
Course Learning Outcomes for Unit VI

Upon completion of this unit, students should be able to:

4. Analyze the roles and operations of courts in the criminal justice process flow.
 - 4.1 Analyze how the various actors in criminal courts interact, support, and argue with each other.
5. Explain the various roles of court personnel.
 - 5.1 Describe how judges and juries are selected, monitored, and removed.
 - 5.2 Analyze how criminal defendants choose an attorney.
 - 5.3 Discuss how prosecuting attorneys are selected, monitored for ethical behavior, and terminated.

Course/Unit Learning Outcomes	Learning Activity
4.1	Unit Lesson Chapter 8 Chapter 10 Unit VI Assignment
5.1	Unit Lesson Chapter 8 Chapter 10 Unit VI Assignment
5.2	Unit Lesson Chapter 8 Chapter 10 Unit VI Assignment
5.3	Unit Lesson Chapter 8 Chapter 10 Unit VI Assignment

Reading Assignment

Chapter 8: Judges

Chapter 10: The Jury

Unit Lesson

Judges, Juries, and the U.S. Constitution

Political bias: The U.S. Constitution and its amendments allow all political parties to exist and advocate any ideology suiting their needs. For example, the Progressive Party believes the government should play a larger role in regulating economic activity throughout the country. By controlling and regulating economic activity, the Progressives would be in a position to implement their four main objectives listed to the right.

Imbedded in the four goals to the right are specific government programs to improve the lives of the poor by improving their personal behavior and changing the uneven balance of wealth between big business, government, and ordinary people (Hamby, 1999).

Protecting Social
Welfare
Programs

Encouraging
Economic Reform

Promoting
Economic
Efficiency

Promoting Moral
Improvement

Progressives Four Main Objectives
(Hamby, 1999)

The most radical of the political parties is the Party for Socialism and Liberation (PSL)—the former Communist Party. Its members advocate destroying the U.S. Constitution and Bill of Rights and forming a revolutionary workers' party based on the Marxism-Leninism doctrine. The ultimate goal would be to convert the United States into a socialist country where the government controls all aspects of the economy, education, and media ("About the PSL," n.d.).

The U.S. Constitution and Bill of Rights were written with the intent to prohibit government from interfering with the natural rights and needs of all citizens. Judge Posner stated this very elegantly and to the point in *Jackson v. City of Joliet* when he said that the founders of the U.S. Constitution were more concerned that the government would do too much to the citizens rather than too little (*Jackson v. City of Joliet*, 1983).

The criminal justice system upholds and defends the U.S. Constitution and its seven articles, which define how the government is organized. The amendments contain prohibitions against government actions to which Judge Posner was referring. An abbreviated list should help make the point by emphasizing the negative (prohibitive) words chosen by the drafters; see the chart below.

Amendment	Phrasing
1st	Prohibits Congress . . .
2nd	Protects the right . . .
3rd	Places restrictions on . . .
4th	Prohibits unreasonable . . .
5th	Sets out rules . . . protects the right . . . prohibits . . .
6th	Protects the right . . .
7th	Provides for the right . . .
8th	Prohibits excessive . . .
9th	Protects rights . . .
10th	Reinforces . . . government possesses only those powers delegated . . .
11th	. . . sovereign immunity.
13th	Abolishes . . .
15th	Prohibits . . .
16th	Permits . . .
18th	Prohibited . . . (Repealed 1933)
19th	Prohibits . . .
22nd	Limits . . .
24th	Prohibits . . .

Amendment	Phrasing
26th	Prohibits . . .
27th	Delays . . .

(National Archives, n.d.)

Only five of the 27 amendments do not contain restrictions on the actions of the federal government; therefore, the criminal justice system must allow political parties, as exemplified by the two examples above, to act in any manner that their members desire as long as they do not violate any laws. An obvious example is the First Amendment, which supports one of society's basic human needs—the freedom to think freely. Conflict develops when the expression of independent thought conflicts with laws. There are a few laws that are designed to protect society from free speech. For example, one cannot incite, urge, or instigate others to riot (Riots, 1996). These concepts, the freedom of speech, and the protection of society from the dangers of riots are eventually controlled by enforcement of the law and, possibly, adjudication in a court.

The criminal justice system works well in supporting and defending the U.S. Constitution and its amendments until factors affecting the system tilt the scale of justice against the U.S. Constitution. Two of the keys allowing the U.S. Constitution and all of the amendments to support and defend the principles that the United States lives by are the judges and citizen juries.

Judge Selection

Selecting judges, justices, and magistrates for the adjudication branch of the criminal justice system is perhaps the most critical aspect of supporting and defending the U.S. Constitution and its amendments. Once appropriate judiciary members are seated, they are faced with attacks on the American way of life by unlawful enforcement of laws and the unconstitutionality of laws, rules, and regulations generated by federal and state legislative bodies and agencies. The courts stand between the disintegration of society and the continuation and constant improvement of the United States. Therefore, the selection process must and should be organized to select candidates who will support and defend the criminal justice heritage.



Court Room
(Digikhmer, 2010)

Vetting and politics: The system for vetting federal judges, justices, and magistrates (hereinafter—judges) by its very nature is politicized. There are approximately 136 federal vacancies with 15 nominees pending (U.S. Courts, 2017). Based on the age of current judges and the average rate of retirements, the current administration (Republican) will be nominating and vetting candidates for these and possibly more positions. The process used is designed to prevent conflict in court decisions, but it is still possible for politics and sociological biases to affect appointments. There are nine steps used to vet possible federal appointees, which are listed below.

1. A vacancy occurs, or a sitting judge provides notice of retirement.
2. The White House consults with state senators for courts located outside of the District of Columbia; the "home state senators" provide the White House with recommendations.
3. The White House conducts a thorough vetting consisting of the Senate Judiciary Committee Questionnaire; after nomination, the responses provided to the questionnaire are made public.
4. The Senate Judiciary Committee sends "blue slips" to home state senators after the Committee approves the nominee to proceed with and be subjected to Senate hearings. The state senators have the power to not return the approval request blue slip without explanation, effectively blocking the nomination of a person they originally nominated to the White House—even for political reasons.
5. The Senate Judiciary Committee conducts a hearing; the committee will submit written questions and interrogate the nominee.

6. The Senate Judiciary Committee votes on the nominee; the voting, thus the nomination, of a candidate may be delayed by any member without giving any reason. Historically, this power has been exercised by members of a political party who are not in the White House.
7. The Senate majority leader sets a time for the Senate to vote; if the minority party chooses to boycott the scheduled vote, the vote will be delayed. It only takes one senator to boycott the vote, and the nomination will be delayed. The majority leader may invoke cloture in lieu of acquiring 100 votes. Cloture requires 60 senators to vote, which makes the threshold for nomination 10 votes higher.
8. The Senate votes, and a nominee is confirmed.
9. The nominee starts a lifetime appointment on the bench (Center for American Progress, n.d.).

The original intention of creating the aforementioned nomination process was to ensure the best possible candidates were appointed to the federal courts. The concept of politicization of nominees is possible, and when the White House, Senate, and House all are members of the same party, the probability of a politically biased appointment is high.

The process above then adds conflict in our courts and the criminal justice system based on political bias.

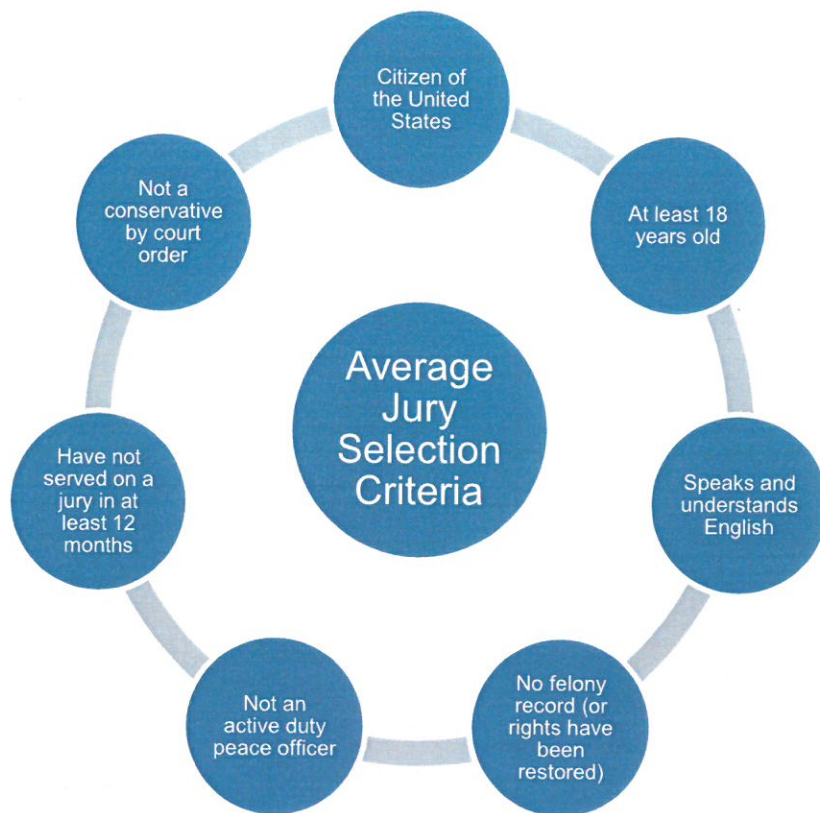
Appointment versus election: Each state, territory, and possession of the United States has a unique system for choosing its judges. It is important for each criminal justice professional to understand and participate in the selection of judges. An excellent source for basic information by jurisdictions may be found at the following resource, which can be accessed by clicking the link below.

American Judicature Society. (n.d.). Methods of judicial selection. Retrieved from http://web.archive.org/web/20150222053432/http://judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state

The webpage above is sponsored by the American Judicature Society and provides current information on a variety of topics related to the appointment and vetting of judges. It may serve as a starting point for gaining an understanding of basic judicial selection processes and methods by jurisdiction. No jurisdiction has yet to devise a method for the selection of nonpartisan jurists. In addition, as noted previously, the major conflicts arising in the U.S. court systems today are based on political views.

Jury Selection and Vetting

Each jurisdiction, by county and state, has its own list of criteria for jury selections. A selection of the typical criteria is depicted above. Jury pools, on the average, are selected from the registers of the Department of Motor Vehicles and the registered voters for the county.



Batson Challenge

A Batson Challenge is a great equalizer and provides protection from racial discrimination in the jury selection process. The Supreme Court was specific by setting firm guidelines of the use of peremptory challenges in a criminal case (*Batson v. Kentucky*, 1986). A peremptory challenge during the jury selection process may be used to dismiss a potential juror without any reason or cause.

The Batson prosecutor used peremptory challenges to remove four members of an ethnic group with the intent to ensure conviction of a person from the same group. The U.S. Supreme Court had found as early as 1880 that a black defendant was denied equal protection rights under the Sixth and Fourteenth Amendment when members of his race were purposefully excluded from the jury (*Strauder v. West Virginia*, 1880). In Batson, the Supreme Court affirmed the Strauder finding. The major difference in Batson was that the Supreme Court declared that the act of attempting to seat a jury based on any "group" was unconstitutional.

A Batson Challenge may be made on grounds that the opposing party used peremptory changes to exclude a potential juror based on race, ethnicity, or sex. In California, the Batson Challenge is now the Wheeler/Batson Challenge since California had an anti-juror bias rule before Batson (*People v. Wheeler*, 1978). In *People v. Williams* (2000), California extended the rule to both civil and criminal trials.

Notwithstanding the above defined ability to challenge a trial attorney's attempts to sit a biased jury, the U.S. system of criminal justice will always be faced with jurors having their own bias. As a criminal justice professional, it seems that all jurors who sit in the box will have a form of prejudice of one sort or another. On the other hand, the majority of jurors overcome their prejudices and judge cases fairly. No government has found a better system of advocacy than ours. Two trained litigators arguing the same set of facts and laws from different perspectives have the best chance of a jury finding the truth.

Conclusion

There will always be conflicts that need to be resolved between our laws and citizens. The best criminal justice practitioners can do is to stay current with their jurisdiction's laws, rules, and regulations and allow the

courts to settle conflicts. When, and if, the courts stray from supporting and defending the U.S. Constitution and Bill of Rights, then appropriate action must be taken to force courts by using appellate procedures.

References

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Learning Activities (Nongraded)

Nongraded Learning Activities are provided to aid students in their course of study. You do not have to submit them. If you have questions, contact your instructor for further guidance and information.

Review your local newspapers for criminal justice conflicts taking place in jurisdictions. Pick out several that are related to your career path, and collect as many facts as you can about the conflict. Then, research the applicable law, rule, or regulation that applies to the conflict, and practice analyzing and arguing both sides of the conflict. Once the issue is resolved, compare your analysis and arguments to the resolution.