



**Devotion:** 21 But select capable men from all the people—men who fear God, trustworthy men who hate dishonest gain—and appoint them as officials over thousands, hundreds, fifties and tens. 22 Have them serve as judges for the people at all times, but have them bring every difficult case to you; the simple cases they can decide themselves. That will make your load lighter, because they will share it with you. (Genesis 18:21-22)

**Business:** **Registration for Spring 2022.** *Review the 10/25/21email to Criminal Justice Majors/Minors.*

**Motivational VIDEO:**

7 10/18	JPA Ch. 5-6 CE article <b>Discuss BMKs and topic choice</b>	How are federal and State judges selected? How do they grow into the professional stature needed to be a judge?	<b>HW5 POST</b> (due 10/16) Find the biographical profile of a judge and identify or challenge the points made in this chapter about judge selection processes and factors. <ul style="list-style-type: none"> <li>Respond to a post (50 words)</li> </ul>	before 11:45 pm. Use text and current events. 250 words.
8 10/25	JPA Ch. 5-6	<b>BMK 1 and 2</b>	<b>Benchmark 1</b> is due in E360 Discussion thread. <b>Benchmark 2</b> is due in E360 Discussion thread Follow syllabus guidelines below. Use text, govt. websites, and current events.	<b>BMK 1 and BMK 2 are due 10/27, and 11/07 before 11:45 pm</b>
9 11/01	JPA Ch. 7	The President and judge appointments, 4 key factors	<b>HW6 POST</b> (due 10/30) 1. State the four principles. What order of importance would you give them? 2. How would you actively work/protest to shape the selection of judges? <ul style="list-style-type: none"> <li>Respond to a post (50 words)</li> </ul>	Use text and current events 125 words each question.

We the People of the United States, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. (Preamble, *United States Constitution*, 1789).

How are the States granted legal authority to conduct State and local politics and government services?

**The 10th Amendment of the U.S. Constitution** establishes **federalism**; it refers to the legal principle that anything stated by *federal code and court decisions* as being within the authority of the federal government cannot be infringed upon by the authority of the States. Federalism also refers to all authority not stated as federal in legal scope, to be within the legal domain of the States and local governments. Hence, a *dual court and legal system* exists in the U.S.

**Lesson Goal:** The *politics of Federal and State Justice selection/election/promotion*

In most States, the State judges are elected by popular vote. Over the past 20 years, the elections of judges have become increasingly visible and funded by political parties. In some States, the judges are appointed by the governor and in only two States they are elected by that State's Legislature.

**Five Modes of Judge State Selection;** Trial Courts, Appeals/ Courts of Last Resort: (see Table 5.1, 5.2, p. 108-09).

1. *Partisan* election – Judge candidates are representatives of a particular political party for judgeship
2. *Non-partisan* election – Judge candidates do not represent a particular party when running for judgeship
3. *Merit* selection – A list of candidates is recommended by a panel of lawyers from the State Bar Association
4. *Gubernatorial* appointment – Judge is appointed by the State Governor
5. *Legislative* appointment – Judge is appointed by a State Legislator process

*Retention elections* – After an appointment, judges in some States may have to run in a public election to continue to hold the judgeship for future terms. It is difficult to unseat a judge, therefore, terms and reseating usually last many years.

How do these methods make a difference? When considering various processes, keep in mind that *the different processes do not necessarily mean the result is different justices*. The candidates for justice positions and their supporters will use the systems in place to secure their places in the courts.

The key question to consider is:

- Do party members have more influence with the elected judges?
- Can supporting a candidate later lead to *bias for or against someone appearing in their courtroom*?
- Can wealthy contributors to election set themselves up to have influence on judges' decisions?

*Chief Justice of the State Supreme Court* – The Chief Justice of a panel leads the court in case selection, court processes, and in-private court discussion between Court Justices. This level of influence is very important in the process and status of the case selection. The Chief Justice selection process varies across the States. Selected by peer-Justices or by seniority (person with the longest record of service). A case worthy of note is the politics of replacing long-standing Wisconsin State Supreme Court Chief Justice Shirley Abrahamson with the State Supreme Court Justice Patience Roggensack. Prior to 2015, the Wisconsin Chief Justice *was selected based on seniority*. A State referendum (State popular vote on a specific policy) to change the State Constitution (by amendment) resulted in the new practice to having the State Justices as a group select their own Chief Justice. The shift in the group from more liberal to more conservative led to the selection of Justice Roggensack.

### **Practical Questions regarding fair judgeships:**

*What does it mean to recuse oneself from a case?* If a judge/committee member has a history/relationship with someone whose case is being decided, *the judge/committee member can voluntarily remove his/herself from the review and decision-making process*. By doing so, the chance of bias or favorable influence is removed for the sake of fairness.

*Can politics and case decisions influence reseating of judges?* Yes, although the goal is to seat judges who respect and rule based on legal principles and precedents, Iowa is a case where the judges who voted to support same-sex marriages were unseated at the next judgeship elections because of conservatives pushing for their removal.

*Can service in Congress before judgeship appointment by the Legislature lead to a biased judgeship?* The appointment of judges by Legislature brings up the question of former legislators being selected based on favorable treatment and voting during legislative service. *In other words, can Legislators serve and vote in ways that will get them elected by their peer legislators later on?*

*Can judges be removed because of old age, or removed because of incompetence, or removed for unethical practice?* YES, YES, and YES. Some States have a mandatory retirement age for judgeships and retirement age regulations were supported by a U.S. Supreme Court decision (*Gregory v. Ashcroft, 1991*). Cases in which judgements are highly questionable for leniency or lack of leniency (flexibility) have resulted in judges being removed by public referendum (vote).

1. For example, in the case of and the refusal to consider an appeal to execution by *Texas Appeal Court Judge Sharon Keller* (on behalf of Michael Richard, executed hours later). The U.S. Supreme Court had made a ruling earlier in the day that could have impacted Richard's case. The Commission on Judicial Conduct issued a warning of poor conduct to Keller.
2. In the case of *New Hampshire Justice David Brock*, he had impeded an investigation of a fellow CA Justice Thayer. Thayer tried to influence the appointment of judges overseeing his own divorce case. Brock was impeached by the New Hampshire Legislature, but was later acquitted of the charges.
3. In the case of *California Superior Court Judge Aaron Pesky* (2018), for overturning the verdict of defendant Brock Turner, a Stanford University student-athlete who raped a fellow, unconscious Stanford student. Pesky sentenced Turner to 6-months incarceration for the rape, (which resulted in 3 months served), three years on probation, and life-time registration as a sex-offender. A 60 percent public vote led to *the recall of the judgeship* (he was removed). Debate in support of judges focuses on how many bad decisions or pattern of misconduct should require public action.

In summary, States proactively attempt to structure the means of selecting judges, however, removal of judges is rare even in cases of apparent misconduct or poor judgement. Legislators often attempt to structure election processes, election ballots, and partisan/ non-partisan voting rules to shape the outcomes (Read *JPA*, p. 101-124).

**Lesson Goal: The Selection/election of Federal Judges**

Who appoints federal judges? - Supreme Court justices, court of appeals judges, and district court judges are *nominated by the President and confirmed by the United States Senate*, as stated in the Constitution.

The names of potential nominees are often recommended by senators or sometimes by members of the House who are of the President's political party. The Senate Judiciary Committee typically conducts confirmation hearings for each nominee. **Article III of the Constitution** states that these judicial officers are appointed for a life term. The federal Judiciary, the Judicial Conference of the United States, and the Administrative Office of the U.S. Courts play no role in the nomination and confirmation process (Retrieved from <https://www.uscourts.gov/faqs-federal-judges>).

Reference

U.S. Courts (2021). *Frequently asked questions, federal judges*. Washington, DC: United States Courts.

Retrieved from <https://www.uscourts.gov/faqs-federal-judges>

**VIDEO: PBS Justice Brett Kavanaugh confirmation hearing in 15 min. – 14:29**

<https://www.youtube.com/watch?v=eNGs1fjQAZs>

1. What key points did Kavanaugh's make to get the approval of the U.S. Senate? (name 3)