

# Illinois Issues

## Wanna be a judge?

**It's not always what they know that gets candidates on the ballot. Sometimes it's whom they know**

*by Abdon Pallasch*

*<http://illinoisissues-archive.uis.edu/features/2008mar/judge.html>*

Well, on the bright side of Illinois' judicial elections, the big-business-funded American Tort Reform Association has dropped downstate Madison County from its list of "Judicial Hellholes."

New Democratic Chief Judge Ann Callis, who the Illinois Civil Justice League — the complainers-in-chief about Madison County's courts — says has cleaned up those courts, received a standing ovation at the league's annual banquet.

And at the biennial meeting of Chicago's ward bosses at the Palmer House Hilton last year (cigars are no longer allowed), the politicians who slate candidates for judge in Cook County asked questions about candidates' legal credentials, in addition to political ones.

The Chicago Bar Association rated all nine candidates they slated as "qualified," and the more critical Chicago Council of Lawyers found eight of the nine qualified.

So maybe Illinois' judicial elections are getting better.

But on the downside, Illinois still holds the national record for most expensive state Supreme Court race for the \$9.3 million raised by business groups and trial lawyers in the Lloyd Karmeier-Gordon Maag matchup in Madison County and southern Illinois in 2004. Republican Karmeier and the business groups won.

And after Karmeier won, he did not recuse himself from the high-profile State Farm case, even though company officials donated more than \$350,000 to his campaign. After rejecting calls for his recusal, Karmeier cast the deciding vote in favor of State Farm, with the divided court throwing out an earlier judgment against the insurance company for using "aftermarket" auto parts.

In Cook County, the ward bosses' choices may have been found mostly qualified, but politically connected candidates or those married to the politically connected still held a

distinct advantage. And the Tort Reform Association still lists Cook County as the third-worst court system in the country for lawsuits against businesses.

Here's a closer look at the judicial election process:

In September, in an out-of-the-way conference room in Chicago's otherwise elegant Palmer House, 39 lawyers appeared one at a time before Cook County's 80 Democratic ward and township committeemen, hoping to be slated for judge.

Party loyalty; ethnicity; sometimes the party elders will even consider courtroom experience in slating a judicial candidate. It's not all that different from the party-controlled New York judicial election system that good-government groups challenged before the U.S. Supreme Court last year.

"I have been very loyal to the Democratic Party," Paula Lingo, chief legal adviser to Cook County Recorder of Deeds Eugene Moore, told the committeemen.

"I have worked on many campaigns; I've ... contributed to some of the campaigns," she said, nodding to state Democratic chairman Michael Madigan. "Mr. Madigan, let's see here, Mayors [Richard M.] Daley and [Harold] Washington, [former Cook County Board] President John Stroger. I was President Stroger's special events coordinator twice on his campaigns."

Despite a perfunctory mention of her 30 years of legal experience, the speech differed little from those seeking slating for the tax appeal board or any other political office. And these party guys and a few women displayed much more interest in political than legal credentials.

"I have worked with [current County Board President] Todd Stroger on his campaign," Lingo continued. "I have been very loyal to the party. I have circulated petitions. I have passed palm cards in the bitter cold. I have driven seniors back and forth to vote on Election Day. I have helped tally the votes on Election Day. I have even served food to workers on Election Day. Nothing has been too great or too small for me to do."

It was a winning performance that earned her a surprise slating, even though she was not a sure thing going in. But eventually she lost the election.

Most of the lawyers groveling before the party bosses were wasting their breath. The most powerful committeemen, who turned out the largest

numbers of Democratic votes in last year's election, had already staked a claim to one of the judgeships for their hardest-working precinct captain, who happens to be a lawyer. But a few seats were still in play.

Getting slated in a countywide judicial race is not a sure ticket to the bench. In recent years, Cook County voters have increasingly rejected the choices of party bosses. For

more qualified would-be judges? No. For women with Irish names? You bet. In the peculiar world of Cook County judicial elections, lawyers of other ethnicities have taken to officially changing their names to “Fitzgerald” or “Flanagan” or “O’Brien” to run for judge because of the voters’ proven affection for Irish names.

**James G. Smith lost a race for judge, so he changed his name to James Fitzgerald Smith and won a seat on the circuit court, then the appellate court. After attorney Frederick S. Rhine changed his name to Patrick O’Brien last year to run for judge, the state legislature passed a law that would require him and other name-changers to include their old names on the ballot.**

Jewish attorneys in particular have been hard-hit by Cook County voters’ preference for Irish-named judges.

Even with the last name she got from her husband, Bonnie McGrath, a former president of the Decalogue Society of Jewish attorneys, felt she had to adopt the middle name “Fitzgerald” to run for judge. She lost, but her run gave voice to the plight of Jewish attorneys in Chicago who can’t seem to win a seat on the bench.

“Despite this community having one of the largest Jewish communities in the world, the number of Cook County Circuit Court judges of the Jewish faith continues to slide lower,” Michael Hyman, who has been president of the Decalogue Society and the Chicago Bar Association, told the party bosses. “By slating me, you make a powerful statement to the people of Cook County that the Democratic Party believes in a truly representative and diverse judiciary.”

Hyman has a gold-plated resume, including 27 years at the prestigious Much Shelist firm. But he doesn’t quite have the pedigree Democratic leaders are looking for. He was never active with the party.

But his speech struck a chord with the Jewish ward and township committeemen.

“Judge Hyman has raised a question that bothers many of us,” said Ald. Bernie Stone. “[We] talk about diversity, and yet it has been years since a Jew has been elected to the bench in Cook County. If you really mean what you say about diversity, then it’s time that we nominate a Jew to our ticket and go out and work for him to be elected and not double-cross him when it comes to Election Day.”

Eugene Pincham, a retired state appellate judge and, at 82, the elder statesman of Chicago’s African-American bar, rose to remember the Jewish maitre d’ who hired him

during law school in the '40s right here in the Palmer House.

"I was a waiter in the Empire Room in this building," Pincham said. "The maitre d' said to me, 'If you're in school, don't tell me 'cause I cannot hire you. Hide your books.' Five-thirty in the evening until 1 o'clock in the morning during law school. The maitre d' was a Jew. He hired me. I haven't forgotten. When I hear this nonsense that a Jew cannot be elected countywide, it hurts your heart."

Turning to Hyman, Pincham said, "If we slate you, brother, you're in." And he did win the primary election.

When Illinois adopted popular elections for judges early in the last century, it was a reform measure to improve the quality of jurists. Now advocates for reform argue that appointing judges through "merit selection" — also known as the Missouri Plan after the state that pioneered it — produces the best results.

But party elders argue that if elections are good enough to choose offices such as president and governor, they are good enough for the office of judge. Minority bar groups say appointive systems shortchange them.

Some merit selection plans have the governor make the appointment. Illinois' last governor, George Ryan, is in federal prison on a corruption conviction, and the current one, Rod Blagojevich, is referred to as "Individual A" in a federal indictment of a close friend, though he himself is not charged with anything. Would their appointees be better judges than the ones the voters/parties choose?

It's irrelevant. Illinois' reformers recognize there is no will on the part of Illinois' legislative leaders to change the system that gives them say in who becomes judge.

"The Illinois State Bar Association has been on record for a long time supporting a merit-based process for judges," says ISBA President Joe Bisceglia. "I doubt that in my lifetime, no matter how long I live, that that is going to happen. It's not a political reality. We have managed to improve the state of the judiciary in Illinois despite the elective process. With our evaluation process, if we can get that message across to voters by partnering with newspapers and other media, I think that would become like de facto merit selection."

The general election is irrelevant in Cook County judicial elections because no Republican has beaten a Democrat in decades. The whole ball game is the Democratic primary election, which used to be held around St. Patrick's Day but was moved up to February 5 this year to help favorite son U.S. Sen. Barack Obama's presidential run.

The February date also was expected to be better "machine" weather. Party faithful will brave snowstorms while occasional voters stay home.

Voters choose about half of Cook County's judges in countywide elections; the other

half through 15 smaller “subcircuits” throughout the county designed to elect more African Americans, Hispanics, even Republicans.

The regional slating sessions for the subcircuits can be even more entertaining than the downtown one. Many subcircuits dispense with the pretense of a slating session. The most powerful ward bosses in the subcircuit just agree among themselves whose turn it is to get the best precinct captain with a law degree on the bench.

The 8th subcircuit stretches from downtown up through the toniest neighborhoods of lakefront condos on the North Shore of Lake Michigan. It has the highest density of lawyers in the city and the only openly gay alderman, Tom Tunney, from the Wrigley Field neighborhood.

Ald. Patrick O’Connor, Mayor Daley’s unofficial floor leader, has waited his turn to get a judge, and everyone knew the slating would go to his able precinct captain, Jim Burns.

But they held a slating anyway at LaDonna Italian Restaurant. Eight politicians sat around a table with bruschetta and mortadella in a private upstairs room.

One by one, the lawyers who would be judge climbed upstairs and stood at the head of the table fielding questions. The pols are not used to outsiders. No member of the public attends.

The pols invited a reporter to pull up a chair and have some bruschetta.

“Here,” gravelly voiced Ald. Burton Natarus said, pushing the plate of bruschetta. “It’s a bribe for a better story.”

Natarus was one of the Jewish politicians pushing Hyman’s candidacy at the big slating, and he picked up the theme here: Does former federal prosecutor James Shapiro think a Jew can win in the district?

“We have not had a very good record of electing Jewish candidates,” Natarus told him.

Shapiro said he thinks he can win.

Natarus complimented the odds-on favorite, Burns, after Burns mentioned his parents were both Irish immigrants, by saying, “I’ll be very honest with you. When you walked in the door and I saw that nose, I thought you were Jewish.”

“It’s been broken a few times,” Burns said with a chuckle.

Natarus queried another candidate why he has hired political consultant Dan Shomon to run his campaign.

Shomon just ran the campaign of Brendan Reilly, who beat Natarus out of his

aldermanic seat after 40 years on the job.

"I am familiar, on the receiving end, of Dan Shomon, so I know what he is capable of," Natarus said.

There is one question they ask of all candidates: If the party doesn't slate them, will they run anyway against the party's candidate, or will they seek the party's favor by sitting this race out and waiting until the party tells them it's time to run?

All the candidates except Burns said they'll run anyway, prompting Natarus to tell Burns, "We'll you're a nice guy — you're the nicest guy we've seen tonight."

Burns got the nod.

At the big slating, the Democratic committeemen chose qualified and very connected candidates: one married to an appellate justice; another married to political consultant Phil Krone; another the daughter of a bodyguard to the late Mayor Richard J. Daley.

But there was actual argument this time about whom to slate for a couple of the seats.

At the end of the debate, Ald. Edward Burke, who runs the show, lamented, "It was a hell of a lot easier in the old days when Mayor Richard J. Daley handed you a list."

The highest spot getting slated was for a seat on the State Supreme court. And the candidate these folks found most qualified in all of Illinois was Anne Burke, who chaired the national conference of lay Catholics overseeing the priest sex abuse scandal.

She's also married to Ald. Burke.

No one in Cook County filed to run against her.

Is this the best way to pick judges?

"As long as the people running for judge are making the same sorts of promises, doing the same sorts of fundraising as other politicians do, that's probably not the best way to get our judges," says Chicago Council of Lawyers president Daniel Coyne.

One option the council has toyed with, and which former appellate Justice Gino Divito has advocated, would reform the retention elections that judges have to sit through every six years.

If a "blue-ribbon panel" were named by various state officials to evaluate judges and only those who failed to meet a certain standard had to stand for retention election, the public might be able to focus more on a few bad apples instead of having to vote "yes" or "no" on 70 judges, as they do now in Cook County.

That's not as much of an issue in downstate counties, where fewer judges' names

appear on the ballot. Voters in downstate Madison County in 2004 not only voted for Karmeier over Maag in the Supreme Court election but also kicked Maag out of his appellate seat, despite his good bar ratings.

For better or worse, Callis and the other Democratic judges got a message from Maag's defeat.

"I am a Democrat, but I am foremost a public servant," Callis told attendees at the Civil Justice League banquet at Maggiano's in Chicago. "I don't think being both is mutually exclusive."

An unlikely agent of change, Callis is the daughter of a prominent trial lawyer in the county President George W. Bush chose two years ago to showcase what he calls out-of-control courts that he thinks Congress should rope in with limits on verdicts.

When Callis ran for presiding judge a year ago, "I really believed I could make a difference in what was going on in Madison County, improve our image," she said.

She and her fellow judges — all but two of them Democrats — began making changes welcomed by the business executives and not so popular with the plaintiffs' lawyers who helped elect them.

"All our rule changes are unanimous," she noted. First of all, lawyers can no longer use a loophole to get the judge they want in the blue-collar county near St. Louis. It used to be that in a class-action suit, if a lawyer used up his or her one "substitution of judge" and got a new judge he or she didn't like, the lawyer could just keep adding new members of the class and get another shot at a new judge each time. That's over.

Another change applies to lawyers from outside Madison County who want to file cases there because they have heard about big verdicts. Those lawyers now face a lengthy and cumbersome registration process to justify why suits are filed in Madison County.

Also, every medical malpractice lawsuit filed in Madison County now faces mandatory mediation before lawyers can try filing it in court.

Those changes dropped the number of class-action suits filed in Madison County from 106 in 2003 to just one so far this year.

"I want everyone who walks into that court to believe they're going to get a fair shake," Callis said.