

GENERAL PATTON AND THE CHIEF JUSTICE

By Lawton R. Nuss

As a former Marine Corps combat engineer, I appreciate Army general George S. Patton, Jr. Just before his troops stormed Normandy beaches to help liberate Europe, he gave them a rousing speech. The general reminded them that they had all “admired the champion marble player, the fastest runner . . . and the All-American football players.” General Patton's inspirational point? “Americans love a winner.”

What Patton said about Americans in 1944 is still true about Kansans in 2012. We love winners. Winners are produced by competition. And rugged competition has produced all of our state's appellate jurists – Court of Appeals judges and Supreme Court justices – since 1958.

I know this, because I started competing to become one in 1995. I completed my lengthy application, attached samples of my legal writings, and listed judges and fellow lawyers familiar with my work. I also submitted to an investigation and an interview by the nine Kansans on the state nominating commission. My 29 competitors did the same. After this thorough screening process, the commission selected three people from whom the governor would choose Kansas' next Court of Appeals judge. My qualifications were not good enough; I was not selected by the commission.

Another opportunity arose a few months later. This time I competed against 27 other applicants, and my result was the same as before.

Because I was determined to earn a position as an appellate jurist, I tried to improve my competitiveness. To hone my writing and analytical skills, I researched and wrote several legal articles for publication – and volunteered to author appellate briefs for other lawyers. To sharpen my understanding of the law's application to the real world, I sought more cases to try to Kansas juries. To achieve a broader perspective of the law, I expanded my law practice to include additional legal fields.

In my third competition, in 2000 I was selected from 22 applicants as one of the three people submitted to the governor. But he chose one of my two remaining competitors. So I worked harder to improve my legal abilities and understanding of the law before the next vacancy.

In 2002, I competed against 17 other applicants wanting to become a justice on the Supreme Court. My name was again one of three sent to the governor. And this time I was chosen – by the same governor who had chosen someone else two years earlier. In my view, I was finally successful because I had steadily improved my qualifications during the previous seven years.

But now new ways of choosing Kansas appellate jurists are being proposed to replace our 50-year-old competitive system of merit selection.

When comparing systems, several fundamental features of our present system must be considered. First is the democratic feature. Our system grants the equal opportunity – to be

chosen an appellate jurist – to each Kansas lawyer and trial judge with at least 10 years’ experience. Nearly 11,000 individual notices are mailed for every vacancy. And to have a chance of achieving such an important position, the person only needs to apply.

Second, and more important to all Kansans, is the quality feature. As demonstrated by my experience, equal opportunity to all means that more than one person will apply. And that obviously means competition – one where politics and its money fortunately play no role. But without such a competition that compares side-by-side the qualification of numerous applicants, no new system can truly claim it produces the best appellate jurists for Kansas.

Even General Patton’s “champion marble player” had to compete against all comers on a level field to earn the title. As a fourth-generation Kansan, I say we should require no less for our state’s appellate jurists. That is why I support our merit selection system.

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