

State of the Judiciary 1993
Chief Justice James G Exum, Jr., North Carolina Supreme Court
Message to the General Assembly
April 1, 1993

"President Wicker, President Pro Tempore Basnight, Speaker Blue, Speaker Pro Tempore Colton, Distinguished Senators and Representatives, justices and judges, ladies and gentlemen:

"Thank you for this opportunity to speak about the Judicial Branch of government—probably the least understood, and, according to Alexander Hamilton, the 'least dangerous', branch.

"This is the third time you have invited me to do this. I hope it will become, if it isn't already, a tradition which legislatures and chief justices in the future will follow, not because we have to engage in this but because future leaders think it is a good thing for government.

"In 1989, I emphasized the great growth in our caseloads in the courts and the need for increased personnel. I spoke of the promise of certain alternative methods other than courtroom adjudication for resolving disputes, which were then in pilot stages in several of our judicial districts. I asked you to increase the salaries of our judges, and I asked you to submit to the people a constitutional amendment which would change the way we select judges from a partisan elective system to an appointive system.

"In 1991, I again spoke of the continued increase in case filings and I thanked you for giving us some of the additional personnel we had asked for in that year, without which, I said, our courts at that time 'would have been ... in or on the verge of crisis.' I urged you again as strongly as I could to let the people speak on the issue of how we select our judges and I emphasized the need for additional funding to provide counsel for indigent criminal defendants. I think all of the things I said then, stand today.

"Today, many may be relieved to hear, I am not going to talk about judicial selection. I have said all I can think of to say on this issue. Suffice it to say now that we continue to lose sitting judges from both parties to the elective process. Others may be urging you to send a constitutional amendment to the people similar to the one recommended by your Judicial Selection Study Commission in 1989. I support this effort, as do most of our judges. I hope you will not wait until the system is broken on the anvil of partisan elections before you decide to fix it. Preventative maintenance, as in most other circumstances, is the best way to go.

"Neither will I speak on the need for increased judicial compensation. On this issue, let me simply refer you to the recommendations your Legislative and Judicial Salary Study Commission made to you in 1990. Copies of that report recommending upward adjustments to judicial salaries are attached to this report today.

"Today I want to discuss the challenges facing our judicial branch in the context of what is constitutionally prescribed for it and in the context of the society in which we live.

"In the Magna Carter of 1215, King John, without a lot of help from his barons, said 'to no one will we delay right or justice.' The North Carolina Constitution echoes this provision in Article I, Section 19:

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

This provision defines the central mission of our courts. It means first, that our courts must be available to all persons rich or poor who claim to have been injured by someone else; and second, that the courts must provide some remedy, as the law prescribes, for the injury.

"The point I want to make here is that the judicial branch operates under a constitutional mandate, many of which are contained in Article 4, one of the oldest mandates in the English-speaking world. Our courts have no choice but to do what the Constitution demands. We cannot refuse to hear and determine claims lawfully brought before us. We have no control over the number or nature of these claims. We must, under the Constitution, accept them as they come and decide them one way or the other.

"And, let me suggest to you, the legislative branch likewise has no choice about whether to provide the funds and resources to enable the judicial branch to do its work. The Constitution, by implication at least, requires that this be done. Our courts are not a discretionary program to be funded or not funded depending on our, or your, desires. Whether to fund them so that they can adequately accomplish their constitutional mission is a decision which the Constitution has already made for us. The constitutional decision is that the courts must be adequately funded.

"Now I am glad to say and thank you for the fact that this North Carolina General Assembly has always recognized these things and has responded relatively well to the requests we have made of you in the past. The issue with you has never been will the funds be provided but rather, how much is adequate. You have relied on us to inform you and have properly insisted that we defend our notions of adequacy. Our policy has been to be 'up front' with you and honest with you and not to over-plead our case. In our current funding requests, which I know are large, we have continued this policy.

"Now, what about the society in which we live and how it affects our courts?

"There is, as you know, an awful lot of 'injury to others' going on out there. Perhaps the overriding issue of our time is the rampant intentional violence which seems to permeate not only relationships between adults but also relationships between the very young. There is a lot of alienation, and polarization, among our people. There is less tolerance of opposing views. Disagreements tend to be disagreeable. And, violence is too often the resolution of choice-violence in the streets, violence in the home, and even, as we know, violence in the schools. We are so bombarded in the media with accounts of violence that, God forbid, we are fast becoming desensitized to it. But, ladies and gentlemen, we must never give in to violence. We must never take it for granted. North Carolina is suffering from the kinds of problems we once thought were

reserved for large, urban states. These problems are not only in metropolitan areas, but the peace and solitude of many of our rural communities has been upset as well.

"The more violent and lawless our society becomes, the more work our courts have to do. Some say that our courts are so overburdened with criminal cases that they are in 'crisis' and unable to carry out their constitutional mandate. While the Jack of available jail and prison space, I think, has reached critical proportions, I do not think our courts, per se, are in crisis, yet; but they could well be if you do not continue to provide the necessary personnel and equipment we need to meet the challenges we face today.

"Ladies and gentlemen, our court system is now operating under the most severe strain that I can recall in my twenty-six years on the bench.

"During the last eight years, case filings per year have grown 54.6%. Cases pending at the end of each year are growing both in size and in age. In the last eight years, total cases pending in superior court at the end of the year have increased by 108%. Felony cases pending grew by 168%, and pending domestic relations cases in district court, by 66%. Yet, court personnel during these years grew by only 27%.

"For the first time since I can remember, we are having to cancel superior court regularly scheduled sessions because we do not have enough superior court judges to staff them. Our superior court judges are stretched thinner than they have ever been.

"Justice should be timely. The Constitution promises that it will be 'without... delay.' Today, in too many instances this promise is not being kept. Most would agree that a year is a long time to have one's life disrupted. It is a long time for the business whose future depends on the outcome of pending civil litigation. It is a long time for a criminal defendant to await trial, especially if he or she is innocent. It is a long time for a victim, or his or her family, to wait for the point at which they can begin to rebuild their lives. It is a long time for a family to wait over who will have custody of a child after a marriage has ended.

"If you took a snapshot of June 30, 1992, 6,284 civil cases pending in our courts were over one year old. Almost 10,000 felony criminal cases were over one year old. In district court 15,327 misdemeanor cases were over one year old, and 13,606 domestic relations cases were still waiting to be resolved after one year. For those whose lives were disrupted by these cases, our courts did not deliver justice without delay.

"Yet our judges and other officials are working harder and disposing of more cases than ever before. I continue to be proud of their effort and dedication.

"Let's look at cases per judge and per prosecutor. Comparisons from eight years ago to the year ending last June show that case dispositions per judge and prosecutor are way up: from 1200 to 1700 for superior court judges; from 8800 to 11,000 for district court judges; and from 4860 to 6331 for our prosecutors. In our clerks' offices the cases handled per employee have gone from 1000 to 1300 per year.

"Comparisons in other areas demonstrate the dramatic increase in the work of the judicial branch over the last several years. For example, child support collections amounted last year to \$310,000,000 compared to \$90,000,000 in 1984 and \$209,000,000 in 1988.

"Now, not only are we working harder than ever; we are also constantly trying to improve our efficiency, the quality of our work and the satisfaction of litigants and others with the process. Our alternatives to resolution programs, which you have wisely authorized, have great promise in all these areas.

"We are also challenging the traditional ways in which court itself is managed. Last year, relying on grant funding, we began experimenting with night court in the district courts in Wake and Buncombe Counties. In Mecklenburg County, we are experimenting with an entire session of superior court devoted to handling felony drug cases. That court conducts trials during the day and arraignments at night. In ten districts, Chief District Court Judges have implemented administrative courts aimed at reducing inconvenience and delays and making court calendars more productive.

"Over the last two years we have stressed the need for local judicial leadership to take the lead in developing new management techniques for our trial divisions. In twelve judicial districts we have established an 18-month pilot project in which our judges with administrative authority are challenged to reach certain performance standards aimed at improving the use of court time, and the management of jurors. Where new methods work, we intend to put them in all of our districts.

"We have followed closely, too, your efforts to make government less costly. Within the judicial branch we have undertaken a number of cost savings measures ourselves. We have reduced juror fees by nearly one million dollars annually. By concentrating on recovery of indigent persons attorney fees we are putting back nearly \$4,000,000 annually into the fund which pays for these attorneys. And we are now reporting electronically over 2.4 million drivers license convictions annually to the Department of Motor Vehicles. We eliminated time consuming manual reports and duplicate data entry requirements in two separate departments of state government.

"We can't do the job that the Constitution demands without more help from you.

"My recommendations to you are these:

"-Grant the resources, both personnel and equipment, which are contained in our continuation and expansion budgets. We need these additional judges, prosecutors and others.

"-Next, I urge you to re-establish and fund the Courts Commission so that there will be one body representative of the courts, the legislature and the people which can conduct ongoing studies of the needs and operation of our court system and make recommendations to you for its improvement.

"-Help us to attract the best lawyers to become judges by improving judicial compensation according to the recommendations of your Legislative and Judicial Salary Study Commission and by improving the way in which we select and retain judges. The compensation of other court officials, our district attorneys, public defenders, clerks, and others, need also to be increased accordingly. At least send to the people, this year, the constitutional amendment which would give District Court Judges the additional security of an eight-year term instead of the four-year term which they now have. We lost three experienced Chief District Court Judges and three experienced District Court Judges to the electoral process last year. Terms that last only four years are a real impediment to getting the best people for these jobs.

"-Keep our deputy clerks' and magistrates' pay plans intact. These people, through their hard work and commitment to their jobs, have proved themselves deserving of the confidence you placed in them when you adopted these plans in the first place.

"-Fund at adequate levels the Indigent Persons Attorney Fee Fund. This fund is already exhausted in at least seven judicial districts. The lawyers in those districts, to their credit, are continuing to represent indigent criminal defendants on only the promise that they may be paid sometime in the future. This is not fair. This shouldn't be. Both the federal and state constitutions mandate that we furnish counsel at adequate pay for indigent criminal defendants.

"Now, in addition to these things (and this recommendation won't cost a cent), I think it is time for you to divide in half the first judicial division in the east and consider doing the same for the second division which is the next division to the west. A map showing the judicial divisions is attached. These are our two largest divisions geographically. This would reduce the time and distance the superior court judges in these divisions spend traveling from one district to the other in compliance with our system of rotation of judges mandated by the Constitution. It would promote the efficiency of the superior courts in these divisions without adversely affecting their impartiality and the justice they administer.

"I also urge you to adopt the recommendations of the Sentencing Policy Advisory Commission. We definitely need more prisons in North Carolina as the Commission wisely recommends. But we also need a sentencing system which is resource predictive-which tells you not only how many prison beds are needed but also how many other sorts of resources are needed for persons who are not going to be sent to prison. But alternatives to imprisonment will not work unless there is a meaningful threat of imprisonment to put teeth in the alternatives.

"With a sentencing system like that recommended by the Commission, you can get as tough on crime as you wish; but you will be able responsibly to estimate the resources that are needed to get tough and to provide them accordingly. In other words, you can put such numbers in that sentencing grid as you want and can afford. It is the idea of the predictive grid that I hope you will adopt this session.

"Now, let me end where I began-with the society in which we live and the place of our courts in that society. The Constitution mandates that our courts provide remedy as the law requires to those who have been injured by others. The courts are not the answer to those conditions which cause people to injure other people. The courts are but the last repositories for the grievances themselves. We deal with them only after other institutions-families, schools, churches, friends, colleagues-have failed to prevent them.

"There was a recent article in the News and Record, formerly the Greensboro News and Record, by David DuBuisson, which recounts the old political adage which says that if you own a problem, you can live off it forever, but if you own the solution, you're in danger of putting yourself out of business.' Our courts are in no danger of putting themselves out of business because we do not own the solutions to violence and crime which permeate our culture. We own only the problems which the phenomenon has brought before us.

"One of this country's greatest judges, Judge Learned Hanel of the 2d Circuit Court of Appeals, put it this way, when he wrote in 1942:

'[T]his much I think I do know-that a society so riven that the spirit of moderation is gone, no court can save; that a society where that spirit flourishes, no court need save; that in a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish.'

"It is true that no court can save us; but we do not shrink from our constitutional obligation to administer justice without favor, denial or delay. The judicial branch, respecting as it does this General Assembly, knows that neither will you shrink from your responsibility to provide us with what we need so we can do as the Constitution commands. Ladies and gentlemen, we need your understanding and your help.

"Thank you for your attention."