Wilson - Ch 12 - The Judiciary

Question 1) Which one of the following statements, A through D, is false?

✗ A) 'Judicial review' is a power not limited to the U.S. Supreme Court. Lower-level federal and state courts also exercise this power to review actions of government and to declare them constitutional or unconstitutional.

Wilson's definition fails to note that both federal and state courts can exercise judicial review over decisions of lower courts as well as acts of state and local governments.

Explanation:

The precedent for U.S. Supreme Court review of acts of the national Congress and the executive was set in Marbury vs. Madison (1803). The precedent for U.S. Supreme Court review of acts of a state government was set in McCulloch vs. Maryland (1819).

✗ B) Judicial review is the federal courts' chief weapon in the system of checks and balances on which the U.S. government is based.

Explanation: Since 1803, the U.S. Supreme Court has declared more than 130 federal laws unconstitutional. It has declared unconstitutional several hundred state laws. Although these numbers are small compared to the total number of federal and state statutes enacted, a declaration of unconstitutionality may avert a long line of similar legislation.

✗ C) Judicial review is one of the distinguishing characteristics of the U.S. political system that makes ours different from most others.

Explanation: About 60 nations do have something resembling judicial review, but in only a few cases does this power mean much in practice. In the U.K. and most parliamentary systems, the parliament is supreme and no court may strike down a law that it passes.

✗ D) A U.S. Supreme Court decision declaring some action to be unconstitutional can be changed only by amending the Constitution, by a change in the views or membership of the Court, or by a lack of enforcement by the executive branch.

As Wilson points out, the Court overrules its own precedents about as often as it overturns acts of Congress. Usually (but not always) this happens when a good deal of time has passed and the membership of the Court has changed.

Congress and the states have several times undone a Supreme Court decision interpreting the Constitution by amending that document. The 11th Amendment was ratified to prevent a citizen from suing a state in federal court; the 13th, 14th, and 15th to undo the Dred Scott decision; the 16th Amendment (1913) overturned an 1895 ruling of the Court that congress could not impose a federal individual income tax.

Explanation:

Sometimes presidents (or governors or mayors) simply refuse to enforce Court decisions. For example, in the case of Worcester vs. Georgia (1832) the Court declared unconstitutional the forced removal of the Cherokee Nation to Oklahoma. President Andrew Jackson then stated, "John Marshall has made his decision; let him enforce it now if he can."

Congress has also several times tried to overturn a U.S. Supreme Court decision -- not by proposing an amendment to the Constitution -- but simply by passing a law contradicting the decision. If challenged in the courts, such attempts are usually ruled unconstitutional by both liberal and conservative justices.

✔ E) None of the above statements, A through D, is false.

Question 2) Which one of the following statements, A through D, is false?

✗ A) The ‘strict-construction' approach to judicial review holds that judges should use judicial review sparingly.

Explanation: Strict constructionists argue for a frugal use of the power of judicial review for several reasons: 1) the power is not enumerated in Article III (or anywhere else in the Constitution) but rather claimed as an inherent power; 2) since federal judges and justices are appointed, they should normally defer to the actions taken by elected officials in the executive and legislative branches of both levels of government; 3) and they should confine themselves as much as possible to applying those principles explicitly stated or clearly implied in the Constitution.

✗ B) The ‘activist' approach to judicial review holds that judges should use judicial review more frequently.

Explanation: Judicial activists argue for a more frequent use of the power of judicial review for several reasons: 1) some of the Framers (most clearly Hamilton) anticipated and approved of the exercise of judicial review; 2) the judiciary are the

"guardians" of the Constitution who were intended by the Framers to protect individual (and, at times, states') rights from the tyranny of "hasty and passionate majorities;" and 3) the Framers intentionally used vague, abstract, and enigmatic language because they knew that the writers of the Constitution could not possibly foresee all the problems, conflicts, and challenges that would face the country in the future and so they intended for the Constitution to be a "living document" whose language would be flexible enough to meet these changing demands.

✔ C) Strict-constructionist judges tend to be politically conservative; activist judges tend to be politically liberal.

Explanation:

No, this is a widely-stated but clearly incorrect view. Relatively few judges or justices have been consistent in their approaches to judicial review – most are sometimes strict-constructionist and at other times activist in their decisions. Which approach they follow in any particular case depends not on some inflexible commitment to one approach or the other, but instead on whether the action of government that they are asked to review threatens or defends their core political values.

For example, if the action under review expands government-imposed limits on legal abortion, then the conservative judges are likely to adopt a strict-constructionist approach; however, if the action under review limits or outlaws government-imposed restrictions on legal abortion, then the conservative judges are likely to adopt an activist approach. The choice of approaches will be just the opposite for liberal judges in these two scenarios.

If the action under review expands the scope of government-imposed affirmative-action remedies for individuals subject to racial or gender discrimination, then the liberal judges are likely to adopt a strict-constructionist approach; however, if the action under review limits or denies individuals' access to affirmative-action remedies, then the liberal judges are likely to adopt an activist approach. The choice of approaches will be just the opposite for conservative judges in these two scenarios.

✗ D) Up until the mid-1930s, the majority of justices on the U.S. Supreme Court tended to be political conservatives who vigorously exercised judicial review to strike down various attempts by the federal and state governments to regulate business.

Explanation:

During the Warren (1953-69) and Burger (1969-86) Court years, the majority of justices tended to be political liberals who vigorously exercised judicial review to strike down various attempts by the federal and state government to limit civil liberties and civil rights.

Under the current Chief Justice Rehnquist, the Court has tended to be often fairly equally divided between liberals, centrists, and conservatives.

Both liberals and conservatives on the Court have always seen themselves as protecting citizens from arbitrary and tyrannical government; they just disagree on which citizens needed protecting from what threats. For example, conservative jurists exercise judicial review to protect the advantaged in society from disorder that threatens their person or property. In contrast, liberal jurists exercise judicial review to protect the disadvantaged in society from the harm caused by inequality.

✗ E) None of the above statements, A through D, is false.

Question 3) Which one of the following statements, A through D, is false?

✗ A) The suit by Marbury requested that the U.S. Supreme Court issue a writ of mandamus ordering Madison to deliver the paperwork necessary to complete Marbury's appointment as a federal judge.

Explanation:

The right to issue such writs had been added to the Court's original jurisdiction by the Judiciary Act of 1789. It was because of this addition to the Court's original jurisdiction that Marbury had brought his case directly to the Supreme Court without first seeking relief at a lower-court level.

✗ B) Chief Justice John Marshall, speaking for the unanimous Court, announced that Madison was wrong to withhold the commission that Marbury sought and that the federal courts had the power to issue writs to compel public officials, like Madison, to do their prescribed duty.

Explanation:

Marbury, indeed, had a legitimate complaint against Madison. And, the federal courts did have the constitutional authority to issue a writ ordering that Madison deliver Marbury's commission.

✗ C) Marshall's opinion held that, while the lower federal courts did have the constitutional authority to redress Marbury's grievance with Madison, the Supreme Court did NOT have such power.

Explanation:

The provision of the Judiciary Act of 1789 that added that power to the Court's original jurisdiction was unconstitutional. Article III of the Constitution enumerated the Court's original jurisdiction; it did not authorize Congress to add to that list by a simple statute. Hence, in order to expand the Court's original jurisdiction, the

Constitution should have been amended. It was not. Therefore, Marbury could not bring his case directly to the Court, since on all matters not mentioned in its grant of original jurisdiction, the Court was limited by Article III to exercising only appellate jurisdiction.

✔ D) The result of this ruling was that Madison had to deliver Marbury's commission.

No, to Madison's (and Jefferson's) great surprise, Marbury lost the case. Marshall had tricked them.

Explanation: Marshall had succeeded in setting the precedent for judicial review in a manner that President Jefferson and the Antifederalists could not block. They had mistakenly assumed that Marshall and the Court would rule in favor of Marbury and order Madison to deliver the commission. At that point, Jefferson was planning to refuse to comply and provoke a confrontation with the Court. Instead, by striking down a small (and otherwise unimportant) provision of an act of Congress that Marbury had used to bring his case to the Court, Marshall left Jefferson empty-handed, with no Court-ordered demand to contest.

✗ E) None of the above statements, A through D, is false.

Question 4) Which one of the following statements, A through D, is false?

✗ A) Under Chief Justice John Marshall (1801-1835), the Supreme Court greatly expanded its own powers and also the powers of the federal government over the states.

The Marbury v. Madison (1803) decision declared that the Supreme Court had the power to decide what the Constitution meant and that the Court could declare an act of Congress unconstitutional.

Explanation: The McCulloch v. Maryland (1819) decision gave a very broad interpretation of congressional power under the 'necessary-and-proper' clause and further declared that the national law was in all instances the supreme law and that conflicting state laws had to give way.

✔ B) Under Chief Justice Roger B. Taney (1836-1864), states' rights were weakened by the Court.

Usually, quite the opposite. Appointed by President Andrew Jackson because he was an advocate of states' rights, Taney led the Court to limit federal supremacy.

Explanation: There was one case where Taney did limit a territory's right -- the right of a free territory to not render a fugitive slave back to his slave-state owner. In the infamous and disastrous Dred Scott v. Sandford (1857) decision, Taney rejected Scott's claim that temporary residence in a territory in which slavery was banned by the Missouri Compromise had made him free. The opinion declared that Congress had no power to forbid slavery in any territory and thus struck down the Missouri Compromise as unconstitutional. This decision inflamed the divided nation and made the Civil War all but inevitable.

✗ C) The dominant issue facing the courts from the end of the Civil War through the Great Depression of the 1930s was the debate over when the economy could be regulated by state and national governments.

The Court had two answers. A series of activist and conservative Supreme Courts, under a succession of Chief Justices (Chase, Waite, Fuller, White, Taft, and Hughes), generally struck down government regulation of business and consistently upheld government restrictions on attempts by labor to organize.

Explanation: The conservative majority on the Court also developed a two-fold view about the appropriate use of the 14th Amendment. First, the equal-protection and due-process clauses SHOULD NOT be used by the federal government to protect blacks from state-mandated segregation and discrimination. Second, those same clauses SHOULD be used to protect private property and corporations from most forms of either state or federal regulation.

✗ D) Justice Owen J. Roberts in 1937 yielded to public opinion in a way that Chief Justice Taney had not in 1857.

Explanation: The public clearly supported Franklin Roosevelt's 'New Deal' proposals that were being struck down by the Court in a series of 5-to-4 decisions until Justice Roberts switched sides. Although FDR's attempt to 'pack' the Court had failed in Congress and with the public before Roberts switched sides, Justice Roberts's change of mind made unnecessary further attempts to tamper with the size of the Court.

✗ E) None of the above statements, A through D, is false.

Question 5) Which one of the following statements, A through D, is false?

✔ A) The size of the U.S. Supreme Court is now fixed by the Constitution at 8 justices and 1 chief justice.

Explanation: No, the size of the Court is not addressed by the original Constitution or any amendments. Congress quickly assumed the power to determine the size of the Court and altered the number of justices on six different occasions – the last in 1869 – either to prevent appointments by a president or to influence decisions pending before the Court. Since then, the public has resisted further efforts to tamper with the size of the Court.

✗ B) Congress has created lower federal courts beneath the Supreme Court that are called federal 'constitutional' courts – whose judges can only be removed by conviction of impeachment charges, nor may their salaries be reduced while they are in office.

Explanation: The most important of the federal constitutional courts are:

The federal 'district courts' total almost 100, with at least one in each state [NC has 3], DC; and the Commonwealth of Puerto Rico. There are over 600 federal district-court judges who hear over 300,000 cases annually.

The federal 'courts of appeals' total of 13, with one in each of eleven regions [NC is in the 4th]; plus one in DC, and one for a 'federal' or nationwide circuit. There are almost 200 federal appellate-court judges.

Certain specialized-jurisdiction courts also have constitutional status, such as the Court of International Trade.

✗ C) Congress has also created lower federal courts that have specialized jurisdictions that are called federal 'legislative' courts – whose judges have fixed terms of office, can be more easily removed, and can have their salaries reduced.

Explanation: Examples of federal legislative courts are: the Federal Tax Court, the Federal Claims Court, and various Military Courts.

✗ D) Although presidents do sometimes manage to tilt the Supreme Court in a liberal or conservative direction by the nominations they make, it is sometimes difficult for a president to predict how a justice will behave once seated on the Court.

Explanation: Most presidents are surprised and unhappy with the performance of at least one of their appointees to the Supreme Court. Oliver Wendell Holmes, Jr. turned out to be less liberal than Theodore Roosevelt assumed he would be, Felix Frankfurter less liberal than Franklin Roosevelt assumed, Warren Burger less conservative than Richard Nixon assumed, John Paul Stevens less conservative than Gerald Ford assumed, David Souter less conservative than George H.W. Bush assumed, and Sandra Day O'Connor less conservative than Ronald Reagan assumed.

✗ E) None of the above statements, A through D, is false.

Question 6) Which one of the following statements, A through D, is false?

✔ A) The typical president can exercise a lot of control over the lower federal courts.

Explanation: Not at all. Most of the lower-court federal judges (who number over 800) serve for life and will not retire or die during a two-term presidency; hence, there aren't that many vacancies to fill.

Furthermore nominations to the federal district courts are heavily influenced by the preferences of the senators of the president's party from the state in which the vacancy occurs.

And, perhaps even more importantly, when the chair of the Senate Judiciary Committee is a member of the opposition party, he or she can usually delay indefinitely consideration of presidential nominees to the federal bench. This delay is possible because the president's party is in the minority and hence is unlikely to muster the majority vote required to force consideration by the committee.

For example, Senator Orrin G. Hatch (R-UT) blocked almost 100 of Clinton's judicial nominations to fill vacancies on the federal bench. The number of vacancies grew so high that the normally reserved Chief Justice Rehnquist uncharacteristically publicly rebuked the Senate for holding up needed appointments.

During the first two years of George W. Bush's presidency, the new Democratic Chair, Senator Patrick J. Leahy (D-VT), followed a similar path.

✗ B) 'Senatorial courtesy' is the tradition that the Senate will not confirm presidential nominees for federal offices in a particular state (e.g., a U.S. Marshal, customs official, or a federal district court judges) unless they have the endorsement of the senators of the president's party from that state.

Explanation: Thus, President Obama must first get Senator Kay Hagan's approval for any district-court nominee in NC before the full Senate would vote to confirm that nomination.

✗ C) Compared to earlier times, modern presidents have devoted a great deal more staff time and energy to screening and

recruiting qualified candidates for the federal bench – but still almost always from within their own party.

Explanation: Even with thorough screening, the Senate still can and does sometimes reject a presidential nominee. The last presidential nominee to the U.S. Supreme Court to be rejected by the Senate was Robert Bork, a Reagan nominee in 1987. Reagan then nominated Anthony Kennedy, who was far less controversial and was confirmed by the Senate.

George H.W. Bush's nomination of Clarence Thomas in 1991 was also controversial, but he was confirmed by a narrow margin.

✗ D) The number of blacks, Hispanics, and women serving on federal courts has increased significantly in both Republican and Democratic administrations since the mid-1970s.

Explanation: The federal bench is no longer the exclusive preserve of white males, as it essentially had been until the 1960s.

✗ E) None of the above statements, A through D, is false.

Question 7) Which one of the following statements, A through D, is false?

✔ A) An adverse decision in a state-court criminal case in which the defendant is charged with violating only a state law cannot be appealed out of the state court system into the federal court system.

Explanation: No, such an appeal can be made to the U.S. Supreme Court, but only after all state-level appeals have been exhausted, and only on the grounds that some right guaranteed by the U.S. Constitution, federal statute, or treaty has been violated.

As we shall see, the U.S. Supreme Court exercises its discretion to grant review to relatively few such appeals. But, when the Court does hear such an appeal, it can review state court rulings even when the federal courts had no jurisdiction over the original dispute.

✗ B) Some matters are exclusively under the jurisdiction of the federal courts.

Explanation: For example: 1) controversies between two or more states, 2) bankruptcy petitions, 3) violations of federal civil or criminal laws that do not involve any violations of state laws, and 4) appeals of decisions of federal regulatory agencies.

✗ C) The vast majority of all cases heard by the federal courts begin in the district courts.

Explanation: The vast majority of these district-court cases also end there. The district courts have only original jurisdiction; they do not hear appeals from any other courts.

✗ D) The U.S. courts of appeals have no original jurisdiction and hear only appeals from lower federal courts.

Explanation: The appeals may come from federal district courts, federal regulatory agencies, and from a few other federal courts. U.S. courts of appeal do not hear appeals from any state courts.

✗ E) None of the above statements, A through D, is false.

Question 8) Which one of the following statements, A through D, is false?

✗ A) The U.S. Supreme Court has original jurisdiction over all cases involving two or more states and over all cases involving the U.S. and one or more states.

Explanation: In addition, the Court has original jurisdiction over suits between a state and a citizen of a different state (if begun by the state).

Finally, the Court has original jurisdiction over all cases involving foreign ambassadors and other diplomats.

✔ B) The U.S. Supreme Court hears appeals from state trial, appellate, and supreme courts.

Explanation: No, an appeal from the state courts can be made to the U.S. Supreme Court only after all state-level appeals have been exhausted – usually that means at the state supreme court.

✗ C) Most cases heard by the U.S. Supreme Court come to it by means of a petition for a 'writ of certiorari.'

Explanation: Relatively few cases heard by the Court are original jurisdiction or non-discretionary appellate jurisdiction cases.

✗ D) Congress has given the U.S. Supreme Court the power to control its workload by selecting, in most instances, which petitions for review that it wishes to grant.

Explanation: The Court accepts for review less than 5% (about 350 of the roughly 8500) applications for certiorari that it receives.

It takes a vote of 4 of the 9 justices to grant a hearing in such cases.

Often the Court further limits its grant of certiorari to only specific questions, rather than reviewing all elements of the dispute. Cases of importance reaching far beyond the interests of the parties to the suit tend to be heard.

The Court issues written decisions for only about 80 of the cases that it accepts for review (about 1% of the 8500 cases filed with the Court).

✗ E) None of the above statements, A through D, is false.

Question 9) Which one of the following statements, A through D, is false?

✗ A) If you are indigent – without funds – your criminal case can be heard by the U.S. Supreme Court at no cost to you.

Explanation: About half of the petitions for review sent to the Court are 'in forma pauperis.' If you are too poor to afford a lawyer to defend you in a criminal case, the government supplies a lawyer (not necessarily a competent or motivated one). If the dispute is a civil suit and you are poor, sometimes an interest group or foundation will be willing to provide counsel – if they think the case is sufficiently important to them and can be won.

✗ B) Unlike most of Europe, each party to a civil lawsuit in this country must pay its own way to bring the case to trial.

Explanation: However, under some circumstances, the plaintiff can collect legal costs from the defendant – if the plaintiff wins the case. Under some circumstances, the defendant could be the government at the local, state, or federal level.

✗ C) An important non-financial barrier to getting a case heard in federal court is presented by the difficulties in demonstrating 'standing' to sue.

Explanation: To have 'standing' to sue, you must meet several important standards: you must be a direct party to an actual controversy that has or will cause real harm to you.

✔ D) Being a taxpayer usually gives you standing to challenge the constitutionality of a government action.

Explanation: No, that is not USUALLY good enough to demonstrate standing to bring suit. For example, a lot of taxpayers don't want their tax money spent in certain ways, but the appropriate remedy is to use political means, not the courts, to change that spending.

However, if the case involves a claim that government has improperly denied or abridged a 1st-Amendment right, then taxpayer suits are sometimes allowed.

✗ E) None of the above statements, A through D, is false.

Question 10) Which one of the following statements, A through D, is false?

✗ A) 'Sovereign immunity' is the doctrine that individuals cannot sue the government without its consent.

Explanation: By statute, Congress has increasingly given this consent – especially in contract disputes and allegations of harm caused by official negligence.

✗ B) A 'class-action' suit is a case brought into court by a person on behalf of not only him- or herself but also all other people in similar circumstances.

Explanation: One significant example was the landmark Brown v. Board of Education (1954) public-school racial-desegregation case. Subsequent class-action suits have involved malapportioned state legislatures, the rights of prisoners, and various actions against corporations (suits brought by tobacco users, women with silicone breast implants, and asbestos workers are all recent examples).

✔ C) The U.S. Supreme Court has recently made it easier to bring class-action suits to that court.

Explanation: No, just the opposite. The conservative majority on the Court ruled that the Court would no longer hear most class-action suits seeking monetary damages unless each and every ascertainable member of the class was individually notified of the case.

✗ D) Class-action suits are common because lawyers often find it more profitable to themselves to bring a suit on behalf of thousands of people rather than on behalf of just one person.

Explanation: However, there are two other major reasons why class-action suits have become much more common: 1) Congress has not addressed properly issues of concern to large numbers of people, and 2) it is sometimes easier to make national policy through the courts than through Congress.

✗ E) None of the above statements, A through D, is false.

Question 11) Which one of the following statements, A through D, –is false?

✗ A) An ‘amicus curiae' is an interested party not directly involved in the case, who presents to the Court a ‘friend of the court' oral argument or written brief.

Explanation: Before such amicus curiae briefs can be filed or oral arguments heard, both parties must agree or the Court must grant permission. Amicus curiae briefs can be of important value, especially if they offer new interpretations of law or evidence different from those of the petitioner and respondent.

✗ B) In deciding a case, a majority of the justices must be in agreement; if there is a tie, the lower-court decision is left standing.

Explanation: There can be a tie among the 9 justices if one is ill or disqualifies him- or herself due to an actual or potential conflict of interest.

✗ C) When the Court reaches a unanimous or majority decision, it then announces the ‘Judgment of the Court.'

Explanation: The ‘decision' or ‘judgment' of the Court in an appellate-jurisdiction case tells whether the decision of the lower court is affirmed, reversed, or remanded for further deliberations. If the lower-court decision is affirmed, then the petitioner loses and the respondent wins. If the lower-court decision is reversed, then the petitioner wins and the respondent loses. If the case is remanded, then both will have to wait to see the outcome.

✗ D) By tradition, the Court usually includes an ‘Opinion of the Court' explaining its judgment.

Sometimes the opinion is brief and unsigned – that is called a ‘per curium' opinion.

Explanation: There can be four kinds of signed opinions: 1) unanimous, 2) majority, 3) concurring (an opinion by one or more justices who agree with the majority's judgment but disagree in part or in full with its opinion), and 4) dissenting (an opinion by one or more justices who disagree with the majority's judgment).

✔ E) None of the above statements, A through D, is false.

Question 12) Which one of the following statements, A through D, is false?

✗ A) The federal government's top trial lawyer is the solicitor general of the United States.

Explanation: The solicitor general decides what cases the government will appeal from the lower courts and usually represents the federal government before the Supreme Court.

✗ B) The current membership of the Court has no clear ideological bloc that consistently is in the majority on most cases.

The current Court has three blocs (Wilson's analysis is out of date):

The conservative bloc: Chief Justice John Roberts, and Associate Justices Samuel Alito, Antonin Scalia, and Clarence Thomas [the latter two are NOT always strict constructionists, as Wilson incorrectly labels them]

Explanation:

The swing bloc: Associate Anthony Kennedy

The liberal bloc: Associate Justices Sonia Sotomayor, Elena Kagan, Ruth Bader Ginsburg, and Stephen Breyer [who are NOT always activists, as Wilson incorrectly labels them]

✗ C) The U.S. Supreme Court is currently deeply divided with different majorities forming in different cases.

Explanation: The 'swing' Justice, Kennedy, tends to shift right or left depending upon the issue in dispute. For example, in abortion, criminal-justice, and no-establishment cases, Kennedy votes with the conservative bloc. On civil-rights cases, Kennedy tends to join the liberal bloc.

✔ D) The conservative bloc on the Court consistently adopts the ‘strict-constructionist' view that the Supreme Court should rarely exercise judicial review and should instead defer to the judgment of elected officials.

Explanation: No, on this point Wilson is clearly wrong. The conservative bloc often adopts the ‘activist' posture in striking down (and not deferring to the elected) federal and state officials' actions, when those actions contradict core conservative values. Three recent examples where the conservatives were in the majority in exercising judicial review:

U.S. v. Morrison. The Court struck down the Violence Against Women Act on the grounds that Congress had

overstated the scope of its Commerce-clause power in providing civil remedies to victims of spouse abuse.

Boy Scouts of America v. Dale. The Court ruled that New Jersey's Supreme Court was in error in applying the state's public-accommodations law to prevent the BSA from denying membership and a scoutmaster position to an openly gay male.

California Democratic Party v. California. The Court struck down the 'blanket' primary adopted by a large majority of California voters in a 1992 referendum holding such primaries to be a violation of a political party's right to freedom of association.

✗ E) None of the above statements, A through D, is false.

Question 13) Which one of the following statements, A through D, is false?

✗ A) An informal rule of judicial decision making is 'stare decisis,' meaning let the decision stand.

Explanation: This is the principle that a court today should follow the precedents laid down by prior decisions in similar cases. Similar cases should result in similar decisions, otherwise equal justice means nothing and adjudication of the law would be unpredictable and chaotic.

✗ B) The Supreme Court sometimes overrules itself, i.e., rejects as unconstitutional a principle laid down in an earlier decision.

This rarely happens, and when it does, usually only after a relatively long period of time and with a change of membership on the Court. Out of thousands of decisions over the past 200 years the Court has overruled its own previous decisions only about 140 times.

Explanation: A landmark example of the Court overruling an earlier decision was the Brown v. Board of Education (1954) rejection of the 'separate-but-equal' doctrine established by the Court in Plessey v. Ferguson (1896).

One of the rare instances when the Court overruled its own recent precedent without a change of membership in the Court occurred with Justice Robert's shift on the constitutionality of New Deal legislation in 1937.

✔ C) In 1997, the U.S. Supreme Court ruled that a sitting president could not be sued until after he had left office.

Explanation: No, the ruling went the other way. Paula Jones was allowed to bring civil suit against President Clinton for sexual harassment. It was because Clinton lied under oath about his sexual relationship with Monica Lewinsky in the Jones trial, that Independent Counsel Kenneth Starr recommended to the House of Representatives that Clinton should be impeached for obstruction of justice.

✗ D) The fact that the U.S. has more lawyers in proportion to our population than practically every other nation is more of a symptom rather than a cause of our high volume of litigation.

Explanation: We have an adversarial and pluralistic culture that emphasizes individual rights with widespread cynicism about government's ability and trustworthiness. It is the conflicting interests in our society that create court cases, thereby generating the demand for lawyers – not vice versa.

✗ E) None of the above statements, A through D, is false.

Question 14) Which one of the following statements, A through D, is false?

✗ A) Simple policy disagreements are generally not considered adequate grounds for trying to impeach a federal judge.

Explanation: Hence the impeachment process is not an effective tool for Congress to influence the federal courts.

✗ B) The Senate's power to reject presidential appointments is a more significant source of congressional influence over the federal judiciary.

Explanation: This power can and has been used to gradually alter the composition of the judiciary.

✗ C) Judicial activism on the Supreme Court has often coincided with periods of society-wide division, conflict, and discord.

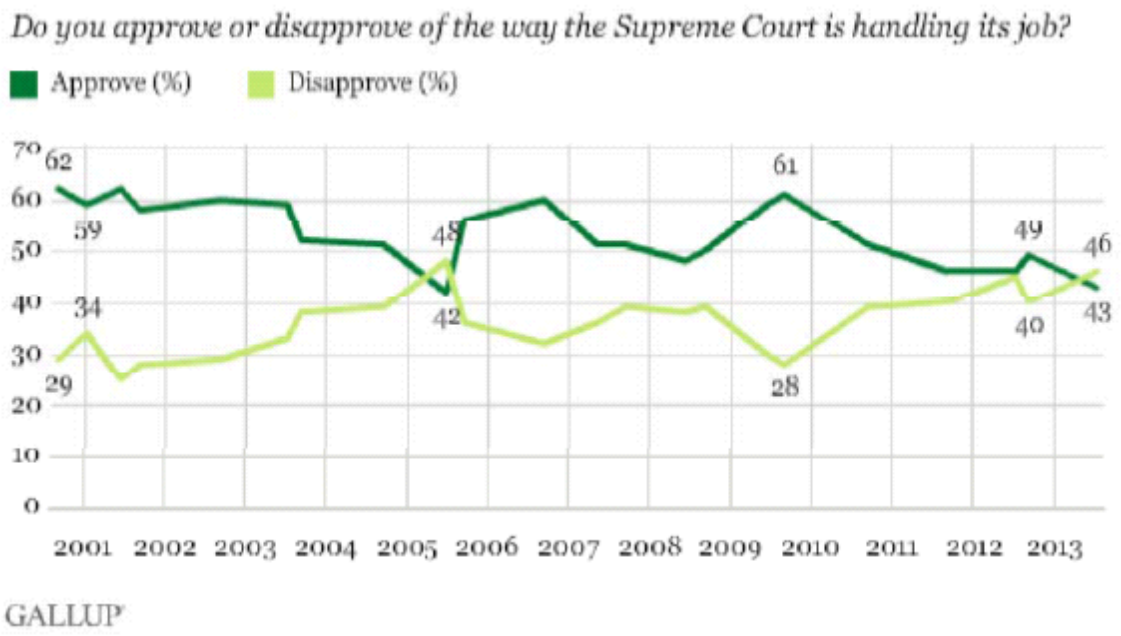
Explanation: The Marshall Court's activism coincided with the collapse of the Federalist party and its replacement by the Jeffersonian Democrats. The Taney Court's activism exacerbated the conflict over slavery and states' rights. The series of conservative decisions striking down state and federal regulation of the economy spanned the profound and

lasting changes of the industrial revolution. The liberal activism of the Warren Court on civil-rights matters came during regional, and then national, racial turmoil.

✔ D) From the early-1980s to the present, the U.S. Supreme Court has gained, rather than lost, support among the American public.

Explanation:

At first, the Court was not tarnished by the war in Vietnam or by Watergate. However, the Court's recent rulings striking down state and federal restrictions on election-campaign contributions have tarnished the Court's reputation.



✗ E) None of the above statements, A through D, is false.