

Q52 – What is the highest court in the United States? *

DOUGLAS GINSBURG, Federal Judge, U.S. Court of Appeals, D.C. Circuit:

The highest court in the land is the Supreme Court of the United States, it has the last word. We accept that without question now. But in the early years of the republic, the Supreme Court's power was theoretical – because it had not yet been tested.

The case in which the Court first asserted its authority was much ado about nothing. On one side was William Marbury – newly named as a federal justice of the peace by the outgoing administration of President John Adams. Before Marbury received his formal commission, Adams was succeeded by his rival – Thomas Jefferson. President Jefferson ordered the secretary of state – James Madison – to deny Marbury his commission. The case went to the Supreme Court: Marbury v. Madison in 1803.

Chief Justice John Marshall held that Marbury had a legal right to his commission. Marshall also held that getting a court order was the proper remedy. But now it gets tricky. A section of the law passed in 1789 gave the Supreme Court authority to issue the order that Marbury needed – but the Constitution did not. Therefore, Marshall declared that section of the law unconstitutional. It may seem ironic. Marshall acknowledged that the Supreme Court lacked the power to issue the order that Marbury needed. But in doing so, the Chief Justice asserted a much greater power: the power of a federal court to review an act of the Congress and to declare it void if it's not consistent with the Constitution. We call that judicial review.

Thomas Jefferson, who was leery of federal power, feared that giving judges “the right to decide what laws are constitutional and what not ... would make the judiciary a despotic branch.” Marshall had the better of that argument. Judicial review ensures that the laws respect the Constitution – the supreme law of the land – and thereby protects the liberties of the people.