



Newsletter

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June 2009

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Guest Column:

North Carolina's Judicial Selection Process: Good Already, but with Room for Improvement

By: Alan Woodlief, **Elon University School of Law**, Associate Professor of Law, Associate Dean for Admissions & Administration

The United States Supreme Court's recent decision in *Caperton v. Massey Coal Co.* has refocused attention on the wisdom of states electing their judiciary. North Carolina remains one of 21 states which utilize either partisan or non-partisan elections to select their judges, and *Caperton* reminds us that such systems are imperfect. Fortunately, North Carolina's judicial campaign reform efforts of the past decade have aided in preserving the integrity of our election system, alleviating many of the concerns raised by a system grounded in partisan politics and campaign contributions. However, other concerns, including voters' ability to effectively select judges, remain. Accordingly, we must continue to strive to improve the judicial selection process and to explore alternatives such as the adoption of merit and appointive retention systems.

One of the most oft-cited concerns with judicial elections is the potential influence of campaign contributions on judicial independence, the issue central to *Caperton*. The *Caperton* decision has been described as a landmark one, and it does mark the first time the Court has applied a due process analysis to the question of whether a judge must recuse herself due to bias or a conflict of interest created by significant campaign contributions received. However, before *Caperton*, all jurisdictions had in place judicial rules and standards requiring recusal where a judge's ability to be fair and impartial has been compromised. In fact, the Court's decision notes that most disputes over disqualification will continue to be resolved without resort to the Constitution. The Court recognized that 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 pitfalls of this system and calls us to action to improve the current system and to at least carefully consider other alternatives.

Another commonly cited concern with popular elections for judges is the perceived inability, or perhaps unwillingness, of voters to discern the qualifications and effectiveness of judicial candidates, so they are well informed in their voting decisions. (con't page 2)

Our Mission...

Helping children and their families who need assistance from the courts, and working to improve the North Carolina Judicial System.

An article in the News and 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. A recent poll of New Jersey residents noted that 94 percent could not name a justice from that state's supreme court, and there is no reason to suspect that North Carolina residents would fare much better. Many surveys of voters reveal that they feel ill-prepared to vote for judges and favor some form of merit or appointive retention system. Given these statistics, it is doubtful that North Carolina's citizenry would lament a change to our current election system.

It appears that one of the primary arguments in favor of continuing judicial elections is their long history in North Carolina. Our state's tradition of electing judges dates to the adoption of its Constitution of 1868. Prior to that time, judges were selected by the General Assembly and served during good behavior, which could conceivably translate to a life appointment. Prior to elections being instituted in the 19th Century, some of the same concerns that are raised today were mentioned. 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." So, while judicial elections have a long history in this state, the idea of an independent judiciary arrived at through an appointment process predates this judicial election process.

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. Given this past support for these alternative methods of selection and the concerns highlighted by Caperton, this would seem a prime time for the General Assembly to revisit this question.

While we await the adoption of a new system of judicial selection, North Carolina's citizens can take comfort in our current election system, as our state has been vigilant in combating the ills discussed above. 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 this spring, USA Today praised our publicly financed judicial elections stating that they are "proving their worth."

Significant effort has also been devoted to educating the state's voters about the candidates for judicial office. Several organizations in North Carolina, including Court Watch, have made great strides in educating our voters with judicial report cards and surveys measuring judges' effectiveness. Many North Carolina newspapers continue their tradition of editorial endorsements, and the State Board of Elections publishes a Voter Guide. The North Carolina 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. For voters who wish to be informed, there should be an abundance of information regarding judges' effectiveness and fairness on which to base their votes.

Because of the judicial campaign reform measures already adopted in North Carolina, our state thankfully does not face a crisis of confidence in our judiciary like that in West Virginia. 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 and likely soon adopt some form of merit or appointive retention system.

(The views expressed in this article are not necessarily the views of Court Watch)

Remembering Isaac McNatt...

It was with great sorrow that we learned that Advisory Board member Isaac G. McNatt died on January 26, 2009 at the age of 92. Isaac had served Court Watch as a Board member and then as an Advisory Board member.

Isaac McNatt joined Court Watch after a remarkable career. He was born in Bladen County, the son of sharecroppers. During the Second World War, he joined an all-black construction unit. While stationed in Trinidad, he led a boycott against the base's PX, which required separate entrances for black and white servicemen. Upon leaving the Navy, he attended St. John's University Law School at night in New York City. In 1945, he graduated magna cum laude. Isaac spent the next 36 years in private practice in Harlem and Teaneck, New Jersey. He became active in the civil rights movement and worked to integrate Teaneck's public schools. He became Teaneck's first black Municipal Court Judge. Three years later he was appointed to a state judgeship in the Workers Compensation Division. Upon his retirement in 1992, he and his wife Gladys moved to Madison, North Carolina.

Court Watch is indebted to Isaac for many years of faithful and enthusiastic service to Court Watch. We will miss his cheerful smiles and his persistent enthusiasm for our missions.

Human Race 2009



Court Watch's Administrative Director and Development Director (and her son) helped Court Watch and the community by participating in the Human Race in March. Court Watch raised over \$550.

NEW BOARD MEMBERS

Jewel A. Mitchell: Jewel received her undergraduate degree from North Carolina A&T State University in Greensboro. She brings a diversified set of skills to the board, having experience in customer service, commercial loan preparation, as a child support agent, and she received an Associate Paralegal degree from Guilford Technical Community College in 2006. We look forward to having Jewel on the board and utilizing her experience and skills to help carry out the Court Watch mission.

Pete Schwartz: Pete has been retired for several years. He had a long and distinguished career with Wrangler, starting as a Territory Salesman and ending up as a Vice President of Sales. Since retiring he has been actively involved in helping his friends and neighbors with legal issues pertaining to Social Services, Child Custody, Physicians and Home Owners Associations. We look forward to providing Pete with a platform to continue to help the "underrepresented".

Diane G. Davis: Diane is a former board member and Director of Court Watch, and we welcome her back on the board. Diane is a long-time political activist and citizens rights supporter in Greensboro, and especially in the downtown sector. We appreciate Diane's opinions and info on issues that impact the quality of life for all Greensboro residents. We look forward to using Diane's knowledge and experience to help Court Watch continue to serve the community.

News & Notes...

Greensboro Glimpse: See the Stan Sprague/Court Watch interview, July 4th at 9:30 am on local access channel 8.

Fundraiser: Court Watch will work one the concession stands at 5-6 upcoming Hopper games. The training session is for July 15th at 5:00 pm at the ballpark. Feel like working? Call us at 275-2346.

Website: We are always updating our website. Please visit us at www.courtwatchnc.org

Court Watch of North Carolina

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6th Annual Child Support Awards Banquet:

We are excited to announce the date for our 6th Annual Child Support Awards Banquet, **October 22, 2009**. The event will again take place at the Joseph S. Koury Hospitality Building on the GTCC Campus. This Banquet is our time to honor the hard-working child support agents and support staff that would otherwise never get their just recognition.

At this year's event, we will again have a Silent Auction during the reception. Items such as a night stay at the new Great Wolf Lodge as well as a great selection of

local restaurant gift certificates will be available to bid on. During the dinner, we will have Janet Ward Black, Attorney at Law, as our Keynote Speaker.

The Child Support Awards Banquet is made possible by the generous donations of local businesses and sponsors. To date we have received donations from **Wal-Mart Battleground #1498, Systems & Methods, Isaacson, Isaacson, Sheridan & Fountain, LLP, and Seth Macon.**

For tickets (\$30 each), sponsorship information or nomination forms, please call the Court Watch office.

Court Watch is grateful to all our supporters who made donations between January 1 & May 1

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