

**The Almost Painless Guide to the Branches of Government
The Judicial Branch**

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**THE ALMOST PAINLESS GUIDE
TO THE BRANCHES OF GOVERNMENT**
Unit of Study
Grades 5-Up

INTRODUCTION

This three-part Unit of Study examines the three branches of the American federal government. The three programs (“The Executive Branch,” “The Legislative Branch,” and “The Judicial Branch”) may be used independently, or as a Unit of Study, intended to present a comprehensive approach to all three branches, their independent functions, and their extensive interactions, especially the system of “checks and balances” between the branches.

The Unit of Study includes Unit Goals, which govern the entire three-part package; Unit Assessment Tools, intended to be used prior to and after the presentation of all three lessons; and Unit Culminating Activities, intended to provide closure for the Unit. The Unit of Study materials and goals are delineated at the beginning of this Teacher’s Guide, and the individual lessons are presented thereafter.

The individual programs include lesson assessment tools, intended to be used prior to and after the presentation of each lesson. Each program has its own Teacher’s Guide, which follows the Unit of Study information. The Guide presents the contents of the program, Student Objectives for the lesson, and ensuing activities for each lesson.

MATERIALS IN THE UNIT OF STUDY

- Three video programs;
- Three teacher’s guides, including lesson plans, student objectives, follow-up activities, and scripts;
- Unit pre- and post-tests, unit goals, and unit culminating activities

Student Preparation

The students should be supplied with the necessary copies of blackline masters required to complete the activities supplied. Teachers can extend any of the lessons on the Constitution by analyzing current events articles.

UNIT GOALS

Unit goals for student comprehension govern the entire three-part Unit of Study. Unit assessment tools and culminating activities reflect these goals.

After participating in all three lessons included in this Unit of Study, students should be able to:

- Identify and explain the basic function of the three branches of federal government

- Explain how the powers of the national government are distributed, shared, and limited
- Explain how the three opening words of the Preamble to the U.S. Constitution, “We the People...,” embody the principle of the people as sovereign, the ultimate source of authority
- Explain how legislative, executive, and judicial powers are distributed and shared among the three branches of the national government.
- Explain how each branch of government can check the powers of the other branches.

UNIT BLACKLINE MASTERS

The following blackline masters present the Unit Assessment Tools and Culminating Activities. A Unit Answer Key may be found on pages 3-6 of this Guide.

1. Unit Blackline Masters #1a-1b: Unit of Study Pre-test is a Unit Assessment Tool to be used before you present any of the materials in the Unit Study. This tool should clarify student knowledge and misconceptions prior to the commencement of the Unit, and may be contrasted with Blackline Masters #6a-6h: Unit of Study Post-Test to gauge student comprehension of the Unit Goals, stated above, after the Unit has been completed.
2. Unit Blackline Master #2: Political Cartoon asks students to interpret a political cartoon based on the division of power between the branches of government.
3. Blackline Masters #3, 4, and 5: Checks and Balances, More Checks and Balances, and Still More Checks and Balances asks students to delineate between the powers and responsibilities of the three branches of government.
4. Unit Blackline Masters #6a-6h: Unit of Study Post-test provides a Unit Assessment Tool based on the Unit Goals, and should be administered after the completion of all three components of the Unit of Study and its Culminating Activities.

UNIT ANSWER KEY

Unit Blackline Masters #1a-1b: Pre-Test

1. A
2. B
3. B
4. A
5. A
6. C
7. A
8. D
9. A
10. D

Unit Blackline Master #3: Checks and Balances

1. A. legislative, B. executive, C. judicial
2. A. executive, B. legislative, C. judicial
3. A. judicial, B. executive, C. legislative
4. The different powers guarantee that no one branch of the government can become too powerful. While the legislative branch and executive branch are both elected the source of their constituency is different. The executive branch must gain support nationally while the legislative branch need only gain the support of the members of the states they represent. This helps to guarantee that issues will be viewed from both a national and state point of view. In addition, Supreme Court justices are appointed by the executive branch and confirmed by the legislative branch. Also, the term of office for the legislative branch and executive branch are limited so that the people may control how powerful these officials become. This is especially true of the legislative branch which does not have term limits. Lastly, the term for a member of the judicial branch is for life so as to prevent them from being influenced by political elections or reappointment.

Unit Blackline Master #4: More Checks and Balances

1. executive
2. legislative
3. judicial
4. legislative
5. executive
6. legislative
7. judicial
8. legislative
9. executive
10. judicial
11. legislative
12. executive
13. legislative
14. legislative
15. executive

Unit Blackline Master #5: Still More Checks and Balances

1. Possible actions taken by the executive branch: The president would have two basic options; (1) sign the bill into law, or (2) veto the bill.
2. Possible actions taken by the legislative branch: If the president vetoed the bill, the legislative branch could override the veto with a two-thirds majority vote. Because the bill passed with so much support in both the House and Senate, this probably would occur.
3. Possible actions taken by the judicial branch: If a court case made its way through the lower courts to the Supreme Court, the Supreme Court could decide to hear the case. If the

Supreme Court decided to hear the case, it could rule the law as either constitutional or unconstitutional because it violates the Second Amendment of the Constitution.

Unit Blackline Masters #6a-6h: Post-Test

- | | | |
|-----------|-------|------------------------------|
| 1. true | 21. C | 41. bicameral |
| 2. false | 22. D | 42. electoral college |
| 3. true | 23. D | 43. Speaker of the House |
| 4. false | 24. C | 44. House of Representatives |
| 5. true | 25. A | 45. judicial review |
| 6. false | 26. D | 46. appellate jurisdiction |
| 7. false | 27. B | 47. impeach |
| 8. false | 28. C | 48. Congress |
| 9. true | 29. D | 49. original jurisdiction |
| 10. false | 30. C | 50. veto |
| 11. true | 31. B | 51. E |
| 12. false | 32. B | 52. L |
| 13. false | 33. D | 53. J |
| 14. false | 34. A | 54. L |
| 15. false | 35. B | 55. E |
| 16. true | 36. D | 56. L |
| 17. false | 37. D | 57. J |
| 18. true | 38. B | 58. L |
| 19. true | 39. A | 59. E |
| 20. true | 40. D | 60. J |

61. legislative branch: make laws; executive branch: enforce laws; judicial branch: interpret laws
62. The President appoints a candidate to fill a vacancy. This candidate is then confirmed by the Senate (legislative branch). The term of the justice is for life; therefore, he is immune from any influences by the other two branches.
63. The executive branch (President) can either sign the bill or veto the bill. If so, the legislative branch can override this veto with a 2/3 majority vote. In this case, the bill will be signed into law. If the law is challenged, it will go to the federal judicial system, which is the judicial branch. The case can eventually be appealed until it reaches the Supreme Court. In which case they can declare it constitutional or unconstitutional.
64. Answers will vary.

**THE ALMOST PAINLESS GUIDE
TO THE BRANCHES OF GOVERNMENT
The Legislative Branch
Grades 5-Up
Running Time: 21 minutes**

GENERAL DESCRIPTION OF THE PROGRAM

The Almost Painless Guide to the Branches of the Government: The Judicial Branch uses contemporary footage, archival footage and photographs, original graphics, and dialog narration to provide students in grades five and up with information on the legislative branch of the federal government.

Although the program focuses on the judicial branch, it is considered in context with the executive branch and the legislative branch to examine how each branch checks the others to create a balance of power.

The program looks at the United States Constitution as the foundation of federal government and the concept of “We the People” as the ultimate authority. The system of checks and balances is examined in detail with various graphic and video examples provided. Additionally, we see how power is divided between state and federal governments.

The creation of the legislative branch and the offices of Senator and Representative are examined, along with the powers and responsibilities that their offices entail. We also look at the requirements of their positions, how they are elected, the concept of a bicameral legislature, and the “great compromise.” The law-making process is also considered in a step-by-step analysis.

The program concludes with “The Almost Painless Review,” which offers an excellent synopsis of the entire program. Also, a Video Quiz is provided after the closing credits.

INSTRUCTIONAL NOTES

It is suggested that you preview the video and read the related Suggested Instructional Procedures before involving your students in the lesson activities. In this way, you will become familiar with the materials and be better prepared to adapt the program to the needs of your class.

You will probably find it helpful to follow the video and lesson activities in the order in which they are presented in this Teacher’s Guide, but this is not necessary.

It is also suggested that the video presentation take place before the entire class and under your direction. The lesson activities focus on the content of the video; therefore, the presentations should be a common experience for all students.

As you review the instructional program outlined in the Teacher’s Guide, you may find it necessary to make some changes, deletions, or additions to fit the specific needs of your students. We encourage you to do so, for only by tailoring this program to your students will they obtain the instructional benefits afforded by the materials.

SUGGESTED INSTRUCTIONAL PROCEDURES

Teacher Preparation

- Preview the video The Judicial Branch
- Duplicate any blackline masters you intend to use.
- Read the descriptions of the blackline masters.

Student Preparation

The students should be supplied with the necessary copies of blackline masters required to complete the activities supplied. Teachers can extend any of the lessons on the Constitution by analyzing current events articles.

STUDENT OBJECTIVES

After viewing the program, The Judicial Branch, and participating in the follow-up activities, students should be able to:

- Define the powers of the legislative branch as the power to:
 - * establish committees to oversee activities of the executive branch;
 - * impeach the president, other members of the executive branch, and federal judges;
 - * pass laws over the president’s veto by a two-thirds majority vote of both houses;
 - * disapprove appointments made by the president;
 - * propose amendments to the United States Constitution
- Describe and define the following:
 - * the creation and function of the legislative branch
 - * requirements for becoming a member of Congress
 - * the process by which a bill becomes a law
 - * the structure of the House of Representatives and the Senate
 - * the role of committees
 - * the role of the Speaker of the House
 - * the role of the vice-president
 - * the powers of Congress

FOLLOW-UP ACTIVITIES BLACKLINE MASTERS

The following duplicable blackline masters are included with this guide.

1. **Blackline Master #1: Pre-Test** is an assessment tool intended to gauge student comprehension of the Objectives prior to the launching of the executive branch lesson, which includes the video and the ensuing activities. The results of the Pre-Test may be contrasted with the results of the Post-Test to assess the efficacy of the lesson in achieving the Student Objectives.
2. **Blackline Master #2: Video Quiz** is a printed copy of the questions which appear at the end of the video presentation. The Video Quiz is intended to reinforce the salient points of the video immediately following its completion and may be used for assessment or as a catalyst for discussion.
3. **Blackline Master #3: Vocabulary** is a list of pertinent terms and definitions.
4. **Blackline Masters #4: Discussion Questions** offers a series of questions to spur discussion and help identify student misconceptions and comprehension.
5. **Blackline Masters #5a-5b: You Be the Judge** poses a number of questions pertaining to political affiliation, gender, ethnicity, and constitutional concepts. The activity includes a blackline master delineating, in pie chart format, the demographic profiles of the judicial branch, executive branch, and the American populace. Students are asked to draw conclusions based on these data.
6. **Blackline Masters #6a-6c: Post-Test** is an assessment tool to be administered after the lesson (Pre-Test, video, and follow-up activities) have been completed.

EXTENDED LEARNING ACTIVITY

The following activity may be assigned to more advanced students:

Included with the blackline masters for this lesson is a set of pages analyzing the Supreme Court case *Korematsu v. United States*. Students are asked to role-play the case. A Teacher Instructions sheet is included. There are six Extended Learning Activity Sheets.

ANSWER KEY

Blackline Master #1: Pre-Test

1. false
2. false
3. true
4. true
5. false
6. false
7. false
8. true
9. true
10. false

Blackline Master #2: Video Quiz

1. A
2. A
3. B
4. B
5. A
6. A
7. D
8. B
9. C
10. D

Blackline Master #4: Discussion Questions

1. Changes to the Constitution can be made by adding amendments. The Supreme Court can also impact the social atmosphere of our country as well. (i.e. Dred Scott, Plessy v. Ferguson, and Brown v. Board of Ed.)
2. It is called a federal system of government because it shares its power and responsibilities with the individual states.
3. The President (the executive branch) appoints the justices of the Supreme Court and appointments are subject to confirmation (approval) of the Senate.
4. The Supreme Court “checks” the other two houses by having the power to invalidate (declare unconstitutional) a law passed by Congress or signed by the President.
5. The length of term for a justice is life.
6. The federal court system is made up of the Supreme Court, US Court of Appeals, US District Courts, and US Claims Court.
7. Judicial review is the act performed by the Supreme Court. By using this review, it interprets the rules of the Constitution. In addition, it also considers whether new laws or lower court decisions violate the Constitution.

8. There are nine Supreme Court justices. An odd number is used in order to insure a majority decision. If a justice abstains from voting and a majority decision is not reached, then the lower court's decision is upheld.
9. Original jurisdiction is when the Supreme Court reviews the constitutionality of a state or federal law. Appellate jurisdiction is when the Supreme Court considers the question of constitutionality of lower courts.
10. There are no requirements of a justice. S/he is appointed by the President, then confirmed by the Senate. During the selection process, his/her qualifications are reviewed.

Blackline Master #6a-6c: Post-test

1. B
 2. B
 3. B
 4. A
 5. B
 6. A
 7. A
 8. B
 9. A
 10. B
 11. A
 12. D
 13. B
 14. C
 15. D
 16. B
 17. C
 18. C
 19. D
 20. A
- ESSAY:
- The answers will vary, but they should include supporting examples the further explanation of the following example:
- The powers assigned to the judicial branch safeguard the individual liberties of the citizens. In addition, these powers allow the Supreme Court to check the executive and legislative branches of government. The judicial branch membership is selected by individuals who are representative of the will of the people.

**THE JUDICIAL BRANCH
SCRIPT OF NARRATION**

HARLAN:
Hold it, we can't say that!

MARIE:
Why not, Harlan?

HARLAN:
Just got off the phone with our lawyers. We have to add a legal disclaimer, Marie. Here, you read it.

MARIE:
Okay. Every attempt has been made to insure this video will be a pain-free lesson in the branches of the United States government. There are no other guarantees or promises, implied or implicit. Your mileage may vary. Always wear your seat belt. Void where pro-

HARLAN:
Stop! How's this?

MARIE:
That should take care of it.

HARLAN:
I guarantee it.

MARIE:
Now you're setting yourself up for another call from our lawyers.

HARLAN:
Sorry. But, speaking of the law...

MARIE:
Was that a transition?

HARLAN:
And a darn fine one! Today's program is on one branch of the government I know something about.

MARIE:
Harlan understands one out of three, and he's proud of it!

HARLAN:
Gee, that was so judgmental, Marie.

MARIE:
You're not going to start with legal jokes.

HARLAN:

I'll be brief.

MARIE:
(Groans)

HARLAN:
I'll admit that learning about the executive branch,

MARIE:
The President,

HARLAN:
And the legislative branch,

MARIE:
Congress,

HARLAN:
Is, a little, shall we say "difficult" for me. Difficult and required, tough combo. You've been helpful though, Marie.

MARIE:
Well, thank you,

HARLAN:
But, I find the law, and particularly the Supreme Court, supremely interesting. I'm sort of a legal eagle.

MARIE:
More like a legal beagle.

HARLAN:
Doggone good joke, Marie!

MARIE:
Oh, brother. We know that the three branches of the United States government are part of a plan, an organization, a set of rules, all established in the Constitution.

HARLAN:
Those rules can change though, right?

MARIE:
That's right. The rules can change through "amendments," or additions to the Constitution. In much the same way, Supreme Court decisions have often changed "the rules" of our country's laws and they way they affect our country's people.

HARLAN:
Got it.

MARIE:

Even though today, we'll be concentrating on the judicial branch and the role of the Supreme Court, it's important to remember who the most important people in our system of government are.

HARLAN:

Okay, I'll bite. More important than the Supreme Court justices?

MARIE:

Yep.

HARLAN:

More important than Congressmen?

MARIE:

Yep.

HARLAN:

More powerful than a speeding locomotive?

MARIE:

Uh, Harlan.

HARLAN:

More important than the President?

MARIE:

We, the people.

HARLAN:

I'm getting a feeling of déjà vu. I swear I've heard that phrase before somewhere.

MARIE:

Well, I certainly hope so! Those three words are the key to understanding our entire system of government, Harlan. They're the first three words of our Constitution. See, unlike other countries, we, the citizens of the United States, granted our government and its leaders the privilege of governing us for our common good. But, and this is very important, "we the people" are the ultimate authority.

HARLAN:

Right, no monarchy or dictators for us!

MARIE:

And the framers of the Constitution made sure there were checks and balances built in, so that no one branch of the government that we established could become too powerful.

HARLAN:

So the branches operate like sort of like umpires for each other.

MARIE:

In a way. A typical male way, but, yes, umpires.

HARLAN:

In this program, we'll examine the judicial branch and how and why it was created, just what powers the judicial branch possesses, how it interacts with the Legislative and executive branches, and how all three branches work together, and limit each other's power.

MARIE:

Back in 1788, our Constitution went into effect, creating a federal government.

HARLAN:

It's called a federal government so that we could have federal cases, right?

MARIE:

No, it's called a federal system of government because it shares its power and responsibilities with the individual states.

HARLAN:

So that's why a state like say, Pennsylvania, doesn't coin its own money or decide to declare war on Saskatchewan.

MARIE:

Right, you won't see any "Pennsylvania pennies" or a "Keystone State Military," but at the same time, the states reserve many powers for themselves, like operating schools, setting local laws, collecting taxes...

HARLAN:

They're real good at that.

MARIE:

No comment. Now, at the Constitutional Convention....

HARLAN:

Held at the Super Bowl!

MARIE:

Held in Philadelphia! Remember that the individual colonies, or states, were understandably very concerned about creating too strong a central government.

HARLAN:

Well, naturally. They'd just finished a war over the tyrannical rule of England.

MARIE:

So, to protect and preserve the states' rights, but at the same time establish an effective national government, a federal system was designed in which the three main functions of government would be held by three separate branches: the legislative branch, or Congress, was empowered to make laws; the President, through the offices of the executive branch, was charged with assuring the laws were faithfully executed; and the judicial branch, or the Supreme Court, was established to interpret the laws as they apply to the Constitution. Their powers were clearly defined, and limited, at the Constitutional Convention.

HARLAN:

And that provides a system of checks and balances.

MARIE:

For example, although the President appoints the justices of the Supreme Court, his appointments are subject to confirmation, or approval, of the Senate.

HARLAN:

Got it.

MARIE:

While the President can veto any law passed by Congress, Congress can override a veto with a two-thirds majority vote.

HARLAN:

And while the President is our Commander-In-Chief of the armed forces, only Congress can declare war.

MARIE:

And the Supreme Court provides a further check and balance because it has the power to invalidate a law passed by Congress, or signed by the President if it decides that law would be “unconstitutional,” or in violation of the principles of the Constitution

HARLAN:

So the checks and balances system really seems to work. The party guys did good!

MARIE:

The “party guys?” Oh, you mean the Constitutional Convention attendees.

HARLAN:

Yeah, whatever. The important thing is that in article three, section one, the party guys...

MARIE:

Harlan!

HARLAN:

...the Constitutional Convention attendees established one Supreme Court, and, in 1790, John Jay was declared our first Chief Justice. They made being a Supreme Court Judge a really good gig, too.

MARIE:

A really good “gig?”

HARLAN:

Yeah, the judges of both the Supreme Court and the lower federal courts have jobs - ready for this? - for life! That’s my idea of a really good gig!

MARIE:

Well, coming from a person who measures job longevity in terms of weeks, I suppose you would put it that way. But those justices have a tremendous responsibility, and the Constitution insists on “good behavior” to maintain their position.

HARLAN:

I knew it was too good to be true.

MARIE:

The fact is that only one justice, Samuel Chase, back in 1805, has ever even been impeached.

HARLAN:

Impeached means he was kicked out?

MARIE:

No, impeached means that legal action was brought against him, but he was acquitted. One other judge, Abe Fortas, did resign in 1969 when he was accused of a conflict of interest.

HARLAN:

So, in all seriousness, Marie, it seems to me that an appointment for life really is a big responsibility and an opportunity to dramatically influence the law and our society. I'll give you just two examples.

MARIE:

I knew you would.

HARLAN:

The Civil War was caused in part by a Supreme Court decision, in the Dred Scott case of 1857. In this case, the Supreme Court ruled that in all states, slaves were considered the property of their owners. More recently, the modern Civil Rights movement was born when the Supreme Court outlawed public school racial discrimination in Brown versus the Board of Education of Topeka, Kansas.

MARIE:

Decisions like these are obviously very important, not only as laws, but to every citizen of our country, and that's why an appointment to the Supreme Court by the President,

HARLAN:

The executive branch,

MARIE:

Must be approved by the Senate,

HARLAN:

One of the two houses of the legislative branch.

MARIE:

Correct. It's all part of our government's

MARIE & HARLAN:

System of checks and balances.

MARIE:

Now, on a lighter note, at least one Supreme Court judge did seem to agree with your opinion that his position was, as you so brilliantly put it, "a good gig."

HARLAN:
Really?

MARIE:
In 1990, when Associate Justice Thurgood Marshall turned 82 and was asked when he might retire, Judge Marshall replied that he had “a lifetime appointment and I intend to serve it. I expect to die at 110, shot by a jealous husband!”

HARLAN:
Pretty cool, especially for a guy dressed in a robe.

MARIE:
Pretty cool, for a member of the most powerful court in the country.

HARLAN:
That’s true. The Constitution established the Supreme Court as the highest court in the land and gave Congress,

MARIE:
The Legislative, or law-making, Branch,

HARLAN:
The power to establish other “inferior” courts. That means they’re not quite as good.

MARIE:
I don’t think so , Harlan.

HARLAN:
Just kidding, Marie. But there are state courts and other lower federal courts, district courts, where trial cases originate, and appeals courts, where those cases can be appealed. But they’re called “inferior” because they can be over-ruled by the highest court.

MARIE:
The Supreme Court.

HARLAN:
Earlier you mentioned that the rules of the Constitution can be changed through amendments.

MARIE:
Right.

HARLAN:
Well, the Constitution’s rules can also be interpreted, and much of the time of the Supreme Court is spent considering whether new laws or lower court decisions violate the Constitution. It’s called “judicial review.”

MARIE:
Wow, “judicial review.” You sound like a lawyer.

HARLAN:

Not only do I sound like a lawyer, I'm charging like one, wait 'til you see my bill.

MARIE:

Can't wait!

HARLAN:

"Judicial review" just means that the Supreme Court has the authority to examine the actions of the Legislative and executive branches to insure that they are constitutional. And the Court can rule on decisions made by lower courts when those decisions are challenged, or "appealed."

MARIE:

First, it's judicial review, now he's talking "constitutionality!"

HARLAN:

Fancy words, simple concept. In 1803, the Supreme Court, under the guidance of Chief Justice John Marshall, ruled on the case of Marbury versus Madison.

MARIE:

Spare me the details, okay?

HARLAN:

You can, and will, read about it later, Marie. The court ruled that any act of Congress which conflicts with the Constitution is null and void.

MARIE:

Got it! So the Supreme Court is the supreme interpreter of the Constitution.

HARLAN:

Supremely stated. The Court's rulings apply to everyone: individuals, Presidents, Congress, and the states. So Supreme Court decisions affect all of us, everyday.

MARIE:

We, the people.

HARLAN:

Just had to work that in one more time, didn't you? But you are right.

MARIE:

I know.

HARLAN:

Right, and oh-so smug. I prefer to look at the Supreme Court as sort of the supreme umpires, calling "foul ball" if they feel Congress or a lower court has made a mistake and a law or a court decision seems unconstitutional.

MARIE:

Leave it to you to somehow, some way, find a sports analogy.

HARLAN:

Well, there are nine Supreme Court justices.

MARIE:

What does that have to do with anything?

HARLAN:

Nine players on a baseball team! Nine!

MARIE:

Spare us. Besides, there weren't always nine justices. The size of the court is set by Congress, and has varied over the years from six to ten. In fact, in 1937, President Franklin Roosevelt tried and failed to add six more justices to the Court to sway a vote in his favor.

HARLAN:

I didn't know that.

MARIE:

Anyway, it has stayed at nine since 1869, although as few as six can decide a case.

HARLAN:

Close enough.

MARIE:

Close only counts in horseshoes, Harlan. Oops, that was a sports analogy, wasn't it?

HARLAN:

I feel the thrill of victory! Vindicated! Case closed! And speaking of cases, do you know the voting structure of the Supreme Court?

MARIE:

I'm still struggling with your horrible transition. Go ahead.

HARLAN:

A majority vote of the entire court is decisive. And a tie vote sustains a decision of a lower, or so-called "inferior," court.

MARIE:

Interesting.

HARLAN:

And judges named "Harlan" get two votes.

MARIE:

Wrong on two counts: One vote, one justice; and, two, there weren't any Supreme Court judges named "Harlan."

HARLAN:

Got ya! I told you I was a legal eagle! There have been three “Harlans” in the Supreme Court. And, I might add, not one single Marie! Or, for that matter, not even a married Marie!

MARIE:

Okay, fine. But there have been women Supreme Court justices!

HARLAN:

Yeah, but none named Harlan!

MARIE:

Well, I certainly hope not!!

HARLAN:

Don’t make a federal case out of it.

MARIE:

Oh, boy!

HARLAN:

But speaking of federal cases, the Supreme Court has power over two types of federal cases: Original, where they hear cases for the first time that involve controversies between states, states and federal government, states and citizens, and others involving admiralty and maritime issues; and appellate cases, where they only hear cases that have first worked their way through the inferior courts. It’s here that the Supreme Court considers questions of Constitutionality, and can, at its discretion, review lower court decisions.

MARIE:

I’m sure there must be thousands of cases they could possibly look at, Harlan. How do they decide?

HARLAN:

At least four justices have to agree to hear the case and only a very few make it to the Supreme Court. You might think of it as getting to the legal World Series.

MARIE:

I’d prefer not to, but I do understand.

HARLAN:

Boy, y’know, all this talk about the Supreme Court, and the justices, you know, I’m starting to get that strange urge I...

HARLAN & MARIE:

always seem to get about now...

HARLAN:

FIELD TRIP!!!

HARLAN:

Well, here we are! Wow, I’ve never seen so much marble! It’s dazzling! This place is whiter than the White House! I’m going to have to get some of those sensational souvenir Supreme Court sunglasses!

MARIE:
Those will fit in nicely with your Washington Collection.

HARLAN:
Well, at least I can safely say, "This is where it all began."

MARIE:
No.

HARLAN:
No?

MARIE:
It wasn't until 1935 that the Supreme Court got its own building.

HARLAN:
Ah, sort of a reward for that "good behavior," huh?

MARIE:
You're living proof that a little knowledge is a dangerous thing. Anyway, Cass Gilbert from New York City designed this building.

HARLAN:
New York City!

MARIE:
You really know how to beat a joke to death, don't you? Well, looks pretty quiet right now, but the Court is only in session from the first Monday in October till June or July.

HARLAN:
I wonder if the judges of the inferior courts have to spend August and September polishing all that marble? Shoot, we're almost out of time.

HARLAN:
HOME!

MARIE:
That was fun, but I'm glad to be back and I'm ready for one of our soon-to-be-famous painless reviews.

HARLAN:
Don't forget the required legal disclaimer.

MARIE:
Right!

HARLAN:
Ready? I promise this won't hurt a bit. The U. S. Supreme Court is the highest court of our land and was established by article three of the Constitution. The court has ultimate jurisdiction over all cases involving

the Constitutionality of laws passed by Congress or signed by the president as part of our federal government's system of checks and balances. The court can also review lower federal court decisions at their discretion. There are nine members of the Supreme Court, including one Chief Justice. Decisions are rendered by a majority vote. Members of the Supreme Court are appointed by the President for life, assuming good behavior of the judge and subject to approval by the Senate.

MARIE:

Wow! Painless, almost, and fast!

HARLAN:

Thank you and I think pretty interesting as well.

MARIE:

Particularly the field trip. I love Washington, D.C.! Can you imagine dusting all that wood in the Court's chambers?

HARLAN:

I can't imagine dusting anything.

MARIE:

That's true.

HARLAN:

Boy, it was a really great trip!

The Almost Painless Guide to the Branches of Government

UNIT OF STUDY

BLACKLINE MASTERS

[Blackline Master #1: Pre-Test](#)

[Blackline Master #2: Political Cartoon](#)

[Blackline Masters #3: Branches of Government](#)

[Blackline Masters #4: More Branches of Government](#)

[Blackline Masters #5: Still More Branches of Government](#)

[Blackline Master #6: Post-Test](#)

Activity: **Pre-Test**

Name _____

Subject: **Branches of Government**

Date _____

DIRECTIONS: Read the following statements and indicate the correct answer.

1. The executive branch is made up of the president and his/her cabinet.
 True
 False

2. The judicial branch is made up of solely the Supreme Court.
 True
 False

3. The President of the United States cannot be removed from office.
 True
 False

4. The legislative branch is made up of two houses: the Senate and the House of Representatives.
 True
 False

5. The majority of the work that is accomplished by the legislative branch is done in committees.
 True
 False

6. Which of the following is not a branch of the federal government?
 - A. executive branch
 - B. legislative branch
 - C. military branch

- D. judicial branch
7. This was created in order to prevent any one branch of the federal government from becoming too powerful.
- A. checks and balances
 - B. the Bill of Rights
 - C. the office of the president
 - D. the Supreme Court
8. According to the U.S. Constitution, which of the following qualifications is not needed to become president.
- A. be at least 35 years of age
 - B. be a naturalized citizen
 - C. live in the U.S. for fourteen years
 - D. be a male
9. The role of the legislative branch is to:
- A. make laws
 - B. interpret laws
 - C. enforce laws
 - D. suspend laws
10. Supreme Court justices serve for:
- A. four years
 - B. six years
 - C. twelve years
 - D. life

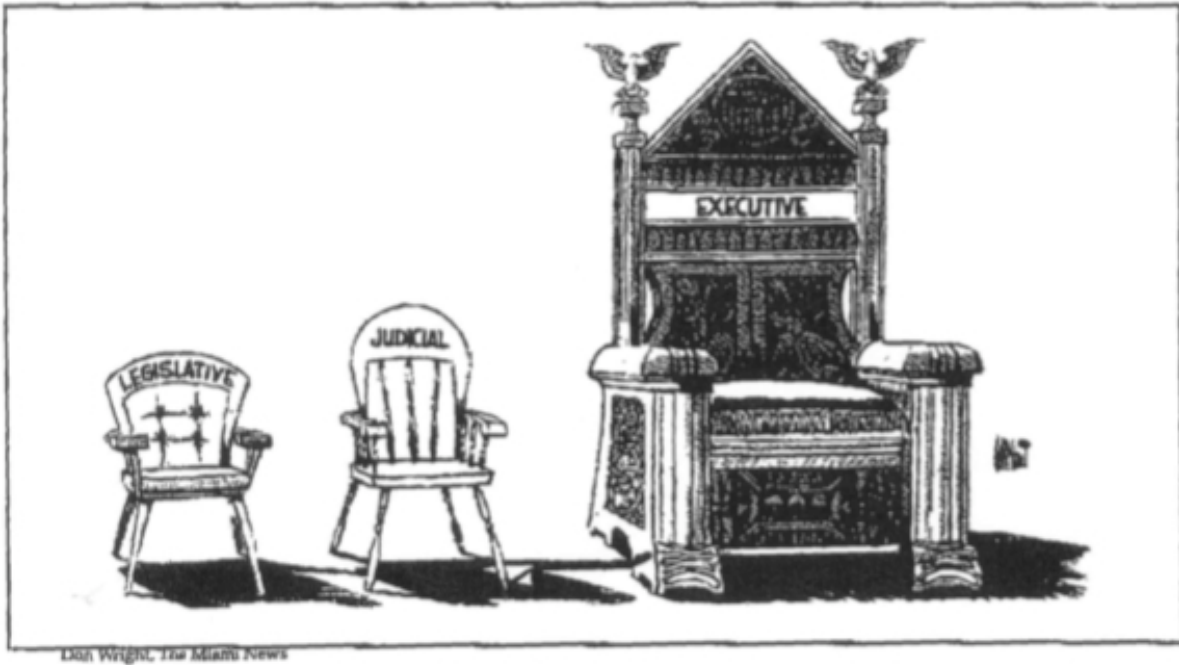
Activity: **Political Cartoon**

Name _____

Subject: **Branches of Government**

Date _____

DIRECTIONS: Analyze the political cartoon below and answer the questions in the spaces provided. Use the back of the sheet if necessary.



1. What do all three chairs represent?
2. What is the intended message of the cartoonist?
3. What does this message say about the checks and balances system in U.S. government?
4. Do you agree or disagree with the message of the cartoon? Explain your opinion.

Activity: **Checks and Balances** Name _____
Subject: **Branches of Government** Date _____

DIRECTIONS: Read the questions carefully and write either executive, legislative or judicial.

1. Write the name of the branch of government that has each of the following responsibilities.
 - A. to write laws and establish policies for the government
 - B. to carry out, administer, and enforce the policies of government
 - C. to interpret the laws of the government

2. Write the name of the branch of government next to the body of people who elects them.
 - A. elected in a national election using an electoral college
 - B. elected in a state election by residents of that state
 - C. members of this branch are appointed not elected

3. Write the name of the branch of government next to the appropriate length of term.
 - A. length of term is for life
 - B. length of term is for four years
 - C. length of term is for either two or four years

4. How do all of these differences help to create a system of checks and balances?

Activity: **More Checks and Balances**

Name _____

Subject: **Branches of Government**

Date _____

DIRECTIONS: Listed below are some of the checks and balances of the three branches of government. In the spaces provided write “E” if it is a power possessed by the executive branch; “L” if it is a power possessed by the legislative branch; and “J” if it is a power possessed by the judicial branch.

1. _____ Can veto acts of Congress
2. _____ Can impeach and remove the president or vice-president
3. _____ Can declare executive acts unconstitutional
4. _____ Can propose amendments to overturn court decisions
5. _____ Appoints judges
6. _____ Can override a presidential veto
7. _____ Appointed for life, so as to be free from executive control
8. _____ Can refuse to confirm presidential appointments
9. _____ Can suggest laws or policies
10. _____ Can declare acts of Congress to be unconstitutional
11. _____ Can refuse to ratify treaties
12. _____ Can pardon federal offenders
13. _____ Can impeach and remove federal judges
14. _____ Can declare war
15. _____ Can call special sessions of Congress

Activity: **Still More Checks & Balances** Name _____

Subject: **Branches of Government** Date _____

DIRECTIONS: Read the following scenario. What actions might the executive, legislative, and judicial branches take if such a scenario were to occur.

Congress has passed a law making all guns illegal. The House of Representatives approved the law by a vote of 415 to 20. The Senate approved the law by a vote of 80 to 20. The president is strongly against this law.

1. Possible actions by the executive branch:

2. Possible actions by the legislative branch:

3. Possible actions by the judicial branch:

Activity: **Post Test**

Name _____

Subject: **Branches of Government**

Date _____

TRUE OR FALSE

DIRECTIONS: Indicate if each statement is true [T] or false [F].

1. The term of office for a Supreme Court justice is for life.
[] True
[] False

2. The legislative branch may override a presidential veto only if the judicial branch agrees.
[] True
[] False

3. Most of the work that is done by the legislative branch is done in committees.
[] True
[] False

4. Supreme Court justices are voted on by popular vote.
[] True
[] False

5. In order to become President of the United States, an individual must be a native-born citizen.
[] True
[] False

6. The President does not have the power to “check” the judicial branch.
[] True
[] False

7. The legislative branch plays no role in the filling of Supreme Court vacancies.
- True
- False
8. Every state has the same number of votes (members) in the legislature.
- True
- False
9. The Supreme Court can “check” Congress and the President by declaring a law “unconstitutional.”
- True
- False
10. The Senate has more committees than the House of Representatives.
- True
- False
11. The New Jersey Plan required that each state receive the same number of seats in the federal legislature.
- True
- False
12. The President is elected to a six-year term of office.
- True
- False
13. The President is elected when he receives a majority of the popular vote.
- True
- False

14. The judicial branch is made up solely of the Supreme Court.
- True
- False
15. Reapportionment is when seats in the House of Representatives are redistributed based upon the most recent census of state populations.
- True
- False
16. A amendment is a law which changes the Constitution.
- True
- False
17. A Supreme Court justice must be at least thirty years of age.
- True
- False
18. A Supreme Court justice can be impeached.
- True
- False
19. The Supreme Court is the highest court in the United States.
- True
- False
20. The Executive Branch is made up of the President and his or her Cabinet.
- True
- False

MULTIPLE CHOICE

DIRECTIONS: Read the question then choose the letter of the answer which is correct.

21. Which of the following is not true of the House of Representatives?
- A. It has 435 members.
 - B. A term for a representative is two years.
 - C. Each state gets the same number of seats in the House.
 - D. A representative must be a resident of the state and district which he or she represents.
22. According to the current law (the Presidential Succession Act of 1947), which of the officers follows the President in the line of presidential succession?
- A. the Speaker of the House
 - B. the Majority Whip
 - C. the Secretary of State
 - D. the Vice-President
23. According to the Constitution, which of the following qualifications is not needed to become president?
- A. be at least thirty-five years of age
 - B. be a naturalized citizen
 - C. live in the United States for at least fourteen years
 - D. be a male
24. The members of Congress do not do which of the following things?
- A. make laws
 - B. represent their constituents
 - C. enforce laws
 - D. serve on committees

25. The _____ nominates individuals to be Supreme Court justices and the _____ approves the.
- A. President/Congress
 - B. Congress/President
 - C. Congress/Supreme Court
 - D. President/Supreme Court
26. One of the duties of the _____ is to insure that laws created by Congress are constitutional.
- A. Congress
 - B. President
 - C. Pentagon
 - D. Supreme Court
27. The outcome of a Supreme Court decision is determined by a:
- A. 1/2 vote
 - B. majority vote
 - C. 3/4 vote
 - D. unanimous vote
28. Which of the following is not a lower court in the federal court system?
- A. U.S. Court of Appeals
 - B. U.S. District Courts
 - C. U.S. Grand Jury Court
 - D. U.S. Claims Court
29. The means by which the Supreme Court has the authority to rule on the constitutionality of federal and state laws is called:
- A. appeals review
 - B. supreme decision

- C. ultimate authority
- D. judicial review

30. The Constitution requires that a member of the House of Representatives be at least _____ years of age and a Senator be at least _____ years of age.

- A. 21/25
- B. 21/35
- C. 25/30
- D. 20/20

31. Another term for a legislative body that has two houses is:

- A. federalism
- B. bicameral
- C. bilegislature
- D. capitalism

32. Which of the following is not true of the Senate?

- A. it has 100 members
- B. the term for a senator is four years
- C. a senator must be a resident of the state that he or she represents
- D. a senator must be a citizen of the U.S. for at least nine years

33. The presiding officer of the House of Representatives is the:

- A. President
- B. Vice-President
- C. Majority Whip
- D. Speaker of the House

34. When the President refuses to sign a bill that is passed by Congress, this is called:

- A. a veto
- B. an executive order
- C. executive privilege
- D. impeachment

35. The number of electoral college votes that each state receives is determined by the:

- A. number of senators from each state
- B. number of sets each state has in Congress
- C. executive branch
- D. Bill of Rights

36. Which of the following positions are appointed by the President?

I. Cabinet members II. Speaker of the House III. National Security Council IV. Senators

- A. I, II, IV
- B. II, III
- C. II, III, IV
- D. I, III

37. Which of the following is not a role of the President?

- A. chief legislator
- B. chief of staff
- C. commander and chief
- D. chief of the senate

38. Which of the following are not presidential powers?

- A. legislative power
- B. congressional power
- C. executive power
- D. military power

39. There are _____ electoral college votes available. In order for a presidential candidate to win the presidency he or she must win at least _____ electoral votes?
- A. 538/270
 - B. 450/450
 - C. 500/250
 - D. 300/200
40. When the President nullifies individual items on a bill it is called a:
- A. veto
 - B. presidential veto
 - C. pocket veto
 - D. line item veto

FILL IN THE BLANK

DIRECTIONS: Use the terms below as a list of choices to place in the blank spaces for the definitions that follow.

appellate jurisdiction	bicameral	Congress
Electoral College	House of Representatives	impeach
judicial review	jurisdiction	legislature
original jurisdiction	pocket veto	redistricting
Senate	Speaker of the House	veto

41. _____ is a two-house legislative body.
42. _____ is a group of persons (presidential electors) chosen in each State and the District of Columbia every four years who make a formal selection of the President and Vice-President.
43. _____ is the presiding officer of the House of Representatives, chosen by and from the majority party in the House.
44. _____ is one of the two law-making bodies in Congress and its representation is based upon state population.

45. _____ is the power of the courts to determine the constitutionality of the actions of the legislative and executive branches of government.
46. _____ is the authority of a court to review decisions (hear appeals) of a lower court.
47. _____ is to accuse a public official of misconduct in office.
48. _____ is the law-making body of the government.
49. _____ is the authority of a court to hear and decide a case for the first time.
50. _____ is the refusal by the President to approve a law.

CHECKS AND BALANCES

DIRECTIONS: Listed below are some of the checks and balances of the three branches of government. In the spaces provided write “E” if it is a power possessed by the executive branch, “L” if it is a power possessed by the legislative branch, and “J” if it is a power possessed by the judicial branch.

51. _____ can veto acts of Congress
52. _____ can impeach and remove the President or Vice-President
53. _____ can declare executive acts unconstitutional
54. _____ can propose amendments to overturn court decisions
55. _____ appoints judges
56. _____ can override a presidential veto
57. _____ appointed for life, so as to be free from executive control
58. _____ can refuse to confirm presidential appointments
59. _____ can suggest laws or policies
60. _____ can declare acts of Congress unconstitutional

SHORT ANSWER

DIRECTIONS: Answer each of the following questions in the spaces provided. Use the back of the sheet if necessary.

61. What are the three branches of government and what are each of their major responsibilities with respect to laws?

62. How is the appointment of a Supreme Court justice an example of checks and balances?

63. If a bill were to be passed by Congress that legalized prayer in schools, what would be some possible actions that the (1) executive branch, (2) legislative branch, and (3) judicial branch could take concerning the bill?

ESSAY

DIRECTIONS: Answer the following question as completely as possible. Make sure that you use specific examples to support your thoughts.

64. The Preamble of the Constitution starts off with the words, "We the People..." How do the three branches of government embody this idea?

The Almost Painless Guide to the Branches of Government

THE JUDICIAL BRANCH

BLACKLINE MASTERS

[Blackline Master #1: Pre-Test](#)

[Blackline Master #2: Video Quiz](#)

[Blackline Master #3: Vocabulary](#)

[Blackline Master #4: Discussion Questions](#)

[Blackline Masters #5a-5b: You Be the Judge](#)

[Blackline Masters: Post-Test](#)

[Blackline Masters: Congressional Simulation](#)

Activity: **Pre-Test**

Name _____

Subject: **Judicial Branch**

Date _____

DIRECTIONS: Read the following statements and mark true or false.

1. Supreme Court justices are elected by popular vote.
A. True B. False
2. Supreme Court justices have an eight-year term of office.
A. True B. False
3. The Supreme Court can “check” Congress and the President by declaring a law “unconstitutional.”
A. True B. False
4. Amendments are used to change the Constitution.
A. True B. False
5. The judicial branch is made up solely of the Supreme Court.
A. True B. False
6. There has never been a women on the Supreme Court.
A. True B. False
7. A Supreme Court justice must be at least 30 years of age.
A. True B. False
8. A Supreme Court bustice can be impeached.
A. True B. False
9. The Supreme Court is the highest court in the United States.
A. True B. False
10. In order for a decision to be handed down, all of the Supreme Court justices must agree.
A. True B. False

Activity: **Video Quiz**

Name _____

Subject: **Judicial Branch**

Date _____

DIRECTIONS: Read the following statements and mark the correct answer

1. There are nine Supreme Court justices.
A. True B. False
2. The Supreme Court is the highest court in the United States.
A. True B. False
3. There are no laws that are reserved for the state governments.
A. True B. False
4. Congress does not have the means to “check” the Supreme Court.
A. True B. False
5. The term of office for a Supreme Court justice is for life.
A. True B. False
6. The _____ nominates individuals to be Supreme Court justices, and the _____ approves them.
A. President/Senate
B. Congress/President
C. Congress/Supreme Court
D. President/Supreme Court
7. One of the duties of the _____ is to insure that laws created by Congress are Constitutional.
A. Congress
B. President
C. Pentagon
D. Supreme Court
8. The outcome of a Supreme Court decision is determined by a:
A. 1/2 vote
B. majority vote
C. 3/4 vote
D. unanimous vote
9. Which of the following is not a lower court in the Federal Court system?
A. U.S. Court of Appeals
B. U.S. District Courts
C. U.S. Grand Jury Court
D. U.S. Claims Court
10. The means by which the Supreme Court has the authority to rule on the Constitutionality of federal and state laws is called:
A. appeals review
B. a supreme decision
C. ultimate authority
D. judicial review

Activity: **Vocabulary**

Name _____

Subject: **The Judicial Branch**

Date _____

judicial branch - one of the three branches of government; it has the power to interpret the laws and apply these laws to court cases

judicial review - power of the courts to determine the constitutionality of the actions of the legislative and executive branches of government

jurisdiction - legal authority of the courts

original jurisdiction - authority of a court to hear and decide a case for the first time

appellate jurisdiction - authority of a court to review decisions (hear appeals) of a lower court

Bill of Rights - the first ten amendments to the United States Constitution

Supreme Court - the highest court in the land; it is the only court created by the United States Constitution and it is the final interpreter of the United States Constitution

Activity: **Discussion Questions**

Name _____

Subject: **The Judicial Branch**

Date _____

1. How can the Constitution be changed?
2. Why is our government called a “federal government?”
3. How is the power of the Supreme Court “checked” by the other two branches of government?
4. How does the Supreme Court check the other two branches of government?
5. What is the length of term for a Supreme Court Justice?
6. What are the other courts that make up our federal court system?
7. What is “judicial review?”
8. How many justices serve on the Supreme Court at the current time? What is the significance of this number?
9. How do original and appellate jurisdiction play a role in the Supreme Court?
10. What are the requirements of a Supreme Court justice?

Activity: **You Be the Judge** Name
 Subject: **The Judicial Branch** Date

DIRECTIONS: In this activity, you will be asked to compare statistical data of the judicial branch to other groups. The objective of this activity is to analyze how the judicial branch reflects the demographic profile of the American population. Use the data below to answer the questions on blackline master #5a.

Statistics of the Judicial Branch (1976-1992)

Political Affiliation	Gender	Ethnicity
Republican—69%	Male—88%	White—89%
Democrat—27%	Female—12%	African American—6%
Independent—4%		Hispanic—5%
Other—.4%		Asian—.6%

Statistics of the Executive Branch (1976-1992)

Political Affiliation
Republican—60%
Democrat—40%

Statistics of the American Populace (1990)

Gender	Ethnicity
Male—48%	White—84%
Female—52%	African American—12.3%
	Hispanic—4%
	Asian—3%
	American Indian—.5%

NOTE: Total may not add up to 100% due to rounding numbers.

Activity: **Post-Test**

Name _____

Subject: **The Judicial Branch**

Date _____

MULTIPLE CHOICE AND TRUE/FALSE

DIRECTIONS: Indicate the correct answer by circling its letter

1. Supreme Court justices are voted on by popular vote.
A. True B. False
2. Supreme Court justices have an eight-year term of office.
A. True B. False
3. Once the Supreme Court rules on an issue, that issue can never be brought before the court again.
A. True B. False
4. Amendments are used to change the Constitution.
A. True B. False
5. The judicial branch is made up solely of the Supreme Court.
A. True B. False
6. The Constitution calls for a Supreme Court.
A. True B. False
7. A Supreme Court justice can be impeached.
A. True B. False
8. A women has never been a Supreme Court justice.
A. True B. False
9. The Supreme Court is the highest court in the United States.
A. True B. False
10. Congress does not have the means to “check” the Supreme Court
A. True B. False
11. The _____ nominates individuals to be Supreme Court justices, and the _____ approves them.
A. President/Senate B. Congress/President
C. Congress/Supreme Court D. President/Supreme Court

12. One of the duties of the _____ is to insure that laws created by Congress are Constitutional.
- A. Congress
B. President
C. Pentagon
D. Supreme Court
13. The outcome of a Supreme Court decision is determined by a:
- A. 1/2 vote
B. majority vote
C. 3/4 vote
D. unanimous vote
14. Which of the following is not a lower court in the Federal Court system?
- A. U.S. Court of Appeals
B. U.S. District Courts
C. U.S. Grand Jury Court
D. U.S. Claims Court
15. The means by which the Supreme Court has the authority to rule on the Constitutionality of federal and state laws is called:
- A. appeals review
B. a supreme decision
C. ultimate authority
D. judicial review
16. Which branch of government interprets laws and government policies?
- A. legislative
B. judicial
C. executive
D. congressional
17. What is the current number of Supreme Court justices?
- A. 6
B. 7
C. 9
D. 12
18. Courts with the authority to decide cases for the first time are said to have:
- A. exclusive jurisdiction
B. appellate jurisdiction
C. original jurisdiction
D. concurrent jurisdiction
19. Which of the following requirements are needed in order to be a Supreme Court justice?
- I. be at least 36 years old II. be a U.S. citizen III. be a lawyer IV. have held political office*
- A. I, II, III, IV
B. I, II
C. III, IV
D. None of the above
20. The person who is the head of the Supreme Court is the:
- A. Chief Justice
B. president
C. vice-president
D. Speaker of the House

ESSAY

DIRECTIONS: In the space provided below, answer the follow question in a clear and concise manner. Use the back of the sheet if necessary.

How does the judicial branch and the powers of the Supreme Court reflect the concept of “We the people...”?

Case Analysis

Activity: **TEACHER INSTRUCTIONS** Name _____

Subject: **The Judicial Branch** Date _____

1. Each student should have copies made of Extended Learning Activity Sheets #2-6.
2. Hand out Extended Learning Activity Sheet #2. Have each of the students read the circumstances of *Korematsu v. United States*.
3. Students should then follow the instructions given on Extended Learning Activity Sheet #3. They will analyze the arguments presented to form an opinion on a constitutional question.
4. Students should use Extended Learning Activity Sheet #4 as a reference tool to help them to write their opinion on the constitutional question.
5. Divide students into cooperative groups of three. Later, these groups will be combined with other groups to form a "Supreme Court" of nine justice, so take this into consideration when organizing the groups.
6. After the students have had an opportunity to write their analyses (Extended Learning Activity Sheet #5), , they should meet within their groups of three to discuss their opinions. Students should record the arguments which they felt were most valid and add any other opinions to their written statement.
7. Students should then be placed in groups of nine that represent the Supreme Court. They should report their opinions on the constitutional question to the group. The group should record the number of people in the Court who sided with *Korematsu*, and those who sided with the United States. Then, the individuals who decided in the majority should write a combined opinion on why they ruled as they did, and those students in the minority should do the same.
8. Reconvene with the whole class and discuss how each group of nine decided, whether in favor of *Korematsu* or the United States. Discuss the arguments and the opinions of the students. Then, explain to the students that Supreme Court cases are impacted by the individuals in the court. As a result, Supreme Court decisions can easily be overturned years later.
9. You may want to review the result of the real case on Extended Learning Activity Sheet #6.

Activity: **Case Analysis - 2** Name _____
Subject: **The Judicial Branch** Date _____

Korematsu v. United States (1943)

Circumstances of the Case

On December 7, 1941, the Japanese military attacked the United States Naval base at Pearl Harbor, Hawaii. Although the United States was not officially fighting in World War II, there was tension between the two countries. The surprise attack at Pearl Harbor caused concern around the United States. As the United States declared war, many Americans felt that a similar type of attack could occur on the Pacific Coast.

President Franklin Delano Roosevelt, on the recommendation of the War Department, reacted to the attack at Pearl Harbor with Executive Order #9066. This order authorized the Secretary of War to evacuate and relocate “all or any persons of Japanese descent” in order to provide “protection against espionage or against sabotage to national defense...” There were approximately 112,000 people of Japanese descent living in the United States at the time, two-thirds of whom were United States citizens, who were evacuated and relocated to isolated regions in the American west. These people were allowed to take only items that they could carry; all other items could be placed in government storage at their own risk. Such people lost homes, businesses, land, and personal belongings during the evacuations.

Toyosaburo Korematsu, a Japanese-American citizen, lived near San Francisco, California. He refused to report for relocation. As a result, he was in direct violation of a congressional action, which penalized those who violated the Executive Order. Korematsu was convicted in federal court. He then appealed to a circuit court, but the appeal failed. Finally, the case came before the Supreme Court.

Activity: **Case Analysis - 3**

Name _____

Subject: **The Judicial Branch**

Date _____

DIRECTIONS: Please read the following arguments from the *Korematsu v. United States* 1944 Supreme Court case carefully. As your analyzing the arguments consider which ones you believe to be most important and valid.

The Constitutional Question

Did the President and Congress go beyond their war powers by implementing exclusion and restricting rights of Americans of Japanese descent?

Arguments for Korematsu

1. Executive Order No. 9066 is based on a racial classification. Japanese-Americans were being excluded solely along racial lines. Further proof of this exclusion based upon race can be seen in the fact that both German- and Italian-Americans were not placed under such restrictions, even though the United States was at war with both Germany and Italy at the time. This type of racial segregation is illegal under the United States Constitution.
2. Executive Order No. 9066 denied Mr. Korematsu his Fifth Amendment guarantee of liberty and due process. The Fifth Amendment guarantees that a person can be tried for a serious crime only if he or she has been charged with that crime by a grand jury. Under Executive Order No. 9066, Mr. Korematsu was never charged with a crime and was never indicted by a grand jury. This is a clear violation of his Fifth Amendment rights.
3. The President never declared martial law in the area. Therefore, the President could not give the military the power to regulate civilians.

Arguments for the United States

1. War had been declared by Congress in accordance with the Constitution (Section 8, Clause 11). The President as Commander -In-Chief has the right, according to the Constitution (Section 2, Clause 1), to issue Executive Order No. 9066.
2. Military necessity and the danger of sabotage and espionage made Executive Order No. 9066 necessary. Even though the liberty of some Americans had been denied, national security in times of crisis may outweigh the rights of individuals.
3. The United States was attacked by Japan. Therefore, it was Japan that threatened the West Coast of the United States. It is only rational, then, that people of Japanese descent would be identified as possible spies or saboteurs.

Activity: **Case Analysis - 4**

Name _____

Subject: **The Judicial Branch**

Date _____

The Executive Order was supported by two parts of the Constitution:

Section 2—Powers of the President

Clause 1. Military powers; Cabinet; pardon

The President shall be Commander-In-Chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States

Section 8—Powers granted to Congress

Clause 10. to define and punish piracies and felonies committed on the high seas and offenses against the laws for nations.

Clause 11. to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

Clause 15. to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

5th Amendment

No person shall be held to answer for a capitol or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger.

Activity: **Case Analysis - 5**

Name _____

Subject: **The Judicial Branch**

Date _____

DIRECTIONS: Using the arguments as well as the source material from Extended Learning Activity Sheet #4, form an opinion on the constitutional question involved in *Korematsu v. United States*. In 25-50 words, state how you would rule on this Constitutional issue if you were a Supreme Court justice. Your opinion should declare Executive Order No. 9066 as either constitutional or unconstitutional. You must then explain this decision. Use the space provided below and the back of the sheet if necessary.

Activity: **Case Analysis - 6**

Name _____

Subject: **The Judicial Branch**

Date _____

Supreme Court Decision:

In the case of *Korematsu v. United States*, the Supreme Court ruled, in a 6-3 decision, that Executive Order No. 9066 and the actions by the President and Congress **were** constitutional.

Majority Opinion:

The majority opinion was written by Justice Hugo Black. In this opinion, Justice Black focused on the military emergency. He wrote that the prevention of espionage and sabotage was sufficiently urgent and closely enough related to the evacuation to be allowed under the constitution. According to the Court, the "power to protect must be commensurate with the threatened danger." In addition, the Court discounted the question of racial prejudice, stating that to "cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue." Ultimately, the Court ruled that "Congress, reposing its confidence in this time of war in our military leaders....., determined that they should have the power to do just this...The need for actions was great, and the time was short. We cannot - by availing ourselves of the calm perspective of hindsight - now say that at that time these actions were unjustified."

Dissenting Opinions:

Justices Frank Murphy and Robert Jackson wrote dissenting opinions. Both emphasized the racial discrimination of the evacuations. Justice Murphy referred to the matter as "this legalization of racism." In addition, Justice Murphy held that the actions taken against Mr. Korematsu and other Japanese-Americans were a deprivation of "equal protection of the law as guaranteed by the Fifth Amendment." Justice Murphy believed that the military should have first proven that a real pressing public danger existed before evacuating Japanese-Americans.

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