

A Tale of Two Teams

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Jay Weiner, *This is Not Florida: How Al Franken Won the Minnesota Senate Recount*. Minneapolis, MN: U. Minn. Press, 2010, 249 pp., \$24.95 (hardcover).

AS ANYONE WHO HAS READ Roger Angell knows, good sports writing is simply good writing. Jay Weiner is a good sportswriter who was assigned to cover the disputed 2008 U.S. Senate election between Norm Coleman and Al Franken when MinnPost,¹ the online news daily he now works for, needed an extra hand as that election went into “extra innings.” Because of his talents as a writer, and because his online platform gave him more space and freedom than an old-fashioned print newspaper, Weiner’s daily reporting of the Coleman-Franken dispute was consistently more colorful and detailed in its information than the traditional press accounts. Indeed, in March 2009, while the *Coleman v. Franken* trial was underway, Weiner received a major Minnesota-based journalism award for coverage of the recount in this Senate race.²

Based on the knowledge and insights derived from his daily observation of the dispute as it unfolded, as well as a multitude of interviews and other extensive research in its aftermath, Weiner has written a book to tell the whole story of the dispute, from start to finish.³ His model was Jeffrey Toobin’s *Too Close to Call*, the fast-paced account of the disputed 2000 presidential election.⁴ Weiner has succeeded in emulating that example. His account of the Minnesota dispute is similarly as

energetic as the one that Toobin provided of the events in Florida.

The bottom line is that Weiner, like Toobin, is a good writer, and it means that his book is a good read. It makes no difference that he is writing about politics instead of sports. Just as Michael Lewis can write compellingly about sports (*Moneyball* and *The Blind Side*) or finance (*Liar’s Poker* and *The Big Short*), so too can Jay Weiner write felicitously about sports or politics.

THE TEAM SPORT OF DISPUTING A CLOSE ELECTION

Sports and politics are not entirely unrelated subjects. Both are competitive enterprises, involving winning and losing. Both involve teams and fans who support them (sometimes even fanatically,

¹See <<http://www.minnpost.com>>.

²*MinnPost’s Jay Weiner Wins Premack Award for Recount Coverage*, MINNPOST (Mar. 7, 2009), <http://www.minnpost.com/stories/2009/03/07/7224/minnpost%E2%80%99s_jay_weiner_wins_premack_award_for_recount_coverage>.

³My own analysis of the disputed 2008 U.S. Senate election may be found in two articles published in previous issues of this journal. The first, a narrative of the dispute focusing on the legal issues, is *The Lake Wobegone Recount*, 10 ELECTION L. J. 129 (2011). The second, a prescription for handling future disputes based on the experience of this one, is *How Fair Can Be Faster*, 10 ELECTION L. J. 187 (2011). The initial manuscript from which these two articles were derived was written before I had the benefit of reading Jay Weiner’s book. Having now done so, I find Weiner’s perspective and my own consistent for the most part, although each reflecting our professional backgrounds (his as a journalist and mine as an academic). Readers interested in this disputed election might find the two approaches complementary, and this review may help readers understand where they overlap as well as diverge.

⁴JEFFREY TOOBIN, *TOO CLOSE TO CALL: THE THIRTY-SIX DAY BATTLE TO DECIDE THE 2000 ELECTION* (2001).

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from which the word “fan” derives). Sports metaphors abound in politics. Indeed, some, like “race” as a synonym for “election,” are so deeply imbedded in the language of politics that they are no longer metaphors but just a discussion of politics itself.

Consequently, Weiner’s background as a sports writer makes him well suited to write about the Coleman-Franken dispute as a form of competition between two teams eager to win a major prize, in this case a U.S. Senate seat. He often refers to either “Team Coleman” or “Team Franken” as being on “offense” or “defense,” depending on the particular stage of the dispute and the particular issue under consideration. He uses his own sports metaphors effectively. For example, to describe how both sides employed rhetorical tactics in an effort to persuade the State Canvassing Board to see matters their way, Weiner writes: “It was as if this were a championship basketball game, with both sides working the Canvassing Board ‘refs’” (p. 40). Or, later in the story, when Coleman’s attorney Ben Ginsberg publicly attacked a major judicial ruling that crippled their case, Weiner observes: “Maybe Ben Ginsberg realized that he and Norm Coleman lost and so decided to yell at the referees” (p. 194).

It helps Weiner that Marc Elias, Franken’s lead attorney, is an ardent football fan and used his own sports metaphors to discuss the recount. Referring to the authority of the State Canvassing Board to overrule the determinations of local recount officials concerning a voter’s intent as indicated by the marks on the ballot, Elias described why the Board would be reluctant to use this power. In Weiner’s words (p. 49),

As Elias, the New York Giants fan, explained, a challenged ballot is not unlike a video challenge by a head coach in pro football. In an NFL game, the ruling on the field stands unless there is indisputable evidence on video that the play should be overturned. Most times, the ruling on the field holds up.

“We all know that sometimes instant replay overturns it,” Elias said of questionable calls by a referee. “But, as a baseline, the NFL could say we’ll assume every call on the field is correct or every call is incorrect. It’s more sensible to start with the proposition that they’re probably correct in the first instance.” The Franken team embraced the

NFL assumption that the [recount] judges’ rulings at tables from Roseau to Albert Lea would be ultimately accepted by the state Canvassing Board.

Then, to point out that the Coleman team did not grasp the significance of this operational presumption that the local recount officials would be correct, Weiner adds another sports metaphor of his own: “On this meticulous exercise, the Coleman team fumbled the ball. According to Coleman staffers and lawyers who were interviewed, his campaign was not diligent in tracking every day exactly how the recount went at all 106 recount sites” (p. 49).

GIVING HIS READERS A RINGSIDE SEAT

Weiner’s training as a sportswriter undoubtedly accounts for why his book is so vivid in its details. He makes you feel as if you are in the room with all the participants—whether it is the courtroom, where the public displays of lawyerly skill occurred, or the conference room, where even more significant strategy sessions occurred. He tells of a “Red Button Letter” (pp. 132–33) that the Franken team drafted, but never sent, and a lawsuit over absentee ballots that Elias debated with co-counsel but ultimately decided not to file (pp. 95–97).

Perhaps most impressively in this regard, he puts us right “in the living room” of Coleman’s “St. Paul home” when the former incumbent learns of his ultimate defeat in the Minnesota Supreme Court (p. 215). “Coleman quickly scanned the decision on the screen of his laptop [and] ‘Crap,’ he muttered.” Although Coleman apparently acquiesced quickly, Weiner reports that some of his attorneys were “parsing excerpts of the opinion, searching for anything that might be encouraging, that might keep his options open for an appeal to the U.S. Supreme Court.” It was a scene reminiscent of *Bush v. Gore*, where Gore’s attorneys pored over the Court’s opinion in that 5–4 decision, looking for enough “wiggle room” to permit further recounting on remand to the Florida Supreme Court, yet Gore himself knew that the game was over.⁵

⁵This moment is well dramatized in the HBO movie *Recount*, which was based in large part on Toobin’s book, *Too Close to Call*.

Weiner is especially good, too, in describing the personalities involved. We learn that Kevin Hamilton, another Franken attorney, induced the local Radisson Hotel to provide “a “better grade of steak” and a “better wine list” (p. 179). Weiner gets James Langdon, one of Coleman’s attorneys, to reflect on the record about an error of judgment during an oral argument before the trial court on a key question of law. Because of the richness of this book, it is worth reading as a case study in the human drama of political competition over the counting of ballots, even if one has no particular connection to Minnesota. Moreover, attorneys in other fields besides election law would enjoy Weiner’s account of litigation strategy and courtroom tactics.

Most valuable of all are the moments in which Weiner was able to get the judges involved in the case to share some of their internal feelings and deliberations. We learn, for example, from Judge Kathleen Gearin, who served on the State Canvassing Board, that the experience of reviewing ballots to determine voter intent was nerve-racking (p. 113): “Some of the ballots were really close,” Gearin said later. “The tension grew for all of us. We’re all used to tension, but you begin to look at a ballot and you’re thinking, ‘Could this be the one that could determine who the Senator will be?’” Likewise, Weiner reports that Justice Alan Page of the Minnesota Supreme Court, who had the authority to appoint the three-judge panel for the *Coleman v. Franken* lawsuit because Chief Justice Magnuson recused himself (having served on the State Canvassing Board), consulted extensively with his Supreme Court colleagues in exercising this authority. Since the selection of this three-judge panel was arguably the most significant single decision in the entire eight-month episode, it is interesting to know that this decision ended up being a shared responsibility among the five non-recused Justices who collectively “understood the importance of naming an experienced, geographically, and politically diverse three-judge panel” (p. 143)—and that the five Justices “conferred about possible names of trial judges for ‘about two weeks’” (p. 144).

Weiner successfully conveys that there really were two judicial trials occurring simultaneously in *Coleman v. Franken*: the public trial in the courtroom, and a behind-the-scene trial in their “daily chambers appearances before the three judges” (p. 195). These sessions occurred in the “court of

appeals conference room, down the hallway” from the public courtroom (p. 196). The three judges robed for these sessions with the six main attorneys from the two sides. The “law clerks” were present, but no media. Nonetheless, based on his interviewing of participants, Weiner is able to give us a feel for these sessions, which is where the really important action occurred. (Elias believed that the public proceedings were just a “show trial.”) Judge Elizabeth Hayden, referring to Ben Ginsberg’s characterization of the case to the media as a “legal quagmire,” opened one of these sessions by proclaiming, “Well, gentlemen, welcome to the quagmire.” Weiner does not depict Judge Hayden as joking. Instead, he writes that she used “her best, acerbic vice principal voice,” meaning that she was intending to rebuke Ginsberg for his remark.

Weiner also conveys something of the dynamic among the three judges themselves:

On all of their rulings, Reilly was the ideas person, with a new view of things daily. Hayden was the overall crafter of most of the orders. Marben was the details editor. The goal, however, with the whole world watching, Hayden said later, was for their rulings to be based on “common sense and wanting to make sure that it was always understandable.”

Because the three judges “had not known each other” before, and “wouldn’t have recognized each other on a street had they bumped into each other” (p. 144), it is interesting how Weiner describes their ability to maintain public unanimity throughout their entire proceedings (p. 244):

For four months, they were unanimous in every decision. They meant it to be that way, and worked at it. . . . Reilly said later[:] “It was like being on a little boat with two strangers at the very beginning. It didn’t take long for the two strangers to become dear and trusted friends.”

While some of these tidbits are tantalizing, leaving the reader wishing the judges had divulged more, we must be grateful that Wiener is able to give us this normally unavailable glimpse behind the judicial curtain.

Furthermore, the book reveals more than Weiner’s interviewing skills. He also puts in

considerable time and effort crunching numbers relevant to the counting of ballots. This analysis gives the reader a valuable overall understanding of the dispute. For example, there has been much discussion about whether the State Canvassing Board deserves the accolades of nonpartisanship that it has received. Some conservatives have criticized the Canvassing Board as being pro-Franken. Others (myself included) have characterized its deliberations as impartial towards both sides. Aligning himself with the latter view, Weiner helpfully adds some hard numbers to support this position. He observes that “despite looking at 1,500 challenged ballots, the board split to a 3–2 vote only fourteen times, and on only forty-five occasions was there a single dissenter and four ayes” (p. 121). He then adds: “By the way, of those fourteen 3–2 votes, Secretary of State Ritchie voted with the ‘left-leaning’ Gearin and Cleary seven times and with the ‘right-leaning’ Magnuson and Anderson seven times, straight down the middle.” (Moreover, each of the forty-five 4–1 votes received the support of at least one of the two conservatives, usually Chief Justice Magnuson.) Thus, these numbers refute any claim of a partisan tilt to the Canvassing Board’s decisions.

HIS TITLE EFFECTIVELY CAPTURES THE KEY POINT

As good as Weiner is with details, he is also correct in his overarching theme (at least in my judgment). *This Is Not Florida* is the title of his book, and it is also his main point. I can also quote the book’s last sentence without spoiling the plot: “Minnesota 2008 was not Florida 2000, not by a long shot.” I share that same basic conclusion, ending my own analysis of lessons learned from *Coleman v. Franken* (written for an earlier issue of this journal) with a contrast between the “full legitimacy” of *Coleman v. Franken* and the bare “legality” of *Bush v. Gore*.⁶ I attribute that distinction to the evenhanded impartiality of the institutions that adjudicated the Minnesota dispute: the State Canvassing Board and the three-judge trial court.

Weiner also highlights the impartiality of Minnesota’s proceedings as the primary reason why Minnesota 2008 was a far cry from Florida 2000: “The State Canvassing Board... included two Republican

Supreme Court Justices,” and “the five-judge Minnesota Supreme Court, with three judges picked by Republican governors” unanimously affirmed the decision of the balanced three-judge trial court, which that five-judge Minnesota Supreme Court had selected. As Weiner rhetorically puts the point, if this election was “stolen” for Franken, as some conservatives have claimed, then these Republican jurists were among the “thieves” (p. 226). But Weiner goes on to make emphatically clear his view that there was “no biased decision” among the institutions adjudicating the “Minnesota case,” and insofar as he identifies this “transparent” impartiality as the main ingredient of Minnesota’s success in resolving the disputed Coleman-Franken election, his book captures the essential point of this story.

SOME BLEMISHES IN THIS OTHERWISE FINE PORTRAIT

Despite our agreement in this essential respect, my own analysis of the Coleman-Franken dispute differs from Weiner’s in some significant respects. I offer three examples.

First, Weiner underappreciates the plausibility of Coleman’s Equal Protection claim based on *Bush v. Gore*, even though it ultimately proved unsuccessful in that case. He makes a major error in asserting: “Anyone with a rudimentary knowledge of election law ... knew that the ruling [in *Bush v. Gore*] was not ‘precedential’; that is, the U.S. Supreme Court’s majority wanted the meaning of *Bush v. Gore*’s holding to be limited to the facts of the 2000 Florida presidential election” (p. 148). While that interpretation of *Bush v. Gore* is held by some, it is by no means the only interpretation among election law scholars and certainly is not among the “rudimentary knowledge” possessed by anyone familiar with election law.⁷

⁶Foley, *How Fair Can Be Faster*, 10 ELECTION L. J. 187, 225 (2011).

⁷Indeed, when Dan Lowenstein and I debated the scope of *Bush v. Gore* a few years ago, we both accepted this case as a precedent, believing the Court intended it as such. The question that divided us was how best to characterize the case’s holding, which would determine the range of its binding nature as a precedent. See Edward B. Foley, *The Future of Bush v. Gore*, 68 OHIO ST. L.J. 925, 930–45 (2007); Daniel H. Lowenstein, *The Meaning of Bush v. Gore*, 68 OHIO ST. L.J. 1007, 1016–27 (2007).

Throughout the book, he expresses as a given truth the ultimate conclusion that *Coleman v. Franken* differed legally from *Bush v. Gore* simply because Minnesota had a clear statute where Florida did not. For example, here is one passage where he swiftly dismisses the merits of Coleman's Equal Protection claim (p. 176):

The crux of the Coleman argument was that election officials applied the absentee ballot statute differently in different precincts or counties, and that the more lenient officials happened to be in more Democratic areas. This may have been true, but it wasn't *Bush v. Gore*-like. In Florida, election officials during a limited recount determined voter intent differently. The Coleman-Franken election involved decisions on Election Night on the legality of absentee ballot envelopes, not on voter intent. Minnesota had a statute detailing the four reasons that left absentee ballots open to rejection. Florida didn't have a clear standard.

This overly simplistic description assumed the conclusion that was open to reasonable debate at the outset of the litigation in *Coleman v. Franken*. Whether the differential treatment of absentee ballots in Minnesota, which definitely occurred (as Weiner acknowledged elsewhere in the book), amounted to a *Bush v. Gore* violation depended upon the scope of the *Bush v. Gore* principle, properly understood, and whether the facts of the two cases were sufficiently similar or distinct. One could not assert the answer to this open legal question by simple fiat, and yet that is how Weiner inaccurately portrays the legal situation.

Second, Weiner is similarly dismissive of the statutory argument Coleman made under Minnesota law in an effort to get more absentee ballots counted. I myself have critiqued Coleman's legal argument on this point,⁸ but my criticism has largely been that Coleman's attorneys did not make the most of what they were working with—in other words, Coleman could have done better in parsing the language of the Minnesota statutes more precisely and distinguishing more finely among the different factual circumstances in which absentee ballots were rejected. For example, I have pressed hard the point that Coleman could have, and should have, distinguished those ballots for which official error rather than voter error was the reason that the ballot was

rejected. The Minnesota Supreme Court itself emphasized this distinction in the appeal, a point that Weiner overlooks, and which might have given Coleman some more running room had he pursued it with supporting evidence at trial.

Weiner instead essentially depicts all of Coleman's statutory argument as a non-starter. He ridicules the entirety of Coleman's effort to identify distinct categories of rejected absentee ballots—"Coleman's side was focused on these odd, made-up categories" (p. 173)—whereas the real problem was the way in which Coleman went about his categorization. The trial judges, after all, came up with their own categorization scheme several weeks after Coleman's. Theirs differed from his, but had he approached the categorization task somewhat differently, he might have been able to persuade the trial judges to define their categorization more like his. (Weiner laughs that Coleman's attorneys "unveiled sixteen newly created categories" that were not specifically mentioned in the statute. The three judges, however, went even further, identifying nineteen different categories. The important point under the law was not whether these sixteen or nineteen categories were actually mentioned in the statute, but instead how the statutory language should be interpreted to apply to these sixteen or nineteen different ways in which rejected absentee ballots could be characterized.⁹)

Even more egregiously, Weiner snidely lampoons Coleman's effort to convince the court to adopt the "substantial compliance" doctrine. Weiner calls it "'sneak-around-the-rules' compliance" (p. 175) even though it has a long and legitimate pedigree in American law. The Minnesota judiciary may well have been correct to reject its applicability in this case, and Coleman may be faulted for not offering the judges a more sophisticated and nuanced version of the doctrine, but it is hardly fair to suggest that Coleman's attorneys were incompetent or even underhanded in attempting to foist this doctrine on the courts.

Third, Weiner missed the significance of the trial court's penultimate—and most consequential—order, the one in which the court identified which

⁸See Foley, *Lake Wobegone Recount*, at 158–59.

⁹I discuss the relationship between Coleman's and the court's categorizations in the online Appendix to *Lake Wobegone Recount*, <<http://moritzlaw.osu.edu/electionlaw/docs/foley-eljapp.pdf>>.

additional ballots to count and, in doing so, gave its most complete account of its principles for deciding whether or not to count a particular ballot. As I have explained in an earlier piece for this journal,¹⁰ a close reading of that order reveals that the trial court was much less strict than its previous rulings would lead one to believe. In other words, when the proverbial push came to shove, the trial court was willing to give voters some benefit of the doubt and exhibit some flexibility in order to reach the conclusion that particular ballots were eligible for counting. The implication of this ultimate leniency on the part of the trial court was that, if Coleman had offered evidence consistent with the court's eventual standard, he could have gotten a lot more ballots counted (which is not the same as saying that those ballots would have been cast for him).

Weiner properly points out that Coleman failed to come close to offering any evidence of the kind that would have satisfied the court, but he misses the point that the court had actually lowered the bar of what evidence would have sufficed. Instead, he treats this order as just a further piling-on of the court's rejection of Coleman's legal argument, which had occurred earlier in the case. To be fair to Weiner, most observers of *Coleman v. Franken* missed this significant shift in the trial court's approach. But insofar as Weiner's book purports to be a thorough and accurate account of the case, it falls short in this particular respect.

All the deficiencies that I have identified in Weiner's book concern points of law. In his defense, Weiner might argue that he is not a lawyer and thus never intended to be fully nuanced in his treatment of the legal issues involved in the dispute. In fact, Weiner opens his epilogue with this assertion, "I'm no expert. I'm just a sportswriter who took a hiatus to tell a political and legal tale" (p. 223).

But accepting that disclaimer would let Weiner off the hook too quickly. To be sure, he is a journalist and neither an academic nor attorney. Still, as he acknowledges, the tale he wishes to tell is one that in part concerns issues of law at its core. Moreover, these legal issues concern not just any subject, but instead the operation of the democratic process. Therefore, in exercising the journalistic enterprise to inform the public about how its own democracy works, Weiner has a responsibility to convey the relevant legal issues accurately. For the most part

Weiner performs superbly in this respect, as he does in the other aspects of his narrative. Nonetheless, there are instances in which his book falls short of explaining some legal aspects of the case.

THE NEED TO WRITE FROM THE REF'S, NOT ONE TEAM'S, PERSPECTIVE

Finally, although Weiner's sportswriting background is an overall asset for the reasons I have described, there is one respect in which it is perhaps a drawback. His narrative tends to favor the Franken team in general and Marc Elias specifically. I assigned the book to the students in my Disputed Election seminar, and the class as a whole strongly agreed with one student's comment that the book was over the top in its gushing praise for Elias.

To be absolutely clear, the book does not shrink from finding fault with some of Elias's moves. It points out that Elias stumbled at the beginning when one of his claims concerning an absentee voter's rejected ballot turned out to be inaccurate, and his credibility with the press corps suffered. Still, the students are not wrong in thinking that the book conveys a general impression of partiality towards Franken and Elias. It is as if the local paper covers the home team honestly and critically, exposing the flaws in the home team's performance, and yet the reader remains aware that at bottom the writer is on the home team's side.

This impression of partiality in Weiner's narrative may have nothing to do with his sportswriting background. Toobin's narrative of Florida 2000 exhibited the same kind of underlying favoritism for the Gore team, even as its account of that dispute was generally accurate and appropriately critical of the Gore's team's mistakes. Perhaps the favoritism apparent in both these books simply reflects the fact that it is hard to write about a dispute over the outcome of a major election without inevitably developing the tendency to root for one side or the other.¹¹

¹⁰Foley, *Lake Wobegone Recount*, at 153–54.

¹¹Even a recent (and otherwise excellent) academic account of *Bush v. Gore* tends to favor Gore's point of view, rather than manage a balanced perspective towards both sides. See CHARLES L. ZELDEN, *BUSH V. GORE: EXPOSING THE HIDDEN CRISIS IN AMERICAN DEMOCRACY* (rev. ed. 2010).

But if this point is true, it may reveal something fundamental—and fundamentally disconcerting—about the way that electoral politics can tend to mimic a particularly virulent version of fan loyalty in spectator sports. If fans get too caught up in the allegiance for their favorite sports team, they have a hard time appreciating the perspective of the referee whose job it is to ensure that the competition between teams is fair and according to the rules. “The ref is always wrong if he rules against my team” is the attitude of the fan who has lost perspective and become too caught up in rooting for the favorite team. This excessive enthusiasm is innocent enough in the world of spectator sports as long as it does not lead to hooliganism and violence in the stadium. But it is especially dangerous in the world of electoral politics, as the operation of democracy ultimately depends on respecting the ability of officials—referees—to administer the rules that enable the competition between political parties to be fair.

One might expect, therefore, that the best books about a major disputed election, like *Bush v. Gore* or *Coleman v. Franken*, would be told from the perspective of an idealized referee, one who strives without any favoritism for either side to discern an accurate resolution of the dispute. But neither Toobin’s nor Weiner’s book, both of which qualify as exemplars of the genre, adopt this perspective of an idealized ref. Instead, they tend to put the reader in the stands rooting, along with other fans sharing the same sympathies, for one team to prevail.¹²

But the favoritism displayed for one side of the dispute is not a reason not to read Weiner’s book. On the contrary, the book should be assigned in high school or college classes. Students would learn much and enjoy the rich psychological description of the characters involved and their efforts to prevail in this intense dispute. In addition, the very favoritism that the book displays would be a fruitful topic of classroom conversation, as my own experience teaching this text demonstrates. Why is it that the book exhibits this partiality, when Weiner at the outset purports to have “no dog in the fight” (xii)? Could this favoritism have been avoided? Would the students themselves be able to avoid picking sides if they were to write a book on a dispute of this kind? Would they, instead, be able to adopt the perspective of an impartial referee? And, most importantly, as citizens of a democratic polity, in the event that a major disputed

election in which they themselves have cast ballots for one of the candidates, would they be able to put aside their own favoritism for that candidate and uphold a system in which the officials responsible for adjudicating the dispute are supposed to harbor no such favoritism?

CONCLUSION: A CONTRIBUTION TO THE PSYCHOLOGY OF ELECTORAL COMPETITION

The psychology of electoral politics is complicated—ultimately even more so, one suspects, than the psychology of spectator sports. The stakes are much higher. The citizen’s allegiance to political party, even if not as emotionally strong as the fan’s attachment to team, is more entwined with self-interest and major aspects of a citizen’s economic, social, and cultural identity. Moreover, in electoral politics, there is less separation between the role of referee and membership on one of the competing teams. Even if the members of a court or canvassing board are supposed to be neutral in their adjudication of a vote-counting dispute, they come to this role after having had an affiliation with one of the competing teams in a way that the referees of a sporting event do not. Also, voters and candidates more directly share the same membership in a political party than the players and the fans of a sports team.

Weiner’s book was not written as a primer on the psychology of democratic politics. Nonetheless, it serves as a contribution to this field. It does so with its finely observed descriptions of the pressures facing the Secretary of State, of Coleman’s “pitch-perfect” concession speech, of the thought process of other actors in this drama. There is much to be learned by immersing oneself in the lived experience

¹²There is one recent book about a disputed election that endeavors to adopt the referee’s perspective. That book, Trova Hefferman’s *An Election for the Ages: Rossi v. Gregoire, 2004* (2010), is an account of the disputed 2004 gubernatorial election in Washington. It is told from the vantage point of the Secretary of State, Sam Reed, by the individual who was his Communications Director. But that book is sufficiently weak in its basic attributes as a narrative that it is not worth comparing to either Toobin’s or Weiner’s. To invoke a different sports metaphor, both Toobin and Weiner have the skills to play in the major leagues, while the quality of the writing in that other book confines it to the minor leagues.

of how Minnesotans acted to figure out which candidate was entitled to serve their state in the U.S. Senate, when the vote count was so close and there were plausible competing arguments over enough ballots to potentially make a difference. In the end, it is Weiner's vivid description of how it felt for all the relevant players to live through this intense and important experience that gives the book its lasting value.

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