REPORT
of the
COURTS COMMISSION

to the

North Carolina General Assembly

1965

Members of the Commission

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State of North Carolina
COURTS COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, N. C.

TO THE MEMBERS OF THE 1965 GENERAL ASSEMBLY:

This report is submitted pursuant to Joint Resolution 73 of the 1963 General Assembly.

/s/ Lindsay C. Warren, Jr.

LINDSAY C. WARREN, JR.

Chairman

The 1961 General Assembly adopted, for submission to the people, a proposal to rewrite the Judicial Article (Article IV) of the State Constitution. In November, 1962, the people adopted by popular vote the proposed changes. The new Constitutional provisions represent the first major change in the Judicial Article since the Constitution of 1868 was adopted. Under Section 1 of Article IV, all of the judicial power of the State, with certain minor exceptions, is vested in one court known as the General Court of Justice. The General Court of Justice is composed of three divisions -- an appellate division, a superior court division, and a district court division. The court is to constitute a unified system for the purposes of jurisdiction, procedure and administration.

Although certain provisions of Article IV are self-executing and hence do not require legislative action, the responsibility for implementing the major changes required by the Article rests with the General Assembly. As a first step toward implementation, the 1963 General Assembly, by joint resolution, created the Courts Commission and charged it with the duty of "preparing and drafting the legislation necessary for the full and complete implementation of Article IV of the Constitution." The Commission is composed of 15 members appointed by a group consisting of the Governor, the President of the Senate, the Speaker of the House and the Chairmen of the Senate and House Judiciary Committees. At least eight of the members are required to have had legislative experience. The Commission was appointed in September, 1963. Fourteen of the members are lawyers. Ten of its members have served in the General Assembly, and seven are members of the 1965 General Assembly. The life of the Commission extends to January 1, 1971, the Constitutional deadline for completion of the implementation process.

To enable the Commission to carry on its work, the sum of $80,000 was appropriated for the 1963-65 biennium.

WORK OF THE COMMISSION

The Commission began its work in earnest in December, 1963. A regular meeting place was assigned the Commission in the State Legislative Building, Raleigh, N. C. Two-day meetings were held every other weekend during the first eleven months of the Commission's work. Beginning in November, 1964, meetings were held every weekend through January, 1965. The Commission was in session a total of 52 days during the period. In addition, members were required to attend a considerable number of sub-committee meetings.

As necessary background for its work, the Commission made a thorough study of the judicial system presently existing in North Carolina. It has accumulated in its files a great deal of up to date information about this system. Much of this data relates to those courts below the Superior Court. It is with these courts that the Commission has been primarily concerned, for the creation of the District Court Division of the General Court of Justice is without question the major problem confronting the General Assembly in the process of implementing the Constitution.

In conducting its work, the Commission has studied the lower court systems of other states, including Maine and Illinois. Each of these states has had a recent Constitutional change in its court structure, and is now in the implementing process. Maine is currently establishing a system of district courts throughout the state. Upon invitation of the Commission, the Chief Judge of the Maine District Court, Honorable Richard A. Chapman,

came to North Carolina and met with the Commission. Although the North Carolina situation differs in many respects from that in Maine, the Commission gained valuable information and insight from Judge Chapman, particularly in connection with troublesome transitional problems which are certain to occur.

In March, 1964, the Commission held a public hearing in Raleigh. All citizens of the State were afforded an opportunity to be heard, as the Commission was (and still is) anxious to seek the views and opinions of those genuinely interested in promoting the administration of justice. Among approximately fifteen groups and organizations appearing were the League of Municipalities, the Association of County Commissioners, the Bar Association, the Sheriffs' Association, the Association of Clerks of Superior Court and the Magistrates Association. The opinions and recommendations of all appearing have been carefully considered and weighed by the Commission in arriving at its final recommendations.

Finally, from time to time, various members of the Commission have made public appearances throughout the State at which times the tentative viewpoints of the Commission were presented. These appearances have proven of value since they have enabled the Commission to test, with others interested in its work, the soundness of its approach to the task assigned.

SCOPE OF THE PROBLEM

As indicated above, the major concern of the Commission has been to recommend a sound proposal providing for the creation of the District Court Division. When established and fully operational state-wide, the district courts will replace all of those courts now existing below the

level of the superior court. These include nearly two hundred "general act" courts, "special act" courts, municipal courts, county courts, and domestic relation and juvenile courts, and approximately one thousand justice of the peace courts. This job must be completed not later than January 1, 1971. Section 21 of the Constitution specifically provides that as of that date all of these courts shall cease to exist. Only three regular sessions of the General Assembly, including the present session, occur before this deadline.

Cognizant of this time element, the Commission considered several alternative plans of implementation. These ranged from a plan for immediate geographical districting of the entire state, with simultaneous activation of the district court in all counties, to a plan for immediate geographical districting of a few districts only, with other districts to be created and activated over a period of several years.

After due consideration, the Commission adopted as soundest, a middle ground position which immediately creates district court districts throughout the State, but establishes district courts therein in accordance with a three-step schedule extending over a period of four years. Specifically, the Commission recommends that the District Court Division with all its districts be created immediately, but that district courts be established in only five or six districts. Since district court judges must be elected, it is proposed that the first districts be activated on December 1, 1966, following the general election of that year. The remaining districts are to be phased into the system either in December, 1968, or December, 1970. By pursuing a policy of gradual activation the Commission believes that transitional problems can be minimized, and that ample time will be

available to plan the administrative details incident to the establishment of a unified, State-supported court system.

Another problem confronting the Commission at the outset of its work was that of recommending district court boundaries. It was recognized that any proposal suggested would not be satisfactory to all. Several alternatives were considered, but it was finally determined, and is so recommended, that the geographic district court lines be coterminous with the present superior court judicial district lines. The Commission believes this to be far the best solution to the problem. There are several reasons for this belief.

In the first place it makes sense administratively for the two trial divisions of the General Court of Justice to have the same geographic boundaries. Secondly, the only certain way to insure full-time judges (another Commission recommendation) is to provide for multi-county districts. And finally, the present superior court judicial district lines have existed since 1955, and have proven to be satisfactory. The Commission feels strongly that it would be a serious mistake for the General Assembly to adopt any other districting arrangement.

Having made the basic decisions calling for gradual activation and coterminous superior and district court boundaries, the Commission concerned itself with the complex and varied problems associated with the creation and organization of the District Court Division. The remainder of this report outlines the major recommendations of the Commission as incorporated in its proposed legislation.

DISTRICT COURT JUDGES

Article IV, Section 8 of the Constitution provides that district judges shall be elected for each district court district, for terms of four years; that the General Assembly shall determine the number of judges per district; and that, when more than one judge is authorized for a district, the Chief Justice shall appoint one of them as chief judge. Vacancies in office are to be filled for the unexpired term, in a manner provided by law. Section 9 authorizes the Chief Justice to transfer district judges from one district to another for temporary or specialized duty. Within districts, the chief judge assigns himself and other district judges to duty, subject to the general supervision of the Chief Justice. Section 15 provides for removal of judges for misconduct or mental or physical incapacity. Section 21 provides that judges of existing recorder-type courts become judges of the district court, upon the establishment of a district court in their respective counties, and serve as such for the remainder of their respective terms.

Within this constitutional framework, the Commission had to make several important decisions. Perhaps the most important of these was the manner of election of judges. State ex rel. Meador v. Thomas, 205 N.C. 142 (1933), apparently permits an "election" by a board of county commissioners, or a similar body, as opposed to popular election by the qualified voters in the electoral district. The Commission felt, however, that it was the intention of the General Assembly, (and, presumably, of the people) in adopting the Constitutional amendment, that judges be elected by the qualified voters. The bill so provides.

One of the criticisms of our present system of lower courts has been that the judges were, for the most part, part-time officials whose primary interests lay in other directions, and who therefore could not bring to the office the required degree of career-minded professionalism. The Commission concurs in this feeling, and accordingly has recommended that judges of the district court serve full-time, with no other career interests competing for their time and attention. This means, for example, that lawyer-judges (and the Commission hopes that all judges will have legal training) will have to give up the private practice of law. To compensate for this loss of opportunity to earn income from other sources, the Commission has recommended that a district judge's salary be set at $15,000 per year. The Commission feels that high quality judges are the cornerstone of a high quality system of courts, and that compensation in the neighborhood of $15,000 is necessary to attract high caliber individuals to the office. The bill does not require that judges be attorneys, as this apparently can not be done under the Constitution.

In a further effort to ensure that only the most qualified candidates are elected to district judgeships, the Commission has provided for the participation, on a voluntary basis, of the district bar in the nominating and electing process. District bars are under a duty to make recommendations to the voters as to which candidate or candidates they recommend, prior to both the primary and the general election, but the failure of the bar to act does not affect the validity of the election. It is believed that potential candidates in whom the bar has confidence may be encouraged by this provision to seek the office of district court judge.

The district bar's opportunity to participate in the selection of judges extends to the filling of vacancies. The proposed bill provides

that vacancies in regular district judgeships shall be filled by appointment by the Governor, for the unexpired term, from nominees submitted by the local bar association. The bar must act within two weeks, however, or the Governor is free to proceed with the appointment.

While the necessity for removing judges from office (other than by defeat at the polls) seldom arises, the Commission felt it desirable to implement the Constitution by spelling out causes for removal, and providing for a removal procedure which would be fair both to the judge concerned and to the public. The causes for removal are generally those mentioned in G.S. 128-16 for judges and law enforcement officers, plus "mental or physical incapacity", mentioned in the Constitution. The power of removal rests solely in a regular superior court judge residing (or holding court) in the district judge's district, who may remove only after a formal, public hearing designed to meet the requirements of due process. Appeals to the Supreme Court are authorized.

When the district court is first established in any district, it is likely that there will be some lower court judges "holding over" as district court judges for the remainder of their respective terms, as provided in Sec. 21 of Article IV of the Constitution. The proposed bill provides that the Chief Judge may assign a holdover judge to such duties as he feels he is qualified to perform, and his salary, if necessary, will be adjusted accordingly, but no holdover judge shall receive less salary than he was receiving before he became a holdover judge. Vacancies in the office of holdover judge will not be filled. The Commission hopes that the most qualified judges currently serving our lower courts will run for office as regular district court judges. In any event, the problem of holdover judges, if it is a problem, will be eliminated in any district in

a matter of months, since the proposed bill also provides that the term of office of a lower court judge who takes office after the effective date of the proposed bill shall extend only until such time as the district court is activated in his particular county.

The Chief Judge of each district court district will have certain administrative responsibilities. He will schedule sessions of court for the trial of civil and criminal cases within his district, and assign himself and the other judges of his district to trial sessions. He will have power to assign civil cases under $300 in value to magistrates, and to specify the times and places at which magistrates will conduct judicial business. To the extent practicable, depending primarily on the number of judges in his district, he will arrange for judges to specialize in trials of cases by subject matter, i.e., domestic relations, traffic, etc. And finally, he will be responsible, together with the other chief judges in the state, for promulgating a list of traffic offenses for which magistrates and clerks of court will be authorized to accept waivers of appearance and guilty pleas. Sentencing in traffic offenses of all kinds will thus rest exclusively in the hands of the district judges (excluding the magistrates). This centralized authority in respect to traffic violations should contribute to uniformity and certainty in the handling of traffic offenders, and thus contribute to highway safety generally.

The numbers of district judges will be determined by the General Assembly, district by district. The Commission recommends that this number be not less than two (in several districts), nor more than six (in one district - the 26th, Mecklenburg County). The majority of districts will have three to four judges. When the amount of judicial business in

a particular district requires an additional judge, the General Assembly can consider setting the term of the additional judge to start in the election year between elections for the original quota of judges for that particular district, to achieve some degree of staggering of terms of judges within districts.

SPECIALIZATION BY JUDGES

Article IV of the Constitution provides that, below the level of the superior court, there shall be but one type of court: the district court. The district court is to be manned by district court judges. This system of courts and judges is to replace the present system of lower courts, including domsestic relations and juvenile courts. The Constitution makes no reference whatever to special types of cases being heard in special courts by special judges.

The Commission is aware of the advantages to be derived from permitting a certain degree of specialization among judges, to the end that special types of cases are decided by judges who bring a concentrated degree of professional expertise to the particular subject matter. Indeed, had the Commission been unaware of this, it would not long have remained so. The Commission has encountered at every turn widespread popular feeling, frequently evidenced in the press and by spokesmen for civic groups, that special courts for domestic relations matters, and for traffic cases, were an expected and highly desired development of the new system of district courts.

Within the limits of the Constitutional concept of a "district court" manned by "district court judges", the Commission has made every effort to provide for specialization. First, district lines have been prescribed which will call for more than one judge per district -- in fact, most districts will have three or more judges. This is the basic essential for specialization -- multi-judge districts. The chief district judge will be able to divide the subject matter of litigation into as many groupings as he has judges. This, of course, does not guarantee specialization, since in some districts geographic considerations and the number of seats of court may prevent or hamper the fullest exercise of specialization. However, the Commission has inserted a provision in the proposed bill concerning the duties of the chief district judge which directs that he permit specialization to the maximum extent practicable.

In some districts it may be desirable and practicable to supplement specialization by assignment, as explained above, by making it possible for certain judicial candidates to run for judgeships specifically designated in advance as specialized. The Commission has sought to make this possible by providing that, in a district with three or more judges, the chief district judge and the Administrative Officer of the Courts, acting jointly, can authorize the designation of specialist judge on the ballot. Under this procedure, a candidate who desired to be a specialist in domestic relations or traffic matters, for example, could run for such a judgeship rather than a general non-specialized judgeship. This has the advantage of permitting both candidate and voter to know in advance the type of judicial service to be rendered by the candidate. Such a judge, however, would still be available for general assignment as a regular district judge,

if and when not fully occupied with his speciality, so that no judicial manpower would be wasted.

In addition, to maximize the advantages of specialization in those urban areas where domestic relations and juvenile problems are most acute, the Commission recommends special assistance for judges sitting in this specialty. The proposed bill provides that the State may authorize (and pay) a quota of probation counselors in any district which has a county with over 100,000 population. In less populous districts, the county welfare director will continue to have the responsibility for furnishing assistance to the judge in this type of case.

Finally, the Commission recommends that jurisdiction over juveniles, now vested in most counties in the clerk of superior court, be transferred to the district court where it can receive the attention of a judge who, in most if not all cases, will have the advantage of special training and experience in juvenile matters.

While these measures fall short of guaranteeing treatment of domestic relations, juvenile, traffic or other specialized types of cases, by specialized judges, the Commission does not feel that any further steps to this end can be taken under the Constitution.

THE DISTRICT COURT PROSECUTOR

Article IV, Section 16, of the Constitution states that criminal actions in the district court shall be prosecuted in such manner as the General Assembly may prescribe by general law. This brief provision left the Court Commission free to design what it considers to be the most efficient system for the prosecution of criminal cases, without regard to

the present superior court solicitorial system. This is fortunate, since the Commission feels that the present disparity between superior court judicial and solicitorial district lines, and the "part-time" status of solicitors and assistant solicitors, are two features of the present system which should be avoided in the proposed system of district courts.

The Commission feels strongly that district lines should be the same for both district court judges and district court prosecutors, and has so recommended. In addition, the Commission feels that the office of prosecutor should be a full-time office, with the holder of the office forbidden to practice law privately on a part-time basis. Finally, the Commission feels that the duties of the office are primarily professional and non-political, and that a high degree of competence in such an office is best assured by appointment to this office by the senior regular resident superior court judge. The term of office is the same as that for the district judge - four years. For those districts in which the criminal case-load makes necessary a full-time assistant prosecutor, the General Assembly will so provide. In those districts in which a full-time assistant is not needed, part-time assistants on a per diem basis may be authorized by the Administrative Officer of the Courts.

To attract qualified attorneys to the office of prosecutor and full time assistant prosecutor, the Commission recommends salaries of $11,000 and $9,000 respectively.

The Commission believes that this system of full-time career prosecutors, selected by superior court judges highly qualified to know the requirements of the office, will produce an efficient, economical and responsible prosecutorial system. The Commission makes no recommendation

concerning the present superior court solicitorial system, other than a change in the statutes regarding assistant solicitors, discussed below.

SUPERIOR COURT ASSISTANT SOLICITORS

Since the Constitution (Article IV, Section 18) requires that the operating expenses of the Judicial Department be paid from State funds, and since all other officers of the General Court of Justice are to be paid by the State, the Commission felt it necessary and proper that assistant solicitors, when needed, should be a state, rather than county, responsibility. The Administrative Officer of the Courts will determine the need for assistants, by district or by county, and the period of time for which an assistant is required. Assistants will be part-time in all cases, since solicitors themselves are part-time. Counties are authorized to continue to furnish assistant solicitors if they see fit, on a purely voluntary basis.

Since solicitorial district lines are not the same as judicial or district court district lines, to reduce confusion this change should become effective on a statewide basis as soon as the district court is established in any district. At that time the present statutes (G.S. 7-43.1, -43.2, and -43.3) with respect to assistant solicitors should be repealed.

MAGISTRATES

Article IV, Section 8, of the Constitution provides, among other things, that "For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from

nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of ... Magistrates shall, from time to time, be determined by the General Assembly .... Vacancies in the office of Magistrate shall be filled, for the unexpired term, in the manner provided for original appointment to the office." Section 15 provides that the General Assembly shall provide by general law for the removal of magistrates for "misconduct or mental or physical incapacity." Section 19 prohibits the compensation of the magistrate being dependent on the outcome of the case or the collection of costs. Section 21 provides that justice of the peace courts are abolished in each county upon the establishment of the district court therein.

The evils of the present system of justice of the peace courts are known to all, and will not be catalogued here. The Commission is acutely aware that reform of this system was one of the main reasons for adoption of the Constitutional amendment. With this and the above-quoted constitutional requirements in mind, the Commission set out to design a system which would be dependable, inexpensive and convenient for litigants and law enforcement officers alike.

A system that meets all the foregoing requirements has not been easy to devise. In fact, no more difficult problem faced the Commission. Numerous plans were proposed, analyzed, and discarded. While the system finally approved is not as simple as the Commission would like, the Commission does not believe that an entirely satisfactory system, under the restrictions imposed by the Constitution and the demands of convenience, can be devised without some cumbersomeness.

First of all, the requirement that the General Assembly determine the number of magistrates imposed a condition which could not be met practically

without prescribing a number which would be uneconomically high. A minimum number - maximum number table was devised to solve this. If the minimum number prescribed for any county proves insufficient, the Administrative Office of the Courts, upon request of the chief district judge, may authorize an additional number from the maximum quota prescribed for that county.

The requirement that magistrates be convenient to warrant-seeking law enforcement officers means that magistrates will have to be located in many counties at places some distance from the county seat, and from each other. Some of these magistrates, it is recognized, will perform few functions other than the issuance of warrants, and hence will be employed only a fraction of the time. The solution to this problem called for a sliding pay scale for magistrates, with the actual compensation of a particular magistrate being set by the Administrative Office of the Courts, after consultation with the chief district judge. The pay scale has been set at $1200 to $6000, the latter figure being intended for the magistrate who is employed full time in the discharge of court business.

Four separate officials of the Judicial Department play inter-related roles in the appointment of a magistrate, setting his pay, and assigning certain of his duties. The roles of the clerk of superior court (nomination) and the senior resident regular superior court judge (appointment) are set out in the Constitution. Since the magistrate is an officer of the district court, it is only logical that the chief district judge should have a say in the assignment of certain trial functions to the magistrate. And since the State is responsible for the magistrate's salary, it is also only logical that a State agency - the Administrative Office of the Courts - should have some control over the salary scale established for magistrates within each county.

Once the General Assembly has prescribed the minimum quota of magistrates for a county, the chief judge must determine which of these authorized billets will be full-time and which will be part-time. He will then consult with the Administrative Office as to the appropriate salary for each magistracy. The Administrative Office, in turn, will notify the clerk of superior court of each county of the approved salary schedule for the magistrates of that county. The clerk then makes nominations for each magistracy, and the superior court judge makes the final appointment. Each nominee knows in advance the salary attached to the magistracy for which he is nominated. In practice, he will also probably know the geographic area of the county to which he is to be assigned, although this is not required by the proposed statute.

While this procedure may sound involved, it can be accomplished in fact in a short time by mutual cooperation of the officials concerned, and once established, should require only occasional adjustments throughout the years.

If the chief judge of a district finds that the minimum number of magistrates authorized for any county is insufficient, additional appointees from the maximum quota of magistrates for that particular county may be obtained in substantially the same manner as for the original appointments.

Magistrates may be removed from office for the same causes, and by substantially the same procedure, as district court judges.

With the birth of the magistrate, the justice of the peace is abolished. Certain civil, non-judicial functions now performed by justices of the peace must be transferred to some other official. The Commission recommends that these functions, the most important of which is the marriage ceremony, be given to the magistrate. Many of these functions, although still on the

statute books, are now obsolete, or nearly so, and the Commission believes that future studies will indicate that many of them can be abolished entirely, and the remainder transferred to various officials.

The authority of magistrates in civil and criminal actions is discussed in a later section on jurisdiction of the district court.

CLERK OF SUPERIOR COURT
CLERICAL FUNCTIONS OF THE DISTRICT COURT

While Article IV of the Constitution continues the office of clerk of superior court substantially as it has been, it makes no mention of a clerk of district court save for a single reference in the section providing for removal of certain officials: "Clerks of District Courts shall be removed for such causes and in such manner as the General Assembly may provide..."

The Commission does not feel that this passing reference is a constitutional mandate for a separate office and clerk of the district court. In fact, in the unanimous opinion of the Commission, a separate office and clerk for the district court would be a serious mistake. The Commission believes, in the interest of uniformity, economy, efficiency, and the convenience of all concerned that there should be but one office of consolidated records in each county for both the Superior Court and District Court Divisions of the unified General Court of Justice.

To achieve this desired objective, the Commission recommends that the clerical functions of the district court be assigned to the clerk of superior court as a part of the duties of his office. To put it another way, the office of clerk of superior court would simply be expanded in scope to include the clerical functions associated with both trial divisions of the General Court of Justice. The clerk's powers and authority, with respect

to matters in the district court, would be the same as they now are with respect to matters in the superior court. His record-keeping function would be enlarged to include matters within the purview of the district court. In civil actions, in most counties, this will involve very little actual change; in criminal actions, in some counties this will require the clerk to take over the record-keeping functions now performed by the recorder-type courts. In a few counties, the clerk will also, for the first time in recent years, maintain the records generated by the domestic relations court. (As explained elsewhere, it is recommended that the clerk's function as judge of juvenile court be transferred to the district court judge).

The clerk will also be given authority to accept waivers of trial and pleas of guilty to certain traffic offenses, in accordance with a list to be promulgated by the chief judge, and to issue warrants. In many counties of the State, the clerk in his ex officio capacity (as clerk of a lower court) already discharges these functions.

In those counties in which an additional seat of district court is authorized, the clerk will be required to maintain at the additional seat enough assistant and deputy clerks to process efficiently the judicial business to be discharged at such additional seat. Only the minimum required records will be kept at the additional seat, however; the central office at the county seat will remain the permanent depository of official records as before.

To compensate the clerk for his added clerical and administrative responsibilities, and to recognize his important judicial responsibilities, the Commission proposes a statewide salary schedule which in most cases will provide a sizeable increase in the clerk's salary. The office of clerk in North Carolina is an important one, but in some instances it has not

been properly recognized as such. By providing for a single, unified office of clerk in each county, and establishing a salary scale sufficient to attract highly qualified personnel, the Commission hopes to upgrade the office so that all those who deal with the courts will benefit.

An incidental effect of these proposals will be the elimination of the few remaining entirely-fee-compensated clerks. Also eliminated will be a considerable number of incidental fees, such as the inheritance tax report fee, which many clerks now receive in addition to their regular salaries.

Since the clerk will become a State officer, it will be possible to achieve uniformity in many non-discretionary aspects of the clerk's operations, both clerical and financial. Uniform forms and records will be prescribed by the Administrative Office of the Courts, and the Department of Administration will be authorized to prescribe uniform procedures for the handling of funds which come into the hands of the clerk.

CIVIL JURISDICTION OF THE VARIOUS DIVISIONS OF THE GENERAL COURT OF JUSTICE

The amended Judicial Article of the Constitution provides with respect to the allocation of subject matter jurisdiction to the various divisions of the General Court of Justice that: (1) the Supreme Court continues to possess its traditional general appellate jurisdiction, and its limited recommendatory original jurisdiction with respect to claims against the State; (2) the superior court possesses general original jurisdiction "except as otherwise provided by the General Assembly (3) the clerk of superior court possesses such jurisdiction and power as may be provided by the General Assembly by uniformly applicable general law; and (4) the district court and its magistrates possess such jurisdiction as may be provided by the General Assembly.

Collateral to these basic directives, but of great significance in the overall pattern of jurisdictional allocations, the Constitution further provides that: (1) the General Assembly may by general law provide for waiver by parties of such jurisdictional limits as may be provided in civil cases, and (2) in respect of appeals within the structure of the unified court, the General Assembly may by general law "provide a proper system of appeals," the only constitutional restriction on "proper system" being that appeals from magistrates shall be heard de novo, with right to jury trial.

These constitutional directives thus provided practically unlimited opportunity for policy decisions as to proper allocations of subject matter jurisdiction - both criminal and civil - between the two trial

divisions. Certain fairly clear guidelines controlled the ultimate decisions now reflected in the final draft. They may be summarized: (1) the Superior Court division must clearly remain that level of trial courts to which, in general, the cases of most importance, in terms of economic value, clearly foreseen complexity and general policy impact, must be channeled for original trial; (2) to the extent practicable, however, a considerable volume of civil litigation involving relatively smaller amounts in controversy, or matters of so stereotyped a pattern that they might quite satisfactorily be handled by district courts - perhaps under specialist judges - should be taken off the superior court dockets and channeled instead to the district courts; (3) the superior courts must likewise retain in relation to the new district courts their traditional appellate review powers in respect of cases tried originally in trial courts "inferior" to them; (4) whatever the allocation of civil action subject matter between the two trial divisions, a procedure for simple, expeditious transfer of causes between the divisions, either by waiver or by compulsion, must be provided to take advantage of the constitutional provision; (5) the traditional role of the clerk of superior court as a judicial officer, particularly with respect to probate, administration, and special proceedings, should be preserved because of ingrained custom, and because the system has generally worked quite well; and (6) the magistrate must be quite carefully and deliberately incorporated into the court structure as merely an officer of the District Court Division and not as a separate "court", given quite limited powers on both the civil and criminal side, and subjected to specific control of the chief district judge in the exercise of these powers. These general guidelines led

ultimately to the following proposals concerning civil jurisdiction, procedure and appeals.

Original Civil Jurisdiction. Here is proposed what may appear the most novel concept in the Commission's recommended legislation. But the novelty of concept makes possible an extremely functional approach to the channeling of civil case loads along the policy lines mentioned, freed from the traditional harsh consequences, from a jurisdictional standpoint, of getting into the "wrong" trial court. The basic concept adopted is that, excepting only matters in probate and the administration of decedents' estates, as to which exclusive original jurisdiction is vested in the Superior Court Division, both trial divisions possess concurrently the aggregate of original civil trial jurisdiction reposed in the General Court of Justice. Except in probate and administration of decedents' estates, either trial division may thus render a valid judgment in any civil matter of a justiciable nature presented to it. This is stated categorically in the proposed act. While there are administrative allocations of case loads between the divisions, it is made plain that these are purely administrative and not jurisdictional. While a party can insist as a matter of right upon following the allocation directed in a particular case, this right can be freely waived by consent or by failure within the appointed time to insist upon it. The utmost that can result from a violation of this "right" is a new trial, and this only in rare situations.

The basis device for allocation - deliberately chosen - is the amount in controversy. Such an allocation has in experience caused less of a problem in application than have allocations by subject matter, e.g., "contract, express or implied", "negligent infliction of injury to person, property or character", "involving title to a freehold", "equitable in

nature", etc. Furthermore, amount in controversy pertains most directly to the basic functional dividing line used by litigants and lawyers in assigning relative importance to cases - monetary value. After considerable discussion ranging over a wide variety of considerations, this basic dividing line was set at $5,000. To assist in administering this amount in controversy allocation, a fairly detailed set of rules, reflecting much judicial experience with amount in controversy allocations, is provided in the suggested statutes.

Pure subject matter allocations are used only when there seemed to the Commission to be an overriding policy requirement for channelling cases by subject matter, rather than monetary value, to one or the other of the trial divisions. Some were deemed necessary. Thus, to the Superior Court Division are allocated (in addition to the jurisdictional allocation of matters in probate and administration of decedents' estates) the following:

(a) Actions to enforce or declare statutory or constitutional rights, or to invalidate such asserted rights. Such cases are likely to involve substantial issues requiring ultimate decision by the Supreme Court. The sooner such ultimate decisions can be had, the better, and final decision will normally be speeded by allocating such cases originally to the Superior Court Division. Furthermore, attempts to evaluate this type case in monetary terms is extremely difficult, and sometimes impossible.

(b) Special proceedings and proceedings relating to the administration of guardian's and trustee's estates. There are well established procedures involving original handling by the clerk of superior court in these matters which dictate that their disposition in the superior court be continued, without regard to the amount in controversy. Indeed, by their

very nature there may be no true amount "in controversy" in connection with their disposition.

(c) Mandamus and quo warranto. These two extraordinary remedies were formerly obtained by special petition and prerogative writ, but are now obtainable by special statutory procedures in the nature of the procedure in civil actions generally. They customarily involve substantial public policy issues whose determination by the Supreme Court as speedily as possible is desirable, and they are quite difficult if not impossible to evaluate in monetary terms.

(d) Condemnation actions and proceedings. Although the general condemnation proceeding under Chapter 40 of the General Statutes is by definition a special proceeding, so that there is some overlap between this allocation and that pertaining to special proceedings in general, this specific allocation was deemed necessary. First, the very determination of amount in controversy is the gist of this type proceeding. Hence, preliminary procedural determinations of proper forum based on amount in controversy might well prejudice determination on the merits. Next, although there is now a wide variety of condemnation procedures - several provided by general statutes, and many more by municipal ordinances - each typically provides a preliminary administrative-type appraisal procedure prior to the raising of justiciable issues for the courts. These procedures, some denominated "proceedings", some "actions", all contemplate eventual trial in the superior court if the administrative appraisal procedure does not result in a confirmed award. It was deemed wise to continue the superior court as the point of access into the court system in all condemnation cases.

(e) Corporate receiverships. These proceedings are likely to be most difficult to evaluate in monetary terms. Their very nature portends complexity and the need for experienced judicial supervision. For these reasons, they are allocated, without regard to amount in controversy, to the Superior Court Division. This allocation, however, has to do only with corporate receiverships - where receivership itself is the principal remedy sought. It has nothing to do with receivership as a provisional remedy. This is available in the district courts, as in the superior courts, as ancillary relief in a principal action pending in that court.

(f) Review of administrative agency determinations. A variety of procedures - certiorari, mandamus, and special statutory review proceedings - exist by which review may be had of administrative agency determinations. Although review is involved, these proceedings are actually original so far as the court system itself is concerned. Indeed the prescribed procedures are original in tone. Consequently, it was deemed wise to make a direct allocation of these as original proceedings to the Superior Court Division to avoid any possible confusion.

Only one subject matter category is allocated to the District Court Division, but it is a critical one - domestic relations cases of a civil nature. This reflects a basic policy decision to relieve the superior courts of a vast amount of time consuming litigation of this type which it is believed can be handled quite satisfactorily in the district courts - perhaps in many districts by specialist judges.

Two final comments about this approach to allocations of original civil jurisdiction should be made. First, although there may be occasional difficulties in determining proper forum in borderline cases - whether amount in controversy or subject matter allocation is controlling - an

erroneous determination will not be fatal to a resulting judgment. Thus, in actuality, there are no possible loopholes in jurisdictional allocation. For if the case is one of a justiciable nature in the courts of the state generally, a judgment entered in either of the trial divisions will be valid so far as questions of subject matter jurisdiction are concerned.

Second, these jurisdictional allocations make no direct change in existing civil procedure. They do necessitate writing in some new procedures to effectuate the provisions for waiver and transfer between divisions, but they change nothing in existing procedure for the trial of actions and proceedings. A civil action to recover property damages of $4,000 will be tried in the district court (unless proper forum is waived) according to the same procedure that would be used in superior court. The allocations by subject matter carefully state that the type action or proceding allocated is to be tried "according to the practice and procedure provided by law for the particular proceeding". This means that a special proceeding, though allocated directly to the Superior Court Division without specific mention of the clerk of superior court, will nevertheless typically be heard in the first instance before the clerk as an officer of that division, and that the clerk will continue, if an issue of fact is raised, to follow the procedure now prescribed of transferring the proceeding to the civil issue docket of the superior court. Again, if review of a state administrative agency determination is sought, under the statutory review procedure provided in Chapter 143 of the General Statutes, the procedure there set out providing for proceeding by petition in the Superior Court of Wake County, will be followed. This is so notwithstanding the jurisdictional allocation is in terms to the

Superior Court Division, without mention specifically of the particular Superior Court of Wake County.

Small Claims Actions. The magistrate as an officer of the district court could theoretically be given power to exercise all or any portion of the civil jurisdiction properly exercisable by the District Court. The Commission approached the problem of how much, if any, he should actually be given with several guiding principles in mind. First, some provision must be made in the new court structure for the continued discharge of that essential service traditionally performed, albeit with varying degrees of competence, by the justice of the peace - the speedy, relatively informal disposition of the typical small civil claim, usually on a merchant's account. Second, in handling small civil claims the magistrate must not act as a separate court, issuing his own process, entering and keeping his own judgment records, and being only loosely accountable for his activities. But, at the same time, a summary procedure must be devised for the small claim, to insure faster and more informal disposition than would usually be possible in prosecuting a civil action in the district court under the usual procedure. Finally, provisions must be made for close administrative supervision of the magistrate's exercise of these powers, both in terms of original assignment of cases to him and in terms of the maintenance of central records of his activities. The Commission's proposal, worked out with these principal considerations in mind, can be summarized as follows:

(a) The magistrate can, if a plaintiff requests assignment of the claim and if the chief district judge does then assign it, hear and determine civil cases involving claims for monetary relief, or for recovery of

personal property, or for summary ejectment, when the amount in controversy does not exceed $300, and when all the defendants reside in the magistrate's county.

(b) Assignment may be by specific order in the particular case or, as is more probable, by general rule laid down by the chief district judge.

(c) Small claim actions are filed as are civil actions generally, and if not assigned, are thereafter treated as any other civil action. If assigned however, a summary proceeding in terms of the pleadings required, the time for hearing, and other procedure, is set in motion. Simple complaint forms are provided. The judgment rendered by a magistrate in an assigned action is a judgment of the district court, and is so entered, docketed and indexed by the clerk.

(d) Appeal lies of right from the magistrate, for trial de novo before a district judge with a jury, unless waived.

It is the Commission's hope that this procedure will give results in the great majority of cases satisfactory to both parties, and that a considerable volume of small civil litigation will thereby be disposed of without appeal.

Clerical Processing of Civil Causes in the Trial Divisions. Basic to the operation of the unified court system in the Commission's plan is the use of a unified clerk's office to give clerical and administrative support to both trial divisions. This duty falls upon the clerk of superior court. There is no clerk of the district court as such, and no separate clerk's office for that court. This will allow all actions and proceedings to be commenced by normal procedures in the office of the clerk of superior court, and the proposed legislation so provides. The party instituting the cause is directed simply to designate on his

originating paper (typically, but not necessarily, the complaint) the division which he considers the proper one for disposition of the cause. The clerk makes no determination of propriety of forum, but merely follows the designation. The cause is then retained in that division for complete disposition unless the transfer procedures are invoked to raise the question of propriety of forum. If not raised within a stated period, all objections to forum (except in probate and administration of decedents' estates) are waived. A detailed procedure by which a party may move for transfer of the cause from the division designated is provided, as is a procedure for expeditious determination of the motion. Since the action has in any event been properly commenced in the General Court of Justice, there need be no delay in its orderly progress through the pre-trial stage while proper forum for trial is being determined. The clerk responds to rulings on transfer by retaining the matter on the docket of the court originally designated, or transferring it to the docket of the court of the other division.

The Commission feels that the transfer procedure necessarily built into the new system will be found simple in operation despite the fairly detailed statutory directives utilized to prescribe its operation. In the vast majority of cases there will be no invoking of the mechanism because propriety of the designated forum will be obvious and agreed upon from the outset.

Civil Appeals from the District Court. The Commission proposes appeals of right by parties aggrieved to the superior court from all judgments and orders of the district court which are appealable under existing practice from the superior court to the Supreme Court. The superior court will review for errors of law or legal inference. From

the superior court judgment after review, appeal will lie of right to the Supreme Court only when a determinative question under the State or Federal Constitution is involved, or when the superior court judge certifies the case as one of such importance as to require determination by the Supreme Court. Review in any other case will be upon leave granted by the Supreme Court on petition for certiorari only.

A greatly simplified appellate procedure from district court to superior court is provided. Comprehensive rules governing the procedure are set out. Main features of this procedure are: (1) ordinarily, the record on appeal consists merely of the original papers filed in the case plus the transcript of designated portions thereof; (2) the record on appeal may be a summary agreed statement of the matters for review; (3) assignments of error, directly related to formal exceptions, are not used to define the scope of review. Rather, the issues for review are noted in written briefs, which are the only papers actually required to be prepared by counsel to prosecute an appeal, other than the notice of appeal itself.

It is the Commission's hope that this approach will relieve the Supreme Court of some of its present tremendous appellate review burden by stopping appeals in all but the most important cases at the superior court level and that the simplified procedure provided, reflecting the best of recent attempts to provide fair yet expeditious appeals, will be popular with bench and bar.

CRIMINAL JURISDICTION
IN THE SUPERIOR AND DISTRICT COURTS

Article IV, Sec. 10 provides that the superior court is the court of original general jurisdiction, except as otherwise provided by the General Assembly, and that the jurisdiction and powers of the district court and the magistrate shall be prescribed by the General Assembly.

The Commission felt that there was no reason to make any major changes in the system currently in use in most counties for the disposition of criminal cases, except at the justice of the peace level. Specifically, indictment by grand jury and trial by petty jury, in felony cases, will remain the exclusive province of the superior court. The district court will have exclusive, original jurisdiction over misdemeanors, however, except that the superior court will have jurisdiction to try a misdemeanor which originated in the superior court on a felony indictment or on a felony information as to which indictment has been properly waived. Preliminary hearings in felony cases will be conducted by the district judge; in misdemeanor cases, the magistrate may conduct the hearing. There will be no criminal jury in the district court. A jury will be available only after trial, on appeal to Superior Court.

Magistrates will have the traditional justice of the peace criminal jurisdiction over offenses for which the maximum punishment cannot exceed a fine of $50, or confinement for over 30 days, with two exceptions: not guilty plea cases must be tried before the district judge, and the magistrate has no discretion as to the sentence in any traffic case, this being the exclusive prerogative of the judge. In traffic cases, the magistrate will

accept guilty pleas and impose a pre-set fine and costs only in those cases in which the chief judge has specifically so provided in advance by standing order. The magistrate will also be able to issue arrest warrants valid throughout the State and search warrants valid throughout the county, and to grant bail prior to trial, except in capital cases.

Magistrates will be compensated entirely by a salary, paid by the State, and no part of the costs collected in any case, regardless of its outcome, will be retained by them.

The warrant issuing function of the magistrate is likely to be an important one. At present in many localities police desk officers and similar law enforcement officials issue arrest warrants and set bail. This is a practice of increasingly doubtful constitutionality. The Commission recommends that these functions be assigned exclusively to judicial officers, that is, magistrates (primarily), and clerks and judges. Law enforcement officers will be prohibited from exercising these functions in districts in which the district court is established.

COURT REPORTING IN THE SUPERIOR AND DISTRICT COURTS

In making its recommendations concerning the reporting of trials in the superior and district courts, the Commission has been influenced by two competing considerations. The first of these was a realization of a shortage - apparently growing - of competent reporters. Second was the conviction that the district court should have a jury in civil cases, with appeals on the record - an arrangement which may well double the demand for reporters.

In an effort to solve these bottlenecks, the Commission has investigated in some depth the latest electronic equipment for recording and transcribing courtroom testimony. Demonstrations by the leading manufacturers of this equipment were requested, and reports on the use of this equipment in other states were studied. Two live jury trials were recorded for the Commission, with excellent results. The Commission is of the opinion that the latest electronic recording equipment is reliable, efficient, and reasonable in cost. Nevertheless, the Commission also recognizes that competent court reporters are superior to electronic reporting methods.

Accordingly, the Commission recommends that court reporters be utilized, if available, for the reporting of trials in the superior and district courts. If a court reporter is not available in any particular county, upon request of the senior regular resident superior court judge, or the chief district judge, as the case may be, electronic recording equipment will be supplied by the State. When such equipment is employed, the clerk will ordinarily be responsible for operating it, and for preserving the record thus produced.

When reporters are used, the senior regular resident superior court judge will appoint them in each district for the superior court, and the chief district judge for the district court. A reporter's salary (or per diem) will be set by the same judges, within limits prescribed by the Administrative Office of the Courts, and paid by the State.

REVENUES AND EXPENSES OF THE JUDICIAL DEPARTMENT

Section 18 of Article IV, entitled "Revenues and expenses of the judicial department," reads as follows:

> "The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds."

Fines and forfeitures have not been affected by the new judicial Article. They continue to be applied in the counties for the support of public schools, under the provisions of Section 5, Article IX, of the Constitution.

The Commission at the outset of its discussion of court finances was confronted with this question: How much of the operating expenses of the judicial department should be borne by litigants? Obviously, the Constitution did not require the system to be self-supporting, for it merely provides that "operating expenses of the judicial department . . . shall be paid from State funds." It could easily have provided that operating expenses be paid from court costs and fees. The Commission rejected the idea that revenues from costs and fees should be sufficient to meet operating expenses of the new court system, especially since fines and forfeitures would continue to accrue to the support of public schools and could not be used to support the courts. Instead the Commission adopted the premise that litigants should bear the major share of operating expenses, but that the costs of court should not be prohibitive. The costs recommended, as set forth in the next section of this report,

do not differ markedly from the present state-wide average of costs chargeable in the existing court system, under like conditions. The Commission feels that these amounts should be subject to periodic re-examination by the General Assembly.

Having decided that litigants should not bear the total cost of court operations, the Commission was then faced with the question of how to finance that portion which would remain the responsibility of government. On this issue the Constitution itself speaks: "The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds."

The simplest way to comply with this Constitutional mandate was to provide that the State would fix and pay the salaries of all court personnel. Under the proposed system, the salaries of judges, solicitors and their assistants, prosecutors and their assistants, clerks of superior court, and magistrates (within a range which can provide for variation depending upon the duties to be performed) will be determined by the General Assembly. The Administrative Officer of the Courts will fix the salaries of court reporters, employees of the clerks of superior court (after consultation with county commissioners and with due regard to the salary levels and the economic situation in each county), and probation counselors in those districts which have a special probation staff for juvenile matters. Other current expenses will also be paid from appropriations made by the General Assembly. These include juror and witness fees, necessary travel expenses of Judicial Department personnel, and the office expenses of the Administrative Office of the Courts and the clerks of superior court.

The major burden of these expenses will be offset by court related revenues. A General Court of Justice fee will be charged in each case or proceeding, and remitted to the State, and the special fees of magistrates and miscellaneous fees of clerks of superior court will also accrue to the State. These fees are discussed in detail in the following section, and will go far to offset the operating expenses imposed upon the State.

The Commission recognizes that counties will continue to provide certain services to the courts. Certainly there is no reason for the State to build new facilities for the use of the courts, when such facilities already exist in each county. It is therefore appropriate to allocate a portion of court costs to the counties, or to municipalities when appropriate, to be used for providing and maintaining adequate courtroom and related judicial facilities. A "facilities fee," therefore, will be charged in each case, and remitted to the local government providing the facilities.

Jails are essential to proper law enforcement, but they are not under the control or operation of the courts. Sheriffs and other peace officers are essential, but they are not judicial officers. Provisions have been made for jail fees, arrest fees, and process fees to help meet the costs of these activities. They will be remitted to the local governments whose facilities or officers provide the service, to help in meeting the total cost of jail and law enforcement operations.

UNIFORM COSTS AND FEES

In no facet of the State's entire judicial system does the Commission find as much confusion, uncertainty, and inefficiency as in the field of costs. At present, there are wide disparities from county to county, both in the way in which costs and fees are fixed and in the amounts of the costs and fees. Some counties still rely on the general law enacted more than a century ago, others rely on special acts for their particular county, and others rely on special acts authorizing county commissioners to set fees. In many counties, costs and fees are set in all three ways. Some justices of the peace have simply charged fees by "tradition," with no awareness of statutory authority at all. The costs and fees which result range from inadequate to excessive.

The fee system itself is a carry-over from the days when officers were compensated entirely by fees. The amount of time and effort involved in performing a traditional service was a logical basis for setting the fee, and as new duties were added new fees were added. Even when officers were put on the county payroll, with fees then going to the county treasury, the fees continued so that the officer could prove to the county commissioners that he was "paying his way."

As a result of this system, the items for which fees are charged continues to expand, the amounts of the fees continue to increase, and the system becomes increasingly cumbersome and confusing. In some counties, the superior court fee bill alone runs to twenty or more printed pages, itemizing interminably dime, quarter, 50-cent, dollar, and greater

items. Often neither lawyer, litigant, nor clerk can readily ascertain the costs in a particular action or proceeding.

Two major considerations underlie the Commission's recommendations concerning costs and fees. The first, of course, is the Constitutional requirement of "a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice." The second is the advisability and desirability of simplifying the existing piecemeal basis of computing court costs.

Reference was made in the preceding section to the Commission's conclusion that total charges in a particular case or proceeding should not vary greatly from present State-wide averages. It was then a relatively simple matter to lump together the various small fees which now exist. A General Court of Justice fee will thus be assessed in every action or proceeding. Generally this fee is a flat sum, increasing with the level of the court hearing the case or proceeding, except that in special proceedings and estate matters the fee will be assessed in part on a traditional basis of the value of the property involved.

The "facilities fee," also a fixed amount in each case, will also be levied. It will be returned to the local government providing the facilities in the particular case.

In the criminal costs bill, the Commission found it desirable to include two additional fees to be uniformly chargeable in each case. A $2 law enforcement officer's fee is imposed for each arrest or personal service of criminal process, to accrue to the benefit of the city or county whose officer performs the service. (When the State Highway Patrol makes the arrest, the fee will continue to go to the county as currently provided by G.S. 20-193). A $3 Law Enforcement Officer's Benefit and

Retirement Fund fee is imposed; this covers the present $2 for retirement benefits and adds an additional $1 to replace the benefits often provided through local benefit funds. (A separate bill, amending G.S. 143-166, is recommended for this latter purpose).

There are a number of other services involved in particular types of cases that litigants should be asked to bear, but they will be assessable or recoverable only when the expense is actually incurred. These include witness fees, process fees, jail fees, appellate transcript fees, counsel fees, and fees for commissioners, guardians ad litem, and other similar court appointees.

Table "A", accompanying this report, sets forth the specific costs in any action or proceeding. If a particular fee in a particular circumstance proves to be excessive or inadequate, it can be readily adjusted. For example, if experience proves that the facilities fee is set too low to adequately compensate the counties and municipalities for the use of their facilities, it can be adjusted upwards; if it proves to be more than adequate, there is provision in the bill for the use of surplus, under certain conditions, for other court-related expenses.

With respect to jurors, the Commission recommends a uniform compensation of $7 per day, plus mileage. While this will mean a small decrease in juror compensation in some counties, it will constitute a sizeable increase in many others. The Commission believes that juror taxes now charged usually represent a small percentage of the actual cost of a jury, and if the total jury cost were charged against a party, requests for jury trial might be dependent on ability to pay and the cost would be prohibitive in many cases. The State will therefore bear the entire cost of jurors.

The Commission recommends that witnesses be paid in all criminal cases, at a rate of $3 per day, plus mileage. The clerk will pay the witnesses, and the amount disbursed will be added in the bill of costs. If the defendant is not liable, the State will bear the expense.

A short, five-item fee bill is proposed for those civil or quasi-judicial functions which will be performed by magistrates. And there is a brief miscellaneous fee bill for services performed by clerks of superior court, which are not ordinarily a part of an action or a proceeding. All of these fees will be remitted to the State.

A uniform civil process fee section is also included in the bill. It provides uniform fees for the service of process and other miscellaneous matters handled by the sheriff. A jail fee of $2 is also included, to partially defray the cost of jail operation.

The Commission recognizes that no costs system can be free from some complexities. The uniform schedules proposed will, however, reduce complexities to an absolute minimum. The system will be easier to understand and administer, and it will result in much time-saving for clerks, litigants, witnesses, jurors, lawyers, and auditors alike.

The Commission acknowledges with appreciation the extensive help of a committee of the Association of Clerks of Superior Court in arriving at its basic schedules. The sheriffs' proposed fee schedule follows closely the recommendations of a committee of the Sheriffs' Association.

We believe that these recommendations involving the revenues and expenses of the judicial department are consistent with the Constitutional mandate. They will provide uniform costs and fees, in as simple a fashion as possible, given the wide variety and complexities of the operation of the judicial system.

State responsibility will not impose a heavy burden on the State. There is no way to forecast accurately what the cost and what the revenues will be, however. Much will depend, of course, upon the use to which the system is put by litigants and lawyers. Moreover, the schedule for establishing the district courts means that the total burden will be absorbed gradually. Only the Administrative Office of the Courts will be in operation during all of the coming biennium, and those district courts established in December of 1966 will be in operation for only 7 of the 24 months of the coming biennium.

The Commission will offer an appropriation bill to provide for the operations of the General Court of Justice. This bill, we anticipate, will not involve more than $1 million for the coming biennium, and a substantial part of this will be offset by anticipated revenues from court costs.

THE ADMINISTRATIVE OFFICE OF THE COURTS

Article IV, Section 13, of the Constitution states that "The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article."

In the last 25 years, over 30 of the States have established an administrative office of the courts. The head of this office, usually called an Administrator or Director, is, as the name implies, an administrative officer. He is <u>not</u> a judge; he has <u>no</u> judicial functions. He is a career housekeeping officer, relieving the judges of a variety of tasks of a purely non-judicial, ministerial nature. The duties most frequently assigned to an administrative office in other states are to collect

statistics concerning the work of the courts, recommend assignments of trial judges to the Chief Justice, prepare and supervise the budget of the Judicial Department, procure supplies and equipment for the judiciary, and generally take care of the routine, business details of the courts in order that the judges may devote their full time to the handling of litigation.

North Carolina has had an office of Administrative Assistant to the Chief Justice since 1951. This office is concerned with a few of the details usually assigned to an administrative office of the courts, such as the collection of caseload statistics, and assisting the Chief Justice in assignments of superior court judges and scheduling sessions of superior court, but it does not have under present law sufficient authority to perform the duties which will devolve upon an administrative office under the new Judicial Article of the Constitution. The proposed bill will, in effect, expand and supersede this office and absorb its duties.

The Commission recommends that the Chief Justice appoint the Director of the Administrative Office of the Courts to serve at his pleasure. This is the accepted method, in the majority of states, the Chief Justice being the titular head of the Judicial Department, and responsible (in the popular mind, whether correctly so or not) for the proper administration of justice. The Director's annual salary is recommended to be $19,500, with the retirement benefits of a superior court judge. The Director is thus established on a professional level just below the Supreme Court, on the level of the Superior Court judges, with whom he will have frequent, close contact. An atmosphere of mutual respect between these judges and the Director is essential to the success of the concept of an Administrative Office of the Courts. The Director will have an Assistant Director,

and such other assistants as he may need to carry out the functions assigned to him by law.

In addition to the duties previously mentioned as being normally within the purview of an administrative office, the Commission proposes that the Director be responsible for approving the need for part-time assistant solicitors and assistant prosecutors, and for additional magistrates in any county when the minimum quota proves to be inadequate. He will also set pay scales, on a statewide basis, after consultation with local officials, for clerks and their office personnel, and for reporters, and (individually) for magistrates. After consultation with the clerks, he will prescribe standardized forms and methods for transacting the routine business of the clerk's office, in an effort to promote efficiency and uniformity. Finally, he will be charged with studying, on a continuing basis, the operations of the trial divisions of the General Court of Justice, and making recommendations from time to time to the General Assembly with a view to improving the efficient administration of justice.

AREAS OF THE JUDICIAL SYSTEM UNAFFECTED BY CURRENT PROPOSALS

It may be helpful, in conclusion, to point out certain areas of our present system of administration of justice which will remain unaffected, or substantially so, by the present recommendations of the Commission. These areas include Supreme and superior court practice generally, civil and criminal procedure generally, the grand and petit jury system, the superior court solicitorial system, the defense of indigents, bail-bond procedures, and jurisdiction over juvenile offenders.

While some of these subjects may need study and adjustment to fit more efficiently within the three-division General Court of Justice, they are matters for future consideration. The Commission has limited its recommendations for the next biennium to the changes necessary to provide an operational framework for the District Court Division. Supplementary recommendations as needed to fully implement Article IV of the Constitution will be based on a study of the experience to be gained from effecting the initial proposals recommended in this report.

CONCLUSION

No Commission, however knowledgeable, could ever devise a plan of implementation satisfactory in all respects to everyone interested in the administration of justice. Indeed, the Commission has not attempted to follow such a course. Its goal has been to create a court system, within the constitutional framework, which will adequately meet the needs of the people of North Carolina. To accomplish this goal, some new concepts and innovations have been introduced. Yet, for the most part the legislative proposals of the Commission are rooted in and closely aligned with the structure, organization, practice and procedure of our existing system. Moreover, it is believed the proposals provide the necessary flexibility of operation required to meet the needs of a particular area, while at the same time achieving a desired degree of uniformity. Time and experience under a new system will tell when change and improvement is needed.

Finally, it must be said that the Commission has been motivated in its work by a dedicated desire to create a truly excellent system of

district courts. The people of North Carolina deserve only the best. An effort has been made not to short-change them.

The phrase "equal justice under the law" is frequently alluded to. It is a lofty though unobtainable standard of excellence for any judicial system. The Commission fervently hopes and believes, however, that its recommendations, when enacted into law, will provide a court system where this noble standard may be allowed to flourish to the fullest extent.

Because of other commitments, Mr. A. D. Folger, Jr., a Commission member, was unable to participate except to a limited extent in the deliberations of the Commission.

General Court of Justice - Superior Court and District Court Divisions
Uniform Costs and Fees Bill

I. Uniform Costs and Fees:	Criminal Action	Civil Action	Special Proceedings	Estates
Law Enforcement (to county or city)	M - $2 DC - 2 SC - 2	Not applicable	Not applicable	Not applicable
Facilities (to county or city)	M - $2 DC - 2 SC - 15	M - $2 DC - 5 SC - 5	SC (CSC) - $2	SC (CSC) - $2
LEOB & RF (to State)	M - $3 DC - 3 SC - 3	Not applicable	Not applicable	Not applicable
General Court of Justice (to State)	M - $8 DC - 8 SC - 20	M - $3-6 DC - 3-6-10 SC - 20	SC (CSC) - $13 plus $.20 per $100 valuation of land not to exceed a maximum additional cost of $100	SC (CSC) - $8 plus $.10 per $100 valuation of personal property, limit $1,000

The General Court of Justice and Facilities fee are payable in advance (except in civil actions in forma pauperis). In special Proceedings and Estates, $13 and $8, respectively, of the GCJ fee are payable in advance.

Costs on appeal are cumulative.

Basic Costs and Fees:	Mag	DC	SC
Criminal Action	$15	$15	$40
Civil Action	$5-8	$8-15	$25

II. Additional expenses:	Criminal Action	Civil Action	Special Proceedings	Estates
1. Witness fees	$3 per day plus mileage round trip each day	Same as in criminal	Same as in criminal	Same as in criminal
2. Expert witness fees	As provided by law	As provided by law	As provided by law	As provided by law
3. Counsel fees	As provided by law	As provided by law	As provided by law	As provided by law
4. Cost on appeal to Super. Ct., transcript of testimony	As provided by law	As provided by law	As provided by law	As provided by law
5. Fees for personal service of civil process	Not applicable	As provided by law	As provided by law	As provided by law
6. Fees of guardians ad litem, next friends, referees, etc.	Not applicable	As provided by law	As provided by law	As provided by law
7. Special jury fee	Not applicable	Not applicable	$2 per juror	Not applicable
8. Jail Fee	$2 per day	$2 per day	Not applicable	Not applicable

Miscellaneous GCJ Fees and Commissions, (to State)

(a) Commitment of the mentally ill, etc., $10.
(b) Foreclosure, $10.
(c) Inventory of safe deposits, $5.
(d) Proceeding supplemental to execution, $5.
(e) Confession of judgment. $4.
(f) Taking a deposition, $3.
(g) Registration of professional and technical persons, $2.
(h) Execution, $2.
(i) Notice of resumption of maiden name, $2.
(j) Taking an acknowledgment or administering an oath, or both, with or without seal, each certificate, $1.
(k) Bond, taking justification or approving, $1.
(l) Certificate, with seal, $1.
(m) Recording or docketing (including indexing) any document, per page or fraction thereof, $1.
(n) Preparation of copies, including transcripts, per page or fraction thereof, $1.
(o) Substitution of trustee, $1.
(p) Issuing pistol permit, $1.
(q) Probate of any instrument. $.50.
(r) 3% commission on G.S. 2-53 and G.S. 28-68 funds.

Above chargeable only when not part of another fee bill. When two or more items involved, charge is for greater only.