


**FAIR & IMPARTIAL
JUDICIARY**
Symposium

“WHAT DOES FAIR AND IMPARTIAL JUDICIARY MEAN AND WHY IS IT IMPORTANT?”

David F. Levi, former Dean of Duke University School of Law

PANEL DISCUSSION: “STATE VS. FEDERAL COURTS”

Lynn A. Marks, Esquire (Moderator)

Honorable Renée Cohn Jubelirer, Commonwealth Court of Pennsylvania

Robert Heim, Esquire

Honorable Theodore McKee, U.S. Court of Appeals for the Third Circuit

Summary: Beginning with the Founders, the assumption has been that a fair and impartial judiciary requires judicial independence. Article III of the U.S. Constitution sought to ensure this independence through a system that provided for the appointment of judges who would serve during “good behavior,” *i.e.*, life tenure. Initially, most of the states copied this system, but later many changed it, influenced by a different view of democracy developed during what is generally known as the Jacksonian era. The result – these states now provided for the popular election of judges based on fixed terms of service. In 1940, Missouri adopted a new system, dubbed the “Missouri Plan”, intended to take politics out of the process of choosing judges. Subsequently, this plan was adopted by many states. A similar change was proposed in Pennsylvania, known as the “Pennsylvania Plan”. Essentially, it provides that whenever a vacancy occurs on the bench, a committee made up of sitting judges and lawyers nominates a panel of three candidates from which the governor selects one. When the next election occurs, that person must then be confirmed by the voters. Pennsylvania is now among a small number of states that still elects its judges on a partisan ballot.

Discussion Questions:

1. Judges in Pennsylvania are subject to a retention vote at the end of their terms, that is the voters are asked whether the incumbent judge should be retained in office. One of the panelists called this system “an abomination.” Additionally, Pennsylvania uses a two-step process to fill unexpected vacancies in the courts. Do you think Pennsylvania provides reasonable means for ensuring judicial independence?
2. During the discussion, panelists raised the issue of the cost of judicial elections. The cost for the last Pennsylvania State Supreme Court election was an estimated \$21 million. Do you think a system of public funding would remedy this issue? Explain your answer.
3. If we are to continue electing judges, do you think that candidates for judgeships should be allowed to discuss how they would rule on certain issues, *i.e.* the imposition and implementation of the death penalty?
4. Hamilton in Federalist No. 78 said that the judiciary was the weakest of the three branches of government, having only the power of judgment. Do you think this characterization of the courts is still valid?
5. Dean Levi raised concerns that studies of the judiciary which show the influence of gender, party affiliation, religion or race on a judge’s decision serve to inform the public that judges use their discretion to advance their own personal policy preferences. Do you agree? If so, do you find this troubling?
6. At both the federal and state levels, bar associations routinely evaluate candidates for judgeships. When such groups rate a candidate unqualified, do you think that that person should automatically be rejected at the federal level or struck from the ballot in state elected systems? Support your opinion.