

Published: 07.02.2006

Justices reshape high court

Mix of new, old brings increase in unanimity

By Stephen Henderson

MCCLATCHY NEWSPAPERS

WASHINGTON — At the Supreme Court, they say each group of nine justices is different, that a switch in just one seat fundamentally alters the dynamic among them all. As the court closes its 2005-06 term, when two new members, including the chief justice, took their seats after a 12-year stasis, that truism is evident in the court's rulings.

From decisions on the Clean Water Act, police procedure and abortion to others on political gerrymandering and the death penalty, the focus was on how Chief Justice John Roberts and Justice Samuel Alito were changing the court's outcomes.

In political terms, they established themselves as solid conservatives. But as their approaches to the law became clearer, they revealed nuances in their thinking that distinguished them from the bench's more doctrinaire members, Justices Antonin Scalia and Clarence Thomas.

The term's lone blockbuster opinion — rejecting the Bush administration's military tribunals at the Guantanamo Bay prison in Cuba — highlighted the term's only other significant theme: the emergence of Justice Anthony Kennedy at the court's center.

He has taken over the compromising, coalition-building role that he once shared with former Justice Sandra Day O'Connor. In cases that split the justices narrowly, Kennedy was in the majority more than anyone else.

"It's now clear that two justices have replaced Sandra Day O'Connor," said Elliot Minc-berg, legal director for People for the American Way. "Justice Alito took her seat on the court, while Justice Kennedy has taken her role as the key swing vote."

It will take at least a few more terms before the character of the new court becomes fully evident. Yet some court watchers say some things are becoming clear.

"This is, of course, more a Kennedy court than a Roberts court," said David Garrow, a law professor at Oxford University in England. "But already we've certainly gotten some clear indications ... of how Roberts will develop."

Alito, Roberts more centrist

The term began quietly, with Roberts installed as chief justice and O'Connor still in her seat, awaiting her successor's confirmation. The justices struck an early chord of unanimity in October in a long string of opinions that included some topics that usually bring discord. They did it by deciding many cases on narrow legal grounds, avoiding more controversial elements.

Overall, the court closed the term with more unanimous opinions than it has in recent years and with fewer concurrences and dissents.

Alito's influence was less noticeable than Roberts', which is typical for a first-year justice who isn't chief. He also missed the term's first half while his confirmation process unfolded.

Once on the court, he established a restrained conservatism that mirrored his work as an appellate judge. His voting record resembled Scalia's and Thomas', but even more Roberts'.

Roberts and Alito distinguished themselves from the court's most rigidly conservative members, Scalia and Thomas, in several key cases. They backed away from the duo's assertion that no amount of political gerrymandering should compel court intervention and from their proposition that any limits on political contributions are unconstitutional.

Kennedy emerged as the justice that the court's liberal and conservative blocs must woo to reach a majority. That was evident not just in how frequently he provided a crucial fifth vote, but also in how often his opinion tempered a ruling.

In a decision that said police armed with warrants can enter a house unannounced without fear that any evidence they find will be excluded from trial, Kennedy's opinion kept the decision from obliterating the so-called "exclusionary rule" altogether.

Analysis

All content copyright © 1999-2006 AzStarNet, Arizona Daily Star and its wire services and suppliers and may not be republished without permission. All rights reserved. Any copying, redistribution, or retransmission of any of the contents of this service without the expressed written consent of Arizona Daily Star or AzStarNet is prohibited.