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## General Response

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# General Response

**Angel Taveras\***

Unlike most of the other panelists, I am not tenured, so I am going to be careful as to what I say. It is a pleasure to be with you here today. I want to talk generally just about the studies that have been presented, and then I also want to talk a little bit about minorities and the findings on minorities.

Let me first say that one thing that I am really happy about in terms of practicing law in Rhode Island is that we do not elect our judges. This is something that has not been touched upon. I have traveled across the country, and when I see the judges advertising on billboards and other things, it gives me a very unpleasant feeling. I am very happy that we do not elect judges in Rhode Island and our judges have life tenure. Rhode Island's judicial selection process is much better than judicial elections. So that is one very positive thing.

The presenters today talked about the different ways that they approached everything for their studies. I think in Rhode Island it is important to look at a couple of things. One is how the JNC is appointed. The Governor appoints everyone. The Governor appoints five members from lists that are presented by legislative leaders and appoints four members unilaterally. So there is going to be some politics involved in the process, and I do not think that anyone is suggesting that we can really take politics out overall. So that is the first issue.

A second issue is that a merit selection process encourages more applicants to apply. I do not have empirical data in terms of

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people who have applied and who have been sent to the Governor. I have anecdotes in terms of people who I know applied because they were interested in becoming a judge and felt that they had a fair shot at making it based on their merit, their background, their practice and their experience. And I think that without looking at all the names that have been sent to the Governor, you do not have a complete picture as to how the selection system is working. When I read a list of the folks who are being sent to the Governor, usually you have several people, you just say wow. They are pretty impressive people, and you might not have heard of them before, but you hear their background and it is clear that they made it on their merit. And there are other folks you read about and you see that there are many political connections and you know that certainly did not hurt them. But it is something that we should look at – the number of people who are sent and what their background and qualifications are. It will present, perhaps, a little different picture.

On that note I want to add something to what John Marion spoke about this morning. As Mr. Marion noted in his article, before the Judicial Nominating Commission, there were five magistrate judges.<sup>1</sup> Now, I think, there are twenty-one magistrates.<sup>2</sup> So to really study the effect of the JNC and this whole process of merit selection, you have to examine magistrates and look at who is being appointed and how the appointment is done. Everyone knows that the appointments do not go through the JNC. I do believe magistrates are now confirmed by the Senate, but I think that that is a recent act. And I am not even certain that all magistrates are confirmed by the Senate. So I think magistrates are a really important issue you have to look at and examine to try to really understand the full impact of the process we have in Rhode Island.

And the last point I want to talk about is minorities. I thought it was interesting to hear Professor Caufield talk about the conclusion that merit selection does help women and minorities, although in one of the footnotes it states that some

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1. See John Marion, *Judging How We Pick Judges: Fifteen Years of Merit Selection in Rhode Island*, 15 *ROGER WILLIAMS U. L. REV.* 735, 748 (2010).

2. See Rhode Island Judiciary, <http://www.courts.state.ri.us/misc/judicialroster.htm> (last visited Apr. 10, 2010).

scholars have found no relationship between the method of selection and diversity on the bench.<sup>3</sup> Instinctively, I find the footnote hard to believe. I actually think the merit selection process does help overall, and I think the broader study shows this. I think that in Professor Yelnosky's study in 1996, his initial reaction was that the process would improve diversity. However, I think the data we have is not statistically significant in terms of the change. I think that there is a reason for that. As we prepared for this, Professor Yelnosky asked me about Latino lawyers in Rhode Island, and it took me about two minutes to come up with the list of the Latino lawyers in Rhode Island. I am kind of scared to say that I think I am one of the more experienced of the group, which is hard to believe, and I think that inexperience is part of why we have fewer judges. One of the things that we have got to do is build our ranks. Build the farm team, so to speak, to use a baseball term. I think, for example, that with United States Supreme Court Justice Sonia Sotomayor, if you go back to her law school class, you would not need all the fingers on one hand to count the number of minorities, or at least the number of Latinos, in her class. I think that you are seeing more and more of society having the first and first and first. Judge O. Rogeriee Thompson has just been nominated for the First Circuit Court of Appeals and she would be, if confirmed, the first African-American woman on the court. So we are still at a point of having first and first and first. Several years ago, the Governor appointed the first Latino, District Court Judge Rafael Ovalles, to the State Court. The Judicial Nominating Commission sent his name, as well as four others, to the Governor. I was very involved in the process, and I can honestly say that I do not think that would have happened but for the JNC. At the time, many minority advocates asked the JNC members to cast one of their five votes for Mr. (now Judge) Ovalles. I feel in working with the JNC that they want to send minority candidates to the Governor. So it is our job to, I think, just to get the experience and to continue to grow, and that is just a matter of time.

In conclusion, from my perspective, I think that our process is better than what other states have. Thank goodness we do not

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3. Rachel Paine Caufield, *What Makes Merit Selection Different?*, 15 ROGER WILLIAMS U. L. REV. 765, 770-71 n.37, 38 (2010).

elect our judges. Thank goodness that we have the JNC. There are ways to circumvent the JNC process, and I think those are ways that we have to study to make sure that people go through the process. I like Judge Smith's suggestion in terms of the federal process.<sup>4</sup> I think that the more vigorous the process, the better in many ways, because if you are going to have life tenure and going to be making decisions that really affect people for everyday life, candidates should go through a rigorous process. I welcome that. I thank you for the opportunity to sit here with this distinguished panel and to offer my thoughts. Thank you.

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4. Hon. William E. Smith, *Reflections on Judicial Merit Selection, the Rhode Island Experience, and Some Modest Proposals for Reform and Improvement*, 15 *ROGER WILLIAMS U. L. REV.* 664 (2010).