Thank you for inviting me to participate in this Symposium. It addresses a timely topic and I have enjoyed listening to the news and views. Let me begin by noting that I work for the American Bar Association, and I must advise that my remarks do not necessarily reflect the policy of the Association. Although I am proud of the work that the ABA has done over the past several years on judicial independence generally and judicial selection specifically, I am not here to discuss that work. I, of course, would be happy to answer any questions that you might have about the ABA’s activities in those areas, however, I am here to comment on the paper prepared by Professors Cheek and Champagne. In that regard, let me also note that I have not had the opportunity to review Professor Schotland’s paper, so I will not comment on that material. This is unfortunate, since Roy Schotland has been quite engaged in the work on judicial independence and judicial selection in the past few years, and he always has something interesting to contribute. I look forward, as I’m sure you all do, to hearing what Roy has to say, even though he won’t be saying it in person.

I find the Cheek paper troubling. It is troubling to me for one particular reason; but before I address that, let me point out some aspects of the paper that I could but will not discuss. First, I could find fault with the variables chosen. Political scientists always are vulnerable to criticism based on the particular variables chosen for analysis and that paper is no different. Certainly we can identify other appropriate variables, or challenge the appropriateness of the variables utilized. This criticism is of a type quite often employed by political scientists in critiquing a paper, but in this case, it is a mere trifle. The variables employed are certainly appropriate based on the theory being assessed, so I won’t discuss this critique any further.

Next, I could find fault with the documentation of the anecdotal and descriptive parts of the paper. There are some cites missing from some of the stories, and that could be criticized. Again, though, this criticism is a mere trifle. I’m sure that the missing attribution could be provided, as I’m sure it will be as the paper goes through further updating, editing, and review. So there is little point in pursuing this critique.

I could also criticize the general methodology used in the paper. The reliance on quantitative approaches to challenge and assess what are basically political—and human—activities is a reflection of the discipline of political science and of one subfield, public law, that places more emphasis on the science rather than the political or legal. The use of analytical techniques such as scaling, regression analysis, and other quantitative tools in political science is not a trifling matter, but instead goes to the heart of the discipline. It may even lead one to wonder whether political scientists prefer science to politics. That is not Professor Cheek’s problem, though, and that is not why we are here. That concern is part of a much bigger issue that is at play among those...
active in the political science world. It would therefore be unfair to Professor Cheek to pursue this line of critique. Clearly, the Cheek paper makes an important contribution to the literature of public law as a field of political science using mainstream political science. It looks at an issue that is of increasing interest, the manner in which state judicial elections are conducted, by using an important state, Texas, which has become a bit of a bellwether for mainstream judicial election research.