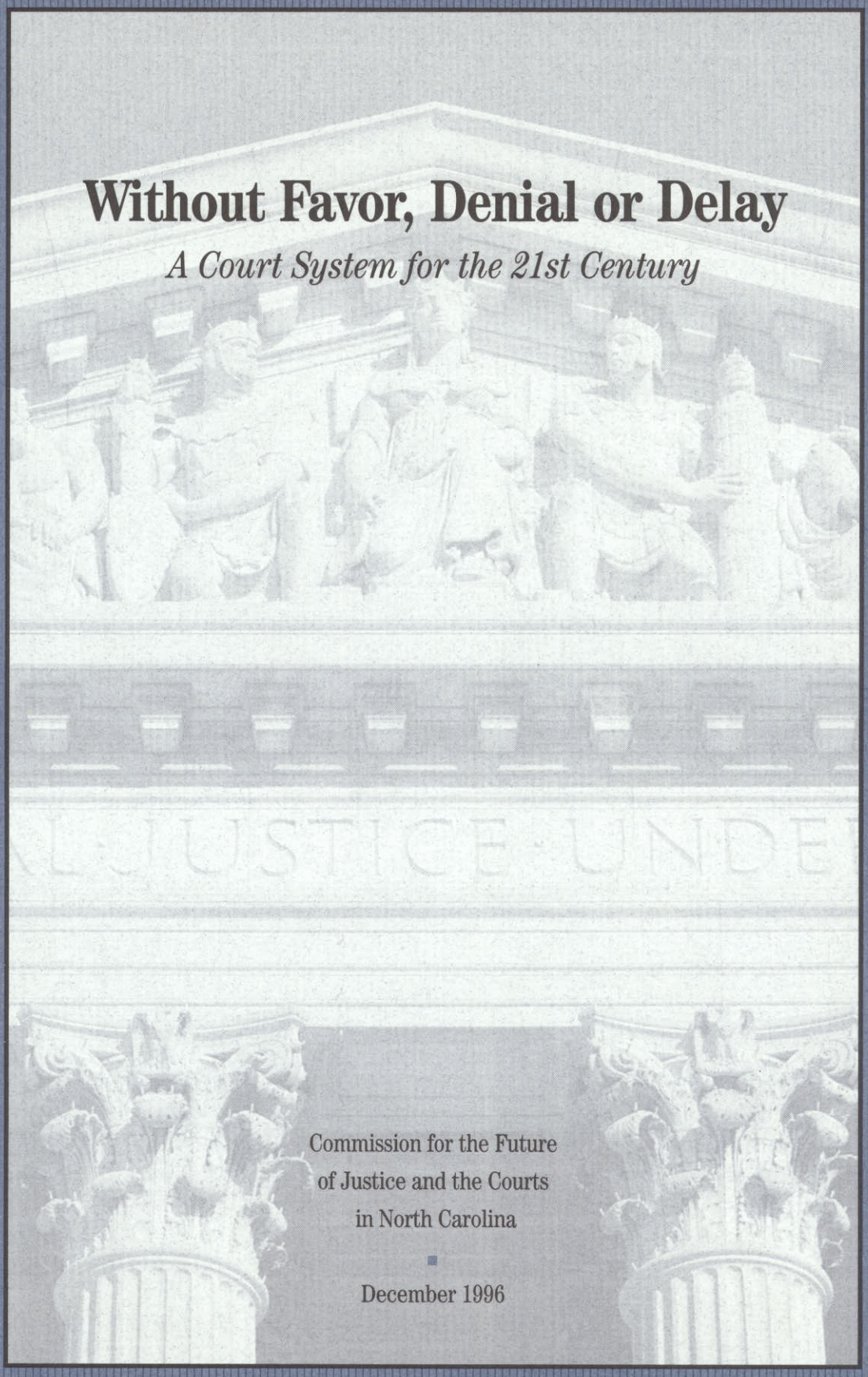


Without Favor, Denial or Delay

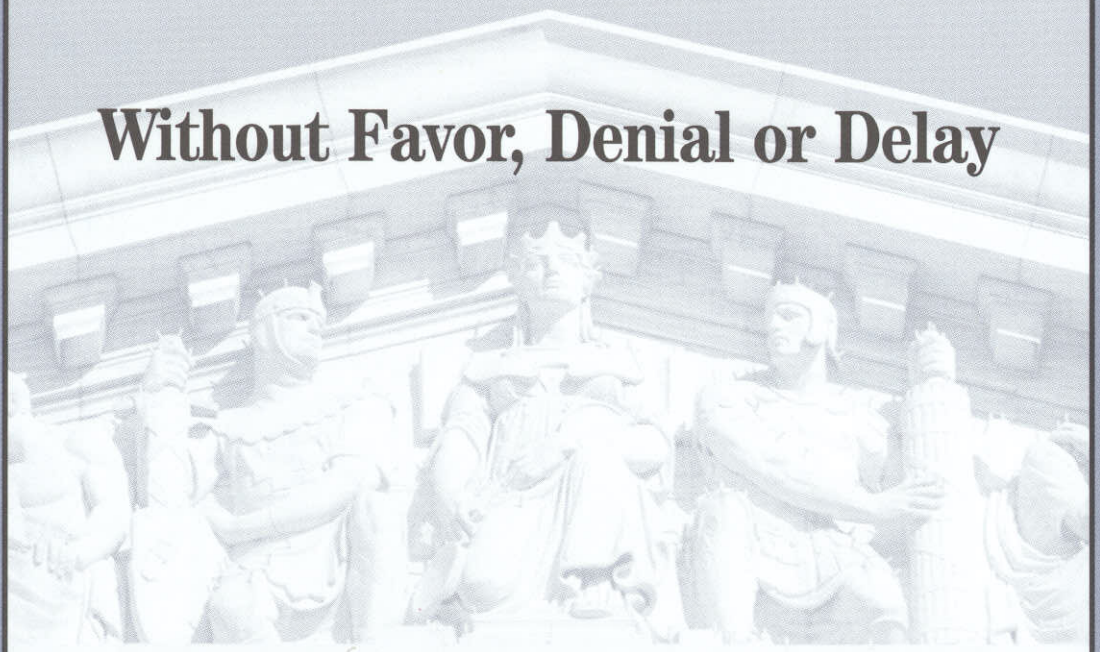
A Court System for the 21st Century

Commission for the Future
of Justice and the Courts
in North Carolina

■

December 1996

Without Favor, Denial or Delay



"All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial or delay."

Constitution of North Carolina
Article 1, Section 18

Our notions of justice have not changed much over the years. What does change, however, is how justice is delivered—and how satisfied the public is with the results.

In recent years there has been growing dissatisfaction with the courts. Justified or not, the public believes that cases take too long to resolve, that people with money are favored and that the system is not tough enough on criminals. Those who work within the system, meanwhile, are frustrated by the lack of resources, technology and respect. Despite their best efforts, they are being overwhelmed and frustrated by societal changes that the current system was not designed to handle, and they face even more challenges in the next century.

These conditions led Chief Justice James Exum to create the Commission for the Future of Justice and the Courts—the "Futures Commission"—in 1994. The Commission is an independent body of 27 members representing a broad cross-section of the state, in terms of geography, occupation, gender, race and perspective. Our charge is straightforward: to meet the public's demand for a better system of justice.

After spending the last two years studying North Carolina's courts, we have found that the best efforts of our judges, clerks, prosecutors, magistrates and others are not sufficient to overcome the structural and other deficiencies of the system in which they operate. The Commission's conclusion is that tinkering with and patching current operations will not satisfy the public demand for justice "without favor, denial or delay." Instead, we need to redesign the system itself.

We envision a system in which the best people can be attracted to serve, a system which provides them with the structure and tools to serve well, a system which holds them accountable for results, a system with enough flexibility to change with the times.

In the system we propose:

- Judges will be appointed based on merit rather than chosen in partisan elections
- Courts will have the authority to decide how they are organized and how they allocate resources
- A single, streamlined trial court will move cases faster and with more certain results
- Family matters will be handled by specially trained judges aided by a case management team
- Judges will have more responsibility for case management and will be accountable for their performance
- Alternative dispute resolution will be used more often and more effectively
- Technology will be employed to increase efficiency and responsiveness, providing citizens a level of service equal to what they receive from the private sector
- Public information and outreach will make people more aware of the challenges and accomplishments of the courts

Our report shows how to make this vision a reality.

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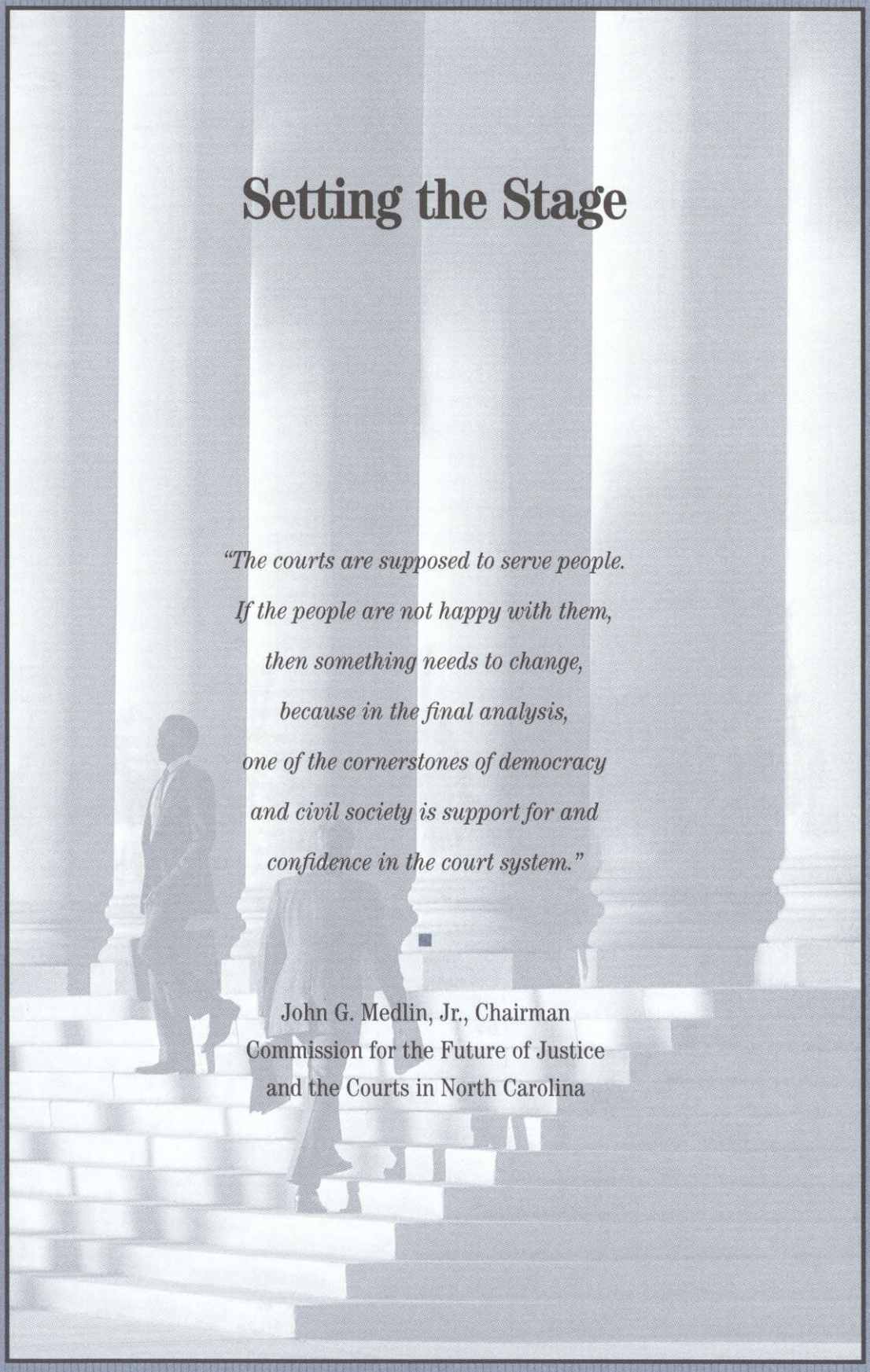


Setting the Stage

"The courts are supposed to serve people.
If the people are not happy with them,
then something needs to change,
because in the final analysis,
one of the cornerstones of democracy
and civil society is support for and
confidence in the court system."

John G. Medlin, Jr., Chairman
Commission for the Future of Justice
and the Courts in North Carolina

Other states are still trying to achieve the uniform court system North Carolina established over a quarter century ago. Many court administrators look with envy at our statewide, state-funded system and at the number of cases handled per judge. Our courts generally operate with professionalism and at a low cost to taxpayers. So why do we need to improve?

Quite simply, the world has changed dramatically since the 1950s, the last time there was a comprehensive review and redesign of the court system. That study by a North Carolina Bar Association committee chaired by J. Spencer Bell of Charlotte—the "Bell Commission"—led to the important improvements of the 1960s, including:

- Creation of a uniform system, with standard policies and procedures
- Establishment of a statewide district court system, replacing about 1,400 local courts
- State funding for all court officials and district attorneys
- Creation of a uniform state fee structure and an end to court salaries being tied to the costs assessed against parties
- Establishment of the Administrative Office of the Courts, the Courts Commission and the Court of Appeals

These changes made North Carolina a model state for court reform. But no large organization can remain static in today's environment and expect to succeed. As management expert Peter Drucker put it, "Any organization, whether biological or social, needs to change its basic structure if it significantly changes its size....Similarly, any organization, whether a business, a nonprofit, or a government agency, needs to rethink itself once it is more than 40 or 50 years old. It has outgrown its policies and its rules of behavior."

The gap between the system of the past and the needs of the present and future has resulted in rising dissatisfaction both inside and outside the court system. Judges and clerks are frustrated by the burdens placed on them, the lack of administrative support and the cumbersome processes built into the system. Attorneys fear that people are being herded through the process with little understanding. Advocates see families too often torn apart, rather than helped, by fragmented and adversarial procedures. And the public complains that the courts are too slow, too costly and unfair.

Why is this pressure coming to a head now? While North Carolina's courts have remained relatively static over the last few decades, the lives, behavior and needs of the people they serve are quite different.

A CHANGING LANDSCAPE

All the changes in our society—social, political, economic and technological—eventually show up in the courts. If the North Carolina court system is to be true to the original vision upon which it was founded, major adjustments must be made.

The Commission cannot predict the future, nor is that our job. Still, it is important to note what the state is likely to face. Before considering the alternatives, then, we outline the forces at work and the potential challenges they present.

The burden on the courts is growing. As government and the economy have grown and become more complex, additional individual rights have been

recognized and the nation has become more litigious, more responsibilities have landed on the courts. Profound social changes—stressed families, growing juvenile problems, the proliferation of illegal drugs—have added to the pressures on the judicial system.

One outcome is that disputes once resolved in homes, neighborhoods, churches, synagogues, schools and communities have become contentious public and legal matters. In a state of roughly 7 million people, an extraordinary *2.7 million* cases are now filed in the courts each year. While North Carolina's population grew 40 percent over the last 25 years, total annual court filings climbed by 132 percent, felony charges by 384 percent, and domestic cases by a stunning 483 percent.

Filings alone do not tell the whole story, however. Cases today are often more difficult and more costly to resolve. For example, as the right to counsel has expanded over the years, far more criminal defendants are entitled to a public defender or state-paid attorney. And more criminal cases involve offenses serious enough to prompt such rights. As a result, the state now spends close to $50 million a year on the defense of indigent defendants in criminal cases, compared to just $1.5 million in 1971.

Even greater changes have occurred in domestic cases. The breakdown in the traditional family structure that has transformed our society has also transformed our courts. When the district court was fully implemented in 1970 and given jurisdiction over domestic matters, for example, fewer than 20,000 cases were filed each year. Today, over five times as many cases are filed. Moreover, those cases now include complex questions of equitable distribution, a concept unknown 25 years ago.

North Carolina's Courts Face Increasing Pressures

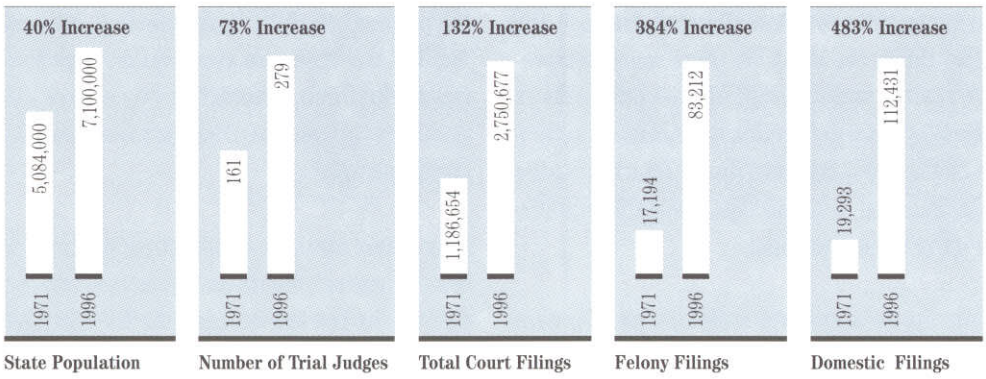


EXHIBIT 1

Source: Administrative Office of the Courts annual reports; Office of State Planning

The number of juvenile petitions also has climbed twice as fast as the state's population, and judges say that the youth they see are committing more violent crimes with less remorse. This is a far different world than the one district court was created to serve.

The growth will continue. The U.S. Census Bureau expects North Carolina's population to grow by another third, to 9.3 million, by 2025. A disproportionate share of the increase is projected to occur in Mecklenburg and Wake counties. While the urban areas will continue to boom, the more rural counties in the eastern and western ends of the state—Tyrrell, Hyde, Camden, Clay, Graham and others—are not likely to grow, making statewide uniformity even more difficult.

And, as the "baby boom" generation continues to age, the greatest population growth will take place in the age 60+ category. This group is expected to increase from one-sixth to nearly one-quarter of the population, which will put additional strain on the probate system.

Caseload projections beyond one or two years are notoriously unreliable. Nevertheless, it is worth noting that if filings were to increase only at the same rate as the population, our courts could expect over 4 million cases a year in 25 years. If the caseload growth followed the trend of recent years, the number could be more like 6 million. Under no scenario are the numbers likely to go down.

Expectations for how cases should be handled are changing. Although many court procedures are designed for the traditional adversarial model —a conflict between two sides, both of which need to be well represented, resulting in a trial—the fact is that few cases actually go to trial. Many are resolved by one side simply giving up, often because the cost is too high. Others are decided through settlement or alternative dispute resolution mechanisms, such as mediation or arbitration.

North Carolina's Population Is Aging

Population Changes by Age Groups (in millions)

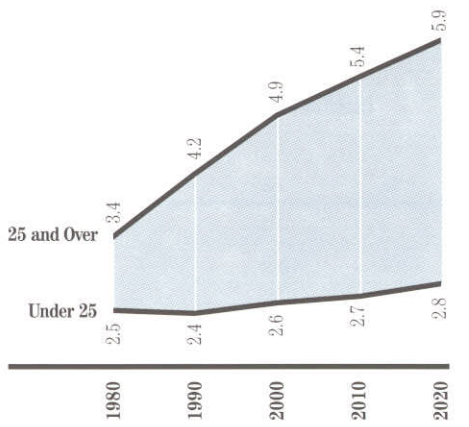


EXHIBIT 2 *Source: Office of State Planning*

North Carolina's courts are not well organized for this reality. While our state is a leader in experimenting with alternative dispute resolution, the current structure, staffing and procedures still are designed primarily to handle trials, with little support for all the activities necessary to resolve disputes in other ways. Courts need to consider other strategies and fully explore other means of alternative dispute resolution, such as returning some responsibilities to the community and serving as a referral, as well as decision-making, agency.

Resources are not keeping pace with demands. North Carolina's court system does well with what it is provided, but the resources are not always adequate or used most effectively. We have relatively few trial judges (about 300 statewide) compared to the number of cases filed each year—and we give our judges only modest support in terms of administrative staff and equipment.

Although the courts have done a reasonably good job of moving cases through the system, the process too often resembles "assembly-line" justice, especially in district court. Many cases do not get the individual attention they deserve. The current judicial budget (less than three percent of the state general fund) is not sufficient to provide needed improvements, particularly in the information technology that could enhance operations, customer service and public satisfaction.

There is also an imbalance in the way resources are distributed across the state. Some judicial districts serve ten times as many people as others, while the number of felonies disposed of ranges from fewer than 450 in some districts to more than 6,000 in others. Population and caseloads are growing much faster in urban areas than the resources to handle them. Managing such diverse caseloads inevitably leads to inequities, despite the state's best attempts at uniformity. More significantly for the future, some districts are simply too small to be cost effective for

the administrative and technological support the courts need.

The political environment is shifting. For a variety of reasons—economic insecurity, private sector competition, technological advances—people are demanding better service for their tax dollars. This trend is reflected in political volatility, taxpayer revolts and a tendency to bash government, including the courts.

The courts also are affected by North Carolina's transformation to a true two-party state. District judgeships have always been contested in some locales, but when state offices were dominated by one party, we had, in effect, an appointed appellate and superior court bench, subject to retention election. Now, elections are contested up and down the ballot in all regions of the state. Races for judges, district attorneys, clerks and other elected positions have become—and will continue to be—more competitive. With less visibility than other offices on the ballot, elections for these court officials are more likely to be influenced by special interest groups with narrow agendas.

Using history as a guide, we can expect increasing criticism of the courts as part of campaigns, which will lead to even more negative perceptions and greater public distrust. We can also expect, as we already are beginning to see, the restraints on the political decorum of the past begin to fade in these elections.

Competition is being introduced into the public arena. The evidence from other areas of government is that if people don't believe that a public institution is meeting their needs, they will look for alternatives. With the quest for better service and value has come a strong movement toward privatization; that is, the entry of the private sector into functions once considered the realm of government alone. In everything from mail delivery to garbage collection and prisons,

District Caseloads Vary Considerably

District	6A	9A	24	18	10	26
Number of counties in district	1	2	5	1	1	1
1990 population	56,858	51,883	101,047	359,536	474,182	550,805
Resident superior court judges	1	1	1	5	6	6
Felonies filed, 1995-96	621	759	527	5,489	4,060	6,286
Felony jury trials, 1995-96	24	13	9	161	149	179
Civil cases filed, 1995-96	146	67	243	1,410	1,837	2,641
Total civil trials, 1995-96	13	15	33	197	181	603
Civil jury trials, 1995-96	2	3	11	38	52	51

Counties in districts: **District 6A:** Halifax
District 9A: Caswell, Person
District 24: Avery, Madison, Mitchell, Watauga, Yancey
District 18: Guilford
District 10: Wake
District 26: Mecklenburg

EXHIBIT 3 *Source: Administrative Office of the Courts annual reports*

the effects of increased competition and privatization are having a profound impact on government.

Although the trend is not as pronounced in North Carolina as in other parts of the country, more citizens are looking for alternatives to the present legal system. More are representing themselves rather than hiring attorneys, and more of those with lawyers are using retired judges to decide their cases privately rather than going to court.

To the extent that this trend keeps disputes that do not require a judicial resolution out of the courts, it is encouraging. On the other hand, in some instances the use of other means of dispute resolution may represent a loss of confidence in the public court system to decide matters quickly and fairly. Also, the diversion of too many important disputes to private adjudication can undermine the development of the coherent body of public court decisions necessary to guide society.

Information Technology Is Advancing Rapidly

Time to Transmit Contents of the Library of Congress

Year	Data Capacity	Transmission Time
1950	40 bits/second*	158,000 years
1980	9,600 bits/second	661 years
1990	56,000 bits/second	113 years
1992	45 million bits/second	53 days
1997	Estimated 1 billion bits/second	51 hours

*Bit is the basic unit of data communication. It describes how much information is transmitted in a period of time.

EXHIBIT 4 *Source: MCNC*

Technology is making new approaches possible. Advances in technology are creating a revolution in the way people work and live. The increasing availability of information, and the decreasing time and cost required to access and process it, have raised expectations among consumers. These demands are now being applied to the public sector, including the courts.

Unfortunately, North Carolina's courts are not able to take advantage of the potential of technology, since they still rely largely on manual processes and information systems 10 to 15 years behind the times. As a result, the courts' processes are too slow, paper-intensive, error-prone and costly, which in turn contributes to the public perception of the courts as an inefficient bureaucracy. This may be one of the largest gaps between where the state is now and where it needs to be. Conversely, bringing the technology up to date will be one of the most valuable investments the state can make.

One example illustrates how the public perception can be improved through existing technology. Today a citizen who receives a ticket for certain traffic offenses must go to the clerk's office to pay the fine or appear in district court. Untold hours of citizens and court officials are wasted as dozens of people are scheduled for district court at the same time, the judge spends much of the day granting continuances, standard pleas are bargained in the courtroom, and payment has to be made in cash. With automated voice response systems, the same transactions could all be conducted on touch-tone telephones and payment made by credit card. The resolution would be quicker and more convenient for everyone, producing a higher regard for the judicial branch.

VIEWS OF THE COURTS

One clear change in recent years is the decline in public support for the courts. Given the fact that the courts have stayed much the same while our society has undergone major shifts, this perception is not surprising. Yet confidence in the courts is a corner-

stone of democracy and must be rebuilt.

Through statewide public hearings, focus groups and a telephone survey, the Commission has confirmed how far the courts have fallen in the public eye. We also learned how discouraged people in the system feel. Specifically:

The public has little confidence in the courts. Only 38 percent of North Carolinians have a favorable impression of the state court system, according to a 1995 telephone survey of 805 North Carolinians conducted for the Commission by Wilkerson and Associates of Louisville, Kentucky. Meanwhile, 33 percent have an unfavorable impression. The rating for local courts was more positive—up to 50 percent favorable—but still fell short of ratings for public schools (66 percent), the news media (65 percent), and the General Assembly (51 percent). While this attitude may be no different in North Carolina than in other states, it is still disturbing.

Survey Shows Limited Support for Courts

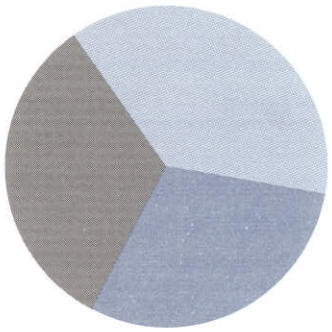


EXHIBIT 5 *Source: Wilkerson & Associates Survey*

The public knows little about the courts. In the same survey, 30 percent of the participants said they did not know enough about the courts to express an opinion. Only 40 percent knew that the state Supreme Court is an elected body. Of the 60 percent who said they voted in the 1994 general election, only half recalled voting for judges—and three-fourths of that half could not name a single judge on the ballot. These findings suggest that the public accountability supposedly gained through elections is a myth.

The survey responses were underscored by the responses of participants in focus groups organized by the Commission. When asked how many cases are filed in North Carolina state courts each year, no one came within two million of the correct number. The same people overestimated six-fold the portion of the state budget going to the judicial system.

The public is dissatisfied with the results. Over 70 percent of those surveyed said the courts were too lenient to criminals, that victims are treated worse than criminals, and that people with money get preferential treatment. Over 40 percent believe there is a serious problem with bias of judges. More troubling, those who had been to court as a party to a case, a witness or a juror were more critical of the courts than those with no direct contact. People with experience in domestic cases expressed the highest level of dissatisfaction.

The Commission is well aware that these responses indicate problems not just with the court system, but with government and the legal system as a whole. Unfortunately, the public does not always understand the distinctions between the courts and the other agencies. Most citizens do not realize, for example, that the General Assembly defines what is criminal and sets the standards for punishment, that the district attorney determines the charge, that the jury determines guilt or innocence, and that the judge's role is limited to assuring that the trial is fair and that the sentence is set within the narrow range established by the legislature. Yet the public often blames "the courts" for an inadequate criminal justice system.

However, whether the public's attitudes are justified is beside the point. To get the support necessary to improve the system, the courts must gain the confidence of the legislature and people of North Carolina. That confidence can be achieved partly through education, but will primarily depend on visible steps to improve the speed, effectiveness and efficiency of the court system.

Court officials are dissatisfied. Responses to the Commission's survey of judges mirrored the comments heard directly at public hearings and Commission meetings. A majority of the judges agreed with the general public that it takes too long to conclude cases. Almost 60 percent of district judges also identified a problem with attorneys getting continuances or otherwise delaying cases. Over a third of all judges considered their facilities and staff inadequate, and over two-thirds wanted to see more judges and clerks. By a two-to-one margin they would prefer appointment to election, and over 70 percent would endorse a merit selection/retention election system, as the Commission proposes.

There is a willingness to change. The silver lining in the cloud of dissatisfaction with the courts is a growing willingness to consider change. Every reform suggested to respondents in the telephone survey received at least majority support, including the appointment of judges. Judges often agreed. For example, 84 percent of the public favor a family court, and 69 percent of district judges concur. Over two-thirds of both the public and judges support the idea of mandatory mediation before a civil case can be filed. Both support the use of smaller juries.

The willingness of the public to accept changes in the system should be gratifying both to those within the court system and to the public officials who must consider and approve the legislation necessary to implement the structural changes that will provide North Carolina with a court system for the future.

North Carolinians Favor Innovative Approaches

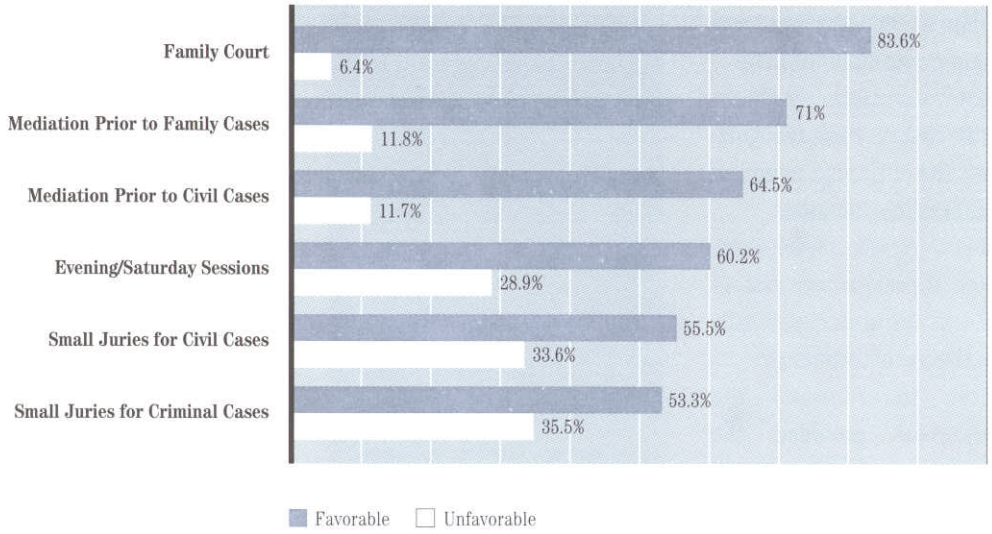


EXHIBIT 6

Source: Wilkerson & Associates Survey

ISSUES TO BE ADDRESSED

The changes we have described, and the opinions of the public and judiciary, help define the issues that must be addressed in any discussion of court reform. The most significant questions facing the Futures Commission have been these:

- How to protect the judiciary from politicalization
- How to structure the courts to be flexible enough to adapt to changing times and unforeseen circumstances
- How to maintain a uniform state system while recognizing the different needs of different communities
- How to provide a level of service approximating that of the private sector, especially in the use of technology
- How to increase the resources provided the courts—and make judicial officials accountable for effective use of those resources
- How to empower court officials to control the organization and operation of the system
- How to assure strong leadership of the courts
- How to better inform the public of what the courts are doing and why

> *"The public's opinions of the statewide North Carolina court system are not very favorable and well below the levels we feel are necessary to maintain widespread public support."*
>
> ■
>
> Wilkerson & Associates
> October, 1995

THE FUTURES COMMISSION

The Commission for the Future of Justice and the Courts in North Carolina was created by former Chief Justice James Exum in 1994—and continued by his successor, Chief Justice Burley Mitchell—to address these questions. The 27 members of the Commission have worked together for over two years to develop the answers. Our conclusions are summarized in the remainder of this report, which presents an overview designed to be understandable and relevant to those inside and outside the courts. More detailed background reports are available for those interested in additional information.

Who we are. The Futures Commission is a diverse group. A majority are lawyers, but the members include people from business, newspaper publishing, social services, law enforcement, academia and the legislature. The chairman is a banker with no prior experience with the judiciary. One of the vice chairs is a law professor and former chief justice; the other is a former legislator and a retired superior court judge. We represent all regions of the state, large urban areas and small communities, and a broad cross section of the population.

Despite this diversity, the members of the Commission share a common outlook and purpose: a commitment to going beyond personal interest to serve the public good. Our ultimate goal is to find the very best system of justice for the state and its future.

Commission members served without pay, but our staff and administrative expenses have been funded by the Governor's Crime Commission and the Z. Smith Reynolds Foundation. We have been supported by a small and able staff and by attorneys, law professors and Institute of Government faculty. Although the chief justice purposely appointed no incumbent court officials to the Commission—to avoid even the appearance that anyone has a vested interest in

maintaining the status quo—a number of judges, prosecutors, clerks and others have served as advisory members, and still others have made presentations, written to the Commission or otherwise assisted our efforts.

How we conducted our work. To make its task more manageable, the Commission subdivided into seven committees covering:

- Citizens' Involvement
- Civil Justice
- Criminal Justice
- Family Issues
- Governance
- Technology
- Resources and Administration

The committees met frequently during the past two years, presenting findings and recommendations to the full Commission at regular monthly meetings. While our preliminary results occasionally overlapped or conflicted, there has been a remarkable synergy overall.

Our first and perhaps most important step as a Commission was to solicit and evaluate the views of the public about the court system. Seeking broad input, we organized six public hearings across the state in the summer of 1995, plus 10 focus groups and a 805-person telephone interview survey. In addition, numerous parties appeared before the committees and the full Commission, and questionnaires were sent to all judges to solicit their views. We are grateful for the help of many advisors, including sitting judges, prosecutors and clerks, who offered an invaluable inside view of the system. All are listed in the appendices.

The Commission has made every effort to keep others informed of our findings and conclusions along the way. We have kept all meetings open to the public. As the Commission began to settle on its recommendations in the summer of 1996, a detailed document summarizing those proposals was circulated to the major newspapers, to all lawyers and court officials, and to interested organizations, and additional public hearings were held to allow people to respond.

Commission members and staff also made personal appearances at meetings of the North Carolina Bar Association; conferences of superior and district court judges, clerks of court and district attorneys; local bar associations; civic clubs; the North Carolina Academy of Trial Lawyers; the League of Women Voters; the Black Lawyers Association; the North Carolina Press Association; and other groups. Public comment was invited and welcomed. Finally, the Commission published a newsletter, *de novo*, as a vehicle for communication with a wide audience.

Furthermore, the Commission heard presentations by representatives from other states about similar projects; visited other states that have model programs in particular areas, such as family courts; reviewed population projections by the North Carolina state demographer; and held several sessions with a strategic planning consultant. All of these approaches helped us stretch our thinking and focus on the future.

GUIDING PRINCIPLES

As we studied the courts, heard from experts and citizens and reviewed the literature, the Futures Commission developed four fundamental principles of court organization and management to guide our decisions. The court system we propose is intended to serve those principles: accountability, independence, flexibility and uniformity.

Accountability. Today's public is more skeptical of government and more demanding that officials be accountable for the performance of their agencies. We cannot expect support for the improvements that are needed in the courts unless the public is convinced that judicial officials are answerable for

what they do—not for how they decide cases, but for whether they act promptly, treat citizens with respect and use their resources efficiently and wisely.

Accountability was one of the fundamental goals of the Bell Commission as well. As Spencer Bell said in 1958: "Only by pin-pointing responsibility can the people fix blame for failure and force corrective action." On the positive side, accountability motivates, recognizes and rewards good performance.

We also agree with the Bell Commission that responsibility must rest with those with the expertise to do the job—that is, the courts themselves. Thus, accountability goes hand in hand with authority.

> *"Delay in justice is injustice."*
>
> Walter Savage Landor

The vision for such a system, as planned in the 1950s, was never fully realized, however. In the process of creating the uniform court system in the 1960s, the legislature rejected proposals to have the new district judges appointed by the chief justice, to give the Supreme Court the power to set the rules of trial procedure, and to allow the Supreme Court to realign trial court jurisdiction and reorganize districts. Court officials cannot fairly be held accountable unless they have the authority and resources needed to run the courts.

Independence. The judiciary should be, in both theory and reality, an equal branch of government with the executive and legislative branches. While our system of checks and balances requires some legislative control over the judiciary, the court system must operate independently. It cannot meet its obligations if it must depend on other branches for so many key decisions about structure, governance, rules and budget. Today, the legislature decides how to allocate officials. It decides the rules of procedure. It decides the duties of magistrates. It sets district lines. If the judicial branch is to be equal in fact, and accountable, court leaders must control more of those decisions.

Independence of individual judges is just as important. Every group that has studied the state's courts in the last three decades has come to the same conclusion: elimination of the election of judges is essential to a truly independent judiciary. Why? Judges simply cannot be looking over their shoulders to see how a decision will affect campaign contributions or play in the press. The increased political competition that has arisen since the 1960s makes the case for appointment of judges even more compelling today.

Flexibility. The establishment in the 1960s of the single, statewide district court system—and the elimination of 1,400 local courts with differing jurisdictions and rules—was a giant step forward in flexibility. In this system, matters within the district court could be heard by any judge in the district, judges could be moved from one district to another in emergencies, and magistrates were added to relieve judges of some responsibilities.

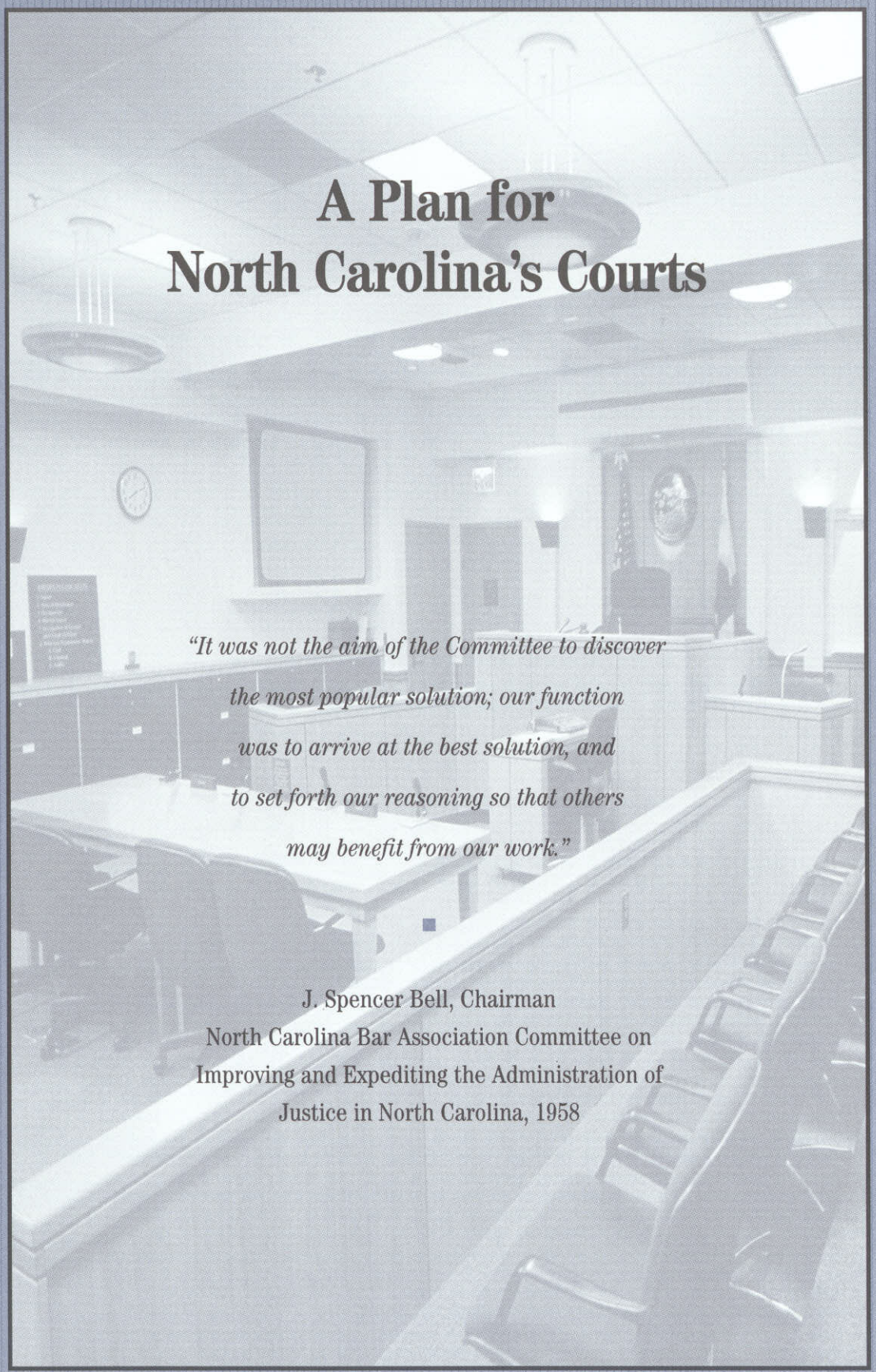
The flexibility and adaptability of the General Court of Justice is limited, however, by the split of the trial court into superior and district court divisions, by the reliance on terms of superior court and by the rotation of judges. Many days a judge in district court will be overwhelmed, while a superior court judge's calendar is completed for the week, or vice versa. Or a courtroom in one county will be overflowing, while a courtroom in another county a few miles down the road sits vacant. And too many citizens wait too long because no term of superior court is scheduled in their county for weeks or months.

A system is needed in which judges can be assigned more easily to the courthouses where they are needed

and in which county lines do not serve as a rigid barrier to efficient use of court space.

Uniformity. Justice should not be a matter of geography. People across the state should have access to basically the same facilities and the courts should approach their business in a uniform way. However, uniformity does not mean every court must be exactly the same; for example, Tyrrell County may not need a drug court, while Mecklenburg County does.

The changes of the 1960s made great strides toward uniformity, but time has eroded some accomplishments, especially in the alignment of judicial and prosecutorial districts. The extraordinary population growth in some urban areas and legislative splitting of districts in response to local political problems has left far greater differences among districts than those that existed before the General Court of Justice was created. New solutions are needed to correct this imbalance and to restore greater uniformity.



A Plan for North Carolina's Courts

"It was not the aim of the Committee to discover the most popular solution; our function was to arrive at the best solution, and to set forth our reasoning so that others may benefit from our work."

J. Spencer Bell, Chairman
North Carolina Bar Association Committee on
Improving and Expediting the Administration of
Justice in North Carolina, 1958

The members of the Futures Commission envision a court system that is defined by accountability, independence, flexibility and uniformity...A court system that is responsive to the people of North Carolina...A court system that takes advantage of technology to speed up its processes, contain costs and improve the results...A court system where:

- Cases are heard fairly and promptly
- Victims are treated with respect and dignity
- Criminal defendants receive fair, even-handed and expeditious treatment
- Witnesses and jurors are inconvenienced as little as possible
- Families are treated as a unit, rather than as disparate elements
- Disputes that can best be resolved without a trial are handled by other means
- Parties are treated the same, regardless of wealth, location or status
- The public understands the distinct function of the judicial branch
- Judges are not, nor perceived to be, political
- Courts can adapt to new circumstances and are highly respected and valued for the services they provide

What we are proposing is a package of significant changes designed to make North Carolina a model of court reform once again. Members of the Commission realize that some of our proposals may not be popular with everyone, but we believe that with a rising public clamor for change and with courageous leadership, they can be adopted.

While we recognize that it will take time to put these recommendations into place, our charge was to present what we believe is best for North Carolina, not just what can be quickly or easily achieved. The central components of our plan will:

- Allow court leaders to decide how the system is organized and how resources are allocated to meet the needs of the public
- Establish a single trial court—the circuit court—to increase flexibility, accountability and efficiency
- Streamline the 40 district court and superior court districts to 12 to 18 circuits
- Assure independence by freeing judges from partisan political campaigns
- Establish a family court within the circuit court to meet the special needs of North Carolina's families
- Place final responsibility for the courts in each circuit with a chief judge, and provide a professional administrator to assist
- Create a State Judicial Council to help govern the system
- Move public prosecution and defense from the Administrative Office of the Courts to the executive branch to assure separation of powers
- Accelerate current efforts in alternative dispute resolution
- Develop a long-range technology plan and set statewide standards to improve efficiency and the availability and reliability of information
- Better educate the public about the courts

The changes we propose will require time to implement. As described on pages 69-71, we recommend legislative action in 1997, followed by a planning period, then actual implementation of the new circuit court beginning January 1, 2000. We also propose, as outlined in the conclusion of this report, that all incumbent court officials complete their present terms, that judges then automatically stand for a retention election without a need for appointment, and that clerks and magistrates be reappointed

unless there is good cause for removal. Such continuity and stability is needed to allow the circuit court to succeed.

Once the new court system is in place, here's how it will work.

Structure. North Carolina's courts will be structured to resolve disputes in a fair, timely and efficient way. The General Court of Justice will remain as a statewide and state-funded system, consisting of trial and appellate courts. But instead of two levels of trial court—district and superior court—there will be a single trial court, called a circuit court. The availability of judges will no longer depend on whether a term of court has been scheduled or whether the right division of the court is in session; all judges may be assigned as needed.

The state's 40 district and superior court districts will be consolidated into 12 to 18 circuits. All trial judges will thus become circuit judges, and the chief justice will select one from each circuit to serve as the chief judge of that circuit. Each chief judge will be assisted by a circuit administrator—a professional manager responsible for setting court schedules and assigning judges and cases, with the approval of the chief judge. This arrangement will allow the chief judge to serve as a trial judge, rather than just as an administrator, but with a smaller caseload than the other judges.

Circuit judges will be assigned, as appropriate, to major criminal cases, minor criminal cases, civil cases and family law cases. They also will rotate from county to county within their circuit. In making assignments, the chief judge will assign the most experienced judges to the most complex cases, but any judge will be available to sit in another court, depending on needs and caseloads.

Magistrates will take on a more important role in this system. Those who are lawyers will be allowed to try infractions and to hear civil disputes involving more than the current small claims limit—eventually up to $25,000. Likewise, clerks of courts will retain their present judicial functions, continuing to serve as judges of probate, determine competency, hear adoptions, decide guardianships and conduct various other special proceedings.

Family Court. Within the circuit court, there will be a special section to deal with family cases. Specially trained judges will hear family law cases, sitting in that court for a minimum of three consecutive years to maximize their expertise. All matters concerning the same family will be assigned to a single judge, who will be supported by a case manager and other appropriate personnel to monitor the case and address non-legal issues. While assigned to family court, a judge may still hear other kinds of cases if needed; after the three-year assignment, the judge may stay or move on to other cases in a regular rotation.

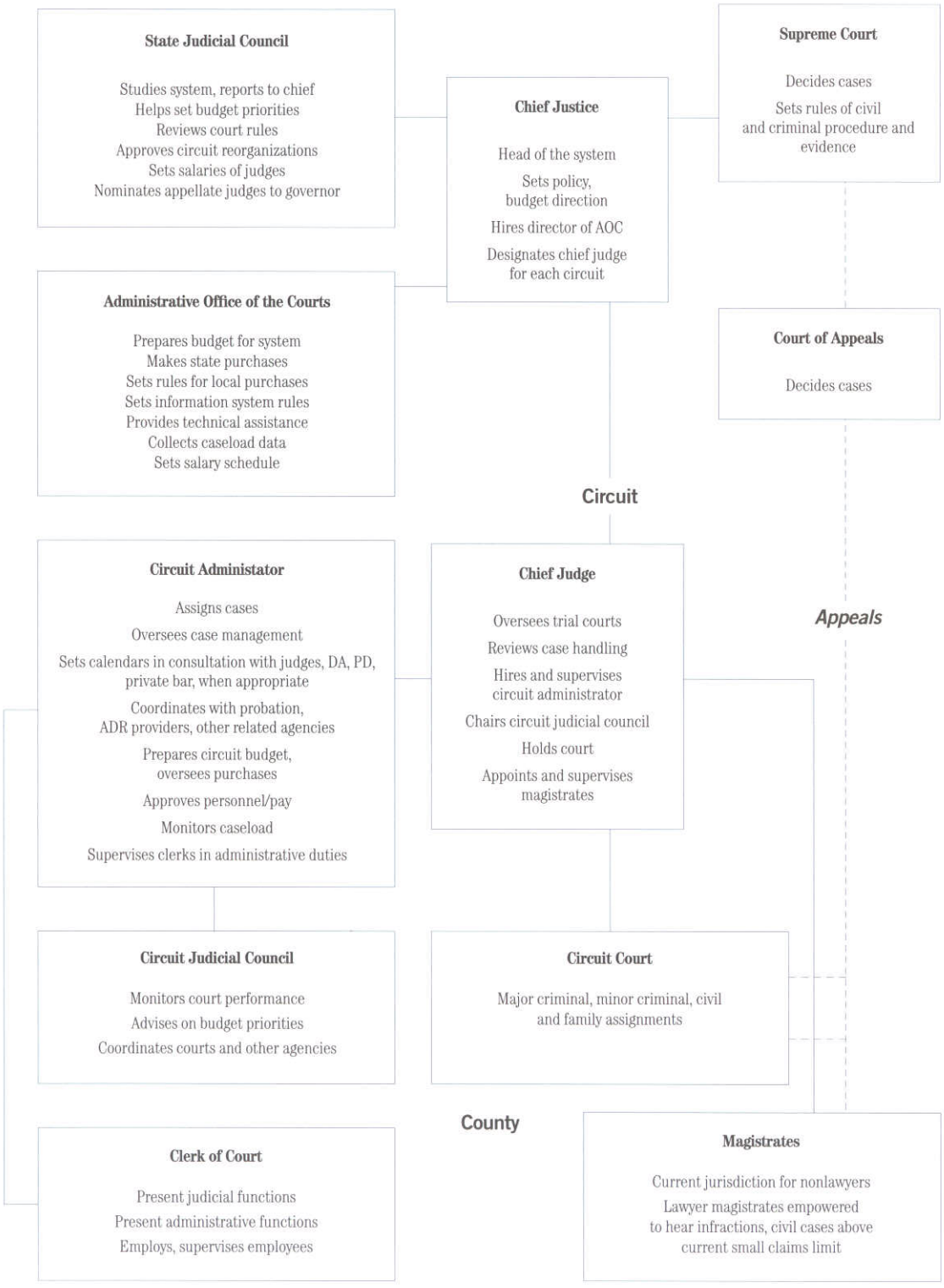
Circuits. The circuits used for the trial court will also be applied to circuit attorneys—formerly known as district attorneys—and public defenders, once again making all those lines coterminous. Due to variations in geography and population density across the state, the circuits will not be the same in size or character. Some circuits will be large urban areas with more than a million people, requiring full-time administrators with staff assistants and multiple courtrooms open at all times. Other, more rural circuits may require only part-time administration and court will be held in different counties at different times.

The circuits are designed to assure a more expeditious, cost-effective and efficient court system. Each will be small enough for convenient travel and large enough to support an administrative staff, as well as the computer technology that can provide the assistance with case management so frequently missing in the present system. With fewer, more cohesive divisions, it will also be easier to manage technology and other process improvements.

The Commission does not propose a specific circuit

EXHIBIT 7

Organization of the Court System



Three Alternative Circuit Maps

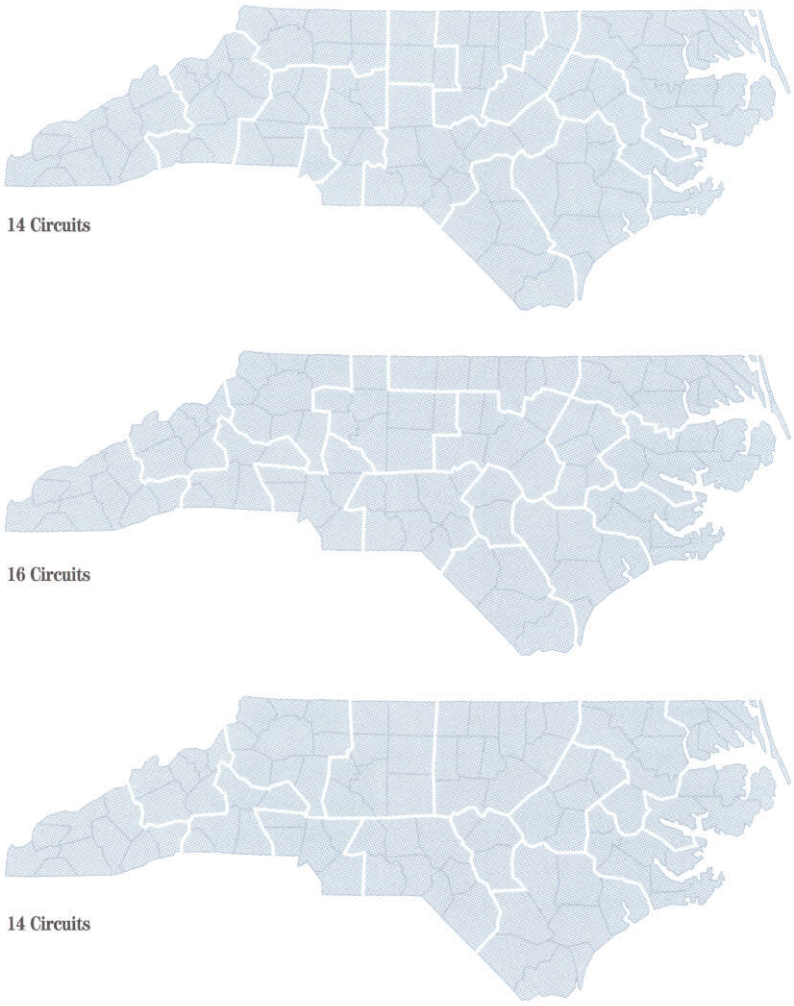


EXHIBIT 8 *Source: OR/Ed Laboratories*

geographic plan. Instead, we commissioned OR/Ed Laboratories to simulate several examples. In each, the smallest circuit has the minimum population and caseload required for a cost-efficient operation. Otherwise, each of the examples emphasizes a different factor. In one, geographic compactness is given more weight, in another keeping urban areas together is most important, and so on. Any one of the simulations might be a satisfactory solution.

The chief circuit judge, working with the circuit administrator, will decide when court should be held in the various courthouses in the circuit. Even the smallest circuits will be large enough to assure that court can always be in session, with a judge available to hear motions, conduct pretrial proceedings and hold other non-trial events for cases originating anywhere in the circuit. In the more compact circuits, a trial may be held anywhere in the circuit, at the location first available. In larger circuits, venue will be limited to a group of nearby counties.

The circuit administrator will provide the professional assistance to allow the chief judge to continue to act primarily as a judge. The administrator will prepare budgets, oversee all financial operations, review facilities, recommend transfers of funds, compile statistics, and otherwise manage the administrative side of the courts. Creation of this position will allow the transfer of some administrative responsibilities from Raleigh to the circuit level.

- The chief justice will appoint the chair of the panel created in each circuit to nominate candidates for trial judgeships
- The chief justice will designate the chief circuit judges
- The chief justice will continue to appoint the director of the Administrative Office of the Courts

The chief justice will also chair the new State Judicial Council, a high level governance board similar in stature and role to that of the University of North Carolina Board of Governors. The council will regularly review and offer advice on the operation of the courts, including setting budget priorities, approving changes in circuit boundaries and nominating candidates to the governor for appointment to the Supreme Court and Court of Appeals. For obvious reasons, though, court officials on the council will not participate in nominating appellate judges.

Advantages of a Circuit Court

- More even allocation of resources and personnel
- Greater convenience to citizens by having court open at all times
- Maintenance of a uniform court system, while permitting local flexibility in organization and budget
- Closer supervision of court officials, better case management
- Adaptability to growth in caseload
- Assignment of judges closer to home, but with rotation from county to county
- Consolidation of services for large urban areas
- Sufficient size to support a family court and its specialized services
- Cost efficiency for new technology
- Suitability for construction of specialized regional facilities such as high-tech or high-security courtrooms

EXHIBIT 9

Governance. The judicial branch will be an equal branch of government, responsible for its own organization and allocation of resources. As the chief executive, the chief justice will have the necessary authority and resources to manage the court system. That will mean:

- The chief justice and Supreme Court will have the authority to adopt and alter the rules of civil and criminal procedure and the rules of evidence, with veto rights by the legislature
- With the approval of the new State Judicial Council, the chief justice can alter the boundaries of circuits as population shifts, caseload changes and other circumstances warrant
- The chief justice, with concurrence of the State Judicial Council, can transfer funds within the two major categories—personnel and non-personnel—of budget appropriations

The State Judicial Council will set performance standards for judges and other court personnel and establish a mechanism for evaluating judges on a regular basis. At the beginning of each biennial legislative session the council will propose the salary schedule for judges, which will go into effect unless rejected by the General Assembly.

The council, described in more detail on pages 34-35, will include members appointed by the governor, speaker of the House, president pro tem of the Senate, and chief justice, plus several court officials. More than two-thirds of the members will come from outside the court system, and a majority of those will be non-lawyers.

Judicial councils established at the circuit level will have a different composition and role than the state council. Each circuit council will be chaired by the chief circuit judge and include representatives of the circuit attorneys, public defenders, clerks of court, the private bar and related agencies, and citizens appointed by the boards of county commissioners. This board will monitor the local courts to see how well they are solving the problems of their area and meeting state standards, and will advise the chief circuit judge and circuit administrator on matters requiring cooperation between the courts and other affected parties and agencies. In addition, it will help determine the budget priorities for the circuit and review local rules.

Judges. Judges will be appointed by the governor to eight-year terms subject to voter approval at retention elections. For the Court of Appeals and the Supreme Court, the State Judicial Council (minus its court official members) will submit three nominations for the governor's selection. The individual chosen will stand for a retention election at the first general election occurring more than a year after the appointment. If retention is approved by the voters, the judge or justice will serve an eight-year term, followed by another retention vote. For the appellate courts, the retention election will be statewide; for trial judges, it will be within the circuit only.

Nominations to the governor for trial judgeships will come from circuit nominating panels consisting of nine members: four non-lawyers appointed by the State Judicial Council, four lawyers named by the circuit bar and a chair chosen by the chief justice. The procedure will be the same as for appellate appointments; that is, the governor will choose from the three nominees and the judge selected will have to stand for retention elections at the next general election and every eight years thereafter.

At each election, the state or circuit nominating panel will publicize its recommendation on whether the judge should be retained. That recommendation will be based on the regular evaluation conducted for each judge. As now, all judges and justices will be subject to discipline and removal by the Supreme Court, following investigation and recommendation by the Judicial Standards Commission.

As part of the move toward greater independence, judges' salaries will be set by the State Judicial Council, subject to disapproval by the General Assembly. Competitive salary schedules, combined with merit selection, will help attract the best qualified attorneys to these positions.

Prosecution and Defense. North Carolina's courts will no longer have to juggle the inherent conflicts of a judicial department housing both the judges who hear disputes and the prosecutors and public defenders who represent the state and defendants in criminal cases. The new more rational approach will place circuit attorneys and public defenders in the executive branch. As a result, judges who decide cases will no longer have even nominal supervisory or budgetary authority over the advocates who appear before them.

For organizational purposes, the circuit (district) attorneys will be located in a free-standing agency called the Office of Solicitor General. That office will assist and help train the circuit attorneys and prepare a budget for submission to the governor to be transmitted to the legislature. The solicitor general, appointed by the governor for a six-year term, will represent the state in all criminal appeals, but in some instances may choose to allow the circuit attorney to keep and handle the case through appeal.

Similarly, an Office of State Public Defender will be

How Judges Are Chosen

State Supreme Courts	
Appointed by the Governor	**25 States**
From names submitted by commission	21
Without nominating commission	4
Retention election at end of term	15
Reappointment by governor at end of term	4
Retains office for life unless removed	3
Reappointment by nominating commission	1
Reappointment by legislature	1
Partisan election after first term, then retention elections	1
Nonpartisan Elections	**12 States**
Partisan Elections	**10 States**
Initial and all subsequent elections are partisan	8
Initial election partisan, then retention elections	2
Election by the Legislature	**3 States**
Subject to reelection by legislature	2
For life	1

General Trial Judges	
Appointed by the Governor	**18 States**
From names submitted by commission	15
Without nominating commission	3
Retention election at end of term	8
Reappointment by governor at end of term	3
Retains office for life unless removed	3
Reappointment by nominating commission	1
Reappointment by legislature	1
Nonpartisan election at end of term	1
Partisan election after first term, then retention elections	1
Nonpartisan Elections	**16 States**
Partisan Elections	**13 States**
Initial and all subsequent elections are partisan	11
Initial election partisan, then retention elections	2
Election by the Legislature	**3 States**
Subject to reelection by the legislature	2
For life	1

EXHIBIT 10 *Source: American Judicature Society; National Center for State Courts*

established within—but independent from—the Office of Administration. A governing board will choose a state public defender who in turn will name a public defender for each circuit. The circuit public defender will be responsible for seeing that counsel is provided for all qualified indigent defendants in the circuit, either through a public defenders office or through private counsel reimbursed by the state.

The geographic subdivisions for circuit attorneys and public defenders will be the same circuits as used for

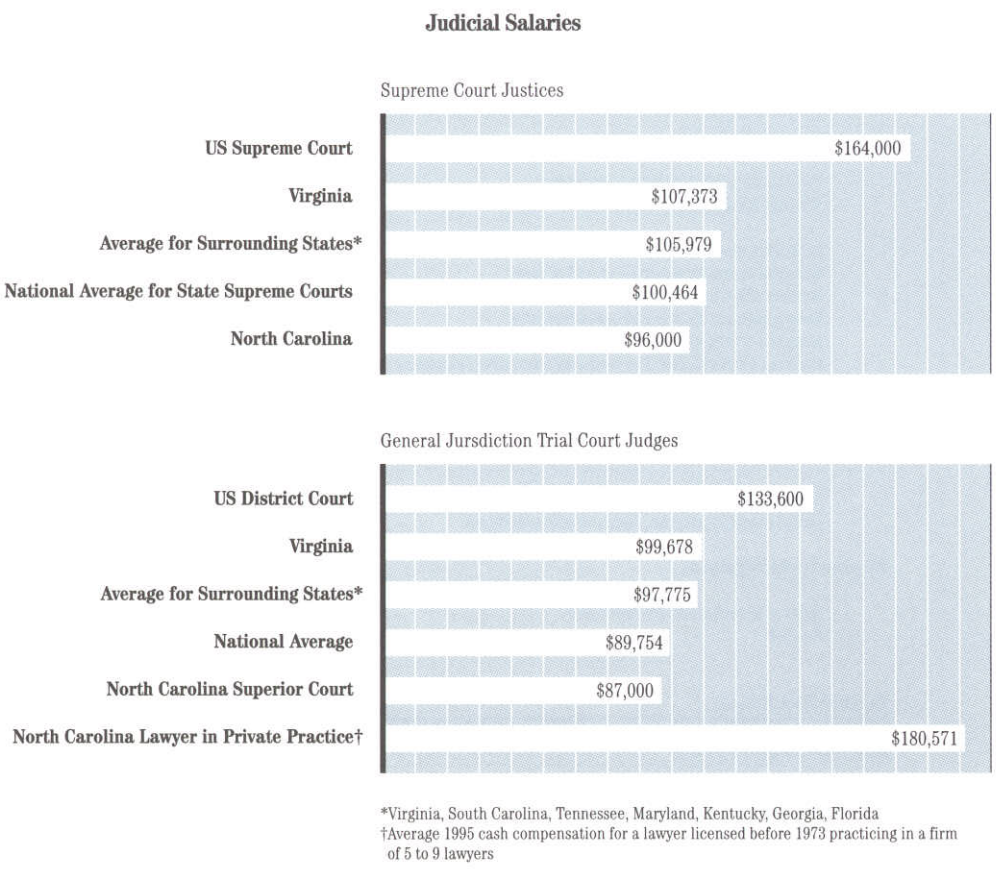


EXHIBIT 11

Source: National Center for State Courts; NC Bar Association

the trial court. It is necessary to have the same boundaries to effectively coordinate case scheduling, and the Constitution should prescribe that the lines always stay together.

Prosecution, like judicial decisionmaking, should not be based on partisan considerations, or even appear to be. Unlike judges, though, circuit attorneys are intended to represent, in part, the public's views on law enforcement, as expressed through elections. Thus, the Commission proposes that circuit attorneys be chosen in nonpartisan elections. Their terms would continue to be four years.

Clerks of Court. Clerks of courts serve an important judicial function today. They provide an informal process for handling estates, guardianship and a variety of other issues. Under the Commission's proposed system, the jurisdiction of clerks will remain the same, allowing them to resolve many matters administratively, as well as serve as judges in probate matters and other special proceedings. Decisions of clerks may be appealed to a circuit judge.

To protect them from the whims of political fortune and to increase accountability, clerks will be appointed rather than elected. The appointment will be made by the chief circuit judge for a four-year term, from names submitted by a county merit selection panel. During that term, the clerk can be removed only for cause.

Magistrates. Magistrates will be responsible for more cases. The jurisdiction of non-lawyer magistrates will

remain essentially the same, but those who are lawyers will be empowered to decide contested infractions, removing a huge volume of traffic cases from judges. Their jurisdiction in civil actions can be increased up to $25,000 by the State Judicial Council, and they will be able to issue temporary restraining orders and preliminary injunctions in certain matters. The chief circuit judge will decide which magistrates in the circuit should be given such authority. In family law matters, lawyer magistrates will be able to grant uncontested divorces, issue show cause orders in child support cases and handle other routine functions. Appeals will be to the circuit court.

Magistrates will be appointed by the chief circuit judge for four-year terms, and will be subject to removal only for good cause, eliminating today's unsatisfactory arrangement in which a magistrate is nominated, appointed and supervised by three different officials.

Operations. The costly and inefficient system of dual trials for infractions and misdemeanors (in which a defendant can be convicted once by a judge and then appeal for a trial de novo) will be streamlined. Infractions will be tried by magistrates and petty misdemeanors (no more than six months' imprisonment) tried by a judge, without juries at any stage. An infraction conviction by a magistrate may be appealed to a judge for trial de novo. Juries will be available only for felonies and more serious misdemeanors, but the defendant will be able to waive that right in all those cases.

For many trials, juries will consist of fewer than 12 jurors. These smaller juries will reduce the burden on citizens and administrators, with no expected change in outcome. For misdemeanor trials and many civil cases, six-member juries will be the standard approach. Felonies will continue to require 12-member juries. Decisions in all criminal cases will have to be unanimous.

Many cases will be assigned to individual judges to handle from beginning to end. The judge will be able to schedule cases from that docket as soon as his or her court time permits, rather than waiting for a particular "term" of court. Motions may be heard outside the home county when convenient. In addition to these assigned cases, judges will be scheduled for sessions of court when misdemeanors and other matters not requiring previous involvement can be tried.

Attempts at alternative dispute resolution will be required in most civil and domestic cases to encourage the resolution of cases without going to trial. The court will continue to make full use of mediation and other services offered by private agencies and individuals, following general state guidelines. In most criminal cases, screening by a prosecutor will be required before a charge can be filed, and disputes will be diverted to community settlement centers and other alternative resources as appropriate. The large volume of worthless check cases will go to community settlement centers for a sincere attempt to collect before these become criminal charges.

At the appellate level, the Court of Appeals will be allowed to hear death penalty cases, which now consume tremendous time and resources of the Supreme Court. The Supreme Court will be freed to pursue the purpose for which it was intended—that is, to hear those cases that involve significant new issues of the law. The right of appeal in all cases will thus be first to the Court of Appeals, with the Supreme Court accepting only those cases in which there is a split opinion in the Court of Appeals or other compelling reason for review.

Technology. All court-related information will be entered, transmitted, stored and retrieved electronically, while paper use will be kept to a minimum. Rather than channeling information through a mainframe computer in Raleigh, the courts will move to a decentralized, client server environment, made possible by the creation of the circuits. The circuit will provide a more reasonable unit for integrating technology, connecting all clerks' offices and other

related agencies. As a result, local users will be able to enter information, prepare reports and use them—all at their own terminals.

The Administrative Office of the Courts will have the authority and resources to develop and implement a long-term information technology plan for the courts. Statewide standards will be developed and enforced, to assure that all parts of the judicial system can communicate with each other, regardless of location or technology platform. Within these universal standards, every effort will be made to give local governments flexibility in choosing solutions for their communities.

A single, integrated case management system will allow access to all of an individual's transactions with the courts. Each individual who comes into the court system will have a unique, permanent identifier, which will further streamline record keeping and information access. Law enforcement officers will thus be able to "read" the personal identification at a laptop computer in their patrol cars and gain the appropriate information to proceed on a more knowledgeable basis, better protecting public safety.

The improvements in technology, more than any other part of the Commission's plan, will enhance service to the public. Citizens who receive traffic tickets will be able to plead and pay by touch-tone telephone. Police will be able to keep drunk drivers off the road because they will have immediate access to current and complete driving and court records. People called for jury duty can be allowed to choose the best dates for their service. Child support payments can be transferred automatically and routinely from the parent's account. In short, the service and convenience the courts provide will more closely resemble what the public now experiences at banks, retail stores and offices.

Public Education. Ongoing communication with the public will be a high priority of the court system, from the highest judicial levels to the clerks and other court personnel who are in daily contact with the public. An office of public information, under the direction of the chief justice, will be responsible for better educating the public. This role will include disseminating information about current events, working with the Department of Public Instruction to develop programs for the public schools and developing close working relationships with the state's news media.

Similar offices at the circuit level will emphasize the development of volunteer groups with a special interest in the court system. These advisory groups will be helpful to the court both in internal discussions and in communication with the public. On the individual level, the call to jury service will be used as an opportunity for additional information. A court official will be designated to greet citizens who arrive for jury duty, to explain the system to them and to thank them when they are done.

In sum, all people who have contact with the court system will be treated with the courtesy and respect they deserve. They will be informed about what the courts do and why they do it that way. Their opinions and comments will be solicited and valued. And they, in turn, will better respect and support the state's courts.

A MORE RESPONSIVE COURT SYSTEM

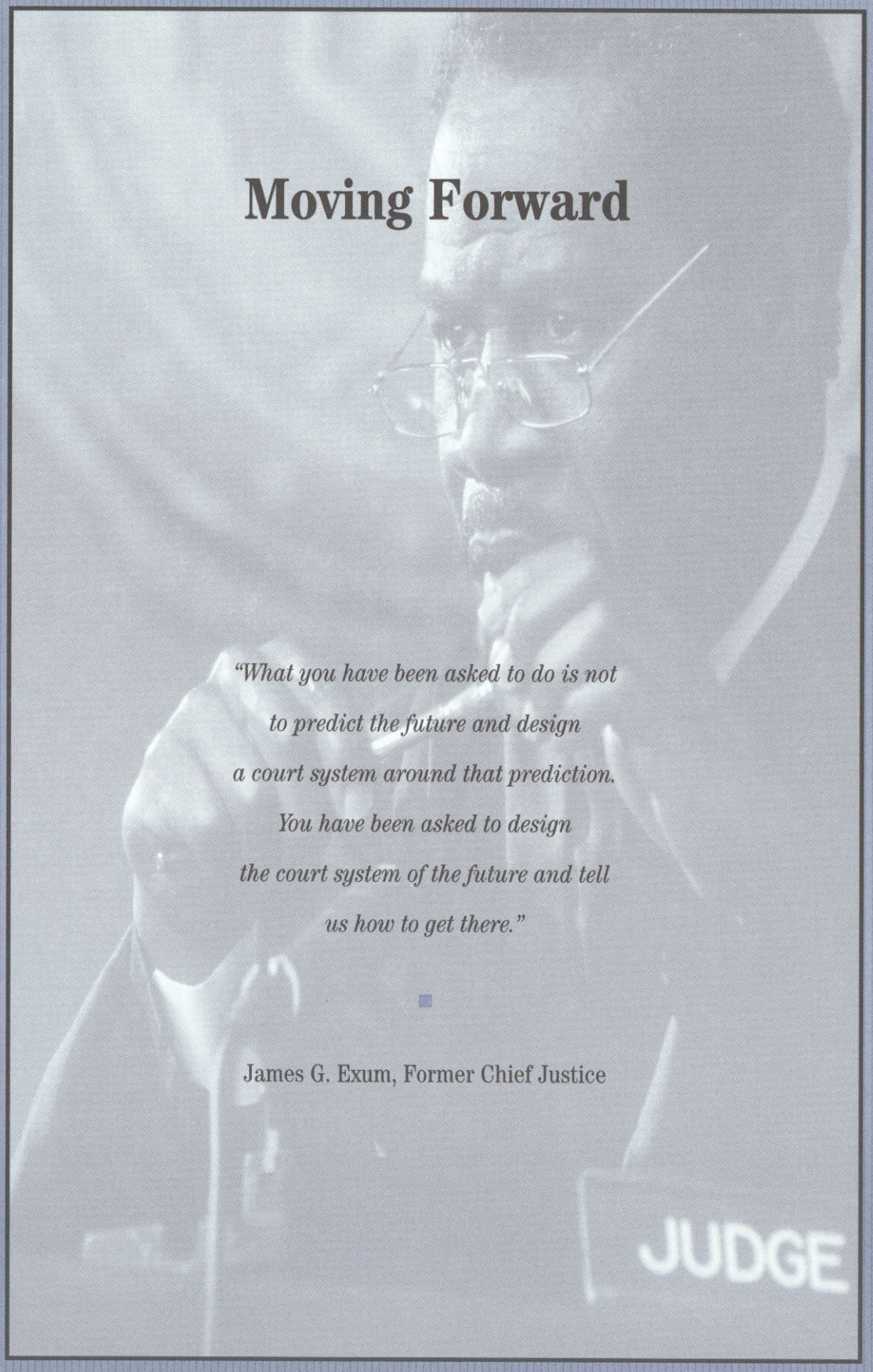
Ultimately, the function of the courts is to adjudicate charges of crimes and to resolve disputes between citizens. The public wants this done faster, cheaper and better. The people are demanding equal treatment under the law no matter where they live or what they earn...services that are as responsive and as cost-effective as those of the state's most successful businesses...and timely answers to their legal questions.

The plan the Futures Commission presents in this

document will result in a court system that can meet these demands. A court system that is truly accountable, independent, flexible and uniform. A court system where:

- A judge whose caseload is completed can step in to finish pending cases in another courtroom
- The court system revises its own procedural rules and redraws boundaries as necessary
- More disputes are resolved through alternative dispute resolution and never go to trial
- More cases are assigned to individual judges to oversee from start to finish
- Families are treated as a unit, integrating legal and related matters
- Delays are brief, reasonable and justified
- Professional administrators handle administrative matters, leaving judges more time to dispense justice
- Every person responsible for the expeditious movement and fair resolution of cases is subject to review by a superior

Changing circumstances have put new pressures on the courts of today and tomorrow. Meeting this challenge can be seen as unwelcome change—or great opportunity. The members of the Futures Commission take the latter view. Just as the Bell Commission responded to the changing needs of the courts nearly 40 years ago, North Carolina can once more transform its courts into a model for the future. And we must.



Moving Forward

"What you have been asked to do is not to predict the future and design a court system around that prediction. You have been asked to design the court system of the future and tell us how to get there."

James G. Exum, Former Chief Justice

GOVERNANCE

On paper, North Carolina has an enviable court structure. We have a unified statewide court system, largely financed from state funds, with a state office to provide administrative assistance. In practice, however, the picture is less rosy. Why?

First, it is not always clear who is in charge. While lines of authority are provided by statute—a chief justice, senior resident superior court judges, chief district judges—the effect is diluted by the fact that our judicial system includes 450 independently elected officials. In this structure, those with authority often do not exercise it, knowing they cannot force action by others who are not accountable to them. The result is that justice is dispensed differently from place to place in the state.

Second, until recently little attention has been paid to case management. The reasons for this gap are built into the system:

- Judges have large caseloads and few personnel to assist them. There are only a handful of trial court administrators at the superior court level and some district judges still do not even have adequate secretarial help.
- The traditional method of rotation of superior court judges, which takes them away from their home counties three-fourths of the time, results in cases being heard piecemeal by different judges.
- Computer information systems have been designed more to provide statistics about what happened in the past than case status data useful for managing the current docket.

Finally, the legislature has retained control over court procedures and expenditures, leaving the judiciary with few means to improve its own operation. Although the chief justice supposedly heads the judicial branch, the General Assembly decides where to allocate many positions. The legislature also controls the organization of the courts, sometimes splitting districts for political reasons but hindering the efficient and fair delivery of services. And, the legislature controls the rules of civil and criminal procedure—a key to management of the courts.

This arrangement conflicts with the growing public demand for greater accountability in government. The courts must be accountable, too—not for the popularity of judges' decisions, but for managing caseloads so that litigants' cases are resolved promptly, jurors are treated with respect, and witnesses do not have to return time and time again. But when judges and court administrators do not have the authority or resources to govern and manage, they cannot be held accountable for their performance.

In this report, the Futures Commission outlines a plan to improve the flexibility, efficiency and independence of the court system. For the new structure to produce the intended results, however, there must be a system of governance in which responsibilities are assigned to specific officials, who have the resources and authority to carry out their duties, and those in charge are held accountable for their performance. This means a court system in which:

- Judges and clerks of court are appointed
- The chief justice has the authority to be the true head of the court system
- The Supreme Court sets rules of procedure
- A State Judicial Council provides a new perspective for governing the courts
- Each circuit has a chief judge responsible for its management, assisted by a professional administrator

- Judges are evaluated periodically
- The court system has more flexibility to use its appropriations where most needed

RECOMMENDATION 1: Appoint all judges and clerks of court.

Partisan elections are inconsistent with an independent and accountable judiciary. The public cannot have confidence in the fairness of decisions when judges must raise large sums in campaign funds from lawyers and other interest groups. And many lawyers who would make excellent judges will not consider the office because of the political demands.

Contested judicial elections have become a way of life in North Carolina in the last decade. The charges that go back and forth in such elections demean the judiciary and erode the public's respect for the courts—to the extent that voters pay any attention. As this Commission's statewide survey shows, most voters do not even know that judges are elected and only a handful can recall an individual judge for whom they cast a ballot. Just as important, the present election scheme does not provide accountability. If judges need to consider only voters' approvals, they are not accountable to their superiors—who are in a better position to know how well they perform their jobs.

> *"We need a new way of selecting judges—get politics out!"*
>
> ■
>
> District Court Judge

The Commission therefore strongly recommends the appointment of the state's judges. Recognizing that eliminating all participation by voters could result in an isolated judiciary with no real check on its power, however, we propose the use of retention elections. Retention elections provide an opportunity for voters to say "yes" or "no" on whether a judge should continue in office at the end of his or her term. If accompanied by published evaluations of judges' performance by a neutral body, this kind of election would provide an effective means of removal of those appointed judges who are unsuited for the office.

In our proposed model:

- All judges would be appointed by the governor
- The appointment would come from three names nominated by a neutral panel
- For appellate judgeships, the three nominations would come from the State Judicial Council, made up of lay members and lawyers (but without its court official members participating in this process)
- For trial judges, the nominations would come from a circuit nominating panel of nine members: four lawyers chosen by the circuit bar, four non-lawyers appointed by the State Judicial Council, and a chair appointed by the chief justice
- The names of the nominees would be public, but the vote by which they were chosen would be confidential
- The governor would have to wait at least five days after receiving the names to make the appointment
- The new judge would stand for a retention election at the first general election more than a year after the appointment
- If retained, the judge would serve eight-year terms, with a retention election at the end of each term
- The performance evaluations of judges conducted under procedures set by the State Judicial Council would be available for consideration at the retention election, with a recommendation for or against retention

We also recommend the appointment of clerks of court. As the position exists today, there is no reason the officeholder needs to be independent of his or her superiors in the court system and answerable only to the voters—few of whom know the duties of the clerk or how well they are being performed.

Still, the clerk's office is an important one in the judicial system and the place where many citizens have their direct experience with the courts. To assure that the best qualified people are attracted to the office and are secure in the position, the Commission recommends that clerks be appointed by the chief circuit judge for terms of four years. To assure that the person chosen knows and understands the local community, the chief judge will be required to choose the clerk from names submitted by a county nominating panel consisting of lawyers whose practices include areas directly involving the clerk, a representative of the county commissioners, and other citizens. At the end of each term, the clerk would be evaluated by such a panel. If retention was recommended, and the chief circuit judge agreed, the clerk would be reappointed. Otherwise, the panel would submit new names to the judge.

RECOMMENDATION 2: Strengthen the authority of the chief justice.

The chief justice is the chief executive officer of what is supposed to be an equal third branch of government. He or she is the official the public, the governor and the legislature should hold responsible for the performance of the court system. But if the chief justice is to be truly accountable, the office must have the authority to direct the operations of the courts.

One of the most significant improvements the state can make in the new court system is to give the chief justice authority to designate and replace the chief judge for each circuit. The chief judge will be the person responsible for scheduling court in the circuit, assigning judges and monitoring case flow. If the chief circuit judge is chosen by and serves at the pleasure of the chief justice, the chief justice will be able to make changes in management when parts of the court system are not meeting the standards set by the State Judicial Council. For the same reason, the chief justice will continue to choose the director of the Administrative Office of the Courts to assure the same kind of influence over the ministerial and business side of the court operation.

As the head of a branch of government, the chief justice needs to exert authority over its budget as well. We believe that those who work in the judicial system, not legislators, will know best where new personnel are needed and whether computers or telephones are most critical in a particular county. Therefore, the chief justice and the State Judicial Council should present a proposed budget to the General Assembly, justified by the needs of each circuit and court function. The legislature should then appropriate funds, not by line item, but in two categories: personnel and nonpersonnel. Within those categories, the chief justice and the State Judicial Council should be able to spend funds as needed for the efficient and effective operation of the courts.

Given this additional authority, the chief justice's role will change. More time will have to be devoted to administrative duties and less to being a justice. The Commission believes that the effective administration of judges requires that the person in charge of the court system be a justice and that it is possible for one person to perform both roles. This method of governance will not be successful, however, unless administrative experience and qualifications are taken into account by the governor and State Judicial Council when choosing a chief justice. The tradition of selecting the most senior justice as the chief will not necessarily result in the kind of leadership the judicial branch needs.

RECOMMENDATION 3: Give the court system control of the rules of procedure.

The movement of a case is largely determined by the basic traffic regulations of the court system: the rules of civil and criminal procedure and the rules of evidence. Today's practitioners and judges believe that many of the delays in litigation that occur are the unintended result of the rules on discovery—that is, the exchange of information before trial. Although meant to expose the full details of the case to both sides early in the process and to encourage quicker resolutions, the use of interrogatories, depositions and other forms of discovery have frequently been

abused. As a result, parties with more money and time can turn the process into a war of paper, wearing down the other side rather than winning on merit.

If the judiciary is to be responsible for the flow of cases within its domain, its leaders must exercise control over these procedural rules. Indeed, that is what happens in most jurisdictions across the country. In North Carolina, however, the General Assembly retains the authority to alter the rules of procedure and evidence. When the chief justice saw need for a thorough study of the discovery process in 1995, for example, he had to ask the legislature to appoint a study commission for that purpose.

If the court system is to be accountable for how well it serves the public, the power should rest within the judiciary to control the procedures that determine how fairly and quickly cases are resolved. This places authority with people who are responsible for the consequences and who have the expertise to know what should be done.

"The law by its nature is stable, consistent and follows precedent. It is the delivery system that must be flexible and have the ability to change and function as the citizens of the state move into the future."

James Van Camp, Attorney

The Commission proposes that authority over the rules of civil and criminal procedure, and the rules of evidence, be vested in the Supreme Court. To prevent abuse of that power, the General Assembly should be given a right of veto—not amendment or substitution—over any rules change.

RECOMMENDATION 4: Establish a State Judicial Council.

If the chief justice's role as head of the court system is to be strengthened, that office will need assistance. We believe that a council composed of both lawyers and lay members can best provide the perspective of other parts of the court system and of the general public. A council with experienced judges, lawyers, civic leaders, business and professional people, and others can also be a sounding and advisory board for managing the courts. The council will not interfere with the independent performance of judicial functions, but it can provide the General Assembly with comfort that the system will be governed in a manner that truly is sensitive to the broad public interest.

The Commission therefore recommends the establishment of a State Judicial Council made up of 18 members:

- The chief justice
- The chief judge of the Court of Appeals
- A circuit attorney chosen by the circuit attorneys
- A public defender chosen by that group
- A circuit judge selected by the circuit judges
- Two lawyers appointed by the State Bar
- One lawyer and one nonlawyer appointed by the chief justice
- Three members (two nonlawyers and one lawyer) appointed by each of the following: the governor, the president pro tem of the Senate and the speaker of the House (for a total of nine, or half the members)

The membership of 18 thus would include five incumbent court officials and 13 others; 11 lawyers and seven lay members; and a seven to six edge of nonlawyers over lawyers in the members who are not public officials. No legislator could be appointed and the members would serve staggered, four-year terms. Geographic, gender and racial balance would be sought.

The council would be chaired by the chief justice and would serve a variety of functions. It would:

- Appraise the operation of the courts and report periodically
- Advise the chief justice in setting budget priorities
- Establish performance standards and goals for the courts
- Set up a methodology for evaluating judges, circuit administrators, clerks and others with managerial responsibilities
- Be able to alter circuit lines and to review changes in procedural rules proposed by different circuits
- Nominate candidates for appellate judgeships (without the participation of the judges, circuit attorney and public defender)
- Select the nonlawyer members of the circuit panels that would nominate candidates for trial judgeships

"Case managers should be used to keep track of cases, and should have the ability to call lawyers when cases appear to be getting off track."

District Court Judge

It is intended that the State Judicial Council be an important, influential body and that its prestige rank with the university system's board of governors. If successful and prominent business, civic, professional and educational leaders are appointed, the council can be of enormous aid to the court system. It can guarantee that the judicial branch will not lose sight of its mission to serve the public. It can provide the chief justice with invaluable counsel. And, the council can be an effective advocate for the courts in the legislature and with the public.

RECOMMENDATION 5: Appoint a chief circuit judge and circuit administrator.

Accountability is just as important at the circuit level as at the state level. For the same reasons, then, there must be an official at the circuit level who is responsible for the courts there. The Commission believes that the official with final answerability for the circuit must be a judge, since it is unlikely that anyone else will have the understanding of the needs of the trial judges or be able to command their respect.

The chief circuit judge should be designated from among the circuit judges by the chief justice, with the advice and consent of the State Judicial Council. The chief judge will be responsible for determining when court should be held in the circuit, assigning judges and cases, approving the budget, and hiring and supervising the circuit administrator— the professional manager who will be responsible for the day-to-day operation of the courts.

The position of circuit administrator will be of substantially greater importance than that of the few trial court administrators that exist in the state today. For the first time, the judges who are responsible for management of the courts will be given the professional assistance they need to do that job well. The administrator will prepare the circuit budget, approve the hiring of personnel by clerks of court, monitor all financial transactions, assess the need for new facilities, and monitor caseloads. In addition, the administrator will develop for the chief judge a system of scheduling court and assigning judges and cases.

Due to the inherent differences in circuits, the role of the chief judge and circuit administrator will not be the same throughout the state. In the larger circuits centered around major cities, the circuit administrator may require a sizable staff and may need a

separate office. In the more rural areas, the administrator might work from a clerk's office and perform several of the functions that would be delegated to others in a larger circuit. In each circuit, though, there will be clear responsibility in the chief judge and the circuit administrator for the performance of the court system.

The chief judge and circuit administrator will be aided by a circuit judicial council, consisting of the chief judge, the circuit attorney, the circuit public defender, a clerk of court, a representative from the Department of Correction, a social services director, a law enforcement representative, an alternative dispute resolution provider, three lawyers chosen by the circuit bar, and at least six public members appointed by boards of county commissioners (if the circuit has more than six counties, the number of appointments will rise so that each county has at least one public member). The principal function of the circuit council will be to monitor the performance of the courts to determine whether they are meeting the standards and goals of the State Judicial Council and whether they are serving the public as efficiently and fairly as possible. The council also will help in coordinating the work of the courts with other affected agencies and offices.

RECOMMENDATION 6: Conduct periodic evaluations of judges.

Although there is overwhelming public sentiment for greater accountability on the part of all public employees, including the members of the judiciary, North Carolina judges do not undergo a formal process of routine performance assessment. Because judges are elected, their performance is believed to be assessed "at the polls." Under the new method of merit selection, the data generated by a formal, routine evaluation is essential to an effective judiciary.

The State Judicial Council should adopt a careful and thorough approach to judicial evaluation. First, it should establish uniform standards for judicial performance, drawing heavily from the American Bar Association's recommendation that judges be evaluated on the following characteristics:

- Integrity
- Knowledge and understanding of the law
- Communication skills
- Preparation, attentiveness and control over proceedings; management skills
- Punctuality
- Service to the profession and the public
- Effectiveness in working with other judges of the court

The council should then institute a program for periodic assessment of the performance of all state court judges. Information should be collected from various sources, including other judges, litigants and attorneys who appeared before the judge, and jurors who served in the judge's court. The judge also should be allowed to provide a self-evaluation. The completed performance assessments should serve as the principal basis for the retention recommendations that will be shared with the public on the election ballots and/or in the media. They should also be used by the chief circuit judges in making case assignments; by the judges themselves for self improvement; and, more generally, as a tool for determining the content of future judicial training programs.

RECOMMENDATION 7: Give the court system more control over its budget and maintain state financing.

One essential component of effective management is control over resources. A manager must have some discretion over how money is spent to be able to effectively direct and change the agency.

The managers of the court system have largely been deprived of such control by the legislature's line item budgeting approach. The General Assembly decides where each new judgeship is to be placed and how many assistant and deputy clerks will be added. It decides what portion of the judicial budget is spent on computers. Through its control of the purse

strings, the legislature decides what information systems will be improved and when, and whether new funds will be invested in personnel or technology, in the clerk's office or the judge's chambers.

We propose a simpler approach, in which the judicial branch budget is developed from the ground up. Here's how it would work:

- Each circuit prepares and submits a budget to the director of the Administrative Office of the Courts
- The AOC director prepares a comprehensive budget for the chief justice and State Judicial Council
- When they are satisfied, the proposed judicial branch budget is presented to the governor as director of the budget, but it may not be altered before being submitted to the legislature
- The legislative appropriation is divided into two broad categories, personnel and nonpersonnel
- Within those categories, the appropriated funds are spent as the chief justice and State Judicial Council choose

We believe that the state should continue to pay all salaries and operating costs for the judicial system, and for prosecution and indigent defense, while the counties should retain responsibility for courthouses. Although some counties now meet their obligation with great pride, others have allowed the courts to be neglected. The 1978 study, *100 Courthouses*, by North Carolina State University identified 16 counties whose courthouses were in need of replacement or significant renovation. Nearly 20 years later, no action had been taken in nine of those counties.

On the other hand, some other counties whose courthouses were not in such bad repair have built new facilities. Such inconsistencies lend weight to the argument that the state should assume responsibility for all financing, including facilities. Rather than adopt that approach, the Commission proposes that the State Judicial Council establish state standards for courthouses, as recommended in *100 Courthouses*. If a county failed to meet the standards, the council could decide to hold court in another location with adequate facilities.

The Commission believes that counties should not be allowed to supplement salaries or provide additional personnel for local court offices. Such a course could lead too easily to a lack of uniformity based on local wealth. We also affirm the longstanding policy that the court system not be expected to be self-supporting. Fees can help meet the judicial branch's needs, but costs would be prohibitively expensive to litigants if they were raised high enough to cover all court expenses.

The new trial court organization recommended by the Commission should not require significant new facilities. Existing courtrooms and offices should be adequate for most purposes. Before implementation of the new system, however, the AOC should survey all facilities and determine whether new space is needed. On a one-time basis, the state should assist the counties in whatever upgrade is required. Thereafter the counties should be responsible for all facilities except those required only for a state or circuit court function, such as AOC offices or a circuit administrator's office which cannot be fit into existing space. The state also should provide facilities needed only on a circuitwide basis—for example, a single high-security courtroom that could be available for a special case arising anywhere in the circuit that requires such extraordinary protection.

CIVIL JUSTICE

Today's increasingly complex society challenges traditional notions of civil litigation. The state's population is growing, placing a tremendous burden on court dockets…Criminal cases are clogging the appeals courts, denying litigants and the business community the guidance that a well-developed body

of timely appellate decisions would provide...State government is issuing numerous regulations, which often require clarification in the courts...And, the public is more litigious and dissatisfied with the pace and process of civil cases.

If the civil justice system does not change to meet these challenges, it will become a fragmented and chaotic mix of different processes for resolving disputes. Such a mixture will produce inconsistent and inefficient results, causing public confidence to continue to drop.

Instead, North Carolina must create a coordinated and coherent civil justice system structured to fairly, expeditiously, and effectively resolve disputes. The system must have the responsibility and authority to control the forum and method of dispute resolution—and it should discourage use of the courts to redress grievances that should be resolved elsewhere.

> *"Courts should be the last resort for resolving disputes."*
>
> ■
>
> Representative, Mediation Group

To achieve these ends, North Carolina must:

- Continue to expand beyond a court-centered adversarial system of justice to include different means of dispute resolution
- Encourage the use of those other, nonadversarial means of dispute resolution so that the traditional court process is the least utilized and the last resort
- Make the different forms of dispute resolution accessible and convenient
- Promote prompt resolution, with the least delay and expense
- Create an adaptable and flexible system to deal with a wide variety of disputes in the most appropriate way

If North Carolina's courts can accomplish those goals, they will regain the public's acceptance, confidence and support. The following recommendations will start that process.

RECOMMENDATION 1: Adopt effective case management techniques that include full use of alternative dispute resolution.

The principal goal of the trial court in civil cases should be the fair, efficient, economical and timely resolution of disputes. To achieve this goal, the court system must accept the responsibility for case management and employ proven information technology and management techniques that support its effectiveness.

Too often the courts have relied on the parties' lawyers to manage the pace of litigation—an arrangement that has proven inadequate. The courts themselves must be responsible for the system's effective operation and, as part of that responsibility, adopt more effective case management practices at all levels. The case management system should:

- Be implemented statewide
- Set and meet definite goals
- Place responsibility on specific individuals and hold those individuals accountable for results
- Take early control of the cases and retain control throughout the process
- Limit continuances within narrow guidelines
- Provide mandatory training in effective case management techniques to all court personnel with such responsibilities
- Employ sophisticated computer and video technology to monitor cases and share information among the various courts
- Devise alternatives—technological or otherwise—to mandatory attendance in person at all conferences and hearings

Using established principles of differentiated case management, the State Judicial Council should develop state guidelines for judges and administrators to follow in identifying the most appropriate means of resolution for different types of civil cases and assigning cases accordingly. The guidelines should require that each case go through alternative dispute resolution (ADR) before being assigned to a court for trial unless there is a good reason not to. The guidelines should not demand absolute uniformity across the circuits, but should be sufficiently flexible to make the best use of local resources.

Once assigned to ADR, a dispute should not be controlled by the scheduling preferences or idiosyncrasies of a particular forum. Instead, all such procedures should meet time standards set by the circuits. For cases not resolved in ADR, the circuit administrators should assign the cases—and the judges and other court personnel—to use resources most efficiently.

Generally, a minor, routine case should be heard by a judge sitting in the county in which a case is filed. Since the volume could overwhelm most case management systems, the progress of these minor cases should be monitored by the parties themselves. For example, the parties could be obligated to follow a set schedule unless they receive court permission to exceed the time limits.

More complex civil cases that are not resolved in ADR should be assigned to specific judges on the basis of the judges' experience, skills and preferences. The judge selected should actively monitor and manage these cases, even when holding court elsewhere in the circuit. The judges and case management personnel should confer on the status of the cases and set the dates and locations of the pre-trial conferences, hearings and trial. Decisions on scheduling should be based on efficiency and the convenience of the parties and witnesses. Technological alternatives to face-to-face meetings should be used when possible.

The Commission recommends that the State Judicial Council closely monitor technological advances that may help assure the timely resolution of cases. For example, computer programs may soon be available to assist in the early settlement of disputes by applying principles of law to individual fact patterns in a way that would provide a mini-trial and indicate a likely outcome. Such an innovation would greatly enhance the recommendations in this report.

> *"There should be some system of accountability for why cases are continued beyond a point that would, as a general rule, be considered reasonable."*
>
> ■
>
> District Court Judge

RECOMMENDATION 2:

Expand the use of alternative dispute resolution for appropriate cases.

North Carolina has been a leader in testing alternative dispute resolution (ADR). The court system should continue the careful analysis and measured experimentation of various ADR mechanisms, which can often resolve cases more quickly, with less cost and with greater satisfaction to the parties. ADR seems particularly well-suited to disputes that involve parties with ongoing relationships (such as landlord-tenant disputes) because it is typically less contentious than litigation.

The ADR mechanisms that have already proven effective should be retained, and other forms of ADR should be explored and developed. The Supreme Court's Dispute Resolution Committee should watch the trends related to ADR, assess the needs of the justice system and propose changes to the State Judicial

Judges Favor Alternative Dispute Resolution

Result of Survey of Trial Judges, 1996	
More use of arbitration, mediation or other forms of alternative dispute resolution (ADR)	94%
Require attempt at ADR before civil suit may be filed	71%
Require attempt at ADR before domestic case may be filed	76%

EXHIBIT 12

Source: Wilkerson & Associates Survey

Council. The State Judicial Council should then respond appropriately, either uniformly throughout the state or locally as conditions necessitate.

While state guidelines created by the Dispute Resolution Committee should dictate standards for all forms of ADR, the chief circuit judges and the circuit administrators should be encouraged to develop mechanisms that meet their local needs. To ensure compatibility across the circuits, any circuit-level initiatives should be approved by the State Judicial Council.

For example, with the council's approval, a chief circuit judge could determine that certain types of cases—such as condemnation cases in which only the value of the property remains undetermined—should not be assigned to any of the standard ADR mechanisms. The judge instead could order the parties to resolve the matter using a different procedure; for example, to take the issue to a mutually selected neutral commissioner. Only if that attempt fails could the parties proceed in the circuit court.

As a starting point, the civil justice system should employ at least two already proven alternatives to the traditional courtroom trial:

- *Court-ordered arbitration.* Today, arbitration is widely used to resolve disputes for money damages of $15,000 or less. Of the more than 4,000 North Carolina cases arbitrated annually, only about 10 percent are subsequently retried before a district court judge. The Dispute Resolution Committee should examine the characteristics of the current process and propose any modifications needed to make it equally effective in a wider range of disputes, including those for money damages above $15,000.

- *Court-ordered mediation.* In mediation, parties retain and pay for the services of a mediator who promotes a voluntary settlement. Empirical evidence indicates that more than one-half of the 2,500 cases annually ordered to mediation end in settlement. The Dispute Resolution Committee should also tailor the mediation process to produce the highest rate of settlement.

The community-based mediation centers currently in existence—the "Neighborhood Justice Centers"—are effective alternatives to the judicial resolution of disputes. To ensure that all citizens have access to a center, the state should continue to help fund their development. But local control and grass roots independence are important features of the centers' success, and must be retained.

Increasing public understanding of ADR techniques will also help improve the court system. Today, few parties are aware of alternatives to trial until they are already in the judicial system. To promote earlier awareness and speedier resolution of civil disputes, a new ethics rule—enforceable by the Ethics Committee—should require attorneys to inform their clients of the alternatives early in their association. Compliance should be demonstrated by filing

with the court a certificate of satisfaction signed by the attorney and the client.

RECOMMENDATION 3: Expand the jurisdiction of magistrates.

The use of magistrates to hear small claims has worked well; about 250,000 civil cases are already resolved this way each year. With the recruitment of more lawyers to be magistrates, the jurisdiction over these cases could be raised well above the current $3,000 limit.

The court system itself is in the best position to decide how to divide jurisdiction between judges and magistrates. The State Judicial Council should be empowered to periodically adjust (perhaps every five years) the level of disputes that may be decided by lawyer magistrates, up to a maximum of $25,000. To best utilize resources, chief circuit judges should decide which lawyer magistrates in the circuit could hear those cases. Likewise, some lawyer magistrates could be allowed to issue temporary restraining orders and preliminary injunctions.

RECOMMENDATION 4: Expand the courts' appellate capacity.

The appellate courts appear to be overburdened with criminal matters. The crunch of death penalty cases at the Supreme Court and routine criminal appeals at the Court of Appeals do not leave sufficient time for civil disputes. Consequently, litigants and the business community operate without the guidance that would be available in a well-developed body of civil law. The resulting uncertainty leads to additional civil disputes and heavier civil dockets.

To rectify this situation, the State Judicial Council must monitor the caseload in both the Court of Appeals and the Supreme Court and take appropriate action to provide adequate appellate capacity for civil cases. One such measure might be the creation of separate civil and criminal divisions of the Court of Appeals. If that is done, however, provision should be made for regular rotation of judges between the two divisions.

Although the burden on the Supreme Court may be relieved by the Commission's recommendation to place death penalty appeals in the Court of Appeals, the uncertain shape of future litigation still threatens the high court's limited civil capacity.

RECOMMENDATION 5: Streamline the appeals process.

Multiple opportunities for hearing and review are inefficient and expensive. Justice requires a single trial by a neutral trier-of-fact and a single appeal for errors of law. In fact, more "due process" than necessary may delay a just result. We believe that fewer reviews should be allowed, by providing for:

- *Cases heard by magistrates.* Currently, after final disposition by a magistrate, the aggrieved party may appeal for trial de novo before a district court judge or a jury. Then, after final disposition by the district court, the party (perhaps twice-aggrieved at this point) can appeal as a matter of right to the Court of Appeals. The future civil justice system should limit this "three bites" approach. On appeals from a magistrate, there should be a trial de novo before a circuit court judge (not a jury), with appropriate cost-shifting disincentives—and then only discretionary review by the Court of Appeals.

- *Cases ordered to arbitration.* Appeals from an arbitrator's award that fall within the magistrate's jurisdiction should be treated the same as appeals from a magistrate's order. In such disputes, the aggrieved party can appeal for trial de novo before a circuit court judge but can then apply only for discretionary review by the Court of Appeals.

- *Cases ordered to mediation.* By definition, if attempts at mediation are unsuccessful there is no judgment from which to appeal. Therefore, the parties' opportunities for hearing and review should not be limited in the same way as are the cases heard by magistrates or arbitrators. Instead,

cases that are not resolved in mediation should be treated as "new" and suitable for possible assignment to other types of ADR. The parties will then gain the rights of appeal and trial de novo that attach to the newly assigned mechanism.

- *Cases arising in the circuit court.* To reserve the state's civil appellate capacity for the types of cases that cannot be resolved outside of the courtroom, the State Judicial Council should consider the design and implementation of an effective post-trial, non-judicial resolution mechanism administered by the circuit court. Post-trial ADR scheduled soon after trial—before briefing, when the parties may be most amenable to compromise—is likely to be most successful.

RECOMMENDATION 6: Develop cost disincentives to discourage non-meritorious litigation.
Today, parties have little incentive to examine the merits of their disputes as they continue through the process of litigation. One way to make people consider the wisdom of pressing their claims is to impose cost *disincentives.* For example, a party demanding a trial de novo from an arbitrator's award currently pays a filing fee equivalent to the arbitrator's compensation. The fee is returned only if, in the judge's opinion, the position of the party who demanded the trial improved as a result.

The State Judicial Council should consider imposing similar cost disincentives throughout the stages of dispute resolution—including when disputes are first heard by a magistrate and when they are appealed. Existing and new cost disincentives should adequately encourage thoughtful evaluation of the merits of disputes, but they should not unfairly discourage meritorious review.

To further encourage the parties to evaluate the merits of their disputes, the Rules of Civil Procedure should be revised to include an effective offer of settlement rule that would require parties who reject pretrial settlement offers to bear a portion of the additional litigation costs, unless the trial outcome exceeds the settlement offer.

RECOMMENDATION 7: Standardize the procedures for administrative adjudications and uniformly coordinate them through the Office of Administrative Hearings.
The Administrative Procedures Act and the use of the Office of Administrative Hearings (OAH) are not universally applicable to all administrative adjudications. Many agencies still handle administrative adjudications under their own separate statutory authority and internal procedures. These divergent approaches lead to reduced efficiency and the potential for confusion among citizens and the constituencies affected by administrative decisions.

Lawyers representing citizens and businesses should not be required to learn a new set of rules for each client's dispute with a state agency. To make the process more efficient and less confusing, all agency adjudications should be handled by the OAH and should follow the OAH's procedures and rules. The operation of the OAH would be enhanced by making its territorial organization conform to the new circuit organization for the courts, and by giving circuit administrators responsibility for coordinating with the OAH to assure the availability of adequate hearing facilities within each circuit.

Although administrative caseloads are still very modest relative to the civil case volumes processed through the courts, the State Judicial Council and the OAH should periodically assess the need for additional specialized tribunals, such as the Industrial Commission or the Utilities Commission, to handle particular classes of administrative proceedings. Furthermore, most administrative adjudications are only recommended decisions, which must then be adopted or rejected by the agency. If rejected, these recommended decisions end up in the courts. Their effect on the courts' workload is uncertain, however, because the current data on the relationship between administrative hearings and the judicial system is limited.

Before any recommendations can be made concerning administrative procedures, the AOC and the OAH must develop a system of data collection that would permit tracking pertinent information such as the number and types of contested case decisions by OAH that are—and are not—adopted as the agency's final decision. Such data will help answer critical questions, including:

- Should appeals from administrative adjudications always be on the administrative record or are there instances where appeals should be de novo?
- Should a different standard of review apply when the agency's final decision is contrary to the recommended decision of the administrative law judge?
- In departments where there is a very high rate of coincidence between recommended decisions by administrative law judges and final agency decisions, should the administrative adjudication be considered the "final" decision, with appeals taken directly to the circuit court?

With this information, the State Judicial Council will be able to make rational decisions to improve administrative procedures.

RECOMMENDATION 8: **Standardize the rules governing civil disputes.**

To create a rational and efficient system of justice, the Supreme Court must be able to revise the existing rules of procedure and evidence, and formulate new rules where necessary to promote the spirit and intent of the recommendations set out in this report. For example, the court should evaluate the various timing provisions in the rules—such as the one-year filing deadline for answering the complaint in a condemnation action—and modify them where necessary to promote the fair, efficient and timely resolution of all civil disputes. To ensure that no substantive laws are affected negatively, the legislature should retain veto power over any new or modified rules.

To facilitate the movement of cases and attorneys within the various circuits and of attorneys among the various circuits, a uniform set of rules of practice should apply statewide. When local circumstances necessitate modifications, circuits may adopt individual rules to be applied circuitwide, as long as they are approved by the Supreme Court and do not differ fundamentally from the state rules.

RECOMMENDATION 9: **Remove the constitutional requirements of 12-member, unanimous civil juries.**

The State Constitution now requires 12-member juries in civil cases and requires their verdicts to be unanimous. By agreement of the parties, however, a smaller jury may be used.

Although research shows that a reduction in the size of juries may not lead to any appreciable savings in cost, the Commission believes that the convenience of smaller juries and the reduced burden on citizens justifies smaller juries in most civil cases. The dynamic of debate within the jury is likely to change if there are only six or eight people present, rather than a dozen, but it does not appear that the result will be meaningfully different. Juries of as few as six members can be expected to reach fair, consistent decisions that will be as acceptable to the parties as those of larger panels. Thus, the Constitution should be amended to allow juries in civil cases of fewer than 12 members, but no smaller than six.

Whether jury verdicts in civil cases should be unanimous is a much more difficult question, and the Commission concluded that it did not have sufficient information to make a recommendation on that issue. The unanimity requirement ought not be constitutional, however. The State Constitution should be amended to eliminate the requirement of jury unanimity in civil cases, leaving the General Assembly free to decide that issue based on further study and deliberation.

The Commission also debated other aspects of jury

selection and service, but decided that the issues were too important to decide in the time available. More study is needed, including review of the experience from states like Arizona, which have significantly altered the jury process in recent years. Among the subjects that should be considered are:

- Converting to a "struck jury" method of selection
- Instructing jurors at the beginning of the case
- Allowing jurors to ask questions
- Requiring employers to pay their employees while they are on jury duty, with appropriate tax write-offs, or requiring the state to reimburse jurors for lost income
- Allowing counsel to summarize arguments during the trial
- Eliminating or reducing the number of peremptory challenges
- Having the judge conduct or play a greater role in voir dire or, if lawyers continue to conduct voir dire, imposing time limits

RECOMMENDATION 10: **Appoint and train judges, and allow the State Judicial Council to make decisions about specialization.**
The current system of election should be abandoned and all judges should be selected on the basis of merit, to assure that the state recruits, obtains and retains the judges who are best qualified. The appointment process described on page 32 will fulfill this goal.

To maintain the impartiality of the judiciary and a true statewide judicial system, circuit judges should "rotate" throughout their circuits. Rotation would free circuit judges from the pressures that can arise from purely local assignment and would foster the consistent application of the law across the state.

The education provided to judges needs to be greatly enhanced if the courts are to meet the challenges of a rapidly expanding body of law and to restore the public's confidence in the judiciary's ability to decide the issues before it. Such education should include comprehensive treatment of the more sophisticated points of civil litigation as well as effective case management techniques and technological advances. Without this help, the judiciary will be hampered in its efforts to resolve increasingly complex cases correctly and efficiently.

North Carolina has recently developed a specialized business court in response to the need for judicial expertise in complex business cases. Although some additional specialized civil courts may be needed in the future, the shape of future litigation is too uncertain to predict the exact needs. Instead, consistent with the flexibility that is intended to be a hallmark of the new court system, the State Judicial Council should establish means by which the justice system can respond to future needs. For example, the council can establish new ADR programs and mechanisms, create specialized courts, designate specialized judges or utilize specialized resources. These changes can be statewide or within a single circuit, depending on the need.

FAMILY COURT

Whether we like it or not, North Carolina's families are facing more challenges and stress, including dramatic increases in divorce and juvenile crime, which have a profound impact on our courts.

In practical terms, domestic and juvenile matters are crowding the dockets of district courts—which are already filled with traffic cases, misdemeanor criminal offenses and general civil matters. At the same time, family matters in the courts are becoming increasingly complex and sensitive, whether it's determining equitable distribution of marital property, enforcing child support or addressing serious juvenile offenses.

Because of their heavy caseloads, however, district court judges often must treat each domestic and juvenile matter in the same way as other cases before

them—that is, as an isolated matter, in which the speed of resolution is largely determined by attorneys and litigants. The result is:

- Parts of the same case are handled by different judges at different times, with little communication among judicial officials and no consistency in court orders
- Delays are common, and are sometimes used by one party to inflict hardship on the other
- Children in foster care and other temporary arrangements often stay in these arrangements far too long
- Juveniles are punished for criminal matters, but the underlying reasons for their misconduct are not addressed
- Family problems increase the caseload of the criminal courts as juvenile offenders grow into adult offenders

Domestic Cases Continue To Increase

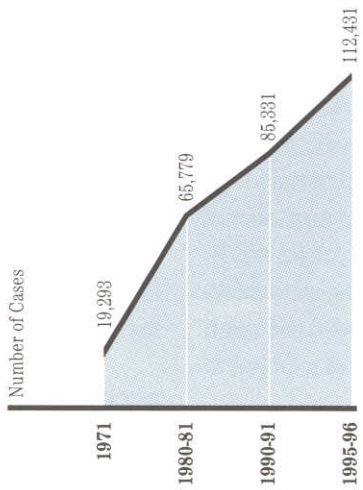


EXHIBIT 13 *Source: AOC Annual Reports*

With the stakes as high as they are, it is not surprising that the public, judges and attorneys all agree: the handling of domestic cases is where the courts can improve the most. For if the courts continue on the current path, we are going to create an unbearable burden on the judicial system and society—and the courts will continue to be part of the problem, rather than the solution.

What can we do? The Commission believes North Carolina must create a forum that resolves family-related issues in a manner that respects the rights of each individual family member, promotes the best interest of the family and helps families structure their own solutions. This forum should be fully accessible to citizens, regardless of economic status, and should encourage the non-adversarial resolution of disputes whenever possible. Toward that end, the state should:

- Establish a specialized family court with jurisdiction over all disputes involving intra-familial rights, relationships and obligations and all juvenile matters
- Make available mediation or other forms of alternative dispute resolution for all family law cases
- Provide mediators, judges and other decisionmakers with specialized training in family and juvenile law and the psychological factors affecting families and children
- Make available the full range of the family court's services on a meaningful level to all citizens, regardless of economic wealth
- Resolve all cases as soon as possible but no later than one year after filing

RECOMMENDATION 1: Establish a "Family Court."

Considering that annual filings of domestic cases have jumped 483 percent in North Carolina over the last 25 years, it's understandable that a major change in the court structure is needed. The Commission believes that the best way to address this growing need is by creating a "family court"—a separate assignment within the circuit court—that hears all claims involving familial rights, relationships and obligations and all juvenile justice matters. In other words, the family court will provide a unified, rational

Domestic Litigants Are Most Critical of the Courts

Is the following an extremely or very serious problem?	Those with No Direct Contact with Courts	Former Jurors	Litigants In Domestic Cases
Time to have a civil case decided	37.5%	34.2%	43.4%
Attorneys being able to get continuances	32.8	44.5	46.3
People being treated differently by wealth	46.8	50.5	64.3
Personal biases of judges	18.6	20.4	36.5
Not enough judges	29.2	36.3	46.9
Frivolous lawsuits	37.4	52.1	48.7

EXHIBIT 14 *Source: Wilkerson & Associates Survey*

and caring forum for the resolution of all judicial proceedings involving family members.

Most cases will be heard by a judge regularly assigned to the family court, but any judge sitting in the circuit will be able to enter an appropriate temporary order in an emergency. With the assistance of specially trained court personnel, the judges will be able to coordinate family legal disputes, consolidate matters so that fewer hearings are needed and reach out to the community for the resources required to solve family problems.

These changes, combined with training for judges and special case management strategies, will provide citizens with a judiciary that is competent, sensitive, compassionate and well versed in family law. The new family court will hear matters including:

- All juvenile matters, including abuse, neglect, dependency, delinquency, emancipation and termination of parental rights
- Abortion consent waivers
- Adoption
- Domestic violence civil restraining orders
- Child custody
- Child support
- Paternity
- Divorce
- Equitable distribution
- Alimony and post-separation support
- Adult protective services
- Guardianship, mental health commitment hearings, hearings for voluntary admission to mental health facilities and actions under Article 2A of General Statutes Chapter 110

The family court will also be the forum for motions to enforce orders in the matters described above, including motions for civil and criminal contempt.

RECOMMENDATION 2: Develop judicial stability and expertise.

To maximize the effectiveness of the family court, judges should be assigned to the court for a term of at least three years. Although these judges may hear other matters when necessary, their principal appointment should be to the family court. When possible, the circuits should allow judges to rotate through different types of cases and, upon request, allow judges who show particular competence in family and juvenile matters to remain in the family court for longer than three years—or to hear certain types of cases. Certification as a "family court judge" or as a specialized judge for particular types of family cases would be one way to address this need.

The Commission recommends that the chief circuit judges select and assign the family court judges, make rotation decisions, and determine whether the three-

year terms can be extended. The chief circuit judges will also appoint managing family court judges and identify the specific roles they are to play—which could range from serving as a liaison between the chief circuit judge and the family court to exercising substantive supervisory responsibilities. The managing judges will coordinate closely with the circuit administrators and report directly to the chief circuit judge.

For family court to work, all personnel—judges, guardians ad litem, alternative dispute resolution personnel—must be adequately trained. We suggest that the training include substantive family law issues, basic principles of mediation and other alternative dispute resolution techniques, as well as sociology, psychology, child development, family systems, family-based services and social work. Family court personnel should also learn what local and statewide resources are available to aid families and individuals in distress.

"Divorce, custody, child support, equitable distribution—these areas of the law affect the lives of more citizens than any other because so many people are directly or indirectly involved in the outcome."

■

Retired Chief District Court Judge George Bason

RECOMMENDATION 3:

Integrate mediation and other forms of alternative dispute resolution.

Family issues are often not well-suited to the traditional adversarial model of the courts. We believe this is one area where alternative dispute resolution (ADR) processes should be used to reduce the emotional damage to the individuals involved, to empower the weaker parties, and to come up with solutions that preserve amicable relationships among family members.

Because early intervention has proven effective, family court cases should be referred to ADR as soon as possible after a complaint is filed. Indeed, to maximize the benefits, the court-provided ADR services should be available to litigants *before* they file a complaint. In the disputes that are not resolved at this stage, ADR discussions should begin within days of filing. While early intervention may not be possible in every case, certain cases—such as child custody, child support and spousal support—must receive prompt attention. If ADR will not occur for more than two weeks after the filing of complaints in these cases, a family court judge should conduct a brief hearing within the 14-day period. The judge should then enter temporary orders that would last until the selected processes are completed.

Moreover, the family court should establish a custody mediation program in every county for custody and visitation disputes and approve other types of ADR for support and property settlement claims. The case manager should be responsible for monitoring satisfactory completion of ADR and referring the case back to the family court for appropriate pretrial procedures if ADR fails to resolve the issues.

We recommend that court-monitored ADR be *mandatory* in the following case types: child custody and visitation, equitable distribution, alimony and spousal support, and certain child support cases. It should be *available* in all other cases, except for issues regarding Chapter 50B protective orders in domestic violence cases. Victims of domestic violence deserve the full protection of the court, including the safety brought on by the formality of a courtroom proceeding. In all cases, however, the family court judge should be able to exempt parties from ADR for good cause.

Since important family issues arise in families across all income levels, court-provided ADR must be available to all citizens. Ideally, all ADR under the auspices of the court will be free of cost. At a minimum, ADR should be without charge for identified issues such as child custody and visitation, with fees for other types of cases based on a sliding scale. At the same time, court-provided efforts should not discourage litigants from resolving their disputes through private ADR mechanisms approved by the court.

RECOMMENDATION 4: **Provide special services for custody disputes.**

To serve the best interests of North Carolina's children, special services should be available whenever custody is an issue. We recommend the following.

Parent education. Under the current adversarial method of handling custody disputes, the interests of the children often come second to the interests of the parents or guardians, who may be unable to focus on what is best for the child. Those involved in custody disputes should be educated on the psychological and emotional impact of divorce and custody disputes on their children. When necessary, advocates should be provided to work directly with the children. Parent education should be provided by the court or paid for by litigants on a sliding scale. Ideally, it should be completed before ADR begins.

Appointed counsel. A family court judge should be able, when necessary, to appoint a lawyer for the child in custody or visitation proceedings and to tax the lawyer's fees as court costs.

Case management teams. In cases where the custody issues are not resolved in ADR, the case manager should take particular care to include all the necessary disciplines in the case management team, or to refer the family to other community services.

Guardian ad litem. The guardian ad litem program should be maintained as an essential element of the family court. In fact, the program's use should be enhanced in the family court, particularly in custody disputes in which ADR fails to resolve all custody issues. In such cases, the case manager or case management team should determine whether a guardian ad litem should be appointed to investigate and advocate for the child.

RECOMMENDATION 5: **Develop effective case management principles.**

Family litigation frequently moves too slowly through the courts, at a pace controlled by the attorneys or the parties, with little judicial intervention. Multiple legal claims by the same family—even claims growing out of a single event such as a marital separation—are heard by different judges, in different courtrooms, and not necessarily in a timely manner. This lack of continuity and communication allows litigants to manipulate the system, to engage in piecemeal litigation and to obtain inconsistent court orders.

Something has to change. We are convinced that the best solution is to develop case management principles using the "case manager/case management team" approach. In this approach, the central figure is a case manager, assigned to work with one or more judges, who manages all cases involving members of the same family. The case manager is responsible for:

- Reviewing pleadings for completeness
- Referring disputes to appropriate ADR and other court or community resources
- Assisting the judge in enforcing discovery and other pretrial deadlines
- Ensuring that ADR occurs when appropriate
- Developing a case management team of court personnel and representatives of other agencies to assist with particular cases

The case management team should have the discretion to involve other governmental agencies, such as the Department of Social Services, and to refer family members to counseling or other community resources. Members of the team may include social

workers, psychologists, domestic violence specialists, ADR specialists, juvenile court counselors or others. They should be trained in mediation, family dynamics, child development, family systems, family-based services and the availability of community resources.

For this approach to work, the case manager must be perceived by the attorneys and the parties as a neutral employee of the courts, not as an advocate for either side. The manager must remain unbiased in opinion and in communication; although other members of the case management team might be called as witnesses in the case of trial, the case manager should not be competent as a witness.

RECOMMENDATION 6: Establish specific case management guidelines and timelines.

A swift and predictable schedule for litigation—with little room for attorney or litigant "foot dragging"—will keep parties focused on proceeding to resolution. A steady pace is also likely to facilitate settlement or produce prompt in-court resolutions for those cases in which settlement is not the likely outcome.

Attorneys and parties should be required to attend a scheduling conference with the judge as soon as possible after it becomes clear that ADR will not resolve the case. At the conference, the judge should set a schedule for completion of discovery, a time for any necessary pretrial conference, and a date for trial. The case manager should then monitor compliance.

Only the judge should be able to extend the deadlines or alter the schedule. No extensions should be open-ended; instead, new deadlines should be set and necessary adjustments made. To provide continuity, the judge who presides over the scheduling conference should become the presiding judge on all subsequent matters in that case, including any trial.

RECOMMENDATION 7: Delegate less complex matters to lawyer magistrates.

We expect the demands of family court to place significant pressures on the family court judges. Their time should be reserved for matters of sufficient legal complexity to warrant use of a judge with special expertise in family or juvenile law. The many routine legal matters that will come to the court should be heard instead by lawyer magistrates. This arrangement will help prevent delay for all cases, especially those that will still be heard by a family court judge—contested cases and others raising urgent or complex issues.

Specifically, the chief circuit judge should have the discretion to delegate authority to lawyer magistrates in the following areas:

- Granting uncontested divorces
- Establishing child support under the Child Support Guidelines
- Issuing show cause orders in child support enforcement
- Ordering blood tests in paternity cases and taking paternity acknowledgments
- Ordering emancipation of minors

For reasons of court integrity and public perception, the lawyer magistrate's decisions should be subject to appeal, de novo, before a family court judge.

RECOMMENDATION 8: Extend the family court's dispositional authority until age 21.

The effectiveness of juvenile court for older teenagers is currently impeded by the provision that its jurisdiction ends when a child reaches age 18. In some cases, this restriction may foreclose an order that would be more commensurate with the crime and more likely to be effective for reform and rehabilitation. More important, the age restriction may also cause older juveniles to be bound over for trial in superior court when a juvenile disposition would be more appropriate.

We therefore recommend that the family court judge be able to impose dispositions and order treatment or other services that extend until the juvenile reaches age 21.

CRIMINAL JUSTICE

North Carolinians have strong feelings about criminal justice. As the Commission's 1995 survey showed, the public believes, rightly or wrongly, that criminal courts are soft on criminals and unfeeling to victims, permit justice to be "bought," do not protect the public from crime, and operate inefficiently.

Some of this distrust is rooted in the prevalence—or perceived prevalence—of violent crime. Unfortunately, further increases in crime seem likely, based on a number of factors: the rising number of young males who, over the next 20 years, will be reaching their late teens and twenties when they are most likely to commit crime; the growing use of illegal drugs; and the decline in stable families.

Any increase in cases will further clog the courts, which are already overwhelmed by current caseloads. It can mean fewer and fewer charges going to trial as the system spends increasing amounts of time and money on simply processing cases. Plea bargaining can become even more prevalent. The result is that all participants in the system—victims, witnesses, and defendants—feel abused and denied justice.

In addition, an increase in violent crime, combined with a widening of the racial, ethnic, and economic divisions of society, may further politicize the issue of crime and criminal trials. If this tendency is not halted, many negative repercussions are possible: an increased demand for conviction and punishment rather than for "justice"...certain groups convinced that litigation outcomes are unfair and that the process is corrupt... decline in respect for the institution, accompanied by a decline in resources...the inability to secure first-rate legal talent as the selection of judges becomes more political and dependent on how particular cases are decided...growing incidences of "vigilante justice" by citizens who no longer believe they can depend on the courts to punish criminals.

The criminal justice system must take positive steps to turn this situation around. How?

- *By delivering what it promises.* The move already taken toward sentences that accurately reflect the time the defendant will actually serve is a step along this path.

- *By using alternative mechanisms to resolve disputes.* When possible, the courts should resolve societal disputes through means that foster reconciliation, non-criminal resolutions and reduction of recidivism. Prosecutors should rigorously screen cases before they formally enter the court system and should divert suitable cases to mediation or treatment programs.

- *By concentrating resources on the serious and important cases.* Cases that make up a large percentage of the courts' current criminal caseload, such as worthless checks and minor traffic offenses, either do not belong in a criminal justice system or should be resolved through simpler trial procedures or alternative means.

- *By seeking to treat all participants with fairness and dignity.* Fewer court appearances should be required of victims and witnesses. More information about the process should be made available to the interested parties. Adequate representation must be provided regardless of the financial resources of the defendant.

- *By acting efficiently and quickly to produce an accurate and just result.* Discovery should be more extensive, and disclosures should occur early in the process. Court proceedings should be streamlined in number and duration and should be made easier for the participants through technological innovation.

Technological advances may help solve some problems facing the criminal courts, such as:

Public Perception of Problems with Court Performance

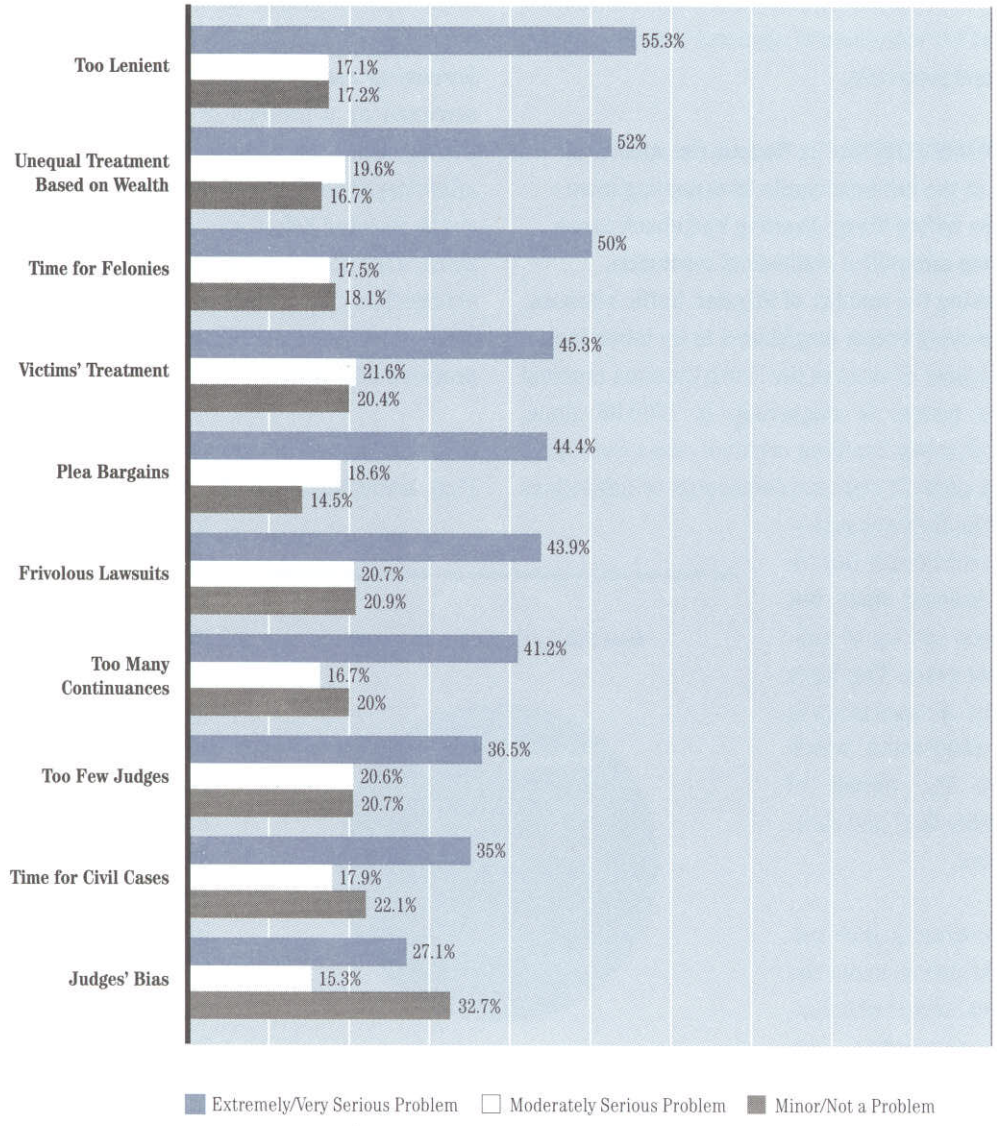


EXHIBIT 15

Source: Wilkerson & Associates Survey

- Sophisticated systems to verify a customer's identity and account balance and to allow electronic transfer of funds, which may greatly reduce worthless checks as the source of large numbers of criminal or civil cases
- Effective information technologies for the processing of defendants, the transfer of information among all players in the criminal justice system, and the management of cases
- Technologies that eliminate some crimes and injuries to society—for example, disabling vehicles when the driver is intoxicated or has no valid permit
- Technologies that make some crimes easier to solve and to prove, such as identifying minute traces of DNA left by crime perpetrators

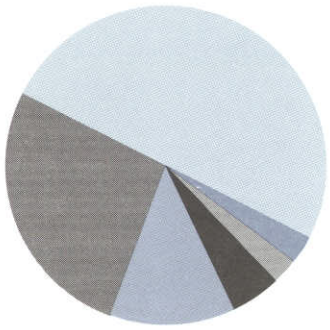
On the other hand, technological developments also may open new vistas to particularly adept and well-equipped criminals, and may challenge the abilities of local law enforcement agencies to detect, apprehend and prosecute.

RECOMMENDATION 1: Reduce the volume of cases in the criminal courts by screening more charges before filing, diverting bad check cases, adopting alternative methods of resolution, decreasing the number of litigated traffic offenses, and allowing lawyer magistrates to try infractions.

The number of cases in the North Carolina criminal justice system is staggering. In 1995-96 alone, approximately 2 million criminal cases were filed. Ninety percent were misdemeanors or infractions heard in district court—which individually require little judicial time, but together add up to substantial costs. The large number of cases leads to rapid processing, which fosters the notion of "assembly-line" and casual justice.

The criminal justice system also labors under the very real threat of defendants demanding jury trials in trivial matters, since the North Carolina Constitution gives defendants a broad and unequivocal right to a jury trial in *all* criminal cases, including traffic offenses. In today's crowded court system, this produces an inflated bargaining position against district attorneys, who must reserve the scarce commodity of jury trial time for serious criminal charges.

How Felony Cases Are Disposed



Dispositions of Felonies, 1995-96

Guilty Plea–As Charged	**50.9%**
Dismissal Without Leave	**26.8%**
Guilty Plea–Lesser Offense	**12.7%**
Dismissal With Leave	**5.0%**
Other	**1.9%**
Trial	**2.7%**

EXHIBIT 16 *Source: Administrative Office of the Courts*

Clearly, change is needed to reduce the volume of complaints which become cases requiring resolution in the criminal courts. We recommend:

Screening more charges. More cases should be screened by a prosecutor before being initiated through arrest, and all cases should be screened soon after they enter the court system. Screening would not be required before issuance of a citation or summons, since no arrest is made. But, in other cases the charge should be cleared by a prosecutor before it is filed—unless an immediate arrest is necessary to protect public safety.

How would cases be screened in this new model? First, law enforcement officers would be given a protocol regarding the types of cases that should be presented to the prosecutor before an arrest is made. Second, in cases where a warrant is requested from the magistrate by a citizen, the magistrate would be directed to authorize arrest only in situations involving threats of violence, likelihood of flight, domestic violence or similar matters. Specifically:

- Magistrates should be directed to authorize immediate arrest only in cases that provide sufficient reason to impose a substantial bond; otherwise, the prosecutor should review the case before charges are filed
- When arrests are made without warrants first being secured, the cases should proceed as presently and go to the magistrate for a finding

of probable cause and for the setting of bond
- If the case is filed in court without prosecutorial action, screening should be prompt and should be conducted in every case
- Cases should be dismissed unless the prosecutor specifically approves continued prosecution by the end of a designated period—for example, the third working day after arrest

Imposing a system of notice and mediation in all "bad check" cases. The key to limiting the effect of bad check cases on the courts is to facilitate settlement *before* they enter the criminal justice system. Thus, notice and mediation should be required before the check writer can be arrested and a charge filed. For example, the typical case could be referred to alternative dispute resolution, the merchant required to give actual notice to the check writer, and formal charges filed only if the check writer still did not pay. Imposing the costs of this system on the merchants would encourage the use of technologies, such as debit machines, that would prevent bad checks from being received in the first place.

Certain classes of bad check cases, such as when a check is written on a non-existent or another person's account, involve fraud rather than debt collection. These cases should be exempt from the mediation requirement.

Adopting alternative methods of resolution. Alternatives to litigation should be institutionalized in the criminal justice system. Two mechanisms offer particular value: mediation, which attempts joint resolution of a dispute by the parties without labeling one the "victim" and the other the "defendant," and diversion, which removes cases from the criminal justice system without formal adjudication, but requires that the defendant receive counseling or treatment.

Each circuit attorney should establish a clear policy setting out the types of cases to be sent to mediation or diversion before prosecution; those for which suitability for mediation or diversion is to be decided as a matter of discretion; and those for which mediation or diversion is never appropriate. In the cases for which the circuit attorney reserves discretion, the screening function may be delegated to others with the appropriate expertise. Additional training in these methods should be provided to magistrates who serve that screening function and law enforcement officers.

The costs of mediation and diversion should be assessed on a sliding scale based on ability to pay. That will mean providing a publicly financed system without cost to those unable to pay. It is not necessary for all services to be provided through a state-run program, however. Locally controlled community mediation centers, for example, provide a good private alternative.

Whether provided by the state or by a private organization, the approaches must comply with basic state-mandated standards. Neither mediation nor diversion cases should be dismissed with prejudice until the program is successfully completed, and deadlines should be established so that defendants are not unnecessarily incarcerated through inattention.

Reducing the volume of litigated traffic offenses. Based on their sheer volume, non-serious traffic offenses constitute one of the most significant problems facing the courts. They constitute over half the filings in the court system each year. This is where the largest number of citizens intersect with the court, and the treatment of those citizens does much to shape public attitudes about the court system generally. These steps should be taken to reduce the number of traffic offenses proceeding to adjudication:

- Fines should be paid through a centralized system using an ATM-type facility. The system will be most effective in reducing the number of cases that go to court if it offers the same benefits that are obtainable from in-person plea bargains.
- The collateral consequences of traffic adjudication—particularly the impact of "insurance

points"—should be reduced to the extent practical. This reduction could be accomplished either directly, by changing the insurance point system, or indirectly, by automatically reducing charges in a manner that is sensitive to the issue of insurance points, as is now done individually in many cases.

- All traffic adjudications, whether by plea or after trial, should be inadmissible for any evidentiary use in civil or criminal litigation, to prevent fears that traffic convictions could have consequences for other litigation. The issue should be litigated fully in the civil or true criminal case, not in the traffic court.
- The legislature should continue its trend of reducing all but the most serious traffic offenses to infractions. Although some traffic offenses must remain criminal, such as drunk driving and evading an officer, few benefits are gained by classifying more routine traffic violations as misdemeanors—and real costs may be incurred.

> *"Consider decriminalizing many traffic offenses and handling them as an administrative matter."*
>
> ■
>
> District Attorney

Having magistrates try all traffic infractions. Even with the changes described above, a substantial number of traffic cases will continue to be tried. To further relieve the burden on the courts, all infractions should be tried before lawyer magistrates. These cases do not require the attention of a circuit judge, and the expected high volume of similar cases suggests that a "specialist judge"—that is, one with regular and substantial experience with that type of case—could most efficiently handle them. The chief circuit judge should decide which magistrates should be assigned this responsibility. Additionally, all infractions should be prosecuted by legal assistants from the circuit attorney's office, rather than lawyers.

RECOMMENDATION 2: Expedite pretrial proceedings.

One critical way to increase the efficiency and effectiveness of the criminal courts is to expedite pretrial proceedings. By adopting the following measures, the court system can both focus its resources and improve public perceptions.

The first step is to require indictment by the grand jury only upon request of the defendant. As a result of the control exercised by the district attorney—and the increased screening of charges by that office—the grand jury now routinely approves most indictments without the careful scrutiny that was originally intended. An indictment is not necessary in the typical case where there is no question of probable cause, but it can serve to preserve the protection from abuse of prosecutorial discretion. To assure the proper balance, we recommend that an indictment be required only when the defendant asks for it; otherwise, the case should proceed on the prosecutor's charge alone. Using a procedure similar to that currently used for sealed indictments, the circuit attorney could indict through the grand jury without notice to the defendant, when warranted.

In addition, the courts should:

- *Limit probable cause hearings.* Though probable cause hearings should not be held as a routine matter, they could be called on request of the circuit attorney. If no probable cause is found at the hearing, the prosecutor may not use the grand jury to bring the same charges.
- *Use bond appropriately.* Officials setting conditions of pretrial release should be encouraged to follow present law favoring release on conditions that do not require a secured bond.

- *Establish an independent system of indigency screening.* Because the prosecutor's office has a conflict of interest regarding indigency determinations, a screening system should be established separate from that office.
- *Appoint counsel promptly.* Counsel should be appointed and meet with clients as soon as possible to examine bond conditions and to determine whether a quick resolution through a guilty plea is appropriate.
- *Substantially expand pretrial disclosures.* North Carolina should adopt a more comprehensive pretrial discovery statute for criminal actions. As a step in this direction, much of the information to be disclosed under discovery requirements should be automatically available to authorized parties on the criminal justice information system. While guarding the legitimate privacy concerns of victims, witnesses and defendants, information should be routinely placed on the computer information system so that it can be accessed without delay by the parties. Also, disclosure obligations by both the prosecution and the defense should arise at designated points early in the prosecution, making requests for disclosure unnecessary.
- *Combine the arraignment and pretrial conference.* The arraignment should be combined with a pretrial conference to ensure that all discovery requirements have been met. The combined hearing would also promote negotiated settlement of cases.

> *"Police officers have a serious problem with continuances in district court. One DWI case recently was continued nine times; that means paying the officer nine different times to be in court."*
>
> ▪
>
> Town Administrator

RECOMMENDATION 3: Reserve jury resources and appellate capacity for serious offenses.

To enhance the criminal justice system's efficiency, the courts must be able to screen and dispose of minor cases rapidly. An initial non-jury trial is an important tool for such a system, and should be used for infractions and misdemeanors—with the check of further proceedings available for dissatisfied defendants.

The right to trial by jury and appellate review should be structured as follows:

- All infractions should be tried before lawyer magistrates without a jury, with appeal for trial de novo before a judge without a jury, and appeal from there to the Court of Appeals
- All misdemeanors should be tried in separate sessions of the circuit court without a jury, allowing the court to continue to handle a high volume of cases
- Minor misdemeanors, such as classes 2 and 3 under structured sentencing and first-time drunk driving, should be appealable to the Court of Appeals after the non-jury trial
- Serious misdemeanors may be appealed for trial de novo before a six-person jury, then to the Court of Appeals
- All felonies should be tried before a jury of 12
- All jury verdicts should be unanimous
- The defendant and the state may agree to waive jury trial in any case, but the presiding judge must also agree in any capital case

Death penalty appeals should be removed from the mandatory jurisdiction of the Supreme Court and placed instead in the Court of Appeals, to allow the Supreme Court to hear other matters. Rather than creating a distinct court for that purpose, specialized

panels of Court of Appeals judges should hear death penalty appeals. Membership on such panels would not be permanent, and some pattern of rotation should be developed. This structure would facilitate the development of expertise, without isolating the judges. Review by the Supreme Court should occur only upon grant of discretionary review, but , as in other cases, be mandatory when the Court of Appeals' decision is not unanimous.

RECOMMENDATION 4: Grant prosecutors discretion to determine which first degree murder cases should be prosecuted capitally.
The current death penalty statute, as interpreted by the North Carolina Supreme Court, requires that a capital sentencing hearing be held if the defendant is convicted of first degree murder and if evidence supports a finding of one of the statutorily defined aggravating factors. This law has many unfortunate consequences:

- To avoid a capital trial, the district attorney must agree to a reduction of the charge to second degree murder, which may—from the prosecutor's and public's perspectives—result in an inadequate sentence
- Defendants who otherwise would be willing to admit guilt to avoid the death penalty, are deterred from doing so because even if they plead guilty to first degree murder, they must still be tried for their lives in the sentencing phase
- There is an increased number of capital trials, where jury selection is much more lengthy and the proceedings bifurcated, often with only scant prospects for the jury returning a death verdict

To rectify this situation, the circuit attorney should be given the discretion—not the duty—to seek the death penalty when the evidence supports the finding of aggravating factors. Rather than creating a statutory provision to govern the exercise of discretion, circuit attorneys should establish internal systems to ensure that their discretion is exercised fairly.

RECOMMENDATION 5: Develop technological alternatives to requiring the defendant's presence at many court proceedings.
All proceedings—other than trials and motions to suppress—may properly be conducted without the defendant being physically present in the courtroom. These other proceedings may be conducted by some type of audio and video link. The defendant's personal presence should not be eliminated, however; rather, a waiver should be allowed. Electronic transmission soon will be sufficiently sophisticated to minimize the negative impact of not having the defendant physically present. These procedures would also enhance security in cases where defendants are held in jail without bail or without posting bail.

RECOMMENDATION 6: Create warrant centers within the new criminal justice information system.
The technology section of this report describes the importance of integrated computer information systems, especially for criminal cases where law enforcement officers and magistrates must have complete, up-to-date information to make correct decisions on arrest and bond. Even if the computer systems are integrated, however, they will not serve their purpose if the data is not complete. Toward this end, warrant centers should be established in all localities to ensure that warrants issued are entered promptly into the criminal justice information system.

RECOMMENDATION 7: Expedite the handling of probation violations.
Although the ultimate decision to revoke probation is made by the sentencing judge and the decision to revoke parole is made by the paroling authority, the circuit attorney should be able to take initial action upon the defendant's re-arrest without authorization from either the sentencing judge or the paroling authority. In violations of misdemeanor probation, the defendant should get only one hearing in the trial division with discretionary appeal to the Court of Appeals.

TECHNOLOGY

Consultants tell us North Carolina's courts are at least 10-15 years behind in the use of information technology. In some counties, clerks are still using handwritten ledger cards. In others, there is only one fax machine to serve all of the county's court-related needs. In most, thick manila files are moved from place to place, with information manually added time and again, creating multiple opportunities for error and few for the useful exchange of information. Cartons of information about the parties are not available except to inspectors on site.

> *"All the other recommendations depend on what is proposed for technology. Automation is the linchpin of the kind of court system the Commission desires."*
>
> Clerk of Court

The fact that the courts' central information systems were designed in the 1970s presents some real limitations, despite continuing updates:

- The computer application systems operated by the Administrative Office of the Courts do not allow the integration necessary to share information
- Data is generally collected and used for statistical purposes, rather than for case management, and has limited availability to many who need access
- The same data is entered and reentered numerous times, often manually
- Personal computers, fax machines, imaging equipment and "smart" phones are in short supply, if they exist at all
- Huge volumes of paper are still being generated, creating storage and retrieval problems and costs

As a result, clerks, judges, prosecutors and others are frustrated that they do not have the tools they need to help them do their jobs better. Citizens perceive the courts as slow and inefficient, and counties such as Wake and Mecklenburg are implementing their own technologies in the absence of statewide systems.

Part of the problem is the lack of a statewide technology plan. Over the years, technology has been added incrementally here and there, without a strategic, comprehensive approach to take advantage of technology and transform the way services are delivered.

The constraints of the budget system have fostered this approach: lacking a long-term commitment from the legislature to modernize court technology—at least partly because it has not received a satisfactory plan for such improvements—the Administrative Office of the Courts has purchased what it could whenever money was available. And, even when money has been appropriated, sufficient funding for installation and training, which are critical to successful implementation, has rarely been available.

Other states and local governments are demonstrating that today's technology can be used to cut costs, speed up the court system and produce better results for customers. For example, Wake County is installing an on-line warrant system that will enable an arresting officer to enter basic information about the defendant into an electronic file that can be used by all need-to-know persons and is automatically available once entered. Automated voice messages allow citizens in King County, California, to connect to a paralegal for help with small claims or to pay traffic citations by credit card. And in some complex civil cases in Delaware, pleadings, discovery and other items in a case are filed, stored and served electronically, with

hard copies printed only when necessary.

These few examples show some of the possibilities with existing technology, but the potential is far greater than the sum of the parts. The Commission envisions a court system in which all information is electronically entered, transmitted, stored and retrieved...the use of paper is kept to a minimum...citizens have direct and immediate access through computers, telephones and televisions... information systems are integrated across legal and geographic boundaries...routine, repetitive tasks are performed automatically...schedules are sorted electronically to make best use of court space...cases are managed and trials scheduled electronically.

Consider the impact on just one common court process—the traffic case—which the Commission and a business consultant studied in depth. With 1.3 million traffic charges filed each year, this area represents high volume, paper heavy, repetitive and routine operations: in other words, an area ripe for automation.

Exhibit 17 shows just what a difference technology can make. On the left are the steps that occur now in a well-run clerk's office for a traffic case when the driver contests the charge. The right column indicates how the process could be streamlined using existing, moderately priced technology.

This abbreviated summary does not adequately convey the burdensome nature of the transactions involved in the current process, the number of times the shuck is handled, the repetitive entry of routine information, the stacking and unstacking of files and the movement of boxes from one location to another. Nor does it highlight the number of times incorrect information can be entered or files can be misplaced.

It is true that making these changes would require an initial investment in technology. However, the state would quickly realize a return on its investment, in terms of more productive staff time, reduction in errors, improved timeliness and responsiveness, and greater customer satisfaction. This report points the way to get there, not only for traffic cases, but for North Carolina's court system as a whole.

The Commission recognizes that such changes are not going to happen overnight. However, North Carolina must start getting ready now to use technology to make the court system work more efficiently and effectively. Moving to a technology-enhanced court system will require at least six steps, as outlined below:

- Develop a long-range comprehensive plan for technology in the courts
- Develop and enforce statewide standards, while allowing some local flexibility
- Adopt a single case management system to control, manage and expedite all cases, which makes information available on a need-to-know basis
- Assign a unique, permanent identifier for each individual who comes into the court system
- Install, update and continue to modernize a wide range of technologies to improve effectiveness and efficiency
- Reengineer the courts' financial management system

RECOMMENDATION 1: Develop a long-range plan for technology in the courts.

The first priority must be to provide a long-range comprehensive plan for technology that will support the courts' needs into the 21st century. At the same time, a process should be developed to assure that this kind of planning will be ongoing. That planning process must be grounded in a strategic vision for the courts.

The present organization and operation of the Administrative Office of the Courts will need to be changed if the courts are to make the best use of technology. Such changes should include:

- Establishing clear central authority to define the specifications and parameters of the strategic

EXHIBIT 17

How to Modernize a Traffic Case

Current Processes	Possibilities
Officer stops motorist, checks license, radios for record check and waits for a response, while officer at other end of radio checks on computer.	Officer stops motorist, swipes license through laptop computer; computer records driver's name and other identifying information and displays record, outstanding warrants, etc.
Officer takes time to copy information from driver's license and registration, then manually writes citation, including court date for trial.	Officer enters charge data in computer, scans driver's license for driver information, then the computer generates a case number and creates the case file.
Officer explains charge and options to driver, driver signs citation and officer hands driver a copy of the citation.	Officer explains charge and options to driver, driver signs; computer prints copy of citation, including court date, which officer hands to driver.
Officer submits citations to supervisor at end of the day. Citations for the day are bundled together and sent to appropriate clerk. Court clerk receives citations, adds four-digit code to identify specific offense charged. Clerk creates and enters case number and hearing date on the citation, then creates a "shuck" (a file folder to hold the citation). Clerk separates shucks into stacks, writes on each shuck the defendant's name; the officer; witnesses, if applicable; and the court date for officer. Shucks are separated according to date. Clerk enters basic data from the citation into the CIS-Criminal/Infractions information system. Information is transmitted to the Division of Motor Vehicles. Clerk places shucks into boxes according to court dates.	Citation data is automatically transmitted to court computer and entered in its information system and to the Division of Motor Vehicles computer.
District attorney assigned to traffic court picks up boxes, separates shucks by officer, writes courtroom number on the shuck, returns the box to the clerk's office. Clerk enters courtroom number into the computer, prints calendar. Clerk places all shucks for each date in a box which is picked up by waiver clerk and placed on shelf by date. Waiver clerk arranges shucks alphabetically by defendant's name, compares file to printed calendar, enters any corrections in computer.	Computer reads program, which includes officers' court dates, judges and district attorneys assigned to traffic cases, courtrooms available, number of cases each judge hears during session, etc., and prepares daily calendar for each courtroom.
On court date, clerk picks up bundle of shucks and calendar for that date and takes them to the courtroom. Defendant determines courtroom by reading long, printed calendars taped on doors or posted on bulletin boards. District attorney calls defendants' names, asks whether defendant wants to plead guilty, writes notes on shuck and calendar to indicate not guilty plea. Judge hears case, decides driver is guilty, renders judgment, writes it on shuck. Courtroom clerk manually completes cost sheets, sends defendant to clerk's office to pay.	On court date, clerk and district attorney print calendars for courtroom. Defendant determines courtroom from voice interactive telephone or television monitors, or from computer. District attorney calls defendants' names, asks whether defendant wants to plead guilty, writes notes on calendar to to indicate not guilty plea. Judge hears case, decides driver is guilty, renders judgment, which clerk enters in computer. Computer prints cost sheet and copy of judgment, which defendant takes to clerk's office.
Clerk accepts payment, gives receipt to defendant. Clerk enters information on judgment, payment into computer.	Clerk accepts payment, gives receipt to defendant.

plan for use of technology, and implementation of the plan, including what kinds of technology must be uniform across the state and which simply need to be compatible

- Giving this authority the means, by control of expenditures or other appropriate mechanism, to see that all parts of the court system follow these requirements
- Assessing which information needs to be stored and managed in the central computer and which can be locally maintained and accessed as needed in Raleigh
- Shifting the focus of the Information Services Division from statistical reporting to case management and comprehensive historical information
- Considering whether the two-year budget cycle used by state government hinders the implementation of new technology
- Including adequate training in all planned extensions of technology

In implementating any plan for technology, several principles must be kept in mind. First, technology is a means, not an end itself; it is a tool and must serve a defined purpose as part of a larger strategy to improve the courts. Second, the users always should be consulted in new technology decisions, otherwise it is not likely to do what is intended. Third, any new technology must be accompanied by the training needed to use it effectively.

RECOMMENDATION 2: Develop and enforce statewide standards, while allowing controlled local flexibility.

"Citizens will not have full confidence in the courts until our service approximates that of the private institutions with which they conduct business, and modern technology is necessary for that to happen."

Chief Justice
Burley B. Mitchell, Jr.

An integrated system of technology should be the ultimate goal for North Carolina's courts. But integration requires established statewide definitions and standards. In other words, there must be a uniform way for the various parties to enter information into the data base. Even the simplest matters, such as the order in which a name is entered or the abbreviations that are used, can determine whether information is accessible to those who need it. As a result of the Criminal Justice Information Network Study Committee, this process already has begun for criminal justice data shared by law enforcement, courts and corrections. The same effort is needed for the other parts of the courts' caseload as well.

The court system also needs to develop statewide standards for the various processes that will be performed in different courthouses and offices across the state, so that information can be exchanged with court officials and employees in various locations. For example, probate reports and accountings should be submitted on established formats, by modem or disk—or hard copy, when other means are unavailable.

At the same time, technology now makes it possible to move away from the highly centralized model of the past, where all information flowed through Raleigh, no matter what its final destination. The new model will allow information to be processed locally, where it is needed, and shared regionally or across the state. Every effort should be made to give local governments flexibility in choosing solutions for their communities, as long as they meet the statewide standards.

RECOMMENDATION 3: Adopt a single case management system to control, manage and expedite all cases.

North Carolina's court system is currently characterized by separate information systems that operate independently and are inaccessible to the others. While the various players involved in the system may require different information, the basic types of data are the same: the names of the parties, the nature of the case, the docket entries, future calendar events and related financial transactions.

Once a case file is created and the basic data entered, therefore, that file should be accessible to all interested officials. Each office can construct its own database to supplement the core information as necessary. The prosecutor and public defender can add their witness lists and discovery schedules, for example, to meet their separate case management needs, and can restrict access to that part of the file. When events that need to be known by all users occur, that data can be entered by one participant and become part of the file available to all.

This change to a single case management system will not only reduce the costs of redundant efforts, but improve the responsiveness of the system. Existing technology can provide the protection that is needed to keep confidential information restricted to the appropriate users.

RECOMMENDATION 4: Assign a unique, permanent identifier for each individual who comes into the court system.

The fact that each individual in our society is identified in many different ways—various spellings of names, as well as social security number, driver's license, credit card, telephone number—makes it difficult, if not impossible, to compile relevant information in a timely basis. Proper and prompt identification is essential to assuring that a wanted criminal does not go free because his record is unknown, that bond is set at the right level, that a drunk driver is properly detained when past history justifies such action. To that end, we believe it is imperative that the state assign a personal identifier which will serve as the permanent identification of each person who comes in contact with the courts.

The identifiers used to establish the identification number would involve at least one item from each of the following two sets of information:

Set one:
- Driver's license number
- Social security number
- Date of birth
- Armed forces service number
- Professional license

Set two:
- Fingerprints
- Retina identification
- Voice
- Picture
- Other physical identifiers

The individual information would be converted to computer-readable digital information, stored in the Division of Motor Vehicles' database on a real-time available basis and applied to the individual's driver's license or identification card, which would become the primary source of identification. With this approach, an officer could "read" the card in the patrol car and gain the appropriate information to proceed knowledgeably.

RECOMMENDATION 5: Install, update and continue to modernize a wide range of current technologies.

The court system is not taking advantage of the basic technology that drives modern business practices, let alone cutting-edge or emerging opportunities. If we want the courts' employees to do their jobs better and faster, we must give them the tools—and training—to succeed. This will mean:

- Outfitting all offices with word processing equipment
- Interconnecting the entire judicial system for

ready access to data and voice communication
- Installing a sufficient number of copy machines and fax machines
- Supplying judges and other court officials with laptops that include modems and printers, to access needed information
- Connecting video and audio media to allow off-site line-ups, remote testimony, conferencing and arraignment
- Making greater use of telephone conferencing to reduce court time, judge time and litigant time
- Using real-time, computer-assisted stenographic transcription
- Implementing courthouse security, including video cameras, digital photography, x-ray devices, magnetometers and smart card "keys"
- Using bar coding for data entry, file control and evidence tracking

RECOMMENDATION 6:

Reengineer the courts' financial management systems.

The courts operate information systems for different kinds of cases and other systems for cash receipts and accounts. For the most part, however, these systems do not communicate with each other. When a defendant pays a fine, therefore, it must be entered both into the financial management system and the information system containing the file for that case. An exception is child support, where the financial transactions are automatically transmitted to the case files. In the future, the courts should integrate the financial management systems with all other information systems so that they operate in an integrated manner.

The money collection system and related deposits, reports and bank account arrangements can also be improved through technology. We recommend that a computerized system be developed to allow each county to handle its monies on a daily basis, rather than the cumbersome centralized approach currently in use. Transfer of funds could be done electronically, eliminating the current delays and paper handling. For example, repetitive child support payments could be received and disbursed automatically through the bank automated clearinghouse system.

> *"It is not merely of some importance but is of fundamental importance that justice not only be done, but should manifestly and undoubtedly be seen to be done."*
>
> ■
>
> Lord Hewart

CITIZENS' INVOLVEMENT

North Carolinians do not know very much about their court system and many are unhappy with what they see and perceive. That's what the Commission learned through public surveys, hearings and focus groups across the state.

When the public ranks the court system against other institutions, including the state legislature, public schools, news media and local government, the courts are at the very bottom of the list. The courts are seen as too slow, too lenient and too expensive. More disturbing, the public perceives that the system unfairly favors the affluent, is too easily manipulated by lawyers, and often treats the victims of crimes worse than it does the criminals.

In a democratic and civilized society, which depends on the courts to deliver justice and to resolve disputes, such a lack of confidence cannot be tolerated. The courts must have a sustainable measure of public confidence to maintain their independence from political attack and to command the support for the

Public Ranks Courts Low Among Institutions/Groups

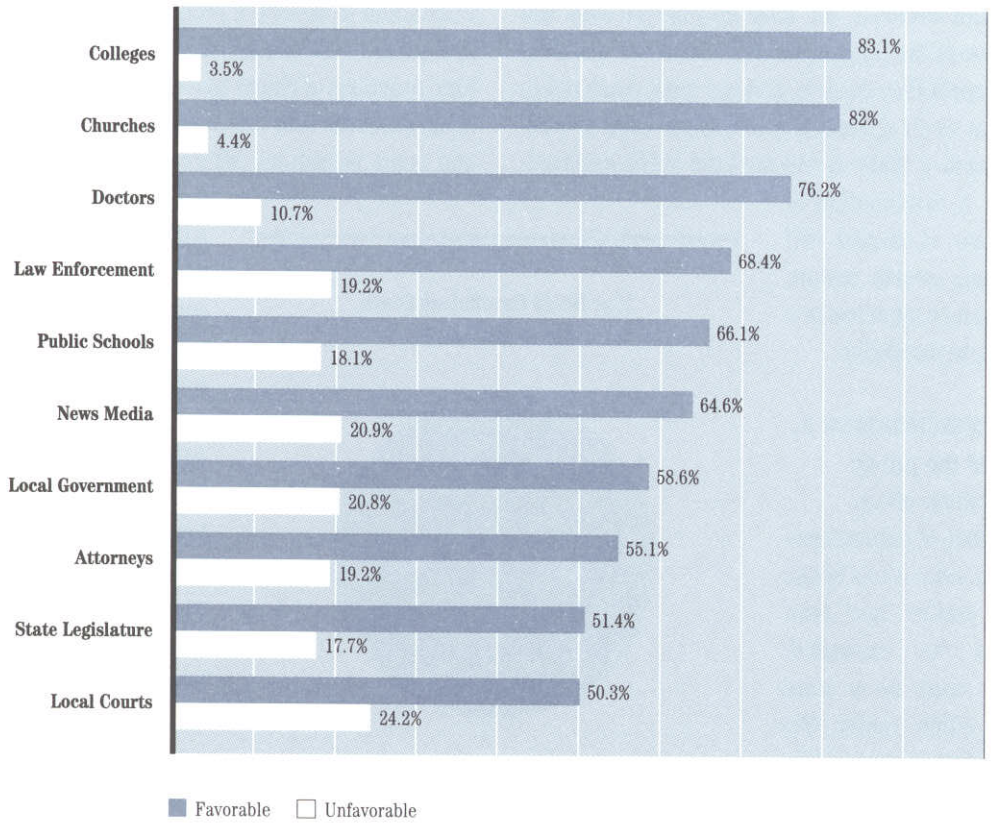


EXHIBIT 18

Source: Wilkerson & Associates Survey

resources necessary to fulfill their responsibilities.

Judicial officials are rightly concerned about the public's critical view of the courts, but many attribute this attitude more to the public perception than the system's performance. While this response is understandable, it is also regrettable. The truth is, as the Commission's investigation has shown, the problems of the courts are the result of both performance and perception. And the perception will not improve without improvements in performance and communication.

One way the judiciary can help restore public confidence in the system is to support our recommendations for improved performance. But public outreach efforts, which lag behind the examples of many other states, will also have to improve to overcome current attitudes. We believe this will require a new recognition of the role and importance of public outreach, and an acceptance of the responsibility for developing a program that better meets both the needs of the courts and those of the public.

Our review indicates that the system's failures in this area may be largely explained by the lack of coordination, lack of fixed authority and responsibility and the lack of performance standards to measure results. As the old saying goes, "what gets measured is what gets done."

As many in private industry and public service know so well, there is no mystery to good public relations. First and foremost, you must do your job well. You must treat the people you serve with the courtesy and respect they deserve, and you must reach out to them at every opportunity to explain what you do, why you do it that way and what the public gains as a result. A combination of all these strategies will help the courts restore the public confidence in a vital state institution.

How North Carolinians Learn About the Courts

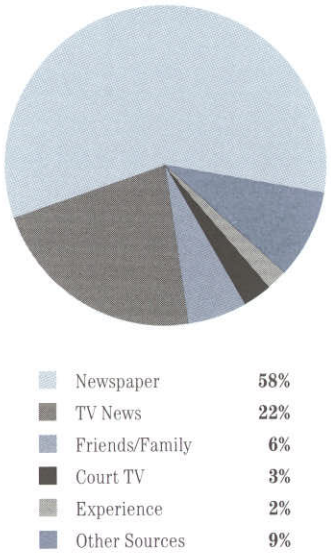


EXHIBIT 19 *Source: Wilkerson & Associates Survey*

RECOMMENDATION 1:

Expand the public information office.

The office of public information, established by the chief justice last year, should be expanded. There must be a state level office under the direction and supervision of the chief justice of the Supreme Court—the natural spokesperson for the court system. In addition to the functions it now performs, this office should be responsible for developing statewide programs and statewide materials for use by the schools, the courts and the news media.

RECOMMENDATION 2: Develop an educational program on the courts for use in the public schools.

The judicial branch of government has been shortchanged in civics education. If we are to change this trend, the courts will need to prod the schools to provide the instruction each citizen should have. This should be a top priority of the public information office.

Toward this end, the courts' public information officer should work with the Department of Public Instruction to develop a program for public schools. This program should inform students about the historic functions of courts in a democratic society and bring students into direct contact with the courts and court personnel. While examples from other states abound, a program adapted to the particular needs of North Carolina's courts and schools would have the best chance of success.

RECOMMENDATION 3:

Keep the media informed about issues, pressures and improvements in the court system.

While the media naturally concentrates on the coverage of newsworthy cases in the courts, there is a gap in background information about the courts' functions, problems and innovations. The public information office can take a proactive role in filling this need, by establishing close working relationships with media representatives.

Since our survey tells us most people get their information about the courts from newspapers, there should be a special emphasis on developing relationships with the state's newspapers. We recommend that periodic meetings with reporters specializing in the courts and with editorial boards be a key facet of the court's public outreach program. Similar efforts should be made with the electronic media.

RECOMMENDATION 4: Develop public information and outreach programs on the circuit level.
The chief judge in each circuit should be held responsible for working with the state office of public information to develop public information and outreach programs at the circuit level. A particular local or circuit emphasis should be on developing volunteer groups with a special interest in the court system.

We believe that advisory panels of volunteers can be helpful to the court system both internally and externally. To demonstrate the importance of this effort, the performance evaluations of every circuit judge should include a performance standard regarding public information and outreach efforts.

RECOMMENDATION 5: Use the call to jury service as an opportunity for public outreach.
The Commission's poll shows that direct contact with the courts is the most frequent source of public information about the judiciary, other than newspapers. In terms of contact, the call to jury service presents a universal—and unequaled—opportunity for public outreach.

To make the most of this opportunity, the chief judge should designate an official in each court to greet individuals who arrive for jury service, explain the system and thank them when they are done. People who are courteously and thoughtfully treated—and who are presented with professionally produced materials and information about the courts—will be not only better jurors, but also better citizens and advocates of the court system.

RECOMMENDATION 6: Take advantage of technological advances to improve public access to the court system.
Dramatic advances in information technology will give the courts not only exciting new tools for improving court performance, but the means to improve public access to the system and build greater understanding of the courts. The public information officer's recent creation of an Internet home page for the judicial branch is an example of an innovative approach to public access and education. In addition to posting court decisions and schedules, the page provides useful background information about the courts. Future technological advances should be evaluated with the same purposes in mind.

Making It Happen

"We are at a critical point—we need to make decisions about the future direction of the courts. Improvements are needed if we are to be able to provide both the fairness and expediency the public deserves and demands. When the public sees changes in how the courts do business and our adoption of more efficient technologies, they will respond with renewed confidence and support."

■

Chief Justice Burley B. Mitchell, Jr.

The Commission for the Future of Justice and the Courts has worked for the last two years to develop the recommendations contained here, and we're proud of the results. But the most important measure of our efforts—implementation—is just beginning.

We know that the changes we have recommended will not happen overnight. While some of the Commission's recommendations can be accomplished by administrative action, others will require constitutional amendments or legislation. All will depend on active support from those who favor a more efficient and effective approach in North Carolina's courts.

The Commission has laid the groundwork for change, by developing the recommendations in this report and drafting the needed constitutional amendments and legislation, contained in a separate document. In summary, the principal constitutional revisions would do the following:

- Provide for the appointment of judges and clerks
- Establish the State Judicial Council
- Give the Supreme Court the authority to set the rules of trial procedure
- Merge the superior and district courts
- Grant the court system control over administration of its budget
- Allow juries of as few as six members
- Eliminate the constitutional right to trial by jury for petty misdemeanors
- Transfer prosecutors to the new office of solicitor general

When the constitutional amendments and legislation are considered, it must be remembered that this is a comprehensive plan for improving the courts in North Carolina. The parts are interdependent and will not produce the needed improvement unless implemented as a package.

Simply put, it is time for an overhaul rather than a tune-up. While the Commission's plan should receive further study and refinement, *the basic court structure and other improvements proposed are inseparable and should be accepted or rejected as a whole.*

Consistent with that view, the Commission proposes that the 1997 session of the General Assembly both approve the constitutional amendments and enact the enabling legislation to take effect after the referendum on the constitutional amendments. The constitutional changes should be voted upon as a single amendment in the fall of 1997. Likewise, the enabling legislation should be enacted as a single, comprehensive act, all to be contingent upon approval of the constitutional amendments by the voters. This timetable is necessary to have the new court system in place by the turn of the century.

It will take time to implement the single trial court circuit plan statewide. Considerable planning, groundwork and transition will be needed, which can best be accomplished by phasing in the circuit court in one part of the state at a time, as was done with the district court in the latter part of the 1960s and the start of the 1970s. The legislation should declare when the implementation will begin and when it will be completed, and leave to the new State Judicial Council other decisions about the phase-in.

One of the council's first decisions will be to determine the number and configuration of the circuits. Then it can proceed to decide the order in which the circuits should be brought to life. The Commission recommends that implementation begin by January 1, 2000, and be completed within two years.

Judges, prosecutors, magistrates and clerks rightly will be concerned about their positions in the new court system. The constitutional amendments and enabling legislation should assure all current judicial officials that they will be entitled to complete the terms for which they have been elected or appointed.

At the end of the holdover term, however, each incumbent judge should stand for a "yes" or "no" vote on being retained in office for a new, eight-year term, without having to submit to the appointment process. At that first retention election, and each subsequent one, the State Judicial Council (or, in the case of a trial judge, the circuit nominating panel) should recommend publicly whether or not the judge should be retained, based on a thorough performance evaluation that will be a public document. Whenever a vacancy occurs, or a new judgeship is created, that office should be filled by gubernatorial appointment pursuant to the new merit selection process.

> *"We can no longer afford the type of justice system we have created."*
>
> ■
>
> Superior Court Judge

The Commission recognizes that if all current judicial and prosecutorial officials are left in place when the new circuits are implemented, there could be some imbalance in allocation of personnel. Some circuits may have more judges than they need, others may have too few. Such problems, if they arise, should be addressed by the State Judicial Council.

The chief justice, working with the council, should be empowered to assign judges outside their home circuits as needed during the transition and until retirements, resignations and deaths correct any temporary imbalances among circuits. Each time a vacancy occurs, the State Judicial Council should determine whether that judgeship is needed in that circuit and, if not, either transfer the position to another circuit or eliminate it.

Clerks of court, like judges, should complete their current terms once the new court system is implemented in their counties. Unless there is good cause for not appointing the clerk—the same kind of justification that would be needed for removal under the new system—the chief circuit judge should appoint each of those officials to an initial, full term of four years. At the end of that and each subsequent appointed term, the chief circuit judge will ask the nominating panel to recommend whether the clerk should be retained for another term. If the answer is yes and the judge agrees, the clerk will be reappointed. Otherwise, the panel will select three candidates from whom the judge can choose a new clerk.

Magistrates also should be allowed to complete their present terms and then be appointed to an initial full four-year term under the new court system unless there is good cause for not reappointing.

District attorneys present a more difficult problem. Under the new system, there will be fewer such offices. In deciding when to implement the new system in a particular circuit, the State Judicial Council should take into account the terms of the current elected district attorneys and schedule the implementation so that it occurs after the last of those terms expires. If the several DAs in a circuit are on different election schedules, the council may return to the legislature to have the shorter terms extended to ensure that all terms end at the same time and the present elected district attorneys are all on equal footing in seeking the new circuit attorney position.

Other changes recommended by the Commission do not depend on the constitutional amendments or legislation restructuring the court system, and these should be implemented immediately. For example, at the next session, the General Assembly may turn

over to the Supreme Court the authority to adopt the rules of civil and criminal procedure and the rules of evidence and also may enact the recommendations for handling worthless checks. Expansion of magistrates' small claims jurisdiction and authorization for lawyer magistrates to hear infractions do not have to await implementation of the new court system either. However, none of these changes should be considered a substitute for enactment of the entire plan presented by the Commission.

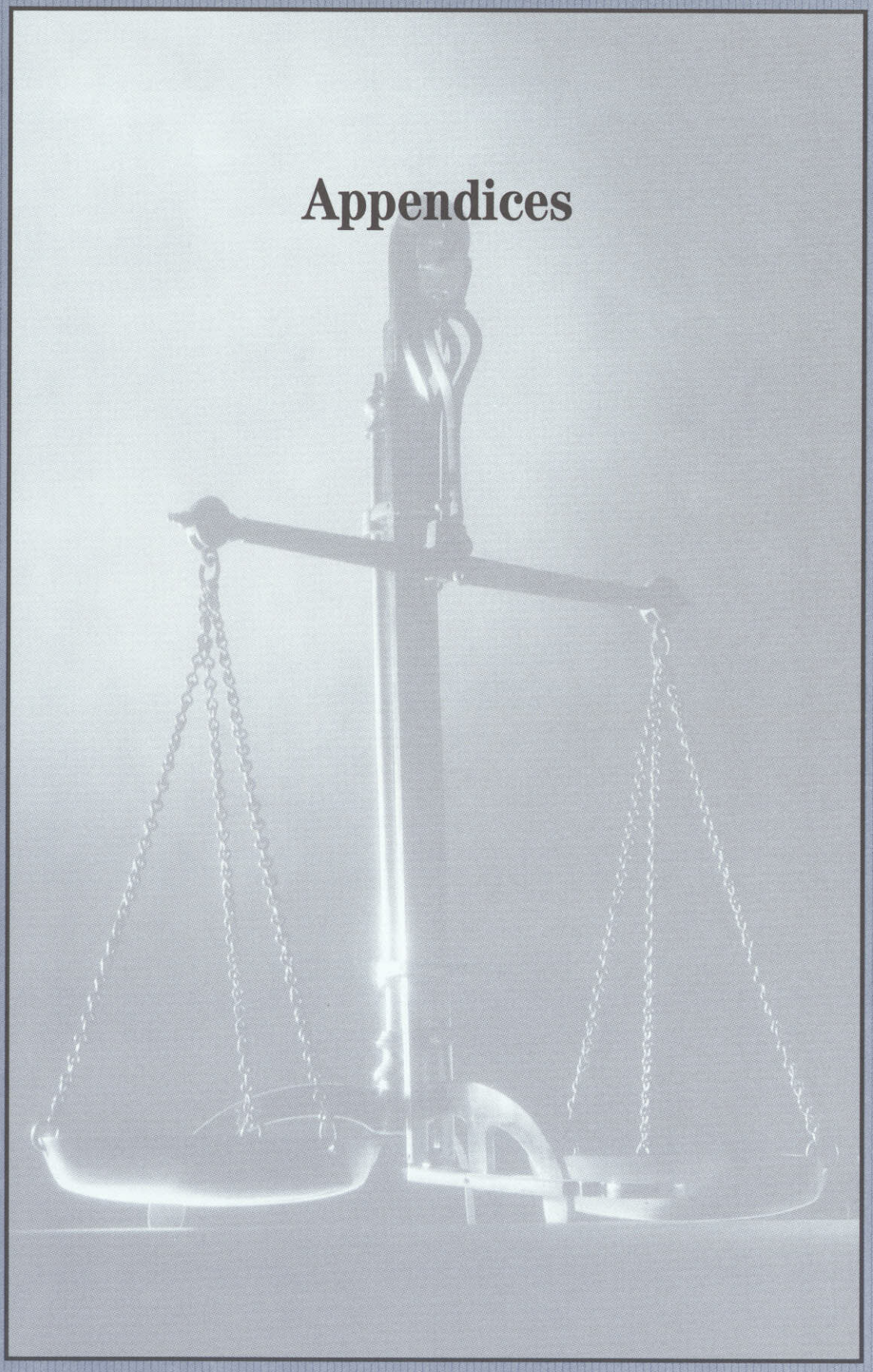
Even without legislation, the chief justice and the Supreme Court may initiate the studies of jury procedures and discovery in criminal cases that the Commission believes are needed for further improvements in those areas. Similarly, the Administrative Office of the Courts may commence the assessment of facilities that will be required when the circuit court is put in place. The AOC already has begun developing a long-range technology plan and should continue that effort vigorously and urgently. It also can begin the training in family law and case management that will be essential to effective operation of the new family courts, and can start on the public education recommended by the Commission.

With this report, the Commission for the Future of Justice and the Courts in North Carolina has completed its charge. But the hard part—implementing the vision outlined in these pages—is just beginning.

The Commission itself is not in position to make the necessary changes. While our members will continue to be personally involved in this effort, many others will have to pick up the torch. Ultimately, success is going to require leadership and support from the chief justice, the governor, the General Assembly, the organized bar, the business community, the courts themselves and the public in general.

It won't be easy, but we can create a model court system in North Carolina, just as we have done before. It is time to begin.

Appendices



Appendix A: The Futures Commission and Its Committees

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Appendix B: North Carolina's Court System

A BRIEF HISTORY

From 1776 to the Civil War. North Carolina's first state courts were largely continuations of the colonial system. A county court, called the Court of Pleas and Quarter Sessions, was held in each county by the justices of the peace appointed by the governor from recommendations of the General Assembly. The justices of the peace were paid from fees collected. When the county court was out of term, they held court individually or in pairs, to consider lesser matters.

The Constitution of 1776 authorized the legislature to appoint judges of the Supreme Court of Law and Equity. The name is misleading in today's nomenclature, because this is the court that has become known as superior court. Initially, there were three superior court judges who were supposed to hold court twice a year in each of the several districts that were established. The system was criticized because the sessions were not held often enough; there were not enough judges; and their opinions sometimes conflicted, with no means for appeal.

In 1779 the General Assembly required the superior court judges to meet together in Raleigh to resolve their differences. This Court of Conferences put its opinions in writing. In 1805 its name was changed to the Supreme Court, but it was not until 1818 that the court became an independent body with three justices of its own to review cases from the superior court.

Beginning in 1806, the superior court was required to hold sessions in each county twice a year, and the state was divided into half a dozen circuits for the rotation of judges. County courts of justices of the peace continued to operate separately.

The Constitution of 1868 to the 1950s. With Reconstruction came dramatic changes in North Carolina government. For the courts, the most far reaching provision in the Constitution of 1868 was the election of judges. Both the Supreme Court, increased to five members, and the superior court, expanded to a dozen judges, were to be chosen directly by the voters for the first time.

The Reconstruction reforms also abolished the Court of Pleas and Quarter Sessions, although justices of the peace were retained as separate judicial officers with limited jurisdiction. Initially they were appointed by the governor; that power was later transferred to the legislature. The distinction between proceedings in law and equity was abolished.

The basic state court structure established in 1868 remained the same through the first half of the twentieth century. Before the reforms of the 1960s, the number of superior court judges had grown to 38 in 30 districts, and those judges continued to rotate, moving from district to district on a regular six-month basis. There were 21 district "solicitors" (the old term for district attorneys) who were paid by the state. The clerk of court exercised some judicial functions, primarily as the judge of probate and sometimes as a juvenile judge. In some counties, the superior court had specialized branches for domestic relations and juvenile offenses.

Below the superior court, two levels of local courts developed. First, there were a number of general county courts, county criminal courts, domestic relations courts, juvenile courts and city and county recorder's courts. Some were established by general state law and many by local acts applying to only one locality. About half were county courts, half city or township courts. Most heard misdemeanors, particularly traffic offenses, and some considered civil cases.

The judges usually were part-time and were chosen by various methods of appointment or election. Below those courts were about 90 mayor's courts and over 900 justices of the peace, all of whom heard petty offenses in the $50 or 30-day range. These officials were compensated by the fees collected. All told, there were probably about 1,400 local courts in existence statewide by the 1950s, with no uniformity of jurisdiction, rules or method of selection.

The Bell Commission and the General Court of Justice. Growing dissatisfaction with the maze of local courts, the variations in jurisdiction and rules, the backlog of cases, and the obvious danger of having a judge's pay depend on the fines imposed, prompted Governor Luther Hodges in 1955 to call for court reform. The North Carolina Bar Association responded by creating a Committee on Improving and Expediting the Administration of Justice in North Carolina, composed of 27 members, 15 of whom were lawyers. The committee became known as the "Bell Commission" after its chairman, J. Spencer Bell, a distinguished attorney from Charlotte.

Bell reported the findings and recommendations of his committee to the 1958 summer convention of the Bar Association. Their primary concerns were:

- The competence and fairness of those administering justice—that is, justices of the peace who were not lawyers, judges who had to run in partisan elections, and solicitors who had private law practices
- The unfairness of having fees differ from court to court in the same county and for officials to be compensated by how much they collected
- The inefficiency and confusion of so many different local courts, and the resulting uneven justice from place to place in the state
- The general poor operation of the courts resulting in delays in having cases heard, excessive costs, inconvenience to litigants, and poor record keeping

After Bell's committee established the basic goals of court reform, the State Committee for Improved Courts was created in 1958 to decide how to accomplish those objectives. Chaired by J. Spencer Love of Burlington Industries, and consisting of one lawyer and one lay member from each of the 30 judicial districts, the committee developed a package of specific recommendations to the General Assembly. Those proposals went to the legislature in 1959.

The Senate passed the bill after amending it to retain more authority for the legislature, but when the House watered it down even further, proponents withdrew the bill altogether. The Bar Association reworked the proposal and presented it again in the 1961 session. Once more, the legislature amended the bill to take authority away from the Supreme Court, but the bill passed. Constitutional amendments were approved by the voters in 1962, the Bar Association continued its legislative efforts in 1963, the Courts Commission was established, and beginning in the mid-1960s the Administrative Office of the Courts was created and implementation of the new district court began.

By the end of the 1960s, the new unified, statewide court system—the General Court of Justice—was in place. Its most important features were:

- Replacement of the variety of local courts and justices of the peace with a statewide district court system and magistrates
- Establishment of the Administrative Office of the Courts (AOC) for statewide administration of the new system
- Conversion of part-time solicitors to full-time district attorneys paid by the State
- Common boundaries for all superior court, district court and prosecutorial districts
- Uniform funding of salaries and other expenses of all court personnel through the AOC
- Establishment of the Court of Appeals as an intermediate level appeals court

The Bell Commission's vision of an independent, accountable and flexible judicial system was not fully realized, however, primarily because of the General Assembly's resistance to giving the court system full control over its own operations.

The commission had proposed, for example, that the new district judges be appointed by the chief justice, but the legislature chose for them to be elected locally. (An earlier proposal from a Bell Commission subcommittee to have all judges appointed had not even made it to the final report.) The General Assembly rejected giving the Supreme Court the authority to set the rules of civil and criminal procedure for the trial courts, instead retaining that authority for itself. Also falling by the way was a constitutional amendment to allow the legislature to choose later whether juries could have as few as six members, verdicts could be by majority vote in civil cases, and whether defendants could waive the right to a jury in most criminal cases in superior court.

THE PRESENT ORGANIZATION

Since the late 1960s, North Carolina has operated a uniform, statewide court system consisting of two trial level courts—the district and superior courts—and two appellate courts, the Court of Appeals and the Supreme Court.

The Trial Courts. The district and superior courts have divided responsibilities. Generally, district court hears criminal misdemeanors and civil disputes involving less than $10,000. The 190 or so district court judges also hear all juvenile matters and all domestic cases (divorce, child custody and related matters). There are about 650 magistrates, who are officers of the district court and may hear small claims—that is, civil disputes involving less than $3,000. Magistrates do not try criminal cases, but in some instances they may accept guilty pleas and impose punishment, according to a schedule set by the chief district judges.

The superior court hears felonies and civil disputes involving more than $10,000. The dividing line between district and superior court was first set at $5,000 in the 1960s, and it has been raised only once since then, to the present $10,000 mark in the early 1980s. There are just over 90 superior court judges. Because jury trials are not available for misdemeanors tried in district court, a person convicted there may appeal to superior court for a new trial. All criminal cases tried in superior court, both felonies and misdemeanors, are heard by a jury.

At one time, the district court may have been considered a "lesser" court by some people because it heard the smaller, sometimes simpler cases. Over the years, however, the district court has faced increasingly important and complex cases, especially in domestic matters such as equitable distribution. Now district court judges find themselves resolving cases in which millions of dollars may be at stake—cases as difficult as those handled by their colleagues on the superior court bench.

The Appellate Courts. Almost all matters heard in the trial courts are subject to appeal by the losing side. Most appeals go to the Court of Appeals, the intermediate appellate court. The court also hears direct appeals from various state agencies and organizations, including the Industrial Commission, the Property Tax Commission and the Utilities Commission (except for rate-making cases). The court's 12 judges sit in panels of three to hear cases. Almost all the sessions are in Raleigh, but panels sometimes hear arguments at other locations.

The Supreme Court, which is the highest court in the state, consists of seven justices who always hear cases together in Raleigh. The only appeals that go directly to the Supreme Court are convictions carrying the death penalty, general rate-making cases from the Utilities Commission, and any split decisions from the Court of Appeals. Otherwise, the court chooses which cases to consider.

Number of Court Officials

Supreme Court Justices	7
Court of Appeals Judges	12
Superior Court Judges	95
District Court Judges	184
Magistrates	683
Clerks of Superior Court	100
Assistant and Deputy Clerks	1,983

EXHIBIT 20

Source: Administrative Office of the Courts

The Clerks of Court. Each of the 100 counties has an elected clerk of court. The clerk's duties include scheduling cases, collecting and managing the fees and judgments that come to the courts, and seeing that all official papers are recorded properly and kept secure. The number of employees provided to each clerk is established by the Administrative Office of the Courts (AOC) according to funds appropriated by the General Assembly. The clerk of court also serves an important judicial function, hearing disputes involving the probate of wills and administration of estates and such other matters as adoptions, determinations of incompetency and partitions of land.

Court Districts. The state is divided into a number of districts for the administration of the courts and for the election of court officials. The orderly organization of districts has changed significantly since the court system was established with 30 coterminous districts twenty-five years ago. Initially, all superior court, district court and prosecutorial districts had the same lines. Beginning in the 1970s, a number of districts were split, sometimes because local lawyers or legislators had come to disfavor a particular district attorney or judge and wanted to create a separate district to elect someone more to their liking.

In some instances, court and prosecutorial districts were divided at the same time. At other times only the prosecutorial district was split, leaving two different district attorneys serving different parts of one judicial district, or the prosecutorial district would remain the same while the superior court district was divided. Only 10 of the 30 uniform districts that existed in 1970 remain untouched. To further complicate matters, in 1989 the General Assembly created a number of new superior court electoral sub-districts to settle a voting rights lawsuit by black citizens.

Due to district splitting and extraordinary growth in a few urban counties, there now are a few districts with 10 times the workload of others. Some urban prosecutorial districts may dispose of 5,000 to 6,000 felonies a year, while smaller districts may act on fewer than 500. In one superior court district, there were only two civil jury trials in the last reported year, while in other districts there were more than 50. The most recent annual statistics also show that one superior court district had only 67 civil cases filed, while another had over 2,600. The same kind of disparities exist in district court as well.

Rotation of Superior Court Judges. North Carolina's superior court judges travel more than any other trial judges in the country. For purposes of rotation, the state is divided into four divisions, and generally each judge rides circuit from district to district within his or her division. Although the scheduling of rotation has changed over time and

now is less rigid than before, superior court judges usually are assigned on a six-month basis.

Generally, then, a superior court judge will hold court in one district for half a year and move to another district in the division for the next six months. In the more urban districts, the judge may stay for several consecutive six-month rotations. When assigned to large single-county districts, judges hold court in the same location every week for the entire six-month period. For more rural districts, especially in the eastern and western ends of the state, the judge may move from county to county within the district and be in no county more than one week at a time.

In addition to the regular rotation schedule, superior court judges are subject to special assignment anywhere in the state. As a result of the rotation system and such special assignments, a superior court judge generally will hold court outside the judge's home district about three-fourths of the time. This practice is intended to insulate judges from local political pressures and assure even-handed justice to outsiders.

Election of Judges. All judges in North Carolina are elected. Currently all elections are partisan, but beginning in 1998 superior court elections will be nonpartisan.

District judges are elected from their districts. In the urban areas, a district court district will consist of a single county, but in other parts of the state it may be several counties. Until litigation brought by the Republican Party in the early 1990s, and subsequent legislative changes, superior court judges were nominated in party primaries held in their districts but then subject to a statewide general election. Now the elections are just within the district. All appellate judges are chosen statewide. District court judges are elected for four-year terms, and superior court and appellate judges for eight-year terms.

Until the 1980s, most judicial elections were uncontested, except for some district judgeships in areas where there was true two-party competition. Often, a judge first came to office by being appointed by the governor to complete a term of someone who had retired or died, and then no one ran against that judge at the next election. Sometimes, as judges contemplated retirement, they would time their resignations to occur just after an election so the appointed successor would have the maximum time in office before having to stand for election.

In the 1980s, judicial elections grew increasingly competitive. The Republican Party's success during the 1970s in elections for governor and Congress led it to field more candidates for statewide judicial office in the 1980s. For the first time in a century, the state began to experience true campaigns for superior court and the appellate courts. In a few appellate races, candidates spent over $250,000.

Judicial Standards Commission. The principal mechanism for discipline of judges, other than election, is the Judicial Standards Commission. The commission is a seven-member body that hears complaints against judges and decides whether to recommend that the Supreme Court take action. Three members of the Judicial Standards Commission are judges appointed by the chief justice, two are attorneys named by the State Bar, and two are lay members appointed by the governor. Based on the recommendations of this body, the Supreme Court can reprimand a judge or even remove him or her from office.

The Judicial Standards Commission finds that nearly four-fifths of the complaints it receives concern matters outside its jurisdiction, and that about a third of the proper grievances warrant some kind of action. Over the last 20 years, the most common discipline has been a private reprimand, but the Supreme Court has publicly censured about a dozen judges and removed five. Another dozen judges have voluntarily left office in the face of serious complaints.

District Attorneys and Public Defenders. District attorneys are also elected in partisan elections, for

four-year terms. The number of assistant district attorneys is set by the legislature and varies from two in one of the smaller districts to two dozen in larger, urban districts.

In 11 districts—including all the major cities except Raleigh—the state's obligation to provide counsel to indigent defendants in criminal cases is met, in part, by a public defender's office. In other areas, private attorneys are appointed to represent all indigents and are paid by the AOC. The public defenders are appointed by the senior superior court judges in their districts from nominations made by local lawyers in the district. The number of assistants is set by the General Assembly. The legislature also funds an Appellate Defender Office to assist in representing indigents on appeal.

Like all judicial offices, district attorneys and public defenders and their assistants are full-time positions. The cost of providing indigent defense, through both public defenders and appointed private attorneys, has been one of the fastest growing parts of the AOC' s budget in recent years and now accounts for more than 15 percent of the state's total expenditures on the courts.

Administration of the Courts. Although the powers are limited, the chief justice is the head of the court system. The office of chief justice is elected separately from other seats on the Supreme Court. Traditionally, though not always, the governor appoints the senior associate justice to fill the vacancy when the chief justice dies, resigns or retires, and, at least until recent years, that person has been unopposed in the next election.

The chief justice appoints and may replace the director of the AOC. The Supreme Court sets the rules of procedure for the appellate courts, and the chief justice assigns judges. Mostly, however, the chief justice directs the operation of the Supreme Court. The chief justice designates one of the judges on the Court of Appeals as the chief judge for that court, traditionally the most senior judge. The chief justice also appoints a chief district court judge for each district. For superior court, the chief judge, by statute, is the resident judge in the district with most seniority.

The senior resident superior court judge for each district appoints magistrates (from nominations by the clerk of court) for two-year terms; appoints public defenders in those districts with such offices; and generally oversees the operation of the court in the district, including the calendaring of civil cases. The district attorney, however, is responsible for setting the calendar for criminal cases—a practice unique to North Carolina.

In 12 of the more populous districts, the senior superior court judge is assisted by a trial court administrator. The administrator's principal duties are to monitor and schedule civil cases to see that they move expeditiously, to oversee the management of jurors, and to deal with county officials on issues concerning court facilities.

The chief district judge for each district assigns judges to sessions of court, supervises magistrates, and, together with all the other chief district judges, prepares uniform schedules of the fines to be paid for uncontested minor offenses.

Despite its name, the Administrative Office of the Courts has little to do with the direct, day-to-day management of court dockets. The AOC prepares the judicial department's budget; recommends new positions, primarily on the basis of workload and population formulas; purchases and distributes supplies; collects and reports statistical information about court operations; maintains computer information systems to keep track of caseloads; and oversees the implementation and evaluation of pilot programs such as court-ordered mediation.

The AOC also advises the General Assembly on the appropriate number of judges, prosecutors and magistrates for each district, and determines the number of clerical employees needed by the court system. All

North Carolina's Trial Court Caseload, 1995-96

Total Cases Filed			**2,750,677**
Total Criminal/Traffic			**2,165,281**
District Court:		2,038,884	
Infractions	705,530		
Misdemeanor motor vehicle	634,834		
Misdemeanor non-motor vehicle	634,291		
License revocations	64,229		
Superior Court:		126,397	
Felonies	83,212		
Misdemeanor appeals	43,185		
Total Civil Filings			**437,111**
District Court:		415,801	
Small claims	263,392		
Domestic	112,431		
General civil	39,978		
Superior Court:		21,310	
Total other Filings			**148,285**
Special proceedings (clerk)	54,860		
Estates	53,561		
Juvenile	39,864		

EXHIBIT 21

appropriations for those positions and other expenses of the court system go through the AOC, but the AOC does not tell clerks, district attorneys or other local court officials how to use their personnel nor discipline judges or others for inadequate performance.

CASELOADS

A Growing Burden. Comparisons between states are difficult due to different methods of counting. However, North Carolina courts appear to handle one of the largest caseloads in the United States, with more than 2.7 million total cases filed each year in a state of just over 7 million people. And while North Carolina's population has grown dramatically in recent years, its caseload has increased even more rapidly. Since the present court system was established in about 1970, the state's population has grown by about 40 percent from 5 to 7 million. But the number of cases filed each year has more than doubled, from about 1.2 million to the current 2.7 million filings a year.

During that time, the greatest percentage growth in the caseload has been in felonies and in domestic cases. Felonies have shot up by nearly 400 percent, and domestic cases have grown at an even higher rate. This pace is expected to continue, resulting in more than 3.2 million cases in the year 2000.

Trial Court Caseloads. The majority of the cases filed are traffic offenses heard in district court. Each year, the district court processes about 700,000 non-criminal infractions, virtually all traffic-related,

which result in only small fines. District court also handles over 600,000 misdemeanor motor vehicle offenses, and 65,000 driver license revocations. The district court hears 600,000 misdemeanors not involving motor vehicles, such as worthless checks and minor assaults.

The district court and the magistrates associated with it also process about 400,000 civil cases each year. Over 250,000 of these cases are small claims (disputes involving $3,000 or less) heard by magistrates, and 100,000 are domestic disputes, including divorces, child custody and child support. District court judges deal with another 40,000 civil filings that fall between the $3,000 limit for small claims and the $10,000 for cases in superior court.

> *"I've seen the future and it's much like the present, only longer."*
>
> ■
>
> Dan Quisenberry

The superior court also faces a heavy caseload, handling more than 80,000 felonies and 20,000 civil cases each year. Roughly one third of the felonies are drug cases, and a fifth are burglaries or breaking and entering. A third of the civil cases arise from motor vehicle accidents, and a quarter are contract disputes. Appeals from misdemeanor convictions in the district court account for another 40,000 filings in the superior court each year.

Another 100,000 plus filings each year are handled by the clerks of court, including about 50,000 estate matters and 50,000 other special proceedings.

In rough numbers, then, about 55 percent of the cases filed in state court each year are minor traffic offenses. Criminal cases other than those involving motor vehicles account for a quarter of all filings, but only about three percent are felonies. Small claims are about 10 percent of the total filings, and domestic cases are about four percent. Other civil cases are less than three percent of the total caseload. Although felonies are a relatively small portion of the total state caseload, North Carolina, like other southern states, ranks relatively high in the number of felony cases filed per capita.

The Disposition of Cases in the Trial Courts. The great majority of cases, both criminal and civil, are resolved without trial. Although the number of trials in district court for motor vehicle misdemeanors is not available, other district court trials number about 100,000 each year. Non-motor vehicle misdemeanors account for 40,000 of these trials; 60,000 are civil cases. Only about 300 of these district court cases are tried before a jury. In the superior court, about 6,400 cases go to trial each year. Most of these are criminal cases and must be heard by a jury.

The criminal cases that do not go to trial are most often resolved by guilty pleas. Nearly two-thirds of all felony cases and nearly 40 percent of non-motor vehicle misdemeanors are resolved by guilty pleas to the original charges or to lesser charges. Another one-third of all felonies and non-motor vehicle misdemeanors are dismissed by district attorneys. Less than three percent of felonies (about 2,000) go to trial each year.

The quickest resolution of criminal cases is through guilty pleas. The median age of these cases is about three months, compared to about seven months for cases resolved by trial, and five months for cases dismissed by the district attorney.

Civil cases are, naturally, resolved quite differently. In superior court, nearly 55 percent of the civil cases are concluded by the plaintiff's voluntary dismissal; less than 20 percent go to trial. But in district court, only about 14 percent are concluded by voluntary dismissal, and more than 40 percent go to trial.

Four-fifths of the civil cases in superior court that go to trial are heard by the judge alone; the rest are heard by a jury. The cases tried by a superior court judge have a median age of nine months, while cases tried by a jury have a median age twice as long.

In recent years, North Carolina has been a leader in experimenting with alternative dispute resolution. Pilot projects have used mandatory arbitration and mediation in various kinds of cases in both superior and district courts. Judges, lawyers and the public all seem to consider these programs effective and encourage their wider use.

Appellate Court Caseloads. The Court of Appeals hears about 3,500 matters each year, including cases on direct appeal, petitions for review, and motions. About 40 percent of the matters are direct appeals from the district and superior courts, and nearly 50 percent are motions. The remaining 10 percent or so are petitions for review.

Of the nearly 1,500 direct appeals, about 55 percent are civil cases, about a third are criminal cases, and the rest are appeals from administrative decisions.

The Supreme Court receives approximately 200 direct appeals each year. It also receives about 500 petitions for discretionary review. Until recently, civil cases accounted for just under half of the cases reaching argument before the court, cases in which persons received life sentences accounted for almost 30 percent, and death penalty cases accounted for another 15 percent. The remaining cases were other criminal matters. In 1995, however, the General Assembly placed appeals from cases involving life sentences in the Court of Appeals. This change will affect the caseloads of both courts.

The Disposition of Cases in the Appellate Courts. Each year, the Court of Appeals writes opinions in about 1,300 cases and disposes of 100 more without opinions. The Supreme Court issues signed opinions in about 70 percent of its direct appeals (140 or so cases) and per curiam opinions in about another 25 percent. Another five percent or so of the cases are dismissed or withdrawn. Less than 20 percent of the petitions to the court for discretionary review are granted.

COURT FINANCES

Since the establishment of the General Court of Justice in the 1960s, the state has been responsible for all personnel and operating costs of the courts and the counties responsible for providing courthouses and local offices. The courts collect filing and other fees from litigants, but these amounts are not intended to cover the costs of operating the judicial branch, and the moneys go to the state general fund or to counties to help pay for facilities. Fines collected by the courts are paid over to local schools as required by the North Carolina Constitution.

When the district court system first began functioning statewide in fiscal 1970-71, total state funding for the courts was just over $22 million. Today, it is about $280 million, but still less than three percent of the state general fund budget. Almost all the state funding goes to pay for people, either to pay salaries of court officials or to reimburse private attorneys for defending indigent criminals. The largest portion of the state funding, just under 30 percent, is for the 100 clerks' offices. Another 16 percent or so goes to pay for district court judges and their related costs. The district attorneys' offices consume about 12 percent of the total budget and superior court judges and their related expenses somewhat less.

Today, nearly $50 million of the state court budget is spent on indigent defense, including both public defender offices and private counsel. This is over 15 percent of the total state expenditures on the courts. Except for the Administrative Office of the Courts, which was still relatively new in 1970, indigent defense is responsible for the greatest increases in the courts' budget over the last quarter century. The

AOC today requires about $17 million for its operation, about half of which is for information services.

Each year the trial courts collect over $90 million in costs and fees. About 70 percent of that amount is transferred to the general fund and the remainder is returned to counties to help pay for local court facilities or jails or is paid to the law enforcement officers retirement fund. The courts also collect nearly $40 million in fines and forfeitures each year, and those sums are paid to local school systems.

It is not possible to say for certain how much counties spend on the courts. The AOC requests annual reports, but many counties do not respond and, of those that do, most report only how they spend the money provided by the AOC from the facilities fees. To attempt to get a better idea of local expenditures, the Futures Commission asked the Association of County Commissioners to survey its members. The differences in the ways in which counties record those expenditures make it difficult to generalize, but these conclusions seem warranted from the survey:

- Counties spend considerably more on court facilities than the $9 million they recover each year in facilities fees
- There are wide variations in the expenditures, particularly in law libraries and security systems
- Statewide, counties spend more than $8 million a year on bailiffs, including expenditures of more than $1 million annually in some of the larger counties
- One of the fastest growing expenditures is for courthouse security; for example, Guilford County spent $300,000 in one year recently to install a new system
- Some counties, though not many, are also providing personnel for the courts by assigning sheriffs' deputies to district attorneys' offices as investigators, providing law librarians or assigning county employees to assist clerks' offices with certain responsibilities

COMPARISON WITH OTHER STATES

Comparing court systems in different states is a risky business. Court structures vary widely, many states have locally funded courts for which numbers are hard to find, and jurisdictions count cases differently—for example, some states will include probation revocations in case filings and others will not. The National Center for State Courts publishes various reports with statistics from all 50 states, but those documents are loaded with footnotes and other warnings about different methods of counting. Nevertheless, an overall picture emerges which allows some generalizations.

These are various ways to categorize state court systems. Ten states—Connecticut, Iowa, Idaho, Indiana, Illinois, Kentucky, Massachusetts, Minnesota, South Dakota and Wisconsin—have wholly consolidated their trial courts into a single court with jurisdiction over all cases and procedures. North Carolina is among about a dozen states with mostly consolidated trial court structures—that is, two levels of trial court, one with general jurisdiction (superior court) and one with limited jurisdiction (district court), but with uniform statewide jurisdiction for each level. At the other end of the spectrum are the 15 states that have two levels of trial court with overlapping jurisdiction and the 14 states with several different general jurisdiction courts or a multiplicity of limited jurisdiction courts with overlapping responsibilities. The American Bar Association standards and other guidelines for court organization favor consolidated trial court structures.

The court systems in nine states—Alaska, Connecticut, Hawaii, Kentucky, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont—are essentially all state funded. North Carolina is in the next rank of about a dozen states that are primarily state funded but also rely on local expenditures to some extent. The remainder of the states rely on local funds to a greater extent than we do.

As mentioned above, it is difficult to compare

workloads from one state to another. Keeping in mind the differences in the way courts are organized and cases are counted, only one other state—South Carolina—has fewer general jurisdiction trial judges (superior court in North Carolina) per capita. South Carolina has 1.1 general jurisdiction judges per 100,000 population and North Carolina 1.3; the national average is 3.38. In a national survey of all trial judges in 1993, North Carolina had 262 superior and district court judges for the state's 6.6 million people. Among the states with a slightly lower population but more total judges were Massachusetts (308 trial judges), Virginia (327) and Georgia (598). Colorado, with about half North Carolina's population, had 468 trial judges, and New Jersey, with about a million more people than North Carolina, had 740.

Like other southern states, North Carolina has a high rate of felony charges. In 1994, it was 1,186 felony charges per 100,000 population, exceeded only by Arkansas (1,445), Maryland (1,255) and Florida (1,272). New Jersey's rate was only 598.

At the appellate level, by contrast, North Carolina appears to have a caseload below what might be expected from its population. In a 1994 comparison, North Carolina's appellate courts only had 2,410 total filings, ranking the state 34th in the country (although 10th in population).

When North Carolina's present court system was established about 25 years ago, the clerk of court was elected in all but six states. The trend, however, is toward appointment. Currently, clerks are chosen in partisan elections in only 26 states and in nonpartisan elections in four others. Appointment is used elsewhere.

One area in which North Carolina clearly trails other states is in the number of trial court administrators. At the last national survey there were still only a dozen such offices in North Carolina. By comparison, Massachusetts had 22, Georgia 31, Indiana 95, Michigan 226 and New Jersey a whopping 560. Admittedly, those numbers are not always a good comparison because in some places, like New Jersey, a person called an administrator may function more as a clerk, but on the whole this is an area where North Carolina has lagged behind other states in recent years in providing support to its judges.

One reason for the difference in the number of local support staff is the concentration of personnel in the central Administrative Office of the Courts. Among all the states that have been mentioned, North Carolina has the most AOC employees by far—647 compared to New Jersey's 352, Michigan's 125, Massachusetts' 120 and Virginia's 119. A large part of the explanation for the differences is the inclusion in North Carolina's AOC of 400 juvenile probation employees. In other categories, though, such as data processing and technical assistance, North Carolina has more state AOC employees than those other states except New Jersey. For example, our AOC has 24 state employees in purchasing, while New Jersey only has 10 and Virginia five. These numbers do not necessarily mean that the AOC has too many people; it only means that there is a difference in organization, with North Carolina having more of those functions performed at the state level.

Appendix C: Acknowledgments

The Commission received a great deal of assistance throughout its deliberations. To all the interested citizens and court officials who participated in the public hearings, responded to surveys, joined in focus groups, wrote or otherwise provided information, we extend our appreciation. Special thanks go to the people who appeared at Commission meetings or hearings to share their experience, knowledge and views. Those include:

September 29-30, 1994

West End

Kathy Mays, Judicial Planning Director, Virginia Supreme Court

R. Dale LeFever, Applied Theory, Inc., Ann Arbor, Michigan

Bill Tillman, State Demographer, Office of State Planning

James C. Drennan, Director, Administrative Office of the Courts

Daniel J. Becker, Deputy Director, Administrative Office of the Courts

Thomas H. Thornburg, Institute of Government

Rick Kane, Co-Administrator for Research and Planning, Administrative Office of the Courts

Thomas N. Havener, Information Services Division, Administrative Office of the Courts

November 17-18, 1994

Raleigh

James B. Hunt, Jr., Governor of North Carolina

Wiley F. Bowen, Senior Resident Superior Court Judge, 11th Judicial District

Gregory A. Weeks, Superior Court Judge, 12th Judicial District

John W. Smith, District Court Judge, 5th Judicial District

Sherry Fowler Alloway, District Court Judge, 18th Judicial District

December 15-16, 1994

Winston-Salem

Thomas Keith, District Attorney, 21st Prosecutorial District

Todd Nuccio, Trial Court Administrator, Mecklenburg County

Richard E. Hunter, Jr., Clerk of Court, Warren County

January 12-13, 1995

Charlotte

John Wyatt, Executive Director, Mecklenburg County Criminal Justice Commission

Doug Walker, Court Technology Specialist, National Center for State Courts

Francis J. Taillefer, Administrator, Information Services Division, Administrative Office of the Courts

John Ferguson, Wachovia Corporation

Bill Tillman, State Demographer, Office of State Planning

Thomas N. Havener, Information Services Division, Administrative Office of the Courts

Rick Kane, Co-Administrator for Research and Planning, Administrative Office of the Courts

Stevens Clarke, Institute of Government

March 2-3, 1995

Research Triangle Park

Robert L. Farb, Institute of Government

C. Colon Willoughby, Jr., District Attorney, 10th Prosecutorial District

Kenneth C. Titus, Chief District Court Judge, 14th Judicial District

Roger W. Smith, Tharrington Smith, LLP, Raleigh

Barry S. McNeill, Special Deputy Attorney General

Malcolm R. Hunter, Jr. Appellate Defender

Janet Mason, Institute of Government

Thomas A. Danek, Administrator for Juvenile Services, Administrative Office of the Courts

Russell G. Sherrill, III, Chief District Court Judge, 10th Judicial District
Albert S. Thomas, Jr., District Court Judge, 7th Judicial District
Ilene Nelson, Administrator, Guardian Ad Litem Program, Administrative Office of the Courts
Wade Barber, Chair, Structure of the Courts Subcommittee of the North Carolina Courts Commission
George Gish, Court Administrator and Clerk of the Recorder's Court, Detroit, Michigan

May 1, 1995
Raleigh and Statesville
Public Hearings

May 2, 1995
Charlotte and Fayetteville
Public Hearings

May 3, 1995
Greenville
Public Hearing

May 8, 1995
Asheville and Wilmington
Public Hearings

May 9, 1995
Greensboro
Public Hearing

May 11-12, 1995
Winston-Salem
Dale R. LeFever, Applied Theory, Inc., Ann Arbor, Michigan

June 8-9, 1995
Durham
James L. Carr, Clerk of Court, Durham County
Richard E. Hunter, Jr., Clerk of Court, Warren County
John M. Kennedy, Clerk of Court, Wake County
Rick Kane, Co-Administrator, Research and Planning, Administrative Office of the Courts
Kim Hagan, Staff Attorney, Research and Planning, Administrative Office of the Courts
C. Ronald Aycock, Executive Director, North Carolina Association of County Commissioners
Elizabeth Keever, Chief District Court Judge, 12th Judicial District
Thomas Dimmock, Attorney, Raleigh
Jaye Meyer, Reporter for Family Issues Committee
Leslie Ratliff, Court Services Division, Administrative Office of the Courts
Stevens Clarke, Institute of Government
Miriam Saxon, Court Services Division, Administrative Office of the Courts
Todd Nuccio, Trial Court Administrator, Mecklenburg County
John R. McArthur, Chief Legal Counsel, Attorney General's Office

September 14-15, 1995
Pinehurst
German Dillon, Wilkerson and Associates, Louisville, Kentucky
Neil Vidmar, Duke Law School

October 14, 1995
Raleigh
National Town Hall Meeting

February 8-9, 1996
Chapel Hill
J. Rich Leonard, Judge, U.S. Bankruptcy Court, Eastern District of North Carolina

February 29-March 2, 1996
Chapel Hill
John J. Sweeney, Director, Office of Justice Initiatives, American Bar Association
Shelly Stump, Director, Judicial Council of the California Supreme Court
Daniel J. Hall, Director of Planning and Analysis, Colorado Administrative Office of the Courts

Albert "Buz" Winchester, Staff Director, Commission on the Future of Maryland Courts
Stephen Johnson, Justice Planning Consultant and former Director of the California and Massachusetts Futures Commissions
Barbara Perkovic, Director, Pennsylvania Futures Commission
Suzanne G. Keith, Deputy Director, Tennessee Administrative Office of the Courts

May 15, 1996
Cary
David E. Grossman, President, National Council of Juvenile and Family Court Judges
Barbara Seibel, Director of Court Services, Cincinnati, Ohio

May 23-24, 1996
Southern Pines
Michael Vasu, OR/Ed Laboratories

June 13, 1996
Elizabeth City
Public Hearing

June 17, 1996
Charlotte and Raleigh
Public Hearings

June 18, 1996
Murphy and Winston-Salem
Public Hearings

June 27-29, 1996
West End
Raymond Taylor, OR/Ed Laboratories

August 16-17, 1996
Pinehurst
James G. Exum, former chief justice, North Carolina Supreme Court
Thomas W. Lambeth, Executive Director, Z. Smith Reynolds Foundation, Inc.

September 19-20, 1996
Chapel Hill
Andy Vanore, Senior Deputy Attorney General

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Mary Ann Poole, Supervised Visitation Coordinator
Eugene Troche, Staff Attorney
Carol Lesniowski, Family Divisions Manager, Monmouth Vicinage
Mary Ann McGevna, Monmouth Vicinage
Adele Keller, Special Projects Coordinator, Family Division
Robert Page, Presiding Judge, Family Division, Camden Vicinage

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