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COVER

J. Spencer Love of Greensboro, president of Burlington Industries and chairman of the State Committee for Improved Courts, studies materials prepared by his committee relating to the administration of justice in the courts of North Carolina.

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STATE COMMITTEE FOR IMPROVED COURTS

J. SPENCER LOVE, CHAIRMAN

On September 4, 1958 the Governor of North Carolina appointed J. Spencer Love of Greensboro, President of Burlington Industries, Chairman of the *State Committee for Improved Courts* with a membership of thirty lawyers and thirty laymen from the thirty judicial districts of the State. Dr. John R. Cunningham of Charlotte was named Vice-Chairman and M. V. Barnhill, former Chief Justice, Honorary Chairman.

In announcing this Committee Governor Hodges paid tribute to the work of the North Carolina Bar Association Study Committee under the leadership of Senator J. Spencer Bell, saying "the proposals of this Study Committee seem to me to be sound in principle and merit our very careful consideration . . . The proposals for improving our courts and the reasons for these proposals should be fully and fairly presented to the people of this State for discussion and consideration during the coming months. I am confident that the newly appointed State Committee for Improved Courts can ably carry out this task of informing our people about our courts and encouraging discussion and consideration of specific proposals to improve the administration of our courts."

As part of this Committee's program of information and education for the people of North Carolina, to whom the courts belong, the Institute of Government presents this issue of POPULAR GOVERNMENT in the effort to bring whatever light its studies of the courts can bring to bear upon the issues the 1959 General Assembly will face as it comes to grips with the problems involved in the administration of justice in the courts of North Carolina.

The Institute of Government has carried on its studies and made its reports in the spirit of impartial, unbiased and non-partisan inquiry it has followed in its studies throughout its history. Not lifting a finger to promote anything or anybody, no matter how good or how bad, in the legislature or out. Studying for all, finding facts for all, seeking the truth for all, and becoming partisan of none.

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Chairman J. Spencer Love, (insert) presides at a meeting of the executive committee of the State Committee for Improved Courts.

THE COURTS OF YESTERDAY TODAY AND TOMORROW

I

Introduction

The notion of a thoroughgoing study of the courts originated in the brain of Governor Luther Hartwell Hodges in the middle 1950's. He thought the lawyers of North Carolina ought to take the lead in improving and expediting the administration of justice, asked the North Carolina Bar Association to appoint a Committee to make the study, and procured from Foundations the funds needed with no strings attached.

The planning and directing of this study was in the hands of the N. C. Bar Association Committee for Improving and Expediting the Administration of Justice in North Carolina.

The execution of this study was in the hands of the Institute of Government of the University of North Carolina in Chapel Hill, which was charged with the responsibility of (1) tracing the evolution of the structure of the courts from colonial beginnings to the present day; (2) picturing the day-to-day workings of the courts by a thorough study of the dockets and consulting with the members of the bench and bar in every type of court in North Carolina, in every type of economic condition, and in every type of geographic setting; and (3) presenting the experience of other jurisdictions for the light it might throw on the problems of the courts.

The methods of study were as simple as common sense, projected by statistical analysis, and seasoned with the experience of lawyers practicing in the courts. The historical study was guided by Albert Coates through constitutions, statutes (including public, public-local and private laws and special acts), and the court decisions, from colonial beginnings to 1958. The civil docket study was guided by Royal Shannonhouse, the criminal docket study by Roy Hall, and the juvenile and domestic relations court study by Roddey Ligon, through the records of every sort of case, in every sort of court, in every sort of location and condition within the limits of North Carolina. The experience of other states was studied by Clyde Ball as it was recorded in books, articles, reports and libraries, and checked and verified by lawyers and judges practicing in the courts in other states. The ways in which these men went about their work are outlined at the beginning of their respective reports to the Bar Committee and need not be repeated here.

Every lawyer in North Carolina was invited to give his views on everything he thought was right or wrong with the administration of justice in this state and to make every suggestion for improvement growing out of his experience. Every lawyer has received every finding of fact and every study going to the full committee and its sub-committees. Every lawyer has had every chance to see everything the Committee did as the Committee did it. Every final recommendation of the full committee originated in the mind of one or more members of the bench and bar of North Carolina.

If the Committee has not done everything it might have done it is not the Governor's fault, for he gave the Committee a free hand. If the Institute of Government has not done all it might have done it is not the Committee's fault, for it gave us a free hand. If the facts found by the Institute of Government are faulty, to that extent the Committee conclusions may be faulty—unless the faults are neutralized by the collective insight and perceptive judgments of the Committee having before it the opinions growing out of the practical experience of lawyers and laymen with the courts in all sections of the State. If the facts we found are valid, as we believe they are, to that extent the Committee's judgments stand on solid underpinning.

The Institute Staff has worked with many committees for many years; but we have never worked with a Committee which has worked harder or longer than the Committee for Improving and Expediting the Administration of Justice in North Carolina. We have worked with many committee chairmen, but we have never worked with a com-

mittee Chairman who has cut deeper or ranged wider in the problems entrusted to his leadership than the Chairman of this Committee, Spencer Bell. He has attended every meeting of his full Committee, attended well nigh every meeting of every sub-committee, and put in more hours for longer days between Committee meetings than any committee chairman we have ever known.

II

The Courts of Yesterday

Three times in our history the lawmakers of North Carolina have looked at our judicial system in an effort to see it clearly and to see it whole and to do something about it in a wholehearted fashion. The first look came with the building of a new society in the Province of Carolina in the 1660's. The second look came with the rebuilding of our 200-year-old society in the 1860's. The third look comes as the 1959 General Assembly reviews the labors of the Committee on Improving and Expediting the Administration of Justice in North Carolina.

It was the task of the lawmakers in the 1660's and the years that followed to adapt the courts of a closely-knit England to the needs of a people living in scattered settlements in a New World. It was the task of the lawmakers of the 1860's to adapt the courts of a social order which was dead to a social order which was still unborn. It is the task of the lawmakers in the 1950's to adapt the courts of today to the needs of a people in swift and accelerating transition from a rural to an industrial society—knowing that any court system must be stable but cannot stand still, and that the courts they fashion for tomorrow must be the product of the life and history of the people of North Carolina.

Under the Charter from the Crown in 1663 and the Concessions of 1665 the Colony of North Carolina started with the "General Court," which was directed "to do equal justice to all men to the best of their skill and judgment without corruption, favor or affection."

Within a generation this "General Court" was evolving through the legislative processes of the General Assembly into a system of courts, including (1) a single justice of the peace in practically every neighborhood to try the smaller civil and criminal cases at almost any time and almost anywhere, (2) a County Court of Pleas and Quarter Sessions in each county to hear appeals from the justices of the peace and to try larger civil and criminal cases beyond their jurisdiction, and (3) Superior Courts for each district grouping of counties to hear appeals from the County Courts of Pleas and Quarter Sessions and to try all sorts and sizes of civil and criminal cases. In 1799 the General Assembly provided machinery for deciding questions of law and procedure on which Superior Court judges could not agree, and in 1818 this machinery grew into the Supreme Court of North Carolina—starting on its course as the unifying agency among the courts in the field of law.

III

The Courts of Today

The Supreme Court

The Supreme Court has continued an orderly adjustment to its growing volume of work from its beginnings in the early 1800's through a hundred and fifty years to the present day. Its unifying influence in the field of law and court administration was extended by the General Assembly through the creation of the judicial conference in 1925 headed by the Justices of the Supreme Court. It has continued through the 1947 Commission for Improvement of the Laws with the Supreme Court Justices as members. It was expanded by the establishment of the Judicial Council in 1949, headed by the Chief Justice and directed to study "the methods of administration of each and all of the courts." It was further expanded in 1950 by transferring control over the exchange and assignment of judges from the Governor to the Chief Justice. Former Chief Justice Barnhill and present Chief Justice Winborne have urged that the unifying influence of the Supreme Court in the field of law be still further expanded: (1) by giving it the power to make the rules of practice and procedure for Superior Courts and lower courts similar to the power it has exercised over its own proceedings for a hundred and forty years, and similar to the rule making power the General Assembly has given to many "administrative courts" in recent years; and (2) that the administrative supervision the Chief Justice has been given for the Superior Courts in the 1950's be extended to all the courts in the future.

The Superior Court

The Superior Court has continued an orderly adjustment to its growing volume of work from its beginnings in the early 1700's through two hundred and fifty years, and is today the undisputed and unifying head of the trial court system

in North Carolina. It is the historic focal center for all appeals coming from the multiplicity of lower courts. It has been throughout its history the sole avenue for appeals to the Supreme Court of North Carolina. And to a limited extent it has exercised throughout its history and is exercising today the powers of an intermediate appellate court.

In the beginning Superior Court judges rode the circuit from county to county within their respective districts according to a regular schedule, with every judge holding all the courts in his own district and none of them going outside. In 1790 they went beyond this practice of "riding circuit" within their own districts, began "rotating" from district to district throughout the State, and continued this practice to 1868. They went back to riding circuit within their own districts in 1868, and in 1875 went back again to rotating from district to district throughout the State. In 1915 the State was divided into Eastern and Western divisions, and in 1955 into four; and Superior Court judges have rotated from district to district within these narrowing divisions. According to the present practice a Superior Court judge holds all of the Superior Courts in a given district for a six months' period, and at the end of this six months' period "rotates" to another district, and so on throughout his division; with no judge regularly holding the Courts in the same district oftener than once in four years.

IV

The Lower Courts—1868 to 1958

The lower courts continued an orderly adjustment to their growing volume of work from Colonial days to 1868. Every justice of the peace in every county of the state had similar jurisdiction and procedures as a matter of law. Every County Court of Pleas and Quarter Sessions in every county in the State had similar jurisdiction and procedures as a matter of law. Every Superior Court in every county in the State had similar jurisdiction and procedures as a matter of law. And appeals went in similar fashion, for similar causes, and by similar procedures—from the Justice of the Peace Courts, to the County Courts of Pleas and Quarter Sessions, to the Superior Courts.

The men who wrote the Constitution of 1868 looked around them at the shambles of a rural and agricultural society destroyed by Civil War and demoralized by reconstruction and faced the problem of adapting old courts to a new society which had not begun to emerge and whose shape they did not foresee and could not predict. They gave the legislative and many of the administrative powers of the old County Court of Pleas and Quarter Sessions to the newly created Boards of County Commissioners. They gave to the Clerk of the Superior Court the powers which the old County Courts had exercised over the probate of deeds; the administration of estates and the appointment of guardians; the apprenticing of orphans; the auditing of the accounts of executors, administrators or guardians; and of other matters to be prescribed by law. They divided the judicial powers exercised by the old County Court in civil and criminal cases into watertight compartments between the justice of the peace and the Superior Court, and provided an escape from this rigid division of jurisdiction by authorizing the General Assembly to add "special courts for the trial of misdemeanors in cities and towns," wherever it thought they were needed.

In 1875 the Constitution writers took away the rigid division of jurisdiction in civil and criminal cases among the justice of the peace, the Superior Courts, and the Clerks of the Superior Courts, and put the power "to allot and distribute" all judicial power below the Supreme Court in the hands of the General Assembly. Under this power the General Assembly has established "administrative courts," beginning with the Railroad Commission in 1891 and continuing to this day with a multiplicity of administrative agencies with judicial powers. It has established 100 Juvenile Courts for the trial of boys and girls under sixteen years of age. It has gone further and established six Domestic Relations Courts with jurisdiction beyond the Juvenile Courts in many cases involving the family as a unit.

The unity and simplicity of the lower courts lasting from Colonial days to the 1860's has been lost in the shuffling of courts and jurisdictions and procedures in the ninety years from 1868 to 1958. To illustrate:

The Justices of the Peace. The General Assembly has changed the methods of selecting the justice of the peace five times since 1868, and today some are selected by the voters in each township, some by the General Assembly, and some by the resident judges of the Superior Court. It has changed his term of office five times and has fixed a two-year term today for all justices of the peace selected by any method. It has changed the number authorized eight times; and today it permits around 3,000 from the thousand or more townships, one more for each added thousand people in every city and

town, an uncertain number to be appointed by resident judges of the Superior Court, and an unlimited number to be appointed by the General Assembly.

In 1957, around 940 justices of the peace were scattered through the state in numbers ranging from zero in one county to forty-four in another. Around one hundred worked full time on the job. Around 300 worked part time. And around 540 handled a transaction now and then. They were charging fees in criminal cases running from $1.75 in one court to $5.75 in another, with nineteen variations in between, and varying from county to county, from justice of the peace to justice of the peace within the same county, and from time to time with the same justices of the peace.

Full-time justices of the peace usually have a fixed working place and regular hours of work. Some of them hold their courts and tend to their business with dignity and dispatch, winning the confidence of those who bring them business, and bringing income in fees and costs and perquisites of office to an amount greater than the salary of a Superior Court judge.

Most of the part-time justices are "birds on the wing," and litigants find them on a "catch as catch can" basis. With no fixed time or place for tending to judicial business, the part-time justice of the peace tends to business any time or anywhere and the records show him trying cases in his own back yard, on his front porch, in the rear end of a grocery store over chicken crates, over a meat counter in a butcher shop, in an automobile, over the plow handles, in a printshop, in a garage, in an icehouse, in a fairground ticket booth, and in a funeral parlor.

From its beginning this system has been haunted with the tragic flaw that compensation to the justice of the peace in criminal cases never comes when the person accused is acquitted, and many people feel that this fact tends to weight the scales of justice in favor of conviction and against acquittal and waters down the force of the criminal law tradition giving to every person charged with crime the benefit of every reasonable doubt.

The Coming of the Mayor's Court. In the years that followed 1868 the General Assembly cut down the business of the justice of the peace in cities, towns and counties by establishing Mayors' Courts. It turned city ordinance violations into misdemeanors and gave the mayor of every city and town the jurisdiction of a justice of the peace within the city limits. It increased the mayor's jurisdiction beyond the justice of the peace in many cases, extended it beyond the city limits in other cases, gave jurisdiction to the Mayor's Court to the complete exclusion of the justice of the peace within city limits in others. And the volume of business of the justice of the peace in criminal cases has steadily dwindled, except for the rural justice of the peace in counties or parts of counties where there are no lower courts.

The Coming of the Recorder's Court. By the 1890's the Mayor's Court evolved into the city court without the mayor, and with criminal jurisdiction, or civil jurisdiction, or both, in varying amounts and in varying territories. Counties followed this city lead from 1907 to 1917—with county courts varying in subject-matter and in territorial jurisdiction in bewildering variety. Cities and counties together followed these leads with the combination city-county court.

Multiplicity and confusion. A hundred or more of these recorder-type courts were created by special acts of the General Assembly under the 1875 amendment to the Constitution. Most if not all of them were "tailor-made" on the request of particular counties, cities, and towns to meet their own particular wishes and without any unifying policy of the General Assembly to guide them. Hundreds of special-act amendments were made to these special-act courts, resulting in a confusing variety of differences in civil and criminal jurisdiction, practice and procedure, costs of court, methods of selecting court personnel, length of term, methods of filling vacancies, causes for removal, amounts and methods of compensation, records, and the multiplicity of procedures involved in the administration of justice in the courts. In the absence of a unifying plan or pattern of the General Assembly, every locality prescribed a plan and pattern for itself and persuaded the General Assembly to put its stamp upon it.

Efforts to bring unity and simplicity. The 1919 General Assembly tried to bring unity into this bewildering variety by passing a law "to establish a uniform system of recorders' courts for municipalities and counties in the State"—(1) a Municipal Recorder's Court, (2) a County Recorder's Court, and (3) a Municipal-County Court. In the forty years from 1917 to 1957 it has passed fourteen differing types of "general laws" establishing fourteen differing types of "uniform courts." It has passed at least fifty-eight "general law" amendments to these "general-law" courts. It has made changes in "general-law" and "special-act" courts from session to session until it has completely "recreated" if not "re-established" them. The re-

sult is a system of courts comprised of (1) the special-act courts now in existence established from 1905 to 1917, (2) the general-law courts now in existence established from 1917 to 1957, (3) the general-law amendments to the general-law courts, and (4) the special-act amendments to both special-act and general-law courts.

Today there are two hundred and fifty-six recorder-type courts in North Carolina with jurisdiction greater than that of a justice of the peace and less than that of the Superior Court. There is a confusing variety in the civil jurisdiction of these courts: in their contract jurisdiction, in their tort jurisdiction, in the combination of contract and tort and miscellaneous jurisdiction. There is a confusing variety in the methods of selecting the judges of these courts; in the methods of selecting the solicitors of these courts; in the methods of selecting the clerks of these courts; in the terms of office for judges, solicitors, and clerks; in their oaths of office; in their salaries; in the methods of compensation; in the provisions for removal from office and filling vacancies; in the provision for regulating the private practice of law by court officials; in requirements for keeping records, jury trials, times for holding court, issuing and serving process, filing complaints and answers, costs of court, and other practices and procedures.

These variations in recorder-type courts confuse the criminal and civil jurisdiction of Superior Courts to the point that Superior Court judges rotating through the state cannot be expected to know the situation they will face in going from one county to another. In fourteen counties they find no lower courts other than justices of the peace, and they exercise their 1868 jurisdiction over all crimes where the punishment may exceed a fifty dollar fine or thirty days in jail. In twenty-one counties they find that the General Assembly has given exclusive jurisdiction of misdemeanors to one or more lower courts to the exclusion of the Superior Court, except by way of appeal.

Between these extremes they find that the General Assembly has cut down on Superior Court jurisdiction in varying degrees either by giving jurisdiction over all misdemeanors to one or more Mayor's Courts within city limits, or to city courts within and beyond city limits for varying distances, or to township courts, or to county courts covering particular areas in the county not already covered by one or more of the foregoing mayor, city, or township courts. Sometimes this jurisdiction is granted to the exclusion of the Superior Court; sometimes to the exclusion of the Superior Court within city limits and concurrently beyond the city limits; and always the Superior Court is left with its 1868 jurisdiction in any areas not covered by lower courts with jurisdiction beyond the justice of the peace.

Variations in recorder-type courts confuse the criminal and civil jurisdiction of the justice of the peace in differing degrees in differing counties to the point that many justices of the peace are uncertain of their own jurisdiction within their own counties. In many counties they exercise their 1868 jurisdiction over all misdemeanors where the punishment cannot exceed a fifty dollar fine or thirty days in jail. In other counties the General Assembly has cut down on this 1868 jurisdiction in the following ways: by giving city courts jurisdiction over the foregoing misdemeanors to the exclusion of the justice of the peace within particular city limits; by giving concurrent jurisdiction in other cities and towns, townships, and counties to one or more Mayors' Courts, or to one or more of the lower courts created by special act before 1917, or to one or more of the lower courts created under general laws since 1917, or to all of them together; by giving this concurrent jurisdiction in some places within city limits only, and in others for varying distances in miles and fractions of miles beyond city limits to county lines. Thus the jurisdiction of the justice of the peace has become a thing of shreds and patches.

Variations in recorder-type courts confuse procedures on appeals from the justice of the peace to the Superior Courts. In many cases the General Assembly has assumed that appeals from a justice of the peace or a Mayor's Court may be routed through intermediate courts. In forty-three counties all appeals go directly to the Superior Court. In seven counties appeals from the justices in one city go to the city court and all other appeals go directly to the Superior Court. In another county appeals from the justices in two towns go to the municipal courts in those two towns and other appeals go directly to the Superior Court. In another county appeals from justices in four towns go to the municipal courts in those towns and all other appeals go to the Superior Court. In another county appeals from justices in four townships go to the township court and the remainder go directly to the Superior Court. In another county appeals from all justices go to one of six township courts—covering the entire county. In thirty-six counties, all appeals from justices of the peace go to the county recorder's court. In six counties appeals

(Continued on Inside Back Cover)

THE PROBLEMS OF CIVIL LITIGATION AND THEIR CAUSES

Introduction

This report is based upon studies in 53 of the state's 100 counties, representing every judicial district, every geographical location, every population level, every economic characteristic, and every type of county judicial system. The studies included the civil dockets and files in 44 Superior Courts, the records systems and files in 15 county and municipal courts, and the available records in 57 Justice of the Peace Courts. The compiled information was amplified by interviews with judges and clerks of the Superior Court, attorneys, clerks of the recorder-type courts, and justices of the peace, as well as by correspondence with many of those who could not be reached in person. These studies pointed up a multitude of problems in the Justice of the Peace Courts, in the recorder-type courts, and in the Superior Courts.

I

Problems in the Justice of the Peace Courts

These studies pointed up the following problems in the Justice of the Peace Courts: (1) lack of training in the laws they administer; (2) absence of records which would permit evaluation of their civil business; (3) employment as collection agents; (4) failure to follow trial procedures prescribed by law; (5) private counseling by attorneys who also appear before them.

Lack of Training in the Laws They Administer

Fifty of the 57 justices of the peace in 18 counties who were interviewed had a high school education. The other seven had attended one or more years of college and two had attended law school. These justices were farmers, merchants, insurance salesmen, jailers, bondsmen, and notaries public as well as magistrates. None reported any judicial experience prior to taking office as justice of the peace. Many judges, attorneys and other court officials, writing to the Bar Association Committee their suggestions for improving and expediting the administration of justice, stated that improvement in the qualifications and training of justices of the peace was essential; one writer stated that justices "should be investigated thoroughly before appointment," another wrote that they "should be required to prepare themselves to perform the duties of office," and another that they "should be required to meet a minimum standard of education and training and other proper qualifications, by written examination if necessary." (See forthcoming Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part VI.)

Absence of Records Which Would Permit Evaluation of Civil Business

Forty-six of the 57 justices of the peace who were interviewed stated that they did not keep records of civil cases disposed of in their courts; five kept records of sorts which were too fragmentary for analysis; two kept copies of summonses issued, but one had destroyed those in which the cases had been terminated; and four maintained a docket of civil actions which did not include cases terminated without trial. (See forthcoming Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part VI.)

Employment as Collection Agents

Several attorneys reported that the justices of the peace they interviewed allowed lawyers and merchants to file civil claims with them by telephone; that the justices then called the defendants to arrange the terms of payment; and that only if the defendant resisted the claim did the justice issue summons and set a time for hearing the case. Many other justices have written to the Attorney General to ask if it is lawful for them to operate collection agencies as part of their business. (See forthcoming Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part VI.)

Failure to Follow Trial Procedures Prescribed by Law

Attorneys with experience before justices of the peace reported that many of the civil cases in these courts are settled by telephone; that when a hearing is held the rules of evidence are ignored; that a trial in a justice of the peace court too often amounts to an informal argument between the parties; that too often the defendant is presumed to be liable unless he can convince the magistrate that he is not; and that claim and delivery papers are issued but the trial required by law is never

held. (See forthcoming Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part VI.)

Private Counseling by Attorneys Who Also Appear Before Them

Thirty-seven of the justices who were interviewed stated that they "had a lawyer" who advised them on legal points of cases brought before them and that these lawyers also appeared as counsel in other cases in their courts. Attorneys with experience in these courts have reported that this is a common practice and that a magistrate's lawyer rarely loses a case in his court. (See forthcoming Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part VI.)

II

Problems in the Recorder-Type Courts

The studies pointed up the following problems in the recorder-type courts: (1) absence of civil county and municipal courts where needed; (2) failure to use existing civil county and municipal courts; (3) reasons for failure to use recorder-type courts in civil cases.

Absence of Civil County and Municipal Courts Where Needed

Fifty-three counties either have no recorder-type courts or have no such courts with civil jurisdiction, but in over half of the Superior Courts in these counties the backlogs of pending civil cases increased from July 1, 1956 to July 1, 1957. The backlogs increased by less than ten cases in nine counties, by 10 to 20 cases in 11 counties, by 20 to 30 cases in six counties, by 30 to 50 cases in two counties, by 71 cases in one county and by 146 cases in another county. (See April, 1958 Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part II, and forthcoming issue. Part VI.)

Failure to Use Existing Civil County and Municipal Courts

Twenty-one counties have recorder-type courts with civil jurisdiction in which no civil cases are tried and 12 counties have such courts in which fewer than 50 civil cases are tried each year. Sixty-five percent of the more than 7,000 civil cases pending in the Superior Courts of these 33 counties on July 1, 1957 were within the jurisdiction of the civil courts. In the 14 counties having active civil courts, 12 courts disposed of 50 to 100 cases per year; five courts disposed of 100 to 500 civil cases per year; and three courts disposed of over 500 civil cases per year. (See forthcoming Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part VI.)

Reasons for Failure to Use Recorder-Type Courts in Civil Cases

Judges and clerks of the Superior Court and of the recorder-type courts and attorneys have reported the following reasons to explain the failure to use more county and municipal courts in civil actions: (1) that appeals from these courts to the Superior Court increase court costs and the time and effort of attorneys more than the value of the cases will bear; (2) that jury trials in civil actions are not provided for by statute in many of these courts and are not made available in others; (3) that statutes do not provide adequate rules of civil procedure for many of these courts, prescribing procedures "as in justice of the peace courts" in nine courts, procedures " as in Superior Court" in 78 courts, procedures " as in the Revisal of 1905" in one court, and procedures "as in the Consolidated Statutes" in three courts; (4) that judges of these courts in small communities are reluctant to give up their civil practice, as would be required if their courts tried civil cases. (See March, 1958 Special Issue of *Popular Government*, "The Courts of Yesterday, Today and Tomorrow in North Carolina," pages 23-32, and forthcoming Special Issue, "Civil Litigation in North Carolina," Part VI.)

III

Problems in the Superior Courts

The studies pointed up the following problems in the Superior Courts: (1) existence of a growing backlog of pending civil cases; (2) delay in the disposition of civil cases; (3) existence of unusual delay in certain types of cases; (4) existence of more delay in "little" cases than in "big" cases; (5) necessity for modifying statutory schedule of court time; (6) failure to use scheduled court time; (7) failure to use pretrial; (8) failure to use statutory methods for disposing of cases without trial; (9) failure to report all pending cases to the Chief Justice; (10) variations in docketing procedures; (11) variations in calendaring procedures; (12) variations in continuance policies and procedures.

Existence of a Growing Backlog of Pending Civil Cases

The reports of the Clerks of the Superior

Court to the Chief Justice revealed that the number of cases on the civil issue dockets in 46 courts increased by 1668 cases from July 1, 1955 to July 1, 1956; that the number of cases on the civil issue dockets in 49 courts increased by 1541 cases from July 1, 1956 to July 1, 1957; and that the number of cases on the civil issue dockets in 52 courts increased by 1866 cases from July 1, 1957 to July 1, 1958. (See April, 1958, Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part II.)

Delay in the Disposition of Civil Cases

The records of 12,276 civil cases pending in the Superior Courts of 44 counties revealed that 76% had been pending more than six months at the time of the study; that 62% had been pending more than one year; that 43% had been pending more than two years; that 20% had been pending more than five years; and that some cases had been pending for ten years. (See April, 1958 Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part II.)

Existence of Unusual Delay in Certain Types of Cases

Interviews with many clerks of the Superior Court and attorneys, and the records of 6063 pending cases in 22 Superior Courts, revealed that delay is a common occurrence in the following types of cases: (1) actions in which property is recovered under claim and delivery proceedings; (2) motor vehicle operators' petitions under G.S. 20-279.2; (3) actions for the recovery of certain delinquent property taxes; (4) certain contested domestic relations cases; (5) many real property cases.

The records of the actions in which property was recovered under claim and delivery proceedings revealed that 80% had been pending more than six months; that 67% had been pending more than one year; that 46% had been pending more than two years; that 21% had been pending more than five years; and that some had been pending ten years. Many attorneys pointed out that a common practice is to abandon these actions upon recovery of the property; that defendants in these cases are usually insolvent and that nothing would be gained from a court trial.

The records of motor vehicle operators' petitions revealed that 61% had been pending more than six months; that 35% had been pending more than one year; that 9% had been pending more than two years; and that some had been pending since the law authorizing this procedure was enacted in 1953. The records of the Financial Responsibility Section of the Department of Motor Vehicles revealed that 4540 such petitions had been filed by July 1, 1957 and that in March, 1958, 73% of these petitions were still pending. Many attorneys and clerks of the Superior Court have explained that the purpose of these petitions is to stay the order of the Commissioner of Motor Vehicles suspending or revoking an operator's license; that the filing of the petition accomplished this purpose, allowing the operator to keep his license; and that a hearing on these petitions is delayed as long as possible because such a hearing too often results in the revocation or suspension of the license.

The records of the claims for delinquent property taxes revealed that 98% of these cases had been pending more than one year; that 97% had been pending more than two years; that 86% had been pending more than five years; and that some had been pending nine years. Many attorneys with experience in property tax law have pointed out the 1947 amendment to G.S. 105-422 provided that actions to foreclose certain delinquent property tax claims would be barred if not filed prior to December 31, 1948; that property tax records were reviewed after this amendment was passed and hundreds of such actions were filed to preserve the right to recover these old claims; and that county officials today are reluctant to sue on the evidence of these old records.

The records of divorce, annulment, alimony without divorce, and other domestic-relations actions revealed that 71% of these cases had been pending more than six months; that 59% had been pending more than one year; that 42% had been pending more than two years; that 15% had been pending more than five years; and that some had been pending seven years. These records, supplemented by statements of attorneys and clerks of the Superior Court, disclosed that many actions for divorce or annulment remain pending because the parties resume an uncertain cohabitation dependent upon the good conduct of one; that some actions remain pending because a party is unable to pay the attorney's fee; and that some actions remain pending because they are frequently reopened to enforce or modify the court's order for support, for peace between the parties, for custody of children, or otherwise to keep the order in line with changing conditions and relations between the parties.

The records of the cases involving real property

revealed that 78% had been pending more than six months; that 67% had been pending more than one year; that 49% had been pending more than two years; that 14% had been pending more than five years; and that some had been pending nine years. Many attorneys with experience in real property cases have pointed out that the legal points involved in these cases are often unusually technical, difficult, and complicated; that in agricultural communities, strong local passions play an important part in these cases; that they often require extensive land surveys and resurveys; and that when these cases finally reach the court they often take up an unusual amount of the scheduled time, which causes calendar committees of the Bar to give priority to simpler cases. (See April, 1958 Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part III, and forthcoming Special Issue, Part IV.)

Existence of More Delay in "Little Cases" Than in "Big Cases."

The records of 2975 actions for the recovery of money in 22 counties revealed that those in which the amount demanded was large had been pending a shorter time than those in which the amount demanded was small.

To illustrate: 66% of the cases which had been pending more than six months involved claims of less than $1000, 17% involved claims of $1000 to $5000, and 16% involved claims of more than $5000; 68% of the cases which had been pending more than one year involved claims of less than $1000, 17% involved claims of $1000 to $5000, and 15% involved claims of more than $5000; 74% of the cases which had been pending more than two years involved claims of less than $1000, 14% involved claims of $1000 to $5000, and 12% involved claims of more than $5000; 84% of the cases which had been pending more than five years involved claims of less than $1000, 9% involved claims of $1000 to $5000, and 8% involved claims of more than $5000. Many practicing lawyers have stated that cases involving small amounts often involve the most difficult legal problems, therefore the return is small for the amount of work required; that cases involving large amounts of money often take priority with calendar committees of the Bar; and that parties to cases involving small amounts often try to work out their problems without going to court, but reserve their right to do so by filing suit. (See forthcoming Special Issue of *Popular Government*, "Civil Litigation in North Carolina, Part IV.)

Necessity For Modifying Statutory Schedule of Court Time

The records of Superior Court terms in the administrative office of the Chief Justice revealed that from July 1, 1956 to July 1, 1957, the schedule of court terms provided by G.S. 7-70 was modified in the following ways: (1) 52 additional weekly civil and mixed terms were scheduled; (2) 20 weekly civil and mixed terms were cancelled by order of the Chief Justice; (3) 52 weekly civil and mixed terms were cancelled by judges or by county officials without giving the Chief Justice the ten days' notice required by law; (4) seven weekly terms of court were changed from civil to mixed; two weekly terms were changed from civil to criminal; and one weekly term was changed from criminal to civil. (See forthcoming Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part VII.)

Failure to Use Scheduled Court Time

The records of Superior Court terms in the administrative office of the Chief Justice revealed that from July 1, 1956 to July 1, 1957, 72 scheduled civil and mixed terms were not held at all; that 63% of the terms which were convened used less than five days—to be specific: 5% used one day, 9% used two days, 22% used three days, and 27% used four days; and that 37% of the terms which were convened used five or six days of the week. On the basis of a five-day court week the records reveal that a total of 1595 days of scheduled court time were not used. Addressing the 1957 meeting of the North Carolina State Bar, Chief Justice Winborne said, "At the rate of 8½ cases per court day, which was the rate of disposition in this State last year, 13,577 more cases could have been tried or otherwise disposed of by our Superior Courts, if the Courts had remained in session and had been utilized through Friday of each week. Since there were 23,026 cases left on the Superior Court dockets at the end of the year, it is obvious that at least a substantial part of the 1595 days could have been used." (See forthcoming Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part VII.)

Failure to Use Pretrial

In 1950 the Executive Secretary of the North Carolina Judicial Council referred to the statutes prescribing the procedures for pretrial conferences in civil actions as, "perhaps the most promising procedural advance made in North Carolina in many years." (Paschal, "Pretrial in North Carolina: The First Eight Months," 28 N.C.L.R. 375) The reports of the clerks of the Superior Court

in 77 counties showed that the promise of these statutes had not been realized: 54 reported that they do not maintain the special pretrial docket required by law, nine reported that such dockets are never used, and 14 reported that such dockets are used infrequently. Sixty clerks of the Superior Court reported the extent to which pretrial was used during the year preceding October, 1957, as follows: no cases were pretried in 34 courts, from one to five cases were pretried in 11 courts, and from six to 20 cases were pretried in 15 courts. None of the clerks reported more than 20 cases pretried during the 12-month period. Many judges and attorneys, writing to the Bar Association Committee their suggestions for improving and expediting the administration of justice, stated that a greater use of pretrial procedure would do much to speed the disposition of civil cases and to reduce congested Superior Court dockets. For example, a judge of the Superior Court wrote, "Lawyers should use pre-trial procedure to a much greater extent. At least one day or more of each civil term should be set aside for pre-trial hearings and motions, jurors not required to report until after these special days." (See forthcoming Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part VIII.)

Failure to Use Statutory Methods for Disposing of Cases Without Trial

The records of 4285 cases which had been pending more than six months in 22 counties revealed that civil process had not been served on all parties in 22% of the cases; that answers had not been filed in 43% of the cases in which process had been served; and that issues had not been joined in 65% of the cases. The attorneys who examined these records reported that these pending cases could be disposed of by default judgment, dismissal, or discontinuance. (See forthcoming Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part IV.)

Failure to Report All Pending Cases to the Chief Justice

A comparison of the number of pending cases reported by 17 clerks of the Superior Court to the Chief Justice with a direct count of the pending cases in their counties disclosed 5834 cases which had not been reported: 4025 were on dockets other than the civil issue docket and 1809 were in "dead files," "off-docket files," or similar repositories for cases in which no action had been taken for six months or more. (See April, 1958 Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part III.)

Variations in Docketing Procedures

A study of the civil dockets and files in the Superior Courts of 44 counties and interviews with the clerks of these courts and with many members of the Bar revealed that in some courts records of special proceedings are kept in a separate docket, as prescribed by law, while in other courts records of special proceedings are kept in the same docket with civil actions; that in some courts uncontested divorce actions, motor vehicle operators' petitions, delinquent property tax cases and sometimes other types of actions, are docketed in special dockets not authorized by law; that in some courts these "special" types of cases are not docketed at all, but are filed apart from the "ordinary" civil actions; that in some courts the summons docket prescribed by law was permanently bound, entries being made in longhand, while in others it was a loose-leaf binder in which typed sheets were inserted, while in still others no summons docket was kept at all; that similar variations existed in the civil issue dockets and judgment dockets; that in some courts one docket contained a complete record of each case from summons to judgment, while in others the record of a case had to be pieced together from entries in the summons docket, in the civil issue docket, in the trial docket, and in the judgment docket; that the summons dockets varied from complete records of the nature of every paper and pleading filed and the date of filing, to records of pleadings only, to fragmentary records which sometimes included some of the pleadings and papers filed and sometimes included others, with many variations in between; that in some courts the civil issue dockets included all pending cases, while in others it included only those in which issues had been joined, while in still others it included only those which had been calendared, and in still others it included a certain number of cases which were ready for trial, regardless of the total number of cases in which issues had been joined, with many other variations; that in some counties the minute dockets were made and typed by the court reporter, while in others they were made by the clerk and typed in his office, and in still others they were made by the clerk in longhand, with many other variations; that in some courts the minute docket contained " a record of all proceedings had in the court during term, in the order in which they occur," as prescribed by law, while in others it included only a note identi-

fying the cases tried and the judgment rendered, and in still others it contained a copy of the judgment rendered in each case, with many other variations; that the judgment docket in some courts contained a complete copy of every judgment, while in others it contained copies only of the judgments for money, and in still others it contained a note of the substance of the judgment in every case or in certain types of cases, with many other variations. Many attorneys who practice in more than one county reported that it was necessary for them to learn as many different systems of records as there were counties in which they practiced; that this impaired their efficiency, added to the cost of litigation, and delayed the course of litigation through the courts; and that a unifying supervision of recordkeeping practices was needed to raise the level of the poorest to the level of the best, to make all systems conform to the requirements of the law, and to bring the law into line with the best of modern methods and procedures. (See April, 1958 Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part III.)

Variations in Calendaring Procedures

A study of the rules of practice in the Superior Court, local acts, general laws, and printed rules of many city, county, and district bar associations pertaining to calendaring procedures, and interviews with clerks and judges of the Superior Court and attorneys, revealed that the procedures for calendaring civil cases for trial are prescribed entirely by local bar rules in some counties, by unwritten local custom in others, and in still others civil cases are not calendared at all; and that in some counties these procedures conform to the laws and rules of practice, complement them in others, and conflict with them in others. The studies and interviews also revealed that, in practice, the clerk of Superior Court prepares the calendar without the assistance or supervision of the Bar in some counties; that in others the clerk prepares a calendar which is then revised by a committee of the local Bar; that in others a committee of the Bar prepares a calendar with the assistance of the clerk and then turns it over to him for publication; and that in still others the local bar or a committee appointed by it prepares the calendar without the assistance of the clerk. The studies and interviews also revealed that special "clean-up" calendars of old cases are prepared to bring the dockets up to date every six months in some counties, every year in other counties, "every once in a while" in others, "every few years" in others, and never in still others. In the 1958 report of the administrative office of the Chief Justice, it was stated that, "corrective measures must be taken in some of the counties. Two remedies have been mentioned: (1) increase in court terms scheduled, and (2) more efficient utilization of the courts . . . The latter is, under our calendaring system, principally a responsibility of the local bar. It is fervently hoped that with the assistance of the presiding judges this responsibility will be fulfilled to greater advantage." (See April, 1958, Special Issue of *Popular Government*, "Civil Litigation in the Courts," Part III.)

Variations in Continuance Policies and Procedures

A study of the rules and practices governing the continuance of civil actions in 44 counties revealed that in some of them the trial of a calendared case is postponed upon the request of the attorney for either side; that in other counties continuances are granted only if both attorneys agree; that in other counties continuance requests of local attorneys are given priority of consideration; and that in still others the local bar has no policies regarding continuances, but leaves the matter entirely in the hands of the judges. The study also revealed that in some counties a case not reached for trial on the day for which calendared is automatically continued for the term, that in other counties such cases are continued to the next day and then if not reached are continued for the term; that in still others such cases are continued from day to day until called for trial or until the end of the term, whichever comes first; and that in some counties there are no rules for the handling of cases not reached on the day for which calendared. Five judges of the Superior Court reported that their policy was to *grant* continuances requested during the term, unless a party or his attorney objected, while five other judges reported that their policy was to *deny* continuances requested during the term, unless "a hardship would result to the parties" if the case were forced to trial. When asked what changes, if any, should be made in the continuance statutes (G.S. 1-175, 176), one judge stated that, "these statutes are dead and they might as well be buried . . . This subject should be covered in a new set of rules of procedure modeled on federal rules of civil procedure." (See April, 1958 Special Issue of *Popular Government*, "Civil Litigation in North Carolina," Part III.)

By Royal G. Shannonhouse, Assistant Director of the Institute of Government.

SOME PROBLEMS OF THE CRIMINAL COURTS AND THEIR CAUSES

Introduction

This is an outline of the principal problems in the administration of criminal justice in North Carolina growing out of studies of more than 220,000 criminal cases in every type of court in 35 counties of all sorts and all sizes in all sections, supplemented by interviews with judges, solicitors, and other court officials in these counties and by suggestions received from practicing attorneys in all sections of the State. These studies point up: (1) the degree of congestion in the criminal dockets of the Superior Court and some of its causes, (2) the problems growing out of the present solicitorial system, (3) the problems growing out of the present system of recorder-type courts, (4) the problems caused by thousands of petty cases growing out of the operation of motor vehicles, and (5) the important part in the administration of justice played by the justice of the peace. All of these studies were spelled out and documented in detail in special issues of *Popular Government* dated May, 1958; June, 1958; and December, 1958.

I

Congested Criminal Dockets in the Superior Courts

Superior Court judges, solicitors and members of the bar in every county complained that too much of the Superior Court's time was being taken up with petty misdemeanor cases which could be tried in the lower courts. To illustrate: one-third of the 12,000 criminal cases disposed of during one year by the Superior Courts of 32 counties were misdemeanor cases growing out of the operation of motor vehicles, and only 4 out of 10 cases in the 12,000 were felony cases. [*Popular Government*, June, 1958 Special Issue, p. 25].

According to the facts of record, the overwhelming majority of misdemeanor cases on the Superior Court dockets grew out of three main causes: (1) the right of appeal from justices of the peace and recorder-type courts to the Superior Court for a new trial (trial *de novo*); (2) the lack of jury trial in some recorder-type courts; and (3) the lack of a uniform lower court system.

First. The study of 6,500 misdemeanor cases disposed of by the Superior Courts of 28 counties where recorder-type courts are in operation showed that 77% of the Superior Court's misdemeanor cases came up on appeal from recorder-type courts —amounting to 5,000 cases in one year. [*Popular Government*, May, 1958 Special Issue, p. 40].

Second. The study revealed that only 17 out of 61 recorder-type courts in 32 counties had jury-trial facilities. The usual procedure when a defendant in a misdemeanor case before these courts asks for jury trial is to transfer the case to the Superior Court. Over 800 cases in one year were sent up to the Superior Courts pursuant to this procedure—amounting to 12% of the misdemeanor cases disposed of during the year in the Superior Courts of counties with recorder-type courts. These were misdemeanor cases which were within the power of the recorder-type courts to try and would have been tried by them if they had jury facilities. [*Popular Government*, May, 1958 Special Issue, p. 40.]

Third. Figures gathered from the minute dockets of the Superior Courts in every county in the State show that the Superior Courts in counties without recorder-type courts must expend more time transacting criminal business than the Superior Courts in counties of the same population and in the same section of the State with recorder-type courts. There were during 1956 sixteen counties without recorder-type courts and four counties with only city recorder-type courts of limited territorial jurisdiction; a misdemeanor case above justice of the peace jurisdiction—or outside the jurisdiction of the city courts—in these counties can only be tried in the Superior Court. It should be pointed out that these recorder-type courts final-

ly dispose of 95% of the misdemeanor cases brought before them and as a consequence take a burden from the dockets of the Superior Courts, although the 5% appealed to the Superior Courts literally flood the dockets there. The study compared the number of days required to transact criminal business in one year by the Superior Courts of counties not having county-wide recorder-type courts with the number of days required in counties similar in population and geographic location having county-wide recorder-type courts. This comparison revealed that a total of 92 more court days—amounting to 18 one-week terms of court—were required by the Superior Courts of counties with no recorder-type courts, or with only city recorder-type courts. These facts of record indicate that if every county in the State had during 1956 a court with power to try all misdemeanors committed anywhere in the county, Superior Court judges and solicitors would have had a total of 92 days free to attend court in counties where felony cases were pending or where the criminal dockets were congested. [*Popular Government,* May, 1958 Special Issue, p. 38].

Observations of judges, solicitors and lawyers on congestion of criminal dockets were borne out by a study of the pending criminal cases in 100 counties. Over 6,000 criminal cases were awaiting disposition in the 100 Superior Courts. Over 400 criminal cases were awaiting disposition in each of five solicitorial districts. Twenty-two percent of the pending felony cases and 19% of the pending misdemeanor cases had been on the Superior Court dockets for over a year, and 8% of the felony cases and 5% of the misdemeanor cases had been awaiting disposition for over three years. The defendants in only 7% of the felony cases and 4% of the misdemeanor cases were unavailable for trial because they had not been arrested or were in mental hospitals. [*Popular Government,* May, 1958 Special Issue, p. 8].

According to the latest report from the Chief Justice's administrative office, four solicitorial districts now have over 400 criminal cases awaiting disposition, another district has over 700 cases awaiting disposition, and still another over 890 cases awaiting disposition. This report states that the number of criminal cases pending in one solicitorial district has increased by 300 cases in one year.

Superior Court judges and solicitors have blamed this congestion upon : (1) the fact that the Superior Courts have more criminal cases to be tried than there are available court terms to try them; (2) the fact that some solicitorial districts cover too many counties; (3) the steady, unremitting flow of cases from the recorder-type courts; and (4) an inadequate number of assistant solicitors. [*Popular Government,* May, 1958 Special Issue, p. 9].

Superior Court judges observed that the irregular practice of "trying" *nolo contendere* pleas—without a jury—in Superior Court is a by-product of congestion on the dockets and stems from a desire to speed up the work of the court. Jury trial in the Superior Court cannot be waived, but according to the facts of the record in 5,000 felony cases, many Superior Court judges hear evidence upon pleas of *nolo contendere,* decide the degree of guilt of the defendant, and order either the entry of a plea of guilty to the proper crime or a dismissal of the case. [*Popular Government,* May, 1958 Special Issue, p. 19].

II

Problems Growing Out of the Present Solicitorial System.

The Superior Court solicitor is in complete charge of prosecuting criminal cases in the Superior Court. He decides which cases shall be called and when, which shall be prosecuted and which nol-prossed, and when a plea shall be accepted and when it shall not be accepted. He alone can submit a bill of indictment to the Grand Jury. He is therefore the single most important official in the administration of criminal justice in the State's most important trial court.

According to the facts of record: (1) there are marked inequalities in workload from district to district; (2) crowded dockets cost thousands of man-hours in time wasted by witnesses waiting for their cases to be called; (3) inequalities in workload make it possible for some solicitors to supplement their salary by engaging in the private practice of law while others cannot; (4) frequently during a year a solicitor is expected to hold court in two separate counties at the same time; (5) some solicitors are provided with several assistant solicitors but others are provided with none, and some are provided office space and secretarial help by the county but others are not.

Inequalities in Workload

The solicitorial districts have not been changed since 1937. These districts were found to vary in size from two counties in the 14th and 19th Districts to ten counties in the 1st

District. They vary in population from 113,000 in the 17th District to 350,000 in the 14th District. According to the facts of record taken from the Superior Court minute dockets in 100 counties, these districts vary widely in workload: (1) The number of criminal court days in one year varies from a low of 68 days in one district to a high of 214 days in another. (2) The number of cases disposed of each year varies from a low of 498 in one district to a high of 1,666 in another. (3) The number of complete jury trials in one year varies from a low of 34 in one district to a high of 305 in another; (4) The number of cases awaiting disposition at the time of the study varied from a low of 121 cases in one district to a high of 877 cases in another. [*Popular Government,* May, 1958 Special Issue, p.13]

Crowded Dockets Cause Lost Man-hours

According to a study of 2,600 criminal cases awaiting disposition and 12,000 cases disposed of in 32 counties, hundreds of thousands of man-hours were lost by witnesses who were subpoenaed term after term to wait for the call of the case in which they were to appear. [*Popular Government,* May, 1958 Special Issue, p.10]. This comes about under the following conditions: (1) The Superior Court judge, travelling from county to county, has no responsibility for calendaring criminal cases; (2) the solicitor has almost complete control over the day the pending cases are set to be tried; (3) under existing rules a case may not be called before the day it is set on the calendar, but it may be called at any time thereafter during the term, and the defense attorney, law enforcement officers and other witnesses must wait until the solicitor calls the case or tells them he will not call it that term. Lawyers in all sections of the State complained of these conditions. Many Superior Court judges observed that some solicitors appeared to take unfair advantage of their control of the calendar, but also felt it would be fair to point out that some solicitors were so overworked they could not set a realistic calendar. [*Popular Government,* May, 1958 Special Issue, p.10]

Private Practice of Law

Solicitors are free to practice law in non-criminal matters when not engaged in prosecuting criminal cases. A few are so busy with criminal matters they have no time left for private practice, but most of them do. Despite this difference, each one receives the same salary and a uniform sum in lieu of travel expenses. Judges and solicitors have advanced arguments for and against a bill introduced in the 1957 General Assembly which would have made the solicitor a full-time official, prohibiting private practice. Arguments for this proposal included: (1) The solicitor with a private practice does not have time to investigate and prepare his criminal cases, advise law enforcement officers, and represent the State adequately. (2) A private practice constitutes a temptation to neglect public duties in favor of increased income from the private practice. (3) There are too many possibilities of representing conflicting interests in civil cases based upon circumstances involved in criminal cases. Arguments against included: (1) If full-time and if defeated at the polls, the solicitor would have to start his law practice again from scratch. (2) A private practice makes for a well-rounded attorney. (3) His present salary is inadequate to attract competent men if not allowed to supplement it by income from private practice.

Conflict Terms

According to facts of record on the minute dockets of the Superior Courts in every county of the State, 31 times during 1956 solicitors were required to be in two counties at the same time as conflicting terms opened in their districts. One solicitorial district had 8 conflicting terms; the remaining 23 conflicts occurred in 7 other districts. Judges and solicitors observed that the General Assembly sets the terms of court for judicial districts without taking into account the geographical differences between judicial and solicitorial districts.

In some cases assistant solicitors prosecuted the docket in one court; in others, solicitors paid attorneys out of their own pockets to prosecute the docket in one court, and in others the solicitor spent part of the week in one county and part in another. [*Popular Government,* May, 1958 Special Issue, p.15].

Assistant Solicitors and Office Help

County commissioners decide whether to appoint and pay an assistant solicitor, and they cannot be required to provide for an assistant no matter how much work their is in a given county. Twenty-one assistant solicitors have been appointed in ten districts, and eleven districts have none at all. Solicitors indicated that caseloads in 17 counties showed a need for assistants which have not been appointed. [*Popular Government,* May 1958, Special Issue, p.15].

Some solicitors are provided office space and secretarial help by the home county. Others utilize

secretarial help and office space in their private law offices. Others do their own typing. In one district the solicitor's wife acts as his secretary without pay. The home county is not required to furnish the solicitor with office space or secretarial help. [*Popular Government*, May, 1958 Special Issue, p.21].

Division of Responsibility

Division of responsibility for representing the State creates many problems: (1) Superior Court solicitors complained that many cases appealed to the Superior Court from the recorder-type courts must be dismissed or nol-prossed because the arrest warrants on which they must be tried are defective in stating the charges; the warrant in such cases might have been amended by the lower court solicitor—and only then—but he is not responsible to the Superior Court solicitor—unless, in rare instances, he is also the assistant Superior Court solicitor. (2) When a case is appealed to the Supreme Court, the Superior Court solicitor's responsibility ends with the preparation of the appeal record. (3) The Attorney General, who represents the State in the Supreme Court, cannot call upon the solicitor for advice or conference, nor for assistance in preparation of the State's brief or in argument before the Court. The Attorney General's staff prepares the State's case from the "cold record", and there is no routine way for them to determine the theory of the trial, or to obtain information which is not in the official record.

The result is a three-way division of responsibility for representing the State at the various levels of our court system: in the lower courts, in the Superior Courts, and in the Supreme Court.

III

Problems Growing Out of Recorder-type Courts

Over and above their effect on the Superior Court criminal dockets, the facts of record show in the recorder-type courts: (1) considerable variation in costs of court, (2) tendencies to use the courts as sources of revenue, (3) negligible use of trial by jury when available, (4) lack of uniformity in procedures, (5) irregularity in the disposition of felony cases, and (6) an unhealthy effect on the administration of justice in these courts caused by the appeal for trial *de novo*.

Variation in Costs

The minimum costs which a defendant would be required to pay even if pleading guilty varied from a low of $7.00 in one court to a high of $28.00 in another. A speeding motorist fined $10 and costs would pay $17.00 in the first court and $38.00 in the second. The records show little relation between the time and labor involved in handling a case and the minimum costs charged, which are made up of lump-sum fees for duties performed by judge, solicitor, and clerk—fees which are assessed even when the defendant pleads guilty to the clerk out of court and never comes to trial before the judge or solicitor. [*Popular Government*, December, 1958, Special Issue, p.45].

This practice results in annual profits of $6,000 to $10,000 for some of the smaller cities and counties, and over ten times as much in large cities.

Use of Jury Facilities

According to the facts of record, 1½% of 38,000 cases in the 17 recorder-type courts with jury trial in 28 counties were actually tried by jury, whereas 13% of the cases in the Superior Courts, where all trials are by jury, were tried by jury. Officials in these courts observed that so few defendants in the recorder-type courts which have juries request jury trial that these courts have infrequent jury sessions—sometimes only once every two months. These officials have also observed that defendants ask for jury trial for the sole purpose of delay, frequently pleading guilty when the case is called. Fourteen out of 17 of these courts charge a "jury tax" or "jury deposit" to be paid by the defendant as a condition of getting jury trial—varying from a low of $3.00 to a high of $42.00. [*Popular Government*, June, 1958, Special Issue, p.47]

Variation in Procedures

Judges of the recorder-type courts have pointed out that rules of procedure in criminal cases in their courts came from: (1) special act of the legislature, or (2) the local governing body, or (3) the practices of the Superior Court, or (4) evolved from case to case, or (5) from a combination of two or more of these sources. One judge stated that his court had no rules of procedure. Attorneys from all sections of the State have complained that this situation introduces a confusing variety of powers and procedures, putting any out-of-town lawyer at a distinct disadvantage.

Disposition of Felony Cases

According to the facts of record, 67% of 5,000 felony cases heard by recorder-type courts in one year were bound over to the Superior Court. Instead of finding probable cause or no probable cause as required by law, these courts appeared to

consider the remaining 33% within their jurisdiction, and after either amendment of the warrant or failure to recognize the charge to be a felony, the defendants were acquitted or punished or the charges were dismiseed or nol-prossed. [*Popular Government*, May, 1958, Special Issue, p.44 and December, 1958, Special Issue, p.3]

Effect of Appeal for Trial De Novo

Superior Court judges observed: *First*, that appeal from the recorder-type courts to the Superior Court for a new trial prevents correcting any misunderstanding or misapplication of the law by the lower court judges, since the cases are never sent back to the lower courts. *Second*, that whereas cases appealed to the Supreme Court from the Superior Courts are sent back—in case of error—with a written opinion for the benefit of the Superior Court judge who has erred, the lower court judges are left to continue to misapply or misinterpret the law in all similar cases.

IV

Motor Vehicle Cases.

Facts of record show that literally thousands of misdemeanor cases growing out of the operation of motor vehicles flood the criminal dockets every year. Thirty-five hundred of these cases—one-third of all criminal cases disposed of—were heard by the Superior Courts in 32 counties in one year, and 124,000 of these cases—62% of 200,000 cases disposed of—were heard by the recorder-type courts in the same period. The Department of Motor Vehicles reported that State Highway Patrolmen arrested or cited to court over 500,000 motorists during 1957. [*Popular Government*, June, 1958 Special Issue, p.1]

The sheer pressure of numbers of these traffic cases usually induces recorder-type courts to dispose of them by devices of doubtful legality. At least 28,000 cases in the recorder-type courts in 28 counties were disposed of by defendant's pleading guilty out of court under an informal "waiver" practice and paying costs and fines in a pre-determined amount. The records in many courts admittedly using this "waiver" device did not show when it was used. Rulings of the Attorney General, based on Supreme Court decision, have consistently stated that a defendant in a misdemeanor case may lawfully waive his presence in court only through an attorney. Some courts allow it to be used in cases where the driver's license is in jeopardy. [*Popular Government*, June, 1958 Special Issue, p.9]

In at least 8,000 cases in 61 recorder-type courts in 28 counties in 1956, the motorist was allowed to post a cash bond for his appearance with the understanding it would be forfeited when he failed to appear in court. This device is used in the Superior Courts of some counties without recorder-type courts, but there were reported instances of at least one Superior Court judge who refused to take up such cases because of the irregularities involved: such cases are technically still awaiting determination of the defendant's guilt or innocence and he could still be forced to answer the charge or charges.

The study noted how persistently the defendants who came into court contested their innocence when their driver licenses were in jeopardy, and Superior Court judges and solicitors complained that drunk-driving cases—more so than others—take up a disproportionate amount of the Superior Court's time and energy. According to facts of record in 12,000 Superior Court cases, more drunk-driving cases were heard than any other single kind of case—felony or misdemeanor. [*Popular Government*, June, 1958 Special Issue, p.1 and December, 1958 Issue, p.1]

V

The Role of the Justice of the Peace

According to the facts of record, justices of the peace in North Carolina heard at least 89,000 petty criminal cases during the fiscal year 1956-57. This figure includes only convictions reported to the State Treasurer. Justices of the peace in 35 counties tried three times as many cases as the Superior Courts in those counties in one year. Based upon the number of convictions reported to the State Treasurer and the average fee charged, they receive around a third of a million dollars in fees each year. [*Popular Government*, May, 1958, Special Issue, p.47]

The record further shows that, despite this volume of criminal business in the Justice of the Peace Courts, they are subject to no administrative control. According to the justices themselves, most of them: (1) "specialize" in one or two kinds of cases—usually trying only drunks and "rubber-check" writers; (2) impose the same sentences without variation; (3) are patronized by only one group of law enforcement officers; and (4) regularly compel defendants to make restitution to prosecuting witnesses—sometimes in excess of $9,000 a year by a single justice in one kind of case alone. [*Popular Government*, May, 1958, Special Issue, p.47]

By Roy G. Hall, Jr., Assistant Director of the Institute of Government

Recommendations Of The Bar Committee

- COURT STRUCTURE AND JURISDICTION
- SELECTION OF COURT PERSONNEL
- THE JURY SYSTEM
- COURT ADMINISTRATION
- PRACTICE AND PROCEDURE
- CONCLUSION

The Committee on Improving and Expediting the Administration of Justice in North Carolina has stated that it is seeking to provide a judicial system which will enable the courts to administer justice fairly and efficiently, to provide the courts with appropriate administrative authority to assure their efficient operation, to make more certain that qualified persons are chosen to staff the courts, and to make the courts fully responsible for the quality of their performance. The Committee has sought to accomplish these general aims through specific recommendations which will be grouped and discussed under the five basic topics studied by the Committee: (1) Structure and Jurisdiction, (2) the Selection of Court Personnel; (3) the Jury System, (4) Court Administration, and (5) Practice and Procedure.

I

Structure and Jurisdiction

The committee recommends that the judicial power of the State (with limited exceptions) be vested in a single court—the General Court of Justice—to be composed of an appellate division, a Superior Court division, and a local court division. The Supreme Court, subject to certain constitutional limitations, would allocate the total trial and appellate jurisdiction of the General Court of Justice to the various divisions and units of the court.

To correct the existing defects in court structure, the Committee considered three possible approaches. The first approach would leave the basic structure unchanged and would try to correct obvious defects in the operation of the system wherever they appeared. The Committee concluded that this approach would result in nothing more than an elaborate continuation of the piecemeal and patchwork approach which was primarily responsible for the lack of unity and uniformity in the existing judicial system. This approach would treat symptoms, not causes.

The second approach would leave the Supreme Court and Superior Courts essentially unchanged, and would establish a uniform lower court structure. The Committee concluded that this approach might make significant improvement in the lower court system, but it would retain a rigid structure made up of separate units, each of which operates without regard to the others, except as appellate review provided some relationship between courts of different levels. The Committee decided that the uniformity which this approach would bring was necessary, but was not enough.

The third approach would bring the Supreme Court, the Superior Courts and the lower courts into a unified and uniform system. The Committee adopted this approach; it would retain most of the parts of the existing system but would substantially alter the relationship between the parts and the whole. This uniform and unified system will now be examined in some detail.

A Uniform Court System

The Committee proposes a uniform system which would make available to every person in every county of the state the same types of courts with uniform authority and uniform procedures. The system would include an appellate division, a Superior Court division, and a local court division.

Appellate Division. The Committee recommends no change in the existing structure of the Supreme Court; this Court already has uniform authority and follows uniform procedures throughout the state. The Committee found that the present work load of the Supreme Court is about as heavy as the Court as now constiuted can properly handle. The Committee felt that the Constitution should provide sufficient flexibility to take care of a substantial increase in this work load without having to resort to frequent constitutional change, and it considered three possibilities which might provide this desired flexibility:

(1) To increase the membership of the Court. The Committee concluded that a limited increase in the membership of the Supreme Court would enable that Court to absorb some increase in appellate litigation and still maintain a high standard of quality and efficiency, but it felt that the device of increasing membership could not properly be used repeatedly. A Supreme Court composed of too many members would be unwieldy and subject to possible divergence of opinion to an undesirable degree. Accordingly, the Committee recommends that the General Assembly be authorized to increase the number of Associate Justices of the Supreme Court from the present six to not more than eight.

(2) To modify the existing provisions with respect to sitting in divisions so that the Court would utilize this power. The Committee found that the existing provisions authorizing the Supreme Court to sit in divisions have not been used although they have been in existence for over twenty years. Among the possible reasons for the failure to use the power is the requirement that a majority of the justices concur in the decision of a division before it can become a decision of the Court. The Committee concluded that the Court's failure to utilize this power indicated that the power offered little promise as a means of effectively disposing of an increase in appellate litigation. The Committee, therefore, recommends that this specific grant of authority to sit in divisions be eliminated from the Constitution.

(3) To establish within the appellate division an intermediate court of appeals to share the burden of appellate litigation. The Committee considered the possibilities of an intermediate court of appeals from many angles. It rejected a proposal for a court to be composed of Superior Court judges (with or without a Supreme Court Justice) on temporary assignment, and to be convened by the Chief Justice whenever the appellate work load became too heavy for the Supreme Court. It rejected a proposal which would have established the intermediate court upon the adoption of the proposed constitutional changes. The Committee was of the opinion that there is no immediate need for an intermediate appellate court, and that such a court should be established only when the need therefor becomes clear. The Committee recommends that the Constitution authorize the General Assembly to establish an intermediate court of appeals upon recommendation of the Supreme Court. The language chosen is intended to require the concurrence of both Court and legislature before the court of appeals can be established.

Superior Court. The authority of the Superior Court is essentially the same in every county in the state, and it follows substantially uniform procedures. The Committee would make no change in the structure of the Superior Court.

Lower Courts. The Committee recommends that the existing multiplicity of local courts be replaced by a system of district courts which would sit in every population center, and in at least one place in each county. A single populous county might have a chief district judge and several associate district judges sitting every day. A sparsely populated county might have a district judge sitting once a week except when unusual situations required more frequent sessions.

The specialized courts, such as juvenile and domestic relations courts, presented a different problem. These courts conduct their proceedings according to specialized procedures, make use of social agencies from other departments of government, may have some specialized personnel of their own, and may have specially qualified judges. The Committee considered the possibility of establish-

ing a separate division for these courts, but it concluded that a separate division would open the door to a mushrooming growth of special courts which would destroy the uniformity and unity which were primary aims of the Committee. Accordingly, the Committee proposes to bring these courts within the framework of the district courts, with a system of specialized district judges and procedures replacing the separate courts. Even in the sparsely populated areas these judges could ride circuit through several districts and thus bring the benefits of specialized training and procedures to areas where they are not now available.

The Committee considered numerous suggestions as to the best way to accommodate the petty civil and criminal business which is now handled for the most part by justices of the peace and Mayors' Courts. It concluded that North Carolina still needs a judicial officer more convenient to each community than even the proposed district courts would be. Accordingly, the Committee would provide for magistrates in each county as needed. These magistrates would be officers of the district court, and subject to the immediate supervision of the chief district judge. They would be available to issue warrants, conduct preliminary hearings in felony cases, fix bail and accept bail bonds, and try cases instituted before them or assigned to them by the chief district judge.

A Unified Court System

The Committee concluded that uniformity of structure, authority, and procedure within the Supreme Court, Superior Courts and local courts does not go far enough, and recommends that all of these courts be made parts of a single unified court. Having arrived at this conclusion the Committee faced the problem of allocating the jurisdiction of the single court among its various parts. The Committee considered two possibilities: (1) that the authority —i.e.,jurisdiction—of the various court units which make up the single court should be fixed by the General Assembly; and (2) that the authority of the various units should be fixed by the Supreme Court as the head of the judicial system.

The Committee considered and discussed at great length the nature of the power which is being exercised when the jurisdiction of the single court is distributed among the various units of that court. The Committee was not seeking to modify the accepted principle of separation of powers—if the power is legislative in nature, it should be left with the General Assembly; if the power is judicial, it should be exercised by the judicial department. The Committee concluded that where there is a system of separate courts, the question of their jurisdiction is a policy question for the legislature; but where—as under the Committee's recommendations—there is but one court the question as to which part of that court shall have authority to handle particular matters is a question of judicial administration to be determined by the judicial department. The policy question which would ordinarily be answered by the legislature would have already been answered in the Constitution under the Committee's proposal—the judicial power of the State would have already been vested in the General Court of Justice.

The Committee felt that certain guides or standards should be set out in the Constitution to govern the Supreme Court in allocating the judicial power among the trial court units; therefore it recommends that the Court not be empowered to assign felony cases or ordinary civil cases involving more than $5,000 to the district court, unless the General Assembly approves such action. Here again the specialized matters such as juvenile cases and condemnation proceedings posed a problem. The specialization desirable to handle these types of cases is most easily developed at the district court level. The Committee concluded, in light of this fact, that the Supreme Court should be free to assign these special-subject-matter cases and proceedings to the district court, without regard to the nature of the offense charged or the amount in controversy.

Just as the Supreme Court would determine which cases should be heard in which trial court, so it would determine how appeals should flow through the various parts of the General Court of Justice. The Committee noted that the ideal system would provide for a right to one trial on the merits and to one appeal on the law, but concluded that the attainment of the ideal would be too costly if it required that a full record of proceedings before magistrates be obtained. Accordingly, the Committee recommends that appeals from magistrates be heard *de novo*—a complete new trial—in another trial court. Similarly, the Committee felt that the importance of constitutional questions, and cases involving sentences of life imprisonment or death, demands that the parties in such cases should have an absolute right of final appeal to the Supreme Court. With these exceptions, the Committee recommends that the Supreme Court be authorized to provide for appeals to flow through the system as the Court deems best.

II

The Selection of Court Personnel

The Committee makes no recommendation with respect to the manner of selecting Justices of the Supreme Court or judges of the Superior Court. It recommends that district judges and magistrates be appointed by the Chief Justice of the Supreme Court, from nominations submitted by the resident regular Superior Court judge. It recommends no change in the method of selecting clerks of the Superior Court.

Selection of Appellate and Superior Court Judges

The question of judicial selection has been the subject of more spirited discussion than any other matter studied by the Committee. The Subcommittee on Judges and Solicitors adopted as a basic premise the proposition that judicial office properly conducted is nonpolitical, and that, therefore, the office should not be filled by political methods. The Subcommittee recommended the adoption of a modified "Missouri Plan" under which judges would be nominated by special nonpartisan commissions, and then appointed by the Governor, with the people having periodic opportunities to retain or dismiss the appointees. After several months of discussion the Committee was unable to agree upon any specific changes in the existing system, and referred the question back to the Subcommittee for further study and eventual consideration at some later time. The result of this action is to leave undisturbed the present method of selecting Supreme and Superior Court judges by popular election.

Selection of District Judges and Magistrates

In reaching a conclusion as to the best method of selecting district judges and magistrates, the Committee considered four possibilities: (1) election by the people in the area for which the officer is chosen; (2) appointment by the governing authorities of the area for which the officer is chosen; (3) appointment by the Governor; and (4) appointment by a higher judicial officer. The Committee concluded that the administration of justice is a matter of statewide import, rather than a purely local matter, and that the officers who dispense justice should not be selected on a local basis, or by ordinary political methods. Furthermore, the Committee decided that the officers of the local court units should not be appointed by an executive officer, but by an official whose primary concern is the proper administration of justice, thus assuring that they would be responsive to administrative supervision by higher judicial authority.

Having decided that a judicial officer should make the appointments, the Committee next faced the question of which judicial officer this should be—the Chief Justice, the resident Superior Court judge, or (in the case of appointment of magistrates) the chief district judge. The Committee concluded that as the area which a judge serves becomes smaller, the greater is the possibility that substantial local political pressures will be directed toward him, and that, therefore, it would be better not to vest any appointing power in the district judge. On the other hand, it is essential that a person familiar with the local situations participate in the selection process lest unqualified persons be unwittingly appointed to office. The Committee's solution is to have the Chief Justice make the appointments, from nominations submitted by the resident regular Superior Court judge. The Committee feels that this method should result in a more nearly uniform quality of local judges over the State, and that appointment by the highest judicial officer of the State will give to the local office a desirable dignity and significance.

Selection of Court Clerks

The Committee considered suggestions that the clerks of Superior Court be appointed by some judicial authority, to serve during good behavior. The Committee found, however, that the turnover in the clerks' offices is not heavy under the existing elective system. The problems in the clerks' offices have not resulted from any lack of competence or any unwillingness to cooperate on the part of the clerks; rather, the problems of inadequate and nonuniform records are primarily caused by a lack of clearly stated standards and the absence of administrative coordination. The Committee concluded that the supervision of the judge and the assistance of the administrative office should enable both old and new clerks to perform their duties adequately, and that there is therefore no compelling reason to suggest a change in the present elective method of choosing these clerks.

III

The Jury System

The Committee recommends (1) that there be in each county a special jury commission to list and draw jurors for both grand and petit juries, and that exemptions from jury duty be sharply curtailed; (2) that the General Assembly be empowered, upon recommendation of the Supreme Court, to provide juries of as few as six persons in the district courts, and to provide that the concurrence of as few as 5/6 of the members of any trial jury shall be sufficient to render

a verdict in civil cases; and (3) that a Superior Court judge be authorized to call the grand jury into session at any time; that a solicitor be allowed to present the State's evidence upon the presentation of a bill of indictment; that bills of indictment be presented prior to the convening of a criminal session of Superior Court; that an accused be permitted to waive venue requirements as to both indictment and trial; and that an accused be permitted to waive indictment or the issuance of a warrant or criminal summons.

The Committee found that, although most lawyers, judges and prosecuting attorneys favored the retention of the right of jury trial, many of them voiced severe criticisms of the way in which the jury system presently operates. The Committee was in agreement that the right to jury trial was a precious one, and that the Committee should devote its efforts to the improvement of the jury system, rather than to suggesting any significant limitation or abridgement of the right. As indicated above, the Committee gave its attention to three principal points: (1) the preparation of jury lists; (2) the conduct of jury trials; and (3) the functioning of the grand jury.

Jury Lists

The Committee found that the county commissioners, who have the duty of preparing the jury lists in nearly all counties, have little time to devote to this duty and frequently delegate their responsibilities to a clerk or to the sheriff. The Committee concluded that a special commission, made up of persons not holding other public or political party office, should eliminate much of the dissatisfaction presently voiced against the methods of listing and drawing jurors. The Committee recommends that these jury commissioners be appointed by the Chief Justice upon nomination of the resident Superior Court judge, and that they be subject to the supervision of that judge.

The Committee found that literally dozens of different occupational groups—almost without exception made up of specially educated or skilled persons—are exempted from jury duty, with the result that a large number of well-qualified persons are never called to serve on a jury. The Committee would remedy this situation by limiting jury exemptions to those persons whose relation to the courts or law enforcement (e.g., lawyers and police officers) made it improper that they serve as jurors, and those persons whose occupations are so essential to the public health or safety (e.g., full-time firemen) that they must remain at their regular posts. Jury commissions and judges would retain the right to excuse individual jurors for proper causes.

Jury Trials

After studying the practices and experiences and the trends in North Carolina and other American and English jurisdictions, the Committee concluded that a jury of as few as six members might be as satisfactory in the district court as would a 12-man jury. The Committee also concluded that a unanimous verdict in civil cases was not necessary to a fair verdict, and that substantial savings of time might be made possible by authorizing verdicts of less than all of the members of a jury. In view of the historic value of the jury the Committee suggests that each of these proposals require the concurrence of Supreme Court and General Assembly before they can be put into practice. The Committee's proposals would not establish either the six-man jury or the majority verdict, but would authorize the General Assembly to do so.

The Committee also concluded that if an accused is permitted to plead guilty in a criminal case, and therefore be sentenced without trial, he should also be allowed to plead not guilty and at the same time waive his right to jury trial, so that all criminal trials in the Superior Court would not necessarily have to be jury trials. To guard against the possibility of too hasty waiver by an accused in serious cases, waiver would be permitted only in writing and would require the consent of the judge and counsel for the accused in felony cases. No waiver would be permitted where the offense charged is punishable by death or life imprisonment.

The Grand Jury

The Committee made a number of detailed recommendations with respect to the organization and functioning of the grand jury. The recommendations are aimed primarily at (1) saving the time of the courts and the grand jury by making possible a better scheduling of grand jury meetings and a more effective presentation of evidence before the grand jury; and (2) enabling an accused to obtain quick indictment and trial, even though the grand jury is not in session in the county where the alleged offense occurred.

Saving time of courts and grand jury. The Committee concluded that considerable time could be saved if the grand jury could meet and consider bills of indictment before a session of criminal court convened. This would enable the solicitor to know which bills would be returned as "true bills"

before he had to prepare the calendar for the next session of criminal court, and would enable the court to proceed to try cases on the first day of the session. The grand jury could proceed more expeditiously if the solicitor were permitted to appear and present the evidence on behalf of the State; he would, of course, retire before the grand jury began its deliberations.

Enabling an accused to obtained quick indictment and trial. The Committee noted instances where a person is arrested and charged with a crime immediately after a term of criminal court in the county has adjourned. If the accused is unable to make bail, he has to stay in jail until the next grand jury session before he knows whether or not he will have to face trial. The Committee recommends that an accused be permitted to waive the requirement of indictment by a grand jury in the county where the offense was committed; this would permit him to have the charge considered by a grand jury sitting in a nearby county, and thus determine whether he must stand trial or be released without trial. If he is indicted, he would also be permitted, under the Committee's proposal, to request and receive trial in a nearby county where a criminal court is in session. To save the time of accused, grand jury and court, the Committee recommends that an accused be permitted to waive indictment, or issuance of a criminal warrant or summons. Thus, where the indictment or warrant is a mere formality, waiver would permit the case to proceed without observing the formality.

IV

Court Administration

The Committee recommends that administrative authority over all units of the General Court of Justice be vested in the Supreme Court, with the Chief Justice as its responsible administrative head; that an Administrative Office of the Courts be established to assist the Chief Justice in performing his administrative duties; that the Judicial Council be designated an advisory body to the Supreme Court in making administrative rules; and that the financing of the judicial department be handled at the State level.

The Committee found that under the existing system each individual court largely determines how it shall conduct its own business. Some progress has been made in authorizing and enabling the Chief Justice to schedule special court terms and assign Superior Court judges to temporary duty outside their designated districts, but it is still true the court schedules are not closely related to the volume of cases ready for trial, and that one judge often is idle while another is overwhelmed with work. The Commitee concluded that no matter how excellent the system may be structurally, the single court cannot handle the entire judicial business of the state efficiently unless the units of the court are coordinated in such a way that the work load is reasonably distributed among the judges, and unless courts are in session where there is work to be done. To make certain that this necessary coordination is obtained, and that the courts dispose of their work without undue expenditure of time and money, the Committee recommends that administrative authority over the entire General Court of Justice be vested in the Supreme Court.

This administrative function would be a major task. The authority would include the power to fix sessions for the trial of cases and to assign judges on the basis of determined need. It would include responsibility for proper calendaring of cases, for establishing an adequate system of court reporting, a satisfactory and reasonably uniform system of court records, and the handling of the financial affairs of the judicial system.

Basic authority would lie in the Supreme Court. The Judicial Council would advise the Court as to administrative rules. The Chief Justice would be the responsible executive head of the Court, but he obviously cannot attend to the details of administration. The Committee recommends that an Administrative Office of the Courts be established to assist the Chief Justice and to perform the detailed work of administration. This Administrative Office would collect the necessary information to enable the Chief Justice to make the most efficient use of judicial personnel and facilities and would execute the administrative policies established by the Supreme Court.

In addition, the Administrative Office would act as the business office of the court—a major task under the Committee's proposals. The Committee concluded that real unity and uniformity could not be obtained unless the courts are financed by the State rather than by local governments. It therefore proposes that the State pay the salaries of judges, magistrates, clerks, jury commissioners and other court officials (but not the salaries of local law enforcement officers who perform some services for the courts). All fees and costs collected by the courts would go to the State, but fines and forfeitures would continue to go to local school funds. Fees and costs would be fixed by the General Assembly and would be uniform throughout the state.

V

Practice and Procedure—the Rule-making Power

The Committee recommends that the power to make rules of practice and procedure for all parts of the General Court of Justice be vested in the Supreme Court, and that the Judicial Council be designated an advisory body to the Court in the preparation of these rules.

The Committee found that the Supreme Court now makes its own rules of practice and procedure, but that the General Assembly enacts statutory rules governing the trial courts; and that this practice results in a division of responsibility which makes it extremely difficult to correct defects. The Committee concluded that it is essential that this division of authority and responsibility be eliminated. It examined the nature of the procedural rule-making function and concluded that it was judicial in nature and should therefore be vested in the judicial department.

Again the Committee looked to the Supreme Court as the responsible head of the judicial system and recommended that the power to make procedural rules for the General Court of Justice be vested exclusively in the Supreme Court by constitutional provision. The rule-making duty is a heavy one, and the Court will require assistance. The Committee recommends that the Judicial Council be designated an advisory body to the Supreme Court with respect to procedural rules. The Committee contemplates that the Judicial Council will play a major role in the rule-making process, much as the Advisory Committee on the Federal Rules did with respect to the Federal Rules of Civil Procedure. For example, the Judicial Council would draft a proposed rule, submit it to the Supreme Court for approval, and then schedule and hold public hearings on the rule before the Supreme Court finally adopted it.

VI

Conclusion

The Committee's proposals go far beyond what some lawyers and judges think is necessary or desirable; they fall far short of what others would have done. As the chairman of the Committee has repeatedly pointed out, every one of the recommendations was suggested by many members of the bench and bar of North Carolina. This summary of the research data and the work of the Committee is not intended to express approval or disapproval of the Committee's proposals. Our purpose has been to present the significant facts as clearly as possible so that the final decision as to the merits of the Committee's proposals may be made by an informed citizenry.

By Clyde L. Ball, Assistant Director, Institute of Government

The Courts of Yesterday Today and Tomorrow

(Continued from page seven)

from the justices in one town go to the municipal court in that town and the remainder go to the county recorder's court. In another county all civil appeals go to the civil county court and criminal appeals go to the Superior Court. In another county appeals from the justices in five towns go to the municipal courts in those towns and the remainder go to the Superior Court.

IV

Where Do We Go From Here

It is beside the point to belittle or abuse these lower courts, the constitution which permitted them, or any locality which asked the General Assembly for permission to go its own way, or the General Assembly which permitted every locality to go its own way in the absence of a common way to go by. For every one of these local courts established under "special acts" or "general laws" has been an experiment station and a testing ground to guide the lawmakers of today in their deliberations. The 1959 General Assembly comes to its historic responsibility for the courts of tomorrow with the satisfying assurance that in looking for ways and means of fashioning a statewide system of courts for tomorrow as good as the best we have today and better, it will not be stepping on the toes of those who have gone before—it will be standing on their shoulders.

—By Albert Coates, Director of the Institute of Government

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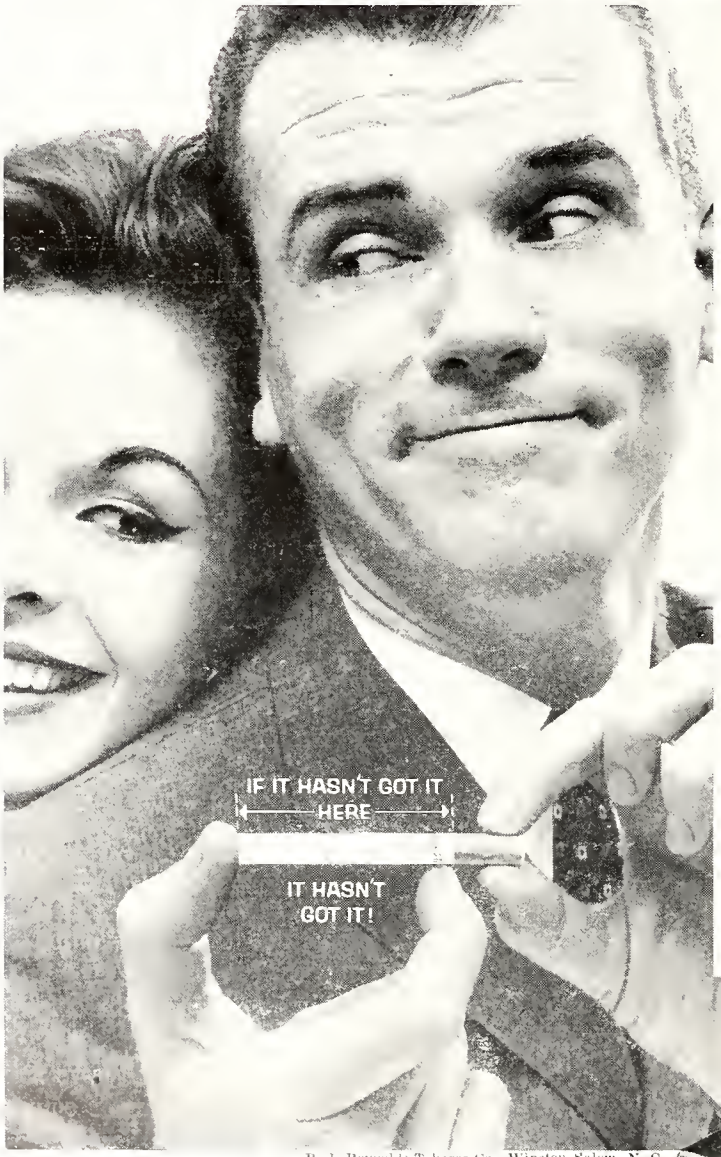

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