Symposium: Judicial Professionalism in a New Era of Judicial Selection

October 22, 2004

Session Four: Alternatives to Electing Judges

JUDGE STUDDARD: Let me start by saying first of all what a terrific Symposium. I hope you all have enjoyed this as much as I have. Perhaps some of you lead more exciting lives than I do, and this is not your idea of excitement. But it has been a tremendous exercise in both scholarship and in the real world of talking about how do we get to a judiciary that really does what the judiciary is supposed to do, and I am grateful to all of the panelists that we have seen today. I am grateful to Justice Phillips for his presentation last night, I am grateful to Pat Longan for his great work in putting this program together, to Mercer, to the Law Review, and to all of you who have attended today and who have participated in this project, and not least of all to Yonna Shaw, who is the real brains behind the outfit, as we all know. I think we would all be remiss if we did not say one more time our thanks to Judge Lawson, whose foresight enabled us to have this program and many others like it. What a great asset for the state of Georgia and for the legal education of the community throughout this country as we have similar discussions. It has been exciting to me to have a number of members of the Court Futures Committee of the state bar here, and I know that this is going to engender much discussion into the future.

Let me introduce our final panel for today. Starting furthest from me, we have Professor Drew Lanier, Associate Professor of Political Science from the University of Central Florida, and a Ph.D. graduate of the University of North Texas, who also holds a J.D. from DePaul University College of Law. Seated next to him is Professor Mark Hurwitz, Professor of Political Science at the University of Buffalo at the State University of New York, a graduate of Brooklyn Law School, and holder of a Ph.D. from Michigan State University. Together Dr. Hurwitz and Dr. Lanier have four Doctorates between them. I keep thinking about that 1980s song *Doctor, Doctor*. It applies to both of them. They have written many scholarly works on the subject of judicial selection, as you can see from the list of their publications, many of which they have written together. I know in particular the publication *Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts* published in *State Politics and Policy Quarterly* last year.[1] The have also written for the *Judicature*.[2] They also have a publication coming out in 2006 on the state of judicial selection.[3]

Also with us at the other table is Alfred P. Carlton, Jr., former President of the American Bar Association, a partner at Kilpatrick Stockton in Raleigh, and a graduate of the law school at the University of North Carolina. He is listed in *Who's Who in American Law*[4] and *Who's Who in America*,[5] and he is a Fellow in the American Bar Foundation. All three of these gentlemen have more credentials than I could tell you about in the time allotted for us here today.

My name is Ben Studdard. I am a state court judge in Henry County, Georgia, just up the road from Macon, a graduate of this law school, and I am very honored to be with you here today taking part in this program. My first very shaky efforts at trial practice conducted in this courtroom would in no way have suggested to you that I might be standing with you today. I do not feel particularly qualified to be taking part in this conversation with these very learned gentlemen, and I am very honored to be here with you. Having said that, I want to say to you that I am very much a believer in the mission of our judiciary and our

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1. Mark S. Hurwitz & Drew Noble Lanier, *Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts*, 3 STATE POL. & POL'Y Q. 329 (2003).

2. Mark S. Hurwitz & Drew Noble Lanier, *Women and Minorities on State and Federal Appellate Benches, 1985 and 1999*, 85 JUDICATURE 84 (2001).

3. DREW NOBLE LANIER & MARK S. HURWITZ, THE STATE OF JUDICIAL SELECTION *in* STATE OF THE STATES (forthcoming 2006).

4. WHO'S WHO IN AM. LAW 129 (Marquis Who's Who 2000-2001) (1999).

5. WHO'S WHO IN AM. 794 (Marquis Who's Who) (2003).

legal profession, and the discussion that we are having is a very important one to me, and I know it is to you because of how important it is for us to have qualified judges. That is a subject that I am not sure that many of the people who do some of the things that we are here to talk about really appreciate, and that makes our discussion that much more difficult.

Noting that I am the only person on the program today to whom this applies, I am going to start my portion of the program by issuing to you this caveat. Do not assume that you learned any opinion of my own personally from anything that I say here today. You should assume that everything that I am saying is in the role of devil's advocate. Much of it will be. I am not going to tell you which parts are and which parts are not. But we are here to discuss, or to continue discussing, I should say, the subject of what lies beyond public election of judges. I appreciate the fact that the last session of panelists started us on that subject because there is so much there. I was despairing of how we would cover that in an hour and fifteen minutes, so I am glad we have a head start.

I want to start that discussion by going over with you the goals that different people have identified for a judicial selection process. Then I want to turn things over to A.P., who will talk to us about the ABA's Commission on the 21st Century in the Judiciary and what it has identified. We will then talk to Professor Hurwitz and Professor Lanier about their research.

When the state bar's Court Futures Program began last summer, we started by trying to set aside notions of political reality and asking the question, "What is it we are looking for out of a judicial selection process? What attributes should that process have?" We came up with these characteristics of a judicial selection process that I hope you will agree with, and I am going to ask for some comment about that.

First, we are looking for a process that nets to us the most qualified judiciary that we can get, and we will talk about what "most qualified" means in just a second. Second, we are looking for a process that gives us a judiciary that is independent and a process that promotes judicial independence. What is judicial independence? What is judicial independence especially when you then say that you want a process that also allows you to have a judiciary that is accountable for its behavior? On the surface, it sounds like those two things are in conflict with one another. But I think ultimately that they are not. We say that we want a judiciary that has substantive independence, the freedom to make the hard decisions that the judiciary has to make, coupled with professional accountability. We are doing this as a professionalism program because there is a real notion of professional accountability. How does that judge

treat people coming into his or her courtroom? Does that judge effectively make timely decisions on matters coming before the court? Does that judge spend an adequate amount of time on the job? Is that judge making sure that he or she studies the law, continues his or her legal education, and has an adequate grasp of the matters coming before the court? Professional accountability should be coupled with substantive independence. Finally, we want a process that inspires public confidence in the process itself.

So if the goal is to achieve a process that has those four characteristics, how do we do that if we do not elect these judges publicly? I want to go back and cover the subject that I promised to cover with you, "What do we mean by a qualified judge?," and give you a couple of different iterations of that. I first want to refer you to an article that Professor Longan prepared for this Symposium.[6] You will find six criteria that Professor Longan sets out for appellate judges in particular.[7] He talks about those judges having: (1) scholarly ability and interest in the law; (2) the ability to function comfortably in a semi-monastic setting, which may apply to a lesser degree to trial judges perhaps; (3) good writing ability; (4) cooperative temperament; (5) a broad experience in life; and (6) wisdom and common sense. Those criteria are stated differently in terms of a broader way because they apply both to trial judges as well as appellate judges.

In the ABA report *Justice in Jeopardy*,[8] if you look at page IV in the table of contents, or if you look beginning on page six at the enduring principles set out in that study, you will see labeled A through H the criteria that this ABA Commission suggests are what makes a good judge. They say that judges first should uphold the law; judges should be independent; judges should be impartial; judges should possess the appropriate temperament and character; judges should possess the appropriate capabilities and credentials; judges and the judiciary should have the confidence of the public; the judicial system should be diverse and reflective of the society it serves; and judges should be constrained to perform their duties in a manner that justifies public faith and confidence in the court. With those criteria in mind, because that is what we are looking for in a judicial selection process, we have said that we are going to spend this hour talking about ways to do that other than through public elections. I now want to turn the session over to A.P.

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6. Patrick, Emery Longan, *Judicial Professionalism in a New Era of Judicial Selection*, 56 MERCER L. REV. 913 (2005).

7. *Id.* at 921.

8. COMMISSION ON THE 21ST CENTURY JUDICIARY, AMERICAN BAR ASSOCIATION, JUSTICE IN JEOPARDY (2003).

Carlton to talk about both the North Carolina experience and also the ABA recommendations. A.P.

MR. CARLTON: Thank you, Judge, I appreciate that. It's great to be here. Thank you, Pat, as always. It's my second turn and I really appreciate the opportunity to come back.

We have proved once again today the admonition of Chief Justice Vanderbilt of the New Jersey Supreme Court, who has become one of the great judicial reformers of the 20th century, that judicial reform is no sport for the short winded. But here we are and we will plug on and plug our way through. In the American Bar Association, we had a six or a seven year run up to *Justice in Jeopardy*, and I recommend it to you. We hope that it is a worthy 21st successor to the *Pound Paper*[9] published in 1906. That was the objective. I think it comes to you highly recommended. That may be a little bit self-serving to call it that, but it is the culmination of about ten years' work of the ABA and many resources, in addition to probably about two million dollars worth of grant money over that period of time.

One of my predecessors, President Lee Cooper, established a Presidential Commission on Judicial Independence in the late 1990s. This Commission found that, while we were so concerned about the federal bench at that time and what was going on in Congress regarding attacking federal judges, the great threat to judicial independence was where 299 out of 300 cases get resolved, and that is in the state courts. At that time, we were witnessing an increasing amount of money being spent in state judicial races. Indeed, over the last decade, the money spent on judicial races in the states has quadrupled. That is a fact. It has become something that is on everybody's radar screen.

During that period of time, at the suggestion of the Cooper Commission, the ABA established a standing committee on judicial independence. It was my great opportunity, coming out of being Chair of the House of Delegates of the ABA, to chair that committee for three years while I was running for president. It was terrific. It led into my chief initiative in the ABA. During that period of time, we had the Commission on State Judicial Nominating Commissions, which came up with the JNC recommendation. This is not something that we, a business, got into yesterday.

Let me give you, against that backdrop, a couple of caveats. Anybody getting into this business does not need to reinvent the wheel. There has been much done and you can trip up going through the briar patch

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9. *See* Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. REP. 395 (1906).

if you do not pay attention to what other people have done before. The New York folks have done a good job on that account, I think. Second, it is a game of bunt singles. You do not hit a home run very often. Now, the North Carolina experience is an off-the-wall double. I called it that and was quoted on the front page. But in any event, it is one of those things where you strive and strive and strive to make progress. Just minimal progress, a lengthening of a term, for instance, is a substantial step that very often can and should be taken.

I have also been in and out of a number of state legislatures lobbying on this issue, and I can tell you two things from that experience. First, there are many possibilities in any system to improve that system. If you just work with the system, you can improve it simply by talking to people.

I spent a day in the Illinois legislature, the supposed home of graft, corruption, and whatever else historically. You wonder what that is like until you get there and find out it is just like any other legislature. You wander around the halls. I spent the day with a young man, a Senator from Chicago, named Barak Obama, who is well on his way to becoming a United States Senator right now. He sponsored the same bill we adopted in North Carolina in the Illinois legislature, and we actually got it through the Senate during their session two years ago. It ran into heavy weather in the House, but anything like that where you can move the discussion along will eventually redound to the benefit of the judiciary. It is sort of a continuum. The North Carolina experience reflects that. Let me give you a quick explanation of that process as the judge has asked me to do.

It is instructive. Ten years ago we had statewide election of our general court of jurisdiction trial bench and all appellate judges. Let me repeat that. All of our trial judges were elected statewide on a partisan political ballot. That ran afoul of the Voting Rights Act[10] and the U.S. Department of Justice in the early 1990s, so we were forced to go to local elections for our trial bench. That resulted in a real examination of how that system was working against the backdrop of the development of a two party system. As a result, in the mid 1990s we took our lower courts and made them non-partisan. That had always been a local election. Two years later we made the superior court, our general trial court, non-partisan. We took those two steps first.

That was six years ago. Two years ago, in one stroke of the legislative pen, the North Carolina General Assembly enacted the law we have been talking about today, which not only turned all judicial elections non-

10. 42 U.S.C. § 1973 (2004).

partisan in North Carolina, but indeed implemented the system of public finance that you have heard so much about. Well, what argument won the day?

First, in 2000 we faced our first real money challenge, which by Ohio standards was not much. It was a campaign where we had $2 million spent in a campaign for chief justice. For the first time in North Carolina, we heard the echoes of what you see in the elections in Ohio and Michigan, which shocked everybody because we have had a tradition of very mild-mannered judicial elections when we had them. So we had a tradition of understated judicial campaigning to begin with. We were (as a bar) very happy with the way things had progressed with the non-partisan part of it. One of our statewide foundations is the Z. Smith Reynolds Foundation, which is basically the Reynolds Family Foundation. It is one of the largest foundations in America. You never hear about them outside North Carolina because they spend all their money in North Carolina. The chief executive officer of the foundation today is a former chief of the North Carolina Administrative Office of the Courts and one of our premier trial court judges for twenty years, a fellow named Tom Ross, who was a member of the ABA's Commission on the 21st Century Judiciary.

In any event, they founded a separate nonprofit called the Center for Voter Education. The Center entered into the business of campaign reform in all areas. It made a decision that the judicial branch was the best place to start because it was "different," and there was a great concern about money and judicial elections. The Center brought several coalitions together. It brought in the League of Women Voters and the Bar.

The North Carolina General Assembly had turned down one form or another of merit selection eight times over twenty years. We departed from the merit selection idea. That turned out to be a good decision. One word about "merit selection": having been in about two dozen state legislatures over the past five years, just like Bill Weisenberg has said, merit selection has become a loaded term. It has lost its substantive content and its substantive meaning. It is whatever whoever is talking about it wants it to mean at the time. I treat the term just like "tort reform." I always stop somebody and say, "Okay, merit selection, what are you talking about? Tell me what you mean by that," because it is a term people like to use and think they know what it means, but very often it results in ships passing in the night.

In any event, merit selection had become a legislative non-starter. This time around, the leadership of the legislature and the bar association found the key, which was to maintain the elections, but in a non-partisan form. What really surprised us all was the ability to get

the public financing, which was due mainly to very strong legislative leadership by the lawyers who chaired the judiciary committees. They stepped up and stepped forward and really took courageous leadership positions. We lacked the strong opposition we had previously because we still had an election in place.

Well, how has it gone? You heard a little bit about it earlier today. We will know much more in eleven days. My observation in the middle of the game is that it has gone very well. The candidates have all utilized the funds, and the voters are getting educated. We do not have any of the vitriol that we were so afraid might happen. The candidates still declare their party affiliations. If we can keep the system in place, I believe the declarations will disappear over time as well. So far it has been a very civilized affair. Everybody is doing well, even in the eight person race for the supreme court, which is a plurality race. We will see what happens.

In any event, six months ago we were not so sure. We talked about how the legislature, Z. Smith Reynolds, and the League of Women Voters stepped up and made sure the fund was in place. All the parties had a vested interest in making sure it worked after putting it in place. When we come back in 2006, the fund will be in place, and we will have a sufficient amount in the fund to go on from there. I am hoping and I am thinking that that continuum of experience will continue.

Well, where do you go with a continuum of experience like that? Eventually, hopefully, you can get to the model, whatever that model is. As to the Missouri plan, let me say a word about that. I last had a conversation about a year and a half ago with the chief justice of the Missouri Supreme Court, and I asked him what he thought of the Missouri plan. He said, "We don't even have the Missouri plan." So that plan is of an ideal that people put out there years ago. Again, back to my discussion about merit selection.

Regarding the issue of improving judicial selection, our ABA commission had a real fight over whether or not we wanted to say something we thought people would adopt and be realistic or just go ahead with the model. In the initial final draft, the basic recommendation was for one appointed fifteen year term. That created a discussion, the kind of discussion we wanted to have all the way through the process, within the group, within the advisory committee, and within the commission itself.

What came out of that discussion is a preferred system of state court selection, which includes a commission-based appointed system with several components. If you really break it out and you look at all of the components, guess what, it is the John Adams "Massachusetts" Plan. With a Judicial Nominating Commission ("JNC") in place at the

beginning of the process it is pretty much what John Adams designed for Massachusetts in the 1780s. So we have come full circle and back to that very same basic thought process. The people who wrote this report came to the conclusion that after 200 years of experience, to get the best qualified, most independent, and most impartial judiciary you can get, calls for that model. However, we then encountered the idea of Jacksonian democracy and the concept of accountability. How do you deal with those ideas and concepts in the 21st Century?

A Harris poll the ABA sponsored in August of 2002 concluded that over 70 percent of Americans want to elect their judges. That is pretty startling. That was the first thing. The second thing, however, is that 75 percent of these frequent voters were extremely concerned or very concerned about the role money and politics were playing in that process. Over 60 percent favored non-partisan elections.

The bottom line is that the American public wants to have it both ways. They want accountable judges, but they do not want them to be politicians. However, they want to elect them.

Against that backdrop, the ABA commission thought it best to propose alternative recommendations on systems of judicial selection. If you look at the commission's recommendations, what you see is a hierarchy system. It is a continuum that begins with the premise that if you cannot abandon the judicial reselection process altogether, judges should be subject to reappointment by a credible, mutual, non-partisan, diverse deliberative body.

What is the most realistic model you can get today? I don't know. I like the Florida model myself, at the appellate level, not the trial court level, which is appointment with a JNC in place. It is a legislatively mandated JNC, with appointment by the governor with retention elections and periodic retention elections. The terms are six or eight years. One of the things I like to point out to the national press and anybody when *Bush v. Gore*[11] comes up in a conversation, is that the Florida Supreme Court, which took such a beating for being "partisan," consists of judges who had at least once gone before the voters of the state of Florida and were retained. It was not as if they had just been sitting there without somebody overseeing them, without being held to some form or degree of public accountability.

While the first point is that judicial reform is a game of trial and error, and the last point is that every judicial system you look at is a work in progress, and there is a continuum of desired systems. You can take a system and look at all of the different things that compose the

11. 531 U.S. 98 (2000) (per curiam).

system, and you can find a way to improve it one way or another. Thank you.

DR. HURWITZ: First, I want to thank Pat and everyone else involved for inviting us here. It has been a tremendously informative Symposium. We have enjoyed being here. We appreciate being asked to be participants. We hope that our comments in presenting some of the research that we have done will also prove useful. After all that has been said here today, one of the problems when you are in the last presentation on the last panel, you are not sure if there is anything left to say. After the comments last night by Justice Phillips and everything that has been said here today, I am not sure we can add anything at all that is useful, but we will try just the same.

In our research, Drew and I take a perspective that is a bit different from what many people in this room here today do. We examine issues such as judicial selection and diversity of the bench from a contemporary political science perspective. By that, I mean we take a scientific agnostic approach to studying these issues. We use real world data. We use quantitative statistical methods that are appropriate to analyze whether or not there are any systematic influences on these issues. When I say we use a scientific and agnostic approach, that does not mean we do not care about these issues. To the contrary, we care quite a bit about them. That is why we are studying them. That is why we are here. But by a scientific and agnostic approach, I mean that we do not have an a priori agenda or expectations for what we do or do not want to happen. We do not hope that our findings turn out one way or another. Our goal is to explain the systematic influences on judicial decision making, diversity, how selection systems influence those issues, etc. We then hand those results over to the policy makers to see if they find them useful, and they use them as they see fit.

We are also aware that many others, particularly the legal community, law professors, bar association studies, lawyers, etc. have looked at these issues. We do not seek to reinvent the wheel as A.P. mentioned earlier. So, no, we are not trying to start this all over from scratch as if nothing has ever taken place before. But we do hope to examine these issues from a perspective that diverges somewhat from what has taken place, so policy makers might have different leverage on how to deal with these issues. Nevertheless, while our approach may be a bit different, we are not that far afield either, based on the fact that both Drew and I were practicing attorneys before we entered the field of political science as academics.

What we will do today is begin by discussing some of the issues related to judicial selection systems and their effects on levels of

diversity in the appellate benches of the states. In particular, I will focus on judicial elections and their alternatives, what this panel technically has referred to as alternatives to judicial elections. I will look at some of those issues, such as merit selection and gubernatorial nominations, and look at the effects that each system has on diversity.

By using the term "merit selection," we are using that term in the basic, traditional, accepted format when you have some sort of commission that provides a list of names to the governor and then usually there is some sort of retention election after the fact. There are so many variations of that term, but generally speaking, when I use the term "merit system," that is the simple way that I am trying to use it.

So I want to see the effect that these selection systems have on diversity. Then I will hand the microphone over to Drew. He will discuss a particularly critical aspect of the merit selection system, the judicial nominating commissions, their makeup, and the manner in which the makeup of these nominating commissions influences diversity levels.

To begin, I want to emphasize the important things we hear about when we are thinking about judges and the judicial department: independence, accountability, professionalism, integrity, confidence, commitment, temperament (something that I think is sometimes downplayed but it is important), and, of course, impartiality. These are all crucial issues, every single one of them.

I want to highlight two quotations that were made nearly two hundred years apart by some rather prominent American public servants, and these quotes start off as an introduction. They dovetail these issues that we are talking about, and I think they put them into some sort of perspective and context. "Our judges are as honest as other men, and not more so. They have with others . . . the same passions for party, for power, and the privilege of their corps."[12] Thomas Jefferson said that roughly two hundred years ago. Remember that Jefferson, who was the author of the Declaration of Independence and the third President of the United States, as well as other accolades that he accumulated during his lifetime, was also pretty well renowned for having some rather intense battles with the United States Supreme Court when he was President, including very specific and personal battles with Chief Justice Marshall and some of the other justices. Some of those battles concerned Marshall wanting to change the way the Supreme Court issued decisions by changing the seriatim procedure, where each judge issued a decision, as Marshall wanted a single opinion of the Court. Marshall won that

12. Letter from Thomas Jefferson to Mr. Jarvis (Sept. 28, 1820), *in* 7 THE WRITINGS OF THOMAS JEFFERSON 177-78 (H.A. Washington, ed. 1854).

battle. But there were tons of other battles as well. This statement was an acknowledgment by Jefferson of what he knew was happening, and that he was aware of the politics of the system even at that time.

William Rehnquist wrote, "There is no reason in the world why a president should not [pack the Court and] appoint people [to the Supreme Court] who are sympathetic to his political or philosophical principles."[13] I refer to him as "Justice" because this statement was written about two years before he was elevated to the Chief Justice position by President Reagan. President Reagan was clearly a president who tried to appoint people sympathetic to his political and philosophical principles (not that there is anything wrong with that, because a president who wants to continue his legacy long after he leaves office should certainly try to do so).

I mention these quotes to introduce the issue because I believe the perspective that these quotes provide is that judges are people, and sometimes we forget that. Sometimes we put them up on a pedestal. They are in their robes, they are on the pedestals on the bench, and we have all the columns around the courtroom. We stand when the judges enter. They are smart people, most of them are at least certainly. They are very decent people. But it means very simply that we should have a certain expectation that they act professionally under the circumstances, but with realistic constraints to insure that they do so act professionally.

Okay, so that is the first perspective, that each judge is a person, and we should not forget that they are people, and they are ordinary people just like everyone else in this room. Second, these mythical notions that many people have that courts are divorced from politics or that they are presumed to be divorced from politics is probably unattainable, if not pure fiction.

This is not a judgment that courts and their judges are bad. Instead, it is a realistic acknowledgment that should help and not hinder those who are trying to bring about judicial reform, especially if we are going to move from judicial elections to other alternatives.

In our research Drew and I have attempted to look at the various selection systems in the states, examine how these judges have attained the bench, whether or not the selection systems have been changing over the years, and what effect those systems have on various issues, including diversity on the bench. Those selection systems are going to be the prime things we are going to talk about here today. We initially looked at two cross sections of time, 1985 and 1999, for purposes of

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13. Al Kamen, *"Court Packing" Backed in Rehnquist Speech*, WASH. POST, Oct. 20, 1984, at A9.

analysis. Why those two years? The year 1999 was the last full year of data we had when we started this project, and we wanted to bring in a time period of about fifteen years prior to then just to see if anything had changed since that time. We are now in the process of compiling data on changes that have occurred since 1999 to appear in the book that we are writing. In this current project, we are also going to look in detail at these selection systems, regarding the effects that they have had on diversity and on other issues, both a historical and a contemporary perspective. But we are still in the middle of writing that book.

We have some of the data now but we still have more to analyze, so today I will focus on some of these earlier cross sections of time, the 1985 to 1999 time periods that we studied, and see how things have changed. What did we look at in these years? Well, we collected data on every supreme and intermediate appellate court judge in all 50 states and the District of Columbia, every single judge that was sitting at that time. This includes in these two cross sections of time close to 2500 judges. When people say, "Why didn't you look at trial courts?," well, there is a theoretical reason not to look at trial courts as I think Judge Studdard knows and acknowledged. There are some differences between the discretion and policy making that takes place in trial courts and appellate courts. You also have to limit the analysis somehow, and this is one of those scientific decision rules that we had to make. You have to limit what you are studying.

We looked at state supreme courts and state intermediate appellate courts including every single judge in every single state. We looked at them in the aggregate. In particular, we considered the type of selection systems in each court along with the background characteristics of the judges who made it to those benches, such as race and gender. The first issue, before we even get to issues of diversity, concerns the distribution of selection systems in the United States and how it has changed over these two periods of time.

The overhead shows a table that stems from an article that we published in *Judicature* in 2001, which was mentioned by Judge Studdard. In this article, we looked at some very descriptive data. I am also going to put up on the overhead some results from another article that we published recently.[14]

14. *See supra* note 1.

Type of Initial Selection System in State Appellate Courts

	Number & Percentage of Courts	
	1985	1999
Judicial Election (whether partisan or nonpartisan)	42 (47.2%)	42 (45.2%)
Legislative Election	5 (5.6%)	5 (5.4%)
Gubernatorial Appointment	7 (7.9%)	7 (7.5%)
Nomination by Commission	35 (39.3%)	39 (41.9%)
Total	89 (100%)	93 (100%)

Source: Mark S. Hurwitz & Drew Noble Lanier, *Women and Minorities on State and Federal Appellate Benches, 1985 and 1999,* 85 JUDICATURE 84 (2001).

If you take a look at this table, it looks like the only selection system that saw any change in the aggregate was nomination by commission, which is the first critical key aspect of the merit system. Here is a little trick of how you can lie with statistics. Does that mean that only the merit system changed over this period of time? No. There was actually much shuffling between and among the other systems. For instance, there were some non-partisan elections that changed to partisan elections, a few partisan elections that changed to other types of systems, a few newly anointed intermediate appellate courts that came in under non-partisan elections, and in the aggregate they all washed out. We give you the details in the *Judicature* article if you want to see what changed. The important point here is that after you see what happened in the aggregate, there was one selection system that increased, and that was the merit system, at least nomination by commission. That was the only system that saw a net change in the numbers of the courts.

We also found that no court that had a merit system departed from it. In other words, there were some partisan election systems that changed to non-partisan and non-partisan that changed to merit, or legislative appointment that changed to some other type of system. But if you had a merit system, nobody abolished it, which we believe is important. On the other hand, the gains the merit system made were clearly modest at this point, particularly when compared to some of the much larger increases we saw when the system first really got its legs. It was called the Missouri plan because that was the place where in some ways it was first implemented. There is evidence that it actually was implemented

elsewhere before then. But it seems as if the momentum of the merit system has leveled off in the period of time we are examining.

One of the reasons I first discussed this relative use of judicial selection systems is because we sense that there may be some changes to come in light of the Supreme Court's decision in *Republican Party of Minnesota v. White*,[15] along with many of the other decisions we have talked about here. The dicta in that case, Justice O'Connor's concurrence, addressed the notion that while there are freedom of speech issues that preclude some state restrictions on judicial campaigns, there is something that is just kind of unseemly about campaigning for judicial seats. So there may be this push away from judicial elections towards other forms of selection. That is why this panel was put together, as it is looking at that issue. Realize, too, that even though we are thinking about moving from judicial elections, more judges in the United States are elected than reach the bench under any other system.

We know there are many judges, if not most of these elected judges, who are technically appointed. Once they are appointed, they have the power of incumbency, but technically they are elected because they have to go through a retention election most of the time anyway. So now the question for us is, "If there is to be a move away from elections, how will that affect the way the bench looks?" When the use of the merit system started to gain momentum, there were many advocates, particularly of minority representation, who argued that minority representation would be depressed on the bench if the merit selection system was used because it would advance a prior status quo. Basically, it would promote a "good old boy" network that non-traditional candidates, in particular women and racial and ethnic minorities, were not a part of, and thus it would be much more difficult for them to reach the bench. This was an argument that was made against the merit system.

There is some evidence that this was once true. In particular, we did find that the merit system depressed the number of women and minorities in 1985. But this effect had dampened dramatically by 1999. In other words, the merit system by the end of the 20th century no longer seemed to hold back these political minorities as it once did. There was no relevant difference between judges who reached the bench via the merit system or otherwise. But there did seem to be differences between the effects selection systems had on women and minorities, particularly African Americans. To determine what specific factors influenced women and minorities in attaining these seats, we then moved to a more sophisticated model, where we controlled and tested for

15. 536 U.S. 763 (2002).

whether or not these systems actually had any systematic influence on diversity.

The next overhead illustrates a rather straightforward table that shows what has happened in the last couple of years. I should emphasize just a few things just so you can read this. I did not come here to report on the statistics. I am not going to give you any coefficients or anything like that. What I have given you here are pluses, minuses, and zeros. If there is a plus sign after a variable, it means that the variable led to greater instances of minority representation. If there is a negative sign, it led to fewer minorities reaching the bench. If it is a zero, there was no influence whatsoever. These results are reported in our second article we have on this subject that is found in *State Politics and Policy Quarterly.*[16]

Factors That Influence *Racial and Ethnic Diversity* in State Supreme and Intermediate Appellate Courts

1985	1999
Size of Court (+)	Size of Court (+)
Elite Liberalism (+)	Elite Liberalism (+)
Candidate Pool (+)	Candidate Pool (+)
Supreme Court (-)	Supreme Court (0)
Merit System (-)	Merit System (0)
Gov. nomination (0)	Gov. nomination (0)
Election (0)	Election (0)

Source: Mark S. Hurwitz & Drew Noble Lanier, *Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts*, 3 STATE POL. & POL'Y Q. 329 (2003).

One of the first things we found is that the size of the court matters. In every situation, the more seats on the bench, the more minorities reached the bench. That was true in 1985, it was true in 1999, it was true for racial minorities, and it was true for women. Regarding the issue of "elite state liberalism," in 1985, the more liberal the state culture was, the more minorities reached the bench. The candidate pool measured the number of licensed attorneys who had the opportunity to become judges. The more minority lawyers in the state, the better chance they have of reaching the bench. But there were a number of

16. *Id.*

factors that depressed minority representation as well, including the supreme court variable. Minorities were less likely to reach the highest court in the state than they were the intermediate appellate court. As feared, the merit system also depressed minority representation.

But by 1999, a number of things changed while others remained constant. From a stability perspective, the size of the court, again the strongest and most profound influence we found, and the ideology of the state and the candidate pool, continued to influence minority representation. But supreme court merit systems no longer limited minorities from reaching the bench. They were not a helpful issue, but they no longer hindered minority representation. That old status quo that may have been around did not seem to be working anymore. I will just mention very briefly that we also studied the supreme courts, the appellate, and intermediate appellate courts in isolation. There were some very different results when we isolated each of those as well, and we can talk about that later. But that is what we found for racial and ethnic minorities.

The next question is, "Did we find something similar for women?," and the answer is no. The results for women are much different from those we found for racial minorities. In fact, it turns out that there are few, if any, systematic factors that influence the representation of women on the courts. The most consistent influence was the size of the bench. The more available seats, the greater the diversity of representation on the bench.

Factors That Influence *Gender Diversity* in State Supreme and Intermediate Appellate Courts

1985	1999
Size of Court (+)	Size of Court (+)
Elite Liberalism (0)	Elite Liberalism (-/+)
Candidate Pool (0)	Candidate Pool (0)
Supreme Court (0)	Supreme Court (+)
Merit System (0)	Merit System (0)
Gov. nomination (0)	Gov. nomination (0)
Election (0)	Election (0)

Source: Mark S. Hurwitz & Drew Noble Lanier, *Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts*, 3 STATE POL. & POL'Y Q. 329 (2003).

The Supreme Court variable was very interesting. While this provided no difference in 1985, by 1999 women were actually more likely to reach a seat on the supreme court than an intermediate appellate court. The one other issue I will look at is the elite liberalism for 1999, which has both a positive and negative sign. How did that come up? Well, that is because the more liberal the state elites, the fewer women reached the court in 1999. But if you have a liberal state that has a merit selection, women were more likely to reach the bench. In other words, the various selection systems help or hinder things in a more complex way than most people understand.

What are the implications for what we found? First, the factors that influence racial minorities are different than those that affect gender diversity. In other words, diversity means different things in different contexts. State political ideology seems to make less of a difference for women judges than it does for racial minorities. Part of this can be explained by the fact that in the aggregate, women generally reach across a broader spectrum of the political and the ideological spectrum than racial minorities. But our more particularized results show that it is not just liberal governors who pick women and minorities, but the more conservative state governments also see the benefits, symbolic and otherwise, of enhancing diversity on the bench. Those policy makers and those people selecting judges, which might be governors or might be judicial nominating commissions, irrespective of their ideology, are aware or are becoming aware of the important political and symbolic aspects of attaining diversity on the bench. Again, it's a complex process. One thing seems clear from our results, particularly noting the increase in numbers of women and minorities: some of the formal and informal barriers that systematically worked to diminish minority representation on the bench are disappearing, though I hazard to say they have completely disappeared. I would not go that far. But clearly there have been changes. What is interesting is that the effect of different selection systems is generally muted in either direction. It does not seem to make much of a difference what kind of a selection system you have at this point in time for influencing minority representation.

If a state is looking at alternatives to judicial elections, the choice of an appointive versus merit system for instance, should be based on a variety of considerations that the state wishes to have in its selection system. But it seems that states do not have to worry about limiting minority representation by choosing one system over another. But there are other considerations. While the quote by Chief Justice Rehnquist stated that there is nothing wrong with the President choosing his political allies for the bench, there are symbolic issues involved here that may prove critical in some states such that the chief justice's lack of

concern for politics may not be appropriate in some states. Thus, some states may want to bring in some form of the merit system, which has the perception of being more fair and less political.

We decided to look more closely at merit selection, particularly the judicial nominating commissions that provide the initial manner in which the names of these potential judges are passed along to the governor. In particular, do these judicial nominating commissions influence rates of diversity? It was an initial concern of advocates that nominating commissions would actually depress minority representation. I will turn the microphone and the wireless mouse over to Drew, who will discuss the results of the analyses of these judicial nominating commissions and their affect on gender diversity. Drew.

DR. LANIER: Thank you. We examined the politics of the Judicial Nominating Commissions ("JNCs"). It is axiomatic in politics that if one can control a decision making body's agenda, then the outcome of that group shall largely be decided. Such is the case regarding the membership of the state's JNCs where the merit system is in place. State courts have long been the non-controversial and mostly unseen servants of the dominant political forces in the state. However, that stance may have changed in the days following the controversial 2000 presidential election when courts, particularly the Florida courts, were cast into the glare of the media serving to heighten the attention paid to such tribunals. Indeed, in the days and months following the United States Supreme Court's decision involving the presidential election cases, the Florida legislature and the governor made several changes in the method by which the state's JNC's were selected.

In effect, the legislature gave the governor even greater power to influence who would serve on the commissions, and by implication who would serve on the state's appellate benches. This provokes the question for us as to whether the composition of these commissions is systematically associated with the type of individual who is ultimately forwarded to the governor for selection. That association is the subject of our study.

We chose Florida as the case study because in many respects it represents the national political landscape. The state's political culture is quite divergent and it is, thus, unique for a Southern state overall. It draws individuals whose political ideologies span the left/right spectrum, making it a crucible for political change during the recent past, especially the last forty years. I point to the closeness of the 2000 presidential election and the fact that once again Florida is a battleground state, where Senator Kerry and President Bush have visited

Florida three times in the last seven days. Thus, the importance of studying the JNCs becomes apparent.

A bit of political history is important here. In 1974 a scandal erupted and engulfed four of the Florida Supreme Court's seven justices. In fact, one was later found in Mexico and charged with drug trafficking and he was obviously removed. The cumulative effects of these events damaged the legitimacy of the Florida court system generally and the supreme court in particular. As a result, in 1976 the merit system of selection was imposed on the state's appellate courts in an attempt to disassociate the courts even further from politics, changing it from a system of non-partisan elections to the current merit system.[17]

Under the system in place after the 1976 referendum, the committees were composed of nine members, three chosen by the governor, three by the bar, and three by the governor and the bar jointly. The commissioners serve staggered terms of four years. After reviewing the candidates, the commission sends a list of three to six names to the governor for his or her ultimate choice.

Soon after the controversial 2000 election, however, a Republican-controlled legislature and governor sought to increase the governor's power of making selections to the appellate courts. In the spring of 2001, in particular, the legislature was inflamed over what it believed to be overt activism on the part of the Florida Supreme Court in the presidential election cases. The legislature amended the controlling statutes to essentially strip the Florida Bar of its independent choice of commissioners.[18] Under this revised system, the bar now only recommends, underline the word *recommends*, four individuals to the governor, and the governor alone chooses the remaining five members. Of the nine commission members, five must be bar members, increasing the influence, albeit indirectly, of the state's attorneys. The governor, thus, has the final choice about the composition in each of the state's JNCs, giving him or her almost untrammeled control over who will join the state's appellate courts, and thereby, determine policy questions in a number of important areas.

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17. Drew Noble Lanier & Roger Handberg, *In the Eye of the Hurricane: Florida Courts, Judicial Independence, and Politics*, 29 FORDHAM URBAN L.J. 1029, 1029-52 (2002).

18. Fla. Stat. 43.291 (2001). The legislature also considered amending Article V of the constitution dealing with the selection of appellate judges. Rather than obtaining only a majority in order to be retained, the legislature considered a bill (S.B. 1794, 103rd Reg. Sess. (Fla. 2001)) that would have increased that margin to two-thirds. The same bill would have eliminated the JNCs entirely, ceding the field to the governor. Ultimately, the bill died in committee, but the message was still clear.

The Florida statute does require the governor to consider, to the extent possible, questions of racial, ethnic, and gender diversity in making appointments to the JNC. A previous form of the statute that had required him to consider those issues was struck down as being unconstitutional in *Mallory v. Harkness*.[19] Accordingly, we examined a number of factors that bear upon the decision of the JNCs to forward individuals to the governor in terms of gender diversity. Appointments of women and persons of color certainly bring a measure of political capital to the selector, as they can be symbolic.

We found that gubernatorial liberalism was not influential in our estimation.[20] At first blush, that result appears to be counter-intuitive. But we believe there are theoretical reasons as to why we obtained that finding, and I will return to that momentarily.

The proportion of JNC members who were female, however, did influence the proportion of female nominees forwarded to the governor for positions on the state appellate courts. We believe that is instrumental in the sense that they wanted to forward fellow ideologues to the governor, and thus, individuals could be appointed to the appellate courts who would be with him. The proportion of minority members and members who were attorneys were not influential, even though we thought they were, again for a number of reasons we can discuss later. But if the nominees were already judicial incumbents, if they were already on the bench, that status was associated with a greater proportion of women being forwarded to the governor for ultimate consideration.

Proportion of *Women Nominees* Forwarded by Florida Appellate Court Judicial Nominating Commissions, 1991-2003

Potential Influences:	Influential?
Gubernatorial Liberalism	No
JNC Women Members	Yes
JNC Minority Members	No
JNC Attorney Members	No
Nominees as Judicial Incumbents	Yes

19. 895 F. Supp. 1556 (S.D. Fla. 1995), *aff'd*, 109 F.3d 771 (11th Cir. 1997).

20. Drew Noble Lanier & Roger Handberg, *Diversity and Merit Selection: The Impact of Judicial Nominating Commissions on the Gender Demographics of Appellate Judges*, Paper presented at the American Political Science Association (Aug. 28-31, 2003); Drew Noble Lanier & Roger Handberg, *The Diversity of Florida's Judicial Nominating Commissions: A Cross-Time Comparison of Its Effect on Nominees to the State Appellate Bench, 1991-2003*, Paper presented at the National Meeting of the Midwest Political Science Association (Apr. 3-6, 2003).

Our model provides some interesting results to consider. First, gubernatorial liberalism itself was not influential, and we assert that women cover a wider space along the ideological spectrum than do racial and ethnic minorities. It is, thus, more difficult for the JNC members to pinpoint and find women who will be liberals necessarily. This is especially true in a state where there has been a recent Republican ascendance, not only in terms of political control of the legislature and the governor, but also in terms of the diffuse partisanship of the public in general. Overall, we found that an array of factors make women candidates more likely to be forwarded to the governor for ultimate consideration. Those factors are rooted in demographics, and not structure or other political factors. The comparative gender composition of the JNCs and the incumbency of the nominees are influential in this regard. Accordingly, reformers who seek greater gender diversity on the appellate courts should focus on the central importance of seeking out judicial incumbents, the JNC's relative gender composition, and the recruitment for the bench, because they set the agenda for diversifying state benches throughout the land.

So what have we learned? First, the merit system has lost its momentum. It had momentum up through about the 1990s, but it has been lost now. It has leveled off. Second, when deciding between a merit system and gubernatorial appointment as alternatives to judicial selection, there is not much of a difference between the systems with respect to diversity. Nevertheless, there is some symbolic value to the selector. Third, the selection systems that previously shaped levels of judicial diversity are no longer influential. They do not seem to be as strong as they once were. Fourth, policy makers are aware of this. They are even motivated by questions of judicial diversity for the very practical reason that they get the political capital and generally selectors are not unwise to that aspect. Last, gender diversity on the JNC is influential because that influences to some extent who is forwarded for ultimate consideration by the governor.

Thank you.

JUDGE STUDDARD: Thank you, gentlemen. Questions ladies and gentlemen?

AUDIENCE QUESTION: First, with regard to the five potential influences that you just listed, were those five categories or potential influences that you settled on for purposes of the research that you wanted to do, or were they what you found to be the only five real influences?

DR. LANIER: No. We looked to a number of them and we only gave you five. I think in the original study there was something like nine or ten. We did not want to have smoke coming out of your ears doing all ten at once.

AUDIENCE QUESTION: I gather you were focusing on Florida. Have you done anything that explores the differences around the country in rates of gender and ethnic diversity by the courts by selection system whether they are urban or suburban or small town or rural? For example, in New York, the minority community is very resistant to a move toward merit selection because they think that it will be bad for their constituency. In New York City, they have certainly made major strides toward ethnic diversity and gender diversity on the bench. If you get up above Westchester County or Putnam County, however, you would be hard pressed to find a woman judge or a judge of either gender or color who goes above family court.

DR. HURWITZ: We actually looked into that issue in our initial study, and we particularly looked at whether or not political subdivisions, where judges were either elected or selected in some sort of non-statewide race, made a difference. We looked to determine whether the smaller the district, the more likely women, and particularly minorities, would be excluded from the bench. We found absolutely no influence whatsoever in that regard, and we eventually dropped it from the model. But here is the caveat. Remember that we were looking at state supreme courts, courts of last resort, and state intermediate appellate courts. These are the big subdivisions. They are not the smaller subdivisions that would take place at a trial court level. I would suspect that there would be some differences there. But in these larger subdivisions of the state and statewide entirely, there was not a difference between the state and the subdivisions.

MR. KIRSCHENBAUM: Did you say between 1985 and 1999 the number of states which had commissions went from thirty-five to thirty-nine?

DR. HURWITZ: Yes, when you include both intermediate appellate court and supreme courts. These were just nominating commissions. If they did not have a retention system but did have a nomination, we included that one, and that went from thirty-five to thirty-nine.

MR. KIRSCHENBAUM: But your conclusion was that merit selection had lost its momentum?

DR. HURWITZ: Compared to what was going on in the 1950s and 1960s, yes.

MR. KIRSCHENBAUM: I would suggest that from thirty-five states with only fifteen left that were eligible to change to merit selections, you had four out of those fifteen, which is like twenty-seven percent, of the eligible states changed over in that fifteen years. There is an argument that a pretty big percentage of the remaining eligible states changed, and your research shows that when most states adopt merit selection systems they do not go back. You could say the momentum is really pretty good.

DR. HURWITZ: Well, I am not disagreeing at all with that argument. I think you are right. We are saying that the merit system seems to have legs and that it is keeping its momentum. It is remaining in states when it is already established. We are not losing it. For instance, legislative appointment systems are used in only a few states. There have been changes elsewhere as well and more shifting. What we wanted to say is that states still are interested in the merit system. There is still something symbolic. There is still something that seems interesting and right about bringing in this system to people who want to bring it in. You are right that there are diminishing returns, and there are only so many that can go that way, but more changes will continue to take place in the future. You are right, there is not as much opportunity for that. But we did find that it is leveling off. Justice Phillips said essentially the same thing last night, too.

MR. CARLTON: Again, I think this is somewhat a class in semantics. I think we need to speak in terms of appointed or elected systems, and then within them whether or not there is a merit element. You can have merit selection and merit election. The fact remains that 80 percent of state judges in America face the voters at one time or another in their careers.

DR. HURWITZ: We only looked at the initial selection, not the follow-up retention.

MR. CARLTON: You did not look at the retention, so the fact that you are looking at thirty-five states or so in the United States with judicial nominating commissions indicates half of those states could have some sort of election instead of appointment. The traditional notion of merit selection is being appointed as opposed to being elected.

AUDIENCE MEMBER: Just two points, and this is for Mark and Drew. First, did you factor in the amount of eligible black attorneys, for example, being a minority group, who were interested in becoming judges in a state? Even going back a little further, the number of minorities entering law schools in the state? You cannot get the attorneys without the academy accepting many applicants. Second, Tom Phillips discussed the word "Oreos," and whether diversity is really about just getting minorities on the courts or whether it is getting minorities who reflect the values of the community. Is it about the Clarence Thomases of the world or of Janice Rogers Brown?

DR. HURWITZ: Regarding your first question about the applicant pool, we looked at the number of people in a particular state who were attorneys in particular at the time that we were looking at it. It is a crude approach. Remember, when you are measuring things, the question is whether you have operationalized a proxy that is valid. We did not have data that said, "Here is the number of people who want to be judges." We did not do a survey or anything like that. But we did not also say, "Here is the number of people who are in law school." We had data on the people who are at this point eligible to become judges because they are lawyers. That was the crude way we looked at it. There are other ways of looking at it. Whether that was correct or not remains to be seen, but clearly the states that had higher minority populations of attorneys had a greater minority representation on the bench.

For the second question, the diversity issue, we looked at the issue of symbolic diversity. In other words, were there women or minorities on the bench? We did not look to the issue of whether or not there was diversity of ideology. That is a different question that can be looked at either by us or by others at a later point in time. We do not think that diversity of ideology is as important as some other people do for the specific symbolic integrity issues that diversity brings. It should not matter whether you have a Justice Clarence Thomas who is conservative, or his predecessor, Justice Thurgood Marshall, who was liberal. The point is that there is a person of color on the Supreme Court at this point. There is also a certain issue of symbolism that makes that representation important. We wanted to see from a straight numbers perspective whether or not these selection systems were influencing diversity. In the end, in the most modern cross section we have, we found that there was not much of a difference at all.

JUDGE STUDDARD: A.P.?

MR. CARLTON: Yes. I just wanted to say one more thing. I think Tom Phillips made the point last night very well. With the *White* decision, we throw the fat in the fire to move the discussion along. One of the things I did not say about the North Carolina experiment was that at the same time we went to non-partisan elections top to bottom with public financing, our supreme court issued new rules under *White* where we bought the "whole farm." We do not restrict our judicial candidates from any form of speech. They can literally say from the stump how they are going to rule on a particular case.

JUDGE STUDDARD: It sounded like you were saying, too, when you were speaking earlier, A.P., that the timing of that in relation to *White* and every little change was particularly important to your success in the legislature.

MR. CARLTON: I think so. I think it was important, and the chief justice and the supreme court took some heat for it, but I think that moved things along as well. Suffice it to say, I think what I would like to say in conclusion is that I think we are moving towards a new paradigm. The research results from these gentlemen are absolutely right. Merit selection as we have traditionally known it has stalled, and we have to find a new way. The *Justice in Jeopardy* report of the 21st Century Commission was an attempt to move that discussion along because it is clear that the American public is concerned. It is clear they want judges who are impartial, fair, and accountable.

JUDGE STUDDARD: I want to make this analogy in closing. Paying careful attention to the election process this political season, not so much dealing with judges but with the broader election that is going on in our country, following the polling that comes out minute by minute, we keep hearing about the undecided vote that persists at a fairly consistent level. You can sit there and you can ask how anybody can still be undecided at this point with such a stark contrast being offered in this political season. What those who claim to be in the know have told us is that many of those undecided voters say that they are not particularly happy with the incumbent, yet they are not sure they are ready for the unknown that is being offered to them as a change. How often is that true for all of us? I am particularly interested in the numbers. A.P. and Barbara mentioned earlier that the vast majority of voters, if asked, will say, "Yes, I want to continue to have a chance to elect my judges," and yet an even greater number of them express suspicion about the process and the role of money in that process. It seems to me that the same dynamic is appearing. I am not particularly happy with the system I

have but I am afraid of the unknown of what will happen if we make a change.

All of us standing in this room are particularly equipped to answer that question. Now that you all have been here today, you are all deemed experts. That does not make us monarchs of the system, instead it makes us stewards of the system, and it is important for us to go forward from here and share what we know with those who have the power to make the system better for the people that we as legal and judicial professionals serve.

I appreciate very much all of your participation in this process today and on the larger issue. Pat, once again, thank you, and I will leave it to you to close.

PROFESSOR LONGAN: Judge, I could not have said it better myself. Reform of judicial selection may be a game of bunt singles, and it may not be a race for the short-winded, but I think today has been very productive. I have learned much and I hope that all of you have as well. We very much appreciate that you came here for this Symposium. Thank you for coming and thanks again to the panel.

(SESSION CONCLUDED)

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