State of the Judiciary
Chief Justice James G. Exum, Jr., North Carolina Supreme Court
Report to the State Bar Council
October 1989

Introduction

Thank you for giving me this opportunity to bring you up to date on matters pertaining to North Carolina's Judiciary. You may recall that at the 1988 Annual Meeting I reported to you on the ever-increasing caseloads in our trial divisions, the need for additional court personnel to handle them, and the need for alternative methods of dispute resolution to become a regular, state supported part of our judicial system. I also mentioned then the need for a substantial upward adjustment in judicial salaries and my hope that we could change the method by which our judges are selected and retained from a partisan political one to an appointive one. This morning I will take up essentially where I left off last year.

State of the Judiciary Message to 1989 General Assembly

For the first time in our State's modern history (I cannot speak for other eras) the North Carolina General Assembly invited me, in my capacity as Chief Justice, to deliver a State of the Judiciary message early in the 1989 Session. I was, of course, pleased to accept the invitation and made the presentation to a joint Session of the General Assembly on February 1 1989.

In this message I stressed, as I had done in my Fall 1988 report to you, the rapid increases in our caseloads over the last five years. I attributed this increase to population growth, an increase in the crime rate, particularly in drug-related criminal offenses, more and better trained law enforcement officers making more arrests, and a relatively strong economy in which there was more commerce, more disputes, and more civil lawsuits. To meet these increasing caseloads, I urged the General Assembly to give us additional personnel and to approve, on a state-funded, permanent. basis, two alternative dispute resolution programs - mandatory, non binding court-ordered arbitration and mediation for child custody disputes.

Second, I made the strongest case I could for a substantial increase in judicial salaries. As I had done in my message to you last fall, I called attention to how unfavorably low judicial salaries compared with other comparable southeastern states and how the gap between judges pay and lawyer earnings had continued to grow. I also pointed out how North Carolina had slipped in national rankings from 14th in 1981 to 29th in 1988.

I mentioned but did not treat in detail, the difficulty we were having in providing adequate fees for counsel representing indigent criminal defendants, my support for the effort of the North Carolina Legal Services Corporation to provide poor civil litigants access to the courts and the physical inadequacies of many of our county courthouses.

Finally, I urged the General Assembly to adopt the recommendation of the Judicial Selection Study Commission which the General Assembly itself had established in 1987 to study the

method of selecting and retaining judges and to recommend changes needed to improve this system.

Actions of the 1989 General Assembly

How, then, did the 1989 General Assembly respond? In summary I would say that due to the hard work, constant attention and legislative knowhow of our able Director of the Administrative Office, Franklin Freeman, and several of his assistants, including Dallas Cameron, who is my administrative assistant, the General Assembly responded relatively well to our need for increased personnel and to our request for permanent, state funded alternative dispute resolution programs. It responded, but not as well us I would have liked, to the need for substantial increases in judicial salaries. It responded halfheartedly to the recommendations of the Judicial Selection Study Commission on judicial selection.

Additional Personnel

We asked the 1989 General Assembly to appropriate enough money for us u, add during the next biennium six additional superior court judges, twenty-three additional district court judges, thirty-three assistant district attorneys and eighty-nine additional deputy clerks of court. These requests we felt were al bare minimum levels. Even if granted, these requests would not return us to the caseload per unit of personnel our court system carried in 1983. Rather we would in the immediate future be demanding more work from our personnel than we were in 1983 and are at present.

The General Assembly did respond well. Effective 1 January 1991 we will have six new resident superior court judgeships. Two existing special superior court judgeships will as of that date be converted to resident judgeships. The eight resident judgeships will be assigned to districts in the following priority: District 29, 3A, 11, 17 A, 25A, 13, 20A, and 5. All of these new resident judges will be selected in the 1990 elections. Those elected in Districts 11, 17 A and 29 will serve full eight-year terms and will run at large with incumbent superior court judges in those districts who will be seeking reelection. Judges elected in Districts 3A and 20A will run initially for a two-year term and then at large with other existing judgeships in 1992 for full eight-year terms. Judges elected in Districts 5, 13 and 25A will run initially for a four-year term but then at large in 1994 with all other judges in those districts for full eight-year terms.

During the biennium we will add 17 new district court judgeships. These new judgeships will be placed in Districts 16A, 12, 22, 20, 68, 18, 25, 26, 4, 10, 7, 9, 28, 11, 27B, 17B, 5.

In this biennium we will add twenty-seven assistant district attorneys, nineteen beginning 1 September 1989 and eight during fiscal 1990-91. The 1989 assistants will be assigned to prosecutorial Districts 3B, 4, 5, 7, 10, 11, 15A, 15B, two in 16A 18, 20, 21, 22, 23, 25, 26, 27A, and 28. The assistant district attorneys to be added in 1990-91 will be assigned to prosecutorial Districts l, 8, 9, 13, 14, 17B, 27B and 30.

The Administrative Office of the Courts was granted authority to use up to $218,055 in fiscal 1989-90 and an additional $260,670 in fiscal l 990-91 from the Indigent Persons Attorney Fee Fund to establish five new assistant public defender positions for each year of the biennium.

With regard to other personnel, we will add during the biennium the following: Eight court reporters and four administrative secretaries for the superior courts; four court reporters for district courts; ten secretaries for chief district court judges; two case management assistants to trial court administrators; nineteen district attorney secretaries; twelve victim witness assistants; eighty-nine deputy clerks; three secretaries and one paralegal for public defenders; twenty-nine juvenile court counselors and six counselor secretaries; and thirty-six guardian ad litem positions.

The General Assembly appropriated $4 million for fiscal 1989 to purchase a new main frame computer. This will enable us to continue expansion of our court information system to purchase equipment to place in all 100 clerks offices both the automated criminal case processing system and a civil indexing system. This appropriation will also allow for continued expansion of our automated child support system and the beginning of a computerized accounting system. The new main frame should provide computer capacity sufficient to take us well into the 1990's for all of the above items, taking into consideration anticipated growth in case filings and the addition of other computer applications.

Alternative Dispute Resolution Programs

With regard to alternative dispute resolution programs, I advised the General Assembly that preliminary results of an Institute of Government study of our three pilot court-ordered arbitration programs indicated they were going to be successful by almost any measure. I suggested that if final evaluation confirmed these preliminary results we would ask the General Assembly for money to fund the three pilot districts and to expand this program in other districts as well. I also advised that the two pilot child custody mediation programs in Mecklenburg and Gaston Counties enjoyed a high degree of satisfaction among till' litigants who participated in them and suggested that mediation may be a better way to resolve contested custody cases than traditional courtroom litigation.

Later in the session it became clear that the Institute of Government's study of our three pilot court-ordered arbitration programs indicated that they were indeed successful. Litigants and lawyers were satisfied with the quality of justice being administered by the arbitrators. The improvement in disposition times of the cases arbitrated and the potential cost savings to litigants were shown to be substantial. At a press conference about midway through the session organized by the North Carolina Bar Association and the North Carolina Citizens for Business and Industry we announced the results of the lnstitute's evaluation.

Ultimately the General Assembly enacted legislation establishing a statewide, state-supported court-ordered arbitration program to be phased in district by district as future appropriations will allow. Enough money was appropriated to continue the program in the three pilot districts and to begin a limited expansion of the program into other districts beginning in January 1990.

The General Assembly also authorized a statewide, slate-supported program for mandatory mediation of child custody disputes. Again, enough money was appropriated to fund the Mecklenburg and Gaston County programs, to establish an additional program beginning in January 1990, and to establish a fourth program during the second year of the biennium.

Mr. Freeman tells me that he is confident more legislative activity on the alternative dispute resolution front occurred in North Carolina in 1989 than in any other state. We made big strides this year toward achieving in North Carolina our goal of having multi-door courthouses in every judicial district- courthouses in which litigants will have available not only traditional jury trials by which to resolve their disputes. They will also have arbitration, mediation, summary jury trials, and mini-trials so that a dispute resolution mechanism which is most appropriate for the particular kind of dispute at hand will be available.

In all, the 1989 legislature provided the Judicial Branch its largest single budget expansion since the full implementation of the district court system following the establishment of the General Court of Justice. The judicial system was provided a total of $19 million in expansion funds for the 1989 fiscal year and $30 million for the 1990 fiscal year. This will bring our total budget to $203 million in 1989 and $214 million in 1990. To help defray some of these costs, we recommended and the legislature adopted a $10,000 increase in court costs which we estimate will bring in approximately $10 million per year.

Judicial Salaries

I asked the General Assembly to fix the salaries of Supreme Court Justices at $90,000, Court of Appeals judges at $85,000, superior court judges at $80,000, and district court judges al $70,000. I proposed salary levels for district attorneys and public defenders al $75,000, clerks of court ranging from $40,000 to $60,000 depending on the size of their counties, and magistrates ranging from $18,000 to $28,000.

At this point. I want to thank the Council of the North Carolina Stale Bar for the resolution it passed on 1 January 1989 urging the General Assembly to approve substantial salary increases for our judges over and above normal increases for State government employees generally. This resolution was submitted by President Baynes to the leadership of both the House and Senate.

Percentage-wise the increases I sought would have been approximately 13 percent for the justices and judges of the Appellate Division, 19 percent for superior court judges, 23 percent for district court judges, 12 to 20 percent for magistrates, 20 percent for district attorneys and public defenders, and 12 percent for clerks.

Essentially the General Assembly authorized all judges and other court personnel the same percentage salary increases they accorded other state employees generally. That is 6 percent for the first year of the biennium and an additional 6 percent for the second year of the biennium. The upshot is that by 1 July 1990 appellate judges' salaries and clerks’ salaries will be at approximately the levels I sought. for them this year. Trial judges', district attorneys', and public defenders' salaries will by that time have enjoyed a rate of increase approximating half of what I proposed. Instead of salary levels at $80,000 and $70,000, respectively, superior court and

district court judges will be earning by l July 1990 $75,000 and $63,000. Likewise, district attorneys and public defenders, instead of salaries at $75,000, will be earning by l July 1990 only $70,000.

My salary proposals are not, however, dead. They are still subject to reconsideration in the 1990 short session of the General Assembly. I intend then to urge again that salary levels of our trial judges, public defenders and district attorneys be raised to the levels I proposed this year.

Judicial Selection and Retention

After about a year and a half of hearings and study, the Judicial Selection Study Commission, created by the 1987 General Assembly, filed its report and recommendations to the 1989 General Assembly on 15 February 1989. This Commission recommended that legislation be enacted to provide for the appointment of judges by the Governor with the advice and consent of the General Assembly. Under this proposal the Governor would nominate a person to fill any judicial vacancy. Upon confirmation by a majority of both houses of the General Assembly the judge would serve an initial term of four years. After that the judge could be reconfirmed for a full eight-year term and reconfirmed every eight years thereafter. The reconfirmation procedure would have required investigation of the judge's performance by the Judicial Standards Commission which would then recommend to the General Assembly whether to reconfirm the judge. A two-thirds majority of both houses would be required to reject the recommendation of the Commission.

This plan was introduced in the Senate by Senator Winner as Senate Bills 218 and 219, Senate Bill 218 being the proposed constitutional amendment and Senate Bill 219, the enabling legislation.

These measures received careful consideration by the Senate Judiciary Committee, chaired by Senator Ezzell from Rocky Mount. It soon became clear that if the legislation continued to apply to trial judges, it had no chance of passing the Senate by the required three-fifths majority vote. This was due in part to opposition to the legislation by a number of trial judges. Indeed, at separate meetings on referendums taken it appeared that both the superior court judges and the district court judges were split about half and half on the desirability of the proposed changes.

A committee substitute for the proposal as originally introduced made three significant changes. First, trial judges were eliminated from the proposals. Second, in the reconfirmation procedure, a newly created Judicial Retention Commission was substituted for the Judicial Standards Commission. Third, the Governor in making appointments would be limited to attorneys nominated by each of the district bars throughout the State. Each district bar could nominate as many persons as it had councilors on the State Bar Council. In addition to these nominees the Governor could choose among the sitting trial judges. The Judicial Retention Commission would consist of four members appointed by the Governor, none of whom could be attorneys or judges; four members appointed by the State Bar from its membership, none of whom could be judges; one member appointed by the Speaker and one by the President Pro Tempore of the Senate, who not be members of the General Assembly nor active judges; one member appointed by the Chief Justice who could not be an active judge but who would serve as chairman of the Commission.

The committee substitutes for Senate Bills 218 and 219 are now pending in the Rules Committee in the House. They will be eligible for consideration in the 1990 short session. I intend to continue to push for their passage at that Session. I urge you to help me and others who are interested in this change bring it about.

This proposal enjoys the support of every major daily newspaper in North Carolina and most of our smaller dailies and weeklies. It has the unanimous support of the members of the North Carolina Supreme Court and I believe ten members of the North Carolina Court of Appeals. It has been endorsed by the North Carolina Bar Association and the North Carolina Citizens for Business and Industry. A Gallup Poll was conducted in March 1989 addressed solely to the judicial selection question and more particularly to the specific proposal then being considered in the General Assembly. It is the only such poll ever taken in North Carolina. It showed this: (1) Ninety percent of those responding would like to have the opportunity to vote on a constitutional change like that proposed in Senate Bill 218. (2) A substantial majority, ranging from 66 percent to 79 percent favor those aspects of an appointive plan proposed in Senate Bill 219. (3) Sixty-five percent would vote for a constitutional change like that proposed in Senate Bill 218.

I believe our people are ready for this change. I hope you will help persuade our Legislature to give them that opportunity.

Indigent Representation

I continue to be concerned about our ability to provide equal access to our courts for indigent civil litigants and adequate constitutionally required representation for the indigent criminally accused. The Legislature helped some on both fronts. It appropriated $1,000,000 to the North Carolina Legal Services Corporation. It increased past appropriations to provide representation for the indigent criminally accused.

With regard to adult indigent criminal noncapital defendants, the State spent $11,158,000 in fiscal year 1988. For fiscal 1989 the General Assembly appropriated $11,869,000 and a like sum for fiscal 1990. We spent approximately $2,500,000 in 1988 to furnish representation for defendants in capital cases. The General Assembly appropriated $3,294,000 for each year of the current biennium for capital cases.

As you may know, the Administrative Office has had a special committee working on the problems of indigent criminal representation for about two years. Initially this committee was appointed to help the Administrative Office develop a uniform fee schedule. In January 1989 I asked this committee to expand its responsibilities. I requested it to advise me regarding how our State may best provide for legal representation for indigents who by constitution or statute arc entitled to have the State furnish this service. I asked the committee to recommend a method which would be fair to indigents, who have a right to effective legal representation; fair to attorneys, who deserve reasonable compensation for their work; and fair to the taxpayers, who must bear the cost. This committee has been active throughout the year. Locke Clifford, who chairs the North Carolina Bar Association's Administration of Justice Study Committee, and Henry Whitesides, who chairs your Legal Aid to Indigents Committee, are both ex officio

members of my Advisory Committee. I hope and trust that this committee working with Mr. Whitesides and Mr. Clifford will be able to come up with a suitable resolution that it can recommend. When it docs and if' the proposal seems reasonable to me, I will do all I can to get it enacted into law.

Denver Conference

Earlier this month your esteemed President, Mr. Baynes, Larry McDevitt, President of the Bar Association, Senator George Daniels, Franklin Freeman, several trial judges and I attended a first-ever national conference in Denver. The conference was sponsored by the National Center for State Courts, the Chief Justices Conference, the American Bar Association, the Institute for Court Management, the National Conference of State Legislators, and other similar organizations. The subject was improving relations between state legislators and state judiciaries and how to better achieve mutual understanding between the two branches. The conference was chaired jointly by Chief Justice Andrew Christie of Delaware and Representative Daniel Blue of North Carolina. It was an excellent, productive meeting. We heard many excellent speakers from other jurisdictions, representatives of both other legislatures and other judiciaries.

Most proudly we were able to present to the conference North Carolina's achievements in the area of alternative dispute resolution. I felt, and others at the conference seemed to feel, that this was one of the best examples of what good understanding and cooperation between bench, bar, and the legislature can accomplish. What we have achieved in this area is due to the thorough study and planning of the North Carolina Bar Association's Task Force on Alternatives, the financial support your IOLTA program provided, the support of the bench, and ultimately the able leadership of a number of interested, open-minded, und articulate State legislators.

I believe that any problem which our judicial system faces can be successfully resolved by this kind of positive cooperation between the North Carolina bench, bar and legislature.

Court Efficiency

Regarding the efficiency with which our courts operate, I have no particular facts or figures to give you. From conversations with lawyers and judges across the State, my impression' is that if our courts were graded on efficiency, the grades would vary widely among districts. Some districts seem to operate quite efficiently and have no substantial case backlog. Other districts do not do so well.

Most of our judges I believe are working hard and putting in full five-day weeks on the job. I do get complaints from some lawyers and some members of the General Assembly that in some areas some judges are not putting in full live-day work weeks. I hear that in some districts judges may be hard to find on Fridays.

I don't like to hear this. I know that a substantial majority of our superior court judges, if they finish up a week of court to which they have been assigned early, will call the Administrative Office to see if there are other places where they can be sent to do work.

I know our caseloads arc growing al such a rule that the caseload per judge and per prosecutor are much higher now than they were five years ago. My impression is that there there are backlogs, they are largely due to increased caseloads and not judicial or prosecutorial inattention or inefficiency.

To the extent that there is judicial inefficiency in our system, I want to find out about it and try to correct it. l have asked the Conferences of Superior Court and District Court Judges to suggest to me a method whereby the Administrative Office can account for the amount of scheduled court time that is actually used. I am awaiting responses from these conferences to this request.

I would be glad to hear from you regarding how you think the courts arc operating in your particular districts. You are among the leaders of the bar. I value your input as we continue to work together to make our court system the best that it can be.

Finally I want to thank this organization for the splendid way it is managing the legal profession in North Carolina. You have for a number of years elected hard working, dedicated and professionally highly regarded leaders. You have, it goes almost without saying, a splendid executive director in Bob James. Your committee work and large programs such as IOLTA, the Client Security Fund, PALS and your disciplinary program are exemplary. I and the other members of our Court have enjoyed and look forward to a continued healthy and productive working relationship with you - all for the betterment of our profession and improvement in the way it serves the people.

Thank you.