

Judicial Independence Requires More Resources and Greater Management Flexibility

BY JOHN MEDLIN AND RHODA B. BILLINGS

“The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.” N.C.Const., Art. I, §6.

“All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law, and right and justice shall be administered without favor, denial, or delay.” N.C. Const., Art. I, §18.

“The judicial power of the State shall, . . . be vested in a . . . General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the government, . . .” N.C.Const., Art. IV, §1.

“The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.” N.C.Const., Art. IV, §15.

“. . . The operating expenses of the judicial department, . . . shall be paid from State funds. N.C.Const., Art. IV, §20.

“The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.” N.C.Const., Art. IV, §21.



Our thesis is this: An independent judiciary is essential to the proper functioning of our democracy. Judicial independence requires adequate funding for the courts. The courts have a constitutional right to adequate funding and may, in some cases, even compel the appropriation of the funds they need to function properly. For years the demands on North Carolina's courts increased dramatically while their needs have been demonstrably underfunded. The effects of this underfunding are exacerbated by the detailed purpose and line item limits placed by the General Assembly on the expenditure of funds that are appropriated. Fully adequate funding for all the courts' needs eventually must be achieved. However, as a first step, the judicial branch of government should be given greater flexibility and have accountability for the management of the funds that are appropriated.

The Importance of an Independent Judiciary to our Constitutional Form of Government

We begin by quoting from a variety of current and historical voices speaking on the importance of judicial independence to our constitutional form of government.¹ "Judicial independence in the United States strengthens ordered liberty, domestic tranquility, the rule of law, and democratic ideals. At least in our political culture it has proven superior to any alternative form of discharging the judicial function than has ever been tried or conceived."² Judicial independence is "one of the crown jewels of the nation's system of government."³ An independent judiciary is essential not only to provide all persons a fair and open forum for the lawful and peaceful resolution of their disputes and for the prosecution of criminal charges, "judicial independence is an essential ingredient of the protection of individual liberty and equality in our constitutional system. Moreover, the independent judiciary checks the legislative and executive branches of government, thereby maintaining our constitutional commitments . . . to separation of powers . . ."⁴

“The courts of justice are to be considered as the bulwarks of a constitutional government against legislative encroachments.”⁵

“Judicial independence is the freedom that a judge should have to decide a case . . . based on the facts and the law, free from outside pressures . . .”⁶ “A truly independent judiciary is one that issues decisions and makes judgments which are respected and enforced by the legislative and executive branches; [and] that receives an adequate appropriation from [the legislature] . . . Judicial independence includes the independence of an individual judge as well as that of the judiciary as a branch of government.”⁷ As Chief Justice John Marshall once said, “[T]he greatest scourge an angry Heaven ever inflicted upon an ungrateful and sinning people was an ignorant, a corrupt, or a dependent judiciary.”⁸

Judicial Independence Requires Adequate Resources

The Functional Need

We believe that, just as the judicial branch itself is no more an option in our constitutional form of government than are public safety and education, so an adequately funded and effective judicial branch is not an option. Justice in the courts is not a “service” that may be offered or withheld at the will of another branch of government. Nor may justice be denied or delayed through inadequate funding for the courts. If the power to withhold funding is the power to destroy, the power to provide inadequate funding is the power to cripple and eventually to destroy, just more slowly.

The North Carolina Supreme Court has identified the risk this way: “In the realm of appropriations, some overlap of power between the legislative and the judicial branches is inevitable, for one branch is exclusively responsible for raising the funds that sustain the other and preserve its autonomy. The danger this fiscal structure poses for the balance of power has long been recognized:

‘It is equally evident that the members of each department should be as little dependent as possible on those of the others for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.’

The Federalist No. 51, at 321 (J. Madison)(Arlington House ed.)”⁹

Constitutional Mandates

Many of the provisions of the North Carolina Constitution quoted at the beginning of this article express a constitutional mandate for adequate resources for the judicial branch.

Section 6 of Article I provides that “the legislative, executive, and supreme judicial powers of the state government shall be forever separate and distinct from each other.” Yet if the legislature has the unfettered discretion to determine how much funding, if any, to provide for the judicial branch, the supreme judicial power is not separate or distinct from, but dependent on, the legislative power. A constitutional entitlement to adequate funding is therefore essential to maintain the required separation of powers.

Section 18 of Article I provides that “All courts shall be open; every person . . . shall have remedy by due course of law, and right and justice shall be administered without favor, denial, or delay.” Yet if the legislature provides resources that become increasingly less adequate for the courts’ needs, the courts will be open less, every person’s remedy will become less adequate, and justice will be not only delayed but also eventually denied.

Section 3 of Article IV provides that the “General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a coordinate department of the government.” Yet if it may provide funding that is less than adequate for the operations of the courts, it may effectively deprive the judicial department of its power by making it impossible for it to function effectively.

Section 20 of Article IV of our Constitution states categorically that the “operating expenses of the judicial department shall be paid from state funds.” Thus, even though the General Assembly has the constitutional authority to raise revenues and make appropriations from state funds, the Constitution requires it to pay the operating expenses of the judicial department. Inherent in the obligation to pay the operating expenses is the obligation to provide funds that are adequate for the courts’ operations.¹⁰

These constitutional provisions may alone provide sufficient support for the proposition that North Carolina’s judicial branch of government is entitled to adequate

funding from the legislative branch. However, the courts in some states have reached the same conclusion by relying on their inherent power as a separate and independent branch of government. The North Carolina Supreme Court addressed the inherent power of the courts to compel adequate funding in the leading case of *In Re Alamance County Court Facilities*, 329 N.C. 84 (1991). There it said:

In order to preserve the independence of the judicial branch, courts in other states have exercised their inherent power even to seize purse strings otherwise held exclusively by the legislative branch, holding such intrusions justified by judicial self-preservation. . . . We hold that when inaction by those exercising legislative authority threatens fiscally to undermine the integrity of the judiciary, a court may invoke its inherent power to do what is reasonably necessary for ‘the orderly and efficient exercise of the administration of justice.’ [Citation omitted].¹¹

Increasing Demands on Court Resources

Since our state’s unified statewide court system was fully established in 1970, demographic, social, and economic trends have placed increasing demands on our courts. Between 1980 and 2002, the population of North Carolina increased by 41%, from 5.9 million in 1980 to 8.3 million in 2002.¹² Case filings increased even more: by 94%, from 1.6 million in 1980-81 to 3.1 million in 2001-2002.¹³ The increase from 1999-2000 to 2001-2002 alone was 11%, from 2.8 million to 3.1 million.¹⁴ Felony filings increased 5% in just the most recent year, from 96,000 in 2000-2001 to 101,000 in 2001-2002.¹⁵

More significantly, over the same time period cases became increasingly more complex and time consuming. Crimes have become more numerous and violent.¹⁶ Pretrial proceedings, jury selection, trials, and post-conviction proceedings have all become more time consuming.¹⁷ Death penalty cases, especially, are vastly more complicated and time consuming than they were before the reinstatement of the death penalty in 1977.¹⁸ Juvenile crime has increased dramatically, and violent juvenile crime even more. The aging of the population has increased the number and complexity of probate matters and the need for judicial guardianship proceedings. Not only did

adoption by the General Assembly of the Rules of Civil Procedure in 1967¹⁹ increase judicial time devoted to monitoring civil pre-trial proceedings, the amount of civil litigation also has increased apace, with ever larger amounts of money at stake and trials increasing in complexity. Business litigation, especially, has become dramatically more complicated as North Carolina's economy has evolved from a local farm and manufacturing economy into one increasingly dominated by high tech enterprises engaging in nationwide and international commerce.

In the area of family law, modern views of the family call for a unified judicial approach to each family's legal problems, requiring even more specialized case administration skills. Changes in the law, including passage in 1981 of the act providing for equitable distribution of marital property,²⁰ have placed tremendous new burdens on the courts in the family law area, but little or no attention has been given to the increased demand placed on judicial and other resources.

The simple job of administering all these

cases requires larger and more skilled staffs for judges, trial court administrators, district attorneys, and clerks.

The judicial branch now employs some 5,500 people, from Supreme Court justices to deputy clerks to DA victim-witness coordinators to AOC technicians and messengers. Increased court personnel requires more AOC personnel to handle salaries, benefits, supplies, equipment, and technology. Other factors place increasing personnel related demands on the courts' resources. Court security requirements had increased dramatically before 9/11 and have increased even more since then. Better accommodations are required for persons with disabilities. Sensitive personnel issues—from workplace safety to workplace harassment and discrimination to drug issues—require more and better ongoing training.

Decreased Ability to Perform Core Functions

The most visible result of these increasing demands is that the dockets of the courts have become increasingly backlogged. In a

typical one-day criminal or traffic session of district court, it is not uncommon for 500 and even 800 cases to be on the calendar, with people standing three and four deep along the walls and overflowing into the corridors. The problem continues in superior court. For example, the median age for felony cases increased from 129 days to 150 days in just the last two years.²¹ In one medium sized county, the median age of criminal cases pending in superior court as of June 30, 2002, was 306 days, and over 10% of the murder cases had been pending for more than three and a half years.²² Not only is it true that justice delayed is justice denied, the practical day-to-day effect on ordinary citizens is that, as cases go undisposed of for longer and longer periods of time, parties, witnesses, and victims must return to court more and more often to deal with each case. Each trip to court involves unproductive waiting time and time off from work or other duties.

Not only is the core function of disposing of cases impaired, general service to the public declines. More cases mean more people to

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be served when they file papers, make payments, and seek instructions. The increase in *pro se* litigation—people’s increasing desire to handle court matters without incurring the expense of an attorney—demands higher levels of service from all involved in the court system and prolongs the length of the trials that do occur. As more and more people have more and more reasons to require information about court matters, the ability of court personnel to provide that information is stretched to the breaking point. The challenge of doing so promptly, accurately, and courteously becomes increasingly difficult.

Fair Trial Requires More than Judges, Prosecutors, and Clerks

For years, appropriations have been directed primarily toward increasing the number of so-called “core” court personnel, the assumption being that more judges, prosecutors, attorneys for indigent defendants, assistant and deputy clerks, and magistrates is the main thing needed to keep up with increasing demands on the courts. This is simply not so. Effective alternative methods of dispute resolution—arbitration, mediation, and case management, to name the most obvious—are equally essential to the courts’ performance of their core function. There must be effective means to identify and resolve those cases that can be resolved without a trial, so that the trial resources of the courts are reserved for providing full and fair hearings to litigants involved in cases that can not be resolved by other means. Otherwise, simply putting more judges on the bench and clerks in the courtroom will be as effective as Sisyphus rolling the stone up the hill.

Up-to-date technology also is crucial if the courts are to perform their core functions. In every field of human endeavor, technology now frees people to do the things only they can do by relieving them of the burden of labor-intensive and time-consuming tasks that can be done more efficiently and effectively through technology. The courts have lagged spectacularly far behind most of the rest of our society in adopting technology to perform menial recordkeeping tasks, to manage information, and to inform decision-making. For example, docketing civil judgments—crucial to the security of all real estate titles in North Carolina—is still done by hand in giant red books stored on rolling shelves in the clerk’s offices, as it was

in the nineteenth century. Although much other court-related data is now recorded electronically, too often the technology used is outdated, employing data entry terminals that function essentially as they did in 1982 and storing the information in databases that do not communicate with each other. This is not for lack of desire, planning, or effort on the part of the Administrative Office of the Courts; AOC personnel have achieved outstanding progress with very limited resources. Limited resources is the problem.

Chronic Under Funding of North Carolina’s Courts

Under Funding Demonstrated

The General Assembly has simply failed, virtually since the establishment of our unified statewide court system in 1970, to appropriate sufficient money to allow the courts to keep up with the increasing demands. Over the last five years, the judicial branch’s percentage of total appropriations made from the general fund for the operation of state government has declined noticeably. From 1992-1993 through 1997-1998, this percentage averaged almost 3%, with a high of 3.03% in 1993-1994. Over the past five years, this percentage has averaged 2.7%, with a low of 2.6% in 2002-2003.²³ Though this difference may seem small, the extra 0.4% of total appropriations would have yielded over \$57.5 million of additional funds for the judicial branch in 2002-2003 alone.

One negative effect of this under funding is an unacceptable increase in the workloads of judges and other judicial officials. Increases in the numbers of judges, magistrates, clerks, and prosecutors, though significant, simply have not kept up with case filings. As a result, since the 1983-84 fiscal year, the caseload per district judge has increased 40%, the caseload per magistrate has increased 36%, the caseload per prosecutor has increased 36%, the caseload per clerk has increased 29%, and the caseload per superior court judge has increased 17%.²⁴

Another negative effect of under funding for the courts is on judicial salaries. Judicial salaries have not kept up with salaries in the legal profession, despite keeping up with the cost of living. The result is that in 1998 (the year of the most recent economic survey by the North Carolina Bar Association), the base salaries of our trial judges ranked well below the median salary of all North

Carolina attorneys who had been out of law school 12 or more years, and well below the 25th percentile of those practicing in the state’s largest law firms.²⁵ The situation has not improved since then. This seriously impairs the state’s ability to attract top potential jurists to the bench.

Other Disturbing Trends

There are other disturbing trends. One is the increased reliance on court costs to provide the revenue necessary to support the courts. Since 1981, the fee for the support of the General Court of Justice collected in district court criminal cases, including traffic infractions, has increased almost 400%, from \$19.00 to the current \$75.00.²⁶ The fee for filing a small claim action has increased 860% in the same period, from \$5.00 to the current \$43.00.²⁷ This is despite the fact that the overall cost of living has increased only 91%.²⁸

The dynamic is this. The Administrative Office of the Courts presents the courts’ budget requests to the legislative appropriations committees. As the legislative session goes on, it becomes clear that state funds will not be made available to meet all or sometimes even a portion of those requests. So a compromise is reached, and court costs are increased to provide additional revenue from which to fund at least a portion of the courts’ needs. In recent years, court cost increases have been used to fend off cuts in the courts’ budget even deeper than those that have been made.

This trend raises three concerns. One is that criminal and traffic defendants are bearing an increasing portion of the cost of operating the courts, though they are among the least able to pay and the cost of collecting from them is itself an increasing demand on the courts’ resources. The second concern is the appearance that the criminal courts, and especially the traffic courts, function largely as a money mill, in which the issuance and disposition of traffic citations may be driven more by revenue needs than by interests in traffic safety. The third concern is of potential constitutional magnitude. When court cost revenues provide a crucial portion of the revenues needed to pay judicial salaries and provide other judicial department resources, salaries of judges in general, if not those of an individual judge, begin to appear to be “dependent upon . . . the collection of costs,” in violation of Section 21 of Article IV of the Constitution.

A second disturbing trend is the increased reliance on non-state revenues to fund the operations of the courts. Grant funds from federal, local, and private sources are now an important part of the funding used in many counties for certain court functions, such as prosecutors, case managers, and drug treatment programs. Some counties are even funding actual positions in clerks' and district attorneys' offices,²⁹ undermining the very concept of a unified statewide court system and creating a widening gap between the quality of justice available in a few relatively well-off, largely urban counties and the quality of justice available in the rest of the state.

Reliance on Expansion Budget Encourages Under Funding

The problem of under funding begins with the nature of the General Assembly's appropriations process. For each biennium there is a continuation budget and an expansion budget. The continuation budget is a static budget that carries into each new biennium only the number of positions and the level of other expenditures that were approved for the previous biennium. It is intended only to maintain a constant level of expenditure; it is not intended to maintain a constant level of service in the face of increasing demand. Meeting increased demand for service is addressed in the expansion budget. The result is that the additional resources needed simply to maintain a constant level of service in response to increasing demand must be approved as if they provided an "expansion" of service. A true expansion of service, such as decreasing the number of cases per judge so that the cases may be more fully and fairly tried, would be at the outer fringe of the expansion budget process.

From the courts' point of view, this very process has resulted in a steady erosion of the resources needed to keep up. Two examples will illustrate this point.

A few years ago the AOC and the Conference of Clerks of Superior Court commissioned a study by the highly respected Jefferson Institute to improve the methods used in projecting the number of assistant and deputy clerks needed to keep up with increases in the various types of cases handled in our clerks' offices.³⁰ The Jefferson Institute recommended an annual increase of 50 assistant and deputy clerks statewide over the ensuing four years. Two of those four years have now gone by and not one new position has been funded. As a result, to

arrive at the point at which the Jefferson Institute said the clerks' offices should be in 2005 would require the addition of 100 new assistant and deputy clerk positions in each of the two years of the upcoming biennium—an ambitious goal in the best of times and a hopeless dream in these economic times. But caseload increases do not halt for a budget crisis.

The second example is equipment replacement. All equipment eventually wears out or becomes obsolete and must be replaced. Replacing this equipment does not expand the amount of equipment available for court personnel; it simply maintains the number of pieces currently in use. Yet the continuation budget of the courts contains no funds whatsoever for equipment replacement. Funding to accomplish no more than replacing worn out pieces of equipment must be requested and appropriated in the expansion budget. The result is that right now it would take \$1.9 million in the next fiscal year to replace copy machines more than five years old and \$10.8 million in the next fiscal year to replace computers five years old.³¹ It is hard to understand how this money could be viewed as "expanding" anything.

Remedies

Despite the increasing magnitude of the under funding of the judicial branch of government, we do not believe that the time has yet come to call on the courts to exercise their inherent power to compel the General Assembly to provide the resources the courts need. Our own Supreme Court has urged great caution in the exercise of such power. "Typically the appellate courts have tempered language about broad inherent power . . . with self-restraint regarding the reach into the public fisc. . . . The court's exercise of its inherent power must be responsible—even cautious—and in the 'spirit of mutual cooperation' among the three branches."³²

We believe this spirit of mutual cooperation should be animated by an aroused bench, bar, and public. The Administrative Office of the Courts has for too long been virtually alone in advocating with the General Assembly and the governor for the needs of the courts. The normal mutual cooperation inherent in the annual budget process has not been without its accomplishment. But more obviously is needed if we are to achieve the goal of adequate funding for

the courts' needs in the future. You readers and your clients, friends, and neighbors also need to press upon your legislators and upon the governor the urgency of the courts' needs for dramatically increased state funding.

Here are suggestions both for long-term goals and short-term strategies.

Increase Total Expenditures for the Judicial Branch

One way to insure increased expenditures for the judicial branch is to assure that the courts receive a greater percentage of total state expenditures. We believe that percentage should be at least 3%.³³ Fixed percentage funding is a neutral principal that works equally well in good times and bad. In good times it provides some assurance that the courts will share equally with the other branches of government in the increased expenditures provided by increased revenues. In bad times it assures that neither the governor nor the General Assembly may balance the overall state budget on the back of the court system by cutting its budget more than the budgets of more favored projects in the executive or legislative branch. It expresses the principle that no department, agency, or program in the executive or the legislative branch can be more exempt from budget cuts than is the judicial branch of government as a whole.

Even fixed percentage budgeting is only a means to a larger end. We simply must work together to convince the General Assembly and governor that a system of justice that deserves, and is able, to inspire public confidence requires a court system that is fully and adequately funded in all of its needs. It is not enough merely to keep pace with inflation and increasing caseloads, although that would be a huge first step. Eventually the courts need all the funds necessary to allow them to reduce significantly the time it takes to dispose of cases and to provide a prompt, full, and fair trial to every litigant whose case cannot be resolved by alternative means. This is what justice is all about.

Greater Flexibility and Accountability in Managing Judicial Branch Funds

Increasing the total appropriations for the operation of the courts to the level required to adequately meet their needs is, indeed, a goal of constitutional magnitude. However it is admittedly an ambitious goal, especially in hard economic times. Therefore, we propose a realistic short-term goal that can be achieved immediately without any increased

expense to the state. Give the judicial branch greater flexibility and accountability in managing the funds that it does receive.

This greater flexibility and accountability can be achieved in several ways, any one of which would be a significant step forward.³⁴ Here are the five steps we recommend:

(1) Make appropriations to the judicial branch non-reverting. Appropriations for the operation of the General Assembly have long been non-reverting,³⁵ and appropriations for the operation of the University of North Carolina System were put on a limited non-reverting basis over a decade ago.³⁶ The judicial branch needs to be on the same basis. Presently, any funds that are not spent by the Judicial Department in a given biennium “revert” to the state’s general fund and may not be used by the Judicial Department in future years. Although the courts obviously are using every penny of the funds appropriated each year, non-reversion would still be a significant step forward. It would protect funds unspent by the middle of the fiscal year from being confiscated by the governor to balance the budget. It would mean that salary money saved when positions are held vacant for a period of time could be carried forward into the next year and used for non-salary expenses such as equipment and technology. It would mean that funds could be carried forward to a future year to take advantage of better prices, quality, and technology.

(2) Appropriations for the operations of the courts should be made on a single sum basis. Again, this is the basis on which appropriations for the operation of the University System are now made.³⁷ Presently, appropriations to the Judicial “Department” are made to certain specific budget purpose and program codes,³⁸ and within each purpose and program to a larger number of line items identified by object codes. Within each program and purpose, a bright line distinguishes the object codes for permanent personnel positions from the codes for all other types of expenditures. It is virtually impossible for the director of the Administrative Office of the Courts to move funds from one program or purpose to another. It is even more difficult to move funds within any program or purpose from one side of that bright line to the other.³⁹ By contrast, the single sum approach to appropriations would allow the judicial branch much greater flexibility in moving funds between programs as priorities and

needs change. It would also allow it to shift funds from personnel to technology, equipment, or other court needs, and vice versa. This would result in a dramatic increase in the ability of the judicial branch to manage its own budget, to effect economies, and to put available resources to work where they are most needed.

(3) It should be made clear that, in times of falling revenues, it is the chief justice and not the governor who determines how the judicial branch will cut its budget. Presently, when state revenues decline, the governor has the statutory responsibility to determine how each state agency will reduce its expenditures, so long as reductions are made pro rata among all agencies.⁴⁰ The Judicial “Department” is treated like any agency in the executive branch. While the governor usually has deferred to the chief justice and the AOC Director in determining how the courts’ budget should be cut, this restraint is self-imposed and not required by statute. We believe judicial independence requires that the chief justice have the ultimate authority to determine whether, and how, to reduce judicial branch expenditures in an effort to balance the state budget in times of falling revenue and that this authority should be made clear.

(4) The continuation budget of the judicial branch should be revised to include reserves for additional court personnel needed to keep up with projected workload increases and for the replacement of worn out and obsolete equipment. If these reserves were included in the continuation budget, the practical effect would be that, instead of the courts having to persuade a majority of the members of the legislative appropriations committees to include this funding in the next biennium’s expansion budget, the funds would be included in the budget unless a majority of the committee members were persuaded to remove them.

(5) The judicial branch should be given substantial authority to manage its personnel. Again, this authority has already been given to the university chancellors⁴¹ and is implicit in the way the General Assembly spends its money. This would apply at least to positions within the AOC itself, to support staff in the offices of judges and district attorneys, to assistant and deputy clerks of superior court, and to magistrates. Presently, all permanent positions in the judicial branch are specifically established and

assigned by the General Assembly and funded in each year’s budget. The number of judicial assistants for each judge, the number of assistant and deputy clerks for each county, the number of investigators for each district attorney, the number of law clerks for each supreme court justice, and, indeed, the number of printing press operators in the AOC’s print shop, are determined by the General Assembly. Once created and assigned, these positions may not be abolished or transferred, nor may new positions be created, except by the General Assembly in a future year’s budget.⁴² Our recommendation would allow the AOC Director, for instance, to reduce the AOC print shop staff by one so as to add a computer programmer to a team developing new cost saving technology for the courts. It would allow the director to move a deputy clerk position from a county with a relatively light workload to one overwhelmed by unanticipated case filings. It would allow the director to respond to labor saving technology by abolishing two labor intensive positions and combining the two salaries to hire one highly skilled technician or an extra senior prosecutor for an over-worked district attorney.

The North Carolina State Judicial Council has adopted proposed legislation to implement these five suggestions and has recommended enactment of this legislation by the General Assembly. We need your help to get them enacted. Most will not cost the state an extra dime. They all would allow the judicial branch to effect savings and use available funds more effectively. In that way they will at least help keep the courts from falling still farther behind in keeping up with the demands on their resources.

Please help by contacting your senators and representatives to express your views on these issues, which are so vital to the independence of our state’s judicial system and to the effective functioning of our form of government. ■

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assistance in preparing this article provided by Thomas J. Andrews, General Counsel, North Carolina Administrative Office of the Courts.

Endnotes

1. We are indebted to the staff of the American Bar Association's Section on Judicial Independence for identifying these sources for us.
2. Fein & Neuborn, *Why Should We Care About Judicial Independence and Accountability of Judges*, *Judicature*, Vol. 84, No. 2 (Sept-Oct 2000).
3. *Uncertain Justice: Politics and America's Courts*. REPORTS OF THE TASK FORCES OF CITIZENS FOR INDEPENDENT COURTS. NEW YORK. THE CENTURY FOUNDATION PRESS (2000), at 13 (Quoting Chief Justice William Rehnquist).
4. *Uncertain Justice*, *supra* at 13.
5. Madison, *THE FEDERALIST*, No. 78, at 469.
6. League of Women Voters: Creating a Just Society: Judicial Independence, www.lwv.org/join/judicial/2001
7. *An Independent Judiciary: Report of the Commission on Separations of Powers and Judicial Independence*. Chicago. American Bar Association (1997), at ii-iii.
8. Address of Chief Justice John Marshall to the Virginia State Convention of 1829-30, *Proceedings and Debates of the Virginia State Convention of 1829-30*, at 616.
9. *In Re Alamance County Court Facilities*, 329 N.C. 84, 97-98 (1991).
10. The late Chief Judge Raymond Mallard of the North Carolina Court of Appeals, in his early article on the inherent power of the courts in North Carolina, expressed the view that the separation of powers provided for in Article I, §6, is somewhat compromised by the provisions that grant the General Assembly the power to pay the expenses of the judicial department, determine the salaries of judges, and establish an administrative office of the courts. Mallard, *Inherent Power of the Courts in North Carolina*, 10 *WAKE FOREST LAW REVIEW* 1, at 9-10 (1974). With due respect to Judge Mallard, we read these provisions differently. We read them as a constitutional mandate to the legislative branch to provide the courts with the resources they need to keep the supreme judicial power effectively separate and distinct from the legislative and executive power and to exercise the judicial power that is vested in the General Court of Justice.
11. *In Re Alamance County Court Facilities*, *supra* at 98-99.
12. North Carolina Office of State Budget and Management, NC State Demographer, <http://demog.state.nc.us/demog/ncpopgr2.html>.
13. North Carolina Administrative Office of the Courts, Annual Reports, 1981 - 2002.
14. *Id.*, 2000-2002
15. *Id.*, 2001, 2002.
16. Since 1998, convictions of violent felonies (Class A through E) have increased 17.6%, from 2644 to 3110, not counting convictions that fall outside the structured sentencing grid. *Table 1, Structured Sentencing Statistical Report for Felonies and Misdemeanors*, NC Sentencing and Policy Advisory Commission.
17. The Criminal Procedure Act, Chapter 15A of the General Statutes, was enacted in 1973. S.L. '73, Ch. 1286. One of its many innovations, the post-trial motion for appropriate relief procedure, N.C.G.S 15A-1411 *et seq.*, has itself called for significantly increased judicial resources. Many decisions of the United States Supreme Court have also increased the length and complexity of criminal proceedings. *See, e.g., Batson v. Kentucky*, 476 U.S. 79 (1986)(challenges to use of peremptory challenges in jury selection - lengthens jury selection); *Strickland v. Washington*, 466 U.S. 668 (1984)(effective assistance of counsel - motivates extra attorney effort in all trial phases); *Lego v. Twomey*, 404 U.S. 477 (1972)(lengthens suppression hearings); *North Carolina v. Alford*, 400 U.S. 25 (1970)(calls for extensive inquiry into voluntariness of guilty plea).
18. N.C.S.L. '77, Ch. 406, §2, enacting N.C.G.S., Ch. 15A, Art. 100, Capital Punishment
19. N.C.S.L. '67, Ch. 954, §1, enacting N.C.G.S., §1A-1, Rules of Civil Procedure
20. N.C.G.S. Sec. 50-20.
21. North Carolina Administrative Office of the Courts, Annual Reports, 2001-2002.
22. AOC Statistical Tables, *Cases Filed and Disposed July 1, 2001 - June 30, 2002 and Cases Pending On June 30, 2002, District 16B Robeson*.
23. For fiscal years through 2001-2002: *North Carolina Courts 2001-2002: Statistical and Operational Summary of the Judicial Branch of Government*, North Carolina Administrative Office of the Courts, p. 20. For 2002-2003: Current Operations Appropriations Act of 2002, S.L. 2002-126, §2.1 amending S.L. 2001-424, §424. 2002-2003 figures subject to revision in Certified Budget.
24. *North Carolina Judicial Branch Statistical Report, January 2003*, North Carolina Administrative Office of the Courts Office of Research and Planning (draft).
25. Base judicial salaries for the 1996-1997 fiscal year were: district court judge \$79,943; chief district court judge, \$82,555; superior court judge, \$90,915; senior resident superior court judge, \$93,528. S.L. '95 (2ND Ex. Sess. 1996), Ch. 18, §28.3. The same year, median "cash compensation" for lawyers just 12 years out of law school ranged from \$73,000 for sole practitioners to \$251,155 for lawyers in firms with 40 lawyers or more. For lawyers 13 or more years out of law school, the range was \$88,000 to \$287,078. The 25th percentile of cash compensation for lawyers just 12 years out of law school ranged from \$65,50 to \$157,110; for those 13 or more years out of law school, from \$55,000 to \$165,640. *North Carolina Bar Association Economic Survey*, 1998, p. 34.
26. N.C.G.S 7A-304(a)(4) *as amended 1981-2002*.
27. N.C.G.S 7A-305(a)(2) *as amended 1981-2002*.
28. Bureau of Labor Statistics.
29. In 1999 the Director of the Administrative Office of the Courts was given specific authority to enter into contracts with counties and municipalities for the provision of services to the state in certain categories of cases. N.C.G.S 7A-64(a)(3), *added* by S.L. 1999-237, §17.17. This provision was enacted in part in response to long-standing concerns in large urban counties that State funding was inadequate to provide all the support needed by the courts in those counties.
30. *Analysis of North Carolina Clerks of Superior Court Resources and Procedures*, Jefferson Institute for Justice Studies (2000), p. 28.
31. Figures provided by the Administrative Office of the Courts Technical, Purchasing and Fiscal Services Divisions. They include equipment that is already five years old and equipment that will become five years old before June, 2004.
32. *In re Alamance County Court Facilities*, *supra* at 98-99.
33. As the result of the creation of our unified statewide court system, in which the exclusively state funded General Court of Justice is the only court in the state, North Carolina' courts are more dependent than are the courts of any other state on state funding, as distinct from county or municipal funding. Our counties provide only physical facilities for the courts and receive a facilities fee to defray that expense. Yet there are states that give their state courts an equal or greater percentage of total state expenditures, even though the state is responsible for only a portion of the total cost of operating the overall court system. *State Court Organization*, Bureau of Justice Statistics, www.ojp.usdoj.gov/bjs/pdf/sco9803.pdf. We would also point out that the budget for the Judicial Branch includes the costs for the operation of the District Attorney's Offices, although prosecution in, in fact, an executive rather than a judicial function. As far as we know, no other state includes District Attorneys' Offices in the budget for the courts.
34. Responses to an informal e-mail survey of state court administrators across the country, conducted recently by the Director of the North Carolina Administrative Office of the Courts, indicates that virtually all the state court administrators who responded have greater flexibility in managing their budgets than does the Director of the NCAOC.
35. N.C.G.S 143-18.
36. N.C.G.S 116-30.3, enacted by S.L. '91, Ch. 689, §296.2(a).
37. N.C.G.S 143-30.2. Lump sum appropriations for the General Assembly are also implied in the duties of the Legislative Services Commission. N.C.G.S 120-32.
38. For instance, clerk of superior court, district attorney, superior court, and administration typify the types of purpose and program codes under which funds are appropriated to the judicial department.
39. An extreme example of budget "micromanagement" is a provision in backup documents for the Current Operations Appropriations Act for 2002-2003 which prohibits the use of any State funds for out-of-state travel by Judicial Branch officials or employees. As a result, the Chief Justice paid his own way to the most recent meeting of the National Conference of Chief Justices and AOC department heads had to apply for a Crime Commission grant to attend a recent national meeting on court security.
40. N.C.G.S 143-25.
41. N.C.G.S 116-30.4.
42. N.C.G.S 143-23. With the exception of magistrates (for which each county's maximum and minimum number are specified in N.C.G.S 7A-133(e)), this detail is not found in any General Statute, or indeed in the published text of the current operations appropriations acts. It is found in the incredibly detailed supporting documents that are used by the budget committees to develop the budget. These documents are then tacitly adopted by the General Assembly in enacting the budget and form the basis for a document called the Certified Budget, which is the ultimate guide for each department's expenditure of the funds appropriated to it.