

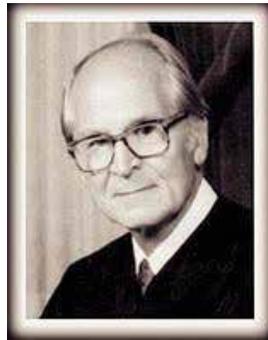
## HARVEY UHLENHOPP AND THE MERITS OF MERIT SELECTION TOM LEVIS, PRESIDENT

**B**efore a rural lawyer from Hampton decided to weigh in on the issue, Iowa elected its judges. My great uncle, Harold Levis, was one of those elected judges. He presided in Southern Iowa, with his home base in rural Chariton. Although I was pretty young at the time, I remember going to uncle Harold's office and seeing his judicial campaign signs. My vague memory is that the signs touted uncle Harold's honesty and integrity (How creative for a judicial election!). My father told me later that uncle Harold loved campaigning as a legislator, but hated campaigning to be a judge. He loathed having to ask his lawyer and social friends for campaign money, and he hated campaigning against his lawyer friends.

Like my uncle Harold, Harvey Uhlenhopp practiced law in rural Hampton. By all accounts, he was a smart, talented and successful lawyer who was active in his community, active in The Iowa State Bar Association and active in his beloved Republican party where he served as a member of the Iowa House of Representatives from 1951 to 1953. In 1953, Harvey Uhlenhopp was elected to the district court bench.

Like my great uncle Harold, Harvey Uhlenhopp hated running for election as a judge. He didn't mind running for political office, but campaigning to be a judge was just plain wrong in his estimation. According to Harvey, a "judicial system must have qualified personnel in order to function properly. Unswerving devotion to justice is the quintessence of the judicial function. Fulfillment of this ideal requires judges beholden to no one." In Harvey's eyes, electing judges was no way to select a judge. Whether a candidate was popular in the community or a funny and witty speaker did not ensure that the candidate would be a good judge. The fact that a candidate was financially successful did not mean he or she would make good decisions on the bench. Harvey knew from his own experience that powerful politicians were generally not the best candidates to be a judge. After all, politicians are often beholden to someone. That is the na-

ture of politics. Even if an elected judge was truly beholden to no one, like Harvey hoped he was, soliciting money from local lawyers and businesses did not give the public confidence that its judges were impartial. In Harvey's view, politics and judging were like oil and water; they just don't mix!



HARVEY UHLENHOPP

For nearly five years after his election to the bench, Harvey thought about changing the way Iowa chooses its judges. In 1958, as Chair of The Iowa State Bar Association's Committee on the Judicial Administration of Justice, Harvey decided to do something about it. He wrote a fascinating article for the Iowa Law Review entitled "Judicial Reorganization in Iowa,"<sup>44</sup> Iowa L. Rev. 6 (1958-1959). This 60-year-old article is a wonderful historical piece that reviews Iowa Courts from 1846 to 1958. It makes a number of recommendations for court reform, one of which immediately found favor in the Iowa General Assembly. Harvey proposed that Iowa amend its Constitution to eliminate judicial elections and adopt a system for selecting judges based on merit. Less than a year after his famous article was published, the Iowa legislature agreed with Harvey and voted to amend the Iowa Constitution to eliminate judicial elections and adopt Harvey's merit selection plan.

Amending the Iowa Constitution is not something Iowa generally does on the spur of the moment, so the Iowa legislature must have known there was a problem with the quality of judges elected to the bench. In 1961, the Iowa legislature again voted in favor of Harvey's merit selection plan. On both occasions, Senator Charles Grassley, then a state lawmaker, voted in favor of

Harvey's proposal. Years later, Senator Grassley said: "I'm the guy who voted in 1959 and 1961 for Iowa's present way of selecting judges...it was a very forward-looking thing to do what we did 50 years ago." In 1962, Iowa voters approved Harvey's proposed Constitutional Amendment and, as they say, the rest is history. Merit, not politics, became the polestar for choosing Iowa judges.

Harvey Uhlenhopp's merit selection plan created nominating commissions to investigate and interview prospective judicial candidates and then send the names of the candidates with the most merit to the governor for final selection. These nominating commissions are composed of members appointed by the governor and an equal number of lawyer-members elected by Iowa lawyers. The senior justice of the Iowa Supreme Court chairs the state nominating commission. The senior judge of the district typically chairs the district court commissions. The state nominating commission interviews and

### I WANT TO EAT A MEAL WITH YOU!

#### A message from President Tom Levis

In early September, ISBA officers and staff held the first of many "Table for Ten" events with lawyers in Oskaloosa. A "Table for Ten" is a lunch, breakfast or dinner event with members of the local bar where any issues affecting lawyers and the courts can and will be discussed.

We met 10 lawyers from the Oskaloosa Bar for lunch at Tasos and spent nearly 90 minutes talking about possible solutions to the rural practice problem, about the new Drake Law Incubator firm opening in Oskaloosa, about access to justice issues in Mahaska County, about judicial residency requirements for district judges and about proposed new guardianship and conservatorship legislation. We also had a laugh or two.

It was a great event and one we will duplicate across Iowa in the next year. If you want to have a "Table for Ten" in your town, let us know and we will set one up. We do travel, so don't be bashful about asking! In addition, the bar picks up the tab. Contact Harry Shiple at [hshiple@iowabar.org](mailto:hshiple@iowabar.org).



investigates all candidates and then sends three names to the governor who chooses one of the three for the next Iowa Supreme Court justice or Court of Appeals judge. The district court commissions send two names to the governor who chooses one to be the next district court judge.

Why nominating commissions? According to Harvey, no judicial selection system is perfect, but the objective is to select the best-qualified individual. According to Harvey, the inquiry ought to be: "Has the individual judicial temperament? Is he or she studious? What about his or her integrity, intelligence, training and experience?" Harvey suggested that when a judgeship becomes vacant, a judicial nominating commission composed of lawyers, appointed members and a senior judge should thoroughly examine the qualifications of all of the candidates without reference to political affiliation, and then certify the best candidates to the governor who would appoint one of the individuals recommended.

Harvey thought that dividing the commissioners equally between lawyers and appointed members made the most sense. The governor, on behalf of the public, should provide half of the commissioners. And lawyers, who have special knowledge of the job and candidates, should have an equal say in who should be the next judge or justice. Harvey also thought judges had valuable knowledge of the judicial position, as well as the candidates, so a judicial representative should be

on the commission. Harvey felt that, except for the judicial members, there should be no restriction respecting the occupation of any of the governor-appointed commissioners. He also felt that none of the commissioners should hold public office while serving on the nominating commission, and each commissioner should be eligible for only one full term. Finally, Harvey thought all of the commissioners should be electors in the judicial area in question, but their political affiliation should be disregarded.

Harvey's system for selecting judges has been in place since 1962. Hundreds of judges and justices have been appointed based on their merit and not their politics. The system has worked well. Republican governors have picked Democrat judges and Democrat governors have picked Republican judges. Each governor knew that the judicial candidates referred to him or her were exhaustively evaluated by an independent and non-political commission.

Unfortunately, Harvey Uhlenhopp's 60-year-old merit selection system is now under attack by politicians who want politics to play a bigger role in the selection of Iowa judges. They believe that the Uhlenhopp system is broken and think that the lawyer members of the judicial nominating commissions wield too much power in the selection of judges. They propose changing the law to allow the governor to appoint all members of the nominating commissions in the hope that the candidates would be more politically-aligned to

the governor. This change is being proposed by Senator Julian Garrett, a Republican and attorney from Indiana. Despite the fact that he has been supportive of other ISBA measures in the past, I am sure Harvey Uhlenhopp is rolling over in his grave wondering why a fellow Republican and fellow lawyer is trying to re-inject politics into the selection of judges after 56 years of success. But that is politics today. There is no data to support this proposal. That is because there is no data to support that lawyers wield too much power or "run the show." Interestingly, Governor Branstad and Governor Reynolds have appointed lawyers to be among the appointed members of nominating commissions. I was on the District 5C nominating commission when Governor Branstad appointed attorney Ryan Koopmans to the commission and on the commission when Governor Reynolds appointed attorney Brett Roberts. If the person actually choosing the new judges thought lawyers "ran the show," he or she would not be adding lawyers to the commission mix!

As I said, I am on the District 5C nominating commission (Polk County). In the last four years, the 5C commission has been involved in the selection of eight district court judges. Candidly, when I ran to be a lawyer-member of the 5C commission, I had no idea that in just four years I would be involved in the appointment of eight district court judges! But, that is the way it worked out and I am honored to have played a role in the future of Polk County justice. I want you to know that in the last four years I have come to know and appreciate my fellow 5C commissioners: both the elected lawyer-members and the governor-appointed members. We do what Harvey wanted us to do. We ignore politics. The politics of a candidate are never discussed. Like Harvey hoped, we read the extensive materials and talk to each other about the merits of each candidate. We investigate each candidate's judicial temperament, their integrity, their intelligence, their training and their experiences. When we are interviewing candidates, all of us candidly share information and thoughts.

During our deliberations, each of us openly discusses the strengths and the weaknesses of each candidate. I can assure you that none of us wants to send a name to the governor who is not uniquely qualified to be a district court judge. We are all looking for the best candidates with the most MERIT.

Each of the elected lawyers on the 5C nominating commission brings a special knowledge to the commission, just like Harvey hoped. Most of us have worked with the candidates and know their work habits, their skills and their temperament. As lawyers, we generally know what the job entails. As lawyers, we all recognize that the candidates selected may very well be deciding cases involving our clients in the very near future. So, we want to recommend the candidates with the most merit. We share our special knowledge with the appointed members. In my opinion, the appointed members of the 5C nominating commission appreciate

the special knowledge that we lawyers bring to the discussions and would struggle without it.

The appointed members also bring special talents to the commission. On the 5C commission, we have lay people from different occupations. For instance, currently we have a lobbyist, a realtor, a banker, a lawyer and a business CEO. None of these appointed members are afraid to ask questions or confront other commissioners about a candidate's merit. Frankly, several of our appointed members ask questions of candidates that I would never have thought to ask, but yielded important information that I would not have learned had the question not been asked. I, for one, appreciate the fact that these appointed members bring a different perspective to the table. They view selecting judges from the perspective of a consumer of justice. What's not to appreciate about that?

Harvey's system works. It's not

perfect, as Harvey predicted, but it is the best system for selecting judges in America. Many of my bar association friends from other states marvel at Iowa's merit selection process. They all wish their judges didn't have to be so political to get elected or appointed. Perhaps if they had a Harvey Uhlenhopp helping them, they too would have an independent judicial branch. Thank you, Harvey.

P.S. In 1970, Governor Robert D. Ray appointed Judge Harvey Uhlenhopp to the Iowa Supreme Court. He served until 1986. By all accounts, he was a wonderful Supreme Court Justice.



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