PUBLIC OPINION AND AN ELECTED JUDICIARY: NEW AVENUES FOR REFORM

J. CHRISTOPHER HEAGARTY

I. INTRODUCTION

To get the bad customs of a country changed and new ones, though better, introduced, it is necessary to first remove the prejudices of the people, enlighten their ignorance, and convince them that their interests will be promoted by the proposed changes; and this is not the work of a day.1

What was true in 1781, at least in this regard, is certainly true today.

The concept of judicial independence is not new to American political thought. However, in recent years there has been a renewed movement to protect the judicial branch of government at the state level from undue political pressure and from the inappropriate influence of money over judicial elections. Evidence of this movement can be seen in the attention given it by the American Bar Association (ABA),2 the formation of a national organization, “Justice at Stake”3 (which is dedicated to this cause) and the frequent

2. The ABA Standing Committee on Judicial Independence, About the ABA Standing Committee on Judicial Independence, American Bar Association, available at http://www.abanet.org/judind/aboutus/home.html (last visited Mar. 6, 2003). In 1997, the ABA formed the Standing Committee on Judicial Independence to promote public awareness about the values of an independent, accountable, and efficient judiciary, including the exploration of reforms to judicial selection methods at the state level. Id. In addition, Alfred P. Carlton, Jr., President of the ABA, was appointed in August 2002 a Presidential Commission to study, report, and make recommendations with regard to various aspects of state judicial systems to ensure continued fairness, impartiality, and accountability, including various proposals for reform. Id. at Judicial Independence in the 21st Century, available at http://www.manningproductions.com/ABA263/ABA263_Overview.htm (last visited Mar. 6, 2003).
3. Justice at Stake Campaign, available at http://faircourts.org (last visited Mar. 6, 2003). The Justice at Stake organization was created in 2000, as a new partnership of state and national organizations dedicated to countering threats to judicial independence through a coordinated strategy of public education, civic engagement, and reform. Id., available at
introduction of judicial reform bills in state legislatures around the country.

I worked extensively in North Carolina as part of a coalition dedicated to improving our judicial selection process and campaign reform. Our efforts culminated in the passage of the North Carolina Judicial Campaign Reform Act of 2002, which transformed our state elections for appellate judicial offices from partisan to nonpartisan affairs, developed a public financing program for appellate level judicial campaigns, created a state-produced voter guide for appellate judicial elections, and enacted voluntary campaign spending and fundraising limits. As Franklin said, this was not the work of a day.

The voters of North Carolina elect trial court and high court judges, and did so in partisan elections until recently. This change leaves only six remaining states that elect high court judges in partisan elections. Not only are partisan elections an uncommon practice in the majority of states, they are uncommon elsewhere among the world’s democratic governments. Critics cite numerous problems inherent in judicial elections, recognizing it as a “bad custom”; but efforts to move away from judicial elections to a merit selection system have been foiled in state after state, including North Carolina. Indeed, no state that elects judges has abandoned that practice in almost twenty years.

How did North Carolina’s Judicial Campaign Reform Act become law when so many proposals for merit selection could not? The campaign organized for passage of the North Carolina bill did not mirror more traditional campaigns for judicial reform. By “traditional campaigns,” I refer to various campaigns around the country to adopt a merit selection system in states with an elected judiciary. I observe most of these campaigns to be very similar: they are organized primarily through state bar associations, utilize arguments that an appointive process will improve judicial independence, and are met with resistance from nonattorneys. Much has been written on the topic of judicial selection, and it is not the purpose of this commentary to summarize the history of the issue or debate various judicial selection methods. Rather, I examine public opinion as it relates to basic voter understanding of judicial elections and public support for traditional
reform proposals. The results help explain why past efforts may have failed and suggest an alternative strategy for reform.