

# A CONVERSATION ABOUT THE COURTS:



## Judges Compare State and Federal Judicial Systems

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#### VIDEO TRANSCRIPT:

Moderator:

Hello, I'm Judge Joseph Goff<sup>1</sup> and I want to welcome you to our conversation today about the differences between federal courts and state courts.

In the United States our system of federalism means the government's power is divided between the states and the national government. Under our system of federalism, judicial power is divided between state courts and federal courts. Each court has an important but different role to play in our judicial system. Today, we have a federal district judge Henry Autrey and a Missouri state court judge Ted House to answer our questions about how they are selected, how long they will have their position, what types of cases they each hear, and if their courts share any similarities.

Judge House, we'll start with you, what is your job title and where do you work?

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<sup>1</sup> Judge Joseph L. Goff Jr. is an associate circuit judge in St. Francois County (in Missouri's 24th Judicial Circuit). He was appointed to the bench in an interim vacancy in 2015, was elected in 2016 to finish the interim term and was reelected to a full four-year term in 2018. At the time of his appointment, he had been serving as an assistant prosecuting attorney in St. Francois County since 2014. He previously served in the attorney general's office.

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Judge House:

I am a circuit judge.<sup>2</sup> I work for the state of Missouri as a trial judge. Specifically, I am one of 14 Judges in Missouri's 11th Judicial Circuit, which covers St. Charles County. Our state is divided into a total of 46 judicial circuits, each containing at least one county. My courtroom is in the St. Charles County Courthouse which is in St. Charles, Missouri.

Moderator:

Thank you, Judge House. I look forward to asking you a little bit more about your job here in a moment. Now we are going to move on to our federal judge. Judge Autrey, can you tell us what your job title is and where do you work?

Judge Autrey:

Thank you. Greetings everyone. I'm a United States District Judge, and that is a trial judge in federal court.<sup>3</sup> The United States is divided into 94 judicial districts, with at least one for each state. Missouri has two of those districts, the Eastern District of Missouri and the Western District of Missouri. I'm seated in the Eastern District of Missouri, and my courtroom is located in the Thomas F. Eagleton U.S. Courthouse in St. Louis, Missouri.

Previously, I too was a state court judge like Judge House, but I was a state court judge in the 22nd Judicial Circuit which serves the City of St. Louis.

Moderator:

What fantastic luck then for our presentation today, that we not only have a state judge, we have a federal judge, and a federal judge at that who was a previous state court judge.

Judge Autrey, now that we know what your job is, can you tell us how you were selected for your position as a federal district judge and how long will you have that job?

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<sup>2</sup> Ted House retired from the bench December 31, 2020, after nearly two decades of judicial service in the 11th Judicial Circuit (St. Charles County) and a total of 32 consecutive years in elected office. He served as a circuit judge from 2005 through 2020 – including a term as the circuit's presiding judge from 2007 to 2008 – and as an associate circuit judge from 2003 through 2004. He previously served in Missouri's General Assembly. He served from 1995 through 2002 in the state senate, representing a district encompassing Lincoln, Montgomery, Pike and Warren counties as well as a portion of St. Charles County. From 1989 through 1994, he represented the people of St. Charles County in the state house of representatives.

<sup>3</sup> Judge Henry E. Autrey has been a United States district judge for the Eastern District of Missouri since 2002. Previously, he served in the 22nd Judicial Circuit of Missouri (St. Louis city) as a circuit judge from 1997 through 2002 and as an associate circuit judge from 1986 through 1997. Prior to taking the bench, he served the city of St. Louis as first assistant circuit attorney from 1984 through 1986 and as assistant circuit attorney from 1977 through 1986.

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Judge Autrey:

Well, federal court judges are called Article III Judges because our jobs are listed in Article III of the U.S. Constitution. The appointment of a federal judge is a great example of the three branches of government. If a vacancy occurs, it's up to the sitting President to fill it. The President will get suggestions from the legislators of the state wherein the vacancy is located and will make a decision on which one of the suggestions to nominate. The nomination then goes to the U.S. Senate for consideration. The nominee then appears before the U.S. Senate for a confirmation hearing. If the Senate approves the appointment, then the appointment becomes official. Once appointed, I, and any other Article III Judge in my capacity, holds the job for life, or for as long as I want to keep the job, subject to maintaining the job in good behavior, which is what the Constitution says and demands. Judges of the U.S. Courts of Appeals as well as the U.S. Supreme Court are selected in the same process.

Moderator:

It's a complex process Judge Autrey, thank you for explaining it to us. And how interesting that we have all three branches of government working together, you have the executive that makes the nomination, the legislative that confirms the selection, ultimately to serve in the judicial branch. What do you think the importance of that type of nomination selection process is Judge Autrey?

Judge Autrey:

It's important because it requires a lot of thought and a lot of input in to making a selection. It's not an easy process, and each branch checks the work of the other branches of government in the selection process. The lifetime appointment means I never have to worry about running for office, I don't have to make any political promises, and I can't be fired for making an unpopular decision, all of which is consistent with what judges are supposed to be, making their decisions based upon the law and to be independent from politics. My job is to apply the law as it is written.

Moderator:

Thank you, Judge Autrey. Judge House, talking about state court judges - is there a different method of selecting, and could you also tell us how long you will have your job as a state court judge?

Judge House:

Well in Missouri, trial judges get their jobs in one of two ways. In the cities of St. Louis, and Kansas City, and Springfield and the surrounding areas, judges are selected using the Missouri Plan. It's called the Nonpartisan Court Plan because it is also designed to keep judges independent from politics. After an involved application and interview process, a nonpartisan commission submits a group of three nominees to the Governor, who selects the new judge

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from among them. Then, citizens must vote to retain the judge every so often through a retention election. Circuit judges serve six-year, renewable terms.

When Judge Autrey was a state judge, he was appointed under the Missouri Nonpartisan Court Plan.

The Missouri Plan also applies to judges of the higher courts in the state – the Missouri Court of Appeals and the Supreme Court of Missouri, though those judges serve 12-year terms.

In the other areas of our state such as where I work, a trial judge runs in partisan, contested elections. This is because in the smaller cities and rural areas, citizens are more familiar with the individual candidates who are running for election for the judicial position. Elected judges also serve a six-year term. At the end of their term, an elected judge would have to run for re-election if he or she wants to continue to serve.

Moderator:

Interesting. The nonpartisan plan that you mentioned, Judge House, it's also called the Missouri Plan. Do you know if any other states have that type of nonpartisan plan for selecting judges?

Judge House:

It's called the Missouri Plan because Missouri was the first to implement this innovation. According to the National Center for State Courts, over half of the states now use something similar to the Missouri Plan for selecting at least some of the judges.

Moderator:

Now that we know how our judges are selected, I'd like to look a little bit at what areas of the law they cover. The first thing I noticed when we were looking at the maps of each of their geographic areas - Judge House's St. Charles County is completely within the same geographic boundary of Judge Autrey's court. Why do we have two courts, and what role does the state court play within that geographic boundary, and what role does the federal court play within that geographic boundary? Judge House can you tell us about the role of the state court?

Judge House:

So, states have general jurisdiction. This comes from the 10th Amendment to the U.S. Constitution, which says that any power not specifically given to the federal government in the Constitution is left up to the individual states to decide. Because of this, our cases can deal with almost anything. The Missouri Legislature in Jefferson City writes the laws that govern the state, including the criminal laws.

Common criminal laws often include drug possession and distribution, violent offenses involving a weapon such as a domestic assault. Stealing, burglary & property crimes are other examples of common state offenses. Though most traffic crimes are handled in our municipal court divisions, driving while suspended and driving while intoxicated are state offenses that can be

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charged as a felony. Juvenile law falls under our jurisdiction as well. For example, if a 14-year-old steals his neighbor's car the police will turn them over to the juvenile court where the state has placed the emphasis on helping the child through resources like residential detention and supervised probation.

Moderator:

Judge House, talking about criminal cases, is it true that judges don't actually charge the cases, and if the judges don't charge a person with a criminal case, who does the charging and how would a criminal case get before a judge?

Judge House:

Criminal cases come before the court through the offices of the County Prosecutors and in the City of St. Louis, that position is the Circuit Attorney. Some serious prosecutions originate from the Missouri Attorney General's Office. These head prosecutors and the state's Attorney General are all elected by the citizens and they have a lot of power to decide which cases to charge. They get their cases from the city police, the county sheriff and sometimes from the Missouri Highway Patrol.

Moderator:

Judge House, we've talked about criminal cases. Do state court judges also hear something called a civil case? And can you tell us the difference is between a civil case and a criminal case?

Judge House:

So, the civil case is a dispute between two parties, usually over a dispute involving money.

Common civil cases include personal injury cases such as car accidents or other types of injuries. Civil causes also include medical malpractice and various business disputes. Our family courts deal with divorce and child custody issues. State courts end up dividing property in divorce cases and also in probate cases when someone dies.

Moderator:

Judge Autrey, Judge House mentioned general jurisdiction for state courts. Does that mean the federal courts have something different, and if so, can you tell us more about the federal courts' role and the cases that you hear in federal court?

Judge Autrey:

Well certainly. In federal court, we have limited jurisdiction. We only hear cases that arise under the U.S. Constitution and laws passed by Congress. These types of cases can include things that cross state lines, cases that use the mail, phone, or the internet, or things that otherwise affect interstate commerce.

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On the criminal side, drug cases involving large quantities or complex distribution of drugs come into the federal court. We also have charges like felon in possession of a firearm which is one of the most common charges we see, these days in particular. We also deal with fraud and money laundering cases, and cases of fraud in federal government programs such as Social Security and tax cases. Bank robbery is another type of case that can be in federal court because most banks are insured by the federal government. We don't see many basic stealing charges but there are cases that have a base of stealing like carjacking: because they are violent offenses, and they involve the use of weapons, and they involve the use of interstate commerce in their effectuation. If a crime is committed on federal property also such as a national park or the arch grounds, for example that's a federal law violation and those case would be prosecuted in federal court.

Moderator:

So, Judge Autrey, talking about the criminal cases you hear, are the prosecutions in your court originated by the same law enforcement agencies that Judge House mentioned?

Judge Autrey:

Sometimes, but typically criminal cases come before me through the federal prosecutor, called the U.S. Attorney. The U.S. Attorney here in the Eastern District of Missouri is Jeffery Jenson. U.S. Attorney in each of the 94 federal districts is a political appointee by the executive, appointed by the President to serve a term. Each office employs a team of Assistant U.S. Attorneys. And they get their cases and they review cases that are brought to them typically by the DEA, the drug enforcement agency, the FBI, the Federal Bureau of Investigation, and ATF which is the weapons investigative arm of the federal government: Alcohol, Tobacco, and Firearms. All those agencies are under the executive branch of government.

Moderator:

We've talked about specific crimes that you hear in federal courts. Judge Autrey, can you tell us about the role of the federal courts on the civil side with civil cases?

Judge Autrey:

Again, as I said earlier, federal courts are courts with limited jurisdiction so the types of cases that we hear in civil matters are limited as well. In disputes between two parties if they are from different states and the amount of the damage that is claimed for or sued for by the plaintiff is \$75,000 or more, it can be heard in federal court. We call that diversity jurisdiction; citizens from different states suing each other. In most cases, if those two things are not met, that is, what we call the amount in controversy, does not exceed \$75,000, and the individuals involved in the suit are not from different states, those cases will be heard in state court. We also hear lawsuits involving discrimination claims, and civil rights violations, because those matters are matters that are under federal law, federal statute.

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Moderator:

Judge House, we're talking about criminal cases, again, would it be possible for someone to be charged criminally in both state and federal court for the same action?

Judge House:

Well it is possible that that can happen. For example, the state charge might be unlawful use of a weapon, and the federal charge might be felon in possession of a firearm. Those are technically two separate charges, one law passed by the state legislature and the other by the United States Congress. Therefore, this would not be a violation of the protection against Double Jeopardy in the U. S. Constitution.

Moderator:

Double jeopardy means you can't try one person twice for the same events. Judge Autrey, why isn't this Double Jeopardy?

Judge Autrey:

To reiterate what you just stated, that's basically the standard, you cannot try one person twice for the same event. However, the U.S. Supreme Court has ruled on a case called *Gamble v. United States*, and in that case the Supreme Court of the United States ruled that since both governments - the federal government and state government - are separate governmental entities and they retain their own power, the two offenses are different charges and it does not violate the Double Jeopardy Clause of the 5th Amendment of the United States Constitution.

Moderator:

Thank you Judge Autrey and Judge House both for your explanation. My next question has to do with how many cases you hear each year. I wonder if there a difference between the federal courts and state courts and the number of cases? Judge House, how many cases did you have in your division last year?

Judge House:

Well, I average over 400 criminal felony cases and around 300 civil cases per year. And that works out to about an average of 9 jury trials per year.

Moderator:

So about 700 cases and 9 went to jury trial. Judge Autrey, do you know how many cases have moved through your federal district court in the last year, and out of those cases, how many went to jury trial?

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Judge Autrey:

Well, in looking at my own personal docket, my numbers were a little lower than Judge House's and that's because of the types of cases that we do hear in federal court. Last year, I had around 200 criminal cases that came through my court room and about 250 civil cases so about a total of 450 cases. Out of that number, I had two jury trials last year. That number, those numbers are actually pretty typical for us here.

For all federal judges in the Eastern District of Missouri, last year's civil numbers, the cases of civil cases that went through were about 4,000; and the number of criminal cases was a little bit under 1,500. The total number of jury trials for all of the district court judges here in the Eastern District of Missouri, total about 30 jury trials last year.

Moderator:

Now I want to talk a little bit about division of the workload in state court and federal court. If my memory serves correctly, there are only eight U.S. District Judges like Judge Autrey and another eight Magistrate Judges in the federal court system that help with some cases in the Eastern District. Looking at our map here in *just* St. Louis City, St. Louis County and St. Charles County, there are 80 Circuit and Associate Circuit Judges for the state of Missouri. When we

look at Judge House's case numbers and multiply by those other judges in counties nearby, it seems like there are a lot more cases moving through state courts than federal courts, even though the federal court covers a larger geographic area. Judge Autrey can you tell us why that is?

Judge Autrey:

Well, if you recall earlier I mentioned this concept of limited jurisdiction, and that limited jurisdiction drives the number of cases that come in to federal court so we only hear a certain type or variety of cases and all the other cases fall within the duty and power of state court judges to hear. Federal courts hear fewer cases, though, but many of those cases deal with very complex issues and, therefore, require more time and attention from the judge on each case, on a case by case basis. Which is not to say that cases that state court judges hear are not complicated and don't require time, but the nature of the cases in federal court is distinct and different because of the limited jurisdiction that we have. As an example, a complex case might be a type of a class action suit that could involve hundreds or even a thousand or more persons that might have been injured or alleging to have been injured by the conduct of the person or company that's being sued. The processing of that case and the handling of that case from a legal as well as a factual perspective requires much time and attention.

Moderator:

Would it be unusual for a case like that to have a jury trial last several months, Judge Autrey?

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Judge Autrey:

That would not be unusual at all. It certainly would not be unusual for a case like that to last at least two months, if not three or four. A lot of it depends too on who the lawyers are, what the issues are, and in what district the case may be located because each district may have quirks and ironies about how they deal with it. But here, that wouldn't be atypical at all.

Moderator:

Judge House, state courts judges have more cases by numbers. How do they handle it with the time that they have?

Judge House:

Since state courts are courts of general jurisdiction, they handle many different types of disputes and not all of those disputes require a jury trial to resolve. State judges have bulk dockets with hundreds of cases a day involving debt collection or collection of rent. We also handle small claims cases where small cases can be handled informally, usually without lawyers. State court judges also hear divorce cases where two people need to divide up their property and possibly provide for child custody and support. Divorce cases are decided by judges, often in a just a day or two of trial, therefore, a state court judge could handle many divorce cases in a year, as opposed to a jury trial which may take a week or two.

Moderator:

Thank you, Judge House. Judge Autrey, we mentioned it at the beginning. I'd like to come back to it now. You were a Missouri state judge before being appointed to the federal bench. From your experience, can you tell us how the courts are different?

Judge Autrey:

Yes, thank you Joe, before coming on to the federal bench, as you said, I was a state court judge here in the City of St. Louis 22nd Judicial Circuit from 1986 to 2002. And my experience is that the role and function of a judge in both the federal and state court is the same.

Federal courts are more formal than state courts judges are, however, and at least in the Circuit Court for the City of St. Louis where I came from, we had more daily contact between and amongst the judges, and the lawyers, and the citizens as well.

In the criminal arena, I think state court judges have a greater discretion in deciding sentencing matters than in federal court. We're guided in many ways by what we call sentencing guidelines. Although within those guidelines now the current state of the law gives federal judges more discretion than they had before.

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Moderator:

Thank you Judge Autrey. Judge House, from your experience, a little different from Judge Autrey's, how do you believe the courts are different?

Judge House:

State court judges live in the community they serve and are close to the people. Every Missourian lives within a 30 minute drive or less from their local state courthouse. State judges are more accountable to the people through the judicial selection process that we discussed earlier.

Moderator:

Thank you, Judge House, Judge Autrey both for your time. You have been very generous, and I appreciate you answering all of our questions. Judge House, do you have any final words?

Judge House:

Thank you so much, to you Judge Goff and to Judge Autrey. It has been a pleasure.

Moderator:

Judge Autrey, any final words?

Judge Autrey:

I can only echo the sentiments of my brother Judge House and say it's been a great pleasure to have this opportunity to speak with everyone. Hopefully we'll see you again some time, same channel, same time, thank you.