

**Grades 7–12 Strategy: Judicial Independence/Judicial Accountability**

**Title** What Makes a Good Judge?  
(Balancing Judicial Independence and Judicial Accountability)

**Time Required** 1–2 class periods

**Overview** The ideal process for selecting judges remains a matter of controversy among scholars, lawyers, jurists, and citizens 200 years after our country’s founding. Too often, two desirable qualities—accountability and independence—are debated without clarifying to whom judges should be accountable or what is meant by an independent judiciary. This activity asks students to weigh the costs and benefits of two methods of selecting judges (election and merit) by participating in an exercise in which they define the qualities they find desirable in judges.

**Presentation****Introduction**

Begin the class by introducing yourself to the students. As you do so, remember when you were this age and what you might like to know about other people.

Be sure to provide a brief explanation of why you are in the classroom on this particular day. If you have an official Law Day poster, hang it where all can see it. You might consider saying the following, in your own words.

*Today, people throughout the United States are celebrating Law Day. I believe it is very special because I work in the legal field and am very proud of the work I do. But, more importantly, it is special because it allows us to stop and think about our country, the United States of America, and the freedoms we all share. It is also special because this day provides us with an opportunity to talk about the laws that protect us and provide us these very special freedoms.*

Establish a focus for the activity by asking the students to describe what they think of when they hear the word “judge.” Allow for several responses. Explain that today you will be discussing with them how individuals are selected to become judges.

**Activity**

Distribute Handout 1. Review the directions and ask students to complete the handout. Call time after a limited but sufficient amount of time.

Ask for volunteers to share the most important qualities that they listed in each category. Reach agreement on the top four qualities in each category. Using the board or flip chart, use those qualities to draft a definition for a good judge. Do the qualities they selected seem to favor accountability or independence?

If time permits, at the end of the activity, return to Handout 1 and assign small groups to use the characteristics to develop desirable characteristics for a specific type of judge, such as Divorce Court, Bankruptcy Court, Traffic Court, and Juvenile Court.

- Discuss the lists.
- Ask the students if they believe a single judge would be suited for all types of courts.
- Ask the students if they feel the criteria for selecting judges should be refined to match the type of cases the judge will be hearing.

Explain that while there are various methods to select judges, today you are discussing two specific ways: the election and merit methods. As a way to engage the students in a discussion of these two methods, guide students through the following steps.

**Objectives**

Students will

- Define the qualities that should be considered when selecting a judge.
- Evaluate the costs and benefits of two methods of selecting and retaining judges. Do they provide for judicial independence and judicial accountability?
- Discuss the strengths and weaknesses of the judicial selection process in their state.

**Preparation**

- Be sure to talk with the teacher in advance about this activity. Provide the teacher with a copy of the activity.
- This activity is enhanced if delivered by a judge, lawyer, or member of the judicial district’s nomination committee or judicial performance committee. Otherwise, the individual should serve as a resource person.

**Materials**

Sufficient copies of the following handouts for class distribution.

- Handout 1: What Makes a Good Judge? (page 27)
- Handout 2: Two Proposals for Selecting Judges (page 28)
- Handout 3: Judicial Selection Methods—An Overview (page 29)

Have the students look at their completed Handout 1. Ask,

- Which qualities on the list would be important if judges run for office?
- Can you identify how some of the qualities that it takes to get elected (good campaigner, contributions to political party, ties to special interest groups) might conflict with qualities you have placed in the essential or desirable columns?

You may wish to give a current-event example of a case where a judge must rule on a controversial issue.

- In contrast, which qualities would be most important if a judge is to be selected through the merit system?

Ask the students to vote by a show of hands as to which process they feel would more likely result in judges with the qualities they have identified. Should judges be selected by election or merit?

Distribute Handout 2. Review with the students the costs and benefits analysis of the election and merit methods of selecting judges.

Distribute Handout 3. Review the background section on the page with the students by briefly discussing some of the historical background of selecting judges throughout the United States.

Have the students look at the map and the chart. Answer the questions concerning the map and chart.

Poll the class to determine what students know about how judges are selected in their state. Specific information about individual state courts (and courts in other states) can be found at <[vls.law.vill.edu/Locator/statecourt](http://vls.law.vill.edu/Locator/statecourt)>.

Remind the students of two important facts: Each state's constitution specifies how judges will be selected, and there is no one single agreed-upon method.

- Support this point by saying that at least some research studies designed to show differences among judges based on the method of selection have found no significant differences.
- In a 1994 *University of Miami Law Journal* article, Jona Goldschmidt reports on research that attempts to relate personal characteristics of judicial decision making to judicial selection. She reports that "after considering the findings of fourteen studies, [one research team] point[ed] out that attempts to relate background characteristics to individual judicial decision making 'have not been very successful.' "

### Summary and Closing

After reminding the students that there are strengths and limitations to each selection process, ask for a show of hands as to which selection process they favor. Ask if anyone has changed his or her opinion since the beginning of the discussion. Why or why not?

Can students reach a consensus on one method or build a system that combines the best attributes of both?

Based on the discussion of the benefits and costs of two methods, what specific changes would students want to see in the way judges are selected in their state? What changes can be made so that the qualities they identified for judges are ensured?

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Source material: Landman, James, "An Elusive Idea: Judicial Selection and American Democracy," *Social Education*, vol. 66, no. 5 (September 2002), pp. 293-301. Strategy adapted by Nancy Brown and Barbara Miller from "What Makes A Good Judge: Analyzing Judicial Independence and Judicial Accountability in Colorado," a lesson developed with the collaboration of Barbara Miller, Mike Brooks, Gordon Butz, Marilyn Johnstone, and Rebecca Virtue.



**STUDENT**



**Handout**

## What Makes a Good Judge?

**Directions** Assume you are appointed to a committee to determine what qualities should be used in selecting judges in your state. Review the list of qualities provided below the chart and categorize them under the most appropriate heading. Following the activity, develop a definition for a “good” judge.

ESSENTIAL & FORMAL REQUIREMENTS	DESIRABLE QUALITIES	UNDESIRABLE QUALITIES	UNNECESSARY QUALITIES

**Qualities**

- |   |  |  |  |
|---|--|--|--|
| <ul style="list-style-type: none"> <li>■ Aggressive</li> <li>■ Business background</li> <li>■ Bilingual</li> <li>■ Brilliant mind</li> <li>■ Christian</li> <li>■ Civil rights activist</li> <li>■ Clear thinker</li> <li>■ Collegial</li> <li>■ Concise writer</li> <li>■ Conservative</li> <li>■ Controversial</li> <li>■ Defense oriented</li> <li>■ Determined</li> <li>■ Democrat</li> <li>■ Distinguished lawyer</li> <li>■ DWI conviction</li> </ul> | <ul style="list-style-type: none"> <li>■ Eminent legal scholar</li> <li>■ Ethnic minority</li> <li>■ Fair</li> <li>■ Family-oriented</li> <li>■ Female</li> <li>■ Feminist</li> <li>■ Follows party line</li> <li>■ Good campaigner</li> <li>■ Good fundraiser</li> <li>■ Good health</li> <li>■ Good looking</li> <li>■ Held public office</li> <li>■ Honest</li> <li>■ Humane</li> <li>■ Impartial</li> <li>■ Independent thinker</li> </ul> | <ul style="list-style-type: none"> <li>■ Judicial experience</li> <li>■ Liberal</li> <li>■ Lobbyist</li> <li>■ Loyal</li> <li>■ Male</li> <li>■ Mediator</li> <li>■ Middle of the road</li> <li>■ Member of a gender-specific group</li> <li>■ Old and wise</li> <li>■ Opposes higher taxes</li> <li>■ Opposes school prayer</li> <li>■ Pro death penalty</li> <li>■ Proenvironment</li> <li>■ Prosecution-oriented</li> <li>■ Radical</li> <li>■ Religious</li> </ul> | <ul style="list-style-type: none"> <li>■ Risk-taker</li> <li>■ Rural background</li> <li>■ Self-reliant</li> <li>■ Service to the public</li> <li>■ Single parent</li> <li>■ Strict constructionist</li> <li>■ Strong communicator</li> <li>■ Supports welfare</li> <li>■ Tough on crime</li> <li>■ Traditional</li> <li>■ Trial attorney</li> <li>■ Trustworthy</li> <li>■ U.S. citizen</li> <li>■ Well-educated</li> <li>■ Youthful</li> </ul> |
|---|--|--|--|

**Definition of a Good Judge**

Adapted from “What Makes a Good Supreme Court Justice,” from a lesson by Debra Hallock Phillips in *Update on Law-Related Education*.

## STUDENT



## Background

## Two Proposals for Selecting Judges

## Handout

Currently, there are six methods of selecting judges, each a variation on three basic models—appointment, election, and merit selection. Debates rage in many states regarding how best to balance calls for accountability with the need for independence. Such debates translate into calls for reforming the selection process.

Arguments for the two most common methods, election and merit, are outlined below. Review the benefits and costs of each method.

- Which method would support your definition of a good judge?
- How do you think each selection method shapes the administration of justice and impartiality of judicial decision making?
- Does the process result in more judicial independence? More judicial accountability?

## Method #1: Election

In nine states, judges run as members of a political party. In 12 other states, the elections are nonpartisan, meaning the judges do not reveal their political affiliation. A recent Supreme Court decision, *Republican Party of Minnesota v. White*, affirmed the right of judges to tell voters about their positions on specific political and legal issues that might come before them. Proponents of elections are not necessarily in agreement about how elections of judges are similar to and different from elections in other branches of government.

## Benefits

- Many Americans believe the political preferences of judges are an important consideration.
- The Federalist Society argues that judicial elections, while not flawless, are better than the alternatives.
- Elections provide accountability in the form of an additional, significant measure of self-government to voters.
- As the legal system deals with increasing and aggressive legal suits such as the recent tobacco and on-going gun lawsuits, the public in states that elect judges will be better able to rein in the judiciary and block the continued deterioration of the civil justice system.

## Costs

- Controversial races create pressure to raise more money.
- Spending by candidates, special-interest groups, and political parties on judicial elections is at an all-time high. As a result, candidates are forced to solicit campaign contributions from lawyers and possible litigants.
- Candidates, often the largest contributors to the campaigns, may end up in debt.
- In large statewide races, candidates may lack sufficient money to inform the voters of their merits.
- Given the nature of the judicial elections, voters often lack clues they need to gauge the merits of individual candidates, such as party affiliations, committee assignments, voting records, press releases, or policy positions.
- Critics say judges should spend their time reducing the backlog of cases rather than campaigning for office.

## Method #2: Merit

Merit selection was proposed as a means of separating judges from the election process. A nominating committee that is comprised of both lawyers and nonlawyers presents the governor with a list of nominees, from which the governor selects an appointee. After a stated term, the judge then stands for an election with no party affiliation and no opponent. The judge will be retained if he or she receives a certain percentage of the vote. Twenty-four states and the District of Columbia use some type of merit plan for selecting some or all of their judges.

## Benefits

- Advocates of the merit system point to the benefits of selection by a nominating committee that include lawyers who bring expertise to the selection process.
- They feel that is an improvement over elections in which voters do not vote because they are uninformed about judges or feel they are not in a position to evaluate judicial performance.
- Elections discourage many well-qualified attorneys from seeking judicial office.
- Proponents feel that judges selected through this process will have more time to spend on the matters before them than judges who stand for election.
- In some states, the merit selection process results in a higher number of appointments of minority and female candidates.

## Costs

- The arguments against merit selection are based on the importance of the right of citizens to vote and the role of elections as a means of educating the public, which critics say is less likely to happen with merit selection.
- Opponents of merit selection also point out that politics are still present in the nominating process—but difficult for the public to monitor. Nominating commissioners may represent special interests and may not be drawn from all segments of society.
- They also point out that judges are rarely removed when they stand for retention. As a result, merit selection often results in life tenure for judges.

**STUDENT**  
**3**  
**Handout**

## Judicial Selection Methods—An Overview

### Background

When most states were created, they had a system of selecting judges that resembled that recommended in Federalist #78 by Alexander Hamilton. In his writing, Hamilton argued that judges should have independence from the approval of the executive, legislature, and the people so they can fulfill the judicial attributes outlined in the Constitution. To ensure the independence of the courts that Hamilton recommended, the U.S. Constitution provides that federal judges are appointed to life tenure “during good behavior.” The selection process involves appointment by the President and approval by Congress with no provision for reappointment. While Hamilton’s ideas about judicial selection still guide the selection process in the federal courts, the states developed a wide range of approaches.

In the 19th century, the influence of Jacksonian Democracy resulted in a move toward elections as a means of holding judges more accountable to the public will. A century later, legal scholars in the Progressive Reform Movement proposed a merit selection process for the purpose of removing judges from the pressures of running for political office. These changes were implemented first in Missouri and in several other states in the 1950s and 1960s.

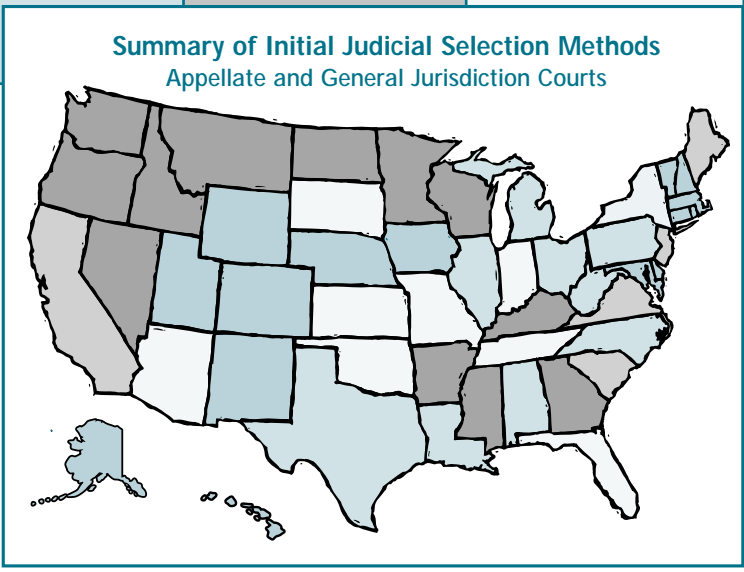
The map and chart provides basic data about alternative methods of judicial selection. To find detailed information about state courts visit <[vls.law.vill.edu/Locator/statecourt](http://vls.law.vill.edu/Locator/statecourt)> .

Summary of Initial Judicial Selection Methods Appellate and General Jurisdiction Courts				
Merit Selection through Nominating Commission*	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Partisan Election	Nonpartisan Election	Combined Merit Selection and Other Methods
Alaska Colorado Connecticut Delaware District of Columbia Hawaii Iowa Maryland Massachusetts Nebraska New Hampshire New Mexico Rhode Island Utah Vermont Wyoming	California (G) Maine (G) New Jersey (G) Virginia (L) S. Carolina (L)	Alabama Illinois Louisiana Michigan N. Carolina Ohio Pennsylvania Texas W. Virginia	Arkansas Georgia Idaho Kentucky Minnesota Mississippi Montana Nevada N. Dakota Oregon Washington Wisconsin	Arizona Florida Indiana Kansas Missouri New York Oklahoma S. Dakota Tennessee

\*The following nine states use merit plans only to fill midterm vacancies on some or all levels of court: Alabama, Georgia, Idaho, Kentucky, Minnesota, Montana, Nevada, North Dakota, and Wisconsin.

Source: American Judicature Society

Look at the map and chart. What can you say about the methods states use to select judges? Look at the chart. Find your state in the list. What generalizations can you determine from the chart?



## PROGRAMS AT A GLANCE School Sponsored Programs

**Jamaica High School • Sullivan & Cromwell/White & Case**  
 Jamaica, NY

**TITLE** Law Day Forum 2002  
**CONTACT** Ellen Frank, Law Coordinator  
 efrankbayer@hotmail.com  
**BUDGET** \$250

The activity promoted student awareness of the importance of law. In the morning, three speakers from the Queens County District Attorney's Office addressed the students on their civil rights. In the afternoon, three people from Legal Aid spoke with the students about when people are entitled to an attorney.

Between the speakers, seven attorneys from the program's co-sponsor law firms visited classes and

worked with the students on various lessons supporting the Law Day theme. A team of students from New York University's clinical law program led classes in role-playing different scenarios where a student may be stopped by a police officer.

The program reached 42 classes and approximately 1,200 students. This is the second year for the program, which has grown from 15 teachers and 11 speakers participating to 25 teachers and 24 speakers.



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See page 66.