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Roger Williams University School of Law

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# ***Newsroom***

## Professor Yelnosky Leads Judicial Selection Forum

### Judicial-selection process debated

**By Katie Mulvaney, Journal Staff Writer**

BRISTOL — The percentage of state judges who earned degrees from Suffolk University Law School has grown since the state overhauled its judicial-selection process to be based on qualifications, not political connections, 15 years ago. The percentage of lawmakers heading to the bench dropped during the same period.

Likewise, the percentage of judges to attend elite law schools fell, while the percentage of native Rhode Islanders donning judicial robes grew.

Those were some of the facts that emerged Friday at a forum on Judicial Selection in Rhode Island: Assessing the 15-year Experience with Merit Selection at the Roger Williams University School of Law. The figures were presented by Michael J. Yelnosky, the RWU law professor who led the session.

Opinions were many, but one consensus was clear: It's impossible to remove politics from the process altogether, despite the best efforts.

The selection process was revamped in 1994 to make it merit-based. The new system created a nine-member Judicial Nominating Commission to vet applicants and choose which candidates' names to forward to the governor. The changes were intended to restore confidence in the judiciary after two chief justices resigned amid scandal.

Today, Rhode Island is among 32 states to enact a merit-based system and the most recent to do so, making its effectiveness hard to assess, said panelist Rachel Caufield, a Drake University professor.

It is rare, she said, to see legislators as involved in the selection as they are in Rhode Island. Not only do legislative leaders pick some of the JNC members, but the Senate must approve all lower court nominees chosen by the governor. The House and Senate must sign off on all high court picks.

“The extent to which the state legislature is involved is unprecedented,” said Caufield, research fellow for the American Judicature Society, a group that strives to improve the selection of state judges.

But she credited the state process for its openness. It is one of nine states to publicly interview applicants and one of five whose nominating committee openly votes on which names to send to the governor.

The JNC releases the number of people who applied for a judgeship but does not disclose the names of applicants who were not chosen for interviews.

JNC Chairman Dr. Herbert J. Brennan said the commission does not identify all applicants because it could compromise their positions.

That stance drew criticism from other panelists and several of the about 50 lawyers, judges and students attending. There is a perception, said panelist Alan S. Flink, a former JNC member, “if you don’t have a political sponsor don’t bother to apply. ... If you don’t know who applied, then you don’t know who’s been considered.”

“We need to get the best and the brightest to apply,” said Joseph S. Larisa Jr., a panelist who served as chief counsel to Governor Almond. And those who fill out the lengthy application expect a fair process, he said.

But, he said, the system will only work if its players — commission members, legislators and the governor — are committed to excising politics.

Flink took it further, commenting that “the governor is selecting who he wants to when it’s his turn,” and the Senate and the House do the same when it’s theirs under the existing system.

Larisa added that he regretted coming up with the argument for a 21-day deadline for the governor to choose a nominee that was “advisory.” [Governor Carcieri](#) adopted the “advisory” position in routinely missing the deadlines.

Larisa said legislators should amend the law governing the JNC to prevent members from serving past their terms. An easy remedy would be to allow the governor to pick JNC members if lawmakers fail to replace members after their terms expire, he said.

The committee was also faulted for asking softball questions that do not truly explore applicants’ qualifications or knowledge of the law.

Stephen J. Carlotti, who just stepped down as JNC chairman, said he tried to keep letters about applicants from being released because that could discourage people from being openly critical about a potential nominee.

He suggested that the process should be revamped to have the JNC review a list of candidates selected by the governor. Interviews, he said, would then be done behind closed doors .

Flink refuted comments that politicians could make ideal judges because they had spent time going door to door speaking with constituents. "Should people in politics be excluded? No," Flink said. "Should everyone else be excluded? No."

Senate President M. Teresa Paiva Weed and other legislators declined to participate in the panel discussion, Yelnosky said.

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