



ALLEN CHAIR SYMPOSIUM

FEDERAL JUDICIAL SELECTION



*federal judicial selection*

## Few aspects of modern governance have been more controversial than federal judicial selection.

Slowed nominee processing, accusations and countercharges between Democrats and Republicans as well as “paybacks” have characterized appointments for two decades. One-tenth of the 179 active circuit judgeships, which the United States Congress has authorized, are perennially vacant, and substantial numbers can remain open for years. Individual tribunals have encountered more aggravated conditions. The United States Court of Appeals for the Sixth Circuit functioned absent half its members over eight recent months. Indeed, one new Fourth Circuit seat that lawmakers approved went unfilled more than a decade. Specific nominees often received tardy, and on occasion no, consideration from the United States Senate, which exercises advice and consent powers. The Senate Judiciary Committee, which has principal responsibility for the confirmation process, increasingly votes along straight political party lines. Democratic senators have even relied on filibusters to prevent or slow nominees’ consideration, while President George W. Bush has resorted to the use of recess appointments.

The existence of numerous, protracted vacancies, therefore, has detrimentally affected the whole appointments process, federal courts and judges, entities and individuals working on selection, and attorneys and parties who litigate. For example, lengthy openings have postponed case resolution as well as frustrated inexpensive and equitable appellate disposition, while vacancies required that the Sixth and Ninth Circuits cancel oral arguments, imposing unnecessary expenditures and delay. The complication’s persistence appears to have undermined respect for all three federal government branches, most significantly the institutions of the presidency and the Senate, but even the judiciary. These ideas mean that the federal court appointments process merits scrutiny, which the speakers in this conference will undertake.

For more information, visit us at [www.law.richmond.edu](http://www.law.richmond.edu).

Co-sponsored by the Richmond School of Law and Jepson School of Leadership Studies.

**8:30 a.m.–9:00 a.m.**  
**Breakfast and Registration**

**9:00 a.m. Welcome**

**Rodney A. Smolla**  
Dean, University of Richmond  
School of Law

**9:15 a.m.–10:30 a.m.**  
**The First Two Centuries**

The first panel will explore the provision that the drafters made in the United States Constitution for federal judicial selection and will trace the two-century history of the selection process following the Constitution's adoption.

**Rodney A. Smolla**  
Dean, University of Richmond  
School of Law  
(Moderator)

**Charles Cooper, Esq.**  
Cooper & Kirk, PLLC

**Professor Gary L. McDowell**  
Haynes Professor of Leadership  
Studies and Political Science  
University of Richmond  
Jepson School of Leadership Studies

**Ms. Maeva Marcus**  
United States Supreme Court  
Historical Society

**10:30 a.m.–10:45 a.m. Break**

**10:45 a.m.–12:00 p.m.**  
**Modern Federal Judicial Selection**

The second panel will explore modern federal judicial selection, tracing the selection process over the last two decades and analyzing how it has grown increasingly contentious.

**Professor Carl W. Tobias**  
Williams Professor of Law  
University of Richmond  
School of Law  
(Moderator)

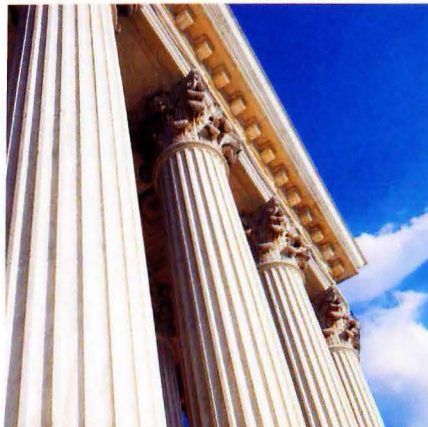
**Professor Theresa M. Beiner**  
University of Arkansas at Little Rock  
William H. Bowen School of Law

**Professor Sheldon Goldman**  
Department of Political Science  
University of Massachusetts

**Judge Edith Jones**  
U.S. Court of Appeals  
for the Fifth Circuit

**Professor William P. Marshall**  
Kenan Professor of Law  
University of North Carolina  
School of Law

**12:00 p.m.–1:30 p.m. Lunch**  
(Law School Atrium)



**1:30 p.m.–2:45 p.m.**  
**The Prospects for Reform**

The third panel will explore numerous suggestions for remedying or ameliorating the difficulties that pervade modern federal judicial selection and the prospects for these measures' success.

**Professor Gary L. McDowell**  
Haynes Professor of Leadership  
Studies and Political Science  
University of Richmond  
Jepson School of Leadership Studies  
(Moderator)

**Terry Eastland**  
Publisher of *The Weekly Standard*

**Professor Michael Gerhardt**  
Hanson Professor of Law  
Marshall-Wythe School of Law  
College of William and Mary

**Professor Sanford V. Levinson**  
W. St. John Garwood and  
W. St. John Garwood, Jr.  
Centennial Chair in Law and  
Professor of Government  
University of Texas School of Law

**2:45 p.m. Reception**



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**April 16, 2004**  
Moot Court Room

Allen Chair Symposium

Federal Judicial Selection