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Judges, attorney debate 'judicial independence'

Law school, bar association
host annual symposium

By FRED TANNENBAUM

CHARLOTTE — A four-person panel convened Friday morning to argue the finer points of "judicial independence" — the degree of judges' latitude in making

decisions and imposing sentences — at the Charlotte Law Review's Third Annual Symposium.

The Charlotte School of Law and the Mecklenburg County Bar Association sponsored the event, which included two panel discussions and a community forum.

Judge Albert Diaz, a special Mecklenburg superior court judge for

complex business cases, joined Senior Associate Judge James Wynn Jr. of the N.C. Court of Appeals, Senior U.S. District Court Judge Graham Mullen and criminal lawyer James Davis of Salisbury.

In addition to judicial independence, they also weighed the pros and cons of electing and appointing judges.

A second panel on Friday discussed federal sentencing guidelines and how much discretion judges have in deviating from regulations.

According to Diaz, judicial independence means giving a judge "the freedom to decide without outside influence." He said he opposes electing judges, saying it

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forces them "to act like politicians" and is inconsistent with a fair, impartial bench.

While some critics believe judicial independence is a negative that makes judges immune to criticism, Diaz disagreed: "Nothing could be further from the truth."

Diaz said he favors selecting judges by some means other than election, but that if voters are going to choose, they need better information. Judicial races "often are nothing more than white noise," with their candidates consigned — perhaps literally — to the bottom of the ballot, Diaz said. Though the public defends its right to elect judges, most voters are woefully ignorant about the candidates, he said.

"If we're going to have judicial elections, we need to have as many mechanisms in place to make sure people are informed," Diaz said.

Improving the system

Charlotte attorney Parks Helms, a former county commission chairman and state representative who attended the discussion, said the North Carolina Bar Association is developing a rating system for judges.

Diaz suggested expanding the state's voter guide for appellate court judge races and limiting campaign spending.

Wynn, the N.C. Appellate judge, said there's no perfect way to select judges. He cited as one model Missouri's system, in which a non-partisan commission

chooses three finalists. The governor makes the choice, but a retention vote is held a year into the judge's term.

North Carolina has made some reforms to judicial elections, Wynn noted, such as removing judge positions from straight-ticket voting.

Helms asked the panel if a selection process similar to Missouri's would improve judicial independence.

Wynn replied that the public still wants an ability "to kick us off if we're not doing a good job."

The panel pointed out instances where relatively inexperienced candidates have defeated incumbent judges. In 1990, the chief justice of Washington State's Supreme Court was ousted and replaced by a 39-year-old lawyer.

Closer to home, businessman Bill Belk defeated incumbent judge Ben Thalheimer last November in an election that sparked fervent discussion about the public's wisdom in electing judges. Several observers noted that Belk had far less experience than Thalheimer and speculated that he ran as a means of retribution against Thalheimer, who had adjudicated Belk's divorce case.

The public should be prepared for such outcomes if it wants to choose judges in the polling place, Wynn said.

At the same time, he said, there is a



Diaz

learning process that occurs when a new judge dons the robe. "They may come to the bench inexperienced," Wynn said. "But after a while, they get it. They want to be good judges."

'Resting place for freedom'

Mullen, the federal judge, said the primary goal of judicial independence is for judges to follow the law, using guidelines from legislation and regulation. But that latitude is threatened, he said, by politics and elections, public charges of "judicial activism," impeachment threats and lawmakers' ability to cut funding for a judge's staff.

As one example, Mullen cited U.S. Rep. James Sensenbrenner (R-Wis.)'s 2004 investigation of the sentencing practices of James Rosenbaum, chief judge of the U.S. District Court for Minnesota. Sensenbrenner, chair of the House Judiciary Committee, disagreed with judges issuing lesser sentences based on the severity of the crime instead of federal sentencing guidelines.

Davis, the Salisbury lawyer, said physical threats against judges and their families have quadrupled over the last 10 years, chilling judicial independence.

The right to a trial by jury is "the final resting place for our freedoms. Judicial independence is the pre-eminent thing we should focus on," he said.

The law, he pointed out, is what keeps government power in check and protects the powerless.

"Who will speak for those who can't speak for themselves?" Davis asked. He quoted retired U.S. Supreme Court Justice Sandra Day O'Connor, who supported an independent judiciary and

"The separation of powers is a beautiful concept and a wonderful check and balance. Our system of justice flows from those who wear the robes."

JAMES DAVIS
ATTORNEY AND PANELIST

wrote that "Judges must be loyal to the law alone."

Davis took issue with the statement of John Jay, a patriot in the 1700s who represented New York in the Continental Congress, that "the great object in the administration of public justice should be to give public satisfaction."

"No, and heck no," the lawyer said. "A judge should not look for public approbation."

He scoffed at proposals to create an inspector general for federal courts and judges. "They're going to police them?" Davis said. "Impeach them for a wrong decision? Are you kidding me?"

"The separation of powers is a beautiful concept and a wonderful check and balance," he said. "Our system of justice flows from those who wear the robes."

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