

Responses to Questions by Students of Belgrade Law Faculty

1. Question: In which way do the judges of the Supreme Court affect the subsequent practice and court decisions?

Response: The United States Judicial System follow the doctrine of *stare decisis* which provides that cases decided by the Court of Appeals sitting in the same district as the trial court, and all decisions of the United States Supreme Court, bind the lower courts. Since I sit on a district court, which is a trial court, I must follow all decisions handed down by my Circuit Court (Court of Appeal) and the Supreme Court. Supreme Court justices, therefore, have a significant impact upon the lower courts.

An opinion issued by the Supreme Court immediately becomes binding on all lower courts. An opinion issued by a Court of Appeal becomes binding after the deadline for seeking a rehearing has passed. The decision is "final" and binding once it can no longer be reviewed by the appellate court that has issued the opinion. Of course, when the Supreme Court overrules the decision of the appellate court, the decision of the appellate court is no longer binding.

2. Question: How does the Constitution explain expelling a Federal Judge? What type of behavior by the judge will cause the start of the impeachment proceedings?

Response: Article III of the Constitution provides that a federal judge's tenure continues during "good behavior". It is without dispute that criminal conduct by a sitting judge, such as corruption, is sufficient to start the impeachment process. Historically, most judges who have faced impeachment had been convicted of criminal wrongdoing after a trial. However, I am aware of at least one judge who resigned under threat of possible impeachment due to an inappropriate personal relationship with a law clerk that he had employed. While Article III is silent on the mechanism for removal of federal judges, Article II, Section 4 provides for impeachment as means of removal: "The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

Impeachment is a procedure by which a judge is prosecuted in the United States Congress. The House of Representatives (the lower chamber) investigates the allegations of misconduct and votes on the articles of impeachment (the charges). A simple majority of the members of the House is required to pass the articles of impeachment. Upon passage of the articles, a judge has been impeached. The trial on the articles of impeachment takes place before the Senate. A two-thirds majority (75 out of 100 senators) must vote for conviction, otherwise the accused is acquitted. Conviction results in the removal of the judge.

This seemingly elaborate procedure is necessary, because the federal judiciary is the third branch of government. Each branch balances the power held by the other co-equal branches of government. Hence, the impeachment process is as set forth herein.

If a Justice on the Supreme Court is impeached, the procedure described above is followed, except the President of the Senate (who is the Vice President of the United States) presides over the trial.

3. Question: What must be taken into account in the selection of the jury?

Response: The pool of individuals who are called to serve on a jury are randomly selected from the voter registration rolls in the district where the Court sits and where the trial will be held. Federal law requires a minimum of 12 jurors in criminal cases and 6 in civil cases. As a result, the jury coordinator employed at the federal courthouse sends notices to a larger group of individuals. It is common to call 40-45 people for jury selection in a criminal case and 24-30 in a civil case. Individuals called for jury service must be a citizen of the United States, be at least 18 years of age, reside in the district for the past year, have adequate proficiency in English, and must never have been convicted of a felony (a crime punishable by one year or more in prison) and must not be currently pending prosecution for a felony offense. The pool of jurors are questioned by the judge to establish their background data, such as employment, education, experience serving on a jury, and to identify potential bias or prejudice against either party to the litigation. The types of questions asked of the jury pool depend upon the nature of the case being tried. Some judges allow the lawyers to also question the jury pool. Once the questioning is complete, the lawyers may move to exclude certain jurors based upon bias or competency, and the judge rules on the objections. The parties are also permitted to exclude, or "strike", a certain number of jurors for no reason at all. This is called a peremptory challenge, and the Court may decline to grant the challenge if it is designed to eliminate a juror who is of the same race or sex as the defendant in a criminal case, unless the party exercising the challenge can offer a race or sex neutral explanation for the challenge.

4. Question: Is the jury equipped to deliver a verdict in a complex civil case, such as a patent dispute, without having any prior legal knowledge of training?

Response: Much has been written in academic settings on whether a jury consisting of lay people is equipped to resolve complex civil disputes such as those arising under patent law or other technical disputes. If the lawyers representing both sides of the dispute desire to try the case to the Court, they are free to waive trial by jury. I have presided over complex business litigation where the parties felt their positions were highly technical and were better resolved by the Court without a jury. I have also presided over complex business disputes, and patent disputes, that were tried before a jury. The jury resolves the disputed factual issues, and the jury must apply and follow the law which is given to them in detailed jury instructions. The

lawyers must be very skilled at making complex facts understandable, and the expert witnesses hired by the parties must be skilled at teaching the jury about the facts that support their position. Even with skilled attorneys and experienced witnesses, the law contained in the jury instructions can be very complex. I read the jury instructions to the members of the jury and provide printed copies. The lawyers must attempt to explain how the facts presented at trial should be applied to the law given by the Court. This is accomplished in closing arguments, which can be very long and detailed. My experience is that jurors can handle these complex issues, and this starts with effective jury selection by the parties.

5. Question: What is the power of the federal judge to change the verdict reached by the jury if the judge disagrees with the verdict?

Response: The Court has the authority to enter a judgment notwithstanding the jury's verdict. That is, the Court can enter judgment for the losing party after the jury returns the verdict. However, the Court must make specific findings of fact and reach specific conclusions of law supporting the Court's decision that no reasonable jury could have reached the verdict. This remedy is rarely granted by the trial judge following a jury verdict. However, if the losing party establishes that the opposing attorney failed to offer competent evidence on an element of the cause of action brought by the Plaintiff, or brought by the Defendant in his counter-suit, the Court may vacate the jury's verdict. The trial judge's decision can be reviewed on appeal. The trial judge may not overrule the jury's verdict in a criminal case and find a defendant guilty after the jury voted to acquit the defendant.

6. Question: Can judges work in other instances of the courts when they retire?

Response: When Federal Judges reach a certain age, typically 65, they can retire or go on "senior status." If the judge retires, he or she will continue to receive their previous compensation for life, but the compensation will not be increased for inflation. The retired judge, however, may seek any employment he or she desires, such as returning to private practice, working as a mediator, teaching law, or any other type of employment without losing the retirement benefit. The vast majority of judges do not retire and elect to go on senior status. A judge on senior status keeps his or her chambers and his or her entire legal staff, but the senior judge accepts 50% of his or her former case load. Many judges want to remain active but desire more free time, making senior status a nice balance. A judge on senior status continues to receive upward adjustments to their compensation, consistent with active judges. All judges (senior and active) can earn no more than \$25,000 from outside employment such as teaching. A judge on active or senior status may not practice law. Many judges teach part-time to continue to interact professionally outside of the confines of their chambers.