



The Issue: Do lawyers in North Carolina wield too much influence over who becomes a judge?

Judges often get their jobs with the help of lawyers who regularly appear before them. Lawyers contribute heavily to judicial election campaigns and also select nominees for appointment to the District Court bench. Critics worry about the pressure that puts on judges, who may be reluctant to rule frequently against lawyers who help them.

How it works in North Carolina

Whether they're elected or appointed, judges often get their jobs with help from lawyers.

Last year, for the first time in North Carolina, a public financing program helped fund the campaigns of most candidates running for the state Supreme Court and Court of Appeals. The change made judges less reliant on campaign contributions from lawyers and others who appear before them in court.

But the reforms didn't cover the District and Superior courts, where most cases are heard. Many who run for those judgeships get campaign contributions from people with a stake in how they rule. No group contributes more to such campaigns than lawyers, experts say.

Many judges arrive on the bench after the governor appoints them. When there's an unexpected District Court vacancy, state law calls for lawyers who belong to the local bar to choose three nominees. Then the governor appoints one of those candidates.

In support of system

Few people know judicial candidates better than the lawyers who appear before them. Most other members of the public have little familiarity with judicial candidates.

Mecklenburg Chief District Judge Fritz Mercer said it makes sense for lawyers to have a lot of say in choosing judges.

"Who knows better who the good judges are?" he said. "The bar has a vested interest in putting the best candidates on the bench."

Criticism of the system

Many believe campaign contributions sway judges.

In a 2002 poll commissioned by the N.C. Center for Voter Education, more than three quarters of those responding said they believed campaign contributions to judges affect their decisions. Some judges agree. A 1999 survey found that 48 percent of Texas judges believe campaign contributions affect judicial decisions.

It's unwise to rely solely on one group of professionals to choose judicial nominees, some experts say. The American Judicature Society, an Iowa-based group that researches judicial issues, recommends that states set up nominating committees composed of lawyers and lay people.

"Any time you have one person or group selecting all the judges, you'll end up with a situation where judges represent the interests of that group," says Rachel Caufield, a consultant for the society. "Then you end up eroding the independence of the judiciary."

Mecklenburg elections

The Observer looked at contributions to the winners of last year's District Court races in Mecklenburg, and found that the percentages given by lawyers ranged from about 10 percent for Libby Miller to about 70 percent for Todd Owens.

When Mercer, the Mecklenburg judge, ran unsuccessfully for the state Court of Appeals in 2002, more than 80 percent of the money he raised came from lawyers.

Mercer said he has never allowed campaign contributions to influence how he rules on cases.

"But it is difficult," he said. "When I've got someone who has given me \$1,000 and has asked for a continuance and I have to say no, that's stressful."

What's different in North Carolina

With a controversial rule change in 2003, North Carolina joined a minority of states that allow judges to personally solicit campaign contributions from lawyers.

Some experts worry the changes could erode judicial integrity.

"Do you suppose the judge asks for contributions before oral arguments or after?" asked Georgetown University Law Center professor Roy Schotland, an expert on judicial selection. "The lines between bribes and contributions really fall out the window. They're wiped out."

N.C. Supreme Court justices say they believe the new rules give judges clearer guidance. They say the U.S. Supreme Court pointed the way with a 2002 decision that allows judicial candidates to voice their views on controversial issues.

But North Carolina went further than most states in loosening the rules. At least 30 of the 39 states with judicial elections prohibit judges from directly soliciting contributions.

N.C. Court of Appeals Judge James Wynn thinks the state Supreme Court made a serious mistake.

"That creates the perception that justice is for sale," Wynn said. "We ... ought to be working in the opposite direction." — AMES ALEXANDER



JEFF SINER — STAFF PHOTO

Parking spaces for judges outside the Carteret County courthouse in Beaufort, N.C. "I listen to all the evidence, not just some of it," said Judge Peter Mack. "...My perception is ... we treat everybody fairly."

A matter of experience, or influence?

Lawyers from 9A

on DWI trials decided by judges is about 96 percent. Other lawyers in the district won about 79 percent of their trials.

The three lawyers say they don't put pressure on judges they've supported. Those judges treat them fairly, they say, but don't favor them.

They contend their trial win rates are high largely because they refuse to waste the court's time on unwinnable cases.

"Most of the trials you're referring to are tried by attorneys who have 20-plus years of trying criminal cases," Crowe said. "It's an experienced bar. It's a bar that ... is able to look at a case and make a determination if it's a triable case."

Crowe pleaded about 800 DWI suspects guilty and 239 not guilty during the Observer's study period. In the 239 trials decided by a judge, he won 231. In at least 70 percent of those acquittals, his clients had tested over the alcohol limit.

Nobles, known for thoroughness and a gracious courtroom demeanor, has practiced law since the 1970s and is one of about 25 N.C. criminal defense lawyers listed in "Best Lawyers of America," a respected legal referral guide.

"If I try one all the way out ... it's probably because they're not going to be able to prove my client was appreciably impaired," Nobles said.

He and some other lawyers say they usually go to trial on cases where they believe officers don't have cause to stop or arrest suspects, where there are problems with the alcohol test or paperwork, or where prosecutors lack evidence crucial to proving impaired driving.

Such cases aren't uncommon, they say, because prosecutors in their district, unlike some others, won't dismiss weak DWI cases — such as those where it's tough to prove who was driving.

Mack said trial acquittal rates in other districts may be lower because he believes prosecutors there dismiss DWI charges when defendants test just over the legal limit. Then, he said, those prosecutors are letting defendants plead guilty to the lesser charge of careless and reckless driving.

But prosecutors in five judicial districts with above-average DWI dismissal rates told the Ob-

server they have policies not to engage in such plea bargaining. Two prosecutors said their districts might make rare exceptions in cases where there are problems with evidence, such as those in which arresting officers have moved away.

David McFadyen, district attorney for Carteret, Craven and Pamlico counties, said his prosecutors simply try to do what the law requires: prosecute DWI cases where there's evidence the driver was impaired. The district's DWI dismissal rate, he noted, is just slightly below the state average.

McFadyen says the district's "disturbingly low" trial conviction numbers call for a closer examination of how DWI cases are handled there.

"It would seem to me perhaps our district has been a little too merciful," he said.

Ed Mullis, a Mothers Against Drunk Driving leader from Carteret County, said he doubts the defense lawyers' expertise fully accounts for their win rates and wonders whether campaign contributions have played a role.

"Perry Mason wasn't that good," he said.

The State Bureau of Investiga-

tion is looking into allegations that some judges in the three-county judicial district give preferential treatment to certain attorneys. The investigation was prompted by complaints about the way judges have handled domestic cases.

A letter obtained by the Observer shows that complaints against Judges Mack, Karen Alexander and Cheryl Spencer were referred to the SBI by the state Judicial Standards Commission, which looks into allegations of misconduct by judges.

Mack said he thinks the SBI will find no wrongdoing.

"I think there was a perception at some point that some lawyers got better treatment than other lawyers," he said. "But some lawyers are better prepared than other lawyers."

Convictions don't come easy

The summer months bring hundreds of thousands of tourists to Carteret and Craven counties, a region that provides a window into coastal North Caroli-



Mullis

na's past.

At the N.C. Maritime Museum in Beaufort, visitors view artifacts recovered nearby and believed to be part of the Queen Anne's Revenge, the flagship of the pirate Blackbeard.

On the coast between Wilmington and Cape Hatteras, the region was the setting for author Nicholas Sparks' novel, "The Notebook," which was released last year as a movie.

Police officers in the three counties are on a first-name basis with many of the people they arrest. Wrenn Johnson, Morehead City's police chief, said suspects brought into her Police Department sometimes yell to her, "I'm sorry Wrenn!"

Police officers spend much of their time trying to keep drunken drivers off the road. But a number of officers there say it's tough to get convictions at trial.

"I knew that if I got up on the stand, it was going to be a not guilty, no matter how strong the evidence was," said state Trooper Richard Willis, who worked in the district from 1995 to 2000. "...Your lawyers run the courthouse."

Judges in the district have acquitted more than 1,000 DWI de-

"It would seem to me perhaps our district has been a little too merciful."

DAVID MCFADYEN, DISTRICT ATTORNEY FOR CARTERET, CRAVEN AND PAMLICO COUNTIES

endants since 2000. Tests showed the majority of those suspects tested at 0.08 or more, above the legal alcohol limit.

Among those acquitted:

- A woman who was arrested on DWI charges twice in two years. She tested over the legal alcohol limit each time, once at 0.17, and each time was acquitted with the help of lawyer Marc Chesnutt.

- A man who ran through a stop sign traveling 40 mph, according to a state trooper, and then tested at 0.13.

- A man who tested at twice the legal limit after police stopped him for weaving from lane to lane and found that his driver's license was revoked.

Mack, who was appointed to

the bench in early 2003, rendered verdicts in 97 DWI trials though mid-2004. He convicted four of the defendants, state court records show.

Mack said he doesn't rely solely on the Intoxilyzer, a state-approved device used to test alcohol levels. The Intoxilyzer has a margin of error, he said, so he looks at all the evidence in DWI cases.

Sometimes, he said, other evidence suggests the defendant wasn't impaired. He noted that a defendant came to court last month after testing at 0.09, but showed no signs of slurred speech, imbalance or poor driving. Mack acquitted the defendant.

"I listen to all the evidence, not just some of it," Mack said.

Experts, however, say the Intoxilyzer is the best indicator of impairment in most DWI cases. The instrument meets federal accuracy requirements, and is used and tested in a manner designed to give defendants the benefit of the doubt.

N.C. Chief Supreme Court Justice I. Beverly Lake Jr. has told the Observer that unless there's evidence the Intoxilyzer malfunctioned, judges should consider it accurate. N.C. law says a driver with an alcohol level of 0.08 or more is impaired.

Johnson, Morehead City's police chief, said she sees no reason for judges to acquit so many people who test over the limit.

"North Carolina claims to be so tough on drinking and driving, and in Carteret County, we are not," Johnson said. "I think the judges are not abiding by the law."

Chip Hughes, of New Bern, retired from the Highway Patrol in 2003. He said he didn't realize how extreme his hometown district was until 2000, when he was assigned to work in Lincoln and Catawba counties for two years.

There, conviction rates were above the state average. Hughes said almost everyone he charged with DWI was convicted.

It was nothing, he said, like Carteret and Craven counties, where he regularly watched judges acquit DWI defendants.

"I was shocked," Hughes said. "Because I assumed it was that way everywhere."

— DATABASE EDITOR TED MELLNIK CONTRIBUTED TO THIS ARTICLE.

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DRIVER ADMITTED HAVING 12 BEERS, 3 MIXED DRINKS

'I wasn't impaired ... I was hung over'

Driver acquitted after testing at 0.10, doing poorly on sobriety tests

One morning in March 2002, Beaufort, N.C.'s, police chief arrested a man driving a motorcycle without his helmet.

The chief stopped the man just before 7 a.m., and, after smelling alcohol, asked him to perform field sobriety tests. The driver, Ernest Lewis Jr., did poorly, and admitted drinking 12 beers and three rum and cokes the previous night, the chief said.

An Intoxilyzer test found Lewis' alcohol level was 0.10, over the 0.08 limit. He had three prior DWI charges and was convicted in two of those cases.

After hiring attorney John Nobles to represent him on the 2002 DWI charge, Lewis went to trial and was acquitted by Judge Paul Quinn. Quinn didn't respond to requests for an interview.

Lewis told the Observer he was stopped by an officer from another police department minutes before Beaufort's chief arrested him. The first police officer concluded he wasn't too impaired to drive, he said. That officer, he said, did not ask him to blow into the Intoxilyzer.

"I was feeling rough but I wasn't impaired," he said. "I was hung over."

Mecklenburg District Judge Hugh Campbell, a former N.C. Court of Appeals judge, said that if he'd been presented these facts, he would have convicted the defendant. He said the officer clearly had cause to stop the defendant because he



JEFF SINER — STAFF PHOTO

Beaufort, N.C., Police Chief Steve Lewis watched a judge find Ernest Lewis not guilty of DWI. "It was a norm for here," he said.

wasn't wearing a helmet, and the Intoxilyzer results and field sobriety tests leave little doubt the suspect was guilty of DWI.

"I don't see that he has a defense," Campbell said. Beaufort Police Chief Steve

Lewis, who's not related to the man he arrested, called it a "clear-cut case."

"If (the judges) went by the statute, we'd have a whole lot more convictions," the chief said.

— AMES ALEXANDER