

State of the Judiciary 1995
Chief Justice Burley B. Mitchell, Jr., North Carolina Supreme Court
Message to the General Assembly
March 21, 1995

"President Wicker, Speaker Brubaker, President Pro Tempore Basnight, Speaker Pro Tempore Russell, Senators and Representatives, my fellow justices and judges, ladies and gentlemen.

"I thank you for continuing this important tradition of inviting the Chief Justice to address you on the state of the Judicial Branch and its needs. Regardless of the words spoken, my address here today serves to symbolize both the constitutional independence of the Legislative and Judicial Branches of our government and their practical interrelationship.

"Even though my tenure as Chief Justice is measured in weeks instead of years, I have quickly learned the magnitude of the increased responsibility I have assumed. After spending a quarter of a century as an elected district attorney, judge, or justice, I have come to the position of Chief Justice with some understanding of the importance and extent of the duties of our judges, prosecutors, and clerks of court. I quite frankly was not aware, however, of the breath and scope of the various programs not traditionally viewed as court functions which the General Assembly has assigned to the Judicial Branch in recent years. Since becoming Chief Justice in January, I have had to attempt to learn quickly about all of the problems and challenges facing the Judicial Branch.

"Like each of you, I have heard clearly the outcry of our citizens against crime and their frustrations with government's seeming inability to deal with it effectively. People are afraid for themselves and their families, and they have a right to be. Victims justifiably feel abused and ignored when they are not kept informed as to what is going on with the cases they are involved in. Witnesses justifiably feel mistreated when they are brought to court several times, only to see cases in which they are to testify continued without any apparent consideration being given to their schedules and needs. As I assume the duties of the office of Chief Justice, it becomes my responsibility to attempt to lead the Judicial Branch to begin to address these problems.

"It is crucial that the courts be responsive to the public's frustrations and fears. But it is equally important that we be honest with the public about the real limits of the power of the courts. Courts are neither the cause of nor the solution to most of society's problems. The work of our criminal courts, both in its makeup and volume, is largely controlled by the extent to which the strains of modern society have caused other institutions—such as families, churches, schools, and social agencies—to disintegrate or lose their effectiveness. Courts are the recipients of society's problems, not the cause of those problems. But it is important that those of us working in the courts be committed to helping solve those problems, and that we not make things more difficult for those involuntarily caught up in the system; this we are pledged to do.

"I have heard some characterize the courts as being in a state of crisis I want to tell you now that I do not subscribe to that characterization. Our judges and district attorneys are among the most efficient in the United States. Every set of national statistics I've seen in the last decade has indicated that our prosecutors and judges dispose of more cases per capita than in almost every

state in the union. Every day, the business of the courts is being conducted in an orderly and fair manner for thousands of our citizens. But I am committed to directing the energies of all of us working in the courts to making improvements where they are needed.

"The crisis I believe that we do face is a crisis of confidence in the courts and other institutions of government. Sometimes, we let problems seem so large that we begin to believe they are insurmountable. We lose our resolve to come to grips with them. In such an environment, perception can become reality. If we let ourselves believe we can do nothing, nothing will be done. I do not want that to happen with the issues facing the courts. My intention is to have those of us working in the courts focus on those things that are within our control and make sure that we are putting the resources available to us to good use.

"We must plan ahead to ensure that our courts change to meet the future needs of North Carolina. There are a number of important efforts underway which can point us in the right direction. They include the North Carolina Commission on the Future of Justice and the Courts, chaired by John Medlin, as well as the Courts Commission and the Criminal Justice Integrated Information Network Commission, which you have created. The fact that these groups are addressing the long-term future of the courts will allow the Director of the Administrative Office of the Courts and me to work with our court officials in focusing our attention and energies on problems which must be dealt with immediately. I want to discuss some of those urgent and immediate problems with you now.

"One bill currently pending before you spans the gap between short-term and long-term issues facing our courts. You currently have pending before you a bill designated the Drug Treatment Court Act. That will create a statewide program to facilitate the establishment of local drug treatment courts to deal with addicted offenders. Many of these people can be saved by being put on deferred prosecution or on closely supervised probation which can be revoked if they do not respond to mandatory drug or alcohol treatment programs. Those who do not respond may then be imprisoned. The proposed act will allow us to save many salvageable people while preserving our limited prison space for those who really should be in prison.

"Alcohol and drug abuse have become so pervasive that they can now be said to be the major cause of crime in North Carolina, particularly violent crime. One-third of all felonies pending before our superior courts are drug charges. Additionally, most violent crimes involve defendants who are abusing alcohol or drugs or who are committing crimes to feed their habits. The proposed Drug Treatment Court Act represents a well thought out and very positive step in our efforts to get the problem of crime resulting from alcohol and drug abuse under control. I commend its sponsors and urge you to give it your most serious consideration.

"Other problems we face also must be addressed as quickly as possible. Our courts -- particularly our criminal courts -- are faced with extremely heavy caseloads. Our heavy caseloads are in large part a result of double-digit growth between 1988 and 1992. Eliminating our backlogs is vital if we are to improve the performance of our courts. Backlogs by definition should be the exception, not the norm.

"The Director of the Administrative Office of the Courts and I are in the process of identifying those locations where the backlog problem is most acute. We plan to work with local officials in those locations. We will supplement their existing resources by assigning emergency judges and temporary personnel to help reduce their backlogs. The Conference of District Attorneys has taken the initiative in this regard by agreeing to assist their colleagues in problem districts by temporarily assigning them senior prosecutors to expedite the handling of their capital cases. And I commend the District Attorneys for their action in this regard.

Additionally, I have exercised my authority as Chief Justice by reassigning all Resident Superior Court Judges to their home judicial districts, effective April 7, for the express purpose of determining the condition of the criminal Superior Court dockets in each county of the state. They will assess the adequacy of the number of criminal court sessions scheduled, in light of the pending cases, and they will recommend changes in the amount of court scheduled, if they think it appropriate. I am prepared to give priority to our criminal dockets for the immediate future, if the Senior Resident Judges report that the backlog situation warrants such emergency action.

Large backlogs breed unnecessary delay in disposing of cases. Unnecessary delay breeds unfairness, inefficiency, increased expense, and loss of confidence in our courts. I am optimistic that by concentrating on backlog reduction, we will produce concrete results. The public is entitled to have cases decided by our courts in a reasonable period of time. We in the courts must use the existing resources you provided us to meet that goal. And, I am absolutely committed to seeing that we do so.

"I think I should mention at this point that I am aware, very aware, of the perception held by many that our courts are not in session long enough and that our judges do not work long enough hours. Several, more than several, of you have shared your thoughts and those you have received from your constituents on this point with me, and I greatly appreciate your doing so. I hope you will continue to call such specific complaints to my attention, and I assure you that I will follow up on them to the extent that I have the power to do so.

"It should be remembered that, like you, our judges are independent elected officials. Just as it would be unfair to make a judgment about how hard you work based solely on the highly visible work you conduct in these chambers when the Senate and the House are in session, it would also be wrong to make a judgment as to how hard judges and other court officials work based solely on the work they do in the courtroom during open sessions of court.

"Nevertheless, I agree with the view many of you have expressed to me to the effect that judges should be in the courthouse during ordinary working hours from Monday through Friday. If court breaks down due to an inadequate calendaring of cases, judges should remain in the courthouse and initiate efforts to have cases ready for trials or for pleas brought before them. Failing that, they should seek to determine whether there are pending motions which they may deal with on short notice. I have addressed these very points with many of our judges recently, in person and in writing. I believe they are committed to redoubling their efforts to ensure that the work of the courts is done and that the public perceives that it is being done in an efficient and timely fashion.

"I very much want you legislators to have an accurate understanding of what the court officials in your districts do. I know you are all terribly busy right now, but within the next few months, I plan to initiate a program whereby the judges from your districts will invite each of you to spend a day or more with them as they perform their duties. It never ceases to amaze me how much actual work our trial judges do, often under frustrating and inadequate working conditions. The purpose of this program will be to inform you as to what judges do, but also to give them an opportunity to learn about some of the frustrations and difficulties that you as legislators face. And, I will encourage each of you to take advantage of this program.

"Like you, I receive questions and complaints every day about the seemingly endless delays at every stage of capital murder cases. As most of you know by now, much if not most of the delay in capital cases occurs during the hearings of the seemingly endless petitions and appeals taken in federal courts. Neither you nor I can do much about this problem, but I know that the Governor, the Attorney General and certain members of our congressional delegation are attempting to change this state of affairs at the federal level. You and I must leave that effort to them, however, and turn our attention to attempting to improve the state system for handling capital cases. Although I think we should make no apologies for ensuring that capital cases – above all others -- are conducted at every stage in a thorough and fair manner, it is apparent to me that many of the delays arising in our state courts in these cases add nothing to the quality of justice and are unnecessary from a constitutional standpoint. We can and we must do better.

"I am informed that certain proposed legislation is before you or soon will be introduced to address some of the delays in capital cases. For example, I understand that you will be called upon to consider whether to remove the requirement that the Supreme Court of North Carolina conduct what is known as 'proportionality review'. This is a process statutorily mandated by you in which the Supreme Court, in effect, 'second-guesses' a jury which has recommended the death sentence. If we believe the death penalty disproportionate, we are required by the statute to strike the death penalty which has been recommended by the Jury and substitute a life sentence. This process has become so complex that we have developed a special computer program to assist us in our review. Removing the requirement of proportionality review would no doubt reduce the time it takes our Court to render an opinion in each capital case.

"Other proposals are currently before you which would require that motions for appropriate relief filed after conviction, sentence, and appeal in capital cases be calendared and heard in a reasonable time. Executions cannot be carried out while such motions are pending. In the past, many such motions in capital cases were not disposed of quickly, because no one had clear responsibility for seeing that they were calendared for hearing. Bills pending before you which would require rapid calendaring of those motions for hearings could reduce the average time between the entry of a defendant's sentence of death and the actual execution by as much as three years according to our statistics.

"I need to remind you at this point that all capital cases are appealed directly to the North Carolina Supreme Court. The increase in the number of cases has placed increasing burdens upon us. In 1991, there were fifteen new appeals in capital cases filed in our Court; by 1994, the number of new capital appeals for the year had risen to forty. This represents an increase of 166% in the number of capital appeals filed from 1991 to 1994.

"We are committed to doing our part in making the system work. In 1994, the North Carolina Supreme Court heard oral arguments in a total of 133 cases. We have decided that we will work through ordinary breaks in 1995 so that we may increase our workload. We are currently scheduled to hear oral arguments in a total of 248 cases this year. This will increase the number of cases we hear in 1995 by 86% over the previous year. I think you can see that we will be straining to do our part to insure that cases reach finality in a reasonable time.

"Our plans to hear more cases on appeal this year will not have much impact on the number of pending appeals in capital cases, however, unless we are able to focus our attention on those cases. You can help us in this regard. I ask that you give serious consideration to proposals to remove the automatic right of appeal to the Supreme Court in every case in which there is a dissent in the Court of Appeals. Many of those cases do not involve issues of any real consequence and have no business before our Court. Nevertheless, they are automatically appealable to our Court, and the litigants in those cases are given the same amount of time for argument that litigants in capital cases enjoy. We can no longer enjoy the luxury of such appeals as a matter of right, and I do not believe that they add substantially to the quality of justice. If serious issues are presented in such cases, we will still be able to grant review in our discretion.

"Another proposal which would help us to speed up pending capital appeals is a proposal that first-degree murder cases resulting in sentences of life imprisonment be appealable to the Court of Appeals, with no absolute right of further appeal to the North Carolina Supreme Court. Removing those appeals of right from our docket would give us time to consider and dispose of an equal number of capital cases from our pending backlog.

"Whether to adopt the proposals I have discussed is a decision left by our State Constitution to you, the members of the General Assembly. But should all of the proposals I have discussed be adopted by you, I believe we will be able to reduce the average time from the commission of a murder to the execution of a convicted defendant from the current average of more than ten years to something near the average of six years, which has been recommended by the American Bar Association. With your help, we shall begin.

"Many of the initiatives advanced in the coming days of this legislative session will impact the courts directly. If we are to ensure that our courts do justice in a fair, timely, and efficient manner, the impact of proposed legislation must be carefully assessed. Expanding victims' rights or establishing statutory limits for handling cases without providing the resources to implement such policies amount to unfunded mandates. Because the courts cannot control the number of cases coming to them, such unfunded mandates inevitably lead to further delay and court backlog -- the very thing we all want to eliminate.

"The Director of the Administrative Office of the Courts is presenting our budget requests to your appropriations committees, but I would like to make just a couple of comments about our needs. Our budget request is an attempt to provide an honest assessment of the minimum we think is necessary to do the job presently defined for us by you and to provide the services the public rightly demands. I should tell you that there are those within the Judicial Branch who believe that we have undershot the staffing needs in certain areas.

"Specifically, the District Attorneys believe that the demands they must meet justify funding for considerably more personnel than this State has traditionally provided them; they make a rather strong argument for their position. To make an intelligent decision as to how many prosecutors are needed is for you to decide.

"I do not believe it would be appropriate for me to answer such questions for you, as they are particularly within the province of the Legislative Branch under our system of government. I do remind you, however, that funding for the courts is not optional. Article IV of the State Constitution expressly provides that you are to pay for the operation of the Judicial Branch from state funds. So, I urge you to be aware of the costs associated with any changes in the operation of the courts you are considering adopting.

"Since the adoption of the North Carolina Constitution of 1868, our judges have been elected to office in partisan elections. Many of us have long sought to change this system. However, the current system served us reasonably well for more than 100 years. During those years, a person who was initially appointed to a vacancy might expect to have one contested election. If the judge won that election, it was rare for the judge ever to face another contested election. While, arguably, the threat of an election opponent kept our judges reasonably humble, the exceptionally small number of contested elections gave our system stability. This allowed judges to enter a career in the judiciary with some certainty that they could complete that career if they were professionally competent and temperamentally suited to the position. We have been blessed under our current system with a judiciary which has been almost totally free of any form of corruption. To the best of my knowledge, only one judge in the history of this State has ever been found to have accepted a bribe or otherwise been financially corrupt; that occurred within the last decade and should be viewed as a wake-up call for all of us.

"For a little more than a decade now, however, strongly contested partisan judicial elections have been commonplace. Partisan judicial elections have become more and more expensive and time-consuming and now regularly put tremendous pressure on individual judges and on the court system as a whole. Current trends toward politics dominated by narrow special interests have brought our judges under increasing pressure to give advance commitments to enter rulings desirable to special interest groups. So far, I am proud to say that I believe our judges have avoided this temptation uniformly; I am sorry that I cannot promise that this will always be so.

"Further, it is now clear that partisan elections are directly interrupting the work of the courts and slowing our disposition of cases. For example, the North Carolina Supreme Court was required to cancel November and December court in 1994 after two justices were defeated and the Chief Justice announced his retirement. Such cancellations have occurred three times in the Supreme Court during the last ten years as Democrats swept Republicans from the Court and the Republicans returned the favor. The experience in the Court of Appeals has been much the same. I do not mean to criticize any individual when I say that this state of affairs has not served the courts or the public well. We simply need to change the system.

"Last fall, the North Carolina Judicial Conference -- an organization comprised of all of the judges in the State -- adopted a resolution endorsing an appointive system for judges; only two

judges voted no. More recently, it has appeared that adoption of a nonpartisan election system for judges might be a more realistic goal in this session of the General Assembly. As a result, we polled the judges of this State, asking them whether they would favor a change to a nonpartisan system for the election of judges over our current partisan system. The responses indicated that 72% of our Superior Court Judges and 64% of our District Court Judges prefer a nonpartisan system of judicial elections over the current system.

"I think you may face a unique but brief opportunity to change our system for the good of the State in this century. The most recent elections have made it clear that we are going to have a bipartisan judiciary in North Carolina. At this particular moment in history, we cannot know which party will be most benefited by any change in our system of judicial selection and retention. This state of affairs should give all concerned added incentive to ignore partisan political considerations and to adopt a system for the selection and retention of judges that will be in the best interest of all the people of North Carolina. My hope is that the result will be a system which provides stability once a qualified judge is in office and which encourages well-qualified Republicans and Democrats to seek a career in the judiciary. Such a system should give Republican and Democratic judges alike reasonable assurance that they will be retained in office if they perform well and that they will not be subject to constant partisan attacks.

"I hope that, at the very least, you will adopt bills which provide that judges running for election immediately after having been appointed will be elected to full terms of office and not just to the remainder of the term of the office to which they have been appointed; this one small change would provide some additional stability to our judiciary without making any significant change in the basic manner by which judges are selected or retained. But, I strongly urge you to take advantage of this unique and perhaps fleeting moment in our history by going further and adopting some form of retention system for judges that will not constantly subject them to the ebb and flow of pure partisan political tides.

"In closing, I want to say that I am proud to be a North Carolinian and very proud to serve as a member of the judiciary of this great State. When we look at the challenges facing the courts it is tempting to blame 'the system.' But those who rush to this conclusion should first take stock of all that is right with our courts in North Carolina.

"Our uniform court system created by this body in 1962 is admired by other states and nations. The Constitution of the former Soviet Union provided more rights than the Constitution of the United States. The laws of the Soviet Union also contained an endless litany of individual rights. But today, delegations from the former Soviet Republics and other nations are visiting North Carolina regularly and trying to copy our form of government under law. They all have the same question: 'How do you make your laws work so that the rights guaranteed your people are carried into effect?' The answer is simple but profound; we have genuine, enforceable rights because we have an independent judiciary to enforce the rule of law. It is ironic that precisely at the time the world has come to appreciate the critical role of our independent judiciary in making our constitutional form of government come alive, our courts are coming under attack here at home. Our court system is not perfect, but it is the best in the world.

"I want to express my appreciation now to each of you for the very important and stressful work you do. I particularly want you to know that I am anxious to work with all members of both parties in both chambers of this General Assembly. I intend to take a positive and nonpartisan approach in dealing with the common challenges we face, and I am confident that you will respond in kind. I look forward to working with each of you, and for your kind attention to these remarks today. Thank you.