

# Politics and Judicial Appointments- Why Juries Matter

By Hon. Mark A. Drummond (ret.), Executive/Judicial Director of the Civil Jury Project

“What’s your position on the 2<sup>nd</sup> Amendment?” the man exclaimed as he took a step towards me and put his finger in my face. This happened on the heels of me asking him to vote for me in the upcoming election for circuit judge.

Startled, I completely blanked on the 2<sup>nd</sup> Amendment. I stammered, “The 2<sup>nd</sup> Amendment is a...a...very...very important amendment” to which he responded, “Damn straight!” Still scrambling, I was about to say something along the lines of, “You know, they listed them in order of importance.” Fortunately, my first feint gave me time to actually look at the man. He was dressed head to toe in camouflage. This visual clue was just what I needed.

In my defense, this happened at our county fair at about 9:30 at night after I had been campaigning since around noon. The combination of the hour, multiple lemon shake-ups and the noise of the tractor pull had dulled my senses.

This was in 2004. I had been appointed an associate judge by the circuit judges in 1999. I was running for a circuit-wide position in eight counties in western Illinois which stretched from the Mississippi River to the Illinois River, reached south toward St. Louis and north toward the Quad Cities. It is one of Illinois’ larger judicial circuits geographically. I put in a lot of miles and gave out thousands of calendar cards and nail files during that campaign.

Other than high school student council, this was my first foray into campaigning. Although I had voted over the years for candidates on both sides of the ticket, I was told that in order to win I needed to declare a party. In those states where judges are elected, I believe you should not have to declare a party. All candidates should run as independents. I told people who asked about my party affiliation that it really shouldn’t matter since I never said from the bench, “Now Mr. Johnson, before I set your fine for speeding, tell me—are you a Republican or a Democrat?”

Although 2<sup>nd</sup> Amendment issues and pro-choice/pro-life issues would probably never come before me as a state court judge, those were the two issues that “single-issue” voters would ask about. They did not care about anything in my background other than my position on those issues.

During my campaign I received three questionnaires from special interest groups on each side of the pro-life/pro-choice debate. All six generally set forth the same thing.

They first cited [Republican Party of Minnesota v. White \(536 U.S. 765\)](#) for the proposition that I was allowed to respond to their questionnaire. They threatened that if I did not respond within a certain number of days, they would assume that I was against them and they would work against me.

I responded to none of the six questionnaires. I figured they would cancel each other out. I was successful on election night. I won 60/40 running on one side of the ticket. A judge on the other side of the ticket who ran in the same eight counties a few years before I did also won 60/40. Since I assume there was not a huge shift in party demographics over the few years which separated our races, I can only conclude that the electorate decided that politics did not matter in a judicial race.

The above is a long introduction to my central point that juries are even more crucial given today's political polarization regarding judicial appointments. A scan of the sources I have listed below shows the steady diet of news stories being fed to the general public on how politicized judicial appointments have become. Most people do not differentiate between the federal and the state systems. Most people do not realize that the vast majority of cases are decided in state courts. To the average citizen, a judge is a judge unless, of course, it is a judge on the Supreme Court.

From my research, I was shocked at how the influence of politics in judicial appointments has ebbed and flowed over our nation's history. According to some scholars I have read it reached its height around the turn of the century. However, back then the public may read one story about it in the local paper. Today the stories of politics and appointments are reposted and retweeted many times to a growing group of citizens.

To me it appears that the pendulum now is swinging back toward more politics being mixed into judicial selections. Republicans will trace it back to Robert Bork. Democrats will counter with Merrick Garland and on and on it goes.

The current U.S. Secretary of Transportation, Pete Buttigieg, once outlined a plan based on [a paper written by two law professors](#), Daniel Epps of Washington University in St. Louis and Ganesh Sitaraman of Vanderbilt, to mandate ideological balance on the Supreme Court. Under the proposal, the number of justices would grow from nine to fifteen: Five affiliated with the Republican Party, five affiliated with the Democratic Party and five others selected by the first ten based on their "fairness, independence and centrism."

The Delaware Constitution contains a political balance requirement applicable to membership on all five of its courts: The Supreme Court, the Chancery Court, the Superior Court, the Family Court, and the Court of Common Pleas.

Given all of this political wrangling, jury trials never have been more crucial in terms of taking politics out of our system of justice. Now, more than ever, we need citizens serving on juries, experiencing the dynamics of a diverse group coming together and

then leaving the courthouse to tell friends and family that the system truly works and without politics even being mentioned.

With rare exception, jurors walk away from their experience with a good feeling about our jury system and how it works. Over the years, I have talked with a lot of jurors after a verdict. I cannot remember one time in which the political affiliation of a fellow juror, litigant or witness was ever mentioned. With the political polarization infecting our judicial system, we need the leavening effect of jury trials. For a jury, political issues simply do not matter when delivering justice.

My bailiff never once came to me, shook her head and said, “Judge, the jurors say they’re deadlocked; those attorneys never should have picked six Democrats and six Republicans.”

#### Sources:

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