

Demystifying What Judges Do

The Importance of Judges

You — yes, you — are in the best position in our society to help others understand what judges do. Now is the time to begin sharing this message.

The critical role of judges is fundamental to our democracy. Why do I say this? So often we hear others talk about the importance of the rule of law — which undoubtedly is bedrock to American democracy. However, very seldom does public discussion focus on the fact that the rule of law is only as strong as the quality of the judges who uphold it.

As Chief Justice Charles Canady has noted, judges give force to the rule of law. Indeed, the rule of law is empowered by judges.

Looking at the experience in Cuba puts this point in harsh relief. When Castro ascended to power, the Cuban Constitution contained many of the core principles contained in the U.S. Constitution. Within a short time of taking power, Castro stripped judges of their constitutional independence. The Cuban bench was then filled with cronies of the Castro regime. The end result of these machinations? Cuba went from a nation governed by the rule of law to a nation governed by the mercurial will of men. Thus, in stripping the bench of its constitutional authority to check the other branches of government, the Cuban bench lost its moral authority to uphold the rule of law.

I repeat: The role of judges in our society is fundamental to democracy, and you, fellow member of the Bar, are best positioned to explain this.



I urge you to share your perspective on what judges do and what factors should be considered when determining whether a judge merits retention.

Why Is This Important Now?

The importance of this issue has never been more acute. Why? As Florida looks toward the November 2012 ballot, voters will be asked whether various state appellate judges and justices of the Florida Supreme Court should be retained. At such time, voters will be asked to vote on whether these judges should remain in office on the basis of merit. In this sense, the question voters are asked is whether the records and reputations of the particular judges and justices on the ballot merit their retention.

No doubt this is a hard question and a difficult subject to assess. There is no question, however, that

in order to understand how to assess the merits of a particular judge, one must understand what judges do. If you step back for a moment, one can appreciate that the analysis needs to start with what judges do in our democracy. Further, unless one has been through litigation, it is difficult to grasp what judges do. Hence, the importance of your role as firsthand observers of judges in our culture.

So What Do Judges Really Do?

A complete treatment of what judges do would exhaust the pages of this month's *Journal*. Let me draw your attention to just a few critical roles that judges play.

At the trial level, judges are keepers of the process and gatekeepers for what is allowed into evidence. By way of convenience, some analogize the role of trial judges to referees. Trial judges enforce the pertinent rules of procedure and apply the rules of evidence. In this sense, judges protect the mandates of the Constitution: To provide a fair trial, to promote equal justice for all, and to ensure procedural and substantive due process at every stage of litigation. Relative to the evidence code, judges enforce the rule of law in the trial context when they rule on whether to allow facts into evidence over objection. Ruling on an evidentiary objection is a classic example of how trial judges make myriad rulings to enforce the rule of law — whether substantive or procedural.

Likewise, in the context of jury tri-

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als, judges empanel the jury, administer jury charges, rule on motions to strike, respond to questions during jury deliberations, and receive and announce the jury's verdict.

With regard to appeals, appellate judges apply the law based on the facts in the record and the issues on appeal. Appellate judges are confined to what is contained in the record on appeal and the issues preserved for appeal in the underlying proceeding. In this sense, application of the rule of law in the appellate context is constrained by what was presented in the lower court. Very limited issues are taken up de novo at the appellate level.

Why Does This Matter?

In the coming months, there will be political rhetoric about particular courts or why particular judges should not be retained. Further, as the fall elections get closer, Bar members will be asked by voters in

their communities to give their views on particular courts and whether particular judges should be retained. As you respond to such questions and evaluate political comments about the court, I urge you to reflect on what judges do — including their fundamental role in upholding the rule of law. In the process, I urge you to share your perspective on what judges do and what factors should be considered when determining whether a judge merits retention.

In my next column, I plan to discuss common views on how to assess judicial merit. In the meantime, I urge each member to reflect on this important matter. You, as an officer of the court, are in best position to do so. □

OATH OF ADMISSION TO THE FLORIDA BAR

The general principles which should ever control the lawyer in the practice of the legal profession are clearly set forth in the following oath of admission to the Bar, which the lawyer is sworn on admission to obey and for the willful violation to which disbarment may be had.

"I do solemnly swear:

"I will support the Constitution of the United States and the Constitution of the State of Florida;

"I will maintain the respect due to courts of justice and judicial officers;

"I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

"I will employ, for the purpose of maintaining the causes confided in me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

"I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

"To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

"I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God."