

March 20, 2008

OPINION

Grisham's Judicial Appeal

By COLLIN LEVY
March 20, 2008

Truth may be more complicated than fiction, but try telling that to John Grisham. The bestselling author of legal thrillers, Mr. Grisham has built his career on sensational stories with real-world political undertones. Wallpapering airport bookstores now is his latest book "The Appeal," which spins the tale of a corrupt chemical company CEO trying to "buy" a judge to get a better verdict. This is possible, the story goes, because the system of judicial elections has made justice itself impossible.

Within days of the book's release, critics of judicial elections began to connect it to examples of real-life corruption. Mr. Grisham himself says his story has "already happened" in West Virginia. Others have tried to link the book's intrigue to next month's Supreme Court election in Wisconsin, where a controversial judge is facing a strong challenge for re-election, helped in part by business groups.

Mr. Grisham has plenty of allies in his crusade among liberal interest groups, who insist that judicial elections somehow represent a blight on the rule of law. Chief among them are groups funded by billionaire activist George Soros. His Open Society Institute is now making donations to dozens of groups seeking to sway the judicial selection process in states from Illinois to North Carolina, as well as funding national groups like Justice at Stake.

The model preferred by Messrs. Soros and Grisham is known to fans as "merit selection," a method already in use in more than 20 states in some form. Under this plan, an appellate judicial commission selects a slate of judges from which the governor must choose. Intended to keep politics out of judicial appointments, judicial commissions have become agents of politicization themselves, steadily tilting state court systems to the left.

Power inevitably comes to reside in the hands of the state's trial lawyers, who end up sitting on the commission. And that means lawyers pick the judges before whom their cases will appear -- a conflict apparently lost on Mr. Grisham, a former trial lawyer himself. One of the most heated battles has been in Missouri, where three of the judicial commission's seven spots are held by trial lawyers with specialties in medical malpractice, personal injury and product liability.

Missouri commission members have also been a prolific source of contributions to Democratic candidates at the presidential and state level, most notably Attorney General

Jay Nixon, a darling of the trial bar. Mr. Nixon is aiming to replace Republican Governor Matt Blunt, who has said he will not run for re-election. Last year, Gov. Blunt called for reform of the judicial commission after he was presented with a slate of Supreme Court nominees designed to force his hand in appointing a justice who didn't share his principles or those of the voters who elected him.

Mr. Blunt is not the only governor who balks at being dictated to by panels of trial lawyers. Tennessee Governor Phil Bredesen, a Democrat, has also been on the record calling his state's version of the Missouri Plan over-politicized and unfair. In 2006, after the commission repeatedly resubmitted a Supreme Court nominee he had rejected, Gov. Bredesen accused the commission of "trying to force people down my throat."

In a result that might surprise Mr. Grisham, a 2007 Harvard study actually found that judges who are elected directly by voters are overall less corrupt than those who win their robes through other methods of selection. Direct election may raise concerns about campaign contributions and the appearance of influence, but it also has the virtue of accountability to the electorate. Though judges in Missouri stand for so-called "retention" elections, these are little more than uncontested pageants. Judges already have the weight of incumbency on their side by the time they face the voters -- and it shows. No appellate court judge has ever lost a retention election in Missouri.

Fans of the judicial commission approach claim that it removes the selection process from the hands of "special interests." At the end of the day, however, the problem isn't the power of business groups, like the fictional chemical company in his novel. Trial lawyers in each state are the ones with the financial and organization incentive to work year-in and year-out to shape the local judiciary to their liking.

That's true, of course, even under an elective system, where trial lawyers donate to candidates they like. But while campaign donations and the possibility of corruption go with all elective office, elections at least provide transparency and accountability. Without checks and balances, Thomas Jefferson once wrote, the judiciary was sure to become a "Despotic branch." To move in the Grisham/Soros direction of picking judges behind closed doors only takes things further from our democratic ideals. Then again, maybe the Soros-funded groups believe panels of Soros-approved experts should appoint our presidents and legislators too.

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