



“How Do Judges Decide Cases?”

**The Honorable Anthony J. Scirica, U.S. Court of Appeals for the Third Circuit
Stephen Burbank, professor at the University of Pennsylvania Law School**

Summary: Judge Anthony J. Scirica and Stephen Burbank regularly team up to teach a law school course on the judicial process. Their discussion at the symposium focuses on how judges arrive at decisions.

Discussion Questions:

1. Article III of the U.S. Constitution established “one supreme court, and ... such inferior courts as the Congress may ... ordain and establish.” Burbank characterizes the notion of judges deciding cases as a fallacy. Rather, he notes that “courts” decide cases. What does he mean by this? Do you agree or disagree? Why?
2. Scirica remarks that courts have an obligation to announce the standard of review applicable to a particular case. What does this mean?
3. Although the public pays a lot of attention to Supreme Court decisions, most judicial decisions that apply to them are decided by lower court judges. How do the decisions of the lower courts differ from those of the U.S. Supreme Court?
4. Burbank notes that the law matters most in decisions, but he also states that attitudinal factor and the identity of judges (e.g., race and gender) play a part in their decision-making. Do you agree with his opinion? Do you think these other factors should figure into their decisions? Explain your answer.

5. Scirica states that he believes he benefits from having colleagues with different life experiences when deliberating cases. Do you think that U.S. courts should better reflect the diversity in American society? Do you think presidents should nominate individuals outside their political party if those individuals better reflect the electorate (American society) as a whole?
6. Scirica came to the bench with experience as an elected official, having served in the Pennsylvania legislature. He said he has found that experience beneficial when interpreting statutes that come before his court. No current member of the U.S. Supreme Court has served as an elected official. Justice Sandra Day O'Connor was the last justice to have served as an elected public official (e.g., senator or governor) before her tenure on the Court. Do you think that experience aided her decision-making as a Supreme Court justice? Explain your answer. What qualities and experiences do you think a president should seek in a nominee for the federal courts?

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