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Fences and Gates: A Survey of Collaborative Aspects of District Court Practice in Light of Self-Represented Litigants, Addiction, and the Mandate to Formulate Plans

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ABSTRACT

The district courts of North Carolina are called to handle a multitude of legal issues, many of which are vital, personal issues facing individuals in our society. Court dockets swell with cases for resolution, due in part to substance use disorder, addiction, and legal issues that frequently arise as a result of them. The court must adjudicate in the midst of these complex challenges experienced by the litigants. These litigants are also increasingly appearing before the court without legal counsel. In Reinventing the Courts: The Frontiers of Judicial Activism in the State Courts, criticism is leveled at courts that attempt to solve these problems. Under legislative direction and ethical duty, a North Carolina district court judge may utilize collaborative and problem-solving methods to bring cases to a resolution. These methods, despite the criticism of Frontiers, are not far beyond the historically contemplated purposes of courts and are well within long-standing structural safeguards, statutory requirements and ethical obligations. In many instances, the court is called to resolve these issues and formulate plans for resolution of these cases by the North Carolina General Assembly. The challenges that present in court everyday often need these approved, prescribed problem solving approaches to answer the needs of the litigants.

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INTRODUCTION

The District Court Division of the General Court of Justice of North Carolina is a judicial juggernaut that disposes of and resolves disputes involving a myriad of subject matters, including domestic relations cases, juvenile cases, traffic infractions, and misdemeanors, along with preliminary hearings in felony cases and appeals from magistrate decisions. The caseload can be staggering, and the issues to be decided are diverse. Depending on the district and court assignment, in a single session, a district court judge may consider a first appearance on a murder case, a misdemeanor trial, a domestic violence protective order, an ex-parte
custody order, and secure and non-secure juvenile custody orders. Nowhere else in the legal system exists such a broad and diverse jurisdiction. The sitting judge must balance and consider the multitude of interests present in these cases and do so with the idea of protecting and preserving due process at each step. This balancing must be considered during the brief window of a day of court where much has to be done.

North Carolina District Court judges are guardians of due process during the balancing just described. Owing to the vast numbers of cases and individual needs of the litigants, they must respond to these external forces to engage the greatest number of people with very real, and personal, legal issues. These factors, particularly the rising numbers of self-represented litigants and opioid-addicted litigants, frame the key inquiry of this Article: within the district court’s jurisdiction, what level of collaboration and problem solving is supportive of overall due process, and does North Carolina’s body of law support collaborative aspects?

Other articles have addressed this key inquiry, albeit in other jurisdictions. One such article is Reinventing the Courts: The Frontiers of Judicial Activism in the State Courts (Frontiers). In Frontiers, Chancellor Frank Williams, a Tennessee state court judge, cautions that collaboration and problem solving are tantamount to the demise of due process.

This Article identifies possible answers to the question of what level of problem solving is supportive or detrimental to due process in the light of prior criticism. In Part One, this Article adopts a working definition of collaboration and problem solving for the purposes of this inquiry. Part Two identifies the critical, contemporary needs faced by the courts generally and the North Carolina District Court specifically. Part Three addresses how the charges in the Frontiers article impact and inform the analysis of collaboration in North Carolina District Courts. In Part Four, this Article briefly examines historical implications of the jurisprudential framework and how those implications inform, or color, the inquiry. Part Five explores a judge’s duties and legislative mandate as a jurist.

In these inquiries, this Article identifies where barriers, or fences, exist to protect due process and the rights of individuals. This Article also examines how justiciable issues, and the individuals who experience them, move from one stage, or gate, to the other, and how those gates are strategically located to facilitate the resolution of justiciable issues. Without gates, fences render the areas they protect unusable. Without

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2. See id. at 709–16.
fences, these areas are open, undefined, and vulnerable. In the judicial context, fences are the threshold and barrier components of due process that protect our court processes. Gates, on the other hand, are the pleadings, enabling statutes, and legislative mandates that direct the court to interact in a specific and purposeful way with litigants. Judges are the gatekeepers. To balance competing rights and interests, or the combination of fences and gates designed by the law, requires problem solving and collaboration in support of due process. The crux of this Article is that, because historical practice and the General Assembly have given North Carolina district courts great latitude in many of society’s most important dispositions, district court judges should exercise that latitude.

I. WORKING DEFINITIONS

Collaboration and problem solving may have a multitude of generalized or specific meanings, depending on the area of usage; however, in this inquiry, simple definitions are sufficient in the context of legal analysis. These definitions are taken from the law and the legal profession’s general understanding of conflict resolution and the settlement of disputes.

Collaboration, in a legal context, is an “interest-based, settlement-oriented dispute resolution process.” This definition notes that collaboration requires a shared purpose and a common goal among the parties. In the present analysis, collaboration is limited to the conduct of legal hearings, with the purpose being a resolution of the problems enumerated in the complaint or initiating documents. Collaboration is limited to justiciable issues properly pleaded by the interested parties, and thus, giving the court jurisdiction. The goals of this collaboration are largely set by public policy enacted by our legislature and can be discerned by taking a macro view of our law, as will be discussed in Part Five. The interests of the parties, for the purpose of the above-defined basis for collaboration, are the individual rights, desires, and needs of the parties. The parties themselves are the collective—and unfortunately increasing—population of unrepresented and non-legally educated public.

3. See generally Williams, III, supra note 1. This concept is the primary theme of Chancellor Williams’s article and the conclusion that he draws in the article.


5. See id. at 243; see also Annelise Riles, From Comparison to Collaboration: Experiments with a New Scholarly and Political Reform, 78 Law & Contemp. Probs. 147, 152 (2015) (“[C]ollaboration that has no purpose is nonsense . . . . [I]f you do not share a common goal, it must not be collaboration.”).
Problem solving, as a concept in its most basic form, is the pressure a court has to resolve the issues before it. Courts have a duty to resolve all issues, that is problems, properly pleaded before it. In fact, a court, and the judge who presides over it, has an ethical duty to resolve all the issues before the court. In a court context, problem solving can generally be regarded as the resolution of the contested issues. There is also a more specific aspect of problem solving: application of discretion within a range of outcomes. A court often has a range of permitted outcomes that will resolve the issues before it. Examples of this are how a child custody order schedules periods of custody with each parent or what a criminal court orders in a probationary judgment. Both components of problem solving are operational in this analysis. As judges, we must get the work of the court done, and that general call to solve problems is inherent in all our court interactions. However, the more specific law- and policy-driven aspect is where the district court applies the goals set by the legislature and protects the public. It is that component that will be more specifically addressed in Part Five.

As stated above, collaboration has an element of a common goal, and this goal is often to resolve legal issues or causes of those issues. These moments frequently arise when deciding how to award custody of a minor child, dealing with a litigant’s addiction, or entering a judgment that will bring about safety for litigants. As we will see, the legislature of our state has answers for some of these situations. It is important to note that some aspects of these judicial interventions, authorized by statute, are criticized heavily in *Frontiers*.

Our district courts serve diverse needs. As outlined above and with the tools described herein, this service is well within the parameters of existing due process and far removed from the social engineering foretold by *Frontiers*.

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7. In many cases before me, I have to craft judgments that protect the individuals. This can include a provision requiring a defendant to seek treatment for a drug problem or have no contact with an individual who is threatened by the defendant. It can also include providing safety parameters for exchanging minor children in a contentious and volatile child custody case or implementing a safety plan for a juvenile after disposition. Specific statutory references to these legislative mandates are set out below.

8. See generally Williams, III, supra note 1.
II. PRESSING ISSUES WITH THE DUE PROCESS NEEDS OF SELF-REPRESENTED LITIGANTS AND ADDICTED LITIGANTS

In dealing with voluminous dockets, complex interpersonal relationships,9 and the ever-changing landscape of litigation, North Carolina courts must act and react to evolving input factors. One of the ways that North Carolina courts have changed over the last twenty years is the increase in the number of self-represented litigants.10 These individuals appear before the court without the formal legal training that judges, as professional participants in the process, easily take for granted. These self-represented individuals are no different than the litigants seated beside them who have lawyers. Their causes of action are similar, their desire to have the court resolve their issues is similar, and their need to have their cases heard in a judicious way is similar. They, however, are hindered in most cases by their lack of knowledge of procedure and evidence. They often have only television or movies to guide them on procedure, a source that is woefully inadequate to prepare them for the process. This lack of knowledge can create a huge divide that is difficult to span and treacherous to manage. These litigants pose special challenges to any judge and are impaired by their lack of knowledge of how the process works.

Additionally, the rise of opioid abuse and the host of legal issues that individual abuse leaves in its wake create significant challenges for court participants. For purposes of this discussion, this Article is not focused on the litigants who come to court “high.”11 Instead, the focus is how we—as judges—can interact with individuals who are severely limited in their present ability to meaningfully protect their due process rights. The vast and expansive problem of cognitive and behavioral shortcomings of addicted individuals12 worsens when the opioid crisis continues to pose a

9. In North Carolina, the district court has original jurisdiction over juvenile justice matters and domestic relations (Family Court) issues, in which the personal relationships of the parties are almost always an integral part of the matters before the court.

10. Or pro se litigants, as they are more commonly referred to by legal participants. See Jona Goldschmidt, Strategies for Dealing with Self-Represented Litigants, 30 N.C. CENT. L. REV. 130, 130 (2008).

11. Although the existence of people coming to court drunk or “high” points to the depth and breadth of the addiction problem, my inquiry is limited to how to deal with the cognitive gap of drug-using individuals and how to resolve the efficacy of litigation with people who are continually impaired.

12. The science and medical pharmacology impact of controlled substances generally, and opioids, in particular, is not debated here. The impact of opioid abuse is a topic of monumental proportions and has been researched, documented, and debated elsewhere. For the purposes of this Article, I assume the existence of obvious and observable effects we see in the court system, not their bases, pharmacology, or processes.
significant threat to public health. The real-world implication of this crisis is that these individuals’ lives are in turmoil and often have this turmoil litigated in court in one form or another. The court must preserve the integrity of its processes while contending with an ever-increasing population of individuals with serious challenges in their ability to self-regulate. The judge’s challenge is finding balance.

Both above circumstances are daily concerns for trial judges. In addition to these daily concerns, a host of societal attitudes exist that increase or diminish the perceived necessity for action. Attitudes similar to “they got themselves into this mess; let them get out of it” or “a person who represents themselves has a fool for a client” can exacerbate an already complicated issue. Simply put, if judges are to preserve the court system’s integrity and efficacy, judges must protect due process, and not neglect litigants who are “impaired.” In light of the critical importance of the subject matter, overwhelming number of ability-impaired individuals, and rising need for access to justice, our courts cannot be dismissive of the need to address these issues in a thoughtful and grounded way. Our legal traditions often color the way we look at change. Nowhere is this conflict more evident than in the court’s response to the two groups that are the subject of this Article’s secondary inquiry: self-represented litigants and opioid-addicted individuals. By looking to the historical and statutory basis, a court can utilize a more collaborative, and directed, input by the judge to preserve and promote the due process rights of the public—paying special attention to the needs of self-represented and addicted litigants that appear in the courts.


14. This includes, but is not limited to, criminal prosecution for possession, child welfare or DSS involvement due to the neglect of children, custody and other family-related issues driven by use, and civil cases such as collections and summary ejectments due to the financial impact of drug abuse.

15. For purposes of this Article, the term “impaired” will be used in the sense of being hindered—not by current impairment of mental faculties due to acute drug or alcohol use, but rather the lack of operative knowledge or present ability to comprehend and meaningfully participate in the process.
III. FRONTIERS—COLLABORATION AND PROBLEM SOLVING SIGNAL THE DEATH OF DUE PROCESS\textsuperscript{16}

In evaluating the methods judges can employ to preserve the rights of litigants mentioned above, it is clear that some methods have a collaborative component. Judges, on occasion, may have to ask questions from the bench. If the law requires it, judges may have to request further information. Judges may, during testimony, ask for clarification as to whom a particular pronoun refers. Facing a large number of cases, a judge may inquire whether cumulative or corroborative evidence will be introduced. These inquiries are collaborative in their application. The court is working toward the goal of arriving at the truth and a viable solution to the litigation. Lawyers, in the representation of their clients, will usually anticipate and plan for these eventualities. This dynamic is commonplace, but when a litigant has no lawyer, there is a vacuum of knowledge. Self-represented litigants are impaired by what they do not know. A court is therefore impaired in its proceedings by that void. Thus, a court, in order to do its job, might intervene. Without cautious interaction, the litigants may be denied full access to justice under the law. These interactions can happen with represented litigants but frequently occur with unrepresented litigants.\textsuperscript{17} These interactions frequently draw the ire and consternation of members of the Bar.\textsuperscript{18} Understandably, the power of the court, in tandem with any discretion in the outcome, makes for a fearsome prospect. Judges, too, fear the potential of abuse or overreaching by the court, which underlies

\textsuperscript{16} This is a response to the statements and conclusions raised in \textit{Frontiers}. \textit{See generally} Williams, III, supra note 1. The Chancellor’s research and outline of many contributory factors of judging “actively” are very challenging. In writing this, I completely abandoned some of my own notions about the topic and changed, significantly, my views in some regards. This is \textit{not} an indictment of that work; I highly recommend a full reading of it. Rather, I am “looking back” and noting the eventual evolution of our law. His views, coupled with the changes we have seen since the writing of that article, are a study of a cautious point-of-view that has not, I believe, come to pass. I personally thank the Chancellor for his words of instruction and caution.

\textsuperscript{17} Anecdotally, many self-represented litigants who come to court expect the court to guide them through the process. This is a challenging area of law. The court’s ethical duty to hear cases and preserve each party’s right to be heard is discussed in greater detail below. However, the court’s impartiality may be impaired if guidance is given. The resulting need to balance competing and concurrent duties, placed upon the court, can create great conflict between the court and the litigants.

\textsuperscript{18} If the court appears to act in guidance or support of a person without a lawyer, many attorneys will feel as if the court is favoring that party or, at the very least, providing such assistance to that party without a lawyer that may discourage the hiring of lawyers for disputes. In a world where the judge helps the parties, it is perceived that people will forego the assistance of counsel. This dynamic is prevalent and persistent in many courts.
Chancellor Williams’s criticism of collaboration and problem solving in the *Frontiers* article.¹⁹

In *Frontiers*, Chancellor Williams describes at great length this thesis: Collaboration and problem solving violate the tenets of the adversarial system, resulting in the deterioration of due process of law.²⁰ He states:

If courts in the past properly understood the judicial power to consist of adversarial proceedings culminating in a judicial decision, then are the judges of today free to change the meaning of the judicial power by giving themselves powers and processes never before contemplated by those who framed and ratified the various constitutions?²¹

*Frontiers* further notes that “judges have become increasingly powerful social engineers.”²² This view is consistent with others that have challenged the idea that, in an effort to do good, judges, even the “best-intentioned judges,” can overreach and diminish due process.²³ In summary, the use of the authority of the courts to reach out to the needs of the litigants is viewed skeptically as the end of due process.²⁴ It appears that in *Frontiers*, “due process” is synonymous with the exclusive use of the adversarial system.²⁵ If we relate the *Frontiers* article to this Article’s key inquiry, we observe the battle between the adversarial system on one side, and collaboration and problem solving on the other. This conflict requires analysis of the claims of the *Frontiers* article and evaluation in the light of adversarial tradition, existing safeguards, and legislative prerogative. This analysis shows that there is both ample room and support within due process to allow for grounded collaboration and problem solving within our adversarial system.

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20. See *id.* at 593–94.
21. *Id.* at 594.
22. *Id.* at 592.
24. Williams, III, *supra* note 1, at 710–15 (noting the intervention of the “courts which try to anticipate problems and prevent them threaten the liberty of everyone”).
25. See *id.* at 592, 710–15.
IV. HISTORICAL AND STRUCTURAL IMPLICATIONS

A. Developing Adversarial Tradition as the Exclusive Path to Due Process

As mentioned earlier, Frontiers equates due process to adherence to the adversarial system. Looking back at our legal system’s history, the foundation of that statement may not be entirely accurate.

The court system in the United States owes the bulk of its form and process to the courts of England. While being separate for over 200 years, our courts have developed from a common basis and exhibit some similar characteristics that evolved independently of one another.\(^{26}\) When looking back at our rich legal heritage, we observe that itinerant courts of the past were popular and in demand.\(^{27}\) Therefore, in 1178, King Henry II authorized the regular seat of court to be at Westminster to allow regular access to the courts.\(^{28}\) One legal scholar, George Adams, goes on to relate that the English courts at that time were varied and had overlapping authority.\(^{29}\) It is interesting that Adams notes, “The new court was a permanent itinerant justice court, held at a central point, in session between the iters of the justices and accessible to anyone from any part of the kingdom, if he obtained the necessary permission, that is, the necessary writ.”\(^{30}\) I will come back to this point at a later portion, but for now, it is sufficient to say that the courts were responsive to the needs and demands of the kingdom.\(^{31}\) It is worth noting that the courts were an iteration or embodiment of the sovereign and access to the courts were similar to seeking divine intervention such as the older trial by ordeal.\(^{32}\) As time progressed, the English courts and their procedures evolved to respond to the changes in the needs of the kingdom.\(^{33}\) Another legal scholar, Stephan Landsman, notes that one of the primary aspects of the development of these courts was the evolution of the adversarial system:


\(^{28}\) See id. at 798.

\(^{29}\) See id. at 802.

\(^{30}\) Id. at 800.

\(^{31}\) See id.

\(^{32}\) See Landsman, *supra* note 26, at 717–19.

\(^{33}\) See Adams, *supra* note 27, at 800 (noting that the court’s new procedures of writs and juries “proved popular,” and eventually, litigants demanded that the procedures should be accessible to the public “at all times”).
One way to improve our understanding of the system is by reviewing the history of its development: this review can assist in identifying the values the system was intended to serve and the methods by which various procedures came to be incorporated into that system. Unfortunately, legal historians have not focused their attention on the development of the adversary system.  

The adversarial system was not the way English courts started out. Professor Landsman points out that after the rejection of church involvement in judicial determinations in 1215, the English courts faced a "vacuum" and that "was filled in England by jury trial." This shift gave rise to the prevalence of the jury as the method for preserving fairness. Landsman follows:

Rather than adopt the Roman-canon approach, the English elected to rely upon the jury. By so doing Britain rejected the straitjacketing evidentiary rules of the ecclesiastical courts, the active and inquiring judicial officer, and the use of torture to obtain confessions. The existence of the jury made England resistant to Roman-canon ideas and thereby opened English courts at an early date to a broad spectrum of evidence to be assessed by an increasingly neutral and passive fact finder. The English chose to utilize an existing form of procedure to meet the needs of society. They thereby maintained traditional protections and avoided the adoption of a new and, in significant ways, oppressive alternative.

Given this shift to the jury as the fact finder and the rise of the passivity of the judiciary, a shining jewel of the strict adversarial tradition, we can identify the historical context that provides the basis for the Frontiers article's allegations. However, this shift is not the sole, determinative characteristic of due process.

Worldwide, the adversarial system is not the only pathway to justice. The United Nations has, as a part of insuring efficacy of the rule of law in member nations, adopted the Doha Declaration. In this Declaration, the United Nations, in the context of criminal justice, seeks to set goals and

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34. Landsman, supra note 26, at 714. I am not attempting here to define or critique the adversarial system's history, but only to point out that the adversarial system is only one type of procedure. In the context of this Article, the adversarial system is equated and elevated to the solitary vehicle for the preservation of due process and the restraint of tyranny by the Chancellor's work.

35. Id. at 724.

36. Id.

37. See id. at 714.

standards for member nations of due process.\textsuperscript{39} Integrated in this declaration is the recognition of the administration of justice in independent, sovereign, member nations.\textsuperscript{40} Justice is to be administered through a “competent, independent and impartial tribunal established by law.”\textsuperscript{41} The United Nations Office on Drugs and Crime notes in educational materials, provided to assist university lecturers in the debate and teaching of key concepts, that “[t]he role of public prosecutors may differ depending on the legal tradition adopted in a particular country. Two types of legal traditions dominate the nature of investigation and adjudication around the world: adversarial and inquisitorial legal systems.”\textsuperscript{42} It is worthwhile to note that the mere existence of multiple legal traditions—both the adversarial and inquisitorial—point to a lack of exclusivity of either system as the sole source of “due process.”

B. Reaching a More Balanced Analysis

The adversarial system and its purported demise in favor of more “active” or collaborative roles of the court\textsuperscript{43} are notions that unfairly stage a binary-optioned battle. By extension of that logic, any procedure that operates outside traditional notions of adversarial trial makes judges “social engineers.”\textsuperscript{44} By accepting the premise that the courts must be either adversarial and traditional\textsuperscript{45} or the instigators of the death of due process, \textit{Frontiers} largely ignores the work of legislatures and their sovereign power to enact laws. While most practitioners of the law will be highly resistant to many collaborative practices—owing to our biases rooted in adversarial

\begin{itemize}
\item \textsuperscript{39} \textit{Id.} at 2, ¶ 5.
\item \textsuperscript{40} \textit{Id.}
\item \textsuperscript{41} \textit{Id.} at 2, ¶ 5(b).
\item \textsuperscript{43} Chancellor Williams weaves this claim throughout his work and is noted in multiple instances. For purposes of this Article, “active” would include any collaborative or problem-solving methods employed by the court. \textit{See generally} Williams, III, \textit{supra} note 1.
\item \textsuperscript{44} \textit{See} Williams, III, \textit{supra} note 1, at 592.
\item \textsuperscript{45} Williams points out that courts in the past “properly understood the judicial power to consist of adversarial proceedings culminating in a judicial decision.” \textit{Id.} at 594. While this sentence is a part of a larger question posed by the Chancellor, it highlights and reveals the purposeful framing of the issue. This statement illustrates the binary nature of the Chancellor’s inquiry and the limitations that are a natural consequence. The reader is forced into an “adversarial or wrong” decision matrix which ignores a multitude of other possibilities that are not a terminal threat to due process.
\end{itemize}
tradition—most legal practitioners would agree the ability of a legislature to enact laws and implement policies and procedures of the courts is a constitutionally-protected method of due process. If judges aim to give litigants all the protection to which they are entitled, i.e., due process, they must recognize that state legislatures have, by the will of the electorate, outlined alternate paths to justice. Before elaborating on numerous statutory provisions later, we must recognize that adversarial trial practices are not necessarily the exclusive path. It is also interesting to note that the “good ole days weren’t always good and tomorrow ain’t as bad as it seems,” and a look at the evolution of court systems does not support the notion that adversarial process is the only guarantee of justice and due process.

While *Frontiers* and many, many members of the various American Bars share the idea that the adversarial system is a static, exclusive repository of due process, there are systems of justice that do not use “our” system. It is myopic, at worst, and presumptuous, at best, to think that other concepts of due process are without merit. As we further evaluate the claims of *Frontiers*, we will see that there are many safeguards to prevent the woes foretold by the collaboration-critics and, in fact, many instances where the law requires the collaboration and problem solving of district court judges.

C. Existing Safe-Guards of Our Systems

As quoted above, Professor Adams points out that in 1178 (prior to the 1215 shift noted herein and by Professor Landsman) the courts were “popular” and were to be “accessible to anyone from any part of the kingdom, if he obtained the necessary permission, that is, the necessary writ.” Inherent in this statement is the notion of justiciability and standing. Quite a bit hinges on the distinction between these concepts, and the idea is something very briefly referenced in *Frontiers*.

The concepts of justiciability and standing predate the *Frontiers* article by over 800 years and are well settled in the law. Black’s Law Dictionary defines “justiciable” as, “(Of a case or dispute) subject to proper resolution on the merits by a court of justice; capable of being disposed of judicially.” The concept of justiciability was in place during the formation of the courts.

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46. BILLY JOEL, *Keeping the Faith, on AN INNOCENT MAN* (Columbia Records 1984).
47. See Adams, *supra* note 27, at 800.
48. See Williams, III, *supra* note 1, at 711 (referencing community court proceedings dispensing with “the constitutional doctrine of justiciability,” as well as the constitutional doctrines requiring “a case or controversy, standing, and ripeness”).
and has continued to the present date.\textsuperscript{50} This is an important distinction because the courts lack any authority until invoked with appropriate subject matter jurisdiction.\textsuperscript{51} The North Carolina judicial system has numerous checks and balances, including standing and justiciability, that preserve the due process of our courts. As foundational safeguards, which are well over 800 years old,\textsuperscript{52} these concepts effectively limit the far-ranging activism described in \textit{Frontiers}. In all the Chancellor’s characterizations and references to behaviorism, activism, and the sinister work of futurists, a small but critical notion is largely overlooked—unless people are properly before the court, the court lacks jurisdiction to remedy the ills of the world nor can it implement the creation of a “New Man.”\textsuperscript{53} Without a complaint, a criminal summons, or a warrant, the courts have no power to affect any of the “social engineer[ing]” ills \textit{Frontiers} warns about.\textsuperscript{54} The conclusions reached in \textit{Frontiers} have not been borne out by practice and are largely ameliorated by internal, limiting thresholds already present in our courts.

\textbf{D. Caveat: Burdens of Proof and Other Internal Checks Upon Judicial Over-Reaching}

Judicial interaction of any sort with litigants is a contrived function of duly conferred jurisdiction and discretion. This is a bright-line limitation on judicial authority. A judge may not neglect the law in favor of his own personal feelings.\textsuperscript{55} A judge, similarly, can neither address issues not pleaded nor adjudicate issues without proper service and notice.\textsuperscript{56} Legislatures control the laws that enable access to the courts, contemplating collaborative methods at many stages of litigation.\textsuperscript{57} Contrary to the notion of courts intervening in matters prior to the commencement of litigation,\textsuperscript{58} collaboration is firmly rooted in the concept that disputes not properly pleaded are not appropriate for judicial interaction.

\textsuperscript{50} See generally Adams, supra note 27, at 798 (noting particularly the idea that an appropriate writ was the key to the court).

\textsuperscript{51} I will note here that there are numerous cases discussing these concepts, notably \textit{State v. Jones}, 819 S.E.2d 340 (N.C. 2018). The minutiae of this concept is not necessary here except to say that North Carolina courts have routinely dismissed cases because of a lack of jurisdiction.

\textsuperscript{52} See Adams, supra note 27, at 798 (discussing the creation of these courts and safeguards in the 1100s).

\textsuperscript{53} Williams, III, supra note 1, at 729–30.

\textsuperscript{54} Id. at 592.

\textsuperscript{55} N.C. CODE OF JUD. CONDUCT Canon 3(A)(1).


\textsuperscript{57} See, e.g., N.C. GEN. STAT. § 7A-190 (2019); N.C. GEN. STAT. § 7B-244 (2019).

\textsuperscript{58} Williams, III, supra note 1, at 592.
V. LEGISLATIVE MANDATE AND JUDGE'S DISCRETION

A. The Practical Balance—The Fences and Gates to Collaboration and Solving Problems

When serving the public, judges must find a balance between waiting and disposition. Judges are forced to manage their dockets to give due consideration to the matter before them, while not over-indulging in time as to slight waiting litigants. Inevitably, there will be some waiting in all courts. But this illustration goes much farther than that base observation. The American court system generally has had barriers constructed, often from centuries ago, that are intended to bring order and dignity to our profession. Judges have dockets to control, making them wrestle with issues of notice and priority. Judges have procedural rules and laws that guard the legitimacy and decorum of the tribunals they hold. They have a multitude of evidentiary rules to guide the truth and veracity of all that they do. In effect, judges have fences to move and guide them through the quest for justice. At each stage, well thought-out openings in these barriers exist in the form of thresholds; these are gates that allow controlled access for the litigants to step over and into the arena before the Bar. Concepts like burden of proof, notice, and standing all act as regulated pathways for the access to justice residing in our courts. These mechanisms, time-honored and time-proven, serve the purpose of controlling the influx of cases to be heard, refining the justiciability of those cases, and ensuring the viability of the process.

B. Judges' Collaboration is Bounded by Legislative Action

Looking to the function of a district court, this section will focus on the more pressing issues of adversarial proceedings and the appropriate role of the judge. Much has been written about the role of the judge in the adversarial system.59 Chancellor Williams points to the common justification of the "activist" judge is that dockets are overwhelming, and the needs of the litigants are pervasive.60 In summarizing his objections, the Chancellor notes that by assuming the role of social engineers, the courts throw away due process and become a pathway for modifying behavior.61 He writes, "Activists have appropriated the lexicon associated with the

59. See Landsman, supra note 26, at 714–15. In that piece, footnotes 8–10 indicate some of the discourse in the 1970s and 1980s about the passivity of a judge. See id. at 715 nn.8–10.
60. See Williams, III, supra note 1, at 725.
61. See id. at 622.
constitutional judicial system, and have given old words new meaning in a way that effectively changes the way we think about the role of the courts and the need for controlling individual and collective life.\textsuperscript{62}

In continuing this line of thinking, it is noted that "the courts feel free to redefine the entire community as they see fit, and to take over the task of creating the kind of people necessary for a just and peaceful future."\textsuperscript{63} Further, the Chancellor named legislatures as "accomplices" in the alleged judicial activism leading to this new society.\textsuperscript{64} It is challenging to adequately address this charge. The accusation that legislatures are "accomplices"\textsuperscript{65} in activism of the courts is a subtle, but pronounced, shift in definitional, foundational aspects of the Chancellor's article. This indictment of legislative-mandated change in the court system cuts deeply and fatally across the Chancellor's work.\textsuperscript{66}

The American system of government depends entirely on legislative action, from "We the People\textsuperscript{67}" to the most recent legislative session. By taking the proper understanding of judicial determinations\textsuperscript{68} and setting it side-by-side with the indictment of legislative action set out above,\textsuperscript{69} the Frontiers article exposes its own fatal flaw: legislative changes in the law have overshadowed traditional views of the courts.

Harkening back to 1178, the courts needed to be accessible to the people.\textsuperscript{70} Legislatures embody the will of the people and hold nearly exclusive authorship of what the law and due process are. Legislatures must react to changes in society. Clinging to traditional models can hinder access to courts and, thus, impair the duty of the judiciary. "We the People" are not only on juries, but we exert our primary influence on policy, procedure, and change through legislative action. It is difficult to imagine that a court, acting within its constitutional authority as set out by the North Carolina General Assembly, is somehow an appropriation of the legal lexicon by

\textsuperscript{62} Id. at 730.
\textsuperscript{63} Id. (citing B.F. Skinner, WALDEN TWO 128 (Macmillan Publ'g Co. 1976) (1948)).
\textsuperscript{64} See id. at 734. This is particularly troubling because the legislature is the Lawgiver in our democracy and oftentimes constructs the boundaries of due process.
\textsuperscript{65} Id.
\textsuperscript{66} I doubt that the Chancellor intended to denigrate the legislative process; I suspect that naming legislatures as "accomplices" is a commentary on public sentiment and not legislative action generally. Regardless of the intended meaning, it is the prerogative of a legislature to enact laws. Our courts, acting within those prescribed guidelines (fences), can hardly affect the massacre of individual liberty that Frontiers contemplates.
\textsuperscript{67} U.S. CONST. pmbl.
\textsuperscript{68} See Williams, III, supra, note 1, at 594.
\textsuperscript{69} See id. at 734.
\textsuperscript{70} See Adams, supra note 27, at 800.
activists. If these same courts are presided over by ethically bound judges, the safeguards against the ills claimed in *Frontiers* are further enhanced. Chancellor Williams states that "legislative and executive branches, exhausted by the cost of large, regulatory bureaucracies, have found the courts and private litigation a cost-effective way to regulate most activities of life and do so in ways that are more acceptable to people."\(^{71}\) In a sense, they are accomplices in the expanding role of the courts.\(^{72}\) This arrangement is not a sinister takeover of the courts, but rather the structure laid out by the United States and North Carolina Constitutions. Judges, as noted above, are ethically bound to apply the law as adopted by the North Carolina General Assembly and signed by the Governor.\(^{73}\) Judges then are constitutionally restrained by the long-standing concepts mentioned above and the enabling legislation that drives the courts. This reality is fully able to address the dangers enumerated. The *Frontiers* article is a warning against "activist" judges—that argument fails considering the procedural rules and legislative mandates of today's district court judges.

**C. The Reality of the Fields We Work**

In evaluating the concerns raised in *Frontiers*, we must look to the role that the North Carolina General Assembly has created for a district court judge. As I stated above, the district court is a court of the people. Handling the most common and repeated interactions with the court system, the District Court Division of the General Court of Justice of North Carolina stands as a primary interface with the general public. According to the internal statistics compiled by the North Carolina Administrative Office of the Courts, the district court handles well over two million dispositions per year (often more than three million).\(^{75}\) For comparison, the Superior Court Division handled just under 300,000 dispositions between July 2018 and June 2019.\(^{76}\) In addition to the volume of dispositions, the district court has original and exclusive jurisdiction over domestic (family) law cases and

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71. Williams, III, *supra* note 1, at 734.
72. *See* id.
juvenile cases. The district court also handles traffic infractions and misdemeanors, magistrate appeals, and first appearances. Acknowledging the breadth of the district court's jurisdiction, the average person is far more likely to appear before the district court than any other court in North Carolina. In these numbers of persons seeking the intervention of the court, the North Carolina General Assembly has created a framework for the district court's interaction with the public. By observing our varied proceedings from a bird's-eye view, we can glean a method that "We the People," through the North Carolina General Assembly, intend for our state's courts to work within. With the field of cases properly surveyed, our courts can act within the scope of their granted authority.

D. Balanced Views of Duty and Discretion

It is thus established that our courts are limited in their reach to cases properly before the court and are limited to parties that have appropriate standing. This limited reach stays the court's ability to become the social engineer of Frontiers. Legislative mandate further confines a judge's ability to impose an activist will within the segment of the population properly before the court. Judges must follow substantive, evidentiary, and procedural laws in addition to the Canons of Judicial Conduct. These salient fences further blunt the perceived threat of activism brought on by collaboration and problem solving that Chancellor Williams anticipated.

Viewing the significant and voluminous work done by North Carolina District Courts every day, there are some places collaboration or judicial interaction with litigants will not and should not work. For example, in a case involving child custody, North Carolina courts are strictly controlled in exercising any jurisdiction by the North Carolina Codification of the UCCJEA. Because Chapter 50A limits the subject matter jurisdiction of the court, a lack of jurisdiction cannot be waived or cured by agreement of the parties. Even if all parties agree, the court can have no authority to hear the case. This limitation on jurisdiction bars some well-intentioned, otherwise permissible actions. This concrete example cuts deeply across the notion that courts or "active" jurists can "feel free to redefine the entire community as they see fit," and exemplifies the further legislative check on judicial power.

77. See generally Williams, III, supra note 1.
80. Williams, III, supra note 1, at 730.
Extending this thought further, in cases where there is a salient burden of proof, such as in a money-owed case absent a valid defense, a court is bound to act even if it seems unfair. In a contract action for enforcement of a debt, the plaintiff carries the burden of proving both the existence of the debt and failure of payment. The defendant also may enjoy affirmative defenses that are to be pleaded and proved. If a judge were to intervene by asking questions about the debt, payment, or lack of compliance with the statute of frauds, these interventions would tend to favor one litigant over the other and, thus, prejudice the process. Asking a question about payment or requesting to see an exhibit not provided by the litigants would tend to further and unfairly tip the scales of justice. These examples illustrate that a court cannot act independent of the law because it seems like it is the right thing to do. Additionally, judges are bound by their ethical duty to uphold these laws. Failure to do so can result in discipline or removal. Moreover, North Carolina District Court judges are elected and responsive to the electorate. Failure to follow the law can result in the democratic removal of an errant judge.

Conversely, the attitude that the court should simply act as passive fact-finder is quite contrary to a judge’s ethical duty. A judge has significant and mandatory affirmative duties imposed by ethics, administrative rules, and other applicable laws. A judge has the ethical duty to ensure the parties have the “full right to be heard according to law.” The court has this duty regardless of the nature of the type of litigants. Represented or unrepresented, aged or minor, disabled or non-disabled, English speaker or Limited English Proficiency, the court must preserve the due process rights of every litigant before it. A court must, “according to law,” uphold the due process of the tribunal and therefore has a

81. I have had the misfortune of presiding over money-owed cases where a defendant admits they owe the money, but they lack any ability to repay. The law is clear that the plaintiff, in those cases, is entitled to a judgment even if it seems sad or unjust.  
82. See N.C. CODE OF JUD. CONDUCT Canon 3(A)(1).  
83. See N.C. CODE OF JUD. CONDUCT pmbl.  
84. See id.  
85. N.C. CODE OF JUD. CONDUCT Canon 3(A)(4) (2006) (amended 2015); see also Goldschmidt, supra note 10, at 139 (discussing the affirmative, ethical duties of the court, Goldschmidt’s article considers the self-represented litigant, concluding that despite the status of the litigant, self-represented or represented, the court’s obligations to those litigants do not change).  
86. There are significant affirmative duties required of the courts to provide accommodation of special needs, including language translation, hearing impairment accommodations, disability access and protection of minors. These multiple instances are outside the scope of this Article but are mentioned as examples of affirmative duties to preserve the due process rights of litigants.
considerable, affirmative duty.\textsuperscript{87} To relegate the court to a passive participant, with no role to play other than to rule on evidentiary issues, is to largely ignore the role and purpose of the court. As noted above, the courts were formed by the sovereign to settle disputes.\textsuperscript{88} That sovereignty is echoed in the Code of Judicial Conduct.\textsuperscript{89} As the face of the judicial branch and as a representative of a governed society, the judge has the duties described above. Placing a judge in the limited role as observer is not only historically incorrect, but also contrary to the sworn mandate of the judge.\textsuperscript{90}

With significant fences in place and the court's proper duty acknowledged, there are many places where the court has latitude to operate in a more collaborative and problem-solving manner. These gated areas allow for the court to interact with the millions of people that come before the district court in a manner commiserate with its legislative mandate. This mandate is significant and purposeful. As discussed above, the sovereign directs the courts. In the 1100s it was the King who saw the courts as necessary, and, in our time, the people, through their legislature, have acted similarly. Striking the balance between these is the prescribed place that the district court employs collaboration and problem solving.

\textbf{E. Boundaries of Discretionary Action}

In North Carolina and, in particular, in the rural areas that make up most of the state, fences or the suggestion of fences mark the boundaries of landowners' properties. Fence lines, hedgerows, field edges, and tree lines all mark the edges of property. Sometimes, only the shadow of a fence may remain, but it is obvious where the line should be. In evaluating \textit{where} the boundaries are, those parameters can be ascertained by looking at the overall picture. As such, we can evaluate the parameters of collaboration in the district court by looking at specific instances where a district court judge has the power to utilize the statutory guidelines and discretion given by the North Carolina General Assembly.

\textbf{F. Statutory Provisions that Encourage Collaboration and Problem Solving}

The North Carolina General Assembly has given great guidance on when a judge should implement discretion. It is beyond the scope of this Article to review all of the case law associated with each of the statutory

\textsuperscript{87} See Goldschmidt, \textit{supra} note 10, at 139.

\textsuperscript{88} See Adams, \textit{supra} note 27, at 798.

\textsuperscript{89} See N.C. CODE OF JUD. CONDUCT pmbl.

\textsuperscript{90} See N.C. CODE OF JUD. CONDUCT Canon 3(A)(1).
references or drill down onto the nuances of each provision. The purpose
of this Article is to evaluate the larger picture of what a court can do and
how that might be implemented with that macro view in mind. Eyeing each
of these provisions gives credence to the notion that it is the job of a district
court judge to formulate workable solutions to engage the general public
who seek out the courts. As the primary tool for access to justice, the district
court is designed to be collaborative in many instances.91 This mission is
critical in the protection of due process for litigants, especially litigants
cumbered by addiction or lack of representation.

It is important to again take heed of the guarding caution of Chancellor
Williams—unbridled discretion and good intentions can do great harm.92
Ultimately, it is the judge, guided by the parameters of statutory authority,
who carries out and enforces the process due to the litigants. A judge who
attempts to intentionally depart from these norms will be checked by the
processes currently in place.93

G. Seeing the Big Picture

Having evaluated the bleak, forward-looking forecast of the Frontiers
article, we should now look to current, actual circumstances. Far from being
“accomplices,” our legislature has enacted much legislation that guides a
jurist and practitioner of law. As noted before, the legislature is the
sovereign in our constitution-guided government and is the source of
authority in our government. By examining the conveyed authority and
mandate for collaboration and problem solving, we can ascertain an over-all
mission for the district court.

North Carolina Rule of Evidence 611 is a good place to begin this
analysis.94 The court, or in our case the district court judge, “shall exercise
reasonable control over the mode and order of interrogating witnesses and
presenting evidence so as to (1) make the interrogation and presentation
effective for the ascertainment of the truth, (2) avoid needless consumption

91. See supra Part Five.
92. See discussion supra note 16.
93. The process of accountability by election, the Judicial Standards Commission,
judicial review, peer accountability, cross examination and right to be heard by litigants, and
personal conviction are, from most general to most specific, duplicative safeguards against
gross neglect of duties. Neither this Article nor the Frontiers article contemplates the norm
of rouge judges; the Frontiers article contemplates judges that are let loose by “accomplice”
legislatures and new norms. See Williams, III, supra note 1, at 734. This Article does not
address judges that fail to follow their duty, but only seeks to inform those judges who are
intent on doing so.
94. N.C. R. EVID. 611.
of time, and (3) protect witnesses from harassment or undue embarrassment. 95

This “reasonable” control is up to the presiding judge to evaluate and protect the presentation of evidence “effective for the ascertainment of the truth.” 96 Inherent in this method is the ability of the judge to make moment-by-moment evaluation of the due process as it develops. In this endeavor the court is mandated to implement “in broad terms the power and obligation of the judge as developed under common law principles.” 97 This is a restatement of the general nomenclature of practice, generally called the “gatekeeper” function of the court. Thus, the presentation of evidence in a fair and logical manner, given the individual nuances of each case, is the duty of the court as developed over time. 98 This concept gives us a basis for the balance of this inquiry.

The nature of our court is also instructive in the evaluation of our court’s duty. North Carolina General Statute section 7A-190 addresses this notion. It states, “The district courts shall be deemed always open for the disposition of matters properly cognizable by them.” 99 Looking back at our discussion above relating to standing, notice, and jurisdiction, we see that this concept is raised here. 100 This language closely tracks the language used in the commentary to the formation of the courts at Westminster and discussed above. 101 Our courts are always open and seated for the dispatch of business as exigent need arises. However, as a limit on this power, “[A]ll trials on the merits shall be conducted at trial sessions regularly scheduled as provided in this Chapter.” 102 This provision of the General Statutes sets the stage for North Carolina courts to be readily available as needed while remaining fair and limited by service of process and notice. This concept was discussed in 1178 in England 103 and continued until North Carolina enacted section 7A-190 in 1965. These concepts of court availability are not new and are far from the vast and sweeping wave of “activism” mentioned in Frontiers in 2007. 104 An indication of this solemn and

95. N.C.R. EVID. 611(a).
96. See id.; see also N.C.R. EVID. 611(a) commentary (2019).
97. N.C.R. EVID. 611(a) commentary.
98. See id. (using the word “obligation”).
100. See supra text accompanying notes 47–49.
101. See Landsman, supra note 26, at 729; Adams, supra note 2727, at 800; Williams, III, supra note 1, at 539.
102. N.C. GEN. STAT. §7A-190.
103. See Adams, supra note 27, at 798.
104. Williams, III, supra note 1, at 591. See also Doha Declaration, supra note 3838, at 2 (highlighting modern-day commitment to increasing court availability worldwide);
constitutionally required task, Chief Justice Mark Martin of the North Carolina Supreme Court noted the necessity of access in an interview with Attorney at Law magazine. He said:

Regardless of income or race or any other factor people should have equal access to the court system. Everyone needs to have confidence that if the day comes where they have a need to go to the court system that they are going to find judges who are fair and impartial, they are going to be treated with respect and they're not going to have economic obstacles to equal justice.\(^{105}\)

There is a significant underlying factor in the former Chief Justice’s remarks that deals with economic barriers to access, but this quote shows the devotion to court access that is a priority of the North Carolina General Court of Justice. Bounded by the laws of evidence, foundational mandate, and stated mission, the courts of North Carolina are designed to be open, available, and responsive.

**H. Specific Provisions Illustrate a Pattern**

The North Carolina General Statutes are replete with instances where judges, particularly district court judges, must personify this responsiveness. Again, divining the limits of each of these provisions in detail is beyond the scope of this Article because our inquiry is a broad one. By noting some particularly relevant sections, this portion will illustrate the component factors of the district court’s wide discretion.

It is also important to revisit the limiting notion outlined above concerning these “responsive” and “collaborative” aspects. In adjudications or cases with well-defined burdens of proof, this collaborative function of the court diminishes significantly, if not completely. North Carolina District Courts have been given wide discretion in many of society’s most important dispositions both by historic practice and by the North Carolina General Assembly. The court, in an effort to follow its duty, must be passive or collaborative as guided by due process as outlined above and with guidance from statutes. A survey of some statutory provisions will further highlight these concepts.

Nowhere in the law is the need for collaborative and problem-solving court action more evident than in juvenile law. The wide discretion and collaborative nature of many of the code sections cited herein are not the

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Adams, *supra* note 27, at 800 (reinforcing that court availability has been a concern for centuries).

norm at key and critical points—at adjudications in delinquency petitions; abuse, neglect, and dependency petitions; and in termination of parental rights petitions. The court has firm and salient burdens of proof with statutorily defined required findings. At preliminary, dispositional, and review hearings, the court has a broad mandate. Petitions alleging the abuse, neglect, and dependency, often called “A/N/D cases,” firmly illustrate the need for court collaboration. North Carolina General Statute section 7B-502 gives the court authority to enter, ex parte, orders for children to be taken into custody by the county Department of Social Services as the needs of the child dictate but uses the word “may” to allow for flexibility of intervention.

Following an adjudication, with the more rigid framework of adversarial adjudication, the court has wide latitude. Section 7B-900 specifically directs that the court should commence “working with the juvenile and the juvenile’s family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the juvenile.” The court also “should” work with community-level services to arrange for the needs of the minor child. Following this mission statement of the court’s process, the court is given wide latitude in making orders to affect the best needs of the child. The label of “judicial activism” is not appropriate here. The court is required under law to make these interventions in a collaborative and problem-solving manner.

The court has similar authority and discretion in delinquency cases. Section 7B-2405 and section 7B-2408 mirror the evidentiary and procedural formalities seen in A/N/D adjudications above and the problem-solving mode in dispositions contemplated by section 7B-2500 and section

106. In each of these, the full complement of evidentiary rules applies, and the court is restrained in a very detailed way.

107. See N.C. GEN. STAT. § 7B-502(a) (2019). Note that this power is bounded by the requirement that the child occupy the criteria as defined by the North Carolina General Assembly in N.C. GEN. STAT. § 7B-503 (2019). However, if the child has that status, the Court is given ex parte authority to quickly act to aid children if necessary but does not require that action.

108. See N.C. GEN. STAT. §§ 7B-802, -804 (2019). These statutes note the formality of representation, the conduct of the hearing, and the application of the rules of evidence.


110. Id.

111. See generally N.C. GEN. STAT. §§ 7B-903–904 (2019). These statutes place a continued duty on the court to evaluate and review the best interests of the child in deciding on a dispositive order as set out in section 7B-905. See N.C. GEN. STAT. § 7B-905 (2019).
7B-2506. These dispositions seek to address the needs of juveniles accused of crimes, and once found delinquent under the more formal adversarial proceedings, the court “should” formulate appropriate plans to meet the needs of the child. It is evident that the North Carolina General Assembly recognized and embraced the “proper” role of the district court in these most pertinent matters, involving the well-being of children, and mandated this type of collaboration.

The district court also handles the range of litigation that is collectively known as domestic or family law. By vesting the district court with original and exclusive jurisdiction over these types of cases, the legislature has endowed the district court with the mandate to resolve some of the most important cases the courts (collectively) hear. As stated before, the district court handles the entire range of juvenile matters, and the district court is again the tool chosen for cases involving families, children, and other domestic matters, including domestic violence protective orders. While there are many stringent statutory parameters for the entry of many orders, orders relating to custody of children and domestic violence pose some of the largest challenges to a district court judge. A district court judge shall award custody of a child in a manner that “will best promote the interest and welfare of the child.”

The court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party. An order for custody must include written findings of fact that reflect the consideration of each of these factors and that support the determination of what is in the best interest of the child.

In making these determinations, the court, in following this direction from the legislature, must evaluate all “relevant factors” mentioned

112. N.C. GEN. STAT. §§ 7B-2405, -2408, -2500, -2506 (2019). These statutes track the same types of processes discussed above in regard to abuse neglect petitions.

113. N.C. GEN. STAT. § 7B-2500. Note that North Carolina has recently amended these statutes to “raise the age” to 18 from 16 and thus extend this type of dispositional authority to more juveniles. See N.C. GEN. STAT. § 7B-1601 (2019).

114. The word “proper” referring back and contrasting with the use of “properly” as used in the inset. See Williams, III, supra note 1, at 594.

115. See N.C. GEN. STAT. § 7A-244 (2019).

116. See id.

117. For example, the factors a court “shall” consider in the award of alimony as set out in N.C. GEN. STAT. § 50-16.3A(b)(1)–(16) (2019).


119. Id.
above. It is up to the court to determine what is "in the best interest of the child." This concept is a time-honored and venerated tenet of law, but the emphasis is upon the court to determine the best interests. Adversarial litigation often fails to adequately present this nebulous concept. A large problem may arise when litigants who represent themselves fail to understand the court's duty. A brief example will prove informative and is drawn from this author's own experience. In a case for the custody of a minor child, two parents are properly before the court upon appropriate notice, service, and with proper personal and subject-matter jurisdiction. The pleadings are sparse but adequate. Upon testimony of the plaintiff, the evidence is summarized: I'm the parent; I want custody, and we can't agree. The entire testimony of the defendant is summarized as follows: I'm a parent, we can't agree, and I don't want any custody to be "just whenever he wants." She also related that there had been a domestic violence protective order granted in the past. That was all of the testimony. Under section 50-13.2(a), the court "shall" award custody. It is not an option to dismiss the case or to send the parties away. The court, in upholding the ethical duties mentioned previously, must dispose of the business of the court. In this case, the parties properly invoked the jurisdiction of the court and deserved resolution of the matter.

As this real-world example illustrates, the court is pulled in different directions, most notably by a judge's ethical duty, the court's statutory mandate, and the limitations imposed by the litigants' inexperience in court. The above real-world example is likely a common experience for district court judges, which makes the conundrum of how to handle these experiences a pervasive problem. Unless the court delves into some sort of collaborative measures, this case will not go forward. In this scenario, while the parties look expectantly to the court for an answer, the court lacks enough information to follow the statutory mandate, and judicial ethics push the case toward resolution. The court must find a way to fulfill the due process owed to these litigants.

In a similar arena, domestic violence protective orders pose comparable problems. The threshold or burden of production for issuance of such an order, ex parte, is the subjective fear that acts of domestic violence will occur or the actual occurrence of such acts. A court,

120. See id.
121. See id.
122. This concept is well documented in anecdotal experience of district court judges.
125. N.C. GEN. STAT. § 50B-3(a) (2019).
oftentimes with an unrepresented plaintiff and defendant, must figure out how such an order must be structured. These orders may be sweeping in their scope and represent a similar ethical and statutory problems as the child custody illustration given above.

It is apparent from the review of some of the statutory provisions that a district court judge is likely to see in any given session that the court has broad discretion and wide mandate from the legislature to resolve the cases. These glimpses are given to inform the reader of the larger scope of the aims of the district court. The district court not only resolves more cases, but it resolves some of the most significant cases any court will ever adjudicate. In dealing with families, juveniles, and their interactions, the court literally holds the future in front of the Bar and sees a higher instance of the key populations of self-represented litigants and addicted individuals. Without a more collaborative approach, time-honored methods of adjudication, such as strict adversarial proceedings, may utterly fail. The movement towards alternative paths to due process is not the death of due process, but rather, the logical evolution of methods to enhance the court's ability to provide due process.

CONCLUSION

A. Back to Our Key Inquiry—Due Process and Collaboration

As a final concept for consideration, and ultimately the concept that demands evolved proceedings, the issues presented by impaired litigants require another look. It is obvious that the dire predictions of Frontiers and the underlying biases against collaboration rooted in our adversarial traditions are not the only factors to consider. It is established that the district court is given a mandate and affirmative duty from the legislature and thus can be collaborative in many circumstances and is directed to be a problem solver in others. As mentioned above, litigants who are impaired, either by their lack of knowledge or by actual chronic impairment, pose significant and lasting challenges to the courts.

126. See discussion supra Part Five Section H.
127. It is important to note that district courts are required to refer custody cases to mediation which adopt similar practices of collaboration. See N.C. GEN. STAT. § 50-13.1(b) (2019).
128. See generally Williams, III, supra note 1.
129. Specific examples are the “best interest” considerations in child custody cases and the required plan formulation from juvenile delinquency dispositions. See discussion supra Part Five Section H.
Litigants, faced with court proceedings and unrepresented by a lawyer, must answer questions of law and evidence in a case that directly affects them. In a way, they are performing surgery on themselves and being critiqued while doing so. Strict processes, without accommodation, are wholly contrary to due process. The court has a duty to provide these litigants with an opportunity to be heard; this duty is absolute. By applying the rules of court, a judge might demand from the litigant information or knowledge that they do not possess. In doing so, the court may cut off the due process rights of the litigant. More significantly, the court may severely undercut its ethical duty to maintain the court’s integrity and preserve the public’s confidence in the courts. In contrast, when a judge goes too far and aids a litigant, the judge violates Canon 3 by failing to maintain impartiality. These ethical duties override any unpopular notions of pandering to unrepresented litigants or fearing disapproval. The question is not one of a particular practice or a method of treating one group in a particular, prescribed manner. Most courts handle cases in the way they have traditionally handled them, without a great deal of introspection. The real issue is a manifest dedication to fairly dispose of all cases for all types of litigants.

As a further consideration, litigants struggling with addiction create great challenges to the duties mentioned above. In an A/N/D case, the court has wide authority to intervene by ordering treatment. A district court judge can order treatment as part of a criminal judgment. These courts were also added to the range of options available for probation conditions. Therapeutic and problem-solving courts have been created nationwide and are maintained as vehicles for the accommodation for special challenges posed by chronic addiction. North Carolina recognized the value of these courts and enabled the creation of Drug Treatment Courts. These enabling pieces of legislation indicate a firm commitment by the North

130. See N.C. CODE OF JUD. CONDUCT Canon 3(A)(4).
134. See N.C. CODE OF JUD. CONDUCT Canon 3(A)(1).
135. See N.C. GEN. STAT. § 7B-904.
137. See N.C. GEN. STAT. § 15A-1343(b1)(2b). Criminal dispositions benefit from collaboration and problem-solving aspects as well, owing to the requirements set out in the statute.
Carolina General Assembly to create courts that are responsive to the increased needs of individuals stricken with addiction.

In viewing these particular examples, we obtain clarity in the mission of district courts in particular. By giving these courts great discretion and ability to be responsive to societal issues that confront the public, the North Carolina General Assembly has attempted to benefit the people of the State of North Carolina. Legislatures are not “accomplices”\(^1\) in some grand social engineering experiment; rather, they are fulfilling the stewardship entrusted to them by the people of their states. The courts are not re-engineering our society; the courts are carrying out their mission and applying the laws made by the North Carolina General Assembly. We return to this point: legislatures are not accomplices; they represent the sovereigns in our system of government. In that capacity, the North Carolina General Assembly has given our courts great authority to respond and adapt to our changing society.

B. Final Perspectives and Thoughts

In trying to glean an overview of how courts may act, we have to look at how they have acted and how they have been directed to act. Connecting the dots in our overview is instructive and illustrative; the reader observes individual vignettes of authority and mandate that make up the larger tapestry of our courts’ processes. Nothing in this Article is intended as a “should act” statement. If day-to-day functioning and idiosyncrasies of courts are examined, even seasoned jurists fail to provide a comprehensive answer. I therefore decided to embark on this project to inform myself, and ultimately the reader, of some aspects that I considered. There are many other aspects, but my method of inquiry was to look back to where we started. Being thus rooted in our past, I extended the inquiry to connect to what we see today. This progression is bound to and supported by individual threads of authority given by our legislature. My observations and analysis are limited to the field directly in front of me. My intent was to prompt my colleagues on the bench to consider their own jurisprudence and ethical duties to arrive at an answer that they can implement in their courtrooms.

Individual jurisprudence, that is, the rich tapestry of education and experiences that each judge brings to the bench, is similar to the diversity and variation in experience that trial lawyers ardently seek in their juries. A diverse background of judicial experience that broadens the trial judge’s temperament is not unlike the multiple perspectives that a jury melds into

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139. See Williams, III, \textit{supra} note 1, at 734.
one decision-making body. The combination of training, experience, and wisdom of a judge occurs internally and not in a group setting, as in a jury. Judges should draw from their experiences as an attorney and have those experiences act as a lens through which they see the world and the evidence presented. With this concept in mind, I state the obvious—each judge is different. In the same way that we would not want uniformity of gender, race, vocation, and experience in a jury, jurists are and should be diverse. This Article begins with one judge commenting on the well-researched hypothesis of another judge in Frontiers. This response highlights that each judge must evaluate his or her own jurisprudence and render justice accordingly. This is not only a reality, but a necessity in our system. I am offering to any jurist who may read this Article a starting place or a set of building blocks. These concepts can be used to begin an internal, self-evaluation of beliefs to be exercised in their sound discretion. To the practitioner, who views the bench from an entirely different perspective, I offer some insight into the highwire balancing act that a trial judge performs daily and some markers to enlighten the evaluation of a judge’s decisions. Engaging in that self-evaluation, judges and practitioners of law can take their given place in our system of government that was intended, as far back as medieval England, to respond to the public. Failing to respond to the needs of our self-represented litigants, our addicted individuals, and our evolving society will certainly limit our effectiveness as an equal branch of government.

In determining the level of collaboration and problem solving that is appropriate in a district court and thereby answering the key issue of this Article, we have responded to the charge that such processes are dangerous and fatal to due process. We certainly are not the “social engineers” that bring the death of due process, as Chancellor Williams suggests. In actuality, the district court is the place people in need come to resolve their most poignant and private disputes, and our legislature has recognized this by codifying many collaborative and problem-solving mechanisms. The reality of our daily judicial process is that some segments of litigants, self-represented litigants and addicted individuals, pose additional challenges to our balancing act of due process and ethical duty.

Each judge may ethically and lawfully employ the guidance given by the legislature in adopting collaborative and problem-solving practices. Each judge must formulate the level of such practices, based on sound discretion, to fit each individual circumstance. Ultimately, the district court, through its diverse judges, will employ these methods to ensure we maintain our responsiveness to the needs of the litigants. We must guide the public through the gates and mind our salient fences if we are to uphold our ethical duty. We must be worthy of the trust of the public to retain the integrity of
our equal branch of government. Never forgetting the solemn duty that we have sworn to uphold, the stern and sincere warnings of *Frontiers* and related writings, our rich legal traditions, and our ample legislative guidance, our courts can meet the dynamic needs of all the people we serve with the use of collaborative methods and problem-solving practices.