Q51 – What does the judicial branch do?

DOUGLAS GINSBURG, Federal Judge, U.S. Court of Appeals, D.C. Circuit:
Judges resolve legal disputes that come into our courts. Our judicial system has courts at every level: city, county, state, and federal.

Federal courts like the one on which I sit, hear the types of cases mentioned in the Constitution. The cases that tend to make the most news involve disputes over the meaning of federal law – including the Constitution itself. For instance, suppose you want to take a job as a tour guide. Is it unconstitutional for your city government to require you to take a test and get a license? Judges can't answer a legal question until a case brings it before them in court. Then, they issue a written opinion explaining the laws they're applying in deciding whether a law is or is not constitutional.

Judges are expected to do their job dispassionately. We don't decide whether a law is desirable. We decide whether it's constitutional. That gives us a unique role among the federal branches. But if we judges decided cases based on our own preferences, we'd be no different from presidents and legislators.

Here's another difference between presidents and legislators, and some state judges: federal judges are appointed, not elected. Why? To keep us more independent of popular opinion.

In the Civil Rights era of the 1960s, federal judges struck down popular laws that segregated the races. If those judges had been elected, they would have been voted out of office.

Sometimes you hear a politician denounce a ruling made by "unelected judges." But by placing the federal courts above popular passions of the day, the Framers of the Constitution hoped to make the federal judges loyal to the law above all else.