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Why Reporters Love Judicial Elections

JOEL ACHENBACH*

Right up front, I'd like to cast a vote in favor of the current judicial election system.

I like judicial elections. Indeed, I cherish judicial elections. This is because I am a newspaper reporter, and newspaper reporters love anything farcical, funny, structurally absurd, or silly. We especially enjoy these qualities when they appear in government institutions, and love them all the more when the straightforward reporting of these matters is enough to evoke hilarity and pathos.

Humor derives from overlapping but incompatible frames of reference, and by that definition a judicial election is really quite amusing. Judges are forced to campaign but then aren't allowed to actually say anything. The one frame of reference, campaigning, grinds its gears against the other frame of reference, the canons prohibiting judges from espousing political beliefs. Hence, humor. The judges also have to take money from lawyers, and yet they must preside impartially over cases argued by those same lawyers. It's funny! Judges spend years going to law school and building reputations, but when their names appear on the ballot, the chances are that most voters will have no idea who they are and will vote simply on the basis of how the candidates' names sound.

I am extremely privileged to have the honor of speaking on this topic, since I am not a lawyer, I am not presently a resident of the state of Florida, I am not presently in the custody of your justice system, and, in the context of this symposium, I am arguably a wholly inappropriate speaker. Being an inappropriate speaker in front of a large audience of specialists is one of the three universal nightmares, along with forgetting to study for a big exam and showing up to school naked. Nevertheless, I have several things I want to share with you.

The first is something I witnessed six years ago. It was one of the most amazing things I've ever seen, truly appalling, and of course, it made for great copy. I was working on a story for *The Miami Herald* about judges in Dade County. It was the kind of story that posed the question: Dade Judges, Threat Or Menace? I decided to fly to Tallahassee in time to witness the filing deadline for candidates for the various judgeships. I knew there were some colorful characters involved in judi-

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cial races in Dade County, but what I found in Tallahassee was something worthy of a Fellini film.

As you know, the easiest way to win an election is to have no opposition at all. And the best way to have no opposition at all was to hire a certain Miami Beach Public Relations person. I don't think it's necessary for me to name him. For our purposes let's call him "the Hamster."

Hiring the Hamster ensured that none of the other people he represented would run against you. He charged about \$12,000 for a circuit seat. Another gentleman, named Bob, was the Hamster's rival as a campaign consultant for judges. The Hamster hated Bob. The Hamster always referred to Bob as a five-time convicted felon. Bob told me that the label was completely unfair because, in fact he was convicted only once, on five separate counts. When I asked Bob what made him an appropriate campaign consultant for judges and judicial candidates, he said that his three-year incarceration in federal prison had rehabilitated him. He added, "I think any judge should be proud to associate with me because I'm an example that the system works."

The Hamster and Bob were in Tallahassee when I arrived, as were a number of incumbents. Some oddball characters who hadn't yet decided in which race they would run were also there. There was a lot of jockeying going on. Judges and candidates go to Tallahassee because there is constant last-minute maneuvering, with some people jumping out of one race and into another. Every year there are floaters who are strategically used by the Hamster and Bob as threats against judges. A judge who doesn't hire a campaign consultant runs the risk of having one of the floaters placed into his or her race. One of the floaters that year was a television character actor, a very large man who told me that he weighed 320 lbs. The Hamster insisted that the man actually weighed 477 lbs., and that he only accepted roles that specifically called for a "quarter-tonner." This is, perhaps, an irrelevant detail, but I can't get it out of my mind.

On the morning of the deadline, the TV character actor fell asleep at the breakfast table in the lobby of the Tallahassee Hilton, prompting a former judge on the scene to say, "Look, he's practicing to be a judge!"

Another floater had been in the hotel restaurant on the previous night and had ordered a piece of pie. As he ate it, a crowd of fifteen people gathered around him, just staring at him in fear and silence, wondering who he would file against.

There was a county judge, who shall remain nameless, who was rated in the annual bar poll as the county's worst judge. He had been investigated and reprimanded by the Judicial Qualification Committee for ethical lapses as a private lawyer, and he was famous for placing bets

with a bookie, who was listed in his personal phone book under B. This judge defended his conduct by saying that when he attended the University of Miami School of Law—and these are his exact words—“legal ethics was not taught.”

He was one of the judges in Tallahassee for the filing deadline. There’s no real reason to go to Tallahassee, since you can file your papers by mail. This county judge told me he had traveled to Tallahassee because “the mail is horrendous.”

The B-for-bookie judge was worried that one of these floaters would file against him, so he was nervously pacing around in the final minutes before the noon deadline. He had one thing going for him: he had hired *both* the Hamster and Bob the one-time-on-five-counts-convicted felon. Thus, he had made it unlikely that anyone would run against him. Sure enough when the deadline passed, he remained unchallenged.

Even so he did not leave the building quite yet, because he had heard there might be some mail coming up from downstairs, mail which might conceivably contain an opponent’s filing. Finally, after receiving some information, he turned happily to Bob-the-felon and said, “They just announced that there’s nothing in the mail room,” and Bob-the-felon shook the judge’s hand and said, “Congratulations.” Four more years for the county judge.

I recognize that there is a difference between Dade County and the rest of the State of Florida. Because I grew up in Gainesville, I know that Dade is considered an abomination to most Floridians. Before coming to this event, I tried to come up with some actual ideas about what should be done in the way of judicial selection reform, and I kept thinking of a certain idea that’s floating around the District of Columbia, my current home. Yes, I’m thinking about statehood for Dade County. I figure that everyone wins that way.

I had lived in Florida for twenty-five years, and the first time I needed to go to court here was just a few months ago. I won’t go into particulars other than to say it was a probate matter. Most people almost never have to go to court. When we do, it is a big deal. We get all worked up. This is why we pay such insane sums of money in legal fees. We want to win. And we definitely want to believe that the judge assigned to our case is going to be fair and impartial.

Unfortunately, in my recent case, my lawyer told me that the judge handling it had low bar poll ratings. I remembered the story I have just related, and I wondered whether my lawyer contributed to this guy’s election campaign. Did the opposing counsel make a contribution? How would I know that I hadn’t already lost the case? Finally, I won-

dered whether this judge obtained his seat on the bench in the first place simply because he had a prepossessing name.

I did win the case. Justice prevailed. But the moral of this story is that in addition to having an excellent judiciary, it is important to have one that is *perceived* as excellent.

I am aware that there are good things about the current system, and that there are problems with a pure merit selection approach. These are democratic concerns. I think, however, that democracy is a poor name for a system in which voters routinely vote for people they know nothing about. And surely what I saw in Tallahassee was not a great example of democracy in action.

But it was great copy, as we say in the news business.

Please, don't change a thing.