Fred Voight

TESTIMONY OF THE COMMITTEE OF SEVENTY
BEFORE THE PENNSYLVANIA GENERAL ASSEMBLY
HOUSE SUBCOMMITTEE ON COURTS
Philadelphia, PA
October 6, 1994

Mr. Chairman and members of the Subcommittee, my name is Frederick L. Voigt and I am Executive Director of the Committee of Seventy. I am pleased to have the opportunity to appear before you today to provide you with the Committee of Seventy's perspective on judicial selection in the Commonwealth of Pennsylvania.

For much of its ninety-year history, the Committee of Seventy has been concerned with reforming the judiciary. Most significantly, in 1983, we published our *Judicial Selection Governance Study*, in which we analyzed the current state of appellate judicial selection and solicited opinions of those who are most closely involved with the judiciary. Even then, a vast majority of those we interviewed favored a switch to a merit selection system for appellate judges, citing such issues as a lack of voter information, poorly qualified candidates, a loss of confidence in the judiciary, and the overall quality of appellate judges in Pennsylvania.

In the wake of recent efforts toward piecemeal legislative changes in lieu of true judicial reform, let me be clear on the policy of the Committee of Seventy. THE POPULAR ELECTION OF JUSTICES AND JUDGES IS THE SINGLE MOST TROUBLESOME POLICY GOVERNING OUR JUDICIARY; ANY COURSE OF ACTION THAT DOES NOT ABOLISH THIS SYSTEM AND REPLACE IT WITH A SYSTEM OF MERIT SELECTION IS NEITHER A REMEDY NOR A HELP.

Popular election of the judiciary in Pennsylvania is like a cancer. Just as one does not attempt to hide a cancerous growth with a band-aid, we must not accept piecemeal changes in the judiciary, which may alter the problem facially, but will do little or nothing to affect a cure. On the contrary, piecemeal efforts such as those proposed will serve to divert attention from the root of our troubles, making our cancer even more insidious than it already is, wrapping a malignant time-bomb in a shroud of benignity. What's more, such a course of action reflects the most destructive kind of cynicism, for it presupposes that we cannot attempt the best solution to our problem, the only solution that will truly bring about much-needed reform.

Of all branches of government, the judiciary has the most tangible and stringent prerequisites. How appalling, then, that fewer than one in ten voters, according to a Pennsylvania Bar Association survey, knew the names of any appellate court candidates before going to the polls, and that 87% of voters in that survey admitted they spent little or no time whatsoever "studying the background and qualifications" of the candidates for Supreme Court?[1]

---

[1] Pennsylvania Bar Association, "Voting in the Dark," *The Pennsylvania Lawyer*, June 15, 1983, Vol. 5, No. 4, pp.5-7. That percentage increases to 92% for Superior Court candidates, and 94.5% for Commonwealth Court candidates.

The difficulty of educating the public as to the qualifications of candidates for the judiciary is compounded by the Judicial Canon on Ethics, which forbids candidates from discussing their opinions on any of the substantive issues on which they may have to rule. This prohibition is imperative to ensure the ethical and equitable conduct of judges; however, it also deepens the extent of voters' ignorance at the polls. Nonetheless, even this consideration is a moot point to all but the 30% minority of eligible Pennsylvania voters who actually turn out to vote in judicial elections.[2]

Voters in Pennsylvania are not, and will never be, properly informed as regards the qualifications of candidates for judicial positions. As a result, our system of popularly elected justices and judges degrades and demeans the judiciary in three critical ways: it causes voters to rely on attributes unrelated to judicial competence; it encourages the pursuit of votes in a manner not befitting a judge; and it propagates party politics in the judiciary.

The lack of any substantive criteria by which to select from a pool of candidates causes voters to rely on such irrelevant factors as the position of the candidate's name on the ballot, the candidate's county of residence (accounting for the disproportionate number of justices and judges from Allegheny and Philadelphia Counties), the candidate's party affiliation, and the extent to which the candidate's name is recognizable. With reliance on factors such as these, it's not hard to imagine the extent to which the quality of our judiciary has been compromised. This accounts for the opinions of the interviewees in the Committee of Seventy's *Judicial Governance Study*, whose overwhelming sentiment is that Pennsylvania courts are second-rate in the quality of the justice they administer, and that the jurisprudence of our judges is unsatisfactory at best.

But the problems with a popularly elected judiciary begin long before candidates ever reach the Bench. In order to win a seat, jurists must garner votes--and they often do so in a manner unbefitting a judicial officer. As I earlier stated, amidst an uninformed voting population, name recognition for candidates becomes all important. To achieve it, candidates must often raise large amounts of money for expensive advertising-based campaigns. This often puts jurists in the position of taking money from the very persons who might then appear before them in Court. It also severely disadvantages candidates who are unable to raise large amounts of money. But do not be mislead by opponents of merit selection, who claim that campaign contribution limits are any sort of remedy. Such a policy, while easing the pockets of some, would merely push efforts of jurists towards making controversial rulings based more on their potential for publicity than their jurisprudential merit. This, I hardly need remind you, is flagrantly antithetical to the proper role of the judiciary.

And matters worsen after the candidate is elected. The political and financial alliances

---

[2] Source: Commonwealth of Pennsylvania Bureau of Elections, Official Election Returns and Census Bureau statistics on population. Data for year-to-year population interpolated or extrapolated linearly. According to data from the last 23 years, only 29.8% of eligible Pennsylvania voters vote in judicial general elections. The percentage of Pennsylvanians who vote in all judicial elections (including primaries) is only 25.6%.

candidates must establish when they campaign inevitably influence their tenure on the Bench. Judges remain political figures, beholden to the political party or individuals who helped them in their bid for election. This makes them susceptible to conflicts of interest when justice collides with political considerations. Judges should rely on the laws and the evidence pertinent to the cases before them, rather than the will of the voting public or political machines. At a minimum, reliance on campaign contributors evokes a public mistrust of our popularly elected judiciary.

After considering all of the liabilities of our system of judicial selection, it should come as no surprise to you that Pennsylvania is one of only eight remaining states to choose its entire judiciary through popular election.[3] Many of those clamoring for piecemeal legislation to address the problems of our judiciary attempt to evade the issue by using the *language* of reform. But reform, make no mistake, means nothing less than ridding ourselves of the diseased system of electing judges to the bench. Anything less is merely an attempt to sugar-coat a system that has made our judiciary the object of mistrust, disrespect, and harsh criticism.

On behalf of the Committee of Seventy, I would like to thank you for the invitation to appear before you today. We gladly offer our continued assistance as you pursue a successful strategy for judicial selection in Pennsylvania.

---

[3] American Judicature Society, 1986 and 1989, cited in Champagne A. and Haydel J., eds., *Judicial Reform in the States*. Lanham, MD: University Press of America, Inc., 1993, p.9.