

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-Clinton

	Johnson	Nixon	Ford	Carter	Reagan	G. Bush	Clinton	G.W. Bush
Sex								
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%
Race								
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%
Occupation at time of appt.								
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%
Party								
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 9th Circuit

Professor Kevin Novak

Palo Alto, CA

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

Resume 2: Candidate for the US Supreme Court

Neely Surh, Esq.

Chicago, IL

Background/ Qualifications	<p>Clerk, Honorable Judge Easterbrook of the 7th Circuit – 1981-82</p> <p>Law Professor, University of Chicago, IL – 1987 – present</p> <p>JD (Law Degree), Columbia University, NY – 1980</p> <p>BS (Chemistry), Loyola University, IL - 1973</p>
Demographic Information	<p>Female</p> <p>Pakistani immigrant, US Citizen</p> <p>49 years old</p>
Party Affiliation	<p>Republican</p>
Personal Data	<p>Married, three children, Muslim</p> <p>Immigrated at age 8, learned English, worked her way through college and law school</p>
Endorsements	<p>The ABA has given a positive rating based on her judicial experience.</p> <p>She is endorsed by the National Right to Life Committee.</p> <p>The NAACP is opposed to her nomination.</p>
Character Report	<p>The FBI background check indicated that one of her sons was arrested for drug trafficking while she was clerking for a federal judge.</p> <p>Interviews show that she broke the law by hiring a nanny and not disclosing income paid on her tax returns.</p>

Resume 3: Candidate for the US Court of Appeals for the 4th Circuit (Replacing black federal judge)

C. Vivian Cooper, Esq.

Richmond, VA

Background/ Qualifications	Justice, Virginia Supreme Court – 2001- present “Why <i>Brown</i> Was Wrongly Decided,” <i>Yale Law Review</i> (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

Background Qualifications	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
Demographic Information	Male Married, four children, nine grandchildren Puerto Rican, Age 72 Catholic
Party Affiliation	Not known
Personal Data	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
Endorsements	Endorsed by the American Bar Association NAACP NOW (National Organization for Women)
Character Report	The FBI investigation resulted in a positive character report.