Judicial Selection in the States: A Critical Study with Proposals for Reform

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NOTES AND COMMENTS

JUDICIAL SELECTION IN THE STATES:
A CRITICAL STUDY WITH PROPOSALS
FOR REFORM*

I. INTRODUCTION

The basic consideration in every judicial establishment is
the caliber of its personnel. The law as administered cannot be
better than the judge who expounds it . . . .

We need judges learned in the law, not merely the law in
books but, something far more difficult to acquire, the law as
applied in action in the courtroom; judges deeply versed in the
mysteries of human nature and adept in the discovery of the
truth in the discordant testimony of fallible human beings;
judges beholden to no man, independent and honest
and—equally important—believed by all men to be indepen-
dent and honest; judges, above all, fired with consuming zeal to
mete out justice according to law to every man, woman, and
child that may come before them and to preserve individual
freedom against any aggression of government; judges with the
humility born of wisdom, patient and untiring in the search for
truth and keenly conscious of the evils arising in a workaday
world from any unnecessary delay. Judges with all of these at-
tributes are not easy to find, but which of these traits dare we
eliminate if we are to hope for evenhanded justice? Such ideal
judges can after a fashion make even an inadequate system of
substantive law achieve justice; on the other hand, judges who
lack these qualifications will defeat the best system of substan-
tive and procedural law imaginable.¹

The American system of justice is often praised for being
built on a foundation of laws, not individuals.² The opposite,

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by the Peoples National Bank of Washington, for financing the project; and the staffs of
the University of Washington Law Library, the American Judicature Society, and the
Institute of Judicial Administration for their cooperation in researching this article and
for the use of their facilities.

2. See, e.g., Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 654-55 (1952)
   (Jackson, J.); United States v. Lee, 106 U.S. 196, 220 (1882) (Miller, J.); 1 COMPLETE
   WORKS OF ABRAHAM LINCOLN 43 (J. Nicolay & J. Hay ed. 1894); PUBLIC PAPERS OF THE

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however, is more often the case. Most studied observers agree that the individual judge—"warts and all"—stands at the center of the judicial constellation and is its controlling force.3 "In the long run," Justice Benjamin Cardozo once wrote, "'[t]here is no guarantee of justice . . . except the personality of the judge.'"4 Or, as Professor Robert Leflar expressed it, "[t]he quality of our judges is the quality of our justice."

For most of this country's 200 years, with some conspicuous exceptions,6 the judicial system has been the recipient of consistent acclaim for its ability to resolve conflicts within the society efficiently and fairly.7 Recently, however, there has been increas-


4. B. Cardozo, The Nature of the Judicial Process 16-17 (1921), quoting Ehrlich, Judicial Freedom of Decision: Its Principles and Objects, 9 MODERN LEGAL PHILOSOPHY SERIES 65 (1917). This book by Cardozo was adapted from his William L. Storrs Lecture Series in 1921 at the Law School of Yale University at New Haven, Connecticut. Eugen Ehrlich was a Professor of Roman Law at the University of Czernowitz, and the 1917 article was a translation by Ernest Bruncken (omitting the first six pages) of Ehrlich's Freie Rechtsfindung und Freie Rechtswissenschaft, Leipzig, 1903. See also B. Cardozo, The Growth of the Law 56-60 (1924); Jones, supra note 3, at 124; B. Shientag, The Personality of the Judge (1944).


7. See, e.g., H. Lee, To Kill a Mockingbird 217-18 (1960) (the summation of Atticus Finch): One more thing, gentlemen, before I quit. Thomas Jefferson once said that all men are created equal . . . [but] [w]e know all men are not created equal in the sense some people would have us believe—some people are smarter than others, some people have more opportunity because they're born with it, some men make more money than others, some ladies make better cakes than others—some people are born gifted beyond the normal scope of most men.

But there is one way in this country in which all men are created equal—there is one human institution that makes a pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. That institution, gentlemen, is a court. It can be the Supreme Court of the United States or the humblest J. P. court in the land.

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ing concern about the administration of justice with much of the criticism centered on the performance of judges themselves. Although there undoubtedly are many highly qualified judges currently sitting, the record of judicial inadequacy and abuse is well enough established to raise the fundamental question: how can the quality of these most powerful and indispensable individuals be improved?

There are a variety of elements which contribute to the quality of judges presently on the bench and there are procedures for removing those who do not meet prescribed standards, but, as Roscoe Pound has written, "[t]oo much thought has been given to the matter of getting less qualified judges off the bench. The real remedy is not to put them on." The problem of judicial selection is an issue which deserves far more analysis than it has heretofore received. It is, therefore, to this critical question—specifically judicial selection in the states—that this article is directed.


9. Among the factors which an individual might consider before seeking or accepting a judgeship are the tenure and removal procedures, retirement regulations, staff allotment, administrative duties, the status of the particular court, and perhaps of greatest importance, the salary.

10. Pound, Introduction to E. Haynes, Selection and Tenure of Judges at xiv (1944) [hereinafter cited as Haynes]. Evan Haynes was a Professor of Law at the University of California and wrote this book as part of the Judicial Administration Series for the National Conference of Judicial Councils of which Dean Roscoe Pound of Harvard was Director and Arthur T. Vanderbilt was Chairman of the Executive Committee. The book contains a most valuable compendium of the constitutional and statutory history of judicial selection in the states from 1776-1944, at 101-35.

11. For material on the general subject of judicial selection see F. Klein, Judicial Administration and the Legal Profession: A Bibliography 173-204 (1963); S. Escovitz,
II. EVALUATIVE CRITERIA FOR JUDICIAL SELECTION

An inquiry into the complex problem of judicial selection necessarily involves a delineation of those qualities which are essential in a good judge as well as the establishment of certain criteria by which to assess the efficacy of the different judicial selection systems. While many students of jurisprudence have touched upon the issue of judicial competence, there have been...
too few rigorous efforts to isolate or specify certain qualifications which might be required of judicial candidates and to set some standard by which it is possible to "judge the judge.""\[^{13}\]

Similarly,

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Professor Rosenberg believed that if any group could claim to be experts on the judicial character it would be the judges themselves. He therefore submitted questionnaires to 144 judges, some of whom were attending the 1965 summer session of the National College of State Trial Judges in Boulder, Colorado, and others of whom were attending the August 1965 annual meeting of the National Conference of State Trial Judges in Miami Beach, Florida. Rosenberg found that the two groups reported nearly identical views, and he suggested in his study that these opinions fairly well represent the more than 3,000 judges who preside over major state trial courts in the country. In one question the judges were asked, "What qualities best equip a lawyer to become a trial judge?" To respond, the judges were asked to rate the following 23 qualities in what they personally felt to be their order of importance:

- Some trial experience
- Good health, physical and mental
- As a lawyer, worked long hours (i.e., industrious)
- Punctual
- Professional and neat personal appearance
- Experience in supervising subordinates
- Decisive, not dilatory
- Active in civic, community affairs
- Knowledge of community and resources
- Patient: able to listen with mouth closed, mind open
- Sense of humor
- Well above average law school record
- Above average reputation for professional ability
- Earning, or likely to earn, more than the office pays
- Aura of dignity
- Possessed of moral courage
- Less than 60 years of age
- Consideration for others
- Dedicated to trial bench as lifetime job
there have been few disciplined studies of the various processes by which judges are designated. An effective analysis of judicial selection, however, demands the establishment of just such evaluative criteria. Not until the "who" and the "how" of judicial selection are critically considered and not until it is recognized that the quality of judges is intrinsically related to the way in which they are chosen, can responsible conclusions be drawn and practical reforms offered.

The personal and individualistic role which the judge plays in our society invites subjective, and therefore divergent opinions as to what exact attributes a judge should or should not have. Socrates, for example, maintained that a good judge should "hear courteously, answer wisely, consider soberly, and decide impartially."14 In the 17th century, the British judge Sir Matthew Hale prepared for himself the following set of judicial guidelines which the biographer Lord. Campbell has suggested should be "inscribed in letters of gold on the walls of Westminster Hall":15

Things necessary to be continually had in remembrance.
   1. That in the administration of justice, I am intrusted for God, the King and country; and therefore,
   2. That it be done, 1. uprightly; 2. deliberately; 3. resolutely.

-Past honorable partisan political activity
-Active in professional associations and work
-Reputation for fairness, uprightness
-Family situation

Most highly rated, in the following order, were:
(1) Moral courage
(2) Decisiveness
(3) Reputation for fairness and uprightness
(4) Patience
(5) Good health, physical and mental
(6) Consideration for others

Those qualities rated least important, in the following order, were:
(23) Past honorable partisan political activity
(22) Higher earnings in practice than as a judge
(21) Active in civic and community affairs
(20) Experience in supervision of subordinates
(19) Well above average law school record
(18) Active in professional associations and work

It is noteworthy that the trial judges gave the highest ratings to the more subjective personality characteristics, whereas they gave their lowest scores to the more quantitative criteria. Rosenberg, supra note 3, at 1066-69.

3. That I rest not upon my own understanding or strength, but implore and rest upon the direction and strength of God.

4. That in the execution of justice I carefully lay aside my own passions, and not give way to them, however provoked.

5. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable and interruptions.

6. That I suffer not myself to be prepossessed with any judgment at all, till the whole business and both parties be heard.

7. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.

8. That in business capital, though my nature prompt me to pity, yet to consider, there is also a pity due to the country.

9. That I be not too rigid in matters purely conscientious, where all the harm is diversity of judgment.

10. That I be not biassed with compassion to the poor, or favour to the rich, in point of justice.

11. That popular, or court applause, or distaste have no influence into anything I do, in point of distribution of justice.

12. Not to be solicitous what men will say or think, so long as I keep myself exactly according to the rules of justice.

13. If in criminals it be a measuring cast, to incline to mercy and acquittal.

14. In criminals that consist merely in words, when no more harm ensues, moderation is no injustice.

15. In criminals of blood, if the fact be evident, severity is justice.

16. To abhor all private solicitations, of what kind soever, and by whomsoever, in matters depending.

17. To charge my servants, 1. Not to interpose in any business whatsoever; 2. Not to take more than their known fees; 3. Not to give any undue precedence to causes; 4. Not to recommend counsel.

18. To be short and sparing at meals, that I may be the fitter for business.¹⁶

¹⁶ G. BURNETT, LIFE AND DEATH OF SIR MATTHEW HALE 35-36 (1682). See also BACON, Speech to Justice Hutton in 6 THE WORKS OF FRANCIS BACON 201-02 (Spennung ed. 1872).
More recently, the late Chief Justice of New Jersey, Arthur T. Vanderbilt, argued that there were three “essentials” which should be prominent in any definition of a true judge—impartiality, independence, and immunity. Vanderbilt explained that:

[An] essential of a sound judicial system is, of course, a corps of judges, each of them utterly independent and beholden only to the law and to the Constitution, thoroughly grounded in his knowledge of the law and of human nature including its political manifestations, experienced at the bar in either trial or appellate work and preferably in both, of such a temperament that he can hear both sides of a case before making up his mind, devoted to the law and justice, industrious, and, above all, honest and believed to be honest.

Despite the lack of a firm consensus, certain fundamental qualifications appear consistently throughout and are common to these and most other assessments of the judicial character: (1) a thorough working knowledge of the law; (2) impartiality; (3) decisiveness; (4) independence of action; (5) honesty, fairness, and moral courage as well as the capacity to project an honest, fair, and morally courageous image; and (6) an ability to relate positively to people in general—that is, the ability to encourage a mutual trust between those who sit on the bench and those who may appear before it. These six basic characteristics are the stan-
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dards to which the judicial character will be held accountable in this article when considering the different ways in which judges are chosen.

The controversy over the selection of judges has been subject to even less exacting scrutiny than the judicial character. As a result, too little time and effort have been expended on devising standards by which to appraise judicial selection systems. Fortunately, former New York University Law School Dean, Russell D. Niles, developed a useful set of criteria, making just such an assessment possible. Dean Niles wrote that any group charged with selecting judges should:19

1. Know what abilities and qualities are essential to a good judge.
2. Have the means of finding the facts about candidates.
3. Exercise comparative judgment—not merely determine whether or not candidates meet an acceptable standard, but decide who among many acceptable candidates are the best qualified.
4. Have the ability and the opportunity to encourage the ablest lawyers to become candidates.
5. Be independent of the appointing authority.
6. Be free of the reward system of politics.
7. Be free of domination by the organized bar, but able to make the best use of the organized bar in the selection process.
8. Have no continuing relationship with a judge after he is on the bench.
9. Recognize the importance of having a judiciary that is representative of the various elements in the society that it serves.

The prerequisites for the qualified judge have been established. To best evaluate which process of judicial selection would be most likely to produce that judge, the selection systems under discussion here will be held accountable to the Niles criteria.

It is advisable when considering these two sets of criteria to remember that for any one method of judicial selection to have a substantial impact on the judiciary system as a whole, it must not only meet these quality standards, but it must also be practical enough to adapt to the social and legal climate. As the history of judicial selection shows, the evolution of time and thought is capable of putting enormous stress on bureaucratic processes which are too rigid. The most efficient and effective judicial selec-

19. Niles, supra note 11, at 243-44.
tion system will be that one which is as receptive to its environment as it is faithful to its basic principles.

III. HISTORY OF JUDICIAL SELECTION IN THE STATES: AN OVERVIEW

In Medieval England judges were an integral part of the monarchy. Judicial tenure was determined by loyalty to a particular King or Queen, not by personal competence or equity. Judges served at the whim of the Crown and when the monarch’s rule terminated, so did the judges’ commissions.

Slowly, however, this dependent relationship began to change and judges became progressively more independent of the Crown. In the Magna Carta, the King stipulated, “We will appoint as justices . . . only men that know the law of the realm and are minded to keep it well.” After 1688, as a result of the revolution against the Stuarts, the monarch no longer held the power to dismiss judges at will. By William and Mary’s time, judicial appointments were more apt to be based on merit, and this trend was finally and firmly established in 1700 by the Act of Settlement which provided that:

Judges commissions be made quamdiu se benegesserint [as long as they will conduct themselves properly], and their salaries ascertained and established; but upon the address of both houses of parliament it may be lawful to remove them.

Commissions still ended automatically, however, with the death of a monarch, and it was not until 1760 that a statute was passed which provided that:

[C]ommissions of the Judges . . . shall . . . remain in full force during good behavior notwithstanding the demise of His Majesty . . . or of any of his heirs and successors . . . .

The Act of Settlement did not apply to Britain’s overseas territories, which meant that all colonial judges in America were

24. 12 & 13 Will. 3, c. 2, § 3, para. 8 (1700).
25. 1 Geo. 3, c. 23, § 1 (1760).
appointed directly by the King and served exclusively at his pleasure.\textsuperscript{26} The inequity of this situation did not go unnoticed in revolutionary America and was specifically cited in the Declaration of Independence: "He [the King of England] has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."\textsuperscript{27} After independence, the 13 new states adopted various judicial selection systems designed to do away with individual control of the judiciary. Seven states provided for appointment by the legislature;\textsuperscript{28} five states, by the governor and a council;\textsuperscript{29} and one state, Delaware, by the governor and the legislature.\textsuperscript{30} Furthermore, all the states which entered the Union, beginning with Vermont in 1791 and including Texas in 1845, utilized either a legislative or a modified gubernatorial system of selection.\textsuperscript{31}

As the new nation grew and suffrage was extended, there soon were calls for the popular election of judges. These proposals seem to have been designed not so much to improve the judiciary, but rather as a manifestation of the populist ideology inspired by Andrew Jackson and his contemporaries.\textsuperscript{32} As Evan Haynes has observed:\textsuperscript{33}

\begin{quote}
[T]he fundamental causes of that change had very little to do with the relative merits of ... that system of judicial selection and tenure but were rather the ideas and impulses of a violent swing toward the democratization of government generally. The more mature and seasoned countries of Europe, who experienced the same revolution in government, preserved the idea that judges should be competently selected, and free of political pressure; but in America, the ebullient enthusiasm and intemperance of youth and inexperience carried all before it.
\end{quote}

Mississippi became the first state to adopt a completely elected judiciary in 1832,\textsuperscript{34} but it was not until after the New York Consti-

\begin{itemize}
\item 26. ASHMAN & ALFINI, supra note 13, at 8.
\item 27. U.S. Declaration of Independence, Ninth Specification (1776).
\item 29. Maryland, Massachusetts, New Hampshire, New York, and Pennsylvania. Id. at 115, 121, 123, 127.
\item 30. Id. at 106.
\item 31. Id. at 101-35.
\item 32. Id. at 88. By the election of Andrew Jackson to the Presidency in 1828 all but two states had universal manhood suffrage. See generally A. SCHLESINGER, THE AGE OF JACKSON 322-33 (1945).
\item 33. HAYNES, supra note 10, at 100-01.
\item 34. MISS. CONST. art. 6, §§ 2, 11, 16 (1832). Mississippi abandoned the elective system
\end{itemize}
tutional Convention of 1846 that a major shift to elected judges began.

In post-colonial New York, societal control was highly stratified and the economic and governmental power in the state was concentrated in the hands of a very few landed families. In post-colonial New York, societal control was highly stratified and the economic and governmental power in the state was concentrated in the hands of a very few landed families. Since judges were appointed by the governor, they naturally tended to be part of the social establishment and could be counted upon to uphold the often oppressive leases of the landlords.

Nowhere was the power of the landlord in politics reflected more impressively than in the social background of the officials who functioned as governors, judges and attorneys, councilors and assemblymen.

In reaction to this domination by the landed classes, New York's substantial tenant population turned to political action.

in 1868, Miss. Const. art. 6, §§ 2, 3, 11 (1868), returned to it in 1910, and retains the elective system at present, Miss. Const. art. 6, §§ 145B, 153, 171; HAYNES, supra note 10, at 117.

35. See, e.g., Niles, The Popular Election of Judges in Historical Perspective, 21 Record of N.Y.C.B.A. 523, 524 (1966) [hereinafter cited as Historical Perspective]. See generally H. CHRISTMAN, TIN HORNS AND CALICO (1945); R. FOWLER, HISTORY OF THE LAW OF REAL PROPERTY IN NEW YORK (1895); D. FOX, DECLINE OF THE ARISTOCRACY IN THE POLITICS OF NEW YORK (1919); I. MARK, AGRARIAN CONFLICTS IN COLONIAL NEW YORK 1711-1775 (1940). The New York State situation is fairly representative of what happened in most other states during the same period, see, e.g., HAYNES, supra note 10, at 86.

36. See, e.g., Lindsay, The Selection of Judges—Does it Serve the Ends of Justice?, 50 Judicature 223, 224 (1967). The New York Constitutional Convention of 1777 modified the Governor's authority to appoint judges by creating a Council of Appointments to pass on nominations, but this Council eventually became a patronage vehicle so the Constitutional Convention of 1821 returned the judicial appointing power to the Governor.

37. Historical Perspective, supra note 35, at 523; New York State Assembly Document No. 156, Mar. 28, 1846, Report of the Select Committee on so much of the Governor's message as relates to the difficulties existing between the proprietors of certain leasehold estates and their tenants, &: FIAT JUSTITIA (pseud.), ANTI-RENT CONTROVERSY, Oct. 1865 (this pamphlet was a reprinting of 17 anonymous articles that had appeared in the Albany Daily Express the preceding August discussing the landlord-tenant problems in New York); Review of the Decision of the Court of Appeals upon the Manor Question, 1859, (privately printed) (this pamphlet was probably authored by H.J. Colvin and Anson Bingham, two leading authorities on New York property law who were sympathetic to the case of the tenants); Speech by Rev. Harry F. Harrington, The Responsibility of American Citizenship: A Sermon Preached on the Occasion of the “Anti-Rent” Disturbance, Dec. 22, 1844 (pamphlet in New York State Library, Albany, New York).


39. Historical Perspective, supra note 35, at 523-28. Besides the political activity there was also a great deal of physical strife and violence. In 1846 the situation was so serious that a state of insurrection was declared and it was not safe for either landlords or their agents to travel far afield. See generally P. MILLER, A GROUP OF GREAT LAWYERS OF...
At the 1821 Constitutional Convention they joined with the agrarian reformers and urban workers to abolish the property qualifications for voting. At the 1846 Convention—armed with the vote, supported by the Jacksonian Democrats, and aroused by the conviction of one of their leaders, Dr. Smith Boughton, in 1845 on the suspicious charge of "highway robbery"—the reformers amended the constitution to allow for popular election of judges in the state.

New York set off a chain reaction. By 1856, 15 of the 29 states had swung over to the elective method of judicial selection and every state that entered the union after that time, until Alaska in 1959, adopted the electoral approach. Because of the limited social base on which the appointive system operated, the elective system broadened the composition of the judiciary somewhat, but nonetheless public dissatisfaction and disillusionment soon set in. Among the first judicial reform groups inside the legal community to challenge the elective method was the Association of the Bar of the City of New York which was formed in 1870 largely in an effort to restore the confidence of the public in the bench. By 1880 a number of other bar associations, including the

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Columbia County, New York (1904); Niven, A Chapter of Anti-Rent History, 24 Albany L.J. 125 (1881).

40. Historical Perspective, supra note 35, at 524.
41. Id.
42. N.Y. Const. art. VI, §§ 2, 12, 14 (1846).
43. With some minor changes, judicial selection in New York has remained elective since 1846. N.Y. Const. art. VI, §§ 2, 6c, 9, 10a, 12b, 13a, 15, 16g, 16h, 17d, 21. See, e.g., Kaminsky, supra note 8, at 502-03; Lindsay, 50 Judicature, supra note 36, at 224-25 (1967). The New York Constitutional Convention of 1894 allowed the Governor to appoint judges to the newly created Appellate Division of the Supreme Court and the Court of Claims, and permitted local executives to appoint certain local judges. It is this latter power that allows the Mayor of New York City to appoint judges to the New York City Criminal and Family Courts. At the Conventions in 1915 and 1921 there were major unsuccessful efforts to abolish the elective system. Id.

There have recently been efforts in New York State to have judges of the court of appeals appointed rather than elected. New York State Legislature Joint Committee on Court Reorganization, Revised Preliminary Report 1-7 (Feb. 26, 1974).

44. Historical Perspective, supra note 35, at 527.
45. Id.
46. Ashman & Alfini, supra note 13, at 10. See section IV infra.
American Bar Association, had been established to help improve the quality of the judiciary in this country.49

Many states with the elective system were concerned about the adverse effect which politics was having on judicial selection and looked for ways to curb political abuse and, at the same time, retain the popular vote. Around the turn of the century, a number of different measures were adopted which were intended to insulate judicial elections from politics.50 The most popular of these was the nonpartisan election,51 but many states also implemented such procedures as special nominating committees, direct judicial primaries, and shortened ballots.52

Judicial reform was significantly augmented on August 29, 1906, when a young Roscoe Pound delivered his historic address, "The Causes of Popular Dissatisfaction with the Administration of Justice" to the annual meeting of the American Bar Association.53 In that speech he observed:54

[W]e must not be deceived by this innocuous and inevitable discontent with all law into overlooking or underrating the real and serious dissatisfaction with the courts and lack of respect for law which exists in the United States today . . . .

. . . Putting courts into politics and compelling judges to become politicians, in many jurisdictions has almost destroyed the traditional respect for the Bench.

Seven years later, Pound, Herbert Harley, John Wigmore, and others founded the American Judicature Society for the purpose of encouraging efficiency and quality in the administration of justice.55 The next year, 1914, Albert M. Kales, a member of

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49. ASHMAN & ALFINI, supra note 13, at 10.
50. Id.; WATSON & DOWNING, supra note 13, at 8; e.g., Matson, Let Elected Commission Choose Judges, 14 J. AM. JUD. SOC'Y 13 (1930).
51. See generally Moos, Judicial Elections and Partisan Endorsement of Judicial Candidates in Minnesota, 35 AM. POL. SCI. REV. 69 (1941); Non-Partisan Ballot in Oregon, 16 J. AM. JUD. SOC'Y 44 (1932) (report of a study by the Oregon State Bar Association on judicial selection and tenure).
54. Pound, supra note 6, at 396, 415.
55. See Introduction, 1 J. AM. JUD. SOC'Y 3 (1917). Since its founding in 1913, the
Wigmore's faculty at Northwestern Law School and the director of research for the Society, devised a judicial selection method intended to combine the benefits but avoid the weaknesses of both the elective and appointive procedures. He suggested that judges be appointed by the chief justice of the state who should be popularly elected on a frequent basis. Kales proposed, in addition, that the appointed judges have their performance reviewed periodically through elections in which the voters would decide only the question of whether a particular judge should be retained. The eminent British economist and political scientist, Harold Laski, suggested in a 1926 article that the executive rather than the chief judge should make the appointments. Two years later the American Judicature Society adopted the Kales plan with the Laski amendment, and the American Bar Association followed suit in 1937. In 1940, after similar measures had been

American Judicature Society, through the writings and activities of its officials, staff, and members, has probably been the most active force for judicial selection reform in this country. Especially influential has been its publication, the Journal of the American Judicature Society, which changed its name to Judicature in 1966 (beginning with Volume 50). The impetus for the formation of the Society was a letter sent to over 100 lawyers throughout the country by Herbert Harley suggesting the formation of an organization to study and propose reforms for more equitable and efficient judicial administration; Harley, A Circular Letter Concerning the Administration of Justice, Oct. 7, 1912. In that letter Harley anticipated that the issue of judicial selection would long concern the legal community: "The question of an elective or appointive judiciary is not one to be settled in any casual treatise. We may never settle it absolutely." Id. at 11. The early writings of the Society on the subject of judicial selection include: Hall, The Selection, Tenure and Retirement of Judges, 2 J. Am. Jud. Soc'y 37 (1919); Matson, Let Elected Commission Choose Judges, 14 J. Am. Jud. Soc'y 13 (1930); Editorial, 3 J. Am. Jud. Soc'y 67 (1919); Selecting and Retiring Judges, 3 J. Am. Jud. Soc'y 165 (1920); Selecting Judges in Large Cities, 14 J. Am. Jud. Soc'y 155 (1931); Should Bar Choose Judges?, 13 J. Am. Jud. Soc'y 134 (1930); Who Should Choose Our Judges?, 8 J. Am. Jud. Soc'y 48 (1924).

56. BULL. No. VI, Am. Jud. Soc'y 29 (1914); Kales, Methods of Selecting and Retiring Judges in a Metropolitan District, 52 Annals 1 (1914) (these articles were adopted from Kales' address to the Minnesota State Bar Association in St. Paul on August 20, 1914). See also A. KALES, UNPOPULAR GOVERNMENT IN THE UNITED STATES (1915); Kales, Methods of Selecting and Retiring Judges, 11 J. Am. Jud. Soc'y 135 (1928); Selecting and Retiring Judges, 3 J. Am. Jud. Soc'y 165 (1920). Dean Dorothy W. Nelson of the University of Southern California Law Center has suggested that it may be wise to return to Kales' original suggestion of appointment by the Chief Judge. Nelson, 36 S. Cal. L. Rev., supra note 12, at 53-54. Professor Delmar Karlen of New York University Law School, a former Director of the Institute of Judicial Administration, has made a similar suggestion. D. Karlen, JUDICIAL ADMINISTRATION: THE AMERICAN EXPERIENCE 30-31 (1970).


WHEREAS, The importance of establishing methods of Judicial Selection that will be most conducive to the maintenance of a thoroughly qualified and
defeated in two other states, the voters of Missouri adopted a modified version of the Kales-Laski plan for its supreme court, its appellate court, and for one of its local jurisdictions.\textsuperscript{60}
The Missouri plan requires that the governor appoint to the court one of three names that are submitted by a judicial nominating committee. This committee is chaired by the chief justice of the state supreme court and consists of three lay members appointed by the governor and three lawyers elected by the bar. After sitting for the first year, a judge is then required to run in an approval/disapproval election, and at the completion of each term must run in a similar election in order to continue in office. If the majority votes for disapproval, then the judge must step down at the end of the term and a vacancy is declared. As Table I and Appendices II, III, IV, V, and VI indicate, the adoption of the plan in Missouri acted as a catalyst for the adoption of similar plans in other states, either by constitutional amend-
ment, statute, or voluntary arrangement on the part of the appointing authority.68

**TABLE I**

This table indicates the time when judicial selection plans similar to that adopted in Missouri were first put into effect in various jurisdictions and the manner in which they became effective. For the current status of these plans see Appendices IV, V, and VI.

**Key:**
- C - Constitutional
- S - Statutory
- V - Voluntary

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<th>Year</th>
<th>Missouri (C)</th>
<th>Alabama (C)</th>
<th>Colorado (C)</th>
<th>Arizona (C)</th>
<th>Alaska (C)</th>
<th>Idaho (S)</th>
<th>District of Columbia (S)</th>
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<td>1940</td>
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<td>1970</td>
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68. Some appointing authorities have adopted various forms of voluntary Missouri procedures. It is important to remember that although these programs are usually binding on the current executive, they can be easily changed or dispensed with by his or her successor. The Appendices include the major voluntary plans. See State of Georgia, Executive Order, Judicial Nominating Commission for the State of Georgia, Apr. 28, 1975; State of Maryland, Executive Order, Court of Appeals of Maryland, Appellate and Trial Court Judicial Selection Regulations, Dec. 18, 1974; Commonwealth of Massachusetts, Executive Order No. 114, Judicial Nominating Commission, Jan. 3, 1975; State of New York, Executive Order No. 5, Feb. 21, 1975; Commonwealth of Pennsylvania, Executive Order 1973-5, Creation of the Appellate Court Nominating Commission and Trial Court Nominating Commission, As Amended Mar. 6, 1975; American Judicature Society, Report No. 36, Voluntary Merit Selection Plans (R. Lowe & J. Alfìni ed. 1972); Lowe, Voluntary Merit Selection Plans, 55 Judicature 161 (1971); Rosenman, A Better Way to Select Judges, 48 J. Am. Jud. Soc'y 86 (1964) [hereinafter cited as Rosenman]; Boston Globe, Sept. 14, 1975, at A5, col. 1; N.Y. Times, Feb. 24, 1975, at 1, col. 1; N.Y. Times, Feb. 28, 1975, at 1, col. 1.

69. Table I is primarily adapted from Lowe, Voluntary Merit Selection Plans, 55
Appendix VI outlines the current status of judicial selection in the states. Eight states use straight gubernatorial appointment, and five provide for election by the legislature. However, the great bulk of states either use election (both partisan and nonpartisan) or some variation of the Missouri plan.

IV. ELECTIVE JUDICIAL SELECTION

The case for elective judicial selection centers on two principal arguments: the open nature of elections and the appeal of political competition. Citing America’s tradition of republican government, proponents of judicial elections claim that the process of electing judges is the most open and straightforward method of selection, and further, that popular participation at the polls produces the beneficial result of a judiciary which is both representative of and accountable to the electorate. It is argued as well that since judges are part of our political life, the competitive political election serves as the best mechanism by which to educate the public about judicial candidates and insure that judges are responsible to the people.

The arguments for elective judicial selection are theoretically appealing but, in fact, misleading. In spite of our republican tradition, an elected judiciary was not part of America’s democratic experiment. On the contrary, as the history of judicial selection...
in this country demonstrates, the Founding Fathers did not object to the appointment of judges per se, but rather to the way in which the concept was abused by King George. Upon the grant of independence, each new state opted for a method of judicial selection which had its basis in the appointive approach. Furthermore, when the election of judges came into vogue in the 1840's and 1850's, it did so in response to a particular social impulse, not in an attempt to return to a specific judicial tradition.

Similarly, the assumption that the election of judges is an open method of selection has little basis in fact. In many instances, the theoretical process of free judicial elections does not, in practice, exist. What does exist more often is a system of judicial appointment dominated by party and government leaders and supported, often unwittingly, by the organized bar and the judges themselves.

In many jurisdictions, for example, the vacation of a judgeship before the end of a term transfers to the executive the right to appoint an interim successor. This has two major ramifications: it oftentimes allows the executive to make unrestricted appointments, and it confers upon the appointee the status of incumbent, which in elective judicial contests is practically tantamount to victory in the next election. Likewise, in non-incumbent elections, it is common practice for political parties to combine their forces informally, divide prospective seats among themselves and cross-endorse their precontracted contestants. True competition is thus substantially diminished and victory for the pre-arranged judicial candidates is virtually assured. It was this particular procedure which prompted the Association of the Bar of the City of New York to comment in 1932 that:

74. See notes 28-30 supra.
75. Historical Perspective, supra note 35, at 526. See generally note 35 supra.
77. See, e.g., Newsday, Sept. 6, 1975, at 31, col. 1.
78. The Association of the Bar of the City of New York, Special Report of the
The elective system has not actually transferred the power of selection of judges from some person or group of persons to the people . . . but has merely permitted them [the electorate] to vote for candidates selected by the managers of the dominant political parties, with little or no control over the choice of the candidates, with the result that the elective system simply substitutes for a responsible agent of appointment an obscure and irresponsible one . . . .

As surprising as it may seem, it has been estimated that in some districts over 90 percent of the judges on the elected bench arrived there either by appointment or through bi-partisan endorsement.

In many instances, the elective method of judicial selection creates its own weaknesses. The decisions of the voters in these elections are rarely based on a consideration of the qualifications of competing candidates. Judicial contests in districts with lopsided political majorities, for example, are little more than *fait accomplis*, particularly since most judicial candidates ride to victory or defeat not on their own abilities, but rather on the coat-tails of their party colleagues running at the head of the ticket. Similarly, competent judges can be swept out of office, regardless of their individual merits, as the result of a strong national political tide which bears no relation to the judicial contest involved. As Harold Laski has concluded:

The people do not, in fact, choose their judges. They decide between candidates of opposing parties, and with rare exceptions, they merely vote for the color they happen to prefer.

Even in districts where pre-election meddling is minimal and political odds are equitable, voters may still be swayed by the

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> It [the elective system] pretends that the people select the judges. That is the greatest farce that has ever been enacted in the history of democracy . . . .

> The selection of judges is made, not by the people, but by the leaders of the predominant parties . . . .


opinions of influential outside forces. One illustration is the case of the organized bar. In close judicial elections the public and the press often look to the bar associations as neutral sources of information and guidance. A bar association will, however, occasionally take an unusually strong position in a judicial contest. Although a stated preference is certainly ethical, it raises some vexing questions about the power of the bar. Most disturbing is the fact that such endorsements tend to come very late in a race, thereby severely limiting the opportunity for rebuttal. In any event, these endorsements stand virtually uncontradicted since there is no organization with the authority or reputation of the bar to counterbalance, much less rebut, the latter's more energetic advocacies. It is important that those who specialize in the law pass on their knowledge of the judiciary to the electorate, but unfortunately there is sometimes a thin line to be drawn between the offering of neutral opinions and voter manipulation.

Defenders of an elected judiciary have augmented their assumption that the election of judges is a free and open process by citing the healthy competition inspired by political contests. Although the partisan political system has proved to be a valuable governing mechanism in many areas of public concern, its positive attributes are often overshadowed by its defects when applied to judicial selection. The disturbing effects which the pol-


In a national poll taken on this matter, Americans responded by a large margin that their local judges were chiefly selected on the basis of politics and not their judicial qualifications. The Gallup Poll; AIPO No. 589, Quest. 21, Sept. 1957 (data located at Roper Public Opinion Research Center, Williamstown, Massachusetts). Additionally, Ameri-
political environment has on the judiciary prompted this observation from an American Bar Association report:82

There is no harm in turning a politician into a judge. He may become a good judge. The curse of the elective system is that it turns every elected judge into a politician.

Supporters of elective judicial selection have further stated that it is a mistake to deviate from that system since it has produced some outstanding judges.83 Not only, however, is there no evidence to suggest that an elected judiciary is in any way more competent than one which is responsibly appointed, but the prospect of a political election has undoubtedly discouraged many qualified individuals from seeking an elected judgeship. As Arthur Vanderbilt has written:84

Many desirable potential judges . . . are disinclined to encounter the recurring hazards of a political campaign for election, and so the field of choice is unfortunately narrowed.

A major fault of the elective system is that the political recruitment of judicial candidates tends to be based not on character qualifications but, instead, on individual service to the party.85 As Wallace Sayre and Herbert Kaufman concluded with

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85. E.g., Singer, Kenyon & Korn, Towards Better Judges 5-7(1961) (Citizens Union Research Foundation, New York City):

[T]he selection of the judiciary . . . whether by election or appointment, is embedded in politics. It forms, in fact, one of the principal mainstays of our political and district leadership system. A judgeship is one of the biggest plums in the patronage larder. . . .

The politicians have a vested interest in the judiciary for three reasons. First, the posts are highly desirable in themselves. . . . Second, each judgeship carries in its train a number of lucrative minor posts which a judge beholden to the leader for his office is likely to fill with persons named by the leader. Third, higher courts have considerable patronage dispensing powers . . . .

. . . . It has been estimated that about 93% of New York City’s judges are members of the Democratic Party. This does not mean that more Democrats than Republicans have judicial qualifications; it merely means that the party takes care of its own.
respect to recruiting methods in New York City:86

The court system provides much of the fuel for party engines . . . . [P]redominant among the ranks of those who give un-stintingly of their time and energy and money to their party are lawyers striving for positions on the bench, and both lawyers and nonlawyers endeavoring to establish claims on other court posts. On the one hand, this enables the parties to recruit, hold and motivate a large body of willing, industrious and often able workers in their cause. On the other hand, it helps the parties maintain a measure of discipline in their ranks . . . . For jobs of this kind, people are willing to work and wait . . . [and] accept the onerous chores of party activity . . . .

Political activity can basically be divided into two types: that which involves the development of governmental policies responsive to the needs of a heterogeneous society and that which seeks to widen a power base primarily for the sake of increasing political control. Although we are inclined to condone the former and condemn the latter, these tasks are by no means mutually exclusive. The judicial candidate who is a loyal and hardworking party member may make a competent public official. However, if party servitude is all that is required of judicial contestants, there is no guarantee—and, in fact, little hope—that they will meet any of the six qualitative criteria established in section II to identify the proficient judge.87

Once they become candidates, prospective judges are then faced with the ordeal of a campaign. Not only must judicial candidates solicit financial contributions for their own campaigns, but they are often requested to make a monetary donation to the party in anticipation of the well-paying job to come. Both of these practices encourage serious problems of undue influence and conflict of interest.88 Furthermore, the advantages which the public

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86. W. Sayre & H. Kaufman, Governing New York City 538 (1960). See also E. Costikyan, Behind Closed Doors (1966); M. Tolchin & S. Tolchin, To the Victor . . .; Political Patronage from the Clubhouse to the White House (1971). The issue of political recruiting practices is a nationwide problem of which New York City is representative. See, e.g., Brownell, Too Many Judges are Political Hacks, Saturday Evening Post, Apr. 18, 1964, at 10.

87. E.g., Rosenman supra note 68, at 92: [T]he [New York City] Mayor's [judicial selection] committee has never considered political activity as a disadvantage to a candidate but rather an asset. It has publicly so stated; but, at the same time, it has rejected political service as the sole, or even the major, qualification for recommendation.

88. E.g., W. Sayre & H. Kaufman, Governing New York City 543 (1960): Like all organizations of the modern world, parties need money to operate.
Judicial Selection has been led to expect from judicial electioneering are greatly restricted by the ethical regulations of both the bar and the courts. Indeed, unless a candidate has been guilty of some gross professional or judicial abuse, there are very few issues which may be openly aired for the benefit of the voting public. Judicial campaigns are therefore principally ceremonial with minimal give and take between prospective judges and their electorate. Simi-

Clearly, one of the primary reasons the court system is of such profound concern to the parties is that this is where a part of their money comes from. See note 92 infra. See also D. Eaton, Should Judges Be Elected (1873); Tolchin & Tolchin, How Judgeships Get Bought, New York Magazine, Mar. 15, 1971, at 29; N.Y. Times, Sept. 27, 1973, at 1, col. 5; Newsday, Sept. 6, 1975, at 3, col. 1.

90. INSTITUTE OF JUDICIAL ADMINISTRATION, REPORTS TO THE TEMPORARY COMMISSION ON THE STATE COURT SYSTEM, ON SELECTION, REMOVAL AND RETIREMENT OF JUDGES 13 (1972); How To Be Elected Judge in Detroit, 12 J. Am. Jud. Soc'y. 186 (1929); N.Y. Times, Sept. 7, 1975, at 29, col. 1.

These ceremonial campaigns do not allow candidates to become acquainted with the needs and wishes of their electorate, nor do they particularly inform the voter. The following is Probate Judge Louis Kohn's description of judicial campaigning in St. Louis County before the Missouri plan was extended to that district in 1970:

The ordeal . . . is similar to that of a candidate for public office. But it is in no way geared to select the person who will make the best judge . . . .

If our future judge has primary opposition he must attend every township meeting, every township picnic, every card party and every kind of party function to solicit support. If he has no opposition he still must make the endless rounds of meetings.

Nomination or endorsement really turns out to be a question of deciding who is the best candidate on the basis of the three-minute talk the candidate gave at the meeting, or the candidate's physical appearance, or how big a contribution he made to the township campaign fund.

St. Louis County has 18 townships and every one has at least one political club and some have as many as six . . . . The candidate must make as many as three or four speeches in one night if he is eager to win . . . .

When a candidate goes to political meetings he usually finds himself just a lone individual in a large group of candidates for senator, governor, supervisor, prosecuting attorney, and magistrate.

The major candidates are usually allotted 10 minutes for speech-making. Judicial candidates are given three minutes. Actually, if they are in luck they may be allowed to stand up and give a little wave to the crowd.
larly, some incumbent candidates are tempted to resort to spectacular publicity stunts and courtroom buffoonery to compensate for the constraints placed upon them by the judicial code of behavior. The activities of such "judicial Barnums" ultimately deter courtroom efficiency and damage the public's estimation of the judicial system. The most objectionable result of this process of political recruitment and election is the creation of a judiciary dependent on political sponsors for its position and tenure. Judges must be concerned solely with justice, and their actions should be governed only by the Constitution, the laws, and their own judgment. More than any other public officials, it is imperative that judges be independent of outside influences and pressures in carrying out their duties. A judiciary concerned with the "politics" of its behavior can only be that much less concerned with dispensing justice.

To those who balk at the less savory side of party politics, supporters of an elected judiciary offer the nonpartisan election as a proper corrective. However, nonpartisan judicial elections neither decrease voter manipulation nor increase the quality of the judiciary. While the nonpartisan election certainly reduces the instance of political abuse, it also further diminishes the already dim prospect of fair and healthy competition. Former President William Howard Taft, who would eventually become Chief

By staying till the end of the meeting, they will have an opportunity to mingle with the crowd and perhaps induce someone to take some campaign literature and bumper stickers.

The round of meetings, picnics, card parties and coffees is the future judge's daily fare in the three months preceding the primaries . . . .

In general elections the judicial candidate is shunted even further into the background at political meetings. The big guns of the campaign are getting all the attention now. The most an aspiring judge can hope for is a brief introduction prior to the main speech . . . .


91. HAYNES, supra note 10, at xv.

92. Letter from J. Russell Dye to Patrick W. Dunn, Sept. 28, 1975, at 4 (Mr. Dye, a recognized specialist in the field of judicial selection, was a court reporter for the St. Louis Post-Dispatch):

I worked in the state courts in St. Louis under the [Missouri] plan and observed very little hanky-panky. I listened to old judges tell how, before the plan was adopted, their antechambers were filled in the morning with political favor-seekers. About 1969 I was transferred to St. Louis County where judges were being politically elected. I was invited at election time to go to fundraising dinners given for judges seeking re-election. I was profoundly shocked to think that a judge would have to solicit lawyers, friends, politicians and businessmen to raise funds for his re-election.

It was degrading. A judge should be beholden to no one . . . .
Justice of the Supreme Court, explained to the American Bar Association in 1913 that the nonpartisan ballot actually lowers the quality of the judiciary by making it possible for individuals to be elected who could get no political support but who, one way or another, were able to wage a successful campaign. Most recent studies corroborate Taft's assessment.

Assuming, however, that voters are given every theoretical advantage in an election—how likely is it that they would be willing and able to select the most qualified judges? The answer would seem to be: not very. In fact, surveys have shown that the electorate knows and cares substantially less about judicial candidates than any others on the ballot. One of the most revealing of these surveys was conducted in 1954 by Elmo Roper and Associates in New York State within a ten-day period immediately following a statewide election. The poll was conducted in New York State in 1954 by Elmo Roper and Associates within a ten-day period immediately following a statewide election.
York City, a metropolis; Buffalo, an upstate municipality; and rural Cayuga County (see Table II). If more voters paid closer attention to judicial elections or could name the judicial candidates for whom they voted, it is conceivable that party leaders would be more inclined to insure that their judicial political activities were responsive to the needs of the public.

**TABLE II**


<table>
<thead>
<tr>
<th>Of those who had voted at all, the percentage that</th>
<th>New York City</th>
<th>Buffalo</th>
<th>Cayuga County</th>
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<tbody>
<tr>
<td>voted for any judicial candidate</td>
<td>75%</td>
<td>88%</td>
<td>80%</td>
</tr>
<tr>
<td>paid attention to judicial candidates before the election</td>
<td>39%</td>
<td>52%</td>
<td>25%</td>
</tr>
<tr>
<td>could name one or more judicial candidate voted for</td>
<td>19%</td>
<td>30%</td>
<td>4%</td>
</tr>
<tr>
<td>could name a judicial candidate they had not voted for</td>
<td>0%</td>
<td>less than 1%</td>
<td>less than 1%</td>
</tr>
<tr>
<td>could name a court for which judges had been elected</td>
<td>20%</td>
<td>11%</td>
<td>14%</td>
</tr>
<tr>
<td>either paid no attention to the election at all or merely voted for the straight party ticket</td>
<td>78%</td>
<td>62%</td>
<td>84%</td>
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</table>

Although the flow of information in judicial elections is stifled by ethical restraints, there is no particular reason to assume that a lengthy and unfettered discussion of complicated court cases would inspire the apathetic, nor would it benefit the aver-

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It has often been assumed that the negative effects of judicial elections tend to be localized in the large urban centers. This poll's figures for Cayuga County indicate, however, that the inherent defects in the elective judicial system appear in the rural areas as well. Furthermore, Elmo Roper and Associates contend that in many instances unique local circumstances have inflated this survey's figures of judicial awareness, indicating that the mean voter awareness may actually be even lower than presently indicated in Table II.

97. Material adapted from Elmo Roper and Associates, RCOM No. 82, Quests. 5, 6, 7, 8a, 8b, 8c, 9a, 9b, 10a, 10b, Nov. 1954 (data located at the Roper Public Opinion Research Center, Williamstown, Massachusetts).
judicial election is a system of selecting judges where the people are to choose those by whom they are to be governed, it omits to note the vital fact that the qualifications for judicial office are not such as an undifferentiated public can properly assess.

Admittedly, low voter turnout and an uninformed electorate are congenital weaknesses of our democratic processes. In judicial elections, however, voter apathy is so high and public knowledge so inadequate that even the most scrupulous contest may fail to produce a qualified judge.

The election of judges does not, therefore, effectively or consistently serve its intended purpose which is to place responsible and responsive public servants on the bench. The judicial elective system itself meets none of the nine Niles criteria; it neither provides for quality control of candidates nor does it engender an independent judiciary. Furthermore, there is no guarantee that the elective system will produce judges who are able to claim any of the six character traits indicative of the qualified judicial official. The nature of the elective method of selection is such that it actually undermines the chances of acquiring such judges, so that when a highly qualified candidate survives the election process, it is more likely to be an acknowledgment of his or her

98. Ellis, Court Reform in New York State: An Overview for 1975, 3 HOFSTRA L. REV. 663, 667-70 (1975); VanOsdol, Politics and Judicial Selection, 28 ALA. LAW. 167, 169-73 (1967); Wigmore, Pontius Pilate and Popular Judgements, 8 J. AM. JUD. SOC'y 47 (1924).


101. Furthermore, the elective system does not necessarily place more liberal judges on the bench, as some have claimed. Nor is there evidence to suggest that the elective system produces less liberal judges than other selection processes. This is still a highly speculative subject, but so far most studies have concluded that there seems to be no direct relationship between the ideological leaning of a court and the method by which its judges are selected. See generally Haynes, supra note 10, at 184-216; H. Schmieder, Courts in the American Political System 36-38 (1968); G. Schubert, Quantitative Analysis of Judicial Behavior (1859); Watson & Downing, supra note 13, at 309-26; notes 114 & 121 infra and accompanying text; Goldman, Voting Behavior in the United States Courts of Appeals Revisited, 69 AM. POL. SCI. REV. 491 (1975); Jacob, The Effect of Institutional Differences in the Recruitment Process: The Case of State Judges, 13 J. PUB. L. 104 (1964); Nagel, Political Party Affiliation and Judges' Decisions, 55 AM. POL. SCI. REV. 643 (1961); Nagel, Comparing Elected and Appointed Judicial Systems, Sage Professional Paper in American Politics 04-001 (1973).
personal stamina rather than a tribute to the system itself.\textsuperscript{102}

Finally, at a time when judicial resources are severely taxed, it is worthwhile to note that the process of electing judges is also an extremely inefficient method of selection. Indeed, much of the time, money, and energy expended under the elective system is minimally related, if related at all, to the selection of qualified judges. These wasteful externalities cause artificially high opportunity costs which have ramifications throughout the entire legal system. For example, many courts face serious backlogs which require judicial attention in the courtrooms. The elective system, however, contains strong incentives for judges, especially during election years, to campaign rather than hear cases. Such campaign activity, which has been shown to have almost no bearing on the selection of competent judges, will not improve the quality of justice and may indeed result in a cost to the system in the form of further backlogs. Certainly judicial resources could be used more efficiently and costs distributed more realistically under an alternative method of selection.\textsuperscript{103}

V. MISSOURI PLAN

The elective system's major rival is the Missouri plan. Supporters of the latter say that its greatest accomplishment has been to remove the judiciary from the contamination of politics by placing the power of judicial selection in the hands of a committee properly structured for the task.\textsuperscript{104} There is general support throughout the legal profession for this view and for the Missouri plan itself.\textsuperscript{105} The selection committee, defenders assert, is able

\begin{footnotesize}
\begin{enumerate}
\item[102.] Niles, \textit{supra} note 11, at 245.
\end{enumerate}
\end{footnotesize}
actively to recruit candidates for the bench, to examine their qualifications thoroughly, and to compare them critically as the field is narrowed. It is further claimed that once a nominee is placed on the bench, this selection system substantially guarantees the judge's independence from the deleterious political influences present under the elective approach. It is also suggested that the committee, composed of a judge, three members of the bar, and three lay appointees of the governor, provides the proper combination of citizen representation and legal expertise for active deliberations and resolutions based on quality. Since the committee is a permanent body, its expertise can be refined by on-going educational programs, its own experience, and the advice of a professional staff. In fact, proponents assert that the mere presence of a screening committee is adequate to deter those candidates who are clearly unqualified. In addition, under this plan, if the electorate decides later that the committee and the governor have made an improper choice, it has the option to vote for dismissal in a special election held after the appointed judge has been on the bench for one year. The voters may further choose not to approve a judge for a future term.

The legal community, regrettably, has failed to utilize its own resources and those of other disciplines—especially political science, sociology, and history—to examine closely the operation and ramifications of this plan. Lawyers seem to be reticent to identify shortcomings in a program which in the United States is

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106. Niles, supra note 11, at 247.
107. See note 61 supra and accompanying text.
108. E.g., Lowe, The Nebraska Institute for Judicial Nominating Commissioners, 51 J. Am. Jud. Soc'y 351 (1968). The following is an example of material used by one such committee in its educational program: READING MATERIALS: IOWA JUDICIAL NOMINATING COMMISSIONER'S INSTITUTE (1972) (materials from the Institute meeting on May 25 and 26, 1972 in Des Moines, Iowa, prepared by the American Judicature Society).
109. See note 61 supra and accompanying text.
offered as the only practical alternative to the elective system. This "hands-off" treatment of the Missouri plan has seriously retarded efforts to reform the judicial selection process.

One would expect the debate over the efficacy of the different methods of selection to concentrate on which produces the most highly qualified judges. Because there has been virtually no vigorous scrutiny of the various selection systems, however, the discussion has taken other forms. The most prevalent criticism of the Missouri plan has been that it provides for elitist control of the judiciary by establishing an undemocratic selection committee which instinctively favors a conservative class of lawyers at the expense of the rest of the profession. Detractors explain that under the plan the judicial selection process has merely been moved to a different and much smaller political arena, and that control over the judiciary has been narrowed to the bar, the state judiciary, and the governor.\textsuperscript{111}

If utilized to support a return to the elective system, the foregoing argument is specious since the elective system has been shown to be singularly undemocratic. However, the fear that the Missouri plan produces judges from only a very narrow spectrum of the profession raises the same serious concerns of class control and public dissatisfaction that characterized much of the criticism of judicial appointment in this country in the 1830's and 1840's.\textsuperscript{112} If the Missouri program is only an elaborate recasting of those previous appointive systems then certainly it is a most cruel hoax. The late Charles E. Clark of the United States Court of Appeals warned of these dangers when he wrote:\textsuperscript{113}

\textit{[T]he Missouri plan . . . [is supported] without notation of the dangers of a unique bias toward professional competence. Since in our economy the rewards of professional competence are, quite naturally and properly, the confidence of an employ-}

\begin{footnotesize}

\textsuperscript{111} See, e.g., note 72 supra; Wormuth & Rich, 3 Utah L. Rev., supra note 94, at 461: The commission is composed of outstanding lawyers who are able to nominate to the governor a panel of candidates all possessed of integrity, technical competence, and judicial balance. Put together, of course, these two arguments are the arguments for aristocracy. The people are not qualified to choose their own governors, nor are the officials they elect qualified to do so for them. Rather their judges would be chosen for them by the wise, the virtuous, and the well-born. In this case, the wise, virtuous, and well-born will be the lawyers of the state, and more particularly the leaders of the state bar association.

\textsuperscript{112} See notes 35, 37 & 39 supra.

\end{footnotesize}
ment by all the settled institutions of our society—the banks, the insurance companies, the mammoth business combines, and so on—the imbalance toward mere preservation of the status quo and notably its aristocratic elements is a potential danger for the courts. Thus if an executive can make his judicial choice only from a limited roster supplied him by a commission composed of the successful and conservative members of the community, then it is obvious that no one who deviates from the professional norm—labor lawyers, for example—need apply.

With very little analysis available comparing the various selection systems and the judges they produce, it is impossible to respond with any certainty to the claim that the Missouri plan provides for elitist control of the judiciary.114 Recent data on judicial selection committees, as is discussed below, indicate that these committees are narrowly based and suggest that the question of elitist control should be the subject of future inquiry. In defense of the Missouri system, however, it is important to note that in their exhaustive study of its operation in the State of Missouri in the 1960's, Richard Watson and Ronald Downing found (as summarized by the U.S. Advisory Commission) that:115

Contrary to expectations, there is a greater tendency for graduates of night law schools—not of prestigious institutions—to ascend to the bench than under the preceding elective system.116

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116. It has long been charged that the Missouri plan favors graduates from prestigious law schools. Such was the gist of this ditty, sung by New York Judge James Garrett Wallace some time ago in a judicial minstrel show. Lyrics from “Wallace’s Third Party”—A Minstrel Show 8, 9 (privately printed 1948) also in Clark & Trubek, 71 Yale L.J., supra note 113, at 273 n.59:
Appointees are essentially "locals" rather than "cosmopolitans."
The majority are affiliated with the majority party.
They are older, more mature than judges previously se-
lected by election.
Appellate judges selected have had more service at the
lower levels than previously.
Appointees tend to have prior experience in law enforce-
ment, particularly as prosecutors.
They are not more conservative than those chosen by elec-
tion.
They are better judges than their predecessors in terms of
knowledge of the law, open-mindedness, common sense, cour-
tesy, and hard work.

Closely related to the charge that the Missouri plan is elitist,
is the suggestion that the Missouri selection committees are un-
able to produce a judiciary which is representative of the pluralis-
tic interests of the society-at-large. 117 This criticism must be con-

"Oh, the Old Missouri Plan,
Oh, the Old Missouri Plan,
When Wall Street lawyers all judicial candidates will scan
If you're not from Fair Old Harvard,
They will toss you in the can. . . .

Oh, the Old Missouri Plan,
Oh, the Old Missouri Plan,
It won't be served with sauerkraut nor sauce Italian.
There'll be no corned beef and cabbage,
And spaghetti they will ban;
There'll be no such dish
As gefilte fish
On the Old Missouri Plan."

However, when Watson and Downing conducted their study this claim was not substan-
tiated:
No Harvard man has been chosen for either the circuit or the appellate benches in
Missouri; the same is true of lawyers from the national prestige law schools of Yale
and Columbia as well. Moreover, only one Chicago man and three Michigan men
have made it. In fact the trend has been in the other direction, that is, there has been
a greater tendency for graduates of night law schools to ascend to the bench . . . .

WATSON & DOWNING, supra note 13, at 343.
At least one commentator, Judge Malcolm Richard Wilkey, who was alarmed by this
finding, observed that the Missouri plan might actually be decreasing the number of truly
outstanding judges and suggested that there should be more Harvard Law School gradu-
ates on the bench. Wilkey, Judicial Background and Decision-Making, 108 TIDSKRIFT,

117. See notes 114 supra, 121 infra and accompanying text; REPORT OF THE TEMPORARY
COMMISSION ON THE NEW YORK STATE COURT SYSTEM, . . . AND JUSTICE FOR ALL, PART II
sidered carefully, for judges should be selected on the basis of over-all ability, and not as representatives of a particular viewpoint or segment of the population. 118 Judges do, nevertheless, affect social policy, and one measure of a judge's competence is the ability of that judge to relate positively to the interests and concerns of the litigants before the bench. The argument that the Missouri plan yields judges unrepresentative of the society's interests is, therefore, deserving of further scrutiny. Once again pertinent data is not available. The potential problem can be appreciated, however, by considering the composition of the selection committees.

Allan Ashman and James J. Alfini's important study of Missouri plan judicial selection committees throughout the country found their composition to be highly unrepresentative. 119 Of the 371 committee members who responded to their survey, 97.8 percent were white and 89.6 percent were male. 120 Certainly the paucity of women and blacks in the legal profession largely accounts for these figures, 121 but it does not explain why only 3.3 percent

118. Those who support the elective system contend that elected judges are representative of their constituencies, but more often than not this has meant representative of the concerns of the political leadership and the bar associations and not of the citizens as a whole.

119. ASHMAN & ALFINI, supra note 13, at 38-40. Their study involved extensive interviews with members of judicial selection committees in most states with Missouri plans. Allan Ashman is the Director and James J. Alfini is Assistant Director of Research for the American Judicature Society.

120. Id. at 38.


There are still alarmingly few black lawyers in the country, although the number is rising. Recent statistics indicate that only about 4,000 of the nation's 325,000 attorneys are black. Black attorneys constitute slightly more than one percent of the total number of attorneys even though blacks represent approximately twelve percent of the American population. With these statistics in mind, it comes as no great surprise that there are few black judges. At the time of our survey [1971-1972] there were 475 federal judges, of whom 31, or almost seven percent, were black. Of 21,294 full and part time state and city judges, only 255 were black, or slightly more than one percent.

In 1970 only 2.8 percent of all lawyers in the United States were women.
of the lay commissioners were non-white and only 22.3 percent were women. In addition, among the lay members of the selection committees surveyed, business and banking executives predominated (27.1 percent) with less input by educators (7.8 percent), journalists (4.8 percent), and medical professionals (3.6 percent). The prevalence of these particular interests on the selection committees raises very serious doubts about the commissions' ability to produce a judiciary sensitive to all interests of the general public. It is important to note, however, that since the Ashman and Alfini study in 1973, and very probably because of the disturbing findings of that valuable work, efforts have been made throughout the country to appoint more women and minority members to the selection committees.

Moreover, there is evidence to show that the lay members who theoretically represent the general public during deliberations tend to defer to the views of the governor who appointed them and are often intimidated by lawyer members. This then allows the bar and the governor further to dominate the proceedings. Watson and Downing as well as Ashman and Alfini discovered this problem to exist under the Missouri plan and recommended the inclusion of strong, independent lay members on the selection committees and energetic lawyer-lay interaction during the selection process.

Furthermore, the electorate has proven to be no more capa-

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The plan presented in Section VI is structured to involve more women and blacks in the judicial selection process.

123. Id. at 39. See Watson & Downing, supra note 13, at 136-37:

[T]he largest number of lay nominating commissioners have been spokesmen for the values of the business community. Drawn entirely from banking, commerce, and industrial firms, they have generally shared the values of the corporate lawyers serving on the nominating commission, and have usually deferred to the lawyer commissioners and the presiding judge for assessment of the legal abilities of judicial candidates. In addition, these lay commissioners occasionally have turned for advice to the legal counsel employed by their own business firms.

124. Interview with Edward J. Schoenbaum, Director of Programs and Services, the American Judicature Society, in Chicago, Oct. 7, 1975.
125. Ashman & Alfini, supra note 13, at 25-27, 70-85; Watson & Downing, supra note 13, at 43-48, 88-91, 136-38, 186-87. These studies also found that if their independence is not stifled, lay members can not only bring fresh perspectives to the problem of judicial selection, but can also mediate and evaluate the often diverse opinions of the lawyer members.
ble of removing a bad judge than it was of electing a good one. The Missouri plan's special one-year retention election and its approval election have not been found to be very successful ways in which to monitor the judicial selection process.\textsuperscript{126} The general public cannot usually assess a judge's competence in one year and, as a result, rarely votes for dismissal. The problem here is that once a judge has been appointed, the Missouri plan's selection system shifts over to an elective process which raises the unsavory spectre of judicial elections discussed previously.

Finally, there is general agreement that the Missouri plan has not eliminated politics from the selection process but only altered its form.\textsuperscript{127} The Governor's choice of committee members and final appointive power is not immune from political pressures; the bar, in its selection of commissioners, is similarly subject to political rivalries. It is equally impossible for the committee itself to be entirely isolated from the political realities of the outside world. The ultimate question is not, however, whether politics should play a part in judicial selection, for it will under any system except divine revelation, but rather whether the Missouri plan so channels today's political energy as to select the best possible judiciary.

The Missouri system is no doubt better equipped than the elective system to produce judges who meet the six basic character qualifications—it's selection committee specifically sets up a control mechanism to monitor these criteria. In addition, the Missouri plan meets many of the Niles criteria for quality screening and recruitment of judicial candidates. Serious doubts remain, however, about the independence of the plan's appointing authority, the power of the organized bar, the debilitating effect of the political system on the process as a whole, and the extent to which the Missouri plan is capable of producing a judiciary sensitive to the concerns of the varied segments of the community. Finally, although the malignancies in the elective system have been repeatedly identified, there has been little hard evidence to indicate that the Missouri plan is capable of selecting a

\begin{quote}
\textsuperscript{126} WATSON \& DOWNING, supra note 13, at 241-57; Ellis, supra note 90, at 674-75; Moran, Counter-"Missouri Plan" for Method of Selecting Judges, 32 FLA. B.J. 471, 472-74 (1958); Comment, Courts: Selection for the Court of Last Resort, 28 OKLA. L.R. 359 (1975).

\textsuperscript{127} ASHMAN \& ALFINI, supra note 13, at 71; Goldman, American Judges: Their Selection, Tenure, Variety and Quality, 61 CURRENT HISTORY 2-4 (1971); Watson, Downing \& Spiegel, Bar Politics, Judicial Selection and the Representation of Social Interests, 61 AM. POL. SCI. REV. 54 (1967).
\end{quote}
more qualified judiciary. Surely these concerns should compel judicial reformers to begin to move away from unquestioning devotion to the Missouri system and to progress toward the creation of a different and better mode of judicial selection.

VI. A Proposal for Judicial Selection Reform

The following is a proposal for improving judicial selection which utilizes the basic appointive framework of the Missouri plan, but which injects into that original system certain specific reforms designed to rectify its fundamental weaknesses. In short, this reform proposal seeks to meet all, not merely some, of the nine Niles criteria for a highly qualified and independent judiciary. While the plan outlined here was conceived with statewide judicial selection in mind, its basic concepts can easily be adapted to other judicial levels.

The Selection Committee, as illustrated in Table III, would consist of eleven individuals—six of whom would be lawyers and five of whom would be lay persons—to be chosen in the following manner: the State Judicial Conference \(^{128}\) (or where applicable the State Supreme Court) would appoint one lawyer who is not a member of the Conference; the State Senate majority and minority leaders would each appoint one lawyer; and the State Bar Association would elect two lawyers from its membership. Similarly, the State Judicial Conference would appoint one lay person, again not from its own membership; and the State House majority and minority leaders would each appoint one lay person. The Governor would appoint two lay persons and one lawyer—only two of whom may belong to the Governor’s political party.

This method of appointing a Selection Committee recognizes that politics cannot be exorcized from the judicial selection process.\(^{129}\) The plan therefore utilizes the positive forces of an eclectic society by opening the Selection Committee to the natural political interaction of varied interests which have a legitimate stake in producing the most proficient judiciary. The Selection Committee would be chosen in such a way that it would not be subject to the power politics of the elective system, nor be stifled by the restricted composition that characterizes the Missouri commit-

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128. Many states have a judicial council made up of all of the judges in the state and chaired by the chief justice of the supreme court. For jurisdictions without such an organization, the appointments in the plan designated for the judicial council should be made by the membership of the highest court in the state.

129. See Ashman & Alfini, supra note 13; Watson & Downing, supra note 13.
Judicial selection committees. In addition, this plan includes in the choice of the Selection Committee various groups whose support is important if such a plan is ever to be implemented.

The organized bar and the governor unquestionably have a role to play in judicial selection, but unlike the Missouri plan, this system is designed to prevent them from dominating, and possibly balkanizing, the proceedings. Hence, their combined appointments to the Selection Committee do not constitute a majority. To preserve the valuable input of the judiciary, the Judicial Conference is allowed two appointments, but to prevent potential domination by a member of the court, these two appointees may not be Conference members. Since the leaders of the House and Senate are accountable to their colleagues in the legislature as well as to their constituents, their appointments would hopefully provide increased electoral representation on the Committee. The one-lawyer majority on the Committee recognizes the professional competence required for proper judicial selection. Because the lay members in this plan represent more substantial and disparate interests in the selection process than they do under the Missouri system, they can be expected to be

**TABLE III**

This table illustrates the manner in which the eleven members of the Judicial Selection Committee would be chosen under the proposal.

<table>
<thead>
<tr>
<th>Lawyer</th>
<th>Nonlawyer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. State Judicial Conference appoints (other than from its own membership):</td>
<td>1</td>
</tr>
<tr>
<td>2. State House majority leader appoints:</td>
<td>-</td>
</tr>
<tr>
<td>3. State House minority leader appoints:</td>
<td>-</td>
</tr>
<tr>
<td>4. State Senate majority leader appoints:</td>
<td>1</td>
</tr>
<tr>
<td>5. State Senate minority leader appoints:</td>
<td>1</td>
</tr>
<tr>
<td>6. State Bar Association elects from its membership:</td>
<td>-</td>
</tr>
<tr>
<td>7. Governor appoints (one from the opposing political party):</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>6</strong></td>
</tr>
</tbody>
</table>

130. See Watson & Downing, *supra* note 13, at 182-86.
stronger and more independent members of the Committee and not subject, therefore, to domination by the lawyer members. Such a lawyer-lay combination should assure the spirited interaction between the various members of the Committee which Watson and Downing as well as Ashman and Alfiniti thought essential to quality judicial selection, but which they found too often lacking under the Missouri formula.¹³¹

To encourage broader representation in the choice of the Committee and the judiciary, the legislative act establishing the proposed system should set specific affirmative guidelines for the individuals involved in the process. Such legislation should expressly direct the appointing authorities to make a special effort to choose individuals for the Selection Committee who are sensitive to the concerns of the electorate and who also represent the various geographic areas within the jurisdiction. This concern for geographic representation is especially important in a statewide committee where it is necessary to recruit candidates from all areas of the state. If all Committee members were from one or two major population areas, they might be inclined to concentrate recruiting activities in those areas with which they were most familiar—at the expense of the rest of the state. Furthermore, members of the Selection Committee should expressly be held to owe a fiduciary duty to the public when recruiting and nominating judicial candidates. Such directives would be helpful in producing a Selection Committee that is not elitist and which is sensitive to the needs of the society-at-large.¹³²

¹³¹ See note 125 supra and accompanying text.

¹³² Crockett, Judicial Selection and the Black Experience, 58 JUDICATURE 438 (1975); Letter from Judge Anthony P. Wartnik to the Editor, in 59 JUDICATURE 57 (1975).

Such affirmative guidance as suggested here could be most helpful in developing a more broadly-based judiciary. See, e.g., Rosenman, supra note 68, at 91-92:

The [New York City] Mayor's [judicial selection] committee has tried also to pay attention to the one political motive which, in my view, has been an asset of the elective system—the recognition of ethnic and other groups of the community in the lists which it has submitted. I am not suggesting that a man should be appointed to judicial office merely because he belongs to some particular ethnic, religious or other group. But practical politics require that a man be not overlooked merely because he belongs to one of those groups—and this realism the committee has sought to preserve in its lists of recommendations. As a result, the Mayor has been able to make his appointments from all such groups—religious, racial and foreign born.

Under this plan there are more opportunities for minority members to reach the bench than under other approaches. For example, under the elective system minority candidates are usually placed on the ballot only in areas of strong minority concentration. However, this plan requires no such “quid pro quo” for a lawyer from a minority community to be
A number of steps should be taken to enhance the independence and efficiency of this Selection Committee so that it will not be susceptible to the outside extraneous influences that have jeopardized the operation of the Missouri and elective systems. First, the charter members should establish regulations governing the Committee's operation and these rules would remain in force until amended by a majority of the Committee members. Too often committees under the Missouri plan proceed without established rules, and this fact has many times led to confusion, inefficiency, and the use of improper discretion on the part of committee members.

One major issue that should be addressed in the enabling legislation concerns the confidentiality of Committee proceedings. In order to encourage the free exchange of information and inspire lawyers to participate in the selection process without fear of professional or personal embarrassment, the deliberations and files of the Committee should be exempt from the relevant state information acts. Once the Committee has submitted its choices to the Governor, however, the public has a legitimate interest in the names and qualifications of those selected. That information will enable the public to analyze more accurately the work of the Committee and to hold the Governor accountable for the final nominee. Judicial candidates who survive to the final list should not object to having their names made public, nor should they desire to escape public scrutiny at these final and crucial stages of selection.

The Committee budget should be a free and separate item in the state budget and should be presented to the legislature as such. This step is primarily intended to prevent the Governor—who may be unhappy with the names submitted for nomination—from attempting to affect the work of the Committee by reducing its budget. Such gubernatorial action would be possible if the Committee were funded through an executive department. Furthermore, if the level and independence of the budget lines for the Committee are clearly delineated in the initial legislation,

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133. See Sections IV and V supra; ASHMAN & ALFINI, supra note 13, at 70-85.
135. See ASHMAN & ALFINI, supra note 13, at 40-45.
then the possibility of its finances being manipulated not only by
the Governor, but also by the legislature, will be considerably
reduced.

In addition, the Committee's budget should provide for a
small, salaried, full-time professional staff—including an inves-
tigative arm with subpoena powers—that works exclusively for
the Committee's benefit. The Missouri plan effectuates an
open and active recruitment of judicial candidates and then
allows for comparative judgments as the names are pared down
to three. This basic structure is retained here. Many Missouri
systems do not, however, utilize the necessary resources to
capitalize adequately on these features, and as a result, many of
their benefits are lost. The proposed plan demands, therefore,
that adequate resources be allocated to the vigorous recruitment
and necessary investigation of the candidates. It is during this
phase that the less qualified candidates are identified and sep-
rated from the field. Substantial financial outlays during the
selection process provide much higher returns than they would
later on since it is extremely difficult to remove an unqualified
judge from the bench.

Furthermore, no Committee member should be permitted to
hold a simultaneous judicial, governmental, or political office,
although such previous employment would not bar an appointee
from service. This provision takes advantage of the backgrounds
of the potential members of the Committee, but at the same time
prevents the most obvious conflicts of interest. The more subtle
conflicts would best be handled by a Committee ethical code
which should be developed as more difficult ethical problems
present themselves during the selection process.

Moreover, because judicial selection must be an on-going
process, the Committee should meet at least once a month to
deliberate and develop reports on eligible candidates in prepara-
tion for vacancies on the bench. Once the Committee has been
in operation for a few years it should have a rather extensive file
on potential nominees. Since most vacancies can be predicted,
the Committee should prepare for those situations well before the
actual declaration of the vacancy. In fulfilling this duty the Com-
mittee must be careful to keep its investigations within proper
bounds, especially when it is considering a sitting judge either for

136. NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS,
possible reappointment or elevation. In this regard, the Committee should evaluate the performance of judges on the bench only in anticipation of a specific vacancy and with the written permission of the judge involved. If it is to be done, judicial evaluation must be accomplished by a body totally separate from the Selection Committee. The Committee's major job is judicial selection, not judicial review. Once a judge is selected, that judge should be completely free of any relationship with the Committee. A hallmark of this system must be judicial independence.

Finally, Committee members should serve staggered five-year terms, and should not be eligible for reappointment. This safeguard is to prevent a particular coalition from dominating the proceedings. An attempt to further structure the Committee or to balance it more politically would probably be overly constritive on the appointing authorities. The regular turnover of the appointing and Committee personnel will provide for adequate diversity.

Once the Committee is set up, the selection process would proceed as follows: within 30 days of the declaration of a vacancy, the Committee would submit the names of 3 judicial candidates to the Governor with a comprehensive report on each individual attached. The Governor would then have 10 days in which to choose one of those candidates and send the nomination to the combined House and Senate Judiciary Committees along with the Selection Committee report and a Governor's report if desired. If so inclined, the Governor might send the candidates' names back to the Selection Committee for reconsideration. In this case, the latter would resubmit three names (either new candidates, the original candidates, or any combination thereof) to the Governor within 10 days. The Governor would then have 10 days in which to choose one of the names and send it on to the Judiciary Committees. Once the candidate's name reaches the combined Senate and House Judiciary Committees, the selection process would continue thusly: the Judiciary Committees would hold a joint open hearing on the nomination within 20 days of

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137. An interesting ethical question is raised by considering the proper relationship between an attorney on the Committee and a judge under consideration for possible nomination. The selection process may take some time. During that period, can the lawyer appear before that judge? What if the lawyer, during the course of a trial before that judge, discovers that the judge's name will be coming before the Committee? Similarly, what is the relationship between the lay members and the judge, and generally, between the members of the Committee and the candidates they are considering?
receiving the candidate's name and would submit a report of the hearing to the full House and Senate. Within 20 days of receiving the Judiciary Committees' report—or if the houses are not in session, 20 days after they reconvene—the joint houses would vote on the nomination. To become official, the appointment must pass by a vote of the majority of both houses. The period of legislative deliberation might be extended one—and only one—20-day period by the passage of an appropriate resolution asking for more time to consider the nomination. If at the end of this time the nomination has been rejected, or if no judgment has been passed one way or the other, the nomination is dead and the selection process would begin again with the Selection Committee. In this event, the Governor is empowered to make an interim appointment to the bench until a permanent selection is made. This process is illustrated in Table IV.

The proposal outlined here has many advantages over both the elective system and the Missouri plan, although it contains elements of both. This plan is substantially more open and less restrictive than the Missouri system, but it also contains provisions which strengthen and improve the quality control aspects of the latter plan. The regulation which allows the Governor to return the names to the Committee for further consideration provides flexibility to the process and stresses the principle that judicial selection is a partnership among a number of interests, not just the purview of a few. In most cases the Committee will narrow a large field to the three finalists. When the list comes back from the Governor they can then reconsider the names in light of the Governor's comments. The Committee can then either resubmit the same names, or make changes. The names on the second list should not represent any lessening of quality, but rather a possibly different emphasis. The Governor must, in any case, make a final choice from the last list, and the openness of the process will allow the public to hold the Committee and the Governor accountable in a way impossible under the closed deliberations of the Missouri plan.  

138. Allan Ashman and James J. Alfini feel that this “kick-back” provision might lead to a complex set of “games” between the Committee and the Governor which would only serve to lessen the quality of the final product and possibly undermine the public support for the program. To accomplish the same purpose as the “kick-back” provision without these possible side effects, Allan Ashman suggests having the Committee submit more than three names, possibly up to ten, which would then give the Governor more flexibility in the final selection. Although this suggestion is an alternative way to add flexibility to the selection system, it would seem to subtract from the quality control...
TABLE IV

This table illustrates the alternative methods of nomination and appointment under this judicial selection proposal.

I. SELECTION COMMITTEE
   within thirty days of a vacancy
   would send three names to the
   GOVERNOR
   who would have ten days to nominate one of these names and send it to the
   JUDICIARY COMMITTEES

II. SELECTION COMMITTEE
   within thirty days of a vacancy
   would send three names to the
   GOVERNOR
   who would have ten days to nominate one of these names or send the names back for reconsideration to the
   SELECTION COMMITTEE
   who within ten days would again send three names
   (either new names or former nominees, or any combination thereof) to the
   JUDICIARY COMMITTEES

JUDICIARY COMMITTEES
   would hold a joint public hearing within twenty days of the nomination and send a report of the hearing to the full House and Senate
   HOUSE—SENATE
   within twenty days of receiving the Judiciary Committees’ report (if the houses are in session or within twenty days after the houses have reconvened) the houses would vote on the nomination. To become official the appointment would have to pass by a majority vote in both houses. The period of legislative consideration might be extended only one twenty-day period by the passage of an appropriate resolution asking for more time for consideration of the nominee. If the nominee is rejected or if the houses do not act at the end of this time, the nomination would be dead and the judicial selection process would begin again; however, the Governor is empowered to make an interim appointment to the court until a final selection is made.

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inherent in narrowing the field to three names. Interview with Allan Ashman and James J. Alfini, Director and Assistant Director of Research for the American Judicature Society, in Chicago, Oct. 6, 1975.
The public hearing and the legislative confirmation vote is another attempt to open the selection process to a wider segment of the population than has had a part in either the elective system or the Missouri plan. Although the Roper survey in Table II showed very little public interest in judicial selection generally, there is a small but concerned group of citizens who are very interested in the judiciary and who should have an opportunity to participate in the selection system via the public hearing. The hearing also allows the elected representatives an opportunity to question the nominee and others in an effort to make further investigation of the candidate's qualifications. On the federal level these hearings have been a very useful mode of obtaining information pertinent to the judicial appointment that had not been made available through other mechanisms. It should also be noted that in most judicial selection plans involving legislative approval, the Senate is the determinative body. The inclusion of the House—which in most states is the more representative body—should allow for the addition of more viewpoints to the selection process.

The selection system as a whole, while a potentially speedy process, contains a number of safety measures to arrest overly hasty appointments and to assure that highly qualified candidates are placed on the bench. Thirty days for the Selection Committee to submit its three names is more than adequate since the Committee should regularly be reviewing names for potential vacancies. Since the choice of the Governor is limited to just 3 names, 10 days is enough time for selection. If the names are sent back to the Committee, 10 days is a sufficient time for reconsideration, because the basic ground work has already been completed. The time constraints for legislative consideration are fairly tight in order to prevent a deleterious political atmosphere from mounting, thus unreasonably delaying the proceedings. The time periods are, however, more than adequate to allow for a full and proper consideration of the nominee.

This proposal does not contain any provisions for a retention election once an appointment becomes confirmed. Experience has shown that such elections have not proved to be a practical evaluative tool. It is therefore imperative that when a jurisdic-

139. See Sections IV and V supra.
140. See Appendix VI and the constitutions and statutes cited therein.
141. See note 126 supra and accompanying text.
tion initiates a plan such as this one, it also adopt strict tenure and discipline procedures. Finally, this is a flexible plan which is capable of surviving changes in the political and social environment—a fact that should not, however, preclude careful and continual monitoring of the plan to assure that it fulfills its basic objectives.

This proposal complies with all the Niles criteria for an independent, competent, and representative selection system, and is structured to nominate judges who possess the appropriate personal qualifications discussed in Section II. In addition, institutionalization of this system is facilitated by the fact that the plan incorporates diverse interests into the selection process. When more people have a stake in a new plan for judicial selection reform, it is easier for such a plan to gain political and public support and, hence, it is more likely to be implemented. Some might suggest that a plan concerned with its implementation will be that much less concerned with considerations of quality. This plan allows, however, for the meaningful participation of the various segments of society important for implementation, and at the same time produces a nominee whose mettle has been more strenuously tested for quality than under any previous plan.

VII. CHARTING A COURSE FOR ACTION

Conceiving a better plan for selecting judges is only the beginning of the reforming process. Means must be developed by which the plan can be actively implemented. Judicial selection cannot be improved by mere discussion, nor will theoretical constructs alone produce better judges.

There is an overwhelming need for responsible action in this area of judicial reform. Moreover, lawyers have a special obliga-

142. One criticism of the Missouri plan applicable here is that when the plan is first implemented it freezes into office the judges chosen in political elections. Some have suggested removing all of these elected judges and replacing them with judges selected under the operation of the new plan. This proposal is politically unfeasible for it would lose support for the plan from many sitting elected judges, and it would also allow one governor to make a large number of appointments. The incompetent judges who would be assured life tenure under this plan should be removed by discipline procedures. Natural attrition over the years will eventually allow judges chosen under the plan to replace the elected judges.

143. See Consensus of the National Conference on Judicial Selection and Court Administration (1959) (sponsored by the American Bar Association, the Institute of Judicial Administration, and the American Judicature Society, held in Chicago, Nov. 22-24, 1959); Consensus Statement of the National Conference on the Judiciary (1971) (held in Williamsburg, Virginia on Mar. 11-14, 1971); The Final Report of the 27th
tion to lead the charge. The legal profession has a stake in both the political and the judicial worlds, and thus it is in a unique position to observe the abuses of the judiciary and to seek constructive corrective measures. Lawyers, as guardians of the law, not only have a duty to society to monitor judicial behavior, but they have a responsibility to themselves as well, since the incompetent judge hurts lawyers, their clients, and the prestige of the profession.  

Lawyers have generally been disinclined to institutionalize proposed judicial reforms and have, unfortunately, exhibited a distinct hesitancy to utilize the political process as an instrument of legal and social change. As a result, the campaigns which the legal community have launched for the cause of improving judicial selection have been sporadic, unimaginative, and unprofessional—hence, for the most part, they have also been unsuccessful.

In the words of Arthur Vanderbilt, “judicial reform is no sport for the shortwinded . . .” Indeed, unenergetic and poorly administered campaign efforts easily fall prey to those with a vested interest in the established system who are many times capable of mounting a stronger and better organized attack. To stress the weaknesses in the past judicial selection re-

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146. See, e.g., Barkdull, Analysis of Ohio Vote on Appointive Judiciary, 22 J. AM. JUD. SOC’Y 197 (1939); B. COOK, THE PARADOX OF JUDICIAL REFORM: THE KANSAS EXPERIENCE, AMERICAN JUDICATURE SOCIETY REPORT NO. 29 (1970); Winters, The New Mexico Judicial Selection Campaign, 35 J. AM. JUD. SOC’Y 166 (1952). Although there have been quite a number of successful judicial selection reform efforts, see note 148 infra, these were usually successful only after a number of earlier defeats. Furthermore, there are a large number of states where judicial selection reform has yet to achieve a victory. See Appendix VI infra.

form efforts is not to deny that some of them have been successful. Most of these victories, however, were more the product of fortuitous events and judicial scandals than the result of carefully executed campaigns.148 It is imperative, therefore, that reformers of judicial selection unite solidly behind a common goal of affirmative action and that they persistently pursue—from start to finish—the legal implementation of their selection platform.

The reform plan itself149 should, as far as possible: (1) synthesize the benefits and eliminate the weaknesses of the established systems of selection;150 (2) meet the Niles criteria; (3) produce judges who meet the six character criteria discussed in Section II; and (4) be able to elicit widespread political support from the electorate. With regard to the establishment of such a plan, it is critical that all interested parties join together to draw up a

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148. See generally American Judicature Society, The Bench, the Bar, and the Public Join Hands to Improve the Administration of Justice (1974) (these four addresses delivered during the 1974 National Conference of Bar Presidents describe how judicial improvements were made in Alabama, Arizona, Maryland, and Florida through the combined efforts of the bar, the bench, and lay citizens; Ashman & Alfini, supra note 13, at 170-78; Iowa Shows the Nation It Can Be Done, in Winter & Lowe, supra note 59, at § V, 18-23; Letter to the Honorable John Perry Wood from H. B. Marshall, Apr. 15, 1941, in Winters & Lowe, supra note 59, at § V, 24-30 (Mr. Marshall was a public relations consultant for the successful campaign for the adoption of the Missouri selection system in Missouri in 1940); Farmer, Indiana Modernizes Its Courts, 54 JUDICATURE 327 (1971); Heinicke, The Colorado Amendment Story, 51 JUDICATURE 17 (1967); Henderson, Judicial Reform Through Total Revision of State Constitutions, 51 JUDICATURE 347 (1968); Hoff, Modern Courts for Vermont, 52 JUDICATURE 316 (1969); Paul, Selling Judicial Reform, 36 J. Am. Jud. Soc'y 175 (1953); How To Conduct a Judicial Selection Reform Campaign, 36 J. Am. Jud. Soc'y 4 (1952); Address by Henry T. Reath, Political Aspects of Judicial Selection, Aug. 5, 1973 (delivered to a meeting on judicial selection sponsored by the American Judicature Society and the American Bar Association at their joint annual meeting).

149. The principles of the program suggested here can be applied to a variety of judicial reform efforts.

150. Before the plan is developed it is imperative to analyze carefully the operation of the existing judicial selection system. In the past, too little time has been spent on this task. It is critical to establish a solid record of abuse before asking others to support a plan for change. Among the better studies which have been made of existing selection systems (not all critical) are: E. Bashful, The Florida Supreme Court: A Study in Judicial Selection (1958) (this study was part of the Studies in Government at the Bureau of the Bureau of Government Research and Service of the School of Public Administration of Florida State University, Tallahassee); C. Davis, Judicial Selection in West Virginia (1959) (a study for the Bureau of Government Research of West Virginia University); B. Henderson and T. Sinclair, The Selection of Judges in Texas: An Exploration Study (1965) (this paper was part of the Studies in Social Science of the Public Affairs Research Center of the University of Houston); Barber, Ohio Judicial Elections—Nonpartisan Premises with Partisan Results, 32 OHIO ST. L.J. 762 (1971); Moos, Judicial Elections and Partisan Endorsement of Judicial Candidates in Minnesota, 35 AM. POL. SCI. REV. 69 (1941); Seiler, Judicial Selection in New Jersey, 5 SETON HALL L. REV. 721 (1974).
reform platform that they can all support. A certain amount of compromise may be necessary to induce agreement, but it is imperative to begin the implementation fight firmly united. More than one plan would only dilute the reform effort and would court defeat even before the campaign began.\textsuperscript{151}

Once a specific proposal has been made, the first basic step involves creating a campaign committee which may draw resources from the various reform groups, but whose only function is the institutionalization of the reform plan. Since judicial reforms of this kind usually involve constitutional amendments requiring ratification by a vote of the electorate, it is important that this campaign committee not be dominated by lawyers, but, rather, be broadly based and able to appeal to the widest possible constituency.\textsuperscript{152} The major task of this committee should be to raise seed money and make a preliminary determination of the probable over-all cost of the effort. If the costs are great, then the effort should not be initiated until the necessary funds are available. In many instances a second-rate campaign could do more harm than good to the cause of judicial selection reform.

If the committee decides that the campaign is feasible, it should remove itself to an advisory and fundraising role and retain a professional management firm to run the campaign. Many leaders of judicial reform campaigns in the past have felt that their elections were special—turning on matters unique to the particular issues and area—and should be run by local albeit


In many states the existence of a plethora of judicial selection reform measures is a reflection of differing perceptions of the selection problem by individuals from different areas of the state. In New York, for example, the problems with judicial selection are not the same in the Bronx as they are in Poughkeepsie or Watertown. One solution to this problem may be some form of local option plan which would allow jurisdictions within the state to adopt different selection plans under the umbrella of a general local option constitutional amendment. This approach to judicial selection change, designed to unite the disparate reform factions behind one general plan, has been successful in Kansas, Indiana, and Arizona and is presently being advocated in Michigan, New York, and Illinois. N.Y. Times, Nov. 16, 1975, at 55, col. 3; Interview with Edward J. Schoenbaum, Director of Programs and Services for the American Judicature Society, in New York City, Oct. 30, 1975.

\textsuperscript{152} Drew, \textit{Judicial Improvement in Florida} in \textit{PROCEEDINGS, EIGHTH ANNUAL MEETING OF THE CONFERENCE OF CHIEF JUSTICES} 40 (1956) (the meeting was held in Dallas, Texas and these Proceedings were published by The Council of State Governments); Winters, \textit{Citizen Action—Key to Successful Judicial Reform}, 51 \textit{JUDICATURE} 6 (1987). While appealing directly to the public, the committee might also attempt to have the appointing authority voluntarily adopt the judicial selection reform proposal. See note 68 supra.
inexperienced hands. However, the history of judicial selection reform elections has shown the efforts in various jurisdictions to have more similar than dissimilar qualities. It makes practical sense, therefore, to seek professional assistance in those areas where the expertise could be helpful. Such a step would not only improve the administration of the campaign but would also allow the committee extra time to concentrate on the uniquely local aspects of the effort. Because of the costs involved in seeking such professional help, it might be more efficient and effective for judicial selection reform groups throughout the country to retain one political consulting firm which would assist in the campaign efforts in the various states.

Some might argue that utilizing such assistance hints of the manipulation that is decried in the elective system. Manipulation, however, is hardly inherent in political processes. It is, rather, the result of the methods used by some individuals in approaching the system. This campaign must maintain the highest ethical standards, and it can be expected that the bar, the judiciary, the opposition, and the press will quickly come to the fore if there is any hint of political manipulation. The more germane question concerns the reasons why a campaign for such an important issue should not utilize the best talents available.

Past efforts to reach the electorate on the issue of judicial selection have been based on ill-conceived attempts to anticipate public opinion and voter awareness about this subject. It is not true, as many judicial reformers argue, that the electorate will naturally support a non-elected judiciary. Most surveys indicate that while the public knows very little about any process of judicial selection, the overwhelming majority of voters will nonetheless oppose an appointive system. These same surveys show,

153. See notes 146 & 148 supra.

154. See, e.g., N.Y. Times, Oct. 28, 1974, at 1, col. 1. This survey by Yankelovich, Shelly and White, Inc. indicated that two-thirds of those polled in the New York City metropolitan area opposed the appointment of judges.

When asked in a poll whether the Missouri plan would be a good way to select state judges, Minnesota residents overwhelmingly responded to the negative. Now, as then, Minnesota judges are chosen in nonpartisan elections. The Minnesota Poll, Minn. No. 265, question 14B, Mar. 1967 (data located at the Roper Public Opinion Research Center, Williamstown, Massachusetts).

Unfortunately there has been very little thorough survey work done in the judicial selection field. Much more quantitative data is needed to deal meaningfully with the problem.
however, that once informed about the issue, the public is much more receptive to reform efforts. The committee therefore should invest its initial funds in an in-depth background survey designed to pinpoint public attitudes on the subject and discover voter opinion on various approaches for change. Such a survey is absolutely crucial, for it will indicate in which areas and to which groups and issues the campaign should be most vigorously directed. It is especially important to pinpoint the strengths and weaknesses of an issue such as judicial selection reform which has a strong potential to build coalitions across traditional political lines. Properly conducted and utilized, the survey should provide a guide for the conduct of the campaign. Since the campaign is likely to be lengthy because of its substantial educational nature, it may be wise to update the survey six months after the campaign has begun to determine the impact of the approach being utilized.\textsuperscript{155}

It is imperative that the matter not be placed on the ballot before the public has been properly informed about the issue at hand.\textsuperscript{156} It must be assumed that in any election of this sort there is a significant built-in status quo vote which only the most vigorous educational campaign will be able to overcome. As Table II indicates, public awareness of judicial affairs is not very high, and if the reform issue is put to a vote before the electorate is made aware of the established system’s defects and the proposed system’s benefits, defeat will be likely.\textsuperscript{157}

\textsuperscript{155} A poll similar to (although much less extensive than) the one suggested here was utilized in the successful judicial selection campaign in Arizona in 1974. This survey was conducted before the campaign for the constitutional amendment began and found that only 17 percent of the voters were familiar with the reform proposal (basically a Missouri plan). When an explanation of the proposal was read to the voters, however, 51 percent indicated that they favored such a plan, 34 percent opposed it and 15 percent had no opinion. These and other findings in the poll indicated that the voters were receptive to the reform proposal and indicated areas for the educational campaign to concentrate upon. \textit{See} Attitudes Toward Proposed Judicial Appointment Commission (Phoenix-Tucson), M.R. West Marketing Research Incorporated, Mar., 1974 (prepared for the State Bar Association of Arizona).

\textsuperscript{156} It is also important that the issue appear on the ballot in a simple and non-prejudicial manner. In 1970 the Missouri plan was extended to St. Louis County, Missouri by a vote of the electorate. The 1970 ballot allowed for a simple “yes” or “no” vote on whether the plan should be implemented. In 1968, an identical measure was narrowly defeated, and its failure was in large part blamed on the confusing and prejudicial way in which the ballot was worded. The voters in 1968 were asked to choose between judges who were “elected by the people” (i.e., retention of the elective system) and judges who were “nominated by a commission and chosen by the Chief Executive of the State” (i.e., the Missouri plan). St. Louis Post-Dispatch, July 18, 1970, at 3a, col. 7.

\textsuperscript{157} \textit{See generally} notes 146 & 148 supra; J. Peltason, \textit{The Missouri Plan for Selection of Judges} 40, 53 (1945).
Before going public, the campaign committee should make an effort to meet with the various political leaders in the jurisdiction to ascertain their views on the proposed reform. The fact that political leaders have a vested interest in the established system does not necessarily mean that they will resist a change. Above all, most politicians are rational, and many of them have decided that judicial selection reform is good politics since it will lift the task of selection from their shoulders—a job which often has as many drawbacks as benefits. Moreover, it is equally beneficial to talk with those who do not favor the plan, since it is important to identify, and possibly isolate, the opposition. Furthermore, it may be possible to neutralize or later convert opposition leaders, particularly if the committee is able to develop some political strength in the leaders' districts.

As the balloting approaches, it is important that the educational effort and the organizational campaign work in tandem to broaden the base of support for the reform. Too often in the past such reform efforts have failed because during the campaign the reformers talked to each other, rather than to the electorate. The issues of judicial abuse and political chicanery potentially have very strong public appeal since any citizen could be a victim of a poor judiciary. Properly tapped, this appeal could be translated

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A proper educational campaign is an important element in the success of a judicial selection reform campaign. The best approach is a simple and straightforward presentation explaining the defects of the current system and the attributes of the proposal. For an example of such material see League of Women Voters of New York State, Judicial Resource Kit: Selection of Judges (1965).


159. Niles, supra note 11, at 255.

160. The majority of voters would probably be willing to support and pass judicial selection reform measures if the basic importance and personal relevance of the issues were properly presented to them. See Winters & Lowe, supra note 59, § V (title page of section, not numbered), quoting Glenn R. Winters:

    Is it [judicial selection reform] worth it? For you, maybe not. Maybe you are one of the considerable number of people who can live a lifetime and never go to court for anything more serious than a traffic violation.

    But when a uniformed officer rings your doorbell and hands you a paper which says that the home you live in is not going to be yours any more, or when the telephone rings at night and it is your son calling to say that he is in jail charged with a crime that he knows nothing about, or when the other automobile runs through the stop sign, smashes your car and puts you and your family in
into important political strength. The final effort, of course, should be to identify the supporters of the reform proposal and encourage them to register their views on election day.

VIII. CONCLUSION

While the legal community has long debated the issue of judicial selection, little time has been expended rigorously analyzing the structure and consequences of the present methods of selection. The controversy has instead tended to revolve around heavily armed camps—either pro-election or pro-Missouri plan—and the proponents of both groups have been hesitant to examine critically the possible defects of their own systems for fear of exposing a weak flank to the opponent. Both of these established approaches have serious drawbacks. It is time now for the creation and implementation of a new synthesis whereby the best qualities of both plans are combined and strengthened to develop a superior means of selection.

Reforming and improving judicial selection is not an easy task. It is, however, an imperative one. As was once remarked to William James, “[t]here is very little difference between one man and another; but what little difference there is, is very important.” It is this difference which mandates the search for an improved system of judicial selection. In the words of Professor Rosenberg:

[A]s hard as the task [of judicial selection] may be, there is a special urgency for finding the human qualities in a judge that are most promising and the flaws that are most damaging. More than the teacher, the engineer, or the lawyer, the judge acts directly upon the property, liberty, even life, of his fellows. His human frailties are perilously magnified by the nature of his day-to-day work.

The proposal presented in this article is an effort to channel the discussion of judicial selection into new areas, thereby stimulating the pursuit for the best method of choosing our judges. This important task must go forward because society demands no less than a system of judicial selection that will yield the very finest judges.

Patrick Winston Dunn

the hospital, then suddenly the circuit court in your county, and the judge who presides over it, become more important to you than anything else.
161. See, e.g., H. JACOB, JUSTICE IN AMERICA 206-07 (1965). “[T]he debate over judicial selection continues in a factual vacuum.” Id. at 207.
162. W. JAMES, THE WILL TO BELIEVE 256 (1897).
163. Rosenberg, supra note 3, at 1064.
These provisions of the Missouri Constitution outline the basic features of the Missouri system of judicial selection. Mo. Const. art. 5, §§ 29(a), 29(c)(1), 29(d) (1970).

NONPARTISAN SELECTION OF JUDGES

§ 29(a). Courts subject to plan—appointments to fill vacancies.

Section 29(a). Whenever a vacancy shall occur in the office of judge of any of the following courts of this state, to wit: The supreme court, the court of appeals, the circuit and probate courts within the city of St. Louis and Jackson county, and the St. Louis courts of criminal correction, the governor shall fill such vacancy by appointing one of three persons possessing the qualifications for such office, who shall be nominated and whose names shall be submitted to the governor by a nonpartisan judicial commission established and organized as hereinafter provided. If the governor fails to appoint any of the nominees within sixty days after the list of nominees is submitted, the nonpartisan judicial commission making the nomination shall appoint one of the nominees to fill the vacancy.

§ 29(c)(1). Tenure of judges—declarations of candidacy—form of judicial ballot—rejection and retention.

Section 29(c)(1). Each judge appointed pursuant to the provisions of sections 29(a)-(g) shall hold office for a term ending December thirty-first following the next general election after the expiration of twelve months in the office. Any judge holding office, or elected thereto, at the time of the election by which the provisions of sections 29(a)-(g) become applicable to his office, shall, unless removed for cause, remain in office for the term to which he would have been entitled had the provisions of sections 29(a)-(g) not become applicable to his office. Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any judge whose office is subject to the provisions of sections 29(a)-(g) may file in the office of the secretary of state a declaration of candidacy for election to succeed himself. If a declaration is not so filed by any judge, the vacancy resulting from the expiration of his term of office shall be filled by appointment as herein provided. If such declaration is filed, his name shall be submitted at said next general election to the voters eligible to vote within the state if his office is that of judge of the supreme court, or within the geographic jurisdictional limit of the district where he serves if his office is that of a judge of the court of appeals, or within the geographic jurisdictional limit of his circuit if his office is that of circuit judge, or within the geographic jurisdictional limit of his court, if his office is that of probate judge or judge of the St. Louis court of criminal correction, on a separate judicial ballot, without party designation, reading:

"Shall Judge ............................................ (Here the name of the judge shall be inserted)
of the .............................................................. (Here the title of the court shall be inserted) be retained in office? Yes ☐  No ☐

(Mark an X in the box you prefer)"

If a majority of those voting on the question vote against retaining him in office, upon the expiration of his term of office, a vacancy shall exist which shall be filled by appointment as provided in section 29(a); otherwise, said judge shall, unless removed for cause, remain in office for the number of years after December thirty-first following such election.
as is provided for the full term of such office, and at the expiration of each such term shall be eligible for retention in office by election in the manner here prescribed.

§ 29(d). Nonpartisan judicial commissions—number, qualifications, selection and terms of members—majority rule—reimbursement of expenses—rules of supreme court.

Section 29(d). Nonpartisan judicial commissions whose duty it shall be to nominate and submit to the governor names of persons for appointment as provided by sections 29(a)-(g) are hereby established and shall be organized on the following basis: For vacancies in the office of judge of the supreme court or of the court of appeals, there shall be one such commission, to be known as “The Appellate Judicial Commission”; for vacancies in the office of judge of any other court of record subject to the provisions of sections 29(a)-(g), there shall be one such commission, to be known as “The Circuit Judicial Commission”, for each judicial circuit which shall be subject to the provisions of sections 29(a)-(g); the appellate judicial commission shall consist of a judge of the supreme court selected by the members of the supreme court, and the remaining members shall be chosen in the following manner: The members of the bar of this state residing in each court of appeals district shall elect one of their number to serve as a member of said commission, and the governor shall appoint one citizen, not a member of the bar, from among the residents of each court of appeals district, to serve as a member of said commission, and the members of the commission shall select one of their number to serve as chairman; each circuit judicial commission shall consist of five members, one of whom shall be the chief judge of the district of the court of appeals within which the judicial circuit of such commission, or the majority portion of the population of said circuit is situated, and the remaining four members shall be chosen in the following manner: The members of the bar of this state residing in the judicial circuit of such commission shall elect two of their number to serve as members of said commission, and the governor shall appoint two citizens, not members of the bar, from among the residents of said judicial circuit to serve as members of said commission; the members of the commission shall select one of their number to serve as chairman; and the terms of office of the members of such commission shall be fixed by law, but no law shall increase or diminish the term of any member then in office. No member of any such commission other than a judge shall hold any public office, and no member shall hold any official position in a political party. Every such commission may act only by the concurrence of a majority of its members. The members of such commission shall receive no salary or other compensation for their services as such, but they shall receive their necessary traveling and other expenses incurred, while actually engaged in the discharge of their official duties. All such commissions shall be administered, and all elections provided for under this section shall be held and regulated, under such rules as the supreme court shall promulgate.
APPENDIX IV

LEGAL AUTHORITY FOR OPERATION OF MISSOURI PLANS

[Map showing various legal authorities for operation of Missouri plans, with symbols representing different types of selection processes.]
APPENDIX V

The characteristics of nominating commissions in states operating under Missouri plans for judicial selection.*

ALABAMA

<table>
<thead>
<tr>
<th>TYPE OF PLAN</th>
<th>Constitutional, governor appoints to interim vacancies only. Thereafter, appointee must run in partisan election at end of each term. Adopted in 1950 in Jefferson County and in 1974 in Madison County.</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMMISSION(S) &amp; JUDICIAL OFFICES ENCOMPASSED</td>
<td>(2) Jefferson County Judicial Commission (Birmingham) 10th Judicial Circuit Court; Madison County Judicial Commission (Huntsville) 23rd Judicial Circuit Court (6 year term).</td>
</tr>
<tr>
<td>SELECTION &amp; TENURE OF COMMISSIONERS</td>
<td>5 Members: 1 judicial—elected by judges of appropriate circuit, 2 Lawyers—elected by lawyer residents of appropriate judicial circuit—from list of nominees of appropriate bar association, 2 non-lawyers—elected by state senator and representatives from appropriate county. All serve 6 year terms.</td>
</tr>
<tr>
<td>COMMISSION OPERATION</td>
<td>Submits names only of 3 candidates (in no specific order); no time constraints on submission thereof; names of all applicants made public.</td>
</tr>
<tr>
<td>RESTRICTIONS ON COMMISSION MEMBERSHIP</td>
<td>Members cannot hold public office, political office, or be appointed to judicial office during term on commission; cannot serve 2 consecutive terms.</td>
</tr>
<tr>
<td>SPECIAL PROVISIONS</td>
<td></td>
</tr>
</tbody>
</table>

ALASKA

<table>
<thead>
<tr>
<th>TYPE OF PLAN</th>
<th>Constitutional, governor appoints to all vacancies. Thereafter, appointee must stand in retention election at end of each term. Initial term is 3 years + period to next general election. Adopted in 1956.</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMMISSION(S) &amp; JUDICIAL OFFICES ENCOMPASSED</td>
<td>(1) Judicial Council, Supreme Court (10 year term); Superior Courts (6 year term); District Court (4 year term).</td>
</tr>
<tr>
<td>SELECTION &amp; TENURE OF COMMISSIONERS</td>
<td>7 Members: Chief Justice of Supreme Court (Chairman), 3 lawyers—appointed by governing body of state's unified bar, 3 non-lawyers—appointed by governor subject to legislative confirmation. All serve 6 year term.</td>
</tr>
<tr>
<td>COMMISSION OPERATION</td>
<td>Submits names only of 2 or more candidates 30 days of vacancy; names of all applicants made public.</td>
</tr>
</tbody>
</table>

*The number listed in parentheses under the heading “Commission(s) & Judicial Offices Encompassed” denotes the total number of nominating commissions in the state.
RESTRICTIONS ON COMMISSION MEMBERSHIP

Members cannot hold public office.

SPECIAL PROVISIONS

ARIZONA

TYPE OF PLAN

Constitutional, governor appoints to all vacancies. Thereafter, appointee must stand in retention election at end of each term. Adopted in 1974.

COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED

(3) Appellate Court Commission, Appellate Courts; Maricopa County Superior Court Commission, (Phoenix) Maricopa County Superior Court; Pima County Superior Court Commission (Tucson), Pima County Superior Court.

SELECTION & TENURE OF COMMISSIONERS

Appellate Court Commission—9 Members
Chief Justice (Chairman)
5 non-lawyers (each from different counties),
3 lawyers.
Maricopa County Superior Court Commission:
Same as Appellate except members must be residents of Maricopa County.
Pima County Superior Court Commission:
Same as Appellate except members must be residents of Pima County.

COMMISSION OPERATION

The chief justice votes only in case of a tie. Voting done by secret, written ballot. Commission nominates not less than 3 persons, no more than 2 can be of the same political party unless there are more than 4, in which case no more than 60 percent of nominees can be of the same party. Commission operates under rules that it adopts.

RESTRICTIONS ON COMMISSION MEMBERSHIP

Lawyers must be selected by state bar, non-lawyer members selected by the governor—both must be confirmed by the senate. Lawyers must have practiced in the state for 4 years, lawyer and non-lawyer appointments are required to be bipartisan. No member of the commission can hold any government office for salary or profit; lawyers cannot be considered for judicial nomination when on the commission or one year thereafter.

SPECIAL PROVISIONS

Missouri selection process is mandatory for all counties with population over 150,000; it is optional for all others.

COLORADO

TYPE OF PLAN

Constitutional, governor appoints to vacancies in all courts of record. Appointee serves provisional term of 2 years; thereafter, must stand in retention election at end of each term. Adopted in 1966.
COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED

(23) Supreme Court Nominating Commission, Court (10 year term), Court of Appeals (8 year term).

Judicial District Nominating Commissions (22) District Courts (6 year term), Probate Courts (6 year term), Juvenile Courts (6 year term), Superior Court of Denver (6 year term), County Courts outside of Denver (4 year term).

SELECTION & TENURE OF COMMISSIONERS

Supreme Court Nominating Commission—12 members:
Chief Justice of Supreme Court (Chairman), 5 lawyers (one from each congressional district)—elected by majority vote of governor, attorney general and chief justice, 5 non-lawyers (one from each congressional district) appointed by governor, 1 non-lawyer at large—appointed by governor.
All serve 6 year terms.

Judicial District Nominating Commission—8 members:
Supreme Court Justice (Chairman), 3 lawyers*—elected by majority vote of governor, attorney general and chief justice, 4 non-lawyers (at least one from each county in the appropriate judicial district)—appointed by governor.
All serve 6 year terms.

COMMISSION OPERATION

Supreme Court Nominating Commission—Submits 3 candidates for an appellate vacancy and 2 or 3 for trial vacancy within 30 days; name of appointee only made public. The chairman of the several commissions do not have a vote and only serve as ex officio members of their respective commissions.

RESTRICTIONS ON COMMISSION MEMBERSHIP

Supreme Court Nominating Commission—Members cannot hold public or political party office, cannot serve 2 consecutive terms (terms are staggered), cannot be appointed to judicial office during their term and for 3 years thereafter. No more than one-half plus one of members (excluding chairman) can be of same political party.

Judicial District Nominating Commissions—No more than 4 of 7 members can be of same political party.

SPECIAL PROVISIONS

*Colorado Judicial District Nominating Commissions—in judicial districts having a population of 35,000 or less, at least 4 members must be non-lawyers; the other members may be lawyers or non-lawyers, depending on majority vote of the governor, attorney general, and chief justice.

DISTRICT OF COLUMBIA

TYPE OF PLAN


COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED

(1) Judicial Nominating Commission, Court of Appeals (15 year term), Superior Court (15 year term).
### Judicial Selection

**Selection & Tenure of Commissioners**

<table>
<thead>
<tr>
<th>Members</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Active or retired federal judge serving in the District-appointed by Chief Judge of the U.S. District Court for the District of Columbia, 1 lawyer or non-lawyer-appointed by President of United States, 2 lawyers-appointed by Board of Governors of the D.C. Unified Bar, 2 members (one of whom may not be a lawyer)—appointed by mayor, 1 non-lawyer—appointed by the District Council. All serve 6 year terms except member appointed by President, who serves a 5 year term.</td>
</tr>
</tbody>
</table>

**Commission Operation**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission of only 3 names within 30 days of vacancy.</td>
<td></td>
</tr>
</tbody>
</table>

**Restrictions on Commission Membership**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prohibited from holding public office, except in the case of the judicial appointee.</td>
<td></td>
</tr>
</tbody>
</table>

**Special Provisions**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senate confirmation of appointee. If President does not or wishes not to appoint 1 of the 3 nominees within 60 days of receipt of the list, the Commission is given the power to nominate.</td>
<td></td>
</tr>
</tbody>
</table>

### Florida

**Type of Plan**


**Commission(s) & Judicial Offices Encompassed**

- (24) Supreme Court Nominating Commission, Supreme Court (6 year term).
- District Courts of Appeal Nominating Commissions, (4) Courts of Appeal (6 year term).
- Judicial Circuit Nominating Commissions (20), Judicial Circuit Courts (6 year term). Judges of County Court (4 year term).

**Selection & Tenure of Commissioners**

<table>
<thead>
<tr>
<th>Members</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Supreme Court Nominating Commission, District Courts of Appeal Nominating Commissions and Judicial Circuit Nominating Commissions—9 members: 3 lawyers—appointed by Board of Governors of Florida Bar, 3 electors—appointed by governor, 3 non-lawyers—elected by majority vote of other commissioners. All serve 4 year terms.</td>
</tr>
</tbody>
</table>

**Commission Operation**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submits only 3 or more names within 30 days; names of nominees made public.</td>
<td></td>
</tr>
</tbody>
</table>

**Restrictions on Commission Membership**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members ineligible for appointment to judicial office during term and 2 years thereafter.</td>
<td></td>
</tr>
</tbody>
</table>

**Special Provisions**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florida Federal Judicial Nominating Commission Chairman elected from membership of commission.</td>
<td></td>
</tr>
</tbody>
</table>
GEORGIA

TYPE OF PLAN

Executive Order, governor appoints to interim vacancies. Thereafter, appointee must run in next general election. Initially issued in 1971, issued with revisions in April, 1975.

COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED

(1) Judicial Nominating Commission, Supreme Court of Appeals, Superior Courts.

SELECTION & TENURE OF COMMISSIONERS

Judicial Nominating Commission—10 Members:
5 lawyers serve by virtue of office in the State Bar of Georgia,
5 citizens appointed by governor (no 2 from same circuit),
Non-lawyers serve for terms concurrent with the governor's term.

COMMISSION OPERATION

Judicial Nominating Commission submits 5 names to governor; no time constraints.

RESTRICTIONS ON COMMISSION MEMBERSHIP

IDAHO

TYPE OF PLAN

Statutory, governor appoints to interim vacancies only. Thereafter, appointee must run in nonpartisan election at end of each term. Adopted in 1967.


COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED

(8) Judicial Council, Supreme Court (6 year term),
District Court (4 year term).
District Magistrates Commissions, Magistrates of District Courts (2 year term).

SELECTION & TENURE OF COMMISSIONERS

Judicial Council—7 members:
Chief Justice of Supreme Court (Chairman),
3 lawyers (including one district judge)—appointed by Board of Commissioners of Idaho Bar, with consent of senate,
3 non-lawyers—appointed by governor with consent of senate.
All serve 6 year terms.
District Magistrates Commissions—5+ members:
2 lawyers—nominated by local bar association and appointed by Idaho State Bar,
3 mayors within appropriate district appointed by governor,
Chairman of the Board of County Commissioners of each county within the district.
Judicial Selection

Commission

Operation

Submits only 2-4 names to governor, names of nominees only made public (at discretion of commission); no time constraints.

Restrictions on Commission Membership

Prohibited from holding public office. No more than 3 of 6 appointed members can be of same political party.

Special Provisions

Indiana

Type of Plan

Constitutional, governor appoints to initial term of 2 years. Thereafter, appointee must stand in retention election at end of each term. Adopted in 1970.

Statutory, governor appoints certain county superior court judges for initial term of 2 years. Thereafter, appointee must stand in retention election at end of each term. Adopted in 1971, 1972.

Statutory, governor appoints to initial term, and makes subsequent reappointments at end of each term. Adopted in 1972.

Commission(S) & Judicial Offices Encompassed

(5) Judicial Nominating Commission, Supreme Court (10 year term), Court of Appeals (10 year term);
Lake County Superior Court Nominating Commission, Lake County Superior Court;
Allen County Superior Court Nominating Commission, Allen County Superior Court;
Vanderburgh County Superior Court Nominating Commission, Vanderburgh County Superior Court (6 year terms);
Marion County Municipal Court Nominating Commission, Marion County Municipal Court (4 year term).

Selection & Tenure of Commissioners

Judicial Nominating Commission—7 members:
Chief Justice of Supreme Court (Chairman),
3 lawyers (1 from each court of appeals district) elected by lawyer residents in each district,
3 non-lawyers (1 from each court of appeals district)—appointed by governor. All serve 6 year terms (after initial staggered terms of 2, 4, and 6 years).
Lake, Allen, and Vanderburgh County Superior Court: Nominating Commissions—7 members,
1 judicial (Chairman)—appointed by Chief Justice of Supreme Court,
3 lawyers—elected by lawyer residents of appropriate county,
3 non-lawyers—appointed by governor. All serve 4 year terms.
Marion County Municipal Court Nominating Commission—9 members:
1 judicial—appointed by Chief Judge of Court of Appeals,
2 lawyers—elected by local bar association,
2 non-lawyers appointed by mayor,
2 non-lawyers appointed by governor,
1 lawyer appointed by Marion County Superior Court en
banc,
1 Circuit Judge (Secretary).
All serve 2 year terms.

**COMMISSION**

**OPERATION**

Judicial Nominating Commission—Written evaluation on each of 3 nominees, based on considerations set out in statutes, submitted to governor; if governor fails to make an appointment within 60 days from the date the list is submitted, then the chief justice makes the appointment from the same list; only name of nominees made public (at discretion of commission).

**RESTRICTIONS ON COMMISSION MEMBERSHIP**

Judicial Nominating Commission—prohibited from holding public or political party office;
Ineligible for judicial appointment during term and 3 years thereafter.
Lake, Allen, & Vanderburgh County Commissions—no more than 2 of the 3 appointed members can be of same political party.
Marion County Commission—no more than 1 of 2 mayor-appointed members, the 2 governor-appointed members and 2 bar-elected members can be of same political party.

**SPECIAL PROVISIONS**

**IOWA**

**TYPE OF PLAN**

*Constitutional*, governor appoints to initial term. Thereafter, appointee must stand in retention election at end of each term. Initial term is 12 months plus period to January 1 following next judicial election. Adopted in 1962.

**COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED**

(113) *State Judicial Nominating Commission*, Supreme Court (8 year term).
*District Judicial Nominating Commissions* (13) District Courts (6 year term).
*County Judicial Magistrate Appointing Commissions* (99), Judicial Magistrates (4 year term for full time, 2 year term for part time).

**SELECTION & TENURE OF COMMISSIONERS**

State Judicial Nominating Commission—12 members:
6 electors (1 from each congressional district) appointed by governor with senate confirmation,
6 lawyer electors (1 from each congressional district) elected by bar members of appropriate district. All serve 6 year terms.
District Judicial Nominating Commissions—11 members:
1 district judge—appointed by chief judge of district,
5 electors—appointed by governor,
5 electors—elected by bar members of appropriate district.
All serve 6 year terms.
County Judicial Magistrate Appointing Commissions—6 members:
1 judicial—appointed by chief judge of district,
2 lawyers—elected by appropriate county bar,
3 non-lawyers appointed by appropriate county board of supervisors.
All serve 6 year terms.

COMMISSION OPERATION
Submits in alphabetical order only names of 3 candidates for appellate vacancy or 2 for trial vacancy; only names of nominees made public.

RESTRICTIONS ON COMMISSION MEMBERSHIP
Prohibited from holding public office, cannot serve 2 consecutive terms; ineligible for appointment to judicial office during term on commission.

SPECIAL PROVISIONS

KANSAS

TYPE OF PLAN
Constitutional, governor appoints to initial term. Thereafter, appointee must stand in retention election at end of each term. Initial term is 12 months + period to second Monday in January after next general election. Adopted in 1958.
Statutory, local option plan adopted in 1974.

COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED
(24) Supreme Court Nominating Commission, Supreme Court (6 year term).
Judicial District Nominating Commissions (23), District Courts.

SELECTION & TENURE OF COMMISSIONERS
Supreme Court Nominating Commission—11 members:
1 lawyer at large (Chairman)—elected by Kansas lawyers,
5 lawyers (1 from each congressional district) elected by lawyers of appropriate district,
5 non-lawyers (1 from each congressional district) appointed by governor.
All serve 5 year terms.
Judicial District Nominating Commissions—lawyers elected by the bar, non-lawyers appointed by county commissioners, number of members depends on number of counties in district.

COMMISSION OPERATION
Submits only 3 names within 60 days; only names of nominees made public.

RESTRICTIONS ON COMMISSION MEMBERSHIP
Prohibited from holding public office, political party office; cannot serve more than 2 terms; ineligible for appointment to judicial office during term and 6 months thereafter.

SPECIAL PROVISIONS
Judicial District Nominating Commissions: 23 of 29 judicial districts adopted plan by local referendum.

MARYLAND

TYPE OF PLAN
(9) Appellate Courts Judicial Nominating Commission
Court of Appeals, Court of Special Appeals
Trial Court Judicial Nominating Commission (8) District
Courts, Circuit Courts, Supreme Bench of Baltimore.

Appellate Courts Judicial Nominating Commission—13
members:
1 chairman, appointed by governor,
1 non-lawyer from each appellate judicial circuit, ap-
pointed by governor,
1 lawyer from each appellate judicial circuit, elected by
the bar,
1 secretary (the State Court Administrator) (non-voting).
Terms co-extensive with term of governor.

Trial Court Judicial Nominating Commission—13 mem-
bers:
1 chairman, appointed by governor,
6 non-lawyers appointed by governor,
6 lawyers elected by bar,
Secretary (the State Court Administrator) (non-voting).

Submits 5-7 names (these figures subject to several
exceptions including if an incumbent is seeking reappoint-
ment) only in alphabetical order; choices must be made
within 70 days; only names of nominees made public.

Prohibited from holding public office; ineligible for
appointment to judicial office during term.

**Massachusetts**

Executive Order, governor appoints. Issued in 1975.

(1) Judicial Nominating Commission, all state courts.
Also nominates clerks of court for those courts for
governor has appointing responsibility.

11 members appointed by governor: 5 lawyers (1 desig-
nated by Massachusetts Bar Association and 1 the dean
of a law school) and 6 non-lawyers.

Recruiting and interviewing of potential nominees. List
of at least 3 nominees to be submitted to governor within
60 days after vacancy occurs. Governor may request addi-
tional list of at least 3 names. If appointee fails confirma-
tion by Governor’s Council, governor may request a third
list of at least 3 names.

No member shall hold appointive or elective public
office during term. No more than 6 members shall be
registered members of the same political party at time of
appointment.
SPECIAL PROVISIONS

3 year terms. No member to serve more than 2 successive terms. Public hearings to be held within jurisdiction of local courts when vacancies occur therein. Names, records and deliberations held in confidence. Name of appointee publicly announced at least 14 days prior to consideration by Governor’s Council.

MISSOURI

TYPE OF PLAN

Constitutional, governor appoints to initial term. Thereafter, appointee must stand in retention election at the end of each term. Initial term is 12 months + period to December 31 after next general election. Adopted by appellate courts and Jackson County in 1940. Adopted by St. Louis county in 1970 and by Clay and Platt Counties in 1973.

COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED

(5) Appellate Judicial Commission, Supreme Court (12 year term), Court of Appeals (12 year term).

Judicial Circuit Commissions, Circuit and Probate Courts within St. Louis, Clay, Platt, and Jackson Counties (12 year terms), St. Louis Courts of Criminal Correction (12 year term).

SELECTION & TENURE OF COMMISSIONERS

Appellate Judicial Commission—7 members:

Supreme Court Justice—elected by members of Supreme Court,

3 lawyers, (1 from each court of appeals district) elected by lawyer residents of appropriate district,

3 non-lawyers (1 from each court of appeals district) appointed by governor. All serve 6 year terms.

Judicial Circuit Commissions—5 members:

Chief Judge of District Court of Appeals,

2 lawyers—elected by lawyer residents of appropriate circuit,

2 non-lawyers, (1 from each circuit) appointed by governor. All serve 6 year terms.

COMMISSION OPERATION

Submits only 3 names (governor may request additional information); names of all applicants made public (at discretion of commission); no time constraints.

RESTRICTIONS ON COMMISSION MEMBERSHIP

Appellate Judicial Commission—prohibited from holding public office, political party office; cannot serve 2 consecutive terms.

SPECIAL PROVISIONS

MONTANA

TYPE OF PLAN

Constitutional, governor appoints (with Senate confirmation) to interim vacancy only. Thereafter appointee must run in nonpartisan election at next general election. Adopted in 1972.

(1) **Judicial Nomination Commission**, Supreme Courts, District Courts.

<table>
<thead>
<tr>
<th>SELECTION &amp; TENURE OF COMMISSIONERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Judge—elected by district judges and certified by supreme court, 2 lawyers (1 from each congressional district) appointed by supreme court, 4 non-lawyers—appointed by governor. All serve 4 year terms.</td>
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</tbody>
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<tr>
<th>COMMISSION OPERATION</th>
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<tbody>
<tr>
<td>Submits 3-5 names only within 30 days; only names of nominees made public (at discretion of governor).</td>
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<tr>
<th>RESTRICTIONS ON COMMISSION MEMBERSHIP</th>
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<tbody>
<tr>
<td>Ineligible for appointment to judicial office during term and 1 year thereafter.</td>
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<tr>
<th>SPECIAL PROVISIONS</th>
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<tbody>
<tr>
<td><strong>NEBRASKA</strong></td>
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<th>TYPE OF PLAN</th>
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<tr>
<th>COMMISSION(S) &amp; JUDICIAL OFFICES ENCOMPASSED</th>
</tr>
</thead>
<tbody>
<tr>
<td>(61) <strong>Supreme Court Nominating Commissions</strong> (7), Supreme Court (6 year term). <strong>District Court Nominating Commissions</strong> (21), District Courts (6 year term). <strong>County Court Nominating Commissions</strong> (21), County Courts (6 year term). <strong>Juvenile Court Nominating Commission</strong>, Juvenile Courts (6 year term). <strong>Workman's Compensation Court Nominating Commission</strong>, Workman's Compensation Court.</td>
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</tbody>
</table>

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<tr>
<th>SELECTION &amp; TENURE OF COMMISSIONERS</th>
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</thead>
<tbody>
<tr>
<td>All commissions have 9 members: Supreme Court justice (Chairman) appointed by governor, 4 lawyers—elected by lawyer residents of appropriate districts, 4 non-lawyers—appointed by governor. All serve 6 year terms.</td>
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<thead>
<tr>
<th>COMMISSION OPERATION</th>
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</thead>
<tbody>
<tr>
<td>Submits 2 or more names only (governor may request additional information); no time constraints; only names of nominees made public. Commission must hold public meeting; chairman does not have a vote.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>RESTRICTIONS ON COMMISSION MEMBERSHIP</th>
</tr>
</thead>
</table>
| Cannot serve 2 consecutive terms nor more than 2 terms; ineligible for appointment to judicial office during term and 2 years thereafter. **Supreme and District Courts Nominating Commissions**: No more than 2 of the
Judicial Selection

**Nebraska County Court Nominating Commissions**—in practice, the members serving on these commissions often serve also on the corresponding District Court Nominating Commissions.

**NEW YORK**

**Executive Order.** Issued in 1975.

<table>
<thead>
<tr>
<th>TYPE OF PLAN</th>
<th>COMMISSION(S) &amp; JUDICIAL OFFICES ENCOMPASSED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Order</td>
<td>(62) <strong>Statewide Judicial Nominating Committee</strong>, Court of Appeals, Court of Claims. Departmental Judicial Nominating Committee, (4) Appellate Division, Supreme Court. County Judicial Nominating Committees, (57) Surrogate's Court, County Court, Family Court (outside N.Y.C.).</td>
</tr>
</tbody>
</table>

**SELECTION & TENURE OF COMMISSIONERS**

Statewide Judicial Nominating Committee—12 members:
- Chairman of each departmental committee + 2 others from each departmental committee, 1 lawyer and 1 non-lawyer.
- Departmental Judicial Nominating Committee—11 members:
  - 4—at least 2 non-lawyers appointed by governor,
  - 4—at least 2 non-lawyers appointed by chief judge,
  - 1 lawyer appointed by presiding justices of appellate divisions,
  - 2—at least 1 lawyer—appointed by majority and minority leader of the assembly, Chairman appointed by governor.
- County Judicial Nominating Committees—13 members:
  - Departmental Committee + 2 (1 lawyer and 1 non-lawyer) appointed by a county's chief executive officer.

**COMMISSION OPERATION**

Report of the committee is available to public after appointment is made.

**RESTRICTIONS ON COMMISSION MEMBERSHIP**

Statewide Committee: the 2 members from each Departmental Committee must be of different political parties.
- Departmental Committee: the 2 members appointed by senate and assembly must be of different parties.
- Of the 4 members appointed by governor and of the 4 appointed by chief judge, no more than 2 can be of same political party.
- County Committee: the 2 members appointed by county's chief executive officer must be of different political parties. No member of a judicial nominating committee shall hold any judicial, elected, public, or political office.

**SPECIAL PROVISIONS**

Statewide Committee—chairman is selected by committee. No limit on number of candidates submitted to governor.
## OKLAHOMA

**TYPE OF PLAN**

Executive Order, governor appoints to interim vacancies (trial courts). Issued in 1967.


**COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED**

(1) Judicial Nominating Commission, all judicial offices within the state.

**SELECTION & TENURE OF COMMISSIONERS**

13 members:
- 6 lawyers (1 from each congressional district) elected by lawyer residents of appropriate district,
- 6 non-lawyers (1 from each congressional district) appointed by governor,
- 1 non-lawyer—elected by other commissioners.
All serve 6 year terms except member-at-large, who serves 2 year term.

**COMMISSION OPERATION**

Submits only 3 names; no time constraints; only names of nominees made public; chairman is elected each year by the commission members; governor bound to choose from the commission nominations for supreme court and criminal appellate courts, but is not thus bound for choosing trial court judges.

**RESTRICTIONS ON COMMISSION MEMBERSHIP**

Prohibited from holding public office, political party office; cannot serve 2 consecutive terms; ineligible for appointment to judicial office during term and 5 years thereafter.

## PENNSYLVANIA

**TYPE OF PLAN**


**COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED**

(8) Appellate Court Nominating Commission, Supreme Court, Superior Court, Commonwealth Court.

Trial Court Nominating Commission, composed of 7 Area Judicial Nominating Commissions, Courts of Common Pleas, Philadelphia Municipal Court, Traffic Court of Philadelphia.

**SELECTION & TENURE OF COMMISSIONERS**

Appellate Court Nominating Commission—7 members:
- 3 lawyers—appointed by governor,
- 3 non-lawyers—appointed by governor,
- Senior supreme court justice who is ineligible for retention—appointed by governor (Chairman).
All serve 3 year terms.

Trial Court Nominating Commission:
- 3 area members,
- 1 lawyer, appointed by governor,
- 1 non-lawyer appointed by governor,
1 lawyer or non-lawyer as determined by governor, appointed by governor,
4 Judicial District Members,
2 lawyers from each judicial district,
2 non-lawyers from each judicial district.
All appointed by governor for 3 year term.
Chairman is appointed from area members by governor.

Appellate Commission: submits only 3 (may be fewer upon majority vote of commission and prior approval of governor) names within 30 days; only names of nominees made public.
Trial Commission: judicial district members only function for appointments within their own judicial district.

Commonwealth is divided into 7 judicial nomination areas composed of judicial districts.

SOUTH CAROLINA

Judicial Nominating Committee, 17 members:
9 non-lawyers appointed by the governor at the request of the bar,
8 non-lawyers appointed by the president of the bar,
1 lawyer and non-lawyer from each of the 6 congressional districts,
1 lawyer from the house and senate judiciary committees,
3 non-lawyers at large.
All serve 6 year terms, or until they cease to hold their official positions.

No more than 3 names may be submitted; these names are made public.

Members of the committee are not eligible for nomination as a justice while on the committee or for 3 years thereafter, committee members may not succeed themselves.

Members of the committee may not solicit individuals for consideration by the committee for nomination.

TENNESSEE

COMMISSION(S) &
JUDICIAL OFFICES
ENCOMPASSED

(1) Appellate Court Nominating Commission, Court
of Appeals, Court of Criminal Appeals (8 year term)
(not including supreme court).

SELECTION &
TENURE OF COM-
MISSIONERS

6 members:
3 members (1 resident from each grand division of
state—only 1 can be lawyer) appointed by governor,
3 lawyers (1 from each grand division of state) elected by
members of Tennessee bar.
All serve 6 year terms.

COMMISSION
OPERATION

Submits only 3 names within 30 days; names of all
applicants made public.

RESTRICTIONS ON
COMMISSION MEM-
BERSHIP

Members prohibited from holding public office, politi-
cal party office; cannot hold office 2 consecutive terms;
ineligible for appointment to judicial office during term on
commission.

SPECIAL
PROVISIONS

UTAH

TYPE OF PLAN
Statutory, governor appoints to interim vacancies only.
Thereafter, appointee must run in next general election.
If no one files against him, then it is retention election.

COMMISSION(S) &
JUDICIAL OFFICES
ENCOMPASSED
(9) Supreme Court Nominating Commission, Supreme
Court;
District Court Nominating Commissions, District Courts;
Juvenile Court Nominating Commission, Juvenile Courts.

SELECTION &
TENURE OF COM-
MISSIONERS

7 members:
Chief Justice of Supreme Court (Chairman),
2 lawyers—selected by Utah State Bar Association,
2 non-lawyers—appointed by governor,
1 lawyer or non-lawyer—selected by senate,
1 lawyer or non-lawyer—selected by house of representa-
tives.
All serve 4 year terms.

COMMISSION
OPERATION

Submits only 3 names within 45 days; only names of
nominees made public.

RESTRICTIONS ON
COMMISSION MEM-
BERSHIP

Cannot serve 2 consecutive terms; ineligible for ap-
pointment to judicial office during term and 6 months
thereafter; member selected by senate will be of governor’s
political party, member selected by house will be of oppos-
ite party; successors shall be of opposite political parties
as predecessors; no more than 1 of 2 members appointed
by governor and bar can be of same political party.

SPECIAL
PROVISIONS

VERMONT

TYPE OF PLAN
Constitutional, governor appoints to all vacancies, subject
| COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED | 1) *Judicial Selection Board*, Supreme Court (6 year term), Superior Court (6 year term), District Court (6 year term) |
| **SELECTION & TENURE OF COMMISSIONERS** | 11 members: 3 lawyers—elected by lawyer residents of state, 2 non-lawyers—appointed by governor, 3 state senators (only 1 may be a lawyer) elected by senate, 3 state representatives (only 1 may be a lawyer) elected by house of representatives. All serve 2 year terms. |
| **COMMISSION OPERATION** | Submits only the names of at least 3 persons qualified to be appointed; if there should be 3 or fewer qualified candidates, then board submits the names and may provide any amplifying information as appropriate; no time constraints; name of appointee only made public. |
| **RESTRICTIONS ON COMMISSION MEMBERSHIP** | At least 1 of the 3 senators and 1 of the 3 representatives must be of political party which is in minority in the senate and the house. |
| **SPECIAL PROVISIONS** | |

**WYOMING**

**TYPE OF PLAN**  
*Constitutional*, governor appoints to initial term of at least 1 year. Thereafter, appointee must stand in retention election at end of each term. Adopted in 1972.

| COMMISSION(S) & JUDICIAL OFFICES ENCOMPASSED | 1) *Judicial Nominating Commission*, Supreme Court (8 year term), District Courts (6 year term). |
| **SELECTION & TENURE OF COMMISSIONERS** | 7 members:  
Chief Justice of Supreme Court or justice selected by Chief Justice (Chairman), 3 lawyers elected by members of Wyoming bar, 3 non-lawyers appointed by governor. All serve 4 year terms. |
| **COMMISSION OPERATION** | Submits only 3 names within 60 days; only name of appointee made public. |
| **RESTRICTIONS ON COMMISSION MEMBERSHIP** | Prohibited from holding political party office or public office; ineligible for appointment to judicial office during term and 1 year thereafter. The 6 elected and appointed commissioners cannot succeed themselves. |
| **SPECIAL PROVISIONS** | Before standing for retention election, candidate must be reapproved by commission. (Currently an amendment to the constitution is pending to remove this provision.) The legislature can extend the plan to lower courts by statute. |
APPENDIX VI

The present methods of judicial selection in the states with the applicable constitutional and statutory provisions.

ALABAMA

Initial Selection:
All judges elected by partisan vote of electors within territorial jurisdiction of their respective courts. ALA. CONST. art. 6, § 152.

Procedure for Filling Vacancies:
Gubernatorial appointment (except in 10th and 23rd judicial circuits where a Missouri selection plan is in effect). ALA. CONST. art. 6, §§ 153, 158, amends. 83, 110, 328; ALA. CODE tit. 13, § 386 (1974).

ALASKA

Initial Selection:
Missouri plan selection of supreme court justices and superior and district court judges, appointed by governor from nominations made by judicial council. Magistrates are appointed by Presiding Judge of the Superior Court. ALASKA CONST. art. 4, §§ 5-8; ALASKA STAT. § 22.15.170 (1972).

Procedure for Filling Vacancies:
Same as initial selection. ALASKA CONST. art. 4, §§ 5-8; ALASKA STAT. §§ 22.15.170, 22.05.080 (1972).

ARIZONA

Initial Selection:
For superior court judges in counties with a population of less than 150,000—non-partisan elections. Justices of the peace elected on partisan ballots; police magistrates elected in a manner determined by local charter or ordinance provision. Court commissioners chosen by Presiding Judge of the Superior Court. All other judges nominated by a non-partisan commission and appointed by the governor. ARIZ. CONST. art. 6, §§ 12, 36-38; ARIZ. REV. STAT. ANN. §§ 12-101, 12-120.01, 12-213, 22-111, 22-403 (1974).

Procedure for Filling Vacancies:
Same as initial selection except that if governor does not fill vacancy within 60 days for superior court, court of appeals and supreme court, judges and justices or chief justices of the supreme court will. ARIZ. CONST. art. 6, §§ 12, 36-38; ARIZ. REV. STAT. ANN. § 12-120.01 (1974).

ARKANSAS

Initial Selection:
Partisan election of all judges. ARK. CONST. art. 7, §§ 6, 17, 29, 38; ARK. STAT. ANN. §§ 22-409, 22-703, 22-810 (1974).

Procedure for Filling Vacancies:
Appointment by governor for unexpired term until next general election. Interim appointee may not run for office. ARK. CONST. amends. 29 §§ 1, 2, 4, 5.
CALIFORNIA

Initial Selection:
Supreme and appellate court judges are appointed by the governor and must be confirmed by the Commission on Judicial Appointments. The governor has total discretion in appointment of superior court judges and municipal judges. Justice court judges are either elected or appointed, at the discretion of the respective County Board of Supervisors. Cal. Const. art. 6, § 16.

Procedure for Filling Vacancies:
Same as initial selection. Supreme and appellate court appointees fill out the unexpired terms, superior court judges only serve until the next general election. Cal. Const. art. 6, §§ 7, 16.

COLORADO

Initial Selection:
Missouri plan selection of all judges of courts of record. Colo. Const. art. 6, §§ 20, 24-26.

Procedure for Filling Vacancies:
Appointment by governor for all judges of courts of record from a list submitted by the appellate or district nominating commission for a provisional 2 year term. Colo. Const. art. 6, §§ 20, 24-26.

CONNECTICUT

Initial Selection:

Procedure for Filling Vacancies:
All trial and appellate court judges nominated by governor and appointed by general assembly. When the legislature is not in session, the governor makes an appointment which lasts until the legislature reconvenes. Probate vacancies filled by special election for the remainder of the term. Conn. Const. art. 5, §§ 2, 3; Conn. Gen. Stat. Ann. §§ 2-40, 2-42, 2-43, 4-19, 17-55, 9-218 (1975).

DELAWARE

Initial Selection:
All judicial offices filled through appointments by governor with confirmation by senate; governor must reconvene senate if vacancy occurs during senate recess or adjournment. Del. Const. art. 4, §§ 3, 30.

Procedure for Filling Vacancies:
Same as initial selection. Del. Const. art. 4 §§ 3, 30.

DISTRICT OF COLUMBIA

Initial Selection:
Procedure for Filling Vacancies:


FLORIDA

Initial Selection:


Procedure for Filling Vacancies:

Vacancy filled by gubernatorial appointment from a list of at least 3 candidates nominated by the appropriate judicial nominating commission. Upon expiration of original term, judicial election held to fill office. Fla. Const. art. 5, § 11.

GEORGIA

Initial Selection:

Partisan election of all supreme court justices, judges of appellate and superior courts, ordinaries, and justices of the peace; juvenile court judges are appointed by superior court judge(s). Ga. Const. art. 6, chs. 2-3703, 2-3708, 2-3802, 2-4203; Ga. Code Ann. §§ 24-1702, 24-2402, 24-2601, 24-2604, 24-4002 (1970).

Procedure for Filling Vacancies:

Governor appoints all judges (except ordinaries, juvenile judges, and justices of peace) under voluntary Missouri plan until next general election when remainder of unexpired term is filled. Ordinaries and justice of the peace vacancies are filled by special elections. Juvenile judges are appointed by superior court judge(s). Ga. Const. art. 6, chs. 2-3703, 2-3708, 2-3803; Ga. Code Ann. §§ 24-1707, 24-406, 24-408, 24-2402, 24-2601, 24-2604, 24-4006 (1970).

HAWAII

Initial Selection:

All supreme and circuit court judges appointed by governor with advice and consent of senate; 10 days public notice must be given by the governor before either sending nominations to the senate or making interim appointments while senate is not in session. District court judges are appointed by the Chief Justice of the Supreme Court. Land court: Chief Justice of the Supreme Court designates 1st Circuit Court Judges to serve as judge. Family court judge selected in same manner as land court judge. Hawaii Const. art. 5, § 3; Hawaii Rev. Stat. §§ 501-2, 571-4, 601-6, 604-1, 604-2, 604-3 (Supp. 1974).

Procedure for Filling Vacancies:


IDAHO

Initial Selection:

Nonpartisan election of supreme and district court judges. District court magistrates appointed on a nonpartisan Missouri plan basis by district court magistrates commission. Actions of commission subject to approval by majority of district judges in the district. Idaho Const. art. 4, § 6; art. 5, §§ 6, 11, 19; art. 6, § 7; Idaho Code §§ 1-2101, 1-2102, 1-2201 to 1-2207, 34-615, 34-616, 34-805, 34-1217 (Supp. 1975).
Judicial Selection

Procedure for Filling Vacancies:
Appointment by governor under a Missouri plan of supreme and district judges from a list submitted by the judicial council, until next election. District magistrates appointed by commission for the unexpired term. IDAHO Const. art. 4, § 6; art. 5, § 19; IDAHO Code §§ 1-2101, 1-2102, 1-2207, 59-804, 59-909 (Supp. 1975).

ILLINOIS

Initial Selection:
Partisan election of supreme court justices, appellate and circuit court judges. Associate circuit judges are appointed by circuit judges and court of claims judges are appointed by the governor with the advice and consent of the senate. ILL. Const. art. 6, §§ 8, 12.

Procedure for Filling Vacancies:
Vacancies in supreme court, appellate and circuit courts filled by appointment of supreme court until next election more than 60 days after vacancy occurs; associate circuit judges and court of claims vacancies filled in manner of original appointment. General assembly has authority to prescribe different method for filling vacancies. ILL. Const. art. 6, §§ 8, 12.

INDIANA

Initial Selection:
Justices of the supreme court, judges of the court of appeals, of the superior courts of Lake, Allen and Vandenburgh Counties as well as the municipal court of Marion County are appointed by the governor under a Missouri plan from names set forth by an appropriate nomination commission. Judges of other circuit courts are elected on a nonpartisan ballot by the electors of the area in which they serve. Ind. Const. art. 7, §§ 3, 7, 9-11; Ind. Ann. Stat. §§ 4-301, 4-304, 4-534, 4-538, 4-927, 4-1928, 4-1932, 4-2995, 4-7801, 4-7806 (Burns 1974).

Procedure for Filling Vacancies:
Vacancies on supreme court, court of appeals, and superior courts of Lake, Allen, and Vandenburgh Counties and Municipal Courts of Marion County are filled by Missouri plan. Vacancies on other circuit courts are filled by regular gubernatorial appointment. Ind. Const. art. 7, §§ 3, 7, 9-11; Ind. Ann. Stat. §§ 4-301, 4-537, 4-538, 4-1927, 4-1928, 4-1932, 4-2995, 4-7801, 4-7806 (Burns 1974).

IOWA

Initial Selection:
Missouri plan selection of supreme and district court judges; full-time magistrates are appointed by district judges from persons nominated by county judicial magistrate commission; part-time magistrates are appointed directly by the judicial magistrate commission. IOWA Const. art. 5, §§ 15-17; IOWA Code Ann. §§ 602.18, 602.42, 602.50 (1975).

Procedure for Filling Vacancies:
Vacancies in supreme and district courts filled by governor under Missouri plan. Vacancies for district associate judges are not filled. Magistrates same as initial selection. IOWA Const. art. 5, §§ 15-17; IOWA Code Ann. §§ 602.18, 602.30, 602.50 (1975).

KANSAS

Initial Selection:
Supreme court justices are appointed by governor under Missouri plan. All other judges are chosen in popular election except in judicial districts where the electo-

Procedure for Filling Vacancies:

KENTUCKY

Initial Selection:

Procedure for Filling Vacancies:
Appointment by governor until first general election 3 months after vacancy unless unexpired term is less than 1 year, in which case appointment is for balance of term. Ky. Const. §§ 152, 160.

LOUISIANA

Initial Selection:
Partisan election of all judges. La. Const. art. 7, §§ 7-9, 19, 22, 33, 47, 51, 82, 96.

Procedure for Filling Vacancies:
Vacancies are filled either by special election or appointment by the governor with the advice and consent of the senate, depending on the length of the unexpired term. La. Const. art. 7, §§ 7, 8, 21-23, 69.

MAINE

Initial Selection:
All judges appointed by governor with advice and consent of executive council (seven-member body elected by the general assembly), except that probate judges are chosen in partisan elections by electors of their respective counties. Me. Const. art. 5, pt. 1 § 8; art. 6, § 6; Me. Rev. Stat. Ann. tit. 4, § 157 (1975).

Procedure for Filling Vacancies:
Governor fills all vacancies by appointment (probate judges' vacancies filled only until the next election) with advice and consent of council. Me. Const. art. 5, pt. 1, § 8; art. 6, § 6.

MARYLAND

Initial Selection:

Procedures for Filling Vacancies:
All judicial vacancies except district court, orphans' court, and tax court vacancies are filled by gubernatorial appointment under a voluntary Missouri selection plan until next general election at least 1 year after appointment. Appointment for tax court and orphans' court are for the remainder of the term to be filled. Vacancies
in the district court are filled by the governor under a voluntary Missouri plan with the advice and consent of the senate for a 10 year term. If the senate does not confirm by end of annual legislative session, appointee leaves office and governor must make another selection. Md. Const. art. 4, §§ 5, 40, 41D; Md. Ann. Code art. 81, § 224 (1975).

MASSACHUSETTS

Initial Selection:
All judges nominated and appointed by governor under voluntary Missouri plan with the advice and consent of the governor's council (8 member body elected by the voters). Mass. Const. pt. 2, cl. 2, § 1, art. 9; Mass. Gen. Laws Ann. ch. 218, § 6 (1974).

Procedure for Filling Vacancy:

MICHIGAN

Initial Selection:

Procedure for Filling Vacancies:

MINNESOTA

Initial Selection:
Nonpartisan election by electors of respective territorial jurisdiction. Minn. Const. art. 6, § 8; Minn. Stat. Ann. §§ 203.41, 205.05(2), 367.03, 487.03, 488.06, 525.04 (1975).

Procedure for Filling Vacancies:

MISSISSIPPI

Initial Selection:

Procedure for Filling Vacancies:
Appointment by governor of trial and appellate judges with advice and consent of senate until next general election. If senate is not in session, governor's appointment expires at end of next session of senate unless appointee is confirmed. Miss. Const. art. 6, § 177; Miss. Code Ann. § 43-23-29 (1972).
MISSOURI

Initial Selection:
Missouri selection for judges of supreme court, courts of appeals, circuit, and probate courts of the City of St. Louis and Jackson, Clay, Platte and St. Louis Counties and the municipal courts of Kansas City. All other judges elected on partisan ballot. Mo. Const. art. 5, § 29(A)(b)(c)(1)(d); Mo. Rev. Stat. §§ 98.030, 98.500, 478.611, 481.110, 482.010 (1975).

Procedure for Filling Vacancies:

MONTANA

Initial Selection:

Procedure for Filling Vacancies:

NEBRASKA

Initial Selection:

Procedure for Filling Vacancies:

NEVADA

Initial Selection:
Nonpartisan election of supreme and district court judges. Nev. Const. art. 6, §§ 3, 5.

Procedure for Filling Vacancies:
Supreme and district court vacancies filled by governor until next general election. Nev. Const. art. 17, § 22.

NEW HAMPSHIRE

Initial Selection:
All judicial offices filled by nomination and appointment of governor with approval of majority of the 5 member executive council (elected by the voters). N.H. Const. pt. 2, arts. 46, 60.

Procedure for Filling Vacancies:
Same as initial selection. N.H. Const. pt. 2, arts. 46, 60, 73.
Judicial Selection

NEW JERSEY

Initial Selection:
Governor nominates and appoints judges with the advice and consent of the senate, for supreme, superior, and county courts plus all judges of the inferior courts with jurisdiction extending to more than 1 municipality. N.J. Const. art. 6, § 6, pt. 1.

Procedure for Filling Vacancies:
Same as initial selection. N.J. Const. art. 6, § 6, pt. 1.

NEW MEXICO

Initial Selection:
All judges are selected in partisan elections. N.M. Const. art. 6, §§ 4, 12, 28.

Procedure for Filling Vacancies:
Vacancies in supreme court, court of appeals, and district courts are filled by gubernatorial appointment until next general election when a successor is elected for the unexpired term. N.M. Const. art. 6, § 28.

NEW YORK

Initial Selection:
Partisan election of judges of court of appeals, supreme court, county court, surrogate courts, family courts other than in New York City, Civil Judges of the City Court of New York City, district court judges, and justices of the peace. Governor designates judges to sit on appellate division of the supreme court from among those elected to the supreme court. Mayor of New York City appoints family court, city court, and criminal division judges under voluntary merit plan. Governor appoints court of claims judges with advice and consent of the senate. N.Y. Const. art. 6, §§ 2(a), 4(c), 6(c), 8-10, 12, 13, 15, 16, 17(d).

Procedure for Filling Vacancies:
Governor fills vacancies in court of appeals, supreme court, county court, surrogate courts, and family court outside New York City under voluntary Missouri plan until next general election at least 3 months after vacancy occurs, at which election a successor is elected for a full term. Court of claims vacancy filled in manner of initial appointment for unexpired term. New York City court of criminal jurisdiction and family court vacancies filled in same manner as initial appointment for full term. Board of supervisors fills vacancies in district court until next general election at least 3 months after vacancy occurs when successor is chosen for a full term. N.Y. Const. art. 6, §§ 2(c), 4(c), 8, 9, 21.

NORTH CAROLINA

Initial Selection:
Partisan election of all judges except magistrate, who are appointed by the senior regular resident superior court judge from each county from nominations submitted by the clerk of the superior court of that county. N.C. Const. art. 4, §§ 10, 16; N.C. Gen. Stat. §§ 7A-10, 7A-16, 7A-45, 7A-140, 7A-171 (Supp. 1974).

Procedures for Filling Vacancies:
NORTH DAKOTA

Initial Selection:
Nonpartisan election of supreme court justices, district court judges, and county court judges. N.D. Const. art. 4, §§ 90, 104, 110, 112, 113.

Procedure for Filling Vacancies:
Supreme court justices are appointed by the governor until the next election. District court judges are appointed by the governor for the rest of the term. County judge vacancies are filled by appointment by the county board of commissioners. N.D. Const. art. 3, § 78; art. 4, § 98.

OHIO

Initial Selection:
Nonpartisan election of all judges. Ohio Const. art. 4, §§ 2, 3, 6.

Procedure for Filling Vacancies:
Same as initial selection. Ohio Const. art. 4, §§ 2, 3, 6.

OKLAHOMA

Initial Selection:
All judges of the supreme court and criminal appellate court are appointed under a Missouri plan by the governor. Judges of the civil appellate court and of the district courts are elected on a nonpartisan basis. Judges of the State Industrial Commission are appointed by the governor with the advice and consent of the senate. Okla. Const. art. 7, §§ 3, 7-9; art. 7-8, §§ 1-5. Okla. Stat. Ann. tit. 20, § 122 (1974).

Procedure for Filling Vacancies:
All vacancies are filled by gubernatorial appointment under Missouri plan—supreme and criminal appellate courts by law, others voluntarily. Okla. Const. art. 7 §§ 2, 3, 7-9; art. 7-B, §§ 3, 4; Okla. Stat. Ann. tit. 51, § 10; tit. 20, §§ 30.10, 122 (1974).

OREGON

Initial Selection:

Procedure for Filling Vacancies:

Pennsylvania

Initial Selection:

Procedure for Filling Vacancies:
RHODE ISLAND

Initial Selection:
Supreme court justices are chosen by both houses of the legislature in grand committee. Judges of the superior, district, and family courts are appointed by the governor with the consent of the senate. R.I. Const. art. 10, §§ 4, 5; R.I. Gen. Laws Ann. §§ 8-2-2, 8-10-11 (Supp. 1974).

Procedure for Filling Vacancies:
Supreme court vacancies are filled by both houses in the legislature in grand committee until the next annual election by the legislature, of public officers when a successor is chosen for a full term. In cases of vacancy in supreme court caused by impeachment, temporary absence, or inability, position may be filled by the governor. All other vacancies filled in manner of initial selection. R.I. Const. art. 10, §§ 4, 5; R.I. Gen. Laws Ann. §§ 8-2-2, 8-10-11 (Supp. 1974).

SOUTH CAROLINA

Initial Selection:

Procedure for Filling Vacancies:

SOUTH DAKOTA

Initial Selection:

Procedure for Filling Vacancies:
Vacancies in office of supreme and circuit courts filled by gubernatorial appointment for balance of unexpired term. County court judge vacancies are also filled by gubernatorial appointment. S.D. Const. art. 5, § 7; S.D. Compiled Laws Ann. § 3-4-3 (1974).

TENNESSEE

Initial Selection:
Partisan election of all judges except intermediate appellate court judges who are chosen by a Missouri plan. Tenn. Const. art. 6, §§ 3, 4; Tenn. Code Ann. §§ 16-401, 17-103, 17-701 to 17-716 (Supp. 1974).

Procedure for Filling Vacancies:

TEXAS

Initial Selection:
Partisan election of all judges. Tex. Const. art. 5, §§ 2, 4, 6, 7, 15, 18.

Procedure for Filling Vacancies:
Vacancies in office of judges of supreme court, courts of civil and criminal appeals, and district court are filled by governor until next general election; vacancies in
office of county judges and justices of the peace filled by commissioners court until next general election. Tex. Const. art. 5, § 28.

UTAH

Initial Selection:
Supreme and district court judges are appointed under a Missouri plan, unless candidates file for the particular position in which case there is an election. Juvenile judges similarly appointed, from nominees presented by statewide juvenile court commission. Utah Const. art. 8, §§ 3, 6; Utah Code Ann. §§ 20-1-7.1 to 20-1-16, 20-1-7.7, 20-1-7.8, 20-1-9, 55-10-69, 55-10-70 (Supp. 1975).

Procedure for Filling Vacancies:

VERMONT

Initial Selection:

Procedure for Filling Vacancies:

VIRGINIA

Initial Selection:
Justices of the supreme court and judges of the circuit courts are chosen by majority vote of the members of the General Assembly. District and county judges are chosen by the General Assembly from a panel of 3 nominated by the circuit court judges. Va. Const. art. 5, § 7, art. 6, § 7; Va. Code Ann. § 16.1-69 (1974).

Procedure for Filling Vacancies:
For vacancies in supreme and circuit courts, the governor, if the general assembly is not in session, appoints; such appointee remains on the bench until a successor is appointed by the reconvened legislature. District and county court vacancies are filled in the same manner as initial selection. Va. Const. art. 6, § 7.

WASHINGTON

Initial Selection:

Procedure for Filling Vacancies:
Supreme, appellate, and superior court vacancies are filled by governor until next general election when a successor is elected for the unexpired term. Wash. Const. art. 4, §§ 3, 5, 10, 23; Wash. Rev. Code Ann. § 2.06.08 (Supp. 1974).
WEST VIRGINIA

Initial Selection:

Procedure for Filling Vacancies:
Governor fills vacancy in all judicial offices except county court by appointment until next general election. If unexpired term is less than 2 years, appointment is for remainder of the term. Vacancies in office of county court commissioner and justice of the peace are filled by appointment by county court until next general election. W. Va. Const. art. 8, §§ 2, 5, 7; W. Va. Code Ann. § 3-10-3 (1971).

WISCONSIN

Initial Selection:

Procedure for Filling Vacancies:
All vacancies filled by gubernatorial appointment until next judicial election, except that supreme court appointments are until next judicial election at which no other justice is to be elected. Wis. Const. art. 7, § 9; Wis. Stat. Ann. §§ 17.19, 17.21 (1971).

WYOMING

Initial Selection:

Procedure for Filling Vacancies: