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## Comments On Who Appoints D.C. Judges

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**EDITED PROCEEDINGS FROM THE SYMPOSIUM ON  
DISTRICT OF COLUMBIA DEMOCRACY AND THE  
THIRD BRANCH OF GOVERNMENT**

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*Comments of*  
**Daniel A. Reznick\***

I'm a very firm proponent of the maxim that if it ain't broke, don't fix it, and this is a system that I think everyone can agree is not broken, and in my judgment, doesn't need fixing. In response to one of the things that Mr. Schneebaum said, I'd like to respond with a quotation from Justice Holmes, who said the life of the law has not been logic, it has been experience. I'm going to talk from my experience.

I practice extensively in the Superior Court, and I appear from time to time in the D.C. Court of Appeals. These are both excellent courts. I think everyone can agree on that. As Professor Worthy said, a number of the Superior Court Judges have gone on to the Federal District Court. In my judgment, the D.C. Court of Appeals is fully the equal of the U.S. Court of Appeals for the D.C. Circuit. I hope there are no U.S. Court of Appeals Judges here, but I'm prepared to defend that proposition on the basis of a good deal of experience in both.

I also was on the Judicial Tenure and Disabilities Commission for about ten years. As you've heard, that's the Commission with the power to reappoint judges. My recollection is that, during that whole time, there was only one judge who came up whom we were prepared to pronounce unqualified, and, therefore, precluded from reappointment. We didn't have to do that, because we passed the word, and that judge voluntarily "retired," so that question never came up. But we never turned down anybody during my tenure, that I can recall, for reappointment, which I think, again, is a testament to the quality of the Court and the job that the Nominations Commission did in putting these people forward. The present system has really worked extremely well.

These are courts of the United States, also. This has been held repeatedly, and it shouldn't even be open for argument any longer. These are courts of the United States, the Superior Court, and the D.C. Court of Appeals. There are important national interests which are adjudicated on a daily basis in those courts, and to mention only a few, First Amendment questions, gun control, [and] civil rights. These are issues that all come before the local courts just as much as before the federal courts. I think it's entirely appropriate to have the President and Congress involved in the selection process because they represent national

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interests. The local interests are also represented through the nomination commission, I think, in a very excellent way.

I'd like to close with a quotation. This is not a new issue, by the way. People should not have to reinvent the wheel here. This issue's been kicking around forever. I was on a committee of the Bar back in 1980 which studied this and produced a report on it. One of the exhibits to our report, which I dredged up, and I'd just like to quote to you, was a resolution of the Board of Judges of the Superior Court in 1979; unanimous, as far as I know. It says,

This Board is compelled to comment on that proposal which would authorize the Mayor of the District of Columbia to appoint the judges of the District of Columbia Courts. An independent judiciary, that is, one capable of reviewing the actions of the legislative and executive branches of government, totally free from bias, fear, favor, or retaliation, is the *sine qua non* of an effective judicial system.

The District of Columbia Government is the most constant litigant in the Civil Division of our Court, and if the prosecution of criminal cases were to be transferred to the District of Columbia, the overwhelming majority of the litigation conducted in our court would involve the District of Columbia as a party.

Legislation enacted by the City Council and executed by the District of Columbia's Executive Branch is ruled upon by the judges of our Court on a daily basis. The legal propriety of revenue provisions, housing codes, rental acts, administrative procedures, school strikes, and the adequacy of mental health, penal, and juvenile facilities, constitute a large part of the Court's regular calendar.

In these matters and numerous others, the Executive and Legislative Branches of the District of Columbia Government have a very direct interest. In a truly effective judicial system, adjudication of these matters must be accomplished by judicial officers who are independent of the coordinate branches of government. This essential independence is seriously undermined when those coordinate branches appoint and reappoint the judicial officers who must rule on the propriety and legality of their various actions.

I can't improve on that, which is why I quoted it at length, and I'll close with that. Thank you.