

State of the Judiciary 1997  
Chief Justice Burley B. Mitchell, Jr., North Carolina Supreme Court  
Message to the General Assembly  
March 5, 1997

President Wicker, Speaker Brubaker, President Pro Tempore Basnight, Senators and Representatives of the 1997 General Assembly, distinguished guests, and ladies and gentlemen:

I thank you for again inviting me to address you on the state of the judicial branch of our government. My address today symbolizes the constitutional independence of the legislative and judicial branches of our government, but it also symbolizes our practical interrelationship.

As I look around the chamber at this great General Assembly, I see many friends of long-standing -- Republican and Democrat -- who have given invaluable assistance to the judiciary and friendship to me personally over the years. You have helped to put me at ease every time my duties as Chief Justice have brought me to this building. I thank each and every one of you for your courtesy and your friendship.

One of my goals as Chief Justice is to improve communications between the judicial branch of government and the legislative branch. For that reason, over the last two years we have invited each of you to spend a day or more with your local judges as they perform their duties. I am constantly amazed at how much actual work is done in our trial courts, sometimes under very difficult working conditions. If you have not yet done so, I encourage you to accept our offer to spend some time with your local judges to observe their problems and to tell them of the problems you face.

We do not want to limit our communications with you to these legislative sessions. Limited communications through the years have caused the judicial branch to be treated as just one more statutory agency of government mentioned in passing in the Governor's budget. As a result, the requests of the judicial branch often have not received the consideration that requests of a separate but equal branch of government should receive.

We in the judiciary bear a large part of the responsibility for this situation, because historically we have perhaps been too fiscally conservative. By that, I mean that we have not adequately anticipated our future needs. Instead, we have tended, as now, to wait until our needs have reached near crisis proportions before we have asked you for help. I pledge to you that from this session of the General Assembly forward, we will attempt to more accurately predict and inform you of our future needs.

The state of our judiciary in March 1997 presents, at best, a mixed picture. I will first mention briefly just a sample of some of the initiatives we have undertaken with your help which are working. I want to share these success stories.

In 1995, we established with your help a new criminal case management system in two pilot districts -- District 12 (Cumberland County) and District 13 (Bladen, Brunswick and Columbus Counties). Both are working very well. Each month one special week of administrative court is

held in the superior courts of those districts to keep all pending cases actually moving to trial. The resulting efficiency has led to substantial reductions in the pending cases in those districts. For example, felony cases pending in the superior court in Cumberland County were reduced by 9.3% in fiscal year 1995-96. This was a phenomenal achievement, given the fact that new case filings there increased by 20% during that same period. In light of such success, we are implementing this new case management system in most of the districts of the state.

Our experimental drug treatment courts continue to be a success. With your help we have expanded those courts to five judicial districts. Alcohol and drug abuse continue to be the single largest factor in our criminal cases in North Carolina, as in the rest of the nation. These drug treatment courts have allowed us to require that whether defendants are put in prison or on probation, they will participate in mandatory drug or alcohol treatment programs and regular testing. Each time one of these courts has a success, a person is diverted from the revolving door of substance abuse, followed by criminal charges. These people become taxpayers rather than tax burdens.

The child custody mediation program is now operating in 17 district court districts. Under this program, a neutral party sits down with parents and tries to convince them to overcome their adversarial relationship and to attempt to agree in a calm manner what is in the best interest of their children. We have experienced a 56% rate of voluntary settlement of the child custody cases which have been a part of this program. Not only does this reduce our pending domestic court backlogs, it also provides for the best interests of these children in a nonconfrontational setting.

We have also experienced some successes in the area of technology, even though we are woefully behind and have far to go. Our financial management computer program used by our clerks of court in their bookkeeping and check-writing functions is in place in 88 counties.

We have also created a new computer program for district attorneys and public defenders. It will allow for computer scheduling of cases in our prosecutors' and defenders' offices. It will let them take advantage of data already entered by clerks of court and others without the waste of time involved in having to re-enter the same information several times. We hope to eventually install it in all of our districts.

Our civil case processing system is a similar computer program that allows us to better manage our civil cases. It will provide attorneys and the public with quick access to detailed information regarding the current status of individual civil cases. Very importantly, it will allow judges to know of attorney conflicts anywhere in the state, so that we can avoid conflicting calendaring of cases involving the same attorneys. The system is currently on line in 34 counties.

Although I am proud of our successes, I cannot let them hide the reality of our shortcomings. Many of our problems have been documented in the recent report entitled "Without Favor, Denial or Delay -- A Court System for the 21<sup>st</sup> Century." This report was submitted to you last December by the Commission for the Future of Justice and the Courts in North Carolina, chaired by John Medlin, former chief executive officer and present chairman of the board of the Wachovia Corporation. The report reviews the present status of the courts and makes detailed

recommendations for restructuring our entire court system to meet the challenges of the twenty-first century. The entire report is very thought-provoking and worthy of your most serious consideration, and I will discuss it further with you at other times during your session this year. In particular, I think the section on technology demonstrates that our courts are at least fifteen years behind where they should be in computerization, and it spells out with complete accuracy what must be done to bring us into the modern world.

The commission accepted and performed the task of outlining the needs of the courts in the twenty-first century. My task today, however, is to inform you of the severe immediate needs of our courts. I will now turn to that task.

Please bear in mind that the only duty placed upon the judicial branch of government by our constitution is the disposition of civil and criminal cases in our courts. This fundamental or core constitutional duty is and must be our first concern, despite the fact that this General Assembly has, for better or worse, assigned many other duties to the judicial branch. I want to focus the rest of my remarks on this core function.

When I made my last state of the judiciary speech in 1995, I had just temporarily halted the constitutionally required rotation of our superior court judges from district to district and had sent them all to their home districts for three months to deal with their pending backlog of cases. I did the same thing again in 1996, sending the superior court judges to their home districts for six months. As a result of these and other short-term efforts, we were able during fiscal year 1994-95 to significantly reduce the number of felonies pending in our superior courts for the first time in history. We again reduced the number of felonies pending in our superior courts in fiscal year 1995-96. I am proud of these achievements. Our trial courts did all of this with almost no increases in personnel or equipment.

Unfortunately, I have now run out of every short-term technique for increasing our case dispositions that I have learned over nearly thirty years in our trial and appellate courts. Compounding this problem, and equally alarming, is the fact that almost every week of the last year I used all of our judicial resources. Each week, in addition to our active judges, I assigned every one of our retired emergency judges to hold court, yet we are beginning to fall behind again.

When looking at all of our district and superior court cases, both civil and criminal, the problem becomes clear. In fiscal year 1995-96 we disposed of more total cases (2,599,861) than in any other year in the history of North Carolina's courts. But in that same fiscal year, we had an even greater increase in new cases (2,716,758) than ever before. Ladies and gentlemen, I can now summarize in one sentence all of the statistics concerning the judicial branch's performance of its core constitutional duty. We are deciding an all-time high number of cases, but our courts are falling behind again.

Like you, I know that some of our court officials work harder than others. Nevertheless, North Carolina consistently ranks among the very top states in judicial productivity. Our district attorneys also consistently rank among the most productive in the nation. I tell you now that as a court system, we have about reached our maximum limits. We cannot do more or even continue

the pace we have set in the last two years without substantial increases in personnel and other resources. We in the judicial branch of government want to perform our constitutional duty. It is our life's work and we are sworn to carry it out. We can and will do our part in any state policy to crack-down on dead-beat parents, but only if we are given the needed personnel and resources. We can and will do our part in bearing down on violent juveniles and making our schools safe, but only if we are given the necessary people and resources. We can and will implement any new law you pass to get even tougher with drunk drivers, but only if we are given the people and resources. We can even reduce plea-bargaining in our criminal courts if that is what you and the public require, but only if we are given a massive infusion of new people and resources. We want to do our duty, but I implore you to recognize that any calls for legislation creating new crimes or substantially increasing punishments for existing crimes will simply amount to demagoguery if not accompanied by adequate increases in court resources.

To give you just one concrete example, I point to the victims' rights amendment to our state constitution which you submitted to the voters and which they passed in the general election of 1996. As you know, this amendment will require that notice be given to victims of some as yet unidentified types of crimes when court proceedings regarding those crimes are to occur. If the legislation you pass to put this amendment into effect requires such notices in anything other than capital cases, I regret to tell you that we simply will not be able to comply without a substantial increase in personnel. This new provision of the constitution will be turned into a false promise, unless you appropriate money for enough people to do the job. No magical automatic telephone system exists or will exist in this century to do the job of giving these notices. It will simply have to be done the old fashioned way; through hard work, by a lot of people.

This year we are asking that you create 8 new superior court judgeships, 16 new district court judgeships, 56 new positions for assistant district attorneys, 135 new positions for deputy clerks of court, and 41 new positions for personnel to assist victims and witnesses when they come to court. We know that this is a large request, but we ask that you bear in mind that if we get every one of these new people we are requesting, we will only have brought the caseloads of our prosecutors and judges back to 1983 levels.

Possibly of even greater importance, we simply must create an adequate computer system for the courts if we are to avoid having to come to you year after year asking for ever larger increases in personnel. Our requests for the coming fiscal year include 4.8 million dollars simply for maintaining our current inadequate system. What we really must do now, however, is design and put in place a true system by which our courts can take advantage of the increased efficiency computer systems have brought to much of the private sector. This was the conclusion of the Future's Commission in the technology section of its report, and I recommend that you read that section of the report particularly.

Tracking the recommendations of the Future's Commission on this point, we are requesting an additional 6.7 million dollars this year to begin the planning and implementation of such a system which will require several years of effort. But the Future's Commission and those of you who are familiar with such large computer systems know that a long-term and consistent funding

stream is required through the planning, creation and implementation stages. They simply cannot be created using a system of year-to-year up and down funding as funding becomes available.

In North Carolina, the judicial branch has always been a separate and independent branch of government, but it rarely has been treated as an equal branch of government. Article IV, Section 20 of the state constitution commands that the operating expenses of the judicial branch "shall be paid from state funds." In recent years, the judiciary has consistently been limited to an appropriation of only about 2.5% of the state's general fund budget. The results are clogged dockets, inadequate record-keeping, and a partial but inadequate computer system which will soon completely bog down without sufficient funds for maintenance and upgrades of equipment.

This year, for example, even if we receive every penny we have requested in our continuation and expansion budgets, the entire judicial branch of government will only be appropriated about 335 million dollars from a general fund budget of more than 11 billion dollars. This is a meager 3% of the budget. Since 1983, you have almost doubled our prison capacity, but we have had no really substantial increase in judges. It is alarming to note that, even if we receive everything we have asked for in the way of personnel this year, we will merely be back to our 1983 levels of personnel.

Prison construction does not occur in a vacuum. No matter how many prisons you build and no matter how many law enforcement officers you put on the street, their efforts will be frustrated without adequate funding for the courts. You cannot put dangerous criminals into prison without first sending them to court. By definition, a "convict" is not a convict until he has been convicted in a court of law. The constitution allows no less.

Failing to provide adequate resources to the courts insures that law enforcement officers, corrections officials and the public are frustrated. Such problems in North Carolina and in other states are in large part responsible for increased attacks upon our court system. This should strike fear into the hearts of every one of us, as it is only the rule of law which separates us from those nations in which there is no freedom.

I do not mean that we should get every cent we request without justification; we have never expected that. Instead, I simply ask that our budget requests be treated as those of an equal constitutional branch of government and evaluated on the basis of what we need to perform our constitutional duties, not on the basis of competition with divisions of state agencies created by statute whose duties are optional and not required by the constitution.

My initial conversations with the leaders of both chambers of this great General Assembly have been very cordial and positive, and I am convinced that they will do everything possible to see that the judicial branch is able to meet its constitutional obligations to the citizens of North Carolina. Our English cousin Sir Winston Churchill, the son of an American mother, is reputed to have once said that, "Americans will always do the right thing -- after they have exhausted every other possibility." I have more faith in you than that. I think it is my responsibility during the eight-year term I am now beginning as Chief Justice to be a voice of conscience reminding you when the tasks you want to assign to the judicial branch are beyond our means. For I believe in you, the members of this great General Assembly. Unlike Sir Winston, I believe that you will

do the right thing, the first time, every time, if we give you all of the facts. I close now by thanking you for your courtesy in inviting me today, for your attention to my remarks, and for your unfailing devotion to the people of North Carolina.