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Top court's new business looks a lot like old business

Justices expected to revisit several major decisions

Joan Biskupic

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WASHINGTON - The new judicial term that begins Monday could be dubbed Supreme Court, the Sequel.

In several cases over the next nine months, the justices will be revisiting major decisions.

They include a 1989 ruling that permits the execution of those who were juveniles when they committed their crimes, and a June decision in which the court cast doubt on whether federal sentencing guidelines are constitutional.

Another closely watched dispute, which tests whether U.S. anti-drug policy overrides a California law that allows the medical use of marijuana, will require the justices to return to a 1995 case that began a series of rulings favoring states' rights over federal power.

Also familiar is the court itself: The nine justices are back for their 11th term together. Never before have nine U.S. justices been together for so long. The high court has not had such a stable period since 1812-23, when it had seven seats.

"The justices are fine-tuning decisions they made years ago, taking them one generation further," said former U.S. Solicitor General Theodore Olson, who resigned in July for private practice.

The presidential campaign will be a backdrop for the first month of the court's term and is a reminder of the crucial role the justices played in deciding the disputed presidential election of 2000.

The court's 5-4 decision in *Bush vs. Gore* ended the recounting of ballots in Florida and ensured that the state's decisive electors would give Republican George W. Bush the presidency over Democrat Al Gore.

No court analysts are predicting that the upcoming election between Bush and Sen. John Kerry will lead to a level of litigation that would bring the results to the high court again.

But there is enough anxiety about problems with voting machines and the possibility of another close election that appellate lawyers associated with the campaigns are not ruling out the possibility of some sort of legal battle over the election.

For now, the court's docket is free of such politically charged disputes. However, it does include cases that touch on some of society's most difficult questions.

In a case from Missouri, the justices will examine whether American attitudes have changed since the court last considered the constitutionality of executing killers who were 16 or 17 at the time of their crimes.

The Constitution's Eighth Amendment prohibits "cruel and unusual punishment," based partly, according to past cases, on "evolving standards of decency."

Justice Sandra Day O'Connor, the key fifth vote in 1989 to allow death sentences in such cases, wrote then that there was no national consensus against such executions.

But she added, "The day may come when there is such general legislative rejection of the execution of 16- or 17-year-old capital murderers that a clear national consensus can be said to have developed." (In 1988, the court ruled that someone younger than 16 at the time of his crime could not be executed.)

The Missouri Supreme Court ruled last year that a national consensus against executing juvenile offenders had emerged. State officials have asked the justices to reverse the state court's ruling and allow the execution of Christopher Simmons, who was 17 when he abducted a woman, bound her and threw her in a river, where she drowned.

Two years ago, the high court reversed itself on the constitutionality of executing mentally retarded criminals. Overturning a separate precedent from 1989, the justices said condemning the retarded is cruel and unusual punishment. With Justices O'Connor and Anthony Kennedy changing their votes from 13 years earlier to secure a majority, the court noted that states increasingly were banning executions of the retarded.

At the time of the ruling, 18 of the 38 states with the death penalty exempted the retarded; in 1989, two states had.

Using that analysis, the Missouri Supreme Court found that since 1989, five states have raised the minimum death penalty age to 18 and that 18 states now bar such executions for juveniles.

Vivian Berger, a Columbia University law professor and a general counsel for the American Civil Liberties Union, said the court might find that some of the same reasons for protecting the retarded from capital punishment apply to juveniles, including their reduced ability to handle interrogations.

She said juveniles are more likely than adults to confess falsely to a crime or to exaggerate their role in it.