

washingtonpost.com

## Justices Are of an Opinion, but Not Often

By Robert Barnes  
Monday, March 26, 2007; A13

When Justice Antonin Scalia met with members of a Northern Virginia business organization in December, he told them about an important case the Supreme Court had recently heard and then teased them a little.

"I know how that one comes out, but I'm not going to tell you," he said.

They're still in the dark. And so are a lot of others, as the court is off to a slower-than-usual pace in issuing opinions. The justices have issued 23 decisions so far, a bit behind last year's pace. Of course, at this point, they've also heard fewer cases than last year.

Justices decide cases soon after oral arguments, but the process of drafting and circulating opinions can take months. Justices aim to have everything completed by the end of June, and often the court's most controversial cases are not released until then.

But the court's work is done when it's done, and for that reason, even mentioning the slow pace can be dicey. The court could unleash a blizzard of opinions this week.

After legal analysts and reporters noted earlier in the term that the justices were on a path to take far fewer cases than in recent years, the court accepted a raft of new ones in January.

That decision means a busy close for the court. Besides writing opinions in cases they've heard, the justices are scheduled to hear 16 cases in April, the same number as in February and March combined.

### Shifting Ideologies

"You've changed" -- the timeless lament of disappointed lovers -- can also be applied to Supreme Court justices. Everyone's thought about that, right?

A group of professors writes in a forthcoming article in the Northwestern University Law Review that ideological drift among justices is not just possible but also likely.

"Contrary to the received wisdom, virtually all justices serving since 1937 grew more liberal or conservative during their tenure on the court," wrote Lee Epstein (Northwestern), Andrew D. Martin (Washington University in St. Louis), Kevin M. Quinn (Harvard) and Jeffrey Segal (State University of New York at Stony Brook).

Oh, it starts off fine. "Presidents hoping to create a lasting legacy . . . can be reasonably certain that their

Advertisement

### Learn how to protect your nest egg from harm

Don't put your financial future at risk. Download a new report by Forbes columnist and money manager, Ken Fisher, called "**The Eight Biggest Mistakes Investors Make And How To Avoid Them.**" If you want to try and keep your nest egg safe, now is the time to get this must-read report. You'll be glad you acted!

[Click Here to Download Now!](#)



FISHER INVESTMENTS™

appointees will behave in line with expectations -- at least during the justice's first term in office," the professors write.

But it is not too long before some start to stray. "Even before hitting the first-decade mark, most justices fluctuate," the article says.

The authors' point is that doctrinal change on the court doesn't necessarily require a change in membership.

The group used "systematically developed data and sophisticated statistical tools" to examine the 26 justices who have served on the court for 10 or more terms since 1937. They examined past votes to determine a justice's ideology and how it changed with the passage of time.

They concluded that 12 moved to the left (including current justices Ruth Bader Ginsburg, Anthony Kennedy, David H. Souter and John Paul Stevens), seven moved to the right (including Scalia), four remained consistent, and three moved "in more exotic ways."

Among the consistent were Stephen G. Breyer, who the authors say has stayed true to his moderately liberal leanings, and Clarence Thomas, who remains the court's most conservative member.

The paper -- "Ideological Drift Among Supreme Court Justices: Who, When, and How Important?" -- doesn't address an additional question: Why?

## Outside Judicial Purview

Consistent, perhaps, but also clueless about aging rock stars.

Breyer struck out over the weekend on National Public Radio's "Wait Wait . . . Don't Tell Me" game show. In a segment asking questions outside the guest's expertise, Breyer didn't know that David Bowie once tried to have his swimming pool exorcised, that Iggy Pop is said to have lived for a year eating only sausages or that Ozzy Osbourne's first question after checking in to rehab was how to get to the bar.

Duh!

Breyer was the first sitting justice to appear on the show. Those of us at The Washington Post still recall fondly that the late chief justice William H. Rehnquist used to play Dr. Gridlock's contest of matching vanity license plates to the makes and models of cars they adorned.

© 2007 The Washington Post Company

### Ads by Google

#### [Court Docket Search](#)

Browse Court Dockets - 100% Free. Unlimited Searches. US and Canada.  
[www.Web-Detective.com/courts](http://www.Web-Detective.com/courts)

#### [All Court Records®](#)

Find any Court Case/Record in 1 Min Using The Database of Government!  
[Gov-Records.com](http://Gov-Records.com)

#### [US Supreme Court Printing](#)

Supreme Court Brief Prep & Printing Fast, Accurate, Dependable, Timely.  
[www.CockleLaw.com](http://www.CockleLaw.com)