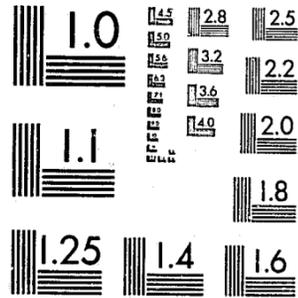


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National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

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CITIZENS CRIME COMMISSION OF CONNECTICUT

REPORT: JUDICIAL SELECTION IN CONNECTICUT

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NCJRS

JUDICIAL SELECTION IN CONNECTICUT

MAY 14 1967

ACQUISITIONS

We expect a lot from our judges. We expect these men and women to be fair and compassionate. We expect them to be honest and hard-working, knowledgeable and competent. We expect them to be independent and uncorruptable. We expect them to strike a balance in protecting individual rights and those of society.

These are difficult standards to achieve. And yet, the quality of our courts is a reflection of the quality of our judiciary. Without good judges we cannot have a just and effective court system. We can work to improve the various components of our justice system, but without a capable judiciary those efforts will end in frustration. We need to ensure that we employ the best judges available.

The Citizens Crime Commission believes that the time has come for Connecticut to change its method of judicial selection. By and large the judicial selection process in Connecticut has produced a competent judiciary. The Governor and the Chief Justice have sought out and encouraged many outstanding individuals as candidates for the bench. However, it is clear from the experience of many other states that this process can be improved to insure the systematic nomination of highly qualified candidates for judgeships.

Present System in Connecticut

Under the present system the Governor controls judicial selection in Connecticut. The Governor submits names of potential nominees for review to a committee of the Connecticut Bar Association and to an ad-hoc judicial screening committee appointed by the Governor. The judicial screening committee, established by Governor Grasso and continued under Governor O'Neill, is composed of both lawyers and non-lawyers. The Governor is not bound to follow the recommendations of either committee, nor is this procedure of screening candidates for judicial nomination established or governed by statute.

Approval by the General Assembly is required for a nominee's appointment to the bench. As a practical matter, although the legislature can veto the candidacy of a person unsuited for the judiciary, it does not exercise this veto power. This means that whoever the Governor chooses to nominate normally is appointed.

Under the present system it is reasonable to expect that the political affiliation of potential candidates figures significantly in their nomination. However, an informal system has developed over the years wherein the minority party usually is assured of a certain number of judgeships.

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Weaknesses of the Present System

Many observers of the present system of judicial selection contend that political considerations play too significant a role in the process. The process does generate candidates who are not "politicians." However, it seems clear that the successful candidate usually has the sponsorship of effective political supporters. While many excellent jurists have emerged from this system, less capable candidates have also received appointment largely on the basis of their political activities. Unfortunately, many qualified candidates have been discouraged from seeking nomination because they lacked the requisite political ties. It is important to note that the salary scale and working conditions faced by judges are also significant factors in discouraging many well-qualified candidates from seeking appointment to the bench. Private legal practice normally provides a higher income and a more favorable working environment for successful attorneys who might otherwise consider a judgeship as an attractive position.

Connecticut's method of selecting judges is especially vulnerable to the criticism that "a judge is a person in favor with the Governor." Essentially one person makes the decision regarding judicial appointment -- the Governor. While s/he may be aided by two advisory committees, these committees are reactive rather than proactive. They review those candidates whose names have been submitted to them by the Governor. They do not actively recruit qualified candidates. Nor are they required to exercise comparative judgement in evaluating candidates for judicial appointment. They do not decide who among many acceptable candidates are the best qualified. Also, while the legislature technically has the power to reject a candidate nominated by the Governor for judicial appointment, it rarely does so. Thus, the Governor is the de-facto judicial appointive authority.

The question is not whether Connecticut currently has a competent judiciary. It does, for the most part. The more compelling question is whether Connecticut has the best judiciary possible -- and more importantly whether the most qualified candidates emerge from the present system of judicial selection.

Efforts for Reform

The issue of improving the judicial selection process is not new. A number of organizations and individuals have been pressing for change for more than a decade. Common Cause, Connecticut Citizens for Judicial Modernization, the League of Women Voters and the Connecticut Bar Association are among those who have been actively involved.

Proponents for change can look to the experiences of more than 30 states¹ around the country which have upgraded their judicial selection procedures during the past forty years. A review of these reform efforts nationally points to a set of common characteristics of contemporary judicial selection systems. These will be discussed in the following section.

The issue of judicial selection is critical at the present time. There is clearly momentum for change during the present legislative session. The Governor made improved judicial selection a key item in this year's budget message. Resolutions for a constitutional amendment and enabling legislation have been put forward in the General Assembly. For the first time there appears to be genuine interest within the legislative leadership to resolve the matter. 1984 appears to be the year when the issue will come to a head, when critical decisions with lasting significance will be made.

The Citizens Crime Commission is concerned that changes in the judicial selection process be made in such a way as to guarantee that the public interest is served by insuring a high quality judiciary. Because of the likelihood for serious legislative action this year, we feel that it is important to underline the basic requirements for an improved system.

Basic Characteristics of an Improved System

The reform experiences of numerous other states point to a set of common characteristics for contemporary judicial selection systems. The Citizens Crime Commission believes that each of these items should be included in any meaningful effort to upgrade judicial selection in Connecticut.

1. Judicial Nominating Panel

- o A judicial nominating panel should be created with the responsibility for submitting the names of qualified candidates for consideration by the Governor for nomination to the judiciary.

2. Composition

- o The panel should be broadly representative geographically of the state. Representation from each congressional district in Connecticut would be appropriate.
- o The panel should be limited to a reasonable size. Having more than a dozen members would make the process too cumbersome.

¹Judicature, Vol. 64, No. 4, October, 1980, Judicial Selection in the United States: A Special Report, Larry C. Berkson, p. 178.

- o Bi-partisan representation on the panel should be guaranteed. A minimum of one-third of the members should come from the minority political party.
 - o Individuals serving as appointed or elected public officials should be prohibited from panel membership.
 - o Panel members themselves should be restricted from consideration to judgeships while sitting on the panel and for some reasonable period of time upon leaving the panel.
 - o Half of the panel members should be attorneys admitted to the bar in Connecticut.
 - o The Chief Justice of the Supreme Court should serve ex-officio as chairperson of the panel with authority to vote only in the case of ties.
3. Selection of the Panel
- o Nominees for membership on the panel should be selected by the Governor and approved by the legislature.
4. Terms of Membership
- o Members of the panel should serve four year terms.
 - o Terms of panel members should be staggered such that half of the panel positions become vacant every two years.
5. Responsibilities of Panel
- o The panel should actively seek out qualified individuals to be considered as potential judicial nominees. Some minimal level of effort -- notices in the press, formal notification of the bar and other interested organizations, etc. -- should be established to insure that a genuine recruiting effort is made.
 - o The panel should define, establish and use criteria by which to assess the qualifications of prospective candidates.
6. Process of Judicial Appointment
- o Whenever a judicial vacancy occurs, the panel should submit a list of names of the most qualified judicial

candidates to the Governor for consideration. A reasonable sized list would include no fewer than three and no more than five names.

- o The Governor should be restricted to the list submitted by the panel for making a nomination to fill a judicial vacancy.
- o The Governor's nominees should be required to gain legislative approval for appointment.
- o The Governor should be permitted a reasonable length of time in which to make a nomination from the approved list. If the Governor fails to make a judicial nomination within the sixty day period, the Chief Justice of the state Supreme Court should be responsible for making a nomination from the same list within a subsequent thirty day period.
- o The panel should also have responsibility for reviewing candidates for judicial reappointment. When a judge's term is about to expire, his/her record and qualifications should be reviewed by the panel and their recommendation for approval or denial of reappointment passed on to the Governor. A recommendation to deny reappointment should be binding upon the Governor, who would then declare a judicial vacancy and trigger the appointment process described above.

7. Other Considerations

- o To avoid inefficiency and confusion within the panel's operations, the legislature should establish by statute general guidelines for procedures to govern the panel's activities. The panel should have the authority to determine specific activities consistent with those guidelines.
- o The deliberations and files of the panel should be exempt from the relevant state information acts so as to provide for confidentiality of the panel's proceedings.
- o The panel should be provided with staff to enable it to vigorously recruit judicial candidates and conduct the necessary investigation of their qualifications.

- o There should be some monitoring of the panel's operations to insure that it is independent of the legislature, judiciary, executive office and organized bar. The goal is for as independent a selection panel as possible.

RECOMMENDATION:

The Citizens Crime Commission recommends that Connecticut change its current method of judicial selection. A new selection process incorporating the components described above should be implemented. The change will require passage of an amendment to the constitution supported by appropriate enabling legislation.

As noted earlier, we believe that there is a genuine opportunity for change in the judicial selection process during the current legislative session. Proposed legislative initiatives have been made by representatives of both parties in the General Assembly as well as the Governor. While the specific content of competing bills differ, the Commission supports any effort which includes the basic requirements for an effective process as set forth in this report.

There must be room for compromise among the various parties concerned with this issue as to the specifics of their respective proposals. However, if Connecticut is truly to have a better judicial selection process, we believe that it is essential to produce a plan that is both comprehensive in scope and forthrightly addresses the weaknesses of the current system. It is critical that this opportunity is not squandered.

The Citizens Crime Commission intends to monitor the legislative process underway. We intend to support actively proposals consistent with our recommendations and likewise to oppose efforts which do not measure up.

Over the long term we will closely monitor the implementation of any new judicial selection process which is put into place. We believe that it will be important to review periodically the progress, accomplishments, and problems inherent in an innovative program. In so doing the Commission will provide the citizens of Connecticut with an opportunity to assess the practical impact of the new process on the quality of our judiciary and the effectiveness of our court system.

END