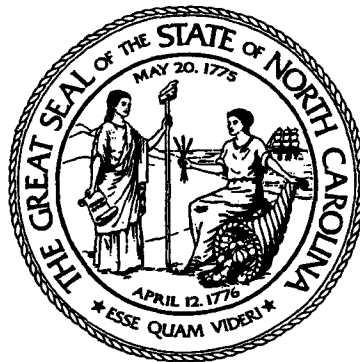


LEGISLATIVE RESEARCH COMMISSION

FUTURE OF THE COURTS



**REPORT TO THE
1998 SESSION OF THE
1997 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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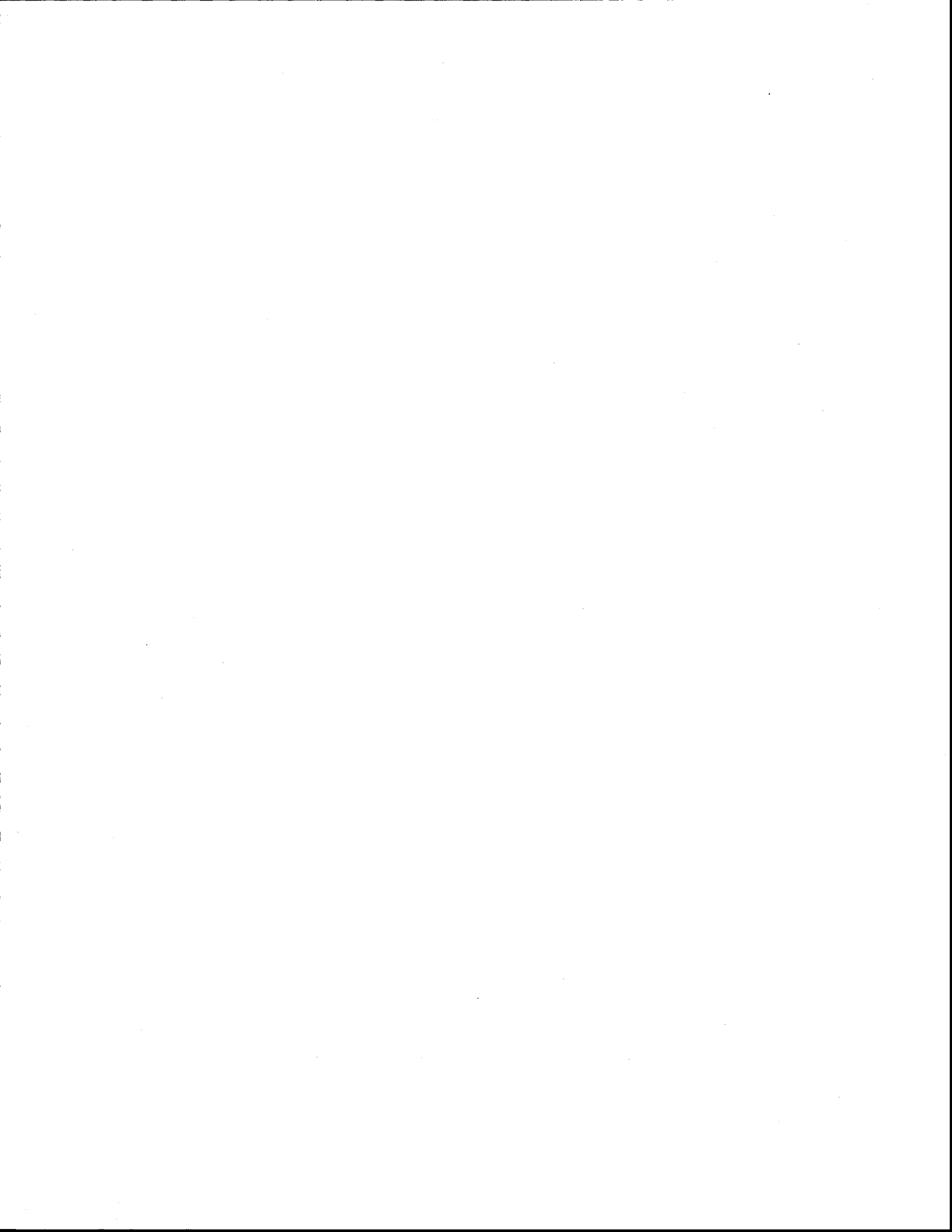
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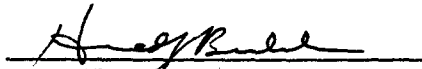
STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27601-1096


May 11, 1998

TO THE MEMBERS OF THE 1997 GENERAL ASSEMBLY (REGULAR SESSION 1998):

The Legislative Research Commission herewith submits to you for your consideration its INTERIM report on Future of the Courts Recommendations. The report was prepared by the Legislative Research Commission's Committee on Future of the Courts pursuant to G.S. 120-30.17(1).

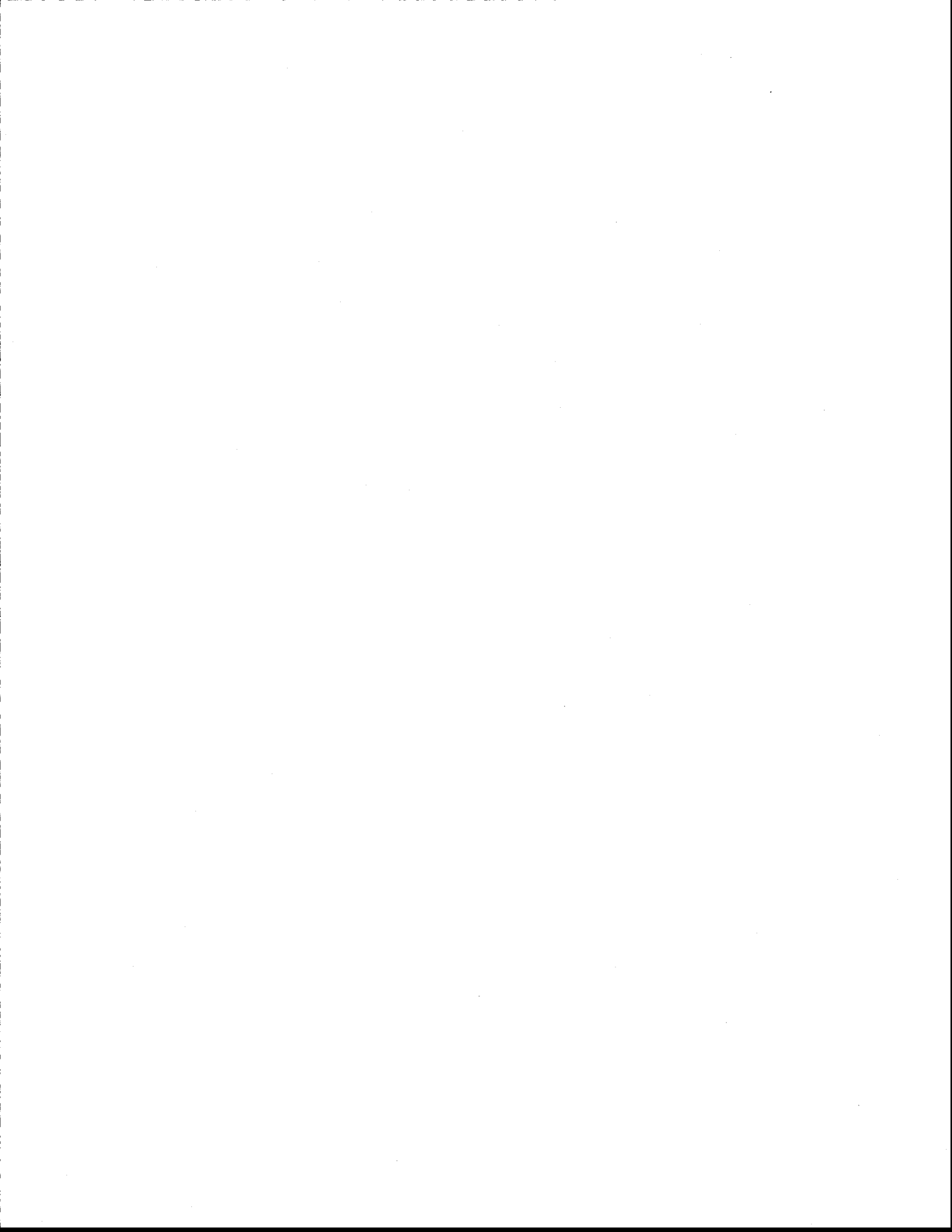
Respectfully submitted,


Harold J. Brubaker
Speaker of the House


Marc Basnight
President Pro Tempore

Cochair
Legislative Research Commission





1997-1999

LEGISLATIVE RESEARCH COMMISSION

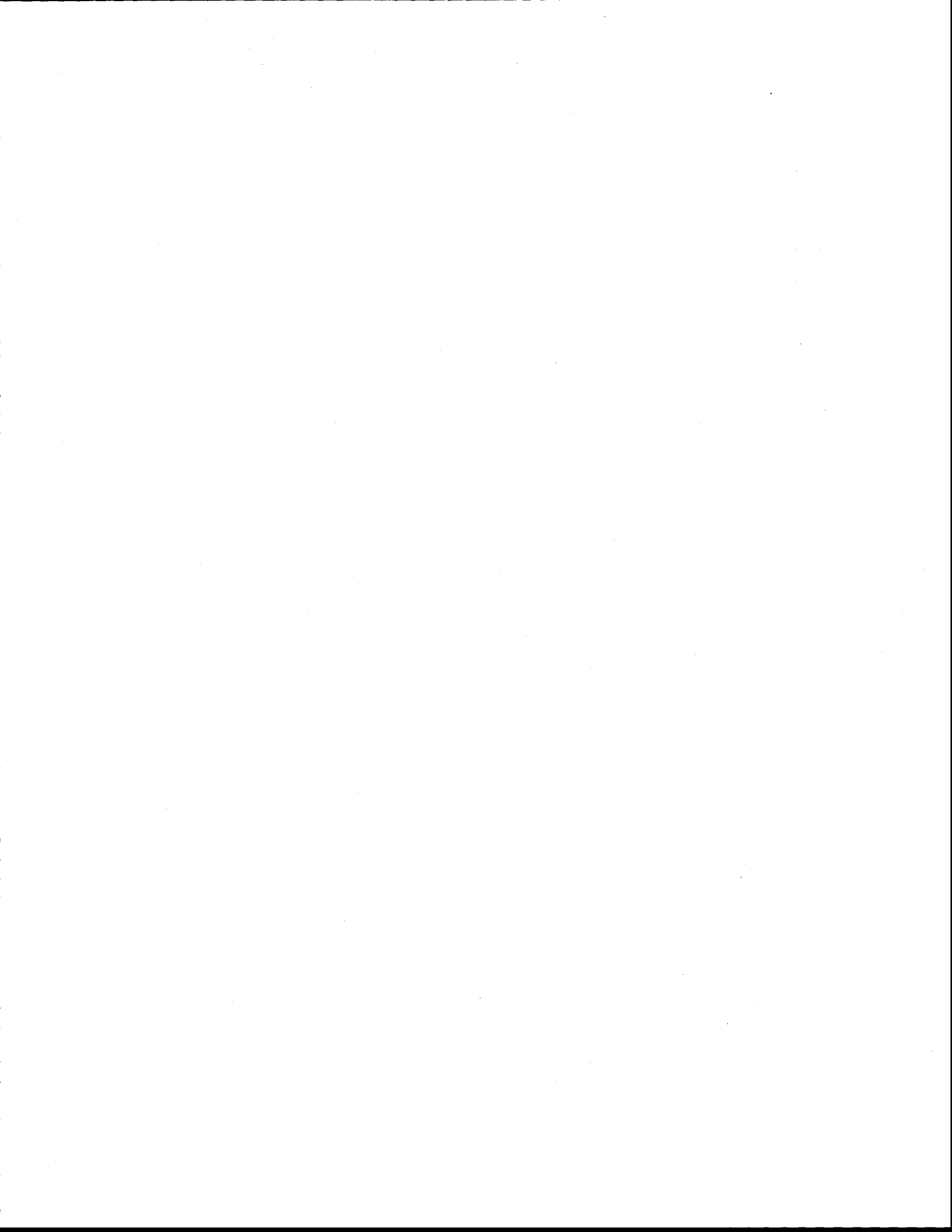
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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1997 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of the Future of the Courts recommendations was authorized by Part II, Section 2.1(7) of Chapter 483 of the 1997 Session Laws. Part II of Chapter 483 allows for studies authorized by that Part for the Legislative Research Commission to consider House Bill 1192 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 483 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Courts area under the direction of Senator Frank W. Ballance, Jr. The Committee was chaired by Senator Frank W. Ballance, Jr. and Representative N. Leo Daughtry. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

LRC FUTURE OF THE COURTS COMMITTEE JANUARY 27, 1998 MINUTES

The LRC Future of the Courts met on Tuesday, January 27, 1998 at 1:00 p.m. in Room 544 of the Legislative Office Building. Senator Frank Ballance, Co-Chair welcomed all Committee members and guests to the Committee meeting. Senator Ballance told the Committee that during session a Committee was appointed to review the findings of the Commission for the Future of Justice and the Courts in North Carolina. However, due to time constraints, the complexity of all the issues, it was decided to bring the Committee back before the Legislative Research Commission. Twenty members of the Committee were present.

Representative Daughtry, Co-Chair was recognized to preside over the meeting. After introductions of Committee members, Ms. Susan Hayes, Committee Counsel was recognized to review the authorizing legislation and the budget. A motion was made by Rep. Wilson to adopt the budget. The motion carried.

Representative Daughtry recognized all presenters on the agenda to come forth to give their presentations.
PRESENTERS:

Former Chief Justice of the Supreme Court, Mr. James G. Exum.

Judge Exum appointed the Medlin Commission in 1994 to study the Future of Justice and the Courts in North Carolina because of the demands of the citizens of North Carolina. He recognized the inefficiencies and inequalities in the structure of the system and the organizing of the workload that could not be resolved and cured with additional resources. He also stated that the Chief Justice and the Judicial Branch have little authority to change the problems. The Superior Court has not been re-examined since 1868. It operates now fundamentally the way it did then. It's documents are organized by weekly sessions with cases being passed from session to session and judge to judge depending on which judges are rotated into a given district. The Senior Resident Superior Court Judge residing in any district is in charge of administering Superior Court in that district. When the judges rotate out of their districts to full-time judicial responsibilities in another district, which in many cases are hours from home, it becomes impossible to properly administer superior court in the home district.

Judge Exum recognized the inequalities in the allocation of the limited resources available. Many judicial districts vary greatly in geographical size, population, and workloads. The large urban districts suffer from a lack of resources, while the small rural districts have more than enough. Judges and clerks in urban districts are overworked while those in the rural districts are not working as hard. There are not enough sessions of court or judges in urban districts to handle the filings in comparison to not enough filings to occupy the courts in many rural areas. The rural districts often lack advantages available to the urban districts such as trial court administrators, secretarial help, public defenders and computerized data bases.

The court's organization of it's workload necessitated by the current system of operation fosters some of the inequalities in the districts and perpetuates inefficiencies. Aside from cases which are designated exceptional by the Chief Justice and assigned to one judge for handling all the way through the system, cases in the trial divisions cannot ordinarily be addressed until they are placed on some prearranged calendar that coincides with a prearranged session of court along with dozens and hundreds of other cases. These cases cannot be addressed except by judges assigned to preside over that particular session, in that district where the cases are docketed. Cases cannot be addressed by Superior Court Judges if they are in the district court division nor by District Court Judges if the cases are in the superior court division. At any given time in North Carolina there are judges, court rooms and time available and cases right for disposition, but the cases cannot be addressed because either they are not on a session's prearranged calendar or they judge, courtroom and time are not in the district where the cases are docketed or the available judges in the cases are not in same trial division.

Judge Exum felt strongly that it was time to reexamine the organizational structure of the trial division, re-think and re-evaluate every aspect of the general court of justice, including organization, funding, independence, technological support and its authority in relation to other branches of government. He appointed the Medlin Commission, chaired by Mr. John Medlin and composed equally of lawyers and non-lawyers. It was hoped that the Commission would consult with and receive input from judges, clerks, prosecutors, public defenders and others working in the system, however no one that was currently working in the system was on the Commission. The Commission was designed to be more representative in its decision making capacity of those individuals using the court system than those running the court system. The Medlin Commission worked two years addressing the concerns of the Court. The findings and recommendations were backed by sound research and thought and represent what the people of North Carolina want.

Mr. John G. Medlin, Jr.

Mr. Medlin began by telling the Committee that when he was asked to become chair he felt strongly about the concerns that needed to be addressed by citizens and others outside the normal confines of government. He also hoped that it would not gather dust in the files. The committee met every month with individuals from other states. The Committee also went to other states to review other courts, such as family court. Witnesses from all walks of life came to speak to the committee. Input was given by judges in the court system. Mr. Medlin stated that he had no motive to chair the committee other than he would live in a better state if the system is changed.

Mr. Medlin stressed to the committee that the present court system was designed a long time ago for a time that is quite different from today. He noted that for the fiscal year ending June, 1997 the system handled 2.9 million filings. He emphasized that since the 1960, the resources and technology have not been adequate. Mr. Medlin referred to Handout 1- Cases Filed and Disposed July 1, 1996-June 30, 1997 and Cases Pending on June 30, 1997. He noted that in Mecklenburg County half of the misdemeanors and felonies have to be dropped because the District Attorney does not have the resources to take them to trial. He emphasized the growing concern about crime and victims' rights. More people are losing faith in the judicial system. The present court system is on the verge of being in serious trouble, more patches to the system are not needed. The system needs to be reformed with more expeditious means of settling cases. Mr. Medlin stated that a two year old statewide sampling of opinions revealed that 38% of citizens have a favorable opinion of the courts. Over 70% stated that criminals do not get enough punishment and that individuals with money get better treatment while victims are treated worse than criminals. Those individuals with experience in domestic cases express the most dissatisfaction of all with the courts. These areas are the least equipped to handle the case load. Family cases are up over 400% in the last 25 years while the population is up only 40%. Individuals interviewed and polled indicated that few citizens participate knowledgeably in the election of judges. 60% of the people interviewed stated that they voted in the 1994 general election, but only half of them remember voting for a judge. Only 7% of those interviewed could remember the name of a judge they voted for. Mr. Medlin emphasized that this showed the danger of the present judicial roulette selection process where you close your eyes and punch a hole. 84% of the people interviewed approved the establishment of a family court. 65% would require pre-trial mediation or arbitration in all civil and domestic disputes.

A majority of people do support merit selection of appointment of judges. The principles that guided the members of the committee were: accountability, flexibility and independence. The courts must be held accountable for what it is supposed to be doing. It must be given flexibility to do the job and the independence to exercise discretion in judicial duties. The framework of the judicial system must be flexibility to allow the court system to adapt to changing times in the future. The judicial system must be independent from the executive branch and legislative branch. Judges must be free from political influence. The overall quality of the judicial product will be diminished when the courts do not have control over critical elements that are their responsibility such as rules, procedures, evidence, personnel allocations and line item budgets. The court systems should be given as much flexibility to run itself as is given to the University of North Carolina. The recommendations of the Commission focused mainly only modernized technology, improve management and expedite case resolution.

The Commission believed that the present two level, superior court and district court structure should be streamlined into a single trial court system. The Commission believed that each circuit should have a one stop family court for all family matters such as divorce, property settlement, child custody, juvenile issues and spousal abuse. A single judge would have all of the paperwork and would know all the problems and the family. The judges in these areas would receive special training and be assisted by specially trained case managers. The work load of the trial courts would be lightened and case resolution resolved faster if qualified magistrates with law degrees and bar licenses are given more authority to adjudicate high volume infractions such as traffic cases.

The Commission also recommended greater use of alternatives to litigation. A bench trial would not be given until a serious effort has been made in arbitration and mediation to settle civil and family disputes. The role and authority of the Chief Justice as head of the judicial system should be strengthened. The Chief Justice should also set the rules for criminal and civil procedure with the Legislature having veto power to prevent judicial abuses. A judicial council should be created for the circuits with more citizen involvement and oversight of the administration of the courts. This council would not decide how cases are decided but how the courts are run. A board of governors, comparable to the university system would provide the ongoing oversight rather than a forming a commission every forty years for reform. Other recommendations are: merit appointment of trial appellate trial judges, modernizing the information system which is light years behind the private sector, SAS Institute has volunteer to do some pro bono work in this area.

Mr. Medlin stated that reforming the courts is an extremely important issue because it touches the lives of every North Carolinian. He also told the Committee that it would probably be the year 2001 or 2002 at the earliest before reforms could be in place. He stressed the importance and the necessity of reforming the courts at this time.

Former Superior Court Judge Robert A. Collier, Jr.

Judge Collier told the Committee about his background which began in judicial reform at the Institute of Government in 1959. He was assigned by the Institute to come to the Legislature. At that time, the Bell Commission was beginning its report to the legislature. After the approval of the new judicial article to the constitution by the General Assembly and the voters of North Carolina and after the initial legislation was enacted to implement the new court system under the recommendations of the Bell Commission, Judge Collier came to the legislature as a member. He was on the judiciary committee that considered the final implementing legislation for the new court system. In 1968, he was appointed Resident Superior Court Judge of the 22nd district, two years before the district was incorporated into the new court structure. He served two years under the old court structure and a total of 21 years as a superior court judge under the new court structure. He held court in 70 counties in North Carolina during that tenure. He retired nine years ago and have been involved in various types of alternative dispute resolution and court reform. He also cited a quote of Gene Roscoe Bound of the Harvard Law School in his treatise of 1930 entitled, "Popular Dissatisfaction with the Administration of Justice" where he stated, "Court reform is no sport for the short winded."

Judge Collier emphasized how each entity of the court system does not like change. Meaningful reform cannot happen and make everybody happy. He spoke of the Medlin Commission and its work and asked the Committee to keep an open mind about the recommendations.

Judge Collier spoke of why court reform is needed from a judges perspective. He told the Committee that jurors and the public see many inefficiencies in the use of time, resources, personnel and wasted facilities and lose all faith and confidence in our system of justice. This problem has become frustrating to the judges and embarrassing. A single trial court is needed with someone in charge with adequate support people and resources to run a circuit with maximum use of facilities and personnel. After detailed study the Commission believed that 12-16 circuits provide the idea size division.

Judge Collier told the Committee that his last assigned topic was to speak of merit selection of judges from a democrat's point of view. In his view, whether Democrat or Republican election of judges is a method that has outlived its appropriateness. More states are realizing this and changing their method of selecting judges. Judge Collier referred the Committee to page 23 of the Commission's report. He reviewed the information regarding the selection of judges. The

present system of electing judges is becoming more expensive and more demeaning. The opportunity to have some of the most able and qualified attorneys as judges is being missed because they will not subject themselves to the abuse of an election. As elections become more contested, judges may make decisions based on how it will be perceived at the ballot box. Lawyers appearing before these judges will be financing their campaigns.

Senator Ballance asked Judge Collier about the Commission's opinion about how fast cases are expedited because some cases may need investigating and some families may need time to pay a lawyer. The Commission had no exact position, however, the length of the case would depend on the complexity of the case.

Representative Kiser asked how the speeding up of a Superior court case can be handled after a juror is picked and is suppose to last for a week but the defendant decides to plead guilty and everyone has gone home. Judge Collier emphasized that no system is perfect and that there is no way to deal with that situation in a perfect way.

Representative Justus asked Judge Collier about the many continuances he had observed when in court on business and asked if it would be possible to be tougher on granting continuances.

Senator Odom asked Judge Collier, Judge Exum and Mr. Medlin about the Commission's priorities in regard to all the commission recommendation. Judge Collier stated that the approval of the Constitutional amendments are an important priority for the short session. Mr. Medlin cited structure, technology and merit selection as most important. Judge Exum agreed with Judge Collier and Mr. Medlin.

Other questions centered around the interviews taken. About 800 or 900 interviews were conducted around North Carolina. The interviews were conducted by a professional marketing firm over the telephone. A detailed description was offered by the Commission. Representative Justus asked that it be provided.

Mr. James R. Van Camp

Mr. Van Camp told the Committee that much of what he had planned to say had already been mentioned. He spoke of the many hours of work that went into preparing the Commission's report and that the Committee should take action because the need is there for reform and action should be taken.

Mr. Russell M. Robinson, II

Mr. Robinson, a business lawyer told the Committee that any person with basic management principals that examined our court system would be appalled with the built in limitations and deficiencies. A business person could not run a business with the built in inefficiencies that are evident in the court system. Basic fundamental restructuring is needed. The courts need to take control of the case management from the lawyers. He spoke of the adversary system of justice and the money spent on elections. The Medlin Commission worked on the report for two years and the work was intense. The system needs to be fixed now before the crisis grows. He asked the Committee to seize the opportunity now.

Former Representative Jonathan L. Rhyne, Jr.

Mr. Rhyne told the Committee that he would be discussing three topics. The first topic was the need for flexibility in the courts systems and to recognized the differences in every part of the State. The system needs to be responsive, flexible and economical which is how the Commission developed the circuit system. The second topic was the importance of including performance standards and evaluations of judges as part of the appointment process. There is a fallacy in the current system because there is no mechanism for informing the electorate. The public has no basis to know what a judge

stands for or if he comes to work on time or stays late. There is no information available for the public to make a decision on how to vote. California and Texas now have elections where the candidates raise a lot of money for their campaigns. Mr. Rhyne's last topic was about the crisis in the court system and he predicted that if the Medlin Commission's report is not taken seriously more crises will exist from the public about the court system.

Representative Philip A. Baddour, Jr.

Representative Baddour told the Committee that based on their polls, 80% of the people in North Carolina favored the idea of a family court. To support the idea of a family court, members of the committee went to a national court of family court judges. The Commission asked the ABA to show them examples of the family courts and how they are being handled in the United States. The two states with the best systems were New Jersey and Hawaii. The committee chose to go to New Jersey to review their system. The idea of the family court system is being called a unified family court around the United States. The ABA have committees looking at the unified family court system and have recommended it. North Carolina is at the forefront in looking at family court. Basically, family court is jurisdictional, judges will not have limited jurisdiction. It would be a division of the court for the purpose of assignment. Judges would have special training in area of family law. Specialization is needed in this area. However, two areas of concern in family court is burnout and dealing with it. With those two issues the Commission recommended that a judge be assigned to the family court for a specific length of time, after which the judge would be allowed to move out of family court.

The Commission also recommended an increased case management system in family court. One case manager would be assigned to each family court judge. With the family court system, a family would have the same judge or at least the same case manager. At the present time, a family with a problem that goes to court multiple times will see a different judge every time they go to court. The court system should be a point of entry to get help for a family that needs help.

Representative Baddour continued by telling the Committee that another idea is the possibility of increased jurisdiction for magistrates and to encourage lawyers to become magistrates. He suggested that new lawyers could be attracted to these positions early in their legal career. If magistrates were paid at the same level as assistant district attorneys and were not held to the rule of working 24 hours shifts, some of the administrative decisions could be shifted to individuals that would not have to be paid between the 80's and 90's. This could be done in both the family court and traffic court areas. He also mentioned that family court could also be done in the present judicial system. Representative Baddour urged the Committee to look at the work of the Commission closely.

Senator Odom asked how many judges would be needed for family court throughout the state. There about 300 judges in North Carolina about 100 of those judges would be need for family court. This number was estimated. Discussion centered around the counties such as Mecklenburg and Wake county that could have family court without the circuits if case managers are assigned. This could not be done efficiently in other counties such as Wayne because it would take more judges. The Commission has asked a group of people lead by Jim Drennan to create a circuit. One was chosen in the east to show the Commission how it would work. The group is still working on this and will bring it to the Committee at a later date.

Senator Kerr asked for information about what could be done to improve the present system. He also mentioned that funding the new system cannot be done based on increased court costs.

Senator Horton told the Committee that he believed that if an analysis was done a substantial savings would result if many of the proposals of the Commission are adopted. He asked what changes would require a constitutional amendment. Two bills have been introduced that contain the constitutional amendments and implementing legislation. One bill is about appointment of judges and the other bill is the establishment of the circuit system. The information is on page 69 of the Commission's report.

After discussion and comments from the Committee the meeting adjourned to reconvene on February 16, 1998 at 6:00 p.m.

**LRC FUTURE OF THE COURTS COMMITTEE
FEBRUARY 16, 1998
MINUTES**

The LRC Future of the Courts met on Monday, February 16, 1998 at 6:00 p.m. in Room 544 of the Legislative Office Building. Senator Ballance, presiding Co-Chair, welcomed everyone to the meeting. Fourteen members of the Committee were present. A motion was made to adopt the minutes. The motion carried.

Senator Ballance recognized all presenters on the agenda to come forth to give their presentations.

PRESENTERS:

Mr. Michael Crowell, Commission for the Future of Justice and the Courts

Mr. Crowell addressed what the Futures Commission had learned. The Commission learned that the public have lower regard of the courts than they do for the legislature. In the last 25 years the courts resources have not keep pace with the mounting work load, in particular in the area of technology. The data processing system is 15 years behind. The General Assembly is too involved in the management of the courts system and that courts officials do not have sufficient authority to run the court system on their own. There is little accountability in the system as a result of having 450 independent elected officials and too little authority at the top. The current configuration of superior and district court districts include a number of districts that were established for political reasons having nothing to do with good court management. Some districts are too small for the economic investment of new resources. The current division between superior and district court creates a barrier to the full and best use of the judicial resources. Terms of superior court are also a barrier to the expeditious resolution in some cases. Some matters heard in court could be dealt with just as conveniently with the parties and outside the home counties. In the last quarter century the greatest growth has been in family law.

The recommendation of the Commission for the Future of the Justice and the Courts are grouped in six categories. The first recommendations are intended to increase the authority of court officials to run the county system and make them more accountable for results.

1. Allowing the Supreme Court to set the rules of criminal and civil procedures subject to veto by the General Assembly.
2. Create a state judicial council with both lawyers and lay members to advise the Chief Justice on governance of the courts.
3. Allow the state judicial council to set the lines for judicial districts, rather than having that done by the legislature.
4. Allow the Chief Justice with the advice of the state judicial council to allocate appropriated funds within broad categories of personnel and non-personnel in deciding where to place personnel in the court system in the same manner that the UNC Board of Governor's system operates.
5. Allow the chief justice with the advice of the state judicial council to appoint a chief judge for each district. This term would be changed to circuit. The chief judge would be allowed to appoint an administrator.
6. Allow the state judicial council to set standards in procedure on evaluation of judges.

The second group of recommendations are intended to create a more flexible and responsive structure for the trial court. Included here are the merger of superior and district court into a single trial court called the circuit court. A reduction in the number of judicial districts from the present 40 districts to between 12 and 18 districts. Also included is giving the chief judge and administrator the responsibility of management of cases within the circuit. The more complex cases would be assigned to individual judges who would be responsible for the case from beginning to end. The court officials would decide which cases fell into that category. Most cases would continue

to be scheduled and heard by a judge assigned to a particular session of court. The assignments would be made based on expertise, experience, court room availability and need rather than on the judges title. Judges would continue to travel from county to county within the circuit, however flexibility within the system would have parts of a case heard out of the county, (example, pre-trial motion) when it is convenient to the parties, allowing the case to move quicker. Establish circuit judicial councils with representatives of the district attorney, the public defender, the local bar, law enforcement, and social services to coordinate the court's schedule with activities associated with other affected agencies. The state judicial council would decide on the expanding of alternative dispute resolution in the trial court making it the rule rather than the exception. An attempt would be made to preserve judge's time for more important matters by allowing lawyer-magistrates to hear infractions by allowing the state judicial council to expand magistrates jurisdiction in civil cases over time up to \$25,000. The appointment of magistrates would be for four year terms and be made by the same person who is responsible for supervising the magistrate which in this case would be the chief circuit judge.

The third group of recommendations addressed the increasing problem of domestic cases by establishing a family court. It is not a separate court, but the assignment of judges with proper training and interest to hear family court matters only for three years. A judge can stay longer if they show aptitude for the work. There would be an attempt to have all matters affecting the same family heard by the same judge. The key would be providing a case manager to assist the judge in managing the docket, assuring the case is directed to alternative dispute resolution and making sure that the family receive services from other agencies as needed. Alternative dispute resolution would be mandatory for child custody, visitation cases for equitable distribution for alimony and certain child support cases. The jurisdiction of magistrates that are lawyers would be expanded to allow them to grant uncontested divorces, and establish child support under the uniform guidelines.

The fourth set of recommendations dealt with increasing independence of judges while making them more accountable by being appointed rather than being elected. The commission recommended that all appellate and trial judges be appointed by the governor from three names submitted by a nominating panel consisting of both lawyers and lay members. A judge would stand for retention election in which the only issue would be whether the judge would be retained in office. A judge would stand for a retention election after a year in office and afterwards at the end of each eight year term. There should also be established standards of judicial performance and a method for periodic evaluation of judges with the results made public and a recommendation on retention. Mr. Cromwell told the committee that although the Commission strongly supports the appointment of judges they realized that the issue of judicial selection has been before the general assembly many times and has a life of its own. They also knew that it would be discussed separately whether it is included in the recommendations of this committee or not. The Commission believes that the debate should not delay consideration of the other issues.

The Commission also recommended the appointment of Clerk of Courts. This is a dead issue that is not going to pass. Mr. Cromell emphasized that the committee should not debate this issue and divert from the other issues.

A fifth set of recommendations are intended to allow court officials to concentrate on governance of the court system by transferring to the executive branch the prosecution and indigent defense functions. These are not judicial functions. The judges should not be in the position of nominally supervising and setting budgets for lawyers that appear before them as advocates. The Commission proposes the establishing of an office of solicitor general who helps coordinate the work of the district attorney in the same way the conference of district attorney does. The solicitor general would also represent the state in criminal appeals. The Commission proposes retaining local election of district attorneys while making the elections partisan rather than non-partisan. Indigent defense would be administered by a state board. The question of whether indigent defendants would be represented by a full time public defender or private attorneys would vary from place to place in the state.

Other recommendations related to criminal justice which would be reducing the burden on the supreme court by allowing the court of appeals to hear death penalty cases. The Commission also recommended the reduction of cases dismissed by the district attorney by requiring a screening of most criminal cases by a prosecutor

before charges are filed. The Commission proposed the expansion of the use of mediation and diversion programs in criminal cases especially for cases of worthless checks.

The last set of recommendations are not central to the other recommendations but are intended to increase the flexibility in the jury system. They provide the constitutional right of trial by jury apply only to misdemeanors in which the defendant can be sentenced to six months or more in jail. This would give the General Assembly the authority to decide whether a jury should be required in cases that involve less than six months jail time and if juries of six members could be used in misdemeanor cases. The defendant could waive the right to a jury in any criminal case allowing the case to be heard by a judge. The legislature would have to decide whether to permit non-unanimous verdicts in civil cases and whether to allow a jury of six members in those cases.

Judge Donald Stephens, N.C. Association of Superior Court Judges

Judge Stephens spoke in place of Judge Hobgood who is President of the N.C. Association of Superior Court Judges.

The Conference of Superior Court Judges have taken no formal position on the Futures Commission report except that it be studied. Judge Stephens spoke on behalf of a number of judges that he knew. The major contention expressed by those judges is the merger of the two trial courts. No superior court judge in the state wants to be a circuit judge. If there is going to be a unified court system with judges subject to try any type of case the Commission does not address where the judges would come from. The merger would increase the separation of the judiciary and the practicing bar. He also stated that this state has never had a bureaucracy. By creating a bureaucracy it will defeat the purpose of justice. He believes the Commission recommendations are great on paper but does not believe it will significantly improve justice over the state. Some of the recommendations are good but not the merger of the two systems.

Judge Stephens suggested making the transition by calling the districts circuits and expand the system when judges retire. It may take 16 to 18 years to implement the system. He also spoke about the judges having authority to manage the civil docket. There should be a way to manage the calendar fairly and move the cases along. There should also be a better utilization of the courts and case management. He also favors the expansion of magistrates. He also cited the statute 7A-49.3 that instructs the District Attorney on how to run the court but stated that no attorney want to incur the wrath of the district attorney. Judge Stephens stated that he did not see a fundamental flaw in the system, but we could do better if we moved away from the old archaic way of doing things in the courts.

Senator Ballance asked for a consensus from the committee to remove the recommendation that Clerks' be appointed. The measure was approved by consensus.

John Kennedy, President, N.C. Clerk of Courts Association

Mr. Kennedy talked about one recommendation, the automation of the courts, which is 15 years behind. He quoted Mr. John Medlin's message about how Wachovia Bank would be out of business if it ran its bank with the same technology as the courts. He also spoke about how the database used to determine criminal cases in the system is based on hand written documents from magistrates and law enforcement officers. At least 5 to 10% of the data going into the system is inaccurate because they are unable to read the information and put it in the system. The system is based on a defendant's name and no other identifying information. This affects the business community with record checks, and real-estate transactions. Mr. Kennedy emphasized the need for new technology.

Tom Keith, Past President, District Attorney, 21st District N.C. Conference of District Attorneys

Mr. Keith provided a position paper for the members of the committee to review. (See attached handout)

Judge Lawrence McSwain, N.C. Association of District Court Judges

Judge McSwain, Chief District Court in Guilford county talked about the heavy case load of Guilford county. Judge McSwain stated that the district court judges did not pass a resolution for or against the recommendations, but decided to let the General Assembly decide the appropriateness of the recommendations. Last summer, as president he did a survey which included the question - Do you believe in merit selection or election? Of the 60 judges responding out of 170 judges they preferred merit selection with the minority favoring election. All the judges favored an eight year term. Judge McSwain talked about the increased population in the state. There are three areas that will determine how many judges and support staff are needed:

1. Population size
2. How time consuming the work is.
3. How much work is really done.

Judge McSwain spoke about the work backlog, which North Carolina has always had, but the problem is how much backlog is reasonable. Judge McSwain talked about the population size, state ranking and total judges in certain states.
(See attached handout).

Judge McSwain answer a question regarding what he thought about family court. He believed that family court could be bad if a judge is overbearing, onerous and controlling. However, the good side about family court is that if you have a criminal case and juvenile case tied together he could make the parents comply better in getting their children under control. He also spoke about how the judges have become an assembly line, he recalled how he has seen some judges go so fast that he has seen individuals stop the first person they see coming out court to ask them what happened to them. Judges should have the time to talk to people. The courts are working in a way that is not promoting justice. The conference voted that if the Futures plan is adopted the district court judges believed that they should do all the family court matters because they have the experience in that area. Judge McSwain also stated that eight year terms would be good for judges. This give judges the opportunity to reach retirement on the bench and keep people who are younger on the bench.

Judge McSwain spoke to the question about shifting judges to districts that they are needed, which he approved.

The committee was unable to finish it's presentations due to time limitations. The presentations will be continued at the March 16th meeting at 6:00 p.m.

LRC FUTURE OF THE COURTS COMMITTEE MARCH 16, 1998 MINUTES

The LRC Future of the Courts met on Monday, March 16, 1998 at 6:00 p.m. in Room 544 of the Legislative Office Building. Representative Daughtry, presiding Co-Chair welcomed everyone to the meeting. Fifteen members of the Committee were present. A motion was made to adopt the minutes. The motion carried.

Representative Daughtry recognized all presenters on the agenda to come forth when called to present presentations.

PRESENTERS:

Mr. Malcolm Hunter, Appellate Defender

Mr. Hunter told the Committee that the Public Defenders Association of North Carolina had not met and formally discussed the matter of removing the indigent defense function from the Administrative Office of the Courts which he is in favor of doing. Mr. Hunter stated that the indigent defense function should be placed under the executive branch. He commented that the Futures Commission did not elaborate on how this could be done, but they did recognize that it is obviously an inherent conflict between having a judge as an impartial arbiter between two sides who also responsible for providing the attorney for the indigent accused in a criminal defense case. Sometimes prosecutors have felt that the relationship puts them at a disadvantage. He also stated that he understands why the indigent defense function has been kept under the judiciary, which is to protect the funding. He also felt that many in the Administrative Office of the Courts feel as though they have suffered by carrying the baggage of the indigent defense fund because it always needed more funding than other sections of the agency.

Mr. James B. Maxwell, North Carolina Bar Association

Mr. Maxwell began his remarks by stating that the Bar Association endorsed the Futures Commission Report. He spoke about his perception of the lack of urgency in making changes. He stated that there is a real crisis around the state in the court system. He had noticed that different groups endorse only the issues that directly affected their organization. Mr. Maxwell continued by speaking from a report submitted from the Bar Association for the official record. (See Bar Association Handout).

Representative Daughtry asked Mr. Maxwell if the committee should take up the constitutional amendments as a starting point. Mr. Maxwell agreed. Representative Daughtry asked Mr. Maxwell if would explain briefly what the constitutional amendment bill do. Those bills are HB741 and SB835.

Mr. Maxwell stated that the companion bills, HB741/SB835 contain those aspects that are presently in the constitution which are contained in the Medlin report that in order to be done would require constitutional amendments. Discussion followed regarding how or if the general public could be educated on why changes are needed and why the constitutional amendments are needed to implement change. Mr. Bennett stated that he hoped the same kind of communication and education effort would be used in educating the public that have been used on bond issues. He referred to page 11 of the bill which outlined what would be proposed on the ballot. Representative Daughtry stated that at some point the committee needed to go through the bill and debate items and come to a consensus on what the committee can agree on and submit it to the General Assembly. He felt it was the right approach to start with the constitutional bill as the first approach in the process. Several members of the committee spoke about educating the public regarding the constitutional amendments and also, how the last significant changes in the court system took place over a period time.

Mr. Richard Taylor, N.C. Academy of Trial Lawyers

Mr. Taylor spoke from a handout submitted to the committee for the official record. (See Academy of Trial Lawyers Handout). Senator Ballance asked Mr. Taylor if the Academy had an opinion on the election of judges. The elections of judges is favored by the Academy of Trial Lawyers.

Senator Ballance was recognized to address the committee about a letter Representative Baddour received from Resident Superior Court Judge Donald W. Stephens after the February 16, 1998 meeting. Judge Stephens letter spoke of making changes by statute rather than by constitutional amendments. Senator Ballance referred to Article IV in the letter which provides for dividing the state into "a number of districts." (See letter addressed to Representative Baddour)

Senator Odom asked Mr. Taylor if the Academy had anything in writing that analyzed the problems that Florida and other states have had with their appointments and retention. Mr. Taylor cited a Florida Law Review report on Merit selection vs. Population election as a resource. Representative Justus asked for Mr. Taylor's opinion about the budget sections in the report which suggest separate budgets for the judiciary. Mr. Taylor stated that the Academy did not take a position on that issue.

Ms. Ann Christian, N.C. Association of Women Attorneys

Ms. Christian spoke from a handout which was submitted for the official record. (See handout from Ann Christian). The Association cited three major areas of importance. Those were:

1. Expand the use of alternative dispute resolution in the appropriate cases.
2. Major technological advances. Court system at present inefficient.
3. Establishment of a family court.

Senator Horton was recognized to speak. He suggested that the report be broken in different sections, that the committee adopt Judge Stephens approach of districts, thereby changing the statutes rather than by constitutional amendments, hold off on judicial selection until after the results of elections this year are available and rework remaining constitutional proposals on page 12 of the bill, line 2, section 12. Representative Neely agreed with holding the bill and work through it, discuss the constitutional changes and then see what areas can be separated.

Senator Odom asked Gerry Cohen, committee staff if he concurred with Judge Stephens interpretation of section 11 and 12 of the constitution. Mr. Cohen responded by saying that he saw no problem with creating a larger number of divisions and having a management structure in each district and he also agreed with the last paragraph on the first page. In response to a question about the creation of a family court, Mr. Cohen stated that the constitution prohibits the creation of any additional courts and that the creation of a family court would be an informal arrangement with judges assigning cases in a particular way. It cannot be a separate court with a separate pool of judges. Mr. Hornethal, and Representative Baddour expressed the need to work through the whole report.

The staff was asked to group the sections of the report with the constitutional amendments and mail to each member.

With no further business, the committee adjourned. The next meeting is scheduled for April 6, 1998 at 6:00 p.m

**LRC FUTURE OF THE COURTS COMMITTEE
APRIL 6, 1998
MINUTES**

The LRC Future of the Courts met on Monday, April 6, 1998 at 6:30 p.m. in Room 544 of the Legislative Office Building. Senator Ballance, presiding Co-Chair welcomed everyone to the meeting. Seventeen members of the Committee were present. A motion was made to adopt the minutes. The motion carried.

Senator Ballance recognized Mr. Hodgin, President of the N.C. Victims Assistance Program and Mr. Dick Adams, a volunteer victims assistance advocate and Mr. Joe Brewer, DA in the 9th prosecutorial district to speak to the Committee.

Mr. Hodgin spoke about the need to improve information technology in the courts. He emphasized the need for an integrated justice information system, increasing citizen involvement and electing judicial officials rather than appointing them so that there will be accountability.

Mr. Adams encouraged the members of the Committee to enact legislation that would improve technology in the system. He also spoke about the need to elect judges rather than appoint them.

Mr. Brewer told the committee that he was speaking for himself and was not speaking on behalf of the Conference of DA's. He spoke about the role of the DA and the mega district approach. Senator Odom asked Mr. Brewer to submit any recommendations regarding the district attorneys to the committee.

The Committee began reviewing the Futures Commission bills by topic. (See Handout) . After discussion a subcommittee was appointed to develop a pilot program. The pilot program would select a rural area and urban area. Wake, Greensboro and Mecklenburg counties were suggested as good areas for a family court pilot program.

The members appointed to the subcommittee were Senator Odom, Chair, Rep. Baddour, Rep. Neely, Rep. Wilson, Rep. Justus, Senator Hartsell, Senator Wellons, Mr. Irv Joyner and Mr. Michael Crowell. Mr. Joyner and Mr. Crowell would be non-voting members. Both chairs would ex-officio voting members.

LRC FUTURE OF THE COURTS COMMITTEE

May 1, 1998

At its meeting of May 1, 1998, the Committee voted to recommend its interim report to the Legislative Research Commission for consideration by the 1998 Session of the 1997 General Assembly.

FINDINGS AND RECOMMENDATIONS

FINDING ONE: The Committee finds that a State Judicial Council with experienced judges, lawyers, civic leaders, business and professional people, and others would provide a beneficial sounding and advisory board for managing the courts.

RECOMMENDATION ONE: That the General Assembly enact legislation establishing a State Judicial Council to assist the Chief Justice of the Supreme Court in governance of the Judicial Branch. The Council would make recommendations to the Chief Justice regarding the budget, salaries and performance standards for courts and evaluation procedures for judges.

FINDING TWO: The Committee finds that North Carolina needs a forum that resolves family-related issues in a manner that respects the rights of each individual family member, promotes the best interest of the family and helps families structure their own solutions.

RECOMMENDATION TWO: That the General Assembly enact legislation authorizing the Administrative Office of the Courts to establish up to three pilot family courts following the guidelines contained in the report of the Commission for the Future of Justice and the Courts in North Carolina and assigned to hear all matters involving intrafamily rights, relationships, and obligations, and all juvenile justice matters.

FINDING THREE: The Committee finds that the resident superior court judge and chief district court judge, in the interest of justice, should have control of the criminal court calendar after it has been filed with the clerk of court.

RECOMMENDATION THREE: That the General Assembly enact legislation providing that the criminal court calendar be prepared by the district attorney and filed with the clerk of court. After filing of the calendar, the resident superior court judge or chief district court judge shall have control of the calendar.

FINDING FOUR: The Committee finds that a pilot "circuits" would be beneficial in determining whether the concept of circuits recommended by the Commission for the Future of Justice and the Courts in North Carolina should be implemented statewide.

RECOMMENDATION FOUR: That the General Assembly enact legislation increasing the number of superior court divisions from four to twelve, thereby providing a constitutional means of establishing three pilot "circuits" in which many of the circuit court recommendations made by the Commission for the Future of Justice and the Courts could be evaluated. (Draft legislation to implement this recommendation will be prepared by the Committee staff as soon as the Chief Justice has been given an opportunity to recommend a suitable grouping of the existing judicial districts into twelve divisions and various other technical drafting issues have been addressed.)

APPENDIX A

CHAPTER 483
1997 Session Laws

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO CONTINUE A COUNCIL, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO IMPOSE A MORATORIUM ON SERVICE CORPORATION CONVERSIONS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1997".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1997 Regular Session of the 1997 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study....

(7) Future of the courts (Ballance; H.B. 1192 - Daughtry, Neely, and Baddour)....

PART XVI.-----BILL AND RESOLUTIONS REFERENCES

Section 16.1. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

PART XVII.-----EFFECTIVE DATE AND APPLICABILITY

Section 17.1. Except as otherwise specifically provided, this act becomes effective July 1, 1997. If a study is authorized both in this act and the Current Operations Appropriations Act of 1997, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1997 as ratified.

In the General Assembly read three times and ratified this the 28th day of August, 1997.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 11:00 a.m. this 10th day of September, 1997

APPENDIX B

**LEGISLATIVE RESEARCH COMMISSION
FUTURE OF THE COURTS COMMITTEE
1997-1999**

Pro Tem's Appointments

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Mr. Tony Hornthal
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Irma Avent
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APPENDIX C

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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98-LL-180(4.23)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Future of the Courts.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE STATE COURT SYSTEM BY IMPLEMENTING CERTAIN
3 RECOMMENDATIONS OF THE COMMISSION FOR THE FUTURE OF JUSTICE AND
4 THE COURTS IN NORTH CAROLINA AND TO MAKE OTHER CHANGES IN THE
5 OPERATIONS OF THE COURTS.
6 The General Assembly of North Carolina enacts:
7 Section 1. Chapter 7A of the General Statutes is
8 amended by adding a new Article to read:
9 "ARTICLE 7A.
10 "State Judicial Council.
11 "§ 7A-49.4. Composition of State Judicial Council.
12 (a) The State Judicial Council shall consist of 18 members as
13 follows:
14 (1) The Chief Justice, who chairs the Council;
15 (2) The Chief Judge of the Court of Appeals;
16 (3) A district attorney chosen by the Conference of
17 District Attorneys;
18 (4) A public defender chosen by the public defenders;
19 (5) A superior court judge chosen by the Conference of
20 Superior Court Judges;
21 (6) A district court judge chosen by the Conference of
22 District Court Judges;
23 (7) An attorney appointed by the Council of the State
24 Bar;

- 1 (8) One attorney and one nonattorney appointed by the
2 Chief Justice;
3 (9) Two nonattorneys and one attorney appointed by the
4 Governor;
5 (10) Two nonattorneys and one attorney appointed by the
6 General Assembly upon the recommendation of the
7 Speaker of the House of Representatives; and
8 (11) Two nonattorneys and one attorney appointed by the
9 General Assembly upon the recommendation of the
10 President Pro Tempore of the Senate.

11 (b) The Chief Justice and the Chief Judge shall be members of
12 the State Judicial Council during their terms in those judicial
13 offices. The terms of the other members selected initially for
14 the State Judicial Council shall be as follows:

- 15 (1) One year. -- The district court judge, the
16 nonattorney appointed by the Chief Justice, one
17 nonattorney appointed upon the recommendation of
18 the Speaker of the House of Representatives, and
19 the attorney appointed upon the recommendation of
20 the President Pro Tempore of the Senate.
21 (2) Two years. -- The district attorney, one
22 nonattorney appointed by the Governor, the attorney
23 appointed upon the recommendation of the Speaker of
24 the House of Representatives, and one nonattorney
25 appointed upon the recommendation of the President
26 Pro Tempore of the Senate.
27 (3) Three years. -- The public defender, the attorney
28 appointed by the Governor, one nonattorney
29 appointed by the President Pro Tempore of the
30 Senate, and one nonattorney appointed upon the
31 recommendation of the Speaker of the House of
32 Representatives.
33 (4) Four years. -- The superior court judge, the
34 attorney appointed by the State Bar Council, the
35 attorney appointed by the Chief Justice, and one
36 nonattorney appointed by the Governor.

37 After these initial terms, the members of the State Judicial
38 Council shall serve terms of four years. All terms of members
39 shall begin on January 1 and end on December 31. No member may
40 serve more than two consecutive full terms. Any vacancy on the
41 Council shall be filled by a person appointed by the official or
42 entity who appointed the person vacating the position.

43 (c) If an official or entity is authorized to appoint more
44 than one member of the State Judicial Council, the members

1 appointed by that official or entity must reside in different
2 judicial districts.

3 (d) No incumbent member of the General Assembly or any
4 incumbent judicial official, other than the ones specifically
5 identified by office in subsection (a) of this section, may serve
6 on the State Judicial Council.

7 (e) The appointing authorities shall confer with each other
8 and attempt to arrange their appointments so that the members of
9 the State Judicial Council fairly represent each area of the
10 State, both genders, and each major racial group.

11 "§ 7A-49.5. Duties of the State Judicial Council.

12 (a) The State Judicial Council shall:

13 (1) Study the judicial system and report periodically
14 to the Chief Justice on its findings;

15 (2) Advise the Chief Justice on priorities for funding;

16 (3) Review and advise the Chief Justice on the budget
17 prepared by the Director of the Administrative
18 Office of the Courts for submission to the General
19 Assembly;

20 (4) Study and recommend to the General Assembly the
21 salaries of justices and judges;

22 (5) Recommend to the General Assembly changes in the
23 expense allowances, benefits, and other
24 compensation for judicial officials;

25 (6) If a judgeship becomes vacant, review whether the
26 judgeship is still needed for that district and, if
27 it is not, recommend to the Chief Justice whether
28 the judgeship should be transferred to another
29 district or should be abolished;

30 (7) Advise or assist the Chief Justice, as requested,
31 on any other matter concerning the operation of the
32 courts.

33 (b) If requested to do so by the Governor, the 13 members of
34 the State Judicial Council who are not judges, district
35 attorneys, or public defenders shall constitute an appellate
36 nominating panel to nominate candidates to the Governor for
37 appointment to vacancies on the Supreme Court and Court of
38 Appeals.

39 (c) The State Judicial Council, with the assistance of the
40 Director of the Administrative Office of the Courts, shall
41 recommend to the Chief Justice performance standards for all
42 courts and all judicial officials and shall recommend procedures
43 for periodic evaluation of the court system and individual
44 judicial officials and employees. If these standards are

1 implemented by the Chief Justice, the Director of the
2 Administrative Office of the Courts shall inform each judicial
3 official of the standards being used to evaluate that official's
4 performance. If implemented, the evaluation of each judge shall
5 include assessments from other judges, litigants, jurors, and
6 attorneys, as well as a self-evaluation by the judge. Summaries
7 of the evaluations of justices and judges shall be made available
8 to the public, in a manner to be determined by the Council.

9 (d) The State Judicial Council shall monitor caseloads in the
10 appellate courts to determine whether cases are being handled
11 expeditiously, whether those courts have adequate resources, and
12 whether the courts are able to maintain a proper balance between
13 criminal and civil matters. If needed to assure such a balance,
14 the Council may recommend the establishment of separate divisions
15 of the Court of Appeals for criminal and civil cases and
16 establish procedures for the regular rotation of individual
17 judges between those divisions.

18 (e) The State Judicial Council shall study and recommend
19 guidelines for the assignment and management of cases, including
20 the identification of different kinds of cases for different
21 kinds of resolution. If the Chief Justice decides to implement
22 these guidelines, they may provide that, except for good cause,
23 each civil case subject to assignment to a trial judge should be
24 directed first to an appropriate form of alternative dispute
25 resolution. The guidelines may also provide for posttrial
26 alternative dispute resolution before or as part of an appeal.
27 The guidelines should not require absolute uniformity from
28 district to district and should allow case management personnel
29 within each circuit the flexibility to direct cases to the most
30 appropriate means of resolution in that district.

31 (f) The State Judicial Council shall monitor the use of
32 alternative dispute resolution throughout the court system and,
33 with the assistance of the Director of the Administrative Office
34 of the Courts and the Dispute Resolution Commission, evaluate the
35 effectiveness of those programs.

36 (g) The State Judicial Council may recommend to the Chief
37 Justice changes in the boundaries of the judicial districts.

38 (h) The State Judicial Council shall perform other functions
39 as needed to monitor the administration of justice and assess the
40 effectiveness of the Judicial Branch in serving the public and to
41 advise the Chief Justice and the General Assembly on changes
42 needed to assist the General Court of Justice in better
43 fulfilling its mission.

44 "§ 7A-49.6. Compensation of the State Judicial Council.

1 Members of the State Judicial Council who are not judicial
2 officials or salaried public officials shall be reimbursed for
3 their travel, meal and lodging expenses while on Council business
4 at the same rate as provided in G.S. 120-3.1(a)(3) for members of
5 the General Assembly, and shall also be compensated at the rate
6 of two hundred dollars (\$200.00) per day for each day on official
7 Council business."

8 Section 2. (a) The Administrative Office of the Courts
9 shall establish pilot programs for the holding of family court
10 within no more than three district court districts, no more than
11 two of which shall contain an urban county. Each pilot program
12 shall be conducted following the guidelines for the establishment
13 of family courts contained in the report of the Commission for
14 the Future of Justice and the Courts in North Carolina and shall
15 be assigned to hear all matters involving intrafamily rights,
16 relationships, and obligations, and all juvenile justice matters,
17 including:

- 18 (1) Child abuse, neglect, and dependency;
- 19 (2) Delinquent and undisciplined juvenile matters;
- 20 (3) Emancipation of minors and termination of parental
21 rights;
- 22 (4) Divorce;
- 23 (5) Annulment;
- 24 (6) Equitable distribution;
- 25 (7) Alimony and postseparation support;
- 26 (8) Child custody;
- 27 (9) Child support;
- 28 (10) Paternity;
- 29 (11) Adoption;
- 30 (12) Domestic violence civil restraining orders;
- 31 (13) Abortion consent waivers; and
- 32 (14) Adult protective services.

33 (b) The Administrative Office of the Courts shall
34 report to the General Assembly by March 1, 1999 on the
35 establishment, number, and location of these pilot programs and
36 on their success in bringing consistency, efficiency, and
37 fairness to the resolution of family matters and their impact on
38 caseloads in the district court division.

39 Section 3. G.S. 7A-49.3 reads as rewritten:

40 "**§ 7A-49.3. Calendar for criminal trial sessions.**

41 (a) At least one week before the beginning of any session of
42 the superior court for the trial of criminal cases, the district
43 attorney shall file with the clerk of superior court a calendar
44 of the cases ~~he intends to call for trial~~ to be tried at that

1 session. The calendar shall fix a day for the trial of each case
2 listed thereon. ~~The district attorney may place on the calendar~~
3 ~~for the first day of the session all cases which will require~~
4 ~~consideration by the grand jury without obligation to call such~~
5 ~~cases for trial on that day.~~ No case on the calendar may be
6 called for trial before the day fixed by the calendar except by
7 consent or by order of the court. ~~Any case docketed after the~~
8 ~~calendar has been filed with the clerk may be placed on the~~
9 ~~calendar at the discretion of the district attorney.~~ After the
10 calendar has been filed with the clerk, cases may be added to or
11 removed from the calendar only by order of the court pursuant to
12 guidelines developed by the Supreme Court.

13 (a) If he has not done so before the beginning of each session
14 of superior court at which criminal cases are to be heard, the
15 District Attorney, after calling the calendar and disposing of
16 nonjury matters, including guilty pleas, if any such nonjury
17 matters are to be disposed of prior to the calling of cases for
18 trial, shall announce to the court the order in which ~~he intends~~
19 ~~to call for trial the~~ the calendar provides for the trial of the
20 cases remaining on the calendar. Deviations from the announced
21 order of cases as listed on the calendar require approval by the
22 presiding judge, judge. ~~if the defendant whose case is called~~
23 ~~for trial objects; but the defendant may not object if all the~~
24 ~~cases scheduled to be heard before his case have been disposed of~~
25 ~~or delayed with the approval of the presiding judge or by~~
26 ~~consent.~~

27 (b) All witnesses shall be subpoenaed to appear on the date
28 listed for the trial of the case in which they are witnesses.
29 Witnesses shall not be entitled to prove their attendance for any
30 day or days prior to the day on which the case in which they are
31 witnesses is set for trial, unless otherwise ordered by the
32 presiding judge.

33 (c) Nothing in this section shall be construed to affect the
34 authority of the court in the call of cases for trial."

35 Section 4. Section 1 of this act becomes effective
36 January 1, 1999. Section 3 of this act becomes effective
37 December 1, 1998. The remainder of this act is effective when it
38 becomes law.

EXPLANATION OF DRAFT LEGISLATION

State Judicial Council

Section 1 of the bill establishes a State Judicial Council to assist the Chief Justice of the Supreme Court in governance of the Judicial Branch. The Council consists of 18 members, including representatives of appellate and trial court judges, district attorneys, public defenders, attorneys, and nonattorneys, and is chaired by the Chief Justice. The members of the Council would serve staggered four-year terms beginning January 1, 1999.

The Council is charged with studying the judicial system, advising the Chief Justice on funding priorities and on the budget prepared by the Director of the Administrative Office of the Courts for submission to the General Assembly, recommending changes in judicial salaries and benefits to the General Assembly, reviewing judgeship vacancies, and advising or assisting the Chief Justice on any other matter concerning the operation of the courts.

The Council is also to recommend standards for all courts and judicial officials and procedures for periodic evaluation of the court system and judicial officials and employees. It is also charged with monitoring caseloads in the appellate courts to determine whether cases are being handled expeditiously, whether those courts have adequate resources, and whether the courts are able to maintain proper balance between criminal and civil matters. The Council will study and recommend guidelines for the assignment and management of cases, including identification of different kinds of cases for different kinds of resolutions, and will monitor the use of, and evaluate the effectiveness of, alternative dispute resolution throughout the court system. The Council is also responsible for recommending changes in the boundaries of judicial districts to the Chief Justice. Finally, the Council is charged with the broad duty of monitoring the administration of justice and assessing the effectiveness of the Judicial Branch in serving the public and advising the Chief Justice and the General Assembly on changes needed to assist the courts in better fulfilling their mission.

Family Court Pilots

Section 2 of the bill directs the Administrative Office of the Courts to establish family court pilot programs in no more than three district court districts, no more than two of which shall contain an urban county. Each pilot will follow the guidelines for family courts contained in the report of the Commission for the Future of Justice and the Courts in North Carolina and will be assigned to hear all matters involving intrafamily rights, relationships, and obligations, and all juvenile matters. The Administrative Office of the Courts is charged with reporting to the General Assembly by March 1, 1999 on the establishment, number, and location of these pilot programs and on their success in bringing consistency, efficiency, and fairness to the resolution of family matters and their impact on caseloads in the district court district.

Calendaring

Section 3 of the bill amends GS 7A-49.3 to provide that at least one week before the beginning of a criminal session of superior court, the district attorney shall file with the clerk of court a calendar of the cases to be tried at that session. After the filing of that calendar, cases may be added or removed from the calendar only by order of the court pursuant to guidelines developed by the Supreme Court. Once the district attorney has announced the order in which the calendar provides for the trial of cases, deviations from the order of cases require approval of the presiding judge. This change takes effect December 1, 1998.