

Judicial Bias & The Political Process

A system of justice or a system for
“Just-Us”?

Susan D. Settenbrino, JD

New York, New York



Overview

- Judicial independence
- Appointments and elections
- Consequences of a political judiciary
- Necessary reforms



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The courts' raison d'être

“...[T]he one safe place where every citizen can receive a fair hearing.”

Sandra Day O'Connor



Judicial independence serves to:

- Ensure the rule of law.
- Maintain the separation of powers.
- Guarantee a fair and impartial process to each litigant.



This means:

- Judges must be independent from both the state and the private sector.
- Independence is essential to prevent politicians or other third parties from using the court system in a political manner.



When is the judicial process deemed corrupted?

“ If [judges] are motivated to ingratiate themselves with an authority with influence over their careers...”

Susan Rose-Ackerman

Independence implies that judges' careers do not depend on pleasing those with political and economic power.



Questions:

- Do our judges need to please superiors?
- Do our judges need to please political or economic powers that be?
- Do our judges need to please third parties?



Answers:

- Elected judges need to please other parties to raise funds. Appointed judges need to please the politicians and their supporters.
- The public generally votes for the party not the candidate so there is **NO** incentive for a judge to serve the public.



Why do campaign donors give?

“In all other races for public office, contributors would say that they give to campaigns to ensure that candidates are elected who will represent their interests and give them access to that public official when issues arise...”

Sue Bell Cob

Alabama Supreme Court Chief Justice (Ret.)



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Appointments and elections

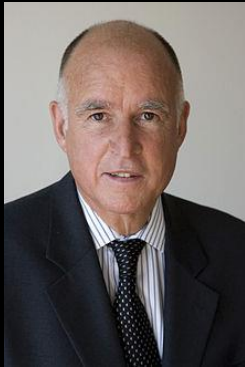
- The U.S. is the only nation that elects many of its judges.
- Even when our elected officials appoint judges they do so without any recourse or accountability.




CHECKS AND BALANCES

<p>Executive Branch (President carries out laws)</p> 	<p>Checks on the Legislative Branch</p> <ul style="list-style-type: none"> Can propose laws Can veto laws Can call special sessions of Congress Makes appointments Negotiates foreign treaties 	<p>Checks on the Judicial Branch</p> <ul style="list-style-type: none"> Appoints federal judges Can grant pardons to federal offenders
<p>Legislative Branch (Congress makes laws)</p> 	<p>Checks on the Executive Branch</p> <ul style="list-style-type: none"> Can override President's veto Confirms executive appointments Ratifies treaties Can declare war Appropriates money Can impeach and remove President 	<p>Checks on the Judicial Branch</p> <ul style="list-style-type: none"> Creates lower federal courts Can impeach and remove judges Can propose amendments to overrule judicial decisions Approves appointments of federal judges
<p>Judicial Branch (Supreme Court interprets laws)</p> 	<p>Check on the Executive Branch</p> <ul style="list-style-type: none"> Can declare executive actions unconstitutional 	<p>Check on the Legislative Branch</p> <ul style="list-style-type: none"> Can declare acts of Congress unconstitutional

Should politicians appoint our judiciary?





If elected
to be judge,
I promise to
faithfully pander
to you...

and to find
legally coherent
reasons to do what
you want in the
following
cases...

We must stop electing our judges?

- In 1906 Roscoe Pound realized that “...compelling judges to become politicians ... has almost destroyed the traditional respect for the bench”.
- In 2014 the New York City Bar stated that it has been focused on judicial election reform since its birth in 1870! We are still waiting for meaningful reform!



This week in the news

“In decades of court-watching, I have struggled sometimes it has seemed against all odds to maintain the belief that the Supreme Court really is a court and not just a collection of politicians in robes. This past week, I’ve found myself struggling against the impulse to say two words: I surrender.”

Linda Greenhouse, New York Times, November 12, 2014.

38 states hold judicial elections to their high courts:

- 7 states have partisan elections
(AL, IL, LA, NC, PA, TX, WV)
- 14 states have nonpartisan elections
(AR, GA, ID, KY, MI, MN, MS, MT, NV, ND, OH, OR, WA, WI)
- 17 states have uncontested retention elections
(AK, AZ, CA, CO, FL, IN, IA, KS, MD, MO, NE, NM, OK, SD, TN, UT, WY)



31 states hold judicial elections to their intermediate appellate courts:

- 6 states have partisan elections
(AL, IL, LA, NC, PA, TX)
- 11 states have nonpartisan elections
(AR, GA, ID, KY, MI, MN, MS, OH, OR, WA, WI)
- 14 states have uncontested retention elections
(AK, AZ, CA, CO, FL, IN, IA, KS, MO, NE, NM, OK, TN, UT)



39 states hold judicial elections to their trial courts:

- 8 states have partisan elections
(AL, IL, LA, NY, PA, TN, TX, WV)
- 20 states have nonpartisan elections
(AR, CA, FL, GA, ID, KY, MD, MI, MN, MS, MT, NV, NC, ND, OH, OK, OR, SD, WA, WI)
- 7 states have uncontested retention elections
(AK, CO, IA, NE, NM, UT, WY)
- 4 states use different types of elections
(AZ, IN, KS, MO)



Money in judicial elections

- **Costs:** Multi-million \$\$\$. Partisan judicial elections are by far the most expensive.
- **Fund-raising:** Lawyers and business interests account for 49% of all contributions.



Public confidence in judicial elections

- **Campaign contributions:** 76% of voters, and 26 % of state judges, believe that campaign contributions influence judicial decisions.
- **Two systems of justice:** 62% of voters, including nearly 90% of African-American voters, feel that “there are two systems of justice...”.

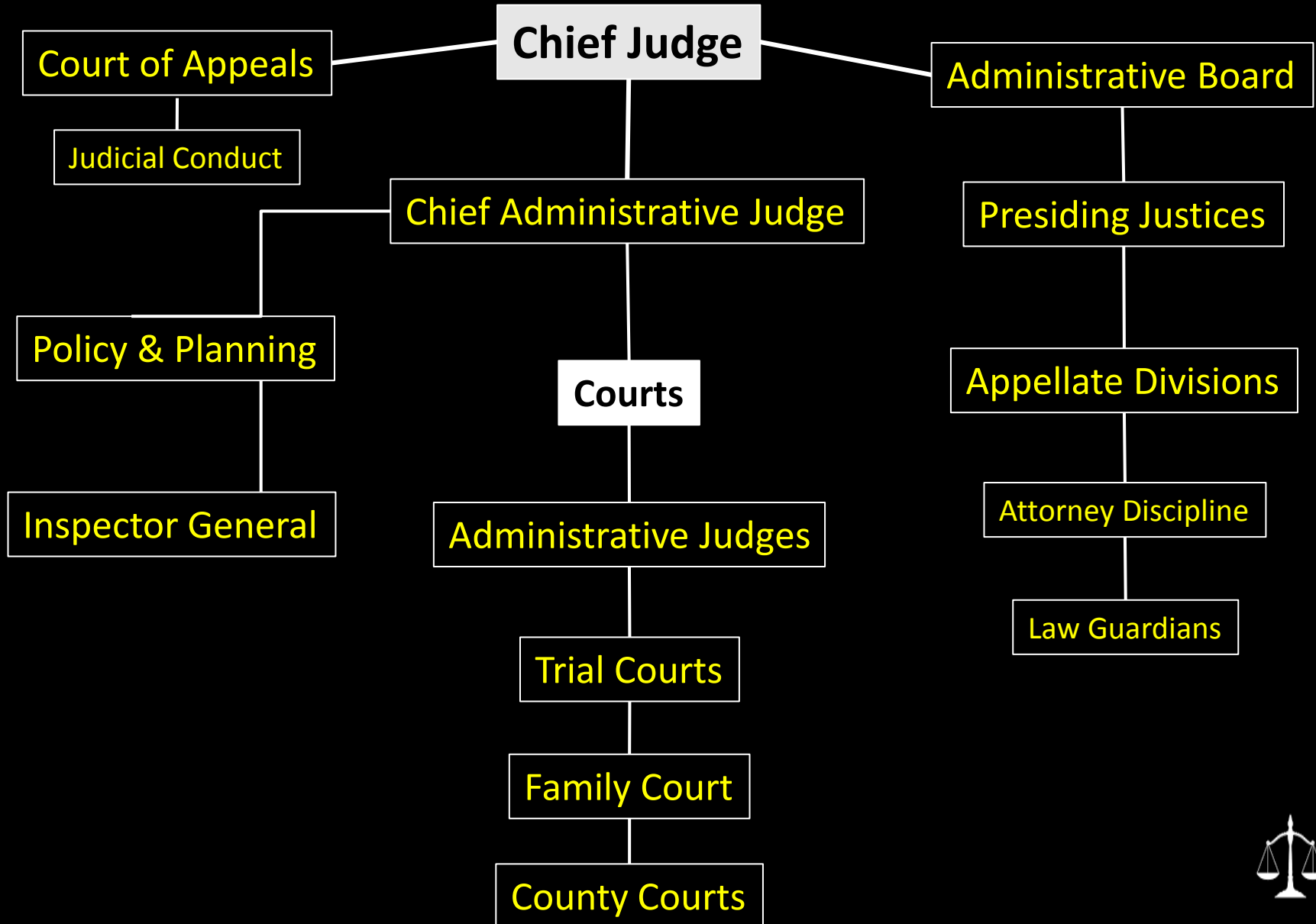
Source: Justice at Stake Campaign, National Surveys of American Voters and State Judges, October 2001- January 2002. Available at www.justiceatstake.org



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Concentration of unchecked power



Protecting misconduct and crimes

- Disciplinary and judicial ethics committees can protect attorneys, law firms and judges.
- Fee dispute committees can protect fraudulent billings.
- Judges can ensure lack of oversight and accountability.
- Judicial budgets can be skimmed and redirected.



Consequences of a political judiciary

Targeting and silencing the opposition



AUTOMATIC ARBITRATION

No more exorbitant fees! No more law! No more trials!

False orders and judgments

- Every order is a powerful blank canvas.
- False orders and judgments can easily be created and continue for years.
- By placing politicians on the bench decisions become unpredictable and the outcomes can be chaotic.



What is a false order?

- When a judge creates rulings that knowingly fabricate, obliterate and distort the facts and/or controlling law of a case.

“Frankly, I have had more than enough of judicial opinions that bear no relationship whatsoever to the cases that have been filed and argued before the judges. I am talking about judicial opinions that falsify the facts of the cases that have been argued, judicial opinions that make disingenuous use or omission of material authorities, judicial opinions that cover up these things with no publication and no citation rules.”

Monroe H. Freedman



The foundation of false orders is intellectual dishonesty

“What kind of judiciary system has this society produced where judges can misstate the facts of a case and then proceed to apply the law to those fictitious facts. Can anybody be safe in court if this practice is allowed to continue? If judges can listen to the evidence and then tell a contrary story, what remains of justice? The vaunted security we have in a free country and a just legal system turns to quicksand.”

Anthony D'Amato



False orders can protect criminal misconduct even in the face of overwhelming verifiable evidence.



False orders can **erase** evidence, events & facts




False orders can **create** new facts, new evidence, and even transform people into monsters.



**False orders can extort funds, creating sudden
unwarranted wealth and/or indebtedness.**



The background is a painting of a shipwreck. A large, dark, jagged mass, likely the remains of a ship, is partially submerged in a turbulent sea with white-capped waves. The sky is filled with dark, heavy clouds. The overall mood is somber and dramatic. A black rectangular box with white text is positioned on the right side of the image.

False orders can
destroy children,
families, the
elderly, individuals
& businesses.

False orders take on a life of their own



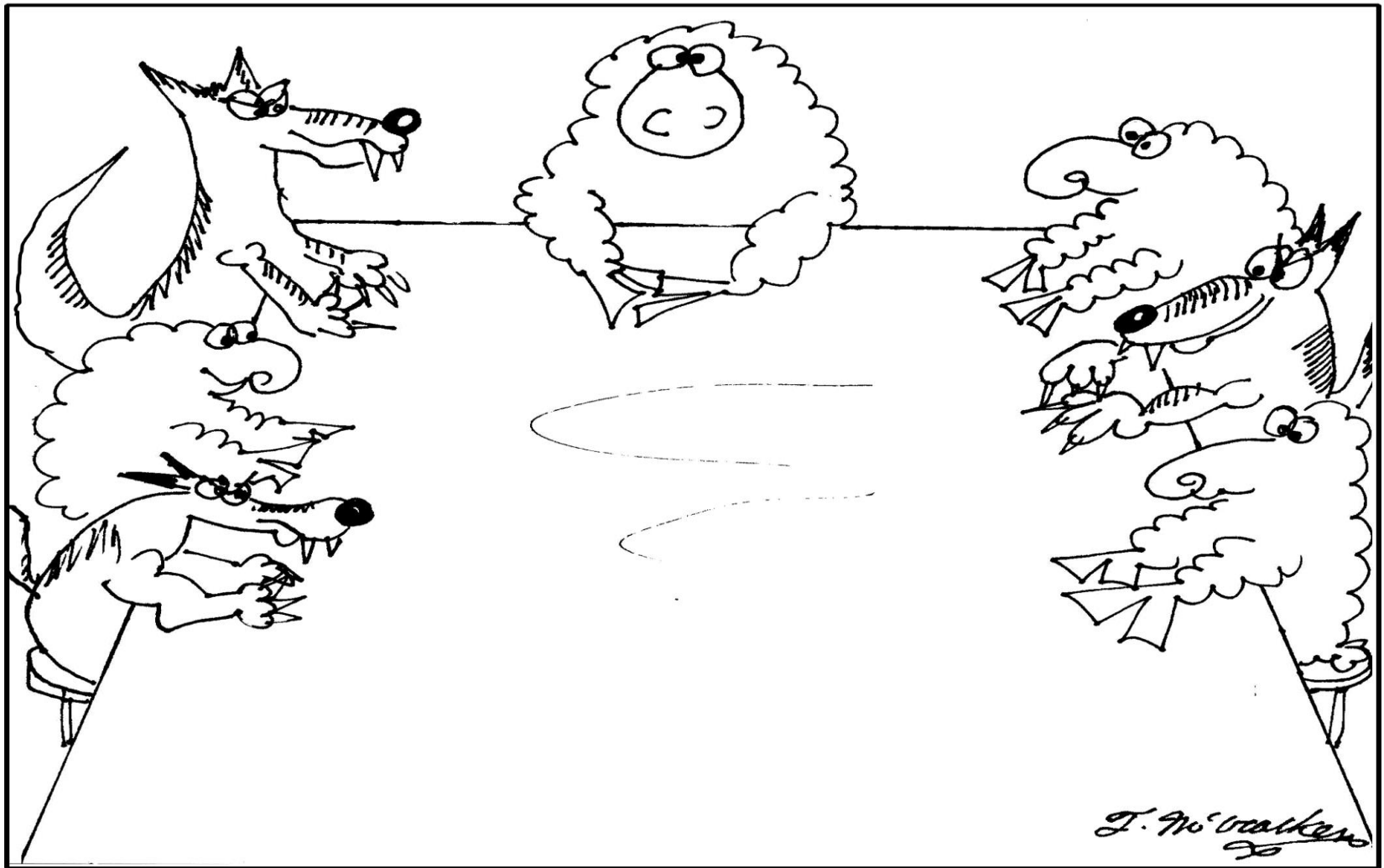
False orders can put innocent people in jail.....



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No more political committees



A bipartisan committee.

What we know:

- We must stop judicial appointments and elections.
- The judicial ethics committees are ineffective.
- The attorney disciplinary committees are ineffective.
- The appellate process is futile.
- Federal courts will not intervene.
- Legislative and Executive branches are ineffective.



The need for transparency

- “Courts must publicize their operation and decision process.”
- “Judges must disclose their assets and conflicts of interest.”
- “Outsiders must be able to find out what is happening within the court system.”
- “A free media with access to judicial proceedings and documents along with an active civil society to publicize lapses and work for reform.”

Susan Rose-Ackerman



The need for accountability

- In earliest English law judicial immunity was not an option.
- Personal actions could be brought against judges.
- The judges faced serious consequences for creating false or malicious judgments and for acting outside of their authority.

Feinman & Cohen, Suing Judges: History and Theory, 31 S.C.L.
Rev. 201, 205 (1980)



Action needed:

- Create a clear de-centralization of power and funding.
- Establish an apolitical body applying oversight.
- Ensure that judges are well versed in the laws they preside over.
- Choose judges based solely on their merits.
- Ensure Juries for all trials.



More action needed:

- Video cameras in the courtroom with available recordings.
- Database must be established to track patterns.
- Complaints against judges, the disciplinary process and their disciplinary history should be made public.
- The code of judicial conduct must be made enforceable.



Answer the question!

Is this a system of justice or a system that promotes
“just us”?



Unchecked Power GUIDE

The entrenched power and politics dominating
The New York State Unified Court System.

Revised Edition



SI SUSAN D. SETTENBRINO J.D.

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Thank you!

