# REPORT

## of the Committee
## on
## Improving and Expediting
## the Administration of Justice
## in North Carolina

The North Carolina Bar Association
December, 1958

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# NORTH CAROLINA BAR ASSOCIATION




OFFICE OF THE PRESIDENT
P. O. BOX 866
GREENSBORO, N. C.



TO: The Members of the 1959 General Assembly of North Carolina

Gentlemen:

At the June 1955 Meeting of the North Carolina Bar Association his Excellency Governor Luther H. Hodges challenged the lawyers of North Carolina to study our system of Courts and bring forward any recommendations felt necessary to improve them.

For more than three years a Special Committee of this Association has worked diligently on this program. At our meeting last June, the members of this Association overwhelmingly adopted the report of this Committee.

I herewith transmit to you this report and the draft of a Proposed Amendment to the Constitution of North Carolina.

On behalf of the North Carolina Bar Association and its membership of almost 2,000 practicing lawyers of North Carolina, I earnestly request careful consideration of these proposals by the members of the 1959 General assembly.

I am proud of the manner in which the lawyers have met the Governor's challenge; we respectfully urge the members of the Assembly to permit the people of our State to vote upon this amendment.

Respectfully Submitted,

President
The North Carolina Bar Association

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# Report of the Committee on Improving and Expediting the Administration of Justice in North Carolina

The Committee on Improving and Expediting the Administration of Justice in North Carolina was appointed by the North Carolina Bar Association in 1955, at the request of Governor Luther H. Hodges. The Committee made progress reports to the Bar Association at the 1956 and 1957 annual conventions of the Association. At the 1958 annual convention the Committee made a report which contained the substance of its final recommendations. This report was presented in the form of a series of subcommittee reports which had been adopted by the full Committee. The report was approved in principle by the Association.

Since the 1958 report the Committee has continued its work and has prepared a draft of the Constitutional changes which it believes are necessary or desirable to accomplish the recommendations set out in the 1958 report. The draft consists of a revision of Article IV of the Constitution; minor changes will be necessary in a few sections of other Articles which relate to the Judicial Department.

This report brings together the various individual reports made at the 1958 convention, with some revision of detail, and with some necessary new material to explain specific Constitutional changes. The proposed Constitutional draft is included, together with the existing Constitutional text and appropriate notes.

Recommendations of the Committee which are not effectuated in the Constitutional draft will be the subject of statutory changes which the Committee will recommend to the General Assembly after the Constitutional changes have been approved by the General Assembly and the people.

## I. Court Structure and Jurisdiction

The judicial department of North Carolina, in its present general outline, was organized during the pioneer days of the state. A considerable degree of isolation required that communities be generally self-sufficient, and this requirement applied to the

community institutions, including the courts. Local courts grew up to serve purely local needs. These courts had virtually no impact outside their communities. No unifying force existed to tie them with other courts into an organized system. Other than a provision authorizing Superior Court judges to exchange circuits by agreement, there was no provision for transfer of judges between courts of the same or different jurisdictions, and no real responsible head of the entire court system. That the quality of these courts was generally high was explained by the fact that the local judge was an important personage in the community, and the office therefore attracted able and conscientious men.

Though North Carolina has long since passed from the pioneer stage, and modern systems of transportation and communication have virtually eliminated the self-sufficient community, our court system, though expanded somewhat and centralized a little, has been but feebly modernized. The result is that our trial courts, regarded as a whole, are inefficient because of the lack of unity and flexibility; one judge may be working only a relatively small percentage of the time, while another judge in an adjoining jurisdiction, or in another court in the same county, works constantly and sees his docket become more and more crowded and his calendar further and further behind. Unsatisfactory calendaring practices, inability to pinpoint specific responsibility of each judge for wasted court time or unnecessary delays, and other factors tend to make our courts unresponsive to the needs of a modern society.

Variations among our local courts are so numerous that it is a misnomer to speak of a "system" of trial courts of limited jurisdiction in North Carolina. Different types of local courts have been established under the authority of some dozen different general statutes, with numerous local modifications. These courts, taken together with those established by special statute prior to the prohibition against such action, make it almost literally true that the 100 counties of North Carolina present 100 different court patterns. The "system" is thus a crazy-quilt, with confusing, unpredictable, and often nonsensical variations in jurisdiction, procedure, costs, quality of personnel, and every other attribute of judicial machinery.

The justice of the peace originally was a necessary and valuable local judge who made a real contribution to the development of North Carolina. Today, however, changed conditions demand

that his judicial functions be vested in a court with better resources and proper supervision. Justices of the peace handle a considerable volume of judicial work. Statistics are not available as to the number of civil cases heard in justices' courts, but in the year ending June 30, 1957, justices of the peace in North Carolina disposed of a total of 88,515 criminal cases. Many people have their first, and sometimes only, experience in the court system at the justice of the peace level. It is, then, of great importance that these courts be of a quality which will not destroy confidence in and respect for the administration of justice. Unfortunately, this is not the case at present.

Justices of the peace are selected in a number of ways, including election by the General Assembly in an omnibus bill where names are sometimes included as a joke and where little or no attention is given to the suitability for judicial office of those whose names are included in the bill. The number of justices of the peace selected for a particular county bears no relation to the volume of judicial business done in justices' courts in the county, so that there frequently is not enough work to assure a reasonable income to all those who are active as trial justices; this leads to an unwholesome competition for business and encourages the practice of "shopping around" for a favorably disposed justice of the peace. Under the existing fee system, the income of the justice of the peace is directly related not only to the volume but also to the character of his judicial decisions; if he finds a defendant in a criminal case not guilty, the justice receives no fee for his services. Where the opportunities for abuse are so great, abuse inevitably occurs. One has only to read the newspapers of the state to know that abuse has occurred.

What has been said here is not a criticism of all justices of the peace; it is, rather, a criticism of the institution. A number of justices of the peace are conducting business in a thoroughly creditable way, and it is to be expected that they will be needed to serve within the framework of a unified court system. It is essential that the officers who perform the functions of the present justices of the peace be included within the unified system. Only through thorough-going integration within the overall judicial system can they be given the dignity required of the office.

Many county, municipal and justice of the peace courts have inadequate quarters, and some justice of the peace courts convene in places and under circumstances which cannot help but

destroy the respect of the litigants for our judicial system generally. All the local courts are virtually independent of supervision by any higher judicial authority, except to the degree that the right of appeal affords judicial supervision. The right of appeal is often more a matter of theory than of practical value, because the cost of appeal is frequently more than the traffic will bear. Further, the appeal process, although capable of providing justice in a specific case, is incapable of insuring continuously efficient operation of the lower courts.

## THE UNIFIED COURT

### Organization

One of the essential characteristics of a good judicial system is simplicity of organization.

The ideal system would provide for one trial and the right to one appeal, with every case decided on the merits. This ideal cannot be completely attained, and if improvement of the court structure is attempted on a piecemeal basis, cannot even be approached. The court system, if it is to provide prompt settlement of disputes at minimum expense to litigants, and is to provide prompt and impartial trials to persons accused of criminal offenses, must be treated as a whole organism. Only in this manner may technicalities be minimized, the system be kept in balance when adjustments are made, and the most flexibly efficient use be made of trained judicial personnel.

This does not mean that sweeping revolutionary changes must be made at all levels; it does mean that the whole judicial system must be treated as a single unit with a single purpose—the efficient administration of justice.

Accordingly, the Committee feels that the essential move in improving and expediting the administration of justice in North Carolina is the establishment of a unified court system in the state. In the light of both experience in other jurisdictions and our own analysis of local needs, we believe that the system should consist of a single court composed of three basic divisions—an appellate division, a trial division of general original jurisdiction, and a division of local trial courts.

The existence of a single court in which the judicial power of the state is vested eliminates completely and permanently the

concept that original jurisdiction over the subject matter of litigation is divided into sometimes overlapping and sometimes mutually exclusive segments. The lawyer can concentrate upon the proper presentation of his case, seldom having to waste time in determining (with or without litigating the question) whether he is in the right court. If a case is filed in the wrong division or part of a division, it can be heard there without objection, and the judgment is secure against collateral attack. If objection is raised, the case is simply transferred to the appropriate forum. There is no such thing as a dismissal of a justiciable issue because the court of origin lacks jurisdiction over the subject matter.

When we recommend the establishment of a single court in which is vested the judicial power of the State, we think it necessary at present to exclude that portion of the judicial power now being exercised by the court for the trial of impeachments and by the various administrative agencies within the state.

The State Senate acts as a court for the trial of impeachments. This highly specialized jurisdiction is rarely invoked, and has little significance to the administration of justice generally. Furthermore, impeachment trials embody political as well as judicial features, and they probably can be handled more appropriately by the Senate.

The judicial powers exercised by the existing administrative agencies are significant to the administration of justice generally. The North Carolina Supreme Court has upheld the legislative grant of judicial power to an administrative agency, and has referred to such agencies as "administrative courts." Numerous reasons for creating administrative courts have been stated; a major one, we think, is that the ordinary courts have been too slow, too costly, and too inefficient generally to deal satisfactorily with the matters which have been made subject to the jurisdiction of the administrative agencies. If the regular court system is properly organized and administered, there would be little demand or justification for leaving judicial power in the hands of the administrative agencies.

At present, however, to divest the administrative agencies of their judicial powers would demand a major reorganization of the whole administrative agency system. We feel that such a major reorganization should be attempted only after a much more

thorough study of the administrative agencies than this committee can now make. The judicial powers exercised by the administrative courts were vested in them by legislative action, and the powers can be divested in the same manner. Whenever the Genral Assembly desires, it can withdraw any part or all of this judicial power from the administrative agencies and transfer the power to the unified court system. Accordingly, we expressly except from our recommendations as to a unified court those judicial powers vested in administrative agencies by the General Assembly.

**Recommendation No. 1: That the judicial power of the State of North Carolina (other than that part of the power which is vested in the court for the trial of impeachments and the power vested in administrative agencies by the General Assembly) be vested in a single court, to consist of an appellate division, a trial division of general jurisdiction, and a division of local trial courts.** (See Appendix, Sections 1 and 4.)

**Functioning**

The concept of a single court does not mean that any branch of the court disposes, regardless of objection, of any matter which happens to come before it. There are divisions of the court, and each division has its special function. Efficient handling of judicial business demands that in general each case be routed to the division designed to handle it. It is the function of court administration to see that this is done. Obviously, appeals will be heard in the appellate division, which, at its highest level, will be called the Supreme Court, as at present. At the trial level, those cases which either by their nature or monetary importance justify the use of more formal procedures should go to the court of general original jurisdiction—in our proposed system, the Superior Court. The cases involving smaller claims, or those of a simpler nature, which do not justify expenditure of the time and money inevitably associated with more formal procedures, should be heard in the local courts. And, as has already been pointed out, since many of these cases will not justify the expense incident to an appeal, the local courts must be so constituted, staffed and supervised that there is the best possible assurance of a just decision in the first instance.

The determination of where in the court system a case can be

most efficiently handled is essentially a problem of judicial administration rather than one of legislative policy, and it can best be handled by the responsible judicial administrative body. When the jurisdictional limits of trial courts are fixed by the legislature, an undesirable lack of uniformity among courts of the same type results. Legislatively-fixed maximum jurisdictional limits for civil trial courts other than justice of peace and Superior Courts in North Carolina today vary from $50 to $5,000.00.

Although we believe that the Supreme Court should by rule determine which types and classes of cases and proceedings should normally be tried in particular classes of courts, we think it desirable that there be some limitation upon the exercise of this authority. This limitation can be effectively imposed by a Constitutional provision establishing maximum permissible limits within which the Supreme Court can fix specific limitations.

If a flat Constitutional limit is fixed, however, an undesirable rigidity of structure will result. We think that this can be avoided by a provision that the General Assembly may, upon recommendation of the Supreme Court, change the permissible limits fixed by the Constitution. This provision would prevent legislative tampering with the system, but would permit adjustments in the system without requiring a Constitutional amendment.

We believe that in the light of present conditions, the Constitution should permit the Supreme Court to provide by rule that any civil case wherein the amount in controversy is $5,000 or less, and any criminal case involving an offense below the grade of felony be assigned to the division of local trial courts.

There are a number of types of cases and proceedings which are more appropriately classified by subject matter than by amount in controversy or grade of offense. Many of these, such as juvenile and domestic relations cases, are now being handled to a considerable extent by specialized courts. Others, such as probate matters and condemnation proceedings, are being handled initially by the clerks of Superior Court. Within the unified court system, specialization is most practicable at the district court level, and most of the special types of cases and proceedings could best be handled in the district court, but conditions might arise which would make it more appropriate to have some of these special-subject-matter cases and proceedings tried in the Superior Court, or left in the hands of the clerks. Accordingly, we recommend that the Constitutional provision permit the Supreme Court to

assign these cases and proceedings to any part of the judicial system. Of course, such assignments should be by uniform rule.

In order to obtain a higher degree of flexibility in the system, the Supreme Court should be empowered to permit waiver in civil cases of the limitations fixed by its rules. Where all parties and the judge agree to try a civil case in a particular court, that court would—a Supreme Court rule permitting—have full authority to hear and decide the case. In criminal cases, we believe that it should not be possible for the parties to waive the limitations fixed by Supreme Court rule. This would eliminate the possibility that a person guilty of a major offense might manage to have his case heard before a local court and receive a light sentence or none at all and thereby escape a more effective prosecution in the Superior Court.

**Recommendation No. 2: That the Supreme Court be empowered to promulgate uniform rules classifying the types of cases and proceedings which may normally be tried in the two trial divisions; that this power be subject to the limitation that the Supreme Court may not, without legislative approval, promulgate any rule assigning to the local court division ordinary civil cases wherein the amount in controversy is more than $5,000, or criminal cases wherein the offense charged is a felony, but that cases and special proceedings involving domestic relations, juveniles, probate, condemnation or other special subject matters may be assigned to either trial division, regardless of the amount in controversy or the nature of the offense charged; and that the Supreme Court may provide that the limits fixed by its rules may be waived in civil cases upon consent of the parties and the judge.** (See Appendix, Section 11.)

## THE APPELLATE DIVISION

At present the Supreme Court of North Carolina, by comparison to courts of last resort of other states, disposes of appeals with dispatch. In this state, only a very small portion of the total time elapsing between commencement of a law suit and final adjudication is represented by the period between argument of a case in the Supreme Court and the filing of the Court's opinion and decision. In this respect the Court's operation is already at such a point of efficiency that no significant improvement is to be expected. Time might be saved in a minority of cases if they

were calendared for argument as soon as ready, by contrast with the present practice of arranging the calendar by judicial districts. But this is primarily a matter for the Court itself to re-examine.

The case load per Supreme Court justice is slowly increasing. In the years 1953-1957, inclusive, the justices disposed of an average of 348 cases per year by written opinion, and an average of 87 cases on motions. This means that each justice now must draft about 50 written opinions per year. In the five years from 1943 through 1947, the average was only about 40 written opinions per justice per year. Providing each justice with a full-time law clerk has been helpful, but the time now available to a justice for reflection and for drafting opinions is certainly minimal. North Carolina's population is steadily growing, and its industry, commerce and income are increasing. Litigation is fated to increase—possibly more rapidly than population. For example, the compulsory motor vehicle insurance law may well produce a substantial new volume of litigation. Our judicial system, as now constituted, cannot efficiently assimilate any substantial increase in appellate litigation except by lowering the quality of appellate decisions and opinions. The Constitutional provisions relating to the appellate division of the unified court should be broad enough to permit the necessary changes in that division to avoid such an unfortunate result.

Some increase in the volume of appellate work might be absorbed if the Supreme Court utilized its existing power to sit in divisions. However, this is debatable. Article IV, Section 6 of the North Carolina Constitution provides: "The Court shall have power to sit in divisions, when in its judgment this is necessary for the proper dispatch of business, and to make rules for the distribution of business between the divisions and for hearing of cases by the full Court. No decision of any division shall become the judgment of the Court unless concurred in by a majority of all the Justices. . . . All sessions of the Court shall be held in the city of Raleigh."

The requirement that a majority of the justices concur in all decisions prohibits two divisions from sitting simultaneously, and in the event one judge dissented would mean that a case heard before a division of four justices would have to be reheard. The requirement that all sessions be held in Raleigh denies the advantage which would accrue from having a division of the

Court go to the area from which a number of cases were ready for argument.

The power to sit in divisions has not been used in the more than twenty years that it has existed. This fact indicates that the Court has such grave doubts as to its merits or practicability that the device holds no real promise of usefulness, and we would eliminate it from the Constitution.

Some increase in appellate litigation could be handled satisfactorily by increasing the number of Associate Justices on the Supreme Court, as was done in 1937. It is important, however, that the Court not become so large as to be unwieldy or subject to undue fragmentation of opinion. In our opinion the Court could safely be increased to nine members. We therefore recommend that the General Assembly be authorized to increase the number of Associate Justices to not more than eight.

We do not think that the authority to increase the membership of the Supreme Court is sufficient to give the necessary assurance that the appellate division can handle properly any reasonably foreseeable increase in appellate litigation in the future. It seems wise to make it possible, when the need therefor becomes clear and manifest, to establish an intermediate appellate court as a part of the appellate division. The Constitutional provision should authorize the General Assembly to establish such a court upon recommendation of the Supreme Court, thus requiring the concurrence of the Assembly and the Court. The structure and organization of the intermediate court of appeals—e.g., how many judges it should have, how its presiding judge or judges should be selected, whether or not it should sit in divisions—should be determined by the General Assembly. The jurisdiction of the intermediate court—what cases it should hear—should be determined by and subject to modification by rule of the Supreme Court, as a matter of judicial administration. Questions as to the constitutional rights and the lives of individuals are of such importance that the litigants should always have a right to have them determined by the court of last resort. The Constitution should guarantee that in those cases raising a question under either the State or Federal Constitution, and in those criminal cases wherein a sentence of death or life imprisonment has been imposed, there is an absolute right of final appeal to the Supreme Court. The Supreme Court would determine whether such cases

should come to it direct from the trial court, or whether they should be routed through the intermediate court of appeals.

**Recommendation No. 3: (a) That the appellate division of the unified state court consist initially of the present Supreme Court, and that the Constitutional provision authorizing the Court to sit in divisions be deleted;** (See Appendix, Section 6.)

**(b) That the General Assembly be empowered upon recommendation of the Supreme Court to establish an intermediate appellate court in the appellate division; that the structure and organization of such intermediate court be determined by the General Assembly; that the Constitution guarantee the right of final appeal to the Supreme Court in all cases involving constitutional questions or in which a sentence of death or life imprisonment has been imposed; and that the right of appeal to and from the intermediate appellate court in all cases be defined by rules promulgated by the Supreme Court.** (See Appendix, Sections 5 and 7.)

## THE TRIAL COURT OF GENERAL JURISDICTION

The primary defect in the existing Superior Courts of North Carolina is administrative, not structural. These courts should be retained but, to a greater extent than at present, they should be placed under the administrative authority and supervision of the Chief Justice of the Supreme Court. Proper administration of the Superior Courts within a unified court structure will enable those courts to handle a substantially greater volume of business in a shorter time.

**Recommendation No. 4: That the trial court division of general jurisdiction consist of the present Superior Courts.** (See Appendix, Section 8.)

## THE LOCAL COURT DIVISION

It is at the local level—the so-called "courts of limited jurisdiction"—that there is the greatest need for change in North Carolina. The Committee believes that the present functions of all existing trial courts, excluding the Superior Court but including justices of the peace and such special courts as juvenile and domestic relations courts, should be embraced within a new division of local trial courts consisting of district courts.

The district court should sit in at least one place in each county, and might sit in several places; the court would sit where there was any substantial amount of business to be done. As suggested in our Recommendation No. 2, the classification of cases to be heard in the district court should be by Supreme Court rule, within limits stated in the Constitution.

In all probability the court would try crimes below the grade of felony, including violations of municipal ordinances, and civil cases involving not more than a fixed amount—perhaps $2,500. It might also be allocated other judicial matters now within the province of clerks of court (but not including the clerk's present power to make orders in litigation pending in the Superior Court).

**District Judges**

Each district would have a chief judge and in less populous districts he would serve alone. In the more populous districts there would be one or more associate judges. They should be under the immediate supervision of the chief judge, who should in turn be responsible to the Chief Justice of the Supreme Court. In districts with more than one judge, case assignments would normally be handled so as to route cases of the same type to the same judge, insofar as practicable. Thus, to a considerable extent, a system of specialized judges would replace the existing system of specialized courts. Each district judge would vary his procedure according to the type of case he was handling; e.g., if he was hearing a juvenile matter he would proceed according to accepted practices for juvenile courts, and would make use of the services of social agencies as juvenile courts now do.

**Magistrates**

To make certain that there is always a court immediately available in each locality, there should be in each county at least one, and in some counties several, magistrates who as officers of the district court could try petty civil and criminal cases, issue warrants, conduct preliminary hearings and act as committing magistrates in criminal cases. Because these magistrates would dispense justice on the broadest base, it is absolutely essential that they be persons of dignity, ability and integrity. To remove them from the pressures and circumstances which have caused the justice of the peace system to deteriorate, they should be

appointed by the Chief Justice of the Supreme Court upon the recommendation of the senior resident regular Superior Court judge. The magistrate should be responsible to and act under the supervision of the chief district judge. He would be authorized to sit anywhere in the area assigned to him, and might sit regularly at one or more fixed places.

Under rules promulgated by the Supreme Court, civil cases filed in the district court could be assigned by the chief district judge to a magistrate for trial. In addition, under rules promulgated by the Supreme Court, the magistrate would have authority to issue both civil and criminal process returnable before himself, and conduct a trial upon the issues presented. We think it desirable that a trial be available at this level, both for the convenience of the public and law enforcement officers and to avoid cluttering the district court dockets with numerous petty cases.

To avoid the abuses which are now sometimes encountered in justice of the peace courts, we think that a defendant in a criminal case brought before a magistrate for trial should have the right, simply upon request, to have his case transferred for hearing before a district judge. Thus, if a magistrate established a reputation for fairness and competence, it would be expected that many defendants would submit to his jurisdiction and their cases would be disposed of at the magistrate level. On the other hand, if a magistrate sought to use his authority in an oppressive or unfair manner, persons accused of even the most minor offenses could obtain trial in the first instance before a district judge, and would not incur liability for double court costs. In civil cases instituted before a magistrate, the defendant should have the right to apply to the chief district judge for transfer of the case to a district judge for trial. In civil cases instituted in the district court and assigned to a magistrate for trial, either party should have the right to apply for transfer. In either case, we think the right to such transfer of a civil case should rest in the discretion of the chief district judge.

The transition to the proposed system of local courts could be accomplished with a minimum of disarrangement of the existing structure. Just as the existing courts would be absorbed by the proposed district courts, so many of the present personnel would be absorbed into the new system.

**Recommendation No. 5: (a) That all existing trial courts,**

**other than the Superior Courts, be replaced by a division of local trial courts consisting of district courts.** (See Appendix, Section 9.)

**(b) That district lines be established and subject to revision by the Supreme Court; that there be in each district one chief district judge and, if the volume of litigation requires, one or more associate district judges; and that the district court sit as necessary, but in at least one place in each county.** (See Appendix, Section 9.)

**(c) That there be in each county, as a part of the district court, at least one magistrate, and more if needed, to try petty civil and criminal cases, issue warrants, conduct preliminary examinations and act as committing magistrate, and handle such other matters within his jurisdiction as may be assigned to him by the chief district judge.** (See Appendix, Section 9.)

**Recommendation No. 6: That the defendant in any criminal case brought before a magistrate for trial be entitled upon request to have the case transferred for trial before a district judge; and that the defendant in a civil case instituted before a magistrate, or either party to a civil case assigned to a magistrate for trial, be entitled to apply to the chief district judge for transfer of the case for trial before a district judge, and the chief district judge be authorized in his discretion to transfer the case.** (See Appendix, Section 11.)

### Appeals from the Local Courts

As we have stated, the ideal system would provide for the right to one trial on the merits and one appeal on the law, but the ideal is not always attainable. Under the existing system, appeals from the lower courts go to the Superior Court, usually for trial **de novo**, though from a few courts appeals are taken to the Superior Court only on questions of law or legal inference. We believe that it will be possible to provide jury trial in the district court, and to make that court a court of record, so that it will be practicable to require that appeals from the district court be taken only upon matters of law or legal inference. If an intermediate court of appeals is established, it might well be desirable to have appeals go from the district court direct to the court of

appeals. In the absence of the intermediate appellate court, however, appeals from the district court should go to the Superior Court. The cost of maintaining a dependable record of proceedings in trials before magistrates would seriously impair the value of the magistrate and would outweigh the cost and inconvenience of trying anew those cases which were appealed from a magistrate. We recommend, therefore, that appeals from magistrates be heard **de novo** in either the district or Superior Court, with further appeal being handled as if the case had originated in the higher court.

Because of the many variables bearing upon the best possible system of appeals, the system should not be rigidly prescribed in the Constitution. And, as the question of where and how appeals should be taken is essentially a question of which part of the single court can most effectively handle a particular type of judicial business, the question is one of judicial administration and should be determined by the responsible administrative agency of the General Court of Justice—that is, the Supreme Court. The Constitution should guarantee the right to an appeal, and should leave it to the Supreme Court to provide a proper system of appeals, subject to the condition that appeals from magistrates must be heard **de novo** with the right to jury trial.

Authorizing the Supreme Court to provide a proper system of appeals would introduce another desirable element of flexibility into the General Court of Justice. If the Supreme Court found, for example, that the cost of maintaining proper records for appeal in the district courts was too great, the Court could by rule provide that appeals from the district court should be heard **de novo** in the Superior Court.

Incidentally, the concept of a single unified court will eliminate the problem caused by what is known as derivative jurisdiction in cases appealed from a justice of the peace. Under existing law, when a case is appealed from a justice of the peace to the Superior Court, the jurisdiction of the Superior Court is said to be derivate; the Superior Court has no greater jurisdiction than the justice of the peace had, and if the justice of the peace had no jurisdiction, the Superior Court must dismiss the appeal. Under a unified court concept, once a case is properly appealed to the district court or to the Superior Court, that court will have power to hear it, regardless of limitations upon the authority of the court from which the case is appealed.

**Recommendation No. 7: That the Supreme Court be authorized to provide a proper system of appeals, subject to the limitation that appeals from magistrates must be heard de novo, with the right to jury trial.** (See Appendix, Section 11.)

# II. The Jury System

## A. THE PETIT JURY

### THE RIGHT TO TRIAL BY JURY

The right to jury trial, brought to the United States from England, has long been regarded as a basic right of free men. The Federal Constitution guarantees the right to jury trial in all criminal prosecutions and in all except minor civil cases. This guarantee does not limit the power of the states to abolish, modify or alter the right of trial by jury in state courts; the states are free to establish their own policy. The North Carolina Constitution guarantees the right of trial by jury to every person charged with any crime; petty misdemeanor cases may be tried without a jury in the inferior courts, but the defendant may in such cases appeal and receive a trial **de novo** before a jury in the Superior Court. Parties to civil suits brought in the Superior Court or heard there **de novo** on appeal from lower courts are entitled to jury trial, and jury trial is available on demand in civil suits before justices of the peace and in most of the recorder-type courts.

Jury trial in petty criminal and all civil cases, particularly tort cases arising out of automobile accidents, has been vigorously attacked in recent years. It is charged that the delays and uncertainties of jury trials are denying justice to many citizens, and are driving them from the courts. The petit or trial jury has been frequently characterized as wasteful, incompetent, capricious and corrupt. Some or all of these defects have existed with respect to some of the juries in North Carolina.

The right of trial by jury is firmly imbedded in the traditions of North Carolina, and the Committee is convinced that the efforts of the Committee in this field should be devoted to improving the functioning of the jury system, rather than to impose any significant limitation upon the right.

We do think, however, that the right as it presently exists,

can be changed to make substantial improvement in the efficiency of jury trials, without destroying the basic right.

Traditionally the trial jury has consisted of twelve persons. A number of the presently existing inferior courts, including justices of the peace, use six-man juries, but persons tried before such juries are entitled upon demand to trial **de novo** in the Superior Court before a 12-man jury, if the matter involved gives the parties a constitutional right to jury trial. We think that the principle of trial by a jury of one's peers can be preserved, and at the same time that considerable expense, delay and inconvenience can be eliminated by providing for juries of as few as six persons to serve in the district courts, with trials before such juries to satisfy the Constitutional guarantee of trial by jury.

Traditionally a unanimous verdict of the jury has been required, but there has been an increasing movement away from the requirement. At present 28 jurisdictions in the United States permit majority verdicts under various conditions. Rule 48 of the Federal Rules of Civil Procedure permits parties to civil cases to stipulate that a verdict or finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury. No state which has adopted the majority verdict has returned to the unanimous requirement. We believe that the unanimous verdict should be retained in criminal cases, in that it gives substance to the requirement that guilt must be established beyond a reasonable doubt. In civil cases, however, we believe that the legitimate interests of the parties can be protected, and considerable time and money can be saved, by providing for less-than-unanimous verdicts. We do not think that any radical departure from the unanimous verdict is desirable. Accordingly we suggest that a verdict of less than all, but not less than 5/6 of the members of the jury be the verdict of the jury; that is, that agreement of 10 of the 12 jurors in Superior Court would be sufficient to return a verdict in civil cases, and concurrence of five of the six jurors in the district courts would be sufficient.

The traditional jury system is deeply imbedded in North Carolina. We feel that the institution should not be modified without the concurrence of the political body which is most directly responsible to the people—the General Assembly. Accordingly we recommend that action to permit juries of fewer than twelve persons, and to provide for majority verdicts in civil cases be

effective only by statutory enactment of recommendation made by the Supreme Court, and that such action be subject to reversal in the same manner.

**Recommendation No. 8: (a) That the Constitution empower the General Assembly, upon recommendation of the Supreme Court, to provide that juries in the district courts may consist of as few as six persons instead of twelve, and that the right to trial by jury shall be satisfied by trial before a jury complying with the statutes enacted pursuant to this authority.**

**(b) That the Constitution empower the General Assembly, upon recommendation of the Supreme Court, to provide that in civil cases the concurrence of less than all, but not less than 5/6 of the jurors trying the case shall be sufficient to render a verdict.** (See Appendix, Section 13.)

Our confidence in the essential value of the right of trial by jury has not blinded us to the defects of our present system. Criticisms of the manner in which juries are selected in some counties, and of the results of jury trials generally, lead us to conclude that in too many instances our petit juries have been incompetent or subject to improper influence, and in a few cases there is evidence of outright corruption. We believe that these weaknesses stem in the main from the manner in which jury lists are prepared, and from the practice of exempting from jury duty a large proportion of the qualified persons in our counties.

## JURY COMMISSIONS

In most of the counties of North Carolina the county commissioners serve as jury commissioners and prepare the lists from which the jury panels are drawn. The manner in which this duty is discharged depends upon the individual commissioners, as there is no person or agency vested with authority to supervise their action. The power of the people to defeat at the polls a commissioner who has failed to discharge his jury responsibilities properly affords little real check because a failure in this duty is likely to be lost sight of at election time when ordinary political issues command attention. The only real check lies in the attack upon the jury made by a litigant. This attack will succeed only where there has been a positive abuse which has prejudiced the rights of the individual litigant, and except for the unlikely case

which leads to an indictment of the commissioner, is not calculated to improve the general process by which lists are made and juries are drawn.

The preparation of the jury lists and the selection of jurors from that list are of very great importance in the administration of justice. The manner in which these tasks are performed determines to a great extent the quality of the final judicial product. County commissioners are political officials, quite properly engaged in political affairs. It is in no sense a criticism of these officials to say that they are not an appropriate group to make up jury lists. When any political consideration enters into the making of a jury list, to that degree the list is defective; an improper influence has been introduced into the judicial system; and respect for and confidence in the courts has been undermined.

Not only are the county commissioners unsuited by their political character to act as jury commissioners, but also in many instances they do not have time to perform their jury responsibilities properly. As a result the task of making up jury lists has been in some counties handled in a haphazard manner, and in a few instances names have been handpicked by some influential individual in the county.

Since any type of elective commission would necessarily involve some political factors, we believe that the jury commissions in each county should be appointive. And, since the proper functioning of the jury system is essential to the proper administration of justice, we believe that the appointments should be made by the judicial officials responsible for that administration. In the light of the administrative machinery recommended by this Committee, we think that the jury commissioners should be nominated by the resident Superior Court judge and appointed by the Chief Justice of the Supreme Court. Commissioners should be removable for cause by the Chief Justice at any time. They should be appointed for a term of years, so that desirable changes in the membership of the commissions may be accomplished periodically without embarrassment or difficulty. Commissioners should be eligible to succeed themselves, so that a commission which is functioning well may be continued in office indefinitely.

The importance of the jury commission makes it desirable that there be more than one commissioner in each county, but there is no need for a large number. Accordingly, we believe that the

jury commission in each county should consist of three members. To make certain that there is always some experienced member, terms should be staggered. Just as the appointing authority should be nonpolitical, so should the appointees. No holder of public or political party office should be eligible for appointment to a jury commission, and no more than two of the three commissioners should be members of the same political party.

In some counties the duties of jury commissioner would not be onerous. In other counties the duties might require commissioners to serve full-time. In either event, the commissioners should be paid for the time devoted to their official duties at a rate commensurate with their responsibilities. Full-time commissioners should be paid a salary. Part-time commissioners might be paid a smaller salary, or they could be paid on a per diem or per hour basis.

**Recommendation No. 9: That for each county in North Carolina a jury commission consisting of three members, no more than two of whom may be members of the same political party, be appointed by the Chief Justice of the Supreme Court from nominees submitted by the senior resident Superior Court judge; that jury commissioners be appointed for staggered terms of three years and be eligible to succeed themselves; that jury commissioners be removable at any time by the Chief Justice upon recommendation of the senior resident Superior Court judge, that no person holding public or political office be eligible for appointment as jury commissioner; and that jury commissioners be paid for their services on a salary, per diem or per hour basis, as may be most appropriate in the individual counties.** (See Appendix, Section 14.)

## PREPARATION OF JURY LISTS

The jury commissions, like all other components of the court system, should be subject to the administrative authority of the Chief Justice of the Supreme Court. The details of supervision and administration of the jury commissions, including the provision of necessary clerical assistance, should be left to be determined by rules promulgated by the Supreme Court. There are, however, certain details which involve principles so important that we believe they should be established by statutory provision.

We believe that the "raw" lists of jurors should be made up

from all reliable sources available to the commission, rather than being limited to voting or tax lists. Arbitrary limitation of the lists to any particular source or sources may result in excluding qualified and desirable jurors. Experience in the Federal courts, in other states, and in North Carolina, indicates that a conscientious jury commissioner will produce a good jury list if he is left free to use all reliable sources of names.

**Recommendation No. 10: That jury commissions be directed to make up the "raw" jury list from all reliable sources available to them.**

Any list of names made up from the sources ordinarily available to jury commissions will probably include names of persons who have died, or moved away, or who are either disqualified or exempt from jury service. Much unnecessary expense and delay can be avoided if, before the panel to be summoned for duty is drawn, the "raw" list is purged of the names of disqualified persons and of exempt persons who wish to claim the exemption. The details of how this should be done are a matter for the administrative machinery of the courts to determine.

**Recommendation No. 11: That the jury commission take appropriate steps to eliminate from the jury list the names of deceased and ineligible persons, and persons who wish to avail themselves of a valid exemption.**

Any element of secrecy or private dealing should be eliminated from the jury selection process. No matter how carefully a list is prepared, and no matter what the integrity of the commissioners, there will always be some basis for suspicion when the jury panel is drawn in relative secrecy or privacy. The present statutes require the county commissioners, at least 20 days before a term of Superior Court, to cause the names of jurors to be drawn from the box by a child of not more than 10 years of age. We believe that this drawing should take place in open court (though not necessarily in court opened for the trial of cases) in the presence of a judge and any members of the public who may desire to be present.

**Recommendation No. 12: That the names of jurors to be summoned for service in any court be drawn in the presence of a judge in open court.**

The use of tales or "pick-up" jurors should be eliminated. Although the statutes disqualify individuals from serving as tales jurors more often than once in two years, in some counties frequent resort to talesmen to supplement an inadequate number of regular jurors has resulted in the appearance of a class of "professional" jurors who frequent the courts in the hope of being summoned as tales jurors. Many talesmen are among the most conscientious of jurors, but the institution lends itself to improper influence and corruption.

A properly administered jury selection system should make available sufficient jurors to handle the cases calendared for a particular court session, in the absence of some unusual and unexpected development. Where for any reason the available jury panel is not large enough to produce a full trial jury, additional jurors should be selected in the same manner as the regular panel and summoned into court at once so the proceedings can continue.

**Recommendation No. 13: That the use of tales jurors to supplement the regular jury panel be eliminated.**

## QUALIFICATIONS AND EXEMPTIONS OF JURORS

### Qualifications

At present the only statutory qualifications for jurors in North Carolina are that they be over 21 years of age, residents of the county, of good moral character, of sufficient intelligence to serve, not parties to suits pending in the court, and in the case of talesmen, that they be freeholders. By court decision atheists and persons who are not citizens of the United States are disqualified.

We believe that the provisions as to United States citizenship should be included in the statutes. In addition we believe that a maximum age limit should be imposed. Although many persons who have reached the age of 70 years have vigorous minds and bodies, we believe that by that time they should no longer be called upon to perform jury duty. Our older citizens who have retired should be free of the burden of liability for jury service. We recommend that attainment of age 70 be a disqualification, rather than an exemption, so that the citizen will be free of the bother of claiming the exemption, and the commissioners will be free to purge the list of all those who reach that age.

The requirement as to good moral character is interpreted so

as to disqualify persons convicted of a crime involving moral turpitude. We believe that this disqualification should be extended to persons who have pleaded nolo contendere to an indictment charging the commission of such a crime.

**Recommendation No. 14: That the statutory qualifications of jurors include requirements that they be citizens of the United States, under 70 years of age; and that it be specified that a plea of nolo contendere to indictment charging the commission of a crime involving moral turpitude is grounds for disqualification of a juror.**

**Exemptions**

No student of the subject seriously disputes the proposition that exemptions from jury duty should be held to a minimum. Yet, in North Carolina the list of persons exempted continues to expand. Under existing law the following persons are exempt: practicing physicians, licensed druggists, telegraph operators who are in the regular employ of any telegraph company or railroad company, train dispatchers who have the actual handling of either freight or passenger trains, regularly licensed pilots, regular ministers of the gospel, officers or employees of a state hospital for the insane, active members of a fire company, funeral directors and embalmers, printers and linotype operators, millers of grist mills, United States railway postal clerks and rural free delivery mail carriers, locomotive engineers, firemen, brakemen and railroad conductors in active service, radio broadcast technicians and announcers, optometrists, registered or practical nurses in active practice, practicing attorneys at law, members of the National Guard, North Carolina State Guard, members of the Civil Air Patrol, naval militia, Officers Reserve Corps, enlisted reserve corps, and the naval reserves, who comply with and perform all duties required of them as members of their respective services, members of the armed forces of the United States on active duty, and members of voluntary fire companies certified to be active. Confederate veterans may be exempt at the discretion of the clerk, as may women who have specified duties at home. Practically every person who qualifies for membership in any of the exempt groups has acquired skills or formal education to qualify him as a desirable juror. It is small wonder that the

competence of our juries is criticized when so many groups, including many of our best trained citizens, are exempt.

Although we are not prepared at this time to specify precisely those whom we believe should be exempt, we believe that the list of exemptions should be greatly reduced and should be limited in principle to persons (e.g., lawyers and police) whose relation to the courts makes it improper for them to sit as jurors, or whose occupation is so essential to the public safety or welfare as to make it imperative that they be free to pursue their ordinary duties. We do not believe that simply because a person is engaged in the communication or transportation industries, or in one of the healing arts, for example, that he should be automatically exempt. In the event that an unduly large number of persons from any one of these groups was drawn, the judge could exercise his sound discretion in excusing a sufficient number so as not to endanger the community. Cases of undue personal hardship could be handled by the jury commission before court convenes, or by the judge during a court session. Jury service is distasteful to many, and may involve an economic loss to most of those called. Every effort should be made by the administrative authorities to improve the facilities for the comfort and convenience of jurors, and to eliminate unnecessary delays which waste the jurors' time. Nevertheless, so long as one citizen is called upon to discharge a duty, we should not lightly create privileged classes who can avoid that duty.

**Recommendation No. 15: That statutory exemptions from jury duty be limited to those persons whose relation to the courts or law enforcement makes it improper that they sit on a jury and those persons whose occupations are so essential to the public safety or welfare as to make it imperative that they be free to pursue their ordinary duties; and that it be left to the sound discretion of the jury commission or the judge to excuse any person when the community interest, or undue personal hardship, justifies such action.**

## WAIVER OF JURY TRIAL

Although we believe the right of trial by jury should not be abridged, we do believe that a more liberal waiver of jury trial should be permitted. At present jury trial may be waived in civil

actions generally in the Superior Court, though in some few cases the consent of the judge is required. In criminal cases in the Superior Court, however, a jury may not be waived upon a plea of not guilty. A defendant may now plead guilty and thereby dispense with a trial altogether; we see no reason why he should be required to have a jury trial if he pleads not guilty. Trial by jury was established to safeguard the rights of the accused. There may be situations where an accused desires a trial but would prefer the more expeditious proceedings of a nonjury trial. Where such an accused acts freely, and with an understanding of his rights, we think he should be allowed to waive jury trial in all cases other than those involving capital punishment or life imprisonment. In felony cases the waiver should be permitted only when an accused is represented by counsel, and with the assent of the trial judge. Furthermore, to guard against confusion and too hasty waiver, waiver in criminal cases should always be in writing.

In some instances where waiver of jury trial is permitted, there have been reports that trial judges, perhaps over-zealous in their efforts to clear their calendars and avoid delays, have exerted a conscious or unconscious pressure upon defendants to waive a jury, by following a practice of imposing more severe sentences when a defendant is convicted after failing to waive jury trial. There is no easy solution to this problem. We believe that both judges and attorneys should be alert to discover such tendencies; should they be discovered it would be a responsibility of the bar and judges' associations to attempt to remedy them. If a judge persisted in the abuse, the only effective remedy might be in the selection process.

We except cases involving capital punishment or life imprisonment from the recommendation with respect to waiver of jury trial. The tremendous responsibility involved in such cases outweighs all other considerations and makes it desirable that the issue of guilt or innocence of the defendant be decided only by the traditional judgment of his peers.

**Recommendation No. 16: That the defendant in all criminal cases other than those involving capital punishment or life imprisonment be permitted, with the consent of his counsel and the trial judge, to waive in writing his right to trial by jury.** (See Appendix, Section 13.)

## B. THE GRAND JURY

Although many legal writers call the grand jury expensive and cumbersome, the Committee does not recommend at the present time any radical changes in the size or function of the jury. The suggestions contemplate the retention of an eighteen-man jury in each county, of whom twelve at least must concur in the finding of a true bill. For felony cases, there is no present recommendation for "streamlining" the accusation process; no changes are proposed in our existing procedure for waiving indictment in felony cases.

### SELECTION AND ORGANIZATION

#### Selection

The existing statutory provisions as to the selection of the grand jury present a truly prime example of county-by-county patchwork legislation. The general provision for selection of the jurors in G.S. §9-24 calls for a new jury of eighteen at the beginning of each term of court. G.S. §9-25, however, sets out nineteen variant procedures affecting thirty-four counties. The most common variant serves as the basis of the first recommendation.

**Recommendation No. 17: That grand jurors serve a term of one year; that the names of nine jurors be drawn for grand jury service at intervals of approximately six months each as a part of a regular drawing of a jury panel; that a Superior Court judge may order that vacancies caused by the failure or ceasing to serve of any grand juror be filled; and that such vacancies may be filled either with a juror from the regular panel or with one drawn from the jury list, in the discretion of the judge.**

#### Organization

G.S. §9-27 specifies that in the absence or inability of the foreman to serve the presiding judge shall appoint an acting foreman. As a matter of practice, the judge also appoints the foreman, though the statute is silent here. There is also no direct provision governing the charge of the judge to the grand jury. The Committee feels that discussions of law in the judge's charge in many cases cannot long be remembered and applied by the jurors, and that a brief handbook for reference would be helpful to them.

**Recommendation No. 18: That a Superior Court judge preside at the installation of new grand jurors, appointing the foreman for a six-month period (ordinarily from among those jurors with half their term already served); that the judge may but need not charge the jury at any other time than this; that to supplement the charge, a handbook for grand jurors be prepared which briefly sets out their duties and the procedures they should follow as well as a concise statement of the elements of the more common crimes they will encounter in passing upon bills of indictment; and that the judge in his discretion need not cover in his charge material in the handbook but may concentrate upon any special problems the jury might face.**

In the light of experience under the federal practice, the Committee believes that allowing the solicitor or his assistant to direct the presentation of the case for the State would expedite the jury's consideration of bills. To make it possible for the solicitor to be present, it would often be helpful for the grand jury to meet, say, as much as a week or more prior to the beginning of a criminal session of court.

**Recommendation No. 19: That a Superior Court judge may call the grand jury into session at any time; that administrative procedures be established to allow but not require the solicitor or his assistant to conduct the presentation of the evidence for the State upon the submission of a bill of indictment; that this presentation may be prior to the beginning of a criminal session of Superior Court in a county; and that the solicitor or his assistant retire during the deliberations of the grand jury upon the bill.**

## ACCUSATION PROCEDURE

Even if the concept of terms of court is abolished, in some of the smaller counties it is likely that several months will elapse between sessions of criminal Superior Court. Felons who cannot make bond might thus languish in jail for a considerable time (as they sometimes do under the existing system); it is not certain that in such an instance a Superior Court judge would be assigned to come to a county to try just one or two cases.

Rather than tailor a recommendation to meet just the contingency outlined above, it is felt that a broad discretionary provision for waiver of venue (or the administrative equivalent of it in the unified court) as to both indictment and trial would be the

best solution. The provision should be general enough to include other possible hardship cases as well as all discretionary changes of venue. The judge mentioned may be either a district or a Superior Court judge.

**Recommendation No. 20: That any person charged with a crime be permitted to waive in writing venue requirements (or their equivalent) relating to either indictment or trial or both; and that a judge be authorized in his discretion to order a person executing such a waiver to another county where speedy and impartial trial or indictment and trial may be had.**

The present law as to waiver of indictment requires consent of counsel in both felony and misdemeanor cases but only the waiver of the felony indictment is directed to be in writing. In misdemeanor cases, the written information, signed by the solicitor, is only specified where there is a plea of not guilty. Because of the possibility of abuses with an oral waiver, the Committee believes that a written waiver should be required in every case. On the other hand, the need for consent of counsel may be too rigid a rule in many simple cases. In any event, with the establishment of district courts in all counties, trial on the warrant will presumably be the rule and indictments will be rare as to misdemeanors.

Upon the substitution of other procedural safeguards, the defendant should also be permitted to waive the issuance of a warrant or criminal summons. The instances are multiplying in which a defendant comes to court with his citation to plead guilty before the law enforcement officer has arrived to swear out his warrant.

**Recommendation No. 21: That in all cases where a misdemeanor is charged a defendant may in writing waive the issuance of a warrant or criminal summons as well as the finding of a bill of indictment; that the waiver of indictment may be written either upon a warrant or upon an information signed by a solicitor provided there is a proper charge of the offense; and that in all cases regardless of plea, the waiver must contain, be written in connection with, or be attached to a sufficient description of the crime charged so as to serve as a formal written accusation on which judgment may be entered and be a record of the defendant's having been placed in jeopardy.**

### INVESTIGATIONS

As stated above, the recommendations do not invade the area of the investigative duties of the grand jury. There is debate over the value of routine grand jury investigations of county buildings or agencies or of institutions where inmates are kept.

In 1949 the General Assembly amended G.S. §9-28 to instruct the grand jury that it would "not be necessary . . . to make any inspections or submit any reports with respect to any county offices or agencies other than those required by the first paragraph of this section . . . ." The inspections required are of the county home, the workhouse, and the jail. This provision may have put in doubt the status of G.S. §§33-50 and 134-66 which require the jury to investigate orphans' estates and Homes for Fallen Women. According to the understanding of the Committee, no Homes for Fallen Women are in current operation. As to the investigation into orphans' estates, it is felt the jury is clearly ineffective in this function—whatever merits the investigative grand jury may have in other areas.

The Committee is of the opinion that in the management of orphans' estates there is a definite need for supervision, but it recommends proper and efficient supervision by some other agency rather than the usual cursory investigation provided by the untrained jurors.

**Recommendation No. 22: That G.S. §134-66 be repealed; and that G.S. §33-50 be rewritten to provide for more efficient supervision of orphans' estates than that now exercised by grand jurors.**

## III. Judges and Solicitors

### APPELLATE AND SUPERIOR COURT JUDGES

**Election**

Under existing law, Justices of the Supreme Court of North Carolina are nominated in statewide party primaries and are elected for terms of eight years on a statewide ballot. Regular Superior Court judges are nominated in district-wide party primaries and are elected for terms of eight years on a statewide ballot. The Committee makes no recommendation for any change in this elective practice, or in the existing provisions as to tenure

and retirement of these judges. If a Court of Appeals is established, that court's judges should be selected in the same manner as are Justices of the Supreme Court.

## DISTRICT JUDGES AND MAGISTRATES

At present judges of the local courts are selected in different ways; some are elected by popular vote of a particular county, municipality or township; others are appointed by various authorities, including the Governor, the resident regular Superior Court judge, and the local governing boards. Some justices of the peace are elected by the voters of townships and municipalities; others are appointed by the resident regular Superior Court judge or the General Assembly.

The judges of the local courts play an important part in the functioning of a unified court system. They must be persons of competence, integrity and dignity who recognize their relationship to the whole court system and who are free of the local pressures which have caused the justice of the peace system to deteriorate. Because the effective functioning of these local judges is so essential to the proper administration of justice, we believe that they should be appointed by the Chief Justice, as the responsible administrative head of the system. Nominations should be made by a responsible person who is familiar with local citizens and who can readily make local investigations. We believe that nominations for district judges and magistrates should be made by the senior resident Superior Court judge. When a district court territory cuts across Superior Court district lines, nominations for district judge could be made jointly by the senior resident judges of all Superior Court districts concerned, or these judges could make individual nominations; this detail could be handled by Supreme Court rule.

We do not think that the nominating judge or judges should be required to submit three names, or any other specified number, as in some instances it might not be possible to find more than one qualified person who was available for appointment. We recommend that the local judicial officials be appointed for relatively short terms, and that they be retained in office by reappointment in the same manner as they were initially chosen. For district judges we recommend a four-year term. For magistrates we think a two-year term would best serve the requirements of

an efficient system. The best interests of the nominating and appointing authorities would assure that the persons believed to be best fitted for the offices would be appointed. The short terms would permit the removal with a minimum of difficulty and embarrassment of those judges who proved to be unsatisfactory.

Because a failure at the local level can be so destructive of the efficient administration of justice, some method of removal of local judges, in addition to impeachment and removal for disability, should be provided. We believe that the rights and interests of the local judges would be adequately protected by a provision authorizing the Chief Justice to remove a local judge upon recommendation of the Judicial Council, which could act only after charges alleging incompetence or misconduct had been filed with the Council and the judge in question had been afforded an opportunity to be heard.

**Recommendation No. 23: That district court judges be appointed by the Chief Justice of the Supreme Court for a term of four years, from nominations by the senior resident Superior Court judge.** (See Appendix, Section 9.)

**Recommendation No. 24: That trial magistrates be appointed by the Chief Justice of the Supreme Court for a term of two years, from nominations by the senior resident Superior Court judge.**

**Recommendation No. 25: That district judges and trial magistrates be subject to removal for incompetence, misconduct or disability by the Chief Justice of the Supreme Court upon recommendation of the Judicial Council, after a hearing by the Council upon charges filed with it.** (See Appendix, Section 18.)

## IV. Practice and Procedure

The primary function of the courts is judicial, that is, to ascertain the law and apply it to particular facts. The worth of a system of practice and procedure is to be judged by its effectiveness in aiding the courts to perform this primary function in the best possible way.

### CHARACTERISTICS OF AN IDEAL SYSTEM OF PRACTICE AND PROCEDURE

The first essential of an ideal system of practice and procedure is that it promote justice and fairness between the litigants.

The system should be designed to eliminate from trials the elements of surprise and deception which characterized the now discredited "sporting theory" of justice.

Cases should be decided on the merits and not on technicalities of procedure. The procedural machinery should allow and encourage corrections of procedural errors as they are discovered, whenever such action is possible without prejudicing the substantive position of a party. If the court of last resort finds it necessary frequently to base its decisions upon procedural points, the procedural system should be carefully examined. All rules should be as simple and understandable as possible. Interpretation of procedural rules should not be a major exercise in mental gymnastics. Rules should be designed to minimize litigation on procedural questions. The citizen is entitled to insist that the courts not spend his time and money clarifying their own procedural rules.

The system of practice and procedure should expedite the disposition of cases and discourage delay. Where settlement is probable, the system should make it most likely to occur before the beginning of the trial, thus saving the time and expense incident to a partial trial. The rules should avoid placing undue pressure upon a party which might result in hasty and ill-advised action, but they should make it difficult for a party to use a court purely as a delaying device.

The procedural system should be flexible. A rigid system promotes, rather than discourages, procedural litigation, since it increases the probability of technical errors. The system should be under constant supervision and review by responsible judicial officials.

Practice and procedure in all trial courts should approach uniformity. Historically, individual courts have had the power to make supplementary rules of practice and procedure to meet particular local needs, and this power should not be withdrawn. But a competent attorney should have the assurance that when he is familiar with the practice and procedure in each trial court division he will be qualified to appear in any trial court, without the necessity of learning a new system each time he appears in a new area.

Finally, an ideal system of practice and procedure would enable the courts to perform their primary function at minimum expense. If court proceedings are too costly for the aggrieved

citizen to make use of them, then to that degree our judicial system is failing to achieve its purpose.

## DEFECTS IN THE PRESENT NORTH CAROLINA PRACTICE AND PROCEDURE

The comments and suggestions received from the lawyers of the state, and the Committee's own research and study indicate that there are many deficiencies in the present rules of practice and procedure provided by the legislature. Our suggestion as to the method by which these defects may be eliminated or minimized is contained in Section III of this Report. At this point we wish only to point out some of the more serious defects in the existing practice and procedure.

The existing rules do not constitute a unified scheme or system, but are rather a patchwork of sometimes unrelated or conflicting provisions. The main body of rules was adopted as the Code of Civil Procedure in 1868, and at that time did constitute an orderly system. Since that time the system has deteriorated under the legislative practice of adopting individual amendments and changes without proper consideration as to their effect upon the scheme as a whole.

The present system of fact pleading is cumbersome and time-consuming. It leads to interlocutory appeals and confusion of issues, and tends to encourage delay and undue consideration of paper allegations rather than the actual facts of the case.

Existing statutory rules governing joinder of parties and causes of action are inadequate and arbitrary, and are based upon the idea of fixed legal categories rather than upon the modern idea that joinder should be purely a matter of trial convenience.

The present statutes dealing with counterclaims and cross actions are ambiguous and inadequate.

North Carolina courts do not have the broad and inexpensive discovery procedures necessary for an efficient administration of justice. Effective discovery procedures in use in many jurisdictions have served to reduce substantially the time and cost of litigation, simplify the issues and get away from the sporting theory of trials.

There is not under existing statutes an effective use of pre-trial procedure. There is a total absence of any summary judgment procedure, which has been found invaluable in other juris-

dictions in promptly disposing of cases in which no material issues of fact are present.

In all too many cases the present statutory rules of procedure result in decisions on technical and procedural points rather than upon the merits of the controversy.

The Committee does not intend to suggest that the list of deficiencies here listed is complete. It is intended to be illustrative, rather than comprehensive, and to indicate the need for improvement.

## PROCEDURAL RULE-MAKING BY THE COURTS

How can we in North Carolina best overcome the existing procedural defects? The Committee believes that this can best be done by giving the rule-making power to the Supreme Court. In making this suggestion we are not proposing an innovation. Originally the courts, as a coordinate branch of American government, made their own procedural rules, and the Supreme Court of North Carolina now makes rules to govern the conduct of its own business and makes some rules for the Superior Courts. The courts, however, lacked a simple and effective machinery through which an adequate system of rules could be formulated and promulgated. The result was that procedural rules developed by the common-law method of case-by-case decision—a method singularly inappropriate for the purpose. Common-law pleading became so cumbersome and involved that the legislatures entered the field to rescue the courts from their own rules.

Beginning with the adoption of the Field Code in New York in 1848, legislative participation in the fixing of procedural rules for the courts became quite common. In the next seventy years rigid and minute procedural statutes were enacted in twenty-seven states, and there was much legislative interference in other states. These statutory codes of procedure are a violation of the American doctrine of separation of powers. Administrative agencies are given the power to make their own rules. Executive departments regulate their own internal affairs. The courts do not attempt to interfere with rules which the legislature makes to govern its own procedure. We believe that the legislature of North Carolina should interfere with the rule-making power of the courts with the same diffidence as the courts of North Carolina interfere with the legislature by declaring statutes unconstitutional.

Quite aside from any question as to appropriate separation of powers, we believe there are compelling reasons why the rule-making power should be vested in the courts, rather than in the legislature.

First, so long as the authority to make procedural rules is exercised by the legislature, there will be a division of responsibility for the administration of justice. Where responsibility is divided the difficulties of efficient administration are greatly increased. Clearly discerned defects may not be corrected because responsibility for neither the defect nor its correction can be pinpointed. The courts and the legislature can in some measure blame their own failures upon each other. The only solution to this problem is to place responsibility for efficient administration of justice where it belongs — upon the judicial department—and this cannot be done without conferring upon that department the authority to manage its own internal affairs. To suggest this is not to suggest that any unusual or extraordinary power be vested in the courts. If our courts can be safely trusted to determine what the decision in a case shall be, surely they can be trusted to determine the procedure by which the decision shall be reached.

Secondly, there are a number of objections to the legislature as a rule-making body for the courts. Many legislators are not lawyers and lack the necessary special competence in the specialized field of court procedure. The intermittent nature of legislative sessions and the considerable turnover of members and committees make it impossible for the legislature to give the continuous study and supervision which the subject demands. The legislature is primarily concerned with policy matters and does not have the time to devote careful study to detailed problems of procedure in the courts. The rules are thus subject to distortion by inexpert or inexperienced legislators. Changes in the rules are often prompted by an individual member's experience in a single case, without proper consideration of the effect upon the system as a whole. When there is a disagreement as to the interpretation of a statutory rule, the point is litigated, thus clogging the courts with minor questions of statutory construction. If the court were free of any problem of ascertaining legislative intent, ambiguities and uncertainties could be resolved with a minimum of litigation; and the court would be expected to be more liberal in interpreting court-made rules.

When rules of procedure are made by the courts themselves, the preparation of the rules is in the hands of those who will use them—the persons best qualified to know what is needed. Proposed changes are considered in the light of their effect upon the whole system; amendments to meet individual cases tend to disappear. The courts are in a position to keep a continuous check upon the operation of the rules and can make changes more promptly than can the legislature. The judges are more responsive to changing needs than is the legislature, and those who are charged with responsibility for the administration of justice will be careful to keep the system uniform and consistent.

In recommending a return to rule-making by the courts, we are following the best modern thought and action. During the last half of the nineteenth and the first decade of the twentieth century the trend was toward statutory codes of procedure. The modern trend is clearly in the opposite direction. Today there are twenty-six states in which rule-making is primarily a function of the courts themselves, and in twenty-five of these the authority has been granted since 1910. The power was vested in the federal courts in 1934, and the Federal Rules of Civil Procedure have been in effect since 1938. These Federal Rules are a conspicuous example of the high quality of court-made rules; they have served as a model in at least fourteen states, and have influenced the rules in several others.

When we state that we believe the rule-making power should be returned to the courts, we are, of course, limiting the suggestion to procedural rules. It is the province of the legislature, not of the courts, to determine policies affecting substantive rights. Furthermore, the rule-making power should not be used to abrogate or limit the right of trial by jury.

**Recommendation No. 26: That the power to make rules of civil and criminal procedure and practice in all courts in the State be vested in the Supreme Court of North Carolina, subject to the limitation that the rule-making power may not be used to abridge substantive rights nor to abrogate or limit the right of trial by jury.** (See Appendix, Section 12.)

Although we recommend that the rule-making power be vested in the Supreme Court, we do not suppose that that Court can or should by itself attempt to formulate a system of rules. The Federal Rules of Civil Procedure were the product of long and

careful study by an Advisory Committee which worked with members of the bar, judges, scholars and other interested persons in preparing drafts of rules for submission to the United States Supreme Court. (The Advisory Committee has now been abolished, and the Judicial Conference of the United States will assist and advise the Supreme Court in the discharge of the Court's rule-making responsibilities.) We think that the North Carolina Supreme Court should also have the assistance of an advisory group in the formulation of procedural rules. The Judicial Council is the logical and appropriate body to serve in an advisory capacity to the Supreme Court when the Court is functioning as a rule-making body.

**Recommendation No. 27: That the Judicial Council be designated as the advisory body to the Supreme Court with respect to rules of practice and procedure for the courts.** (See Appendix, Section 16.)

When the legislature is exercising the rule-making power, proposed changes or new rules are submitted in the form of public bills. Interested persons have an opportunity to examine the proposals and to be heard by the legislative committee considering the bills. We believe that similar provision should be made with respect to court-made rules. Before they are finally adopted, proposed changes in the rules or new rules should be published in some appropriate way and an opportunity should be afforded to all interested persons to be heard with respect to the proposals. The Judicial Council could schedule and hold hearings anywhere in the State, and could devote more time to the hearings than would be reasonably possible for a legislative committee; therefore, the bar and the general public would have a better opportunity than is now afforded to be heard on proposed rules and changes to rules.

**Recommendation No. 28: That before proposed changes in the rules or new rules are finally adopted by the Supreme Court, the proposals be published and an opportunity be afforded to all interested persons to be heard concerning them.** (See Appendix, Section 12.)

The procedural rule-making power may be vested exclusively in the courts, or provision may be made for some degree of legislative participation in the process. In the federal system the Con-

gress has the right to enact procedural rules, but it does not in fact do so (although bills for that purpose are introduced from time to time). Prior to the adoption of the Federal Rules of Civil Procedure, the Congress had no tradition of enactment of detailed procedural rules for the courts; the Conformity Act made federal procedure conform to state rules in the absence of specific statute. Consequently, there is little tendency on the part of the Congress to exercise its rule-making powers for the courts. By contrast, the North Carolina General Assembly has for many years enacted specific rules of procedure for the courts. In the light of this background, we believe that the General Assembly will tend to continue to enact procedural statutes if it is empowered to do so. If both the courts and the legislature are making rules, conflicts and confusion as well as the undesirable division of responsibility, are certain to result. Accordingly, the Committee recommends that the power to make rules of practice and procedure for the courts be vested exclusively in the Supreme Court of North Carolina.

Because we think that it is so important that the rule-making power be exercised only by the courts, we believe that the authority for the exclusive exercise of the power should be vested in the courts by Constitutional provision.

**Recommendation No. 29: That the power to adopt, amend and revise rules of practice and procedure for the courts of North Carolina be vested in the Supreme Court of North Carolina by Constitutional provision.** (See Appendix, Section 12.)

## V. Court Administration

No system of courts, however admirable, will function at top efficiency unless it is administered properly; and no system, however defective, will fail to benefit from proper administration. Proper administration requires that authority be granted to an appropriate official or body, and that necessary machinery to exercise the authority be provided. At present North Carolina has neither.

The extreme decentralization of the courts of North Carolina is reflected in their administration. Each court is an administrative unit in itself, with virtually no administrative accountability to any central or coordinating unit. In the trial courts each clerk

establishes his own system and keeps whatever records he and the judge find workable, in whatever manner he chooses. Justices of the peace keep records ranging from adequate to virtually non-existent; records pertaining to justices of the peace are so poor that it is not possible readily to determine how many of these officials are actually functioning as trial justices in the state. Trial courts and judges are quartered in whatever facilities the county or local unit makes available.

Each court manages its own fiscal affairs, and many handle considerable sums of money for the estates of minors, incompetents and decedents, without any uniform auditing and accounting system.

The condition of dockets varies widely throughout the state, calendaring practices vary from county to county, and the work load of different judges differs markedly.

## ADMINISTRATIVE AUTHORITY IN THE COURT SYSTEM

Administrative problems are such that they require a flexibility of approach which cannot be provided through legislatively-fixed rigid rules. Even if the legislature were pre-eminently qualified to deal with judicial administrative problems, the biennial session arrangement would make legislative handling of administrative rules unsatisfactory. Administrative rules—rules for governing the internal affairs of the courts of the state—should be made by a responsible judicial body, which can deal with new problems and developments as they arise, and which is equipped to know best how to deal with the problems. The body which exercises this administrative authority should have the experience necessary to understand the administrative problems of the various courts, and should have sufficient prestige to minimize the need for sanctions to enforce its rules. The court of last resort in a state is admirably fitted to perform this function. We feel that administrative authority over the courts of North Carolina should be vested in the Supreme Court of North Carolina, and that the Chief Justice should be the responsible administrative officer in the system.

In order for the Chief Justice to be able to discharge these administrative responsibilities properly, he must have adequate and accurate information as to conditions in the various courts.

At present the Chief Justice through his Administrative Assistant compiles statistics on the court system, but he can require reports only from clerks, officers and officials of the courts. Although a grant of general administrative authority over all the courts to the Supreme Court might necessarily imply the power to require reports from judges as well as other court personnel, we think that the authority to require reports from judges should be specified.

**Recommendation No. 30: That administrative authority over all of the courts in the state be vested in the Supreme Court of North Carolina, with the Chief Justice as the responsible executive head; that the details of administration of the courts be established by rules promulgated by the Supreme Court; and that the Supreme Court be specifically empowered to require from all court clerks, officers and judges such reports as it may need in order to discharge its administrative responsibilities properly.** (See Appendix, Section 15.)

## ADVISORY BODY ON ADMINISTRATIVE RULES

Experience in other states demonstrates that it is desirable that the Supreme Court have the advice and counsel of other groups in making administrative policy. Trial judges know first hand the special problems of maintaining an efficient trial court; members of the bar are affected directly by the administrative practices of the courts; and solicitors are responsible for handling criminal matters with dispatch. All of these groups should be in a position to express their views and contribute their ideas on administrative practices. Laymen, who are the litigants, should be enabled to bring their fresh approach to the solution of administrative problems. Finally, the general policy-making body of the state, the General Assembly, should be represented in any advisory group, not only to bring the legislators' experience to the aid of the Court, but to provide effective liaison between the Court and the General Assembly.

The Committee does not think it necessary to create a new advisory agency to the courts. The Judicial Council is presently composed of the Chief Justice or another Supreme Court Justice designated by him, two judges of the Superior Court designated by the Chief Justice, the Attorney General or a member of his staff designated by him, two solicitors of the Superior Court

designated by the Chief Justice, two members appointed by the Governor, one member appointed by the President of the Senate, one member appointed by the Speaker of the House of Representatives, and four practicing lawyers appointed by the Council of the North Carolina State Bar. We think that with minor changes in the present manner of naming members of the Judicial Council and with additional specifications as to some of the appointees, the Judicial Council should be designated to serve as the advisory body to the Supreme Court with respect to administrative rules. It should be specified that the members of the Council appointed by the President of the Senate and the Speaker of the House must be members of the Senate and House, respectively, and that the members of the Council appointed by the Governor must be laymen. Provision should be made to include representatives of the district courts. With these changes the Council would include representatives of all the groups which we think should be represented in the advisory body.

**Recommendation No. 31: That the Judicial Council be designated as the advisory body to the Supreme Court with respect to administrative rules.** (See Appendix, Section 16.)

## ADMINISTRATIVE OFFICE

The judicial system should be administered by judicial personnel, and not by a special administrative unit superimposed upon the system. Administrative authority and responsibility should be vested in the Supreme Court, with the Chief Justice as the responsible executive officer. Obviously, however, the Chief Justice will require an adequate staff to perform the details of administration. The present Administrative Assistant to the Chief Justice is now performing this function insofar as the present limited administrative authority of the Chief Justice goes. Effective functioning under the broad administrative powers recommended herein will require that the existing office of the Administrative Assistant be expanded into an Administrative Office, with a director and sufficient professional and clerical staff to collect proper statistics, maintain appropriate personnel records, handle the procurement of equipment, supplies and facilities for the courts, prepare and maintain fiscal records, make appropriate reports on the basis of which the Chief Justice can

handle judicial assignments, and generally to supervise and report on the operation of the system.

**Recommendation No. 32: That the present office of Administrative Assistant to the Chief Justice be expanded into an Administrative Office of the Courts, with appropriate professional and clerical staff to serve as the executive staff for the Chief Justice.**

## ASSIGNMENT OF JUDGES

Under existing law the Chief Justice of the Supreme Court is empowered to assign special or emergency judges to hold court in any district in the state, to assign any Superior Court judge to hold one or more terms of court in any district, and to assign any Superior Court judge to hear non-jury civil matters in any county without relation to a term of court. Most of these assignment powers are subject to the restrictions imposed by the concept of court "terms"; a judge can be assigned only to hold a term of court. Furthermore, the assignment power of the Chief Justice is limited to Superior Court judges. If maximum effective use is to be made of judicial manpower, and if there is to be the best possible distribution of the judicial work-load, the Chief Justice should have authority to assign judges where they are most needed, without regard to court terms, and the authority should extend to assignment of the judges of the local courts as well as to those of the Superior Courts.

To attain the desired flexibility in the system, it should be possible to assign Superior Court judges to temporary duty with a district court. When undue congestion developed in a district court division and there were no judges of that division available for assignment to help clear the congestion, a judge of the Superior Court could be assigned to temporary duty to the end that undue delay in bringing cases to trial might be avoided. This authority to assign Superior Court judges to district courts should not have to be used extensively. If there was a continuous need for such action it would indicate that the district court division was understaffed, and appropriate action should be taken. The concept of a single court, made up of different divisions, each of which is staffed by competent judges, should minimize any feeling that a Superior Court judge would be affronted by being assigned to temporary duty with the district court.

For similar reasons, we think that the Chief Justice should be

empowered to assign Superior Court judges to temporary duty with either the Court of Appeals or the Supreme Court, and to assign judges of the Court of Appeals to temporary duty with the Supreme Court.

**Recommendation No. 33: That the Chief Justice of the Supreme Court be given authority, to be exercised in accordance with rules promulgated by the Supreme Court, to make original assignments of judges of the Superior and of district courts, and to transfer these judges from one place to another; and that the Chief Justice be given authority, to be exercised in accordance with rules promulgated by the Supreme Court to assign Superior Court judges to temporary duty with the district courts, the Court of Appeals, and the Supreme Court, and to assign judges of the Court of Appeals to temporary duty with the Supreme Court.** (See Appendix, Section 10.)

## SESSIONS OF COURT

If the Chief Justice is to be charged with responsibility for efficient management of the courts, he should have the power, subject to rules of the Supreme Court, to schedule sessions of court at the times and places where there is judicial work to be done. At present the legislature fixes court terms some two years in advance—a practice which cannot take into account the needs of a particular locality at any given time. The Chief Justice now has authority to cancel a term when there is not sufficient business to justify it, to call a special term when necessary, and, upon recommendation of the local bar, to change the designation of a term as the nature of business to be done may require. This authority of the Chief Justice is remedial, and is thus likely to be used only when a relatively serious situation develops or threatens to develop. We believe that efficient handling of judicial business would be greatly facilitated if the present concept of court terms were eliminated, and the courts were regarded as being in continuous session during the regular hours of every business day for the transaction of business. Since it is not practicable to have a judge present continuously in every court, it will, of course, be necessary that trial calendars be promulgated and that sessions for the trial of civil and criminal cases be scheduled. We believe these trial schedules should be fixed and subject to change by rule of the Supreme Court, with authority in the Chief Justice, subject

to Supreme Court rules, to modify the schedule when conditions warrant. In addition to his present authority to cancel a term or call a special term, the Chief Justice could, for example, extend a scheduled trial session or curtail a trial session when the volume of business justified such action.

**Recommendation No. 34: That the present concept of court terms be eliminated, and that courts be regarded as being in continuous session during regular hours of every business day for the transaction of business; but that scheduled sessions for the trial of civil and criminal cases be fixed by rule of the Supreme Court, with authority in the Chief Justice, acting in accordance with rules promulgated by the Supreme Court, to modify the schedule when conditions warrant.**

## COURT REPORTING

The existing system for obtaining court reporters in North Carolina is unsatisfactory. Sometimes it is necessary to postpone terms of court, or to pass over particular cases because no satisfactory court reporter is available. There is a shortage of qualified reporters in the state, and this shortage promises to become more acute, as evidence indicates that younger persons are not entering the field in great enough numbers to replace those who retire or go into other work.

Under the present system, the responsibility for obtaining court reporters lies with the county authorities. Some counties hire one or more reporters on a full-time salaried basis. Other counties contract with a reporter who then assumes the responsibility for having a reporter available to serve each term of court in that county. In still other counties arrangements are made by the Superior Court judge, court clerk, or county manager with any reporter who happens to be available when a court term is held.

The court reporter is an important part of the trial court mechanism. If he is unavailable the handling of court business is delayed or in some instances halted entirely. If the reporter is incompetent the problem of preparing a proper record on appeal is greatly complicated. Some provision should be made to insure that a competent court reporter, or a satisfactory substitute, is available to every court of record. The development of mechanical methods of reproducing sound has reached the point where it may

be desirable to substitute sound recording equipment for regular reporters in some instances. The best assurance that satisfactory provision will be made for court reporting is to place responsibility upon the Administrative Office of the Courts, under rules promulgated by the Supreme Court. The details as to how to obtain proper court reporting should be left to the Administrative Office. What is desired is that court reporting—not necessarily court reporters—be made the responsibility of the Administrative Office, and it should be free to develop the best system—human, mechanical, or a combination of the two—which might prove to be the most satisfactory in the circumstances.

**Recommendation No. 35: That the Administrative Office of the Courts, under rules promulgated by the Supreme Court, be made responsible for establishing and administering a system to obtain reliable records of trials in courts of record.**

## CLERKS OF COURT

The gathering of accurate and complete statistics, the making and preservation of proper records, and the efficient use of records by judges who are transferred from their regular assignments demand that clerks of Superior Court be subject to the direction of the Chief Justice in their administrative functions. This authority should be included in the constitutional grant of administrative authority to the Supreme Court, with the details left to be fixed by rules of court.

Many local courts have no separate clerk. In some counties the clerk of Superior Court does not have sufficient business to keep his office open full-time. In these as well as other situations, it may be convenient and efficient to establish a consolidated clerk's office for all the courts in a county. The convenience of litigants, attorneys and the public generally makes it desirable that there be at least one clerk's office in every county. We think that the Supreme Court should have authority, where it finds such action to be desirable and feasible, to establish a single consolidated clerk's office for all the courts in a county.

**Recommendation No. 36: That the constitutional grant of administrative power to the Supreme Court include authority to direct the organization and administrative functioning of the court clerks' offices.**

## FISCAL CONTROL

The establishment of a unified and uniform court system necessarily requires that the courts be financed at the State level. If the Supreme Court is to establish district lines and determine where district courts and magistrates shall be available, it is essential that the financing of these courts be handled at the State level. Under a statewide financing system, all costs and fees would be paid into the State. The State would pay the salaries of judges, magistrates, solicitors, court clerks and their office personnel, and jury commissioners. The State would also pay the travel allowances of judges and solicitors, the statutory fees of jurors and witnesses, all expenses of the appellate division, and the Administrative Office of the Courts. To the extent practicable the State should pay the cost of books, supplies and equipment for the trial courts, should pay rent or allocate some portion of receipts to local governments for providing and maintaining quarters for the courts, and should reimburse the local governments paying the compensation of law enforcement officers who make the arrest in criminal cases.

Transfer of fiscal operation and control to the State will have a substantial impact upon some local government units, particularly those municipalities which are presently deriving a substantial net profit from the operation of their recorder-type courts. It may be necessary for the State to make some provision whereby municipalities will obtain new revenues to supplant that taken away.

Though we do not think it proper that the State's judicial department should be called upon to be self-supporting, we believe that improved collection methods applied on a statewide basis would enable the Administrative Office of the Courts to determine what uniform costs would be necessary to make the court system pay whatever part of its total expenses the General Assembly may deem appropriate. Certainly costs could be set so as to avoid an increase in the State's present appropriation for operating the courts.

**Recommendation No. 37: That the financing of all divisions of the unified court be handled at the State level, and that the State receive the revenues, other than fines and forfeitures, which the courts now pay to local governmental units.** (See Appendix, Section 22.)

# Appendix

## Proposed Revision of the Judicial Article of the Constitution of North Carolina

December, 1958

# ARTICLE IV
# JUDICIAL DEPARTMENT

| Proposed Text | Existing Text |
|---|---|
| **Section 1. Division of Judicial Power.**—The judicial power of the State shall, except as provided in Section 2 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the Judicial Department of any power or jurisdiction which rightfully pertains to it as a co-ordinate department of the government. | **Section 2. Division of judicial powers.**—The judicial power of the State shall be vested in a court for the trial of impeachments, a Supreme Court, Superior Court, courts of justices of the peace, and such other courts inferior to the Supreme Court as may be established by law.<br><br>**Section 12. Jurisdiction of courts inferior to Supreme Court.** The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a coordinate department of the government; . . . |

NOTE

See Recommendation 1.

This section establishes a unified court—the General Court of Justice—and, subject to stated exceptions vests in this unified court the judicial power of the State.

The Court for the Trial of Impeachments is a highly specialized court with a political as well as a judicial character; it was left unchanged, and was specifically not included within the unified court structure.

The second sentence of the section was brought forward from existing Section 12 in order that the principle of separation of powers might be expressed at the beginning of the Judicial Article.

| Proposed Text | Existing Text |
|---|---|
| **Section 2. Judicial Powers of Administrative Agencies.** — The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes | None. |

for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice under rules promulgated by the Supreme Court.

NOTE

Under the existing Constitution, administrative agencies exercise judicial powers as administrative courts inferior to the Supreme Court. The proposed draft eliminates the authority to establish such inferior courts by law. Therefore, unless some special provision were made, administrative agencies could not exercise judicial powers under the proposed new structure. The Committee did not intend to deny to administrative agencies the power to exercise such judicial powers as might be reasonably necessary to the accomplishment of the purposes for which the agencies were created; accordingly, the exercise of such powers by administrative agencies was specifically authorized by this section. Although the administrative agencies are not made a part of the unified court, the principle of judicial review of the decisions of administrative agencies is effectuated by the second sentence of the proposed section. The language used authorizes the Supreme Court to determine the scope and the routing within the General Court of Justice of appeals from administrative agencies.

| Proposed Text | Existing Text |
| --- | --- |
| **Section 3. Court for the Trial of Impeachments.**—The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the court. A majority of the members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law. | **Sec. 3. Trial court of impeachment.**—The court for the trial of impeachments shall be the Senate. A majority of the members shall be necessary to a quorum, and the judgment shall not extend beyond removal from and disqualification to hold office in this State; but the party shall be liable to indictment and punishment according to law.<br><br>**Sec. 4. Impeachment.**—The House of Representatives solely shall have the power of impeaching. No person shall be convicted without the concurrence of two-thirds of the Senators present. When the Governor is impeached, the Chief Justice shall preside. |

NOTE

Existing sections 3 and 4 have been combined here. The existing text provides that the Chief Justice shall preside over the Court of Impeachment when the Governor is impeached, but it makes no provision as to who shall preside when the Lieutenant Governor is impeached. The proposed text would supply this omission by having the Chief Justice preside when either the Governor or Lieutenant Governor is impeached.

| Proposed Text | Existing Text. |
|---|---|
| **Section 4. General Court of Justice.**—The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration; and shall consist of an appellate division, a Superior Court division, and a division of local trial courts. | None. |

NOTE

See Recommendation 1.

This section specifically states that the General Court of Justice is a unified court, and establishes the basic framework of the Court.

| Proposed Text | Existing Text |
|---|---|
| **Section 5. Appellate Division.**—The appellate division of the General Court of Justice shall consist initially of the Supreme Court. The General Assembly may, upon recommendation of the Supreme Court, establish within the appellate division an intermediate Court of Appeals. | None. |

NOTE

See Recommendation 3(b).

This section states that when the unified court is first established, the Supreme Court shall constitute the appellate division of the court. The second sentence makes it possible for the General Assembly to establish an intermediate appellate court when the Supreme Court recommends such action. The language is intended to require that the Supreme Court recommend before the General Assembly can act, and to require that the General Assembly act before the intermediate court can be established.

**Proposed Text**

**Section 6. Supreme Court.**—The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. The General Assembly may provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on that Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

**Existing Text**

Sec. 6. Supreme Court.—The Supreme Court shall consist of a Chief Justice and four Associate Justices. The General Assembly may increase the number of Associate Justices to not more than six when the work of the Court so requires. The Court shall have the power to sit in divisions, when in its judgment this is necessary for the proper dispatch of business, and to make rules for the distribution of business between the divisions and for the hearing of cases by the full Court. No decision of any division shall become the judgment of the Court unless concurred in by a majority of all the Justices; and no case involving a construction of the Constitution of the State or of the United States shall be decided except by the Court en banc. All sessions of the Court shall be held in the City of Raleigh. This amendment made to the Constitution of North Carolina shall not have the effect to vacate any office or term of office now existing under the Constitution of the State, and filled or held by virtue of any election or appointment under the said Constitution, and the laws of the State made in pursuance thereof. The General Assembly is vested with authority to provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on said court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

NOTE

See Recommendation 3(a).

The number of Associate Justices has been changed to six, to conform with existing law, and the General Assembly is authorized to increase the number to eight. The provisions with respect to sitting in divisions

have been eliminated, as the Court has never found this provision useful. The requirement that all sessions of the Court be held in Raleigh has been eliminated, so as to permit the Court to sit elsewhere in emergencies or when the public interest would be best served. The sentence dealing with the effect of the adoption of this Constitution on existing offices has been deleted; its substance will be retained in a general transitional provision, either the last section of the proposed Article, or as a part of the Act by which the proposal is submitted to the people for ratification.

| Proposed Text | Existing Text |
|---|---|
| **Section 7. Court of Appeals.**—The structure and organization of the Court of Appeals, if established, shall be determined by the General Assembly, with the advice of the Supreme Court. Jurisdiction of the Court of Appeals shall be determined by the Supreme Court, as provided in Section 11 of this Article; and sessions of the Court of Appeals shall be held at such times and places as may be fixed by rules of the Supreme Court. The General Assembly may provide for the retirement of members of the Court of Appeals and for the recall of such retired members to serve on that court in lieu of any active member thereof who is, for any cause, temporarily incapacitated. | None. |

NOTE

See Recommendation 3(b).

If the Court of Appeals is established, this section would leave it to the General Assembly to determine how many judges should be on the court, whether the court should be organized on a regional or statewide basis, how its presiding judge or judges should be selected, and other similar matters. The Supreme Court would advise the General Assembly on these matters, but the General Assembly would be free to disregard this advice if it saw fit to do so. The Supreme Court would determine the jurisdiction of the Court of Appeals. The provision as to recall of retired members for temporary duty is identical with existing provisions relating to Supreme Court Justices.

| Proposed Text | Existing Text |
| --- | --- |
| **Section 8. Superior Courts.—(1) Superior Court Districts.** The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court judges for each district. Each regular Superior Court judge shall reside in the district for which he is elected. The General Assembly may provide by general laws for the selection or appointment of special or emergency Superior Court judges not selected for a particular judicial district. | **Sec. 10. Judicial districts for Superior Courts.**—The General Assembly shall divide the State into a number of judicial districts which number may be increased or reduced and shall provide for the election of one or more Superior Court judges for each district. There shall be a Superior Court in each county at least twice each year to continue for such time in each county as may be prescribed by law. |
| (2) **Open at all times, sessions for trial of cases.** The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to rules promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county. | **Sec. 11. Judicial districts; rotation; special Superior Court judges; assignment of Superior Court judges by Chief Justice.**—Each judge of the Superior Court shall reside in the district for which he is elected. The General Assembly may divide the State into a number of judicial divisions. The judges shall preside in the courts of the different districts within a division successively; but no judge shall hold all the courts in the same district oftener than once in four years. The General Assembly may provide by general laws for the selection or appointment of special or emergency Superior Court judges not assigned to any judicial district, who may be designated from time to time by the Chief Justice, to hold court in any district or districts within the State; and the General Assembly shall define their jurisdiction and shall provide for their reasonable compensation. The Chief Justice, when in his opinion the public interest so requires, may assign any Superior Court judge to hold one or more terms of Superior Court in any district. |
| (3) **Clerks.** A clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the General Assembly. If the office of clerk of the Superior Court | |

becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident judge of Superior Court for the county shall appoint to fill the vacancy until an election can be regularly held.

**Sec. 22. Transaction of business in the Superior Courts.**—The Superior Courts shall be, at all times, open for the transaction of all business within their jurisdiction, except the trial of issues of fact requiring a jury.

**Sec. 16. Election of Superior Court Clerk.**—A clerk of the Superior Court for each county shall be elected by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the General Assembly.

**Sec. 29. Vacancies in office of Superior Court Clerk.**—In case the office of clerk of a Superior Court for a county shall become vacant otherwise than by the expiration of the term, and in case of failure by the people to elect, the judge of the Superior Court for the county shall appoint to fill the vacancy until an election can be regularly held.

NOTE

See Recommendation 4.

As indicated, proposed section 8 combines parts or all of five existing sections. The substance of existing sections 10, 16, 22, and 29 is retained without change, although the material has been rearranged. The compulsory rotation provision of existing section 11 has been eliminated. This, along with the provisions of existing section 11 with respect to assignment of judges has been left to the general assignment power of the Chief Justice, which is spelled out in proposed section 10.

| Proposed Text | Existing Text |
|---|---|
| **Section 9. Local Trial Courts.**—The Supreme Court shall from time to time divide the State into a convenient number of local court districts and shall promulgate rules prescribing where the district court shall sit; but a district court must sit in at least one place in each county. For each local court district the Chief | **Sec. 30. Officers of other courts inferior to Supreme Court.**—In case the General Assembly shall establish other courts inferior to the Supreme Court, the presiding officers and clerks thereof shall be elected in such manner as the General Assembly may from time to time prescribe, and they shall hold their offices for a term not exceeding eight years. |

Justice of the Supreme Court shall appoint, for a term of four years, from nominees submitted by the senior regular resident Superior Court judge or judges for the area comprising the local court district, a chief district judge, and where authorized, one or more associate district judges. For each county the Chief Justice of the Supreme Court shall appoint for a term of two years, from nominees submitted by the senior regular resident Superior Court judge for the county, one or more magistrates who shall be officers of the district court. The number of associate district judges and magistrates shall from time to time be determined by the General Assembly, acting on recommendation of the Supreme Court.

Vacancies in the office of district judge and magistrate shall be filled, for the unexpired term, by appointment of the Chief Justice in the manner provided for original appointment to those offices.

NOTE

See Recommendations 5 and 23.

This section outlines the local court structure and provides for the appointment of district judges and magistrates.

| Proposed Text | Existing Text |
| --- | --- |
| **Section 10. Assignment of Judges.**—The Chief Justice of the Supreme Court, acting in accordance with rules of the Su- | Sec. 11. (The text of existing section 11 is set out at page 54, above.) |

preme Court, shall make assignments of judges of the Superior Courts and district courts, may transfer these judges from one place to another, may assign Superior Court judges to temporary duty with the district court or the Court of Appeals, and may assign judges of either the Superior Court or the Court of Appeals to temporary duty with the Supreme Court.

NOTE

See Recommendation 33.

This section gives the Chief Justice, acting under rules of the Supreme Court, general assignment authority over Superior Court and district court judges. It would permit the Supreme Court and Chief Justice to retain, modify, or abolish rotation of Superior Court judges. It would also permit the Chief Justice to make temporary assignments of Superior Court judges to serve on a district court or in the appellate division, and to assign Court of Appeals judges to temporary duty with the Supreme Court.

**Proposed Text**

**Section 11. Jurisdiction of the General Court of Justice.** (1) **Supreme Court.** The Supreme Court shall have jurisdiction to review, upon appeal or appropriate writ, any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court shall have the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the inferior courts. The Supreme Court shall have

**Existing Text**

**Sec. 8. Jurisdiction of Supreme Court.**—The Supreme Court shall have jurisdiction to review upon appeal, any decision of the courts below, upon any matter of law or legal inference. And the jurisdiction of said court over "issues of fact" and "questions of fact" shall be the same exercised by it before the adoption of the Constitution of one thousand eight hundred and sixty-eight, and the court shall have the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of inferior courts.

**Sec. 9. Claims against the State.**—The Supreme Court shall have original jurisdiction to hear claims against the State, but its decisions

original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; the decisions shall be reported to the next session of the General Assembly for its action.

(2) **Court of Appeals.** The Court of Appeals, if established, shall exercise such appellate jurisdiction as the Supreme Court may by rule vest in it; Provided, that in all cases involving a construction of the Constitution of this State or of the United States, and in all criminal cases in which a sentence of death or life imprisonment has been imposed, there shall be an absolute right of final appeal to the Supreme Court.

(3) **Superior Court.** Except as limited by rules promulgated by the Supreme Court, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of Superior Court shall have such original jurisdiction as the Supreme Court may by rule prescribe.

(4) **District Court.** The Supreme Court shall by uniform rule designate those cases and proceedings which may be heard in the District Court, but it shall not, without approval of the General Assembly, promul-

shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the General Assembly for its action.

**Sec. 12. Jurisdiction of courts inferior to Supreme Court.** —The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a coordinate department of the government; but the General Assembly shall allot and distribute that portion of this power and jurisdiction which does not pertain to the Supreme Court among the other courts prescribed in this Constitution or which may be established by law, in such manner as it may deem best; provide also a proper system of appeals; and regulate by law, when necessary, the methods of proceeding in the exercise of their powers, of all the courts below the Supreme Court, so far as the same may be done without conflict with other provisions of this Constitution.

gate any rule authorizing the District Court to try ordinary civil cases in which the amount in controversy exceeds $5,000, or criminal cases in which the offense charged is a felony; but cases and special proceedings involving domestic relations, juveniles, probate, condemnation, or other special subject matters appropriately tried by specialized courts or according to specialized procedures may be assigned to the District Court, regardless of the amount in controversy or the offense charged. The jurisdiction of Magistrates shall be governed by uniform rule of the Supreme Court, but shall in no event exceed the jurisdiction of the District Court. The defendant in any criminal cases instituted before a Magistrate shall have the absolute right, upon request, to have his case transferred for trial before a District Judge, and any party to a civil case instituted before a Magistrate shall have the right to apply to the Chief District Judge for transfer of the case of trial before a District Judge. In the event of transfer of a case from a Magistrate, the right of jury trial as defined in this Constitution and the laws of this State shall exist when the matter is tried before the District Judge.

(5) **Waiver.** The Supreme Court may by rule provide that

(See Sec. 12 of existing text on preceding page.)

the jurisdictional limits fixed by its rules may be waived in civil cases.

(6) **Appeals.** The Supreme Court shall by uniform rules provide a proper system of appeals: **Provided,** that appeals from magistrates shall be heard **de novo,** with the right of trial by jury as defined in this Constitution and the laws of this State.

(Sec. 12 of the existing text is set out at page 58, above. It includes the provision " . . . the General Assembly shall . . . provide a proper system of appeals.")

NOTE

See Recommendations 2 and 7.

This section makes no substantive change in jurisdiction of the Supreme Court. Jurisdiction of courts below the Supreme Court is to be fixed by rules of the Supreme Court, subject to specified Constitutional limitations. The Supreme Court could permit waiver of its jurisdictional rules, but not of Constitutional limitations. Appeals would be provided for by Supreme Court rule rather than by statute.

**Proposed Text**

**Section 12. Procedural Rule-Making Authority of Supreme Court.** —Except as otherwise provided in this Article, the Supreme Court shall have exclusive authority to make rules of civil and criminal procedure and practice for the General Court of Justice, but no rule shall abridge substantive rights or abrogate or limit the right of trial by jury. No rule of procedure or practice shall be finally adopted by the Supreme Court without prior publication and reasonable opportunity for public hearing.

**Existing Text**

Section 12 of the existing text is set out at page 58, above. It includes a provision that " . . . the General Assembly shall . . . regulate by law, when necessary, the methods of proceeding in the exercise of their powers, of all courts below the Supreme Court, so far as the same may be done without conflict with other provisions of this Constitution."

NOTE

See Recommendations 26, 28 and 29.

This section vests in the Supreme Court exclusive authority, subject to specified limitations, to make rules of practice and procedure for the

General Court of Justice. Section 16 of this proposed text constitutes the Judicial Council an advisory body to the Supreme Court in the preparation of such rules.

| Proposed Text | Existing Text |
|---|---|
| **Section 13. Jury Trial.**—(1) **Waiver.** The right of trial by jury may be waived in all criminal cases except those in which the offense charged is a felony punishable by death or life imprisonment. In other felony cases waiver of the right of trial by jury shall be permitted only with the consent of the trial judge and counsel for the accused. In misdemeanor cases in which the right of trial by jury is granted, waiver of the right shall be permitted only with the consent of the trial judge. All waivers in criminal cases shall be in writing. The parties in any civil case may waive jury trial. In the event of waiver of jury trial, in either criminal or civil cases, the finding of the judge upon the facts shall have the force and effect of a verdict by a jury. | **Sec. 13. In case of waiver of trial by jury.**—In all issues of fact, joined in any court, the parties may waive the right to have the same determined by a jury; in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.<br><br>**Article I, Sec. 13. Right of Jury.**—No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful persons in open court. The Legislature may, however, provide other means of trial, for petty misdemeanors, with the right of appeal. |
| (2) **Number of Jurors.** The General Assembly may, upon recommendation of the Supreme Court, provide that juries in the district courts shall consist of as few as six persons, in which event trial before such a jury shall satisfy any Constitutional or statutory right of trial by jury. | **Article I, Sec. 19. Controversies at law respecting property.**—In all controversies at law respecting property, the ancient mode of jury trial is one of the best securities of the rights of the people, and ought to remain sacred and inviolable. |
| (3) **Majority Verdicts.** The General Assembly may, upon | |

recommendation of the Supreme Court, provide that in civil cases the concurrence of less than all, but not less than five-sixths, of the jurors shall be sufficient to render a verdict, in which event such a verdict shall satisfy any Constitutional or statutory right of trial by jury in civil cases.

NOTE

See Recommendations 8 and 16.

This section does not define the right to trial by jury; this right is included in Article I, The Declaration of Rights. The section would permit waiver of jury trial under specified conditions in criminal cases. It would also permit the General Assembly, if the Supreme Court recommended such action, to provide that 6-man juries in the district court would satisfy the Constitutional right to trial by jury, and that the concurrence of as few as 5/6 of the members of a jury in any trial court in civil cases would be sufficient to render a verdict in civil cases. The unanimous verdict would continue to be mandatory in criminal cases.

| Proposed Text | Existing Text |
|---|---|
| **Section 14. Jury Commissions.**— The General Assembly shall, by general law, provide for the establishment of a jury commission in each county to list and draw jurors for both petit and grand juries and to perform such other duties relating to juries as may be prescribed pursuant to law. The powers and duties of jury commissions shall be uniform throughout the State. | None. |

NOTE

See Recommendation 9.

This section provides for a jury commission in each county, and leaves it to the General Assembly to provide the specific details of organization and selection. The powers and duties of the commissions would have to be uniform throughout the State, but it would be possible to provide by statute that commissioners in some counties be paid a salary, whereas in other counties they might be paid on a per diem or other appropriate basis.

| Proposed Text | Existing Text |
| --- | --- |
| **Section 15. Administrative Authority of Supreme Court.**—The Supreme Court shall have general administrative authority over all divisions of the General Court of Justice and shall promulgate rules governing the administration of the General Court, including the reporting, by judges and other officers, of such information as the Court may require to discharge properly its administrative responsibilities, and the organization and administrative functioning of the offices of the clerks of court. The Chief Justice of the Supreme Court shall be executive head of the Court in discharging its administrative responsibilities, and shall be assisted in this duty by an Administrative Office of the Courts. | None. |

NOTE

See Recommendation 30.

This section gives to the Supreme Court general administrative authority over the General Court of Justice and makes the Chief Justice the executive head of the Court for administrative purposes. An Administrative Office of the Courts is provided to assist the Chief Justice. Section 16 of this proposed text constitutes the Judicial Council an advisory body to the Supreme Court in making administrative rules.

| Proposed Text | Existing Text |
| --- | --- |
| **Section 16. Judicial Council.**—The General Assembly shall provide for the selection of a Judicial Council to be comprised of both lawyers and laymen. The Judicial Council shall serve as an advisory body to the Supreme Court in the preparation of ad- | None. |

ministrative and procedural rules, and shall perform such other duties as the General Assembly may prescribe.

NOTE

See Recommendations 27 and 31.
The administrative and procedural rules, with respect to which the Judicial Council is to advise the Supreme Court, are provided for in sections 12 and 15 of this proposed draft.

| Proposed Text | Existing Text |
| --- | --- |
| **Section 17. Term of Office and Election of Judges of Supreme Court, Court of Appeals, and Superior Courts.**—Justices of the Supreme Court, judges of the Court of Appeals, and judges of the Superior Court shall be elected by the people and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and judges of the Court of Appeals shall be elected by the voters of the State. Judges of the Superior Courts may be elected by the voters of the State or by the voters of their respective districts as the General Assembly may provide. | **Sec. 21. Elections, term of office, etc., of justices of the Supreme and judges of the Superior Courts.**—The justices of the Supreme Court shall be elected by the qualified voters of the State, as is provided for the election of members of the General Assembly. They shall hold their offices for eight years. The judges of the Superior Courts, elected at the first election under this amendment, shall be elected in like manner as is provided for justices of the Supreme Court and shall hold their offices for eight years. The General Assembly may, from time to time, provide that the judges of the Superior Courts, chosen at succeeding elections, instead of being elected by the voters of the whole State, as is herein provided for, shall be elected by the voters of their respective districts. |

NOTE

This section makes no change in existing practice with respect to Supreme and Superior Court judges. It provides that judges of the Court of Appeals shall be elected in the same manner as are Supreme Court justices. Transitional language in the original has been eliminated.

**Proposed Text**

**Section 18. Removal of judges and clerks for inability.**

(1) **Justices of Supreme Court, Judges of Court of Appeals and Superior Courts.** Any Justice of the Supreme Court, Judge of the Court of Appeals, or Judge of the Superior Court may be removed from office for mental or physical inability, upon the joint resolution of two-thirds of both houses of the General Assembly. Any justice or judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the General Assembly shall act thereon. Removal for any other cause shall be by impeachment.

(2) **District Judges and Magistrates.** Any district judge or magistrate may be removed from office for incompetence, misconduct, or mental or physical inability by the Chief Justice of the Supreme Court upon recommendation of the Judicial Council, after a hearing by the Council upon charges filed with it. Any judge or magistrate against whom the Council is about to proceed shall be given written notice of such charges at least twenty days prior to the convening of the hearing.

(3) **Clerks.** Any clerk in any

**Existing Text**

**Sec. 31. Removal of judges of the various courts for inability.**—Any judge of the Supreme Court, or of the Superior Courts, and the presiding officers of such courts inferior to the Supreme Court as may be established by law, may be removed from office for mental or physical inability, upon a concurrent resolution of two-thirds of both houses of the General Assembly. The judge or presiding officer against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the General Assembly shall act thereon.

**Existing Text**

**Sec. 32. Removal of clerks of the various courts for inability.**—Any clerk of the Supreme Court, or of the Superior Courts, or of such courts inferior to the Supreme Court as may be established by law, may be removed from office for mental or physical inability; the clerk of the Supreme Court by the judges of said court, the clerks of the Superior Courts by the judge riding the district, and the clerks of such courts inferior to the Supreme Court as may be established by law by the presiding officers of said courts. The clerk against whom proceedings are instituted shall receive notice

division of the General Court may be removed from office for incompetence, misconduct, or mental or physical inability by the chief or senior regular resident judge of the highest division of the court for which he performs the duties of clerk. The clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 20 days before hearing upon the charges. Any clerk so removed from office shall be entitled to an appeal as provided by law.

thereof, accompanied by a copy of the cause alleged for his removal, at least ten days before the day appointed to act thereon, and the clerk shall be entitled to an appeal to the next term of the Superior Court and thence to the Supreme Court as provided in other cases of appeals.

NOTE

See Recommendation 25.

The existing provisions as to removal of Supreme and Superior Court judges are retained without substantive change and are made applicable to judges of the Court of Appeals. New provisions relating to removal of district judges and magistrates have been added. The substance of existing provisions with respect to removal of clerks has been retained, but the provision with respect to appeal has been modified.

**Proposed Text**

**Section 19. Solicitors and Solicitorial Districts.**—The General Assembly shall, from time to time, divide the State into a convenient number of solicitorial districts, for each of which a solicitor shall be chosen for a term of four years by the qualified voters thereof, as is prescribed for members of the General Assembly. When he determines that there is serious imbalance in the work loads of the solicitors, or that there is other good cause, the Attorney General shall recommend redistricting to

**Existing Text**

Sec. 23. Solicitors and solicitorial districts.—The State shall be divided into twenty-one solicitorial districts, for each of which a solicitor shall be chosen by the qualified voters thereof, as is prescribed for members of the General Assembly, who shall hold office for the term of four years, and prosecute on behalf of the State in all criminal actions in the Superior Courts, and advise the officers of justice in his district. But the General Assembly may reduce or increase the number of solicitorial districts, which need not correspond to, or be the same as, the judicial districts of the State.

the General Assembly. The solicitor, under the supervision of the Attorney General, shall be responsible for the prosecution on behalf of the State of all criminal actions in his district and for performing such other duties as the Attorney General may require. Upon recommendation of the solicitor, the Attorney General may appoint one or more assistant solicitors who shall be responsible to the solicitor and assist him in the performance of his duties. Such appointments shall be made from nominees submitted by the solicitor.

**NOTE**

This section makes no substantive change in the provisions relating to selection of solicitors. The solicitor is made responsible to the Attorney General, and the solicitor is made responsible for the prosecution of criminal actions in all courts in his district, instead of in the Superior Court only. When he requires assistance, the solicitor will recommend to the Attorney General that one or more assistants be appointed and he will nominate persons from whom the appointments, if any, must be made. The Attorney General is charged with the specific duty of recommending redistricting to the General Assembly when he determines that redistricting is needed.

**Proposed Text**

**Section 20. Sheriffs.**—In each county a sheriff shall be elected by the qualified voters thereof as is prescribed for members of the General Assembly, and shall hold his office for a period of four years. In case of a vacancy existing for any cause in any sheriff's office, the governing authority of the county may appoint to such office for the unexpired term.

**Existing Text**

**Sec. 24.—Sheriffs and coroners.**—In each county a sheriff and coroner shall be elected by the qualified voters thereof as is prescribed for members of the General Assembly, and shall hold their offices for a period of four years. In each township there shall be a constable elected in like manner by the voters thereof, who shall hold his office for a period of two years. When there is no coroner in a county, the clerk of the Superior Court

for the county may appoint one for special cases. In case of a vacancy existing for any cause in any of the offices created by this section, the commissioners of the county may appoint to such office for the unexpired term.

NOTE

This section makes no change as to the sheriff. The coroner and constable are eliminated as Constitutional officers. This action was taken to conform to the recommendations of the Constitutional Revision Commission.

**Proposed Text**

**Section 21. Vacancies.**—Unless otherwise provided in this article, all vacancies occurring in the offices provided for by this article shall be filled by the appointment of the Governor, and the appointees shall hold their places until the next regular election for members of the General Assembly that is held more than 30 days after such vacancy occurs, when elections shall be held to fill such offices: **Provided,** that when the unexpired terms of any of the offices named in this article of the Constitution in which such vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next general election, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any persons, elected or appointed to any of said offices, shall neglect and fail to qualify, such offices shall

**Existing Text**

Sec. 25. Vacancies.—All vacancies occurring in the offices provided for by this article of the Constitution shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election for members of the General Assembly that is held more than thirty days after such vacancy occurs, when elections shall be held to fill such offices: Provided, that when the unexpired term of any of the offices named in this article of the Constitution in which such vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next general election, the Governor shall appoint to fill said vacancy for the unexpired term of said office. If any person, elected or appointed to any of said offices, shall neglect and fail to qualify, such offices shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents shall hold until their successors are qualified.

be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of said offices shall hold until their successors are qualified.

**NOTE**

This section makes no substantive change in existing provisions.

| Proposed Text | Existing Text |
| --- | --- |
| **Section 22. Revenues and Expenses of the Judicial Department.**—The General Assembly shall establish a schedule of court fees and costs which shall be uniform throughout the State. All fees and costs shall be collected, received, accounted for, and paid into the State Treasury under the supervision of the Administrative Office of the Courts. Revenues from fees and costs shall be applied only toward the payment of the expenses of the Judicial Department. The compensation of judges, magistrates, solicitors, assistant solicitors, court clerks and their office personnel, and jury commissioners, and travel allowances of judges and solicitors, statutory fees of jury and witnesses, all expenses of the appellate division, the Administrative Office of the Courts, and to the extent practicable, all other expenses of operating the General Court of Justice shall be paid from State funds, subject to regular budgetary procedures. | None. |

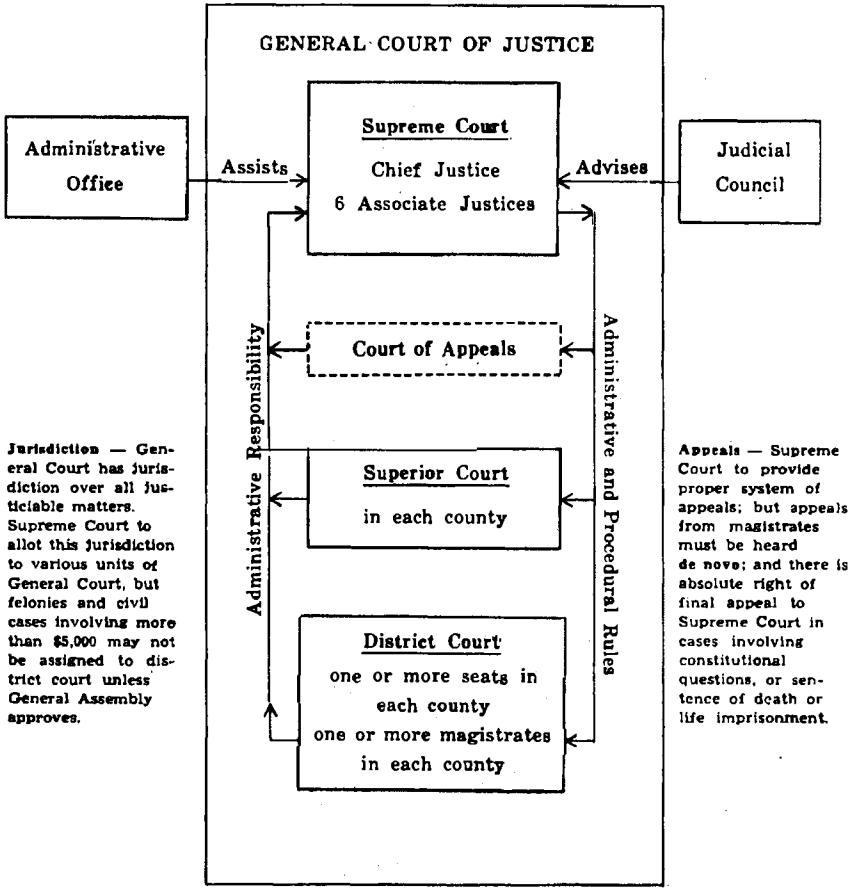
## NOTE

See Recommendation 37.

This section makes the fiscal operation of the courts a State responsibility. Costs and fees would be paid into the State. The clear proceeds of fines and forfeitures, which under the existing Constitution go to counties for support of public schools, are not affected by this section, and would continue to go to the schools.

| Proposed Text | Existing Text |
| --- | --- |
| **Section 23. Fees, salaries and emoluments.**—The General Assembly shall prescribe and regulate the fees, salaries and emoluments of all officers provided for in this Article; but the salaries of judges shall not be diminished during their continuance in office. | (Section 18 of the present Constitution is identical with the proposed section 23.) |

## Structure of Proposed Judicial Department




**Jurisdiction** — General Court has jurisdiction over all justiciable matters. Supreme Court to allot this jurisdiction to various units of General Court, but felonies and civil cases involving more than $5,000 may not be assigned to district court unless General Assembly approves.

**Appeals** — Supreme Court to provide proper system of appeals; but appeals from magistrates must be heard *de novo*; and there is absolute right of final appeal to Supreme Court in cases involving constitutional questions, or sentence of death or life imprisonment.

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