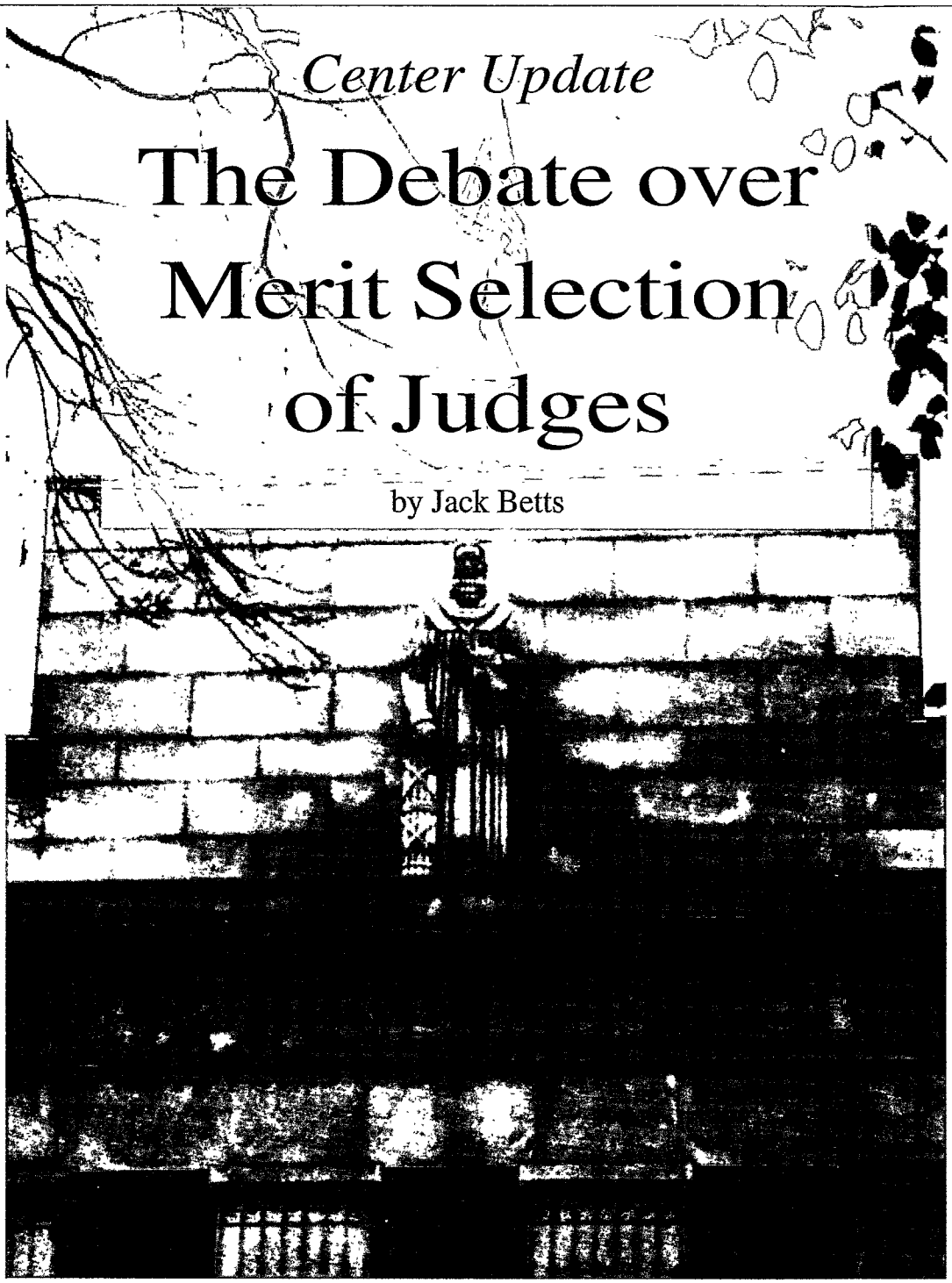
Center Update

The Debate over Merit Selection of Judges

by Jack Betts



Tom Mather

North Carolina Constitution, Article IV, Section 16. *Terms of office and election.* Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified.

For decades, politicians, lawyers, political scientists, and citizens have debated how to choose judges—by popular election, direct appointment, or a screening process that has come to be known as "merit selection." Nationally, 20 states use some variation of merit selection and 16 of those states use a form known as the "Missouri Plan," which includes: (1) a nominating commission to screen judicial candidates, (2) gubernatorial appointments of judges from a list of those nominees, sometimes with legislative confirmation, and (3) retention elections in which voters determine whether a judge serves another term. North Carolina's Constitution requires that judgeships be filled by partisan elections, except when vacancies occur between elections. However, nearly half of the state's judges—48 percent in 1996—were first appointed to their current seats.

Voters in the 1974 Republican primary for Supreme Court Chief Justice had an intriguing choice of candidates from which to choose. The two candidates' backgrounds presented a razor-sharp contrast: District Court Judge Elreta Alexander of Greensboro, an African-American woman and trial judge with years of courtroom experience; and James Newcombe, a fire extinguisher salesman from Laurinburg who not only had no judicial experience, but also lacked a law degree.

Guess who won? That's right—Newcombe, who took 59 percent of the vote in the primary. To his dismay, however, the Republican Party hierarchy declined to support him in the general election, and Associate Justice Susie Sharp, the Democratic nominee, handily won the race. A few years later, North Carolina voters adopted a constitutional amendment requiring that all judges be licensed to practice law in North Carolina, a direct outgrowth of the 1974 primary.[1]

In fact, North Carolinians have been bickering since Colonial days over the way their judges have been chosen. More than 200 years ago, the British Crown appointed judges in this colony, antagonizing the Lords Proprietors who saw the Crown's influence as an abridgment of their powers granted by Royal Charter, and annoying colonists who thought they should be allowed to judge their own affairs. When that unseemly system was dispatched by the American Revolution, such weighty matters as choosing judges and governors were delegated to the North Carolina General Assembly. For nearly a century, the legislature appointed the state's judiciary to "hold their offices during good behavior," as the 1776 Constitution allowed.

Another war once again changed the way judges were chosen. In the Reconstruction after-

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This article updates a series of articles, including pro/con arguments on merit selection of judges, that were previously published in North Carolina Insight *and now are contained in the latest edition of* North Carolina Focus: *Jack Betts, "The Debate Over Merit Selection of Judges,"* North Carolina Focus, *N.C. Center for Public Policy Research, Raleigh, N.C., 1996, pp. 315–327; Jack Betts, "The Merit Selection Debate—Still Waiting in the Legislative Wings,"* North Carolina Insight, *Vol. 9, No. 4, June 1987, pp. 15–21; H. Parks Helms, "Merit Selection: The Case For Judicial Election Reform,"* North Carolina Insight, *Vol. 9, No. 4, June 1987, pp. 22–27; Joel Rosch and Eva R. Rubin, "Merit Selection: The Case Against Judicial Election Reform,"* North Carolina Insight, *Vol. 9, No. 4, June 1987, pp. 28–34.*

Table 1.
Arguments For and Against Merit Selection

For Merit Selection:	Against Merit Selection:
Would take politics out of the judicial selection process.	Would shift politics from electoral decisions by large numbers of voters to political decisions by a select few within the bar's nominating committee in the appointment process.
Judges would be selected more on merit and legal ability.	Judges still would be selected on the basis of political alliances with those in power.
Merit selection would attract qualified candidates who do not now seek election to judicial office.	Merit selection would not produce more qualified judges than the electoral process does.
Merit selection would prohibit judicial candidates from having to seek campaign funds from lawyers who later must appear before those judges.	Judicial candidates would still have to drum up pledges of support from judicial nominating committee members.
Merit selection would produce a more independent judiciary without ties to party, politicians, or lawyers who appear before judges.	Few problems stem from judicial ties to political parties, and merit selection would not eradicate party alliances or beliefs.
A judicial nominating committee would be able to make better choices than voters because it would have access to better information on the candidates' actual performance in the legal profession.	As North Carolina increasingly becomes a two-party state, more contested judicial elections would mean that more information is available to voters.
Merit selection would eliminate bitter political campaigns.	Political campaigns still could exist because voter groups could oppose a judge who is up for a retention vote under a merit selection system.
Merit selection would shorten North Carolina's long ballot and relieve voters of the burden of having to vote for judges they do not know.	Merit selection would remove choice of judges from the electorate, where it belongs, and place that choice in the hands of a select few.
Merit selection has worked well in 20 other states and would produce better judges in North Carolina, where 24 judges have been removed or censured for misconduct in office since 1975.	Judges in North Carolina already are good ones, and merit selection in other states has not produced better judges.

"We have many excellent district court judges. Some are outstanding jurists. Unfortunately, however, a minority of these judges are so highly unqualified that they are damaging the image of that echelon; and if we continue to elect such judges, they will inevitably tarnish the image of the entire judiciary."

—FORMER CHIEF JUSTICE SUSIE SHARP OF THE N.C. SUPREME COURT IN A 1977 LETTER TO FORMER STATE REP. PARKS HELMS (D-MECKLENBURG)

math of the Civil War, a new Constitution was adopted in 1868 that for the first time embraced Jacksonian democracy and gave the citizens of North Carolina the power to elect trial and appellate judges. So it has remained ever since, despite periodic calls for yet another change in the selection of state District, Superior, Court of Appeals, and Supreme Court judges. Most recently, the Commission for the Future of Justice and the Courts in North Carolina issued a report in December 1996 recommending—among other things—that the state replace its system of electing judges with a modified form of merit selection. (See the related article, "Legislature Considers Courts Panel's Recommendation to Install Merit Selection in N.C.," on pp. 87–88.) The commission's recommendations led to the introduction of legislation aimed at establishing a form of merit selection in the 1997 session of the N.C. General Assembly.[2]

This movement to alter the selection process has usually proposed a process known around the country as "merit selection" of judges. It refers to choosing judges by (1) naming a bipartisan commission to screen a pool of candidates for a judicial vacancy and making a recommendation to an appointing authority, usually a governor but sometimes a legislature; (2) authorizing appointment of a qualified candidate, and sometimes requiring confirmation by a legislative body; and (3) usually requiring the judge to stand for a "retention" vote after a certain period in office. Voters, in a retention election, are asked only whether a judge should be kept in office. If a certain percentage—sometimes a simple majority, sometimes a three-fifths majority—vote yes, the judge then serves a full term, whereupon another retention vote is taken; if the vote is no, a vacancy is declared and the nominating and appointment process begins anew. Scores of variations and combinations of certain elements of these plans and of other methods—such as nonpartisan statewide elections—have been debated and sometimes adopted by various states. Some use merit selection only for trial judges; others for appellate judges only.

Why adopt such a change? The arguments for merit selection generally include that (1) the existing partisan system of election discourages qualified lawyers from running for judgeships; (2) the cost of running for office is too high; (3) politicking requires candidates to seek funds from lawyers who may subsequently have cases before that judge; (4) voters already are faced with an unusually long statewide ballot; (5) voters often lack information about candidates, and without the time or resources to become familiar with them, they are unable to make good choices; and (6) merit selection has worked well in some other states.

Why resist such a change? The arguments against merit selection generally include that (1) the system takes power from its proper place—with the people—and deposits it in the hands of a select few; (2) North Carolina has had a good judiciary under the current system; (3) merit selection does not eliminate politicking, it just alters the way judicial candidates must run for office; and (4) merit selection has not worked well in some other states. (See Table 1 on p. 74 for a summary of key arguments for and against merit selection.)

These arguments have been batted back and forth for most of the 20th century following growing national dissatisfaction with the politicizing of the judicial selection process, according to Keith Goehring, a staff attorney with the National Center for State Courts in Williamsburg, Va.[3] Goehring's research attributes the development of merit selection plans in the early 1900s to Albert M. Kales, a law professor at Northwestern University, and Harold Laski, an English political scientist. They developed a merit selection process that was first

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Table 2.
State Systems for the Regular Selection of State Judges

State	Partisan Election	Nonpartisan Election	Gubernatorial Appointment	Legislative Election	Missouri Plan	Other Merit Selection
AL	X					
AK					X	
AZ					X	
AR	X					
CA		X	X			
CO					X	
CT						X
DE			X			
FL		X			X	
GA		X				
HI						X
ID		X				
IL	X					
IN	X				X	
IA					X	
KS					X	
KY		X				
LA		X				
ME			X			
MD					X	
MA						X
MI		X				
MN		X				
MS	X					
MO	X				X	
MT		X				
NE					X	
NV		X				
NH			X			
NJ			X			
NM					X	
NY	X		X			

Table 2, *continued*

State	Partisan Election	Nonpartisan Election	Gubernatorial Appointment	Legislative Election	Missouri Plan	Other Merit Selection
NC	X					
ND		X				
OH		X				
OK		X			X	
OR		X				
PA	X					
RI			X	X		
SC				X		
SD		X			X	
TN	X				X	
TX	X					
UT					X	
VT						X
VA				X		
WA		X				
WV	X					
WI		X				
WY					X	
TOTALS	12	17	7	3	16	4

Notes: Lighter areas indicate states that use some sort of merit selection.

The Missouri Plan is the term used for merit selection that involves (1) a nominating commission to screen judicial candidates, (2) gubernatorial appointments of judges from a list of those nominees, sometimes with legislative confirmation, and (3) retention elections in which voters determine whether a judge serves another term.

Many states have different judicial selection plans for different groups of judges, so states may appear in more than one category on this chart. States are classified according to the system they use for the regular selection of judges, rather than for the filling of vacancies or for the staffing of minor trial courts.

Source: The Book of the States 1996–97, The Council of State Governments, Lexington, Ky., Table 4.4: "Selection and Retention of Judges," pp. 133–135.

Table 3. Number of Court Officials in North Carolina, 1996

Supreme Court Justices	7
Court of Appeals Judges	12
Superior Court Judges*	90
District Court Judges	198
Magistrates	698
Clerks of Superior Court	100
Assistant and Deputy Clerks	2,022

* The number of Superior Court judges does not include five special, limited-term seats that are by statute appointed by the governor.

Source: Administrative Office of the Courts, from *Without Favor, Denial or Delay: A Court System for the 21st Century*, report by the Commission for the Future of Justice and the Courts, Raleigh, N.C., December 1996, p. 80. Figures for magistrates and clerks are for actual numbers of people employed, including part time. Numbers are less for budgeted, full-time positions.

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adopted by the state of Missouri in 1940 and thus is commonly referred to as the Missouri Plan. Generally, there are now five systems used by the states for the regular selection of judges: partisan election (12 states), nonpartisan election (17 states), gubernatorial appointment (7 states), legislative election (3 states), and some form of merit selection (20 states). (Numbers do not add up to 50 because some states use more than one method to select judges. See Table 2 on pp. 76–77.)

North Carolina has been toying with the notion of merit selection for more than 20 years. In the 1973–1975 sessions of the General Assembly, efforts were made to push for a constitutional amendment after the N.C. Courts Commission endorsed merit selection in 1971, but those efforts ultimately failed. In part, the bill went nowhere because it lacked the support of then-Lt. Gov. (and later Gov.) Jim Hunt and then-Chief Justice Susie Sharp. It wasn't that Sharp opposed merit selection. In fact, she supported it but objected to the 1975 legislation because she believed the nominating commission would not have adequately reflected the state's judicial districts.[4] Two years later, she endorsed another attempt, sponsored by Rep. Parks Helms (D-Mecklenburg), that resolved her concerns.

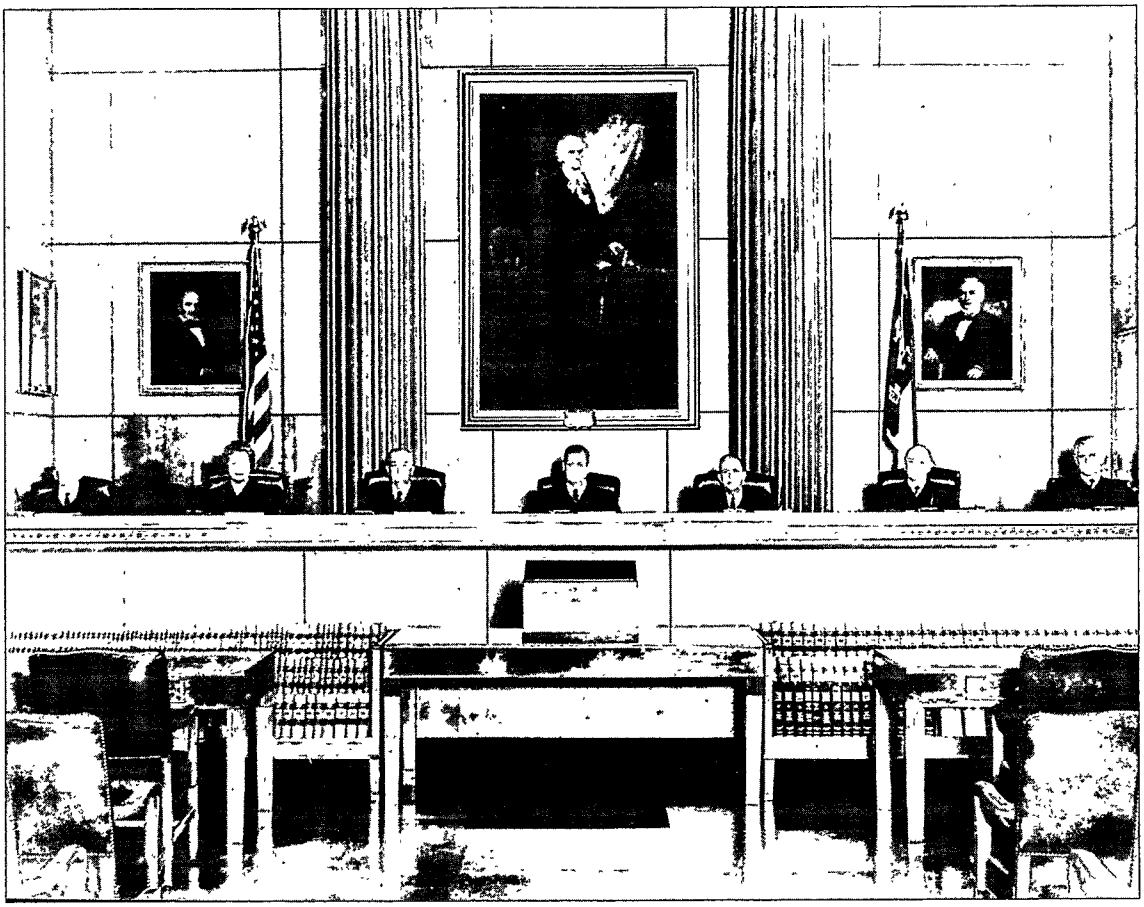
Sharp was especially concerned about the quality of the state's lower court judges. "We have many excellent district court judges," she wrote Helms in 1977. "Some are outstanding jurists. Unfortunately, however, a minority of these judges are so highly unqualified that they are damaging the image of that echelon; and if we continue to elect such judges, they will inevitably tarnish the image of the entire judiciary."

However, in 1979 the bill still lacked the support of Governor Hunt, who waited until the proposal had been killed in committee before he endorsed it—at least as a proposal worthy of further debate. Hunt's attitude at first was rather like that of Chicago Mayor Richard J. Daley. Under some lobbying heat to have judges appointed rather than elected, Daley is said to have asked, "What's all this fuss about merit selection? We already got it. If they have merit, we select 'em."

North Carolina's Constitution requires that judgeships be filled by elections, except when vacancies occur between elections. Justices of the Supreme Court and Judges of the Court of Appeals run on the statewide ballot, while District and Superior Court Judges run within their judicial district.[5] North Carolina has 307 regular judgeships—not counting retired judges who may be called upon to fill in during busy court dockets and five special Superior Court judges (who are appointed by the Governor to four-year-terms and who do not stand for re-election). There are seven Supreme Court justices, 12 judges of the Court of Appeals, 90 regular Superior Court judges, and 198 District Court judges. (See Table 3 above.) District Court judges serve four-year terms; all others serve eight-year terms.[6] That means lots of elections—11, for example, on the 1996 ballot in Wake County.

"[F]or many years in North Carolina a system supposedly giving voters complete control over judicial selection has given them almost no control."

— JOHN KORZEN
IN *WAKE FOREST LAW REVIEW*



N.C. Division of Archives & History

The N.C. Supreme Court in its chambers, 1966.

But the fact is that many judgeships are *not* filled by election. Vacancies routinely occur because of resignations, retirements, and occasionally death in office. The Governor appoints judges to fill these posts, and confirmation of the legislature is not required. But the judge must stand for election for the position in the next regularly scheduled general election. *Thus, despite North Carolina's electoral system, nearly half of its judges in 1996 initially were appointed to their posts.* For instance, of the seven Supreme Court justices, three first reached the court by appointment; of the 12 judges on the Court of Appeals, three reached the court by appointment; of 90 regular Superior Court judges, 47 percent were appointed; and, of 198 District Court judges, 51 percent were appointed. *Overall, 48 percent of North Carolina's judges in 1996 first won their current seats by appointment, not by election.* (See Table 4 on p. 82.) That number was down slightly from 1995, when 52 percent of the state's judges were appointed rather than elected. A similar study in 1987 found that about 59 percent of North Carolina's judges had first been appointed to the bench, rather than elected—although that study used a slightly different methodology.[7]

Of the 37 African-American or Native-American judges in 1996, 14 were appointed and 23 were elected. Of the 47 female judges, 21 were

"Some oppose taking away votes from the people. Others think the system would act like a close cousin to the federal system, where judges are appointed for life. And some fear that confirmation hearings would become political."

—EDITORIAL IN *THE NEWS & OBSERVER,* OF RALEIGH, EXPLAINING 1995 DEFEAT OF A MERIT SELECTION BILL

Table 4. How North Carolina Judges Reached the Bench: Appointment vs. Election, 1996

All Judges

Court	Total # of Judges	# Appointed	% Appointed	# Elected	% Elected
Supreme Court	7	3	43%	4	57%
Court of Appeals	12	3	25%	9	75%
Superior Court*	90	42	47%	48	53%
District Court*	198	100	51%	94	47%
TOTAL	**307**	**148**	**48%**	**155**	**50%**

African American/Native American Judges

Court	Appointed	Elected	Total	% Sitting on the Court
Supreme Court	1	0	1	14%
Court of Appeals	1	1	2	17%
Superior Court	4	10	14	16%
District Court	8	12	20	10%
TOTAL	**14**	**23**	**37**	**12%**
SUMMARY	*37 African American/Native American Judges = 12% of the Judiciary*			

Female Judges

Court	Appointed	Elected	Total	% Sitting on the Court
Supreme Court	1	0	1	14%
Court of Appeals	2	0	2	17%
Superior Court	1	4	5	6%
District Court	17	22	39	20%
TOTAL	21	26	47	15%
SUMMARY	*47 Female Judges = 15% of the Judiciary*			

Judges Who Are Republicans

Court	Appointed	Elected	Total	% Sitting on the Court
Supreme Court	0	2	2	29%
Court of Appeals	0	2	2	17%
Superior Court	0	6	6	7%
District Court	13	31	44	22%
TOTAL	13	41	54	18%
SUMMARY	*54 Republican Judges = 18% of the Judiciary*			

Source: Thomas J. Andrews, Chief Counsel, Administrative Office of the Courts, 1996. The appointment/election statistics are based on the way the judge first was seated in his or her current position.

* Percentages for District Court and total judges do not add up to 100% because four District Court seats were vacant. The number of Superior Court judges (90) does not include five special, limited-term judgeships, which by statute are appointed by the governor.

Removal and Censure Actions Against N.C. Judges by the State Supreme Court Since 1975

Judges Removed from the Bench

1. District Court **Judge Linwood Peoples** of Henderson resigned his seat in 1977 after he was accused by the Judicial Standards Commission of accepting money from defendants to settle traffic cases out of court. The Commission recommended to the Supreme Court that Peoples be removed from office. In 1978, Peoples ran for Superior Court and won a seat, but the Supreme Court refused to seat him, ruling that his misconduct in office made him ineligible to retain his seat.

2. District Court **Judge William Martin** of Hickory was removed from the bench by the Supreme Court in 1981 after the Judicial Standards Commission accused him of trying "to obtain sexual favors from female defendants who had matters pending before the courts." The Commission earlier had recommended in 1978 that Martin be removed from office, but the Supreme Court reduced that recommendation to a public censure of Judge Martin.

3. Superior Court **Judge Charles Kivett** of Greensboro was accused by N.C. Department of Justice prosecutors in 1982 of sexual misconduct in office and of giving light sentences to certain defendants at the request of a friend. The Judicial Standards Commission recommended that Kivett be removed, and the Supreme Court removed him from office in 1983.

4. District Court **Judge Wilton Hunt** of Whiteville was accused by the Judicial Standards Commission of accepting bribes in an undercover operation conducted by law enforcement authorities. The Supreme Court removed Hunt from the bench in 1983.

5. Superior Court **Judge Terry Sherrill** of Charlotte was removed from the bench by the Supreme Court in 1991 for conduct that constituted willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. In 1990, Sherrill had been placed in the Deferred Prosecution Program for offenses arising out of his arrest on March 10, 1990 for misdemeanor possession of marijuana and drug paraphernalia and felony possession of cocaine.

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appointed and 26 were elected. And, of the 54 judges who are Republicans, 13 were appointed and 41 were elected. Thus, only in theory has North Carolina had a partisan system of judicial selection and retention. In fact, because of the Governor's appointment power, the system has worked quite differently. "As a result, for many years in North Carolina a system supposedly giving voters complete control over judicial selection has given them almost no control,"[8] notes John Korzen in the *Wake Forest Law Review.*

In addition to the Governor's de facto control over the seating of judges, proponents of merit selection could cite a rise in judicial misconduct. North Carolina's judges occasionally run afoul of the law themselves, and some have been defrocked or censured by the state Supreme Court, which has final authority in disciplinary actions. The N.C. Judicial Standards Commission was created in 1973 to make recommendations to the N.C. Supreme Court in cases of misconduct in office. From 1975 to

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Table 5.
Salaries of N.C. Judges, 1996

Chief Justice of the Supreme Court	$ 103,012
Associate Justices of the Supreme Court	$ 100,320
Chief Judge of the Court of Appeals	$ 97,812
Judges of the Court of Appeals	$ 96,140
Senior Resident Superior Court Judges	$ 93,528
Superior Court Judges	$ 90,915
Chief District Court Judges	$ 82,555
District Court Judges	$ 79,943

—*continued from p. 83*

1996, five North Carolina judges were removed from the bench and 19 were censured. By and large, District Court judges seem to get in the most trouble, accounting for three of the five judges removed from the bench and 15 of the 19 censures. (See article on pp. 83–85, "Removal and Censure Actions Against N.C. Judges by the State Supreme Court Since 1975.")

In the 1995–96 General Assembly, a push to end partisan judicial election for judges on the Court of Appeals and justices on the Supreme Court failed again. "The 1994 elections saw record amounts of money spent in Supreme Court and Court of Appeals races," writes Joseph Neff in *The News and Observer.*[9] "In the Supreme Court race won by Bob Orr, a Republican, candidates spent almost $500,000. In the Court of Appeals race won by Mark Martin, a Republican, candidates spent more than $300,000." Neff continues, "The bulk of campaign contributions in North Carolina come from trial lawyers who argue before

Dwayne Powell

the court, and from businesses that often appear before the court as defendants." Senator Fountain Odom (D-Mecklenburg), a sponsor of a judicial reform bill, notes that such contributions tend to corrupt the image of an impartial judiciary. (See Table 5 on p. 86 for a list of salaries for N.C. judges.)

N.C. Chief Justice of the Supreme Court Burley Mitchell Jr. endorses reform of the judicial selection system. In an address to the 1995 General Assembly, he noted that (1) strongly contested partisan elections have led to more expensive and time-consuming races; (2) the Supreme Court was required to cancel court in November and December of 1994 after two justices were defeated, the third such cancellation in the past ten years resulting from partisan sweeps; and (3) all the judges in the state adopted a 1994 resolution endorsing an appointive system for judges.[10]

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Legislature Considers Courts Panel's Recommendation to Install Merit Selection in N.C.

by Tom Mather

When lawmakers rewrote the North Carolina Constitution in 1868, one of their key reforms was to let voters elect state judges for the first time. But today, most voters don't realize they have that responsibility or they don't exercise it, a recent survey shows. And now that reality has led a judicial reform panel to recommend that the state scrap its 129-year-old system of choosing judges through partisan elections and replace it with a type of merit selection.

"[M]ost voters do not even know that judges are elected and only a handful can recall an individual judge for whom they cast a ballot," states a recent report by the Commission for the Future of Justice and the Courts in North Carolina, a panel established in 1994 by then-Chief Justice James Exum to find ways to improve the state's legal system.[1] One of the commission's key recommendations was that the state replace its partisan judicial elections with a form of merit selection combined with periodic retention elections.

The commission's recommendations were incorporated into legislation introduced in the 1997 session of the N.C. General Assembly.[2] Because the legislation would change the State Constitution, to become law it would need to pass the N.C. House and Senate by three-fifths votes and then be approved by voter referendum at the next general election. Under the proposed legislation:

- All judges would be appointed by the governor from nominees submitted by politically neutral, blue-ribbon judicial panels.
- New judges would stand for retention votes at the first general election occurring more than a year after their appointments.
- Judges retained by voters would serve eight-year terms, with additional retention elections at the end of each term.
- All judges would be subject to regular performance evaluations by neutral judicial panels, and those evaluations would be made available to the public before retention elections.
- Clerks of court would be appointed to four-year terms by the chief circuit judges in their districts from lists of nominees submitted by panels of local lawyers, county commissioners, and other citizens.

The current method of selecting judges through partisan elections has limited the independence and accountability of judges, while eroding public confidence in the judicial system, the Futures Commission concludes. "The public cannot have confidence in the fairness of decisions when judges must raise large sums in campaign funds from lawyers and other interest groups," the commission states. "And many lawyers who would make excellent

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Despite strong support, the 1995 judicial reform bill died in the House after it passed the Senate. The vote was 62–43 in favor of merit selection, but supporters of the bill, who included the leadership of the House, needed approval by three-fifths of the members of the House—72 votes—since the bill involved an amendment to the Constitution. The bill proposed gubernatorial nomination of judges, legislative confirmation, and retention elections for judges on the Court of Appeals and justices on the Supreme Court.

Why was the bill voted down? "Some oppose taking away votes from the people. Others think the system would act like a close cousin to the federal system, where judges are appointed for life. And some fear that confirmation hearings would become political," noted an editorial in *The News and Observer* of Raleigh.[11]

Nevertheless, the push for merit selection isn't going away. The number of states using some form of merit selection grew from 17 to 20 over the past decade, and the N.C. General Assembly is facing a renewed effort to install such a system here. That effort gained steam in 1996 when the influential Commission for the Future of Justice and the Courts in North Carolina called for the end of partisan judicial elections in the state. (See the related article, "Legislature Considers Courts Panel's Recommendation to Install Merit Selection in N.C.," on p. 87–88.) Legislators now are considering the Commission's proposal for a modified form of merit selection, which was incorporated into legislation introduced in April of 1997.[12] Thus, merit selection is on the agenda for the 1997–98 session of the General Assembly—representing another chance at becoming reality in North Carolina.

FOOTNOTE

[1] N.C. Constitution, Article IV, Section 22, first passed by the legislature as Chapter 638 of the 1979 Session Laws, and then approved by the voters on November 4, 1980.

[2] House Bills 741 and 742, and Senate Bills 834 and 835.

[3] Keith Goehring, "Judicial Selection Procedures," memorandum prepared for the National Center for State Courts, Williamsburg, Va., June 28, 1985, p. 2.

[4] Correspondence from Chief Justice Susie Sharp to the Hon. Parks Helms, March 9, 1977, p. 2.

[5] Until the November 1994 election, Superior Court judges were elected statewide. Candidates were nominated within their own judicial districts, but they appeared on the statewide ballot. As a consequence, voters in other areas of the state often did not know who the candidates were or how to choose among those running for a judicial seat. Republicans argued that the system worked to keep both Republicans and African Americans off the bench, because the measure diluted their voting strength and assured that Democratic candidates would always win because the voter registration ratio favored Democrats.

The Republican Party sued the state in an effort to force the election of Superior Court judges by judicial district and won the case in federal district court, *Republican Party of N.C. v. Hunt*, 841 F. Supp. 722 (E.D.N.C. 1994). However, in early 1996, the Fourth Circuit U.S. Court of Appeals reversed that ruling and sent the case back to federal district court for another review [77 F.3d 470 (4th Cir. 1996)]—once again leaving the issue unsettled.

The situation was resolved in 1996 by the N.C. General Assembly, which under the state Constitution can approve elections of Superior Court judges within their own districts. Such legislation was enacted in the final days of the 1996 session. The law [Chapter 9, 2nd Ex. Sess. (S 41)] required that Superior Court judges be elected by district in partisan elections, starting with the 1996 general election. Also under the law, Superior Court elections will be nonpartisan starting with the 1998 general election.

[6] Joan G. Brannon, *The Judicial System in North Carolina*, UNC Institute of Government, Chapel Hill, N.C., 1994, pp. 3–8.

[7] See Jack Betts, "The Merit Selection Debate—Still Waiting in Legislative Wings," *North Carolina Insight,* Vol. 9, No. 4 (June 1987), p. 20. The 1987 Center Study looked at how judges were first selected to *any* judicial seat, while the current data in this article show how judges reached their *current* post.

[8] John J. Korzen, "Changing North Carolina's Method of Judicial Selection," *Wake Forest Law Review*, Vol. 25, 1990, p. 265.

[9] Joseph Neff, "Change in selection of judges advances," *The News and Observer*, June 14, 1995, p. A3. The judicial reform bill was Senate Bill 971, introduced in the 1995 session of the General Assembly.

[10] Burley Mitchell, "Picking Judges," *The Charlotte Observer,* March 22, 1995, p. 12A.

[11] "Judicial bill may get benched," *The News and Observer*, Raleigh, NC, July 26, 1995, p. A3.

[12] In April 1997, Legislators introduced four bills aimed at establishing a form of merit selection in North Carolina. The bills are: House Bills 741 and 742, introduced by Reps. Chuck Neely (R–Wake) and Philip Baddour (D–Wayne); and Senate Bills 834 and 835, introduced by Sen. Frank Ballance (D–Warren).