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.

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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
(Moderator)

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