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Fair Trial Forum held

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HOUGHTON - The Constitution guarantees the right to a fair trial.

But from overburdened public defenders to delays in processing evidence, there can be obstacles, a panel of judges and defense attorneys said at the Constitutional Day Fair Trial Forum at Michigan Technological University.

Talking and answering questions from students were panelists Julie Beck, former chief public defender for Chippewa County; Mark Wisti, judge for the 97th District Court; Fraser Strome, Houghton County Probate Court judge; and David Gemignani, defense attorney and public defender in Houghton and Baraga counties.

Michigan is one of seven states that doesn't have a state-wide funding for the public defender system. As a result, Beck said, the result is a patchwork of varying systems depending on each county's finances and practices. In Chippewa, it was a county agency, with a 40-hour work week ("in theory," Beck said); Houghton County works on the contract system. Staffing also varies: In places such as Oakland County, assignments are tied to the charge, so that the most experienced lawyers get the most severe crimes; in Monroe County, a murder case could go to someone with two years as a lawyer.

A May report from the Campaign for Justice discussed 13 cases where suspects were convicted wrongly or on shaky grounds; in all of them, the defendant was represented by public defenders who either lacked the time or ability to properly defend them.

"You are required to be adequate," Beck said. "And adequate does not mean ever just sitting in the chair next to someone who's in front of a judge."

As public defender, Gemignani has to question witnesses and do his own investigating. In addition to the workload, it poses another problem: if a witness changes his or her story on the stand, he can't call himself to testify.

"If they go south, then I have an investigator who could testify for the jury, saying, 'This is the answer they gave me then,'" he said.

Strome talked about the responsibilities as probate court judge, which combines traditional probate responsibilities such as estates with family law, mental illness hearings and juvenile delinquency.

Compared to criminal cases, the ones coming before Strome are very quick moving. In cases where a child has been pulled out of a home for suspected abuse, the parent has a right to a hearing within 24 hours.

"These types of situations demand prompt attention and require prompt attention," he said.

Wisti called the right to a trial by jury our greatest fundamental right; instead of being tried by "self-styled elitists" with a vested interest in the proceedings, people are put before 12 people who are (hopefully) free from bias and political agenda.

He contrasted two trials, as seen in the recent historical drama, "The Conspirator," about the plot to kill Abraham Lincoln and other administration officials. In one, Mary Surratt, the owner of a boarding house where several of the conspirators lived, was tried by a military tribunal and sentenced to death based on sketchy evidence. In a later trial, her son was tried in a civilian court and acquitted.

"When you get called in for a jury, that's a privilege, he said. "That's probably the most important democratic right we have as citizens, and it's good we have a day to honor it."

Gemignani, Wisti, and Strome, said they'd never encountered a case where the jury had not based their verdict on the law. However, Beck remembered three cases where jurors had told her afterward they found the suspect guilty because they were with someone they also considered guilty, or because the jurors believed they'd done something else for which they should be sentenced.

In cases where public opinion has turned against a defendant, the attorney's only tool is voir dire, or questioning of the jury. Both sides have a number of peremptory challenges they can use to dismiss a potential juror; the judge can also dismiss jurors for cause.

Gemignani, who defended former arson and murder suspect Ronald Kempainen in both of his trials, recalled someone coming up to him at a restaurant before the trial and saying he wanted to see Kempainen "fry."

He recalled the encounter during jury selection in the first trial.

"I looked at the jurors and said, 'Who else feels the same way?'" he said. "There were 14 people in the box, and 12 raised their hands."

Diminishing state budgets have put a crimp in trial efforts, as evidence from all over the state is sent to one crime lab. Cases such as murders and sexual assaults are prioritized first; in the event of a drug case, waiting for evidence could take months, if not years.

The mounting hassles of processing evidence have unfortunately dovetailed with what the panel called "the CSI effect," where jurors expect the detailed evidence so easily available to the stars of legal procedurals.

But jury expectations are always shifting. Strome, who spent 18 years in the prosecutor's office, remembered the days when Gemignani had to make sure jurors didn't automatically take law enforcement witnesses at their word. That changed in 1992, when the tape of Los Angeles officers beating Rodney King blanketed the airwaves.

"Dave would start asking the question, and all of a sudden you would get a guy who would laugh or snort," Strome said. "I'd think, 'Uh-oh, I've got a problem here.'"

Tyler Haggemiller, a biochemistry student at Michigan Tech, came for a class. But he liked it more than he'd expected.

"I found the whole thing about the lack of funding interesting," he said. "I think somebody should do something about it. I wouldn't want to sit in jail for 17 years because I had a poor lawyer."

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