



# SUPREME CONFLICT

THE INSIDE STORY OF THE  
STRUGGLE FOR CONTROL  
OF THE UNITED STATES  
SUPREME COURT

Supreme Conflict: The Inside Story of the Struggle for Control of the United States Supreme Court, Jan Crawford Greenburg, Penguin, 2007, 1594201013, 9781594201011, 340 pages. Drawing on unprecedented access to the Supreme Court justices and their inner circles, acclaimed ABC News legal correspondent Jan Crawford Greenburg offers an explosive, newsbreaking account of one of the most momentous political watersheds in recent American history. Over the past decade, the central front of America's bitter culture wars has been the titanic battle over the composition and direction of the United States Supreme Court. During that period, no journalist has been closer to the action on the ground—the ideas, the politics, the personalities, the gamesmanship—than ABC News correspondent Jan Crawford Greenburg. Now, in *Supreme Conflict*, Greenburg draws on all of her formidable reportorial resources to give a brilliant, vivid, astonishingly unvarnished account of the struggle for the soul of the highest court in the land. Greenburg picks up the plot with the Rehnquist Court, which, despite having seven Republican nominees, proved deeply disappointing to conservatives hoping to reverse decades of progressive rulings on key social issues. She reveals for the first time the real story behind a series of failed Republican nominations that enraged the American conservative movement and left it seething with frustration and resolve not to squander future opportunities. Enter: George W. Bush and the setting of the stage for a full-blown conservative counterrevolution. *Supreme Conflict* contains entirely fresh perspectives across the entire sweep of its story, from the conservative movement's early fumbles with the nominations of justices Anthony Kennedy and David Souter to its crowning successes with the appointments of justices Roberts and Alito. The book breaks news in its revelations about the effect of Chief Justice Rehnquist's illness on the process; on the truth behind Harriet Miers's disastrous nomination and how it was really scuttled; and on how decades of bruising battles led to the triumph of the conservative agenda with the appointment of two of its leading judicial exponents. Through the entire dramatic story, rich in character and conflict, Greenburg never loses sight of the gargantuan stakes in this struggle, the opposing ideological agendas at play. The story Jan Crawford Greenburg tells is that of the fulcrum event of our time, the massive coordinated campaign to move the Supreme Court in a very different direction, to a more limited and restrictive role in American government. A masterpiece of old-fashioned gumshoe reportage, rich storytelling, and penetrating analysis, *Supreme Conflict* will be the definitive account of the most consequential shift in the use of American judicial power in almost one hundred years..

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Judicious Choices The New Politics of Supreme Court Confirmation, Mark Silverstein, 1994, , 188 pages. Traces the increasing contentiousness and publicity surrounding the confirmation of nominees to the Supreme Court and argues that such changes are the result of trends in the ....

United States Reports Cases Adjudged in the Supreme Court at October Term, 2007, Supreme Court (U S ), Apr 4, 2013, Law, 992 pages. .

Storm center the Supreme Court in American politics, David M. O'Brien, 2008, Law, 458 pages. The Supreme Court is a fundamentally political branch of the U.S. government that is deeply engaged in shaping American politics and policy..

The Court and the Cross The Religious Right's Crusade to Reshape the Supreme Court, Frederick S. Lane, 2008, Political Science, 263 pages. Discusses the efforts made by conservative Christians to gradually dominate the Supreme Court and how the judicial changes made in recent years may affect the nation..

The Myth of Judicial Activism Making Sense of Supreme Court Decisions, Kermit Roosevelt, Jan 1, 2008, Law, 262 pages. Constitutional scholar Kermit Roosevelt uses plain language and compelling examples to explain how the Constitution can be both a constant and an organic document, and takes a ....

Actual Innocence When Justice Goes Wrong and How to Make It Right, Jim Dwyer, Peter (Peter J.) Neufeld, Barry Scheck, Dec 1, 2003, , 407 pages. A collection of nightmarish true tales of people falsely accused detail the slovenly police work, corruption, errant witnesses, and other flaws in the

criminal justice system ....

Supreme Court Justices: Illustrated Biographies , Clare Cushman, Dec 12, 2012, Biography & Autobiography, 562 pages. Presents a biography of every Supreme Court justice from John Jay to Elena Kagan, profiling the main realm of each judge's jurisprudence, the major cases in his or her tenure ....

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American Original The Life and Constitution of Supreme Court Justice Antonin Scalia, Joan Biskupic, Nov 10, 2009, Biography & Autobiography, 434 pages. A profile of the conservative Supreme Court justice offers insight into his absolute belief system and considerable body of work, evaluating Scalia as an "apex of power" whose ....

The Oath The Obama White House and the Supreme Court, Jeffrey Toobin, 2013, Law, 325 pages. Presents an insider's account of the ideological war between the John Roberts Supreme Court and the Obama administration, tracing several landmark cases and the strong views ....

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Turning right the making of the Rehnquist Supreme Court, David G. Savage, Apr 24, 1992, Law, 473 pages. In a revealing account of the ``Rehnquist" Supreme Court, a seasoned reporter investigates the court since 1986, covering court politics and analyzing the court's new ....

Drawing on unprecedented access to the Supreme Court justices themselves and their inner circles, acclaimed ABC News legal correspondent Jan Crawford Greenburg offers an explosive newsbreaking account of one of the most momentous political watersheds in American history. From the series of Republican nominations that proved deeply frustrating to conservatives to the decades of bruising battles that led to the rise of Justices Roberts and Alito, this is the authoritative story of the conservative effort to shift the direction of the high court—a revelatory look at one of the central fronts of America's culture wars by one of the most widely respected experts on the subject.

With its closed chambers and formal language, the Supreme Court tends to deflect drama away from its vastly powerful proceedings. But its mysteries hold plenty of intrigue for anyone with the access to uncover them. In Supreme Conflict, Jan Crawford Greenburg has that access, and then some. With high-placed sourcing that would make Bob Woodward proud, she tells the story of the Court's recent decades and of the often-thwarted attempts by three conservative presidents to remake the Court in their image. Among the revelations are the surprising influence of the most-maligned justice, Clarence Thomas, and the political impact of personal relations among these nine very human colleagues-for-life. Written for everyday readers rather than legal scholars, her account sidesteps theoretical subtleties for a compelling story of the personalities who breathe life into our laws. --Tom Nissley

Jan Crawford Greenburg: Hard! And let me tell you it took some time--they weren't flinging open the doors of their chambers for the first few years I was covering the Court. It takes awhile to build relationships and trust, and I was fortunate enough to do that during the dozen years I've been covering the Supreme Court. As for openness, I think the culture of the Court instead promotes anonymity and privacy. The justices aren't like the people across the street in Congress, or down Pennsylvania Avenue in the White House. They don't hold press conferences or solicit media coverage of their views. They speak through their opinions. I was fortunate that they also chose to speak with me for this important book about the direction of the Supreme Court and its role in our lives.

Greenburg: A treasure chest is an understatement. Harry Blackmun took extraordinarily detailed notes--almost breathtaking in their scope and level of detail. (He would even write down what lawyers were wearing when they'd appear in Court to argue a case.) He recorded the justices' comments during their private conferences--when they discuss cases--and he took down their votes. And he kept all the key memos and letters that the justices would send back and forth when they were discussing a case. It was a tremendous window into the Court's inner sanctum, during some of the most pivotal years for the institution.

Greenburg: Clarence Thomas has been the most maligned justice in modern history--and also the most misunderstood and mischaracterized. I found conclusive evidence that far from being Antonin Scalia's intellectual understudy, Thomas has had a substantial role in shaping the direction of the Court--from his very first week on the bench. The early storyline on Thomas was that he was just following Scalia's direction, or as one columnist at the time wrote, "Thomas Walks in Scalia's Shoes." That is patently false, as the documents and notes in the Blackmun papers unquestionably show. If any justice was changing his vote to join the other that first year, it was Scalia joining Thomas, not the other way around. But his clear and forceful views affected the Court in unexpected ways. Although he shored up conservative positions, his opinions also caused moderate Justice Sandra Day O'Connor to back away and join the justices on the Left.

Greenburg: The recent appointment of Samuel Alito shows a justice with a clearly conservative record can get confirmed--and even pick up some votes from Democrats. Maybe the secret is developing a reputation as a fair and nonpartisan judge on a federal appeals court. At his hearings, liberal and conservative judges who had worked with him on the appeals court testified in his behalf, as did his law clerks--some of whom were self-identified liberals. Alito was the conservative counterpart to Clinton nominee Ruth Bader Ginsburg. She had been an outspoken advocate for liberal causes (including the ACLU), but she'd developed a reputation as a fair and thoughtful judge on the federal appeals court, garnering respect from both sides.

Greenburg: Most Americans, understandably, think about trials and drama when the issue of the courts is raised. But the appeals courts--and the Supreme Court--remain mysterious, even though those courts have an enormous impact on American life. The judiciary is one of the three branches of government, but its decisions take on outsized importance at times. It can provide a vital check against abuse of individual rights by government--but it also can usurp the role of the people when it reaches out and takes on issues that more appropriately belong in the purview of the other branches.

Greenburg: To be more conservative than the one led by Chief Justice William Rehnquist. John Roberts himself is a solid judicial conservative who believes the Court has too often taken on issues that belong in the realm of elected legislatures. He is advocating a more restrained approach, with greater consensus among the justices. In addition, Justice Alito replaced key swing-voter Sandra Day O'Connor, the Court's first female justice. O'Connor's vote often carried the day on the closely divided Court--and she typically sided with liberals on social issues like abortion, affirmative action, and religion. Alito is more conservative, and I expect to see the Court turn to the right on those and other issues.

In *Supreme Conflict*, ABC News legal correspondent Jan Crawford Greenburg examines our judicial branch's highest court, parlaying her all-access pass into an analysis that reveals one of the most volatile periods in the Court's history. Greenburg moves the story along with engaging prose and salts the book with little-known details and anecdotes, though critics wonder if the author's unprecedented access might have come at the cost of revealing even deeper truths about the book's subjects. Jack Rakove of the *Chicago Tribune* questions Greenburg's supposition that President Bush's choices will have far-reaching consequences and asserts that her "conclusion that the Roberts and Alito appointments may seal the character of the court 'over the next three to four decades' overreaches." Despite some critics' reservations, *Supreme Conflict* provides fresh insights into the powerful judicial branch.

I read this book practically in one sitting -- which is saying something for a book about the last twenty years of the Supreme Court. I have some vocational and avocational interest in the subject: as a journalist, I covered many of the judicial nomination battles of the first George W. Bush term, though (as Greenburg points out) there were no Supreme Court nominations then. So, in the course of my work, I met some of the key players in Greenburg's account (including John Roberts when he was nominated the first time, for the U.S. Court of Appeals in D.C.) and I think Greenburg has gotten everything right. And she does as good a job as anyone in explaining the chief mystery of the last couple of decades: how a Court with seven appointees of GOP Presidents could be as moderate as it was.

I see little or no evidence of political bias, left or right, in Greenburg's book. Her references to Justice David Souter as a disappointment and an example of poor staff work are clearly stated from the perspective of conservative activists, not necessarily as reflecting the author's views. In addition, Greenburg stays clear of another, subtler form of journalistic bias -- a bias in favor of people whom she knows and who have cooperated with her. Example: Greenburg clearly likes and admires Justice Sandra Day O'Connor and benefited from a lengthy interview with the retired Justice. However, she does not shy away from expressing a (well-deserved) criticism of Justice O'Connor -- that the Justice had no consistent vision of the law and decided cases one by one, almost by instinct and out of a vague sense of what would be "just."

This is just a terrific book on the recent Supreme Court. The author, a graduate of the University of Chicago Law School, currently is a correspondent for ABC News, and for many years covered the Court for the Chicago Tribune. The author develops a dual focus in her analysis. First, she looks at how certain key Justices were selected for nomination to the Court. Those Justices include Souter, Kennedy, Thomas, O'Connor, Scalia, Miers, Roberts and Alito. She also covers the Bork nomination. Particularly interesting in this regard, and the "struggle for control" of the Court she sees continually occurring, is the conservative paranoia that true believer conservatives only must be nominated by GOP Presidents, individuals who will unlike Souter, Blackmun, Kennedy, and O'Connor for example, never deviate from a firm conservative outlook no matter what seductive influences (such as the New York Times and the Georgetown cocktail circuit) impact upon them. The author well documents that the Federalist Society and other judicial conservative groups felt themselves continually betrayed as one after another Justice moved to a more moderate position despite having appeared to be a firmly-fixed Scalia/Thomas type conservative. The internal struggle in GOP White Houses with these groups and the process of selection itself are superbly discussed, based primarily it appears upon the author's extensive interviewing, the Blackmun papers, and documentation at various Presidential libraries (especially the Reagan facility).

The second focus of the book is equally fascinating. Here the author analyzes the struggle within the Court for dominance, the process of coalition building, the strategies of inter-Justice persuasion, and the role of Justice personality in the mix. Some very interesting suggestions emerge from this analysis. For example, Justice Thomas joining the Court had a critical impact in that his staunch conservatism moved Justice O'Connor toward the middle from her previously more conservative position due to her disagreements with him. Much like Joan Biskupic in her excellent biography of the Justice (also reviewed on Amazon), the author analyzes O'Connor's techniques of coalition building and how she adopted fluid and flexible tests in concurrences that would allow her to maximize her position as a "swing" justice. We also come to understand why Justice Kennedy has developed the reputation for being indecisive and in the habit of switching sides at the last minute. Some interesting background analysis of Chief Justice Roberts and Justice Alito is included. But there is much more of great interest to digest in the author's incisive analysis of these intra-Court dynamics.

The book is based on solid research, but is not "academic" in that the author cites relatively few law review articles in her notes. One senses her solid grasp of the topic comes from extensive contact with the key players and a profound understanding of the processes involved in selection, more than from extensive published sources. If you are interested in the Supreme Court and American politics, this is a book that will "wow" you with its insights and perceptive analysis. Read more &rsaquo;

I just bought the book and finished it in a day. Greenburg has really done a very fine job providing a fascinating account of the Rehnquist and (so soon!) Roberts Courts. I won't spoil anything, but there is a lot of information previously undisclosed regarding the circumstances of O'Connor's and Rehnquist's retirements, the search for replacements, and the nominations of Roberts, Miers, and Alito. There are also segments dedicated to the other justices, and some interesting remarks on *Bush v. Gore* from Justices O'Connor and Kennedy.

Jan Crawford Greenburg traces the history of conservatives to re-shape the court beginning with President Reagan and moving through the confirmation of Justice Alito. The author obviously had access to a number of sources as well as the notes of Justice Blackmun. She is able to tell a complete narrative both inside the Supreme Court and inside the White House as candidates for nomination to the bench are debated, prepared, etc. She devotes more space to conservative administrations and justices but this seems due to the nature of the narrative she is attempting to construct rather than an attempt to slight anyone.

This book methodically traces the successes and failures of the nomination process. There were enough contentious and controversial proceedings to provide plenty of grist for the mill and plenty of behind the scenes details that display the thought processes going into each nomination. There is also a nice level of background information on the nominee so that you begin to see them as real people, and not just the shallow caricatures that the media typically portrays. Some may be disappointed by a relative lack of detail in the Clarence Thomas confirmation hearings but I would say she hit it just about right. That widely publicized mess could fill an entire book and is not central to the story she is attempting to tell. She discusses it enough to make clear what a firestorm it was and then moves on.

Once each person makes it onto the court, she walks us through the impact that they had on the group dynamic. One of the most fascinating aspects of the book is how one justice may affect another to change that group dynamic. Once again, we are presented with justices as human beings with normal thoughts and emotions. Many of the images we hold of these people appear to be false and beyond that there is a good deal here worth knowing. Many people are pleased or unhappy with the Supreme Court based on whether they like the end result. But the justices actually have to consider the law and constitutionality of those issues and there is an underlying logic to their decisions that we often fail to consider. I may not agree with some of those decisions, but I would say that I understand the reason for some of them far better now than prior to reading *Supreme Conflict*.

As for flaws, the narrative occasionally loses focus when she delves into background situations. Also, at the end she seems to imply that the addition of Roberts and Alito constitute a "mission accomplished" for judicial conservatives. The truth is that we don't know how those two will vote over time and, in any case, they would still lack a clear conservative majority. Kennedy has long been a swing vote on the court and the four presumed conservatives would need him to form any sort of lasting majority. All in all, it seems premature to determine how this group will perform. Still, these are minor points that do little to mar an excellent book. I have already begun recommending it to friends and family and likewise offer my highest recommendation to Amazon readers. Read more &rsaquo;

In this impressive book, Jan Crawford Greenburg relies on interviews with administration officials, the papers of Justices and Presidents, and even interviews with the Justices themselves to give readers an inside look at the Supreme Court. Starting with the appointment of Sandra Day O'Connor, and ending with the confirmation of Samuel Alito, Greenburg discusses the politics behind the appointment and confirmation of all of the current Justices as well as the impact these Justices have had on the Court. Perhaps not surprisingly, Justices Sandra Day O'Connor and Anthony Kennedy play central roles in the book (much as they did on the Court during this time). In many ways, this reminds me of *THE BRETHERN* (Woodward and Armstrong 1979), but with more of a focus on the justices than on the key cases decided (though there is some discussion of cases). The book is both well-written and well-organized. In addition to learning much from the book, it is also easy to read.

Some of the information in the book will be familiar to scholars of the Court – for example, the fact that Chief Justice William Rehnquist was a good leader of the institution, rarely pressuring Justices who disagreed with him. Greenburg writes (p.17), “Rehnquist . . . was a well-liked leader, and the justices had developed a warm and easy rapport over the years.” This is in contrast to the man he replaced, Warren Burger, whose leadership style was criticized by both liberal and conservative justices alike (Woodward and Armstrong 1979; Greenhouse 2005). Interestingly, later in the book (p.315) Greenburg describes Chief Justice John Roberts as more collegial and savvy than Rehnquist, something that is curious given the high marks generally given Rehnquist on both accounts. (Greenburg offers no evidence to support this claim.) Another example is the way the Bush White House completely blundered the nomination of Harriet Miers. Given all of the opposition to Miers, both internally and from key supporters, one is left with a feeling of amazement that the Administration thought that she would be confirmed by the Senate.

Despite the considerable strengths of the book, there are some things I wish had been developed better. First, I think Greenburg needs to provide better evidence for some of her claims that contradict previous accounts or scholarly studies. On p.171, she writes, “[Harry] Blackmun hadn’t been a particularly likable colleague.” This seems to contrast with the portrayal of Blackmun in both *THE BROTHERS* (Woodward and Armstrong 1979) and *BECOMING JUSTICE BLACKMUN* (Greenhouse 2005). While Blackmun could be finicky sometimes, he was never accused of being a bad colleague. Greenburg needs to say more here, especially since it seems contradictory to other accounts. Another example is when she writes that *BUSH v. GORE* was “a case that would shake the political world and deeply damage the Supreme Court’s reputation for years to come” (p.174). Yet, there is no evidence that the Supreme Court’s reputation was damaged by the case (e.g., Kritzer 2001; Gibson, Caldeira, and Spence 2005).

More troubling is the fact that Greenburg’s conclusion that the Court is finally going to shift to the right seems a bit premature and overly optimistic. After all, after the appointment of O’Connor, Kennedy, Scalia, Souter, and Thomas, people thought the Court was going to swing to the right. And, there was evidence this was occurring: in addition to the consistently conservative decisions of Scalia and Thomas, O’Connor voted with Rehnquist as often as Thurgood Marshall did with William Brennan during her first three terms (p.68), Kennedy “emerged as one of the most conservative of the justices” (p.73), and Souter was solidly conservative early on as well (p.109). So, if all these justices drifted to the left, how can we be sure the same will not happen with Roberts and/or Alito? To be sure, their records are both more solidly conservative before reaching the Court than O’Connor, Kennedy, and Souter. But, there are no guarantees. Also, if Scalia and Thomas pushed O’Connor to the left, how can we be sure they will not push Kennedy even further to the left, thereby, stymieing the conservatives once again. It is for these reasons that her conclusion (p.315) that “George W. Bush and his team of lawyers will be shaping the direction of American law and culture long after many of them are dead” seems a bit premature. This may well be true, but we have heard this before.

In sum, *SUPREME CONFLICT* is sure to be a book of interest to scholars of the Court, regardless of the approach they take in their research. While there are some shortcomings, on balance it is interesting and insightful. It is certainly appropriate for use in undergraduate classes on the Supreme Court as students are likely to find the behind-the-scenes account of the Court and its Justices compelling.

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