North Carolina Courts

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THE HISTORY OF NORTH CAROLINA COURTS

The purpose of this outline is to provide sufficient factual material to allow judges, lawyers, and court personnel to effectively address civic, social and school groups, and organizations on the history of our courts and the reasons behind the design, creation, and purpose of our District Court on its 50th Anniversary.

PART TWO — The District Courts of North Carolina: Born of Necessity

OVERVIEW

> "I hope and believe that the results of the study will furnish the people of the state a guidebook for the improvement in the administration of justice at all levels, both in the immediate future and for the years to come." — Governor Luther Hartwell Hodges

The courts of North Carolina were first charged with their responsibilities when the Charter from the Crown in 1663 and the Concession of 1665 authorized the Lords Proprietors to establish a system of Courts in the Province of Carolina.

Numerous courts were created, formulated, reformulated, or rescinded since then. In 1955, the Committee on Improving and Expediting the Administration of Justice in North Carolina (known as the Bell Commission) was appointed by the State Bar Association at the request of Governor Luther H. Hodges. The Bell Commission was tasked with examining best practices and making recommendations to improve our courts. Our General Assembly, Executive Branch, county governments, and municipalities have had a rich history of working collectively with the judiciary to address the legal and social needs of our citizens. The work continues to this day.

At the time of the Bell Commission study, a tabulation of criminal cases revealed there were 1,809 felonies and 4,370 misdemeanors pending statewide in our Superior Courts. The 21 solicitorial districts varied from a high of 877 pending cases to a low of 121. Nearly half the cases were age three months or less with 7.6% of the felony and 5.4% of misdemeanors pending more than three years. Superior Courts were scheduled as infrequently as one term every six months in 14 counties to near continuous terms all year in three counties. One trend observed by the Bell Commission was the newer cases were being disposed of before the older, allowing the old ones to become older.

If the 1960s were a time of sweeping social reform, the 1950s were a time of enlightenment that recognized the need for change. It was a decade of reflection that challenged the ways of old and focused on the possibilities of the future. A hodge-podge of lower courts existed along with our Supreme and Superior Courts. There were justices of the peace courts, mayors' courts, "special act" courts, "general law" courts,

juvenile courts, domestic relations courts, and administrative courts.

When the Bell Commission began its work in the mid to late 1950s, there were nearly 1,500 of these courts. They were established by different people in different places for different purposes at different times frequently exercising conflicting and incongruous jurisdictional requirements. Their formation and history spanning colonial times, the Revolutionary War, U.S. expansion westward, the Civil War, the agricultural and industrial revolutions, and two World Wars.

In 1957, there were 940 justices of the peace in North Carolina. Some were full-time with fixed work locations and hours. Others worked part-time conducting business anywhere and anytime. Records establish hearings in or on a backyard, front porch, grocery store loading dock on top of crates, car, plowed field, repair garage, icehouse, print shop, and funeral parlor.

As towns and cities developed in the early 1700s, they were empowered by the General Assembly to pass ordinances for better government not inconsistent with the laws of our state. When rural-minded justices of the peace failed to energetically meet the expectations of the city dwellers, the door was opened for the establishment of mayors' courts. The Bell Commission noted 154 mayors' courts in operation in North Carolina in the late 1950s.

From mostly 1905 to 1917, the General Assembly established over 100 separate courts by "special act." There were 70 such "special act" courts still in existence in the late 1950s. The President of the North Carolina Bar summed up the dilemma posed by "special act" courts in a speech delivered in 1915:

- "It has, in every instance, taken care of the local condition arising from the total inadequacy on the part of the Superior Courts to cope with local business and dispatch of criminal dockets... (but) in many instances for the express purpose of increasing the fees of the officers, a tendency to disregard the rights of the state, or defendants, or both... and make the courts return a big yield in money... making them fast turn into paths of disrepute... creating judicial and court chaos... they have given us a system of courts that are the most expensive, less effective, and more demoralizing to the profession of law than any system ever attempted in this state."

In response, the 1917 General Assembly outlawed the future creation of local, private, or "special act" courts inferior to the Superior Courts and slowly began to shape a system of somewhat uniform lower courts over the next half century (courts of "general law").

By 1957, there were 256 of these "general law" courts (commonly referred to as Municipal Recorder's Court, County Recorder's Court, General County Court, or County Civil Court) in North Carolina with jurisdiction greater than justices of the peace court and less than that of Superior Court. The Bell Commission noted many of these courts, for decades, varied in: civil and criminal jurisdictional requirements, methods of selecting solicitors and clerks, term lengths, oaths of office, compensation (at times set by court officials against litigants), provisions for removal of judges/solicitors/clerks, filling of vacancies, allowing court officials to preside and also practice law, the number of jurors necessary to decide a case, the amount of "jury taxes" assessed, who may issue criminal and civil process, rules of criminal and civil procedure, costs of court, rights to trial de novo on appeal versus an appellate determination.

The juvenile court was established by our General Assembly in 1919. It possessed the current philosophies of design for delinquent and abuse/neglect/dependency cases. Summons's, informal proceedings, detention rooms, adjudications and training school/boarding home/foster care placements replaced warrants, arraignment/indictment/formal trial, jails, sentences, and prisons. All appeals went to Superior Court. When the Bell Commission began its work, there were 106 juvenile and domestic relations courts existing in North Carolina — 92 county juvenile courts, two joint city-county juvenile courts, six city juvenile courts, three county domestic relations courts, and three city-county domestic relations courts. These courts varied in selecting judges — some judges selected by the city's governing body, others by county government, some joint city and county government, most by appointment by the Clerk of Superior Court. Some domestic courts had a solicitor, others did not. As well, reporting techniques and the use of probation personnel varied.

The 1890s ushered in the age of administrative agencies. Administrative Courts were called upon to handle decisions outside the realm of our traditional courts. Our first state administrative agency was the Railroad Commission established by the General Assembly in 1891. After that, the Corporation Commission in 1899, Industrial Commission in 1929, and the Utilities Commission in 1933. Over 100 other agencies or officials possessed quasi-judicial responsibilities subject to statutory review by the Superior Courts (ie. State Banking Commission, State Board of Alcohol Control, State Board of Elections, State Parole Board, State Board of Education, Department of Agriculture, 25 plus occupational licensing boards).

The landscape of North Carolina had changed dramatically since 1663. The handful of wagon trails and few hundred footpaths were replaced with thousands of miles of dirt and later paved roads. The flow of goods and people, initially by foot or horseback, then riverboat were replaced by rail, gas powered vehicles, and air transport. Agricultural techniques and practices advanced along with the developing trends of the Industrial Revolution. Gone were the days of news and information coming by word of mouth, printing press, or mail — replaced by telegraph, radio, and television. Night slowly became as day with candles, kerosene lanterns, and electricity. On October 4, 1957, the first man-made satellite was launched and successfully encircled our world. Suddenly, the moon was within reach and mankind gazed to the heavens in contemplation of the possibilities.

While changes and improvements in technology were inevitable, the Bell Commission was poised to assess the strengths of proven designs within state courts nationwide, assess our needs and make recommendations to meet the

future legal needs of our state. Hindsight provided the insight of how our courts evolved in piecemeal fashion. The design of courts historically had been a slow evolution of reactions to monumental change in the agricultural, industrial, social, and economic lives of our citizens.

In 1955, the time was right. All eyes were fixed upon the future. The need was identified. Our citizens deserved more from their judicial system. J. Spencer Bell (Chairman) along with Joel Adams, John Archer, J. Murray Atkins, D.G. Bell, Henry Brandis, Jr., David Clark, Fred Fletcher, Ashley Futrell, A. Pilston Godwin, P.K. Gravely, T.N. Grice, Shearon Harris, Francis Heazel, Howard Hubbard, R.O. Huffman, Thomas Leath, Wallace Murchison, William Murdock, G. Harold Myrick, James Poyner, Woodrow Price, Robert Proctor, John Redmon, William Snider, John Spicer, William Womble, and the five Ex-Officio members from the North Carolina Bar Association were poised to study our past in order to chart the future of our courts.

This change was born of necessity.