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CLEVELAND BAR ASSOCIATION'S  
TASK FORCE ON JUDICIAL EXCELLENCE  
PUBLIC FORUM

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December 1, 2010
7:00 p.m.

Taken at:
Case Western Reserve University School of Law
11075 East Boulevard
Cleveland, Ohio

Jill A. Kulewsky, RPR, Notary Public

1 MR. ROBENALT: First of all, thank
2 you all for coming on such a miserable night,
3 but can you start off tonight by giving a
4 little love to our two-party chairmen who have
5 joined us in this effort?

6 (Applause.)

7 MR. ROBENALT: It really is
8 fantastic and it's wonderful to have them both
9 here. It's great to have all of you here
10 tonight. We've got a lot of stuff to do. We
11 don't want to stay here the full two hours, but
12 we do have a lot of things to talk about. So
13 it's great that you're all here, it's going to
14 be very interactive.

15 I'm Jim Robenalt, co-chair of this
16 task force. This is Judge Timothy McMonagle of
17 the McMonagle Dynasty, who is here to grace us
18 with his presence, and that's about it, I
19 think.

20 JUDGE McMONAGLE: Pretty much.

21 MR. ROBENALT: Yeah. But in any
22 event, we have got a wonderful task force that
23 we put together. A lot of people are here
24 tonight, we're going to do a few introductions
25 before we start and get into our business, but

1 first thing I would like to do is thank a few
2 people, and the first person I would like to
3 thank -- this is nice -- is our host here, CWRU
4 School of Law, and particularly Dean Rawson.
5 Thank you very much for having us here, Bob.

6 When we talked about doing some of
7 these public forums, we thought that we really
8 should start with the law schools, and
9 unfortunately, it's finals, so we would have
10 been probably in a bigger room with a bunch of
11 students, but they're all studying. Right,
12 Dean?

13 DEAN RAWSON: One hopes.

14 MR. ROBENALT: Yeah. But as you
15 know, he was a long-time practitioner, before
16 he became Dean out here, with Jones Day, and I
17 think he realizes how important this task force
18 is, too. So we really appreciate his support.

19 We hope to have our other --
20 another forum at Cleveland State Law School,
21 and then we're going to talk a little bit with
22 our group about where else we want to go.

23 We really want this to be something
24 beyond just lawyers, and so we can think about
25 things like a union hall, perhaps, for one more

1 forum, but really some way to get the public
2 involved beyond just lawyers.

3 Now, most people in this room are
4 lawyers and we have a lot of judges here, too,
5 and that's wonderful, but I think to get the
6 public confidence, we need to expand what we're
7 doing. We're going to talk about that a little
8 bit tonight, too. So anyway, thanks to Bob.

9 I also want to thank Rennillo
10 Reporting. Jill is here taking down what we're
11 doing, and we are also videotaping what we're
12 doing because we want to put this up on our
13 site, we want to keep a public record of what
14 we do. We think it's very important for us to
15 be very transparent about what we're doing, and
16 to the extent that people can't get here for a
17 forum, we would like to put it up on our site
18 for people to go take a look at it. They are
19 donating their services, both of them, and so I
20 would like you to give them a round.

21 (Applause.)

22 MR. ROBENALT: All right, with
23 that, Mike Ungar, who I want to say a few words
24 about before he gets up to introduce our task
25 force, and to give you an idea of the diversity

1 of this task force, Mike -- this is Mike's
2 brain child to have this task force.

3 Ten years ago I started with a
4 number of other people to put together Judge 4
5 Yourself, which has been a lot of effort by a
6 lot of people, but Mike was one of the early
7 supporters of it, he got involved in it, and
8 then when he became president of the Bar
9 Association, his idea was Let's make judges a
10 priority, and he said this long before we had
11 any scandal that arose. It was his idea, and
12 when he called me, I said that I would only do
13 it if we could get Tim McMonagle to do it, too,
14 because I thought it was important to have
15 somebody who practices in the court and a long
16 time judge with a sterling reputation. So
17 since I couldn't get anybody else, I got Tim.

18 JUDGE McMONAGLE: You should have
19 got Goldberg.

20 (Laughter.)

21 MR. ROBENALT: It was Jerry Gold.

22 So in any event, this is Mike's
23 idea, so he deserves a lot of credit for this
24 for standing behind it.

25 Mike also did a lot of his

1 discussions with both Rob Frost and Stuart
2 Garson in getting them on board, and so he very
3 skillfully, I think, is putting this all
4 together and so I want him to be recognized for
5 that.

6 Mike, why don't you come up and
7 give a little introduction of who we have on
8 this committee, and then once we have those
9 introductions, we'll get to our business,
10 including the guy from New York who was going
11 to be here that got stuck in New York because
12 of bad weather today, which is too bad, but
13 he's on the phone and we've got a lot of good
14 stuff to get from him, too. So Mike, I'll let
15 you start out.

16 MR. UNGAR: Thanks, Jim. Can
17 everybody hear me without this?

18 AUDIENCE MEMBERS: Yes.

19 MR. UNGAR: I figured so. Do you
20 need this? No, you do not need it. I feel
21 like a law professor here. Can I call on
22 people?

23 I just want to -- I want to say I'm
24 really moved by the number of folks that are
25 here this evening. This, as Jim described,

1 this really -- there are a number of important
2 initiatives that are going on at this great Bar
3 Association that I'm proud to be a part of. Of
4 all of them, there is no initiative that moves
5 me more or I deem more important than the work
6 of the Task Force On Judicial Excellence. I
7 feel truly blessed to have as co-chairs Jim and
8 Judge McMonagle.

9 I can't tell you how lucky this
10 community is. I don't have to tell the folks
11 in this room how lucky this community is to
12 have leadership of this sort. I don't think I
13 have to tell the folks in this room how lucky
14 this community is at this place at this time to
15 have the leadership of the political parties
16 that we have in Stuart Garson and Rob Frost. I
17 mean that from the bottom of my heart. That's
18 not just sucking up to them, because everybody
19 recognizes that at the end of the day, they are
20 the ultimate customer here. If they're not
21 buying what we're selling as a Bar Association,
22 this whole thing goes right down the tubes. We
23 know that, we get that, both of them have made
24 that clear to me from the start and I
25 understood it from the start. We've always

1 said this needs to take into account the
2 political process.

3 Judge McMonagle and Jim will tell
4 you right from the get-go, in laying out the
5 mandates and the issues for this Task Force On
6 Judicial Excellence to consider, one of the
7 things we took off the table was any notion,
8 any semblance of "merit selection." Others
9 have spoken clearly, in my view, declaratively,
10 dispositively, merit selection is not the way
11 to go here. So we are going to be -- whatever
12 we come up with, we're going to be working
13 within the political process. That's mandatory
14 and we've talked about that at length in our
15 two meetings of the task force.

16 So with that in mind, I have the
17 privilege this evening also of introducing to
18 you most, I think, of the members of the task
19 force who are here, and I'm going to start with
20 two important ones whose names don't officially
21 appear on the task force membership, but they
22 have been tremendous in terms of doing a lot of
23 the grunt work that is making this task force
24 hum right now.

25 Ahmed -- Ahmad --

1 MR. ABONAMAH: Ahmed.

2 MR. UNGAR: Ahmed Abonamah is right
3 over here, and Ahmed is currently working as a
4 lawyer at the Cleveland Metropolitan School
5 District and has just been doing a phenomenal
6 job.

7 Seated right next to him is Evan
8 Byron, who is with the Chernett Wasserman law
9 firm, who also stepped up -- let me tell you
10 how the Bar Association is working these days,
11 I just want to put in a quick plug. Jim and
12 Judge McMonagle said, "Look, Ungar, we got a
13 lot of big plans for this thing. It's going to
14 require a lot of careful thought, a lot of
15 studying and a lot of thinking and a lot of
16 research and we need help," and I went to our
17 Young Lawyers Section -- strike that. I went
18 to the Litigation -- did I go to the Litigation
19 Section or the Young Lawyers Section?

20 MR. BYRON: Young Lawyers Section.

21 MR. UNGAR: I went to the Young
22 Lawyers Section and asked Kevin Dunn if we
23 could have some volunteers, and these two hands
24 were the first to go up and we grabbed them and
25 they're doing a terrific job for us.

1 Steve Dever, I saw Steve. Steve,
2 everybody I'm sure knows, is a long time
3 prosecutor, first rate trial attorney, very
4 well regarded in the legal community.

5 Rob Frost, who I know needs no
6 introduction, is a lawyer at Tucker, Ellis and
7 chair of the Republican Party.

8 To his right is Stu Garson, a
9 partner at Seaman Garson and the chair of the
10 Democratic Party.

11 Kerin Kaminski is not here this
12 evening. I didn't see her, at least.

13 MS. ROLLER: She can't be here.

14 MR. UNGAR: She can't be here this
15 evening, she has another commitment. She is a
16 past president of the -- she was co-president,
17 technically, of the Cleveland Metropolitan Bar
18 Association and a partner in the law firm of
19 Giffen & Kaminski.

20 Irene Keyse-Walker, very well-known
21 trial lawyer and appellate lawyer in town and
22 she is with -- she's a partner at Tucker, Ellis
23 & West.

24 We talked about Judge McMonagle.
25 These are in alphabetical order.

1 David Paris is right over there.
2 David, as everybody knows, is one of the
3 pre-eminent plaintiffs' personal injury lawyers
4 in town and has just been a wonderful addition.
5 He's a partner -- he's a named partner in
6 Nurenberg, Paris, Heller & McCarthy.

7 Jim Robenalt we talked about. Jim,
8 were you introduced? Jim is a partner at
9 Thompson Hine and also a very well-known trial
10 lawyer in town.

11 Jan Roller, speaking of terrific
12 trial lawyers, is a partner at Davis & Young.

13 One thing that folks should know,
14 one of the more important things about this
15 task force, one of the criticisms -- let me
16 start by telling you one of the criticisms of
17 Bar Association presidents and Bar Association
18 initiatives is sometimes they die a natural
19 death, as I and my predecessors move out of
20 office and into the sunset.

21 The good news about this one, I
22 knew that this -- I knew given who I asked to
23 chair it, I knew that this was going to take
24 time and we were going to be going through a
25 careful deliberative process as we're going

1 through this evening, and therefore, I knew
2 that it was not likely that this would be
3 accomplished during my term as Bar president,
4 and therefore, I immediately turned to my
5 successor times one, Barbara Roman, who is also
6 an ex-officio member of this task force,
7 Barbara is a partner at Meyers, Roman,
8 Friedberg & Lewis, and I turned to my successor
9 times two, Carter Strang -- where is Carter,
10 front and center -- who will be president of
11 the Bar Association in two years, and I said,
12 "Hey, folks, are you on" -- I explained what I
13 was doing and I said, "Are you on board with
14 this because this is going to be a marathon,
15 not a sprint," and both of them, I'm pleased to
16 report, gave me a resounding yes, which really
17 makes me happy, and we're thrilled to have both
18 of you on board, and Tucker is -- and Carter is
19 also a partner of Irene's at Tucker, Ellis &
20 West and an outstanding trial lawyer.

21 Roger Synenberg, unfortunately,
22 could not be here this evening. I think you
23 all know who Roger is, a former chair of the
24 Cuyahoga County Republican Party, a very, very
25 well-known criminal defense lawyer in town.

1 Terry Szmagala. Terry is right up
2 front. He is the vice-president and chief
3 counsel of the industrial sector at Eaton
4 Corporation. We're thrilled to have him on
5 board.

6 Russell Tye, right over here.
7 Russell is in private practice with a firm
8 bearing his name, Tye & Associates. He focuses
9 his practice in the area of criminal defense,
10 civil litigation, both plaintiff and defense.

11 Robin Weaver, I think almost
12 everybody in the room knows Robin. I see he's
13 not here. He is going to be here I'm told.
14 Robin is a partner at Squire, Sanders & Dempsey
15 and a very skilled trial lawyer.

16 So that, I think, rounds out the
17 task force. I want to thank again each of the
18 members of the task force.

19 MR. STANTON: Excuse me, I don't
20 mean to be venal --

21 MR. UNGAR: I'm sorry. I'm sorry,
22 Mark.

23 MR. STANTON: -- but was I suddenly
24 dropped? Which I'm sure would be the
25 preference of you.

1 MR. UNGAR: And we have Mark
2 Stanton, which I apologize, I skipped your
3 name.

4 JUDGE McMONAGLE: No, no, we did
5 drop him.

6 MR. UNGAR: Look, just stand up,
7 Mark, and everybody will see you.

8 (Laughter.)

9 MR. UNGAR: He's a movie star, for
10 those that don't know it.

11 Mark is -- seriously, Mark is one
12 of the foremost criminal defense attorneys in
13 Northeast Ohio and has been an excellent --

14 MR. STANTON: Not after tonight.

15 MR. UNGAR: And is an excellent
16 contributor to the task force. Did I miss
17 anybody else?

18 Normally you ask for a sign-in
19 sheet for all the judges. I'm stunned and
20 thrilled with the number of judges who have
21 shown up this evening. Please forgive me if I
22 don't introduce each of you publically, but
23 please accept my thanks to each of you being
24 here. We really appreciate it.

25 JUDGE McMONAGLE: Great. Thanks,

1 Mike.

2 MR. ROBENALT: Thanks. And thanks
3 to all the task members, this is going to be a
4 lot of work, but it's going to be a lot of fun,
5 too.

6 All right, let's talk about what
7 we're doing to do tonight so we can get into
8 our talk. We're going to introduce our
9 panelists in a little more detail, but let me
10 start by telling you Dennis Hawkins works for
11 the New York Modern Courts organization, which
12 is devoted to issues of judicial selection and
13 so forth in New York, and New York is
14 interesting because New York elects their lower
15 level judges. They appoint their -- what they
16 call their -- their Supreme Court is called the
17 Court of Appeals and their Common Pleas Court
18 is, I think, called their Supreme Court, so
19 it's just the opposite.

20 So they elect the lower level, they
21 have merit selection, essentially, for the
22 upper groups, but they have the only experience
23 in the country in what we're talking about
24 tonight, a Qualifications Committee. So I
25 asked Dennis to join us. His plane could not

1 take off, so he's going to join us by phone.

2 Jan Roller is going to do a brief
3 introduction of him in a minute when we come
4 back to this, but it's great to have Dennis
5 with us tonight. He's going to have some
6 important things for us to think about.

7 Joe Frolik is here from the
8 Cleveland Plain Dealer. You all know that the
9 Plain Dealer is the one organization, Tom, that
10 a lot of people look to when they look to how
11 do they vote for judge.

12 So Joe has been involved in this
13 for a long time. We want to know what
14 qualifications he's looking for, what qualities
15 he's looking for, what he would like to see on
16 a Qualifications Committee and his thoughts
17 about that.

18 In addition, we've got Jay Miller
19 here from Crain's who gets involved in
20 reporting on a lot of things involving the law,
21 and so we want to get his perspective, too, on
22 that and maybe hopefully convince Crain's to
23 start doing endorsements, too.

24 But in any event, those are our
25 panelists tonight, the people who will speak to

1 us.

2 Our purpose is to talk about a
3 Qualifications Committee and the reasons for
4 that are really two-fold. The first is for use
5 in Governor appointment so that when there is a
6 vacancy, you would have a committee that would
7 vet candidates for the Governor, and the second
8 is for use by the parties' pre-nomination. So
9 we're going to talk a little bit tonight about
10 how the parties nominate their candidates and
11 how a Qualifications Committee could be of
12 assistance in that process.

13 Obviously what we're going to do is
14 not going to be mandatory, but the hope is that
15 we'll help the process by having a committee
16 like this that will be broad-based and will vet
17 candidates and will help in that process.

18 One thing I want to say is what we
19 say every time we speak about this, and that is
20 that we have got some very good judges in this
21 county, you know, we've got 34 Common Pleas
22 Judges and they're some of the -- the best
23 people in our profession are those judges, and
24 our point is not to attack any judges who are
25 sitting today, our point is to open up the

1 process, make it more competitive and try to
2 get the best candidates in the pipeline
3 possible and to get more people involved in
4 helping this process.

5 So as you all know, in Ohio to run
6 for judge you only need to be admitted to the
7 practice of law for six years and we need a
8 mechanism to vet potential candidates and a
9 commitment from the parties that they will not
10 endorse candidates who are not qualified.
11 We're not going to call on either of the party
12 chairs to make that commitment tonight or stand
13 up and make a pledge. What we're asking them
14 to do is participate in this process, talk with
15 their groups, see if this is acceptable.

16 They are not making any commitment
17 beyond we're going to work with you guys, we're
18 going to see how it works, but, you know, this
19 is one of those things you've got to move along
20 not at a really fast pace but at a moderate
21 pace that brings in everybody. That's one of
22 the reasons we're doing these forums, is we
23 want to have people come in and say what they
24 think to give the public the opportunity to
25 talk about this, too.

1 So we want to talk about minimum
2 qualifications, and in order to do this, the
3 key is to have a Qualifications Committee that
4 has the ability to judge the candidates. So
5 one of the things we have to talk about is
6 membership in this committee, and then as
7 important, the public most have confidence in
8 the workings of the Qualifications Committee.

9 One thing that -- Tim and Mike and
10 I were on WCPN this morning. A very common
11 theme that we heard is, "Why do we want to
12 listen to a bunch of lawyers tell us how to
13 vote for a judge," and I think there is this
14 stigma that goes along with a committee that is
15 solely lawyer-run. So we have to think about
16 that. We have to talk about lay membership in
17 this committee that will help us in that regard
18 and how to go about that.

19 So we're going to talk about, you
20 know, the composition of the committee, the
21 diversity of the committee and the membership.
22 So that's one series of things we want to talk
23 about tonight, and we need both people who are
24 experienced and also representative.

25 We're going to talk about thoughts.

1 The Bar Association clearly has experience
2 doing this rating and this whole system.

3 Deborah Coleman, who is the current
4 chair of Judge 4 Yourself, was here tonight and
5 she was one of the co-founders for the Judge 4
6 Yourself movement, so she can tell you we've
7 got a lot of people who have given a lot of
8 their time for free to sit and interview and
9 question candidates and there's a lot of
10 experience in that room when you're doing that.

11 In addition, though, we want to
12 talk about strong, meaningful lay membership
13 for the reasons that I spoke of before.

14 We also -- I think it would be a
15 good idea to have a representative from the
16 Common Pleas Court and the Court of Appeals, to
17 have perhaps the Administrative Judge or the
18 Administrative Judge select somebody to be on
19 this committee. I think that would be
20 important to include the judiciary.

21 And we also think the parties
22 obviously should be represented in the
23 Qualifications Committee. You can't ask them
24 to listen to what a committee is saying without
25 having a seat, you know, at the table. So

1 those are some overall thoughts we want to talk
2 about and want to get some feedback from
3 everybody else.

4 In addition to this, one of the
5 things we're not going to spend a ton of time
6 on tonight, you have to have a set of rules
7 that are transparent that everybody follows and
8 that you're not just from the seat of your
9 pants doing this. You really have to have it
10 thought out, all these various topics that we
11 set up here. We'll spend a little time talking
12 about that less, more about who the members
13 ought to be and what people think about that.

14 So I'm not going to go through this
15 rule stuff right now. I think right now it
16 would be a good idea to turn to Dennis Hawkins.
17 As I said, New York has this extremely
18 Byzantine system of how they elect their
19 judges. It is an election process, but to get
20 into the pipeline is, you know, a very -- it
21 would be bizarre to all of us. It's much more
22 complicated than a simple primary election and
23 then a general election.

24 Nevertheless, they have put
25 together these Qualifications Committees, and I

1 thought it would be good for Dennis to tell us
2 his thoughts about it, as this is what he
3 thinks about every day all of the time, and to
4 tell us some of the pitfalls, some of the
5 things we should look for and avoid when we're
6 putting together our own Qualifications
7 Committee and how we should do that.

8 Dennis, are you there?

9 MR. HAWKINS: Yes, I am.

10 MR. ROBENALT: Okay. I'm going to
11 have Jan Roller introduce you. Jan was the
12 president of the City Club here in Cleveland, a
13 very renowned institution, so she's used to
14 giving introductions. So she will introduce
15 you and I will have you talk.

16 MS. ROLLER: Good evening,
17 everyone. It's terrific to see everybody here
18 because I think we're all very critical to the
19 success of this process.

20 Dennis, I'm sorry I don't get to
21 meet you in person and I'm sure that's true for
22 everybody else who is in the room. We have
23 quite a roomful here, but I'm very happy to
24 introduce Dennis Hawkins, who is the Executive
25 Director for the Fund For Modern Courts.

1 We are especially honored that he
2 can be with us even by phone since the Judicial
3 Excellence Committee feels that he is one of
4 the most knowledgeable people in America on the
5 topic of judicial reform.

6 The Fund For Modern Courts is a
7 private, non-profit, non-partisan organization,
8 dedicated to improving the administration of
9 justice in the State of New York. The Fund was
10 founded in 1955, led by concerned citizens,
11 prominent lawyers and leaders of the business
12 community.

13 Modern Courts works to make the
14 court system more accessible, efficient and
15 user friendly for all of New Yorkers and it
16 fights to remove influence of money and
17 politics from the selection process by working
18 to institute merit selection.

19 Now, I know that's different than
20 what we're going to be talking about, but
21 certainly there are parallels that I'm sure
22 Dennis can share with us.

23 In 1975 it created the nation's
24 first Citizen Court Monitoring Program. In the
25 program, which currently serves 16 counties,

1 volunteer monitors evaluate the State's courts
2 from the perspective of the ordinary citizens.
3 The program has been instrumental in causing
4 numerous improvements, including, among many,
5 the establishment of in-court child care
6 facilities in 22 courts around the state and
7 the creation of an online searchable public
8 database of campaign finance information for
9 New York State Supreme Court races.

10 To tell you a little bit about
11 Mr. Hawkins himself, he joined the Fund For
12 Modern Courts in November of 2005. Before then
13 he was the Regional Anti-Corruption Advisor in
14 Eurasia for the American Bar Association's
15 Central European and Eurasian Law Initiative,
16 which is a public service project that advances
17 the rule of law by supporting the legal reform
18 process.

19 Until 2001 he served as a Deputy
20 District Attorney in charge of the rackets
21 division in Kings County, New York, and prior
22 to that, he was a Special Attorney General in
23 the Office of the Special Prosecutor for New
24 York City's criminal justice system and he has
25 been counsel to the Association of the Bar for

1 the City of New York, the New York Fire
2 Department and New York State Assembly
3 Education Committee.

4 So, Mr. Hawkins, thank you very
5 much for being with us by phone tonight, and
6 everybody please welcome Dennis Hawkins.

7 (Applause.)

8 MR. ROBENALT: Okay, Dennis.

9 MR. HAWKINS: Okay, thank you.

10 It is a pleasure to be able to participate in
11 this important endeavor.

12 I have a feeling that given Modern
13 Court's history of support of a merit
14 selection, perhaps it was best that my plane
15 didn't leave because I don't have to be driven
16 out of the state for our strong inclination for
17 the merit selection.

18 But we deal with reality in New
19 York, and I noted in the comment about the, you
20 know, affluence of judges in Ohio. Our
21 organization believes that the past party of
22 judges who are elected in New York State are
23 highly qualified and deliver justice, you know,
24 in the fashion that, you know, we all hope for.

25 In New York -- some of what I have

1 to talk about about the composition of the
2 Qualifications Commission relates specifically
3 to (inaudible.)

4 As was indicated, our highest court
5 is the Court of Appeals. The members of that
6 court are appointed by the Governor, and both
7 under the Constitution enabling legislation and
8 invoking their own rule, there is a system for
9 selecting the members of the Commission on
10 Judicial Nomination.

11 As you might expect, because this
12 is a government -- a Governor appointment, the
13 Commission itself is really comprised of
14 individuals who are part of the government.
15 There are -- there are four people appointed by
16 the Governor, four by the Chief Judge and one
17 by each of the -- either the majority or the
18 minority party in our senate assembly.

19 The requirement under statute,
20 though, does recognize the importance of lay
21 people, and the Governor, in his appointment,
22 has to -- of his four appointments has to
23 appoint two lay people, as well as the Chief
24 Judge. So there will always be four out of the
25 12 members who are lay people, and that's a

1 good thing, I think, because while it is clear
2 from my experience at the City Bar and head of
3 Modern Courts that lawyers actually are the
4 people who come, you know, very much in contact
5 with judges on a daily basis and their
6 colleagues, many of whom are nominated by this
7 Commission to become members of the highest
8 court, so it makes sense, but there are other
9 people who use the courts also.

10 In our state the legal system is
11 very active in judicial matters and there are
12 many, many organizations that service victims
13 and people who use the courts who know how the
14 courts work and have a sense of particular
15 individuals and their reputation and their
16 integrity and their knowledge of the law.

17 In addition -- and I'm not going to
18 spend much time talking about those -- that
19 particular Commission because I think you're
20 working for something a little bit different.

21 In addition, in New York City, the
22 Mayor of the City of New York appoints Criminal
23 Court Judges, which is our misdemeanor criminal
24 part, and Family Court Judges, and he, too, has
25 an auditing committee on the judiciary that is

1 rather large, much too large, I think, for
2 anything that you might be thinking of, it has
3 19 members, and that seems a little unwieldy,
4 and only nine are appointed by him. The Chief
5 Judge of the state appoints four, the presiding
6 Justices for the areas of New York City appoint
7 two apiece.

8 Interestingly enough, and this is
9 perhaps a concept that has been discussed and
10 you should be thinking about in terms of the
11 composition of the Qualifications Commission --
12 Committee, is that two deans of New York Law
13 School appoint one person apiece, and they
14 rotate among the many, many fine law schools
15 that we have in New York City, and that brings
16 a little bit of outside, you know, outside the
17 lawyer/judge system by having the law school
18 deans involved.

19 In New York State, the vast
20 majority of judges, almost 78 percent of the
21 judges are elected, though, and I think that's
22 what your focus is on tonight, and there are a
23 variety of ways in which people are screened
24 and considered for the positions, but it's
25 mostly determined by the parties themselves,

1 and we are largely a Democratic and Republican
2 Party state. There's some smaller parties,
3 conservative parties, working family parties,
4 who do have some influence, but in many of the
5 judicial districts throughout the state, the
6 screening is left in -- the selection, rather,
7 than just the screening is left to the parties
8 themselves, and there's a wide variety of
9 methods that are used.

10 I'm just going to focus on what the
11 New York County Democratic Committee does
12 because that has been held out as something of
13 a model in a case that worked itself all the
14 way up to the Supreme Court of the United
15 States, Lopez-Torres, in which various
16 individuals have challenged the Byzantine way
17 in which the party works to select judges, and
18 we don't want to go into those details, but
19 ultimately the Supreme Court found that there
20 wasn't a violation of any constitutional rights
21 in this Byzantine system and unanimously
22 decided that the system that's in place is
23 constitutional.

24 But in the first -- in the District
25 Court decision by Judge Gleeson, he made

1 reference and went into great detail about how
2 the party system works, and he held the New
3 York County Democratic Party up for "This is
4 the best that I see," but he found that they
5 still -- the system that we're using was still
6 unconstitutional, and not for the reasons of
7 how the Democratic Committee worked.

8 They have an interesting -- you
9 know, this was a -- historically we're talking
10 about Manhattan, a very progressive borough in
11 New York City, and back in the 70s there were a
12 lot of reformers who were part of the
13 Democratic Party in Manhattan, the New York
14 County Party, and they had the same kind of
15 concerns that I think that you have, that the
16 system for considering candidates should be
17 wide open, it should be one in which the best
18 and the brightest are given an opportunity to
19 serve in the position of judge, and what they
20 have done is a concept that -- I don't know if
21 you've heard about it before -- that's
22 called -- we refer to it as kind of a double
23 blind system.

24 So rather than having members of
25 the party themselves be on the screening

1 committee -- and I'm going to call it a
2 screening committee rather than a qualifying
3 committee because that's what it's called in
4 New York. They are not members of the parties
5 themselves. What the party members do on this
6 judiciary committee is that they appoint --
7 that they reach out to Bar Associations, law
8 schools and community organizations, and those
9 associations, Bar Associations, law schools,
10 community organizations actually appoint
11 members to the Democratic Party screening
12 committee, and they did that because they
13 wanted to put, you know, some distance between
14 pure politics, and in New York pure politics
15 works that if you're a good party guy or woman
16 and you carry petitions or you work on a
17 campaign, you may get rewarded by being put on
18 the ballot for election.

19 This system, in their mind, is one
20 in which following that kind of politics might
21 be eliminated because the law school dean or a
22 Bar Association, you know, president is going
23 to be looking for different qualities and how
24 well the individual, you know, performed doing
25 party and political party business. So it's an

1 interesting concept.

2 When we were discussing whether
3 there was a way to come up with a statewide
4 system, our assembly came up with the same kind
5 of double blind method that the individuals who
6 actually sat on the Qualifications Commission
7 would be people from a variety of
8 organizations, including Bar Associations, law
9 schools and not-for-profits. I think that as
10 part of your goal you want to have buy-in by
11 people that think this is an independent group
12 of people who are really looking solely for the
13 qualifications of the individual rather than
14 whether somebody is owed a favor.

15 Now, that does not happen in most
16 of our district divisions throughout the state.
17 We've had our scandals too. In the borough
18 that I worked in for many years, Brooklyn, New
19 York, in which the party leader there had a
20 rubber stamp process and the people who were
21 being rewarded were the people who were
22 politically useful to the party chairman. That
23 particular system is not held in very high
24 respects by members of the Bar or by our
25 organization, but it does exist.

1 Separate and apart from what the
2 Democratic Judicial Committee would do or the
3 Republican will do, the Bar Associations are
4 out there. The City Bar Association does have
5 a very active judiciary committee, they do
6 screen and make recommendations regarding
7 judicial candidates and, you know, they approve
8 some and they disapprove others. It has been
9 my experience in following this for the past
10 five years that the public generally totally
11 disregards that and really aren't focused on
12 that aspect at all. So oftentimes people who
13 are not approved or did not even submit
14 themselves to the process are elected judge
15 because they have the political support in the
16 jurisdiction that they run in.

17 So in terms of the composition of
18 the Qualifications Committee, all of the things
19 that we support and that we've seen does look
20 for both lay and lawyers, does look for
21 diversity. When you're talking about, you
22 know, having Bar Association representation,
23 we're not just talking about the premiere City
24 Bar Association but there are many other Bar
25 Associations that are specifically focused on

1 race and organized around race and gender
2 principles. So there is a Metropolitan Black
3 Bar Association, there are Women's Bar
4 Associations, and if you are creating a system,
5 one of the causes would be looking for people
6 from those Bar Associations, as well as from
7 the major Bar Associations, because they'll
8 bring diversity to the table.

9 In terms of -- and I'm just going
10 on the three major points of what I understand
11 the forum is about. In terms of the rules of
12 government for a Qualifications Commission, you
13 know, it's extremely complex and it would take
14 a lot longer than we have to discuss tonight,
15 but maybe we could follow up on it. Things
16 like, you know, the voting procedures of the
17 committee are very important and what the
18 standard approval is.

19 In New York State we have some
20 groups, like the City Bar Association, who
21 basically focus on whether people are qualified
22 for the position or not qualified, and there's
23 only an up or a down.

24 However, other groups use a
25 two-tier, a highly qualified and then just a

1 qualified or not qualified type of thing, and
2 so that anything that you design you have to
3 decide whether you want to signal to the public
4 that this is somebody who really is special and
5 has special qualities, and I guess what I think
6 of is kind of, you know, like the Oscar
7 nominations, These are the people who are
8 nominated at the top of their profession, and
9 then, you know, some -- the group that picks
10 the winner looks at that top group. You don't
11 look at everybody who is just merely qualified.

12 But in New York, like in Ohio, the
13 only qualification for judicial office is ten
14 years, rather than six years, of experience as
15 a lawyer, and that kind of low standard of just
16 being somebody who is a lawyer and, you know,
17 who perhaps has practiced in the courts for
18 that period of time might not be enough.

19 So in terms of that particular
20 rule, what is going to be the standard that's
21 applied and is there going to be a
22 discrimination between those people who are
23 clearly outstanding and those people who are
24 qualified but are not outstanding, and I think
25 that's what the term "well qualified" conveys.

1 The other issue that is important,
2 I think, is the decision whether the committee,
3 your Qualifications Committee, is going to
4 recommend an unlimited number of people for
5 each judicial vacancy, and that's a basic theme
6 that goes on in New York State. The system,
7 the merit selection system that we support and
8 the Mayor's system has a limited number of
9 people reported out of the Qualifications
10 Committee or Commission for each vacancy.

11 There are other systems, though, in
12 New York where there is no limit, so that if
13 100 people apply for the position and 25 were
14 found to be well qualified or 50 were found to
15 be well qualified, all of those individuals
16 would get that designation.

17 We believe, Modern Courts, that if
18 you limit the number, you provide information
19 to the appointing authority that these really
20 are the best people, and I think the same would
21 be true for the, you know, for the electorate
22 as well, although with a party system, you're
23 really looking for, I suppose, one person from
24 each party, so maybe this doesn't become an
25 issue for the election, but it certainly is an

1 issue for any appointing authority that the
2 Governor has in Ohio.

3 Appeals process is another one of
4 these smaller items. Many of the systems do
5 not have an appeals process. We do not think
6 that's a particularly good idea. There may be
7 legitimate reasons that a candidate wants to
8 come back and make an appeal. So as part of
9 the rules of the Commission, some thought
10 should be given to should there be and will
11 there be.

12 You have to think about terms, in
13 terms of the rules of governance, of the people
14 who are on this Commission. Many of the
15 systems in New York State, whether they're Bar
16 Associations or governmental groups, limit the
17 terms of individuals to a single three-year
18 term, followed by a break, and then an
19 additional three-year term somewhere in the
20 future. I think that's important to convey to
21 people that this is not, you know, the inner
22 circle that's deciding year in and year out who
23 the nominees are.

24 We don't have anything that's as
25 bold or as creative as you're suggesting of

1 having a Qualifications Commission or Committee
2 that would actually have members of the
3 opposing political parties on it. I think
4 that's a fascinating idea. I think it's
5 something that would enable, you know, the
6 decisions of the Commission to have greater
7 weight to be a participant in the process.

8 And on rules, there are lots of
9 things to talk about that would take entirely
10 too much time to do.

11 MR. ROBENALT: Okay.

12 MR. HAWKINS: And finally, on
13 criteria, I find that most of the rules and
14 most of the statutes and most of the
15 discussions describe the qualifications in very
16 general terms, terms that you have all used and
17 we all use, you know, constantly, you know,
18 things like their character, their ability,
19 their training, their experience, their
20 temperament, their independence, their
21 intellect, their judgment, and you hear the
22 same words over and over and over again, and I
23 think that's not because of the lack of
24 creativity, it's because those are qualities
25 that, you know, judicial candidates must have

1 and it's hard to go beyond that definition.

2 However, in the screening process,
3 the Court of -- the process that's used for our
4 Court of Appeals, the process that's used by
5 most of the better party committees and the
6 process that's used by the Bar Association is
7 one of, you know, intensive investigation.

8 There are questionnaires that every
9 candidate has to fill out that describes any
10 potential conflict of interest and describes in
11 great detail the kind of work that they have
12 done either as a lawyer or as a sitting judge.

13 There are requirements about
14 references. If you're an attorney, parties you
15 have tried cases against, you have to name and
16 list those people. They interview those people
17 and they collect decisions if the person is the
18 judge. They collect articles if the person is
19 an attorney.

20 They look at what kind of
21 activities they have in the Bar, in public
22 service, to demonstrate whether they would have
23 those same qualities as a judge, and all of the
24 Committees and Commissions commit to
25 interviewing the individual before they make

1 their decisions, and so I think that's pretty
2 critical in terms of deciding whether a
3 particular individual meets the criteria that's
4 set by the Committee or Commission.

5 MR. ROBENALT: Great. Thanks,
6 Dennis. Those are great thoughts.

7 We're going to -- if you can hold
8 the line, we'll come back to questions for
9 Dennis on some of the things that he's said,
10 but let's have our other panelists get a chance
11 to speak a little bit here.

12 I think what we're going to do with
13 the rules part of this, you know, the quorum
14 rules, terms of members and things like that,
15 our Committee will go through what we think are
16 some of the outstanding examples of some of
17 these rules, we'll come up with a set of rules,
18 we'll put them on our website and ask for
19 public comment. I don't think we need to go
20 into that tonight.

21 Tonight I think what we want to
22 hear from our panelists who are here are the
23 two things that Dennis talked about initially,
24 who do you want to see on a Qualifications
25 Committee, who should be the members, and

1 what's the criteria that's important to you,
2 and these are the two things that I think both
3 Jay Miller and Joe Frolik can help us with a
4 little bit, and then I want to open it up to
5 the group who's here to talk about those two
6 things, what are you looking for in terms of
7 membership and who should be on this, who
8 should we have on it, how big should it be. We
9 want to hear from all of you, we'll start with
10 Joe and Jay, and then what criteria does Joe
11 look for when he's interviewing candidates,
12 what's he looking for in a judge, what's Jay
13 interested in when he does his stories about
14 the judiciary, the qualities he's looking for,
15 too.

16 So we're going to have those two
17 come up and sit here in front, if you don't
18 mind, and Tim is going to introduce both of
19 them and then we'll turn it over to them.

20 JUDGE McMONAGLE: I don't think I
21 need this. Anyone having any trouble hearing
22 me? I'm not giving it back to you.

23 (Laughter.)

24 JUDGE McMONAGLE: Can you shut off
25 Robenalt's microphone, please. Thank you.

1 I want to ensure everyone who
2 expressed their concerns ahead of time when
3 they came in here and saw that the alpha male,
4 Jim Robenalt, was co-chairperson of this task
5 force that you will not be required to purchase
6 that damn book that he wrote in order to get to
7 your car.

8 I'm concerned that when you
9 pandered to the two heads of the parties that
10 you forgot to pander to the head of the
11 Republican Party. Stu, obviously he mentioned
12 we're going to do one of these in a union hall.
13 Rob, we'll do one at the Union Club, too.

14 (Laughter.)

15 JUDGE McMONAGLE: They indicated --
16 Dennis was kind enough to indicate that what
17 we're about to do is both bold and creative.
18 I'll be bold; he can be creative.

19 Now I'm going to introduce Joe
20 Frolik, but -- and he's an individual, you
21 know, a person that really doesn't need an
22 introduction. I mean, I don't have one either.

23 (Laughter.)

24 JUDGE McMONAGLE: That's probably a
25 good thing. And I tried to find out something

1 about him, and I figured I knew how to spell
2 his name, so I put it on the first time and all
3 I got was Pickwick and Frolic. I knew that was
4 wrong. So I said I'll go on Cleveland.com and
5 see if they have anything for Joe Frolik.

6 Well, on Cleveland.com the first
7 ten hits that came up was Joe Frolik to do his
8 100th consecutive skydiving tour in Lisbon,
9 Ohio. Now that I've seen him, I know that's
10 not him. So just as you wrote it, Joe, I'm
11 going to read it.

12 Joe Frolik, before joining the
13 editorial board in 2001, Chief Editorial Writer
14 Joe Frolik was the Plain Dealer's national
15 correspondent for 12 years. That's four
16 presidential election cycles in political
17 junket terms.

18 He wrote about personalities,
19 strategies and issues and also coordinated the
20 Plain Dealer's opinion polling from 1996
21 through the 2000 election.

22 This is the part that really got my
23 attention. Away from politics he's covered
24 earthquakes, hurricanes, space shots and the
25 Kenyon College Swimming Dynasty. We'll ask you

1 about the locker room of Kenyon College.

2 (Laughter.)

3 JUDGE McMONAGLE: On the editorial
4 page he has written extensively about local and
5 national government politics and about economic
6 development. He is the lead writer in the
7 opinions section of the Quiet Crisis series on
8 Northeast Ohio's struggle to reinvent its
9 economy. Good luck with that, Joe.

10 His Saturday political notebook
11 column debuted in January of 2008, and really
12 for our purposes here tonight there are many
13 judges actually from every level. We have
14 Municipal Court Judges, former Municipal Court
15 Judges, Common Pleas Judges, Court of Appeals
16 Judges and almost a Supreme Court Justice who
17 ran for the Supreme Court. For those of you
18 who are wondering who I'm talking about, I'm
19 sure her Bailiff, Mike Apicella, will point her
20 out. Sorry about not getting that job down in
21 Columbus, Mike.

22 (Laughter.)

23 JUDGE McMONAGLE: Now, my next
24 guest also doesn't need an introduction, but he
25 sent me one anyhow.

1 Jay Miller joined Crain's Cleveland
2 Business in 1982 as a reporter and later served
3 as assistant managing editor. He left in 1992
4 to become managing editor of a weekly newspaper
5 and later worked as a correspondent for Reuters
6 News Service, midwest correspondent for The
7 Credit Union Times and a contributor to
8 Cleveland Magazine, Inside Business Magazines
9 and many other local and national publications.
10 He rejoined the staff of Crain's in 2003 as the
11 government and economic develop reporter.

12 Now, I don't want either one of you
13 to feel uncomfortable, to feel in any way the
14 way that you made many of us feel when we came
15 before you, Joe.

16 (Laughter.)

17 JUDGE McMONAGLE: And this is very
18 informal. Would you please rise?

19 (Laughter.)

20 JUDGE McMONAGLE: Please rise.
21 Raise your right hands. Do you two solemnly
22 swear that the testimony you are about to give
23 in the case now shall be the truth, the whole
24 truth and nothing but the truth, so help you,
25 Rhonda; help, help you, Rhonda?

1 (Laughter.)

2 JUDGE McMONAGLE: That's all I got.

3 I think we could start it off
4 certainly with Joe because many of us know he
5 has been part of the editorial process at the
6 Plain Dealer for years. He has been part of
7 the interview process for many, if not all, of
8 us at some point in time, and he is the one
9 that doesn't ask the nasty questions.

10 Well, I think the simple thing to
11 start off with is, how do you start your
12 endorsement process at the Plain Dealer?

13 MR. FROLIK: Well, the first thing
14 you do -- and I recognize a lot of you have
15 been through it. Some have had good results,
16 some have had bad results, some have had mixed
17 results. The first thing you do is, as you
18 know, when you qualify for the ballot, you get
19 a letter from us inviting you to an editorial
20 board meeting, which you have to testify in
21 order to contest a general election, and
22 included in that is a -- we ask you to fill out
23 a kind of background sheet, tell us a little
24 about your education, your professional
25 background, why you're running. In simple

1 terms, why you're running, what you would do if
2 you get to the office, how do you -- are there
3 particular improvements that you would help to
4 make at the court which you are a runner.

5 And then you're brought in -- we
6 bring all the candidates in together who are in
7 a given race. So it would be -- in a
8 Democratic Primary, we would have all the
9 Democrats in, all the Republicans if there's a
10 contested Republican Primary, although those
11 are pretty rare, frankly, on the judicial side,
12 and then in the fall, anybody, including any
13 independents who are on the ballot, and we have
14 a -- we do an interview with them and ask --
15 you know, we encourage the candidates to talk
16 amongst themselves. I always say the best
17 endorsement interviews are the ones that we
18 talk the least and you guys talk the most.

19 Frankly, judicial candidates are
20 pretty boring. They love the Cannon which says
21 they really can't talk about anything, so they
22 very rarely will even challenge one another on
23 given points. There have been a few
24 exceptions, including one involving Judge
25 McMonagle's wife, which was pretty interesting.

1 There are some that have gotten
2 kind of testy and personal, but for the most
3 part, they're very straightforward. Sometimes
4 you can't even get an answer to, "So there's 34
5 judges on the ballot, why did you pick this one
6 to run against," and they won't even tell you
7 that. "Well, you know, I admire Judge Anderson
8 but somebody needs to run."

9 Well, you could have said that
10 about the other, you know -- what did we have
11 last time, 27 uncontested judges, and no
12 disrespect to anybody, but from a small D for
13 democratic standpoint, I think everybody
14 deserves an opponent and should have to get up
15 every six years and explain why you did your
16 job the way you did it and why you hope to
17 improve in the future.

18 So we do the interviews. We always
19 ask people -- almost generally ask people for a
20 writing sample, particularly on the appellate
21 judges, but we started it now at all levels,
22 and it's a good way to see how people think.

23 We had one candidate in a race
24 within the last cycle whose -- and you could
25 submit anything. A brief, an article you've

1 written. Since they're not judges -- if you're
2 not a judge, you don't have a decision that you
3 could hand down. This person, I remember this
4 person sent us something that if your freshman
5 in high school had turned it in, you would be
6 embarrassed. Incomplete sentences, misspelled
7 words, no coherency to the thought pattern,
8 and, you know -- so a writing sample is very
9 helpful.

10 The other things we do -- and the
11 discussion goes on. We look at the
12 recommendations of the JCRC, which we find to
13 be very valuable, although not necessarily
14 definitive, but those of us on the editorial
15 board, for the most part we've been around for
16 a long time, we have a pretty good role and
17 access to people who are attorneys in town who
18 practice law, other judges, and we ask about
19 people's reputation, and we're looking for
20 people who have good minds, who have a
21 reputation for being fair, good temperament.
22 If you have a hot temper and you blow up,
23 that's probably not someone you want on the
24 bench.

25 We are a little bit interested in

1 if you've been in office, and if you held other
2 political office, how you conducted yourself.

3 If you've been, you know -- if you have a
4 general reputation for honesty.

5 So those are the things that go
6 into it, and then the board gets together
7 usually after several days or sometimes a
8 couple weeks of this, depending on the race and
9 how early we've done the interviewing, although
10 we're very cognizant now of how early voting
11 has changed, we need to get these things done
12 and get them out early because people now vote,
13 you know, 30 days in advance, and then we sit
14 down and we talk amongst ourselves and come up
15 with an endorsement. I mean, who struck us,
16 based on the interview, based on the other
17 research, that would be the better choice.

18 I mean, there's a lot of times --
19 I'll be honest with you, there are some -- some
20 are really easy, some are, you know,
21 slam-dunks, one candidate is so much better
22 than the other, but there's a lot, frankly,
23 where both people or, in a primary, more than
24 one person -- more than two people are really
25 good candidates.

1 You know, there are -- I could tell
2 you there are some anecdotes that, you know --
3 of kind of the people who have come in to us
4 who kind of make your head spin and then there
5 are others who have come by and you'll think,
6 Wow, there are three or four people there who
7 all could probably do the job, and it's a very
8 tough pick.

9 Our feeling has been, as I was
10 quoted actually in the paper in a different
11 context on Sunday, saying we feel voters have
12 to make a decision, so do we, and so we will
13 generally -- we'll come down -- we may say nice
14 things about more than one candidate but we
15 come down on behalf of one or the other, and
16 there's no particular science or rhyme, nor
17 reason to it. We don't count Ds and Rs, we
18 honest to gosh don't, in spite of what some
19 people think. We probably each cycle end up
20 endorsing more Democrats, but that's just a
21 fact of probably where we happen to live. So
22 that's -- you know, that's the process from our
23 standpoint.

24 The more guidance and help we could
25 get from the Bar Associations, the better, in

1 terms of having some sort of way to say This
2 person meets a minimal set of qualifications.
3 That would be extremely helpful, particularly
4 in some of the lower court races, the Municipal
5 and Trial Court levels.

6 So that -- so the kinds of
7 qualifications that you're talking about I
8 think would be really valuable to us. Like I
9 said, the JCRC has been an invaluable tool and
10 it has given us a good time to go -- I mean, I
11 could think of three races in the last --
12 probably within the last four years where I
13 think the JCRC process and I would like to
14 think the Plain Dealer endorsing process made a
15 big difference. One, of course, was the race
16 that Joe Synenberg won where we wrote probably
17 a good half a dozen editorials about that, and
18 that, you know, going -- although it didn't
19 work in the primary.

20 We wrote a couple in the primary
21 and there was a -- there were news stories
22 about one of the candidates, but that candidate
23 had what at the time was considered a
24 bulletproof name, it wasn't Frolik, but through
25 a lot of work and a lot of voter education,

1 that ended up a different outcome than I think
2 it would have otherwise. In fact, I think --
3 I'm pretty sure that's the race that Peggy
4 Foley Jones dropped out of the Republican race
5 because she didn't want to go through another
6 name game race, and that said an enormous
7 amount to us and really reinforced,
8 particularly when the Republican Party came up
9 with a first-tier candidate, the need to make
10 an extra effort, and I don't know that we've
11 ever until that time done a sustained campaign
12 like that on a judicial race.

13 There was a Bedford Court race last
14 year where all of the Bar Associations said
15 that the candidate, who was a Democratic Party
16 nominee, who had a great ballot name, who had
17 significant support from elected officials and
18 had run several times before in that area for
19 various offices, so was well known, was rated
20 not recommended by every Bar Association. We
21 hit that race a couple of times and that
22 Bedford Municipal Court race, which includes,
23 as you know, many towns in that corner of the
24 county, the candidate who had the higher
25 judicial marks and who we endorsed won.

1 And then we just had the most
2 recent race involving a sitting judge who was
3 indicted during the course of the campaign, but
4 even before that had been -- had drawn, shall
5 we say, at best mixed marks from the Bar
6 Associations and who we had never, I'm proud to
7 say -- this is one -- you know, we have to
8 apologize all the time for our Russo and Dimora
9 endorsements over the years. Flog me a couple
10 times if you'd like. This is one we've never
11 had to apologize for because that particular
12 judge was never endorsed by us. We always
13 thought there was way too much politics around
14 that one and that that was a classic name, and
15 luckily the voters saw through it.

16 Although the only thing we said to
17 Jim is, you think about this and think about
18 the voter education function. You need a focus
19 group made up of about -- I could think of
20 125,000 people from whom you could choose from
21 in this county, just like every candidate out
22 there, and this person almost won just the
23 same.

24 It's also important to note, as you
25 do this judicial education, look at the

1 drop-off in the number of people who vote for
2 any judge, from Municipal Court all the way up
3 to the State Supreme Court, the drop-off
4 between the top of the ballot and by the time
5 people get down to the judicial races, that
6 could speak for something about how little
7 information, in spite of what you guys do, in
8 spite of what we do to endorse and elect to
9 have them there, when they go into the -- and
10 the parties do. I mean, at least they're out
11 there putting up candidates saying, "This is
12 who you ought to vote for," and the people
13 still don't vote for all of them. So there's
14 clearly a lack of knowledge from the voters on
15 that front.

16 But again, anything you could -- I
17 applaud this effort and anything that you could
18 do to sort of raise the standards of what's
19 expected from people who run and the knowledge
20 of the overall community about candidates, I
21 think, is a great public service.

22 MR. ROBENALT: Great. Okay, we're
23 going to open it up for questions in just a
24 minute. I think, Jay, you get your chance to
25 have your two cents here and then I think we'll

1 open it up to everybody to ask questions and
2 kind of join the conversation.

3 MR. MILLER: Probably the most
4 obvious thing I thought of coming into this
5 production, with respect to the last thing that
6 Joe mentioned, was that outside the Bridget
7 McCafferty race, the fact that she could get 46
8 percent says a whole lot about the kind of
9 education that the citizens may need to get the
10 right judges, and over the years I've covered a
11 lot of trials and the quality of the judges has
12 always struck me, as a layman, as very uneven.

13 Surprisingly, and maybe the Federal
14 Courts are a little better -- actually, they
15 probably are a little better, but generally it
16 doesn't -- so often it seems to be dependent on
17 who is the judge, and that's frightening and
18 that shouldn't be. My experience is covering
19 trials more than talking to judges, in
20 particular, and that part does frighten me and
21 I worry about that, and that's why I think what
22 you're doing is important.

23 MR. ROBENALT: Okay, good. Let's
24 open it up here. First of all, I would like to
25 open it up just for questions of these two guys

1 that you may have about how they do their work.
2 Then let's turn and focus a little bit on what
3 people want to see in a Qualifications
4 Committee and who they want to see on it, but
5 let's first give you a chance to ask both these
6 guys some questions about what they do and how
7 they do it. Mark.

8 MR. STANTON: Thank you very much.

9 Mr. Frolik, you indicated that
10 there's a number of things that you consider to
11 be very important as far as qualities,
12 prerequisites, not necessarily legal knowledge,
13 but temperament, you expressed strongly an
14 interest in a person's temperament, which is
15 certainly understandable.

16 We have on the Common Pleas bench
17 right now 34 judges and we have two
18 African-Americans, one male and one female, and
19 I don't know that -- I believe Ms. -- I
20 shouldn't say that, I don't know if Judge
21 Saffold -- she's certainly been on there a long
22 time, I don't know how long she's going to stay
23 there, but is that a consideration, the
24 diversity factor, because we have a -- I'm sure
25 you've been down at the courthouse --

1 MR. FROLIK: Oh, yeah.

2 MR. STANTON: -- and I don't know
3 what goes on in Judges' meetings and I'm sure
4 I'll never have that opportunity, but the point
5 of the matter is, the influx of people that
6 appear in that court, all right, is decidedly
7 in the inverse proportion to the people that
8 are sitting in judgment or monitoring those
9 particular cases. So I've always been
10 interested, and I'm sure many other people are,
11 whether or not the Plain Dealer considers the
12 diversity factor.

13 MR. FROLIK: Yeah, it is, and that
14 would be one of the things when we discuss
15 this -- I think at times when we've raised it,
16 it's been -- it's not been a tie-breaker but
17 it's been a factor, you know, we're very aware
18 of that, but we also don't have many candidates
19 who come forth.

20 You know, a lot of the -- there's a
21 very familiar set of names, if you will, who
22 have come, and it's a little different on the
23 Cleveland Municipal Court where I think it's a
24 pretty balanced -- or pretty diverse panel,
25 which is good to see and something that we've

1 always encouraged, and, you know, we find that
2 situation where sometimes you're looking at
3 multiple good candidates in a race like that.

4 MR. STANTON: So if you have two
5 people that are essentially people of equal
6 qualification, the diversity factor would put
7 one of those individuals over the top?

8 MR. FROLIK: You know, I'm -- it's
9 --

10 MR. STANTON: All I'm saying is
11 encourage. I'm talking about encouragement.
12 There should be more diversity on candidates.

13 MR. FROLIK: Yeah. We certainly
14 do, yeah.

15 MR. STANTON: To encourage
16 African-Americans or --

17 MR. FROLIK: We love to see --

18 MR. STANTON: -- Hispanic members.

19 MR. FROLIK: We would love to see
20 more candidates who are racial minorities, as
21 well as women. Although, there are certainly a
22 lot of women as well, but I mean, I would like
23 to see more people with different backgrounds
24 in the legal backdrop. I mean, there's all
25 kinds -- there's a whole lot of former

1 prosecutors. There is probably another way to
2 train people to go to the bench. Although, you
3 know, historically it's also been -- a lot of
4 people tend to come out of the prosecutor's
5 office and the prosecutors have taken a strong
6 interest in people who they like best for
7 office, and I'm not sure that other portions of
8 the Bar have taken historically the same
9 interest in getting people there.

10 MR. STANTON: What's the foundation
11 for that?

12 MR. FROLIK: Well, I think --

13 MR. STANTON: You don't have to
14 answer that.

15 JUDGE McMONAGLE: Any other
16 questions? Judge Trapp.

17 JUDGE TRAPP: I'm just curious why
18 the Plain Dealer generally and historically has
19 not done the kind of compare and contrast
20 side-by-side articles about the judicial
21 candidates that your sister papers in other
22 parts of the state and even our local News
23 Herald does to at least on one day give a
24 little bit of column space to -- especially
25 Court of Appeals judges, we're all the

1 anonymous judges in this state. It doesn't
2 matter if you're in Cuyahoga County or out in
3 my district, nobody knows what we do and nobody
4 knows who we are, and it's nice that we could
5 put lengthy information on Cleveland.com, but I
6 really don't know the stats on how many people
7 go to do the homework to make their way through
8 Cleveland.com to get to the information and the
9 questionnaires, because I know other papers
10 throughout the state at least do one,
11 potentially two, side-by-side comparison
12 articles.

13 MR. FROLIK: We have done that in
14 the past. I think there were a number of races
15 this year that we probably could have done more
16 on. You know, I'm not -- we don't have any
17 direct control for the editorial paper over
18 what the Metro staff covers, what the news side
19 covers, and I think that's a very valid
20 criticism and I would be happy to take that
21 back and share it with the people on the news
22 side who do make those decisions.

23 JUDGE McMONAGLE: Anybody else?

24 (No response.)

25 MR. ROBENALT: Let's turn to this

1 question then about who would you like to see
2 as members on a Qualifications Committee, and I
3 would like to start by asking this question,
4 should it be predominantly lawyers? I mean, we
5 obviously need lay membership, but should we
6 have this be predominantly lawyers or should it
7 be absolutely balanced in lawyers/non-lawyers,
8 and I'm sort of preaching to a choir here
9 but --

10 MR. MILLER: One of the things I
11 thought about from the beginning also was, I
12 would suggest that it should be a majority of
13 laymen. It makes a whole lot of sense to me.
14 You rely on and use lay people to make life and
15 death decisions. How much harder could this
16 be?

17 AUDIENCE MEMBER: I would like to
18 respond to that. That sounds persuasive on the
19 surface, but I can just describe to you the
20 dynamic that goes on in the Judge4yourself.com
21 process which we set. So much of the vitality
22 of the work of that committee and the
23 reliability of the work when it comes out is
24 based upon the experiences and the networks of
25 the lawyers in the room because they've been in

1 front of the courtroom.

2 Now, you're an exception in the
3 sense that at least you, in your profession,
4 have sat in the courtroom and have watched
5 trials and you have formed thus some beliefs
6 about their performance, but that's vitally
7 important and I'll give you a couple just small
8 examples.

9 Much of my work takes place in the
10 Federal Courts, Federal Trial Courts, some in
11 the Appellate Courts and some in the Common
12 Pleas Court, but I almost never go to the
13 Cleveland Municipal Court, occasionally I will
14 go. I never go to any kind of family court,
15 Domestic Relations, the Probate Court, and so
16 even as a lawyer, practicing lawyer sitting in
17 -- the Juvenile Court I almost never go there,
18 too.

19 So if I'm sitting in that process
20 and there aren't lawyers there who have vital
21 experience in front of those judges, then I'm
22 in a position where either I've got to play the
23 name game, or just based on the impression in
24 an interview, I'm reacting to something, and
25 there are lots of judges, I'm sure Joe has

1 experienced this in the Plain Dealer
2 endorsement process, there are lots of judges
3 that can really pitch a great game from the
4 left curtain. Some of these people are
5 accomplished politicians. No offense, Judge
6 McMonagle.

7 (Laughter.)

8 AUDIENCE MEMBER: And have been
9 very good at that.

10 The common experience of the
11 lawyers here and the networks they have then
12 bring stories and reputational stories to the
13 table, and I think unless you have a safe,
14 diverse committee that's out of all of those
15 networks of people who have actually appeared
16 in front of them, you're not going to get the
17 rich experience and deliberative process and
18 reliability.

19 MR. MILLER: Is there opportunity
20 or should there be opportunity to sort of
21 school the lay people as to what they should
22 look for or what they should talk about and
23 educate them as they -- on this for two years,
24 three years, however long it is, to get to a
25 level of expertise where they're better at what

1 they do?

2 AUDIENCE MEMBER: But that's why
3 lay people play an incredible portion and a
4 valuable process in our process, at least at
5 the Cleveland Metro Bar Association. We have
6 lay people on our committee who participate and
7 are incredibly important to us and raise some
8 very important points, but having them as a
9 majority or even half of it wouldn't work
10 because then you would lose all the experience
11 of people who appear in the --

12 MR. MILLER: I'm sorry. I guess I
13 was worried that you want to get the voters.
14 The idea is to be able to educate voters and to
15 spread the interest of the courts through the
16 lay people. I mean, the more you close them
17 out, the less you'll be able to do that.

18 JUDGE McMONAGLE: Jay, what did I
19 tell you? Don't argue with lawyers.

20 Judge Montgomery from the Shaker
21 Heights kingdom.

22 JUDGE MONTGOMERY: I think at least
23 there needs to be participation by the laymen
24 because what we find is that there is truly a
25 jaded outlook on the part of many very

1 well-educated individuals that all lawyers and
2 all judges have character flaws, and they would
3 much rather --

4 MR. ROBENALT: And they're in
5 cahoots with each other.

6 JUDGE MONTGOMERY: That's right.

7 MR. ROBENALT: It's an inside
8 system.

9 JUDGE MONTGOMERY: It's an inside
10 system, you're right. And they are much more
11 likely to follow the steps of the PTA parent as
12 to who they're going to vote for as opposed to
13 someone with trial experience on death penalty
14 cases.

15 So there is clearly, I think, a
16 need, and I also believe that just like in jury
17 selection, there has to be a layperson
18 selection, it can't simply be someone with
19 charisma. There has to be some foundation that
20 you have to get your hands around so you know
21 these individuals will meet certain criteria
22 when it comes to reasoning and expectations.

23 JUDGE McMONAGLE: One of the
24 things -- I agree with you, Jay, and one of the
25 things that affected judges the most, believe

1 it or not, and I go back to my first election
2 campaign back in 1982, was the demise of the
3 Citizens League. That was a -- and most of the
4 judges here at least had the opportunity to
5 appear in front of them.

6 They sent out a very detailed
7 questionnaire, you went before a panel, the
8 room was filled, you got some very interesting
9 questions, some of which called upon as to our
10 fall-back position of we're not allowed to talk
11 about that, but many of the questions were very
12 insightful, and I always thought that having
13 that Citizens League endorsement should be up
14 near the top of your listing, and it also
15 helped you with other bodies that you went to
16 like the Plain Dealer. "By the way, I've been
17 endorsed and screened by the Citizens League
18 and I got their highest reference." I agree,
19 that was a big loss. Aaron.

20 MR. BULLOFF: Hi, Aaron Bulloff.
21 I'm a little concerned about overemphasizing
22 the role of lay people on the committee. If
23 we're talking about educating the populous, I'm
24 a little troubled by having intelligent
25 designers teach physics.

1 And, Mr. Miller, you've covered
2 trials, but have you sat in settlement
3 conferences with counsel and judges?

4 MR. MILLER: No.

5 MR. BULLOFF: Do you know how well
6 the judge works with counsel to try to affect
7 settlements? Have you seen how judges rule on
8 dispositive motions? Are they ruling on
9 motions by looking at Hadley versus Baxendale
10 or by the expedience of simply granting or
11 denying a motion in the interest of clearing a
12 docket?

13 These are things that lawyers
14 hopefully can bring to the table but lay people
15 probably don't have a good sense of. So I'm a
16 little troubled, and I could expand on it, and
17 anybody in this room probably could expand on
18 this point. So I'm a little concerned that if
19 we're going to educate the populous, the
20 educators should have the background to
21 educate.

22 MR. MILLER: Well, I guess this
23 goes the other way, too. Part of the reason I
24 thought of this idea to begin with is the idea
25 if you have a majority of lay people, it

1 becomes incumbent on the lawyers on the panel
2 to be very -- be the educator to the rest of
3 the panel to very clearly explain what's going
4 on and what they should know.

5 I think I was aware in this kind of
6 situation what happens is, the lawyers
7 steamroller the lay people, and to be honest,
8 the way you just described what was important
9 to you did the same thing to me. You know,
10 when you talk about settlement conferences and
11 dispositive hearings, or whatever, you run
12 right over people and they are going to be
13 intimidated about contributing to a session
14 when you talk to them like that.

15 MR. BULLOFF: I hope I persuaded
16 you rather than --

17 MR. ROBENALT: No, but, you know,
18 it's interesting because you represent the view
19 of the people in this room, who are mostly
20 lawyers and judges, and he represents the view
21 of almost everybody else.

22 MR. BULLOFF: Maybe it's a matter
23 of degree and not a finding.

24 MR. ROBENALT: Yes, and I will say
25 one thing, and then we'll get to your comment,

1 when we did start Judge 4 Yourself, we were
2 very clear that we were going to have a major
3 lay component through the citizens, but they
4 were great because they did have the
5 experience. What would be nice for us to do,
6 if we do this Qualifications Committee, is to
7 try to get a group together to really restart
8 something like that to add to this and draw
9 from. Anyway, from the back.

10 MS. HUFF: Good evening, my name is
11 Leslye Huff and I am an attorney. I'm also a
12 proponent of laypersons' involvement in the
13 screening process, not so much because they
14 know about Hadley V. Baxendale or any of the
15 other cases that might be present by which a
16 judge will make some determinations, but
17 because of the ability to translate the laws
18 that govern us into a humane and human language
19 so that the people who are being judged and the
20 people who are being -- who are bringing
21 themselves before the courts, whether it's
22 civil court or criminal capacity, understand
23 that they have been treated in a
24 constitutionally appropriate way, and it's very
25 easy to use jargon as a way to obviate that,

1 and it's also very easy for judges to impress
2 attorneys and attorneys to impress judges and
3 the people who become the victims, whether they
4 are winners or losers in the case, can often be
5 the citizens.

6 More importantly I think we're kind
7 of -- we have a dilemma here about judges and
8 we have a dilemma about elections in general,
9 but the biggest dilemma that we have is that
10 our citizenry has not been educated in a
11 general fashion about the public services
12 position, the various positions that our public
13 servants are elected to handled, and so as long
14 as you have a person who is sitting on 150th
15 and Chagrin who doesn't know what the judge is
16 supposed to do or doesn't understand what the
17 city council's function is, you will have a
18 problem in elections. You will have an
19 uneducated citizenry who is unprepared to elect
20 anyone, not just Judges, and I don't know how
21 broadly based some of the individuals are in
22 this room in terms of wanting to make a
23 positive impact on the electoral process, but
24 if you do have an individual interest in that,
25 you should try to work in times when the

1 election isn't the point.

2 MR. ROBENALT: Right.

3 MS. HUFF: Because there is no way
4 that you can convince a citizen -- when you're
5 trying to teach them about elections but you're
6 also trying to push a candidate, there is no
7 way to convince that citizen that this is a
8 legitimate act.

9 MR. ROBENALT: So one of the things
10 you could do is, this task force could say
11 Let's continue doing public forums and get out
12 there and have lawyers and lay people go out
13 and educate people about that.

14 MS. HUFF: That's right. Generally
15 when there's no election involved, just in
16 terms of election, in terms of educating our
17 population about what they should expect from
18 the individuals that they put into office.
19 That way when the Plain Dealer comes out and
20 endorses one candidate, a person who has been
21 educated might not think of it as some kind of
22 shady deal that was done or some other reason.
23 They will understand that, Oh, yes, they are
24 supposed to have this kind of familiarity or
25 they're supposed to have this kind of record

1 and those two things match with what I've
2 learned as an educated civic citizen.

3 MR. ROBENALT: Yeah, all good
4 points. Joe.

5 MR. FROLIK: One thing that seems
6 to me that you've got to think about in terms
7 of where the Qualifications Committee kind of
8 fits in, in terms of Mr. Hussenbach, and what I
9 would say is, how do people get into the
10 pipeline.

11 I've been struck over the years by
12 how many people come in and say, "I always
13 wanted to be" -- you have to -- you know, the
14 loosen up question, "So tell us about yourself
15 and why you're running." Somebody says, "Well,
16 I've always wanted to be a judge." I could
17 understand teacher, doctor, lawyer, cowboy,
18 that sort of thing. No offense, the Judge is
19 here, but that strikes me as kind of an odd
20 thing that you decided when you were about
21 five or six-years old, that you always wanted
22 to be a judge. Although, I probably would have
23 written a book. I digress.

24 So what would be helpful, I think,
25 is sort of almost like a career ladder type

1 thing, tell people -- and we've had some people
2 who have come in and said, "I made it a point
3 in my practice to do these kinds of cases. I
4 spent four years in the prosecutor's office and
5 then I went into civil practice because I knew
6 I wanted to do this." What's an appropriate
7 career ladder for lawyers, if you will?

8 JUDGE McMONAGLE: For Judges.

9 MR. FROLIK: For judges, I'm sorry.
10 I know you guys are. What's an appropriate
11 sort of preparation? Some people have even
12 talked about maybe there should be a school put
13 on by the Supreme Court of the State of Ohio.
14 If you really want to run for judge, you could
15 take a year out -- or week off the year before
16 and go to judge school in Columbus and at least
17 we have forced you to think about the basics of
18 what does it mean to be a judge, and that's a
19 role maybe that you guys could play and, again,
20 sort of -- and then the parties have a group of
21 people who, Here's 10, here's 25, 30 people who
22 have expressed an interest who have gone
23 through some things that on a career ladder, it
24 suggests they're ready to be judges. Here's 25
25 Republicans, here's 55 Democrats.

1 You guys, if you want to endorse
2 somebody or people want to go on the ballot and
3 run against each other, I mean, to me that
4 would be very valuable from the good
5 qualifications standpoint. I think it's an
6 important thing, too, about when this committee
7 enters the process, as opposed to say when
8 (inaudible.)

9 MR. ROBENALT: Yeah, yeah.

10 JUDGE McMONAGLE: Okay. You heard
11 Joe give a shout out to a Columbus school, how
12 about a judicial course of studies at the law
13 schools?

14 AUDIENCE MEMBER: I'm open to it,
15 but I have a comment on the question on the
16 table.

17 MR. ROBENALT: Sure.

18 AUDIENCE MEMBER: If the problem
19 were that the people vote in groves and vote
20 for the wrong people, then why is that? The
21 problem is that people don't vote in judicial
22 elections for judge because they don't
23 understand why it's in their own interest to
24 elect judges in their district. The reason, in
25 answer to Mary Jane's question to Joe, is it

1 doesn't sell newspapers, people aren't
2 interested in who runs for judges because they
3 don't think it impacts their lives.

4 Now, if their uncle becomes a
5 defendant and gets convicted wrongly, suddenly
6 they have an interest; if they get sued, they
7 have an interest, but for most people, the
8 judicial race doesn't make a difference.

9 If part of the purpose of the
10 Qualifications Commission is to solve that
11 problem, I don't see how you could solve it
12 without having some lay people involved to help
13 us understand why people don't care and who
14 perhaps, as lay people, bring to the table the
15 kind of experience and prominence, and that's
16 one of the things the Citizens League could do
17 because it had a history and tradition and
18 people accepted the brand and listened to the
19 Citizens League. Again, not in the numbers
20 that the people in this room would like to see
21 happen, but they would listen.

22 So the question is, I think, how do
23 you put together a Qualifications Commission
24 that is going to have the kind of outreach and
25 impact on others that will interest people in

1 the business that we, as lawyers and judges,
2 all think is critically important to our
3 society but most of the world doesn't get that.

4 MR. ROBENALT: Randy.

5 AUDIENCE MEMBER: What we're
6 talking about now is getting the best possible
7 people on the bench, and there are, as already
8 has been identified, a number of important
9 points. The most important one, I agree with
10 you, is finding people who really want to be
11 judges and have the qualifications to be judges
12 to actually step up and leave their careers and
13 put themselves in line to meet the people on
14 this committee and persuade them why they are
15 the best.

16 We are never going to educate the
17 public with regard to the specific
18 qualifications of any particular judge enough
19 so that they can in any reasonable way choose
20 between any more that are -- perhaps are
21 reasonable too as we try to get to do that now.
22 That's why what you're doing, putting together
23 -- and the question on the table originally,
24 how do we select a group to select the people,
25 to select the candidates, because once the

1 group has assisted in selecting the candidates
2 and you only have people running for the office
3 of judge, the position of judge who are
4 purportedly qualified, then the education of
5 the public doesn't become all that important,
6 and that's what we're really talking about
7 here.

8 We're trying -- you know, at one
9 time we all said, "Oh, we have to have judicial
10 selection." Well, we've thrown that away.
11 Well, I -- quite frankly, what we're talking
12 about here is more getting back to that in a
13 certain way, and that certain way is only met
14 by making sure that the people who have the
15 chance to do that are people who are qualified,
16 and I think that our problem has not been -- we
17 have wonderful judges, terrific judges who
18 really want to be judges and they're great,
19 people are even lucky to get them, I believe,
20 but if the two people running are both
21 qualified, then they can bolster what their
22 real qualifications are, they can really tell
23 the people, This is why you want me rather than
24 him, he rather than she or whatever, but that's
25 the purpose here, and I think this is a

1 brilliant idea, and if what's on the table is
2 who should do that electing, I had an answer to
3 the point that somebody made, no one lawyer --
4 no four lawyers will have the same opinion as
5 20 lawyers on a particular judge.

6 Juvenile Court, extremely important
7 to have people who know what's going on in
8 Juvenile Court to determine whether any sitting
9 judge should continue as a sitting judge, but
10 you're not going to have on this committee that
11 many people, and what you need are people who
12 are going to be committed to going out and
13 finding out about the candidates, not just from
14 sitting there and listening to somebody talk,
15 because as it's been explained, anybody, any
16 good political person could become a judge, all
17 you have to do is be able to persuade this
18 group of ten people that I'm going to be a good
19 judge, and there's plenty of people who could
20 do that who wouldn't be good judges at all.

21 JUDGE McMONAGLE: Elizabeth.

22 MS. HARVEY: Thank you, Judge.

23 I just wanted to share my
24 experience in running for the Court of Appeals.
25 The one thing that I tried to do is educate

1 everybody that I spoke with at least what the
2 Court of Appeals were really all about because
3 no one really understood, and so I found that
4 people that I spoke with were very happy to
5 know, were very glad that I took the time to
6 explain to them what the Municipal Courts did,
7 what the Common Pleas Court did, what the rank
8 was and how the appeals process works and how
9 -- why there are so few cases that come out of
10 the Supreme Court, and a light bulb went off.

11 People do want to know and they do
12 want to understand. So perhaps it is -- it
13 will require lay people and attorneys but it
14 takes a broader commitment than just selecting
15 or finding people to run. It takes a much
16 broader commitment and that is about educating
17 the public. People that -- people want to
18 know, and those who don't want to know, there
19 is completely nothing you can do about it, but
20 there are people who want to know and there are
21 people who want to make the right choice.

22 MR. ROBENALT: Judge.

23 AUDIENCE MEMBER: Can we justify
24 Mr. Hawkins' phone bill by asking his comment
25 on the size of the Commission and the balance

1 between those in the industry and those out?

2 MR. ROBENALT: Dennis, are you
3 still there?

4 (No response.)

5 MR. ROBENALT: Hello?

6 AUDIENCE MEMBER: Before he speaks,
7 I will say this, if you put too few lawyers on
8 it -- Mr. Hawkins mentioned about 12 is right,
9 I thought I heard him say. If you put too few
10 lawyers on it, you're giving them that much
11 more power.

12 MR. ROBENALT: So the question you
13 want to ask him is the size and composition,
14 lawyers versus lay, that's the question?

15 AUDIENCE MEMBER: That's it.

16 MR. ROBENALT: Dennis, thoughts on
17 that, size and composition of lawyers versus
18 lay.

19 MR. HAWKINS: We've been pretty
20 successful with our Court of Appeals, and it's
21 a 12-member Commission with four members as lay
22 people. So, you know, given the track record
23 of over 35 years and a very, very
24 well-respected court that the people aren't
25 critical of the process to any great extent,

1 although -- and I'll share this, you know, most
2 recent story. The Commission on Judicial
3 Nomination for the Chief Judge nominates up to
4 seven people, and in this last go-around we
5 might have had 30 or 35 people apply. So, you
6 know, by limiting the number under the
7 Constitution and the implementing legislation,
8 it's signaling to the Governor that these are
9 seven very highly qualified individuals and
10 that's the standard.

11 This last go-around, one of the
12 members of the Court of Appeals put her name in
13 for Chief Judge and she did not make the list
14 of seven. She happened to be a woman of
15 Hispanic background and there were no other
16 women in the group of seven. For the first
17 time politicians and legislature and the public
18 and the press media raised questions about does
19 this system work.

20 So the system that went along
21 pretty well, you know, with quality people --
22 you know, our Chief Judge Judith Kaye for many
23 years was not a judge when she was appointed to
24 the Court of Appeals and distinguished herself
25 there and became Chief and was, you know -- and

1 that was kind of like drawing from the larger
2 fields of attorneys who are out there and might
3 make very good appellate judges because she
4 knew how it worked.

5 What happened is that for the first
6 time in 35 years people were questioning
7 whether the system really worked, and to me,
8 the lesson is that, you know, it's who comes
9 out of the Commission's recommendations, who
10 are the people that will validate the
11 composition of the Qualifications Committee or
12 Commission.

13 If stellar people are being
14 recommended regularly, there will be concern or
15 consideration. What happened as a result of
16 this is that the chair of the Commission on
17 Judicial Nomination was rotating off and was
18 replaced by a former Chief Judge of the Court
19 of Appeals as the chair of the Commission, this
20 very same woman I was talking about who was
21 appointed years and years before, not the one
22 who was already on the court, she had retired.

23 In order to, you know, convince the
24 public that this was going to be a process that
25 had integrity, that it was going to be looking

1 at individuals, you know, from the different
2 backgrounds and giving consideration, they
3 changed some of the language of their rules to
4 put a little bit more emphasis on diversity.
5 They really had to scrub their voting procedure
6 to see if the procedure might have led to this,
7 that they were block votes being cast, a very
8 complicated thing, and they made some minor
9 adjustments in the voting procedure.

10 Another point that I wanted to
11 make, because we were talking a lot about
12 public education and outreach, the members of
13 the commissions and screening committees also
14 have a responsibility to -- under the statute
15 in the Court of Appeals to reach out and to
16 solicit people to apply.

17 The reason why there had been a
18 drop-off in -- one of the reasons why there had
19 been a drop-off in the number of people
20 applying is that you can make your
21 questionnaires and your process so onerous that
22 you discourage people from applying and it's
23 just, you know, too much of an effort to fill
24 out all of the requirements and to meet with
25 subcommittees and finally the full committee.

1 So I think when you're designing your system,
2 you have to be careful that you're not
3 discouraging people from putting their name in
4 the hat.

5 MR. ROBENALT: Okay, great
6 comments.

7 JUDGE McMONAGLE: Jim, I got one.
8 Let's hear from the Legal Aid Society.

9 MS. SWEENEY: Thanks, Judge. My
10 name is Anne Sweeney, I'm an attorney with the
11 Legal Aid Society of Cleveland, and it seems to
12 me on the plight of citizen engagement, that's
13 really one of the areas where having both of
14 the political parties at the table for this
15 work is most critical and that we can really
16 capitalize on, and so those two institutions
17 should be instrumental in figuring out how we
18 can make this work in a way that is informative
19 and communicated to the voters because we know
20 that those are two groups that really can gage
21 the benefit. They certainly can gage or reach
22 the broader citizenry as well, but having them
23 here gives us that advantage to start with
24 those groups, and I really value the
25 participation and hope that that's an area that

1 they'll work with us on as well.

2 I was curious about, in terms of
3 membership on the screening committee, our
4 particular speaker said about the double blind
5 process, and I would love to hear more about
6 that in another setting.

7 MR. ROBENALT: Yeah, that's good.
8 We've got about ten more minutes and then we're
9 going to wrap this up.

10 JUDGE McMONAGLE: Judge Russo.

11 JUDGE RUSSO: I just have a
12 question --

13 JUDGE McMONAGLE: You know we have
14 to call on somebody named Judge Russo. And I
15 have six Russos.

16 (Laughter.)

17 JUDGE RUSSO: Jim, I guess my
18 question is, what -- and I hear from all the
19 questions here, what is the purpose of the task
20 force, this group? Is it two-fold, and that's
21 what I -- I really hear the questions going
22 both ways and I'm not sure. Are we looking at
23 putting members on the task force that are
24 developing a criteria that is sufficient for
25 judges to be qualified and then be stepped up

1 and nominated as a judge that would be
2 sufficient to be on the bench, or is it -- or
3 is it both, also the education of the public?

4 So are we looking at members to
5 develop this criteria and then decide if a
6 person fits that criteria, or are we picking
7 members to say, How are we going to educate the
8 public on what judge is good and why this judge
9 is, or is it two-fold, I guess is my question?

10 MR. ROBENALT: To answer your
11 question, what we want to do is create a group
12 called a Qualifications Committee that will
13 meet with potential candidates and say yes or
14 no, up or down, qualified or not qualified,
15 different from Judge 4 Yourself.

16 JUDGE RUSSO: Right. So we're not
17 talking here about educating the public?

18 MR. ROBENALT: No, but it's been
19 such a good point tonight, that's why we're
20 holding these forums, that it's something that
21 we now have to really think about, how can we
22 do that, and it ties into your point about the
23 parties can help us do that, too, and if we get
24 everybody thinking along the same lines and do
25 forums, many forums around this city for this

1 purpose, that's something that would be totally
2 different from having a Qualifications
3 Committee, but it seems to me it's one of the
4 big things that's come out of this meeting
5 tonight. So it's a good question.

6 MS. ROLLER: Jim, that's the thing
7 that certainly hits me, that there are two
8 questions, educating the public, because no
9 matter how well the Plain Dealer does in
10 endorsing a particular candidate or this
11 committee and having a great committee say this
12 is the best qualified, if the public isn't
13 educated, 125,000 will still vote for an
14 indicted judge. So I mean, we have to remember
15 what we each work with.

16 This is a political process, and
17 this, I think, is an era of great reform in
18 Cuyahoga County, we have a new form of
19 government, and we -- I mean, this is an effort
20 of reform. There is a reform within the
21 parties, certainly within the Democratic Party.
22 I can say that there are great efforts for
23 reform.

24 So this is a period of reform, and
25 in my view, because we are dealing with the

1 political process, we have to address that
2 reality. Not only should this committee work
3 on or this effort work on a committee to select
4 good candidates, but we have to have a
5 campaign, because this is politics, we have to
6 have a campaign to educate the public, and it
7 should be two-fold and I would recommend that
8 this effort embrace that in this era of reform
9 in Cuyahoga County and work on both of the
10 questions of Judge Russo.

11 MR. ROBENALT: Yeah, it's an issue
12 that we hadn't thought about that comes right
13 out of this. That's great.

14 Two more questions and we'll start
15 to wrap it up, and Tom, you're next.

16 AUDIENCE MEMBER: I hate to throw
17 cold water.

18 MR. ROBENALT: Since you were going
19 to say I hate to throw cold water, we're not
20 going to let you talk.

21 (Laughter.)

22 AUDIENCE MEMBER: I just wanted to
23 address your point, Jan, and I think what Randy
24 said earlier was, if we have a selection
25 committee or a Qualifications Committee that

1 basically votes up and down and that's what the
2 parties endorse, we don't have to worry about
3 an indicted judge being elected. So I think
4 that's key in getting --

5 MR. FROLIK: Actually, anybody can
6 go out and get signatures and get on the
7 ballot.

8 AUDIENCE MEMBER: Right, right. I
9 don't disagree that educating the public is
10 helpful and I think the process -- I mean, if
11 we could get public figures who have some
12 notoriety who could do, you know, speaking
13 engagements or even PS, you know, public
14 service announcements about being important,
15 that might get some --

16 MS. ROLLER: But just anybody can
17 run in the primary, and if they've got the name
18 --

19 AUDIENCE MEMBER: Not if they're --
20 not if they have to go through the committee to
21 be voted up or down.

22 MR. FROLIK: There will still be a
23 primary. You could be the endorsed candidate
24 of the Democratic or Republican Party and still
25 --

1 MR. ROBENALT: I think the point
2 is, it's going to be more difficult if you
3 don't have the party backing.

4 AUDIENCE MEMBER: Right.

5 MR. ROBENALT: Which I think is --
6 all right, Tom, and then I do actually want to
7 give both party chairs a chance to say anything
8 they want to say or just to say pass because we
9 are in a law class here.

10 AUDIENCE MEMBER: I said I was
11 going to throw cold water because I think one
12 of the main things we don't do is, the quality
13 of our legal community that we have or the
14 quality of the -- to the community that we
15 have, the fact is we have never put our money
16 where our mouth is on this issue, not once, not
17 ten percent of what's needed.

18 The reality is the foundations put
19 more into funding the Administration of Justice
20 Committee back in 1968 that created the
21 personal docket, the computerization of the
22 court. More money was put in for that
23 Administration of Justice Committee back in 68
24 than has been spent in any five-year period in
25 current dollars by any group in this county to

1 improve the quality of judicial elections.

2 The reality is that the candidates
3 who have won, Joan Synenberg being the best
4 example, as much support as she had in the
5 media, if she hadn't outspent her opponent by
6 as much as she did, she would not have won that
7 race.

8 AUDIENCE MEMBER: Or as photogenic
9 as she is.

10 AUDIENCE MEMBER: That's for sure.

11 MR. ROBENALT: Tom, very good
12 point. Very good point. We're going to have a
13 forum on fundraising and this is going to be a
14 core issue for us to talk about. So a great
15 point to kind of end this discussion with.

16 AUDIENCE MEMBER: I was going to
17 ask Mr. Hawkins before he leaves what his
18 budget just for Manhattan, just for the
19 Democratic Party process in New York County
20 is?

21 (No response.)

22 MR. ROBENALT: I don't think he's
23 still there.

24 AUDIENCE MEMBER: He's not still
25 there. I know what it is. I mean, it's over

1 half a million dollars.

2 MR. ROBENALT: Yes.

3 All right, Stuart and Rob, you get
4 the last word here, you can either say pass and
5 everybody gets to go, or you can say a few
6 words now that you're here.

7 MR. FROST: First of all, thank you
8 all for having us here and acknowledging the
9 integral role of the parties. Stuart is here
10 and he said the same about me, we convinced
11 each other to participate and went.

12 A couple things, brief points to
13 take away, because we are the last word and
14 when we get done, you have to do all this
15 stuff, and it has been touched upon already,
16 the reason it's been mentioned so many times
17 how important we are to the system is because
18 we get out there and we endorse and we support
19 the candidates and campaign, but others do,
20 too, and that's why we have a Plain Dealer
21 representative here. They endorse as well.

22 Think that on through, Call and
23 Post endorses, The Sun Newspaper many times
24 endorses. There are other organizations,
25 nationality organizations and others.

1 Part of what we're kind of
2 wrestling with, let's just do it, let's put it
3 up. Whether it's 12 members or 24 members,
4 whatever it is, let's get it going, and if it
5 has integrity, the Plain Dealer is going to pay
6 attention to the results that come out of it,
7 the parties are going to pay attention to the
8 results that come out of it. Let's just get
9 started with doing it and let's make sure we
10 all buy into the process, the parties and
11 lawyers as well.

12 Another thing that we were talking
13 about that I thought was key, you talked about
14 the dual roles, and the third is there has to
15 be admission of the Bar Associations to
16 recruit, to reach out and encourage people who
17 should be judges that they need to run. He
18 mentioned that in his -- as one of the last
19 things, he said he wanted to make sure that
20 they got out, and I agree wholeheartedly with
21 that.

22 MR. ROBENALT: Yeah. Stuart.

23 MR. GARSON: Thank you for inviting
24 us to participate on the task force, and Rob
25 and I are very, very much -- I think it's

1 fortunate that you happen to have two lawyers
2 that are heading the respective parties right
3 now, and contrary to popular myth, the problem
4 when it comes to our judicial candidates, we're
5 probably more on the same page than not on who
6 we want to be judges.

7 I'm reminded of that adage that
8 basically said that the envy of good is
9 perfect. So don't try to be perfect, you're
10 not going to get there. Just come up with a
11 process because at the end of the day it's
12 still going to go back to the parties, and what
13 you have to hope is that we get our internals
14 right.

15 Jay, you're concerned about lay
16 people on the committee. Whether it's a valid
17 concern or not, believe me, within the parties
18 there is going to be lay people involved in
19 that process, and so I wouldn't make
20 yourself -- I wouldn't try to drill this thing
21 down to such a micro level that you lose what
22 you're trying to do, and what we're simply
23 trying to do is let us know if these people are
24 qualified. That way, then we come back and
25 then, Joe, you can't call us lobotomized

1 Democrats.

2 I will tell you the one thing that
3 did come out of that article, and speaking for
4 my party, of those 125,000 people, the reason
5 that judge is not a judge today is because the
6 party did not put her on the sample ballot,
7 that's why she was not elected judge, but there
8 was no mention of that in the article.

9 So the fact of the matter is, the
10 parties have a vital role to play here, for
11 good or bad. Help us be better, and I think
12 that's what we all want.

13 So we will participate in this
14 process so long as we head in the right
15 direction, but I think there's a lot of
16 wonderful ideas, a lot of ambitious ideas. I
17 wouldn't make this that hard right now. Let's
18 just get something good in place and then we
19 can fine tune it as we go forward.

20 MR. ROBENALT: Excellent.
21 Excellent, excellent thoughts. Let's conclude
22 this.

23 Mike Ungar probably wants to thank
24 everybody on behalf of the Bar Association.

25 (Laughter.)

1 MR. UNGAR: I do want to thank
2 everybody and I want to sort of follow up on
3 the point that Rob and Stuart made, and they
4 obviously know this because they are part of
5 it, we are -- notwithstanding the work of this
6 task force, we are getting something going
7 right now, I announced it on WCPN today, and it
8 probably falls in the category of anything but
9 perfect, but you guys can think about what I've
10 put together and give us your feedback, but
11 again, the most important folks in the room,
12 the most important audience, the customer, if
13 you will, here, at least from my perspective
14 and the Bar's perspective, is the political
15 parties. We can construct a Rolls Royce, but
16 it's not going to do us any good if that's not
17 ultimately what they want.

18 So here's what we have, there is
19 going to be an interim Judicial Qualifications
20 Committee that I've put in place so that we
21 have something up and running here and now for
22 the political parties to come to. It is going
23 to be co-chaired, not surprisingly, on a
24 bipartisan basis by former Judge Peggy Foley
25 Jones on the R side and by Bob Linton on the D

1 side. Most of you probably know Bob currently
2 serves as a co-chair, along with Steve Wolkin,
3 of the Cleveland Metropolitan Bar Association's
4 Judicial Selection Committee, and then
5 following them, Subodh Chandra will be the
6 incoming chair of the Judicial Selection
7 Committee.

8 It is going to be supplemented.
9 Let me talk for a moment too about the idea of
10 getting more lay involvement, more citizenry
11 involvement. I'm all for that. The Cleveland
12 Bar Association's Judicial Selection Committee
13 has built-in slots for lay membership. Perhaps
14 not as many as ultimately this task force will
15 recommend, but it is there and we are having a
16 meeting tomorrow to talk about a replenishing
17 of those slots.

18 In addition to the nucleus of this
19 interim committee, we'll call it, is going to
20 be the Cleveland Metropolitan Judicial
21 Selection Committee supplemented as follows:
22 Deborah Coleman, who all of you know, who has
23 done an amazing job chairing the Judge 4
24 Yourself coalition, is also going to be on
25 this, and then each of the constituent members

1 of the Judge 4 Yourself initiative will put on
2 representatives, in addition to several other
3 Bar Associations that I plan to reach out to,
4 and for those who don't know what we're talking
5 about, that's the Cuyahoga Criminal Defense
6 Lawyers Association, the Norman S. Minor Bar
7 Association, which is the largest
8 African-American Bar Association in Ohio, and
9 the Ohio Women's Bar Association. Is that it?
10 Yeah, four. It used to be five but then the
11 Bars consolidated.

12 And then I've reached out to the
13 Hispanic Bar Community, Asian Bar Community and
14 The Human Rights Campaign.

15 Then obviously I'm constructing
16 this with -- under the very careful guidance
17 and approval, I'm doing all the work and
18 they're getting all the glory, but that's okay,
19 I e-mailed Rob and Stuart and put this thing
20 together, I've conferred with the Judicial
21 Selection Committee advisors that I rely on,
22 all the people whose names I just mentioned,
23 and that's what's going to be in place on an
24 interim basis and we're going to take this
25 sucker out for a test drive, and I submit that

1 at some point we ought to come back and find
2 out whether -- how she drove, see whether it
3 worked.

4 Again, the infrastructure will be
5 provided by the Bars, the questionnaires will
6 look very familiar to those that are expressing
7 interest, but at the end of the day, to Jan's
8 point before, I've got to tell you, if this
9 thing works, one of those indicted judges, I
10 submit, would never have made it through this
11 Qualifications Committee. That indicted judge
12 would not have been a nominee of one of the
13 parties in this room and he or she would not
14 have gotten through and it wouldn't have even
15 been on the ballot.

16 And I too want to note -- I didn't
17 get a chance to do it, he pre-empted me, and I
18 have a Letter to the Editor in the works, Joe,
19 on this point because it is crystal clear
20 that -- to me at least, that notwithstanding
21 the great work of Judge 4 Yourself but for the
22 Democratic Party having the courage to do what
23 they did and take her name off that ballot, she
24 would have been re-elected. No doubt about it,
25 that's a fact. That's what would have

1 happened.

2 So we owe it to them and that's
3 what I call putting your money where your mouth
4 is. That just proves it. We've got two
5 chairs, chair of the Democratic Party, chair of
6 the Republican Party, who actually give a rat's
7 behind about the quality of our bench, and that
8 is a window of opportunity that we all should
9 capitalize on.

10 JUDGE McMONAGLE: So much for you
11 getting the last word.

12 (Laughter.)

13 MR. ROBENALT: Thanks for coming.
14 Look at our website.

15 (Forum concluded.)

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REPORTER'S CERTIFICATE

I, Jill A. Kulewsky, do hereby
certify that as such Reporter I took down in
Stenotypy all of the proceedings had in the
foregoing transcript; that I have transcribed
my said Stenotype notes into typewritten form
as appears in the foregoing transcript; that
said transcript is the complete form of the
proceedings had in said cause and constitutes a
true and correct transcript therein.

Jill A. Kulewsky, Notary Public
within and for the State of Ohio

My commission expires August 31, 2015.