
SEPTEMBER 17, 2025: CONSTITUTION DAY CURRICULUM

Judicial Independence and the Rule of Law

Video conversation with retired United States Supreme Court Justice Stephen Breyer and Duquesne University President Ken Gormley (a Constitutional scholar) with introductory remarks by Jeffrey Rosen, President & CEO of the National Constitution Center

How to Use This Lesson for College Students

- Play the 25-minute video straight through or pause at points for discussion.
- Use the questions below to guide a class discussion.
- Designed for a 50–60 minute class segment.
- **Particularly useful for a Constitution Day class or program, on Wednesday, September 17, 2025, to fulfill Congress’s requirement of educational programming on this day.**

Discussion Questions

1. Justice Breyer refers to *Federalist 78*, where Alexander Hamilton argued that judges must be independent to enforce the Constitution. What was Hamilton worried about, and do you think his reasoning still holds true today?
2. Why could it be dangerous if judges decided cases based on politics or popularity? Why might judges sometimes make decisions that are unpopular?
3. What are the pros and cons of life tenure for federal judges? How might the courts change if presidents could replace U.S. Supreme Court justices at will?
4. How did the acceptance of *Bush v. Gore* by the impacted political leaders and the American public – after the disputed election of 2000 – show why trust in the courts matters? Would the reaction be different in today’s more polarized political climate?
5. Why is public trust in the courts essential for democracy to work?
6. Consider the sports analogy: Are there limits to comparing courts to umpires? In what ways do judges go beyond simply “making calls”? How would the Super Bowl work if the losing team would not accept the result?

7. How should judges balance awareness of politics and society with their duty to apply the law? Should they ever take public opinion into consideration?
8. What are the effects of threats against judges? What type of threats have become more common? How should the judiciary and other branches respond?
9. Why is impeachment of judges not a good remedy? What would happen to our democracy if judges could be impeached every time they make an unpopular decision?
10. Justice Breyer observed that roughly 40% of Supreme Court cases are unanimous, but media coverage often focuses on the cases where the justices are split 5-4 on “hot button” cases. How does selective reporting shape public perception of the Court?
11. Justice Sandra Day O’Connor said judges will often anger political leaders if they are truly doing their jobs and applying the law impartially. Why is judicial independence sometimes certain to make politicians unhappy?
12. Justice Breyer noted that judges cannot defend themselves publicly when attacked, unlike public officials in other branches of government. Should others (like bar associations or the media) play a more active role in defending judges? What role can students play in that effort?
13. Justice Breyer explained that democracy’s survival is not guaranteed. How does this idea challenge each generation, including today’s students, to uphold democratic principles including judicial independence?
14. Why is Constitution Day a particularly appropriate day to talk about the importance of judicial independence?
15. Theodore Roosevelt’s “man in the arena” speech was referenced at the close of the conversation. What was Teddy Roosevelt saying in that famous speech? In what ways can students embody that active role in sustaining democracy?