

What's Wrong with This Court?

Lesson Plan: 6-8

Overview

This activity can be completed alone or in student groups. The lesson has two parts. The first walks students through the content on judicial independence found on the Judicial Learning Center's web page. The second handout describes a fictitious, and silly, courtroom scenario, with 19 inaccurate statements woven in. These statements sometimes target vocabulary but also involve the trial process and judicial ethics.

Students will use what they know about the judicial process, courts, and judicial independence to read the case and pick out the inaccurate statements. Once they are identified, they should note what is wrong with the statement and provide a correction in the space given.

Corresponding Student Center Pages

- [About Federal Judges](#)
- [Judicial Independence](#)

Suggested Time Needed

2 class periods

Learning Objectives

After completing this activity, students will:

- Understand the factors that guarantee the judicial branch's independence.
- Apply the knowledge they have gained about the court process and judicial ethics to pick out inaccurate information.
- Have a greater understanding of the judicial process in general.
- Have a deeper understand of the reasons for some processes and procedures and recognize how they are related to judicial independence.

Guiding Questions

- What is in place to guarantee that judges are free from public opinion?
- What safeguards the independence of the judiciary from the president and Congress?
- How might the court system be different if judges were not independent from public opinion, or from the other two branches of government?



- How is the idea that the judiciary is independent related to the concept of “separation of powers”?
- What does it mean that judges are bound by the “rule of law, not of man”?
- How does the independence of the judiciary, and the judicial code of ethics, provide for all people to be treated equally and fairly before the court?

Missouri Grade Level and Course Level Expectations

- 6-8.AH.3.GS.E – Apply the principles of rule of law, representation, separation of powers, checks and balances, and federalism to explain the purposes and functions of the Constitution.
- 6-8.AH.3.GS.F – Describe the origins and purposes of the Bill of Rights and evaluate the enduring significance of these concepts to the preservation of individual rights and liberties.

Materials Needed

- A: Understanding Judicial Independence
- B: What’s Wrong with this Court?
- C: Understanding Judicial Independence - Answer Key
- D: What’s Wrong with this Court? - Answer Key

Procedure

1. Place students into groups of 2, 3, or 4 depending on your class size.
2. Distribute the handout for part 1, and instruct students to go to the Student Center pages at <http://judiciallearningcenter.org/about-federal-judges/> <http://judiciallearningcenter.org/judicial-independence/>
3. Tell them to use the two web pages to complete the questions on the handout.
4. Allow time to complete. When finished, discuss the answers. Lead a discussion to include the following points:
 - Judicial independence is a core concept of the American judicial system.
 - The courts and judges are independent from public opinion because they are not elected.
 - The courts and judges are independent from the other two branches because they can’t be fired in times of good behavior, and their salary can’t be reduced by the president or Congress.
 - Because the courts and judges are independent, they are free to make decisions according to the law, even if those decisions might be unpopular.
 - Federal judges are bound by the law, and by a strict code of ethics, which provides guidance for judges in maintaining their independence.
5. After summarizing part 1, distribute copies of the handout for part 2. Explain to students that they will be reading a brief scenario about a court case.
6. Explain that there are many errors in the summary, and their job is to find them all.
7. Allow time to complete. When finished, discuss the answers from the teacher answer key.



8. Conclusion: Ask students to share their thoughts on the following:
 - What exactly is judicial independence?
 - How does judicial independence provide for all to be treated equally and fairly by the court?

9. Review the Guiding Questions
 - What is in place to guarantee that judges are free from public opinion?
 - What safeguards the independence of the judiciary from the president and Congress?
 - How might the court system be different if judges were not independent from public opinion, or from the other two branches of government?
 - How is the idea that the judiciary is independent related to the concept of “separation of powers”?
 - What does it mean that judges are bound by the “rule of law, not of man”?
 - How does the independence of the judiciary, and the judicial code of ethics, provide for all people to be treated equally and fairly before the court?



A: Understanding Judicial Independence

Directions: You will be using the [Judicial Learning Center Web Page](#) to find the answers to the following study guide. Please read the sections on “[About Federal Judges](#)” and “[Judicial Independence](#)” to find the answers.

Go to the “[ABOUT FEDERAL JUDGES](#)” page and answer the following questions:

Section “Article III Judges”

1. Name the types of Article III judges:
 - a. _____
 - b. _____
 - c. _____
2. How do Article III judges get their jobs? They are appointed by the _____, and are subject to confirmation by the _____.
3. For how long do Article III judges serve? _____

Section “The Appointment Process”

4. In which Article of the U.S. Constitution will you find the requirements for the appointment process? _____
5. The job of appointing and confirming the nominees begins with the _____ Committee, whose members meet with and investigate the nominees to make sure they are good candidates for the position.
6. The process by which a judge in the state systems gets his/her job is different. What is the name of the process used in parts of Missouri? This process is used by several other states as well, and combines both appointment and election.
The _____ Plan.

Now move to the “[JUDICIAL INDEPENDENCE](#)” page for the following questions:

7. _____ refers to the practice of protecting the courts from the influence of the other branches and from public opinion.
8. What three factors are given on the web page for how this is guaranteed? List each. On the second line, explain how the factor contributes to independence.
 - a. _____
Explain: _____
 - b. _____
Explain: _____
 - c. _____
Explain: _____



Section “Checks and Balances”

9. What are two ways the power of judges is checked?

- a. _____
- b. _____

Application

10. Look up the definition of the word INTEGRITY in an online dictionary _____

11. Why is INTEGRITY an important quality for a judge to possess?

12. You may recall that Alexander Hamilton, in *The Federalist Papers*, warned it would be a bad idea to put the courts under the leadership of Congress. He felt this would jeopardize the independent nature of the courts. Use this reasoning to explain how the principle of SEPARATION OF POWERS helps to ensure an independent judiciary.



B: What’s Wrong With This Court?

Directions: Read the following scenario, then see how many inaccuracies you can find. These might be errors in how the courts work, use of vocabulary, or ethical concerns that would violate the Code of Conduct for Federal Judges.

- Underline or highlight each inaccurate statement, and number 1-19.
- Then use the second page of this handout to explain what is wrong with each of the statements that you marked.

The following depicts the case of *U.S.A. v. Smith*

Smith has been charged with tax evasion, and has not paid his federal income taxes in 15 years.

The court reporter calls the court to order, and has everyone stand as Judge William Stanley enters the court. This is an appellate court, as it is the first time the case of *U.S.A. v. Smith* is being heard. The judge takes his seat, greets the jury, and says hello to the prosecuting attorney John Stanley, giving him a wave and saying, “howdy, bro.”

The prosecutor then gives his closing statements, telling the jury, “The first evidence I want to present is a signed confession from Mr. Smith. The judge ruled before the trial that this evidence was collected illegally and therefore it can’t be used, but I’m going to tell you about it now anyway, because this whole trial is a waste of time. If the cops had read Mr. Smith his Miranda rights, the confession would have been admissible, so why shouldn’t I tell you about it now?”

Ms. Clifton, the defense attorney, stands and says, “I object. The prosecutor is not allowed to talk about suppressed evidence.” Judge Stanley rolls his eyes at Ms. Clifton, and says, “Oh, for crying out loud, don’t get all upset, your client did confess after all.” He then motions for the prosecutor to call his first witness. When Ms. Clifton stands to ask for a chance to make her opening statement, the judge waves her off, saying, “Oh come on, you really don’t have anything important to say, so let’s just move on.”

Ms. Clifton sits, and the prosecutor calls his first witness. The court reporter swears in the witness, who is the IRS agent that investigated Mr. Smith’s case. His name is Agent Paul Prosecutor. John Stanley asks Agent Paul, “Agent, are you sure Mr. Smith is guilty?” To which the agent answers, “You bet, I’ve been doing this job forever, you know that, John. You, me, and your brother the judge there have been friends since high school. You know I know my job.” “Yes, I do,” responds the prosecutor, “but we gotta jump through some hoops for this jury, okay?”

The agent goes on to explain that the IRS has audited Mr. Smith repeatedly. They have verified that he made income as an independent contractor with his employer. He was sent bills for his back taxes, which he repeatedly refused to pay. He now owes the U.S. government approximately \$500,000.

Defense attorney Clifton then cross-examines Agent Paul, asking about the audit process. Before the agent can answer, Judge Stanley yells, “I object, the agent already talked about the audit. Why are you asking for more information? We need to move this along. I have a hot date tonight and I need to get ready.” The defense moves on quickly through the cross-examination.



Finally, it is time for her to present the defendant’s side of the case, but the judge stops her, saying, “Everything that we really need to know has already been stated, so I don’t think you need to call any witnesses.” Ms. Clifton says, “Judge Stanley, I had hoped to allow my client, Mr. Smith, to take the stand to tell his side of the story, and he has a right to do so.” “Oh come on,” replies Judge Stanley, “we all know he’s just a scheming tax cheat, and un-American to boot. What could he say to explain away \$500,000? We really don’t need to listen to anything he has to say.”

The prosecutor lets out a loud “whoop” and starts to pump his fist in the air, and one of the members of the jury joins in. Ms. Clifton once more stands and yells, “Your honor, I OBJECT!” “Well, who cares, Toots; just sit yourself down, cuz I am going to finish this up so I can get out of here.”

At that Ms. Clifton sits, and Judge Stanley turns to the jury. He says, “So, right about now we’d do closing arguments, but frankly, I just don’t think there is any more to say. So, I want you six people to go back to the jury room and decide this case. If you need to use the internet or your phones to look up information on Mr. Smith that’s fine, whatever you want, but make it quick. I know you all have much more important stuff to do than deal with this un-American tax evader. So go on into the jury room and make your decision, but please, do it fast, because, like I said earlier, I have a hot date tonight and want to get out of here.”

Inaccurate Statements - Explain what is wrong with each of the statements that you marked.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____



9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____



C: Understanding Judicial Independence – Answer Key

Directions: You will be using the [Judicial Learning Center Web Page](#) to find the answers to the following study guide. Please read the sections on “[About Federal Judges](#)” and “[Judicial Independence](#)” to find the answers.

Go to the “[ABOUT FEDERAL JUDGES](#)” page and answer the following questions:

Section “Article III Judges”

13. Name the types of Article III judges:

- a. **Supreme Court Justice**
- b. **Appellate Judge**
- c. **District Judge**

14. How do Article III judges get their jobs? They are appointed by the **President**, and are subject to confirmation by the **Senate**.

15. For how long do Article III judges serve? **For life**

Section “The Appointment Process”

16. In which Article of the U.S. Constitution will you find the requirements for the appointment process? **Article II**

17. The job of appointing and confirming the nominees begins with the **Senate Judiciary Committee**, whose members meet with and investigate the nominees to make sure they are good candidates for the position.

18. The process by which a judge in the state systems gets his/her job is different. What is the name of the process used in parts of Missouri? This process is used by several other states as well, and combines both appointment and election.

The **Missouri Non-Partisan Court Plan**.

Now move to the “[JUDICIAL INDEPENDENCE](#)” page for the following questions:

19. **Judicial Independence** refers to the practice of protecting the courts from the influence of the other branches and from public opinion.

20. What three factors are given on the web page for how this is guaranteed? List each. On the second line, explain how the factor contributes to independence.

- a. **Federal Judges are appointed**

Explain: **Frees judges from having to run for election, raise money, and take a partisan stand on issues.**

- b. **Federal Judges serve a life term**

Explain: **Provides job security and allows appointed judges to do what is right under the law without worrying that they will be fired.**



Federal judges can’t have their salary reduced

Explain: Allows them to decide each case in terms of the legal issues no matter how unpopular the decision might be.

Section “Checks and Balances”

21. What are two ways the power of judges is checked?

- a. Impeachment
- b. Judicial Code of Conduct

Application

22. Look up the definition of the word INTEGRITY in an online dictionary. Firm adherence to a code of especially moral values.

23. Why is INTEGRITY an important quality for a judge to possess? Answers will vary – Judges must be impartial and not favor one side over another. They must remain independent and not allow personal bias to affect the outcome to uphold the Rule of Law

24. You may recall that Alexander Hamilton, in *The Federalist Papers*, warned it would be a bad idea to put the courts under the leadership of Congress. He felt this would jeopardize the independent nature of the courts. Use this reasoning to explain how the principle of SEPARATION OF POWERS helps to ensure an independent judiciary.

Answers will vary – Because the Judicial branch is both independent and co-equal to Congress, judges are able to make decisions about whether or not a law passed by Congress is constitutional based only on legal grounds. If the Judiciary was just a department within Congress, judges might be unfairly influenced by partisan politics, lobbyists, and constituents that vote for Representatives and Senators.



D: What Is Wrong With This Court – Answer Key

Each of the inaccurate statements is underlined, with an explanation given in the footnotes below.

The following depicts the case of *U.S.A. v. Smith*

Smith has been charged with tax evasion, and has not paid his federal income taxes in 15 years.

The court reporter calls the court to order,¹ and has everyone stand as Judge William Stanley enters the court. This is an appellate court, as it is the first time the case of U.S.A. v. Smith is being heard.² The judge takes his seat, greets the jury, and says hello to the prosecuting attorney John Stanley, giving him a wave and saying, “howdy, bro.”³

The Prosecutor then gives his closing statements,⁴ telling the jury, “The first evidence I want to present”⁵ is a signed confession from Mr. Smith. The judge ruled before the trial that this evidence was collected illegally and therefore it can’t be used, but I’m going to tell you about it now anyway, because this whole trial is a waste of time. If the cops had read Mr. Smith his Miranda rights, the confession would have been admissible, so why shouldn’t I tell you about it now?”

Ms. Clifton, the defense attorney, stands and says, “I object. The prosecutor is not allowed to talk about suppressed evidence.” Judge Stanley rolls his eyes at Ms. Clifton, and says, “Oh for crying out loud, don’t get all upset, your client did confess after all.”⁶ He then motions for the prosecutor to call his first witness. When Ms. Clifton stands to ask for a chance to make her opening statement, the judge waves her off, saying “Oh come on, you really don’t have anything important to say, so let’s just move on.”⁷

Ms. Clifton sits, and the prosecutor calls his first witness. The court reporter swears in the witness,⁸ who is the IRS agent that investigated Mr. Smith’s case. His name is Agent Paul. The prosecutor John Stanley asks Agent Paul, “Agent, are you sure Mr. Smith is guilty?” To which the agent answers, “You bet, I’ve been doing this job forever, you know that, John. You, me, and your brother the judge there have been friends since high school.”⁹ You know I know my job.” “Yes, I do,” responds the prosecutor, “but we gotta jump through some hoops for this jury, okay?”

¹ Usually the courtroom deputy clerk or judge calls court to order. The court reporter makes an accurate record of the case.

² A trial court (or federal district court) hears the case first, not an appellate court.

³ If “hey bro” implies that Judge Stanley and Prosecutor Stanley are brothers, it would be inappropriate for the judge to hear this case since it may appear he could be swayed by family loyalty. He should recuse himself.

⁴ Court opens with “opening statements” not “closing statements.”

⁵ Evidence is NOT presented during opening statements.

⁶ The judge should treat Ms. Clifton with respect, and not roll his eyes. Also, if there was pretrial motion to suppress the confession of Mr. Smith, then the judge should reprimand the prosecutor for bringing the topic up, and instruct the jury to discount the information. This is very serious, and could result in Mr. Smith being granted a new trial.

⁷ While neither attorney has to make an opening or closing statement, they both have the right to do so.

⁸ The courtroom deputy clerk is in charge of witnesses, and swearing them in, not the court reporter.

⁹ If the judge, prosecutor and primary witness for the prosecution are old buddies, there might be a perception of unethical activity.



The agent goes on to explain that the IRS has audited Mr. Smith repeatedly. They have verified that he made income as an independent contractor with his employer. He was sent bills for his back taxes, which he repeatedly refused to pay. He now owes the U.S. government approximately \$500,000.

Defense attorney Cliffton then cross-examines Agent Paul, asking about the audit process. Before the agent can answer, Judge Stanley yells, “I object,”¹⁰ the agent already talked about the audit. Why are you asking for more information? We need to move this along. I have a hot date tonight and I need to get ready.” The defense moves on quickly through the cross-examination

Finally, it is time for her to present the defendant’s side of the case, but the judge stops her, saying, “Everything that we really need to know has already been stated, so I don’t think you need to call any witnesses.”¹¹ Ms. Cliffton says, “Judge Stanley, I had hoped to allow my client, Mr. Smith, to take the stand to tell his side of the story, and he has a right to do so.” “Oh come on,” replies Judge Stanley, “we all know he’s just a scheming tax cheat, and un-American to boot What could he say to explain away \$500,000? We really don’t need to listen to anything he has to say.”¹²

The prosecutor lets out a loud “whoop” and starts to pump his fist in the air, and one of the members of the jury joins in.¹³ Ms. Cliffton once more stands and yells, “Your honor, I OBJECT!” “Well, who cares, Toots; just sit yourself down, cuz I am going to finish this up so I can get out of here.”¹⁴

At that Ms. Cliffton sits, and Judge Stanley turns to the jury. He says, “So, right about now we’d do closing arguments, but frankly, I just don’t think there is any more to say.”¹⁵ So, I want you six people¹⁶ to go back to the jury room and decide this case. If you need to use the internet or your phones¹⁷ to look up information on Mr. Smith that’s fine, whatever you want, but make it quick. I know you all have much more important stuff to do than deal with this un-American tax evader.¹⁸ So go on into the jury room and make your decision, but please, do it fast,¹⁹ because, like I said earlier, I have a hot date tonight and want to get out of here.”

¹⁰ Judges don’t object; they determine how the law applies when the defense and prosecution make objections.

¹¹ The defense has the right to cross-examine or confront the witnesses brought against them, and they also have the right to call witnesses in their defense.

¹² The judge is supposed to be unbiased. Here, he is implying the guilt of the defendant in front of the jury, which is highly unethical.

¹³ Members of the jury are instructed to be unbiased, and to listen to all evidence before making a decision. To “whoop” like this in court implies that this juror has already made up his/her mind. The judge should reprimand or remove them for such an action.

¹⁴ Using a term like “toots” is disparaging to women, and not respectful. Also, Ms. Cliffton made a legitimate objection and the judge should rule on it, not simply ignore her concerns.

¹⁵ The judge is eliminating the closing arguments, which lawyers on both sides have a right to make.

¹⁶ Criminal trials usually involve a jury of 12 at the federal level.

¹⁷ Jurors are NOT allowed to do any outside research. Their decision is to be made based on what is presented in the courtroom during the course of the trial.

¹⁸ Again, the judge is telling the jury that the defendant is guilty before they have had a chance to decide. This is highly unethical.

¹⁹ Judges should encourage the jury to take its time, weigh the evidence carefully- and make the decision beyond a reasonable doubt. Asking them to go fast so the judge can go on a date is very unethical.