

State of the Judiciary
Chief Justice James G. Exum, Jr., North Carolina Supreme Court
Address to the Legislature
February 27, 1991

Before I begin my formal remarks, let me say that last week North Carolina was diminished by the loss of one of its finest sons—Joseph Branch—lawyer, legislator, counsellor to governors, and Chief Justice—a personal friend and mentor to me and to many of you here assembled. I dedicate this message to his memory and ask the Chair that we pause for a moment of silence to honor him and all that he meant to us.

Mr. President, Mr. Speaker, members of the General Assembly, fellow justices and judges, ladies and gentlemen: Thank you for permitting me to appear again on behalf of our state's judicial branch of government. My hope is to be helpful without imposing. My mother warned me against wearing out my welcome. I will be mindful of her warning.

THE GENERAL COURT OF JUSTICE

Article IV of our state's constitution provides for a 'unified judicial system' known as the General Court of Justice. Except for the power of impeachment, which you have, Article IV authorizes the General Court to exercise the judicial power of the state. Article IV divides the General Court into three divisions, Appellate, Superior Court and District Court. It further divides the Appellate Division into the Supreme Court and Court of Appeals. It provides for an 'administrative office of the courts' to help administer the General Court.

We should be proud of the structure of our unified court system. It has become the model which other states have followed and are continuing to follow. Therefore, we should be vigilant to protect its integrity.

Now let me report on how the system is operating.

CASE FILINGS

The judicial power is the power to decide disputes between citizens or between the state and a citizen. When these disputes get to court, we call them 'cases'. Numerically, almost all cases are filed and decided in our trial divisions. Unprecedented annual increases in case filings in these divisions, which I reported to you in 1989, continue. Caseloads per judge, prosecutor, magistrate, and clerk continue to rise. Case inventories continue to increase. Average and median ages of cases pending continue to creep up. Although average time from filing to disposition is also increasing, these times, at all levels of our system, trial and appellate, are within the zone of reason.

Total filings in our trial divisions in fiscal '89-'90, not including juvenile or mental health commitment proceedings, were 2,493,245, a new record. Total dispositions were 2,348,798, were also a new record. Not since fiscal 1983 have dispositions kept up with filings in both trial

divisions. From then until now the gap between filings and dispositions in both divisions has continued to grow.

In the Superior Court filings grew 12% year before last and 8.5% last year. Dispositions increased last year by 6%. (All reference to years are to fiscal years and percentages have been rounded.) Felony filings last year increased 11%. Drug case filings alone increased 31% and they now comprise 29% of the felony docket in Superior Court. There were 63,035 cases pending at the end of last year, an increase of 20% over the previous year. The median age of pending cases increased from 219 to 225 days for civil cases and from 91 to 96 days for felony cases.

In the District Court Division filings increased 10% year before last and 3% last year. Dispositions last year increased 3.6%. Last year motor vehicle criminal and infraction filings increased only 2%; but non-motor vehicle criminal filings increased 8%, domestic relation cases 7%, and general civil cases 9%. Civil magistrate filings decreased by 5%. Motor vehicle criminal and infraction cases account for 1,166,000 of the 2,270,000, or about 51% of district court filings.

They are also the least difficult and consume less time per case than the other categories. But it is these other categories of cases, particularly the domestic relations cases, many of which involve complicated equitable distribution proceeds, that account for the real workload of the District Courts. The dramatic increases in these categories just in the last year are significant. In the last year pending civil cases in the District Court increased by 9%, pending domestic relations cases by 13% and pending non-motor vehicle criminal cases by 15%. The median age of pending cases increased from 176 to 206 days for domestic relations cases, 170 to 177 days for civil cases, 58 to 65 days for non-motor vehicle criminal cases.

Our judges, prosecutors, magistrates and clerks are working hard under heavier than ever caseload burdens. From 1983 to 1989 caseloads per personnel per year have increased as follows: Superior Court Judges, 811 to 1,174, 45%; District Court Judges, 4,277 to 6,505, 52%; Prosecutors, 2,886 to 4,529, 57%; Clerks, 1,029 to 1,370, 33%; and Magistrates Small Claims Court, 623 to 928, 49%.

Thanks, however, to the much needed increase in personnel you authorized us in the 1989-91 biennium, our courts, statewide, are not in crisis in terms of being able to handle the ever growing caseloads. Without this increase we would have been by now in or on the verge of crisis. Ever increasing inventories of pending cases and the increasing ages of these cases are storm clouds on the horizon. They show that we are not, and have not been for several years, keeping up. We are not hopelessly behind, but we continue to fall further behind. Some districts, mostly our more urban districts, are in worse shape than others. Some Mecklenburg court officials report they are in crisis and are no longer able to prosecute many criminal cases that should be prosecuted. Mr. Freeman and I are presently trying to sort out this situation in relation to the needs of other districts.

ALTERNATIVES TO LITIGATION

Our alternatives to litigation programs—court ordered arbitration and child custody mediation—which in 1989 you authorized us to use statewide, are promising. In the pilot districts, where they have been operating for several years, we have been able both to reduce the number of scheduled jury trial sessions and to improve the speed of case dispositions in the district court. We are expanding these programs to more districts as funds permit. Thank you for your approval of them and your recognition of their merit.

COURT EFFICIENCY

When we talk of efficiency in our courts, we need to remind ourselves that there is a limit to the efficiency that can be squeezed out of any court system. Our courts' duty in deciding disputes is to see that justice under the law is done in each individual case. As to each dispute, no matter how routine or how momentous, judges must give individualized attention and achieve an individualized resolution tailored to that particular dispute. Cases are like snow flakes, no two are exactly alike. Justice cannot be mass produced, and it must not be sacrificed on the altar of efficiency. There comes a time, as during the current biennium, when increased personnel is the only reasonable solution. We will not ask for these increases if we do not need them, and we know this is not a good time to ask. But when we can demonstrate the need, we hope you will be able to respond favorably.

COSTS

The Judicial Branch operates, comparatively, without a great deal of cost to the state. For fiscal '89-'90 you appropriated \$200,807,000 to the Judicial Branch. This figure is only 3% of all General Fund appropriations for all the operating expenses of state government. It works out to an average per case cost to taxpayers of about \$80.00. The actual net cost to taxpayers is far less. From fees, fines, forfeitures, and other collections, our courts recovered last year nearly \$120,000,000, most of which--\$115,330,000—we returned to the state and to local governments. The net appropriation to the Judicial Branch was, therefore, \$85,477,000. That works out to an average cost per case to taxpayers of \$34. That may be the best bargain in town!

SALARIES

I am not going to say anything this year about judicial branch salaries. We do continue to slip further behind comparable surrounding southeastern states. But enough of that. Let me simply refer you to the report of your Legislative and Judicial Salary Study Commission. Attached to this speech is a table comparing current salaries with those of other comparable states and those which your study commission recommended be in place by July of this year.

JUDICIAL SELECTION AND RETENTION

The darkest storm cloud on the judicial horizon with the potential to wreak the greatest havoc, is our continued use of partisan political elections for the selection and retention of our judges.

My position on this is well known. I spoke at length to you about it in 1989, and I am not going to belabor it today.

Just let me say that there is more momentum for change today that we have ever had before. Many who were opposed to change are now persuaded that change must come. Listen to this letter written last November by a prominent North Carolina attorney to one of his colleagues:

‘Over a year ago I met.... with Chief Justice Exum. He warned of a demeaning “judges for sale” atmosphere such as happened in Texas. He also warned that there would soon come to a time when candidates wanted judicial office so badly that the truth would be obscured by campaign rhetoric, distortion, and exaggeration. While I appreciated the Chief Justice’s concern, I did not share it.... I was wrong.’

I hope you will seize this momentum we have and act favorably on Senate Bills 71 and 72 or House Bills 102 and 103. There are some differences between the House and Senate versions of the implementing legislation in the way the Judicial Selection and Retention Commission works. Both the Senate and House versions are good bills. Personally, I can support either. I hope you will not let these differences in detail kill the bills. Instead I hope the Senate and House will work cooperatively and constructively to resolve the differences and enact the legislation. My only suggestion now regarding these bills would be that you add representatives from the District Attorney and Public Defender Associations to the Selection and Retention Commission.

If you can avoid the pitfalls of minor differences between the chambers and linkage with other measures and pass the legislation standing on its own merits, you will have taken a giant step—as big a step as any legislature has ever taken—to preserve the independence and impartiality of our courts, and the people’s confidence in them. I urge you to take this step.

INDIGENT REPRESENTATION

Two of our toughest problems are access to our courts for all people and providing the indigent criminally accused with legal counsel. These problems become acute in hard financial times. But if we do not address and solve them, our system of justice will be without integrity and credibility. It will be a system which promises but does not deliver.

Our courts promise to be available equally to all persons-rich or poor. Our state constitution's Declaration of Rights, older even than the federal constitution, promises that 'All courts shall be open; every person for an injury done ... shall have remedy by due course of law.... ' Theoretically, our courts are open to any person with or without counsel. Practically, they are not open very wide to those persons who have no lawyer. Our laws and procedures are too complex a thicket for one not trained in them to navigate.

Many lawyers, on their own initiative and through programs sponsored by various lawyers' associations, particularly the North Carolina Bar Association, help us keep this promise by simply volunteering their services to those who cannot afford to pay for them. Thank God for these lawyers. They are responding to our profession's highest calling. The North Carolina Legal Services Corporation also provides lawyers for persons who cannot afford their own. Without all these lawyers, our constitution's promise of open courts can not be kept.

In 1989, for the first time, you provided financial support for the Legal Services Corporation. It helped a great deal, and I thank you for it.

Our constitutions also promise that the criminally accused shall enjoy the right to effective assistance of counsel. Recognizing your constitutional responsibility, you have mandated by statute that the state provide counsel for the criminally accused at various stages of the proceedings, and you have for many years appropriated substantial funds to pay lawyers who represent indigent criminal defendants. You have also asked the AOC to administer these funds. We believe we have administered them responsibly.

Nonetheless, the funds we have requested and you have appropriated have not, in recent years, seemed to be enough. This is due probably to unprecedented increases in criminal, and particularly drug, cases, in our system. Lawyers are unhappy, judges are unhappy, defendants are unhappy, the taxpayer is unhappy, and you are unhappy.

Last year I appointed a committee of judges, lawyers, a district attorney, and a public defender to study this problem and recommend a system that would be fair to lawyers, fair to defendants, and fair to you and the taxpayers. Early this year, the committee filed its report, and you will receive a copy. I endorse the recommendations made by a majority of committee and urge you to help us implement them. They will improve this program.

There are three programs we believe save money in furnishing counsel to indigent defendants. They are our Public Defender program, our Resource Center for capital cases, and our Indigency Screening Program. Counsel costs per case are inevitably lower in our Public Defender districts than in districts which rely on private assigned counsel. The Resource Center for capital cases helps us attract volunteer lawyers to appear in these cases. It also helps reduce the fees of the lawyers we pay because the Resource Center provides them with legal research and other aids in preparation of the cases which they would otherwise have to provide for themselves. The Resource Center also helps to avoid costly retrials on the ground of alleged ineffective assistance of counsel at the first trial. The Indigency Screening Program helps us ensure that only those entitled to appointed counsel get them.

I hope you will be able to continue your support of the Resource Center and the Indigency Screening Program and authorize us to expand our Public Defender program into more districts where it would be cost effective. Problems with programs for the poor and the indigent criminally accused become acute in hard financial times. It is easy to cut these programs, for those who benefit by them have no constituencies and no political clout. All they have going for them is the Constitution and your wisdom.

Thank you again for providing me this opportunity to talk to you about our concerns. Our three branches of government, after all, are separate, but they are interdependent. You depend on us to apply properly the laws you enact. We depend on you to understand our problems and respond to our needs. We depend on the executive to enforce our decrees. You have the power of the purse; the executive, the power of the sword. The judiciary has only the power of reason, perhaps the most fragile of all the powers. Its existence depends on help from the sword and the purse.

Thank you for your attention.