



Lesson Plan: Impartiality; An Honest Court

Student Handouts:

Rose Bird and the Death Penalty

In 1977, Democratic Governor Jerry Brown appointed Rose Bird as chief justice of California. Bird was the first woman chief justice and, in fact, the first woman ever appointed to the court. Bird had no judicial experience. She had worked as a public defender and had impressed Brown as head of California's Department of Agriculture. Although he considered her highly qualified, she barely squeaked by her retention election in 1978, gaining just 51.7 percent of the vote.

That same year, voters overwhelmingly passed a death-penalty initiative. In subsequent years, 59 defendants sentenced under this death-penalty law appealed their cases to the Supreme Court. In each case, Bird voted to overturn the sentence. A majority of the court sided with Bird in all but three of these cases. These decisions drew heavy criticism. Many accused the court of thwarting the will of the people. In 1986, six justices of the Supreme Court, including Bird, faced a retention election. Supporters of the death penalty campaigned to remove three justices—Bird, Joseph Grodin (a former professor of labor law), and Cruz Reynoso (the first Latino on the court). All three had been appointed by Brown. Grodin and Reynoso had only voted to uphold death sentences in three cases.

No justice in California had ever lost a retention election, but this campaign caught fire. A crime victims organization enlisted people across the state to ring doorbells. The California District Attorneys Association opposed the justices. Anti-Bird literature flooded voters' mailboxes. The campaign gained the support of many in the business community who did not like the justices because of what they considered a pro-consumer bias. Republican Governor George Deukmejian, running for re-election, constantly attacked Bird and the two other justices as "liberals" lacking "impartiality and objectivity." His Democratic opponent, Tom Bradley, refused to take sides. Bird aired a series of commercials, but refrained from getting involved in a discussion about the death penalty. Her commercials focused on the importance of an independent judiciary. She stated: "Judges with a backbone are a California tradition worth keeping." Although the three justices had support within the legal community, anti-Bird forces vastly



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outspent their supporters. All three justices lost, and the newly re-elected Governor Deukmejian appointed three justices in their place.

Questions:

1. What was the key issue concerning Rose Bird?
2. What was the result of the anti-Bird campaign?
3. What is your personal opinion of this situation as it is presented?
4. How does this situation fit into our topic of an impartial judiciary?



Nancy Wieben Stock and the O.J. Custody Case

In 1995, celebrity O.J. Simpson, a former football star, went on trial for murdering his former wife and her friend. The trial drew incredible media attention. Opinion polls showed the public deeply split along racial lines over Simpson's guilt. Whites overwhelmingly believed Simpson, a black man, guilty. A majority of blacks believed him not guilty. When the jury acquitted Simpson, many members of the public were outraged.

During the trial, Simpson was held in jail. His two young children lived with his ex-wife's parents. Following Simpson's release, he sued for custody of his children. In December 1996, Judge Nancy Wieben Stock granted Simpson custody. This decision drew tremendous criticism.

A civil lawsuit was pending, charging Simpson with wrongful death. In February 1997, a jury found Simpson liable for the deaths and awarded millions of dollars in damages to the families of Simpson's former wife and friend. Many people thought Wieben Stock should have waited for this civil case to end before awarding custody. Others, however, pointed out that the civil case would probably not end for years due to the appeals process.

Tammy Bruce of Women's Progress Alliance, a women's and children's rights organization, led a recall movement against the judge. She said that Judge Wieben Stock overlooked domestic violence in the Simpson case and another case where Wieben Stock awarded joint custody to a woman who later killed her two children. "The recall process is a way of bringing people back to the system," Bruce said. "We're going to use Nancy Wieben Stock as an example. I've heard her supporters say she's a courageous judge, but when do two dead children add up to courage?"

The legal community widely praised Wieben Stock as a judge who applied the law fairly. The president of the California Judges' Association, William McDonald, stated: "We don't conduct cases by hearing the evidence in the news media and then say, 'Let's conduct a poll'. . . . We hear the facts and apply the law to the facts. And usually, half the people end up unhappy." McDonald recommended that instead of recalling a judge, people work to change laws they don't like.



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Bruce's group failed to get the required signatures for a recall. But Bruce has formed a group called Judge Watch. She said her group will eventually monitor judges throughout the country. She warned that her group will go after judges who make the wrong decisions in child-custody and domestic-abuse cases.

Questions:

1. What was the key issue that separated Ms. Bruce and Mr. McDonald?
2. What would Ms. Bruce consider a proper way to reach a judgment? What would Mr. McDonald consider a proper way to reach a judgment?



Joyce Karlin and the Controversial Sentence

Trial court judges have also come under attack for making controversial decisions. In California, the governor appoints most trial judges. Since 1979, the governor must first submit the names of all judicial candidates to the Commission on Judicial Nominees Evaluation. This commission, made up of lawyers and members of the public, evaluates whether the candidates are qualified. Once appointed, judges stand for election every six years and other people can enter their names as candidates.

In 1991, newly appointed Los Angeles Superior Court Judge Joyce Karlin handed down a sentence in a highly charged trial. Defendant Soon Ja Du, a Korean-immigrant grocer, had been convicted of voluntary manslaughter for killing Latasha Harlins, a 15-year-old African-American girl. A store video camera had recorded the two women struggling over a bottle of orange juice. As Harlins started to leave, Du shot her dead.

Karlin, a former prosecutor, could have imposed a 16-year prison term. Instead, she sentenced Du to five years probation and 400 hours of community service. Karlin stated that Du had no criminal record, had acted out of fear, and posed no threat to the community. This sentence outraged many in the African-American community. They saw it as another example of racism in the criminal justice system.

Just two weeks before, another videotape had showed Los Angeles police beating Rodney King, a black motorist pulled over after a high-speed chase. When a jury failed to convict the police officers in late April 1992, Los Angeles erupted in rioting.

In the fall of 1992, Judge Karlin was on the ballot. Three opponents challenged her. The black community rallied behind her opponents. The Los Angeles County Bar Associated rated two of her opponents as “unqualified” and rated Karlin and another opponent as “qualified.” (No one in the race received the bar’s highest rating.) The *Los Angeles Times* in an editorial endorsed Karlin’s opponent who received the “qualified” rating. The *Times* explained that Karlin’s “stunningly inapt sentence of . . . Du . . . reflects a lack of fairness impairing her ability to sit as an impartial judge.”

In a letter to the editor, Karlin responded: “If judges have to look over their shoulders as they decide a case; if they have to test the political winds in order to arrive at a politically correct verdict—then the judicial system and the freedoms it guarantees will be destroyed.”



Karlin barely won the election with just 50.7 percent of the vote. But community groups kept the pressure on Karlin. Two recall attempts failed to get enough signatures to qualify. Karlin asked to move from criminal court to juvenile court, and she retired before her first term expired.

Questions:

1. What was the key issue concerning Joyce Karlin?
2. What factors magnified the outrage over Karlin's decision?
3. What is your personal opinion of this situation as it is presented?
4. How does this situation fit into our topic of an impartial judiciary?



Ron George and Abortion

With a whole new make-up of justices, the California Supreme Court reconsidered and reversed several rulings that the Bird court had made. Over the years, it upheld death penalty sentences and made numerous pro-business rulings. Just as critics of Bird said her court was too predictably liberal, critics of the new court said it was too predictably conservative.

In 1991, Republican Governor Pete Wilson appointed to the Supreme Court Ron George, a well-respected judge with almost 20 years of judicial experience. In 1996, Wilson named George chief justice. In his brief tenure, George has led the court to more moderate positions on criminal justice and business issues. Then in 1997, the court in a 4–3 vote struck down a state law requiring minors to get parental consent before they get an abortion. The opinion of the court, written by George, stated that the law violated the right to privacy guaranteed by the California Constitution.

The decision provoked great controversy. The previous year the court had upheld the law. But when two justices left the court, the court decided to rehear the case. Republican state Senator Ray Haynes denounced the new decision. He said, “You shouldn’t be playing a political game with a court decision.”

George and Ming Chin, a justice who voted with George, have retention elections in November 1998. A pro-life group is mounting a campaign against both judges. Several Republicans have joined the campaign. Republican gubernatorial candidate Dan Lungren has declined to take sides, but has said he favors a constitutional amendment to overturn the court’s abortion decision.

In February at the state Republican convention, Republicans set up a committee headed by Senator Haynes to decide whether to endorse or oppose the two justices in the traditionally non-partisan election. The committee has said it would wait until the court decided two cases on whether the Boy Scouts could ban gays and atheists from joining. GOP Chairman Michael Shroeder said that these cases would “be an important factor in the [endorsement] decision.” In March, the Supreme Court in unanimous decisions held that the scouts did not have to admit gays or atheists. The lawsuits were based on an antidiscrimination statute that applied only to businesses, and the court ruled that the scouts were not a business. The Republican committee has not yet made its recommendation on George and Ming.



The *Los Angeles Times* has condemned the anti-George campaign: “What’s at issue here, as it was with Bird, is judicial independence. You don’t have to like a decision to support the principle that judges should not be ousted because they dared to make a decision that is not universally supported.”

Questions:

1. What was the key issue Justice George ruled upon?
2. What was the result the ruling?
3. What is your personal opinion of this situation as it is presented?
4. How does this situation fit into our topic of an impartial judiciary?