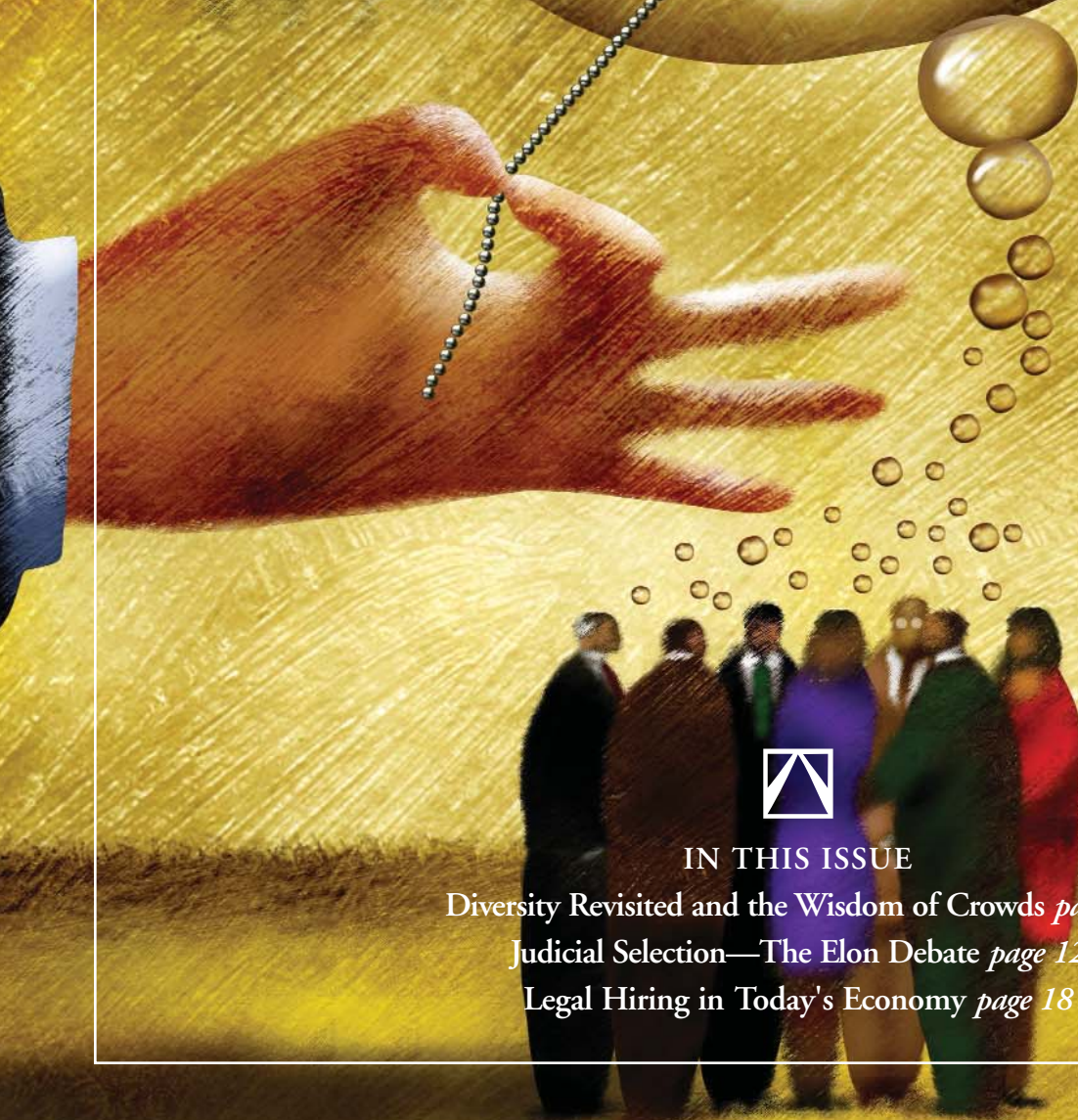


THE NORTH CAROLINA STATE BAR

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# Diversity Revisited and the Wisdom of Crowds

BY THE HONORABLE ALLYSON K. DUNCAN

*The following remarks were made in October 2009 at the North Carolina State Bar's Annual Meeting.*

**T**hank you for inviting me to participate in your annual meeting, and to witness the swearing in of your impressive new slate of officers. I am delighted to be a part of the installation of Bonnie Weyher as your second woman president. I know firsthand the level of commitment that bar leadership demands, and I am confident that she will handle it with the talent, grace, and humor that she brings to every endeavor.

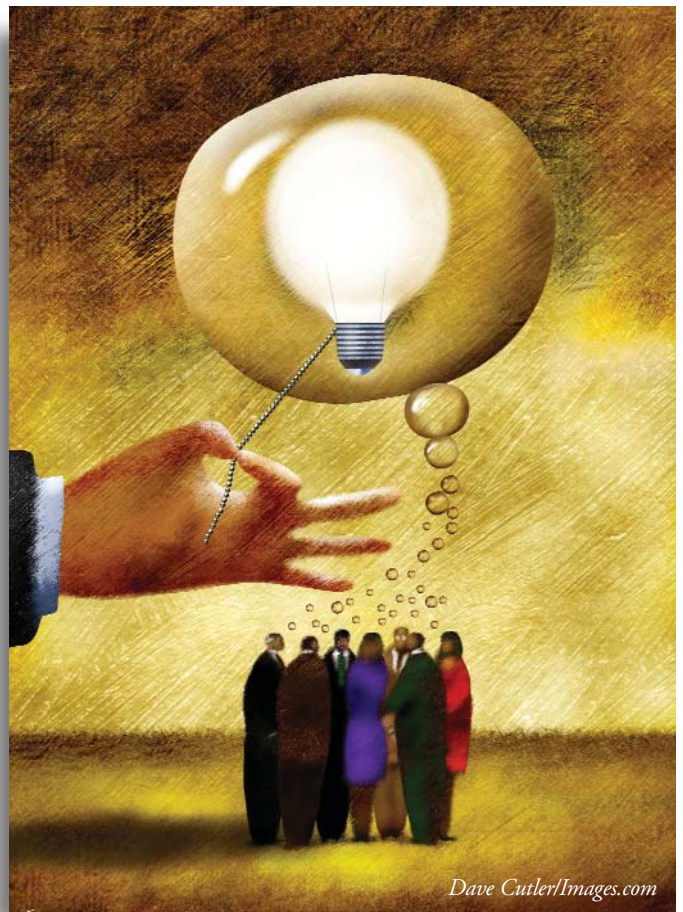
Bonnie asked me to talk about the importance of diversity in bar leadership. Unfortunately, we judges are notoriously bad at taking directions. It is not that I am going to be completely disobedient: I applaud and support her interest in making the State Bar as broadly representative of the strengths of our profession as possible. But I would like to approach the subject a little differently.

I am declining to strictly follow President Weyher's orders for several reasons. First of all, disobedience comes naturally to me, and

it is a proclivity that has only been exacerbated by having life tenure. Second, as one of probably no more than three black female Republican Catholics south of the Mason Dixon line, I feel that I do considerable justice to the subject of diversity simply by showing up. And third, I feel it worthwhile to take a step back and a fresh look.

Diversity is something that we talk about

so much that I wonder whether we tend to lose sight of why it matters. Being "diverse" is rather like being "green:" we all know it's good. But there is far less consensus about the difference it makes. I fear that if we view diversity as a social justice goal—one that only benefits minorities and that we can abandon



*Dave Cutler/Images.com*

once we get the numbers right—we are missing the larger point and the stronger argument. Diversity, in my view, is not just something we do; it is integral to the best of what we are. And so I take as the text of my brief remarks this evening the topic, "Diversity Revisited and The Wisdom of Crowds."

You may recognize the title of a book, *The Wisdom of Crowds*, by James Surowiecki. It was the subject of an episode of one of my favorite television programs, "House." It is the current selection of my book club. And its thesis is that the collective judgment of diverse groups is likely to be consistently superior to that of almost all its individual members.

Mr. Surowiecki gives a graphic illustration of this phenomenon:

At 11:38 AM on January 28, 1986, the space shuttle Challenger lifted off from its launch pad at Cape Canaveral. Seventy-four seconds later, [when] it was ten miles high and rising . . . it blew up. Eight minutes after the explosion, the first story hit the Dow Jones News Wire.

The stock market did not pause to mourn. Within minutes, investors started dumping the stocks of the four major contractors who had participated in the Challenger launch—Rockwell International, which built the shuttle and its main engines; Lockheed, which managed ground support; Martin Marietta, which manufactured the external fuel tank; and Morton Thiokol, which built the solid-fuel booster rocket.

But Thiokol's fell the farthest and the fastest—so much so that a trading halt was called almost immediately. By the end of the day, Thiokol's decline had reached 12%, whereas the others had started to recoup so their total loss averaged only 3%. Almost immediately, then, the market had labeled Thiokol the responsible party. Why?

None of the contemporary press pointed a finger, and subsequent investigation revealed no insider trading patterns that would have provided a clue. It was not until July of that year that the Presidential Commission on the Challenger concluded that the O-ring seals on Thiokol's booster rocket became brittle in cold weather, creating gaps that allowed the gases to leak out. It therefore took the commission six months to realize that Thiokol was the responsible party—something the market "knew" within 30 minutes.

According to Mr. Surowiecki, the market was "smart" that day because it satisfied the

four criteria that characterize "wise" crowds:

1. diversity (a broad spectrum of individual views are represented);
2. independence (those views are not affected by the opinions of others);
3. decentralization (individuals can draw on local knowledge); and
4. aggregation (some method exists for turning private judgments into collective action).

The author informs me—and if you know me you know that I must take anything involving mathematics on faith—that the accuracy of group judgment rests on a mathematical truism. If you ask a large enough group of diverse, independent people to make an educated guess and then average the results, the errors each person makes in guessing will cancel each other out. In other words, each guess has two components—information and error. Once you cancel out the error component, only the information remains.

Diversity is important because the best collective decisions are more likely to be a product of the collision of widely disparate viewpoints than the consequence of consensus or compromise. The most intelligent group does not ask its members to modify their positions to come to a point everyone can live with—it does not drift, in other words, down to the lowest common denominator. Instead, as Mr. Surowiecki explains:

[I]t figures out how to use mechanisms—like stock markets or [bar associations]—to aggregate and produce collective judgments that reflect not what any one person in the group thinks, but rather, in some sense, what they all think. Paradoxically, the best way for a group to be smart is for each person in it to be as diverse and act as independently as possible.

Rather like appellate court panels. Otherwise, why would it take three of us to decide an appeal?

From this perspective, then, diversity is less a social justice goal that benefits the selected few than it is a mechanism for creating a group dynamic that achieves better results. And that group may, or may not, derive its distinctiveness and healthy dissonance just from racial or gender differences. Diversity of background and viewpoint are also critical value adders.

In the small universe that is my chambers, I experience the value of divergent perspectives firsthand. When the new crop of law clerks arrives each fall, the first thing I tell

them is that I have zero tolerance for blind deference to my point of view. It may be flattering but is scarcely productive to be surrounded by four people who agree with me. What I need and expect is to have intelligent minds who challenge my assumptions and force me to reckon with my blind spots. I want people whose perspectives expand, not mirror, my own.

And that, for better or worse, (but I suspect for better) is exactly what I have. Two of my clerks are naturalized citizens. One is a young woman from Argentina with a talent for art and an interest in political science. I have my first married couple, seated as far apart as the office will allow, from Harvard. The wife is a young woman from Mexico who dabbled in investment banking. The husband hails from Greenville, South Carolina, has a background in philosophy, and was greeted with intellectual skepticism in the Ivy League because of his southern roots. And the fourth is a young Jewish man from New York with a previous career as a novelist, who has never been south before and whom we (alright, I) tease about being in North Carolina on a visa.

When we get together to discuss issues, our conversations are the audio equivalent of a pinball machine. Even our tangents have tangents. During a recent interview with a young woman who was applying for a clerkship, we got into a spirited debate about an issue in her writing sample. Perhaps afraid to offend, the young woman said almost nothing, escaped with relief, and, I suspect, will be happier somewhere else. But the end result of our collective analyses is, invariably, a product that has been rigorously vetted by opposing views. It is rare for a colleague, for example, to question something we have not at least talked about.

This bears out Mr. Surowiecki's thesis—that diverse groups can make stronger decisions than homogenous ones. Homogenous groups tend to become very cohesive very quickly. The more cohesive they become, the more insulated they are from outside views. As a result, as cohesiveness increases, so does the group's tendency to believe that, because they all agree, they must be right. You are familiar with the term "groupthink"—the phenomenon in which discussions among like-minded people lead them to rationalize away any possible counterarguments and reinforce the beliefs they already hold. In a

CONTINUED ON PAGE 17

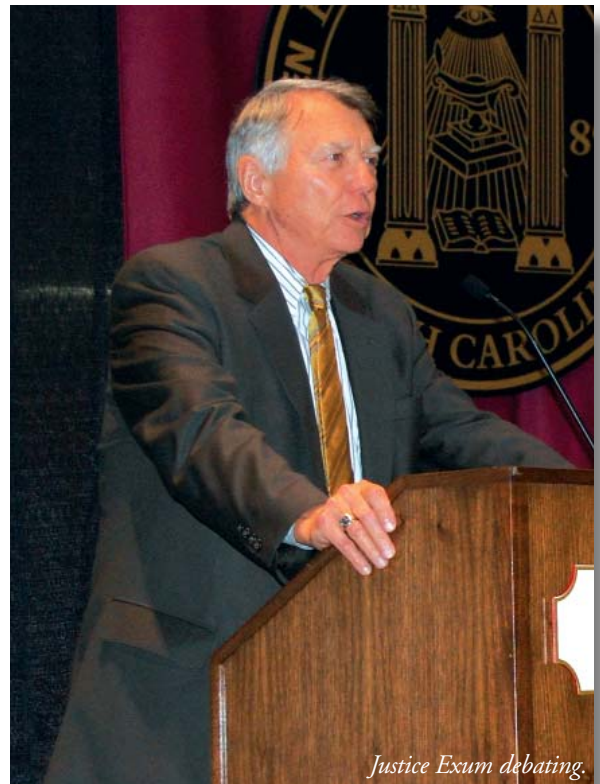
# Judicial Selection—*The Elon Debate*

BY ALAN WOODLIEF, SCOTT GAYLORD, AND ANDY HAILE

**O**n Thursday, October 29, 2009, Elon University School of Law, in conjunction with the Greensboro *News & Record*, hosted a public debate to explore whether North

Carolina should maintain its current system of judicial elections or move to an appointive system like that used in the federal system. Jim Exum, former chief justice of the North Carolina Supreme Court, advanced the position that North Carolina should move to a system of appointing judges, arguing that elections wrongly influence judges to consider the political implications of

their decisions. Elon law professor and constitutional law scholar Scott Gaylord defended judicial elections, noting that they promote accountability and independence and urging caution in departing from this longstanding process.



## The Debate

Exum, Distinguished Jurist in Residence at Elon Law, acknowledged there is no perfect way to select judges, but stated that an appointive system would reduce political influence on judges after they are in office by removing the influence of campaign contributions and popular opinion.

"Politics in judicial selection is like matter in the universe," Exum said. "You cannot destroy it. It will always be there. The question for us is where do we want to put the politics? In my view, the politics is best put at the outset when the judge is selected or appointed, in the appointment process . . . that's tolerable." Exum continued, "But

what seems to me to be intolerable is when the judge is in office, working on cases, [and] at that point . . . to subject that judge to popular political recall."

Gaylord countered that elections present a check on the power of judges and a response to the dangers of lifetime appointments. He noted that the adoption of our



elective system in 1868 was motivated at least in part by a desire to provide a check, or external control, to the power of the state's judiciary.

"The election process is a means by which you can try to get the judiciary to have a control, to have a check on the process, and be answerable to the people as opposed to what Lincoln and Jefferson talk about as the 'despotism of an oligarchy,'" Gaylord said. "With lifetime appointments, there's not a lot you could do to put a check on judges within an appointment system, and there's not a lot that the executive or legislative branches could do at that point."

In explaining the necessity of accountability for judges, which popular elections provide, Gaylord quoted James Madison in Federalist 51, "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."

Exum responded that the threat of not being reelected is not necessary to ensure accountability. Rather, the Code of Judicial Conduct and potential sanctions by the Judicial Standards Commission are adequate to prevent individual judges from bringing the judicial system into disrepute.

In supporting an appointive system, Exum further contended that judges should consider only the law in deciding cases, not how their decisions might impact future elections to retain office. He noted that our courts are charged with protecting the rule of law and with ensuring that "the strong do not do what they can merely by virtue of their strength and the weak do not suffer merely by virtue of their weakness."

"Once in office, judges should be insulated from the political winds that blow across our land from time to time," Exum said. "Courts are non-majoritarian. Yet, [our system] takes a position and a person that is doing work that should have nothing to do with what the majority necessarily wants and we subject that person or office to the will of the majority [through popular elections]."

Exum highlighted the recent state Supreme Court decision in *State v. Bowden*, affirming that life sentences were statutorily-defined as 80 years for those individuals convicted during a five year period in the 1970s. Exum said the justices decided the case correctly according to the law, but that the decision could have an impact in elections.

"The decision was legally correct, but politically it is absolute dynamite," Exum said. "If the members of the court were up for election in November, do you think any of them would survive? Probably not. If you want judges to decide cases according to the law, then it seems to me to follow that we don't want judges to be subject to being recalled by a popular vote of the people on the basis of the decision that they made."

Gaylord countered that an appointive system would be just as dangerous to the court's independence and in fact could threaten the co-equal powers among the three branches of government. Such a system could create undue influence by the executive and legislative branches on the judiciary.

"One of the reasons that we moved to judicial elections in 1868 was that concern of political patronage and the judiciary becoming too beholden to the legislative or the executive branch," Gaylord said. "In order for me to get the position as a judge, I have to get cozy with whoever is making the appointments and, if I do that, my objectivity serving as a check on the legislative branch may be compromised."

### The Aftermath

Just a few weeks after the debate, an Elon University poll asked North Carolinians their opinion of our state's judicial selection process. The contrasting positions of the Elon debaters each found some measure of support in the poll's results.

The results make clear that residents do not believe that political considerations should have any bearing on a judge's court decisions. When asked whether they agreed with the following statement—"judges should be concerned about the law, not about getting elected"—65.8% of those polled strongly agreed, and 30.1% agreed with the statement. An appointive system by an independent commission, rather than by the governor or the General Assembly, also found support in the poll, with nearly half of respondents (49%) agreeing with that means of selection.

Still, residents appear skeptical that politics can be removed from the judicial selection process, even in an appointive system. Evidencing this skepticism, three in four residents polled disagreed with the statement that appointing judges is better than electing them. Similarly, 69% of respondents expressed support for continuing popular election of judges.

Reconciling these poll results, it appears that North Carolina residents are open to an appointive process, but only when they can be assured that politics will be removed from the process as much as possible. If politics cannot be removed from the process, then the state's residents appear to favor the devil they know, content to retain the power of their vote and risk the potential evils of politics in the popular election process, rather than sacrifice their vote and risk the evils of politics in a system where the governor or legislature makes the appointments.

Given the state's urgent budget concerns, it is unlikely that the General Assembly will take up changes to the current system of selecting judges in the near future. However, some have proposed that an appointive system would involve significantly less expense than popular elections and would aid efforts to balance the state's budget.

Undoubtedly, this issue will continue to garner attention, and thoughtful minds will continue to differ on the subject. Debates like the one at Elon serve to keep this important issue in the public consciousness, to educate the public about the benefits and pitfalls of elective and appointive systems, and to foster continued thought and discussion about the ideal system for selecting judges in North Carolina. ■

*The following three articles appeared in the Greensboro News & Record (debate sponsor) prior to the debate and are reprinted with permission.*

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### Debate Over Reforming the System Keeps Going

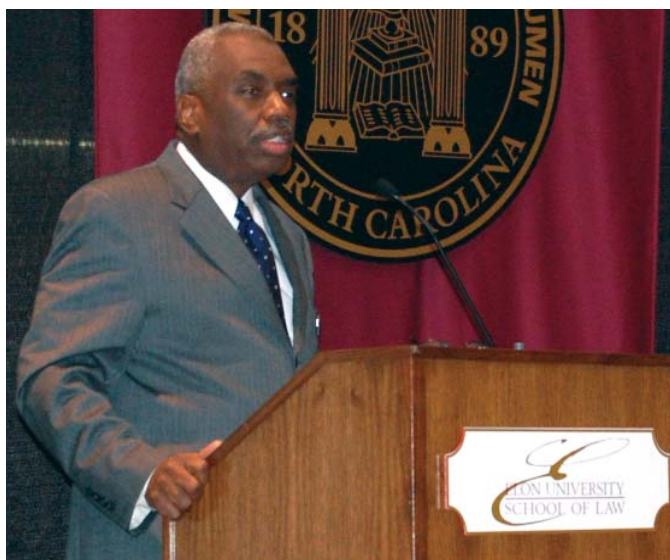
*By Alan Woodlief*

The United States Supreme Court's recent decision in *Caperton v. Massey Coal Co.* has focused attention on a longstanding debate—whether state judges should be elected or selected through alternative methods such as merit and appointive retention

systems. *Caperton* highlighted one of the most oft-cited concerns with judicial elections, the potential influence of campaign contributions on judicial independence. The *Caperton* situation was extreme—the \$3 million contribution from the CEO of a mining company to a candidate running for the West Virginia Supreme Court where the company's appeal of a \$50 million punitive damage award was pending is the stuff of popular legal fiction, and in fact, John Grisham has said that he had *Caperton* in mind when he wrote his 2008 novel, *The Appeal*. While such an extreme example does not necessarily dictate that we dispense with our long history of electing judges, it does again caution us to the potential pitfalls of this system and calls us to carefully consider potential alternatives or ways to ensure the effectiveness and integrity of the current system.

Concerns regarding judicial independence are not new with the *Caperton* decision. Author Timothy S. Huebner in his book, *The Southern Judicial Tradition*, explains that Thomas Ruffin, a storied chief justice of the North Carolina Supreme Court in the 1800s, decried the election of judges as an assault on the judiciary's independence and feared that elections would lead to "dependent, and by consequence, flexible, cringing, time-serving, weak, bad men for judges." Prior to 1868, North Carolina's judges were selected by the General Assembly and served during good behavior, which could conceivably translate to a life appointment.

Dean George R. Johnson Jr. introducing the event.



Ruffin was concerned that North Carolina would depart from this system and implement judicial elections. In fact, that was the case, as the North Carolina Constitution of 1868 ushered in the election of our state's judges, a system that has been in place now for 142 years.

The idea of some form of a merit or appointment system did not lie dormant from 1868 to the present. The American Judicature Society, an organization which studies courts and the judiciary with the aim of improving the administration of justice, indicates that in 1974, the North Carolina General Assembly considered a merit selection bill which passed two readings on the House floor before failing on the third reading. In 1977, a similar bill failed on the House floor, despite having the endorsement of the chief justice and the North Carolina Bar Association. At the suggestion of Chief Justice James G. Exum Jr., and others, in 1987, the General Assembly established a judicial selection study commission, and this commission recommended that Supreme Court justices be appointed. On at least four other occasions, in 1989, 1991, 1995, and 1999, the Senate approved bills calling for some combination of merit selection, gubernatorial appointment, legislative confirmation, and retention elections, only to have them be defeated or die in the House. The North Carolina Bar Association has long supported merit selection of judges and has advocated an appointive retention method of selection.

Our state has taken steps to combat the concerns of bias and loss of judicial independence highlighted in *Caperton*. In 2002, the General Assembly adopted the Judicial Campaign Reform Act, establishing non-partisan elections for the appellate courts (later the trial court elections were made non-partisan), limiting the amount of campaign contributions, and offering candidates who adhere to strict fundraising and spending limits the

option of using public financing during their campaigns. In so doing, North Carolina became the first state to adopt full public financing of appellate judicial elections and subsequently has been held up as a national model in this regard. In an opinion piece just last spring, *USA Today* praised our publicly financed judicial elections stating that they are, "proving their worth."

Still, concerns remain with the popular election of judges, including the perceived inability, or perhaps unwillingness, of voters to discern the qualifications and effectiveness of judicial candidates. An article in the *News & Record* from October 1, 2008, recognized that judicial elections often puzzle voters, as candidates are prohibited by the code of judicial conduct from stating how they would rule on specific legal issues. Many surveys of voters reveal that they feel ill-prepared to vote for judges.

To remedy this ill, significant effort has also been devoted to educating the state's voters about the candidates for judicial office. Several organizations, including Greensboro's own Court Watch, have made great strides in educating voters with judicial report cards and surveys measuring judges' effectiveness. Many North Carolina newspapers, including the *News & Record*, continue their tradition of editorial endorsements, and the State Board of Elections publishes a Voter Guide. The Bar Association has also embarked on a judicial performance evaluation program, with its first survey being conducted this summer and results released in early 2010. Voters who wish to be informed about judges' effectiveness and fairness can be now.

Because of the public financing and voter education efforts mentioned, our state thankfully does not face a crisis of confidence in our judiciary like that in West Virginia after *Caperton*. However, there is still room for improvement in the system. Given the General Assembly's forward-thinking approach to judicial campaign reform earlier this decade, we can be optimistic that it will continue to strive to enhance the judicial selection process, perhaps by adopting some form of merit or appointive retention system. ■

*Alan Woodlief is associate professor and associate dean for admissions and administration at Elon University School of Law.*



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### **Selection: The Way to Ensure That the Best-Qualified Are On the Bench**

*By Andy Haile*

How many of these names do you recognize: Linda McGee, Wanda Bryant, Rick Elmore, Martha Geer, Donna Stroud? Unless you practice law in North Carolina, chances are that you don't recognize any of them. But these are important people. They are the members of the North Carolina Court of Appeals, our state's second highest court. The court of appeals makes decisions that affect individuals and businesses every day. Other than attorneys who litigate for a living, however, very few people know much about its members. Do you know their judicial philosophies, their "judicial temperaments," or how they treat the litigants and attorneys who appear before them? Can you name any other members of the court of appeals? Of the North Carolina Supreme Court? And yet, despite the general lack of knowledge about our courts, North Carolina voters go to the polls year after year to elect who will sit on the bench and decide issues

of major importance, including even matters of life and death.

A lack of knowledge about the candidates is just one reason why judicial elections are a bad idea. Potentially more harmful is the role that money plays when judges are elected. Campaigns require money. North Carolina has adopted a public financing system that seeks to reduce judicial candidates' dependence on campaign contributions. That's a positive change, because most contributions have traditionally come from attorneys, the very people who will appear in court before the judge.

But North Carolina's public financing system is far from perfect. First, it only applies to the election of appellate judges, not trial court judges. In addition, to qualify for the public financing system, judicial candidates first must raise approximately \$40,000. Therefore, even if candidates opt into the public financing system, fundraising still plays a part in the election process. Moreover, participation in the public financing system is voluntary, and the amount of funds available to candidates opting into the

system is limited. Candidates running for the court of appeals receive a maximum of \$480,000; those running for Supreme Court max out at \$700,000. Those limits mean that candidates choosing not to participate in the public financing system could significantly outspend opponents who are receiving public financing.

In some states, judicial races have turned into high-dollar contests. Candidates in an Illinois Supreme Court race in 2004 spent a combined \$9 million on the election, most of which came from campaign contributions. From 2000 to 2006, spending by candidates and political committees for a seat on the Georgia Supreme Court rose from approximately \$40,000 to \$4 million. Those spending levels would dwarf the funds available through the public financing system. Recent judicial elections in North Carolina have not been multi-million dollar affairs, but they soon could be, especially with our Supreme Court so closely divided (despite ostensibly non-partisan elections, it's widely known that four members of the current Court are Republicans; three are



Democrats). If the amount of spending in other states' judicial races spreads to North Carolina, candidates who want to stay competitive will have no choice but to opt out of the public financing system.

So what's the problem with having to raise money to run for a judicial position? The infusion of money into the selection process raises concerns over judges' ability to act impartially. Would you like to know that your opponent in court or his attorney had contributed money to the judge's election campaign, while you hadn't? Would that affect your faith in the judge's ability to fairly and impartially hear your case? For most people it would. Money has no legitimate place in selecting judges. Judges are not meant to be politicians who reflect the current political mood. Instead, they should be impartial arbiters of justice, willing to make politically unpopular decisions when the law requires. Campaign contributions cast doubt on judges' ability to do that. Justice O'Connor had it right when she recently quipped, "Justice is a special commodity. The more you pay for it, the less it's worth."

In addition to the serious concerns over money's role in judicial elections, elections may not result in the selection of the most qualified judges. Many well-qualified individuals refuse to run for election because they have no desire to become quasi-politicians, traveling around the state asking for money to fund their campaigns. Conversely, elections may result in voters choosing judges based on dubious criteria. Empirical evidence indicates that when confronted with a lack of information about candidates, voters tend either not to vote or to vote for candidates of their own gender. As a result, women are more likely to be elected as judges than men, since there are more female voters. In addition, many candidates believe that the position of their names on the ballot impacts their likelihood of success (they believe that those placed first have an advantage over candidates farther down the ballot). These are hardly ideal ways to choose who will make decisions broadly and significantly impacting our state and its citizens.

Elections are a flawed way to choose judges, but there are alternatives. Federal judges are appointed for life. Several other states have enacted merit appointment processes with shorter tenures. During the

most recent legislative session, the North Carolina General Assembly considered a bill sponsored by Guilford County Representative John Blust that provided for the appointment of appellate judges after a rigorous merit selection process. Voters would still have a voice in the judicial selection process by having the opportunity to retain or remove a judge after a relatively short "trial period" on the bench. If the voters elected to retain the judge, the judge would then serve an eight-year term on the bench.

While this proposed legislation was less than perfect (it did not change the election of trial judges), at least it constituted a move in the right direction to get qualified, independent judges on the appellate bench. Justice requires that our best and brightest citizens are selected to serve as judges. The current system of electing judges fails to accomplish that goal. ■

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*Andy Haile is an assistant professor at Elon University School of Law and a practicing attorney in Greensboro.*

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### **Election: Changing Current System Shouldn't Become a Rush to Judgment**

*By Scott Gaylord*

Although Alexander Hamilton thought that the judiciary was "the least dangerous branch" because it had "no influence over either the sword or the purse," federal and state courts have assumed an ever-increasing role in our federalist system. State courts now handle roughly 98% of the cases nationwide, covering issues that touch on all facets of their citizens' lives. As a result, the selection of state court judges is of critical importance to our system of government. For the judiciary to provide the requisite check on the legislative and executive branches of government, the selection process must ensure that our judges are independent, accountable, and well-qualified.

Since the adoption of our post-Civil War Constitution in 1868, North Carolina has elected the members of its judiciary. The United States Supreme Court's recent decision in *Caperton v. Massey Coal Co.*, though, has focused national attention on the potential threat to judicial independence created by large, independent campaign expendi-

tures. But the concern over the effect of elections on judicial independence is not new in North Carolina. The North Carolina Bar Association repeatedly has advocated a merit-based appointment system, and the North Carolina House of Representatives passed a bill this past spring proposing retention elections. And these efforts are likely to gain support in light of *Caperton*.

Although shifting to a merit-based system of judicial selection ultimately may improve North Carolina's judiciary, there are several reasons to proceed with caution before revamping a provision in the North Carolina Constitution that has served our citizens for more than 140 years. First, history informs us that campaign contributions are not the only threat to judicial independence. The current system was not simply an unprincipled expression of Jacksonian democracy. Rather, the shift to judicial elections in North Carolina and other states originally was intended, as one commentator has noted, to increase judicial independence by freeing the judiciary from "the corrosive effects of politics and ... to restrain legislative power." For our systems of checks and balances to work properly, the judiciary must be independent of the other coordinate branches of government. That is, a judge must not, as the old adage states, simply be a lawyer with a politician for a friend.

Moreover, political influence resulting from gubernatorial appointments or committee nominations may be more difficult to scrutinize than campaign expenditures. Each state has rules of judicial conduct that require judges to recuse themselves under certain circumstances. Disclosure requirements make it relatively easy to track individual expenditures to determine when recusal might be necessary. And *Caperton* now requires courts to monitor expenditures to ensure that due process is not violated. In a merit-based system, citizens will have to defer to the integrity of the selection committee and the judicial appointee, even though critics of the current system are unwilling to grant such deference to an elected judge.

Second, those championing long-term appointments of judges tend to downplay the importance of accountability. As Chief Justice Roberts has noted, "[w]hen the other branches of government exceed their constitutionally-mandated limits, the courts can act to confine them to the proper bounds. It



is judicial self-restraint, however, that confines judges to their proper constitutional responsibilities."Under our current system, if one of our judges fails to fulfill her judicial function, the voters can vote that person out and elect someone who better reflects their judicial philosophy. When a judge is appointed for a long tenure, no such check is available, a flaw that retention elections are meant to alleviate.

But retention elections pose a similar threat to judicial independence as periodic elections. Under several current proposals, a committee would review a judge's performance and issue a recommendation on whether to retain the particular judge. The committee's recommendation regarding retention is likely to be one of the few details that voters know about the incumbent. The "probability of bias" therefore remains. To garner committee support, a judge may feel pressure to rule in ways that either benefit committee members directly or evince a judicial view with which the committee agrees. Moreover, if the committee does not favor retention, the incumbent will need to raise considerable money to respond to the unfavorable recommendation, which would inject the threat of large campaign expenditures back into the process.

Finally, advocates of an appointment-based system frequently contend that merit-based selection is necessary to encourage "the selection and retention of the most qualified persons to serve as judges." The



*Professor Gaylord responding during the Q&A.*

campaign process may discourage some well-qualified candidates who do not want to be thrust into the limelight or to impose on friends and strangers for campaign contributions. But a far higher barrier already may exist—the financial compensation that North Carolina judges currently receive. Judicial salaries in North Carolina are among the lowest in the nation and are significantly lower than in the private sector. By increasing judicial compensation, North Carolina may encourage more well-qualified candidates from the public and private sectors to seek judicial election without having to alter the current system.

Because the judiciary plays a critical role

in our political system, it is important that the judicial selection process yields well-qualified, independent judges who are accountable for their decisions. Improvements to the current system should be welcomed but only after they have been fully considered. Given that a move to a merit-based system will require an amendment to the North Carolina Constitution, voters should be cautious to make sure that the problems with campaign expenditures are not replaced by the problems that may flow from political patronage. ■

*Scott Gaylord is an associate professor at Elon University School of Law.*

## Diversity Revisited (cont.)

groupthink setting, deliberations have the counterproductive effect of closing people's minds rather than opening them. As a result, while homogenous groups are great at doing what they already do well, they become progressively worse at identifying new alternatives and solutions.

Why does that matter? If you view diversity primarily as a social good, then it may seem to be a luxury we can ill afford during challenging economic times. If you believe in "the wisdom of crowds," however, perhaps the reverse is true. I am told that of the 1,000 candidates who took the last bar exam, approximately 800 were licensed and fewer than half have jobs.

Perhaps, in this environment, "groupthink" is the luxury we can ill afford.

It cannot be an accident that one of the most defining characteristics of our judicial system is premised on the assumption of collective wisdom. Our jury system is designed to take a truly random group of people and ask them to make the most important decisions we face as a society. And they do. I am consistently impressed by the ability of juries to parse through some of the most complex and puzzling facts imaginable, with instructions from judges that are sometimes less than a model of clarity, and make decisions in accordance with the law.

There is a quote, often attributed to Anais Nin but paraphrased by me, that suc-

cinctly expresses my point: "We see the world not as it is, but as we are." The more diverse a group of decision-makers is—whether within an appellate panel, a bar association committee, or a jury—the more ways of seeing the world that will be represented. And from the diversity of that representation, in the crucible of that difference, better decisions will emerge. ■

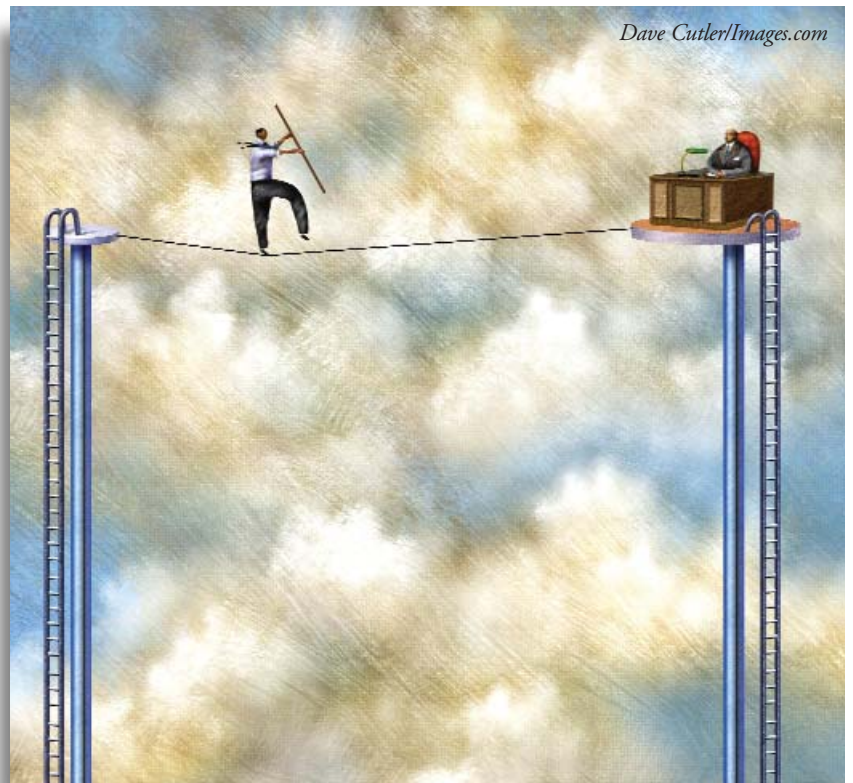
*Judge Duncan was a partner in the Raleigh offices of Kilpatrick Stockton, LLP, served on the North Carolina Court of Appeals from 1990-1991, and was an assistant professor of law at North Carolina Central University. On August 15, 2003, Judge Duncan was sworn in to a seat on the United States Court of Appeals for the Fourth Circuit.*

# Legal Hiring in Today's Economy: The Class of 2009 Enters the North Carolina Job Market

BY MARIA J. MANGANO

When asked whether he is surprised by the fact that more than six months after receiving his law school diploma he is still seeking a permanent job, Jack Rockers quips, "Do you mean my expectations going into law school or my amended expectations?" In terms of those amended expectations, amended

above all else by the national economic downturn, Rockers says it's no surprise at all. "Amended expectations" seems to be the theme for the 2009 graduating class in law schools nationwide, including those seeking legal employment in North Carolina. To give you a sense of what it is like out in the trenches for new graduates, this article will look at some trends and profile some members of the newly graduated Class of 2009 at the University of North Carolina School of Law.





For starters, the big firm scene in the Tar Heel state has been significantly affected. Like all law school career services offices, the University of North Carolina tracks employment information on its students and recent graduates. For the Class of 2009, our color-coded spreadsheet sports a new color: red, to indicate a newly hired associate whose start date has been deferred. This unprecedented phenomenon of big firms deferring traditional fall start dates for first-year associates began to surface with the Class of 2008, when a few graduates were requested to start later than expected. By the following year, the economic crisis had hit full force and the trickle of deferrals had become a flood, with the majority of big firm hires for the Class of 2009 being informed that they would not start until the following January, or September, or even as late as January 2011, over a year and a half after receiving their JDs.

This phenomenon is a nationwide one. In North Carolina, most of the state's largest firms have delayed the traditional fall start date of at least some of their associates. In addition, since this is such a new development, firms are approaching their deferral programs in diverse ways. A number of firms have provided their new hires with a monetary stipend during the deferral period, some with no strings attached, and others requiring the newly-fledged attorneys to find work in the public sector in exchange for the stipend.

Requiring public sector work in exchange for a stipend has created another phenomenon heretofore unseen: a cadre of young attorneys offering to work for free in cash-strapped nonprofits and the budget-slashed and -frozen halls of North Carolina state government. Ron Charlot was slated to head to the bright lights of New York City and work for the megafirm of Ropes & Gray. A deferral meant a change in travel plans; instead of the Big Apple, he's spending a year in Raleigh at Disability Rights North Carolina (DRNC), a nonprofit specializing in advocacy for the disabled. His supervisor, Litigation Director John Rittelmeyer, says his organization is "fortunate to have him with us for the coming year," noting that "Ron increases our capacity to reach more clients; vulnerable individuals whose lives have been drastically affected by the same economic tides that brought Ron to work with DRNC." Ron, in turn, is not only enjoying working in an area of law he had not expected to, he is developing "skills as a lawyer while doing something

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helpful in the public sector." He sums it up thus: "I've gotten an opportunity and it's working out well for me. I'm making the most of it."

The University Counsel's office at UNC-Chapel Hill has also benefited from the deferred associates phenomenon. Previously, the counsel's office hired a new law school graduate as a one-year fellow in higher education, paying for this position out of their budget. One of the many tough decisions the office made in 2009 following state budget cuts was to eliminate that position. But the final picture for 2009-2010 was a rosy one: instead of a single fellow paid from their budget, they were able to bring on four deferred associates for periods ranging from four to 12 months.

Associate University Counsel Joanna Carey Cleveland is extremely pleased with the arrangement: "We have had a great experience with these smart, talented new lawyers who are working with us at no cost to the university. Their work ethic and work product have been consistently impressive, and they have had opportunities to work with our

lawyers on a wide range of issues. Once their deferrals end, they will return to their firms with increased legal knowledge and practical skills gained from working at a complex organization. This opportunity is clearly a win-win for all."

So pleased is Cleveland with deferred associates that she says she'd love to have more on board next year, which naturally raises the question of whether firms will continue to defer associates (and pay them stipends) in the future. Although some members of the Class of 2010 have already had their start dates deferred, it is still unclear whether that class will experience deferrals in as great numbers as the preceding one. However, anyone's best guess is that there will be a decline in the number of deferred associates, as larger firms better tailor their hiring to current economic realities.

With deferred big firm associates taking positions in the public sector, another issue has arisen for students who had planned and prepared during law school to take public interest jobs—that is, whether they are being squeezed out of these jobs. Once again, it is

difficult to say for sure, although overall the situation does not seem to be as dire for public interest graduates as feared. Some deferred associate positions (as in the case of the University Counsel) are simply extra positions created by busy employers who would otherwise be unable to afford them and who are delighted to have more hands on deck. And there is definitely evidence of regular entry-level hiring in the public sector, not as abundantly as in the recent past, but permanent entry-level jobs nonetheless. Here at UNC, we have already seen members of the Class of 2009 employed by North Carolina Prisoner Legal Services, by the North Carolina General Assembly, and as assistant district attorneys and public defenders across the state.

Kelley Gondring is one of those newly hired public interest lawyers. Gondring is a native of Winston-Salem who got her juris doctor from Chapel Hill in May. Her original plan was to specialize in the policy side of public interest law ("trial work scared me") and also expand her horizons and relocate outside of North Carolina—in fact, she worked in Colorado both summers during law school. When she was unsuccessful in securing permanent employment out west, she decided to sit for the North Carolina bar exam. In October, not long after being licensed, she accepted a position in her hometown as an assistant public defender, a job she believes was "not posted anywhere" but that she learned about through diligent networking.

Her long job search—"I've been looking for a job since the day I walked into law school my third year"—had some silver linings, one of which was that the more she explored policy-related jobs, the more she realized it wasn't what she wanted to do in ten years. As to her decision to work in the once-feared courtroom, Gondring says, "The economy pushed me to challenge myself." She reflects that going home again has been a positive influence in her work, allowing her to build an "easy rapport" with her clients: "I know the community. I know the high schools. I grew up with some of the court personnel."

Like Gondring, Jack Rockers came to law school in order to work in the public sector, with a goal of practicing immigration law. All his legal training and activities were directed towards this goal. However, the sluggish job market, plus a desire to remain in the Triangle, where his wife is employed, motivated him to broaden his goals to working

with low-income populations generally and using his Spanish. Even so, seven months after graduating with honors he had still not found permanent employment, instead piecing together four different jobs: a volunteer position with the Southern Coalition for Social Justice (SCSJ), and three paid positions—contract work for the Center of Death Penalty Litigation, representing indigent clients through Indigent Defense Services as a court-appointed lawyer, and working as a painter and landscaper. ("It's not so bad. I get to be outdoors.")

Despite the fact he has not yet landed an entry-level job, Rockers remains optimistic. He says the public sector market is "not a wasteland" and that he has a number of promising leads. The SCSJ likes his work so much that they have said they would hire him—if only they had the funds. In addition, being on the appointed list has expanded his horizons, as he has found he enjoys the thinking on your feet required in the courtroom, and that this experience has "kindled an interest" in public defense work.

Jason Miller is another member of the UNC Class of 2009 who had to amend his expectations in the current economic climate. Once Miller learned of his deferred start date—he is currently slated to start work at Parker Poe in September 2010, a year later than originally anticipated—he quickly put together a plan that is bringing him both income and experience. Miller has an entrepreneurial spirit and a business background that includes an executive position with a large national animal-related nonprofit, and decided to hang a general practice shingle in Raleigh. A few months later, he has already handled "business disputes, bankruptcy, family law, personal injury, contracts, housing, traffic, and minor criminal matters." He also is working part time on the civil team at North Carolina Prisoner Legal Services. It's all working out better than expected. According to Miller, "Maybe I've been lucky so far, but I've had more than enough work."

Not everyone with a big firm offer has been deferred. Certain practice areas have been less affected by the downturn, and consequently, graduates with offers in these areas have tended to keep their traditional fall start dates. Mia Lindquist came to North Carolina with the intent of relocating from her home state of Pennsylvania. She concentrated her job search on Charlotte, where she has some family connections, and focused on litigation.

She accepted an offer with the Charlotte office of Hedrick Gardner during her third year and started work in September 2009. Compared to some of her classmates, she acknowledges that she is fortunate to have come through "unscathed," in part because her firm concentrates on civil defense, an area not especially vulnerable to current economic changes.

Matt Ballew always wanted to be in private practice, but unlike Lindquist, his dream job was in a small firm. Despite strong grades and excellent summer experience, he knew that the fact he wanted to stay in the Triangle, a popular if not saturated market for new law graduates, only made his search more difficult. The fact he borrowed heavily to attend law school didn't make the search any less nerve-wracking. But he persevered, making the decision to "stop scouring online job postings, stop the cover letter/resume routine, and simply trust in the value of networking."

Ballew's strategy paid off. In August, he started working for Wade Barber, who has been practicing in Chatham and Orange Counties since 1971. Being a general practice small town lawyer suits Ballew to a tee: "In three months of practice, I feel like I've experienced more than most get in their first three years. I am in criminal district court at least once a week. I meet with folks almost daily, and help them with everything from getting their wills and estates in order, to resolving a boundary line dispute with a neighbor." Like his classmates Jason Miller and Mia Lindquist, Ballew does not take his situation for granted: "Each day I try to take a moment and remind myself how lucky I am to be in this position."

The tight job market is tougher on some people than others. As Matt Ballew discovered, looking in a popular market is a factor. One Triangle job hunter working on a six-month research project told me that when the Orange County Public Defender's Office posted a job, "Everyone was talking about it, or knew people who had applied." Law school career services offices are familiar with this situation—an employer in Raleigh or Charlotte who posts an opening gets inundated with resumes, while employers in rural areas find their mailboxes empty.

Another group of seekers facing special challenges are those new graduates who are simply not sure what they want to do with their law degrees. As one member of the

CONTINUED ON PAGE 56



# Filling a Void—Why We Started a Mental Health Court

BY JUDGE JOE BUCKNER

When I began my service as a judge for Orange

and Chatham Counties 15 years ago, I knew little about severe and persistent mental illness.

It became quickly apparent, especially in our seat of court in Chapel Hill, that a significant number of mentally ill offenders were cycling in and out of our criminal courts continually.

Why the concentration in Chapel Hill versus Hillsborough, Siler City, or Pittsboro? We had theories. Our town has the state's largest public hospital. The university campus is open to all. The town and the Inter Faith Council sponsors a well-run homeless shelter. Two interstates and two major state highways run through our county.

Regardless of the cause, what I saw in those first few years was that many offenders were rearrested less than a day after release from jail. In 1994, only three district judges served our five seats of court, and we had minimal jail capacity in both counties.

Judges were likely to preside over the same sessions each week. Often a com-

plainant in cases involving the mentally ill was a fatigued family member or an upset neighbor, or frustrated merchant who came to court to ask that I order the offender to "get help," "not drink alcohol," "take their medicine," or leave the complainant alone.

Jail administrators often sought early disposal of the cases involving mentally ill defendants or at least an unsecured bond because these offenders did not mix well with the usual jail population.

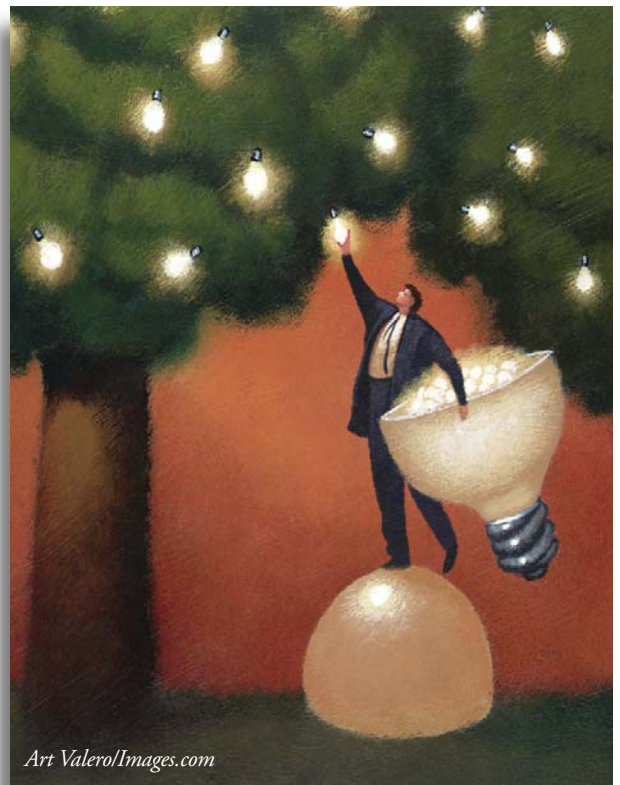
## Traditional Court and Law Enforcement were Overburdened

When Structured Sentencing began in North Carolina in 1995, sentencing for most misdemeanors was in effect decriminalized. An offender with 1,000 prior 2nd degree trespass convictions faces a maxi-

mum penalty of 20 days.

The police officers I knew from work as a criminal defense attorney in my private practice shared their frustration about the many community nuisance and family disturbance offenders. The conflicts resulted in frequent calls to police and many trips to UNC hospitals for involuntary commitments. After that time and effort, law enforcement still faced new calls for the same offenders and disturbances days or weeks later.

Law enforcement supervisors have taught me that officers are a finite supply. They address all kinds of critical public



*Art Valero/Images.com*

safety needs in cases involving family violence, drunken driving, community patrols to prevent assaults, robberies, and break-ins, and more.

When two or more officers were responding to a call involving a SPMI (Severe and Persistent Mental Illness) offender for several hours and multiple times a month, other community priorities went unmet.

Added to that were the other responsibilities held by the district court—family law, family violence, abuse and neglect of children, juvenile delinquency, motor vehicle (from DWIs to death by motor vehicle), general civil bench and jury, hospital commitment hearings, felony pleas, probable cause hearings, first appearances, etc.—resulting in a system that is easily paralyzed.

As judges, we needed to give appropriate attention to the duties we are statutorily and constitutionally mandated to do. But we were being overwhelmed almost daily.

Handling a chronic offender who was not going to jail for a long period because of limited jail space and legislatively mandated short sentences, and whom the state mental hospitals were often discharging shortly after commitment, required a new approach. We had a vivid picture of the problem, and needed a plan to solve it.

### Finding a Better Way

About ten years ago, one of my law professors from UNC, Dan Pollitt, and Bill Meade from the National Alliance for the Mentally Ill (NAMI) and I sat down to lunch.

What we discussed was a groundbreaking effort that a Florida state court had made in handling offenders with SPMI. Florida already had been the pioneer in the nation's first drug court, and this effort was born out of the same philosophy. It showed promise.

They used the court to achieve therapeutic compliance so that the defendants will not reoffend and will get the help they need. I later learned from several Florida judges that as other states depopulated their patients from traditional state hospital systems, Florida, with its warm weather, got a double-dose of this population.

One of the judges summarized the routine: municipalities in the Miami-Dade area responded to an increase in homeless people with SPMI by making it illegal to

push a grocery cart down the street. An offender is arrested for doing just that, and can't make bond. The offender waits in jail with very little medication management. Public defender tries to interview her client, and realizes that client is showing signs of mental illness. She seeks a court order for a competency evaluation. The offender is transferred to a state hospital for evaluation within in a few days. Then the offender is transferred to a local jail awaiting the mental health professional's evaluation.

When the report arrives showing that the inmate is not competent to aid in his own defense, the public defender presents the report to the judge and the assistant district attorney agrees that the offender is not competent to stand trial. The assistant DA, happy to not have to try a pushing-grocery-cart-down-the-street case, announces the dismissal. Defendant is released from the jail, and the cycle begins again.

The process averaged three weeks from arrest to release. The jail reported that its inmates' emergency stabilization budget was seven times higher than the general jail population and the secure stay was eight times longer for an offender with a similar status crime.

Three days later the offender was arrested for pushing a grocery cart down the street, or speaking to a clock in a restaurant, or telling his mother he is Jesus and that he is going to break all the windows in the house to allow the angels inside.

Sadly, the criminal justice professionals had to treat these offenders differently than others in the jail population because of the threats of harm to self and others. Many were housed naked because of suicide attempts with their own clothes. Some were sprayed with hoses to wash body emissions off of them because the jailer, not professionally trained in helping psychotic patients, knew no other way to safely approach them.

### Our Solution

On hope and a hunch we launched our Community Resource Court (CRC) in 2000. It works by getting all the participants in criminal court to agree on a treatment and an outcome, and seeing that it is followed.

Here is an example. A 25-year-old man visits a local bar. He has been asked to leave because he has been pestering other

patrons about his ability to communicate telepathically to the Pope.

Police forcibly remove him from the bar. He's charged with communicating threats, being intoxicated and disruptive, second-degree trespass and resist, and delay and obstruct of an officer in the discharge of his duties.

Unable to make bond, he is interviewed by pre-trial services or manifests an affect to jailer, assistant district attorney, his attorney, judge, or other court officer which alerts them to possible mental illness. Often a family member also alerts the public defender or district attorney that the defendant is a prior user of mental health services.

What used to happen is that the case moved on, and everyone did the best they could to move his case through the criminal justice system.

Under our Community Resource Court model, the lawyer or other court official recommends referral for case managers to screen him before court. His history is collected from family members and treatment professionals. The family reports that he has skipped taking his medicine or has begun drinking with his meds (which can result in significant impairment or damage with most psychotropic medicines).

On his court date, the offender is addressed by the judge, who explains in open court the broad parameters of CRC and why he is there. He's given time to meet with the case manager and lawyer simultaneously and ask questions about his therapeutic and court compliance requirements.

The initial treatment is based on his individual case management plan. He might be required to attend therapy, abstain from alcohol and non-prescribed drugs, attend group meetings, stay away from certain establishments or people, or attend vocational rehabilitation, AA or NA, for example.

The prosecutor and defense attorney work out a legal outcome based upon compliance. This could be a deferred prosecution with dismissal, a prayer for judgment continued granted, or even not having a jail sentence activated.

The court awards certificates of accomplishment from the judge. The district attorney, defense attorney, case managers, probation, and others praise the progress of



the participant. Often the offender gets applause from everyone in court for goals achieved.

The referring attorneys are not required but are welcome to attend the monthly session. One assistant public defender and one or two other designated attorneys manage all the participants. The referring attorneys get the case back in regular court if the client fails or a due process issue arises. The referring attorney and charging civilian complainant and/or officer is encouraged to attend the graduation to celebrate their client's success.

The CRC is entirely voluntary for the defendant, though there is no right of acceptance. Participants are screened for suitability and are admitted under a signed agreement. The district attorney, community corrections, or case management may opt the defendant out for public safety concerns. The participants can choose not to participate at any time and return to regular court.

Our district attorney, public defender, other interested defense attorneys, community corrections (probation/parole officer), the Chapel Hill Police Department, the Orange County Sheriff's Department and Pre-Trial Services made a commitment to work a once-a-month court session in Chapel Hill.

For most of the court officials and law enforcement, the work is the same but managed a different way. What we have found is that it is often easier for the assistant district attorneys because they are not handling the case during one of our typical busy criminal court sessions.

The defense attorneys are typically satisfied with the outcome because their clients are not in jail, are not being rearrested on new charges, and are achieving some stability and peace in their lives.

The victims are usually more satisfied because the person has ceased, or at least slowed, the occurrence of his abhorrent behavior.

The sheriff's department is happier because this defendant is not disrupting the general population in the jail or repeatedly taxing the limited jail capacity. Our model is saving local jail bed space and the medical expenses typically charged to our county by slowing or ceasing recidivism and reducing emergency hospitalization.

The judges are more satisfied because we

are "not paying for the same real estate twice" and can more easily get to all the other matters for which they are responsible.

The police are receiving fewer calls, making fewer arrests, and risking less injury to officers attempting to subdue a combative, delusional offender.

### The Community Resource Court Team

In addition to courtroom attorneys and law enforcement, other necessary partners are our area Local Management Entity (LME) Orange-Person-Chatham, which provides case managers and referrals to treatment providers. Initially we had help from Congressman David Price, who secured a grant to fund the case management position, and later from state Rep. Verla Insko who sponsored a bill to provide state funds to support the case managers. The Department of Health and Human Services granted a waiver to our LME to allow these positions to be exempt from traditional billing requirements. Without this cooperation and assistance, CRC would not exist.

The critical key for therapeutic success has two components: case management and access to treatment. Without early case management—essentially a person who is responsible for ensuring the offender follows a treatment plan—the participant would not be effectively engaged in treatment and other necessary services.

The other element, access to treatment, means that medical and mental health treatment is accessible and attainable. In addition, shelter, food, and other necessities of life must be available. Again, case managers, aware and knowledgeable of the available government, charitable, and non-profit resources are a must to the success of the participant.

A significant impediment to medicine intake is homelessness. People living beside garbage bins and under bridges are not particularly motivated to take their medicine. With these two elements, our treatment providers are finding that the patient is showing therapeutic compliance, making therapy appointments, taking medications as directed, and attending peer support groups when prescribed.

Finally, the offender is happier because they are not in jail and are on their medications, which allows them to access other

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necessities like housing, food, hygiene, and other often basic opportunities like vocational rehabilitation and even jobs.

What we did not see at the outset of this effort was the sense of achievement many offenders have when they meet thresholds or graduate from the program. They have a great sense of pride in the work they did and the success of beating the illness or holding it at bay.

When asked what she wanted when she was living on the street with an untreated mental illness, one formerly homeless woman responded, "I didn't want your sympathy, but I did want your empathy. I wanted to be just like you."

Of course, those with severe mental illness are like us, they are just sick. They are like us just as the cancer, heart, and kidney patients are like us. Because they have a mental illness and a behavior aspect to that disease, SPMI offenders deserve a chance to manage their illnesses while being accountable for their behavior.

CRC is not for every SPMI offender. Some people are beyond the safety and therapeutic abilities of this court. They are too delusional and too dangerous to risk management under this model.

And some crimes are episodic in nature. For example, an offender who committed a crime as a result of a failed marriage or other despair. That offender is often managed with the help of his personal mental health provider, and monitored for a shorter period than an SPMI offender.

### What Does it Take to Start a Mental Health Court?

A district attorney, chief district judge, interested defense bar members, and access to case management by an LME or other

CONTINUED ON PAGE 42

# Everything I Know About Being a Lawyer I Learned in Second Grade

BY EMILIA BESKIND

I conducted my first successful cross examination in a public school classroom a year and a half before I went law school. The cross took place at 7:45 a.m. in New Orleans' Ninth Ward shortly after my students had handed in their homework. As I leafed through the assignments, one stood out. I called its owner up to my desk and began:

Q: This is the writing homework you turned in, right?

A: Yes.

Q: You remember what your writing assignment was, don't you?

A: Yes, we were supposed to write something in our journals for ten minutes.

Q: You didn't do your writing homework last night, did you?

A: I did my homework. You're holding it.

Q: Well, it's in your handwriting, but it's not your ideas?

A: Yes they are!

Q: You copied it from a book?

A: No, that didn't come from a book.

Q: Go ahead and read me the first sentence of what you wrote.

A: [Student reading aloud] In the begin-

ning God created the heavens and the earth...

Q: That came from the Bible.

A: How did you know?

That student entered my second grade classroom not knowing all the letters of the alphabet and left as a beginning reader and writer. By the end of third grade, she was reading and writing at grade level and at the closing assembly she read a beautiful speech she had written on Martin Luther King. Her achievements were particularly impressive because during that exchange about her homework I asked her why, of all books, she chose to copy from the Bible and she had responded, "I had to use it, it's the only book in my house."



## Teach for America

Teach for America (TFA) recruits, trains, and places recent college graduates in underserved urban and rural public schools to teach for two years. The design of the program was Wendy Koop's senior thesis at Princeton. She envisioned an organization that would help close the academic achievement gap between impoverished students and their more privileged peers by placing enthusiastic and service-minded young educators in low-income classrooms. Her Princeton professor said she



was "quite evidently deranged."<sup>1</sup> Thankfully, she ignored him and in 1990 founded TFA with 500 corps members. Twenty years later, TFA works around the country—including in Eastern North Carolina—and last year placed more than 7,500 teachers in public schools across the country. A 2005 study showed that 75% of school principals consider Teach for America educators more effective than other teachers and a 2004 study showed Teach for America students do better than other kids in math.<sup>2</sup> Though some TFA corps members stay on in education, most don't. For those who move on, TFA's goal is that its alumni will succeed in other endeavors, become leaders in their communities, and positively influence education policy based on their own experiences teaching in the corps.

Like me, most TFA Corps members were not education majors. I joined TFA directly out of college having been a political science major. I knew elementary education would not be my career. I was reasonably sure that law school was in my future, but I thought that working for a couple of years would give me some real world experience and a better sense of the direction in which I wanted to go. I had spent time in undergraduate school, and during my summers, working for organizations handling post-conviction death penalty cases. I had seen and understood the economic inequality of the death penalty's application. Most of the defendants I had worked with grew up desperately poor and with little education. In thinking what to do before law school, what drew me to TFA was its mission to close the equality gap in education—the disparity between the academic performance of students who grew up with even modest financial resources and those who grew up in poverty. Teach for America seeks to close that gap by creating classrooms where students have diligent and involved teachers who, despite inexperience, create an environment where students want to learn. Nobler aspirations aside, I also thought teaching would play to my strengths. I like kids and I have always enjoyed public speaking. As I recall, I thought teaching would be me standing in front of a group of kids giving them lectures on the assigned curriculum...with recess.

### Learning and Teaching

If you have ever been a teacher or raised children, you're laughing at my naiveté. Luckily, TFA anticipates that new corps members may have unrealistic assumptions about

teaching and knows they need to take recent college grads that have excelled in academics and prepare them to do something incredibly difficult—experience failure on a daily basis, at least at first. It sends all new corps members to a boot camp during the summer before they start. At these TFA "Institutes" around the country, participants spend five weeks teaching in the morning at local summer schools and the rest of the day taking instruction on methodology, behavior management skills, and ways to track student performance.

When I arrived at my Institute, all I knew was that I was to be an elementary school teacher in New Orleans. I didn't know what grade or what school. It wasn't until I got to New Orleans that I was placed in a sixth grade classroom. The next day 35 students walked into my classroom, and despite TFA's best efforts, I was utterly unprepared. I spent the next two years teaching sixth and second grades at two different schools. I coached volleyball, attended school plays, spoke at a church funeral for a student's mother, attended an eighth grade student's baby shower, cried in the restroom, and worked harder than I ever had before. Teaching, particularly during the first year when most teachers are wholly incompetent, can be grindingly difficult. But with experience and increasing competence, teaching has phenomenal rewards. There are the student success stories and those personal moments. It was very gratifying to be told by my principal one day that not only were my students the best behaved in the cafeteria, but that she also heard them talking about our morning language arts project throughout lunch. I doubt that the language arts project changed the course of any student's life, but I am so proud that almost all of my students left second grade reading at or above grade level. I came to love my students and had intended to stay in touch with them. However, Katrina washed away their school, their church, and their community, scattering them into cities across the South.

I knew when I left New Orleans that I would focus on indigent defense in law school. My experience in the Ninth Ward enabled me to understand the social forces that create an almost inevitable pipeline of young people from schools in disadvantaged communities into the criminal justice system. After finishing law school at Duke, I accepted a Prettyman Fellowship at Georgetown Law. During my first year, I worked out of the

Georgetown Criminal Clinic as a public defender trying misdemeanor and felony cases for indigent criminal defendants in DC Superior Court. Now in my second year, I still have my own case load, but I also supervise third year law clinic students as they try cases under DC's student practice rule. In some respects, I am still teaching, but representing indigent criminal defendants has been the bulk of my work. After my fellowship ends this summer, I will be a public defender.

### Lessons Learned

I have had the benefit of an excellent legal education, but I am a better lawyer because I was a teacher. Many of my lawyering skills were significantly formed by my time in Teach for America. I am not saying that talking to a District of Columbia jury is like talking to sixth graders, but some of the same communication principles work. TFA taught me to use clear structure in my teaching. One of the first teaching principles I learned was the rule of three: "Tell them what you're going to teach them, teach them, and then tell them what they just learned." Trials are really about teaching jurors. An opening statement tells the jury what's coming. The evidence offered are the facts being taught. And closing argument is showing the jury in a persuasive way what they've just learned from the facts. So, whether in the classroom or the courtroom, the communication principle is the same.

TFA taught me that persuasion is the combination of understanding your audience and tailoring your message with creativity to suit that audience. We learned that every class and every student was different and it was our job to reach them all. As a teacher, every day I practiced persuading 35 seven-year-olds to go places quietly in a line. No one method worked. Instead, every day I employed a combination of different strategies, none of which could contradict each other, to move my students. Trials involve persuading far fewer people, but the essential skill of creatively shaping your argument to fit each member of your audience without internal inconsistencies is no different.

Another transferrable lesson learned from teaching is the importance of understanding community and culture. The level of poverty in the Ninth Ward community was something I had not experienced before in this country and it was a process to come to grips with the innate cultural differences of my students' community. At the start of a school

year, teachers write a letter introducing themselves for students to take home. I started mine, "Dear Parents." No, that wouldn't work. Several of my students were being raised by family members other than parents. So, I started again, "Dear Parents or Family Members." No, some of my students were being raised by foster parents or legal guardians. And then, "Dear Parents, Family Members, or Legal Guardians." Not quite, because several students were living in group shelters and at least one in a car. Eventually, I just said, "Hey." Does poverty take its toll on families or is the lack of families a factor causing of poverty? Whatever the cause and effect, all my own assumptions about children being able to rely on parents for support and structure were wrong. They might have had support or structure in their lives, but it came in varying forms. Now, when writing an opening statement or a closing argument, I am mindful that the common references one may learn from your parents often have little resonance to jurors from impoverished communities. My job is to find the references that work across communities without regard to economic condition. So, where I might have talked to a jury about what we learn "from our parents," I now know to speak in terms of what we learn "growing up."

Teaching also taught me about cultural assumptions. I knew that my students, some of whom lived in homeless shelters and many of whom grew up in terrible poverty, would have a different set of experiences and expectations than I had as a child. But, I was still surprised by how different some basic childhood experiences actually were. Early in the school year, one of my students lost her tooth. I stopped class and made a big deal of it. I put the tooth in an envelope with some sticks on it and gave it to the student to take home for the tooth fairy. I was surprised when the student didn't know what the tooth fairy was. So, I explained it. Shortly after, my students, who were newly introduced to the idea of the tooth fairy, began wiggling their own loose teeth. By the time I looked up, five or six students had pulled out teeth that were not really ready to come out. My cultural lesson that day was walking a group of children with bloody faces and clothes down to the school nurse and receiving such a withering look from her that for the rest of the year I would duck around a corner if I saw her coming. I had assumed that everyone knew about the tooth fairy. As

I prepare trials now, I think of that episode and ask myself what I have assumed from my own life that may not be true for those I seek to persuade.

Of course, teaching did not teach me everything I needed to know about cultural habits. Recently, I noticed that when I visited clients at the DC jail on weekdays, or even Saturdays, they were glad to see me. On Sundays, however, my clients were short with me and generally not happy to see me. After weeks of this, I finally asked one client what was up. His answer was simple, "Sunday is the Redskins game." Who knew? I'm still learning.

Perhaps the most important life lesson I learned from teaching was the importance of looking at the whole person rather than simply looking at negative actions. I had students who were incredibly disruptive, but I never had a student who was only incredibly disruptive. TFA teaching taught me to focus on a student's positive qualities and abilities and not just negative behaviors and learning deficits. Over my two years, I learned that the labels "bad student" or "behavior problem" can be hard to shed and can become self-fulfilling prophecies.

This lesson follows me to the lock up at the courthouse where I meet many of my clients for the first time. Everyone I meet there is accused of a crime. But none of them is only an accused criminal. While preparing sentencing arguments, I research old school records and see clients going from being in the normal range of student behavior to being a "bad" student, to failing academically, and then quitting school. Teaching taught me to find their positive qualities. This can be essential in explaining to judges why, for my clients, there are better options than prison.

### The Poverty Parallel

When I was a TFA teacher, people were universally positive about my work. They would tell me I was helping save the world or doing God's work. I often heard "how wonderful" or "what a great program." Now, when I say I represent indigent people accused of crimes, I hear, "Does it bother you that most of your clients are guilty?" or "How can you represent people like that?" Abroad in our country is the belief that teaching students in disadvantaged schools is both admirable and socially valuable, while defending indigent clients against criminal charges is dangerous to society and

even morally questionable. Teachers teach "good" children; public defenders represent "bad" criminals. It's an odd distinction since TFA Corps members and public defenders both provide direct services to the same population. Most of my current clients attended the kinds of public schools where TFA places corps members. TFA's goal is giving low income students the same access to high quality education as their wealthier counterparts. Public defenders work to give indigent clients the same access to justice as those who can afford a lawyer. At their heart, both jobs are about ensuring equality of opportunity.

Someone recently asked me why so many TFA alumni become public defenders. I suspect many former corps members feel that as public defenders they have the opportunity to help clients who fell through the cracks in the educational system after being labeled "bad." My friends from TFA who now work as public defenders each have a story of the moment that pushed them towards public defense. John, a sixth grade boy, is my story. On his bad days he would get loudly frustrated, had trouble following class rules, and often came to school hungry in dirty clothes. On good days he was warm, funny, charming, and leader in the classroom. On one of his really bad days, I shouted out his name to get his attention. When he didn't look up, I realized I had called him "Jake" not "John." Jake was a death row inmate I worked with one summer while in college. I suspect that I was subconsciously worried that John, who was headed to middle school, might get lost in the system and end up where Jake was. Twenty years ago Jake's sixth grade teacher may have had similar concerns. John would be 18 now. I lost contact with him after Katrina. I very much hope his exposure to a TFA teacher nudged him in the right direction. But, if he ended up in the criminal justice system, I hope someone is fighting for him. ■

*Emilia Beskind is a second-year E. Barrett Prettyman Fellow at Georgetown University Law Center and will receive her LL.M in 2010. She graduated from Duke University School of Law in 2008.*

### Endnotes

1. *The 2008 Time 100*, Wendy Koop, Time Magazine, April 30, 2009, [www.time.com/time/specials/2007/article/0,28804,1733748\\_1733754\\_1736227,00.html](http://www.time.com/time/specials/2007/article/0,28804,1733748_1733754_1736227,00.html).
2. *Id.*



# Reflections by a Novice Judge

BY NANCY E. GORDON

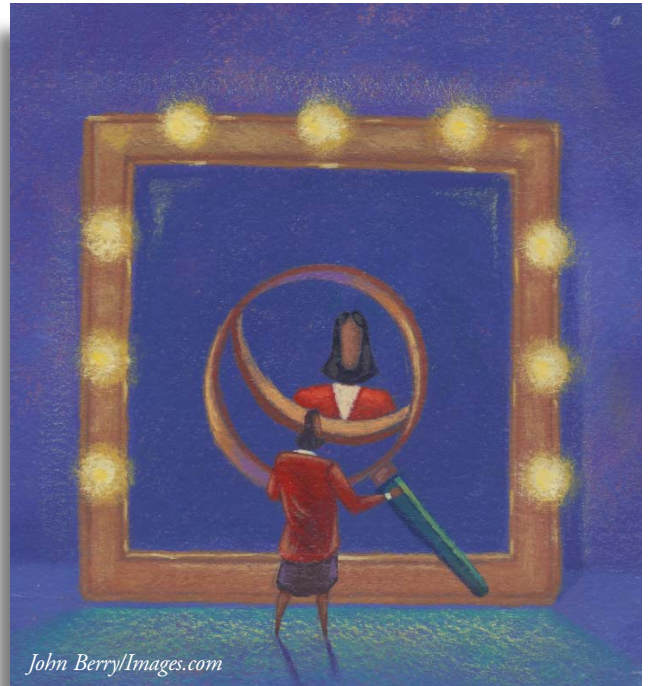
Being a judge is an extraordinary privilege and opportunity. It's a privilege to rise to the position of judge after over 25 years of

lawyering. It's a privilege to serve the public and a community that I love.

Serving as a judge is an opportunity to imagine, from a different perspective,

a better legal system, to work toward a more efficient and effective system,

and to use my talents to understand how the system works best.



John Berry/Images.com

Being a judge is a very public position. One loses one's name because "Judge" or "Your Honor" will suffice. And one spends the workday reacting to controversies and disagreements brought before you, trying to find your own rhythm and balance, and trying to find the middle of the dispute. Unlike the years spent as an attorney advocating for one side, a judge finds himself or herself in a completely different role where the job is to balance two sides and determine a fair resolution. In the past two and a half years, I've spent time cogitating about the various changes that my new profession has brought about in my life, struggling to balance some of the changes and learning to balance the daily challenges each day brings. I've been asked to write about being a novice judge, so let me start

with something that speaks to me about my new profession:

*God grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference. —Serenity Prayer*

I'm often asked "Do you like your job?" And, "What's it like to be a district court judge?" When asked by lawyers about this job, this is what I've wanted to say:

Imagine that you are sometimes compelled by the law or the facts (or both) to render a decision which is unpopular or that you don't like. . .

Imagine always feeling compelled to self-censor everything you say even with your closest friends and professional colleagues. . .

Imagine that if you forward a joke email that you thought was funny but was at best

impolitic and, at worst, offensive, your name would be splashed across the local newspaper. . .

Imagine that when you go to the local grocery store you might cross paths with someone you don't recognize, but someone who knows who you are and is very angry with you. . .

Imagine that you are really not comfortable talking with the very people you thought were your friends because you're in that strange place: professional isolation. . .

Imagine that you hear from colleagues and people associated with your profession that your fellow judges, as a group, suffer from narcissism and that everyone knows judges don't work very hard. . .

And imagine that you never really know how well you're doing your job because you

hear snarky comments passed along behind your back and you don't have a means to measure your progress or effectiveness other than an election every four years. . .

Imagine that you are asked to take a voluntary pay cut. . .

Now imagine that every day you go to work and put in not only a full work day, but you take work home with you. . .

Imagine that you wake up in the middle of the night worrying or dreaming about whether you made a good decision that afternoon at work. . .

Imagine that you are very proud of how hard you work, the example you've set, and the efforts you've made to do the very best job that you can do. . .

Finally, imagine that you love your job, you enjoy the daily challenge of your workplace, and you are incredibly proud to work in your chosen profession. Welcome to my world as a novice judge.

*"If I am not for myself, who will be?*

*And if I am for myself alone, then what am I?*

*And if not now, when?"*

—*Rabbi Hillel, Pirke Avot 1:14*

On January 1, 2007, I was proud to be sworn in as a district court judge here in Durham County. Before that time, I'd been in private practice since 1979, primarily as a family law specialist. Since my first day on the bench, I have presided over criminal court, traffic court, family court, first appearance court, civil court and Family Drug Treatment Court. In doing so, I've seen thousands of individuals, dozens of lawyers, and made thousands of decisions—most, I hope, were good, and some, I regret, were perhaps not so good. I've worked hard to recognize my biases, to restrain my impatience and temper, and to understand what my role is in our justice system. I have appeared at community forums where I've been asked why we judges set bonds so low that criminals get out of jail when they are charged with serious crimes. Most recently at a meeting of community activists, I was asked how I balance the rights of innocent victims with the rights of criminals; it is a particular goal of mine to educate the public about how the court system works. I've had the privilege to attend courses on judging at the School of Government in Chapel Hill and the Judicial College in Reno, Nevada. And I've learned a lot about why being a judge isn't simply being a lawyer wearing a robe.

Being a judge is its own profession and is truly a place of honor from which one can perform great public service.

Of the many things that I've learned, let me share four observations.

First, and this is nothing new to those who work in our criminal justice system, a great percentage of the people in our criminal courts, on probation, and in our jails, suffer from drug or alcohol addiction and/or mental illness. District court judges do not sentence the most serious and dangerous criminals—other than DWIs, our sentences range from community punishment to 120 days of incarceration. The criminals we sentence will be out of jail sooner rather than later. Many of the people coming to my courtroom have drug problems, either presently or historically. Many are homeless and mentally ill people charged with trespass or misdemeanor larceny. We have too many substance abusers and mentally ill people in our criminal justice system. These individuals need treatment that, more often than not, isn't available, particularly once they enter the criminal justice system; when people who are ill are incarcerated, it's only logical to expect that they continue in the same ill health when they get out of jail. Ergo, we have the "revolving door" that the public complains about. In addition to their addictions, mental illnesses, and cognitive limitations, these individuals now have a criminal record which severely restricts their employability and ability to function as productive adults. The community is not well served by the system we have. Changes in this arena must come from the legislature, not the bench. It is this reality that frustrates and angers the public who look to hold judges responsible for a system judges don't really control.

Second, therapeutic courts work. Before I began working as a judge, if anyone had told me that the court I would feel represents my greatest direct contribution to our community would be Family Treatment Court ("FTC"), I would have laughed. Okay, I probably would have guffawed! I am hardly a social worker or hugger by nature. Nevertheless, I treasure my hours in Family Treatment Court. And I am the most challenged there as a judge, meaning that court makes the greatest demands on my temperament, my perspective, my working to eliminate my biases and treat all clients the same, and my work to make just and fair decisions to help people change their behaviors and lives.

If you've never seen how a drug treatment court works, you might check it out. For a minimum of one year, drug court participants are held accountable by frequent and regular appearances in recurring court appearances before the assigned judge where they are rewarded for doing well and sanctioned when they do not live up to their obligations. Parents are reunited with children through FTC and criminals stay out of the system with the help of Adult Treatment Court. The personal engagement that a drug court judge has with each participant is unique, particularly given the volume of our court dockets and the time limitations imposed by the need to get all of the work done. Drug courts are worth the time and effort. They save money and change lives. My next project: I'd like to see us start a Veteran's Court here in Durham.

Next, our courts have an increasing number of self-represented litigants coming into the family court and civil system—they are a growing burden on limited court time and judicial resources. Judges must reasonably accommodate these *pro se* litigants to make sure they have the opportunity to have their matters fairly heard without violating the principle of judicial impartiality. The great number of self represented litigants demands that judges assume a more interactive role with them and that requires a careful balance. This is a great challenge for our judges, particularly our family court judges, as well as for attorneys who are more and more frequently faced with self-represented opposing parties.

Finally, to paraphrase another judge and our newest Supreme Court justice, "A wise woman can make a decision at least as good, and perhaps better, than a man." In 2009, only 8% of our superior court judges are female. We are better represented at the district court level (29%) and the appellate level (37% on the Supreme Court and 27% on the court of appeals). District court judges are elected every four years. After the *Republican Party of Minnesota v. White* (536 U.S. 765 (2002)) decision, it's concerning that judges may be viewed by the electorate as too cagey when we take the position that it is inappropriate for judicial candidates to talk about the political issues the public expects. As a woman judge, I emphasize that it is important to be mindful

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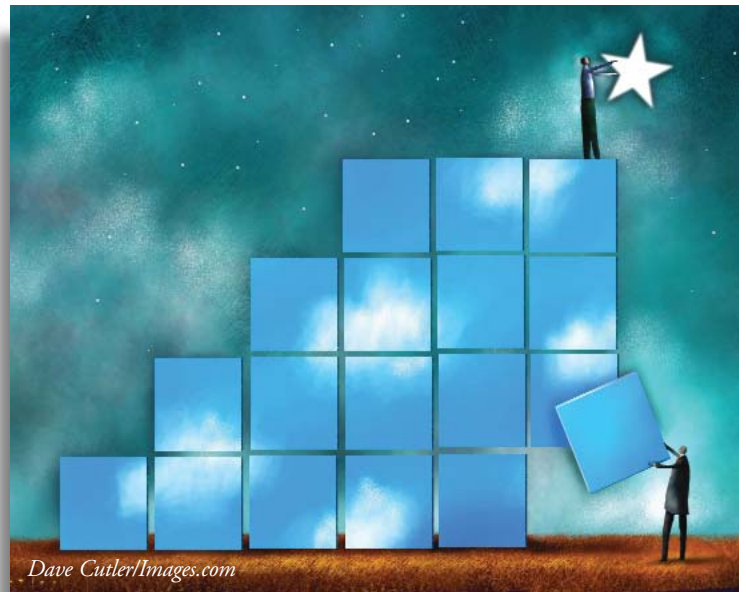


# Raising the Bar for Federal Judges and Lawyers

BY FORREST A. FERRELL AND W. CARLETON METCALF

The state of North Carolina sports seven law schools and 100 county courthouses. Now, it also has its first chapter of the Federal Bar Association (FBA).

Recognizing a necessity for an organization that focuses primarily on the needs of federal judges and practitioners, a group of lawyers and judges in western North Carolina has formed the western district of North Carolina Chapter of the FBA.



## A History of Support for Federal Courts and Lawyers

Founded in 1920, the FBA was originally designed as a professional organization to serve federal judges and government lawyers involved in federal practice. In the 1980s, attorneys engaged in private practice, along with law students, were allowed to join the FBA's ranks. Since then, the FBA's membership has swelled to over 15,000 members across the United States.

Some of the purposes of the FBA are:

- To serve as the national representative of the federal legal profession;
- To promote the sound administration

of justice;

- To enhance the professional growth and development of members of the federal legal profession;
- To promote high standards of professional competence and ethical conduct in the federal legal profession;
- To promote the welfare of attorneys and judges employed by the United States government;
- To provide meaningful service for the welfare and benefit of the members of the association;
- To provide quality education programs to the federal legal profession and the public; and

- To keep members informed of developments in their respective fields of interest.

These purposes are achieved through a variety of means. Headquartered now in Arlington, Virginia, the FBA and its chapters sponsor approximately 700 hours of continuing legal education events and classes annually. The topics of these offerings run the gamut from federal procedure to substantive areas such as criminal law, Indian law, and tax matters.

Through its related foundation, the FBA provides scholarships for law students as well as financial support for programs such as Books for Africa.

FBA members represent nearly every sector of the legal community, from small to large law firms, attorneys serving in-house with corporations and federal agencies, and members of the judiciary. The FBA is the catalyst for communication between the federal bar and the bench, as well as the private and public sectors.

### A New Presence in the Tar Heel State

Though the FBA has over 80 active chapters across the country and in Puerto Rico and the US Virgin Islands, no chapter had been located in North Carolina. According to the FBA's Executive Director, Jack Lockridge, the national organization had long been interested in establishing a chapter in our state. "North Carolina lawyers and judges, such as the late Robinson O. Everett, have been members of the FBA, but in years past the idea of beginning a chapter in North Carolina just did not seem to take root. That situation changed last year."

In September 2009, a group of lawyers and federal judges from across the western district joined together to petition the FBA to grant a charter for the group. The application was allowed by the FBA's Board of Directors that same month and a charter was presented at the FBA's annual meeting in Oklahoma City shortly thereafter.

Since then, the chapter has proceeded to elect its first slate of officers, pass bylaws, and begin the business of planning events. Also, as of the writing of this article, another group from the middle district has begun the process of establishing a separate chapter in that area.

W. Carleton Metcalf, chair of the litigation practice group with the Van Winkle Law Firm in Asheville, helped lead the charge to establish the western district's chapter and was elected as its first president. "A few years ago, I happened upon the FBA and, since I

often handle cases in federal court, I became interested in the organization and joined as an at-large member. The more I learned about the group, the more I realized how a chapter could help our district," Metcalf said. "When I took the idea to some members of our bench and bar, we all agreed it would be a strong asset to lawyers and judges in western North Carolina."

In addition to Metcalf, US Magistrate Judge David S. Cayer serves as vice-president of the chapter, while assistant US attorney Amy Ray holds the position of secretary. Retired superior court judge Forrest Ferrell was elected as the chapter treasurer. The remaining members of the founding group are Mark T. Calloway, the Honorable Robert J. Conrad Jr., C. Frank Goldsmith Jr., David L. Grigg Jr., the Honorable Dennis L. Howell, the Honorable David C. Keesler, the Honorable Graham C. Mullen, the Honorable Martin K. Reidinger, Annette E. Tarnawsky, the Honorable Richard L. Voorhees, and the Honorable Frank D. Whitney.

### The Road Ahead

The group is clear that it does not intend to infringe on the territory of other bar organizations. According to Metcalf, "The North Carolina Bar Association has a very strong history and place in North Carolina's legal circles. Likewise, our state's attorneys are recognized participants in the American Bar Association, not to mention numerous local bar groups. We fully understand that many, perhaps even most, of our chapter's members will be involved in other organizations. However, since the FBA is a bar association oriented directly toward federal judges and those appearing before the federal courts, we plan to offer programs and services that are specifically tailored to meet their needs."

Magistrate Judge Cayer agrees. "There are

many fine attorneys practicing in western North Carolina. The western district's chapter of the FBA will assist those who are already familiar with our federal courts to increase the level of their practice, while at the same time helping lawyers who may be less experienced in federal court understand how that forum operates."

The group has been hard at work planning events targeted toward those in federal practice. "The western district includes four divisions that are spread over a large geographic area. Our goal has been to sponsor events on different topics in locations across the district so that as many lawyers as possible can take advantage of them," reported Metcalf.

At press time, introductory receptions were scheduled for February in Asheville and Charlotte. In addition, the group plans to hold its Mid-Year Meeting, which will focus on civil practice in the western district, on April 23, 2010, in Asheville. The chapter's Annual Meeting will center on criminal practice and will be held in Charlotte in October.

Persons interested in the western district's chapter are invited to view the chapter's webpage at [www.fedbar.org/WDNC.html](http://www.fedbar.org/WDNC.html) or to contact one of the chapter's officers. Additional information about the FBA generally can be obtained from the FBA's national office at (571) 481-9100 or its website [www.fedbar.org](http://www.fedbar.org). ■

*Forrest Ferrell is a retired senior resident superior court judge from Hickory, having served 22 years. He now practices law in Hickory and is a member of the North Carolina State Bar Council.*

*W. Carleton Metcalf is a principal with the Van Winkle Law Firm in Asheville, North Carolina. He maintains a litigation practice in which he regularly represents businesses of all sizes that are involved in commercial disputes before federal and state courts.*

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## Novice Judge (cont.)

of the interrelationship between judicial independence and judicial diversity, particularly in light of the concerns about gender and racial bias in judicial performance evaluations and the diversity of people in our court system. I bring to the bench life experiences, common sense, legal scholarship, a strong work ethic, and my understanding of

the law. I will continue to work to make fair decisions based on the law and facts, free of the influence of other political institutions and without regard to whether my decisions are well-received by the public. I know that I am committed to being a good judge—I have many, many role models, supporters and encouragers. And I continue to grow a thicker skin to withstand the vagaries of being a public official and the criticism of

my decisions which is to be expected, is part of the job, and is healthy in a democratic society. As it is said "If the going is real easy, beware, you may be headed downhill." ■

*Judge Nancy Gordon became a district court judge in Durham County after a 27-year career practicing law. She is a board-certified family law specialist and is less of a novice judge with each passing day.*

# A Worrisome Letter

BY GREG GROGAN

I received a letter from the Honorable Judge Silas Roe. It was Thursday, May 1, 2008. He is a judge in my district with a brutal reputation. The newspapers say he is mean to everyone and would hold his mother in contempt. I'm not sure if that's true, but I am sure that I never wanted to find out. I'm called a transaction attorney, or a business attorney, or even a real estate attorney. I'll gladly go by any title if it'll keep me out of a courtroom.

I was sitting at my desk happily minding my own business. The mail carrier made his stop, and after taking my mail from him, I flipped through the usual assortment of bills until I came to the envelope from a judge's chambers. I found it strange because it was addressed to me personally and not to the name of my law office. Inside I found a letter, on the courthouse letterhead, and the words I had to read twice:

Mr. DeCarlos:

The Honorable Judge Silas Roe requests your presence at his courtroom on Monday, June 9, 2008. Please make every effort to be present, and if you cannot attend please contact our office. Thank you.

It was signed by the judge and that was all the information. I'd never received such a notice before, and I was dumbfounded. I started to call the judge's office to see if this was a joke, but who would pull this stunt and why? I decided that the letter was real. Then I decided that maybe I'd better figure out what was the reason behind the letter. I reread all my open files. There seemed to be no problem there, but I would check closer the next day. I'd also have to check all my closed files and see if anything jumped out at me.

I fidgeted around until closing time and went home. When I walked in the door I was greeted by my wife. Mary Stringer had been my kindergarten companion. We met when I ran over her at recess one day. I was playing freeze tag with some new friends, and I

stopped looking where I was going in order to avoid being made "it." I was running full steam ahead when I suddenly felt myself crash and fall to the ground. I looked underneath me with the intention of letting the person interfering with my escape feel my wrath. Instead I saw this set of warm blue eyes that took my breath. Teachers rushed over to pick us up, but I made sure the hand Mary held when she was off the ground was mine. I will never forget our first conversation. She started it.

"My name is Mary. You busted my lip I think."

"My name is Odd, er, Odell DeCarlos and I didn't mean to run into you. I was just trying not to get tagged."

"You should say you're sorry."

"I'm sorry."

"You are the one they call 'Odd.'"

"It's a nickname. My name's Odell Donald DeCarlos."

"I won't call you that. I'll call you Odell or lip buster, but not Odd." Mary stuck by that for several months, but the peer pressure built up too much. Finally, with an apology of her own, she began calling me Odd. By then we were a regular item at the school and we've never been apart since.

"I received a letter from Judge Roe. He wants me in his courtroom on Monday morning."

Mary stopped shuffling her papers and gave me a look that said "Are you serious?" I can't explain that look, but I know it when I see it. I continued. "No explanation as to why. I'll find out when I arrive."

"Aren't you going to call?"

"I thought about it. If he wanted me to know then he could've put it in here."

"I don't think I could wait. It'll keep you up tonight and you know it."

"Thanks, and this conversation helps. Let's change the subject. What're you grad-

## The Results Are In!

This year the Publications Committee of the State Bar sponsored its Sixth Annual Fiction Writing Competition. Eight submissions were received and judged by a panel of eight committee members. The submission that earned third prize is published in this edition of the *Journal*.

ing?" Mary's a teacher. She knew even in kindergarten that she had a calling for that line of work. She started out as a math teacher, but eventually switched to teaching history. She hates it when I take an interest in her work. I read her text books and remark about the books' inaccuracies. I'm against political correctness in all its forms, and I don't believe fifth graders need to start out learning history from a slanted point of view. Mary sees things differently.

I woke up Friday and I made a resolution not to worry about the letter. That lasted about ten minutes or until I made it from breakfast to the shower. Then I kept trying to consider all the possibilities, but really came up with none that sounded plausible. I kissed Mary goodbye and she headed off to school. I climbed in my car and headed for my office. Living in a suburb of Raleigh meant not having a long commute. Not having to leave my little town meant an even shorter commute than most. I was at work in under 15 minutes.

I made it a policy to check my emails and return my phone calls each and every day. Then, first thing the next day, I check messages again to see if someone called during the night. Sure enough, a lady named Kathy with Judge Roe called to make sure I would be in attendance on Monday. My level of



anxiety grew. Not only was I now sure that the letter was no hoax, but the judge has double checked on me. This meant he has something planned for me. Still, Kathy's phone call gave me the opening I needed to call the judge. I remember picking up the phone and dialing the numbers.

"Good morning. You've reached Judge Silas Roe's office. This is Kathy speaking."

"Good morning. This is Odell DeCarlos calling and I'm scheduled to be in your courtroom on Monday. I was calling to confirm I'll be there."

"Oh good. The judge has asked me a couple of times if you'd called. I'll be sure to let him know."

"Kathy, do you mind telling me what this is about? The letter gave no indication."

"I'll try to look and see." I waited for a couple of minutes before she came back on. "I'm sorry Mr. DeCarlos. There's no indication on his calendar. He hasn't told me and I'm afraid he won't be in the office today."

Frustration set in, but I had to be careful with Kathy. Making a judge's staff mad is an easy way to ruin a reputation and career. All of us lawyers pretend we're not at the mercy of people like Kathy, but in reality we know that people like her can do us a lot of damage. I politely ended the conversation, and then said my true feelings once the receiver hit the cradle.

I picked up the day's paper from my doorstep. The brown room lightens up with the glow of the daily news. The economy's still struggling. The campaign was still going strong, and North Carolina is up for grabs. The Tar Heels were recruiting hot and heavy. Then my eyes found a story about Judge Silas Roe. I recognized his picture and then the headline got my attention:

**Judge to Attorney - "Be ready for trial or be ready for jail!"**

This was just what I needed to see. It seemed that the Honorable Judge called a civil case to trial and the attorneys for the plaintiff requested a reset. The judge, unhappy with the pace of the proceedings, told the plaintiff and the plaintiff's attorney team that they had one day. They would go forward with their case at that time or they would be held in contempt. The article continued on with examples of the judge holding defense attorneys, prosecutors, and civil litigation attorneys to a tough standard. The article concluded with a mention of the judge's former prosecution days, and how the local citizens are lucky to have such a force-

ful judge on the bench. Again, what could this guy want with me?

I put down the paper and went to my computer. My Hewlett Packard is my second best friend. All my work gets saved on here, and I never have to argue with it. My early career was much different than what I do now. I remember getting out of law school and wondering what I'd do. I landed a job with a solo practitioner, like myself, who did a little of everything. He dabbled in real estate, wills, elderly law, bankruptcy, divorce, and just about anything else that would pay the rent. He was moderately successful, but he couldn't afford to keep me around for long.

I left his office and went to the district attorney's office. I was immediately put in a trial division since I had some experience. I protested that my experience in the courtroom was limited to filing documents in probate court, but apparently that was more than many of the others that came on at the same time. I'll never forget the first day on the job.

I walked in and met the man who was going to be my trial partner. His name was Bob Stafford. He was a nice enough guy and we were about the same age. He showed me his office, my office, and then told me he had court that day. Our supervisor told me to tag along since it was my first day. We walked over to the courtroom and he told me about Judge Melvin Howard. Judge Howard, it seemed, liked having jury trials. They interested him, and since he didn't have to prepare or round up witnesses, he decided to have one as often as possible. My trial partner felt sure he was going to have trial this day so I could watch how it went.

We entered the packed courtroom and I watched him walk to the front of the room. He met with defense attorneys and placed himself at the table for the prosecution. Soon the judge came out and called the courtroom to order. A few pleas were taken and the judge lined up the first case that was going to be a trial. Bob asked if he and the defense attorneys could approach the judge's bench. The judge looked confused but agreed. I could hear only whispers as they talked, and then the judge broke out in a smile. He called out my name and asked me to approach his bench. A little shocked, I awkwardly got to my feet and willed my legs to move me up to the front of the room.

When I reached comfortable speaking distance, the judge smiled down at me and said, "Mr. DeCarlos, I'm told you're to be a prose-

cutor in my court. I look forward to seeing you in action."

One thing that Bob hadn't mentioned was the judge's voice. I had heard deep voices, but this voice sounded lower than a whale's moan. I'm not sure Barry White could've touched these deep tones. It also had a powerful force behind it that I swear made my hair blow backwards as he spoke. My ability to move, speak, or show any signs of life left my body. I remember feeling sweat suddenly appearing on my hands and head, otherwise I might as well have been a mannequin that someone delivered to the court. The judge continued smiling.

Luckily, Bob sensed the rising panic in me. He turned and started talking to the judge as if it were he the judge had been addressing all along. "Judge, Mr. DeCarlos comes from a general practice firm that did very little in the courthouse. He's new to jury trials so I'll be with him to start."

The judge nodded and smiled again. I found my voice, somewhat, and shakily thanked the judge for his time. The judge laughed and I quickly walked away. I found my seat in the back of the courtroom and took the next few minutes to recover and settled in for an entertaining afternoon. I looked around me at the sordid collection of human beings. I tried to decipher if I was looking at a witness, a defendant, or a victim as I studied the different people. There were people walking in and out of the courtroom, and the scene was one of controlled chaos. I found it pleasant until I heard my name being called.

At first, I thought I must've imagined it. Who'd be calling me? Then I looked around again, and again I heard my name. I finally looked up at the front of the room and saw Judge Howard waiving. I rose and walked toward the bench in a daze.

"Mr. DeCarlos, your trial will begin in about 30 minutes. It's almost lunch time, so get everyone ready and we'll begin after I eat last night's leftovers."

I stood staring for just a moment trying to understand what I'd just heard. "Excuse me, your honor, but did you say 'my case' would be starting? I'm afraid I don't understand. I don't have a file or a case. I was sent here by my supervising attorney to observe."

"Mr. DeCarlos, you were hired by the district attorney were you not?"

"Yes sir."

"You are an attorney are you not?"

"Yes sir."

"Then you are ready to try this case."

"Your Honor, I'm not at all ready to try this case. I don't know the defendant's name. I don't know what he's charged with. I don't know the location, names, or trustworthiness of the witnesses. I don't even know the location of the case file."

"Mr. DeCarlos, I gave you 30 minutes. Make yourself ready."

"Your Honor, you cannot possibly expect me to get totally ready in 30 minutes on a case I've never seen."

The judge sighed. That's never a good sign. "Again, you work for the district attorney's office don't you?"

"I do today your honor, but if you make me go to trial then I might not tomorrow."

"Let's worry about tomorrow when tomorrow comes. See you in 30 minutes."

That was my introduction to life in the prosecutor's office. I managed to find the file, locate my witnesses, and pick a jury. After the jury was picked I discovered that I had a possession of cocaine case. My arresting officer did a great job testifying as did his backup officer. Then my crime lab witness, who had never received a subpoena, got stuck in traffic and the judge dismissed my case. I went home to Mary and told her the whole story. My life had taken a dramatic turn.

The phone brought me back to reality and the present. Mary called to remind me that I needed to get home early tonight. I needed no reminder. I had forgotten our anniversary before, and I paid the price. This time I was taking Mary into downtown Raleigh for a very nice dinner and maybe a carriage ride around the town. We always enjoy our trips to Raleigh, even though they are rare, and I enjoy hearing a tour guide tell me all about the big city where I grew up. I sometimes think I want to retire and be a tour guide. Share my knowledge of the city with others and enjoy the atmosphere of the area. Then I realize I only want to reminisce and make others enjoy my stories. I probably wouldn't be a popular guide.

As the day went by I worked on a couple of articles for those same trade magazines I had received in the mail. I'm not a writer by profession, but I do occasionally get asked to submit articles on a few topics. I have written on commercial and residential real estate, contract preparation for the buying and selling of business entities, and setting up a corporate structure. I take great pains in my writing. I've read pieces where it was obviously not the writer's

best work, and I've never wanted to be lumped in that category. I never receive much feedback, but they keep asking me for submissions so I take that as a good sign. The nature of my work doesn't lend itself to going out in public, so I grasp at what other attorneys might think. Getting caught up in my work also makes the day go faster. I only thought about my upcoming courtroom adventure about ten times before lunch, and only about ten more times after lunch. Even with all that thinking I'd found no answer.

At 3:00 I packed up my work and headed home. I beat Mary home, which is unusual, and I showered for our date. We rarely get a chance to go out alone. We have two children, but both are in college. They come home on weekends from Chapel Hill to do laundry and get free food or health care. Our son, Ronald, is going to be a pharmacist he says. He's only a freshman so we'll see. Our daughter, Rachel, is a junior and is planning on being a teacher like her mother. That I believe. She spent her life taking care of her little brother and playing school.

Mary came in the door and brought me back, again, to the present. She showered and changed her clothes to something fancy. We jumped in the car and took off for a place called Bravo. It was a restaurant I had read about in a magazine, and made the reservation a few weeks earlier. The place was supposed to have great views and great food. Once we arrived we stepped inside and surveyed the scene. Very formal with white table clothes and expensive silverware. The room was painted an off white color and the heavy drapes are a shade of dark raspberry. We took our seats next to large windows that provide a clear view of the skyline. At this point the place was winning me over and I hadn't even tried the food.

The waiter goes to get our drinks, and we begin our annual teasing. I started. "So, Mary Stringer DeCarlos, why did you marry me 27 years ago today?"

"Silly. For your money. I figure any day now we'll be on easy street. Besides, your brother wasn't interested in me. Why did you marry me?"

"You were the best looking girl in the school, and my dad said I should." I ignored the comment regarding my brother. He was always more popular than me.

"Ha! My dad said Odd DeCarlos was nothing but trouble." When she said this I felt her foot rub on my leg. Still playing "footsie" after 27 years!

"I always said he was smart. You know, in all seriousness, he prevented me from marrying you two years earlier. I wanted to get married to you at 18."

She looks at me with a slight smile. "What stopped you?"

"The thought of your dad chasing me around the yard with an axe. Besides, my dad also said he didn't want to have a teenage daughter-in-law."

We enjoyed what truly was one of the best meals I've ever eaten. Mary ordered something healthy, as usual, while I ordered a steak. I am not sure if it was the steak, the potatoes, or the company, but it was a fantastic time. After the meal we walked around the city for a little while. The air was cool and the humidity was low. Conditions were so good that we didn't even notice or care about the time. It was very late when we came home and we found both our teenagers asleep in their beds.

When the alarm went off on Monday morning I was surprised to find that I actually did sleep. I didn't sleep much, but four hours was much more than I would've guessed possible. I took my shower before Mary, and then she caught up to me in the kitchen. She gave me a morning kiss and asked, "Today's your big day. Are you excited to go back to court now that the day's here?"

"Excited? No, I don't think what I'm feeling is excitement."

"Silly. It'll be no big deal. Just wait and see."

"I really hope you're right. Judges aren't known for summoning attorneys just to tell them what a great job they're doing."

We said little else because she could see I was just not in the mood for it. We said our goodbyes and I began my drive to the courthouse. When I worked as an assistant district attorney I would sometimes think the drive took hours. This day, even with traffic, the drive took less than 15 minutes. I was hoping for a major traffic calamity, but no such luck.

The courthouse still had that giant sterilized look to it. The gray marble on all four sides looked like it might have just been polished in detergent, and the air smelled crisp but musty. I parked in my old parking lot that now charges the ridiculous amount of ten dollars for a spot. The cost is the same whether you park for five hours or five minutes. I held my hopes that my visit would be short. I walked into the main lobby and preceded through the security areas. The inside was just as sterile as the outside. Gray marble and wooden railings line the building. The place

looks like you could eat off the floor, but those of us who have worked there know better. I found my way over to the elevators to go to floor three. The elevator was crowded with other attorneys, defendants, witnesses, and groupies who just like to hang around the building. When the bell rang, and the elevator stopped on floor three, just about everyone onboard got off. As a group everyone looked around for their designated site, and I found Judge Roe was in courtroom 3F. I remembered that being the biggest courtroom, and it was at the end of the hall. To my surprise, just about everyone in the hallway also headed toward that courtroom.

I held the door for everyone as they filed in and took seats. I could see the inside of the courtroom and a wave of nostalgia rushed over me like a wave over rocks. I took a seat as far in the back as possible. In my earlier days I could've recited facts about the cases on the day's calendar, and I would've recognized many of the people. I noticed that a few of the attorneys, and they can always be distinguished from other people by their eccentricities, took an interest in me. I saw one point my way and whisper to a colleague. I told myself that this was paranoia, but I saw a few others looked my way as well.

Up front there were three tables set up. Attorneys were mingling around the tables with papers and books spread out all over every possible inch. I rarely ever saw three tables set up because there were usually only two sides to each fight. Whatever was on the calendar would take second fiddle to the main case. The sheriff deputy assigned to the courtroom and the judge's calendar clerk came out and took their seats. The deputy, in the customary brown uniform, told the courtroom that the judge was on the way. All people in attendance were expected to stand when the judge entered, and he would start the proceedings with some announcements. I remembered that the announcements will cover such mundane topics as turning off cell phones and pagers, attorneys were to stand when and if the judge calls their case, attorneys were to identify themselves before speaking, and any disrespectful behavior would be dealt with by the deputy. I always wondered if judge's got tired of giving this spiel, but it was a necessary speech and often violated by those not listening.

I was lost in my thoughts when the gavel resounded through the room. The deputy barked out for everyone to stand and called

out that the court was now in session. Judge Roe came out from his chambers with his black robe flowing behind him. Judge Roe, a large man with thick gray hair and stern features, sat down. Everyone in the courtroom sat down and the deputy retreated to the corner of the room where he blended in with the paneling. The judge leaned over his desk and whispered to the court clerk. I could not hear the words, but I saw her shake her head.

The judge sat back up and cleared his throat. "Is Mr. Odell DeCarlos present?"

I now understand that the trouble I had getting up was due to my legs not wanting to work. I clumsily stood and answered. "I am, your honor." I heard a few whispers and saw more than a few heads turn my way.

"Mr. DeCarlos, can you come forward please."

"Yes sir." My walking was the same as a drunk man. I couldn't feel my legs, but I was conscious of my arms swinging. I couldn't remember how I ever felt comfortable in a place such as this. I made my way up to the front and stood between the tables. The attorneys seated at each table looked at me with curiosity.

"Mr. DeCarlos, we appreciate your coming today. I'm told you're the man for the job." The judge had serious demeanor, but the look on his face was friendly. He had a slight smile and his eyes showed he was in a light mood.

"I'll do what I can your honor." I felt the need to say something and that was all I could deliver.

"What do you think of our problem?"

This was an odd question. Judges usually don't speak about cases, much less a case they are currently hearing. I looked around at the three tables. The attorneys were all looking at me with a sense of anticipation. "I have no information on this case."

The judge looked puzzled at this statement. "Did you not receive my letter requesting your presence and explaining the situation?"

"I received a letter requesting my presence, but nothing else. I considered it curious, but I just thought I'd have it explained to me when I arrived."

"My apologies, Mr. DeCarlos, for keeping you in the dark. I'm sure it's my fault that you were not given an explanation for the request. We have a delicate matter here. Both sides seem to be making a claim over some property. We also have a third party holding money in escrow for the rightful owner. I've listened

to the outline of the case as told by all sides, but I'm not an expert in this area. I'm told I can use someone to come in and try to arbitrate the situation as a special master, and you were recommended. If you don't mind my saying, I was also told you were a bit of a recluse so I might have a hard time getting you here. I'd like for you to hear the arguments and give each side some of your time."

I took a deep breath. "I'll do my best." Just what I need. A final exam in front of witnesses.

Each side takes their turn telling me why they have the best claim to this half acre commercial tract just inside the city. They show me deeds, letters, tax records, and surveys. They tell me of their witnesses and what testimony I could expect in a trial. The third group sits until the end and then they tell me they just want to know where to deliver the money. I begin asking questions and making points. Soon I find myself lost in the moment. I'm no longer in the courtroom but on the side of the road looking at a prized piece of land. I can see the survey lines and I can see the area of dispute. I'm only vaguely aware of the words leaving my mouth and if Judge Roe ever speaks then I don't hear. I ask all the questions I feel I need and then I start a monologue. I explain to the court the ruling that makes the most sense, and how the paperwork should read so that future title examiners will have a resolution. I'm not even sure how long I talk, but when done I feel as if I've run a marathon.

I look around the room and see attorneys sitting with their mouths hanging open. There is only silence for a few seconds before I hear a low chuckle. I turn to see the judge is actually laughing. He catches himself and drinks a sip of water. Then he looks around the courtroom.

"My fellow attorneys, I think we all just got schooled. I hope I can remember half of what I just heard. Mr. DeCarlos, your reputation doesn't do you justice. People say you know your stuff, but I don't think that sufficiently covers it."

I don't know what else to say, so I say thank you. I ask the judge if there's any other service I can provide.

"No, I think that's all. I don't think my brain can handle any more educating. The parties in the case should have more than enough to resolve this problem now."

CONTINUED ON PAGE 56



# Bruno's Top Tips for Tip Top Trust Accounting

BY BRUNO DEMOLLI

## FDIC Protection for Client Funds in Your Trust Account

During this economic downturn, the FDIC (Federal Deposit Insurance Corporation) has closed a number of banks causing lawyers some concern regarding the protection of client funds in their trust accounts. FDIC coverage has also gone through a number of changes during the recovery. Here is a refresher and update on FDIC coverage.

### Basic Coverage

The basic rule regarding FDIC coverage is that each client's funds deposited in a trust account will be insured by the FDIC (up to the insurance limit, which is currently \$250,000) provided the account satisfies the FDIC disclosure requirements. Remember that the client's insurance limit includes *all* of the client's funds held at that bank; if a client holds funds in a different account (e.g., the client's own account or different

lawyer's trust account) at the same bank in addition to the funds in the lawyer's trust account, they will be included when determining total coverage.

### Requirements for Coverage

There are two disclosure requirements: (1) the fiduciary nature of the account must be disclosed in the bank's records, and (2) the name and ownership interest of each owner must be ascertainable from the deposit account records of the insured bank or from records maintained by the fiduciary. If you are complying with the trust accounting and record keeping requirements in Rule 1.15 of the Rules of Professional Conduct, you have already satisfied both of the FDIC disclosure requirements.

### Changes to Coverage

Following an intensive comment period regarding the rules of the FDIC Temporary Liquidity Guarantee Program during fall

2008, it was decided that all funds in an IOLTA account, regardless of size, would be insured in full by the FDIC and backed by the full faith and credit of the United States government unless the bank opts out of the program with posted notices. This Transaction Account Guarantee Program (TAG) coverage has been extended through June 30, 2010.

However, *quite a few banks have now opted out of the program*, including a number of large banks operating in North Carolina such as Bank of America, BB&T, Suntrust, and Wachovia. A list of banks opting out of the program is now available on the FDIC website: [www.fdic.gov/regulations/resources/TLGP/optout.html](http://www.fdic.gov/regulations/resources/TLGP/optout.html). Please note that banks are listed there by the state in which they are headquartered. IOLTA accounts held in institutions that opt out of the TAG program revert to the basic coverage and are, therefore, insured up to \$250,000 per owner (i.e. client). ■

## Mental Health Court (cont.)

organization providing professional, accredited case management services is essential. Other agencies such as our jail, our pre-trial release program, our mental health clubhouse, our local NAMI chapter, our police departments and their social workers, vocational rehab, Section 8 housing, our businesses local and national who donate incentives, the Town of Chapel Hill and its Public Housing Department, and the University of North Carolina and UNC Hospital, to mention a few, are all invaluable partners in the success of the participants in CRC.

For our district, once a month court sessions in each location are adequate. Many of the participants have challenges with transportation so we set the court location based upon where it is easiest for them to attend.

What matters most is the commitment of the participants and availability of services.

If we can help with other information about mental health court, don't hesitate to contact us. Also GAINS Center is an exceptional resource for information on what is occurring nationally with this effort. Our program administrator is Marie Lamoureux and her contact information is provided below.

[marie.lamoureux@nccourts.org](mailto:marie.lamoureux@nccourts.org)

Ms. Marie Lamoureux

Programs & Special Projects Manager

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[www.gainscenter.samhsa.gov/html/resources/presentations.asp](http://www.gainscenter.samhsa.gov/html/resources/presentations.asp) ■

*I would like to gratefully acknowledge Dr.*

*Diana Perkins, Jim Van Hecke, the late Jesse Basnight, Tom Maynard, Judy Truitt, Dr. Nancy Johnston, Dr. Earnie Larsen, Dr. Terrence Real, Caroline Ginley, Jim White, D.C. Rhyne, Senga Carroll, Jeffrey Demagistris, Tom Velivil, Lauren Dickerson, Karen Murphy, Fran Muse, Public Defender James Williams & staff, Judge Carl Fox, District Attorney Jim Woodall & staff, Community Corrections JDM Tommy Perry & staff, Judge Beverly Scarlett, Congressman David Price, Representative Verla Insko, Sheriff Lindy Pendergrass, Sheriff Richard Webster, Judge M. Patricia DeVine, Matt Sullivan, Bill Meade, Professor Dan Pollitt, Dr. Virginia Aldige, Dr. Marlee Gurrera, and many others. Mostly thanks to Kurt for reminding us why this is important. Without all of you we would not have this court or this opportunity to serve those who need our empathy, help, and love.*

gram improve the clarity of the rules, streamline the appeal process, and make hearings less adversarial.

Proposed amendments to the standards for the elder law specialty make the experience requirements for certification the same as those required by the National Elder Law

Foundation, the testing organization for the elder law specialty.

### Proposed Amendments to the Plan for Certification of Paralegals

27 N.C.A.C. 1G, Section .0100, The Plan for Certification of Paralegals, and Section

.0200, Continuing Paralegal Education

The proposed amendments allow a Juris Doctor degree from an ABA-accredited law school to satisfy the educational requirements for certification and prohibit continuing paralegal education credit for self-study except for courses taken online.

## Proposed Amendments

At its meeting on January 14, 2010, the Executive Committee of the council accepted the report and recommendation of the Ethics Committee to withdraw proposed amendments to Rule of Professional Conduct 8.3, *Reporting Professional Misconduct*, published for comment in the Winter 2010 *Journal*, and to permit the Ethics Committee to study the proposed amendments further. The proposed amendments would exempt a lawyer serving as a mediator who is subject to the North Carolina Supreme Court Standards of Professional Conduct for Mediators from reporting information learned during a mediation relative to another lawyer's misconduct.

At its meeting on January 15, 2010, the council voted to publish the following proposed rule amendments for comment:

### Proposed Amendments to Rules Governing Judicial District Grievance Committees

27 N.C.A.C. 1B, Section .0200, Rules Governing Judicial District Grievance Committees

The proposed amendments will increase the members of a district grievance committee.

#### .0201 Organization of Judicial District Grievance Committees

- (a) ...
- (c) Appointment of District Grievance Committee Members

(1) Members of District Committees - Each district grievance committee shall be composed of not fewer than five nor more than ~~13~~ **21** members, all of whom shall be active members in good standing both of the judicial district bar to which they belong and of the North Carolina State Bar. In addition to the attorney members, each district grievance committee may also include one to ~~three~~ **five** public members who have never been licensed to practice law in any jurisdiction. Public members shall not perform investigative functions regarding grievances but in all other respects shall have the same authority as the attorney members of the district grievance committee.

...

## Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments to L. Thomas Lunsford II, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

## The Process

Proposed amendments to the Rules of the North Carolina State Bar are published for comment in the *Journal*. They are considered for adoption by the council at the succeeding quarterly meeting. If adopted, they are submitted to the North Carolina Supreme Court for approval. Amendments become effective upon approval by the court. **Unless otherwise noted, proposed additions to rules are printed in bold and underlined, deletions are interlined.**

## Legal Hiring (cont.)

Class of 2009 who is living with her parents and working in a temporary in-house position conceded, "No one wants to hire someone who is not quite sure what they want to do." She admits that she "need[s] to be able to articulate clearly and confidently what I want to do," but the fact remains she is just not sure of her path. In a less-than-robust job market, people with such uncertainty are having a difficult time.

Each new graduate has a unique story, but the bottom line is that some members of the Class of 2009 seeking work in North Carolina are thriving and some are struggling—and more are struggling than in

past years. Many graduates have had to amend their expectations, be flexible, take temporary positions, seek longer, and work harder before landing a job. Their career paths are not easy ones. North Carolina's lawyers, law schools, and professional organizations must remain committed to assisting these newest members of the bar in every way they can. ■

*Maria J. Mangano is herself a graduate of the University of North Carolina School of Law and is the director of career services there. Her previous article for the State Bar Journal, Changing Times: The 'Second Generation' of Women Lawyers Speaks out on Motherhood, appeared in the Fall 2005 edition.*

## A Worrisome Letter (cont.)

I turn and walk toward the door. I hear the whispering and I see people nodding my way.

Suddenly, I'm not intimidated by that. I have a new opinion of those pointing and of the one at which they are pointing. My favorite kindergarten play date is going to be eating at one of her preferred restaurants and will have to hear about another one of my days. ■

*Greg Grogan is a former prosecutor turned real estate attorney. He lives in Paulding County, Georgia, but works with clients in North Carolina, and he still remembers his first time standing before a judge in a courtroom.*