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The District Court and the Ongoing Pursuit of Local Justice in North Carolina

JAMES W. NARRON AND JOHN R. HESS*

“In a time when man has divided the indivisible in splitting the atom, has harnessed new sources of power and new means of overcoming distance, has found how to add satellites to the planet, has begun to explore space and is threatening to bombard or even to pay friendly visits to the moon—in short in an era of bigness of all things—justice, the great interest of man on earth, must expand its institutions likewise to the measure of the greater tasks of great age.”

Roscoe Pound¹

ABSTRACT

The state of North Carolina’s system of district courts is a prominent example of the success of legal reform, but also of the difficulties that reform can encounter. From the earliest days of the Lords Proprietors, Old English law played a significant role in colonial judicial administration. As North Carolina expanded, however, growing pains emerged; among the most severe were the availability of courts for small matters, the qualifications of those appointed to serve as judges, and the challenges brought on by interference in the court system by the executive and legislative branches of government. This Article tracks North Carolina’s long journey from judicial pariah to a model of effective governance, including the influence of other states, legal scholars, and public opinion. It concludes that the establishment of a dedicated system of district courts in the state fundamentally improved and continues to maintain—despite recent changes—a robust administration of justice in North Carolina.

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1. Roscoe Pound, Dean Emeritus, Harv. L. Sch., *Toward Improving the Administration of Justice in North Carolina* 12 (Jun. 12, 1958).

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INTRODUCTION

Administering justice has never been easy. In the early twentieth century, the state of New Jersey was especially well known for judicial ineptitude. One vice-chancellor consistently handed down rulings *years* after the trial had taken place. On one such occasion, the vice-chancellor sent his law clerk to the sole surviving lawyer involved, who allegedly told the clerk that the vice-chancellor could “go to hell.”² When confronted by the angry jurist, the lawyer replied, “No, sir, I didn’t say that. I said that all my clients are dead, and so far as I know, everyone else who was interested in the case is dead, and I suspect they have gone to hell for what they said about you.”³

This illustration of “Jersey justice”⁴ is a troubling instance of court disorganization, a legal phenomenon prevalent in the United States since the country’s founding. In North Carolina specifically, the conglomeration of courts has exemplified this phenomenon of disarray. The state’s patchwork system of lower courts, in place from the advent of civil procedure during the time of the Lords Proprietors until the passage of the Judicial Department Act of 1965, had a profoundly negative impact on the creation, practice, and administration of law. This Article introduces and celebrates a vital change to the state’s system of local courts, coordinated by a small army of reformers during the mid-twentieth century.

2. Roger Butterfield, *New Jersey Puts Its Judges to Work*, SATURDAY EVENING POST, May 17, 1952, at 31.

3. *Id.*

4. *Id.*

Upon its implementation, the new district court system untangled the twisted knot of lower courts in North Carolina, replacing stagnation with efficiency and antiquation with modernity. Such a paradigm shift was deeply rooted in old English law, steeped in the traditions of the American South, and shaped by nationally recognized legal luminaries. Widely credited with restoring integrity to the justice system in North Carolina, the district court framework removed countless hindrances to the administration of law. Despite twenty-first century politicking, the system remains a prominent and powerful example of legal reform success.

I. EARLY FOUNDATIONS

The underpinnings of North Carolina's first judicial system appear prominently in English legal scholarship. Blackstone's *Commentaries* is particularly illustrative: "The course of justice flowing in large streams from the king, as the fountain, to his superior courts of record; and being then subdivided into smaller channels, till the whole and every part of the kingdom were plentifully watered and refreshed."⁵ However, in his *Commentaries*, Blackstone also hints at a potential flaw of the court: interaction between the lower courts. Indeed, with the early and confusing bulk of available courts in England, litigants often found themselves figuratively parched, and courts rarely exercised their duties efficiently.⁶ Opposing jurisdictions among county, seigniorial (local), and borough courts further resulted in courts administering "separate bodies of law, with a separate procedure, and a separate vocabulary of technical terms."⁷ With respect to Frederick Pollock and Frederic William Maitland's definition of a functional court as "defining and enforcing the rules of substantive law,"⁸ the disjointed English system would have struggled to meet the criteria.

Into this precarious system entered the new colony of Carolina with the Charters to the Lords Proprietors of 1663 and 1665. The Crown offered significant latitude to "do all and every other thing and things which unto the complete establishment of Justice . . . [p]rovided, Nevertheless, that the said laws be consonant to reason and, as near as may be conveniently,

5. 3 WILLIAM BLACKSTONE, *COMMENTARIES* *31.

6. See 1 WILLIAM HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 634–35 (A.L. Goodhart & H.G. Hanbury, eds., 7th ed. 1956).

7. *Id.* at 634.

8. 1 FREDERICK POLLOCK & FREDERIC WILLIAM MAITLAND, *THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARDS I* 527 (The Legal Classics Library ed., 2d ed. 1959).

agreeable to the laws and Customs of this our Realm of England.”⁹ The Lords Proprietors thus “adapted old customs to new conditions”¹⁰ and created a system of eight distinguishable courts in 1669.¹¹ They included in the Fundamental Constitutions provisions for a court in each county and district, with respective jurisdiction to hear minor civil and criminal cases.¹² Altogether, this General Court System would remain in force with minimal changes until 1754.¹³

The most notable courts in colonial North Carolina, which contributed to the present-day district court system, were the courts of Pleas and Quarter Sessions (1670–1868). The “chief local courts,” during their operation, consisted of several justices of the peace, who heard actions under common law (pleas) four times a year (quarters).¹⁴ Justices of the peace also oversaw Magistrates Courts (1670–1868), which had jurisdiction over small debts and petty differences, and often acted in additional capacities as county officials or commissioners.¹⁵ These extensive responsibilities, enhanced by historical prestige from England, made the justice of the peace an office of significant repute in North Carolina.¹⁶

But as the fledgling state marched toward the nineteenth century, changes became necessary for the existing judicial system to function without interruption. The General Assembly, tasked with maintaining district superior courts, began to synthesize the old English system of law and equity, as “many innocent men [were] withheld of their just rights for want of courts of equity.”¹⁷ By 1818, the General Assembly’s pursuit of a sufficient appellate court blossomed into the Supreme Court of North Carolina.¹⁸ Over the span of several decades, North Carolina’s court system

9. Charter to the Lords Proprietors of Carolina (June 30, 1665), in *NORTH CAROLINA CHARTERS AND CONSTITUTIONS, 1578–1698*, at 94–95 (Mattie Erma Edwards Parker ed., 1963).

10. Albert Coates, *The Courts of Yesterday, Today and Tomorrow in North Carolina*, 24 *POPULAR GOV’T* No. 6S, Mar. 1958, at 5, 6.

11. JOHN LOCKE, *THE FUNDAMENTAL CONSTITUTIONS OF CAROLINA (1669)*, reprinted in *A COLLECTION OF SEVERAL PIECES OF MR. JOHN LOCKE*, 4–5 (1739).

12. *Id.* at 9.

13. See GEORGE STEVENSON & RUBY D. ARNOLD, *NORTH CAROLINA COURTS OF LAW AND EQUITY PRIOR TO 1868* 9 (Archives Information Circular, 1973).

14. *Id.* at 7.

15. *Id.*

16. See JOAN G. BRANNON, *NORTH CAROLINA SMALL CLAIMS LAW 2* (UNC Sch. of Gov’t ed. 2009).

17. Coates, *supra* note 10, at 8.

18. See *id.*

had surely become a product of the English judicial system, but it needed constant maintenance to adequately serve the needs of a growing state.

II. SYNTHESIZING LAW AND EQUITY

Those attempting to modernize the court system in North Carolina met the constitution of 1868 with considerable optimism. In several ways, the resulting updates to the judiciary represented a complete restructuring:

The distinction between actions at law and suits in equity . . . shall be abolished, and there shall be in this State but one form of action . . . which shall be denominated a civil action; and every action . . . against a person charged with a public offence . . . shall be termed a criminal action.¹⁹

Lawmakers also eliminated the county courts, dividing the courts' responsibilities between justices of the peace, the superior court, and newly-created county commissioners.²⁰ The legislature provided for the general expansion of the judicial system by increasing the number of superior court districts and justices of the peace in each county.²¹

The constitution of 1868's most consequential change was the General Assembly's newfound authority to establish "Special Courts, for the trial of misdemeanors, in cities and towns, where the same may be necessary."²² In 1875, the constitution was amended to give the General Assembly an even freer hand to influence the judicial system. These changes removed fixed limits on districts and justices and muddied original jurisdiction between lower courts by striking the word "exclusive" from the 1868 version.²³ The inevitable fallout of such maneuvers, perhaps unforeseeable at the time, reverberated over the following decades as legislators took advantage of these new provisions to exert their influence.

III. "REFORMS" GALORE

Changes to the court structure in the nineteenth century had marked effects on the court's operation in the twentieth century. While the supreme and superior courts retained their respective structures and jurisdictions, the lower courts fell to the mercies of constant legislative action. In 1950, noted academic J. Francis Paschal lamented the resulting patchwork: "[O]ur State,

19. N.C. CONST. OF 1868, art. IV, § 1.

20. Coates, *supra* note 10, at 8–9.

21. *Id.* at 9.

22. N.C. CONST. OF 1868, art. IV, § 19.

23. Coates, *supra* note 10, at 9.

once a leader in the administration of justice, has fallen behind. Other states have advanced while North Carolina has marked time.”²⁴

Two major headaches had arisen from the General Assembly’s intervention. The first was a dramatic increase in the number of lower courts. Nostalgic feelings resulted in the attempted revival of the county court in 1876, followed by several attempts to institute a circuit court system—all of which failed.²⁵ The “Special Act” Courts that the General Assembly created from 1905 to 1917—numbering over 100—were equally troublesome.²⁶ The composition and responsibilities of these courts were altered with additional legislation when the need inevitably arose, resulting in “[v]ariations . . . so numerous that it is a misnomer to speak of a ‘system’ of trial courts of limited jurisdiction.”²⁷ The president of the North Carolina Bar Association complained in 1915 that

If I could present a moving picture showing these various local courts and their varying session, their many modes of procedure, explaining the manner in which crimes are changed by crossing a township or county line, as the case may be, and the manner in which each local court bill was drafted to circumvent the plain letter of the Constitution, and above all how the city, town, township, and county have been substituted for the State in the administration of the criminal law, you would be ready to designate the entire system a crazy quilt court system, a *veritable judicial Pandora’s Box*, creating judicial and court chaos.²⁸

In response to widespread criticism from judges and lawyers alike, a constitutional amendment was offered in 1917 to supply a stopgap against General Assembly interference.²⁹ This amendment prohibited “local, private or special act or resolution . . . relating to the establishment of courts inferior to the Supreme Court”³⁰ but simultaneously granted the “power to pass general laws regulating . . . this section.”³¹ Such a loophole did not go

24. J. Francis Paschal, *Minimum Standards of Judicial Administration in North Carolina*, 29 N.C. L. REV. 27, 35 (1950).

25. See Coates, *supra* note 10, at 14–15.

26. See *id.* at 18.

27. N.C. BAR ASS’N, REPORT OF THE COMMITTEE ON IMPROVING AND EXPEDITING THE ADMINISTRATION OF JUSTICE IN NORTH CAROLINA 2 (Dec. 1958) [hereinafter REPORT OF THE BELL COMMISSION].

28. Coates, *supra* note 10, at 18 (emphasis added).

29. *Id.*

30. Coates, *supra* note 10, at 18; see also *In re Harris*, 112 S.E. 425, 425 (N.C. 1922); *Reade v. City of Durham*, 92 S.E. 712 (N.C. 1917); *Mills v. Bd. of Comm’rs of Iredell Cnty.*, 95 S.E. 481, 482 (N.C. 1918) (“An interpretation of these recent amendments which would destroy or impair the legislative power . . . would be of such serious and threatening consequence that it should not be sanctioned . . .”).

31. Coates, *supra* note 10, at 18.

unnoticed by legislators, who passed a law in 1919 that attempted to establish a uniform system of recorders' courts—an effort that was blighted by legislators who hurriedly resolved to exclude their own counties.³²

In re Harris was a resulting legal struggle which saw the Supreme Court of North Carolina determine that “the statute is designed and intended to provide for as many as 56 out of the 100 counties of the state, and could in no sense be regarded as a local or special law.”³³ This ruling enabled a further explosion of local courts, including those of fourteen “general laws” passed by the General Assembly during the period from 1917 to 1957.³⁴ North Carolina’s complex system of local courts, cultivated by special and general acts, thus became like those of England and New Jersey—“only for those who have plenty of money and time to wait for it.”³⁵

IV. MOBILE “JUSTICE”

The second troublesome result of the General Assembly’s intervention in the court system was a gradual deterioration of judicial quality. Scholars often cite justices of the peace as role models of the decline.

Instead of receiving a salary, justices of the peace received payment in the form of fees charged.³⁶ In criminal cases, they received no fee unless the trial resulted in a conviction, setting up an unavoidable and outrageous conflict of interest.³⁷ From 1868 until 1955, their method of appointment vacillated between local elections, General Assembly selection, and gubernatorial selection.³⁸ When it was the General Assembly’s turn, legislators would occasionally pass omnibus bills in which names were included as jokes, and “where little or no attention [was] given to the suitability for judicial office of those whose names [were] included in the bill.”³⁹ This practice had such a negative effect that, even today, no exact count exists of authorized justices of the peace in the first half of the twentieth century.⁴⁰

32. *See id.* at 18–19.

33. *In re Harris*, 112 S.E. at 426.

34. Coates, *supra* note 10, at 19.

35. Butterfield, *supra* note 2, at 30.

36. BRANNON, *supra* note 16, at 2.

37. *See id.*

38. *Id.*

39. REPORT OF THE BELL COMMISSION, *supra* note 27, at 3.

40. *See* BRANNON, *supra* note 16, at 2–3.

Naturally, these payment and appointment techniques meant that the office of justice of the peace was often a “political football” subject to “magistrate-making mania.”⁴¹ The effects quickly became clear:

Most of the part-time justices are “birds on the wing,” and litigants find them on a “catch as catch can” basis. With no fixed time or place for tending to judicial business, the part-time justice of the peace can tend to business anytime or anywhere, and the records show him trying cases in his back yard, on his front porch, in the rear end of a grocery store over chicken crates, over a meat counter in a butcher shop, in an automobile, over the plow handles, in a printshop, in a garage, in an icehouse, in a fairground ticket booth, and in a funeral parlor.⁴²

Combined with amendments to both the special act and general law courts, the period from 1917 to 1957 was a nightmare for judicial administration in North Carolina. All told, the General Assembly passed 111 acts relating to the jurisdiction of lower courts, 144 acts modifying lower court procedures, and 25 acts abolishing previously constituted courts in their entirety.⁴³ Desperately in need of reform, North Carolina’s system of lower courts instead lumbered through the twentieth century.

V. DISSATISFACTION DIAGNOSED

In a famous speech to the American Bar Association in 1906, then Dean of the University of Nebraska Law School, Roscoe Pound, stated that “[d]issatisfaction with the administration of justice is as old as law Assuming this, the first step must be diagnosis.”⁴⁴ How would North Carolina find its judicial footing? The State’s pivotal incursion into self-diagnosis took hold in the form of the Committee on Improving and Expediting the Administration of Justice in North Carolina, which was appointed by the North Carolina Bar Association in 1955 at the request of progressive Governor Luther H. Hodges.⁴⁵ Governor Hodges presented the Commission with a check for \$30,000 to commence its work, remarking,

41. *Id.* at 3; *see also* Kemp D. Battle, *Open Court*, 6 N.C. L. REV. 349, 353 (1928) (“Apparently magistrate-making gets to be a sort of mania.”). Without political barriers to their appointment, justices of the peace were frequently unqualified and appointed by potentially corrupt means.

42. Coates, *supra* note 10, at 16.

43. *Id.* at 22–23.

44. Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 14 AM. LAW. 445, 445 (1906).

45. *See* REPORT OF THE BELL COMMISSION, *supra* note 27, at ii.

“This is the down payment, and as far as I am concerned, you are in business.”⁴⁶

The establishment of the Bell Commission, named for its chairperson, launched a multi-year and multifaceted crusade to identify necessary changes to North Carolina’s judicial system and recommend avenues of implementation. A noteworthy suggestion came from a judge on the superior court in a compilation of comments and opinions on the current state of the court system. “[We ought to study] the New Jersey plan of supervising the Superior Courts,” he wrote, “with a view of determining whether some similar plan should be recommended for North Carolina.”⁴⁷

Indeed, the Bell Commission, led by Charlotte attorney J. Spencer Bell, would draw many of its recommendations from prominent legal scholars, especially those from New Jersey. Arthur T. Vanderbilt, a prominent New Jersey attorney and judge, provided “the spark that kindled the white flame of progress”⁴⁸ in his state following the efforts of Roscoe Pound and David Dudley Field.⁴⁹ Vanderbilt was fond of citing a study that indicated twenty-eight percent of the American people believed their local and municipal judges to be dishonest. “Leaving aside the question of whether this large group of people is right or wrong,” he wrote, “the fact remains that enough judges have behaved in a way which creates a widespread impression of dishonesty.”⁵⁰

Vanderbilt was equally critical of disorganized lower courts, where he sharpened his reform efforts. When he became Chief Justice of the New Jersey Supreme Court in 1948, Vanderbilt demanded strict adherence to the Canons of Judicial Ethics, which prevented judges from participating in partisan political activities, required magistrates to hold formal legal education, and brought in fixed salaries to replace the questionable system of fee compensation.⁵¹ His model of proper judicial structure consisted of a trial court with statewide jurisdiction, a court to hear appeals, and “chiefly as a matter of convenience” a local court to hear petty civil and criminal

46. Arthur Johnsey, *Study of N.C. Courts to Start Immediately*, GREENSBORO DAILY NEWS, June 17, 1956, at 1. The \$30,000 fund was raised by the Richardson Foundation and presented by Governor Hodges at a banquet.

47. INST. OF GOV'T, UNIV. OF N.C. AT CHAPEL HILL, JUDICIAL COMMENTARY ON ADMINISTRATION OF COURTS AND CIVIL JUSTICE 22 (Royal G. Shannonhouse ed., 1957).

48. ARTHUR T. VANDERBILT, CHANGING LAW: A BIOGRAPHY OF ARTHUR T. VANDERBILT 94 (1976) [hereinafter CHANGING LAW] (quoting John H. Wigmore, *Roscoe Pound's St. Paul Address of 1906*, 20 J. AM. JUDICATURE SOC'Y 176, 176 (1936)).

49. See ARTHUR T. VANDERBILT, THE CHALLENGE OF LAW REFORM 53–54 (1955) [hereinafter CHALLENGE OF LAW REFORM].

50. Butterfield, *supra* note 2, at 143.

51. CHANGING LAW, *supra* note 48, at 193.

cases.⁵² But Vanderbilt recognized reform as a difficult undertaking and one that must be attempted by a steadfast group:

Manifestly judicial reform is no sport for the short-winded or for lawyers who are afraid of temporary defeat. Rather must we recall the sound advice given by General Jan Smuts to the students at Oxford: “When enlisted in a good cause, never surrender, for you can never tell what morning reinforcements in flashing armor will come marching over the hilltop.”⁵³

VI. A NEW FRAMEWORK

North Carolina’s “morning reinforcements” became the group of lawyers who wanted to bring simplicity and efficiency to the state’s judicial system. The Bell Commission began its work by supplying a comprehensive portrait of the judicial system in the late 1950s. That court system, they argued, was one designed for the pioneer days of the state, when some degree of self-sufficiency and local governance was necessary.⁵⁴ They found broad support for this conclusion through a survey of various law enforcement personnel and court officials. One respondent specifically hailed the “golden and unlimited opportunity”⁵⁵ to bring about real change. Many other respondents had harsh words for the existing system. They committed colorful adjectives to articulate their opinions of justices of the peace, including “archaic,” “disgraceful,” “corrupt,” and “dishonest.”⁵⁶ Several subcommittees joined the cacophony; one wrote, “the lack of uniformity went so totally into every aspect of each court as to leave almost every court a stranger to its brother.”⁵⁷

Bell Commission participants concluded that the only acceptable course of action to advance these “feebly modernized” courts would be “the

52. CHALLENGE OF LAW REFORM, *supra* note 49, at 39.

53. ARTHUR T. VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION xix (Arthur T. Vanderbilt ed., 1949).

54. REPORT OF THE BELL COMMISSION, *supra* note 27, at 1–2.

55. *Suggestions for Improving the Administration of Justice in North Carolina Received from Judges, Lawyers, Clerks of Court, Sheriffs, Police Chiefs and Other Officers and Court Officials*, in BELL COMMISSION REPORTS 38 (Royal Shannonhouse et al. eds., 1957) [hereinafter *Suggestions for Improving the Administration of Justice in N.C.*]. [Editors’ Note: Because of COVID-19 restrictions, *Campbell Law Review* was unable to review this source.]

56. *Id.* at 41.

57. Fred G. Crumpler, *Comments from Judicial Officials*, in 2 BELL COMMISSION REPORTS 41 (1958). [Editors’ Note: Because of COVID-19 restrictions, *Campbell Law Review* was unable to review this source.]

establishment of a unified court system.”⁵⁸ The creation of a system that could provide simplicity, efficiency, and usability became the Commission’s next challenge.

In forming its recommendations to the General Assembly, the Bell Commission reached far into North Carolina’s judicial history and took note of many jurists’ practical experience on the bench. In December 1958, the Commission released its seventy-one-page report with recommendations to the North Carolina Bar Association.⁵⁹ We note three of its most salient suggestions for the system of lower courts and general court administration.

The Commission first recommended the establishment of a unified court system in the state, including an appellate division, a trial division of general jurisdiction, and a division of local trial courts.⁶⁰ This approach stemmed from a desire to eliminate competing jurisdictions while retaining flexibility to transfer authority along the court divisions.⁶¹ Second, the Commission recommended the establishment of a new district court system:

It is at the local level—the so-called “courts of limited jurisdiction”—that there is the greatest need for change in North Carolina. The Committee believes that the present functions of all existing trial courts, excluding the Superior Court but including justices of the peace and such special courts as juvenile and domestic relations courts, should be embraced within a new division of local trial courts consisting of district courts.⁶²

The district courts would include a chief judge, assisted by associate judges in more populous counties, and magistrates, who were to be appointed upon the recommendation of the senior resident superior court judge.⁶³ The Commission reasoned that many of the current local court judges and staff would transition to the district court, enabling the judicial system to achieve new levels of efficiency without losing institutional memory.⁶⁴

The Commission’s third recommendation served as a point of synthesis for its report. The Commission noted that state courts were generally characterized by

[E]xtreme decentralization; considerable duplication of work; overlapping, conflicting and confusing jurisdiction; intricate procedures; wide diversity of local courts with marked lack of uniformity among courts of the same

58. *Id.* at 2, 5.

59. *See generally* REPORT OF THE BELL COMMISSION, *supra* note 27.

60. *Id.* at 6.

61. *See id.*

62. *Id.* at 11.

63. *Id.* at 12–13.

64. *Id.* at 13.

general purpose; a high degree of autonomy in individual courts; lowest courts threatened by incompetence or dishonesty or both; and a virtual total absence of authoritative supervision from any competent source.⁶⁵

The Commission proposed an expansion of the administrative assistant to the chief justice into a full Administrative Office of the Courts.⁶⁶

Under the supervision of the Chief Justice of the Supreme Court of North Carolina, the Administrative Office would: “collect proper statistics, maintain appropriate personnel records, handle the procurement of equipment, supplies and facilities for the courts, prepare and maintain fiscal records, make appropriate reports on the basis of which the Chief Justice can handle judicial assignments, and generally to supervise and report on the operation of the system.”⁶⁷ In short, the Administrative Office would complete tasks that had fallen by the wayside for centuries.

VII. GRADUAL IMPLEMENTATION

By providing a framework with which North Carolina could consolidate its court system, create new efficiencies in lower court operation, and keep accurate records, the Bell Commission hoped to permanently transform judicial operation in North Carolina for the better. Its ambitious recommendations, however, were met with widespread skepticism by the 1959 session of the General Assembly. Legislators watered down provisions in fear of ceding too much regulatory authority to the court system, and supporters of reform quickly withdrew their proposal.⁶⁸

Undaunted, the North Carolina Bar Association returned to its studies in search of a compromise. Under the leadership of Howard W. Hubbard, the Committee on Legislation sent a report to the 1961 General Assembly that met less opposition.⁶⁹ In exchange for the safe passage of reform, the report suggested new provisions to protect legislative authority, including oversight of district court judges and the supervision of supreme court procedure-making powers.⁷⁰ This focus on flexibility enabled many of the

65. Clyde L. Ball, *Report on Court Structure and Jurisdiction*, in 3 BELL COMMISSION REPORTS 1 (1958). [Editors’ Note: Because of COVID-19 restrictions, *Campbell Law Review* was unable to review this source.]

66. REPORT OF THE BELL COMMISSION, *supra* note 27, at 42.

67. *Id.* at 41–42.

68. See Michael Crowell, *The Origins of the North Carolina District Court*, 21 N.C. ST. B.J. 6, 7 (2016).

69. See *id.*

70. See *id.*

Bell Commission's initial reforms to receive legislative approval without sacrificing necessary progress. In November 1962, North Carolina voters went to the polls and overwhelmingly (357,067 to 232,774) supported the compromise amendment to the state constitution.⁷¹

With a firm legal framework in place, the 1963 General Assembly established the Courts Commission, under the chairmanship of Lindsay Warren, Jr., to implement the revised court system by 1971.⁷² The Commission drafted the Judicial Department Act (JDA) of 1965, which brought the decades-long search for tangible court reform to a close. The JDA specifically provided for the construction of the district court division of the General Court of Justice, the Administrative Office of the Courts, and financial support of the judicial department.⁷³ In doing so, the JDA fulfilled the salient recommendations of the Bell Commission and set in motion a unified effort to provide equitable justice to all of North Carolina.

VIII. FULLY OPERATIONAL

The JDA designed the district courts to be established in three phases on a schedule spanning five years, with full implementation in all 100 counties by December 1970.⁷⁴ On paper, the JDA gave the district court "exclusive original jurisdiction of misdemeanors, and concurrent jurisdiction of civil cases where the amount in controversy [was] \$5,000 or less, and of domestic relations cases regardless of the amount in controversy."⁷⁵ In practice, these provisions were included to give quick relief to the superior court. Positive feedback began to trickle into the new Administrative Office of the Courts as district courts spread to all 100 counties:

In Cumberland County there were 271 civil cases filed in the Superior Court during the year as compared with 2,043 filed during the previous reporting

71. Crowell, *supra* note 68, at 8.

72. See generally LINDSAY C. WARREN, JR., THE JUDICIAL DEPARTMENT ACT OF 1965: A SERIES OF EXPLANATORY ARTICLES FROM POPULAR GOVERNMENT REPRINTED BY THE NORTH CAROLINA COURTS COMMISSION 1 (1967), <https://celebrate.nccourts.org/sites/default/files/The%20Judicial%20Department%20Act%20of%201965%20-%20Sen.%20Lindsay%20Warren%20complete.pdf> [<https://perma.cc/23G8-BBDD>].

73. N.C. GEN. STAT. § 7A-2 (1965).

74. WARREN, JR., *supra* note 72, at 3.

75. N.C. JUD. DEP'T, ANNUAL REPORT OF THE ADMINISTRATIVE OFFICE OF THE COURTS 3 (1966).

year. At the same time, there were 3,079 civil cases filed in Cumberland County in the District Court division.⁷⁶

Statistics at the state level suggested comparable results.⁷⁷ The total number of civil cases added in the superior court across the state dropped from 33,020 in 1968 to only 8,251 by the end of 1971.⁷⁸ The number of criminal and civil cases pending was equally striking, falling by over 17,000 from 1967 to 1971.⁷⁹ Moreover, the fully established district court division disposed of small claims cases with remarkable efficiency. A jury was impaneled in only 2.3% of 134,837 civil cases.⁸⁰ After years of judicial malpractice in North Carolina, and after over a decade of demanding work, the labors of countless reformers had indeed borne lasting fruit.

IX. FORWARD TO THE FUTURE OR BACK TO THE PAST?

Despite significant early success and gradual administrative tweaks over the past fifty years, the district court and judicial system in North Carolina are under constant pressure to improve. From 1994 to 1996, this task manifested itself in the form of the Commission for the Future of Justice and Courts in North Carolina, colloquially known as the Futures Commission.⁸¹ Chaired by Wachovia executive John Medlin, the Commission included no sitting members of the court system, as a means to avoid those inclined to resist change.⁸²

The Commission took special notice of developments in North Carolina both in and beyond the justice system, including a growing burden on the courts as the result of an expanding population, a shifting political climate, and rapid advancements in technology.⁸³ Moreover, it employed a public relations firm to determine the public opinion of the court system. The resulting survey, conducted over several months in 1995, found that “the most frequent form of contact [51.5%] . . . is personally appearing before the court . . . in traffic court, a domestic court, small claims court, or

76. N.C. JUD. DEP'T, ANNUAL REPORT OF THE ADMINISTRATIVE OFFICE OF THE COURTS 6 (1967).

77. N.C. JUD. DEP'T, *supra* note 75.

78. N.C. JUD. DEP'T, ANNUAL REPORT OF THE ADMINISTRATIVE OFFICE OF THE COURTS 12, 13 (1971).

79. *Id.*

80. *Id.* at 40.

81. Crowell, *supra* note 68, at 8.

82. *Id.*

83. COMM'N FOR THE FUTURE OF JUST. & THE CTS. IN N.C., WITHOUT FAVOR, DENIAL OR DELAY: A COURT SYSTEM FOR THE 21ST CENTURY 6–7 (1996) [HEREINAFTER A COURT SYSTEM FOR THE 21ST CENTURY].

a civil suit” (*i.e.*, the district court).⁸⁴ Of all respondents, 38% indicated a generally favorable opinion of the court, 33% unfavorable, and 30% had no opinion. “This indicates that a major segment of the adult population has major gaps in their knowledge about the court system in North Carolina,” the report concluded.⁸⁵ Furthermore, the court system as a whole ranked lower in favorability than the news media, local government, attorneys, and the state legislature.⁸⁶

Faced with these challenges, the Futures Commission set about making recommendations for North Carolina’s twenty-first century court. Looking for a “recommitment to uniformity,” the Commission reconsidered several of the proposals laid out by the Bell Commission decades earlier.⁸⁷ First, it suggested an enhanced role for the chief justice of the supreme court, ending most General Assembly oversight.⁸⁸ Second, the Commission proposed a simpler trial court organization in the form of a new circuit court.⁸⁹ This reorganization would entail a closer case management system, justices appointed by recommendation from a State Judicial Council, and improved technological engagement and information-sharing.⁹⁰

The proposals agreed upon by the Futures Commission met similar resistance in the General Assembly to those of the Bell Commission. The new Judicial Council lacked the authority to be anything more than an advisory body; family courts—despite their overwhelming popularity among respondents of the Future Commission’s survey [84%]—were not uniformly established throughout the state, and no merger between the superior and district court into a circuit court was ever seriously considered.⁹¹ Most importantly, legislators remained unwilling to relinquish any measure of control over the judicial branch.

In 2015, the then-Chief Justice of the Supreme Court of North Carolina, Mark Martin, commissioned a third attempt (officially the Commission on the Administration of Law and Justice) at adapting the

84. COMM’N FOR THE FUTURE OF JUST. & THE CTS. IN N.C., NORTH CAROLINA COURT SYSTEM RESEARCH 11 (Wilkerson & Associates ed. 1995). [hereinafter N.C. COURT RESEARCH]. [Editors’ Note: Because of COVID-19 restrictions, *Campbell Law Review* was unable to review this source.]

85. *Id.* at 16; *see also* A COURT SYSTEM FOR THE 21ST CENTURY, *supra* note 83, at 8.

86. A COURT SYSTEM FOR THE 21ST CENTURY, *supra* note 83, at 8; *see also* N.C. COURT RESEARCH, *supra* note 84, at 49.

87. Crowell, *supra* note 68, at 8–9.

88. *Id.* at 8.

89. *Id.* at 9.

90. *Id.*

91. *Id.*; A COURT SYSTEM FOR THE 21ST CENTURY, *supra* note 83, at 9.

state's court system to the twenty-first century.⁹² With a burgeoning and mobile population, fluctuating levels of judicial funding, and court clerks' offices awash in "over 31 million pieces of paper, requiring 4.3 miles of shelving" in 2016 alone, North Carolina's need for modern reforms was clear.⁹³ Among other measures, the Commission proposed several initiatives designed to improve trust and reduce inequality within the judicial system, recommending the restoration of funds for legal assistance programs, the raising of North Carolina's juvenile age to "eighteen for all crimes except violent felonies and traffic offenses," and the creation of a new state legal innovation center to "account for the evolving needs and expectations of the public."⁹⁴

However, as with the Bell and Futures Commissions, many of the 2017 recommendations were not adopted. This was due in large part to recent tides of partisan politics that have washed in changes to the executive and legislative branches.⁹⁵ Unlike many states, North Carolina judges adhered to partisan politics at all levels for most of the twentieth century.⁹⁶ Since the mid-1990s, however, those elections have vacillated between partisan and non-partisan as political power has changed hands.⁹⁷

In 2002, the General Assembly made judicial elections fully non-partisan with the Judicial Campaign Reform Act. As statewide political fortunes began to favor conservatives, however, the Republican ascendancy brought back partisan elections for the supreme court and court of appeals in 2016 and district courts in 2017.⁹⁸ In 2018, the Republican-led General Assembly overrode two vetoes from democratic Governor Roy Cooper to redraw existing districts, further altering the judicial landscape in North Carolina.⁹⁹

92. See *North Carolina Commission on the Administration of Law and Justice (NCCALJ) Final Report*, NORTH CAROLINA JUDICIAL BRANCH, <https://www.nccourts.gov/documents/publications/north-carolina-commission-on-the-administration-of-law-and-justice-nccalj-final-report#:~:text=The%20North%20Carolina%20Commission%20on,make%20recommendations%20for%20improving%20the> [<https://perma.cc/3BKX-H8GX>].

93. N.C. COMM'N ON THE ADMIN. OF LAW & JUST., RECOMMENDATIONS FOR STRENGTHENING THE UNIFIED COURT SYSTEM OF NORTH CAROLINA 13 (Mar. 2017).

94. *Id.* at 39–40, 44, 50.

95. See generally Robert N. Hunter, Jr., *Do Nonpartisan, Publicly Financed Judicial Elections Enhance Relative Judicial Independence?*, 93 N.C. L. REV. 1825 (2015).

96. See *id.* at 1840–53.

97. See *id.* at 1853–68.

98. 2017 N.C. Sess. Laws 72.

99. Travis Fain, *Cooper Veto Overturned; 2018 Judicial Primaries Canceled*, WRAL (Oct. 17, 2017, 12:38 PM), <https://www.wral.com/cooper-veto-overturned-2018-judicial-primaries-cancelled/17023207/> [<https://perma.cc/9CDB-LD7D>].

X. THE ONGOING PURSUIT OF JUSTICE

While the history of the district court in North Carolina leaves open the question of whether partisan judicial elections represent the best policy, it does provide ample evidence in favor of a unified system that functions as an efficient and neutral arbiter of local-level disputes. Certainly, the pursuit of justice is not an easy or straightforward task. As the respective sagas of the Bell Commission, Futures Commission, and Commission on the Administration of Law and Justice show, judicial reform can only be accepted and implemented with broad support from jurists, attorneys, and the public. Participants must be willing to consider every angle, gather every data point, and compromise where compromise is possible for the best results.

North Carolina's journey to the district court was long and illustrious; the fifty-plus years since its implementation have reaped the harvest of wisdom sowed by thoughtful people of foresight. From the early days of the Carolina colony to the present, the administration of justice has been a central focus of the state. With the new district court, reformers hoped that changes made in the 1960s would allow Blackstone's vision of a court "plentifully watered and refreshed"¹⁰⁰ to be achieved. Long removed were law and equity and general and special acts courts of the early twentieth century. No more were the ethically and numerically questionable justices of the peace.

Instead, North Carolina leapt to the "cutting edge of court reform"¹⁰¹ under the guidance and practices of the legal profession's elder leaders: Roscoe Pound, Arthur Vanderbilt, and J. Spencer Bell. The court system that once supplied justice during the pioneer days of the state had evolved into a modernized, efficient, and growing one—a mirror image of the state it served.

100. BLACKSTONE, *supra* note 5, *31.

101. COMM'N FOR THE FUTURE OF JUST. & THE CTS. IN N.C., REPORT TO THE NORTH CAROLINA BAR ASSOCIATION 1 (1996).