

An Interview with Roy Schotland

Georgetown law professor Roy Schotland was the reporter for the ABA's Task Force on Lawyers' Political Contributions for its recommendations of changes in the financing and handling of judicial elections. While the ABA task force's *other* recommendations – known under the label “pay-to-play” based on their attempts to limit the ability of lawyers to get work from government in exchange for campaign contributions to government officials' campaigns – have received wide notice, the judicial election reform measures have received less discussion. The recommendations, now under active review within the ABA and by the Conference of Chief Justices, are expected to appear on the agenda of the ABA House of Delegates in August.

Professor Schotland has for many years studied campaign finance and election law issues, and he was a law clerk for U.S. Supreme Court Justice William J. Brennan, Jr. in 1961-62, when Brennan wrote the majority opinion in *Baker v. Carr*, 369 U.S. 186 (1962), which authorized judicial review of state legislative districting and ultimately led to the one-man, one-vote rulings that reshaped the country's political landscape. In this interview, we discussed the judicial election reform proposals, as well as some of the problems they were designed to address. We also briefly discussed the *Baker* case and the duty of a clerk to keep confidential the work of the Court.



Court Review: Let me start with this: You first got into writing about judicial elections at least by 1985. What originally got you into studying judicial elections?

Schotland: That's simple, and in a way wonderful, and in a way embarrassing. It was the first time that I taught election law. I haven't done it continuously since — in fact there was about a ten-year break — but that first time it was a seminar, which meant papers, and a student came in and suggested that he would like to do a paper on judicial campaign finance.

And I sat there completely silent, and

after a few moments he said, “What's wrong?” And I said, “The only thing wrong is that I didn't think of it. It's superb.” So this was genuinely a student-initiated area, and I kept digging. There was almost zero out there. There would be a little bit on trial court elections in L.A. in a two-year cycle, and then that sort of thing about county elections in some other state and some other cycle, totally isolated, and really no effort, at least that I can recall, ... to get generalizations and no effort to say what can be done about this, if anything.

CR: Obviously there's been quite a bit in the meantime since your first article back in 1985.¹ You recently have been the reporter for the ABA's Task Force on Lawyers' Political Contributions. How and why was that group formed?

Schotland: The driving force there was the Association of the New York City Bar and the chairman of the S.E.C., who were very concerned — not at all about judicial elections — but about what is called pay to play; that is, just as in the municipal bonds finance area, there has been regulation of contributions by municipal bond underwriters to, let's say, state or county treasurers. There was a concern about municipal bond lawyers.

Now, put wholly aside whether those lawyers should be distinguished from all kinds of other lawyers who do all kinds of other work with state and local governments. The driving point was that

Footnotes

1. Roy A. Schotland, *Elective Judges' Campaign Financing: Are State Judges' Robes the Emperor's Clothes of American Democracy?*, 2 J. LAW & POLITICS 57 (1985). For Professor Schotland's views regarding campaign finance reform in non-judicial settings, see Roy A. Schotland, *Proposals for Campaign Finance Reform: An Article Dedicated to Being Less Dull than its Title*, 21 CAP. U. L. REV. 429

(1992); and Roy A. Schotland, *Proposals for Campaign Finance Reform - A Postscript*, 21 CAP. U. L. REV. 489 (1992). In the last-cited article, Schotland used an apparently novel device, which he called a “bogometer,” “a new scientific instrument [that] locates and measures bogus,” to locate minor errors in his earlier arguments.

the muni-bond lawyers should be regulated. The ABA, if I may put it in simple language, put that aside. It came back. The ABA said, well, we'll appoint a task force, and as they were appointing that, a key member of the ABA said, you know, if we're looking at campaign contributions at all, we really ought to include judicial elections. So it piggy-backed.

CR: The report of the task force was issued in two parts: a part one, dealing with the pay-to-play issues with state and local candidates, and a part two dealing with judicial candidates. Were you the reporter for both parts?

Schotland: Happily, no, not at all. I say that because the pay-to-play issues are, I think, much more hard to answer than the judicial campaign issues. Specifically, the task force was sharply divided on the pay to play and throughout was completely unanimous on the judicial [issues].

CR: Were there different task forces

Schotland: No.

CR: — or were they the same group?

Schotland: Exactly the same people. Of course, there were slightly different, shall I say, leading participants on the different issues. The key person on judicial is the Chief Justice of Texas, Thomas Phillips.

CR: How did the group get selected? Do you know?

Schotland: I really don't. I only came into it — they were created by [ABA] House of Delegates action in the Summer of '97. I was first contacted in February '98. And the first time there was actual discussion of judicial issues was ... at a task force meeting at the beginning of March.

So their earlier work had all been on the pay to play, and there were several bond lawyers in that group. There were some of the people who were pressing for regulation of bond lawyers. And I believe that Chief Justice Phillips was there ... at least primarily because of the judicial issues.

Senator Howard Baker was one of the group. William Webster was one of the group. I just don't know how the particular people got brought in. There's an outstanding Los Angeles lawyer Ron Olson, of Munger, Tolles & Olson, who, as far as I know, has no particular

SELECTION AND RETENTION SYSTEMS FOR STATE COURT JUDGES	
APPELLATE COURTS	
Total appellate judges: 1,243	
Total that stand for some form of election: 1,084 (87%)	
Total that stand for contestable election: 659 (53%)	
INITIAL TERM	SUBSEQUENT TERMS
Appointment: 582 (47%)	Appointment: 133 (11%)
Partisan Election: 495 (40%)	Partisan Election: 400 (32%)
Nonpartisan Election: 166 (13%)	Nonpartisan Election: 166 (13%)
	Retention Election: 518 (43%)
GENERAL JURISDICTION TRIAL COURTS	
Total trial judges: 8,489	
Total that stand for some form of election: 7,378 (87%)	
Total that stand for contestable election: 6,650 (77%)	
INITIAL TERM	SUBSEQUENT TERMS
Appointment: 2,061 (24%)	Appointment: 1,013 (12%)
Partisan Election: 3,669 (43%)	Partisan Election: 2,360 (28%)
Nonpartisan Election: 2,759 (33%)	Nonpartisan Election: 2,891 (35%)
	Retention Election: 2,127 (25%)

Source: Report and Recommendations of the [ABA] Task Force on Lawyers' Political Contributions, Part Two, July 1998, at 69, 73.

involvement in the muni-bond area and certainly has continued to be extremely valuable in the judicial area.

CR: Let's talk about the report of the group. What would you characterize as the theme of the recommendations, or can you point to a theme?

Schotland: I would say the theme would be that you cannot sit still. You also cannot stop with saying let's get rid of judicial elections, because when you have thirty-nine states with significant numbers of judges up for some form of election — three other states [also have elections], making a total of forty-two, but those three others only have probate judges up — so let's [call it] mainly about thirty-nine states.

If you've had generations of effort to get rid of judicial elections and you still have 87 percent of state judges up for some form of election, then you've got to pay attention to the problems — and there are problems, obviously, in judicial elections. And you've got to go to work on that, and I would say the theme is not to say that we should have judicial elections, not to say we shouldn't have judicial elections, but [that] we have them, they're becoming nastier, noisier, and costlier, and we've got to do something

about it.

CR: Before we talk about the solutions, let's talk for a minute about the problems. What did your group feel were the most important problems that need to be addressed now?

Schotland: Concentrated large contributors, that is, either individuals or one or two firms or a particular type of firm or particular types of litigants who funded heavily and also were a heavy proportion of a judge's [total funding]. If a judge got a hundred thousand dollars from one firm and another judge got a million dollars in \$20 contributions from lots and lots of people, I think those are two quite different situations, one more problematic than the other. So it isn't just the matter of the amount of money, it's the matter of the size of the contributions and the concentration.

CR: You present quite a bit of data in the report about the rising cost of campaigns. What do you feel is a cause for that?

Schotland: Well, there are several causes. Campaigns generally are costing more, partly because they're becoming more sophisticated, partly because of media expenses. Judicial races by and large don't use much broadcast, but in

THE RISING COST OF JUDICIAL ELECTIONS

Los Angeles Superior Court (non-partisan election)

median cost - 1974:	\$3,177
median cost - 1994:	\$70,000

Alabama Supreme Court (partisan election)

two candidates, total expense - 1986:	\$237,281
two candidates, total expense - 1996:	\$2.1 million

Pennsylvania Supreme Court (initial partisan election; later retention elections)

largest amounts raised - 1987:	\$407,711 and \$115,457
largest amounts raised - 1989:	\$1.4 million and \$555,824
largest amounts raised - 1993:	\$1.3 million and \$250,000
largest amounts raised - 1995:	\$1.8 million and \$926,019

Wisconsin Supreme Court (non-partisan election)

two candidates, total expense - 1979:	\$102,564
two candidates, total expense - 1997:	\$899,074

Source: Report and Recommendations of the [ABA] Task Force on Lawyers' Political Contributions, Part Two, July 1998, at 15-16, 69-71, 73.

some of the less expensive markets they do. And, of course, if you're adding TV on top of other ordinary campaign expenses, you've got a lot more [cost].

There's been a spreading recognition of the states' judicial races. The Chamber of Commerce in September of '98 explicitly targeted eight states in which they said that business had an interest in turning around the approach of those courts or preserving the approach of those courts to issues in which business is particularly interested, and that's very heavily product liability and tort reform. Tort reform generally. Things like punitive damages.

You [get a] statute through the legislature, the court knocks it out. Business has been in the habit of giving money to members of legislatures and executive officials, but they really had never paid as much attention as recently to the courts.

You just had significant Chamber of Commerce involvement in the Michigan race. The Michigan court, and I hate to speak this way, but [it] went from a Democratic court to a Republican court.... I don't know if it's the first time, but [for the] first time in a long time, the majority of that court are Republicans.

And you're going to see more of that, I have no doubt, in 2000.

CR: Other than the involvement of chambers of commerce directly in 1998 campaigns, were there any other surprises or changes?

Schotland: Some judges in Oklahoma who were up for retention were targeted by business [for defeat], and the tactic didn't work. Those justices and judges came through. I don't know if I'd call that a surprise.

Let me make explicit, [though]. As long as the rules are as they are, anybody who faults plaintiffs' lawyers on the one hand or the defense side, Chamber of Commerce, on the other hand, is either being silly or hypocritical.... I don't mean for one second to say that these people are doing anything wrong when they participate. The only thing [that] would be wrong is if they give sums that are illegal or they launder money and so forth, and I'm not aware of any such problems in judicial races.

CR: The Sixth Circuit ruled last year that overall expenditure limits on judicial campaigns, at least in the circumstances argued by the State of Ohio, were unconstitutional.² Your task force didn't suggest any expenditure limits because

that case was still pending and the constitutionality was in doubt. If expenditure limits aren't available, what can be done to improve the situation?

Schotland: Let me say first that the Ohio expenditure limits had been set by the court itself, and I would think any neutral observer [would] be a little concerned about seeing the people whose races are in question setting the regulation of those races.

Now, that's a reason why many of the people, academics, that is, who attend to campaign finance are very, very skeptical of expenditure ceilings, even if they were held constitutional. There is a very decent case that the general unconstitutionality of expenditure ceilings should be distinguished from the rather special situation of judicial elections.

But there's another problem with expenditure ceilings. If you have a ceiling, you just push the money outside of the candidate campaign and into independent spending or spending by parties. So the expenditure ceilings, even if constitutional, won't work. They just cause a different flow of the funds.

And by and large, while that different flow, many of us would say, is clearly constitutional and has to be protected and allowed, most of us would say we'd rather see the candidates in charge of the campaigns than any independent or more amorphous group, because the voters can hold the candidates responsible for a campaign. Voters can't hold responsible some independent group that runs a Willy Horton ad.

CR: How would the contribution limits proposed by your task force be handled?

Schotland: In the first place, they should be set in light of the actual experience in the jurisdiction. What is an appropriate contribution in, let's say, Alabama and what's appropriate in Wyoming or Texas or California would obviously differ.

And you also have to set the contribution limits in a way that is fair as among different size firms. For example, if you say the limit is only on indi-

2. *Suster v. Marshall*, 149 F3d 523 (6th Cir. 1998), cert. denied sub nom. *Marshall v. Suster*, 67 U.S.L.W. 3452 (Jan. 19, 1999).

viduals and you don't do anything about law firms, then the plaintiffs' bar, which tends to be in small firms, could give, let's say, five times or ten times the limit; whereas, a firm with a few hundred people could give a few hundred times the limit.

So there has to be not only a cap on individual contributions, but also some related cap on at least law firm contributions, speaking of law firm not just as the firm's own pocket, but [including all] the members of the firm, employees of the firm.

The task force also said that once the limits are set, if they are violated, the judge should not be able to sit in the case in which a lawyer or a party has given excessively. Or, if the jurisdiction doesn't decide to have general campaign finance limits, then the task force thought it of the highest importance that there be a special limit for purposes of disqualification; that is, if somebody gives more than X, they shouldn't be able to have a case before that judge.

CR: Was any consideration given to a blanket disqualification any time a lawyer contributor is before a judge?

Schotland: No. I would say that's the extreme of symbol-driven, impossible purity. Lawyers, I would think, and the task force said, have an obligation to support good judges for one thing. For another thing, where are the judges going to get money from if they don't include, among the contributors, the lawyers?

For a last thing, the task force thought and said that lawyers' contributions are less problematic than contributions from likely litigants, because the lawyers know that they're going to win some, they're going to lose some, and the best thing they can get is a judge that's going to do a decent job. Litigants are only going to be concerned about which way that judge is going to go on some single issue.

So to single out lawyer contributions, or single out anybody's contributions, and say, if there's any contribution at all, then the judge can't sit, would mean that either judges can't raise funds or they can't sit. It's utterly unworkable.

CR: How would indirect contributions be handled?

Schotland: The task force says they should be aggregated. If Steve

Leben is running and Roy Schotland gives him up to the limit — let's assume the limit is a thousand dollars — Roy Schotland should not be able to give another thousand dollars to a political action committee and another thousand dollars to a party, having an agreement with the party and the political action committee that they will do things to help the Steve Leben campaign. All of that should be put together and should be under the \$1,000 cap, whether it's direct to the candidate or indirect.

Now, that doesn't mean that absolutely any contribution to a PAC or party would be included. Let's say, for example, the party doesn't do anything special for Leben's campaign, they just include him on the list of all the candidates whom they're supporting. That would not make the contribution "earmarked" for Leben's benefit.

Without the aggregation, you've just got a sham limit; that is, I can give [the maximum] dollars to the candidates and then more dollars elsewhere to help the candidate. And the parties and PAC's are happy to take the money for the candidates, if they're for them, anyway.

CR: Another of your recommendations may be considered part of the pay-to-play proposals themselves —

Schotland: Yes.

CR: — in prohibiting the appointment by judges of lawyer contributors who have given over specified amounts.

Schotland: Yes.

CR: Is that proposal running into the same opposition that other pay-to-play proposals are?

Schotland: First of all, I don't know, because the other pay to play is under review now in the ABA ethics committee, and I don't know where they're coming out. This one, the limit on appointing excessive contributors, has been supported by a report by an ad hoc review committee that is looking over the task force report ..., and they are supporting the limit on pay to play in judicial appointments.

The problem has been that in some jurisdictions, at least in specialized courts, there has been a strong pattern of large contributors or at least significant contributors getting appointments to a disproportionate extent.

You can't simply say that you bar the person completely, because you'd want

to be able to appoint people to pro bono work, and there might be very special cases where somebody has very special expertise and [that] would be highly relevant. In those situations, the judges would be able to make the appointment so long as they make explicit findings, formal findings, about why they're doing it.

Also, the review committee has said if there's a rotation system, then it's okay if there have been large contributors because they're just getting appointed by rotation and not simply because of the contributions.

CR: The first recommendation made by the task force was to provide for full disclosure, particularly of lawyer contributions, and to make sure that those disclosures are filed with the local court clerk so they're easily accessible to the public. If nothing else got adopted, would adoption of that disclosure provision itself be a substantial improvement?

Schotland: Well, people would differ about "substantial." The one area of campaign finance regulation that has been the most widely supported is disclosure. I think the way the task force wrote it is not quite as happy as the way the Conference of Chief Justices and the review committee are writing it.

The whole idea of having the local filing was simply to make it more available, and if, in fact, the jurisdiction has central filing which is electronic, so that people anywhere in the state can get the data by coming on line, then you don't need local filing.

So the real point is either go electronic, which ... I think almost as many as twenty states now have and probably another ten will have very soon, either have the electronic so everybody can get in easily, or if you don't have the electronic, then have it filed not only centrally but also locally.

CR: Your task force also made some miscellaneous recommendations, such as shortening the time period for raising money, forbidding carry-over of campaign funds from one election cycle to the next, promoting more voter's guides by bar and citizens groups, and getting better data collection on expenses of campaigns.

Let me ask you about the shortened period for raising money. Back in 1987 after the Rose Bird election, you partici-

pated in a panel discussion where you said, "Judges facing campaigns have to move early. They have to get a committee early, they have to get fund raising early."³ Have you changed your view?

Schotland: First of all, the task force recommendation was simply that states that have not already adopted the fairly longstanding Model Code provision, which gives a limit on the [fundraising] period, should adopt it.

I forget at this moment ... just how many states have it. I think it's around half still don't have it.⁴ What you're speaking to, I think, really goes to what the time period should be as distinct from whether there should be any limit.

If there is no limit at all, that means that, as did happen in some situations, the day after, let's say, the 1998 elections occur, the next day, judges who may not be up for not only two years but four or six years are on the phone raising money. They can raise money literally all the time.

And it's one thing to say it ought to be early, whatever you decide early is. It's another thing to say they should never be limited. A Florida court did hold that the Constitution knocks out any time limit. The task force thought that is an impossible answer as well as wrong. The idea that judges could raise money all the time is about as problematic as anything we can think of.

CR: At this point, what's the status of the ABA consideration of your task force report, and where will it go from here?

Schotland: There is an ad hoc review committee that has been working. It includes [Texas] Chief Justice Phillips and the California lawyer I mentioned earlier, Ronald Olson. They will have a report out ... which aims at a discussion ... in February where the ABA will be meeting in Los Angeles.

Then the review committee presumably will make this or that change in their report and bring that before the [ABA] House of Delegates in August, when either the ABA committee report

or original task force report recommendations will be up for action.

CR: By the way, how unique is the process of electing judges in this country?

Schotland: Well, I understand that Switzerland has some of it, and the Soviet Union used to, I don't know if they still do. I think you can stop there. So it is all but completely unique.

CR: The task force indicated that it continues to support merit selection rather than election.

Schotland: Yes. But note that most merit systems include retention elections. So you still, even with merit, don't get away from elections of some type, and if you have elections of some type, you have trouble.

Two justices, Nebraska and Tennessee, were defeated in ... '96, ... in Nebraska because the justice had written the opinion in which that court unanimously struck term limits. And the term limits people came after him and spent supposedly around \$200,000. They haven't filed any disclosure documents, they say they can't be required to. And although the justice raised about \$80,000, he was not retained.

In Tennessee, it was a group aimed at making courts much more conservative and supported, lamentably, by the Republican leadership in the state, including the governor, if I remember correctly, and one or two United States senators, saying Justice Penny White should be defeated. And she was.

So even if you have retention, you're going to have campaign finance problems at least as a potential, and I think, in fact, that potential is being seen much more frequently.

Let me just note, earlier you spoke of the voter's guides.

CR: Right.

Schotland: The hope is that they would be official, not just by bar or other citizen groups. Several western states have for generations had official [ones], and the Washington Supreme Court in '96 and '98 by court order got out over a

million voter guides on the judicial elections, which were inserts in Sunday newspapers: 1.2 million in '96, 1.3 million in '98.

CR: Let me ask you a couple of questions based on your service as a clerk at the U.S. Supreme Court. You clerked during the October 1961 term of the Court. From your experience, how do you view the duty of a clerk to keep secret what went on there?

Schotland: Total. At least, at very least, until all the justices who were there during that clerk's time have left the court.

CR: Have you ever been asked to talk to a biographer —

Schotland: Yes.

CR: — or writer or other author?

Schotland: Oh, yes.

CR: How have you responded?

Schotland: There is a man who's been working over ten years on Justice Brennan's biography. He is the so-called official biographer, and I think most of the clerks did speak with him pursuant to the justice [having] selected him to do this. And we trust his sense of the large picture and sense of discretion. We aren't yet at the point where all the justices who sat with Brennan are gone, but the biography is taking long enough that that may happen.

CR: Have you read the Lazarus book, *Closed Chambers*?

Schotland: I've been in it, yes.

CR: Do you have any thoughts about the —

Schotland: Not printable.

CR: Okay. Let me ask you —

Schotland: That was not meant to be a no comment. That was meant to be a, "I think it's outrageous."

CR: You were there for *Baker v. Carr*, which was written by Justice Brennan while you were serving there. In looking in one of the biographies — that is apparently an unauthorized one — I noticed that most of the press reports immediately after the opinion praised the minority opinion more than Justice Brennan's. *The Washington Post* said:

3. *After California, What's Next for Judicial Elections?*, 70 JUDICATURE 356, 360 (1987).

4. Professor Schotland's recollection was accurate. According to the task force report, "at least" twenty-four states limit the time period

in which a judge can raise funds. ABA TASK FORCE ON LAWYERS' POLITICAL CONTRIBUTIONS, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYERS' POLITICAL CONTRIBUTIONS, PART TWO 48 (1998).

“On the basis of legal scholarship and forensic ability a jury would award victory to the minority. In contrast to Mr. Frankfurter’s tour de force, the opinion of the Court, written by Mr. Brennan, was pallid and technical.”

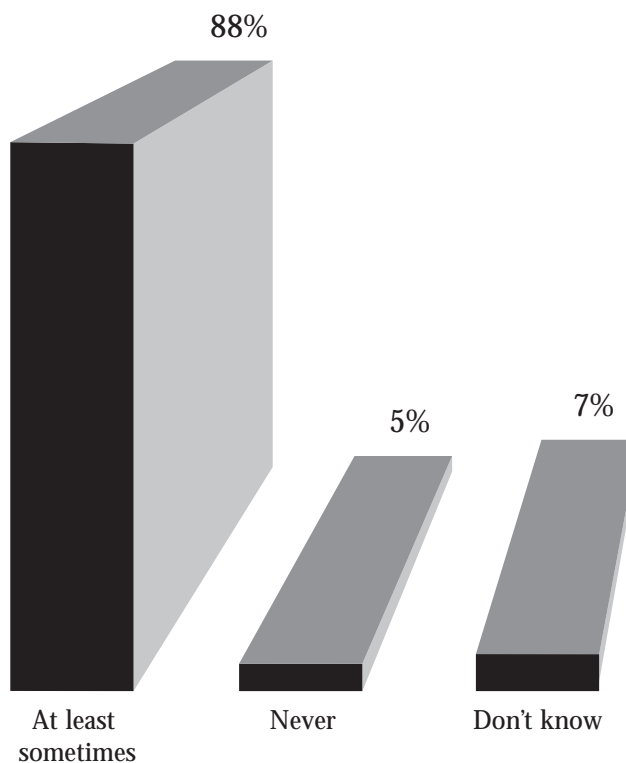
I’m not sure that the forces of history would stand with *The Washington Post* this many years later, but I wonder whether such reviews ever bother a justice who’s written an opinion.

Schotland: If they do, I’ve never heard of it. I think anybody who had participated in that one would say, if you want to call it pallid and technical, that might be totally accurate, but perhaps it was that way in some measure in order to have a majority. There might have been members of the Court who would not have been happy with some elegant rhetoric.

CR: What was it like to be at the Court in that year with such a strong split between Justice Frankfurter and the conservatives, and Black and Douglas, among others, on the liberal side?

Schotland: It was Frankfurter’s last year. It was a swan song time. He had almost had a majority in the prior term on that case, and Justice Stewart thought it ought to be reargued. If you look in the November 1997 *Harvard Law Review*, Anthony Lewis, the *New York Times* correspondent who had written a book about reapportionment back before *Baker v. Carr*; had a piece on *Baker* behind the scenes, which includes some of the documentation showing how the case worked out.⁵ Frankfurter ended up with nobody but Justice Harlan with him. He had had Justice Whittaker, who by the time the case came down had retired, after a very short period on the court. And he had had Justice Clark, who switched to join Justice Brennan. And Stewart, who originally wasn’t sure which way he would go, was part of the Brennan majority.

PENNSYLVANIA SURVEY: ARE JUDGES INFLUENCED BY BIG DONORS?



Source: Pennsylvania telephone survey of 500 respondents, January 1998. Question asked: “In Pennsylvania, how frequently do you think the decisions made by judges in their courtrooms are influenced by large contributions made to their election campaigns – always, most of the time, some of the time, or never?” Full responses: always – 7%; most of the time – 30%; some of the time – 51%; never – 5%; don’t know – 7%; reported margin of error – 4.4%. Survey done for the Pennsylvania Special Commission to Limit Campaign Expenditures, appointed by the Pennsylvania Supreme Court.

And much of the quality of the Brennan opinion was precisely because it was trying to be as narrow as possible to make a step which was obviously a large one, and Justice Brennan, once he had a larger than five-justice majority, was not about to change the opinion and disregard the loyalty of Justice Stewart, who had said he would go along with something, to use *The Washington Post*’s language, not his, that

was pallid and technical.

CR: How did having the chance to work for Justice Brennan affect your career?

Schotland: Well, as one of my professors said of most Supreme Court law clerkships, from there it’s all downhill.

CR: Thank you.

5. See Anthony Lewis, Jr., *In Memoriam: William J. Brennan, Jr.*, 111 HARV. L. REV. 29 (1997). In this memorial tribute to Justice Brennan, Lewis relies upon working documents from Justice Brennan’s chambers, made accessible to Lewis by Justice Brennan, including a detailed memorandum written at the time by Schotland and his fellow clerk, Frank I. Michelman, who later became a law professor at Harvard. In Lewis’ account, Justice Clark ultimately changed his position after he determined that the citizens of Tennessee had no effective remedies other than recourse

to the federal courts. When Justice Clark wished to discuss his changing views with Justice Brennan, a snowstorm prevented Clark from going to the Supreme Court building. Schotland drove Justice Brennan to meet with Clark, and waited an hour and a half in the car before Brennan returned to announce Clark’s change of position. 111 HARV. L. REV.34-35. The Lewis piece provides a fascinating inside view, apparently from authorized sources, of the shaping of the Court’s opinion in *Baker v. Carr*.

**SUMMARY OF RECOMMENDATIONS FOR JUDICIAL CAMPAIGNS
ABA TASK FORCE ON LAWYERS' POLITICAL CONTRIBUTIONS**

Amend Canon 5 (Model Code of Judicial Conduct) to require judges' campaign committees to file disclosure reports with clerk of court (unless otherwise readily available to the public, as with electronic access) and to provide full disclosure of lawyer contributions.

Amend Canon 5 to provide for specific contribution limits for each individual, PAC, firm or political party. The limits would be set by each jurisdiction in light of its own experience and practice.

Amend Canon 5 to provide for recusal, on motion, when a lawyer who has contributed more than the limit on contributions (or, if no contribution limit has been adopted, a separate limit for recusal purposes) is before the judge.

Amend both Model Code of Judicial Conduct for judges and Model Code of Professional Conduct for lawyers to prohibit appointment by judge of lawyer-contributors who give more than a specified amount, except for *pro bono* appointments or in extraordinary circumstances accompanied by specific findings.

Take related steps to reduce the need to raise funds and encourage compliance with campaign regulations, including:

- Limiting the period during which judicial campaigns may solicit contributions (through adoption of Model Code Canon 5C(2) in states that have not yet adopted it);
- Prohibiting carryover of campaign funds;
- Encouraging bar associations and other citizen organizations to produce more voter's guides to promote informed voting; to have judicial campaign oversight committees, to assist candidates in meeting appropriate standards and to assure that campaigns promote public confidence in the judiciary; and to have better data collection on judicial campaign finance practices; and
- In those state with public funding of some campaigns, considering whether such funding should be extended to judicial campaigns.