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Ousting the Judge: Campaign Politics in the 1984 Wyoming Judicial Retention Elections

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Ousting the Judge: Campaign Politics in the 1984 Wyoming Judicial Retention Elections

Michael J. Horan and Kenyon N. Griffin ***

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I. INTRODUCTION

Sixteen years ago, the people of Wyoming amended their state's constitution to accomplish major changes in the processes by which judges of the state courts of general jurisdiction were chosen and disciplined. The older system of nonpartisan election of district judges and supreme court justices was scrapped. A judicial nominating commission comprised of

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**Media sources on file at the Land and Water Law Review office.

a majority of lawyers was created and vested with exclusive power to nominate the persons from among whom the Governor must pick to fill a vacancy in judicial office.¹ This is the essence of "merit selection" of judges. A supervisory commission was also established and authorized to look into complaints about judicial performance and, if the facts warranted, advise the state supreme court on appropriate disciplinary measures.² Judges would henceforth be compelled to step down when they reached seventy years of age.³

A key element of the 1972 reforms, which were subsequently extended to Wyoming's county court judges,⁴ concerns the way by which judges, once appointed, continue in office. "Merit selection" of a judge is followed by at least a year on the bench during which the appointee has the opportunity to establish a record of sufficient quality to convince the people that he or she deserves to be kept on the job for a full term of office.⁵ After this probationary year expires, the appointee must stand for retention by the electorate of his or her jurisdiction at the next general election.⁶ In a retention election, the sole question presented to the voters is whether the incumbent should be retained in office for the term prescribed by law. The voter's options are to vote "yes," "no," or simply abstain on the question.⁷ Because a retention ballot lists neither opposing candidates nor political party labels, the presumption—or perhaps the hope—is that only the incumbent's record in office will guide the voter's choice. The term "merit retention" has thus been coined to describe the noncompetitive, nonpartisan features of judicial retention elections. The alternative outcomes of these elections are quite simple: If the candidate receives a majority "Yes" vote from those answering the question, he or she stays in office for a regular term—four, six, or eight years, depending upon which level of court is involved.⁸ On the other hand, should a majority of those voting on the question vote "No," the incumbent is obliged to relinquish office the following January.⁹ The merit retention hurdle also applies to a judge whose term has expired and who desires to continue in office.¹⁰

Merit retention is not at all a uniquely Wyoming institution, though as a means of requiring judicial officers to receive a periodic stamp of popular approval in order to remain in office, the device is geographically concentrated in the midwestern and mountain states. Although California adopted it for judges of that state's appellate courts in 1934, merit retention is generally viewed as part and parcel of the broader plan of judicial

1. WYO. CONST. art. V, § 4(b)-(c).

2. *Id.* at art. V, § 6.

3. *Id.* at art. V, § 5.

4. WYO. STAT. § 5-5-111 (1977 & Cum. Supp. 1988).

5. WYO. CONST. art. V, § 4(g). An affirmative retention vote for an incumbent who had been appointed to fill the mid-term vacancy of his predecessor would permit the incumbent to serve out the unexpired term before being required to stand again for retention in order to serve a full term of office. *Id.*

6. *Id.*

7. *Id.*; WYO. STAT. § 22-6-126 (1977 & Cum. Supp. 1988).

8. WYO. CONST. art. V, § 4(g). See also *supra* note 5.

9. *Id.*

10. *Id.* at art. V, § 4(h).

selection and retention pioneered by (and named for) Missouri, in 1940.¹¹ Like Wyoming, most states which employ merit retention for judges also initially choose those judges through the merit selection procedures of the Missouri Plan. However, a few states, such as California, Pennsylvania, and Illinois, subject judicial tenure in office to merit retention, while eschewing the initial selection features of the Missouri Plan. Whether adopted singly or in combination with merit selection, judicial merit retention rode a wave of popularity during the 1960's and 1970's when it was adopted by jurisdictions in seventeen states.¹² Today, such elections cover at least some of the judges in twenty-two states; in nineteen of these, including Wyoming, the judges of the states' highest courts are subject to merit retention requirements; in fifteen states, also including Wyoming, judges of the major trial courts must run for retention in office.¹³

Regardless of jurisdiction, the employment of judicial retention elections has been shown to produce distinctive patterns of voting behavior on the part of the electorate. For example, significant numbers of persons tend to abstain from voting in judicial elections of any kind, whether non-partisan or partisan, but the highest abstention rates occur in jurisdictions using the retention mode of election.¹⁴ Moreover, the level of information about judicial retention candidates possessed by voters has been found to be disappointingly low, a characteristic upon which published bar polls have made relatively little impact.¹⁵

Easily, the most notable feature of judicial retention elections, however, is that candidates for retention almost inevitably win, and win big. Judges typically roll up huge "Yes" votes in such elections, frequently by margins of two or three to one, and often despite the opposition of the press and the organized bar.¹⁶ Thus, the advantage which the retention form of ballot confers upon incumbents, reflected in the usual landslide of "Yes" votes, strengthens the pro-incumbent tendencies which all forms of judicial elections share to begin with.¹⁷

Perhaps in part because of the infrequency of non-retention of judges, relatively few studies have been published which explore the circumstances

11. Carbon, *Judicial Retention Elections: Are They Serving Their Intended Purpose?* 64 JUDICATURE 210, 221 (1980).

12. *Id.* at 213. The adopting states were: Alaska, Arizona, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Montana, Nebraska, Oklahoma, Pennsylvania, Tennessee, Utah and Wyoming.

13. PRENTICE-HALL LAW & BUSINESS, *THE LAWYER'S ALMANAC* 1988, 724-33 (1988).

14. P. DUBOIS, *FROM BALLOT TO BENCH: JUDICIAL ELECTIONS AND THE QUEST FOR ACCOUNTABILITY* 47-52 (1980).

15. See Griffin & Horan, *Merit Retention Elections: What Influences the Voters?* 63 JUDICATURE 78, 82-85 (1979); Scheb, *Is Anyone Listening? Assessing Bar Influence on Merit Retention Elections in Florida*, 67 JUDICATURE 112, 113 (1983).

16. See Jenkins, *Retention Elections: Who Wins When No One Loses?* 61 JUDICATURE 79 (1977); Griffin & Horan, *supra* note 15, at 79-80.

17. See R. WATSON & R. DOWNING, *THE POLITICS OF THE BENCH AND THE BAR: JUDICIAL SELECTION UNDER THE MISSOURI NONPARTISAN COURT PLAN* 229-30 (1969); Baum, *The Electoral Fates of Incumbent Judges in the Ohio Court of Common Pleas*, 66 JUDICATURE 420, 429-30 (1983).

under which, despite the enormous advantages incumbents enjoy in the quest for retention in office,¹⁸ a judge is occasionally rejected by the voters.¹⁹

This article is a case study of one of these rarities of judicial elections, an instance in which a veteran member of the Wyoming bench sought another term of office under the state's merit retention process, but was rejected by a fifty-seven percent vote of his "constituents." Utilizing information gathered from analyses of aggregate and survey voting data, interviews with group spokesmen, organizational records and financial reports, and media coverage, the study seeks to identify and weigh the primary factors affecting the nature of a judicial retention election campaign and its outcome. The policy implications of these findings are discussed, and possible avenues of response to these findings are suggested.

II. THE SETTING

A. General

The 1984 Wyoming general election saw two supreme court and six district court judges standing for retention for eight- and six-year terms of office respectively. With the exception of Judge Paul T. Liamos, Jr. of the Sixth Judicial District, all won by a landslide of "Yes" votes. This continued a pattern begun in 1974, the year merit retention elections were first held in the state.²⁰ Since that time, thirteen supreme court justices have run for retention. All were retained with an average "Yes" vote of seventy-seven percent of those voting on the questions. On the district court level, forty-four out of forty-six incumbents have been retained, with an average "Yes" vote of seventy-six percent. In 1984 alone, for all eight judicial candidates, the average proportion of persons who cast votes for President and Vice-President, but who abstained from voting on the judicial retention questions (a figure known as voter "roll-off") was 10.8 percent, a figure somewhat below previous years.²¹

18. See Griffin & Horan, *Patterns of Voting Behavior in Judicial Retention Elections for Supreme Court Justices in Wyoming*, 67 JUDICATURE 68, 75-77 (1983).

19. The principal studies containing substantial material on defeat or near-defeat in judicial retention elections are: Carbon, *supra* note 11, at 221-33; R. WATSON & R. DOWNING, *supra* note 17, at 229; P. STOLZ, JUDGING JUDGES: THE INVESTIGATION OF ROSE BIRD AND THE CALIFORNIA SUPREME COURT (1981). Carbon analyzed all instances of non-retention between 1934 and 1979. She found that of thirty-three rejected judges, seventy-five percent had been defeated for "significant" reasons, such as lack of professional competence or judicial temperament, questionable conduct, corruption, or scandal. "Less valid" reasons, e.g., controversial decisions or the judge's philosophy, accounted for the other defeats.

Thirty-one out of thirty-three rejected incumbents served at the trial court level. Carbon also suggested that the defeat of a judge seeking retention tends to occur most often when the incumbent is opposed by at least two of the three critical elements of the bar, press, and concerned interest groups. Of more recent vintage are the studies of the 1986 judicial confirmation elections in California published in Volume 70 of JUDICATURE (1987).

20. WYO. CONST. art. V, § 4(b)-(h).

21. P. DUBOIS, *supra* note 14, at 47, 58; Griffin and Horan, *supra* note 15, at 83. Statistical data on judicial retention elections in Wyoming has been gathered from the WYOMING OFFICIAL DIRECTORY, published annually by the Office of the Secretary of State in Cheyenne.

In Wyoming, there appear to be only two departures from this tradition of "no one loses."²² In 1974, voters in the state's Fourth Judicial District turned Judge John P. Ilsley out of office, allegedly because of his lack of judicial temperament.²³ The second instance is the subject of this article.²⁴ Beyond these observations, Wyoming retention elections have generally been devoid of substantive or personality issues, with almost no public opposition to the incumbents.

"Campaign" receipts and expenditures by judges or committees formed to support them are required by state law to be reported to the Office of Secretary of State.²⁵ Occasionally, incumbents will report the costs of a one-time advertisement printed in the newspapers of their district a few days before election day, just to "play it safe," but even this is relatively infrequent if the incumbent faces no opposition. The more typical situation is that of 1984 where, with the exception of the Sixth Judicial District, no funds were reported spent on the retention campaigns in any district across the state. The quiescence of these campaigns was also reflected in the near-total absence of local press editorializing about candidates for retention outside the Sixth District.

The organized bar, in the form of the Wyoming State Bar, has conducted polls of attorneys who practice before a judge running for retention, and the results (at least in terms of recommended/not recommended) are publicized in the press. The state bar again performed this function in 1984 and, except in the Sixth District, each incumbent received strong support from the lawyers.

B. The Sixth Judicial District

Wyoming's Sixth Judicial District is situated in the northeastern corner of the state. Last revised by legislative act in 1977,²⁶ it consists of three counties, Campbell, Crook and Weston, with a combined area of just over ten thousand square miles, larger than New Jersey and Delaware together. The population of the district in the 1980 Census stood at 36,781 inhabitants, a figure which would steadily increase over the next four years.²⁷ Close to two-thirds of the district's population resides in Campbell County, and nearly half of these live in the City of Gillette, the county seat. Weston County (whose county seat is Newcastle, pop. 3,596) and Crook County, with its seat at Sundance, make up the largely rural remainder of the Sixth Judicial District. Well over half of the three-county

22. Jenkins, *supra* note 16.

23. Carbon, *supra* note 11, at 222, 226.

24. Not a defeat, but a relatively close call in view of the usual victory margins of judicial retention candidates, was the fifty-four percent "Yes" vote garnered by Judge Leonard McEwan of the Fourth Judicial District in 1982.

25. WYO. STAT. §§ 22-25-106 to 22-25-107 (1977 & Cum. Supp. 1988).

26. 1977 Wyo. Sess. Laws ch. 21, § 2 (codified at WYO. STAT. § 5-3-101(a)(vi) (1977)).

27. WYOMING EMPLOYMENT SECURITY COMMISSION, WYOMING ANNUAL PLANNING REPORT FISCAL YEAR 1988 at 3.

district's population lives in small towns of less than 2,500 persons, or on farms and ranches.²⁸

The concentration of the Sixth District's urban dwellers in Gillette is largely a by-product of the energy crisis which gripped the United States in the mid-1970's. The development of large deposits of coal, oil and gas in Campbell County led to a rapid influx of workers and their families, in both the mineral and construction industries. By the time of the 1980 Census, the population of Campbell County had nearly doubled in ten years, and the county's per capita income was second highest in the state. The population was the youngest, with a median age of 24.4 years, and had the greatest number of persons, aged five and over, who had lived outside the county in 1975 (52.7 percent, compared to 28.3 percent for the state as a whole).²⁹ The largest of the Sixth Judicial District's five newspapers, the daily News-Record (circulation 7,500) is published in Gillette; four weekly newspapers (combined circulation 5,600) are published in Newcastle, Sundance, Upton and Moorcroft. Three of the four radio stations in the district are also located in Gillette, with the other situated in Newcastle. In 1984, fifty-four of the district's sixty-seven lawyers resided in Gillette.³⁰

C. Judge Liamos

Paul T. Liamos, Jr. was appointed District Judge for the Sixth Judicial District on January 1, 1972, by then Governor of Wyoming Stanley K. Hathaway.³¹ Liamos' background and qualifications for the bench were essentially like those of thousands of other lawyers who rise to join the elite of their profession. Born in Montana in 1925, he moved with his working-class parents to Wyoming as a youth and attended elementary and high school in Newcastle (Weston County). After two years' honorable service (including a Purple Heart) in the Marine Corps during World War II, he returned to his hometown, married and pursued a college education at the University of Wyoming. He graduated from the University of Wyoming College of Law in 1951, having worked summers on oil rigs to help pay for his legal education, and was admitted to the Wyoming Bar the same year.³²

He then embarked upon a long career of both private practice and public service. After four years as assistant and deputy attorney general for the State of Wyoming, he returned to Newcastle to engage in private practice. From 1959 to 1968 he was a partner with Halsey, Whitley, Hollo-

28. 1 BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1980 CENSUS OF POPULATION-WYOMING, ch. A, table 3 at 52-59 (1981).

29. *Id.* at ch. B, table 14 at 52-58; ch. C, table 65 at 52-26; table 174 at 52-143.

30. 6 MARTINDALE-HUBBELL LAW DIRECTORY 439-55 (1985).

31. Bonnar, *Two Gillette groups want to unseat Judge Liamos*, The Casper Star-Tribune (Casper, Wyo.), Oct. 17, 1984, at B-1, cols. 2-6.

32. Doll, *Liamos: Judge likes work, swift justice*, The News-Record (Gillette, Wyo.), Oct. 17, 1984, at 1, cols. 3-6; Campaign statements by Paul Liamos recorded on radio station KIML, Gillette, Wyo. (Nov. 13, 1984); *Liamos has good background* (Letter to the Editor), The News-Record (Gillette, Wyo.), Nov. 1, 1984.

way & Liamos, a general practice law firm which specialized in trial work, oil and gas law, corporation law, and probate and insurance litigation.³³ A Republican in a generally Republican state and judicial district, Liamos also built up a solid record of legal and political experience in various county and city posts connected with the administration of justice, including deputy county attorney for Weston County, and municipal judge and assistant city attorney for the City of Newcastle. On the state level, he supplemented his earlier experience in the state attorney general's office with service as counsel for the Wyoming Senate and House of Representatives during the 1960's, and as commissioner on the Public Service Commission from 1969 to 1971.³⁴

Liamos' appointment to the state bench came as a consequence of the elevation of his predecessor on the Sixth District Court, Rodney Guthrie, to the state supreme court in January, 1972. Later that same year, the voters of his district elected him to a full six-year term of office when he ran unopposed for district judge in the last judicial primary and general elections held before Wyoming changed over to the Missouri (Merit) Plan for judicial selection and retention. His first full term in office passed unremarkably, certainly without any hint of the acrimony to come later. Those who knew Judge Liamos regarded him as a dedicated, honest and energetic jurist. True, he generally did not show up at the various civic ceremonies and other public events which other community leaders made it a point to attend ("I'm not much of a socializer," he conceded),³⁵ but this could be shrugged off as due to the long hours he was required to devote to his work on the bench. Liamos' six years of service culminated in his being retained by a seventy-seven percent majority of the voters of his judicial district in 1978.

During Liamos' second term of office, his work habits began to develop in a way which led to increasing criticism by attorneys who practiced before him. This, combined with the sentences he imposed in highly publicized criminal cases, would eventually prove to be his undoing in his third test before the voters. By nature a hard worker (sixty hours a week is a fair estimate)³⁶ he believed in cutting litigational expense and delay by placing a premium upon efficiency in the administration of justice. The methods he employed to streamline the flow of cases through his court included: (1) scheduling ("stacking") as many as ten trials to begin at the same time, thus encouraging out-of-court settlement before trial or, in the alternative, requiring litigants, witnesses and attorneys to wait for hours while other cases scheduled ahead of them were disposed of; (2) commencing jury trials as late as eight or nine p.m. and holding court until after midnight to complete a case; (3) frequently, and sometimes unreason-

33. MARTINDALE-HUBBELL LAW DIRECTORY (1959-1969).

34. Doll, *supra* note 32; 4 MARTINDALE-HUBBELL LAW DIRECTORY 22868-78 (1969).

35. Excerpt from campaign statement by Paul Liamos recorded on radio station KIML, Gillette, Wyo. (Nov. 13, 1984).

36. Doll, *supra* note 32.

ably, denying motions for continuances.³⁷ These methods were so successful that he was able to dispose of the monthly case load assigned to him in three weeks, permitting him to travel to Cheyenne one week each month in order to assist judges in the state capital in coping with their increasingly heavier case dockets.³⁸

The difficulty in accounting for his apparently bizarre scheduling practices was compounded by the negative publicity Lamos received as a result of the sentences he handed down in two controversial cases. He was attacked for being too lenient in suspending all but sixty-one days of a one- to five-year prison sentence and then merely fining and placing on probation a convicted child molester. Criticism for being too harsh followed the five- to fifteen-year penitentiary term he imposed upon a seventeen-year-old boy for voluntary manslaughter in killing his father in the nationally-publicized Jahnke case.³⁹ Other charges were leveled at Lamos in his campaign for retention, but the above facts constituted the basis for the greatest of his problems in this regard.

III. CAMPAIGN POLITICS

A. Overview of the Election

In 1984, fifty-seven percent of the Sixth Judicial District electorate voted "No" on the issue of retaining Judge Lamos. This total consisted of negative majorities in the more populous Campbell and Weston counties (fifty-nine percent in each), and a pro-Lamos vote (fifty-seven percent) in rural Crook County. The election campaign which culminated in Judge Lamos' defeat was as atypical as the result. First, political action committees (PACs) were organized by pro-Lamos and anti-Lamos factions to press their views upon the voters. PACs had not previously been utilized in Wyoming's judicial elections. Second, a total of nearly \$12,000 was contributed by those supporting and opposing the retention of Judge Lamos. These contributions represent the first and only effort in Wyoming to finance a judicial retention election campaign. The money raised for the Sixth Judicial District campaign exceeded by more than sixty-seven percent the total sums (\$7,014) raised by the eight candidates running for seats in the Wyoming House of Representatives from the three counties in the Sixth Judicial District.⁴⁰ Third, there was unprecedented voter interest in the election. While an average twelve and a half percent of the voters in other Wyoming jurisdictions having judicial retention elec-

37. *Id.*; Doll, *Groups want judge ousted*, The News-Record (Gillette, Wyo.), Oct. 15, 1984, at 1, at cols. 3-5.

38. Doll, *supra* note 32.

39. Doll, *supra* note 37; Doll, *Lamos too lenient, foes say*, The News-Record (Gillette, Wyo.), Oct. 17, 1984, at 1. See also M. Murdock, K. Griffin, & M. Horan, *Public Opinion and the Administration of Justice: A Case of Patricide* (unpublished paper delivered at the 1985 meeting of the Am. Political Science Assoc., New Orleans, La.) (Aug. 31, 1985).

40. Figures obtained from statements of receipts and expenditures by candidates and campaign committees in judicial retention elections and state House of Representatives elections in Campbell, Crook and Weston Counties, filed with Office of Secretary of State, Cheyenne (1984).

tions rolled-off"⁴¹ after voting for President and Vice-President, the corresponding rate for the Sixth Judicial District was a minus one percent—i.e. voter participation in the Liamos retention election was actually *higher* than in the race for President and Vice-President.

The campaign to oust Judge Liamos was led by two different groups based in Campbell County. The two groups, which did not coordinate their campaign strategies, sought to inform Campbell, Crook and Weston County voters about the problems they perceived with Judge Liamos continuing on the bench. These attempts to inform voters about the judge's alleged inadequacies resulted in a counter-attack by the pro-Liamos forces. Prior to examining the campaign strategies, we first turn to the campaign organizations.

B. Campaign Organization and Financing

The Sixth Judicial District retention election campaigns were organized by four PACs. The anti-Liamos PACs included the "Concerned Citizens for Better Justice" and the "Justice Committee." The Concerned Citizens PAC was co-chaired by Greg Pasek, a Gillette certified public accountant, and Steve Lane, and included a number of prominent attorneys and businessmen in Campbell County. The unifying factor among this group of individuals was their dissatisfaction with Judge Liamos' methods of conducting court business. Pasek told a local reporter that "Our contention isn't that Paul [Liamos] is the worst judge in Wyoming. We just feel that, with the legal talent available, we can do better." He did specify, however, that committee members were unhappy about Liamos' scheduling of trials, his conduct on the bench, and the committee members' perception that Liamos was "anti-business, anti-success and anti-male."⁴²

The Concerned Citizens PAC raised over \$2,800 for their efforts to thwart Judge Liamos' retention bid. The primary source of campaign monies was in the form of anonymous cash contributions (\$1,830), while the remainder came in equal shares from attorneys and others not tied to the legal community.⁴³ Interviews with Concerned Citizens PAC members revealed that the cash contributions stemmed from fear of retribution from the incumbent or his colleagues on the bench, especially if the campaign to oust Judge Liamos should fail. Many attorneys, as well as businessmen, felt they could not afford to campaign against Liamos openly.

The Justice Committee PAC was organized by Dick Mader, a Campbell County rancher and businessman, and consisted of nine members. While this group was not as large in number as the Concerned Citizens PAC, Mader reported that a large number of individuals in the three coun-

41. *Supra* text accompanying note 21.

42. Doll, *supra* note 37.

43. 1984 Political Action Committee, Statement of Receipts and Expenditures, Concerned Citizens for Better Justice, Thomas D. Roberts, Treasurer (Nov. 8, 1984) (filed with Office of Secretary of State, Cheyenne).

ties volunteered to help campaign against Liamos. This group focused upon its perception of arbitrariness in the judge's rulings, in response to which Mader, who had lost rulings before Liamos, asked rhetorically, "Does he consider himself a god?"⁴⁴ In addition, this group's campaign literature emphasized Liamos' alleged "leniency" in a sexual molestation case involving a Newcastle music teacher and seven children.⁴⁵

The Justice Committee PAC raised slightly over \$800 for its campaign efforts against Judge Liamos.⁴⁶ Most of this money came from private residents of the district not directly associated with the legal community; nearly ninety dollars was raised by "passing the hat" at a public meeting in Gillette in early October.⁴⁷

The pro-Liamos PACs also included two groups: the "Committee to Retain Judge Paul T. Liamos, Jr.," the primary organization, and a committee chaired by Lawrence A. Yonkee, consisting of three lawyers who set up a PAC to run one newspaper advertisement. The unifying factors linking supporters of these two PACs were personal friendship and loyalty to Judge Liamos, and a perception that the efforts to oust the judge were unfair attacks upon his legal competence, work ethic and personal character.⁴⁸ The Committee to Retain Judge Paul T. Liamos, Jr., was led by Robert Gose of Sundance, a personal friend of the judge. The campaign rhetoric, some of which was strident in tone, was viewed by Liamos' friends as personal attacks upon a man who had a long record of public service. Thus, the campaign was a bitter personal experience for Liamos supporters.

The challenge to the incumbent represented by the anti-Liamos PACs may be seen in the financing of the incumbent's campaign. The contributions reflect an interesting, if not unusual, pattern. As shown in Table 1, Judge Liamos personally contributed over one-fifth of the pro-Liamos PAC campaign funds,⁴⁹ while attorneys and state court judges each contributed over one-quarter of the total. Thirteen clerks of court and their deputies who worked in the Sixth District Court contributed \$240 to the

44. Bonnar, *supra* note 31; Justice Committee campaign advertisements published in the News Letter Journal (Newcastle, Wyo.) at 8, and the Weston County Gazette at 6 (Oct. 25, 1984). See also *A vote for Judge Liamos* (Letter to the Editor), The News-Record (Gillette, Wyo.), Nov. 1, 1984, at 5; *Judge right to help out* (Letter to the Editor), The News-Record (Gillette, Wyo.), Nov. 2, 1984, at 5, col. 4.

45. Justice Committee campaign advertisements, *supra* note 44.

46. 1984 Political Action Committee, Statement of Receipts and Expenditures, Justice Committee, Dick Mader, Treasurer (Nov. 13, 1984) (filed with Office of Secretary of State, Cheyenne).

47. *Id.*

48. See, e.g., the advertisements published by the Yonkee Committee in The News-Record (Gillette, Wyo.), Nov. 2, 1984, at 11, and by the Committee to Retain Judge Paul T. Liamos in the same newspaper, Nov. 4 & 5, 1984, at 3.

49. Judge Liamos reported directly contributing \$1,451.44 to his retention campaign which, when added to the money he contributed to the Committee to Retain Judge Paul T. Liamos, Jr., brought his personal contributions to \$2,859.12, or 35.5% of all sums reported spent on his campaign. See 1984 Political Action Committee, Statement of Receipts and Expenditures, Paul T. Liamos, Jr. (Nov. 9, 1984) (filed with Office of Secretary of State, Cheyenne).

main pro-Liamos PAC, which was used to pay for signed advertisements in district newspapers defending Judge Liamos' character.⁵⁰ The remaining funds—slightly over one-fifth of the total—were contributed by persons not overtly connected to the legal community. Of the total contributions, only forty dollars was given anonymously. Although the anonymity of much of the anti-Liamos PAC money makes it difficult to say how much attorneys spent on the campaign,⁵¹ nearly all the bar members who contributed to the pro-Liamos PACs did so openly. Similarly, a Wyoming Supreme Court justice and thirteen of the state's seventeen

TABLE 1
1984 SIXTH JUDICIAL DISTRICT PAC CONTRIBUTIONS

Sources of Contributions	Pro-Liamos PACs		Anti-Liamos PACs	
	Yonkee Committee	Committee to Retain Liamos	Justice Committee	Concerned Citizens for Better Justice
Candidate's Personal Contribution	—	\$1407.68	—	—
Judges*	—	\$1860.00	—	—
Bar Members**	\$165.00	\$1680.00	\$ 50.00	\$ 679.50
Anonymous Cash	—	\$ 40.00	\$ 89.82	\$1830.00
Others	—	\$1450.00	\$670.34	\$ 360.00
TOTALS	\$165.00	\$6437.68	\$810.16	\$2869.50

	Pro-Liamos PACs	Anti-Liamos PACs
Candidate's Personal Contribution	21.3%	—
Judges*	28.2%	—
Bar Members**	28.0%	19.9%
Anonymous Cash	0.6%	52.2%
Others	22.0%	28.0%

*Including two retired judges.

**Bar members were identified by comparing the names of contributors to the pro- and anti-Liamos PACs with the 1984 *Wyoming State Bar Directory*.

50. The News-Record (Gillette, Wyo.), Oct. 28 & 31, 1984; News Letter Journal (Newcastle, Wyo.), Oct. 25, 1984, at 21 cols. 4-6; Weston County Gazette (Newcastle, Wyo.), Oct. 25, 1984, at 17, cols. 3-6; 1984 Political Action Committee Statement of Receipts and Expenditures, Committee to Retain Judge Paul T. Liamos, Jr. (Nov. 2, 1984) (filed with Office of Secretary of State, Cheyenne).

51. One of the attorneys who (anonymously) helped lead the anti-Liamos campaign assured the authors that it could be safely assumed that the great majority of the anonymous cash contributions to that campaign were from attorneys.

active district court judges contributed openly through an organized campaign led by a member of the district court bench.⁵²

C. Campaign Strategies: Issues and Advertising

The pro-incumbent tendencies of merit retention elections, at least as seen in the 1984 Sixth District experience in Wyoming, found the anti-Liamos PACs mounting an uphill effort to defeat the incumbent judge. While one Liamos supporter later suggested that the "defeat came as a big shock to Judge Liamos because he didn't think he was in trouble,"⁵³ the size of the campaign war chest suggests that the pro-Liamos forces were prepared for the campaign. The issues raised by the Concerned Citizens group and the Justice Committee dealt with Liamos' judicial performance and his sentencing in criminal cases. The performance question found its way into the campaign in diverse arguments.

For many attorneys who practiced before Judge Liamos, the major grievance was court administration. One lawyer described Judge Liamos as "obsessive, compulsive and unreasonable with respect to scheduling cases and controlling the docket."⁵⁴ The administrative matters, including stacking of five to ten cases to begin at the same time, conducting trials late into the night as well as on weekends and holidays, and his unwillingness to grant continuances, focused attention upon his "workaholic" ethic. Complaints from attorneys resulted in Liamos discussing his judicial conduct with both the Wyoming Supreme Court and the Judicial Supervisory Commission. Records of the meetings are not public; a newspaper article reported that Liamos was "scolded" by the Wyoming Supreme Court for running court sessions late into the night, but that he was not otherwise disciplined by either group.⁵⁵

Anti-Liamos campaign literature attempted to translate the criticism evolving out of the incumbent's methods of court administration into issues which voters, without much legal knowledge, could understand and act upon. Another, perhaps more dramatic, issue presented to the voters in the campaign literature raised the charge of leniency in sex offense cases involving children and, to a lesser degree, the judge's alleged hard-line stance in sentencing Richard Jahnke to a five- to fifteen-year prison term for killing his father, despite considerable evidence of the father's long-term abuse of Richard and his younger sister Deborah. It is interesting to note that lawyer-members of the anti-Liamos groups focused their criticism upon the apparently idiosyncratic administrative policies of the judge, while opposition to the incumbent based upon the "unjust" sen-

52. 1984 Political Action Committee, Statement of Receipts and Expenditures, Committee to Retain Judge Paul T. Liamos, Jr. (Nov. 12, 1984) (filed with Office of Secretary of State, Cheyenne). See also the advertisement published by this PAC in *The News-Record* (Gillette, Wyo.), Nov. 5, 1984, at 3. A district court judge's solicitation of contributions from other judges to aid Judge Liamos' retention effort was described to the authors by a Sixth District source who requested anonymity.

53. The source of this statement requested anonymity.

54. The source of this statement requested anonymity.

55. Doll, *supra* note 39. See *infra* notes 97-115, 118-22 and accompanying text.

tences he imposed was stressed by non-lawyer opponents of the incumbent. After the election, Liamos himself was reported as feeling that the principal factor in his rejection by the voters was the "lenient" sentence he handed down in a child molestation case.⁵⁶

The two anti-Liamos PACs developed separate campaign strategies. The Concerned Citizens, in addition to its fund-raising activities, conducted a small-sized public opinion poll of a random sample of Campbell County voters. In October, fifty respondents were interviewed for their perceptions of Judge Liamos. The decision to conduct this poll was based upon the assumption that some systematic data was better than intuitive impressions, and a larger sample was not possible because of the lack of financial resources. The results showed a predictable lack of information, as well as a slight voter tendency to give the benefit of the doubt to the incumbent. Twenty-five percent of the respondents indicated they would support Liamos for retention, sixteen percent said they would oppose him, and the remainder were "undecided."⁵⁷

With over half the respondents reporting that they had "little or no knowledge" about the judge,⁵⁸ the Concerned Citizens committee sought to wage a media campaign that would ultimately personalize for the voters the group's criticism of the incumbent. A typical committee appeal to the electorate listed his alleged defects as a judge, and then concluded by asking the voters how they would like to have to appear in Judge Liamos' court.⁵⁹ One advertisement implied that Liamos handled Sixth Judicial District cases in "assembly-line fashion" so he could rush off to Cheyenne one week out of every month and hear cases there.⁶⁰ In addition to radio and newspaper ads, the Concerned Citizens PAC also utilized other campaign strategies to carry its message to the voters. The committee did a mass postcard mailing to voters in the three counties. The message was brief: Injustice occurs when a judge conducts court at unreasonable times and under intolerable conditions; vote "No" on Liamos. Finally, lawyers who opposed the retention of Judge Liamos also sent letters to individuals from among their clients urging them to vote "No" on Liamos and asking them to urge other voters to do the same.⁶¹ The individuals were selected on the basis of their being "influential" in the community, and thus likely to have some impact upon others.

The Justice Committee conducted a media campaign utilizing newspaper ads; they also printed a flier for distribution throughout the Sixth District. The message in their ads primarily focused upon Judge

56. Bonnar, *Liamos says he won't miss some aspects of his job*, The Star-Tribune (Casper, Wyo.), Nov. 8, 1984, at A-1, cols. 2-6.

57. Summary of results of survey of Campbell County voters sponsored by Concerned Citizens for Better Justice PAC, Oct., 1984 (copy provided to authors).

58. *Id.*

59. *See, e.g.*, the advertisement placed in the News Letter Journal (Newcastle, Wyo.), Oct. 18, 1984, at 8.

60. The News-Record (Gillette, Wyo.), Oct. 28, 1984, at 9; News Letter Journal (Newcastle, Wyo.) Oct. 25, 1984, at 4, cols. 1-3.

61. A copy of one such letter, undated, from an attorney in Gillette to a client was furnished to the authors. This source requested anonymity.

Liamos' leniency in the cases involving sexual abuse of minors, though other concerns were mentioned.⁶²

The pro-Liamos PACs, faced with the organized campaign by attorneys and businessmen, were placed in a defensive posture. Judge Liamos' campaign strategy was to rebut the charges made by the anti-Liamos forces. Using radio and newspaper ads, the Committee to Retain Judge Paul T. Liamos, Jr. developed a multiple attack. The Judge himself wrote letters to the voters using Sixth Judicial District letterheads; these letters were published as newspaper advertisements and thus voters were made aware of his role as the incumbent.⁶³ In his own newspaper and radio advertisements, Liamos quoted Socrates, Justice Robert R. Rose, and Judge Benjamin Landis in seeking to explain to the voters those elements of the judicial role which he had attempted to put into practice during his career on the bench: fairness, integrity and impartiality.⁶⁴ Friends and supporters of the pro-Liamos PACs wrote "letters to the editor" extolling Judge Liamos' virtues and attacking his critics.⁶⁵ A radio campaign featured "friends and neighbors" testimonials; these rebutted allegations about courtroom administration and praised the judge for his work ethic.⁶⁶

TABLE 2

1984 SIXTH JUDICIAL DISTRICT MEDIA EXPENDITURES BY COUNTY⁶⁵

Expenditures	Campbell County		Crook County		Weston County	
	Pro-Liamos	Anti-Liamos	Pro-Liamos	Anti-Liamos	Pro-Liamos	Anti-Liamos
Newspaper Ads	\$1861	\$1213	\$770	\$286	\$ 915	\$296
Radio	\$3323	\$ 402	-	-	\$ 718	-
(No television advertising was used by either side.)						
TOTALS	\$5184	\$1615	\$770	\$286	\$1633	\$ 296
\$ Per Vote by County	\$.50	\$.16	\$.27	\$.10	\$.49	\$.09
% Yes Vote by County	41%		57%		41%	

62. See, e.g., the advertisements published by the Justice Committee in the News Letter Journal (Newcastle, Wyo.), Oct. 25, 1984, at 8, and the Weston County Gazette, Oct. 25, 1984, at 6. Fliers bearing the same message were printed and distributed by committee members.

63. See, e.g., the advertisements published in The News-Record (Gillette, Wyo.), Oct. 28, 1984, at 7, and Nov. 5, 1984, at 5.

64. See, e.g., the advertisements published in the News Letter Journal (Newcastle, Wyo.), Oct. 11 & 18, 1984, at 3, 12, 19, and in the Weston County Gazette, Oct. 18, 1984, at 3, 5.

65. See, e.g., the "Open Forum" columns of The News-Record (Gillette, Wyo.), Nov. 1 & 2, 1984, as well as the letters to the editor in The Sundance Times (Sundance, Wyo.), Nov. 1, 1984, at 2.

66. A transcription of several such advertisements recorded on radio station KIML, Gillette, Wyo. (Nov. 13, 1984) was furnished to the authors. *Supra* note 35.

In a final effort, lawyers who supported Judge Liamos urged the voters to retain him. This group included former Republican Governor Hathaway, who had originally appointed Liamos to the bench, and the current Governor Democrat Ed Herschler, who told the voters that Liamos was a "hard-working and dedicated judge," and that it was unfair to criticize Liamos for the stiff sentence imposed upon Richard Jahnke.⁶⁷

Table 2 breaks down the spending patterns of pro- and anti-Liamos forces on radio and newspaper advertisements in the three counties. A comparison reveals decidedly different strategies pursued by the pro- and anti-Liamos groups. In addition to outspending the anti-Liamos PACs by more than three to one, the pro-Liamos organizations allocated more money to radio than to print. Similarly, the pro-Liamos PACs spent a disproportionate amount of money in Campbell County (fifty cents per voter) and Weston County (forty-nine cents per voter) and the least in Crook County (twenty-seven cents per voter).⁶⁸ Except in Crook County, the vote totals were inversely related to the campaign expenditures of the pro-Liamos PACs.

D. Role of the Press

Judge Liamos' retention election campaign generated substantial editorial interest in his district. Each of the newspapers in the three counties, including the *Gillette News-Record*, and the four weekly papers in Newcastle, Sundance, Upton and Moorcroft, published "Letters to the Editor" regarding Judge Liamos. Only two papers editorially supported Liamos, though none opposed his retention. The *News-Record* published an editorial⁶⁹ endorsing the judge; however, the tone of the endorsement was mixed. On one hand, the editorial argued that Liamos should be retained based upon his "diligence and hard work in the speedy handling of cases," concluding that his work ethic "should serve as an example to all judges." On the other hand, the endorsement implored Judge Liamos to "seriously consider the complaints lodged against him and consider adjustments, such as concentrating more on his own district."⁷⁰ The *News Letter Journal* in Newcastle, Liamos' hometown, also editorially supported Liamos' retention bid. The editor and the judge were longtime friends, and the endorsement was in the form of an editorial somewhat ambiguously supporting the judge's retention.⁷¹ Of the four radio stations in the Sixth District, KIML, a popular Gillette AM station, aired an editorial

67. Governor Herschler's statement appeared in *The News-Record* (Gillette, Wyo.), Oct. 28, 1984. Former Governor Hathaway's endorsements were carried on local radio stations and published in Sixth District newspapers during the first week of November.

68. Figures are extracted from the statements of receipts and expenditures filed by Judge Liamos and the four PACs with the Secretary of State's Office in Cheyenne subsequent to the 1984 election. Expenditures per vote represent total media expenditures for and against Judge Liamos in each county divided by the number of persons in each county who voted in the 1984 general election.

69. Oct. 31, 1984, at 4.

70. *Id.*

71. Oct. 25, 1984, at 1, cols. 5-6.

critical of Judge Liamos, while KOLL-FM in the same city editorialized in favor of the judge.⁷²

The role of the press in the Sixth District retention election was a generally negative influence for Judge Liamos. It seems apparent that the pro-Liamos editorials were relatively unsuccessful in influencing voter choices. The two papers which supported Liamos editorially, as well as the other newspapers in the judicial district, published paid advertisements urging voters to support or oppose Judge Liamos. Similar appeals were broadcast on local radio stations. Each paper also published news articles about the issues which had generated controversy about him, e.g., scheduling of cases, court decisions, and the bar poll results. On balance, the election outcome suggests that the weight of negative information published was significantly more important in influencing voters than editorial endorsements.

E. The State Bar Poll

The Wyoming State Bar has conducted an evaluation poll of judges in the state every election year since 1978. The 1984 poll revealed that bar members failed to support Judge Liamos' retention bid. Among the 474 state bar members who evaluated the judge, sixty-five percent opposed his retention. The attorneys in the Sixth District counties who participated in the survey also opposed Liamos' retention, but the margin was narrower; thirty-eight attorneys evaluated the judge and fifty-eight percent of these opposed him.⁷³

The bar poll became a controversial issue, especially in Campbell County, when a former Wyoming State Bar president branded the poll "grossly inaccurate." Thomas Lubnau, a member of the smaller pro-Liamos PAC, argued that the previous polls had been conducted independently but the reliability of the 1984 poll was suspect because it was conducted by the state bar itself.⁷⁴ This exchange, in turn, provoked a public disclaimer by the Wyoming State Bar, which said it had taken no official stand on Judge Liamos' retention.⁷⁵ In addition, the larger of the two pro-Liamos PACs published advertisements in Sixth District newspapers signed by eighteen lawyers challenging the notion that bar members were solidly lined up against Liamos.⁷⁶ The results of the bar poll were published in Sixth District newspapers as well as the major state papers which are readily available in northeastern Wyoming communities. The unsettled controversy surrounding the poll results afforded an opportunity for this negative message to come before the voters on two occasions rather than one.

72. Editorial, KIML, Gillette, Wyo. (Oct. 29, 1984) (transcript in authors' file). According to Roy Mapel, general manager of KIML, the editorial won an award from the Wyoming Association of Broadcasters for best broadcast editorial in Wyoming in 1984.

73. Star-Tribune (Casper, Wyo.), Nov. 1, 1984, at A-18, cols. 2-4; The News-Record (Gillette, Wyo.), Oct. 31, 1984.

74. Star-Tribune (Casper, Wyo.), Nov. 2, 1984, at A-12, cols. 2-4; The News-Record (Gillette, Wyo.), Nov. 2, 1984, at 1, col. 1.

75. Star-Tribune (Casper, Wyo.), Nov. 3, 1984, at A-16, cols. 2-3.

76. The News-Record (Gillette, Wyo.), Nov. 4, 1984 & Nov. 5, 1984.

Without information from the voters, it is difficult to assess the impact of the Wyoming State Bar poll findings. It should be noted that the state bar itself has never made recommendations to the voters on retention questions, and maintained a neutral stance on the retention of Judge Liamos. In addition, previous studies of Wyoming voters in retention elections suggest that relatively few voters recall having heard about any bar polls, and less than half of those who had heard of a poll said they were influenced by the lawyers' evaluations.⁷⁷ On balance, it seems plausible that the direct attack by Sixth District attorneys had a far more significant impact on voters than the bar poll, which was not as visible as the anti-Liamos campaign, itself led by Campbell County lawyers and businessmen.

IV. DISCUSSION

The initial purpose of this article has been to examine an election campaign to defeat an incumbent trial court judge under the merit retention system. The analysis focused upon the electoral setting in Wyoming's Sixth District Court as well as the campaign organizations and their respective strategies. This case study demonstrates that judges can be defeated; in this situation, a major condition leading up to the electoral defeat was the creation, in the minds of many voters, of a perception of an arbitrary and eccentric judge.

The retention election which Judge Paul Liamos faced contrasted dramatically with the typical merit retention contest across the nation. Where most are devoid of court-related issues or personality factors, the highly visible Sixth District election campaign introduced the voters to both concerns. Two voting outcomes illustrate just how salient this retention election was to the constituents in the three-county judicial district.

First, while five state district court colleagues received an average of over eighty percent "Yes" votes, Judge Liamos received only forty-three percent support from his constituents voting in the contest. Second, more voters actually cast ballots on the Liamos retention issue than in the 1984 presidential race in the strongly Republican counties comprising the Sixth Judicial District. The fact that twelve percent of voters in the other five retention elections across the state failed to cast a ballot either for or against the incumbent standing in their counties also demonstrates the impact which the election campaign had in ousting Judge Liamos.

Now, our purpose shifts from the electoral campaign and its results to a discussion of three issues which emerge from the campaign to defeat Judge Liamos. These issues focus upon the role of other judicial officers in merit retention elections, the responsibility for supervision of judicial officials, and, finally, the future of judicial retention elections in Wyoming.

77. Griffin & Horan, *supra* note 18, at 73.

We have argued elsewhere that the merit retention system, through the electoral process, may work for the wrong reasons.⁷⁸ This system seeks to facilitate the continuance of quality jurists on the bench.⁷⁹ Insofar as most retention elections are foregone conclusions, this aim may be said to have been realized, but at the cost of meaningful public participation. The Liamos case, with an election campaign which not only informed the electorate but made a villain of the incumbent, suggests a need for a re-evaluation of merit retention. In effect, we will suggest that "Nobody Wins When the Judge Loses" and that this scenario may be less desirable than the typical retention outcome which has been described as "Who Wins When Nobody Loses."⁸⁰

A. Retention Elections and the Proper Role of Other Judges

A fellow judge solicited his peers for contributions to the larger of the two pro-Liamos PACs.⁸¹ This effort apparently irritated a number of judges, but most did contribute and several gave the "suggested" amount of \$150. A retired member of the state bench wrote a letter to the editor of the *Gillette News-Record* questioning the motives of one of Liamos' detractors, defending the judge's hearing cases in Cheyenne and urging that he be retained in office.⁸² Should judges engage in such political activities as publicly supporting the retention campaign of another judge?

To be sure, knowledge of the reputation and the working relationships a judicial candidate enjoys with his colleagues on the bench may be of value to an electorate confused by the barrage of allegations and counterclaims of a heated retention campaign. There is also the natural reaction of any professional group to perceive an attack upon one of its members as an attack upon all, and therefore to close ranks and come to the aid of the beleaguered member. The First Amendment, which has been held to reflect the ". . . profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open . . ."⁸³ may arguably be construed to protect the right of all persons, including judges, to speak and contribute on behalf of candidates for public office. Intertwined with this issue are the broader questions of whether, and to what extent, public officials such as judges enjoy the same rights of free expression which accrue to ordinary citizens.

What is also at stake, however, is the community's perception of a judge as an impartial adjudicator, a perception utterly critical to public understanding and acceptance of his role. If politicking threatens, or is

78. Griffin & Horan, *Judicial Merit Retention in Wyoming: An Analysis and Some Suggestions for Reform*, 15 LAND & WATER L. REV. 567, 579-83 (1980).

79. Carbon, *supra* note 11, at 220.

80. Text *supra* at 3.

81. See *supra* note 13 and accompanying text.

82. W.J. Nicholas, *Judge right to help out*, *The News-Record* (Gillette, Wyo.), Nov. 2, 1984, at 5.

83. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). For a useful background discussion of the free speech rights of judges see D'Alemberte, *Searching for the Limits of Judicial Free Speech*, 61 TUL. L. REV. 611 (1987).

seen as threatening, the ability of a judge to arbitrate disputes regardless of political leaning or personal friendship, the judicial function is itself seriously impaired.⁸⁴ Within as yet unclearly established limits, attorneys are legally and ethically free to endorse candidates for public office, contribute and solicit funds for political campaigns, and take stands on public issues.⁸⁵ Ethics, however, impose stricter standards upon judges in public discourse. Judicial candidates who promise more than the faithful and impartial performance of their duties invite severe criticism.⁸⁶ The Code of Judicial Conduct, adopted with modifications by the Supreme Court of Wyoming in 1973, enjoins judges from publicly endorsing a candidate for public office.⁸⁷ This prohibition is broad enough to encompass judicial retention candidates, and endorsements in the form of letters to the editor of a newspaper. The Code of Judicial Conduct likewise bans judges from soliciting funds for, or making contributions to, political candidates,⁸⁸ a ban which has been interpreted to extend to judicial election campaigns, with one exception:

The only exception to the ban on political activity permitted under the Code is the limited circumstance where the judge himself is a candidate for judicial office. Canons 7A(2) and 7B. There is no exception, however, for judicial campaigns involving colleagues of a judge running in an election in which the judge himself is not a candidate. In this circumstance, a judge should scrupulously avoid political activity on behalf of, or in opposition to, a judicial colleague.⁸⁹

Judicial retention election campaigns would seem to be included in the sorts of election campaigns judges should ordinarily steer clear of. Retention candidates are unquestionably seeking to continue in a public office of vital legal and political importance; although retention elections are non-partisan and non-competitive, they may involve controversial issues of great concern to the community. The Code of Judicial Conduct itself recognizes that retention elections and competitive elections of judges are functionally equivalent for certain purposes, such as the right of candidates in either to raise campaign funds through committees.⁹⁰ To the criticism that these restrictions significantly burden the ability of judges to come to the aid of a good colleague whose distinguished record of service is threatened by a well-financed anti-retention movement, a partial answer is that there is a greater good to be served:

84. CODE OF JUDICIAL CONDUCT Canon 3 (1972); Dubois, *Financing Trial Court Elections: Who Contributes to California Judicial Campaigns?* 70 JUDICATURE 8, 9 (1986).

85. MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 8-6, 8-8 (1977). Cf. SUPREME COURT OF WYOMING, RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW, Preamble, cl. 5, Rule 8.2, Comment (1987).

86. CODE OF JUDICIAL CONDUCT Canon 7B(1)(c) (1972).

87. *Id.* Canon 7A(1)(b). This canon also applies to part-time and retired judges.

88. *Id.* Canon 7A(1)(c).

89. ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1468 (1981).

90. CODE OF JUDICIAL CONDUCT Canon 7B(3) (1972).

The essential thrust of the Code of Judicial Conduct is to disfavor activities of judges which would tend to reduce public confidence in the integrity and impartiality of the judiciary.

Accordingly, judges are asked to accept restrictions on their public conduct that do not apply to other citizens.⁹¹

The undesirable consequences posed by questionable campaign activities of colleagues in a judicial retention election may be seen in the wake of the campaign which is the subject of this article. A sizable number of attorneys who took part in the movement to deny Judge Liamos another term expressed serious concern about retribution or retaliation directed against them by Liamos' colleagues on the bench. This group, which included some of the lawyer-members of the main anti-Liamos PAC, as well as several identifiable contributors to that committee, pointed to the presence of most of the state district court bench on the list of pro-Liamos contributors, and understandably concluded that future public opposition to a judicial retention candidate risked taking on the entire state judiciary, a move not likely to redound to the benefit of themselves or their clients.⁹²

Of course, the fear that judges would abuse their legal authority in order to "punish" opponents of Judge Liamos may be utterly without foundation, but the *fear* of retaliation can be as significant as the reality if it poisons the atmosphere of what otherwise ought to be an impartial judicial proceeding. In any case, it is just this kind of danger to the fair administration of justice—and its constitutional correlates in the due process clauses of the federal and state constitutions⁹³—that the prohibitions on certain varieties of political activities in Canon 7 of the Code of Judicial Conduct were intended to prevent.

Must judges, then, stand by mute when they believe one of their colleagues has become a target for unfair or erroneous attacks in the context of a judicial retention election campaign? Neither law nor the Code of Judicial Conduct requires such a strained interpretation of the demands of judicial propriety. If it is important to the judicial function that a member of the bench stands clear of the political activities "inappropriate to his judicial office,"⁹⁴ there surely is a correlative right, if not obligation, to "engage in activities to improve the law, the legal system, and the administration of justice."⁹⁵

This phrase, commonly understood to refer to such activities as lecturing on legal topics or testifying before non-judicial agencies of govern-

91. ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1468 (1981).

92. This concern was expressed to the authors by one of the attorney-organizers of the opposition to Judge Liamos, and several of the sources cited in this article who requested anonymity. The "retaliation" fear led a number of lawyers to criticize sharply Governor Mike Sullivan's appointment of Judge Liamos as a deputy administrative law judge to hear contested workmen's compensation claims in June of 1987. *Star-Tribune* (Casper, Wyo.), June 26, 1987 at B-1.

93. U.S. CONST. amends. V, XIV, § 1; WYO. CONST. art. I, § 6.

94. CODE OF JUDICIAL CONDUCT Canon 7 (1972).

95. *Id.* at Canon 4.

ment,⁹⁶ is broad enough to encompass the disinterested communication to the public of factual data bearing on disputed issues of law, courtroom practice, and judicial administration—even when these issues arise in the midst of a controversial judicial retention election. Truthful statements of fact (as opposed to opinions, interpretations, or conclusions drawn from facts) made by judges may enlighten the electorate and clarify matters which voters would ordinarily know little about, thus improving the chances that the voters' decision to retain or reject an incumbent judge is grounded on facts, not rumors, suppositions, or lies.

In the Liamos retention election campaign, for example, one of the most widely repeated criticisms of the incumbent was for his practice of scheduling as many as ten trials for the same time ("stacking" cases), for conducting jury trials late into the night and for traveling to Cheyenne one week out of the month to help with the district court's caseload there. To a Sixth District public with little or no knowledge of contemporary techniques of judicial administration and burgeoning caseloads in the state courts, such tactics might well have been seen as products of judicial arbitrariness. Judge Liamos' reply was that "case-stacking" was a judicial management tool commonly used by judges throughout the state to bring about the out-of-court settlement of cases that would eventually be settled out anyhow.⁹⁷

This explanation might more effectively have dispelled the suspicion of arbitrariness attending "case-stacking" had it been supported by factual/statistical data relative to case management in other district courts in Wyoming. This would be truthful data, neutral on its face, which other judges might have contributed to enlighten public understanding of the disputed practice, without exceeding the limits of judicial ethics. Unlike endorsements, such statements are neither testimonial nor evaluative, but are subject to empirical verification.

To the observation that even verifiable comments by the judiciary relative to the issues in a retention election can involve the bench in political activities, the answer must be that the Code of Judicial Conduct does not delimit a judge from all political activities, but only those inappropriate to his judicial office, and the touchstone for these must be when it can reasonably be said that judicial expression or behavior casts doubt on the judge's capacity to decide impartially any issue that may come before him.⁹⁸ Imperfect as it is, and dependent as it is upon the circumstances of each instance, such a dividing line would rescue judges from the unhappy choice between improper involvement or no involvement whatsoever in the retention elections of their colleagues on the bench.⁹⁹

96. *Id.* at §§ A, B.

97. *See, e.g.,* Bonnar, *Liamos' figures contradict those of opposing groups*, *Star-Tribune* (Casper, Wyo.), Nov. 1 1984, at B-1, cols. 2-6.

98. CODE OF JUDICIAL CONDUCT Canon 4 (1972).

99. The political activities of those Sixth District court clerks and deputy court clerks who publicly endorsed Judge Liamos and contributed to one of the pro-Liamos PACs raise more problematic ethical considerations. At stake here are not only the political rights of state court employees, but also the neutrality of public employees in matters of political

B. Judicial Supervision, Independence, and Accountability

The bitter feelings in the legal community generated by the issues and tactics of the 1984 Sixth Judicial District retention election should also alert bar and political leaders to the implications for judicial independence raised by that exercise in political accountability. One may begin by noting the miscalculations that allowed, even encouraged, the unthinkable to happen, i.e., a twelve-year veteran of the state bench to be removed from office by the electorate for issues which had nothing to do with corruption, incompetence or incivility.

A primary issue—and the one perhaps which most nettled his opposition amongst the bar—in the campaign against Judge Liamos concerned how he handled the administrative side of his court. As important as this is to the efficient management of modern judicial systems, it is not one which attracts widespread public interest—as would, for example, charges of taking a bribe or sexual harassment.

One may understandably ask why the issue of a judge whose work habits have produced problems in the administering of justice could not have been dealt with in a more effective fashion than through a winner-take-all electoral process. Such a process tends to polarize attorneys, foster suspicion and resentment between bar and bench, and portray issues in deceptively simple colors of black and white for the voters who do not understand the judicial process well enough to appreciate crowded dockets, the subtleties of “appropriate” sentencing, and the myriad of problems confronting judges and attorneys in the day-to-day administration of justice. In the case of Judge Liamos, inappropriate scheduling of court was an issue which ought to have been resolved either through informal counseling by other members of the bench or through the channels offered by the Wyoming Judicial Supervisory Commission’s disciplinary powers over state judges.

The Wyoming Constitution creates the Judicial Supervisory Commission, composed of two district court judges, two members of the Wyoming State Bar, and three non-lawyers.¹⁰⁰ The primary function of this agency is to receive and investigate complaints about the behavior of particular judges.¹⁰¹ It is empowered to recommend to the state supreme court appropriate disciplinary measures to be taken against judges whose conduct is found to exceed the standards of proper judicial behavior.¹⁰² Adopted into the state constitution concurrently with the Missouri Plan for selection and retention of judges,¹⁰³ the supervisory commission resem-

controversy. See *supra* note 52 and accompanying text; see generally Berkson & Hays, *The Forgotten Politicians: Court Clerks*, 30 U. MIAMI L. REV. 499 (1976); Ozar, Kelly & Begue, *Ethical Conduct of State Court Employees and Administrators: The Search for Standards*, 71 JUDICATURE 262 (1988).

100. WYO. CONST. art. V, § 6(a).

101. WYO. JUD. SUPERV. COMM’N R. 9.

102. WYO. CONST. art. V, § 6(e).

103. See *supra* notes 11-13 and accompanying text.

bles in structure and functions the judicial conduct organizations which have been established in every other state since first pioneered by California in 1960.¹⁰⁴

Also, like its counterparts elsewhere, the Wyoming Judicial Supervisory Commission represents an attempt to supplant older, less satisfactory methods (such as impeachment) of resolving the problems of misbehavior or unfitness on the bench,¹⁰⁵ through a permanent, visible agency with powers and procedures flexible enough to protect the public from injustice, preserve the integrity of the judicial process, maintain public confidence in the judiciary, and educate judges about what standards of behavior are expected of them.¹⁰⁶ In Wyoming, the grounds for disciplinary action against a judge by the supervisory commission include willful misconduct in office, willful and persistent failure to perform one's duties, and habitual intemperance.¹⁰⁷ The state constitution also lists as a ground which may warrant discipline "conduct prejudicial to the administration of justice that brings the judicial office into disrepute."¹⁰⁸

The supervisory commission, it is true, may not take formal disciplinary action against a judge on its own motion. The commission may only recommend to the Wyoming Supreme Court that such action, in the form of censure, removal or forced retirement,¹⁰⁹ be taken; the ultimate authority to act upon or not act upon the commission's recommendation belongs to the supreme court.¹¹⁰ The Judicial Supervisory Commission has never recommended formal disciplinary action against a judge in the sixteen years of its existence. It is also true that the "conduct prejudicial to the administration of justice" standard is a rather nebulous category of conduct which can be defined only on a case-by-case basis.

Despite this want of precedent and Wyoming court interpretation, two things seem reasonably clear: (1) the supervisory commission may, on its own, apply corrective measures short of formal disciplinary penalties, including verbal or written admonition and/or counseling, either of which the commission may deem to be the most appropriate way to resolve a particular matter in light of all the circumstances;¹¹¹ (2) the "conduct prejudicial" standard is sufficiently precise to cover practices—even those defended on the ground of administrative necessity—so far beyond the accepted procedures of judicial administration that they "bring the judicial office into disrepute." Canon 3B(1) of the Code of Judicial Conduct declares that:

104. I. TESITOR & D. SINKS, *JUDICIAL CONDUCT ORGANIZATIONS* 2 (2d ed. 1980).

105. WYO. CONST. art. III, §§ 17-18.

106. TESITOR & SINKS, *supra* note 104, at 2-3.

107. WYO. CONST. art. V, § 6(e).

108. *Id.*

109. WYO. JUD. SUPERV. COMM'N R. 16(a).

110. WYO. CONST. art. V, § 6(e).

111. WYO. JUD. SUPERV. COMM'N R. 9(e)(2); TESITOR & SINKS, *supra* note 104, at 5, 46. The action taken by the commission, according to Judge Llamas, appears to have been that of corrective counseling, albeit privately. See *infra*, text accompanying notes 112-15.

A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

In the case of Judge Lamos, he stated in a press interview that his scheduling practices had been the subject of lawyers' complaints before both the Judicial Supervisory Commission and the Wyoming Supreme Court.¹¹² Apart from a private "scolding" by the high court and his assurance that he would "do better" in the future, no formal disciplinary action was taken against the judge.¹¹³ What transpired before the supervisory commission is conjectural.¹¹⁴ Proceedings before the commission are governed by a blanket rule of secrecy until the point at which it (with the concurrence of at least five members) files a formal disciplinary recommendation with the supreme court. If no such recommendation is made, the record and disposition of the case are never made public. A breach of the secrecy rule is punishable as contempt of court.¹¹⁵

Assuming that both the supervisory commission and the supreme court sought to handle the grievances lodged against Judge Lamos through informal counseling, it is evident in retrospect that these efforts fell far short of the mark, as the continued unhappiness of many Sixth Judicial District attorneys at Judge Lamos' scheduling practices bears witness. Did the two state agencies constitutionally charged with overseeing the conduct of state judges fail to effectively follow up their disposition of the complaints against Judge Lamos? Did both agencies, as well as the judge himself, misperceive how widespread attorney dissatisfaction with Lamos' administrative practices had become? Whatever the answers to these questions, it is clear that neither informal counseling nor the possibility of judicial discipline proved successful in addressing the problem. The result was an appeal to the electorate as a last desperate measure.

An indirect consequence of the necessity of resorting to the electorate in order to bring about changes in the management policies of Judge Lamos' court was that it left the judge vulnerable to attack on the basis of the unpopular sentences he handed down in two highly publicized criminal trials. Accusations of leniency toward a convicted child molester and severity toward a seventeen-year-old patricide who had been abused by his father, grated on public sensibilities, and were enough for some openly to call for Lamos' ouster from office. How much of a role this factor played in the judge's rejection by the voters, and whether it alone would have sufficed to defeat his bid for another term on the bench, are difficult to estimate. At the very least, it is doubtful whether so large a segment of the legal profession would have actually joined a campaign against an incumbent judge based solely or primarily upon dislike of his sentencing proclivities.

112. Doll, *supra* note 39.

113. *Id.*

114. *See supra* note 111.

115. WYO. JUD. SUPERV. COMM'N R. 7.

Opposition to judges because of their rulings in particular cases raises troublesome questions relating to the cherished belief in judicial independence from "partisan interests, public clamor, or fear of criticism,"¹¹⁶ a belief widely shared among Americans, and a cardinal principle of the Anglo-American legal tradition. Those public figures who saw the defeat of Judge Liamos as an omen of how judicial independence could be subverted by requiring judges to undergo periodic popular approval in order to stay in office¹¹⁷ may have underestimated the political fortitude of the Wyoming judiciary. The irony of their position is that any mischief done to the vitality of judicial independence by the Sixth Judicial District campaign and election was exacerbated by the inability or unwillingness of the legal community to remedy the legitimate grievances of Judge Liamos' critics through the other means provided by the law.

C. *The Future of Merit Retention in Wyoming*

The 1984 Sixth Judicial District retention struggle and its outcome throw into sharp relief perplexing questions about the desirability of the retention process itself as a means of holding judges accountable to the people. On one hand, the typical judicial retention election in this state and elsewhere, is heavily weighted in favor of the incumbent. Without issues or competing personalities, such elections display significant rates of voter abstention and low levels of voter information about the candidates who are standing for retention.¹¹⁸ Although they serve well the purpose of keeping judges in office, they amount to empty gestures as far as a meaningful popular check upon judges is concerned.

Conversely, on the infrequent occasion when an incumbent finds him or herself in a fight for retention, and in the yet rarer instances when the voters reject that incumbent, other problematic consequences ensue. As this article has demonstrated, a retention candidate can be defeated under the right circumstances, but at the cost of bitter divisiveness within the legal community, an erosion of judicial impartiality and pressure upon the independence of the judiciary. Perversely, the more a retention election becomes a real expression of the popular will, the more it plunges the bench into politics—the very thing the Missouri Plan was designed to insulate judicial selection from.

One answer to the quandary noted above takes the form of a simple demurrer, that is, to acknowledge that there will inevitably be a price to pay when a judicial selection system tries to accommodate both judicial independence and popular accountability; that a portion of each of these values will have to yield in order to preserve what is most desired in each. Merit retention of judges does generally insure lengthy tenure of office, but if those same judges were selected through procedures which assured they were well qualified to serve on the bench in the first place (merit selec-

116. CODE OF JUDICIAL CONDUCT Canon 3A(1) (1972).

117. See, e.g., the statements made to the press by Judge Liamos, Judge Joseph Maier and Judge Alan Johnson subsequent to the election, Bonner, *supra* note 56, at A12.

118. See *supra* text accompanying notes 14-15.

tion), then lengthy tenure makes good sense. Subjecting judges to periodic retention at the polls not only pays homage to popular accountability, but offers the people an ultimate opportunity "to get rid of a man who, *in spite of all other safeguards*, turns out to be unsatisfactory."¹¹⁹ If a judicial retention election occasionally turns into a real struggle for survival, with its attendant costs, this is in the nature of the democratic process, and seldom happens in any event.

Moreover, the relatively small number of judges actually turned out of office by the voters is at best only a partial yardstick of the value of retention elections in implementing the democratic principle of popular accountability. This objective may be served even if a judge survives a campaign mounted to defeat him at the polls. Opposition by the bar, critical editorials and unfavorable publicity may themselves be sufficient to open a judge's eyes to the need for correcting questionable courtroom behavior or off-the-bench conduct. Electoral victory by a narrow margin of "Yes" votes can also signify a warning for the future that the incumbent had better change his ways.

Admittedly, these justifications for the continued utility of judicial retention elections are not likely to satisfy those who view the Lamos retention campaign and vote as proof that the costs and risks of these electoral devices far outweigh any benefits they may have. Such pessimism might have a sounder basis if the other elements of the system established in 1972 to select and maintain a highly qualified judiciary functioned as they were intended. We have argued elsewhere that the state bar organization and the media both play a critical role in making the public aware of the tasks of the courts and the judges who sit on them. In that connection we suggested means by which these institutions and others might provide the factual data the voters require in order to make intelligent choices in judicial retention elections.¹²⁰

We also called attention to some of the characteristics of the Wyoming Judicial Supervisory Commission which impede rather than facilitate the accomplishment of its mission.¹²¹ Although budgetary and staff assistance have been somewhat increased in recent years,¹²² the supervisory commission is still one of the most invisible agencies of state government. What we wrote nine years ago remains true today: "The Judicial Supervisory Commission files no annual public reports by which its activities can be evaluated, nor does it conduct any significant educational program by which the public could be made aware of its existence as well

119. Winters, *Judicial Selection and Tenure*, in *SELECTED READINGS: JUDICIAL SELECTION AND TENURE* 19, 25 (G. Winters ed. 1973), as quoted in Carbon, *supra* note 11, at 221.

120. Griffin & Horan, *supra* note 78, at 583-88.

121. *Id.* at 590-91.

122. The state legislature appropriated \$23,710 for the Judicial Supervisory Commission for the biennium ending June 30, 1988. 1986 Wyo. Sess. Laws ch. 3, § 103. In 1987, the commission replaced the clerk of the supreme court as its staff with a staff person of the court designated by the chief justice. WYO. JUD. SUPERV. COMM'N R. 4.

as what avenues of recourse the commission offers to those having a legitimate grievance against a judge."¹²³

The absence of means by which the public can learn about the work of the supervisory commission is underscored by the unnecessarily broad provision for secrecy which the commission has written into its rules of procedure. Rule 7 states in part: "All papers filed with and proceedings before the commission shall be confidential. Only a record filed by the commission with the Supreme Court loses its confidential character upon its filing. Any violation of the provision for confidentiality shall constitute an act of contempt and be punishable as such."¹²⁴

Under the same terms, Rule 7 obliges witnesses who testify before the commission to swear not only to tell the truth but also to keep silent about the existence of the proceeding and the identity of the judge concerned.¹²⁵ By virtue of this rule then, the entire record of proceedings in a case, including documents, testimony and actions taken, whether in the course of preliminary investigation or formal hearing, are kept secret upon pain of jail sentence or fine, or both; they become available to the public only when a record of such is filed with the supreme court. Until that time, apparently not even the original complainant has any right to disclose how the commission dealt with the case (if indeed he knows). Should no record ever be filed, the obligation of silence becomes permanent.

It is difficult to understand the reasons for the broad scope of these secrecy provisions. Confidentiality during the early stages of the commission's handling of a complaint is justified primarily, though not exclusively, by the desire to protect the reputation and good name of a judge who becomes the target of malicious charges which have no evidence to support them. Both the judge concerned and society have vital interests in protecting public officials from this kind of defamation, but these claims must be balanced against the strong public interests represented in the mission of the Judicial Supervisory Commission, including maintenance of public confidence in the judiciary.¹²⁶ Throwing a shroud of official secrecy over the treatment and disposition of grievances against any public official is more likely to excite suspicion and cynicism about government conduct, rather than instill confidence in it. When information does leak out about a matter before a judicial conduct organization, as it sometimes does,¹²⁷ it may partake more of distortion or rumor than fact, contributing to, rather than dispelling public uncertainty about the integrity of a judge. Shielding judicial reputation is entitled to its due weight in the proceedings of the supervisory commission, but it is dubious whether it outweighs the public's right to know once the commission has decided

123. Griffin & Horan, *supra* note 78, at 590. See generally TESITOR & SINKS, *supra* note 104, at 5-7.

124. WYO. JUD. SUPERV. COMM'N R. 7(a).

125. *Id.* at R. 7(c).

126. See generally Shaman & Bégue, *Silence Isn't Always Golden: Reassessing Confidentiality in the Judicial Disciplinary Process*, 58 TEMP. L.Q. 755 (1985).

127. 10th National Conference Held, 8 JUD. CONDUCT REP. (Cent. for Jud. Conduct Orgs.) at 2 (1986) (quoting G. Sinykin).

that there is sufficient merit in a complaint to warrant a formal hearing in the matter.¹²⁸

How this bears upon the problems which beset Judge Liamos in the 1984 retention elections is not easy to specify, as the Judicial Supervisory Commission's record in his case has never been released. The public, whom the supervisory commission is supposed to protect, was made aware of the continuation of the judge's questionable administrative practices, and may well have received the impression that nothing had been done. The commission, which doubtless was reluctant to publicly chastise an honest, competent and hard-working member of the bench, apparently chose a course of action—private counseling—which it hoped would quietly settle the issue, but which did nothing to reassure either the judge's critics or the general public. When the commission's course of action proved futile, the conviction became irresistible that only a "No" vote at the polls would suffice.

V. CONCLUSION

The judicial retention election which has been the subject of this article serves as a reminder that judicial performance is gauged by more than the qualities a judge displays in the process of presiding in the courtroom and writing opinions.¹²⁹ Honesty, legal acumen, impartiality and industry, alone or in combination, may not be enough to protect a member of the bench if he antagonizes a substantial portion of his attorney-audience by the way he manages the administrative affairs of his court. Responsibility for "system performance"¹³⁰ varies by degree among different judges, but it may become a distinct liability for a jurist who exercises it without regard for the local legal culture in which he or she operates.¹³¹

In Judge Liamos' case, the administrative steps he took to promote judicial efficiency not only created political enemies among the lawyers who practiced before him, but could not be satisfactorily explained to an electorate which, despite his alleged laxity/severity in sentencing, might otherwise have been inclined to give him the benefit of the doubt (or benefit of lack of information) usually accorded to an incumbent judge.

Even here, Liamos might have weathered the challenge to his retention in office if he had made effective use of the community relations

128. Twenty-six state judicial conduct organizations, including Wyoming's, still hold judicial disciplinary proceedings confidential until *after* a formal hearing to determine if discipline is justified. However, the trend in recent years has been toward allowing public access to information about disciplinary proceedings earlier in the process. *Confidentiality Survey Results*, 9 JUD. CONDUCT REP. (Cent. for Jud. Conduct Orgs.) at 4 (Fall 1987/Winter 1988). Assertions that the first amendment guarantees a right of public access to judicial disciplinary proceedings after formal charges have been filed have not been well received in the courts up to now. See *First Amendment Coalition v. Judicial Inquiry and Review Board*, 784 F.2d 467 (3d Cir. 1986), *vac'g*, 579 F. Supp. 192 (E.D. Pa. 1984); *Judicial Inquiry Board v. Hartel*, 72 Ill. 2d 225, 380 N.E.2d 801 (1978).

129. J. RYAN, A. ASHMAN, & B. SALES, *AMERICAN TRIAL JUDGES: THEIR WORK STYLES AND PERFORMANCE*, ch. 2 (1980).

130. Nejelski, *The Tension of Popular Participation*, 1 STATE CT. J. 9, 11 (1977).

131. Sipes, *The Journey Toward Delay Reduction in Trial Courts: A Traveler's Report*, 6 STATE CT. J. 5, 6 (1982).

aspects of his job. That he would not, or could not “socialize” with people might have been overlooked at one time, but in the context of the campaign mounted against him in 1984, seemed to reinforce the suspicion that he had lost touch with the sensibilities of ordinary people.

In the 1984 retention elections across the state, Wyoming’s new constitutional machinery for the selection and retention of judges worked as it was intended. Nearly all of the incumbents were retained with comfortable majorities of “Yes” votes. In the Sixth Judicial District, a judge was ousted when the other safeguards against perceived unsatisfactory performance were ineffective. If the costs and risks to the legal community arising out of contested retention elections are to be minimized in the future, that community would do well to remember that the parts of the new machinery are interdependent, and the failure of one part to do its work may burden another part to the point of overheating. The appropriate remedy ought to be to repair the defective part, not scrap the working one. Rather than do away with retention elections, the bar, the courts and the legislature should direct their efforts toward improving the likelihood that the voters’ decisions on the fate of an incumbent judge will be based upon a thoughtful weighing of facts, not hearsay. Similarly, the judicial supervisory agencies of the state must be enabled to perform their functions effectively enough to minimize the need to turn to “Merit Retention” as a substitute disciplinary technique. Hopefully, the reforms suggested in this article are a starting point in both of these directions.