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Dean Logan's Blog

Symposium Tackles Controversial Topic of How Judges are Appointed in RI

Posted by David Logan on 12/04/2009 at 12:00 AM

Lawyers are understandably interested in how judges are selected. There is much attention given to appointments to the federal bench, like the nomination of [Sonia Sotomayor to the United States Supreme Court](#) and current nomination of [Rogerree Thompson to an open seat on the United States Court of Appeals for the First Circuit](#), but in many states there is controversy about the process for selecting judges, and RI is no exception. Due to scandals that forced the resignation of two consecutive Chief Justices, Rhode Island voters approved a “merit selection system” in 1994. RWU Law Professor Michael Yelnosky has been a close observer from the beginning of the resulting Judicial Nomination (JNC) (indeed he wrote on the topic in the [first volume of the RWU Law Review](#)) and he decided that the passage of 15 years meant that it was a good time to evaluate the reforms.

After a brief overview of the “new” approach, a panel discussed the nuts and bolts of the process, including a debate on whether the JNC is less “political” than the prior approach of vesting all power in the legislature (the consensus was that there is no way to take politics entirely out), whether the state provides adequate resources for an effective commission (a resounding “No”), and whether the process is sufficiently, or too “transparent” (there was no consensus on this). The panel, moderated by RWU Law Professor Jared Goldstein, featured:

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- *John Marion, Executive Director of Common Cause Rhode Island (a key institutional player if the reform effort)*
- *Stephen Carlotti, Hinckley Allen and Snyder, Former Chair of the JNC*
- *Rachel Caufield, Drake University, Research Fellow at the American Judicature Society*
- *Alan Flink, Edwards, Angell, Palmer & Dodge, former member of the JNC*
- *Joe Larisa, Larisa Law and Consulting, Chief of Staff for former Governor Lincoln Almond*

• *Scott McKay, Political Analyst WRNI; former political reporter, Providence*

”
Journal

The second panel featured empirical studies that considered whether the Rhode Island judiciary has changed as a result of merit selection. The first, by Professor Yelnosky, was titled “A First Attempt at Measuring the Impact of ‘Merit Selection’ on the Characteristics of Judges Appointed to Rhode Island’s Courts,” and showed that the characteristics of “merit selection” judges appear not to differ dramatically from their predecessors. There is some evidence, however, that women and minorities may be fare slightly better under merit selection, that more merit selection judges are graduates of less prestigious law schools, and that service in the General Assembly is less influential. The second study, presented by Mirya Holman, Research Associate at Duke University School of Law, was “Measuring Merit in Rhode Island’s Natural Experiment in Judicial Selection,” and her results triggered skepticism from commentators United States District Judge Will Smith, RWU Law Professor Emily Sack, leading litigator Lynette Labinger, Esq., and rising star Angel Tavares, Esq. For example, does data that shows that judges in other states now are less likely to cite to decisions of the Rhode Island Supreme Court mean that the JNC produces weaker judges or merely the fact that a nationally-respected Chief Justice (Joseph Weisberger) had retired? Or the fact that the Supreme Court now writes longer opinions, but in fewer cases, reflects an admirable inclination for thoroughness, or rather an unwillingness to edit?

Both panels were candid and lively and once again underscored the unique role that the School of Law plays in evaluating and shaping public policy in the Ocean State.

Here is some press coverage of the symposium as well as photos from the program.

Providence Journal

[Nov 17: Columnist Fitzpatrick says R.I. judicial selection process needs transparency](#)

[Oct 25: Merit selection process for R.I. judges to get a close analysis](#)