



Sandra Day O'Connor Project on the State of the Judiciary 2007 Conference Recommendations for State Court Judicial Selection *October 17, 2007*

This year's Conference, *The Debate over Judicial Elections and State Court Judicial Selection*, brought together dozens of state supreme court justices, experienced litigators, and business leaders to discuss state court judicial selection practices and effects. The conference focused on the troubling trend of highly politicized state court judicial elections, among other topics. Through small group working sessions and a plenary session held at the end of the day, conference participants developed a set of recommendations to address this problem. The recommendations that follow had either consensus or clear majority approval.

1. Where judges are elected, campaign conduct committees should be established to promote appropriate campaign conduct, and deter negative campaign advertising. These committees should:

- include at least fifty-percent representation from sectors of the community other than the legal profession;
- set voluntary guidelines for appropriate conduct and ask candidates to agree to sign pledges to adhere to the guidelines;
- conduct educational sessions, early in the campaign cycle, for candidates and their campaign staff;
- provide services for candidates about adhering to the guidelines, dispute resolution services when it is alleged that one of the candidates has violated the guidelines, and general information about appropriate campaign conduct;
- work with the media to enhance transparency about the sources of large campaign contributions. These contributions are now reportable but are inadequately publicized by neutral sources;
- educate the public and the media about appropriate conduct by judicial candidates and what criteria should be used to select judges;
- disseminate performance evaluations that have been prepared by official bench and bar entities;
- stay active on an ongoing basis, and not just during the election cycle, to serve as a resource for judges and potential judges and an instrument of education for the media and the public.

2. Voter education guides should be sent to all state voters:

- such guides should be distributed on-line and in print by state or local governments, bar associations or organizations concerned with good government;
- Congress should pass legislation to provide free postal franking privileges to state and local governments that mail guides to voters.

3. Judges and judicial candidates should maintain their integrity and impartiality. Specifically they should:

- refrain from running excessively negative campaign ads;
- control overly zealous campaign advisors, who are sometimes unfamiliar with proper conduct in a judicial race because their experience is in running legislative or executive campaigns;

- seek election based on their impartiality, knowledge of the law, and legal or public service experience. By doing this, judicial candidates will promote public understanding that campaigning for judge is different than campaigning for political office.

4. Courts should improve their mechanisms for outreach by:

- periodically holding court in non-traditional locations such as schools and community centers around their state;
- creating and providing access to good educational resources for children and educators;
- utilizing the internet to communicate with the electronic generation by setting up a comprehensive website with links to information such as court decisions, procedure, biographies and history as well as providing links and information to organizations with relevant websites;
- building relationships with citizens who have a broad contact base in their communities so that these citizens can act as surrogates in rapid response to attacks on the judiciary during elections, ballot referenda or following controversial high-profile decisions;
- providing better juror education so that jury service is an opportunity for people to learn more about the courts;
- collaborating to compile national electronic databases of best practices for judicial outreach;
- speaking publicly, subject to ethical limitations, about the role of the courts and the importance of judicial independence.

5. States should find new ways to protect judges from unethical demands after the Supreme Court's holding in Republican Party of Minnesota v. White, which bars certain restrictions on speech by judicial candidates. Specifically:

- appropriate recusal processes are more important as judicial elections become more heated;
- state supreme courts should adopt codes of conduct that adhere to a narrow reading of *White*, such as the American Bar Association's model code.

6. Governments and nongovernmental organizations should increase efforts to educate citizens, the government and the media about the judiciary by:

- emphasizing civic education in schools to help young people learn about the judiciary;
- holding roundtable discussions for interest groups such as business leaders and trial lawyers about the courts;
- collaborating to compile national databases of best practices for legislators to use to reform their judicial selection systems;
- promoting dialogue and cross-education between the branches of government through formal and informal mechanisms like a "judging for legislators" program and a "legislating for judges" program to bring legislators to courts and judges to legislative assembly halls for training sessions;
- nongovernmental organizations, specifically, should run public service announcements to counter excessively negative advertisements.

7. States should consider legislation to change the way judges are selected:

- states that have partisan elections should consider replacing them with non-partisan elections;
- all states with contested judicial elections should consider moving to a hybrid appointive/elective system, commonly known as merit selection. In a typical hybrid system, an independent commission of knowledgeable citizens recommends several qualified candidates suitable for appointment by the Governor of the state. After several years of service the appointed judge's name is submitted to the voters in an up-or-down retention election.