

New Hampshire Judicial Selection Commission: A Work in Progress

By Attorney Katherine M. Hanna

On June 30, 2000, Governor Jeanne Shaheen issued Executive Order 2000-9, establishing New Hampshire's first Judicial Selection Commission. The Governor's charge to the Commission was to "seek out the best judicial talent in the State of New Hampshire, evaluate all potential candidates for judicial nomination, and recommend the most qualified candidates to the Governor."¹ The Executive Order was issued during a tumultuous time in the state's judiciary: the New Hampshire Supreme Court had come under attack for various practices, Supreme Court Justice Stephen Thayer had resigned under fire, and impeachment proceedings were about to commence against three of the other Supreme Court justices. Governor Shaheen viewed the establishment of a merit selection system as a means of restoring public confidence in the judiciary.

Governor Shaheen announced that she sought a selection system for judges based on merit, not politics. She urged the Commission to cast a wide net in its search for judicial candidates and to emphasize to the bar and the public that having political connections was not a prerequisite for attaining a judgeship.

The Governor also recognized the importance of a thorough and careful screening process for the many people seeking judicial appointment. She emphasized that with 5000 members now in the New Hampshire Bar and with the limited time and resources of a governor's office, it is important to have a Commission whose sole focus is to investigate the qualifications and experience of judicial candidates and to recommend the very best candidates.

The Governor set forth in her Executive Order the qualities which she wished to have the Judicial Selection Commission consider in evaluating judicial candidates: "The Commission shall consider such factors as integrity, legal knowledge and ability, judicial temperament, impartiality, commitment to justice, health, experience, diligence, administrative and communicative skills, and public service.

Candidates for judicial office shall be considered without regard to race, religion, gender, national origin, sexual orientation, or political affiliation."²

Most significantly, Governor Shaheen did what no governor had ever agreed to do: to submit all judicial vacancies to the Commission for its consideration and to make her nominations from the Commission's recommendations. In so doing, Governor Shaheen relinquished a political prerogative long cherished by governors.

The initial reaction to this first Judicial Selection Commission has been extremely favorable. Members of the bar and the public, legislators, and even court naysayers have weighed in with their support. The Manchester Union Leader reported that "the fledgling judicial selection commission couldn't have done better in this first test of the state's choosing judges."³ Executive Councilor Ruth Griffin spoke of the "love-in" at Supreme Court Justice Duggan's confirmation hearing.⁴ Representative John Pratt of the House Judiciary Committee commented that "Duggan was an outstanding choice who certainly seems to me to be a choice based on merit and not connections,"⁵ and even the judiciary's most vocal critic, Theo Kamasinski, responded to the selection of Supreme Court nominee James Duggan with enthusiasm: "Initially, what I thought was that they would select just more of the same old boys and gals. But on a scale of one to ten, [Duggan] is easily 11."⁶

Perhaps the most significant affirmation of the "success" of the Governor's new Judicial Selection Commission is the recent attempts by the legislature to make the commission a permanent fixture in state government. Concerned that the next governor could simply abolish the commission or ignore it, legislators have introduced bills to institutionalize the Judicial Selection Commission, either by legislation or through a constitutional amendment. These initiatives raise a number of important constitutional and prudential issues.

This article addresses the workings of Governor Shaheen's Judicial Selection Commission and attempts to identify the best features—and the limitations—of such

commissions. The article also addresses the advisability of embedding such an arrangement in our State Constitution. The article maintains that the Judicial Selection Commission should be preserved through legislation rather than constitutional amendment. It argues that judicial selection commissions should be used to improve upon, not to replace, New Hampshire's time-honored constitutional system of selection of judges by the Governor and Council.

EVOLUTION OF JUDICIAL SELECTION COMMISSION IN NEW HAMPSHIRE

Twenty-six years ago, New Hampshire came within a hair's breadth of having its first Judicial Selection Commission. In 1975, Governor Meldrim Thomson vetoed this author's proposed legislation⁷ to create an eleven member merit selection commission comprised of lawyers and laypeople whose purpose was actively to seek out the best judicial talent in the state and to submit to the Governor the names of the most highly qualified candidates for judgeships.⁸

Under the proposed legislation, House Bill 754, the new Commission would receive suggestions for candidates, carefully screen all candidates, and within thirty days select at least three candidates for consideration by the Governor and Council. The Governor retained the right to select whom-ever he or she chose, but was required to make a selection within sixty days of the submission if the nominee was a person recommended by the Commission. The legislation received nearly unanimous support from the New Hampshire House of Representatives and Senate.⁹ It was supported by the Judicial Council,¹⁰ the New Hampshire Bar Association,¹¹ Chief Justice of the Supreme Court,¹² and Governor Thomson's own Commission of Court Reform.¹³

Governor Thomson did not lightly decide to veto the merit selection legislation. He did so only after exploring alternative means of achieving the same result through an executive order. According to his veto message to the New Hampshire General Court,

"No bill has given me more concern than this one.

I have had four different executive orders drawn that address themselves to the subject matter of this bill.

I have discussed the matter four times with the sponsor and once with the Council and sponsor."¹⁴

Nevertheless, Governor Thomson decided not to sign legislation or to issue an executive order establishing a merit selection commission. He concluded that "however meritorious the idea of a judicial selection committee may seem, it [runs] contrary to the clear intent of the Constitution," specifically Part II, Article 46, which gives to the Governor and Council "the power to nominate and appoint all judicial officers."¹⁵

Shortly after Governor Thomson's veto of House Bill 754 legislation, he nominated to the Superior Court bench

a lawyer from his own staff who had no trial experience. This event rekindled discussion of the need for a merit selection commission in meetings called by the New Hampshire Senate President.¹⁶ The topic was also addressed in a 16-month long study of the New Hampshire Supreme Court by a blue ribbon commission chaired by Chief Justice Kenison.¹⁷

During the next legislative session, in 1977, the Judicial Selection Commission legislation vetoed by the Governor was reintroduced in the same form. This time the legislature sought an advisory opinion from the New Hampshire Supreme Court as to the constitutionality of the proposed legislation.

In its *Opinion of the Justices*, 117 N.H. 398 (1977), a closely divided New Hampshire Supreme Court responded that the proposed Judicial Selection Commission legislation constituted "an unconstitutional encroachment upon the powers of the Governor and Council."¹⁸ In the 3-2 decision, the majority cited the separation of powers provision of the New Hampshire Constitution, Part I, Article 37; and Part II, Article 46, which provides that "all judicial officers . . . shall be nominated and appointed by the governor and council."¹⁹

The majority ruled that even through the proposed legislation permitted the Governor to reject all the recommendations of the Commission and to substitute his or her own choice, the legislation failed to pass constitutional muster because "it nevertheless encroaches on a constitutional power of the Governor by 'altering' or 'changing' the selection process for judges."²⁰ The majority noted that the Massachusetts Supreme Judicial Court had recently upheld the constitutionality of the Massachusetts Judicial Nominating Commission. However, the majority distinguished that decision on the basis that the Massachusetts Governor had established the Judicial Nominating Commission through an Executive Order which the majority characterized as a "purely voluntary action."²¹

Chief Justice Kenison and Justice Lampron issued a vigorous dissent defending the constitutionality of the proposed legislation. They emphasized that the bill as drafted did not bind the Governor and Council to accept the names tendered to the Governor by the Commission, and that the Commission merely served as a useful tool to the Governor in finding well qualified candidates:

"The amended bill does nothing more than create a citizens' committee to do what any citizen may do, namely, recommend to the Governor and Council persons deemed to be qualified for judicial office. The only purpose of creating such a system is to aid the Governor and Council in fulfilling its constitutional duties."²²

The dissent strongly disagreed with the majority's interpretation of the Massachusetts Supreme Judicial Court's Opinion of the Justices, concluding that under the reasoning of the Massachusetts Court, it was irrelevant that the

Commission was created by Executive Order or legislation, as long as in the end the Commission's recommendations were not binding on the Governor.

"Contrary to the impression that may have been created by the majority opinion, the Massachusetts court did not sustain the plan on the ground it was voluntarily undertaken by the Governor, as opposed to being undertaken by the legislature. The court did not even mention, let alone rely upon, the fact the commission was created by executive order rather than by statute... The court stated that the Governor could delegate to others the power to investigate the qualifications of judicial candidates as long as he does not surrender to them his responsibility to select a candidate and to make the nomination and appointment... Thus, it was the non-binding aspect of the commission's recommendations—not the fact that the Governor voluntarily instituted the program—that saved the constitutionality of the scheme."

Opinion of the Justices, 117 N.H. at 405 (Kenison, J. and Lampron, J., dissenting).

As for the majority's opinion that the proposed legislation was an encroachment on the separation of powers provision of Part I, Article 37 of the Constitution, the dissent concluded:

"It is difficult for us to comprehend how the non-binding suggestions of an eleven member commission, none of whom are legislators or appointed by legislators, five of whom are appointed by the Governor and only one of whom comes from the judiciary can possibly amount to an unconstitutional encroachment upon the authority of the Governor and Council."

117 N.H. at 408 (Kenison, J., and Lampron, J., dissenting).

The dissent concluded that the proposed legislation creating the Judicial Selection Commission was constitutionally sound.

"The essence of the power to nominate and appoint is the unfettered power to choose any person for judicial office that the Governor and Council wish. Under [the proposed legislation] this authority remains intact: the fact that the Governor and Council would be free to disregard the commission's recommendations and appoint someone who was rejected or not even considered by the commission means that they will continue to exercise complete control over the nomination and appointment process."

117 N.H. at 406 (Kenison, J., and Lampron, J., dissenting).

TWENTY-THREE YEAR HIATUS

For nearly a quarter of a century after the New Hampshire Supreme Court's divided decision, the subject of judicial selection in New Hampshire lay dormant. In June of 2000, Governor Shaheen broke the judicial selection logjam by issuing an Executive Order and thereby avoiding constitu-

tional difficulty. The Order created a commission comprised of eleven members, including seven lawyers and four public members, each of whom serves a three-year term, renewable for one term.²³ By selecting a three-year term rather than a two-year stint coterminous with the Governor's own term of office, the Governor attempted to imbue in the Commission a sense of permanency and continuity.

The Governor's initial appointments to the Judicial Selection Commission reflected her desire to assemble a group of lawyers and laypeople who represent a cross-section of the Bar and of the State of New Hampshire. She succeeded in appointing a group of people from all corners of the state who bring to the table a variety of backgrounds, training and experience. The Commission comprises approximately equal numbers of lawyers and laypeople, males and females, Democrats, Republicans, and Independents.

The seven attorneys²⁴ on the Commission include a sole practitioner as well as attorneys from medium-sized and large firms, with experience in the private and public sectors. They have collective experience in criminal prosecution, criminal defense, plaintiffs' litigation, insurance defense, bankruptcy and healthcare law, marital cases, and corporate law. They have tried cases in all courts of the State. They include two former Presidents and a current member of the Board of Governors of the New Hampshire Bar Association, a former legislator and a former Executive Councilor.

The four public members²⁵ on the Commission include a police chief, a victim's advocate, a business person in the construction industry, and an advocate in the juvenile justice system. The Governor's decision to include four members of the public on her Judicial Selection Commission underscores the importance of the public role played by our third branch of government, the judiciary. Moreover, the Governor recognized that laypeople are at least as capable as lawyers in evaluating those subjective qualities—such as integrity, fairness, and common sense—which are valued most in our judges.

Governor's Shaheen's Judicial Selection Commission had a busy first year. Its first order of business was to recommend to the Governor the names of candidates for the Chief Justice of the Superior Court, a position vacated by Justice Nadeau when he was elevated to the New Hampshire Supreme Court.²⁶ At the same time, the Governor asked the Commission to recommend to her the names of the most qualified candidates for five different District Court vacancies: Berlin, Gorham, Hooksett, Manchester, and Rochester.²⁷ A few months later, in November, Justice Sherman Horton tendered his resignation from the New Hampshire Supreme Court, resulting in a request by the Governor to the Commission for recommendations for this Supreme Court vacancy. In December, the Governor requested that the Commission "recommend at least ten (10) names" to her for three vacancies in the New Hampshire Superior Court.²⁸ To round out the Commission's first year,

the Governor asked the Commission to submit to her "at least two names" for each of the following vacancies: Presiding Justice of the Claremont District Court; and Special Justice of the Haverhill, Lancaster, Littleton, Milford, and Rochester District Courts.

In its first year of operation, the Judicial Selection Commission scrutinized over one hundred fifty applications from judicial candidates for sixteen different judgeships at every level of the court system. Its members collectively devoted in excess of 2000 hours to the task of judicial selection, all on a volunteer basis. The Judicial Selection Commission required no appropriation of state monies. Expenses such as long distance telephone calls, and mileage have been borne by Commission members.

PROCEDURES ESTABLISHED BY COMMISSION

The Governor's Executive Order provides that the Governor selects the Chair of the Commission "who has the power to set the rules and procedures to aid in the Commission's selection of the most qualified persons for the recommendations to the Governor."²⁹ The Commission had both the benefit and the detriment of drafting procedures on a clean slate, informed only by the collective wisdom of the group.

Certain of the Commission's rules were established with minimal debate. For example, it was axiomatic that Commission members must recuse themselves from considering the applications of those with whom they had close personal, family, economic, or business relationships. Other procedures were less clear cut. For example, how detailed should the Application/Questionnaire be? Should the Commission make any exceptions for late applications? Should the Commission accept comments from references who refuse attribution? What should be the voting rules?

After much debate and garnering a consensus, the Commission adopted the following procedures which are subject to amendment as the Commission proceeds:

1. Publication of Judicial Vacancy

Upon receipt of a written request from the Governor to address a particular vacancy, the Commission publishes notice of the vacancy in the Bar News and such other publications as the Commission deems reasonable in order to inform the State's attorneys and the public of the vacancy. The Commission members also notify such groups as the New Hampshire Bar Association, law enforcement organizations, victims advocates' groups, and other organizations, requesting them to contact interested candidates.

2. Deadline for Applications

In the public notice, potential judicial candidates are informed of the process for obtaining the Application/Questionnaire and the deadlines by which the Application/Questionnaire must be filed for the particular vacancy in ques-

tion. To promote fairness toward all applicants, the Judicial Selection Commission has strictly observed the deadlines.

3. Recusal Process

Promptly after the deadline for applications passes, the Chair causes copies of all Applications/Questionnaires to be distributed to Commission members. At that time, the Chair also requests each Commission member to identify, in writing, any potential conflicts which the Commission member has with any applicant(s) such that the Commission member must recuse himself or herself from the deliberations regarding that Applicant.

The Commission rules provide that any member whose impartiality could reasonably be questioned as a result of a close personal, family, economic, or business relationship with an applicant or personal bias toward an applicant, must recuse himself or herself. Members who have recused themselves with respect to an applicant are precluded from participating in the review, interview, deliberations, or voting on that applicant and must leave the room during any such proceedings pertaining to that Applicant.

4. Discussion of Criteria for Judgeship

At the outset of consideration for each judgeship, the Commission meets to discuss the criteria for that particular judgeship. The criteria for various judgeships differ depending upon the level of court, the geography of the court, and other factors. For example, in reviewing candidates for the Supreme Court position, the Commission placed greater emphasis on scholarship and writing than for some of the other courts; in reviewing candidates for the Manchester District Court the Commission sought a candidate who was adept at handling a multilingual population; and in reviewing candidates for the Superior Court, the Commission placed emphasis on trial experience and potential ability to handle litigants and control a courtroom.

5. Review of Applications and Assignments of Applications/ Questionnaires for Diligence

Each Application/Questionnaire is read by each Commission member. Upon establishment of the recusal list, the Chair assigns each Application/Questionnaire to two or three Commission members for the purpose of conducting diligence on the Applicant.

6. Diligence

The Commission members to whom an Applicant has been assigned meet and divide the responsibility for telephoning or meeting with the Applicant's "references." "References" include not only those lawyers and laypeople whom the Applicant has listed in the Application/Questionnaire as favorable to the Applicant, but, in addition, opposing counsel, judges, colleagues, laypeople, and any other

potential sources who are likely to have salient information regarding the attributes of the candidate. All interviews with references are conducted in strict confidence. The Commission member requests that the reference refrain from disclosing even the fact that a particular Applicant has applied for a judgeship.

7. Review of Diligence

After the completion of the diligence process, the Commission members meet to discuss the diligence on each applicant and vote to determine which of those candidates should be interviewed by the Commission.

8. Interviews

The Commission conducts interviews of the most highly qualified candidates. The interviews last approximately forty-five minutes and are conducted with all eleven Commission members present (except recused members). The Applicant is asked to give a brief summary of his or her career and to explain why he or she is seeking a judgeship. Thereafter, each member of the Commission asks questions of the applicant. Following the interview, the Commission deliberates briefly about the strengths and weaknesses of the candidate.

9. Deliberations

Following the interviews of all of the candidates for the particular judgeship, the Commission meets to deliberate. If necessary, where questions arise during the interview or at other times during the process, further diligence is conducted. Depending on the number of Applicants in the pool, the Commission's deliberations may last one or several days.

10. Voting

At the completion of deliberations, the Commission members vote on which candidates to present to the Governor for her review. Although the Commission has no preset rule on the number of candidates to recommend for each judicial vacancy, the Commission has, to date, recommended to the Governor approximately three people for each vacancy.

11. Review of JCC and PCC Files

Prior to submitting recommendations to the Governor, the Commission reviews the Professional Conduct Committee and/or Judicial Conduct Committee files of each Applicant. The Judicial Selection Commission's access to these files was authorized by the New Hampshire Supreme Court through its amendment of New Hampshire Supreme Court Rule 40, issued shortly after the creation of the Commission.

12. Letter to Governor

The Chair of the Commission prepares a letter to the

Governor setting forth the most qualified candidates for the position(s) in question, and attaches thereto the Application/Questionnaire of each recommended Applicant.

13. Governor's Nomination for Judgeship

The Governor is bound by her own Executive Order to select a nominee from the list presented by the Commission, with the exception that the Governor may reject all of the names and request that the Commission conduct further diligence and present another list of names. To date, the Governor has selected her nominations from the initial lists presented by the Commission. Upon making the nomination, the Governor has, as she originally promised, released publicly the Application/Questionnaire of the final nominee.

14. Public Hearing and Confirmation by Executive Council

Following the nomination, the candidate undergoes a public confirmation hearing conducted by the New Hampshire Executive Council. The Council votes on confirmation at a subsequent hearing.

ASSESSING THE SUCCESS OF THE JUDICIAL SELECTION COMMISSION

Devising the best procedure and criteria for selecting judges is no easy matter. Assessing the success of any judicial selection commission inevitably turns on the question of whether the Commission has produced "good judges," and there are as many different answers to "what makes a good judge" as there are people who are willing to offer their opinions on this issue. Moreover, the attributes that are most often cited as necessary to the making of a "good judge" – fairness, integrity, common sense, and wisdom – are those which are the least quantifiable.

Our society has lofty expectations for judges. Felix Frankfurter insisted that a judge should be nothing less than "philosopher, historian and prophet."³⁰ Paul Freund of the Harvard Law School preferred a combination of "Justinian, John the Baptist, and John Marshall."³¹ And Learned Hand asked merely that a judge have a "bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare, and Milton, with Machiavelli, Montaigne, and Rabelais, with Plato, Bacon, Hume and Kant."³² As Chief Justice Walter Murphy, the first candidate to emerge from the New Hampshire Judicial Selection Commission, commented upon his confirmation: "[Society] expects someone to be paranormal, to be something humanity hasn't permitted for 2000 years."³³

It follows that a society that has high (and sometimes unrealistic) expectations for judges will have high (and sometimes unrealistic) expectations for judicial selection systems. For example, merit selection systems have been touted for "eradicating politics" from the selection of judges

when in fact judicial selection commissions are—and should remain—an integral part of the fabric of our political system. Rather than claiming that the “best” judges would finally surface if elected officials would only relinquish their power to commissions, supporters of judicial selection commissions would do well to recognize that commissions are intended to improve upon, not replace, our time-honored constitutional system of selection of judges by the Governor and Council. Judicial selection commissions serve the important functions of assisting a governor to recruit new or untapped judicial talent,³⁴ conducting thorough investigations of each judicial candidate, carefully screening candidates, and recommending candidates to the governor based on merit rather than patronage. But we cannot expect commissions to create a clear, quantifiable, non-controversial recipe for selecting the best qualified judges.

STATUTORY OR CONSTITUTIONAL REFORM

Recognizing that judicial selection requires striking an artful, prudential balance among competing values counsels against embedding the Commission in an amendment to the State’s Constitution. The Commission works best not as an autonomous, independent body, but in coordination with our elected representatives. Creating a Judicial Selection Commission through legislation provides for the permanency lacking in an Executive Order but allows for the flexibility missing in a constitutional amendment. The Judicial Selection Commission should be viewed as a work in progress whose makeup and procedures may require occasional fine tuning.

As an example of how time and experience can inform one’s thinking about the subject of judicial selection, it is useful to reflect on the composition of the Judicial Selection Commission which was the subject of this author’s 1975 proposed legislation. The 1975 bill called for a Commission comprised of five attorneys appointed by the Bar Association; five members of the public; and the Chief Justice of the Supreme Court as its chair.³⁵ While this legislation gained almost unanimous support from the House and Senate in 1975, few today would advocate that this particular configuration be memorialized in a statute let alone a constitutional amendment.

Some have argued that the 1977 Opinion of the Justices requires judicial selection reform to be accomplished through a constitutional amendment. For several reasons, though, it is quite likely that our current New Hampshire Supreme Court would uphold legislation creating a non-binding Judicial Selection Commission. First, the only New Hampshire Supreme Court precedent on the subject of judicial selection is the closely divided opinion issued a quarter of a century ago. Second, Chief Justice Kenison and Justice Lampron rendered a vigorous dissent in the case which persuasively argues in favor of the constitutionality of a non-binding, advisory commission.

Third, although little mention has been made of this so far in the current debate, it is significant that a constitutional amendment to create a judicial selection commission was rejected as unnecessary by the 1974 Constitutional Convention. The delegates to the Convention voted Resolution No. 102³⁶ “inexpedient to amend the Constitution” based on a recommendation by the Convention’s Judicial Department Committee that legislation was the appropriate vehicle for the creation of a judicial selection commission and that “No constitutional amendment is required.” The Committee, chaired by the highly respected attorney, Arthur Nighswander, wrote:

“The committee agrees with the principle that the creating of a commission to screen nominees for judicial office is advisable, as long as the governor’s appointive power is not destroyed and that such commission should be advisory, but believes that this proposal requires more study by the Judicial Council and others for the purpose of recommending appropriate legislation. No constitutional amendment is required.”

Journal of the Convention to Revisit the Constitution, May 1974, p. 234. Fourth, the current court has had the benefit of observing successful judicial selection commissions in New Hampshire and other New England states which maintain intact the governor’s unfettered right to nominate and appoint judges.

It is likely that in order to pass constitutional muster, any statutorily created Judicial Selection Commission would have to be non-binding and advisory only. The non-binding nature of a Judicial Selection Commission would not, however, detract from its ability to perform the essential and most useful tasks of a commission: active recruitment, effective diligence, and vigorous deliberations. Non-binding or not, the Commission would still stand as a compelling conscience for any governor. To assure that a governor does not ignore a commission with impunity, the legislation could require the Governor to publicly disclose his or her rejection of the recommendations of the Commission.

To minimize the potential for constitutional attack, careful consideration would have to be given to the composition of any statutorily created Judicial Selection Commission. A Commission comprised of gubernatorial appointments would likely stand a better chance of withstanding constitutional scrutiny than a Commission comprised of appointments by the legislative and judicial branches. To assure diversity of ideas on the Commission and to protect against appointment of those subservient to the governor, the statute could require representation on the Commission of various constituencies, much as Governor Shaheen’s Executive Order does.

CONCLUSION

So far, the experiment with the Judicial Selection Commission initiated by Governor Shaheen has been consid-

ered a success. Although it might be tempting to embed this new arrangement in the State Constitution, there are three strong arguments for preferring a commission established by statute. First, the Commission remains an experiment, a work in progress. A statutory commission would allow for flexibility to respond to improvements dictated by acquired experience. Second, a key to the Commission's success has been the Governor's cooperative attitude. Keeping the structure of the commission susceptible to modification by the governor and legislature will enhance the prospect of continued cooperation among the branches and may serve to prevent stalemates between the Commission and the governor. Third, we should be wary of making permanent changes in our constitutional system of separation of powers. In reforming complex governmental mechanisms, modesty is almost always a virtue.

ENDNOTES

1. Exec. Order No. 2000-9, Gov. Jeanne Shaheen (June 30, 2000).
2. *Id.*
3. Shawne Wickham, *Murphy Wins High Marks for Court Chief*, New Hampshire Sunday News, September 10, 2000, p. A-20.
4. Tom Fahey, *Superior Court Nominee Duggan Praised*, The Union Leader, Manchester, N.H., December 19, 2000, p. A-9.
5. Lisa Wangness, *Judicial Selectors Eases Skepticism*, Concord Monitor, December 16, 2000, p. A-8.
6. *Id.*
7. House Bill 754, New Hampshire House of Representatives, 1975, sponsored by Representative Katherine M. Hanna.
8. *Id.*
9. House Bill 754 was approved by the New Hampshire House Judiciary Committee (16-1); the New Hampshire House of Representatives on an affirmative voice vote; and was approved unanimously by the New Hampshire Senate.
10. Minutes of House Judiciary Committee, April 16, 1975, citing testimony from John Pendleton.
11. *Id.*
12. Letter from Chief Justice Frank R. Kenison, to Martha Frizzell, Chairman, House Judiciary Committee, (April 14, 1975).
13. Minutes of House Judiciary Committee, April 16, 1975.
14. Governor Meldrim Thomson's Veto Message to the Honorable Members of the General Court (June 1, 1975), p. 1.
15. *Id.*, at 1; N.H. Constitution, Part II, Article 46.
16. Letter from David H. Bradley, to Katherine M. Hanna (July 15, 1975) (announcing Senate meetings on the subject of judicial selection).
17. Letter from Chief Justice Frank R. Kenison, to Katherine M. Hanna (November 18, 1975).
18. Opinion of the Justices, 117 N.H. at 401.
19. *Id.*, 117 N.H. at 401.
20. *Id.*, 117 N.H. at 403.
21. *Id.*, 117 N.H. at 402.
22. *Id.*, 117 N.H. at 406 (Kenison, J., and Lampron, J., dissenting).
23. Exec. Order No. 2000-9, Gov. Jeanne Shaheen (June 30, 2000).
24. The attorney members on the Commission include: Kenneth Brown of Abramson, Brown & Dugan; John Dwyer of McLane, Graf, Raulerson & Middleton; Fred Hall of Rochester; Katherine Hanna, Chair, of Sheehan, Phinney, Bass + Green; Marilyn McNamara of McNamara & Newman; Diane Nicolosi of Swope & Nicolosi; and Philip Waystack of Waystack & King.
25. The public members on the Commission include: Kathy Keller of New Beginnings Women's Crisis Center; Marcia Sink of Court Appointed Special Advocates of New Hampshire, Inc.; William Walker of The MacMillin Co., Inc.; and Chief William Wrenn, Police Chief of Hampton.
26. Letter from Governor Jeanne Shaheen, to Katherine M. Hanna, Chair of Judicial Selection Commission, dated July 7, 2000.
27. *Id.*
28. Letter from Governor Jeanne Shaheen, to Katherine M. Hanna, Chair of Judicial Selection Commission, dated December 8, 2000.
29. Exec. Order No. 2000-9, Gov. Jeanne Shaheen (June 30, 2000).
30. Felix P. Frankfurter, New York Times Magazine, November 28, 1954, p. 36.
31. Interview of Katherine M. Hanna with Paul Freund, University Professor Emeritus, Harvard Law School, and Chairperson of the First Circuit Judicial Nominating Commission, Cambridge, Massachusetts, March 30, 1979.
32. Learned Hand, New York Times Magazine, November 28, 1954, p. 36.
33. Shawne Wickham, *Murphy Wins High Marks for Court Chief*, New Hampshire Sunday News, September 10, 2000, p. A-20.
34. The fact that eighty-seven New Hampshire attorneys filed applications for the three Superior Court vacancies published by the Commission in December of 2000, substantiates the effectiveness of the Commission's active solicitation.
35. House Bill 754, New Hampshire House of Representatives, 1975, sponsored by Representative Katherine M. Hanna
36. Resolution No. 102, sponsored by Delegate Mark A. Stevens, Walpole, 1974 Constitutional Convention, "relating to the nomination and appointment of judicial officers. Providing that a nominating commission be established to nominate candidates for judicial posts and submit nominees to the governor and council for selection and appointment."



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