Objectives: The student will

1. Experience events that occurred in the United States from 1796 to 1803;
2. Analyze the roles of the various people involved in the *Marbury v. Madison* Supreme Court case;
3. Sequence the order of events surrounding the *Marbury v. Madison* case;
4. Predict the impact of the outcome of the Supreme Court case, the *Marbury v. Madison*.

TEKS: Govt. 8 C; 8.18 A & B

Materials Needed: Suspect cards printed on large cards (Thomas Jefferson, John Adams, John Marshall, James Madison, William Marbury); clue strips (one per student)

Vocabulary: Judicial review, original jurisdiction, Electoral College, appellate jurisdiction

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Teaching Strategy:

1. Before class, cut out and scramble clue strips. Hang suspect cards around the room.

2. Discuss the above vocabulary and Part I of the Historical Background with students. Emphasize that students will experience a very critical time period in U.S. history: 1796-1803.

3. Pass out a clue strip to each student or pair of students. They should use textbooks, the Internet, or other available resources to determine to which man that particular clue card applies. It will be helpful if students are able to determine the year in which the incident on the clue occurred.

4. Have each (or pair of students) student go to the suspect card to which his or her clue card applies and group around it. Students should confirm with each other that they are in the correct group, and the teacher should double check.

5. Students should then place the clue cards in chronological order for their suspect. When this is completed, have the groups report to the class by reading the clue strips for each suspect in the correct order. (For the teacher’s convenience, the clues are in the correct order under each suspect’s name.)

6. Before going further, each group should write at least three interrogation questions to ask their suspect. (Questions MUST be regarding Marbury’s lost commission, such as, they might ask John Marshall if he felt a conflict of interest between his jobs as Secretary of State and Chief Justice.)

With one group member playing the role of the suspect, have each group conduct a question and answer session for the class. Allow other class members to ask the suspect additional questions before moving to the next group.

7. After all suspects have been interrogated, hold a class discussion and try to reach a consensus as to who should be blamed for the undelivered commission.

8. At this point, have students place ALL clues for all suspects in chronological order. Warn students that some events occurred at the same time and should be placed side-by-side. A key is provided for the teacher.

9. After the clues have been placed chronologically, go over Part II of the Historical Background in detail, making sure students understand what happened and the importance of each event.

Emphasize that although Marbury never got his job, that is not the important part of this case. The importance is that this case gave the United States Supreme Court the right to decide the constitutionality of acts of Congress and the president—the right of judicial review.
A summary of the Supreme Court decision is included for upper level students and as a resource for the teacher.

**Debriefing Questions:**

- What was the primary motive of each suspect?
- Which suspect(s) is (are) the most to blame for the missing commissions? Why?
- What was (were) the dilemma(s) faced by Marshall?
- What might have happened if Marshall had ordered Madison to deliver the remaining commissions?

**Extension for GT/AP:** (1) Divide the class into five groups. Assign one man to each group and have the students research and report to the rest of the class what happened to their character. (2) Have students research how and when the Supreme Court next used its newly gained power of judicial review.
HISTORICAL BACKGROUND
1796-1803

Part I:

Article III in the U. S. Constitution established the Supreme Court and left the creation of other federal courts to Congress. The Constitution gave the Supreme Court broad appellate jurisdiction (the power to hear cases that have been previously heard by a lower court) and original jurisdiction (usually the trial court, or the first court to hear and decide a case) in only a few specific situations.

In 1789, Congress passed and President George Washington signed the Judiciary Act into law, thus creating the federal court system. The law added to the Supreme Court’s original jurisdiction power by giving the Court the power to hear cases involving appointments of federal officials.

An important event began in American history in 1796. George Washington was completing his second term as President of the United States and announced that he would not run again. John Adams and Thomas Jefferson were the leading candidates in what was the first presidential election with two political parties in opposition. John Adams was elected president, which made Jefferson the vice president.

Again in 1800, the same two men were in the presidential race. This time, Jefferson was eventually elected President of the United States by the House of Representatives. Although the election was decided on February 17, 1801, Jefferson did not take office until March 4. Until that time, Adams was still in power.

On March 2, Adams appointed 42 new judges and all were approved by the Senate. One of these “Midnight Judges” was William Marbury, appointed to a position as Justice of the Peace in the District of Columbia. These commissions were signed by Adams and John Marshall, his secretary of state. To complicate matters, Marshall had been appointed as Chief Justice of the United States on February 4, but had continued to act as secretary of state until Jefferson’s inauguration.

Jefferson refused to recognize 25 of the 42 judicial appointments made by Adams because they had not been officially delivered before Adams left office. Jefferson appointed James Madison as the new secretary of state and ordered him NOT to deliver the remaining 25 commissions.

What happens next begins the mystery of the missing (undelivered) commissions. Who should be blamed for this series of unfortunate events that led to the missing commissions?
Part II:

Explain to students that although this activity was written as if a crime had taken place and someone was going to be charged, it actually was a CIVIL case that was filed by William Marbury. He probably was not interested in WHO was at fault but simply wanted to receive his commission so he could serve as Justice of the Peace of the DC circuit, the job for which he had been appointed by President Adams.

Chief Justice John Marshall, writing for the Supreme Court in *Marbury v. Madison* (1803), first declared that William Marbury should have his job. However, since Marbury was not an ambassador, minister, consul, or state, the Supreme Court did not have original jurisdiction in this case under Article III of the Constitution.

The Supreme Court found that the Judiciary Act gave the Supreme Court powers not granted by the Constitution. Marshall declared in the Court decision that the section of the Judiciary Act of 1789 that gave the Supreme Court the right to issue orders (such as in Marbury’s case) was unconstitutional.

The genius of Marshall’s opinion is that it managed to recognize the legitimacy of Marbury’s claim, chastise Jefferson’s administration for refusing to deliver it, and gave the Supreme Court the right to define constitutional limits on the powers of Congress. At the same time, it denied the Supreme Court’s power to give Marbury the remedy he sought. Marshall managed to confound his opponents by limiting the Supreme Court’s power in the Marbury matter while asserting a much more important and far-reaching power—judicial review.

The importance of this case is illustrated by Marshall’s quote in his decision: “It is emphatically the province and duty of the judicial department to say what the law is ... and a law repugnant to the Constitution is void.” This statement establishes the right of judicial review, which allows the Supreme Court to declare the acts of the other two branches of government unconstitutional.
MARBURY v. MADISON (1803)
Decision

Only four of the six Justices on the Supreme Court participated in this decision. Chief Justice John Marshall wrote the opinion, first answering whether Marbury had the right to his judicial commission. The Court concluded that he did have this right. Marshall wrote:

Some point of time must be taken when the power of the executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised. And this power has been exercised when the last act, required from the person possessing the power has been performed. This last act is the signature of the commission.

Mr. Marbury, then, since his commission was signed by the president, and sealed by the secretary of state, was appointed ....

The next question brought up by the Chief Justice was, “If [Mr. Marbury] has a right, and that right has been violated, do the laws of his country afford him a remedy?” To this, the Chief Justice wrote:

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right....

Next, the Court considered the constitutionality of parts of the Judicial Act of 1789. Chief Justice Marshall wrote that the section of the Judiciary Act of 1789, which gave the Supreme Court the power of original jurisdiction in cases such as Marbury’s violates Article III of the Constitution. The Chief Justice refused to accept a power that had been given to the Court by the legislature. In so doing, he announced that the Court would exercise a much greater power, that of judicial review. The Chief Justice wrote:

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution, or conformably to the constitution, disregarding the law, the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty.
If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

... Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.

Thus, Marshall declared the Supreme Court as the final judge of constitutionality, giving it the right of judicial review.

The importance of the case, Marbury v. Madison, is not whether William Marbury became a justice of the peace (he did not) but rather that the United States Supreme Court has the final say in whether or not a law violates the United States Constitution.
JOHN ADAMS
James Madison
JOHN MARSHALL
I was elected the first vice president of the United States.

I ran for president as the Federalist candidate when Washington decided to retire to Mt. Vernon.

I was narrowly elected as the second President of the United States.

I worked with the Federalist-dominated Congress to pass the controversial Judiciary Act of 1801, which created sixteen new federal circuit judgeships.

I lost the presidential election of 1800.

After I lost the election, I worked with my Secretary of State, John Marshall, to keep control of the federal courts by filling all judicial positions (called the “Midnight Judges”) with political friends before leaving office.
THOMAS JEFFERSON

I served as the first Secretary of State of the United States.

I lost the third presidential election to John Adams by a vote of 71-68, thus becoming vice president.

I became an ineffective vice president because my political views differed from those of President Adams and returned home to Monticello.

I ran for president as the Democratic-Republican candidate in the fourth presidential election.

I tied in the Electoral College with Aaron Burr in the presidential election.

The House of Representatives elected me President of the United States after 36 ballots.

I was infuriated with Adams, who nominated Federalists to the positions of Justices of the Peace for the District Columbia before he left office. I refused to honor the undelivered judicial appointments (the Midnight Judges) made by my predecessor.

I believed that the remaining commissions were invalid because, even though they had the presidential seal, they were never delivered.
<table>
<thead>
<tr>
<th><strong>JAMES MADISON</strong></th>
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<td>I declined reelection to Congress and returned to Virginia with Dolley.</td>
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<td>I worked hard to help my friend, Thomas Jefferson, be elected president.</td>
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President Adams appointed me to the position of justice of the peace of the DC circuit. This appointment, and others, became known as the "Midnight Judges."

My commission for justice of the peace of the DC circuit was signed and sealed but not delivered before President Adams’ term as president expired.

I took my case to the Supreme Court under its original jurisdiction power granted in the Judiciary Act of 1789.

Although the Supreme Court said I was entitled to the job, I never got it. The Court determined that it did not have the power to hear the case and therefore could not decide for me.
I served as John Adams’ Secretary of State.

President Adams appointed me as Chief Justice of the United States.

I made sure I received my commission to the Supreme Court.

For a short time, I served as both Secretary of State AND Chief Justice—the only person in U. S. History to serve in both a federal executive branch and a judicial branch position at the same time.

I did not deliver all of Adams’ last minute judicial appointments because time ran out.

One of my first tasks as Chief Justice of the United States was to swear in Thomas Jefferson as President of the United States.

I wrote the Supreme Court decision in the case of Marbury v. Madison.

I determined that Marbury should have his job but that the Supreme Court did not have original jurisdiction in the case and therefore should not have heard the case in the first place.
Chronology of Clue Strips*

*Events that occurred at approximately the same time have been numbered the same.

1. (John Adams) I was elected the first vice president of the United States. (1788)

2. (Thomas Jefferson) I served as the first Secretary of State. (1790)

3. (John Adams) I ran for president as the Federalist candidate when Washington decided to retire to Mt. Vernon. (1796)

4. (John Adams) I was narrowly elected as the second President of the United States. (1796)

4. (Thomas Jefferson) I lost the third presidential election to John Adams by a vote of 71-68, thus becoming the second vice president. (1796)

5. (Thomas Jefferson) I became an ineffective Vice President because my political views differed from those of President Adams and returned home to Monticello. (1796-1800)

6. (James Madison) I declined reelection to Congress and returned to Virginia with Dolley. (1797)

7. (John Marshall) I served as John Adams’ Secretary of State. (1800-1801)

8. (John Adams) I worked with the Federalist-dominated Congress to pass the controversial Judiciary Act of 1801, which created sixteen new federal circuit judgeships. (1800)

9. (Thomas Jefferson) I ran for president as the Democratic-Republican candidate in the fourth presidential election. (1800)

10. (James Madison) I worked hard to help my friend, Thomas Jefferson, be elected President. (1800)

11. (John Adams) I lost the presidential election. (1800)

12. (Thomas Jefferson) The House of Representatives elected me President of the United States after 36 ballots. (1800)

13. (John Marshall) President Adams appointed me as Chief Justice of the United States. [Note to teachers: It is very important for students to realize that Marshall was appointed as Chief Justice by Adams AFTER Adams lost the election to Jefferson.] (1801)

14. (John Adams) After I lost the election, I worked with my Secretary of State, John Marshall, to keep control of the federal courts by filling all judicial positions (called the “Midnight Judges”) with political friends before leaving office. (1801)

14. (William Marbury) President Adams appointed me to the position of justice of the peace of the DC circuit. This appointment, and others, became known as the “Midnight Judges.” (1801)

15. (John Marshall) I made sure I received my commission to the Supreme Court. (1801)

16. (John Marshall) For a short time, I served as both Secretary of State AND Chief Justice—the only person in U. S. History to serve in both a federal executive branch and a judicial branch position at the same time. (1801)

17. (John Marshall) One of my first tasks as Chief Justice of the United States was to swear in Thomas Jefferson as President of the United States. (1801)

18. (James Madison) I was appointed to serve as President Jefferson’s Secretary of State. (1801)

19. (Thomas Jefferson) I was infuriated with Adams, who nominated Federalists to the positions of Justices of the Peace for the District Columbia before he left office. I refused to honor the undelivered judicial appointments (the Midnight Judges) made by my predecessor. (1801)
20. (William Marbury) My commission for justice of the peace of the DC circuit was signed and sealed but not delivered before President Adams’ term as president expired. I took my case to the Supreme Court under its original jurisdiction power granted in the Judiciary Act of 1789. (1801)

20. (John Marshall) I did not deliver all of Adams’ last minute judicial appointments because time ran out. (1801)

20. (Thomas Jefferson) I believed that the remaining commissions were invalid because, even though they had the presidential seal, they were never delivered. (1801)

20. (James Madison) As President Jefferson’s Secretary of State, I was responsible for delivering judicial commissions to the Midnight Judges. (1801)

20. (James Madison) I was ordered by Jefferson to ignore the undelivered commissions. (1801)

21. (James Madison) William Marbury sued me in court because he did not receive the commission for his job. (1801)

22. (John Marshall) I wrote the Supreme Court decision in the case of Marbury v. Madison. (1803)

23. (John Marshall) I determined that Marbury should have his job but that the Supreme Court did not have original jurisdiction in the case and therefore should not have heard the case in the first place. (1803)

24. (William Marbury) Although the Supreme Court said I was entitled to the job, I never got it. The Court determined that it did not have the power to hear the case and therefore could not decide for me. (1803)