

TESTIMONY OF SAYDE LADOV, ESQUIRE
CHANCELLOR-ELECT, PHILADELPHIA BAR ASSOCIATION,
BEFORE PENNSYLVANIA SENATE JUDICIARY COMMITTEE
REGARDING MERIT SELECTION OF JUDGES
Tuesday, September 16, 2008
Harrisburg, PA

Mr. Chairman, and distinguished members of the Committee, my name is Sayde Ladov, and I have the honor of serving as the Chancellor-Elect of the Philadelphia Bar Association and will serve as the Chancellor of the Association in 2009. I am also a shareholder in the Philadelphia law firm of Abraham, Lowenstein & Bushman.

I am pleased to be here today on behalf of the more than 13,000 members of the nation's oldest chartered, metropolitan Bar Association, and inform you of our continued and unwavering support for a constitutional amendment which would change the way that we, as Pennsylvanians, choose our judges.

Over one half century ago, the position of our Bar Association was that we "proudly support the active campaign of information and education in support of the 'Pennsylvania Plan' for improving the caliber of the judiciary through the adoption of a constitutional amendment providing for a better method of judicial selection." Members of the committee, the Pennsylvania Plan was a precursor to the current proposed merit selection plan currently under consideration. Our position has not changed

Chairman Greenleaf, according to our Bar's charter, written over 200 years ago, one of our core principals is "to uphold and maintain the rights, the honor, and the dignity of the Bar and of the Bench." It is our belief, that the attorneys of the Bar, the members of the judiciary themselves, and especially the citizens of this Commonwealth will no doubt be better served by the actions you take to pass the legislation before you today.

While it is not my purpose here today to draw attention to some of the less than stellar history of the Pennsylvania judiciary's public image, I would not be serving my Association and the citizens of the Commonwealth if I did not remind you of the composition of our bench - that being - all-white and all-male for the majority of the last two centuries, the Roofer's Scandal of the mid-1980's, the impeachment of Justice Larsen in the mid-1990's, the loss of a sitting Justice of our Supreme Court as a the consequences of the pay-raise debate, and the purely political creation of the "activist judge" moniker of late.

As we sit here today, potential judicial candidates across the state are gathering money and political support for campaigns that appeal not to their greater knowledge or sense of justice, but to partisan pundits and policy wonks, not to informed citizen voters, but to party bosses and lobbyists. This dance, which is so irrelevant to the actual makings of a quality jurist, has continued in this regard for decades.

For over half a century, our organization, charged with promoting and maintaining the honor and integrity of the judicial system, has stood for the principle of merit selection and yet little has changed. I sit here today before you and urge you to seize an opportunity for change that will benefit all Pennsylvanians and has no downside

Perhaps the strongest “proponents” of the selection of judges based on their merit are the numbers themselves. In 1986, then-Governor Robert Casey commissioned a report on the state of the judiciary. Known as the Beck Report after lead author, former Superior Court Judge Phyllis Beck, the Governor’s Judicial Reform Commission reported in 1998 that:

“A successful judicial campaign for statewide office today requires effective – and expensive – communication in order to reach millions of voters with a message that is, paradoxically, often devoid of any meaningful content. Support from the political machines is, of course, important but not sufficient in itself to assure victory...[T]he judicial candidate must also respond to the technological challenges of radio, television, newspapers and sophisticated Madison Avenue techniques of advertising, all of which require exorbitant amounts of money.”

How much money you ask? The Beck Report noted that in 1983 the successful candidate for the State Supreme Court raised just under \$200,000. Just six years later, in 1989 the amount raised by the successful candidate had risen to \$1.4 million. Today, 20 years after the Beck Report, the successful candidate for the State Supreme Court rose over \$2.3 million in campaign funds from lawyers, law firms, interest groups, and many politically interested organizations. Is this “dialing for dollars” approach the way in which we want to continue to choose our judges...individuals who are charged with considering the cases before them in a dispassionate and even-handed manner? Our Bar Association urges you to say “no” to a continuation of this process.

The bill before you today proposes a very different system. Under this new system, a commission will be created whose job it is to recommend five candidates for judicial positions to the governor. The Governor then sends his or her picks to the Pennsylvania State Senate for confirmation. If confirmed, those judges will serve a four-year term before a retention election, at which time the voters decide - by way of a non-partisan up or down vote - whether those judges should remain on the bench for an additional 10-year term.

This way, Mr. Chairman, at the end of an initial, shorter term, the people of the Commonwealth get to decide - based on a record - whether or not the individual has been a quality judge. This is a substantive vote based on a substantive record, not fund raising capabilities, not political affiliations, and not personal or political wealth.

The structure of this commission is extremely important as well. Consisting of 14 members whose diversity of sex, race, ethnicity, and geography is paramount, the commission will have four members chosen by the governor: of which no more than two will come from any one political party and two will be non-lawyers. The general

assembly will appoint four members as well. The remaining six members will be made up of leaders chosen from the business sector, unions, civic and professional organizations, and the public safety sector, as well as a dean from one of Pennsylvania's law schools.

Judicial candidates must be licensed members of the Pennsylvania Bar for at least 10 years and in good standing. They must demonstrate integrity, judicial temperament, professional competence, and commitment to community. Moreover, diversity is paramount.

In this way, members of the Committee, there are no party officials, there is no nepotism, and there are no judges on the commission. Just 14 diverse individuals from across the state chosen to serve a 4-year term, with no back-to-back terms. As for the judicial candidates themselves, the bill before you includes perhaps the most strongly-worded charge for diversity than any of the other 33 states and District of Columbia which have changed to a merit-selection type of system. Parenthetically, it is time for Pennsylvania to join the majority of states, to come into the 21st century and select its judges via merit selection.

As State Senators, each of you, along with your colleagues in the House of Representatives are all elected officials. Of course, and for good reason, you appreciate and respect the right of every Pennsylvanian to choose his or her leaders through the elective process. To some, the notion of merit selection flies in the face of such a process, but I implore you too look closer and see that the issue at hand is fundamentally different for several reasons.

First, as State Senators, you represent your districts and their citizens. It stands to reason that those citizens should have the ability to choose their representatives. But judges serve a different function. They do not represent constituents, and they do not represent voters. They are charged with representing justice, fairness, evidence, and the rule of law. Judicial integrity is not a sport. However, each year we ask our judicial candidates to step momentarily into the political arena in an attempt to "win" a seat on the bench. By perpetuating the multi-million dollar, political campaigns of judicial candidates to citizens who are not their constituents, you are asking judicial candidates to pander to voters.

Mr. Chairman, there is a misconception that merit selection is undemocratic, and that citizens are not involved. This is simply untrue. The public is involved at all stages of this process, from representation and participation on the nominating committee itself, to communication with the Governor about his or her recommendations, to communication with the Senate about which candidates are confirmed. This process is literally as transparent as the legislative and executive branches of our state government. Most importantly, the final decision is made by the voters about whether a judge will serve a 10 year term or not!

This process helps to ensure that the actual qualifications of judicial candidates are the deciding factor. It removes millions of dollars, campaigning, politicking, and pandering from the process. It takes ballot position, and county of residence off the table and puts quality and competency in its place.

Another complaint that follows merit selection is that it is an insider's game; part of the "Good Ole Boy's" network. The question that is often raised is "who picks the pickers?" It is not the right question to ask as the statistics bare the real truth: states that have chosen merit selection have more women, more racial and ethnic minorities, and greater overall diversity than those that do not.

The Bill before you is perhaps the most inclusive of diversity efforts than any similar bill in existence. Yet, even with lesser language, in every state that has adopted merit selection, women and racial and ethnic minorities have fared much better than in the previous elective systems. They have certainly fared better than here in the Commonwealth, where currently there are no African American members of the Supreme Court, and only a single African American member of the Superior Court. We know that this is not representative of the citizens of this Commonwealth, and certainly not representative of its ideals.

Mr. Chairman, members of the Committee, thank you for your time and attention. , I would like to quote Senator Dermond's comments at the impeachment hearing of Justice Larsen:

"Now is the time to give motion to government, to give life to the constitution, to give hope to the people, and to restore the integrity of the courts."

Our Bar Association has advocated on behalf of Merit Selection for over 50 years. Please do not wait another 50 years to take this opportunity to do what is right for the courts and what is right for the citizens of the Commonwealth of Pennsylvania.

Thank you.