

**RECOMMENDATIONS ON THE SELECTION OF JUDGES
AND THE IMPROVEMENT OF THE JUDICIAL SYSTEM
IN NEW YORK**

**The Judicial Selection Task Force
of The Association of the Bar of the City of New York**

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I. Introduction

This Task Force was convened by the Association of the Bar of the City of New York (the “Association”) to examine the process by which judges are selected in the State of New York, and particularly in New York City, and to make recommendations on behalf of the Association for improving the process. An examination is timely. A few recent cases of judicial misconduct have attracted significant attention and have prompted political officials, including Mayor Bloomberg and Brooklyn District Attorney Hynes, to call for an examination and overhaul of the selection process. Ultimately, the issue is the delivery of justice and the public’s confidence that justice is being delivered by women and men who are honest and competent and not subject to institutional pressures that undermine those qualities. The questions being raised go beyond misconduct, they go to the best way to construct a system for selecting judges to better administer justice. We address the issues posed herein, but first a nod to the current climate.

A. The Immediate Background

On January 22, 2002, New York Supreme Court Justice Victor I. Barron was arrested on charges of soliciting and accepting a bribe from a plaintiff’s lawyer to approve a \$4.9 million settlement in a case involving a young girl who suffered brain injuries during a car accident.¹ Mr. Barron later pleaded guilty to the felony charge and received a sentence of three to nine years in prison, which will result in Barron spending more time incarcerated than any other New York judge convicted of either state or

¹ See, e.g., Daniel Wise, *Justice Barron Charged with Taking a Bribe*, 227 N.Y. L.J. 1 (Jan. 23, 2002); Daniel Wise, *Justice Allegedly Demanded \$250,000 to Approve Settlement: Witness Against Barron is Solo New York Lawyer*, 227 N.Y. L.J. 1 (Jan. 25, 2002).

federal crimes.² In December 2002, Barron was officially disbarred by the Appellate Division, Second Department.³

Mr. Barron's conduct prompted Brooklyn District Attorney Hynes to examine the integrity of the New York judicial system.⁴ Upon concluding his investigation, Hynes was satisfied that corruption in Brooklyn was not endemic.⁵

But in June of 2002, the State Commission on Judicial Conduct ruled that Supreme Court Justice Reynold N. Mason should be removed from office for misconduct.⁶ The Commission found that Justice Mason violated ethical rules when he improperly sublet his rent-stabilized apartment to his former brother-in-law, mismanaged an escrow account by using it for personal expenses, and refused to cooperate with an investigation into such activity.⁷ In May of 2003, the New York Court of Appeals upheld the Commission's findings and removed Mason from the judiciary.⁸

Stories of judicial misconduct continued to surface in 2003. In April, Brooklyn Supreme Court Justice Gerald P. Garson was arrested on charges that he

² See, e.g., Daniel Wise, *Barron Pleads Guilty to Taking Bribe: Former Brooklyn Supreme Judge Will Be Sentenced to 3- to 9-Year Prison Term*, 228 N.Y. L.J. 1 (Aug. 6, 2002) [hereinafter Wise, *Barron Pleads Guilty*]; Daniel Wise, *Brooklyn Judge Barron Gets 3 to 9 Years: Negotiated Bribery Plea Means He Will Spend 3 Years in Prison Before Parole Eligibility*, 228 N.Y. L.J. 1 (Oct. 29, 2002).

³ *Ex-Judge Baron Is Disbarred*, 228 N.Y. L.J. 1 (Dec. 19, 2002).

⁴ See Wise, *Barron Pleads Guilty*, *supra* note 2.

⁵ *Id.*

⁶ See STATE COMM'N ON JUDICIAL CONDUCT, MATTER OF REYNOLD N. MASON, A JUSTICE OF THE SUPREME COURT (July 1, 2002) (disciplinary proceeding), *reprinted in* 227 N.Y. L.J. 6 (July 1, 2002) [hereinafter *Disciplinary Proceeding*].

⁷ See Tom Perrotta, *Commission Orders Mason Off the Bench*, 227 N.Y. L.J. 1 (June 28, 2002); *Disciplinary Proceeding*, *supra* note 6.

⁸ See John Caher, *Panel Declares it is Not Bound By 'Spargo' Case: Mason Removed from Bench Despite Federal Ruling*, 229 N.Y. L.J. 1 (May 2, 2003).

accepted money and gifts in exchange for favorable rulings in matrimonial disputes.⁹

Garson's arrest resulted in his indictment in August 2003 on bribery charges.¹⁰

Justice Garson's arraignment prompted Brooklyn District Attorney Hynes to denounce the judicial selection process of Supreme Court justices as "indefensible" and a "sham".¹¹ Shortly after the arrest of Justice Garson, Mr. Hynes convened a special grand jury to investigate the New York judicial selection process.¹² In particular, Mr. Hynes focused on the Democratic nominating process for the Supreme Court in Brooklyn because of the large sums of money that were being raised for Democratic candidates who were generally considered "shoe-ins".¹³

The numerous and simultaneous cases of judicial misconduct also attracted the attention of Mayor Michael R. Bloomberg. Concerned that the recent cases of judicial misconduct were causing a crisis of confidence in the judiciary, the Mayor urged political leaders to adopt a system for screening judicial candidates, similar to the process established by executive order, that is used to select Criminal and Family Court

⁹ See Tom Perrotta, *Hynes Begins Investigation Of Supreme Court Elections: Criticism of Process Comes on Heels of Brooklyn Judge's Arraignment*, 229 N.Y. L.J. (Apr. 25, 2003).

¹⁰ Daniel Wise, *Prosecutors File Upgraded Indictment Against Garson: Bribery Count, Three Others Added to Brooklyn Judge's Earlier Charges*, 230 N.Y. L.J. 1 (Aug. 6, 2003).

¹¹ See Perrotta, *supra* note 9.

¹² Tom Perrotta, *Trouble in Brooklyn Spurs Court Reforms: Oversight Added for Matrimonial Matters*, 229 N.Y. L.J. 1 (Apr. 28, 2003).

¹³ See Daniel Wise, *Probe Will Follow Funds Raised in Electing Judges: Brooklyn D.A. Seeks to Change Party Convention System*, 229 N.Y. L.J. 1 (Apr. 30, 2003). More recently, the Commission on Judicial Conduct admonished Brooklyn Supreme Court Justice Martin Schneier for throwing a \$20,000, 250-guest victory party and using excess campaign funds for donations to a not-for-profit organization and other unjustified post-election expenses. Tom Perrotta, 230 N.Y. L.J. 1 (Oct. 2, 2003).

candidates.¹⁴ Mayor Bloomberg confided that, in the long run, he supported a constitutional change, requiring all judges to be appointed, rather than elected.¹⁵

Only recently Mayor Bloomberg testified before the Commission to promote public confidence in Judicial Elections.¹⁶ He testified that although he does not believe that corruption pervades New York's courts, a lack of rigorous merit-based selection standards endangers the public's trust and respect for the courts.¹⁷ He pointed out that under the current process, party leaders virtually handpick the winning judicial candidates. He testified that "[t]here's nothing wrong with being politically active, but knowing where the local clubhouse is should not be a prerequisite for becoming a judge."¹⁸

The flood of criticism regarding the judicial selection process, in general, and the process employed in Brooklyn, more specifically, also prompted action by Brooklyn Democratic Party Chairman Clarence Norman Jr., who has been in the center of the storm over judicial selection in Brooklyn.¹⁹ In response to criticism that the current judicial screening process by which Supreme Court candidates are referred to

¹⁴ See Daniel Wise, *Mayor Urges Reform in Judicial Screening: Citing 'Crisis of Confidence' in Judiciary, Bloomberg Calls for Broader-Based Panels*, 229 N.Y. L.J. 1 (May 29, 2003); Exec. Order of the Mayor of the City of New York No. 8, § 1-2 (Mar. 4, 2002)[hereinafter Exec. Order No. 8].

¹⁵ See Wise, *supra* note 14.

¹⁶ Press Release, Office of the Mayor of the City of New York, Mayor Michael R. Bloomberg Delivers Testimony Before the Commission to Promote Public Confidence in Judicial Elections (Sept. 16, 2003) (<http://www.nyc.gov>).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Clarence Norman Jr. has since been indicted on charges of grand larceny and filing a false instrument in connection with his activities as chairman. See Andy Newman, *Party Chief in Brooklyn Denies Guilt Over Funds*, N.Y. TIMES, Oct. 11, 2003, at B4.

nominating delegates for consideration²⁰ is less than transparent, Mr. Norman in April agreed to make public the future findings of his screening panel.²¹ Nonetheless, two panel members, concerned that the screening process was too closely controlled, stepped down in May.²² Mr. Norman subsequently adopted additional measures to increase confidence in the Brooklyn judicial selection process and judiciary. In May 2003, Mr. Norman appointed a ten-member committee to examine Brooklyn's process for screening candidates.²³ The committee ultimately approved a plan, to be implemented in 2004,²⁴ that will create an eighteen-member screening panel, six members of which will be selected by party leaders.²⁵ The approved plan also authorized the Brooklyn Democratic Party leader to select the panel's chairman and expanded the party's involvement so that it reviews Civil Court candidates as well.²⁶

II. The Current Judicial Selection Process in New York State

Following is a description of the judicial selection process, as established by the various laws of New York State and City, including the constitution, the laws of the judiciary, election laws, and a mayoral executive order. In addition, this report goes on to examine more closely the judicial screening process as it is in fact implemented in the five boroughs of the City of New York, where most of the recent attention has been directed.

²⁰ See *infra* Part II.C.

²¹ Daniel Wise, *Brooklyn Leaders Adopt Judicial Screening Reform*, 230 N.Y. L.J. 1 (Aug. 20, 2003).

²² *Id.*

²³ See *Reformers Fail to Overhaul Judicial Screening Process*, 229 N.Y. L.J. 1 (May 27, 2003); Wise, *supra* note 21.

²⁴ Graham Raymon, *Delegates Punchy*, NEWSDAY, Sept. 17, 2003, at A02.

²⁵ Wise, *supra* note 21.

²⁶ *Id.*

A. The Court of Appeals

New York state's highest court consists of the chief judge and six associate judges.²⁷ Vacancies in the Court of Appeals are filled by what is known as "merit selection":²⁸ new judges of the Court of Appeals are appointed for a fourteen-year term by the governor of New York, with the advice and consent of the senate, from among those recommended by the judicial nomination commission.²⁹

The judicial nomination commission for the Court of Appeals consists of twelve members.³⁰ Four of the members are appointed by the governor; four are appointed by the chief judge of the Court of Appeals; and one each is appointed by the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, and the minority leader of the assembly.³¹ No more than two of the members appointed by the governor and two of the members appointed by the chief judge of the Court of Appeals can be from the same political party.³² In addition, two of the members appointed by the governor and two of the members appointed by the chief judge of the

²⁷ N.Y. CONST. art. VI, § 2(a).

²⁸ "Merit selection" is a term of art used to refer to the appointment of judges from a small group of nominees who have been selected as the best qualified by an independent nominating commission of broadly-based membership. Merit selection is one form of appointment, and as such, can be distinguished from appointment in which the appointing power has unfettered discretion (except perhaps as to confirmation) to appoint. The federal system utilizes this second type of appointment. The term "merit selection" does not imply that elected judges lack merit. Furthermore, this Task Force emphasizes that it does not intend to malign elected judges by the use of the term. Instead, it adopts the term to describe a process which is on balance more likely to lead to a greater proportion of meritorious judges than the elective process.

²⁹ N.Y. CONST. art. VI, § 2(e).

³⁰ N.Y. CONST. art. VI, § 2(d)(1); N.Y. JUDICIARY § 62(1) (McKinney 2001).

³¹ N.Y. CONST. art. VI, § 2(d)(1); N.Y. JUDICIARY § 62(1) (McKinney 2001).

³² N.Y. JUDICIARY § 62(1) (McKinney 2001).

Court of Appeals must be lawyers; the other two appointed by each must be non-lawyers.³³

The judicial nomination commission evaluates the qualifications of candidates, and, upon the concurrence of eight members of the commission, prepares a written report recommending to the governor persons who by their character, temperament, professional aptitude, and experience are qualified to hold judicial office.³⁴ The commission's written report must be released to the public when submitted to the governor.³⁵ For the position of chief judge of the Court of Appeals, the commission recommends seven persons; for a vacancy in the office of associate judge, the commission recommends at least three but not more than seven candidates.³⁶

If a vacancy occurs, essentially the same procedure applies. The governor will make an appointment from those recommended by the commission.³⁷ If the senate is not in session at the time, the governor's appointment is considered an "interim appointment" until the senate has the opportunity to confirm or reject the appointment.³⁸

B. The Appellate Division

Appellate Division justices are designated by the governor of New York from among the Supreme Court justices approved by the governor's screening committee of the applicable department.³⁹ Unlike the judicial nomination commission, the screening

³³ *Id.*

³⁴ N.Y. CONST. art. VI, § 2(c), (d)(4); N.Y. JUDICIARY § 63(1), (3) (McKinney 2001).

³⁵ N.Y. JUDICIARY § 63(3) (McKinney 2001).

³⁶ N.Y. JUDICIARY § 63(2)(a)-(b) (McKinney 2001).

³⁷ N.Y. JUDICIARY § 68(2) (McKinney 2001).

³⁸ *See* N.Y. JUDICIARY § 68(3) (McKinney 2001).

³⁹ N.Y. CONST. art. VI, § 4(c); N.Y. JUDICIARY § 71 (McKinney 2001).

committee does not narrow the field of qualified candidates, it passes on each qualified candidate to be considered by the governor. After interested Supreme Court justices submit applications, the committee examines each candidate's history and interviews lawyers and the candidate before deciding whether the judge is qualified to be a candidate for the Appellate Division bench. If the committee deems the candidates qualified, the candidate is permitted to continue the application process and be considered by the governor. Thus, although the committee does not make recommendations, it acts as a gatekeeper in the Appellate Division designation process.

Appellate Division justices are appointed for five-year terms or the unexpired portion of their respective fourteen-year terms, if less than five years.⁴⁰ For each of the four judicial departments the governor also selects a presiding Appellate Division justice, who serves until the expiration of her or his term of office.⁴¹ Presiding Appellate Division justices must be residents of the department to which they are appointed.⁴² When the terms of such designations expire or vacancies occur, the governor must make new designations.⁴³ In addition, upon the request of the Appellate Division, the governor may make temporary designations in the case of any justice's absence or inability to act, as well as when additional justices are needed for the speedy disposition of the court's business.⁴⁴

⁴⁰ N.Y. CONST. art. VI, §§ 4(c), 6(c); N.Y. JUDICIARY § 71 (McKinney 2001).

⁴¹ N.Y. CONST. art. VI, § 4(c); N.Y. JUDICIARY § 71 (McKinney 2001).

⁴² N.Y. CONST. art. VI, § 4(c); N.Y. JUDICIARY § 71 (McKinney 2001).

⁴³ N.Y. CONST. art. VI, § 4(d); N.Y. JUDICIARY § 71 (McKinney 2001).

⁴⁴ N.Y. CONST. art. VI, § 4(d), (e); N.Y. JUDICIARY § 71 (McKinney 2001).

C. The Supreme Court

New York State's trial court of general jurisdiction is the Supreme Court. The justices of the Supreme Court are elected by the voters in the district in which the justices are to serve for a term of fourteen years from and including the first day of January following their election.⁴⁵ To be eligible to serve as a Supreme Court justice an individual must be a member of the Bar of New York for at least ten years.⁴⁶ From among those eligible to serve, justices to the Supreme Court are selected by a somewhat complex and controversial process.

First, political parties elect delegates to a judicial district convention, assembly district by assembly district, at a primary election.⁴⁷ There are twelve judicial districts,⁴⁸ and there are multiple assembly districts within each judicial district. The number of delegates a political party of a given assembly district can elect to the judicial district convention is determined by party rules, but is required to be "substantially" proportional to the assembly district's share of the vote cast for governor on the party's line in the immediately preceding election.⁴⁹ Individuals seeking to be elected as delegates to a judicial convention must gain access to the primary ballot by submitting

⁴⁵ N.Y. CONST. art VI, § 6(c).

⁴⁶ N.Y. Const. art VI, § 20(a).

⁴⁷ See N.Y. ELECTION § 6-124 (McKinney 1998). New York election law defines a political party as "any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor." N.Y. ELECTION § 1-104 (McKinney 1998).

⁴⁸ N.Y. JUDICIARY § 104 (McKinney 1983).

⁴⁹ See N.Y. ELECTION § 6-124 (McKinney 1998).

petitions containing the signatures of no less than five percent of the enrolled voters of the particular party within the given assembly district.⁵⁰

Second, the elected delegates nominate candidates for the Supreme Court vacancies.⁵¹ Some view the delegates' role as merely perfunctory, arguing that the delegates do nothing more than ratify or rubber stamp the choices of the party leaders, “who essentially get to pick the candidates.”⁵² The process by which candidates are proposed to the delegates varies by judicial district.⁵³

Third, those candidates nominated at the judicial district conventions of the various parties run against each other in a general election within their respective judicial district.⁵⁴ In areas of the state where one party dominates—the Democrats in New York City and the Republicans in most upstate districts—nomination by that party is tantamount to election. To further complicate the election, many candidates are “cross-endorsed”—that is, endorsed by political parties other than the party that nominated them. Consequently, a candidate can appear on the party line of multiple parties.

When a vacancy occurs, otherwise than by expiration of term, it is filled for a full term at the next general election held not less than three months after the vacancy occurs.⁵⁵ Until the vacancy is filled by election, the governor, by and with the

⁵⁰ See N.Y. ELECTION § 6-136 (McKinney 1998); *France v. Pataki*, 71 F. Supp. 2d 317, 320 (S.D.N.Y. 1999).

⁵¹ N.Y. ELECTION § 6-106 (McKinney 1998); *France v. Pataki*, 71 F. Supp. 2d at 321.

⁵² Gary S. Brown, *The Merits of Merit Selection*, THE METROPOLITAN CORP. COUNS., May 1996, at 53.

⁵³ See *infra* Part III.

⁵⁴ *France v. Pataki*, 71 F. Supp. 2d at 321.

⁵⁵ N.Y. CONST. art. VI, § 21(a).

consent of the senate, may fill it by appointment.⁵⁶ As in the Appellate Division designation process, the governor may only pick from those candidates deemed qualified by the governor's screening committee.

D. Other Courts

1. Appellate Term

The Appellate Division of the Supreme Court may establish an Appellate Term of the Supreme Court.⁵⁷ Three to five Supreme Court justices are assigned by the chief administrator of the courts, with the approval of the presiding justice of the Appellate Division, to hear appeals from certain lower courts.⁵⁸ Currently, an Appellate Term of the Supreme Court exists only in the First and Second Judicial Departments.

2. County Courts

There is one County Court in each county outside of New York City. County Court judicial candidates are nominated at primary elections by their county-political-party.⁵⁹ Voters in the county in which the judges are to serve then elect the County Court judges from among those nominated.⁶⁰ Judges are elected for ten-year terms.⁶¹

⁵⁶ *Id.* If the Senate is not in session, the governor's appointment will continue until the December following the election to fill the vacancy. *Id.*

⁵⁷ N.Y. CONST. art. VI, § 8(a).

⁵⁸ N.Y. CONST. art VI, § 8(a), (e); N.Y. JUDICIARY § 212(2)(a) (McKinney 1983).

⁵⁹ The Fund for Modern Courts, *Judicial Selection in the Courts of New York*, at <http://www.moderncourts.org/js-ny.htm> (last visited Oct. 15, 2003).

⁶⁰ *See* N.Y. CONST. art. VI, § 10(a).

⁶¹ N.Y. CONST. art. VI, § 10(b).

3. Court of Claims

In reality, many judges appointed to the Court of Claims serve as Acting Supreme Court justices and assist with the caseload in the City of New York. Judges of the Court of Claims are appointed by the governor, with the advice and consent of the senate, for nine-year terms.⁶² If a vacancy occurs, otherwise than by expiration of term, the governor, with the advice and consent of the senate, may appoint a judge for the unexpired term.⁶³

4. Surrogate's Court

There is a Surrogate Court in each county of the state, which is served by at least one judge.⁶⁴ Candidates for Surrogate Court are nominated at primary elections by their county-political-party.⁶⁵ Judges of the Surrogate Court—surrogates—are then elected by the voters of the county in which the surrogates are to serve from among those nominated.⁶⁶ Surrogates outside of New York City are elected for ten-year terms; surrogates within New York City are elected for fourteen-year terms.⁶⁷

5. Family Court

There is a Family Court in each county of the state, which is served by at least one judge.⁶⁸ Family Court judicial candidates outside of New York City are

⁶² N.Y. CONST. art. VI, § 9.

⁶³ N.Y. CONST. art. VI, § 21(b).

⁶⁴ N.Y. CONST. art. VI, § 12(a).

⁶⁵ See The Fund for Modern Courts, *supra* note 59.

⁶⁶ N.Y. CONST. art. VI, § 12(b).

⁶⁷ N.Y. CONST. art. VI, § 12(c).

⁶⁸ N.Y. CONST. art. VI, § 13(a).

nominated at a primary by their county political-party;⁶⁹ judges are then elected, from among those nominated, for ten-year terms by the voters of the county in which the judges are to serve.⁷⁰ Judges of the Family Court within New York City are appointed for ten-year terms by the mayor⁷¹ from those nominated by the Mayor's Advisory Committee. If a vacancy occurs within the New York City Family Court, otherwise than by expiration of term, the mayor may appoint a judge for the unexpired term.⁷²

a. The New York City Mayor's Advisory Committee

The Mayor's Advisory Committee was established by executive order of the mayor to recruit, evaluate, consider, and nominate judicial candidates for appointment and to evaluate incumbents for reappointment to the New York City Family Court, New York City Criminal Court, and interim appointments to the New York City Civil Court.⁷³ The Committee consists of nineteen members, all of whom either reside or have their principal place of business in New York City.⁷⁴ Committee members serve for a term of two years.⁷⁵ All members of the Committee are appointed by the mayor. The mayor selects nine members to the Committee directly. However, the remaining ten members are nominated by members of the judiciary and the legal community: the chief judge of the New York Court of Appeals nominates four members, the presiding justices of the Appellate Division for the First and Second Judicial Departments each nominate two

⁶⁹ See *The Fund for Modern Courts*, *supra* note 59.

⁷⁰ N.Y. CONST. art. VI, § 13(a).

⁷¹ N.Y. CONST. art. VI, § 13(a).

⁷² N.Y. CONST. art. VI, § 21(c).

⁷³ See Exec. Order No. 8, *supra* note 14.

⁷⁴ *Id.* § 5(a).

⁷⁵ *Id.*

members, and the deans of two law schools within New York City (on a rotating basis) each nominate one member.⁷⁶

The mayor may not appoint any judge without the nomination of the Committee, nor may the mayor reappoint any judge without the Committee's recommendation.⁷⁷ After selecting a candidate for appointment from among the nominees, the Committee conducts a public hearing to gather more information about the candidate; no hearing is held in the case of an incumbent judge.⁷⁸ The Committee may reconsider a nomination based on the findings of the public hearing.⁷⁹

6. New York City Criminal Court

Judges of the New York City Criminal Court are appointed for ten-year terms by the mayor from those nominated by the Mayor's Advisory Committee.⁸⁰ If a vacancy occurs, otherwise than by expiration of term, the mayor may appoint a judge for the unexpired term.⁸¹

7. New York City Civil Court

Judges of the New York City Civil Court are elected by the voters for ten-year terms.⁸² If a vacancy occurs, otherwise than by expiration of term, it is filled for a full term at the next general election held not less than three months after the vacancy

⁷⁶ *Id.*

⁷⁷ *Id.* § 4(a).

⁷⁸ *Id.* § 3(a).

⁷⁹ *Id.*

⁸⁰ N.Y. CONST. art. VI, § 15(a).

⁸¹ N.Y. CONST. art. VI, § 21(c).

⁸² N.Y. CONST. art. VI, § 15(a).

occurs.⁸³ Until the vacancy is filled by election, the mayor with the consent of the Mayor's Advisory Committee, may fill it by appointment.⁸⁴ Although the judges of the New York City Civil Court are elected, judges for the housing part of the Civil Court are appointed by the administrative judge from among a list of qualified candidates prepared by the advisory council for the housing part.⁸⁵

8. District Courts

Judges of the district courts are nominated at party primaries and elected for six-year terms by the voters in the district in which the judges are to serve.⁸⁶ If a vacancy occurs, otherwise than by expiration of term, it is filled for a full term at the next general election held not less than three months after the vacancy occurs.⁸⁷ Until the vacancy is filled by election, it may be filled by appointment.⁸⁸

9. Town, Village, and City Courts

Judges of the town courts are elected by the voters in the town in which the judges are to serve for four-year terms.⁸⁹ The method of selecting judges of village and city courts outside of New York City is prescribed by the legislature.⁹⁰

⁸³ N.Y. CONST. art. VI, § 21(c).

⁸⁴ *Id.*

⁸⁵ N.Y. CITY CIV. CT § 110(f) (McKinney 1962).

⁸⁶ N.Y. CONST. art. VI, § 16(h).

⁸⁷ N.Y. CONST. art. VI, § 21(d).

⁸⁸ *Id.*

⁸⁹ N.Y. CONST. art. VI, § 17(d).

⁹⁰ *Id.*

E. Evaluation by the Association of the Bar of the City of New York

The Association of the Bar of the City of New York is involved extensively in the process of evaluating candidates for elective and appointive judgeships. Candidates for elected judgeships are invited and expected to participate in the Association's evaluation process. The Judiciary Committee of the Association contacts every candidate once he or she has been selected for inclusion on the ballot (regardless of whether the candidate is unopposed or on a minor or major party line), sends the candidate a uniform questionnaire and a waiver of confidentiality and invites the candidate to appear before a meeting of the full committee for an interview. The Judiciary Committee is comprised of thirty-nine experienced attorneys from the private, public and academic sectors of the legal profession, and up to ten interim members who serve to assist with the workload.

Once the questionnaire is completed and submitted, a subcommittee reviews the information provided by the candidate, reviews the candidate's writings and public statements, interviews ten to forty attorneys and judges who know the candidate professionally and interviews the candidate. Based on the information gathered, the subcommittee prepares a report and recommendation to the full committee.

The full committee considers the report and interviews the candidate itself. The full committee then, by majority vote of those present, votes the candidate "Approved" or "Not Approved". If the candidate is voted "Not Approved" but there are at least four votes (or 25% of those present) in dissent, the candidate has the right to appeal the Judiciary Committee's decision to the Executive Committee of the Association.

This evaluation process is designed to be, and is, nonpartisan, to ensure that those who are elected or appointed judges in this city have the requisite qualifications for office. This is one of the central missions of the Association.

The evaluation process is confidential, but, in the case of candidates for elected judicial office, the final determinations are made public and issued in a press release shortly before election. These results often appear in the *New York Law Journal*, on the editorial page of *The New York Times* and elsewhere.

In the case of mayoral appointments to Criminal Court, Family Court and interim Civil Court judgeships, the mayor and two of his predecessors have pledged not to appoint anyone found “Not Approved” by the Association. Candidates for appointment are interviewed by the Judiciary Committee after the candidates are screened and approved by the Mayor’s Advisory Committee. The Association also reviews candidates for federal judgeships, Housing Court, District Attorney and U.S. Attorney.

III. How the Process Works in Practice in New York City

In the course of its work, the Task Force went beyond the examination of the legal requirements for selecting judges and investigated the reality of the process by which candidates for Civil Court or Supreme Court are selected by the political parties in each borough of this city. The Task Force, itself consisting of people familiar with the reality of the process, spoke to several people close to the selection process in each borough.

The process by which a party endorses a primary candidate for Civil Court or selects a nominee for Supreme Court varies from borough to borough within New York City. The reality, however, is that the leader of the majority political party in each

borough has enormous influence on the party's choice, which, in this city, is very often tantamount to election in November.

Candidates for Civil Court are elected like all other candidates for elected office in this state. Civil Court candidates must qualify for the ballot by obtaining the requisite number of signatures of registered voters. Primary contests may occur in the event more than one Civil Court candidate seeks a party's nomination and qualifies for the ballot. In that instance, party leadership may endorse one of the candidates in the primary, and that endorsement is often crucial to success.

As stated before, the Supreme Court follows a delegate system in which by law party nominees are selected by delegates at a judicial nominating convention of each party. This practice has existed for over 100 years. Delegates to the convention are themselves elected in the primary in September of each year. Shortly thereafter, the elected delegates meet at the nominating convention and select the party's nominees for Supreme Court, who will then appear on the November ballot. Thus, candidates for Supreme Court do not themselves compete in primary elections for the party's nomination.

The selection of judicial delegates is often perfunctory, as generally only one slate of delegates is nominated per assembly district to attend the judicial convention (indeed, when only one slate is nominated, they are deemed elected and do not even appear on the party's primary ballot). Similarly, judicial nominating conventions are often perfunctory and preordained, as the delegates do no more than ratify the choices of

party leaders. In addition, the minority parties in this city very often cross-endorse the candidate of the majority party.⁹¹

What follows is a description of the Democratic Party process in each borough. We focus on the Democratic Party because of its dominance in the New York City judicial selection process:

Given the indictments of Justices Garson and Barron, and the recent allegations in Brooklyn that judgeships can be “bought” from Democratic Party leaders,⁹² the process in Brooklyn has received by far the most scrutiny in recent months.

In Brooklyn, the Democratic Party leader appoints a 16-member screening committee of lawyers to review applications of those who seek the party’s endorsement for Civil Court or nomination for Supreme Court. (Because Brooklyn and Staten Island are both within the Second Judicial District of the Supreme Court, the Staten Island Democratic Party leader is allowed certain appointments to this committee.)⁹³

Although the idea of a screening committee is a good one in theory, the Democratic Party screening committee in Brooklyn operates with few objective guidelines and procedures, and appears to be subject to extensive influence from the party leader. These 16 committee members have no fixed term of office and serve at the pleasure of the party leader; many have reputations as either persons active in the Democratic Party or close to Clarence Norman personally. Until recently, the

⁹¹ Some argue that cross-endorsement allows the major political parties to barter for political favors, including getting their judicial candidate elected. *See* Brown, *supra* note 52. Others contend that cross-endorsement eliminates election risks for well-qualified candidates.

⁹² Kevin Flynn and Andy Newman, *Some Say Inquiry Could Lead to Overhaul in Picking Judges*, N.Y. TIMES, June 21, 2003, at B1.

⁹³ *See* Daniel Wise, *Exchange of Letters Reveals Politics Behind Brooklyn Judicial Selection*, 228 N.Y. L.J. 1 (Sept. 20, 2002).

committee's determinations were forwarded to the county leader, but not known to the public nor even the candidate.⁹⁴

According to news accounts, in 2002 the screening committee refused to evaluate a Civil Court judge for Supreme Court who was "repugnant" to the party leadership, revealing that the process was not open to all who wished to apply.⁹⁵ (Mr. Norman himself has been quoted as saying "it's my screening committee ... if I know there is someone we are not going to endorse, then what's the point."⁹⁶) Two members of the screening committee reportedly resigned as a result of this incident. One was quoted as saying that committee members are not "free to vote their consciences" because of the presence of others on the committee who are close to Mr. Norman.⁹⁷

In response to public outcry, Brooklyn party leadership adopted proposals to reform the screening committee process and to permit the appointment of some of its members by sources independent of the party leader.⁹⁸ It remains to be seen whether such reforms improve the judicial selection process in Brooklyn because such proposals do not take effect until 2004.⁹⁹

The Democratic Party in the Bronx has a 12-member screening panel appointed by the party leader. The party advertises in the *New York Law Journal* for

⁹⁴ Leslie Eaton, *Behind a Troubled Bench, an Arcane Way of Picking Judges*, N.Y. TIMES, June 30, 2003, at B1.

⁹⁵ See Wise, *supra* note 93.

⁹⁶ *Id.*

⁹⁷ See Daniel Wise, *Brooklyn Panel Approves 17 Judge Candidates*, 229 N.Y. L.J. 1 (June 24, 2003).

⁹⁸ The proposal includes increasing the number of members on the screening committee to eighteen and limiting the number of members who could be selected by party leaders to six. See Wise, *supra* note 21; Kati Cornell Smith and Tom Topousis, *Courting Reform – Brooklyn Dem Leaders OK Plan to Fix Judge Picks*, N.Y. POST, July 3, 2003, at 15.

⁹⁹ Rayman, *supra* note 24.

candidates, who apply directly to the screening committee. Those associated with the process in the Bronx insist there is “zero gatekeeping” by party leaders.¹⁰⁰

The Queens Democratic Party has no screening panel at all, and has not had one for years.¹⁰¹ In Queens, candidates for judicial office are selected by the county leader himself, with recommendations from district leaders. Compared to other boroughs, there are few primary contests for Civil Court in Queens. Thus, the reality that the Democratic Party leader handpicks elected judges could not be more obvious than in Queens.

The Democratic Party process in the First Judicial District, composed of Manhattan is referred to as a “double blind” or “reform” process. It is the most open and inclusive, and by far the most complicated. Only a community with a high degree of party activism could support such a process. In Manhattan multiple screening committees are selected by a variety of bar and community groups ostensibly free from influence by the party leader. Applications for judgeships are solicited in the *Law Journal*, and made directly to the screening committee. The screening committees investigate and evaluate the qualifications of each applicant, and select 2-3 candidates for each judicial vacancy, which are then forwarded to party leadership. The party will not endorse or offer to the nominating convention any candidate who is not screened and approved by a screening committee.

Given the level of party activism in Manhattan, delegate selection and nominating conventions can at times be competitive events. Democratic clubs may put forth on the primary ballot competing slates of delegates for election, and delegates may

¹⁰⁰ Wise, *supra* note 93.

¹⁰¹ *Id.*; Editorial, *Screening Panels for Decoration Only*, DAILY NEWS, September 5, 2003, at 50.

differ at the convention about which candidate screened and approved by the screening committees should be nominated by the party. In reality, though, the party leader controls a number of delegate votes at the convention.

IV. This Association's Record on these Issues

The Association has long supported a system by which judges of the State of New York will be appointed by an executive, following approval by a non-partisan merit selection or nomination commission. However, most of the Association's written comments were issued more than 20 years ago. Nevertheless, it is striking that the issues remain very much the same. The solutions we recommend in this report are certainly in harmony with and in many ways quite similar to those adopted by the Association since its inception.

On June 20, 1869, in response to a steady decline in judicial integrity and the public's perception of the legal community, a letter was published in the *New York Times* editorial page proposing that "[t]he true remedy is not in a public meeting [among lawyers], but in a permanent, strong and influential association of lawyers for mutual protection and benefit."¹⁰² After a similar letter was published in December 1869, a letter began to circulate among lawyers calling for the organization of a bar association that would, among other things, "sustain the profession in its proper position in the community, and thereby enable it, in many ways, to promote the interests of the public."¹⁰³ In the month following this "call for organization" over 200 lawyers joined what would become the Association of the Bar of the City of New York.

¹⁰² GEORGE MARTIN, CAUSES AND CONFLICTS – THE CENTENNIAL HISTORY OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 1870-1970 12 (1970).

¹⁰³ *Id.* at 15.

The debate between elected versus appointed judges in particular played a key role in the founding of the Association. New York State's Constitution initially provided for the appointment of state judges. Constitutional conventions in 1846 and again in 1867 proposed elections for judges. In 1869, the public ratified the election method by a close margin. As stated in Causes and Conflicts – The Centennial History of the Association of the Bar of the City of New York, "[t]he decline of quality on the bench under the elective system and the necessity for reversing the trend had been among the chief reasons for founding the Association."¹⁰⁴

Soon after the amendment was ratified, the Association began efforts to repeal it and promote judicial reform. An early initiative in advancing judicial reform was the Association's decision to join the Committee of Seventy in opposing Boss Tweed's candidates for the Supreme Court in the November 1871 judicial elections.¹⁰⁵ In its first official act to reform the New York State judiciary, the Association approved a report drafted by the Association's Judiciary Committee to be sent to the legislature.¹⁰⁶ The report included a full description of the corruption that had plagued the judiciary in New York and led to an investigation of four judges by the New York State Assembly's Judiciary Committee.¹⁰⁷

In 1873, the Association supported a referendum on the ballot to reinstate the appointive method of selecting judges.¹⁰⁸ In addition, the Association published an open letter to the voters of New York arguing that facts and statistics showed that elected

¹⁰⁴ *Id.* at 104.

¹⁰⁵ *Id.* at 69.

¹⁰⁶ *Id.* at 72-73.

¹⁰⁷ *Id.* at 73.

¹⁰⁸ *Id.* at 104.

judges were less impartial and less capable than appointed judges.¹⁰⁹ The referendum was defeated.¹¹⁰

In 1962, in a continuing effort to reform the judicial selection process, the Association formed the Committee on Judicial Selection and Tenure with the responsibility of studying and making recommendations on improving the selection of judges.¹¹¹ In 1965, Chauncey Belknap, as chairman of the committee, proposed that an appointive system for the selection of judges be implemented in New York City, before it was proposed statewide. The plan was based on three principles: (1) all judges were to be appointed by the mayor; (2) recommendations of three to five names were to be made to the mayor by a statutory judicial selection commission and no appointments could be made of anyone not recommended; and (3) the commission must be nonpartisan and representative of the courts, the mayor, the bar, and the interests of the community.¹¹² The Senate Judiciary Committee considered the plan briefly, but the full legislature refused to entertain the proposal.¹¹³

Under the stewardship of President Rosenman, the Association turned its attention to the New York Constitutional Convention of 1967.¹¹⁴ An Association member, Roswell Perkins, chaired a convention committee that advanced the Association's agenda with reports calling for a reform of the judicial selection process. The recommendation mirrored the plan proposed by the Association's Committee on Judicial Selection and

¹⁰⁹ *Id.* at 107-09.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 309.

¹¹² *Id.* at 310.

¹¹³ *Id.* at 311.

¹¹⁴ *Id.* at 311-13.

Tenure. The proposed amendment carried the support of several organizations including the New York County Lawyers' Association, the League of Women Voters, the Citizens Union and the Institute on Judicial Administration. Notwithstanding this support, the convention voted not to endorse the plan.¹¹⁵

Upon his election as Governor, Hugh Carey appointed then President of the Association, Cyrus Vance, as head of a task force on the state court system.¹¹⁶ Other members of the task force included Ruth Bader Ginsburg, Mario Cuomo, and Victor Kovner. The result of their efforts was an executive order by Governor Carey, issued in February 1975, that provided for the appointment of Court of Appeals judges from a list of lawyers recommended by a nonpartisan commission, a commission on judicial conduct to review, remove, or censure certain judges, and a centralized state court system under the Chief Judge of the Court of Appeals.¹¹⁷ In 1977, the executive order was submitted by the Legislature to the voters of New York as a constitutional amendment, and the electorate approved it. In 1978, Governor Carey signed a bill codifying the terms of the amendment.¹¹⁸

In 1973, the Association published a report entitled “The Selection of Judges,” outlining a plan for merit selection of judges similar to the process by which Court of Appeals judges are now selected.¹¹⁹ The conclusion reached thirty years ago is equally apt now:

Merit selection of judges in New York is long overdue. This state should have a judiciary of the highest quality at all levels, one that is uniformly

¹¹⁵ *Id.* at 311-12.

¹¹⁶ JEFFREY B. MORRIS, MAKING SURE WE ARE TRUE TO OUR FOUNDERS – THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 1970-95 54-55 (1997).

¹¹⁷ *Id.* at 55.

¹¹⁸ *Id.*

¹¹⁹ 28 THE RECORD 372 (1973).

respected by lawyers and laymen alike. The present elective method of judges has in too many instances failed. We strongly urge that judges in New York be elected in the manner outlined above.¹²⁰

In the 1970's the Committee on State Courts of Superior Jurisdiction, one of the authors of "The Selection of Judges", continued to focus on the critical issue of merit selection of judges and issued three reports on the general subject, the last of which contains the most comprehensive comments and recommendations.¹²¹ That 1980 report entitled "Legislative Proposals on Court Merging and Merit Selection of Judges" analyzed five different legislative proposals dealing with court merger and merit selection.¹²² In concluding that it would continue to support the appointive rather than the elective method, the Committee provided five justifications.

First, nominating conventions do not provide for adequate participation by the electorate because the delegates are selected by local political leaders. This makes the nomination of Supreme Court judges "largely a political process".¹²³ Second, in many areas of the state one political party dominates and in effect determines who will be elected. Third, one-issue political parties can have an undue impact on the judicial selection process. Fourth, judicial election campaigns are fraught with potentials for abuse and do not adequately educate the public about the relevant issues. Fifth, election campaigns are costly, thereby limiting the pool of potential candidates.

¹²⁰ *Id.* at 376.

¹²¹ The first report written in 1976 dealt with the narrow issue of a proposed change in the Judicial District Nominating Convention System. *A Proposal to Restructure the Judicial District Nominating Convention System*, 32 THE RECORD 615 (1977). The following year the Committee issued a report entitled "Legislation Implementing the Court Reform Amendments". 33 THE RECORD 525 (1978).

¹²² 35 THE RECORD 66 (1980).

¹²³ *Id.* at 74.

The report recommended establishing procedures for judicial nominations for Supreme Court justice by judicial district nominating commissions, one for each judicial district, with the governor to make the appointment. The commissioners would function as a screening and selection group. The members of the commission were to be selected by the presiding justices of the respective Appellate Division, the state legislative leaders and the governor. The commissions would consist of both lay and attorney members but none should hold any other public office. The Committee recommended as well that the commission be permitted to submit only three to five candidates for each vacancy and that there should be no interim appointments.

In 1985, a representative of the Association testified in favor of legislation which would have merged the trial courts and retained the way each judge was placed on the court (“merger-in-place”) but provided for retention elections rather than regular elections at the end of a judge's term. The representative testified that:

Such election will maintain both the appearance as well as the reality of judicial independence. It will provide comfort to sitting judges so they will not be at the mercy of political leaders if they seek to remain at the bench.¹²⁴

V. The Task Force’s General Conclusions: Increase Merit Selection & Move Towards A Fully Appointive System

Although there are many excellent judges in New York, the Task Force is concerned that the current system selects for strong political loyalty, and is not constructed to select for strong legal credentials or character.¹²⁵ There is nothing wrong with selecting judges who have been active in politics, but political loyalty should not be

¹²⁴ Statement of Bettina B. Plevan on Behalf of the Association of the Bar of the City of New York to the September 30, 1985 Hearing Held by the Senate Judiciary Committee on Senate Bill 6751. *See also* Assembly Bill 8329 (1984).

¹²⁵ Tom Hays, *Corruption Scandal Shakes Brooklyn’s Court System*, THE ASSOCIATED PRESS, Aug. 3, 2003.

a primary or even important qualification for selection. A process which relies on political connections may not sufficiently emphasize the importance of character and integrity, and the extensive political ties of those judges chosen by such a process may additionally make them more susceptible to requests for favors from the political leaders who helped elect them.¹²⁶

Another concern of the Task Force is that the election process, together with the money necessary to participate in it, is hardly ideally suited to select good judges and has a deleterious effect on the administration of justice. In a democracy, the role of the electorate in selecting members of the executive and legislative branches is obvious. Questions of policy, direction, personality and character are those which are entrusted to voters. It is far less obvious that elections are the best mechanism for selecting who will make the best judge,¹²⁷ particularly when the issues of fund raising and campaigning are factored into the elections. The need for funds limits the people who can run to those with access to financial resources, and the need to obtain funds for election and reelection

¹²⁶ One study seems to support this: A study by The Fund for Modern Courts comparing New York City judges selected by the elective system with those selected by the appointive system reports that only one of 188 judges selected by a merit system from 1977 to 1992 compared with seven of 181 elected judges were convicted of a crime, or removed from office, or censured or publicly admonished for misconduct, or suspended from the practice of law. M.L. Henry, Jr., *THE FUND FOR MODERN COURTS, CHARACTERISTICS OF ELECTED VERSUS MERIT-SELECTED NEW YORK CITY JUDGES, 1977-1992* 15 (1992).

¹²⁷ An address by the Association in 1873 correctly framed the issue in a way that is still applicable today:

Judges are not selected, like senators, assemblymen, and city officers, to represent the property, the opinions, or the interests of the people of a locality, but they are the mere selection of the fittest members of a single learned profession for the purpose of interpreting and applying the laws of the State in the same sense and the same spirit throughout its borders, irrespective of all parties, and all local interests, and all popular feelings. The fact that we vote for representatives is no reason why we should vote for judges, but quite the contrary. It is essential that a judge should be selected by a method which does not arouse personal prejudice or popular passion, which places him under no commitment to any locality, interest or political party, which shall give all the people who may be suitors or prisoners before him, the same power and participation in placing him upon the bench, and the same grounds of confidence in his impartiality.

ADDRESS OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, AN ELECTIVE JUDICIARY 6 (Oct. 24, 1873).

raises the specter of candidates beholden to those who fund them.¹²⁸ Although such factors are accepted by the public when it comes to the election of executives and legislators,¹²⁹ we should not accept them when it comes to the selection of judges. Even if corruption or undue influence may be limited to a few cases, it is a few cases too many.

Therefore, this Task Force concludes that merit-based judicial selection is vital to the independence and integrity of the New York judiciary. The Task Force believes that merit-based selection is best accomplished through an appointive process, which minimizes the corrupting influences of money and helps ensure that the selection of judges is based on qualifications rather than party politics. Although the current elective process provides the illusion of voter participation, the Task Force believes that judicial selection guided by an independent, diverse screening body representative of the public in the respective districts or counties will better provide the public with a judiciary of the highest quality and independence. As set forth in detail below,¹³⁰ such a screening committee would investigate judicial candidates and choose a single nominee, or a very small number of nominees, believed by the screening committee to be the best qualified of all the applicants. Only candidates so nominated by the screening committee would be eligible to become a judge.

The Task Force emphasizes that New York's judiciary contains unusually well-qualified judges, many of whom are among the nation's outstanding judges.

Unfortunately, even a few corrupt or incompetent judges can taint the public's perception

¹²⁸ See e.g., Committee on Government Ethics, *Report on Judicial Campaign Finance Reform*, 56 THE RECORD 157 (2001). In 2001 the Association's The Committee on Government Ethics proposed a system of public financing for judicial elections. *Id.* at 164-65.

¹²⁹ The Association holds a long-standing position in favor of public financing of campaigns for legislative and executive office.

¹³⁰ See *infra* Part VI.

of many. The goal of the Task Force's recommendations are threefold: (1) to safeguard the legitimacy of the judiciary in the view of the public, (2) to ensure that judges in New York are consistently selected based on merit, and (3) to provide greater access to the opportunity to become judge to those who were formerly precluded by party politics.¹³¹

VI. Recommendations to Refine the Current Process

Although the Task Force strongly recommends replacing the current system of elective judgeships with a system of merit appointment, we recognize that the process of constitutional amendment that such a change would entail could take several years to effectuate. But the need for reform is urgent, and ought not to await the outcome of that lengthy process. There are a number of significant potential reforms which can be put in place either by legislation or even by agreement of party officials.

In listing these reforms of the current system, some principles must be stated at the outset. The first principle is that it will accomplish nothing—indeed, it will only add to cynicism about the justice system—for reforms to be added as “window dressing” disguising a fundamentally corrupt or autocratic system. For instance, an “advisory” committee or a judicial “selection” committee which has only persuasive authority is simply unacceptable. Unless a selection committee effectively limits the number of possible appointees to a small number, its influence will be overwhelmed by naked political considerations. Similarly, where the selection committee is itself selected by or beholden to a party leader, it cannot effectively insulate the process of judicial selection from party politics. Such a toothless selection committee was in effect in Kings

¹³¹ Although the Task Force's focus has been the selection of judges in New York City, and the present press coverage has focused on the Borough of Brooklyn, the problems addressed by this Report are endemic to the system throughout the state. The only difference is that the dominant party varies in regions of the state. Accordingly, our conclusions and recommendations are not limited to New York City.

County, and we have found no evidence that the work of the committee had any effect in improving the quality of the judiciary or in ensuring its independence. While recently a package of reforms has been implemented ostensibly to improve the process in Kings County, the committee will still be asked only to distinguish between qualified and unqualified candidates; it will not be asked to select only the most highly qualified candidates for Supreme Court Judge. The Task Force opposes the formation of ineffective screening committees, and, indeed, we urge members of the bar not to participate in such cynical attempts to add a façade of legitimacy to a “politics as usual” process.

Any package of reforms, therefore, even those short of constitutional amendment, must at a minimum follow these principles:

- For appointive judgeships, the person or persons effectively choosing judges must be themselves politically visible and subject to election. But the elected official making the decision should be choosing among a small number of candidates—in most instances, no more than three—selected as the most qualified by a screening committee independent of the elected official's authority.¹³²
- Insofar as possible, the system should insulate judges from political or financial indebtedness.
- Members of a judge’s staff, including law secretaries, should themselves be merit hires, chosen without influence from political parties.

With these broad guidelines in mind, there are important reforms that can be made within the existing system to improve the quality and independence of judicial selections.

¹³² These principles apply equally to committees which screen for selection to run for elective office.

A. First: Refining the Elective Process To Make It More Merit-Based
1. Supreme Court

While New York State Election Law requires that all “party nominations for the office of justice of the Supreme Court shall be made by the judicial district convention,”¹³³ in practice there is a wide divergence among the counties with respect to how this convention works. In some counties, the “convention” is a mere formality, held during a lunch hour, at which the delegates simply vote as instructed by the county political leader. In other counties, the convention is genuinely contested, and the delegates engage in a process of compromise and coalition-building before a candidate is selected.

We believe that in order for the conventions to nominate the best possible candidates, they must each set up an effective screening committee to review the qualifications of candidates. The members of the screening committee should be selected from a broad range of bar groups, law school faculties, and civic organizations and include both lawyers and nonlawyers. While the party leadership will determine which organizations will appoint members to the screening committee, the organizations themselves, not the party leadership, should decide who they will appoint to the committee. Appointed members are not to serve as their organizations’ representative. The purpose of such a selection system for the screening committee is to ensure that the members of the screening committee are diverse, yet independent. This will help to ensure that the diverse public has confidence in the selections.

The screening committee must also have adequate resources. The committee should have the funds to hire an independent counsel who answers to the

¹³³ N.Y. ELECTION § 6-106 (McKinney 1998).

committee and not to outside political leaders. Additionally, the screening committee should conduct some version of a background check on potential candidates using any online or public sources available.¹³⁴

To encourage accountability, the members of the screening committee should be selected for fixed nonrenewable terms, and their identities should be known. The screening committee's rules and procedures should be written and public so that there is a degree of transparency although the committee's deliberations should be private.

The screening committee should accept applications from any persons who wish to apply and should have an active outreach function to encourage the highest quality and diversity of potential candidates. No applications for judicial nomination should be accepted except through the screening committee. The screening committee should also effectively investigate potential candidates, interviewing colleagues, adversaries, and judges who are familiar with the attorney's work.

The screening committee should forward only the three most highly qualified candidates for consideration by the judicial district convention for each vacancy. If more than three candidates are forwarded per vacancy, the committee should rate them, *i.e.*, put them into ranked categories. The committee's decision should be final, and not subject to an appeal from political leaders who may favor a particular candidate.

Finally, delegates of the judicial district convention should agree to be bound to choose only among those three candidates found most highly qualified by the screening committee for each vacancy.

¹³⁴ For example, Regulatory DataCorp Int'l LLC, provides such services to the financial resources industry. See <http://www.regulatorydatacorp.com>.

2. Elective judgeships generally

Other elective judgeships do not involve nomination through a judicial district convention. However, there are important reforms that are generally applicable to improve the electoral process.

First, although any candidate could circulate petitions and run in a party primary, party leaders should run an endorsed slate selected on merit. The party could form a screening committee, similar to that described above for the Supreme Court, which would select those three candidates most highly qualified for each vacancy. Party leaders would agree in advance to select for endorsement only candidates included in this list of the most highly qualified candidates. As in the description for the Supreme Court, screening committees generally would conduct background checks on potential candidates.

Second, voter guides should be provided to the public in all judicial elections, including those for the Supreme Court, to facilitate informed voting.¹³⁵ A frequent complaint is that, in contested judicial elections, voters enter the voting booth having no knowledge whatsoever of the candidates among whom they can choose. Voter guides would include a summary of each candidate's qualifications and endorsements, and a statement from the candidate.

Finally, although the prospect of a non-partisan judicial election is an intriguing one, the Task Force does not recommend its adoption. In the case of judicial elections, the change to a nonpartisan election would require a constitutional amendment,

¹³⁵ Bar associations may also play an educational role by sponsoring educational programs within the community and establishing information hotlines. *See, e.g.*, National Summit on Improving Judicial Selection, *Call to Action*, 34 LOY. L.A. L. REV. 1353 (2001).

and the Task Force does not believe that this reform would in practice lead to better-qualified judges.¹³⁶

B. Second: Refining the Appointive Process

While the Task Force strongly favors an appointive process of judicial selection, it recognizes that even that process must be carefully structured if it is to produce the best-qualified judges. There are two essential elements for effective judicial appointments.

The first is an effective screening or nominating committee. Such a committee would have similar characteristics to the screening committee described above with regard to Supreme Court nominations (*i.e.*, diverse membership, fixed terms, set rules, adequate resources). In addition, the committee should be bipartisan in composition and independent of the appointing authority.¹³⁷ The committee should actively solicit and review applications, and recommend to the nominating authority a maximum of three most highly qualified candidates for each vacancy.

A recurring criticism of merit selection is that it is elitist. The Task Force believes that, on the contrary, merit selection is the fairest and most accessible method of selecting qualified judges. Nonetheless, the screening committee must operate openly and transparently to ensure that potential applicants and the public at large feel that the process is accessible, and to counter any perception of elitism (as opposed to meritocracy,

¹³⁶ In addition, the effect of interest groups and the pernicious effect of the need to raise money would still play an undue role.

¹³⁷ One study found that members of screening committees were less likely to feel that politics affected their decision (15% versus 37-41%) when their committee was required to be bipartisan in composition. See Malia Reddick, *Merit Selection: A Review of the Social Scientific Literature*, 106 DICK. L. REV. 729 (2002) (citing ALAN ASHMAN & JAMES J. ALFINI, *THE KEY TO JUDICIAL MERIT SELECTION: THE NOMINATING PROCESS* 76-77 (1974)).

which is to be encouraged). Similarly, members of the screening committee must be representative of the diverse interests of the public it serves.

The second essential element for effective judicial appointments is a politically accountable appointing authority. Even where a legislative body has the ultimate approval over judicial appointments, the nomination must be made by a single, visible elected executive who has political accountability for his or her decisions. The appointing authority must not dominate the screening committee or have sufficient control of the committee such that his or her nominees are always approved. Likewise the appointing authority must ensure that he or she does not appoint only those who are known to be very close to the appointing authority even if such persons are qualified. Such a process would lead to widespread cynicism about the role of the screening committee and the whole notion of merit selection.¹³⁸

During the appointing process, this Task Force also recommends the use of background checks on candidates to detect any past criminal behavior or misconduct. One of the benefits of moving to an appointive system is that background checks may be

¹³⁸ For example, although there is widespread agreement that the current merit selection of Court of Appeals judges is preferable to the elective process that preceded it, the merit selection process in the Court of Appeals has recently drawn criticism. See John Caher, *Few Appellate Judges Apply for Wesley's Seat: Potential Candidates Say They Presume Governor's Choice is Foregone Conclusion*, 230 N.Y. L.J. 1 (Sept. 18, 2003). According to the article:

Mr. Cuomo appointed three Democrats, three Republicans and one independent. The liberal Democrat used his first pick to appoint Richard D. Simmons, an upstate conservative. He also named a Republican, Sol Wachtler, chief judge and shocked observers when he appointed now-Chief Judge Judith S. Kaye, who had no judicial experience. With Judge Kaye's appointment, Mr. Cuomo appointed the first woman to the Court. He also appointed the first black to a full term, Fritz W. Alexander, and the first Hispanic, Carmen Beauchamp Ciparick.

Id. at 2. In contrast, although two of Governor Pataki's four picks have been women, all of his picks have been white Republicans. In addition, the article points out that "[t]hree were Appellate Division justices. Three had close political connections to the governor." *Id.*

more easily conducted using the appointive body's law enforcement resources. Such resources are difficult to employ in an elective system.

In New York City, three mayors, from both parties—Mayors Koch, Dinkins, and Bloomberg—agreed not to appoint any judge who had not been approved as qualified by the Association.¹³⁹ This has been an effective additional means of ensuring that only well-qualified candidates become judges and of strengthening the independence of the judiciary.

C. Third: Refining the Reselection Process and Retention Elections

Judges in New York do not serve life terms. For most of their tenure, judges take the bench each day knowing that their performance will be subject to review at the end of their term. This system involves a trade-off. On the one hand, it provides an incentive for judges to be hard-working, productive, and fair. On the other hand, the system of reselection can lead to the temptation for judges to decide cases not on the merits, but on how a decision may be reported by the media or viewed by political leaders who are involved in the reselection process. Judges are often called upon to make unpopular decisions, and they should not feel that their jobs may be in jeopardy when they do so.

Under a purely appointive system, judges are reselected through the process of reappointment. In order to balance the competing factors of judicial independence and public accountability involved in this process, the Task Force recommends that, except in cases of corruption or incompetence, the nominating

¹³⁹ To the extent bar associations are invited to have “representatives” on a screening commission, we believe the Association should have a designee on the commission, but it should be clear to all concerned that such person is a designee of the Association, not a representative. That is, he or she is acting as an individual expressing his or her own views and in no way speaking for the Association which will express its views as a body when it vets those selected by the screening commission.

committee should nominate the judge up for reappointment as the only candidate for that position, and the appointing authority should reappoint the judge. Judges should be assured that, so long as they work hard and strive to be fair, they will be reappointed to full terms without the threat of the appointing authority looking over their shoulders.

In this area as well, the organized bar can provide an essential service. The bar should review judges coming up for reappointment to determine whether the judge is qualified to continue. If so, the judge should be recommended for reappointment. Political leaders should agree to reappoint those judges whom the bar has found qualified to continue in office.¹⁴⁰

An alternative approach to the reselection of judges through pure reappointment is the use of retention elections. The first merit selection plan for the selection of judges, first adopted in Missouri and often referred to as the Missouri Plan, utilized such retention elections as a compromise between advocates of the elective and the appointive processes:

After a period on the bench, judges face voters on the question of whether they should be retained in office. Judges who receive the required number of affirmative votes in this uncontested plebiscite earn a full term in office. At the end of each succeeding term, judges again face voters on a retention ballot. If a judge is rejected, the process of appointment is reinstated.

The Missouri Plan was a practical compromise between the goals of judicial independence and public accountability. The combined system of initial merit selection and subsequent retention elections was designed to obtain quality judges, maintain their independence by insulating them

¹⁴⁰ This process--or one close to it--is already in place in some areas. For instance, the Mayor of the City of New York has pledged not to appoint anyone to the Criminal Court, Family Court and interim Civil Court judgeships if that person is "Not Approved" by the Association. However, the Mayor has not gone so far as to agree that he will affirmatively reappoint those judges whom the bar has found qualified to continue in office.

from political influences, and provide public accountability through a mechanism for removal of judges.¹⁴¹

Retention elections generally do not present all the problems of initial elections, either in terms of political control¹⁴² or the influence of money.¹⁴³ Furthermore, they do not seem to have an adverse impact on minority judges.¹⁴⁴ Additionally, they may increase judicial accountability.¹⁴⁵

The potential adverse effect of retention elections on judicial independence however is very apparent. As already discussed in this section, judges should be allowed to decide cases on the merits without fear that their jobs are in jeopardy when they must make unpopular decisions. Retention elections may stifle this independence (although the requirement that retention be opposed by a supermajority may at least mitigate this effect).

The Task Force does not endorse retention elections as a preferable feature of any merit selection procedure. Nonetheless, it is prepared to accept retention elections if they may help engender the public and political support needed to secure passage of a merit selection system in the place of the current elective system.¹⁴⁶

¹⁴¹ Larry T. Aspin and William K. Hall, *Retention Elections and Judicial Behavior*, 77 JUDICATURE 306, 306-07 (1994) (internal citations omitted).

¹⁴² Nonpolitical retention elections are to be distinguished from political recall elections such as the one in California in 1986 involving the recall of Chief Justice Bird.

¹⁴³ See Aspin & Hall, *supra* note 141, at 309.

¹⁴⁴ See Robert C. Luskin et al., *How Minority Judges Fare in Retention Elections*, 77 JUDICATURE 316, 316 (1994) (“A study of nearly every judicial retention election in the United States from 1980 to 1990 shows no correlation between whether a judge is black or Hispanic and the number of affirmative votes the judge received.”).

¹⁴⁵ It is unclear, however, how desirable this accountability is in a jurisdiction like New York where there are already mechanisms for removing corrupt or incompetent judges.

¹⁴⁶ We note that in an elective system, it is preferable to have a judge seeking reelection run in a retention election rather than a contested election, so long as the judge is subject to the same screening process as when he or she ran originally for that judgeship.

Finally, in the interim before the move to a purely appointive system, this Task Force suggests a procedure designed to encourage judicial independence as judges contemplate reelection: If a sitting judge is found satisfactory by the applicable screening committee, the committee should only pass on only the name of that judge for consideration. This practice would ensure that qualified judges are assured renomination.

D. Postscript: “Elevation” of Judges

In New York City, Acting Supreme Court judges are appointed by “elevating” criminal or Civil Court judges. The Chief Administrative Judge decides which judges will, or will not, be elevated. The Chief Administrative Judge can also remove a judge’s “Acting Supreme Court” status at any time. This process violates several of our principles as set out above, most notably that under the current system, Acting Supreme Court judges are effectively chosen by an official with limited political visibility, through a process which makes no use of an insulating, independent selection committee. Any comprehensive process of judicial reform will end the appointment of “Acting” Supreme Court judges and provide for an adequate number of regular Supreme Court judges. But in the meantime, at the very least, the Office of Court Administration should agree not to appoint any judge to Acting Supreme Court status if that judge has been found not qualified by this Association or any comparable group providing independent outside scrutiny.¹⁴⁷

A similar issue arises with respect to certification of judges. Starting at the age of seventy, judges must be “certificated” in order to continue their service (up to the age of seventy-six). The Administrative Board of the Courts should agree not to

¹⁴⁷ This appears to happen in practice, but it is not an official policy.

“certificate” any judge found unfit for continued service by this Association or a comparable body.¹⁴⁸

VII. Improving the Judicial Process, Beyond Selection

A. Increased Compensation

New York State cannot afford to be at a competitive disadvantage in attracting the best-qualified and ablest people to serve as members of its judicial branch. Historically, the compensation given to judges in the last century has failed to even keep pace with the rate of inflation. Indeed, one of the most comprehensive surveys of judicial compensation reported in 1988 that there had been a 20-year erosion of real purchasing power among New York State judges.¹⁴⁹ That study, published June 29, 1988, by the State of New York Temporary Commission on Executive, Legislative and Judicial Compensation, recommended that judicial salaries be substantially increased. Although small increases in salaries have been legislated, there have been no substantial increases in judicial salaries since the study was published.

While there is no uniformly accepted standard to measure the adequacy of compensation, there are relative criteria that can be used. In comparing state judicial salaries with salaries of those in the corporate sector or in private practice, it becomes clear that New York’s judicial salaries risk being so deficient that they erode the dignity and threaten the quality of the judicial system.

¹⁴⁸ The need for independent assessment in this area was illustrated by a recent letter to the editor of the New York Law Journal, accusing the Office of Court Administration of failing to recertify a Supreme Court judge in part because he was an “outspoken critic of the Office of Court Administration”. Kenneth P. Nolan, Letter to the Editor, *Why was Judge Garry Not Recertified*, 230 N.Y. L.J. 2 (Oct. 8, 2003). An independent screening body could effectively eliminate any such suspicions. By extension of the same logic, there should be independent assessments of judicial hearing officers, who are typically chosen from the ranks of retired judges.

¹⁴⁹ New York State Temporary Commission on Executive, Legislative and Judicial Compensation, Report of the New York State Temporary Commission on Executive, Legislative and Judicial Compensation (June 29, 1988).

Not only are the absolute dollars of compensation inadequate, but, perhaps more significantly, there exists no mechanism for periodically evaluating judicial salaries. Increased compensation is left to the irregular action of the New York State Legislature, which has often tied increases in legislative compensation to increases in judicial compensation. The 1988 Report of the Compensation Commission recommended that the Legislature should create a permanent Commission on Compensation to adjust levels of compensation for public officials at the top of all three branches of state government.¹⁵⁰ The goal of such a Commission would be to “assure more regular and even incremental adjustments and eliminate the very considerable disadvantages of sporadic compensation which have often necessitated relatively large catch-up adjustments”.¹⁵¹

That Commission would be charged with making regular reports (perhaps every 3 years) to the legislature and the governor concerning the adequacy of compensation. In evaluating that issue, the Commission would be charged with considering such factors as changes in the cost of living and the general economic condition of the state. There were also recommendations that the Commission should develop a salary system that considered longevity on the court, as well as incremental payments that would be sensitive to the extraordinary costs of living in certain geographical areas of the state.

An important feature of the procedures of the Commission was that the recommendation of the Commission should take effect unless rejected by the governor and the legislature within 90 days.

¹⁵⁰ *Id.* at 24.

¹⁵¹ *Id.*

In order to attract and retain well-qualified judges, judicial salaries must be periodically and systematically adjusted. This Task Force takes no firm position with regard to most of the details of such a Commission, but strongly recommends that a permanent mechanism be created to periodically review judicial salaries and to make specific recommendations that would take effect unless rejected by both the governor and the legislature.

B. Judicial Feedback

As we have stated, the legitimacy of judicial decisions must depend in large measure on the public's confidence in the skills, competence and independence of the judge. The focus on evaluating those credentials by the appropriate individuals or organizations at the optimal time is at the center of most of this Report, but that discussion generally points to evaluations made before the judge is appointed or elected.

The review of qualifications at that time must result in an "up or down" decision as to whether the candidate's qualifications support elevation to the bench. A number of states have taken this further and asked the obvious question: Why shouldn't evaluations be utilized after the judge is on the bench, and has had an opportunity to perform in that role? There is a related question, which has particularly troubled members of the Task Force who have been in the position of evaluating judges for reappointment or reelection: Why should a judge lack the information about an area perceived to need improvement until the screening process, when he or she is seeking a new term? It is clear that those devoting their efforts and lives to public service would want to perform in a manner that reflects well upon the bench. If a judge is perceived as deficient, that judge should be aware of that evaluation. Judges should not be deprived of information that they could use to improve their performance.

Policies that provide for the systematic collection and analysis of information regarding the judge's performance can help the community to ensure judicial competence in a number of ways. Such evaluations can be a very important tool to provide the judge with specific information and feedback as to how to improve his or her performance. Moreover, collecting data and opinions from a large, diverse group can insulate a judge from unfair criticism from the media or public officials, or from the complaints of a handful of unhappy constituents. With the results of the evaluations, unjustified criticism can be countered, or at least put into its proper perspective. Indeed, it will enhance judicial independence.

This Task Force recommends that confidential mid-term evaluations be undertaken to provide feedback to each member of the judiciary. In addition, new judges should be evaluated early in their first term to provide initial feedback and to flag any potential problems before they become entrenched. Both types of evaluations should not be judgmental or critical, but rather supportive and constructive.

It is important that the evaluation is designed and administered so that it promotes positive values and competencies without harming judicial independence. The most essential issue in designing such an evaluation is the selection of areas of performance that are to be evaluated. The Task Force suggests the following performance criteria for each judge (taken from one state's statute):¹⁵²

- **Integrity**, including avoidance of impropriety and appearance of impropriety; freedom from personal bias;
- **Knowledge and Understanding of the law** and judicial branch rules, including the issuance of legally sound decisions;

¹⁵² Kevin M. Esterling, *Judicial Accountability the Right Way*, 82 JUDICATURE 206, 208 (1999) (citing Utah's Code of Judicial Administration, 1993 Rule 3-111(2)).

understanding of the substantive, procedural and evidentiary law of the state;

- **Ability to communicate**, including clarity of bench rulings and other oral communications; quality of written opinions;
- **Preparedness, attentiveness, dignity and control over proceedings**, including courtesy to all parties and participants;
- **Skills as a manager**, including devoting appropriate time to all pending matters; discharging administrative responsibilities diligently;
- **Punctuality**, including the prompt disposition of pending matters, and meeting commitments on time and according to rules of the court.

In the past, this Association recommended, after careful study, that a poll of practicing lawyers be conducted “to obtain their collective opinion as to the ability of sitting judges”.¹⁵³ At that time in 1977, over 30 bar associations performed such surveys. The recommended plan, while leaving open many details, envisioned sampling only practicing lawyers, with the sampling narrowed only by the geography of the judge's seat. The plan also recommended that the entire poll results be immediately released to the press. That effort was never undertaken.

The Task Force recommendations for judicial evaluation should follow the plan proposed in 1977 with two significant differences. First, in order to encourage frank and open responses, the information should be collected on a confidential basis and a summary released only to the judge being evaluated; and, second, evaluations should be obtained from others beyond practicing attorneys. In other states, judicial evaluation committees interview or send surveys to court personnel, law enforcement personnel, litigants, witnesses, probation officers, jurors and others who may frequently come into

¹⁵³ Committee on State Courts of Superior Jurisdiction, *Judicial Evaluation Poll*, 33 THE RECORD 15 (1978).

contact with the judge. Enlarging the pool of those consulted is likely to make the results more credible for the judge and is also more likely to reveal a more wide-ranging perspective of the judge's performance.

There are a number of additional, specific issues that need to be discussed in order to implement mid-term judicial evaluations, including who should have the responsibility to collect the assessments/data, and how are judges to be given the data in a way that is credible but preserves the confidentiality of those that share their perceptions. This Task Force recommends that the mid-term evaluations first be implemented on a pilot basis, with the goal of eventually spreading statewide. The Office of Court Administration would ideally administer the process, and their members—along with members of various bar associations in the community—would sit on the committee which prepares the evaluation report.

Although this Task Force takes no position on whether the mid-term evaluations should later be shared with the Association or other bar associations in conjunction with the review process for the reappointment of a judge, this is an important question to consider. On one hand, restricting the evaluation to use by the judge comports with the objective of a process geared towards encouraging improvement. If the judge improves, as intended, as a result of the feedback contained in the evaluation, then the evaluation should no longer be relevant at the later date that the Association is evaluating a candidate for reappointment. On the other hand, information regarding suggested areas of improvement at an earlier date could be very useful for a committee evaluating a judge's qualifications. Past evaluation can highlight a judge's improvement—or failure to improve—and provide an incentive for judges to take the mid-term evaluations seriously. Members of the Task Force recommend that this, and

any other outstanding issues relating to evaluation, be discussed by a special committee that would include members of the bench, members of the bar, and representatives of the Office of Court Administration.

At this time in which public confidence in judicial performance needs to be strengthened, we strongly recommend implementation of mid-term judicial evaluation as an important tool to aid the individual judge, to improve overall judicial performance, and of equal importance, to increase public confidence in the system.

VIII. Conclusion

This Task Force recommends the adoption of a merit-based appointment system for all of New York's judges. The basic framework for such a system consists of a politically visible appointing body who is subject to election, and an independent, bipartisan and diverse screening committee to recommend a maximum of three most highly qualified candidates among whom the appointing authority must choose to fill a position. The membership of the screening committee should serve for fixed terms, consist of persons appointed by a broad range of bar and civic organizations and law school faculties and include nonlawyers as well as lawyers. Although its deliberations will be private, the screening committee must operate in as open a manner as possible. In addition to reviewing and recommending candidates, the members will actively solicit potential applicants. At some point in the process, background checks will be conducted on candidates. Also, the appointing body will not appoint any candidate found not qualified by the Association or a comparable organization. Finally, there will be a

presumption of reappointment of judges, except in cases of corruption or incompetence, or where the candidate is found not qualified.¹⁵⁴

Recognizing that it may take time before the statewide adoption of the merit-based appointive process described above is fully implemented, this Task Force recommends that specific improvements be made to the elective process in the meantime. First, screening committees should be established to forward three names of the most highly qualified applicants for each judicial vacancy to either the judicial district convention delegates—in the case of Supreme Court nominees—or to party leaders. Second, the delegates and party leaders should agree to choose the judicial candidate who will appear on the ballot from one of those three names. In addition, if a judge comes up for reelection and is found qualified by the screening committee, the committee should forward only that one name to the judicial district convention delegates or party leaders to be put on the ballot for that particular position.

The membership and operation of screening committees for the elective process is modeled closely on the guidelines suggested for screening committees for the appointive process: the membership should be diverse and serve for fixed, nonrenewable terms, the procedures and membership of the committee should be open to the public, and the process should include some version of a background check and a solicitation or outreach component. In addition, great care should be taken to ensure committee independence and autonomy from party leadership. This can be accomplished in part by allowing party leaders to choose which organizations will be represented on the committee, but mandating that the organizations themselves choose the individuals who

¹⁵⁴ The Task Force does not endorse retention elections as a means of weeding out unsuitable judges at the end of their term, but is willing to accept such retention elections if that is the price necessary to engender the support to convert to an appointive process.

will serve on the committee. All potential candidates will pass through the screening committee, and the decision regarding those candidates by the committee will be final and not subject to appeal by party leaders.

For as long as there are judicial elections, this Task Force recommends that voter guides be given to the public in all judicial elections to facilitate informed voting. The voter guides would include a summary of the candidates' qualifications and endorsements, and a statement from the candidate.

Finally, this Task Force recommends several improvements to New York's judicial system, beyond the manner of selecting New York's judges. This Task Force believes that an independent commission should evaluate the compensation levels of judges in this state to ensure that judicial compensation is adequate and also commensurate with the changing cost of living. The commission should periodically review judicial salaries and make specific recommendations that would take effect unless rejected by the governor and legislature.

This Task Force also recommends the establishment of a system for providing feedback to judges currently serving on the bench. Under this system, feedback evaluations should be conducted for all judges halfway through their term. New judges should have an additional evaluation early in their first term. The evaluations should be collected from a wide range of sources, including lawyers, court personnel, litigants, jurors and witnesses. These sources should be kept confidential from the judge and the public, and the final conclusions of the evaluation should be shown to the judge but not to the public.

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APPENDIX

The following is a sampling of some of the recent literature addressing judicial selection. This list is not meant to be exhaustive.

1. State-specific:

- Alabama: Scott William Faulkner, *Still on the Backburner: Reforming the Judicial Selection Process in Alabama*, 52 ALA. L. REV. 1269 (2001)
- Alaska: Tillman J. Finley, *Judicial Selection in Alaska: Justifications and Proposed Courses of Reform*, 20 ALASKA L. REV. 49 (2003)
- Arizona: Michael L. Piccarreta, *Department President's Message: Supporting Merit Selection*, 33 ARIZ. ATT'Y 11 (1996)
- Arizona: John M. Roll, *Merit Selection: The Arizona Experience*, 22 ARIZ. ST. L.J. 837 (1990)
- Arkansas (and Wyoming): Lawrence H. Averill, Jr., *Observations on the Wyoming Experience with Merit Selection of Judges: A Model for Arkansas*, 17 U. ARK. LITTLE ROCK L.J. 281 (1995)
- Florida: Martha W. Barnett, *The 1997-98 Florida Constitution Revision Commission: Judicial Election or Merit Selection*, 52 FLA. L. REV. 411 (2000)
- Florida: Madison B. McClellan, *Merit Appointment versus Popular Election: A Reformer's Guide to Judicial Selection Methods in Florida*, 43 FLA. L. REV. 529 (1991)
- Florida: Susan E. Liontas, *Judicial Elections have no Winners*, 20 STETSON L. REV. 309 (1990)
- Idaho: Debora K. Kristensen, *In Search of Judicial Independence*, 46 ADVOC. 27 (2003)
- Illinois: Ralph A. Gabric, *United for Justice: The Case for Merit Selection*, 84 ILL. B.J. 552 (1996)
- Indiana: Hon. Daniel J. Vanderpool, *One Plan for Restructuring Indiana's Judiciary: Is it Time for a Change?*, 44 RES GESTAE 32 (2000)

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- New Jersey: Robert J. Martin, *Reinforcing New Jersey's Bench: Power Tools for Remodeling Senatorial Courtesy and Refinishing Judicial Selection and Retention*, 53 RUTGERS L. REV. 1 (2000)
- New York: Quintin Johnstone, *New York State Courts: Their Structure, Administration and Reform Possibilities*, 43 N.Y.L. Sch. L. Rev. 915 (1999-2000)
- New York: George Bundy Smith, *Celebrating the New York Court of Appeals 150th Anniversary, Essays on the Court of Appeals: Choosing Judges for a State's Highest Court*, 48 SYRACUSE L. REV. 1493 (1998)
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- North Carolina: Samuel Latham Grimes, *"Without Favor, Denial or Delay": Will North Carolina Finally Adopt the Merit Selection of Judges?*, 76 N.C. L. REV. 2266 (1998)
- Ohio: Michael E. Solimine, *The False Promise of Judicial Elections in Ohio*, 30 CAP. U. L. REV. 559 (2002)

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- Texas: S. Shawn Stephens, *A History of Recent Attempts at Judicial Reform in Texas*, 40 HOUS. LAW. 14 (2003)
- Texas: Anthony Champagne & Kyle Cheek, *The Cycle of Judicial Elections: Texas as a Case Study*, 29 FORDHAM URB. L.J. 907 (2002)
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- Texas: Orrin W. Johnson & Laura Johnson Urbis, *Judicial Selection in Texas: A Gathering Storm?*, 23 TEX. TECH. L. REV. 525 (1992)
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- West Virginia: Larry V. Starcher, *Choosing West Virginia's Judges*, 20 QUINNIPIAC L. REV. 767 (2001) (reprinted from Larry V. Starcher, *Choosing West Virginia's Judges*, 12 W. VA. LAW. 18 (1998))
- Wisconsin: Richard S. Brown, *Proposal for a Modified Merit Selection Plan for Wisconsin*, 20 QUINNIPIAC L. REV. 651 (2001)

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- Lawrence Baum, *Judicial Elections and Judicial Independence: The Voter's Perspective*, 64 OHIO ST. L.J. 13 (2003)
- Stephen B. Burbank, *What Do We Mean by "Judicial Independence"?*, 64 OHIO ST. L.J. 323 (2003)
- Mark A. Behrens & Cary Silverman, *The Case for Adopting Appointive Judicial Selection Systems for State Court Judges*, 11 CORNELL J.L. & PUB. POL'Y 273 (2002)
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- Elizabeth A. Larkin, *Judicial Selection Methods: Judicial Independence and Popular Democracy*, 79 DENV. U. L. REV. 65 (2001)
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- Charles Gardner Geyh, *Why Judicial Elections Stink*, 64 OHIO ST. L.J. 43 (2003)
- Symposium, *Selection of State Judges, Judicial Selection White Papers, The Case for Judicial Appointments*, 33 U. TOL. L. REV. 353 (2002)
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- Norman Krivosha, *Acquiring Judges by the Merit Selection Method: The Case for Adopting Such a Method*, 40 SW. L.J. 15 (1986)

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- Julius Uehlein & David H. Wilderman, *Opinion: Why Merit Selection is Inconsistent with Democracy*, 106 DICK. L. REV. 769 (2002)

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- Philip L. Dubois, *Accountability, Independence, and the Selection of State Judges: The Role of Popular Judicial Elections*, 40 SW. L.J. 31 (1986)

5. Retention Elections:

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