



The Demographics of the Judiciary: No Longer a Bastion of White Male Democrats

by Katherine White, Dale McKeel, and Jack Betts

This regular Insight department usually examines policymaking and the decision-making process in the judicial branch of state government. But this installment takes a look at the demographics of the judiciary and reveals some eye-opening statistics about those who sit in judgment of North Carolina's 6.5 million citizens.

For the first six decades of this century, you could walk into any courtroom in North Carolina and find the same thing as in the General Assembly or the Office of the Governor: a white male Democrat in charge. That began changing in the late 1960s in the General Assembly and in 1972 when a Republican took over the Office of the Governor, but the N.C. judiciary remained largely insulated from such changes.

Those days are only now beginning to pass. Of North Carolina's 261 active judges at all levels, 38 are Republicans—14.6 percent of the state's judiciary. The judiciary comprises four different court levels in North Carolina's General Court of Justice: the seven-member N.C. Supreme Court, the 12-member N.C. Court of Appeals, the 74 judges of the Superior Court (plus three Special Superior Court judges) and the 165 judges of the District Court. Democrats, who just a few years ago held nearly all of the judgeships, are down to 85.4 percent of the judiciary.

Similarly, blacks and Indians have begun making inroads. North Carolina now has 24 black judges—9.2 percent of the judiciary, and 2 Indian judges, comprising 0.8 percent, while there are 235 white judges—90 percent. And more women are judges as well. Of the 261 sitting judges, 22 are female, or 8.4 percent of the total, while 239 are male, or 91.6 percent of the total.

Thus, women, minorities, and Republicans have made some progress in gaining representation on the bench, but that progress has been slow and does not begin to match their numbers among the state's general population. For example, North Carolina's voter registration ratio is 64.2 percent Democratic and 30.8 percent Republican (with 5 percent registered in other categories), but the judiciary is more than 85 percent Democratic. The statewide racial breakdown is 76 percent white, 21.8 percent black, and 1.1 percent Indian or other race, but the judiciary is 90.4 percent white. And the statewide gender makeup is 48

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percent male and 52 percent female, but the judicial makeup is 91.6 percent male.

What difference does all this make? It depends upon how you view the judiciary. Unlike a legislative body, the judiciary traditionally has not been perceived as a group that should be representative of the population, but rather should have certain characteristics that enable it to judge fairly and impartially, regardless of demographics. U.S. Senator Roman Hruska, Republican of Nebraska, once argued, in defense of a presidential nomination for an associate justice of the U.S. Supreme Court, that mediocrity deserved representation on the Supreme

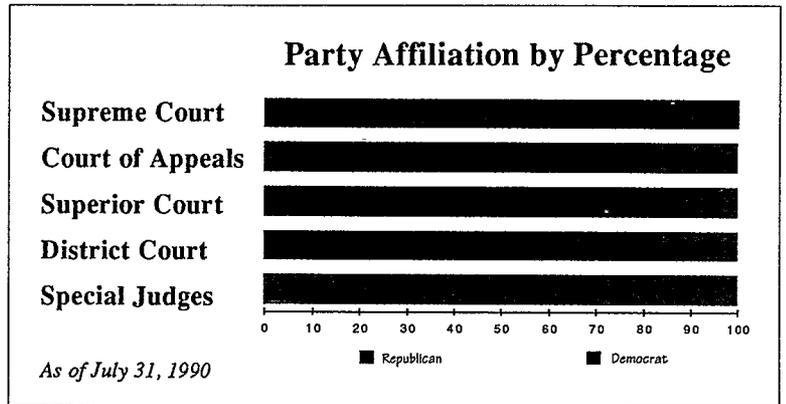
Court. Hruska's words did not sway his colleagues, who turned down the appointment. They agreed with the traditional view that more importance should be attached to legal training, experience, temperament, and scholarly ability than to one's race, gender, political affiliation, or other demographic characteristics. Yet because there are so many groups in a society as large as ours, many observers believe it's important that society feel that the judiciary is broadly drawn.

As Chief Justice James G. Exum Jr. puts it, "The bench needs to be broadly representative of the makeup of society generally. Judges are passing daily on the fortunes, the liberties, and on the lives of our citizens. It is important for the public to know they are represented racially, sexually, and politically." Does that mean that a judge's gender or race or political party makes a difference in the outcome of a case? Exum says no. "We're all working from the same set of law books and we are all trying to apply the law evenhandedly and fairly," Exum says. What is important is "that justice not only be done but that it be perceived to be done," Exum adds.

Several Factors Bring About Change in Judicial Makeup

Several factors account for these changing—however slowly—demographics of the bench. The emergence of a two-party state has resulted in the political changes.¹ Not only have the state's two Republican governors been able to

appoint more GOP judges, but Republicans have been running for and winning judgeships on their own as well. Of the current judiciary, 15 Republicans ran for and won their judgeships



outright without first having been appointed to the post. In the same way, blacks and women have made inroads by the ballot box. Federal court litigation has forced North Carolina to increase the number of minorities on the bench,² and the women's movement of the 1970s has led to a steady increase in the number of female law students and more female lawyers—to the point that one in five lawyers in North Carolina is a woman.³

A decade ago, the N.C. Center for Public Policy Research evaluated the performance and makeup of the N.C. judiciary, including an examination of the appellate courts and the Superior Court judiciary for their political and gender makeup (the District Court bench was not included).⁴ In 1980, the survey found, there were 85 judgeships in the Superior Court and appellate judiciary; 84 of them were filled by Democrats and 84 were filled by males. There was one white Republican, making the upper level of the judiciary 98.8 percent male and 98.8 percent Democratic. The 1980 survey did not examine race or other demographic elements.

But a new 1990 survey by the Center found that on the same levels—the Superior Court and appellate bench—women had made progress, though significantly less progress than Republicans. By July 30, 1990, when there were 96 judgeships at these levels, 92 were held by males and only 4 by women—in other words, 95.8 percent male, 4.2 percent female. But 11 Republicans now hold judgeships compared to 85 Democrats, or 11.5 percent Republican compared to

Table 1. Party Affiliation of North Carolina Judges

	Democrat		Republican		Total	
	Count	Percentage	Count	Percentage	Count	Percentage
All Judges	223	85.4%	38	14.6%	261	100.0%
Supreme Court	7	100.0%	0	0.0%	7	100.0%
Court of Appeals	10	83.3%	2	16.7%	12	100.0%
Superior Court	68	91.9%	6	8.1%	74	100.0%
District Court	138	83.6%	27	16.4%	165	100.0%
Special Judges	0	0.0%	3	100.0%	3	100.0%
Registered Voters in North Carolina	2,019,800	64.2%	969,349	30.8%	3,147,867	100.0%

Note: 158,718 voters (5.0%) are registered as unaffiliated.

Source: N.C. Center survey in July 1990 based on data from the State Board of Elections, Administrative Office of the Courts, local boards of elections, and interviews with judges.

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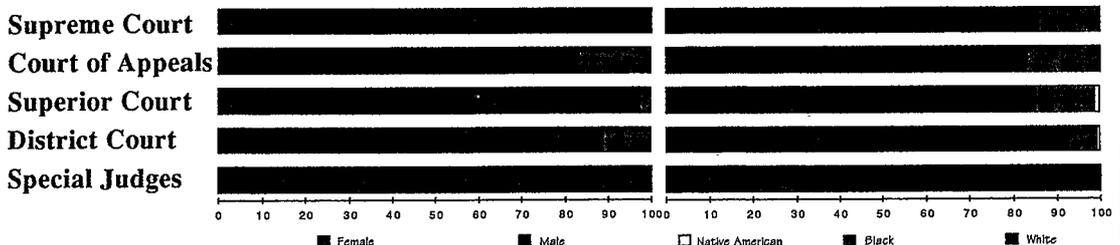
88.5 percent Democratic.

The Center's 1990 survey examined all levels of the judiciary, and revealed that much of the progress for women and for Republicans was coming at the District Court level. While there are no 1980 data to compare progress of these groups, the 1990 survey shows that of the 165 district court judges, 18 of them (10.9 percent) are women and that 27 (16.4 percent) are Republicans. The survey also showed that blacks have made steady progress in the trial courts judiciary.

Ten of the 74 regular Superior Court judges are black (13.5 percent) and 11 of the 165 District Court judges are black (6.7 percent).

Is there a noticeable difference in the decisions of these groups, or on the policymaking process? The presence of women and minorities on the bench and their impact on the judicial process have been studied a number of times over the years, and for the most part, these studies have found that neither group sentences differently from the way their white male counterparts have,

Gender of Judges by Percentage Minority Judges by Percentage



As of July 31, 1990

Carol Majors

Table 2. Gender of North Carolina Judges

	Male		Female		Total	
All Judges	239	91.6%	22	8.4%	261	100.0%
Supreme Court	7	100.0%	0	0.0%	7	100.0%
Court of Appeals	10	83.3%	2	16.7%	12	100.0%
Superior Court	72	97.3%	2	2.7%	74	100.0%
District Court	147	89.1%	18	10.9%	165	100.0%
Special Judges	3	100.0%	0	0.0%	3	100.0%
General Population of North Carolina	3,179,037	48.1%	3,434,354	51.9%	6,613,391	100.0%

Source: Department of Administration; N.C. Center survey in July 1990; and data from the Administrative Office of the Courts.

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Table 3. Minority Judges in North Carolina

	White		Black		Native American		Total	
All Judges	235	90.0%	24	9.2%	2	0.8%	261	100.0%
Supreme Court	6	85.7%	1	14.3%	0	0.0%	7	100.0%
Court of Appeals	10	83.3%	2	16.7%	0	0.0%	12	100.0%
Superior Court	63	85.1%	10	13.5%	1	1.4%	74	100.0%
District Court	153	92.7%	11	6.7%	1	0.6%	165	100.0%
Special Judges	3	100.0%	0	0.0%	0	0.0%	3	100.0%
General Population * of North Carolina	5,006,337	75.7%	1,441,719	21.8%	72,748	1.1%		100.0%

* Note: The 1988 County and City Data Book identifies 1.0% of the state's population as Hispanic, and 0.4% as Asian/Pacific Islander.

Source: 1988 County and City Data Book; N.C. Center survey in July 1990; and data from the Administrative Office of the Courts.

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but that perceptions have been an important factor. In *Race Versus Robe: The Dilemma of Black Judges*, respondents to a survey thought that the presence of a black judge enhances the chance for justice for blacks. As one judge reasoned, "The mere presence of a black judge is going to influence his white associates in their thinking. Secondly, because he is in, shall we say, the councils of the mighty, with policies being fixed that's [sic] going to control the police department, the prosecutor's office, and so forth, he can make the input that blacks would like to have with respect to the formulation of that policy. And if he's on his toes, he will do that. Thirdly, of course, he serves as a rallying point He gives a sense of dignity to blacks generally, and particularly to the youngsters from various schools who come down to visit the courts When they see the black judge there in the flesh, they realize there's hope for them, that they might also one day achieve their highest ambition."⁵

Not surprisingly, what women bring to the bench is similar. Elaine Martin, associate professor of political science at Eastern Michigan University, puts it this way: "Their differences might influence such things as decisional output, especially in cases involving sex discrimination; conduct of courtroom business, especially as regards sexist behavior by litigators; influence on sex-role attitudes held by their male colleagues; especially on appellate courts where decisions are collegial" ⁶

But perhaps a Washington state prosecutor has put it in the most direct terms. Ric Martinez, a Hispanic prosecutor in Seattle, Wash., put it this way: "You can have sensitivity sessions 'til the cows come home. But if you don't have minority faces up on the bench, you're not going to have an impact on the system and its built-in biases. Not only will a minority judge be able to better understand the position of a minority defendant, but that same judge will have a sensitizing effect on his fellow judges."⁷

Is There a Political Impact?

And how about the political impact? Does that show up in decision-making, or is its importance more a matter of balanced representation and public confidence in a system that is not dominated totally by one political party? Court of Appeals Judge Robert Orr, a Republican, says, "I think it's important that the judicial system be represented by a broad cross section of indi-

viduals and that certainly includes gender, race, political affiliation, and judicial philosophy." Orr believes that, particularly at the appellate level where cases are decided by panels of judges, "the range of different experiences and different perspectives on a panel provides the necessary broad scope of legal analysis so important to the decision-making process. If you have a panel consisting only of three older white male Democrats who came on the bench from the district attorney's office, do you really have a cross-section of thinking on a particular issue? Or, for that matter, any three judges sitting on a panel, all of the same gender, race, party, and background?" Even so, says Orr, political affiliations do not decide cases. "I have not seen party affiliation or gender or race play a deciding factor in how a case is decided," he says.

GOP Progress

What other demographic items of interest turned up in the Center's study? In party affiliation, Republicans have made the most progress on the Court of Appeals, where they constitute 16.7 percent, and on the District Court bench, where they constitute 16.4 percent. But they have no members on the Supreme Court and only 8.1 percent on the Superior Court bench.

Women have made their presence felt on the same two benches. Women make up 16.7 percent of the Court of Appeals and 10.9 percent of the District Courts, but 0 percent of the Supreme Court and only 2.7 percent of the Superior Court judgeships.

Minorities, meanwhile, have done better at the upper levels. Blacks comprise 14.3 percent of the Supreme Court, 16.7 percent of the Court of Appeals, and 13.5 percent of the Superior Court, but only 6.7 percent of the District Court bench, and none of the three Special Superior Court judgeships.

The average age of North Carolina's judges is 48.6 years. The state's District Court judges average 47.1 years of age; the Superior Court judges, 50.7 years; the Court of Appeals, only slightly older at 51.6 years; and the Supreme Court, considerably more mature at a grand old 57. But female judges are on average much younger than male judges, reflecting the fact that women have only recently increased their numbers on the judiciary. Women judges on the Court of Appeals average 43, while men average 10 years older—53.3 years of age. On the Superior

Table 4. Average Age of North Carolina Judges

Judge Category	Average Age
All Judges	48.6
Supreme Court	57.0
Court of Appeals	51.6
Superior Court	50.7
District Court	47.1
Special Judges	52.0

Source: N.C. Center survey in July 1990; and data from the Administrative Office of the Courts.

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Court, women average 37 years of age, while men average 51. On the District Court bench, women average 43.4, while men average 47.5. (The averages for female judges on the Court of Appeals and Superior Courts may not be that significant, because there are only two women judges on each court.)

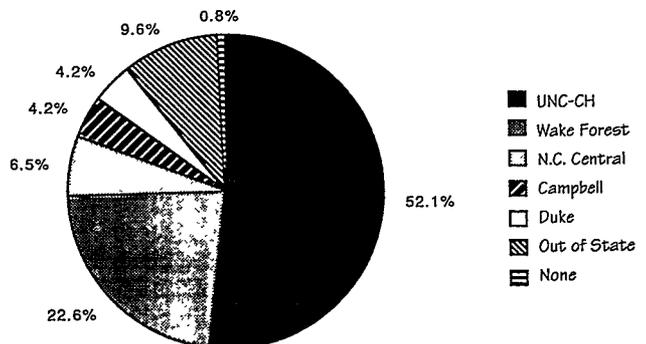
Carolina, Wake Law Schools Most Frequent Training Grounds

Legal training is also a key element of judicial demographics, and the Center's research found that there still are two of the state's 261 judges who did not graduate from law school. Prior to 1980, the N.C. Constitution did not require judges to be licensed to practice law,⁸ and because judges are selected by election in North Carolina, there were a number of judges who had not been to law school and who had thus not been licensed to practice. Those judges who were already on the bench were allowed to remain as long as they could win re-election, but their number is now down to two on the District Court bench—Judges Stephen M. Williamson of Kenansville and Arnold O. Jones of Goldsboro.

Of the remaining 259 judges, more than half went to law school at UNC-Chapel Hill. Carolina's law school claims 136, or 52.1 percent of the judges; followed by Wake Forest Law School with 59, or 22.6 percent; N.C. Central University with 17 judges, or 6.5 percent; Campbell University and Duke University each with 11 judges, or 4.2 percent; and 25 law schools in other states with the remaining 9.6 percent—except for the 0.8 percent who didn't go to law school.

The Center's survey also examined the geographic elements of the state's judiciary, and found, not surprisingly, that most of North Carolina's judges hail from the populous Piedmont area of the state, and the fewest from the

Law School Attended by N.C. Judges



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western reaches. The 35-county Piedmont, stretching from Hickory in the west to Raleigh in the east, has 125 of the state's 239 trial court judges—40 of the Superior Court judges and 85 of the District Court judges—or 52.3 percent of the state's trial judges. The Piedmont has 54.6 percent of the state's population.

By contrast, the 24-county western section of the state has 32 of the trial court judges, including nine Superior Court judges and 23 District Court judges—representing 13.4 percent of the state's trial judges. The region has 14.2 percent of the state's population. And the 41-county eastern region of the state has 82 of the 239 trial judges—25 Superior Court and 57 District Court judges—representing 34.3 percent of the trial judges. The region holds about 31.2 percent of the state's population. Thus, the trial court judiciary ap-

proximates the population distribution in North Carolina.

But in the appellate judiciary, the Piedmont has a larger share and the eastern and western regions have a smaller share of the judges. Twelve of the 19 appellate judges come from the Piedmont (63 percent of the appellate judges), while five come from the East (26 percent) and only two (11 percent) hail from the West.

Most Judges Are Appointed, Not Elected

And the Center's survey confirmed once again that, while the North Carolina court system professes to have an *elective* judiciary, in fact most judges are first *appointed* to their judgeships. Of the 261 judges sitting on the bench, 160

Table 5. Law School Attended by North Carolina Judges

	UNC-CH	Wake Forest	N.C. Central	Campbell	Duke	Out of State	None	Total
All Judges	136 52.1%	59 22.6%	17 6.5%	11 4.2%	11 4.2%	25 9.6%	2 0.8%	261 100.0%
Supreme Court	3 42.9%	1 14.3%	0 0.0%	0 0.0%	0 0.0%	3 42.9%	0 0.0%	7 100.0%
Court of Appeals	7 58.3%	3 25.0%	1 8.3%	0 0.0%	1 8.3%	0 0.0%	0 0.0%	12 100.0%
Superior Court	48 64.9%	14 18.9%	4 5.4%	0 0.0%	5 6.8%	3 4.1%	0 0.0%	74 100.0%
District Court	77 46.7%	39 23.6%	12 7.3%	11 6.7%	5 3.0%	19 11.5%	2 1.2%	165 100.0%
Special Judges	1 33.3%	2 66.7%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	3 100.0%

Source: N.C. Center survey in July 1990; and data from the *Martindale-Hubbell Law Directory, North Carolina Manual (1989-1990)*, the Administrative Office of the Courts, and interviews with judges.

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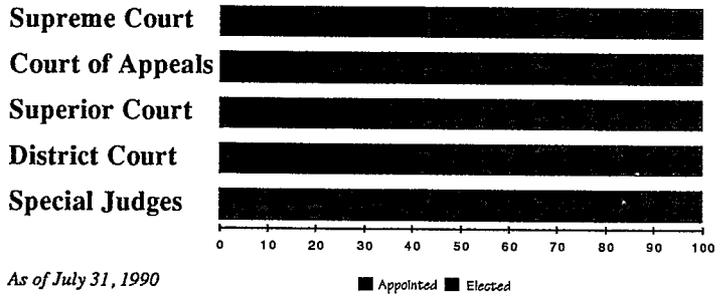
Table by Dale McKeel

of them—or 61.2 percent—were first appointed to the post they occupy, although they may since have won election to the same judgeship, while 99—or 38 percent—got to their current judgeships by the elective route.

By type of court, four of seven Supreme Court justices, or 57.1 percent, were first appointed to their posts; eight of 12 Court of Appeals judges, or 66.7 percent, were appointed; 48 of 74 Superior Court judges, or 64.9 percent, were appointed; and 97 of 165 District Court judges, or 58.8 percent, were appointed. By law, the three Special Superior Court Judges are appointed. These findings are consistent with other surveys of the judiciary. In 1987, the Center found that 59 percent of the state's existing judiciary had been appointed, compared to 1990's 61.2 percent.⁹

And finally, the Center found that former Gov. Jim Hunt appointed more of the state's exist-

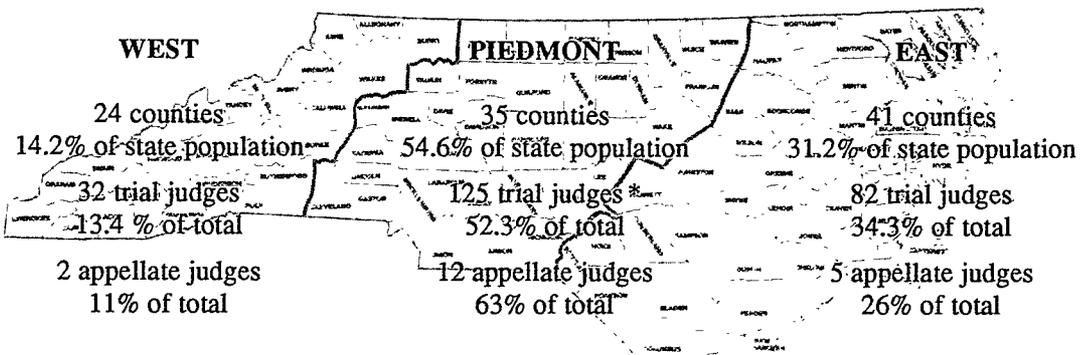
Percentage of Judges Elected Versus Appointed to their Judgeships



ing judiciary than has Gov. Jim Martin, who has been in office for nearly six years (since January 1985). Hunt served eight years from 1977-1985. Of the 261 judges currently on the bench, Hunt appointed 79 of them—or 30.3 percent of the state's judiciary. Martin, meanwhile, has named 47 of the current bench—or 18 percent of the state's judiciary. Of the 160 appointed judges (some were appointed by previous governors), Hunt named 49.4 percent of them, while Martin named 29.4 percent of them.

Carol Majors

Table 6. Geographic Distribution of North Carolina Judges



* Note: All three special Superior Court Judges, who must be appointed by the governor, are also from the Piedmont.

Source for geographic divisions of the state:

Ole Gade, H. Daniel Stillwell, *North Carolina People and Environments* (Boone, N.C.: Geo-App Publishing Company, 1986)

Source for county population data: *North Carolina Manual*

Source for judicial data: N.C. Center survey in July 1990; and data from the Administrative Office of the Courts, *Martindale-Hubbell Law Directory*, and *North Carolina Courts Directory*.

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Table 7. Whether Judges Were First Appointed or Elected to Current Position

	Elected		Appointed		Total	
All Judges	101	38.7%	160	61.3%	261	100.0%
Supreme Court	3	42.9%	4	57.1%	7	100.0%
Court of Appeals	4	33.3%	8	66.7%	12	100.0%
Superior Court	26	35.1%	48	64.9%	74	100.0%
District Court	68	41.2%	97	58.8%	165	100.0%
Special Judges	0	0.0%	3	100.0%	3	100.0%

Source: N.C. Center survey in July 1990; and data from *North Carolina Reports*, *North Carolina Court of Appeals Reports*, *North Carolina Manual (1989-1990)*, and the Administrative Office of the Courts.

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Table 8. Judicial Appointees by Governors James B. Hunt Jr. and James G. Martin

	Hunt Appointees Still on the Bench		Martin Appointees Still on the Bench	
All Judges	79	30.3%	47	18.0%
Supreme Court*	4	57.1%	0	0.0%
Court of Appeals	4	33.3%	2	16.7%
Superior Court	17	23.0%	6	8.1%
District Court	54	32.7%	36	21.8%
Special Judges	0	0.0%	3	100.0%

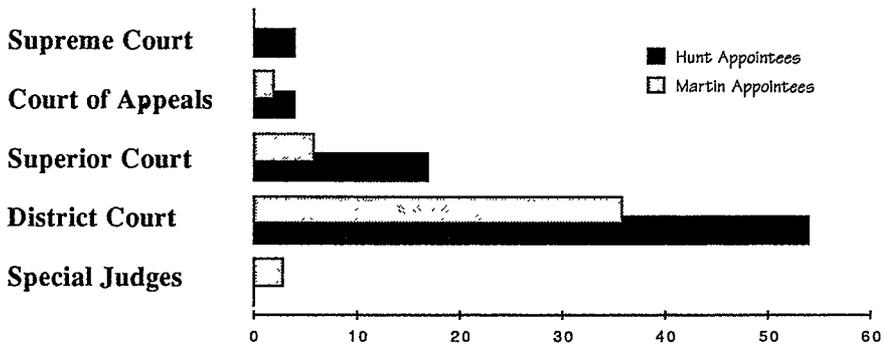
*Percentages indicate the proportion of judges at each level that were appointed by Governors Hunt and Martin, respectively, and still on the bench.

Source: N.C. Center survey in July 1990; and data from *North Carolina Reports*, *North Carolina Court of Appeals Reports*, *North Carolina Manual (1989-1990)*, and the Administrative Office of the Courts.

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Judicial Appointments by Governors



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Hunt appointed four justices, or 57.1 percent of the Supreme Court, while Martin has no current appointees; Hunt named four judges of the Court of Appeals, or 33.4 percent, while Martin has named two, or 16.7 percent; Hunt appointed 17 of the current Superior Court judges, or 23 percent, while Martin has named six judges, or 8.1 percent; and Hunt appointed 54 of the District Court judges, or 32.7 percent, while Martin has named 36 of the District Court judges, or 21.8 percent. Martin has named all three of the Special Superior Court judges.

Of the current judiciary appointed by Hunt, a Democrat, all are Democrats; of the judges appointed by Martin, a Republican, most are Democrats. Because in many cases Martin had to pick from a list of Democrats nominated for District Court judgeships (state law requires nominees for District Court vacancies to be of the same political party as the judge who vacated the post¹⁰), Martin has appointed 29 Democrats to judgeships and 19 Republicans to such posts.

This survey of the state's judiciary makes it clear that most of North Carolina's judiciary is still white, male, and Democratic. But increasingly, the judiciary is becoming more reflective of the state's population. It may never mirror that population, but it likely will continue to diversify as more diverse views and backgrounds are brought to the state's trial and appellate benches. "Appointing authorities are becoming—and have been over the years—more sensitive to appointing women and minorities to the bench," notes Exum. But as their numbers continue to lag well behind their percentage in the general population, it's evident that there's plenty of room for improvement. □□

FOOTNOTES

¹For more on how North Carolina increasingly has become a two-party state, see Vanessa Goodman and Jack Betts, "The Two Party System in North Carolina," a special report by the N.C. Center for Public Policy Research, December 1987.

²*Haith v. Martin*, 618 F Supp. 412 (E.D.N.C., 1985).

³Michael Vasu and Associates, "North Carolina Survey of Attorneys," cosponsored by the N.C. Association of Women Attorneys and the N.C. Bar Association, May 1, 1990. Vasu et al. found that in 1970, about 5 percent of the state's attorneys were women, but that by 1983, 15 percent were women and that in 1990, about 20 percent of the lawyers were women. That number should continue to grow, according to an informal survey of North Carolina's law schools conducted by Chief Justice Exum during the spring of 1990 for a speech. Exum said that about 43 percent of the law school students in North Carolina are women. See James G. Exum Jr., address on "Women and the Law: Changing Roles and Changing Attitudes in the 1990s," April 27, 1990, pp. 1-2.

⁴*Article IV: A Guide to the N.C. Judiciary*, N.C. Center for Public Policy Research, Raleigh, 1980, pages 15-215.

⁵*Race Versus Robe: The Dilemma of Black Judges*, Associated Faculty Press, Inc., National University Publications, Port Washington, N.Y., 1983, pp. 79-80.

⁶Elaine Martin, "Men and women on the bench: vive la difference?" *Judicature*, The Journal of the American Judicature Society, December-January 1990, Vol. 74, No. 4, pp. 204-208.

⁷Julie Emery and Alex Tizon, "More minority judges needed to end bias, say judge, prosecutor," *The Seattle Times*, October 5, 1988, page 1A.

⁸A constitutional amendment (Article 4, Section 22, N.C. Constitution) requiring judges to be authorized to practice law—"Only persons duly authorized to practice law in the courts of this State shall be eligible..."—was approved by the General Assembly in Chapter 638 of the 1979 Session Laws and adopted by the people on a 888,634 to 353,714 vote—72 percent for and 28 percent against—on Nov. 4, 1980.

⁹For more on judges in general and how they are chosen, see Jack Betts, "The Merit Selection Debate—Still Waiting in Legislative Wings," *North Carolina Insight* Vol. 9, No. 4, June 1987, pp. 14-21.

¹⁰G.S. 7A-142.