

The Origins of the North Carolina District Court

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This year we celebrate the 50th anniversary of the district court in North Carolina. The first district courts, part of the new statewide unified General Court of Justice, opened in 1966 in six districts and 23 counties, replacing a scramble of county courts, recorders courts, justices of the peace, and the like. Over the next four years the district court spread to the rest of the state.

While we celebrate 1966 as the birthdate, the creation of district court really began over a decade earlier in 1955. And the process was not completed until the 1970s. The story is a reminder of the perseverance required for meaningful court reform.

The Beginning

It all began in July 1955, when Governor Luther Hodges addressed a meeting of the Supreme Court and superior court judges. We are not sure what or who prompted the governor's interest, but he warned the judiciary that the public's respect for the courts had fallen and change was needed. Hodges asked that the North Carolina Bar Association recommend improvements to him, the General Assembly, and the public.

The result was the Bar Association's Committee on Improving and Expediting the Administration of Justice in North Carolina, chaired by J. Spencer Bell of Charlotte, one of the state's most prominent lawyers and later a federal judge on the Fourth Circuit Court of Appeals. In tribute to his leadership the committee now almost always is referred to as the Bell Commission. The committee was a mix of talented and prominent lawyers and business leaders, many of whose names are still recognizable

today, including Shearon Harris, Henry Brandis, Pilston Godwin, James Poyner, William Womble, Fred Fletcher, Ashley Futrell, and Woodrow Price.

The Bell Commission employed the UNC Institute of Government as staff and set to work in November 1955. Subcommittees drafted and distributed reports, with questionnaires, to all members of the Bar Association as well as other lawyers and citizens. The final report was presented at the Bar Association's 1958 convention.

The Courts of the 1950s

The court system the Bell Commission was examining, and attempting to improve, consisted of: a single appellate court, the Supreme Court; a single statewide trial court of general jurisdiction, the superior court; and a mixup of local courts with varying jurisdiction, procedure, financing, and methods of selection, plus justices of the peace (JPs). By the late 1950s, there were 256 local courts in the state with jurisdiction between that of a JP and the superior court—mayors' courts, municipal recorders' courts, county recorders' courts, general county courts, a civil county court, county criminal courts, domestic relations courts, and juvenile courts.

A local court might have jurisdiction only within a municipality, for a mile beyond the city limits, five miles, the entire township, or the entire county. In one instance, jurisdiction was defined by the watershed of the city reservoir. Some of the courts could hear only town ordinance violations, while others could hear all crimes below the superior court level. Civil jurisdiction might be capped at \$50, \$500, \$1,000,



or some other amount, and might vary according to the nature of the claim, or might be unlimited. Some of these courts could hear alimony and divorce, others could hear land disputes, some could issue injunctions, and others could not. Many local judges were elected, others were appointed by the city or county governing body or by the governor or the resident superior court judge, and terms of office ranged from one to four years or, in the case of mayors' courts, a term coterminous with the term as mayor. Most judges received a set salary, but a number depended on fees collected. The timing and numbers of sessions of court were all over the map.

The Bell Commission's Vision

In looking to reform this patchwork of courts, the major principles that guided the Bell Commission, and the accompanying recommendations, to be embodied in a new Article IV of the State Constitution, were:

Responsibility for the judicial system should be clearly fixed upon the courts— The commission's view was that if the courts

were failing to serve the people properly, criticism should be directed to the office of the chief justice. For the chief to accept that responsibility, the system would need to be an actual single statewide court system and would need an administrative office of the courts with a director answerable to the Supreme Court. The Court should have control, too, over the rules of trial and appellate procedure.

Justice should be uniform throughout the state—The commission believed that people across the state should have basically the same court facilities, and that the courts should conduct their business in a uniform manner. Most significantly, that meant replacing the various local courts with a statewide system of courts utilizing uniform fees, jurisdiction, and procedure. The local courts would be replaced with a statewide district court system, and all courts would be administered and funded at the state level. Local governments would be responsible only for providing court facilities.

The court system should be flexible—Court needs will change over time and, therefore, the system should be sufficiently flexible to adapt. To that end, the proposed single unified General Court of Justice would have jurisdiction to hear all disputes, eliminating the rigid limited jurisdictions of all the local courts. The Supreme Court, the commission believed, should be able to change the jurisdiction of each division of the new system, though legislative approval would be needed to have district court try felonies or hear civil disputes of more than \$5,000.

The Bell Commission wanted to allow the court system itself to adapt to changing needs rather than having to keep returning to the legislature. Thus the commission recommended that a new intermediate court of appeals be established by the General Assembly, with its jurisdiction determined by the Supreme Court. The superior court's jurisdiction also could be modified by the Supreme Court. The legislature still would draw superior court districts, but the chief justice would assign judges to sessions of court, rather than being set by statute, and the chief could send superior court judges to temporary duty with either the district court or the new court of appeals. The Supreme Court would decide district lines for the new district court, and there would be a minor judicial official—the magistrate—to replace

justices of the peace and, unlike JPs, be under the supervision of other court officials.

The Problem of Judicial Selection

Judicial selection was a contentious issue for the Bell Commission and has remained so to this day. A Bell Commission subcommittee first proposed a Missouri Plan for selection of Supreme Court justices and superior court judges: A judicial council would nominate three candidates for each vacancy, the governor would appoint one, and that person would serve until the next general election, at which time there would be a yes/no referendum on retaining the judge in office for an eight-year term. District court judges and magistrates would be appointed by the chief justice from nominations by senior resident superior court judges.

After the subcommittee's proposals drew a strong unfavorable reaction, the commission dropped the Missouri Plan, staying with elections for appellate and superior court judges. The commission stuck with the appointment of district judges and magistrates by the chief justice.

The 1959 General Assembly

The Bell Commission's first real test came in the 1959 General Assembly. It did not go well. Most importantly, the legislature was not willing to cede so much authority to the court officials. After the legislative committees had done their thing, the proposed constitutional amendments had the General Assembly, not the Supreme Court or chief justice, set district court lines, determine the jurisdiction of the trial courts, and determine the system of appeals. The legislative committee also removed the authority to assign superior court judges temporarily to district court, eliminated the chief justice's authority to appoint district judges, dropped the creation of a new court of appeals, and authorized the legislature to veto the Supreme Court's rules of practice and procedure for the trial courts.

The rewritten legislation cleared the Senate but was further amended in the House to diminish court authority even more. The House voted to have the legislature, not the Supreme Court, decide when sessions of superior court were to be held, and also allowed the General Assembly to amend any procedural rules adopted by the Supreme Court. With the constitutional

revision now far from what the Bell Commission intended, the sponsors pulled the bill and gave up on any meaningful reform in the 1959 session. The General Assembly had made it clear that it was not ready to loosen too greatly its oversight of the courts.

A New Committee, the 1961 General Assembly, and the 1962 Constitutional Amendment

With the lessons of 1959 in mind, the Bell Commission went back to work. Its revised proposals then were studied and modified by the Bar Association's Committee on Legislation, chaired by Howard W. Hubbard. Some other prominent committee members were Pat Taylor, Pete Avery, Jim Dorsett, Hubert Humphrey, John Jordan, Armistead Maupin, Beverly Moore, Rogert Morgan, Dickson Phillips, Richardson Preyer, Frank Snepp, W.W. Speight, Ralph Strayhorn, and Lacy Thornburg.

The Bar Association presented its report to the 1961 General Assembly, the main features being:

- The legislature would create a court of appeals on recommendation of the Supreme Court, and the Supreme Court would decide its jurisdiction.
- The Supreme Court, not the legislature, would set the sessions of superior court.
- The Supreme Court could subdivide superior court districts into district court districts and decide where the court would sit.
- The General Assembly would decide how district judges are chosen.
- Magistrates would be appointed by the chief justice on recommendation of the senior resident superior court judge.
- Solicitors would not be put under the supervision of the attorney general as discussed earlier.
- The chief justice could assign superior court judges temporarily to the Supreme Court or the new court of appeals.
- The Supreme Court would decide the rules of practice and procedure for all courts, subject to repeal by the legislature by 3/5 vote.

The House and Senate committees, naturally, put their own stamp on the legislation, more often than not restoring legislative control over the courts. The legislature eliminated the court of appeals, set its own

authority to draw district court lines, provided for appointment of magistrates by the senior resident on nomination of the clerk of court, removed the authority of the chief justice to have superior court judges serve temporarily on the Supreme Court, and empowered the General Assembly to set procedural rules for the trial courts. The final bill included a new administrative office of the courts, but eliminated a proposed courts advisory commission, and also dropped the requirement that all fees and costs go to the state.

Finally, though, there was a new Article IV of the Constitution to go before the voters. The referendum on the constitutional amendment was on the ballot in November 1962 and was approved 357,067 to 232,774.

The 1963 General Assembly

The overall structure of the new court system having been established, the Bell Commission started implementing legislation, blending its efforts with yet another new committee. This was a special committee established by Governor Terry Sanford to prepare proposals for the 1963 legislature, chaired by Judge George Fountain. Much of its work was done by a drafting subcommittee chaired by Dickson Phillips. Without time to iron out the details for establishing an entirely new district court system in 1963, the two committees chose instead to focus on establishing the administrative office of the courts and a courts commission.

The administrative office of the courts (AOC) did not make it through the 1963 General Assembly—some legislators resisted the whole idea of professional court administration, and others simply thought the AOC was not needed until more of the new system was in place. The creation of the Courts Commission did pass, but only after the General Assembly struck the idea of having the governor name all the members. The legislature provided instead for a majority of members to have legislative experience, with all members appointed jointly by the governor, the president of the Senate, the speaker, and the chairs of the General Assembly's judiciary committees. The Courts Commission's assignment was to draft the legislation necessary to fully implement the new court system by the beginning of 1971.

The Courts Commission and Completion of the General Court of Justice

Over the next dozen years the Courts Commission first completed the broad contours of the new statewide court system and then filled in the details. It was chaired initially by Lindsay Warren Jr., and included, among others, David Britt, Alex McMahan, James McMillan, Dickson Phillips, Eugene Snyder, and Pat Taylor.

The Courts Commission drafted the 1965 legislation to establish the district court system, defining the offices of district judge and magistrate and setting their jurisdiction, then scheduled the new courts to open in different parts of the state in three phases. Twenty-three counties welcomed the new district court in December 1966, followed by 60 additional counties two years later, and the final 17 in December 1970. The lines for all district court districts were set in 1967 and were the same as for superior court. Solicitors became district attorneys in the new system in 1967, and in 1969 their districts were given the same lines as for the trial courts. The result was 30 districts with coterminous lines for district court, superior court, and prosecution.

The Courts Commission's efforts led to the creation of the court of appeals in 1967 with six judges. In 1969 the juvenile code was revised and those cases assigned to the district court, and in the same year the first two public defender offices were established in the 12th (then Cumberland and Hoke counties) and 18th (Guilford) districts, out of the seven recommended by the commission.

The original Courts Commission expired in 1969, but was reauthorized that year by the General Assembly. Over the next several years it put in place the final pieces of the uniform General Court of Justice, including the 1972 constitutional amendment leading to the creation of the Judicial Standards Commission and a method of judicial discipline other than impeachment, the mandatory retirement age for judges, and the judicial retirement system.

Like the Bell Commission and many others since, the Courts Commission banged its head against the wall of judicial selection a number of times without any success. At almost every session in its early years the commission proposed to the General Assembly a constitutional amendment for the Missouri Plan, i.e., the gover-

nor would appoint judges from names submitted by a bipartisan nominating commission, with the judge standing for a yes/no retention vote at the next election and after each term. Despite bipartisan sponsorship—and usually the backing of the governor—none of the bills could ever gain the 3/5 majority needed in both houses of the General Assembly to put the amendment on the ballot.

The Courts Commission went dormant in 1975, was revived in 1981, brought forward various more modest proposals for court improvement, and went dark again in 1989.

The Futures Commission

The next and last big picture review of the court system came in 1994 through 1996 when Chief Justice Jim Exum established the Commission for the Future of Justice and the Courts in North Carolina, typically referred to as the Futures Commission or the Medlin Commission in honor of its chair, John Medlin, the retired CEO and chairman of Wachovia Bank. Vice chairs were former Chief Justice Rhoda Billings and former Superior Court Judge Bob Collier. Chief Justice Exum intentionally left off the 27-member commission any sitting court official, wanting to avoid members inclined to preserving the current system. Nevertheless several judges, a clerk, DA, and public defender were later included on advisory committees. The lawyer members of the commission included Phil Baddour, George Bason, Alan Briggs, Charles Burgin, Dan Clodfelter, Roy Cooper, Parks Helms, Ham Horton, Johnathan Rhyne, Russell Robinson, Tim Valentine, Jim Van Camp, David Ward, Fred Williams, and Merinda Woody.

The story of the Futures Commission is not as long as the Bell Commission because its work is more recent and more familiar, and because its efforts were not as successful. The commission's report, *Without Favor, Denial or Delay: A Court System for the 21st Century*, is available online and continues to be the source of discussion even though few of its specific recommendations have been implemented.

The Futures Commission began by reviewing the work of the Bell Commission and deciding whether its major principles still applied. The commission decided they did and organized its recommendations

around the same themes. Like the Bell Commission, the Futures Commission believed that the chief justice and other officials needed to be held responsible for the system's performance, but for that to happen they had to have true authority over court operations. Thus the commission proposed that: the Supreme Court control all rules of procedure; the legislature appropriate funds to the courts in a lump sum, and the chief justice and AOC, working with a new Judicial Council, decide where to allocate positions and what salaries to pay; the Judicial Council be able to redraw district lines; and that each district, to be reorganized as a "circuit," have a chief judge and professional administrator responsible for assigning cases, with individual judges accountable for managing their dockets.

Concerned about the growing disparity among districts because of significant demographic changes—the explosion of the urban areas of the state and stagnation of more rural parts—and also because of the splitting of districts into increasingly smaller units and the introduction of local supplemental funding of operations, the commission wanted a recommitment to uniformity. Its choice was to replace trial court districts with a smaller number of "circuits," each with the critical mass of population and caseload necessary to support professional court administrators and specialized activities, such as family courts. For uniformity and for flexibility, echoing the words of the Bell Commission, the Futures Commission proposed the merger of district and superior court into a single trial court—the new circuit court—with assignment of cases to judges based on the circuit's needs and the individual judges' experience and interest. The idea was to eliminate the inefficiency of some district and superior courts being crowded while others had finished their business. The commission also wanted to reduce the barrier to case management inherent with superior court rotation, instead having judges stay within their circuits and be held accountable for their dockets. Management would be further enhanced by having a professional administrator assist the chief judge of each circuit and by having clerks appointed rather than continuing as independently elected officials.

Like all its predecessors, the Futures Commission thought election a poor method of selecting judges, and once again

recommended a Missouri Plan for judicial selection. The state judicial council would nominate candidates for appellate judgeships, local judicial councils would recommend trial judges, and all judges would be subject to systematic evaluations based on established performance standards.

There were many more commission recommendations, a number of which dealt with more limited procedural matters rather than major structural changes. Several concerned upgrades in technology. The proposal that received the most attention and most success was the idea of a family court: the integration of resources so that all issues involving a single family—divorce, alimony, child custody, child support, etc.—would be heard by the same judge who would be assisted by a team of court personnel who could more carefully monitor and manage the case. This recommendation was the basis for the family courts now operating in a number of districts around the state.

The Futures Commission's recommendations were reported to the 1997 General Assembly, bills were drafted and introduced for various parts of its reports, special legislative and Bar Association committees were created, and over the next several years some pieces got attention, but most fell by the wayside. A new Judicial Council was created, but it was more an advisory body than the robust board of directors kind of entity envisioned by the Futures Commission. Family courts were created, but only in some districts and without the full range of resources the commission wanted. Technology improved, but not at the rate and as extensively as proposed. The structural changes called for by the commission fell flat. Clerks did not want to be appointed rather than elected; superior court judges abhorred the idea of merger with district court; no one wanted their districts redrawn; and as always legislators did not want to loosen their control over the courts.

Conclusion

As the long story of the Bell Commission shows, and the short story of the Futures Commission reinforces, significant structural reform in the courts requires general public recognition that the existing system is failing; unity within the bar and courts on the need for change; a strong commitment by leaders in the legal and business communities; and years of discussion and much

compromise with legislators.

Let us not forget, though, that the district court of 1966 and today is a huge improvement over its predecessors. Although the product of compromise and dilution of the principles of the study commissions who wanted more authority transferred from the legislature to the courts, the General Court of Justice was and still is the envy of many states that continue to struggle with the kinds of local courts North Carolina replaced a half century ago. By the 1970s the result of the work the Bell Commission began was a statewide district court with state funding for every judge, the same jurisdiction everywhere, coterminous districts for all purposes, a unified system where no one could be thrown out of court for filing in the wrong place, set salaries rather than fee-based compensation, and the accountability of a chief district judge appointed by and serving at the pleasure of the chief justice. There may be much still to be done, but the changes implemented 50 years ago were monumental. ■

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Note on sources: Much of the information in this article is taken from the UNC Institute of Government's (now School of Government), March 1958 special edition of its magazine *Popular Government*, entitled "The Courts of Yesterday, Today, and Tomorrow in North Carolina"; the "Report of the Committee on Improving and Expediting the Administration of Justice in North Carolina," published by the North Carolina Bar Association in December 1958; "A Report on The Unified Court Bill," published by the Committee on Legislation, North Carolina Bar Association, January 1961; "A Summary of Court Improvement Efforts, 1955-1963," prepared by Clyde L. Ball of the Institute of Government for the North Carolina Courts Commission, October 1963; the reports of the Courts Commission; and from the files and memory of James C. Drennan, retired professor of public law and government at the School of Government, and former director of the Administrative Office of the Courts.