



## Nominating Federal Judges Lesson Plan

### AP US Government & Politics

By Rebecca Small, Herndon High School AP Government Teacher,  
for the Supreme Court Summer Institute for Teachers

#### Objectives

The students will be able to explain the politics and political processes of court appointments, interpret and analyze relevant charts, and hone and refine essay composition skills. *(The charts and essay assignments are particularly helpful for students preparing for the AP US Government and Politics Exam.)*

#### Scope/Sequence

- This lesson was initially developed for use in an advanced placement course but is appropriate for various classes and may be adapted to your class's level.
- The lesson works best if presented as part of a unit on the judiciary, preferably after the units on the president and Congress.
- Prior to beginning this lesson, students should be familiar with the Congressional committee structure, committee hearing process, and Senate procedures (such as filibusters) as well as the role and importance of federal judges.

#### Time Recommendations

- The complete lesson is designed for approximately 180 minutes of class time (either two 90-minute block periods or four 45-minute blocks). However, this time can/should be adjusted based on the pace of your class and the amount of preparation students do outside of class.
- Additional time should be allotted if you opt for an in-class essay as an assessment tool. *(A 25-minute segment of class is required if you plan to assign students the AP essay.)*

#### Focus Questions

- What is the purpose of giving federal judges life terms?
- What factors should be considered in nominating and confirming a federal judge?
- What are the most effective techniques for accomplishing the objectives of the various players (president, nominees, Judiciary Committee member, Democratic senator, etc.)?
- What is at stake in the appointment of federal judges?

#### Materials Needed

*For the teacher:*

- ✓ Answer key to discussion questions (included on page 3)

*For the students: (Materials are included in the student packet for reproduction.)*

- ✓ Excerpt from Article III of the US Constitution
- ✓ "Nominating Federal Judges – An Overview of the Process"
- ✓ Charts From Vital Statistics - (May be copied for each student or copied on transparency for use with an overhead projection)
- ✓ Chart Discussion Questions
- ✓ Resumes of Judicial Candidates

## Optional Background Research/Homework Assignment

- Have students research one or all of the current justices on the Supreme Court, noting the political affiliation of each justice's nominating president, the justice's political position (i.e. liberal, conservative, moderate), and the justice's position on key issues such as abortion, affirmative action, state rights, etc.
- Have students offer hypotheses about how the justices' views on the Court compare to the views of the appointing president.
  - For example, Justice David Souter was appointed by President George H. W. Bush, who believed that Souter was a moderate Republican. Justice Souter has proven to be one of the more liberal members of the Court, who often sides with positions favored by Democrats.

## Interactive Strategy/Student Directions

- “Articles II & III of the Constitution – Judicial Power”
  - Distribute copies to each student and have them read the excerpts from Articles II & III of the Constitution.
  - Encourage students to comment on the language. Consider the following:
    - What is meant by “good Behavior?”
    - What is the process for appointing a federal judge?
    - Are there any formal requirements for the judges?
  - Review the discussion questions with the students.

### *Alternative approach:*

- Have students search through a copy of the full Constitution to find the language relevant to court appointments. (Students should identify the language that is quoted on the “Article III of the Constitution – Judicial Power” handout without using the handout.)
  - Encourage students to contrast the way in which the requirements for federal judges are outlined as compared to the president and members of Congress. (For example: there are no age requirements, education requirements, or citizenship requirements for judges.) Challenge students to think of reasons for these differences.
  - Read the questions on the “Article III of the Constitution – Judicial Power” hand-out with the students and discuss the relevant issues.
- “Nominating Federal Judges – An Overview” - Steps, Chart, and Discussion Questions
    - Review the steps for nominating a federal judge.
    - Distribute copies of the chart or use a transparency to project it for the entire class.
    - Have students analyze and interpret the chart. Use the discussion questions to guide student analysis.

- Senate Judiciary Committee Hearing Simulation \*\*
  1. Give students a foundation for the activity. Unless a current nomination is underway and you choose to simulate that, students are to assume a Republican president is trying to get several judicial nominations confirmed by the Senate, which is comprised of 51 Democrats and 49 Republicans.
  2. Choose five students who will play the roles of the president and the four nominees. For large classes, divide the remaining students into four groups. Each group will play the Judiciary Committee assigned to conduct the hearing of one of the nominees. Smaller classes should have the remaining students act as one Judiciary Committee that conducts the hearing for all four nominees.
  3. Distribute the resumes based on whom the students will be playing/questioning. If a current nomination is underway, you might prepare resumes of actual or potential nominees.
  4. The president should coach each nominee in preparing the candidates to present themselves before a Senate Judiciary Committee of inquiry. With the assistance of the president, the nominees should prepare a brief opening statement in support of their candidacy based on their biographies. The president should also help the four nominees prepare answers for some of the questions they anticipate. Their answers should be honest but crafted in such a way that they do not jeopardize their chances at a confirmation. (The nominees should try to avoid answers that may alienate the Democratic majority in the Senate.)
  5. The Senate Judiciary Committee will review the profile of the candidate they will question. The committee members should develop a list of questions to ask the nominee during the simulation. There should be a variety of questions prepared. Instruct students that they want to elicit information on the following topics:
    - Background/age
    - Qualifications
    - Specific issues (abortion, affirmative action)
    - Party loyalty
    - Personal/character information
    - Interest group endorsements
    - Filibuster possibilities (issues that may be offensive to the majority of the Senate)
  6. The committee should choose a chair who will call the meeting to order, recognize committee members to speak, and call for a vote to recommend or not recommend.
  7. Conduct the simulation. At the conclusion of each hearing the committee will vote on whether or not to favorably recommend the nominee.
  8. After all four committee hearings, the class will act as the full Senate and vote on whether or not to confirm each, articulating the reasons for their votes.
  9. Debrief:
    - Ask students what was realistic about this simulation and what was not?
    - What impressed them about each candidate?
    - What concerned them about each candidate?
    - How did they ultimately make their decisions?

## Assessment

- AP Essay Assessment:
  - Go to [http://apcentral.collegeboard.com/apc/members/exam/exam\\_questions/157025.html](http://apcentral.collegeboard.com/apc/members/exam/exam_questions/157025.html)
  - Scroll down to 2000 Free Response Questions
  - Click on all questions to get a .pdf. Have students respond to Question 2.
  - A grading rubric is also available on this site.
- Alternative Essay Assessments:
  - Have students imagine themselves as president and list the qualifications of their ideal judicial nominee. Students should focus on the factors emphasized during the simulation. They should identify one or two key issues that might prevent them from choosing a particular candidate. (For example, refusal to nominate someone who is against the death penalty or someone without a formal legal background, etc.)
  - Alternatively, students could write a paper arguing for or against life terms for judges. Students must understand the rationales for judicial tenure in order to support or challenge the practice.

## Extension Activities

- Have students research and hypothesize how the next presidential election could affect the make-up of the Supreme Court, taking into account the current justices most likely to retire.
- Ask students to research/report on recent filibusters of judicial nominations at [www.jurist.law.pitt.edu](http://www.jurist.law.pitt.edu).
- CBS News Productions has a 45 minute program entitled “Hill vs. Thomas,” which describes the very public and contested confirmation of Clarence Thomas to the Supreme Court. Four CBS News correspondents provide their firsthand insights into the Hill vs. Thomas case. Archival footage covering the events surrounding the heated Judiciary Committee and Senate hearings presents the case from multiple viewpoints. This video can be ordered at: [www.films.com](http://www.films.com)
- Have a federal judge visit your class. Contact information for federal judges is available at [www.uscourts.gov](http://www.uscourts.gov).

## Teacher Copy

### AP Government – Nominating Federal Judges Answer Key to Discussion Questions

#### Article III of the Constitution Discussion Questions

- 1) The purpose of giving judges a life term was to remove them from politics and to ensure that they would view only the legal merits of a case and not make decisions with an eye toward re-election or re-appointment. (To help students grasp the concept you may draw comparisons to arguments for and against tenure for teachers and professors.)
- 2) Many argue that the impact of giving judges a life term has not necessarily insulated them from politics. Judges are citizens who read newspapers and watch the news; they can be swayed by public opinion as much as anyone else. Others believe that judges often (but not always) appear to be loyal to the ideas of the presidents who appointed them. Still, the Supreme Court has issued many rulings in the past that appear to go against public opinion of the time, including the *Brown v. Board of Education* decision.
- 3) The purpose was to provide a check on presidential power. Today it appears that this check, while real, does not occur very often. Fewer than 20% of all federal judicial nominations are rejected.

#### Nominating Federal Judges – Chart Interpretation Discussion questions

- 1) This chart shows the demographic characteristics of federal district judges from the presidencies of Johnson – Clinton.
- 2) Presidents choose almost exclusively nominees from their own party.
- 3) Most federal judicial nominees have previous experience as judges.
- 4) The number of women nominated has increased. More women are educated and are attorneys today than before. Still, the number of women nominated is low in proportion to their percentage of the population.
- 5) The number of African Americans nominated has increased. Democrats have been more likely to nominate blacks. Affirmative action programs and the civil rights movement have helped to create more diversity in the federal judiciary. Many argue that there is still a long way to go.
- 6) The number of Asians nominated is very low.
- 7) The number of Hispanics nominated is low in proportion to the population but has been increasing.

## ARTICLES II & III OF THE CONSTITUTION

### Article III

“The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior.”

### Article II

“He (the president) shall have Power, by and with the Advice and Consent of the Senate, to . . . nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States. . .”

### ***Discussion Questions***

- 1) *What was the purpose of giving federal judges a life term?*
  
  
  
  
  
  
  
  
  
  
- 2) *What was the impact of giving federal judges a life term?*
  
  
  
  
  
  
  
  
  
  
- 3) *What was the purpose of requiring the president get the support of the Senate for federal judge appointments?*

# Characteristics of Federal District Court Appointees, Presidents Johnson-Bush

	Johnson	Nixon	Ford	Carter	Reagan	G. Bush	Clinton	G.W. Bush
<b>Sex</b>								
Male	98.4%	99.4%	98.1%	85.6%	91.7%	80.4%	71.5%	80.3%
Female	1.6%	0.6%	1.9%	14.4%	8.3%	19.6%	28.5%	19.7%
<b>Race</b>								
White	93.4%	95.5%	88.5%	78.7%	92.4%	89.2%	75.1%	82.8%
Black	4.1%	3.4%	5.8%	13.9%	2.1%	6.8%	17.4%	5.9%
Hispanic	2.5%	1.1%	1.9%	6.9%	4.8%	4.0%	5.9%	10.8%
Asian	0%	0%	3.9%	0.5%	0.7%	0%	1.3%	.5%
Native American	0%	0%	0%	0%	0%	0%	0.3%	0%
<b>Occupation at time of appt.</b>								
Judiciary	31.3%	28.5%	34.6%	44.6%	36.9%	41.9%	48.2%	46.8%
Law Firm	47.4%	60.9%	43.2%	49.9%	49%	45.9%	29.3%	37.4%
Government	21.3%	10.6%	21.2%	5%	13.4%	10.8%	11.5%	12.3%
Other	0%	0%	0%	0.5%	0.7%	1.4%	1.0%	2%
<b>Party</b>								
Democrat	94.3%	7.3%	21.2%	91.1%	4.8%	6.1%	87.5%	6.9%
Republican	5.7%	92.7%	78.8%	4.5%	91.7%	88.5%	6.2%	84.7%
Independent	0%	0%	0%	4.5%	3.4%	5.4%	6.3%	8.4%

## Nominating Federal Judges – Chart Interpretation Discussion Questions

### Characteristics of Federal District Court Appointees, Presidents Johnson to Clinton

#### Chart Discussion Questions

1. What is the topic of this chart?
2. What trend do you see when you compare the president's party to that of his judicial selections throughout the chart? What do you think is the reason for this trend?
3. What is the most common background for judicial nominees? What do you think is the reason for this trend?
4. What changes do you see in the number of women nominated over the years? What do you think are reasons for this trend?
5. What changes do you see in the number of African Americans nominated over the years? What do you think are the reasons for this trend?
6. What changes do you see in the number of Asians nominated over the years? What is the reason for this?
7. What changes do you see in the number of Hispanics nominated over the years? What is the reason for this?

## NOMINATING FEDERAL JUDGES – AN OVERVIEW

- 1) President selects potential candidates, usually with the advice from White House Counsel.
- 2) President usually interviews or meets with the candidates for the Supreme Court in private. While the public is frequently aware of these meetings, the contents of the meetings are usually not disclosed. Occasionally, the name of a nominee is unofficially leaked to the press.
- 3) The White House Counsel or other senior administration official will meet with federal judicial nominees. The president may or may not meet with a federal judicial nominee.
- 4) President submits the name(s) to the Senate.
- 5) In some cases, interest groups will run advertisements in favor of or against a nominee, usually at the Supreme Court level. These public relations campaigns are aimed at convincing the public and the Senate to support or oppose the Supreme Court (or federal judicial) nominee.
- 6) Senate Judiciary Committee holds a committee hearing in which the committee members question the nominee and other witnesses (such as friends and previous co-workers) about the nominee's background and qualifications. These hearings are televised and segments are frequently shown on news programs. All Senators have access to transcripts and tapes of the hearings. (Before the hearing, both committee staff and the FBI will have completed an extensive background check on the nominee. This check will ensure that the nominee has paid his taxes, has not been convicted of a serious crime, is a person of good standing in his/her community, etc.)
- 7) Senate Judiciary Committee, led by the chairperson, holds a vote on whether or not to recommend the nominee for confirmation.
- 8) Full Senate votes on whether or not to confirm the nominee. A simple majority (51 votes or more) is required. However, filibusters by the minority party can prevent a vote on a judicial nomination from coming to the floor. In recent years, with a closely divided Senate, this has become a more common tactic used by the minority. Since it takes 60 votes to cut off a filibuster and one party does not often have that many members, it can be a powerful tool used by the minority party to block a nomination. Such tactics are often criticized by the majority party.
- 9) If the full Senate votes to confirm by 51 votes or more, the nominee is confirmed.

## Resume 1: Candidate for US Court of Appeals for the 9<sup>th</sup> Circuit

### Professor Kevin Novak Palo Alto, CA

<b>Background/ Qualifications</b>	<p>Professor of History, Stanford University, 1976-present Palo Alto, CA</p> <p>Author, <u>Strict Interpretation of the Constitution</u> (1993)</p> <p>PhD. History – University of California, Los Angeles - 1970</p> <p>BA Political Science – Pomona College, CA - 1963</p>
<b>Demographic Information</b>	<p>White Male Age 62</p>
<b>Party Affiliation</b>	<p>Republican</p>
<b>Personal Data</b>	<p>Married, two children, member Holy Trinity Presbyterian Church</p> <p>Assisted the president in developing a national initiative to promote teaching history and civics in the nation's schools</p>
<b>Endorsements</b>	<p>Not recommended by American Bar Association (A.B.A) (lack of judicial experience)</p> <p>Endorsed by Heritage Foundation which has written editorials in <i>The New York Times</i> in his favor</p> <p>The Christian Coalition has endorsed him on their Web Site.</p>
<b>Character Report</b>	<p>The FBI investigation resulted in a positive character report.</p>

## Resume 2: Candidate for the US Supreme Court

**Neely Surh, Esq.**

**Chicago, IL**

### **Background/ Qualifications**

Clerk, Honorable Judge Easterbrook of the 7th Circuit – 1981-82

Law Professor, University of Chicago, IL – 1987 – present

JD (Law Degree), Columbia University, NY – 1980

BS (Chemistry), Loyola University, IL - 1973

### **Demographic Information**

Female

Pakistani immigrant, US Citizen

49 years old

### **Party Affiliation**

Republican

### **Personal Data**

Married, three children, Muslim

Immigrated at age 8, learned English, worked her way through college and law school

### **Endorsements**

The ABA has given a positive rating based on her judicial experience.

She is endorsed by the National Right to Life Committee.

The NAACP is opposed to her nomination.

### **Character Report**

The FBI background check indicated that one of her sons was arrested for drug trafficking while she was clerking for a federal judge.

Interviews show that she broke the law by hiring a nanny and not disclosing income paid on her tax returns.

**Resume 3: Candidate for the US Court of Appeals for the 4<sup>th</sup> Circuit  
(Replacing black federal judge)**

**C. Vivian Cooper, Esq.**  
**Richmond, VA**

**Background/  
Qualifications**

Justice, Virginia Supreme Court – 2001- present  
“Why *Brown* Was Wrongly Decided,” *Yale Law Review* (1996)  
JD (Law Degree) Howard University, Washington, DC - 1992  
Officer/Lawyer in US Military, 1989-2001  
BS (Mathematics) West Point, New York

**Demographic  
Information**

Female  
Single, no children  
African American, 37 years old  
Affiliated with the Southern Baptist Church

**Party Affiliation**

Republican

**Endorsements**

Strongly recommended by both senators from Virginia  
Supported by the Joint Chiefs of Staff  
NOW has run advertisements suggesting her candidacy would  
“bring the status of women back to the dark ages”  
ACLU has run advertisements suggesting her appointment would  
“make a mockery of the First Amendment”  
Endorsed by Log Cabin Republicans  
Not endorsed by ABA due to previous rulings on the First  
Amendment and abortion that were considered far right

**Character Report**

The FBI produced a positive character report.

## Resume 4: Candidate for the US Court of Appeals for the DC Circuit

**Emilio Cruz, Esq.**

**White Plains, NY**

<b>Background Qualifications</b>	Federal Judge, Southern District of New York – 1985-present Senior Partner, Jeffries & Cohen, LLP, New York – 1965- 1985 JD (Law Degree), Washington & Lee University, St. Louis, MO – 1961 BA (English), Connecticut College - 1954
<b>Demographic Information</b>	Male Married, four children, nine grandchildren Puerto Rican, Age 72 Catholic
<b>Party Affiliation</b>	Not known
<b>Personal Data</b>	Press leak indicated that many Republicans and the president became concerned about his support for affirmative action programs; president recently wrote an amicus brief against affirmative action
<b>Endorsements</b>	Endorsed by the American Bar Association  NAACP  NOW (National Organization for Women)
<b>Character Report</b>	The FBI investigation resulted in a positive character report.