

## Judicial Profile

SARAH LINDEMANN BUTHE

# Hon. James A. Wynn, Jr. Circuit Judge, U.S. Court of Appeals for the Fourth Circuit

WITH HIS JOVIAL charisma, James A. Wynn, Jr. can make friends with anyone anywhere. In other words, he is a natural politician—except that Judge Wynn is vehemently apolitical, and a passionate advocate for judicial independence.

To Judge Wynn, who was appointed to the U.S. Court of Appeals for the Fourth Circuit in 2010, that means a judiciary free from political pressure and special interests and guided by the sovereign will of the people embodied in the U.S. Constitution.

Judge Wynn was born and raised in Robersonville, N.C., in the rural eastern part of the state, by his parents, James A. Wynn Sr., a farmer, and Naomi Wynn, a seamstress. Growing up, Judge Wynn worked on his family's farm and in the local supermarket, in addition to working diligently in the classroom. Judge Wynn's schools were segregated until high school, but wherever he has been, Judge Wynn has maximized his learning opportunities.

After high school, Judge Wynn attended the University of North Carolina at Chapel Hill. The first in his family to earn a college degree, he majored in journalism and graduated from college in just three years. One of his close friends from his undergraduate days, North Carolina Supreme Court Justice Patricia Timmons-Goodson, recently remarked that, even then, Judge Wynn's friends "knew that Jim Wynn was going to law school" and that "he was going places."

And so he did. Having distinguished himself at Carolina, Judge Wynn was offered a scholarship to Marquette University Law School. Marquette Law's dean, Joseph Kearney, recently noted that, as an applicant, Judge Wynn was described as strongly motivated, hard working, frank, and likeable—characteristics again recognized when Marquette recently honored Judge Wynn with its All-University Alumni Merit Award.

Upon graduating from law school, Judge Wynn began a 30-year career in the U.S. Navy, with four years of active duty in the Judge Advocate General's Corps followed by 26 years in the Navy Reserves. Judge Wynn served as a Certified Military Trial Judge, ultimately rising to become the chief judge of the Navy and Marine Corps Trial Judiciary. As Vice Admiral James W. Houck, the judge advocate general, recently emphasized, Judge Wynn served the Navy and his country with pride, passion, and enthusiasm.



Following active duty, Judge Wynn briefly served as an appellate defender and then entered private practice in Greenville, N.C., and Wilson, N.C., relatively small cities in eastern North Carolina. Judge Wynn's practice covered legal soup to nuts: criminal cases, real estate transactions, wills, and general litigation. Judge Wynn's law partners, G.K. Butterfield and Toby Fitch, went on to distinguished careers in the U.S. Congress and the North Carolina Superior Court, respectively. Judge Wynn, too, left the practice of law for the courts.

North Carolina voters elected Judge Wynn to the North Carolina Court of Appeals—the state's intermediate appellate court—in 1990 and re-elected him to that court until he moved to the U.S. Court of Appeals for the Fourth Circuit in 2010. Unlike intermediate appellate courts in some states, in North Carolina there is only one Court of Appeals, with 15 judges, all of whom sit in Raleigh. The court sits exclusively in panels of three judges, and if any one of those three dissents, it confers a right of appeal to the State's Supreme Court, which, like the Supreme Court of the United States, takes few cases on discretionary review. Court of Appeals dissents are therefore powerful tools in North Carolina—and Judge Wynn never shied away from writing them where he felt it warranted. Judge Wynn recognized the power of opening the Supreme Court door to litigants, whether to rectify an injustice or to clarify an ambiguity in the law. (Judge Wynn also briefly served as an interim appointee on the Supreme Court of North Carolina in 1998.)

Even where the law was clear and forced his hand,

Judge Wynn was unafraid to call it like he saw it. For example, in *Broderick v. Broderick*, 175 N.C. App. 501, 623 S.E.2d 806 (2006), Judge Wynn authored a powerful and prescient concurring opinion taking on the North Carolina Court of Appeals' increasing willingness to dismiss appeals based on technicalities—in that case, assignments of error. Judge Wynn wrote that, “the cost of effectively denying our citizens access to justice in our appellate courts outweighs the benefits of strictly enforcing the technical requirements...” *Id.* at 503-09. At the time, Judge Wynn noted that dismissing cases “is so easy—no research, no effort. You just say ‘improper spacing, wrong font in your footnotes. Dismissed.’ ... We need to employ more common sense, and we need to try to do our job and give answers, not just dismiss.” Several years later, the Supreme Court of North Carolina changed both the appellate rules and the case law in the very manner Judge Wynn advocated.

Judge Wynn's commitment to access to justice for all, which necessarily implies judicial independence, led him to become vice chair of the Board of Directors at Justice at Stake, a nonpartisan campaign working to keep state and federal courts fair, impartial, and free of politics and special interests. Judge Wynn was also a long-serving member of the American Bar Association's Standing Committee on Judicial Independence. In that capacity, he worked to enhance judicial independence and encourage the public's awareness of the importance of judicial independence. (Judge Wynn also chaired the ABA Judicial Division and the Appellate Judges Conference; he currently serves on the American Bar Endowment Board.)

In his writings and speeches, Judge Wynn has emphasized that a fair, impartial, and independent judiciary is indispensable to our society. In a 2003 law review article, for example, he wrote that, “[j]udicial independence is vital because when it is your day in court you will look to the judge to protect your rights and not merely enforce the representations of the state. When the son of a governor or the son of a wealthy campaign contributor assaults your son or your daughter, you will seek justice. At the gates of justice you will find a judge, and you trust the judge to apply the same law to the governor's son as the judge would apply to your son. And if the judge fails, then society fails, because you, as a reasonable victim, will seek justice by your own hand, rather than by the hand of the law. Thus, from the trial—where the judge decides restraints on individual liberty—to appellate judges—who in stealth opinions affect the rights and responsibilities of citizens far beyond the actual litigants—the decisions of the judiciary have a cumulative effect of disavowing or creating equal justice under the law.” James A. Wynn, Jr., *Judging the Judges*, 86 MARQ. L. REV. 753, 758 (Spring 2003).

Given his many qualities, including intelligence and hard work to preserve the integrity of the judiciary, Judge Wynn has to many appeared for some



Judge Wynn with his law clerks.

time like an obvious choice for the federal bench. But moving from obvious to actual took patience and perseverance. Then President Bill Clinton twice nominated Judge Wynn to the Fourth Circuit, but then Sen. Jesse Helms contended that the circuit needed no more judges and refused to lend his support. President Obama nominated Judge Wynn once again in 2009, and in August 2010 Judge Wynn was confirmed by the Senate and sworn in.

In April 2011, Judge Wynn enjoyed a grand public investiture ceremony, with historic attendance of the living Fourth Circuit judges, including retired and senior judges. Every judge and justice on North Carolina's appellate courts also attended to wish their colleague well. Dignitaries, including Sen. Richard Burr (R-N.C.), attended the ceremony, with a half dozen speaking to a packed audience at Raleigh's federal courthouse. The North Carolina Bar Association—proud finally to be sending another one of their own to the Fourth Circuit, on which North Carolina has historically been underrepresented—hosted an investiture reception in Judge Wynn's honor.

Judge Wynn is married and has three sons. The eldest—Javius, a Harvard Law School graduate—recently spoke for the family at Judge Wynn's public investiture ceremony. Javius underscored the importance of family to Judge Wynn. One anecdote shows not only Judge Wynn's commitment to family, but also his loyalty and faith: He drives every Sunday an hour each way to take his 88-year-old father to church.

Judge Wynn is also a committed and faithful mentor. His clerks, many of whom recently gathered to participate in his public investiture festivities, told colorful stories of Judge Wynn's advice about not only their careers, but their personal lives. Never short on opinions or common sense and good humor, Judge Wynn clearly has been a guide to many on many things. He will no doubt continue to wear with grace his many hats, including champion of judicial independence, now on the federal bench. **TFL**

---

*Sarah Lindemann Buthe is a career law clerk to Judge Wynn.*