the story of President Franklin Roosevelt's court expansion plan, which you heard a lot about today. The current head count of justices is engraved neither in stone nor in the Constitution. There have been so many fluctuations in the numbers of justices on the court that the history of the changes was put into a little verse to jog the memory.

### **Chapter 30**

Congress decided at first to fix the number of justices at six. Congress planned on a change to five but the six remained very much alive. Six high judges, supreme as heaven, and Jefferson added a



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number seven. Seven high judges all in a line, two more added and that made nine. Nine high judges were sitting when, Lincoln made them an even ten. Ten high judges very sedate, when Congress got through there were only eight. Eight high judges who wouldn't resign. President Grant brought the figure back to nine. Would a justice feel like a packed sardine if the number was raised to say 15?

### **Chapter 31**

Well the last line of this little verse marks the so-called court packing plan of Franklin Roosevelt. In citing the heavy workload and declining age or advancing age I should say of many of the Supreme Court's then sitting justices, President Roosevelt suggested the increase that would have raised the number to 15. However, I think historians have long focused on what's widely believed to be the real reason for the plan. He was more than a little annoyed that the justices were giving a thumbs down to so much of his New Deal legislation and he was not imagining things. In the 104 years between 1790 and 1930 the court had overruled only 60 acts of Congress, barely half an act a year, but during President Roosevelt's first term the court held unconstitutional 12 laws and some of those were the president's favorites. Indeed, on the aptly named Black Monday, May 27, 1935, the Supreme Court struck down three pieces of legislation all at once. At that pace, President Roosevelt feared the court would soon dismantle his New Deal altogether.

### **Chapter 32**

So his proposal was to get Congress to pass a bill that would let him appoint a new justice every time a justice turned 70. Coincidentally, six members of the court were over 70 at the time. There was a cartoon that was published that showed what people thought the president was doing. It shows the nine then current justices sitting on the bench, along with six President Roosevelt look-alikes. Finally, Senator Burton K. Wheeler of Montana obtained a letter at his request from Chief Justice Hughes. As Senator Wheeler recalled, "You could have heard a comma drop in the caucus room as I read that letter aloud." In it, Chief Justice Hughes struck down the arguments offered by the president and his supporters. Hughes detailed how the court was fully abreast of its work, was not rejecting important cases to keep its dockets clean and his last argument was the clincher. He said, "An increase in the number of the justices of the Supreme Court would not promote the efficiency of the court. It is believed it would impair that efficiency so long as the court acts as a unit. There would be more judges to hear, more judges to confer, more judges to discuss, more judges to be convinced and decide. The present number of justices is thought to be large enough so far as the prompt, adequate and efficient conduct of the work of the court is concerned," said Chief Justice Hughes.

### **Chapter 33**

President Roosevelt's court packing plan was dead and so the court survived what many viewed as one of the biggest crises the court faced in its history and the Court emerged larger in influence if not



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in numbers and much more keenly aware of its sometimes tenuous but always interesting relationship with the presidency.

### **Chapter 34**

Now perhaps the most significant story to tell on this general subject, at least in terms of the legal precedent is what I saved for last. It takes place in April, 1952 during the Korean War and it features President Harry Truman and a steelworkers' union and Justice Robert Jackson, who you might be interested to know had as a law clerk at the time a bright young lawyer by the name of William H. Rehnquist. Now at this critical time in the war effort, the steel industry and the union had reached an impasse in their negotiations. There was a looming strike by more than 600,000 workers and it threatened to cripple the production of weapons and, in President Truman's eyes, endanger American troops serving in Korea.

### **Chapter 35**

Ever sympathetic to the steelworkers, President Truman had worked for months to keep the strike at bay and he turned to his advisors for counsel; the recommendation, he should seize the steel mills forcing the companies and labor to return to the bargaining table and management to retract what President Truman viewed as outrageous demands for regulatory approval of big price per ton increases. So President Truman took that advice and just hours before the scheduled strike in an impromptu press conference, President Truman looked into the camera and announced on national television that he would order his Secretary of Commerce Charles Sawyer to take over the steel mills and keep them running.

### **Chapter 36**

The president's advisors, it turned out, had not counted on the Supreme Court entering the fray. Historical documents now tell us that they counseled him that the odds were low that the judiciary would involved itself in such a hot button issue and that the short-lived seizure would serve its designed purpose of nudging labor and management into more productive talks and have no wider ramifications. But what resulted was something much larger; an act that would forever impact the American presidency and it produced a watershed Supreme Court decision defining the limits on the scope of presidential power.

### **Chapter 37**

It began with the U.S. District Court Judge David Pine [ph?] who to the surprise of the administration and even the steel companies' own lawyers declared the seizure unconstitutional. Judge Pine said there was utter and complete lack of authoritative support for a president's seizure of private businesses. The Circuit Court of Appeals entered a stay and the U.S. Supreme Court heard expedited arguments. In its decision in *Youngstown Sheet and Tube v. Sawyer*, it echoed the district court's



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rebuke of the president. He had indeed exceeded his powers under the Constitution, said the court. Writing for the majority, Justice Hugo Black rejected the administration's argument that in a time of war the president could exercise his emergency powers in so broad a fashion as to be almost boundless. But the most enduring opinion in the case was the concurrence penned by Justice Jackson from Jamestown, New York, just up the road a little way, and by the way the last justice who never went to law school. He didn't even graduate from college and he was educated in the public schools of Jamestown, not too bad, right? Well, Justice Jackson, his opinion in that case is very insightful on the issue of presidential powers and that's the real legacy of *Youngstown Sheet and Tube*.

### **Chapter 38**

According to recent writings on this case, President Truman, never one to keep his feelings masked, asked a top advisor to list on a single sheet of paper the reasons why the court's decision was wrong. The president took the sheet with him to a dinner hosted by Justice Black at his home after the release of the decision and all the justices had been invited and were present. And it was a sort of peace offering by Justice Black to the beleaguered president. And the first line of paper we're now told read as follows: "The Supreme Court substituted its judgment for that of the president as to the seriousness of the cessation of production of steel at this time." Now whether President Truman actually delivered that written message is unclear but it was reported though that at the conclusion of that dinner, President Truman turned to Justice Black and said, "I don't like your law but this is mighty good bourbon."

### **Chapter 39**

When the founders crafted the masterful Constitution that survives to this day, you think they could have imagined the drama of those stories I've just related tonight? And could they have anticipated the human dynamics and battles of will that would pepper the centuries to come and change the course of history in such fascinating ways, maybe. At a minimum the framers forced their would-be times of crisis, real and perceived, international and domestic, personal and political and that these times would inevitably put the president in the boundary-pushing role of defining his own powers and the courts in the precarious role of reviewing the president's acts. They knew because common sense dictates it that institutions that are large in power and large in their impact inevitably have run-ins that are large in scale and large in their ultimate consequences. But they also trusted, the framers did, that the balanced system of government that they had created would at the end of the day provide a larger perspective. They knew that the people of their fledgling nation could be counted on to choose their leaders wisely, at least that's what they thought then, I don't know if we do now or not. We'll see, and that those chosen could be counted on to respect the roles set out in the Constitution for them.



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## Chapter 40

And as we face the trials we do today, and we have some major ones with separation of powers issues, I think we can find hope in the dignity with which the presidents and the judiciary have emerged from even the rockiest episodes of the past and maybe when this speech is given again or the subject is addressed again in a future presidential library seminar, it will be remembered that at this time the tasks before us are large. They really are. But it will also be remembered that we, like our forbearers, are probably strong enough to meet them. Thank you.