# Symposium: Judicial Professionalism in a New Era of Judicial Selection

## October 22, 2004

## Session Two: Improving the Election of Judges, Part I

*MS. PRICE:* I am Liz Price with the law firm of Alston and Bird in Atlanta. It's my pleasure and honor to have this distinguished group here to talk about improving judicial elections. Let me introduce our panelists.

We're going to start with David Clark, who is a partner at Bradley, Arant, Rose & White in Mississippi. David has a commercial litigation practice, which includes a broad range of clients and issues in state and federal court. He has substantial trial experience in complex commercial, product liability, and securities litigation. He was named by the American Tort Reform Association as Legal Reform Champion in June 2004 for his work in civil justice reform in Mississippi. He's also listed in the *Best Lawyers in America* in the field of business litigation.

We also have Mary Klenz. Mary is the Co-President of the League of Women Voters of North Carolina. She's the founder and owner of the Klenz Insurance Agency for Nationwide Insurance since 1979. She's a member of the League of Women Voters' United States Nominating Committee. She's the past president and vice president of the Charlotte-Mecklenburg League where she helped coordinate Civics 101 for the Charlotte League. This is a program that won a national award and is used throughout the country.

We also have Jim Elliott, the Associate Dean at Emory University School of Law. Jim teaches Ethics, Banking, and Commercial Real Estate Finance. He practiced law at the Atlanta firm of Alston and Bird for twenty-eight years prior to coming to Emory. He is a Fellow of the American College of Real Estate Lawyers as well as the American and Georgia Bar Associations. He is past President of the State Bar of Georgia. He served on various Supreme Court commissions dealing with professionalism and lawyer discipline, and he serves on what we call the "Bill Ide Committee." It has a much fancier name along the lines of the Judicial Campaign Conduct Committee. And I am sure he is going to tell us a good bit about that.

I don't know if any of you got a chance to look at the Atlanta Journal Constitution this morning. Front page. "Big Bucks Buy Blitz in Judge's Race."[1] I'm not going to read you the whole thing, and by reading this I'm not expressing an opinion about any of the candidates. This just goes to the issues that Barbara and others in the first panel raised with respect to raising money and the notion that justice may be for sale.

> Howard Mead seems to be doing all he can to make the most of a second chance. Once a lawyer for Democratic Governor Zell Miller and Roy Barnes, Mead has spent a record 1.3 million dollars for a chance to sit on the Georgia Court of Appeals, in what typically would be a low-profile race. As Mead blankets the airwaves with TV ads, his two opponents are accusing him of trying to buy the election and of denigrating the legal profession.

The article discusses why this is now a three person race in the election. It goes on to say,

> Mead has raised a record amount for a judicial campaign in Georgia, thanks largely to over a] million dollars in personal loans to his campaign—for a job that pays $152,139 a year.
>
> Mead . . . said he wants to follow in the footsteps of Elbert Tuttle, the former federal appeals court judge in Atlanta whose landmark rulings in the 1960s led to the integration of public schools and facilities.
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> "Our courts are too important to let special interests start taking them over by electing their own candidates," Mead said. "If there's something I can do to step up to the plate and stop that, I'll do it."
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> To get his message across, Mead has spent more than one million dollars on some of the most pointed TV ads in the history of Georgia's judicial elections. While some ads extol Mead's work at the Capitol,

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1 Bill Rankin, *Big Bucks Buy Blitz in Judge's Race*, ATLANTA J. CONST., Oct. 22, 2004, at A1.

> others take shots at his opponents for becoming criminal defense lawyers.
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> One ad notes that while Mead left a lucrative law practice and entered public service to fight for tougher DUI laws and remove corrupt public officials from office, [his opponents] Bernes and Sheffield "made different choices." They left their positions as prosecutors "to become high-priced criminal defense lawyers and work for the kind of people they once sent to jail."

I won't read you the rest of it. You're welcome to come look at it. Perhaps that gives you a bit of a flavor. In the first panel, Eric Schroder said, "How depressing." It reminds me of the quip, "Other than that, Mrs. Lincoln, how did you enjoy the play?" It is kind of depressing.

But I would like to perhaps turn it over to our panelists to talk about what's going on in these various states and what we are trying to do to improve judicial elections. And I am going to start with Jim Elliott.

*MR.* ELLIOTT The committee that Liz referred to is actually formally called the Georgia Committee for Ethical Judicial Campaigns. It was formed in great part at the instigation of Bill Ide, who called it, and he of course prefers that I not refer to it this way, "sixty-six do-gooder citizens," of which I was one. In fact there are seven or eight others who are sitting in here today. These are concerned citizens. About a third of them are non-lawyers. They are all volunteers; therefore, there is no State action. But they are concerned about judicial elections, which are really different from elections in the other two bodies. Judges do not represent anyone, and there should be a difference.

Now, the committee was formed and adopted by-laws. It had as a part of its purpose to do some of those things that the JQC would have done earlier that, because of the two decisions that have already been referred to today, were no longer able to do.

Now, what power did this committee have? Well, it had only the power of moral suasion and the power to use its own First Amendment rights to comment on the conduct that the committee felt was inappropriate.

It could act on its own motion, though it preferred to act as a result of complaints having been filed, and during the campaign there was only one complaint. That complaint was filed as it related to a fundraiser that was held. It was organized by a group of women lawyers, and the invitation suggested that there was a concern by this group of lawyers that female judges had been singled out in the sense of having campaigns launched against them. Now, there was concern that Justice Leah Sears was going to somehow benefit from that complaint. An investigating committee was appointed and determined that Justice

Sears had had nothing to do with the formation, that there was nothing in the statements that were made that could be proven to be in any way misleading, and it was dismissed.

Now, what had we done? Well, as soon as each candidate would announce that they were going to run for the judicial offices, we asked by mail and by a phone call that they sign a pledge. That pledge was asking them to conduct their campaign at a level that was above that which was constitutionally protected as a minimum. And we have already heard about some of the things that it covered. For instance it asked that they take no position on issues that would likely come before their court, that they would not issue false and misleading statements, and that they would solicit contributions by a committee only.

As an aside, I think that pledge really is more important. It has been given a great deal of emphasis. Business Week, which is not considered one of your normal left wing publications, has done a survey of almost a thousand elected judges.[2] In response to the question, "Do campaign contributions have an impact on your decisions?" there was a continuum where they could say anywhere from "absolutely" through all the way down to "never." Roughly 70 percent of the judges said they were either "always" or "sometimes" affected in their decision making by campaign contributions. I frankly find that terrifying.

Do we gain a great deal by the potential insulation of the committee? I hope so. I know there are many judges who utilize committees to raise money, and do not look at the disclosures to determine who gave them campaign contributions. But in any event, one of the things we asked for in the pledge was that a committee be formed.

Only three of the nine candidates signed. And when I say nine we were talking about statewide appellate courts that included unopposed candidates and incumbents. One of the two candidates on the supreme court signed the pledge. Two others who were running for the court of appeals signed the pledge. Four others made oral commitments to abide by the comments in the pledge but did not sign it.

In addition to the one complaint that was filed, there was last-minute flap that the Democratic Party had figured out a way to acquire about $150,000 in additional funding right at the very last minute because of what appeared to be a loophole in the campaign financing law. They were able to run ads on behalf of Justice Sears because they included two other candidates who happened to be unopposed in their own elections, and it was, therefore, a slate as opposed to one for a particular candidate. There was no complaint filed, at least with us, by the other

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2. Mike France et al., The Battle *Over* the Courts: How Politics, Ideology, and Special Interests are Compromising the U.S. Justice System, BUS. WK., Sept. 27, 2004, at 36.

basically educating and advocating for democracy. And the focus for the League of Women Voters is on the voter. We want to bring information and education to the voters, particularly on the judicial system and the courts because it is so abstract and out there. And I think people intuitively know that the money and the political issues should not be part of the judiciary, but they are creeping into our system more and more.

The League in North Carolina has been working with the support of our national organization in Washington on these judicial independence issues for quite a long period of time. We are working on it on three levels. One is part of the Public Financing Bill. The Public Financing Bill was passed in the North Carolina Legislature in 2002 as part of campaign reform and the idea of getting money out of politics.

We are working on judicial independence at the civic level, educating people on the system. And I will tell you in a little bit more detail about some of these activities we are doing. We are also working on these issues with the candidates with candidate forums, which is our latest endeavor.

But let me go back to the Campaign Finance Reform Bill. The League forms coalitions because coalitions are probably the only way we are going to be able to work and be effective. The coalition working on the Campaign Finance Reform and the Public Financing Bill for the Judiciary was made up of the organizations like the League, Common Cause, the NAACP, and other local and state grass roots organizations. We developed a campaign. We call it the Penny Campaign. We said, "Support campaign finance reform. It makes good cents." It built on this idea of a penny a day per voter will pay for all of this.

Once the bill was passed, the way it was going to be funded was through a check off on your state income tax. So we came up with a campaign, and we called it the "check it out, check it off" campaign. We had buttons made. We took it out into workshops, through the media, and through a lot of other ways. NPR sponsored a segment for about two and a half months when the state income tax forms had to be filled out. It was to inform people to look on the income tax form where there was a check off. You can check off authorizing three dollars of your tax return, not in addition to, but of your own tax return, that would go into the financing fund to pay for the judicial elections.

There was enough money collected through this check off and other means to finance the three seats open for the court of appeals. We had two seats open for the supreme court. We had an unexpected second seat for the supreme court, and we ended up having eight candidates running for one supreme court seat with no primary, which threw a

monkey wrench into the whole plan. But we were able to find money for that election.

The public and the legislature and the candidates had really become vested in this whole idea of public financing. There was a total of sixteen candidates running in the general election for these seats. Twelve of them participated in the public financing aspect of it. It was only through odd circumstances that two of the four candidates did not participate. I do not think it was because they did not want to, but there were just things that prevented them from participating.

Another important part of that legislation was the Voter Guide. This Voter Guide is put out by the State Board of Elections. I think it is phenomenal. It has been sent out to all households in North Carolina. So this is our first real step in North Carolina doing a voter guide like that. Also, the races were made non-partisan. So all judicial races in North Carolina were non-partisan.

Another reason that the League has come at this issue is because we know that the public is either disconnected, not interested possibly, or does not have much experience with the court and the judicial system. We developed a program, Civics 101 for the Judiciary, and this has helped. We had some funding for that program from the Open Society Foundation coming through our national office in Washington.

We feel that it is important that the people come into the courts to see what is going on because the only real connection most people have with the courts is through the traffic court. And now you can send your money for your traffic fines or pay them online so you don't even have to go to the court.

So we felt it was really beneficial for the public, who does not want all the detail and all this wonderful legalistic stuff or does not feel they need it, to have an understanding of how complex and how many people are involved in this whole system of ours and why it is important to them. And I think one of the easiest and most visual ways we were able to do that is as part of our civics program because it is open to the community. We had everybody coming, from Boy Scouts to retired people, people new to the community, and long-time people in the community. So we covered a wide range of individuals. The media loved it. It gave them something to cover, and people asked for more of it.

As one of the segments of this program, we had all the people sit in the courtroom as the jury in the jury box, the judge, the court reporter, and all the individual different players in this system. The rest of the participants were seated in the audience.

The judge went around the court and talked about every part and every player in this whole scenario and what part they played in it. So visually you saw all these players that had a part in this system, a

system I don't think most people have a real sense of how involved it is. It involved the sheriff, district attorney, prosecutor, defense attorneys, and the jury.

One of the things we have done most recently for the candidates for the court of appeals and the supreme court is a webcast, a forum over the Internet. I think this part of it is in three seats for the court of appeals open, and all three seats were contested.

So we did this in partnership with the North Carolina Bar, which is very important, the State Board of Elections, the National League of Women Voters, and the Institute of Political Leadership. We also had many good government groups that were supporting partners for this. We developed a whole list of questions for the candidates. That was really hard because you never knew quite what you could ask and what they would feel comfortable asking. But we also knew what people wanted to hear, so we tried to cover all of that.

I think we just checked the site this morning, and we had about 930 people check into it to listen to it. If you want to pull the site up on your home computer, it is on http://www.beforeyouvote.us. We have it marked on the home page so you can go right to a specific question for a specific judge because it is a two-hour forum. You have the home page and some of the questions that we asked the judges.

The other thing we have done is more of a traditional guide, but it's on our web site at http://lwvnc.org. We took the same group of judges and asked them similar questions in a more traditional format. The most important two or three things that we focused on was coalitions, working with a large group of organizations, and focusing on the voter and getting them information in an unbiased format that they can really relate to.

*MS. PRICE:* David, perhaps you could talk to us about what is going on in Mississippi.

*MR. CLARK:* Good morning. I am from Jackson, Mississippi, and the reason Professor Longan wanted somebody from Mississippi is a couple of things. We have a bit of a history with our courts, and what some would say are problems with our courts and a reputation with our courts, and then we recently turned things around, at least in the civil justice reform area.

Mississippi was the first state in the country to have all of its judges elected. It was put in our Constitution in the 1830s. That was changed again later in the 19th century, and then we did not elect judges, but they were appointed for a long time. And now we are back to electing all of our judges.

Our elections in the state are non-partisan. We do not run by political parties. And the elections used to be like probably everywhere else: Who knew the judicial elections were going on? Not many people knew much about it. Only the lawyers knew the judges or knew much about them. Many of them were unopposed. No advertising. Then, in the last half of the 1990s, the stakes got higher. The verdicts started going up. Before 1995 we had never had a verdict over nine million in our state courts. In the half dozen years after that we had close to twenty-five, including some of five hundred million, three hundred million, and so forth.

One measurement was there were some polls that were commissioned by the U.S. Chamber of Commerce and done by the Harris polling folks. They were published at the first of 2002, 2003, and 2004, with the polling done usually in the months of November and December the year before.

In the 2002 publication, Mississippi ranked a solid fiftieth out of fifty among state courts. And this was a poll of senior corporate counsel around the country. That first year they polled, I believe, eight hundred and twenty something, and I think the poll now is of up to thirteen or fourteen hundred corporate counsel each year. They polled them in ten categories, and they said, "Don't vote unless you've had actual experience with these states." There were only nine categories that applied to Mississippi because we do not have state class actions, one of the categories. And of the nine, we were fiftieth in eight. West Virginia edged us out, and we were forty-ninth in the other. We have remained fiftieth for those three years, just to put things in context.

We have heard about the tort reforms in Texas and Alabama several years ago, but what you find on these polls is that reputations are hard to change. Texas and Alabama are still being ranked near the bottom in those categories.

Beginning in 2001, we began to have a civil justice reform push, and the state business community helped form a group in 2001 called Mississippians for Economic Progress. Its objective was to level the playing field again in the courts and make some changes. But there was not much success for a long time.

Through the 2002 regular session of the legislature, we gained nothing. The Governor called a special session of the legislature in the fall of 2002, and they had some legislative hearings in the summer of 2002. In the special session, basically a few things were passed. The Governor and legislature split the medical and business reforms into separate special session. There was much concern about doctors leaving the state, doctors leaving practice, insurance costs going through the roof, and that sort of thing. And there was also the business component.

The Governor set a special session in the fall of 2002. First, there was the medical special session, then the civil justice special session. The medical session did pass some legislation, although as people found out later there were some things that were passed in the medical session, some changes in the venue laws, that were then taken away. And not many people noticed; nobody on the business side did, until after the second session was over, actually months later, that the legislature had overwritten one of the things that they had passed, a venue position favorable to the doctors. They had overwritten it in the civil justice reform special session, following the medical special session, and wiped it out.

As a matter of fact, I was set to debate somebody in January—the special session ended in October—and I was debating a plaintiff's lawyer. In our pre-debate discussion, I was saying, "Not really very much came out of the special session." She said, "What do you mean? The venue changes were significant." And I said, "Go back and look; it's not there anymore." Significant changes that had passed one house, were eliminated in conference.

But then we get to 2004; we achieved nothing in 2003, and nothing in the 2004 regular session. Then we had a special session, and we passed what has been called the most comprehensive civil justice reform in the country.

That said, let's go back and see what has happened to elections in the process. I think the two really have been tied together in our state. There is a professor at the University of Texas-Dallas, Anthony Champagne, who is originally from Mississippi, who has written a great article looking at tort reform and judicial selection. It will be coming out soon. It is in the Loyola University-Los Angeles Law Review, titled "Tort Reform and Judicial Selection."[3]

He also has a book that he wrote with Kyle Cheek, which makes it Cheek and Champagne. The first part of the title is Judicial Politics, and I'm thinking, well, with Cheek and Champagne, the subtitle should be, maybe, "How to seduce the electorate." But it actually will be called "Judicial Politics in Texas: Politics, Money, and Partisanship in State Courts." It will be coming out in 2005.[4]

Going back to our state elections, I think many other states have gone through something just like Mississippi has. We will see what happens in the future, but we started with our judicial elections not getting very

3. Anthony Champagne, *Tort Reform and Judicial Selection*, 38 LOYOLA L.A. L. REV. (forthcoming 2005).

4. KYLE CHEEK & ANTHONY CHAMPAGNE, JUDICIAL POLITICS IN TEXAS: POLITICS, MONEY, AND PARTISANSHIP IN STATE COURTS (2004).

much attention. And then we had elections in the early 1990s where we started having some advertising. And then one particular lawyer who was running for the state supreme court ran advertising, and the ads tended to be about being tough on crime. "Don't be soft on crime." One of his ads has the metal jail door clanging shut with a metallic sound, and the words, "Tell them Chuck sent you." Anyway, it worked. He won.

So we came to the 2000 elections. We had elections for four positions on our nine member supreme court. (Our state is divided into three districts: northern, central, and southern. We have three justices from each district, and each candidate runs only in one district.).

In 2000 we had four justices up for election. One was a vacancy and several were incumbents. This time things changed. We had more advertising, more direct contributions, and then something that we had not had before: the issue ads or advocacy ads by other organizations, not revealed in the contributions to the candidates. Those ads actually played a big part in the election.

One of the people running in 2000 was Chief Justice Lenore Prather of our state supreme court. She had been on the court many years. A wonderful justice. The person running against her was not well known, although he had run for offices in the county in which he lived several times, unsuccessfully, for trial judge and for another position. In the last several weeks of that campaign, "issue advertising" kicked in, not by the candidate, not saying "vote for" or "vote against" anyone, but there were ads reporting on the number of people that Justice Prather "has let out of jail," and things like this.

What also became evident in 2000 was that you had the business interests on one side, and the plaintiff's bar on the other. And that was where the money was coming from. Chief Justice Prather was defeated, and the other races were close.

One group that spent a good bit of money in that election, and it probably backfired to a large extent, was the U.S. Chamber of Commerce. They ran issue advocacy ads that did not say "vote for" or "vote against," but said something about the particular candidates. To some extent it backfired. Our state attorney general sued the U.S. Chamber to get disclosure on who contributed to these particular ads. A federal district judge ruled that they had to disclose. It went up to the Fifth Circuit, who said they did not have to disclose. It received a lot of attention. We had justices saying, "I had nothing to do with this ad. I don't want them advertising here." No one ever pointed out the substantial amounts of money—i.e., from plaintiff's lawyers—that were obviously going into campaign ads on the other side, which is interesting. The attorney general did not ever sue to get those disclosures.

Mississippi is a small state. Our population is under three million. Each of these supreme court candidates was running in a district that was only a third of the state. The court of appeals judges, on which we really did not have that much activity in 2000, were running in five districts in the state. So the districts were not very large.

In one of the supreme court races in 2000, the total spending, just of the candidates, was about $1.6 million. The lowest spending by the candidates was by the person challenging the Chief Justice. But there was far more money that came in on issue ads from third parties.

After 2000, things picked up. The civil justice reform movement started up 2000, 2001, and 2002. At the same time the special session was going on in 2002, there was one supreme court race. And this time, the "Tell them Chuck sent you" ad was running again.

The sitting justice, Chuck McRae, who was a former head of the Mississippi Trial Lawyers Association, had been on the bench a number of years. And generally, not exclusively, he had never seen a plaintiff's verdict he could not affirm, or seen a defense verdict that he could not vote to reverse. Justice McRae, in all fairness, had some other baggage and other controversy surrounding him. We had that justice, another person running, and the person that was favored by the business community and the doctors. Now, we hate to make that sort of identification, but I am afraid that was what people did. When you look at the contributions, the largest contributors to one side were all from the plaintiff's bar, and to the other side, businesses and medical providers or associations.

That race was controversial. You had some unusual ads. I do not know if there was anything quite like some of the others that I have heard about from other states. Justice Phillips last night was talking about a TV ad when he was running in Texas. It has a siren in the back, and you have a child saying, "Mommy, Mommy, is it all going to be okay?" and the response is, "Not if Tom Phillips gets elected." We did not have anything quite like that, but still pretty controversial.

Again, there were outside groups spending a great deal of money. Back in 2000, the U.S. Chamber disclosed that it spent close to a million dollars in the four races. It was over nine hundred thousand dollars. And there was a comparable amount spent on the other side. There was a single P.A.C. on the other side that had $240,000 from four contributors, four plaintiffs' lawyers.

In 2002 we had court of appeals races spending a total of $70,000, and this is just in a fifth of the state. Another race spent $504,000. Again, the line is pretty clearly drawn on who is contributing to each side.

In terms of reform, I will say just a word about the 2004 elections. We have four justices up again this time, and things are relatively calm. I

think there may be a lot of advertising in the last few weeks. Several candidates are incumbents who do not have much opposition. There's one contested race that will be interesting. Both of those candidates announced a month or two ago that they expected to have to raise over a million dollars each, again for running in a third of the state. But that is what we are facing.

Our reform efforts have dealt with an actual problem. And there is an important problem with public perception. If the public believes the legal system, or judges, favor one side or another, that destroys the legal system. Let me show you a mild ad. This was an op-ed cartoon from the Jackson newspaper recently.[5]

Our state fair was going on at the time, and you have one person labeled "Business" saying, "I got another one," and the other one, "Trial lawyers," saying, "Me, too." And the idea is that one side or another has bought a court position. This obviously troubles a lot of us. It troubles the justices on the court, too. And our previous chief justice, who retired this past April, had made a push to do something about this perception, which seems to flow from electing judges.

He set up a commission at the end of 2002 to look at judicial selection. The membership was almost all lawyers. We found that we were on a very fast schedule. The chief justice wanted something that could be presented to the legislature the following January. The recommendation of that group was to have an advisory panel for the Governor to use, and this is something that some of our governors have used informally, nothing set up by statute. But the proposal was to set one up that had representatives of not just lawyers, but different segments of society, appointed by different people, to recommend people to the Governor to fill vacancies.

One of our recommendations was to put something like this into the law. The other recommendation was to make the supreme court of our state selected by merit selection, namely, to be appointed, with retention elections. Another decision of the commission was to leave the intermediate court of appeals elected.

I think for a number of the African-American members, on the commission and in the population as a whole, the question was, "Can we be sure that we're going to have adequate representation if you're going the appointment route?" Now, that is something others may want to talk about who have more experience. Many of us thought there would probably be more assurance of minority representation through the appointive process. But others disagreed, and that is one of the reasons

5. Marshall Ramsey, Cartoon, *Win a Judge*, CLARION-LEDGER, Oct. 13, 2004, at 8A.

we left it. We do have pretty good minority representation and diversity on the court of appeals now, and that is one reason that was left that way.

At present, my state does not have anything proposed right now. However, Mississippi has a new chief justice who has been on the court for a number of years. He became chief justice in April. He is very concerned, from what he has said publicly, about the public perception of the courts. If people are thinking that a judge is coming into a case siding with one side, even if the judge has not said something about a specific area of the law or something about a specific case, that is a problem. If judges even say, "We are not treating the plaintiffs fairly enough in this state," the judge is siding with the little people against the big corporations. Or on the other side, if judges are saying, "Business needs some representatives," the public is going to lose confidence.

Now, the question becomes, "How are you going to get something proposed and accepted by the public?" We have heard that you need coalitions. I am convinced that forming coalitions is something that needs to be done. The previous effort that was made in Mississippi, and the recommendations made, probably did not involve enough people other than just lawyers. It did not involve legislators, for instance, to give them any ownership in the process. I think our state has surprised many folks with some of the reforms we have made, and I think we are going to be looking hard at reforming judicial selections and adopting merit selection. I think we will have some changes. We'll see. Thank you.

*MS. PRICE:* Thank you. Certainly thanks to all three of you who touched on what Eric Schroeder had described as the three "I's" which are such a concern to us: independence, integrity, and impartiality. The things that you talk about going on in Mississippi, certainly we are seeing them here and can expect them to get worse, and it makes you wonder how many of us are going to be personally solicited to retire some of that campaign debt that is accumulated by the winners of these million dollar elections. So I guess we can look forward to that.

Let me now turn to see if anyone has any questions that they would like to present to this panel?

*AUDIENCE QUESTION:* Didn't Mississippi have a vote on extending the length of judicial terms in 2002, and why did that fail?

*MR. CLARK:* It did fail. There was a proposal to lengthen the judges' terms for trial judges, and it failed. I think that was probably some-

thing that did not have any education or promotion, and I think it was just thrown out there a bit too fast and people are saying, "Wait a minute. We have had all this talk about reforming our courts and all the problems in our courts and how we are viewed and now we are talking about extending their terms?" I think that was part of the problem. There really was just not enough preparation, there was not any support, and there was not any type of real advertisement and promotion. I think something like that could work with proper education.

*AUDIENCE QUESTION:* David, a couple of questions. Where are you in law schools in Mississippi and the State Bar of Mississippi in terms of judicial selection? What efforts are they making, if any?

*MR. CLARK:* Not much that I know about.

*AUDIENCE QUESTION:* And the second question is for the League of Women Voters of North Carolina. You mentioned that your voter's guide was phenomenal. I was wondering what you thought was particularly phenomenal about it? One of the things that troubled me about it is that, for example, if someone is a sitting judge who is running for re-election, you do not see anything about their performance. You do not see any results of surveys or questionnaires that would really guide us in determining whether these people would be good judges or not good judges. And if you compare this to what you might see from Colorado, for example, you have much more detail. You have performance evaluations. You have information that will really give voters a tip on who these people are and why you should vote for them.

*MS. KLENZ:* Well, phenomenal in the sense that it is the first time we have ever done this in North Carolina, had a voter guide. And it was mailed out to all households. So this is the first year we have run through this. I think what you are saying is something that needs to be considered. It is being published by the State Board of Elections. I am not sure how far they feel that they want to go with that. But the League and other organizations that have voter guides can possibly broach some of those more detailed questions to give voters more information.

*MR. CARLTON:* Could I just add that part of that was part of what was possible, and getting the bill passed, that the Board of Elections would be the sponsoring entity for the universal voter's guide. The

legislature was very hesitant to give any direction as to what to put in it.

*AUDIENCE QUESTION:* How much money then could each of these candidates spend? What was the number in North Carolina? On the financing?

*MS. KLENZ:* On public financing?

*AUDIENCE QUESTION:* Yes, ma'am.

*MS. KLENZ:* There is a formula of how much money that each candidate gets from the fund. Is that what you are asking?

*AUDIENCE QUESTION:* Right.

*MR. CARLTON:* It works out on the court of appeals races to about $375,000, I think. That is at least what the candidates have told me that they are looking for. I cannot say what it would be on the supreme court races now. They have not told me that. And I cannot remember the formula. I could look it up. But Mary is right, it is a pretty straightforward formula. And we do know that we have enough money in the fund now to meet all requirements unless we use the trigger, when a privately financed candidate goes over the amount, but that does not look like that is going to happen either.

*MS. KLENZ:* The distribution amount for the court of appeals was $137,500 and the supreme court was $201,300. The judges had to raise some qualifying contributions. They had to get signatures, and they had to raise money, and that varied according to the level of the office. Then they were guaranteed this amount of money to run. There was also a rescue fund built into the formula so if an opponent exceeds some level of expenditures there would be some extra funds that would kick in for them.

*MR. SWEENEY:* We in New York took great note of your program and actually the formula is included in our report here. I think the bottom line was with the rescue funds the Supreme Court in North Carolina, the public funds that were available, were $603,900. For the court of appeals it was $412,500. Those were with spending and the rescue funds.

*AUDIENCE QUESTION:* What percentage of people are opting for the check off and has there been a backlash against it, a resistance to the idea?

*MS. KLENZ:* No. I do not really have the percentage. It was not as much as we would like it to be, but again this is the first time through. It is a real challenge to educate the people on the judiciary why this should matter to them and why they should contribute three dollars of their money. That has been a real challenge and something that we worked on hard. I have not seen a backlash, and I have not heard about one.

*MR. CARLTON:* I will confirm that. I have not either. But one of the real problems is not only education of the public but education of the bar. We have a mandatory bar in North Carolina. We all have to pay a mandatory fee to that bar every year. And within that dues notice comes a check off for a $50 optional contribution to the fund. And only fifteen percent of the lawyers checked it off and contributed. The reason is because you have firm billing, and none of the individual lawyers had a chance to check it off or send in a check because their firms are paying the bills. One of the things we have to go back and do is educate our own, in the bar. And I think we will see an increased level of contribution next time around from the bar as well.

*MS. KLENZ:* I think this was the first time. Now I think another state has passed a bill through legislation. From what I have heard I think Massachusetts and a couple of others have passed similar types of bills through referendum, and I believe there was quite a backlash from the legislature on that. So I think there is real value in having the public vested in it, including the legislature and the governor. I think that might help to ameliorate any kind of backlash.

*MS. PRICE:* Well, one option might be to have that check off that you are talking about with a little asterisk that says anyone who checks off shall not be personally solicited. I bet you would get a lot more response.

*MR. CARLTON:* That's part of the psychology of it. The individual attorneys do not see the envelope to see the check off to begin with. That is the problem.

*MS. CUSTER:* My question is for Dean Elliott. I know the big questionnaire that was issued for you folks the last time around was the

Christian Coalition one, but I assume that you expect that these will be coming back again and possibly from other groups with other specific agendas. Are you going to take up that issue as part of your mandate, and, if so, do you have any plans in place as to what you intend to do, or is that an open question?

*MR. ELLIOTT:* Well, it is still open. We expected, frankly, that there would have been more questionnaires than there were. The one from the Christian Coalition, I have to at least give them credit for artful drafting in the sense that it did not say, "Are you pro-life." What it did say was, "Here are two excerpts from a U.S. Supreme Court decision. With which do you agree?" I thought that was fairly artful.

Our approach this time, and I guess it will be the same the next time, is that we will simply encourage those candidates not to respond to any questionnaire, be it from that group or any other, that puts them in a position of commenting on issues that could come before the court to which they are trying to become inducted.

*MS. CUSTER:* Are you encouraging them at all to respond to the questionnaires, but not to necessarily respond to the question asked? One of the things that I counsel judges to do is to not let them set the terms of the debate and to not cede this territory to them. Answer the questionnaire but provide your own answers. Say, "Look, I'm not answering this because it is inappropriate to do so. What I will tell you is X, Y, Z."

*MR. ELLIOTT:* Well, we actually had two of the candidates write what I thought were superb letters in response saying, "This is not something that I think is appropriate, but let me tell you these things about me." Those were considered non-responses so that what was published was that this person did not respond at all.

*MS. CUSTER:* But then at least that candidate's campaign treasurer or someone can say to a reporter, "Here's what we submitted."

*AUDIENCE QUESTION:* How did those individuals fare in the election?

*MR. ELLIOTT:* Well, the interesting thing is of the two who answered the Christian Coalition, one received 37 percent of the vote and lost very handily. The other one came in second in a six person race. And what will happen in that other one, we just do not yet know. We will not know until Tuesday, November 2nd. But as I mentioned earlier, I had

been terrified, quite frankly, that if the only two candidates who answered the questionnaire were the winning candidates, the message would have been very clearly sent that if you expect to run for a statewide appellate judge position, then you must answer these questionnaires. Quite fortunately, that was not the result, but who knows, two years, four years from now, it could be different.

*AUDIENCE QUESTION:* This question is for Ms. Klenz. The voter education effort that was going on in North Carolina, does it reach back to future voters, or go into the schools and try to look at curriculum and see if the importance of the judiciary, the role of the judiciary, is included in that education?

*MS. KLENZ:* There is a civic education consortium in North Carolina that is aimed at curriculum in kindergarten through grade 12. I do not know if it includes anything about the judges or not.

*MR. CARLTON:* It does. We have a very strong law-related education program through both bars and with the State Department of Public Instruction, and that is part of the program. It is not aimed at the judiciary but it is general civics. It was not part of this effort because it was already there.

*MS. PRICE:* Anything else? Okay. Thank you.

*(SESSION CONCLUDED)*