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NATIONAL SYMPOSIUM ON JUDICIAL SPEECH - POST WHITE  
AT THE NATIONAL JUDICIAL COLLEGE  
RENO, NEVADA

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TRANSCRIPT OF PROCEEDINGS  
SYMPOSIUM  
February 25, 2005  
8:00 A.M. to 12:00 NOON  
Reno, Nevada

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1 FEBRUARY 25, 2005, FRIDAY, 8:00 A.M., RENO, NEVADA

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4 FIRST SESSION

5 8:00 A.M. TO 9:00 A.M.

6 HOW HAS WHITE ALTERED THE

7 MEDIA'S APPROACH?

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11 MR. HENGSTLER: Good morning. My name is  
12 Gary Hengstler. I am with the Reynolds National Center  
13 for Courts and Media. I understand from the  
14 pre-symposium issues and questionnaires that there are  
15 at least two issues you would like us to focus on today.  
16 One being how to respond to an interview situation,  
17 especially as a reporter. The other is how to handle  
18 the questionnaires that will come in a campaign. (Very  
19 difficult to hear.)

20 Let me first introduce our panelists. I'm  
21 very grateful to them for taking the time to be with us  
22 today. We have James Alfini, President and Dean of  
23 Southwest Texas College of Law. And I think has, has  
24 been assisting our center as we've developed our

1 programs over the past five years for judges and  
2 journalists.

3           This is Lucy Dalglish, the Executive Director  
4 of the Reporters Committee on Freedom of the Press, also  
5 a member of our advisory council, who has been very  
6 helpful.

7           And T.C. Brown, Director of Legal Affairs,  
8 and reporter for The Cleveland Plain Dealer. Let me  
9 just say as someone who is from, a native of Ohio, The  
10 Cleveland Plain is one of America's most distinguished  
11 newspapers.

12           Let's start with a basic common ground.  
13 There's one thing that, when we teach our courts to do,  
14 and judges and journalists do share a common value.  
15 Both judge and journalist must have the public's trust  
16 and confidence in the fundamental fairness and unbiased  
17 approach to the job for the system to work.

18           Now particularly with the election campaigns  
19 for judges we have run into problems. I think back to  
20 when I was an editor in Indiana and Ohio, and we know  
21 that the information about a judicial candidate is  
22 important. We know that the voters need information.  
23 But the key ingredient, at least from my perspective, is  
24 how do you make that interesting.

1                   You've got in the past, I went to law school  
2 and had so many years of practice. I will be fair and  
3 impartial. That's about it.

4                   And we know from your experience with your  
5 spouse and family members and friends you tend to tune  
6 them out, once you've gotten the gist of the  
7 information, and someone wants to go into a myriad of  
8 details.

9                   So the key factor that limited the amount of  
10 coverage we gave to judicial candidates was that there  
11 really wasn't a whole lot of interesting things to write  
12 about once you got past the initial information.

13                   The question I think we're raising and  
14 discussing is whether White has changed that landscape.

15                   And in that regard I would like to invite the  
16 three panelists to give a brief overview of their  
17 perspectives about the situation and whether life has  
18 changed and if so how.

19                   Let me start with Lucy on that.

20                   MS. DALGLISH: I would have to say I really  
21 haven't noticed any changes. I've noticed attempts by  
22 the media to get more information but I haven't really  
23 noticed a lot of success.

24                   My organization is Legal Defense and Advocacy

1 for Journalists in the United States. And I have one  
2 entire fellowship that focuses on nothing but secret  
3 courts and prior restraint issues and openness in the  
4 court.

5           So I frequently get phone calls from people  
6 who having a difficult time covering unusual court  
7 cases, both criminal and civil. But judicial election  
8 issues are not really high on the list of concerns from  
9 the people who call me.

10           And before I took over at the reporters  
11 committee I was a trial lawyer for five years in  
12 Minneapolis. Before that I was a reporter and editor at  
13 St. Paul Pioneer Press. And at the end of that I was  
14 doing a lot of court reporting.

15           And I guess because of that role when I was  
16 in Minnesota in the late nineties, the issue, the bar  
17 association decided we need to, we need to make the  
18 public more aware of how important courts are, and how  
19 important quality of the judges are, and we need the  
20 public to pay more attention to judicial elections. And  
21 we think you're the one to help us. Go talk to the  
22 newspaper, go talk to the various news directors out  
23 there and try to convince them that we need to spend  
24 more time on these important judicial elections.

1                   I said. Okay. Fine. I set up a series of  
2 meetings with city editors at the newspapers and  
3 everything, and assembled several distinguished judges  
4 and some leaders in the bar association. And we were  
5 there to talk about you need to pay more attention to  
6 the courts and judicial elections. They said okay.  
7 What would you like us to cover? Well, there are some  
8 judges who are not as competent as they should be.  
9 There are some people who are really good candidates,  
10 and you don't do a very good job of covering and letting  
11 the public know about the quality of the judges.

12                   Okay. Are you going to -- who do you have in  
13 mind? Who do you think is a bad judge? Well, we're not  
14 going to tell you. Well, do you have any data out there  
15 on a certain judge who gets overturned by the Court of  
16 Appeals regularly? Well, I can't share that with you.  
17 I have to appear in front of these people. But you  
18 should be able to report their qualifications. They are  
19 of high character, they will be fair and impartial. And  
20 you go, okay. That is one big inch story. Now what?  
21 Now what do you want me to say? What do you want us to  
22 cover?

23                   Have they been involved in a controversial  
24 case? Judges who are incumbents, sometimes you can

1 have -- sometimes you can write something about cases  
2 they had presided over. It was very, very difficult for  
3 a journalist to cover any type of judicial election,  
4 partly because other than character, fairness, and  
5 qualifications, nobody else would say anything.

6 I think that might be changing in the future  
7 as more states go to online electronic access to  
8 judicial records, because then journalists will have the  
9 ability to actually look at more documents, look at  
10 results, take dockets, compare them to, you know, rates  
11 of being overturned, able to get some quality  
12 information about whether or not judges are fair or  
13 impartial. But it's almost impossible to cover it.

14 Now what I've noticed -- when I was reading  
15 through materials preparing for today's session -- what  
16 I noticed was the complaints that were the loudest and  
17 angriest didn't really have much to do with journalism.  
18 It had to do with advertising. And it had to do with  
19 who is paying for that advertising, and it had to do  
20 with speech in the sense of is the chamber of commerce  
21 backing one candidate over another. It didn't have much  
22 of anything to do with the actual coverage.

23 So I'm hoping, you know, that as time goes  
24 on, we'll have better data to cover judicial elections,



1 but I don't really foresee White having much of an  
2 impact, because one thing that I have noticed is that  
3 journalists, once you explain to them that White doesn't  
4 seem to say everything you think it says, it's just the  
5 announced provision, and it doesn't require judges to  
6 talk -- and I think if that's your position, that you  
7 don't, you know, that you have ethical constraints or  
8 you feel uncomfortable talking about issues, you just  
9 explain that to the journalists.

10                   And if you feel that you can't comment on  
11 something, then -- and you feel completely constrained,  
12 then don't comment. But don't get upset with your local  
13 reporters for not covering the elections because there's  
14 nothing to write about.

15                   MR. HENGSTLER: Dean Alfini?

16                   MR. ALFINI: Yes. Some random thoughts here,  
17 and Lucy prompted some of them.

18                   I understand how tough it is for the press to  
19 cover judicial elections. And I understand the things  
20 like a judge's background and qualifications are not the  
21 stuff that is newsworthy -- that reporters that are  
22 looking for newsworthy items are going to be excited  
23 about.

24                   On the other hand, I think the big danger

1 here is -- and I think we all recognize that -- is that  
2 as the media approaches judges during election  
3 campaigns, they may push judges to a point where the  
4 judiciary becomes a third political branch.

5 I like to remind reporters periodically that  
6 we have three branches of government, and two, the  
7 legislative and executive are political branches, and  
8 the judiciary is intended to be the counter majoritarian  
9 (phonetic) branch. It's intended to be independent and  
10 impartial.

11 And when, when we push judges during the  
12 course of a campaign to identify themselves with certain  
13 issues and certain constituencies, they begin to look a  
14 lot more like legislative and executive branch  
15 officials.

16 They, they will, when they get on the bench,  
17 want to dance with those who brung ya, and as  
18 legislators and executive branch officials necessarily  
19 should. They should represent the constituencies that  
20 put them in office.

21 I don't think judges should be doing that.  
22 And I don't think we should be pushing them to do that.

23 And I, I think -- ooh, she wants to respond  
24 to me already.

1                   And, and I think when newspapers do -- in  
2 your materials, by the way, there's a very, there's some  
3 very good cases by T.C. in The Cleveland Plain Dealer,  
4 on the judicial elections in Ohio. And, but one thing  
5 that concerns me -- although great reporting on his  
6 part, great educating of the public on these issues --  
7 the one thing that concerned me is that, newspapers  
8 sending out a questionnaire to candidates.

9                   Are you crossing that line between reporting  
10 on newsworthy events and making news when you send out  
11 questionnaires? Shouldn't you be concerned about, about  
12 that? When you, when you push judicial candidates to a  
13 particular point, are you, are you making news? Are you  
14 maybe running the risk of upsetting that, that, that  
15 delicate balance if you will.

16                   I agree with Lucy, though, that I don't think  
17 White so far made much of -- has had much of an effect.  
18 If you read that first piece by T.C., again, it's a very  
19 good piece. You'll see that all four candidates were  
20 very reluctant to respond to some of the issues that  
21 were, that were posed to them in The Plain Dealer  
22 questionnaire.

23                   I, I would have preferred that the article be  
24 titled "Judicial Hopefuls Act Responsibly" rather than

1 "Judicial Hopefuls Reluctant To Give Stances on Issues."  
2 But I thought that when I came to the end of the article  
3 I had a pretty clear sense of who these four people  
4 were. You did a good job of finding information  
5 elsewhere.

6           One of the places he went to for information  
7 was the academy. And he had David Goldberger (phonetic  
8 spelling) from Ohio State and Candice Pope from Toldeo,  
9 is she, and some others saying things like well, they  
10 ducked the issues. It's like -- I think Goldberger  
11 said -- it's like a soldier on a beach ducking the  
12 bullet.

13           Roy, we need to be doing a better job in the  
14 academy of informing our colleagues about the values  
15 inherent in the judiciary and what they, what they  
16 should or should not -- they need to be explaining  
17 through the press to the public, why judicial candidates  
18 are acting the way they are.

19           But anyway, those are sort of, sort of some  
20 random thoughts. I think, like Lucy, that if we all act  
21 responsibly, White is not going to have -- it will not  
22 pose the kind of danger ultimately that, again, we  
23 create a third political branch.

24           And if all the journalists act like T.C., I'm

1 okay. But I, I do worry about, about the  
2 questionnaires.

3 MR. HENGSTLER: T.C.?

4 MR. BROWN: Well, after White, we saw a door  
5 opening, and a couple of years later, now we realize we  
6 only thought we saw a door opening.

7 In practice, I think caution and reticence  
8 have been the operative words for the judicial  
9 candidates that I've come across in trying to get them  
10 to respond. So in other words, it's mostly been more of  
11 the same.

12 You know the duty of a news organization is  
13 to fully investigate all candidates. And gathering more  
14 information from the candidates is valuable for us and  
15 for the readers. And the need is definitely out there.

16 For instance, I think it was the League of  
17 Women Voters did a survey a few years ago, most voters  
18 could not name all the members of the Ohio Supreme  
19 Court. And in fact many of them did not know who the  
20 Chief Justice was, Tom Moyer, and he had been on the  
21 court about 18 years by then.

22 It's also well known that voters often ignore  
23 or skip down, you know, they skip over the, down  
24 judicial tickets, the judicial races. But a 2002 poll

1 by the League of Women Voters of Ohio showed that 84  
2 percent of the respondents to that poll said they'd pay  
3 more attention to judicial races if candidates would,  
4 quote, talk more about their specific views.

5           As has already been mentioned, we've done  
6 questionnaires after every -- since White, in every  
7 election cycle we've sent out questionnaires.

8           The most, the biggest one was a couple of  
9 months after White, we sent out 15 questions to four  
10 supreme court candidates. And the topics covered  
11 everything from legal definition of parents, concealed  
12 carry, tort reform, school funding, lawyer discipline,  
13 truth in sentencing, recusal from cases involving big  
14 contributors. And we had, as the Dean mentioned, we had  
15 several law professors review the answers.

16           One of the quotes -- these answers are hardly  
17 models of clarity. As the Dean mentioned, David  
18 Goldberger said, it's like the first guy to hit the  
19 beach in battle, you prefer not to take the first  
20 bullet.

21           So the responses weren't real revealing. No  
22 one gave an opinion on school funding or concealed  
23 carry. And everyone said it's up to the general  
24 assembly to determine the legal definition of a parent.

1                   In fact, one candidate said if I'm running  
2 for the general assembly that might be an appropriate  
3 question. Another candidate suggested that the public  
4 can search published opinions of judges if they want  
5 insight to a judge's character. Great idea, but I think  
6 it's an unlikely scenario that people are going to  
7 either know how or take the time to do that, other than  
8 lawyers.

9                   Three of the four in the questionnaire said  
10 they support the death penalty, but they did not  
11 elaborate. One candidate answered less than half the  
12 questions and noted that she did not, quote, I don't  
13 think the rules of judges have changed.

14                   So Lloyd Snyder, who is a law professor at  
15 Cleveland Marshal College of Law said that he thinks  
16 that, you know, sitting judges have a stronger advantage  
17 if nothing is said. The public wants more but does not  
18 want to hear only that a judge will be firm, fair, and  
19 impartial, which is the standard answer that we've  
20 gotten as reporters.

21                   MR. HENGSTLER: So basically -- yes.

22                   QUESTION/COMMENT FROM AUDIENCE: I'm going to  
23 provide the counterview. I ran for the Pennsylvania  
24 Supreme Court in 2003. Pennsylvania elects judges only

1 in odd years. It was the first real election after  
2 Minnesota vs. White. Maybe I was too naive, not having  
3 the benefit of all of this to know that we should not  
4 take advantage of the banning of the announce clause.  
5 And I took positions on all the issues.

6           And I don't know, T.J, if you know Kid  
7 Macorsey, (phonetic spelling.) Harrisburg Patriot News,  
8 he's the principal political reporter for Pennsylvania.  
9 But what happened is that my opponents declined to take  
10 positions on issues citing the recusal concerns. As a  
11 quick digression, I've didn't by that a bit.

12           She wanted to be all things to all people.  
13 She wanted trial lawyer and position support. She  
14 wanted labor union and Chamber of Congress support, so  
15 she tried not to take positions.

16           The reason that I tell you this is that  
17 Minnesota vs. White became the issue during the  
18 campaign. And I was endorsed by every major newspaper  
19 in Pennsylvania. And the, the Allentown Morning calls  
20 endorsement, calls endorsement, but he disagreed says we  
21 disagree with Judge Baer on several issues, but we  
22 endorse him because he has the courage to take his  
23 positions, and I prevailed in a race where a Democrat  
24 had not won in Pennsylvania since '95 and only two since



1 '89 by a relatively large position, large vote.

2           And I think it was because I picked up the  
3 votes of the people who appreciated the taking of  
4 positions even if they disagreed with those positions,  
5 with the possible exception of the antichoice people who  
6 are voters, and voted against me, because I told them  
7 that I was pro choice.

8           MR. HENGSTLER: I had that perspective come  
9 up in the journalism class I teach, that if we assume  
10 that jurors have the ability to put aside their personal  
11 beliefs and opinions and be fair, why do we not ascribe  
12 the same thing to judicial candidates.

13           QUESTION/COMMENT FROM AUDIENCE: And they all  
14 have opinions. Everybody is, is, you know -- not  
15 everybody, but many people are either pro or anti-gun  
16 control, or pro or anti-choice, which are the only two  
17 issues anybody can touch upon.

18           MR. HENGSTLER: That's an excellent  
19 springboard. Let me show you White in action and then  
20 we'll get back.

21           And, by the way, we have members of our  
22 National Advisory Council here, distinguished judges,  
23 journalists, court public information officers, lawyers.  
24 I invite you to offer your comments.

1 QUESTION/COMMENT FROM AUDIENCE: So those of  
2 us on this side of the bar can speak?

3 MR. HENGSTLER: I want to show you, White  
4 probably doesn't change the landscape all that much.  
5 But it, it's no longer bare. There is the potential for  
6 the maverick. And we want to show you an example of  
7 that right now.

8 QUESTION/COMMENT FROM AUDIENCE: I think it  
9 does change the landscape. It allows this side of the  
10 questioning to be responsive like Justice Baer said, if  
11 we choose to.

12 MR. HENGSTLER: If we choose to, but from the  
13 journalists' point of view most judges they encounter  
14 probably aren't going to.

15 QUESTION/COMMENT FROM AUDIENCE: Well, I  
16 think time will change that.

17 MR. HENGSTLER: Well, let's take a look at  
18 the video.

19 QUESTION/COMMENT FROM AUDIENCE: As I said,  
20 if one, in an election chooses to, it puts the other in  
21 a very difficult position.

22 MR. HENGSTLER: Yeah, you'll see that on the  
23 video.

24 (Video being played.)

1                   MR. HENGSTLER: T.C. covered this, and I'd  
2 like to ask him to amplify on his perspective and then I  
3 would like to have your reaction.

4                   MR. BROWN: Yeah, that, that, that debate  
5 showed exactly what was going on in that race. Judge  
6 O'Neill is probably one of the most outspoken candidates  
7 I've ever -- in fact, he is the most outspoken judicial  
8 candidate I've ever covered.

9                   And a couple of other things he said, this  
10 was an hour-long debate, that the Ohio Supreme Court was  
11 dead wrong on school funding, they abandoned their role  
12 as the third branch of government.

13                   Two years ago twelve million dollars was  
14 spent to purchase two seats on the Ohio Supreme Court,  
15 and it is a purchase. We have no right hiding behind a  
16 curtain. We have rights and obligations to speak out on  
17 issues.

18                   He also said that information is power, and  
19 it is fundamentally wrong for voters to vote in a  
20 vacuum.

21                   QUESTION/COMMENT FROM AUDIENCE: Did he win?

22                   MR. BROWN: He lost. Actually he lost  
23 fairly -- 60/40.

24                   QUESTION/COMMENT FROM AUDIENCE: Did you

1 endorse him?

2 MR. BROWN: Yes, we endorsed him.

3 Justice O'Donnell, on the other hand, said  
4 there are no issues in races for judicial office, for  
5 judicial officers who are mandated to be fair and  
6 impartial. They should not speak out on issues that may  
7 come before the court, and that it is unfair to immune  
8 the integrity of every judge and justice by suggesting  
9 something sinister is going on.

10 So you can see the different positions both  
11 of these candidates had.

12 QUESTION/COMMENT FROM AUDIENCE: How much did  
13 these candidates spend in the race?

14 MR. BROWN: Pardon me?

15 QUESTION/COMMENT FROM AUDIENCE: Was there a  
16 spending disparity between the victor and the loser?

17 MR. BROWN: Well, yeah. Because Judge  
18 O'Neill had self-imposed limits of \$10 from individuals  
19 and a thousand from organizations. So Justice O'Donnell  
20 raised over a million dollars. I don't remember the  
21 exact figure of Judge O'Neill. It wasn't much, as you  
22 might gather.

23 QUESTION/COMMENT FROM AUDIENCE: Okay.

24 That's why he lost.

1 MR. HENGSTLER: Yes.

2 QUESTION/COMMENT FROM AUDIENCE: I want to  
3 challenge the statements that Mr. Brown made that -- I  
4 just wanted to challenge the statements that Mr. Brown  
5 made that, that somehow the, the, especially for a  
6 sitting judge, that it is beyond the pale to imagine  
7 that a newspaper would search their record for details  
8 about the positions a judge has taken.

9 And I've had this very conversation with  
10 editorial boards all across the State of Michigan. And  
11 they're just not interested.

12 MR. BROWN: I don't know if I misspoke, but  
13 what I meant to say if I said it wrong, the public, the  
14 public --

15 QUESTION/COMMENT FROM AUDIENCE: My question  
16 is why don't newspapers see that as a prime source of  
17 material to ferret out information, relevant  
18 information about a sitting judge.

19 MR. BROWN: Newspapers do. We do investigate  
20 every candidate. We do search that stuff out. We do.

21 What I was saying was that this candidate was  
22 saying that if the public wants to know about us, they  
23 can find our opinions. And what I'm suggesting is that  
24 okay, that may happen on occasion, but I don't think

1 that's going to be the rule.

2                   People, a lot of people probably don't have  
3 access, don't know how to do it, or they're just not  
4 going to take the time.

5                   QUESTION/COMMENT FROM AUDIENCE: I agree.

6                   I just want to -- my experience in Michigan  
7 is that the editorial boards say that's too difficult.  
8 Your opinions are too long, and it's too difficult for  
9 us to figure out what they mean. Can you send us a  
10 summary.

11                   QUESTION/COMMENT FROM AUDIENCE: They're  
12 probably right.

13                   MR. HENGSTLER: Roy?

14                   QUESTION/COMMENT FROM AUDIENCE: I try to tie  
15 together two things. And raise points.

16                   Justice Baer noted that he won as the first  
17 Democrat lonestring, I think there were 17 R wins before  
18 his, so it's really striking. I don't mean to take  
19 anything away from it, but neither do I think we ought  
20 to, I think we ought to avoid the inference that it's  
21 because of the way he spoke out. He had a little help.  
22 He had help from the best ever turnout drive in  
23 Philadelphia.

24                   It was the ground, it was the first go by act

1 in the ground game. And they registered 86,000 new  
2 people, and they got 48 percent of them to actually  
3 vote, which is, both of those are astounding.

4 He, he also had a little help from the  
5 F.B.I., which in its genius tapped the telephone of the  
6 Philadelphia many. The result was he got a huge turnout  
7 from Philadelphia.

8 I don't mean to say he wouldn't have won if  
9 he had spoken out, but nobody should infer that he did  
10 win because he spoke out.

11 And the another end is what T.C. just pointed  
12 out about O'Neill, but it isn't enough to note, T.C.,  
13 that he lost by 60/40, there were three seats contested,  
14 and his was the biggest loss, and I don't mean to say  
15 the biggest loss because he spoke out, but we don't know  
16 the extent to which the speaking out either helped Baer  
17 or hurt O'Neil. I think we ought to be careful about  
18 inferences.

19 Two more little ones. T.C. has been unfair  
20 to himself, because I don't see here, and I didn't hear  
21 it, maybe I missed it, one of the best lines he had in  
22 the story. After they have avoided his very, very savvy  
23 way of asking about the death sentence, which is what do  
24 you think of the right now moratorium on executions in

1 Illinois, they avoided it so completely, that I think it  
2 was a public defender who you quoted, that said tell him  
3 it's the state, the other side of Indiana that has  
4 Chicago. It was just marvelous.

5 But do you like this kind of thing, this is a  
6 North Carolina challenger to what the North Carolinians  
7 call the Sara Parker, justice for a long time. The  
8 challenger loses. Here's his entry in the Voter Guide.

9 First of all, it's the first time they're  
10 running nonpartisan. It opens saying he's your -- John  
11 Tyson is your conservative Republican candidate to the  
12 Supreme Court. Two sentences later. He believes  
13 marriage is a sacred union of a man and a woman, and  
14 that all life is valuable and unique. Next paragraph.  
15 He will protect our families and preserve traditional  
16 values. Two paragraphs later. Preserve strong family  
17 values.

18 Now put aside whether he has a constitutional  
19 right to say all this.

20 Do you like this? I don't like it. Do you  
21 like it?

22 QUESTION/COMMENT FROM AUDIENCE: But do the  
23 voters like that? I'd like to know that as a voter. So  
24 I can vote against that.



1                   I would rather vote against somebody who is a  
2 known quantity, however small the quantity of  
3 information amassed is than to have this total  
4 vagueness. Voters are at sea when it comes to selecting  
5 judicial people.

6                   MS. DALGLISH: They are. Absolutely.

7                   QUESTION/COMMENT FROM AUDIENCE: Does  
8 everybody know this gentlemen, because I didn't, and  
9 it's very wonderful that he's here.

10                  MR. HENGSTLER: I'm sorry. This is Doug  
11 Clifton, Editor of the Plain Dealer, and best editor of  
12 the year last year.

13                  MR. BROWN: And my boss.

14                  MS. DALGLISH: Gary, can I, can I follow  
15 that, add --

16                  QUESTION/COMMENT FROM AUDIENCE: The biggest  
17 service that the newspaper does is endorse judges,  
18 because most editorial boards, they can try to question  
19 them carefully, ask to see their opinions, talk to  
20 members of the bar, talk to other members of the  
21 judiciary. At least that's what we do. And we make,  
22 what I believe is a, a pretty informed judgment.

23                  And voters use those for the most part, they  
24 didn't in the O'Donnell race, that was a statewide

1 thing, it had greater impact in the local area we  
2 served. But it is really the only thing they have to go  
3 on.

4           On the news pages we attempt to background  
5 all of the judges. We are scrupulous in running each of  
6 the bar polls. The, the bar association does one, the  
7 others do one, a whole bunch of government kinds of  
8 organizations do it, so we try to get voters as much  
9 information as we can. But in the end, the judicial  
10 candidate has a smoky question mark over the, their  
11 body, and voters just -- so the most important thing  
12 that's decisive in selection of the judge is his name.

13           If it's Russo, you can, more or less  
14 guarantee that you're going to be --

15           MR. ALFINI: Well, and there was a prominent  
16 Chief Justice named O'Neill. And he obviously didn't  
17 have that advantage.

18           MS. DALGLISH: I really would caution against  
19 the mind set that it's up to the media to back off and  
20 not ask questions.

21           You know, whether or not -- obviously there's  
22 disagreement here about whether or not judges should  
23 answer them. But the job of the media is to gather as  
24 much information as they possibly can. If they have to

1 push the limit a little bit they will. But that is a  
2 journalist's job, is to ask questions, and if they think  
3 there's a possibility they might get some answers that  
4 would provide useful information to the electorate,  
5 they're going to do it.

6           So it's, it's, I don't think it's up to  
7 journalists to decide, well, we really, you know, this  
8 White decision is out there, I suppose maybe we could  
9 ask questions, but we wouldn't want the judges to do  
10 anything ethical, so we won't ask the questions. That's  
11 not going to happen.

12           MR. ALFINI: Lucy, I wasn't suggesting that  
13 you not ask the questions. It's the way you do it.

14           A point of -- questionnaires, do you do that  
15 to other candidates? Executive and legislative branch  
16 officials?

17           MS. DALGLISH: Absolutely.

18           MR. ALFINI: Okay.

19           MS. DALGLISH: Absolutely.

20           MR. ALFINI: Okay. Then maybe judges are  
21 going just going to have to, to face that.

22           What I liked about the way T.C. approached  
23 it, though, and this is a quote from his article:

24                       Despite the expansion of free

1 speech rights for candidates,  
2 judges are required to render  
3 impartial justice, free of  
4 personal opinion.

5 He didn't have anybody -- he wasn't quoting  
6 anybody. That was his language. I wish David  
7 Goldberger had said that, or one of the law professors,  
8 but they didn't. They were irresponsible. You were  
9 responsible.

10 I think that if T.C. Brown is the model --  
11 I'd like to clone him -- for responsible reporting, I  
12 think we'll, we'll get a feel for candidates. And you  
13 will have an O'Neil and you will have an O'Donnell. And  
14 there's, the pieces on that race are also in your  
15 materials as well. I think he did a great job of  
16 reporting on those races.

17 MR. HENGSTLER: Yes.

18 QUESTION/COMMENT FROM AUDIENCE: I would just  
19 say, number 1, the judges here -- the media has a job to  
20 do. I think actually the environment is changing.  
21 We're heading into what I call a mixed era.

22 We're going to have lots of judges that are  
23 more traditional in an increasing number, and I think  
24 the media will have more opportunities, and I think more

1 chances to think through how they do their reporting.

2           But I wanted to add a little of information  
3 that my group gathered. We did focus groups on these  
4 very questions, what do voters want. They complained  
5 they don't have enough information. Good voters who  
6 vote on every other part of the ballot stop when they  
7 get to judges. They said they wanted three things.

8           One is they want to know how the candidate  
9 will decide cases. Well, we say to them, what if that  
10 can't happen. Well, we really want that.

11           And one of the lessons there -- and judges  
12 told me last night that voters hate to hear that. I  
13 think it's actually a very good thing, and one of the  
14 articles that T.C. did was talking about the issue of  
15 how much judges can say I think is a good thing to say  
16 in these articles and reminding the readers that if you  
17 don't get as information as you'd like, that's a good  
18 thing.

19           The other two things that voters say they  
20 want that would help them decide to vote are very simply  
21 things. Basic background information. Who they are.  
22 Where they're from. Where they went to school. What  
23 type of jobs they hold to supplement the work they do.

24           And also they actually like the bland 50-word

1 statements that we may all see as kind of either boring  
2 or political. They understand that, but what they want  
3 to do is compare A to B. And we all process small  
4 amounts of information in very sophisticated ways. And  
5 what they tell us -- we actually asked this in the  
6 context of voter guides, I think there's other lessons  
7 we can learn as well -- if you're providing fairly small  
8 amounts of information, that's all you can get, you're  
9 still doing voters a very great service by providing  
10 that.

11                   And one of the articles that T.C. had, for  
12 example, this is the website, it's the questionnaires  
13 you all sent in, I think that's an enormous value, and  
14 we've done promotions of your website links, we know  
15 that people like them.

16                   MR. BROWN: You understand we don't just do  
17 questionnaires. We, we profile -- you know, you're  
18 seeing a small portion of what we do in races like this.  
19 We also profile candidates and we do get all that  
20 information.

21                   QUESTION/COMMENT FROM AUDIENCE: I want to  
22 take down the press a little bit and what I consider to  
23 be a little bit of a minimizing of the effect of a judge  
24 taking a position on a judge's decision.

1                   Let me give you an example in another area,  
2 the executive branch. We have a Governor who ran on a  
3 no new taxes pledge. Policy is emerging in the state,  
4 we're short of money, it appears that a cigarette tax  
5 and a gas tax is good policy. Even some of his  
6 strongest supporters are moving in that direction.

7                   The Governor will not support a tax increase  
8 on cigarettes or gas. He sometimes uses different  
9 language. And it's because he made the pledge, and it  
10 goes to credibility. He's not, he can't defend it as  
11 policy. He will be attacked on his credibility for  
12 breaching a promise.

13                   Now what are we about as judges? We are  
14 about credibility. So if we get elected, and we take  
15 the stand and say this is what we're going to do, take a  
16 look, maximum marion boss, (phonetic) you do the crime,  
17 you do the time.

18                   Over 90 percent of convicted criminals  
19 sentenced, prison commitment rate is more than twice the  
20 state average, I run, I get elected on that, I've made a  
21 promise, darn well, I'm going to maintain my  
22 credibility, and I'm going to stand by it.

23                   So don't underestimate it, because that's  
24 what we're about as judges. Credibility. We say

1 something, we have to stand by it.

2 MR. HENGSTLER: Barbara?

3 QUESTION/COMMENT FROM AUDIENCE: I am  
4 possibly in a unique position among people in this room  
5 in that I have as a lawyer produced a guide for the  
6 media to covering judicial independence and judicial  
7 selection issues and so forth.

8 I should also point out that this was bedded  
9 by a number of members of the media. One of the  
10 things -- and, and I'm seeing this, I -- this is  
11 something that when I, when I work with judges about how  
12 to talk to the media, and when I work with the media  
13 about how to report on judges, I see this disconnect  
14 coming up all the time, and it's coming up here. You  
15 know, judges are saying you're not covering us properly,  
16 and then the media are saying look, this is our job, and  
17 proper isn't the question here.

18 I think one thing that judges really want  
19 from the media, and I'm not talking about you folks  
20 here, I'm talking about what they face with their local  
21 reporters and their local media outlets -- and, and this  
22 happens all the time, when a judge says to you it is not  
23 appropriate for me to comment on that and here is why,  
24 they're not asking necessarily for you not to ask the



1 questions. They, a lot of them, they understand that is  
2 your job. But what they want from reporters is when  
3 they actually write up the article, to say the judge  
4 said that it was not appropriate because.

5 More often what they will find is that the  
6 reporter, or the editor, produces an article that says  
7 judge so-and-so refused to comment. Or you may even get  
8 editorial commentary down the road that says, you know,  
9 they're hiding behind the, the cannons of conduct, and  
10 using language just like that.

11 And I think really when you're dealing with  
12 judges, most of them would be very happy with the  
13 coverage they get if they just get that sort of sentence  
14 included when they're giving you their responses.

15 MR. HENGSTLER: Yes.

16 QUESTION/COMMENT FROM AUDIENCE: I think what  
17 I'm hearing from Mr. Brown is, is not what we have in my  
18 home state and that is a good in-depth study of judges  
19 and with respect to other issues.

20 For example, we all agree that the public  
21 thinks that the hot button issues are guns, gays, and  
22 marriage, and those type of things, but just as  
23 important is the judge's views about judicial  
24 administration, how well the judge handles his

1 administrative duties. How good the opinions are. How  
2 fast the turnover is. How long the backlog is. Those  
3 kinds of things.

4           And so it seems to me that more reporters  
5 ought to be asking those kinds of questions in  
6 questionnaires, not maybe to the exclusion of the issues  
7 on substance, but how do you do your job. And those  
8 issues I think are just as important and perhaps the  
9 public should be educated along those lines with the  
10 help of the press. Because you can have somebody that,  
11 that gives exactly what the majority wants on the  
12 substantive issues, but when they get on the job haven't  
13 got a clue how to get it done.

14           MS. DALGLISH: And really the only way you  
15 can do a story like that, and I agree that's a very  
16 useful story. There are some, like I said, I was from  
17 Minnesota before I moved to D.C., and the bar  
18 associations, and it was the county bar associations --

19           QUESTION/COMMENT FROM AUDIENCE: Hannipan  
20 County (phonetic spelling) in particular.

21           MS. DALGLISH: That's by far the largest  
22 jurisdiction in the state of Minnesota.

23           And they do judicial rankings -- not so much  
24 judicial rankings as they poll all of the lawyers who

1 belong to the bar association. And there's a series of  
2 questions that address those issues that you just  
3 mentioned.

4           And as a voter that's about the single-most  
5 useful thing that you can have in that particular county  
6 when you're voting for judges. Because for the media to  
7 just go out willy-nilly and started talking to lawyers  
8 and say what do you think, you know, does Judge Clark  
9 move his docket along quickly.

10           QUESTION/COMMENT FROM AUDIENCE: Ask Judge  
11 Clark about his docket.

12           MS. DALGLISH: What happens, though, is  
13 lawyers in the jurisdiction have to sign a pledge saying  
14 that they had appeared before that judge. And only they  
15 are allowed to answer these questions. And then it's a  
16 survey of the folks who are in the court every day.

17           And it's not definitive, but it's a useful  
18 tool. And I think some of the best reporting that was  
19 done on judicial elections, pre-White, anyway, in my  
20 former home state came from those surveys. And those  
21 are exactly the issues that they asked because the  
22 lawyers are the ones that are there every day.

23           MR. BROWN: And we've done that, too. We've  
24 done those type of surveys. And it does give you

1 insight.

2 I think we'd rather approach it in some  
3 respects from that angle as opposed to going to the  
4 judge. You know, we've got an outsider's view of how  
5 you're doing your job.

6 Sometimes it's evident, self-evident of how  
7 your job is being done, but we've done that a couple of  
8 times.

9 MR. HENGSTLER: Yes.

10 QUESTION/COMMENT FROM AUDIENCE: It seems to  
11 me that it would be a good thing if states hosted some  
12 sort of a session right after qualifying closes for the  
13 candidates, and for the reporters, maybe in the same  
14 room at the same time, because they don't seem to be on  
15 the same page about what's allowed and what's not  
16 allowed, what's a good touch and what's a bad touch.

17 And bring in folks like Barbara here and Bert  
18 up there, and Mark who sits beside me and maybe T.C. and  
19 some of these others, let everybody hear at the same  
20 time what's allowed and what's not allowed. Because,  
21 frankly, the candidates, most of them, nor the  
22 reporters, most of them, really know what's allowed and  
23 what's not allowed, what is a good touch, and what's not  
24 a good touch.

1                   I think if most of them understood that,  
2 they'd be willing to comply.

3                   MR. HENGSTLER: Yes.

4                   QUESTION/COMMENT FROM AUDIENCE: I was just  
5 going with Bill on the -- we found that the least  
6 reliable source for that kind of thing was the sitting  
7 judge, because we've done data analysis, good old pick  
8 and shovel work, to get a sense of how much, how big the  
9 backlog is, what the complexity of the cases are,  
10 because often there's a big backlog, because he's  
11 dealing with some humongous case that consumes all your  
12 time.

13                   We do those periodically. Interestingly, the  
14 judges will rail at you like crazy when they are at the  
15 low end of the backlog. Cite their own figures, you  
16 don't know where they come from, because once you do the  
17 analysis the data, the data doesn't move. They still,  
18 they're out --

19                   MR. HENGSTLER: Yes.

20                   QUESTION/COMMENT FROM AUDIENCE: I think it's  
21 important to think about what it is that you respond to.

22                   You know, I've heard the stock response up  
23 here. I have to preface this by saying that I trust the  
24 press, I guess because I'm a recovering reporter, but it

1 seems to me that when somebody asks the question about a  
2 legal issue, that one of the things -- and I think this  
3 is probably more apt for editorial boards perhaps than  
4 individual news story, but I'm not adverse to giving as  
5 dispassionate an analysis of that question as I can on  
6 the one hand and on the other hand.

7                   How a case actually comes out depends on the  
8 context in which it comes up. Depends on how well it is  
9 argued.

10                   I will tell people that there is a certain  
11 percentage, rather small percentage of cases that, even  
12 after I've read the briefs, that when I'm listening to  
13 the oral argument that my view of the case changes from,  
14 because of some of those factors.

15                   So I'm not adverse at all -- and by the way,  
16 I think that's a perfectly appropriate thing to do with  
17 editorial boards, because they're in the same kind of  
18 business. They're in the business of analyzing issues  
19 and that kind of stuff. They want to know how we think.  
20 They want to know whether we can think. A lot of people  
21 think that's a good thing.

22                   And the reason that I say this is that Lucy  
23 mentioned the advertising stuff and sometimes the things  
24 that we're concerned about, but, you know, advertising

1 and editorial comment have a direct relationship because  
2 it's no accident that people's editorial comments show  
3 up in advertising.

4           When we had the Titleman (phonetic spelling)  
5 smear that I talk talked about yesterday, we had the  
6 Post Dispatch of St. Louis and the Kansas City Star had  
7 editorials within 48 hours of the start of that, or 72  
8 hours. Two or three days there are editorials in both  
9 major newspapers and as many small dailies as we could  
10 get.

11           And some of the pungent things that they had  
12 to say showed up in things that were done, like  
13 automated phone calling and radio ads, that were done to  
14 counter it because it gives weight to it. I mean, on  
15 certain levels, even if people don't agree with the  
16 liberal Post Dispatch or something, they at least  
17 understand that they have -- that they will take a  
18 closer look at it than the voter himself or more herself  
19 will.

20           MR. HENGSTLER: Yes.

21           QUESTION/COMMENT FROM AUDIENCE: I live in a  
22 state where we run partisan, and I see absolutely  
23 nothing wrong, I've answered every questionnaire ever  
24 sent to me. And I've been elected four times to a

1 judicial position.

2 I said clearly I'm pro choice. I will say  
3 that's a women's decision, and when men start having  
4 babies they can chime in on it.

5 I believe in gun control, and I say so, and I  
6 also say everybody does. Nobody wants guns in school.

7 I'm against the death penalty, and I say so.

8 And I state that we send far too many people  
9 to prison. And I cite the cost factor.

10 And then I always say but we must decide  
11 cases not on our personal feelings. And frequently I  
12 find myself deciding a case in a way that I personally  
13 disagree with, but I feel I have to because of law.

14 When it comes to a specific question on  
15 specific cases, I think that's our responsibility to  
16 tell you folks, the reporters, that I can't tell you  
17 what I'll do in that case. That would be improper for  
18 me to do that, and you know that. And I generally say  
19 something like that.

20 But I tell you what you can do. You can tell  
21 where a person is likely to go by looking at the paths  
22 that they've taken. Depending on my audience, I might  
23 say, you know, before I was a judge, I was a legal aid  
24 lawyer, I belonged to the ACLU, I don't anymore, and I



1 will give a little background. And I leave it to them.

2                   It's information, and I think it's  
3 information that people need and want to make an  
4 intelligent judicial decisions. I think in my case --  
5 (inaudible.)

6                   MR. HENGSTLER: In our remaining minutes I  
7 wanted to raise an issue, because it came up with the  
8 questionnaires.

9                   It's one thing for the newspapers or  
10 television stations to issue its own questionnaire, but  
11 what is the appropriate media response when the  
12 Christian Coalition or a special interest group has a  
13 questionnaire and then turns its results over to the  
14 media.

15                   How is the balance struck there? I'd like to  
16 throw that out.

17                   MR. BROWN: Yeah, I mean first of all, we  
18 would look at, look at, look at it as a potential news  
19 story, like anything coming in. Whether it might be a  
20 stand alone story, or part of the bigger picture story  
21 on the candidate, I guess that would depend on the  
22 circumstances. But especially if the candidate had  
23 something striking to say.

24                   But we'd also keep in mind the motives of the

1 organization that is asking the questions. You know, we  
2 don't willy-nilly take the answers and write a story on  
3 that. We would question the candidate ourselves on why  
4 did you say this or what do you think about this, and  
5 then try to balance that out with opposing views of an  
6 organization that doesn't see things the way that the  
7 organization that sent the questionnaire does.

8                   So in my view we would see that as a  
9 potential story and just kind of put it in context to  
10 whatever we were doing at the time.

11                   MR. HENGSTLER: Another question that I  
12 wanted to pose is we're all concerned about the  
13 distorted smear ads, the attack ads. I have seen in the  
14 Reno Gazette Journal, and I've seen other media who on  
15 the editorial side have devoted a column or a news story  
16 to say wait, wait a minute, folks, this goes too far.  
17 Now that pits the advertisement department taking money  
18 for the ads versus the editorial undercutting it.

19                   But is there an avenue for that kind of  
20 editorial balance when the advertising is, crosses the  
21 lines?

22                   Do you see a trend in that?

23                   QUESTION/COMMENT FROM AUDIENCE: With  
24 political campaign, some of the major papers do ad

1 checks.

2                   Why shouldn't they do it for, ad checks for  
3 judicial races?

4                   MS. DALGLISH: I think that's probably what  
5 they will be seeing. You assign the beat, a media  
6 reporter, or working with the politics reporter or the  
7 court reporter, comparing what the claims were in the  
8 ads with reality. And I think good reporting will  
9 require you to do that.

10                   And I think if, if race has become more  
11 contentious and more political, more like other  
12 political races that's the type of coverage you're going  
13 to start seeing.

14                   MR. ALFINI: There is another story there,  
15 too, I think, and that is who is paying for the ads.

16                   MS. DALGLISH: Yes.

17                   MR. ALFINI: In a lot of these campaigns,  
18 there's sort of a phantom presence out there that's  
19 expressing for the judge things that he or she couldn't  
20 express for themselves.

21                   MS. DALGLISH: And I think that's one of the  
22 things that you have in those boxes that they do.

23                   QUESTION/COMMENT FROM AUDIENCE: I have a  
24 request, and I direct it more at the editors, but also

1 at the reporters.

2           You come educated about who we are. I have a  
3 standing offer with the press in Minnesota. I give a  
4 behind the scenes tour of the court. I've done it with  
5 about 25, 30 different individual reporters. I take  
6 probably a couple of hours with them, and explain what  
7 we do.

8           But I run into sometimes ill-informed, lazy  
9 reporters. And that doesn't do anybody any good. And  
10 so I ask you from the point of the judiciary, those in  
11 the media, set your standards high.

12           I have no problem with a good reporter asking  
13 me tough questions. You're doing your job, I'll do my  
14 job. But when the -- is it -- I'm finding, and it's  
15 more the electronic media than the print media, I must  
16 admit that, but you have an obligation to know what  
17 you're reporting on, and do a good job. And I ask that  
18 you bring that message back.

19           MS. DALGLISH: Well, I do conferences, I'm on  
20 the road two, sometimes three days a week doing things  
21 like that. And that's one of the reasons why the Center  
22 for Courts in the Media was created. We've really just  
23 been in full swing now about a year and a half, two  
24 years. Two years.

1                   We've had court reporters coming in, we've  
2 had public information officers. We're trying to  
3 educate the judges, the reporters, the public relations  
4 professionals. And that's exactly what this center is  
5 all about, bringing people in.

6                   But we're also trying to go out on the road,  
7 do regional presentations, and then I work on -- in a  
8 couple of months, I'm going to Florida and spending  
9 several days down there, on a session just teaching  
10 reporters how to cover the courts. And that's something  
11 that the Florida Bar and the newspaper association does  
12 every year. And there are a lot of sessions like that  
13 that go on all over the place.

14                  I did, one of the things that -- I was always  
15 interested in covering the courts. And for about 25  
16 years there, Yale Law School had a program, would take  
17 five journalists from around the country, and put them  
18 through the first year of the law school, and the idea  
19 was that they would get their masters degree, and then  
20 go back and cover the law.

21                  And I did that program in the last, in the  
22 late '80s, it kind of peaked my interest in being a  
23 lawyer, and after being back in the news room for six or  
24 seven years, I decided to actually finish law school.

1 But there are programs like that. And there are people  
2 who take covering the law incredibly seriously.

3 So hopefully, we'll be able to -- you know,  
4 if there's great interest in it, if you think that this  
5 is something that's really necessary, write a letter to  
6 our funders.

7 Right, Gary?

8 MR. HENGSTLER: It is a question of money.  
9 Yes. I mean the Yale program has been cancelled.

10 Yes.

11 QUESTION/COMMENT FROM AUDIENCE: I have a  
12 question for the media folks. We're in the embryonic  
13 stages for a campaign conduct committee. And the ideal  
14 thing is going to be having common people whose names  
15 the public recognizes, ex-Governors and so forth, as the  
16 lead people on this.

17 From your point of view, if something gets  
18 presented to your attention that's obviously a bogus  
19 campaign tactic, how significant or not significant is  
20 the fact that these famous people signed onto -- or are  
21 you going to focus on the merits of -- I mean, are we  
22 overselling ourselves on having prominent people being  
23 the lead people in denouncing bad campaign things, or  
24 are you going to be more focused just on the, on the

1 merits?

2 MR. BROWN: Yeah, I mean, I think certainly  
3 we would look for merits.

4 I mean, the fact that it's a prominent person  
5 is going to give it some weight.

6 I'm not sure I'm following what you're  
7 saying.

8 Are you saying you're looking at particular  
9 ads?

10 MR. HENGSTLER: I'm not sure there's a good  
11 answer for that for this reason, and we're about out of  
12 time.

13 It's going to vary, just as there are  
14 excellent judges, average judges and some bad judges.  
15 You're going to have the whole range of quality of  
16 reporting. And some will ignore it. And some will  
17 focus on the merit. So there is no definitive answer on  
18 that.

19 I'm sorry. We're out of time and because of  
20 the -- we don't want to crowd the other programs.

21 MR. DRESSEL: I want to say a couple of  
22 things.

23 I'm glad some of you brought up this concern  
24 about reporters because we agree, and there's a couple

1 of things that we're doing.

2                   One is we did get a grant, the Reynolds  
3 Foundation, a media group, Mr. Reynolds is from Arkansas  
4 and Nevada and across the southwest papers. And what  
5 we're going to be doing is go into every state and hold  
6 a forum between the media and the judges.

7                   Many states do it already, and we've  
8 identified the ones that do it. But this is -- we look  
9 at it as an opportunity to both, you know, get the media  
10 to understand a little bit about the roles, to lay out  
11 what judges can and cannot do, and also gets judges to  
12 think about their role on -- many of the things they  
13 have said. So we will be coming to you and asking for,  
14 who should we be talking to, who can bring this  
15 together.

16                   Another thing, too, is we had an interesting  
17 experience here in Nevada this year. We had three  
18 contested races for the Supreme Court. And I thought  
19 what happened was a terrific way to start off the  
20 campaign.

21                   Once they got through the primary, and the  
22 two candidates were there, they were looking for an  
23 entity that had some prestige, was neutral to kind of  
24 hold the debate that was going to be televised and



1 filmed and played all over the state on cable T.V. And  
2 it also gave the opportunity for the press people to  
3 come in and do one-on-one interviews. And we held it  
4 here.

5           It was sponsored by the League of Women  
6 Voters, American Association of University Women, and it  
7 was really a terrific event once the primary was over.  
8 And we started out, each candidate, we first started out  
9 staying hey, no, this is where we are with judicial  
10 comment, here's what judges cannot say, kind of  
11 explained it.

12           Then they went on each of the candidates,  
13 talked about who they were. We had questions from the  
14 audience.

15           I had a great time. I was the moderator, and  
16 I kind of sanitized the questions, keep the essence of  
17 it.

18           And if you qualify in your state, something  
19 like that, I, I don't know if many of you do, it is a  
20 great way to start off to get the judges known and kind  
21 of lay some of the groundwork. And hopefully we'll  
22 build up some of the other ideas like that.

23           And, please, thank the panel for its  
24 presentation.

1                   Quick stretch break, have the other panel  
2 come up, and then we'll go into it.

3                   (Whereupon a recess was taken and this  
4 portion of the Symposium was concluded.)

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SECOND SESSION

9:00 A.M. TO 10:00 A.M.

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THE CONTRIBUTION OF NON-REGULATORY APPROACHES: JUDICIAL  
CAMPAIGN CONDUCT COMMITTEES, CANDIDATE EDUCATION, AND  
PUBLIC FUNDING

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CHIEF JUSTICE LAMBERT: Let me have your  
attention, please. And if I could, ask those in the  
hallway if they're planning to come back to do it soon.

Okay. Everybody, are we, are we about ready  
to get started again?

David, what about it?

Okay. We still have some stragglers, but now  
we're in the home stretch of what has been a very good,  
a very good meeting.

And I think the program that will be  
presented at this particular time is a very good one,  
primarily because we have three experts on the panel  
here who can give us some real insight into the topic.

1                   And one who we'll be calling upon, three  
2 experts, that would be me.

3                   Our subject, in this particular segment of  
4 the program, is judicial campaign conduct committees.  
5 And there are very active committees in a number of  
6 states, including the states of Ohio, Florida, and  
7 Alabama.

8                   And of course the other part of the program  
9 would be on candidate education workshops and proper and  
10 appropriate methods of campaigns.

11                   On the program today is Judge Charles Kahn,  
12 Barbara Reed and Mark White. All of you know the three  
13 panelists here. And they're all very experienced.

14                   It was suggested that I talk very briefly  
15 about -- and I promise to keep that very brief -- about  
16 what we are doing in Kentucky. I heard someone say a  
17 few minutes ago that the campaign committee in his state  
18 was in its embryonic stage, and that seemed to be a  
19 perfect description of what we're doing in Kentucky.  
20 But I would like to tell you a little bit about what  
21 we've done.

22                   In the wake of the White decision, in the  
23 wake of the White decision, I was invited to attend a  
24 workshop put on by the National Center for State Courts

1 in Dallas, and I attended that meeting along with a  
2 small group of four or five others from Kentucky. And  
3 at that meeting I became, or came face to face with the  
4 very really possibility that in our state we were going  
5 to have a train wreck in the year 2006.

6 I was generally familiar with the White  
7 decision, though at that point in time I was perhaps  
8 excessively concerned about the changes that it would  
9 bring about -- maybe not even. But I was also fearful  
10 about, about the possibility of this train wreck I  
11 mentioned simply because that in the year 2006 in our  
12 state we will have more than 260 judicial elections on  
13 the election ballots. In fact, we have 266 judges in  
14 our state, and all but three of those 266 will be on the  
15 ballot, all of those seats will be on the ballot in the  
16 year 2006.

17 I'm happy to say that mine is one of the  
18 three. So I don't have to face the music in 2006, but  
19 virtually everyone else, every other judge in our state  
20 does.

21 As a result of the -- as a result of the  
22 Dallas meeting, I met some very able people at that  
23 meeting, one of whom was Mark White. I came home all  
24 inspired to get something significant going in our

1 state, and of course the first thing I did was call Mark  
2 White. I thought this is the guy who knows all about  
3 it. And sure enough, Mark was kind enough to come to  
4 Kentucky and participate in an organizational meeting  
5 that we conducted.

6 We invited about 30 or so people. We had  
7 quite a number of very significant journalists come to  
8 our organizational meeting. We had of course a lot of  
9 lawyers. We had a lot of sitting judges. And we had  
10 some university presidents and some other significant --  
11 this was really a blue ribbon group.

12 Mark showed some of the films of some of the  
13 attack ads that had been used in other states. We had a  
14 goods thorough discussion on it, and from that point  
15 we're still in the organizational process. But that's a  
16 process that's coming along.

17 We were fortunate then and now to have a good  
18 deal of lead time. We have no judicial elections in our  
19 state during the year 2005, but it all breaks loose come  
20 January, the filing deadline in the year 2006. So we're  
21 very concerned about that.

22 At this point in time, so as to avoid  
23 unnecessarily using any of the time that we have  
24 available, the State of Florida has been one of the real

1 national leaders in establishing judicial campaign  
2 conduct committees and in the area of candidate  
3 education and so forth.

4           And with that in mind, I would like to call  
5 upon my colleague on the panel here today, Judge Charles  
6 Kahn and ask, Chuck, if you would please proceed.

7           HONORABLE KAHN: Thank you, Judge.

8           (Whereupon a video was played.)

9           HONORABLE KAHN: Okay. This, this panel is  
10 not about the substance of Nancy Alley's (phonetic  
11 spelling) reprimand, and you can feel however you want  
12 to feel about that. And it's not about, even about the  
13 cannon, although I think you probably got from that that  
14 this was a knowing misrepresentation case and not a  
15 pledge, promise, commit, announce, anything like that.  
16 So we dealt with the provision that is still extant in  
17 the codes.

18           The reason for using that is that this tape  
19 is a teaching tool that we still use in Florida for what  
20 we call judicial candidate conduct forums, which we  
21 began in 1998 and have done successfully around the  
22 state.

23           The materials in your outline, beginning at  
24 page 551 pretty much show you -- what we set out here

1 actually is the overview of one particular forum and  
2 exactly how we do it, who we invite, what the format is.  
3 There's a Power Point in there which probably won't be  
4 relevant for your state if you're interested in this,  
5 but it kind of shows you what we do, so it's a quick  
6 Cannon 5/7 education thing. Having said that, I'll try  
7 to say we limit these to an hour.

8           The way that this works -- and it's been very  
9 noncontroversial to tell you the truth. People have  
10 accepted it and appreciated it. The way this works is  
11 we went to the Florida Supreme Court, the chief justice  
12 at the time, which was I guess just after Justice Kogan  
13 (phonetic spelling), I think it was Justice Charles  
14 Wells (phonetic spelling) who also presided over the  
15 2000 election case by coincidence.

16           And Charlie was very much behind this, and  
17 the Florida bar has been tremendously supportive. There  
18 are no official legal sanctions, summons, subpoenas, or  
19 anything like this involved. But we put together a  
20 package. We involved the chief judges from our all of  
21 our 20 circuits. Now we only elect trial judges in  
22 Florida, so the administration of this is either a  
23 little easier or a little bit harder, however you want  
24 to look at this.



1                   We do the forums, the fora. We do these  
2 geographically. We have judicial qualifying in May of  
3 the election year, and we try to do them within two,  
4 two, three weeks at the most after qualifying.

5                   We can't do them earlier. One of the  
6 problems is that it's, it's very common in judicial  
7 campaigns, and we've heard this I think, maybe it was  
8 from Ellen, that people often don't announce until the  
9 11th hour, 11:59 often, so you don't know who is  
10 committed, you don't what race they're going to be in  
11 and that sort of thing.

12                   We invite -- and the invitation to the  
13 candidates comes in a hand-signed letter from the chief  
14 justice of the Florida Supreme Court. That's been  
15 pretty effective. It's not a summons or a subpoena, but  
16 it is a letter from the chief justice inviting you to  
17 attend and telling you where to be.

18                   We also invite media, we invite what we call  
19 in Florida campaign consultants, and I assume other  
20 states have these. These are people who go around and  
21 recruit candidates, and for whatever sum, \$5,000 a  
22 month, or whatever, they'll advise your campaign, do  
23 your media buys, and keep other people out of your race,  
24 is what they do.

1                   And we also invite representatives from local  
2 political parties, the Democrat or Republican party.

3                   I don't know how many of our media people are  
4 still here, but I will say that the turnout from the  
5 media has been erratic. It's been disappointing to a  
6 lot of us, and the coverage has been disappointing to a  
7 lot of us. Although, several papers, most notably the  
8 Miami Herald have been very supportive of us and also of  
9 our judicial, local, what we call JC, judicial conduct  
10 committees, local conduct committees that Mark and  
11 Barbara are going to talk about.

12                   We also amended our election code, Chapter  
13 105, in Florida about three or four years ago, to simply  
14 require, actually require candidates for judicial office  
15 to read and attempt to understand the Code of Judicial  
16 Conduct. Many people who come out of the box to run for  
17 a judge as a lawyer -- I have to hold my hand up, I go  
18 back 15 years -- have barely a vague awareness of the  
19 Code of Judicial Conduct.

20                   So we did this one little thing, we amended  
21 both Cannon 7 and the election code to require that when  
22 you qualify, you not only sign the financial pledge,  
23 which is that you'll file your reports or whatever, but  
24 you also sign a pledge that you've read and understood

1 to the extent possible the Code of Judicial Conduct.

2           We made absolutely sure -- this is in  
3 response to something that came up yesterday, this  
4 appears on 551, that our rules regulating lawyer  
5 conduct, the rules regulating the Florida Bar make it  
6 very clear that a lawyer who is a candidate for judicial  
7 office -- and we do not have any non-lawyer judges  
8 anymore in Florida -- the lawyer who is a candidate is  
9 subject to the applicable codes of the code -- to the  
10 applicable provisions of the code of judicial conduct.

11           And we have Supreme Court decisions directly  
12 on point saying that a campaign misconduct, while a  
13 lawyer, Alley being an example, is going to be  
14 sanctionable by the Supreme Court after the election --  
15 whether they're a lawyer or a judge -- after the  
16 election.

17           As a supplement to our, to our forums, which  
18 are, which are done around the state, we also -- does  
19 everybody -- when I say judicial ethics advisory  
20 committee does everybody know what I'm talking about?  
21 Many states, most states, in addition to having some  
22 sort of qualifications commission or conduct commission  
23 also have advisory committees. Some are more active  
24 than others. Cindy Gray (phonetic spelling) tracks