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Judges come out ahead in recent mayoral election

By Kevin Washburn

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One clear victor in the recent mayoral election was the judiciary. While no judges were on the ballot, mayoral candidate Dan Lewis made the election a referendum on what he called “catch-and-release” judges. While it is not always clear why voters choose one candidate over another, Lewis made criticism of judges a central component of his campaign through the eve of the election. Lewis explicitly and repeatedly blamed judges for the crime problems facing Albuquerque.

Given Lewis’ resounding 25-point defeat, it is clear that city voters were not buying it.

Lewis’ criticism of judges left a lot of people scratching their heads. What was he planning to do about it as mayor? Mayors have no role in selecting judges. In Albuquerque, each judicial position is filled in the first instance by the governor and then by the voters. It is very difficult for a mayor to make much of a difference in how judges do their jobs. He can vote like every other voter in judicial elections, but that is not much of a platform.

Surely candidate Lewis knew this, which makes one wonder about his motives. Blaming judges is clever, if cynical, because they cannot defend themselves. Judges are bound by rules of ethics that prevent them, in most circumstances, from making public statements in response to such criticisms. In that way, the courts make very easy targets.

Lewis likely took media coverage that was critical of individual judicial decisions as a sign he could “pile on” and score political points by going after the judiciary. Lewis, however, seems to have miscalculated.

In Albuquerque, no public officials are more accountable than our judges. Judges have to make difficult decisions every day, and they have to do it in an open and transparent manner. A judge must explain his/her reasons, and there is a right of appeal of a judge’s ruling if a party disagrees. And when an appeal happens, a lawyer’s job is to prove that the judge’s decision was wrong. Most mortals would not be able to withstand the thought that every one of his/her official decisions at work would be scrutinized by a lawyer or team of lawyers. Our judges also face public

scrutiny in elections, both contested elections and then retention elections. Finally, they face scrutiny every day in the media, including this newspaper.

The election results demonstrate that, while Albuquerque's citizens may disagree with judges now and then on individual issues, the voting public tends to trust our judges. In light of all of that scrutiny, this trust seems very well-placed.

While judges perform an exceedingly important role, their role is actually a fairly passive one. Judges neither investigate cases nor prosecute them. Those important roles are assigned to police and prosecutors. Indeed, both mayoral candidates were on much stronger footing when they discussed police leadership and staffing. In the criminal justice process, a judge largely plays the role of referee. It is true that the Constitution and the rules of criminal procedures hold prosecutors to very high standards reflected, for example, in the requirement of proof beyond a reasonable doubt. While judges do enforce those standards, good prosecutors tend not to complain about high standards because that is the job they signed up for. Prosecutors tend to believe in fair rules, even if they are strict.

Mayor-elect Tim Keller has his work cut out for him, but his strong opposition to Lewis' efforts to vilify the judiciary is comforting because it means the new mayor will focus on things he can control, like police leadership and staffing.

The judiciary should take comfort that they have also been given a mandate in an election in which they never should have had a part. The message from the voters is clear: Judges should ignore the recent criticisms about their role in criminal justice. They should focus on the important business of making hard decisions and improving the criminal justice system.

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